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Hans Kelsen and Eric Voegelin: The History of a Divergence

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During January and February 1951 Eric Voegelin delivered six lectures at the University of Chicago under the title "Truth and Representation." His lectures were sponsored by the Charles R. Walgreen Foundation for the Study of American Institutions and were part of a series of lectures by many of the most distinguished political scientists of the twentieth century. The revised lectures were published in 1953 by the University of Chicago Press as *The New Science of Politics*.[1] It gained a popular profile by being featured as part of a cover story published by *Time* magazine. About a year later Hans Kelsen sent Voegelin a 125-page typescript, "A New Science of Politics," that constituted his first response to Voegelin's book.[2] A second response, *Secular Religions*, was published in 2012.[3]

Both these posthumously published books of Kelsen invite questions for which only speculations, not answers, can be provided. One can say with certainty, however, that Kelsen expended a great deal of effort on reading and criticizing Voegelin and his sources, on correcting his translations and interpretations, and on pointing out omissions even to Voegelin's bibliographies, which raised a question: as formulated by Alexander Pope, "Who breaks a butterfly upon a wheel?" Or, as Massimo Leone prosaically observed, "Isn't such a spectacular display of critical and polemical skill [by Kelsen] somewhat disproportionate to the polemical target?"[4] Similarly, Bjørn Thomassen noted, "Kelsen dedicated much of his remaining lifetime [Kelsen died in 1973] to 'dealing with Voegelin'—without ever publishing a word of it."[5] Considering

that Kelsen's name appears neither in *The New Science of Politics* nor in *Science, Politics and Gnosticism*, Thomassen's use of the terms "debate" and "exchange" is misleading.[6] So far as I know, the last relevant time Voegelin mentioned Kelsen was in his 1936 book on Austria, *The Authoritarian State*, discussed below.[7]

When I first read Kelsen's typescript, "A New Science of Politics," it seemed to me that Kelsen had, on the surface, violated the first principle of hermeneutics: to understand an author on his or her own terms before mounting a critical analysis. There are, on closer inspection of Kelsen's text, misquotations,[8] as well as selective quotations,[9] but these can be attributed, perhaps, to a hasty composition. Rather than attempt a detailed reply to Kelsen's criticism, which would serve no obvious purpose, these two texts suggest a more interesting problem: how did Voegelin achieve his own "theoretical position" independent of Kelsen's Pure Theory of Law, and when did he do so?[10] This article aims to analyze the development of Voegelin's thought in the context provided by Kelsen's jurisprudence. To the extent possible this article also examines Kelsen's response to Voegelin's growing intellectual independence. Generally speaking, Voegelin sensed initially that Kelsen's Pure Theory of Law was limited, as every theory is limited. He then undertook to contrast his own still-inchoate understanding of *Staatslehre* with Kelsen's Pure Theory. Eventually, he was able to clarify critically the sources of their differences and to present coherently his own "theoretical position." It would be a great understatement to say that Kelsen was not persuaded. As Voegelin remarked in his letter of February 10, 1954, "The greatest thing a teacher can give his students is not [a] 'teaching' but the discipline of work. . . . And if you look again on your misguided student you might consider that the best students are not necessarily those who swear *in verba magistri* and remain in the 'shell,' but perhaps rather those who studied so thoroughly at school that they free themselves from it and can go their own way."[11] For Voegelin, at least, attaining his intellectual independence from Kelsen was accompanied by expressions of warm personal regard as well as uncompromising awareness of how their views had come to diverge.

Early Reflections on the Pure Theory of Law

Voegelin has long been recognized as an early member of Kelsen's "Vienna School" of jurisprudence.[12] At the same time, however, Othmar Spann seems to have been more important, at least initially, in Voegelin's intellectual formation. Both Kelsen and Spann were Voegelin's dissertation directors (Doctor-fathers), but the actual content of his thesis dealt with the relationship between the individualist notion of Georg Simmel's "interaction" (*Weschelwirkung*) and Spann's "spiritual community" (*Gezweiung*).[13] When Max Weber left the University of Vienna in 1919 for Munich, Spann was hired, so to speak, in his place. Not that any contemporary scholar could in fact replace Weber, but that on the surface at least Spann's and Weber's sociological interests seemed to be approximately similar. More to the point, and despite Kelsen's evident familiarity with both Weber and Spann, the primarily sociological focus of both scholars seemed a long way from Kelsen's legal theory.[14] And, indeed, in his *Autobiographical Reflections* Voegelin said that "both philosophically and historically" Spann's "range was without a doubt much larger" than Kelsen's. And yet, he "veered" toward Kelsen's Pure Theory because of "the precision of analytical work that is peculiar to a great lawyer."[15] More specifically, "what I learned from Kelsen, I should say, is the conscientious and responsible analysis of texts as it was practiced in his own multivolume work and in the discussions in his seminar." Kelsen's Pure Theory of Law, Voegelin said, "furnished a logical analysis of a legal system," and despite numerous improvements in detail, Kelsen's achievement "stands as the core of any analytical theory of law. . . . I should like to stress that there never has been a difference of opinion between Kelsen and myself regarding the fundamental validity of the Pure Theory of Law."[16] Such disagreements as existed, therefore, must have pertained to the other, more restricted areas of Kelsen's "range"—namely, history and philosophy. Moreover, as Voegelin observed, these differences "began to evolve gradually."

The evolution began with a 1924 essay, "The Pure Theory of Law and the Theory of the State."[17] Voegelin began by noting that

the epistemological principle of the Pure Theory of Law was furnished by the neo-Kantian "logicians" of the Marburg School, according to whom "knowledge does not portray an object given as such in reality." Rather, "a priori forms antecedent to all forms of experience determine the character of the judgments and thus the structure of the objects that are contained in these judgments." That is, for neo-Kantians (and for Kant) the categories of right thinking are axioms of knowledge, not attributes of psychology. Voegelin then quoted Kelsen, that the "fundamental principle of all epistemology, [is] that the object of knowledge is determined by the aim of knowledge." The aim of Kelsen's Pure Theory, according to Voegelin, was the "logification" (*Logisierung*) of the problem of law. A significant implication, according to Voegelin, was that "there is actually no difference between the state and the law for all legal purposes. There may be a social reality in the realm of existence that produces the legal order with its unity of substance, but to mix up the problem of existence with the legal problem of [the] state is, to Kelsen, an unpardonable mistake."

Once one has identified the state with the legal order and the legal order with the logic of legal norms, so far as any actual state is concerned, the results must be "disappointing," because Voegelin considered that the fundamental historical forms are also part of the reality of the state and are not "pure forms of a logical genesis of objects" but an actual "content," which Voegelin designated by the term "meaningful unit" (*Sinneinheit*). Because the Pure Theory "consciously ignores the problem of social reality," which is by no means a natural-scientific causal reality as is posited by neo-Kantian epistemology, it must also ignore the problem of a "meaningful unit" and similar social and political realities. In consequence, Kelsen was able to dismiss these realities as "illusory," with the result that "the achievements of the 'pure theory of law' in the area of norm logic remains immune from this critique," which is to say the critique just made by Voegelin. That is, Voegelin was aware that Kelsen's Pure Theory was not touched by Voegelin's evidently critical remarks. So why did he make those remarks? Granted that "it is quite possible to practice norm logic," that is not the same as

"legal logic, because law is not a sphere of [neo-Kantian] cognition; its formative elements are symbols, ideas, fragmentary acts, and the founding elements." That is, the "formative elements" of "legal logic" were constituted by history understood as "meaningful units," which was what Voegelin was interested in.

One might summarize Voegelin's analysis in this article with the observation that, notwithstanding the scientific accomplishments of Kelsen, Voegelin was critical of the implications of Kelsen's approach because generating the object of investigation by means of logical a priori categories had the consequence of eliminating the empirical constituent elements of the state as "meaningful units." One can attribute the genesis of Voegelin's concern to Spann or to Weber: either way he was concerned with a reconstruction of an empirically complete science of the state.[18] In commonsense terms, Voegelin sensed that Kelsen's Pure Theory was too abstract for his purposes, but the twenty-four-year-old Voegelin was not yet able to describe clearly the epistemological constraints that actually constituted the limitation of Kelsen's theory. Hence his later judgment that the results of this early article were of "dubious scientific quality."[19]

America

On October 4, 1924, Eric Voegelin arrived in New York, an early recipient of a Laura Spelman Rockefeller Memorial scholarship that provided a generous stipend and travel allowance of $1,800 a year (as compared to $30 a month, which he received in 1927 as Kelsen's assistant).[20] He had put together an ambitious and well-thought-out program, beginning at Columbia University in the fall of 1924, studying sociology with Henry F. Giddings, educational theory with John Dewey, and public administration with J. H. Macmahon, all of whom were leaders in their respective disciplines. Voegelin moved to Madison for the 1925 summer session at the University of Wisconsin, where he first met John R. Commons and Selig Perlman, who introduced him to American labor history, American populism, and American political history and institutions. Following an extensive tour of the United States, Voegelin

was appointed a research fellow in economics for the fall term at Harvard, where he began a concentrated study of American jurisprudence with Roscoe Pound and attended Alfred North Whitehead's lectures in philosophy. He returned to Wisconsin after Christmas and spent the summer session of 1926 working with Arthur Corbin at Yale Law School. In short, for a period of twenty-four months Voegelin was able to work with some of the most creative scholars in America and at several of its great universities.

In retrospect, Voegelin wrote, "these two years in America brought the great break in my intellectual development."[21] "There was," he said, "a world [in America] in which this other [Central European] world in which I had grown up was intellectually, morally, and spiritually irrelevant." In the encounter with American social, political, and academic life, Voegelin "gained an understanding . . . of the plurality of human possibilities realized in various civilizations, as an immediate experience." In retrospect, Voegelin said that the lasting impact of his two years in the United States came from "the fact of being thrown into a world for which the great neo-Kantian methodological debates, which I considered the most important things intellectually, were of no importance."

In place of methodological debates Voegelin was exposed to such direct experiences as the American foundings of 1776 and 1789 as expressed in current Supreme Court decisions, to the still-living Christian traditions of New England Puritan mysticism, to the commonsense philosophy that originated in the Scottish Enlightenment, and to the intellectual and spiritual openness of American academic life. The result, he said, was to rid him of his "Central European or generally European provincialism without letting me fall into an American provincialism." Thus, for example, when Heidegger's *Being and Time* appeared, which Voegelin read shortly after returning to Europe, the impact was negligible: "I had been immunized against this whole context of philosophizing through my time in America and especially at Wisconsin."[22]

Voegelin's report on his time in America, *On the Form of the American Mind*, was published by J. C. B. Mohr in 1928.[23] His intention in writing the book, Voegelin said, was not to provide "an

inspired riddle-solving synthesis of the American mind" but to extract both the "instruments of interpretation as well as the meaning from the material itself."[24] This procedure, which combined a presentation and an interpretation of evidence, was appropriate (as Voegelin argued in his rather opaque introduction) because the subject of his investigation—namely, the American mind, *Geist*, or as one might say today, American culture, *sensu lato*—evolved from the sociohistorical reality of America.[25] In elaborating the argument regarding the emergence of the subject matter of his study from the historical reality of American life, Voegelin introduced new analytical terms and continued to use terms such as "meaningful unit," which he had previously used in his initial critique of Kelsen's Pure Theory. The point of introducing such neologisms—and Voegelin was criticized by Kelsen and many others for doing so—provides evidence that he was trying to move beyond the epistemological restrictions of received language and concepts, in this instance neo-Kantian methodology. In the 1920s Voegelin was seeking to develop what he later would call a *geisteswissenschaftliche Staatslehre*.[26]

The objective of this new project was to combine the cultural approach of Max Weber with the interpretive approach of Wilhelm Dilthey. *The Form of the American Mind* can, in that context, be considered an early effort at doing so. It was also a further step away from Kelsen's Pure Theory. In 1928 Kelsen provided a favourable report to the Austrian Ministry of Education on Voegelin's application for Habilitation.[27] Voegelin's work on America, Kelsen wrote, "is a sign of how great the task is that Voegelin has set for himself. He wants to understand as much as he can from all areas of social theory in order to create the most complete synthesis possible in his theory of politics [*Staatslehre*] and sociology." Kelsen then commented on Voegelin's article "The Pure Theory of Law and the State." He characterized it as arguing (correctly) that Voegelin thought the Pure Theory was "more limited than [was] claimed by the theory itself. He understands the problem of *Staatslehre* in a sociological not a legal sense." After misquoting Voegelin,[28] Kelsen provided an extensive quotation

from the closing pages of Voegelin's article and characterized it as a Platonic conception of a theory of the state and of society. Notwithstanding Voegelin's having left the fold of the Pure Theory, Kelsen said, *On the Form of the American Mind* was "among the most meaningful endeavors in the direction of *non*-judicial *Staatslehre* that has been undertaken up to this time." Kelsen concluded by praising Voegelin's "stupendous knowledge and intellectual versatility" and declaring that his "achievements to date justify the greatest hope for the future." Despite Kelsen's praise for Voegelin's intelligence, he also expressed reservations about his "scientific intention and methods."[29]

In the event, Voegelin did not complete a comprehensive *Herrschaftslehre* or "theory of governance" to which the work in the book on America seemed to be pointing, a problem reconsidered below. In 1930, when Kelsen left Vienna for a chair in Cologne, Voegelin lost his salary as Kelsen's assistant and had to endure the financial insecurity of a *Privatdozent*, rather like that of an underpaid adjunct professor today.[30]

Later Reflections on the Pure Theory of Law

In 1927 Voegelin published a short article, "Kelsen's Pure Theory of Law," in English in the *Political Science Quarterly,* the journal of the American Academy of Political Science housed at Columbia University.[31] The focus was on the 1925 version of Kelsen's *Allgemeine Staatslehre* and the "underlying principles" of the Pure Theory, "with the accent on the word *pure,*" because Kelsen sought to distinguish the elements of legal theory from the collection of related problems connected to "the somewhat vague description of *Staatslehre*," which began in the 1860s and ended with the Great War. That is, by 1927 Voegelin was looking at Kelsen's work as a *historical* as well as a scientific achievement. Specifically, Voegelin argued, the initial development of *Staatslehre* was motivated by the political problems associated with German unification and the creation of a uniform legal structure to replace a collection of particularist and speculative "natural law" abstractions.[32] In this context, Kelsen's Pure Theory was the culmination of a lengthy

intellectual tradition. Moreover, Voegelin reiterated the point that "the new starting point of Professor Kelsen in his purification of legal theory is to be found in his training in neo-Kantian logic." Voegelin's experiences in America had effectively purged him of any concern with neo-Kantian problems, which may be why he would claim a few years later never to have been "a supporter of Kelsen's Theory, but exactly the opposite: from the very beginning of my scholarly work I strove to provide *Staatslehre* with a new foundation because I was not satisfied with the Pure Theory of Law."[33] This statement, which obviously distanced his own work from that of Kelsen, did not contradict his consistent admiration for Kelsen's achievement. Rather, Voegelin was able better to sense (and later describe) the limitation of the Pure Theory: the "purity" of the Pure Theory seemed to be for Voegelin both a strength and a weakness.

In any event, Voegelin argued that as a result of Kelsen's legal purification, "the problem of law is reduced to the government enforcing machinery" and "legal concepts in the strict sense are confined to enforcing action and operative facts." Kelsen's work could be both part of the *Staatslehre* tradition and its culmination because he had gone "to the radical extreme of separating the problem of legal technique entirely from its social purposes." The most significant consequence, Voegelin said, was that Kelsen "destroys any undue respect for existing legal institutions." The content of law is "not an eternal sacred order, but a compromise of battling social forces." Kelsen's "purity" thus resulted from keeping the two realms distinct; in contrast, Voegelin sought to connect the "battling social forces" to "legal institutions."

Voegelin's initial attempt at bringing these two sets of phenomena together took the form of an essay, also published in 1927, entitled "On the Theory of the Form of the State," or in the language of contemporary political science, on the theory of the regime.[34] In the literature of twentieth-century *Staatslehre*, Voegelin began, the problem of the form of the state was usually "dispatched as if it were a postscript" rather than a significant problem. He then undertook a critical survey of five "ideas of the theory

of [state] forms currently in vogue." The great defect in all these accounts was that they discussed only the external aspects of the state and did so necessarily in an abstract or "empty" fashion. To use the language of *The New Science of Politics*, these accounts were "elemental" inasmuch as they ignored the substantive realities that constituted the existence of the regime.[35]

Once again the end point was found in the work of Kelsen, who "demonstrates the unity of state and law" because "all contents of the order of law can be reduced" to elements of a Pure Theory "with no entity called 'state' left over." Voegelin again attributed the omission of any concern for the form of the state independent of legal theory to Kelsen's adherence to neo-Kantian epistemology. Toward the end of this article, in the context of a detailed discussion of Georg Jellinek's *Allgemeine Staatslehre*, which contained a less "pure" theory than Kelsen's *Allgemeine Staatslehre*, Voegelin proposed an alternative. To begin with, he said,

> one must accurately grasp the essential differences between idea, symbol, and legal content. In the sphere of historical events, the symbol is a more or less adequate expression of an idea; taken psychologically, this expression is constructed in the valuations of individuals belonging to a state. The order of law comprises determinations concerning external, tangible elements that are appropriate bearers of symbols. There is nothing to be said in aprioristic fashion about the indispensability of any of these elements.

The idea—of a monarchy, for example—"transcends the reality of the state, yet it must somehow assume shape within it." If social values change and the symbol of the monarchy is no longer tenable, "it must be replaced by another symbol" that in turn would establish new contents of law.

The analysis of Jellinek's theory of the formation of "juridical" concepts led Voegelin to conclude "that the category of law differs from the category of physics by a material determination" the essence of which was manifest "in a type of form all its own, which

is the 'idea' of the historical meaningful unit of the state." This "idea" is nonjuridical, which meant that "we have definitively removed the problems of the theory of state forms from the *theory of state law* as juridical discipline." The "idea" of the historically meaningful unit, moreover, "constitutes a series of symbols" that expressed fundamental experiences that in turn constituted the characteristics of the regime. "The state has only one constant element: the idea of the meaningful unit, and this idea is the same in all states." In this article Voegelin was still exploring what he considered the limits to Kelsen's *Staatslehre*. He understood it to be connected to neo-Kantian epistemology and accepted that in consequence it excluded elements of political reality that he wished to consider. However, he had not yet clearly formulated his own response, which would eventually center on the importance of philosophical anthropology. Nor had he yet integrated his misgivings about neo-Kantianism with the lessons he gained from his experiences in America.

The final essay to be considered in this section is Voegelin's 1931 contribution to Kelsen's *Festschrift* presented on his fiftieth birthday, when Kelsen was a comparatively young man for such an honor. The first paragraph can be read as Voegelin's explicit declaration of independence. He was thirty.[36] "If," Voegelin began, "one were to understand legal theory as a theory of the science of positive law"—that is, as Kelsen's Pure Theory of Law—then "one could construe it without mentioning obligation or ought [*das Sollen*]." Under those circumstances, the legal scholar would be concerned only with "establishing and interpreting the relevant legal statements, connecting the statements into a system, and subsuming cases into it." That is, the focus was on "legal contents" so that whatever the ought might be, such a jurist "needs neither to know nor to ask." Or, as William Ebenstein put it, "the search for the sanction of any particular Ought can lead logically [according to the Pure Theory] only to another Ought, just as the sanction of an Is can only be found in another Is."[37]

Yet, if one expands "the idea of legal theory beyond that of a theory of science" and seeks to understand the law in the context

of the concrete experience of the state, then examining the origin of the ought would be both possible and necessary. In that context, "the law . . . is itself a phenomenon and product of the spirit [*Geist*]." Kelsen, Voegelin said, "worked his way so close to the essence of ought" but in the end remained in the realm of "working out a theory of science" and so of "eliminating the problem of ought." Voegelin then declared that "the cause of this restriction lies in the fact that a more deeply probing investigation of [the] ought is possible only within the purview of an all-embracing philosophical view of the essence of man," which is to say, within a philosophical anthropology. Apart from Nietzsche, German philosophy had ignored this problem since the end of "idealist philosophizing." As a result, we "return to Kant, because we find in his work a clear view of the essence of the human being." Voegelin proposed, therefore, to examine Kant's "image of a human being."

By Voegelin's account, Kant considered human beings to belong to two genera: one moral, the other biological; one cultural, the other natural. The first and genuinely human actions were characterized as reasonable, technical, and free; the second were discussed in terms of reflex, instinct, and habit. Kant's chief concern was with the intellectual rather than the sensory aspects of human being, and he examined them in great analytic detail. "The rational capacities of a human being" were always classified "in such a way that the crowning faculty is sharply isolated from the lesser, sensory capacities that derive their ends from nature." Indeed, there was an "abyss" dividing reason and good will from "the capacities of technical and pragmatic understanding that are bound to nature." Moral laws were thus not grounded on "experimental knowledge" or "anthropological knowledge." Rather, for Kant, the moral law was identical for all rational beings and the will was good, not because of what it achieved, but solely by what it willed. In short, "the will and the moral law lack any inherent relationship to a human being as a creature in and of nature."

As a consequence, "Kant never grasped what nobility is" because nobility is based on lineage, one of "the essential foundations of society." Accordingly, "the historical-social elements are

excluded from Kant's view of the nature of the human being as thoroughly as the sensory elements were." In fact, however, the "natural sphere" could not be "negated" if one were concerned with "the entire human being." Instead, the "natural sphere" would be "merely isolated" as being inessential and unworthy. "The representation of sensory goals should not motivate actions," according to Kant, because that was the task of the moral law and will. And yet, "sensory being is completely real, and ought stems precisely from the possibility that a human being might lapse from its essence into sensory reality." Corporality was, in other words, an "impurity" to be stripped away over time, which raised a complex question: how, and to whom, would this stripping away be done, and how long would it take?

An answer can be found in Kant's "Speculative Beginning of Human History" (1786), which argued, much as Rousseau, on the basis of an "unshakeable" dogma that "the miseries of our cultural condition" were a result of "the activation of reason" that destroyed over time the original natural harmony of human life. This assumption "is the decisive dogma that precedes all Kantian speculation." It was, moreover, an event in "the history of mankind as a species," not an event in an individual's life. The implication was clear:

> Only in humanity as a whole do the evils of culture and the social world strive for dissolution at the end of history. Only the entire species, not the individual, attains the state of the full development of rational talents that is required to lead the perfect life. Certainly, evil is removed from the life of the species at the end, but the fate of the concrete person is never satisfactorily resolved. In terms of fulfillment of the meaning of his existence, the human ranks even lower than the animal, which fulfills its destiny by living out its individual life.

It seems that Kant was never able to resolve the disjunction between the perfection of the person and the perfection of the species.[38]

So far as the individual was concerned, he or she was an exemplar of the crooked timber of humanity from which nothing straight could be built.[39] Only in the development of the entirety of humanity would the rational aptitude of human being unfold. The life of any individual human being, therefore, "is a fairly meaningless fragment." Voegelin's conclusion was as follows: "The particular color of Kantian ethics arises from this fundamentally flawed assessment of life, just as the main features of his system and its problems are derived from this miserable view of human beings." Between the lower sensory part of human being and the higher and purely rational part, Voegelin located the central experience of Kant's thought: duty, which combined the spontaneity of action with moral necessity. "For Kant," Voegelin wrote, "ought is not a random philosophical topic beside others, but the one phenomenon of our existence that aroused him so profoundly that his entire philosophizing welled up from the ground of this arousal." In short, Kant was "excited" by the problem of duty alone, but "his soul remained closed to all other existential contents," such as conscience, nobility, relations with God, corporality, history, and political reality—that is, the entirety of sensuous existence.

Voegelin ended his essay by recalling its beginning: "As we indicated at the beginning, our investigation of Kant's theory of [the] ought was intended as a reorientation." One aspect of the reorientation, after reading Voegelin's essay, was that a "return to Kant" was a dubious endeavor, given Kant's seriously deficient or "deprived" anthropology. As Arpad Szakolczai noted, "the real merit of Kant's theory is only that whoever manages to digest this material and recognize its emptiness cannot but return to what really needs study and what is the genuine foundation of political science: real, concrete persons and communities."[40] The conclusion Voegelin would have us draw seems inescapable: on an occasion honoring his allegedly neo-Kantian teacher, Voegelin argued that the defects of limitations of the Pure Theory of Law lay with Kant, not with the Marburg "logicians" and not with Kelsen. The difference between Voegelin and Kelsen now appeared to Voegelin to be philosophical, not methodological.

Toward a Comprehensive *Staatslehre*

In 1933 Voegelin published two books on the problem of race.[41] Apart from the obvious contingencies of contemporary political discussion,[42] the two books were part of what Voegelin called a "system of *Staatslehre*," or a comprehensive *Staatslehre*. Such a *Staatslehre*, Voegelin said, developed the "fundamental idea" that "the roots of the state must be sought in the nature of man." In other words, Voegelin set for himself "the challenge of developing the problems of *Staatslehre* on the basis of a philosophical anthropology," one of the "essential themes" of which "is the justification of the phenomenon of law." To do so, Voegelin argued, the appearance of law "is to be traced to its origins," of which there are two. The first "is to be found in the moral experience of the individual, while the other resides in the experience of the community." From the former comes the sense of "what ought to be done."[43] From the latter comes the sense of obligation for members of the community to follow the law. "Individual and community are the fundamental human experiences from which the 'norm' in the sense of an anticipatory design for the future actions of people as members of a community arises." At every level of the legal system exists "the idea of the 'norm' in the precise [*prägnenten*] sense of a model for the realization of the community in the actions of its members."

Voegelin's use of the term "norm" was clearly more expansive than Kelsen's, for "it includes not only the law but also community ethics." The general phenomenon of the norm becomes particularized in any given community by means of its relationship with "other fundamental human experiences, namely those of ruling [or of governing] and of serving [*Herrschens und Dienens*]." Considered systematically, "the *Herrschaftslehre* is the second part of a *Staatslehre*," the "first part" evidently being a philosophical anthropology. If the "first part" is concerned with the general questions of human nature, the "second part" deals with the particular. Accordingly, "it served to delimit the specific action by which the community constitutes itself as having political existence (Carl Schmitt)."[44] He added that sociology provided significant contributions to a systematic or comprehensive theory of governance but

that "a complete restoration of this great theme," it seemed to him, "is possible only by returning to Nietzsche and Fichte and especially the *Herrschaftslehre* of antiquity," by which Voegelin meant Plato and Aristotle.[45]

As for contents of the legal order, one looked to regulating the relations of members of the community to one another and of the community as a political entity to other political entities. The first problem was dealt with in the context of "natural right," chiefly dealing with freedom and property in a dogmatic way, which raised another problem: "we need a transformation of the dogmatic system of natural right into an analysis of existential experiences that make regulation of certain institutions (property, obligation, family) the inevitable component of any legal order." And here Voegelin referred to John R. Commons because Commons and other English writers "have treated these themes continuously ever since the classical natural-rights doctrine" of such thinkers as John Locke.

The second problem, regulating the actions of the political community, involved the problem of the "idea of the state and the form of the state," both of which were essential parts "of the reality of the state itself" that "originate in the fundamental human experiences already mentioned," such as a sense of obligation and the "ought" as well as ideas of kings and leaders and specifically Western Christian ideas of empire and church and other community ideas. Here Voegelin referred to his 1927 essay on the form of the state discussed in the previous section and mentioned specifically the importance of "body ideas" from dynasty and blood lineage, to the mystical body of Christ, to race. These "ideas," which he would later call symbols, were based on the various fundamental experiences noted earlier and helped constitute the political reality that a *Herrschaftslehre* would analyze.

A final part of a comprehensive *Staatslehre* (after elaborating a philosophical anthropology and a *Herrschaftslehre*) would include an account of the structure of the legal system. This would include the hierarchy of laws, the forms of legal principles, and a theory of institutions, as well as a constitutional theory, which would be a

"theory of the foundation of the ideas of the state in terms of the contents of positive law." The argument regarding a comprehensive *Staatslehre*, Voegelin said, "directly indicates a stance toward the prevailing theory." Since the founding of the German Empire, *Staatslehre* has been treated as an appendage of constitutional law "so that its systematic center is located not in the fundamental human experiences [of the person, community, etc.] that give rise to the phenomenon of the state, but in the final part of *Staatslehre* that presupposes all the other parts. . . . The basic problems are dealt with not on their own grounds but only as they are reflected in the contents of positive law, and therefore they are *of necessity* seen in a distorted way." That is, German *Staatslehre* (here Voegelin again mentioned Jellinek) had things exactly backward: instead of dealing in a systematic way with real problems, such as the purpose of the state or the problem of evil and justice, to say nothing of the fundamental experiences and their expression as political "ideas" (or symbols), one found only a collection of topical essays that were part of a traditional treatment. That is, concretely, *Staatslehre* had come to mean books dealing with the topics discussed in earlier books, not books dealing with changing political and legal realities.

This "systematic problem" in contemporary German *Staatslehre* "can be seen most clearly in Hans Kelsen's work." No doubt Kelsen discussed in his *Allgemeine Staatslehre* "a theory of law, a theory of the validity of law and [a theory of] the positive content of law" and did so "with the utmost consistency." But his argument made sense only where "a simple principle," such as the spatial organization of the state, was concerned. It was of no use where matters had become complex, as with the regulation of "the personal spheres of the community's members." As noted in the previous section, Kelsen dismissed such matters as a "sham problem" or "pseudo-problem" (*Scheinproblem*) and refused, unlike Commons, to analyze the state and the "private" legal sphere, including property and family, that could be "traced back to its roots in human nature." Likewise the "normative sphere" might be accepted as a reality, but Kelsen made no attempt to link it to its origin in human nature. In

short, by purging *Staatslehre* of everything that did not belong to positive law, Kelsen was not only consistent, he enabled "other thematic areas" of the law that had nothing to do with positive law to come into focus "with a clarity they never had before." This purge opened up "opportunities" to reintegrate the person, the community, rule, service, and the idea of the state. But the task of developing a system of *Staatslehre* on the basis of a theory of human nature, of a philosophical anthropology, "has not yet been completed" despite "the uncontestable fact that man is the creator of the state."[46] To restate a point that by now ought to be self-evident for Voegelin's argument: *because* human beings were uncontestably creators of the state, any *Staatslehre* that did not include a philosophical anthropology would be incomplete and thus deficient.

The balance of *Race and State* consisted in an analysis of the "idea" of race as a constituent of political reality as well as a critique of the scientific pretensions of race "theory." In this respect the book anticipated the multivolume *History of Political Ideas* of the 1940s as well as *The New Science of Politics*. At the time, however, it was cast in the context of *Staatslehre* rather than anything approaching political science or political philosophy in the North American sense.

Austria

"It seldom happens that a legal philosopher has a chance to put his theories into practice" the way Kelsen did with his substantial contribution to the text of the Austrian constitution, "a legal document that from a technical point of view may fairly be called the best of its kind now in existence."[47] The problem, however, was that this technically elegant document was drafted to apply to a nation, and regrettably "the Austrians are not a nation and the Austrian republic is not a national state. Every investigation seeking to understand the peculiar character of the Austrian constitution in contrast to the great democratic national states must begin with this basic fact."[48] In *The Authoritarian State* (1936) Voegelin resumed the problem of the connection between an existing

national constitution and a nonexistent nation to which it was supposed to apply; he continued as well the argument of the race books that race "theories," which claimed to be scientific, and race "ideas," which helped constitute political reality, were to be sharply distinguished. Political symbols, he said, "around which a rationalization of the respective types of political existence is attempted are by no means an adequate theoretical description of the political structure; instead, they are added to the [political] structure, serving as additional elements of political reality."[49] Such terms as "total" and "authoritarian" were political symbols that emerged in a situation of conflict and political fragmentation, a situation that could be resolved only through the establishment of new authorities. If one started from a description of Austrian political reality in the mid-1930s, "the overall political structure remains in a peculiar state of suspension between an 'empire' (the ruler and *the peoples*) and a state (the monarch and *one* political people)."[50] In 1918 a national constitution was constructed during a period when democratic ideas of legitimation were highly valued, "but there was no *demos* with the will to statehood." Instead, there was simply a government presiding over a "remnant" territory, left over after other nationalities departed the Hapsburg lands as a result of the Treaty of St. Germain. That is, there was a "state" within the borders of Austria, but it had not been established or "founded" by the political decisions of Austrians.[51]

Chapter 6 (163–212) of Voegelin's *Authoritarian State* is entitled "Kelsen's Pure Theory of Law and the Problem of an Austrian Theory of the State."[52] Voegelin began with the observation that the absence of a founding by political action "has allowed the norms of the constitutional order to come to the fore as the unifying element of the population in the Austrian territory to such an extent that we could almost say that the Austrian state represents a case to which the theory of the identity of state and law can empirically be applied correctly." That is, because Austria was not founded as a political body and yet has a constitution that in large measure reflects Kelsen's Pure Theory of Law, "this theory . . . is representative of the Austrian political complex of

problems." That is, Kelsen's theory was itself a *constituent* of Austrian political reality. A contemporary analogy might be the *Verfassungspatriotisimus*, "constitutional patriotism" espoused by some German thinkers today.[53]

Voegelin's next problem was to place Kelsen's theory in "the larger context of the Austrian theories of the state." The "most comprehensive intellectual context" of Kelsen's theory is one of "metaphysical positivism" now understood by Voegelin as being *derived* from neo-Kantian epistemology. Whatever the defects of Kant's account of "human life in society," which Voegelin had discussed in his Kant essay in Kelsen's *Festschrift*, Kant at least kept his argument distinct from the problems associated with his critique of inorganic nature. The neo-Kantians ignored or overlooked this problem.[54] Using the study of natural phenomena as the model for all knowledge made this metaphysics "positivist" in the sense used by Ernst Mach and the Vienna Circle.[55]

The great problem for Voegelin, which he treated in *The New Science of Politics* and in other essays after the war,[56] was "that generalizing the methodology derived from the model of mathematical physics must result in very significant limitations for the object of a theory of the state." Specifically, it assumed "that reality is arranged in such a way that it can be perceived by a pure method." Thus, the consideration and exploration of "an ontological question preceding the methodological inquiry into the object, the argument goes, is admissible." The neo-Kantian argument, in short, was tautological: "there is no perception prior to perception; there is no ontological problem prior to the methodological problem." For Kelsen, methodology preceded ontology; for Voegelin, the reverse.

Accordingly, acts of perception for Voegelin were contextualized by reality or "the horizon of existence" and not "the categories of the perceiving consciousness." He would later describe this mode of consciousness as "participatory" rather than perceptual. Kant's model for natural sciences was Newtonian mechanics, and it "may well have been correct" in that context. However, "for the realm of

being called *state*," it is "definitely wrong" because this realm of being included objects such as legitimacy, power, political ideas, and so on that "cannot be included in a single object-constituent system of categories." If one nevertheless insisted on a "single object-constituent system," the result would be "a serious impoverishment of the total object." This consequence was obscured by a "combative attitude in the criticism of method" that concluded not by "justifying a genuine problem of method but [by] justifying a metaphysical—more precisely, a positivist—dogma." Moreover, when the object "state" was identified with "law" as the object of legal science, law as a context of reality constituted prior to legal science also vanished from the real subject matter of *Staatslehre*.

To obscure or eclipse this problem, Kelsen "developed a complete system of metaphysical battle [i.e., polemical] concepts with which he was able to attack and destroy in principle all theoretical attempts to deviate from the Pure Theory of Law." As Voegelin had previously argued, anything not appearing within the context of the Pure Theory was for Kelsen a pseudo-problem. Statements concerning "the reality of substances, either persons or states," were dismissed by him as "ideologies," including theologies and metaphysics that were simply "unscientific." The purpose of Kelsen's polemical concepts was to "sidestep a rational discussion of the statements posited as scientific" and simply "cut away the ground on which alone such a discussion would be possible," namely, reality.[57] In other words, for Voegelin, the theory of the state within the context of the Pure Theory of Law eliminated the experienced and meaningful reality of the state.

Voegelin then situated Kelsen's theory in the historical context of Austrian *Staatslehre* and Austrian political reality. Historically, as indicated earlier, Austria was not a modern state but essentially a medieval *Reich*, a multinational political entity unified only by the house of Hapsburg, the army, and the bureaucracy. An Austrian national people has, therefore, never existed in Austrian history "if the term is to mean anything more than specimens of *homo sapiens* provided with Austrian citizenship." Likewise, the act of voting

does not consist in a member of an animal species, *homo sapiens*, putting a mark on a piece of paper and transporting the paper to various parts of the planet, called voting booth or ballot box. Rather, such behavior constituted "meaningful acts of spiritual persons" so that the meaning must be included in the description in any adequate interpretation of the norm "voting," even though such a meaning would in principle be excluded from Kelsen's science if he in fact followed his own metaphysics. Fortunately nobody, and certainly not Hans Kelsen, actually proceeded on the basis of their professed metaphysical dogma. They proceed on a commonsense understanding of what the act of voting entails, just as everyone else.

Voegelin's point, however, was that when Kelsen's Pure Theory was applied to such a reality as the Austrian political entity, the content of the norms of constitutional law was simply empty. More precisely, such terms as "king," "people," and "parliament" meant something that is not captured by the norm. "We cannot tell whether a constitution is, for example, democratic from the content of the legal text. Rather, we first need to know from other sources what 'democracy' is, and second, we have to ascertain whether the political situation that is to be ordered by the contents of these norms is fundamentally democratic." In *The New Science of Politics*, for example, Voegelin pointed to the "beautifully written" Soviet constitution (34) as an example of how the formal language of a constitutional text said nothing about the constitution of an actual state.[58]

The limitations of the Pure Theory became even more apparent when it was applied to the 1934 constitutional transition in Austria. From the outset, two factors had to be excluded from the Pure Theory: (1) the political situation in which the constitution was instituted and (2) the constitution as a document created by human beings and legitimated by the ethical order of humans. "After all, according to this theory, the constitution is delegated by the 'basic norm.'" But this raises the question: "*Why* should the constitutional norm be complied with?" Answer: it just should be. "The 'norm' becomes a fetish."[59]

Conclusions

Voegelin began to distance himself from Kelsen's Pure Theory of Law with his earliest publications. This did not, however, diminish his respect for his teacher's achievements as a jurist and lawyer, even when he expressed a highly qualified agreement with some of the arguments of Carl Schmitt, with whom Kelsen disagreed even more strongly than he did with Voegelin.[60] Voegelin saw in Schmitt's *Verfassungslehre* "a principled counterformulation to the neo-Kantian principle of methodological purity" advanced by Kelsen. Voegelin's reason was the by now familiar observation that the subject matter of *Staatslehre* "constitutes itself" outside the context of established neo-Kantian methodology, which Schmitt acknowledged. Thus, "the scientific account of the subject-matter cannot be executed independently and solely according to its own principles, but rather has to follow the contours of the source material." That is, the subject matter of *Staatslehre* and of political science more broadly is self-interpretive, and political science begins with an analysis of that self-interpretation. Schmitt tried to do so with his "general theory of the decision," about which Voegelin expressed considerable reservation, along with other comments critical of Schmitt's understanding of the Pure Theory of Law. They agreed, however, that constitutional norms "are not derived in terms of content from a highest norm, but are instead dependent for their content on the political and social situation of the time of their origin."[61] In summary, Voegelin thought that Schmitt raised valid questions that Kelsen ignored, but also that Schmitt's treatment of those questions was in some measure inadequate.[62]

Viewed in light of Voegelin's writing over the previous decade or so, the fifty pages of *The Authoritarian State* simply confirmed that Voegelin had abandoned the Pure Theory of Law.[63] In place of the Pure Theory, at least since the writing of *Race and State*, Voegelin's focus was on "political ideas." Two years later he published *The Political Religions*, which argued that Nazi speculations on, and efforts to create, a "total" state entailed the application of a "religious idea" to politics. The effect was to subsume

the individual in a collectivity, an intellectual operation he traced to Averroes and to later European "Latin Averroists." The notion of a political idea was central to his unpublished *History of Political Ideas* and to *The New Science of Politics*. He later abandoned the terminology of "ideas" but not the insight he achieved during the mid-1930s: concepts that can be critically clarified belong to the discourse of science; political ideas and symbols are constituent elements of political reality analyzed by the critical concepts of science.

In his *Autobiographical Reflections* (69) Voegelin wrote that *The Authoritarian State* "was my first major attempt to penetrate the role of ideologies, left and right, in the contemporary situation, and to understand that an authoritarian state that would keep radical ideologists in check was the best possible defense of democracy." So far as Austrian political reality was concerned, up to 1933 Austria's "will to non-existence," which was Voegelin's rather dramatic way of indicating the absence of a political people, had major and dangerous geopolitical implications. Following the imposition of the authoritarian regime by Dolfuss starting in 1933, "the situation changed considerably. It would be an exaggeration to say that now an Austrian people exists in a most satisfactory way—but certainly it is now in the making."[64] By 1937 or so, Voegelin was of the view that the inhabitants of Austria were in the process of constituting themselves as a people with a will to exist as a state. It was rather late in the day: Austria had nine months to exist.

Notes

1. The book remains in print and has been widely translated. For details on the production and reception of the book, see Barry Cooper, *Consciousness and Politics: From Analysis to Meditation in the Late Work of Eric Voegelin* (South Bend, IN: St. Augustine's Press, 2018), chap. 2.
2. It has since been published as Hans Kelsen, *A New Science of Politics: Hans Kelsen's Reply to Eric Voegelin's "New Science of Politics": A Contribution to the Critique of Ideology*, ed. Eckhart Arnold (Frankfurt: Ontos Verlag, 2004). The typescript is available in the Voegelin Papers, Hoover Institution, Stanford University, box 63, file 13.

3. Hans Kelsen, *Secular Religions: A Polemic against the Misinterpretations of Modern Social Philosophy, Science, and Politics as "New Religions"* (New York: Springer, 2012). About a fifth of the text of *Secular Religions* was devoted to Voegelin's *New Science of Politics* and to his 1958 *Science, Politics and Gnosticism*, the title of Voegelin's *Antrittsvorlesung*, or inaugural lecture, delivered when he was called to the political science chair at Ludwig-Maximilian University in Munich.
4. Massimo Leone, "Review: Hans Kelsen, *Secular Religions*," *International Journal for the Semiotics of Law* 26 (2013): 244.
5. Bjørn Thomassen, "Debating Modernity as Secular Religion: Hans Kelsen's Futile Exchange with Eric Voegelin," *History and Theory* 53 (2014): 437.
6. For a thorough philological account of the epistolary exchange between Kelsen and Voegelin, see Barry Cooper, *Beginning the Quest: Law and Politics in the Early Work of Eric Voegelin* (Columbia: University of Missouri Press, 2009), 219–26.
7. Kelsen was mentioned briefly in Eric Voegelin, *The Nature of the Law, and Related Legal Writings*, vol. 27 of *The Collected Works of Eric Voegelin*, ed. Robert Anthony Pascal, James Lee Babin, and John William Corrington (Baton Rouge: Louisiana State University Press, 1991), 27–31. This book, completed in 1957, was used in a jurisprudence course Voegelin taught at LSU School of Law. It existed only in mimeograph until published as part of the *Collected Works* project, and it is highly unlikely that it ever came into Kelsen's hands.
8. E.g., cf. Kelsen, *A New Science*, 21, with Voegelin, *The New Science*, 11–12.
9. E.g., cf. Kelsen, *A New Science*, 61–62, with Voegelin, *The New Science*, 12–13, 28–29; *Secular Religions*, 14, 53, 184–86.
10. Voegelin mentioned having attained his own "theoretical position" in a letter to Kelsen, dated February 10, 1954, and available in Voegelin, *Selected Correspondence, 1950–1984*, vol. 30 of *The Collected Works of Eric Voegelin*, trans. Sandy Adler, Thomas Hollweck, William Petropulos, ed. Thomas Hollweck (Columbia: University of Missouri Press, 2007), 207.
11. *Selected Correspondence: 1950–1984*, 209.
12. Josef L. Kunz, "The 'Vienna School' and International Law," *New York University Law Quarterly Review* 11 (1934): 370–422, esp. 374. See also William Ebenstein, *The Pure Theory of Law* (New York: Kelley, 1945), ix–x; Rudolf Aladár Métall, *Hans Kelsen: Leben und Werk* (Vienna: Verlag Franz Deuticke, 1969), 28–47; Günther Winkler, "Geleitwort,"

in Voegelin, *Der Autoritäre Staat: Ein Versuch über das österreichische Staatsproblem* (Vienna: Springer, 1997), xxx–xxxi.

13. See Voegelin, "Interaction and Spiritual Community: A Methodological Investigation," in Eric Voegelin, *The Theory of Governance and Other Miscellaneous Papers, 1921–1938*, vol. 32 of *The Collected Works of Eric Voegelin*, trans. Sue Bollans et al., ed. William Petropulos and Gilbert Weiss (Columbia: University of Missouri Press, 2003), 19–140.
14. See Kelsen, *A New Science of Politics*, 29.
15. Eric Voegelin, *Autobiographical Reflections*, vol. 34 of *The Collected Works of Eric Voegelin*, ed. Ellis Sandoz (Columbia: University of Missouri Press, 2006), 48.
16. *Autobiographical Reflections*, 48–49. His letters to Kelsen in 1954 were also filled with expressions of admiration and goodwill.
17. Available in Eric Voegelin, *Published Essays, 1922–1928*, vol. 7 of *The Collected Works of Eric Voegelin*, trans. M .J. Hanak, ed. Thomas W. Heilke and John von Heyking (Columbia: University of Missouri Press, 2003), 49–99. The following quotations are taken without citation from this source. In his *Autobiographical Reflections*, Voegelin called it "my first essay, of rather dubious scientific quality" (50). In fact, his first publication appeared in 1922 in sociology, "The Social Determination of Sociological Knowledge: A Sociological Examination," which seems to me to be evidence of the lingering importance of Spann and behind him of Weber, whose *Protestant Ethic and the Spirit of Capitalism* was quoted in the essay. See *Published Essays, 1922–1928*, 27–48, esp. 39.
18. See Voegelin's 1925 comments in "On Max Weber," *Published Essays, 1922–1928*, 100–117, which argued that Weber provided a systematic and scientific way of ordering empirical materials.
19. For a discussion of the "dubious scientific quality" of Voegelin's article from a generally Kelsenian position, see Günther Winkler, "Die Reine Rechtslehre Kelsens als Dekonstruktionismus? Geistesgeschichliche Notizen zu einer grundlegenden Kontroverse zwischen Kelsen und Voegelin," in Joachim Burmeister, ed., *Verfassungsstaatlichkeit: Festschrift für Klaus Stern zum 65. Geburstag* (Munich: C. H. Beck, 1997), 115–25. Franz Leander Fillafer and Johannes Feichtinger, "Natural Law and the Vienna School: Hans Kelsen, Alfred Verdross, and Eric Voegelin," in *Hans Kelsen and the Natural Law Tradition*, ed. Peter Langford et al. (Leiden: Brill, 2019), esp. 439–47, defend Kelsen's criticism of Voegelin on the grounds that Voegelin was a proponent of natural law, cut from the same cloth as Verdross. Regrettably, the authors showed no interest in understanding Voegelin

on his own terms, failed to situate Voegelin's argument in any context relating to the development of his thought, and ignored Voegelin's two essays "What Is Right by Nature?" and "What Is Nature?," both of which are available in *Anamnesis: On the Theory of History and Politics*, vol. 6 of *The Collected Works of Eric Voegelin*, trans. M. J. Hanak, ed., David Walsh (Columbia: University of Missouri Press, 2002), 140–74. They also construed *The Authoritarian State* as "an apologia for the Austrofascist regime." See the conclusions to this article for Voegelin's actual appraisal of the Austrian regime in 1937. Once he was living in the United States, Voegelin was much more critical of Austrian politics, particularly the notion that Austria was an early victim of Hitler and the Nazis. See Barry Cooper, *Eric Voegelin and the Foundations of Modern Political Science* (Columbia: University of Missouri Press, 1999), 26ff.

20. For details on the Memorial, see Martin Bulmer and Joan Bulmer, "Philanthropy and Social Science in the 1920s: Beardsley Ruml and the Laura Spelman Rockefeller Memorial, 1922–29," *Minerva* 19, no. 3 (1981): 347–407; Martin Bulmer, "Support for Sociology in the 1920s: The Laura Spelman Rockefeller Memorial and the Beginnings of Modern, Large-Scale, Sociological Research in the University," *The American Sociologist* 17 (1982): 185–92; Christian Fleck, "Die gescheiterte Gründung eines Zentrums für sozialwissenschaftliche Forschung in den 30er-Jahren in Wien," *Archiv für die Geschichte der Soziologie in Österreich*, Newsletter, no. 20 (June 2000). Details of Voegelin's fellowship are available at the Rockefeller Archive Center, LS/RM/III/52/548.
21. *Autobiographical Reflections*, 56. In fact, his later account in the *Autobiographical Reflections* occasionally distorts the original specifics of his intellectual posture at that time, and the details of his studies as reported to the Rockefeller Foundation are not in exact agreement with his recollection. Nevertheless, these years undoubtedly had a lasting influence on his scholarly and personal outlooks.
22. The above quotes are from Voegelin, *Autobiographical Reflections*, 60–61.
23. Eric Voegelin, *On the Form of the American Mind*, vol. 1 of *The Collected Works of Eric Voegelin*, trans. Ruth Hein, ed. Jürgen Gebhardt and Barry Cooper (Baton Rouge: Louisiana State University Press, 1995). J. C. B. Mohr was Max Weber's publisher. This first book by Voegelin also served as his *Habilitationsschrift*.
24. Voegelin, *On the Form of the American Mind*, 3.

25. A few years later in a series of lectures written and delivered in English in Geneva entitled "National Types of Mind and the Limits to Interstate Relations," available in *The Theory of Governance and Other Miscellaneous Papers*, 430–82, Voegelin provided a much more commonsensical account of his interpretive procedures. See also "Editors' Introduction," in *On the Form of the American Mind*, xxii–xxxv. Kelsen had reservations about the approach Voegelin took in these Geneva lectures. See Winkler, "Geleitwort," xxiii.
26. Voegelin's 1932 fragment of a book on *Staatslehre als Geisteswissenschaft*, translated as "Political Theory as Human Science," is available in *The Theory of Governance and Other Miscellaneous Papers*, 414–29.
27. Available as "Appendix 2," in Eric Voegelin, *Selected Correspondence, 1924–1949*, vol. 29 of *The Collected Works of Eric Voegelin*, trans. William Petropulos, ed. Jürgen Gebhardt (Columbia: University of Missouri Press, 2009), 676–82.
28. Voegelin wrote, "The 'Pure Theory of Law' stands at the end of the historical destruction of the problem complex" (*Published Essays, 1922–1928*, 98). Kelsen wrote that the Pure Theory of Law was the "end of the destruction of the historical problem complex" (677).
29. Gebhardt, "Eric Voegelin, the Early Years," in *Selected Correspondence, 1924–1949*, 11.
30. See Gebhardt, "Eric Voegelin, the Early Years," 11–12; between July 1931 and March 1932 Voegelin received $900 from the Rockefeller Foundation to work on his *Herrschaftslehre*. See Cooper, *Beginning the Quest*, 230n6.
31. Available in *Published Essays, 1922–1928*, 182–91. The following quotations are taken without citation from this source.
32. See also Fritz K. Ringer, *The Decline of the German Mandarins: The German Academic Community, 1890–1933* (Cambridge: Harvard University Press, 1969), 10–11, 17, 115.
33. Voegelin to Ernst Krieck, December 15, 1933, in *Selected Correspondence, 1924–1949*, 116.
34. Available as "On the Theory of the State Form," in *Published Essays, 1922–1928*, 206–54. The following quotations are taken without citation from this source.
35. See Cooper, *Beginning the Quest*, chap. 3, for a discussion of the details; see also Voegelin's discussion in *The New Science of Politics*, 31–36.
36. See Voegelin, "Ought in Kant's System," in Eric Voegelin, *Published Essays, 1929–1933*, vol. 8 of *The Collected Works of Eric Voegelin*, trans.

M. J. Hanak and Jodi Cockerill, ed. Thomas W. Heilke and John von Heyking (Columbia: University of Missouri Press, 2003), 180–227. The following quotations are taken without citation from this source.

37. Ebenstein, *The Pure Theory of Law*, 7.
38. See "Kant's Importance for Voegelin's Philosophical Anthropology," in Barry Cooper, *Paleolithic Politics: The Human Community in Early Art* (Notre Dame, IN: University of Notre Dame Press, 2020), 327–39.
39. See Thomas W. Heilke, "'Out of Such Crooked Wood': How Eric Voegelin Read Immanuel Kant," in *Eric Voegelin and the Continental Tradition: Explorations in Modern Political Thought*, ed. Lee Trepanier and Steven F. McGuire (Columbia: University of Missouri Press, 2011), 15–43.
40. Arpad Szakolczai, "Eric Voegelin and Neo-Kantianism: Early Formative Experience or Late Entrapment?," in *Eric Voegelin and the Continental Tradition*, 157.
41. Available as Eric Voegelin, *Race and State*, vol. 2 of *The Collected Works of Eric Voegelin*, trans. Ruth Hein, ed. Klaus Vondung (Baton Rouge: Louisiana State University Press, 1997); and Voegelin, *The History of The Race Idea from Ray to Carus*, vol. 3 of *The Collected Works of Eric Voegelin*, trans. Ruth Hein, ed. Klaus Vondung (Baton Rouge: Louisiana State University Press, 1998).
42. "The debate about races, the Jewish problem, etc., went on all the time." *Autobiographical Reflections*, 66.
43. *Race and State*, 2–3. Voegelin referred in a footnote to his article on Kant discussed in the previous section. The following quotations are taken without citation from this source.
44. Here Voegelin provided a footnote to a lengthy review of Schmitt's *Verfassungslehre*, available in Eric Voegelin, *Selected Book Reviews*, vol. 13 of *The Collected Works of Eric Voegelin*, ed. and trans. Jodi Cockerill and Barry Cooper, with introduction by Barry Cooper (Columbia: University of Missouri Press, 2001), 42–66. (Discussion of this article follows in the concluding section to this paper.) See also Winkler, "Geleitwort," xxiii–xxiv.
45. Voegelin developed some of these points in his *Herrschaftslehre*; see *The Theory of Governance*, 224–413. This text remained unpublished until 2003.
46. Voegelin, *Race and State*, 3–7.
47. Voegelin, "Kelsen's Pure Theory of Law," 188.
48. Voegelin, "The Austrian Constitutional Reform of 1929," in *Published Essays, 1929–1933*, 148.

49. Eric Voegelin, *The Authoritarian State: An Essay on the Problem of the Austrian State*, vol. 4 of *The Collected Works of Eric Voegelin*, trans. Ruth Hein, ed. Gilbert Weiss, with historical commentary on the period by Erika Weinzierl (Columbia: University of Missouri Press, 1999), 81–82, 296. See also *The New Science of Politics*, 27–31.
50. Voegelin, *The Authoritarian State*, 139.
51. Voegelin, *The Authoritarian State*, 159.
52. The following quotations are taken without citation from this source.
53. Consider Voegelin's remarks on the German *Rechtsstaat* in *Hitler and the Germans*, vol. 31 of *The Collected Works of Eric Voegelin*, trans. and ed. Detlev Clemens and Brendan Purcell (Columbia: University of Missouri Press, 1999), 213–36.
54. In this context consider the remarks of Klaus Christian Köhnke, *The Rise of Neo-Kantianism: German Academic Philosophy between Idealism and Positivism*, trans. R. J. Hollingdale (Cambridge: Cambridge University Press, 1991), 137–39, 225–26, 280.
55. See also Ringer, *The Decline of The German Mandarins*, 308–9.
56. Notably "The Origins of Scientism" (1948), available in Eric Voegelin, *Published Essays, 1940–1952*, vol. 10 of *The Collected Works of Eric Voegelin*, ed. Ellis Sandoz (Columbia: University of Missouri Press, 2000), 168–96.
57. In his later work, Voegelin would write of a "prohibition of questions," *Fragesverbot*, that enabled the prohibitor to introduce imaginary second realities. See Eric Voegelin, *Modernity without Restraint: The Political Religions*; *The New Science of Politics*; and *Science, Politics and Gnosticism*, vol. 5 of *The Collected Works of Eric Voegelin*, ed. Manfred Henningsen (Columbia: University of Missouri Press, 2000), 261–65; see also Voegelin, *Hitler and the Germans*, 239–56.
58. Leo Strauss made the same point regarding the equally positivist and quantitative American voting studies. See Strauss, "An Epilogue," in Herbert J. Storing, ed., *Essays on the Scientific Study of Politics* (New York: Holt, Rinehart and Winston, 1962), 305–27; and "What Is Political Philosophy?," in Strauss, *What Is Political Philosophy? and Other Studies* (Glencoe, IL: Free Press, 1959), 9–27. The problem still exists among contemporary quants in political science.
59. Voegelin, *The Authoritarian State*, 216. See also Sandro Chignola, "*Fetishism with the Norm" and Symbols of Politics: Eric Voegelin between Sociology and Rechtswissenschaft, 1924–1938* (Munich: Occasional Papers, Eric-Voegelin-Archiv, 1999); Thierry Gontier,

"Le 'Fétichisme de la Norme': Voegelin Critique de Kelsen," *Dissensus: Revue de Philosophie Politique* 1 (2008): 125–47.

60. Esp. in *Secular Religions*.
61. Voegelin, "Review of Schmitt," in *Selected Book Reviews*, 42–66. See also Thierry Gontier, "From 'Political Theology' to 'Political Religion': Eric Voegelin and Carl Schmitt," *Review of Politics* 78 (2013): 25–43; Sandro Chignola, "The Experience of Limitation: Political Form and Science of Law in the Early Writings of Eric Voegelin," in *Politics, Order and History: Essays on the Work of Eric Voegelin*, ed. Glenn Hughes, Stephen A. McKnight, and Geoffrey L. Price (Sheffield, UK: Sheffield Academic Press, 2001), 61–84, esp. 75–79; Jürgen Gebhardt, "The Concept of 'The Political' Revisited," in *Philosophy, Literature, and Politics: Essays Honoring Ellis Sandoz*, ed. Charles R. Embry and Barry Cooper (Columbia: University of Missouri Press, 2005), 209–22.
62. See also Voegelin's 1937 review of Hans Krupa's study of Schmitt as well as his review of Kelsen's *General Theory of Law and the State* (1945) in *Selected Book Reviews*, 109–10; 131–34.
63. According to Erika Weinzierl, Voegelin's "critique affected Kelsen deeply," but she gave no reference to any source. Kelsen's biographer, Métall, said nothing about Kelsen's reaction in *Hans Kelsen: Leben und Werk*, nor did Winkler in his "Geleitwort." See also the remarks of Reinhold Knoll in *Voegelin Recollected: Conversations on a Life*, ed. Barry Cooper and Jodi Bruhn (Columbia: University of Missouri Press, 2008), 238–39. In a letter to Talcott Parsons, September 3, 1941, Voegelin said: "I myself am regarded as something like a queer monster, practically a Fascist, by my friends of the more radical Kelsen persuasion (in 1936 I got furious and tore the pure theory of law to pieces in my *Autoritaerer Staat*; Kelsen did not speak to me after the performance for more than a year and is still very cool)." See *Selected Correspondence, 1924–1949*, 291.
64. Voegelin, "Changes in the Ideas of Government and Constitution in Austria since 1918" (1937), in Eric Voegelin, *Published Essays, 1934–1939*, vol. 9 of *The Collected Works of Eric Voegelin*, trans. M. J. Hanak, ed. Thomas W. Heilke (Columbia: University of Missouri Press, 2001), 110.