

LEARNING FROM FRANZ L. NEUMANN

Law, Theory, and the Brute
Facts of Political Life



David Kettler and
Thomas Wheatland



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Chapter 1

THE CHALLENGE OF FRANZ L. NEUMANN

Franz L. Neumann was a twentieth-century political thinker compelled to address central issues of democratic political understanding that have unexpectedly returned to prominence in recent years. Above all, there are patterns of threat to the convergence of pluralist social formations and adaptive constitutional orders that appeared securely established in the predominant array of states, notably the rise of authoritarian political leaders able to secure recognition from constituencies comprised of disillusioned publics and interested centers of power. It is understandable, then, that some attention has turned to the generation of thinkers that encountered fascist rule in its various embodiments in the twentieth century, especially the classical—and worst—instance of National Socialist rule in Germany, notable among other examples of the time in that it displaced a troubled but working democracy. Much of the discussion of those cases segued into a more inclusive examination of “totalitarianism,” designed to comprehend the Soviet state as well, which shifted attention from key issues of democratic theory, notably the use of such key democratic institutions as universal suffrage to destroy democracy. Yet, that is precisely the form taken by present-day threats.

That class of questions could not be neglected by the generation of political exiles who had played an active role in the struggles of Weimar, among whom Franz Neumann was certainly the best recognized, notably after the publication of *Behemoth* during the course of the Second World War. Although he was never a Marxist in his political theory of the democratic state, his recourse to social analyses he learned from Marxists made it easy to put him aside in the postwar years, especially in view of his silencing by an early death. Alternatively, he could be referred to the rather amorphous entity called the “Frankfurt School,” in the light of his years of employment in Max Horkheimer’s New York Institute, and then dismissed as a lesser thinker by the scholars focused on this tendency precisely because he insisted on a political and social frame of analysis centered on issues of power and law. He certainly learned from his dealings with the Institute, but he worked as an independent scholar, as well as contributing important effort to collective ventures, as mandated by his position as a senior-level research associate. *Behemoth*, in fact, was expressly written outside of the terms of reference and discipline of the Institute.¹

Neumann was not a beginner when he forced into exile. His Weimar preoccupations with the legal and social prospects of the labor movement entered into his reading of democratic failure in Germany, and continued to concern him later, although mediated by the “brute facts of political life” encountered in the United States. This theme as well bears on contemporary understanding of changing social underpinnings of democracy. The aim of the present study is to make Neumann’s thought, as expressed not only in his

most theoretical treatises but also in the writings incidental to his practical involvement as commentator and participant in public life, available to contemporary inquiries. The interplay between these facets of his life is integral to the strength—the “this-sidedness” of his thought. Awareness of it also helps to define the limits of any attempt to build on him in the present constellation of factors, given enough similarity to warrant the enterprise of learning from Neumann.

From his first doctoral dissertation “On the Relations between State and Punishment” (1923) to his last writings, dealing with threatening relations between anxiety and political education (1953), Neumann’s work displays three motifs. First, he engages the existing work of great thinkers, as well as empirical-historical observation, with a view to mobilizing thought for determinate purposes, all aiming to enlarge human freedom and to make political regimes decent when so many are not. At times, these purposes are immediate, including understanding the horrific so as to act against it, or, earlier, strengthening the place of the working class through law in a democratic republic; while some of them are forms of what Rawls, among others, has called realistic utopianism—reflections based on an identification of appealing outcomes just beyond our current reach. Second, his theoretical models acknowledge the coexistence of variously grounded motifs, even under optimal conditions, whose interrelationships cannot be brought to consistent theoretical harmony but must be managed by the changing interplay of political actions. Neumann’s work recurrently grasps a small number of elements—law, class, party, bound together in a complex field. These elements function as overlapping—sometimes complementary, sometimes antagonistic—elements and mechanisms that give shape and motion to Neumann’s writings. These are his conceptual and empirical building blocks, his site of mechanisms that give shape to his analyses and that animate the motion of his writing. We speak of “complementarity” in a sense to be developed in the course of the study. Third, and as the prime example of such tension, there is, as noted, his dedication to key elements of the social-democratic program, grounded in themes derived from Marxist analysis, together with a high priority given to liberal standards of governance, notably the rule of law, notwithstanding his recognition of their capitalist genealogy and ideological functions. This motif eventuates in an increasingly elegiac consideration of social democracy, which has failed to keep the elements in play together in a manner in which their ties become creative rather than problematical. That is where his work was interrupted.

Born in 1900 in a sizable Silesian city, Franz Leopold Neumann studied in several German universities, worked as a labor lawyer for the trade union movement in Berlin, emigrated under duress in 1933, gained notice as author of an important book on National Socialist Germany and later as professor of political theory at Columbia University, and died at age 54 in an auto accident in Switzerland, at a moment of uncertainty in his life and career. Because he lived a life broken into many segments by the vicissitudes of Weimar Germany and exile, he is remembered within a number of distinct academic compartments, usually as a respected but secondary figure. Such judgments neglect much of what can be learned from Franz Neumann’s enterprise, comprehensively understood. Our aim is to consider him instead as exemplary for the conjunction of politics and intellectual creativity.²

After his legal studies, Neumann served as a legal and political advocate, adviser, negotiator and teacher for many in the interwar generation of Socialist trade unionists. His last legal assignments as counsel to the Social Democratic Party included futile lawsuits against Hitler and Goebbels that were still in litigation in April of 1933. The bulk of his legal work and publications, however, dealt with the relations between the social or economic “constitution,” which comprehended labor and management in their multiform relations, and the constitution of the Republic, which framed the political formation of both parliamentary sovereignty and variously protected rights. This led him to complex exchanges with influential figures in Weimar constitutional thought like Hermann Heller, Gustav Radbruch and Carl Schmitt, although he was 10 or more years their junior. We nevertheless speak of him as an intellectual rather than a professional because even his most technical work as lawyer was grounded in the larger Social Democratic political project whose locus was in the culture of discussion and controversy that surrounded the prime political centers.

First, he appears as one of the two or three most productive junior associates of the most influential Weimar labor law teacher, Hugo Sinzheimer, exceptionally active in trade union practice and a participant in some of the important controversies of the time, not only as advocate for major initiatives by the Socialist labor federation but also as publicist in disputes about the Weimar Constitution among organized scholars of public law. In his capacity as controversialist, then, he is noticed in the more recent literature as well by students of Weimar legal theory, notably as one of the Socialist writers in an unexpectedly complex relationship with the prominent conservative legal theorist, Carl Schmitt. Neumann’s time during 10 of the 12 years of Weimar was largely consumed by the routine of legal work, which led him to countless litigations before all the courts of the labor law system, including the highest, as well as his role as advocate and publicist in the periodicals of the Socialist and labor movements. He was a practitioner. Although Neumann lived most of his short life in Germany, his forced emigration in 1933 led to 20 years of education, adjustment and experimentation, which led him in turn to focus on a critical examination—sometimes excessively harsh—of the intellectual scene of which he had been an active part.

The theoretical by-products of his earlier work raised the issues that occupied him during his first years in exile, as a doctoral student of political theory at the London School of Economics (LSE). Neumann first found asylum in England. Rather than seeking requalification as an attorney, as two of his closest associates did, he sought out the English political theorist, Harold Laski, some of whose writings he had already cited during his last German years, and he set about a program of studies in political theory that might provide an explanation for the failure of the conjunction of law and politics that had been his *métier*. Laski was perhaps uniquely attractive to Neumann because he was himself in the midst of an abrupt shift from a pluralist theory of social liberalism, whose multiple bargaining regimes resembled the Weimar scheme that Neumann had helped to explicate, to a rigorously majoritarian and militant form of social democracy. Another mentor at the LSE was the sociologist, Karl Mannheim, a fellow émigré, whose studies at the time were focused, like his own, on a diagnosis of the breakdown of rationality evinced by the rise of Hitler. Neumann’s own analysis was distinctive, grounded

in his experience and intellectual milieu, but it is clear that his engagement with both teachers was open and, in some measure, reciprocal. Learning and negotiating are closely linked in the style of such intellectuals.

Along with his more academic studies of the historical signs and antecedents of fascism in the domain marked out by power in the form of law and legal process during his time at the LSE—notably his dissertation on “Governance of the Rule of Law” and its decline—Neumann engaged in a polemical mode in the politics of anti-fascism. Such manifest political activism gave way to a number of activities that drew on his old skills as advocate, legal analyst and organizer and brought him close to Max Horkheimer’s Institute of Social Research, which had found refuge in New York. As a result of his resourceful support of the Institute’s journal among English academics, above all, he narrowed the distance of the Weimar years in Frankfurt between himself as an associate of the trade union-oriented Academy of Labor and the members of Horkheimer’s Institute, which had been a special, privately endowed branch of the Philosophy Faculty. In exile, Laski’s active sponsorship was decisive for his opportunity to translate these efforts into a position with Horkheimer’s organization; and, as in his relations with Laski and Mannheim, Neumann’s aim was not simply to find material support but also to enter into a new phase of learning about the matters most central to his concerns as a political intellectual and exile, always with his eyes on Germany. As exercises driven largely by self-criticism and best understood in relation to his earlier work, neither his dissertation on the rule of law nor his occasional contributions to exile periodicals at that time have been much studied. By and large, this work has been subsumed under the more general conception of Neumann as a marginal “member” of the “Frankfurt School,” in view of his move from London, in the fourth year of exile, to employment in Max Horkheimer’s Institute of Social Research in New York.

During his years at the Institute, he recontextualized some of his earlier exile writings to come closer to the discourse required as a condition for recognition there, wrote several articles and many book reviews for the Institute’s closely held, German-language periodical and played an important role in research planning; but his most noted accomplishment during those years was his highly regarded, meticulously researched account of National Socialist Germany, which was written outside of the ordinary consultative procedures of the Institute, under contract to an American publisher. During the Second World War, having been dismissed as a salaried employee of the Institute, Neumann made a memorable record as the moving force within the unit of the American Office of Strategic Services (OSS) that was charged, above all, with analysis and policy planning for Germany; and these activities provide the materials for a distinct body of scholarship.

Most broadly stated, Neumann’s project at this moment was a subtilization of the stern Marxism he had found ever more politically attractive so as to comprehend as well the issues of law and power that he had identified in his dissertation as central to the emergence of fascism. Although the Institute self-protectively cast its commitment to a philosophical version of this wider project in somewhat Aesopian language and supplemented this undertaking with more narrowly defined examinations of special aspects of society, Neumann had every reason to seek an affiliation there as well as some reason to hope that his special focus would be welcomed as an important addition

to Critical Theory. Then too, the Institute for Social Research was unique among arrangements for exile scholars in having a core of its own funding as well as a recognized autonomous position at a major American university. In the event, Neumann's position within the Institute group was never altogether unproblematic, not least because his own key questions about events in Germany and their implications for modern states remained distinctly political and focused on the two principal social players in the Marxist class analysis. His major study of Nazi Germany was accordingly written and published outside of the normal collective scrutiny of the Institute group and indeed differed with its consensus on a capital question of the economic underpinnings of National Socialism. At some distance, then, and with only one significant article in the institute's journal during his six years of affiliation, he nevertheless served as the public voice of the group in numerous published reviews of political and legal books as well as being a respected participant in internal seminars and discussions. His role was modified, however, rendered more vulnerable but paradoxically also more influential, when economic circumstances and the priorities of Horkheimer and his closest associates made it clear that the wider research scope of the Institute that occupied staff members like Neumann would be eliminated unless outside funding could be found on terms that did not compromise the primary identity for which Horkheimer sought recognition. Neumann resumed his old practice as negotiator, working on project proposals and operating within the group to open it to a conception of research less alien to American sponsors and collaborators and then working in turn upon some funding agencies, notably the American Jewish Committee, to initiate the anti-Semitism project for which the Institute became best known in the United States. Nevertheless, not least because of his focus on institutionalized political power, he remained on the margins when it came to Horkheimer and Adorno's scholarly priorities, especially at this time.

Neumann's involuntary departure from the Institute, notwithstanding his contribution, was cushioned by officials in wartime Washington, a number of whom he had impressed over the preceding years by specialized briefings on German economic structure and policies. After the publication of *Behemoth*, his study of National Socialist Germany in 1942, he was widely recognized as uniquely qualified on these matters, regardless of the varied opinions about his approach, which was uniformly if inaccurately taken as rigorously Marxist. He had also built on professional contacts initiated during his first visit to various American institutions with Harold Laski as well as developing close ties at Columbia due to his successful stints as visiting teacher in the School of General Studies. As to his associations in anti-fascist political circles, there are hints but no hard evidence. In any case, Neumann was not dependent on the Institute, however much he wanted to continue his work in that intellectually demanding setting and to play a part in developing the research projects he had done so much to make possible. The connection was not in fact ever severed, at least as long as the Institute remained in the United States, and Neumann continued to function intermittently to negotiate relations for Horkheimer and his associates, until after the war he helped them to return to Frankfurt.

After an unwanted period of routine work in a wartime economic agency, while awaiting his expedited American citizenship, Neumann was received into the research branch of the new American intelligence service, where he was joined by several of his

close Institute associates, notably his friend, Herbert Marcuse. When Neumann spoke not long before his death of the gain to exile intellectuals from complementing their continental philosophical education through learning about the “brute facts of life” from American political scholars, he may have been thinking of academic empirical studies first of all, but he could also have been referring to his three years in the Research and Analysis Branch of OSS, and this in two senses, at least. First, no facts of life—or death—could have been more brutal than the detailed information about National Socialist Germany that he studied so closely, together with the exceptional young American historians seconded to the agency. Of course, Neumann had already paid close attention to the structures of that *Behemoth*, but the theoretical framing of that work also offered a measure of protection against the violence on view. There was no conflict between the two perspectives, but the strategic point of view implicit in intelligence was certainly different—and more brutal—than the view that Neumann originally delineated with great distance as of an abstract interplay of contradictory forces. Second, the experience in Washington also instructed him in new dimensions of the more ordinary brute facts of politics, inasmuch as the political strategies urged by Neumann and his group in conjunction with their analyses were rarely implemented—or even seriously considered—by the American government, whose orientation was rather guided at first by more conventional and politically potent preconceptions and then, at the very end of his service for the War Crimes Tribunal, especially when it came to the responsibilities of German business leaders and officials of civil government, by the emerging priorities of the incipient Cold War with the Soviet Union. Paradoxically, then, it might be said, Neumann was shielded by his comparative lack of functional effectiveness during this period of intense and privileged study from the temptations of the “treason of the clerks” against which he often warned in his later defense of political theory as a necessarily independent and critical enterprise.

Finally, in the postwar years, beginning in 1948, Neumann figured as an important teacher of political theory at Columbia as well as prominent advocate for this subfield within the political science profession. Simultaneously, he was present in Germany as a proponent of new departures in university designs, notably the institutionalization of political science. His own ambitious project in democratic political theory, however, was left as a collection of fragments at his death. This last phase of his work often disappoints his commentators, who frequently want him to have remained closer to what they understand to have been the line of the Frankfurt School’s Critical Theory. Yet, we shall argue that this unfinished testament, understood in the context of what came before, amounts to an important diagnosis of political theory and its problems.

Although the seven years left to Neumann between his departure from government service and his accidental death during a stay in Europe were largely dedicated to the project of devising just such a political theory for the democracy that he envisioned for the postwar world, reassessing the structural factors that he had earlier deemed decisive and adapting to a politics lacking in the transformative social thrust that he had earlier expected, there was also a measure of continuity with the practical aims that had animated his Washington years. The neglect of his policy advice at the higher levels of government did not mean that he was not respected by many officials within the apparatus as well as

by many in the closely related worlds of universities and foundations. And once removed from the OSS, which was after all a marginal entity within the hierarchical policy process of government, he was free to return to the mode in which he had been most successful in exercising a measure of power. He was back at a variety of bargaining tables, where his negotiating skills counted. Most important in the postwar years was his contribution to the political and cultural ecology of Western Berlin, especially his efforts on behalf of the newly created Free University as well as his part in the redevelopment of the Advanced Institute for Politics, headed by a major Social Democratic resistance figure, and its eventual incorporation in the university. At Columbia University, during his six years as professor, he gained extraordinary respect from colleagues in diverse specialties as well as from a short generation of graduate students—including one of the coauthors of the present study—all obliged at the outset to attend the lecture course he led and many of them mature, exceptionally serious adults, who came to university after wartime military service. There was never a “Neumann School” but rather a lasting effect of his authority for many in their subsequent choice of subjects and formulations of questions, notably in respect to the sense of the moral and political seriousness of this work. At the university and in his relations with research institutions whose policies did much to form the fields of study, Neumann steadfastly advanced the cause of interrelating the factual study of politics with the work of political theory, which, in his judgment, required knowledge of the history in both domains. The institutional projects were important arenas for this political intellectual, but his lasting legacy was in the determination to make political theory an integral part of political science, a project that had a scientific dimension, to be sure, but that gained its specific weight from a design for the political education that he came to consider the motor of the social and political change he had once expected from sweeping social movements. The challenge to the authors of the present book is to inquire into the bearing of Franz Neumann’s work on political theory as a contemporary and continuing enterprise.

Notes

- 1 Cf. William E. Scheuerman, “Liberal Democracy’s Crisis: What a Forgotten ‘Frankfurter’ Can Still Teach Us,” *Berlin Journal of Critical Theory*, Vol. 2, No. 3 (July 2018), pp. 5–30.
- 2 The aim, design and scope of this book preclude critical engagement with the extensive challenging literature available on Neumann and his work. Valuable studies include Jürgen Bast, *Totalitärer Pluralismus* (Tübingen: Mohr Siebeck, 1999); Peter Intelmann, *Franz L. Neumann: Chancen und Dilemma des politischen Reformismus* (Baden-Baden: Nomos, 1996); Joachim Perels (ed.), *Recht/Demokratie und Kapitalismus: Aktualität und Probleme der Theorie Franz L. Neumanns* (Baden-Baden: Nomos, 1984) [containing articles by Thomas Blanke, Rainer Erd, Wilfried Gottschalch, Friedhelm Hase/Matthias Ruete, Wolfgang Luthard, Ulrich Mückenberger, Volker Neumann, Joachim Perels, Gert Schäfer, Jürgen Seifert and Alfons Söllner], p. 9; Alfons Söllner, *Geschichte und Herrschaft. Studien zur materialistischen Sozialwissenschaft 1929–1945* (Frankfurt am Main: Suhrkamp, 1979); Alfons Söllner, *Neumann* (Hannover: SOAK, 1982); Alfons Söllner, “Reimport aus der Emigration?—ein hypothetischer Ausblick auf die Gründung der westdeutschen Politikwissenschaft,” in Alfons Söllner, *Deutsche Politikwissenschaftler in der Emigration* (Opladen: Westdeutscher Verlag, 1996), pp. 273–88; Raul Hilberg, Alfons Söllner, “Das Schweigen zum Sprechen bringen. Ein Gespräch über Franz Neumann und die Entwicklung der

Holocaust-Forschung,” in Dan Diner, Hrg., *Zivilisationsbruch. Denken nach Auschwitz* (Frankfurt am Main: Fischer Taschenbuch, 1988), pp. 175–200; Mattias Iser and David Strecker (eds.), “Franz L. Neumann: Power, Constitution, Critique,” *Constellations*, Vol. 10, No. 2 (June 2003), pp. 213–63; and the relevant chapters in William E. Scheuerman, *Between the Norm and the Exception. The Frankfurt School and the Rule of Law* (Cambridge, MA; and London: MIT Press, 1997).

Chapter 2

SOCIAL CONSTITUTION, SOCIAL POWER AND RESPONSIBILITY: NEUMANN AND LABOR ADVOCACY

Marxism and Law

In a memorial delivered, as dictated by convention, by the head of his Columbia department to the assembled council of the Faculty of Political Science soon after Neumann's death, but written in quite an unconventional, almost confrontational manner by Neumann's closest friend, Herbert Marcuse, it is said of him that he "was a scholar for whom political science was closely linked to political action." His lifelong cause, according to the friend who knew best how he would want to be remembered, even in this academic setting, was to reverse the Weimar failure of social democracy, and his most pressing concern was the condition of his time.¹ If all political exiles, in the full sense of the word, have been active in some public space before their displacement, a distinct location must be reserved for figures like Neumann, whose adult years before exile were so profoundly engaged in the preeminent project of the place from which he was banished. In such cases, the activities of exile cannot be understood without close attention to the earlier enterprise.

According to the second of Karl Marx's *Theses on Feuerbach*, "Man must prove the truth, i.e., the reality and power, the this-sidedness of his thinking, in practice" (229). This familiar quotation from the author who was the subject of one of Neumann's last semester-long seminars at Columbia and whose theoretical contributions he promoted with surprising enthusiasm there in the McCarthyite Spring of 1953 may be read as a gloss on Neumann's resolution to deal, as a political intellectual, with the "brute realities of politics" while fighting "for a better political system."² The great and continuing strength of Neumann's work as achievement and model is its alertness, despite the profound importance he attaches to the great theoretical structures of rational political thought, to the distracting evidence of discordant developments in the practical world, as encountered in his practical projects. Neither in his legal nor in his political analyses was he prepared to reify the broad designs or general trends that figure in theory—not even in the theory he valued the most. This meant that he would not, on the one hand, be a thoroughgoing "critical theorist," in the sense of the Horkheimer group, lest this imply a neglect of practical threats or openings; and it meant, on the other hand, that he also would not follow Marx in his *Theses* to the categorical identification of practice with "revolutionary practice." Marx is nevertheless present as interlocutor and recognized negotiating partner throughout Neumann's intellectual career, as was made

surprisingly evident to members of his Columbia doctoral seminar in 1953, at a time when he appeared to many contemporaries and later commentators to have put all that behind him. Marx remained the social theorist to be reckoned with for Neumann, even when it seemed clear that the revolutionary proletariat would never come.

During the Weimar years, as is no less evident from the academic dissertation he completed in 1923 as from his 10 years as practitioner of labor law and participant in the process of effectuating the Weimar law and constitution in this and closely related fields, Franz Neumann's practice was dedicated, first, to social change in the sense of Social Democratic designs and, second, to managing conflicts that did not appear winnable, while eschewing compromises that jeopardized future prospects of change. If bargaining was an integral part of the process, the settlements achieved were to be judged as well by their consequences for future bargaining power. The first question about Neumann's Weimar career concerns the relations between his genre and style of thought with the Marxist themes that were so important in the political thinking of his party, and this requires a preliminary view of the relation between these themes and the legal terms of reference that were integral to his *métier*. If Neumann spent his formative Weimar decade in pursuit and practice of a socialist legal theory that somehow acknowledges what are taken to be Marx's fundamental social-theoretical insights, we have to show the *prima facie* plausibility of such a mode of political practice. We must do this if we are to assess the work of these years as an intellectual contribution and challenge rather than simply as a career of professional service to the labor movement.

Although the mature theoretical work of Karl Marx takes the form of a "critique of political economy," this work itself presupposes his earlier critique of legal and political doctrine.³ In the treatment of political economy, he undertakes to show that the central categories embodied in actually existing economic relationships in the most developed countries and accurately abstracted by the theoretical accounts of the classical economists must be more deeply penetrated in order to reveal—and change—the historically transient exploitative inhuman relationships they conceal.⁴ But the decision to focus critical attention on these categories and relationships arises from a prior determination that readings of the human social condition in legal and political terms are unproductive and misleading. There is a fairly consistent and fundamental contrast between the way in which Marx discusses economics and economists and the way he treats the political constitution and philosophers of law and state. The term "ideology" in its most derisive connotation is reserved for the latter: a "critical" political philosophy or radical political movement is no less illusory, according to Marx, than the self-characterization of the prevailing political order or the portrayal of reality implicit in the norms of the practical roles of subject, jurist, litigant, citizen, and official imposed by participation in prevailing institutions. Marx sometimes speaks of *the* political ideology and likens it to theology, in the somewhat extravagant polemics in which he breaks with his erstwhile political associates shortly after his meeting with Friedrich Engels: just as the preoccupation with religious themes and arrangements makes the atheist no less than other critics of religion appear as a "theologian" to Marx and Engels, so any attempt to grasp what is happening in society and to respond to it which orients itself by the legal and political face of things is bound to be ultimately irrelevant, however revolutionary its comportment.⁵

Revolutionary understanding and movement, in Marx's sense, must situate themselves and operate in the world of the social realities uncovered by the exposé of political economy, never taking legal and political matters on their own terms. So, for example, it is not private property as a legal right or institution that is a productive target for critical dissolution; it is capital. Similarly, class struggle and the attainment of socialism and not the democratizing of oppressive authoritarian states must be taken as the objectives of revolutionary movement, according to Marx. This fundamental position can be restated quite unambiguously at an abstract theoretical level. But its specification and practical application proved unattainable without inconsistency. Marx himself and the political movements claiming intellectual descent from his work found themselves constantly drawn back toward the legal and political understandings operative in the social arenas within which they sought to be effective. Marx's conception of *the* political ideology did not, of course, mean that he saw nothing important happening in the social relationships that "ideological" thought comprehends as legal and political or saw nothing to be done with regard to them. Rights of property secured by courts and officials and armies had to be noticed, explained, and overthrown, even if the issues concerning these rights had to be drastically recast so that they were no longer defined as moral and legal. This was no mere scholastic quibble. Marx was convinced that a political movement focusing upon the injustices of private property as such would pick up merely antisocial elements and that it would generate schemes for the equalization of property and the like, which he considered irrelevant to the actual course of modern production and consequently demoralizing for the movement. There was a deep inner tension between the need for a descriptive language, which could clearly point to the things people encounter in their political life, a language in which the legal terms for the changing structures of private property, for example, would play an important part, and his theoretical conviction that a characterization of things in such terms could be profoundly misleading as well as his political judgment that it would be dangerous.⁶

Marxist political movements found the matter still more vexing, since moral and political orientation to issues concerning property rights appears irresistible. Hostility to the rich, as well as egalitarian property demands, was rooted in powerful minority traditions within the working-class populations they sought to organize. Marx himself once apologized to Engels for including references to equal rights in a document he prepared for the International Workingmen's Association in London, explaining that he had felt obliged to accommodate himself to English prejudices. The assimilation of Marx's labor theory of value into the popular notion of a right to the full product of labor, which took place in the course of German socialist organization in the late nineteenth century, further illustrates the point. A characterization of things consonant with Marx's theories was constantly contested, in his own political experience and in that of his followers, by requirements of political life. As important as the agitational incentive to maintain an ideological focus on property rights was the ongoing practical need to formulate organizational responses to legal obstacles placed in the way of political and trade union activities as well as the need to develop legislative strategies for socialist parliamentary delegations. These tasks had to be carried on in an idiom of word and deed that could be effective, or at least comprehensible, in the larger community. Given the

fact that, in the German-speaking countries during the generation after Marx, the language and institutions of the *Rechtsstaat* provided the most accessible alternative to the traditionalist authoritarian regime, that idiom was likely to be legalistic.

Basic terms of public law and political journalism were, if anything, even less avoidable for Marx and those who professed to be his followers. Marx's theoretical position, as has been already indicated, required a subtle distinction hard to maintain. At first against his comrades in the early Communist League and later against the followers of Bakunin active in the First International, he insisted that decisive action had to be taken precisely in the social domain commonly characterized by legal and political concepts. What is more, this action required tactical support for the campaigns of liberals or democrats, even when those campaigns were widely understood by the other participants in terms of one or another of the variants of the political ideology.⁷ Marx's political prescriptions seem to impose a burden of deviousness on his followers, hard to reconcile with the genuine enthusiasm for Enlightenment operative within the movement. Marx's diagnostic journalism, which he always designed also as an instrument of the movement, is richer in political description and projection than in the reconceptualization of the social field that his theory requires.

This is by no means wholly true. His fertile development of the polemical strategy that exposes the interested motives behind the arguments and actions of opponents contributed to the process of redefining the terms of political life—as witness the subsequent political career of “ideology.” But this development was, first, not unique to Marx and his followers and, second, merely destructive in its impact. But a feature of Marx's critique of capitalist political economy that distinguishes his theory from the work of others also pessimistic about the prospects of the system, like Thomas Malthus, is his claim to show an alternative economy growing up within the established one, as a necessary function of its development. Social revolution is required to free this socialist alternative from its decadent host, but the principle of reconstruction does not have to be newly invented or the most fundamental relationships newly imposed. That is the point of the “midwife” imagery in his discussions of revolution. In his political thinking, however, which is supposed to spell out how this social revolution can work, the characterization of reconstructive developments—including the revolutionary movement itself—remains rudimentary, depending overmuch on the invocation of “the revolution” in the French sense of the term, as if it were a real presence requiring no introduction, a mole digging well.

This feature of his thinking put Marx at a curious, sometimes ironic, distance from the political developments he spent his life fostering. Once there was the strangely resigned gesture of transferring the Secretariat of the First International to New York, where it could not survive. More often his estrangement expressed itself in frustration and anger at what appeared to him to be the incomprehension displayed by the organizers and leaders of his party. They persisted in converting the alliances and objectives he would have had them treat as merely tactical into actual terms of reference and ideals. But the parties themselves found it impossible to work toward the legalization of trade union activity and, after the legal prohibition of the party, for the political rights of their members, for the establishment of minimum standards in terms and conditions of employment, for the

expansion of the franchise and the replacement of authoritarian regimes by parliamentary democracies and the many other objectives that Marx also supported, without at the same time taking a high moral tone of constructive intention, which often depended for its effect on the contrast between the high ideals embodied and promised in existing legal institutions and their actual achievements. They could not sustain the irony, which seems paradoxically intertwined with Marx's revolutionary design.

When Marx comes to deprecate juristic modes of "action," he has in mind a more basic sense in which the state of the law is dependent on non-juristic events.⁸ The law is a certain kind of design for comprehending and regulating activities of person, and these activities are shaped by considerations or factors, which the law may not touch. And much activity will be outside the law. Law can thus be reasonably represented as nothing more than an imperfect technique for giving organizational form to certain aspects of social activities and represented as altogether dependent for its apparent effects upon tendencies beyond its control. Moreover, the aspects of things that are recognized by law may have very little to do with the dynamics of events and may, in any case, be taken up by law in the form of fictions. So, for example, the criminal law envisions actors of a responsibility rarely encountered on the streets, let alone in criminal court or, for that matter, on the pages of contemporary treatises on behavioral science. The law of contracts historically has premised an equality between contracting parties that was defined so as to ignore certain types of abject dependencies. And when law renders its forms more realistic, it simply records changes in power that have been brought about by the play of the forces that actually determine events. Neumann begins, as will be shown, by accepting this as a correct sociological theory of law, but he distinguishes this from legal theory and legal philosophy, as distinct domains of knowledge, whose interrelations must be worked out largely in practice.

A developed and pointed statement of the distinctively Marxist case was drafted by Friedrich Engels in 1886 and completed for publication by Karl Kautsky in the following year. Under the sarcastic heading of *Juristen-Sozialismus*, or "lawyers' socialism," Engels dissects a study of the "right to the full product of labor" by the Viennese jurist, Anton Menger.⁹ Menger argues that Marx needlessly confused the Socialist thesis by his involuted economic reasoning. What socialism is really about, on this account, is above all the "right to the full product of labor," to which Menger added a right to livelihood and a right to work. Marx eventually gets to the real point, Menger says, but fails to acknowledge his predecessors and, in any case, fails to develop the legal philosophy that socialism needs, if it is to lay a proper foundation for its three central claims. Engels's rejoinder, especially angry because of the slight to Marx, opens with an historic review of the uses of juristic argumentation. During the Middle Ages, he maintains, all thought was given a theological foundation. The church bound together the dispersed feudal order, and the clergy sanctified the system of power. When the bourgeois class, growing up in the shelter of the towns, turned against the regime of the privileged landed order, they initiated a series of religious "reformations" in an attempt to bring religious thinking in line with their experiences and needs. "But," Engels asserts, "it didn't work." The "classical" worldview of the bourgeoisie, arising in France early in the eighteenth century, was "the juristic world view." Since the exchange of commodities on a society-wide scale and in a

full state of development—that is, with the granting of advances and credit—produces complex reciprocal contractual relationships and therefore requires generally binding rules, such as can only be laid down by the community—legal norms determined by the state—it was imagined that these legal norms arose from the formal determinations by the state and not from the economic facts (492).

Competition is the great equalizer, according to Engels, and equality before the law thus became the great bourgeois battle cry. But then Engels touches on a critical point, which renders his position with regard to the place of juristic themes in Socialist politics less simplistic. He writes,

The entrenchment of the juristic worldview was aided by the fact that the struggle of this newly emerging class against the feudal lords and the monarchy then protecting the lords had to be a political struggle, like all class conflict, a struggle for possession of the state, a struggle on behalf of claims of right [*Rechtsforderungen*]. (493)

Engels's linkage of class conflict, political conflict and claims that may be understood as legal claims or claims for rights makes this passage particularly interesting for our inquiry and fulfills the expectations aroused by our earlier discussion of the pressures toward legal political conceptualizations in political life. Quite consistently, then, Engels—or Kautsky¹⁰—applied the political point to his own party, in the concluding paragraph of the piece:

None [of what has been said about the ideological character of “lawyers’ socialism”] means that Socialists won’t allow themselves to make their own claims of right [*Rechtsforderungen*]. An active socialist party would be quite impossible without such demands, as would any other kind of political party. The requirements arising out of the general interest of a class can be secured only if the class conquers political power and makes what it needs generally binding in the form of laws. Every battling class must therefore formulate its demands in its program in the form of claims of right. (509)

Engels insists that there is a critical distinction between this position and what he denounces in Menger because the claims of right in his own analysis are to be grounded upon realistic assessments of the social and political situation and constantly adjusted to meet the changing requirements of the class struggle. They have nothing to do with a philosophy of law or other figments of juristic imagination. While the working class had once based its earliest strivings upon notions of right, trying to substitute their own juridical system for the system sustained by the bourgeois worldview, these understandings are now, Engels contends, wholly obsolete. They had radicalized the demand for equality and turned it against the bourgeoisie, and they had extrapolated a right to the full produce of labor from Adam Smith’s observations on labor as the source of all wealth.

But such pioneers of socialist thought as Saint-Simon, Fourier and Owen had already sensed that “letting the social question rest upon merely juristic ‘grounds of right’ did not by any means help to get rid of the misery produced by the bourgeois-capitalist mode of production, especially at the stage of modern industry.” Where they erred in turn was in supposing that they should therefore altogether abandon the juristic-political domain

and give up all political struggle, in favor of an appeal to humanity. Thanks to Marx's materialist theory of history, Engels asserts that the working class has now reached a position that renders, at least in principle, both of the preceding conceptions obsolete. The proletariat is able to recognize "that it cannot adequately grasp its situation in terms of the juristic illusions of the bourgeoisie" (494), and that this illusion is simply one of the products of the old economic conditions. The proletariat, in short, "can comprehend its situation in full only when it looks at things in their reality, without juristically-tinted spectacles" (494). Even Menger, Engels goes on, cannot wholly escape the influence of this new realism, despite his jurisprudential speculations, by granting that only the course of historical development can determine whether things will in fact move toward the juridical system he has put forward, and he cautions that in the meantime nothing should be done that might make conditions worse. In a mocking set of rhetorical questions, Engels demands to know the point of laying down fundamental rights that "can't even lure a dog from the hearth," let alone being able to shape history. "Why wait 'til the conclusion to inform us [...] that the goal of the socialist movement can only be grasped by study of social development and its motive forces, and not by the transformation of socialist ideas into dry legal concepts?" (508) The power of Engels's sarcasm in this passage depends, of course, on a certain equivocation about what it might mean to "grasp" the "goal" of the socialist movement.

The specification and justification of the objectives to be sought are tacitly identified with an analysis of actual development. And that equivocation seemed to decline in persuasive force during subsequent years. In fact, the question whether the growing power of labor can be "cashed in" from time to time in the form of constitutional change and reform of the law occasions a thoughtful but heretical rejoinder to Engels's/Kautsky's treatment of Menger's *Juristen-Sozialismus* by an anonymous writer uncharacteristically given space in *Neue Zeit* by Kautsky. The writer distinguishes two views of the power of labor, one taking it as "latent" and the other as "actual." Those who hold the former think that labor's increasing power can only assert itself in a revolutionary moment; the others, that the power steadily changes the social equation and makes possible continuous and cumulative assertion by way of legal changes.¹¹

Implicit in this disagreement and critical for an understanding of the social sphere, where the questions about legal analysis and legal work arose most directly and where the abstract talk about rights took concrete and consequential form, is the uncertainty about the importance to be attached to trade unions. Marx and Engels each emerged as independent thinkers with their attempts to comprehend collective movements among the working class, including the organization of such movements through trade unions. But their need to specify the place of trade unions within the broader pattern of social progress gained new urgency with the formation of the First International. In his 1866 "Instructions for the Delegates of the Provincial General Council," Marx assigns unions two distinct qualities, as functions of the present state of the social process and as integral to the dynamics of revolutionary change:

Trades' Unions originally sprang up from the spontaneous attempts of workmen at removing or at least checking that competition [i.e. the unavoidable competition among the workmen],

in order to conquer such terms of contract as might raise them at least above the condition of mere slaves. The immediate object of Trades' Unions was therefore confined to everyday necessities, to expediencies for the obstruction of the incessant encroachments of capital, in one word, to questions of wages and time of labor. This activity of the Trades' Unions is not only legitimate, it is necessary. It cannot be dispensed with so long as the present system of production lasts. On the contrary, it must be generalized by the formation and the combination of Trades' Unions throughout all countries. On the other hand, unconsciously to themselves, the Trades' Unions were forming centers of organization of the working class, as the medieval municipalities and communes did for the middle class. If the Trades' Unions are required for the guerrilla fights between capital and labor, they are still more important as organized agencies for superseding the very system of wage labor and capitalist rule.¹²

This remains Marx's theoretical account of unions, carried forward by Engels after Marx's death and by orthodox Marxism.

At a more concrete, practical level, however, Marx and Marxists are plagued by the all but universal tendency of unions to perform the first function at the cost of the hypothesized second. Most Marxist analyses of actual unions, accordingly, follow the pattern also laid down by Marx in "Wages, Price and Profit" in 1865:

Trades Unions work well as centers of resistance against the encroachments of capital. They fail partially from an injudicious use of their power. They fail generally from limiting themselves to a guerrilla war against the effects of the existing system, instead of simultaneously trying to change it, instead of using their organized forces as a lever for the final emancipation of the working class, that is to say, the ultimate abolition of the wages system. (95)

This left Marx in the position of offering a kind of moral injunction and counting on a process of political education rather than securely counting on the social logic of this class of activity:

Apart from their original purposes, they must now learn to act deliberately as organizing centers of the working class in the broadest sense of its complete emancipation. They must aid every social and political movement tending in that direction. Considering themselves and acting as the champions of the whole working class, they cannot fail to enlist the non-society men into their ranks. They must look carefully after the interests of the worst paid trades, such as the agricultural laborers, rendered powerless by exceptional circumstances. They must convince the world at large that their efforts, far from being narrow and selfish, aim at the emancipation of the downtrodden millions. (65)

Nevertheless, as with the hope that rights claims could be put forward without distorting or confining the social analyses of the working class, Engels's conclusions about unions, in a letter of 1871, prefigure a recurrent motif of distrust in the "actual" power of which Engels's critic speaks,

The trade-union movement, above all the big, strong and rich trade unions, has become more an obstacle to the general movement than an instrument of its progress; and outside of the trade unions there are an immense mass of workers in London who have kept quite a distance

away from the political movement for several years, and as a result are very ignorant. But on the other hand they are also free of the many traditional prejudices of the trade unions and the other old sects, and therefore form excellent material with which one can work. (81)

The work that captured the imagination of Franz Neumann's generation of lawyers, in conjunction with the "free" trade union movement, involved the attempt to bring into being what may paradoxically be called a "revolutionary constitution," an attempt giving a prominent part to the practice of jurists. The product intended was to function as a constitution not only in the fundamental sense of providing a substantiating foundation upon which claims and judgments could rest,¹³ but also in the more technical senses familiar to and contested among jurists. A characteristic feature of the legal practice of socialist jurists was to assimilate as many legal matters as possible to larger questions of constitutional law, giving the latter a broad and multilayered reading. The state of the law was to be coequal with the state of the constitution. And the constitution was to be "revolutionary" in the sense that it was to give form and cumulative effect to social and political actions designed to transform the social order in the respects that Marx identified as decisive.¹⁴ Other socialists viewed these efforts as vain or treasonable and attempted to give substantial foundation to revolution by adaptations of military paradigms of organization, rather than civil ones, or to seek some other solution to the political problems involved in organizing and sustaining a political force capable of self-confident, cumulative, planful action—or to ignore the problems by forming transient, small sects of fellow believers. And some of those who entered upon the constitutionalist course as socialists found themselves so caught up in the interplay with prevailing legal doctrine—or so distracted by struggles with others who sought to pull prevailing doctrine in directions they found more threatening than orthodoxy—that they abandoned the socialist objectives.¹⁵ A considerable proportion of the younger socialist jurists who began their careers during the Weimar years inferred from the catastrophic end of that venture that the whole enterprise had been futile.

All that has been offered thus far are some reasons for thinking that Engels's triumph over "juristic socialism" was not as decisive as he supposed and that more must be said about the continued experiments in juristic designs among socialists during the Weimar years than that they testify to the continued power of bourgeois ideology or served as mere tactical weapons of a movement governed by quite a different understanding. There is a fundamental problem in Marxist orientation to the political world, and legal socialism addresses it. In Marx's sense, legal socialism can be studied as a contribution to the critique of Marxism. At the same time, these jurists are distinguished by their attempt to appropriate and refine Marx's insights into the social roots of the power that makes and construes legality. The question for them was whether it was nevertheless possible to substantiate the "validity" that Engels also agreed law must have, and that question helped to keep them at work as jurists. We are suggesting that socialist jurists treated the state of the law as territory, which could be properly contested by their practice of the law and that their work on the constitution was their way of conducting this contest without depriving the law of its legitimating effect. Their anti-socialist opponents insisted that this could not be done, that they were introducing party politics and ideology into a domain that

could not tolerate it without losing its essential character. Beyond that, a number of these critics argued that the campaign for socialism, in whatever form, involves a kind of class struggle that can never be structured by legality, that socialist movement and constitution are inherently contradictory.¹⁶ How they attempted to meet this challenge is a central part of our story and cannot be told in a few words.

Part of the response, inevitably, was an attack on the ideological biases in prevailing doctrine. But that could not be carried too far without undermining the basic rationale for their own enterprise and undermining their standing as practitioners with a right to be heard. To speak of legal practice, after all, is most frequently to refer to the litigation of cases where the powers and activities of the labor movement require defense against challenges in the forms of bureaucratic rulings, lawsuits and other applications of law that could only be countered in the concrete case by lawyering. When we speak of the deeper strategies of socialist and labor lawyers, we are characterizing a project that had to be balanced many times against the requirements of winning cases. When Hitler destroyed the constitutional work of this advocacy bar and denied its members all opportunity to practice, their positions necessarily changed, and their intellectual productions took on a different character.¹⁷ It isn't simply that they changed their "ideas" as a result of bitter experience. It is that they were forced to engage in different sorts of activities, that what we can abstract as their later "ideas" belong to different kinds of understandings in different kinds of context, theoretical in a different way. And some of them, notably in his generation, Franz Neumann, made no effort to resume work as lawyers. Our interest in their juristic work and critiques, we see once more, cannot be satisfied by the intellectual history of their theories, although we are bound to rely heavily on formulations of doctrine and counter-doctrine for our evidence. Unless we retain methodological awareness of the performative dimensions of their words in a technical context analytically distinguishable from the general context of political discourse, we shall lose track of our phenomenon—and, incidentally, rule against the socialist jurists without ever hearing their case.

Neumann's First Studies: The State and Coercion

In 1923, Franz L. Neumann received his doctorate in law from Frankfurt University after successful defense of a dissertation entitled "A Legal-Philosophical Introduction to a Treatise on the Relations between State and Punishment," prepared under the supervision of Max Ernst Mayer.¹⁸ Viewed from the standpoint of our characterization of Neumann as above all a "political intellectual," whose professional and academic work always contained an orientation to practice in the political sphere, this philosophical prolegomenon looks like an unlikely undertaking, even given the inevitable restraints implicit in academic candidacy under a professor whose interests were equally divided between philosophy and criminal law. Then too, the study appeared during the major crises afflicting the Weimar Republic in its fifth year, notably the hyperinflation and the conflicts associated with the French Occupation of the Ruhr, and yet the political assessments appear confident. When viewed with care, the dissertation can be seen also to anticipate Neumann's surprisingly consistent view of Marxist social theory as essential

but as only one of the distinct strands needed to organize separate dimensions of knowledge pertinent to human action in the spheres of state and law. At the same time, the document is prolegomenon also in the sense that it does not arise from or speak directly to matters in which he is engaged as publicist or practitioner.

Yet notwithstanding stretches reminiscent of many purely academic exercises, the work clarifies, first of all, Neumann's points of departure in an acceptance of the limits of theory, in view of the plurality of autonomous fields subject to theoretical comprehension, and consequently, as well, his conviction of the perennially unfinished business of political practice. Second, the intimate ties among state, law and the political designs of parties presupposed at virtually every level of the analysis in the dissertation signal a key theme in much of his future thinking as well as a vital complex whose disruption sets the problem for his work after 1933. Whatever academic use he may find for the neo-Kantian jurists who so largely define the field where he must qualify himself, the critical point is that he never shares their conception that the state is at one with the law; he grounds his work rather in the Marxistic theory of Gustav Radbruch that the state is articulated by the conflict of political parties.¹⁹ Quite striking, third, are the calm convictions that the position of the Social Democratic Party as a primary and dynamic force in the newly established constitutional democratic state is a reality, unthreatened by crises in the postwar transition and his matter-of-fact identification with the party's perspective and project.

Missing is only the focus on labor unions and the social constitution that comprehends their activities, which will never be quite absent in subsequent undertakings during the Weimar years. It is impossible to know how far this is due to the methodological circumstance that this aspect of Socialist activity does not have an intimate connection with the punishment theme and how far to his being properly introduced to the theme only in his subsequent close association with Hugo Sinzheimer and the labor school at Frankfurt University. In any case, there is no question for this law student that the law is a vital site for the advancement of his politics, and there is equally little doubt that this is because the law is an irreducible mode of power capable of harms to be opposed and advances to be promoted.

Simply stated, Neumann's central question is about the Social Democratic judgment of relations between the state and punishment, and his puzzle is why the party takes a Liberal position toward punishment when the affirmation of the state implicit in its designs should logically make it open to this potent public resource. Like Conservative doctrine, Neumann avers, Socialist doctrine holds that the state has an ethical mission, and yet the party in practice has failed to accept the logical inference that punishment must be seen as a "necessary, ethical arrangement for the preservation and security of this ethical idea of the state."²⁰ Neumann offers a provisional explanation applicable to the time before "the Revolution of 1918," according to which the Socialists' fight against the "class state" was taken as a fight against the state as such, with a resultant setting of goals and reliance on arguments against the state that were made available by Liberal doctrine. Although Neumann notes that Marx and Engels correctly denounced the notion that the Liberal arguments were Socialist ones, when, in fact, "the Liberal conception of the essence of the state and punishment contradicts the essence of socialism"

(8), Neumann balances this against his own contention that “the Liberal critique of the state on the basis of ideological-natural-law arguments was a historical necessity for the Social Democracy as a party in opposition.” The deviation from the consistency of doctrine is evidently subject to a sociological explanation.

This applies even when the puzzle becomes more perplexing after the end of the empire in 1918, when the party has come to share responsibility for the state [*Staatspartei*] and has largely abandoned the liberal attitude toward the state,²¹ without however following through on the question of punishment: “Liberal, pacifist, and juristic arguments are still being brought forward as socialist ones in the fight against the death penalty and retributory punishment” (9). The unexpected practical objective anticipated in a footnote that at first appears as a misprint is not that the Socialists should harmonize their approach to punishment with the logic of their theoretical position, which would lead them to a harsh doctrine of retributory justice, like that of the Conservatives, but rather that they should continue the fight against the death penalty and schemes of retribution, as long as they acknowledge that the arguments they are making are Liberal rather than Socialist (9n.9). The problem is to account for and justify a certain syncretism. Neumann excuses himself from the first part of this assignment, the sociological explanation of this contradictory outcome, because it would be too lengthy a project for a dissertation. He writes,

The original aim of this work was to have been to display all of these inter-relations, contradictions, and implications between political theory and practice; to show the sociological laws in accordance with which the attitudes of the political parties towards the problem of the state and punishment proceed; and to become acquainted with the rhythm of the fight against the state and punishment as well as on behalf of state and punishment. (10)

Postponing this larger undertaking—to a second dissertation, as it proved, written under profoundly less promising circumstances—Neumann proposes instead to lay down the philosophical basis for distinguishing between the sociological work needing to be done and the two philosophical dimensions that are also required to delimit and define the scope of such sociology, an effort that will also yield a critique of the ways in which sociology and evaluative philosophy have been interrelated by leading thinkers, including his own teacher, Max Ernst Mayer. A fundamental decision, surprising in view of impressions created by his closeness throughout to Marxist modalities and his later collaboration with the “Frankfurt School” thinkers, is his acceptance of the characteristic neo-Kantian distinctions among several autonomous domains of thought, with special emphasis on the mutual independence of legal sociology, legal conceptual or epistemological philosophy and legal philosophy of evaluation. In fact, his primary aims in this prolegomenon to the promised sociological inquiry are, first, to show that there can be no meaningful “sociological jurisprudence,” in the sense of deriving value judgments from sociological studies of any kind and, second, to insist on the separation between neo-Kantian explication of legal categories, on the one hand, and, on the other, “the idea of law, the theory of legal values, which is the actual goal of legal philosophy” (11).

Neumann speaks of the necessity of “grounding” legal sociology in philosophy “if sociology is to be a genuine science and not be degraded to a random collection of

history, individual and social psychology, and statistics.”²² Yet the most important aspect of such grounding is the fundamental distinction among three studies that differ in method and objective, given the basic principle that studies of fact and values are fundamentally different. The methodological philosophy put forward by neo-Kantian thinkers “grounds” Marxist social theory by constraining it within the limits of empirical study. The two undertakings that he treats as fundamentally different and divorced from legal sociology are, as noted above, first, the philosophical development of the conceptual system of legal categories, which he identifies with the work of Kelsen, following in the Kantian line, and which he finds unexceptionable in this mode, as long as the work is not improperly extended to serve as an evaluative philosophy; second, then, there is the philosophy of evaluation, which is a function of the worldview of the person making the evaluation and which cannot be validated by any study grounded in facts. This last will be Neumann’s primary concern in the bulk of the dissertation, mostly through his criticisms of various attempts to find universal and unified solutions to its problems.

Neumann’s treatment of sociology begins in a curious manner. He notes that the very idea of sociology—and especially legal sociology—has been very much in dispute, since the terms are used haphazardly for many different kinds of studies. He then unexpectedly proceeds to legitimate the field as a science with a distinct subject of study through Siegfried Kracauer’s explication of Georg Simmel’s “formal” or “pure” sociology” with its phenomenological method:

It is the task of sociology to investigate the life of humans who are socially bound together insofar as the conduct of these humans, as well as all of the intentional expressions of such life, display regularities and essential attributes that are somehow clearly dependent on the fact and manner of such sociation. (17–18)

Yet when he turns to a discussion of the uses of legal sociology as an auxiliary to legal analysis, he calls on a “material” sociology whose character he does not discuss. One of these uses, he maintains, is to clarify the facts of the case, supplementing the primary work of conceptual analysis, when complex events bear on a legal dispute or offense. More distinctive is an application of sociology that Neumann illustrates by reference to Karl Renner’s understanding of socially induced changes in the effects of the legal arrangements auxiliary to the central exercises of property rights, above all, which Renner calls “legal institutions,” a kind of knowledge that may be relevant to either the application of law or to legislative policy but never as primary determinant.²³

The reference to Renner prepares for Neumann’s account of legal sociology as a distinct science, no longer conditioned by its auxiliary tasks, inasmuch as Renner’s study is framed by a Marxist question about the social unraveling of a regime structured by the logic of capitalist private property. The argument, which will continue to fascinate Neumann throughout his Weimar years—and which his associate, Otto Kahn-Freund, will bring to England in exile—is that “institutions” that initially simply serve property, especially the contracts governing terms and conditions of employment, have come increasingly to change the meanings of relations between proprietors and workers so that the dynamics of property lose in primacy without the need for revolutionary disruptions.

Very much in the spirit of Renner's ingenious appropriation of social developments in labor relations to bypass the more apocalyptic versions of the end of capitalism, Neumann asserts that the subject matter and method of sociology as science are precisely delineated by the economic theory of history in the Marxist sense, provided that it is recognized as only a sociological method and separated from both the "metaphysics" that Marx incorporates for reasons of his own or the modes of action that he prescribes. This is also the place to which Neumann, following Max Adler, another Marxist Austrian writer, relegates Marx's "materialism," which he treats as a mere device invoked by Marx to *épatér* his opponents, there being in fact nothing in the economic domain to exclude "spiritual" factors.²⁴ Legal sociology, accordingly, is in this sense "the science of the juristic superstructure, the forms of social consciousness inasmuch as they stand in a relationship to the legal order" (25).

This brings Neumann to the "ideologies" of political parties as the decisive forms of such consciousness in the modern democratic era when, in his view, such parties in effect provide the substantive contents of states in action. In a move that anticipates his subsequent separate treatment of philosophical theories of valuation, he distinguishes among ideologies, ideas and ideals. Ideas, he maintains, refer to the valuations that are the subject of evaluative philosophy, and ideals, to some composite of such ideas with purposes of other types, while ideologies, following Gustav Radbruch,²⁵ are taken as ethical maxims adapted to their use as justifications for social actions and thus in constant interaction with interests. These are properly the objects of sociological study. Although the competition among parties makes ideologies almost universal in political life, one cannot exclude the possibility of situations where actions appear as purely instrumental enactments of *arcana* for which no justification is offered. In a move that deviates even further from the more familiar Marxist understanding, Neumann distinguished between ideologies that accurately characterize the motives of the social actions justified by them and those that in fact contradict them. He calls the ones expressive ideologies [*Ausdrucksideologien*] and the others masking ideologies [*Verdeckungsideologien*].

Somewhat surprisingly, Neumann proceeds to maintain that legal ideologies, since they appeal to legal standards beyond the actual law in force, generally take the form of theories of natural law and/or natural rights, two types of argument that he treats as effectively identical, linking both to claims of a right to resistance and a contract as the foundation of legitimate rule. In illustrating his analysis from history, however, he also credits justifications based on tradition so that it is likely that his focus on constructs more similar to individualistic contractual natural rights theories than natural law theories of different kinds is less a function of thorough analysis than of his eagerness to show the intimate link between individualistic ideologies and opposition in politics, whatever the actual aims of the parties that nominally proclaim them. From this standpoint, to revert to his original sociological question, Neumann can be understood as offering the thesis that the liberal critiques of the state and its punishments enunciated by Socialists were an ideology to mask their actual aims put forward under the mandatory constraints of oppositional politics, structurally similar to the masking ideology of the church in its struggles against the imperial party during the Middle Ages. In his initial reference to the seeming anomaly of Socialist ideology, he even speaks of it as "opportunistic," although

it is not clear whether he means the disparaging connotation of that term as more than an ironic reference to something he expects to justify as well as to explain. Nonideological justification, however, belongs to philosophy of evaluation, to be considered later.

Neumann's sociological analysis itself transfers the ideology he identifies as uppermost in oppositional politics from an individualist to a communitarian rationale. Drawing on dialectics as a methodology expressly identical with Marx's appropriation of the concept from Hegel, he maintains that every positing of an individualistic oppositional ideology simultaneously posits a collectivist affirmative ideology that will lead to their mutual displacement in a synthesis that will be somehow more inclusive, but that will bring its own oppositional counterpart with it. He accepts the triple rhythm of thesis, antithesis and synthesis, while insisting that none of the three ever dominates unopposed so that the method has more in common with an unresolvable two-term dialectic in fact, notwithstanding the use of the Hegelian-Marxist language. Despite his Marxist model and some confusing language, this dynamic understanding of politics and party conflict represents an early form of Neumann's recurrent skepticism about any notion of an ultimate revolution.

Neumann emphasizes his conviction that legal sociology is not an all-embracing frame of reference for the study of law by devoting a number of paragraphs to the theory of legal knowledge, although this plays only a minor part in his own investigation, serving above all to underline the jurisprudential concomitance of state and punishment, the relationship at issue in the ideologies to be studied in the sociological study to which the dissertation is prolegomenon. He characterizes jurisprudence as study of the legal order in the imperative mood, with each object to be identified and systematized an "ought." Drawing on Georg Simmel (rather than Max Weber) for the foundational statement of the distinction between "is" and "ought," so that the latter can never be derived from the former and its identification need imply nothing about its actuality as distinct from the injunction that it expresses for practice, he categorically identifies his own position on this subdiscipline with the jurisprudence of Hans Kelsen. In this context, the legal order and the order of the state are identical; "every punishment is equivalent to the consequence posited by the state for any illegal act," regardless of the form that is prescribed; and it is not excessive to say that "the law-breaker has a legitimate claim on punishment" (33). The moral indifference implied by these formulations is shown to be harmless by the reminder that there are no practical consequences intended by anything at this level of analysis, which serves only the aim of theoretical clarity in expounding the terms of the legal order, which is then properly subject to moral judgment, as a whole or in its parts.

Two-thirds of the dissertation is then devoted to a consideration of evaluative legal philosophy, with the aim above all of challenging the line of thinking he associates with Kantian idealism, which he treats as the overwhelming presence not only in moral or legal philosophy but also in the wider culture and among the ideologies of the time. The evaluative question comes down, Neumann asserts, to a choice between standards grounded in the individual or in the community [*Gemeinschaft*], and this antinomy, he insists, "is not simply a dialectical position that is assumed only to be immediately abandoned. It cannot be dissolved" (35). At the time of writing, Neumann maintains, the idealism predominant in legal philosophy revolves around the individual whose idealized qualities are

variously characterized but uniformly taken as the values to be subserved by legal norms, which are seen in turn to be the expression of a complex constituted by a contract whose parties are identical in all morally relevant qualities. The moral standards to be applied to the state, its prescriptions and its punishments, accordingly, should not differ from those implicit in the idealized individuality that is their legitimating source. This is not a tenable position, in his view.

Neumann returns to his core theme of punishment for his direct confrontation with Kant's legal philosophy, citing above all Kant's unconditional and remorseless adherence to a retributory theory of punishment, which mandates the death penalty for murder, without any chance of abatement or pardon. In agreement with Beccaria and Radbruch, he finds this conception incompatible on its face with a theory that ascribes primacy to individual freedom, but he rejects their view that this anomalous consequence is due to a misreading of the logic of the social contract or even, as others maintain, to a lapse from theoretical argument to the harsh religious ideologies of his time. Following Georg Simmel instead, he maintains that this fault reveals the abstractness and lack of personality of Kant's universal "individual" whose "freedom" can be as easily identified with an unforgiving state that is taken to be an expression of his will as with the rationality of legal forms and the moral responsibilities in their interstices. This indeterminacy is not a resolution of the problem posed by the disjunction between individual and community. The philosophy oriented to the individual alone cannot comprehend the claims of valued collective entities without damage to both dimensions.²⁶

Having quickly dismissed the possibility of a metaphysically grounded natural law early in the discussion and then subjected Kantian evaluative legal philosophy to a critique that he extends to the neo-Kantian approaches he considers, he turns to a strategy that he calls, following Gustav Radbruch, a "relativist" one.²⁷ Because Neumann's exposition of "relativist" evaluative legal philosophy brings him eventually to a disagreement with his professor, Max Ernst Mayer, he proceeds through this last section with academic caution, but the details of the argument do not add anything important to the basic conviction laid out in his conclusion, which surprisingly anticipates—and clarifies—the position he will occupy for all but a few years of revolutionary fervor in the immediate aftermath of 1933. The outlines have already been stated above.

Unlike Radbruch, to whom he ascribes complete skepticism about specifying or validating evaluative criteria for law through philosophy and a consequent flight to religion, or Max Ernst Mayer, whom he sees as postulating a dimension of "humanity" to supersede and order the primary poles of a relativist evaluation of law, state and punishment, Neumann insists on the irreducibility of the alternatives of individualist "personalism" and collectivist "transpersonalism" in the values capable of assessing the realities of this domain as well as endowing it with meaning for practice and policy. In the context of this culminating discussion, he seeks support in the kind of historical or cultural relativism that is closer to the views of the important non-Marxist Socialist figure, Ferdinand Lasalle, than to the contending Marxist readings. The individualist and collectivist alternatives, Neumann maintains, are equally deeply rooted in their respective worldviews and there cannot be a philosophical reconciliation.

Since the respective worldviews function in the world as the principles that animate political parties in legitimate conflict in a democracy, “the longing for synthesis [that] is embedded in the tendencies of our times” can only take the form of politically achieved and sustained compromises that may require the parties to deviate in some measure and for clearly stated ends from their principles, whose validity for them is not thereby denied. As Sascha Ziemann has noted, there is a certain similarity in this to Hans Kelsen’s use of a more thoroughgoing relativism as a decisive argument for democracy, which requires no philosophical rationales for the decisions made by majorities.²⁸ For Neumann, however, the “personalist” and “transpersonalist” value schemes each have a distinct kind of validity, as measured at least by their integral structures within one or another worldview; and democracy itself would require validation by one of these value schemes.²⁹ In conclusion, then, it would appear that legal philosophy can reject inadequate solutions to the problem of valuation and that it can characterize as well as simplify the choices to be made, but the effect is to validate the activity of politics as constituting the domain in which the philosophically unresolvable issues are fought out, compromised or otherwise managed. Neumann offers a number of examples of movements that incorporate theoretically incompatible motifs out of the impulse to two-term “syntheses” that he imputes to the spirit of the age and the opportunities provided by democracy. He cites a shift in the transpersonalist Catholic Church toward a new care for individual souls, a corresponding trend in the Protestant Church toward a collective confession of the faith and, oddly, a recognition in the Socialist movement that there is a danger that the labor might suffer from an absence of “individual motivations,” which it undertakes to counter by the importation of self-management from the English guild movement, in the form of works councils—an example that is curious both because he treats this collectivist form as an individualist one and because he deliberately ignores the Soviet influence behind this trend. These observations in conclusion point toward the unfinished business of the dissertation project, while signaling the low priority in fact of the philosophical issues.

During most of the decade after submitting his dissertation, Neumann’s efforts to situate the labor movement within the legal and constitutional order certainly implied general judgments on democratic politics, but Neumann saw little need for a comprehensive theory of politics until the end of Weimar. Although Neumann never did in fact return to the question of punishment, a topic of special interest to Mayer but effectively—and purposely—excluded from Neumann’s own domain of labor law,³⁰ he never deviated very long from the conviction that there was no harmonious solution to the critical political issues, and that the question was always about settling on the best possible management of intrinsically ambiguous situations. Yet, contrary to stereotyped expectations, this style of political diagnosis never made him a “conservative.” It might take quite radical measures, in his view, to get to the comparatively modest optimum, and these would have to be constantly redesigned and renewed, as the consequences of the previous settlements played out over time, especially in the realignment of the decisive forces with their distinctive and conflicting designs, variously institutionalized in legal forms and pursued through practices bearing on those institutionalized powers through the medium of those forms and their enveloping ideologies.

That this pattern was not a mere artifact of the academic exercise in the dissertation is evident from his earliest professional articles as labor lawyer in 1925. Neumann is addressing the mandatory sector-wide imposition by state authorities of arbitrated wage settlements of individual conflicts, which was an increasingly common practice in Weimar Germany after the hyperinflation. In criticizing this design as antithetical to socialism, the state and the constitutionally safeguarded position of the trade unions, he wrote,

Present-day socialism is not hostile to the state. It affirms the state—if not *this* state—and seeks to gain control of its machinery. [...] [Yet] socialism does not stand for affirmation of the state alone [...] but attaches the same importance to the free development of social forces as to direct state coercion. The interweaving of socialism and democracy is today so intimate that no mere association has come into being but rather a spiritual, social and political whole. Perhaps in contrast to Russia, socialism is not thinkable in Germany without democracy, without the participation of the emergent social forces in the life of the state. Affirmation of the state *and* affirmation of the idea of social autonomy—and, specifically in labor law: the recognition of the right and duty of the state to regulate labor relations and the status of employment *and* affirmation of social self-management through labor unions.³¹

More generally, it is useful to recognize that Neumann adhered throughout to the primary elements in his original dissertation, not only in his reliance on a socialist ideological standpoint in evaluation but also in the distinction between legal sociology and doctrinal explication of law.³² Yet the most important thematic questions about Neumann's Weimar years are about his engagement with the trade unions allied with the Social Democrats as the primary focus of his practice as political intellectual and lawyer as well as his insistence that these unions perform a decisive constitutional function in a domain comparable to the sphere assigned to the rights and voluntary relations of individuals in liberal thought. For Neumann, the most pressing questions of democracy were inseparable from questions of collective labor law. This conjunction appears especially poignant in the wider context of the present study because of Neumann's repeated self-accusing disavowals during the years of exile of precisely these choices that he had made.³³

Labor, Law and the Republic

Neumann's model and mentor in his 10 years as labor lawyer, as yet absent from his dissertation, was Hugo Sinzheimer, 25 years his senior, a noted participant in the circle of social liberal reformers before the First World War and one of the few members of that cohort to become an active Social Democrat. In the words of Otto Kahn-Freund, who had been associated with Neumann in Sinzheimer's circle of assistants and who did much to shape English labor law during the years of exile,

Sinzheimer united theory and practice—the *vita contemplativa* and *vita activa*—in a unique way. All of his research was borne by a passionate will to social justice, and all of his actions, by profound insights achieved through self-sacrificing and creative work. Sinzheimer the labor law jurist, cannot be divorced from Sinzheimer the sociologist. No more is it possible

to separate Sinzheimer the researcher and teacher from Sinzheimer the legislative advocate, parliamentarian, and attorney.³⁴

Neumann's political and intellectual mission during the decade after his first dissertation cannot be understood without an overview of the Sinzheimer project in the context of the immediate postwar situation in Germany, an exercise that will also amplify earlier summary statements about relations between the Social Democracy and institutions of law.

On November 8 and 9, 1918, it became clear to the major political figures in the last government of Imperial Germany that only the Social Democratic leadership could hope to contain the political excitement spreading throughout the country, as military garrisons and workers united in improvised councils, determined to resist any authority attempting to prolong the war and to do something about the conditions of exhaustion and deprivation in the working class.³⁵ The leaders of the majority Social Democratic Party, like their close allies in the General Commission of the Free Trade Unions, identified social movement with a long-term campaign of position: the organized force of labor would compel the still predominant social and political forces to back off by taking the higher ground in ever greater strength. The opportunities and manpower for such a campaign would be provided by the course of social development, and the major constituents of strength were organization and discipline. Actual clashes were designed to show strength or to resist countermovement and not to destroy the opponent or dictate terms. At the core of the socialist strategy, then, was the conduct of negotiations and the consolidation of gains by collective agreement. Agreements reached were to be honorably kept but also designed to leave room for the next maneuver. No conduct was permitted that jeopardized the integrity of the disciplined organization, however tempting an opportunity for immediate advance.

This characterization of predominant Social Democratic strategy, based on a review of their conduct in the decades before 1918, should help prevent misunderstanding of their subsequent designs. It is not correct to misread their propensity to compromise and to fight angrily against those who defied discipline as due simply to a longing for social integration and acceptance, as was done by the opposition on the left. And the theses of bureaucratization and organizational rigidification common elsewhere in the literature also have to be taken with caution, to remain alert to the political rationales giving a larger meaning to these organizational features. From the standpoint of our present inquiry, which concentrates on jurists in and around the Social Democratic Party during the Weimar years, it is especially important to recognize that the emphases on negotiations and partisan adjustment render this political conception something quite different from "legalism" in any strict sense. Judith Shklar³⁶ has pointed out that "legalism" involves "the structuring of all possible human relations into the form of claims and counterclaims under established rules"(10) and that this conception "despises arbitration, negotiations, bargaining, as mere 'politics' arbitrary and expedient" (19). Law and order, constitution and legal means do represent central themes in the Social Democratic political conception during the days of revolution and in the Weimar years; but the meaning of these practical concepts to the party will have to be further explored and clarified.

The proven willingness of the Social Democratic leaders to make and honor agreements, as well as their readiness to impose discipline on their followers, made it attractive to the established leadership of Germany, suddenly threatened on every hand, to seek stabilization by accepting their terms for taking on the responsibility of government. There is ample evidence that Ebert and his associates would have preferred to consolidate the gains won during the last months of the war rather than to assume the responsibilities of government. And, indeed, it also seems clear that they did not consider that there were substantial additional gains to be derived from serving as provisional revolutionary regime under the conditions of economic and social devastation prevalent in Germany. During October, they had secured a parliamentary and democratic constitution; the unions had gained a comprehensive agreement with major industrial organizations granting them a set of important substantive points as well as new arrangements for codetermination. The excitement of “revolution” and the spectacle of a socialist regime, they feared, would rouse “Russian” expectations and bring about “Russian conditions,” which had been a term for confusion and net loss for them already since the days of the Revolution of 1905. Nevertheless, they agreed that they had to take over.

The political position was peculiarly ambiguous. At least during the months of November and much of December, the governing Council, consisting of three leading members of the Independent Socialist Party as well as Ebert and two others for the Majority Socialists, enjoyed a measure of legitimacy within two substantially different configurations. On the one hand, that Council represented Ebert’s way of honoring the implicit agreement made when the last imperial chancellor, Prince Max of Baden, asked Ebert to assume responsibility. Within that framework, Ebert was a sort of emergency chancellor, or extraordinary commissioner of state, managing the most urgent business while preparing for a National Assembly to reinstate a full constitution and order. This view of the matter governed the conduct of most civil and military officials of government, and was expressly agreed between Ebert and several key politicians of the more liberal nonsocialist parties, who took on major ministries, as nominally nonpolitical “technical experts.” On the other hand, Ebert and Haase, the leaders of the independent Socialists, were seen as the joint heads of a Council of Peoples’ Delegates, authorized by a revolutionary assembly drawn from the Workers and Soldiers Councils, and as representing the coalition between the two parties of the Social Democratic movement. Although none of the agencies of the Council movement was allowed an influence on any decisions of state, the Council of Peoples’ Delegates—that is the transitional regime set up by Ebert and his associates—twice formally acknowledged that Council Movement as its source of authority and, in fact, conceded to the Council’s Executive Committee a right to recall the governing delegates and replace them with others.

By and large, the potentially conflicting demands of the two sets of roles were successfully managed during the first month. Comparable formations had taken shape in most of the major units of the former empire; the apparatus of government was almost everywhere restored to its normal functioning, with the administration of justice undisturbed; experienced labor leaders predominated on most councils and restored discipline. And, accordingly, it was no surprise when the Congress of Workers and Soldiers

Councils, assembled in Berlin in mid-December, overwhelmingly endorsed the calling of a constituent National Assembly, with elections in January. That Congress, however, also signaled some of the difficulties to come. The question, "National Assembly or Council Republic," was intensely debated. Although the opponents of calling a Constituent Assembly were not at all clear about their counterproposal, and although they were strongly outvoted, they did help to generate pressure upon the governing coalition. The Independent Socialists present in effect disavowed their leader, who continued to support Ebert's views, and they boycotted the elections to the continuing Executive Committee of the Council movement. And the Congress as a whole voted a strong demand for more decisive measures of socialization in industry and democratization in the military.

During the succeeding months, between mid-December and mid-April of 1919, the governing Council presented itself ever more clearly as continuator and caretaker of the old state formation, as the force and extent of radical expectation and disappointment within the labor movement manifested themselves in widespread strikes and diverse political ventures that the government countered with symbolic concessions and by giving free play to the old apparatus, and to its more dangerous adjuncts, especially the military free corps. It seems clear that the scope and intensity of mass protests shocked the majority Socialist leadership and confronted them with serious questions about the terms upon which they had taken office. Most of the more recent German historians who have studied this period tend to agree with the older thesis of Arthur Rosenberg that the rise of the "Council idea" and of radical protest could and should have been met, not by some Utopian venture into full socialization but by the incorporation of the many responsible Councils into a governing structure able to effectuate a policy of moderate socialization and effective democratic reform of military and bureaucratic structures.³⁷ The way in which the miners in the West broke off their strike and collaborated with the ad hoc socialization they achieved in January is often cited in support of the argument that the radical movement was not inherently insatiable. And the trade union movement, after months of immovable opposition to what its leaders took to be revolutionary self-indulgence needing simply to be waited out, finally acknowledged the importance of the radical movement and registered the growth of opposition in some of its major unions. Characteristically, this acknowledgment was registered in a new "constitution" for the associated unions, which contained a characterization of past achievements and present designs agreed between the establishment and the opposition, and giving a more socialist face to its work. That this new constitution, adopted in the summer of 1919, was not merely cosmetic, may be indicated by the surprisingly militant conduct of the union organization during the Kapp-Luttwitz Putsch of the next year, and its attempt to intervene in the politics at that time.

Even the historians critical of Ebert's way of resolving the ambiguity between his roles as Socialist leader of a revolutionary movement and as functionary of the German state grant that there were weighty reasons for his choice. First, there were enough instances of mindless imitations of what was imagined to be the Soviet way or of acting out other sorts of inconsequential fantasy to raise the primordial political fear of chaos or "utter confusion." If Ebert had to recognize how restricted a command he had over the state forces he put into play, he had reason to think that they would not spin out of control.

His trust in the socialist organizations as a disciplined force, on the other hand, was badly shaken by the eruption of the second revolutionary wave after the seeming pacification promised by the strong support for the National Assembly.

The rising fear and anger within the older political class and its constituents, brought out of its passivity by the campaign for the National Assembly, also introduced a new factor and a new threat of violent civil conflict, like that which was raging in Russia. All of this made police action appear the correct response. Second, there was the need to constitute an international political actor competent to move from the negotiations of the ceasefire toward a treaty of peace. There seemed to be clear indications that the victors would not deal with anything they had reason to consider a "Bolshevik regime" and some reason to hope that they would be less harsh with a regime meeting Wilsonian standards. Threats to the Eastern borders and separatist movements in the West also rendered implausible a move toward greater dependence on the dispersed and often particularistic Council movements. Third, there was a fierce determination to restore production, a deep appreciation for the past productive performance of the established industrial organization and no confidence at all that an equivalent alternative could be designed or at least that it could be designed in time to meet the crushing need. Again, the Russian disaster in this respect, graphically reported by Menshevik exiles, helped to make a more radical course appear unthinkable.

All these factors made the agreement with the military, political and industrial managers of the old state appear essential, despite the quite evident shift in the power alignment upon which it had been premised and the cruel costs of turning the divided socialist forces once more upon each other. Returning to our earlier military metaphor then, we want to suggest that Ebert determined to stand by the strategic consolidation of November 9th, even though this involved extremely costly tactical maneuvering and indeed serious weakening of his own front. He did not go over to the other side, as is often alleged.

The major hope for restoring the situation, apart from a lessening of pressure from outside, was the National Assembly and the new constitution. But the outcome of the elections in January rather worsened the difficulties, since the massive return of nonsocialist politicians made it less likely than ever that basic social changes would be carried out and therefore increased the support for nonparliamentary radical movements in the active working class. It is important to distinguish here between response to radical slogans and participation in their actions, both of which did increase, and actual buildup of organized followings, which succeeded much less. In fact the only organizations growing during these months were the trade unions, which were faced with the task of trying to assimilate great armies of previously unorganized workers. And despite the growing radicalization and elaboration of the Council ideology, and the widening interest in it during this second revolutionary wave, the Councils themselves rather lost than gained in organizational strength.

This complex of developments is directly pertinent to the subsequent course of Social Democratic action. The major accommodation that Ebert and his associates offered to the opposition of the left was a promise to "anchor the Councils in the Constitution." This commitment, accompanied by some unclear undertakings to socialize all industries

ripe for it, sufficed to divide the striking coal miners in both the Silesian and Westphalian fields, leaving only a radical remnant for military suppression, and it played an important part in the discussions ending militancy in Berlin. It is this theme of the Councils and associated issues that we want to use to explore the socialist conception of the constitutional process as a whole and also the role of one kind of juristic thinking in binding together the socialist design, meant to restore the partisan organization and to further the longer-term strategy, with the requirements of a constitution for a democratic and parliamentary Rechtsstaat. These are the key undertakings to which Neumann oriented during his last years as organized Socialist student and his first years as lawyer.

The government's commitment concerning the Councils generated intense debate within the socialist labor movement. At one level, there was an almost amusing pushing and shoving between the trade unions and the party. In his review of 1918, published on January 1, 1919, the head of the unions' General Commission, Carl Legien, voiced the leadership's opening bargaining position, characterizing the Councils altogether as an imitation of Russian proceedings wholly unnecessary under conditions of German organization and clearly dispensable. In March, after various socialist party organs, including key ministers, pledged to retain the Councils and to give them a leading function in reorganizing the economy, Legien furiously protested that the politicians had no business encouraging the Councils to interfere in the unions' domain. If the party politicians want to retain the Councils, then let them work in the political sphere: "the Workers Councils are political organs of the revolution and can only be effective politically [...] they are used to ruling, dictating, and administering; and that is of no earthly use in economic life. They would keep the shops in a consistent turmoil, politicize and disorganize them, and paralyze production."³⁸ But in the Labor "constitution" mentioned earlier, approved by the committee of union presidents in late April, Works Councils are granted an important part but primarily in administering the union contract and in codetermining personnel and welfare issues.

A few weeks later, the union spokesman is even prepared to see serious attention paid to proposals to let the Works Council movement connect with certain wider agencies of economic codetermination so long as it is clearly recognized that unions will continue to be essential:

Legal agencies will always be restricted in their activity by the legislator [...] they cannot carry on struggles because they are more nearly administrative agencies. The unions in contrast are, and remain fighting formations of the working class [...] the revolution does not last forever and revolutionary slogans lose their appeal. But the constant unwearying activity of the unions in the service of the working class subsists, and will make the work of the Workers Councils fruitful.³⁹

These are not the querulous complaints of an organization on the defensive, it should be noted, but the confident assertions of an organization that had grown from 2,866,012 members, when the first editorial cited was written, to 5,779,291 at the time of the last one. This power reality will also figure in the calculations of the socialist contributors to the constitution.

Several proposals for accommodating the “council” scheme were debated, but the alternative that gained overwhelming approval at the Party Congress in June, and that was then incorporated as Article §165 in the Weimar constitution, was put forward by Hugo Sinzheimer, a well-established expert on labor law from Frankfurt and one of the two party spokesmen on the subcommittee of the National Assembly reviewing and revising the government’s constitutional draft. Sinzheimer was comparatively new to the socialist movement, and there is a curious reference to him in the minutes of a January meeting of the Central Committee of the Council movement, as someone who seems too close to the “Spartacists” and is not to be trusted.⁴⁰ At the first meeting of the Social Democratic faction in the National Assembly, too, he was the only member not from Bavaria (then governed by a close coalition between majority and independent socialists) to cosponsor a resolution seeking a coalition with the independent socialists. All this is noted to caution against the thought that Sinzheimer was simply a party hack assigned to fob off the whole Council issue with an elaborate but empty scheme. Franz Neumann’s last major contribution to the Weimar debates, published in late 1932, was a book-length plea for the constitutional centrality of this section. Sinzheimer’s design called for two Council structures, a pyramid built on a base of Works Councils, and comprising only workers’ representatives, and a second pyramid bringing members of the first set of agencies together with representatives of industrial management in local, regional and national economic councils. The first type of Council was supposed to promote workers’ interests, presumably in the sphere of social and welfare policies, above all, and also in the autonomous administration of such policies. And the second was to work in the socialization program and other aspects of economic planning and to make recommendations on public economic policy at the level of parliament.

What makes the design interesting to us, despite the fact that the precise scheme remained a dead letter in the constitution, superseded by enhanced trade union recognition, is that it embodies a distinction between the political constitution of the state and a constitution of society, to be built up within space created by public constitutional law but not caught up in the immediate play of political forces or necessarily restricted to the settlements achievable there. This is an extension of Sinzheimer’s thinking about labor law and collective agreements and serves as an influential formulation, in terms directly pertinent to law, of what we have characterized as the Social Democratic conception overall. Neumann’s incidental reference at the end of his dissertation to English guild socialism as model for a new dualism in the German labor movement may well be his preliminary notice of this development.

During the first two decades of the twentieth century, Hugo Sinzheimer was the most important German writer on the collective contract between organized workers and employers, that puzzling instrument of agreement between entities that might be no more than voluntary associations but that nevertheless overrode individual labor contracts and precluded the right to negotiate their own terms of employment for workers subject to its regime, although it had none of the constituents of statute law. This was the point of departure for his work on the deeper meanings and presuppositions of labor law. Sinzheimer was convinced that law can be made to speak to the underlying needs of oppressed and deprived social groups and that actions purporting to satisfy those

needs but hostile to law are ephemeral or dangerous. Sinzheimer's critical legal studies were always conjoined to designs for legal reconstruction. Except when he was expressly involved in legislative processes, his criticisms were integral to acts of advocacy—in his treatises as well as in his advisory opinions and litigation. They were designed as legal arguments even when they sought to revise the method and thus change the definition of legal argument. Although there was no time or opportunity for Neumann to develop academic writings like those that were at the core of Sinzheimer's contribution, his concept of legal practice was identical. Sinzheimer never doubted that legal order is indispensable to social cooperation, and he could see no way of reconciling political democracy with schemes for wholesale disruptions in law. Weaknesses in the integrity of law called for remedial action, but political initiatives had to be translated into legal form. Class and political bias in the judicial process could be attacked by changing the recruitment and education of judges, reconstituting courts to incorporate new perspectives and devising legal mechanisms to adjudicate whole classes of cases by transparent and multipartisan procedures. Legal innovation, he thought, would also enhance the law's capacities, especially by making it less subject to the political and bureaucratic vagaries of the state. The crux of the matter was the development of a domain of "self-management" to complement the political one. Although Sinzheimer by no means limited the pursuit of this goal to the work on the Weimar constitutional draft, his case is succinctly stated in a plea for the constitutional clause incorporating the councils.

After a compassionate dismissal of unreal hopes for salvation through councils and a firm rejection of the all-too-realistic proposal to use the councils as basis for an anti-democratic class dictatorship, he argues that the agitation on behalf of the councils established in many shops and localities does have a valuable and achievable inner meaning: social self-determination. He contends that the economy must be organized to meet the desperate needs of the war-impooverished nation. Production must be mobilized and directed without reducing workers to recruits. State agencies cannot provide this organization. Neither bureaucratic regulation nor legislation is supple and swift enough to control the diversified and volatile economic domain. The interests of workers, moreover, are vulnerable to attacks by nationalist and other political movements that appeal to voter responses indifferent to vital social interests. The political constitution must provide for an autonomous social constitution by legitimating and elaborating the council device.

Workers' councils in plants, regions and nation will complement bipartite economic councils in industries, regions and nation—the one focused on social policies and the other on production—while coalitions of employees and employers continue to settle wages and conditions by collective bargaining. These entities must be made genuinely self-regulating and equipped with adequate legal standing as well as resources of power on both sides, including the historic instruments of organized economic conflict, to render their decisions binding on all.⁴¹ In its complex organizational form and economic single-mindedness, Sinzheimer's proposal on the councils was outdated shortly after it was made. But the underlying principles are not tied to peculiarities traceable to the specific political challenges of the moment. Sinzheimer had developed them in his pioneering studies of collective agreements more than a decade earlier, and he refined them during the remainder of the Weimar years and in his Dutch exile. These can be

briefly identified as recognition of social sources of law, uses of “constitutive” state law, respect for organizational and cognitive imperatives of social functions to be regulated and confidence in a evolutionary rise of economic democracy, displacing property rights by human rights.⁴²

Sinzheimer had two models for his conception of the social sources of law, Otto Gierke⁴³ and Karl Renner. Gierke’s erudite excavation of Germanic interpersonal institutions buried under the formalizations of the civil code encouraged Sinzheimer to look for incipient law working against the grain of the ordained order, especially in regulating the legally neglected power and status dimensions of employment relations. But there is something of the Brothers Grimm in these ancient tales of unseen powers, and Sinzheimer’s strong sense of the complex relations of modern capitalism would have inhibited his appropriation of Gierke without the confirmation he found in the Marxist and legally positivist writings of Renner. Renner argued that the maturation of corporate capitalism brought with it a decisive change in the function of the formal legal institutions centered on private property. Auxiliary institutions, especially contracts, were being put to uses that undermined the sovereign control implicit in classical property doctrine. The dynamic social context was transmuting the force of the law without changing its letter. Expanding on this analysis, Sinzheimer found socially generated new law in the conflict-resolving rulings of informal commercial courts and, above all, in the collective agreements between organized workers and their organized employers. With several colleagues, he sought recognition of this novel emergent, which they called labor law, and considered a transpersonalist countercurrent to property law.

When Sinzheimer’s most reflective work on labor law appeared in 1921, it was attacked by the two leading academic professors in the field as a disappointing regression from the steady advance of labor law into systematized doctrine, falling back to the “belletristic-sociological approach,” one wrote, “that must be considered obsolete by any jurist properly trained in labor law.” Both of these professors subsequently wrote standard commentaries on the Nazi labor legislation replacing unions by leaders; yet, their textbooks and doctrines later also founded the postwar labor law of the German Federal Republic. What unsettled these legal technicians was not only Sinzheimer’s dedication to the egalitarian social principle he identified as the spirit of the labor law but also his perception of that principle as a dynamic one, requiring a constant readaptation of doctrine to changing social circumstances.

As Sinzheimer and his associates insisted, stringently formal methods applied to relationships of power and dependency that are systematically disguised easily degenerate into passivity before superior power, whether in the guise of a triumphant predominant opinion or predominant totalitarian party. Sinzheimer’s labor law exemplifies an advocates’ law, striving to inform legal analysis by contestable knowledge about social causes and consequences, without breaking with the constitutive distinctions between legal and other forms of public power. Yet if legal analyses and decisions depend on social knowledge that often appears in partisan guise and gains solidity only in the course of intense processes of highly technical and contingent nonlegal discourses, how can the law cope? Sinzheimer concentrates on explicating procedures that may yield controllable legal results but operate largely through the partisan social knowledge immanent

in always-changing and ever more complex social formations. That is the point of Sinzheimer's interest in collective agreements and his extrapolation from there to the notion of a self-regulating social constitution.

Through its capacity for legislation and other forms of legal innovation, the law takes it upon itself to set standards for these procedures and to monitor their operations. This relies more on inducements and incitements than it does on enforcement as such. Collective bargaining and collective agreements are not compelled to follow a prescribed form, for example, but they are denied certain privileges and immunities if stated conditions are not met. Sinzheimer knew that collective agreements could not be denied legal force because they lacked the attributes of contracts and he knew that legal regulation could not simply override the operative knowledge that governed a complex social activity so that no scheme of social justice could be indifferent to the prerequisites for production in economic entities. That knowledge directed his political course. Hugo Sinzheimer sought to foster a law that tracked transformative trends in social power, civilizing and legitimizing them, while subtilizing their effects. He thought these trends favored the transition from the liberal world of individual persons to a social world of humankind in groups; and his legal vehicle was labor law, understood as a legal design countering the reign of property law and progressively reorienting the social constitution.

Neumann and the Promise of Labor Law

Neumann usually aligned himself closely with Sinzheimer during the Weimar years and, subject to the cautions roused by the hyperinflation, shared his basic assumptions about the favorable tide in social history, although they already found themselves in a defensive position before the economic collapse, as business regained its strength and confidence after 1925. In addition to a very large load of technical legal work, Neumann distinguished himself during the decade of most promise in labor law by his contributions to a strategy and theory of the interplay between the "political" and "social" spheres, whose complementary relationship he began to project in the work discussed earlier. There are no known records of Neumann's legal practice, except for some documents arising from what must have been among his very last cases, an appeal from a decision in a reciprocal slander case between the last Republican prime minister of Prussia, Otto Braun, and Adolf Hitler.⁴⁴ That pathetic finale, coming a few weeks before Neumann's imminent arrest and consequent emigration, cannot be taken as emblematic of his 10 years of practice before courts at all levels on behalf of several unions, including the union of the building trades for which he was contractual attorney, as well as the Social Democratic Party that became his client at the very end, not to speak of his forceful advocacy in published writings on key questions of legal policy.

The best record of his contributions during that decade can be found in the series of publications appearing in *Die Arbeit. Zeitschrift für Gewerkschaftspolitik und Wirtschaftskunde*, which was a "theoretical" journal established by the executive committee of the labor federation closest to the Social Democrats, expressly distinct from the ordinary agitation-and-information union newspapers, for the continuing education of trade union functionaries to qualify them for their many new duties on boards and commissions where

they had to deal with highly educated and professionally qualified representatives of both the employers and the state.⁴⁵ The editor of the journal was Lothar Erdmann, an outsider whose mix of moderate nationalist and socialist interests attracted the chair of the union executive, Theodor Leipart.⁴⁶ Neumann was not among the most frequent contributors, but he supplied a number of reviews of academic publications on labor law as well as critical assessments of the annual meetings of the influential public law profession. His main papers—one or two of which were published rather in *Die Gesellschaft*, the mainstream Socialist theoretical journal, and *Die Justiz*, Sinzheimer's organ for "republican" jurists—dealt with perhaps the most consequential policy questions confronting the labor movement during those 10 years;⁴⁷ and his views were obviously consistent with the centrist line of the union executive, although there was never any hint of the nationalist current pervasive in Erdmann's own publications.

As noted earlier, the large question raised for Social Democratic policy after 1919, both in the party and in the affiliated trade unions, turned on the relationship between the state, newly rendered parliamentary and democratic in form, and the various arenas where organizations of workers engaged with employers and other established centers of authority. The former was rendered problematic by the continued centrality of the old state apparatus and judicature, as well as the weakness of cabinets based on broad coalitions, while the latter was unsettled by abrupt shifts in the balance of power, as economic and political circumstances changed, even after the more revolutionary designs were rendered effectively harmless. For Sinzheimer and his followers, the basic formula remained a dualistic one, with a domain of social self-management constituted by deals negotiated between associated workers and employers remaining alongside of the democratically governed state, whose official activities could now be counted upon, especially in the form of legislation, to support that autonomous structure and to supply its needs—as with legal mandates for works councils, labor courts and the like. The actual course of development, however, quickly put that model under stress.

Leaving aside the increasing power of the streets, which was never really addressed by this cohort of labor intellectuals, there was, first, a dramatic rise in the role of the state bureaucracy in the negotiation structure that was the paradigm of the whole self-management design; second, a massive change in the economic organization of employers, with an attendant rise not only in their bargaining power but also in their ability to avoid bargaining altogether; and third, a change in the method and doctrine of the courts that introduced a new mode of power into the political equation and disturbed the legal calculations on which the autonomous social sphere had operated. Neumann cited these developments later, in his bitter account of the failures of Weimar, but he also angrily understated the extent to which he and his fellows did see those problems as they emerged and sought policy responses consistent with their judgment that there was no "revolution" to be had. They had, in fact, provided the themes of his policy studies throughout.

His first extensive contribution to *Die Arbeit*, as noted earlier, deals with a potent and effectively irresistible challenge to the basic notion of a separation between the state apparatus and the autonomous realm constituted by relations of collective bargaining. The reference is to an institution that grew out of the wartime mechanism for imposing

settlements in cases of labor conflicts in “essential” industries. Although partially rescinded by the new regime, it left behind provisions for bilateral nonbinding arbitration, and these were soon supplemented—first by a court decision (1922) and then by a new decree (1923)—through a power in the Ministry of Labor, first, to rule without a request from the parties that such arbitration should be undertaken, and, second, to declare the resulting proposals binding.⁴⁸ Although compulsory wage settlements, which were at the heart of this institution, affected only a minority of collective settlements, they soon became predominant in labor conflicts involving large numbers of employees.⁴⁹

Neumann’s article originated as a talk to the union of public employees in 1925. Both the design and the themes of the argument make it a representative example of the mix of legal and sociological argumentation whose initial terms he had laid down in his dissertation as well as the important provision introduced into his thinking by his work with Sinzheimer. And yet, the conclusion also reveals his characteristic acceptance of a prime responsibility to qualify principle with pragmatic considerations, to function as effective counselor in negotiations constrained by the realities of the moment, while insisting on the importance of the principle to define and strengthen the party to and for which he speaks. He begins, accordingly, by citing the likelihood that workers will require new wage increases to compensate for the price rise bound to follow from new taxes and tariffs and notes the corresponding fear that the scheme of compulsory settlements will make this hard to achieve. Renowned trade union experts, as well as the executive committee of the socialist-oriented unions (ADGB), have pointed out the conflict between this procedure and basic union interests and perhaps even the constitutional guarantee of trade union rights, while the legal establishment and specialists have devised technical complications to condition or even to overturn such settlements without providing alternative bargaining means to unions. Associations of employers have even been permitted by the courts defensively to revise their charters to declare themselves incapable of collective agreements so that they are no longer parties in either the historic collective bargaining or the new procedures, a position that Neumann rejects in passing, on the grounds that collective agreements or their equivalents must be recognized in their social reality (following Gierke and Sinzheimer—but also Kelsen) as equivalent to state enactments in public law rather than as adjudications subject to technicalities of contract law or review by courts. The arguments of the employers come down to a reassertion of the bogus “free economy” ideology, which is “nothing but a great lie.”⁵⁰

Having dismissed the objections to the mandatory arbitration regime put forward by nonunion agencies, Neumann focuses on its implications for unions, which he sees as being affected in the sphere that uniquely defines them. To this consideration, he undertakes to add—in a manner reminiscent of his dissertation—an assessment from the standpoints of socialism and state policy. As in the dissertation, then, he challenges the grounds on which labor advocates criticize state action in this matter as being liberal in design. One writer insists that all state action in this sphere is inherently “reactionary” and the other, that the regime violates a constitutional right to strike. Neumann begins his rejection of the former by emphasizing the neutral character of law as a form, with judgments depending on the actual point of any given law and its social function—noting by the way that the status and force of unions is itself ultimately grounded on law—and

he questions the assumption of the latter that the right to strike is in fact guaranteed by either of the two constitutional clauses that bear on unions. Neumann next rehearses Radbruch's distinction between "personalist" and "transpersonalist" perspectives and recalls the importance of the latter for socialism, with its rejection of the individualist claims against the state and affirmation of collective designs. Yet if the state were everything, he maintains, Socialists would resemble Conservatives, and any objections they might have to the compulsory wage settlements at issue here would be purely tactical, depending on the political makeup of the state from time to time. He concludes, resolving issues left uncertain in the dissertation,

Socialism assigns the same importance to the free development of social forces as to the direct application of state coercion. The interweaving of socialism and democracy is so close today that what has come into being is not merely an association but a spiritual, social, and political whole. In Germany—probably in contrast to Russia—socialism is not thinkable without democracy, without the participation of the social forces that have emerged autonomously. Affirmation of the idea of the state *and* affirmation of social autonomy [*sic*]. (699)

With regard to labor law, then, this requires both state regulation of labor relations and "affirmation of social self-management through the trade unions." The ultimate formulation is epitomized for Neumann in the title of Sinzheimer's "A Wage Settlement Law: The Idea of Social Self-Determination in the Legal Order." Imposed settlements, Neumann maintains, are ultimately hostile to the very idea of the state because they are in fact unenforceable if resisted and thus an overreaching of state sovereignty; they are counter to democracy because they are an expression of a servile attitude antithetical to the responsibility that is at the heart of that form; and they are against a critical component of the socialist idea, the interplay between state and society. While this analysis can be seen as anticipated in Neumann's dissertation, he expressly and interestingly poses a question that could not have arisen there: why should the social power be delegated to the trade unions? His answer has a markedly different logic from much of his argument. This has been their historical mission: they have an "acquired right," in the sense in which civil servants claim it, and they have a moral claim to the duty of exercising the responsibility for this aspect of economic management. Unlike employers' groups, which represent nothing more than interests, trade unions are "organs of the national economy" (700). The rejection of imposed settlements is a matter of fundamental principle for unions, no matter what short-term benefits they might derive. This said, Neumann abruptly turns to the pragmatic question posed by the actual situation in a statement that also calls into question his earlier identification, following Radbruch, of the state with the political parties:

Despite everything and to our astonishment, [the compulsory wage] remains alive, and, frankly, it will not die soon. Notwithstanding the most vehement opposition by trade unions and employer's associations, it will remain, first, because the quality of inertia in all laws prevents it from disappearing and, second, because the government and the governmental bureaucracy are stronger today than democracy and the political parties. (701)

Neumann's management of this state of the "brutal facts" in this matter is complex, in that it can be taken as either opportunistic or a paradoxical but reasonable response to a poor bargaining position. First, he proposes to change the selection of the mediators whose recommendations are subject to compulsory implementation so that they are no longer simply the appointees of the government authorities involved—normally chosen from officials in the bureaucracy—but chosen from a pool created by unions' and employers' associations, with the chair selected by the Ministry of Labor. Second, he would change the present rule by which intervention by such mediators-turned-arbitrators can happen upon their own initiative so that a request by the parties would be required. Interestingly, he brushes aside a suggestion by the trade union federation's official speaker on legal matters that such intervention should require a trade union request alone, observing that it is senseless to press for changes that could never be achieved. Finally, then, he considers the seeming contradiction that the parties to the imposed settlement are then responsible for upholding it, a situation most blatantly visible in the obligation on unions to refrain from striking. He acknowledges the anomaly—in fact, he insists on it—but he also insists that it would be unthinkable to violate the norms of self-management in the social sphere by having the state impose sanctions. He concludes, then, that the situation testifies to the "impossibility" of the procedure but that as long as the procedure illogically remains in place, the implementation must remain within the social domain, and unions must abstain from striking.

The issues raised by compulsory settlements came forward two years later in quite different form, giving new weight to Neumann's contention that the procedure was in some sense "impossible" because it was not only unenforceable against sustained resistance but also underlining the ambiguity of the practice from the standpoint of the unions, as acknowledged implicitly in Neumann's paradoxical recommendations. As Hartwich shows in some detail, a prime motif in the mandatory interventions by the Ministry of Labor, which was consistently headed by trade-union figures until 1932, was the protection of the collective agreement regime, often under conditions of great weakness in the unions—and a concerted drive by employers to eliminate it.⁵¹ In 1928, then, the steel industry in the Ruhr united against a mandatory settlement, locking out its employees. Neumann was one of the labor spokesmen who inveighed against this resistance, arguing above all that the employers' legal claims against the conditions of the settlement were specious and that the struggle was a purely political one, directed against the social and labor policies oriented to labor and eventually against the unions themselves, and illustrating the perverse practice of attempting to harness legal institutions to political conflicts.⁵² Neumann's response linked the specific case to the labor movement's wider demand for new legislation to control cartels and monopolies by providing for labor representation in their management. Since the ministry's path around the impasse was to gain acceptance of a new arbitrator under the terms of the collective agreement and outside the compulsory arbitration mechanism, Neumann and other labor advocates were in the curious position of resisting a renegotiation in the "social" domain in favor of enforcing the outcome of the mandatory procedure they opposed in principle. For Neumann, however, the critical point was the political struggle against the employers' cartels with the help of what appeared to be a government supportive of labor. This aspect

of the institutional balance was itself undergoing change, and the need to deal with these changes presented in fact a first strategic priority, however tactical the immediate steps might appear in this instance. The Sinzheimer strategy, after all, always presupposed a conjunction of enabling legal devices with a balance of social power. When Neumann speaks of social or economic “constitutions,” as complements to the political one, and indeed when he becomes ever more engaged in debates about the Weimar constitution itself, notably on the question of its rights guarantees, he must be understood to follow the lead of Max Weber and other social theorists for whom constitutions were always a function of both legal institutions and “brute realities of politics.”

Notes

- 1 Herbert Marcuse “Franz Neumann,” Minutes of the Faculty of Political Science, Columbia University, April 15, 1955.
- 2 Franz L. Neumann, “The Social Sciences,” in William Rex Crawford (ed.), *The Cultural Migration. The European Scholar in America* (New York, Philadelphia: University of Pennsylvania Press, 1961), pp. 4–26.
- 3 The basic texts are conveniently assembled in volume 3 of the *Collected Works* of Marx and Engels (London: Lawrence and Wishart, 1975). They include Marx’s *Contribution to the Critique of Hegel’s Philosophy of Right, On the Jewish Question* and others.
- 4 The most straightforward account of this design is in the text of an early lecture, “Wage Labor and Capital.” Karl Marx and Friedrich Engels, *Selected Writings*, vol. 1 (Moscow: Foreign Languages Publishing House, 1965).
- 5 The relevant texts are *The German Ideology*, vol. 5, and *The Holy Family*, vol. 4, of the *Collected Works* of Marx and Engels (London: Lawrence and Wishart, 1975). The themes recur in later writings especially in the treatment of radical democrats in the writings on France after 1848, most notably in the classic *Eighteenth Brumaire of Louis Napoleon*.
- 6 In the *Holy Family*, Marx jeers at the way in which the Young Hegelian “Critical” philosophers are never prepared to give answers to the “questions of the day,” as they are posed in practical political life, but always transpose them into a jargon that implies their own “philosophical” answers. His own *Je n’ais pas Marxiste* may well stand as his response to much that has since been done along these lines in his name. Apart from his stylistically dated exaggerated polemics and his sometimes difficult technical writings, Marx is represented by a still powerful and effective journalistic literature, which does call things by recognizable names. All of his fugitive journalism is conveniently collected in an anthology edited by H. Christman. For a stimulating discussion of the complex relationships between Marx’s more theoretical and his more descriptive writings, see Jarrold Siegel, *Marx’s Fate: The Shape of a Life* (Princeton, NJ: Princeton University Press).
- 7 This is already well worked out in the *Communist Manifesto*. Marx’s own strategy is clearest in the journalism published during 1848 and 1849 in the *Neue Rheinische Zeitung*, and his approach to the specific problem of interrelating the terms of his analysis with the modes of juristic argument emerges clearly in his statements before courts of law in 1849 and 1851. See *Collected Works*, volume 8.
- 8 Marx’s earliest journalistic writings, for the *Rheinische Zeitung* in 1843, concentrated on legislation before the Estates and consisted of shrewd applications of Hegelian juridical thinking. See volume 1 of the *Collected Works*.
- 9 “Juristen-Socialismus.” Karl Marx und Friedrich Engels, *Werke* (Berlin: Dietz, 1964), vol. 21, pp. 491–509. It is a review of Anton Menger, *Das Recht auf den vollen Arbeitsertrag in geschichtlicher Darstellung* (Stuttgart: Cotta Verlag, 1886).
- 10 Karl Kautsky, *Das Erfurter Programm* (Stuttgart: JHW Dietz Nachf, 1912 [11. Aufl.]), pp. 131 f.

- 11 Anonymous, "Die soziale Frage und die Rechtsordnung," *Neue Zeit*, XI/2 (1890–91), Nr. 40, pp. 430–38; Nr. 41, pp. 476–80; Nr. 43, pp. 539–44.
- 12 Kenneth Lapides, ed. *Marx and Engels on the Trade Unions* (New York: Praeger, 1987), p. 64.
- 13 Kenneth Burke, *A Grammar of Motives* (New York: Prentice Hall, 1950), p. 335f. Burke actually treats the Communist Manifesto itself as a "constitution" in his extended sense: "This document is a *constitution*. For not only is it *regulative*, saying what may be on condition that its offer is accepted. It is soundly *constitutive*, grounding its statement of political principles in statements about the nature of the universal scene. "That takes us quite a way from the more literal sense of the juridical terms which concern us here, but it is neither vacuous nor irrelevant, because it implies Burke's judgment that Marx's thought is not 'futuristic' in the sense of those doctrines that," in Burke's works, "spurn the *now* and so cannot provide an anecdote for understanding what man *is*—or depict the present in reductionist but tangible terms and so serve to enhance the gloom not hope or striving." *Ibid.*
- 14 It was the view of many legal socialists, beginning with Karl Renner's path-breaking work, that such expansion of governmental acts revealed and furthered the obsolescence of the old legal system, damaging its central liberal premises beyond repair. See discussion later. Karl Renner, *The Institutions of Private Law and Their Social Functions* (London: Routledge and Kegan Paul, 1949). The original was first published in 1906 and republished in 1929.
- 15 The nature of the struggles can be conveniently inferred from the statements published by the *Republikanischer Richterbund* in the first issues of its journal (*Die Justiz*). See later in the text.
- 16 This argument appears, in nonjuristic form, in Friedrich Hayek, *The Road to Serfdom* (London: Routledge, 1944), and in many of his subsequent publication. See also Michael Oakeshott, *On Human Conduct* (Oxford: Oxford University Press, 1976).
- 17 Compare, for example, the technical tract by Franz Neumann, *Koalitionsfreiheit und Reichsverfassung, Die Stellung der Gewerkschaften im Verfassungssystem* (Berlin: Carl Heymann's Verlag, 1932), with his political pamphlet, written in England two years later, *Trade Unionism, Democracy, and Dictatorship* (London: WETUC, 1934). See later in the text.
- 18 Franz L. Neumann, *Rechtsphilosophische Einleitung zu einer Abhandlung über das Verhältnis von Staat und Strafe*, Jur. Diss. Frankfurt am Main. v. 5. Juni 1923, Carbon Copy, 113 S (Frankfurt am Main: Collection of the University Library).
- 19 The distinction between Marxist and Marxist theories conveniently distinguishes between wholistic theories focused on revolution, like the contemporary work issuing from writers like Georg Lukács, and sociological approaches derived from Marx, like the writings not only of Radbruch but also Emil Lederer and many Austrian authors of the time. See Colin Loader and David Kettler, *Karl Mannheim's Sociology as Political Education* (New Brunswick: Transaction, 2002), p. 160.
- 20 Franz L. Neumann, *Rechtsphilosophische Einleitung zu einer Untersuchung ueber das Verhaeltnis von Staat und Strafe*. Frankfurt Rechtswissenschaftliche Dissertation von 5. Juni 1921 [Typescript], p. 7
- 21 Without citing his source, Neumann quotes Gustav Radbruch: "Since the Socialist Party has been called, through war and revolution, to co-determination and co-responsibility [...] it is undergoing a change in spirit that is distancing it ever more from its individualistic starting point" (9).
- 22 Neumann's remarks about sociology interestingly echo the motifs of German academic distrust of that emerging study as well as the determination of a new generation to establish the terms of recognizing it as a discipline in the sense of *Wissenschaft* rather than *Bildung*. See Loader and Kettler, *Karl Mannheim's Sociology as Political Education* (2002) as well David Kettler and Colin Loader, "Weimar Sociology," in Peter E. Gordon and John P. McCormick (eds.) *Weimar Thought. A Contested Legacy* (Princeton, NJ; Oxford: Princeton University Press, 2013), pp. 15–34
- 23 Karl Renner, *The Institutions of Private Law and Their Social Functions*, trans. and ed. Otto Kahn-Freund (London: Routledge and Kegan Paul, 1949); and Otto Kahn-Freund, *Labor Law and Politics in the Weimar Republic* (Oxford: Basil Blackwell, 1981).
- 24 Max Adler, *Staatsauffassung des Marxismus* (Vienna: Wiener Volksbuchhandlung, 1922).

- 25 Gustav Radbruch, *Grundzuege der Rechtsphilosophie* (Leipzig: Quelle & Meyer, 1914).
- 26 Neumann's critical treatment of Kant is followed by a detailed critique of Rudolf Stammler's *Richtige Rechtslehre* [Theory of Rightful Law], which had a vogue at the time despite a rather transparent admixture of arbitrary importations from natural law and elsewhere. It was the subject of some vehement attacks by Max Weber and a thorough critique by Neumann's professor, Max Ernst Mayer, both of which are acknowledged—and followed—by Neumann. See Max Weber, "R. Stammler's 'Ueberwindung' der materialistischen Geschichtsauffassung," *Grundriss der Sozialökonomik. Wirtschaft und Gesellschaft* (Tübingen: Verlag von J.C.B. Mohr), pp. 291–359; Christopher Adair-Toteff, "'Methodological Pestilence': Max Weber's Devastating Critique of Stammler," *Max Weber Studies* Vol. 14, No. 2 (July 2014), p. 24.
- 27 The question of relativist legal philosophy in Neumann's dissertation is at the center of a brief article that undertakes to systematize the argument in the context of the author's undeveloped misgivings about "relativism," which he views as self-evidently ominous in the setting of Weimar's crisis. Neumann concludes that Stammler at best develops an "epistemological" theory of the kind that Hans Kelsen had contributed in much clearer form. This section of the dissertation has very much the character of a student exercise and adds little to an understanding of Neumann's independent starting point for his subsequent legal and political thought. Although the suggestion that such relativist legal theory had some responsibility for the destruction of the republican order is without foundation, the article has value for its expositions of the legal theory of the time. Sascha Ziemann, "Relativismus in Zeiten der Krise: Franz L. Neumanns unveröffentlichte Rechtsphilosophische Doktorarbeit von 1923," *Zeitschrift für Internationale Strafrechtsdogmatik*, Vol. 9 (2007), pp. 362–70. We are grateful to Professor Adair-Toteff for his help with these materials.
- 28 Sascha Ziemann, "Relativismus in Zeiten der Krise: Franz L. Neumanns unveröffentlichte rechtsphilosophische Doktorarbeit von 1923," *Zeitschrift für Internationale Strafrechtsdogmatik*, Vol. 9 (2007), pp. 362–70.
- 29 There is some uncertainty in Neumann's handling of the question whether democracy is more nearly personal or transpersonal in its rationale. On balance, he inclines to the former.
- 30 In a commentary on the 1928 annual meeting of German jurists, an influential body for screening proposed changes in law and for formulating authoritative legal doctrine, Neumann welcomes a recommendation against legislation to criminalize abuses of workers' capacities for work. In agreement with his mentor, Hugo Sinzheimer, Neumann maintains that "it is up to the state to operate as little as possible with criminal sanctions in the domain of labor law." This is, he says, "in the interest of the state, in the interest of the labor unions, and in the interest of the individual worker." Franz Neumann, "Der Salzburger Juristentag," *Die Arbeit: Zeitschrift für Gewerkschaftspolitik und Wirtschaftskunde*, Vol. 5, No. 10 (1928), pp. 656–62, at p. 658. Neumann's rationale will become clear in the discussions of labor law, later in the chapter.
- 31 Franz Neumann, "Der Kampf um den Zwangstarif" [The Struggle Concerning the Mandatory Wage], *Die Arbeit: Zeitschrift für Gewerkschaftspolitik und Wirtschaftskunde*, Vol. 2 (1925), H. 11, S. 694–703, at pp. 698–99. Quite typically, Neumann did not limit himself to the principled statement against this practice; he also recognized the strong political considerations that promoted it at the time and proposed a set of mitigating measures to lessen its effects on union autonomy.
- 32 See, for example, Franz Neumann, "Richterliches Ermessen und Methodenstreit im Arbeitsrecht" [Judicial Discretion and the Dispute about Method in Labor Law], 16 *Arbeitsrecht*, Vol. 6 (June 1929), pp. 320–32, where he effectively repeats paragraphs from his earlier discussion of the value-free character of legal sociology.
- 33 See letter to Helge Pross, Chapter 3. In attempting to understand Neumann's engagement for the unions, we are limited to investigating reasons beyond his concerns for livelihood and the like, which may have been among the causes of his actions, since we have neither the information nor the ambition for such a biography.

- 34 Otto Kahn-Freund, "Hugo Sinzheimer (1875–1914)," pp. 1–34, in *Hugo Sinzheimer, Arbeitsrecht und Rechtssoziologie*, Bd. 1 (Frankfurt-Koeln: Europaeische Verlagsanstalt, 1976), p. 1.
- 35 The interpretative historical survey below is grounded, apart from sources expressly cited, in standard sources: Hans-Joachim Bieber, *Gewerkschaften in Krieg und Revolution*, 2 vols. (Hamburg: Christians, 1982); Horst Heimann and Thomas Meyer (eds.), *Reformsozialismus und Sozialdemokratie* (Berlin/Bonn: Dietz, 1981); Wolfgang Luthardt (ed.), *Sozialdemokratische Arbeiterbewegung und Weimarer Republik*, 2 vols. (Frankfurt: Suhrkamp, 1978); Susanne Miller, *Die Bürde der Macht* (Düsseldorf: Droste, 1978); Hans Mommsen, *The Rise and Fall of Weimar Democracy* (Chapel Hill: North Carolina Press, 1996); Heinrich Potthoff, *Gewerkschaften und Politik zwischen Revolution und Inflation* (Düsseldorf: Droste, 1979).
- 36 Judith Shklar, *Legalism: Law, Morals, and Political Trials* (Cambridge, MA: Harvard University Press, 1964).
- 37 Arthur Rosenberg, *A History of the German Republic* (London: Russell & Russell, 1965).
- 38 *Correspondenzblatt* der Generalkommission der Gewerkschaften Deutschlands, 29:10 (March 8, 1919), 83. Friedrich Ebert Stiftung Bibliothek.
- 39 *Correspondenzblatt*, 29:22 (May 31, 1919), 227. Friedrich Ebert Stiftung Bibliothek.
- 40 Eberhard Kolb, *Der Zentralrat der deutschen sozialistischen Republik, 19.12.1918–8.4.1919, vom ersten zum zweiten Ratekongress*. Bearb (Leiden: E.J. Brill, 1968), p. 507.
- 41 Verfassungsgebende Deutsche Nationalversammlung, Aktenstück Nr. 39, 135. Sitzung. Berlin, den 2. Juni 1919. Artikel 57 (34g), 393–94.
- 42 Hugo Sinzheimer, *Arbeitsrecht und Rechtssoziologie. Gesammelte Aufsätze und Reden*, 2 vols. (Frankfurt-Koeln: Europaeische Verlagsanstalt, 1976).
- 43 Sinzheimer, "Otto von Gierkes Bedeutung für das Arbeitsrecht," *Arbeitsrecht* (1922).
- 44 Letters from Franz L. Neumann to Otto Braun dated February 18, 1933, February 19, 1933, February 20, 1933, and February 22, 1933, *Neumann Papers* Archive, International Institute for Social History, Amsterdam, file 355, pp. 1–14, file 359, pp. 1–3 and file 360, pp. 1–3.
- 45 The rationale is to be found in "15/16, 1. 1924: Sitzung des Bundesausschusses," pp. 103–35, in *Die Gewerkschaften von der Stabilisierung bis zur Weltwirtschaftskrise 1924–1930*, ed. Host A. Kukuck and Dieter Schiffman (Cologne: Bund Verlag, 1984), pp. 107–8; see also "16.5.24. Sitzung des Bundesausschusses," pp. 189–90.
- 46 For Erdmann and *Die Arbeit*, see Ilse Fischer, "Die Arbeit. Zeitschrift für Gewerkschaftspolitik und Wirtschaftskunde"—das theoretische Organ des Allgemeinen Deutschen Gewerkschaftsbundes (ADGB), 1924–33. Accessed Winter 2007 from <http://library.fes.de/arbeit/einleitung-fischer.pdf>. See also Ilse Fischer, *Versöhnung von Nation und Sozialismus?: Lothar Erdmann (1888–1939): Ein "leidenschaftlicher Individualist" in der Gewerkschaftsspitze; Biographie und Auszüge aus den Tagebüchern* (Berlin: Dietz, 2004). Erdmann's nationalism (and nonracist anti-Semitism) inclined him to a certain neutrality toward the National Socialist regime, which nevertheless imprisoned him in a concentration camp at the outbreak of war. He was killed soon after under circumstances that did him honor.
- 47 Neumann also published brief articles on decisions and other specific issues in law in several of the more technical labor law periodicals and briefings for local trade union functionaries. There were also several brochures of this type and one small book that will be discussed later.
- 48 Michael Ruck "Von der Arbeitsgemeinschaft zum Zwangstarif. Die Freien Gewerkschaften im sozialen und politischen Kräftefeld der frühen Weimarer Republik," in Erich Matthias/Klaus Schönhoven (Hg.), *Solidarität und Menschenwürde* (Bonn: Verlag Neue Gesellschaft, 1984), pp. 133–51; Hans-Hermann Hartwich, *Arbeitsmarkt, Verbände, und Staat, 1918–1933* (Berlin: De Gruyter, 1967), pp. 26–42.
- 49 Hans-Hermann Hartwich, *Arbeitsmarkt, Verbände, und Staat, 1918–1933*, Veröffentlichungen der Historischen Kommission zu Berlin beim Friedrich-Meinecke-Institut der Freien Universität Berlin, Bd. 23. 212–220 (Berlin: De Gruyter, 1967).
- 50 Franz Neumann "Der Kampf um den Zwangstarif," *Die Arbeit: Zeitschrift für Gewerkschaftspolitik und Wirtschaftskunde*, vol. 2 (1925), H. 11, pp. 694–703, 694–96.

- 51 During most of the Weimar years, the minister came from the Christian rather than Socialist trade unions, but there were no significant differences about the centrality of collective agreements. Hartwich, *Arbeitsmarkt*, pp. 231–43. See also the case studies and statistical charts on pp. 244–305. For the context, see Horst-Albert Kukuck, “Der Wiederaufschwung der Gewerkschaftsbewegung 1924 bis 1929,” pp. 153–86, in Matthias/Schönhoven, *Solidarität und Menschenwürde*.
- 52 Franz Neumann, “Recht und Eisenkampf,” *Die Justiz*, Vol. IV, No.2 (Dezember 1928), pp. 113–21.

Chapter 3

POWER, RESISTANCE AND CONSTITUTIONS

Resistance can suspend co-operation, or make it defective. The forms of resistance [...] may hinder, interrupt, or threaten to destroy a system of co-operation. [...] The general purpose of all kinds of resistance is to re-establish a favorable situation.

E. V. Walter¹

The Rise of Cartels

As Hans Mommsen effectively summarizes a complex story,² the most important political developments of the economic recovery years during the mid-1920s took the form of an “extra-parliamentary offensive” against the complex of policies that had been part of the social settlement signaled by the Weimar Constitution and the ensuing governing coalitions, with the highly symbolic issue of the limitation of the working day prominent among the policies under immediate attack and with the supports of the collective bargaining regime as a whole clearly in prospect as targets. The prime agents of employer action were newly strengthened patterns of business organization, ranging from cartels that interlinked enterprises with regard to certain of their functions to trusts that brought key sectors under ever more unified control, all tending toward effective monopoly in the markets, whether or not the ownerships were in fact fully joined. After the economic collapse of 1930, the resistance to a regime hospitable to unions gained effective power, and the task of resistance shifted to the unions and their political supporters. The young Franz Neumann—still in his twenties, it should be recalled—figured as an important voice in both phases. The challenge of the cartels arises first in the minutes of the executive committee of the principal trade union formation in 1925 and 1926, not directly in relation to changed power configurations in bargaining but rather with regard to the change in the capacity to resist and undermine public economic policy, as it affects prices, industrial rationalization and foreign trade, during the period of recovery from hyperinflation.³ Yet, by the end of 1928, Neumann’s introduction of the theme into his analysis of the Ruhr struggle exceptionally put the immediate issue in the context of the shifting power relations in collective bargaining. It followed major joint submissions along the old lines to Chancellor Marx by the Social Democratic unions earlier in the year,⁴ an authoritative policy prospectus called “Economic Democracy” published by a leading labor intellectual, Fritz Naphtali, and subsequently adopted by the union federation as its program⁵ as well as two important earlier interventions by Neumann himself.⁶ As late as the end of 1930, in the first year of

presidential rule, in fact, when the weakness of labor was completely clear and the posture undeniably defensive, Neumann nevertheless offered a new draft of a law on cartels and monopolies.⁷ Three motifs prevailed in all of these proposals. First, there was the conviction—naturally stronger earlier than later—that the rapid and marked shift from a “free market” to an “organized economy” was a welcome development, on balance, because it showed the way to a planned economy governed by democratic judgments of public need and shared development rather than an economy driven by the profit aims of proprietors. Because the labor submissions minimized, whether on tactical grounds or out of limited realism, the threats posed to collective bargaining and labor’s interests by these power centers, they focused instead on negative consequences for the prime objectives of public economic policy. The proclaimed aim was to influence the direction of cartels tending toward monopoly rather than to dismantle them. Naphthali offers an exceptionally optimistic reading of the progress toward a democratized economy implicit in the new waves of concentration:

Although we are far from wanting to cover up the highly capitalistic character of the new organizational forms, we believe that this development of organized capitalism will provide a great thrust towards the democratization of the economy, a thrust that is already underway. Precisely because under these conditions the power of the various capitalist groups can rise to complete domination of the markets, it necessarily raises the awareness that within these organizations of entrepreneurs decisions about economic well- or ill-being are made that can no longer remain within the private sphere but that must necessarily become matters for the community as a whole. Against the most advanced forms of autocratic domination of the economy through the various groups of entrepreneurs, a countermovement emerges that raises the cry for a subordination of the leadership of the great organizations of entrepreneurs to the common interest represented by the state.⁸

Naphthali’s concluding words point to the second motif in this labor program, which is a call for state intervention of a special kind. The basic design, common to Neumann’s version(s) and the others, requires a public control agency that would have, first, many characteristics of what contemporaneous American policy discussions would have called an independent regulatory commission.⁹ Although bureaucratically assigned to the Economics Ministry, the agency was to be headed by an independent “President” (in Neumann’s draft proposal), staffed by experts and officials not subject to policy directives from the minister, and seconded by a balanced committee of representatives of the principal employer and employee organizations. In the original statement by the trade union executive, the commission’s powers would mostly take the form of public information, beginning with the “registration” of the terms of cartel agreements and extending to findings regarding monopolistic practices, especially with regard to pricing policies, secured by binding subpoena. Cease and desist orders against actions harmful to the economy could also be issued, subject to review by the tripartite cartel court. Neumann’s own original proposal included consumers’ representatives and placed more weight on control functions than on publicity, with the special court involved only when it is a question of dissolving cartels or trusts or of invalidating their broad decisions and contracts.

In addition to this “higher level” of regulation, there was a case made as well—and this is the third theme—for trade union representation on governing boards of cartels, complemented in some of the concrete proposals with provision for state agents at this level as well, with a view to influencing the responses of the entrepreneurial organizations to the overall policies short of enforcement procedures, including measures to increase voluntary compliance and negotiated settlements. Because the experience in the two industries that had had such arrangements put in place immediately after the war showed that representatives from the immediately affected unions were subject to aligning themselves with employers without sufficient regard to the economic situation overall, such representation was intended to include a substantial proportion of officials from the union executives overall. Not all proposals gave equal weight to this aspect of coparticipation, although it was agreed that the provision for works councils in exiting law could not touch these issues of economic power because the units involved were not equivalent to the firms, let alone the combines, so that the operations of those representative entities were limited to local working conditions and remote from the economic policy in which unions sought to play a part. The insistence that union representation is designed as a contribution to public economic policy rather than to the protection of trade union interests is closely tied to the argument against the claim made by defenders of the cartels that unions are simply the counterparts of cartels and thus require as much or as little supervision as entrepreneurial associations. Neumann repeatedly presses the case for a qualitative distinction between the two.¹⁰ In the event, none of the unions’ submissions succeeded in giving them an institutionalized voice at the level required to be effective against the economic organizations whose power they experienced as a fatal threat to their designs for “economic democratization,” not to speak of socialism. The initial proposal to Chancellor Marx in 1927 was left without response, despite some uneasiness among officials about the weaknesses of public control in this burgeoning field, since the only recourse under the earlier provisional regulations of 1923 was to a court operating on narrow formalistic guidelines in a technical juristic manner. An important part in the delay was played by the minister of trade. The new coalition ministry under the Social Democrat Mueller, formed in the following year, made certain gestures denoting attention to the cartel and monopoly questions at the outset of its period of rule but then let the matter rest for the rest of its term, in some measure because of the outcome of a deliberation in an unexpected forum, where Franz Neumann played an important part on the losing side.¹¹

The question of legislation regarding cartels was one of the two principal issues deliberated at the 1928 biannual meeting of a widely recognized elite association of jurists, where reports on several previously designated outstanding juristic issues were presented by speakers selected by the organizers and the speakers’ recommendations were then put to a vote of the membership in attendance. It was intended that these opinions would carry weight not only in governmental decisions on legal policy but also, in certain cases, on the articulation of the “dominant opinion” that was often cited by courts as grounds of judgment. With regard to cartel regulation, the reports were assigned to jurists who favored a further weakening of existing regulations, especially in the matter of allowing cartel members to escape from commitments that were harmful to them. Franz

Neumann, in conjunction with Hugo Sinzheimer, made the case for stronger regulation, tending toward the trade unions' position.¹² As Neumann reported in detail in *Die Arbeit*, the assembly voted instead for a weakening of control. In the records of the cabinet, this vote is mentioned in the context of awaiting a proposal from the minister of trade, which never emerged. The authority of the juristic association adds weight to the responsibility of advocates like Neumann, who must try to influence the consensus among members of the profession as a matter not only of intellectual interest but also of affecting the frame of reference that defines questions for the courts, especially where the legal theories at issue are novel and controversial, as is true of labor law and related fields.

Neumann's participation in this campaign was obviously mandated in important part by the professional role he played in service of the labor movement as well as by his recognition that the Sinzheimer conception of a sphere where employers' power over labor would be transmuted into a constitutional relationship with a potential for democratization and further change could not flourish without restraints on the massive organizations whose policies could not be effectively countered in an economy that they controlled. In any case, he did not believe that structural change could be achieved without in some way distancing the processes of the primary economic relationships from the vagaries of a political system whose capacities for policies of change had become ever weaker. The aspirational context of his concern with the transformation in the position of labor and the concomitant change in the role of property in the economic system accordingly remained the idea of an economic constitution with a large measure of autonomy within the democratic political state. Neumann's sustained involvement in campaigns against the power of business combinations during the Weimar years indicates that when Neumann later focused on the roles of cartels and monopolies in his explanation for the fall of Weimar, notably in *Behemoth*, this should not be taken as some sort of mechanical application of Marxist theory but rather as a conclusion from the actual course of the political struggles that ended in the ascendancy of the National Socialists.

Resisting the Resistance to the Weimar Regime

In the study quoted as motto for this chapter, E. V. Walter considers a number of alternate strategies for responding to a potent resistance to a seemingly established political regime. His own special interests lead him to consider these as alternatives to violence or even terror, but there was no question of such recourse by the defenders of the Weimar social settlement in the face of resurgent resistance by the historically predominant powers newly recuperated in the mid-1920s. A strategy that Walter examines with special care takes the form of a constitutionalized pattern of concessions and adjustments. The situation we are examining does not have as simple a structure as those Walter studies, inasmuch as the dominance of the design set forth by Neumann and other advocates for the labor movement was hardly as firmly established as might be suggested by Walter's "power-resistance" model, yet it is fair to say that the years, when no government could rule against the SPD and when the ministers of labor were effectively supportive of the trade union movement, had the character of a new established fact in the structure of public power in Germany, especially in the perceptions of the labor movement and

its coalition partners. Accordingly, it is helpful to think of Neumann's new attention to constitutional theory, at least in its earlier phases, in the context of a strategy of counter-resistance to the projects of reformed and newly strengthened resistance by previously predominant economic powers. In time, the posture of consolidating social power to counter resistance from the great economic powers turned into resistance to the economic powers, as it seemed, newly in control. Constitutional arguments were deployed under both conditions.

A series of Neumann's publications, accordingly, was devoted to constitutional theory, beginning with two major articles designed to show the compatibility between the institutional steps toward the constitutionalizing of labor relations and the Weimar Constitution, which were followed by a sequel that presented a prospectus of an economic constitution [*Wirtschaftsverfassung*] in formation. These themes were then brought together in a small book whose chapters were originally presented by Neumann as visitor in seminars conducted by leading legal theorists, including Carl Schmitt, whose central substantive thesis about the Weimar Constitution is under attack throughout, notwithstanding various concepts adapted from Schmitt to enlist his authority. Above all, Neumann is concerned with the challenge posed by the catalogue of rights in the second part of the constitution, the provisions that ground the ever more influential case of Carl Schmitt and others that the constitution represents a rejection of socialist aims and a commitment to the liberal individualist order, insofar as it is coherent at all. Neumann's work of advocacy merges ever more with the need to counter the effective resistance at the level of certain state institutions, notably the courts, as well as economic organizations, to the great compromise of Weimar.

"Against a Law for Judicial Review of Federal Legislation," the first study in this series, was published in June 1929 in *Die Gesellschaft*, the principal theoretical journal of the Social Democratic movement, which was edited by Rudolf Hilferding, the originator of the theory of "organized capitalism" integral to Naphta's *Wirtschaftsdemokratie*, who was also the minister of trade in 1928–29 under the Social Democratic chancellor, Hermann Müller. Neumann's high hopes for the laborist Social Democratic program at this moment are clearly stated near the beginning:

Social conditions have undergone fundamental change, and the following discussion bases itself upon the optimistic conviction that they will change year by year in favor of the working class.¹³

Since the public he is addressing in this publication is exceptionally not his normal labor constituency, nor an audience of legal professionals, but a readership of Socialist intellectuals, this passage cannot be discounted as mainly a moral booster to his ordinary readership.¹⁴ Despite the comparatively narrow subject suggested by the title, Neumann took the opportunity of his sole appearance in such a periodical to set forth his understanding of the trade unions' project and prospects.

He begins with a critique of the individualist liberal concept of rights, moving beyond the image of shifting balances of his dissertation. While he had earlier emphasized the irreconcilably different but comparable worth of both the "personal"

and “transpersonal” values constitutive of modern states, he now calls on a more judgmental distinction that he had already introduced at that time. Because development had brought state and society from the “bürgerlichen Rechtsstaat” to a “socially democratic community,” the liberal conception is no longer an expressive ideology [*Ausdrucksideologie*],¹⁵ as it is under the former circumstances, but an ideology of concealment [*Verdeckungsideologie*]. And judicial review, he maintains—notably in the decisions justified by the supposed connections between the clause on equality before the law (§109) and the guarantee of the institution of property (§153)—has been a prime locus for the defense of unjustified bourgeois power that this ideology entails. In the jurisprudence of the courts, he remarks, the qualified and institutional “guarantee of property has [accordingly] been turned into the security of all objects and rights constitutive of wealth.” In the sequel to this article, Neumann cites a study by Otto Kirchheimer in this connection, where Kirchheimer illustrates the ideologically inflated character of the judicial property concept by reference to compensation based on anticipated speculative profits foregone that was granted by the courts to proprietors of land taken for public use.¹⁶ The constitutional theory that has facilitated this ideologically distorted rendering of the law, Neumann maintains here, is the “integration” theory of Rudolf Smend, which simply posits that certain provisions, like an expansive and unalterable guarantee of private property, must be read as constitutive integrative principles inseparable from the “Volk” and enforced as binding, at the cost of the actual social development of social law.¹⁷

Neumann then uses the opportunity of speaking to a wider audience to lay out in somewhat schematic form the “modern socialist theory of property” as derived, he says, from the writings of Karl Marx, Karl Renner and Hugo Sinzheimer, with special emphasis on the specification of that theory in the literature of labor law that is less likely to be familiar to the readers of *Die Gesellschaft*:

In a capitalist economic order, where the working class is cut off from the means of production, property grants a twofold dominion: over OBJECTS (machines, products, real estate) and over HUMAN BEINGS. The rule over OBJECTS is threefold in turn: POSSESSION, MANAGEMENT, and REALIZATION OF VALUE. Modern socialist theory of private law, which proceeds from this central concept of property, sees the task of economic law to be the diminution of the proprietor’s power of disposition, where the emphasis today is on the proprietor’s power of management [...] Modern socialist legal theory sees the task of labor law to be the limitation of the proprietor’s dominion over the people—the work force and the working class. The labor law seeks to regulate the dependency relations of the work force to the individual employer, as well as that of the working class to the class of employers. [...] This development is by no means complete: it is underway and it aims without a doubt on a further strengthening of the possibilities for intervention by STATE, TRADE UNIONS, AND WORKS COUNCILS. [Neumann’s emphases]¹⁸

This progressive process would be halted and possibly even reversed if the courts were permitted to impose their reading of property rights upon arrangements that properly withstand constitutional objections in political debate, in Neumann’s view, on the grounds that the constitution protects only the “institution” of private property, which is

in turn subject to conditions in the constitutional text itself and which may properly be construed as very narrow indeed.

Neumann lists a number of specific situations where the judicial review of legislation would interfere with existing and prospective steps on the socialist labor law agenda that properly respond to newly threatening forms of power in the political economy, beginning with his own proposals for dejudicializing the regulation of cartels and monopolies. More generally, he supports a number of specific proposals—like the suggestion of his law partner, Ernst Fraenkel, that unions be given the power to sue employers for failure to adhere to collective agreements without granting reciprocal rights to employers—that recognize, in his view, that the “parity” between employers and unions that courts would enforce under their reading of the equality guarantee ignores the reality that unions represent masses and have a broad social function while employers’ groups represent only a few and have no function other than to defend their members from unions. Beyond this exposition of the labor movements’ legal position and legislative hopes, Neumann’s engagement with other arguments about a court qualified to administer judicial review is almost perfunctory. He cites the terrible example of American constitutional jurisprudence on claims of property rights and finds some cases to suggest that German courts could go to similar extremes, despite all presumptions to the contrary, and he takes up a theme from the debate about the establishment of separate labor courts to speculate that courts remote from the active management of certain aspects of social life are likely to make abstract ideological judgments indifferent to their practical effects on those activities. In an interesting aside, he reports that Hans Kelsen has indicated his agreement with Neumann on the exclusion of judicial review from a system like the German, with its long list of rights, notwithstanding the fact that Kelsen had played a major and controversial role in the development of judicial review during his short term on the Austrian Highest Court. At the end, then, Neumann recalls that parliamentary minorities do have the option of suspending enforcement and initiating referenda against laws they consider improper, as the president has the power to refuse promulgation to laws he deems unconstitutional. His calm acceptance of these provisions underlines the extent to which his intervention in this debate is about a program of dejuridification whose implications he will question in retrospect. At points in the argument, there are also anticipations of the program that will soon gain even greater importance for him and his associates, whereby the legislature itself ceases to be viewed as a central player in the reconstruction and management of what he will ever more consistently call the constitution of labor-and-the-economy [*Arbeits- und Wirtschaftsverfassung*], which is supposedly taking shape through a “new form of democracy” centered on unions, employers’ associations and agencies of state.¹⁹

A Constitution within the Constitution

While developing this argument, however, Neumann takes the opportunity provided by the publication of a commentary on the Second Part of the Constitution, “Basic Rights and Duties of Germans” by many authors, under the editorship of Hans-Carl Nipperdey, to make the case against Carl Schmitt and his followers that the constitution

neither evaded a fundamental decision about the sociopolitical order it was grounding nor that it can be understood to have made such a decision in favor of a bourgeois liberal order.²⁰ His thesis is not only that the constitution does not stand in the way of a progress toward socialism but also that it is expressly designed, in its second part, to ground a process in that direction. Neumann acknowledges that it “may well be the case that the actual political development and interpretation of the basic rights formulations are in opposition to what the constitutional legislator expressed in the second part of the constitution,”²¹ recalling his earlier objections to the jurisprudence of the courts, but he insists, as he did in his dissertation, that the formal rendering of law, which includes the obligation of rendering seemingly contradictory components into a coherent system, must be the first step in interpretation, with sociological considerations allowed to enter only where the empirical referent for the norms taken literally have been rendered obsolete or given altogether new meaning. His three topics concern the relations between basic rights and democracy, the meaning of equality before the law and the constitutional grounding of the state distinguished by the “social rule of law” [*Sozialer Rechtsstaat*], adopting Herman Heller’s concept now, in preference to Naphtali’s more narrowly focused “economic democracy,” which he had used in other contexts.²²

Like the methodological issue noted above, the question about the compatibility between basic rights and democracy revisits issues that Neumann had already discussed in his dissertation. Instead of accepting a need to find a politics capable of balancing the “personalist” claims of a rights regime against the “transpersonalism” of democratic collectivities, however, he now proposes a theory of rights that is designed to be wholly consistent with the latter. There are no rights prior to their constitution by democratic enactment, which is concerned above all to form a new power, and these rights guarantees mean only what the constitution expressly provides, including all conditions and qualifications. And contrary to Carl Schmitt’s “clever” notion of rights so fundamental that they cannot be altered or negated without rendering the constitutional agreement invalid, Neumann insists that the constitutional democratic process is supreme. On Schmitt’s theory, he points out, a revolution would be necessary for a forward constitutional development to socialism—or even a return to the liberal order. Instead, in Neumann’s view, the design of the constitution leaves a full range of possibilities open without departure from its democratic mechanisms of change. Yet the constitution is not neutral or undecided on the direction it points. Neumann sees the guarantee of “equality before the law,” whose liberal ideological construction in judicial rulings he had already cited in his *Gesellschaft* article as a reason for rejecting judicial review, as the critical norm whose meaning must be unraveled in order to grasp the orientation of the scheme of rights as a whole, if only because the consensus view of the clause gives it a key controlling role over the meaning and application of all the rights provided by the constitution, especially when the fulfillment of some positive social expectation jeopardizes property rights.

The crux of the constitutional question cannot be sufficiently addressed by the formal juridical analysis that he sets down as the primary method in legal interpretation because

the surface meaning of the bare clause, “All Germans are equal before the law,” cannot resolve the question about the concept of equality that is intended. Neumann writes,

If one examines Article 109 strictly in terms of its juristic contents, it says nothing. The literal meaning of the words can as readily support the views of those who see nothing in the equality guarantee but a norm binding the administration as it does those who see it as being directed as well to the legislator. The equality clause can express a merely negative equality but also a positive one. The dogmatic explication of the constitutional provision therefore yields nothing. (574)

Neumann concludes, “The explication of article 109 must accordingly be sociologically historical in character” (574).

As the passage quoted above indicates, Neumann’s analysis begins with the familiar difference between a “negative” and “formal” equality among persons, taken in their abstract form as legally competent individuals, and a “positive” and “material” concept of equality, where agents are taken in their actual, practical capacities in a world of inequality and control. The issue is important not only because the rarely challenged liberal rendering of the equality clause precludes proper resolution of substantive issues of great importance but also because of the intimate tie between democracy and equality: if democracy rests on the identity of rulers and ruled, as Lorenz von Stein correctly argued, the question is about the aspects of personality and human capacity that must be recognized in order to make that a meaningful principle.²³ While there can doubtless be a liberal democracy dedicated to the maintenance of security, freedom and property for the possessing classes, there can also be a social democracy “whose material field of operations lies in the advancement of the rise of the working classes and that ensures freedom and property only insofar as it does not hinder the rise of the working classes” (575).

Neumann does not question that the former has been the predominant construction of equality and democracy, but he cites Renner’s concept of the change in function of legal concepts as applicable to the language of the equality guarantee, a reframing of the issues that licenses a historical understanding of the old meanings and a historical openness to new ones. Neumann’s historical arguments for the pertinence of the social, material rendering of the equality guarantee take a number of forms. He suggests, first, that the competition between a formal and social rendering of democracy was present already in the struggle between the Gironde and Mountain in the French Revolution but then provides an opening to the social version in a less contentious source, citing language hospitable to public support to render all citizens equally capable of full participation, which can be found in a standard encyclopedia article of the mid-nineteenth century, compiled, according to Neumann, before the commercial middle class became ascendant in Germany. More generally, his treatment of the issues, now that they have been declared to be historical, gives weight to the critique of the ideological-functional uses of the standard meanings to protect the interests of the beneficiaries of commercial society. An unexpected layer of argument has to do with American legal theory. When he first cites it, he portrays it as one of the authoritative models underlying the

prevalent doctrine about equality before the law as a formula for nothing more than formal negative freedom, but then he twice cites a study of labor legislation by John R. Commons and John B. Andrews²⁴ to suggest, first, that “even the practice of the American state” recognizes that the concept of what is necessary to meet the standard that every one has equal opportunity will be governed by changeable public opinion (575), and, second, that they allow a differentiation to benefit the weaker parties when this serves “the public benefit” (576). Although Neumann sees this American adaptability as limited by a fundamental commitment to the liberal design, it is nevertheless interesting that in this study, as in some aspects of the *Wirtschaftsdemokratie* discussions, this Progressive strand of American thought is a matter of interest and that it is even taken as the authoritative voice of American legal theory. At the end of the section on equality, Neumann introduces a rather simple notion of historical causation and asserts simply that the Weimar Constitution must be understood, even sight unseen, as supportive of the workers’ project for social democratization since “it is in its decisive parts a product of the working class.” “It is impossible,” he concludes this section, “that the working class, which was represented on the constitutional committee by such constitutionally knowledgeable representatives as Sinzheimer and Katzenbach, sought to achieve nothing more with the constitution than to secure the freedom and property of the middle class” (577–78).

Having fended off the widely accepted uses of the equality clause as an ideological measure to uphold liberal constitutionalism, Neumann sets forth the elements of the social legal order intended by certain decisive basic rights, taking up key terms that Sinzheimer and others speaking for labor had brought to the negotiating table in the constitutional committee. In sum, according to Neumann, the section under the heading of “economic life,” which concludes the second part of the constitution, articulates and recognizes the distinct interrelated constitutions of labor-and-the-economy. There could not be such constitutions at all, he maintains, within a purely liberal frame of reference, where proprietors’ rights prevail, so that the sovereign property owners have unconstrained control over workers under domineering employment contracts and where they function as free agents in a market process thought to be “natural” and unrelated to the state. According to Neumann, taking up an analysis he had sketched in an earlier paper, liberal thought fails to recognize that “property” is a bundle of functions and that accordingly some functions of possession can be upheld while such functions as the control and exploitation of property are otherwise organized, in accordance with a public design. The manifest presence of such a secondary layer of “constitution(s)” within the scheme of basic rights, in his view, precludes the reading of the whole as a liberal foundation.

Neumann offers a systematization of the constitutional provisions at issue, which subjects some of the more Liberal clauses to rather stern massaging and which he evidently considers justified by his basic assumption that as an “economic constitution” the section is structurally about massive deviations from the liberal commonplaces that register the conventional elements of a market order. Subordinating the guarantee of “economic freedom,” he takes the initial statement of the limits (or aims) of a market economy rather as the major premise for all that follows: “The ordering of economic life

must correspond to the basic principles of justice, with the aim of a life worthy of human beings for all” (§151.1 RV). Neumann goes on to note that rights to property, to free trade and freedom of contract are expressly subject to delimitation by legal acts, which may include administrative rulings—and that the rationales of such acts would be the social principle stated at the outset. In short, he concludes, only the “institutions” comprising the liberal foundations are protected, and this says nothing about their public ordering and purposing. Evidence of the thrust of the economic constitution toward the positive concept of equality, according to Neumann, is provided by several assurances—as with the provision authorizing land reform, socialization, workers’ health and others—but above all by the labor constitution. Unlike the rights of property and the rest, the rights of workers to organize in §159 is not subject by the language of the constitution to legal restriction under any circumstances, and their organizations are further recognized in §165 as autonomous entities immune from state interference and simultaneously granted collective rights to coparticipation in the development of productive forces.²⁵ “The objective of the labor constitution is the regulation or shrinking of the proprietors’ powers of command over workers” (581), which is accomplished through works councils in the production sites and unions in the labor market. Since the constitution of the economy anticipates control or expropriation of property for the common good, it can be seen to be directed no less against the proprietors’ powers over its material resources. In sum, Neumann says, there can be no question that the concept of equality is intended to be increasingly understood as a material rather than formal quality:

These provisions of basic rights contain the foundations for the construction of a state according to rule of social law, whose aim is the realization of social freedom. Social freedom means that [...] the alien determination of work through the proprietor’s power of command over the means of production must give way to self-determination. (579)

It is important to note how far removed this program is from a demand that the workers displace a ruling class. As will become increasingly clear, Neumann’s adaptation of *Wirtschaftsdemokratie* (Naphtali) or *Sozialer Rechtsstaat* (Heller) is ever less demanding with regard to power in the state, although state functionaries are bound to be involved and state law must give due recognition. Nor is there any recognition of conflict within the conjoined labor and economics constitutional realm, which appears as a tripartite bargaining regime, where the question of respective bargaining powers is left unexamined, except insofar as a certain pattern of outcomes is presupposed as implicit in the process itself. The strategy should be recognized as a defensive one, at least in part, not only because of the steadily increasing concentration of the economy with attendant shifts in bargaining power, accentuated by the fall of the Socialist-led government and ensuing frightening elections for the Social Democracy and its Weimar coalition allies. Although unemployment in Germany rose by one-third between 1929 and 1930, it should be noted that union membership held firm. The idea of attempting to strengthen and to hold a bounded domain of interdependence among workers, producers and the state officials most immediately concerned with the economy was not a senseless project, however improbable its chances of success.

The Question of Pluralism: Franz Neumann and Carl Schmitt

When Neumann returns systematically and for the last time to the themes of his last cluster of articles, unemployment stands at 44 percent of the labor force, and the unions are profoundly weakened. As a working labor lawyer required to appear regularly in court on behalf of unions, he nevertheless had to project a strategic rationale that might make sense of their activities to clients, colleagues and perhaps to some public authorities as well. And however instrumental this impetus, he must also be seen, in the peculiar way of the political intellectual, to be at work on the theoretical model that he had initially sketched in his dissertation, when his frame of reference was different in so many respects, both intellectual and historical. This will be developed in his 1932 book, *Freedom of Unionization and the Constitution: The Trade Unions in the Constitutional System*.²⁶ In 1931, then, he separately published an article on the concept of the “economic constitution,” which will later enter into that book. It is worth separate treatment, first, because it builds on an acknowledgment that parliamentary rule had lost the capacity to contribute to the state under the social rule of law, which he had earlier put forward in his “social rights” article as the goal and actual developmental direction of the state constitution, and, second, because it was initially presented in Carl Schmitt’s university seminar and consequently abounds in favorable references to Schmitt’s work, which may require some commentary.

Neumann begins with a systematic account of changes in the empirical referents and thus in the actual meanings of the terms used to lay out the classical model of free market capitalism. The entrepreneur, he maintains, has already ceased to exist as the integral free person of liberal theory, now that capital and productive labor are managed by distinct agents in corporate organization; but the transformation of the nominal entrepreneur into an employee is complete when individual enterprises are combined in huge concerns, cartels and monopolies, which bind the nominally free entrepreneur as did the old guilds. Because it is their purpose to do so, these new entities also largely set aside risk as a feature of market relations, and where they do not succeed, they play such major roles in the economy that the state will not allow them to fail. In short, Neumann concludes, “There can be no more talk of a free entrepreneur: the leadership of the economy lies rather in the hands of salaried functionaries of private associations.”²⁷ Turning next to the legal forms corresponding to the liberal capitalist model, Neumann finds that they are all present and guaranteed in the constitution, if also conditionally, but the question then arises about the economic conditions to which these liberal basic rights now correspond. Unsurprisingly, in context, Neumann is prepared to concede the existence of a time when the economy proceeded in accordance with a kind of natural pattern, and the state was obliged to stay away except insofar as its actions might be needed to police the process, as in laws against unfair competition. It has been repeatedly shown, Neumann asserts, that the market is now “organized” rather than free and that its outcomes are determined as much by legislation and relations of power as by the “nature” of classical economics. At a purely formal legal level, the key liberal institutions of contract and freedom of trade still exist, but they no longer function as they did. Neumann surprisingly follows the American Progressive legal theorist, John R. Commons, to insist that economic freedom that is more than a legal form comprehends actual choices, the

chance to exercise individual economic power and the freedom to compete; and he cites the American anti-Trust regime as evidence that American theory and practice understands that freedom of contract implies a realistic opportunity for the economic subject, endorsing Commons' judgment that this is the point of the current American jurisprudence. When the power of monopolies to prevent competition is combined with their enormous political power, "the freedom of contract simply veils the dictatorial power of the monopolist over those who are not monopolists" (592).

When labor recognized the deceptive, purely nominal character of the employment contract, it brought about a constitution of labor, where such public conjunctive institutions²⁸ as arbitration, collective agreements and legal limits on the working day condition the labor contract. This constitutionalizing of labor anticipates the constitution of the economy, where public institutions will also displace the purely private ones. "If property and concentrated property comes to be privilege, then [...] non-intervention is intervention." The problem is now, according to Neumann, to develop a systematic ordering of state intervention, which is what is meant by an economic constitution. At this point, Neumann raises the stakes of the argument in a departure from his earlier writings on the constitution, inasmuch as he now questions the congruence between the norms laid down in the constitution of the state and the constitutional reality, identifying discrepancies that, in his judgment, imply serious questions about how or even whether the state as constituted in fact can carry into effect the constitution making required and justified in the economic sphere. He lists five principal problem areas, following the academic host for this presentation, Carl Schmitt, in most of them, although in two of these he also cites prior sources for Schmitt's deployment of the key concepts. And Neumann's response to these circumstances could not be further, in any case, from Schmitt's formula in the book on presidential dictatorship where the structural problems are classified.²⁹ In any case, it is Neumann's contention now that the democratic constitutional structure on which he had earlier banked is effectively distorted or immobilized in its operations. And the immediate urgency of the situation is due to a circumstance that Schmitt would never consider relevant to his analysis and that Neumann traces to Engels: the breakdown of the equipoise of class forces on September 14, 1930, a date that Neumann writes twice in one paragraph. This refers to the election that shifted the National Socialist parliamentary delegation from 12 to 107. This change, he says, makes it impossible to deny any longer the complex of problems and the remedy required.

First, then, Neumann asserts that multiple "social complexes of power have appropriated power over the formation of the state's will," displacing the Parliament, which is intended by the constitution to be the "highest organ of will of the state," however qualified by basic rights and division of powers. With Schmitt, he includes trade unions as well as employers' organizations in the list of entities whose conflicting forces constitute what he, like Schmitt, calls "Pluralism," although he notes in passing that Schmitt is following "English constitutional theorists" in this formulation, which would seem to point to Harold Laski, who had been an advocate of some such design and who was, ironically, to be Neumann's mentor in the first years of his exile, albeit at a time when Laski had abandoned his pluralist theory. Neumann's citation of pluralism as first in the list of contradictions between the constitution in the books and the constitution on the

street requires very careful attention to the concepts of labor and economic constitutions he is developing, which might appear to be implementations of a pluralist program, while it contrasts with his earlier friendly gesture in the direction of English socialist pluralists in his first dissertation, where he greets their attention to individualism as a qualification on the collectivism of that general outlook. Still, the argument of the dissertation had turned on the basic assumption that however qualified, the socialist position rested on the supremacy of the state, a commitment that Neumann made without reference to Schmitt and a position that Neumann never abandoned—and that became the central theme of his study of National Socialist Germany, 20 years after the dissertation. Neumann's second "contradiction" is an application of his distinctive and urgent earlier argument against the highest German court's assumption of the power to test the substance of legislation for its conformity to the constitution, what American legal theory calls "judicial review," which does the most obvious damage to parliamentary democracy, in his view, when it is applied to the guarantees of equality before the law (§109.1) conjoined with the property guarantee (§153) interpreted in the predominant bourgeois manner. Third, then, Neumann is prepared to concede that there may be some danger from the separation of public economic enterprises from their "maternal community" [*mütterliches Gemeinwesen*]³⁰—the sector whose autonomous functioning Schmitt calls "polyarchy," following some earlier usage,³⁰ but it is clear that Neumann does not really consider this a serious factor, if only because he thinks that its autonomy is exaggerated. Neumann cites, fourth, the federal structure, which he says fosters both pluralism and the more disruptive forms of polyarchy.

The fifth and most comprehensive charge, sharply antithetical to Schmitt's views on the problem complex, is that "parliament has failed in the sphere of administration," specifically with regard to ministerial responsibility, the central feature of parliamentarism. Neumann says that under existing actual conditions, the norm serves rather as a buffer for the bureaucracy. With ministers drawn from the party leaderships of broad interdependent coalitions, their powerful political roles mean that they are effectively immune from parliamentary challenge on grounds of the policies or practices of their respective administrative bureaucracies, all the more now that the two large parties excluded from participation are both hostile to the parliamentary rules of the game. Neumann likens the situation to the governance of corporations, where management and nominal oversight are conjoined in boards of directors with neither incentives nor capacities for the latter function. The impossibility of parliamentary control over the direction of ministerial administrations is especially clear, Neumann notes, in matters of economic policy. Reverting to one of his prime policy concerns, he illustrates this failure by the contrast between the annual proclamations of political leaders in the Parliament about the need to strengthen and enforce controls over monopolies and cartels, on the one hand, and, on the other, the undisturbed passivity of the responsible minister of trade, whatever the mix of parties in coalition—a clear expression of despair at the inaction of the cabinet in the preceding years under a Social Democratic chancellor. Neumann summarizes his points:

[These features] reveal that the predominant powers are not the parliament but bodies of social power outside the state, the bureaucracy, and the polycracy of the public enterprises, the judiciary, and federalism. (595)

Rather than proposing a strategy for correcting the most striking of these deficits, however, Neumann accepts them, in part, as the conditions under which economic activity must be ordered, while he limits himself to detaching a portion of the contradictions that he sees in the parliamentary democracy of his day, clearly implying that the larger question is simply not timely although fundamental in principle. He turns to a systematic introduction of the “economic constitution,” which he had anticipated in his article on the social rights guarantees in the second part of the Constitution. Implicit in this turn is the thesis that it can serve to counter the effects of the “contradictions” insofar as they affect economic life, as when trade unions and employers’ groups are no longer able or compelled to function as competitors in a disordered pluralist competition, but are brought into structured bargaining relations in institutions oriented to coparticipation and optimal social outcomes, and subjected to regulation empowered by state agencies as well interaction among the prime economic parties. The economic constitution is a “historical” concept, he insists, and not equivalent to the economic system or the legal ordering of economic resources and relations at any or all times. And its historical moment is precisely the time of monopoly capitalism, when “the concept of freedom falls into contradiction with the underlying economic base” (596). Neumann is insistent, above all, that this economic constitution is not superior or equal to the political constitution, which remains the prime locus of democratic rule in all principal matters of state. He takes some time with this in order, first, to narrow the scope of some statements that Sinzheimer and others he recognizes as authorities made at the time of the original postwar conflict about the role of the councils, since the more rhetorical among them shade into claims to the equivalence between economic and political governing bodies, and, second, to counter the conservative—and fascist—claims in behalf of one or another scheme of occupational representation, which he deems meaningless except in conjunction with some monarchical or dictatorial authority, when they prove powerless.

Neumann turns next to a characterization of the economic constitution whose recognition and consequent strengthening is the aim of his exercise. He begins with a definition of its scope:

The economic constitution serves to provide some form of state and social intervention in the natural course of economic events, which is to say in economic freedom. (598)

The question then arises whether such intervention is congruent with the basic rights guaranteed in the constitution. Neumann rehearses the arguments that he had developed in his earlier study, up to the conclusion that not only do the formulations of basic rights relating to economic freedom have no more than a conditional and limited scope consistent with the democratic rejection of prior rights against the public but also that intervention is in fact unconditionally mandated in the clauses relating to the limited justification of property and to the coparticipation of labor in the powers of management. A novel sequel to this thesis is a circumstantial denial that American jurisprudence provides a model of a strictly liberal set of guarantees. Citing the American case law, Neumann concedes that the guarantees of property had been extended beyond real property to subjective economic expectations, in the manner later imitated by German courts

in some decisions, but he insists also that newer developments in adjudication and in the “dominant American literature” have recognized that state control is necessary where there are monopolistic organizations because they have become quasi-public entities comparable to the state itself. Interestingly, Neumann reverts once again to Progressive writers, citing John R. Commons again, as well as A. A. Berle, to whom he mistakenly ascribed the kind of authority that adhered to the “prevalent doctrine” [*herrschende Lehre*] in German public law. This bears remarking both because of its testimony to an unexpected undercurrent of preoccupation with American models in the German discussion and because there is no evidence that Neumann ever interested himself in this current after his establishment in the United States. In sum, according to Neumann, an economic constitution presupposes the displacement of the entrepreneur by the functionary; the domination of the market by power and law rather than “natural” economic laws; the existence of market as well as occupational associations [*Standesverbände*]; the constitutionality of intervention; and the continuation in principle of the institutions of market freedom:

An economic constitution is a system of norms that orders the state and social intervention in a condition of economic freedom, which is now nothing but a legal freedom. (602)

For a variety of reasons, Neumann excludes the management of public facilities as well as the activities of works councils from the economic constitution. The latter point required some detailed argument and some disagreement with allies because the original constitutional provision [§165.1] as well as the governing legislation anticipate a place for those councils in a table of organization that would rise to a voice in matters of economic policy, but much of that became a dead letter and the works councils serve functions relating to welfare and related interests within units of production that are not in fact the units of economic policymaking, which pertains to more inclusive organizations of production. For Neumann, the empty terminology of the original legislation is especially painful because it has been elevated by the courts into a charter for a doctrine of common interests between owners and workers within works, which has led in turn to rulings against the interests of workers and in defiance of the realities of their condition as dependent labor.³¹ As noted, Neumann distinguishes between the organization of economic actors grouped on the basis of sectoral interests³² and the organization of employers and employees in terms of their respective market roles. The former refers overwhelmingly to associations of owners and managers, since labor demands for legislated bilateral organizations of this sort have been consistently disregarded and the hierarchy of chambers anticipated by initial legislation and the last paragraphs of the Weimar Constitution, both extrapolated from the council movement, has stagnated in practice as a single advisory chamber that is rarely consulted and cannot by any stretch be taken as “representative of the economy as a whole.”

Although the influence of sectoral organizations upon economic policy in a pluralist system cannot be neglected, the decisive portion of the economic constitution, then, has to do with the control of the market. “To master and to control the market is to take part in directing the economy,” Neumann writes. He asserts, then, in keeping with

his constitutional analysis, that such mastery belongs of right most directly to the state's control of the market. Some of its interventions may be for the sake of market freedom, as with rules against unfair competition. Yet in a monopolized economy, such harmless regulations may themselves have a change in function and serve the monopolies by intervening to uphold their fixed prices, a kind of ruling that courts have extended even to third parties that are bound to the monopolies' prices if they should have known of such agreements. Also a part of the economic constitution are state regulations that serve police functions in the public interest to avert risks of improper conduct in exchanges and banks and the like. Both of these kinds of state interventions in markets are "negative" in design, according to Neumann, in that they do not pursue a distinctly social public economic policy, although, as noted, they may have a more positive effect because of the change in functions of nominally neutral measures.

Abruptly, Neumann turns to the possibility of a "democratic" control of the market, by which he means "an administration of the market exercised by associations that are independent of the state" (603). Such democratic controls are directed toward parties "who are able to assert themselves in a monopolized market," and they are exercised by agencies of state, the trade unions and the principal economic actors themselves. Neumann points out that the concept of "market-capable parties" [*marktfähige Parteien*] is his own construct on the analogy of the legal doctrine of "collective-agreement-capable parties" [*tariffähige Parteien*] present in labor law. If an economic constitution is a function of an economy dominated by monopolies, its ordering efforts refer precisely to these actors, whose place in the market "is an economic position of power in the economy that permits its occupants to deviate from the norms of a competitive market for the sake of their own profitability." It is worth noting that Neumann has here redefined the terms of reference of labor action from the struggle against market capitalism as such to a struggle against capitalism at a distinctive phase, where its characteristic market norms are no longer effective; and that the capitalists in this instance offend against the social interest not so much by the exploitation of labor as by the exercise of restrictive domination over social production as well as social rewards. When it comes to the actors engaged in the "democratic" control of the market, Neumann begins with the sovereign state, following Hermann Heller, remarking almost by the way that the state has branched off the management of the economy from its "total" jurisdiction and delegated it to private economic actors. Nevertheless it retains the last word. To specify this last point, Neumann turns to his earlier proposals for the control of cartels and monopolies by an independent state agency with sweeping powers, only nominally responsible to the minister of trade, which is cited not simply as an example of state powers in action but also as essentially the sum and substance of state action directly relevant to this constitution, although he also assigns a place directly to the bureaucracy as an essential third party in the bipartisan processes that also have their place in the economic constitution.

The second actors in democratic control are the market-capable parties, whose exclusion would mean the legal actualization of socialism, while "it is the task of this work," Neumann says, "to discover the legal formulations for a situation that is no longer purely capitalist but not yet socialist" (605). The third group naturally consists of the trade unions, whose equal role in this process fulfills the provision of Article §165

of the constitution, which recognizes these associations and calls them “to take part in the overall economic development of the productive forces, empowered by law on equal terms with the heads of businesses” (605). This means, according to Neumann, that they are entitled to send representatives to the controlling instances of the market-capable undertakings and to take part in the administration on equal terms. Neumann insists that this scheme has nothing in common with fascism, where the nominally coparticipant nonstate entities are controlled in every important respect by agencies of the dictator. In the German economic constitution, as he sees it, there is not only the joint presence of parties with divergent interests but even a kind of division of powers and, above all, also a guarantee of basic rights. These are summarized in §159 of the constitution where the right to form unions is unconditionally guaranteed as an essential component of the labor role in the economic constitution, which is laid out in §165. Notwithstanding Neumann presentation of this analysis in Carl Schmitt’s seminar and his complimentary references to one and another of Schmitt’s critical observations on the Weimar Constitution, his conclusion upholds the essential elements of the regime—or constitution—that for Schmitt are prime evidence of the pluralist dismembering of the state. It should be noted, nevertheless, that the last sentence of Neumann’s article reads, “This means the exclusion of the pursuit of partisan political objectives by the activities recognized in §165 and protected in §159.” Neumann thus appears to sacrifice the alliance between the trade union with which he is associated and the Social Democratic Party. It is 1931.

Complementarity between Legal Authority and Social Power

It is therefore somewhat surprising, although not too much can be made of it, that the last paragraph in Neumann’s principal book-length publication of the Weimar years contains a defense of Communist unions against the charge that they are political associations rather than trade unions in the sense intended by the extraordinary safeguards for trade union activity that he finds in the constitutional calendar of basic rights. Neumann writes,

The distant political objective of an organization is immaterial. Every union [*Koalition*] pursues distant political objectives. In its quality as an association representing a sector of society [*Standesorganisation*], every union wants to transform the state. But if it is prepared to be active as an organization in the market, it is a trade union, and nothing but a trade union, in the legal sense. (138)

This unique reference to Communist unions comes in an unexpected addendum to a chapter devoted to the question, “Are economic associations [*Vereinigungen*] political organizations [*Vereine*]?” And no less unexpectedly, Neumann opens by justifying, almost in passing, the chapter devoted to this question with a most remarkable, supremely controversial and never elaborated claim, although it figures also in the title of the paper he presented in Hermann Dersch’s seminar on labor law on which this chapter is based, “Freedom of Unionization and the State of Emergency”³³:

It must be admitted that this problem plays a decisive role only in a “state of emergency [*Ausnahmezustand*]” when the point at issue concerns the limits of the dictatorial powers of the President. Under these conditions, the treatment of the question becomes an undeniable necessity, because the dictatorial dominion of the President finds its bounds in the [unconditional basic rights of trade unions]. (122)

The full weight of this assertion can be made clear only after a review of the rights at issue, which are the subject matter of Neumann’s preceding four chapters in *Freedom of Unionization and the Constitution: The Trade Unions in the Constitutional System*, but it will be helpful to begin with Neumann’s consideration of this final “problem,” which requires him to set forth his views on the concept of “the political,” as it applies to constitutional analysis. Above all, it must be noted that the Weimar Republic had been under a declared “state of emergency” and consequent presidential rule under §48 since the first months of 1930 so that Neumann’s seemingly incidental remark was a direct challenge to the scope of the government in power. It is no easy matter to judge whether Neumann was engaged in a subtle political maneuver, quite possibly misjudged, or whether he thought that his work would have some value and effect only if it was presented as a scholarly contribution to the debates among constitutional theorists, where the followers of Carl Schmitt were evidently an important target group for Neumann. On a theoretical level, however, it is altogether understandable why Neumann would have wanted to speak strongly against the “emergency rule” that is proposed by Schmitt and others as the synthesis that overcomes the contradiction between the political forces in the nominally sovereign Parliament and the social forces organized in the “economic constitution.” After the unresolved duality between individualism and collectivism in his original dissertation, this is Neumann’s final invocation of a complementarity to orient action in Weimar Germany.

In his review of concepts of the political, Neumann begins with a technical treatment of the predominant juristic opinion, derived from the commentary on cases arising out of rules regarding “political associations” and extracts the criterion that a “political will” must be present, a design on the shaping of the state. Next he turns, as might be expected, to Carl Schmitt’s concept of the political, as developed in the book by that name.³⁴ Neumann proceeds with considerable care to expound Schmitt’s theoretical scheme, at times leaving it unclear whether he is summarizing or stating the views as his own, but he concludes with fundamental misgivings about Schmitt’s central characterization of the political as the domain constituted by the contrast between friend and foe. The objections proceed on two levels. Schmitt’s concept excludes from the political all the constituents of public conduct that are not dynamic, like the systems of law and administration; but Neumann objects that the domains Schmitt identifies in order to make his conception concrete are not in fact static in character, and that indeed none of the public domains are exclusively dynamic or static. They are both structures and happenings, Neumann asserts, quoting a formulation by Hans Freyer, whose “structural sociology” he cites at the very beginning of his book as a prime source for his own sociological analyses.³⁵ He similarly questions the views of Karl Mannheim according to which the line of separation is between the rationalized or “reproductive” activity of public agencies and the irrational dimensions of public life.³⁶

Formal rationality, which Max Weber still considered the standard of private law in a capitalist society, has been already destroyed. The activities of justice and administration are irrational, and they have thus become political activities in the sense of both Schmitt and Mannheim (126).

Yet this empirical claim is not as important as the contention that the two aspects integral to a legal-constitutional design must in any case always be considered precisely because of the irreconcilable differences in perspective.³⁷

This kind of dual structure, familiar as well from his dissertation, is prepared by the opening pages of Neumann's book, where he locates the relationship between state and unions in a "state association," which is the process that contingently relates the legal order as norms with the social reality manifested by legal practice, in all their incompatibilities and changes. In the present context, Neumann rejects the idea that the political can be defined except by virtue of the state's action and decision, expressed through the legal order. He agrees with Schmitt that conflict enters into the concept as practically established but maintains that conflict need not be enmity to the death in Schmitt's sense since the parties may in fact be struggling constructively for the power to shape the state. He returns to Karl Marx's *Critique of Hegel's Philosophy of Right* in order to invoke his authority for the view that both the precise character of the tension and the subjects in contention that count as political are those that the state takes as political from time to time. In his summary statement, then, he concludes—expressly in agreement with the "prevailing doctrine": "Within the entity of the state [...] only the state itself can decide—in keeping with constitutional law—the scope of the political" (129). And there is no formal rule to guide the state's historical actions in this respect. The question whether unions are engaged in politics in the sense of the political associations, whose conduct is subject to a variety of legal controls, is thus treated in this place by Neumann as a matter of ordinary legal analysis of settled state policy and jurisprudence. First, he examines the history of the relevant law under Prussian and imperial law, which guides interpretation of the law insofar as it has not been expressly changed, and then he turns to report of a Reichstag Commission, which expanded on legislation to allow unions to represent the interests of their members in matters of social and economic policy without being accounted political associations. The conjunction of the constitutional provisions guaranteeing the right to unionize (§159) with the sweeping right of coparticipation granted to unions in the first clause of the last article of the constitution (§165) adds up to a decision by the state to treat as nonpolitical essentially all actions by unions, as long as they do not interfere with such matters as foreign policy, cultural policy or issues of relations among the units of the federal state. For present purposes, Neumann is concerned with the "legal" and not with the "sociological" sense of things. The discussion of Communist trade unions cited above, however, makes it clear that many things here shown to belong outside of the constitutional-legal sphere of the political are "political" indeed in the sociological—or indeed in the ordinary language—meaning of the term. Accordingly, Neumann expands the range of legitimate union activity beyond its strictly economic sphere with the help of a distinction between the efforts of each union

on behalf of the economic concerns of its members and the unions' application of their social power on behalf of the interests of the station in life [*Stand*] that workers represent. His example strikingly is the general strike declared against the Kapp Putsch.

We propose to characterize his strategy by declaring the distinct legal and sociological aspects as “complementary” in the challenging sense set forth by a literary critic in a strikingly different context:

I realize that I have credited Shakespeare with what appears to be a very modern and still largely scientific concept: that of the *model*. I must now credit him with another, closely related one: *complementarity*. I am in fact saying that, some three centuries before Niels Bohr, Shakespeare discovered the need for complementarity—i.e., of operating with two mutually inconsistent and severally inadequate models because, and as long as, a single, consistent, and adequate model has not been found. Complementarity differs from and is superior to mixing because it remains aware of its “illegitimacy” and *pays the price* of choosing one model or the other. It does not pretend to be a solution, hence does not close the road to discovery but on the contrary compels us to take the risk of following it. Its passionate demand for order forces us to leave the safe prison of a static, once-for-all world picture, to suffer the grief of imperfection and disorder and the joy of genuine action and creativity. Complementarity, in short, asserts the value of *human action in time*—which is to say, of history, of time.³⁸

In context, Sigurd Burckhardt is talking about Shakespeare's treatment of “succession” in the Prince Hal Trilogy, and the issue is the duality between legitimacy and causality as models for expounding the meaning of the royal events in view. Is it the rather tired legal principle of primogeniture or the dangerous principle of superior force that should guide our understanding of this historical epoch? Both are “valid,” he suggests, but neither can sufficiently orient our judgment or understanding. And there is no “synthesis” anywhere in sight. Obviously, this stands in no more than a metaphorical relationship to the scientific uses of concepts like “model” and “complementarity.” But literary critics do not spurn metaphor. We suggest that interpreters of the complex practices of political intellectuals need not do so either. Precisely the incomplete and irreconcilable but inescapably applicable perspectives on legal rationality and sociological causality are ever present in Neumann's writings, from his first dissertation—where the tension is still managed at least in part by neo-Kantian pluralism—to the writings on Weimar and on to his last unfinished project, where the two articles deal, respectively, with “power” as sociological reality and “freedom” defined in important measure by rights subject to juridical definition. Neumann's narrow—and sociologically implausible—reading of the “political” in the present context must be understood to belong to the legal dimension of his complementary pairing of approaches to his compound subject matter.

There is paradox in taking political action in support of a legal conception of the political that would not class the action as political but not a contradiction if the dimensions are indeed coherently complementary in the sense proposed by Burckhardt. It is important to note that at least in this version of the concept each design is imperfect and cannot be guaranteed against incursions from the other. This is a way of thinking about the situation that Neumann characterizes in other studies, especially in relation to the property right, as a change in function of the institutions presupposed by a given legal norms or

by a cessation of or radical change in the social patterns of action pertaining to it such that the laws no longer can mean what they did and may become self-contradictory, incoherent or empty notwithstanding their logical form and formal validity. The conditionality of coherent social actions in relation to the legal order is not expressly developed by Neumann in this text, but a striking feature of his argument at numerous critical places is that he supports his position by maintaining that a failure to do so would somehow drive to “revolution.” This can be discounted as a rhetorical device, but it need not be so viewed. There is an interdependence, on this view, between a pattern of action that does not call legality as such into question and its coherence. This pattern of argument may be seen to play a decisive role in Neumann’s eventual critique of Nazi Germany as a nonstate and the links between this characterization and his condemnation of deviations from formal rationality of law, which in his view decisively undermined the Weimar Republic. In the situation, as he understood it in 1932, the critical point is the organization of social action so as to give meaning to a constitutional regime of rights, including especially the rights that are in his view embedded in the constitution of labor and the economy.

The Last Defense of the Weimar Regime

After his brief introduction of the historical method applicable to his sociological inquiries and underlying his assumptions about the situation he is addressing, Neumann turns to the work of legal theory, where sociological considerations apply only where the terms of legal theory on its own are expressly undermined by the course of events. The topics overlap with those of his earlier papers and especially of the seminar presentations of which we have an independent record. Yet it is worthwhile to review briefly the design of the argument and to note the adjustments to the course of development as both political and economic conditions worsen between 1930 and 1932. There are four chapters prior to the concluding one, already discussed, which deal with the concept of the political in relation to the constitutional law about the limits that may be placed on the activities of political association, especially under emergency conditions. The first chapter deals with “the meaning of the basic rights in second part of the Weimar Constitution, the second, “the law of trade unions in §165.1 RV” [the clause on coparticipation]; the third, “the law of trade unions under §159 RV [the clause on freedom of union organization]: the freedom guaranties in the freedom of unionization”³⁹; and the fourth, “the conjunctive institutions and guaranties within the freedom of unionization.” As may be expected from the more defensive posture that Neumann is adopting here, there is more emphasis on rights as a guarantee of freedom in his first chapter than in some earlier writings, and there is even a concession that the rights guarantees remain liberal in design and in legal function, at least in part. Neumann introduces the theme, in fact, with a surprising sociological observation on the persistence and prevalence of rights talk, presumably in his own text as well:

The right of resistance serves every aspiring group for the justification of its struggles against the state, because no political struggle is conducted without ideology, without an attempt at

legitimation. Again and again, there is struggle for power in the state or against the state, in the name of freedom. The idea of freedom is the form of every political idea, as it appears in the theory of the state. (11)

Neumann draws no normative consequences from this sociological relativization of his legal explication of the constitutional rights relevant to unionization, except to note, first, that arguments based on rights cannot include the standard format of rights antecedent to the state if they are to be at all compatible with democracy and, second, that their liberal forms have been to some extent undermined by changes in their social functions. At a key point in the argument, however, he resorts to a simple positivist affirmation of the theoretically uncertain but definitive legal situation that the German democracy simply is a limited constitutional regime.

In his further analysis of this state of affairs, Neumann then turns to a kind of explanation that he usually eschews, calling on Rudolf Smend, an author whom he had earlier condemned as a key source of ideological support to usurping judges because of his attempt to supersede logical exposition of law with an open judicial canon. The constitutionalism of the German democracy, Neumann now maintains, serves the “integration” of the political order by providing it with a “spirit” that would otherwise be lacking.⁴⁰ And this move then gives him license to insist that this “spirit” is not predominately individualist after all, but that it achieves a “collective integration through free social associations.” Neumann’s surprising reliance on Smend at this point may be a testimony to his difficulties with making his more characteristic sociological account of constitutionalized settlements in the spheres of labor and the economy work when the mutual recognitions on which this depends are in fact at their lowest ebbs. The class balance on which that scheme depended, as he noted in his presentation to Schmitt’s seminar, can no longer be discerned after 1930. Yet from Neumann’s point of view, at least before 1933, there appears to be no alternative to making the constitutional deals that he believes to be embodied in the articles he singles out for emphasis both sociologically plausible and normatively clear. It is in any case his job as lawyer for the unions to make this case as best he can.

Before developing these analyses in detail, he elaborates a classification of constitutional rights that can be diversified in degrees and types of effects because there is no universal grounding of rights prior to their legitimation by a democratic constitutional process. He begins with a classification scheme according to degrees of the guarantees variously provided, distinguishing among rights that are subject to limitation but not elimination by law, rights that are subject to change only by constitutional law, rights that may not be suspended during presidential emergency rule and some others. Having set this scheme forth, he says that he prefers another one. In this design, there are first the rights guaranteed to individuals against the state, as in classical liberalism; second, there are the democratic rights of the *status activus*, which he now identifies with the doctrine of equality before the law, which he had construed quite differently in his earlier writings, with an emphasis on “positive” equality; a claim that he now, third, treats separately as a right derived from the social reform design of the “positive” state. While his fifth class coincides with his earlier analyses of the guarantees of “institutions,” property above all,

whose reach does not extend beyond an “essence” that leaves present practices subject to extensive change and adaptation, the fourth class is new and derives from the incorporation of some part of Smend’s argument, inasmuch as it refers to “legal fundamentals” that serve “integration” and provide guidance to judges in dubious cases. In the present context, this quasi-systematization of right guarantees serves primarily strategic—or even tactical—purposes, as he seeks to highlight the uniquely inviolate character of the clauses on union rights, and there is no effort made to work through the heterogeneous rationales that the various types might require or their application to provisions that do not bear on the two articles of special interest in this study. In short, notwithstanding some interesting applications of Neumann’s overall theoretical design, the present work inclines more strongly than most of the others considered above to the character of an advocate’s brief in a very tough case, where the first need may be to assemble arguments that will work in a legal culture where the “dominant opinion” counts in court and must be wooed not only by force of theory but also by the citation of widely recognized authorities.

Having laid out a rather permissive framework for the work of constitutional interpretation, he must next make it work for the constitutional rights of trade unions, where he is attempting to strengthen some weak links in his earlier formulations, especially regarding the relations between the constitutional language and the claim on behalf of unions. As in that earlier approach, Neumann begins with the first clause of §165, the sweeping assertion of coparticipation between labor and management, but he now classes the rights at issue under the heading of “institutional” rights, like the property guarantee of §153, subject to limitations and changes consistent with their “essence.” This adaptation of a concept that he traces to the Socialist, Karl Renner, as well as to Carl Schmitt, allows him to substitute the trade unions for the coparticipant councils anticipated in the rest of that long article, almost all of which is in fact a dead letter, with the argument that the change in historical circumstances justify such a reinterpretation. The interpretive substitution of unions for the worker participation in a hierarchy of joint councils envisioned by the actual clause, he maintains, captures the “integrative contents” of the provision, even if there is no express legislation to reframe the burden of the guarantee, as in the case of property or the other examples of “institutional” rights he offers:⁴¹

Workers and employees are called to co-participate, with equal right and in common with the heads of enterprises, in the regulation of the terms of compensation and conditions of work, as well as in the entire economic development of productive forces. The organizations of both parties and their agreements are recognized. §165 I RV [authors’ translation]

Although Neumann’s interpretation of the threefold significance of the clause, taken as institutional guarantee, overlaps with his analysis in the presentation to Schmitt’s seminar examined above, it is worthwhile to review the main points in the context of the present, more urgent context. First, then, he finds a guarantee of the existence of unions against actions by police and public agencies but not against competing groups. An interesting additional emphasis is his insistence that the guarantee also protects the unions against the attempts of works councils to displace them in dealings with employers,

a provision doubtless highlighted in view of employers' attempts to negotiate with these organizations, whose localized character precludes bargaining for enterprises as a whole and thus takes many key issues off the table. Beyond this specification of the workers' representation under §165, Neumann also provides that the organizations at issue must be focused on the labor market, although they may also pay attention to comradely welfare issues and represent the broader interest of their social stratum to government. Above all, Neumann insists, the organizations must be independent of their employers in organization, economic resources and spirit, with a clear criterion available to distinguish their character:

If the collective agreement, viewed sociologically, is a treaty of peace or armistice; if at the same time—as will be shown later—the organizations must exert their entire legitimate might for the implementation of collective agreements; it follows that they must be not only spiritually, financially, and organizationally independent, but also materially independent to the greatest degree—i.e., that they are both willing and able to engage in strikes and similar combative measures. (32)

Notwithstanding the language of parity that prevails in the constitutional text of §165 I and in his later commentary, it is clear that Neumann in fact sees the unions as agencies of resistance within the economic realm.

Neumann turns next from his sociological characterization of the organizations recognized by the constitutional article to their legal specification. His main new objective in this segment is to disavow an earlier opinion that the unions have personality in public law by virtue of their essential roles in an economy that is no longer private. Unlike public agencies, he notes, they neither implement the state's designs in matters that it includes in its own sphere of operation nor have they the authority to give orders. Unions are organizations that cannot be publicly licensed, a kind of recognition that they do not in any case require. They generate rights by contract and, from a legal point of view, they can enforce these rights only through private law. As indicated by the refusal of courts to interfere in expulsions of members, despite a good deal of inconsistency in adjudicating related issues, their internal relations are social rather than legal in character, and the unions systematically refuse to utilize legal process in internal matters even where the courts mistakenly assert jurisdiction. The constitutional guarantees of these organizations, in brief, guarantee this autonomous nonjuridified social formation.⁴²

The third phase of Neumann's interpretation of §165.1 offers a reading of its purposes, the tasks for which unions are recognized. He begins with the text itself, which uses the teleological language of a "calling" in setting forth the coparticipatory economic purposes of organizations among both employees and employers and of the agreements negotiated between them, except that he expressly construes these activities as the elements of constitutions for labor and the economy. These expressly recognized designs at the very end of the charter of basic rights, he maintains, manifest the fundamental decision [*Grundentscheidung*] embodied in the constitution as a whole, which is not in favor of the regime of property and freedom that identifies the *Rechtsstaat* of the middle classes but rather in favor of a social *Rechtsstaat* that builds on the institutions of the liberal

order but supplements and thus transvalues them with the social constitutions that elevate the working class to autonomy and coparticipation. Citing Heller and Naphtali in his support, Neumann acknowledges that he is going against the predominant opinion in his analysis, where Schmitt is not alone among the most influential jurists in his insistence that the constitutional commitment must either be seen as liberal or so temporizing as to be simply lacking.

To make his case, Neumann must deal, first, with the nominally liberal jurisprudence that has developed around the constitutional guarantee of equality before the law (§109) and, second, with the constitutional guarantees of free markets, private property, contract, inheritance and land ownership (§§151.3, 152, 153, 154 and 155). As in earlier versions of this argument, Neumann is not contented to make defensive minimal claims but rather resumes his argument for the constitutional warrant for a novel economic constitution linked in turn to a constitution of labor. At a preliminary step, he simply points out that the constitutional recitation of familiar liberal guarantees in the economy is conditioned, first, by general “principles of justice with the aim of guaranteeing to everyone an existence worthy of a human being” (§151.1). Instead of developing this argument as such, which would bring him into the vicinity of the natural law theories that in fact underlay the passage, he turns rather to an argument grounded on the change of meaning in the key terms of liberal market rights, as is the case in the separate paper from Schmitt’s seminar available to us, which is only insignificantly altered on these points. The preconditions that give these guarantees their liberal, bourgeois, capitalist meaning are no longer given, he maintains, under conditions of monopoly, estate-like cartels and unpredictable government intervention.

Although in a formal sense they continue to operate, the basic institutions of property, contract and the like have lost the functions that gave them meaning. The point is that they no longer serve to give the economic subject choices not subject to coercion, the choices present only in a market of many roughly equal competitors. No one can compete in a market dominated by monopolies, which overpower individual contracting parties and exercise enormous political power through their organizations. In developing his argument to reach the jurisprudence by which courts adapt institutions to the situations alien to their objective rationales, Neumann first cites Max Weber for his showing that the psychological security that contracts would be performed underpins formal rationality and calculability in modern societies. Before the war, Neumann maintains, such expectations were rarely disappointed because the positivist jurisprudence of the time could comprehend and reinforce the doctrine. This “actual existence” [*Bestehen*] of the liberal legal order, however, no longer prevails.

Neumann observes instead that the courts’ expanded resort to the unspecified “good faith” general clause of the private law code and similar general formulas in its rendering of contractual rights has undermined the calculability of contracts so that the private law order has ceased to have “actual existence.” He refers to several lines of opaque proceedings having to do with reevaluation after the hyperinflation, labor law and elsewhere, and he insists that all this unpredictable private law is as much a product of monopoly situation as it is of the economic crisis. Freedom of contract under monopoly conditions, he maintains, merely hides the dictate of monopolists, the status

differentiation among economic actors. As before, Neumann likens the situation to the case of the employment contract, where insight into its character as a veiling of power relations led to the development of labor law, “where public-law conjunctive institutions (the mandatory arbitration regime, the law of collective agreements, legal limitations of the working day) have displaced private basic law (Renner).” Just so, he maintains, alluding probably first of all to the proposals for control of cartels and monopolies that he had supported, “public-legal elements will displace the private ones” (54–55). To substantiate this trend, Neumann cites a number of pieces of regulatory legislation limiting employers’ powers over workers, but an expansion of state action in itself is not the purpose of the development.

His critical claim is that “this [state] intervention takes effect according to §165 by means of the construction of a labor-and economic constitution.” Dismissing the provisional moves toward the system of councils expressly set forth in the constitutional text as having been rendered obsolete by the historical displacement of the council movement by strong unions, as well as an unspecified range of statutory guidelines, Neumann insists that they were in any case never designed to be able to shape the market, which is the core to economic power. Under the “pluralist” regime in place, where centers of economic power are able to impose their preferences, the employers’ organizations are in control. Only state sovereignty can effectively serve as a counter, but this sovereignty itself is to be exercised by the commitment to the largely autonomous combination of the labor and economic constitution, whose charter, according to Neumann, is to be found in §165 I. In a development beyond his earlier characterization of the nonstate economic constitution as the “democratic” version of the “economic constitution,” he now makes express provision for participation by state agencies, as in his proposal for the regulation of cartels and monopolies, where the minister of trade has the last word, although the scheme is drawn up to build in a strong presumption against such intervention. The bureaucracy, moreover, would be separately integrated at various points in the structure, as Neumann saw it. Yet in the final analysis, Neumann describes the constitution as a new form of collective democracy and collective self-management, where the trade unions of workers are joined on equal terms with the organizations of the heads of enterprises.

Two additional themes arise that appear dissimilar but will converge in some measure in Neumann’s retrospective view of the matter. First, he insists on the fundamental difference between this constitution and the provisions of fascist syndicalism, where the organizations are organs of state possessed of a monopoly and in fact subject to both direct and indirect control. Second, he returns repeatedly to the works councils established under law in keeping with a design developed by Hugo Sinzheimer. Neumann insists that they are neither empowered nor competent to displace unions in the comanagement of labor or economic affairs, especially inasmuch as their fields of operation are limited to individual locations and thus unable to deal with issues other than social welfare matters since both labor and economic policies are managed at the level of enterprises with many sites. Elsewhere, he is dismayed that certain sweeping well-intentioned language in the works-council legislation has been construed by the courts in terms of a “community of the workplace” in denial of the clear conflict of interests between workers and employers so that not only specific rulings detrimental to workers have been handed

down through misapplication of gratuitous language but also that discussions of law in this sphere have been deceptively confused and harmful to the clarity and effectiveness of labor.⁴³ Neumann's emphasis on both points underlines the importance of conflict and resistance in his conception of the labor-and-economic constitution, as against the corporatist arrangements and ideologies that are rising at the time.

The primary political-theoretical target of Neumann's study nevertheless remains the "liberal" reading of the Weimar Constitution, and this requires him to complement his treatment of §165 with a treatment of the clause that would appear to guarantee a rather individualist right to organize in unions and thus implicitly a right subject to the same kinds of legal limitation as the liberal rights in the economic sphere:⁴⁴

The freedom of organization for the protection and advancement of terms of work and economic activity is guaranteed for everyone and for all occupations. All agreements or measures that seek to limit or to interfere with this freedom are against the law. §159 RV

Broadly speaking, it is Neumann's design to reverse the predominant legal opinion whereby issues arising under §165 I RV are made subject to the liberal reading of §159 RV. He argues instead that the organizations recognized under the former clause are the constitutionally protected "institutions," while the organization right at issue here is to be understood as an instrumental conjunctive guarantee to underpin the collective entities integral to the constitutions of labor and the economy. Neumann's textual case is not strong, since it depends, first, on reading the extension of the right to "all occupations" as implying rights of collectivities and, second, on the claim that Sinzheimer was the effective author of these clauses combined with the citation of some earlier writing by this author that Neumann sees as anticipating the point of the constitutional language as he interprets it. Sinzheimer had spoken of the "freedom of each individual to take part in the formation of a communal will [*Gemeinschaftswillen*] in which the state is to recognize a social function."

Neumann then attempts to justify the grant of a "subjective public right"—the German equivalent to the English concept of a claim of rights—in addition to the "objective" right laid down by the legal norm established, which is in any case the necessary ground of rights in a democratic state, where there cannot be rights prior to the state. He begins with the predominant opinion, according to which a subjective right makes legal sense only where there is express legal provision for enforcing the norm laid down by the statement of the objective right [*Rechtsschutz*]. The grant of the subjective public right in these cases thus guarantees access to remedies for the beneficiaries. In the present context, however, Neumann expands the conditions under which subjective public rights can be said to be real. He adds circumstances under which "the will of the legal order can actualize itself as an effective force of will," which appears similar in structure to his earlier provision that trade unions can be identified by their willingness to engage in strikes, inasmuch as both refers to modes of forceful action rather than to purely legal characterizations of the situations. The question is not only whether provision is made by law to protect the right but also whether those who are its intended beneficiaries have the power to assert it. As the meaning of law depends on its relations to the

changing state of the economic elements that it regulates—as epitomized in the concept of the change of function of law—it also is a function of certain political conditions. In practice, the separate designs of law and fact do not remain separate: that is integral to their complementarity.

Admittedly, Neumann links the power conditioning the actuality of rights above all to the action of initiating litigation, which involves a slight embarrassment for him inasmuch as the injunction against interference by state law with the rights of unions seems to imply an endorsement of the judicial review of state legislation, which he opposes but which he also accepts as an accepted practice. In any case, he insists that only a constitutional amendment could overrule the conjoint objective and subjective rights here under discussion. Court reviews of actions by the constituent federal units, by police or by the president under his emergency powers are unproblematic. All three appear to him straightforwardly subject to judicial review and none of them, in his opinion, has the legal right to interfere with the subjective rights at issue here, especially inasmuch as they are not “awarded” by the constitution but “recognized” as already existent. Since there cannot be “natural rights” prior to the sovereign state, Neumann’s argument evidently presupposes a constitutional moment at which the technically subordinate but substantially autonomous labor and economic “constitutions” are laid down simultaneously with the formation of the political state as such.

Having laid down the general rationale for the “subjective” rights of organization, Neumann addresses a number of questions that are more technical in character and more closely linked to the academic disputes among lawyers and the history of litigation before the labor courts than his treatments in the earlier chapters, perhaps because the materials in this case may have been presented to the seminar of the labor law specialist, Hermann Dersch, where the audience’s expectations and Neumann’s legitimation needs would have been different from those in the seminars of Hermann Heller and Carl Schmitt. The two set-piece analyses deal, first, with the rights of minors to join a union without permission of legally responsible parent or apprenticeship master and, second, with the legal tests for employer actions in violation of the second clause of the constitutional provision. A more immediately controversial question that Neumann addresses concerns the so-called negative right to refuse membership in a union, which employers’ groups impute to the right granted by §159. He makes a number of arguments against this reading of the provision, but the most striking one derives from his characterization of the membership right as instrumental to the institute constituted by §165: the failure to join an organization cannot be said to support the organizations chartered by the latter article and thus cannot be covered by the guarantee of organization rights. This opens the way to a chapter dedicated to the “conjunctive guarantees and institutions” entailed by the right of unionization.

Like the preceding one, this chapter is written to work as a technical professional brief, with extensive lists of legal provisions and summaries of court decisions bearing on the issues raised, occasional express arguments with other scholars and meticulous concessions on legal points that run against the most favorable outcomes for his overall cause, all this in fairly striking contrast to the sweepingly argued broad claims made earlier on behalf of the autonomous labor-and-economic constitutions, which continue

to be presupposed. Yet the issues are not trivial. This is in fact the section of the book where the harsh realities of recent developments on the streets as well as in government offices and courtrooms are present. A predominant motif is the exemption of the labor movement from the police response to threat and violence. Neumann begins by conjoining two concepts from quite different sources through the common use of the adjective “conjunctive” to refer, first to Renner’s “institutions” and then to Schmitt’s “guarantees” of auxiliary rights. As in earlier writings—and as will be the case in all of his later writings relating to this field—he begins with Karl Renner’s concept of the “institutions” of private law, where he distinguishes between the primary legal institution of private property and the auxiliary legal arrangements that give effect to the powers that this right grants, with emphasis on the unanticipated cumulative change in the actual meaning of the institution brought about by social adaptations in the auxiliary legal institutions. In Neumann’s explication, he takes as his example the effects on the primary right of landed property of the working agriculturist by such conjunctive institutions as lease (which separates property from those who work it), rent (“which similarly transforms that which belongs to one [*Eigentum*] into that which belongs to another [*Fremdtum*] and transforms the proprietor into a recipient of interest”) (87) and the mortgage (which subjects landed property to speculative capital [*Zinskapital*]). “All three developments,” Neumann concludes, “gradually displace landed property.” The title to land may remain in law, but its social consequences are fundamentally altered through the obsolescence of its former use: notably, the social power that it once represented is no longer a distinct factor in the advanced capitalist society. Neumann’s earlier application of this concept to the organizations guaranteed in §165 suggests that the change of primary institutions through social changes in its auxiliaries need not require long spans of time to be effectuated. The point of the concept, in any case, is sociological, in the sense of Neumann’s distinction between the sociological and the legal, but it points also to a point of conversion between these two dimensions of analysis, since the sociologically redefined primary institution must be understood legally in a new way or recognized as obsolete—as it was in the maximal rendering of Renner’s thesis as a formula for socialization brought about by the undermining of the social functions of property by their auxiliaries, notably with the transmutation of the contract of employment that is its prime auxiliary.

Turning to Schmitt, then, Neumann claims that he had adapted Renner’s sociological concept to legal studies by proposing the constitutional recognition of certain subordinate rights that protect constitutionally protected primary rights. Neumann’s conjunction of the two concepts is in fact quite problematic, inasmuch as it might appear as if Schmitt’s “conjunctive rights” would serve to guard conservatively against the transformations in Renner’s progressively changing “conjunctive institutions,” which Neumann sees as integral to social development. In the event, Neumann’s actual analyses deal exclusively with Schmitt’s guarantees, although it is arguable that the actual identification of those subordinate and instrumental relations derives from the sort of sociological analysis that Renner offers—and that the actual circumstances and prospects of the changes underway at the time of writing rendered Renner’s rather hopeful reading of transformation in principal institutions by the cumulative changes in secondary ones inapplicable.

Neumann identifies six areas relating to conjunctive guarantees and institutions of the primary right of unionization derived from §§159 and 165, and he subjects them to somewhat detailed lawyerly analysis, as in a brief. The motif of defensiveness is especially evident in this chapter, since he is confronted at the time with a number of emergency measures relating to organizations whose applicability to labor unions he seeks to question. First of all comes the key question about the constitutional status of the right to strike; this is followed by closely related considerations of guarantees applicable to labor unions' rights of expression, press, association and assembly; and at the end is an analysis of the guarantees protecting decisive conjunctive institute of the collective agreement.

Notwithstanding his reiterated insistence that readiness to strike is essential to the organizations Neumann treats as subjects of the constitutional right to unionization, Neumann asserts that there is no constitutional guarantee of a right to strike attendant on that primary right. Such a constitutional right would, first of all, undermine the terms of collective agreements, he notes, which necessarily preclude strike actions during their validity. Beyond that, Neumann cannot conceive of a blanket guarantee that would preclude state action to limit strikes under conditions of excessive damage to economic life or public security. Moving beyond the question of a constitutional guarantee, however, Neumann finds that there are no legal obstacles to strikes that do not violate contracts under the present state of the law, and that national law, which may impose limits but has not done so, has preempted the authority of constituent provincial legislatures or police authorities to interfere. Neumann's treatments of expression, press, association and assembly run parallel in that he seeks to show that these modes of action in their distinctive labor union forms are essential auxiliaries to the activities guaranteed by the special unconditional organization right of §159 and cannot be subjected to the limitations in accordance with law that are permitted under the reservations attached to their general guarantees in the constitution, and that have been widely applied—not least by the Social Democratic government of Prussia—to limit threats and violence on the streets. In the present context, Neumann does not expressly address the question whether there are any contents that may appear in union-linked communications that might be subject to the same restraints as he is prepared to allow for political communications with other sources, but this is closely linked to the question whether unions are political organizations, which he takes up in the final chapter. It will be recalled that he denies this under all circumstances as long as the organizations also seek recognition as unions in their central functions—and as long as the state, as he supposes, adheres to the decision he imputes to it of upholding the autonomous labor-and-economic constitution as an autonomous and nonpolitical domain. In Neumann's critical retrospective of this period, the question about the political mission of labor unions becomes a principal topic of regretful review.

For Neumann's projection of the Weimar period itself, in any case, the last topic in the present chapter is perhaps the most significant. The collective agreement is both the central institution and the paradigm of the economic constitution. Its being cast as an auxiliary or conjunctive institution of the trade union regime that Neumann presents as the central figure of the constitutional norms governing economic life does not mean that it is somehow secondary. The central economic relationship between workers and owners

is defined by the collective agreement and its pursuit, which in principle exclude the state from interfering in the binding terms of settlement, which Neumann insists include the entire range of norms, standards and procedures, and not merely the compensation, as well as the autonomy implicit in the arrangement and the self-management that it constitutes. Taking up a development of his immediate time, he insists just as firmly that the works councils have no legitimate right to interfere in any way with collective agreements, as employers have been pressing them to do in order to take advantage of the fears of unemployment in these immediate settings. The arrangements that he does not challenge, although he does not deny that they are exceptions to the overall legal condition, are the imposed arbitrated settlements that had been the subject of his critique in his first published article on labor law and the ministerial declarations of universal application of settlements within a given economic domain. The settlements that emerge out of these problematic processes, in his view, nevertheless count as collective agreements in the same sense as those negotiated freely by the parties.

Neumann recognizes the borders of the economic constitution as permeable by the sovereign state and acknowledges readily that the guarantee of the collective agreement as an institution does not guarantee any individual contract from the effects of state action, as might be the case of public fiscal policy, for example, or tariff regulations, not to speak of public regulations emerging out of war or other emergencies. It is the institute itself that is constitutionally protected and that, especially in Sinzheimer's interpretation, which Neumann contends repeatedly controlled the constitutional composition, serves as well as model for Neumann's characterization of the negotiated settlements that constitute the domain of economic production against the background and within the wider constraints of the constitutional state as a whole and impervious to public malfunctions in other regards.

It may appear eccentric—or simply wrong-headed—to have devoted many pages to the close examination of a book that could reasonably be dismissed as an exercise in futility, since its evident assumptions about the effective force of the constitution and of legal reasoning associated with it would appear to have been rendered patently inapplicable to the state of German economic and public life after July 1932—but in fact, already after the 1930 elections—when the Parliament was rendered inoperable by the addition of obstructionist National Socialists to the Communists already in place. Power was divided among the sequence of chancellors selected by the president acting under emergency powers and their compliant bureaucrats and judges, the oligarchs heading the cartels and monopolies and the activists on the streets. Neumann was accordingly misreading the situation and at best naive.

Indeed, one of the first scholars to direct attention to Neumann's book devoted a persuasively scathing four pages to precisely such a judgment, compounding the indictment of irrelevancy with the added charge of accepting irrationalist terms of analysis from writers like Carl Schmitt and Hans Freyer without recognizing their (deliberate) openness to fascist formulas of decisionism.⁴⁵ In Neumann's analyses in exile of the trade union policies that he had continued to support after 1930, there is a strong but more nuanced self-critique, with the strategy set forth in the 1932 book providing the most important terms of reference.⁴⁶ Since he never denigrates the social and economic gains

of the labor regime he had worked to protect and develop, however, the question turns on the quality of the political design, with its constitutional-legal supports, which was so thoroughly defeated. In our study of Neumann's political thinking, this experiment cannot simply be shoved aside. The politics of constitutional reproduction and progressive development or resistance are the matter of judgment in the constructive argument of this work, as they are in its critique; and the question whether and how this can be theorized remains before him throughout.

There are three sad valedictory footnotes to Neumann's last defense of the Weimar development that he, together with his mentor and his closest associates, sought to sustain and secure. First, there is a brochure containing Neumann's briefing of the publishers of the Social Democratic press in the autumn of 1932 on the "limitations on the freedom of the press" resulting from the presidential emergency measure of June of that year, where Neumann makes it clear that the constitutional guarantee does not protect against restrictions through law, and he provides a detailed and distinctly cautious set of guidelines to keep them in compliance, to avoid suspensions, closures or fines. No protest or critique but simply dispassionate legal advice is offered. Second, in counterpoint, Neumann vehemently rehearses the case for the constitutional grounding of labor's collective rights and calls to battle in the summer of 1932 against a blanket pledge to dismantle the "welfare state" [*Wohlfahrtsstaat*] made by Hitler's immediate predecessor (and close ally), Franz von Papen, at his installation as chancellor. Finally, there are pathetic documents from Neumann's legal practice relating to private law suits against Hitler and Goebbels filed by some of the recently deposed Social Democratic Prussian ministers—Otto Braun and Carl Severing—on grounds of personal insults in public speeches and similar trivial matters and still being contested in February of 1933. This caricature of politics helps to explain Franz Neumann's ironic statement upon his departure into exile, "I have had my fill of world history."

Notes

- 1 Eugene Victor Walter, *Terror and Resistance* (New York: Oxford, 1969), p. 336.
- 2 Hans Mommsen, *The Rise and Fall of Weimar Democracy* (Chapel Hill; London: University of North Carolina Press, 1989), pp. 217–87.
- 3 See Documents 39, 54, 59, 61, 62, 68 (all 1925); 89 and 127 (1926) in *Die Gewerkschaften von der Stabilisierung bis zur Weltwirtschaftskrise 1924–1930*. Edited by Horst A. Kukuck and Dieter Schiffmann (Cologne: Bund-Verlag, 1986).
- 4 "Stellungnahme der Gewerkschaften zur Kartellbildung in der deutschen Wirtschaft, Eingabe der gewerkschaftlichen Spitzenverbände an den Reichskanzler zur Kartell- und Monopolfrage" (February 10, 1927), in *Die Gewerkschaften von der Stabilisierung bis zur Weltwirtschaftskrise 1924–1930*, pp. 847–50.
- 5 Fritz Naphtali (im Auftrage des Allgemeinen Deutschen Gewerkschaftsbundes), *Wirtschaftsdemokratie. Wirtschaftsdemokratie. Ihr Wesen, Weg und Ziel* (Berlin: Verlagsgesellschaft des AGDB GmbH, 1928). It is preceded by an earlier version of the section focused on these issues: "Monopolistische Unternehmungsorganisationen und die Arbeiterschaft," *Die Arbeit*, Vol. 4 (1927), p. 158ff.
- 6 Franz L. Neumann, "Gesellschaftliche und Staatliche Verwaltung der monopolistischen Unternehmungen" [Social and State Management of Monopolistic Enterprises], *Die Arbeit*.

Zeitschrift für Gewerkschaftspolitik und Wirtschaftskunde, Vol. 5 (1928), Heft 7, pp. 292–406, and, three issues later in the same publication, “Der Salzburger Juristentag,” Vol. 5 (1928), Heft 10, esp. pp. 659–62.

- 7 Franz L. Neumann, “Der Entwurf eines Kartell- und Monopolgesetzes” [The Proposal for a Law on Cartels and Monopolies], *Die Arbeit*, Vol. 7 (1930), Heft 12, pp. 773–91. Neumann’s sustained involvement with campaigns against the power of business combinations during the Weimar years indicates that when Neumann later focused on the roles of cartels and monopolies in his explanation for the fall of Weimar, notably in *Behemoth*, this should not be taken as some sort of mechanical application of Marxist theory but rather as a conclusion from the actual course of the political struggles that ended in the ascendancy of the National Socialists. See later in the text.
- 8 Naphtali, *Wirtschaftsdemokratie*, p. 28.
- 9 There are scattered indications that these German commentators were paying some attention not only to the writings on “Industrial Democracy” of the Webbs in England but also to American progressive literature of the Wilson era, notably the writings of John R. Commons. This is a little surprising inasmuch as Neumann and the others, first, found the American anti-trust policy insufficient and, second, were opposed to the juridical locus of much of the American discussion, as required by the American scheme of judicial review. Naphtali addresses the former concern by noting that the Supreme Court’s emendation of the Sherman Act by the insertion of “unreasonable” before the blanket prohibition of “combinations in restraint of trade” meant that the Americans acknowledged the positive importance of combinations that were “reasonable.” Naphtali, *Wirtschaftsdemokratie*, pp. 28–32. The attractions of American proposals for a deformalized domain within the legal order, subject to nonlegalistic criteria, overlapped with efforts by Neumann and others to design an “economic constitution” operationally distinct from the formal state and its law. See later in the text.
- 10 Franz Neumann “Der Salzburger Juristentag,” *Die Arbeit*, Vol. 5 (1928), Heft H 10, p. 661; in his more detailed 1930 submission, Neumann concedes that both types of organization seek to control the market but emphasizes differences in the forms of organization, sources and limits of power between the two types of organizations. See “Der Entwurf eines Kartell- und Monopolgesetzes,” *Die Arbeit*, Vol. 7 (1930), pp. 782–83.
- 11 *Die Gewerkschaften von der Stabilisierung bis zur Weltwirtschaftskrise 1924–1930*, pp. 850–851n.8.
- 12 Die Verhandlungen des 35. Deutschen Juristentages in Salzburg, 2 Bde. Berlin und Leipzig, 1928.
- 13 Franz L. Neumann, “Gegen ein Gesetz zur Nachprüfung der Verfassungsmaßigkeit von Reichsgesetzen” [Against a Law for Judicial Scrutiny of the Constitutionality of Statutes], *Die Gesellschaft. Internationale Revue für Sozialismus und Politik*, Vol. 6, No. 61 (June 1929), pp. 517–36 at 521.
- 14 *Die Gesellschaft* published four reviews, for example, of Karl Mannheim’s *Ideologie und Utopie* within one or two issues of Neumann’s article. The authors included Paul Tillich, Herbert Marcuse and Hannah Arendt. Albert Salomon, the acting editor, recalled in an unpublished memoir that the aim of this “collective issue against Mannheim” was to stand “against the weakening of radical thought.” Colin Loader and David Kettler, *Karl Mannheim’s Sociology as Political Education* (New Brunswick: Transaction, 2002), p. 103, n.7.
- 15 There is no relationship between Neumann’s use of this term and the concept assigned the same name by Kurt Lenk in a series of books published after 1961. Neumann presupposes a political function that is bound to be fulfilled by an ideological construct, in a value-free sense of the term “ideology,” and distinguishes between ideologies that give an effective practical orientation to an actual situation (expressive) and ideologies that disguise or obscure the practical circumstances and options.
- 16 Since the latter Neumann article begins with a criticism of Kirchheimer’s dismissive judgment elsewhere of the rights guarantees in the Weimar Constitution, Neumann uses this citation also to show how much Kirchheimer’s valuable study was in fact structured by an appreciation of

- the actual constitutional rights. Franz Neumann, “Die soziale Bedeutung der Grundrechte in der Weimarer Verfassung” [The Social Significance of the Fundamental Rights in the Weimar Constitution], *Die Arbeit*, Vol. 9 (1930), pp. 570–82 at p. 582. Cp. 570n3. The Kirchheimer brochure criticized by Neumann was *Weimar ... und was dann: Entstehung und Gegenwart der Weimarer Verfassung* (Berlin: Laub, 1930). See Luthardt W., “‘Erst Einmal Weimar!’ Oder ‘Weimar — und was Dann?’” In *Sozialdemokratische Verfassungstheorie in der Weimarer Republik. Beiträge zur sozialwissenschaftlichen Forschung*, vol. 78 (Wiesbaden: VS Verlag für Sozialwissenschaften, 1986).
- 17 Rudolf Smend, *Verfassung und Verfassungsrecht* (München: Duncker & Humblot, 1928).
 - 18 Neumann, “Gegen ein Gesetz zur Nachprüfung der Verfassungsmäßigkeit von Reichsgesetzen,” pp. 524–25.
 - 19 In the very next issue of *Die Gesellschaft*, Neumann’s partner, Ernst Fraenkel, publishes a programmatic article on “collective democracy,” which is in some measure anticipated here and which Neumann consistently cites approvingly. Ernst Fraenkel, “Kollektive Demokratie,” *Die Gesellschaft*, Vol. 6, No. 8 (1930), pp. 103–18. Fraenkel and Neumann did not agree on all points during the Weimar years and differed in their assessment of the experience and in their later political-theoretical development, but this thesis was common to both. For Fraenkel, see Ernst Fraenkel, *Gesammelte Schriften. Bd. I. Recht und Politik in der Weimarer Republik*. Edited by Hubertus Buchstein (Baden-Baden: Nomos, 1999).
 - 20 The question of Neumann’s relations with Carl Schmitt is a frequent theme in the literature, a topic spiced by Schmitt’s harsh critique and brilliantly articulated recasting of the Weimar Constitution and the legal order of the German state, culminating in his failed and sometimes abject bid to become the acknowledged legal theorist of National Socialist regime. Since this state of the question tends to neglect Neumann’s central focus on labor law and its ramifications, a topic of no interest to Schmitt, as well as his attempts to develop a theory of social democracy, we shall only touch on the “Schmitt question” in the limited and specific contexts in which it may arise, notably in Neumann’s 1936 doctoral dissertation at the London School of Economics. As with the “Frankfurt School” focus, this emphasis, although doubtless productive of some outstanding scholarship, fails to do justice to Neumann’s work and project. For a recent overview of Schmitt, see Reinhard Mehring, *Carl Schmitt: A Biography* (Cambridge: Polity Press, 2014).
 - 21 Neumann “Soziale Bedeutung der Grundrechte in der Weimarer Verfassung,” p. 570.
 - 22 For an overview of Heller, see Christoph Müller and Ilse Staff, *Der Soziale Rechtsstaat* (Baden-Baden: Nomos Verlagsgesellschaft, 1984).
 - 23 In a clumsy attempt to illustrate the idea of qualitative difference, Neumann cites the differences between men and women as epitomized in a weary journalistic anecdote that ends in “Vive cette petite difference!” (573).
 - 24 John R. Commons and John B. Andrews, *Principles of Labor Legislation* (New York: Harper, 1916).
 - 25 Article 159 (1): The freedom to organize for the protection and advancement of working and economic conditions is granted to everyone and all occupations. All agreements and measures that seek to reduce or obstruct this freedom are illegal. Article 165 (1): Workers and employees are called to collaborate equally in association with the heads of enterprises in the regulation of wages and working conditions as well as to collaborate in the overall economic development of productive forces. Organizations on both sides as well as their agreements are recognized. *The Reich Constitution of August 11th 1919* (Weimar Constitution). http://www.zum.de/psm/weimar/weimar_vve.php#Fifth%20Chapter%20:%20The%20Economy. Translation revised by authors.
 - 26 Franz L. Neumann, *Koalitionsfreiheit und Reichsverfassung. Die Stellung der Gewerkschaften im Verfassungssystem* (Berlin: Carl Heymanns Verlag, 1932).
 - 27 Franz Neumann, “Über die Voraussetzungen und den Rechtsbegriff einer Wirtschaftsverfassung” [About the Preconditions for and Concept of a Constitution of the Economy], *Die Arbeit*, Vol. 8, No. 8 (1931), pp. 588–606 at p. 590.
 - 28 “Conjunctive institution” is used to translate the technical term, “Konnexinstitut,” which refers to a subordinate but functionally important complement to primary institutions, which may

- be subject to changes even if the primary institution remains formally the same. In that case, in the theoretical tradition that Neumann is tapping, the primary institution will change its function if not in its form. The key source is Karl Renner, *The Institutions of Private Law and Their Social Functions* (London: Routledge, 1949) [1904].
- 29 Carl Schmitt, *Der Hüter der Verfassung* (Berlin: Duncker & Humblot, [1931] 1985).
- 30 This concept has no connection with the later use of the term by the American political scientist, Robert A. Dahl, where it enters into a positive reformulation of political democracy.
- 31 The issue of the supposed works community will be discussed later.
- 32 The German term actually translates as “status,” but that would be misleading in English. Since the German term “Stand” also refers to the sense of status that is distinguished from class, Neumann is careful to point out that his use of the term is not intended in that sense—familiar from Marxism—but simply to a classification by product or occupation, and that these are class formations.
- 33 Hermann Dersch was a mainstream labor lawyer whose work Neumann respected, despite disagreements on important points relevant to his constitutional concepts. See *Die Rechtsprechung des Reichsgerichts zum Arbeitsrecht*. Bearbeitet von Dr. Hermann Dersch, Senatspräsident im Reichsversicherungsamt; Dr. Georg Flatow, Ministerialrat im Preussischen Ministerium für Handel und Gewerbe; Dr. Alfred Hueck, Professor an der Universität Jena; Dr. Hans Carl Nipperdey, Professor an der Universität Köln. 1. Band: Das kollektive Arbeitsrecht und das Arbeitsvertragsrecht von 1919 bis 1926. Mannheim, Berlin, Leipzig 1926. Verlag J. Bensheimer. Preis geheftet 8 Mk., gebunden 10 Mk.: [Rezension] / Franz Neumann. In *Die Arbeit: Zeitschrift für Gewerkschaftspolitik und Wirtschaftskunde*, 1927, H. 5, S. 346–49, although Neumann asserts in the present work that Dersch is closer to him than even Sinzheimer in their readings of §165.
- 34 Carl Schmitt, *The Concept of the Political*. Translated by George Schwab (Chicago, IL: University of Chicago Press, 1996).
- 35 Hans Freyer, *Soziologie als Wirklichkeitswissenschaft* (Leipzig; Berlin: B.G. Teubner, 1930). Like Carl Schmitt, Hans Freyer pursued an active career under National Socialist rule and gained several important positions. A feature of Weimar academic intellectual culture was a measure of mutual respect and a surprising amount of dialogue among representatives of views that conflicted in ways that made the subsequent political choices unsurprising. Freyer was also an important interlocutor for Karl Mannheim, at least until 1932.
- 36 Karl Mannheim, *Ideology and Utopia* (New York: Hartcourt Brace, 1946), p. 103.
- 37 This is in fact consistent with Mannheim’s own treatment of ideologies in conflict. See David Kettler and Volker Meja, *Karl Mannheim and the Crisis of Liberalism* (New Brunswick: Transaction, 1995).
- 38 Sigurd Burckhardt, *Shakespearean Meanings* (Princeton, NJ: Princeton University Press, 1968), pp. 183–84. There is a certain implausibility in mentioning Neumann and Shakespeare in one breath but perhaps no greater than in pairing the latter with Niels Bohr.
- 39 “The freedom of organization for the protection and advancement of terms of work and economic activity is guaranteed for everyone and for all occupations. All agreements or measures that seek to limit or to interfere with this freedom are against the law.”
- 40 Neumann also quotes a statement by Friedrich Naumann in the records of the constitutional committee that the affirmation of “democratic freedoms” provides the irrational commitment to the state that has been deficient since the end of the empire.
- 41 In present-day discussions of constitutional interpretation, such readings may be characterized by reference to the “objective purpose of the norm,” although this is a contested method, more common in German jurisprudence than others. For a recent discussion, see András Jakab, “Judicial Reasoning in Constitutional Courts: A European Perspective,” and compare Jeffrey Goldsworthy, “Clarifying, Creating, and Changing Meaning in Constitutional Interpretation: A Comment on András Jakab, ‘Constitutional Reasoning in Constitutional Courts—A European Perspective,’” *German Law Journal*, Vol. 14, No. 8 (2013), pp. 1215–95. It

should be noted that Schmitt and Smend continue to be highly prized academic authorities in contemporary German constitutional jurisprudence.

- 42 As in the 1926 article in which he opted for public law as the frame of reference for unions, the role played by mediation and arbitrary judgments by state agencies poses a problem. As before, he characterizes them as a public element within the social labor regime without being able to resolve the seeming contradiction, while implicitly downplaying their significance. Neumann says next to nothing about the implications of the labor courts for this design, although they are his field of daily operations.
- 43 The conflict over “Works-Community” is a good case study for the realism in the labor legal strategy developed by Sinzheimer and accepted in general by Neumann and his associates in the trade unions’ labor bar, although it is also cited by Neumann after the collapse of the movement as a sign of what he came to consider a crucial weakness in their own legal theory and political practice. David Kettler, “Works Community and Workers’ Organizations: A Central Problem in Weimar Labor Law,” *Economy and Society*, Vol. 13, No. 3 (August 1984), pp. 278–303; also in David Kettler, *Domestic Regimes, the Rule of Law, and Democratic Social Change* (Mobility and Norm Change, vol. 3) (Berlin Glienecke; Cambridge, MA: Galda & Wilch, 2001), pp. 23–43.
- 44 This would correspond, then, to the second rather than the third phase of the historic interaction between states and unions as classified by Neumann in the introduction to the book, where liberal reasoning protects organizations, but laws may inhibit their actions.
- 45 Alfons Söllner, “Linke Schüler der Konservativen Revolution?” [1982], pp. 55–73, in *Deutsche Politikwissenschaftler in der Emigration* (Opladen: Westdeutscher Verlag, 1996), pp. 59–62. Söllner has been perhaps the foremost scholar of the exile generation of political thinkers, and he has mentored generations of outstanding students in these studies.
- 46 See the publications listed for 1932–35 in Franz L. Neumann, *Wirtschaft, Staat, Demokratie. Aufsätze*. Edited by Alfons Söllner (Frankfurt am Main: Suhrkamp, 1978). See later. In the article cited in the previous note, Söllner quotes in this connection from Neumann’s vehement self-accusations in the letter to Helge Pross discussed in Chapter 3.

Chapter 4

FRANZ NEUMANN'S COMMEMORATION OF EXILE

Neumann's departure from Berlin in 1933 was by no means the end of his engagement in the overwhelming events of his time. After four years in England, his exile took him to the United States, where he lived until his death by road accident in 1954. To characterize this period, we shall draw on Neumann's own retrospective view, written a year or so before his death and expressly designed to put more emphasis on his American years than on the initial stay in Britain. Still, at this critical break in Neumann's unfinished project, we shall follow him regarding the rise of Hitler to power as a pivotal moment that sharply bisects his intellectual life, although we will take distance from his dismissive view of the earlier period as nothing but prelude. These distortions will require some attention, but in a retrospective examination of the role of social scientists exiled from Nazi Germany written not long before his premature death, Neumann himself proposes a characterization of his own vocation that lets us think less disjointedly about him than is usually done, without reducing his path to a mere artifact of his unique biography. Neumann's occasional piece, a contribution to a collection that was oddly entitled *The Cultural Migration* by its American editor—as if the persons under discussion were suddenly all struck by wanderlust in 1933—is also a good introduction to his late intellectual style; and we shall therefore review it in some detail, with occasional comments to mark distinctive features of his way of proceeding.¹

The key concept that Neumann uses for his own kind, accordingly, is “political scholars,” deliberately conflating the senses of the scholar who studies politics and the scholar who is political. Using a more generic term, Neumann defines political scholars, first, as “those intellectuals dealing with problems of state and society—historians, sociologists, psychologists, political scientists—who were—or should have been—compelled to deal with the brute facts of politics”; and, second, as intellectuals who “being political [...] fought—or should have fought—actively for a better, more decent political system.” Neumann's explication of this concept—at once normative and descriptive—is a prime motif in his historical approach to the problem of intellectuals in exile, which he offers as context for a consideration of his own cohort of emigrants. As his treatment approaches modern times, however, he calls attention to new difficulties in the way of the intellectual, as he defines the type, and thereby gives some indirect notice of complications in his own life as an intellectual producer.

Neumann begins with a normative imperative addressed to all intellectuals. They are to be proponents of an expansion of freedom, which implies, first, that they must always stand in a critical relationship to their times, since freedom can never be fully achieved

in any political and social regime. And this vocation as advocate of freedom requires, second, that they must stand at a distance from the constraining institutions of the political and social order within whose boundaries they find themselves: they must be in some sense aliens or *metics*. In the context of the public lecture that is the source of this text, Neumann offers little more than two problematic rhetorical references to some passages in Plato to support this postulated ideal. He quotes Socrates in the *Republic* on the notion of the philosopher as *metic*, without acknowledging, however, that the text moves on to the obligation of the philosopher, nevertheless, to accept a consuming civic responsibility. From the *Crito*, Neumann extracts another quotation that appears to underline the distance between the philosopher and his community, notwithstanding the overall thrust of Socrates' argument in that text that he must bow to an unjust death sentence rather than to deny his city. It is impossible to say whether Neumann intentionally chose passages that highlighted some paradoxes in the normative guideline he proposes for intellectuals—and it must be said that this would not be his usual way with quotations—yet the difficulties might be said to be immanent in the very idea of the “political scholar,” as this figure is situated by Neumann in a sequence of historical contexts and specifically as it is subjected to exile. To be political, after all, is to be engaged; the mark of the *metic* is his debarment from political status.

Neumann's comparatively lax use of classical quotations to make a point memorable rather than to prove it is characteristic of his manner, especially in lectures, as is his turn next to a comparative treatment of historical differences. The force of his argument is in the synthetic constructions that he derives from his negotiations with his sources rather than his scholarship, notwithstanding a certain connoisseurship of unusual noncanonical sources and examples from the history of thought. Neumann's concept of the intellectual is reminiscent of the theory of Karl Mannheim, with whom he had studied in London in the mid-1930s and whose concepts of rationality played some acknowledged part in his doctoral dissertation but who also was viewed with disdain by the core of the Institute of Social Research and by Neumann himself in some of his statements during his years with that group. During the first year of exile in London for both of them, in any case, Mannheim listed Neumann as a leading researcher in a failed application to the Rockefeller Foundation for funding of a study of the crisis manifested by Hitler. That intellectuals comprise a distinctive social formation whose character cannot be sufficiently comprehended by the ordinary categories of sociological class analysis is certainly a key element in Mannheim's thought, especially in the Weimar years, as is the notion that this formation, at least in its modern form, can be said to be distanced from the orientations that guide other types of groups, although Mannheim speaks of “socially unattached intellectuals” rather than *metics*. In Mannheim as in Neumann, there is also a notion of the intellectuals as bearers of a distinctive political mission as well as an inner link between self-recognition as intellectual and acceptance of that mission.

The key difference is that Mannheim's intellectual, if properly self-aware, has the task of fostering coherent choice amid the mutually contesting and even mutually incomprehensible total ideologies that rule the fractured political realm, while Neumann's intellectual, at least in principle, bears a “critical” task of undermining conceptions and

arrangements that stand in the way of a historically given potential for an expansion of freedom. Both conceptions draw directly or indirectly on the legacy of Georg Lukács' early Marxism, but Neumann programmatically retains a distinction between ideologies that disguise and those that simply characterize the political designs of those professing them, while Mannheim finds a comparable mixture of obfuscation and revelation in (almost) all ideologies. As a practical matter, especially in view of Neumann's own special genius for negotiated settlements, on the one hand, and Mannheim's conviction, on the other, that crisis effectively obviates choice and allows only one rational course of action as alternative to totalitarian oppression, the strategic differences are by no means always quite so clear, however different their actual political projects and however thoroughgoing Neumann's dislike of Mannheim's anti-political program of "planning." The similarity in fact sometimes appears quite striking, as in the notion of the exile intellectual as mediator between German intellectual traditions and those of the host culture, with the offsetting tasks of fostering more empiricism in the one and more theory in the other. These observations on certain affinities between Neumann and Mannheim are designed above all to safeguard against the propensity to superimpose a model of "Frankfurt School" thinking upon Neumann's thought. They are meant to justify the effort required to study his own intellectual strategy on its own terms and without resort to such classificatory shortcuts.

According to Neumann, then, the situations of intellectuals in exile over the centuries are diversely constituted by their different roles in different ages as well as by differences in their social settings. Because the historical appearances of some older types play a part in Neumann's characterization of his own cohort, it is worth reviewing his scheme as a whole. In the classical era, he maintains, there is an identity of politics and culture so that exile means death to an intellectual. Neumann's eagerness to invoke a familiar limiting case, it appears, leads him to neglect both his thesis of the intellectual as *metic*—as he might have illustrated it, for instance, by Aristotle—and the political reality of the difference between the cultural and political boundaries of the Greek city-states of antiquity. He asserts, rather, that culture and politics were first separable in the Hellenistic and Roman periods as was notably the case with the Epicurean philosophers. Nevertheless, he asserted that exile remained "intellectually catastrophic." His citation of Epicureanism in this connection and especially his harsh rejection of it are especially interesting because Epicureanism also had its attractions for him, especially in his disillusioned last years, although it represented for him a surrender of the intellectual's mission.

The construct of "political scholar," as such, Neumann introduces in conjunction with his initial discussion of Christianity. Generally speaking, he maintains, the universal culture of Christianity, with its common language, allowed intellectuals to move freely from a place where they were not wanted to another, where they might be permitted to function. But the situation was different, he asserts, for "political scholars" like Dante and Marsilius of Padua, who are seriously affected by displacement from their original locales. Yet such figures may be also motivated as well as freed to reflect deeply on their dilemmas and thereby to make major contributions to political theory. The contrast to the Epicurean type of displaced intellectual—and the optimistic foreshadowing of benefits to offset the costs in the event of exile—is stark.

Since the concept of national cultures plays an important part later in Neumann's analysis, it is important to note that he introduces the idea of a "political scholar" in the context of a universal culture, albeit at the instance of two anomalous figures. Without forcing the evidence, it is interesting that the two figures, both originating within a civic polity, move in opposite directions in their political theories. While Marsilius offers a theory that anticipates later theories of the state, Dante develops a theory of a universal polity. This contrast hints at some questions that will confront us when we examine Neumann as "political scholar," when we will have to examine his relationship to the alternatives of citizenship and cosmopolitanism.

In the further development of Christian types and contexts, however, Neumann conjures up two other typical situations. First, there is the circumstance arising when Christianity transmutes its constituent bounded units into closed sacral religious communities, whose opponents are enemies who pollute the faith and deserve "extermination" not merely in the etymological sense of expulsion but also in the new sense of annihilation. This enforced reunification of culture and politics, Neumann asserts, is found as well where there is a "civil religion" in the sense of Rousseau and the Reign of Terror, which he here conjoins and, indeed, according to Neumann, wherever society is united by faith rather than reason. While the conjunction of Rousseau and Robespierre is much in tune with academic opinion in the early Cold War years, Neumann's extrapolation of the argument is eccentric in context and quite possibly, like his conception of the intellectual's critical "mission," a placeholder for some elements of Herbert Marcuse's version of Critical Theory.²

Over time, according to Neumann, Christian societies may, in any case, anticipate a more modern constellation. Under these circumstances, intellectuals are able to play church off against state in order to maneuver freely within flexible limits of heresy and political dissent, especially in view of their individual mobility and their collective protection by trans-political corporations of scholars. Their counterparts in early modern states are the intellectuals with special skills as well as "uprooted intellectuals," like Bakunin and Marx, who find shelters in various locales as needed. These cosmopolitans, in fact, appear to epitomize the normative condition of the intellectual as outsider and critic, although neither of them was in fact prepared to leave the mutually inter-defining antithetical categories of citizen and *metic* intact.

On further analysis, Neumann notes that the modern paradigm in either of these varieties presupposes the modern state, whose development—notably in the form of the nation-state—creates a situation of striking ambiguity for the independent intellectual. While the modern state, as it emerges in the sixteenth century, increasingly limits itself in principle to providing security for cultural and social processes that achieve great gains by their autonomous dynamics, it also insists, according to Neumann, on its sole control over the question of what counts as "security" under different circumstances and what is required to maintain it. Modern states, thus, normally permit unprecedented liberty for intellectual exploration and dissent, but they may also produce abrupt and arbitrary incursions into that liberty. With the mobilization of "nationality" increasingly comprehended by an ideology of nationalism as a frame of legitimacy, the tensions increase.

As long as there is not the outright institution of a civil religion, however, the restrictions imposed by even such states are commonly limited to public interventions deemed to be disruptive. And this standard leaves room for a kind of “inner emancipation”—or even “inner emigration”—exemplified by figures like Spinoza, the Abbé Meslier, Immanuel Kant and Theodor Mommsen, according to Neumann, where intellectuals are outwardly compliant but maintain an inward rebellion and produce hidden dissident works, often of great value. Although Neumann does not use the expression “political scholar” to identify intellectuals of this kind, they clearly approximate, like the uprooted intellectuals, to this ideal—albeit within the constraints of their powerlessness.

Yet in the course of development of the modern nation-state, according to Neumann, even these ambiguous openings are made ever narrower, first of all, by the functionalization of intellectual roles and their transformation into intellectual professions. Neumann curiously cites Julien Benda's *La Trahison des Clercs* as an authority for this observation, although Benda's actual concern is with the “politicization of the intellectuals” rather than the confrontation between political scholars and the bureaucratization of their function and thus of their thought. In view of the “political scholar's” attention—as well as Neumann's own—to the “brute facts of power,” which are often articulated in bureaucratic modes, however, it is increasingly difficult for the intellectual to be relevant to politics without becoming involved in the rationalized scheme, entering into a complex play of power and resistance rather than categorical autonomy. This phenomenon of functionalization is by far the greatest challenge to Neumann's own aspirations to live and to be recognized as an “intellectual” in the emancipated and emancipatory sense that he idealizes. In his Weimar years and later, there were his obligations not only to the organizations to which he was loyal and by which he was retained but also to the forms and methods of the specialized crafts—as lawyer, researcher and then professor—that were so much the conditions for his getting a public hearing. His space as “intellectual” had to be won over and over again and was never secure in his hands.

The terribly simplified outcome of the line of development associated with functionalization, according to Neumann, is the state of affairs in totalitarian states, where the dominant powers exert irresistible pressure to “coordinate” all thought and culture and where attempts to seek refuge in “inner emigration” are condemned to utter sterility. Under such conditions, intellectuals have only the choice between submission and exile. In making this flat assertion about the vacuity of “inner emigration” under totalitarian conditions, Neumann is registering a belated judgment on an issue that had been, at the time of his talk, bitterly debated in Germany during the six years since the end of the war and largely decided, at least in the Federal Republic, against the external emigrants. His statement was directed not only to Americans, whose heightened respect for the exiles he was seeking, but also to German intellectual circles as well, with whom he also had unfinished business.

Interestingly enough, Neumann concedes some force to the considerations most often cited against the exiles in these debates but only in order to list them among the prime constitutive difficulties confronting exiles more generally under the conditions of the nation-state. Tradition, experience and language are so closely integrated within the boundaries of the state that intellectuals who depart, whatever the reason, effectively

disconnect from the national culture and lose the right as well as the capacity to vindicate their exile on their return. Neumann rejects the constructive implication of this proposition, if it is put forward in support of “national” legitimacy claims for those who remained in Germany, whether as “inner emigrants” or as outright collaborators, but he seemingly accepts the negative point. This leaves Neumann’s judgment of those who returned to Germany from exile quite unresolved, which is especially noteworthy since this group includes several of his closest collaborators during the years of exile, notably the inner core of the so-called Frankfurt School to which he is often assigned. Perhaps he counts them as *metics* or cosmopolitans, notwithstanding their own politics of reintegration, or he assigns them to a category quite different from the “political scholars” who are his present concern—and among whom he counts himself. This issue will concern us later. In any case, the exiles he is examining now must stay away and create, he maintains, “a new life” in a new national culture. Neumann’s essay now takes an expressly autobiographical turn, although the position he puts forward with such seeming certainty is by no means finally resolved in his own life.

Such a new beginning is a profoundly difficult undertaking, not made easier by rage against those who disrupted the old life, since this emotion is inseparable for the exiled political intellectual from the recognition of failure and defeat. A “political scholar” in exile is displaced, Neumann says, as human being, as scholar and as political agent. Briefly sampling an earlier sociological inquiry by a fellow exile and former Mannheim student, Hans Speier, Neumann then reviews the conditions that might ease these difficulties. Speier had identified these conditions as marked similarities in social environment and audience. In quite general and predictable terms, Neumann assesses the likelihood of Speier’s conditions being met under the various historical circumstances of his earlier overview; but he concludes that the case of intellectuals’ exile from German totalitarianism requires separate, historically more specific treatment. As his analysis proceeds, then, he abandons the straightforward micro-sociological situational variables cited by Speier and applicable to his own schematic historical survey, and he focuses instead on the experiences and states of mind of this particular cohort of exiles.

He begins with a sketch of the skepticism and despair that he now claims marked German political intellectuals during most of the Weimar years. The First World War had ended with a competition between Wilsonian democracy and Bolshevism, in which both sides lost. Democracy was tied to defeat in the public mind, and its supposed supporters were too badly crippled to make it strong. Middle-class liberalism had been corrupted by Bismarck, and social democracy was steered bureaucratically to a course of “trading social freedom for higher wages.” Bolshevism, in turn, became a “terroristic machine” that misused Marx to serve the Soviet Union and “the ruling clique within the party.” It is worth noting that this characterization is not inconsistent with the views of the non-Communist dissident Social Democratic groups like the *Revolutionäre Sozialisten Deutschlands* to whose journal he had contributed until his departure to the United States. The emphasis is in any case not on the shortcomings of Wilsonianism or Bolshevism, as such, but precisely on the disillusionment of intellectuals attracted to either one, with the versions available in Weimar Germany.

In the Weimar universities, he continued, the students with an intellectual bent, as he could testify from his own experience, were confronted by antidemocratic propaganda from the professorial lectern, as the universities became centers of nationalist restoration theories. Yet having offered this cold and bitter account of the political intellectual's world, Neumann surprisingly introduces an "Indian Summer" that extended, in his view, through almost half of the life of the German Republic, notably in the universities. It was the Depression that took hold in 1930 that negated the apparent achievements of that interlude. And then came National Socialist rule.

Neumann distinguishes four grounds of emigration generated by that regime. There were, first, the exiles who were the targeted political enemies of the Nazi rulers but who failed to constitute a unified exile, since there were many oppositional groups with nothing else in common. Second, there was the "racial" emigration driven by the persecution of Jews. Distinct from this group, whose actual religious commitments were immaterial to its classification as outcasts, was a "religious" exile, which reacted against the underlying anti-Christian animus in the regime's ideological and cultural policies. And finally, Neumann identifies a "moral" exile, whose members were actuated by simple moral revulsion against the Nazis in power and their recognition that under totalitarian conditions there could not in fact be an "inner emigration." There is an implication here about the judgments of those who remained, which points, when taken with Neumann's assiduous postwar dealings with many such Germans, toward his view of the complex and conditional relations between politics and morals.

The difficulties in expounding this text are a function of Neumann's attempt to find the correct balance between a dispassionate analysis of complex events and a public reflection on his own experience. Looking at the time elapsed in exile, then, Neumann generalizes a process of change exemplified by his own history. At some point, he maintains that Nazism was seen to have changed Germany so much that exiles found that their ties were cut and they were left to undertake a "conscious transplantation" of their "existence." He had himself spent three years in England, he reports, remaining geographically close to Germany and active in exile politics, until he had concluded that there could be no internal overthrow and that England would support the Nazi regime rather than act against it. It is noteworthy that Neumann depicts the critical development as a political response to external events rather than as change in his own mental state through a process of spontaneous acculturation. On this telling, it was only when he had acknowledged these developments that he had set himself to undertake a "self-transformation," a project for which, in his opinion, England was too restrictive a setting. It is impossible to know whether Neumann recognized the implicit judgment of those he left behind in London. Perhaps he was simply caught up at this point in his eagerness to pay tribute to his American hosts.

To introduce the American alternative, then, Neumann continues in an autobiographical mode, although he points in the direction of generalization by citing the small number of academic returnees from America to Germany despite the superior conditions offered to professors in German universities after the war, a curious observation, in the light of the many qualified exiles who received no such offers. He does not in any case take into account the academics and other intellectuals whose "return" took them to

East Germany. More generally, he makes no reference here to weighing possible political reasons for return, as if the “self-transformation” entails either a complete abandonment of the character as a “political scholar” or a complete refocusing of that character on the new nation and thus a definitive end of the relationship between exile and asylum. As it might apply to Neumann himself, such a projection would have to be substantially refined in the light of his actual career. At this stage of the exposition, he is concerned above all to explain the “success” of the transition to the United States.

Neumann begins with an account of what he encountered when he arrived in 1936. First was the “Roosevelt experiment,” which had achieved what Weimar had failed to accomplish in that it made Wilsonianism real by virtue of a “militant democracy.”³ Second came the openness of American society, its “comradeliness,” which made “the process of reintegration exceedingly simple, once one had really made a clean break with Europe, and particularly with Germany.” Since this characterization can hardly be reconciled, if taken literally, with Neumann’s continued intense preoccupation with Germany—as scholar, as government official and as academic entrepreneur—the crux must lie in his notion of a “clean break,” which evidently turns on the issue of political loyalty. As with his earlier discussion of national cultures, this raises interesting questions about his judgment of the conduct of his close associates in the Institute of Social Research. Clearly, his classification of responses leaves room for a class of exceptional cases, but just as clearly, he does not include himself in it, since he extrapolates the paradigm case from an idealization of his own perceptions and conduct.

After these brief references to the wider environmental conditions facilitating the exiles’ entry into America, Neumann focuses on intellectual life and the universities, the dimensions most pertinent to his assigned topic. It is here that he most carefully differentiates his analysis from Speier’s generalized—and rather obvious—criteria of success, since the “similarities” that Speier postulates are not simply given, in Neumann’s view, but must first be discovered and cultivated after the emigrants’ initial perceptions of incongruence. The German scholars, he points out, initially looked down on the miscellaneous *mélange* of colleges and universities in the United States but recognized in time that American colleges had in fact resurrected the ideals of von Humboldt, which they treasured, while German universities, notwithstanding the ideology of *Bildung*, had become professional schools, with the professors specialized as researchers rather than serving as teachers.⁴ This conception of the universities as a theater for dedicated cultivation may help to explain both Neumann’s extraordinary success as a teacher at Columbia, with oversubscribed classes, as well as the special reputation of so many of the émigrés in schools of all kinds. There was a widely shared sense of mission in the classroom.

More complex was the problem posed by contrasts in the academic cultures, especially in the social sciences. Bred to history and theory, the German émigrés disparaged the empiricism and pragmatism of American scholarship, and they were confronted with a choice rather than a simple welcome. Some exiles attempted to make a total change, Neumann says, to become intellectually like the Americans, as they saw them. Others simply maintained their previous positions and sought converts—or accepted the status of recluse. From Neumann’s point of view, the optimal strategy was clearly one of attempted “integration” between the two cultures. To explain this possibility, as it applied

in the social and political sciences, he essays a historical characterization of German practice in these fields.

The starting points are, first, the traditions of scholarship and, second, the great systems achieved during the long nineteenth century by Kant, Hegel and Marx as well as the counter-systems in the work of Nietzsche and Freud. In the universities, however, both Kant and Hegel were transmuted into conservative stereotypes, remote from actual conditions, while Marx and Freud were simply excluded. Nietzsche was turned into his own opposite, Neumann says. The great achievements of the universities were in history and law, which could be done by book learning and speculation, without reference to social and political reality. Social and political science were thus outside the university, except for Max Weber, whose actual empirical work, like his emphasis on the social responsibility of scholars, was neglected in favor of the much more uncertain preoccupations with methodology. It is only in the United States, Neumann asserts in an aside, that Max Weber comes into his own. There were some great social and political scientists in Germany in the middle of the nineteenth century, whose work in fact inspired the first political scientists in America, but this Liberal current succumbed to Bismarck after unification, and Liberalism was reduced to the defense of private rights in the *Rechtsstaat*. Jurisprudence replaced the political and social science that had inquired as well into the sources of law in relations of power. In short, the émigré political scholars found in the American universities the focus on training social and political scientists concerned with the reform of society and politics that was missing in the German universities after Bismarck.

Implicit in this analysis is the thought that the exiles' ever-clearer understanding of the limits of the German and the advantages of the American universities in these respects encouraged them to find ways of making an appropriate contribution. Because they are so diverse, the contributions cannot be easily assessed, Neumann says—and some European trends were already established, notably some orientation to Mosca and Pareto as well as the Vienna School in Economics—but he claims that persons like himself, trained in a tradition of theory and history, were able to achieve two things. First, they brought skepticism about the ability of social science to engineer change. In making this point, Neumann does not mean to disown the radical projections of Marx and similar European trends, although he contents himself with a certain ambiguity, but to question engineering models of social transformation. Most important, he claims that the insistence by himself and his cohort on a theoretical framing of empirical research averts three capital dangers in the American pattern of social science. First, there is the overstressing of data at the expense of context and especially the historical frame. Second, according to Neumann, recalling his earlier cautions about the state of intellectual life in modern societies, there is the transformation of the scholar into a functionary, constrained by the techniques of data collection. And finally, citing a consideration that played an important part in his own earlier life as researcher in America, there is the dependence of the scholar on funding sources. It is not only an opportunity but also an obligation, Neumann says, for the émigré scholars to bring their backgrounds to bear on minimizing these threats. In return, American social and political science teaches them a "concern with and analysis of the brute facts of life." That is a mutually beneficial

bargain, Neumann thinks, although he does not at this point use the language of negotiations that is elsewhere so pervasive in his discourse on these subjects. “Integration” is in effect a fair deal, and the success of the intellectual emigration is the result less of an immediately compatible environment than of a promising setting for negotiations.⁵

With that settlement presumed to be in place, Neumann returns in his talk to the question of the exile’s relations to Germany, using the somewhat evasive formulas of “the German scholar returning to Germany for a visit” and “drawn into a debate” but also clearly alluding to his own extensive involvement there, notwithstanding his supposed “clean break.” The issue is the condition of the German universities, as seen by the returnee. Neumann draws up a list of comparative disadvantages, ranging from the unreformed spirit and institutional structure of the places, the gulf between students and teachers, the lack of “truly general humanistic education” and the failure to establish evening universities to the delicate condition of political and social science and its dependence on émigrés who have chosen to return, after all, as well as on American visitors. Scholars like himself who have a chance to be heard find themselves pressing for empirical work in Germany, just as they are obliged to call for more theory in the United States. Unexpectedly, without further reference to the supposed centering on America, Neumann concludes that this “dual role” is the “true significance of the once exiled German scholar.” Without resolving this ambiguity, Neumann closes with a tribute to the attitude of American colleges and universities, which “succeeded in transforming a tragic problem into a happy solution.” When taken in the context of Neumann’s enterprises at the time of its composition, this unconditional compliment can be seen as charged with Neumann’s hopes and assigned a rhetorical function. He is engaged, first, in an extensive campaign on behalf of the Free University in Berlin, negotiating with his own university, agencies of the American government and the principal foundations by associating it with a menu of remedies for the supposed shortcomings of German universities listed above as well as a capital anti-Communist political gain. Second, he has invested energy and hope in a Rockefeller Foundation project to strengthen political theory, which the sponsors see mainly as a means of strengthening the ideological front against Communist appeals but which he sees also as an aid to making American universities more hospitable to the kind of enterprise he identifies with political intellectuals like himself. On the grounds of both projects, it is reasonable to suppose that his presentation cannot dispense with a measure of diplomacy.

His own far more forthright—and perhaps even exaggerated—share of the rage and furious self-blame of the exiled political intellectual of which Neumann speaks when he first lays down the obstacles to the “new life” that he desiderates is expressed in a different document of that time. In a confessional letter to a young German sociologist with whom he becomes close during her research visit to the United States in 1952 and who became his intended life partner, Neumann wrote, in the year of his death,

How often have I asked myself since 1933 where my own responsibility for National Socialism lies. Because I do believe in collective guilt—and then I cannot exempt myself. All of us in the opposition to reaction were too cowardly. We all made compromises. How lying the SPD was in the months between July, 1932 and May, 1933 (and not only then), I could see with my

own eyes—but I said nothing. How cowardly the union bosses were—and I continued to serve them. How lying the intellectuals were—and I remained silent. Naturally I can rationally justify this by the united front against National Socialism, but ultimately the fear of isolation played a part. And yet I had great models: Karl Kraus, Kurt Tucholsky. And in my theory I have always agreed with the Socratic standpoint that the genuine intellectual must always and in the face of every political system be a *metic*, an alien. So I also played a part in the sell-out of the ideas of the so-called German Left. No doubt, my contribution is small, and the politician will view my attitude with irony. But is it possible to view the fall of the SPD and the rise of the National Socialists as a political problem alone? Were there no moral decisions to be made? I made those too late and still not radical enough.⁶

That Neumann highlights the period between July 1932 and January 1933 when he speaks of his co-responsibility for the lies of the SPD suggests that he may have been thinking of his role as lawyer in counseling the greatest caution upon the editors and proprietors of the Social Democratic press in the face of press restrictions, especially after the legal coup by the Right in Prussia on July 20.⁷

Yet the excerpt is obviously also a part of a very personal letter, the rest of which is lost, and the emphasis on his own failure by several standards, up to the point of complicity, may have been somehow related to Helge Pross' adolescent loyalty to the National Socialist movement to the very end, following the lead of her deeply implicated parents. The letter may have been designed, in brief, to eliminate any suspicion of a moral gap between them, given that she had committed no violence, and to define a common starting point. Striking in this deployment of the *metic* figure is the contradiction between the standard of distance to which the intellectual is supposed to be committed and the standard of civic responsibility that Neumann blames himself so bitterly for having neglected. It is necessary to be cautious about the precise weight to be assigned to these dramatic self-reproaches written at almost the same time as the lecture we have been reviewing at some length as a testament of his self-understanding in the years of exile. What can be fairly inferred from the ambivalence identified by a comparison between the long public text and the short private one is that there was in fact no "happy end" for Neumann or, indeed, for most of his fellow exiles. Everything they achieved was hard won.

Notes

- 1 Franz L. Neumann, "The Social Sciences," in William Rex Crawford (ed.), *The Cultural Migration. The European Scholar in America* (Philadelphia: University of Pennsylvania Press, 1961), p. 13. "Scholar" is almost certainly intended as a translation of *Wissenschaftler*, which is a more fluid concept, since it encompasses all studies. In some contexts, the German for "intellectual" applies to a population different from—or even antithetical to—"scholars," if the latter are tied closely to specialized disciplines. See David Kettler and Gerhard Lauer, "The 'Other Germany' and the Question of Bildung," in *Exile, Science, and Bildung: The Contested Legacies of German Émigré Intellectuals* (New York; London: Palgrave, 2005). In the present context, however, Neumann treats the "political scholar" as a subset of the larger class of "intellectuals."
- 2 David Kettler, "Herbert Marcuse. The Critique of Bourgeois Civilization and Its Transcendence," in Anthony de Crespigny and Kenneth Minogue (eds.), *Contemporary Political Philosophers* (New York: Dodd, Mead, 1975; London: Methuen, 1976), pp. 1–48.

- 3 The concept of “militant democracy” was originally developed by the exiled political scientist, Karl Loewenstein, in two articles (“Militant Democracy and Fundamental Rights I,” *The American Political Science Review*, Vol. 31, No. 3 [June 1937], pp. 417–32, and “Militant Democracy and Fundamental Rights II,” *The American Political Science Review*, Vol. 31, No. 4 [August 1937], pp. 638–58) and taken up by Max Lerner in *It Is Later Than You Think: The Need for a Militant Democracy* (New York: Viking Press, 1939), but the emphasis in both of these uses was on the need to resist domestic “fascism” even at some cost to individual liberties. Neumann certainly knew Loewenstein’s writings and he reviewed the Lerner book (*Zeitschrift für Sozialforschung*, 1940) with numerous compliments, but the reference here to the New Deal mobilization and planning regime is also reminiscent of Karl Mannheim’s development of the concept in *Diagnosis of Our Time* (London: Routledge & Kegan Paul, 1943).
- 4 This brief criticism of the German universities, unspecific as to the time to which he refers, echoes judgments in essays by Paul Tillich and others in a series carried by the *Frankfurter Zeitung* in 1931–32. See Dieter Thomä (ed.), *Gibt es noch eine Universität? Zwist am Abgrund, eine Debatte in der Frankfurter Zeitung, 1931–32* (Konstanz: Konstanz University Press, 2012).
- 5 See Chapter 5.
- 6 Franz L. Neumann to Helge Pross, Summer 1954. Cited in Alfons Soellner, “Franz Neumann,” *Telos*, No. 50 (Winter 1981–82), pp. 171–72. It is a curious comment on Neumann’s state of mind that Tucholsky in fact committed suicide within days of his emigration and Karl Kraus’ posthumous *Walpurgisnacht* fulminated against the Socialists and intellectuals with whom Neumann identified himself.
- 7 Franz L. Neumann, *Das gesamte Pressenotrecht vom 4 Februar 1933* (Berlin: Dietz Verlag, 1933).

Chapter 5

AFTER WEIMAR: THE FIRST EXILE

Overview of Neumann's Writings in England, 1933–36

If Franz Neumann's writings until the moment of exile almost all comprised legal advocacy in design as well as purpose, given the address of his commentaries as well to intellectuals, his most important exile writings were either more directly political or academic in manner. Although his decision to attend the London School of Economics (LSE) is clearly congruent with such a change in emphasis, nothing is known about the process by which Neumann came to enroll in a doctoral program focused on political theory rather than seeking to requalify himself for legal practice, as was done by his close associates, Otto Kahn-Freund and Ernst Fraenkel. It seems likely, however, that Harold J. Laski, who was to supervise Neumann's dissertation was an important factor. In the early days of Neumann's arrival in London, Laski was the sponsor and doubtless also the authority addressed in two quite different writings on the end of Weimar (and beyond).

Like Laski himself, Neumann also published some openly political writings in the exile Socialist press during his four years in England, taking a strong position on several of the issues most contested within the Socialist political emigration, which entailed, in turn, a controversial stand on the Socialist and trade-union politics of the Weimar years. His politics in those writings were "Left"—and thus critical of the majority in the Social Democratic exile organization—very much in the manner of the *Neue Beginnen* group, which had broken away from the party, although there is no evidence available of direct contacts with the group as such, which became somewhat influential among English émigré and labor groups only after his departure. Although tempting at times, and made more plausible by the positions taken by some of the non-Communist delegates to the mid-1930s sequence of meetings in Paris, it would not be on balance accurate to identify his position with an opening to the Popular Front, which was an important political issue on the continent at the time. Neumann's focus remains on the trade unions and not on the political parties. After 1936, there is never again a piece of political advocacy of this frankly partisan type. And all we have by way of explanation is his remark in the exile lecture that he became convinced that there would be no revolution from within Germany. The misgivings appear toward the end of these texts themselves.

A political style of a different sort governs Neumann's very first publication in exile, appearing in English within a few months of his arrival in England in a well-respected political studies journal of whose editorial board Laski was a member. It was a sober analysis¹ and it incorporated many of the uncertainties and fears that had already marked Neumann's Weimar writings after 1930, now intensified by the failure of the last defensive maneuvers in which he had played a part and by the subsequent course of events.

That Neumann was able to publish the first article on current German happenings to be found in a journal unconnected to the political emigration within a month or two of his arrival in England—and that he received the translation and editorial assistance evident in a reasonably colloquial piece—strongly suggests that he was actively sponsored upon his arrival by the Fabian grouping around the editor, Leonard Woolf, as well as by Laski. Much more ambitious was Neumann's second doctoral dissertation, which focused on a sociological approach to the political theory of law, in an extensive reconsideration of issues and methods in his first dissertation, and his development of them during the subsequent Weimar years. Sometimes mistaken for a theoretical study of the rule of law, the work examines “the governance” of such law—almost certainly a translation of the more forceful German term *Herrschaft*—and expressly intends to explain the historical conditions under which a state of the law that could be properly so designated was the form taken by the governing power as well as the factors that rendered that condition no longer attainable. Neumann in fact insists in his introduction that “it is neither a study in legal or political theory [...] It is rather a sociological treatise, intended to be a contribution to a theory of modern society with a view to its control.”² The concept of sociology employed here closely resembles that in his first dissertation, where his point was, however, to explain his postponement of such study. Then too, the codicil about sociology as a means of control strongly suggests his exchanges in London with Karl Mannheim, whose plea for planning in the first version of *Man and Society in an Age of Reconstruction* had already appeared. That Harold Laski, in turn, was as much interlocutor as doctoral supervisor in the ordinary sense is evident from the fact that Laski as well as Neumann was concerned above all to reassess the pluralist elements present in their earlier thought, centered as they both had been on the autonomy of the labor regime within a balanced liberal constitution.³ This dissertation was never published in Neumann's lifetime, despite Laski's urgings, clearly because Neumann wanted to recast the culminating argument, which addressed the displacement of liberal legalism in the newest phase of development, into terms closer to the theoretical discourse of his new group of sponsors at the Institute for Social Research in its exile home in New York. Our references to “sponsors” who figure in the design of his work are by no means intended to suggest some sort of passive submission to the “influence” of one or another authority. The point is rather to highlight Neumann's willingness and capacity to shift the reference points of his intellectual negotiations—as well as his practical ones—to the sources where he had most to learn as well as most to contribute. In that sense, the aim is always to be effective in both the practical and intellectual worlds. We are studying Neumann's documents in an attempt to understand his intellectual designs and what might be learned from them, and we would falsify the materials if we tried simply to expound them rigorously in terms of some theoretical model, even if it is one through which he may have spoken at a time.

Neumann's years with the Institute for Social Research in New York, in addition to his numerous internal project proposals and other planning activities, yielded several journal articles and many book reviews, almost all of which were quite modest in aim, until the publication in 1942 of *Behemoth*, his attempt at a definitive statement of the design and dynamics of the National Socialist regime, which was in fact expressly written outside the Horkheimer Institute and therefore never subjected to the philosophical and political

oversight that Max Horkheimer otherwise exercised over members' writings. A work often praised or blamed as an exercise in the materialist sociology of power, it must also be understood as the point of departure for the attempt to develop a democratic political theory adequate to the twentieth-century state, which occupied him during the postwar years. *Behemoth* marks the end of Neumann's settling of political accounts with the Weimar experience and its bitter aftermath. And yet, in the end, the puzzle about the relations between liberal and democratic strands that Neumann had raised in his first dissertation remained unsusceptible to an integral, harmonious solution. In this, as in other respects, the orientation that political theory is meant to provide cannot supersede the play of power and resistance that constitutes the political field.

A Cautionary Postmortem for English Readers

Neumann opens his initial diagnostic article for his new English public with a quick sketch of what will later be often characterized as the German *Sonderweg*. Germany never had a bourgeois revolution, he asserts, since "freedom was betrayed for money," and even the political transformation of 1918 had to be understood as mere incidents of breakdown, with the terms of the various settlements reached at the time expressly precluding revolutionary change and leaving openings for restoration. One concomitant of this circumstance was that deep internal divisions—economic, religious, generational and with regard to the acceptance of democracy—remained unmediated and unresolved. The only common objective identified by "many authors," he reports, was the "negative" aim of warding off Bolshevism. Within this frame of reference, then, and notwithstanding a surprising ambiguity with regard to the concept of revolution, Neumann puts forward the following general statement:

The thesis of this article is that the National Socialist Revolution is a counter-revolution of a monopolized industry and the big landowners against democracy and social progress; that this revolution was only successful because the structure and practice of the Weimar Constitution facilitated it; that the revolution was largely due to the creation of an Anti-State which the democratic State tolerated though it was born to destroy democracy; that the Social Democratic Party and the German Free Trade unions which were the sole defenders of parliamentary democracy were too weak to fight against National Socialism; that their weakness was due both to fate and guilt. (524)

Neumann turns then to problems that he sees built into the constitutional design of a sovereign democratic parliament like that established in 1919:

The problem in every industrial democracy with a strong and developed Labor Movement is how to anchor Parliament in the people. The problem in every State wherein the State has to deal with nearly all social and economic affairs is how to enable Parliament to perform its tasks. (528)

Neumann's analysis of the first of these problems is interestingly ambivalent, in view of his overall comprehensive critique of the constitutional scheme, since he ends by

upholding the “collective democracy” achievements that had been integral to his advocacy during the Weimar years, at least in principle. The political parties, he says, were “totalitarian,” in the sense of dominating the life of their members, which he claims, in turn, is a type of organization unsuited to parliamentary democracy. His separate reference to “radical” totalitarian parties categorically hostile to parliamentary rule indicates that he did not use the highly charged adjective in itself to characterize the programmatic or political aims of the parties, as subsequent usage will do. The point is simply that “totalitarian” parties, even if they accept parliament as their prime locus of action, stand in the way of directly grounding the parliament in the people. In contrast to this critical assessment of the parties as such, not excluding the Social Democracy, Neumann says nothing to qualify his endorsement of the “new form of self-government to be exercised by Trade Unions and the organizations of employers,” going on to list the variety of “parity appointments” made under this design, as mandated by Section 165 of the Weimar Constitution. He sums up that “it is permissible to speak of a new form of democracy, a collective democracy, by means of which the political democracy was to be rooted in the masses of the people.” Neumann presses this case by emphasizing that the Weimar Constitution had expanded the domain of rights beyond the personal, political and capitalist (property) rights common to modern democracies to include “completely new” social freedom rights “to guarantee the emancipation of the working-class.” Notwithstanding the preservation of property rights, which he now does not relativize as he had done in earlier writings, when he made it appear as if the structure built in a dynamic toward a completed socialist democracy, the intention was “to create a Social Democracy [...] that is to say, a democracy based not only on the freedom of property but also upon economic freedom of the working class.” The latter concept he seems to identify above all with a regime of intervention—by the state or the “organized society”—in the relation between master and servant so as to make the servant the real equal partner of his master” (531). This was “completely new,” he asserted.

He maintains further that this system actually prospered during the four years without economic crisis between 1924 and 1928, when there were new social services, a boom in workers’ standards of living and every appearance of security. With economic crisis, however, and a threat to profits, Neumann asserts, “capitalism the real owner of power in every non-Socialist state” obstructed, as it always will, organized labor from gaining sufficient control to advance social progress. Under conditions of monopolization, moreover, where the free market no longer functions, state intervention is inevitable, according to Neumann, and “capitalism knew” that a government captured by Socialists would redistribute wealth. Neumann cites Laski’s statement in the 1932 *Democracy in Crisis* that power in the hands of a new class means social revolution, and he concludes that this explains the monopolists’ “retrograde” program to destroy parliamentary democracy, which was, after all—Neumann concluded—“the constitutional platform for the emancipation of labor.” At the same time, Neumann is no less clear that defects in that constitution and constitutional practice—including the failure to address deep structural flaws in parliamentarism—contributed decisively to the success of the reactionary program as did a weakening of the trade unions and Social Democratic Party whose due mobilization was essential to the operation of collective democracy.

Although the agreement of all bourgeois parties, expressly including the Catholic Center, to transfer “all power to the President” after 1930 figures in Neumann’s analysis, as does the expansive and incorrect rendering of the emergency powers granted to the president by Article 48 of the constitution to include far more than the “individual administrative acts in defense of security and order” that Neumann cites, he traces the decay of democracy not to the excessive powers of the presidential office but to the failures of parliament and parliamentary groups. Neumann begins with the general contention that the parliament suffered a loss of power, authority and dignity, grounding this expressly in Laski’s determination that the parliament ceases to be suitable for legislation in a state that is no longer limited by liberal constraints. Such a parliament can uphold its sovereign authority, according to this view, only by deciding broad principles and then creating other, more specialized, organs of legislation—a formulation wide enough, it would seem, to comprehend the organs of “collective democracy” that Neumann had celebrated earlier. Instead, Neumann maintains, the parliament destroyed its sovereignty by allowing private and public groups to take over, primarily through enacting very broad and indeterminate “authorizing laws,” which empowered ministries to develop their own policies, a direction further strengthened by the constitutionally unjustified inflation of presidential powers.

In the present context, Neumann interestingly focuses on the powers of public rather than private groups, which had been a focal point in his earlier writings against the “pluralism” that guaranteed the power of the strongest economic groups to control decisions. The idea that under certain circumstances the bureaucracy becomes an actor in its own right is a thought that Neumann never abandoned in his future analyses of the German developments, although it later led him into persistent disagreement with Max Horkheimer and his closest associates. It is also in striking disagreement with one of his own last Weimar-era presentations of the makeup of the economic constitution, where bureaucrats were given a role on a par with the trade union and entrepreneurial representatives, as well as with the views of Laski, who expresses strong trust in the arguably different political culture of the British civil service as a rational force within government, past and future.⁴ Here, however, Neumann pronounced categorically, “The main objective of the ministerial bureaucracy was to minimize social progress, to weaken the break with the militarist, capitalist, and reactionary tradition” (533).

He speaks of this force as a capital element of the “anti-state” within the framework of democracy. The defects of parliament that enabled this usurpation, according to Neumann, were, first, the practical unavailability of the vote of nonconfidence, which is supposed to bind the minister to close control of his bureaucracy and to principled adherence to the directions generally approved by parliamentary majorities. Under the conditions of Weimar, however, the cabinets had to be periodically assembled out of a broad coalition among the comparatively small number of parties willing to take any responsibility for governing the republic under the constitutional scheme. It was too great a risk to affront any party by the ouster of one of its ministers. Correspondingly, the most forceful oppositions were not in any case centered upon the parliamentary contests, since they rejected the legitimacy of parliament. And finally, Neumann noted that the responsibilities heaped on the ministerial bureaucracy, with their attendant disorganization,

were too great to allow it to be controlled. As a consequence, Neumann concluded, the bureaucracy in fact legislated and governed against progress.

Another constituent of the anti-state that overwhelmed German democracy, in Neumann's view, was the judiciary. Speaking of his own field of operations during those years, he strikes an especially bitter note. He mentions, first, that the judges lacked the special status of British judges but represented simply another career in the bureaucracy. Second, then, he speaks strikingly of their being controlled by the "social mind" of their regressive associations. This certainly echoes his involvement over the years with Hugo Sinzheimer's attempts to foster a dissident organization of republican judges by means of the organ, *Die Justiz*, for which both Neumann and his partner Ernst Fraenkel had written and which Fraenkel had in fact edited during the last year of the republic. Quite possibly, Neumann was also thinking of the majorities arraigned against his views and those of his allies in the association of public law jurists, as with the attempt to initiate a new legal regime for monopolies and cartels. "German justice ever was a matter of politics," he declares.

Taking up themes of his persistent earlier critical commentary on the jurisprudence in cases affecting labor and property and the relations between them, he cites as instances of political manipulation the abrupt shift in the courts from the positivist jurisprudence of the imperial years to a doctrine of free discretion that drew on ill-defined general clauses to override key doctrines in the legal code, where the judges saw gains for their political preferences. Similarly, he charged the judges with distorting their work in constitutional law so far as to approach the sweeping powers granted to American judges under "judicial review," with free reading of provisions like "equality before the law" serving like "due process in American jurisprudence to protect property and contract." The effect was to delegitimize parliament as well as to achieve results contrary to the line of progressive policy enabled by the constitution and political choices of Weimar democracy. Although Neumann also mentions in passing the idea he had already adumbrated in his lecture to the Schmitt seminar, that the transfer of municipal public services to private entities because of financial pressures defeats projects of municipal socialism and empowers a polyarchy of private agents in position to undermine larger social projects, his most vehement charge is against the trade unions.

"It is impossible to describe here all the mistakes of the Trade Unions" (536), he writes, who lost their freedom and independence in fact, although they remained legally independent. He focuses accordingly on a development that had already featured in his first published article on labor law and that he had both attacked in principle and accepted in practice. The crux of the matter, he said, was the loss—or abandonment—of the unions' functions as autonomous agents of workers' struggles because free collective agreements were replaced by state determination through compulsory arbitration. With the acceptance of this development, unions became unable but also unwilling to strike, as witness the decline of funds allocated to this definitive class of activities, which Neumann had already singled out earlier, while commenting on the constitution, as the essential and defining capacity of unions. Neumann drew on his earlier classification of union functions to conclude that unions had consequently limited themselves to their "guild" function as advocate for workers' interests before government, a class of efforts that

ceased to have any effect as governments became more fascist. In a carefully worded conclusion to this section, Neumann seems to show an understanding for the unions' last desperate aims, appearing to treat the action taken as folly rather than crime:

Towards the end, they tried to abandon their relations with the Social Democratic Party and to form a new, half-fascist ideology in the hope of avoiding capture by the National Socialist Party. (536)

The conclusion of Neumann's article consists of brief characterizations of the forces converged on the scene, the disastrous economic crisis, the reorganization of German industry and the states of mind of some reactionary elements as well as the Social Democratic cohort. Because of the central importance of Neumann's relations with the unions during the Weimar years and because of his inability ever after to select any social formation as somehow comparably predestined by its own distinctive historical structure of interests and power resources to contribute to both democratic politics and social progress, it is important to read the precise language that he uses to assess their capacity and performance during the last years of Weimar. Following his diagnosis of their weakness as a function of dependence on the state, he returns twice more to the topic. First, he concentrates on the union "bureaucracy":

The Socialist Trade Unions were still strong in number (1931: 4,417,000 members) but unemployment, disappointment and their bureaucracy, which had very much to lose in case of resistance, and the hundreds and thousands of positions they had acquired in the State, had deprived them of freedom, independence and strength. Their great mistake was to believe that economic democracy was possible without political democracy. (538)

But then, characteristically, he introduces the conclusion of the article with a review of labor's capacities for resistance, the last in his brief discussions of other possible actors, a topic he introduces with the flat assertion, "Resistance was impossible."

Labor's only available weapon was a general strike. But as a weapon it was inexpedient at a time when unemployment stood at 8 million. Moreover, a general strike would have led to civil war, the issue being between Socialism and capitalism. In practice, no Socialist would have gone into a civil war in defense of the Weimar Constitution; his participation in such a struggle would only have been secured in order to achieve Socialism. But in this case, the army, the police, the brown-shirts, the black-shirts, the steel-helmets, the whole of the bourgeoisie, the federal States, the Churches—all would have fought against Labor. It is not my task to answer the question whether in spite of this Labor should not have fought, whether a heroic death would not have helped the cause of democracy and Socialism more than their collapse without any resistance. But there is no doubt that the fate of liberty and democracy was decided after two years of a policy of the lesser evil in addition to an enormous economic crisis. (539–40)

Prior to this, he had dismissed both churches—the one as "nationalistic and reactionary" and the other as bound to make peace to secure its properties and practices—and he curiously weighed the prospects of a resistance by South German states, whose

strength he judged to be overrated and who he thought could not in any case have gotten the support for their sectional claims from workers or others opposed to Hitler. In view of his dealings with university professors at the very end of the period now closed, it is interesting how he judges them with special notice of Carl Schmitt, whose seminar he had attended in the preceding year:

The universities were not willing to resist. On the contrary, they had worked to a great extent for the destruction of the idea of parliamentary democracy in the minds of the students. Professors of constitutional law were in the main implacable ‘opponents of parliamentary democracy.’ The enormous influence of Professor Carl Schmitt, who served uninterruptedly as an expert under Ebert, Brüning, Papen, Schleicher and now Hitler, and who took only an aesthetic view of the Constitution, did much to bring into contempt liberty, Parliament and the so-called “western democracy.” (540)

He concludes dramatically, if not quite consistently with what he had said earlier about labor and its party, “German democracy committed suicide and was murdered at one and the same time. A democracy without democrats found its end with the appointment of Hitler as Chancellor on January 30th, 1933” (540). The painful cliché at the end, a commonplace already during the Weimar years, when he would never have conceded the point, denotes the political exhaustion that pervades the piece.

This is not the atmosphere, however, of the publications appearing in the press of the socialist exile and that he issued under the pen name of Leopold Franz. As an emblem of his political reinvention may be taken the passage in which he pairs Hermann Heller, whom he will criticize sharply in the second of these articles, with “Franz Neumann” as constitutional theorists who attempted in vain to bring about a state of social rule of law [*Sozialen Rechtsstaat*], associating himself in his persona as Leopold Franz, not only with the criticism of this design by the socialist, Otto Kirchheimer, whose “Weimar and what then?” he had once countered with “First, let’s have Weimar!,” but also the “bourgeois” criticisms of Carl Schmitt, the other presence who haunts his Weimar years—and will continue to do so.

Critique and Self-Critique: Anti-Fascism

The continuities in Neumann’s thinking, notwithstanding self-critical changes in political points of reference and orientation, are manifest not only in the somewhat academic title of the first of his Leopold Franz articles, “State under Rule of Law [*Rechtsstaat*], Division of Powers, and Socialism,”⁵ but also in that the problem that he derives from his analysis and promises at the conclusion of the piece to solve in the sequel is, “How to solve the problem of conflicts between freedom and equality,” a question first raised in his original dissertation and last discussed, years later, in one of his last publication.⁶ Yet the analysis of the issues in his 1934 article expressly builds Marxism into the formulation of the problems, which neither his first nor last encounters with the very broad problem do, and it has an immediate political point in the context of Socialist exile politics. On January 28, 1934, the executive committee of the German Social Democratic Party in Exile published a new basic program, generally referred to as the “Prague Manifesto”⁷

Neumann opens his article with a criticism of its failure to address the conflict between the promise, in effect, to restore the *Rechtsstaat* and yet also to submit the nation to a revolutionary regime beginning with “revolutionary justice” against the “guilty.” He asks how guarantees of equal civil rights can be reconciled with revolutionary dictatorship and he jibes against their promise of a “free state entity” [*freies Staatswesen*] after the phase of revolutionary transformation, commenting that he is tempted to treat this amorphous concept as Marx treated a comparably vague promise in his *Critique of the Gotha Program*. Yet he denies that he is simply dismissing the possible link between elements of the *Rechtsstaat* with socialism. In fact, he proposes to explain “the positive relation between Marxian socialism and the idea of the *Rechtsstaat*” (125) in a future publication but only after he has situated the concept in its present form in relation to the economic-political base. In an aside intended perhaps to soften still further the challenge to the party program, he emphasizes the great propagandistic force of the *Rechtsstaat* formula, citing the attacks even within National Socialist Germany against Carl Schmitt’s claim that the Nazi “just society” transcends the *Rechtsstaat*.

This potent concept, Neumann claims, was created by the liberal bourgeoisie but is specific to Germany, where it comprehends not only the liberal legal program but also an identification of both state and nation with that program. Other groups envy this powerful design and seek to apply it to quite different formations. The example he cites is the idea of the “social *Rechtsstaat*” that is supposed to emancipate labor, completing the unfinished business of 1789. This is the context in which he cites Heller and Neumann and remarks that their efforts were wrecked with the end of the Weimar Constitution, ambiguously referring then to the fact that both socialist and bourgeois writers had criticized the idea, with Otto Kirchheimer and Carl Schmitt taken as the two examples, both writers with whom Neumann had complex intellectual relations, as we have seen. It is almost a concession to both critics that they had been right but not exactly. As he had done in his earlier writings, he contends that the *Rechtsstaat* is best explicated in connection with the economic, political and philosophical system of liberalism, which has the legal rights of property exchange and contract as its actuating principle and projects an order grounded in market equilibrium. Corresponding to this design is a requirement that law be general in form lest their presumably justified interferences with property be subject to administrative arbitrariness. This consideration provides the key to the separation of powers as a feature of the liberal scheme. Neumann distinguishes between two senses of that formula. The first has to do with functions, in that legislation is supreme and that both administration and judges are bound to its general norms, with judges specifically viewed as nothing more than “mouthpieces of the law,” who apply mechanical-logical rules to subsume cases to the norm. With reference to the administration, Neumann refers more cautiously to the limits placed on the legislative powers by the jurisprudence of the two leading liberal systems in England and the United States.⁸ Speaking of the second aspect of the separation of powers, which involves a kind of balance among social groups, with Montesquieu’s scheme of allocations to king, nobles and commons in the background, Neumann interestingly only singles out the privileged position of the bourgeoisie in the judiciary rather than their place in the legislature. In any case, he asserts that this scheme ceases to be viable when the proletariat, which has been left out, organizes itself as a

class. And its core aim is the protection of individual freedom and property. In a curious passage where he follows Georg Simmel rather than more familiar patterns of Marxist ideology theory, Neumann asserts that the philosophical system corresponding to this liberal design is to be found in the eighteenth-century Enlightenment, with its sweeping claims for the formative powers of the soul and its apprehension of individuals as universal beings without individual traits that matter. Perhaps ironically, but not very much in logical connection, he then recalls Kant's "brutal openness" in limiting political rights to possessions (*Besitz*) and cultivation (*Bildung*).

Neumann next turns to a reworking of the factors undermining the rational-legal democratic state, now expressly qualified as marked by separation of powers, that he had started to cite during the last crisis years of Weimar, adding some Marxist terms of analysis but more interestingly also highlighting the disruptive effects of working-class enfranchisement and organization. He begins with a broad characterization of two developments that "denature" the *Rechtsstaat*, one of which he had never before put in quite these terms. First, then, he lists the combination of "mass democracy" with the institution of ministers responsible to parliamentary majorities and, second, the more familiar shift from competitive to monopoly capitalism. The latter of these gets relatively little detailed attention, although it is presupposed at key points of the primarily state-centered analysis. Marx serves as authority for the characterization of the *Rechtsstaat* in its prime. Whereas the inequality prevalent throughout the feudal era manifested itself everywhere in the political domain as well as in differentiated legal personalities, 1789 ushered in a situation of equality in these spheres and gross inequality in the social sphere as a distinct domain. The proletariat in the bourgeois *Rechtsstaat* has legal freedom and, tendentially, equality in the political sphere but gross social and economic unfreedom.

Democratization of politics, monopolization of the economy and proletarian self-organization undermine these configurations and thus the *Rechtsstaat*.⁹ This is what happened in Germany, Neumann says, but the trends can also be observed in England and the United States. The primary signs are changes in the concept of law and the character of legislation, the enhanced power of the executive-administrative branch of government and a drastic change in the functions of judges. None of these themes are novel in Neumann's work after 1930, but in the earlier context his main concerns were to counter these developments or at least to promote organizational adjustments to bypass them when it came to the issues paramount in his design, as with the proposed cartel law or, more generally, the constitutional reframing of economic relations, especially with regard to the role of organized labor and their employers. Now, in 1934, these mitigations appear as vain hopes and the paradoxical consequences of labor's self-recognition and activation in the context of an economic thrust toward monopoly must be addressed in quite different, more radical terms.

In this new context, then, it may be permissible to review Neumann's analysis of the decisive changes marking the decline of the liberal order under the rule of law as constituted by the division of powers and the primacy of legislation. It is not a question now of writing warnings and proposing strategies, as it was to the end in Germany, but rather of offering explanations to associates who are suffering from the collapse of a legislative and administrative order where they retained influence throughout and whom

he addresses as a constituency that lacks the knowledge to explain what has happened to them. With regard to the legal order itself, there are three primary developments. First, the need to regulate strong individual powers, especially in the monopolized economy, means that legislation no longer has the character of generality and universality that distinguished law in the epoch of the rule of law. Yet, second, the laws as enacted cannot in fact address these diverse situations so that they take the form of very vague and indeterminate authorizations to administrative agencies, which act in accordance with their own policies. As anticipated in the general statement of the forces of change, it is also the case, third, that laws no longer center exclusively on the protection of property since workers, constituted as a class, are strong enough to demand and to achieve social and economic gains that can be achieved only at the cost of property. Neumann adds that he is passing over the question why property was prepared, to a point, to make these concessions.

When Neumann turns this time to the enhanced powers of the executive branch, which in fact comprehends primarily the administrative apparatus of state, the terms of reference are no longer so narrowly focused on German experience, and the echoes of contemporary English debates about law and the administrative state as well as themes of parliamentary helplessness in Harold Laski's 1932 book are clear. As corollary to changes in legal controls, then, the administration gains expanded legislative functions in a state that increasingly changes from governance through legal enactments [*Gesetzgebungsstaat*] to rule by administration [*Verwaltungsstaat*]. Most important, from the standpoint of the liberal state is that the parliament is no longer in a condition to control the administration, which is the classical guarantee of the supremacy of law. He underlines again the coincidence of these developments with the entry of organized workers into parliament but then turns to the increasingly complexity and impenetrability of the vastly expanded technical work of bureaucrats. A sociological aspect is the collegial closure of the bureaucracy as status group against attempts at control, a circumstance that is made all the more effective by the fact that ministers need not make serious efforts to subordinate their officials because they are themselves virtually immune from parliamentary censure or removal because of the conditions, at least in Germany, of coalition regimes, marked by an inability to risk the combination by having one portion act against the other.

In the end, then, Neumann turns again to the judiciary, indicating once more how much his conception of a constitutionalized state depends on the actual legal order, from a sociological point of view no less than from a jurisprudential one, as is evident from his focus on separation of powers in a realistic sociological (Montesquieu) as well as formal legal sense. The judiciary, he says, is no longer applying general laws but supplying sanctions to uphold specific administrative orders as law. The rationality of law is destroyed by the monopolized economy in the final analysis. To rationalize the orders, the judges take refuge in general clauses available in the constitution as well as in the Civil Code (BGB); and they can impose their wills without the fear of dismissal, which still exists, at least hypothetically, in the case of bureaucrats who exceed their legal terms of authority. And where there were genuine laws enacted by the parliament that they viewed as harmful to the interests they protected, notably capitalist ones, they devised rationales for declaring them contrary to some of the general clauses in the constitutional

text, although there was no such judicial review provided at any previous time in German law and no basis for introducing it, except the political design of the guild. Neumann's exceptional rage against the judiciary is, first, a sign of the importance he attaches consistently to a legal order and, second, a mark of the urgency with which he puts aside the idea that rule of law can somehow be reinstated after a revolutionary transition on the same institutional terms as before—notably separation of powers—the issue with which he challenges the confident assumptions of the Prague Manifesto, as he sees them, albeit without sufficient textual warrant.

More important, because not limited to this important but still partial question, is the subordination of parliament just as workers gain influence there. From the standpoint of the jurisprudence of rights, the vital point is that just as workers are in a position to make use of the equal political rights that liberal constitutionalism in its most expansive sense offers them, those rights themselves are steadily weakened, even within the legal order, since they are, after all, granted, like all liberal rights in continental practice, within the limits of the law. And that law, as has been seen, increasingly takes the form of administrative rulings, unbound by liberal assurances of equality and universality. Neumann concludes,

The outcome of the development is that the basic principle of the state under rule of law through the separation of powers continues to exist only in the textbooks of public law and among the representatives of the German labor movement, whose belief in this institution has closed their eyes to the fact that in a parliamentary mass democracy the absolute domination by the administration is decisive, the independence of the judiciary is a phantom, as well as that the modern interventionist administrative state requires a completely different understanding of the relations among the three powers than existed in the liberal state under rule of law. (131)

If Weimar was the prime example of this development, he asserts, the signs are growing in Britain as well.

Having set down his detailed argument about a rather unexpected aspect of the enormous change in Germany, balanced between a recitation of a complex of facts, as Neumann sees them, and reproaches against the Socialist leadership for failure to have seen them, he raises the discussion one level higher and reviews his familiar claims about the inherent conflicts between liberalism and democracy, between individual rights and equality and between the state under rule of law and democratic institutions. He cites the authority of Burckhardt and Marx, Rousseau and von Stein in support of this understanding, and he recurs to his favorite example of the conflict between the Montagne and the Gironde. Again he reproaches the failure of the labor movement to take note. Yet he insists that this divide need not mean that nothing remains of the freedom rights of citizens, but rather—and this is an express departure from the complementarities he had laid out in his earlier writings on this conflict—they must be sublated, synthesized at a higher level, in the Hegelian sense. He then summarizes and promises to show in a future article how the idea of freedom can serve in the transition to socialism and within socialist society, “how to solve the problem of conflicts between freedom and equality.” There is no such sequel to this article in comparable form and the central

terms upon which it is premised appear in fact to be flatly disvalued when Neumann turns next to the theory of the state in a comparative double review in a political journal of major works by his one-time intellectual guide, Hermann Heller, and the successor in this role, Harold Laski.¹⁰

The common subject, as Neumann notes in his title, is theory of the state (*Staatstheorie*) and the question is about a theory of this kind that can be recognized as Marxist. He begins with a brief account of the deficits in this regard among jurists identified with the Social Democratic Party. The prewar jurists who came to the movement, he says, came out of anger and disgust at the criminal law system, and thus focused on social-liberal causes, which Neumann does not consider wrong in itself because Marxism aims to fulfill the thought of the French Revolution, not to rebuff it, but that cannot provide an adequate state theory. The postwar “juridical intellectuals of the party,” who would certainly include himself, were caught in contradictions and could never attain to clarity. Marxist theory sees the state as a class instrument, after all, but the Social Democratic Party had taken responsibility for the German state and had fought it only tactically from time to time. Except for the Soviet writer, Pashukanis, Neumann asserts, the Communist literature had the same faults.

Now there are two books that claim to offer a socialist theory of the state. Introducing Heller and Laski, he notes that they manifest diametrically opposed mental attitudes. Heller’s thought, Neumann contends, clearly derives from German Idealist philosophy, while Laski manages a synthesis between Marxist theory of history and English empiricism. Laski does no dialectical thinking but comes to Marxist conclusions, Neumann asserts, while Heller comes to anti-Marxist ones notwithstanding his constant talk about dialectics.

After these blunt preliminaries, Neumann offers what he calls a “sociology-of-knowledge” explanation for the contrasting attitudes. Heller grew up in Austria amid its disintegration and found himself elevating the state above the conflicting social and ethnic groups as did a catalogue of prominent earlier thinkers, including Hobbes, Spinoza, Pufendorf and the early Fichte, Neumann asserts magisterially. Reinforcing this elevation of the nation as state were, first, his war experiences and, second, his status as a Jew in that setting. Laski’s situation, according to Neumann, is diametrically opposed on all three factors. England has been immune to disintegration since 1688; war experiences interest no one; and Jews live simply as English citizens, notwithstanding some awareness of a distinctive position. Neumann’s use of the term “sociology of knowledge” may well bear witness to his then current studies with Karl Mannheim, although the social elements he cites are peculiarly different from the quasi-Marxist ones that were usually Mannheim’s own point of departure in such interpretations, unless Neumann is presupposing a common social location of the two authors as intra-class intellectuals, which was of course the operation of Mannheim’s approach that most affronted orthodox Marxist thinkers.

Neumann then reconstructs Heller’s theory, leaving aside the central theme of the “social state under law” that had been an orienting concept in much of his own earlier Weimar writings. The question for Heller, he says, is how the state is possible as a social and historical reality despite the trends and class relations that challenge its unity and

effective presence. This question itself, according to Neumann, shows that Heller denies the Marxist view of the state as a function of class strength and imputes to it a substance independent of the class structure. Despite this fundamental difference, Neumann greets Heller's critique of both geopolitical and racist theories of the state: both hypostatize features that cannot be shown to be at most more than preconditions of the state. His reaction to what would appear to be a similar factor, however, is different. He objects to Heller's dismissal of the cultural formulations comprehended as nationalities on the ground that to subsume the state under such entities would call its unity into question, an argument that Neumann also sees as antithetical to the Marxist class analysis, presumably because national and class lines may overlap.

As a concomitant of his understanding of the state, Heller dismisses the Marxist notion of the eventual postrevolutionary dissolution of the state, and this issue is one that Neumann sidesteps rather than subjecting to substantive criticism. Rousseau and others had also had such ideas, he says, but the question of the future of the state or other modes of organization under socialism is not germane to the theory of the present structure and function of the state. The next points in Heller's characterization are simply reported. First, then, law and state are in a dialectical relation, according to Heller, but also interdependent, a model hard to distinguish, in fact, from Neumann's own statements on the question. Then too, there is a point that Neumann will in effect restate some years later in *Behemoth*, which is that the state serves to organize and activate an area of social cooperation and to create a historically necessary *status vivendi* for conflicting interests, given the existence of similarly organized entities on its borders.

After his somewhat distanced reports on these aspects of Heller's thesis, Neumann becomes polemical when he comes to speak of Heller's attempts to justify this formation. He first questions the need to justify this sociological fact and then dismisses the terms of Heller's justifications as empty phrases, drawing on principles of right and wrong that he deems to be generally agreed, when in fact, Neumann asserts, they are clearly no longer commonly held in the era of fascism. With this categorical judgment, Neumann appears to be disavowing the depth structure of many of his earlier analyses, including the essay during the previous year, with its talk of equality and freedom, where some such criteria played a key role. It would seem to be a measure of his deep disappointment with the normativism that is his natural habitat as well as, quite possibly, his admiration for a certain English elite self-assurance, where all rationalizations seem vain but the standards for "our kind" are understood.

In presenting Laski's theory, which he characterizes as being "in quite a different spirit," Neumann begins with a sort of utilitarian formula. The only measure of a state is how far it can meet demands, which are in turn a function of differing class locations with presumably opposed demands. The state according to Laski, then, is nothing but an association with sufficient power over all within, and the regime that controls the coercive constituent of this power is in fact the state, while it also proves, on the strength of Laski's investigations, to be always class-based. The international actions of these states, in turn, are to be understood in terms of economic interests of the dominant classes. Given this coercive force behind the state, Laski shows, there can be no constitutional change to socialism. Neumann then notes that Laski is in agreement with Lenin that revolution

requires a party of revolutionary professionals in the lead, and that this leads him to be pessimistic about socialism in England, because no such party exists. Neumann does not comment on this curious defeatism.

Next, Neumann attempts his own formulation of the question constellation that a Marxist theory must solve, and this appears to differ no less from Laski than from Heller as will become clearer in the dissertation on the "Governance of the Rule of Law," which is almost finished at the time of this review. His point of departure is the bourgeois state, which he says is erected on the principles of sovereignty as well as human rights. Since sovereignty gives the state an appearance different from the social groups in conflict, it enables it alone to perform a number of tasks for bourgeois society, including the protection of boundaries, the conquest of new markets, the unification of internal legal and administrative areas and the management of religious and local powers.

Yet these states must also recognize human rights at a certain stage in their developments to shelter a sphere of individual freedom. After all, this had been their ideology while destroying the old powers and they were seeking economic freedom to develop the economic forces. For reasons he does not explain, the liberal hallmark on the means to actualize bourgeois freedom is to think the guaranteed freedoms as prior to the state. The crux of the matter and insoluble contradiction is that sovereignty and human rights have the same value in bourgeois society, although they clearly cannot be simultaneously actualized. As in earlier passages in this study, he then aligns the authors who see only the primacy of sovereignty—Hobbes, Spinoza and Pufendorf—over against Grotius and Locke, who cannot view the state as separate from society, where freedom is institutionalized. Unexpectedly, Neumann next turns to points in common between Marxist and bourgeois theories of the state, beginning with the secular view of the state and continuing on to its character as a rational construction. For the explication of this concept, he limits himself to the distinction between a rational and rationalistic theory, where the latter is taken as presuming that every agent is always actuated by reason, while a rational theory takes both rational and irrational factors into account while mapping a rationally comprehensible design and capacity for the whole. The great difference, he avers, is that unlike bourgeois thought, which treats human agents as rationalistic or as mere atoms as points of reference, Marxism sees them as products of history.

On this view, he says, it follows that state and law are simply a function of society as historical formation and have no independent substance. When it appears otherwise, this is because of a certain equilibrium of forces between the antagonistic social classes, but this appearance is shattered, as in the present situation, when capitalism is unwilling to make further concessions to the working class and the state becomes simply an instrument of domination by the dominant class. This secular-rational view of the state has inherent revolutionary implications because it means that the wills of humans can determine the direction of state action. Once workers organize as a class and come to consciousness, capitalism is in danger that the state may be used against its interests. And when the proletariat declares itself as the national class, the bourgeoisie can no longer rationally defend their state and turns instead, as Max Weber had anticipated, to charismatic leadership, whether in the form of a deified leader, as in Germany and Italy, or through a theory of divine origins, as in Austria in 1934.

In somewhat abrupt conclusion, then, Neumann announces that Heller's views are doomed to failure, while Laski comes to correct conclusions despite his lack of philosophical grounding. These conclusions take the form of maxims for action. First, Marxist parties should be governed by nothing more than tactical considerations vis-à-vis the state; second, that Marxist parties know no loyalty to the state so that, third, the only question is how far the state is an aid or obstacle to the attainment of socialist objectives. Measured by Neumann's earlier promise of a theory of a state beyond the dominance of the rule of law and separation of powers, as well as his awareness in his critiques of Weimar of the many paradoxical ways in which state forms can lose the capacity to act rationally—or to retain the predominance of power—this is a thin and impatient conclusion, as witness also the abandonment of terms like democracy. It is impossible to reconstruct the local circumstances that might help to explain the form taken by this first attempt to negotiate with Harold Laski's *The State in Theory and Practice*. Questions of state and law return soon enough to his range of problems, but not before he tries to settle at least interim accounts with trade unionism, under Laski's auspices.

In 1934, Franz Neumann published a pamphlet for the Labor Education Trade Union Committee called *Trade Unionism, Democracy, Dictatorship*, which was published with an introduction by Harold J. Laski. A German version, lacking the Laski introduction, with a title that translates as *Trade Unions in Democracy and Dictatorship* and that lists "Leopold Franz" as author appeared a year later in a series on "Problems of Socialism," published in Carlsbad in Czechoslovakia. One year later still, there was an American Edition, called *European Trade Unionism and Politics*, which contained the Laski introduction and appeared under Neumann's own name under the auspices of the League for Industrial Democracy but that also credits an editor, Carl Raushenbush, who notes that the text has been "considerably revised." In the present discussion, because of the role of the pamphlet in Neumann's dealings with his immediate political associates, we follow the German version. In covering the contents in some detail, notwithstanding the number of overlaps between this pamphlet and summary accounts that Neumann had made earlier, in his Weimar writings, we are governed by the consideration that it is important to know what points in his earlier analyses he was still prepared to endorse, in view of the critical remarks he makes as Leopold Franz about the thought of the earlier Franz Neumann.

Neumann begins with a crisp and magisterial summary of his familiar listing of the ways in which "property" dominates the worker in his various roles as producer, consumer and citizen. There are five sites: the workplace, the enterprise (where policy is made), the labor market (where employer is monopolist), the consumer goods market (where monopoly rents are extorted) and the state. The last of these, Neumann is now careful to define on terms congruent with those laid down in his article on Heller and Laski:

By state we mean—disregarding all theories, and purely realistically—an organization of domination that lays claim to the monopoly of coercive force and regularly prevails. (148)

Its prime aim is the protection of private property.

Correspondingly, the labor movement must address five problem complexes. There is, first, the protection of workers, as with regards to safety and the limitation of hours. Second, on quite a different scale, Neumann lists coparticipation in the economic management of the enterprise. When he comes to his third point, he is curiously cautious. The labor movement and the state must find ways, he says, to influence labor markets so as to make labor contracts “actual,” which is to say, to make them agreements between equals. Even more indefinite is a passing remark to the effect that something similar must be done on the consumer market to make it similarly fair in its exchanges. When he comes to the state, however, there are no reservations: “The struggle over the elimination of private property must be conducted through a political fight for the state apparatus” (150).

Next, Neumann turns to a specification of trade unions among the agencies of the labor movement. They operate, first, in the mode of cooperatives, offering models for the public provision of these kinds of goods and services, as the English unions have been the first to show. In their market or cartel functions, Neumann says, their efforts center on the collective agreement supported by the nonviolent combative means of the strike, the boycott and passive resistance as well as political action, where the state determines the terms. When it comes, third, to the political roles of unions in legislation and administration, Neumann speaks of direct action, up to political strikes, as well as the indirect action of alliances with parliamentary parties. It was this last field that Neumann had excluded as part of his defensive constitutional strategy during the last years of the Weimar Republic; and it is precisely this aspect that he angrily misses in the labor movement’s awareness at the end of Weimar. Although the mix of actions always depends on historical circumstances, the functions are always interrelated, and the aim always remains the replacement of property’s domination of humankind with the emancipation of labor and its constitution in a new social and political status.

With this somewhat ambiguous—presumably because also inclusive enough to apply to different political varieties of contemporary unions—program stated, Neumann sets out to elaborate the historical periodization of relations between states and unions, which he had summarized in earlier work. Despite the distance from legal dimensions in his discussions of the state in his exile political writings, he begins with the legal crystallization of bourgeois order, which also constitutes the proletariat, dismissing any supposed analogies between unions and medieval guilds. The four phases in relations between states and unions, according to Neumann, are (1) autocratic liberalism, when unions are prohibited; (2) enlightened liberalism, when unions are tolerated; (3) democracy, when unions are recognized; and (4) fascism, when unions are destroyed.

In a passage that begins as if Neumann were simply reapplying his mantra of a nontheoretical apprehension of factual conditions but that ends with a new kind of theoretical claim on behalf of this practice, Neumann writes,

It is obvious that these four stages correspond to four different political and economic theories. But we are not engaged in the investigation of these ideologies. We are satisfied to extricate the true facts from behind this thicket of theories, ideologies, and laws, and to mould

them together into a total structure in order to reveal all the more clearly the dialectical principle in the development of the relationship between state and trade union. (154)

The striking thing about Neumann's phases of development is that he ends with fascism while leaving unmentioned the presumed revolutionary final—or, at least, next—stage. To freeze the unions at a stage of fascism also situates them in a moment of anti-fascism, whose outcome he will not predict in a design meant only to encompass what has happened. When he speaks of the purpose that must ultimately inform unions in their dealings with states, he is not saying that they will necessarily achieve it. As in an earlier discussion of dialectical relations, there is present a kind of complementarity in the contradiction, with only the possibility of effective action available to manage the duality. This may be an important clue to later thinking that sometimes appears as radically discontinuous with this period of his work. Neumann's sometimes detailed treatment of the phases in relations between the state and the unions is clearly not a model of continuous progress, especially after the third period, where he offers not only the achievements of unions but also the circumstances that ultimately defeated them, at least where they were most aggressively challenged. As will be seen in the discussion of Russia in the context of his treatments of trade unions within the "total state," there is even a certain ambiguity about the question whether unions would play a role if the goal were ever fully achieved.

In setting forth the phase of "autocratic liberalism," Neumann depends heavily on the record of laws prohibiting unions in France, England and Prussia, emphasizing the individualism in the formulations as ideological disguise of the domination that lets capitalists maximize profits. In citing a famous speech in support of the anti-union *Lex Chappelier* in revolutionary France, Neumann even asserts, somewhat surprisingly, that its ideology does not differ materially from that of fascism. He does not then bring the period to a close by virtue of a "material" explanation, as with changed requirements after the period of primitive accumulation, but speaks insistently of the resistance to the state arising ever and again from within the society through the actions of workers, and that only such resistance can account for the rise of toleration.

The "enlightened" period, then, is not simply achieved in stable form either, since the concessionary legislation brought about by political changes in response to resistance is, according to Neumann, often effectively overridden by police action rationalized by the immediate requirements of order, as well as by court cases, especially in England, that impose obstructions upon unions through arbitrary decisions. The activism of unions had to be sustained and expanded, until the achievement, with the introduction as well of political democracy, of "the victory of the idea of parity," as he labels the third period, in recognition of its rather more formal establishment in Germany. The "recognition" of unions, he construes along the lines of "the way of social reform, with state intervention in all spheres of life," while acknowledging that this sense of "equality before the law," a constitutional provision that he still read as he had throughout the Weimar years, was only achieved *de facto* in France, England and Austria. In the end, however, its realization was a function everywhere of the political strength of unions, which was sufficient during this phase to uphold their main achievements even when unfriendly parties

formed governments. In the present valedictory moment, Neumann nevertheless pays special tribute to the achievement in Germany in the area of unemployment provisions, as if to give implicit endorsement to the trade union wing of the Social Democratic Party, which had forced the resignation of the Hermann Mueller government in 1930 in support of these arrangements, an action that led directly to the end of the political system that had preserved the third phase. The center could no longer hold.

Under the heading of “the collapse of the parity concept and the predominance of politics,” then, Neumann analyzes the transformation in Germany in terms essentially similar to those he applied to the analysis he had published in English in 1933, with perhaps somewhat more of an attempt to speak in terms general enough for other labor movements to use for self-diagnoses. Much can be comprehended under the “power-and-resistance” formula, although the power in this instance is exceptionally the power of labor, and much that is set forth is also a function of unexpected consequences of the perfectly rational action of unions. First, then, the organization of labor fosters the corresponding rise of employers’ associations. Second, moreover, union policies for improving workers’ living standards and conditions also assist the process of rationalization and monopolization, which brings about, in turn, technological unemployment and a change in the makeup of the work force, especially in the increase of white-collar employees, generally hostile or indifferent to the labor movement. As the purely economic power of unions declines under these new circumstances, the economic strike as well as the independently negotiated collective bargaining agreement lose in significance. The state, in contrast, rises steadily in importance, both as employer and as decisive force in labor market policy. Neumann now correlates the phase of union recognition whose dissolution he is examining with the concept of the “pluralist system,” a designation he sought to avoid during the actual Weimar years, when he sought to distinguish the notion of a distinctive “labor and economic constitution” from “pluralism” in the sense of a politics of interest groups, which he had rejected quite as much as Carl Schmitt, who had developed the critique in a treatment of Harold Laski. Now so closely associated with Laski himself, who had rejected his own pluralist design in all its modes, Neumann abandoned the distinction, along with his ambitious treatment of constitutions as distinctive kinds of political formations.

In the present mode of analysis, the issues are simpler. The pluralist system is bearable for the working class, he says, as long as political democracy is really working and they can use their political power to counter the structurally determined thrust of the capitalist state toward unconditional support of capitalists. Yet such a system of counterbalance cannot work in the long term, Neumann says, because it is static, while conditions in society, economy and politics are constantly changing. There is evidently no concept of “dynamic equilibrium” available here, as Karl Mannheim and others had developed it during the Weimar years, although even that is not completely clear, since Neumann calls on the extreme condition of “a crisis”—presumably in the economy—as the moment when such a system must collapse. Unions prevent the drastic cuts in living standards that capital is determined upon under such conditions, and they will be pushed aside by the superior power of the state and its ultimate patrons, for the sake of the interests of property.

The democratic system—perhaps he means the democratic constitution, after all—will nevertheless provide some capacity for resistance, some protection, and so it will be displaced by dictatorship. In the context of this fatal transition, Neumann returns to the factors, as laid out in his 1933 article, making for the disabling of parliament and the transfer of power to the bureaucrats of the state machinery. To this list, he now adds the recruitment opportunities for the National Socialists within the new white-collar workforce and the support of the army, which he describes as free of all political control and disposed toward the Nazis' nationalist program. He deems the support of monopoly capital as very important but anticipates a later discussion where he will argue that both parties are likely losers, in the long run, from their conjunction.

The critical question, then, turns on the parts played by the trade unions as these factors jointly drove toward a transfer of power to the National Socialists. Neumann reiterates his opinion that the unions had only one chance to prevent this final step. They would have had to become fully political and risk everything in the fight to preserve democracy, knowing that this would have entailed at least a general strike, whose outcome would have been highly uncertain. Instead, they sought to become “unpolitical,” “although they had an even greater responsibility than the Social Democratic Party, for they saw clearly that politics entails the risk of being destroyed in the fight for freedom and democracy.” Anticipating his later discussion, he says that the German unions consequently suffered the same fate as the Italian ones, which had sought an accommodation, an outcome inherent in the nature of every “total state.”

Neumann's next chapter, then, deals with “the total state” and the destruction of trade unions. The central concept here remains somewhat uncertain, when seen in relation to its subsequent development, inasmuch as the sense of the term where the emphasis is on the oppressiveness of the regime is still in some measure crossed by a recollection of the sense introduced earlier in the period in discussions of the Italian boastful use of the expression to characterize the state as all-inclusive, where evaluations might be more complex, even among anti-fascists. This is noted to caution against simply reading the expression as a synonym for what later came to be called “totalitarianism,” a consideration especially important inasmuch as it would be an error to overinterpret the fact that Neumann places the Soviet Union alongside of Italy and Germany in the class of “total states.” With regard to unions, however, Neumann sees the effects of the total state as unequivocal: the total state cannot tolerate independent social entities.¹¹ And the initial discussion gives no sign that the Soviet Union will be a topic. He is talking about fascist states, which he characterizes along the lines of the standard Marxist anti-fascist formula as “political domination by the petite bourgeoisie, which disguises the economic dictatorship of monopoly capitalism.” And “the immanent tendency of the Fascist dictatorship to tolerate no independent movement between the state and the isolated individual broke through in the total destruction of the unions” (206). In this respect, at least, Neumann does anticipate a characteristic theme of later “totalitarianism” discussions, as he concludes his portrayal of the development in the German case with the judgment that “the atomization of German workers is complete” (207).

Neumann begins with a comparatively detailed rendition of developments in Mussolini's Italy with three aims evidently in mind. First, there is the important

circumstance that the Italian story shows the failures of several quite specific attempts on the part of labor leaders to find formulas of compromise that would enable workers' organizations to perform some of their roles in defense of workers' interests without challenging the regime's political supremacy, an account that displays the resiliency of labor, if also to no avail, as well as the deviousness of the fascist regime, as it consolidates its power. Second, Neumann is continuing an effort he made already in the Weimar years to reject any confusion between the ideology of corporatism and the sorts of parity arrangements comprehended in the labor constitution that he had once advocated, notwithstanding his present rejection of the latter. The history of an attempt by leaders of the syndicates to maintain some measure of separate collective initiative and the renewed creation of a complex system of nominal councils after the crushing of these efforts make it especially important to unveil them as fraudulent in some detail. Third, it would seem that the attention to the Italian fascist case is designed to underline the commonalities between it and the German one, in support of a wider diagnosis of the threat of fascism—notwithstanding local variations—everywhere, under the conditions of the capitalist phase he sees emerging.

He quotes Mussolini,

We grant ourselves the luxury to be aristocrats and democrats, reactionaries and revolutionaries, to adhere to the laws or to disregard them, according to the conditions of time, of place, of circumstances—in short of history in which we are compelled to live and to operate. (197)

This means, Neumann says that they will do everything they must do in order to retain their power. And the social idea of fascism, he maintains, is summarized by Mussolini's pronouncement in 1934 that mankind will have to maintain itself at a very low level in the near time, but that this will not prevent men from being strong, enthusiastic and heroic. "The social system," Neumann concludes, "is naked capitalist exploitation" (197). In the end, then, the Italian "corporations" are simply agencies of state, with all officials appointed by the regime. Neumann underlines the conclusion by returning to the four arenas of actual trade union activity with which he framed the study as a whole. Organizations to which workers belong have no voice within the workplace notwithstanding the deceptive overlap between the corporatist ideology and some syndicalist notions of workers' voice; they have no influence at the level of the enterprise, which the state controls in support of existing ownership; there is nothing but state control in the labor market, with state as the absolute dictatorship of one man and one party.

Somewhat surprisingly, Neumann inserts the discussion of Russian trade unions between the Italian and German cases. As his analysis proceeds, it is clear from his citation of several exact parallels between Russian and Italian developments that this order is not accidental. His first sentence reads, "The same tendency of dictatorship to tolerate no independent organization between the individual and the state is also manifested in the Bolshevik system" (198). Later in the article, he reports on the ousting of the Russian trade union leader who persisted in seeking an opening for trade union initiatives even after the onset of the five-year plan and remarks on "the absolute identity between the conflicts in Italy and Russia" as being manifested in almost identical formulations in

both places. These parallels are in some measure relativized by the assertion, also at the outset, that the treatment of the Russian case overall must take into account, first, that Russia had no prior experience of liberalism, let alone democracy, and, second, that “the Bolshevik dictatorship embodies an idea—the idea of socialism” (198). Accordingly, he remarks, “The similarities between Fascism and Bolshevism are [...] only formal.” Yet the question whether the methods applied in pursuit of the idea are right—and thus how much difference this difference makes—is to be put aside, inasmuch as “we are only interested in the question of the trade unions.” And there, the judgment is unequivocal. The Russian party defeated the trade unions, and the party is the state.

Neumann pays some special attention to Russian works councils, noting first that they were alien to the Leninist conception of a party of revolutionaries but gained some recognition after their marked influence in earlier phases of the Russian movement. This was dramatized in the immediate aftermath of October 1917, but the role became steadily more subject to party control, as the unions themselves were subdued and the councils were fully subordinated to the unions, which have in turn become nothing but cultural associations, beyond their functions as agents of state policy in all matters where the historical trade union movement had won its place in the labor market as well in other aspects of labor relations. Neumann concludes,

The state is in the hands of the CP. To what extent it may be a workers' state cannot be treated or decided here. That Russia is a dictatorship is clear. Whether Russia's people agree with this system or not cannot be ascertained, since no means of measurement are available. (204)

This skeptical judgment of the Russian situation is not Neumann's last word on the Leninist model in the present context.

In contrast to the exclusive emphasis on state dominance, which is the common theme of the treatments of Italy and Russia, Neumann introduces the motif of “feudalism” into his account of the German version of fascist destruction of trade unions as agents of working class needs and aspirations. He traces the stages between the “period of conquest,” when oppositional unions were displaced, notwithstanding their vain attempts to be accepted as politically neutral, by National Socialist organizations, and the “period of disempowerment,” when even these organizations were deprived of all functions relating to the work- or marketplace, culminating in a condition where the nominal workers' organization is a meaningless aggregation of all those who work, including small business owners and the like, while the workplaces are organized according to the new labor law, which states,

In the enterprise, the entrepreneur, as leader (*Führer*), and the employees and workers, as loyal following (*Gefolgschaft*), work in community to further the objectives of the enterprise and the communal usefulness to the people and the state. (208)

Neumann comments,

This is just a medieval feudal terminology, which is supposed to have the function of disguising the actual core of the law, which is Paragraph 2: “The leader of the enterprise

decides, in relation to the loyal following, a affairs of the enterprise, insofar as they are regulated by this law." (208)

In the end, then, Germany does not even permit the dependent and controlled unions that exist in Italy and Russia because the sudden transformation has not destroyed the strong tradition of opposition grounded in the workplace. Workers as such are precluded from any organization free of employer control except those mass groupings for purposes of "culture," in which they are individually isolated. Influence in the state is limited to what Neumann in this context calls "the old feudal powers," which include big capital, heavy industry, large landownership and the army.

In addition to the argument that Neumann had also made in the case of Italy and Russia, then, that modern dictatorial states could not permit the existence of independent trade unions or any other uncontrolled organizations lest they become agencies of overthrow, where the language of "feudalism" may appear simply as a derogatory term, he makes two principal claims to justify its special application to the German case. First, he traces a body of labor law that culminates in a situation where workers are not permitted to change jobs; "The Middle Ages have returned," he writes, "the worker is fettered to his place of employment." Second, he maintains, the "fascist dictatorship as a dictatorship of monopoly capital and large landholdings has to feudalize the society; that is, it must transform the society from a dynamic one to a static one" (214) in order to protect property. The worker becomes a bondsman.

His argument then takes an unexpected turn. The antidemocratic measures of fascist dictatorships are put forward in the name of the total state, where all social functions are in fact state functions. And this does indeed apply in the political sphere, where no measure of political freedom is allowed to remain. But from the standpoint of the economy, Neumann insists, the fascist "total state" is nothing but a mask:

For the theory of the total state is in fact the state theory of Bolshevism in the period of transition to the proletarian dictatorship. If Fascism wanted to be serious about the formula of the total state, it would have to socialize [...] That it does not do, for its "total state" represents the total domination of a small upper stratum over both state and society with dictatorial means. The people are made unpolitical. (215)

The renewed contrast between the Bolshevik and fascist dictatorships is once again left without further development, except insofar as Neumann once again implies the additional contrast that he invoked earlier when he spoke of the "idea of socialism" embodied in the Soviet regime. Like the Italian fascist regime, he asserts, the National Socialist regime "has no political idea except to remain in power" (212).

In the context of the trade union discussion that frames this brief treatment of the dictatorship in Germany, Neumann makes little effort to work out a detailed account of the power structure. In some passages, as noted, he simply talks of the domination by bankers, industrialists, landowners and the army, but elsewhere he speaks of a "marriage between monopoly capitalism and fascism," presumably in the sense of the dictatorship and its formations. Optimistically, in the latter case, he asserts that the partnership is serving both parties poorly. The policies of the Nazi regime are ruining the economy,

he maintains, while Hitler's alliance with the monopolies and cartels is undermining the mass base of the party, as shown by what he presumes to have been a rebellion of the SA under Roehm against this policy, whose violent suppression documents the ruling party's indifference to the aims of its principal public supporters and the slogans that had recruited and mobilized them.

In yet another part of this simplified analysis, he treats the dictatorship as a function of the logic of capitalism, beginning with a critique of the misleading identification of capitalism with a "weak" or "non-interventionist" state. This is false, first, because even the liberal state has always been as strong as it needed to be, especially in its mobilization against internal or external enemies that threatened its economic relations and wealth. As the dynamics of capitalism lead toward monopolization, the demands on the state change character, especially in times of economic crisis. Because democratic states, controlled by the public, will not meet these demands in full, "the monopoly economy overturns democracy and erects the dictatorship of the so-called total interventionist state, which guarantees monopoly rents, shackles labor, and subjugates the state to itself" (216).

What renders the underdeveloped analysis of fascist dictatorial power immaterial in the setting of the pamphlet on trade unions is the uniform applicability of the countermeasure Neumann urges on the unions. It is to be a fight for democracy against the dictatorship and its political antecedents. Trade unionism, he maintains, can exist and function in a capitalist society, if there are liberal communications and association rights; and political democracy lets unions fight for their social objectives. Neumann adds,

Even a reactionary regime is unable to threaten the trade unions, so long as it pursues its reactionary policies on the basis of democracy and political freedom. For the control by public opinion and the relativity of democracy, which gives the opposition a chance of coming to power, hinders the dissolution or delegitimization of labor unions. (214)

Within a democratic polity, of course, the aim of achieving human dignity and thus the end of the subjection of man to things require social as well as political struggle by the labor movement and thus the strategic utilization of both political and social rights—with the latter epitomized in the rights of unions—but the situation in the era of emergent dictatorships restricts the choice of priorities:

In a time [...] when the state as coercive apparatus has intervened decisively into social conditions, where state functions have become ever more decisive, both in form and content, *the struggle over this coercive apparatus becomes the central problem of labor*. This struggle is a *political* one. It demands that all the force of the labor movement, including the force of the labor unions, subordinate themselves to the political leadership. It is not a question of more or less social reform [...] but of the very existence of the labor movement. (217)

And the struggle must be carried under the banner of socialism.

From this quite concrete setting of the conflict, generalizing on his earlier characterization of the immediate pre-fascist moment, especially in Germany, Neumann shifts to a more distanced view to argue the case for socialism as a concomitant of democracy.

“Although democracy rests on freedom,” he writes, “its substance is equality.” Neumann then postulates three phases of equality, ranging from the personal and juristic equality epitomized in equality before the law, through the political equality of democratic citizenship, to the culminating social equality, which, he says, undoes the inherent perversion of the previous dimensions of equality by the private ownership of property. So long as there is a functioning democracy, then, trade unions have the dual function of utilizing their economic power to limit property and, as political associations, to engage in the struggle for the state, under the leadership of the political labor movement. In the present context, however, in contrast to earlier use of the term, “struggle” suddenly appears defensive: it has to do with upholding political and social rights as well as—curiously—“the idea [*Gedanken*] of popular sovereignty.” As in earlier sections of the pamphlet, there is a certain fluctuation in the militancy of Neumann’s argument as well as in the extent to which the German development is treated as somehow paradigmatic, presumably because the pamphlet was originally written for a British trade union audience.

Neumann’s concluding pages, however, return to the immediate political questions confronting labor under fascist dictatorship, where both his analysis and his language turn markedly to the Left:

The function of labor unions under the fascist dictatorship can only be a political one, directed to the overthrow of the dictatorship and the establishment of a socialist dictatorship as transitional step towards socialist democracy. (219)

From this general statement, Neumann turns immediately to a politically charged question of detail, whether there is a place for illegal labor unions at all, if the struggle is so clearly political. His reply brings on the scene not only Carl Schmitt, as authority for the proposition that the essence of fascism is to render the people unpolitical, but also Lenin, whose “Left Wing Communism: An Infantile Disorder” is quoted on the necessity of rendering the majority of the working class politically conscious. The problem is to counter the passivity of workers. Neumann emphasizes that there is no unified political labor movement in Germany, not only because a united organization would be all the more easy to destroy but also because of the basic split between Social Democrats and Communists, further compounded by sectarian groupings. Illegal labor union formations, Neumann maintains, will tend to create localized unifications, assisted by the organizational givens of the workplace, although such a locale will naturally also heighten the risk of denunciation for the activists.

In any case, the argument for the fostering of illegal labor union formations faces the larger question whether such entities would not be preoccupied with trade union rather than political objectives, contrary to Neumann’s more fundamental case, and whether it would not make much more sense to localize strictly political entities. Neumann’s somewhat surprising, expressly tactical reply is that German workers are thoroughly disillusioned with the political parties and more generally deterred from political involvement by this disgust as well as by their fear of the dictatorship, and that their political awareness must be renewed through the movement from immediate economic and social issues to an understanding of the class basis of the misrule under which they

suffer. He acknowledges that his call for localized illegal trade union formations runs the risk of fostering nothing more than what Lenin called “trade-union consciousness”—another unexpected invocation of Lenin as authority on key elements of the Communist approach to labor unions, notwithstanding Neumann’s uncertain views of Russia—but Neumann maintains in effect that the organizational and political circumstances leave no alternative.

This equivocal conclusion to his analysis of the struggle against fascism as well as his rather defensive diagnosis of the prospects for labor against the trends in economic and state developments that in his view led to fascism make it no surprise that this pamphlet is also the last of his independent political interventions in the debates of exile. As is true of his more polemical texts during the first exile years, there are echoes here of the *Neu Begonnen* critique of the Social Democracy’s policy in exile, but there is no commitment. There will be echoes in turn in some postwar occasional writings of the more general case he makes here on behalf of labor’s role, but his focus will shift during the next 10 years, and the labor movement will never again occupy more than a provisional role in his political theory, although questions about labor will remain a recurrent topic in his inquiries.

Neumann’s discussion of the political choices confronting the illegal labor opposition is unsurprisingly found only in the German-language publication, which is expressly addressed to the contending exile groups. The two English-language versions end simply with a call to labor unions to defend democracy where they still can. In the original English as well as in the American versions of the brochure, the question of the local applications of Neumann’s wider analysis of the threats to labor unions is taken up in forewords, written in one case by Harold Laski for the Workers’ Educational Trade Union Committee and in the other by the editor, Carl Raushenbush, speaking for the League for Industrial Democracy. The latter version limits the scope of the work in the title, offering it as a survey of “European Trade Unionism and Politics,” in contrast to the more comprehensive English and German titles, which promise an examination of trade unionism, democracy and dictatorship.

Laski opens by characterizing Neumann’s study as one that addresses “fashionable ideologies” that must be exposed as leading to “the destruction of the right of the worker to safeguard his interests,” “if British trade unionism is to avoid the catastrophes which have attended the labor movement elsewhere” (5). Any ambiguity that might suggest that Laski is including Communism among such ideologies is eliminated a little later, when Laski “mildly” disagrees with Neumann’s likening the condition of unionism in Russia to that in Italy and Germany. He says that Neumann underestimates its importance, that he fails to recognize that unions must have different functions where markets have been suspended and that he overlooks the compensation for workers “that lies in the knowledge that the successes of Russian industry are reflected in the workers’ well-being” without the deductions imposed by capitalism. While he acknowledges “grave defects” in the system, he insists “that it enables the worker, through his trade union, to win opportunities in the disposal of his industrial life which are definitely not open to him in capitalist countries.”¹² Laski also argues that Neumann’s argument, as well as the Russian example, implicitly shows the importance of an alliance with middle-class professionals

whose anti-capitalist interests, as witness Thorsten Veblen's studies of scientists and technical professionals, parallel those of labor. And labor is weakened by a lessening of dedication to the movement due to the passage of time since the enthusiasms of the original years of organization.¹³ Still, Laski acknowledges the differences between the English and German trends against democracy and unions inasmuch as English measures like the 1927 Trade Union Act that stifles political actions are still within the constitution and that England may still hope to avoid a revolutionary solution if unions learn what they must do when capitalism is under pressure, although the crisis of capitalism and the consequent push to reaction are fundamentally the same in Britain as in Germany. The differences between Neumann and Laski on the key political question of Russia are worth noting in view of the close working ties between them during the succeeding year or two. Their common front in support of a politicized labor movement and against the fallacious corporatist ideologies of fascism as well as the burgeoning antidemocratic ideologies of the privileged classes in England sufficed to bind them close. Then too, Laski's pro-Russian sympathies do not commit him to the Communist analysis or strategies for labor movements outside of Russia.

Raushenbush's introduction to the American version differentiates the American history of trade union acceptance from Neumann's generalized account. He notes first that, with the partial exception of the First World War period and the short reign of the National Recovery Act before its immobilization by action of the Supreme Court, there had been nothing resembling the close ties between trade unions and state that Neumann finds in the "recognition" or "parity" phase of trade union acceptance. Second, then, he challenges the view of some commentators that there had never been a phase of "prohibition," insisting rather that toleration is uncertain and unevenly distributed in the United States, with action against unions in some parts of the industrial field, where "'triumphant unionism' has aroused an organized opposition which has meant 'Trade Union Destruction.' Both prohibition and destruction are accomplished by methods of suppression which resemble those of fascist countries."¹⁴ What is lacking in Raushenbush's appreciation of Neumann's study is any sense of immediate threat or crisis, except for the fear expressed at the conclusion that some areas might "support the sterilization of unionism in the event of war." Raushenbush's distanced reaction to Neumann's work effectively anticipates the important measure of political disorientation that Neumann will experience in his American asylum, largely enclosed at the institute in an enclave where the talk of revolutionary urgency is everyday, but that is simultaneously (and only in part instrumentally) seeking engagement with a wider cultural and political world where there are no practical counterparts to any such urgency.

A Second Academic Dissertation: Can Law (Still) Rule?

To move from Neumann's political writings during the first years of exile to the doctoral dissertation that he submitted to the LSE at the beginning of 1936 is to change from the context of political immediacy to a scene of academic reflection, which nevertheless points toward a decision about the ways in which Neumann would in the future confront the political world, even as the book attempts to offer a more systematic account of the

dire concerns addressed more polemically by his political writings. The work is nevertheless clearly a work of exile, unfinished and at times groping for common ground between the intellectual resources of his cruelly disrupted past, much of which he nevertheless disavowed, and an approach that could win him understanding and recognition in a very different universe of discourse, where his first readers—Harold Laski, Karl Mannheim and Morris Ginsberg—were themselves deeply divided.

Harold Laski has been introduced earlier in this chapter, and he doubtless remains the single most important figure in Neumann's reorientation to English exile, to academic work and to the political world after Weimar. Karl Mannheim was himself an exile from Germany, having been deprived of his professorship at Frankfurt by the early National Socialist legislation to purge the civil service and having been helped to a teaching position at the LSE by Laski and Morris Ginsberg. Mannheim is best known for his studies of the ideological dimensions of social and political knowledge, collected in a set of essays in the widely discussed *Ideology and Utopia*, which was being translated into English during Neumann's years at the London School. Nevertheless, Mannheim's first book in exile (originally published in German) bypasses the sociology of knowledge project, where egregious ideological distortions were to be minimized through the capacity for mediation that he imputed to sociologically informed intellectuals, in favor of a conception of a superior mode of thinking that he associated with the mental and practical activities of a planning elite, whose exploration and cultivation he expressly put above the emphasis on ideology.¹⁵ Although Mannheim's sociology of knowledge is informed by a continuing dialogue with Marxism, his discussion of planning and the knowledge it entails is much closer to American pragmatist thought and its German counterpart among some economists, to the disappointment of Laski, who evidently lost interest in him. It is possible that Mannheim and Neumann knew one another in Germany, however slightly, since Mannheim included Neumann as a researcher in a funding application he made to the Rockefeller Foundation before he came to England, when almost all of the other researchers proposed were Mannheim's own students.¹⁶ In any case, Neumann is familiar with both aspects of Mannheim's work, although he appears not to distinguish them.

Morris Ginsberg was in many respects the antithesis of Karl Mannheim, although in fact Ginsberg had been active in bringing Mannheim to the London School. Ginsberg had read Mannheim's sociology of knowledge as pointing toward the sort of inquiry into the psychological and sociological sources of rationality that he admired in the work of his own teacher, Leonard Hobhouse, and in John Stuart Mill's program of ethology. Within a year or two of Mannheim's arrival, Ginsberg vigorously objected to what he considered to be Mannheim's philosophically loose and overly adventurous speculation, likening it to the work of the largely British amateur scholars whose control over the sociological journals and associations Ginsberg was fighting to break. His own thinking combined a program of reasonably fine-grained empirical sociology with a philosophical pursuit of objective moral values. Unlike Mannheim, whose influence over Neumann's dissertation would have been strictly moral, since he was not empowered to examine doctoral candidates, Ginsberg was also an influential evaluator of the dissertation. It should be said, however, that there is reliable testimony to the effect that even advanced students at the time did not know about the strong differences between the two sociologists.

In sum, then, it is obviously difficult to distinguish diplomatic accommodations from intellectual conviction in Neumann's responsiveness to these very different but equally forceful mentors, especially in the case of a thinker like Neumann, whose willingness to balance and negotiate between contrasting intellectual strategies is a lifelong feature of his work; but the new presence of these dissimilar figures in his intellectual reorientation in exile certainly conditions what Neumann will say—and will not say—in his dissertation, where he has set out, at least in part, on an inquiry that imposed different rules than those he followed earlier as a legal thinker and practitioner. It is moreover not easy to distinguish diplomatic accommodation from the experiments integral to the process of learning.

No less importantly, then, the dissertation was his valediction to legal practice as a mode of action relevant to the politics of social change. On one level, this is obvious on the surface, since, unlike his close associates in the Weimar years, Otto Kahn-Freund and Ernst Fraenkel, he made no effort, as noted earlier, to qualify as lawyer in the place of asylum. Most of Neumann's legal practice had presupposed the model of dynamic constitutionalism that he now judged to have been an illusion. The distinctive and autonomous constitutional complex, which Neumann had characterized as the constitution of labor and situated at a special location within the overall democratic constitutional design, had authorized and given form to the expansive activities of labor unions in relation to property. These activities, which combined organizational initiatives with legal assertions of claims, had seemed destined, in line with Karl Renner's thesis about the cumulative change in the function of institutions, to render ownership of private property ever less powerful in relation to work and its proceeds, even if the "essential" legal form was not expressly abolished. To be a labor lawyer under those circumstances was to be in a strategic position. But if that analysis was profoundly wrong, and if the legal process has been so much subjugated to the resistance against progressive social change as Neumann's conclusions in his political pamphlets assert and the last pages of "The Governance of the Rule of Law" purport to show, lawyering is no longer a politically relevant mode of activity.

Two incidental but surprising passages in the dissertation suggest something of the distance he may now want to take from his own legal pleadings and writings. In one of them, he is assessing the relationship between Cicero and Natural Law and finds arguments grounded in mutually contradictory opinions within one of Cicero's legal speeches. "Cicero here appears as advocate and [...] by the emphasis he laid on the postulate [in question] [...] he hoped to buy the good-will of the court," Neumann writes (52–53). He returns to this figure later, when he is evaluating the weight to be assigned to the citations of precedents supposedly resting on Natural Law by Sir Edward Coke in a decision arising in the course of the conflict between Coke and James I. "It seems inadmissible," Neumann writes, "to maintain on the basis of Coke's witness that natural law played any decisive role in legal practice; for Coke was similar in this to Cicero—a pure advocate." The dismissal of these iconic lawyers as Sophistic rhetoricians in their activities as advocates implies a sharp questioning of his own earlier life's work. Or at least this appears to be the case, since he nowhere reflects in any way on the relations between lawyering and the state of the law.

These aspects serve mainly to help characterize the dissertation when we view it as documenting the project that produced it, which is not only unlike the elaboration of lawyers' briefs in the Weimar years or the direct interventions into political controversy of the earlier exile publications but also a function of complex academic negotiations with little time and much at stake. The common coin of the latter is a display of scholarship. Some 40 percent of the text is accordingly taken up with quite lengthy treatments of authors and movements in the history of political and legal theory. Such expertise in the canon of established earlier works was the stuff of the academic subdiscipline, especially under Harold Laski, and essential to the qualification Neumann was seeking.

This is not to say that this comparatively long section of the dissertation contributes nothing, in Neumann's view, to the development of his central argument. The present configurations of law and state power, which are his ultimate concerns, are to be understood as the historical products of past formations, which are in turn to be illuminated by encounters with the theories that expounded and evaluated them in their time. Yet his readings of these political theories do not involve their diverse philosophical methods and premises but rather construe them as setting forth a range of rational models that variously order a common body of concepts, with differences to be explained largely by different historical circumstances and political designs. He is very clear on this:

We emphasized the necessity of rationalizing the political theories with which we are dealing. We have, therefore, avoided dealing with the metaphysical fundamentals of the various theories, which are often in any case incomprehensible. We have tried to divorce the political theory from its metaphysical background, which on the average is very simple, because there usually is very little relationship between the political theory and the metaphysical system. We have also attempted to introduce modern terminology and concepts, in order to make the theories understandable. We have the impression that a simple repetition of words and notions in the theories used by their authors makes any exposition of the theory incomprehensible. (50)¹⁷

In this resolve, Neumann does not deviate from the standard practice of the distinctive field of political theory, as it was being codified, largely apart from academic philosophy, especially in English-language university textbooks and scholarship. The "Whig interpretation" of political theory is his point of reference, even when he deviates from it, as he does especially in his readings of Rousseau and Hegel. Neumann delimits the boundaries of the political theory canon when he explains in his preface why he had not introduced his treatment of the twentieth-century crisis of "rule of law" with a review of political philosophy models, as he had done in his account of sovereignty in relation to natural law and its "disenchantment":

With the beginning of the nineteenth century, political philosophy practically came to an end. Hegel really said the final word. From then on, political theory either lived on the old heritage, or turned completely from philosophy towards sociology. [LSE Abstract]

Neumann is clearly following this last-mentioned turn in political theory when he characterizes the book as "a sociological treatise, intended to be a contribution to a theory of modern society, with a view to its control."¹⁸ After Hegel comes Marx.

Yet his conception of sociology cannot be simply—or consistently—equated with one or another Marxist approach. As was true of his first dissertation, the work is visibly engaged in negotiation with the teachers with whom he is working. His acknowledgments of debts to his LSE mentors are neither routine courtesies nor confessions of dependency by a grateful pupil: he builds in important measure on experiments with key themes and strategies found in their work but reserves and exercises the right to differ. The notion of sociology as a successor to philosophy in an important sense, preempting and reformulating questions historically associated with the latter, including questions about the character and assessment of knowledge, is characteristic of Mannheim—if also anathema to Ginsburg, at least in anything like Mannheim’s version. The readings of the theoretical texts are thus, among other things, occasions for exploring the uses and limits of Mannheim’s suggestions.

More generally, it must be said, Neumann’s engagements with Mannheim suggest an unusual measure of uncertainty, although it is obviously impossible to say whether these are a function of Neumann’s indecision or of insistent pressure from the prominent exile from his own original home university. The difficulties appear, for example, in Neumann’s attempt to merge the conceptions of rationality in Max Weber and Karl Mannheim, to be discussed below; and they are striking in a passage in which he somehow conjures up an ideal of judges who arrive at “thought at the level of planning,” although there is no explanation of the abrupt leap from his exposé of judicial ideology to a concept that Mannheim in later work, when he has in fact put aside the concept of ideology in the sense Neumann employs, applies to sociologically educated agents of social change.

If Neumann’s display of familiarity with the political theory canon is new, the problem constellation of the work shows more continuities with his 1923 dissertation on legal-philosophical issues than might be expected. First, he retains the trifurcation of legal studies, distinguishing among the explication of the law as a self-dependent system, as practiced in the “pure law” of Kelsen, the philosophical evaluation of law by the appropriate rules of reason, both substantive and formal, and a sociology of law that draws without orthodoxy on Marxist writers. To amplify this third connection, he denies that Marxism entails an exclusively economic interpretation:

Such an assertion would be as essentially un-Marxistic as that history is the development of ideas, or the work of great personalities. Marxism aims at a total interpretation of all social phenomena. Marx was a Hegelian, and Hegel has conceived a law to be a dependent element in a totality, one of the many others constituting the character of a nation and an epoch, and receiving their meaning and justification from their interdependence. (16)

More focused than in his first dissertation, where the actual sociological analysis was not developed, he writes,

The central task of a sociological investigation into the legal system consists in indicating on the one hand the conditions under which law and the state can develop relatively independently, and on the other hand the forces which go to destroy this relative autonomy and subject the law and the state with full force to the stream of social realities. (16)

As in several of his earlier German studies, he links this general issue to Karl Renner's observation that the legal norm and the underlying social structure are both subject to independent change, and that sociological analysis must work out the distinct causes and effects of such development. Second, and no less important, he remains bound eventually to the question with which he had opened his earlier work: how to conceptualize, justify, explain and defend the conjunction of features of political practice and form constitutive of democratic socialism with certain key constitutional legal aspects historically grounded in liberal ideology. He does not arrive at an answer. Third, then, notwithstanding an intensified curiosity about connections between Hegel and Marx, he does not offer a synthesis between these discordant elements, especially with regard to the state, but at most a politics of what we earlier referred to as "complementarity," for which the way must be cleared and which must then be enacted day to day.

The main difference between the two doctoral studies, taken at this level of generality, is that the first proceeded as if the prime problem involved philosophical clarity in justifying a course that is not in doubt, whereas the second, as might be expected, addresses a condition of threat that mortally endangers the very possibility of such a politics. In this respect, Neumann seeks to ground his dismissal of the strategic design that had oriented him as labor lawyer during most of the decade before his exile, the constitutionalizing of dynamics of social change by means of securely bounded autonomous sub-constitutional arenas of conflict. This scheme was grounded, he concludes, on a dire misunderstanding of the state as well as a failure to anticipate the power centers generated by the drive to economic cartels and monopolies. And he thinks that it foundered as well, after a few years of plausibility, on the weaknesses of the labor movement—in its labor union formations as in its divided political agencies, a thesis that he develops in greater detail in the political writings of exile considered earlier.

Despite these overlaps with earlier writing, the book is framed by three novel "theses" stated in more general, theoretical terms, laying down contextures of problems that are to be elucidated by the sociological inquiry Neumann proposes. He may be seen to be taking up the issues raised by his first publications in exile, if also in a more academic mode, although he can hardly be judged to have delivered on his promise there to lay out the relations between Marxism and freedom. First, then, Neumann poses the puzzle of the coexistence in modern societies of sovereign states, whose power overrides that of all constituent social groups, on the one hand, and, on the other, a recognition by modern society, "in the decisive periods of its existence," "[of] certain human rights [that guarantee] a certain realm of freedom from the state" (3). The reference is to the era of the competitive market economy and uncontested bourgeois political domination. To the secured realm of rights, Neumann maintains, was added the guarantee that all acts of state intervention would be imputable to and legitimated by general, universally applicable legal norms, a formal feature of government that supplied the second element of the "Rule of Law." While sovereignty and the rule of law have both been essential constituents of the modern state, as it has taken form, Neumann insists that they are also logically irreconcilable. The observations in the first dissertation about the conflictual conjunction between liberal and democratic principles in a state like that formed under

the Weimar Constitution prove to refer to a special case, if also a critical one, where the design of sovereignty is democratic and where the rights guaranteed by the rule of law are nevertheless closest to liberal ideology. While the concept of sovereignty precludes limitation by any force, the rule of law is no less unconditional in principle. Yet, as a matter of historical fact, the two elements have often coexisted and even strengthened one another, just as they have, at other times, been mutually disruptive. The sociological task is to explain the conditions under which these elements arise and their different constellations take form or break down and to project possibilities for recalibration in a new epoch.

His model is derived from the secure liberal historical situation analyzed in 1885 by A. V. Dicey's *Law of the Constitution*, when the conflicting principles were coordinated because it was a period when "the highest efficiency of the power of the state [was] reached just on the basis of political freedom," when "sovereignty [...] emerge[d] from free competition of society." Although most of the dissertation is in fact taken up with an examination of just this period and its attendant ideological and social conditions, which prove to be more complex than this idealized formulation suggests, the ultimate aim is to learn from it to understand and act in a period "when a real antagonism corresponds to the logical one [between sovereignty and Rule of Law]." Such a condition, Neumann says, "leads to a redistribution of spheres between state sovereignty and the Rule of Law, in favor of one element or another." In a uniquely fervent statement of what he has in view, although the present study comes only to the threshold, he writes,

In the same way as the bourgeoisie under the slogan of "Representation of the Will of the People!" has brought down feudal rule and monarchical absolutism, so will the proletariat on its side represent the will of the people by merging the state into the proletariat after it has "become the nation." [...] The democratic concept only exhausts itself when the proletariat becomes the nation and constitutes itself as the national class. (5)

Notwithstanding the conclusiveness of this formulation, Neumann is fully aware that the antagonism in his own historical moment is being resolved in quite the opposite direction, a reading directly antithetical to his diagnosis of the circumstances at the time of his first dissertation.

Neumann's second "thesis" expands on the alternative possibility. The focus narrows to one of the factors that evidently may enter decisively into the field defined earlier as the intermittently problematic conjuncture of sovereign state and rule of law. Introducing without preparation a formula that is clearly intended as a commanding value, Neumann says "that a secular and rational justification of state and law; i.e., a human justification, basing itself on the will or the needs of men, can have under certain historical circumstances revolutionary consequences" (5). Citing Marx's statement that the proletariat will use the weapons by which the bourgeoisie had overthrown "feudalism," Neumann specifies this possibility with the example of the proletariat adapting its ideology and using the electoral and other political means of the democracy and rule of law that had institutionalized bourgeois rule to put forward its own more comprehensive and transformative claim to "be the nation."

This conception, up to this point, rather resembles the strategy that Neumann and his political associates in the labor movement had articulated and followed during the Weimar years, but Neumann cannot leave the matter there after 1933. “Every society,” he now adds, presumably referring to the social forces still in command of both the state and the laws, must now confront what he curiously calls a “well-known dilemma.” They must choose “either to satisfy the claims of the proletariat, or to abolish democracy.” Neumann then flatly asserts, “The choice usually made is well known.” Alluding to developments for which he considers the German case as paradigmatic and that his sociological work will explore, he concludes,

The concept of democracy is abandoned, when the masses, newly awakened and aroused to a political self-consciousness during the period of industrialism and world war, demand this democracy for themselves, and when a society feudalized by monopoly-economy is unable to satisfy that demand. (5)

This would appear to be the setting in which the “human justification” of state and law might yield “revolutionary consequences,” although this possibility is not in fact a manifest theme in the book, as applied to the diagnosis of his time.¹⁹

The more limited aim is rather to explore in depth the extent to which “the general Rule of Law guaranteeing freedom in a society based upon inequality” acts to disintegrate the status quo precisely because the egalitarian implications of “equality before the law” counter the guarantees of (unequal) property, as the institutions concretizing the latter right are ever more countered by working-class organization. When Neumann examines political theories and legal practices, he often distinguishes between the limited scopes they may have, when taken literally, and the social-political dynamics that they may set or keep in motion. In the face of such unanticipated consequences, he maintains, the rule of law is limited and eventually simply abandoned by those whose power had earlier been expanded by its institution. “It must happen sooner or later,” he writes, “that the further recognition of the Rule of Law becomes dangerous for the power positions or for the stability of the social order”(6).

What Neumann means to say, as the next sentences indicate, is that the elements of reason (*ratio*) in law, as well as the consequent standards of human wants, and human needs are suppressed because of the disruptive threat they pose to the prevailing order of inequality. The most radical counter to these progressive forces is a charismatic justification of law and authority, which epitomizes irrationality. This is not, however, the primary target of Neumann’s expose in the dissertation, although he examines it briefly in his very last chapter. Almost certainly because he is addressing himself to the questions arising in nations not yet under fascist rule, he emphasizes instead that the rational rule of law is likely to be displaced by legal practices that are in turn expounded and justified by natural law theses that are purely ideological in character, serving the dominant powers. Although there were passages in his earlier dissertation where he suggested that natural law could served as an ideology—but not as a theory—of political action favoring the many, he now emphasizes only that this ideology lacks the underlying revolutionary rationale and dynamics of the rule of law, properly understood.²⁰

He rejects the idea that natural law can serve the working class as revolutionary ideology, as it had served the bourgeoisie. As Neumann states at some length in the later article derived from the dissertation, one rationale for this focus in the dissertation is his belief that “natural law” theorizing in the courts and at the bar damaged the Weimar constitutional design for which he had been a main advocate and jeopardized the understanding and critique of the new developments culminating in fascism.²¹ The substantive point of his historical survey of the theoretical stages in the rationalization of natural law, a process that he calls, following Max Weber, the “disenchantment” of natural law, is to provide a grounding for this critique in its wider application, culminating in an assault on Immanuel Kant, as well as for an approach to the rational potentialities beyond natural law, which he sees best anticipated by Hegel. Somehow, the revolutionary potential of theoretically reinterpreted elements within the theory of the rule of law must be uncovered and tapped.

When Neumann speaks of “theses” in the opening pages of the work, he must not be understood to be outlining the major topics covered by the dissertation but rather to be indicating three fundamental dynamic considerations that remain present in the logic of his analyses, although his extended treatment ends in fact with a diagnosis that sees all three as effectively stymied in his own time. How the complementarity between state and law, the revolutionary potential of rationality or the disruptive force of rule of law can express themselves—can be enacted—to end a time when all three are obstructed is not said. Those are the questions whose immediacy is to be shown.

From another point of view, the “theses” can also be understood as key items on the bargaining table in the continuing negotiations between Neumann and his patron and mentor, Harold Laski. Simply stated, they are all three implicit in Neumann’s reservations about Laski’s comparatively unreflective formulations of the Marxist case, as briefly noted in his dual review of Heller and Laski on theory of the state, notwithstanding his admiring preference for Laski.²² On the question of the illogical coexistence of sovereignty and rights, then, Neumann is not ready to treat the latter as nothing but ideologically disguised instruments of domination. He always comes back to the problem of preserving while transforming the residual “ethical” component of law.

More broadly, even at the risk of some repetition, it will be useful to review the concluding section of that double review, published a month before the submission of the dissertation, taking it as its somewhat less inhibited prospectus, composed without the need to defer to academic usage and various examiners. Neumann announces first of all that he will set out from the modern bourgeois state and attempt to gain clarity about commonalities and differences between its theory and the Marxist theory of the state. The modern state is necessarily based on both sovereignty and human rights. Sovereignty cannot be dispensed with, in view of numerous essential tasks in relation to foreign states and, above all, in relation to powerful social agencies and social groups in conflict, which can be controlled—and, if necessary, destroyed—only by the state. Yet the bourgeois society must also recognize, “in the decisive phase of its existence,” a certain sphere of individual freedom, a bundle of rights that are thought of as prior to the state, in the liberal manner. In this case, however, Neumann grounds the necessity only in the requirements of competition and in the historical circumstance that the claim of rights

had been used as a weapon against royal absolutism. Neumann's difficulties with the theoretical grounding of rights, which had been simply a function of constitutional theory in his Weimar writings, are not limited to the dissertation. Neumann's point, in any case, is identical with the starting point of the dissertation: the logically insoluble contradiction between these two constitutive elements of the bourgeois state. Since he is not clear whether the Marxist theory he is discussing is also meant to comprehend the state beyond the high point of the bourgeois regime, he does not consider whether such a contradiction would recur in a state consonant with the Marxist design.

He turns instead to the secularism common to bourgeois and Marxist theory and the understanding of the state as a product of ordinary human activity. "And this gives rise to a second idea, where bourgeois natural law [*Naturrecht*] is at one with Marxist theory of the state," he writes, "in that the state is a *rational arrangement*; i.e., that the state and the principles of right [*Recht*] are to be understood on the basis of the wills and needs of human beings" (141). He then devotes a long paragraph to the distinction between a rational and a rationalistic understanding of these arrangements, with the latter imputed to all bourgeois theories. Unlike a rationalistic theory, a rational one fully recognizes and seeks to account for irrational motives and ways of engaging the world:

Such rationalistic theories as view the human being as nothing but a creature of the understanding. This is where Marxist theory takes leave of the bourgeois one. The human being does not appear in Marxist theory as a creature of understanding, not as an atom, not as a mere point of reference, but rather as a product of history. The decisive difference between the bourgeois and Marxist conception of the state lies here. (141)

Neumann concludes from this that the state and the principles of law are nothing but functions of society and have no independent substance apart from society. While granting the point that Engels suggests in some places that the state may stand above society and quell its conflicts under some circumstances, Neumann insists that this applies only during brief periods of balance between the contending classes, and that this ends when capitalism is no longer in a position to make concessions to the working class, whereupon the state reverts to being nothing but an instrument of domination by the ruling class.

"The secular-rational explanation for the state and legality has an inherent revolutionary effect," Neumann maintains, because in a state grounded in the will or needs of humankind, humans can determine the direction of state action by their wills and needs. And when the working class gains political consciousness, constitutes itself as a class and lays claim to represent the nation, capitalism is suddenly faced with the danger that the activities of the state will be determined by the will of the working class. "When this danger actually materializes, the bourgeoisie quite rationally abandons all efforts at rational justification of the state" (143). At this point, Neumann finds, referring to Max Weber, that the bourgeoisie seeks refuge in an irrational justification, most commonly in the form of a charismatic idealization of a leader, as in Germany and Italy. Neumann abruptly concludes from this that the proletarian parties can be guided by nothing but tactical considerations in their relations to any state and that they cannot know anything

resembling loyalty to any state. Their only criterion can be whatever best helps or least hinders the attainment of the socialist objective.

This harsh conclusion is not reached in the dissertation, where the suggestion appears to be rather the value of a continued adaptation of the politics of sovereignty and lawfulness, except in the “theses” that we have been examining. The key questions appear to be unresolved for Neumann, as witness for example the persistent insistence on the “ethical” component in rights, which would make no sense in the “tactical” vision of relations to the state, except insofar as the theory itself is taken as being itself merely a tactical presentation. It is best, in our view, to recognize the uncertainty that this “political” formulation of his project manifests and to return to the dissertation itself.

While introducing the legal sociological aims of his second dissertation, he quotes Gustav Radbruch, who had been an important authority in his first one, on the meaning of “law in the philosophical sense,” as being “directed towards the idea of right,” which entails, in turn, the demand for justice and the demand for the satisfaction of human needs, in dialectical tension with one another. None of these topics as such belong to legal sociology, he says, because philosophy cannot speak to the needs of state and society, which will determine the extent and mode of realization of the philosophically explicated aim. Yet Neumann does not question the reality and rational importance of such aims, as is clear from the second and third of the “theses,” which presuppose their articulation, albeit in somewhat different terms. The unresolved issues between Neumann and Laski, whose presence is registered in the “theses,” can be further tracked in Neumann’s balanced and manifestly unfinished encounter with Hegel as having said “the final word” in political philosophy, a “word” that did indeed get translated into an ideological rationale for the *Machtstaat*, according to Neumann, but which could also be transmuted into the most profound word yet said about the state with law. For Laski in *The State in Theory and Practice*, Hegel is invoked frequently but only as the epitome of ideological distortion of political relations. Neumann’s sociological inquiry, in contrast, is haunted by newly initiated unfinished business with Hegel, probably arising from Marx’s early writings on Hegel, which Neumann must have learned about late in the Weimar years, when these texts were first published. There is some variant of the state and law hidden in that philosophy, Neumann suggests, whose sociological applicability he hopes to put on the agenda through the work of the dissertation.

In the ordinary sense of a thesis to be established by evidence and argument, the work undertakes to show, first and foremost, that the logically anomalous conjunction of sovereign states with the rule of law was sociologically a function of the capitalist competitive society in its development until the early twentieth century. This investigation involves a showing in some detail that the British Common Law and German *Rechtsstaat* designs, despite consequential differences, both meet the standard intended by the rule of law, which is “determined as the rule of the State through general norms, which have the character of formal rationality, calculability, and predictability,” as well as a certain recognition of rights. Between his explication of the conceptual constituents of the rule of law and his showing of its relationship to “the social background in the competitive society,” Neumann inserts a history of political theories that he considers relevant to this complex. His conception of this relevance is challenging.

There are three dimensions, although they are not all considered in each case. First, there is the notion of these theories as sources or expressions of ideologies, where he distinguishes between those that obfuscate realities for the benefit of those who control their terms, on the one hand, and, on the other, those that clarify matters by providing a working and legitimating model adequate to effective general practice within the historical setting. This is a distinction that he had already made in his first dissertation. In the second place, Neumann characterizes political agencies and especially states on the basis of the political theories that more or less rationally comprehend their implicit constitutional processes of power and resistance. This is the background of his ultimate utter condemnation of National Socialist Germany, in his later book on the subject, as lacking the qualities of a state and having no political theory. Third, then, there is a separate analysis and assessment of the theories as explanations of the relations between sovereignty and law, measured by criteria of rationality, proceeding through a whole catalogue of variations on the theme of speculative natural law until “it is superseded by positive law which has the formal character of general rules.” This is the aspect that appears best to correspond to the subtitle of the section as a whole: “The Disenchantment of the Law.”

He designates the succeeding treatment of “the rule of law in the nineteenth and twentieth centuries” as a “verification of the theory,” without making it clear whether the theory in question is the sociological one about the interrelationships between the rationalization of “rule of law” as the competitive capitalist social order is completed, the immanent explanation of the displacement of natural law in the sequence of theories he presents or, indeed, the culminating theory on the relations between law and sovereignty that he finds implicit in Hegel. In view of the overall strategy of the section where Neumann follows the track of natural law and its aftermath, the three possibilities converge, with Hegel left to provide an understanding of the sociological interdependence between the scope of the state and the legal wants of civil society as far as those could be understood before the emergence and self-recognition of the fourth estate, the working class.

Despite the exposé of the limits of liberalism in all forms implicit in Neumann’s preliminary “theses,” he treats it with respect in this discussion, highlighting what he calls its “ethical dimension,” in some measure because of his determination to distance himself from the “the totalitarian state’s criticism of the liberal theory of law.” In a preface to this section, he attacks Communist, Fascist, and National Socialist writers, who compare idealized versions of their own ideologies with caricatures of the actual circumstances in states under liberal constitutions. This immediate vital confrontation—aimed at Carl Schmitt, above all—helps to explain why Neumann does not expand on the categorical rationales for revolution briefly set forth in his theses.

The summary statement of his findings as presented in his preface, in fact, makes no reference to natural law at all, not to speak of revolutionary change, and recalls, in fact, a tradition of political commentary that dates back to Adam Ferguson and his master, Montesquieu, notwithstanding the reference to Hegel. Neumann writes,

The conclusion of the book—that law as such, and as realised historically in the English doctrine of the rule of law and the German *Rechtsstaat*, guarantees only a minimum of freedom;

and that the attainment of liberty is rather the outcome of political struggle for it—does not appear to amount to much. But law does contain a “negative” guarantee, which, as Hegel put it in his *Philosophy of Right*, must not be made absolute, but must not be thrown away.²³

Neumann’s study closes with a chapter on the adaptation and crisis of the rule of law in Weimar Germany, taken as a decisive example of a state increasingly under monopoly rather than competitive capitalism, and another on the “rule of law under National Socialism,” which concludes with the judgment:

That law does not exist in Germany, because law is now exclusively a technique of transforming the political will of the leader into constitutional reality. Law is nothing but an *arcanum dominationis*. (298)

These chapters, an appendix to the dissertation as such, come closest to the “theses” discussed above, taking over from his initial political exile writings the principal issues that will most acutely occupy him during his first years in America, as recorded above all in his publications under the auspices of Max Horkheimer’s Institute for Social Research in New York City and in his large work on the Nazi regime, *Behemoth*. The self-declared principal themes on law, sovereignty and democracy of the actual dissertation will not reemerge until the postwar period in his unfinished work on a twentieth-century version of liberal-democratic theory, grounded more or less in American rather than German or British experience. Accordingly, we will concentrate at present on the “Disenchantment of Natural Law,” as viewed first through the history of legal-political thought and then in the sociological chapter on the displacement of natural law by a rational rule of law more closely attuned to the “actual needs or wills of men” in the epoch of the maturation of the modern nation-state and competitive capitalism.

Law, Sociology and the Puzzle of Rationality

As indicated by our preliminary overview of Neumann’s LSE dissertation, its theoretical framing is not lacking in uncertainties and problems—difficulties that Neumann will address in part in his later work, although he will also simply drop some of the troubling issues. In this, his second dissertation also resembles his first, which proves on closer reading to be but a prolegomenon to the consideration of the questions about punishment that it poses at the outset. Our aim in treating these required academic treatises is not, however, to criticize Neumann but to understand him better. The standards for judging the work of a public intellectual are not identical with those applicable to a philosopher or social scientist; and a prime criterion for what counts as such work is publication at the author’s initiative. In the case of this dissertation, Neumann expressly refused to publish it, although Harold Laski made an offer to have this done.²⁴ His stated reasons are immaterial. Putting its pragmatic purposes aside, the work is an exercise in reflection, an attempt to balance a number of things, which manifestly posed more questions than he could answer—or even fully clarify. Moreover, the project had to be done hurriedly, under great difficulties arising from a new genre of writing, new expectations in analysis and an unfamiliar language—not to speak of the need to negotiate with his mentors

under conditions of dependency. In dealing with his “Part I. Theoretical Basis,” accordingly, we will limit ourselves to pointing out the issues that will help with our reading of his later work. This is the more justified by the circumstance that the substantive sections of the dissertation depend on only a few of the conceptual and theoretical probes of this first section.

Neumann begins systematically with a definition of law, where he postulates a conjunction of ordering norms of society and coercive power, given that the former may arise anywhere in the social process while the latter has become the monopoly of the state since the sixteenth century. He distinguishes also the legal validity of the norms, which requires only that coercion be a formal mandate, from their sociological validity, which depends on a high probability that coercion will in fact be employed to uphold them. The implicit point at issue, quite apart from aspirations to systematicity, might have been to solidify the distinction between sociological study of law and the sociological jurisprudence that Neumann had seen as a danger in some readings of Weimar labor law, as exemplified in the controversy mentioned earlier that had divided the labor group in the face of legal rulings that drew inferences from the supposed sociologically validated “community” that joined all employees (and sometimes even employers) within a common workplace, obscuring the actual divisions established by differential contract and property statuses.²⁵

As he had done in his first dissertation, Neumann then touches very briefly on the question of the “philosophical” sense of law. He accepts Radbruch’s dictum that law is a “reality that has as its function the service of the idea of right,” which latter he then divides into the two fundamentally dissimilar elements of “the demand for justice” and “the demand for the satisfaction of vital human and state needs.” For his present “sociological” purposes, he insists, the definition given to justice is irrelevant; what matters is only that “law in the philosophical sense is not identical with the needs of the state or of society.” He then immediately insists however that the “main problems of the philosophy of law” arise from “the dialectical tension between justice and necessity.” While this juxtaposition of “philosophical” and “sociological” accounts of “right” is quite unclear at this point, it points forward to his curiosity about Hegel later in the work.

Neumann next lays the theoretical foundation for his acceptance and simultaneous narrow circumscription of Hans Kelsen’s “pure theory of law.” The “science of law,” he says, “is just as much a science of norms as of Reality.” The one looks at formal relations among norms, treating them as objective logical entities, while the other looks to the social substructures of laws as well as the social constellations of agents involved with law. If the immediately preceding section ends with an anticipation of Hegel, this classification of the sciences belongs rather to the neo-Kantian logical scheme of his first dissertation, notwithstanding his present claim to build above all on a “criticism of Kantian and neo-Kantian legal philosophy.” Neumann’s management of this seeming conflict is to highlight the critical aspect of Kelsen’s theory, building on Laski’s concession of the validity of the project on its own terms, above all, its contribution to recognizing the inner link between law and the state as well as its emancipation of law from moral philosophical constituents, as in natural law. “Normative Jurisprudence,” he

maintains, “does not reach any concrete positive results. The results reached by it are purely negative ones” (19). This opens the way, he maintains, for a new consideration of the philosophical questions as well as providing a univocal subject matter to be examined by sociological study.

Neumann speaks of legal sociology as the inquiry into the “social substructure” of law, although he is careful at first to take distance from any tendency to equate this categorically with the concept of a “base” that determines the ideological “superstructure” of law, as it is developed in a kind of Marxism that he questions. He maintains rather—citing the Soviet legal theorist, Pashukanis, as his authority—that law serves to order society under certain circumstances, with the question of the conditions under which law can thereby affect changes in society as well as the “forces which go to destroy this relative autonomy and subject the law and the state with full force to the stream of social realities” left for sociological study. He adds, “This will be one of the main tasks of the present investigation” (22). At this point, he reintroduces the concept that has played a role in his earlier analyses and that will play a part in later work as well. He speaks of the change in function of law, where the law remains constant while the social substructure changes so that the same legal order of things serves quite different purposes. While recognizing the reality of this phenomenon, he rejects the notion put forward by Max Weber among others that socialism could be brought about without a change in the law, simply by transferring proprietary rights to public agencies through ordinary contracts. Neumann denies that socialism is simply about ownership and insists that it entails a process of democratization that requires far more extensive changes in the public order. Similarly, he questions the depth of the analyses he finds in American institutionalist legal theorists like John R. Commons—whom he had cited favorably in his Weimar writings on anti-monopoly issues—where changes in law would suffice to make socialism happen, since he denies that such changes could take place without corresponding social movements.

Neumann concludes this first chapter on the concepts of “legal science” with the distinction, first, between private and public law, where the critical difference proves to be the “legal surplus value” available to the state, which both postulates and enforces law against subjects of its domination, while private law relations are constituted by free agreements subject to regulation and adjudication by public authorities. He adds,

According as the state penetrates into the realm of its citizens’ freedom, and according as the limits between state and society shift in favour of the state, so is the sphere of public law extended. (21)

And it would appear that his objective in this segment is to normalize a wide range of state discretion and to block against having legal theory stand against it by an expansive definitions of rights. Then too, he uses this segment to reassert a claim that was central to his legal argument in the last years of the Weimar Republic, namely, that the emergency powers of the German president under Article 48 did not have the sweep of genuine prerogative “governmental” acts but were subject to constitutional and other restrictions similar to those controlling the actions of administrative officials.

This brings Neumann to the concept of the state that he has been presupposing. In his definition of law, Neumann treats Kelsen's formal concept of law as a valuable reference point for the sociological concept, which differs from the formal definition only insofar as the coercion correlative to the law's ordering function is actually likely to occur. When it comes to the state, however, he dismisses Kelsen's legalistic conception:

According to the pure science of law, all relations of super and sub-ordination are "based upon the fact that either explicitly or implicitly powers are delegated out from the centre." The state is the last point of attribution and at the same time an order itself which cannot "be further delegated." What in this connection is the meaning of "point" and how it is possible that a "point" be at the same time an order I have been completely unable to discover even after an exhaustive perusal of all available works of Kelsen.²⁶ The pure science of law may indeed be self-contained and self-consistent, but it solves no political problem whatsoever. (29)

Neumann objects that sovereignty entails command, and commands can only be given by men and not by legal orders. The state is an institution that is "sociologically sovereign," and it simply does not exist if there is no coherent force that has the capacity to dominate. The state comprises everyone who exercises any of its sovereign functions, including participants in agencies that exercise some delegated powers within such entities as municipalities and even trade unions and employers' associations. This last point, Neumann says, is an expansion on Laski's equation of state and government. This reference, with its Marxist resonance, brings him back to the much wider question of relations between state action and social factors. He writes,

According to the materialistic interpretation of history, these determining relations are conceived as such that the contents of the state will tend on the whole to coincide with the interests of the economically exploiting class, and that the state is a class state, an apparatus for the maintenance of this relationship of exploitation. (28)

Having introduced this discussion by affirming the force of social factors over state actions, he nevertheless concludes—after reserving the possibility raised by Engels of state independence of classes under special circumstances—with the academic formula: "Whether such assertions are right can only be verified by empirical investigation."

Neumann turns to the concept of sovereignty primarily in order to recast his earlier "sociological" definition of the state in terms that permit him to underline his differences from not only Hans Kelsen but also Carl Schmitt. The first of these critiques, as has been indicated, is linked to a more general objection to confounding legal, sociological and ethical conceptions. In dealing with Schmitt, he carefully summarizes the identification of sovereignty with the decider in case of emergency, and he acknowledges that the concept of sovereignty cannot exclude the emergency situation; but he insists, against Schmitt, that "the abnormal cannot be the unique and essential element in a definition," especially in states marked by the separation of powers where there is in any case no definitive standard by which competing claims to sovereignty can be resolved, except a constitutional or legal one, which complicates the simplistic formula. Neither state nor sovereignty makes any sense without legality: both will and norms belong to both

concepts. Notwithstanding the logical contradiction between the two designs, it appears that they are also interdependent.

Next, the discussion moves on to the concept central to the dissertation as a whole, the rule of law; the anomalous conjunction of law and sovereignty, which may under some circumstances even appear sufficiently stabilized to speak, as Neumann does in his title, of the “governance” of the rule of law.²⁷ That the rule of law in its earlier forms ceases to be applicable to currently emerging conditions anticipated by the two phases of postwar Germany, then, is the subject of the two chapters that he characterizes as postscripts to the actual dissertation, where Weimar’s adaptive alternative is shown to have been radically deficient and where the National Socialist outcome is destructive of both sovereignty and law. His actual thesis, as noted earlier, is about the “disenchantment” of rule of law in the course of its time of predominance, a development he examines first in his survey of theories from Aquinas to Hegel and then, more narrowly, in his sociological review of legal-political institutions in the nineteenth and early twentieth centuries, which he deems to be a “verification” of this thesis. Neumann explains that he has coined the expression “disenchantment of the law” “from the analogy of Max Weber’s famous generalization of the ‘disenchantment of the world’” (51). Since this depends in turn on a conception of “rationalization,” the reference signals a need for him to sort out, as Max Weber also had to do, the various senses in which he employs terms derived from “reason.”²⁸ The issue is worth some detailed attention in the present study, in view of the centrality of the term(s) in the intellectual settings of his subsequent work, notably in the context of Horkheimer’s so-called Frankfurt School, for whom the differences between that which is commonly called reason and that which they consider to be genuinely rational is a constitutive theme.

Neumann’s difficulties with this range of conceptual issues are already suggested by the title he gives to the section where this discussion is found. Under the section heading, “The Theory of the Rule of Law,” he has a subhead that appears to equate the “theory of the rule of general norms” with “rationality,” suggesting the sufficiency of the universalistic but formal Kantian criterion that he elsewhere rejects. In fact, he opens the segment with a distinction between rational and rationalistic “behaviour,” where the latter is supposed to be controlled exclusively by “intellectual motives,” a fundamentally erroneous construct that he oddly imputes to the “Kantian philosophy.” His rejection of the mistaken identification of rational and rationalistic behavior concludes (somehow), “Hence: a rational foundation of the coercive powers of state and law is a justification on the basis of the needs or wills of men.” The correct criterion of “rationality” recognizes that “irrational forces play a more or less decisive role” but sets out to explain their origins and effects, while attempting to understand how and why the balance between rational and irrational psychological as well as sociological factors may be shifting. He ends this introductory discussion with an amplification of the earlier assertion that “state and law” are to be rationally understood as institutions of neither God nor Devil but rather as human institutions emanating from “the wills and needs of men.”

Neumann’s shifts from the application of the adjective “rational” from behavior to justifications to foundations are less than transparent, but the key may be in the notion of a historical shifts in balance so that the effects of needs and wills meet standards

of reason more at one time and less at another, with the concept of rational itself not explained beyond his initial assertions that “behaviour can be rational or irrational” and that “we speak of rational behaviour.”

A surprising passage presupposes that legalized state sovereignty is the rational norm for political entities but then cites as an exception the capacity of groups and parties, like the German Nazis and Italian fascists, to act “rationally” under certain conditions of power equilibrium, with the proviso that such circumstances are always temporary and the legalized state will resume dominance. In that connection, he also cites Trotsky’s thesis of “dual power” during the revolutionary transition, implicitly picking up his earlier disposition to equate the fascist and Communist modes of power. Rationality here is evidently equivalent to effective purposive action, although the premised conciliation between sovereignty and legality calls into question the overall contradiction that is the point of departure for his study.

In another place, near the end of the segment, he addresses the awkward but obviously urgent question of the “rationality” of the English legal common law system, in the sense in which Hegel questioned rule of law in England and Max Weber sought a sociological explanation for the coherence of English law. Having adapted Weber’s explanation, he complicates the problem by citing the seemingly irrational basis of the power of royal pardon but resolves the issue by citing a study that shows a pattern of “consistency” in this “modification of rational law” and asserting that consistency is “only another expression for rationality.” At the end of this first of several exercises designed to fend off the charge that the English common law system is not “rational” in the conventional sense, he asserts that he has “in its essential features demonstrated that by purely organizational means it is possible to reach a degree of rationality which is far more efficient than that of the rational substantive law on the Continent.” He follows this with an account of “material rationality” as a common feature of continental law and identifies this with the “legal standards of conduct,” which he treats elsewhere as the decisive deviation from rule of law. In the last analysis, a practical guide for reading Neumann’s conceptually unsettled discussions of rationality is to focus on his common-sense dependence on the judgment of “irrationality,” with the “rational” comprehending anything that works against it.²⁹ Beyond that, Neumann’s analytical exercise is undermined by his determination to include all the established conventional uses of the term.

Neumann’s explication of “rule of law” moves on from its characterization as “rational” in a special sense of coherence and consistency to an account of the element of freedom that it is thought to embody. This treatment is ordered by the three modes of investigation that he had introduced early in his study—the legal, the sociological and the philosophical—and it is accordingly more transparent, although there are remaining difficulties with the relationship between Neumann’s exposition of conventional usage and his critical selection among alternate formulations. “In the legal sense,” Neumann asserts, “freedom is to be defined as the absence of restraint,” as Hobbes had proposed, and neither differences among agents nor “the character of the social substructure” matter. His amplification of the concept moves directly to freedom of contract to assert that the competitive situations of contracting parties are immaterial to the measure of

freedom they may be said to possess. When he pushes this preliminary analysis to the point of view of “some well-known German industrial lawyers,” who assert that freedom of contract extends also to the formation of monopolies, however, he remarks on “that fundamental misunderstanding of the material function of freedom,” which thereby “becomes fully evident.”

Rather than developing that objection, Neumann moves from contract law to legal freedom in the political sphere, which he defines as the ability to act freely “within the framework and provisions of the existing legal code.” Since this limiting law includes individual commands as well as general norms, Neumann remarks, “The definition of legal freedom becomes nearly meaningless.” Yet, he concludes, “In spite of this, the formalistic conception of legal freedom is extraordinarily politically significant in a positive way.” The justification for this judgment is that predictable, measurable state interference—“even if oppressive”—is preferable to “unpredictable, arbitrary” state action—even if benevolent—because the latter creates insecurity. Surprisingly, then, and notwithstanding his earlier challenge to the German lawyers’ “misunderstanding,” he asserts categorically, “That is, in truth, the eternal value of the idea of the ‘Rule of Law’ and of the *‘Rechtsstaatscharakter’* of the state.”

After this paradoxically minimalist claim, Neumann asserts that “freedom in the sociological sense means something completely different.” He opens with two quotations from Harold Laski who postulated that freedom required an equal franchise as well as the absence of a dominant opinion that could “control the social habits”; and he also cites Edmund Burke and the author of the American Sherman Anti-Trust Act who denied that grants of great powers over others could be accounted as grants of freedom. Neumann then envisions freedom in the sociological sense as a function of competition “in all spheres of human life” between agents that are more or less equal. It is not clear why he appears to exclude solidarities as arenas of freedom, especially since he cites Rousseau on the element of equality, but it is likely that he really means to emphasize the independence of agents as well as the absence of nonlegal constraints that render some choices impossibly costly or meaningless, as in the case of a worker confronted with the alternatives of accepting an insufficient wage and having no resources or possibilities at all or in the case of a subject of dictatorial rule who is offered an empty choice in a plebiscite.³⁰

The upshot of Neumann’s account of the social dimension of freedom is the contention that “apart from the more recent fascist reactionary tendencies,” the “modern development of law” pays increasing attention to social differences and “attempts to realize in practice this sociological conception of law.” To illustrate the point, Neumann returns to Article 165 of the Weimar Constitution, with its guarantee of freedom of association and, above all, the invalidation of any contracts that challenge this freedom. He underlines the fact that the guarantee against interference in union formation by state action would not be sufficient to establish the social right without the corresponding limitation on the social power of employers.

Neumann’s discussion ends with a short paragraph on “freedom in the philosophical sense”:

[It is] the real possibility of human self-assertion, the ending of the alienation of man from himself. The realisation of this “concrete conception of freedom” includes the two other notions of freedom. It is of decisive importance to recognize this hierarchy of concepts of freedom and not to confuse its stages. (35)

From this brief anticipation of the higher-level rationale that is to encompass Neumann’s theoretical design overall, with its reminiscences of Marx’s reading of Hegel, Neumann abruptly turns to the classificatory scheme of rights and institutions comprehended by “rule of law” as a constituent in the hierarchy of freedom. In contrast to the philosophical statements about freedom, the systematization here refers to formations characterized in passive voice and noncommittedly as historical emergences:

In the course of historical development a certain number of special liberties [i.e., “spheres of freedom”] have emerged which are described as fundamental rights—as human rights, or as “rights of men.” (35)

Neumann suggests two classification schemes for such rights, beginning with the kinds of legal protection possessed by different constitutional rights, which he leaves surprisingly unresolved, given his Weimar involvement in such questions, and turning then to a classification according to subject matter. Under the first heading, he begins with a concept of “inalienable rights,” which he equates with Carl Schmitt’s thesis that certain rights are integral to the basic constitutional decision and cannot be altered by any amendment, noting that there is corresponding American literature. In the main text, he leaves the matter at the level of a claim made by these authors and notes only that the political function of such claims may be illuminated by the fact that they stress, “such liberties as go to preserve the bourgeois system of property.”

A footnote refers not only to Schmitt’s statement of that case but also to rejections of it by the constitutional theorist, Richard Thoma, and his own 1930 essay on “The Social Significance of the Basic Rights.”³¹ The American articles cited as corresponding to Schmitt’s thesis are expressly formulated on the basis of Natural Law, while their critic is simply quoted as rejecting any constitutional limitation on the amending power. This implicit parallelism between one of Schmitt’s characteristic arguments and an argument grounded in natural law may shed some additional light on one of the underlying motifs in Neumann’s focus in this dissertation on the “disenchantment of natural law,” suggesting another respect in which the work is a part of his settling of his accounts with Schmitt as well as some of his English mentors.

Putting aside the thesis of “inalienable rights,” Neumann then offers two primary technical distinctions that are expounded in a way designed to strengthen the case for a parallelism between the German and British modes of “rule of law,” an essential theme throughout the study. The first divides liberties that are granted in German legal doctrine subject to the “reservations of law” (and that he expressly says, on the authority of Dicey, have their counterpart in English constitutional doctrine) so that ordinary legislation can redefine them, from those that can only be altered or withdrawn “in the process of constitutional amendment.” The second distinction generalizes on his arguments about Article 165 of the Weimar Constitution and distinguishes between

rights that “can be withdrawn in exceptional circumstances, and such as cannot even then be touched.”

A reading of this paragraph is complicated, first, by the fact that Neumann opens it by saying that the distinctions to follow are “within the inalienable liberties,” which he has at the least called into question in the preceding paragraph. This cannot but be a mistake in language. Second, Neumann formulates the first distinction in terms that could be read as referring to two separate ones—one referring to “removal” of the liberty and the other to “interference” with it, but there is no discussion that amplifies or requires such a refinement—and the former of these, if taken literally, would go beyond anything intended by rights granted subject to the “reservation of the law.” Because of the centrality to Neumann’s study of the Rousseauist question about the force of “rights” under a sovereign democratic regime, it is important to be as precise as possible in rendering these initial definitions, although he also refers to them as “categories of positive constitutional law,” in line with his reminder in the opening paragraph of this analysis: “We repeat that the so-called pre-state rights of men of philosophical liberalism are [also] legally intelligible only as rights granted by the state.”

Neumann’s classification in accordance with subject matter similarly expounds the distinct categories as they are known to law, leaving questions of their comparative value or timeliness aside for later. He begins with the “personal” rights of the individual viewed in isolation, “such as the protection from illegal imprisonment, security of dwelling place and of correspondence, of religion and conscience.” The second category pertains to political association, as with rights of association, press, meeting and secrecy of ballot; and Neumann carefully insists that these have the “dual function” of providing a liberal sphere free of the state “as well as a democratic [function] in serving the integration of the will of the state in a democratic way.” Looking back, he notes that the first category is also indispensable to democracy, although the “political” ones are decisive for free decisions, a point that he elaborates in a curious way, unprepared by anything he has said earlier: “The rationalization of political life by political parties would be impossible without political and personal right to freedom.”³²

Without further evidence, this unexpected insertion would appear to be a concession to Harold Laski, for whom majoritarian party rule was the essence of democracy. A sign of the unsettled state of these issues in Neumann’s mind at this time follows toward the end of his discussion of rights, where he suddenly asserts that “the rights of *status activus* must be divorced [...] from the political rights,” a puzzling notion that he expands by saying that “democratic rights belong to the citizen,” presumably as distinct from the individual, “and serve directly to integrate the will of the state in a democratic way.” This formulation may be designed to relativize the talk of rationalized political life through party representation. Rousseau is a demanding master.

No less difficult than the balance between liberal and various democratic themes in the treatment of political rights is Neumann’s analysis of his third category, the rights to economic freedom, as they have to be related to the fourth, the rights to social freedom, of which he says that they “have developed historically from the rights to economic freedom.” Neumann puts private property at the center of economic rights and denominates it a subjective right because granted by the legal order and an absolute right

because it grants rights of defense against everyone. In line with the very compressed character of his discussion in this section, he says first that it is essential to distinguish between the sweeping right of the owner and the thing to which it extends, although the “characteristics” of the thing are “without significance.” In his earlier writings, he used the former distinction to recognize that law may limit the aspects of things subject to ownership without calling ownership as such into question, and so he may mean by the second present point nothing more than that such limitations in law do not hinge on the kinds of goods at issue. Then too, questions of rights and their historical variations will occupy so much of the book that this introduction may simply suffer from a certain provisional perfunctoriness.

This is suggested as well by Neumann’s characterization of rights of social freedom as rights that “have developed historically from the rights to economic freedom” and that aim at the liberation of the working class, as exemplified above all by “the right of association granted to trade unions,” which he equates with the “freedom of the worker to join with his fellows in a trade union.” That is all he says, as the paragraph shifts to the theme of the *status activus* noted above, which can be seen to refer to something as technical in the present context as the limited claims of minors and others who may be legitimately excluded from citizenship.

The only hint of the more profound arguments prepared for by the notion of social rights emerging historically from economic rights is found in a seemingly specialized argument directed against “modern German constitutional theorists,” which appears to refer primarily to Schmitt, if also in an inverted form, and against their fascist heirs. Neumann notes that the former deny all rights of social freedom and maintain that the first three groups of rights are interdependent “children of modern bourgeois society of free competition” and “therefore disappear and as a logical consequence have to be abolished when free competition no longer exists.” He does not distinguish here between the things that “disappear” and those that therefore have to be “abolished.” His statement of the fascist position is even stranger in that he appears on first sight to treat it simply as more stringent adherence to the same view but on closer examination has it standing for the “annihilation of personal, political and social freedoms” on grounds of the supposed dependence of all rights on capitalism but without reference to the supposed obsolescence of rights of private property, which he’d made fundamental in his account of the German theorists with which he begins.

Neumann’s conception of rights nevertheless becomes somewhat clearer through the argument by which he disposes of the overall claim that all rights are interdependent and ultimately a function of capitalism:

Even a very superficial historical analysis teaches us that at least personal and political rights have existed and even been struggled for long before the competitive economic system arose. It can be proved that the function of these rights is not lost, but tends rather to increase in importance after the disappearance of free competition. (38)

A right, then, would appear to be a defined, rational claim for freedom in respect to a certain class of activity that has either been recognized by law and protected by legal

practice or that is, in any case, capable of being so recognized because coherent and somehow congruent with the fulfillment of human needs and wishes.

At this point, Neumann reintroduces the consideration he first took over from Karl Renner in his original 1925 dissertation, the sociological reality that the actualization of rights in any concrete situation depends on the complementary effective presence of a complex of auxiliary rights and institutions whose operations are consistent with the terms of the right. If changing circumstances create serious discordance between the institutional and other actualizing provisions, on the one hand, and the historical form of a primary right, on the other, the claims have to be amended and/or their institutionalization has to be adapted—or even revolutionized. Although the connection between socialist analysis and Renner's theses about the links between effective constitutional law and auxiliary or conjunctive institutions subject to social change has been clear in Neumann's Weimar-era expositions of the argument, he now focuses expressly on this substance of the matter, while bringing it to an unexpected and deeply pessimistic conclusion.

First, however, he emphasizes that this use of the concept of "institutions" has none of the legitimating functions that Carl Schmitt ascribes to it or that appear in the "institutionalist" theories of law that he will attack so forcefully in the reformulation of his dissertation's principal theses that he will publish later in the year in the journal of Max Horkheimer's Institute for Social Research. In the present context, he simply differentiates his "sociological" use of the term from the "pluralist" and "neo-Thomistic" theories of "Institutionalism," which construct a legal model in which the individual persons, whose wills constitute the primary legal relationships in liberal legal systems, are replaced by members of constituted communities, whose legal claims and duties somehow derive from the objective character of those communities (1937).³³ As will be noted later, Neumann in some measure withholds judgment from certain manifestations of such institutionalism in the course of the dissertation, although not later. For the present, however, institutions are as congruent with liberal regimes when understood sociologically as they are with the social developments that lead beyond liberalism as a guide to legal theory:

We understand by a legal institution the establishment of a relationship, intended to endure, between either men, or between properties, or between men and property, for the purpose of regulating social processes, belonging either to public or to private law. (38)

Neumann illustrates the concept by looking at the institutionalization of private property of the means of production within the economic system, where he distinguishes, first, the hierarchical organization of the technical relations associated with production in the "shop"; second, the administrative relations that manage the "business policy" through the "enterprise"; and third, the economic strategic work of the "concern." After some illustrations of the ways in which the interplay among these institutions may be complicated by the diverse hierarchical and collegial relations that must be integrated to give reality to property of this sort, Neumann turns to the relations between liberties and institutions, with a principal distinction between "main liberty" and the auxiliary liberties and institutions requisite to its

actual functioning in the social system, a relationship that he now conceptualizes as being essential to its “protection and realization.” To illustrate this notion, he returns to one of his distinctive constitutional law theses from the late Weimar years, where he had argued that the freedoms of the press and assembly of labor unions were not subject to the conditionality of the “reservation of the law” that attached to the actual constitutional guarantees of these rights in the Weimar document. Their legal force was multiplied by their roles as auxiliaries to the main liberty of organization among workers.

This application of the correlation between rights and institutions does not get to the issues of social change that drive Renner’s analyses or Neumann’s earlier references to the theme. At the next stage, then, he postulates the emergence “in certain historical situations” of a conflict between auxiliary institutions as when freedom of trade and freedom of contract clash under conditions of monopoly, with trade favoring the opponents of the monopolist, while contract sustains him. Neumann uses such occasions to account for the displacement of these institutions by administrative law expressly designed to foster the interest associated with the primary liberty under the new conditions:

Regulations belonging to public law then replace supplementary liberties—the administrative act or the statute replace the rights of free contract and trade in their relationship with property in the means of production. (43)

It seems that Neumann may want to show that such legal changes are consistent with a regime of rights, given its actual historical development rather than arbitrary intrusions by sovereign power. But as his analysis proceeds, this design appears to be crossed by unresolved difficulties arising out of the course of current events that Neumann also has constantly in mind. His theoretical exercises were carried on, as it were, against a background of profoundly anxious observation. Neumann moves to the next step of his explication of relations between rights and institutions, as noted, by proposing that “the relation of private property in the means of production to its supplementary institutions and liberties on the one hand, and of the totality of this legal complex to the economic and political dynamic on the other hand, is particularly clearly shown in Marxian sociology.” He proceeds, then, to lay out the familiar elements of the emerging contradiction, according to Marx, between “production relationships” and “productive forces.” With the development of the latter, the former change their function and become fetters, and a fundamental change takes place, from a social order characterized by the institution of “private property in the means of production” to “socialism by communal property in the means of production.” Yet this paradigm does not suffice for the situation Neumann is attempting to comprehend, where there is no such change from one comprehensive social order to another but rather the change in functions that he had already earlier ascribed to the auxiliary institutions of private property in the means of production under conditions of monopolization. Neumann then anticipates an adjustment quite different from the socialist one:

Workers are given the possibility of joining trade unions by freedom of association, and in such circumstances, when the profits of the monopolist undertakings tend to diminish, it can

very well happen that the auxiliary institutions and liberties are abolished in favour of new supplementary statutes and administrative acts more suited to the monopolist interests. (44)

Renner's model of peaceful change to socialism, including the special component of organized labor that had been the center of Neumann's analysis throughout the Weimar years, appears not only futile but also self-contradictory.³⁴ Yet this bitter argument is made in a context of theoretical explication of the legal order upon which it appears to have no clear bearing. And the only express criticism of Renner that Neumann allows himself is a rather gnomic and isolated sentence to the effect that Renner does not distinguish sufficiently between liberties and institutions.

The critical difference between Neumann's earlier confident adaptations of Renner's projection of a legitimate transition between the regime of private property in the liberal sense and a regime of increasing social intervention in the organization and utilization of these resources, it would appear, is that he can no longer count on the conjunction between shifting institutional requirements and increasing socially democratic roles—Rousseau's popular sovereignty—whether in the national or the economic constitution. So the problem is somehow to strengthen the constraining role of the legal order to counter the powerful forces in control of sovereignty in a condition of monopolization—and to do so without denying the realism that law cannot be divorced from an appropriate mode of power.

This theme implicitly governs the short concluding section of Part One of the dissertation and sets the problem for Neumann's extensive commentary on the history of legal and political theory to follow in Part Two. In the nature of the case, it will not be possible to follow those treatments in any detail, except for his endpoint in Hegel, whose theory of the modern state he had mentioned at the outset as the last word—before sociology—in political theory. Neumann prepares for this with a summary discussion headed, "The Dual Significance of the Rule of Law," and which reprises his earlier discussions of rationality.

One meaning of the "rule of law," according to Neumann, builds on a concept of "political" law, where it is simply the will of the sovereign, as postulated and further developed by Thomas Hobbes. In that sense, where law is simply command, there can be no conflict between law and sovereignty, and the concept of "rule of law" is empty. In contrast to this, Neumann elaborates a concept of "material law," which is defined as "such norms of the state as are compatible with defined ethical postulates, be these of justice, liberty or equality or anything else [*sic*]." "To this alone," Neumann continues, "it owes its authority, and this principle is wholly transparent to the speculative intelligence," although the "accidents of its realization" may not be penetrable by reason. By this definition, there can be no "absolute sovereignty" since the lawgiver is constrained and "allowed only to issue general or just or reasonable laws." Rule by Natural Law is an example of such a material law, provided only—in this as in all other cases of material rationality—"that there is a sufficiently great expectation (Chance) that the material law in question will be realized in the positive legal system, or that where a positive law is in contradiction with the material law, the positive is not carried out." Neumann excludes from the material rule of natural law all cases where the natural law is said to authorize sovereignty in the absolute sense, and he denies that the mere assertion of a natural law rationale suffices if

the law is not “concretized” or “institutionalized” in some way of resisting and overriding any command not legitimated by the rationale of the material law supposed to be in place. At the very end of the discussion, then, he adds that “there must [...] be a relative unanimity as to the contents of the natural law.” Examined simply as a theoretical complex, this preliminary summary is rather perplexing. First, the problem of the relations between sovereignty and law seems to be solved by the simple expedient of wishing sovereignty away under circumstances that are not specified. Second, the power constituent of the law is referred to processes of realization, concretization and/or institutionalization, which appear to be in a dimension not penetrable by reason in anything like the same sense. Neumann’s case rests more on his success in designing plausible paradigms derived from theoretical or historical writings than it does from the compelling logic of his theoretical constructs. It is to this activity, then, that he moves the discussion.

The Usable Legacy: Thomas Aquinas to Hegel

As noted in our introduction to Neumann’s London dissertation, nearly one-half of its length is devoted to a selective review of legal and political theory literature from St. Thomas Aquinas to Hegel. It seems clear that this *tour de force* belongs importantly to the legitimation of the work as doctoral dissertation in a program where proficiency in the standard history of political thought, not to speak of Harold Laski’s excavated favorites, is a prime requirement. His program appears modest:

First, to demonstrate the distribution of spheres between sovereignty and the rule of material law in the most important rational political theories, and second to make clear the connection between the legal theories of the nineteenth and twentieth centuries and divine and secular natural law. (49)

A literal reading would be deceptive, however, since he intends to bring his survey of theories to a point of assessing one as a special threat to adequate political understanding and another as the highest point to which political theory as such has attained, and since he also means the scrutiny of natural law to intervene in legal and political debates in his own time. It cannot be the aim of our review to evaluate Neumann’s readings of the thinkers he examines; our interest is in Neumann’s uses of his more or less critical survey to advance his own argument.

Because Neumann’s design appears to take notice of the renewed interest among Marxists in a sort of climactic relationship between Hegel and Marx, and because of Neumann’s later emphatic retreat from the revolutionary transcendence of the state that consequently seems on the horizon at the end of his Hegel discussion in this work, this last segment will be treated somewhat differently, in line with a certain ambiguity in Neumann’s seemingly incidental remark in the “Abstract” to the dissertation, cited earlier:

With the beginning of the nineteenth century, political philosophy practically came to an end. Hegel really said the final word. From then on, political theory either lived on the old heritage, or turned completely from philosophy towards sociology. [LSE Abstract]

Although it is impossible to attend in any detail to the 13 individuals and schools that Neumann discusses, it would be a mistake, in short, to treat the work as a mere exercise. Despite Neumann's general disposition to localize various theoretical designs within limited historical settings and his dismissal of what he calls the "metaphysical background" of the theories he examines, his critical review of alternate strategies toward the recurrent problems of public right might serve as a medium for comparative theoretical work of a kind that he found more congenial than the analytical reasoning of his earlier section.

The ambiguous standard that he provides for his selection of theorists to be considered is that he chooses those "which have had an undoubtedly high degree of influence on the development of political thought." There is a simple sense in which this can be read as a focus on those theorists that other theorists read and follow. But there is also a different reading, where political thought refers to the thinking that conditions orientation and legitimation within a given political domain, tendency and historical period so that its understanding also comprehends the conflicting legal theories in political play as they seek to shape the effective constitution of a place and time—drawing here on a concept that played such a large part in his earlier work. Although Neumann now uses the actual term "ideology" almost always in its pejorative sense, it is nevertheless helpful to recall his use of the concept in his first dissertation in order to comprehend his characterizations of the "political theories" he is here subjecting to a sociologically charged examination. He distinguished there between "expressive" and "masking" ideologies, with the former functioning so as to give both intellectual support to a given social-political design and guidance to its requirements, while the latter disguises its operations so as to induce subjection. In both cases, however, his interest is limited to "rational" theories in settings where difficult questions about law, rights and force have some actual saliency.

Accordingly, Neumann does not limit his exposition of the theories he is examining to the authoritative texts in which they may be set forth but looks also at the discursive uses of key elements in practical contexts in order to parse the more abstract formulations. So, for example, he opens with Cicero and the question whether he is a classic of natural law thinking, inasmuch as he draws heavily on Stoic notions of rational universalism in the course of his discussion of the order validating law in its proper understanding. Very soon, however, Neumann cites passages conflicting on this very point from two of Cicero's famous addresses to courts and he concludes, first, that Cicero must be understood to speak as an advocate who is seeking to advance the causes of his clients in both cases—an awkward point to make for a writer who has advanced so much of his own past thinking in the course of advocacy—and, second, that by arguing in one case that the law laid down by the qualified authorities is always and exclusively binding and in another, that only the universally validated law should be heeded, Cicero shows himself to anticipate the "conflict between the postulate of sovereignty and that of the rule of law" that confronts modern thinkers, a point that frees Cicero from the onus of giving mere lip service to one or another view on strictly opportunistic grounds and that signals the presence of a recurrent fault line in the application of natural law models.

Neumann's comparatively extensive treatment of Thomas Aquinas' Natural Law devotes relatively little attention to an exposition of its principles, apart from the simple

claim that they stand for the terms of the good community and justice. The critical issue, given the basic postulation of the supremacy in human matters of a natural law congruent with eternal law, is whether and how far it can be established that actual impulses as well as effective constraints on human actions correspond to these norms. Neumann speaks of a measure of self-enforcement built into Aquinas' design for the hegemony of natural law through the authorization of passive resistance in cases of deviations by law makers but more importantly sees the natural law effectively concretized by virtue of the fact that it "is on the whole a codification of the feudal order" with no systemic conflict, above all, between the secular and religious authorities, in the sense in which state and civil society confront one another under modern conditions. Pope and emperor may be in conflict, he maintains, but they define their claims by reference to the same structures of landed wealth and social domination by privilege. "So long as feudal society was static, and as long as town and country were in equilibrium and the poor could maintain themselves," Neumann writes, "it was possible that in the mind of the average member of society as well as in the minds of their theorists, norm and will should coincide." A secure structure of authority appeared to be in place.

Having laid down this reading of Aquinas as the most prominent representative of the doctrine concretized in this conjunction of norm and will, Neumann however devotes most of the discussion of this design to paradigmatic indications of "disenchantment" through the widening of distances between the natural law norms and the positive direction of wills, with a tendency toward sovereignty. Neumann begins, somewhat surprisingly, with a certain autonomy of the symbols invoked by the theory. He points to the many levels at which Christian doctrines proclaims the equality of men, albeit in dimensions initially separate from the conditions of practical life. At this point, Neumann introduces a consideration that recurs in his analyses of other theoretical formations as well—an effect of theoretical language that is not limited to its theoretical meaning. He asserts flatly, "But the idea contained a psychological dynamic which had to complete itself in spite of the theory of original sin [...] The recognition of freedom and equality in one sphere leads to the postulate of freedom and equality in others." He adds a sociological condition:

The divergence of natural from positive law—of natural law from the social order—occurred when the social substructure was no longer closed, no longer undisturbed, and appeared no longer negative in its function. The conflict between domination and norm, between will and *ratio*, was often not only a theoretical possibility, but a social reality. (59)

Neumann follows this process through a series of stages, beginning with claims to something resembling sovereign domination by the church, which fomented in time and in various places counterclaims by secular authorities, whether in terms of a revolutionary mode of natural law or, increasingly, claims on behalf of secular law grounded in one or another legitimation of lawmaking by political authorities on the basis of the qualified wills who are the authors, whether this is the *valentior pars* of Marsilius of Padua or the clerical aristocracy of Nicholas of Cusa and other Conciliar theorist. From the outset of his review, then, Neumann poses enactment and legitimation of law by will—what will

eventually appear as a duly qualified democratic will in his own political theory—over against any view of law as emanation of some metaphysical ultimate reality, notwithstanding the emancipatory ideological effectiveness of the latter doctrines from time to time. The question whose genealogy he is tracing, then, is how this collective, authorizing will can be understood and structured so as to constrain its sovereign power within the limits of material rule of law without compromising the efficacy that makes it real. The clearing of the ground to let this question appear in its full complexity proceeds through a condensed “social history of natural law” whose outcome is not questioned by Neumann from the very outset:

The various systems of natural law are only ideologies of justification which are given up as soon as the postulated political aims are attained. Political democracy—i.e., the integration of the will of the state through the free election of representatives and the majority principle—and natural law institutionalized by the right of resistance are two contradictory principles. Natural law disappears. When in a democratic era it has a so-called renaissance, it has nearly always a reactionary end in view—viz., the limitation of the will of the people in so far as it becomes dangerous to the property system. (68)

It is of some importance to follow Neumann’s track to this predetermined end because it anticipates a central procedural feature of his later career as political theorist and not only as teacher. He worked on political theory through the history of political theory, while subjecting the philosophical structures he is examining to a process of “rationalization” that simplifies classification, comparison and critical examination. Neumann’s historical development of the issues in the present case follows along the lines of research by Laski and his academic generation, in opposition to the textbook tradition of Whig historiography. This requires reconsideration, first, of the alternating rebellious sides in the French religious conflicts of the sixteenth century, which had been viewed in the older literature as precursors of liberal rule. Neumann takes the view that the opposition to Catholic rule by the Protestant monarchomachs as well as the subsequent opposition by Catholic advocates of resistance to Henry IV were both given expression by an understanding of monarchical rule as constrained and even subject to violent resistance in accordance with traditional constitutional principles given force by established predominately aristocratic bodies. The admixture of natural law arguments was construed as little more than an elaboration of the tradition. “Only the actual contents of state activity were of importance to the monarchomachs,” Neumann says, concluding with a finding of a “complete disinterestedness in the basic problems of liberty and democracy.”

The contrasting case appears as the prime tendency in the English struggles of the seventeenth century, corresponding in some measure to the earlier French Religious Wars. While natural law designs variously played a part in the political agitations attending the Civil Wars, especially among the more radical movements associated with the Levellers (John Lilburn) and Diggers (Gerard Winstanley), according to Neumann, they were incidental to the primary reliance on theses about the primacy of parliament, which had been already prefigured several hundred years earlier by the emphasis on a council to monitor the king’s compliance with the terms of the Magna Carta. “With the

stabilization of the supremacy of Parliament,” Neumann asserts, “natural law definitively ceases to play a role in England” (75). He qualifies this categorical statement to point toward later recurrences in conflict situations, but he distinguishes these short-term incidents from the normative attributes ascribed to the political law enacted by parliaments, notably its generality, which he does not consider to be grounded in anything but universal usage in parliamentary systems. This leads to a formulation that bears directly—and optimistically—on reconciliation between “political” and “material” rule of law:

The premature death of natural law, guaranteeing liberties on the basis of the fundamental idea of the people’s sovereignty, has in fact however, paradoxically enough, contributed to the realisation of those very liberties contained in the natural law ideology. (76)

Neumann’s next chapters make it clear that this seeming resolution of the issues depends on the comparative simplicity of the problems as stated in terms of the English Civil War and in the context of a comparatively stable social order. Its underlying principle may be sound, but its application even in the place of its greatest strength requires attention to social and political conflicts that cannot be so confidently addressed. To convey a sense of these complications, Neumann pairs two sets of seventeenth-century continental jurists, first, Jean Bodin and Johannes Althusius and then, Hugo Grotius and Samuel Pufendorf,

Despite important differences in their respective formulations, Neumann finds that the first two are similarly challenged by the events and terms of discourse of their times to pose the question of reconciling the supreme power of rulers with a regime of secure material law including certain critical substantive rights. Jean Bodin’s work, on this reading, embodies the conflict in classical form. On the one hand, Bodin is the first to develop the concept of sovereignty in its full sense of absolute, ultimate and unconditional power of the ruler; on the other hand, however, Bodin also reserves important spheres of human activity for conduct in accordance with natural law norms that rulers are bound to respect, subject to control by estates and legal process. Despite differences in formulation, Althusius sets up a similar disjunction. In both cases, according to Neumann, the theoretical disjunction is moderated by the reality that the social agents whose conduct is seen as protected in their autonomy are the propertied heads of family whose security and advancement are congruent with the designs of the rulers of the time so that the reservations of this localized natural law are concretized. This state of the case appears all the more self-evident to these theorists, Neumann notes, expressly citing the sociology of knowledge, because of their social locations as state officials also at home in that propertied class and thus situationally induced to see this conjunction.

Neumann’s exposition of the legal theories of Grotius and Pufendorf follows a similar course, although the details are significantly different. They juxtapose a ruler uniquely qualified to have the last word on enforceable laws and commands to a regime characterized by conformity with principles ascribed to a scheme of natural law and characteristically centered on what Neumann calls the “bourgeois” interests. Grotius is of special interest to Neumann not only because his “is the first theory to be almost

completely bourgeois” but also because it “is almost completely rational; i.e., it is oriented by the will of man.” Yet this will is imputed to man as a generic being in a harmonious social association and not to democratic agency. Much depends on assumptions about morality and conflation of moral and legal right so that conflict with rulers is construed as a function of immorality on one side or the other. Although this clearly appears as a decisive theoretical weakness to Neumann, he also cites this aspect of Grotius’ doctrine as a ground for the fact that “the postulate of the rule of law has [...] not yet taken on the purely disguising function which it later assumes.” The critical example for Neumann, recalling his preoccupation with labor contracts as well as monopolies, is a doctrine of contracts that insists on equality between the parties, free choice for both and accordingly a fair bargain.

There is no such harmony postulated in Pufendorf’s frame of reference, whose model insists on the primacy of enforcement for the constitution of law and thus for its promulgation by the prime bearer of force. There is a natural law grounded in the divine scheme, but it is not justiciable once there is a state. Resistance under these conditions is a last resort for the individual as moral agent obedient to God’s commands but only if a command to act in a sinful manner cannot be evaded: there is no right of a people, whose collective existence is a function of the state and its ultimate integration by force. It is a curious feature of Neumann’s treatment of the four seventeenth-century jurists that he expounds them as primarily political writers rather than recognizing the limited importance of his themes within their work in the service of an emerging legal profession, where these questions are “theoretical” in the sense that it is mostly the convention of systematicity in the tradition of Roman Law that brings them forward at all for the writers concerned.

The frame of reference of political philosophy cannot be disputed in the case of the next subject, who is Thomas Hobbes, although Neumann adheres at some cost to his procedure of reading his texts for their political-legal implications without reference to their philosophical methods or premises. Writing with evident satisfaction against the current of opinion in the English schools of interpretation, Neumann opens his account:

Our fundamental thesis, that the introduction of the postulate of the rule of material law and of a rational and secular justification of the state necessarily leads to revolutionary consequences, can be demonstrated in Hobbes’ system very clearly; although Hobbes is generally considered to be quite immune from any such disintegrating tendencies. (100)

“All petit-bourgeois looked on him with mixed feelings,” Neumann continues, and “it can even be said that the traditional Liberal English political theory is ashamed of Hobbes.” Neumann turns instead to German authorities like Friedrich Julius Stahl, Otto von Gierke and Ferdinand Toennies—conservative rather than liberal—extending his list to include some ironically critical judgments about Hobbes by Max Horkheimer, who will function within a year as Neumann’s principal interlocutor in place of Harold Laski.

Summarily stated, Neumann focuses on Hobbes’ initial constituents of the “Law of Nature” that forbids man to do anything destructive of his life; he finds expandable ambiguities in Hobbes formulation of the principles implied; and he rejects the common

view that precisely these norms, given the nature of man, necessarily generate the social contract that yields the sovereign power that comes as close as possible to effectuating the laws of nature, albeit on its own uncontested terms. It is the last phrase in that summary that Neumann contests, citing “vague formulations” amid Hobbes’ injunctions to “unconditional obedience,” such as “Law of Nature obliges always in conscience (*in foro interno*) but not always *in foro externo*.” He concludes, “The phrase ‘not always’ implies that the postulate of unconditional obedience is met by the antagonistic postulate of a right of resistance” (102). Similarly, he scans the passage where Hobbes grants man “the liberty to disobey” in the event that he is commanded to take his own life, which is not generally understood to deny the sovereign the power to take it, and he seizes on a catch-all item in Hobbes’ list of things necessary to life that the ruler may not order a subject to deny himself, and he concludes, quite improbably, “The phrase ‘other things without which he cannot live,’ can be interpreted so widely as to include almost socialist elements in the natural law system.” Two things follow for Neumann from this reading:

Our assertion that the postulate of a restriction of the sphere of sovereignty by material law must necessarily lead to disintegration of the status quo, applies equally to Hobbes [...] [and] the disintegrating function of the rationalistic justification of the coercive power of the state and law, are clearly indicated in Hobbes’ system. (103)

Neumann proceeds to quote a number of conservative writers in support of the thesis, as applied to Hobbes, that any theory that undertakes to understand the state as originating in the wills of individuals under conditions of some postulated state of nature is inherently revolutionary. Yet he rejects the notion advanced by some that he was in fact aligned with the revolutionary party in England’s Civil War after conceding a certain “psychological dynamic” toward democracy in the theory. “Hobbes in reality,” Neuman writes, citing Horkheimer, “always put his conscience at the disposal of the strongest political power of the moment.” The dissolution of order during the Civil Wars—the period Hobbes was later to characterize in the historical study he called “Behemoth,” whose title Neumann took over for his study of National Socialism—led him to the political conclusion “that a legal order as such was good, independent of its function in the social life of the people, and without regard for the social substructure it preserved.” That specific, context-determined judgment apart, Neumann contends, Hobbes’ work contains “all the constituent elements of the bourgeois state and society.” The case he makes for a “wide sphere of absolute sovereignty” refutes the thesis put forward by fascists and social reformers alike that the bourgeois state is a negative or weak state, a notion that Neumann consistently attacks, although nothing prevents Hobbes, according to Neumann, from demanding “a sphere of economic and cultural freedom for the individual citizen.” What Hobbes makes clear, Neumann contends, is “that without a strong state power, property relationships as he knew them could not be guaranteed” (107).

As with many other features of the respective theories, Neumann sees this paralleled in Spinoza’s political writings. The prime distinguishing element in this theory, as Neumann presents it, is Spinoza’s explanation for the measure of resistance available to members of the political society who are, in terms of the theory of law, subject to the unconditional

rule of the sovereign. Neumann calls this the “legitimacy of the factual,” inasmuch as it refers to the natural force available to subjects, a recognition of the continued availability under extraordinary circumstances of the capacity for struggle that is pacified and delegitimated but not obliterated by the constitution of the state. Despite a certain appreciation for Spinoza’s intellectual originality, Neumann’s account hews quite closely to a historical and somewhat reductive account of Spinoza’s political alliances in the Netherlands, including the naming of his allies in the political and commercial worlds. He writes,

The strong state [...] implies political domination by the bourgeoisie, and secures the free exchange of commodities. Against a state that does not realise this social and political aim however, there is in fact a right of revolution following from his proposition of the identity of right with might. (115)

Neumann concludes that Spinoza envisioned two applications of the “legitimacy of the factual.” The first would be its use “to crush the power of the people, whom he quite naturally hated” because of the murder of his friend, the aristocratic leader, Jan de Wit. Second, then, was its potential as a resource for a joint aristocratic and bourgeois opposition to monarchy, “which feels itself powerful and is powerful, and which has not yet played out its role, but trusting its power hopes to be able soon to translate its might into right.” (116)

If Neumann highlighted a dimension of resistance in the theories of Hobbes and Spinoza, who were generally taken as proponents of absolutism, he opened his discussion of Locke with a caution against reading him simply as an advocate for the liberty of the individual against the state. In important measure, Neumann presents Locke rather as the political theorist who lays out a reconciliation between the elements of sovereignty and material rule of law, the problem posed at the outset of Neumann’s review of the theoretical literature, while illustrating as well the restrictive social conditions for and political consequences of this achievement as exemplified by Locke. Neumann begins, as would be expected, with an account of Locke’s postulated state of nature, which is taken as a sphere governed by intrinsic laws that are at once divine, natural and rational—inferable from every man’s needs for a sphere of free activity and security, which yield universal rights to property extending not only to possessions but also to ownership of self. In Neumann’s view, this design presupposes a vision of human nature as predominately benign and harmonious, and he supposes this conception to have been generated in express opposition to Hobbes’ natural state of universal warfare of each against all. There are nevertheless good and sufficient reasons—inconveniences—for a social contract to form a state, but this state, on Neumann’s reading, is understood first and foremost as a support to life so far as possible as if in the natural condition, the protection of the rights that pertain to it.

The prime feature of government that builds in these limited aims is rule by material law, general in form and restricted to the aims that follow rationally from the objectives imputable to the contract, notably the protection of private property. Such rule is further qualified by the primacy of the legislative power comprised of representatives, where the

people can make such concessions from the scope of their rights as the taxes required to have government function. Whatever its formal supremacy, this legal power also requires agencies that wield instruments of coercion. In this respect, Locke distinguishes between the executive power, whose primary role is the enforcement of the general laws in concrete cases, and the federative power, which is responsible for pursuing the interests of the political entity in relation to others. Since both powers require coercive means, Neumann presents their unification under the crown as a reasonable provision in the design. Yet he emphasizes an important difference between them. The federative power, he maintains, is completely in the realm of the ruler's prerogative, his capacity to act without any reference to law or the legislature, a necessity in view of the particularity of dangers and projects in that sphere, while much of the executive power is delimited by the law it is enforcing. Still, the prerogative may even extend to executive functions, whenever they serve the cause of the common good. Neumann calls this latter the realm of discretion and reads Locke as envisioning forceful resistance in this sphere of governmental action—other than a prayerful appeal to heaven—only in the event that abuse reaches to the level of despotism, when deposition and punishment are right.

Citing Locke's personal interest and connections in colonial ventures, Neumann grounds Locke's unconditional support of the federative power in his commitment to the activist imperial policies pursued by Britain since the time of Cromwell. Locke's ease with the discretionary aspects of domestic executive power Neumann connects with his trust in the rule of William of Orange after 1688, and his willingness to see the state do whatever is needed to safeguard against a Jacobite restoration or a disturbance of the property order. As to the basic principles of equality and rule of material law, Neumann links them first to Locke's restricted view of equality and property to exclude the status or labor power of workers, not to speak of slaves in the colonies. Although he makes marginal reference to the "psychological dynamics" that might lead Locke's talk of equality toward a "petit-bourgeois socialism," Neumann emphasizes that there were no basic conflicts among the other social groupings within the society. The possessing classes were essentially united in their interests, and the generality of law served them equally well.

In addition to being "at the disposal of this relatively united class," Neumann adds two more functions of "the postulate of the rule of the material law," which he finds equally present "in the whole period of liberalism." He speaks next of "the function of disguising interests" because the form hides the actual authors. That "Rule of law means rule of the bourgeoisie," he asserts, is "perhaps only in the Kantian system as clear as it is in Locke." Finally, Neumann calls on the familiar sociological notion—in Max Weber as in Karl Marx—that material law also functions to render the system of exchange calculable. His conclusion is important because it anticipates in the language of this theoretical survey his overall thesis about the epoch of the "governance of the rule of law":

Locke's [...] system [...] proves to be a typical bourgeois system of state and law [...] The spheres of prerogative and of discretion make it possible for the state to carry out a strong foreign policy, to maintain order within, and to crush political opponents. By the sphere of the rule of the material law the position of the economically ruling class is sanctioned, and the legal foundations of a system of competition are laid. (125)

If Locke offers, according to Neumann, a practicable explication of the conjunction of law and state under conditions of unchallenged bourgeois hegemony, Rousseau anticipates something far greater and more pertinent. Neumann opens his chapter on Rousseau with the flat assertion that Rousseau is “the first modern thinker to see and solve the problem of a synthesis of material law and sovereignty, of liberty and rule.” Toward the end, then, he characterizes his reading as one that sees that “Rousseau’s theory is, in fact, an interpretation of the Marxian theory of the withering away of the state; of the emergence of a society free from external rule that administers itself” (137). Neumann knowingly assembles the elements of his interpretation from a number of the texts that are commonly treated as distinctive disquisitions on questions variously posed, ranging from the *Discourse on the Origins of Inequality*, through the *Social Contract*, to the *Constitution of Corsica*, the *Political Economy* contribution to the *Encyclopédie* and *Émile*. “Our interpretation,” he writes, “treats the work of Rousseau as an organic whole.”

His account of this composite view, then, begins by situating Rousseau among the “state absolutist” writers he has discussed earlier. The individual retains no natural rights. But the social contract that constitutes this state has validity, and it transforms the individual into a fully integrated and unconditionally obligated citizen only if, according to Neumann, it simultaneously achieves “the realization of pure democracy [...] and the realization of economic and social equality” (126). With regard to other entities that are characterized as states, Rousseau is an agnostic, says Neumann, or rather a revolutionary, who sees no objection to a popular uprising against such schemes of rule. Even where a state has been duly constituted, its power always remains with the people whose political act gave it form and can reform it. Neumann pauses in the development of his argument to consider where Rousseau belongs in relation to the parties of the French Revolution and concludes that the claims on him by the Montagne would have to be qualified, insofar as that more radical party represents the city, in view of Rousseau’s fierce hostility to rule from the capital rather than the country. Yet that Rousseau animated the spirit of the National Convention, Neumann does not question.

Neumann’s notice of the social politics of the French Revolution, as between Montagne and Gironde, is an indirect introduction to his treatment of the *Essay on the Origins of Inequality*, which he presents as a sociological treatment of human nature and of the natural concomitants and consequences of its ordinary activities, precluding any notion of natural law. In this analysis, as Neumann reads it, the human condition depends on the natural history of society, which generates power relations through the effects of private property and which brings about dire moral and cultural relations through its ordinary dynamics. Yet that does not at all mean, according to Neumann’s rendering of Rousseau, that human collective will is chained to that natural development:

Against the actual society examined in the *Discours* and found to be bad, the *Économie Politique* and the *Contrat Social* undertake the task of finding a genuine and true human community, which can dispense with the motives of power, avarice, and vanity, and which is wholly founded on common submission to a law internally recognized as “binding and necessary.” His aim is a society in which individual will and general will coincide, and thus in which only the general will is valid; in which freedom and laws are at once realized; in which right means

might, and might means right [...] [I]ndividual liberty is undoubtedly given up in Rousseau's system, but not simply annihilated [...]; it is abolished in a Hegelian sense, that is, annihilated in the sphere of individuality and restored in the collective sphere. (130)

Having uncovered these principles in Rousseau, Neumann says that they would be no more than pious hopes if Rousseau had no conception of their institutionalization. The first substantial element in this respect is the rule by general law but only insofar as that law is made by the people as sovereign legislator. Neumann emphasizes, first, that it is not the formal quality of generality alone that is supposed to be decisive, and, second, that the governmental apparatus that administers the laws has no prerogative powers or anything of the sort. Still, Neumann says, the scheme as set forth to this point gives no indication "that his system is anything but one of naked state-absolutism" (134).

Neumann acknowledges that the three features that in his view decisively distinguish Rousseau from other absolutists are not consistently or unambiguously set forth in Rousseau's writings. Yet he finds one text modifying another and concludes that the theory gains its special character and power through its overall vision. This includes, first, completely egalitarian political democracy; second, a scheme of organic units qualified to resolve conflicts among men socially bound in collaborative projects; and, third, equality of property. Despite the absence in Rousseau of Marx's recognition of the historical contradictions that bring the development forward, Neumann says, "The final result is that in a society based upon political freedom and on the social substructure which he demands, the state must necessarily become obsolete, because the decisive conflicts are missing" (137). Neumann's conclusion returns from this construct to the blunt judgment that prepares for the last two chapters of his review: "German idealism, which is built upon [Rousseau] has not, with the exception of Hegel, made any significant contribution to the theory of state and law."

This last is above all Neumann's introduction to his exceptionally polemical treatment of Kant, of whom he writes,

No philosophy has proved more disastrous for German political thought than the Kantian theory of the State and of the law, which, by banishing the idea of law into the sphere of transcendence, "leaves actual law and actual morals at the mercy of empiricism and the blind forces of tradition."³⁵

Marx is brought into the discussion to provide the critical reference point and to set the tone, as with Rousseau, but here Neumann quotes his disparagement of what he calls "German thought": "The abstraction and unreality of their thought always kept pace with the one-sidedness and inadequacy of their social and political actuality."

Kant's aim, according to Neumann, is to elevate the social contract to a transcendent idea, beyond all speculative scenarios, providing the point of conjunction between ethics and law and thus also a rational principle to judge all constitutions. Human beings are understood as being ethically obliged to enter into such a binding alignment with others, and thereby to bring into being the authority whose word—if stated in terms so general as to apply to everyone within the contractual unit—is law. Given the premise of a

rational origin in freedom, the presumption is that the state formed by this process will limit coercive law to the restrictions necessary to install distributive justice, which will in turn guarantee as much liberty as possible. To achieve this end, obedience to law cannot be limited to those who respond subjectively to the call to ethical conduct in a moral way; it must also be calculable that others will respond, perhaps out of fear or desire for gain, all of which also counts as a “legal” way of complying, congruent with the ethical design to have law prevail.

Neumann first indicates his misgivings about Kant’s conception of an ethics remote from love or happiness as well as his general distrust of a universal inherently rational “formal” principle derived from the legalistic meaning that Kant attaches to the concept of ethics. He questions whether the standard—to will the maxim of one’s action to be a universal law—yields anything more than the “usual dogmatic system of material values” put forward by natural law advocates. It is in the postulated consequence of this ethical principle that all engage in the social contract, according to Kant, but Neumann notes that even at this level of analysis Kant concedes that not everyone can be supposed to respond to the moral drive toward ethical judgments. Some will respond to what Kant calls the “legal” reasons, which include fear and other motives, just as is the case when a state is in place. Neumann pauses in the exposition to question how a judgment can be thought ethical on Kant’s terms if it can be defined as a function of such a range of subjective factors. This calls into question, in his judgment, the supposed purely ethical transition from the natural condition to the realm governed by the state’s law.

Beyond this philosophical objection, Neumann presses on to question the range of perfect duties grounded in ethics, according to Kant, and constitutionally institutionalized in the state. First, he returns to his earlier point that perfect duties here refer exclusively to liberty and property, while any obligation toward the promotion of culture or happiness is imperfect at best. Second, he judges that Kant’s distinction between ethical duties and the legal duties that create enforceable rights is little more than a reformulation of the Natural Law distinction between rules binding in conscience and those binding in law. Third, then, he concludes that the exclusive focus on rights, notably of property, which entails a purely individualistic self-reference of obligations, where there is no duty to care for others, adds up to an uncritical account of “the modern bourgeois state, of the German Rechtsstaat”—and that this is misleadingly asserted to be the idea of the state as such.

A critical element in Kant’s theory, according to Neumann, is that he maintains that civil law provisions like private property and contract are already present in the natural state so that rights are also provisionally present. The morally obligatory entry into the social contract to constitute the state makes good on the unenforced obligations already present. Neumann summarizes the case as a theory of the state as a “categorical postulate of private property” but then sees a “collapse of this “beautiful logical construction” because the supposition that private property is somehow natural is, Neumann says, as arbitrary as other such postulates in Natural Law. Notwithstanding Kant’s rehearsal of formulas from Rousseau about the transition from the individual rights of the state of nature to the freedom provided by the state, Neumann says, the decision as to the “natural rights” inferred from human freedom that are to be limited and regulated by statute

and their enforcement is simply in the hands of the sovereign authority, which lacks the democratic grounding in Rousseau. He calls it a “complete surrender of liberty” and avers that “the existing power is glorified with the aid of the idea of right.”

It is important to register the vehemence with which Neumann attacks Kant as contrasted with the historical understanding he brings to the other theorists he reviews, but Kantian thought is a widely praised contemporary antagonist as was clear already in Neumann’s first dissertation, where some of these arguments were first made. Especially important in that work on “punishment” was a subject that Neumann reintroduces here. The question is about Kant’s categorical insistence on the death penalty for any case of murder, with no possible regard for any circumstances that might be thought to mitigate the crime. The challenge to this theory by Beccaria has been the question how the individual can be supposed to have entered into a compact whose consequence is his death. Kant’s reply, as represented by Neumann, is that the subjects of the contract are presumed to be rational, harmonious and ethical agents so that the actual criminal has nothing in common with his persona as one of the contracting parties. For Neumann, as for the critics he cites, this shows that the subjects of rights in Kant are not human beings but “mere logical points of attribution.” Neumann concludes that Marx was right to see Kant as the “author” of the German version of the French Revolution. He was “responsible for the defeat of the German bourgeoisie in 1813, 1848, and 1860 [...] provided that theories have any political influence at all.” He provides the liberal theory of the *Rechtsstaat* from 1812 to 1918, with security of property and the political monopoly of the landed, while the bourgeois accept a secondary status devoted to the acquisition of wealth. Democracy, Neumann says—thinking of Rousseau—has disappeared alongside of Natural Law.

Paired with the discussion of Kant is a survey of Fichte’s approaches to the relations between state and the law, which Neumann introduces sardonically with the observation that Fichte had developed “a system of freedom as against the state” as well as “a system of absolute freedom of the state,” one after the other. There is little point in reviewing Neumann’s pointed commentaries on these contrasting stages in Fichte’s thought inasmuch as he writes, in conclusion, that he has not “dealt with Fichte’s theory because it contains any original contributions.” He continues,

We have only considered Fichte’s theories because his work comprises every conceivable rational theory of law and the state, from a pure natural law system whose sole aim is liberty, via all possible compromises, to state-absolutism; and because it clearly demonstrates the dependence of political theory on political reality. (158)

Although Neumann’s opening words about Hegel are comparably dismissive, that initial impression is significantly revised as he works through the theory, pointing ever more toward what may be an attempt to retrieve and to account for the interest of the young Marx in Hegel. For this reason, and because of Neumann’s earlier somewhat ambiguous statement that Hegel culminates the development of political theory, it is necessary to follow Neumann’s reading in considerable detail. In contrast to his assertive indifference everywhere else to what he calls the “metaphysics” of the theories he examines,

Neumann signals at the outset that the value of important elements in Hegel's thought depends on the possibility of rendering dialectics as something other than a "mere postulate or metaphysical concept" as is done in "materialistic dialectics." In the event, he does not systematically carry through any such program in his commentary, but he expounds substantive elements in Hegel's theory with a view to such a reevaluation of the dynamics, an undertaking that he finds exceptionally difficult, as will be shown.

After a brief reference to Hegel's earliest writings on political themes, where his harsh rejection of both standard natural law and the "critical" version in Kant arose in conjunction with some "classical" theses about the corruption attendant on private property and the like, Neumann turns to a preliminary overview of Hegel's mature ethical philosophy, whose exposition he interrupts in a surprising manner. The theory begins with a postulate of "the free will of man" as the "primary principle of the state." Neumann sees the question raised by this as comparable to that addressed by Kant and Fichte as well as Rousseau: the identification of individuals' free will with that of the state. With the rejection of the recourse to transcendence of the first two theorists (and the silent avoidance of Rousseau's democratic and egalitarian alternative), the question becomes how "homogeneity" in those dimensions can be achieved and understood. Hegel has recourse to a historical concept related to Montesquieu, according to Neumann, according to which the lives of individuals are in effect ruled by an objective ethical order, varying in time, which individuals enact in the actions they freely take in their own interests. Neumann emphasizes that this is not the romantic "spirit of the people" but a process of individual human actors making their best choices. Neumann quotes the Hegelian concept of the "self-conscious moral substance" as the expression for this relationship.

Then he interrupts his exposition in an unexpected way. "What this means, I do not know. I am not in a position rationally to understand this conception." But this does not lead to the expected unequivocal rejection, inasmuch as he goes on to say, "I can only feel it." After expanding slightly on Hegel's aim of transcending the natural law, whose historical necessity—including its manifestation in the French Revolution—he had nevertheless acknowledged, Neumann quotes, "The state is the realized ethical idea or ethical spirit [...] The ethical system is thus the conception of freedom, developed into the present world and also into the nature of self-consciousness." He then returns to the admission that he is "unable to understand the assertion of a coincidence of freedom and the spirit of the people in the state" but concludes from this that it would seem "more fruitful to present the relations of liberty and state sovereignty in various instances." These formulations are unique insofar as they presume that there may be something important encoded in theoretical formulations he might have been expected to reject outright as irrational, given his postulated equivalence between rationality and accessibility to ordinary intelligence.³⁶

Neumann begins with Hegel's postulation of the Roman Law concept of the person with its concomitant idea of legal equality. The passage in Hegel that he cites in this connection, however, goes beyond equality to a concept of freedom that implies "an external sphere in order that [man] may reach the completeness implied in the idea." Following from this, according to Neumann, is not only a refusal to separate legality from morality, as in Kant, but also the extension of the concept of freedom to include

the “philosophical” as well as the juridical meaning of freedom, taking up a concept that he had earlier briefly stipulated in his own conceptual survey as comprising “the real possibility of human self-assertion, the ending of the alienation of man from himself.” Neumann does not speak of alienation elsewhere in the book, but it must derive from some acquaintance with Marx’s early writings, which may be an undercurrent in his treatment of Hegel throughout.³⁷

In the context of Hegel’s theory, however, Neumann is moved from the twofold concept of freedom to the right of property, although he finds there too a positive right of use as well as a negative right of protection. The conception of property as something for use and labor, Neumann traces to Hegel’s adoption of Adam Smith’s “cultural” theory, but he faults him for failing to recognize—as Neumann says both Smith and the Physiocrats saw—that “free initiative” depends on equality of property, a curious reading that he then extends to the contention that “sovereignty” can only emerge from competition out of such equality, a proposition that nowhere accords with his uses of that key term elsewhere, as it also seems alien to Smith, whose account of the origins of sovereignty links it precisely to “inequality of fortunes.”³⁸ These questionable passages are puzzling but inconsequential for Neumann’s further development of Hegel’s argument. He cites a range of equal rights that Hegel extrapolates from the property right, such as trade and contract, but also attends to other forms of freedom recognized by Hegel. Yet he notes that freedom of religion, speech, the press, access to office and the like are expressly treated by Hegel as dependent on express grants by the state and as products of the historical development of civil society. After some attention to the qualifications on communications freedom in Hegel, he closes this preliminary discussion with a reformulation of his basic problem:

A guarantee for the rights of freedom is only given if the interests of the state and those of the civil society are identical. If they diverge, the same dilemma occurs as in all rational theories: the state either abolishes the rights of freedom, or the civil society abolishes the state. (163)

An ambiguity in Neumann’s treatment of Hegel’s theory of civil society and state is contained in the concept of interest here. Quite apart from the unlimited extent to which the sovereign’s authority in relation to foreign states renders the interests of civil society as such irrelevant, there is a gradation of authoritative stages among perceptions of interests within the agencies of civil society, notably the corporate entities, before they enter into the deliberations of state. Yet it is arguable that this realm of duties and patriotism is precisely the aspect of Hegel’s theory that Neumann says he cannot “understand.”³⁹

After his anticipation of the moral he will draw from his reading of Hegel, Neumann turns to the theory of civil society, first identifying Hegel’s configuration with historical developments in France and England after the medieval era. The central feature of this order of things is the conjunction between egoistic self-assertion of individuals and “the interdependence of social men” so that universal interests are satisfied by the pursuit of the interest of individuals. The functions of civil society, then, are the satisfaction of

needs through division of labor; the realization of property and other related freedoms and the reparative pursuit of common interests through institutions of police and corporation. Neumann likens Hegel's civil society to Kant's preliminary state of private law, without the quality of logical abstraction that encloses the earlier theory. Neumann's emphasis beyond this is on the universal dialectically penetrating the particular, a philosophical formulation of the more empirical, if historically delimited, "harmonist" vision that Neumann sees Hegel sharing with Smith, Ricardo and others of that generation.

Yet the topography of human activities in civil society does not adhere to the more common individualist or contractualist accounts. Neumann introduces Hegel's concept of the estates that succeed the family within civil society as a setting for human activities while insisting on their decisive differences from medieval estates, by virtue of their openness to all who qualify. The first estate in this scheme comprehends officials, officers and teachers, while the second and third, respectively, integrate the activities of agriculture and commerce. He notes that Hegel rejects the idealization of some original condition that is common to natural law theorists; and he remarks specifically, following Rosenzweig, on Hegel's comparatively advanced views on issues relating to the division and mechanization of labor, taken as a difficult emblem of human progress. Yet Neumann's principal point in this discussion is Hegel's failure to recognize the "fourth estate" of dependent workers, despite his recognition of poverty and his acknowledgment of the impoverishment of many as a function of enrichment of some. Neumann writes what appears almost like an apology but seems to be intended rather to signal the outer limits of political theory. If Hegel had acknowledged the fourth estate, "he would not have been able to construct the state," Neumann writes, "for it cannot be too often repeated, that such a rational construction of the state is only possible if harmony of the interests of all those groups which form the state is presupposed." He could have acknowledged the workers' estate, given that premise, only by claiming that their interests were identical with those of the other estates: "This assumption, however, he could not make without doing violence to reality." Neumann does not explain at this place why it would be less "violent" simply to ignore this segment of civil society. And, as noted, Hegel does not in fact simply ignore the distinctive interests of the poor whose exceptionally deprived conditions he in fact links to mechanization and separation of labor; as a reader of not only Smith but also Ferguson would be bound to do. The point is that he does not see them constituting an "estate," in the sense of the corporations that have self-organization, a measure of self-management and privileged lines of communication to the state. Somewhere in the background of this argument appears to be an echo of Neumann's abandonment of the "constitution of labor" that had been his central cause in Weimar. The addition of a Fourth Estate, it seems, is inconceivable. Neumann concludes the discussion by emphasizing Hegel's conviction of the identity of interests of these three estates, "from whose competition and collaboration sovereignty emerges," noting almost as an afterthought that "the center of gravity" so much lies in the first estate "that in reality this universal estate [...] becomes the bearer of the state and the realization of the ethical will." This consideration would seem to bear on the notion of an equality of interests among the three duly organized estates. The direction of the state apparatus will also recur as a problem in Neumann's later work.

In the present context, however, Neumann quickly reviews Hegel's legal theory as preliminary to the theory of the state as such. The core institution, as noted earlier, is private property, with the scheme of liberties seen as supplementary to it. "Right enters into being only because it is serviceable for wants," Neumann quotes. The legal order is formed through general laws enacted by the state, with only limited discretion placed in the hands of independent judges, acting in public. The design as a whole is supplemented by police action in a sense that extends not only to the control of crime but also to the shaping of physical and other conditions required for the competitive society. While this includes "keeping a check on poverty," the main responsibility for mutual aid and support rests with the corporations, which "constitute the moral order of the state," beyond the level of the family. In Neumann's somewhat simplified reading, both police and corporations are "under the control of the state," although they are agencies of civil society.

This relationship between civil society at its most developed level and the state is the most important and yet also the most ambiguously developed aspect of Neumann's account of Hegel's theory.⁴⁰ He opens with a surprising claim. Having noted that "the state as an idea stands above civil society," he appears to infer from the observations that "the only bearer of the state is the civil society" and that the state is "the indwelling end" of civil society: "The civil society is not only one element of the state; it is in truth the state. It subordinates it; makes it its servant" (126).

Since the rest of Neumann's account does not question the superiority of the state or the sovereignty of the monarch within the state, this metaphor might be put aside as an exaggeration meant to make a narrower point, except that Neumann's central thesis about the harmonistic presuppositions of the state might be said to depend on quite a literal reading of the claim of such service, since otherwise the state might be counted upon to manage the conflicts among the constituents of civil society—as the whole design certainly does, according to Neumann's brief sketch of Hegel's transition from the family to civil society, in relation to the conflict among individuals as they emerge from the family with their individual properties and expansionary designs in hand. The issue at the heart of Neumann's uncertainties here has to do with the sense in which the state embodies the "interests" of civil society, as organized in corporations, sustained by police, ordered through law and integrated through patriotism, in comparison with the sense of "interests" that Neumann provisionally adopts from Laski and others writing in the more reductionist mode of Marxism. In his review of Heller and Laski, he indicated that Laski's simplified version of class domination of the state needs dialectical refinement, but this undertaking clearly remains a work in progress at the time of the dissertation.⁴¹

Despite Neumann's invocations of "dialectical" patterns of development, he appears reluctant to concede the qualitative changes that this approach sees as emerging out of the clash of opposites, a kind of skepticism that was already apparent in his first dissertation, when we spoke of "complementarity" in characterizing his skepticism about the talk of "synthesis" between conflicting forces and trends in the Weimar design. Yet, as we have noted, he maintains consistently that Hegel is the only political theorist who can be paired with Rousseau as making a contribution to the understanding of his central questions about the rationality of law and the willfulness of sovereignty and preparing

the way for what the Marxism that interests him has to see as a synthetic dialectical resolution. Another face of this issue is almost certainly Neumann's tendency to think of "revolution" rather as metaphor or, at most, as sociological shift. He will acknowledge the "rationality" of this or that violent outcome, but he will not build on violence. These considerations will require us to look with some extra care at the next phase of his work, in the setting of the Institute of Social Research, where "revolution" is so much part of the ordinary language.

This general quality of his thinking, the counterpart of his inventive extrapolations from models of negotiations, enters at this point in his critical exposition of Hegel's political theory of the state in more modest ways. He insists that Hegel does not link the agents of civil society subjectively with the state by contract, as in natural law theories, but rather through "patriotism," whose efficacy Neumann sees Hegel as having noted in the cases of both England and France in the wars of the late eighteenth century; but which he then equates with "the free consent of the citizens," without having first distinguished between the agents of civil society and the citizens so that it sounds very much like contract after all, notwithstanding his earlier insistence on the differences between Rousseau and the liberals in this respect. He translates that difference into the surprising thesis that Rousseau is anticipating the stateless society rather than the democratic state. All this appears quite remote from Neumann's undertaking to work through the relations between legal rationality and state sovereignty, unless, of course, it is taken as a sign of profound doubt whether the problem is soluble at all, which is not an unexpected element in a study written in a moment of uncertainty about the extent to which the aberrant new political forms represent the main prospect without a total transformation that he cannot really imagine. Perhaps he does not even "feel" it.

The Hegelian thesis about the spirit of the state that Neumann had originally put at a distance he now translates into the following formulation of "Hegel's theory of the state": "The state is the organization of the general interests of society through the medium of its particular interests." This is a reasonable paraphrase of Hegel's opening statement in the paragraph in the *Philosophy of Right* (270) that Neumann cites, but the point of the paragraph is the "education of the spirit" that is presupposed, and the exceptionally lengthy "Addition" is devoted to the differences between the political ethos involved and the claims of religions of all sorts. This is in fact the discussion where Hegel urges not only the inclusion of Quakers who will not fight for the state but also of Jews who may appear as members of an alien community, in both cases because of the way in which inclusion serves the citizenship essential to that reinterpretation of particular interests into conformity with general interests. In the light of Neumann's earlier discussions, one might expect a critique of ideology at this point in order to undermine Hegel's claims about the reconstitution of interests, but there is no echo of it: the dimension of "cultivation" [*Bildung*] uppermost in Hegel's treatment is simply left out of account.

Neumann moves fairly abruptly from these very general considerations to an account of the state's constitution, according to Hegel, beginning with his version of the separation of powers, which had occupied Neumann in his discussion of Locke and occasional references to Montesquieu. Neumann first notes that Hegel rejects the notion of

separation of powers as a form of mutual limitation, but that he rather separates offices of legislation, execution and monarchical functions to accommodate the “increasing complexity of state activity,” in the manner of Max Weber. At the next step, however, he also makes it clear that the offices are not nearly comparable in power or authority. The collectivity of offices does not add up to the sovereign. The sovereignty of the state is monarchical, and it is the monarch who has the power of final decisions in the general matters of law as in the particular matters of execution. Neumann says dismissively that “we may be spared the extremely complicated justification of this theory.” He goes on to cite Hegel’s “rationally unproved identity of the ‘ethical will [...] with the will of the ruler,” although it is in some way achievable only within the state, whose members bear the “ethics” of the whole. In any case, there are no institutional limits provided by the self-protection of property or the generality of law on the power of the monarch. That said, Neumann also finds in Hegel a decisive role for the “first and universal estate” of civil society:

Only the bureaucracy can guarantee the freedom of the citizens. This assertion proves the sureness of Hegel’s historical insight. Legality of administration is guaranteed, not by the right of resistance, but by permanent institutions such as the bureaucracy; and the interaction which, in spite of their separation, takes place between the state and civil society. (169)

When it comes to legislation, Neumann speaks of a “merging of civil society and state,” as if the self-organized corporations entered directly into the state’s nonparliamentary dual legislative structure, although he also notes that they have only an advisory function in relation to those who create the general norms that rule.

What we have discussed throughout as a difficulty in Neumann’s apprehension of Hegel’s concept of dialectical progression to syntheses, however, now quite abruptly appears as Neumann’s attempt to apply an epigrammatic philosophical critique he quotes from Marx’s *Holy Family*, his only direct citation of this early work: “Hegel is guilty of an indecision, in explaining the philosophy as the existence of the Absolute Spirit and at the same time refusing to allow himself to accept the real philosophic individual as the Absolute Spirit.”⁴² Neumann offers the passage as culmination of his own summary, rather cryptic critique:

In Hegel’s system two elements can be discerned: the rational justification of the state on the one hand, and history as a datum on the other, which is to say the coercive machinery of the state as represented by the state and the bureaucracy. His rational arguments are not carried to their conclusion. (170)

What appears as an expansion of the Marx quotation turns to a brief reiteration of the point that there are no protections for citizens’ freedoms built into the state, there being no right of resistance, share in political power or protective separation of power. “Protection,” he concludes, “is transferred exclusively to the civil society, which by its free consent justifies the state.” Because of the uniqueness of the quotation from this first joint writing by Marx and Engels, it may be useful to note that it

is not possible to link the use to which Neumann puts it with its meaning in context. Marx is mocking his target, the Young Hegelian, Bruno Bauer, for transforming an abstract philosophical but comparatively harmless point with religious roots in Hegel into a preposterous claim on behalf of himself and his immediate followers. Hegel distinguishes between the absolute philosophical spirit in history and the empirical mass that unconsciously executes its designs, Marx says, but he does not follow through to the conclusions—that is his inconsistency—that philosophers actually embody this spirit or even that the spirit is in any empirical sense the prime mover of events: the philosophers gain insight into the spirit only after the event and the spirit does not really take form until the philosophers have comprehended it. Things, in brief, do have deepest meanings; but those meanings first appear when they are recognized after the event. In the meantime, presumably, Hegel does not deny that things happen as agents enact and understand them. In contrast to these metaphysical claims in Hegel, whose incompleteness effectively precludes any harmful practical conclusions according to Marx, Bruno Bauer actually dismisses acting humanity as passive mass and elevates his clique of philosophers to the active role of governing world spirit. Marx likens this to the political conception of the French school of *Doctrinaires*, who posit the sovereignty of reason against the sovereignty of the people. None of this lends itself to the use to which Neumann puts the passage, quite apart from the fact that he does not indicate in the English translation that he has cut out a revealing half of it. The assumption must be that the passage as quoted by Neumann had taken on some sort of scriptural meaning in the political literature, and that this isolated incident in the writing does not indicate the quality of Neumann's reading of these recently published and philosophically abstruse texts. This academic misstep is worth noticing only because of the importance that Neumann attaches to the movement beyond Hegel to Marx.

In context, Neumann moves from his renewed emphasis that it is the “free consent” of “civil society” that protects its agents against the state to a flat rejection of Hermann Heller's reading of Hegel as proponent of the *Machtstaat*.⁴³ Neumann counters this with a claim that offers a surprising gloss on the concept of consent intended in his reference to civil society: “Even if the decision of the monarch is considered to be the constitutive element of the State, the remnants of natural law are still preserved intact.” In his only reference then to the powers of the monarch in relation to the state among states, Neumann asserts that Hegel is never warlike or Machiavellian in foreign policy. Neumann pushes the argument once more against Kant:

If he [...] rejects the Kantian assertion of the possibility of eternal peace [...], he rendered to the science of politics a far greater service than did Kant, because he recognized the forces driving towards war and, unlike Kant, did not veil them. (170)

Written in 1936, that passage is perfectly understandable. Then too, Neumann's position on the primacy of the executive in international relations remains constant throughout his career, if only because of the paradox of claiming democratic control when secrecy is of central importance in the process.⁴⁴

Neumann offers another summation of Hegel's conception of the state, expressly following Franz Rosenzweig. Hegel's state was the Prussian state of the reformer, Freiherr von Stein: "Liberation of the peasants, freedom of trade, local self-government, the recognition of the existence of a bourgeoisie, with the correctives of corporations and police." Neumann then elevates these features to the level of a "solution of the problem of the synthesis of liberty and sovereignty, of the rights of men and the state," returning to his original questions, and he concludes not with a clear rebuttal but rather with what is almost a historical relativizing of the two key assumptions that underlie this design. Neumann's surprising description of the "philosophical problem" embodied in the first of these should be quoted in full, especially in view of the closing comparison:

How far the dialectical philosophy of history is compatible with the assertion that the state is the realization of the ethical idea. It is only possible because for Hegel history ends with the attainment of the "modern" epoch, just as for the Marxist theory history ends with the realization of the classless society. (171)

Second, then, he argues that Hegel's conjunction of liberty and the state depends on a unity of interests between state and civil society, with each of these internally undivided as to interests. This excludes the working class as a social and political reality, a pre-Ricardian position that could be understood, he says, at a time when workers did not present any "difficulty," but Neumann questions the assumption of a unity of interests between the landed interests and those of trade and industry, leaving aside in his conclusion the question of a possible conflict between monarch and bureaucracy to which he alludes earlier.

These surprisingly mild reservations against the argument are followed by stern condemnation of the actual consequences of following Hegel's lines of analysis without recognizing their limiting conditions so that Hegel is sharply criticized for having praised the Prussian state that Neumann characterizes in bitter terms and seen as supplying a weapon to the proponent of the "*Machtstaat* that it has become." "One cannot excuse Hegel," he writes, "on the ground that he was not realist enough to recognize the true character of the Prussian state." Yet the tone of almost personal disappointment rather than categorical condemnation of the theory is explained by the conclusion that opens an unexpected vista of a future development:

But his conception could just as easily become the revolutionary theory of Marxism, if one took into account the existence of the fourth estate of workers, and proved the theory of the harmonists to be a false doctrine. This has been done by Marxism. (172)

This conclusion leaves unresolved the question whether Neumann thinks of the Marxist "revolutionary" theory as a continuation as well as a dramatic correction of the Hegelian political theory so that elements of the Hegelian conception might enter into the Marxist theory of the state that he had promised to supply at the end of his first Leopold Franz articles or whether he means that the Marxist theory is the dialectical negation of Hegel's theory of the state, as might be inferred from his earlier treatment of Rousseau. At the

level of analysis of Neumann's concluding section, the former appears more prominent than the latter. The question is about the crisis of the rational state, not its supersession.⁴⁵

A Defense of Rule of Law in the Liberal Nation-State

In the introduction to the third part of the dissertation, which he designates as the "verification of the theory," Neumann distinguishes decidedly between the "idea" and the "reality" of the various types of states in order to defend liberal and democratic states, as they have existed, against the categorical and idealized critiques formulated by proponents of fascist, National Socialist or Bolshevik "totalitarian" states, who dismissively judge the reality of the one by the grandiose postulated ideals of the other. He speaks of this practice as a "trick" characteristic above all of National Socialist political science, listing an array of instances, with Carl Schmitt as a prominent example, and he asserts over against these practices, "It must be obvious for a science of politics that an idea can only be confronted with an idea and a reality only with another reality" (175). This thought, although formulated in this place against polemical distortions of both the ideas and the realities at issue, raises some questions about the way in which Neumann will construe his later close relations with conceptions of theory within the Horkheimer group, where it is taken as holistically "critical" of realities seen as integrally bound together. In the present context, in any case, Neumann concludes, "We have therefore to re-state the liberal theory of society, of the law, and the state."

While the term "theory" in the title of the third part, where he speaks of its "verification," refers to Neumann's own sociological account of the "governance of the rule of law" as a function of the primacy of bourgeois interests in the "competitive society," the term in the present context refers to something like the "prevailing doctrine" among legal professionals or the "expressive ideology" that systematizes and explicates actual patterns of conduct. The "rational political theories" surveyed in the preceding section are cited only incidentally, either as sources of influence or as effective formulations of patterns operative in the real world. Accordingly, Neumann opens his discussion of the "liberal" theory with the problem posed by the distinction between the *Rechtsstaat* that historically comprehended the "legal form of a system based upon political and economic freedom" in Germany and the conjunction of parliamentary supremacy and rule of law that is its counterpart in England.

The former, Neumann concludes after a quick and selective survey of the history of the concept, focuses on the primacy of formally rational law, as well as equality before the law, to govern the conduct of the bureaucratic administration, above all, and to render state interferences with individual liberty and property transparent and predictable. Neither state policies nor the political form of the state is constrained by the *Rechtsstaat*, although the cultural and welfare aims of the state are effectively subordinated in the effectuation of the theory after the failure of the 1848 movements. Neumann speaks of it as a design appropriate to a politically passive bourgeoisie, the consummation of "the strange alliance between throne and altar on the one hand and the competitive economic system, on the other."

The English system of rule of law and supremacy of parliament, by contrast, emerges with the political assertion of the bourgeoisie against royal absolutism early in the seventeenth century. Neumann follows Dicey in putting parliament at the center, with the rule of law emerging in effect as an instrument of that predominance, notwithstanding the logical tension between the empowerment implicit in the one design and the restrictions that constitute the other. Parliament constrains other form of sovereign power by its rigorous insistence on legislated rules, and the rigidity of law and the legal order enhance, in turn, the authority of parliament. In the English case, as in the German one, the instituted liberal designs presuppose and reinforce the end of Natural Law as an effective doctrine. To strengthen this claim, against one possible line of objection, Neumann follows Blackstone in asserting that with the rise of parliament and statutory law the authority of the Common Law was correspondingly subordinated by the judges, who play a central role in rationalizing the system.⁴⁶

Neumann summarizes the “fundamental difference between the English and German doctrines” as follows:

In the British doctrine, the centre of gravity lies in the determination of the content of the law by Parliament. The German theory is uninterested in the genesis of law, and is immediately concerned with the interpretation of a positive law, somehow and somewhere arisen. The German theory is liberal-constitutional; the English, democratic-constitutional. (185)

He follows this statement of the contrast with a list of theses, however, almost all of which appear to apply equally to the “legal systems in a competitive society” as such and thus to both of his case studies. First, then, there is a presumption in favor of a conception of personal and economic liberty, which is in turn guaranteed by the application of general laws by independent judges. Second, this legal system was related to the economic system of free competition, to a social condition in which class conflict could still be ignored and to a political “system of separation and distribution of powers,” albeit with differences in the extent to which the bourgeoisie actually shared in political power. Finally, Neumann introduces the conception of the nation as the force that integrates the competitive society he is considering into the state. Without noting the resemblance of this factor to the “patriotism” that Hegel had posited and that he had not attended earlier, he designates it as “the irrational basis of society.”⁴⁷

Neumann characterizes these theses as conclusions of analyses he has yet to present but excuses their placement by “didactic reasons,” evidently associated with the methodological reflections that he prefaces to his treatments of the three principal topics. He begins these with the recognition that his characterization of the liberal legal system as well as of the social and political “substructures” underlying it will overlook many details and variations that could not be considered within any reasonable compass of the time and space at his disposal. Drawing first on Max Weber, then, he refers his sketches to the method of ideal types, whose models of social complexes stand between historical-empirical specificity and universalizing abstractions. He rejects Weber’s relativistic rationale for the methodology but contents himself with asserting “that the rightness of the construction of the ideal-type can be proved by

the convincingness of the results of the investigation.” Neumann then turns to a second, closely related methodological problem in his studies, the justification for the interlinkages proposed between selected ideal-typical constructs, as between the liberal legal order and the socioeconomic system of competitive capitalism. To manage this issue, he turns to a concept of equal interest to two of his mentors at the LSE. It was Morris Ginsberg who first retrieved the idea of *principia media* from John Stuart Mill’s *Logic* to comprehend analogous historical configurations extending across several complexes of the sort that Weber later called ideal types, with the analogies involving decisive structural or ideological dimensions. Neumann cites these sources but relies especially on Karl Mannheim’s discussion in an extended section of his 1935 version of *Man and Society in an Age of Reconstruction*, where in fact Mannheim cites Neumann’s own *Koalitionsfreiheit und Reichsverfassung* (1932) as an exemplary study of the ways in which such seemingly self-evident sociological correlations as that between capitalism and formal rationality in law are in fact differentiated by a common historical reconfiguration.⁴⁸ It is worth noting that, notwithstanding his general disposition to Marxist social theory, Neumann does not limit himself to norms of Marxist method, in this as in other matters.

This loosely structured relationship to Marxism becomes evident as well in Neumann’s nuanced treatment of Adam Smith, whom he takes as the theorist not only of the form of capitalism that functions as the material corollary of the legal system of rights and contracts and minimal state intervention, where sovereignty consistent with this social order can emerge out the competing multitude, but also of the social and political concomitants of a capitalism that features monopoly formation, where the political mode is domination. The crux of the matter is a distinction between two kinds of competition, given the premise that individuals are naturally disposed to pursue their individual interests. In the one case—which Neumann identifies with the kind of natural law metaphorically invoked by Smith in the figure of the “invisible hand”—competition is among equals and proceeds through the quality of entrepreneurial performances; the relations build on contract between bearers of secure rights; and they tend toward cumulative equilibriums that serve the common interest, with the consumer as judge. He writes, “Only if these conditions exist in reality does Adam Smith believe in the realization of the pre-established harmony of individual and common interests” (194). In the other case, then, of which individuals may be no less capable, notwithstanding “natural” cues, the competition begins with unequal powers and proceeds through restrictive harms by the stronger against the weaker competitor, in pursuit of monopoly power. The latter efforts are properly subject to restrictive law and administrative regulation, according to Smith’s theory, insofar as the conditions of trade, the self-restraint of individuals and their recognition of the shared advantages of fairness do not constrain them, as he thinks likely. In this connection, Neumann cites Smith’s discussion of bakers’ and butchers’ guilds, where cartelization is facilitated by circumstances and where authorities properly intervene.

Despite Neumann’s acceptance of the applicability of Smith’s liberal model to a certain phase in the development of capitalism, whatever the eccentricities of its metaphysics, he is no less certain that Smith does not apply his criterion of power disparities to the

relations between employees and workers. “It is true,” Neumann writes, “that Adam Smith [...] enjoined some measure of welfare for the workers, but [...] [he] did not make institutional provision against a possible exploitation of the non-monopolist by the monopolist, and for a restitution of the competition in efficiency” (195). Surprisingly, Neumann offers only an internal critique of what he treats as an inconsistency in Smith’s treatment of this issue, with a corrective available within Smith’s terms through the institution of the trade union, which “corresponds to the individual employer” in the labor market. He extrapolates from this discussion to a critique of the English law, which fails to distinguish between cartelization in the commodity and labor markets, and he favorably recalls the “German legislation” that “clearly differentiated between them,” in view of that distinction: “This differentiation culminated in the establishment of a control of cartels and monopolies on the one hand, and in the institution of a complete freedom of trade unions on the other hand” (195).⁴⁹

Especially in view of Neumann’s consistent and bitter critique of Weimar’s failure to control cartels and monopolies, as well as his insistent complaints that the freedom of trade unions was insufficiently respected, it is hard to know what to make of this passage, which appears to suggest that the Weimar period might be seen as the implementation of a corrected liberal design, fundamentally consistent with Adam Smith’s social theory. One possibility not inconsistent with the occasional admixture of political elements in his writings is that this excursus was intended as a bit of minimalist political advocacy, or even as a mild provocation of Friedrich Hayek, who was also a member of the faculty at the LSE.⁵⁰ In any case, Mannheim makes it clear in the later chapter on Weimar that it is to be understood in the context of the distinctive *principia media* of “monopoly capitalism” rather than the era of the “competitive society.”

Such a distinction is already implicit in Neumann’s brief segment on the classification of state interferences, although this discussion focuses on the aims or functional consequences of state actions rather than on the whole complex of economic, social as well as political factors that enter into the constitution of a historical period of the sort apprehended by distinctive *principia media*. After an initial classification exercise in which Neumann distinguishes such interventions as those made to provide the “individualistic minimum,” to sustain the state’s operations, to promote the interests of one group or another or such general interests as protection of health and safety, he turns to the more “important” classification “according to [...] its influence on the structure of the economic system,” where he distinguishes between interventions that maintain a competitive system and those that “may consciously aim at altering the economic structure, or [...] may functionally lead to such transformation” (197). Given the presumption against state intervention in the former case, he nevertheless ranges beyond measures to safeguard property or to protect the regime of free competition to include “a certain type of social reform [...] necessary for the social security of the working of the economic system,” including “some measures for the protection of the working class.” He adds,

Even the recognition of trade unions may be necessary for the maintenance of free competition, for the restoration of industrial peace, and the establishment of a certain amount of calculability in the relation between workers and employers. (197)

When it comes to the alternate classification of state interventions, where change from the competitive economy is at issue, Neumann subdivides the measures between those that serve to strengthen the drive to monopoly, as with the distorted forms of laws nominally of a type to protect against unfair competition but in fact serving to suppress all competition, as well as “that kind of social reform which no more serves the maintenance of free competition, but consciously aims at a change of the economic structure.” This class is comprehended overall under “recognition of rights of collaboration of the working class,” which once again includes trade union recognition, but now in the context of markets other than the labor market alone, along the lines of his earlier analyses elsewhere of the multiple loci of capitalist power. It is not hard to see in this classification the three competing designs of the Weimar years, as Neumann had seen them at the time. His principal and concluding point here is, however, his rejection of the notion that the liberal state was “negative” either in the sense of weakness or in the normative sense “that the positive state is an interventionist state in every case preferable to it,” as is held by “Fascist or social reformist critics of the non-interventionist state.” Neumann’s difficult political agenda is manifest throughout this discussion.

His express discussion of “the political substructure” of the liberal legal system, however, is focused on the German constitutional history underlying the *Rechtsstaat* complex, with only a brief sketch of the “balance between state and society” in the English scheme, where King, Commons and Lords stood in relationship for which Neumann accepts a characterization as “independent interdependence.” The principal feature of the German history from the time of Frederick the Great to William II is the predominant political weakness of the bourgeoisie, notwithstanding some brief periods of assertiveness, as in the years just before 1848, when representation and a voice on taxation and expenditures were actively pursued, combined with the institution of policy designs, especially in law, that were congruent with bourgeois economic interests and practices. An interesting feature of Neumann’s overview is the central roles assigned to leading figures from Stein to Bismarck, an approach that is not easily reconciled with Neumann’s initial assurances “that the political history is in turn determined by economic considerations,” a proposition that he then puts aside with the remark that “this economic determination is so evident that it seems superfluous to mention it here.” At minimum, the complementarity between the political and structural understandings of history remains a feature of Neumann’s actual treatments of the events pertinent to legal and constitutional matters.

A further indication of the complexity of Neumann’s sociological method—some would say eclecticism—is the importance he attaches to the conjunction of individuals in the nation as an “irrational” counterpart and necessary supplement to the “rational legitimation” of the modern state, which rests on the political and economic liberty of individuals. Without referring to the concept of civil society, which he’d explicated in connection with his account of Hegel and which derives in considerable measure from the writings of the Scottish moral philosophers he cited when discussing the social substructure, he finds a problem arising from the plurality of desires and interests associated with the various and potentially conflicting memberships of the individuals in society. “The unification of these divergent desires and interests,” he writes, “takes place in

the nation, which thus becomes, so to speak, the irrational substructure of the state.” Neumann begins his analysis of the nation by distinguishing it from the people. Putting aside the question of a people constituted solely by race, as in the National Socialist theory, he traces it rather to a combination of geographical, cultural and natural commonalities. At the next step of the analysis, then, “a people becomes a nation [...] if it is capable of achieving and maintaining a relatively united political will,” which directly links the nation to the state, since it is the reference point of the search for power that is the object of such a will.

Yet the state may emerge before the nation. Neumann asserts that its necessary precondition is rather commodity production, which generates the money to create an army and bureaucracy to control society, as in the case of Italian city-states, which were modern states governed by sheer force in the hands of capitalists. By contrast,

The decisive function of the nation consists in rendering possible the unification of a multitude of individual energies, in a period in which the bourgeoisie attains consciousness of its own political value; in making universally binding its political and cultural decisions. (207)

Citing the case of France at the beginning of the eighteenth century as well as the emerging German territorial states, Neumann maintains that the state founded on the nation displaces all forms of theological or dynastic legitimation as well as the universalistic ideologies of the Middle Ages. It is the French Revolution, however, with Sieyès as its spokesman, that merges the concept of the nation with that of the sovereignty of the people: “Here is found the unifying principle which makes it possible to integrate the essentially secular competitive society and to declare universally binding its social and political decisions” (208). Insofar as capitalism is imperialistic, Neumann adds, the national spirit turns into aggressive nationalism, which mobilizes the nation, as servant of economic interests, for war. “The nation,” he concludes, “creates for capitalism the efficient state.”

Yet the economic mission of such a state does not suffice to provide the distinctive identity that is sociologically required to integrate the population, especially since the liberal ideology is focused on individual security and gain. “The integrative function,” Neumann asserts, “is taken over by the nation.” In this discussion, which introduces a motif that has not been present in Neumann’s earlier political writings, he is following not only Laski, whose book on the subject of the nation focuses on the economic side of the matter, but also the Austrian Socialist writers like Bauer and Renner, who were required to deal with the problem of adapting the internationalism of the Socialist movement to the national movements of subject populations in the late years of the Austrian Empire. But the issue is almost certainly put before him as well by the themes of revolution in a context of nationalist discourses, which has a saliency it did not have before. Neumann points in this direction after first having noted that the multinational character of the British state, as well as the prominence of its colonial domains, combine with the comparative popularity of the monarchy to make it an exception to the more common pattern. In the case of imperial Germany, the nation was remote from the Jacobin idea, in keeping with the general absence of political consciousness among

the bourgeoisie. The saliency of the political meaning of nation nevertheless becomes clear almost everywhere when the bourgeoisie loses its progressive role in social development and its active or passive identification with the nation is challenged by a politically self-conscious labor movement that makes the same claim for itself and that is in turn denounced as anti-national. This is the conflictual setting in which this issue takes on an unprecedented importance for Neumann. He closes the chapter with a quotation from a French author who lists multiple respects in which Germany is bifurcated, closing with “above all, a democratic and an anti-democratic Germany.”

The development of these themes, which is at the political core of the project, is suspended until the two chapters of postscript, dealing with the Weimar and National Socialist years. Neumann turns first to his account of “the legal system of the competitive society,” whose design, sources and functions form the academic topic of the dissertation. This is the “rule of law” whose epoch of “governance” is to be understood—duly recognized—and accounted for. That this question is nevertheless closely connected to the key political issues for Neumann is made clear from the fact that his first “Leopold Franz” article in 1934 provides a preview of the dissertation in both of its aspects.⁵¹

The first element in the liberal theory of law to be reviewed is the doctrine of the generality of law, which entails a distinction between authoritative individual orders and commands, on the one hand, and rules that are laid down in an impersonal and universally applicable form to govern the circumstances specified in the law, which has been duly enacted through the constitutional process specified for legislation. Closely related to this, according to Neumann, is the doctrine of nonretroactivity of law. His reviews distinguish French, German and English approaches to the key problems revealed by the analysis. Second, then, Neumann addresses the role of the judge in the liberal scheme, ranging from the theory of the judge as strictly bound “mouthpiece” of the law to the German school of Free Decision and American Realism. His evaluation of the difficulties he has raised also introduces the problems associated with distinctions between administrative and judicial processes. There follows an excursus on the question whether the English schemes of common law and equity put this system outside the liberal design. The chapter closes with an assessment of the social functions of the law and the judge in the competitive society, which ends with special attention to the German case and a return to the theme of the distinctive vulnerabilities of the liberal design in that historical setting.

Neumann’s treatment of the norm of generality largely reiterates his earlier findings, granting it an ethical value in its provision for equal treatment, while also pointing to its ideological and practical functions in a class society and competitive economic system. At the same time, his historical survey of effective doctrines in France, Germany and England shows that individual measures grounded in sovereign power are nowhere denied authority, even if they are procedurally distinguished, which is not the case everywhere. What he finds, in sum, is a doctrinal presumption in favor of generality of law, which is everywhere subject to be overridden on occasion in practice. Much the same is true, in his judgment, of the prohibition against retroactivity, which he treats as a logical concomitant of the generality doctrine.

Neumann identifies Montesquieu as the most influential of the early writers laying down the terms of the modern doctrine of the rule of law, in conjunction with his theory of the separation of powers. He is thus taken as the originator of what a later commentator called the “phonograph” theory of the judicial function, whereby the judge simply recognizes the law applicable to the case before him and announces a corresponding verdict. Neumann identifies the danger, first that this doctrine may lead to more rather than less judicial power, as judges impute their preferred conclusions to the imperatives of the law and he discusses a countervailing post-Revolutionary French practice of requiring a referral to the legislature if the applicability of existing law is not transparently clear. By the middle of the nineteenth century, he records, the “recognition” theory was nevertheless triumphant on the European continent, in connection then with an extensive dogmatic jurisprudence. This systematic application of the separation of powers between legislative and judicial organs implied as well a rejection of “judicial review” of legislation, except in the United States, where Neumann notes that the grounds must be understood to have been political rather than jurisprudential. At the end of this discussion, he records without condemnation the more general dissenting views of American Realists and the German School of Free Discretion, both of which oppose what they consider to be “dogmatic” jurisprudence with a conception of judicial problem solving, drawing on modern psychological and sociological theories. In effect, according to Neumann, this involves the supersession of formal rational law by legal standards of conduct. And the latter development, whether or not conjoined with adherence to these dissident schools, is a major motif in Neumann’s later diagnosis of the end of governance by the rule of law.

In the section on “the theoretical evaluation of the doctrines,” Neumann professes that his interest does not extend to the correctness of these contesting theories but rather to a politico-sociological explanation for the prominence of one or the other. Yet he begins with a categorical rejection of the “recognition” theory, citing Hegel. He then paraphrases Radbruch to speak of the judicial process as “an indistinguishable mixture of theoretical and practical, recognizing and creative reproductive and productive, scientific and supra-scientific, objective and subjective elements.” He then sidesteps the terms of the debate he had set up and moves on to Karl Mannheim, whose “elevation of the sociology of knowledge to the rank of a science” makes possible the distinguishing of “the existential determination of thought,” a concept that Neumann expounds with the help of one of Mannheim’s most thoroughly determinist formulations.⁵² Under the circumstances sketched by Radbruch and given a kind of sociological grounding by Mannheim, Neumann finds that the “pure theory of law” (Kelsen) is correct in refusing to make a qualitative distinction between the law as legislated and the law as laid out by the courts. He denies, however, that this finding is especially significant except insofar as it refutes theories that see an “unbridgeable gulf” between legislation and application, a view that Neumann curiously imputes to the American Supreme Court in the case that overturned the National Recovery Act of 1935 [*A. L. A. Schechter Poultry Corp. v. United States* 295 U.S. 495 (1935)], although the “application” in that case was in the hands of an administrative agency, not a court, and the legislation in question provided only a nongovernmental procedural guideline for the creation of the binding norms at

issue, all of which would seem to entail a far more radical reading of the pure theory than Neumann is otherwise prepared to grant, even for the sake of argument.⁵³

When Neumann returns to weigh the implications of his recognition of Radbruch's complex formula for the views of the American Realist School, represented by Jerome Frank, he concludes that Frank's psychoanalytical thesis that dependent judicial behavior is governed by deep-lying fears constraining the judge and that judges can be rendered authoritative, as they must be, only insofar as these difficulties can be resolved, fails altogether to recognize the role played by rules, and the complex interplay with the state of the case, and ends with a search for certainty just as sure—and just as bourgeois—as do proponents of Montesquieu's phonograph doctrine. Frank can explain neither the actual decisions nor the controversies about the uses of rules. "This problem," Neumann says, "can only be solved by the method of sociology."

Neumann returns to Mannheim, if also in a strikingly eclectic manner. He begins by distinguishing between individual preferences, which are indeterminable and not subject to some common rationalization, and the far more important circumstance that, as mentioned earlier, "social structure conditions [collective mentalities]." At this point, Neumann abandons Mannheim's strategy of investing this ideological admixture with rationality in his sociology of knowledge texts—where it depends on the mental capacities for synthesis among "free-floating intellectuals" and enters into the political process through its effects on intergroup negotiations—in favor of Mannheim's quite distinct writings on the thought appropriate to the impending age of planning. Instead of progress through a sequence of distinct historical periods, as in Mannheim, however, Neumann applies the sequence of epochal development to "various stages of the judicial process," presumably in some/many/each case(s).⁵⁴ The judge begins with an untutored "intuited" judgment, as in Kadi justice. "But the judge does not stop short at this stage." He next advances to "inventive thought," where arguments are produced and tested, although the thinking involved is existentially determined. At the third stage, then, the judge thinks sociologically, at the level "planned thought," and "makes himself aware that his thinking is existentially determined"; and this, according to Neumann, in this passage is "the first task of the judge." For Neumann—but not for Mannheim—this is the transition to Marxism.

"Planned" thought means materially—according to its function—the fitting of the judge's decision not only into a logical system of rules but also into a social system that is determined by the constitution. Marxism fills materially this methodological conclusion of the sociology of knowledge by the assertion that the attitude of the judge toward the law is conditioned by the class relationship upon which it is dependent.

For reasons difficult to explain, Neumann then proceeds to state the central problem to which this sociological approach is to be applied in terms that do not appear to have any manifest relationship to Marxist concepts of class justice or the like. After a purely nominal reference to this theme, he returns to the question about the distinction between legislation and jurisdiction, where he shifts quickly from questions requiring an analysis of underlying forces to the majority of cases where "the law is clear and not open to interpretation, [as] every practical lawyer knows," following the American Supreme Court justice Cardozo in seeing a "quantitative over-evaluation in the United States

of the creative activity of the judge” due to the excessive emphasis on Supreme Court decisions “centered on constitutional disputes, and [to the fact] that the Constitution consists not at all of abstract legal norms, but of undefined legal standards of conduct, which either have no content whatever or whose content is indeterminable.” Neumann then returns to the distinction between justice and administration as a matter of great sociological importance.

He proposes several criteria for the difference, given that they do not correspond strictly to the actual institutional arrangements. The most generally accepted, in his view, is that jurisdiction applies to civil conflicts between individuals, as well as other conditions of clashing rights, while administration refers to organizational activities of the state.⁵⁵ But there is a more “material” criterion, Neumann maintains, although he pauses first to ask whether this matters, if in fact the practice under positive law often disregards it. “The answer to this question,” he writes, “is that the sociological analysis is preparatory to a reform of the law,” citing as example, in general terms, the transfer of matters that are administrative, from a sociological point of view, from the courts to administrative tribunals. With that in view, he offers the following:

We define as administrative disputes those disputes between individuals which are exclusively or overwhelmingly decided on the basis of legal standards of conduct; that is to say, by free discretion [...] Legal standards of conduct, and the free discretion, which is the realization of such standards, serve the reconciliation of conflicting interests, and not the determination of conflicting rights [...] The distinction is important because administrative acts and administrative decisions are essentially more political than those of the ordinary courts. (238–39)

The thrust of Neumann’s analysis, registered in his initial statement about the “reforms” implied by his analysis and the examples he offers—he cites the uncertain criteria applied to the “morality” of strikes and the dissolution of cartels in German law under the Civil Code as well as the American criterion of “reasonableness” in antitrust law—is toward a recognition of the extent to which courts actually function in administrative roles and consequently toward an advocacy of expanding the role of administrative tribunals and the like. In view of the challenges such shifts appear to offer to the “rule of law,” as he has been explicating its elements, it is helpful to remember that Neumann’s proposals with regard to these issues during the Weimar years offered multi-partite negotiating structures for the administrative agencies in these spheres rather than pure state officialdom and thus to recognize that this tendency in the present argument already anticipates his view of the progressive displacement of the competitive society and its rule of law by the confrontation between monopoly power and the transformative designs of the labor movement.

In the next section, Neumann abruptly backs away from this projection in order to return to a question that he has touched on earlier and that he clearly must resolve, namely, “The Doubt raised by English law.” He speaks of it as a “test of the validity of our thesis”:

If [...] we are able to prove that the structure of English law, in spite of many differences from the Continental legal system, has so much in common with it that its essential features are

identical, then we have evidence that there corresponds to the competitive economic system one particular type of legal system, finding its expression in the generality of the law, in its rationality, and in the merely declaratory function of the judge. (239–40)

For present purposes, it is not necessary to review Neumann's rather technical way through authorities and cases about consistency and uniformity in English law, the role of the judge under common and parliamentary law and the special place of equity. Briefly stated, he emphasizes the rule of *stare decisis* as a warrant for consistency, the rigorous self-denial of judges with regard to making law and the equivalence—at most—between remaining equity jurisdictions in the narrow sense and the rulings by legal standards of conduct in Germany. In concluding this excursus, he maintains that, especially because of the sanctity of precedent, the English law in practice may well adhere more closely to the design postulated by sociology for a competitive society than did German law even at the height of its formal rationality.

With this unsettling question addressed, Neumann returns to the “sociological evaluation” of the “rule of law” design overall, expanding on the points he has made earlier. In fact, he formulates his question more cautiously to focus on the “expression of the belief” in such a regime rather than presuming its actuality. This provides the opening, above all, to an application of his distinction between two kinds of ideology, the expressive ideology that more or less comprehends the actual state of things and the veiling ideology that hides or disguises the reality of which it purports to speak. Neumann links this distinction to the paradox that the predominance of the rule of law ideology testifies both to the strength and to the weakness of the bourgeoisie. The former is linked to bourgeois predominance in the legislative process, and its consequent ability to protect its interests at this level, while the latter is manifested in the disguising of the extent to which state officials and judges in fact shape the law to their political designs. Neumann connects the veiling role of the ideology to a strong disposition in the bourgeoisie to seek out an uncontested authority, which he finds a need that increases in urgency with their actual political weakness so that the ideological emphasis on rule of law is greater in Germany than in Britain. This reading of the veiling function of ideology as a matter of collective self-deception is quite different from his earlier applications of the concept, and Neumann returns in what is nominally a recapitulation to the more common—and more Marxist—sense of the ideology as a veil over the rule of the bourgeoisie, to which he now adds a consideration derived from English discussions, to the effect that the focus on the parliamentary process also provides an alibi for failure to enact social legislation, in view of the slowness and complexity of the legislative process. Neumann then goes on to project once again the change in the dominant ideology when the “working class emancipates itself, becomes politically conscious,” whereupon “the bourgeoisie abandons the belief in the rule of enacted law, and either has recourse to a new ‘natural law’ [...] or it abolishes Parliament and its legislative function altogether.”

Although Neumann's summary review of the ideological dimension of “rule of law” takes up themes he has discussed earlier, as noted, it also testifies to the difficulty of generalizing on the contrasting British and German cases so that the analysis rather shifts implicitly from one to the other rather than speaking to the case of the “competitive

society” as Neumann means to do. In working through this interesting and innovative text, it is important to recognize that it is nevertheless a doctoral dissertation that attempts to appropriate new materials and authorities and to satisfy a committee of academic supervisors, while addressing questions of critical importance to the author. It is not simply a metaphor to speak of the work as the record of revealing but incomplete negotiations. There were good reasons for Neumann to turn down Harold Laski’s repeated offers to see to the publication of the work.

When Neumann shifts from the political complexities of the ideological to the socio-economic functions of rule of law, his analysis regains its confidence, at least after he balances rather awkwardly over the “conflict in the attitude of liberals towards parliamentary legislation,” which he calls a “fictitious” generalization because of liberal selectivity in this matter, to the secure ground explored by Max Weber, who has been his prime authority here: “To the needs of competitive capitalism there corresponds a general law as the highest form of formal rationality or the binding force of precedents and the absolute subjection of the judge under the law” (255). Given the competition among more or less equal participants in a free market, the guaranteed effectiveness of contracts and the predictability of state interventions are essential, he recalls, and those conditions demand formal rationality of law, which precludes retroactivity and judicial rule by “standards of conduct” as well as ad hoc administrative interventions in individual cases.

As has been the case in Neumann’s earlier renderings of the “rule of law,” he does not stop with sociological considerations in the ordinary sense:

But the general law and the principle of distinction between the powers of the State, has, besides its task of veiling power and of rendering exchange processes calculable, a decisive ethical function which is expressed in Rousseau’s theory. The generality of law and the independence of judges are intended to realize personal and political equality. The general law as the basic notion of the legal system of liberalism establishes the personal equality of all men, a postulate which seems to us to be so obvious that it is almost inconceivable that as a maxim it should be questioned to-day. (257)

In the immediate context of Neumann’s work, his emphasis on the “ethical” function of the rule of law is integral to the fierce rejection of arguments by Carl Schmitt and others “that the general law, the independence of judges, and the separation of powers must be abolished when capitalism dies.” This strongly defensive rationale may explain why Neumann does not at this point enter more deeply, as he had done earlier, into questions about the kinds of rights at issue in his avowal of liberal safeguards of the individual beyond the limits of a competitive society.

The Distinctive Character of the *Rechtsstaat*

Some of these matters are touched on in a brief supplementary chapter that closes the “Verification of the Theory” section of the book. Neumann speaks of it as considering “the social significance of the German doctrine,” although it also contains some comparisons with England. The doctrine of which Neumann speaks has to do, first, with the historical

distinction under monarchical rule between “material laws,” which create or directly affect the rights of individuals and are under the authority of parliament, and formal laws, whose impact on individuals is more indirect, which remained in the hands of the monarchy and the state apparatus. With the addition of two more technical features, Neumann underlines once again the comparative political weakness of the German bourgeoisie notwithstanding the institutionalization of the market economy in which they predominated. He maintains that a kind of balance was maintained by the comparatively strong voice that they had in the juridical sphere, with a high measure of formal rationality in the law even before codification at the end of the nineteenth century and with a series of efforts leading to the independence of the judiciary, whose jurisprudence was very closely tied to the legal texts and eschewed interpretations open to ethical or similar considerations. Neumann complicates this picture by emphasizing as well the social subordination and consequent deference of the judges to the king and his ministers. Then too, he asserts, “The rationality of the law was realized mainly on the commodity market and in relations between the ruling classes.” Neumann closes with an overview of the disadvantageous treatment of the working class, especially in their attempts at collective action. “The *Rechtsstaat* was decisively a state of the ruling classes,” Neumann writes, “but this class rule was calculable, and therefore not despotic. Those elements of the *Rechtsstaat* which we might call eternal, guaranteed security and a certain amount of liberty to the working class” (263). Curiously enough, Neumann then goes on very quickly to praise the English system once again as having attained to the level of rule of rational law more directly and with fewer limitations, except—and this is then his concluding point—that litigation in Britain is so expensive that legal recourse is hardly available for poor people. He even brings litigation statistics from 1927 to show “that the boon of the rationality of the law is enjoyed by far larger strata of society in Germany than in England.” Despite his use of the present tense, he cannot mean to say that this remains true. “The common law is highly rational,” he says, “but only for the rich. It is still irrational to a large extent, for the poor and for the lower bourgeoisie.” It is a curious reading of litigation statistics and an anticlimactic conclusion, in view of his unstinting praise otherwise of things British.

The two brief chapters on German developments since the First World War return the project to its underlying rationale. Like his first dissertation, the exercise overall can be seen as a prolegomenon to the substantive issues that drive his inquiry. Notwithstanding the radical differences between the historical configurations being addressed, they share a common motif at that level of analysis: the place of “liberal” rights and procedures in a socialist program. In a reductionist mode, one could even say that they are both about the question of the political intellectual as lawyer. Perhaps there is even an echo of conversations in good times between Franz Neumann and his friend and law partner, Ernst Fraenkel, who sought to return to the profession in exile and whose study of the Nazi regime differed from Neumann’s *Behemoth*, seen from the present limited viewpoint, precisely on the question whether law work could matter even there. The two short chapters that Neumann appended to his London dissertation summarize his retrospective account of the Weimar constitutional struggles, the years of his own legal work and writings, and sketch the approach that he will take to questions of law and the constitutional order in National Socialist Germany.

As may be expected from Neumann's engagement in the issue of regulating cartels since the later 1920s, he sees the transformation of Germany's economic structure as one of the two decisive processes during the Weimar years, with the other playing out through the actual political development of the constitutional design.⁵⁶ The formula for the first of these is simple: "From the competition of pre-war Germany there emerged the concentration of capital; and from the concentration of capital, monopoly capitalism" (266). Drawing on newer economic literature, he explains the massive trend toward combination of industrial units and away from competition by the massive but risky capital investments required to increase productivity to the level of economic feasibility under the conditions in Germany after its misdevelopment in the lost war and subsequent economic crises. "The rationalization of the individual undertaking is supplemented by the rationalization of the whole economic system, by standardization and uniformity"—and this of a kind that cannot be achieved in a competitive society. Neumann notes, almost as an aside, that Social Democrats and Communists differed in their readings of these developments, with the former seeing them as progressive preliminaries to socialization and the latter as further steps toward the self-destruction of capitalism. His response is measured:

Both theories are right and wrong at the same time. For whether monopolies, as higher forms of industrial organization, can be made beneficial to the whole of society or not, depends entirely upon political forces. (267)

In the case of Weimar, according to Neumann, these were realigned in ways that worked decisively against Social Democratic hopes, which he says were shared by labor unions (notwithstanding the campaigns for cartel regulation in which he had himself played a part). Neumann looks first at the social power at the disposal of monopolized capital and organized labor. The former have powerful organizations for the domination of the labor and commodity markets, as well as for control of the state, where the expanded size and power of the bureaucratic apparatus and its commitments to the prime economic organizations make the effective state ever more dependent on these economic agents. The trade unions, on the other hand, are weakened by structural changes in the labor market, as the size of units increases and the composition of the working class shifts with the decline in the number of skilled workers and their displacement, on the one hand, by the unskilled and, on the other, by "office workers, clerks, and officials," both of them comprising types of workers that are hard to organize. Even the increase in state support for social services gained by political organization and conceded by business lessens motivations for unionization and increases working-class dependence on the emerging public order.

In characterizing the Weimar constitutional scheme, Neumann focuses first on the "pluralist" substructure formalized in a series of contractual agreements between the two principal social forces to constitute what was thought to be a regime of parity between the bourgeoisie and working class, and that was to proceed through continuous negotiations within the parliament chosen under conditions of "collective democracy." Neumann notes that this agreement was aimed against Communism, first of all, but indicates that

it also precluded a socialist outcome to the postwar reordering. The state apparatus then was to serve mainly as referee and, at most, arbitrator in these dealings between the prime nonstate collective actors. In the event, the change in power relations between the two social forces whose parity had been presupposed, as well as the growing inability of the parliaments to control the cabinets because of the tenuousness of coalitions when numbers of anti-parliamentary representatives increased, meant that ministerial bureaucracies steadily gained until they were in fact installed as the effective government under presidential emergency rule.

As Neumann moves toward a characterization of changes in the legal system concomitant with these developments, he first reviews the second part of the Weimar Constitution once more and insists that it must be seen to incorporate authentic elements of the compromises made at its initiation. He rejects what he takes to be the accepted view that the decisions formalized there were simply for constitutional democracy and the bourgeois *Rechtsstaat*, insisting on the force of the clauses asserting the rights to unionize, the anticipations of some measures of socialization and—above all—the provisions of Article §165, which he still portrays as a guarantee of industrial democracy.

The characterization of the rights guarantees in the Weimar Constitution as nothing more than reaffirmations of liberalism is prominently associated with Carl Schmitt, but Neumann challenges him by name rather in connection with his rendering of the constitutional guarantee of equality before the law (§109) as a prohibition against any but general law, a doctrinal innovation directed against the legislature as well as administrative officials. Neumann denies, first, that this invocation of an old formula could be given that meaning but notes further that Schmitt invoked the doctrine to shelter the singular property of the imperial clan from confiscation and that it came to render ineffectual all attempts to deal with the differentiated circumstances of monopolies and cartels, where laws in general terms are likely to miss their targets. He insists, moreover, that the equality guaranteed by the constitution might best be served at times by measures that are not general in form:

In the economic sphere, therefore, the postulate of the generality of the law becomes absurd if the legislature is no longer concerned with equal competitions, but with the monopolies violating [the] principle of equality in the market. (275–76)

Neumann favorably cites Herman Heller's vehement attack against Schmitt on this issue of generality but then qualifies his praise with his own perennial indeterminate reservation, noting that "Heller [...] overlooks the fact that the generality of law has [...] also an ethical function which becomes evident in the political sphere" (276). Neumann does not develop this reservation in this place.

The doctrinal innovation of Schmitt and others took on substantial weight in conjunction with unprecedented claims, including some by juridical instances themselves, that they had a power of judicial review. "German justice rapidly approached the American model," Neumann writes. This involved not only the transmutation of such clauses as the equality paragraph into a kind of natural law authority, according to Neumann, but also the expansion of some general clauses—like "good faith"—into

natural law provisions that could override parliamentary action in matters affecting property rights, above all, as in settlements after the macro-inflation. More generally, Neumann asserts that judges progressively abandoned their customary strict interpretation of legislation and the codes in favor of free discretion: “With regard to the formal structure of law this meant the victory of formal standards of conduct over formal rational norms.” Neumann adds that “legal standards of conduct [...] appear whenever the legal system is confronted with the problem of private power.” He cites a number of decisions precisely in the areas of labor relations and industrial combinations, where the decisive structural changes are underway. As long as the concept of parity still applied in some measure, this adaptation by the judiciary served the generation of compromises; but that ceased to be the case by 1930, when the economic crisis hit. Neumann cites areas of law where monopolies could be certain of the outcomes and other controversies where monopolies could prevail simply by virtue of their social powers of command over other social actors, avoiding the courts.⁵⁷

It is at this point that Neumann cites the “ethical function” of liberal legal institutions, notably the contract. The monopolists protect their positions by imposing one-sided contracts on customers, workers or would-be competitors, confident that they can make the terms binding by their superior power, even if they do not get favorable rulings from courts operating under doctrines that transform the legal questions into terms favorable to the superior power. Yet Neumann also reverts more generally to the point he’d raised earlier about the availability to the middle and poorer classes in Weimar Germany of the legal protections offered by formal rationality of law, repeating the statistics he’d already cited and emphasizing the wide and inexpensive availability of legal recourse for matters affecting workers. “That is a legal protection not attained by any other country in the world,” he writes proudly.

“The process of the disintegration of formal rationality,” Neumann concludes, “was accompanied and made possible by a complete reversal in legal theory.” In a new scheme, he lays out four types of judicial thinking: “normative, institutional, decisionistic, and functional thought.” The normative model conforms to the demands of formal rationality, with the judge proceeding as “phonograph,” of the law as written. Decisionism, on the other hand, “has [...] nothing to do with law,” since it merely gives legal form to the political will and serves as nothing but a technique (*Arcanum*) for the maintenance of power. Institutional legal thinking, according to Neumann, is distinguished not only by its assertion of wide judicial discretion but also by its construal of rights and duties not as a function of will but as derivable from an analysis of the structural, institutionalized patterns of human relationships. An example cited by Neumann is the ruling in labor law cases where the legal relations between employers and workers are construed not as a function of contracts (and thus governed by the Civil Code, where it might benefit workers) but rather as a function of the “works community” whose best interests, as understood by the judge, should rule.⁵⁸ Neumann refers this tendency to Catholic, conservative socialist and pluralist-syndicalist social thought, identifying it with a nonrevolutionary openness to social welfare measures, as in the Weimar ideal of the social *Rechtsstaat*.

Neumann says that the fourth type of legal thought, functionalism, which “starts from the assumption that law is [...] but a function of society, [...] lies at the bottom of

all [his] investigations.” It accepts neither of the schools of interpretation as providing a firm rule, and it especially questions the political certainties of the institutionalists. Neumann’s formulations are somewhat circuitous, but he is making a cautious case for the presumption in favor of the normative approach. He writes that the functionalist will want a social explanation for the “prevalence of the school of free discretion” and that he will also want to know whether and how the normative approach might “fulfill progressive social functions.” In his summary, then, he asserts that he is rejecting neither the normativist nor the institutionalist theories but looking rather “to distribute the tasks between them.” He begins with a quotation from Radbruch to the effect that the judge “can know no theory of the law but the juristic one,” which amounts to what Neumann has called normativism. Now he is categorical. And both the institutional and functionalist approaches are “secondary.” The former serves the judge simply to clarify his understanding of the meaning of the institution at issue; and “he will think functionally, if the interpretation of a legal provision is open to doubt, and he has therefore a choice [...] In such a situation, he will choose that interpretation which fits in the social system realized in the constitution” (385). His last word on this central question of his project, then, is in effect a justification of the theory of his legal practice and writings during the Weimar years, with positivist readings of legal doctrine subject only to an institutionalist reading of the constitution as a whole. The question of a regressive constitution does not arise as a juristic question. The question of revolution is outside the frame of reference.

The Destruction of Law in Germany

Neumann closes his book with a short chapter on “The Rule of Law under National Socialism,” which has as its stated aim only a further clarification of liberal principles by means of the contrast. At the same time, it sets out a number of the themes that will play a major part in Neumann’s detailed indictment of the National Socialist regime in *Behemoth*. Neumann opens with a contrast between the Italian fascist and German National Socialist ideologies. In the Italian case, the totalitarian state is first and foremost: “The state is the embodied will to power, based upon discipline.” Surprisingly, in view of his earlier interpretation, he says, “It is in the main, the Hegelian idea of the state.” He takes note of the Italian corporations but insists that they are simply organs of state. Finally, he insists that notwithstanding the fascist hostility to liberalism as well as democracy, “it [...] confesses its faith in private initiative in the sphere of production.”

When Neumann turns to the National Socialist ideology, he begins with the “grandiose contempt for the notion of the state” to be found in the “canonical text,” Hitler’s *Mein Kampf*. He likens it to the liberal conception, inasmuch as the state is seen only as a mechanism for achieving the aims of another entity, in this case, the “zoological” idea of the people as a “totality” embodying a “pure” race. “This totality,” Neumann writes, “is realized by the total movement (that is, the Party), which in its turn is exclusively represented by the total leadership.” And “the law is the will of the Leader in the form of law,” a condition that finally rejects the Hegelian theory. The state, as mechanism, is static; the movement is the dynamic element; and the people are “mere objects of leadership.” Neumann suggests that the “sociological reason” for the ideological subordination

of the state is the party's sense of inferiority to the bureaucracy, which is "functionally all-powerful." The doctrine also disguises the role of traditional and conservative elements.

In contrast to some of his later writings, notably in the revised edition of *Behemoth*, Neumann attaches considerable importance to the racial ideology of anti-Semitism in Germany, contrasting it with Italy, whose colonial ambitions preclude such a doctrine. First, Neumann maintains that the German plan for expansion looks to the East, where the racial idea is required "in order to enable it to exclude the millions of eastern Jews." Second, then, he focuses on the equation of politics with the relations between friend and foe that is put forward by Carl Schmitt, whom he calls "The Crown Jurist of National Socialism." In view of the centrality of "the community of the people" in the ideology and the categorical denial of class conflict, there could be no "politics" if there were no enemy, and yet "the state is entirely the work of politics." Neumann concludes,

The existence of the Jews is the essential factor for the preservation of political life in Germany. The conception of the nation is valueless as it implies as we have already pointed out—certain liberal and democratic consequences, and the idea of the race serves, therefore, as a means of Integration of the National Socialist society. It further serves to differentiate that society from others, and finally, to preserve politics, apart from its function in foreign policy. The new Nuremberg laws of September 15, 1935 are the culmination of that development towards integration and differentiation of the National Socialist society. (290–91)

Neumann returns to Schmitt as well in an examination of the concept of "totality" as it applies to these states. The question is how Germany as well as Italy can spare economic institutions from their invocation of totality. He says that Schmitt "very ably" found a solution in distinguishing "quantitative" from "qualitative" totality, with the latter open to state limitation in the economic sphere. Despite his initial compliment—perhaps ironic—Neumann then dismisses the distinction, arguing that totality can only be "quantitative," since that is what the term means. Interestingly, Neumann also downgrades the importance of charisma in both regimes, contending that since their initial phases they have come far more to resemble feudal domination. "In the same way as the estates of the Middle Ages veiled the role of landed ownership," Neumann maintains, "corporations and estates hide the domination of monopoly capitalism." With "the worker fettered, [...] [the] contract of faith between leaders and followers stands at the center of German law." He concludes his provisional political analysis: "The totality of the state is, in fact, the total dominion over the state, exercised by the Leader for the sake of a feudal class, by transforming the people into serving estates."

Neumann turns last to "the law in the totalitarian state," which entails the question, in the German context, whether the National Socialist state is a *Rechtsstaat*. Schmitt is cited once again, but this time it seems that his assertion that this is merely a liberal shibboleth has been encountering official opposition, leading him to shift his position. For Neumann, there is no question that both "theory and practice reject the postulate of the rule of law." He cites first the issuance of numerous individual laws, notably including grants of privilege to economic units and then quotes actions and legislation that defy the norm against retroactivity:

Wherever it is necessary for the security of the present rulers, National Socialism uses individual and retroactive laws; wherever monopolistic situations have to be dealt with, the monopolists are exempted from the universally valid laws. (294)

In considering the changed role of the judge, Neumann remarks on the irony that the same judge who has “fulfilled during the Weimar democracy his counter-revolutionary function [by undermining parliamentary legislation] has now become once more the absolute servant of the law, i.e., the will of the Leader.” Neumann asks how it is possible both to adhere strictly to law and to obey the political leader, leaving aside all measures of direct pressure on the judges. He replies that if the law is an individual measure or a retroactive ad hoc decree, “then the judge in Germany today no longer possesses the functions of a judge. He has become a mere bailiff, a mere policeman.” Citing Schmitt as authority once more, Neumann puts special emphasis on the construal of legal standards of conduct in line with the supposed morality of the people, which comprises the principles of National Socialism. The final step in this degradation of law is when the leader is granted judicial powers, as was the case when Schmitt defended Hitler’s killing of his political opponents as acts of legitimate judgment, in defense of legal rule. In his summary, Neumann reiterates that the National Socialists state cannot be deemed a *Rechtsstaat*. “Whether the Nationalist state is a just state,” he adds, “is left entirely to the judgment of the reader.”

Following his outline of the three functional dimensions of law, Neumann devotes a brief paragraph next to the question of whether law under National Socialism meets capitalist requirements for economic rationality. In response, he first lists several coercive laws that constrain labor, whose freedom under contract is one of Max Weber’s requisites for a capitalist economy. “[They] have transformed free labor into a legally-bound serving estate.” But he concludes, as he did in the previous chapter, that monopolists possess sufficient power to serve their needs for predictability. Neumann turns finally to “the ethical function of law,” the requirement that he has insisted upon throughout the work, notwithstanding the unresolved tension between it and his critical readings of the liberal state and the capitalist social order to which it is so closely connected. He lists three sociological principles of National Socialism that combine to reject the vital ethical principle of the equality of all human beings. The first is the atomization of society by the compulsion of individuals to enter into vast synchronized social groups that cannot give expression to the needs or wants of anyone. Second is a principle of totality, selectively applied to override even the most personal relations of life. Social differentiation, then, is applied to create favored groupings as well as outcasts. “Law in Germany,” Neumann concludes, “is nothing but an *arcantum dominationis*.”

That Neumann closes his work with the contrast between a rule of law and a brutal law of overpowering epitomizes his unwillingness—or inability—to condemn the institutions that his sociological analysis ties to a capitalist order he sees as both oppressive and historically obsolete. He may dwell momentarily, as in his treatment of Rousseau, on a mode of democracy that tends toward the dissolution of the state anticipated in some Marxist projections, and he will not preclude revolutionary political actions, and yet there hardly seems to be a time appropriate to either. Of course,

it may be said that his unwillingness throughout his study to abandon key principles in common with scholars and intellectuals who operate within frameworks of comparative political moderation is simply an opportunistic acceptance of certain brute realities of politics and the needs for alliances. Such a facile conclusion will not stand up to a careful reading of his strenuous texts or to an examination of his subsequent work. The dichotomies of social and political modes of both study and action remain integral to his undertaking.

Inconclusive Conclusions: Law after Liberalism

Some six months after his doctoral examination, Neumann submitted a proposal for an article on “Rational Law in the Monopolistic Economy” to the *Zeitschrift für Sozialforschung*, the periodical of Max Horkheimer’s Institute for Social Research in New York. Neumann had been an advocate for the institute in several senses during the earlier years of his London exile, but these contacts will be discussed later, in the context of his subsequent association with this group. For the present, the aim is to follow Neumann’s development and refocusing of his English writings, notably the dissertation, as he turns to a new context and constituency.⁵⁹ The point of departure for the article, he indicates, is to be Max Horkheimer’s statement in one of his articles that in the monopolistic economy the system of contracts is displaced by a regime of command.⁶⁰ He undertakes to see whether this tendency can be verified, how it expresses itself in legal theory and practice and what its functions may be. The study will open with a review of Max Weber’s account of the unique congruence between law as general norm and the requirements of a competitive society, which is the accepted opinion. Against this limited view, Neumann says, he will show that the generality of law has two additional functions. First, it also disguises domination, inasmuch as the notion of a “rule of law” obviates the need to identify the individuals that rule in fact. And, second, it has an ethical function: “it protects the weak, since it guarantees a minimum of equality. With this, it transcends the requirements of the competitive society.” He underlines the importance of the last of these points because it is the only way, he maintains, to avoid the conclusion drawn from the first one, that displacement of competition means that rational law must disappear from all spheres—from the political as well as the economic. In the dissertation, this point is expressly directed against Carl Schmitt.

Neumann’s prospectus then undertakes to present a historical overview, distinguishing between the early period of liberalism, on the one hand, when there are still expressly privileged groups recognized by the law and, on the other, the flowering of capitalism, where equality displaces privilege in the formal structure of law, although even here there will be breaches, especially in times of crisis, when the minimal ethical effects of the form are found to threaten the prevailing order. In presenting the third period to be considered, the time of monopoly capitalism, Neumann surprisingly proposes to distinguish between the consequences under democracy and the authoritarian state. This leaves open possibilities that are not entertained in his dissertation, where democratic rule in a monopolistic economic order appears primarily as a stage in the steady decline to authoritarianism, with Weimar Germany as the illustrative case.

Before expanding on this proposal, Neumann outlines some of the ways in which the generality of law is oriented to competition. With private property in the means of production as the central legal right, institutional support is provided by freedom of contract and trade. In the monopolized economy, by contrast, these are redefined and restricted, since freedom of contract opens the way to trade union organization, and freedom of trade lets outsiders remain free of the cartels. In the monopolized economy, Neumann hopes to show, the liberal institutions are displaced by the commands of private parties or the state. It is the latter alternative, it seems, that creates at least the formal possibility that in a democratic state these commands will be social in their design and objectives, as was in some measure the case, Neumann now avers, in the Weimar Republic. The authoritarian state, however, simply eliminates the free legal order and sanctions the monopolists' powers of command. The leadership principle rules the economy, in the relations between workers and employers as in those between monopolists and those who would compete with them. And the institutional supports of private property in the means of production, Neumann proposes to show, are now state commands to shield monopolistic property and to foster its proceedings.

The ideology and practice of law, it will be demonstrated, steadily accompanies and justifies these changes. This is where he introduces the theme of natural law that takes up so much of his dissertation, but in this proposal he essentially narrows this down to the generality of law, which he characterizes as an ideological instrument of the emerging bourgeoisie to counter the powers of individual command of kings and popes as well as to the remaining privileges of estates. To oppose positive law against its interests, the bourgeoisie postulates the supremacy of a general, unchangeable and unbreakable natural law, which is concretized in the property regime and institutionalized through the right of resistance or the claim to representation. With the establishment of liberalism, when the bourgeoisie find its class interests expressed in general positive law, natural law disappears, together with its right of resistance.⁶¹

The monopoly economy, however, sees a renaissance of natural law, Neumann asserts, including even a right of resistance, but this is no longer progressive but reactionary. It is designed to displace positive law that does not satisfy the class interests of the monopolists. This phase ends in the authoritarian state, according to Neumann, when there is neither natural nor general law. Neumann closes his proposal with an overview of the changing position of the judge in three phases, which are not however fully identical with the ones he has just projected. In early liberalism, the judge is simply the mouthpiece of the law; in the democratic state, judicial discretion [*Freirecht*] prevails, with its emphasis on the creative side of the judge's activities, up to a power of judicial review. In the authoritarian state, then, the judge is strictly bound to the commands of the leader, with judicial discretion available to adapt earlier law to the will of the leader.

Almost all of the elements in this proposal are familiar from the dissertation, but it may be worth noting some themes that are excluded as well as some puzzles that appear more striking here. First, Neumann does not raise what he presents in the dissertation as a prime difficulty, the practical reconciliation between the logical antitheses of sovereignty and rule of law. Neumann's response to that question, in part implicit, had depended, above all, on the model of the English conjunction of parliament and the

legal guild, where sovereignty is in part referred directly to elected and representative legislators and in part exercised by authorities structurally dependent on that institution. Less developed, but in some senses presented as more fundamental, was the complex of relationships between the institutionalized monarchy and the agencies of civil society, as credited by Neumann to the example of the German *Rechtsstaat*, especially as theoretically expounded by Hegel. There is no room for these complex political arrangements in the account that Neumann offers in this proposal. A concomitant of this simplification is Neumann's unexpected separation in the design between his insistence on the "ethical" function of liberal legalism, a claim that he presents as decisive to his argument overall, and his characterization of democracy as a rule by command, however social the contents. These puzzling features of the proposed argument may simply be ascribed to the exigencies of writing an abstract of a paper not yet written as well as to Neumann's eagerness to expose the lawlessness of the Nazi regime and the monopolies he takes as its social foundation.

The article that appeared in the *Zeitschrift für Sozialforschung* many months later, after extensive but unrecorded changes arising out of discussions with Horkheimer and others responsible for the journal, returned to more of the issues and materials in the dissertation than had been foreseen in the proposal, although the focus shifts, and several important themes are still excluded. The discussion of natural law is not only much abbreviated, as it would have to be in an article, but it is almost perfunctory, inasmuch as the aspect emphasized is the generality of law, which carries forward into the epoch of the "rule of law," where natural law in its former sense and function is at best peripheral. As before, Neumann firmly opposes the notion of the liberal state as a "weak state," insisting that all variants of liberal theory acknowledge the strength they require of the state as well as the weakness they desire in relation to the domain of postulated rights. Not present in the original proposal, the theme of contradiction between the sovereign and the law returns, although the formulation now specifies it as matter of ambivalence in liberal theory rather than as a universal problem in the theory of law.

Overall, theoretical reflections are localized to the historical development of liberal theories of law and their contemporary displacement. So, for example, Neumann does not take up the fundamental issue he had posed at the very outset of the dissertation, as to the "dialectical tension between law and necessity," which he specifies in terms of law as an agency of justice, on the one hand, and, on the other, law as required to meet vital human and state needs. Although there are two or three more references to "dialectical" relations between elements in his analysis, the narrowing of the frame of reference here appears to be a manifestation of the single most striking feature of the journal essay: the omission of any discussion of Marxism or socialism. And the brief discussion of Rousseau perforce does not value him as a prophet of the stateless society. Marx's name appears twice, both times in a footnote, as author of an incidental cited cross-reference. This abstention is in line with the general policy of the Horkheimer group, at least at this time, evidently as a matter of institutional prudence. At a more ordinary level of importance, Neumann does not raise any of the issues about which he negotiates respectfully with Karl Mannheim in the dissertation. Mannheim is nowhere on the theoretical menu of the Horkheimer institute, except as the malign influence behind the deprecated exile

scholars at the New School. That Neumann is less ambitious in his conceptual and other philosophical discussions, as with the examination of rationality and freedom, is almost certainly a matter of deference to or discipline by the philosophers in-house. This may apply as well to the less polemical treatment of Kant and the virtual disappearance of Hegel, who plays an important—if unresolved—part in the earlier text.

With regard to legal theory in the narrower sense, the topics that diminished in importance include themes of special interest in the English context of the original writing, such as the overcoming of doubts about the rationality of the English system of common law and equity. Another topic left out is the treatment of “nation” as irrational coadjutant of civil society in the constitution of states, a topic of great interest to the Austrian Socialist writers that Neumann had read with care and the subject of an article at the time by Laski. That would have been a fraught subject for Neumann to condense under the circumstances of his recent arrival in the United States and the state of these discussions in this land of immigrants. Neumann’s critical examination of Kelsen’s pure theory of law, the American neo-realist school as well the detailed analytical discussion of the relations between individual measures and general laws—administration and adjudication—are promised in a footnote for a future article in the same periodical. For reasons unknown, no such article ever appeared. It may be that this last subject was thought to be too close to the issues being contested at the time in the challenges to New Deal legislation, with conservative hostility to the neo-realist currents in the Supreme Court as a prominent feature: nevertheless, the legal-theoretical as well as political questions raised by the expansion of administrative powers remain a prominent feature of Neumann’s thinking.⁶² Despite the difficulty of distinguishing substantive omissions required by the practicalities of a scholarly article in place of a book from changes that register the beginnings of Franz Neumann’s career of complex negotiations with and for the Horkheimer group, the issue should not be neglected.

At the same time, it must also be recognized that the main thrust of the article takes up the thesis that is only sketched in the final dissertation chapters that Neumann characterized as a sort of appendix, the transformation and displacement of the liberal legal order. Because of the differences in conceptualizations, the title is not well-translated in the somewhat shortened English version: the concern is with the “change in function” of the institution of binding law (*Gesetz*) within the legal order (*Recht*). “Change in function” is a term of art that Neumann took over from Karl Renner early in his work, in more hopeful times, when the institution in view was private property and the change envisioned was a steady displacement of the power, exaction and control historically implicit in it. In the present case, the institution in question is represented by laws in the sense of individual norms that lay down binding and enforced obligation (or corresponding rights, privileges or penalties) in the comprehensive sense delineated by Hans Kelsen—so that arbitrary commands may be no less valid than duly applied legislative determinations. The thesis, familiar now from Neumann’s earlier writings in this series, is that the system of legal order and determinations has changed/is changing in conjunction with social changes, especially in the modes of production, so that it functions ever more in the command mode and ever less in the mode congruent with what is called “rule of law” and predominates in competitive market societies.

On another level, inasmuch as he does not want to be limited by Kelsen's indiscriminating treatment of the materials, Neumann distinguishes between the "political" and the "legal" senses of law, with the former seen as having its source in the will of the sovereign and the latter comprising a rational norm, duly applied. And, in another context, speaking specifically of liberal legal orders, he revises the distinction to term the one "sovereign law" and the other "rights." His point, in any case, is that even liberal orders must accept some portion of command in addition to the rational norms that are their characteristic features. In keeping with his methodology throughout, he presumes that the prominent theorists he cites correctly comprehend decisive features of the legal systems they lay down, even if they differ as much in their emphases as Locke and Hobbes, with the differing historical circumstances playing a major part. The one cannot but acknowledge the prerogative and federative powers, while putting forward, above all, a regime of rights encoded in a system of rational parliamentary law, while the other highlights the sovereign's will but finds also an expandable range of matters where the subject is free to deny obedience. As in his dissertation, Neumann briefly characterizes the natural law of Thomas Aquinas, which comprehends "a norm that is penetrable by reason, open to theoretical understanding, and contains an ethical postulate, often that of equality." Although the validity of such law does not depend on the sovereign, according to Neumann, it gains actuality above all from the right/obligation to resist violations that is integral to the design, as is reliance on religious authorities or natural obstacles. Those conditions soon cease to exist. Neumann very briefly touches on Marsilius of Padua, Nicolas of Cusa and Bodin to trace the story of various forms in which sovereignty is ever more clearly acknowledged and "natural law" is concretized (at least in principle) by some form of legitimate control, until he gets to Rousseau, where the legislative power is firmly in the hands of a popular legislature, and natural law is displaced by rule of law bearing the formal qualities of generality as to those subject to it, specificity as to its terms and nonretroactivity. This is definitely not the earlier Rousseau of social and economic equality and the withering away of the superfluous state that Neumann presented in his dissertation as a projection of future possibilities. The form of law is decisive, with the criterion of specificity emphasized at the very outset by a contrast with general clauses, which in effect authorize individual measures, because there is no consensus on the reach of their terms.

All laws, says Neumann, limit freedom in the sense of absence of restraint, as in Hobbes, but he is quick to cite Hegel as authority for refusing to dismiss this one-sidedness of law—one of his very few references to Hegel, who had played a fairly central role in the dissertation. Over against law stand rights, whose grounds he does not explore, but they are never unconditional—that would be "senseless"—but rather subject to limitation by general law. Rights are personal, political (communications), economic (commercial) and social. The last of these is very narrowly defined as extending political rights to workers, as in labor unions. In addition to the interaction with rights, law also regulates the organized forms that he calls institutions, while insisting that his use of the term is unrelated to "institutionalist" legal theory, which is discussed later. Neumann, as in the dissertation, then follows Karl Renner in distinguishing primary rights and institutions from the auxiliary rights and institutions that variously protect

or facilitate their realization. In an interesting deviation from the distance from socialist means and possibilities that he maintains overall in this article, he specifies private property as nothing more than an auxiliary right for the primary productive institutions of the economy at a certain historical period. Within that regime, he adds, the no less decisive institution is contract, another point referred to Hegel's authority.

As these concepts crystallize in legal practices, he observes, the recourse to natural law formulas fades away, subject to occasional and local variations. Liberal rule comes early to England, and it means simply rule by law enacted in parliament. In the German case, the uncertain condition of state and bourgeois rule gave a longer life to natural law arguments and campaigns. After citing some examples of late natural law theorists, he abruptly turns to Kant, whom he credits with a rational theory that culminates simply in the universal norm of generality applied "dogmatically" to law. There is nothing here of the fierce attack against Kant in the dissertation, where his influence is held responsible for the absence of any political supports of rationality in the German design. The standard of generality in law is anticipated, according to Neumann, by Montesquieu and Rousseau and proclaimed by the French Revolution, where nevertheless there is also provision for measures that do not have this character. As liberal influence is strengthened in Germany, this is also the path taken, at least until the matter is complicated by a distracting jurisprudential innovation. Without criticism, Neumann reports on an English case where equality before the law was expressly rejected. At issue was the control of certain indigenous populations in the colonies, where the disparities in numbers and force would jeopardize the governors if the subjects were treated as equal before the law. Indirectly, this analysis is the negative counterpart of the insistence on substantive equality that Neumann expands on in his dissertation in connection with Rousseau. The issues are not further explored here. Neumann notes that during the period of liberal ascendancy, as far as it variously went, judges in France and Germany, if not in the same way in England, limited themselves to expounding the word and logic of the law as it was written. Implicit in this is also the norm that the powers of government are indeed divided among the branches, but, that, insofar as the regime follows the liberal design, the legislative power will be at least nominally supreme.

Neumann then asks about the "social significance" of this arrangement; and he answers, first of all, that its degree of realization is an indicator of both the strength and weaknesses of the bourgeoisie in one or the other nation. He then offers, first, a somewhat revised list of the ideological functions of legislative supremacy. The bourgeoisie is helped by its ideological primacy, he notes, to defend against social reform measures as well as other schemes to their disadvantage. The doctrine also disguises the fact that not laws but men in fact rule. At the same time, and this is a dimension he had not addressed in this way, the legend of legislative supremacy disguises the actual weakness of the bourgeoisie vis-à-vis the state apparatus. He concludes that this complex of the rule of law embodies the contradictory bourgeois inclinations toward both individual autonomy and subjection to domination. In turning to the economic uses of the rule of law, he finds that it renders capitalist competition calculable if the competitors are comparable, that it grounds the indispensable contract and that it renders these matters independent of government.

With this familiar model set up once again, Neumann goes on to insist that this liberal theory was never and nowhere fully realized. Strangely enough, he expands on this point by noting that the liberal society is not rational because it is unplanned. It is impossible to know what he means by this, in view of his frequent acceptance on this question of the rationalization model of Max Weber. The reference may be to nothing more than the rational constraints he finds in Adam Smith's model, where competitors are held to near equality and economic activity is directed by entrepreneurs with direct ties to production rather than joint stock companies. In any case, he also insists that notwithstanding the ideology and the constitutional design, sovereign measures and general clauses are inevitable; liberalism is at best a matter of degree. Finally, he returns to one of the capital themes of the proposal. While the contract is a central and indispensable institution of the liberal order, it also works against the competitive society at its foundation, inasmuch as it can legally suppress free competition. This last is, once again, his prime concern. In monopoly capitalism, the rule of law has at best a minor role.

Notwithstanding all that, Neumann, as expected, closes the discussion with his summary invocation of the "ethical function," subserved by rule of law, notably the generality of law that guarantees personal equality, and the separation of powers that provides for the independence of judges. These elements, whose clearest expression Neumann credits to Rousseau, have essential tasks that transcend the ideological and economic. The immediate thrust of this assertion, as before, is against proponents of the total state, like Carl Schmitt, who assert, according to Neumann, that the obsolescence or other displacement of any aspect of the liberal regime renders all of it disposable. Yet the issue is not localized. Neumann goes so far as to assert "the full and equal legal standing of all human beings has never been interfered with by Liberalism in any period."

The differences between the German and English institutionalizations of the liberal order, insofar as it was achieved, are nevertheless important, also in their consequences. In Germany, as a function of the comparative weakness of the bourgeoisie, the actions and aims of the executive, with its administrative state apparatus, are ascribed to a political order distinct from the legal order that is subject to the norms of legalism; and the latter is itself sociologically constrained by the comparatively dependent status of the judiciary. In contrast to this liberal-constitutional design, the English regime is liberal-democratic in character, with expansive legislative powers and governmental primacy in the hands of a democratically elected parliament. All this is familiar from his earlier work, of course, but it is worth noting that it figures also in the presentation of his thinking in this new setting. Somewhat surprisingly, he also brings back a theme that cuts the other way. The ethical function of law in Germany extends to the social care of workers and the poor, he reasserts, while this remains sadly deficient in England. He explains this by the local circumstance of the Prussian police tradition and draws no further conclusions. Still, it serves as another pointer toward a developmental direction beyond the immediate program of the article.

In context, however, it refers to an ambiguous element—in its means if not in its ends—in the historical development from liberalism to authoritarianism in Germany that Neumann proceeds to sketch in two typological stages. Neumann naturally keeps

returning to this story, but his emphases do change, and nothing is more fundamental to Neumann's thought than his best understanding of these events, in which he was active and at times effective as political intellectual. The point of departure is the liberal moment in Germany. Law is formally rational, as in Max Weber's ideal type; the material structure is the regime of free competition among producers, with auxiliary guarantees in the rights of property, contract and free trade; within the social structure, there is no threat from the working class; and the political structure is marked by a certain separation and distribution of power, with the bourgeoisie quite limited.

The first subsequent developmental phase, then, Neumann denominates the period of monopoly capital, introducing this ideal type somewhat sooner than in earlier accounts, with changes in legal theory and practice as the focal point. He strikingly puts aside the economic structural changes as "familiar" and focuses on the political configuration. While this may be yet another indication of the general desire to tone down the Marxist appearance of the analysis, the move also influences the calendar of change and revises the appraisal of the labor movement as an agent in the developments that eventuate in so much hurt. The undeniable presence of the labor movement at the critical moment requires a constitution that recognizes this development. Although the reference is obviously to the political upheaval at the end of the war, Neumann in fact offers no theoretical explanation for such a crisis.

The central feature, rather, is a new contract—the "social contract" of liberal political theory cashing out in an actual set of agreements among strong social groups. Neumann writes,

The idea of the social contract in the political theory of the modern period does not exhaust its meaning in being a mere hypothesis. If the contract is seen as the origin of civil society, this contains an insight into one of the primary conditions for the emergence and functioning of this society. It actually does rest upon contracts, and not only in the economical sphere. Powerful groups in society come to agreements, turn their own interests into the sole legitimate ones, and with this, sacrifice the general interest. In the last phase of bourgeois society, the foundation of the German Republic reveals the meaning of the social contract. (571)

The ensuing discussion is by far the most hostile characterization of the Weimar Republic that Neumann had as yet offered, especially in the implicit disdain for the organized labor movement. Then too, in his dissertation, he had identified the phase prior to the emergence of labor as a contestant as the moment of the "social contract" forming civil society, and he had commended Hegel conditionally for his understanding of this constitutional development.

In his summation of the contracts constitutive of Weimar, then, Neuman asserts that they unite the groups not only against communism but also in effect against socialism and for the maintenance of the existing state apparatus. The basic political design initiated by these contracts is the "collective democracy" of a "pluralist" arrangement, where social organizations continuously perform functional and intermediary roles between citizens and the state. Integral to the agreements, he notes, was the principle of "parity" between key social agents in certain spheres, notably in the relations between labor and employers. The scheme depended, Neumann says, on the continued predominance and willingness

of the contracting parties to abide by the terms of the agreements—or on the intervention of a third party willing and able to enforce the agreements.

In the event, Neumann says, the conditions could not be sustained. The progressive bourgeois party (DDP) disappeared; political parties hostile to the deals gained in strength; the employers could not meet their commitments due to the economic crisis; and there was no neutral enforcement, since the idea of a neutral state is in any case a fiction. In passing, Neumann also dismisses the social rights guarantees of the constitution as lacking the backing of power sufficient to render them effective. The weakening of the state apparatus by the pluralist scheme proved to be an illusion, since it actually enhanced its strength, not least because collective bargaining collapsed and its place was taken by administrative rulings. Labor unions were further weakened, moreover, by developments in the technology of production, where rationalization disempowered the militant skilled workers and redivided work between technical supervisors and the unskilled, with such consequences as the dramatic decline of strike actions. Similarly, the new alignments in parliament paralyzed its powers and further strengthened the bureaucracy of the state apparatus.

With these changes in the political agencies, according to Neumann, came disruptive proposals for changes in the legal system, which had consequences even where the doctrines proposed were not accepted. Carl Schmitt influentially urges a sharp distinction between individual measures and general laws but links this to the claim that the constitution does not permit parliament to enact the former—and to the power of judges to enforce such rules through judicial review. In a convergent maneuver, according to Neumann, Schmitt also argues that certain key provisions of the constitution are not subject to change. In judicial practice, the primary change comes at the hands of the bar as well as the bench, as there is widespread acceptance of so-called *Freirecht* theories, whereby the courts exercise great discretion in specifying the meaning of legal terms, presumably in order to fit the general terms to the uniqueness of cases, an approach made all the more consequential by the referral of cases to the most open of the “general clauses” that appear in the code.

Unlike Schmitt’s proposals, which have a clear authoritarian, anti-parliamentary design, whatever the surface appearance of liberal principle, the free-law trend originated as a progressive strategy to mitigate the effects of antisocial law on the books. The design was to open the process where there were unequal parties in conflict and to gain the judge as a kind of arbitrator between the contending parties instead of a dogmatic adjudicator following regressive legislation to the letter. Under general clauses, the judge’s ruling, then, might well be a political or administrative balancing of the forces. In the event, the losers were ever more commonly the groups that had counted on this possible melioration of the harsh or indifferent law. Max Weber had cautioned progressives against this strategy, Neumann recalls. He lists a sequence of illustrative cases and controversies from the “decisive social sphere” of labor law. Decisions regarding the legality of strikes in the large contested zones under Weimar labor law were grounded on a supposedly shared moral sense; and judgments regarding employees’ acceptance of wages below contractual scales were decided on speculations about ethical justified needs. An issue where Neumann and Hugo Sinzheimer were actively involved illustrates the conflicted

responses of labor advocates to “free law” adjudication. In ruling on the question of pay for employees idled by closures due to strikes in which they are not a party, the labor courts put aside the self-evident rule in codified contract law in favor of constructions about “enterprise communities” or “work communities” that subsumed the nonstrikers within entities construed as collective agents. While some proponents of labor’s causes favored what they took to be a step toward legal recognition of workers’ solidarity and accepted the financial costs to workers in these individual cases, Sinzheimer and Neumann at the time sought the straightforward application of contract law that duly recognized the economic—and power—relations.⁶³

In retrospect, Neumann characterizes the conjunction of general clauses and judicial powers as a kind of secret “natural law” in defense of the existing order and its predominant trends, destroying the rationality of law, especially where legislation laid down elements of social reform. Where general clauses were already in place, as with the rule against unfair competition, the new patterns of interpretation turned them to protect monopoly control. Notwithstanding his examples and sweeping condemnations, however, Neumann does qualify his judgment when it comes to the labor courts during the years before 1931, when in his view the idea of parity still corresponded in some measure to the balance of power between labor and capital so that the courts would devised compromises in the exercise of a kind of administrative function. After that year, however, parity was pure ideology, Neumann says, and the general clauses served monopolies also in their destruction of competition, which had been in some measure upheld by liberal institutional supports as well as the legal rationality that protects weaker parties. As monopolies attain both economic and political supremacy, they can also dispense with legal contests. Citing Horkheimer once more, Neumann asserts that they can also rule by command, whether in direct confrontation with social agents or through their control over the agencies of state.

These trends culminate in the “authoritarian state,” Neumann asserts, when pure decisionism governs legal processes. The law governing judges is cast in general clauses that can be read only in a “national socialist” sense, with the law ultimately seen as the “will of the Führer,” who embodies the Volk. While these are the effective standards, the ideology is institutionalist, Neumann avers, and it is this ideology that is his primary target in the last 10 pages of the article, developing the arguments he had already suggested earlier, when reviewing Weimar labor’s ambivalence toward expansions of judges’ discretion and power.

Neumann begins with a review of the legal positivism that institutionalism denies at critical points, notably the supposed logical character and inclusiveness of the duly enacted and systematized legal enactments as well as the account of legal subjects as individual persons exercising equal right of property, bound together by voluntary agreements among equals and ultimately governed by a legal person possessing the formal attributes of sovereignty. As he had stated earlier, this design clearly disguises the power dimensions of property and contract—especially the labor contract—as well as the social contents of the power exercised by sovereign rule. It is in this context that institutionalism purports to be progressive, displacing the fictional construct of the person with the sociological reality of the institutions that define the agents of society.

Yet Neumann asserts that the sociology in question is itself ideologically constructed, as witness especially the notion that the ruling sovereign is in actuality a community acting under natural law or some inner imperative of life. While early institutionalism introduces a dimension of social law between private and public law—and here Neumann harks back to a concept that played a central role in his own reading of the last paragraphs of the Weimar Constitution as authorizing the generation of an autonomous social or economic constitution—the authoritarian expansion of the institutionalist theory traces all law back to a community whose voice is said to include the rulings of judges as well as the enactments of other governmental agencies. Work relations, corporations and property are all accounted for by ideologically enhanced social locations and ostensible functions. Contract gives way to institutional status. In view of Neumann's own reliance on some of these figures, as well as his resistance, along with his closest associates and models, to others—as in the controversies about works communities—it is striking that he singles out his admired mentor, Hugo Sinzheimer, as responsible for bringing these concepts and strategies to labor law, having derived them, in this account, from his teacher, the Germanist jurist, Otto von Gierke.

This is especially striking—and the rebuke, especially stinging—since Neumann goes on to argue that the ideological veiling of power through this institutionalism is more complete than positivism can achieve. The latter, he maintains, does not altogether hide from view the relations among agents and relations in its view of owners, workers and contracts, even if it disguises the dimension of power. Institutionalism, on the other hand, in generalizing notions of leaders and communal followerships, in political units as well as economic ones, makes way for rule by command, especially as international relations become tests of strength to be mobilized within the individual nations.

Having said all this, Neumann returns to the attractions of institutionalism to labor movement advocates of reform, citing Laski's writings prior to his abandonment of pluralism in 1932 as well as G. D. H. Cole and other renowned figures in that movement. Property is shown in its reality as a social institution rather than an interpersonal right, and the legal ordering of social institutions is freed from the fictions of liberal individualism. More ambiguously, Neumann also notes the importance of neo-Thomist thought to the elaborate French formulations of institutionalism. In any case, Neumann reasserts, the realism of institutionalism is only apparent, since power remains hidden.

Most important is the consideration that the displacement of positivist rational law in the end strengthens decisionism, as the apparatus of the authoritarian state concretizes the indefinite concepts of institutionalism. And then, Neumann concludes, the state has no legal character at all and violence becomes integral. He returns, in contrast, to the superiority of rule by general law, notwithstanding the first two as well as the third classes of functions, above all because of the measure of equality it upholds and because the regime of monopoly rule retains private property while displacing law and contract with the individual measures of an uncontested sovereign. That this final conclusion simply puts aside all of the difficulties raised in the course of the analysis, as if a simple choice were available, suggests that it reflects the obstacles evidently in the way of inquiring more radically how these questions might better be addressed by those wrongly drawn to institutionalism rather more than it represents the actual conclusions of Neumann's

study. He has sought to show that law and legal ideology matter to the conjoint development of monopoly dominance in society and authoritarian rule, as factors as well as indicators, but the possible links between the ethical consideration that figures in his analysis and the social and political possibilities that would have to be understood and mobilized to counter these developments are left in abeyance.

Notes

- 1 Dr. Franz Neumann, "The Decay of German Democracy," *The Political Quarterly*, Vol. 4, No. 4 (October 1933), pp. 525–43.
- 2 Franz L. Neumann, *The Governance of the Rule of Law* [quoted from p. iv of the original typescript on file at the London School of Economics and Harvard University]. For reasons unexplained and by no means self-evident, this preface is not reproduced in the published English version, which is also mistitled for no discernible reason. A close scrutiny might reveal other changes. See Franz L. Neumann, *The Rule of Law* (Leamington Spa, Heidelberg; Dover, NH: Berg, 1986).
- 3 Neumann also acknowledges Karl Mannheim as an adviser on certain aspects of the work, but this refers to some analytical devices rather than to the basic question and its answer. Mannheim's own engagement with legal thought was limited to his Habilitation on Conservative Thought, where many of the principals are in fact jurists. Karl Mannheim, *Conservatism* (London: Routledge and Kegan Paul, 1986, 2001). In 1934, Mannheim urged Fritz Borinski, a political refugee who came to study with him at the London School of Economics, to write a sociologically informed dissertation comparing the work of the legal theorists Carl Schmitt and Hermann Heller during the crisis of 1930–33.
- 4 The progressive American thinkers like J. R. Commons, who drew Neumann's notice earlier in the Weimar years, also placed strong emphasis on the "public administration" as a counter to the "politicians" and their appointees in elective as well as administrative offices.
- 5 Franz L. Neumann, "Rechtsstaat, Gewaltenteilung und Sozialismus," reprinted in Franz L. Neumann, *Wirtschaft, Staat, Demokratie. Aufsätze 1930–1954*. Edited by Alfons Soellner (Frankfurt: Edition Suhrkamp), 1978, pp. 124–43.
- 6 Franz L. Neumann, "The Concept of Political Freedom," *Columbia Law Review*, Vol. 53 (November 7, 1953), pp. 901–35.
- 7 "Grundsatzprogramm der SPD," published in "Neuen Vorwärts." It was distributed illegally in Germany in the guise of a brochure called "The Art of Shaving Oneself," which contained suitable opening and closing pages intended to protect the actual contents against a cursory inspection.
- 8 Neumann seems to be following Dicey's model of the liberal "rule of law" rather more than he did earlier, when the question of administrative discretion was handled in a less sweeping way, although the question of excessive vagueness in the law and the consequent range of power in the hands of administrators became one of his critical themes after 1930.
- 9 Neumann here announces in a political tract the thesis he will make central to his doctoral dissertation at the London School of Economics and that he will reformulate in terms acceptable to the usages of the Institute of Social Research in an article that has been often republished and still counts as a sort of classic, although it is in some respects less forthright but not more precise than this statement.
- 10 Franz L. Neumann, "Zur marxistischen Staatstheorie," *Zeitschrift fuer Sozialismus*, Vol. 2, No. 26/7 (November/December 1935), pp. 865–72; reprinted in Franz L. Neumann, *Wirtschaft, Staat, Demokratie. Aufsätze 1930–1954*. Edited by Alfons Soellner (Frankfurt: Edition Suhrkamp), 1978.
- 11 Neumann backs this overall claim by offering a list of the organizations being subjected to *Gleichschaltung* by the National Socialist state, ending with the Evangelical Church. This last

illustration is interesting because Neumann's conviction that this church was somehow a prime target of the Hitler regime comes to play a part in his later, much criticized "spear point theory," where he described the anti-Semitic campaigns as little more than preliminaries to the principal project.

- 12 See Harold J. Laski, "The Position and Prospects of Communism," *Foreign Affairs*, Vol. 11, No. 1 (October 1932), pp. 93–106.
- 13 Both of these points bear on the terms of reference within which Neumann will be working in his years with the Institute for Social Research in New York. The decline in workers' commitments to the historical mission of the labor movement is the implicit topic of Neumann's numerous research proposals during the Institute years, often put forward to the displeasure of Max Horkheimer and the others at the core of the group. There is, on the other hand, no trace in Neumann's research of the idea that Veblen's technical intelligentsia might serve as allies in the push for basic social change, which would call into question a central defining notion of the group.
- 14 Foreword to the American Edition, *European Trade Unionism and Politics*, p. 1.
- 15 Karl Mannheim, *Mensch und Gesellschaft im Zeitalter des Umbaus* (Leiden: A.W. Sijthoff, 1935). A revised and expanded version in English appeared in 1940 as *Man and Society in an Age of Reconstruction*. See David Kettler and Volker Meja, *Karl Mannheim and the Crisis of Liberalism* (New Brunswick; London: Transaction, 1995), esp. Chapter 6, pp. 147–91.
- 16 After 1937, Neumann had no difficulties in chiming in with the Horkheimer group's disdain for Mannheim, and he even criticized Fredrick Pollock in a letter to Horkheimer for his supposed closeness to the New School social scientists, whom he characterized as Mannheim disciples. See later. When challenged by a student in a graduate seminar in 1952 about evident similarities between his methods and those of Mannheim, Neumann replied dismissively, "Much too rationalistic" and went on. Perhaps those were the terms of his settling of accounts with some unfinished business of his own.
- 17 The pattern of developing his theoretical arguments through a comparative-historical survey of canonical models becomes a feature of much of his subsequent writing, as it was central to his teaching.
- 18 Neumann opens his actual preface with the remark that "this book is neither a study in legal or political theory," but this must be understood in the sense of conventional treatments limited to the immanent meanings and contesting philosophical claims of such theories. The "Abstract" that is bound with the manuscript of the dissertation is very helpful with the design, and it is puzzling that neither the publications of the text in English nor the German translation includes these few succinct pages. The dissertation itself is nowhere as clear as the abstract, where Neumann presents the work as essentially completed with the sociological chapter said to "verify" the thesis of the "Disenchantment of Natural Law" and refers to the succeeding substantial chapters on the collapse of the rule of law in Weimar and the sequel in National Socialist Germany in a single sentence, as a sort of appendix. As will be seen, Neumann will shift the center of gravity of his argument in the 1937 article based on the dissertation but prepared to comply with policies of Max Horkheimer's closely held journal.
- 19 These passages are reminiscent of the thesis of his first political article in exile, whose title in turn anticipates the problem of the dissertation. See the discussion earlier of "State under Rule of Law [Rechtsstaat], Division of Powers, and Socialism." The promise there that he would show the relations between Marxism and freedom in a later article can hardly be said to have been fulfilled in the present work.
- 20 In this context, Neumann also writes, "In so far as this book continues my unpublished doctoral thesis of 1923, it develops what is conceived to be the purely ideological character of natural law on the basis of a criticism of Kantian and Neo-Kantian legal philosophy."
- 21 Franz Neumann, "Der Funktionswandel des Gesetzes im Recht der bürgerlichen Gesellschaft," *Zeitschrift für Sozialforschung*, Bd. VI, Heft 3 (1937), pp. 542–96. An abbreviated translation

- appears as “The Change in Function of Law in Modern Society,” pp. 22–68, in Franz L. Neumann, *The Democratic and the Authoritarian State* (New York: Free Press, 1957), pp. 22–68. In an article published in the same journal three years later, however, Neumann, writing on the premise that “natural law” has revived too pervasively to be categorically dismissed, takes a more equivocal position on some minimalist kinds of natural law ideologies. Republished in original form and language: “Types of Natural Law,” in Neumann, *Democratic and the Authoritarian State*, pp. 69–95. Neumann’s constant balancing between inquiry and political effects in his writings doubtless explains this concession in a publication in 1940, in the light of the needs of the anti-fascist coalition, especially since this is the first issue of the Institute of Social Research’s journal in English.
- 22 Leopold Franz, “Zur marxistischen Staatslehre” (1935), in Alfons Söllner (ed.), *Wirtschaft, Staat, Demokratie. Aufsätze 1930–1954* (Frankfurt am Main: Suhrkamp, 1978), pp. 134–43. Neumann was not always respectful in his negotiations with Laski. In the introduction to a discussion of the German theory of the *Rechtsstaat*, he quotes Laski on the subject and then remarks, “Such a conception is neither right nor wrong: it is simply meaningless” (180).
 - 23 As noted earlier, this Preface is not reproduced in the version published many years after Neumann’s death, although it does appear in the German translation of the work. It is not surprising that some editors would be uncomfortable with the distances between Neumann’s maximal and minimal objectives, yet this is a vital feature of this effort, written, as he says, in the same preface “under adverse conditions.” The reference to Ferguson above is not arbitrary, although the theme of rights as a function of political resistance is a commonplace in much republican thought.
 - 24 Max Horkheimer, “Research Project of Dr. Franz L. Neumann.” MHA IX 59/2 (Feb./Mar. 1939).
 - 25 See discussion of Sinzheimer earlier, and see also David Kettler, “Works Community and Workers’ Organizations: A Central Problem in Weimar Labor Law,” *Economy and Society*, Vol. 13, No. 3 (August 1984), pp. 278–303. In his later critiques of this face of legal theory, Neumann will focus on the special French version of sociological jurisprudence called “institutionalism,” which also marked a phase in the work of Carl Schmitt.
 - 26 This kind of curious personal witness recurs at one point in Neumann’s exposition of Hegel. Not to exaggerate a turn of phrase, it does however hint at Neumann’s impatience with a situation where his authority counts for so little.
 - 27 It should be noted that the term “governance” appears only once in the book, apart from the title, and then it is in Neumann’s account of Montesquieu’s political theory, although the implication in that place is that Rousseau as well, if also by a different route, arrives at a theory of such governance by the rule of law. Yet these are also the political theorists, apart from Hegel, that Neumann most respects, in this work as in his later thought.
 - 28 To this point in the manuscript, Neumann had spoken only once of the “rational,” at the point where he equated a “rational” justification of law, as earlier noted, with “a justification deriving from men, their wills and ends” (16).
 - 29 Compare Judith Shklar management of the contested concept of “justice” in *The Faces of Injustice* (New Haven, CT: Yale University Press, 1990).
 - 30 Neumann sets forth the last of these points as an alternative to Karl Mannheim’s less demanding view that freedom requires only that a person confronted by a certain requirement has a choice of doing something else or nothing at all.
 - 31 The preceding footnote offers a short bibliography on the classification of rights, which includes a reference to another of his own Weimar articles.
 - 32 Neumann adds to the mystery of this observation by referring it to Max Weber’s *Wirtschaft und Gesellschaft* without any page or chapter citation, although Weber’s discussion of parties is in fact dominated by the supposed loss of “leaders” and the burdens of bureaucratization. See Chapter IX, Section 4.

- 33 “Rights and duties are no longer to be connected to the wills of legal persons equal before the law but rather to objective facts” (1937, p. 590).
- 34 Tory Leigland, “Marxism, Law, and Social Change: The Political Education of Franz Neumann” (dissertation, 1980), pp. 139–41.
- 35 Neumann is quoting another of his professors and dissertation supervisors, Morris Ginsburg (*Modern Theories of Law* [London: Oxford University Press], 1933, p. 51). Ginsburg is talking about Rudolph Stammler, but Neumann says that his words apply to all Idealists except Hegel. Compare Neumann’s discussions of Kant and Stammler in his first dissertation. See p. 45 et seq. earlier.
- 36 This reading is cast into some doubt by the fact that in this second passage Neumann likens his inability to understand Hegel’s formulation to a comparable inability to understand similar efforts in Kant, Fichte and Rousseau. Still, there is no sign in his treatments of at least two of these writers that there is anything worth probing behind the “formulations” he cannot “understand.”
- 37 Neumann’s references to Marx and Marxism are mostly to secondary literature, when he does not simply take them as known quantities. In addition to some quotations from *Capital*, there are, first, a quotation from the *Holy Family* and an unspecified reference to Marx’s newspaper articles in the *Neue Rheinische Zeitung*.
- 38 Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*. Edited by R. H. Campbell and A. S. Skinner (Oxford: Clarendon Press, 1976), vol. 2, pp. 710–23.
- 39 This is developed quite clearly in Franz Rosenzweig’s *Hegel und der Staat*, which Neumann cites throughout with respect and which emphasizes the gaps between Hegel’s understanding and democratic theory, in terms not remote from Neumann. Curiously, Neumann links Rousseau’s *Discourse on the Origins of Inequality* with *Social Contract* in ways that suggest Hegel’s own qualitative differentiation between the lower stages of civil society and the state—but of course this involves the prime element of equality.
- 40 It could be argued that the uncertainty is in Hegel (cf. Georg Zenkert, *Die Konstitution der Macht* [Tuebingen: Mohr Siebeck, 2004], pp. 284–304), but Neumann focuses on Hegel precisely because he sees him as the political theorist who is closest to the solution of this core problem, notwithstanding the insurmountable obstacle that he cannot overcome.
- 41 Neumann, “Zur marxistischen Staatstheorie, pp. 865–72; reprinted in Neumann, *Wirtschaft, Staat, Demokratie. Aufsätze 1930–1954*.
- 42 In his endnote, Neumann quotes a significantly shortened version of the passage in the original German and cites the title and a page number but fails to provide the publication date that is usually his concession to bibliographical completeness. See Chapter VI, “Absolute Critical Criticism or Critical Criticism in the Person of Herr Bruno,” in Karl Marx and Friedrich Engels, *The Holy Family* (Moscow: Foreign Languages Publishing House, 1956), pp. 114–16. See also section on *Heilige Familie* in Hans-Joachim Lieber/Peter Furth, *Karl Marx. Frühe Schriften*, vol. 1 (Stuttgart: Cotta, 1962), pp. 766–68.
- 43 The reference is to Hermann Heller, *Hegel und der nationale Machtstaatsgedanke in Deutschland* (Leipzig: B. G. Teubner, 1921). Compare review of Heller’s later work, earlier.
- 44 See later in the text.
- 45 It may be important here to recall Neumann’s quite sweeping earlier statement of the links between Hegel and Marx:

Marxism aims at a total interpretation of all social phenomena. Marx was a Hegelian, and Hegel has conceived a law to be “a dependent element in a totality, one of the many others constituting the character of a nation and an epoch, and receiving their meaning and justification from their interdependence.” Marxian sociology asserts that law may develop relatively independently of social reality, that autonomous legal forces may drive its development in another direction to that of the social substructure. The independence of the legal system from social forces is, however, as has been indicated by Engels with great firmness, only a

relative one. It is, however, a meaningless statement that law and the state are relatively autonomous. The central task of a sociological investigation into the legal system consists in indicating on the one hand the conditions under which law and the state can develop relatively independently, and on the other hand the forces which go to destroy this relative autonomy and subject the law and the state with full force to the stream of social realities. This will be one of the main tasks of the present investigation (Neumann, *Governance of the Rule of Law*, p. 16).

- 46 In view of Neumann's newfound interest in Hegel, it is of some interest to note that he does not take up Hegel's 1831 critique of the English Common Law system as an "Augean stable." Hegel's criteria in this final writing include not only standards of rule of law very close to those Neumann applies but also surprisingly detailed social criticism of the harsh class domination facilitated by the English legal order. G. W. F. Hegel, "Über die Englische Reformbill," in G. W. F. Hegel, *Berliner Schriften, 1818–1831. Werke in Zwanzig Bänden. Vol. 11* (Frankfurt: Suhrkamp, 1970), pp. 83–128. See Shlomo Avineri, *Hegel's Theory of the Modern State* (Cambridge: Cambridge University Press, 1972), pp. 208–20 at 214. It should be said that Franz Rosenzweig, who is Neumann's principal secondary source for Hegel, barely touches on this side of Hegel's argument: Franz Rosenzweig, *Hegel und der Staat* (München; Berlin: R. Oldenbourg, 1920), pp. 225–39.
- 47 Neumann anticipates this unexpected dimension of his political sociology only where he speaks earlier of the working class at some historical moment declaring itself to be "the nation" and precipitating revolution or repression.
- 48 Morris Ginsberg, *Sociology* (London: Home University Library, 1934), pp. 19ff; Mannheim, *Mensch und Gesellschaft* pp. 130–44 at p. 134.
- 49 Neumann cites one of his major affirmative readings of the Weimar Constitution: Franz Neumann, "Die soziale Bedeutung der Grundrechte in der Weimarer Verfassung," *Die Arbeit* (1930), pp. 570–82, but also Otto Kahn-Freund, *Das soziale Ideal des Reichsarbeitsgerichts* (Mannheim, Berlin, Leipzig: Bensheimer, 1931), which likens the jurisprudence of the labor courts to fascist doctrine.
- 50 This conjecture rests in part on personal knowledge of Neumann's informal (and not rarely mocking) use of Smith's limits on modes of competition as counter to enthusiastic market advocates among students and colleagues during his years as professor.
- 51 See earlier, Section 3.
- 52 "The existential determination of thought must be supposed to be a proven fact, in those spheres in which we succeed in showing (a) that the process of recognition does not historically develop itself according to 'immanent laws of development,' that it is in no way determined by the 'nature of things' and by 'pure logical possibilities,' in no way by an 'immanent spiritual dialectic,' but that decisively extra-theoretical factors of a totally different kind, which we are accustomed to call factors of existence, arise and determine the process of thought, and (b) that the emergence of those factors of existence which determine the concrete content of knowledge are not only of a peripheral significance, but determine it in content and form, in structure and way of formulation." Karl Mannheim, "Wissenssoziologie," in A. Vierkandt (ed.), *Handwörterbuch der Soziologie* (Stuttgart: F. Enke, 1931), pp. 659–80.
- 53 This detail is worth noting because of the muted recurrence later of Neumann's uncertain relationship to American judicial review, which had been a comparatively simple target of his criticisms in his Weimar years.
- 54 It is hard to understand how Neumann came to insert this eccentric reading of these materials into his analysis, especially since the argument about these presumed stages in knowing is so closely linked in Mannheim to the discussion of *principia media*, which Neumann cited only a few pages earlier and which refers to historical periodization. Since nothing follows from this in Neumann either, with no trace anywhere of an argument that judges attain to such a distanced and sociologically self-critical perspective, one likely explanation is that this was

inserted uncritically in response to some urgent recommendation by one of his supervisors, quite possibly Mannheim himself, for political reasons. Alternatively, the passage belongs to a series of gestures against the “totalitarian” abuse of critical readings of the liberal legal regime, notably by Carl Schmitt.

- 55 Neumann oddly neglects to mention criminal law in this context, but the omission is probably unimportant.
- 56 This key element is missing, however, from the analysis of the Weimar collapse that he published soon after his arrival in England.
- 57 Neumann cites a passage from an article by Max Horkheimer, which concludes, “The economic basis of the significance of promises become weaker day by day. No longer the contract, but command and obedience, characterize increasingly internal relations.” Max Horkheimer, *Zeitschrift fuer Sozialforschung*, Vol. IV (1935), pp. 14–15. Interestingly, Neumann introduces the quotation as follows: “These ideas which I have set out in previous publications, are formulated philosophically in an important contribution of Professor Max Horkheimer” (278n29).
- 58 See David Kettler “Works Community and Workers’ Organizations: A Central Problem in Weimar Labour Law,” *Economy and Society*, Vol. 13, No. 3 (August 1984), pp. 278–303.
- 59 It should be noted that the journal was published in German and was closely held by the Institute group.
- 60 Horkheimer, *Zeitschrift fuer Sozialforschung*, pp. 14–15. When Neumann quotes this passage in his dissertation, he introduces it with the following remark: “These ideas which I have set out in previous publications, are formulated philosophically in an important contribution of Professor Max Horkheimer” (278n29). It is worth noting Neumann’s concept of an “idea,” which can then be “formulated” in the language of philosophy or sociology or political theory.
- 61 In his brief projections of the phases of liberalism, from natural law to formal rationality, Neumann puts in parentheses the names of the theorists he discusses at considerable length in the dissertation, but he does not suggest authorities for legal ideology in either the democratic or authoritarian states.
- 62 Cf. dispute with Horkheimer about bureaucracy, MH to FLN (Aug. 13, 1941) MHA VI.30, pp. 40–43.
- 63 David Kettler, “Works Community and Workers’ Organizations: A Central Problem in Weimar Labour Law,” *Economy and Society*, Vol. 13, No. 3 (August 1984), pp. 278–303.

Chapter 6

NEUMANN'S SECOND EXILE: NEGOTIATING THE POLITICS OF RESEARCH

Neumann's Contested Place

For most people familiar with Critical Theory, Franz Neumann is typically seen as a minor player in a complex institutional and intellectual drama. Unlike the core members of Max Horkheimer's Institute for Social Research in its New York exile years, Neumann did not engage in philosophical inquiries. In his work as legal and political thinker, he focused on the political implications of philosophical designs he found generally sympathetic, while maintaining some skeptical distance from the foundational work. This pattern was already manifest in his first dissertation, where he expressly addresses the question of relations between philosophical and other levels of inquiry into legal issues. He was also a relative latecomer to the Institute who did not fit comfortably within its intellectual orbit around the Frankfurt School's director, Max Horkheimer—and there is no question that Neumann's experiences and commitments to working-class political movements were out of step with the Frankfurt School's abandonment of the proletariat as the primary agent of revolutionary social change. More broadly, Horkheimer and his most intimate group did not recognize the distinct problems of political theory as bearing philosophical weight.¹ This is not to say, however, as some have assumed, that Neumann's intellectual contributions to the Critical Theory enterprise were not substantial. Rather, it points to the fact that Neumann was underutilized and underappreciated by Horkheimer and his administrative right-hand man, Friedrich Pollock, during the years of Neumann's brief collaborations with them. The working agreements that governed their relations were shallower than they needed to be if they had been able to communicate more reciprocally about the limits of their respective domains. Nevertheless, the interactions, however flawed, were productive for the Institute, especially in the longer term.

The view of Neumann as peripheral to the Institute of Social Research, taken as the home of the "Frankfurt School," is a reasonable conclusion from Neumann's inability to engage in sustained research on his own distinctive questions under the auspices of the Institute, as his distinctive research projects were not supported. We shall review that story later, inasmuch as it will take us to his principal initiative beyond the imposed programmatic limits. In the present chapter, however, the objective is to advance our understanding of Neumann's contribution to the Institute as a recognized research agency through a review of his management of perceived and actual differences between

methods of inquiry most congenial to the core group of the Institute for Social Research, notably Max Horkheimer and Theodore Adorno, and “American sociology.”

This is necessarily a complex story because of the many ambiguities and crosscurrents that mark it. First, the concept of “American sociology” is a contested one, with the standard view of the Institute being governed by a radical simplification of the situation as one of mindless empiricism, where ad hoc hypotheses are subjected to rigorous testing that yields no cumulative knowledge, and the dissident view exemplified by Neumann, recognizing the countermovement within American sociology, especially since the onset of the Depression, toward more structural and historical inquiry. Neumann is more aware of and engaged with the latter tendency, although there are moments when Horkheimer, but not Adorno, acknowledges the more differentiated picture. Second, there is only one documented occasion when the members of the Institute discuss the question of the relationship to “American sociology” in a focused way, although even then the circumstance is strongly affected by tactical questions about making their case for funding from agencies they presume to be controlled by “American sociology”; and the latter type of situation is the source of most of our inferences about the strategic distinctiveness of Neumann’s views, as distinct from tactical accommodations that he doubtless also makes. Yet when these materials are viewed in the present wider context of Neumann’s project, we think that we can make the case that Neumann does work productively toward the “integration” that he stated retrospectively as his achievement in exile. In making this case, we distinguish among the consequences of his efforts for the history of the Institute, the effects on the theoretical or methodological standpoint of the “Frankfurt School” and the contribution to the development of his own thought. We show that he did affect the history of the Institute’s research programs into the future and we maintain that the experience was important if not formative for him, especially in expanding the range of empirical sociology he was prepared to consult; but we accept the case generally argued that he did not influence the theoretical work of Horkheimer and Adorno.

Neumann entered the Institute for Social Research through an unanticipated backdoor, and the circumstances of his entry shaped much of his early relationship with the other members of Max Horkheimer’s circle. As Neumann was concluding his studies at the London School of Economics (LSE) in the winter of 1935–36, he took the opportunity offered by one of Max Horkheimer’s occasional visits to Europe, to initiate a contact with him,² volunteering his assistance to the Institute and its fledgling operations in London. In a letter dated January 15, 1936, Neumann reported to Horkheimer that he had been promoting both the Institute and its journal at the Institute of Sociology and the Institute of Psychoanalysis; that he organized a discussion of *Authority and the Family*; and he had sought out reviewers for the *Zeitschrift für Sozialforschung* such as Morris Ginsberg, D. W. Harding and T. H. Marshall.³ A few days later, Neumann recruited his mentor, Harold Laski, as an ally of the Institute and as a contributor to its journal. Neumann also sought Laski’s assistance in appealing to the administration of the LSE to make use of its diplomatic contacts to assist with the recovery of the Institute’s confiscated library.⁴ In both letters, Neumann refers to his activities repeatedly as “negotiations” (*Verhandlungen*) conducted on behalf of the Institute, although there is no indication that he was commissioned to serve as its agent.

In return for this promotion and advocacy on behalf of the Institute, Neumann sought the assistance of Max Horkheimer. Neumann was nearing the completion of his studies at the LSE, and he did not wish to remain in England. As he recalled in his contribution to *The Cultural Migration*,

Much as I [...] loved England, her society was too homogenous and too solid, her opportunities (particularly under conditions of unemployment) too narrow, her politics not too agreeable. One could, so I felt, never quite become an Englishman. Thus the United States appeared as the sole country where perhaps, an attempt would be successful to carry out the threefold transition: as a human being, an intellectual, and a political scholar.⁵

Harold Laski was planning a trip to the United States in April 1936 and invited Neumann to accompany him so that Laski could introduce him to friends and colleagues at Harvard, Yale and Cornell. Neumann's hope was that such introductions and connections might lead to a teaching position in America. In order to be immediately available for any opportunities that might arise—and doubtless for other reasons as well—Neumann sought Horkheimer's help in securing a nonquota visa. By providing Neumann with a nominal employment contract, Horkheimer and the Institute enabled Neumann to bypass the immigration restrictions of the United States.⁶

The Institute for Social Research granted Neumann the contract and he traveled to the United States, but his visits to US universities with Laski did not result in any employment. Nevertheless, Neumann had impressed Horkheimer with the negotiations he had undertaken in England on the Institute's behalf. The employment contract that originally had been a tool for entry into the United States accordingly became a real contract of employment—but these peculiar circumstances were unlike those of any other associate of the Institute during the late 1930s. His association was probably a by-product as well of Horkheimer's accommodation to Laski. No doubt Neumann's unique accomplishment, as an exiled labor lawyer, of earning a doctorate in political theory under the well-known socialist British theorist should have made him an attractive intellectual addition to the circle around Horkheimer in any case, adding new areas of competency to the Institute's comprehensive theory of contemporary society; but Neumann had not been brought into the circle after a scholarly assessment. He had proven his value in his handling of administrative and legal tasks—and these types of duties became his initial niche within the Institute.

Throughout the summer and fall of 1936, Neumann was assigned to a legal dispute involving Felix Weil, the original patron and main benefactor of the Institute. The Weil family had been grain importers in Germany and thus had business interests in Argentina. Neumann was sent to Buenos Aires because Weil had been accused of unlawfully dismissing his junior business partner and brother-in-law.⁷ Neumann was miserable during his time in Argentina. It was too expensive, and the case was a depressing affair. As he reported in a letter of October 5, 1936, "I had been hoping for three years to be able to work 'normally' again, and as soon as the chance arrives I end up dealing with this business, which is dreadful for all concerned."⁸

In addition to the case in Argentina, Neumann handled other legal matters that arose in 1936 and 1937. For example, he worked together with the Institute's attorneys in

England who were striving to retrieve or attain compensation for the Institute's library in Frankfurt that had been seized by the Gestapo during the first months following the Nazi seizure of power in 1933. C. D. Medley, the London lawyer handling the matter, exhausted all legal options in December 1936, including a failed maneuver to donate the collection to the LSE in order to bypass the anti-Semitic measures that governed the case in Germany, but Neumann's advocacy at the LSE earlier in the year had gotten the British Foreign Office involved too,⁹ although to no effect.

It's clear that Argentina was not the only source of disappointment for Neumann during his first year at the Institute. On a more fundamental level, Neumann wanted to build on the work that he had begun as a student at the LSE. Neumann's obstacle to pursuing work more consistent with his intellectual and political goals was a function of the terms and circumstances of his arrival at the Institute. Because he entered through such an odd backdoor channel, he was fortunate to fill Horkheimer's legal and administrative needs. Becoming valued for his political and theoretical work, especially his conviction that developments in law are of vital importance to social and political analysis, would require changing his niche within the Institute, which meant demonstrating to Horkheimer and the Institute's inner circle that he could make contributions to the distinctive intellectual project they were developing.

The Institute for Social Research was unique within the broader intellectual migration. Unlike the New School, which also provided research opportunities for émigré intellectuals with a background in the Weimar left, the Institute was economically self-sufficient, at least during the crucial early years, and self-administered by members of the exile cohort, in direct continuity with a shared history since the late Weimar years. On a general level, the Institute appeared to be an ideal place for Neumann in exile, as he sought to engage his distinctive experience of the German catastrophe and to question the failed ventures to which he had contributed.

Yet the Institute was a highly complicated community to inhabit, especially for a newcomer and outsider. The distance between Horkheimer's Institute in the Philosophical Faculty of the University of Frankfurt and the *Akademie der Arbeit*, where Neumann served an apprenticeship in the mid-1920s, had been great; and not even Neumann's years with Laski could make it an easy gap to cross. Moreover, the Institute in New York was a classic German *Männerbund* with confusing and messy internal politics. Horkheimer, as the authoritarian father figure within this community, demanded loyalty that could veer toward conformity—but he also valued associates with fresh ideas that appeared complementary and with connections to individuals, institutions and intellectual networks beyond the Institute's enclave on Morningside Heights.

While Neumann originally served the Frankfurt School as a legal agent and negotiator, he found a few opportunities to redefine his role. He took part in the frequent internal seminars of the Institute; he was an assiduous reviewer for the *Zeitschrift*; and he secured publication there of two articles—one of them, arising out of a proposal submitted before his actual association with the Institute, quite major—that offered his legal and political expertise to address some structural features of the Institute's comprehensive theory of contemporary society.¹⁰ In the event, these efforts culminated in an

unwelcome internal critique of the Frankfurt School's structural analysis of late capitalist/fascist society.¹¹ Neumann's forceful and persistent rejection of Friedrich Pollock's theory of state capitalism implicitly challenged a paradigm that grew in significance throughout the late history of Critical Theory—eventually leading to the characteristic conception of the totally administered society, with its accompanying critique of instrumental reason.¹² There was no simple integration between theoretical ventures allied in their politics and cast in similar language but pitched at different levels of analysis and temperamentally so different in their attitudes to facts.¹³

Notwithstanding his unwelcome challenge to Pollock's rather abstract construct and the measure of estrangement that this occasioned, Neumann was the member of the Institute who pointed the way to the dualistic research agenda of the Institute during its postwar phase. Although Neumann never embarked on the Frankfurt School's Atlantic crossing back to Germany, he was the figure most responsible for plotting the course toward a successful cohabitation between late Critical Theory and American sociology—a development uncomfortably at odds with the actual theoretical thrust of late Critical Theory.¹⁴ Of course, Neumann didn't see his earlier contributions in this light. No member of the Institute had such foresight about the consequences that would result from its eventually successful pursuit of American grant support. For Neumann, his efforts were consistent with a career dedicated to negotiating and bargaining—in this case an effective collaboration between German social theory and US empirical research methods, given his long-term distinction between sociological and other dimensions of political understanding as well as his assessment of the less fragmented and more historical sociological studies that he had encountered since his arrival in the United States.¹⁵

We can anticipate the outcomes of Neumann's strategy by turning to the story of the grants that led to *The Studies in Prejudice*, which established the reputation of the Horkheimer group among social scientists outside of the exile community in the United States. It is safe to say that each party involved with this project, which Neumann successfully adapted and promoted to the American Jewish Committee (AJC), resulted in all parties getting more than they bargained for. In the case of Neumann himself, his successful strategy for securing grant support from the AJC backfired against his professional hopes at the Institute.¹⁶ The terms upon which the agency supported the project offended the leaders of the Institute. While they could not refuse the money, they closed off Neumann's chances of continuing his work. Just as Neumann had seen few insuperable contradictions between Marxist social theory and normative legal theory, he similarly did not see insurmountable contradictions between Critical Theory and trends within US sociology, as he saw them. If he had intended the anti-Semitism project to foster a mutually valuable complementarity between social scientific work of the newer American type and the theoretical orientations of the Institute, he failed to carry Horkheimer and the others. They concluded that he had harnessed them to a kind of work they despised. The curious consequence was, first, that he was excluded from the work he had made available and, second, that the empirical components of the project resembled more nearly what they feared than what he planned. Paradoxically, at least in the eyes of many observers, the momentum of the celebrated "authoritarian

personality” studies led to the curious juxtaposition of theoretical radicalism and conventional research during the years after the Institute returned to Germany.

We will explore the specifics of this vague but functional integration later in the body of the current chapter. In relation to the consequences of Neumann’s achievement, the fallout was ironic. American social scientists, as well as fellow émigrés outside of the Frankfurt School, appreciated Neumann’s efforts to supplement Continental social theory with American empirical methods. Nowhere were his efforts more enthusiastically embraced than within the Sociology Department at Columbia University. Ever since the Institute’s arrival on Morningside Heights, members of the department had hoped that the Institute would continue the kinds of interdisciplinary research that had been managed in Europe by Erich Fromm. Initially, Columbia’s sociologists thought that their wish had come true as Fromm initiated a series of comparable projects in collaboration with Columbia faculty and graduate students. Yet these hopes were dashed by the departure of Fromm in 1939.¹⁷ Neumann’s efforts on grant proposals to study the origins of Nazism in Germany and the broader phenomenon of anti-Semitism renewed the hopes of Columbia’s disappointed sociologists. Despite the fact that the Rockefeller Foundation then rejected the Germany Project (to be discussed in the next chapter) and that the anti-Semitism project failed to generate initial interest, Robert Lynd and other members of the sociology department appreciated what Neumann was attempting to accomplish in his work on both. While Lynd scolded the other members of the Institute for having “wasted a great opportunity” because they had “never achieved a true collaboration” in which they “might have confronted our European experiences with conditions in America,”¹⁸ he became a powerful champion on behalf of Neumann. As the Institute sought a closer and more formal relationship with the university that would include a member of the Institute becoming a lecturer on Columbia’s sociology faculty, the leadership of the Frankfurt School took for granted the fact that Horkheimer (or whoever he chose to designate) would be selected for this role. When news arrived in January 1942 that the department had selected Neumann for the lectureship, Horkheimer and Pollock immediately began making radical plans to downsize the Institute.¹⁹ Neumann was notified that his position would be terminated in September of 1942 unless outside funding was secured, thereby making his flight to Washington a necessity.²⁰ Although Neumann did secure the outside funding that represented his only hope of remaining with the Institute, Horkheimer and Pollock rescinded this last bit of hope as a result of their confused judgment about the terms with the AJC.

As an unintended result of Neumann’s interventions, Critical Theory returned to Europe with a split personality—while it may have been homeless and rootless in exile, it became bipolar during its return to Germany—divided between a classically American epistemology grounded in empiricism, as well as the pursuit of practical ends, and a more vehement denial of “traditional theory” on the grounds that it couldn’t see beyond the status quo and contributed to the totally administered society. As much as Max Horkheimer, Friedrich Pollock and T. W. Adorno sought to emphasize the origins of their thought beyond the traditions of Weimar *Bildung* and *Wissenschaft*,²¹ they returned to Germany as both ambassadors and critics of the empirical methods that they had encountered in American sociology. On the one hand, the postwar *Institut für Sozialforschung*

marketed itself and its appreciation of the methods and goals of American social science in the following way:

Social Research, in all its aspects, and particularly in the areas of research on the structure of society, on human relationships and modes of behavior within the labor process, of opinion research and the practical application of sociological and psychological knowledge in the last few decades, has received a great boost [...] The part these disciplines can play today both in Germany's public life and in the rationalization of its economy can hardly be overestimated [...] The demand for scientists trained in the new methods is no less than that for engineers, chemists or doctors, and they are valued no less than those professions are. Not only government administration, and all the opinion-forming media such as the press, film and radio, but also businesses maintain numerous sociological research bodies. Social research can create the optimal social conditions in their factories, ascertain and calculate in advance what the public needs in their branch of business, and monitor and improve the effectiveness of their advertising.²²

Although this quotation appears in a very early pamphlet promoting the Institute and its unique qualifications, the Frankfurt School did carry out a research agenda quite faithful to this mission statement during the first two decades in West Germany. Thus, it promised to deploy the most cutting-edge empirical techniques to meet a myriad of "functionalist" ends. In addition to the well-known *Gruppenexperiment* on postwar political attitudes, commissioned by the American occupation authorities, the Institute also pursued a research program of educational and industrial sociology relying on the most contemporary techniques of American public opinion polling for a myriad of practical results to bolster West German society and business.²³

On the other hand, the reconstituted Frankfurt School also presented itself as an enemy of these same trends viewed by many as synonymous with American social science. As T. W. Adorno explained in the famous *Positivismusstreit*,

Sociology's abandonment of a critical theory of society is resignatory: one no longer dares to conceive of the whole since one must despair of changing it. But if sociology then desired to commit itself to the apprehension of facts and figures in the service of that which exists, then such progress under conditions of unfreedom would increasingly detract from the detailed insights through which sociology thinks it triumphs over theory and condemn them completely to irrelevance.²⁴

Thus, at the same time that the Institute offered its services to West German managerial and political elites, their social theory attacked the research methods that they deployed in the name of furthering "optimal social conditions."

The cognitive dissonance between the two positions led many who were intimately familiar with the Frankfurt School's theory and methods to throw up their hands in confusion. Paul Lazarsfeld expressed this sentiment perhaps like no other. In an essay written at the height of the Frankfurt School's postwar reception by the New Left, Lazarsfeld noted the puzzling contradiction:

When, after the war, the majority of the Frankfurt group returned to Germany, they at first tried to convey to their German colleagues the merits of empirical social research which

they observed in the United States [...] Within a period of five years, however, the situation changed completely. Adorno embarked on an endless series of articles dealing with the theme of theory and empirical research. These became more and more shrill, and the invectives multiplied. Stupid, blind, insensitive, sterile became homeric attributes whenever the empiricist was mentioned [...] Thereafter one paper followed another, each reiterating the new theme. All have two characteristics in common. First, the empiricist is a generalized other—no examples of concrete studies are given. Second, the futility of empirical research is not demonstrated by its products, but derived from the conviction that specific studies cannot make a contribution to the great aim of social theory to grasp society in its totality. Empirical research had become another fetish concealing the true nature of the contemporary social system.²⁵

At first glance, the archival material could easily lead one to conclude that this epistemological bipolarity was a result of material necessity. The reconstituted Frankfurt School required the financial, political and intellectual capital to possess the academic freedom to critique postwar social science.²⁶ And yet grantsmanship cannot fully account for the contradiction. Even at moments when the material circumstances of the Institute in exile were most dire, its leadership did not support the kind of intellectual assimilation that took place after the war. While the Institute was struggling to survive during the most precarious period, Horkheimer wrote to Adorno,

In this society [the United States] even science is controlled by trusted insiders [...] Whatever does not absolutely submit to the monopoly—body and soul—is deemed a “wild” enterprise and is, one way or another, destroyed [...] We want to escape control, remain independent, and determine the content and extent of our production ourselves! We are immoral [...] Fitting in, however, would mean in this instance, as in others, primarily making concessions, many of them, giving material guarantees that submission is sincere, lasting, and irrevocable. Fitting in means surrendering, whether it turns out favorably or not. Therefore, our efforts are hopeless.²⁷

Had Horkheimer changed his mind after the war and in the new setting of West Germany? The answer would clearly seem to be “yes.” But what were the reasons for the change? In this chapter, we would like to propose that Horkheimer had been trapped by his own success. During the early 1940s, neither he nor his inner circle had foreseen the acceptance of their grant proposal for a study of anti-Semitism or the fruitful integration of Continental social theory and American empiricism that it envisioned. Both the grant and subsequent projects, *The Studies in Prejudice*, brought Horkheimer and his colleagues more recognition than could have plausibly been expected. Interestingly, none of the key members of the Institute’s inner circle had been responsible for the key breakthroughs that made the project possible. Rather, the effects were achieved by the relative outsider, Franz L. Neumann, who had actually sought a less schizoid outcome. The Institute returned to Germany much changed. The successes made possible by Neumann’s interventions created opportunities for the returning Frankfurt School, but it also created expectations that could not be avoided.

The Quest to Explicate the Research Methodologies of the Frankfurt School

Nowhere was Neumann's consistent ambition to negotiate between German and American social science during the American years more evident than in his contributions to the Frankfurt School's attempts to explicate its social research methodology as well as his revisions of the Institute's grant proposal for a study of anti-Semitism. Not only did his contributions help garner the support of the American Jewish Committee, but his interventions also propelled the Institute in a direction and toward a future that Horkheimer, Pollock and even Adorno could not have foreseen—and initially did not desire. This path represents the basis for late Critical Theory's bipolar, epistemological tension between the social theoretical rejection of empiricism and pragmatism that coincided with the practice and teaching of sociological research relying on both empiricism and pragmatism.

Like so many of the other émigrés who Neumann celebrated in his retrospective account of the "Cultural Migration," Neumann stood apart from his colleagues at the Institute in his heightened self-conscious ambition to function as a transatlantic intellectual. As Neumann recounted,

[It] is clear that emigration in the period of nationalism is infinitely more painful than ever before. If the intellectual has to give up his country, he does more than change his residence. He has to cut himself off from an historical tradition, a common experience; he has to learn a new language, he has to think and experience within and through it; has, in short, to create a totally new life. It is not the loss of a profession, of property, of status—that alone and by itself is painful—but rather the weight of another national culture to which he has to adjust himself.²⁸

A partial or tentative integration within the US society and academic culture was not only impractical but also impossible in his eyes.²⁹ Neumann judged that he could only continue to fight fascism by exposing its character through studies based on his negotiations between European political theory and American social science. It also is clear that such an integration was fully compatible with his former thought and practice as a political intellectual. Established American social science, thus, like German jurisprudence, was simply another set of realities that needed to be navigated in his quest for progressive social change. Rejecting the empiricism and pragmatism of American scholarship was a common reaction among his cohort of émigrés, but Neumann saw such stances to be unproductive dead ends.³⁰ Similarly, complete assimilation to the new epistemological and intellectual environment was undesirable because the exile sacrificed the training in history and theory that made their perspective so distinctive and potentially valuable to Americans. From Neumann's point of view, as noted earlier, the optimal strategy had come to be one of attempted "integration" between the two cultures.

Notwithstanding Neumann's cautions against exclusive emphasis on empirical research framed by nothing more than a descriptive question or arbitrarily postulated hypothesis, he saw merit in the American approach as conveying, against European

academic custom, the valuable “demand that scholarship must not be purely theoretical and historical, that the role of the social scientist is the reconciliation of theory and practice, and that such reconciliation demands concern with and analysis of the brutal facts of life.”³¹ For Neumann, the full understanding of the “brute facts” requires that they be put in a context of a historical theory that comprehends both past developments and present potential for the future, and the knowledge of the “brute facts” precludes an illusory projection of that future. Even theoretically unsatisfactory empirical inquiry can be adapted for purposes of the more critical view as long as the “facts” it examines do in fact bear on the course of development. The exposition of the consequent theoretically informed and factually controlled reading of events has practical consequences in the critique (and reorientation) of actions.

One might be tempted to see Neumann’s characterization of a successful integration of Continental social theory and American social science as something that arose only from hindsight. Neumann’s interventions on behalf of the Frankfurt School’s grant proposals of the early 1940s, however, suggest that not only had these views been formed much earlier but also that he was the one responsible for advocating them to the other members of the Institute. The puzzling circumstance about Neumann’s years at the Institute is that he successfully influenced its range and manner of studies through his success in introducing structural factors—collaborators and terms of financial support—that developed their own momentum, but that he could not build any institutional momentum for his own research questions, as will be shown in the next chapter.

In 1939, as the Institute commenced work on several simultaneous bids for outside grant support, Neumann began thinking in earnest about recent developments in American sociology. It would be an exaggeration to suggest that other members of the Institute were not similarly looking more closely at their colleagues in the social sciences. Horkheimer, for example, corresponded with Louis Wirth and received a lengthy handwritten report on the state of sociology in America from Wirth’s senior assistant, Edward Shils, whose work on translating Karl Mannheim’s *Ideology and Utopia* prepared him to bridge some gaps. Adorno, meanwhile, worked closely with Paul Lazarsfeld on the Radio Research Project but was a very skeptical eye witness for this groundbreaking endeavor. They nevertheless remained generally convinced that there was no accommodation possible between Critical Theory and the concurrent developments in the United States, insofar as they became aware of them. Neumann, by contrast, saw more potential for the Institute in the United States. There is little question that part of the explanation for his differing attitudes was connected with his distance from both the inner circle of the Institute and their intellectual project. Yet, one can also see his efforts in 1939 to be another case of venturing upon a negotiation on behalf of the Marxism that he thought underlay the Institute’s theory.

From the beginning of his employment with the Institute, Neumann contributed book reviews to the *Zeitschrift für Sozialforschung*. Prior to 1939, he had published a total of 12 reviews, but the subject matter of the books examined in each of these reviews was restricted to his acknowledged areas of expertise—law, labor issues and political theory. His assignment to review some works in contemporary sociology, which coincided with the initiation of the Institute’s two grant proposals, thus signaled a shift in Neumann’s

niche within the Institute, cautiously ventured by Horkheimer, as it appears, and eagerly sought by Neumann.

Neumann's first effort to come to terms publicly with contemporary trends in US sociology was his review of Robert Lynd's *Knowledge for What?*²⁶² Strategically, the assignment of this book to Neumann for review in the closely held journal could serve two vital functions. First, it was good diplomacy. Prior to Erich Fromm's departure from the Institute in 1938, Lynd had been one of the Horkheimer Circle's key allies at Columbia University. Thus, an extensive review of *Knowledge for What?* by someone with Neumann's profile could function as a kind of olive branch. Second, the review assignment was good preparation for Neumann as he was given original responsibility for directing the Institute's proposed research project on the rise of Nazism in Germany.

While it's hard to see the review of Lynd's book in its entirety as a representation of Neumann's independent views and opinions, it is possible to distinguish passages in which he largely appears to be writing for himself from others, in which he is writing more as an official spokesperson for the Institute. Detailed negotiations between the editor, who was exceptionally close to Horkheimer, and contributors based in the Institute were not unusual. For example, the significance that Neumann attributes to the book—the topic that dominates nearly the first half of the review—would clearly appear to represent his own unmediated views, a speculation strengthened by the terms of his subsequent dealings with Lynd. Anticipating an assessment of American sociology that he would later repeat and defend against attacks by other Institute members in an in-house debate that was held in 1941, Neumann saw the book as an important example of US disillusionment with both positivism and empiricism. It was significant for the Institute not only because it was formulated by a “chief representative of the Research School of American sociology” but also because Lynd was endorsing the use of theory, which Neumann saw as potentially compatible with the underlying methods of the Institute. His criticisms of Lynd, similarly, anticipate characterizations Neumann articulates more forcefully in the Institute's 1941 debate. Thus, he questions Lynd's call for his sociological colleagues to make bold hypotheses and to let both their research and analysis be guided by values. As Neumann indicates in the review, as well as later in the debate of 1941, Lynd fails to explain the methods by which such hypotheses can be made or how values can guide social research in directions that are not entirely relativistic. When Neumann concludes his review with his proposed solution to the problems he identifies with Lynd's methodological proposals, Neumann presents a vague description of Critical Theory that was typical of characterizations made by other members of the group. As Neumann writes,

But if his [Lynd's] criticism is correct, and we do not doubt it for a moment, what method then remains in the present stage of society for maintaining the isolated, progressive features or even for thoroughly transforming them into a rational whole. This central question cannot be answered by positivism, for it does not even recognize the problem. It cannot be answered by any value philosophy, which offers to mankind a whole array of values for selection. It cannot be answered by psychology, which can never pass judgment on the rightness and truth of man's strivings. It can only be answered by a theory of society, which is essentially

critical [...] All the twelve problems regarded by the author as relevant, are problems which fundamentally cannot be explained in the realm of psychology, but only in terms of the inner contradiction of society.³³

Thus, in the culmination of his review, Neumann writes on behalf of the Institute in the kind of Aesopian language that was typically deployed when explaining the methodology of the Institute to outsiders.

At the end of 1939, Neumann was enabled to make another strategic foray into the world of American sociology. Whether as a representative of the Institute, which seems likely, or on the strength of his earlier acquaintance with the noted sociologist, Louis Wirth, Neumann was invited to an event sponsored by the University of Chicago Social Science Department, nominally to celebrate the 10th anniversary of their building but actually to register the department's adjustment to the strong trend against its founding thesis of the unity of the social sciences, which nevertheless coincided with new moves toward qualitative research and theory in sociology. The meeting was accordingly called "The Social Sciences. One or Many." Wesley C. Mitchell, a prominent senior economist oriented to Thorsten Veblen and John Dewey but best known as a specialist on business cycles, chaired it. Neumann was not invited to give a lecture, but he took part in a round table on the thematic subject. In the memorandum that he prepared for Horkheimer, based on the recollection of his impromptu intervention on behalf of the Institute, he opens with notice that the issue of the unity of the social sciences is not the defining theme of the Institute's work.³⁴ He began his comments, he reports, by presenting the standard picture that had been used throughout its early years of exile by emphasizing the multidisciplinary structure of the Institute and its commitment to integrating the social sciences. Neumann then departed from the more cautious Institute narrative by insisting that organizational structure, alone, is not capable of achieving the kind of theoretical integration that is the hallmark of the Institute's work. By noting this, however, Neumann obligated himself to a more substantive attempt to explain the research methodology of the Frankfurt School. Accordingly, the memo continues,

Integration must ultimately lead to a theory of society enabling us to understand the rise of modern society, its structure, its future, in short, the laws governing its development. If we accept this concept of integration, we are faced at once with two decisive problems. Every social science constantly operates with certain basic concepts like person, being, essence, motion, liberty, etc. These concepts cannot be won by mere generalization. Induction would not make them true concepts. They are, in our view, philosophical concepts which can only be developed through a general philosophical effort. The Institute is consequently engaged in an analysis of the traditional concepts and methods of the social sciences. We try to find out the meanings of the basic concepts of the social sciences and to redefine them according to the present historical needs of the social sciences. That, however, is by far not enough. Since our main problem is the rise, structure and the prospective development of modern society, we insist that sociological work can only be fruitful if it is historical. [...] [W]e agree with Professor Lynd's view [on this matter] [...] Each member of the staff, in spite of the fact that we require from him a thorough training in his own specialized field, has to present his work historically. Philosophy and history, both, unite the research work of all our members.³⁵

Whereas Neumann had made only the vaguest allusion in his Lynd review of 1939 to a kind of social theory most familiarly exemplified by historical materialism, his statement at the SSRC meeting picked up on Lynd's enthusiasm about historical method in *Knowledge for What?* and experimented with a new description of Critical Theory. While it still camouflaged its debts to Marxism and relied heavily on a vague formulation about the integration of philosophy and history, it strongly suggests that the discussions that Neumann had heard on this occasion in Chicago appeared to show openings for more detailed negotiations with American colleagues.

If the Lynd review and Chicago intervention are important primarily as public moments in Neumann's personal development of a more open attitude toward links between Critical Theory and American social science, as well as a careful signal to representatives of the latter that the Institute might be open to such negotiations, a discussion protocol entitled "Debate about methods in the social sciences, especially the conception of social science method represented by the Institute," held on January 17, 1941, at the Institute of Social Research in New York is evidence, among other things, of his attempt to induce the key member of the Institute to reconsider stereotypical overgeneralizations about American social science and thus to develop a less defensive bargaining position for such discussions. From an instrumental standpoint, the "Methods Discussion" demonstrates a critical moment in the history of the Institute, as it struggled to find outside funding for research projects that would keep the group together.³⁶ Seen in a wider context, however, the protocol documents not only the group's joint deliberations on the tactical problems of presenting their work but also, thanks in important part to Neumann's challenges, the participants' differing understandings of the gap to be bridged between work consistent with their commonly avowed theoretical approach and the requirements of the social-scientific strategies sanctioned by American funding agencies.

Horkheimer convened a meeting of the Institute's members in an effort to capitalize on potentially encouraging signs arising from contacts with several US social research foundations. Whereas Horkheimer had seen little hope in the past for external funding for the Institute's research as a result of the reigning obsession with empiricism, he now reported that a possible shift was occurring in which the importance of more "theoretical viewpoints" was being recognized. Opportunities for the Institute remained limited, however, because the social science foundations tended to look upon theoretical claims as "hypotheses" that still required empirical verification, which sharply differed from the Institute's own conception of social theory. The purpose of the meeting was to explore whether there were any potential ways of recasting Critical Theory to US research foundations. Was it possible to explain their method to Americans in a manner that could capitalize on the recent developments, while still remaining true to their vision of social research? As the Institute's finances continued to disintegrate in the recession of the late 1930s, Horkheimer was determined to explore the narrow possibilities that now seemed apparent.

Two group projects were in the background, both designed in the course of the preceding year with a view to external funding and both evidencing signs of trouble. The first, initiated by Horkheimer and Adorno, involved a structural analysis of the

anti-Semitic belief system based on leading anti-Semitic texts.³⁷ For obvious reasons, this project looked for its funding to Jewish organizations, notably the AJC,³⁸ but the original scheme was scheduled for a complete reworking after the Institute received clear signals that it had failed to raise the kinds of pragmatic questions that were a hallmark of the organization. The topic intended for the Rockefeller Foundation was an analysis of National Socialist Germany—with both genealogical and structural approaches under consideration—and the succession of project proposals devoted to this subject occupied at least six of the members of the Institute during 1940 and early 1941 as well being the principal focus of Neumann's efforts during this time, both as planner and as promoter. It would be only a slight exaggeration to say that the January meeting was called to discuss a disputed project design in which Neumann was assuming the leading role, and that it was intended to see how the funding for the emerging new plan could be facilitated without improper compromises in method and theory.

Strikingly, Horkheimer's opening statement at the 1941 discussion was interrupted by Neumann twice. As soon as Horkheimer says that they are expected to supply an explanation of their method, Neumann interjects that the explanation must not appear Marxist, and when Horkheimer refers to the empirical testing of hypotheses expected of them, Neumann moves the discussion toward an examination of this conception, maintaining that the social scientists do not know how to discover hypotheses but see them as grounded simply in preferences. As he proceeds, however, it becomes clear that he does not consider this "general consensus" to be immovable but rather a position with regard to which there is also discontent, as witness the high regard for Veblen as well as the writings of Max Lerner and—especially—Robert Lynd, whose critique of "positivism" in his recent *Knowledge for What?* he underlines, without reference to his own published dissent from this characterization of Lynd's work. Julian Gumperz, Felix Weil, Herbert Marcuse and T. W. Adorno all disputed Neumann's characterization.³⁹ Each of Neumann's challengers fell back on the empiricist, positivist and pragmatist stereotypes that had been common in the Institute since Horkheimer's "Traditional and Critical Theory"—in an effort to be unbiased, Americans avoided hypotheses altogether or they developed functional hypotheses aimed at achieving limited but instrumentalist goals. Citing the examples of Thorsten Veblen, Robert Lynd and Max Lerner, Neumann made the case that things were changing and that the Institute's old stereotypes of "traditional theory" had to be reconsidered—and thus that a clearer statement of the Institute's methodology was necessary.⁴⁰ Responding to Neumann's mediation, Horkheimer is categorical: "[I]t would never occur to us to construct a hypothesis because we find a quite specific state of the question [Fragestellung] already given [...] We would rather revert to certain conceptions of society that we already possess."⁴¹ Provocatively impersonating the skepticism likely to meet Horkheimer's impulse to assert Critical Theory as a settled foundation, Neumann had an American social scientist responding, "What is correct about the theory on which you base yourselves?" And he concludes that "to come to such an understanding with the American who does not accept the theory is very difficult."⁴² That an understanding is to be sought is not in question.

Based on his interactions and negotiations with potential sponsors of the Institute's two research projects, Neumann offered a statement of methodology less self-enclosed

and less philosophically abstruse than Horkheimer and especially Theodor Adorno were advocating, although he diplomatically introduces his suggestion with obeisance to the sense of superiority among his associates:

This is not about working out our own method but about the question, "How do I tell it to the children?" Until now we have been satisfied to say that we seek to integrate all the social sciences. That does not suffice. The question is whether we can present our method so as to attack the hypothesis-fact problem. We distinguish ourselves from sociology in that we view phenomena as historical phenomena, which Americans do not do. We must emphasize that we are not engaged in sociological but in social-scientific work, and we must explain this. The difference is enormous, and we must show this.⁴³

It is easy to recognize the substantive proposal as a restatement of the position he put forward on behalf of the Institute at the Chicago event 13 months earlier. Historical method, as Neumann noted years later in his retrospective contribution to the *Cultural Migration*, was the key to allowing the European social theorist to gain traction in the United States. It avoided the thorny question of Marx and yet developed a methodological vocabulary not inconsistent with the Institute's theoretical direction but communicable to US social researchers and social research foundations familiar with the idea of a historical method from the writings of Robert Lynd and others whose American social science credentials were beyond dispute. A methodological statement that would not have taken the form it did without the January debate was prepared afterward as a preface to the project on "Cultural Aspects of National Socialism" in the application to the Rockefeller Foundation. When this was rejected, the statement was published in the Institute's *Studies in Philosophy and Social Science* as a prelude to the prospectus of an anti-Semitism study, which was said to be in abeyance, however, due to matters more urgent from the standpoint of American interests.⁴⁴

The methodological statement comprised four theses, of which it was reassuringly said at the outset that "none of these theses will be treated as dogmas once the actual research is carried through." Two of the four recall suggestions that Neumann advanced during the January session.⁴⁵ The first announced that "concepts are historically formed, [...] concretized in a theoretical analysis, and related to the whole of the historical process." In the second thesis, the argument expounding the claim that "concepts are critically formed" resembled the approach of Robert Lynd in *Knowledge for What?*, as summarized in Neumann's "Methodology Discussion" comments if not in the original review in his name:

Social theory may be able to circumvent a skeptical spurning of value judgments without succumbing to normative dogmatism. This may be accomplished by relating social institutions and activities to the values they themselves set forth as their standards and ideals [...] The ambivalent relation between prevailing values and the social context forces the categories of social theory to become critical and thus to reflect the actual rift between the social reality and the values it posits.⁴⁶

Although there is no evidence concerning the primary authors of these statements, it seems likely, after comparing them with the positions stated during the discussion on

method, that Neumann's advice played an important part as a compromise statement was drafted. Both of these methodological principles were much in evidence as well in Neumann's successful revision of the Institute's troubled grant proposal regarding anti-Semitism as well as in his own book *Behemoth*. Neumann not only discovered how to "tell it to the children," he also developed ways of putting this historical methodology into practice and thereby attracting the widespread attention and interest of American social scientists.

A Practical Bargain: Recasting the Research Proposal for Anti-Semitism

Until Neumann's intervention, the grant proposal regarding anti-Semitism had been pushed in a significantly different direction from the methodological principles championed by Neumann. During the summer of 1940, Adorno commenced a new round of work on the project that culminated in the draft that appeared in *Studies in Philosophy and Social Science*, curiously combined with the methodological statement discussed earlier.⁴⁷ As Adorno wrestled with the topic of anti-Semitism, his historical prism widened to the rather speculative anthropological horizon. Ultimately, Adorno's search ended with the prehistory of the Ancient Hebrews. In a letter of September 18, 1940, Adorno shared his new and daring thoughts with Horkheimer:

At a very early stage of the history of humanity, the Jews either scorned the transition from nomadism to settled habitation and remained nomadic, or went through the change inadequately and superficially, in a kind of pseudomorphosis [...] The survival of nomadism among the Jews might provide not only an explanation of the nature of the Jew himself, but even more an explanation for anti-Semitism. The abandonment of nomadism was apparently one of the most difficult sacrifices demanded in human history. The western concept of work, and all of the instinctual repression it involves, may coincide exactly with the development of settled habitation. The image of the Jews is one of a condition of humanity in which work is unknown, and all the later attacks on the parasitic, miserly character of the Jews are mere rationalizations. The Jews are the ones who have not allowed themselves to be "civilized" and subjected to the priority of work. This has not been forgiven them, and that is why they are a bone of contention in class society. They have not allowed themselves, one might say, to be driven out of Paradise, or at least only reluctantly [...] This holding firm to the most ancient image of happiness is the Jewish utopia [...] But the more the world of settled habitation—a world of work—produced repression, the more the earlier condition must have seemed to be a form of happiness which could not be permitted, the very idea of which must be banned. This ban is the origin of anti-Semitism, the expulsion of the Jews, and the attempt to complete or imitate the expulsion from Paradise.⁴⁸

For Adorno, nomadism was synonymous with an existence free of reification, repression and alienation—the nomadic Jew was representative of a utopian liberation from the exploitation and domination inherent in contemporary society. More importantly, civilization itself—not merely bourgeois civilization—was now called into question by Adorno's theory. After his arrival from England, Adorno had begun identifying flaws

inherent in the very constitution of Western civilization and was ever more linking them to the contemporary phenomena that the Institute traditionally studied. This conceptual shift was a crucial stepping-stone toward his version of the grant proposal on anti-Semitism, as well as toward *Dialectic of Enlightenment*. Whatever the suggestiveness of such free-ranging speculations, they offer no opening for connecting with the questions arising in political practice or with whole libraries of factual and historical findings.

Writing for an audience of Jewish philanthropies and American social scientists, Adorno did restrain his more speculative anthropological claims. Instead of imaginatively looking back to the biblical narratives of the Ancient Hebrews, his proposed historical timeline began with the Crusades and then proceeded to examine the medieval pogroms of the twelfth and thirteenth centuries and the Reformation. Adorno also highlighted the existence of anti-Semitic trends during the Enlightenment, French Revolution and the German Wars of Liberation. Although the focus on the anti-Semitism of Voltaire and Goethe might have surprised some of his American readers, the selections of Herder, Kant, Fichte and Hegel would have confirmed some of the earliest, anecdotal American beliefs in a specifically German impulse of this kind. Nonetheless, it remained a challenge to convince contemporary readers that the prehistory of Nazi anti-Semitism had much practical relevance for combating the contemporary manifestations of the phenomenon. Furthermore, Adorno's analysis suggested that the anti-Semitic trend was not simply a German aberration but a danger inherent within Western civilization. As Adorno explained,

It is generally overlooked that present day National Socialism contains potentialities which have been dormant not only in Germany but also in many other parts of the world. Many phenomena familiar in totalitarian countries (for instance, the role of the leader, mass meetings, fraternizing, drunken enthusiasm, the myth of sacrifice, the contempt of the individual, etc.,) can be understood only historically—that is, from the foundations of the whole of modern history.⁴⁹

Indifferent to the experiences and understandings of his American audience, Adorno rationalized his historical and psychological approaches to the study of anti-Semitism in a highly provocative manner. Adorno's research proposal seemed to be implicating Western civilization in some of Nazism's most irrational policies. The Rockefeller Foundation had balked at the Institute's grant proposal, "Cultural Aspects of National Socialism," for a similar reason. Just as American social research foundations were put off by undifferentiated claims about the potential for Nazism in the United States, they were similarly alienated by such claims about the potential for anti-Semitism.⁵⁰

Also prominent in Adorno's 1940 grant proposal was an emphasis on Friedrich Pollock's theory of state capitalism. Whereas the Frankfurt School had formerly embraced a monopoly capitalist theory of fascism, Adorno now insisted on the state's conquest of the economic sphere. As Adorno explained,

In the totalitarian state the free market is abolished, and the ability of money to "declare" ceases to exist. Now the government, together with rather small groups of the contemporary

German bureaucracy, determines which undertakings are useful for its military and other purposes and which are not. The market, an anonymous and democratic tribunal, is replaced by the command and plan of those in power.⁵¹

Thus, Adorno dropped the Institute's traditionally Marxist emphasis on cartels and monopolies and instead emphasized the totalitarian state as the economic engine as well as the force behind contemporary anti-Semitism. He drew a distinction between the liberal economic order and totalitarianism—whereas the Jews had a function in the liberal state, the shift to state capitalism put an end to the Jews and their former economic roles. Adorno continued,

The decline in importance of the spheres of economic activity in which the German Jews were chiefly engaged is the basis of their becoming superfluous. Their economic existence was intimately connected with the liberal system of economy and with its judicial and political conditions. In liberalism, as already mentioned, the unfit are eliminated by the effectiveness of the mechanisms of competition, no matter what their names are or what personal qualities they have. In the totalitarian system, however, individuals or entire social groups can be sent to the gallows at any moment for political or other reasons. The replacement of the market by a planned economy of the state bureaucracy and the decline of the power of money capital makes possible the policy against the Jews in the Third Reich.⁵²

Adorno linked Nazi race theory with the eclipse of the free market. He saw Germany's Jews as representatives of entrepreneurial, finance capitalism—but the monopolies had not inherited the Earth (as Horkheimer had earlier claimed)⁵³; rather, Adorno now argued that it was the totalitarian state that obliterated the bourgeois order and had initiated the race policies of the Third Reich.

It is odd to see Franz L. Neumann taking the lead role in the revision of the anti-Semitism project. In addition to his awkward institutional and intellectual fit within the Frankfurt School, Neumann is also noted for a shallow reading of Nazi anti-Semitism in his classic book, *Behemoth*. In a passage that has been quoted by numerous commentators, Neumann wrote,

The administration kept a number of anti-Jewish measures up its sleeve and enacted them one by one, whenever it was necessary to stimulate the masses or divert their attention from other socio-economic and international policies. Spontaneous, popular Anti-Semitism is still weak in Germany. This assertion cannot be proved directly, but it is significant that despite the incessant propaganda to which the German people have been subjected for many years, there is no record of a single spontaneous anti-Jewish attack committed by persons not belonging to the Nazi party. The writer's personal conviction, paradoxical as it may seem, is that the German people are the least Anti-Semitic of all.⁵⁴

Earlier, Neumann had openly expressed grave misgivings about Adorno's 1940 draft of the anti-Semitism proposal. As he explained in a letter to Adorno,

Even in such a project, one should not abandon our theoretical point entirely. On page 2 you say that anti-Semitism was necessary to the understanding of National Socialism. I take

this sentence to be false. I think, and try to do the same in my book, that you can represent National Socialism without attaching a central role to the Jewish problem.⁵⁵

Neumann proceeds to question why anti-Semitism is integral and sees it serving dual functions. As an instrument of internal politics, he proposes that “the Jew represents, after the abolition of the class struggle, the single political enemy, which society needs in order to be able to constitute itself as a unit.”⁵⁶ He, then, goes on to observe that this means that the enemy is interchangeable, representing “all despised properties.” Second, Neumann argues that anti-Semitism also serves an ideological function in the arena of foreign policy. As long as expansion focuses the National Socialists on the east, anti-Semitism serves to reduce an unassailable large mass into objects of exploitation and management. He notes, however, that these two tendencies conflict. In the domestic arena, anti-Semitism is a secondary, auxiliary theory. In the realm of foreign policy, by contrast, Neumann believes that anti-Semitism is “genuine National Socialism”—because Germany is being presented as a proletarian nation fighting against plutocratic democracies.

Although Neumann disagreed with the original tone and scope of the anti-Semitism project, his active role in adapting the proposal is understandable if one looks at his participation as another case of him functioning as a bargainer on behalf of the Frankfurt School. As we observed earlier, Neumann's first jobs for the Institute were as a legal counsel. As a legal agent, Neumann functioned as a negotiator—a role to which he was accustomed from his law practice during the Weimar Republic. It is important to remember that negotiators do not simply represent the interests of their clients. This would make them little more than couriers. Negotiators are granted the power to bargain—to represent, modify and transform the interests of their clients in order to accomplish their patrons' broader aims. Negotiators help their clients navigate institutions and individuals. The requisite qualities of mind and skill were highly developed in Neumann, not only because of his professional training but also because of his distinctive understanding of intellectual complexities and the strategies for managing them. In the context of the proposal for the anti-Semitism project, Neumann reformulated the project to make it more congruent with the methodologies of US social science as well as to make it more practical in its political ambitions to comprehend and combat anti-Semitism. In reviewing the first attempts by these exiled scholars to study the brutal eruptions of anti-Semitism in Germany after 1938, it is important to acknowledge the deep perplexity and pain that burdened them and that gave their work a certain improvisational character.

As one of the present authors has shown in detail elsewhere, Neumann's revision of the grant proposal regarding anti-Semitism was a successful integration of Continental social theory and American empiricism.⁵⁷ Neumann's revisions, however, also demonstrated the specific methodological bridge that he had proposed both before and after the AJC's acceptance of the Institute's proposal. It wasn't simply a case of rebranding, marketing and grantsmanship. Neumann had struck upon a manner of seeing and embracing the interrelationships between German *Bildung* and American “science.” The revised grant proposal offered a more concrete historical analysis of anti-Semitism and its political functions than the visionary supposition of a civilizational pathology offered earlier.

Neumann's proposal held the promise of more effectively combating National Socialism by better understanding its more immediate aims and significance. Although the Institute had utilized the concept of totalitarianism before (using it as nearly a synonym for fascism), Neumann's proposal developed a more specific notion of totalitarianism to capture the essence of the dangers it posed to both Europe and the rest of the world. As the new proposal explained,

The new anti-Semitism is totalitarian. It aims not only at exterminating the Jews but also at annihilating liberty and democracy. It has become the spearhead of the totalitarian order, and the aims and function of this order can be vastly clarified by a study of anti-Semitism [...] the attacks on the Jews are not primarily aimed at the Jews but at large sections of modern society, especially the free middle classes, which appear as an obstacle to the establishment of totalitarianism. Anti-Semitism is a kind of rehearsal; when the results of the rehearsal are satisfactory, the real performance—the attack on the middle classes—takes place.⁵⁸

Notably, the concept of state capitalism had been removed from Neumann's grant proposal, and the Institute's more traditional emphasis on monopoly capitalism returned. The primary threat, however, no longer jeopardized merely the Jews and their economic roles within the liberal state—Jewish and non-Jewish small businesses and free professionals were in danger. Neumann's proposal broadened but also specified this rhetoric to present the totalitarian menace in terms that an American audience would appreciate. It threatened liberty, democracy and the middle class—the very foundations of American society.⁵⁹ By better comprehending totalitarianism and its anti-Semitic policies, the Institute offered to assist the United States in combating and eliminating them. The argument continues,

The aim of our project is not merely to point out contradictions, to enlighten the prospective victims, or to argue with them rationally. We want to trace the origins, conscious as well as unconscious, of anti-Semitism, to analyze the pattern of anti-Semitic behavior no less than of anti-Semitic propaganda, and to integrate all our findings into one comprehensive, empirically substantiated theory of anti-Semitism which may serve as a basis for future attempts to counteract it.⁶⁰

Like the 1941 proposal, Neumann's revision promised to include a study of the origins and history of anti-Semitism. The description, however, was far less adventurous. While the earlier work proposed some ingenious but tenuous hypotheses about the early history of anti-Semitism, the new application to the AJC promised to uncover the recent history of prejudice and mass persecution. Instead of identifying specific but distant events and intellectual movements that may have anticipated contemporary anti-Semitism, at the risk of failing to explain them and showing their relevance, the Institute now outlined its procedure without the exercises in intellectual history and social philosophizing that Adorno had proposed. The result was a coherent and concrete description of a historical research methodology that could be embraced by social scientists in the United States. This historical analysis promised to achieve what the prior grant proposal had promised, but it devoted itself to these topics without implicating the more provocative critique of Western civilization that was becoming the main focus for Adorno.⁶¹

As in the 1941 proposal, the revised AJC project sought to uncover anti-Semitic character types and their bases in shared perceptions of Jews. These research goals, which eventually represented the major psychological contribution of the enterprise, made up the other essential piece of the plan. Modeled closely on the character types developed by Erich Fromm in *Autorität und Familie*, this section of the study had the potential to generate great interest in the United States, as Neumann recognized. Psychoanalysis was rapidly growing in popularity, and an innovative usage of Freudianism had the potential to appeal to a sizable scholarly audience. Neumann recognized, however, that psychoanalysis alone would not suffice. Instead of separating the various elements of the psychological portion of the study, as the 1941 article had planned, Neumann's new appeal to the AJC consolidated the analysis of anti-Semitic character types by simultaneously considering their sociological basis in contemporary reality as well as their political functions.⁶² The strategy that he used for unifying psychology, sociology and politics was by focusing on anti-Semitic propaganda. As had been raised from the outset of the grant proposal, Neumann's hypothesis was that anti-Semitic propaganda could be more successfully negated by a better comprehension of its audience and their receptions of it.

The revised AJC grant proposal concluded with a direct appeal to US social researchers and foundations. The new research program needed to appeal to the orientation and interests of potential American sponsors. The old proposal had failed to accomplish this as had the equally unsuccessful Nazism project. Both initiatives aggressively asserted the recent theoretical and philosophical innovations that had been pioneered by members of the Institute, but this strategy could not communicate effectively with US researchers, especially since so much of it appeared as pure speculation. Consistent with the "Methods Discussion" in early 1941, the Institute did not however simply abandon the theoretical traditions they had brought with them from Continental Europe. Instead of advocating a total assimilation to American sociology, the revised proposal recognized the possible benefits of trying to combine the two classes of approaches. Realizing that they would need assistance, the Frankfurt School suggested that they collaborate with American specialists and that through working together a marriage of the two sociological traditions might be successful.⁶³ As the members of the Institute explained,

Such a combination of the highly developed American empirical and quantitative methods with the more theoretical European methods will constitute a new approach which many scholars regard as highly promising [...] What will be important in the proposed tests is not the explicit opinions of those subjects but the psychological configurations within which these opinions appear. The terms which occur most frequently in free associations may supply us with valuable cues. It will be particularly instructive to compare the frequency curves of various subjects and socio-psychological types. A more precise knowledge of the emotional backgrounds of anti-Semitic reactions may enable us to elaborate more differentiated psychological methods of defense against anti-Semitic aggression.⁶⁴

Manifesting neither epistemological intransigence nor complete accommodation, Neumann's revised proposal arrived at a strategy of initiating this project that yielded the widely recognized *The Studies in Prejudice*.

More importantly, Neumann's revised proposal offered a political plan of attack for combating totalitarianism and totalitarian anti-Semitism. In a supplement that was added to the grant proposal in December 1942, Neumann offered an action plan that was expected to rise out of the Institute's research study. The supplement proposed the following:

1. The emergence of the new totalitarian form as distinct from the previous forms of anti-Semitism requires the adoption of an offensive strategy and the abandonment of the traditional defensive and apologetic policies. In this connection, we shall show how to identify potential anti-Semitic movements behind their various disguises and classify them according to the magnitude of the danger they present. We shall evolve new methods for distinguishing the less dangerous nontotalitarian forms of anti-Semitism from its deadly totalitarian form. The exact and early recognition of the danger may prevent the counter-action from being "too little and too late."
2. We shall attempt to determine which social groups and organizations can be won as allies, which can be neutralized and which are thoroughly uncompromising. Here, our analysis of the specific social and economic conditions underlying anti-Semitism will stress the role of certain social reforms in partly destroying the breeding ground of anti-Semitism.
3. In formulating our suggestions we shall take into account various possibilities of postwar reconstruction in Europe and America. We shall assume first an American-British control over most of the world for a long transitory period with a gradual introduction of self-administration in Europe. We assume a painful transition and serious social unrest. Social and economic trends already apparent during this war, instead of arbitrarily drawn blueprints, must serve as a guide for this as well as for our inquiries.⁶⁵

The revised proposal did offer hypotheses, but they were hypotheses that arose naturally from the Institute's theoretical work. Neumann was careful, however, not to draw too much attention to how the hypotheses had been formed. Although the Institute's unique brand of Marxism was a central source of inspiration, prudence prevented an open admission of this reality. More significantly, the new proposal did represent the kind of reconciliation of "theory and practice" that Neumann later presented as one of the most important notions that European exiled social scientists learned from their American counterparts. More significantly, it also remains consistent with the reconciliation of "theory and practice" that he and other labor lawyers had developed and practiced during the years of the Weimar Republic. Horkheimer and the other members of his inner circle had developed a series of philosophical critiques of pragmatism, but Neumann recognized the practical value of pragmatism in the pursuit and utilization of social research. As a committed member of the Weimar's anti-fascist community, Neumann was determined to combat Nazism. What was the point in studying anti-Semitism if not to strike a blow against the Third Reich. As Herbert Marcuse later recalled in a memorial address delivered at Columbia University,

He believed that progress in freedom depended on the progress of democratic socialism, that the failure of German socialism was not final, that knowledge of past errors and a thorough analysis of the historical forces determining the present era would help rescue what had been lost [...] The rapid consolidation and expansion of the Nazi regime did not demoralize him: he saw in the emigration a fresh opportunity for action.⁶⁶

Although the integration of empiricism and theory was an important dimension of postwar Critical Theory, perhaps it was the concept of practical, political action that made this blending of opposites both possible and desirable. As Marcuse observed about Neumann, the postwar Critical Theorists did not import and deploy American social science methods for their own sake or for strictly mercenary motives. They utilized the newest American techniques to address significant problems in West German society. They had made their peace with pragmatism—not American pragmatism in its philosophical guise but practical pragmatism as a guide to social change. Without Neumann's intervention, it's intriguing to wonder whether late Critical Theory might have included this adaptation from its earlier exile form.

Despite the success of his bargain with the American sociologists and the leadership of the American Jewish Committee, Neumann's efforts proved to be the final straw for Horkheimer and precipitated the termination of Neumann's involvement with the anti-Semitism project. In a letter written by Horkheimer to Leo Lowenthal of October 31, 1942, one is able to see how independently Neumann had been able to refashion the grant proposal as well as to negotiate on behalf of the Institute with the AJC. Not only does the letter indicate Horkheimer's ignorance about Neumann's efforts but also his sense of rage concerning what Neumann viewed as a triumph. As Horkheimer wrote,

There is not the slightest doubt that Neumann's contacting Lynd without having spoken to us was grossly incorrect [...] I shall write to you about the "esoteric" significance of the project when it really has been accepted and the work is in progress [...] At present we have to see whether the Committee's decision is finally ratified, and then we shall have to organize the work. I am still very much in doubt. Furthermore, I have still the ambition to stick a little bit to my work here, an attitude which obviously becomes more and more difficult [...] But we can accept the (positive) decision only if my work of this year, which I was just starting when the Lynd, budget and outline questions interrupted it again—and how effectively (!—, is not completely ruined by the set-up). Neumann has the *thema probandum* that my moving here was a mistake which he predicted and, of course, he is doing all he can to make his prediction come true and to make my work here impossible. That is why he says, he wants me to live in New York again in January. I shall come if you and Pollock really take the responsibility, but I want you to know what it really means. (I do not want to come in January and I think it is simply irresponsible to promise this. We may say I shall come sometime during the work—if necessary. *If* I come at all a later period would be much better for the project.) My idea is that we cannot accept the grant if we have not the freedom to establish *headquarters* in Los Angeles, where, after all, the people are living who wrote the original project [...] The fact that we undertake the project is no excuse for resuming the form of activities which will destroy my work here, and at the same time destroy our finances [...] My idea of our working Institute in the future corresponds to the French one-room institutes which, in my eyes, have accomplished more scientific advances than all sorts of Brooking Institutes. If the

Committee would give us \$50,000, it could expect us to expand our activities and an extended stay of mine in New York. But for \$10,000, including about 10% for ourselves, it can expect nothing but a careful work (in contrast to Neumann's outline) and a religious adherence to the budget.⁶⁷

While Neumann had found a suitable and productive way of negotiating between Critical Theory and American social science, navigating the internal politics and personalities of the Institute proved to be impossible.

Notes

- 1 In his recent biography of Max Horkheimer, John Abromeit convincingly asserts that Critical Theory suffered from a "liberal-democratic political deficit," which he juxtaposes with Franz Neumann's thought that "recognized that Marx's theory needed to recover and reintegrate the best aspects of the liberal-democratic tradition." As we have tried to demonstrate in Chapter 2, Marx's views, as well as Neumann's, were more complicated than this formulation. Rather, one might be inclined to reformulate Abromeit's observation to make the case that Critical Theory fundamentally lacked a concrete political dimension. See John Abromeit, *Max Horkheimer and the Foundations of the Frankfurt School* (New York: Cambridge University Press, 2011), pp. 15, 175.
- 2 While they must have known each other quite superficially, Neumann did indicate in an early letter to Horkheimer that they had crossed paths there during Neumann's service as Sinzheimer's assistant and instructor in the Labor Institute at the University of Frankfurt. In a letter of January 15, 1936, Neumann wrote that he "was extremely pleased to meet you again after so many years (or rather, to get to know you)" (MHA, VI, 30, pp. 206–7).
- 3 Letter from Franz Neumann to Max Horkheimer dated January 15, 1936, *Max Horkheimer Archiv*, VI, 30, pp. 206–7 (hereafter cited as *MHA*).
- 4 Letter from Franz Neumann to Max Horkheimer dated January 19, 1936 (MHA VI, 30, pp. 202–5).
- 5 Franz Neumann "The Social Sciences," in Franz Neumann et al., *The Cultural Migration: The European Scholar in America* (Philadelphia: University of Pennsylvania Press, 1953), pp. 17–18.
- 6 Letter from Franz Neumann to Max Horkheimer dated January 19, 1936 (MHA VI, 30, pp. 202–5).
- 7 See the letters from Franz Neumann to Max Horkheimer dated August 14, 1936 (MHA VI, 30, p. 174) and dated September 20, 1937 (MHA, 30, pp. 160–63).
- 8 Letter from Franz Neumann to Max Horkheimer dated October 5, 1936, quoted in Rolf Wiggershaus, *The Frankfurt School: Its History, Theories, and Political Significance*. Translated by Michael Robertson (Cambridge: MIT Press, 1994), p. 227. It is curious to note that Neumann speaks of his time prior to exile as permitting him to work "normally," when it was also a time when his work consisted so much of legal practice and publicistic writings in support of organizational objectives. From the standpoint of his criteria for the "political intellectual," his years in London would seem to qualify better. The puzzle is probably to be solved by noting the importance of recognition as a measure of normality. Exile is harsh.
- 9 See the letter from Franz Neumann to Max Horkheimer dated Autumn 1936 (MHA VI, 30, pp. 169–70); and the letter from C. D. Medley to Franz Neumann dated December 1, 1936 (MHA VI, 30, pp. 171–72).
- 10 Earlier chapters have documented part of this attempted integration within the Institute for Social Research. While Neumann's essay, "Der Funktionswandel des Gesetzes im Recht der bürgerlichen Gesellschaft," bore close resemblances to work that he completed in his second dissertation with Laski, its context within the broader work of the Institute altered some of its meaning and significance. With Laski, Neumann's analysis of the rule of law and its

- self-destruction was part of a reckoning with his own past—part of a larger struggle to reconsider the consequences of having “gone to law” as a Weimar labor lawyer. As already noted in relation to Abromeit’s recent work on Max Horkheimer, the article was stripped of this original context and inserted into the Institute’s wider rejections of liberalism and democracy. See “Der Funktionswandel des Gesetzes im Recht der bürgerlichen Gesellschaft,” *Zeitschrift für Sozialforschung*, Vol. 6, No. 3 (1937), pp. 542–96. Martin Jay, *The Dialectical Imagination: A History of the Frankfurt School and the Institute of Social Research, 1923–1950* (Berkeley: University of California Press, 1996), pp. 143–72.
- 11 Ibid.
 - 12 Moishe Postone, “Critique, State, and Economy,” in Fred Rush (ed.), *The Cambridge Companion to Critical Theory* (New York: Cambridge University Press, 2004), pp. 165–93.
 - 13 See discussion of *Behemoth* in Chapter 8.
 - 14 Nearly every scholar who has written about the late history of the Frankfurt School has called attention to the tension between the philosophical/ideology critique of the totally administered society and the sociological teaching and research resumed in Germany. American sociological methods, in particular, were at the core of Critical Theory’s postwar constitutive tensions. On the one hand, American sociology was highlighted as a powerful example of instrumental reason in late capitalist society, while at the same time it was taught and utilized by the Institute to serve the interests of West German managerial and political leaders.
 - 15 Evidence of Neumann’s assessments regarding recent trends in United States sociology is several reviews that were published on the topic for the Institute’s “house” journal. See Franz Neumann, “Review of Max Lerner *It is Later than You Think*,” *ZfS*, Vol. 8, No. 1–2 (1939), pp. 281–82; Franz Neumann, “Review of Robert S. Lynd *Knowledge for What?*,” *ZfS*, Vol. 8, No. 3 (1939), pp. 469–73; Franz L. Neumann, “Review of Max Lerner *Ideas for the Ice Age: Studies in a Revolutionary Era*,” *ZfS*, Vol. 9, No. 3 (1941), pp. 530–31; Franz L. Neumann, “Review of Louis Wirth (ed) *Contemporary Social Problems*,” *ZfS*, Vol. 9, No. 1 (1941), pp. 148–49. In addition to Neumann’s systematic reading of what he came to see as countertrends in United States sociology, this viewpoint was reinforced by a handwritten appraisal of United States sociology written for the Institute by Edward Shils. See Edward Shils memo to Max Horkheimer dated June 5, 1938 (*MHA*, I, 22, pp. 372–77).
 - 16 Horkheimer and Pollock had threatened to terminate Neumann and other members of the Institute during the immediate fiscal crisis that hit the Institute during the recession of 1937–38. See the letter from Neumann to Horkheimer dated September 24, 1939 (*MHA*, VI, 30, pp. 124–26). This threat, however, was rescinded when Horkheimer decided to maintain the full Institute staff in several bids to win outside grant support. In an ironic twist, Neumann eventually did succeed in procuring the grant support, but he was still terminated despite this significant contribution to the Institute.
 - 17 For a detailed account of the circumstances surrounding the Institute’s move to America and its relationship with Columbia University, see Thomas Wheatland, *The Frankfurt School in Exile* (Minneapolis: University of Minnesota Press, 2009), pp. 35–94.
 - 18 Letter from Marcuse to Horkheimer dated October 15, 1941 (*MHGS*, vol. 17, pp. 199–201).
 - 19 Wheatland, *The Frankfurt School in Exile*, pp. 87–91, 230.
 - 20 Letter from Pollock to Horkheimer dated January 27, 1942 (*MHA* VI, 32, pp. 385–87).
 - 21 David Kettler and Gerhard Lauer, “The ‘Other’ Germany and the Question of Bildung,” in David Kettler and Gerhard Lauer (eds.), *Exile, Science, and Bildung: The Contested Legacies of German Émigré Intellectuals* (New York: Palgrave Macmillan, 2005), pp. 2–6.
 - 22 From a promotional pamphlet written by the Institute in June 1951. Quoted by Rolf Wiggershaus, *The Frankfurt School: Its History, Theories, and Political Significance* (Cambridge: MIT Press, 1994), p. 432.
 - 23 See Clemens Albrecht et al., *Die intellektuelle Gründung der Bundesrepublik: Eine Wirkungsgeschichte der Frankfurter Schule* (Frankfurt am Main: Campus, 1999).

- 24 T. W. Adorno, "On the Logic of the Social Sciences," in T. W. Adorno et al., *The Positivist Dispute in German Sociology*. Translated by Glyn Adey and David Frisbey (London: Heinemann, 1976), pp. 120–21.
- 25 Paul Lazarsfeld, "Critical Theory and Dialectics," *Paul Lazarsfeld Papers*, box 36, pp. 112–14.
- 26 Wheatland, *The Frankfurt School in Exile*, pp. 191–263.
- 27 Max Horkheimer to Theodor W. Adorno, June 23, 1941, *Max Horkheimer Gesammelte Schriften, Band 17: Briefwechsel 1941–1948* (Frankfurt am Main: Fischer, 1996), pp. 81–88. It should be noted that this was a reaction to a failed application to the Rockefeller Foundation at a time when the New School group was successful. Although there are no similar letters written when grant applications succeeded, the analysis was nevertheless deeply rooted.
- 28 Neumann, "The Social Sciences," p. 12.
- 29 Erich Fromm was the only other member of the Institute that sought such a thorough adjustment to American society and intellectual life. The other members of the Institute were far more guarded and tentative. For a detailed account of the Institute's relationship to American society and United States intellectuals, see Wheatland, *The Frankfurt School in Exile*.
- 30 Neumann, "The Social Sciences," p. 19.
- 31 *Ibid.*, pp. 24–25.
- 32 Neumann "Review of Robert S. Lynd *Knowledge for What?*," pp. 469–73.
- 33 *Ibid.*
- 34 Franz Neumann, "Contribution of Dr. Neumann to the Round Table Discussion, Chicago, Social Science Research Building" ["The Social Sciences: One or Many," December 1, 1939] (*MHA*, IX, 57a, 4b).
- 35 *Ibid.*
- 36 See Institute for Social Research, "Debate about Methods in the Social Sciences, Especially the Conception of Social Science Method for Which the Institute Stands," trans. David Kettler and Thomas Wheatland, *Thesis Eleven*, Vol. 111, No. 1 (August 2012), pp. 123–29; and Institut für Sozialforschung, "Debatte über Methoden der Sozialwissenschaften, besonders die Auffassung der Methode der Sozialwissenschaften, welches das Institut vertritt" (*MHA*, IX, p. 214) (hereafter cited as "Methods Discussion").
- 37 See Christian Fleck, *Transatlantische Bereicherungen: zur Erfindung der empirischen Sozialforschung* (Frankfurt am Main: Suhrkamp, 2007); Lars Rensmann, *Kritische Theorie über den Antisemitismus: Studien zu Struktur, Erklärungspotential und Aktualität* (Berlin: Argument, 2001); Wheatland, *The Frankfurt School in Exile*; and Eva-Maria Ziege, *Antisemitismus und Gesellschaftstheorie: die Frankfurter Schule im amerikanischen Exil* (Frankfurt am Main: Suhrkamp, 2009).
- 38 At first glance, the AJC might seem an odd organization to be approached as a potential sponsor of this research project. While it was the most secular Jewish organization, it also aggressively pursued a policy of Americanization that made a topic like anti-Semitism a delicate issue. While the leaders of the AJC were deeply committed to combating anti-Semitism, they were uncomfortable with it being framed as peculiarly a Jewish issue. Thus, as we will see, Neumann's approach to the topic was more in line with both the thinking and goals of the AJC. See Wheatland, *The Frankfurt School in Exile*, pp. 153–58; and Murray Friedman (ed.), *Commentary in American Life* (Philadelphia, PA: Temple University Press, 2005).
- 39 This was not the first time that the Institute had reflected on the relationship between Critical Theory and other trends in the social sciences. Early during Neumann's tenure with the Institute, Horkheimer published "Traditional and Critical Theory," a programmatic statement regarding the methodology of the Frankfurt School in contrast to wider practices in America—see Max Horkheimer, "Traditionelle und kritische Theorie," *Zeitschrift für Sozialforschung*, Vol. 6, No. 2 (1937), pp. 245–94. The objections to Neumann raised throughout the "Methods Discussion" bear a striking resemblance to the characterizations of "Traditional Theory" developed in Horkheimer's essay.

- 40 Ibid.
- 41 Ibid.
- 42 Ibid.
- 43 Ibid.
- 44 See Institute for Social Research, "Notes on Institute Activities," *Studies in Philosophy and Social Science*, Vol. 9, No. 1 (1941), pp. 121–23.
- 45 The third and fourth theses better represented the views that had been expressed by Horkheimer and Adorno during the "Methods Discussion"—similarly, they also corresponded most closely to ideas that Horkheimer had published in his article "Traditionelle und kritische Theorie." The third and fourth theses were that "societal concepts are inductively formed" and "integrated." The theses went on to explain that the "totality of modern culture" was a system, and thus the entire system was implicated and laid bare in any social relationship or social concept.
- 46 Institute for Social Research, "Notes on Institute Activities," p. 122.
- 47 Institute for Social Research, "Research Project on Anti-Semitism," *Studies in Philosophy and Social Science*, Vol. 9, No. 1 (1941), pp. 124–43.
- 48 Letter from Theodor W. Adorno to Max Horkheimer dated September 18, 1940, from *MHGS*, *Band 16*, pp. 762–64.
- 49 Institute for Social Research, "Research Project on Anti-Semitism," pp. 126–27.
- 50 Roderick Stackelberg, "Cultural Aspects of National Socialism," *Dialectical Anthropology*, Vol. 12 (1988), pp. 253–60.
- 51 Institute for Social Research "Research Project on Anti-Semitism," p. 141.
- 52 Ibid.
- 53 See Max Horkheimer, "Die Juden und Europa," *Zeitschrift für Sozialforschung*, Vol. 8, Nos. 1–2 (1939), pp. 115–37. In this essay, Horkheimer stated, "[T]he number of corporations which dominates the entire industry grows steadily smaller. Under the surface of the Führer-state a furious battle takes place among interested parties for the spoils [...] Inside the totalitarian states, this tension is so great that Germany could dissolve overnight into a chaos of gangster battles."
- 54 Franz L. Neumann, *Behemoth: The Structure and Practice of National Socialism* (New York: Oxford University Press, 1944), p. 121.
- 55 Letter from Franz Neumann to Theodor Adorno dated August 14, 1940 (*MHA*, VI, 1a, pp. 21–23).
- 56 Ibid.
- 57 See Wheatland, *The Frankfurt School*, pp. 203–63.
- 58 Institute for Social Research, "A Research Project on Anti-Semitism," *MHA*, IX, 92, 7a, pp. 2–6.
- 59 Ibid.
- 60 Ibid., p. 8.
- 61 Ibid., pp. 8–9.
- 62 The first grant proposal separated each of these complementary components into distinct investigations. Thus, the 1941 article called for a study of "Types of Present Day Anti-Semites" (the psychological research study of anti-Semitic character types), "The Jews in Society" (the sociological research study examining the basis for Jewish stereotypes) and "Foundations of National Socialist Anti-Semitism" (the political research regarding the governmental function of anti-Semitism). See the Institute for Social Research, "Research Project on Anti-Semitism," pp. 133–42. The revised AJC grant, on the other hand, called for the sociological and political components of the research to supplement the psychological investigation into anti-Semitic character types. At the same time that the Institute planned to gather evidence regarding the varieties of contemporary anti-Semitism, it planned to locate the sociological conditions and political motivations connected with specific character types. The new proposal therefore set

similar goals to the first but broadened and strengthened the evidentiary basis for the psychological analysis. See Institute for Social Research "A Research Project on Anti-Semitism."

63 Ibid., p. 31.

64 Ibid., pp. 31–32.

65 Ibid., pp. 27–29.

66 Herbert Marcuse, "Franz Neumann," Minutes of the Faculty of Political Science, Columbia University, April 15, 1955.

67 Letter from Max Horkheimer to Leo Lowenthal dated October 31, 1942 (*MHGS*).

Chapter 7

NO HAPPY END: UNPROFITABLE NEGOTIATIONS

Anti-Fascism in America: Paul Tillich's 1938 Theses

Franz Neumann's need to gain a measure of recognition in his exceptional and exceptionally demanding American locale of exile—especially in view of the barriers to much of America that were the price of the opportunities offered by Horkheimer's Institute of Social Research—to earn a livelihood for himself and his family, to assemble sufficient bargaining power to solidify and to renegotiate his deal and yet also to pursue his own political and intellectual designs—made for a time of strain and difficulty. This is documented in the record of his own work during the six years between his arrival in New York and his departure for Washington as well as in the internal records of the Institute. In an important sense, however, Neumann's characterization of himself as a “political intellectual” captures the continuities amid the diversions, distractions and duties that absorbed so much of his energy. And the conjoint missions of understanding, explaining and resisting the Hitler regime in Germany remained at the center. And there was never enough, if only because he was never satisfied with being a member of a team. He felt a distinctly personal responsibility as theorist, analyst and advocate.

The central questions for him were political, not philosophical, jurisprudential or social scientific, as such, although the question of what was to count as political, both in subject matter and practical engagement, involved those fields of inquiry. We have little evidence of Neumann's active engagement in the political efforts of the inwardly divided exile groupings after his arrival in New York, and what little we have is predictably ambiguous, as to the extent to which he was acting primarily as agent for the Institute. The best-documented instance turns on a set of theses on “the political and spiritual tasks of the German emigration” circulated by Paul Tillich in 1938 among representative exile intellectuals, ranging from Thomas Mann to leading figures at the New School. Although it was Max Horkheimer who was on the distribution list, it was Neumann who suggested some changes to Tillich, in his own name, and he also evidently prepared points for discussion at the Institute, as did Herbert Marcuse. There is no record of additional communications about this scheme, and it is not known whether Neumann or any one from the Institute was associated with the American Friends of German Freedom, which involved many of those addressed by Tillich's circular, although the organizer was evidently Tillich's closest American associate, Reinhold Niebuhr, with the help of Karl Frank, newly arrived in the United States, a principal figure in the leftist opposition to the main Social Democratic organization and a correspondent of Niebuhr since 1935.

It is of some importance to put the discussion of Tillich's text in the context of organizational connections before and after, since some such aim is set forth in it and because it must be assumed that this context was known to everyone involved in the discussions, although they came to nothing at the time. Tillich had initiated a political negotiation whose full ambition did not become clear until late in the war, when the organization took new form.¹

The 14-page document by Paul Tillich consists of a three-point introduction and five parts, ranging from 4 to 10 points each: (1) a political-social interpretation of the world situation (*Weltlage*), (2) a religious-cultural interpretation of the world situation, (3) an interpretation of the German situation, (4) the situation of the German emigration and (5) practical conclusions.² The introduction postulates that the question of a common task applies only to those who accept special obligations arising from their situation as "anti-fascist emigrants"—who emigrated out of an inner political or spiritual necessity—and not to those who emigrated simply under duress (i.e., most of the Jewish refugees) or those who have wholly immersed themselves in the problems of their new home.³ The programmatic correlation between anti-fascism and exile is very important, although, as will be seen, the idea is to present the vision as a contribution that the exiles are uniquely qualified to make rather than as a limited perspective.

The principal point in the discussion of the world situation is that fascism is a "universal tendency," by no means limited to nations that suffered most in the first war or lacked democratic traditions. Social and economic developments everywhere undermine the conditions—notably the exploitation of proletarians and colonies—that had upheld liberal democracy. "The collectivist-authoritarian systems"—which are everywhere tendentially displacing the liberal democratic phase—are classed as fascist "insofar as they uphold the capitalist principle, they are militarized in whole or in part, and have as their aim the suppression of the proletarian mass movement, which can no longer be held down by liberal-democratic means." The universal thrust of this development is evident not only because the remaining liberal democratic states are undergoing similar trends but also because "Russia too has been propelled in this way along a line related to fascism, towards nationalistic militarization and bureaucratization—proof indeed of the irresistible force of the fascist tendency in the late capitalist era." There are some tensions internal to fascism and it is not impossible that popular pressure in non-fascist lands will bring about a peaceful shift to socialist democracy, the only alternative, but the likelihood is that war and revolution will have to intervene. Neumann himself had never spoken so bluntly about the prospects.

In the religious-cultural dimension, Tillich argues, the situation is marked above all by the destructive effects of the new technologies of reproduction (i.e., radio and film), their near irresistibility when deployed by authoritarian propaganda and their effects as well on cultural producers who succumb to their commercial appeals by the turn to unhistorical romance or uncommitted formalism. The isolated remaining voices true to the critical spirit are hunted down, either by starvation or by force, and they are ever more driven to esoteric and underground retreats. In the cultural sphere, the primary symptoms are the abandonment of humanism for nationalism as well as the rise of anti-Semitism, which arises perforce because Judaism has nowhere lost all contact with the

“prophetic-critical” spirit. The Christian churches are arenas of a losing struggle, as their inner weaknesses open them to co-optation and coordination, at least in important part, despite resistance to nationalism in its most egregious forms. While there are some signs of hope in occasional adhesions to principles of religious socialism (as in the Oxford movement) in some places where the authoritarian trend is not yet fascistic, these are not reliable, as opposition mobilizes itself. Ultimately, hope for the spirit and culture resides only in the persistence of cultural traditions and in the resiliency of the spirit.

The decisive point about the German situation is that “it must not be understood as an isolated, avoidable accident, but as the outstanding and most thoroughgoing example of the general trend of finance capitalism”—as witness above all the success of German foreign policy, notwithstanding its aggressiveness. “Hitler has been and is still accepted by the ruling classes of all nations [...] as the instrument for the structural transformation of late capitalist society. For that reason, they bow to him, even when they hate and despise him.” There is opposition, but it is scattered, esoteric, underground and significant only for its role in salvaging the “socialist, humanistic, and prophetic” tradition for post-fascist Germany. There is also discontent, but it has no political significance, since it sways with the success and failure of the regime, which has good prospects in the present state of the world. The party officials in exile seem bent on restoring all the old divisions of Weimar politics, Tillich contends, while the critical intellectuals are severely strained by the practical demands of survival in their host countries.

Then Tillich returns to his central theme of the vocation of exiled intellectuals. The shared circumstances of emigration, he maintains, do lay the foundation for common struggle against fascism. The actual situation, he concedes, is admittedly marked by the division between “liberal-idealist” and “dialectical-materialist” views of history, yet this division can be overcome, if understood. The former views fascism as an avoidable, fortuitous interlude limited to the populations psychologically most damaged by the war, while the latter sees it as inherent in the situation of all late capitalist peoples, in view of the defeat of the working-class movement. While the former sees the restoration of rights and liberties as the primary and immediate aim, the latter does not see this as being on the agenda until the conditions that led to fascism are eradicated: “The first group is mainly interested in united and immediate political action of antifascists, while the second is mainly interested in esoteric preparatory activities, which prepare for later action.”

While the liberal-idealist intellectuals think that a moderate liberal, social or socialist *Rechtsstaat* can follow directly upon fascist rule, the proponents of the materialist-dialectical approach believe that a post-fascist regime will have to be authoritarian and dictatorial. The former has high hopes for the transition of the remaining democratic states into reformed capitalist or socialist democracy; the latter sees class struggle as the structure of contemporary democracy and sees little chance of such a reformist transition:

In the cultural sphere, the first group believes that there has been nothing more than a temporary interruption of general cultural progress through the Fascist barbarization of certain peoples, while the second group thinks it likely that spiritual life during the next historical period will have to be rescued by esoteric groups from destruction by liberal skepticism, anarchic disintegration, and authoritarian suppression. (11)

Taking up a familiar theme in émigré discourse, originally derived from Georg Simmel and other social thinkers of that earlier generation, Tillich points a way beyond this seeming impasse:

Nevertheless, the emigration does share an opportunity. Its location on the boundary permits it to see the overall situation of society more clearly and to have an effect on this overall situation from the boundary without feeling exclusively obligated to the special problems of Germany or their host countries. The emigrant can be the driving force of supranational groups and associations. (11)

The emigration must first of all gain realism about its very limited role in both Germany and in emigrants' host countries. The future of Germany will be determined by powers within the country. In cultural matters, as well, realism requires recognition that the emigrants have no succession beyond the present generation and that they cannot therefore mark the beginning of a new German culture. Yet, he reiterates, they nevertheless have both destructive and constructive functions in the struggle against fascism.

Among the negative anti-fascist tasks are support of internal oppositional groups, exposes of conditions, critique of the factors responsible for the rise of Hitler and, above all, the unplanned liberal regime and the class domination disguised as democracy. Positively, the task is first to search for the forms of the now inevitable authoritarian-collectivist features that fit the requirements of the situation but are limited by the humane principles on which prophetism and Christian humanism are agreed and, second, the formation of a loose alliance among emigrants, which should nevertheless not aim at a common organization, for the sake of the diversity of perspectives and situations. The cultural mission of the emigration is to be fulfilled not only by continued work in their own language but also—and increasingly—by the translation that comes about as they pursue their work in new contexts and in a different language. In substance, the new cultural task, where the emigrants can make a vital contribution, is to join together the forces as well as the values of socialism, humanism and prophecy, whose separation helped to make fascism possible. Once again, Tillich reverts to the defensive notion that none of this can be done in public:

Groups of this sort will be inherently esoteric, not because of an artificial exclusion of the public, but because of the impossibility of achieving, under present world conditions, any public effectiveness. The attempt would not only render their own maturation impossible but also call forth destructive countermeasures. (13)

There is a marked contrast between the moderate tone of Neumann's letter to Tillich, which is conditioned by the rhetorical requirements of negotiations, and the substance of his objections, as is made especially clear by the strong language in the memoranda almost certainly intended for internal discussion at the Institute. Although it seems that Tillich adjusted his political analyses to come closer to the "dialectical materialist" points emphasized by both Neumann and Marcuse in their memoranda, there remain revealing differences. For one thing, Tillich sees the possibility, however slim, that the remaining liberal democratic states may evolve into socialist democratic ones, whose share of the

inevitable “collectivist-authoritarian” elements mandated by the social developments of the age he describes in terms that bear a marked resemblance to Karl Mannheim’s design for central planning and coordinated education, as set forth in the German version of *Man and Society in an Age of Reconstruction* published in 1935, an association evidenced also by Tillich’s use of Mannheim’s term of art, Reconstruction (*Umbau*) and rendered plausible by the close association between Tillich and Mannheim during the last years in Frankfurt.⁴

Although Neumann studied with Mannheim at the London School of Economics and used some of his key concepts in his dissertation, the unmistakable recollections of Mannheim in Tillich’s text would have been unacceptable to Neumann in 1938, both because of developments in his own thinking and because his principals, insofar as he was acting as bargaining agent for the Institute group, were bitterly hostile to Mannheim. Neumann initially rejected this “socialist democratic” alternative, objecting that the sociological concept of a collectivist-authoritarian trend was no different from the tendency toward fascism, understood in political terms, but he pretended to treat it as a mere category mistake, while Marcuse bluntly says that such an “alternative” to fascism has already existed, presumably in Weimar, and that “fascism itself rests largely on this unquestionable existence.” The continuing debate about Weimar was another tension built into this design of anti-fascism.

The question of relations to Communism is naturally of capital importance. In the internal memorandum, Neumann agrees with Tillich’s characterization of Russian developments as a “militarist-nationalist concentration,” but he rejects the idea of a connection to the “structural laws of late capitalist development,” arguing, in a manner reminiscent of Trotskyist and some left Socialist groups, that Russian developments are a function of internal developments alone, “namely the struggle against the Bolshevik revolution waged by the party and state bureaucracy.” In the letter to Tillich, to evade the issue, he blandly suggests elimination of the whole thesis in which Russia is characterized, supposedly because militarization had been mentioned earlier. Similarly, while in the letter to Tillich, Neumann simply urges a shortening of the section on cultural issues, he asserts in the internal memorandum that he has “lively misgivings about the claims made for the prophetic spirit of Judaism.” Neumann rejects the notion that Communism has no chance at the time. The development of productive relations is ripe for such a change, but the possibility cannot be effectuated because of the demoralization of the proletarian parties. In any case, he finds Tillich’s views too “defeatist” and insists that a slackening of the terror for any reason can see the rise of a spontaneous mass movement toward revolution.

Throughout, both Neumann and Marcuse object to Tillich’s assigning equal weight to the fascist suppression of proletarian movements and the campaign against critical intellectuals. Tillich’s earlier language of the “spiritual leadership” and “creative emigrants” for such intellectuals is countered by Neumann’s ironic request that he find a term “that better applies to me.” The basic structure of Neumann’s own anti-fascism, in short, appears governed by revolutionary socialist expectations, epitomized in his objection that

the sentences about the proletariat [in Germany] are too pessimistic for me, despite everything. Under certain circumstances, a mass movement can emerge with the intensification

as well as the weakening of terrorist pressure. Then it will also become evident that not the entire critical intelligentsia has been banished, but that forces will arise within the proletariat itself, which can lead it.⁵

Without attempting to sort through the varieties of leftist émigré politics, it seems likely that Neumann's own position at the time was close to the militant dissident group within the German Social Democratic Party in Exile, called "New Beginning," which was dominant in the London Socialist group during his years at the LSE.⁶ There is some evidence, as well, that Neumann may have remained in close contact with Arthur Rosenberg, an important dissident left-Communist whose exile trajectory closely paralleled Neumann's and with whom it seems he wrote a political tract called "Nazis, Nazism, and Nazidom" published by the Labor Party during their first year in England.⁷ From the standpoint of the New York scene, however, as well as the history of anti-fascism overall, it is no less striking that Neumann was almost certainly speaking for Horkheimer and the Institute group, at least in the toned-down epistolary statement. There is corroborating evidence in the Horkheimer correspondence that the group's opposition to Stalinism was by no means identical to disillusionment with revolutionary socialism: Horkheimer speaks of Stalin as an "embezzler of the revolution's legacy" [*Erbschleicher*].

Interesting too in this connection, as an indicator of the way in which the Horkheimer group is perceived within the emigration, is Tillich's repeated reference to the "esoteric" retreats of the "dialectical materialist" reading of fascism. Neumann evidently persuades Tillich to remove the term in one place but fails in another, more critical location, where Neumann's objection in any case is narrowly focused on the term. The reference is to the passage quoted above, where Tillich speaks of the contrasting liberal and dialectical conceptions of the challenges to "spiritual life," the contrast that comes closest to the interests of the Institute. Neumann writes,

Another problematic passage is where you impute immediate political action to the Liberals and esotericism to the Marxists. In substance, you are correct, because it is well known that certain Liberals understand by immediate political action the getting of offices, while Marxists are so much on the defensive (*zurückgedrängt*) that the theory exists in fact only among small groups. But I believe that we can find a more precise formulation for this.⁸

Noteworthy is not only Neumann's political translation of the alternative tendencies that Tillich identifies by philosophical labels but also the reference to "the theory," which is the way Neumann always refers to the shared assumptions of the Institute. Notwithstanding the substantial differences he hopes to adjust, Neumann assures Tillich that the exercise is worthwhile and that he "believes, as do the friends with whom he has discussed it, that the draft on the whole fulfills the purpose for which it was designed."

There is no evidence that Neumann became personally involved in the anti-fascist grouping that fostered Tillich's prospectus or any of the others active in New York, probably because of "the Institute's consistent policy of maintaining a relatively low profile within New York's extremely politicized intellectual community" to which the response to Tillich was an exception.⁹ Neumann's recorded practical involvements rather took

the form of policy-oriented background information for American policy makers and advisers, such as his lecture on “the German Cartel Program” to the Anti-Trust Division of the US Justice Department in 1939¹⁰ and the 1942 report on psychological warfare, written with Norbert Guterman,¹¹ consultancy work that anticipated his subsequent years of service with the Office of Strategic Services (OSS). At the Institute, he played an active role in the internal and external negotiations concerning major institutional grant applications for the study of German politics and culture in historical perspective, which never materialized, as well as for the study of anti-Semitism, whose design and funding he did much to bring about, as was shown in the previous chapter. In an attempt to fend off his separation from the Institute, the prospect opened by a year’s notice of dismissal in 1939, he designed a personal research funding proposal on his “rule of law” topic¹² as well as a project on European labor law. Neither of these plans bore fruit. His work on these topics can be tracked, however, in the book reviews that he published during those years in the Institute’s periodical, including especially reviews of historical and contemporary (National Socialist) studies of German legal theory as well as a number of studies dealing with American law. And his legal studies design is documented, at least in part, by the second of only two full articles he published in the Institute’s journal, renamed in 1939/40 as *Studies in Philosophy and Social Science*: “Types of Natural Law.”

Pragmatic Compromise on Natural Law

In that article, Neumann takes up a topic whose definitive obsolescence had been a central theme in his second dissertation, except insofar as it served as cover for authoritarian means and measures, but that he now accepts as pervasive and in need of typological analysis and evaluation. The article opens,

Today we are faced with a revival of Natural Law. At the turn of this century, such a renaissance would have been inconceivable. Natural Law was dead [...] But today it takes considerable courage to deny the scientific validity of Natural Law. It has again permeated political and legal thought and forms almost a compulsory introduction to many political pamphlets [...] If we wish to preserve the heritage of Natural Law, we must restate it. (69)

The juxtaposition of mismatched references to historically variable evaluation, scientific validity and political pamphlets indicates that Neumann’s projected restatement need not represent a simple reversal of the judgment to which he devoted so much scholarly labor a few years earlier. An important supplementary clue is provided by his seeming equation in another introductory passage of natural law with “all attempts to measure the system of positive law on some normative standard,” a conception very close to what he had called “philosophy of law” in both of his dissertations. Yet his method for restating this so-called natural law does involve the literature generally recognized as belonging to that tradition in the narrower sense. He speaks, then, of “developing the historic types of natural law” in order to find “common traits which can be spoken of as progressive elements in modern society.”¹³

Neumann's essay can usefully be introduced by two book reviews he published at about the same time, both in the *Columbia Law Review* and thus expressly for an audience other than the narrow circle that could be expected to read the Institute's periodical, even in its English-language incarnation. One dealt with a historical study of *The Early Tudor Theory of Kingship*, and it led him to compare the leading Protestant political theories unfavorably to the Catholic natural law tradition exemplified by Thomas Aquinas, inasmuch as the former, in the view he shares with the author of the book he is reviewing, denies the rationality of individuals and subjects them politically to charismatic leaders and rulers.¹⁴ The second of these reviews, which must be taken especially seriously inasmuch as its principal portion is a critical comment on a lecture by Roscoe Pound, whose distinguished position at the time precludes any improvisation by Neumann, sets very narrow limits to the "restatement" of natural law that we can expect him to intend in the longer article we will be examining.¹⁵

Dean Pound's lectures at a celebration at the Catholic University of America have as their topic, "The [Catholic] Church in Legal History," and they especially celebrate the achievements of Thomas Aquinas as precursor of "more liberal ideas." Pound expresses his own belief in natural law, if not in any traditional or otherwise specified form. Neumann gently questions the genealogy, preferring the heterodox medieval theorists, as in his dissertation, but he then moves through a series of steps to the stark conclusion that "today's natural law is [...] a stale imitation of a vital tradition." He begins by expressing sympathy for the recourse to a "belief in some eternal and immutable law of nature" in a time of "extreme nationalism and war" but then insists that if the natural law is to be more than an ideology to veil power or a fashionable "idol" to which one pays occasional "lip service," it must be "concretized and institutionalized." This would require, Neumann asserts, a comprehensive theory of society integral to the legal theory, and this is impossible now, in view of the complexity of philosophy, history and economics, which cannot be simply "submerged" in this framework, as Thomas Aquinas had done. Nor can there be the sort of counter to hostile positive law—and thus a power constituent of natural law—exemplified by the medieval provision of tyrannicide. "Natural law doctrines of today are not and cannot be institutionalized," Neumann says. The most that theory of law can do, he concludes, is to "define the limits of any coercive activity, vis a vis human freedom." And that brings Neumann back to Hegel and the minimal but invaluable "negative function" of law in its universal and rational form.

This contemporary framing of the question of natural law in its traditional sense suggests that Neumann's stated aim in the article presently under review to "preserve the heritage" of natural law had best be understood in quite a modest—even minimalist—sense. Much of the legacy cannot, in his judgment, be recovered. This preliminary recognition will help with some of the uncertainties introduced by the rhetorical occasion of the article in the journal of the Institute. The special nature of the piece, although there is no documentation for the origins and aim of the contribution to this quite special edition,¹⁶ is manifested in the concluding language, where Neumann speaks of the "democratic theory of natural law" as being, "on the whole, truer than any other," which introduces the curious notion of degrees of truthfulness where he had spoken at the outset about "scientific validity." A possible hint is given in the course of an evaluation

that Neumann wrote at the time to Max Horkheimer dealing with a submission by a younger author in his field: "There is no other human science in which the relations between science and practice are as close as in legal science. Juristic theories are socially relevant only when they have had an effect in legal practice."¹⁷ This might explain why Neumann opens the article by a reference to the extent to which natural law has become an inescapable term in legal discussions—and quite certainly also in legal briefs—and then why he refers to theories of natural law as having various degrees of truth—or applicability, without always making clear that the theories in question bear but few of the historical marks of such conceptions.¹⁸

From the beginning, Neumann adopts a skeptical tone, announcing that natural law theories assert a state of nature and consequent nature of man, from which a state of civil society and then of the state and relations between state and law are derived, with each of these elements exemplified by a list of possibilities, along the simplistic lines of "man is either [...] a lamb or a wolf" and so on. Thereupon, he summarizes Hume's systemic objections to such rationalism after proclaiming all the doctrines obviously "deficient philosophically." He tops this with the following: "Hegel's criticism is far more decisive, for, from the very basis of his philosophical idealism, he discloses the dogmatic and arbitrary character of the traditional Natural Law doctrines."

Hegel is seen to divide natural law doctrines between empirical, exemplified by Rousseau, and the critical, exemplified by Kant. The former, according to Hegel, abstract one quality from among the many that humans possess and acquire and place that one arbitrarily at the center. The latter are even worse, as shown in the instance of Kant, whose grounding of morality in practical reason is arbitrary—and can even be immoral, inasmuch as the principle generated by the formal rule in fact depends on historical circumstances. What is there to prevent the rule of the strong from being the norm that appears under certain circumstances as properly decreed by a universal law? Although Hegel also rejects Rousseau's version of an "empirical" theory, Neumann looks to Rousseau's "Discourse on Inequality" for a rejection of the arbitrary norms that philosophers proclaim as well as for a showing that such theories require a measure of deep reasoning that most cannot achieve so that they are arbitrarily taken or left.

With these criticisms of traditional doctrines of all varieties established, Neumann then claims—and acclaims—that Hegel, unlike philosophical critics like Hume, nevertheless finds in precisely these doctrines one element from which it is possible to develop a rational theory of right and justice. This cannot be found by epistemological inquiry, Neumann asserts, but must rather be uncovered by placing the various natural law theories in their respective historical settings in order to learn "the extent to which [each one] embodies concrete liberty and human dignity, upon its ability to provide for the fullest development of all human potentialities." Neumann then undertakes to specify the shared characteristics of the natural law theories he will treat as having a measure of truth.

First, then, each of them must have a theory of the nature of law, but this is true of every philosophy of law so that it must also exemplify a distinctive method, which Neumann sees as "deriving the principles of law from the lawfulness of nature." And it is not enough to cite such vague generalization as ascribing order to both or imputing

certain symbolic parallels. Neumann asserts that a genuinely philosophical theory of law presupposes that “man is a part of external nature, subject to its laws and determined by the iron necessity from which external nature cannot escape.” This excludes Aristotle, for example, since the man who counts for him is already a member of an association, whether personal or civic. So then, these theories build on a conception of man in some sort of pre-social state, and Neumann simplifies once again that such theories may assume that man is bad, good or indeterminate, and that the rest follows from that. The optimists assert men’s rights; the pessimists emphasize order; and the agnostics, like Rousseau, make the qualities of man depend on the social experiences and look for the constitution of collective rights out of the conjunction of individual men with rights.

Neumann goes on to claim that it follows from his viewpoint “that Natural Law doctrines must postulate the existence of a system of norms independent of the decision of the sovereign power, and even independent of God’s decision.” The wills of individuals can be thought of as sources of valid laws only if they are endowed with reason, and the social contract is one of the ways of effectuating the authority of these laws. After developing this possibility, however, Neumann asserts that social contract theories cannot in fact ever develop the coercive element of the political relationship, inasmuch as it becomes pertinent in such constructions only in ways that must also allow of exceptions in relation to the basic human qualities that are premised as their foundation. Neumann concludes that “every Natural Law doctrine is self-contradictory [...] All of them are compelled to admit into their system a non-normative element, namely power, thus overthrowing their whole elaborate structure.”

Notwithstanding his sweeping language, he next asserts that the democratic doctrine associated first with Marsilius of Padua and then mainly with Rousseau is the only one that avoids the alignment with anarchy or absolutism that haunt the others, as they must either deny power or succumb to it. Yet in those cases, natural law is only a compelling feature of the preliminary association among individuals: “with the establishment of the State, Natural Law disappears,” Neumann concludes. In a brief version of Rousseau’s political theory, Neumann says simply that all individual rights are surrendered in the social contract but nevertheless preserved in the general will. He then insists that all this would be nothing more than a “dogmatic and totally unproven assertion, or mere ideology to justify the rule of majorities and of representative bodies,” except in conjunction with Rousseau’s “social theory,” which requires either full equality in the distribution of property or public ownership. Without this precondition, “his doctrine is the ideology of representative democracy, and is thus exposed to the reproach that the majority does not necessarily represent the truth.” “Nevertheless,” Neumann adds, “democratic Natural Law does at least provide the formal framework within which it is possible to harmonize the wills of individuals.”

It must be admitted that this whole discussion of Rousseau is somewhat peculiar. First, it is hard to understand why Neumann would say that Rousseau can serve as ideologist for representative democracy, when he expressly rejects that idea, although it may be argued that Rousseau is uniquely honored by democrats, and that most democrats in politically contested settings are in fact distinguished by their advocacy of universal suffrage as an expression of political equality, which is undoubtedly associated with him.

Similarly, political theorists generally distinguish between natural law and natural rights, and Rousseau, in any case, never used the expression “natural law;” unless all of his translators are mistaken. He does speak of “laws of nature” about a half dozen times in the *Social Contract*, but he always means by this the causal laws of physical nature. It was already true in Neumann’s earlier and more extensive treatment of Rousseau that he felt free to disregard the manifest differences among the premises, aims and designs of Rousseau’s dissimilar texts, as well as to extrapolate from them, and that he acknowledged this. Perhaps this is similar to certain citations of Hegel, where Neumann speaks of “feeling” rather than understanding the meaning. A few of his Marx citations similarly partake of a kind of what one may call symbolic readings, where detail gives way to a rendering of what Neumann considers to be the thrust of the argument or its significance in a certain fraught context. This blends oddly with his curiosity about certain rather obscure and complex texts, whose arguments he tries to present in considerable detail. Neumann’s juxtaposition of Marsilius of Padua and Rousseau illustrates the contrast.

As Neumann backs away from what he offers as Rousseau’s Natural Law theory, taking it without the vital supplement of the categorical social imperative against any economic inequality, he asks whether natural law has accordingly to be discarded “despite its inner consistency?” Having postulated that “every doctrine of Natural Law is based upon man as an individual,” he asserts that it follows logically that man must also “be considered as a rational individual,” which he claims implies that men are essentially equal, that each doctrine is universal and that mere facts are not determinative but rather that “each human institution is open to critical reason.” He sets it up over against such “anti-rationalist doctrines as Vitalism, Universalism (by which he means a theory that puts the whole before the individual), or Charismatic Leadership,” and he dismisses attempts by adherents of these schools to cast their doctrines in terms of natural law as mere “playing with words.” He cites Donoso Cortes (subject of an admiring book by Schmitt), Friedrich Julius Stahl, Joseph de Maistre and Louis Bonald in this connection, and he approvingly quotes Stahl’s characterization of natural law as “the scientific foundation of revolution.” It seems evident that Neumann’s unexpected celebration of natural law in 1940—sweeping “ancient and Thomistic theories” into the mix—is largely for the sake of its enemies, and that his readings of the theories are no little influenced by theirs.

Accordingly, he now turns to the “pragmatic character of Natural Law doctrine,” which appears to refer to what he elsewhere calls “ideological uses,” and sets out a “pragmatic typology” that distinguishes its conservative, absolutistic, liberal, democratic and revolutionary modes. It is in this kind of treatment that Neumann evidently exemplifies “the uniquely fruitful method of treating the categories with which political theory works as social from the outset” that he misses in the textbook of George Sabine, which he otherwise praises so highly.¹⁹

Neumann presents Thomism as the “representative conservative doctrine” and he compresses many of the points of his more extensive treatment of Thomas Aquinas in the dissertation into a complex account of its social character, as he sees it. It is, first of all, conservative inasmuch as it is “on the whole, a kind of codification of the

feudal order” and “no more valid than any other Natural Law theory.” Yet, he calls this “just one aspect of the system,” inasmuch as it also recognizes “man as a rational creature,” and thereby “contains a psychological dynamism” that provides “the Church a weapon for attacking the superstitious adoration of kings who [...] claimed charismatic powers.” Neumann proceeds to sketch some moments in this confrontation, including several where the church sacrificed its superior position. In any case, a view of “this dual polemical position” makes it possible to understand “the essentially progressive trait of Thomistic Natural Law in spite of its ideological character.” A central objective of this discussion of Catholic Natural Law is a vigorous dissent from the common notion of Calvinism as a precursor of liberal thought. Neumann insists on Calvin’s denial of man’s rationality and the consequent conception of man’s political orientations as a matter of subservience to divinely ordained incomprehensible powers, whether these orientations take the form of passive obedience to a ruler or unreflected followership of someone acting against the ruler out of historical reflex by virtue of some office or out of a conviction of being a “providential savior” selected by God and eliciting obedience by charisma.

Neumann’s appreciation of “the rationalistic-absolutistic doctrines of Hobbes, Spinoza, and Pufendorf” similarly builds on the counter-model of the charismatic claims made by kings in the era after the predominance of Catholic Natural Law, as exemplified by the Tudor and Stuart theories.²⁰ “The need for concentration of national power was indisputable,” and this was provided for in a rational way by a theory of the social contract, conjoined with a pessimistic view of human nature. In contrast with Neumann’s earlier treatments of Hobbes and the others, where he highlighted passages that appeared to grant rights of resistance to individuals, as counterpart to the passages providing for unchecked sovereign powers in the writings of liberals like John Locke, he now says that these “absolutistic theories of Natural Law sacrifice human rights to the need for establishing a central coercive authority.” Notwithstanding this immediate absolutism of the doctrine, he persists, the grounds are democratic and the dynamics accordingly revolutionary. Neumann sees this most clearly in the case of Hobbes but finds it also underlying Spinoza’s theory, while Pufendorf’s contribution took the form above all of the rational scheme of law that he devised, to be enunciated by the ruler in a design that eventuated in the German *Rechtsstaat*. Because these theories “base authority upon the consent of man, [they] must therefore recognize the essential and indestructible rationality and equality of man.”

This contestable conclusion appears even more uncertain in the light of Neumann’s treatment of the only “revolutionary” natural law cases that he examines, having introduced the topic with a denial that they are always “progressive.” “They are often,” he maintains, “merely devices to entice dissatisfied masses and to utilize them for narrow and completely egotistic aims.” He then proceeds, in a kind of *tour de force*, to touch on the Albigensian movement and the “opportunistic theories” broadcast by both sides in the conflicts between Philip the Fair and Boniface VIII as well as by the Catholic monarchomachs in the sixteenth century. In characterizing the ideological developments in Paris after the accession of Henry IV, he writes,

We have here a specific revolutionary Natural Law, a forerunner of that of the French revolution and of the Paris Commune of 1870. The doctrine of the social contract was used to

invest popular bodies with full and even terroristic powers, completely discarding the separation of powers for which the French *Parlements* and the Estates General had been fighting and continued to fight. (88)

This falls short of a total condemnation of the revolutionary option in the situations of his time only by virtue of the claim that the “social aims” were in no way “revolutionary” but dedicated only, among the most urgent partisans, to the restoration of the Catholic religion and, in the event, “the stabilization of the royal authority and the complete suppression of democratic and liberal natural law.” It is hard to see why the supporters of Henry IV should be denied the courtesy gladly extended to the “absolutistic” natural law advocates in Neumann’s preceding section, given that the reasons for centralized rule were no less urgent in France than in England, the Netherlands or the German principalities. While there is insufficient evidence to ascertain whether the exercise was an implicit showing of anti-Communist credentials, Neumann’s determined separation from “Revolution” as such is suggestive.

Neumann’s treatment of what he had earlier listed as the “liberal” pragmatic use of natural law and now refers to as “constitutionalist” is very respectful, not least because it encompasses all the orientations that he had praised in his earlier work, albeit under the heading of “rule of law” rather than “natural law,” and that he had characterized as the successor to natural law of all but a resurrected manipulative and reactionary type. He does urge that a measure of Cartesianism (manifested in the faith in abstract general rules) and tradition also enters in, but he does not see any conflict between these elements and the liberal natural law in question, which takes the form of the German *Rechtstaat*, the English doctrine of the sovereignty of Parliament, or “the American form of judicial supremacy, which protects rights through judicial review of legislative acts, attempting to extend it over administrative decisions.” The calm incorporation of this third variant, given the curious attempt to capture the state of the contested questions regarding jurisdiction over administrative agencies, bears no mark of Neumann’s earlier urgent conviction that such an extension of judicial power is both symptom and cause of decline in rule of law.

Neumann does complicate matters a little at the end. He introduces “the antagonism between the democratic conception and the liberal theories” but, referring readers to his earlier article in the journal and maintaining that he cannot discuss this “exhaustively” here, says nothing more about it than that “the [liberal] doctrine of natural rights may very well be used for entirely reactionary aims, namely for the sabotage of democratic processes.” His footnote to this statement is almost a self-parody. Its full text (apart from a citation) reads as follows: “That is why it has been rejected by Linguet, the famous critic of the rational-liberal natural law doctrines.” In the main text, he adds that “the insistence on the primacy of a liberal as compared with a democratic Natural Law is often the first step of a counter-revolution” but then insists that “even this perverted doctrine of natural rights” contains “elements of a rational theory of law” and “allows for some discussion.” The constitutionalist doctrine is weak, he says, inasmuch as it claims superiority to the democratic theory of the state, although the latter, he simply asserts at the very end, is “on the whole, a truer one, since it provides for the rational justification of the State.”

The difficulty that Neumann is exhibiting here is a classical one that we have already noted in his first dissertation: how to reconcile his dedication to rule of law, inclusive of a certain catalogue of substantive rights, with his reckoning of the political processes required to institute and secure democracy after the emergence of the working class, not to speak of the rise of monopoly dominance and authoritarian rule. The management of these issues in the article just reviewed appears complicated not only by their inherent difficulties—and his vital stake in both sides of the opposition—but also by the special circumstances of this article at this time and in this place. We must recall the special susceptibilities of the exile. The point is not merely the need to negotiate for one's recognition under circumstances where one would otherwise have many things settled but also the weakness of one's bargaining position. Neumann's second article in the journal of the Institute does not, in our opinion, advance his thinking and does not teach anyone anything. It may have contributed, however, to an extension of his time as a researcher, which allowed him in turn to complete the major achievement toward which he was working, his study of National Socialism. This work, which was produced in the course of the following two years under contract to Oxford University Press and outside of the consultative processes of the Institute, was in fact further prepared by Neumann's somewhat earlier unsuccessful role in the development of a collaborative grant proposal for the Rockefeller Foundation soon after publication of his unlikely "Natural Law" article.

The Rise and Decline of the Institute's Germany Project

Although Neumann was clearly responsible for the first phase of this proposal, when the title shifted from "German Economy, Politics, and Culture, 1900–1933" in June of 1940 to the more dramatic "The Collapse of German Democracy and the Expansion of National Socialism" at the end of that summer, there is nothing to confirm his role in writing the abstracts of all the projected sections, although he was almost certainly the author of the segments assigned to himself and perhaps also of the "synthesis" prefaced to the proposals of five distinct volumes in the second of these 1940 versions. Under these circumstances, it would be senseless to summarize all seven versions of the argument designed for the Foundation, five culminating in the application submitted on February 28, 1941, and two for a supplementary submission on April 14. It is nevertheless worth looking briefly at the changing coverage and tone of Neumann's portions, not least because the pattern of change overall is useful for thinking about Neumann's relations with the core of the Institute group as well as his adaptability.

The first design, then, prepared before the summer of 1940, had studies covering the span between 1900 and 1933 in the German economy, political history, labor movement, philosophy, music and—in a single chapter—literature, theater and motion pictures. Strikingly, three of the studies were to be done by nonmembers of the Institute—Henryk Grossman, Arthur Rosenberg and Kurt Pinthus—with the other three by Neumann, Marcuse and Adorno. By the end of that summer, the formal plan was considerably altered, providing for a volume called "Synthesis," with a new emphasis on a "cultural crisis" and a "new ideology" and then five separate volumes, to comprehend the German economic structure until 1939, the social structure, the political and legal structure as

well as two studies under the heading of culture. The individual assignments are not listed, but the same individuals are to be involved. This scheme is substantially altered in the three comparable outlines prepared in February of 1941, immediately before the submission to the Foundation. First, the original draft in this second sequence is materially cut by Eugene Anderson, a historian at the American University, who becomes a codirector of the project with Horkheimer, with most general theoretical reflections on the project replaced by comments on method, and second, the title and scope now refer to “cultural aspects of National Socialism,” completing the shift signaled in the last version of the preceding fall. Then too, Horkheimer is added to the list of contributors, with a study of “Nietzsche and the Struggle against Christianity,” a title that is eventually altered by the removal of Nietzsche’s name. Not covered by this reorientation but similarly indicative of the shift of the project toward the in-house emphases of the core group, there is now a first chapter on “Bureaucracy” to be written by Frederick Pollock, who was at the time preparing his thesis on “state capitalism” as the dominant feature of Nazi Germany, a thesis that Neumann always rejected—and there is nothing left of the two projects on political history, institutions or structure, not to speak of the economy.²¹ Neumann’s own topic changes three times: from “The Labor Movement,” it becomes “The German Masses and the Philosophy of National Socialism,” then “Ideological Permeation of Labor and the New Middle Classes” and finally back to the relations between “the masses” and National Socialism. The focus has shifted from questions of resistance to questions of submission, with the working class and labor movement no longer criticized for squandering its supposed revolutionary potential.

Neumann’s original prospectus, then, follows closely the analyses and critiques he’d been making in almost all of his writings in exile, with minor shifts of emphasis from one occasion to the other. Neumann maintained that the labor movement had decisively weakened itself by letting the unions gain effective command over the Social Democratic Party; that the organizations became rigidly bureaucratized, if only because of the need to rationalize the implementation of the agreements with employers and state agencies, which became the unions’ prime activities; that the unions were weakened by changes in the workforce attendant to the rationalization of production, with more white-collar technicians and supervisors as well as unskilled and women workers unfamiliar with unions; and that the social insurance schemes that became a primary preoccupation of unions had unintended consequences not only for their internal organization and allocation of energies but also for strengthening the trend toward monopolies and cartel because small business could not manage the costs of these programs. The effects of these circumstances and policies made it impossible for the unions to offer effective resistance after the state became hostile to their projects, under the conditions of economic disaster and political change. This is all familiar, and it is developed further in the comparatively short introductory section of his long book as well as in the more detailed chapter just before its conclusion.

Neumann’s analysis in the final draft of the Germany project, however, comes very close to denying that labor might have been effective in resisting National Socialism but for a fallacious depoliticization of its efforts. In taking what he calls a “cultural approach to National Socialism” in its relations with the “German masses,” especially

labor and the new middle class, he maintains that the latter had been, in any case, culturally conditioned to be seduced. Although one of his aims is to use changes in the principal National Socialist slogans as an indirect indication of groups that might have needed special inducements at various times, his final expressly rhetorical question is whether the effectiveness of these adaptations did not show that National Socialism “[fulfilled] cravings that were already operative within” the labor movement as well. He even asks whether “the incorporation of the old Marxist slogans into the National Socialist philosophy concealed or expressed an identity of contents,” with no third possibility considered. The instances of such “incorporation,” according to Neumann, include similarities between “classless society” and “people’s community,” proletariat as “bearer of truth” and the “supremacy of the German race,” socialism and the slogan that “the common welfare precedes selfish interests” and—above all—“class struggle” and the notion of Germany engaged “in a war of a proletarian race against plutocratic democracies.” Neumann also finds a current of “social imperialism” in many key figures in the history of socialist thought, including Karl Renner, who had been one of his great inspirations in his Weimar writings. All that said, he does not deny that the Nazis also utilized techniques of mass atomization, “divide and rule” and “elite selection,” not to speak of their “terroristic machinery,” to strengthen their ideological hand. Nevertheless, this entire segment testifies to an exceptionally low point in Neumann’s diagnoses, whether because this was the first year of the war, when German armies swept everything out of their way, or because he was accepting the distrust of labor, or indifference to it, that was endemic at the core of the Institute, and that seemed to accord with the redesigning of the project overall. No less important than Neumann’s adaptations of his proposed contribution to the changed direction of the project is the simple fact that the revisions of the overall design abandoned Neumann’s initial focus on the economic and political dynamics of National Socialism. This work was left to the book he wrote outside of the constraints of Institute discipline.

Notes

- 1 See “American Friends of German Freedom/American Association for a Democratic Germany, 1935–1948,” Maurice J. Goldbloom Papers, 1933–71. Institut für Zeitgeschichte Archiv, Bestand: MA 1548, Rolle 1–12. Paul Tillich Archives atc Andover-Harvard Theological Library, Series 201.
- 2 “Die politischen und geistigen Aufgaben der deutschen Emigration,” [typescript] in Paul Tillich, XIII, pp. 200–16, Stuttgart, 1978.
- 3 This conception is almost identical with a definition of political exile proposed by Karl Mannheim in 1924: Mannheim Karolyi, “Levelek az imigrációbol,” *Diogenes I* (1924), pp. 13–25; *Diogenes 2* (1924), pp. 20–23 [tr. “Briefe aus der Emigration,” pp. 582–93, in Reinhard Laube, *Karl Mannheim und die Krise des Historismus* (Göttingen: Vandenhoeck & Ruprecht, 2004)].
- 4 It should be noted, however, that the relations between Mannheim and at least some members of the Tillich Circle became tense after the publication of *Mensch und Gesellschaft*. See the stern reproaches against Mannheim’s advocacy of “functional rationality” voiced by Eduard Heimann in a letter mailed after the appearance of the book. See “In Defense of Functional Reason,” pp. 175–94, in Karl Mannheim, *Sociology as Political Education*. Edited by David Kettler and Colin Loader (New Brunswick, NJ; London: Transaction, 2001), pp. 175–94.

- 5 Letter from Franz L. Neumann and Herbert Marcuse to Max Horkheimer dated April 19, 1938 from MHA, VI, 30-304-312.
- 6 Ursula Langkau-Alex, *Deutsche Volksfront 1932–1939. Zweiter Band: Geschichte des Ausschusses zur Vorbereitung einer deutschen Volksfront* (Berlin: Akademie Verlag, 2004), p. 76.
- 7 This coauthorship is claimed by Mario Kessler. If it is the case that Neumann collaborated with Rosenberg on this text, it would indicate a surprising accommodation, since the analysis is quite different from his own treatment of the issues in his 1934 article.
- 8 Letter from Franz L. Neumann and Herbert Marcuse to Max Horkheimer dated April 19, 1938 from MHA, VI, 30-304-312.
- 9 Thomas Wheatland, *The Frankfurt School in Exile* (Minneapolis: University of Minnesota Press, 2008), p. 127.
- 10 Franz L. Neumann, “Cartel Policy in Germany from 1930 to 1938,” Anti-Trust Division Lectures, February 17, 1939.
- 11 “Our Psychological Offensive against Germany. A Report Prepared by Norbert Guterman and Franz Neumann,” LL A631, pp. 62–84. See reference in Max Horkheimer to Franz Neumann, June 2, 1942 (MHA VI. 30, pp. 346–50).
- 12 MHA IX 59/2 (1939). Neumann’s original prospectus closely follows the LSE dissertation, with a special emphasis on rebutting totalitarian attacks on liberal legalism. Laski evidently urged him to publish the manuscript as it was, but Neumann maintained that changes were needed in order to correct his treatment of monarchomach writers, where he had depended on secondary sources, to update his treatment of the authoritarian states and to incorporate more references to American writers. In a letter to Horkheimer protesting the notice of dismissal written some months after this proposal, Neumann refers to the corresponding project rather as a treatment of natural law, noting that the topic was designed with a view to the presumed interests of the funding agency being approached. MHA VI. 30, pp. 124–26 (March 24, 1939). And it is this theme that Horkheimer highlights in the “to whom it may concern” letter of reference that he drafted some months later. MHA VI. 30, pp. 121–23 (March 27, 1940).
- 13 Franz L. Neumann, “Types of Natural Law,” in *Studies in Philosophy and Social Science* (New York and Paris, 1940), pp. 338–61. Republished in Franz L. Neumann, *The Democratic and the Authoritarian State* (Glencoe: Free Press, 1964), pp. 69–95.
- 14 Franz L. Neumann, [Review of] *The Early Tudor Theory of Kingship* by Franklin Le Van Baumer (New Haven, CT: Yale University Press, 1940). *Columbia Law Review*, Vol. 41, No. 5 (May 1941), pp. 961–65.
- 15 Franz L. Neumann, *Jubilee Law Lectures. 1889–1939. School of Law, The Catholic University of America* (Washington, DC: Catholic University of America Press, 1939). *Columbia Law Review*, Vol. 40, No. 5 (May 1940), pp. 951–53.
- 16 The article, awkwardly advancing a position remote from any designs of the Institute and barely reconcilable with Neumann’s earlier—and contemporaneous—statements on the subject (if conventionally understood), is published in the context of Horkheimer’s attempts to relocate Neumann due to a number of considerations to be discussed later. The following documents in the Horkheimer Archive appear directly relevant: Reference for Franz L. Neumann. Lists him as researcher, contributor to periodical and lecturer and emphasizes legal studies profile, while noting “National Socialism and European Reconstruction” work in progress for Oxford University Press. Highlights qualities as teacher. There is also what appears to be a draft, highlighting Franz L. Neumann’s “natural law project: “He attempts to determine the quantity of truth contained in all rational theories of natural law and finds that it lies not in their positive contents which is [*sic*] always arbitrary and dogmatic, but entirely in their negative function [...] [which] is its limitation of political power by making it responsible to universal and rational law” (MHA IX.58.11) (March 27, 1940). Letter from Max Horkheimer to whom it may concern, MHA, VI.30., pp. 121–23.

- 17 Franz Neumann, "Evaluation of Submission by Hans Mayer," Letter to Max Horkheimer and Friedrich Pollock, February 17, 1937, MHA I.18, pp. 146–55.
- 18 Neumann's stand on natural law in this article is reminiscent of a view shared by many politically moderate commentators in the mid-1920s. Cf. Rudolf Goldscheid, "Naturrecht," in *Verhandlungen des Fünften Deutschen Soziologentags* (Tübingen: JCB Mohr [Paul Siebeck], 1927). Goldscheid concludes his presentation: "Natural law is eternal because it guarantees the right of the weak...[and] because it is the strongest cement of every truly unified and fruitful social legal order." (authors' translation) (167).
- 19 Franz L. Neumann, Review of Sabine, George H., *A History of Political Theory* (New York: Henry Holt, 1937); Otto von Guericke, *The Development of Political Theory*. Translated by Bernard Freyd (New York: W. W. Norton, 1939), in *ZfSF ZfS*, Vol. 8 (1939), pp. 237–38.
- 20 See Note 7.
- 21 See discussion later in the text of Neumann's treatment of "bureaucracy" in *Behemoth* as well as his disagreement on this subject with Max Horkheimer.

Chapter 8

BEHEMOTH: WARS CAN BE LOST

Leviathan and Behemoth

Franz Neumann was probably the only member of the Institute for Social Research in New York who had been an active partisan of the defeated political forces that shaped the Weimar Republic and who sought to uphold it to the end. Unlike the others, thus, he did not have the luxury of portraying the rise of Hitler as strictly a function of social and cultural forces that he had always resisted. His angry critique in exile of labor's Weimar policies almost always entailed—more or less openly—self-criticism as well. As we have seen, this was at times quite explicit, as when speaking in the name of Leopold Franz, he denounced Franz Neumann's illusions about the state. But that was done in a context in which the reader was left free to believe that the writer thought that a comprehensive socialist revolution had been an alternative available in 1918. When Neumann goes to Hobbes for the ultimate disjunction between “Leviathan” and “Behemoth,” however, he is gauging a more elemental loss and, perhaps, a more shameful defeat. After all, the disaster epitomized for Hobbes by the ouster and execution of Charles I had to do with the loss of the sovereign state whose necessity and feasibility Hobbes had shown in *Leviathan*, and the prime causes, as set forth in his *Behemoth*, had all to do with the confusion brought about by the schemes and claims of reformers, political as well as religious.

Hobbes played a number of different roles in Neumann's earlier work, including a striking claim in his LSE dissertation: “Our fundamental thesis, that the introduction of the postulate of the rule of material law and of a rational and secular justification of the state necessarily leads to revolutionary consequences, can be demonstrated in Hobbes's system very clearly” (100). But that is clearly not what Neumann wants to convey with the juxtaposition of the two paradigms that he takes from Hobbes's best-known books. With Rousseau and Hegel—and Montesquieu as a later addition—Hobbes provides Neumann with the constituents of a rational theory of the state, with his own unfinished constructive work dedicated to working out the gaps and conflicts among them. Marx hovers authoritatively in the background, much of the time, but he needs to be complemented by a political theory. An invocation of revolution will not suffice. The motto on Neumann's LSE dissertation is taken from another work of Hobbes: “All study is rational, or nothing worth.”

As we think back over Neumann's earlier book-length writings, it seems clear that the question of the sovereign state has been a major theme throughout. In his original dissertation, he professes to be puzzled by continuing Socialist support for juridical limits on the sovereign powers of the state, especially in the domain of punitive law, but he vindicates it despite the presumed anti-liberal operating theory uppermost

in the new democratic regime. He recalls the valued precedent of syndicalist currents in the English labor movement and generally portrays safeguards in law as a complement to democratic sovereignty, notwithstanding the logical inconsistency between the two. Despite growing misgivings in the face of monopoly formation, Neumann's Weimar writings turn on a dual reading of the constitution, with the democratic sovereignty of parliament as unquestioned principle, but a presumption as well that the Weimar Constitution authorizes autonomous constitutional domains, especially in the key economic institutions, that normally function with state agents as little more than guardians of the borders. The LSE dissertation, then, poses the logical contradiction between the claims of sovereignty and the claims of the rule of law as the central corrosive puzzle, except insofar as it can be temporarily harmonized under favorable historical circumstances, as with the English parliamentary regime in the age of liberalism or the actual circumstances that underlay Hegel's insightful but abstract projection. Neumann's *Behemoth* is far from indifferent to the rule of law and the actuality of decisive rights, but the priority of a sovereign state—a Weberian state, as it were—belongs to the “brute facts of political life” to which Neumann later refers when he lists the lessons of exile. Neumann's struggles with this issue are among the features of his thought that make it worthwhile to review it once more at this time, when the question of displacing the state is once again alive among political thinkers.¹

The Failure of Labor and the Dissolution of Weimar

In Neumann's brief introductory statement about “The Collapse of the Weimar Republic,” the final version of the diagnosis that he had first sketched in the last years of the Republic, the fault is built into the foundation, and the responsibility for failing to acknowledge, diagnose and resist the destruction rested, above all, with the labor unions and Social Democratic Party. Toward the end of 1918, Neumann maintains, the failure of the authoritarian imperial design, based socially on a bargain between great agriculture and great industry, was manifest to everyone, including the military command that had the remaining political instruments under its control. Even they were prepared, first, to recognize that they could not simply disregard the democratic forces partially mobilized against them and, second, to concede the victory of Woodrow Wilson's ideology, whatever they may have thought about the opposing armies. The question was how the “New Freedom” could be enunciated and institutionalized under the conditions prevailing in Germany.

Neumann emphasizes that constitutions earlier put in place during “great turning points of history,” like the eighteenth-century revolutions in America and France, laid down both institutions and collective aims, but that the end of the liberal era meant that Germany could not simply follow a straightforward design of legal order and guaranteed rights to give a tendentially rational form to sovereign rule. As he had done in some earlier writings, Neumann characterized the Weimar Republic as the product of a series of contracts between the major agents with one or another source of power at that historical moment. Above all, Neumann says, “Class struggle was to be turned into class collaboration” (9). More clearly than elsewhere, Neumann characterizes the underlying

scheme as a mode of pluralism, however disguised by the form of parliamentary democracy and, correspondingly, “the ideology of the Catholic Center party [as] the ideology of Weimar.”² It all started with a set of literal contracts, he maintained, but it required a great deal more:

Pluralism is the reply of individual liberalism to state absolutism [...] By entrusting decisive administrative tasks to [...] private bodies, the pluralist hopes to accomplish two things: to bridge the gap between state and individual, and give reality to the democratic identity between ruler and ruled [...] Unfortunately [pluralism] does not accomplish its self-imposed tasks. Once the state is reduced to just another social agency and deprived of its supreme coercive power, only a compact among the dominant independent social bodies within the community will be able to offer concrete satisfaction to the common interests [...] In short, the society must be basically harmonious. However, since the fact is that society is antagonistic, the pluralist doctrine will break down sooner or later. (10–11)

Either the strongest among the social bodies will take command or the power will devolve to the state bureaucracy. Both happened in Weimar Germany.³

Neumann fixes responsibility:

The main pillars of the pluralistic system were the Social Democratic Party and the trade unions. They alone in post-war Germany could have swung the great masses of the people over to democracy [...] Yet the Social Democracy was unable to organize either the whole of the working class or the middle classes [...] The Social Democrats lacked a consistent theory, competent leadership, and freedom of action. Unwittingly, they strengthened the monopolistic trend in industry, and, placing complete reliance on formalistic legality, they were unable to root out the reactionary elements in the judiciary and civil service or limit the army to its proper constitutional role. (13–14)

Neumann does not in this context focus on the powerful interests and movements hostile to the democratic tendency, since he understands their actions as a function of social realities that would necessarily shape their designs. It was up to the labor movement to defend and advance the immanent dynamics of radical social change. He does not of course question that conditions also combined against the movement. The definitive power resource of labor unions, the strike, became ever less available, not only because the ever more powerfully organized employer organizations and fusions were able to resist them but also because of declining memberships under conditions of sharply rising unemployment and the changes in the makeup of the labor force that came with rationalization, tending toward unskilled workers and others less prone to union membership or activism. State support of industry, as the economy struggled, also stigmatized labor resistance as unpatriotic, Neumann avers, “which the trade unions flatly opposed because of their revisionism and ‘economic democracy’” (17). The ensuing complex relations between the unions and the state bureaucracy fostered the bureaucratization of the unions themselves, and this in turn, according to Neumann, made the unions ever less attractive to the younger generation of workers. While the competing Communist Party “gave the workers sufficient critical insight [...] [to leave] them with little faith

in the security promised by liberalism, democracy, and reformism,” these “credible features [...] were more than balanced by the profoundly backward character of their policy and tactics” (19). Among these fatal errors, it should be noted, Neumann includes the strategy of denouncing the Social Democracy as “social fascism.”

When Neumann turns to the active and eventually triumphant “counter-revolution,” he begins with the judiciary, as we might expect from his persistent preoccupation with jurisprudential issues in his earlier writings on Weimar. In the present study, however, he unexpectedly devotes most of his attention not to the legal theory of “Institutionalism,” which is not in fact discussed until the last main section of the book, but to “political justice” in the most elemental sense, where judges harshly punished defendants whose legally questionable actions favored labor and the Left and consistently found ameliorative excuses for comparable defendants—and worse—on the Right, when these were even brought to judgment. This topic has not appeared in his writings before. Neumann reviews three *causes célèbres*: the aftermaths of the Bavarian Soviet Republic, the Kapp *putsch* and Hitler’s Munich *putsch* attempt of 1923. The first two had the most dramatically contrasting outcomes, with everyone in the first cases sentenced to long prison terms and no one, according to Neumann, convicted in connection with the latter. In the case of Munich, Neumann focuses on the fateful failure to deport Hitler, as the law required, after completion of his shortened sentence, on the juridically absurd grounds that he “felt” himself not to be an Austrian alien but a German. Neumann concludes that those harshly treated as well as those spared both scorn the law as a result:

As a device for strengthening one political group at the expense of the other, for eliminating enemies and assisting political allies, law then threatens the fundamental convictions upon which the tradition of our civilization rests. (21)

This is not language we would expect to encounter in his earlier writings, although the underlying conviction that some shared concept of “right” is a presupposition of every rational political design is a recurrent theme—and clashes throughout with Neumann’s projections of revolution.⁴

Almost as an afterthought, having asserted that “political justice is the blackest page in the life of the German Republic” Neumann mentions the “change in legal thought [...] that culminated in the new principle of judicial review of statutes” (23), which he characterizes “as a means of sabotaging social reform.”⁵ He places this in the context of the weakness of parliament, which is precluded from playing its constitutional role as democratic principal by several factors that devolved its nominal powers to the bureaucracy and the president. And this is in addition to the unclear constitutional grant of sweeping “emergency” powers to the president. Neumann had noted a number of these considerations already in his seminar presentation to Carl Schmitt’s class in 1931, including the breadth of coalitions increasingly difficult to bring together, and thus the obstacle to parliamentary actions to hold ministers responsible, the pressure to delegate sweeping powers to ministers to cope with the sequence of emergencies, the technical and thus uncontrollable relations between state agencies and key players in the economy and the corresponding pressure on the Parliament to enact legislation in terms of

vague principles that left virtually limitless discretion to the bureaucracy and the courts. A striking feature of his rehearsal of such factors in the present work is his attention to the effective complicity of the Social Democracy in these developments, since not a few of the delegations and transfers of power related to economic policy and social reform measures that the party supported.⁶

Neumann's section on "the collapse of the democracy" correspondingly focuses on the "helplessness" of the Socialists and unions: especially "since [the party] never mustered the courage to drop [...] [its Marxist] ideology or [its] reformist policy." The former would have delivered many supporters to the Communists, while the latter "would have required cutting the many links binding the party to the existing state." The economic depression, in Neumann's view, was not the cause of the impasse; it simply "uncovered and deepened the petrification of the traditional social and political structure" (30). At this moment, he asserts, the Social Democrats had to choose between the "desperate measure" of "the road of political revolution through a united front with the Communists under Socialist leadership"—an option that reads strange in view of his earlier recognition of the Communist commitment to the "social fascism" campaign against the SDP—or the option of supporting the "semi-dictatorships" put in place by Hindenburg, to block Hitler. With the former alternative out of the question, the Socialist leadership nevertheless did not follow through the logic of the latter course. The depth—and perhaps also the confusion—of Neumann's feelings appears especially clearly in his comments on a well-known statement by the unionist, Fritz Tarnow, at the last Social Democratic Party convention in 1931. Tarnow had likened the position of the party to that of a doctor at the "sick-bed of capitalism," who is at the same time also the patient's heir, who might even poison him in order "to take over the entire heritage of the capitalist system today rather than tomorrow." Every word of Neumann's comment bespeaks his bitterness: "This was a policy of a man who is hounded by his enemies but refuses either to accept annihilation [*sic*] or to strike back, and invents excuse after excuse to justify his inactivity" (31). Neumann caps this report and judgment with a statement by the leading Socialist theorist, Rudolf Hilferding, who concluded from some minor losses by the National Socialists in the election of November 1932—as did the Communists—that the Hitler threat was essentially removed, and that the decisive fight was between the SPD and the KPD. Hindenburg elevated Hitler to power a few days later. Neumann summarizes,

It was the tragedy of the Social Democratic party and trade unions to have had as leaders men with high intellectual qualities but completely devoid of any feeling for the condition of the masses and without any insight into the great social transformations of the post-war period. (32)

Reaching back to one of his early premises, Neumann compares Germany before and after the First War from the standpoint that "every social system must somehow satisfy the primary needs of the people." In the imperial era, he says, "A successful policy of war and imperial expansion had reconciled large sections of the population to the semi-absolutism," whose rule was in any case mitigated by its acceptance of the rule of law.

With expansionism checked, the regime “abdicated.” The Weimar democracy sought to “rebuild an impoverished and exhausted country in which class antagonisms had become polarized” by combining the inherited rational bureaucratic structure with parliamentary democracy and “a pluralistic collectivism,” which entailed “the incorporation of the powerful social and economic organizations directly into the political system” (33). “What it actually produced however,” he wrote, “were sharpened social antagonisms, the breakdown of voluntary collaboration, the destruction of parliamentary institutions, the growth of a ruling bureaucracy, and the renaissance of the army as a decisive political factor” (34).

To explain this outcome, he returns to his focus on pluralism. This could work in a country subject to Germany’s conditions, first, only insofar as foreign assistance could foster trade to the level of the country’s advanced capacities, which in fact marked the first phase after the hyperinflation and which were duly fostered by Weimar’s foreign policy during the first decade. A complementary condition for success would have been concessions by the socially ruling groups. “That would have led to a better life for the mass of German workers and security for the middle classes,” Neumann continues—somewhat surprisingly, inasmuch as it suggests the availability of a strategy he otherwise considers vain—“at the expense of the profits and power of big business.” Industry refused and the state increasingly sided with it. The third possibility was transformation into a Socialist state. Once more, Neumann sees this possibility rendered “completely unrealistic,” above all, “since the Social Democratic party was socialist only in name.” The fourth alternative—and the road taken—was a return to imperial expansion but not to monarchy:

An industrial society that has passed through a democratic phase cannot exclude the masses from consideration. Expansionism therefore took the form of National Socialism, a totalitarian dictatorship that has been able to transform some of its victims into supporters and to organize the entire country into an armed camp under iron discipline. (34)

The first principal section of Neumann’s *Behemoth* is accordingly devoted to the “political pattern” of this imperialist dictatorship and organization, which is also the theme identified by the title and conclusion.

Totalitarianism against the State

Neumann’s account of the “political pattern” of National Socialist Germany at war corresponds loosely to his treatments elsewhere of the concrete constitutional designs that conjoin sovereignty and law, inasmuch as he interrelates a characterization of actual power relations with treatments of “theoretical” models abstracted from the literature of political thought, both in their empirical uses as ideology and in their value, once stripped of their metaphysical baggage, for actually comprehending the rationales of the systems in place (and in development). It is the third dimension, above all, that governs Neumann’s eventual conclusion that Germany had neither a “political theory” nor a

“state.” He proceeds by a review of a sequence of integrative models variously put forward, primarily by anticipators or proponents of the present regime. His objectives are, first, simply to show the multiplicity and mutual incompatibility of such schemes and, second, to specify the terms of their irrationality.

Leaving for later examination the characterization of Germany in relation to its “monopolistic economy,” as a system of power, Neumann takes up the designs of the “totalitarian state,” the “movement state,” “the leadership state,” the racial people and their imperial mission and the quest for “living space.” His treatments of each theme bring together references to official documents, news reports and occasionally quite detailed reviews of theoretical designs by German academics and commentators.⁷ It would not be feasible to do more in this place than to sketch Neumann’s characterization of each of the paradigms.

Neumann’s conception of the totalitarian state in *Behemoth* is derived from the Italian use of that term. It refers to unlimited and unconditional claims made on behalf of the state, rule by decisionist commands originating in a hierarchy of state offices, radically simplified through unconstitutional extensions of powers, beginning in Germany with the emergency powers of the president, disruption of rationalized elements in law and administration and the effective reduction of the legislature to a locale for propaganda broadcasts. Unlike Italian fascism, however, which explains itself primarily in terms of a version of state-centered Hegelianism, the National Socialist ideology increasingly rejects the centrality of the state, Neumann claims. At a simple level, he paradoxically explains the difference by reference to the circumstance that Mussolini needed to strengthen and celebrate the state in order to overcome the absence of public order and control, but that Hitler had to counteract in some measure the established and powerful state, rightist in its political orientation but distrustful of the popular mobilization that provided the dynamics of his regime’s designs. Or, at the least, Hitler had to disguise what Neumann calls the “reality” of the state’s pervasive power.

As is true of Neumann’s political characterizations throughout, there is a measure of uncertainty introduced into his political analysis by an ambiguity in judging the interrelations between what he characterizes as the political and social “reality” of a political design, on the one hand, and the “ideology” that supports its operations, especially as institutionalized through symbolic elements in both political and social spheres. From his “functional” perspective, ideology is rarely mere “appearance” or illusion. It matters. He remains closer to Mannheim (or even to Max Weber) than to commonplace Marxism on this question. Nevertheless, as indicated by Neumann’s conclusion to this segment, his relationship to this issue remains paradoxical: “During the present war, the reality of the totalitarian state has [...] been extended to such a degree that there can hardly be scope for further extension. But this reality does not correspond to the ideology. To the extent that the political power of the state has increased, the idea of the totalitarian state has been rejected” (61).

Neumann traces this rejection back to the agitation of the National Socialist organization and membership, although he recognizes that the most concrete challenges from within the movement were forcibly quashed when “Hitler decided to get rid of his ‘Mountain’” through “the massacre of 30 June 1934, comparable to the events of St.

Bartholomew night in 1572.” Neumann’s rather surprising historical analogies, linking Roehm and his SA to Robespierre and the Jacobins as well as to the Huguenot dissidents, suggest how far he had gone in neutralizing—if not demonizing—the concept of revolution. Nevertheless, Neumann also cites passages that relativize the state in Hitler’s *Mein Kampf* and he traces the subsequent ideological codification of the subordination of the state to the movement, conditioned on the understanding that the revolutionary phase of National Socialist rule was over and that the new order was in place.⁸ He quotes Hitler as asserting some months after the purge, “The state is not our master; we are the masters of the state” (65).

As noted earlier, Neumann attaches great significance to the ideological explication of this formula, perhaps in some measure because the first major contributor to the German discussion after Hitler’s demarche was Carl Schmitt, whose machinations consistently fascinate him, although in this case he expressly groups him among “political and constitutional theorists, whose conformist instincts were roused” (65). Schmitt proposed a tripartite scheme, according to which the state apparatus represents the “static political part” while the movement is the “dynamic political element,” with the “people” as passive but appreciative beneficiaries. Schmitt’s rendering of the movement as the dynamic—and thus superior—factor is widely accepted, Neumann notes, but his recognition of the people’s dependency runs against the established ideological formulas of the people as principal underlying force so that his tripartite formula is revised so as to retain “the people” as the political heart of things, without any indication how they might be said to act politically. “Bad metaphysics,” Neumann concludes, “replaced any rational discussion of the problem” (66).

Although Neumann finds the formulas applied to the relations between the state and the party not much more lucid, he maintains that “the analysis [of this relationship] must [...] be undertaken [...] to elucidate the fundamental problems of where political power resides and how strongly National Socialist ideas [*sic*] have penetrated the army and civil service.” In this matter too, Neumann cannot fully resolve the relationship between the ideological and realistic constituents of political power. He proceeds by a comparison among three “one-party states.” In Italy, he says, the party is “incorporated” as an “organ” within the state; in Soviet Russia, the party is in full command, as witness the periodic purges aimed importantly against buildups of autonomous power in state agencies; and Germany is “somewhere in between these two.” First, Neumann traces the legislative history that establishes the party’s monopoly but also designates it as a public corporation, which would, in ordinary German legal practice, make it subject to law and thus subordinate to the state. He then shows in some detail that it occupies a position in relation to state functions that is not compatible with such a legal status, acting as a fully legitimate collaborator in many governmental acts and actually maintaining superiority in certain key domains, notably the SS in its police activities and the Hitler Youth in its command over youth and its leaders in dual state and party functions. At the same time, party membership is suspended during military service and some important local agencies are expressly separated from party control. Neumann speaks in summary of “the extremely equivocal relation between the party and the state” but notes, in anticipation of the next stage of his account of the political pattern, that it is “legally solved”

by the “leadership principle,” with Adolf Hitler at the apex of both modalities of power. Yet the actual weight of that legal solution must in any case be separately ascertained, given the reality of two such different types of designs. Neumann writes, “Our task will be to show [...] that there is a definite pattern of political and constitutional theory, although this pattern does not fit the rational categories of political thought as we know it, whether liberal, absolutist, democratic, or autocratic” (74).

To develop his argument, Neumann expands on his earlier comparison between Germany and Italy. Mussolini, he maintains, found it important to build on the measure of stability provided by a feeble and contentious state machinery, and he easily turned from his earlier anarchist professions to the spiritualized version of Hegelianism promulgated by Giovanni Gentile, with fascism as an emanation of this essential and—in principle—dominant power. In the German case, by contrast, the strong and deeply rooted bureaucratic state machine threatened to overshadow the party, which could not build a comparable force, and “the claims of the party conflicted with the claims of the state.” Neumann derides the attempts of a few diehard Hegelians to reconcile his political philosophy with the National Socialist ideology, whose constitutive racial myth stands in profound opposition to Hegel’s theory, which Neumann subjects to a striking summary encomium: “Hegel’s theory is rational; it stands for the free individual. His state is predicated upon a bureaucracy that guarantees the freedom of the citizens because it acts on the basis of rational and calculable norms.”

This cannot be reconciled with the “dynamism” of National Socialism. Neumann elaborates on the rationality of bureaucracy, reformulating at this unexpected place his characteristic but uneasy analysis, according to which the conflict between bureaucratic rule and democracy is conceded, at the level of political organization, but democracy is said to entail values as well, which will depart from the normative concomitants of “liberal democracy” as “the masses demand recognition of their material status.” And the ensuing “new aims” will require some kind of “regimentation,” with only a choice between “pluralistic” and state-centered solutions. He rejects the “Utopian” premises of the former, given the realities of the self-interest of group actors in an antagonistic society and the functional imperatives that lead them to bureaucratic forms as well. Because Neumann’s profound ambivalence about state bureaucracies is an integral part of his political thought, it is worth looking at some passages in the present decisive context. He opens the discussion as follows:

Faced with the choice between two kinds of bureaucracy, the citizenry might prefer the public bureaucracy to the private. For private bureaucracies pursue egoistic group interests, whereas public bureaucracies, even when they are dominated by class interests, tend to serve the general welfare. (79)

He explains this perplexing, most un-Marxian claim, first, by noting that public bureaucracies “obey fixed and ascertainable rules, while private bureaucracies follow secret instructions,” and, second, that public servants are selected by an open competitive system by merit, at least in principle, while the others are simply co-opted. A selective treatment of Max Weber’s views on bureaucratization yields a list of virtues, culminating

in the claim that the bureaucrat “is motivated by a simple idea of duty, without regard to the person, with formal equality for everyone.” Neumann concedes that the bureaucracy “may turn into an anti-democratic force,” but he insists that this is not inherent and can be averted by the strength of the democratic forces. His conclusion is nevertheless indifferent to this possibility:

Even if [the state bureaucracy] should become reactionary, the bureaucracy will incline towards carrying out its policies legally, in line with the fixed rules according to which it must behave. It will preserve a minimum of liberty and security and thus support the contention that all rational law, regardless of content, has an incontestable protective function. (80)

Neumann’s aim in thus stretching his familiar thesis about rational law to comprehend bureaucracies, whatever their political character, becomes momentarily clearer when he highlights the contrast with the National Socialist ideological depreciation of the state and its agencies, yet that argument too becomes problematical as it develops. He writes, “The rejection of state supremacy is therefore more than an ideological device intended to conceal the party’s betrayal of the army and civil service; it expresses a real need of the system to do away with the rule of rational law.” Although this reasoning recalls the perennial theoretically unresolved issues in Neumann on the ambiguity between ideological and power dimensions in his analysis, it does apply his consistent findings about the National Socialist political pattern. Yet he also insists that “centralization of bureaucratic machinery” has in fact noticeably strengthened in the course of preparedness and war, and that “the party’s existence has [not] in any way restricted bureaucratic powers.”

Neumann then turns to “the party as a machine,” after noting the anomaly of the state bureaucracy undergoing “enormous growth” notwithstanding “an ideological campaign of denunciation waged against the [state] bureaucracy” that has as its paradoxical concomitant the bureaucratization of the party. Neumann sees the latter as a function of individuals’ need for organized guidance and representation in the face of state regimentation, a sociological regularity that has a special character under conditions of one-party monopoly of nonstate organization. He goes on to sketch the centralized control of most party and allied organizations by the party treasurer, with the exception of formations originating in the party but serving armed state functions, and to estimate the enormous numbers of affected persons and amounts of money coordinated in the “machine.” He concludes, in partial anticipation of his final conclusions about the German system, “As a result, the state and the party stand side by side. Legally neither controls the other, each is sovereign in its own field—a constitutional situation which is self-contradictory” (82).

When Neumann turns to the feature of the National Socialist scheme that might be thought to resolve that contradiction, the supreme role of the “leader,” he says very little about the actual functions of this institution in relation to the problematic dualized constitution of Germany, as he has depicted it, but focuses instead on the genealogy, ideology and psychology of charismatic leadership, with only a generalized conclusion about the centrality of unconditional and nonrational character of the obedience that is the defining feature of the institution. For Neumann, the authors of charismatic theses concerning the rulers of states include the two predominant figures of the Protestant

Reformation, contrary to the common view that Luther and Calvin—especially the latter—were forefathers of liberalism:

At the birth of modern capitalism, allegedly initiating a system of rationality, calculability, and predictability, stands this social doctrine, which is in every respect the opposite of rationalism, though it fulfills certain psychological needs of the people that are older than capitalism. (92)

Such beliefs had an ancient history, in various forms, and they were a feature of oriental monarchy, albeit in a reciprocal form, in the sense that the failure by a charismatic ruler to deliver what is promised would open him to capital punishment by his subjects. The instrumentalization of this tradition in the early modern era, without the element of reciprocity, often took the form of absolute kings successfully claiming thaumaturgic—magically curative—powers “to assert independence of religion and social forces” countering church, feudal and popular resistance to the emerging absolute state.

Neumann turns next to the question why the claims of the aspirants to charismatic power sometimes succeed even in advanced societies with modern states:

This entirely irrational belief will arise in situations that the average man cannot grasp and understand rationally. It is not only anxiety that drives men to embrace superstition, but inability to understand the reasons for their helplessness, misery, and degradation. In periods [...] productive of misery and distress, men are often unable, or deliberately rendered unable, to perceive the developmental laws that have brought about their condition. The least rational strata of society turn to leaders, [like] primitive men. (96)

Having emphasized the irrationality, however, Neumann also insists that “there is always a factor of calculation [...] The leader uses and enhances the feeling of awe; the followers flock to him to attain their ends.” This reintroduction of rational calculation into the arrangement is reminiscent of Neumann’s puzzling concession in a much earlier analysis to the distinctive capacity of fascist actors to proceed in accordance with instrumental rationality. He distinguishes, in fact, between the “genuinely religious phenomenon” of irrational charisma and “its parallel political manifestation,” which “is purely a ruse for the establishment, maintenance, or enhancement of power.” Neumann concludes, still without explaining how the element of charismatic leadership relates to the antinomy between state and party that he had depicted in the two preceding chapters, “The charismatic claim of modern leaders functions as a conscious device, intended to foster helplessness and hopelessness among the people, to abolish equality, and to substitute a hierarchical order in which the leader and his group share the glory and advantage of the *numen* (divine voice)” (96–97).

From the general discussion of charismatic leadership, as exemplified by the National Socialist “leadership state,” Neumann turns to the derivation of that widely successful claim in National Socialist Germany. The magical qualities are accepted as an endowment not of God but of the “racial people.” Neumann’s exposition of this National Socialist design proceeds through a number of steps, most of them explicated through illustrative sketches of the pertinent intellectual history. First, he develops an argument that he had already outlined in his LSE dissertation, according to which the modern state

with its democratic potential is intimately linked to the political concept of a people as a “nation” and rejected by a biological concept like “race” when it is applied to units subject to common rule and entitled to assert themselves against others. Second, then, Neumann traces the rise of German “racism” among leading thinkers in opposition to all aspects of the legacy of the French Revolution, notably the dual implication of a measure of equality among all citizens of the nation and, collectively, within the company of sovereign nation-states. Integral to the preference for “race,” third, is the claim of racial superiority. And this, in turn, materialized domestically in the anti-Semitism that the National Socialist movement appropriated as its distinctive hallmark and translated into ever more harsh acts of oppression and violence against Jews. The ruthless, irresistible and impune acting out of this fancied racial superiority, in short, serves as the decisive token of the charismatic powers of the leader and his movement.

Because of Neumann’s relativizing of Nazi anti-Semitism in some controversies at the Institute of Social Research, especially in opposition to Theodor Adorno, and because of his somewhat disparaging reformulation of the theme in the brief supplement published in the wartime second edition of *Behemoth*, it is worthwhile to pay some attention to his principal statement on the topic in the main body of his book, a treatment uncontaminated by the rhetorical impulses evidently affecting the other two situations. In the one case, he is contesting Adorno’s disregard of economic and political aspects of the Nazi regime in favor of a theory that elevates German anti-Semitism to a primary causal and symbolic role, a case to which Neumann replies that he could explain National Socialism without reference to anti-Semitism.⁹ In the other, there may well be a concern for more effective anti-Nazi political mobilization in a wartime setting where the American public was little moved by the reports of anti-Semitic horrors. This was his much-discussed “spearhead” theory, according to which the anti-Semitic program was above all a trial and first step in an assault against Christianity, where “the Jews are used as guinea pigs in testing the method of repression” (551) and their choice as victims rests mainly on the dual criteria of attacking someone visible and potent enough to be noticed but not as strong as the Catholic Church, for example, would have been. In that context, he identifies three purposes for the campaign, which he expressly presents as including the “physical extermination of the Jews.” The first of these has to do with the concomitant political self-abandonment enacted by any foreign nation that takes up the anti-Semitic campaign; the second is the “testing ground” notion to prepare similar terror against domestic groups not fully subservient to the regime; and the third is to impose collective guilt on those who execute the deeds and thereby to “make it impossible for them to leave the Nazi boat” (552).

While the summary statements of the “spearhead thesis” in the 1944 expansion of his earlier analysis appear to deny Jews the residual dignity of being recognized as mortal enemies by their oppressors—and murderers—Neumann’s more extensive treatment of the theme in the original edition of *Behemoth* fully acknowledges the underlying doctrine of specific hostility to the Jews, which he traces through some chapters of German cultural-intellectual history, beginning—as with charisma—with Martin Luther and culminating in the writings of Houston Stewart Chamberlain and Richard Wagner. In treating anti-Semitism as a political force, Neumann reports first that it became a

“popular movement” in the Bismarckian era, but then that “it failed to strike roots in the population.” Having cited a range of anti-Semitic political figures, including the social critic, Eugen Duehring, and the anarchist, Max Stirner—but not the author of “On the Jewish Question”¹⁰—he maintains that “the workers’ movement remained immune from it,” as witness the acclaim of August Bebel’s characterization of anti-Semitism as “the socialism of fools.” And the Conservative Party too, Neumann notes, abandoned a short-lived alliance with the anti-Semites after suffering political damage. Neumann identifies three main themes carried over from these writings to Hitler’s *Mein Kampf* and later National Socialist agitation. First, there was the “identification of capitalism with Judaism,” which he considers to have been scientifically disposed of by Werner Sombart’s *The Jews and Economic Life*. Correspondingly, Marxist socialism is also identified with the Jews. And the seeming contradiction is resolved by the thesis of a Jewish conspiracy against “Aryanism” manifested by both of those tendencies, as laid out in forged *The Protocols of the Elders of Zion*.

Moving from National Socialist anti-Semitic ideological denunciations to the steadily worsening program of measures aimed against Jews, Neumann opens the discussion with the stark assertion: “National Socialism is the first anti-Semitic movement to advocate the complete destruction of the Jews” (111), which introduces the anti-Semitic aspect of the “blood purification” campaign, which he also denounces for its brutal applications—sterilization, castration and even eugenic killing—to non-Jews deemed unworthy of propagating the race. In the case of Jews as such, this class of measures is exemplified, first, by the series of laws prohibiting sexual relations between Jews and non-Jews (outside of previously established “mixed” marriages, now prohibited) and, then, in parallel, by exclusion of Jews from one after another profession or type of employment and the brand-marking of Jews by imposing names to identify them. For Neumann, it is no less important to show how the application of these new regulations is extended by the abuse of judicial process, notably the treatment of whatever written laws may exist as mere pointers, whose reach can be extended at will by the courts and enforcement agencies, in line with the overall dissipation of principled legality.

This was a factor as well in “the elimination of Jews from economic life,” although this also proceeded—progressively—through abuse of contract and outright coercive imposition. Neumann catalogues a sequence of maneuvers, ever more exclusionary, until the aftermath of the assassination of a German consular official in November 1938, when expropriations, fines and prohibitions combined to render Jews incapable of retaining any wealth or earning a livelihood. Summarizing the range of actions, he has described, Neumann concludes that “segregation, political enslavement, economic extinction, and the cultural ghetto go hand in hand.”

A number of striking gaps in Neumann’s circumstantial account of anti-Semitic measures are nevertheless hard to explain. First, he does not mention, even in passing, the expulsion of Polish Jews from Germany in October 1938, which precipitated the assassination of November and the subsequent destructive events. Second, he does not deal with the concentration camps, which first cruelly held labor and political figures convicted of no crimes, and then also Jews and others deemed to be unworthy outsiders, subjecting them to harsh forced labor and violent treatment. The term occurs only twice

in the entire book, and then in passing, although the exile and political literature in the late 1930s abounded in reports on the camps. There is no plausible explanation for this, except possibly a fear that a fuller account of horrors might evoke the skepticism that had been cultivated by exposes of propagandistic exaggeration in horror stories during the First World War. This entire section is strongly marked by Neumann's political aims for the book.

It is clear that Neumann is in fact profoundly troubled by the anti-Semitic policy and by its puzzling relationship to the political message he hopes to convey. He keeps returning anew to basic questions about it. Considering the pattern of progressive stages in inflicting economic harm, Neumann suggests, first, that economic legislation against the Jews served as a means of distributing spoils among supporters, especially "the powerful financial and industrial capitalists" who are especially important supporter, but it was also "a method of satisfying the anti-capitalist longings of the German people." Returning to the theme of proceeding by incremental steps, Neumann claims, on the one side, that measures were kept in reserve for use when it was necessary "to stimulate the masses" or to divert attention from other matters. But he also somehow links this to a repetition of an earlier theme, to the effect that the absence of "spontaneous anti-Jewish attacks" by nonparty individuals reinforces his "personal conviction [...] that the German people are the least anti-Semitic of all" (121).

His question nevertheless next becomes one about the roots of "anti-Semitic terrorism," which returns him to an inquiry into various established types of anti-Semitism and the corresponding theories. First, however, he characterizes "totalitarian anti-Semitism" as a blind conviction of Jews as "the incarnation of evil" and thus "beyond discussion." In contrast, he maintains, "Non-totalitarian anti-Semitism preserves remnants of rationality and can, therefore be analyzed." He distinguishes four types: religious, economic, political and social. Religious anti-Semitism, he maintains, has the Jews' role in the crucifixion as theme, although he limits its sway in German territories to areas of Polish settlement, where Jews play an important role in cultural Germanization and are thus attacked in religious terms in the interests of Polish nationalism, under leadership of lower Polish clergy. Neumann adds a categorical defense of the Catholic Church in this respect, accepting the liberal Catholic writer Jacques Maritain as its voice, on the grounds of a supposed recognition "that anti-Semitism is incompatible with the spiritually Semitic origins of Christianity" (122).

He then lumps together the remaining three types of established anti-Semitism, which, he says, were "restricted to the old and new middle classes," ranging from the free professions to shopkeepers and civil servants. Neumann explains this phenomenon by claiming that the intermediate position of Jews in the occupational field made them the "concrete manifestation of capitalism" so that even the competitive resentment of Jews in fields like medicine and academic pursuits stemmed from an anti-capitalist misperception of the economically most visible Jews' actual subordination as middlemen for non-Jewish financial and industrial capitalism. If the white-collar worker had not refused to be "proletarized" and had united under the leadership of labor, he could have helped to displace or improve capitalism; but this went counter to his sense of his own status: "His

anti-capitalist longings were thus concentrated in his hatred for and resentment against his Jewish employer" (123). Neumann concludes, with Harold D. Lasswell, that anti-Semitism serves this population as "an outlet for resentment arising from damaged self-esteem." It also facilitated collaboration between the middle classes and the landed aristocracy. Then too, according to Neumann, "Anti-Jewish hatred expressed the anxiety of those groups whose traditional patterns of culture were threatened by the intellectual vanguard that was to a considerable extent composed of Jews." Neumann adds to the sources or uses of anti-Semitism the transfer of responsibility for the lost war on Jews, sparing "the German sacred ego."

Neumann next shifts abruptly to the question whether anti-Semitism in present-day Germany is more than "a mere device utilized when necessary and discarded when it has fulfilled its aim." Interestingly, Neumann's denial of this simple instrumentalization depends on the extent to which German historians, legal theorists and others are rewriting the records to display the Jews as perpetual sources of corruption, defeat and failure. "It is scarcely surprising that National Socialism should do this," he writes, "but the almost complete moral corruption of the German intellectual intelligentsia, especially of the academic world, is a depressing fact." He illustrates this by citing numerous bogus studies as well as the obvious "servility" of the newly founded and richly endowed Institute for Jewish Research to German imperialism.

Notwithstanding his earlier remarks about the comparative absence of anti-Semitism among Germans, then, he comes to explain "the present all-pervading anti-Semitism" by three factors. First, then, he returns to the notions of racism and anti-Semitism as "substitutes for the class struggle." He oddly construes this as an application of Carl Schmitt's notion of politics as a struggle against a foe who must be exterminated. The qualifications of the Jews for this role include their incapacity to resist total annihilation, a consideration that then leads Neumann to claim that "the internal political value of anti-Semitism will [...] never allow a complete extermination of the Jews, [inasmuch as] the foe [...] must always be held in readiness as a scapegoat for all the evils originating in the socio-political system," reverting to a thesis he had earlier rejected as insufficient. Neumann's second explanation has to do with the design of Eastern conquest. This argument, too, is rather forced. He begins with the National Socialist undertaking to "liberate all racial brethren," first of all in the east. An obstacle to this, as it appears, would be the elevation of Jews to a position near the Germans at issue in view of their greater familiarity with German language and culture. Anti-Semitism supposedly obviates this difficulty inasmuch as it justifies the subordination of Jews to all other populations, their enslavement, in fact. Neumann supports this thesis by a report on the hierarchical classification scheme imposed on the conquered territories in the east at the time of writing.

Finally, then, Neumann comes somewhat closer to the "spearhead" theme that will dominate his later analysis, maintaining that "anti-Semitism is an expression of the rejection of Christianity and all it stands for" (127). Yet he finds it necessary, first, to distinguish such a "rejection" in the case of National Socialism from anti-Christian trends among free thinkers who "did not substitute race hatred, leadership veneration, or terrorism for

Christian love, *caritas*, and the brotherhood of man, but the evolution of a scientifically tenable rational theory of justice and morality” (127). Surprisingly, Neumann appears to refer the more rational National Socialist rejection of Christianity to an ethically complex way of finding the principles “incompatible with the specific tasks that Germany has to undertake, or because those principles mutilate and fetter man” (128). This leads him to a discussion of Nietzsche and his followers. Having made it clear that Nietzsche, whose unique talent and language as critic he praises, had rejected anti-Semitism, he describes the appeals of Nietzsche’s demanding anti-Christian position to the Youth Movement as an articulation of their own rejection of “the whole world of bourgeois culture” and its subsequent degradation to a kind of nihilism or naturalism that led easily and often to National Socialism, especially in the middle classes: “The protest against a world that did not satisfy their ambitions and against a value system that imposed moral restraints upon them is expressed in the anti-Christian and anti-Jewish movement.”

In concluding his actual discussion of “religious anti-Semitism,” before entering upon his excursus on the influence of Nietzsche, Neumann touched on the limited practical consequences of the anti-Christian impulses, inasmuch as they are “restricted to the Semitic origins of Christ because Christianity is too deeply rooted in the German people” (127). It is not the case, in short, that Neumann treats anti-Semitism as an incidental or purely instrumental element in National Socialist rule. In treating it as a source of Hitler’s charismatic authority, he takes it very seriously indeed; but he is also profoundly perplexed by it, as witness the excess of conventional and improvised explanations he offers.

There is no evidence that Neumann or any of his Jewish friends and associates in Weimar ever acknowledged anti-Semitic treatment in their milieu, although, in fact, both Lothar Erdmann, the editor of *Die Arbeit*, with whom Neumann had many dealings, and Clemens Noerpel, the principal spokesman of the labor movement on labor law, were anti-Semites,¹¹ and it must have taken an effort of will to reach Neumann’s conclusion that his plight had nothing to do with his Jewish antecedents. Yet this was of capital importance to him: Nazism was not “about” anti-Semitism. That was not the political struggle in which he wanted to engage—or to enlist others. These complex circumstances help to explain Neumann’s difficulties with his account of anti-Semitism as a central motif in German political life.

Neumann has no such difficulties in dealing with an important rationale for the expansionism that was not only a policy of National Socialist Germany but also an institutionalized constituent of the regime, manifested above all in the expanded and rearmed military. Under the heading of the *Grossdeutsche Reich*, he considers, first, the claim to the legacy of the German-speaking (and/or German-dominated) “empire” both in its limited and contested historical actuality and in the expansion imagined by a tradition dating back to Dante. The symbolic code word in the later German versions of the imperial view of a unified Europe was the *Third Reich*, although the National Socialists materialized this conception, which had originated as a poetic motif for the radical cultural renewal propagated by the influential Stefan George Circle during the 1920s.¹² Apart from his allusions to the traditionalist skein in rationalizing a “restoration” of an expanded *Third Reich*, Neumann summarizes several books that make philosophically

more ambitious arguments for a political rendering of the *Reich* theme, arguments that Neumann traces to the existential philosophy of Martin Heidegger:

Transferred to the realm of politics, existentialism argues that power and might are true: power is sufficient theoretical base for more power. Germany lies in the center, it is potentially the greatest power in Europe, it is well on its way towards becoming the mightiest state. Therefore, it is justified in building the new order. (135)

Neumann points out that this line of argument leaves no room for the claims of “race” and illustrates once more the ad hoc character of the public ideology.

In Hitler’s dismissive reply to Franklin D. Roosevelt’s last-minute plea for peace in the spring of 1938, as quoted by Neumann, he makes the following strangely eclectic appeal to some sort of natural law:

According to common sense, logic, and all the principles of human and of higher justice, nay, even according to the laws of the Divine will, all nations ought to have an equal share in the goods of this world. It should not be the case that one nation claims so much living space that it cannot get along when there are not even 15 inhabitants to the square kilometer, while other nations are forced to maintain 140, 150, or even 200 on the same area. (131)

Elsewhere in the same speech he had expressly attributed that density of 15 person per square kilometer to the United States so that the reference to the nation that “cannot get along” is an express reproach to Roosevelt, and he obviously also includes the United States among the “fortunate nations [that] further curtail the living space of peoples who are already suffering, by robbing them of their colonies, for example.”

Neumann proceeds from reporting this sly but crude set of debater’s points to a critical survey of the literature of geopolitics and its concomitants to which Hitler might be said to allude when he speaks of “living space” as a principle to justify expansionism. Neumann engages with Friedrich Ratzel, Karl Haushofer and Rudolf Kjellen, whose cumulative efforts yield an account of dynamic political entities grounded in certain natural attributes of the terrestrial ground they inhabit and the physical space they require under the supposed natural norm of expansion for those who in some sense occupy the center, where the original focus on land and people gains ever more racialized contents, the upshot of which is that the German racial people, centrally embedded in the European landmass and endowed with both energy and power, are bound to attain the space they require. Neumann concludes this segment of the chapter:

In the final analysis, geopolitics is nothing but the ideology of imperialist expansion [...] The bulk of geopolitics is a hodgepodge of ethical, military, economic, racial, demographic, historical and political considerations. It offers a fine illustration of the perversion of genuine scientific considerations in the interest of National Socialist imperialism. (147)

Neumann makes similar short shrift of arguments that build the case for expansion on disparities in population densities, noting first that Germany engages in an ambitious—and successful—pro-natalist policy at the same time that it dramatizes its greater density

as a rationale for expansion. He argues in passing, then, that overpopulation is always a function of economic deficiencies and cannot be rationally countered by conquest.

Neumann next links the geopolitical talk about “living space” to arguments expressed in the language of international law and focused on the supposed invalidity of the Versailles treaty, a theme that had already played a part in the Weimar years. In a brief excursus, Neumann focuses on an unexpected recourse to a natural law argument by Carl Schmitt, through which he had sought to show that the Versailles regime did not meet the standard of universal equality implicit in international law, inasmuch as it disregards the quality of an egalitarian community by its denial of the life space required for Germany’s due functioning. Neumann agrees that international law rests on the premise of equality among states but insists that it understands this as a juristic category. For Schmitt and the propagandists he instructs, by contrast, there are “all sorts of moral and political implications,” including “the eternal right to existence, self-determination, defense, and so on.” Neumann asserts that this introduces ethical and political reasoning that would have to be judged on its own merits, but that these could not be built into legal reasoning, which Neumann sees essentially bound by the “traditional separation between law and morals.”¹³

Neumann’s criticism of German innovation in international law is both determined and—at times—uneasy. The latter is markedly the case in his treatment of German lawyers’ objections to the reintroduction by English and American lawyers of the old distinction between a just and unjust war, with the concomitant thesis that the obligations of neutrals are different in the two cases, as in American one-sided support of British needs during the early years of the war. Neumann notes that Schmitt is in the forefront in this matter too, arguing for the tradition that he dismisses in other contexts. Neumann’s unease stems in some measure from the legitimation that this opportunistic traditionalism has achieved internationally, extending to the effective legal dismantling of the concept of collective security, at least within the League of Nations. Then, too, the position that the German international lawyers adopt for this limited purpose coincides with his own.

Neumann also invests considerable effort in countering a “regionalist” reconstruction of international law, developed by German scholars in the context of anticipated and achieved occupations within the “space” they claim as rightfully their own. Meaningful international law, these assert, no longer applies to relations among nations whose boundaries and jurisdictions are undermined by the dynamics of geopolitical expansion but rather to relations among the peoples within the multinational political entities that ensue from this process. The older international law, they maintain, merely disguised the extent to which it was a concomitant of the “system of Anglo-Saxon world imperialism.” The example they then cite as a more forthright illustration of the truth behind the appearance is the Monroe Doctrine, only recently extended still further in its claims over the seas within the region. Neumann concedes the historical imperial function of that doctrine but calls attention to the process initiated by Franklin Roosevelt whereby the region is being reconstituted as an alliance system, a “Pan-American Union,” that abandons the American claim to (formal) dominance. Although progress is slow, he admits, and as yet uncertain, “The American basis [of regionalism] is democratic consent by sovereign states; [while] Germany knows nothing but conquest and domination.”

More broadly, however, Neumann concedes some difficulties in making German abuse of international law a major theme and provides a formula to justify the effort:

The postulates of the Germanic Monroe Doctrine seem convincing at first sight. Hardly any other ideological element is held in such profound contempt in our civilization as international law. Every generation has seen it break down as an instrument for organizing peace, and a theory that disposes of its universalistic claims has the obvious advantage of appearing to be realistic. The fallacy should be equally obvious, however. To abandon universalism because of its failures is like rejecting civil rights because they help legitimize and veil class exploitation, or democracy because it conceals boss control, or Christianity [*sic*] because churches have corrupted Christian morals. Faced with a corrupt administration of justice, the reasonable person does not demand a return to the war of each against all, but fights for an honest system. Likewise, when we have shown that international law has been misused for imperialist aims, our task has begun, not ended. We must fight against imperialism. (158–59)

Neumann extends the defense of international law next to the domain of minority protection, where he focuses above all on the Nazis' construct of a "folk group law" in place of the law of protection of minorities acknowledged in the Versailles Treaty and formalized by the League of Nations Covenant. Taking up this theme and anticipating the subsequent theme, which helps above all to explain Neumann's dedication to the issues raised in this chapter, he writes,

There is a popular notion that the National Socialist insistence on a racial law is mere ideology with practical consequences only for the Jews, that the German practice of international law operates with the old concepts. A similar idea is widely held about German political theory. Both are dead wrong. The decline of the state in domestic as well as international law is not mere ideology; it expresses a major practical trend. (160)

In the first of these matters, Neumann is obliged once more to concede that international law has often been ineffectual in this sphere and to concede as well that some of the distinctive aspects of various groups and their actual situations do need to be kept in view in the management of conflicts: "legislators and governments must consider the actual economic, cultural, and social situation of each minority, without, however, sacrificing the basic principle of legal and constitutional equality." The National Socialist ideology, he maintains, consistently cites the contradictions between the universal categories of formal law and the concrete circumstances of parties; but "they make no attempt to transform the socio-economic structure so as to make the formal equality real, [but rather] use a legitimate critique to abolish even legal equality." Neumann underlines the importance of this theme by comparing the differentiated—and racially hierarchical—German applications of its group folk law in areas annexed or occupied in the course of the war, noting not only the subjugation of "racial" units variously deemed inferior but also the subordination of the "superior" German group to the racial collectivity as embodied in the local Nazi leadership.

The theme of the "decline of the state" recurrent throughout *Behemoth* proves to be the underlying concern of this lengthy chapter, contentious in a distinctive way, on the

ideological doctrines that rationalize the multidimensional National Socialist deviations from the international law of war and peace. He acknowledges that even within the terms of the latter there are formulas to justify exceptions, but he insists that these “imply a continued recognition of the two fundamental concepts of international law, state sovereignty and state equality” (167). Interestingly, he does not turn immediately to the National Socialist denials of these doctrines but rather to “liberal international lawyers” who “blame the present world chaos on unlimited national sovereignty” and promote, in some cases, a notion of dual sovereignty such that the individual is seen to be subject as well to international as to domestic law, a measure that they think will provide the “psychological basis” for identification with the essential framework of international guarantees and limits. Neumann’s counter is somewhat curious in that he agrees that the postwar settlement will require some psychological basis for the international solidarity to be established but cautions that it would be a grave error to assume that fascism will be wiped out at the end of the war: “It is therefore of the utmost importance to lay bare the propagandistic character of National Socialist conceptions of international law and the dangers inherent in the doctrine of dual loyalty.” Neumann concludes, “The following pages might well be entitled *In Defense of State Sovereignty*” (167). That applies no less to the preceding pages in this intense and lengthy chapter.

Neumann surveys National Socialist writings that seek to displace the concept of state sovereign by various notions of racial sovereignty, in municipal as in international law. He begins with a reformulation of his recurrent dilemma about the concurrent importance of sovereignty as “highest power” and the “highest right” constitutive of individual humanity, which he now describes as an interrelationship between the unlimited claims of the state and “the bases on which sovereignty rests, in the area in which it is effective and in the people from which the state can command obedience.” “Conceived in this manner,” he concludes, the notion of sovereignty is today a progressive one for two negative reasons: “the juristic equality of all states and the consequent rationality of international relations” (167). Neumann’s sequence of National Socialist writers culminates in the doctrine laid down by the high SS functionary, Werner Best, according to whom law expresses the norms of a racial people, as posited by their leader, so that there cannot be an international law, in any case. Because the primacy of the state plays such an important role in Neumann’s work throughout, it may be justifiable to quote, despite the repetition it entails, his summary of the harm done by National Socialist rejections of this concept:

- (1) By denying that states are subjects of international law, it denies the equality of all states and allows differentiation among them.
- (2) By denying that states have sovereignty, it destroys the last element of rationality in international relations. The spatial and functional limits inherent in the notion of state sovereignty disappear.
- (3) By proclaiming the sovereignty of the race, it subjects all racial Germans, whatever their nationality, to the law of the Germanic race.
- (4) By denying that international law exists among rival empires, it rejects any legal frontier to aggression, while at the same time it defends its own empire by a perverted Monroe Doctrine.
- (5) By applying the term international law to the relations between the folk groups within its empire, it destroys the last remnant of minority protection and invests minority oppression with the sanctity of international law. (171)

Moving from the National Socialist ideological pronouncements on these themes, after reviewing a representative work on European organization that he calls a “synthesis of racism, geopolitics, and large-scale economics,” Neumann compares illustrative features of actual German organizational policies in several occupied and nominally allied countries. The varieties range from military rule (France and Belgium) through the forms of civil administration exemplified by the commissioner imposed over a purged state machinery, as in the Netherlands and Norway, some variants on the “indirect rule” known from the older empires, as in Bohemia-Moravia and—in different forms—in the nominally independent German allies in the Balkans (with regard to which Neumann incidentally criticizes Britain above all for failing to have made an effective and timely appeal to the oppressed peoples), and ending with the harsh and punitive colonial regime exemplified by German rule in the nonincorporated portions of Poland. He insists that these are best understood by the nonidentical opportunistic requirements of the dominant power, a method even more appropriate to the diverse schemes of economic organization and policies.

Neumann returns to the socioeconomic frame of analysis that takes up so much of the rest of the book that the central importance of the political-legal questions about the state is often missed. At this place he summarizes, “The economic position of the conquered states will not be determined by a preconceived plan but by the inner dynamics of totalitarian monopoly capitalism [...] Exploitation—and nothing else—is the common denominator of all economic, political and social measures taken in the conquered territories [...] The promise which Hitler held out to [West-German] industry has been fulfilled to a degree which exceeds the expectations of probably the most aggressive industrialists.” A striking feature of this last portion of the chapter is that it takes up the possibility hinted at throughout that the National Socialist government might well outlive the war and consolidate its gains on the European continent, even if it is stopped from further advances and a peace settlement is reached. He uses this, for example, to put aside a discussion of the international law implications of the appropriate postwar settlement if Germany were to be completely defeated. As is the case with the prospects of revolution, especially in Germany, Neumann hedges his bets in proposing policy guidelines, relying primarily on the minimal rationality of the fall-back model of a global system including many nation-states with practices and norms far removed from his optimal goals.

In the final segment of his depiction of the discordant ideological themes comprising National Socialist self-presentation, Neumann returns to a question of distinctive importance to him, with regard to which his reports and conclusions had varied during these years of disappointment. He considers the increasing wartime characterization of National Socialist objectives on terms that he takes as somehow echoing the aims projected by the socialist doctrines that had been so widely accepted within the German working class, and he asks whether this strategy has successfully co-opted labor. In some of his earlier diagnoses, especially the chapter he proposed last for the Institute’s “Germany” project, he appears to think that the ruse was succeeding, but in the present study he concludes that it is failing.

His inquiry begins with the claim that imperialism becomes ever less acceptable to populations as democracy becomes more prevalent, illustrating the general point by reference to America and British anti-imperialist movements and even by the anti-war trend among German democratic movements in the 1914–18 war. Accordingly, and especially in view of the total mobilization required in current wars, the people must be incorporated through a new kind of propaganda, displacing their democratic convictions: “The rulers and the ruled must be represented as pursuing identical interests; the internal social antagonisms must be utilized and transformed into external aggression” (187). The Nazi ideology devised to pursue this objective, according to Neumann, is the “new [...] doctrine of a racial proletarian imperialism,” which portrays the war as a defensive struggle of “proletarian races” against “a world of hostile plutocratic-capitalistic-Jewish democracies,” with England as the epitome of those qualities. Neumann quotes Robert Ley, the head of the German Labor Front,

This war is the war of the money power against labor and against the creative human being, the embodiment of labor [...] For all awakening peoples who make labor the focus of their lives, the watchword must henceforth be: workers of all lands, unite to smash the rule of English capitalism. (187)

Neumann calls this “racial proletarianism” “the genuine theory of National Socialism and its most dangerous expression,” with the primary purpose of enticing the working class through the utilization of Marxist phraseology and symbolism. He asks, “Has the theory of proletarian racism really permeated the ranks of labor” and displaced “the pervasive belief in democratic socialism or in communism?” This, he now maintains, is “the decisive question, for upon the answer to it depends the fate of Europe.” In the event of an affirmative answer, “Germany’s opponents can have but one war aim: to destroy Germany, divide her, and keep her enslaved” (190). He asserts that this is the self-exculpatory view of precisely the “foreign statesmen who did most to destroy German democracy and to support National Socialism in every international crisis.” Neumann concedes that there is no simple way of showing that the contrary is the case, given the total control over public opinion and cultural expression exercised by the regime, but proposes a complex of “indirect methods” to assess the probabilities. These include a further analysis of the ideology, especially its antecedents in Germany and the social strata that supported them and the political measures they rationalized, and, finally, “by investigating the character of National Socialist social organization to see how far it is based on terror and how far on consent” (190).

He begins this section with a set of quotations from influential contemporary German writers, especially directed against England, in order to show how close their formulations are to Marxist critiques of England, its class-biased “democracy” and subservient Labor Party. Comparably revealing, in Neumann’s view, is “the transformation of Marxist slogans to meet the needs of national socialist policy,” which leads him to the equivalents to class struggle, the labor theory of value, the classless society and the proletariat as bearer of truth—a list that he had already compiled earlier, when his emphasis was on

the vulnerability of the German working class more than on the manipulative design of the National Socialists. Neumann concludes,

All this serves the same purpose: to make the theory of racial imperialism the ideological basis of a war of the German people [...] having as its object the attainment of a better life for the master race through reducing the vanquished states and their satellites to the level of colonial peoples. (193)

Neumann traces this design to the earlier generation of Italian fascist writers, from Rocco to Corradini, but highlights the Socialist opposition—notably by Benito Mussolini—to the early colonial wars defended on this rationale. The comparable Germans, according to Neumann, included not only Oswald Spengler and Moeller van den Brock but also Friedrich List and—especially and somewhat surprisingly—the liberal Friedrich Naumann, whose conception of “Central Europe” is a recurrent target of Neumann, probably because of the expansionist implications—and democratic appeals—of this strategy for reorienting the relations between Germany and the territories of the old Hapsburg Empire. While emphasizing the role of Naumann and some others in preparing opinion among social elements otherwise hostile to imperialism, Neumann finds “nearly all the elements of the National Socialist philosophy”—excepting only the racial theory—in the writings of Spengler, whose main themes he summarizes, as well as in those of van den Brock, notwithstanding the quarrels of both writers with the National Socialist party. Neumann summarizes the themes: “The contempt for man and for the masses, for culture and intellect, the insistence on hierarchy and leadership, on discipline and obedience, the elevation of the “productive forces” are as present [...] as in Ley or Hitler” (198). And he concludes that these “proletarian” theories are clearly designed to transfer the allegiances of the working class but postpones the question of their [likely] success until he has attempted “an analysis of those social strata that actively supported imperialist expansion” (199).

There follow some 10 pages devoted to a historical and critical account of “German Imperialism,” which opens with a comparison between the aggressive mobilization mode of this “late-comer” and (comparative) “have-not” and that established in the contrasting—and hated—English setting. While the latter had the resources and social support to combine some colonial expansion with a nonaggressive and low-risk imperial policy of the purely economic sort desired by the *rentiers* whose political party ruled through much of the period, the former could compete only through a “social imperialism” that required ideological incorporation of the masses and campaigns of conquest, first against its continental neighbors and then worldwide. Although Neumann portrays the militant organizations driving Germany toward naval rearmament and expansion as comprised largely of enthusiasts from academic, professional and other middle-class elements, he insists that they are in fact pressing for a policy consonant above all with the logic of the expansionist industrial monopolies and trusts. The large agrarian interests, on his report, lack that drive but are won to a common front with the industrialists by the exchange of continued command of state functions for deference on this policy direction. The occasion for this settlement was the naval expansion program of Tirpitz in

the years before the outbreak of war in 1914. Neumann also notes the extent to which the successful public campaigns in that decade led the Catholic Center Party to reverse its position on armaments and expansionism in the election of 1907, sparing it the losses suffered by Social Democracy.

That reference brings Neumann closer to the question about the likelihood of workers' absorption of the social imperialist commitments and rationales of the Hitler era, which justifies this historical exploration of the social progenitors and constituencies of social imperialism. Neumann begins with the Social Democratic Party's forceful opposition to all the imperialist agitation in the election of 1907, citing Parvus and Hilferding as they project the likely course of German expansionism, whose advocates threaten to conquer public opinion and then turn state policy against the proletariat in a full reactionary fury in view of the expected resistance of the working classes to their warlike undertakings for the sake of capital. Although this was the official party view, Neumann reports, there were dissents emanating from the "revisionist" wing, which had more generally shifted its priorities from the displacement of capitalism to the improvement of workers' conditions, in alliance with democratic elements within the lower middle class. This wing itself was divided between the pacifist group represented by Eduard Bernstein and a group that "fully accepted colonial expansion as a boon for the working classes, expecting higher wages and a quickening of the natural life of capitalism, which would hasten the coming of socialism" (212). This view tended to be prominent at the party congresses after 1907, Neumann concedes, but only because of the predominance of trade union delegates, who were most inclined in that direction, given their day-to-day priorities. There were some leadership converts to the social imperialist view within the party in the course of the first war, Neumann reports, but he cautions against assuming that the widespread Social Democratic support of the war during its first years was a measure of that influence, rather than a simple sign of working-class social patriotism, especially against tsarist absolutism.

In the Weimar years, Neumann asserts, the Social Democratic leadership all but unanimously rejected both the policy of allying with the Soviets against England and the Western powers and the policy of imperialist eastward expansionism in the name of anti-Bolshevism. In the ambivalent tone that marks so many of his retrospective comments on the SPD in the Weimar years, Neumann writes, "Not social imperialist revisionism triumphed, but the pacifist and petty bourgeois outlook of Eduard Bernstein. It was English Fabianism that under the Weimar Republic triumphed over orthodoxy, although the orthodox formulas and slogans were maintained" (213). A few pages later, after reviewing the Social Democratic policy toward the Soviet Union from Rapallo onward—"immune to hatred of England and hatred of Russia"—he notes that "only a handful" of Social Democratic low-level officials joined the National Socialists, while "the great majority of all party and trade-union functionaries remained either aloof or in opposition." And then, Neumann encapsulates his perplexity in a remarkable—one might almost say perverse—conclusion:

This attitude is the really lasting merit of Social Democratic education. The defensive mentality that the party and trade unions had developed from 1914 through 1932, though it turned out to be catastrophic for the existence of the Weimar Republic, prevented the party

officials from actually supporting the regime. Compared with the French trade unions and with the French Socialist party, the German movement died a heroic death.¹⁴

Neumann's brief final section in this discussion attempts to sum up the various hints and inferences that he offers as the best available way to answer his "decisive question" upon the answer to which, he had earlier written, "hangs the fate of Europe." He hardly sounds overconfident when he writes, "The latest phase of National Socialist theory, the doctrine of proletarian racism, of social imperialism, has failed to gain a complete hold over the masses." As he proceeds, moreover, he offers some reassurances about trade unionists and Social Democrats, notwithstanding the destruction of their organizations, not to speak of their confidence in them; and he suddenly decides that the younger generation of workers "shows just as little National Socialist sympathy." The circumstantial evidence he offers is the presence of what he now calls "almost complete terrorization" as an accompaniment to propaganda in the workplaces. Workers cannot be counted on by the National Socialists because "even the most unenlightened worker," "even the most self-centered worker" will see the contradiction between the extraordinarily high productive power, the incessant propaganda and the "terrorism" that accompanies it all. Neumann expects that this will yield revolutionary syndicalist acts of sabotage "as the sole means of asserting man's dignity within a terroristic system." Unexpectedly, he subjects the workers who had been Communists to a separate analysis, presumably because of their socialization to the National Bolshevik episode in the history of the party. Yet he is confident that only the *Lumpenproletariat* element will have made the transition from one nationalist battle group to the other.

Neumann closes the section with an account of the segment of "the masses" who are indeed caught up by the ideology, "the uprooted middle classes," who are anti-capitalist but also anti-socialist because anti-egalitarian. "Social imperialism," Neumann repeats, "is the most dangerous formulation of National Socialist ideology" and not only in Germany. "It appeals to all those groups throughout the world who are in danger of proletarianization: peasants, retailers, artisans, teachers and other intellectuals; it appeals to the unemployed, to all those who in the process of monopolization have lost security but do not want to be called proletarians" (218). Neumann's final judgment on the political and ideological congeries constituting National Socialist Germany, as he indicates in a footnote, is postponed to the very last segment of the book, where he will address the questions, whether Germany has a political theory and whether it is a state. For the present, in a rather abrupt transition, he concludes that the doctrine is "especially dangerous since it contains one element of truth" inasmuch as "the German economy is highly developed, is efficient, and contains many progressive elements." This introduces Neumann's extended treatment of the "totalitarian monopolistic economy."

The Economic Structure and Dynamics of the National Socialist Regime

In view of Neumann's consistent juxtaposition of his political analyses to an examination of what he takes to be a dynamic social-economic substructure, understood within a more

or less Marxist frame of reference that sets—and changes—the limits and possibilities of political designs, it is not surprising that his four chapters on the economy of National Socialist Germany occupy a critical portion of his study. The book has, in fact, sometimes been understood as nothing but a Marxist explanation of the rise and anticipated fall of the regime. Our studies, however, have shown that Neumann almost always eschews such a reductionist application of Marxist terms of reference, given the complementarity of activities and agencies comprehended in terms of political and legal theory. In the present instance, however, Neumann sees himself confronted with a literature that disrupts the complementarity, converging on the thesis that Marxism can contribute at most to an understanding of the factors that have rendered Marxist projections obsolete, notably the supremacy of political developments and their concomitant ideological-cultural settings.¹⁵

And this theoretical innovation is increasingly present in representative work coming out of the Institute of Social Research, especially in two articles by Max Horkheimer's most trusted associate, Frederick Pollock, in the two last American issues of the Institute's journal, published in 1941 as *Studies in Philosophy and Social Science*.¹⁶ A shift from a Marxist reading toward an understanding of National Socialist Germany in the framework of a critical theory of the sociocultural system of modernity, without reference to monopoly capitalism, class conflict or the prospects of its denouement in proletarian revolution, was already suggested by the changing emphases of the research proposals on Germany earlier submitted to the Rockefeller Foundation, but it becomes a public statement with these publications. Two features add to the institutional weight of Pollock's statements in addition to their publication in English and consequent direction toward a wider American academic audiences than the publications in earlier German-language editions of the journal. First, the initial article, "State Capitalism: Its Possibilities and Limitations," is expressly endorsed, if also in somewhat muted terms, in Horkheimer's preface to the journal, while the second one, "Is National Socialism a New Social Order," appears in Pollock's summary overview of a set of lectures at Columbia by Herbert Marcuse, A. R. L. Gurland, Otto Kirchheimer and Neumann himself (of which only the Kirchheimer talk is published), although its implicit claim to speak for the group is qualified by Pollock's note that his colleagues disagree with him on some of the things he says.¹⁷ Second, then, Pollock's thesis expressly applies as well to what is characterized as the predominant tendency in the American New Deal, if also in a "democratic" form that contrasts with the German "totalitarian" one. The extent to which this raises the stakes of this internal controversy for Neumann is implicit in his remark in a letter to Horkheimer, where he is protesting Horkheimer's support of Pollock, specifically with regard to the question of the obsolescence of Marxist analysis of American conditions: "Naturally, I do not agree with your positive assessment of the American democracy, but I will gladly put aside my objections, in view of the political situation."

In order to incorporate this context in our understanding of Neumann's *Behemoth*, we shall quickly review Pollock's article and Horkheimer's introduction to it, as well as the pertinent exchanges between Neumann and Horkheimer, before reviewing Neumann's treatment of the issues in *Behemoth*, which—it should be said—Pollock does cite in the second of his articles as a prime authority on German economic arrangements, without,

however, wavering in his own theoretical analysis. Pollock's central claim is that "state capitalism" marks the end of autonomous markets and thus also of "economic law." The state gains full command of all the controls on investment, production, distribution and consumption that had been a function of the capitalist economic system. In principle, state capitalism can appear in totalitarian or democratic versions, although the latter is mainly a matter of trends, advance research and planning as yet, while the former can be read off the characteristics of the National Socialist system, although the model is not fully realized. The difference between them is that the totalitarian version, at least in the German case, is subject to control by a state comprised of a negotiated conjunction of four primary oligarchic forces, while a democratic one would deny power to the bureaucracies and be subject to democratic decisions on objectives. The system carries forward the designation as a kind of "capitalism" mostly because of continuities in functions, a continued but much altered role for proprietary interests and a clear distinction between this system and socialism.

State capitalism, according to Pollock, arises when the market economy is undermined by its own development, yielding monopolies, government control of credit, labor unions that rigidify labor markets, destructive unemployment and the corresponding ameliorative government expenditures. In response, a new organization is brought into being that moves toward coordinating needs and resources as well as directing both production and distribution—the functions formerly performed by the market economy, notwithstanding its deficits, especially the "murderous mechanics" of the business cycle. Under the rules of state capitalism, there is planning for production, consumption, saving and investment, with political purposes rather than economic mechanisms setting the aims and with political supremacy dictating the outcomes. While the institutions characteristic of capitalism remain—ownership, prices, profits and the like—their functions have changed. Capitalists become richly reimbursed *rentiers*, while decisions are made by scientific management, in conjunction with more or less competitive political principals. In the absence of unemployment as a threat, workers are disciplined by a combination of "political terror" and secure if restricted material incentives. Pollock rejects the contention that state capitalism is only an emergency response to temporary conditions of scarcity, contending instead that emerging knowledge suffices for the management required under all conditions. "Where the economist formerly racked his brain to solve the puzzle of the exchange process," Pollock writes, "he meets, under state capitalism, mere problems of administration." If there are no limits put on state capitalism by "economic" consideration, according to Pollock, the question arises about limitations of other kinds. He sees limits arising first of all from competition for primacy among the commanding elements, which do not include capitalists, but also from an uneasiness about realizing the full potential of production, lest the population respond to plenty by unwillingness to submit to domination, a psychological theory of popular resistance that runs counter to familiar—and Marxist—notions of workers' uprisings motivated by want. These limits, in Pollock's view, account for the emphasis on foreign conquest as rationale for demanding sacrifice and subordination under totalitarian state capitalism. According to Pollock, then, there would be no such limits on a democratic version of state capitalism, given the sort of unity that a genuine democracy would present. Pollock

concedes that there has been no state capitalism other than the totalitarian sort, but he sees the advanced state of planning in the work of authors in democratic states and anticipates the inevitability of such a transformation in the postwar period. In following Pollock's argument, it seems clear that he is informed not only by the pervasive planning literatures of that decade—especially in England—but also by astonishment at the economic achievements of the Third Reich, a deeply unsettling development for Neumann as well.

Neumann saw the article before its publication, although it is not clear whether it was circulated to him for comment, and he wrote Horkheimer a strong letter against its publication. The polemical motif that runs through the letter, above all, is that Pollock abandons “the theory of the Institute,” which Neumann eventually identifies expressly as Marxist, especially inasmuch Pollock takes over, according to Neumann, Karl Mannheim's sociological theses on “planning for freedom.” Amid disingenuous apologies for entering upon complex methodological issues, Neumann denies that Pollock's argument from a “model” or “ideal type” that has never existed and that—on his own showing—cannot ever be fully realized is a legitimate way of proceeding. Strikingly, Neumann is especially eager, first, to explain some improvement in standards of living among the working masses as due to a phase of such complete capitalist control that employers need not fear to initiate a momentum of increasing demands by making some limited concessions and, correspondingly, second, to warn that Pollock's account suggests that such improvements actually have no limits so that his “state capitalism” could become the “millennium” and preclude any revolutionary change. A pacified work force in a crisis-free economy will remain passive. Neumann simply rejects Pollock's suggestion that “those who live better must necessarily demand the end of a political system of domination,” and he likens the theory overall to a cyclical theory of the kind that “he has always viewed as an attempt to evade the reality of capitalist conflict.”

Horkheimer's first reply to Neumann's enraged letter came in the indirect form of the preface that introduces the edition in which a finished version of Pollock's article appears.¹⁸ Horkheimer traces the development from the capitalism that corresponded to liberalism through the process of monopoly formation to the era of state control in terms general enough to straddle the difference between Pollock and Neumann but does not in any case share Pollock's qualified but manifest hopefulness about a democratic “capitalist state”:

As long as its power had been decentralized, industry, propelled by its self-interest, had to cater to the needs of the population and, willy-nilly, promoted technical, political, and social progress, at least to a certain degree. But under its totalitarian set-up big industry is in a position not only to impose its plan upon its former competitors, but also to order the masses to work instead of having to deal with them as free parties to a contract. Popular needs determine production far less than they did through the market, and industry converges on the production of instruments of destruction. Planned waste of intelligence, happiness, and life succeeds the unplanned waste caused by the frictions and crises of the market system. The more efficiently authoritarian planning functions and the more smoothly nature and men are exploited,—the more are subjects and objects of the plan dominated by dead matter and

the more senseless, exorbitant, and destructive becomes the whole social apparatus which is maintained for the perpetuation of power exclusively.¹⁹

At one point, Horkheimer says that Pollock's article "seeks to destroy the wishful idea that fascism must eventually disintegrate through disharmonies of supply and demand, budget deficiencies, or unemployment" since "all technical economic problems that worried the business world can be handled through authoritarian devices," but he does not restrict "state capitalism" to this setting, noting that the "democratic and humanitarian administration" of the United States has begun to build and apply its state power to deal with such crisis domains as agriculture. As this capacity grows, he expects that "fascist groups within and without" will seek to "wrest it away." His last words, in fact, say that the postwar world will have to choose between "consummate democracy" and "the hell of an authoritarian world order," without explaining whether and how the mechanisms of the two planning regimes might differ, given the presumed differences in the ways of determining the goals to be pursued. The relations between the model of emancipation derived from revolutionary Marxism and the institutionalization of something like a democratic welfare state remain unclear—as it had been, curiously enough, for Social Democracy during the Weimar years.

In a letter to Horkheimer, Neumann contends that this introduction has rendered Pollock's article "harmless," presumably by emphasizing all of the negative concomitants of the totalitarian "capitalist state," while gliding smoothly over Pollock's clear suggestion that much the same social technology—and the consequent continued subordination of the working class to its employers—would apply to the "democratic" version. Horkheimer's attempt to avoid conflict, he maintains, simply leaves readers with the impression that the two codirectors of the Institute speak past each other.²⁰

Horkheimer's rejoinder, two days later, builds to a reprimand, as from a director to a staff member. At the outset, he authoritatively invokes the twofold authority of Max Weber and Friedrich Engels: the first, to vindicate Pollock's use of an ideal typical construction as an aid to understanding the presuppositions underlying various approaches to the historical situation, and the second, to underpin his own agreement with Pollock's expectation of a trend toward state capitalism, even if he accepts Neumann's empirical judgment that this has not as yet been established in Germany. He welcomes Pollock's projection, and the matter is settled. This is followed by a complex argument against the Marxist assurance with which Neumann rejects Pollock's "psychologist" contention that people will rebel against benign domination, precisely as conditions improve. He tends to agree with Neumann on the probabilities, but he respects Pollock's proposition as a sign that no prognostication of revolution can be counted on—Marx's sociological thesis no more than Pollock's psychological one. "It represents sociology and can be easily trumped by the counter-revolutionaries, who are in any case the better sociologists." Horkheimer continues,

If judgments of probabilities are appropriate to this question, which I consider not only doubtful but also politically questionable, then the social revolution is more likely to occur

against the probabilities than with them. What can be “predicted” with logical correctness under the circumstances is domination and always only domination, not its overcoming.²¹

Horkheimer’s disavowal of the Marxist analysis that Neumann has assumed they share, whatever Aesopian cautions they may exercise in their writings, is followed by forceful criticism of Neumann’s harsh tone against Pollock, notably the talk of his being a Mannheimian renegade, an impropriety especially regrettable “in view of the complicated relations that prevail at present between theory and political groupings” and offensive in view of the fact that Pollock will be loyal long after those to whom Neumann complains. Horkheimer further emphasizes the distance between Neumann and his own—and the Institute’s—position on the Marxian legacy by scolding him for denunciations “in the manner of the ‘Anti-Duehring,’” when the circle of the trust-worthy is steadily shrinking.

This exchange delineates the state of the question about Marxist social theory and political diagnoses within the Institute as Neumann proceeds with his work on *Behemoth*. Part II of that work accordingly opens with a chapter called “An Economy without Economics?” that is divided between a section entitled “State Capitalism?” and another devoted to “The Myth of the Corporate State,” which is referred to as “A National Socialist Economic Theory” parallel to the theory treated in the first section, with the question marks in two of the titles and the language of the other indicating the critical tendencies of both analyses. Neumann begins by noting a universal agreement on the “astounding” achievements of the German economy in eliminating unemployment, in expanding and sustaining production and in the development of a synthetic industry to counter shortages in natural resources and in the management of rationing and price control schemes. Because there is no agreement on the “nature of the economic system,” however, there is also no agreement on “how this miracle has been achieved.”

First, then, are those who “deny the capitalistic character of National Socialism,” a contention that Neumann ascribes in his footnote to a group of writers who do not limit their claim that the economic terms of analysis characteristic of both liberal and Marxist economic theory are becoming obsolete to the German case.²² Frederick Pollock’s article on “State Capitalism” appears on the list of references but only as an addition at the end. The writers that Neumann cites first are primarily focused on the Soviet Union, in fact, as well as the United States. Peter Drucker is an American innovator in the theory and practice of administrative management; James Burnham is a sometime Trotskyist who follows Trotsky himself in the characterization of the Soviet statist and bureaucratic deviation from the Socialist project, although they differ in their assessments; and the author of what Neumann calls the “most important book” on the topic is another leftist deviant from the main Communist line, Bruno Rizzi, whose work is subtitled “Quo Vadis America?”²³ Neumann speaks of Rizzi as “formerly a Marxist.” In generalizing on this tendency, Neumann notes that they see “the profit motive [...] displaced by the power motive” (222), as entrepreneurs are displaced by administrators and the distinguishing features of capitalism—freedom of trade, contract, markets, prices or wages—cease to play interdependent roles. The domination of workers, correspondingly, is political, not economic. In a curious but not accidental juxtaposition of political sources, Neumann

quotes at some length a summary characterization of the Soviet scheme by the respected Socialist theorist, Rudolf Hilferding, as quoted by the American fascist enthusiast, Lawrence Dennis, to bring together a comprehensive statement of an “economy of use” whose constituent elements have changed functions to become instruments of rule by governmental authorities. In a sweeping political remark that is offered almost as an aside, Neumann concludes this exposition by asserting that “those who believe that this theory holds good for Germany also accept the fascist interpretation of liberalism and democracy,” which correlates them exclusively with the classical features of market capitalism. Whether or not this was indeed a generally accepted “fascist theory,” and regardless of the extent to which this thesis was holistically and uniformly presupposed by the theorists of “state capitalism” that he has in view, Neumann’s rejection of the equation is a consistent feature of his thought, beginning with his first dissertation. Neumann’s opposition to the state capitalist thesis in any form is grounded as much in his political as in his socioeconomic theory. Key elements of liberalism, as well as democratic rule, have rational justifications apart from the historical circumstances that gave rise to them and the functions they may perform in the eras of classical capitalism and its immediate successors.²⁴

In contrast to the general objections to Pollock’s theses laid down in his letters to Horkheimer, Neumann undertakes to refute the “state capitalism” theses primarily by working through the actual structure and operations of the German economy, drawing on German newspapers and professional analyses rather than on speculative extrapolations from legal and administrative designs.²⁵ He prefaces those descriptive treatments with some theoretical reflections. First, then, he objects to the “state capitalist” label, since the thoroughly politicized arrangement that the theorists postulate would not be marked or moved by any “capitalist” mechanisms. Second, as in his correspondence with Horkheimer—and notwithstanding the rebuttal offered by the latter, Neumann denies that a “model” or “ideal type” can be extrapolated from anything but an existing reality, citing Marx’s refusal to discuss a socialist or communist design. He objects, third, that no proofs have been presented that the trends on which the state capitalist characterizations rely could in fact lead to the outcome projected, or that anything resembling such arrangements could actually work.

His last preliminary critique is of a different kind. He asks what this “bureaucratic collectivism,” as he prefers to term the model, would mean for humanity. Would it bring peace and happiness or war and oppression? Neumann says that if the projection were correct, there would need to be no limitations or conflict within or between states due to economic factors (including Bukharin’s projection of an externalization of class conflict to warfare between states). Since “politics divorced from economics is a mere technique, an art” (227), there would be no reason why this arrangement would be disrupted by “political” mistakes and why it should not represent the future, just as Hitler asserts, even without war. Neumann cannot accept the psychological or cyclical theories adduced by the anti-fascist proponents of the model to predict an uprising against the repressive features of such a regime as economic conditions improve and questions arise about the political costs. If the system were as described, there would be no obstacle to raising the standards ever higher or to elevating the status of the lowly, given the retention of

the necessary bureaucratic hierarchy and order. Neumann writes, "Such, then, might be the fate of mankind. The world would not be exactly a pleasant place to live for an intellectual, but for the large masses of society, it might turn out to be heaven" (227). "Or," he adds, "it might be hell." Presumably in firm expectations of revolutionary emancipation, Neumann rejects such an indeterminate prospect:

The present writer does not accept this profoundly pessimistic view. He believes that the antagonisms of capitalism are operating in Germany on a higher and, therefore, a more dangerous level, even if these antagonisms are covered up by a bureaucratic apparatus and by the ideology of the people's community. (227)

His characterization of the view that precludes the prospects of a working-class revolution as "pessimistic" echoes Horkheimer's earlier resort to the same label to characterize Neumann's hostility to Pollock's theory. This incidental feature of the dispute testifies to the search for hope that marks the contests among exiles, where pessimism is defeatism. In any case, the key questions await Neumann's depiction of the socioeconomic aspects of the National Socialist regime.

As a preamble to this, Neumann considers a model that is in some ways a counterpart of "state capitalism," in that it sets out another integral and distinctive version of economic activities under National Socialism, although in this case Neumann prefaces his account by a categorical statement that "we must recognize once and for all that the structure of the National Socialist economic system does not follow any blueprint [...] [but is] pragmatic, [...] [with its organization] directed by the need of the highest possible efficiency and productivity required for the conducting of the war." The pattern that can doubtless be seen "is not designed by a doctrine, but rather by the material structure of the economy" (228). Before turning to this inquiry, Neumann devotes several pages to an overview of various National Socialist advocates of the corporatism also associated with Italian fascist ideology and originally derived from some syndicalist writers, but he asserts that these advocates had either lost influence or abandoned the scheme by the time the National Socialists came to power. Where nominal remnants exist in some sectors, they serve either as an additional support to cartelization or as label for a distinctive organizational form that in effect excludes workers or subordinates them to their employers or managers. The doctrine remains only as an occasional myth. In any case, Neumann insists, "No one adheres to the theory of state capitalism that we have discussed." Whether a "dictatorship of the managerial bureaucracy" is nevertheless present or in prospect is a question that cannot be answered by a rejection of the theory but only by looking at actual structures and trends and by determining the extent to which certain misleading features of these arrangements are simply a function of the wartime emergency management.

Neumann accordingly turns next to the organization of business, taken in the context of the pattern that emerged in the course of the Weimar Republic, and which, according to Neumann, has been little altered by National Socialism. In an express return to Marxist language, Neumann opens his analysis as follows: "Ownership of the means of production exercises its function in a number of spheres, especially in the labor market, the

commodity market, and in the state” (235). Corresponding to these functions, Neumann reports, contemporary “property” typically takes part in employers’ organizations for labor, in cartels for commodities and in trade associations for interest representation to the state.²⁶ Neumann focuses on the last of these types, distinguishing between the mandatory but comparatively unimportant geographic chambers of commerce, assigned certain legal obligations, and the trade associations organized according to branches of the economy and serving in many respects as coordinating agencies for the other organizations (notably with regard to cartel formation and management) and as principal settings for relations with public policy and agencies. Notwithstanding divisions of labor among these various organizations, they added a coordinating body comprising all of them “in the face of the threat from the trade unions” (239).

Neumann records in some detail the sequence of reorganizational measures undertaken under National Socialist rule, yielding a more formalized version of the design that was already effectively in place beforehand, and that he characterizes as an “autonomous political organization of business.” In the present context, Neumann’s principal objective appears to be the delineation of organizational structures that provide an effective field of operations for the leadership of the various branches, which is in turn grounded in comparatively small groups within each constituent commercial branch—membership meetings having become insignificant—that carry out the dual roles of implementing state directives and carrying out “genuine self-government” in their fields. The seeming excess of tables and other details appears to serve Neumann as a way of asserting specialized expertise that overshadows the mix of impressions and generalizations that comprise the “state capitalist” case. He depicts an apparatus that can perform its functions only on the basis of detailed local knowledge and authority, whatever general directives may be issued by state agencies. Capital remains a force.

When he turns to the organization of the “war economy,” however, Neumann first emphasizes the centralizing state apparatus, beginning with the curt assertion that “the chief organ of the war economy is Göring” and proceeding through an account of state machinery with the power to govern rationalization, allocation, rationing, price setting and the like. Yet he quickly qualifies the impression yielded by this overview:

This structural analysis tells us little about the actual functioning of the economic machinery. Nor does it reveal whether markets still operate, how extensive is the actual influence of the state, and in whose interest the machinery operates. All these questions are basic. (254)

The state is all-powerful in law, he concedes, and “if we take such legal pronouncements at their face-value we shall indeed gain the impression that Germany is a state-capitalist country [...] But law, like language, does not always express reality; it often hides it.” He continues,

The more obvious the contradictions in a society, the more the productivity of labor increases, the more the monopolization of society progresses—the more is it the function of law to veil and hide the antagonisms until it becomes almost impossible to pierce through the veil of words. Yet this is exactly what must be done. (254)

Neumann consequently turns to a surprisingly detailed treatment of the German economy in action, devoting a lengthy chapter first to “the monopolistic economy” and another to “the command economy,” to distinguish the power alignments and functional operations in war and peace. For the years of peace (and preparation for war), Neumann seeks to show that the Weimar-era dominance of cartel formations and the tendency toward monopoly within that frame thrive under National Socialist rule, notwithstanding the party’s programmatic promises to small business. His analysis of developments is prefaced by a rehearsal of points he had already made in his earlier studies of Weimar. He begins with the constitutive elements of capitalism, private property and contract, and he asserts that the institutionalized forms and operations of these basic principles, conceptualized as rights, undergo change in the course of capitalist development, taking up once again the theme of institutional transformation through changes in the “auxiliary guarantees” of basic economic rights from Karl Renner. Property is separated from the entrepreneurial actor, as technological and other developments expand the capital and scale requirements of production, and contract takes forms antithetical to free competition and individual enterprise, specifically in the constitution of binding cartels that tend toward monopolies, which the originators of capitalist economic theory—and Neumann returns to his favorite passages from Adam Smith on this point—had expressly precluded. In a striking return to old disputes, he includes the collective bargaining contract between employers and unions among the institutions of the liberal contract guarantee. And in the years of its flourishing, he asserts, this institutional element was not so much redefined, as was true of property and contract in the domain of capitalists, as rendered much more consequential in a contest against proprietors and employers.

According to Neumann, these developments of the postwar years in themselves had increased the role of public authorities, especially under the duress, first, of the hyperinflation and then under political pressure to manage the conflicts generated by the dual processes of cartelization and unionization. With smaller businesses demanding protection against enforced and unalterable affiliation with cartels, while cartels in the process of monopolization proclaimed their economic and technological necessity, and with employers resisting the power of unions by challenging their contractual rights, while unions expanded the range of their claims to codetermination, state agencies abandoned the experiment in self-regulation by corporate entities with a distinct “economic constitution,” which Neumann had originally welcomed. From boundary monitors and mediators, state agents were constrained to become regulators and decision makers:

In the period of monopolization, the new auxiliary guarantee of property is no longer the contract but the administrative act, the form in which the state interferes [...] The possession of the state machinery is thus the pivotal position around which everything else revolves. This is the only possible meaning of the primacy of politics over economics. (260)

The questions are posed for the state by the development of the capitalist economic system and the answers are conditioned by the logic of its development.

Neumann contends that neither the “complete incorporation of all business activities” in the new industrial organizations nor the total suppression of unions, which were

sought by the unfolding monopolies, could be carried out in a democratic Germany, where small businesses and the Social Democratic Party retained a measure of defensive strength. Then too, the National Socialist policy of unconditional support of monopolies contradicted its political appeal to small business and independent crafts. Only a totalitarian regime could force “the whole economic activity of Germany into the network of industrial combinations run by the industrial magnates.” Neumann proposes to call the German economy “totalitarian monopoly capitalism.”

To “verify” the thesis about the primary character of this mode of capitalism, Neumann gives an account of the National Socialist cartel policy, which he situates in continuity with the uncertain and contradictory experiments of the three preceding “crisis” administrations, operating under “emergency rule.” While these predecessors sought to moderate the administered prices of cartels through various regulatory measures without moving against the organizations, they proved practically unable to implement most of the regulations in the face of their own uncertainties and against the resistance of the prime business interests. “Their policy,” Neumann says, “was that of a tightrope walker over a deep abyss.” The National Socialist regime, then, at least during the years before its attention shifted massively toward armaments and military preparedness, acted forcefully to protect the alliance with big business and the productive resources of cartelized industry against hurtful price competition through a policy of compulsory cartelization and restricted expansion outside of the cartelized organizations. The slogan was “purging the chiseler.”

With the shift toward production for war marked by the proclamation of the Four Year Plan at the end of 1936, there developed a certain tension between the expansionist ambitions of the regime and the protectionist policies of the cartels. Neumann’s account gains in effectiveness by his use of circumstantial examples derived from internal German sources, especially business and professional journals. The politically mandated “groups” within the various business and industrial fields were urged to foster full employment and productivity, even at the expense of established cartel designs. According to Neumann, however, the net effect of these tensions was to strengthen the roles of the largest actors within the cartels, since they were also the most efficacious negotiating partners for the state agencies, given the governance of the cartels by the size of quotas rather than numbers of participants, quite apart from the continuing—although occasionally decried—phenomenon of overlaps in the staffing of agencies at both levels, as well as the priority claims of large organizations with many employees, when it came to the allocation of materials and assignments. In the event, the trends toward monopoly within the cartelized economy were intensified. And “the most influential industrialists” were also the principal beneficiaries of the “Aryanization” of Jewish-owned firms as well as of the “Germanization” of strategically decisive firms in countries that were occupied or made satellites, notwithstanding the diversity of forms in which these were recast.

Neumann is not satisfied to show that the prime capitalist actors—cartels and monopolies—are integral to the working out of the National Socialist economic design. In seeking out the “real source” of the “centralizing trends in German industry,” he turns to developments that are generated by “the very mechanism of capitalistic production, refuting the beliefs of those who hold that capitalism has lost its dynamism” (278).

Beginning with innovation in the technological uses of coal, he surveys the “new methods of processing coal, wood, straw, nitrogen, oil, and metals” and the concomitant expansion of the chemicals industry. The scale and costs of these activities, however, limit them to the largest and wealthiest economic organizations, while they nevertheless also require massive state investment. “The combines entering those new fields,” Neumann observes, “claim and receive government support, thereby strengthening and enlarging their power [...] [T]he financial help given for the establishment of new enterprises rebounded primarily to the benefit of the long-established monopolies” (280). This applies, according to Neumann, no less to novel state-imposed organizational forms of financing new industries, as in the case of cellulose wool and lignite hydrogenation. Once again, Neumann strengthens his general argument by illustrative case studies, whose details are unlikely to be familiar to his readers.

Neumann’s immersion in the German materials at times makes him in effect a participant in their policy debates. This is especially striking in his discussion of measures taken by the National Socialist regime to shut down small businesses unable to sustain themselves above a “proletarian” level, notably in retail and handicrafts. He notes that these policies had been motivated in large measure to reward the middle levels in these fields, which were needed as a political support of the National Socialist regime, and that they also provided added advantages to the largest organizations. Yet Neumann writes,

This process is partly desirable, if it is carried out with sufficient safeguards. For the economic position of the enormously swollen distributive agencies and of small handicrafts has indeed become untenable and incurable [...] However bitter may be the descent into the stratum of the proletariat and however brutally the whole process may have been carried out, any other way was unthinkable. (284)²⁷

This deviation from his general exposé of the conjunction of the requirements of monopoly capitalism and National Socialism is a reminder that Neumann is not writing in defense of liberal capitalism. The immediate occasion is probably the extent to which the proprietors of these minimal shops persist for the sake of the residual social prestige due to separation from the working class, as such. The passage corresponds to the conclusion of the preceding chapter, where the susceptibility to National Socialist appeals of precisely this segment of “the masses” is noted.

Although Neumann’s segment on “The Disappearance of Small Business” in *Behemoth* is barely two pages long, he appears as coauthor, together with his close associates and marginal Institute collaborators, A. R. L. Gurland and Otto Kirchheimer, in the year after publication of his book, of a study entitled “The Fate of Small Business in Nazi Germany,” published as an exhibit of the United States Congressional Special Committee to Study and Survey Problems of American Small Business, with an introduction by Senator Claude Pepper, a principal advocate of American small business. In this detailed treatment of the theme, Neumann joins in a more nuanced view of developments. First, there is recurrent emphasis on the persistence of small business, especially in the sphere of crafts, a conclusion unavoidable in a presentation documented by detailed statistics. Second, there is recognition that cartelization was ambiguous in its effects on small

business, especially in the phase carried over from the Weimar years, when cartel policies were protective of weaker performers. Third, there is a surprising current of criticism of labor indifference to small business during the Weimar period, a lack of awareness (or actual satisfaction) that the social programs fostered by the unions had destructive effects on smaller businesses—a theme that is not altogether surprising in a study prepared for a body whose hallmark motif was anti-monopoly concerns. Fourth, then, there is nevertheless no deviation from the conclusion that the net effects of the policies evolving from Weimar to National Socialist times strengthened the trend toward control by and through the biggest businesses, with monopolization as an implicit tendency, due to the internal power dynamics within the cartels, as well as the mounting dependence of small crafts businesses on their effective incorporation as service agents within the technologically advanced largest organizations. Neumann's evident comfort with the moral that small businesses must be protected and fostered, which Claude Pepper sees as confirmed by the study, is not an altogether new departure for Neumann, whose later Weimar writings—as we've seen—are punctuated with regard for American anti-trust policies, even though the “unreasonable restraint of trade” criterion devised by the American courts exemplifies the “institutionalist” jurisprudence he otherwise condemns. These complications belong to Neumann's longer-term concerns, as sketched in his thesis about the “change in function of law” and cannot be allowed to disrupt the common campaign against fascism. And in that context, what matters is the mounting supremacy within the economic field of the largest businesses, approaching monopoly as a limit, driven by factors inherent in the National Socialist imperialist designs, which overwhelm their initial efforts to strengthen the adherence of small businesses to their cause.

Neumann closes his chapter on “the monopolistic economy” with a section on the sources of economic power of the magnates whose dominant positions in many key sectors of the economy are comprehended by Neumann's concept of “monopoly,” whether or not the conglomerates they control actually focus on gaining total command of one branch or industry. In this context, Neumann returns to the interplay between economic and legal developments, tracing the power of the major actors above all to their control as managers of the resources of corporations whose character as “democratic” combinations of active stockholders was being displaced already in the Weimar years. Such managers come to function as master capitalists, acting in the name and with the resources of corporate entities whose autonomous collective identity and interests are recognized and fostered by institutionalist legal doctrines. Neumann uses the aggressive expansionist designs of such actors and agencies to insist in conclusion that the distinctly capitalist force of competition remains a central element in this “monopolistic economy,” reverting to the theme that the fundamental changes he has been analyzing do not imply a departure from capitalism:

Entrepreneurial initiative is not dead; it is as vital as ever before, and perhaps more so [...] The motivating power of expansion is profit. The structure of the German economy is one of a fully monopolized and cartelized economy. (292)

In a departure from his usual style of argument, Neumann opens the following chapter with a direct challenge to his own thesis. “It is conceivable,” he writes, “that

the extent and depth of the command economy—the interfering and regimenting state [...] may shatter our construction” of the totalitarian monopolist economy. He sets the program of the chapter, accordingly, as an assessment of the six decisive kinds of interference that are certainly present in wartime Germany. The political actions at issue are (1) “the state’s direct economic activities” as well as (2) “those of National Socialist Party,” (3) “the control of prices,” (4) “of investment and profits,” (5) “of foreign trade” and (6) “of labor” (293). Neumann prefaces his inquiries into the current state and consequences of these dimensions with a classification of four stages of the regime’s economic policies, beginning with a version of the internationally practiced national “depression programs” of measures against unemployment and supports to industry expanded from the preceding emergency ministries, followed by a distinctive strategy against dependence on imports initiated by Hjalmar Schacht, coincident with German withdrawal from the League of Nations, which Neumann sees as preliminary steps in the preparation for war, and then, in short succession, the rearmaments-oriented Four Year Plan, and the war economy, whose characteristics are the primary subjects of the chapter.

In view of the high price that Neumann attaches to failure to show the developments at all six levels, consequential as they are, he draws on impressively detailed information and complex analyses to support his earlier stated thesis about the German political economy. Nevertheless, the opening statement of the first of the six challenges, expressly harkening back to the terms of the dispute with Friedrich Pollock, flatly anticipates the motif of the chapter: “Has the direct economic activity of the state been increased to such an extent as to make it a decisive factor? If it were so, state capitalism would really be operative in Germany. But it is certainly not so” (395). Neumann contends the contrary impression may be gained from the circumstance that the public sector had already been exceptionally large in Germany due to the political circumstances of its economic modernization, but that the National Socialist policy actually diluted the public character of many of these enterprises by replacing public officials in controlling positions with major figures from “private capital.” Neumann’s analogous arguments with regard to the other categories are considerably more technical and the supportive empirical claims are no more controllable at the present distance, so it will suffice to summarize his responses to the other five challenges.

Neumann’s treatment of the party’s direct economic role is exceptionally provocative. Concentrating on the expansion of the Hermann Göring Works, he likens it to the projects of gangsters who seek legitimacy and steady income by capturing and expanding respectable business enterprises. Neumann sums up:

Is that development a negation of capitalism? I do not believe so. On the contrary, it appears as an affirmation of the living force of capitalist society. For it proves that even in a one-party state, which boasts of the supremacy of politics over economics, political power without economic power [...] is precarious. (305)

This conclusion is not affected by his accompanying somewhat unexpected judgment that this development is also disliked by German capitalism and that it adds to the “contempt

in which the old bureaucracy and the industrial leadership hold National Socialist gangsterism” (305). In outlining the various dimensions of price control and price formation, Neumann eschews such denunciatory language. He speaks quite respectfully of the comparative success of the diverse policies that address, over time, the diversity of issues in this variegated economy, under conditions of extreme scarcity and the preferential allocation of resources to war industries, but he insists that modes of capitalist competition in different forms nevertheless persist as long as the viability of the economic agents depends on their capacity to elicit profit through their control of factors of production.

Neumann next asks,

Does the control of profits and investments change this picture? If they were rigidly controlled, if a planning machinery directed the flow of investments according to social principles, if profits were taxed away, then possibly the system would no longer be capitalistic. (316)

This statement of the challenge, with its demanding qualifiers of “rigidly” and “social principles,” indicates that Neumann has to work hard to deal with it. And he will reject historic socialist analyses and measures in order to do so. The main difficulties are that there have been in fact a series of regulations affecting the distribution of dividends and, more important, that there is little question that the power of independent financial institutions to control investments has been subordinated to state control. Neumann manages the first issue by distinguishing between regulating profit and restricting the modes of its distribution. The limitations on the latter, in fact, reinforce the availability of self-financing, which is the single most important factor that allows the largest industrial firms to pursue their own capitalist strategies. This brings him to striking claims that entail forceful polemics against political friends as well as foes.

The incentives and opportunities for self-financing reinforce what he deems to be an ongoing trend against banking capital, as present in the United States as in Germany, he asserts, due to the slowdown of economic expansion, the concentration of investment capital within industrial firms—especially among the cartel leaders and monopolists—institutional investments and government spending and lending programs. The National Socialist ideology and policies attack “predatory” banking capital, which they contrast with the “productive” industrial capital they support. Neumann comments,

Finance capital as identified with banking capital has always been the target of all pseudo-socialist movements, movements that never dared to touch the foundations of capitalist society but rather sought a reform that would break the poisonous teeth off the capitalist system and direct the deep resentment of the masses against exploitation toward certain concrete symbols. (320)

Neumann’s argument along these lines fluctuates between denunciation and something markedly different that anticipates his eventual characterization of the “Behemoth” as a whole. So, first, he cites Marx’s critique of Proudhon’s preoccupations with banks; he denigrates an authoritative handbook of the German Social Democracy, Rudolf Hilferding’s *Finanzkapital* (1910), as a sign of the party’s fateful misreading of twentieth-century development: and he culminates the critique with the following: “Whenever the

outrage against banking capital is injected into a popular movement, it is the surest sign that fascism is on its way" (322). Yet he also concedes that bankers' functions justified focus on banks when bankers controlled the economy and that they evidently continue to be important enough for government and industry to vie for control of their boards: "It is in the control of the banks that the influence of the state is so great that indeed a change in the socio-political structure must be admitted" (324). He focuses on the transformation of the *Reichsbank* into a state agency so that "the central bank can no longer sabotage the financial system or paralyze a political system" (325), as they have done and can still do "under conditions of liberal democracy." Yet the supremacy of government in the central bank, he continues, makes it essential to "subordinate the political machinery to the needs of capital" (327). And this "strengthens the necessity for business to get power and more power over the state machinery." In Neumann's account, it is primarily a fight for places on the controlling boards. Here is another indication of that fundamental conflict among interests that will prove to be central to Neumann's eventual understanding of National Socialist Germany as an arena for irrational struggle rather than the "total state" that many presume it to be.

Under the heading of "Foreign Trade, Autarky, and Imperialism," however, National Socialist Germany appears as a unified collective actor, with the political and economic forces responding to a logic that compels them both. Foreign trade, he maintains, curiously citing Ricardo's views to the contrary, brings surplus profit to the more developed and better-organized economies, which is especially important to them in times of domestic economic downturn. When Germany set out to challenge England's monopoly in international trade at the end of the nineteenth century, it made a transition to "what amounts to a state-regulated foreign trade." From the outset, the two prime aspects were, first, the imposition of tariffs to limit imports and, second, the recourse to "dumping" made possible by the compensation of the exporting companies by the "rents" they derive from domestic cartel and monopoly conditions. Since the raw-material-rich importing countries and the competing trading economies can retaliate with comparable measures, the economic strategy takes on a political dimension, as state agencies draw on their power resources to inhibit such counters.

Neumann next shifts from varied trade to capital exports, which he calls "the decisive phenomenon in the stage of modern capitalism," especially when the burdens of a weak economy "cannot be fully thrown upon the large masses of the people because parliamentary democracy functions and trade unions operate." Interventionist political means are required to protect such investments. This rather modest restatement of the "imperialism" thesis of early twentieth-century socialist thought, as it applied before Nazi rule, yields to a much more forceful statement about the latter: "Germany's foreign trade [...] is foreign trade in name only. Foreign trade and currency manipulation now become predominantly the means of subjugating foreign countries" (329). Neumann emphasizes that this has nothing to do with "autarky," which is merely a pragmatic slogan for the Nazis to idealize wartime shortages and unrelated to the ideal projection under that name associated with some earlier nationalist ideologists. The war aim is the conquest of raw materials bases, markets and protected investment sites. "Germany will be driven to the conquest of the world market" (331). Even a completely Nazified European continent

will not suffice to meet the explosive expectations, as it will also not satisfy the social imperialist project that targets England and the United States.

It is a feature of this discussion, as is also true elsewhere in passing, that Neumann does not presume either that Nazi Germany will necessarily lose the war or that a peace settlement may not leave the regime (and some/many of its conquests) intact. Apart from a cautious assessment of the situation at the time of writing, after the invasion of Russia and before Pearl Harbor, Neumann is also writing to mobilize American commitment to the struggle, as is implicit, for example, in his criticism of the “western democracies” for having failed earlier to take up the economic contest by forestalling German economic domination of nations in Latin America, as well as elsewhere, which could have been done by taking up the surplus of weak nations that subsequently became vulnerable to German abusive manipulation of the credit involved in the essential sale of their surplus. Neumann’s concluding sentence in this section, in fact, appears to disregard National Socialism as a factor in the imperialist confrontations generated by the state of the world market:

It is the high productivity of the industrial apparatus, the pressure of foreign markets, and the need for satisfying the vital material needs of her masses that have driven Germany into a policy of conquest and will continue to drive her to still further expansion until she is defeated or has fulfilled her aim. (337)

Neumann has left the most difficult and politically consequential challenge for last. Given the congruence between capitalism and the emancipation of labor, the question arises what to make of the circumstance that National Socialism is “most sharply distinguished from democratic society by the greatest possible control of the labor market, with no rights for labor.” Neumann opens a space for a reply by recalling his habitual distinction between two phases of capitalism with their correlative senses of labor freedom and then by adding a third, minimalist sense of the concept to characterize what is remaining even in totalitarian Germany. First, then, there is the right of individual laborers to bargain with employers as legal equals, which characterizes the epoch of liberal capitalism, epitomized in the *Lex Chapelier* of the French Revolution. This formal freedom, however, disregarded the material reality of the employer’s dominance. Through the “triumph of trade unionism” after the First World War, then, the right is “fulfilled,” Neumann says. The labor market ceases to be free, but the laborers’ right to negotiate a contract becomes actual by its transfer to a collectivity with sufficient power to meet the employers on more nearly equal terms. If both of these senses of labor’s freedom are voided by National Socialist rule, the question is whether anything aligns the status of labor closely enough to the emancipation of labor to speak of capitalism. Neumann focuses on the sociological character of employment. He distinguishes the status of a worker who is employed for distinctive tasks to be performed during a specified time from the slave or servant, all of whose time is at the service of a master. This ultimate concept of the “work” done by labor excludes many modes of domination and, in Neumann’s view, still counts as the resort of labor that is “free” in an important sense and can presumably enter into the distinctive calculations of capitalism.

Somewhat surprisingly, Neumann evidently seeks to raise the importance of this last residual characterization by relativizing the importance of the second phase that it displaces. He cautions against exaggerating the importance of unions, first invoking the Communist denunciation of some or many of them as mere associations to protect a labor aristocracy and then asserting that their powers, while real, have been mostly defensive. The subsequent argument poses difficulties:

It is this aspect of autonomous labor-market control that National Socialism has destroyed. Yet it is no longer necessary under conditions of full employment. If the effective demand for labor far exceeds the supply, no defensive organizations are needed to prevent the fall in wages; what is needed rather is offensive unions fighting to adjust the wage scale to full capacity. It is the function of National Socialist policy to prevent such adjustment. (340)

Since Neumann does not even consistently grant the Weimar unions effectiveness in their defensive functions, this analysis somehow suggests that National Socialism destroyed the unions to keep them from doing what they had not shown a capacity to do, even leaving aside the fact that in 1933 there was no “full employment” to occasion the offensive actions in question. A political explanation for this forced argument can be inferred from the next stages of his analysis.

In contrast to his other topics in this chapter, where he gives a summary overview of the present-day design, Neumann leaves a description of the labor regime to some standard sources, which he cites, and limits himself to the “function” and “principles” of labor policy in two regards: the full utilization of manpower for the highest-priority tasks and the raising of individual productivity among workers. His pages on manpower briefly summarize the recruitment of women into the labor force as well as a sequence of measures to hold employees in essential occupations as well as a subsequent wave of regulations to provide for involuntary transfers—“brutally carried out, without regard to humanitarian considerations” (341)—and retraining of skilled workers.

While Neumann considers this function duly executed, notwithstanding the cost, he asserts that “it is questionable, and far from clear, whether the raising of the productivity of labor has been equally successful.” This is the context also in which Neumann thinks he can find the legacy of the struggle carried on earlier, more or less successfully by the organized labor movement. His admittedly speculative claim is that workers have engaged in successful “passive resistance” of a syndicalist kind—slowdowns and the like—although these incidents would have to be conducted in strictest secrecy. He thinks he finds a plausible case of gains won in this way earlier in the regime but then draws on certain parallels to infer a “new and much greater victory” from a sequence of ever more stringent “downward revision of wages, salaries, and labor conditions” at the outset of the war followed by dramatic reversals and improvements later in 1939. He concedes that the changes may have been influenced by the unexpectedly easy victories and economic gains of the “phony war” but insists, once more, that “they signify in my opinion a defeat of the regime and a victory of the working class.”

That concluding sentence indicates the urgency and difficulty of the discussion of labor for Neumann, given its apparent mass mobilization and incentivization by the

Nazi regime. There must continue to be a “working class” possessing both motives and resources for resistance—and perhaps more. Neumann is writing 10 years after his involvement with anti-Nazi labor organizations in the English and exile groupings and in the light of his recognition that such entities—as well as their variations on the Marxist statement of the question posed by the Nazi regime—no longer play a significant role in the 1940s. The question of “class struggle” has become moot. He must make as strong a case as he can, if only to keep the issue on the table.

From this critical theme of labor, Neumann turns to three summary questions about the efficiency, generating force and structure of the economic system. The efficiency question is unexpectedly approached by citing the accomplishments of Weimar in the self-formation of business in groups and chambers, as well as the cartels, and the high competence of the ministerial bureaucracy. Notwithstanding his earlier claims about labor’s resistance in the sphere of productivity, he loyally concludes that “credit must also be given—perhaps more than to any other factor—to the high training and skill of the German worker and the system of occupational training” (351). On the other hand, he asserts, “The contribution of the National Socialist party to the success of the war economy is nil. It has not [...] contributed a single ideology or organizational idea that was not fully developed under the Weimar Republic” (351). He follows a hypothetical medium-sized entrepreneur through the process of interaction with agencies to conduct or expand his business and concludes that this makes it “clear that the intertwining of business, self-governing agencies, and governmental agencies achieved [...] a higher amount of organizational efficiency.” There is no sign here of the “internal contradictions” of standard Marxist analysis.

Yet his answer to his second question, as to what holds the economic system together and moves it, is unconditional: it is profit, not patriotism or power. “But in a monopolistic system profits cannot be maintained and retained without totalitarian political power.” He asserts that such an economy is “hypersensitive to cyclical changes,” which can only averted through total “political power over money, credit, labor, and prices, if necessary,” while “democracy would endanger the fully monopolized system” (354). In contrast to such a threat, the distinctive aim of the National Socialist Party is such that it “cannot but protect the monopolistic system, which provides [...] the economic basis for political expansion” (354). The totalitarian control over the economy, in brief, appears harnessed to an overlap but not to an identity of interests. Neumann concludes, “It is the aggressive, imperialist, expansionist spirit of German big business unhampered by considerations for small competitors, for the middle classes, free from control by the banks, delivered from the pressure of the trade unions, which is the motivating force of the economic system” (354).

The structure of the economy, then, Neumann concludes from his own analysis, which he sees confirmed in a lengthy detailed treatment in a business publication, is a steered or controlled economy in harmony with the aims of the leading forces in private industry. Unexpectedly, Neumann poses question that “why such ‘planning,’ if we may use the word, has not been carried on under democratic conditions and by democratic methods?” (358) He cites failed efforts by labor unions and social democracy in Germany, the Labor Party in Belgium and the Popular Front in France, with partial success only in

the American New Deal, where the effort was underpinned by vast reserves. He explains, “Democratic planning failed because [it] must satisfy the needs of the large masses—and that is the very reason why democracy should take up planning” (359). The monopolists will not accept democratic planning as the way out of the economic crisis for a number of reasons, including the democratic support of consumer industries; the dynamic of mass achievements: one gain leads to further demands (“democratic automatism”); the need in a democracy to coordinate many interests, without the options of “combing out” unwanted businesses, reducing middle classes to proletariat or subjecting workers and, in sum, the strengthening of a state whose power could serve “to increase the welfare of the masses and cut down profits.”

Interestingly, Neumann reverts once again from his generalized answers to the special case of Germany, where, he says, there were “additional reasons” for the failure of democratic planning. His diagnosis contains nothing new, but his language is fierce. There is above all the “bankruptcy” of the Social Democratic Party and the labor movement, “who were motivated by cowardice, led by incompetent leaders, and who preferred abdication to a fight” (359–60). To this, Neumann adds the emergence of a reactionary wing in the Catholic party, and additional “weakening of the working classes” by the incompetent Communist Party, as well as the consistently antidemocratic disposition of bureaucracy, judiciary and army. And the evidence is clear, he asserts, that industrialists supported the National Socialists from the beginning. To this last point, Neumann adds the proviso that the industrialists did this despite “broken promises,” which he does not specify. It is nevertheless another notice of his thesis that the constituent elements in the regime pursue mutually adaptable but not identical interests. The only aim of the National Socialist coordination and organization of this planned order, Neumann concludes, is imperialist war, as Neumann claims to have been among the first to say. “This means that the automatism of free capitalism, precarious even under a democratic monopoly capitalism, has been severely restricted. But capitalism remains.”

There was no reason, Neumann maintains, for the National Socialists to have nationalized private property. They had a common interest in imperial expansion with big business, which also shared their hostility to Weimar democracy. Neumann summarizes,

National Socialism utilized the daring, the knowledge, the aggressiveness of the industrial leadership, while the industrial leadership utilized the anti-democracy, anti-liberalism, and anti-unionism of the National Socialist party, which had fully developed the techniques by which masses can be controlled and dominated. (361)

Somewhat scornfully, he adds that the bureaucracy joined the winners, as always, and the army got everything it wanted, for the first time in its history. This analysis leaves a final major question in two parts, Neumann concludes: the extent to which the four prime social actors are “one compact body” and whether “their rule [is] integrated within and accepted by the masses.” As is clear from these questions, Neumann does not accept the notion that the characterization of the regime as “totalitarian” renders these questions redundant.²⁸

Ordering the Classes

Neumann divides his treatment of his final large questions into a section on the “ruled class” and the “ruling classes.” As he had done in the preceding section on the “Totalitarian Monopoly Economy,” he opens his discussion overall with a critical examination of a thesis, which, if valid, would negate his chapter headings by rendering Marxist social theory obsolete. As in the case of “state capitalism,” his criticism centers on the writings of a fellow exile. In this instance, however, it is not a question of a fellow associate of the Institute, as it was when he implicitly challenged Frederick Pollock, but rather a leading figure in the New School group and Dean of the Graduate Faculty of Political and Social Science, Emil Lederer, whose last book was published posthumously in 1941. Lederer had been the most influential of the Marxistic proto-sociologists in Weimar, a protégé of both Weber brothers, Professor of Economics and Social Policy at Heidelberg and—briefly—at the University of Berlin and long-time managing editor of the *Archiv fuer Sozialwissenschaft und Sozialpolitik*, the foremost interdisciplinary journal in Germany. He was Karl Mannheim’s mentor, as well, and responsible for his appointment at Frankfurt. All this would make him a more obvious target for open criticism by Neumann than Pollock, whose views he had summarized without citation, except for a footnote at the end. Yet it is plausible that in this case too, Neumann has an influential Institute colleague in mind. In view of a certain closeness between Lederer’s key post-Marxist concept of “mass society” and a recurrent central focus on “mass” in the writings of Theodor Adorno—and the closely related differences between Neumann and Adorno in the design of the Institute’s proposal to the Rockefeller Foundation—it is not far-fetched to think of Neumann’s encounter with Lederer as animated, at least in part, by his unfinished business with Adorno. As was true in the case of “state capitalism,” the “mass society” thesis was both a categorical challenge to Neumann’s theoretical frame of reference and a construct supported by many descriptive details of the German regime so that his rebuttals were uncompromising in intent but not always steady in execution.

According to Neumann, Lederer characterizes the National Socialist regime as a “modern political system that rests on amorphous masses,” which “sweep the dictator into power and keep him there.” The masses are consequently prime actors and not the tools of a ruling class. Neumann recapitulates Lederer’s argument that masses are “the opposite of classes,” comprising a population “united solely by emotions,” susceptible to violent explosions of action when “integrated by a leader who can articulate their emotions.” Lederer continues, “The National Socialists build on this potential, especially through an aggressive foreign policy that exacerbates the chronic envy of people and their rage against the rich and successful,” culminating in foreign wars that prevent the reawakening of thinking and of articulation into social groups. “Masses make dictators, and dictators make masses the continuing basis of the state.” “National Socialism has completely destroyed the power of social groups,” Lederer asserts, “and has established a classless society.” Provocatively, he concludes, as quoted by Neumann, “That is why the Marxist theory of a classless society becomes so dangerous” (138).

Neumann's vehement response begins by stating only the theoretical consequences of Lederer's analysis for his own reading:

Were Lederer's analysis correct, our earlier discussion would be completely wrong. Social imperialism would then be not a device to ensnare the masses but an articulation of the spontaneous longing of the masses. Racism would not be the concern of small groups alone but would be deeply imbedded in the masses. Leadership adoration would be a genuine semi-religious phenomenon and not merely a device to prevent insight into the operation of the social-economic mechanism. Capitalism, finally, would be dead, since all particular groups have been destroyed and only leaders and masses remain. (366)

"Lederer is wrong, however," Neumann continues, above all because he misses the "key point" of the distinction between class structure and social differentiation. Neumann's summary alternative statement does not revert expressly to this distinction, except insofar as he may have the latter in mind when he describes "National Socialist social policy" as "strengthening the prevailing class character of German society" by atomizing all strata through the destruction of autonomous groups while imposing "reliable elites."

If we assume that Neumann saw no need to reiterate his case for the continued primacy of capitalism and its classes, relying on his economic analyses, the discussion would be over; but Neumann surprisingly returns vigorously to the theme of mass man and mass society, quite apart from any National Socialist policy. And he does so, first of all, by crediting the counterrevolutionary writers, de Maistre, Bonald and Donoso Cortes with identifying the beginnings of mass men. It would be a serious misreading to suppose that Neumann cites these reactionary figures to discredit the concept. He writes, rather,

Protestantism, and democracy, which they hated, bore the seeds of the emotionally motivated mass-man and would eventually give birth to the dictatorship of the sword. Mass democracy and monopoly capitalism have brought the seeds to fruition. They have imprisoned man in a network of semi-authoritarian organizations controlling his life from birth to death, and they have begun to transform culture into propaganda and saleable commodities. (367)

National Socialist policy does enter in:

National Socialism has annihilated every institution that under democratic conditions still preserves remnants of human spontaneity: the privacy of the individual and of the family, the trade union, the political party, the church, the free leisure organization. (367)

There are many concessions to Lederer's analysis in these two paragraphs, with the differences more a matter of degree than kind. Yet they lead to a flat assertion at some distance from the preceding: "National Socialism has not eliminated class relations; on the contrary, it has deepened and solidified the antagonisms."

In the next step of his analysis, Neumann further draws on developments that he depicts as being well under way before the rise of National Socialism to power. He asserts that "National Socialism must necessarily carry to an extreme the one process that characterizes the structure of modern society, bureaucratization." This is not a topic

in his critique of Lederer, but, like the topics of “state capitalism” and “mass society,” it deals with matters with regard to which Neumann appears to deviate from the consensus of the Institute. Having dismissed the notion that bureaucratization has reference to nothing but the expansion of the public service, Neumann writes,

Bureaucratization, correctly understood, is a process operating in both public and private spheres, in the state as well as in society. It means that human relations lose their directness and become mediated relations in which third parties, public or private functionaries seated more or less securely in power, authoritatively prescribe the behaviour of man. (368–69)

As far as the Institute archives show, this is the only passage—and indeed the only theme—with regard to which Neumann addresses “a scientific question” to Max Horkheimer during the composition of *Behemoth*.²⁹ He remarks, “It’s deliberately sociological. What do you think?” Horkheimer’s reply is not at all perfunctory. Important issues appear to be at stake, but they are not the same for the two authors, as it seems, perhaps because the passage was only an excerpt—but perhaps also because Horkheimer is especially distrustful of Neumann’s understanding of political rationality. Horkheimer opens with approval of Neumann’s introduction of the concept of “mediation,” which precludes any notion of the bureaucracy as a class, although he also reserves his judgment because Neumann does not provide the context of his discussion, and, in Horkheimer’s view, sociological propositions are neither true nor false when taken alone. Mocking Hegelian language, Horkheimer then asserts that the “world spirit” effectuates itself no less when its mechanisms are transferred from the system of money and contracts to no less alienated bureaucratic commands. Such objective processes “have all the less to do with rational formation of will or spontaneity the more they evoke the appearance of rationality and adherence to a plan.” He likens opinions to the contrary to claims about “the end of ideology.” Some of this is different, at least in tone, from the tolerance that Horkheimer had urged on Neumann in responding to Pollock’s “state capitalism” thesis.

Overlooking Neumann’s narrowly descriptive use of the key term, Horkheimer challenges Neumann’s remark about the supposedly “authoritative” character of the bureaucrats’ orders, denying that bureaucrats are any the less under compulsion than the ruled. In a “genuine bureaucratic society,” Horkheimer asserts, command and obedience can both be directly “derived from the forces of production.” In present-day Germany, however, he continues, the actions of the bureaucracy are to be explained by the discrepancy between social organization and relations of production. In a somewhat mysterious passage, Horkheimer writes that “though the ruling class retains authority, it no longer serves as such. The bureaucracy is accordingly nothing more than the expression of this discrepancy: the alienated power of the class condemned by history.” It is “no longer rooted in an adequate class order.” In contrast to his own account and in conclusion, Horkheimer asserts that Neumann’s statements about the bureaucracy prescribing behavior are too “subjectivist,” by which he presumably means that Neumann imputes too much autonomous power to bureaucrats.

Although Neumann’s discussion was directed to the form rather than to the power of bureaucracy, the underlying issue between him and Horkheimer was precisely in that

distinction. Put differently, the question was whether the aspect of things that Max Weber had called formal rationality can have any bearing, however conditional, on material or substantive rationality. Neumann's judgment on that point is manifest in the "ethical" importance that he almost always applies to the rule of law as well as in the actual expansion of his consideration of bureaucracy in the present place, in the sequel that he did not submit to Horkheimer for his "scientific" advice. Neumann in fact continues,

It is a highly ambivalent process, progressive as well as reactionary. The growth of bureaucracy in public life is not necessarily incompatible with democracy if the aims of the democracy are not limited to the preservation of individual rights, but also include the furtherance of certain social goals. Even in the social sphere the growth of private organizations is not entirely retrogressive. It brings some kind of order into an anarchic society and thereby rationalizes human relations that would otherwise be irrational and accidental. (368)

Neumann proceeds with a series of illustrations, combining a motif of denunciation of the "mediation and depersonalization" entailed in bureaucratization with acceptance of its apparent ineluctability in a society no longer liberal and in a regime of collective action. His examples include critical comments on the bureaucratic organization of music in radio programming—an example hard to imagine without Adorno's involvement in these studies—but also measured comments on the role of bureaucratic organization in labor and in democratic politics. He writes,

Civil liberties lose many of the functions they had in a liberal society. Even the exercise of civil rights tends more and more to be mediated by private organizations. Whether it is a problem of defence in a political trial or protection of the rights of labor or the fight against unjust taxation, the average man, lacking sufficient means, has no other choice but to entrust his rights to some organization. Under democratic conditions, such mediation does not destroy his rights, as a rule, since the individual still has a choice between competing organizations. (368–69)

It is only when Neumann comes to the denial of this choice in totalitarian society that he reverts to categorical denunciation of the process:

What National Socialism has done is to transform into authoritarian bodies the private organizations that in a democracy still give the individual an opportunity for spontaneous activity. Bureaucratization is the complete depersonalization of human relations. They become abstract and anonymous. (369)

As noted, Horkheimer's critique of Neumann's initial formulation of bureaucratization, although it rests in some measure on a misunderstanding, points to wider theoretical differences between them, as they emerge, however discreetly, around *Behemoth*. About a year after the correspondence we have been considering, Horkheimer drafts a letter to Neumann, responding to the full text of the book. He opens with regrets that the geographical distance between them precludes the extensive discussion in the Institute seminar that the manuscript merits. He will limit himself to some objections, he

writes, leaving the “obvious merits” of the work aside. The first objection refers to what Horkheimer believes to be an erroneous characterization of the fatal actions taken by Weimar administrations as “mistakes,” which “gives the Weimar heroes credit for having been willing to do things better whereas they actually were tools of the disaster to come, both consciously and unconsciously.”³⁰ This, he observes, is implicit in “our conviction that fascism is the outcome of the basic social trends in Germany.” In the summary statement of his reservations, Horkheimer averts to this objection in the more general terms of “the optimism which you show [...] with regard to the question of better administration,” a formulation that brings the statement closer to the issues about formal rationality that arise in the earlier commentary on administration. Horkheimer raises only four more objections. Among the “deeper lying issues of society itself,” Horkheimer reverts to the question between them about “state capitalism,” although his English formulation is not perfectly clear and his objection is included under the heading of Neumann’s supposed excessive “optimism,” in this instance as to “an inherent and insoluble antagonism of state capitalism.” To this Horkheimer adds, as another example of undue optimism, Neumann’s conviction that the “split personality” induced by National Socialism cannot endure. Pollock’s “state capitalism,” in this context, is evidently being defended here not because it suggests that the problems of society can be managed short of revolution, as Pollock and other proponents seemed to believe, but because it accurately shows how the crisis symptomized by National Socialism can continue without arriving at an inner “contradiction” such that a new revolutionary stage must ensue.³¹

Editorial markings on the draft of Horkheimer’s letter indicate that he consulted Adorno about it, but, in the end, Horkheimer never sent Neumann these critical comments. Instead, he extracted the remarks about Neumann’s undue optimism that the “split personality” induced by Nazism was self-contradictory and unsustainable but put them in the context of a practical discussion they were having about a memo on psychological warfare that Neumann was preparing for a government agency. With Neumann in Washington, it would appear that relations between them had become more diplomatic.

Divided Rule

Neumann’s theoretically weighted preliminary overview of the “ruling class” is followed by a more descriptive account of what he takes to be its separable primary bureaucracies and of the unsettled dynamic relations within and among them. The details are too specialized for summary here. The major overall theme is that it is far from the case that Hitler’s party has successfully subjugated all the elements of the ruling class. Neumann begins with the state bureaucracy, which remains as much stratified as ever; and, at the top levels, little changed in its ethos, even where—as in the economic and labor ministries—the leading officials have been replaced:

The ministerial bureaucracy is a closed caste [...] The upper civil servant [...] has the successful businessman’s cynicism, except that administrative efficiency takes the place of profit as the highest goal [...] Essentially, of course, it is an anti-democratic and authoritarian outlook. It values success more than right or social justice. Power is revered because

it guarantees efficiency [...] Their great desire is to [...] be promoted as rapidly as possible. They are neither pro- nor anti-National Socialist, but pro-ministerial bureaucracy. As in the past, they march with the strongest army—from monarchy through republic to National Socialism. Nor will they hesitate to abandon the Leader if and when the present regime shows signs of weakness. (372–73)

Almost in passing, Neumann says, “The ministerial bureaucracy has never betrayed industrial capitalism,” citing above all the rewards its members receive after retirement for their service on various self-regulatory boards of industry. At the same time, he also notes in rounding out this topic that this bureaucracy “must compete with other bureaucracies of the party, the armed forces, and of industry” (373).

Neumann accordingly turns next to the National Socialist Party, which he describes as “before all else a huge bureaucratic machine.” He sketches its hierarchical order and names the leading figures on a table, noting their birth dates, schooling, service in the First War, date of party membership, professions or occupations and present range of positions. In drawing a composite picture of the district leaders, he emphasizes the number of elementary school teachers who had served as officers in the war, perhaps invoking a stereotype. Notwithstanding the emphasis on the “leadership principle,” in his view, “the party can hardly be considered a closed, well-integrated group [...] The cabals and intrigues inevitably produced in a closed, hierarchic group centering around a leader prevents the homogeneity that is the prerequisite of popular law.” In discussing the relations between the party and government bureaucracy, Neumann distinguishes between the upper echelons, where it is a question of influence through liaison or, in a few cases, transfer of state functions to party offices, and the great mass of civil servants, including employees in state-run services, where “the submergence of the civil service in the party is in full swing” (382). On the one hand, the party organizations at this level demonstratively disregard the internal civil service hierarchy and exert great influence over promotions and the like, enforcing the political support of staff, but on the other, according to Neumann, the hierarchical organization of the bureaucratic work remains unaltered.

If the interface between the power of state and party bureaucracies cannot be clearly demarcated, according to Neumann, the situation is even more problematic with regard to relations between the military bureaucracy and the party. “One guess,” Neumann says, “is as good as the other.” Still, he thinks that he can say that the army “has kept itself organizationally free from party interference.” While “its present leadership fully agrees with National Socialism in so far as the restoration of Germany to its 1914 frontiers and reacquisition of the colonies are concerned,” it has long-standing closer ties to the industrial and agrarian leadership that limits its commitment to the National Socialist longer-term program. Nevertheless, Neumann takes the army’s acceptance of—and perhaps complicity in—the killing of two leading officers in the Purge of June 1934 as a clear sign that the “more decent characteristics of feudalism, the longing for culture [...] for comradeship and faith,” that had marked the military have been displaced by the “technician, interested in keeping the army machine running.” Interestingly, Neumann

also notes that “the army [...] betrayed the church and religiosity once the cornerstone upon which its spiritual power rested.” But even if “the Leader has been substituted for God” in the military oath, there are limits: party activity of military members is forbidden, and the resistance to the military ambitions of Himmler and the SS remains strong. Neumann concludes the discussion as he started, with doubt that there is an ultimate identity of interests beyond the averting of defeat: “The army is out to preserve its existence, its social and political status, and it will not willingly surrender this position whatever course the war may take” (385).³²

Even more important for Neumann than the question whether state or army has been fully integrated within the organization of the National Socialist Party is the state and tendency of “industrial leadership.” Neumann’s use of that functional term is dictated by his recognition that the organization of the most important sectors of the economy has seen an increasing role for managers at key places in bureaucratized structures as well as a continuing role of private capitalists but also by his insistence that this complexity does not yield “the monopoly of ‘managers’”:

An economic system may be bureaucratic; it may be integrated into a network of organizations, of cartels, groups, and chambers controlled by permanent officials; these organizations may vie with each other for control; the modern corporation may be defined as an hierarchical structure in itself—and private capitalism still remains. [...] [P]rivate capitalism and bureaucratization of the economy [...] actually complement each other at a certain stage in the development of monopoly capitalism. (385)

Bureaucratization in the economic sphere, Neumann asserts, does “destroy the direct relation between property and the surrounding world [...] [but it] does not destroy the institution of private property” (386). An unexpected twist in Neumann’s commentary on this situation is that he takes it to show how wrong it is to call National Socialism a feudal system, since “the essence of feudalism, sociologically speaking, is the directness of human relations expressed without mediation by a market.” A footnote explains this unexpected reference, inasmuch as Neumann confesses to having at some time made this error. His principal concern in the discussion, however, is to situate the economic regime within the processes of multisided bureaucratization:

As monopolization increases and as business seeks more and more control over the state, it must develop more highly organized forms of political pressure. In turn, the more the state interferes in the economic life, the faster will the pressure groups [*sic*] grow [...] The utmost of formal rationality is reached. Human relations are now fully abstract and anonymous. This depersonalization [...] is responsible for the false interpretation of bureaucratization of the economy as the disappearance of private ownership. (386)

Having said that, Neumann nevertheless applies here his earlier method of interpreting the tendencies of organizations by a consideration of the backgrounds and careerist prospects of the individuals who lead them. He focuses on the leaders in the self-organization of industries and attempts to show that those who are not themselves

capitalists or managers recognized as equivalent to capitalists have every reason to ingratiate themselves with the capitalist leaders with whom they work:

The trade association official or the cartel secretary has one ambition—to transfer to an industrial enterprise, with a higher salary and an improved social status. With that objective constantly before him, he is a willing tool of the most powerful and wealthy members of the organization. (387)

In the national economic chambers, separated according to industry, the leadership is most often directly in the hands of persons who also occupy dominant positions in the industry involved. That the provincial chambers are more likely to be directed by lesser economic figures, who are also party members and reserve officers, does not revise Neumann's overall assessment that "by the device of self-government in industry, the whole economy has been incorporated into the rule of monopolistic producers, not only factually but also legally" (392).

If the National Socialist appeal to small and medium business proves, in Neumann's judgment, to be largely a matter of deceptive ideology, much the same is true of the supposed program of elevating the small farmer. A brief review of the failed Weimar policy in this sphere brings Neumann to a situation where the large traditional proprietors have been restored after the damages inflicted by the Depression and are protected in their wealth and possessions by new measures of the National Socialist regime, while the promises to the great majority of farmers are in practice transmuted into the creation of an elite among the independent peasants, largely at the cost of the small and poor farmers. "Two anachronisms are thereby preserved," Neumann concludes: "the Junker class and the hereditary peasantry" (396).

Neumann begins the summary of his findings about the ruling class with a sweeping statement that "nothing holds [these heterogeneous] groups together but the reign of terror and their fear lest the collapse of the regime destroy them all" (396), but he modifies this judgment by means of a return to the case of the Continental Oil Company that he had already mentioned earlier, which he characterizes as an attempt "to merge the four hierarchical groups into one integrated elite [...] which might become the model of a new ruling class composed of the party, the army, the bureaucracy, and industry." His point is, however, that this organization brings together nothing but the management of captured undertakings, where all groups can readily profit, but that in the event of failure in the larger campaign of conquest the limited and diverse overlapping objectives do not suffice to override the divergent interests and designs: "Nothing remains but profits, power, prestige, and above all, fear. Devoid of any common loyalty [...] the ruling group will fall apart as soon as the miracle-producing Leader meets a worthy opponent" (398).

Even this disparagement of the boasted experiment to coordinate the four prime groups does not bring the question of the ruling class to an altogether satisfactory ending for Neumann. Given the hereditary character of much of the economic leadership, he takes quite seriously the party's leading role in renewing the political leadership through the mandatory universal membership in the Hitler Youth and the provision of opportunities, given a decline in elite formation within universities, through specialized courses

and leadership opportunities to young people from the middle classes “and even sections of the working class.” He closes the discussion with a summary of the class composition of the Nazi party, noting that workers form one-third and salaried employees one-fifth. Recording the doubling of civil servants as a proportion of party membership in the first two years of National Socialist rule, he ends the whole discussion of the ruling class with a bitter remark—“the bureaucracy marches with the victors” (399). This rather anti-climactic conclusion of a section that does, after all, undermine so many National Socialist claims would appear to be linked to his earlier observation that there is no more loyalty to the state “for it has been abolished ideologically and even to a certain extent in reality,” which must be taken in turn in the context of Neumann’s “Weberian”—or is it “Hegelian”?—commitment to the state as at least a minimal prerequisite to rational social existence and to the public bureaucracy as well as the legal order as integral to its constitution.

No Law: Domination Through Organization, Isolation and Harm

The question of the legal order will occupy the second half of Neumann’s chapter on “The Ruled Classes,” but first he inquires into the principles and practices of social organization applied to the management of the ruled, as exemplified by the working class. Whatever may be the case with regard to the uncertain and provisional centralized control of elite groups, there is little question, in Neumann’s judgment, that the regime of party domination in this sphere is securely established. There are no references here to the organized worker slowdowns he mentions earlier or to other forms or threats of resistance. He identifies five distinctive principles of National Socialist social organization.

The contrast model by which he defines the first is a rather surprisingly confident account of the “pluralistic principle of competition among social organizations” that informs democratic societies and a grounding of the various units in “the natural differences modern society produces: class, occupation, ancestry, religion, cultural interests, and so forth.” Conflictual behavior is to be expected, but this can be “allowed to exist as long as the society can count upon the good will of the leaders and rank and file of the social organizations, upon their readiness to make adjustments and compromises” (400). Fundamental is that “the establishment of a social equilibrium requires that the various organizations adjust their conflicting interests by agreements.” Since “National Socialism has no faith in society and particularly not in its good will, [...] [it] takes all organizations under its wing and turns them into official administrative agencies. The pluralistic principle is replaced by a monistic, total, authoritarian organization.” Neumann’s profession of faith in pluralism in this passage, notably its linkage to multiple “natural” differences in society, is a considerable distance removed from his critical assessments of the Weimar regime and of the policies of the labor movement to which he returns later in the same chapter, and it must be understood as a part of a summary bill of indictment addressed to a wider audience, as he nears the end of his book.

This character of the present discussion seems also to lead Neumann to some uncharacteristic risks in his exposition of the second National Socialist organizational principle, “the atomization of the individual.” He is speaking of a deliberate policy of

breaking down institutions and practices of solidarity but chooses as his first examples two developments that in other contexts he might well have welcomed as progressive. “The treatment of illegitimacy and procuring,” he writes, “reveals the complete collapse of traditional values”—in these instances, of the family. The labor law connection of the first ruling makes Neumann’s citation of it as a terrible example especially strange:

The birth of illegitimate children is encouraged, despite the fact that the sacredness of the family is supposed to be the cornerstone of National Socialism’s “domestic philosophy.” Thus when the federal supreme labor court had to decide whether an employer could dismiss an unmarried pregnant woman without notice, it ruled in the negative on the ground that such pregnancy need no longer be regarded as *ipso facto* “immoral and reproachable.” (401)

Neumann’s second example similarly cites a court ruling he might otherwise have welcomed:

[It] is perhaps even more illustrative not only of the destruction of family life but also of the prostitution of the judiciary. Pre-National Socialist courts had generally ruled that toleration by the future parents-in-law of sexual intercourse between an engaged couple was punishable as procuring. Under pressure from the regime, particularly in the *Schwarze Korps*, organ of the S.S., the courts have reversed themselves. (401)

Neumann evidently recognizes the problematic character of these examples and expressly notes in similar language in both instances that “this attitude [...] is not part of a progressive social and eugenic policy. On the contrary, it is thoroughly hypocritical, an imperialistic attitude accompanying the ideological glorification of the family.”³³

Neumann’s further development of the theme of atomization refers to more commonly recognized features of the regime. He cites regulations that prohibit mutual discussion among workers and between workers and their families about their work as well as church interference in “secular problems.” Charity and leisure time are under unified control. And the official organizations that exist are vast in size so that individuals count for nothing. In a return to his earlier normative use of the traditional concept, he writes, “The natural structure of society is dissolved and replaced by an abstract ‘people’s community,’ which hides the complete depersonalization of human relations and the isolation of man from man.”³⁴ Neumann goes further, borrowing a major theme from Erich Fromm, to claim that the organizational design aims to “create a uniformly sado-masochistic character, [...] who is driven by this very fact into a collective body, where he shares in the power and glory of the medium of which he has become a part.” It is important to follow Neumann closely, as he tries to understand the absence of working-class resistance and to project future possibilities. The eclecticism of some of these passages is not simply a function of the propagandistic component of his effort—the imperative to contribute to the “psychological warfare” that is the subject of the book’s very last paragraph—but also a sign of Neumann’s ultimate perplexity.

At the next step of his analysis, he complicates—or compromises—his earlier characterization of the leadership of social forces by the four bureaucracies that comprise the heterogeneous ruling class by postulating an organizational structure comprised of

multiple elites “carve(d) out of the masses,” rewarded by privileges, and hierarchically clustered to “act as the spearhead of the regime within the amorphous mass” or, if necessary, to be played off against one another. He applies this principle not only to the range from the inclusion of all Germans in a “racial” elite to the elite within the SS elite but, in conclusion—and in a return to the questions that will dominate much of the chapter—also to the elevation of “one small body of skilled workers [...] raised above the level of the unskilled and semi-skilled.” “None of these stratifications,” he concludes, in a manner unexpected from a Socialist intellectual, “are the natural outcome of a society based on division of labor. They are the product of a deliberate policy designed to strengthen the hold of the leadership over the masses.” Neumann complements this mechanism with the two features of National Socialist domination that are most commonly singled out—the pervasiveness of propaganda “to prevent the masses from thinking” and, ultimately, the resort to violence. Neumann’s view of the former is somewhat distinctive in that he singles out the “transience of the slogans.” As for the latter, which he also refers to as “terror,” he reverses the impression created by listing it, as it were, as last resort, by designating it as “the very basis upon which the society rests,” and remarking insightfully that “violence not only terrorizes but attracts.”

As noted earlier, and for reasons implicit in the study as a whole, Neumann limits his inquiry into the application of these five principles of rule over the ruled classes to the working class. His comparatively exhaustive 25-page treatment of this topic and its historical setting also represents the reworking of analyses and arguments that had occupied him from the beginning of his exile and whose central importance was a topic of continuous disagreement between Neumann and the core of the Institute group, most recently in the development of their proposals to the Rockefeller Foundation. In fact, the opening pages in this section of *Behemoth* largely follow the outline laid out in Neumann’s 1940 segment of the Rockefeller Foundation proposal as well as the functional and historical sketches in Neumann’s 1936 pamphlet on labor unions. We shall thus limit ourselves essentially to recalling the outline of this scheme.

Neumann opens with his familiar account of property as a source of power over workers in the plant, the enterprise, the labor market, the commodity market and the state, followed by a formal statement of the corresponding countervailing functions of trade unions in the attempt “to replace the employer’s dictatorial power by a democratic power in which the workers too shall share.” Neumann distinguishes “friendly society” mutual aid, marketing through collective bargaining and political pressure as the characteristic three trade union modes of action. After these definitional generalizations, Neumann undertakes to review the four stages into which he divides the history of relations between the unions and the state, following the scheme that he had laid out in his 1934 Trade Union pamphlet. In the present context, however, he offers a schematic treatment with various historical examples only for the periods of prohibition and tolerance, with the period he’d earlier labeled “recognition” and now identifies with “the triumph of democracy” serving as a segue to a historical overview of the distinctive project of the German trade union movement during the Weimar years, and its eventual failure. He never actually speaks of the fascist epoch as the “fourth” stage but moves directly to an account of the social organization of labor under Nazi rule. Much of the material

regarding the first and second stages is essentially the same as in earlier versions of this account, but his characterization of the German paradigm for the third stage opens with a much more ambitious generalization:

In the pluralistic collectivism of Weimar, the trade unions played the decisive role. More than the political parties, they were the bearers of the new form of social organization, the bridge between the state bureaucracy and the people, the agency for developing a political democracy into a social democracy. (406)

While most of his retrospective views portrayed a kind of equilibrium between property and labor, embodied in a contract of compromise, he now frames the arrangements in the context of a dynamic project to resist if not to displace the power of property in its five spheres of control. Within the plant, accordingly, he sees the establishment of works councils mandated by a law of 1920 as a constitutionalizing of the internal regulatory order, most successfully in the sphere of legislation. During the Weimar years, Neumann had been cautious about these councils, fearing the ability of employers to play them off against the labor unions, but now he emphasizes the extent to which they served as “the elongated arm” of the unions rather than their potential competitors. In this capacity, as well, they supervised the execution of the collective agreement and other protective measures. At the same time, neither the works councils nor the labor unions gained much leverage over either the managerial strategies of the enterprises or over the powers exercised by owners in the commodity market.

Neumann’s characterization of what he now calls “collectivist democracy” in Weimar Germany, a convergent consideration of the interplay between the labor movement in the labor market and the state, appears more distanced and less (self-) condemnatory than his many earlier reviews, more prepared to acknowledge the counterpowers, contradictions and dilemmas that undermined the positions won and the progressive trends initiated by labor. “The most important influence of the unions,” Neumann writes, “was in the labor market.” Neumann opens with the triumph of the collective agreement, now given “the force of objective law,” and not rarely strengthened by ministerial rulings that made their terms binding even on employers in the economic sector at issue whose workers were not unionized. In context, he presents this as supplemented in turn not only by mandatory arbitrations by state agencies where conflicts could not be resolved but also by the scheme of unemployment benefits conjointly managed by labor union, who were its originators, and state agencies as well as by comprehensive health, disability and old-age insurance. The role of the state in support of these labor market achievements clearly connects with the key role of labor unions in the Social Democratic Party as well as the parts played by some unions in the Christian Center Party and the Democratic Party. Neumann concludes this account with a report on the centrality of union representatives in the judicial processes within the newly founded labor courts. Yet his generally positive assessments of the labor project in Weimar could not of course end on a note of triumph:

It must be said in conclusion that this vast system of collectivist democracy was never carried through completely. The constitution promised it, but the continued and growing political power of reaction blocked fulfillment of the promise. The Weimar Republic, a democracy of

the Social Democratic party and trade unions, did achieve two things. It won for the working man a comparatively high cultural level and it had begun to give him a new political and social status. (409)

This summary statement hardly comprehends the contradictory trends that Neumann holds responsible for the outcome. First, he cites the monopolistic transformation of capitalism, with emphasis not only on the increased political power of the controlling actors but also on the occupational reorganization attendant on the expansion of clerical and organizational tasks in these huge enterprises in balance with a steady decline of industrial workers, displaced by massive investments in technical labor-saving devices, a shift in the occupational makeup fostered also by key achievements of labor:

Social legislation facilitated the trend towards the concentration of capital, with all that it brought in its train. A pattern of high wages, short hours, and good working conditions places the heaviest financial burden on medium and small-scale undertakings. Large-scale enterprises escape because they use relatively little labor and much machinery. Every enforced rise in wages and every increased expenditure imposed by the demands of social legislation forced the producer to save elsewhere. The “saving” usually took the form of labor-saving devices. (410)

The unions mistakenly welcomed these developments, Neumann contends, citing a complex calculation on a concomitant expansion of employment in capital-goods production rather than the supposed identification of the developments with progress toward socialism that he’d elsewhere identified as the source of the misjudgment. In the event, such new employment as became available came in occupations and kinds of workers historically resistant to unionization—such as the unskilled and women workers—or those associated on terms expressly distant from the political and social aims of organized labor:

The salaried and professional employee did not want to “be reduced to the level of the masses.” He fought to retain his tenuous middle-class status and his privileges, and he succeeded [...] No party dared oppose their demands nor those of the minor government officials, whose henchmen were present in every political faction. The attitude of capital was simple—divide to rule; grant privileges to a small group at the expense of the larger. The “new middle class” thus became the stronghold of the National Socialists. (411)

Unions, in their turn, became ever more dependent on the state, although the increased economic activities by state agencies multiplied the occasions when workers confronted the state as employer and although the increasing role of the state in the historic spheres of labor’s labor market activities called the need for unionization into question among blocs of workers. More generally, Neumann maintained, “A collectivist democracy [...] binds the trade unions and the state in a closer relation. Though the unions remain independent and free, their close contact with the state leads them to develop a psychological attitude of dependence that discourages strikes.” As economic conditions worsened and as the alliances centered on monopolistic capitalism gained in strength, both the union-dominated labor party as well as the unions themselves “had

become bureaucratic bodies tied to the state by innumerable bonds [...] [and accordingly] lost their freedom of action.” Neumann concludes,

The pluralistic social system of the Weimar Republic had broken down completely by 1932. No organization could fulfill its aims. The social automatism no longer functioned. The spontaneity of the working classes had been sacrificed to bureaucratic organizations, incapable of fulfilling their promise to realize the freedom of each by pooling individual rights into collective organizations. National Socialism grew in this seed-bed. (413)

Neumann’s shift in terminology, from Weimar as “a democracy of the Social Democratic party and trade unions” to Weimar as theater of a failed pluralistic “social automatism,” suggests some of the fundamental issues about the Weimar experiment that ultimately remained unresolved for him.

When it comes to the trade-union leadership at the Nazi seizure of power, in any case, Neumann’s condemnation is unconditional. They agreed to surrender their offices and to accept National Socialist suzerainty over a grouping of all unions in exchange for the maintenance of their organizations as politically neutral entities, an agreement symbolically manifested by their participation in a May Day celebration staged by the National Socialists. Without any reference to the precedent of the union movement’s feints during the years of Bismarck’s anti-Socialist campaign, Neumann writes,

The betrayal of a decade-old tradition in an attempt to save the union organizations from complete destruction was more than just cowardice. It was a complete failure to appreciate the real character of National Socialism, and it opened the eyes of the National Socialists. (414)

Neumann contends that this revealed to the National Socialist leadership that they did not have to risk reliance on their own unions in the alliance originally planned. On May 2, they raided and wrecked all free union offices, arresting leaders, and they founded a new all-encompassing labor organization under the control of the party’s head. Neumann asserts,

It took exactly thirty minutes for the huge trade-union structure to collapse. There was no resistance; no general strike, not even a demonstration of any significance. What further proof is needed that the German trade-union organizations had outlived their usefulness? They had become machines without enthusiasm or flexibility. They no longer believed in themselves. (414)

Notwithstanding this judgment of workers’ organizations, Neumann sees the motivation for a series of organizational adjustments in the Nazis’ continued uneasiness about the potential of resistance from any grouping that brought workers together in coherent groupings, even if they were patterned on the fascist corporatist designs. “The reasons seem to be,” Neumann writes, “that the German working class is far more numerous and highly trained than the Italian, and, though not so militant as some groups in the Italian labor movement, far less amenable to authoritarian control.” “After the one false start,” Neumann continues, “the German Labor Front was deliberately planned to destroy the

natural differentiations created by the division of labor.” He outlines the design of an organization that is subdivided at the administrative level according to occupational and industrial specializations, but indiscriminately assembled at the level of membership, with no representation in any part of the decision-making processes:

That is how much the regime fears that articulation along even occupational lines might lead to opposition [...] The German worker and salaried employee alone of all the sections of the population have no organization built on the natural differences and similarities of work and occupation. The Labor Front has driven the process of bureaucratization to its maximum. Not only the relations between the enterprise and the worker, but even the relations among the workers themselves are now mediated by an autocratic bureaucracy. (418–19)

If Neumann retained any hope at this time for workers’ action against the National Socialist regime, given his condemnation of both the German unions and the party organizations, it would have had a syndicalist coloring, and its plausibility would have been inferred from the preemptive actions of the regime alone. The singular importance to Neumann of this complex of issues is manifest from his rather detailed treatment in the following pages of labor law as an instrument of control over the labor force, the manipulative appropriation of workers’ leisure and training and “wages and incomes as means of mass domination.” Neumann begins the discussion of labor law with a dismissive treatment of the attempt to deny the basis of labor relations in the individual contract of employment. In line with his general point of departure in the liberal legal order, he asserts that such an agreement is “a rational instrument dividing labor from leisure and clearly limiting the power of the employer in space, time, and function,” notwithstanding the fact that it also “hides the fact that the employee is subject to the power of the employer.” (419) The National Socialist labor lawyers propose in its place a number of variants of the general ideological thesis that workers and employers are joined in a “plant community” founded on faith and patterned on a mutual relationship as in the “Germanic” model of leader and followers engaged in a common venture. As a practical matter, Neumann asserts, the lawyers cannot actually dispense with the individual contract for comprehending most issues, but the ideology is not without consequences.

Neumann rehearses the story of the precedent during the Weimar years, when the notion of a “plant community” was conjured up by judges in order to exempt employers from the obligation under the civil code to pay wages when an employer is unable to supply work to his employees because of some external conditions, with the courts asserting that no such obligation existed if the condition involved a strike anywhere in the operation or its supply chain, on the premise that the employees are all joined in a community by the works councils and must share responsibility for such disturbances. Neumann’s opposition to this doctrine during the Weimar years was by no means the common response among the labor movement’s lawyers, since some saw it as a promising new recognition of workers’ collective force despite the disadvantageous consequences of the occasion under which the doctrine was proclaimed.³⁵ Neumann recalls his mocking responses at the time that such community was never recognized when it came to the distribution of profits. “The community ideology in labor relations,” he concludes, “is

one of the worst and one of the most significant of the heritages from the Republic," he writes. That Neumann recalls this precedent in the present discussion has to do with his persistent search for factors undermining the labor movement during its period of greatest strength.

In the National Socialist epoch, in any case, the ideology expressly underlines the powers of the "leader of the plant" and the subjection of the "followers," given the obligation of the former to "look after the welfare of the followers." Neumann notes that the latter obligation already existed under the earlier regime, grounded on the recognition that the employment contract was a power contract and that such a contract entails duties in matters of health and safety for the proprietor of the means of production, and he denies that the ideological reformulation has ever improved this aspect of the relationship, while asserting that the dissipation of the contractual bond has destroyed the rationality circumscribing employment under liberal law. "In sum," Neumann concludes, "the community and leadership theory in labor relations uses a medieval terminology to conceal the complete surrender of the rights of the workers by the destruction of the rationality of the individual labor contract." His emphasis here is on the involuntary displacement and relocation of workers, unhampered by the terms of a contract that sets limits. Neumann clearly assesses these measures not simply from the standpoint of the resources they put at the disposal of the employers and the state but also from the isolation and disorientation of the workers.

The notion of this potential collective resistance having to be systematically averted holds together the somewhat puzzling next section of his analysis. Neumann begins with an account of the employer- and party-dominated "councils of confidence" that have taken the place of the freely elected works councils of the Weimar years. Neumann continues,

The almost complete control of the Labor Front (assisted by the plant troops) and the employer over the composition of the "council of confidence" would seem to guarantee against their becoming centres of opposition. In many cases, however, the councils were apparently dominated by old trade unionists and did become spear-heads of opposition. National Socialism has not been able to conquer the manual worker or even the entire group of the salaried employees. (423)

This assessment is followed by an excursus on the makeup of the elected works councils during the last Weimar years, followed by a rather improvised breakdown of the distribution of votes in the last parliamentary elections, to show that workers overwhelmingly rejected the National Socialists when given a choice. Neumann infers the continuation of these preferences—in some important measure, at least—from the fact that there had not been any new elections to the councils of confidence since 1936, notwithstanding the rigid controls that had been placed on candidacies in the preceding period.

Neumann assigns these Nazi measures, together with the harsh penalties for anyone thought to be divulging information about their work or products, to "the process of isolating the worker and terrorizing him." Neumann concludes,

We must come to the conclusion that community theory, plant leadership, councils of confidence, Labor Front, and plant troops have but one function: they are devices for the

manipulation of the working classes, for the establishment of an authoritarian control, for the destruction of the natural differences created by work, training, and occupation, for the isolation of each individual worker from his family, and for the creation of elites. It is not merely the requirements of war that are responsible; it is the very structure of labor and other social relations. (425)

Having made this sweeping judgment, Neumann nevertheless reports as well on the quasi-judicial institutions established by the labor regime—or retained, in the case of the labor courts, which he now characterizes as “the outstanding contribution of the Republic to rational labor relations”—in order to expose them as sham arrangements, little used and rigidly controlled.

The control of workers is by no means limited to the workplace. Neumann prefaces his treatment of leisure under National Socialism with a partially admiring recollection of the contribution of labor unions during the Weimar years to leisure-time activities that mitigated the effects of the full control exercised by monopolistic powers over the major forms of entertainment in mass democracy. It is an interesting passage, reminiscent of his earlier encounter with the figure of “mass society,” because in it Neumann speaks the critical language of the Institute but mitigates the totalistic judgments by reference to pluralist countermovements, especially through the trade unions, that Theodor Adorno or Max Horkheimer would never have considered. He accepts that much of the educational work of the central Social Democratic labor organization was “geared primarily to romantic, petty-bourgeois incentives”—and notes “that nearly all ex-teachers of the ADGB schools are now National Socialists”—but he insists that “the educational program[s] of many of the affiliated unions [...] were designed to make men critical of the existing labor process.” He further credits the book, theater and radio guilds of such unions with having been “the most powerful antidotes against a standardized mass culture dictated by private monopoly,” having aimed “more and more at changing the conditions of labor rather than at relaxation and the regaining of bodily strength for greater efficiency.”

The flat assertion that “free leisure is incompatible with National Socialism” opens Neumann’s sketch of some representative arrangements in labor education and organized leisure, with emphasis on “full use of the findings of applied psychology to prescribe in detail the correct methods, time, and content of leisure for the one aim of enhancing the worker’s productivity.” A distinctive element in this discussion is an emphasis on the part played in these designs by “the most reactionary of German sociologists and psychologists” in continuity with their efforts during the Weimar years, when they had already been “the inveterate foe of trade unionism of any kind” and in the service of the major industrial firms.

Reduction of leisure to a mere auxiliary of work is the official leisure philosophy of National Socialism. It is all the more brutal because it coalesces with the National Socialist principle of social organization: drive the workers into huge organizations where they are submerged; lose their individuality, march, sing, and hike together but never think together [...] These organizations have of course given material benefits to many working-class groups. But much as glee clubs, orchestras, and baseball teams may improve the lot of prisoners, they do not tear down the bars. (430)

The metaphor of the prison—and an American prison at that—obviously does not comprehend the productivity and passivity of the German working class. “National Socialism is built on full employment,” Neumann writes, “its sole gift to the masses,” tacitly recalling the part played by unemployment in the preceding decade. He undertakes to expose the system of wages and income, nevertheless, as “a means of controlling and isolating man.” First, however, he ventures one of his occasional projections of a time after the war, with the National Socialists notably still in control. He lists a number of devices that will enable the regime to avoid “mass dismissals,” in view of “state control over credit, money, and the labor market,” while reasserting—presumably in view of the “state capitalism” thesis—that this does not call into question the primacy of monopoly capitalism and its subjection to cycles. He concludes this preliminary overview:

The crucial point is that unemployment must be prevented so as to retain this one link that still ties the masses to its ruling class. Full employment is accompanied by an elaborate social security program [...] Social security is its one propaganda slogan built on the truth, perhaps the one powerful weapon in its whole propagandistic machinery.

Neumann’s argument in support of his claims about the links between wage policy and domination is less effective or consistent than the evidence he presents on the other measures of control. It has the character of a lawyer’s brief, where the case is not strong. There is no question that the labor regime under National Socialism worked against important aspirations of the labor movement to which Neumann was closest. Against the policy advanced by the Socialist trade unions of aspiring to a “class wage” that would break down differentials by grades of skill and incorporate even apprentices, the National Socialists supported the consistent employer policy of trying “to play off a labor aristocracy against the plebeians by granting concessions to the skilled workers and by extending special treatment to salaried employees” (432). The decisive mechanism, in this account, was the replacement of the class wage aspired to by Socialists with the “performance wage,” based on piecework and bonuses, as well as the exclusion of apprentices from the benefits accorded to the workforce. Neumann comments, doubtless aware that such schemes are also commonplace in the United States (and that the Socialist aspirations in this respect were rarely satisfied in Weimar), “Such a policy is completely demoralizing, for it appeals to the most egotistic instincts and sharply increases industrial accidents” (432).

This conclusion does not fit easily into the next step of Neumann’s argument, which focuses on the disparities between the rise in national income and the proportion of national income allocated to wages, notwithstanding the great increase in employment. The critical factor, he maintains, is the great rise in productivity, which he has explained elsewhere as a result of employment being shifted from small businesses and crafts to ever more efficient industry—and which hardly appears as a sign of demoralization. He concludes, “[Between 1932 and 1938,] the volume of production rose by 112.4 percent and the total hours worked in industry by 117 percent. That is, the productivity has doubled while income has risen by merely 66.1 percent.” Since this calculation does not take into account the investments that also made the increase in productivity possible,

Neumann's categorical conclusions from this and similar indicators belong at least in important part to his difficult rhetorical balancing act between residual hopes for a potential opposition from the working class and a recognition of the Germans' successful mobilization of labor and the economy. The figures that Neumann duly reports for the proportion of national income dedicated to pensions and relief in 1932 and 1938 show a shift from 20.7 percent to 9.5 percent, and those measures were almost certainly more important to the German working class than all the others, given that conditions were also such that Neumann must concede that "these figures do not mean that the level of consumption by the working class declined" (434).

The uncertainties revealed by Neumann's attempt to show that the achievements of the German economy were a function of mass domination of the working class through the allocations of wages and incomes are not present in his treatment of the theme of violence inflicted through propaganda, which follows next. Still, the topic induces him to venture beyond a description of propaganda themes or techniques, and his experiments with various explanatory insights cannot be said to form a consistent whole. The treatment bears marks of the numerous discussions within the Institute for Social Research in connection with intermittent inquiries from public and other agencies about designs for and counters to propaganda, a prominent topic as well for the New School group. Neumann's opening, which cites a passage in an old book, in French, on English history and doubtless recalls Neumann's years with Laski, translates an aphorism that became one of Neumann's legacies, the proposition that "propaganda is violence against the soul." Neumann explains that propaganda, like all forms of violence, aims to "make men amenable to control from above." He also characterizes propaganda as a "display" of terror and asserts that Nazi specialists have themselves claimed as much.

As he proceeds with the topic at a somewhat more theoretical level, he comes closer to suggesting that the empowerment of propaganda need not be by terror—or perhaps even by violence alone among the instruments of power. In the late years of Weimar, he avers, the propagandistic symbolisms of the Social Democracy could do nothing against the Nazis, backed by its violent agents on the streets and granted impunity by courts and other state agencies. The arrows and hammers on the Socialist banners "did not symbolize a vital and realistic policy," Neumann asserts. "The leadership was unwilling to take risks and democratic policy became petrified." But then, he quickly cautions that a democratic movement must rely on the state machine to suppress terror. His formula then sounds somewhat strange in the present context: "That the republican leaders did not succeed in inducing the state machine to stop National Socialist terror will remain the most severe indictment of Weimar."

Returning to the issues raised by the prominent National Socialist propaganda program, Neumann combines several intellectual strategies. First, he advances the notion that the National Socialists "take advantage of the soft spots in the social body," including "class struggle from above and below" and "clashing economic groups," which are, he maintains, manifested in "competing political groups," and all of which is "fertile grounds for a skilled propaganda machine." But since these divergences are also the stuff of all political conflict, more would appear to be needed. In a somewhat ambiguous general statement, introducing an element other than the supposed deficiencies of democratic

leaders and formations, Neumann asserts, “The superiority of National Socialist over democratic propaganda lies in the complete transformation of culture into saleable commodities.” This echo of a sweeping motif in the Institute’s cultural critique cannot by itself resolve the question of superiority, but Neumann adds, in line with his earlier reliance on pluralism as a saving feature of the non-fascist states, “A democracy can never completely divorce propaganda from truth because there are competing propaganda machines and they must ultimately prove their value by actual performance in the social life of a nation.”

Neumann is not the first writer to be led into difficulties by a powerful *bon mot*. If all “propaganda” were violence, then the existence of conflict would add nothing to the likelihood of truth or “actual performance” in the sense of Neumann’s saving formulas for democracies. As is true in numerous places throughout, Neumann’s inescapable attempt simultaneously to explain the catastrophic defeat of democratic labor and to canvass the possibilities of reversal—however slight—the rhetorical and analytical currents run together. The principled aim of the analysis is to argue against the views of friendly authorities that there must be some sort of ingenious propaganda method discoverable to overpower the Germans, who are free to say anything—however contradictory—to gain a propaganda advantage from situation to situation. In an understandable overstatement of the point, Neumann writes, “National Socialist propaganda cannot be beaten by a democratic super-propaganda, but only by a superior democratic policy that eliminates the soft spots.” In a recollection of his argument against the “mass society” thesis, Neumann adds that “attempts to fight fascism primarily by propaganda methods are almost always connected with an abandonment of democratic conviction,” citing as example the case of a writer who dismisses 90 percent of the population as incapable of forming any sort of genuine judgment and thus requiring to be kept from evil choices only by effective propaganda by the remaining 10 percent.

If Neumann’s attempt to cram the vastly complex questions about the modalities of effective ideology in political life into this late section of his book is too telegraphic to do more than to raise some possibilities, his treatment of the latent functions of propaganda within Germany is sharp and insightful. He notes that the constant mobilization of the people through one or another propaganda campaign serves to keep them in a state of “unceasing tension” such that they are constantly active but never on their own initiatives. This activism precludes thought and enables action only under the control of bureaucratic machines. He quotes Hitler’s *Mein Kampf* on this technique, writing about the mass meeting in a passage that concludes, speaking of the individual brought into this setting, “He himself succumbs to the magic influence of what we call mass suggestion.” Neumann continues,

Nationalist Socialist propaganda is thus the expression of the same two phenomena that appear in every aspect of the regime: the destruction of whatever remnants of spontaneity are left and the incorporation of the population into a super-machine. (439)

This machine in turn is presented as driven toward triumph by a magical force, and “Magic,” says Neumann, “becomes a major concern of National Socialist culture.”

Neumann cites the numerous rites and ceremonies given magical significance and concludes the discussion with a powerful insight that he adopts from a colleague and that will have an important history in postwar German scholarship:

The emphasis on magic has even changed the language. The noun tends to supersede the verb. Things happen—they are not done. Fate, providence, objective natural forces produce things: German victories. The loss of man's active role in society is expressed by a language that negates activity and stresses the impersonality of the noun and of the "it." (439)

From this subtle extension of his attention to violence in a rather metaphorical sense, Neumann turns, in the last section before the summary conclusion of the book, to the regime of state intimidation and violence through abuse of the legal system, recapitulating at surprising length the argument of the LSE dissertation, as complicated by his *Zeitschrift fuer Sozialforschung* essay on the rule of law. His introductory paragraph, however, introduces a new consideration, which is a critical reply to the thesis of *The Dual State* by his friend and long-time partner, Ernst Fraenkel, although he does not expressly link this argument to that book until the very last section of his conclusion, some 30 pages later. The point at issue is whether the arbitrary and oppressive uses of legal agents and instruments is only one face of a legal regime that also functions, in many other respects, in the normal way of modern states.

Neumann probes critically, opening with a formula that seems to slight the colleague he has in mind. "The average lawyer," he writes, "will be repelled by the idea that there can be a legal system that is nothing more than a means of terrorizing people. He will point out that hundreds of thousands, perhaps millions, of transactions in Germany are handled according to calculable and predictable rules." Neumann concedes the latter point but classes the phenomena as unavoidable in a society based on division of labor: "These and thousands of other questions are dealt with rationally, even in the so-called 'prerogative' state—the S.S., the S.A. and the Gestapo. But they are, in the words of my late teacher Max E. Mayer, 'culturally indifferent rules' of a predominantly technical character." And Neumann denies that such technical rules are what "we mean when we speak of law."

Neumann reformulates a distinction first made in the dissertation he wrote for Mayer, although he continues to question the philosophical extrapolation that Mayer had made in the direction of a kind of natural law. If law is taken purely as a political phenomenon, then every dictum willed by the sovereign counts as law. Viewed rationally, however, law is constituted by its form and content: "Law in this sense is a norm, comprehensible by reason, open to theoretical understanding, and containing an ethical postulate, primarily that of equality. Law is reason and will." Interestingly, Neumann expressly introduces the concept of "material" rationality, as put forward by advocates of natural law, where demands for freedom, equality and security are comprehended, and where reason alone validates the law, even if it is not willed by the sovereign. The contrasting criterion of "formal" rationality, following Max Weber's terminology, requires only then that "law can be expressed only in general, universal terms." Neumann treats the displacement of natural law as a historical development beginning in the liberal era of the eighteenth

century, “with the spread of democracy and of the theory of the social contract.” He implies that the expectation that the contents of law could be shaped by the “natural” rationality of the social order is no longer applicable when all law is viewed as an interference whose justification is to be gauged by its form and fairness.

Neumann quotes Rousseau as representative authority but then, to convey the insufficiency of his criteria of generality and universality, cites an example from the nineteenth-century German civil code, where the criterion of “good morals” is introduced to assess contracts, and another from the National Socialist penal code, where “healthy racial feeling” is a measure, to show that general and universal laws can lack sufficient focus to meet the requirements of formal rationality:

A legal system that constructs the basic elements of its rules out of these so-called general principles or legal standards of conduct is only a shell covering individual measures. The formal structure of the general rule—this is the third element of universality—must contain a minimum of material concreteness.³⁶

Neumann takes as a corollary of this concept the limitation of judicial discretion. “The judge’s sole function is to perceive the law,” he writes, citing both Montesquieu and the contemporary legal philosopher, Morris Cohen. And the law is the product of legislation, with the legislature as the supreme factor in the separation of powers.

Neumann follows this reformulation of the rule of law with the question that played a central role in his LSE dissertation: “What is the social significance of the theory of the rule of law, of the denial of natural law, and of the absolute subordination of the judge to the law?” His answers follow along the lines of his earlier discussions, with the focus, first, on commercial calculability in the market society and, then, on the “ethical function,” with Rousseau as model. The latter discussion reiterates the claim that rule of law guarantees a minimum of freedom, above all through its assurance of equality within its admittedly limited sphere, as well as the exclusion of retroactive law. More firmly than before—especially in view of the somewhat equivocal position adopted in his article on Natural Law—he insists on the categorical separation between legality and morality and thus of the obsolescence of Natural Law. In this context, Kant is regarded positively, as having completed the process of this reassessment. Neumann grants that morality and legality can be conjoined in “a fully homogeneous society,” but he insists, “In an antagonistic society [...] in which moral convictions are always clashing, an alleged identity between the two normative systems is merely a way of terrorizing man’s conscience.”

Neumann turns next to the theme of his first article in the *Zeitschrift fuer Sozialforschung*, the deviations from rule of law underway in the period of monopoly capitalism. As he had done earlier, he opens by citing the inevitability of individual measures to cope with the unique character of each monopolistic undertaking, instancing a 1931 action against the legal status of a single bank, where regulation by general law would have been “meaningless.” Second, then, and on an altogether different dimension, he takes up the refusal of judges to play their due limited role of applying law and their claim to judge law by “general clauses” in the Constitution or to read all legislation as laying down nothing more than “legal standards of conduct” that the courts can interpret as

they will. In this connection, he cites the revival of natural law discussions, illustrated by Carl Schmitt's opportunistic proposal to postulate American-style "inherent limitations upon the amending power" as a weapon against measures deemed socialist, notably the expropriation of royal lands. Finally, and presumably with prime reference to the uncertainties introduced by these developments, he asserts that the direct power of monopolies over their workers and other commercial partners permits them to disregard—and even to welcome—these breaches in the rational predictability of law.

As before, Neumann has this overview of trends, whose best management he leaves uncertain, serve mainly as a preface to his conclusion that the most disturbing of them are brought to their apogee under National Socialism, which "completely destroys the generality of law and with it the independence of the judiciary and the prohibition of retroactivity." Existing law is subject to arbitrary emendation by National Socialist standards of conduct, with the displacement of equality before the law by the weight given arbitrary qualities, as well as the subjection of all ultimately to the "will of the Leader," who has powers of life and death without even the pretense of judicial process. In practice, then, Neumann finds "decisionism" as the operating juristic theory and the law nothing more than an instrument of domination. He will reiterate this characterization at the end of his discussion, but he first reworks at some length the worrying theory of "institutionalism," which he introduces as the "juristic ideology of the National Socialist" state.

Neumann's treatment of institutionalism in this place does not differ markedly from his lengthy discussion of it in his 1937 article. The units of analysis are not rights-bearing individuals whose mutual relations are constituted by contract under a regime of general law, adjudicated by a disinterested judiciary on universal principles, but variously postulated social institutions whose internal and mutual relations are governed by diverse socially and judicially construed standards, improvisationally adaptable case by case. Under National Socialism, the social constructs are rendered harmonious, with the orders imposed within each deemed authoritative and construed as the will of a united people, articulated ultimately by their leader.

The distinction between these two conceptions of law occupies an important place in Neumann's exposition for a number of reasons. First, as is usual with most of Neumann's uses of the term "ideology," the doctrine is operative and not merely obfuscatory: it has weight in legal reasoning. Second, the critique offers another opportunity to distance himself from Carl Schmitt, to expose the opportunism that Neumann now presents as his primary characteristic. But, third, there is also a more complex consideration, in that, according to Neumann, "The labor law doctrines of all trade unions outside of the Soviet Union and National Socialist Germany have developed from institutionalist concepts." In this last respect, Neumann returns to his paradoxical thesis that the formal legal rationality of liberal legal theory, historically linked to the conjoint sovereign state and market society, is indispensable also for the labor-initiated democratic political and egalitarian social order that must—somehow—displace the destructive concomitants of the monopolistic remains of capitalism: "Absolute denial of the generality of law is the central point in National Socialist legal theory [...] There can be no independent judiciary without general rules to guide them. The authority of the judge now rests upon the pronouncements of the Leader."

Interestingly, Neumann concedes, perhaps as a concession to his long-time associate, Fraenkel—or simply to the jurists he knew and who remained in office—that “these principles are not yet fully developed. The law is still in a state of flux, the judiciary not yet fully synchronized.” Yet he turns directly to an account of “protective custody” and the concentration camps, all in the hands of the Gestapo. “At first,” he writes, “some judges tried to restrain the discretionary power of the police, [...] [but] the absolute and arbitrary power of the Gestapo over all personal liberties is not disputed by any court today.” Once more, he hints at judicial resistance: “The federal supreme court tried to prevent the complete annihilation of rationality, especially where the churches were concerned. For that very reason, however, its role declined steadily and rapidly.” The positive subcurrent in his treatment of the courts turns up again, when he recalls at some length how rigorous the German courts had been in enforcing the principle of “no penalty without crime; no crime without law” citing—and defending against common-sense objections—the 1890 case in which the courts refused to apply the law against theft to the unauthorized tapping of electric lines, since the law specified “material objects.”³⁷

All this, Neumann maintains in conclusion, no longer matters at all: penal law is broken down into countless jurisdictions distinguished by one or another coercively political function, with criminal sentences being governed by phenomenological doctrines of “criminal character” and the like, and the key agencies possessing the power to inflict the death penalty with no recognizable legal process, let alone legal defense. This is law only if law is nothing but the will of the sovereign, recalling the disjunction of his LSE dissertation. Neumann’s concluding words prior to the final summary chapter of the book, then, allude to the topic that had been the subject of his original dissertation in 1923:

The National Socialist legal system is nothing but a technique of mass manipulation by terror. Criminal courts, together with the Gestapo, the public prosecutor, and the executioners, are now primarily practitioners of violence. Civil courts are primarily agents for the execution of the commands of monopolistic business organizations. (458)

No Political Theory—Not a State

A recurrent question in our treatment of Neumann has concerned the precise character and function of political theory, as he uses the term to refer not only to the designs projected by a rich array of named authors in the history of political thought but also to the designs discernable within a pattern of political power and practice. Although the relations between these two uses are not perfectly consistent, it seems in general that he thinks of the theorists’ productions as serving to explicate and in some sense to ground the reasonable political orders established to meet changing constellations of human needs and wants, given the tensions—and even contradictions—among rational requirements, as with sovereignty and law, and given the possibility of conflicting overall rational interpretations. And he also thinks that the most appropriate theoretical readings serve to orient, criticize and guide political agents, although they share the work of justifying regimes with ideologies, which need not—and normally do not—share the rational character of theories. The pivotal importance of this set of considerations in Neumann’s

thought must be clear in order to understand the two integrally connected questions with which he concludes his study of National Socialism, whose title points to this conclusion, and to understand his subsequent immersion in political theory as central subject matter for his teaching as well as his unfulfilled ambition to produce a new democratic political theory to comprehend the designs and prospects of his contemporary states. The first question that Neumann poses in his conclusion is thus, “Has Germany a Political Theory?” The question is whether Nazi rule approximates and/or aspires to a rational design comparable to those comprehended by one or another intellectually coherent political theory. His answer is unconditional:

Every political system can be characterized by its political theory, which expresses its structure and aims. But if we were asked to define the political theory of National Socialism, we should be greatly embarrassed. National Socialism is anti-democratic, anti-liberal, and profoundly anti-rational. That is why it cannot utilize any preceding political thought. (459)

It is important to look with some critical care at Neumann’s attempt to ground his negative answer to this leading question as well as to its sequel, “Is Germany a State?” if only because not one of the thirteen critics who reviewed the book in American academic journals, however much they may have appreciated the information and various analyses in the book, accepted these conclusions.³⁸

Somewhat surprisingly, in view of his earlier appreciative treatments, Neumann begins with Hobbes as no more than the borderline case of a rational political theory, but he denies the applicability to Nazi rule of even Hobbes’s “absolutistic” predominance of sovereignty over law, since it was after all grounded in consent and is conditional upon effectiveness. This is the context, then, in which Neumann explains his choice of “Behemoth” as a title, citing Hobbes’s book on the English Civil War and the reign of the Long Parliament, which, Neumann writes, “was intended as the representation of a non-state, a situation characterized by complete lawlessness.”³⁹ Neumann proceeds to other kinds of limiting cases, lacking even Hobbes’s understanding of the sovereign state but nevertheless still more recognizable as political theories in Neumann’s judgment than the National Socialist design. In this connection, he cites a representative sampling of theorists hostile to the political theory of the French Revolution, with special emphasis on writers like De Maistre and Cortes, notwithstanding the categorical rejection of human reason that they share with the Nazis. The “unbridgeable gap” between them, nevertheless, consisted of the part played by the church in their thought so that “their theories,” Neumann asserts, “in spite of their Augustinian flavor, were rational.” Unexpectedly, Neumann concludes, after a somewhat closer examination of some of these approaches that “Christianity and National Socialism are essentially incompatible [because] according to National Socialism, men are irrational and unequal, and this separates it even from the least rational theologies of Augustine and Calvin.” Neumann finds National Socialism closest to some political theories of the Restoration period—which Hegel had denounced, according to Neumann, as “fanaticism, mental imbecility, and hypocrisy”—but he concludes that even these had a theory of society, however antiquated, while National Socialism has none.

Neumann portrays the National Socialist ideology as an opportunistic agglomeration of unintegrated “elements of [...] every conceivable philosophy [...] used to establish and extend power and to carry on propaganda.” He dismisses as a misunderstanding the widely shared idea of a connection to Hegel, and he cites Herbert Marcuse’s *Reason and Revolution* as a “brilliant refutation of this erroneous interpretation.” He also rejects identification with “relativism, positivism, or pragmatism,” although he quotes at some length a statement affirming relativism by Mussolini but uses it to document the contention that this “has next to nothing to do with either philosophic relativism or pragmatism, is nothing but cynicism and nihilism.” Neumann writes that the two philosophies cited do in fact “contain authoritarian elements” inasmuch as they deny the validity of objective truth and may cling to what exists, but he insists that they are “critical doctrines, deflating the arrogant claims of Kantian idealism” and that they “bow only to ascertained facts, and thereby, demand freedom to ascertain and analyze them.”

Neumann’s sums up this segment with the conclusion that “no philosophy can be held responsible for National Socialism,” a statement that rather obscures Neumann’s view of the relations between political theory and political realities, inasmuch as there is nothing in his analysis to simplify the relations between them so that one simply shapes the other. In the following sentence, which he characterizes as a repetition of the point he’d just made, he writes, “National Socialism is, we repeat, incompatible with any rational political philosophy, that is, with any doctrine that derives political power from the will or the needs of man.”

Neumann expands on this formula, familiar from his LSE dissertation, in a way that comes closer to the sort of Marxistic simplification that he has eschewed throughout the book. He simply asserts that there is a fundamental “antagonism” between the productive capacity of German industry and its use “exclusively for destruction,” and that

this antagonism must be felt by the masses, which are not simply babes in the woods but have a long tradition behind them, a tradition that imbued them with a critical spirit and made them aware that the primary fact of modern civilization is this very antagonism between an economy that can produce in abundance for welfare but that does so only for destruction. (464)

Neumann reconciles this flat assertion with the many misgivings throughout the book about the potential for resistance within the working class by citing the regime’s recourse to measures that prevent “thought,” which “must inevitably have a critical and revolutionary impact.” And there cannot be a nonrational political theory, he maintains, and “if it claims to be non-rational, it is a conscious trick.” Elaborating on this trickery, then, he invokes a purely instrumental sense of the term “rational” to assert: “It may not be exaggerated to say that National Socialism acts according to a most rational plan, that each and every pronouncement by its leader is calculated, and its effect on the masses and the surrounding world is carefully weighed in advance.” A corollary for Neumann is “that the German leadership is the only group in present German society that does not take its ideological pronouncements seriously and is well aware of their purely propagandistic nature.” This is presumably another sense in which Nazi Germany “has” no political theory.

Neumann differentiates this pattern of rule from most “preceding political systems that lack theoretical justification” by its need to appeal to the masses, which had supported its rise to power. The modern democratic experience cannot be simply reversed:

National Socialism has transformed institutional democracy of the Weimar Republic into a ceremonial and a magic democracy [...] [In] order to manipulate the masses, in order to control, atomize, terrorize them, one must capture them ideologically [...] [National Socialism] has returned to the early period of state absolutism where “theory” was a mere *arcantum dominationis*, a technique outside of right and wrong, a sum of devices for maintaining power. (465)

Neumann illustrates his point through one of his favorite historical examples, the brief interim of rule in fourteenth-century Florence by Cola di Rienzo as well as by the strategies of Napoleon III. The condition that these situations shared with Germany, Neumann avers, was an inchoate revolutionary discontent in the masses, which was then canalized by means of their “ideological flattering,” while the “material foundations of society” were left untouched: “To achieve that end, the isolation of the individual characteristic of modern society is intensified to the utmost limit with the help of an immense network of bureaucratic organizations and an opportunistic, infinitely elastic ideology.”

Notwithstanding the ingenious and evidently potent modalities of power Neumann ascribes to Germany’s rulers, he denies that Germany is a “state.” And, for the sake of argument, he concedes that a state need not be identified by definition with a rule of law. He provisionally expands the concept to include what he deems to be the origins of such political systems: “States, however, as they have arisen in Italy [in the fourteenth and fifteenth centuries], are conceived as rationally operating machineries disposing of the monopoly of coercive power.” As Neumann develops his argument, he follows Max Weber in linking rationalized schemes of law and bureaucracy to such political formations. It is important to emphasize that these are limitations of the applicability of the state concept, as such, and that, in Neumann’s usage, they would not apply to many other historical forms of rule, including absolute regimes. Neumann equates the term with the political arrangements that were more generally referred to as the “modern state” in the political theory literature of the time.

Neumann begins his defense of his thesis with a critique of the conception of Germany as a “dual state [...] within which two systems are operating, one under normative law, the other under individual measures, one rational, the other the realm of prerogative.”⁴⁰ He briefly summarizes the reply to this contention that he had already made in the preceding chapter, namely, that this argument confuses technical rules commonplace in every advanced society with laws as they function in states. Neumann’s questioning of the existence of a state is grounded in his analysis of the four principal power centers, each of which possesses sovereign resources for imposing its judgments within its fields of operations and whose coordination is a function of negotiated settlements among the antagonists. He acknowledges that similar conflict and conflict resolution can be found in pluralistic democratic states but he insists that in the latter, “the [settlement] process must be accomplished in a universally binding manner, that is, through abstract rational law

or at least through a rationally operating bureaucracy.” This is not the case, Neumann insists, in Germany:

Under National Socialism [...] the whole of the society is organized in four solid, centralized groups, each operating under the leadership principle, each with a legislative, administrative, and judicial power of its own. [...] It is quite sufficient that the leadership of the four wings agree informally on a certain policy. The four totalitarian bodies will then enforce it with the machinery at their disposal. There is no need for a state standing above all groups; the state may even be a hindrance to the compromises and to domination over the ruled classes. (468)

Although Neumann does not make the connection explicit, the focus on the question of Germany lacking the character of a state can be read as an extension of his earlier discussion of the subjects of international law and his consequential rejection of claims by German lawyers that Germany possesses expansionary rights by virtue of its status as a “people” or regional power. This had implications for the contemporary debates about the obligations of neutrals, especially the United States (before Pearl Harbor) and the scope of eventual peace settlements. Neumann’s argument depends on the line of political theory from Hobbes to Hegel. If there is no sovereign, there is no state. The logic of sovereignty requires that all decisions, however generated through group conflict, must ultimately be put on a “universal valid basis,” whether through law or through bureaucratic decision. This presupposes also the institutionalization of sovereignty, a criterion that enters accordingly into the decisive question about the claims made on behalf of the leader. Insofar as there is validity to the largely mythological claims in German constitutional ideology on behalf of the supremacy of the leader as the embodiment of the people, Neumann insists, this provides at most a personal supremacy, insofar as the pronouncement is not simply a ceremonial proclamation of the ad hoc agreements entered into by the four powers. Neumann concludes,

But if the National Socialist structure is not a state, what is it? I venture to suggest that we are confronted with a form of society in which the ruling groups control the rest of the population directly, without the mediation of that rational though coercive apparatus hitherto known as the state. This new social form is not yet fully realized but the trend exists which defines the very essence of the regime. (470)

Neumann turns last, accordingly, to his assessment of “the developmental trends in this structure” and to their implications for policy by the opponents of the regime. Most of this chapter, it should be noted, proceeds on the assumption that National Socialist rule will remain intact after the war, at least initially, whether because of a German victory or a negotiated settlement. At the very end, he does maintain that the Nazis can be beaten in the war, but he conditions this on psychological warfare measures whose ability to penetrate the masterful propagandistic screen he had earlier questioned. The two analyses, in fact, converge, inasmuch as the second one presupposes many of the assumptions of the first. Common to both is a presumption that the National Socialist system, despite the manifest successes laid out in the book, is subject to—perhaps even

destined for—subversion from within. As will be shown, the failure of the processes he here projects, which he sought to further during his wartime activities, lead Neumann to disappointment and distrust, especially during the first years after the victorious end of the war.

Neumann begins his projection of trends with a reiteration of his earlier insistence on the absence of “common loyalties” among the components of the quadripartite ruling class. “The cement that holds them together,” he writes, “is profit, power, and, above all, fear of the oppressed masses.” Neumann grants the possibility, under those circumstances, that the party may expropriate industry, but he denies that even under conditions of such a “garrison state” (Harold Lasswell), where all power is in the hands of the violent, capitalism would be at an end. It would rather, he maintains, revert to the stage of primary accumulation but not with the upward thrust of the original occurrence of this stage because economic power would not be in the hands of the most able and independent, whose rise is precluded by the social system in place. Even with the power of the party reinforced by its secure anchorage in the economy, the system of compromise would remain, since the army would emerge from a successful war with new prestige and power, and this alone would in time reinstate the present divisions.

Neumann then turns to the benign ghost whose intermittent appearances have haunted the book, “the antagonisms between rulers and ruled.” He speaks of these as “breaks in the system.” His point of departure is clear, as is his acknowledgment that it is not certain. “There exists objectively a profound antagonism between the two classes,” Neumann writes. Yet he feels constrained to add, “Whether and when it will explode we do not know.” In weighing the probabilities, he begins with the “antagonism between the magic character of propaganda and the complete rationality and depersonalization of society.” In contrast to his earlier discussions, he now maintains that attempts “to prevent the rise of an ideology corresponding to the rational processes of labor [...] can arouse only contempt and cynicism.” Drawing on some recent studies of the astonishing successes of the German military, he projects a growing clash between the authoritarianism of the army hierarchy and the actual battlefield dependence on the initiatives of shock troops among soldiers and noncommissioned officers. And he anticipates a comparable development in the sphere of production. Neumann extends this argument toward the developments anticipated most famously by Thorsten Veblen. On the assumption that “the engineer exercises the most rational vocation and he knows what beneficent powers the productive machinery can yield,” and that he is in a privileged position to see “how this machinery becomes an instrument of destruction rather than of warfare,” he concludes that “the antagonism between the engineer [...] and totalitarian monopoly capitalism is one of the decisive flaws of the regime.” Once again, Neumann pulls back slightly, inasmuch as a failure by the regime to follow the logic of its situation, which is to strive for conquests worldwide, would relegate the engineer to a minor position in a production process reoriented to full employment rather than technical progress.

Yet he immediately reinstates the claim of inherent conflict and extends it to all skilled workers, notwithstanding all the practices that Neumann had credited earlier with lessening their role and providing illusions and incentives to keep them in check.

The change in tone and manner of the argument with which he concludes this final inquiry indicates as much about Neumann's unease as it does about his stubborn hopes:

Will the higher skilled worker [...] understanding the potentialities of the industrial apparatus, be satisfied with a regime that uses these potentialities for oppression and terror? If we believe man to be essentially wicked, if egoism is the sole incentive of man, the prospects are rather black. But man is neither bad nor good; he will be moulded by his cultural and political experience. (473)

Neumann now returns to the experiences in these spheres that he had diagnosed earlier as primary instruments of isolation and weapons against any "thought" and he allows that their contents, however fraudulent in design, will have cumulative unanticipated consequences, destructive of the regime. He speaks of these as "breaks in the system":

The community ideology, fraudulent as it is, the anti-state ideology, fictitious as it may be, are, as we have mentioned, forms of the theory of a classless society—though, of course, degenerated forms. By its anti-capitalistic and anti-state propagandas, the regime unwittingly furthers genuine socialist trends. That applies to the pseudo-egalitarianism. Even fake egalitarianism will leave indelible impressions on those for whom it is practiced. (473)

Neumann extends these hopeful projections into the cultural sphere, focusing even on Strength through Joy, the organization that he had earlier deemed an integral part of the successful strategies to isolate individuals from workplace solidarities, in addition to its use of "applied psychology to prescribe in detail the correct methods, time, and content of leisure for the one aim of enhancing the worker's productivity." He now massively qualifies this assessment by asserting that "the organization will undoubtedly create a demand for genuine culture, which no garrison state can fulfill. Culture can breed only in freedom, and freedom will subject the labor process to criticism [...] The conflict must one day become fully apparent." In summarizing this discussion of "flaws of this system, which must develop even if Germany wins the present war," he adds also the threats to the regime from the hatred against the German conqueror in eastern Europe that will become "more powerful and more dangerous every day," especially with Russia in the war, generated by the "national" and "social" questions, especially among "the impoverished masses."

Although it is striking how much of Neumann's analysis accepts the possibility of a German victory or stalemate in the war, he naturally does not preclude a German defeat. He insists, however, that "the defeat must be planned [...] also as a psychological [action]," recalling that the Revolution of 1918 that ended the First World War was "also [due] to the superiority of Woodrow Wilson's new freedom over a monarchic political theory that had for long ceased to be believed." Then, in italics, which he almost never uses, he proclaims, *Germany no longer believes in this ideology*. He proceeds with a list of events that explain but also justify this disbelief. He begins with the postwar suppression of minorities in Eastern Europe disregarded by the Western powers, not by democratic Germany, and the collapse of the League of Nations. Then he asserts categorically, "Democracy has been betrayed by the German democrats—liberals, Social Democrats,

Catholics,” and the German people cannot unlearn that political democracy may hide economic injustice, as taught by both “Marxist and National Socialist criticism of liberalism and democracy”:

Much as the German longs for peace and freedom, for justice and equality, much as he abhors concentration camps, the executioner’s axe and the S.S., much as he ridicules leadership and fake community—he will never be satisfied with a *status quo* which again delivers him to the anarchic conditions of the great depression. (476)

Neumann cites the National Socialist campaigns that portray England and United States as nothing but centers of capitalist abuse as evidence of their recognition of democracy as a fundamental threat, if it is properly developed and effectively portrayed:

The National Socialist leadership knows that once England and the American democracies will show themselves as efficient as, and perhaps more efficient than, National Socialism, while retaining or even deepening democracy, the belief in National Socialism, which is founded on fear and despair, will ultimately collapse [...] [The regime] can only be overthrown by conscious political action of the oppressed masses, which will utilize the breaks in the system. (476)

This conditional prognosis closes the book in its original form, and it is not superseded in the slightly updated edition published 2 years later. When balanced against the detailed analyses in the book, it is more an expression of determination and hope than a secure prediction. Many things that Neumann describes as working for the regime must cease to do so, and the mobilization for war among Germany’s enemies is hardly likely to coincide with a “deepening” of democracy. Notably missing from the last prospectus is any reference to the Soviet Union, which had entered the war at the time of publication, and whose participation is mentioned once in the closing section, serving only as a goad to national and social awareness in occupied states. Taken apart from Neumann’s projection of the optimal outcome, moved by his loyalty to the alliance of opposition, *Behemoth* is a bitter memorial to the defeat of the Social Democratic—and his own—project for Weimar. After the completion of the book, Neumann really has to begin anew, if he can.

Notes

- 1 For an excellent recent restatement of the theoretical issues, see Georg Zenkert, *Die Konstitution der Macht* (Tuebingen: Mohr Siebeck, 2004).
- 2 It is a striking feature of Karl Mannheim’s *Ideology and Utopia*, expressly dedicated as it is to explicating the ideological structures of Weimar, that he makes no mention whatever of the Catholic party and its ideology. The paradox is that this ideology could be loosely said to embody the “synthesis” he hoped to generate.
- 3 Compare Neumann’s 1932 lecture to Carl Schmitt’s seminar, discussed above, where he largely accepts Schmitt’s characterization of this defect. Since Harold Laski had abandoned his own syndicalist-tinged pluralism only a year before Neumann’s arrival at the London School, the issue is recurrently present until it reappears in the rather benign American formulation in his postwar writings.

- 4 Cf. Discussion of the first “Leopold Franz” article (1934) where he highlights the contradiction between revolution and *Rechtsstaat* in the context of an ambiguous critique of the “Prague Manifesto” issued by the SPD executive in exile (191f).
- 5 Neumann’s treatment of judicial review, which he had systematically denounced as usurpation during the Weimar years, is naturally complicated by his dealings with an American audience, especially since he also compliments the American system for making the opposing counsels rather than the judge the key figures in legal disputes. The softening of his position on “natural law” is pertinent here. In the present context, his reference to the supposed one-sided purpose of judicial review in Weimar may be read as an approach to the position of American jurists who supported New Deal legislation against the hostile decisions of the Supreme Court during Roosevelt’s first term.
- 6 Compare the discussion above of Neumann’s proposals in the Weimar years for the discriminating control of trends to monopolies and cartels, pp. 89–93.
- 7 *Behemoth* was listed among the 21 “most influential books” of the 1940s by the *Times Literary Supplement* in 1995. See “The Hundred Most Influential Books Since the War,” *Bulletin of the American Academy of Arts and Sciences*, Vol. 49, No. 8 (May 1996), pp. 12–18. The academic authority enjoyed by Neumann’s book for decades after its publication, notwithstanding reservations about the “Marxism” that was widely taken to be its primary feature, surely had to do with the extraordinary range of references and critical analyses of German authorities that were otherwise unknown. Neumann’s energies and self-assurance in these respects were prodigious.
- 8 Neumann likens this notion of a revolution that restores some kind of “natural” order to “a kind of perverted liberalism,” with racial purity replacing individual rights as the principle of order, but he also emphasizes that Schmitt categorically rejects anything like the liberal tension between state and society.
- 9 Letter from Franz Neumann to Theodor Adorno dated August 14, 1940 (*MHA*, VI, 1a, pp. 21–23).
- 10 Karl Marx “On the Jewish Question,” in Lloyd D. Easton and Kurt H. Guddat (eds.), *Writings of the young Marx on Philosophy and Society* (New York: Anchor, 1967), pp. 216–48. It is true that Marx’s questionings of arguments for Jewish “emancipation” are neither racial nor religious in any ordinary sense but focused on the cultural-economic notion of Jewishness as symbolic of the capitalist order and thus no less pervasive among Christians than Jews. And it is also true that this early pamphlet was part of an esoteric debate within the Young Hegelian cohort “before Marxism” and certainly unknown outside of that very small band until its recovery and republication in the late 1920s. Yet Neumann’s very next point touches on the central element in Marx’s denunciation of “Judaism.”
- 11 For Erdmann’s preoccupation with the “Jewish Question” and his consequent discomfort, for example, with Neumann’s partner, Ernst Fraenkel, as well as for his report on Noerpel, see Ilse Fischer (ed.), *Versöhnung von Nation und Sozialismus? Lothar Erdmann (1888–1939): Ein “Leidenschaftlicher Individualist,” in der Gewerkschaftsspitze. Biographie und Auszüge aus den Tagebüchern Beihefte zum Archiv für Sozialgeschichte*, Band 23. 1. Aufl. 2004. It should be said that Erdmann sought to distinguish his anti-Semitism from that of the National Socialists, although he wrote admiringly about Hitler, especially his international ventures, until the end of his diary in 1938. It should also be said that Erdmann died in a concentration camp, when he sought to shield another prisoner.
- 12 Neumann emphasizes that George rejected the Nazi version of his vision and that he fled to Switzerland shortly after the seizure of power, in the company of one of his many Jewish followers. His treatment of George is reminiscent of his treatment of Nietzsche in the earlier chapter: a blend of respect for the writings and disdain for the influence.
- 13 Neumann is walking a very narrow path here, since his own explication of “equality” in legal theory carries its own bundle of substantive rights. That may explain the curious aside where

- he insists that “the purely arbitrary character of the reasoning becomes clear” even if “we agree with a recent American work that holds [the joining of legal and moral reasoning] to be progress” (153), with a reference to a recent book by Lon Fuller.
- 14 There is nothing anywhere in the book to explain that gratuitous last sentence, since the only references to France relate to the form of military government installed there by the German Occupation.
 - 15 Franz L. Neumann, “An Economy without Economics?” *Behemoth*, pp. 221–34.
 - 16 In the footnote cited *supra*, Neumann closes with a reference introduced with “also”—as if for an afterthought—an article by Frederick Pollock: “State Capitalism,” *Studies in Philosophy and Social Science*, Vol. 9, No. 1 (1941), pp. 200–26.
 - 17 Frederick Pollock, “Is National Socialism a New Order?,” *Studies in Philosophy and Social Science* Vol. 9, No. 3 (1941), pp. 441–55.
 - 18 That there are some changes, at least, between the version on which Neumann initially commented and the published text is clear from Neumann’s quotation of some of Mannheim’s characteristic language—“Control over controllers”—as present in the Pollock manuscript, although this does not appear in the published version.
 - 19 Max Horkheimer, “Preface,” *Studies in Philosophy and Social Science* Vol. IX, No. 2 (1941), p. 195.
 - 20 Franz L. Neumann to Max Horkheimer, July 30, 1941 (MHA VI.30, p. 53).
 - 21 Max Horkheimer to Franz L. Neumann, August 2, 1941 (MHA VI.30, pp. 49–52).
 - 22 In the endnote (500) introducing Neumann’s critique of the “state capitalist” argument, he cites publications appearing between 1939 and 1941 by Peter Drucker, Frank Munk, James Burnham and Dwight Macdonald.
 - 23 As “the most important book [...] written by a former Marxist,” he lists Bruno Rizzi, *Le Collectivisme Bureaucratique. Quo Vadis America?* (Paris: Champ Libre, 1939). It seems in fact that Rizzi’s 1939 publication did not include the section on fascism that was noted in the book’s outline and that eventually appeared in a postwar English version. See “Joe’s Review” at <http://www.goodreads.com/review/show/184211466>.
 - 24 This does not in itself determine a clear or consistent position on the Soviet Union, as witness, for example, his discomfort with Tillich’s references, in his 1938 draft declaration of anti-fascist unity, to the thesis of bureaucratic domination under Communist rule. The uncertain variable is “revolution,” whose forms and duration he does not consider with care, although he rejects the Social Democratic exile manifesto that proposes to install liberal safeguards at the moment of liberation from National Socialist rule.
 - 25 Neumann’s account of German economic organization, focused on the changing character of cartels in the scheme, follows quite closely the two lectures that he presented in January and February of 1939 to the Anti-Trust Division of the US Department of Justice. It is worth noting that in this text he does not shy away from the concept of “state capitalism.” He writes, “In the third stage, cartels become organs of state capitalism. They are incorporated into the political system. They are legitimate representatives of the government’s economic policy and yet retain their private character.” Franz Neumann, “Cartel Policy in Germany from 1930 to 1938,” Anti-Trust Division Lectures, February 17, 1939, MHA XIII 104.1.
 - 26 Neumann speaks of “property” rather than proprietors in recognition of the important circumstance that corporate organization relativizes the roles of owner as such, although he naturally highlights the roles of certain individuals at the peaks of the various capitalist organizational forms.
 - 27 Neumann cites a 1932 study by the sociologist, Theodore Geiger, to show the large proportion of proletarianized retail and handicrafts undertakings in Germany.
 - 28 Neumann’s conception of the totalitarian state differs from that of the best known contemporary authors on the subject in leaving open the extent to which such regimes can in fact dominate all aspects of social life. Hannah Arendt, *The Origins of Totalitarianism* (New York: Harcourt, Brace, 1951); Carl Joachim Friedrich/Zbigniew K. Brzezinski, *Totalitarian Dictatorship and*

- Autocracy* (Cambridge, MA: Harvard University Press, 1956); Sigmund Neumann, *Permanent Revolution: The Total State in a World at War* (New York: Harper, 1942).
- 29 Franz L. Neumann to Max Horkheimer, August 5, 1941 (MHA VI.30, p. 48). There are only a few inconsequential linguistic differences between the passage Neumann asks about and the published text.
- 30 Max Horkheimer to Franz Neumann, June 2, 1942 (MHA VI.30, pp. 346–50).
- 31 Horkheimer's fourth line of objections in this draft letter has to do with Neumann's supposed exaggeration of the ideological importance of writers like Chamberlain and his comparative neglect of Wagner and Nietzsche. Interestingly, Horkheimer also objects to having Heidegger viewed as an ideological factor, given the remoteness of his philosophy from empirical reality.
- 32 As in earlier passages, Neumann does not presume that the end of the war would bring down the regime.
- 33 Neumann's use of the term "imperialistic" in the present context presumably refers to the expansionist motives behind the encouragement of reproduction by these measures.
- 34 It is doubtless a function of his polemical strategy, but it is nevertheless remarkable that Neumann relies on the "natural" as normative criterion, especially since the National Socialist legal commentator he denounces on the question of illegitimacy relies on the same strategy, *mutatis mutandis*: "Our views of today, based on a concept of morality that is in unison with nature, living force, and the racial will to life, must, if it affirms the [sexual] drive, affirm the naturally willed consequence, or more correctly, the naturally willed aim. For it is solely the latter which justifies and sanctifies the drive."
- 35 David Kettler, "Works Community and Workers' Organizations: A Central Problem in Weimar Labor Law," *Economy and Society*, Vol. 13, No. 3 (August 1984), pp. 278–303.
- 36 This is a new conceptualization of the specificity required to counter judicial aggrandizement in the rendering of law. The juxtaposition of formality and materiality raises some difficulties, in view of Neumann's usual disjunction of these two characterizations, as in the Weberian division of modes of rationality, all the more because Neumann goes on immediately to focus on the requirement of formality and its protection of judges against having to enforce individual measures. "Material concreteness" is the standard translation of the Hegelian term *Gegenstaendlichkeit*. It is probably better to treat Neumann's expression as an ordinary language antithesis to "legal standards of conduct." It never recurs.
- 37 Neumann cites a comparable case in the US Supreme Court, where Justice Holmes refused to apply automobile regulations to an aircraft. This is worth noting, since the references to American jurisprudence are very rare. Neumann also finds a decision of the International Court of Justice that the liberal constitution of Danzig precluded criminal law that imitated National Socialist differentiations by race or religion.
- 38 M. J. Bonn, *Journal of Political Economy*, Vol. 51, No. 4 (August 1943), p. 371; Robert A. Brady, *American Economic Review*, Vol. 33, No. 2 (June 1943), pp. 386–89; Frederick H. Cramer, *Journal of Modern History*, Vol. 15, No. 2 (June 1943), pp. 156–57; Waldemar Gurian, *Review of Politics*, Vol. 4, No. 3 (July 1942), pp. 347–52; Oscar Jászi, *American Political Science Review*, Vol. 36, No. 4 (August 1942), pp. 771–74; Josef L. Kunz, *American Political Science Review*, Vol. 39, No. 2 (April 1945), pp. 375–77; Dwight E. Lee, *American Historical Review*, Vol. 48, No. 2 (January 1943), pp. 337–38; C. H. Pegg, *Social Forces*, Vol. 21, No. 3 (March 1943), p. 364; Koppel S. Pinson, *Political Science Quarterly*, Vol. 57, No. 3 (September 1942), pp. 441–43; Charles B. Robson, *Journal of Politics*, Vol. 5, No. 1 (February 1943), pp. 70–72; George H. Sabine, *Philosophical Review*, Vol. 51, No. 4 (July 1942), pp. 432–35; Maxine Yapple Sweezy, *Annals of the American Academy of Political and Social Science*, Vol. 222 (July 1942), pp. 195–96; James Elliott Walmsley, *Social Science*, Vol. 18, No. 3 (July 1943), p. 144.
- 39 It should be said that Neumann's characterization of "Behemoth" is quite scanty and selective, with no hint of the ideological-religious developments that arbitrarily disrupted a settled monarchical order, according to Hobbes. While Hobbes's "Leviathan" served Neumann as a

minimal model of a modern state, “Behemoth” is not considered from the standpoint of any possible parallels beyond the general characterization as nonstate. If “Leviathan” corresponded to the needs and wills of men in the early phase of the market, the presumed supersession of this logic by conflicting religious motives is not examined by Neumann, although his next few paragraphs in fact bear on religion in political theory.

- 40 As at the beginning of his earlier discussion of law (516), Neumann summarizes this notion as it was presented by his long-time partner and friend, Ernst Fraenkel, but he does not cite Fraenkel’s book or refer to him by name until the very end of *Behemoth*. The pattern is similar to his critique of Frederick Pollock’s “state capitalism.”

Chapter 9

FRANZ NEUMANN IN WASHINGTON: THE POLITICAL INTELLECTUAL AT WAR

Neumann Comes to the Office of Strategic Services

Franz L. Neumann commenced full-time work with the US government on February 22, 1943, thereby dedicating himself fully to the official war effort against Nazi Germany.¹ Although he had already divided his time between the Institute for Social Research and the US Board of Economic Warfare through the summer and fall of 1942, his outright termination by Max Horkheimer and Frederick Pollock at the end of 1942 led him into more direct and permanent employment with the US government.² While it would be tempting to see this move from scholarly research to the official war effort as a moment in which Neumann voluntarily recommitted himself to a more activist role as a political intellectual, his choice of public employment presents a more complex picture. Although Neumann had always been one of the most explicitly political intellectuals in the nominally nonaligned Institute, he went to extraordinary lengths to preserve his research-centered job at the Institute, notwithstanding the political discretion it required. He only made his move to Washington after his position with Max Horkheimer had become no longer negotiable and thus impossible. Therefore, the decision to enter full-time government service, where his political effectiveness could well be subject to more formal limitations, was made in important part because more desirable options had been foreclosed. In a sense, the leaders of the Institute made the decision for him.

Confronted with no other attractive professional opportunities, he followed up on overtures to join the Office for Strategic Services (hereafter referred to as OSS) made by Walter Dorn and Eugene Anderson, academic historians he'd come to know during his Institute years and who had been drawn earlier into government service. This would allow him to continue with the people who had joined him during his last years working on the Institute's failed grant proposals on Nazi Germany.³

Neumann had made himself the natural candidate for an OSS leadership role, because he had then separately begun a book project under contract with Oxford University Press entitled "National Socialism and European Reconstruction."⁴ By the end of 1940, Neumann's role with the Institute's Germany project had also led to his collaboration and friendship with Eugene Anderson, who would later become Neumann's supervisor at OSS. Walter Dorn, the European historian who offered Neumann the job at OSS and was his first supervisor, first worked for the Coordinator of Information (or COI), which was the new agency's predecessor. As Dorn compiled a bibliography of research projects and books on National Socialism, he learned of the Institute's work

detailing the origins of National Socialism being spearheaded by Franz Neumann.⁵ Dorn maintained his intermittent contacts with Neumann, and he became an early and enthusiastic reader of *Behemoth* as well as one of the first people in the OSS to begin regularly seeking Neumann's advice.⁶ Thus, Neumann had been a known intelligence asset for several years by the men who later hired him at OSS. The principal reason that he resisted their earlier overtures to join America's efforts to make sense of Nazi Germany was because Neumann feared the bureaucratic controls that attended government employment, a recurrent topic in his earlier work.

Perhaps through these early contacts with those who would later hire and direct his activities as part of the US war effort, Neumann recognized the intellectual price that would be required by this new type of work. On the one hand, he could take satisfaction that his daily efforts at OSS were directly contributing to the struggle against Hitler. Yet on the other hand, the *limited* intellectual independence that he enjoyed at the Institute would be substantially more curtailed by the protocols established by the emerging bureaucracy of OSS. This frustrating paradox was a trying reality for Neumann and all of the other research analysts who worked with him at OSS—they were producing reports that had the potential to shape the decisions of the most significant civilian and military leaders in the United States, but they had to conform to paradigms of value neutrality as well as to navigate institutional assumptions held by the leaders of OSS. While Neumann's work with the OSS is some of the most interesting and colorful of his entire career, it needs to be handled and examined in ways markedly different from any other documents that have been examined in this book. As we will discuss below, in an introduction to the organization of OSS and its operations, OSS was unlike any of the other intellectual settings in which Neumann had worked before or after. While his writings as a lawyer and political theorist always were conditioned by a practical component, they were never subjected to the same degree of vetting and censorship that was a hallmark of the OSS's Research and Analysis (or R&A) branch. Finished reports, therefore, are less a reflection of Neumann's independent thoughts and analyses of wartime events and dynamics in Central Europe. Rather, they represent examples of political and legal analyses that are importantly mediated, to an unknowable degree, by the institutional rules and standards of OSS.

Another significant complication to any close analysis of Neumann's work product from his time at OSS arises from the way in which his Central Europe group approached research. Alfons Söllner, one of the first scholars to take a close look at the reports written by Neumann's cohort in OSS, cautioned readers that it was impossible to make any kinds of attributions of individual authorship to any of them in view of the way in which these reports were created.⁷ As all of the former members of this group recounted in later interviews and writings, the Central European group operated in important respects like a constant faculty seminar at a leading research university.⁸ Reports may have been initially assigned to individuals or groups of individuals in the Central European branch, but the research was then regularly presented to the entire group of research analysts who made suggestions about additional sources and even possible conclusions arising from the research. Some reports were then reassigned to other analysts in the group who wrote them up. Thus, the work product of the group was always collaborative. Although

later historians of OSS, such as Barry Katz, have used the assignments of projects to assert claims of individual authorship, it is hazardous to think of this as authorship in any traditional academic sense.⁹ Unlike Katz, we are making no specific claims about authorship. Even for reports that may have been originally assigned to Neumann, it's impossible to see such documents as direct and unmediated reflections of his thinking during this period. Rather, they point to the views and analyses of the entire Central European group at R&A, filtered through a work process shaped by self-censorship and direct censorship by the leaders of the entire R&A team. While we have sought to exercise caution about the claims of authorship, we have not overlooked materials that were not initially assigned to Neumann. Instead, we have directed our analysis at the entire work product of the Central European branch, because Neumann had input into every report that this group produced, particularly because he was viewed by both his supervisors and colleagues as the main spirit of the group. The publication of *Behemoth* made Neumann the leading expert on Nazi Germany within the Central European group. Thus, it is impossible to not see the impact of his thought affecting nearly everything produced by his team, if only by his ability to edit the texts submitted to superiors.¹⁰ An analysis of all of these documents is not possible in the context of this book project. Instead, we've focused attention on representative reports that shed light on the different topics examined by the group as well as the evolution of the Central European branch's thinking on these key topics.

A Brief Introduction to the Structure and Organization of OSS's R&A Division

While OSS was the organization that gave birth to the Central Intelligence Agency, it was not America's first foray into the worlds of espionage and intelligence gathering. Paul Revere's "mechanics" probably have that distinction. OSS, and its immediate forerunner, the COI, marked a notable change in the US approach to espionage and intelligence. Prior to the formation of the COI, which was formed by executive order by President Franklin Roosevelt on July 11, 1941, American intelligence efforts were diffuse.¹¹ In addition to each branch of the military having intelligence groups, the State Department also possessed personnel conducting limited intelligence operations on a regional basis.¹² The COI and later the OSS were institutionally centralized and gathered all intelligence efforts under one authority directly accountable to the Executive Branch of the federal government.¹³ Fearing that the country lagged far behind its potential foreign adversaries, President Franklin Roosevelt, on the advice of his Republican Secretary of the Navy, recruited a noted Republican internationalist and law-school classmate, William Donovan, to begin exploring possibilities for a new, centralized and more robust method for conducting US espionage. After spending time in London learning about British intelligence, Donovan returned to the United States with the proposal that led to the creation of the new office.¹⁴ Under Donovan's leadership, the COI assumed the task of gathering and analyzing all information related to national security and then reported its findings directly to the president of the United States and the Joint Chiefs of Staff. Equipped with a secret budget to hire a staff for his new organization, Donovan immediately began

assembling a staff unlike any other in Franklin D. Roosevelt's Washington. For the most part, Donovan did not seek to hire appointed or career bureaucrats from other segments of the federal government. Instead, he sought the expertise of politically unknown scholars in academia, cultural institutions, research organizations as well as the services of experienced diplomats. While this enabled Donovan to gather an exceptionally knowledgeable staff, unmarked by New Deal controversies, its members were naïve about the workings of the federal government. Their comparative youth and bureaucratic inexperience conspired to cause much of the work to be marginalized and ignored by much of official Washington—a problem that plagued not only the COI but also its successor, the OSS.¹⁵

Neumann was assigned to the Research and Analysis Branch, which remained constant when the agency was renamed and greatly expanded after Pearl Harbor. While the R&A branch studied and developed policy recommendations based on intelligence gathered and processed by an array of OSS branches, including Communications, Research and Development, Special Assistants, Censorship and Documentation, Foreign Nationalities, Counterespionage, Labor, Special Operations, Morale Operations, Schools and Training and a Reporting Board. Before examining the work that Franz Neumann did as a part of R&A, it is useful to look briefly at the history, structure and operations of the entire R&A branch. James Phinney Baxter, the president of Williams College, was hired as the first leader of R&A. As such, Baxter was responsible for hiring the men who would shape the development and culture of the branch. Baxter's most significant appointment was the hiring of Harvard historian William Langer, who became Baxter's successor in September 1942. Of nearly equal importance was the recruitment of Edward Mason, Donald McKay, Edward Mead Earle, Joseph Hayden and Calvin Bryce Hoover to become members of R&A's Board of Analysts. In addition to overseeing the subsequent hiring of all other R&A personnel, the Board of Analysts functioned as the main leadership group advising the director of R&A. As a group, the Board of Analysts shared a common worldview that set them apart from many of the rank-and-file members of R&A. Although they were all noted interventionists, scholars who felt strongly enough about the war effort to leave their academic posts, they were not only anti-fascist but also strongly anti-Communist, conflating Fascism and Communism under the newly expanded rubric of totalitarianism. Some were even anti-socialists and convinced that any type of economic planning led to the inevitable rise of authoritarianism. Yet in many ways, the leadership of R&A was not so different in its foreign policy thinking from many other State Department and military officials in Washington at the time. Although the Board of Analysts could be characterized as Conservative, in the terms of the time, its ideological leanings were widely unacknowledged because the members prided themselves—and were widely accepted—as objective men of knowledge.¹⁶ Thus, while R&A employees such as Neumann always felt that there was a conservative bias at the top that affected how their reports and recommendations were read and acted upon, the leadership never acknowledged the existence of any partisanship. In fact, the conservative inclinations of the Board of Analysts, as well as their self-presentation as value-neutral dispassionate scholars, were almost inevitably intensified by the left-leaning reputation that the rest of R&A had within official Washington.¹⁷ Fearing

that R&A would not be taken seriously by the government agencies that were expected to act on their reports, William Langer highlighted the ideal of social scientific objectivity. As Barry Katz explained,

Opportunities to influence policy would arise, but only insofar as those authorized to decide policy had confidence in the quality, integrity, and impartiality of their [the R&A branch's] work. In the face of this hostility, and in order to win a clientele for its goods, it was literally a matter of life and death that R&A gain a reputation for its disinterested professionalism as much as for the sheer excellence of their work.¹⁸

Toward accomplishing this end, Langer recruited University of Wisconsin geographer and prominent advocate for a narrowly “fact-based” method, Richard Hartshorne, to chair a Projects Committee that was formed in July 1942. The Projects Committee, thereby, became the central clearinghouse for all R&A reports. Like the editorial board of a newspaper or scholarly journal, the Projects Committee determined research priorities, oversight over the research methodologies being utilized and editorial control over the form and content of all final reports that were then distributed to government agencies outside of OSS. A prominent analyst of Central Europe, such as Neumann, might have tremendous influence over his immediate associates collaborating on reports about Weimar and Nazi Germany, but these reports were subjected to rigorous oversight and revision by the Projects Committee. Again, as Barry Katz observed in his historical analysis of the unreflective self-understanding of the controlling instances of R&A, “The Projects Committee, then, fought a rear-guard battle to enforce in practice the objectivist standard of political reporting called for by the positivist theory to which the directorate of the [R&A] Branch subscribed.”¹⁹ The bulk of the staff for the R&A was recruited in three great hiring waves. Initially, Baxter, Langer and the Board of Analysts tapped into their academic “Old Boys” networks to recruit other mid-career scholars to join them at OSS. Next, they hired former and current PhD students whom they had trained. Last, beginning in 1943, Langer encouraged R&A to begin hiring exiles and émigrés from Europe, and Neumann was one of the first to be hired in this final recruitment drive.

In the early history of R&A (within COI and its first six months within OSS), there had been a disciplinary division of labor. Researchers were grouped together as historians, economists, geographers or psychologists. The 1943 reorganization of OSS led to the erasure of disciplinary boundaries. R&A was reimagined as an interdisciplinary organization, and the new structure was built around geographic orientations—a Europe-Africa Division, a Far East Division, a Soviet Division and a Latin America Division. As the war progressed, the four R&A divisions in Washington were supported by foreign R&A outposts in London, Bern, Stockholm and later in Algiers, Bari, Caserta, Rome, Cairo, Istanbul, Paris and Wiesbaden. Thus, the organization that Neumann joined in February 1943 had just undergone significant growth and change and this dynamism and flux would continue throughout Neumann's years of government service.

Franz Neumann was hired as a research analyst within the Central European subdivision of the Europe-Africa Division of R&A. It was a subdivision that had suffered considerable turnover among its personnel during the leadership of Walter Dorn, its

first subdivision chief.²⁰ When Neumann began work with the subdivision, it was newly under the leadership of Eugene Anderson, who had worked closely with Neumann on the Horkheimer Institute's proposed projects on the origins of the Third Reich. By the summer of 1943, Neumann would be joined by other former members of the Institute group, such as Herbert Marcuse and Otto Kirchheimer, as well as by other Central Europe experts such as Sinclair Armstrong, Felix Gilbert and Edgar Johnson. According to Anderson's own historical account of the subdivision, Franz Neumann was "the recognized intellectual leader of the Section."²¹ At the time that Neumann began at the OSS, the Central European section totaled only 16 research analysts, but as the war persisted the group swelled to 45, and Neumann assumed more formal leadership roles.

The Early Analyses of Nazi Germany: The Pre-Neumann Years

Before looking at the work produced by the Central Europe subdivision of R&A during Neumann's tenure, it is worthwhile examining the research priorities and reports that were executed prior to February 1943. Beginning in the fall of 1941, research analysts connected with the COI's Psychology Division were directed to undertake a series of projects focused on German morale. Frederico Stallforth, a Mexican-born, German-American businessman, approached William Donovan with intelligence indicating that a group of German generals (Falkenhausen, Halder and Stülpnagel) had been swayed by the Atlantic Charter and were interested in seeking a peace deal with the United States as well as indicating a preference for the overthrow of the Third Reich and the establishment of a German Constitutional Monarchy. Stallforth was convinced that a conservative military coup against Hitler was possible. President Roosevelt, who was briefed on the meeting, was more skeptical. By the summer of 1941, his administration had embraced a more muscular foreign policy and was no longer inclined to entertain the possibility of any peace deals with Germany that did not include the removal of Hitler from power. Furthermore, the president and his advisors briefed on the Stallforth intelligence were skeptical about the reliability of the information and its source. Nevertheless, they were intrigued by the possibility that there might be (or could be) a resistance movement within Nazi Germany. While they decided to proceed cautiously with Stallforth, Donovan then tasked his Central European COI analysts with a series of focused studies of German morale as well as current economic and military developments.²²

The first of these studies was completed and circulated on December 12, 1941, and was entitled "The German Military and Economic Position." According to its R&A authors, the failure of Operation Barbarossa to deliver the rapid and decisive victory over the Soviet Union that the Blitzkrieg had achieved elsewhere marked a significant shift in Germany's fortunes. As the war in the East dragged into the winter, labor shortages were beginning to develop. This undermined the original war propaganda strategy of the Third Reich. Recognizing the need for high German morale in a total war, the Nazi propagandists had focused their initial efforts on emphasizing the initial successes of the Wehrmacht. They concentrated on the army's stunning victories and developed a narrative suggesting that "total victory was certain and within sight."²³ This became

impossible by the winter of 1941 as a result of shortages of civilian supplies and manpower as well as an intensified British bombing campaign. The Nazi propaganda ministry responded to this unexpected bad news by frightening the population with the specter of total annihilation. This marked a shift in public psychology from anticipating the fruits of a successful war to the total mobilization needed to prevent national destruction. So long as the German military did not suffer any devastating military losses or the public began to sense that defeat was inevitable, the COI Central Europe analysts predicted that the Nazi propagandists were sophisticated enough to keep German morale high. Thus, the authors of the report reasoned, resistance born of a crisis in morale would not likely result from “counter-propaganda” but—if it happened—would rather be the sudden result of deterioration of Germany’s military or economic circumstances.²⁴

Neumann’s predecessors at the COI felt secure in this more pessimistic assessment of campaigns against German morale, because they theorized that popular morale was less consequential in a “totalitarian state.” As the report explained, “fluctuations of civilian morale” were only of “indirect importance” in assessing Germany’s “striking power.”²⁵ The decisive factors that determined Germany’s military capability and survivability were not meaningfully linked to public morale but rather to the functioning of the “Army, Administration, and Industry—all of which are under the firm control of the all-powerful Nazi Party.”²⁶ The passage is notable, because this analysis of the Nazi state is different from that of Neumann at the same moment in time. While Neumann similarly saw the populations dominated by the same ruling groups (the industrial monopolies, the Nazi Party, the civil service and the military), he did not think that the party had yet gained dominance over the others in 1941. As evidenced by the initial edition of *Behemoth*, Neumann emphasized the ongoing competition among the four groups at the time.²⁷

A second COI report on German morale and the prospects for a viable German resistance, entitled “Current German Attitudes and the German War Effort,” was completed and distributed on March 19, 1942. A joint product of the Central European group and the Psychology Division, the second report took a finer-grained look at the work of the Propaganda Ministry by examining attitudes across different categories such as age group, gender, region, religion, political affiliation, profession, social class and educational background. The conclusions, however, echoed the pessimistic picture that had emerged in “The German Military and Economic Position.” As the report’s authors concluded at the end of their introduction,

In no case does there appear to be any justification for the view that organizational efficiency has been impaired by the dissident attitudes which are believed to exist at the present time in Germany. Even widespread disaffection of attitude may be expected to influence the trend toward disorganization only after this has been initiated by outside military and economic pressures [...] Despite the relative stability of the present German socio-political system it is possible to isolate certain groups in this population which, because of their attitude are likely to prove more susceptible than other groups to anti-Nazi propaganda appeals. Once deterioration of German power sets in, these propaganda “target groups” may then be expected to serve as the “catalysts” in hastening the ultimate victory.²⁸

Basing its findings on European espionage, news reports and interviews with exiles, émigrés, refugees and prisoners of war, the report on German attitudes summarized the following patterns: that the younger generation was most committed to Nazism, while the oldest segment of the population that had endured both World Wars was the least committed to the Nazi regime; that men tended to be greater supporters of the Third Reich than women; that Austrians, Bavarians and Rhinelanders tended to be less enthusiastic about the regime than populations from central and northern Germany; that strictly observant Protestants and Catholics generally disliked the regime but did little to oppose or resist it; that no political opposition or “underground” existed in Germany after 1936; that new army recruits were far more devoted to the regime than professional soldiers and officers; that industrial workers appeared to be underperforming with production goals (especially coal miners), which might suggest a lack of support for the regime; that intellectuals, on the whole, seemed to be one of the least satisfied groups; and that the upper middle class and lower middle class were most supportive of the Nazis and the war but that the aristocracy and working class were disgruntled (the first because they feared being leveled, and the latter because they disliked the competition from foreign laborers absorbed into the Nazi orbit).²⁹ Thus, the prospects of a robust and organized German resistance movement were judged to be minimal in the eyes of the COI analysts. Devoting resources to a nascent German “underground” made little sense without dramatic military and economic setbacks for the Third Reich. In one of the key summary sections of the report, the authors stated,

As long as group effort is successful, attitudes may fluctuate widely without appreciably affecting total organizational efficiency. Depressed attitudes may be expected to contribute to the disorganization of group effort only after organizational efficiency has already been weakened in some material respect by conflict with a superior opposing force. Once deterioration of group effort has set in, attitudinal depression can hasten break-down. Ultimate disorganization can take place only after prolonged frustration and general recognition of the hopelessness of continuing the struggle. Disorganization in crucial areas, such as defense, administration or supply, may be of decisive importance.³⁰

Neumann, by contrast, expressed a markedly different view in the 1942 edition of *Behemoth*. According to Neumann, Nazism needed to be defeated by a combination of psychological, military and economic actions. More significantly, Neumann’s notion of psychological actions was significantly dissimilar from what the COI analysts had in mind. For Neumann, psychological warfare was meaningless without political substance. As Neumann explained in the 1942 edition of *Behemoth*,

Psychological warfare against Germany will not be successful if the mere status quo is the ultimate aim. Europe must be reorganized. It cannot again be divided into hostile warring states. The potentialities of a unified Europe must be put to work for the welfare of the large masses.³¹

In agreement with the COI analysts, however, Neumann shared a low opinion regarding familiar types of counterpropaganda. For Neumann, psychological warfare was hollow

if it was not political warfare.³² By committing the United States to the reconfiguration of Europe, Neumann believed that a German resistance could be fomented. His future colleagues in the COI did not share this view in 1942.

The most significant point of convergence between the Central European analysts at OSS and Franz Neumann prior to his hiring by R&A relates to their views on the transformation that the German economy was undergoing as a result of the war. As readers may recall from our examination of *Behemoth*, Neumann rejected the concept of state capitalism. While he believed that the Third Reich had obliterated the pre-Nazi labor movement and was in the process of demolishing the rule of law, he did not accept the notion that capitalism was vanishing in Nazi Germany or that the economy was moving toward autarky. By contrast, Neumann believed that the trends toward monopolization that had been present in Germany before the First World War were intensifying in Hitler's Germany. In Neumann's view, the war and the economic mobilization that it required did not represent a turn away from capitalism or slow the pace of Germany's cartelization—instead it sped this process up. As Neumann explained,

It is, we repeat, nonsensical to believe that Germany aims at autarky and renounces foreign markets. Autarky is on the contrary merely a preparation for the conquest of world markets. Since the world market is divided among powerful contending states, it can no longer be conquered by trade and investments but only by political means. And since trade between industrial states is the essence of foreign trade, the political conquest of the world is and must be the aim of National Socialist Germany if she wants to survive as a highly industrialized nation [...] it is the high productivity of the industrial apparatus, the pressure for foreign markets, and the need for satisfying the vital material interests of her masses that have driven Germany into a policy of conquest and will continue to drive her to still further expansion until she is defeated or has fulfilled her aim. It is the dynamics of a fairly young, aggressive, monopolized country that is the prime mover of German expansion.³³

Neumann not only saw Germany's monopoly capitalist economy as the main beneficiary of its war economy, but he also saw the war as a product of its monopoly-capitalist economic system. While Hitler and the National Socialist Party may have seen the war in racial terms, Neumann recognized that the obsession with *Lebensraum* made little sense unless understood in terms of markets, international trade and imperialism.

In March 1942, the Central European subsection of R&A released its most ambitious project to date, and its analysis converged with Neumann's understanding of the economic dimensions of Nazi rule. It was a collaborative report, entitled "The German New Order in Europe," which combined the expertise of the Psychology and Economic Divisions and was integrated by the regional experts on Germany. The report arose from further close studies of propaganda and German morale. During the winter of 1942–43, the Central European team recognized what they judged to be a significant shift in Nazi propaganda messaging. While prior war propaganda had emphasized "equality of rights" and "living space," the new emphasis was on a "New Order," which the project went on to elucidate.³⁴ As the introduction of the report explained,

The longer the war lasts, the more imperious becomes the German need to employ the productive capacity of the Continent in addition to that of Greater Germany. There is a precise

correlation between growing need for the resources of the entire and the growing volume of Nazi propaganda on behalf of the New Order in Europe [...] At present Germany lacks that degree of economic self-sufficiency in essential foodstuffs and raw materials, which the Nazis call “autarky.” The cost of autarky through ersatz production is exorbitant. The broader and richer Germany’s raw material base is, the larger “Europe” is, the lower will be the costs of self-sufficiency. Europe, in this sense, ceases to be a geographic or cultural term and becomes an economic and military concept. At the present moment Nazis include in Europe all those regions that the British-American blockade has forced into the Axis economic orbit, including the entire continent from Gibraltar to the Urals, together with its natural adjuncts, Siberia and Northern and Central Africa. Until the vast area is actually conquered, the New Order propaganda is directed merely to the Continent that is still to be won over to collaboration with Greater Germany.³⁵

Like Neumann, the COI analysts did not see these economic and military goals associated with the “New Order” as an ideological fantasy dreamed up by the “lunatic fringe” of the Nazi Party. The report, therefore, did not focus on figures like Alfred Rosenberg. The “totalitarianism” theme was muted. Instead, the report focused somewhat unexpectedly on “an abundance of concrete and practical planning being done by ministers of state and responsible public officials, by industrialists and bankers, by technicians and engineering experts, and above all by that type of person—a hybrid between an army officer and an economist—who is playing so significant a role in present Nazi Germany.”³⁶ Like Neumann, the analysts at COI took the rhetoric of the “New Order” seriously, because they also saw this construct to be consistent with the logical and practical necessities dictated by the war and the needs of the German economy. Both recognized that autarky was a fantasy, because economic self-sufficiency was impossible for Germany’s advanced industrial economy. What the Nazi propagandists actually had in mind was the transformation of continental Europe into a network of colonies that the COI analysts saw as a Teutonic version of the British Empire. Central to the process of this new German imperialism was the absorption of foreign businesses into the German capitalistic economy. And like Neumann, the COI report pointed to the cartels as the main agents for this economic co-optation of conquered industrial interests. As the COI analysts stated,

One of the most effective means used to incorporate business outside of the Reich is the German cartel system [...] Cartels are authoritarian bodies, controlled by powerful combines which normally employ the cartel as a tool to advance their special interests [...] German cartel legislation, especially that concerning compulsory cartelization, has since been introduced into the conquered territories [...] Since, as we have seen, all the great German cartels are quota cartels, this can only mean that the allocation of production quotas is determined by the German majority of cartel members. There can be no doubt that the Germans have greatly strengthened their position by means of this device in certain specific industries.³⁷

While the tone of “The German New Order in Europe” may have shied away from the provocatively more direct engagement with capitalism that was prominent in *Behemoth*, Neumann’s future colleagues did agree with him and the report did state—perhaps precisely because the “conservatism” of R&A leadership was oriented to market

economies—that the German monopolies were not only the central player in the new war economy but also were the primary architects of the new German imperialism.³⁸

Neumann at OSS: Analyses of Nazi Germany, 1943–44

This section of the chapter seeks to address, first, the question of the degree to which Neumann's *Behemoth* analysis reoriented the work of the Central European section following his arrival in Washington and, second, the continuing development of his thought about the Third Reich discernable in the OSS reports produced by his section. In retrospective interviews conducted by Rainer Erd, former colleagues like H. Stuart Hughes, Carl Schorske and John Herz all recalled the overwhelming influence of *Behemoth*.³⁹ The influence of Neumann's book has been emphasized as well by historians of the Central European R&A group such as Barry Katz and Christof Mauch.⁴⁰ We propose to look closer at the substance of the question by noting how the reports completed after Neumann's arrival echo the theoretical positions and rhetoric found in *Behemoth* and to be attentive to how these change over the course of Neumann's career at OSS. Having reviewed the work of OSS on his subjects prior to Neumann's arrival and drawn attention to some similarities and differences between these reports and Neumann's *Behemoth*, we now want to show how that gap closed further after Neumann's hiring.⁴¹

The first substantive work that involved Neumann was the continuation of a report entitled "Survey of Greater Germany." While the initial portions of the report were completed in February 1943, before Neumann's arrival, "Section IV" was researched and written during Neumann's first months with R&A and released on July 17, 1943. The topics covered in the report were many of the primary areas of research highlighted in his book—the government, the Nazi Party, power, the stability of the regime and foreign policies.⁴² The most dramatic example of Neumann's immediate impact on the Central European section can be illustrated by the new assessment of the Nazi state. Since the December 1941 report entitled "The German Military and Economic Position," Central Europe R&A analysts almost always presented the Third Reich as a totalitarian entity in which the Nazi Party had seized control of the government from the administration, business community and military. "The Survey of Greater Germany," by contrast, presented an analysis of the Nazi state that was closer to *Behemoth*. As "The Survey of Greater Germany" stated,

The subordination to Hitler and the NSDAP has not yet achieved totality. In the bureaucracy as in the judiciary, some members trained in previous regimes, maintain what they can of former standards and traditions. Despite the indoctrination of the armed forces with National Socialism, which contributes to rendering illusory any hope of a cleavage between Wehrmacht and party, the latter has not yet succeeded in gaining full control of the former. Social, religious, and regional antagonisms to Nazi domination survive, even if generally reduced to silence.⁴³

Thus, the political section of "The Survey of Greater Germany" presented a glimmer of hope comparable to the one suggested by Neumann in *Behemoth*, but it was a glimmer

that was fading with current developments in the Third Reich. As Neumann wrote in the year before his arrival in Washington,

Devoid of any common loyalty and concerned solely with the preservation of their own interests, the ruling groups will break apart as soon as the miracle-producing Leader meets a worthy opponent. At present, each section needs the others. The army needs the party because the war is totalitarian. The army cannot organize society “totally”; that is left to the party. The party, on the other hand, needs the army to win the war and thus to stabilize and even aggrandize their own power. Both need monopolistic industry to guarantee continuous expansion. And all three need the bureaucracy to achieve the technical rationality without which the system could not operate. Each group is sovereign and authoritarian; each is equipped with legislative, administrative and judicial power of its own; each is thus capable of carrying out swiftly and ruthlessly the necessary compromises among the four.⁴⁴

Despite Neumann’s use of the term “totalitarian,” he used it in a way that was different from its common meaning both in the earlier history of COI/OSS as well as its current use. While previous COI analysts used the term to describe an all-enveloping authoritarian state established through total domination by the Nazi Party, Neumann limited its use to characterize the convergent attacks on the rule of law, free societal and political institutions and on civil society by the four distinct power groups. Under Neumann’s influence, the Central European group in R&A would reject the previous view of the Third Reich as a kind of Hobbesian Leviathan and instead embraced Neumann’s view of it as a *Behemoth*.

Neumann, thereby, was a new recruit who may have shaped the somewhat more optimistic picture painted in “The Survey of Greater Germany.” While earlier COI reports were wholly pessimistic about the prospects of a German resistance, we find the following formulation in the July 1943 report:

The absence of concrete data on the strength of anti-Nazi forces within Germany does not detract from the fact that such forces do exist. Between one and two million Germans have themselves been in the concentration camps [...] Unsuccessful though it was, the most determined opposition to the rise of the Nazis was offered by the German labor movement, the unions and the Social Democratic Party. Demoralized by failure in 1933, their organization pulverized, the German workers have been coerced and cajoled into at least passive acquiescence in the regime by a skilful combination of full employment, social security benefits, propaganda and terrorism. Before the war, there were underground labor movements from which the Nazis took a heavy toll. Since the war started and particularly since Pearl Harbor, evidence on this subject has become so fragmentary as to have little meaning. The fact remains that, more than for any other social group, the interests of the German workers are antagonistic to those of their Nazi rulers.⁴⁵

Such formulations marked a significant departure from earlier COI judgments that a German resistance would be possible only after abrupt and profound military or economic setbacks. In contrast to the COI analysts, Neumann located an indigenous German opposition movement within the former ranks of the German Social Democratic Party and labor movement. This could be seen to follow from Neumann’s analysis in *Behemoth*.⁴⁶

In the wake of subsequent Nazi setbacks on the Eastern Front, Neumann had grown more hopeful about the implosion of German morale in the social sector especially targeted, in his view, by the regime—an eventuality that was not seriously weighed in the earlier COI reports. As “The Survey of Greater Germany” stated,

Added to the continuing privations and mounting losses of the war, events since September 1942—disaster before Stalingrad and in North Africa and the increasing fury of allied air-raids—have influenced German morale much more adversely [...] There is a wealth of evidence in confidential reports and in the German press that defeatism and war-weariness have grown under the impact of these events. The phenomena of declining morale are not confined to any social group, although one of the most conspicuous signs has been the restoration of an eight or nine hour day in some industries.⁴⁷

Neumann’s involvement in the first substantive report from the Central European group not only demonstrates the impact of *Behemoth* on the R&A Division, but it also indicates the direction that future Central Europe reports would take. While the previous COI analyses indicated that only abrupt and severe defeats had the prospect of inspiring a substantive German resistance, and located this potential in the primary groups supportive of the regime, the Central European subsection (after Neumann’s hiring) began to entertain the possibility of indigenous revolutionary prospects—however slight—grounded in the surviving members of the Weimar labor movement.

At the same time that OSS identified the interwar, German labor movement as the most promising source for a German resistance, the Central European branch also showed its debts to Neumann in its primary explanation for the economic rationale of Nazi Imperialism. In another report from the early summer of 1943, R&A more explicitly began identifying German monopoly capitalism as the driving force behind the Third Reich’s plans for imperialistic conquest. In an OSS report entitled “Banks, Industry, and the Nazi Party,” the R&A division manifested the first signs of a Marxian critique of National Socialist Germany. As this report stated,

The exclusive concentration of the Nazis’ attack on banking was, however, primarily designed to cover their real intentions, namely to protect and strengthen the industrial monopolies. The economic influence of the banks was on the wane prior to 1933. Industrial capital had long emancipated itself from the control of banking capital [...] The accumulation of capital within industry had reached such an extent that industry became not only independent of the banks but even penetrated into them. The Nazis thus concentrated their anti-capitalist attack on the weakest sector of the German economy—as they always do—in order to hide the support of the most powerful group within the ruling classes: the industrial monopolists.⁴⁸

While the COI had already identified the cartels as the main beneficiary and likely mover of Nazi foreign policy, the report on “Banks, Industry and the Nazi Party” utilized the anti-capitalist, socioeconomic rhetoric that had been a hallmark of Neumann’s *Behemoth*—a language strikingly absent from R&A reports prior to Neumann’s tenure.

It is, perhaps, not surprising that the newly reconfigured Central European subdivision of R&A with Neumann as “intellectual leader” reacted as it did in the late summer

of 1943 to the “Free Germany Manifesto,”⁴⁹ a product of the Union of Anti-Fascist Forces, a group of German prisoners of war and exiled German Communists living in the Soviet Union, which aimed at mobilizing a resistance movement within Germany.⁵⁰ This was the first report of the reconstituted branch to move beyond the analyses in Neumann’s book to make policy recommendations. James Grafton Rogers, chairman of the OSS Planning Group, was immediately suspicious of the group and its communiqué. Rogers, who harbored deep mistrust and concern about the larger geopolitical goals of the Soviet Union, worried that the “Union of Anti-Fascist Forces” was less an attempt at anti-Nazi propaganda and more an effort to inspire the formation of a pro-Soviet resistance movement that might challenge and then supplant the Third Reich. Rogers found confirmation for his fears from R&A’s Foreign Nationalities branch led by DeWitt Poole, which viewed the report as a part of Stalin’s larger strategy.⁵¹

While the R&A leadership around Rogers grew gravely concerned about Russia’s new propaganda initiative, the Central European group around Neumann developed a markedly different analysis of this development. Their report, entitled “The Free Germany Manifesto and the German People,” was completed and released on August 6, 1943, and it made an appeal for OSS and the US government not to challenge or counter the initiative of the Union of Anti-Fascist Forces. As Christof Mauch uncovered from a memorandum that preceded the report of August 6, R&A saw the Free Germany Manifesto as an example of a broader trend that had developed in East-West wartime relations. With the Atlantic Charter and recent US-British initiatives to displace the fascist government in Italy while rejecting the leftist resistance in action, the Central European group feared that the Western allies were developing policies unilaterally without coordinating or even consulting with the Soviets. Thus, the Central Europe group saw the manifesto as indeed an example of Soviet unilateralism but not as a nefarious extension of the defunct Popular Front strategy.⁵² Because they viewed the manifesto with less suspicion, they saw potential gains for the United States as well—which were then highlighted in “The Free Germany Manifesto and the German People.”

First, and perhaps most important, Neumann and his R&A colleagues thought that the manifesto was a very effective propaganda effort. While they didn’t ignore the fact that some of its contents were aimed at German Communist activists and sympathizers, they argued that the manifesto was likely to have a much broader appeal. In fact, they maintained that the manifesto was entirely consistent with the Weimar Constitution of 1919, although they acknowledged that the appeal of democracy as such would be limited among its intended audience.⁵³ As the authors noted, “The appeal to democratic memories and principles could by itself hardly have any effect in Germany [...] only the politically conscious anti-Nazis criticize the regime on social and political grounds. The young generation knows nothing about democracy, and the older one is probably still reminiscent [*sic*] of the impotence and failure of the Weimar Republic.”⁵⁴ Instead, the most powerful appeal in the manifesto, in their view, was the formulation of an alternative to the unconditional surrender demanded by Britain and the United States. The report highlighted that the manifesto “shows the democratic revolution as a way to terminate the war without losing national unity and independence [...] If the German

people does not wait until the Wehrmacht is beaten, if the German army keeps its arms and turns them against the Nazi regime, it will, in beating Hitler, at the same time beat the enemies: the United Nations would not invade a democratic Germany which has eradicated the Nazi system."⁵⁵ Far from presenting typical Communist rhetoric, The Free Germany Manifesto effectively reached out to a wider constituency of workers, small peasants, proletarianized segments of the middle class, intellectuals, common soldiers and "certain high army circles which are favoring an understanding with Russia rather than with the Western Powers," by realistically appealing to their own self-interests and pitting those interests against those of the Nazi regime.⁵⁶ Neumann and his colleagues saw no danger in promoting these interests, because they saw national independence as a universally accepted goal of all democratic societies. The imperialistic nationalism of the Third Reich would end with the kind of democratic revolution envisioned by the manifesto, because that destructive form of nationalism was "characteristic of certain social groups whose interests are dependent on aggressive expansion (mainly the monopolistic strata of German Industry, the Junkers and militarists); it is not to them that the Manifesto appeals; it rather calls for their 'punishment' as the war profiteers and instigators."⁵⁷

R&A's analysis of the Free Germany Manifesto was consistent with the form of psychological warfare that Neumann had advocated in *Behemoth*. Whereas earlier OSS analyses of German morale and propaganda saw little promise for a significant German resistance, the Free Germany Manifesto led Neumann and his colleagues to become more hopeful—but their hope was linked to what was precisely new and innovative in this Soviet-supported appeal. In *Behemoth*, Neumann had rejected a purely operational vision of psychological warfare:

The war must be shortened by dividing Germany and divorcing the large masses of people from National Socialism. This is the task of psychological warfare, which cannot be dissociated from the domestic and foreign policies of Germany's opponents. Psychological warfare is not propaganda. It is politics. It consists in demonstrating to the German people that military superiority can be achieved by a democracy which does not claim to be perfect but which rather admits its imperfections, and does not shun the long and arduous task of overcoming them.⁵⁸

The "Free Germany Manifesto" was embraced by Neumann and his colleagues because it embodied the type of political-psychological warfare that Neumann had foreseen as necessary for kindling a substantive German resistance. Far from being a nakedly ideological appeal to the traditional opponents of the Nazi regime, the Free Germany Manifesto made a practical appeal and envisioned a future in which postwar Germany preserved its sovereignty and rejoined the community of nations. Such a practical appeal was possible, however, only so long as the powers allied against Germany were able to work together and support the aims of such a resistance. The R&A analysts, therefore, recognized that the manifesto had another audience—the leaders of Britain and the United States. As Neumann and his colleagues wrote, the manifesto "is directed not only to the German people but also to the British and American statesmen, challenging them to come out with a declaration of post-war policy toward Europe. If an

understanding between the Western Powers and Russia cannot be reached, the 'Free Germany' movement may become an instrument for power politics."⁵⁹ Neumann and his team of analysts, thus, sought to counter the potential for Cold War and recognized the last years of the war as the turning point in shaping the postwar world. Genuine cooperation was needed, they maintained, rather than the continued escalation of suspicions and misunderstandings between the East and West.

This implicit theme of the report on the Free Germany Manifesto was repeated with even greater urgency in a report entitled "Possible Political Changes in Nazi Germany in the Near Future," which was released on August 10, 1943. Building on their positive analysis of the manifesto, Neumann and his colleagues made an even stronger case for the necessity of cooperation between the Western Allies and the Soviet Union.⁶⁰ Militarily, the report sounded a note of supreme optimism. According to its authors, "It is certain that the German ruling groups have come to realize that the war is militarily lost."⁶¹ An inherent danger, however, lurked within this otherwise promising situation—the escalating mistrust between the East and West. As Neumann and his colleagues worried, "If military measures thus do not offer an escape from certain military defeat, the only hope of Germany lies in the field of politics."⁶² While they saw little danger in continuing German attempts to facilitate domestic opposition to the war in each of the Allied nations, they were far more worried about German efforts "to split the United Nations and to make a negotiated peace with one or the other, either with Russia or with the Western Powers. This they may hope to achieve by demonstrating to the Western Powers, the danger of the Bolshevization of Europe and to Russia, the danger of an Allied intervention against the Soviet Union."⁶³ They feared that such a strategy was evident in the late political consolidation of the Third Reich under Keitel, Dönitz and Göring. In the author's view, this reorganization implied "the subordination of the Nazi Party to the military." While it did not yet "mean the creation of an agency for bargaining with the Western Powers or with Russia," they saw it as "the first step in this direction [...] The new government will be aimed at a separate peace with the Western Powers or with Russia."⁶⁴ If OSS and official Washington insisted in listening to James Rogers and his Planning Board, the United States jeopardized not only the hope of a meaningful German resistance but also the possibility of a stable, democratic and peaceful postwar Europe. With tactical forethought, "Possible Political Changes in Nazi Germany in the Near Future" raised the specter of a renewed nonaggression deal between Nazi Germany and Soviet Russia.

Official Washington and the leadership of OSS were not persuaded. As they also became convinced that Germany had militarily lost the war, the Roosevelt administration and the military grew increasingly hopeful about the prospects for the collapse of German morale and a repeat of the swift uprisings of 1918 that toppled the *Kaiserreich*.⁶⁵ As in 1941, they asked R&A to take a closer look into the question of German morale and the prospects of a general German revolution against the Third Reich. In the August 1943 report, "German Situation in 1918 and 1943," the Central European analysts concluded that there was little parallel between the two historical moments. First, they reminded their readers that the failed Spring Offensive in 1918 was a major precipitating factor in the collapse of morale within the German military. Although German leaders in

1918 tried to combat this with propaganda emphasizing the annihilation that a defeated Germany would suffer, this message was neutralized by Wilson's Fourteen Points, which suggested a very different outcome.⁶⁶ While interviews with German prisoners of war suggested that morale within the military had now reached a nadir comparable to 1918, Neumann and his colleagues worried that the Western Allies were having more trouble countering the predictions of doom and total destruction that formed the center of Nazi propaganda in 1943. As they explained to their readers,

Roosevelt and Churchill have, to a degree, followed the lead of Wilson's fourteen points with the four freedoms and the Atlantic charter. But the German disillusionment with the fourteen points, in 1918 and after, has deprived this kind of general statement of principles of most of its effectiveness. The Russians, on the other hand, have been quick to take advantage of the new situation with the Free Germany manifesto [...] While informing the Germans of the impossibility of military success, it at the same time offers them attractive alternatives to national annihilation. This is precisely the way to counteract the propaganda of their own leaders [...] The characteristic of the Russian step which differentiates it from the 14 points or the four freedoms or the Atlantic charter is that it is specific in its relevance to the German people and tells them just how they can hope to extricate themselves from their present terrible dilemma [...] "Unconditional surrender" is not an aim that a German can become enthusiastic about or actively work for. Its content, for them, is entirely negative; it is perfectly compatible with what the Nazis tell them, namely that their enemies mean to exterminate Germany as a nation.⁶⁷

In light of the increasing mistrust between Russia and the Western Allies, Neumann and his colleagues offered a warning and choice to their readers in official Washington. If the United States continued on its present course and if it continued to view the actions of the Soviet Union with knee-jerk mistrust, they risked squandering the opportunity to exploit the similarities that did exist between 1918 and 1943. In the view of the Central European analysts, a comparable set of circumstances did exist, but they required the US government to be more innovative in its approach to psychological warfare. Specifically, it needed to be less suspicious of the Soviet initiatives in the domain of war propaganda and to recognize instead the wisdom of the Soviet approach. As the August 1943 report concluded, "What is wanted is a positive goal for Germany which will dispel this fear and encourage German soldiers and civilians alike to revolt against their leaders and bring the war to an end."⁶⁸

A month later, R&A was asked to assess more specifically how German morale was likely to be affected by new initiatives in the Third Reich intended to equip the Nazi Party with greater control over domestic affairs. OSS was asked to explain what inspired Heinrich Himmler's appointment as Minister of the Interior and as Delegate General for the Administration of the Reich, as well as Albert Speer's appointment as "virtual dictator" of the German economy, and to comment on the implications that these changes had on the prospects for psychological warfare and its facilitation of a German anti-Nazi resistance. In a report released September 16, 1943, entitled "Morale in Germany," Neumann and his colleagues attempted to place these new developments into the framework of their broader assessment of the prospects for a German uprising against the

Hitler regime. In their view, one of the Third Reich's motives for the changes was quite clear—the increase in the portfolios of Himmler and Speer had “been taken to insure full control of the Nazi party over society [...] The two appointments concentrate all powers over the domestic life of the German people in the hands of two reliable Nazis.”⁶⁹ The more insidious motive, however, related to Nazi concerns about morale. Building on Neumann's concerns about the complicity of German monopoly capitalism, the civil service and the military in the Third Reich, the report saw the elevation of Himmler and Speer as also a method of further co-opting these powerful groups that had the potential to do the most harm if they defected from the Nazi regime. As the report explained,

Junkers, industrial leaders, and the Nazis realize that the war is lost and that the only alternative to a crushing defeat with ensuing loss of wealth and power is a separate peace with either Russia or the western powers. But the Nazi leadership also realizes that neither Russia or the western powers are willing to negotiate with them but that avenues of escape may still be open to the army leadership and its allied Junkers and industrialists. The two appointments and the policies of Himmler and Speer thus in turn tend to close the avenues for the generals, Junkers and industrialists. They make the three groups of the German ruling classes, willing or unwilling, accessories of the Nazi party leadership [...] We may, therefore, say that in spite of differences between the views of the Nazi leadership on the one hand and the generals, Junkers, and industrialists on the other, the control of the Nazi leadership over these groups in the ruling class today is as strong as ever before. There is at present no likelihood of the emergence of a politically powerful opposition within the ruling classes, except if manipulated by Nazi leadership itself.⁷⁰

Intriguingly consistent with the views that had arisen and developed in the wake of the Free Germany Manifesto, the Central European analysts did not see the Nazi Party's consolidation of domestic life to have the same significant impact on the lower classes in Germany. “While the control apparatus over the ruling groups is thus powerful, it has considerably weakened in so far as the middle class and labor are concerned,” wrote the authors of the “Morale in Germany” report.⁷¹ What is notable about this new R&A assessment, of course, is the perception of expanding discontent into the ranks of the middle class. The reason that the Central Europe analysts began to see more lower-class potential for resistance arose from the numerous reports that they were receiving from Germany citing “misery, defeat, air raids, destruction of property—they all have contributed to the detestation in which the Nazi party is held.”⁷² The Nazi Party, they recounted, was increasingly conducting purges of the SA, as well as of the broader membership, and Hitler no longer made “concrete promises of victory” in his public speeches.⁷³ Echoing the caution that they'd expressed in the reports of August 1943, Neumann and his colleagues reminded their readers that war weariness was not synonymous with anti-Nazi opposition. Because the majority of the lower classes simply wanted an end to their suffering, Nazi terror was still a powerful force in checking outright resistance. Thus, the report “Morale in Germany” located the main hope for a German resistance in “the underground inside and outside the Nazi party.”⁷⁴ With the collective and united support of both the Western Allies and the Soviet Union, “the underground [...] may transform into a non-political community solidarity into political

solidarity. It alone can light the spark which can transform apathy and hatred and weariness into action.” This concluding statement is a perfectly consistent echo of the call for political warfare as the substantive ingredient in any efforts at psychological warfare that we have documented in *Behemoth* as well as all of the reports of the Central Europe analysts since Neumann’s arrival at R&A.

While the preparation of these Central Europe OSS reports confirms the reception within his OSS team of Neumann’s analysis of the Third Reich, there is another reason why lower-class political warfare became a preoccupation of the Neumann group. At the same time that Neumann and his colleagues were trying to convince their consumers to be more trusting of the Soviet Union and to pay more attention to the anti-Nazi German underground, leadership of the OSS was simultaneously being lobbied by competing factions insisting that the same social and political elite written off by the Central Europe analysts was the main bulwark of resistance. Since the beginning, there had always been a tug of war within OSS between analysts identifying with the political left or right, but this dynamic produced greater disharmony as victory in the Second World War became a more certain outcome. Perhaps the main source of in-field opposition to the views of the Central Europe analysts in Washington came from the OSS branch office in Bern, Switzerland, headed by Allen Dulles. Dulles, who arrived in Bern on November 8, 1942, presented a vastly different assessment of the potential for an anti-Nazi, German resistance. In contrast to Neumann and his colleagues in Washington, Dulles produced a series of reports indicating that the same elites from the military, bureaucracy and industry (condemned by Neumann and the Central Europe analysts), complemented by segments of devout Catholic and Protestant Church circles, represented the basis for the most promising opposition to the Third Reich.⁷⁵

With Neumann as first in the group of sophisticated students of central Europe at OSS, they set forth a policy design that could easily be viewed in retrospect as credulous about Soviet objectives in Germany and Western Europe, if not simply subservient to them. Given that the events that actually followed in the Cold War were in no small measure a function of the policies that were in fact pursued, such judgments dismiss three factors that entered into the thinking of Neumann and his associates. First, there was the not unreasonable conviction that a restoration of the status quo at the end of the war would renew the risks of the developments that first brought it about. Second, there was a collective judgment that the only alternative required accommodations that would change the structural dynamics of the competition between the Soviets and the West. In the end, third, they saw no alternatives to fostering a development of a “new politics” that would display the creativity of social action within both of the emerging camps. These were not trivial considerations. We have emphasized Neumann’s leadership, but we must also recognize the qualities of the colleagues he led—and the poverty of the choices before them at the time. As conditions changed, so did the focus of the analysis.

An Alternative Reading: Neumann as “Ruff”

Since the late 1990s, a quite different reading of the activities we have just described gained a certain plausibility. Publication of the wartime Soviet intelligence files after the

collapse of the Soviet Union showed three instances where Franz Neumann, under the code name of “Ruff,” supplied information to the Soviet secret service.⁷⁶ In a book on a number of these files, Ivan Vassiliev, a former KGB agent, and his English-speaking coauthor, Allen Weinstein, recounted Neumann’s brief relationship with the Soviets.⁷⁷ According to this report, Neumann had been recruited through his New York friends, Hede and Paul Massing, who were Soviet agents at the time.⁷⁸ In August of 1942, the Massings sent word to Moscow about Franz Neumann. Neumann, who was still working for the Board of Economic warfare while he continued part-time at the Institute, shared three reports on the Caucasus with the Massings.⁷⁹ Hede Massing’s first husband had been one of the original members of Horkheimer’s Institute, Julian Gumperz, and he had been instrumental in helping the Institute for Social Research relocate to New York City.⁸⁰ After her divorce from Gumperz, she married Paul Massing, who was a research assistant at the time of Neumann’s employment at the Institute. The Massings were colleagues and friends of Neumann during his time in New York.

The personal relationship is significant, because it may indicate that Neumann’s recruitment was less formal than the Soviet archives suggest. While the Massings were unquestionably active spies for the USSR, they may have misrepresented their contacts with Neumann to their Soviet controlling agents. Then too, his release of the economic study of the Caucasus followed immediately upon the beginning of the great German offensive in that region, aimed at the oil fields in Baku, when it would have seemed only logical to make this recent detailed study available to the Soviets, whatever the regulations of his agency. In attempting to impress the Soviet agency, especially after Neumann’s entry into OSS, the Massings may have exaggerated Neumann’s desire to enlist as agent. According to Vassiliev’s transcripts, the Massings reported that “Ruff promised to pass us all of the information that came his way.”⁸¹ Curiously, Hede Massing made no mention of Neumann in *The Great Deception*, the 1951 book in which she recanted on her service to the USSR and identified, as it seemed, all of her informants. We raise the issue of Neumann’s precise commitment before examining his later contacts with Soviet intelligence, because it seems pertinent to register that the Soviets grew very disappointed with “Ruff.” As an important contact within the OSS, he rarely provided them with anything.⁸² As Vassiliev’s transcription of the KGB files stated, “Despite ‘Ruff’s’ consent to help us, to this point he has done poor work, attributing the skimpiness of his reports to the fact that he supposedly focuses on material at the ‘Cabin’ [OSS headquarters] that are not of interest to us. In the opinion of the Carthage Office, ‘Ruff’ is avoiding systematic fulfillment of our assignments.”⁸³

Yet there is more. Neumann’s more substantive contacts with Soviet intelligence took place between the spring of 1943 and the summer of 1944—a time frame that corresponds not only to Neumann’s first months at OSS but also to the time in which he was enthusiastic about the strategy developed in the Free Germany Manifesto and was frustrated by his inability of get the leadership of OSS to put aside their fears and suspicions about ulterior motives of the Soviet Union. Thus, it is easier to make sense of the renewed contacts with the Soviets that resumed on April 3, 1943. On the record, the move from the group’s political projections to Neumann’s renewed transfer of information is far more plausible than any other supposition. There is no evidence that Neumann

ever took instructions from the USSR, and no scholar has ever suggested it. A cable sent from the USSR's New York station to Moscow reported that Neumann had met with Elizabeth Zarubina, the wife of the station's chief. According to Zarubina, Neumann again "promised to pass us all data coming through his hands. According to [Neumann], he is getting many copies of reports from American ambassadors [...] [and] has access to materials referring to Germany."⁸⁴ The information that Neumann shared at this first meeting with Zarubina related an attempt by US Cardinal Francis Spellman to "bring the Pontiff toward a more supportive public role on behalf of the Allies" as well as intelligence intercepted from the Spanish diplomats relating to a plot to overthrow Hitler by German generals and industrialists. There was also some unspecified information regarding Communist agents in Mexico.⁸⁵

After this initial meeting and the reports that Neumann shared with Zarubina, Neumann again went silent. According to Vassiliev's analysis of the KGB materials, Soviet intelligence thought that he was a coward. Neumann became an American citizen at the end of 1943, liked his job and the Russians believed that he no longer wanted to risk what he had.⁸⁶ A memo sent to Moscow in January 1944 tried to address the mystery surrounding Neumann's second silence. It was sent following a meeting between Neumann and the Massings. In response to the Massings inquiry about "the reasons for his inability to work," Neumann reportedly told them, "I did not change my mind. If there is something really important, I will inform you without hesitation."⁸⁷ Not long after this pronouncement, Neumann did leak material to the USSR one last time. In July 1944 after the failed generals' plot to assassinate Hitler, Neumann shared several files with the Soviets regarding Allen Dulles's attempts to recruit a conservative anti-Nazi opposition from military, industrial and religious groups.⁸⁸ Following this third set of leaked materials, Neumann went permanently silent. Zarubina left the United States after this final transmission of information, and Neumann was never contacted by another Soviet intelligence agent.

The question that remains, which is really essential in making sense of his motivations and actions during these years, is why he cooperated with Soviet intelligence in this discontinuous and independent manner. It is possible that they were right and that he got cold feet about all that he stood to lose if he was discovered, but there is a better explanation for his odd behavior. Leaving aside the set of materials regarding the Caucasus, which had their self-evident relevance to the common war effort, all of the other reports that Neumann shared related to attempts by the OSS and US government to recruit a conservative German resistance to overthrow Hitler. It is possible that this is merely a coincidence, but it seems more likely to us that Neumann's leaks to the Soviet Union were tactical in nature. Based on our analysis of Neumann's views as a political intellectual, the way of making sense of this brief episode that is consistent with the rest of his thought and actions is that these leaks to the Soviets were intended to undermine the schemes being supported by OSS leadership to bypass the Soviet anti-fascist efforts and instead promote a German opposition more to their liking. By tactically making the Soviets aware of these efforts, Neumann may well have believed that he might obstruct OSS designs for a conservative anti-Communist and pro-capitalist resistance and thereby keep the door open for the broader resistance that he saw possible in the Soviet-inspired psychological

warfare efforts in 1943 and early 1944. Perhaps more importantly, he may also have seen this as the only way of keeping alive his hope of cooperation between the Western Allies and the Soviet Union, thereby preserving his goal of a peaceful and unified postwar Europe. By 1944, Neumann and his colleagues at the OSS had reassessed their optimism regarding a Communist-supported allied resistance. Neumann ended his contacts with the Russians. Rather than having been a Soviet tool, it would appear, he sought to use the Soviets as a power resource in pursuit of the political conception he shared with his associates.

If our reading of the available evidence is correct, we are still left with Neumann's surprising—and illegal—breaches of organizational discipline in support of his best judgment. It should be noted, first, that it cannot be supposed that the many adventurous overtures made by the largely uncontrolled OSS field agents overseas could have proceeded without compromising such information as might have appeared helpful to their ventures⁸⁹; but Neumann was not in the field, where he could speak secretly with agents of all sorts, but in Washington, where informal channels of communication were strictly precluded. A decisive clue to his conduct in this matter may be provided by his reflections on the difficulties of the political intellectual in his time, included in his late reflections on his exile, discussed in an earlier chapter. We recall our summary of his argument on this point:

Neumann begins with a normative imperative addressed to all intellectuals. They are to be proponents of an expansion of freedom, which implies, first, that they must always stand in a critical relationship to their times, since freedom can never be fully achieved in any political and social regime. And this vocation as advocate of freedom requires, second, that they must stand at a distance from the constraining institutions of the political and social order within whose boundaries they find themselves: they must be in some sense aliens or *metics*.

Yet in the course of development of the modern nation state, according to Neumann, even these ambiguous openings are made ever narrower, first of all, by the functionalization of intellectual roles and their transformation into intellectual professions. In view of the “political scholar's” attention—as well as Neumann's own—to the “brute facts of power,” which are often articulated in bureaucratic modes, however, it is increasingly difficult for the intellectual to be relevant to politics without becoming involved in the rationalized scheme, entering into a complex play of power and resistance rather than categorical autonomy.

Adapting to the Brute Facts: 1944–45

In response to the potent opposition to their design within the OSS and the actual flow of events, the Central Europe analysts released a series of reports intended to ameliorate the negative reactions they had received. They began to express more pessimism about the prospects of a labor opposition to the Third Reich and rejected the prospects for the formation of the kind of unified resistance that they'd envisioned in the immediate wake of the Free Germany Manifesto. In a report from December 4, 1943, entitled “Process of German Collapse,” the Central Europe analysts, in brief, reversed their prior optimism about a lower-class revolution. By the end of 1943, they saw this opposition as undermined by “disorganization, atomization, and apathy.”⁹⁰ Now, they expressed their

concern that while the potential for a military coup had risen, its prospects for triggering the kind of broader resistance that they had foreseen in the immediate wake of the Germany Manifesto had greatly diminished. Not even the prospect of continuing allied military successes boosted their hopes in a German opposition. Instead, they feared that military occupation of Germany might actually stall the formation of a revolutionary resistance.⁹¹ The rationale for this negative assessment that must have flown in the face of the optimism being felt in other governmental agencies in Washington arose from two key concerns that Neumann and his colleagues shared. First, they feared that the Nazi regime would intensify its terror policies against “all elements of potential opposition,” such as German and foreign worker, leftists and the remaining Jews.⁹² In fact, they had even begun to fear that such terror policies might be directed at the “unreliable persons” among the monopoly capitalists, civil servants and military personnel whose power had been largely preempted, in their view, by the appointments of Himmler and Speer. Second, and perhaps more ominous, they expressed concern that a National Bolshevik appeal to the lower classes might have the effect of blunting opposition in the same way that Himmler and Speer were undermining upper-class interests by appealing to the short-term self-interests of the ruling classes.⁹³

By the end of 1943, as hope for a German resistance faded, Neumann and his colleagues shifted their attention from a focus on German morale and the prospects for such resistance to planning for American occupation and de-Nazification of Germany. Specifically, they considered policies that the allies would need to undertake to accomplish the political goals that the group had previously expected a German underground to achieve. The reports produced in 1944 and 1945, thus, were written to equip occupying troops with background information regarding institutions, people and ways of life in Germany. They had two objectives. One goal was to get official Washington and the military up to speed with past and current circumstances in Germany, and these reports consequently provided less of the analysis and reasoned predictions that we have seen in reports from 1942 and 1943. By contrast, these reports were rigorously rooted in historical and recent facts, which were presented in the language of value neutrality that the leaders of R&A preferred. The second goal was to contemplate the consequences of policy decisions that were being made as the occupation of Germany unfolded. These reports, as one would expect, were necessarily more speculative and therefore were not expected to conform to the same rigid ideal of value-free analysis that had become the *modus operandi* of R&A.

A report entitled “The German Communist Party” from July 10, 1944, is a superb example of the newer type of report being prepared for the German occupation. The bulk of the report is a detailed history of the KPD from the formation of the Spartacist League up to the present. Presuming an audience that knew nothing about the subject matter, the report introduced its readers to the party, its leaders, its ideology, its membership, the evolution of its political strategies during the Weimar Republic and its activities as an important component of the anti-Nazi underground in Germany.⁹⁴ The report shifts in its final section to a projection of what the United States might expect in the future from the KPD. Here one sees a more skeptical view of the Communist underground. Neumann and his colleagues still looked at the KPD as “the best organized and

most effective underground in Germany” and still hoped that as “the military situation of Germany deteriorates and internal controls weaken, the underground may be able to play an important role either in the overthrow of Hitler or the liquidation of the Nazi regime under military occupation.”⁹⁵ By the summer of 1944, the Central Europe analysts still thought it was essential for their readers to be aware of the fact that prisoner-of-war interviews indicated that hundreds of thousands of German soldiers on the Eastern Front “subscribed to the Free Germany Manifesto” indicating that the strategy demonstrated by that document was having precisely the impact that they had anticipated in their prior analyses.⁹⁶ A broad proliferation of propaganda echoing the Free Germany Manifesto was also being broadly circulated within the civilian population. Also included in the report, however, was notice of more ominous strategies being pursued by the Communists. Assuming a tripartite division of Germany after the war, the KPD was calling on its supporters to carry out “agitation [...] in the British and American zones against military occupation” emphasizing that “better living conditions and greater political liberty exist in the Soviet zone.”⁹⁷ While Neumann and his colleagues reminded their readers that actual events might alter this strategy, they clearly were beginning to see the KPD as “the most faithful exponent of Soviet policy in Germany”⁹⁸—a view that was greatly qualified in their prior assessments, when they thought that effective American policy could hold the Soviets to the line of the “Manifesto.” In fact, the Central Europe group now began pinpointing developments that might limit the appeal of the Communists and undermine their efforts. Thus, they noted the Soviet Union’s push for a “hard peace” that included German territorial losses, reparations and enforced labor for Soviet reconstruction.⁹⁹ They similarly remarked the fact that the KPD had failed in their partisan appeals to the labor movement and the Socialist groups. The Western Allies, by supporting these rivals on the Left, had the ability to limit the impact of the Communists, thereby limiting one-sided influence of the Soviets in postwar Germany.¹⁰⁰

More common than the type of fine-grained political analysis that is evident in the report on the KPD are the numerous reports involving German industrial supply chains,¹⁰¹ the structures of the major German cartels¹⁰² and profiles of the largest German industrial corporations.¹⁰³ Consistent with Neumann’s long-standing concerns about monopoly capitalism in Germany, these reports were intended to accomplish two goals. First, they wanted to demonstrate the complicity of the German business community in the imperialist policies of the Third Reich but, second, and perhaps more important, they sought to make clear to occupying forces how this sector of German society could best be disrupted in order to facilitate defeat and capitulation to the allies. These reports indicate that Neumann and his colleagues were already anticipating the challenges the United States would face in its de-Nazification efforts. The Central Europe analysts, in preparing these reports, wanted to make sure that the postwar push to eradicate the regime was not limited to the Nazi Party, government and military. They wanted to demonstrate the complicity of the main economic players too. As they bluntly stated in the conclusion to the introduction of their survey of 100 of the most powerful businesses in Germany, heavy industry “found a partner in Nazism whose interests coincided with its own.”¹⁰⁴ As far as Neumann and his colleagues were concerned, the business community should not go unpunished under allied occupation.

The Central Europe analysts' contribution to OSS's larger investigation into the possible dangers of a Nazi underground complemented the studies indicting the German business leaders. By August of 1944, the defeat of Germany was becoming a foregone conclusion. It was increasingly becoming a question of specifically how and when the regime would collapse. In the midst of this mood of optimism, one concern that emerged among the leadership of OSS was fear of the formation of a Nazi underground. OSS outposts across Europe were detecting chatter that suggested efforts by the Hitler regime to establish the foundations for a Nazi resistance.¹⁰⁵ While the leaders of OSS may have exploited this fear to gain support for increasing the size of the organization, as suggested by Christof Mauch's history, Neumann and his colleagues used the threat of a Nazi underground to remind their superiors of the role that the German military had played in what they saw as a pre-fascist underground that arose in the immediate aftermath of the First World War. While Allen Dulles was successfully lobbying OSS leaders to actively support the networks of renegade military officers and religious authorities that Dulles was courting as an alternative German resistance to the leftist-dominated groups that the Central Europe analysts had been promoting,¹⁰⁶ Neumann and his colleagues challenged this strategy by presenting a historical precedent for distrusting the German military. After presenting a detailed history of the formation and activities of the post-1918 Free Corps, they made the case that these represented an object lesson for the architects of the developing Nazi underground.¹⁰⁷ As they explained, "A situation comparable to 1919 will exist in Germany after the war. Violent reactions to defeat and military occupation may inspire a new group of activists to continue the war by illegal means. The elite and militant groups in the Nazi Party, long trained in the methods of subversion, could provide the necessary personnel and ideology for an underground. Support may be drawn from any nationalist circles opposing the peace which will be imposed on Germany."¹⁰⁸ Occupying forces were, thus, not only needed to subject members of the Nazi Party to the most rigorous de-Nazification efforts but also to deploy the same intensity to scrutinizing members of the German military and nationalist organizations.¹⁰⁹ These concerns were reiterated in subsequent Central Europe reports entitled, "The Clandestine Nazi Movement in Postwar Germany" and "The Pattern of Illegal Anti-Democratic Activity in Germany after the Last War: The Free Corps."¹¹⁰ The former report, in particular, identified additional groups most likely to be attracted to and recruited by a Nazi underground, such as industrialists; members of the landed aristocracy; dispossessed Germans from Austria, Poland, Czechoslovakia and Hungary; and local defense groups.¹¹¹ Collectively, the three contributions of the Central Europe analysts to the OSS's investigation into the prospects of a Nazi underground again corresponded to the key components of the Nazi regime that Neumann had presented in *Behemoth*—the Nazi Party, the military, the civil service and the monopoly-capitalist business community.

Preparation for the Nuremberg Trials

An exceptionally difficult phase of Neumann's OSS career is comprehended by the months of his service, as recognized head of a subset of his team, in the preparations for the American position on the Nuremberg Military Tribunals of 1945, both before

and after the tripartite London Charter agreement among the United States, the United Kingdom and the Soviet Union in August of that year. This spell of activity eventually entailed his first return to Britain and France, and then to Germany, where he served variously as advisor to the American chief prosecutor, Justice Jackson, and his staff during the preparatory stages of the American preparations for the trial, often in conflict with one or another in the disjointed hierarchy of that organization and excluded from participation in the trial itself.¹¹² Returning as well to an entirely new dimension of his old professional field—similar to labor law only insofar as the former had also been an unsettled and politically charged legal field in formation—these efforts involved difficult accommodations to the formal limits of legal conceptualization and practice, balanced against ambitious political objectives. In contrast to his work in labor law, however, the stakes and superior authorities at issue effectively precluded his developing the sorts of theoretical explications that we have examined in the former cases. We shall accordingly limit our examination of this important episode to two representative OSS reports arising from this assignment, one submitted before and the other just after the tripartite London Charter agreement, as well as to a deliberately inconclusive retrospective published four years later, posing questions for future research and decision raised by the record of the actual trial (and its successors).

The first of the documents to be considered is no less important for its radical presuppositions than for its actual contents. In lieu of approaching the trial through a “case-book of Nazi crimes perpetrated either by groups or individuals,” it offers “categories of charges” and sorts through the “organizations and institutions of the Nazi Party, the Reich Government, and the Armed Forces (*Wehrmacht*)” in order to specify “the jurisdictional responsibility [...] for the commission of specific crimes.” Since there have been no charges or indictments formally determined by the authorities, the categories are simply posited. The express proposal of the report is to use a “group approach (as opposed to the consideration of isolated persons).” This approach is not analyzed in relation either to the requirements of German and most continental criminal law, which requires proof of individual responsibility, or to the complex and contested American doctrine of conspiracy. The report offers a single pragmatic rationale in the first paragraph and never addresses these legal issues again:

The group approach [...] is based on the assumption that the indictment of these organizations or their agencies may expedite the prosecution of war criminals and help to prove that Nazi war crimes are not purely individual acts committed in violation of existing laws but are the manifestation of an overall plan which relied, integrally or implicitly, on specific organizations as instruments essential or incidental to the execution of its purpose. (1)¹¹³

This sweeping premise does not mean that the specification of groups is not subjected to any criteria, stated in legal language. First, three alternate standards are offered: (1) that the organization was established to perpetrate or to assist in the perpetration of crimes; (2) that the functions of the organizations make them instrumental; and (3) “that by virtue of their functions, these organizations [...] have prepared, inaugurated, facilitated, or justified and upheld the perpetration of crimes” (2). There is also provision for the trial

of individual defendants like Hitler or Göring, but this is not in the purview of the report. In the cases of the groups, “they may be charged [...] by putting on trial such of their members as the tribunal may determine to be fairly representative.”

There follows an elaboration of the criteria for selecting Nazi organizations for prosecution so as to exclude entities too varied for collective treatment or incidental to the criminal complicity of those to be tried. Among the examples cited is the need to specify the *Gestapo* within the larger organization of state security services, which also includes many police departments. In complex organizations, moreover, there will be a hierarchy among constituent units, and attention should be focused on the entities in positions of command and responsibility:

A procedure of this sort will [...] facilitate the establishment of a scale of responsibility [...] according to the agency’s or individual’s functional proximity to the crime. (4)

The report then strikingly offers its own catalogue of charges, so as to provide a basis for selecting organizations related to one or another, as well as the varying degrees of responsibility. We summarize the five charges devised for this occasion, which, we believe, effectively state Franz Neumann’s hopes for the political functions and effects of the trials to be held.

First, and most sweepingly, there is a charge of a complot originating prior to 1939 aiming at “the establishment of complete German domination of Europe, and eventually the world,” and that this design knowingly or predictably entailed the commission of the other crimes listed. As is evident from the elaboration of this charge below, as well as from the other R&A report to be examined, this provision is intended to criminalize the Nazi regime from its inception. Second is a charge of launching “illegal wars of aggression.” These wars entailed, third, violations of international law (“laws, rules, and customs of war”). Elaborating this charge is the fourth, which specifies involvement in “atrocities or other crimes” in violation of “the laws of Germany” or other involved national entities as well as “international law or treaties.” Fifth, then, this preliminary catalogue of charges links the criminal acts listed above to the initial thesis of “a common criminal plan or enterprise among the defendants” (5). The remainder of the report is devoted to an assignment of organized entities to the various charges slightly elaborated, prefaced by a legally correct formula that “proof must be furnished that the organization, or parts of it was implicated in the perpetration of crimes covered by one or several of the above charges” (5).

For present purposes, it will suffice to review this largest segment of the report only insofar as it sheds further light on the charges postulated, since the sometimes lengthy separate lists of organizations presumed to be responsible, divided according to the distinction among party, governmental and military offices, with the *Führer* heading each list, are not sufficiently revealing in their respective comparative inclusions or exclusions to merit the detail this would require. The longest of these lists contains about 65 items. The elaboration and further specification of the charges in this context, however, do merit some consideration, inasmuch as they further clarify the political as well as legal designs of the report. In view of its extensive aim of criminalizing, in effect, the entire

duration of the Nazi regime, the elaboration of the first charge—summarized in the report as “Plot for World Domination”—is especially revealing. The charge is said to cover “the defendants’ internal and external policies,” “their ideological, organizational, and material preparations for the commission of the atrocities and other crimes charged against them,” as well as “the prewar (pre-1 September) atrocities and other crimes, and those committed by the defendants against their fellow nationals, neutrals, stateless persons, and nationals of the United Nations.” Some 50 organizations are listed, and the policies for which responsibility will suffice for condemnation, if proven, include “indocctrination of Germans, at home and abroad, with Nazi ideology”; “coordination of political, professional, and economic activities inside Germany for the purpose of establishing the monopoly of the Nazi Party in all spheres of public and private life”; “abrogation or minimalization of civil liberties, constitutional rights, the process of law, and parliamentary procedure”; “infiltration into non-German organizations and agencies and foreign countries for the purpose of propaganda, espionage, sabotage, and subversion”; as well as, most sweepingly, “organization of human and economic resources for the purpose of preparing and waging aggressive wars against other nations” (8–9). When the state parties responsible for drafting the actual charges for the tribunal, some weeks after issuance of this report, accepted the French proposal to limit the scope of charges to events after the onset of war, nothing remained of this class of proposed charges. This restriction may help to explain Neumann’s eventual reluctance and then refusal to serve as adviser to the prosecution beyond the preliminary stages.¹¹⁴

The explication of the second charge, “Launching of Illegal Wars, Aggression, and Violation of International Treaties,” adds little to the title, failing to address the problems of distinguishing between legal and illegal wars or the specification of aggression, except insofar as the actions were shown to be a “part of the overall plan to dominate the world” (11). Closely related is the charge of violating “International Rules of Warfare,” discussed third, a matter on which the report first defers to the War Crimes Office to identify such violations but then proceeds to list a number that include both self-evident but also highly contestable items that come indistinguishably close to Allied practices and, in one case, depend on “the limits of measures recognized as necessary or traditional in the prosecution of war” (12). Under this third heading, the report also includes a lengthy and ambitious subsection headed “Crimes Committed in the Planning and Execution of Nazi Occupation Policies.” This includes, first, a catalogue of actions designed to prepare for eventual attack and occupation, including “divisive policies,” “false and subversive propaganda” and numerous similar alleged violations of “international law and the laws of the countries concerned” (15). Details of the execution of the policies thus prepared are prefaced by a statement of specific circumstances affecting the German treatment of such matters in named countries, as with documentable statements that international law did not apply in the Soviet Union and that Czechoslovakia and Poland had ceased to exist as states. There is reference as well to an earlier OSS report on the incorporation of certain named territories and to a finding that “the Germans themselves were conscious of the illegality of their actions” (18). Continuing the treatment of crimes associated with occupation policies, the report lists not only “the deportation of civilian labor,” “the spoliation of property” and “the operation of concentration camps

for foreign nationals inside and outside of Germany” but also—perhaps surprisingly, in this context—“the extermination of the Jews” and, as a separate item, “the extermination of other groups” (exemplified by “the Polish intelligentsia”). In considering these curt juxtaposed references, it should remain clear that the document presently under review is designed as an agenda for specialized reports to be executed in support of the various prosecutions, and we will be examining next an important and controversial report of this kind, submitted two months later to the war crimes staff: “The Criminal Conspiracy against the Jews.”¹¹⁵

The final class of charges, initially summarized as aimed at proving the existence of “a common criminal plan or enterprise among the defendants,” is now reformulated as “violation of domestic laws since 1933,” presumably in order to back up the “group approach” overall and bring it closer to the American doctrine of “conspiracy.” This is the category where more than 60 organizations are named as “agencies responsible for crimes.” But, the report concedes, this “presents the greatest legal difficulties.” The question arises, “What is domestic German law?” If it is not Weimar law at the time that the Nazis came to power, it must be “the sum total of all laws valid in Germany on VE day”; but this entails, on its face, rendering “lawful,” under the Nazi theory of the sovereign right of party actions, even such events as concentration camp murders. The report puts forward an alternate approach, which it labels first as an interpretation of that law “according to liberal conceptions” and later as “interpretation according to civilized standards,” so that murders would be condemned under Section 21 of the German Criminal Code, without reference to the perverse Nazi legal doctrines.¹¹⁶

This section may be seen as the closest practicable approximation, under the circumstances, to Neumann’s stated preference elsewhere that the prosecution of war crimes overall should be left to German courts reorganized so as to become capable of such judgments, as an integral part of German civil reconstruction. Since there was no possibility, under the policy clearly preferred by the victorious governments, to yield this result at that time, the report links this whole class of actions—including even crimes committed to intimidate opponents before 1933—to the international war crimes tribunal by the claim “that the establishment of total control over Germany was merely a step in their aim to seize control of Europe and possibly of wider areas” (22). The “conception of a basic plan of conquest” then opens the way to the inclusion of a whole array of domestic crimes. A first list of six ranges from “rigid control over the government and all its agencies” as well as “religion, administration of justice, education, news dissemination, finance, commerce, industry, labor, and the professions” to “destroying opposition elements,” racialized division of citizens and “discrimination against those adjudged not to be of German blood,” unlawful expropriations for the sake of Nazi control, all under the Führer principle, and “destruction of racial minorities and political opponents” through a series of sanctions, ranging from “underfeeding” and “deprivation of livelihood” to working under conditions of forced labor and inhumane conditions. This catalogue is supplemented by another, designated as being “of special importance.” The focus here is on the elimination of political opposition and the trade unions. The Roehm Putsch of 1934 is improbably characterized as the occasion for the elimination as well of the conservative opposition, with the murders of Nazis expressly excluded

from consideration. There is a separate item for “the persecution of the churches” and another, finally, for domestic “anti-Jewish policies,” within Germany, ranging from legal enactments in keeping with a “predetermined plan” to an account of “the fate of the Jews.”

The expansion of this last category will shortly serve us as an example of the reports that were presumably prepared to deal in some detail with all or many of the charges, but first we should look briefly at the aims set forth for such reports. In general terms, “the object of the research is not the detection of crime but the exposure of jurisdictional power by virtue of which certain crimes were committed.” Accordingly, the validity of evidence pertinent to this objective ranges through a number of degrees with the scale measuring the power each one respectively reveals. Most weight will be assigned to formal commands, in various forms, by German civil or military authorities, and the least to such pictorial evidence as German newsreels. The nine intermediate categories include “statements by German leaders,” “official literature,” “unpublished official documents, treaties,” “financial, commercial, and trade agreements,” “biographical records,” “statements by German experts and propagandists,” and, striking low on the list of pertinent sources, presumably in view of the power rationale for the weighting, PW interrogations and testimonies of witnesses.

For closer scrutiny, we have selected from a number of available texts a draft of the special OSS report to the war crimes staff on “The Criminal Conspiracy against the Jews” under the broader heading of “Nazi Plans for Dominating Germany and Europe,” and we have done so for a number of reasons. First, we have every reason to suppose that Neumann did not delegate this assignment to collaborators. Second, it stands, when compared with Neumann’s other writings on the subject, both before and after, as a striking example of Neumann as advocate, whose briefs look to the interests deemed nonnegotiable by his clients as well as to his own political designs, as far as possible. This suggests how his briefs in labor law cases must have looked. In the present instance, his “client” was almost certainly the Institute of Jewish Affairs, which was the source of the documentation attached to the report and many of the quotations cited as evidence. Their fierce and effective advocacy on behalf of a view that the destruction of the Jews was something close to the center of Nazi crimes would not have permitted them to cooperate without insisting that the report meet certain minimum conditions.¹¹⁷ If the analogy of client and advocate is slightly overdrawn, it helps to explain the deviations in the report from certain points in Neumann’s earlier—and subsequent writings on the subject.

That brings us to the third point, which serves also as an excuse for the many iterations in the course of this study of Neumann’s shifting understanding of the “Jewish Question,” where certain considerations are inevitably discussed a number of times. Although we have avoided speculating on the relations between Neumann’s shifting personal feelings and his work as political intellectual, it is impossible not to take note of his excruciating difficulties with precisely this issue—with his analyses ranging from his furious response to Theodor Adorno’s initial statement about Jews as universally envied wanderers—to which Neumann replied that he could have written *Behemoth* without mentioning the Jews—to some statements in the report to be considered. Some of this preoccupation

over the years is doubtless a function of the need to secure funding for projects of the Institute, with Jewish organizations an obvious source to be solicited, but we think that there is more. Crudely stated, Neumann began with—and never wholly abandoned—the conviction that Nazism should be understood as “fascism” and not as “anti-Semitism.” That was a central motif of the Socialist movement in (almost) all of its guises. Yet in the present report, there is even the factually inaccurate claim that concentration camps were first designed for Jews and only later applied to Communists, Socialists, Pacifists and others. It is not necessary to multiply examples or to make an effort to delve more deeply into the sources of Neumann’s conflicted judgment on this dimension of Nazism. If the recollections of his sons are to be credited, Neumann conducted at least some Jewish religious ceremonies in his home, although there is no record of his having attended public services. His distinction between persons displaced from Germany on the grounds of ethnic identity alone and genuine exiles was an important part, we think, of who he was. But he was also a Jew.

First, then, the report takes up and vigorously pursues Neumann’s determination to have the Military Tribunal take up the whole of the Nazi era—and thus to encompass organizations that were not active in implementing what came later to be called the “Final Solution”—rather than limiting itself, as it eventually did, to the time of war. He speaks of the actions against Jews taken after 1933 as “one continuous and indivisible crime—a criminal conspiracy against the Jewish people [...] [P]hysical extermination through killings of individuals and groups of mass murders was merely the last step in the plan to exterminate the Jewish people.” Conspiracy gradually unfolded through measures to make people’s lives literally impossible is no less criminal than the annihilation that was its culmination. And, the report adds, that although this was an end in itself, it was closely tied to the aim of world conquest.

The Jews were an ideal target in the search for a “scapegoat for all the ills of Germany,” the report states, because “they were conspicuous enough to make a good target, and yet weak enough to prohibit the possibility of a real struggle,” all in the context of “the long tradition of anti-Semitism in Germany (and Europe).” There is no echo here of Neumann’s frequent assurances elsewhere that the Germans were the least anti-Semitic of all people. There follows a curious claim, not further expounded, to the effect that the Nazi state derived “from historical precedent” “the assurance that killing Jews is not murder.” This leads to a consideration of the “fundamental purpose,” which speaks even more sharply against any notion of anti-Semitism as an alien import. It was “the one point,” according to the report, “upon which mutually hostile social groups could agree” and provided the cement for the so-called people’s community. This contention is supported by the first of several quotations of the Nazi rallying cry: “Germany awake! Jewry perish!” [*Deutschland erwache-Juda verrecke!*]

To this prime purpose were added others. In a restatement of what the report at the end calls “this use of anti-Semitism as a ‘spearhead for terror’”—an expression characterized as an apt description—there follows a catalogue of measures that were supposedly imposed first on Jews and then on many others, including some misstatements and exaggerations. “Extermination of Jews was merely the prelude to the annihilation of Greeks, Poles, and Serbs.” With an eye to our introductory analysis, this can readily

be recognized as a counterbalance to the acceptance of the Germans as universally anti-Semitic. Another purpose, according to the report, was to serve as both bribe and implied threat to inhabitants of occupied countries, who were shown that however bad their circumstances, they could be much worse. The list continues. Anti-Semitism “proved to be one of Germany’s major weapons for political and economic infiltration” of “the democratic world,” a statement that it would be hard to expect Neumann to make. Then was adduced the consideration that the expansion of Germany in search of *Lebensraum* required “the destruction of peoples” living in the way, a claim that segues, on the basis of a line in a speech by a Nazi leader, to a discussion of “biological warfare,” which is said to be exemplified by the annihilation of the Jewish people.

From these rather speculative considerations, the report shifts abruptly to a summary of statistical findings appended to the report, recording specifically the estimates of deaths and the loss of property, but this is immediately followed by a consideration that “cannot be expressed in figures” but has had an impact “even more important to the future of the Jewish people and mankind.” The paragraph opens with a reference to the “rich communal, spiritual, and economic life” of the “old Jewish communities” but switches abruptly to the contributions “made to the civilization of their respective countries,” focusing on such fields as medicine, politics, education and economic activities. The references conclude,

To grasp its significance, one need only imagine what gaps in all branches of our common culture would be evident today if such an extermination of the Jewish people had been conceived and carried out a century ago. (6)

Surprisingly, the culminating damage is said to be the effect on “Jewish population trends in Europe,” leaving “communities deprived of children and youth and composed in the main of aggregates of physical and mental wrecks and broken-up families” (6).

In keeping with the earlier statement on the weight of various types of evidence, the body of the report is then taken up with quotations from various National Socialist leaders and spokespersons, setting forth—sometimes in more guarded language and sometimes in less—the project of expelling and later annihilating Jews. This is followed by a statistical appendix of “Jewish Casualties during Axis Domination,” quite a different kind of evidence, and quite possibly a prime consideration for Neumann to collaborate with the Institute of Jewish Affairs, which evidently had compiled them. There is no need to review these tragic numbers here: there are tables on “Jewish Survivors and Jewish Dead,” listed by country, as well as a set of notes setting forth in some detail the varied sources for the estimates for each of the countries. The numbers do not deviate dramatically from present-day statistics, although the number of survivors seems high, unless émigrés are included. These most brute of brute facts are surely among the most vital considerations governing Neumann’s difficult, unresolved—and at times, confused—engagement with “the Jewish Question.”

Some four years after his participation in the preparations for the Nuremberg trials, Neumann published a distinctly pedagogical exercise entitled “The War Crimes Trials” in one of the first numbers of a new academic journal that had also attracted many

of the outstanding names of political science and related disciplines.¹¹⁸ Neumann's 12-page contribution falls under the heading of "research notes" and is organized around a detailed plea to have the records of the war crimes trials, notably but not exclusively the Nuremberg events, serve as source and point of reference for research projects of various sorts. Neither the tone nor the emphases follow the forceful line of the OSS studies examined above so that the scheme of group prosecutions advocated in the first of the two examined above is in effect deemed problematical and the murderous persecution of the Jews is quite literally never mentioned. Although it is difficult to ignore the motif of academic self-legitimation that animates the exercise, there are enough interesting materials to repay a brief overview.

Neumann divides his account of research topics arising out of the trial records and potentially informed by them into three segments: international legal problems, problems of international politics and the German problem in relation to the wider issues of dictatorship, as illuminated by the trial records. Neumann's first segment is the longest of the three and naturally the most reminiscent of his Weimar work on law of a contested kind. He begins with the question of the legal status of the trials under Allied Control Law No. 10, which gave shape to the Nuremberg and Tokyo trials. The problem is especially important, he maintains, because the responses bear on Germany's postwar legal position. Three theories are offered. The country may be understood to be under belligerent occupation in the sense of the Hague Convention; the occupation may be understood, more radically, as sovereign in a legal sense so that the tribunals count as German courts; or the whole complex may be referred to a new international constitutional law of intervention to restore liberty. Neumann concludes that none of these have been resolved upon, and that all three pose grave difficulties. Neumann singles out for special attention the notion of a belligerent occupation but insists that this cannot apply in the sense of the Hague Treaties when the occupiers have undertaken to transform the legal system, to treat it as an optimal law in formation (*de lege ferenda*). In the end, according to Neumann, there is no consensus or unproblematic solution so that the matter is judged, especially in Germany, as lacking all solid legal basis or as requiring the application of the norms applied no less to the actions of the victors. An emerging third possibility, with contesting versions in the East and West of Germany, is that the trials have purged Germany and rendered it a sovereign state fit to ally with one or the other contesting international forces.

The second of the international legal problems that Neumann poses for research concerns the criminality of "aggressive war," which is a familiar concept but lacks agreed legal meaning. An extension of the concept that Neumann imputes first to Vyshinski but ascribes now to John Foster Dulles's "haphazard" extrapolation refers to "indirect aggression" through parties said to be undermining internal security structures so that the concept no longer refers to state actors alone. This problematic concept, according to Neumann, points in the direction of "the modern and quite dangerous concept of criminal conspiracy," which the Nazis also adopted. In the war crimes military tribunals, however, a concept of conspiracy was improvised, according to Neumann, that corresponds neither to the Vyshinsky model nor to the far more rigorous American norms. It merits investigation and specification, he maintains.¹¹⁹

In this context, then, Neumann notes the extent to which the continental focus on individual criminal responsibility may be decisively undermined by the pervasiveness of bureaucratization, which denies choice to individuals in the processes relevant to charges of aggressive war and the like. As this overview proceeds, it becomes clearer that Neumann is here offering the records of the trials as sources of experiments and improvisation that might be taken up productively by legal theorists and practitioners in a manner comparable to the work he assisted in the formation of Weimar labor law. But all this, in the present instance, is presented at a scholarly distance from the legal-political processes at issue.

Neumann's reflections next turn to problems of international politics that might be illuminated by reflection on the trials as political events. The political aims generally proclaimed for the trials include the promotion of democracy and the reintegration of nations, but Neumann, with the German situation clearly in mind, elevates deterrence as the only objective that can be clearly divorced from the charge of victor's justice that undermines the other two. Yet his discussion of deterrence is itself undermined: "Logically," he writes, "only a permanent international court could solve the problem and could possibly act as a deterrent" (141). Yet such an arrangement is politically in serious doubt in the absence of an enforcing agency, which is in turn hard to imagine under conditions of bipolarized world politics. Shifting out of his research mode, then, Neumann flatly asserts, "We cannot, therefore, expect any international criminal court could possibly act as a deterrent to future aggressive wars" (141). Yet he does not abandon all hope, grounding himself on humanitarian traditions that he finds operative even under Nazi rule, if the aim of deterrence is limited to upholding the rules of warfare. An international criminal tribunal with such limited aims, Neumann maintains, might be achievable. Yet he recognizes further complications arising from the expansion of minimal standards through United Nations measures easy to formulate but hard to enforce, especially in view of the United Nations provision that gives prime jurisdiction to domestic authorities. Then too, Neumann sees an added burden in situations where violations of the basic norms are not also a threat to the peace, although these must, in his judgment, be incorporated in the design.

Neumann's final category of research possibilities arising from the records of the war crimes trials brings the discussion closest to the political issues that will occupy his remaining years, with the trial records now serving mostly to provide illustrative materials about the political changes and threats illustrated in the German case but much more widely present. Clearly recalling and anticipating his most active concerns at the time, he translates his questions into an inquiry into the conditions for the rise of caesaristic leaders. The themes are familiar from his better-known late work: How do conflicts become class conflicts? How do authoritarian economic organizations sabotage democratic procedure when threatened? And then there are such problematic topics as the changes in the status and psychology of the middle classes, the decline in militancy of democratic labor, the "moral lag" vis-à-vis technology, the effects of economic depressions and inflations and the seizure of dictatorial power by democratic means. Neumann adds that the records also refute notions that dictatorship can be somehow superior, given the constant eruption of self-destructive internal conflicts.

In conclusion, then, Neumann credits the United States as leader in political and moral investment in responding to the circumstances and developments about which the war crime trial records are so informative but emphasizes the concomitant burden, especially in view of widespread German hostility to the war crime trials, approaching the mobilizing distrust of the “war guilt lie” after 1918. This hostility, Neumann urges, must be periodically studied as an index of democratization and a diagnostic tool for identifying weak and threatening spots in Germany. This abrupt and hardly optimistic ending is cushioned by a catalogue of some additional sources and projects regarding the records of the trials, restoring the paper to its nominal character as guide to research. In the larger picture of Neumann’s project, this exercise serves above all as recognition of the unresolved issues left for Neumann with regard to the notion of legal responses to what has happened and what threatens, as epitomized in the war crime trials.

Notes

- 1 See Federal Bureau of Investigation, Department of Justice “Report on the Government Service of Franz L. Neumann,” dated April 21, 1950. *Franz L. Neumann*, File number 121–22399. Obtained through the Freedom of Information Act.
- 2 *Ibid.*; and also see Chapter 6 and its account of Neumann’s revision of the Institute for Social Research’s research proposal on anti-Semitism and his successful negotiation for funding from the American Jewish Committee. Ironically, these successes on behalf of the Institute led to his final termination from the Institute.
- 3 See Chapter 7. For another account of the project and its development, see Roderick Stackelberg, “Cultural Aspects of National Socialism: An Unfinished Project of the Frankfurt School,” *Dialectical Anthropology*, Vol. 12, No. 2 (1987), pp. 253–60.
- 4 See a letter of reference Horkheimer wrote for Neumann dated March 27, 1940, from the *Max Horkheimer Archiv*, series VI, folder 30, pp. 121–23.
- 5 Regina Gramer, *The Socialist Revolutionary Dilemma in Emigration: Franz L. Neumann’s Passage toward and through the OSS* (MA thesis, 1989), pp. 61–63.
- 6 *Ibid.*
- 7 Alfons Söllner (ed.), *Zur Archäologie der Demokratie in Deutschland: Analysen von politische Emigranten im amerikanischen Geheimdienst, 1943–1945* (Frankfurt am Main: Fischer, 1986).
- 8 Rainer Erd (ed.), *Reform und Resignation. Gespräche über Franz L. Neumann* (Frankfurt am Main: Suhrkamp, 1985), pp. 153–71; John Herz, *Von Überleben: wie ein Weltbild entstand* (Düsseldorf: Droste, 1984); H. Stuart Hughes, *Gentleman Rebel: The Memoirs of H. Stuart Hughes* (New York: Ticknor and Fields, 1990), pp. 136–38, 170–203; and Carl Schorske, “Encountering Marcuse,” in John Abromeit and W. Mark Cobb (eds.), *Herbert Marcuse: A Critical Reader* (New York: Routledge, 2004), pp. 253–54.
- 9 Barry M. Katz, *Foreign Intelligence: Research and Analysis in the Office of Strategic Services 1942–1945* (Cambridge: Harvard University Press, 1989).
- 10 *Ibid.*, pp. 36–37.
- 11 The precipitating event for the formation of this centralized intelligence structure was evidently the realization that the United States was enduring an unprecedented infiltration by foreign spies. Prior to 1938, the FBI typically arrested 30 to 40 individuals for foreign espionage, but this number leapt to 634. *Ibid.*, 2.
- 12 Christof Mauch, *The Shadow War against Hitler: The Covert Operations of America’s Wartime Secret Intelligence Service*. Translated by Jeremiah M. Riemer (New York: Columbia University Press, 1999), pp. 10–11.
- 13 *Ibid.*, 11.

- 14 Katz, *Foreign Intelligence*, p. 2.
- 15 Mauch, *The Shadow War against Hitler*, p. 12.
- 16 Katz, *Foreign Intelligence*, pp. 5–8.
- 17 *Ibid.*, pp. 13–14.
- 18 *Ibid.*, p. 14.
- 19 *Ibid.*, p. 20.
- 20 “History of the R&A Branch in the OSS June 1941–September 1944,” Record Group 226, Entry 99, Box 76, National Archives, College Park, Maryland.
- 21 *Ibid.*, p. 76.
- 22 Mauch, *The Shadow War against Hitler*, pp. 28–32.
- 23 “The German Military and Economic Position” (Section G entitled “German Morale”) from *O.S.S./State Department Intelligence and Research Reports* [microfilm] (Washington, DC: University Publications of America), Guide IV, Reel 9, document 2, p. 1.
- 24 *Ibid.*, p. 16.
- 25 *Ibid.*, p. 3.
- 26 *Ibid.*
- 27 It is only the appendix added to the 1944 edition that approaches the terms of the COI analysis found in “The German Military and Economic Position.” Franz L. Neumann, *Behemoth: The Structure and Practice of National Socialism* (New York: Oxford University Press, 1944), pp. 470–76.
- 28 “Current German Attitudes and the German War Effort,” from *O.S.S./State Department Intelligence and Research Reports* [microfilm] (Washington, DC: University Publications of America), Guide IV, Reel 9, document 11, pp. 3–4.
- 29 *Ibid.*, pp. 4–23.
- 30 *Ibid.*, p. 28.
- 31 Neumann, *Behemoth*, pp. 475–76.
- 32 *Ibid.*, p. x.
- 33 *Ibid.*, pp. 336–37.
- 34 “The German New Order in Europe,” from *O.S.S./State Department Intelligence and Research Reports* [microfilm] (Washington, DC: University Publications of America), Guide IV, Reel 9, document 6, p. 1.
- 35 *Ibid.*, pp. 2–3.
- 36 *Ibid.*, p. 4.
- 37 *Ibid.*, p. 24.
- 38 It is impossible to say whether these new emphases derived from Neumann’s book, although it is known that a number of the R&A specialists had seen the manuscript during its late phases of composition.
- 39 See Erd, *Reform und Resignation*, pp. 153–71.
- 40 Katz, *Foreign Intelligence*, pp. 36–37; and Mauch, *Shadow War against Hitler*, p. 15 (especially footnote 25).
- 41 In emphasizing Neumann’s leading role in the deliberations of the R&A Central Europe section, we are following the reports and memoirs cited above rather than the uncertain practice of Raffaele Laudani in his valuable collection of reports, who credits authorship to the persons initially assigned the various topics. See Franz Neumann, Herbert Marcuse and Otto Kirchheimer, *Secret Reports on Nazi Germany*. Edited by Raffaele Laudani (Princeton, NJ: Oxford: Princeton University Press, 2013). Laudani also follows the problematic convention of lumping the three authors under the heading of “the Frankfurt School” in his subtitle.
- 42 “Survey of Greater Germany: Section IV,” from *O.S.S./State Department Intelligence and Research Reports* [microfilm] (Washington, DC: University Publications of America), Guide IV, Reel 10, document 6.
- 43 *Ibid.*, p. 4.
- 44 Neumann, *Behemoth*, pp. 397–98.

- 45 "Survey of Greater Germany: Section IV," pp. 100–1.
- 46 Neumann, *Behemoth*, pp. 215–16.
- 47 "Survey of Greater Germany: Section IV," pp. 101–2.
- 48 "Banks, Industry and the Nazi Party," from *O.S.S./State Department Intelligence and Research Reports* [microfilm] (Washington, DC: University Publications of America), Guide IV, Reel 10, document 11, pp. 1–2.
- 49 Mauch, *Shadow War against Hitler*, pp. 73–74.
- 50 "The Free Germany Manifesto and the German People," from *O.S.S./State Department Intelligence and Research Reports* [microfilm] (Washington, DC: University Publications of America), Guide IV, Reel 10, document 14.
- 51 *Ibid.*, pp. 74–75.
- 52 *Ibid.*, p. 76.
- 53 "Free Germany Manifesto and the German People," p. 3.
- 54 *Ibid.*
- 55 *Ibid.*, p. 4.
- 56 *Ibid.*
- 57 *Ibid.*
- 58 Neumann, *Behemoth*, p. x.
- 59 "Free Germany Manifesto and the German People," p. 5.
- 60 "Possible Political Changes in Nazi Germany in the Near Future," from *O.S.S./State Department Intelligence and Research Reports* [microfilm] (Washington, DC: University Publications of America), Guide IV, Reel 10, document 16.
- 61 *Ibid.*, p. 1.
- 62 *Ibid.*
- 63 *Ibid.*, p. 2.
- 64 *Ibid.*, Report Summary.
- 65 Mauch, *Shadow War against Hitler*, p. 85.
- 66 "German Situation in 1918 and 1943," from *O.S.S./State Department Intelligence and Research Reports* [microfilm] (Washington, DC: University Publications of America), Guide IV, Reel 10, document 25, pp. 3–4.
- 67 *Ibid.*, pp. 6–7.
- 68 *Ibid.*, p. 7.
- 69 "Morale in Germany," from *O.S.S./State Department Intelligence and Research Reports* [microfilm] (Washington, DC: University Publications of America), Guide IV, Reel 11, document 6, pp. 3–4.
- 70 *Ibid.*, pp. 3–4.
- 71 *Ibid.*, p. 4.
- 72 *Ibid.*, p. 5.
- 73 *Ibid.*, p. 6.
- 74 *Ibid.*
- 75 Mauch, *The Shadow War against Hitler*, pp. 107–33.
- 76 Random House negotiated a deal with the Russian Foreign Intelligence Service to gain access to many KGB files. Journalist and former KGB agent, Alexander Vassiliev, was allowed to investigate the materials. From 1994 to 1996, Vassiliev was able to make transcripts of these files, which were later reviewed by the Foreign Intelligence Service and released as the *Venona Documents*. See Allen Weinstein and Alexander Vassiliev, *The Haunted Wood: Soviet Espionage in America—The Stalin Era* (New York: Random House, 1999), pp. xv–xix.
- 77 *Ibid.*, pp. 249–51.
- 78 *Ibid.*, p. 249.
- 79 Vassiliev appears to be mistaken about Neumann's biography. He assumed that Neumann was already working for OSS in 1942.

- 80 Thomas Wheatland, *The Frankfurt School in Exile* (Minneapolis: University of Minnesota Press, 2009), pp. 45–60.
- 81 “Vassiliev White Notebook #3,” 2009, History and Public Policy Program Digital Archive, Alexander Vassiliev Papers, Manuscript Division, Library of Congress. <http://digitalarchive.wilsoncenter.org/document/112566> (p. 133).
- 82 Weinstein and Vassiliev, *Haunted Wood*, p. 250.
- 83 “Vassiliev White Notebook #1,” 2009 History and Public Policy Program Digital Archive, Alexander Vassiliev Papers, Manuscript Division, Library of Congress. <http://digitalarchive.wilsoncenter.org/document/112564> (p. 58).
- 84 Quoted in Weinstein and Vassiliev, *Haunted Wood*, p. 250.
- 85 Ibid.; and see “Vassiliev White Notebook #1,” pp. 133–34.
- 86 Weinstein and Vassiliev, *Haunted Wood*, p. 250.
- 87 Ibid.
- 88 Ibid.
- 89 For a detailed account of many such enterprises, see Richard Harris, *OSS: The Secret History of America's First Central Intelligence Agency* (Berkeley: University of California Press, 1972)
- 90 “Process of German Collapse,” from *O.S.S./State Department Intelligence and Research Reports* [microfilm] (Washington, DC: University Publications of America), Guide IV, Reel 11, document 26, from the summary.
- 91 Ibid.
- 92 Ibid., p. 2.
- 93 Ibid., pp. 3–9.
- 94 “The German Communist Party,” from *O.S.S./State Department Intelligence and Research Reports* [microfilm] (Washington, DC: University Publications of America), Guide IV, Reel 12, document 11, pp. 1–58.
- 95 Ibid., pp. 58–59.
- 96 Ibid., p. 59.
- 97 Ibid., p. 62.
- 98 Ibid., p. 65.
- 99 Ibid., pp. 65–66.
- 100 Ibid., pp. 66–67.
- 101 “Control over Distribution of Industrial Materials and Products in Germany,” from *O.S.S./State Department Intelligence and Research Reports* [microfilm] (Washington, DC: University Publications of America), Guide IV, Reel 12, document 14.
- 102 “The Major German Cartels, 1930–1944,” from *O.S.S./State Department Intelligence and Research Reports* [microfilm] (Washington, DC: University Publications of America), Guide IV, Reel 12, document 15.
- 103 “A Hundred Major German Industrial Corporations,” from *O.S.S./State Department Intelligence and Research Reports* [microfilm] (Washington, DC: University Publications of America), Guide IV, Reel 12, document 19.
- 104 Ibid., p. 5.
- 105 For a broader account of discussions at all levels of OSS on the topic of a possible Nazi underground, see Mauch, *Shadow War against Hitler*, pp. 186–96.
- 106 Ibid., pp. 205–10. A subsequent report on the Free Corp built on the warnings regarding the German military by developing a list of former members of the organization who were prominent members of the Nazi Party and part of the Third Reich's civil service.
- 107 “The Problem of the Nazi Underground,” from *O.S.S./State Department Intelligence and Research Reports* [microfilm] (Washington, DC: University Publications of America), Guide IV, Reel 13, document 4.
- 108 Ibid., p. iv.
- 109 Ibid., pp. 1–2.

- 110 “The Clandestine Nazi Movement in Postwar Germany,” from *O.S.S./State Department Intelligence and Research Reports* [microfilm] (Washington, DC: University Publications of America), Guide IV, Reel 13, document 2; and “The Pattern of Illegal Anti-Democratic Activity in Germany after the Last War: The Free Corps,” from *O.S.S./State Department Intelligence and Research Reports* [microfilm] (Washington, DC: University Publications of America), Guide IV, Reel 13, document 3.
- 111 “Clandestine Nazi Movement in Postwar Germany,” pp. 18–22.
- 112 See Katz, *Foreign Intelligence*, pp. 49–57; and Michael Salter, *US Intelligence, the Holocaust, and the Nuremberg Trials: Seeking Accountability for Genocide and Cultural Plunder* (Boston, MA: Martinus Nijhoff, 2009).
- 113 Office of Strategic Services Research and Analysis Branch, R&A No. 3113, *Principal Nazi Organizations Involved in War Crimes* (June 5, 1945): Parenthetical numbers refer to pages in this document. It seems plausible to suppose that Neumann simply transferred to this novel criminal prosecution the premise of German Labor Law, where employers and labor unions were treated as entities in judicial (civil) proceedings.
- 114 Claire Hulme and Michael Salter, “The Nazi’s Persecution of Religion as a War Crime: The OSS’s Response within the Nuremberg Trials Process.” <http://www.lawandreligion.com/sites/law-religion/files/Nazi-Persecution-HulmeSalter.pdf>. This article contains useful information as well as a good deal of confusion, including an improbable explanation of Neumann’s references to German law in his legal grounding of charges as a function of the Frankfurt School’s methodology of “immanent critique.”
- 115 OSS R&A No. 3114.3, August 13, 1945.
- 116 There is a certain parallel between this notion of a valid law discernable under the surface of the doctrines being applied by the authorities and Neumann’s reading of Weimar law in the light of emerging “institutional” configurations that give revised meanings, in his view, to formulations on the books. This was the primary qualification to his oft-stated adherence to formalist readings of law.
- 117 Michael Marrus, “A Jewish Lobby at Nuremberg: Jacob Robinson and the Institute of Jewish Affairs, 1945–1946,” *Cardozo Law Review*, Vol. 27 (2006), pp. 658, 1664. The article does not avert directly to the OSS report, but it gives an effective picture of the organization’s advocacy before and during the trial.
- 118 Franz Neumann, “The War Crimes Trials,” *World Politics*, Vol. 2, No. 1 (October 1949), pp. 135–47. For the early numbers of the journal, see <https://www.cambridge.org/core/journals/world-politics/issue/14828C2126A50EEF73922FBBD58F04A7>.
- 119 This discussion forms a striking contrast in tone to Neumann’s explorations in the first of the two OSS memoranda discussed above, although it is far from certain that he did not in fact mean to leave open the possibility that the model he created earlier might prove to be the basis for the new scheme he asks researchers to investigate.

Chapter 10

FRANZ NEUMANN IN THE UNIVERSITY: *LA GUERRE EST FINIE*

The author [of the book under review] drew the consequences of withdrawing from political participation. A political activist may regret this decision [...] In the present situation he may, however, be right. There are historical situations where an individual, no matter how honest, intelligent and courageous, is quite powerless to affect the course of history.

Franz L. Neumann (1952)¹

American Policy for Postwar Germany: Analysis and Advocacy

If it is the measure of political intellectuals that their professional and academic work always contained an orientation to practice in the political sphere, as noted earlier, Neumann's functioning in this capacity in the postwar years involved a narrowing of the relevant domain to the locus of political education. His practical energies and skills were primarily invested in the reshaping of political studies at Columbia University, in the non-Communist university project in Berlin, and in the institutionalized political science discipline in the United States. Underlying this aspect of his activities was his political judgment that, in the end, the raising of a generation of politically aware young people held more promise than investing in the resurrection of the labor movement. As with many matters, Neumann was close in this to his friend, Herbert Marcuse, who embodied this project in the decades after Neumann's death, albeit in a style that Neumann would never have essayed.²

Like Marcuse, however, he also sought to bring his wartime experience to bear on elite discussions about American policy toward Germany and the Soviet Union.³ In August 1946, Neumann prepared a research proposal entitled "The Buffer Society," whose intended recipient—presumably a funding source—is not known, although he sent a copy with his regards to Max Horkheimer. The objective he poses is to help the United States to cooperate with the United Kingdom and the Soviet Union to maintain peace, in the full sense of that term. He begins by noting the "structural differences" between the Western powers and the Soviets, schematically reviewing all the dimensions he had covered in *Behemoth* and by postulating that they are all of "vital importance in international relations." Neumann observes that each of the countries "strives to create a sphere of exclusive influence in order to strengthen its security," but that there are also a number of countries under the postwar control of some multipartite commission, with varying degrees of influence by one or the other partner. He calls these "disputed countries," and he proceeds to list American aims with regard to them, including

prevention of their aligning with a great power or becoming an aggressor. Neumann adds the unlikely objective of keeping the countries from playing the powers off against one another as well as providing for continuance of the multipartisan cooperation after the end of occupations and other controls. In his judgment, it has been a mistake to think about these situations on the basis of geo-political considerations or old ambitions for regional alignments.

In a manner reminiscent once more of *Behemoth*, Neumann urges the need to relate foreign policy aspirations to the dynamics of each nation's domestic structure, especially since "it becomes clearer every day that it is the difference between the capitalist-democratic state and the collectivist one-party state which is determining foreign political relations between the powers." If nothing is done, the disputed countries will align with the "system" closest to their own, which "would ensure the complete division of the world (or Europe, at least) into spheres of exclusive influences, with all the consequences usually and correctly attached to this division." The United States, Neumann avers, would be most harmed by this since "it cannot maintain a military establishment in Europe beyond a limited occupation period." "Nor can it," he adds, "exert its influence in Europe through a satellite, since it has none." And domestic opposition precludes "complete commitment to Great Britain" or acceptance of increased Soviet influence in Germany, Austria, Hungary or the like.

Neumann then cites the failures of past attempts to deal with comparable problems through "buffer states" or "neutralization" but urges consideration instead of the possibility of a "buffer society" to eliminate friction and assure cooperation. "Such a society," he says, "must embody elements of the USSR and of the western democracies" and be "satisfactory" to both, who would then act to stabilize them. Neumann lists major questions for research. First, there is the question of social changes acceptable to the powers: how far "left" must they go to satisfy the USSR and how far "right" for the Western powers, and how can they remain stable under those combined formulas? Second—and on a different level—there is a question whether the powers have in any way contributed to such a development rather than seeking to acquire satellites. And that leads, third, to the policies likely to foster buffer societies. He postpones treatment of Asia and lists Germany, Austria, Czechoslovakia, Hungary, Yugoslavia, Romania, Bulgaria, Greece, Albania and Italy as suitable candidates and immediate subjects for research.

If the notion of the three great postwar powers collaborating to build a scheme to balance the social designs in the "disputed" countries so as to achieve a sustainable compromise among the powers' conflicting aspirations for these territories seems implausible, Neumann's interventions in an extended workshop a year later give some indications of what he may have been diplomatically suggesting. The occasion was a week-long meeting, in September 1947, of recognized specialists assembled to map out the research program of the RAND Corporation, newly contracted by the US Air Force to inform American foreign policy in the Cold War, where Neumann appears as a confident participant, recognized on the basis of his OSS and State Department service. He distinguishes himself, overall, by his conviction that the foreign policy of states powerful enough to

execute their own policy must be understood above all in terms of the state's historically distinct internal structure and dynamics rather than by reference to some general theory of International Relations. And on occasions, he gives somewhat surprising signs of expecting a socialist—or collectivist—regulative idea to be operating everywhere, if not actively opposed.

For obvious reasons, the former theme plays a much more important part in Neumann's contributions to the Project RAND Conference of Social Scientists than the latter, which appears primarily in the form of opposition to policy designs that work against non-Communist collectivist developments in Europe or preclude changes in some such direction within the United States itself. A characteristic moment occurs near the very beginning of the most general session on International Relations research. The participants, in addition to Neumann, include Chester I. Barnard, Bernard Brodie, William T. R. Fox, Pendelton Herring, Harold D. Lasswell and Donald Young, with Hans Speier in the chair. Barnard was a well-known management theorist; Brodie and Fox were political scientists specializing in International Relations; Lasswell was an exceptionally prominent political psychologist; Herring and Young were political scientists in two major foundations; and Speier was a sociologist and expert in issues of public opinion and propaganda, who was named soon after as director of the RAND Corporation. On the table was the question of specifying a vaguely stated general research topic about American foreign policy and its traditions. Almost immediately, it is objected that statements of policy and the trend of actual operations need not harmonize, and that research must accordingly attend to such disparities.

At that point, Franz Neumann intervenes at length. He dismisses the idea of compiling the principles underlying official policy statements and notes also that a project of analyzing all aspects of "real policy" would be endless. Instead, he urges the selective study of a "very urgent problem" that matters deeply to the objective of winning and retaining allies, which requires that "we have to give way to trends towards collectivism in Europe, and that in American policy resisting those trends is doomed to failure."⁴ He acknowledges that American policy toward nationalization, for example, has been repeatedly stated as not opposing such measures if American property interests are respected and the decisions are made democratically, but he asks skeptically, "Has this policy actually been adhered to, or have we done the opposite?" Assuming the answer, he subsumes the issue under a "dilemma in American policy." "The dilemma can be simply stated—that in opposing [pro]-communist trends we very often fall into supporting pro-fascist trends [and] [...] counteract a basic principle of American foreign policy."⁵ Somewhat further on, he radicalizes the issue: "The question [is] whether a country that is wholly dedicated to capitalism can actually promote or even stand for the policy of the promotion of collectivist trends in Europe." Having uttered this provocative question, he drops back for a while into the tone of the general discussion, repeatedly intervening on behalf of historical strategies of research, much in the tone of his contributions to the 1941 discussion on methods at the Institute of Social Research. His question about considering the effects of American policy on the Social Democratic movement is defensively generalized by Harold Lasswell to apply to all transnational movements in Europe, especially political

Catholicism. Later in the discussion, Neumann reiterates his distinctive point, posing a substantive question that no one else at the meeting takes up:

It is also quite important to realize to what extent the domestic structure of the United States, not simply ideas held by certain groups but the very structure of the country, makes the realization of a certain policy difficult or almost impossible. (184)

Two additional points are relevant here. First, Neumann does not assert that internal conditions always lead foreign policy; second, he states that the internal conditions that do matter need not include popular opinion because foreign policy requires secrecy and, Neumann asserts, “Secrecy and democracy are incompatible, and I would very much question whether the popular conception of democracy is workable” (187).

In the course of the days of occasionally disjointed discussion, as it appears on a transcript that is by no means error-free, Neumann returned more than once to the interconnected themes of having American policy abstain from interfering with autonomous developments in nations it seeks to support, as long as these do not lead them to strengthen the presumed adversary, as well as to the changes that might be needed in domestic American designs in order to make such policy effective or even possible. A remarkable statement of the latter point occurs in a discussion about the presentation of the US position and prospects to influential persons in countries characterized as “in-between,” after one of the other participants has emphasized the need to show that the United States has the power to persevere. Neumann says that no one doubts that the United States can maintain its position but notes that “you can maintain your power status perhaps better by being a Fascist country, by being a dictatorship, by concentrating all war powers, economic, political, social powers in one hand.” He insists instead on “ideological attraction, which is something very different from simply being a big power—a problem of creating a society in which men are happy” (160).

If Neumann’s hints that an effective foreign policy for the United States depends on a policy of progressive social change within the United States are scattered and ambiguous, there is less room for uncertainty with regard to his strong views about the need to support such developments within nations that are to be helped to resist Soviet domination. One surprising context in which these themes are developed has to do with the need to consider the value of fostering neutrality. In reply to an intervention posing the problem of the “power vacuum” due to the defeat of such major powers as Japan and Germany, Neumann puts up for consideration the retention of “so-called dispute areas” and postulates a choice between “grab[bing] as much as we can” and “an intelligent foreign policy [...] of preserving autonomous areas between the great powers” (188). Speaking to the issue of a “neutralized” Germany in a published public lecture given in 1949, he cites the objections based on the proposition that a “power vacuum cannot exist [...] [and] must be filled by someone: if the West will not fill it, the East will do so.” Neumann (1949) replies,

I refuse to accept the validity of physical or biological laws for politics and political science. We know well the misuse perpetrated by the organic theories of state, or by the so-called

“science of geopolitics” for partisan purposes. Politics is not governed by iron laws, but is made by men acting within an historical setting. (35–45)

This element of his earlier proposal on “buffer societies” keeps recurring, although he narrows it as applying especially to a neutralized Germany.

The article from which this last quotation is taken was one of two Neumann published in 1949 in academic journals dedicated to international relations, elaborating in his own voice the major themes of collective reports during his final years in the R&A, relocated to the State Department, and the passage is more a reproach for what he considers to have been a missed opportunity by the United States than a support for recommendations he still considers likely to be considered. In the first of these pieces, entitled “Soviet Policy in Germany,” he condemns all the wartime allies for taking refuge in “abstract and ugly words”—he cites not only “denazification” but also “democratization,” among other terms—in formulating their common war aims rather than working through specific policies for postwar Germany. What inhibited them, he maintains, was a “schizophrenic attitude” brought about by a determination, on the one hand, to keep Germany from ever again being a danger and yet, on the other, by a mutually competing desire to “win Germany over,” in view of its location, resources and capacities. Russian policy exhibits the contradiction most clearly by weakening Germany by the reparations it demands, while simultaneously hoping for “a stable government friendly to the USSR.” The policy was “doomed to failure,” according to Neumann, especially when Western policy began to oppose the boundary settlements in the East and to “pour money into western Germany.”

The Russian errors are further compounded, according to Neumann, by their failure to compensate and motivate German workers for their comparative disadvantage by permitting them to effectuate the “socialist ideas” to which they remain loyal—and which German officials in the East respect when given a chance to do so. To support his conclusion that there is no socialism in the East, Neumann writes,

The integration of the [official trade union] and [official party] bureaucracies into the state machines strengthens the authoritarian rather than the democratic elements, and the fact that the whole system works for a foreign power makes it still more impossible to accept Rousseauan identification of the general will, represented by [the military government, official party, and official trade union] with the interests of the people, or more particularly with the working class. (178)

With all that said, Neumann also faults the Western allies for their refusal to negotiate with the Soviets on their terms, if only because it permits the Soviets to charge the West with hostility to German unity and similar faults. Yet, he affirms categorically that such propaganda cannot diminish the failure of the Soviet policy: “Indeed, the Soviet Union has lost the battle for postwar Germany.” The question remains for Neumann what this victory for the Western Allies may promise:

[D]emocracy has by no means won in western Germany. Without German unity, without profound social and economic changes in the west, a neo-fascist movement may reap the benefits of the struggle over Germany. (165–79)

Implicit in that last judgment is not only Neumann's condemnation of Soviet policy in East Germany but also his bleak assessment of the West German labor movement, a judgment he expressed especially frankly at a closed discussion at the Institute during the week of the RAND conference (MHA XXIII.20, 305). The notes of that meeting are limited to the interventions of Neumann and his close associate A. R. L. Gurland, recording their fundamental disagreement, with Neumann's indictments countered by little more than Gurland's insistence that the actions and attitudes to which Neumann objects are integral to democratic social democratic principles and that the situation remains hopeful. Neumann's list is forceful, especially in contrast with the cautious hints of unease in his Rand interventions. His first points are especially revealing. He notes that there are no Socialist intellectuals and that trade union leaders have no theoretical knowledge and therefore no programs other than practical demands. These latter in turn may be self-defeating, since, for example, even selective nationalization may do little more than to strengthen the reactionary state. His summary statements are shockingly vehement, even granting the dynamics of polemics against a collaborator in trusted company: the SPD "is totally corrupt, fights only against the Left"; "democracy as practiced by the SPD gradually gets identical with Fascism. SPD is not only bourgeois but Caesarean." There is even a passage in which he contrasts the SPD unfavorably with the Communist SED, since the latter "calls for the *Völkstaat* and [fights] monopolies." Yet in a twist at the end, imaginable only within this trusted company, Neumann simply despairs of the problem: in view of the polarization of the world, there can be no independent national labor movement policy.

Two years later, speaking at a scholars' conference, now in the status of a Columbia University professor, Neumann does not permit himself such categorical judgments. His lecture merits close attention because it is such a clear illustration of Neumann's style of negotiation, although in this case he could hardly count on the recognition that would give him a place at the table where policy is being decided. The authoritative text on which he seeks to build is a "Restatement of Policy on Germany," delivered by the Secretary of State, James F. Byrnes, in September of 1946, shortly before his replacement, first, by George C. Marshall and then, two years later, by Dean Acheson, whose policies arguably presupposed and developed a political horizon remote from Byrnes's perspective.

Neumann begins with a summary of American foreign policy objectives at a level of generality that comprehends all the competing views and states his agreement with them all. He lists the avoidance of war, the containment of Russia, favorable settlements of outstanding disputes and a strong Western Europe, prepared above all to resist any armed attack. The policy challenge he hopes to resist is the plausible proposition, which he expects to be ever more widely advanced, that the capacities of Western Germany would make a powerful addition if it were simply admitted unconditionally to the newly formed Western Union and NATO. He speaks of this prospect as a decisive deviation from past policy toward Germany, whose elements he summarizes on the basis of Byrnes's address. They comprehend a unified Germany, neutral in relations to major powers, economically viable, incapable of war, economically integrated into Europe and securely

democratic. Neumann rejects the objection based on the postulate of a resulting “power vacuum,” making the argument against “geopolitical science” cited earlier. Policy is a matter of judgment.

Neumann devotes much of his argument against the plausible new course to a consideration of political consequences for France. His main point is that such a redirection of the alliance would undermine the “Third Force” government that has been gaining strength against the Communists and the Gaullists. And in his judgment it is the latter of these movements that would gain most.⁶ If it is said that De Gaulle would accept the policy in exchange for power, the result would sacrifice democracy in France, in which the United States has both a self-evident ideological interest as well as a political one. Against the “specious but shallow argument” that the new policy would calm French fears of Germany and create a new constellation of trust, Neumann unexpectedly cites the example of cartels, where the presence of a clearly stronger partner quickly subjected the others. And Germany, with its capacities in steel, chemicals, coal and machine tools would quickly become England’s prime competitor for command of the group.

Whether Germany would seek to do so depends on the “nationalism” that observers have seen to rise in Western Germany. Interestingly, Neumann denies that characterization to a number of indicators that others might read that way. There is nothing “nationalistic” in the desire for unification, which Neumann shares. Nor is it “nationalistic” in the pejorative sense to seek a strong central state, a prime Social Democratic objective, since Weimar experience has shown that in Germany “particularism [...] [is] a device to create reactionary preserves in the midst of social and political progress.” And, finally, Neumann asserts that campaigns to regain control over the Ruhr region or to rectify the ad hoc settlements regarding Eastern borders are not “nationalistic” in their aims. He writes, sweepingly, “It is not nationalism to love one’s country and to desire the restoration of its unity, its integrity, and its prosperity.”

The question is about the methods sought to achieve such objectives and the crux of the matter lies in attitudes toward the West German state. Neumann begins with the question that why there was so little opposition to the formation of this state as contradictory in principle to the aim of German unification and a major practical obstacle to its achievement. He can more or less understand a reply to the effect that one must take what one can get but considers untenable the notion that this state is Germany and will be eventually joined by the East. The real reason, Neumann contends, is the belief that Germany will become indispensable to the United States and that this will lead to a domination of Europe by a reincarnation of the Greater German Reich disciplined by “blood and iron.” He cites the failure of the younger generation of German international lawyers to question the establishment of a new state by a military occupying force, against the clear terms of the Hague Convention:

They assert that the activities of MG are legally valid because they are derived from a new international constitutional law which authorizes the interference with the internal structure of any country for the sake of creating liberty and democracy; [But in fact, they hope] to become [...] partners in the intervention against another Power. (262)

The rising power of this political force in Germany can be measured, Neumann asserts, by their success in reversing the “great achievement of America’s denazification policy” (where Neumann had played a part). It was not a mistake to end “colonial rule” by turning over power to Germans: “What was—and still is—wrong is that we turned the reins over to an unreconstructed Germany.” (262) Provocatively, Neumann reiterates the central thesis of *Behemoth*:

Nazism, militarism, aggression are [...] products of a structure which vitiated the attempt to create a viable democracy: [...] the political form of democracy was imposed upon an authoritarian social and economic structure. [...] This structure stands in Western Germany. (262–63)

Yet his hopes for reconstruction are more modest than before. He looks to “the democratic labor movement, socialist, catholic, liberal [...] [notwithstanding] all their weaknesses, their lack of militancy, their addiction to legality [...], who are the hope of a reconstructed Germany” (263).⁷ The chances of a settlement on Byrnes’ terms are ever better, as the Soviet failure in the East becomes manifest, and, once again, Neumann is categorical in his assurances. “There is no Communist threat to Germany,” he writes, “and communism in Germany will never come to power, if there is a viable democratic labor movement.” Neumann’s recommendations follow directly from his analysis: support democratic groups “even if their economic philosophy should not be ours”; follow up with West German state, unless a settlement appears very near; economic integration as well; no membership in the Western Union unless the French situation stabilizes, Germany is “reconstructed” and international tensions abate; and no participation in NATO, under any circumstances.

If the metaphor of an intervention in a negotiation can be stretched to apply to Neumann’s writings on American policy toward Germany during the first three or four years after the war, it would perhaps be appropriate to read his two articles on the German political situation in 1950 and beyond as premised on his acceptance of the deal that appears to be in place, if not to his satisfaction. There are no sweeping denunciations of the labor movement and no injunctions to the remnant occupation authorities to preclude a fascist revival in the absence of radical social change. No sharp reversals are demanded. The policies of the authorities he trusts are for the most part encouraged, even if they are compelled to accept inhibiting constraints. Accordingly, his remarks about the American military government and its successor in the tripartite high commission are mostly positive, and the term “continue” recurs several times in his brief concluding listing of its future “tasks.” The title of the more extensive of the two articles written in 1950 carries the suggestion of at least a provisional settlement: “German Democracy 1950.” It will be recalled that Neumann’s conception of a “settlement” is in some measure conditioned by the character of collective-bargaining agreements, where a change in power relations may legitimately yield a demand for “re-opening” the terms. In the present instance, Neumann’s conclusion is that any such reopening must be done by Germans themselves and not by the occupation authorities.

Neumann prefaces the more extensive of the two articles with a reiteration of his judgment that “the Soviet Union has been defeated,” at least for the present and near

future. He describes the East as dominated throughout by the state party in the service of the Soviet occupation authorities, with the disillusioned population lacking effective civil rights and suffering economically. In the West, in contrast, the Basic Law improves on the Weimar Constitution, especially in denying the executive officials anything like the emergency powers of the president in the earlier regime and in limiting the concept and authority of "law" to general statutes enacted by Parliament.

Apart from the comparison with the East, however, Neumann identifies a number of weaknesses in the Basic Law, due in part to what he calls "constitutional fetishism" among the joint German and Western authorship, especially the emphasis on strong federalism. He is uneasy about provisions that in his view make the protection of civil liberties dependent too much on governmental entities that he distrusts, notably the judiciary and bureaucracy, which he characterizes as essentially unchanged from the antidemocratic ethos that possessed them during the Weimar years. Interestingly, he sees the principal support for civil liberties in the public opinion that is being cultivated by the "licensed press" that he credits to the military government between 1945 and 1948 and characterizes as "successful and beneficial." His reference to this theme in his concluding recommendations appears paradoxical to judgments conditioned by American "First Amendment" jurisprudence:

The protection of civil liberties must in the future become one of the principal concerns of the High Commission. Determined opposition to and suppression of militarism and Nazi-oriented organizations and utterances is vital; for these groups are impressed by power and power only. Rigid supervision of the German judiciary and bureaucracy; a democratic civil service law and support of the so-called "licensed press" appear indispensable for the future. (295)

The context for this is provided, first, by Neumann's discussion of the inevitability of clashes and exceptions regarding constitutional guarantees, with the prime safeguard provided by the requirement that this must be authorized by parliamentary law and, second, by his focus on political education, which, as will be shown later, remains the principal field where he continues to function as active agent in political life, both in Germany and the United States.

Neumann proceeds to an overview of the main social groupings in Western Germany. His treatment of the middle classes is very much conditioned by his judgment of their distance from democratic commitments during the Weimar years. He sees little change. Similarly, he views industry as unchanged in its designs, although it is now deterred from entering into cartel arrangements tending toward monopoly, but he sees them also as contented with rule by a government supportive of its aims and not any immediate threat to democracy. He is uncertain about the political disposition of the peasantry, especially if their present favorable economic situation should change, and he worries very much about the large refugee population whose integration is not proceeding well and who have shown political support for right-wing parties, who promise to restore them. Neumann's treatment of the Christian Democratic Party, the principal beneficiary of these aspects of the social constellation, is best characterized as uneasy. He does not

question its present dedication to the democratic political system in place, but he sees its voter base as a miscellaneous and politically unformed segment of the population, like that which the National Socialists were able to organize in the early 1930s, and he sees Adenauer as an authoritarian, strongly anti-socialist in his orientation, and in command of many skills and resources to carry out his pro-business policies and the wishes of his clerical support. The social-minded opposition within his party, carried over in some measure from the left wing of the Weimar Center Party, has lost virtually all influence. And Adenauer can also count on the support of the American government, especially in his economic and social policies.⁸

In the final analysis, as might be expected, the quality and durability of the democratic settlement depends, according to Neumann, on organized labor and the Social Democratic Party, which remain, in his view, the only forces capable of pursuing the changes required to safeguard a democratic development in Germany. This is the topic not only of the most ambitious sections of the paper we have been reviewing but also of Neumann's contribution at about the same time to a lecture series on "Germany and the Future of Europe" at the University of Chicago,⁹ where he is more forthright in his conclusion that, as he writes, "it is in my view difficult to expect a viable Socialist and trade union movement in Germany." Common to both treatments is nevertheless his steadfast conviction that "substantial social and political changes will be required in Germany to achieve internal democracy and to make possible a truly progressive Europe," and that these depend on the labor movement.

The difficulties, as Neumann presents them, are circumstantial rather than integral. He opens both accounts with a clean bill for the unions with regard to Communist influence or likely prospects, emphasizing the extent to which this distinguishes them from many European labor movements, a strength further increased by the unification of the organizations that had been variously aligned, especially in the division between Catholic and Socialist unions. Neumann also praises the institutions of workers' councils that protect workplace interests while lessening dependency on union bureaucracies. Yet, he finds the unions themselves unable to translate their strengths into "an efficient and militant pursuit of the workers' interests, such as adequate wages, reduction of working hours, adequate housing, social security, and full employment," not least because collective bargaining cannot by itself achieve them. He writes, reiterating his core belief,

To achieve these objectives, the unions must use their actual and potential political power. This power must be used rationally and militantly. If the unions believe socialism to be the indispensable base for democracy, they should fight for socialism. (271)

Instead, the unions have focused on a neo-corporatist scheme of "co-determination" essentially similar to the conception of "economic democracy" pursued by the Free Trade Unions in the Weimar period, which achieved little more, according to Neumann, than to tie the organization to the bureaucracy and to elevate the organization itself above its purposes. Especially in the Chicago lecture, Neumann bitterly renews his condemnation of the unions' attempts in 1933 to preserve their organizations even at the cost of accepting what they imagined would be the final National Socialist terms. That said,

he expresses a certain fatalistic recognition of the appeals of their present program “for the simple reason that the trade unions are now capable of presenting their programs in terms of [both] Karl Marx and the papal encyclicals.”¹⁰ He concludes nevertheless that “the acceptance of the codetermination program would not change the locus of political power in Germany” and that he “would, therefore, for practical purposes write off the whole codetermination program, hoping strongly that it will not materialize” (104).

Neumann’s assessment of the Social Democratic Party is characterized by similar forlorn understanding for a course of conduct that he finds disappointing. In order to counter the appeals of the rightist parties and incipient movements among the most unsettled portions of the population, especially the refugees, the Social Democratic Party has largely defined itself by the promotion of “national” objectives, including the restoration of territories detached as a result of what were thought to be provisional armistice lines and settlements. He speaks of these programmatic points as “national” in the defensible rather than “nationalistic” manner, but they cannot be pursued without alliances and emphases remote from the prospects of social change. In the one text, he concludes overall that no significant change in the party’s policies can be realistically expected until the Protestant “East”—which, he notes, is actually the Center of Germany—rejoins the heavily Catholic area of the Federal Republic. In the other, he notes more sweepingly that only the British Labor Party has been able to overcome the restraints placed on Socialist parties everywhere by the mobilization for the Cold War and the anti-socialist bias in the policy of the United States, on which these nations are dependent.

The one political position on which he does not waver, regardless of his dismay at Soviet actions and threats, as well as his admiration for the determination shown by the United States in the Berlin Airlift, is that there must not be a German army for a long time to come. Germany would quickly become the strongest military power in Europe, potentially allied in a “semi-Fascist alliance” with De Gaulle, who might be the only European leader to see a gain in such rearmament. More to the point, Neumann argues at some length that the officer class and those closest to it have shown in the past their willingness to align with the Russians if that promises to secure and expand Germany’s power—and their power in Germany. Then too, the restoration of the military and its historic appeals to Germans would seriously jeopardize the process of democratic reeducation, which has become Neumann’s principal sphere of active involvement and dealmaking.

The German Reeducation Project

Neumann had been responsible for a principal internal State Department study on the subject of “The Progress of Reeducation in Germany” issued as a “restricted” document of 111 typewritten pages in the name of the Division of Research for Europe in early June of 1947, near the end of his government service.¹¹ Simultaneously, he published an article called “Re-Educating the Germans: The Dilemma of Reconstruction” in *Commentary*, at the time still very much the journal of left-oriented New York intellectuals. We will first review the critical chapter of the State Department report, assuming Neumann’s authoritative control despite the inevitable uncertainty about the actual authorship of the language,¹² and afterward depend solely on Neumann’s subsequent statements and

documented actions in this sphere, much of which is put into a curious light by the deep pessimism (and harsh criticism) in the government document.

Neumann opened his chapter on “political problems of youth and re-education,” which follows descriptive reports on developments in all four zones, with a citation of an earlier postwar State Department document, where the “re-education of the German people” is integrally linked to “their rehabilitation.” As “the basic handicap in the process of re-education in the western zones,” then, he cites the conflict among the occupying powers and the consequent delay in restoring the German economy so that the reopened educational institutions “developed in a vacuum with none of the political and social conditions envisaged as essential in the long-range policy statement” (74). Neumann reports dolefully that most reports agree that German youth are not responsive to the “democratization” of staff and curricula and that the newly institutionalized democratic processes have little educational effect, first of all, because of the pervasive economic disruption and low standard of living. Neumann adds several more controversial points. “The promise of individual right and freedom,” he asserts, may not count for much, since the “Aryan” youth, apart from the tiny subset of opponents, enjoyed not only freedom but also license under the Nazi regime. Then too, there is a disillusioned certainty that “ideologies” count only if they further material aims, strengthened by skepticism about the Allied promise of justice, in the light of the malfunctioning of denazification evident in the easy treatment of many Nazis. More broadly, Neumann asserts, much of the youth is influenced by “the vast majority of the German population” that “fared better under the Nazi system than it does under the occupation,” not to speak of the old, nationalist-conservative professors returned to service due to the shortage of teachers. “This [...] makes for a cynical distrust of democracy and a reawakening of German nationalism.”

Neumann turned next to the segment of youth quite willing to find a new democratic way of life but concludes that they are also “dissatisfied, suspicious, and cynical about present conditions” because “nothing is offered but the old slogans and tactics of German party politics,” even less meaningful than before because of the control by the occupying powers. “This necessary restriction makes the new German democracy appear as a rather unattractive play permeated by a basic insincerity,” he concludes, and leaves these more promising young people vainly searching for something new. And, he asserts, they cannot look for help “in any new forms and ideas in the cultural field.” Neumann classes the “most representative post-Nazi periodicals” according to three motifs, which he characterizes in rather scornful terms. There are, first, periodicals that revive the “cult of academic-humanistic ‘culture’ [...] removed further than ever from somber reality”; second, a “promulgation of Christian morality as the basis for social reconstruction,” nominally anti-political, but practically in support of the conservative Christian Democratic program; and, the third, “the propagation of straight political party lines, such as in the Social Democratic and Communist publications.” He ties the first to the old “caste system” and authoritarian sentiment; the second, as noted, to right-wing conservatism; and designates the third as “illusory if it does not materialize in corresponding political action.”

The last of these criticisms points again, if only briefly, in the direction of Neumann’s recurrent theme that democracy in Germany can be rendered actual only if it is a

function of egalitarian social and economic changes. In that context, then, he does mention democratizing school reform but expands on the theme of fundamental changes in the university:

A student body composed predominantly of members from the traditionally democratic groups of the population needs to be taught by actively democratic teachers. Such democratization deserves precedence over the requirements of educational completeness and continuity [...] The concept of a non-political, non-partisan education is applicable only to a firmly established and functioning democracy [...] [R]emoval should be possible [...] if a professor lacks a positively and actively democratic attitude. (79–80)

Until there are basic changes in the secondary schools, the students needed could only be supplied by suspending the prerequisite for admission of the preliminary examination [*Abitur*], achievable only through preparation in elite schools. To the argument that the design overall would worsen the shortage of professors, Neumann replies that even the present “shortage” is largely due to the exclusion of “new and actively anti-Fascist professors” on the grounds that they do not meet the “academic standards,” which were themselves developed in an “anti-democratic society” and designed to uphold the scheme of castes that defined higher education from secondary school and through the university. A striking recurrent theme in this section of the report, as well as elsewhere, is that Germany lacked “intellectuals,” a motif resonant with Neumann’s consistent advocacy for the cultured segment with which he identified himself. The changes in the late Weimar years that brought figures like Max Horkheimer, Paul Tillich and Karl Mannheim to professorial positions in Frankfurt can be understood as the beginning of an incorporation of intellectuals into the academic community—a process quickly reversed in 1933 with the dismissal of the Jews and anti-fascists among them.¹³ A few months after the State Department report, at the Institute’s in-house discussion of German Labor, it will be recalled, Neumann listed the absence of labor intellectuals as the first consideration in accounting for the postwar defects of the movement.

Neumann reinforces his argument about the absence of democratic development in the higher schools and universities by citing several pessimistic reports by American investigators as well as signs of anti-Semitism in unexpected new vigor among the young. He also reports on some especially distorted developments in Bavaria and elsewhere. Throughout, the presumed bias in favor of the right wing of the Christian Democratic Party counts almost as much against the inadequately reformed systems, in his judgment, as the failure to purge Nazi elements. Yet his concluding point, in the spirit of the times, is that thorough democratization is called for to counter efforts in the Russian-occupied zone to “direct reeducation and reorientation energetically toward socialist ideas,” which can in time have effects in the West as well, although they have not as yet proved successful. “As the unification of Germany progresses,” he writes in conclusion, “the vigorously inculcated ideas from the eastern zone may spread into the western zone.” This ideological socialist expansion would not encounter an equally vigorous democratic ideology, which could effectively combat it. In order to establish such an ideology and practice, reeducation would have to be based on institutional changes no less fundamental than

those in the eastern zone but, in contrast to them, shaped by those forces that are willing to extend democratic reconstruction to the very roots of German society and culture.

Neumann's initial postwar writings on the theme of reeducation have as their first practical counterpart a contemporaneous series of efforts to secure, first governmental and then organizational support for some sort of mission by Max Horkheimer to German educational institutions. In the present state of documentation, it is not possible to state with certainty how much of this activity was moved by an opinion that a supportive report by Horkheimer would strengthen Neumann's case in the debate about policies and how much by a wish to accommodate a person important to his theoretical orientation and career opportunities. There is even some reason to believe that Neumann may have been promoting Horkheimer's venture, which could reasonably be expected to lead to a permanent return to Germany, as a service to influential Columbia authorities, who may have wished to quit the Institute for Social Research in view of its Marxist aura in the changed political climate or perhaps merely because of a desire to present the university's social science research portrait in a more empirical image, as modeled by Paul Lazarsfeld and the Bureau of Applied Social Research.

The earliest documentation of this undertaking occurs in a letter written in late May of 1947 in which Neumann informs Horkheimer of his efforts to work through a military government official in Berlin to get Horkheimer an assignment there. He reports that the Education Division will not accept naturalized citizens, but that another branch may be more open.¹⁴ A letter written almost a month later reports on the official processing of Horkheimer's "job in Germany" while warning him that the military government officials are increasingly hostile to *metics* (a sardonic self-reference among Institute people), especially since they want civilian jobs for themselves. Marcuse has been brought in to support the scheme. The topic for investigation is now narrowed to issues of anti-Semitism, and Horkheimer is urged to assure officials that research would be done by military government people and the results would be presented as a recommendation to military government—and so presumably not as a public document.¹⁵

Neumann had however himself shifted the locus of the discussion documented in the "restricted" State Department reports with the publication in the June edition of *Commentary* of an article named "Re-Educating the Germans: The Dilemma of Reconstruction," a copy of which he includes with the June 21 letter to Horkheimer, relativizing it as deliberately lacking in depth, presumably with a view to the practical purpose. His main themes include, first, the claim that postwar adjustments in education in the American Zone amount to a restoration of Weimar conditions, with the predominance of religious schools and elitist universities, while Soviet educational policies are socially egalitarian but rigidly partisan and geared narrowly to technical training. The Germans, he asserts, are spectators who play their parts by applauding the performances of the various occupiers. In the West, Neumann says, there is freedom but no safeguards against a neo-fascist revival, while the Soviets achieve a needed social preparation but are unlikely to allow a return to freedom. Neumann insists that there is no lesser evil between these two. A four-power agreement and reunification are a prerequisite to any improvement. The cultural cleavages among the zones of occupation can be summarized, he

maintains, by listing the respective slogans of the occupying authorities. Americans and the British say “Western Civilization,” the French say “the Occident” and the Russians, “anti-Fascism.” Neumann closes the article with the problem of universities in the West, strongly condemning the restoration of the caste spirit prevalent in the Weimar years as well as the reopening of all the universities despite the loss of faculty due to denazification and the categorical refusal of the institutions to permit any lateral entry into university teaching by qualified and motivated individuals who lack the formal credentials of the obsolete traditional scheme.

Five months later, Neumann proposes a new approach to what he calls Horkheimer’s “major interest,” which appears to be a reference to a return to Germany with an American mission that would distance him from the complexities of “return from exile.” After a meeting with others, Neumann reports to Horkheimer that they will submit a brief to the American Jewish Committee, proposing a study of anti-Semitism in Germany. Neumann will draft the proposal, together with Hans Speier and A. R. L. Gurland. The key recommendation will be a visit by a committee to make German contacts and to plan programs to fight anti-Semitism. The main point, he indicates, will be to get Horkheimer on that committee. Neumann assures him that he can “manage” Speier, who is a good friend, and that he can “neutralize” Gurland, who will be happy just to be taken along.¹⁶

The principal 20-page brief, evidently written by Gurland alone in a few days, is filled with horror stories, based on news reports and some interviews, elaborating on his initial summary:

More than two years after military victory destroyed the German military machine, we witness a resurrection of Nazism in Germany, a dangerous increase of anti-Semitism, and a general decline of every effort at education toward peace and democracy in Germany, as well as almost everywhere else. The complete failure of our efforts, feeble as they were, has diminished American prestige in Germany—and the world—very considerably; it has brought to the fore the “inability of democracy to deal with problems realistically” and has re-created the fear of a powerful Germany everywhere in Europe. It has increased anti-Semitism in Germany, and thus opened the way for an increase of anti-Semitism in other lands.¹⁷

Franz Neumann added a nine-page “Supplement,” which he introduces with the curt remark: “This very excellent report suffers from not being specific enough.” He organizes his intervention in 39 numbered items, grouped under five headings, and followed by a number of recommendations, featuring an agenda for a fact-finding committee, of which Horkheimer would be a member, as well as a proposal for a permanent American Jewish Committee (AJC) representative in Germany and a standing committee in New York. Yet the new focus on anti-Semitism does not substantially revise Neumann’s policy emphases.

Neumann begins with “The Danger of anti-Semitism in Germany,” where the problems confronting Jews remaining in or returning to Germany are only a preliminary concern. German hostility to “the Jew” does not depend on the presence of actual Jews, he maintains, and threatens to infect other European states, where Jews will settle,

as Germany regains its standing. He enlists as a further argument the potential jeopardy to a policy of which he does not approve:

A U.S. policy designed to strengthen Germany as she is now constituted may imply a simultaneous strengthening of anti-Semitism and Neo-Fascism and may thus create a serious embarrassment to U.S. policy, which, by subordinating to the economic viability of Germany every other consideration may bring about a weakening of Germany's democratic forces.

He appends a footnote reference to "certain theses about the political repercussions of the Marshall plan" that he has prepared, "where this conception is more fully worked out." Then too, in another somewhat labored argument, he suggests that American political opponents of the administration's foreign policy overall—presumably pro-Soviet or isolationist commentators—would use the resurgence of anti-Semitism in Germany as a polemical weapon against it.

Neumann's second category deals with "Attitudes towards anti-Semitism." He begins by claiming that anti-Semitism is growing in Germany, notwithstanding a growing awareness of the problem, as well. His first substantive point refers back to a claim that Neumann made in *Behemoth*: "[T]here appears to exist a greater receptivity for anti-Semitism than under Nazism. Anti-Semitism appears more spontaneous today and much less manipulated." He concedes that polls indicate that most Germans consider the policy of anti-Semitism a central bad feature of a regime that they consider, in their majority, a good idea badly carried out. While he welcomes this as a potential aid in the fight against anti-Semitism, he emphasizes rather the absence of moral revulsion. And then follow a list of other causes—a term that he places in quotation marks in order to signal the speculative character of the rest. Like Gurland, he takes up, in this connection the prevalence of anti-Semitism among the occupying troops, and then turns to a number of hardships afflicting Germans as well as the identification of Jews with the Black Market and the pervasive presence of Displaced Persons, not to speak of the "Morgenthau Plan," which is not rarely taken as a plot against Germany by Jewish capitalists. He closes with a rather wild conjecture, however cautiously phrased, that there may be hopes for a restoration of German grandeur through an anti-Semitic International.

Neumann turns next to the "Social and Spatial Spread of Anti-Semitic Attitudes," given a preliminary concession that little is known about its stratification. He denies, first, that it is limited to the immediate vicinity of DP camps, but rather that it is "strong" in the old Lutheran sections, in Bavarian Catholicism and among the rural population; "making headway" among the middle classes; and "fairly weak" within organized labor. Among those alert to the "dangers of anti-Semitism," he includes the Confessional Church with Pastor Niemoeller at its center, the leadership of the SPD, the left wing of the Christian Democratic Party as well as a number of journals and activists that Neumann characterizes as "heretic groups."

The discussion turns then to the "objectives and basic principles of our fight against anti-Semitism in Germany," which correspond precisely to the initial list of dangers to be averted, although he makes the point about American policy more forceful, inasmuch as he speaks now of preventing "U.S. policy in Germany from strengthening

anti-Semitic and neo-Fascist trends.” With a view especially to the 45 percent of polled Germans “who believe National Socialism to be a ‘good idea badly carried out,’” Neumann insists, first, that anti-Semitism has to be addressed directly rather than being subsumed under general headings of intergroup harmony and democratic values, and that a central feature of the campaign must be insistence on the weakness of anti-Semitism elsewhere and on the fact that those abroad who “desire a peaceful, prosperous, and democratic Germany” are also the groups most vigorously opposed to anti-Semitism. Neumann inserts a call for “an educational and disciplinary program for the US army in Germany.” He also cautions that there is no assurance that the 55 percent of Germans who reject National Socialism are also immune to anti-Semitism but must be subjected to a program of firm instruction in the “moral depravity” of anti-Semitic attitudes and practices.

Neumann turns next to the “machinery” of this fight, insisting first that only Germans can carry it to success and that outsiders are limited to abstention from policies that “hamper the fight” and to the provision of “advice and technical assistance,” although his specifications of actions to be taken extend beyond this modest formula. First, he lists eight organizations to be helped, with the SPD first, but then goes on to assert that individuals prepared to commit to this fight are more important than organizations, provided that those recruited by the military government are not to be identified with it, with “support and assistance [...] given covertly.” Military government is also asked to “extend and perfect its analyses of anti-Semitism,” to review all references to the subject in its publications, and “induced to devote attention to anti-Semitism of American troops.”

There are of course many points of resemblance between Neumann’s exposition in this “Supplement” and his observations in other texts considered here, yet it is important to gain as much clarity as possible about Neumann’s characterization of the German situation to a number of different constituencies and in conjunction with his attempted intervention in the sphere of “re-education” policy, above all, and of his use of this dimension as a lever to find support for the wider revision of American policy that he has found himself helpless to influence more directly. When he turns to the American Jewish Committee, he suggests the stationing of a permanent representative in Germany as well as the establishment of a permanent subcommittee of the organization in America to monitor government and other actions pertinent to this question, but most immediately—as anticipated in Neumann’s letter to Horkheimer a few days earlier—there is to be a fact-finding committee, to consist of A. R. L. Gurland, Samuel Flowerman (Director of Research at AJC, who later plays an important role in the publications of the Institute-initiated “Authoritarian Personality” studies) and Horkheimer, of course. In addition to collecting information to strengthen the speculative approximations about the distribution and strength of anti-Semitism, this body is to foster a network of consultants, in and out of military government, as well as encouraging activists and organizations to monitor and fight anti-Semitism in Germany, an activity that would “establish preliminary contacts with Germans (scholars writers, artists, independent political figures)” and thus presumably also allow Horkheimer to make the inquiries and connections that Neumann has been hoping to help him to undertake.

The focus on Horkheimer is not a matter of speculation in the last phase of Neumann's indirect efforts to strengthen lines of communication with the prime agents of "re-education" in Germany. After the evident failure of the proposal to the American Jewish Committee, Neumann undertook to persuade the Rockefeller Foundation to commission Max Horkheimer to make a "survey of Social Science studies in Germany, the purpose of which would be to make suggestions about the improvement of research and teaching in this field and to discover the most appropriate way of increasing the number and quality of contacts between German and American scholars."¹⁸ The documentation of this undertaking consists, first, of a memorandum of a meeting on January 8, 1948, at which Neumann introduces Horkheimer and his project to Rockefeller staff member, Bryce Wood, second, a follow-up "memorandum concerning the need for American assistance in the promotion of social science research in Western Germany," submitted by Horkheimer and annotated by Wood, who then, third, urges declining the project, a recommendation endorsed by J. H. Willits, director of the Division of Social Sciences, and implemented 10 days after the initial approach. These documents merit some closer attention because they testify, first, to Neumann's skills as bargainer, especially in comparison to Horkheimer, and, second, to the reception of a design, which is ascribed to Horkheimer but quite probably composed by Neumann as well. This speaks to our broader interest in the cost of exile as well as to the record of Neumann's initial postwar attempts at practical political intervention outside of the constraints of public office.

According to Wood's memo, the meeting opened with a statement by Neumann setting forth his views on education in Germany, which he had earlier expounded, Wood remarks, in an "able and informed" article in *Commentary*. Wood concludes that "FN appeared to be primarily concerned with the broad aspects of the problem in an objective manner." His report on Horkheimer has quite a different character:

MH described his work in Frankfurt and it soon appeared that he had two personal interests in making the survey, either one of which would, in BW's opinion, disqualify him. He is anxious to reestablish his Institute in the first place, and, in the second place, he made reference in an oblique fashion to the possibility that the surveyor might usefully select young Germans to occupy leading educational positions. In addition, *since MH is both an exile and a Jew, it would seem difficult to find a less suitable candidate for the proposed study.* [emphasis supplied]

This first report to J. W. Willits ends with a more neutral summary of criticisms made by both of his interlocutors of the reinstatement of habilitation as a precondition for a university career and the consequent exclusion of able young men "because they had been radically anti-Nazi, even without having been Communist."¹⁹ The follow-up memorandum signed by Horkheimer single-mindedly focused on critique of universities and praise of potential outside research institutes, even if such outside agencies lack social science method. In addition to raising the specter of competition from both French and Soviet sectors, the memo illustrates its insensitivity to the Rockefeller Foundation's *amour propre* with passage like this:

Whatever American assistance has been and is being given to Germany, is channeled almost exclusively through and to the universities. This policy is not without its dangers. The German

universities are, more than before, closed castes, controlled by conservative cliques that are unwilling to open the ranks of the teaching staffs to outsiders. This closed-shop policy is most marked in the very university which is still surrounded by the halo of liberalism—the University of Heidelberg.²⁰

The document concludes with a set of suggestions, which Wood annotates with red lines and very brief marginal comments. Next to the first suggestion, which entails a survey of existing social science research, as well as its methods and connections to teaching, Wood writes “Facts.” The following three items are annotated with dismissive terms: “charges” and “what’s this?” One speaks of the need to investigate whether universities are “promoting or hindering research in the social sciences” and to inquire into the “treatment” they accord younger scholars. Another simply suggests an inquiry into the “utilization of assistance” by the universities. And finally, it is proposed to initiate a “rational program of American assistance,” including “moral support [...] to non-university scholars.” Wood writes to his director,

This memo, combined with my impressions of Horkheimer, seems to me to make declination necessary without further discussion. The memo gives quite a different picture from that suggested by Neumann at first. Sponsorship of private or institutional grudges is hardly an RF line. Shall I reply, declining and saying that we are not intending to go beyond the Havighurst report, or analysis present under way?²¹

He is instructed to write the rejection but to give no reason “beyond the many demands on the RF.” Yet this was not the final decision.

More effective than Neumann’s advocacy were evidently letters to the Rockefeller Foundation from Robert MacIver and Robert Lynd, Columbia sociologists long close to the Foundation as well as the assumption of sponsorship by Paul Lazarsfeld, in the name of the Bureau of Applied Social Research.²² The effort was also supported by Robert Havighurst, whose earlier report on German developments had been cited by Wood as making Horkheimer’s project superfluous.²³ From a distance, there is some irony in Horkheimer’s first return to Frankfurt at least nominally as representative of Lazarsfeld’s Institute. His reaction to the visit, as reported to Neumann, marks the end of one chapter and the opening of another, for Neumann as well as for himself:

Just because the majority of Germans, notwithstanding all seeming openness, appear even more unapproachable and evil than under the 3rd Reich, we have an even more profound relationship to those who engage in resistance. The desire to defy the new hardening of Fascist attitudes together with them is strong, even if the prospects of success are slight. The temptation to take part in the struggle is great. Then too, France is so close. I cannot accept the idea that all the forces of good, which are, after all, present there, will not be able to be effective, in the long run.²⁴

Professor of Public Law and Government

Franz Neumann’s association with Columbia University had begun almost as soon as he arrived in the United States, inasmuch as the Institute for Social Research was at

least formally linked to it; but his actual connections were intermittent until after the war. Under a number of variable arrangements, members of the Institute were invited to teach external classes, and Neumann was already a member of a teaching team led by Max Horkheimer in the spring semester of 1937. Neumann's segment in a course on "Authority and Power" covered the institutional features of the National Socialist regime. To judge by numerous irritated letters among members of the Institute disappointed in their expectations of teaching assignments during the years following, Neumann's performances in such occasional classes were exceptionally well-regarded by the Columbia faculty associated with this scheme and presumably with the students as well. And he received a disproportionate share of subsequent invitations.

Neumann retained his Columbia contacts during the war and was closely enough connected afterward to have the most active social science faculty members invite him to join the University Seminar on the State in the academic year 1946–47. In 1948, then, Neumann became a visiting professor in the Department of Public Law and Government, with a tenured appointment following two years later. At a time when it was not unusual for doctoral candidates to take a number of years to complete their dissertations, since it was often both necessary for them to secure employment without the doctorate—and possible in the postwar expansion of the universities—Neumann left a number of "orphans" at his death, but the dissertations he both advised and examined included the work of Raul Hilberg, Fred Burin and others whose subsequent well-known studies continued their dialogues with Neumann. He was, however, best known at Columbia as an uncompromising but inspiring classroom teacher, whose courses and seminars were normally full, quite apart from his central role in the team-taught course on the history of political theory that was required of all graduate students in Public Law and Government. The coauthor of the present study who was Neumann's student has written the following brief memoir of Neumann as teacher.

Among the undergraduates interested in political theory at Columbia, there was word of a teacher who was outstanding in that field, but very rarely available in the College. That professor was Franz Neumann, a short, rather strict man with thick glasses and a prominent hearing aid, who spoke with a marked German accent. My first encounter with him was in a rather large lecture class during the summer of my transition from undergraduate to graduate school. I lacked two courses for graduation and selected a course on economic history with Karl Polanyi and Neumann's class on "Democracy and Dictatorship." For the first time, I faced professors without small talk. In one of the early sessions of Neumann's class an eager student asked at the end of a recital of characteristic National Socialist programs, "What about the 'Kraft durch Freude' movement?" His German pronunciation was not flawless, but he could be understood. Neumann nevertheless responded with a seemingly perplexed "What?" This exchange was repeated two or three times, until the student, deeply embarrassed, offered, "What about the "Strength through Joy movement?" "Ah," said Neumann, in his strongest German accent, "ze ztrengs sru choy mufment," and proceeded to explain. We were delighted. Neumann had carefully accommodated his student audience by translating all terms into English, and he was not prepared to grant an individual student special status by entering into a non-public exchange with him in our presence. He had the authority, and he set the terms. We accepted the deference that this circumstance mandated because we recognized that authority, asserted without theatrics through the dry and orderly briefings transmitted by his carefully prepared lectures.

Neumann was the principal lecturer in the course on the history of political theory that was required of all graduate students in the department, although it was team-taught and also included lectures by Robert Denoon Cumming, Herbert Schneider, and Dino Bigongiari the year I took it. An engineering student taped and transcribed Neumann's lectures, and we bought copies from him for further study. Unlike present-day courses of this type, the class required no research papers and virtually no reading in original texts. In a sense, it was a graduate school equivalent of the initial cultural orientation courses at the College; but a different kind of challenge was manifest, at least for those of us who expected to pursue this study beyond this initial encounter. We normally sat for an hour or two afterwards debating what Neumann really meant and what we could do with it—a practice that continued throughout my studies with Neumann. These next took the form of participation in his doctoral seminars, where we were suddenly expected to be able to write papers that we could defend in the face of sustained critical scrutiny, led by the professor but pursued by all. No time was allotted to reading papers. They had to be deposited in the library in multiple copies in time for everyone to be prepared. Neumann never taught methodology; all the discussions dealt with matters of substance. In the first and last of the three semesters during which I took part in the seminar, the students selected their topics from either the history or the analytical themes of political theory, without restriction, and Neumann's versatility was part of the excitement. The second semester was dedicated to Marx and Marxism, with an introductory session devoted to Hegel. That was my assignment.

Neumann had lectured on Hegel during the survey course, but he expressly excluded the subject from the final examination, since, as he told us, we could not possibly be ready. After weeks of desperate struggle that Christmas holiday, I concluded that I would not be able to write a proper paper at the expected level. Unimaginably, I mustered the courage to telephone Neumann at home and reported that I could provide a list of things I understood about Hegel's Philosophy of History and Philosophy of Right, but that there was also a list of things I did not understand—questions I could not answer. Neumann agreeably said I could expound my lists to the seminar in lieu of a completed paper, but when I asked whether he was enjoying his holidays, he curtly said good-bye and hung up the telephone. I cannot say whether his mentoring took such an impersonal form with all of his students, but it seemed right to me. And this was all the more the case because the style was completely consistent with a measure of attention and generosity. Neumann had been absent in Europe when I gave a paper on "Plato and the Problem of Social Change" in the previous semester, drawing heavily on Marcuse's course for conceptualizing the latter. Some weeks after my problematic Hegel presentation, he called me aside to say that he'd just read the earlier paper and that it would satisfy the requirement for the second seminar as well. I could devote my attention to converting the Plato paper into my Master's Essay and did not have to stop then to settle my accounts with Hegel.

My "graduation" seminar with Neumann took place in the third semester, when I was nominally attending only as visitor, and in the event the experience was almost farcical in its conformity to coming-of-age scenarios. It began when Neumann uncharacteristically called a sudden halt to a labored seminar presentation on the subject of freedom by a new graduate student, remarking only that he had himself just completed a paper on the subject, that he would deposit it in the library, like the regular seminar presentations, but that he wanted someone from the class to introduce it at the next session. Exploiting my status as old boy, I asked facetiously whether he was prepared for the introduction to be critical. He promptly invited me to be the rapporteur. ("Ah, Mr. Kettler," he said, delighting me by calling me by name, an unusual distinction.) The seminar met at 9:30 in the morning. On the day of my assignment I woke up shortly after 9 in my apartment at the other end of Manhattan. Luckily I had given a copy of my prepared notes to a friend in the seminar, so that when I arrived thirty minutes late the presentation was peacefully in

progress. I stood panting in the doorway, however, and announced that it must be obvious to everyone what had happened, implying a Freudian reading of my difficulties with the challenge, an interpretation that would have been self-evident to all of us at that time. Neumann almost fell off his chair laughing. As I took over the reading, however, and moved beyond the initial summary to my critical questions, the good humor ceased. Neumann allowed me to finish, took up his papers and briefcase, and started grimly out the door, long before the scheduled end of the session. Someone asked whether he would keep his paper available in the reserve library for another week; and he simply answered, “No” and left the room. Since my objections were of a political sort, I did not consider myself reprimanded and dismissed. Perhaps I can even speak of a measure of elation: a rite de passage. I reiterated my criticisms three years later in a review of his posthumous political theory essays, which ended with a tribute to Neumann as teacher.

My last meeting with him concerned my dissertation prospectus, which was also to serve as my (successful) application for a Rockefeller Foundation pre-doctoral fellowship. Neumann listened to my proposal to expand my confrontation in my Master’s Essay with Karl Popper’s critique of “historicism,” and he replied in his usual laconic way with a single sentence suggesting that I look into the Scottish moral philosopher, Adam Ferguson, of whom I had never heard. Then Neumann died. With some initial help from my undergraduate political theory teacher, John B. Stewart, Ferguson became the subject of my dissertation and my first book. The approach of the finished work leaned most heavily, however, on Karl Mannheim, to whom other professors had introduced me and whom Neumann has scolded as “much too rationalistic” when his name once came up in seminar. There was no Neumann method readily available; the Neumann students could not form a “school” even if we had been so inclined.

Neumann’s instruction was more an initiation to a cultured but ethically charged political discourse than a sharply contoured theoretical challenge. The key to his influence, especially among those of us already oriented to the Left, was the nature of the ethical charge. Stated in the somewhat gnomic quasi-Hegelian formula of political theory as the vehicle for expanding human freedom and in his conviction of a “totalitarian” threat immanent in advanced societies, the substance of the matter remained the resolve to work at his generation’s unfinished business with the Hitler regime. His authority rested on memories of the “good war” and on the legitimation he provided for our interest in the suspect topic of Marx. Without loading the burden of his exile on his students, Neumann conveyed the urgent need to get political theory right. Since his conception of political theory was initially formed by his experience of continental law, where a theoretical statement is inherently an intervention in the disputes that shape and reshape the ruling doctrine to be given effect by officials and courts and where precisely-aimed renderings of intellectual history served as a legitimate aid to argument, he never questioned the practical relevance of political theory, as he taught and wrote it. As in law, the responsibility for supporting the best possible judgment in a timely fashion is more urgent than the solution of conundrums of method and epistemology. Neumann’s legacy, in short, could hardly endow a school. Through memories of instruction, a list of books worth reading, and the small collection of his own essays, he left behind a mission, a model, and a certain connoisseurship about theories of the past, but little settled doctrine and less philosophy. Like most others in the cohort, I took a long time to complete the dissertation. Even in his terminal absence, he remained a demanding and parsimonious taskmaster.

Political Studies and the Free University of Berlin

Neumann’s central focus during the following two years was on the work required to gain recognition as a qualified academic colleague at Columbia University, where he was

given first a visiting and then a tenured professorship. His writings on Germany, as noted earlier, now aimed at publication in recognized scholarly journals and addressed broad questions of policy, informed by a conviction that Russia has been effectively defeated in the political struggle and that there would be a war within the next few years. In the course of a briefing at the Institute recorded in December 1948, moreover, he asserted that no "spiritual" [*geistig*] work was possible in Germany for any American citizen because if he does not represent American democracy in the way that is expected by the authorities he will be thrown out by the military government.²⁵ He gives qualified blessings to the Marshall Plan here but condemns its administration and dismisses Truman as "the authentic representative of the American small town politician."

At the very end of 1949, however, he has an encounter that energized him anew to engage with practical questions of political education, if not in Western Germany as a whole then in Berlin, which he viewed in any case as politically and culturally distinct, precisely in the respects that he found lacking elsewhere in the areas occupied by Western allies. This point needs to be emphasized: involvement with Berlin was by no means identical with a return to West German life. The new rector of the Free University, founded by student and faculty initiatives in 1948 and legitimated by the military government and Western authorities as an alternative to the Soviet-dominated University of Berlin in the Eastern sector of the city, was a guest of Columbia University in December of that year, as it appears, and engaged in extended discussions with Neumann and others about establishing a regular connection between the two institutions. Although the documentation is incomplete and not altogether consistent, it appears that the two began a discussion at that time about a summer course in "political science" that Neumann was to organize, drawing on Columbia colleagues as well as on some other American professors who had earlier accepted invitations to Berlin. Not mentioned in the available correspondence is a very important programmatic guest lecture that Neumann had already given in Berlin on January 2, 1949, under the joint auspices of the Free University and the older *Hochschule für Politik*, where he had taught before his exile and which he was eager to see united with the University.²⁶ Since the lecture sets forth not only his hopes for a new beginning in the curricula of the Berlin institutions but also a prospectus of the work in political theory that he will himself undertake during his last years, we shall postpone closer attention until later. At present, what is important above all is his brief for recognizing the study of politics as a distinctive and essential discipline, requiring its own curriculum and research institute.

Interesting from the standpoint of his own biography is that he focuses on what he considers to have been a profoundly ambiguous decision by the German middle class and academic institutions to abandon the understanding of politics that had been developed prior to the settlement in the era of Bismarck, when they declared themselves satisfied to investigate and foster the legal mechanism for preserving rights so that political studies became juristic studies. Neumann asserts that the Weimar era changed little in this state of affairs, notwithstanding the unmatched achievements in constitutional and state law by such politically diverse figures as Carl Schmitt, Hermann Heller, Hans Kelsen, Rudolf Smend and others. Yet the problems they addressed were ultimately juristic, even if they variously drew on sociological or economic methods. These legal theories of the state

“ultimately failed to understand the problem of democracy as well the problem of the state [...] [neither of which] was at the center of their research or teachings” (375–76).

At this point in the lecture Neumann put the critique of the past aside in favor of a “presentation of the political science as such,” with the proviso that he is speaking of this study only in the context of democracy. He opens with a statement of the aim of democracy: “It is the actualization of human freedom through mass participation in its actualization.” This is followed by an anticipation of the detailed analysis of freedom that he will publish some years later, centered on the three dimensions of (1) the juristic or negative, (2) the historical or cognizant [*erkennend*] and (3) the willed. The principal thinkers associated with these three constituents of freedom are, respectively, (1) Hobbes, Locke, Montesquieu and Kant; (2) Spinoza, Hegel and Marx; and (3) Fichte. We’ll reserve Neumann’s elaboration of these aspects for our examination of his definitive article. Especially striking under the circumstances of his presentation in Berlin, however, is his insistence on the many difficulties that obstruct the attempt to effectuate freedom in this threefold sense, especially in Germany. He focuses attention on monopolization, bureaucratization and the “ever greater complexity in the practice of democracy.” In a sweepingly pessimistic statement, he writes,

There is no doubt that the individual efforts of men in politics (and not only in politics) appear hopeless. There is no doubt that successful political practice presupposes rigorous organization and that rigorous organization often kills the spontaneity of the individual. (378)

As a “dialectical statement” for investigation, he puts the paradox that “little stands in the way of democracy in an agrarian society, but there is little demand for it, while democracy is ever more difficult to achieve in an industrial society, as the inner need for it increases.”

Neumann asserts that this universal condition, especially marked in Germany, defines a prime task for political studies. He says that many grumble about bureaucracy but also maintain that the few will always rule and that the “good citizen” must simply accommodate as best possible to this circumstance. Such “nihilism,” grounded in Machiavellian psychology, he maintains, is almost always the pathway to authoritarianism—and, he adds, especially prevalent in Germany. He does not take the analysis further, he asserts, because his present aim is simply to indicate the tasks of a science of politics. This restraint nevertheless does not prevent him from attempting to specify “the central problem of democracy.” Given the dominance of the bureaucracy, understood as “all who are active in public life in the service of others,” this would be its “selection, education, and control.”

Neumann’s treatment of democratic control of bureaucracy unexpectedly takes up a central theme of his Weimar writings, which he had largely put aside during the American years, namely, his disapproval of assigning the central role in this function to judicial proceedings. He cushions this discussion by asserting that the excessive German reliance on this method in the postwar years arises out of a misconception of the structure and process of American democracy. In any case, he insists that freedom cannot be protected by primary reliance on tests of the constitutionality and lawfulness of

bureaucratic acts, which cannot in any case assess the many judgments that constitute the work of bureaucrats and form the central issues of politics. He writes,

It is today much less a question of erecting fences around the lawgiver and administrators than of giving a rational and democratic character to the exercise of power. This can be done only through activating parliament and local self-rule. (380)

Neumann concedes that the excessive reliance on legal and constitutional measures is psychologically comprehensible after the experience of National Socialism and the competition with Soviet Communism but urges that democracy should not permit its tactics and strategy to be dictated by its opponents. Neumann, it should be said, never further develops this projection of democratic activation, although it would presumably have been a central theme in the “democratic theory” he sought to elaborate in the years immediately before his early death.

Understandably, in view of the occasion of this lecture, as well as his increasing conviction that political education is the least obstructed sphere of practice for the political intellectual, his most developed exposition refers to the character, contents and goals of schooling in political science, especially as it applies to the bureaucrats in waiting who will comprise most of the graduates. The latter suggestion, which is nowhere stated as clearly, offers a useful insight into Neumann’s conception of his last vocation—and how it happens that he refers to himself as a “political” rather than “academic” scholar in the lecture on the social sciences in exile that he gave in the United States at nearly the same time.

A first point, nevertheless, is his insistence that the course on the fundamental principles and practices of democracy that should in any case be available to students in all fields, “provides little help,” in view of the extensive specialized materials they have to master in their own subjects. “The study of politics,” he writes, “is an independent field. It requires its own curriculum, [the acquisition of] technical—or shall we say ‘handicraft’—skills.”²⁷ Neumann lists seven subfields as constituting the discipline, ranging from “comprehension of the historical development within which politics transpires” to “comprehension of political theory, since the force of ideas can be of decisive significance in the political struggle, especially in a democracy.” He includes also knowledge of the legal forms within which democratic struggles are carried out, foreign systems for comparison, the social structure of the nation that decisively influences political groups, the economic organization that influences, in turn, the social design as well as international politics. With due apologies, he illustrates this range of studies by a summary description of the divisional makeup of his own department at Columbia University, emphasizing the complementary existence of specialized research institutes. He concedes, first, that such a structure can only be the product of many years of development but notes, second, that in the case of Columbia the original model had been brought from German institutions for the study of the state [*Staatswissenschaft*], the tradition that is now mostly forgotten in Germany itself.

To strengthen the case for recognizing political science as a separate discipline, requiring its own faculty and institutes, Neumann sketches the relations between that

study and its cognate fields. The first—and most important, in his judgment—relationship he considers, however, proves to involve an interdependence, inasmuch as “history is the substance of political science,” an understanding that, Neumann admits, is not shared by many American scholars, whose universalistic ambitions Neumann rejects in rather strong language. The importance of history in Neumann’s conception of political science separates the discipline from sociology, although Neumann acknowledges that discipline as source of the empirical research method essential for comprehending the present. The key difference between political science and sociology, as well as economics, is that political science inquires into central features decisive for those disciplines only insofar as they impinge more or less directly upon the political domain. It cannot be said that Neumann’s analyses in this segment of his talk are especially perspicuous, if only because the topics involve too many issues unsettled in his own mind—as with the continued relevance of approaches derived from Marxism. This becomes manifest in an excursus that Neumann appends to his brief discussion of economics.

He abruptly raises a series of questions about the structure and consequences of the factory, an inquiry he says could also be subsumed as well under economics or economic sociology, urging its importance especially in relation to Marxist theory. The latter had anticipated that the development of capitalist forms of organization would generate a rise in class-consciousness among workers, culminating in a revolutionary consciousness. “In reality, this prophecy was not fulfilled,” Neumann writes, and he goes on to make this circumstance responsible for Lenin’s replacement of Marx’s theory of spontaneous development with a theory of avant-garde leadership, without his acknowledging that this in fact entailed the dismissal of Marxism. Neumann hypothesizes that the factory has rather served to educate workers to obedience, discipline and authority, and he urges the study of the neglected relationship between factory organization and democracy, which he deems to be a decisive problem. It is a measure of the extent to which the failure of working-class socialism haunts Neumann that he inserts just this manifestly interdisciplinary discussion into a brief for the autonomy of political science. It is almost certainly not an intended irony that he continues his talk with a caution against the “dilettantism” that is the likely consequence of attempting to address all the overwhelming number of questions confronting political science. Taking up a motif from Theodor Adorno, he urges that partial cultivation [*Halbbildung*] is often worse than an absence of cultivation, where the individual at least knows what he does not know. His objective in context is to insist on the necessity of intradisciplinary specialization, given a broad overview of the field and knowledge of the research methods that would make possible later expansion into new areas.

At this point, Neumann suddenly apologizes for having dealt with matters at a rather abstract level and asks permission to illustrate the application of political science procedures to a more limited problem, which proves to be the analysis of political power. As with Neumann’s earlier segment on freedom, the discussion of power anticipates a subsequent article, which we shall discuss in the next section, in the context of his academic political theory ventures. In the present context of setting the distinctive agenda of political studies, several points stand out. The first key topic is that the means of domination are limitless and need to be distinguished, and the second is the inquiry into

the diverse attitudes toward a power, which Neumann classes according to a typology of theoretical conceptions ranging from the “classical,” Augustinian, Thomist, Liberal, Epicurean and Anarchist to the positive attitudes of Marxism and Rousseauist democracy, which are, according to Neumann, closely related and neglected. One use of this cataloguing of attitudes is that it helps to identify the commonplace demagoguery of opportunistic shifts from one design to another, as the propagandistic occasion requires. In turning to the sources of power, Neumann rejects the recourse to unhistorical psychological theories, which he traces, first, to the fashion for rejecting Marxism root and branch, which “renders one incapable of understanding political power” (389). Second, then, he cites the difficulties in the way of identifying the social sources of power in a democracy, where the competing social agents must disguise their aims in universalized ideological terms, a disadvantage that he appears to see compensated for by the possibility that a thorough democratization will in fact impel these entities to set more encompassing goals. His conclusion for the agenda of political science is, somewhat unexpectedly, a deprecation of research focused on political parties and a celebration of the empirical studies of interest groups pursued by American scholars, singling out V. O. Key’s study of Southern Politics. It seems highly likely that Neumann was implicitly taking sides in the controversy generated by a report issued in 1950 by a committee of the American Political Science Association, called “Towards a More Responsible Two-Party System,” and his evident alignment with the critics of this document is unexpected because the thesis of the report closely resembles the critical views of Neumann’s old mentor, Harold Laski, on the shortcomings of the American party system. His main point, in any case, is to press the case for a political science research institute:

Compared to the expenditures for technical, natural-scientific, and medical research, research into the political is naturally inexpensive. Savings on these costs always pays off poorly for democracy. (391)

Neumann’s conclusion turns to “the problem that most occupies me personally: the role of political theory in the science of politics.” If it were the case, he asserts, that politics were nothing but the struggle for power, as many are satisfied to conclude, “the world would be in a terrible state.” Although many competitors for power do in fact represent nothing but particular and selfish interests, others represent “universal and national interests.” Before 1918, he says, it was easy to distinguish them: “But today? Who can tell us and how do we know today what is progress and what regression? What is egoistic and what national?” He continues, first of all, with a simple clause that tells much about his state of mind at the time: “The difficulty lies in the failure of the European labor movement” but then goes on to focus on the universal pervasiveness of propaganda and the consequent transformation of all culture into merchandise. And it is to this second diagnosis, resonant with echoes of his years with Horkheimer, that he sees political theory—the theory of the concept of freedom—as the only response available, inasmuch as it serves to penetrate the veil of propaganda and to identify the groups that actually seek to promote freedom. This can only be done, Neumann maintains, through the juxtaposition of theory and empirical research. His conclusion speaks from his own

perplexity and resolution rather than in the authoritative manner of the brief. He never said anything as revealing to American constituencies. Berlin remained special.

The documentation for Neumann's efforts on behalf of the Free University and the *Hochschule für Politik* during the next year or two is incomplete, although it is clear that he organized a Columbia Committee for the Support of the Free University in Berlin during that time, that he fostered an Institute for Political Studies run jointly by the FU and the *HJPS* and that he secured a place at the latter institution for his long-time associate, Ernst Fraenkel, who had become more deeply dedicated to American Political Science than Neumann ever became. It was in the first months of 1951 that Neumann invested his greatest effort in his campaign to strengthen the Free University and to establish something close to his vision of political science in Berlin.²⁸

On the second of February, John J. McCloy, who is high commissioner for Germany, sent his friend, Paul G. Hoffman, at the Ford Foundation "a grand and costly scheme for an international university at the Free University" that he'd received from the public affairs officer in Berlin.²⁹ In the Ford Foundation files, it appears that Franz Neumann then writes directly to Hoffman on February 13, contending that he had just returned from a third trip investigating the FU for the State Department, and that the public affairs officer of the High Commission for Occupied Germany who was his direct contact in Berlin had told him to "assist" Hoffman and the Ford Foundation. Ten days later, Neumann visits the Foundation and makes the case to an official there, who first shows him McCloy's letter. Neumann begins by explaining his threefold connection with the University: as representative of Columbia University, as associate and past official of the State Department and as interested individual, who had fostered the newly established Political Institute as a collaboration between the University and the *Hochschule für Politik*. The memo of this meeting continues,

Professor Neumann thinks the Free University is the most promising university in all of Germany and believes that it should be converted into an international university, a strong center of Western culture in Berlin. Notes that Reuter rejected Federal assistance to prevent Catholic takeover. Has been asked to apply for money in aid of building program and PolSci. How?³⁰

On March 1, then, high commissioner McCloy sends Hoffman at the Ford Foundation the full text of Neumann's February report, adding, "We have placed great confidence in his advice and recommendations." Neumann's report is quite lengthy, and the dollar amounts that he recommends cannot mean much out of context, so we will select only a few details to illustrate his operations.³¹ First, there is the consistent characterization of his various meetings as "negotiations," including those with HICOG officials, representatives of the two schools, as well as the newly founded Institute of Political Science, "Lord Mayor Reuter, and a number of officials of the *Magistrat Berlin*." He reports that he persuaded the FU Curriculum Committee to experiment with "general education" courses like those required of first- and second-year students at Columbia and similar American colleges; and he reports also on the progress of his negotiations with the Max Planck Institute to transfer its international law program to FU as well as some other similar operations. He makes

a renewed plea for the HfP as “indispensable to the life of Berlin, of Western Germany, of political science in general.” Conceding that its academic standards are deficient, he contends that less “puritanical” funding will solve that problem. As for the new Institute for Political Science, he met with its Executive Committee, and he wrote, “*I made clear that a systematic program of the Institute must be developed and I spent considerable time in assisting the Institute to develop such a program. This program has now been completed.*” The topics follow the questions raised by his reports on Germany quite closely, including the German party system, the process of bureaucratization and “Germany’s neutrality past and present and popular attitude to it.” Funding for these programs, he maintains, is being “negotiated” with the Rockefeller Foundation and the Carnegie Endowment for International Peace. Neumann characterizes the FU question as political as well as academic: “Our prestige and reputation in Berlin are to a considerable degree dependent upon the success or failure of the Free University.” While HICOG funding for the Institute for Political Science has been helpful, it has also roused resentment at the University because of the need to share with *HfPS*. The latter should be supported separately to signal American interest in “a type of institution standing between the *Volkshochschule* and a university.” On April 12, then, Neumann brings the new FU rector, von Kress, to a meeting with Ford Foundation officials and speaks for him, with emphasis on funding for physical plant as well as evening classes and political science.

Neumann’s most intense efforts on behalf of the three interconnected Berlin institutions culminate in a formal application to the Ford Foundation signed by the rector but clearly drafted by Neumann.³² The overall agenda set forth repeatedly refers to the Free University as uniquely “progressive” and “democratic” in its academic practices “and thus, perhaps [able] to set an example for the more conservative West German universities.” The projects that have been planned and require financial support include, first of all, the development of “political science in teaching and research,” but also the study of Eastern Europe and the Soviet Union, and the organizational as well as construction projects required to move in these directions. Supplementary memoranda look ahead to the conjunction of the new university political science scheme with the *Hochschule für Politik* to generate a new examinable subject. Another focuses on new tasks for the law school faculty, in view of the need to “create a legal pattern in Germany, which enables the citizen to carry out the functions of responsible citizenship,” inasmuch as the new constitution “accords to the individual certain inalienable rights and duties.” The author of the memorandum—presumably Neumann—underlines the last two terms. There is no readily available archival record of the various “negotiations” that Neumann enters into during these years with public and private funders, according to his statements, except that it is clear that many of the attempts, unlike the dealings with government agencies and the Ford Foundation, did not succeed. It is in any case unmistakable that this project in political education was Neumann’s last great practical undertaking.

For American Political Science: Montesquieu as Flawed Model

And its locus was not limited to Germany. While the most urgent change to be introduced in German political studies was the legitimation of empirical study of

political realities, as a control on legal and philosophical speculation, American political science, in Neumann's view, needed to grant its proper place to political theory rather than treating its study as an antiquarian *rite de passage*. Before considering Neumann's unfinished elaboration of this program during his last years, we shall consider two sources that illustrate its preliminary implementation, directed to students rather than professional colleagues. Later, we will examine a student's notes on Neumann's course on "Democracy and Dictatorship," as taught at Columbia in the summer of 1951, but we begin with Neumann's introduction to a student edition of Montesquieu's *Spirit of the Laws*, published in 1949. It is not clear how Neumann, newly appointed to a professorship, came to be selected as an editor in this rather ambitious new series, except that the list of editors is weighted toward Columbia, with 6 of the 12 titles announced—the first one and the last five—edited by Columbia professors. In any case, Neumann's introduction takes up some 60 pages. And it is a text of sufficient weight, in the judgment of Neumann's close associate and final editor, Herbert Marcuse, to have a place in the posthumous collection of his writings.³³

Neumann opens by quoting contrasting opinions about Montesquieu voiced a hundred years apart by two English Whigs, indicative of his author's disputed reputation, but he insists on Montesquieu's importance nevertheless as "the first after Aristotle to write a systematic treatise on politics" and innovative author of "a treatise [that] was not derived from the principles of natural law but based on historical facts (even if distorted)." In many respects, Neumann's treatment of Montesquieu corresponds to his dealings with Hegel in his LSE dissertation, in that he highlights elements that he finds instructive while rejecting the political objectives of the theorist. If in the case of Hegel, Neumann concluded also that he could learn from him although he found the philosophical strategy impenetrable, he says more confidently in the case of Montesquieu that if his work "indeed has a structure," it "is very difficult to perceive." He begins as if his encounter with Montesquieu were primarily a matter of explaining his newly exalted reputation. "Who was this man," he asks, "whose formula of 'the separation of powers' as the device for securing liberty enjoys more reverence today than perhaps ever before in history?"

Neumann's first answer to his question consists of a biographical sketch recording Montesquieu's initial inherited career as magistrate in a regional *parlement*—a controversial agency that combined judicial functions with claims to discretion in the implementation of legislation and royal decrees—and his subsequent entry, having sold his office, into the company of metropolitan intellectuals and writers, as well as the travels associated with this role, notably his stay in England. Neumann also catalogues Montesquieu's diverse writings, culminating in the *Spirit of the Laws*, whose extraordinary initial success after publication in 1748 he ascribes to its uniqueness as systematic political treatise, its championing of the nobility and *parlements* and "above all to the brilliant style." At the same time, to underline the problematic character of the work, he notes that it was harshly attacked, not only by the Sorbonne and other clerical authorities but also by such Enlightenment *philosophes* as Helvétius and Voltaire, who, he maintains, misread it as little more than a brilliant political text in support of obsolete and harmful aristocratic privilege.

Neumann then backs away from Montesquieu's expressly political writings in an attempt to uncover his "personality," which he deems to be pertinent to understanding Montesquieu's overall achievement—and that appears to be an important factor in Neumann's striking attraction to him, notwithstanding the great gap between their political judgments. After a brief sketch of Montesquieu as a sincere and moderate personality, Neumann ventures "to interpret [Montesquieu's] *Persian Letters* [...] as an autobiographical attempt, as a kind of self-analysis." This work is cast in the form of letters to friends at home written by two Persian princes on a visit to France, although it also contains exchanges between the older and more reflective of the two and the inhabitants of his seraglio, notably the eunuch and several of the wives. Many of the letters add up to a social and cultural criticism of France, more or less satirical in character. Yet, Neumann asserts, this is only the surface:

The concern of Montesquieu [...] is far deeper and goes, indeed, to man's basic problem, namely, man's dehumanization. The theme which links the *Letters* is his conviction that man's destiny, dignity, and freedom have been betrayed by and through all institutions. (100)

Neumann explicates this thesis first in connection with a "deep and passionate" love of justice, which is an undercurrent in many of the letters, he maintains, whose form "permitted Montesquieu an endless discussion about justice within himself, revealing a man of intense scientific curiosity and great scientific caution—always in doubt, but always in search of justice" (101). Existing religious and political institutions are exposed as thoroughly corrupt and exploitative, with only the family given a partial exemption. Yet, according to Neumann, the most profound defects of both the French and Persian societies are exposed by the circumstances that render love impossible, converting the impulse into the frivolity of "affairs," in the one case, and into the terror behind the sensuality of the seraglio, in the other. The hopelessness of the situation is illuminated by the exception set forth in a story of true love between social and cultural outsiders who are also siblings.³⁴ "His attitude toward life reveals a deeply felt pessimism," Neumann concludes, and "it is this skepticism that made him a conservative." Neumann amplifies his balanced judgment of the consequences, having first summarized some of them in terms clearly oriented to Neumann's present (including a reference to "the Bomb" as denying to man "upon the earth a refuge from injustice and violence"):

It is this point of view that exasperated the *philosophes* who, agreeing with his cultural criticism could not accept defeat [...] The *Esprit des Lois* [...] suggests a range of possibilities depending on special circumstances [...] [which], if applied [...] make possible a government operating with a "minimum of friction" and, consequently, being "more rational."

If it is difficult to deny Neumann's sympathies with Montesquieu's "personality" and the dark insights it opens to view; this does not mean that he was open to Montesquieu's judgment of the French political situation of his time. Neumann devotes some pages to an account of the confrontation between the proponents of the "monarchical" and "aristocratic" theses about the French political system, setting both of them largely in a context of corruption and increasingly obsolete self-interest, as the ideological categories

of the dispute are displaced by the realities of commercial interests. He offers a more sympathetic account of the absolutist version put forward by proponents of “enlightened despotism,” notably the physiocrats, although he concludes that their scheme “was essentially utopian.” And he qualifies his condemnation of the “conservative solution” as advanced by Montesquieu, who “is set off from his feudal *confrères* by his tolerance, his awareness of the national obligations of the privileged groups, and his deep doubts about all perfect solutions.” Still, for Neumann, the confrontation between the theses was rendered obsolete by Rousseau, who “put the political problem on an entirely new basis, that of pure democracy,” for which Montesquieu had no understanding. Neumann concludes this discussion: “His [...] contribution to France’s political problem, honorable as his motives may have been, was unrealistic, and, in its effects, quite harmful.”

However, this assessment of Montesquieu as political commentator and advocate for his time is only a preliminary step in Neumann’s undertaking to study his contributions as “a political scientist who, standing in the tradition of Aristotle, undertook to analyze governments on a cosmic scale and to derive from historical observations a system of politics.” Although Neumann follows this immediately with a judgment that “the enterprise failed, as it necessarily must,” and a classification of what he considers to be the many errors of fact and reasoning in the book, he balances this with renewed praise of the originality and instructiveness of the work and closes his preliminary remarks with praise of this “extraordinarily stimulating book whose riches have remained neglected because of the attention given to one the most doubtful of his discoveries: the separation of powers as the instrument of securing political liberty” (115).

In line with this general pronouncement, Neumann sets out to outline Montesquieu’s attempts to identify and manage the issues Neumann considers basic before eventually addressing the theme that others highlight. Neumann opens with his own perennial formulation: “The problem of political philosophy, and its dilemma, is the reconciliation of freedom and coercion.” He quickly reviews his familiar claim that the problem is at the center of all political theories since Machiavelli, emphasizing the contradictory needs in this respect of societies with a money economy; however, one or the other theorist may appear to elevate one theme above the other. Montesquieu, in Neumann’s view, is distinctive, first of all, because he followed through on his conviction that the problem is insoluble at a theoretical, universalistic level. Neumann then breaks down this distinctiveness into five elements: The “solutions” applicable, according to Montesquieu, given that they must be derived from a scientific analysis of all the facts at our disposal and are nevertheless at best an approximation, vary from one culture to another; they are not arbitrary but rather a function of the “configurations of space, time and tradition in each specific country”; and they are subject to change, whether through correction or corruption. This does not mean, Neumann insists, that Montesquieu is like a “modern positivistic sociologist,” indifferent to the classic problems of good government. His pursuit of justice is simply immune to any moralizing approach that wishes away the realities of human passions and the consequent needs for politics and, thus, of power.

Neumann tracks the genealogy of Montesquieu’s distanced approach back to Descartes and Malebranche above all, bringing together a deep respect for method with

a recognition of fallibility and the dangers of misunderstandings. In its application to historical events, the method looks for the “logical structure” of the various types of society, with a constitutive principle that is articulated in the factual makeup of each. Although these designs are static, Neumann insists that Montesquieu was aware of the problem of social change and made some important, if fragmentary, attempts to comprehend it. The approach is best seen in Montesquieu’s study of Rome.³⁵ When possessors of power succumb to the greed for more that afflicts that condition, they may act against the integrating principle of the order that endows them with power and thereby initiate reactions that make for structural change. Neumann likens this conception to Hegel’s “cunning of reason.”

Yet Neumann also contrasts it with the radicalism of Helvetius and others among the *philosophes*, who thought that none of the existing political institutions could be counted upon to give individuals the space required to live up to the new possibilities, which men³⁶ must simply assert:

Montesquieu’s historicism and relativism prevented him from accepting any of these statements. *The Spirit of the Laws* may, in spite of frequent allusions to reason and justice, be considered as a critique of rationalism and individualism. (121)

The reference to historicism leads Neumann to distinguish Montesquieu’s experiments in this mode from the work of Vico, whose “revolutionary contribution to historiography” he views as “overshadowing” Montesquieu’s “more mechanistic conception of historical causality.” Yet Montesquieu was better known, Neumann notes, and influenced both Romanticism and the historical school as well as, on the other hand, positivism and Marxism.³⁷

Neumann’s characterization of Montesquieu’s method is followed by three sections devoted to the substance of Montesquieu’s argument, beginning with the “principles” of the work and then two sections situating him in some of the topical literature in political theory, first on the subject of “liberty and the separation of powers,” with which he is especially closely associated, and then on constitutionalism as a more general design. These sections are distinguished by rather forceful arguments by Neumann, both as regards the interpretation of the texts and the evaluation of some of the key theoretical questions raised, all of it punctuated by quite dismissive judgments of elements in the work—notably in its (dis)organization and sometimes eccentric emphases—which do not, however, take away from the regard for Montesquieu that Neumann expresses and urges on his readers.

Neumann begins this account by reiterating his conviction that Montesquieu, notwithstanding his somewhat obscure definition of law, grounds his theory on the conviction of an ultimate objective standard of justice whose validity is not dependent on human actions or understanding. Neumann’s interpretation rests in important measure on Letter 83/84 in the *Persian Letters*, where the more philosophical of the two Persian travelers offers an extensive profession of faith in the ultimate objectivity of justice, concluding with the observation, “If I were sure that I could put into practice [...] that equity which I can visualize, I should consider myself supreme among men.”³⁸ As suggested by those

concluding words, Montesquieu also questions the ability of men in society to live up to those standards. Neumann writes,

If one accepts this interpretation, then his discussions of the various types of political society are all oriented towards finding an approximation to the standard of justice by taking into account all factors that shape society. (122)

For Montesquieu, according to Neumann, entry into society does not pacify men but rather first provides them with the strength to engage in struggle. The differing structures of society, accordingly, enter into history and must be examined and compared. With regard to this “exceptionally fruitful” concept, Neumann aligns Montesquieu with Helvétius, Holbach and Rousseau.

Montesquieu’s distinction between the “nature” of governments and the “constitutive principles” of the societies they rule, however, takes a distinctive course. The former characterization refers primarily to the conventional focus on the number of rulers, although Neumann treats two distinctive aspects of Montesquieu’s adaptation of the design as deficient. The first has to do with the subsumption of both democracies and aristocracies under the heading of “republics” differentiated primarily by their location along a continuum of popular participation, a notion that Neumann finds “not very convincing” and tending to obscure the questions about suffrage that are uppermost in democracies. When it comes to the characterization of monarchy, however, Neumann says bluntly that Montesquieu’s “political prejudices mar his scientific objectivity,” inasmuch as he makes it depend on the incorporation of “intermediate powers,” specifically the aristocracy and *parlements*, and builds his argument on an extensive treatment of feudalism that is “a simple polemical tract against [...] the royalist thesis.” Neumann’s review of the “energetic principles”³⁹ of governments, which refer to social characteristics and serve as a normative injunction to the governments, is more appreciative, even when it questions some of the simplified formulas invoked.

Neumann’s treatment of “civic virtue,” which is the vital principle of republics is compressed but comprehensive and ends with the puzzle posed by the fact that, on the one hand, republics require at least a measure of equality in wealth and power, but that, on the other hand, they are most likely to flourish under conditions of commercial civilization, which “leads to ‘the acquisition of vast riches.’” Montesquieu’s reconciliation of that contradiction depends, according to Neumann, on his postulating moral habits that amount to “an almost accurate description of the puritan conception of civil society.” Montesquieu’s principle of aristocracy, as Neumann summarizes it, comprises a “moderation” constituted by the self-discipline of the aristocrats, including their abstention from commerce. In the case of monarchy, the energetic principle requires the respect by the king for both the substantive and ceremonial elements of the traditional design, including the authority of the laws as well as the prerogatives of the aristocracy. If these principles are not effectual, rule takes the form of despotism, a government whose principle is fear and whose end is mere tranquility, enforced by the army and not a state of genuine peace. “It is only the silence of towns which the enemy is ready to invade,” Neumann quotes Montesquieu as saying.

Neumann becomes impatient with Montesquieu's elaboration of these principles in the characterizations of appropriate laws and conditions of "corruption" corresponding to deviation from basic principles, although he praises Montesquieu's recognition of the correlation between the republic and the formal rationality of law, in Max Weber's sense, with the monarchy obliged to differentiate between its constituent strata and despotism condemned "by its very principle, [to] know no law." A correlation that Neumann questions is that between the forms and the size of the states that they can rule, objecting especially, as inconsistent with the account of the regime, to the notion that the republic can maintain itself only in a small territory. In this case, Neumann says that Montesquieu "became a victim of his philosophy of history, as expressed in his *Considerations*." Montesquieu himself recognizes, when he comes to speak of external security, that the small republics he envisions would be defenseless, contrary to historical experience. The remedy he sees is action in concert by means of confederation in international affairs.

Neumann's discussion of Montesquieu's incorporation of "the factor of space (climate and soil) into the discussion of the nature and principles of government" is punctuated by questions about its originality, judgments of its lack of "success" in its scientific ambitions, "primitivity" in many of its correlations between climate and political forms, even untenability, but the overall tone is nevertheless appreciative of issues that he considers to have been raised in challenging form as well as such individual suggestions as the liberty of mountain dwellers and "the effects of American space on Indian tribes." Clearly, in order to distinguish Montesquieu from doctrines he identified with National Socialism in *Behemoth*, Neumann insists that Montesquieu in any case was not a "geopolitician," and that he recognized the possibility and often the need for progress beyond domination by such natural influences. Although Neumann credits Montesquieu's contemporary, Giambattista Vico, with deeper historical insight for his recognition that the mastery of nature might lead to serfdom, he concludes by crediting Montesquieu nevertheless with loyalty to freedom and having "stated the problem correctly." These details of Neumann's encounter with Montesquieu are of interest precisely because they illustrate in some detail Neumann's complex transactions with the classical literature, his willingness to distinguish between claims that he rejects and materials from which he can learn as well as his conviction that the management of the constitutive problem of political theory must adapt constantly to historical changes in the social constituents of rule, while adhering throughout to criteria of rationality that preclude rule by fear.

Democracy and Dictatorship, Summer 1951

If Neumann aims in his introduction to Montesquieu's work to illustrate a method for negotiating with a classical text in political theory in support of critical political study rather than ideological construction, Neumann's Columbia course on "Democracy and Dictatorship" offers an introduction to political study informed by a review of the contemporary state of the key problems that dealings with the theory literature help to define. The first of these concerns the relations between the state and the changing economic configurations in society and the second, the changing character of state agencies,

notably the bureaucracy, in the context of rule of law and democracy. The third topic—the pervasive manipulation of public opinion—arises only on the margin of this text.

Our source is imperfect. We are reviewing class notes, not quite complete but conscientious and detailed, preserved by one of the present coauthors from his first course with Neumann in the summer of 1951. This review is justified, despite the familiarity of many motifs, because of some striking omissions in Neumann's account of the challenges facing democracy and because of a dramatic lowering of expectations regarding the counters to threatening trends, an overall air of defensiveness, as it seems in retrospect. Then too, the course may be said to be informative about what Neumann had in mind when he urged the Ford Foundation earlier that year to fund a comprehensive political science program in Berlin. In fact, the unexpected emphasis throughout on developments in Germany and the corresponding relative neglect of American conditions suggest that his course notes drew heavily on his teaching in Berlin earlier in the year. Whether these attributes of the course also signal a warning that, in Neumann's judgment, the unresolved German experience still serves as a paradigm of sorts, suggesting the urgency of the political problems, cannot be judged with any assurance.

Neumann's reading assignments for the overall course are strikingly uncontroversial. He lists a standard textbook on the governments of Britain, France, Russia and China as well as widely accepted books on democracy by Carl Joachim Friedrich and A. D. Lindsay and a study of dictatorship that focuses on nationalism as the central motif in the modern totalitarian type. To judge from the notes, about one-half of the course was taken up with the theme of dictatorship, with the section on totalitarian dictatorship addressing the Soviet Union as well as Nazi Germany and fascist Italy. The section on democracy centers on four topics, although it is prefaced by an outline covering more. Under close scrutiny were questions of representation, political parties—featuring a comparatively lengthy discussion of the histories of socialist and communist parties—⁴⁰bureaucracy and civil liberties. Since Neumann opened the course by stating its purpose as the identification of problems, “based on historical analysis,” rather than institutional description, it is appropriate to limit our overview largely to the catalogue of questions he generated, even if some are stated implicitly and even if, for others, it is their absence that is most marked.

Neumann opens with a “constitutional” definition of dictatorship as rule by unlimited power but immediately calls this insufficient inasmuch as the British parliament, for example, is no less unlimited in its sovereignty. Similarly, the Rousseauist definition of democracy as the identity of rulers and ruled is adjudged abstract and inapplicable, and even the modern notion of democracy as majority rule fails to comprehend the limits required by the minority rights also integral to the design or the inadmissibility of a majority choice of dictatorship. These remain as problems to be addressed in understanding and conducting regimes that Neumann then—provisionally and loosely—characterizes as defined by “accountability and restraints.”

Returning to the specification of dictatorship, then, Neumann remarks that its inferiority is implicitly acknowledged by its present-day proponents, who all claim to be democratic, as has been the case since the time of Louis Napoleon. He contrasts this with Aristotle's grudging acknowledgment that tyranny “under some considerations and circumstances [...] may be necessary and useful” as well as the complex history of

absolute monarchies. This yields the provocatively worded question: “why the fetish of the word ‘democracy?’”

Neumann lets this question hang and turns to a set of questions whose answers elucidate at least one dimension of the “totalitarian” dictatorships of the present. A prominent feature of the latter, he notes, is the transition from a state based on law to a “police state,” which raises the questions, according to Neumann, about the sense of law here intended. He opens with a somewhat skeptical report on the notion of inalienable rights, citing “escape clauses” from constitutional rights guarantees in American and European jurisprudence, and ends with a notion of a “presumption” in favor of such a rights catalogue, with states required to justify interferences by laws, which are in turn subject to judgment by an independent judiciary. Such a conception precludes the simple equation of law with either “moral or natural law,” based on faith, or the will of the sovereign, based on sheer power. He ends, as in all of his treatments of the subject from the time of his first dissertation, with a formal concept of law, characterized above all by a presumption in favor of rights, its generality and the independence of the judiciary.

In the totalitarian dictatorship, in contrast, the presumption is in favor of the state and the form of law is immaterial, with the will of the leader paramount. He cites the Nazi suspension of all constitutional civil rights and comparable actions by the Italian fascists. But then he asks about the seeming exceptions in the case of Spain and the Soviet Union, where constitutional guarantees remain in place. He explains this by reference to propaganda uses, the division of labor for ordinary affairs, protection of rulers against sweeping powers of police authorities and, ultimately, the provisional character of the guarantees. The power of police is in the end overwhelming, and the courts become brutal instruments of rule. With all that said, however, Neumann dissents from the “popular” opinion that these features sufficiently characterize the totalitarian state, noting, for example, that they were shared by absolute monarchies prior to the development of liberal legal systems in the seventeenth and eighteenth centuries.

Neumann turns then to the stabilization of the political order through the categorical centralization of power, in contrast to the instability that he finds in representative government, with its diffusion of political power through “checks and balances” as well as the independent operations of smaller bodies and competing political parties. His summary characterization of the Nazi regime departs markedly from his earlier studies inasmuch as he does not in any way question the comprehensive control by the leader and his immediate followers. He expressly says that the “powerless and complicated administrative machinery” could be disregarded. As an afterthought, he grants that there remained two other weak sources of power: the army and the church. Capitalist actors, whether in the form of monopolies or any other, are simply not mentioned. The nonstate of *Behemoth* has disappeared.

Neumann distinguishes the Italian case from the German one mainly by reason of the continuing if marginal role he ascribes to the monarchy as well as the Grand Council of Fascism, which ultimately displaced Mussolini. He likens the Soviet system to the Italian one, presumably by virtue of a more structured governmental design than the Nazi “constitutional shapelessness,” but he also uses this case to make the transition from the

characterization of these regimes in terms of constitutional analyses to a political analysis since the “distinguishing characteristic lies [...] in the role of the political parties.”

This raises the question about the pervasiveness of monopolistic state political parties in contemporary dictatorships, when these were not a feature, for example, of Latin American dictatorships until recently, let alone in the absolute monarchies of earlier times. In response, Neumann first cites the changed functions of the modern state. He curiously cites Adam Smith on *Police, Arms, Justice and Revenue* as authority for the statement that the contact between the people and the state was slight in the period of “absolute monarchy” so that state functions could be carried out by the state organization as such. Because the state now has controlling influence over the social organization as a whole, he asserts, dictators will not entrust this to officials of state alone. Furthermore, Neumann maintains that because all totalitarian dictatorships emerge from democratic political experience, the dictatorship enacts a ritual of apparent continuity with this design through its monopolistic party.

Neumann’s first example of an activity that the totalitarian dictator seeks to control is culture, where he requires not only censorship, as was true of absolute kings and ordinary dictators, but also the generation of positive communications, which cannot be done by bureaucratic management, but requires party-directed cultural monopolies. The second example is especially significant, in the light of his earlier analyses, if only because it is noted as just one example among others and because he characterizes the chambers of commerce under reliable leadership as sufficient for the partisan “control of economic distribution” and thus, it seems, “control of the economy.” Neumann refers to these as instances of indirect direction, in contrast to the direct control exercised by the parties in the fields of propaganda, labor relations, police organization and youth control, although in these cases as well he notes differences in the arrangements in place at various times in National Socialist Germany, Fascist Italy and Soviet Russia. Unsurprisingly, he devotes most space to the transmutations of labor organization, which were taken through different steps to arrive at the point of complete subordination, with the Soviet unions as “administrative agents of the state” after the introduction of the Five-Year Plan in 1936, with Italian unions eventually dissolved into “corporate” unification with employers and with the German Labor Front following the rule that “it is desirable to march together, sing together, drink beer together, but never to discuss the work or conditions.”

Neumann turns next to differences among totalitarian states in the formal relations between state and party, which he ascribes to differences in the respective alliance politics on the way to sole power, with special attention to the German point of departure in state supremacy, to attract conservative support, and the transformation to a notion of the mass movement state after the liquidation of the threatening leadership of the SA formations. He sees the Soviet Union beginning with a design to destroy the state but shifting toward its affirmation with the 1936 constitutional thesis that the ruling class had been destroyed, the state transmuted into an agent of the equal working and peasant classes, with the intellectuals and bureaucrats as the classless instrument of this design.

This discussion melds into a treatment of the respective ideologies, although the incomplete notes at our disposal do not include any account of Italian fascism; and they take up the German ideology only at the question of its “racialist theory,” when there

were certainly more topics covered. As he does in other writings, Neumann construes the anti-Semitic program as merely instrumental. The aim, he asserts, is to eradicate class awareness in Germany and to integrate the people. He elucidates this design with a reference to Carl Schmitt's conception of politics as a struggle to the death with an enemy. It would have been too risky to cast Roman Catholics in that role, according to Neumann, and the Bolsheviks were unsuitable, since the question of future relations with the Soviet Union was still contested within the movement. "Jews?" Neumann then evidently said: "Excellent for the purpose." And that was all.

Neumann's unconditionally dismissive treatment of Communist ideology nevertheless suggests an interest in keeping Marx available to himself as a partner in continued theoretical negotiations. He summarizes Marx in four points. Because capitalism stunts workers' development and the state under capitalism functions as an instrument for the suppression of the majority, the aim of creating a realm of freedom with cooperative relations must be pursued through a strategy consonant with the line of historical development. Neumann then asks, "How can this type of analysis be applied to industrially backward Russia? How can historically necessary steps be overleapt?" And he answers, "This theoretical formulation was clearly inapplicable to Russia," adding, as if these data obviated all further discussion, "The ratio of industrial workers to agrarians was in 1917 approximately 30:72." Neumann then sketches the split between Mensheviks and Bolsheviks in Russia, highlighting Lenin's concept of a vanguard party and asks rhetorically, "Who is to judge the 'truth' of the vanguard's position? Who is to set up an industrial regime leading to socialism, and how?" He moves abruptly to a summary of Trotsky's rejection of the notion that all historical stages must be passed through by each nation, coupled with insistence, however, that peasants and other deprived populations are counterrevolutionary, and the concomitant thesis that the revolution must be European-wide and "permanent." Neumann says that Lenin's response was "cagy," inasmuch as he established a "Trotskyite" International but also developed a theory of the alliance between workers and peasants, which Neumann mocks as a relationship between a lion and a mouse. "This view is not a Marxist one," Neumann asserts. It is rather Blanquist, he continues, and then, categorically, "It must lead to a totalitarian organization." His conclusion, in keeping with his political position during the Weimar years, is that there was "no betrayal by Stalin: terror is implied in Lenin's formulation."

The next section of Neumann's lectures on totalitarian states moves toward that theme of terror through a series of steps under the general heading of the transition from a pluralistic to a totalitarian social organization. This begins with a reference to homogenization and centralization of social organizations, including the imposition of the leadership principle, recourse to plebiscitary elections, synchronization of all local formations with the center and the use of various other techniques to keep the organizations under discipline. Neumann goes on to characterize this profusion of organizations as an instrument for atomizing society inasmuch as they replace the freely chosen social groups united for action in common causes with mass organizations that destroy such loyalties and forbid real collective action. He speaks of an "enactment of isolation" and the imposition of "anonymity within the large collective," adding the effects of weakened family structures and finding a precedent for this understanding of tyrannical regimes in Aristotle.

When Neumann comes to propaganda as a feature of the totalitarian state, he speaks of it as “probably the most complex problem” inasmuch as the quality of propaganda does not depend simply on the presentation of nonfacts as facts but also on the selection among facts and the mode of their presentation so that all communications may belong to the sphere of propaganda, and the difference between information, education and propaganda may be eliminated, as it is the aim of totalitarian states to do. “Think it over,” Neumann said to the class, “the question will reappear.” In the present context, Neumann moves directly from propaganda to terror, bridging the two with the quotation he has used before: “Propaganda is terror of the soul.” In its literal sense, Neumann maintains, terror refers to unpredictable harm rather than criminal sanctions, however severe. The mind is under constant pressure when subjected to propaganda and subject to harms without legal order, and critical thought is made impossible.

Somewhat surprisingly, Neumann turns from his account of totalitarian rule to dictatorships of other types, presumably in order to underline the specificity of the former. Under the heading of “simple dictatorship,” Neumann distinguishes two subtypes, both marked by concentrated and absolutist power, but restricted to power over the state’s coercive force rather than the range of social institutions subjected to totalitarian control. He offers the principal features, first, of the constitutional dictatorships known to Aristotle as well as the commissioned dictatorships of Roman republican law, limited in duration and precluded from offensive war or interference with civil legal relations or taxation. In explanation—and indeed justification—of such arrangements, Neumann outlines the many veto points in the civil constitution and declares it to have been unworkable under conditions of emergency. He is firm in denying that the emergency powers of American presidents and the British cabinet are analogous, inasmuch as “they were limited and delegated powers, subject to judicial limitations.” In view of his focus on German examples both earlier and later in the course, it is noticeable that he does not raise the problem of the emergency powers granted to the German president under the Weimar Constitution, which would have complicated the matter. The second subtype of “simple dictatorship” receives rather perfunctory treatment. It has to do, first, with individuals simply seizing power and maintaining it by coercion and, second, with absolute monarchies. The former has no theory of legitimacy, he maintains, while the latter have it, because “during [the] heyday [of the form],” it was considered legitimate by the populace.

It seems clear that Neumann’s insertion of other dictatorships in his discussion of totalitarianism is mainly in order to clear the way for a historical survey of what he calls “Caesaristic dictatorships,” which leads back to a key element of the totalitarian type, its fraudulent mobilization of popular legitimation. Neumann’s concept of legitimacy in this context, as noted above, is nothing but popular agreement with or acquiescence in the rule, with the proviso that certain historical periods require at least the appearance of popular consent. Four situations illustrate the phenomenon: the rule of Peisistratus—Solon’s successor in Athens—the various manipulations of the Roman dictatorship by Sulla, Caesar and Augustus; the rise of Cola di Rienzi in fourteenth-century Rome; and then a line from Louis Napoleon to the totalitarian dictators where the plebiscite is a central device for securing the appearance of active popular support. Until he gets to

the fourth class of examples, Neumann's treatment of the Caesaristic dictatorships is not judgmental in tone, with the popular support portrayed in most of those cases as more or less genuine and little express concern for the constitutions displaced. It is the recourse to plebiscites that offers no alternative to the *fait accompli* that mark the transition, at least in the twentieth century, to the totalitarian type of Caesarism.

After some omissions, the notes pick up Neumann lecturing on the conditions under which democracy will change to totalitarian dictatorship. He cites "imperialist war" but says nothing more about it. The discussion centers on "intensification of conflict between social strata," a segment that Neumann also labels "class struggle," but qualifies with the instruction to "ignore Marx!" Stratification is more "rigid and psychologically recognized as class division" in Europe than in the United States, he observes, and inserts the phrase "class consciousness" without indicating how this matters to the analysis he proceeds to offer. The great bulk of the remaining course, then, is devoted to Neumann's unfinished business with 1933, skipping a number of announced topics, except for a truncated discussion on civil liberties in America, focused circumspectly, it would seem, on issues raised by the Smith Act convictions of the Communist leadership in the months before the course offering.

On the question of "class struggle," then, Neumann begins with three beliefs of the European working class, which, he says, were permeated with Marxist thought until 1933, namely, that the proletariat was "progressive"; that its interests were incompatible with those of other classes; and that the proletariat must therefore rule. He distinguishes next between the old and new middle class. In the former case, he asserts, there were basic structural changes, if not those that Marxists predict. They could no longer form the core of liberalism because their economic position had become tenuous and they had become dependent on big business interests. As for the new middle class, in Neumann's view, they present extraordinary problems, inasmuch as these white-collar workers, more poorly paid and more "soullessly" employed than industrial workers, nevertheless reject the Marxist assignment of them to the proletariat and insist on recognition of a distinct status. Neumann's explanations for the failure of "social labor" to gain an "ascendant role" in Europe give voice to his continuing uncertainties. He says, first, that "they allied themselves with bourgeois groups to fight communism and lost their militancy and appeal." Then, he notes, "they were defeated by the bourgeoisie, often through terroristic methods," while simultaneously conceding that "the bourgeoisie also raised the workers' standard of living as a price for anti-communism."

In Germany, according to Neumann, these structural factors were aggravated, first, by the post-1918 inflation that was traumatic for the old middle class and, second, by the 1930 depression that struck especially hard against younger workers and new middle-class employees. His summary explanation for the rise of totalitarian movements, nevertheless, does not indict working-class misjudgments but focuses on the disillusion of the old middle class, the insecurity of the new and "the irresponsible elements of the old ruling class." Once again, the big business actors that had always figured so prominently in Neumann's earlier explanations are simply unmentioned. Neumann does expand on these explanations by highlighting the failures of the German and Italian democracies but now focuses on agrarian problems. He speaks of an alliance between "demagogic

mob rulers” and “the old aristocracy” where he inserts a parenthetical reference to the “industrial” as well as the “customary.” Yet he expands the point by specifying some key issues confronting the “agrarian elements” in both Germany and Italy.

Referring back to the heading of this section, he then makes a transition from the theme of dictatorship: “This discussion of class conflicts leads us directly to the problem of the democratic state.” At this point, Neumann inserted an outline of what he intended to be the rest of the course, with a bibliographical reference for most items. In the event, he covered only about a third of the topics, doubtless due in important measure to his comparatively detailed treatment of Socialist designs, parties and failures, another indication of his focus on the great defeats of the 1930s rather than on whatever promise he might have seen for the democracies of the 1950s. It is of course not possible to be certain of the extent to which this balance was a function of his pedagogical design rather than an indicator of his theoretical preoccupations. Before a classroom of the postwar generation, he appeared as witness, after all, as well as advocate, judge and reporter. And, in his own mind, at least, he is also among the accused subject to judgment.

He opens with a discussion of “rule of the people,” postulating at the outset that “the problem of democratic government is the participation of the populace in the formation of the General Will,” and then summarizing Rousseau’s development of the “abolition of estrangement between rulers and ruled” by “an identity of rulers and ruled,” whose “rational will” is “counterpoised against individual wills.” Neumann concedes that such identity depends on special conditions, and that “representation with election and accountability is considered as democracy” for “practical purposes,” although “this is not real democracy.” And he insists on the continued importance of the original principle and cites a number of cases where, he asserts, “all power [was] directly in the hands of the people.” They were all “revolutionary uprisings,” from a rebellion in Tudor England to the Soldiers and Workers Councils in the German Revolution of 1918 (and include the “Menshevik, not Bolshevik,” Soviets in the Revolution of 1905). The “trend for direct democracy” cannot long sustain itself, however, although he initially credits such legacies as plebiscite, initiative, recall and referendum with continued “vitality, even under representative government.”

Neumann presents the suffrage as the focus of such government, since it represents—if only “to some extent”—the participation and accountability that are central to such regimes. Citing the Chartists and Social Democrats as democratic movements that pursued universal suffrage, he asserts nevertheless that this was fully achieved nowhere until 1918 and continues to be undermined by “gerrymandering” against industrial populations. On the question of voting techniques, he says somewhat cryptically that there is no evidence that stability is jeopardized by proportional representation, an implicit rejection of this critique of the Weimar design. His central preoccupation in this section is another topic that played an important part in the Weimar years, where he had sought to devise an optimal balance, the challenge of functional representation to political representation based on a principle of equality.

In developing his defense of the latter, he begins with two criticisms that do not in fact invoke this alternative. Marxists condemn political representation in the absence of social and economic equality but do not deny political equality if the other inequalities are

overcome. They are not challenged at this place. Neumann turns next to traditionalists who insist that social status hierarchies are the proper bases of representation and—at least in the instance of De Maistre—who add that men are evil and that majority rule would be mob rule. Syndicalist alternatives are presented in two forms. The first begins with a denunciation of political democracy as the worst form of exploitation and moves on—somewhat unclearly (with Sorel lumped with Le Play)—toward schemes of self-governance by corporate entities comprising both workers and employers, a direction that he also identifies with two papal encyclicals, which he ascribes to a “threat of replacement of the Catholic Church by Socialists.” His account of Guild Socialism, his second type of functional representation, is also impatient, since he links the political opposites, G. D. H. Cole and syndicalism, with Otto von Gierke’s conservative jurisprudence, without more explanation than a reference to an “organistic theory of the state.” The actual point of the discussion seems to become clear when he closes the introduction to functional representation with a reference to the strength of this idea in the SPD after 1918, and with his consequent critique of the scheme, recapitulating and rounding arguments that he’d already made in his Weimar writings.

Neumann begins with the standard of representation in a functional arrangement, which, he asserts, is bound to be arbitrary in its divisions and allocations and especially harmfully so if there are antagonistic classes in society. Then there is the static character of any such arrangement, if achieved, while political institutions should be the prime agencies for the social changes required by the dynamics of society, and the most “rational” instruments for this purpose, with that quality defined by the absence of violence. In the event of deadlock between functional representations, then, the civil service would step in as nominal “honest broker” but would act in fact as “fig leaf for dictatorship,” as Neumann says happened in Italy, Austria and Portugal. “Functional representation as a substitute for political representation is clearly undemocratic,” Neumann concludes. The situation is different if such representation is designed to serve as auxiliary to political representation, as in the “harmless” case of the Weimar Advisory Economic Council or in arrangements to protect against the biases of the distrusted bureaucracy by giving those affected by its political decisions a part to play.

The basic question for Neumann, however, is the meaning and justification of representation. Notwithstanding his earlier symbolic identification with Rousseau, he now insists on the distinctive justification for representative rule. The representative cannot be thought of as an agent of his electorate, which would make no legal or constitutional sense. He acts in his own right but in the interest of his constituency. Given this distinctive and independently justified scheme of representative government, Neumann reviews several special arrangements derived from direct democracy intended to serve as a sort of corrective but concludes, citing specifically the referenda of the Weimar years, that the referendum, initiative, plebiscite and recall have made little difference, where they have been employed on a national scale: “Representative government has been relatively unaffected by correctives of direct democracy.”

At this point, three lectures are missing from the notes. To judge from Neumann’s outline, it seems likely that one or more may well have been devoted to the distinction between presidential and parliamentary forms of representative government, and that

others may have surveyed a range of political parties. The loss of this record is especially regrettable because without it we cannot know whether Neumann used these classes to say something about the American presidential system or whether he dealt with any political parties or organizations other than those of labor, which are in effect the sole subject matter of the next four pages of available notes in a total collection of 29. A brief reference to business and agriculture as organized socioeconomic bases for some political parties consists largely of the remark that “the problem of these organizations is to find an appropriate party or parties through which expression may be found,” which certainly does not sound as if Neumann had discussed such other parties during the sessions for which we have no record. The discussion at that point serves primarily as a point of transition between Neumann’s discussion of socialist parties and his concluding account of international labor organizations. It seems safe to assume that no topic competed with Neumann’s continued preoccupation with the political trials of labor.

We pick up Neumann’s discussion of political parties with an introduction to the merger at Gotha between the labor groups around Ferdinand Lassalle and those closer to Marx and Engels, differentiated by the importance that the latter ascribed to trade unions. Neumann remarks without further comment that Marx’s critique of the combined program first referred to a “dictatorship of the proletariat.” Neumann touches on the success of the Socialist Party despite the hostile acts by Bismarck so that by 1912 they were the largest party in Germany. He characterizes the 1891 Erfurt Program as a return to Marxist program but immediately notes the contrast between this and the support of the 1914 War by the majority of the Socialists and adds that in fact their policy more generally was that of the nonrevolutionary “revisionist” Eduard Bernstein. The Independent Socialist Party, which had split with the main group over the war, divided its time between those who returned to the old Party and the Communists generated by a Bolshevik splinter led by Rosa Luxemburg and Karl Liebknecht. Neumann’s next characterization of the Weimar SPD is that, as leading party in Germany, it was committed to English-style laborism. His judgment was categorical and harsh:

Responsible for the rise and fall of the Weimar Republic: allying with bourgeois parties to establish the republic, and through loss of militancy making effective opposition to Hitler impossible.

He says then that in 1945, despite efforts of the occupying powers to foster “grass-roots” parties, the organization “was resurrected intact without change of name or character,” which he ascribes to “the character of the party organization consisting of paid functionaries.” Neumann moves on to comparable historical overviews of the French and Italian Socialist parties, emphasizing the tenuous character of various unification schemes, as the parties split and splinter. The emphasis in both cases is on the weakness of the democratic or reformist Socialists and their loss of support among industrial workers and militants. In his summary statement, he speaks simply of two reasons for “failure of Democratic Socialists,” the attractiveness of the Communist Party to militant workers in view of the rise of the Soviet Union and—a new theme—the absence of a transnational “power center” for the movement, since the comparatively successful Labor Party in England is nationalistic in character.

Under the heading of the “Communist parties,” which are introduced by the remark that they have been “in direct interaction and dependence on the Soviet party,” a condition that he somewhat surprisingly dates only to 1936, Neumann then outlines the history of international organizations, Socialist as well as Communist. This unexpectedly detailed account is worth summarizing because its inclusion in the discussion of political parties in democratic states indicates something of importance in Neumann’s preoccupations at the time. It is as if he were inviting these students to think with him about the puzzle of an opportunity lost because of the contradiction between the nation-state formations, which he deems essential, and the “power center” that he now treats as necessary for socialist success.

First, then, he characterizes Marx’s plan for the First International as aiming toward an international political party rather than a federation of national parties. The anarcho-syndicalist dissent led by Bakunin, he maintains, foiled this design, which Neumann does not criticize in any way, notwithstanding his recognition that it presupposed “power in a central council.” With the defeat of this experiment in 1870, there was nothing until the formation of the Second International almost 20 years later. Neumann’s account of this organization is almost dismissive, with the first 15 years labeled as a “pseudo-revolutionary period,” during which they served only educational and agitational purposes “and then very little.” He reports that they undertook “not one single piece of international action,” and that, in fact, “the main purpose of the 2nd International was the increased nationalization of the socialist parties.” The Marxist components of their joint statements consisted of a commitment against militarism and a resolution to oppose war with an international strike as well as a resolution not to enter into ministerial coalitions with bourgeois parties. The question of seizing power divided the parties, with reformist, orthodox Marxist and anarcho-syndicalist variants. After 1905, according to Neumann, the movement became ever more reformist, rejecting Left demands for commitments to international action in the event of war—not least because the burgeoning German party feared relegation to the illegality of the Bismarck years—and settling for a vague pledge that each party should do what it could. Its worth was shown by the events of August 1914, which effectively ended the Second International.

Neumann then takes up the activities of the Left, initially under Lenin and Luxemburg, which organized two congresses in 1915 and 1916, where they sought unsuccessfully to gain actual commitments to the empty pledges of the pseudo-revolutionary period and to turn the national war into a class war. At most, they gained a resolution to seek peace without annexations or indemnities. Neumann then remarks that “Lenin drew a lesson for the need of a new international patterned on the First International,” and he describes the formation of the Comintern in 1919 in these terms. After noting the problems with the representativeness of that congress, Neumann summarizes its two-point program, accepting the October Revolution as a displacement of bourgeois democracy and calling for world revolution. A year later, the Comintern set rigid criteria for membership and effectively excluded a number of left-wing dissident groupings among Socialists. Citing failures in postwar Germany, Hungary, Bulgaria and China, Neumann writes, “The history of the Third International is a story of incessant defeats [...] Its failure is greater than that of the 2nd International.” After Stalin’s rise to power, this

Comintern became a mere instrument of Russian foreign policy, until its displacement, after a wartime interim, by the Cominform comprising state parties. Neumann says, somewhat mysteriously, that the latter is “more efficient” than the former. At the end of this section, Neumann briefly mentions the reformist Second International, dissolved in 1945 and reconstituted in 1951 as an association of non-Marxist parties. He predicts sardonically, “This will exercise as much power as the former Second International.”

With this excursus out of the way, Neumann turns back—if only briefly—to more general issues concerning political parties in democratic states. He says that the political party “is the instrument through which socio-economic forces are expressed in democratic societies,” but he denies that they can limit themselves to representing only their socio-economic bases, lest they stagnate. From this general rule, Neumann excludes “parties of labor influenced by Marx,” although they are ceasing to be such, as well as agrarian parties in agricultural nations. In a few lines, Neumann surveys organized business as a socioeconomic basis for certain political parties, attending only to the diverse modes of organization in Europe, comprising employers’ organizations as pressure groups with regard to collective bargaining, territorial chambers of commerce and functional trade associations. He closes off the topic with the puzzling assertion that “the problem of these organizations is to find an appropriate party or parties through which expression can be found,” which is rather remote from his earlier treatment of such relations and from his comments on the balance of political power. And then he returns to labor.

He asks about the relations between the union and party organizations. Although Marxist theory puts the political party in the lead, the superior relevance and funding of unions often put them ahead in the past. Neumann touches on the different states of play in Germany, France and England, noting the present trend toward partisan neutrality in the unified movement in Germany, Communist control of the strongest French unions and some movement away from trade union leadership even in the English labor party. He concludes this discussion with a reportorial overview of developments at the level of international trade union organizations, beginning with the prewar International Federation of Trade Unions, rendered “ineffectual” by the absence of the American unions and the shift of workers toward Communist political entities without trade union function, continuing with the postwar World Federation of Trade Unions, which had no effectiveness but universal membership until the East-West split after the Marshall Plan, whereupon the non-Communist unions formed another organization. The last remarks in this rather inconsequential segment dealt with a Catholic international that was in turn divided between a “reactionary” and “progressive” trend. It is tempting to view the extensive labor segments of Neumann’s course as a kind of personal farewell and a caution to students not to build their progressive hopes on this social factor.

Neumann uses the remaining time of the class for a more theoretical and historical treatment of bureaucracy and civil service as well as a brief, rather pointed discussion of civil rights at the very end. The former topic, like the role of labor as a democratic force, has been a constant matter of concern to Neumann. If the one problem complex had to do mostly with the dynamics of the democratic state and its relation to emancipatory social change, the other concerns above all the rational structuring of state power. In the one case, uncertainties arise because labor may be overborne by its opponents,

it may sacrifice strategic objectives for short-term tactical gains, it may be misled and it may indeed have lost its historical opportunity, as technology and organization deprive it of its strategic position. The theoretical point of reference is Marx. In the case of bureaucracy, Neumann's corresponding theoretical negotiations deal with two partly anti-theoretical classical thinkers, Hegel and Max Weber, although his close engagement with both had also put him in conflict with his admired colleagues at the Institute, notably Max Horkheimer.⁴¹ Neumann's treatment of the issues in the 1951 class breaks off after depicting a clash between a coherent theory and a rooted practice.

The importance of the question of bureaucracy in defining his distinctive academic qualifications and projects in political science is already clear in Neumann's first postwar dealings with the Columbia faculty five years earlier, when he presents himself to the group of influential social science professors in the Faculty Seminar on the State, which he is already invited to join in 1946, when he was an adjunct professor in the School of International Relations. The subject under discussion in the seminar was bureaucracy, taken up by the group as a theoretical problem, after two years of descriptive historical treatments involving specialists in Egyptology, Greek and Roman Classics and Medieval History. At the beginning of the new academic year, in October 1946, however, Robert K. Merton is applauded when he opens the proceedings with the remark that "we have had no clear statement of problems in two years; we didn't formulate the question why we are concerned with aspects of bureaucracy."⁴² Neumann is asked for his views, as a new member with "individual experience in this field." Karl Wittfogel and Robert Merton had spoken to the issue first. Wittfogel wanted a focus on the social structural conditions under which bureaucracies are strong or weak, as well as their inner power relations, while Merton proposed a focus on the "factors which tend to limit bureaucratic power," in the wider context of a typology of bureaucracies. Neumann's remarks, his first recorded intervention in the seminar, are completely in character, responding openly to the ideological motifs implicitly present in the remarks of the others, not to denounce them but to bring them expressly into discussion:

That bureaucracy and democracy are incompatible is untrue. Democracy would then be procedural. Might not our approach be to inquire where the locus of power is in the modern state. Is it in the bureaucracy? Is it outside the government? [...] We should analyze bureaucracy, and the external conditions making bureaucracy rule in our social process. Militarization has taken place in the human relations of society; external conditions have become so powerful that they may make democracy a sham and bureaucracy the power.⁴³

Having injected this political urgency into the discussion, Neumann made it clear that he did not mean by this to replace analysis with prophecies of doom. In fact, he added immediately that such a development was not a realistic threat in the United States, since there was not really a bureaucracy in that country, in the sense of a cohesive social formation capable of exercising power, but only a "civil service."

In the course of the eight meetings of the semester, Neumann built an argument against the conflation of the functional and sociohistorical (or "institutional") aspects of bureaucracy, which he claimed to find in Max Weber, and against the erroneous

assumption that a growth of bureaucracy in either of those senses necessarily implied an increase in bureaucratic power. Rather than assuming that the growth of officialdom and the increased need for the functional qualities associated with bureaucracy opened the door to rule by administrative agents of the ever more complex state, Neumann saw the accession of bureaucrats to a share of that decision making on discretionary, contested and weighty matters that he identified with “power” as a puzzling anomaly, given the impossibility of governing a dynamic society by the established rules inherent in bureaucracy, and thus as a symptom either of temporary conditions or of pathological malformations of state. When actors within the institutions of bureaucracy have power, they are not in any case acting bureaucratically. The question is how the locus of power came to such an unexpected place. His first assumption was always that power in the modern state, strictly speaking, would be exercised by other actors, whether public or private, and that bureaucracy would be instrumental, restricted to the functions that Weber identified as peculiarly bureaucratic. The problem of adapting democracy to modern conditions is not addressed by an attack on bureaucracy or on the expansion of governmental functions that brings with it a growth of administration.⁴⁴ The correct question is about the special circumstances that lead to an exercise of power by the bureaucracy as institution.

This analysis set him against the other two émigré intellectuals who played a prominent part in the proceedings, Karl Wittfogel and Gottfried Solomon-Delattour. Wittfogel charges, “Your definition is your personal definition and competes with others. [...] You have simplified the scope of analysis by referring to modern society, which is something different from Max Weber’s teachings.” Solomon, in turn, challenges Neumann: “Do you accept Weber’s modern theory of rationalization in defining bureaucracy?” Neumann’s reply to Wittfogel denies that his distinctions between bureaucratic and nonbureaucratic conduct fail to fit Weber’s expositions of the phenomenon, but his reply to Solomon is “I do not accept [Weber’s theory] because our society is not foreseeable as Weber says it is; it is even less so today. [...] In any case,] we must distinguish between discretionary and non-discretionary decisions, as was developed in Locke’s theory.”⁴⁵ For Neumann, theories are provisional guides to the reading of dynamic situations, and the primary objective is always to orient the discussants to a scene for action: the perspective is that of the actor, not the spectator.⁴⁶

Except for the introductory meeting and one meeting devoted to a frequently interrupted report on bureaucracy in the Soviet Union by an economist who apologized that he had not studied the phenomenon at all, the sessions were led by the three German exiles. Wittfogel, who had been a Communist in Weimar and member of the Institute for Social Research in New York, but had broken with both, had three sessions to comment on the historical presentations of the preceding two years; Neumann spoke on bureaucracy in wartime for another three sessions; and Salomon-Delattour, the intellectual successor of Franz Oppenheimer, whose Frankfurt chair went to Karl Mannheim instead, was asked to lead the last two meetings by offering his views on the semester’s work. The Americans taking part were themselves quite influential academic figures, notably Robert K. Merton, on his way to being one of the foremost sociological theorists of his generation; Walter Gellhorn, a leading writer on administrative law; and Arthur Macmahon, a

respected figure in American political science, noted for his work in public administration and American institutions, and president of the American Political Science Association at the time. The 1946–47 Columbia University Seminar on the State, in brief, was an important site for Franz Neumann and his two compatriots in acculturation to bring their competing macro-theoretical approaches, each possessing political overtones familiar to the competitors from Weimar debates—notably in conflicting judgments of socialism—before several prominent representatives of the older, more narrowly problem-centered as well as the newer, science-building American academic strategies. Neumann made a special impact because he showed that a broader historical and comparative framework need not detract from the circumstantial citation of urgency, relevance and experience (notably his experiences as Weimar lawyer and as bureaucrat in wartime Washington), qualifications especially respected by most of his American partners in the seminar.

It is of special interest to compare the outcomes of his analyses in the two settings, given an unchanged theoretical framework, and with a five-year lag between them. In the class, Neumann begins his treatment of bureaucracy with a categorical dual metaphor: “While the heart of representative government is in the political parties, its arm is in the Civil Service and bureaucracy.” His first point is a rejection of what he describes as the American view of bureaucracy as incompatible with democracy. He traces this view to a failure to make the distinction between direct and representative democracy that he had made earlier. It is, he asserts, “completely unrealizable in fact” and therefore “cannot be right.” Under “key questions,” Neumann distinguishes between bureaucracy as structure and bureaucratic behavior. The former comprises a hierarchical organization with a division of functions, where a caste feeling has arisen among a corps of professionals, while the latter refers to “routinization with extremely limited discretion.” Bureaucracies may act in nonbureaucratic ways, and much of what is done, notably in business, is bureaucratic in character. The question is whether the undoubted growth of bureaucracy and bureaucratic behavior is in itself a threat to representative democracy. Neumann asserts, as he had done five years earlier, that there is no correlation between the increase of bureaucracy, as such, and the expansion of bureaucratic power.

“The real problems arise from the non-bureaucratic activity of the bureaucracy,” Neumann maintains. In military and foreign policy, he concedes, praising Locke for recognizing this special domain in his concept of the federative power, the problem is insoluble since officials must constantly make decisions in concrete situations, a position he had already taken in the RAND conference in 1947, where he had expressly denied that there can be democratic control in this domain. In the present context, he asserts flatly that nothing can be done about this institutionally and that representative government simply cannot cope with this. He floats the notion that there are problems even when bureaucrats act within the framework of law but then inserts a brief overview of the history of modern bureaucracy, whose formation he dates to 1660 in France, Prussia and England, at the origin of the modern state. He speaks of early problems in the clash between territorial subdivisions of state powers, in continuity with feudalism, and the functional ones mandated by financial and military issues. In the modern period, civil service problems take different forms, beginning with corruption and incompetence among the officials. Neumann traces stages

of development in England and Germany, emphasizing in both cases the internal impassable lines of division within the bureaucracies, corresponding to class and status differences indicated by access to university preparation. In the case of Germany, he remarks on the political criteria applied through the Weimar years and the preference given to conservative applicants. He concludes this overview with an unexpected warning of a shift in Germany toward “renazification,” precisely in this dimension of the state, after the “denazification” undertaken in 1945.

Returning from this historical excursus, Neumann asserts, “Problems of the civil service today are not created by the nature of the civil service but by the nature of the modern state.” He specifies this general comment by remarking on the shift from a “legislative” to an “administrative” state, where the latter is distinguished by the unification of legislative, executive and judicial powers within agencies not subject to limited tenures and subject to control primarily by the hierarchical principle. There are disciplinary codes in Europe, enforced by disciplinary courts, but these operate in secret and do not, in any case, solve the question of political control. The theory of ministerial responsibility in Europe would appear to render the civil service without danger to parliamentary sovereignty, but in fact the responsible ministers who are the hierarchical heads of agencies delegate effective control of their departments to deputies, who are themselves permanent civil service employees. Neumann closes the discussion by noting that Weimar ministers were “taken for a ride” by the civil service, presumably acting in nonbureaucratic ways. This discussion is striking because these notes record no reference to the effects of the “administrative state” on rule of law, which had been his primary concern in earlier writings, at least since the time of his second dissertation, dealing with these changes. In Neumann’s last version of the course outline, there is reference to a topic on checks and balances and the separation of power[s] as well as a statement to the effect that this will be one of the two remaining topics that will in fact be covered so that it may be that there are some notes missing. Yet the first part of the discussion under the next heading leaves little room for the primacy of “rule of law” as a constitutive element of democratic rule.

The final topic on the record is “civil rights.” Neumann begins with a reference to the American initiative in incorporating written civil liberties in its constitution and the spread of the practice to Europe. He puts aside the “difficulty of theoretical origins of civil rights” to focus on the problem of the “political function” of these guarantees. After distinguishing between the American constitutional prohibition of legislation violative of rights and the European formula that guarantees apply “within the framework of laws” and can thus be overridden by Parliament, he asserts categorically that nevertheless “there is no case in history when the government failed to limit or suspend civil liberties when it considered its security threatened.” And, he adds, “In Great Britain where civil liberties are most secure, there are neither constitutional guarantees nor separation of powers.” The “real basis” of secure civil liberties, he maintains, is in the “political and social situation,” as manifested in the existence of competing political parties that agree on the framework of compromise. If one of them fails to do so, “then the constitutional formulations are an exceedingly minor fact.” After 15 years in the United States—and in the midst of political struggles focused on the Supreme Court as an essential guardian

of constitutional guarantees under threat—Neumann retains his unease with judicial review, first articulated in the mid-1920s.

He nevertheless shifts abruptly to a discussion that depends on legal theory rather than political analysis, with the issue almost certainly defined by the decision a few months earlier by the US Supreme Court upholding the imprisonment of the Communist Party leadership.⁴⁷ The question he poses is as follows: “Are all civil liberties of the same kind and can they all be evaluated by the same yardstick?” In answer, he urges a distinction between rights grounded in being human and those derived from citizenship. Suffrage and eligibility for office belong in the latter category. Whether these should be denied to any group that rejects “the basic compromise,” which it is possible to do without denying democracy, “can be argued endlessly.” A prohibition aimed at a specific group violates the requirement of generality in law; and past attempts to formulate general criteria have produced laws that are “highly questionable and doubtful.” Neumann concludes that it is ultimately a question of “efficiency” and recommends two criteria—“the establishment of a private militia and high treason.”

Human rights, in contrast, do not depend on the political regime but inhere in human beings universally. He contends implausibly that some have inferred from the fact that citizenship presupposes human rights that members of parties arguably excludable from the citizenship rights can also be denied human rights, a linkage that he categorically denies. Civil rights, he concludes, serve as “basic rights of man, and, secondly, as ancillary rights to the function of the *status activus*.” With that, as far as the available record shows, Neumann ended the course, whose documentation is exceptionally revealing of the themes, recollections and uncertainties uppermost in his mind as he set about composing what was to have been a comprehensive and contemporary political theory of democracy.

A Brief for a New American Political Science

A few months after the conclusion of the course described above, Neumann received an opportunity to advance the cause of his program of conjoining theoretical and empirical studies in politics. While the most urgent change to be introduced in German political studies, in his judgment, was the legitimization of empirical study of political realities, as a control on legal and philosophical speculation, American political science, in Neumann’s view, needed to grant its proper place to political theory. An opportunity for Neumann to play an active part in such a campaign among outstanding colleagues in the field arose through the coincidental uneasiness among the leadership of the Rockefeller Foundation that the “behavioral” program in political science and the corresponding “value-free” legal studies that they had been supporting for several decades were leaving questions of political belief and ideology open to incursions from Marxist and other threatening doctrines.

The story begins with directives from the Board of the Rockefeller Foundation early in 1951 “to experiment in the development of work in morals and ethics.” John Willets, the director of the Social Science Section, writes to Dean Rusk, as head of the Foundation, “At Board meetings, members have urged the need for the social sciences

to rediscover, for today's circumstances, the moral philosophy from which social science is descended." "Unless a more adequate social philosophy is developed," he concludes, "we will lack stability in our intellectual life—and in our national policies too."⁴⁸ These general formulations are translations of a somewhat more pointed design. According to recollections by John B. Stewart, who heard this background from his predecessor as Willets' assistant director in social sciences, Herbert A. Deane, "the initiative for the Foundation's program had come from John Foster Dulles, then the chairman of the Board of the Foundation," who felt that the spread of Communism meant that "there was a need for a far better understanding of politics." "Moreover," Stewart's recollections continue, "because of the 'Cold War' Marxist theory had gained so much of the attention of students of politics in the English-speaking world that the ideas behind the institutions and legal systems of Western society were being ignored."⁴⁹

Franz Neumann was not among the initial group of jurists and political theorists consulted, as the Foundation worked toward a conference to help it to prepare for a funding program, but his name appears some months into the process, after Herbert Deane became the assistant director charged with this project. Deane was a doctoral student of Robert M. MacIver, who had been the initial consultant on this design, but he had studied as well with Neumann. On an early list of speakers to lead off discussion on key topics, Neumann is posted for "analysis of political power" and "popular participation in political and legal affairs," but this thematic design of the planned conference was later abandoned.

Neumann's brief, as is evident from the minutes of the three-day meeting in November 1952, closely resembled his message to his Berlin constituency.⁵⁰ He summarized his interventions in a letter to John Willets some weeks after the event:

Yet our primary task to determine the truth of a political theory is to develop a true political theory for today [...] My own view [...] is that the truth of a political theory is determined by its ability to maximize the freedom of man in a specific historical situation [...] I base the determination of the truth on the empirical analysis of a concrete historical stage as well as on philosophical thought. The reason is this: political theory is not and cannot be pure philosophy. It does not deal with eternal categories [...] It deals with politics and thus with power, which is a historical category. The great attraction—and the great difficulty of political theory is precisely the need for this dual approach: theory and its empirical verification.⁵¹

There are nevertheless several important differences, doubtless conditioned by a difference in the constituencies between the two occasions—and Neumann's vocation as negotiator.

A complex of questions that he did not have to address in his earlier formulations arose from the additional presence at the Rockefeller conference not only of legal theorists but also of "positivist" political theorists. Especially the latter trend had been a concern during the years at the Institute, but the contest about the meaning of "political theory" and the extent to which it can be rationally grounded on anything but empirical research had intensified in the intervening years, balanced by complementary developments in moral theory that narrowed its scope. Neumann also insisted, as we have

seen, that there was no conflict between empirical and theoretical work, reasserting his contention that empirical study—done in a duly historical way—was needed to “verify” theoretical findings, to explore the extent of a theory’s applicability, as measured by its interpretative force, its capacity for orienting rational political conduct. As shown also in his LSE dissertation, Neumann uses the term “verification” in a loose sense, possibly conditioned by the permissive range of the German *überprüfen*, and, in any case, obviously deviating from the American usage that he is in fact challenging.

In Berlin, Neumann, speaking as authoritative guest lecturer, had concentrated on emancipating political science in all of its modes from jurisprudence, which had displaced scientific study of the state in German universities; but in New York, there was need to bargain with the company of distinguished English and American legal theorists who were also actively present at the conference, if also in considerable measure self-segregated. Fairly late in the proceedings, Neumann addresses the situation, as he sees it:

I do not know whether the lawyers and political theorists are only accidentally assembled here or whether an attempt should be made to correlate the jurisprudence and political theory. [...] We actually seem to have two conferences running parallel here. The lawyers never talk to the political theorists and the political theorists never talk to the lawyers.⁵²

He reports on a joint seminar on civil rights at Columbia, where the discussion between law faculty and political theorists was unable to move beyond “one almost insurmountable problem, namely what is actually the weight and the role of legal protection of civil rights within the whole context of the preservation of freedom in society.” Neumann set forth his view “that the legal protection of civil rights in every stage of society was only a minimum of protection,” but “the lawyers very violently disputed this view.” Neumann calls for “cooperation between jurisprudence and political theory,” although he admits that he is “not able to establish a program on this” (250).

Later in the conference, Neumann returns to the question of establishing a frame for negotiations between political theorists and jurists, now adverting, but only in passing, to the extent to which the striking of such a bargain has been central to his own intellectual life. This second intervention opens by contesting a contention he ascribes to an earlier speaker, that all things appear in a legal guise. “Happily,” he says, “there is a large section of human relations that is not regulated by law.” But then he poses a question about the “goals of law,” where it does apply. In reply, he asserts that while “the legal philosopher has a duty to investigate what are the peculiar legal values which legal philosophy [...] can determine,” but that is not the only pertinent inquiry. Neumann propounds a thesis already set forth in his first dissertation in 1925:

I take the position of my own teacher that the fundamental legal value which is inherent in the legal system is the conception of legal security [...] a formalization of the human and social relations, which brings about a system of rationality, which by the very fact of rationality guarantees by itself a minimum of freedom and security. (332)

“But beyond that,” he adds, “the conception of justice, conceptions of life, conceptions of freedom are not legal conceptions” but conceptions of philosophy. Yet political theorists

have erred in failing to recognize that “whatever values are developed by political philosophy, they have to be translated into action.” He concludes,

It is here that the second great contact between political and legal philosophy is achieved. In the translation of any principle into an institutional system, the question, how legally these principles can be realized, arises. (333)

And this formally reopens the question of relations between democratic state power and rule of law, which was already Neumann’s point of departure in 1925 and then, once again, in 1936. First and last, his political and legal theories culminated in a defense of political judgments and actions fitted to the optimal promise of the historical moment. This perplexed his hearers, if it did not offend them. He seemingly made no converts.

In contrast to his situation in Berlin, where he came to the bargaining table equipped with access to funds and other support, he had little to offer beyond his standing and persuasiveness in the context of American Political Science. He gained the respect of his American colleagues, but it was often that qualified sort of respect that is paid to figures whose course is deemed admirable but culturally remote or peculiar. Then too, the discussion of relations between political theory, in its diverse modes, and political science, as a broad congeries of inquiries aspiring toward the closure of a discipline in Bourdieu’s sense,⁵³ was intensely underway among a comparatively large population of well-known and well-established English-speaking scholars. Neumann’s performance at the conference was recognized by at least one of the prominent British scholars who had taken part,⁵⁴ and Neumann’s summary letter was circulated by Willets among the staff of the Social Science branch of the Foundation with the slightly ambiguous marginal note, “good thoughts?”; but a more precise measure of his reception can be gained by the comments by leading established political theorists on the research proposal that Neumann submitted in the immediate aftermath of the event.

The two assessors selected by the Foundation, Robert MacIver and George Sabine, both characterize the project as overly ambitious and insufficiently focused, although neither recommends outright rejection of the application. Whereas MacIver limited his reservations to what he considered to be a needless replication of work done by others, while praising the prime theme of democracy and social change, Sabine mocks Neumann’s “Teutonic” grandiosity, finds his claims of novelty exaggerated but patronizingly sees a potential worth in his devising “an accepted rationalization of democratic institutions and practices,” while disregarding Neumann’s invocations of his “critical” stance or his denunciations of the reduction of theory to mere ideology.⁵⁵ It is not altogether a coincidence that these two scholars were among the first appointed to the committee that was to oversee the implementation of a scheme arising out of the conference, to fund political theory research, initially among predoctoral students.⁵⁶ That Neumann’s hopes of playing a part in reshaping the relations between political theory and the rest of the field were thwarted, even within the Columbia program, can be shown by his subsequent explorations, a year later, of possible Rockefeller funding for a European Institute at Columbia, which he envisioned as a sort of counter-political

science program, to be staffed by a group of named younger faculty responsive to his initiatives, under his leadership. Nothing came of this.⁵⁷

The Projected Classic: Political Systems and Political Theory

If there was little yield for Neumann from his attempts to play a major part in reshaping American political education, the Rockefeller Foundation Conference also provided the occasion for him to lay down a program for a major effort to advance his theoretical work. A few days after the end of the conference, then, he submitted to John W. Willets a plan (and notice of a funding request) for a book to be called “Political Systems and Political Theory” and projected as a comprehensive democratic political theory for the times. Almost all of his subsequent teachings and publications can be understood as chapters or other preliminaries for that design, although he projected, in his last months, to limit the book he had promised his funders to problems of dictatorship, which amounted to an abandonment of the original rationale. This must be understood as largely a pragmatic measure, in view of disruptions in his private life; and the plan for “Political Systems and Political Theory” can still be understood as Neumann’s outline of a political theory that he hoped would move the field beyond what he had called almost 20 years earlier the “last word” on the subject, spoken by Hegel.

In his proposal, Neumann begins provocatively, calling all present-day democratic theory a mere “myth” because unrelated to the current state of knowledge, material advance and modes of power. He catalogues a list of relevant and insufficiently recognized changes, many of them familiar from his treatments of Weimar’s failure. He cites, first, a shift in economic power as well as the weight of political power in socio-economic processes; then, second, the emergence of new social groups and the concomitant displacement of individualistic by pluralistic competition, in conjunction with other changes in social mechanisms; third, the change in governmental structure, especially the rise of the executive and its bureaucracy; and, finally, “the shift from enlightenment to propaganda and the resulting increased role of the communications media.” He asks whether a system geared to an agrarian society, which is how he characterizes the dominant democratic ideology, can continue to serve. And he restates his program:

This question can, however, be answered only through a genuinely comparative study of political systems. The comparative study must also be theoretical and historical, that is, they must be seen in the process of social and political change. Only then can we hazard a forecast whether our institutions will be capable of peaceful adjustment to a fundamentally changed environment.⁵⁸

Yet, according to Neumann, “there is [...] no longer a theory of political institutions.” He turns to a critique of the institutionalized political science discipline. American institutions, he maintains, are studied apart and almost exclusively from the standpoint of their “behavioristic aspects,” with political theory effectively segregated from the study of institutions. This combines with a neglect of interconnections among the economy, social systems and the political system as well as “very little historical awareness.”

Neumann's own procedure, he writes, will include analyses of theories that serve to legitimate and attack political institutions, the constitutional law forms through which political power is exercised, the economic structures "to which the institution corresponds" and the social structure agencies through which social power is translated into political power. He cites his forthcoming articles on "Political Power" and "Freedom" as his theoretical points of departure, and he indicates that he will use the concepts explicated there to revise and reevaluate the Aristotelian classification scheme. He anticipates,

Democracy will of course form the largest part of the volume. *Socially* the legitimation of democracy appears to rest in its being the most rational form for carrying out peaceful large-scale social changes. *Ethically*, it rests upon its ability to maximize political freedom.⁵⁹

Then he adds, evidently relishing the paradox,

The true problem lies—as Aristotle clearly saw—in defining the system of material and social satisfactions necessary to stabilize the political system [...]. The stability of a democracy is thus a function of its flexibility.⁶⁰

And this quality varies as a function not of constitutional provisions but rather of "(1) the state of education and intellectual maturity [and] (2) the social structure (which is in turn related to the economic structure)." Neumann's practical shift to political education now assumes a theoretical importance that it did not have in his earlier models of (social) democracy, where the experiential rise of social consciousness in the working class appeared to obviate a distinct need.

Neumann sets forth three primary undertakings, for which he claims originality. First, he will review conceptions of political freedom in correlation to "the changing historical situation," which entails an analysis of civil rights protections in both liberal and interventionists systems, the effects of propaganda and education on citizens' understanding of their society's problems and the part played by participation in overcoming "the political alienation of modern man." Second, then, there is to be inquiry into the various types of dictatorships—an exposition in which he still categorizes Nazism as a type of dictatorship employed by "doomed social classes." As a third and final general topic, Neumann offers "the problem of political change," as it arises in understanding changes from democracy to dictatorship and dictatorship to democracy. Illustrating his approach, he first proceeds as he had done in *Behemoth* and its preparatory studies, listing the disintegration of state machine, intensification of class struggle and commitment to aggressive wars; but then he turns to a different type of factor, emphasizing aspects more reminiscent of the Horkheimer group than of his own earlier approaches. He begins with changes in intellectual production as foreshadowing radical changes, citing as a self-evident example "the ascendancy of vitalism, existentialism, and irrationalism and the gradual rejection of idealism, rationalism, and empiricism in pre-1933 Europe." And then he moves to deeper psychological levels, citing not only Aristotle and Montesquieu but also Kierkegaard and Freud. Changes from democracy to dictatorship, he maintains, seem to depend upon the ability of anti-democratic groups to mobilize and manipulate

anxiety and fear. He thus closes his prospectus with a new emphasis, shifting to a theme that he had mentioned only in passing in *Behemoth*:

The analysis of the socio-economic changes, the techniques for coming to power, and the changes in the thought structures will thus be focused on the psychological processes which make man a fearful animal.⁶¹

Neumann never produced the treatise on democratic theory that he projected in this successful funding application, and there is some reason to think that he had abandoned—or at least postponed—the scheme before his death by accident in 1954. We can nevertheless examine a set of essays in which he lays out the central elements of his last formulation of the problem that he had already set forth some 30 years earlier in his first dissertation: the complementarity between power and freedom and its mediation—insofar as possible under varying historical circumstances—through political action. Two of the essays—dealing, respectively, with the themes of power and political freedom—are cited in Neumann's Rockefeller application as completed but not yet published, and the second of them refers to itself as continuation of the first. The third late essay takes up the theme of “anxiety and politics.” Unfinished at his death was a draft article on the theory, not of democracy but of dictatorship.⁶² Perhaps it is, after all, the essay rather than the treatise that is the medium of the political intellectual.⁶³

Notes

- 1 Review of Joseph Buttinger, *Am Beispiel Oesterreichs*, in *Political Science Quarterly*, Vol. 67, No. 1 (March 1952), pp. 138–41.
- 2 David Kettler, “Herbert Marcuse. The Critique of Bourgeois Civilization and Its Transcendence,” in Anthony de Crespigny and Kenneth Minogue (eds.), *Contemporary Political Philosophers* (New York: Dodd, Mead, 1975; London: Methuen, 1976), pp. 1–48.
- 3 Tim B. Mueller, *Krieger und Gelehrte: Herbert Marcuse und die Denksysteme im Kalten Krieg* (Hamburger Edition, 2010).
- 4 CNSS files, Rec. 118, Box 7.
- 5 That language is surprising. One possibility is that he is referring to the Truman Doctrine with regard to Greece and Turkey. He is certainly very critical of Truman's policies, including the Marshall Plan as an attempt to align Western Germany with American policy without any structural changes within Germany.
- 6 Neumann writes, “Since I belong to those who, since 1946, have confidently expected a shrinking of Communist strength and have consistently discarded a Communist danger, I believe the beneficiaries to be de Gaulle's RPF” (257).
- 7 After citing secretary Byrnes as advocate for the old policy, he mentions Alfred Weber as spokesperson for the Socialists in Germany and a Left Catholic periodical as well, noting that, in Byrnes words, they “do not want to become ‘pawns or partners’ of the East or the West.”
- 8 Neumann implicitly distinguishes between the role played or promised by the Americans in the military government and high commission and that of the US government in matters of economic and related policies. He has confidence in the one but not in the other.
- 9 Franz Neumann, “The Labor Movement in Germany,” in Hans J. Morgenthau (ed.), *Germany and the Future of Europe* (Chicago, IL: University of Chicago Press, 1951), pp. 100–7. In addition to Morgenthau, contributors to this “institute” included individuals prominent in the contemporary generation of scholars and public intellectuals as well as two of Neumann's

closest companions, Herbert Marcuse and Otto Kirchheimer. Among other contributors were Reinhold Niebuhr, Howard Becker, Sigmund Neumann, Walter Heller, Gabriel Almond, Hans Simons and James P. Warburg.

- 10 There is an important nuance of difference between his treatment of codetermination in the Chicago lecture, here cited, and his conclusion in the longer article, where he sees the program as response to an imperative. He writes, "The [Labor] Federation [...] must work through both Catholic and non-Catholic parties. Presenting its program both in terms of Karl Marx and of two papal encyclicals [...] is no easy feat, yet it is essential if unity is to be maintained, and without such unity that Federation will lose much of its force as a major element in forging a democratic Germany" (271fn).
- 11 A number of the misgivings and suggestions set forth in this report were anticipated in a brief document issued by the same office and dated in March 1946: "Notes on the Problem of American Aid to Education in Post-War Germany" (R&A No. 521.2).
- 12 This can hardly be accounted a risk. The chapter makes a number of statements that criticize exiting policy and would never have been included without, at the minimum, Neumann's imprimatur.
- 13 See David Kettler, "Karl Mannheim in Frankfurt: A Political Education," in Moritz Eppe, Johannes Fried, Raphael Gross and Janus Gudian (eds.), *"Politisierung der Wissenschaft": Jüdische Wissenschaftler und ihre Gegner an der Universität Frankfurt vor und nach 1933*. Series: Publications of the Frankfurter Universitätsarchiv (Hg. von Notker Hammerstein und Michael Maaser), vol. 05, 2016.
- 14 Neumann to Horkheimer, May 25 1947, MHA VI 20, p. 254.
- 15 Neumann to Horkheimer, June 21, 1947, MHA VI, 20, pp. 250–52.
- 16 Neumann to Horkheimer, November 18, 1947, MHA VI, 20, pp. 241–43.
- 17 A. R. L. Gurland, "Fight against anti-Semitism within the Framework of Germany: Education for Democracy," MHA, undated. Franz L. Neumann's "Supplement" is dated November 21, 1947, only three days after Neumann's original letter to Horkheimer.
- 18 Bryce Wood, Interview Memo (Rockefeller Archives: RG2-1948/717/428/2888).
- 19 "Habilitation" requires an acceptable study submitted under the sponsorship of a professor, whose discretion to accept the candidate is unconstrained. Karl Mannheim, for example, was refused habilitation by the Philosophy professors he approached in Heidelberg, while Georg Lukács was rejected by Max Weber, who greatly enjoyed his company and essayistic work. Mannheim found refuge with Alfred Weber, now as sociologist. Lukács was empowered for a few months during the Bela Kun regime to make his own professorial appointments, which included a younger and unhabilitated Mannheim.
- 20 Max Horkheimer, "Memorandum concerning the need for American assistance in the promotion of social science research in Western Germany," January 12, 1948; Rockefeller Foundation Archive:RG1-1948/717/428/2888.
- 21 Bryce Wood to J. H. Willits, January 13, 1948. Rockefeller Foundation Archive:RG1-1948/717/428/2888.
- 22 Thomas Wheatland, *The Frankfurt School in Exile* (Minneapolis: University of Minnesota, 2009), pp. 259, 391n94.
- 23 Max Horkheimer had written to Havighurst in April, outlining his plans for a German visit and asking for support for the funding application that had then been made on his behalf by the Bureau of Applied Social Research. Max Horkheimer to Robert Havighurst, April 2, 1948. Max Horkheimer, *Gesammelte Schriften. Band 17: Briefwechsel 1941–1948* (Frankfurt: Fischer, 1996), pp. 452–54. Horkheimer's belated letter of thanks to Havighurst in August also contains a request for help in securing several thousand dollars for a return visit. See *ibid.*, 1021–24.
- 24 Max Horkheimer to Franz Neumann, September 17, 1948. *Ibid.*, pp. 1026–27. For Horkheimer's detailed reports from Paris, Zurich, Frankfurt and Munich, see Horkheimer's letters to his closest associates and his wife between April 29 and July 10, 1948, on pp. 958–1018 of the book cited.

- 25 MHA XXIII.20, 302 (December 9, 1948).
- 26 Franz L. Neumann, "Die Wissenschaft der Politik in der Demokratie," in Alfons Söllner (ed.), *Wirtschaft, Staat, Demokratie. Aufsätze, 1930–1954* (Frankfurt am Main: Suhrkamp, 1978).
- 27 Karl Mannheim uses a similar reference to skilled labor in his discussion of "politics as science" in *Ideology and Utopia*.
- 28 This is not the place to attempt an assessment of the weight and effects of his efforts, compared to those of others, although there is reason to believe that they were by no means inconsequential.
- 29 All materials relating to the Ford Foundation negotiations can be found on Ford Foundation Reel 489, Grant 51-41, Sections 1 to 4.
- 30 John B. Howard, Memorandum of Conversation with Mr. Franz Neumann, February 23, 1951, Ford Foundation Archives, Reel Number 489, Grant Number 51-41.
- 31 Franz L. Neumann, "Report [...] on the Free University of Berlin and the State of Political Science in Berlin," Ford Foundation Reel 489, Grant 51-41, Section 4.
- 32 Von Kress to Hoffman, FF Reel 489, Grant 51-41, Section 1 (April 18, 1951).
- 33 Franz L. Neumann, "Montesquieu," pp. 96–148; Franz L. Neumann, *The Democratic and the Authoritarian State* (Glencoe, IL: Free Press, 1957).
- 34 This focus on the human capacity to love as an ultimate standard anticipates the argument in *Eros and Civilization* by Neumann's closest friend, Herbert Marcuse, and it may reflect their conversations. This possible connection led one of Neumann's students to attempt an expansion of Neumann's argument. David Kettler, "Montesquieu on Love: Notes on the *Persian Letters*," *American Political Science Review*, Vol. LVIII (September 1964), pp. 658–61.
- 35 *Considerations on the Causes of the Greatness of the Romans and Their Decline* (Hackett Classics).
- 36 At this point, as throughout the text, the language used in characterizing authors' arguments will not be gender neutral unless there is textual support for such a deviation from the ordinary usage of their times.
- 37 Neumann's cursory concession of superiority to Vico in the present context reflects a detailed treatment of the latter (accompanied by a rather dismissive reference to Montesquieu) to be found in an undated and only posthumously published text in the Marcuse archives on "Theories of Social Change" credited to both Neumann and Marcuse and put into its present form after the publication of Marcuse's *Reason and Revolution*, which is cited. Herbert Marcuse, *Technology, War and Fascism. Collected Papers of Herbert Marcuse*, vol. 1. Edited by Douglas Kellner (London; New York: Routledge, 1998). The text of the prospectus (pp.105–38)—whether for a lecture series or book—is prefaced by a preliminary proposal entitled "A History of the Doctrine of Social Change." To judge by the prominence given philosophical issues and the extensive treatments of some theorists, like Vico or Saint-Simon, only mentioned in passing by Neumann, this would seem to have been a Marcuse enterprise supported by Neumann. Cf. Kellner's *Introduction*, pp. 12–15. As Kellner suggests, the collaborators' scheme may have been a function of their improvisations after their effective separation from Horkheimer's Institute, and the scheme may well have foundered when both found employment in government agencies. If Marcuse played the leading role, as appears likely, it may well have corresponded to Neumann's efforts on *Behemoth*, on matters where Marcuse, as Kellner points out, followed Neumann's lead. Cf. incidental reference, *infra*, to Marcuse's 1953 course on "The Theory of Social Change." In the absence of records for that course, it is impossible to say whether the earlier project played a role in its coverage and design.
- 38 Neumann does not consider the possibility that this letter belongs to the literary preparation for the subsequent revelation of the cruel injustices entailed by the seraglio that is maintained for this sage traveler. Montesquieu does address the oppression of women by men in the *Persian Letters*, but Neumann subsumes this discussion under the heading of the inability to love, which presumably refers primarily to men.
- 39 Neumann takes this explicative translation of Montesquieu's *principes* from Thomas Jefferson's notes on the work, which he cites repeatedly.

- 40 Lecture notes for three sessions are missing, and there may have been consideration of other parties, but it seems unlikely that there could have been the detail lavished on the political labor movement. There are in any case no comparative references of any kind; and each of the four sections on democracies centers on only one specific theme, presumably the most important, within the problem area it addresses.
- 41 See earlier, in discussion of *Behemoth*. Neumann's first postwar intellectual contacts with Columbia faculty in the Seminar on the State (1946–48) dealt extensively with problems of bureaucracy, where Neumann clashed repeatedly with two other exile social theorists over his insistence that Max Weber had erred in conflating the rationality of a state in which political decisions by political leadership are instrumentally effectuated through a bureaucracy with conditions where members of the bureaucracy are able to exercise political power because of the failures of the duly authorized sovereign powers. See earlier, in discussion of *Behemoth*.
- 42 [Columbia] University Seminar 401–402 (1946–47) THE STATE. First Meeting. October 4, 1946: 1.
- 43 *Ibid.*, p. 2.
- 44 [Columbia] University Seminar 401–402 (1946–47) THE STATE. Fifth Meeting, November 29, 1946.
- 45 *Ibid.*, pp. 4–5.
- 46 For the distinction, see David Kettler, "History and Theory in Ferguson's *Essay on the History of Civil Society: A Reconsideration*," *Political Theory*, Vol. 5 (November 1977), pp. 437–60.
- 47 *Dennis v. United States*, 341 U.S. 494 (1951). Decided June 5, 1951.
- 48 Willets to Dean Rusk, March 3, 1953. RF/RG3/910/8/76.
- 49 John B. Stewart to David Kettler, October 28, 2005 [Author's Archive].
- 50 RF: Proceedings. First Conference on Legal and Political Philosophy, October 31–November 1–2, 1952. Arden House, Harriman, NY. RG3/Series 910/Box 9/Folder 81-2; Correspondence RG3/910/8/74.
- 51 Franz L. Neumann to John H. Willets, November 24, 1952. RF/RG3 910 Box 8 Folder 75.
- 52 RF Conference on Legal and Political Philosophy, RG3/910/9/82, pp. 249–50.
- 53 Pierre Bourdieu, *Science of Science and Reflexivity* (Cambridge: Polity 2004); David Kettler, "Why Is Political Science Not a Discipline?" Oral Presentation Text, September 1, 2006. <APSA06Proceedings 150 694 >.
- 54 Herbert Dean's notes on the aftermath of the conference include the following: "H.[L.A.] H[art] noted that Friedmann and Neumann were quite different from their American colleagues. Their statements tended to be more general and positive and sometimes were dogmatic and in need of further discussion and modification. But both had the virtue of clarity and of deep concern for ideas and their importance. From many of the Americans, on the other hand, one got the impression that ideas and reflections upon them are not really serious or respectable pursuits" (RF Correspondence: RG3/910/8/74, November 3, 1952).
- 55 RG1.1 Series 200 Box 320 Folder 3805. Whereas MacIver limited his reservations to what he considered to be a needless replication of work done by others, while praising the prime theme of democracy and social change, Sabine mocks Neumann's "Teutonic" grandiosity, finds his claims of novelty exaggerated but sees a potential worth in his devising "an accepted rationalization of democratic institutions and practices," while saying nothing about Neumann's invocations of his "critical" stance. RG1.1 Series 200 Box 320 Folder 3805.
- 56 David Kettler was among the first recipients of such a grant (1954–55), having been nominated by Robert D. Cumming rather than by his graduate adviser, Franz Neumann. Kettler also received a postdoctoral grant funded by the Social Science Research Council near the end of the Rockefeller Foundation-funded program (1961–62).
- 57 Rockefeller Foundation Archives: RG2-1953/200/14/89, March 1953. Later in that month, Neumann secured a grant from the Rockefeller Foundation for a year's leave for the "Political Systems and Political Theory" project to be discussed later. Some months later, Willet learned

that Neumann had already received funding for the same time period and for essentially the same project from the Twentieth-Century Fund. The matter was essentially hushed up among the principal parties, including the chair of the Columbia Government Program, the Columbia provost and the foundation officials, with the understanding at Rockefeller that Neumann would receive no further funding for any project. RG1.1 Series 200 Box 320 Folder 3805; Columbia University: Neumann, Franz L. (Political Science), 1952–55. Neumann’s questionable conduct, given the public character of grant announcements, has no known explanation. In his apology, he sought to distinguish between a grant for the project and a grant for its completion. Since he was nowhere near completion of the project as described and in fact gave notice that he would only do the portion of it dedicated to dictatorship and not the theory of democracy that was its original rationale, this leaves the matter in the realm of speculation.

- 58 F. L. Neumann to J. H. Willets, November 25, 1952. RG1.1 Series 200 Box 320 Folder 3805. Columbia University—Neumann, Franz L. (Political Science), 1952–55.
- 59 Ibid.
- 60 Ibid.
- 61 Ibid.
- 62 He also makes mention in one of his late writings of a pending essay on “virtue,” but there is regrettably no trace in available posthumous documents of a treatment of this pivotal theme, whose discussion in Montesquieu’s theory of republicanism he had criticized because of the unresolved contradiction between the conjunction of republicanism with commercial societies and the structural defects of classical “virtue” in the latter.
- 63 See Kettler (1977), “History and Theory in Ferguson’s *Essay on the History of Civil Society*”. *Behemoth* is, of course, the prime exception. It is striking that Neumann refused the opportunities to publish his LSE dissertation.

Chapter 11

THE LEGACY: FOUR STUDIES

Political Power

Neumann's article on political power presents itself as a mere survey of approaches to the topic "for younger students," rather than a new theory, although the conjunction with the ambitious statement on freedom in the sequel calls this modest description into question. The character of the enterprise is better seen through Neumann's initial footnote, attached to the curt statement, "Political power is an elusive concept." Neumann quotes a passage from Francis Bacon's *Advancement of Learning*. Bacon built on a passage from Virgil to identify power with the force that "is diffused throughout the living parts of nature [and] activates the whole mass." The Bacon passage goes on to decry the futility of rebellion: the ruled need/cannot know about government, but the rulers must know everything about the governed, Bacon maintains.¹ As will be seen later, Neumann counters this inference from the inescapability of power with a different calculus, which is not, however, offered as a refutation.

In his development of the concept of political power, Neumann surprisingly asserts that it "embraces [...] control over nature [as well as] control over man," although he quickly adds that the former is a "mere intellectual power," serving productivity through knowledge of nature's laws, as well obedience to them, drawing once again on Bacon. Unlike this "powerless power," political power in the narrower sense is "control over men." In a more detailed characterization, however, Neumann explains, "Political power is social power focused on the state. It involves control of other men for the purpose of influencing the behavior of the state, its legislative, administrative and social activities." And such control, according to Neumann, differs fundamentally from power over nature inasmuch as both parties in political power relations have the capacity for voluntary actions, even if the capacity for rational choice, as is normally the case, is not activated in the one subjected to control:

Consequently, those who wield political power are compelled to create emotional and rational responses in those whom they rule, inducing them to accept, implicitly or explicitly, the commands of the rulers. (162)

Neumann then expands on this formula to include relations of "simple violence, ultimately to liquidation" among the modalities of the power interplay. The somewhat curious notion that control can be secured through liquidation is made less mysterious as Neumann develops his analysis.

Under the heading of “political power and psychology,” Neumann strikes out against what he takes to be the predominant approach to power among political scientists from the time of Machiavelli to his own, its characterization as a function of individual psychology and as sole factor in political life. Power is a social phenomenon, Neumann avers, and power transactions must be understood in terms of their environment and differentiated according to their historical meaning. In line with his critique of the Machiavellian rendering of power relations, Neumann challenges Acton’s commonplace dictum about the corrupting effects of power as a “facile half-truth generalization,” citing several cases where, in his judgment, massive increments of power rendered political rule substantially less corrupt.² He concludes,

The rejection of the psychological approach involves in its positive aspect the view that politics (and thus history) is not simply a struggle of power groups for power, but an attempt to mould the world according to one’s image, to impress one’s view upon it. The historical process has a meaning. Provisionally, we may accept the traditional pre-positivistic formulation that politics is a struggle of ideas as well as force. (164)

Neumann’s somewhat abrupt next step is to refer the discussion to the contrasting evaluative “attitudes towards political power” one or the other of which is consciously or unconsciously present in “every student of politics,” presumably including those who profess a purely scientific understanding. Neumann’s procedure at this step of the analysis is reminiscent of the route to the reflexivity required for knowledge of politics that was mapped by Karl Mannheim, with a classification of “attitudes” informing political thought serving in place of a scheme of “ideologies.”³ As in Mannheim, this classification scheme is not intended to dismiss the attitudes in question. In his usual commonsense treatment of issues that might be deemed forbiddingly philosophical, Neumann writes,

The valuative premises must be made clear so that objective analysis may be possible. The soul searching of the political scientist may be facilitated by a classification of the various attitudes exhibited in the history of political theory. (164)

Yet there is also a more clear-cut critical function subserved by the classification scheme, according to Neumann. It is to identify manipulative political statements that draw opportunistically on more than one of the attitudinal designs.

Neumann suggests nine sets of attitudes expounded by named or unnamed political theorists, while acknowledging that other heuristic schemes were possible. He begins with an attitude that he ascribes equally to Plato and Aristotle, according to which power is an attribute of the community as a whole, while men count only in their capacities as citizens. Antithetical to this is the Augustinian view that all political power is evil, which can yield either passivity or a destruction of politics. Thomism yields a “practical” attitude, according to which hierarchical power arrangements are “natural” but subject to some sort of “spiritual” authority. Neumann turns next to the “liberal” attitude, which he reduces to the notion that power can be dissolved into legal relations and the “rule of law.” At this point, he deviates from his proclaimed impartiality and states unequivocally

that “power cannot be dissolved into law” and adds, “In reality, of course, this is in large measure an ideology tending (often unintentionally) to prevent the search for the locus of political power.” Strikingly, he reinforces his judgment by the authority of the harsh conservative, Joseph De Maistre, who does indeed urge that “all [be] written which can be written” but who also insists that “in every constitution there is always something [...] which must be left in a dark and venerable cloud under pain of overthrowing the state.” This conservative counter to the liberal attitude is also the only reference to conservatism, which is not treated separately as an “attitude” in the catalogue. It may be speculated that in his citation of De Maistre Neumann has in mind—both here and in the general dark perspective on power in this essay—his earlier dictum, stated in the RAND discussion, that international relations policy can never be controlled by liberal or democratic mechanisms as well as his regretful acceptance of the extent to which Cold War strategy dominates almost all policies in the liberal-democratic states of his time.

In contrast to the pervasiveness of power that he cites in dismissing liberal legalism, Neumann goes on to expound two closely related attitudes, more radically anti-political than liberalism’s attempt to imagine a state with all power reduced to law. He refers, first, to an “epicurean” attitude, according to which the domain of political power is inconsequential, recognized only insofar as it maintains minimal order. Second, then, he addresses anarchists, who, in his view, are similar psychologically to the epicureans but who hope to organize life through social devices that obviate political power. As with liberalism he closes his brief description with a dismissive formula, namely, that this attitude yields either conformism or putschism. Yet this characterization also opens the way to Neumann’s account of Marxism, which aims similarly at a society without domination, but only after using political power to smash political power, which pertains of necessity to the historical stages prior to that accomplishment. In characterizing the attitude represented by Rousseau, Neumann at first likens it to Marxism as having a “positive” view of political power but then closes with the paradox that while it resembles Plato and Aristotle in seeing the political power of the general will as everywhere, it also deems political power as nonexistent.

Neumann’s final model is obviously the attitude with which he identifies his own. Curiously, in applying a hyphenated dual label to it, he disregards his earlier caution against blending contrasting attitudes, indicating a certain impatience with his dual design of providing critical tools to students while reflecting on the substance of the issues he encounters. In a footnote somewhat later, he writes that “education is [not] to be considered solely as an instrument of maintaining power; but it must also be considered as a technique in the struggle for power.” In any case, he characterizes the last of the attitudes to be considered as follows:

The liberal democrat shares with the total democrat a positive attitude toward political power, which appears essentially as a rational instrument to be used for desired and desirable ends. Yet the fear of the liberal prevents him from accepting the total politicizing of life and causes him to insist on the separate character of political power. But the consistent liberal democrat is not, and cannot be, solely concerned with the erection of fences around political power. He is increasingly concerned with the potentialities of a rational use of political power. (167)

This anticipates the agenda for Neumann's subsequent inquiry into the complementarity between political power as sociological phenomenon and freedom as the rational dimension of political life.

At this point, however, Neumann's focus returns to political power alone. No society is without political power, he asserts, also using the opportunity to repeat one of his refrains, denouncing the notion that the liberal state was ever "weak." It was "as strong as it needed to be," he insists. The methods of political power include violence, material inducements and persuasion, according to Neumann, with the latter "the most efficient (that is cheapest) form," although all three are always present. This categorical assertion is followed by five "sociological generalizations," as he labels them, with a number of them explicated in surprising ways. The first takes up the theme of persuasion. As society becomes more complex, he maintains, persuasion "increases in significance." He expands on this observation by recalling the saying that persuasion may be deemed "violence against the soul" and then, without further distinctions, notes that such power depends on success in achieving habituation through "propaganda" and "stereotypes," thereby deploying the characterization that he had earlier applied primarily to totalitarian dictatorships.

Neumann's second generalization is no less harsh in characterizing political power, and it expressly targets democratic movements. The point is that not only rulers but also other contestants in the struggle for power must increasingly rely on secret techniques. Neumann uses this observation to explain—and, in effect, to justify—the oligarchy in democratic mass movements noted by Max Weber and Roberto Michels, whom he cites. He writes,

The opponents of these movements are usually numerically few, but individually powerful, subjects who are thus able to keep their strategic and tactical decisions secret. The mass organization, faced with such opposition, must, in turn, resort to the construction of forms of rule that also permit secrecy. Aristocratic rule thus becomes a sociologically necessary implementation of democratic movements. (169)

He adds, in a decidedly ambiguous formula, that Lenin made a virtue of this necessity in his conversion from a democratic to an aristocratic conception of the movement. A third sociological generalization further darkens the prospects for democracy. "The higher the state of technological development," he writes, "the greater the concentration of power." And he expands on this with a major shift in his earlier thinking, in that he calls ownership irrelevant to this development, with the key being the degree of organization and extent of struggle, which make for hierarchy, with a concentration of power at the top. The increase in complexity, fourth, makes for power concentration and rigidity, and this, in turn, makes control of the state "more precious than before." And this trend, finally, distances political from social power. Neumann's fifth generalization is hard to reconcile with his characterization, at the beginning of the essay, of political power as social power focused on the state. In the present context, he cites the chapters on monopoly and on the command economy in *Behemoth*, but these are in fact polemically directed throughout against the Institute thesis of the "capitalist state" and insist on the social foundation of even the command economy.

It is not surprising, accordingly, that Neumann observes that these sociological generalizations produce “uneasiness.” But his observation refers not to the relations between social and political developments as such but more specifically to democratic theory, with which these are “at first sight [...] difficult to reconcile.” And he undermines even this perplexed observation by saying that this is so only “if by democracy is understood that mixture of diverse elements, of Locke and Rousseau, St. Augustine and St. Thomas, which is usually called ‘democratic theory.’” “An adequate democratic theory,” he asserts, “will have to deal with these problems.”

Presumably as a step in the direction of such a theory, Neumann addresses “the roots of political power,” an inquiry that, in his view, comprises both conceptual and institutional clarifications as well as an understanding of the historical process that leads to change in institutions and attitudes. The ancient historians, as distinct from the classical philosophers, accepted the correlation of economic and political power, with conflict during transitions in the former dimension. Contemporary historians of the same period routinely accept this view, but analysis of the more problematic modern periods is hampered by the politically induced categorical rejection of anything deemed to be a “Marxist” approach. Neumann in turn hopes to facilitate discussion of the issues by distinguishing three historical states of the question. Blending the views of ancient historians and classical philosophers, he suggests that in the ancient period, “The economic power position merely provides the motor of political power which then includes all power relationships” (172). In the feudal epoch, in turn, political power is nothing but a function of landownership. Under capitalism, he maintains, “a real problem arises: the independence of political power and yet its interconnection with economic power.” In his view, Hobbes and Locke converge on this understanding, despite their basic disagreement on the extent of power that best serves society, given that each makes some concessions to the view opposite to that they prefer. Neumann urges the analysis he associates with thinkers from Saint-Simon to Marx, namely, that the two modes of power are “not only functionally but [also] genetically connected; that is, economic power is the root of political power” (172).

He refines that view into a three-stage relationship, with the “translation” of economic power first into social power and only then into political power. Returning now to the theme of democracy, he asserts that in this political design political parties above all mediate these translations. His assessment of such parties in the present context inclines toward standard American views, expressly deviating from his strong critique of ideologies. That political parties require mass support means that they will rely on an “ideological disguise” of the interests that drive them, hiding connections obvious to the ancients. Unexpectedly, he emphasizes a “valuable side” to this circumstance: “The very need to appeal to social groups larger than the immediate interest group compels adjustment of various interests. Politics becomes more democratic” (173). He underlines the force of this concession with a pointed footnote: “It is this fact that Marxists usually overlook.”

As his analysis proceeds, however, Neumann retreats from this concession to American interest group theories of democratic rule. “Social power,” he asserts, “either is derived from private property or is against it.” And the property that matters to political scientists

is that which gives power over men, power that is derived from power over nature—the means of production. Such power operates in the labor and commodity markets as well as the “political market of the state.” In Europe, Neumann notes, recurring to his detailed treatments of the German case, the social power derived from private property is more likely than in the United States to be institutionalized in associations, cartels and chambers, but this is a detail for more refined study. Against these modalities of social power, however formed, Neumann inserts labor unions, which attempt to organize the collective power of organized labor to contest the domination by proprietors in the labor and political markets. And he marks his circumspect retreat from the approach he had earlier sought to accommodate by noting that comparative studies more “sophisticated” than “interest group” research are needed, given varieties from nation to nation and from time to time. This is Neumann in his negotiation mode, *vis-à-vis* his American colleagues.

His discussion of “bureaucratization” in the present context shares this character, inasmuch as he appears to straddle a key question that he had earlier answered unequivocally, arguably in order to accommodate the political state of the question in American political debate, where hostility to “bureaucratic rule” is a political weapon of the more conservative parties opposed to the social advances he favors. His analysis overall does rely mostly on the distinctions among bureaucratic behavior, structures and power that he had earlier set forth in his discussion of the subject in the Columbia Faculty Seminar and in his own 1951 class, as shown earlier. But this time, in the course of his defenses of bureaucracy in the first two dimensions, he also notes, presumably as a value of bureaucracy, not only that routine bureaucratic behavior is essential to many of our needs and comforts but also that “it is untrue that the decisions of the bureaucrats are exclusively routine decisions.” He amplifies this last point: “Many, indeed, are creative ones, not derived from precedent or standing rules, but highly discretionary, and thus essentially lawmaking in character;” a feature that he would almost always have seen earlier as a grave fault. Neumann continues the defense of bureaucratization in the modern state by observing that, in any case, bureaucratization is no less prevalent in the private sector, presumably meaning by this that attacks on bureaucratization in the former locale cannot prevent subjection to whatever negative qualities may attend bureaucracies. As he proceeds, however, he takes up his more familiar characterization of bureaucratic power as a distinct and presumably unwanted phenomenon, the extent of which can only be ascertained by empirical research.

Returning to the question of relations between economic and political power, he cites the Soviet Union as a case where political power has become the basis of economic power, and he suggests that this would also have happened in Nazi Germany—as exemplified by the Göring Works—if not for the “exigencies of war.” Considered as a trend, the shift toward the increasing role of political power is ascribed to democracy, which is accurate enough, Neumann says, given the democratic affirmation of such power. The hostile and exaggerated explications of this general tendency, however, have an express anti-democratic political thrust, implying a necessary course toward totalitarianism. “Maistre and Bonald are resurrected,” Neumann writes, and aristocracy and libertarianism are offered as alternatives consistent with the constitutionalist “traditions

of Western civilization.” Neumann responds with one of his most familiar oral formulas: “This is only a partial truth, and therefore false.” He asserts that Rousseauism is more central than Locke to the democratic tradition, and that constitutionalism is in any case very unlikely to counter such abuses of political power as may occur. He concludes with a formulation that marks the conclusion he has drawn from political events since his initial statement of the complementarity between liberalism and social democracy in 1926: “The problem of modern democracy is much less the fencing of political power than its rational utilization and provision for effective mass participation in its exercise” (177). This sets the problem for the article on freedom that he characterizes as the sequel to the present article on power.

The closing pages of the power article further complicate the newly refined state of Neumann’s question. He notes, first, that relations among economic, social and political power in democracies are difficult to plot because the competing effects of power derive from actors for and against private property. He likens constitutional law to the law of property, inasmuch as it sets forth certain forms but says little about the distribution of power effectuated within those forms, an argument reminiscent of his earlier uses of Karl Renner’s distinction between property and its “auxiliary institutions.” Curiously, he uses the occasion to revert once again to an old contrahent, Carl Schmitt, “in his pre-Nazi period,” citing the uses of emergency situations to discern actual power relations, although he underlines his consistent disagreement with Schmitt on relying on such moments to identify sovereignty. The actual distance from Schmitt becomes even clearer in Neumann’s development of a key point in the transition between this article and its sequel.

Having raised the question about relations between political power and freedom, Neumann first massively qualifies his earlier provisional notion of a contest between power and ideas, inasmuch as this would leave freedom always defeated. Politics, he says, is conflict between power groups, with an outcome in the form either of a winner or conciliation. The main thrust of this reformulation might be thought to be consistent with Schmitt, but Neumann quickly adds his principal point, namely, that one contender in such a contest “may indeed represent the idea of freedom, the idea crucial to political theory” (179). He chooses his example shrewdly, to avoid a mechanical assertion of his general antipathy to the power of property: the case of business favoring immigration. His summary statement, however, is quite remote from such practical examples: “The task of political theory is thus the determination of the degree to which a power group transcends its particular interest and advocates (in Hegelian terms) universal interests” (179). Yet the matter is further complicated, he maintains, by the role of ideology (in the pejorative sense) “and the weight of power on what is called public opinion.” This observation unexpectedly leads him to a deeply pessimistic reflection on much that has gone before (and what will follow):

The individual then resorts to many forms of dissimulation; and, in certain periods of history, it is the liar who becomes the hero. The lie (in its many forms) becomes the protection of the individual against a universalized system of propaganda. (180)

The tone of the article—and the challenge to the sequel—reverts to the mood of the introductory quotations from Bacon, with the “most interesting American philosopher,” Charles Peirce, serving as source for this lengthy closing quotation:

The method of authority will always govern the mass of mankind; and those who wield the various forms of organized force in the state will never be convinced that dangerous reasoning ought not to be suppressed in some way. If liberty of speech is to be untrammelled from the grosser forms of constraint, then uniformity of opinion will be secured by a moral terrorism to which the respectability of society will give its thorough approval. Following the method of authority is the path of peace. Certain non-conformities are permitted; certain others (considered unsafe) are forbidden. These are different in different countries and in different ages; but, wherever you are, let it be known that you seriously hold a tabooed belief, and you may be perfectly sure of being treated with a cruelty less brutal but more refined than hunting you like a wolf. Thus, the greatest intellectual benefactors of mankind have never dared, and dare not now, to utter the whole of their thoughts; and thus a shade of *prima facie* doubt is cast upon every proposition which is considered essential to the security of society. Singularly enough, the persecution does not all come from without; but a man torments himself and is oftentimes most distressed at finding himself believing propositions which he has been brought up to regard with aversion. The peaceful and sympathetic man will, therefore, find it hard to resist the temptation to submit his opinions to authority.

The extent to which Neumann means to caution against his own arguments by these two astonishing passages can never be known. It may be the case, after all, that he means merely to show his literary versatility and to weaken his opponents. There is no question, however, that however slight and ephemeral the historical chances of their full realization, Neumann never abandons his own effort to set forth the general criteria for that “rational utilization of power” that is the meaning of modern democracy. The work of political theory, we might say, is not for Peirce’s “peaceful and sympathetic man” but for the critical political intellectual.

Political Freedom

Neumann opens his study of “political freedom,”⁴ published three years after the essay on political power, but presented as its continuation, with a renewed challenge to the “widespread academic doctrine” in political studies, which he characterizes now as granting political theory a role only in “determining the limits of the citizen’s obedience to the state’s coercive power” (160), which is presumed to be legitimate. Distinguishing political sociology as the accepted domain of the study of political power from political theory in this limited sense, he scoffs,

In both disciplines, political power seems to be accepted as an ontological datum, a natural fact, and the role of political theory is to see to it that political power behaves with relative decency. Insofar as political theory is concerned with the legitimacy of political power [...] [its] validity is [...] determined by a pragmatic-utilitarian appraisal [...] with its propagandistic-manipulative success the criterion of its truth.

It is, in brief, equated with mere ideology.

We quote these introductory remarks at some length because it is important to recognize the limits of Neumann's bargaining concessions. In this connection, it is interesting to speculate about the curious fact that this "continuation" of the "power" essay, which had been published in the *Political Science Quarterly*, appeared in the student-edited *Columbia Law Review*, where it was far less likely to be read by members of the profession that is being so forcefully challenged. It contains some more or less technical legal arguments in one of its sections; but these are dwarfed by political points. As it happens, the student editor-in-chief at the time ended his career in the law as a professor at Columbia and a sharp critic of business. It would be too much to conclude from this scattering of circumstantial evidence that the article was rejected by many political science journals. Yet it is also worth noting that this article appeared a year after Neumann's largely unsuccessful attempt to elicit responses to his fundamental questions about political theory from the community of scholars in this field assembled under the auspices of the Rockefeller Foundation.⁵ If we take the two articles as conjoined, as Neumann urges us to do, he is in effect identifying his colleagues with the ideologists he scorns at the conclusion of the power discussion, who "intensify the weight of [prevailing] power on what is called public opinion." This is not Neumann in a negotiations mode.

He refers the predominance of the misconception—if not betrayal—of political theory, in the full sense, to "the political alienation of contemporary man: the fact that man considers political power a force alien to himself, a force which he cannot control and with which he cannot identify himself, and which at best can be made barely compatible with his existence." A contemporary neglect of Plato and Rousseau, whom Neumann jointly credits with attention to political alienation, he cites as evidence in support of this view. Abruptly, Neumann then shifts the grounds of the argument. He reiterates his earlier assertion that no one can deny the pervasiveness of political power, and he mocks the view, presumably among more "traditional" political theorists, that there is a "Right" that confronts "Power" and is destined to triumph, an outcome—Neumann insists—directly opposite to experience. "Were we to stop at this formula," he writes, "we ought to abandon political theory altogether (save as a technique of manipulation)" (161). "Machiavellism," described here as in the previous article, would be the only sensible position. "The wise person," on those premises, "will add that you cannot expect anything else, human nature being [...] basically selfish and evil" (161).

Neumann concedes that "in a period of conflicts, of uncertainty, hatred, and resentment, this view—like pessimistic theories in general—seems especially attractive." He cites the current appeals of St. Augustine and Machiavelli. Significantly, especially in view of his own aborted interventions in debates about foreign policy, Neumann adds, "Metternich's conception of foreign relations [is] [...] unquestionably fashionable today," and he grants that "if contrasted with a shallow misinterpretation of enlightenment philosophy, they are certainly more realistic." Yet he returns forcefully to his blanket condemnation of Machiavellism and its "cleverness," according to which "a theory [...] becomes an ideological statement which, if repeated often enough, will by its own weight change the political situation and produce victory."

Strikingly, Neumann dismisses the false alternatives between naïve assertions of the inevitable triumph of Right and the calculated celebration of manipulative ideology by

an appeal to an authority not often cited in his writings. "But the ordinary man is repelled by these conceptions," he writes. Neumann expands on this assertion, insisting that such a man rejects the identity of promoting soap and political ideas, with the latter merely a matter of individual preference. Terming him also a "political man," Neumann says that he "deeply feels that his preference must be part of a more universally valid value system." And, keeping the character of that system open, that man adds "a system of natural law or justice or national interest, or even humanity." As Neumann continues the counterargument, he shifts closer toward his own position on the universally valid value system, beginning with a reiteration of his concluding point in the essay on power, that some parties in the struggle for power that is politics really act in pursuit of ideas rather than mere ideological rationalizations of "egoistic-particular demands." Yet he acknowledges that this valid formula does not in itself serve to identify such valid actions, a judgment made ever more difficult by the pervasiveness of ideology and the consequent seeming hopelessness of efforts "to pierce the layers of symbols, statements, ideologies, and thus to come to the core of truth."

Neumann insists that this is nevertheless the task of political theory, properly understood, and he flatly announces the central motif of such a reply in the categorical assertion that "the truth of political theory is political freedom."⁶ His corollary returns to a motif of Horkheimer's Institute that Neumann had more recently put forward in his first rhetorical intervention at the Rockefeller conference. Since political freedom can never be fully realized, "political theory must by necessity be critical. A conformist political theory is no theory" (162). Having proclaimed his concept of political theory unconditionally, Neumann states the aims of his article more modestly. It has a merely "didactic" function, setting forth the three elements constitutive of political freedom and leaving for future efforts a fulfillment of "the hope that they may be reintegrated into an overall theory of political freedom." Like his statement of the issues posed for democratic theory by the sociological characteristics of power, his "dissection" of freedom leaves the project of a comprehensive political theory pending. We will consider at the end of our study the question whether Neumann really thought that the utopia of a comprehensive theory could ever be attained or whether it is in fact his view that its valid but changing elements can only be accumulated through a history of more rather than less rational political judgments and actions. Neumann's article on freedom inevitably returns to many themes and theses in his earlier writings. Yet, quite apart from its exceptional attention to some American issues, it must be respected and reviewed as his definitive statement of the evaluative complement to "power" or "sovereignty" in his political thought, in conjunction with the unresolved doubts reformulated here and elaborated in his subsequent article on "anxiety."

Neumann begins with an initial review and partial critique of the liberal conception of "freedom as the absence of restraint." He credits Hobbes, Locke, Montesquieu and Kant for this conception of "negative freedom," which cannot be dismissed, although it is one-sided and therefore, "in Hegel's sense inadequate." He does not say, "false," as in his usual manner of speaking. The underlying concept of "man v. the state" presupposes philosophical individualism and thus also a measure of "political alienation," partial conditions that do have a measure of justification, since man is not only a "political

animal.” Still, according to Neumann, the individual rights, as best laid out in the civil rights catalogues of constitutions, cannot be categorical; they are subject everywhere to lawful restrictions. They are only presumptions, since no political system can grant unconditional freedom. Interferences must however be justified by law and proper legal process.

At this point, Neumann recalls his distinctive argument in his London dissertation. He puts aside the Thomist vision of objectively valid Natural Law as well as the Lockian notion of undisturbed rights preexisting the political system and postulates that law in the modern era can properly mean only positive law of the state, constitutionally enacted. Since rights are valid only insofar as they can be enforced, according to Neumann, it was only the possibility of a realistic right of resistance that gave some plausibility to natural law theses. With the state’s monopolization of coercion, effective rights are a function of positive law, and Neumann acknowledges that this aligns him with the legal positivist views in the tradition of Hobbes, Austin and Kelsen. Law is the will of the sovereign. Philosophical theories of law can “shape” preferred meanings, but it can neither validate nor invalidate the positive law that exists. As in his earlier writings on legal theory, he quickly qualifies this concession, lest—as he asserts—“rule of law” protect “nothing at all.” Citing a “second theme in history,” which he traces, as so often, to Plato and Aristotle, he endorses the requirement that law be general in form. He writes,

The generality of law means logically a hypothetical judgment by the state on the future behaviour of legal subjects, its manifestations being the legislative statute or the *ratio decidenti* of the common law. (165)

Such law will apply equally to all persons specified only by abstract criteria, and it will be as specific as is consistent with this first requirement. The structure of his argument in justifying the requirement for generality of law is quite different from his argument about rights. He does, first of all, expressly depend on philosophical theories, citing both Hobbes and Locke and recognizing its “most accurate formulation” by Rousseau. Beyond that, he emphasizes that the principle is acknowledged even in England, where the sovereignty of parliament would permit individual measures. In the last analysis, the legitimacy of the implied principles—the permissibility of the nonforbidden, the closed and self-enclosed legal system, the rejection of retroactivity and the separation of judicial from legislative powers—is supported by the contention that “these concepts were—and still seem to be—accepted by the civilized world without question” (165). The qualification, as well as the element of circularity in the criterion of the “civilized” world, suggests the uses of conservative strategies in Neumann’s pleadings, when he needs them.⁷

In a return to his more usual method, Neumann turns next to the functions and effects of such a system. As in all of his earlier writings on the subject, he insists first on a function that he label “moral” or “ethical,” without making the distinction common among philosophers he admires. Citing the otherwise dissimilar writers, Cicero and Voltaire, he asserts that there is a minimum of equality and security inherent in the formal structure as such. There is also an economic function in constituting the “social system of a competitive society” providing calculability and reliability in contractual fulfillment for

entrepreneurs of about equal economic power who share identical interests with regard to the state. As he does elsewhere, he emphasizes—in express agreement with the anti-formalist American legal theorist, Roscoe Pound—that there is no contradiction between liberal advocacy of a limited state and liberal determination to have a strong state within those limits. He makes nothing at this point of this instrumental analysis, relating the design to a social-economic system he considers historically overtaken.

When he comes to the political function of what he summarizes as a “government of laws and not of men,” however, he distinguishes sharply between the German version, historically designated by the concept of the *Rechtsstaat*, and the English “rule of law,” effectively dismissing the former. The *Rechtsstaat*, he maintains, requires nothing more than that the state expresses its will in legal form, regardless of the source of law or its goal; and it is a formula that German liberals accepted in surrender of the contest for political power. The English concept of “rule of law,” in contrast, is built on the sovereignty of Parliament, giving democratic legitimation to political power, as well as conformity with requisite norms. The seeming contradiction between sovereignty and law is balanced by the self-restraint of Parliament brought about by a functioning party system and a stable social structure. Neumann’s calm satisfaction with this solution, unlike his earlier varied reflections on the issues, suggests that his reading of the English situation has shifted from the ever more radical perspective of his mentor, Harold Laski, toward the reforming spirit associated with Clement Attlee’s Labor government in the late 1940s.⁸ The more immediate political point is an anticipation of his treatment of the American “Crisis of Political Freedom” with which he will conclude the article. At the present point, he writes only, “The United States system lies between the two marginal cases of the *Rechtsstaat* and the English rule of law, the two elements often being, as now, in a rather precarious balance” (170).

His summary statements about the functions subserved by the doctrine in practice make it clear that his analysis is far from finished. He now limits the strictly political role of “the government of laws and not of men” to that of an ideology that “hides the locus of power.” “The sole legal value inherent in a legal system so structured,” he maintains, is the “moral” one: the implied concession of the equality of men, if only in principle. “All other values realized in a legal system are introduced from outside, namely by power” (170). He dismisses the “dream of the liberal period” that power could be dissolved in legal relationships, as if all relationships were somehow rational and calculable, and concludes, “But this, of course, does not work [...]. While power can at times be restrained, it cannot be dissolved” (170).

The next step in his argument must be followed with care, beginning as it does with clashes between “the non-rational element, power, and the rational element of law” but ending, in effect, with considerations that amount to a view of power as more “rational” than law. Neumann begins with the flat assertion that conflicts between power and law are resolved either by an outright suspension of law or by provisions in legislation that allow for “purely discretionary decisions.” It is the latter eventuality—especially in the form of “legal standards of conduct,” whether expressed or implied—that raises issues that have especially troubled him from early in his legal career and with regard to which his judgment has fluctuated.

Neumann opens the discussion with the generalization: "One may perhaps say that power enters private law through equity; and rational constitutional law through prerogative (or some similar term)" (171). After briefly reviewing the history of hostility to equity, especially in England, which led in effect to the tacit reconstitution of courts of equity into properly juridified entities, with their own general common law provisions, he counters the considerations paramount in that history with the historical observation that he had first explored in his first article in Horkheimer's periodical (1936):

But the rejection of equity is germane only to a competitive economic system. Equity considerations increase with the increase in concentrations of economic power and in interventionist activities of the state. (171)

He cites, as examples of this development, the English jurisprudence on "restraint of trade," the American criterion of "unreasonableness" with regard to economic combinations and the German measure of "good morals," which covers most important issues in labor law. Using language reminiscent of his conception of "the brute facts of political life," he concludes, "If [the general law] has to deal with power concentrations it will be replaced by clandestine individual measures." When he comes to public law, he suggests criteria of evaluation that go beyond empirical considerations. First, then, there is the recognition that every political system will resort to similar devices when it deems its security threatened. Second, there is the need for ad hoc adaptability when legal doctrine cannot resolve a conflict between rights claims of equal merit and the relevant bodies resort to arbitration. It is the third of Neumann's considerations that anticipates a new and consequential dimension of his concept of freedom, although his very first introduction to the theme remains terminologically within the context of the present frame.

Juristic freedom, Neumann observes, is "naturally conservative," but political systems must change, drawing on values not embedded in the legal system. These values "come from outside, but for propagandistic reasons they are presented as legal demands." In a shift of a perspective, however, he anticipates a move beyond the well-established juridical dimension of freedom. "Freedom is more than the defense of rights against power;" he writes, "it involves as well the possibility of developing man's possibilities to the fullest" (173). The transition from one dimension to the other, he undertakes through his typology of "various types of [traditional] rights with different functions and different sanctions" (173), now scrutinized not only for their value but also for their distinct limitations.

The validity of the "personal" class of rights "is bound solely to man as an isolated individual" and is essentially equivalent to criminal law provisions in what he surprisingly calls "our constitution," a turn of phrase that increases the likelihood that this portion of the text derives from a lecture to students. In underlining the universal validity of such rights, moreover, he says that they are absolute, regardless of change in the socio-economic system, but then specifies this development by reference only to changes from competitive to "organized" capitalism. Socialism does not appear.

Similarly, his citation of "property rights" places them, without further discussion, among the "societal rights" in relation to others, a class that has "communications rights" at its core. There is no trace here of his earlier strategies for varying the scope of property

rights by diverse institutional articulations so that they lose their paradigmatic form and meaning. He introduces the topic of limitations very carefully through a citation of Kant's formulation that the exercise of this class of rights, unlike the unconditional first type, must be kept from abusing the comparable rights of others, a limitation specified through the law of "libel, slander, and trespass."

Neumann's list of political "problems" affecting societal rights makes only the most indirect reference to the issues of social inequality that have been at the center of his interest in earlier discussions. This comes through a reference to a US Supreme Court decision of the time [*Kovacs v. Cooper*, 336 US 77 (1949)] relating to a clash between a local anti-noise ordinance and the election-time use of loudspeaker trucks, where the court ruled in favor of the locality but a dissenting opinion raised the question of the social differences between parties of the rich and parties of the poor, when it comes to means of propaganda. A broader issue that he characterizes as "really important" has to do with the clash between the authorities' reading of "security issues," where they may side with a hostile mob threatening an unpopular speaker, as in the instance adjudicated in *Feiner v. New York*, 340 US 315 (1951). Having sided mildly with the view that American constitutional guarantees in this field are more categorical than corresponding assurances in European schemes, he first credits more favorable skeins of opinion to attitudes in the courts rather than legal language, as such, but then notes that all systems feature "escape clauses" that upset the balance of power and rights envisioned by the constitutional guarantees. Through "reservations of the law" provisions in Europe and judicial phrases like "clear and present danger" in the United States, there is an expanding gap in the calculability of relations between power and right. Somewhat surprising is Neumann's sweeping conclusion at this point that "power [...] cannot be effectively [...] restrained by constitutional law," although he may be referring simply to judicial practices rather than to the wider political interventions made in the name of constitutional rights (175). Neumann turns finally to political rights, "deriving from the political structure of the state," which is in turn a function of "what the political system claims to be," an awkward framing for Neumann's critical application of his scheme of rights concomitant with democracy: equal franchise and access to political office as well as "equality of treatment in regard to occupations, professions and callings" (176).

Having postulated a hierarchy among these classes of rights, with those listed later presupposing those listed earlier, he proposes a turn from the "traditional problems" grounded in the "old formula of citizen versus state" to problems of freedom in modern society that cannot be subsumed under this heading. It is in this context, then, pointing toward a frame of reference different from claims of rights, that issues surprisingly missing from the earlier discussion begin to reappear. The new list of problems is heterogeneous. First, there is a sweepingly wide class of effects on civil rights of "far-reaching changes in the socio-economic structure"; second, the far more focused question raised by the effects of social—as distinct from state—sanctions on dissenters; and, finally, the qualitatively different questions raised by attempts to legitimize positive demands on the state as "civil rights." Illustrative treatments of these themes are reserved for the last portion of the article, where Neumann addresses "the present crisis of freedom," but at that point he will have additional analytical and evaluative tools at his disposal.

Rationality in the Theory of Political Freedom

Neumann's transition beyond the juristic dimension of freedom moves next to a summary statement of its limitations. First, it cannot justify democratic rule, given that there is much to be said for the conservative contention that, strictly by the norm of citizen versus the state, constitutional monarchy or the like might be better. Second, Neumann maintains, juristic freedom is unduly static and conservative—a contention he pedagogically underpins by a passage from the decision by Justice Jackson in *West Virginia State Board of Education v. Barnette* [319 US 624 (1943)] (upholding a student's refusal to recite the "Pledge of Allegiance"). The deficiencies specified are, first, the implication that liberty increases with the decrease of governmental power and correlatively that government is the only enemy of liberty. Neumann comments that "the historical links between interventionism and civil liberties are but little investigated" and suggests that findings of value would turn up from studies of Weimar, England, in the Second World War (as compared with the First) and American courts after 1931. Any absolute theory of judicial freedom would be incoherent and therefore false, since it would depend on an undefined concept of intervention that failed to indicate its purpose or the interests being interfered with. Understanding the place of guaranteed rights requires a political-historical analysis of situations, if only because the existence of an effective state is a precondition for the exercise even of individual rights. Then too, Neumann concludes, in an implicit return to his well-established basic concerns, "Private social power can be even more dangerous to liberty than public power."

To bring the different contents of laws into the analysis of freedom, and to secure an adequate political orientation to the social reality in which legal escape clauses cannot be controlled by legal guarantees, it is necessary, according to Neumann, to turn to the "cognitive concept of freedom," which deals with the interrelationship between freedom and necessity in its political—rather than philosophical—meaning. Neumann begins with humankind in the realm of physical nature, as he had done in the analysis of power. Knowledge counters fear, as has been maintained since Epicurus and Lucretius, and it enables instrumental uses of nature to better human life. A more narrowly focused and more basic kind of knowledge has been developed, according to Neumann, in a scientific tradition that he sees as extending from Spinoza's expectation that understanding can subdue the passions to "Freud's understanding of the instinct of aggression and self-destruction and his analysis of the need for identification as the emotional tie of one person to another" (179). Neumann links Freud to Kierkegaard in the basic insight "that our existence is shot through with anxiety," which is quite different from fear of something specific that poses a danger. Only knowledge of a certain sort, whose character he does not specify, can manage that aspect of human existence, which will otherwise join with the aggressive instinct and the need of the isolated individual for identification with others to "permit the total annihilation of freedom in totalitarianism" (180). The possibility of applying knowledge of human psychology to such destructive ends shows that there is no "necessary correlation" between knowledge and freedom.

The third dimension of knowledge associated with freedom, Neumann writes, is "understanding of the historical process." As with his initial reference to knowledge about

human anxiety, the concept of “understanding” in this case is treated in a way that seems to preclude the kind of manipulative and instrumental uses of knowledge that Neumann cites in the further development of the psychological dimension. The term here is closer to “awareness” or “recognition,” with an implied mandate. He credits Vico with being the first to attempt “a scientific analysis of the structure of human freedom in the frame of an historical analysis” and to recognize that the universal historical process is “the conflict between man, nature and culture” (180). Neumann’s genealogy moves on to Montesquieu, whom he treats briefly as he did in his earlier writings, adding only that he was also the first to grasp the unintended consequences of purposive social action as well as the interdependence among social phenomena. “The road goes to Hegel and Marx,” he writes, “who accept the Epicurean-Spinozist formula that freedom is the insight into necessity.” Neumann insists, however, that this does not mean “obedience to an abstract and fatalistic law of history.” “Historical insight,” he maintains, “is critical and programmatic,” since it also includes man’s aspirations for control of the environment. He concludes, “Since what man can achieve is bound to the stage of social development, the realization of freedom is not at the disposal of man’s free will” (181). Neumann’s initial formulation of this most central of his aspirations to knowledge remains in some measure indeterminate.

As is true of so much of his work, he depends on the persuasiveness of his readings of authorities and analyses of situations rather than on the development of the philosophical grounding of his procedure to carry his arguments. In the present case, he undertakes to show the significance of the historical dimension of cognitive freedom by reference to his pivotal concepts: sovereignty and freedom. Neumann introduces the consideration of the first of these phenomena with a mildly mocking reference to the Anglo-American tendencies to treat theorists of sovereignty from Marsilius of Padua to Hobbes to Hegel as “criminals” responsible for much evil, up to totalitarianism. Neumann expressly puts aside the question whether theory can ever be held responsible for political developments and focuses rather on the grounding of such judgments on the juristic concept of freedom. Defining sovereignty as a monopoly of coercive power held by an agency separate from society but connected with it, he asserts next that “the progressive historical function of sovereignty has never been doubted,” leaving it to the reader to realize that the Anglo-American thinkers he cited at the outset as foes of theorists of sovereignty are marked precisely by their shared failure to apply an understanding of what is historically progressive to their categorical judgments. His documentation of the historical judgments begins with a blanket reference to the history of the changes that brought the feudal age to an end and enabled economic development and then cites recognition of these changes by “middle-class theorists” from Bodin to Hobbes. The French Revolution, he continues, was aimed against the weakness of monarchy, as recognized by theorists from D’Argenson to Rousseau, who had projected a reconstitution of the central power for the sake of freedom. Neumann recalls a passage from his introduction to the *Spirit of the Laws*, where he had certified that political thought since Machiavelli is a history of attempts to justify both “right and might, law and power.” The sovereignty concept, he adds, also adds a measure of rationality into international relations, by precluding

imperialist claims, like those of Nazi Germany or the Third International, against the recognized bounded territories of states. Neumann concludes, "Thus sovereignty in the modern period, though it formally appears as the negation of the juristic concept of freedom, was in reality its very presupposition" (183).

Neumann's second exposition of historical understanding in the service of cognitive freedom turns to the central element of juridical freedom, property. He asks why it was raised to a natural right and revered even by the young Marx. From Aristotle to Hegel, he replies, it was regarded as an "instrument for the realization of the good (or at least the tenable) life" (183). Its value was thus "instrumental," he maintains. Even in the case of Locke, the thinker who most forcefully identified liberty with property, the quality valued was not possession as such, but property as a product of human labor, grounded in man's creative activity. In any event, the instrumentalist character of the property right, unlike communications rights in general, requires redefinition for various historical stages and differentiation among things ownable. The special character of this right is already evident, for example, in long-standing European constitutional provisions expressly authorizing compensated condemnation of property for public purposes, a provision unimaginable for other rights. The property right, Neumann concludes, is only relative to other measures of freedom:

The tasks of political theory concerned with human freedom are to analyze whether property fulfills its function as an efficient instrument of freedom, and to discover what institutional changes are necessary to maximize its effectiveness. (184)

The knowledge corresponding to cognitive freedom, in sum, supports human productivity, provides what is needed to avert anxiety conducive to totalitarianism and guides the adjustments of institutional frameworks to changing historical situations.

Volition in the Theory of Freedom

The third dimension of freedom, according to Neumann, derives from the presupposition that freedom must be acted upon, which requires human will. This "volitional element in freedom," he asserts, provides the basis for recognizing democracy as essential to human freedom. In a characteristic move, he begins by citing the authority of Plato and Aristotle, focusing on the requirement for participation in the polis as a mark of humanity, although he qualifies this, rather weakly, by adding "even if, for reasons of political expediency, [they] deny full participation by the masses" (185). The yield to Neumann of these uncertain references is a proposition about the "undesirability of political alienation." As is so often the case in these late writings, Neumann poses his provisional judgment over against the "Epicurean School," which he here expands to include Hobbes; and this time he concedes to its representative thinkers, "Political Epicureanism may indeed be a necessary attitude in periods where two evil principles compete, and a third principle has no prospect of asserting itself" (185).⁹ His rejoinder to this judgment shows a certain reluctance and strikingly relies on a claim of necessity:

Whether or not one believes political power is alien to man, it determines his life to an ever increasing extent; thus the need for participation in its formation is imperative even for those who prefer the cultivation of individual contemplation. (185)

Yet even this cautious endorsement is qualified. The stress on volitional freedom alone implies neglect of responsibilities to others, as with the protection of minorities and dissenting opinions, and must therefore be somehow conditioned by juristic freedom guarantees. More forcefully, Neumann cautions,

If we stress the primacy of political action regardless of the historical situation [...] we arrive at a Utopian putschism—the view that man can, [...] regardless of the historical stage, realize his full freedom through his action. (185)

His first example of this extravagance is Bakunin (as schooled by Fichte) but then also Mussolini.

In the end, however, in conjunction with an abrupt change in the historical premises, Neumann reasserts the indispensability of the volitional freedom: “History may present magnificent opportunities for freedom, but they may be missed if [...] one fails to act adequately” (186). And this in turn provides the central justification for democracy as the political system that institutionalizes the activist element. His final summation of this section on the three dimensions of freedom nevertheless includes a very curious reformulation of this last element. A “stable” democratic system, Neumann concludes, requires “the effective operation of the rule of law; the flexibility of its political machinery to deal with new problems; and the education of its citizens.” There is no earlier identification of “volitional freedom” with education; but the surprising formulation does correspond to Franz Neumann’s own mode of political practice.

The Present Crisis

In the last section of his article on “Freedom,” Neumann offers a rather cheerless diagnosis of his time under the title of “The Present Crisis of Freedom.” Putting aside the totalitarian states, where, he says, none of the elements of freedom are present, Neumann sets himself the “far more difficult” assignment of assessing the then-current situation in democracies. The discussion opens with current American concerns about challenges to rule of law, “especially as it relates to personal freedom.” He recalls, first of all, his earlier discussion of socioeconomic sanctions against exercises of social rights, which he now ties expressly to the effects of the Loyalty Program as well as the Non-Communist Oath provision of the Taft-Hartley Act. His analyses seem quite cautious. Conceding the right of government to exclude or dismiss “disloyal” employees, and thus no violation of the constitutional right to trial by jury in such cases, he maintains nevertheless that all citizens have an equal right to elected or appointed office and that procedures in these cases arbitrarily exact costly penalties. His second illustration consists of the provision of the Taft-Hartley Act that union leaders have legal standing under labor law only if they

have taken a non-Communist oath. As in his first example, he does not challenge the legal correctness of the Supreme Court decision upholding this requirement yet asserts that trial by jury is “the indispensable minimum of civil liberties.” Neumann’s legally amorphous concessions to the juridical propriety of rulings in both cases are merely preliminary to the quite radical claim that “juristic conception of liberty can no longer adequately perform its function” in these situations because “in many cases the application of economic sanctions means a sentence of economic death inflicted without a hearing” (188). And the psychological-social consequences for the expelled and excluded may be even more damaging.

Neumann expands on the insufficiencies of juristic freedom, maintaining quite categorically that it is inadequate to new phenomena and covers only a shrinking minimum of threats. He returns to the example of the loudspeaker case and asserts that even a ruling in favor of the “little man” would not begin to solve the problems in the area of political communications due to “economic imbalance.” Yet Neumann rejects the formulation of remedies as “social rights,” deviating sharply from his Weimar advocacy in just those terms. Social security, trade union rights and “even planning” have their legitimation in their social utility and cannot be equated with the rights at the heart of democracy that require no demonstration of social usefulness. He does not reflect back on the “instrumental” character that he had imputed to property rights but is satisfied at this point simply to express a wish for a “fair degree of equality in the control and access to the media of communication.” The caution in his response to the weaknesses in the present state of juridical rights, which he had diagnosed so forcefully, seems enhanced by the next step of his analysis:

These problems may not appear so depressing, if one considers political power not as an alien power [...] but as one’s own—that is, if the volitional or activist element of freedom is recognized as being of equal importance with the two others. (190)

He turns then to problems in this domain, notably the neglect of volitional freedom. Although it is a valuable insight of individualist thought, Neumann says, that there must always be some recognized measure of alienation between the individual and the political sphere, he insists that there can be “no freedom without political activity.” Rejecting the notion of complete immersion of citizens that he imputes to Plato and Rousseau as utopias, inasmuch as there will always be passions of rulers and conflicts among social groups, he asserts that democracy has a “tendency to minimize the alienation of political power [...] and makes possible a fair balance of the interests of the individual and the *raison d’état*” (190). Yet the alienation of citizens from democracy, Neumann maintains, is increasing everywhere and “at tremendous speed” in Europe.

The condition is labeled “apathy” from a psychological point of view, but it comprehends in fact three variants. Neumann refers to one simply as “I don’t care,” identifies the second with Epicureanism and then conjures up “the total rejection of the political system without a chance of effectively articulating an alternative,” which may even be designed to include the “critical” standpoint of his former associates in

the Horkheimer-Adorno group. "All play into the hands of demagogues," he maintains, and all may lead to Caesarism. It is the third mode of apathy that he deems the most dangerous:

Its symptoms and causes have often been analyzed: the growing complexity of government; the growth of bureaucracies in public and private life; the concentration of private social power; the hardening of political parties into machines, which, because of the high cost of politics, tend to exclude newcomers from the political market. (190)

Yet the remedies often proposed, according to Neumann, would actually exacerbate the difficulties.

The two themes he identifies have to do, first, with representation and, second, with bureaucratic administration. Under the former heading comes, first, the general condemnation of representation as a sham of popular rule. Proposals to replace present schemes with "occupational representation," Neumann condemns as "fig-leaves for dictatorship," doubtless thinking first of Italian fascism. "Economic democracy" ignores the circumstance, according to Neumann, that democracy applies specifically and only to states, while designs of codetermination and the like, however useful they may be, cannot be justified by democratic theory. The question of administration has been a recurrent theme for Neumann, and his analysis in the present instance strikingly echoes his retrospective critiques of Weimar. First, he dismisses the notion of "democratic" reorganization of the bureaucracy, with responsibility downward, flatly asserting that this would "tend to destroy an orderly administration, which must be hierarchical." "Still more fateful," according to Neumann, are "dangerous" schemes for "the participation of interested groups in the making of administrative decisions," citing labor administration in Europe, with the bureaucracy as "honest broker" between equally represented parties. If the matter is one where the national interest is at stake, compromises between the interested parties provide no assurance that it has been secured and threaten to grant dictatorial powers to the interests. Concurrently, the groups become part of the apparatus and lose their capacity for "spontaneous responsiveness" to policy and "become incapable of acting as critics of the state."¹⁰

These critiques lead Neumann to a postulated summary of democracy as political system, which differs little from the standard British textbooks he assigned to his beginning classes. The "essence" of democracy, accordingly, is not "mass participation in decisions" but "politically responsible decisions," a concept that Neumann explicates here as "responsibility" to the electorate as a whole through rule by representatives, who are not agents of their constituents but actors in the national interest on their own responsibilities. There are also distinct echoes of Max Weber's use of the term "responsibility," where it refers to a quality of considered judgment rather than answerability. The problematic linkage between the two senses is not addressed at this point, although it would seem to be essential to his claims about democracy. Yet an opening to a less conventional emphasis in this context is provided by his conception of political action beyond a free electoral choice between competing parties. Neumann speaks of the "preservation of spontaneous responsiveness" by parties, social organizations like trade unions and new formations—and the openness of these entities, in turn, to "rank and file pressure."

These democratic elements are jeopardized not only by the factors cited earlier but also by “a further and deeper threat [that] arises from the growing antagonism between the potentialities of our historical situation and their actual utilization” (193). Returning to formulations closely related to his earlier expressly Social Democratic writings, he warns of such a tendency (193) specifically in the uses of technological progress primarily in the service of armaments production. This in turn can be sustained only in “a wholly repressive system.” Neumann reformulates a presumption about the policies essential to democracy: “the execution of large-scale social changes maximizing the freedom of man” (193). He seems to relate this, in turn, to the moral integrative principle of “virtue” set forth by Montesquieu for “republics,” a topic that Neumann mentions elsewhere as the theme of a forthcoming article, of which there is regrettably no trace. In the present context, he finds his initial authority once again in a Platonic dialogue but this time in the person of Socrates’ antagonist, Protagoras. The alternative he sees, however, returns the analysis to Montesquieu. It is “fear of an enemy,” which cannot serve as the “energetic principle” of a democracy. Neumann rejects the myth promulgated by proponents of dictatorship that democracy must degenerate into mob rule. A first priority is to remove the restraints of fear on people, because it is fear that makes a mob. This undertaking points toward one of the last completed articles among his writings, “Anxiety and Politics.”

Neumann concludes his article on “freedom,” as he ended the paper on “power,” with a pessimistic warning from an American philosopher. Having reformulated his warning about the transformation of democracy into dictatorship through an abandonment of liberal elements and the imposition of a creed, he warns, “This will be successful if, in John Dewey’s words, we attain the ‘stage of development in which a vague and mysterious feeling of uncertain terror seizes the populace’” (194).

Anxiety and Politics

Although Neumann’s lecture on “Anxiety and Politics” was delivered to a German audience at the Free University in Berlin, he opens it with a reference to Franklin D. Roosevelt’s pledge of “Freedom from Fear,” asserting that notwithstanding that undertaking there has been everywhere a great and dangerous increase in paralyzing anxiety. Accordingly, he maintains, “Anxiety is or ought to be a central problem of the sciences” because “only a fearless man can decide freely” (270). Having stated that all sciences have as their “great concern [...] the analysis and application of human freedom,” he quickly reasserts the distinctive focus of the science of politics on “the dialectical relation between domination and freedom.”¹¹ Neumann reconciles these statements by a striking assertion that unlike the “traditional disciplines,” political science has no method of its own and must draw on the methods and findings of other sciences to address its distinctive problem. This is reminiscent of his 1949 lecture in the same setting, when he was pleading for a distinct program in political studies but referred to its goals as the acquisition of “technical—or shall we say ‘handicraft’—skills.” Political theory served, in that earlier statement, to give point to materials derived from the distinct disciplines of history and sociology. The range is widened in the lecture now under review, above all, by Neumann’s conviction that psychology is also needed.

Neumann cautions, however, about the danger of “dilettantism” when political scientists draw on the variety of specialized disciplines, like psychology, a risk that can only be minimized by an awareness of limitations and “giving a hearing to” authorities in the fields at issue. In the present context, Neumann asserts, there is also a problem arising from the inadequate state of the discussion of anxiety in psychology. He will, accordingly, provisionally rely on Freud, whose theory seems plausible and unrefuted, although he will say nothing about Freudian therapy “of which I know nothing.” The positions taken in the essay, moreover, are taken provisionally and, above all, to stimulate “more competent scholars.” This introduction represents a striking change of tone for Neumann inasmuch as it projects the study of politics as a discipline dependent on other disciplines, with which it can only negotiate at a distance, although it can in effect dictate the questions to be addressed. It appears, as it were, like an intellectual’s mode of knowing.

This impression is strengthened by Neumann’s use of a long quotation from a classic in the nontechnical cultural mode, Schiller’s *Letters Concerning Aesthetic Education* to introduce the substantive theme of “alienation,” which he brings into the discussion of anxiety. Neumann asserts that this poet’s work “magnificently described man in modern society.” It anticipates the concept of alienation, he maintains, as developed by Hegel in his youthful *Theologische Jugendschriften*—where the crux is the failure of love, as in Montesquieu’s *Persian Letters*—as well as Marx’s early characterizations of the threefold tyranny of the commodity form, which estranges man from nature, self and fellow men. Neumann emphasizes the common theme of division of labor as a mode of alienation but questions the idealization of a Greek countermodel of man as a “universal being” who has been subsequently subjected to mutilation. Because there has never been such a man—with slavery in Greece, for example, undermining that ideal—these important theories are nevertheless deficient. Neumann proposes instead a model of alienation that appears in three strata—psychology, society and politics—and differs in its expression in different structures of society.

As signaled earlier, Neumann’s examination of the psychological linkage between alienation and anxiety consists primarily of a report on Freud. He begins with Freud’s denial of the possibility of complete happiness for man, who inevitably suffers from the vagaries of external nature, illness and mortality as well as delimiting social institutions. Yet Freud harbors no hostility to civilization, since the conflict between libidinal desires and negative limitations makes for progress, in his view. There is always a gap between reality and the promise of instinctual gratification from technological progress, and the renunciation of immediate instinctual gratification can and must be “economically” compensated if disorders are to be prevented. Freud does conjure up an image of paired lovers fully satisfied in one another but denies that such an exception can be realized.¹² Neumann notes, at this point in his presentation, that Freud is indifferent to differences among societies, which are decisive for the broader analysis Neumann will offer. With that said, he characterizes the libidinal renunciations identified by Freud as instances of psychological alienation—or better, alienation of the ego from the dynamics of instinct.

The question arises, then, of the “logical connection” between alienation and anxiety. As “outsider,” Neumann announces his abstention from theoretical issues about the genealogy of anxiety (as in differences between Freud and Rank) but settles for a

“more or less acceptable proposition” to the effect that there is a distinction to be made between true anxiety, as fear of an external danger, and neurotic anxiety developed within the ego (although it may also have a real trigger). Although anxiety is located in the ego, Neumann continues, it is a self-punishing response to internal threats to libidinal demands. Under disturbed conditions, dangers are exaggerated and inner anxiety is compounded, resulting in depressive or persecutory anxiety, a distinction important to the analysis of political expressions. As Neumann turns to the analysis of political behavior, however, he speaks of anxiety as also playing a protective and warning role, without referring to the presumed difference between “true” and “neurotic” anxiety. Insofar as it paralyzes man’s ability to resist or escape danger, the effect is destructive. At this point, Neumann introduces a third class of possible effects of anxiety, which he designates a “cathartic” effect. His formulation suggests that this is not to be found in the literature and may well be grounded in Neumann’s reflections on his own experience. Qualifying his earlier assertion that anxiety is antithetical to free decisions, he writes,

One may perhaps even say (although I cannot prove this) that the man who has conquered anxiety in coming to terms with a danger may be more capable of making decisions in freedom than the one who has never had to seriously wrestle with danger. (276)

Neumann next remarks that his treatment of the relations between alienation and anxiety has as yet been at the level of individual psychology and thus insufficient for political topics. He turns to questions concerning the phenomenon of an identification of masses with leader, whom they render the blind obedience that he in turn acts to secure and to maintain. A predominant “current prejudice” in group psychology, responding to recent history, draws on LeBon’s “aristocratic” thesis, equating masses with ruthless mobs, due to their “racial” integration and the hypnotic powers of leaders. Freud correctly counters such explanations with an understanding of the libidinal character of “the cement which holds the mass together and ties them to the leader, [...] a sum of instincts that are inhibited in their aims” (277). Neumann offers this as an understanding of the link between alienation and mass behavior and he characterizes it as a regression on two levels. Neumann clearly presupposes a general familiarity with Freudian concepts and theses, since his present formulations are quite obscure, although their point is clear enough. It is a historical regression, he maintains, since it reverses the individualization due to man’s emergence from the tribal horde—and it inflicts psychological damage to the ego because it serves as a “substitute for a libidinal object tie.”

He qualifies his very general statements by insisting that the characterization applies only to libidinally charged identifications between masses and leaders and probably not where the identification is between lovers or small groups, as with the “cooperative identification” within a small group of comrades in military service. Neumann also insists on the distinction between affective identifications and the nonaffective ones characteristic of organizational memberships, whose group-psychological analysis he credits to the American psychologist, William McDougall. With these distinctions laid down, Neumann focuses on affective identification of masses with leaders, “built upon nearly total ego-shrinkage,” which he calls Caesaristic identification. He writes,

Caesaristic identifications may play a role in history when the situation of masses is objectively endangered, when the masses are incapable of understanding the historical process, and when the anxiety activated by the danger becomes neurotic persecutory (aggressive) anxiety through manipulation. (279)

Since such identification need not follow every threatening situation and since not every mass movement need be Caesaristic, the question is about the historical conditions under which this happens.

Before directly addressing this problem, however, Neumann lays out at considerable length a thesis for which he claims ownership, namely, that Caesaristic identification can be diagnosed by the prevalence of a conspiracy theory of history. In general terms, such a theory personifies the historical process into a confrontation between villains and saviors. He makes a special point of rejecting interpreters' characterizations of the "villains" in these scenarios as "scapegoats." They are to be extirpated, he insists, and not merely sent into the wilderness. Such deadly readings of history are made all the more dangerous, Neumann says, because they will contain what he calls a "kernel of truth." The "thesis" is summarized as follows:

With this view of history, true anxiety, which has been produced by war, want, hunger, anarchy, is to be transformed into neurotic anxiety and is to be overcome by means of identification with the leader-demagogue through total ego-renunciation, to the advantage of the leader and his clique, whose true interests do not necessarily have to correspond to those of the masses. (279–80)

Neumann acknowledges that he has no "conclusive" proof, but he collects a number of historical cases to underpin it. His first example takes up the story of the early Renaissance Roman leader, Cola di Rienzo, a historical sequence he has used before and that evidently had special significance for him, perhaps because of some parallels, his language suggests, between this story and the failure of the German Revolution of 1918. In any event, the account is not a simple condemnation. Cola is a young political leader who articulates the view of the Roman masses that their bitter condition is entirely due to exploitation by the purely destructive aristocracy. Neumann concedes that this view of their dominators has much truth, but he insists nevertheless that it exhibits the pattern of false concreteness, inasmuch as the impoverishment and disorders in Rome at the time had numerous situational causes and would not be mended even if the aristocrats were extirpated. He concludes that Cola during his brief rule fits the Caesaristic model, but he qualifies that characterization by noting that Cola shared the anxiety of the masses and "was not enough of a Caesar" in that he failed to liquidate [the enemy] "whether out of cowardice, decency, or tactical considerations [...] [and accordingly] had to fail." This remark is reminiscent of Neumann's more bitter exilic condemnations of Friedrich Ebert, especially since Neumann closes the recitation with the observation that the case is in fact on the margin of progressiveness, with its credible aspirations for the "realization of the freedom of man as its goal."¹³ Neumann's assessment of violent political change remains unresolved.

Neumann turns next to the three parties in the religious wars in France during the sixteenth century. While his sparse historical references do not add much, this example is interesting not for his depiction of Caesaristic patterns marking the two religious antagonists but for his sketch of Bodin and the *politique* thinkers who set forth a case for a nonaffective identification with the state, a vision implemented under Henry IV. In a quick aside, Neumann refers ironically to the Caesaristic motifs in John Knox's denunciation of "the monstrous regiment of women," which he had to disavow when his cause was in fact upheld by Queen Elizabeth.

The further development of Neumann's historical treatment of Caesaristic examples takes the form of "five fundamental models of conspiracy theories," marked by the manipulative intensification of anxiety, identification and false concreteness. The models are the supposed all-commanding conspiracies by Jesuits, Freemasons, Communists, Capitalists and Jews. The first two, Neumann asserts, illustrate the dangers posed by the "element of truth," which strengthen the theories at the outset, before they have been institutionalized by Caesaristic means. He cites the actual conspiratorial elements in the designs of Jesuits and Freemasons (especially in the French Revolution). "The theory of the [hyper-potent] Communist conspiracy—[as exemplified by reading the Russian Revolution as product of a Blanquist conspiracy, the German Revolution of 1918 as Leninist product, and the formation of satellite states after the Second World War as a mark of the powers and dangers of conspiracy]—follows the same model and serves the same purposes" (284). Neumann counters these manipulative simplifications with brief indications of the actual historical complexity of the events as well as of the uses of the distorted accounts. He focuses especially on the false imputation of Communist rule in the satellites to the power of the conspiracy—and thus its threats to the West—rather than to the presence of the Red Army. No conspiracy could have taken the West:

Nevertheless, the conspiracy theory is believed not only by the masses, but even by serious writers who, strongly under the influence of Pareto's simplistic antithesis between elite and masses, generally tend to see in politics nothing but the manipulation of the masses by the elites, and for whom psychology and political science are nothing but techniques of manipulation. (284)

After this interim summation, Neumann offers a quick survey of American movements marked by conspiracy theories, drawing on the work of his Columbia colleague, Richard Hofstadter. He cites the anti-Catholic Know-Nothing Party, the Ku Klux Klan and the Populist thesis of an anti-silver conspiracy, prefacing these brief allusions with a restatement of the larger political significance of such theories. Potential anxiety is actualized through reference to conspirators, he contends, and then easily becomes neurotic persecutory anxiety, which can lead to totalitarian mass movements. The placement of this statement as an introduction to American cases may well have significance as a further indication of the fears signaled by the concluding section of his article on freedom, where Neumann focuses on contemporary American examples under the heading of the "Crisis of Freedom." By contrast, his treatment here of the Soviet myth of "capitalist encirclement" as an instrument of Stalin's legitimation is rather cursory.

The model of conspiracy treated at greatest length and designated as “most important” by Neumann because of its political role in the theory of the Jewish conspiracy, as it has expressed itself politically in the mode of anti-Semitism since the forgery of the Protocols of the Elders of Zion at the beginning of the twentieth century. In view of the criticisms of Neumann’s treatment of this theme in his earlier writings on Nazi Germany, it seems very likely that the emphasis on this case is also a function of Neumann’s determination to explain and justify one of his most controversial claims. In the present context, he writes,

As early as 1942 I wrote [in *Behemoth*], in opposition to an almost unanimous opinion: “The writer’s opinion, paradoxical as it may seem, is that the German people are the least anti-Semitic of all.” I still hold this view today, for it is precisely the weakness of spontaneous anti-Semitism in Germany that explains the concentration of National Socialism on it as the decisive political weapon. (286)

To make his case, Neumann begins with the awkward question of the “kernel of truth” he has postulated for potent conspiracy models. He cites the role of the Jews in the crucifixion as a source of hostility among Christians, although he also acknowledges that this story is ambivalent from the standpoint of many church leaders, since this event is essential to the possibility of salvation. The “truth” in this condemnation hardly suffices for the theoretical role Neumann ascribes to it, especially in a population that is relatively free of religiously grounded anti-Semitism, as he suggests. It seems reasonable to speculate that Neumann’s reluctance to make the German population at large in any way responsible for the anti-Semitic component of National Socialist rule has to do with his eagerness to put the labor-monopoly conflict at the heart of his analysis and to further an anti-fascist reading of events.

Neumann turns then to the policy of the National Socialists to account for “total anti-Semitism.” Its success is grounded, according to Neumann, in the inability of German people to understand their “moral, social, and political homelessness” in the Germany of 1930–33, in the wake of defeat, a tame and unfinished revolution, the destructive inflation, the deadly depression, nonidentification with democratic parties and a dysfunctional political system. Because they cannot understand their own true anxiety resulting from these conditions, they are susceptible to having it converted into neurotic anxiety by acts of terror and the propaganda of anti-Semitism that have the goal of welding the people to the charismatic leader in a campaign of conquest and racial hegemony. Neumann next offers an explanation for the choice of anti-Semitism to implement this policy. He suggests a prior decision by the Nazi movement to use hatred of an enemy to integrate the differentiated people and then the selection of Jews because the Communists are too strong and the Catholic Church is needed. This notion of a tactical choice is curiously silent about his early preoccupation with frantic anti-Semitism among the National Socialist leadership, from Hitler down. Neumann proceeds instead to rehearse a number of factors in a calculation of instrumental rationality. The Jews form the best target, he suggests, because they appear strong but are in fact weak, because they are relative strangers and because they serve as symbols of “parasitic capitalism” through their

positions in commerce and finance. It is interesting that Neumann does not list these considerations among the “kernels of truth” in the anti-Semitic denunciations, although the reasons are not hard to guess. Nor does he reiterate the spearhead thesis according to which the campaign against the Jews was primarily a preparation for a concerted attack on Christianity, an analysis central to the earlier writings, including the passages in *Behemoth* from which he selectively quotes and whose conclusions he professes to reaffirm.

In a transition to a more general sociological discussion of “situations of collective anxiety, identification, and guilt,” Neumann notes that susceptibility to the anti-Semitic conspiracy theory in Germany was not a function of contrasting levels of wealth or education, but that loss of social status did make a difference through “resentments arising from damaged self-esteem,” in the language of Harold Lasswell. The larger question is about the movement from universal psychological potential anxiety to mass attempts to overcome anxiety through ego-surrender to a leader, reinforced by false concreteness and a theory of conspiracy. Neumann begins by taking up his earlier reference to the social stratum of alienation. First comes the “separation of labor from the product of labor through hierarchical division of labor” (288) characteristic of modern industrial society. German intellectuals speak of “de-spiritualization” of labor, but this conception itself dangerously deepens anxiety, inasmuch as the failure to accept the inevitability of changes in labor and to concentrate on limiting its duration is a source of social anxiety. Neumann locates this development in the attitude of the clerical “new middle class” whose actual conditions of work are like those of the working class—and even more poorly compensated—but who become especially susceptible to Caesarism because they cling to middle-class ideology and unsustainable customs.

In speaking of social-economic factors, Neumann is adamant that competition does not necessarily cause anxiety, as the psychologist Karen Horney maintains. If competition corresponded to the model set forth in some well-known passages from Adam Smith’s *Wealth of Nations*, it need not have that effect. Shifting to a different level of analysis, Neumann maintains that competition of this pure sort has never and can never exist, and that the relations characterized as competition hide an uneven struggle for power and control, where the impotence of the dependent subordinates crystallizes as anxiety. Even when conditions approximate to the unattainable mode of competition, the “uninformed”—like the old middle class in Germany—will respond to economic crises with susceptibility to pseudo-explanations centered on false concreteness. Neumann expands on his rejection of anxiety as an invariant response to competition as such with a footnote reference to “petty bourgeois socialism,” as expounded by Proudhon and others, which sees social distress as a result of defective distribution due to competition rather than an exploitative mode of production. This incidental note implies a commitment to Marxist social analysis that is rarely suggested in Neumann’s late writings. Another unusual feature of this discussion, on the other hand, is Neumann’s extension of the relevant fear of degradation beyond social classes to relations between whites and blacks in South Africa as well as the American South, where “the anxiety of a dominant white minority that it will be degraded through the economic and political rise of Negroes is used in propagandist fashion for the creation of affective social movements, which frequently take on a fascist character” (290). This is almost certainly the sole reference to these conflicts in

Neumann's writings, but it recalls the note of concern about the state of freedom in the United States elsewhere in his late writings.

The final section of this article returns most directly to the conclusion of its predecessor, Neumann's warnings about political alienation in democracies. Expressly citing his earlier segment on volitional freedom, he introduces the topic of nonparticipation in democratic politics. He breaks down into three variants the phenomenon that, as he remarks, American literature lumps together as "apathy." The first is associated with a dismissive attitude to politics, as a matter for maneuvering cliques, and the second, with the Epicurean attitude that is satisfied with order and invests its energies in self-perfection. It is the third variant, however, that Neumann labels "political alienation" as such and judges to be the most dangerous. He characterizes it as a conscious rejection of the democratic political system as incapable of meeting needs and not susceptible to change by its rules of the game. Neumann argues that this response arises within social alienation and, if widespread, leads to partial paralysis of the state. "It opens the way," he maintains, "to a caesaristic movement which, scorning the rules of the game, utilizes the inability of citizens to make individual decisions and it compensates for the loss of ego with identification with a Caesar" (291). To succeed, such a movement must institutionalize its constitutive anxiety and move fast, given the instability of its affective base—something not required by parties or movements not based on such factors. And if Caesarism achieves power, it must avoid "the extinction of its affective base by its bureaucratic structure" (291). This is done, Neumann affirms, citing Montesquieu's theory of despotism (which he traces to Aristotle and Machiavelli), by institutions of propaganda and terror.

An awareness of these provisions, Neumann maintains, helps to clarify the profound psychological difference between states of affairs where the anxiety that is a factor in every political system is depressive and persecutory rather than, as in "halfway liberal systems," where anxiety is true anxiety. This difference is clarified, Neumann urges, by recognizing the distinctive link between institutionalized anxiety and guilt in the Caesaristic regimes. Neumann opens with two classical accounts of the periodic publicly decreed murders of outstanding Helots in Sparta committed by select citizens, beginning his account with the version of Thucydides, whom he calls "the greatest of all historians" and following with Plutarch's version. Next, Neumann cites Dostoyevsky in *The Possessed*, where the rationale of such actions is made plain, inasmuch as the leader's self-serving scheme is to bind a group together by ordering it to kill one of its own members. After the literary examples, Neumann returns to Freud on the relations between anxiety and guilt. He excuses himself from engaging with the psychoanalytical explanatory thesis derived from the conception of the Oedipus complex as the source of universal anxiety but offers his own "psychological analysis" of the connection, based mainly on his own historical examples, as anxiety is manipulated and sustained in a "totally repressive society." Given anxiety and unconscious feelings of guilt, the leader seeks to create neurotic anxiety to bind the led so that they would perish without identification with him. He orders the commission of criminal acts sanctioned by the imposed group morality, fully aware that the older moral convictions in the superego are not extirpated so that the suppressed guilt becomes panic-stricken

and subject to pacification only through further unconditional surrender to the leader and the commission of new crimes.

Neumann's conclusion, as in the articles on power and freedom, is at best ambiguous, when looking at the prospects in his own time. He begins with a sweeping statement that the world is exceptionally susceptible to regressive mass movements, surprisingly exempting only Germany because of continuing aftereffects of recent history. And then he asks about the prospects for countering this clear and present danger. The troubling authority he cites this time is not an American philosopher, but Friedrich Schiller, whose account of man in "modern society" opens the present essay. He asks first whether the state can counter the trend toward neurotic-destructive form of the anxiety that is in any case a feature of human existence. He answers with a quotation from Schiller, denying this possibility. The actually existing state caused the evil and cannot be replaced by an ideal version, since this would presuppose the very humanity whose loss is to be reversed. And he quotes Schiller also on "our educators'" notions that education can provide a remedy: "how can the character ennoble itself under the influence of a barbarous civil polity?" Neumann turns next to the possibility that love might serve as a solution for individuals—a nonpolitical rumination that can be traced back to Neumann's treatment of Montesquieu's *Persian Letters* and his account of Freud's unattainable alternative to universal anxiety. In any case, he concludes on this occasion that this possibility is at best accidental and that the risk of loss is enormous.¹⁴

Without providing fresh grounds for retracting his seeming endorsement of Schiller's pessimism, Neumann nevertheless concludes on a note of exhortation:

Hence there remains for us citizens of the university and of the state the dual offensive on anxiety and for liberty: that of education and that of politics. Politics, again, should be a dual thing for us: the penetration of the subject matter of our academic discipline with the problems of politics [...] and the taking of positions on political questions [...] We must suppress our ignorance, inertia, and our revulsion from the alleged dirt of day-to-day politics. We must speak and write. Idealism, as it is expressed so nobly in Schiller's Letters must not be for us only a beautiful facade, it must not once more become that notorious form of idealism which in the past disguised the most reactionary and anti-libertarian aims. Only through our own responsible educational and political activity can the words of idealism become history. (294–95)

What Remains: Political Study and Political Education

In July 1954, in the last of his completed texts and a few months before his death, Franz Neumann took up the theme of the intellectual vocation of scholars and teachers with which he had ended his article on "Political Anxiety." Since the occasion was a celebratory event, marking the 200th anniversary of Columbia University, in the presence of a select academic and political audience in Bonn, the lecture lacked its predecessor's overtone of uncertainty about the effectiveness of education in the face of mounting anxiety, although the topic is mentioned and the earlier study cited. Yet, as is so often the case with Neumann, what may appear as a mere concession to an occasion is given integrity by a redefinition of the governing question. In the present instant, the prime

issue is not a diagnosis but the proclamation of a mission that neither the speaker nor the audience can evade, whatever the ultimate outcome. In that sense, it was Neumann's "Here I stand."

Neumann's initial question is about the justification of scholarly inquiry by the criterion of freedom, which is his ultimate ethical norm. This appears to be implausible inasmuch as freedom is generally understood to mean nothing but the absence of restraints and thus to be gauged by the extent of negative freedom, as institutionalized in juristic limitations on the state. From this standpoint, the state, as the sole source of coercion, is in effect the enemy of freedom. Neumann maintains that he agrees with the overall concept but makes this agreement dependent on three qualifications. The state need not be an enemy of freedom but may often serve as its friend. He expands on this "exception" by identifying the state as the representative of the universal interest against monopolistic impositions from egoistic nonstate agencies. While the limitation of coercion remains a correct principle and essential to a rational legal system, where the presumption in favor of freedom can be overridden only by duly enacted law and due legal process, this indispensable mark of a "civilized state" is insufficient. Neumann's third "qualification" moves his argument into the sphere of his cognitive dimension of freedom. Expressly citing Idealist philosophy, Neumann expands the concept of freedom to include the self-determination of men, the unfolding of their potentialities. This in turn presupposes knowledge of the self to be directed, which comprehends, Neumann says, the knowledge of external nature, human nature and the historical process.

The connection between inquiry and freedom, Neumann maintains, has been largely lost in favor of linking knowledge exclusively to utilitarian calculation and pragmatic valuation. This aspect of knowledge, Neumann maintains, is of no interest to him, except insofar as it may pose a danger to the interest in freedom. In any case, there is not, in his opinion, a normative scale for the diverse modes of inquiry. Natural scientists, humanists, social scientists, psychologists and other classes of inquirers are all equally in the service of emancipatory knowledge. This observation leads Neumann somewhat unexpectedly to the defense of science against the critiques of "scientism," which he identifies with obscurantism and finds "consciously or unconsciously play[ing] into the hands of political restrictions on inquiry." And his authority for rejecting obscurantism and for recognizing the link between freedom and the recognition of necessity brings him back to Epicurus, who has been an important focus for Neumann, although his judgment of him fluctuates, as will appear later in this very essay. The "great tradition" runs from the Epicureans to Spinoza, Hegel and Marx, he maintains, and can be seen to underlie the self-understanding of such contemporary natural scientists as James B. Conant. The passage that Neumann quotes takes the argument beyond the initial terms of reference. Natural science in this expansive sense is not narrowly focused on pragmatic uses of knowledge. It offers knowledge to expand the "conceptual field of the common man," even if much is lost in the transmission. Natural science is essential to freedom, Neumann asserts, even if its products are used for purposes hostile to freedom.

As a decisive embodiment of the principle at stake here, Neumann takes a paragraph from Goethe's history of the theory of colors, where the author marvels at the unique contribution of Copernicus to the human spirit by means of a theory "which entitled

and challenged him who accepted it to a hitherto unknown, indeed unimagined, freedom of thought and greatness of sentiments” (204–5). Neumann turns next to the second stratum of the cognitive freedom he has been discussing. This concerns understanding of human motivations. The model in this case is Spinoza, whose geometric conception of human actions and desires founds scientific psychology. His formulation of freedom as the recognition of necessity is a restatement of Epicurus’ leading principle, and it is followed by Freud’s dictum that rational action presupposes such insight. Neumann concedes that such psychological knowledge can be exploited through the “management of men,” just as natural science can be subordinated to destructive technology. And he insists just as forcefully that this must not be taken as a rationalization for obscurantism or hostility to technology as such, as if the “good old” prescientific days lacked their own modes of destruction and “seduction of souls.” To the extent that Neumann offers a strategy for managing the promise and threat of the two dimension of knowledge he has laid out, he follows the pattern of his essay on “Freedom.” The crux of the matter is the historical situation, knowledge of which is the third stratum of knowledge, as pursued by a sequence of thinkers, including Bodin, Harrington, Montesquieu, Vico, Hegel and Marx. His summary statement may be read not only as an echo of his early diagnoses of the progressive era in his time but also as a latter-day grim caution about the immediate prospects for freedom: “Insight into necessity of the historical process helps us to become free. For in different historical situations, the possibilities of human self-determination are different” (206).

Neumann next turns to a comparative inquiry into the question of the political conditions favorable to inquiry, given the inappropriateness of utility as a measure. He notes, for example, the absurdity of trying to gauge the study of literature or Greek philosophy by such standards. And when it comes to the natural and social sciences, deference to public utility risks state prescriptions of matters to be studied. “Scientific inquiry,” he reiterates, “is [...] a decisive signpost in the determination of the freedom of man; only the conscience of the scholar, and no other tribunal can decide on this point.” When Neumann turns after this summary preface to the question of the optimal political conditions for inquiry in his own time, he asserts that scholars and academic teachers will be in agreement that it is a regime of juristic freedom. He asks then whether this has always been the case and, if not, why it should be the case at the present.

His first answer is that such an assertion would deny the achievements of Greece, Rome and the Middle Ages. Neumann says that he knows of no comparative study to account for these epochs in intellectual achievement, and he proposes an “unproved hypothesis”:

It seems to me that a homogeneous society is at least as fertile a soil for scientific and artistic production, as the competition and the antagonistic society of the modern period. [...] Greek philosophy and art, medieval theology, philosophy and the beginning of scientific thinking [...] are manifestations of closed and relatively homogeneous societies in which there was no freedom in our sense. (207)¹⁵

Neumann qualifies this judgment by distinguishing between, at worst, “halfway genuine” closed societies, even at present, and those whose homogeneity is imposed by

terror, as in the cases of Sparta, Nazi Germany and Stalinist Russia. Neumann extends the era of productive closed societies through the years of the Italian tyrannies and the early phases of absolutism, where art and science were encouraged for the sake of prestige rather than utility. After the seventeenth century, however, competition emerges as the universal principle of social-political entities. He traces this development through three stages, as understood, in historical sequence, by Bodin, Locke and John Stuart Mill. In the case of Jean Bodin, the historical reality to be comprehended was warfare between irreconcilable religious parties so that a doctrine of religious freedom issued as reason of state. John Locke, according to Neumann, takes the next step through the projection of an association of competing equals grounded on principles of natural law, although he distinguishes between Christians who are full fellows and non-Christians, who are only tolerated. Neumann's admiring treatment of John Stuart Mill, finally, is unique among his writings and may be in some measure a function of searching for indisputable common ground for the occasion.

Neumann quotes Mill at length about the importance of contrary opinions, conjecturing that Mill's own experience with idealist writers after his initiation in utilitarianism enters into his understanding and summarizing his position as upholding the process of competition as such, with no distinction between prevailing and "tolerated" opinions. Mill recognized, according to Neumann, that parliamentary democracy must be supported by comparable principles of society, since the latter may pose the greatest threat to freedom. Expressly putting aside the "philosophical correctness" of Mill's problematic theory of truth, Neumann derives from Mill's analysis a basic rule for heterogeneous societies:

There can be no principle of adjustment other than that of competition; that in this case every truth is only relative; that only the contest of opinions—each of equal significance—is the institution that enables men to live together. (210)

Since Neumann does not address the question of selecting and legitimating "winners" in such competitions, this passage must be read to refer only to coercive interferences in disputes that must ultimately be governed by appropriate processes of rational judgment. Neumann accepts, for example, the reasonableness of asserting that monarchy might be as good as liberal democracy from this standpoint, and he asserts, in fact, that this was once the case. But, he insists, "Today, anti-democratic tendencies [...] must always take the form of totalitarian dictatorship, [...] and liberal democracy [is accordingly] the ideal political institution for free scientific inquiry."

Neumann turns next to dangers that threaten democracy specifically in its capacity as host to the advancement of knowledge. He cites first the theories advanced by a tradition of commentary from De Maistre to Ortega y Gasset, according to which democracy must turn into mob rule headed by a tyrant. Leaving aside the "Augustan anthropology" that underpins the claim that this outcome is fatally grounded in human nature, he concedes that such possibilities exist, but he notes that the theorists of their inevitability "strive to convert their theory into reality through propaganda and politics," instead of accepting the "duty of intellectuals to oppose such views" (211). A tendency

to press upon intellectual and artistic life in the direction of a “conformist monolithic culture” will accompany democracy, Neumann recognizes, as does a certain distrust of intellectuals, who are viewed as outsiders [*metics*] and seen as unable to identify wholly with the political system, a posture that Neumann has in fact elsewhere urged on his fellows. Tacitly accepting the tension, Neumann asserts, “Such tendencies become dangerous only when they appear organized on the political scene, led by a demagogue, equipped with financial means”(211). More broadly, Neumann closes this subject with a call to “those to whom the maintenance of liberal political institutions should matter most—the scholars and teachers, intellectuals and artists—resolutely [to] conduct the fight for liberal political institutions” (212).

Neumann does not close his larger inquiry with this uncontroversial exhortation but turns next to dangers to the liberal supports for scientific inquiry arising from an ongoing structural transformation into a “corporate” kind of closed society. Individuals come to be valued for their status within protected social corporations, and this threatens most directly the natural and social scientists whose work is ever more affected by specialization, division of labor and ever increasing costs of research. Even if the state, which is steadily more prominent in the facilitation of such research, abstains from interference with the goals and methods of inquiry, scholars become functionaries within hierarchical, bureaucratized entities. Neumann accepts the need for specialization but urges the formation of ever more egalitarian research communities so that the “assistant” is recognized as “colleague.” He concludes, “Scientific inquiry stands and falls with the preservation of individual and co-operative responsibility of the scholar for the results of his research” (213).

Neumann does not stop there with the question of responsibility. Given the interdependence of inquiry and political freedom—notably the provision of juristic freedom by the state—Neumann asks whether the democratic state does not in turn have any valid demands on scholars and scientists. In reply, he first cites the distinction between propaganda and legitimate research and teaching. Everyone knows that the difference exists, even if it is not always easy to draw the line. In view of his experience during the Weimar years, he admits to a certain reluctance to deny the state the authority to enforce such lines, but he insists that only scholars themselves can control such boundaries, acting through criticism and collective responsibility, without the tempting trend toward mutual protection and caste spirit. Neumann makes no effort to reconcile this caution against propaganda in the guise of science with his sweeping formulations of Mill’s plea for freedom of speech. Toward the very end of the talk, moreover, he asserts categorically, “For us, as scholars, an approximation to the truth can result only from scientific discussion.” Such gaps are not surprising in an address for a festive rather than scholarly academic occasion, but we are drawn to this talk not only because of its topic and timing but also because it remains quite close, as it appears, to a statement of the uncertainties pressing on Neumann.

The last turn of his argument brings him to the “volitional” dimension of freedom, the proviso that “only the political act itself, our activity, can bring and secure freedom.” He returns to his long and uncertain dialogue with the “Epicurean” standpoint, which he had cited earlier in this talk in support of the thesis that freedom presupposes knowledge

of necessity. Men of knowledge justify indifference to politics by taking the side of Atticus the Epicurean, in his correspondence with Cicero, since the civic position of the latter leads him to fateful political alliances.

Neumann's counterarguments are cast in the language of common sense. He writes first, "Today, from a moral point of view alone, I consider the Epicurean attitude to politics irresponsible. When the state gives us security and still leaves us freedom—should we then be uninterested in politics?" (215) Then he argues that Epicurean abstention is also pragmatically indefensible, since only the utterly insignificant or the genius can count on immunity from politicians' designs, and even these are subjugated in totalitarian states. Society is too integrated, communications are too refined and supervision is too developed for anyone to expect security and order without engaging actively in their maintenance. Still, the obligation is met, according to Neumann, regardless of the positions taken on such "great political questions" as the choice for or against democracy, any one of contrasting foreign policy alternatives or a stand for or against a liberal economy, as long as the judgments can be justified through "scientific discussion." At the very end, Neumann calls on Max Weber, notwithstanding a preliminary unspecified reservation on "objectivity of social science":

All political questions ought to be discussed openly and without rancor; [...] no scholar and teacher has the obligation of accepting a political system, but [...] each of them has the obligation, knowing his own prejudices, of discussing openly and rationally every political action and conception. (215)

Neumann's public record, then, closes with a liberal exhortation that can also be read as an unneeded apology for the intellectual life that he waged with such determination and force.

Notes

- 1 In "Conciliation with America," Edmund Burke cites the same passage from Bacon.
- 2 Neumann's examples are Peisistratus, the emperor Augustus and the late Medieval Papacy.
- 3 Karl Mannheim, "The Prospects of Scientific Politics: The Relationship between Social Theory and Political Practice," in *Ideology and Utopia* (London: Routledge and Kegan Paul, 1946), pp. 97–171. A difference between Neumann and Mannheim is that Neumann refers to general features of historically recognized political theories while Mannheim refers to contrasting structures of political thinking in political life. Yet Mannheim's characterizations of the structures at issue rely primarily on the same class of authors as are cited by Neumann. For a collection of current studies focused on the theme of reflexivity in Mannheim, see essays by Ralf Bohnsack and others in David Kettler and Volker Meja (eds.), *Anthem Companion to Karl Mannheim* (London: Anthem Press, 2018).
- 4 Franz L. Neumann, "The Concept of Political Freedom," *Columbia Law Review*, Vol. 53 (November 7, 1953), pp. 901–35. Cited from reprint in Franz Neumann, *The Democratic and Authoritarian State* (Glencoe: Free Press, 1956), pp. 160–200.
- 5 Neumann did get a grant from the foundation, but the patronizing treatment of his proposal by the two most influential political theorists of the time—Robert McIver and George Sabine—tell much. Neumann evidently began to lose faith in his own department on these matters, as witness his attempt to secure funding for a separate Institute of European Studies in his

- last year, although his standing there was also undermined by his action in applying to two foundations for the same project, as revealed in the correspondence of the chair, Schuyler Wallace.
- 6 His footnote cites Wilhelm von Humboldt, the founding philosopher of the German theory of “cultivation” [*Bildung*], whose work was also uniquely important to John Stuart Mill.
 - 7 There is a similarity here to John Stuart Mill’s presupposition of “civilization” in his argument in “On Liberty.”
 - 8 There is no express evidence that Neumann took sides between the Labor government (1945–50) and Laski’s vehement opposition to its moderation after the war, but it seems unlikely that he would have stopped attending to the situation. On the differences between Laski and Atlee, see John Bew, *Clement Attlee. The Man Who Made Modern Britain* (Oxford: Oxford University Press, 2017).
 - 9 In a manner not paralleled elsewhere in his writings, he refers his readers to the “delightful” novel by Max Radin, *Epicurus my Master* (1949), which is set in the last days of the Roman Republic and projects new hope for action only with the emergence of Christianity.
 - 10 Neumann’s discussion of interest groups does not refer to the American debate initiated by his Columbia colleague, David B. Truman, who emphasized—and praised—the centrality of interest-group negotiations in the American policy process, challenging the Anglophile analysis underlying “Towards a More Responsible Two-Party System,” the 1950 report of an American Political Science Commission.
 - 11 In the absence of the original German text, it cannot be known whether Neumann in fact intended a shift from his formula of “power and freedom” to “domination and freedom” or whether the changed formula is simply a matter of the translator’s judgment.
 - 12 There is no way of knowing whether Neumann was writing in critical anticipation of Herbert Marcuse writings on Freud, published a little over a year later, which may well have been under discussion between them.
 - 13 In Neumann’s unfinished “Notes on the Theory of Dictatorship,” he returns to the story of Cola di Rienzo, now with greater historical concreteness. Yet he retains his surprising ambivalence about this case: “[H]is administration was generally sound and progressive, notwithstanding his rapid assumption of the role of a charismatic leader. But in order to maintain his power Cola would have had to develop even more intensively the totalitarian trends that appeared in his administration, for his major problems were to gain an adequate base and to eliminate his enemies, the barons. In both of these he failed. The bourgeoisie [...] proved an unreliable ally. The barons were humiliated publicly, but, whether from fear or inborn decency, Cola did not liquidate them” (*The Democratic and the Authoritarian State*, 243).
 - 14 It should be noted that this article was prepared at the time that Neumann’s closest intellectual companion, Herbert Marcuse, was completing work on *Eros and Civilization*, where the obstacles to the saving power of love is the prime theme. There is no more than a trifling documentary record of exchanges between the two friends.
 - 15 Neumann’s thesis about “closed societies” directly opposes the interpretations of Karl Popper, whose study of the “The Open Society and its Enemies” first appeared in 1945. The terminology is new in Neumann’s work, but there is no reference to Popper [...] or to Henri Bergson who was the first to use the distinction between “open” and “closed” societies, with the latter antithetical to new knowledge or art.

CONCLUSION

In the spring of 1954, Franz Neumann advised the older of the present authors to abandon a grandiose dissertation project on numerous writers attacked by Karl Popper as “historicists” and to limit his study to the little-known Scottish moral philosopher, Adam Ferguson, who is occasionally classed with this tendency. It was not until many years later that the point of the assignment became altogether clear. Ferguson had to be understood as a writer in two distinct modes. He was an unoriginal moral philosopher in the Common Sense school designed to counter David Hume’s skeptical philosophy, but he was also a teacher and commentator who viewed social and political designs from the standpoint not of the “spectator” but of the “actor.” It was in the latter capacity that he projected a scheme of strategic norms for conflict-ridden historical phases rather than abstract moral maxims based on universal laws of human nature to provide orientation for active participants in social and political actions. The commercial society, he thought, precluded civic virtue in the classical sense, but it opened a range of other ethically meaningful choices and set a menu of weighty political alternatives. His master was Montesquieu. Yet, since he was a contemporary of Adam Smith, he offered a more complex reading of the modern social structure, with special emphasis on the division of labor as a critical irremovable factor, a refinement for which he was acknowledged by Karl Marx. Neumann’s Marx is above all the Marx of the political journalism, Marx as public teacher. That is, we think, what it means to be a public intellectual. We have followed Neumann quite closely through his years of political study and intervention, acknowledging his evasions, errors and perplexities because we think practical political understanding entails such risks and because we think also that his career exemplifies the highest standards of such an undertaking, due ultimately to his deep respect for evidence and his openness to instruction through experience as well as the thoughts of others. The greatest tribute to Franz Neumann is that there cannot be a “Neumann school” as there is a school—to remain within his generation of exile scholars—of Leo Strauss and Hanna Arendt. Thinkers like Franz Neumann are not authorities to be accepted or denied: they are intellectuals to be reckoned with, even some generations later.

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