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Authoritarian Government in Early Twenty-First Century Europe: Elements of a Genealogy

by

Philipp Patrick Kender

Thesis submitted for the degree of Doctor of Philosophy

School of Law
Birkbeck, University of London

January 2022

Declaration

I hereby declare that the work presented in this thesis is my own. All references to works of other authors are indicated in the text.

Signed: _____

Philipp Patrick Kender

Abstract

The topic of this dissertation is the early twenty-first century resurgence of political organisations in Europe which promulgate ethno-nationalist doctrines and the naturalness of hierarchy and inequality in society. While this political conjuncture is frequently examined through the conceptual lens of ‘populism,’ these developments are studied here with reference to the notions of government and authority. Government is understood in the sense proposed by Michel Foucault as the practise of guiding the conduct of subjects, whereas authority is construed as a subset of governmental practises, namely practises of issuing binding advice and validating the conduct of subjects.

This dissertation develops a genealogy of this ‘authoritarian moment’ focused on the radical heterogeneity of the anthropological models of homo juridicus, the subject of rights associated with the theory of the social contract, and homo oeconomicus, the self-interested economic actor. Subjectivation as homo oeconomicus is associated with neo-liberal practises of government, and considered an expression of a general opposition within neo-liberal politico-economic thought to the theory of the social contract and the model of the subject of rights. Engaging with key figures (Friedrich Hayek) and events (the Walter Lippmann Colloquium) in the history of neo-liberalism, two features of this opposition to social contractarianism are elaborated. The first is that neo-liberal governmental rationality seeks to prevent the state from acting as a political representative of a popular will, ideally by dissolving it in post-national frameworks of government. The second feature elaborated is the neo-liberal rejection of interpersonal authority in favour of a practise of authority in which subjects receive advice and validation from impersonal economic indicators.

The genealogical narrative of this dissertation considers the supranational framework of government which emerged in Europe in the early 1950s as an institutional embodiment of the neo-liberal opposition to the contractarian idea of

politics as wilful deliberation over the common good. It concludes that the combination of neo-liberal policy proposals, nationalism, xenophobia and apologia of social inequality that characterises the political organisations contributing to the ‘authoritarian moment’ is not without precedent. This combination follows a late attempt made by Europe’s supranational institutions at legitimising their own government of subjects as economic actors by way of recourse to the language of social contract theory. While this attempt has failed on the supranational level, this combination is effectively deployed on the level of the nation-state against a crisis of legitimacy of the impersonal authority of the market.

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Chapters Two, Three, and Four of this dissertation grew out of papers presented at the *Violence, Space, and the Political* conference, which took place at NUI Galway in June 2018, as well as the *Semaine Doctorale Intensive*, organised by the Sciences Po (Paris) École de droit in July 2018, and the *IIPPE Annual Conference* held in Pula, Croatia in September 2018.

The ideas contained in these Chapters have benefitted greatly from the conversations I had with Mark Devenney and Clare Woodford after my talk in Galway, the detailed responses by Norman Spaulding and Rusbel Ricardo Ortíz Dicelis to my paper at Sciences Po, and the comments by Zoé Evrard, Frieder Otto Wolf,

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Introduction

In July and August 1978, Friedrich Hayek wrote two letters to the editor of *The Times* which, taken together, constitute an impressive example of what is entailed *in extremis* by a central tenet of Hayek’s political philosophy, namely the idea that individual liberty is independent of, and a higher political good than democracy. The first of Hayek’s letters to *The Times* was prompted by a previous contribution by David Steel, then leader of the British Liberal Party, in which Steel questioned the ideological proximity between Augusto Pinochet’s dictatorship in Chile and Margaret Thatcher’s Conservative Party, whose appreciation for Hayek’s ideas was already well-known at that time. More specifically, in his letter, printed in the July 3, 1978 edition, Steel criticised the idea of freedom promoted by the Conservative Party under Margaret Thatcher’s leadership as being all too ‘selective’; that is to say, an idea of freedom that reduces it to “economic freedom” (Steel, 1978, p. 14), which is moreover defined only vaguely, and in purely negative terms, as “the absence of socialism” (ibid.). Steel further observed in his letter that this idea of freedom is by no means exclusive to the Conservative Party of Great Britain. In this respect, he wrote, the Conservatives share common ground with the military dictatorship that had governed Chile since the 1973 coup d’état had overthrown the democratically-elected socialist Salvador Allende: “[t]he Pinochet regime in Chile,” his letter continues, “has, after all, brought back economic freedom in place of the socialism which Señor Allende had tried to introduce — but in the process it has abolished political liberty and trampled on human rights” (ibid.). A politics that assiduously de-

fends the ‘free market’ at the cost of political liberty and human rights: this is also the path on which the Conservatives were about to embark under Thatcher, or so Steel appeared to claim when he lamented that “[e]conomic liberty, the New Right’s (and Mrs Thatcher’s) battery, is a poor thing without political and civil liberties to balance and support it” (ibid.).

In his response to David Steel, which appeared in *The Times* one week later, on July 11, 1978, Hayek did not address the latter’s comparison between Margaret Thatcher and Augusto Pinochet, but he nevertheless stressed emphatically that as far as he was concerned, the existence of a democracy is a not at all indispensable safeguard for individual liberty. The only true guarantor of individual liberty, Hayek wrote, is a ‘free’ market. Hayek’s message for Steel is that too much democracy may in fact constitute a threat to the freedom of the individual: “[a] limited democracy,” asserted Hayek, “might indeed be the best protector of individual liberty and be better than any other form of limited government, but an unlimited democracy is probably worse than any other form of unlimited government” (Hayek, 1978, p. 15). In Hayek’s view, it followed moreover that “[i]f Mrs Thatcher said that free choice is to be exercised more in the market place than in the ballot box, she has merely uttered the truism that the first is indispensable for individual freedom while the second is not” (ibid.).

Yet when two weeks later a colleague of Steel’s from the Liberal Party, the political theorist William Wallace, asked in a perplexed response to Hayek whether he really meant “to argue that authoritarian governments may defend freedom better than democracies” (Wallace, 1978, p. 13), Hayek eventually put his cards on the table and, in a further letter, wrote an explicit apologia for Pinochet’s junta and authoritarian forms of government in general. “In modern times,” we read in Hayek’s second letter,

“there have of course been many instances of authoritarian governments under which personal liberty was safer than under many democracies. I have never heard anything to the contrary of the early years

of Dr Salazar’s early government in Portugal [...]. More recently I have not been able to find a single person even in much maligned Chile who did not agree that personal freedom was much greater under Pinochet than it had been under Allende. Nor have I heard any sensible person claim that in the principalities of Monaco or Lichtenstein [sic!], which I am told are not precisely democratic, personal liberty is smaller than anywhere else!” (Hayek, 1978a, p. 15)

As we enter the third decade of the twenty-first century, Pinochet has disappeared and the people of Chile are working to undo the legacy of his rule, having recently voted in a referendum in favour of rewriting the constitution implemented by the military dictatorship in 1980. Neo-liberal government, however, of which Pinochet, at least in Friedrich Hayek’s opinion, is such a formidable embodiment — and its accompanying process of the curtailment, hollowing out, and transformation of democracy into a spectacle of media propaganda in the interests of capital — still appears to be well and alive, and one may easily get the impression that the broader issues which Hayek and his interlocutors were arguing over in the pages of *The Times* in the late 1970s have gained considerable importance in Euro-Atlantic political discourse over the years.

In 1978, Hayek’s association of individual liberty with the ‘free market’ may still have been surrounded by an air of novelty. In the decades since, however, this association has become such a staple of political discourse that a small political compass can now be constructed on the basis of the positions assumed vis-à-vis this reduction of individual freedom to the freedom to be an actor on the capitalist market. We could perhaps claim that to be right-wing today means to subscribe to this reduction, and loyally embrace each and every implication that follows on from it; to be a centrist, if it is at all meaningful to speak of such a political position,¹ might perhaps mean to accept Hayek’s reduction of individual

¹In his 1994 *Rechts, wo die Mitte ist* (‘Right, Where the Centre Is’), Kurt Lenk writes, in the context of pre-1990 West German politics, that it is no doubt appealing for major political parties to claim to be ‘centrist’ or prefix their political orientation with ‘centre-.’ Doing so allows these parties “[to lay claim to] a space *beyond* mere partisan politics” (Lenk, 1994, p. 13; my translation); a claim supposed to appeal to an audience characterised by a “rather apathetic

liberty to unhindered market participation, but with some reservations and the occasional noble effort at mitigating the worst ramifications of life in a market society; whereas rejecting this association and insisting on the idea that the freedom of the individual depends on the possibility of subjecting every aspect of social life, including economic ones, to democratic decision-making processes is what it would appear to mean to be on the left in the Euro-Atlantic world today. Regardless of one's respective positions, Euro-Atlantic political discourse as we enter the 2020s seems hardly thinkable without a constant return to questions such as 'Can or should the notion of freedom be reduced to economic freedom?', 'Is socialism really the antithesis of economic freedom?' and 'Which aspects of social life should be subject to democratic decision-making?'

Apart from the obstinate persistence of questions like these, we have moreover witnessed in the first two decades of the twenty-first century a remarkable increase in popular support across the Euro-Atlantic world for authoritarian movements on the political right whose answers to these questions are technically identical to those given by Hayek some forty years ago in the letters pages of *The Times*, but rhetorically perhaps focus slightly less on presenting the neo-liberal market society as an existential alternative to socialism than the Austrian émigré economist did. With Christian Fuchs, we can say that the hallmark of early twenty-first century authoritarianism is that it exploits the "fears of potential future social decline" (Fuchs, 2018, p. 166), essentially amongst industrial workers (cf. Manow, 2019, p. 30 ff.) and the lower middle-class (cf. Mounk, 2018, pp. 156-160), fears that arose only after decades of social reforms along Hayek's lines, and actively "[tries] to create chauvinist, xenophobic, racist and anti-Semitic fear so that citizens are encouraged to project their aggressions into surrogate objects" (Fuchs, attitude, averse to the idea of politics as a conflict of interests" (ibid.; my translation). In the same passage, Lenk, however, also reminds us of the sociologist Maurice Duverger's thesis of the " 'natural phenomenon of party dualism' " (ibid., p. 12; my translation), according to which "the centre does not exist in politics: there may well be a Centre party but there is no centre tendency, no centre doctrine. [...] The dream of the centre is to achieve a synthesis of contradictory aspirations, but synthesis is a power only of the mind. Action involves choice and politics involve action" (Duverger, 1959, p. 215; quoted in: Lenk 1994, p. 12).

2018, p. 166). Although this recent resurgence of the authoritarian right is indeed a phenomenon that pertains just as much to North America, Latin America and Asia as it does to Europe, in this dissertation we shall focus on the specific historical developments which led to this resurgence in early twenty-first century Europe.

To give a brief, exemplary list of European right-wing political parties that have enjoyed considerable popular support for extended periods in the 2000s and 2010s, consider for instance the electoral successes in these two decades of the Dutch Party for Freedom (PvV), the French National Rally (formerly the National Front), the Alternative for Germany (AfD), the Austrian Freedom Party (FPÖ), the Belgian Vlaams Belang, the Sweden Democrats, the True Finns, Law and Justice (PiS) in Poland, Fidesz in Hungary, Golden Dawn in Greece, the Italian Lega and the Spanish Vox. The UK Independence Party (UKIP), though never particularly successful in national elections, moreover should be mentioned as having contributed considerably to positioning xenophobia at the core of political discourse in the United Kingdom in the late 2000s and early 2010s. Most recently, it has furthermore been argued that now the British Conservative Party (essentially in the wake of the referendum on the United Kingdom's exit from the European Union) (Ryder, 2020, pp. 63-86), Emmanuel Macron's La République En Marche (Amable & Palombarini, 2021, pp. 166-173), and the conservative New Democracy government which came into power in Greece in 2019 (Roufos, 2021), also appear to be adopting the rhetoric and strategies of the other parties we listed above. It would thus appear that there is hardly a single country in Europe without successful rightist political parties promoting a combination of an ethno-nationalist agenda, an open embrace of xenophobic rhetoric, and a belief in the supposed naturalness of hierarchy and inequality in society. In fact, some parties may even claim to represent all three of these characteristics.

0.1 Literature Review

0.1.1 A Survey of ‘General Theories’ of the Current Political Conjuncture

A considerable number of scholarly attempts have been made in recent times at shedding light on the broader historical trends which contributed to the surge in popularity, both in Europe and in North America, of the political parties listed above and similar political organisations. We begin our review of this literature by turning to four such works, all of them authored by political scientists and theorists, in order to identify a set of common explanations for the causes of the rise of such organisations in the Euro-Atlantic world.

Yascha Mounk’s 2018 monograph *The People vs. Democracy* proves a particularly good starting point here, insofar as the individual chapters of this book touch briefly on the entire span of the most common explanations. In light of Friedrich Hayek’s late 1970s words of support for Pinochet, the diagnosis of the Euro-Atlantic political conjuncture at the end of the 2010s reached by Mounk is a rather interesting one. In order to give his readers an overview of what he refers to as the ‘crisis of liberal democracy,’ he first refers to longitudinal data from the World Values Survey according to which support for military rule has increased, in some places sometimes significantly so, in nine European countries, East and West, as well as in the United States, between the mid-1990s and the mid-2010s (Mounk, 2018, p. 109 f.). Immediately after, Mounk refers to a further set of data from the same source suggesting that the number of citizens across North America and Europe who support the idea of being ruled by “a strong leader who does not have to bother with parliament and elections” (ibid., p. 111) is increasing. His book offers three explanations for these trends: the rise of social media (ibid., pp. 137-150), decades of slow economic growth on both sides of the North Atlantic (ibid., pp. 151-160), and what could perhaps be called ‘anxieties

around identity' in Western democracies (ibid., pp. 161-181), anxieties that are due, at least in Mounk's estimation, to these democracies having recently become "much more equal [in terms of formal rights to democratic participation] and diverse" (ibid., p. 181). A survey of other influential studies of the historical trends leading to the current popularity of authoritarian movements of the political right throughout the Euro-Atlantic world would also attribute this trend to one or more of the three factors identified by Mounk.

Pippa Norris and Ronald Inglehart's *Cultural Backlash: Trump, Brexit, and Authoritarian Populism*, for instance, identifies the cause of this electoral trend primarily in the anxieties of ageing populations over the loss of their cultural hegemony in society (Norris & Inglehart, 2019, pp. 87-131; pp. 175-212). The joint authors consider economic stagnation as another factor contributing to this process, but ascribe to it merely a secondary role, as something that accelerates the process but does not drive it (ibid., pp. 132-174). Their main thesis is that the current political conjuncture can be explained as a 'cultural backlash' against what their book refers to as a "silent revolution in cultural values" (ibid., p. 87). According to Norris and Inglehart, "unprecedentedly high levels of economic and physical security [in the decades after World War II] brought a pervasive intergenerational value shift" (ibid., p. 412) in the Western world, in the context of which a preoccupation for "freedom of choice for the individual" (ibid.) is supposedly displacing an earlier preoccupation with "economic and physical safety and conformity to group norms" (ibid.). The joint authors explain the rising "[v]ote share for populist parties" (ibid., p. 9) by way of arguing that "older social conservatives" (ibid., p. 45), that is, voters born in the interwar period and to a large extent the so-called 'baby boom' generation (ibid., pp. 94-98), have lost the influence they once had on public culture, but still "[remain] a bare majority of the voting public" (ibid., p. 45). As such, these groups use the vote to retaliate for the injury inflicted by their loss of status. For Norris and Inglehart,

what we are currently witnessing is thus the rise of a “politics of resentment and alienation” (ibid., p. 48).

David Runciman’s *How Democracy Ends* also grants some explanatory value to the circumstance that longer-term economic stagnation in the West has “[drawn] voters [...] to politicians offering the promise of something different at election time” (Runciman, 2019, p. 175), noting that in fact, if these leaders are elected, they eventually merely transform the politics of their respective countries into what Runciman terms a “pragmatic authoritarianism” (ibid., pp. 170-178 passim); something that Runciman does not consider to be the end of democracy in the Western world, but rather “the populist distortion of it [...] a parody of democracy rather than a replacement” (ibid., p. 175). Runciman, however, gives at least as much consideration to the digital revolution, which, he claims, has made us “become dependent on forms of communication and information-sharing that we neither control nor fully understand” (ibid., p. 7). His book juxtaposes the rise of social media with the trend of steadily declining membership in political parties in Western countries. While he acknowledges that this trend “is a story of long-term decline” (ibid., p. 147), he is careful to emphasise that “like so much else, the social media revolution has accelerated it” (ibid.). For Runciman, this dual development also participates in the process of hollowing out Western liberal democracies. Social media, he tells us, has accelerated the decline of the party, but since to him “[i]t is not clear that democracy can work without [parties]” (ibid., p. 151), he ultimately comes to the pessimistic conclusion that “[f]or now, we have destroyed something without knowing how to replace it” (ibid.).

Finally, consideration should be given to a comprehensive study from outside the anglophone world, namely Philip Manow’s *Die politische Ökonomie des Populismus* (‘The Political Economy of Populism’). Manow’s book focusses predominantly on Europe and considers the current crisis of liberal democracy against the backdrop of the politico-economic ramifications of the EU enlargement in

2004, the 2008-09 financial crisis, and the subsequent eurozone crisis in the 2010s (Manow, 2019, p. 16 ff.). His fundamental assumption is that the respective local consequences of these developments were determined by the “respective economic and welfare systems” (ibid., p. 18; my translation) of the different states in Europe. Manow sees in Europe’s ‘populism’ of recent years “essentially an articulation of protest against globalisation, and against two of its primary manifestations in particular: international trade and migration” (ibid., p. 11; my translation), though he ultimately distinguishes two varieties along the lines of which this ‘protest’ is articulated. In his view, it is the regional varieties that “culturalistic [... kulturalistische]” (ibid., p. 11) explanations such as that of Norris and Inglehart have trouble accounting for (ibid., p. 103 f.). His argument about these regional varieties is that in northern Europe, “where the welfare state is generous *and* accessible” (ibid., p. 19; my translation), this ‘populist protest’ defines itself in opposition “to migration, that is to say, as a right-wing populism opposed to the free movement of people” (ibid., p. 20; my translation); whereas in southern Europe, where “the welfare state, while also generous, is generally inaccessible to migrants” (ibid., p. 19; my translation), we encounter a left-wing populism “opposed more to the ‘neo-liberal’ economic order, that is, the free movement of goods and capital and the fiscal restraint of the state (‘austerity’)” (ibid., p. 20; my translation).

0.1.2 The Position Assumed Vis-à-vis These ‘General Theories’

It should be acknowledged that each of the four studies just surveyed provides well-substantiated theories about the developments that have led to the recent successes across the Euro-Atlantic world of political parties and movements marked by their xenophobia, nationalism, and apologia for social inequality. However, certain aspects of these studies nevertheless remain open to question.

For instance, while Norris and Inglehart, who portray the current Euro-American political conjuncture principally as an intergenerational conflict (about values, but not money, mind you), are very careful to undergird their hypotheses about the causes of this conjuncture with empirical data, one should perhaps call into doubt the categorical disjunction on which the basic claim of their book rests; that is to say, the claim that in the second half of the twentieth century, “[p]eople changed from giving top priority to economic and physical safety and conformity to group norms toward increasing emphasis on individual freedom” (Norris & Inglehart, 2019, p. 34). It seems odd to start from the assumption that there should be an either/or choice between economic and physical safety as a ‘top priority’ and ‘freedom of choice,’ which in Norris and Inglehart’s view amounts essentially to “gender equality; tolerance of gays, foreigners, and other out-groups; freedom of expression and more say in decision-making” (ibid., p. 412). After all, it is easy to imagine that every single one of these ‘individual freedoms’ was probably demanded precisely because of concerns for either physical or economic security, or both. This foreclosure of the possibility of establishing connections between demands for ‘individual freedoms’ and economic concerns or concerns for physical safety in turn diminishes the persuasiveness of Norris and Inglehart’s method of using a generous amount of empirical data in order to support the argument that generations can be treated as homogenous masses, in which internal stratifications play less of a role than their external delimitation against other generations. Given this fundamentally questionable framing of the problem, the quantitative methodology the joint authors draw upon appears merely to be a roundabout manner of arguing that the current political conjuncture is a tempest in a teacup because the older generations will eventually die and “the long-term trajectory of cultural evolution [will] [continue] to move Western societies in a more socially liberal direction over successive decades” (ibid., p. 454).

Conversely, apropos Philip Manow’s study of the ‘political economy of populism’, one could ask whether his particular materialist approach, despite the

equally great care he takes to substantiate his hypotheses with empirical data, might not be flawed by an underestimation of the effect of mass media political communication on the formation of political opinions. Amongst the phenomena Manow seeks explain is the support of northern European industrial workers for xenophobic varieties of populism. He argues against the association of such support with a general culture of xenophobia in northern Europe (Manow, 2019, p. 32 f.) by suggesting that this support for xenophobic populism is due to northern European industrial workers having to compete with labour migrants on “flexibilised labour markets [... flexibilisierten Arbeitsmärkten]” (ibid., p. 63). Yet this particular organisation of national labour markets still does not explain why such an increase in competition on the labour market should lead to support for populist parties stoking fears about migrants, rather than movements which demand that labour markets and social welfare systems be reformed in the interests of workers. The thesis that mass media political communication can successfully be used for the purpose of directing public opinion for the benefit of partisan interests is arguably as old as modern mass media themselves (Lippmann, 1929, pp. 234-249; Ellul, 1973; Horkheimer & Adorno, 1989, pp. 120-167); and in the context of the current conjuncture, the capacity of mass media to “actively [foster] a social protest identity” (Williamson, Skocpol, & Coggin, 2011, p. 27) has been examined by Vanessa Williamson, Theda Skocpol, and John Coggin with regard to the American Tea Party movement in the early 2010s.²

But aside from these two specific aspects worth calling into question, all four of the abovementioned analyses of the causes of the current political conjuncture

²The anti-humanist understanding of subject formation, according to which the human subject is entirely a second-order phenomenon of specific socio-historical contexts, plays an important background role in this dissertation. We should thus mention that one of the arguably best-known outlines of this anti-humanist understanding, namely the one we encounter in Louis Althusser’s 1970 essay *Ideology and Ideological State Apparatuses*, explicitly describes the concrete social practises through which subjectivation occurs as telecommunicative practises. Althusser contends in his essay that the human subject emerges from practises of interpellation, that is, practises of ‘calling someone up,’ or, ‘hailing’ someone. Apropos these practises, Althusser writes: “[e]xperience shows that *the practical telecommunication of hailings* is such that they hardly ever miss their man” (Althusser, 1971, p. 174; my emphasis).

in the Euro-Atlantic world share a further observation: all four studies we mentioned share the assessment that authority and authoritarianism are implicated in the current conjecture, occasionally referring to their object of study as an ‘authoritarian populism’ or use similar designators.³ All of the works we just discussed could moreover be said to associate the specifically ‘authoritarian’ aspect of this ‘authoritarian populism’ with the circumstance that the political movements and parties that recently gained popularity practise, to a greater or lesser degree, what Maurice Duverger has referred to as the “the cult of the leader” (Duverger, 1959, p. 179); that is to say, that all these movements and parties rely on individual leader-figures who are primarily “considered as a person and not as the holder of an office” (ibid.). This aspect is often presented as a resurgence of an authoritarianism after a virtual absence of authority from public life during most of the second part of the twentieth century. We find this proposal in Yascha Mounk’s reference to an “[increasing openness] to authoritarian alternatives [to democracy]” (Mounk, 2018, p. 108) that has developed in the West over the past thirty years. Norris and Inglehart’s thesis of “the silent revolution in socially liberal and post-materialist values” (Norris & Inglehart, 2019, p. 15), which finds itself interrupted by an ‘authoritarian reflex’ triggered when “formerly predominant majorities” (ibid., p. 16) who do not feel represented by this ‘revolution’ “become a steadily shrinking but still sizeable share of the population and the electorate” (ibid.) offers another exemplar of this trope.

³The works by Norris and Inglehart and Yascha Mounk against which we position ourselves use the term ‘authoritarian populism’ throughout. Although we do not encounter this the term ‘authoritarian populism’ in David Runciman’s book, he nevertheless argues that the current political conjuncture is characterised on the one hand by a populism, which he defines as the rhetorical strategy of claiming “that democracy has been stolen from the people by the elites” (Runciman 2019, p. 65), and a “[t]wenty-first century authoritarianism” (ibid., p. 171), which, in his opinion, “is much more pragmatic than its predecessors” (ibid.). One of the central aims of Philip Manow’s study is that of developing a more nuanced narrative than the one according to which populist parties generally draw their support from “social groups with a national-authoritarian orientation who are opposed to globalisation” (Manow, 2019, p. 71; my translation). Manow’s “comparative political economy of populism” (ibid., p. 103; my translation) attempts to counter this narrative with the alternative explanation we outlined above, which distinguishes between different varieties of populism caused by differences between national welfare systems in Europe.

It is with regard to the suggestion that authority did not play a major role in public life in the second half of the twentieth century that this dissertation wishes to make its most important contribution to the literature on the genesis of the current conjuncture. The central category of our analysis is therefore that of ‘authority,’ and it is for this reason that we shall refer to the current political conjuncture as an ‘authoritarian moment.’ The circumstance that the political parties promoting xenophobia, nationalism, and the naturalness of inequality in society, whose popularity we deem to be characteristic of the current political conjuncture, also employ populist rhetorical tactics and strategies — or in other words, that their political rhetoric frequently makes “some kind of appeal to ‘the people’ and [denounces] ‘the elite’ ” (Mudde & Rovira Kaltwasser, 2017, p. 5), as Cas Mudde and Cristóbal Rovira Kaltwasser put it — shall not play a significant role in our analysis. However, the analytical framework we develop in this dissertation nevertheless offers a perspective on this rhetoric of the ‘appeal to the people.’ As far as the narrative of this dissertation is concerned, the emergence of this ‘populist’ rhetoric in the early twenty-first century is considered a symptom of a legitimacy crisis of an impersonal, ‘market-centred’ modality of practising authority that has been introduced in the Euro-Atlantic world alongside neo-liberal practises of government in the second half of the twentieth century.

This dissertation intervenes in the debate around the developments that led to the current political conjuncture by proposing that the existence of ‘cult-ish’ leader-figures in politics is not an indicator of the presence or absence of authority in society *per se*, but merely indicates to us the modality in which authority is practised. We contend in this dissertation that the second half of the twentieth century has not in the least been characterised by an absence or even a diminution of the importance of authority in public life. What we seek to demonstrate is that authority has always been an integral part of the neo-liberal governmentalities that began to take hold in the Euro-Atlantic world in the second half of the twentieth century, and would proliferate particularly from

the 1970s onwards. For this, we shall focus our analysis on the development of neo-liberal governmentality specifically in Europe. On the basis of a discussion of the proceedings of a 1938 conference held in Paris occasionally referred to as the ‘birthplace of neo-liberalism,’ the Walter Lippmann Colloquium, and a reading of the work of Friedrich Hayek, we argue that it is possible to portray neo-liberal government as the pursuit of a ‘dethronement’ of politics qua expression of a popular will. We furthermore highlight that the means for such a ‘dethronement’ are either the formation of an authoritarian state, or (and this is the preferred option) the dissolution of the nation-state in post-national governmental frameworks. Our historical case study of such a ‘dethronement’ of politics will be the supranational framework of government that developed in Europe, from its 1951 emergence through the foundation of the European Coal and Steel Community to the 1992 foundation of the European Union and its aftermath.

The analysis of the current political conjuncture in Europe proposed in this dissertation offers neither an idealist account in the sense of Norris and Inglehart’s ‘politics of resentment’ nor an economic sociological study in the vein of Philip Manow, whose explanation suggests that the origin of the current political situation in Europe is to be found in the different *modi operandi* of labour markets and welfare systems across European countries. We establish a genealogy of this ‘authoritarian moment,’ whose general bearings are derived from Michel Foucault’s work on the notion of ‘government’ and his historical analysis of modern, liberal and neo-liberal governmentalities. We propose that authority can be conceptualised, analogously to ‘government’ in Foucault’s sense of the term, as a social practise, and that the practise of authority can moreover be considered a subset of practises of government. With Foucault, we claim that ‘government’ refers to the practise of directing the conduct of human subjects. To this, we further add the claim that practises of government always direct the conduct of subjects on the basis of particular anthropological models: classical- and social liberal practises of government call upon their subjects to act as *homines jur-*

idici, that is, as subjects of rights, whereas neo-liberal practises of government subjectivate individuals as *homines oeconomici*, or, as self-interested economic actors. By ‘authority,’ we understand the practises of giving binding advice to subjects, and validating their conduct. While being governed as *homo juridicus* involves participation in interpersonal practises of authority, governmental practises on the basis of the model of *homo oeconomicus* call upon subjects to accept binding advice and validation from impersonal economic indicators.

Drawing on this theoretical framework, we finally propose that, at least in the European context, this ‘authoritarian moment’ is to be understood neither as a ‘reflex,’ nor as stemming from a recently rekindled desire for ‘authoritarian alternatives,’ nor as a ‘protest against globalisation,’ but as a reversion to the old, interpersonal modality of practising authority as a result of a crisis of the impersonal, ‘market-centred’ forms of practising authority which were introduced in the second half of the twentieth century.

0.1.3 A Survey of Works on Authoritarian Currents in European Neo-Liberalism

We are certainly not the first to enquire into authoritarian undercurrents in European post-war neo-liberalism. Literature on the linkage between liberalism and authoritarianism in post-war Europe in fact predates the crises facing Europe at the beginning of the 2020s by nearly three decades. A term we frequently encounter in this context is that of ‘authoritarian liberalism’. It was invented by the constitutional lawyer Herman Heller in a 1932 article of the same title (Heller, 2015) to describe the potential outcome of a proposed constitutional reform in late Weimar Germany that would have given a permanent institutional form to the rule by presidential decree, which had for all practical purposes already been the norm for a while at the time because of an ongoing parliamentary deadlock.

An early example of a study into such post-war linkages of liberalism and authoritarianism in Europe can be found in Dieter Haselbach's 1991 monograph *Autoritärer Liberalismus und soziale Marktwirtschaft* ('Authoritarian Liberalism and Social Market Economy'). The objective of Haselbach's book is to outline an oscillation "between liberal rationalism and conservative traditionalism" (Haselbach, 1991, p. 17; my translation) which the author believes to be a characteristic feature of the social theory of ordoliberalism. Part of his 'archaeology,' if we can call it that, of the ordoliberal theory of society consists of a refutation of the intellectual-historical orthodoxy according to which ordoliberalism "owed its programme to a theoretical and practical confrontation with the National Socialist 'centrally administered-' [» Zentralverwaltungs- «] and war economy" (ibid., p. 19; my translation). Haselbach's counter-argument has it that

"ordoliberal 'founding manifestos,' all dating from 1932, make reference to positions within the field of constitutional law [staats- und verfassungsrechtliche Positionen] which, at the end of the Weimar Republic, were advocated in particular by Carl Schmitt. In the context of everyday political debate at the time, these manifestos read like partisanship for the authoritarian presidential empowerment [Ermächtigung]." (ibid.; my translation; cf. further: ibid., pp. 25-54)

According to Haselbach, the "critique of parliamentary democracy" (ibid., p. 18; my translation) formulated by the ordoliberals in late Weimar Germany would moreover remain an integral part of the programme when ordoliberal thought eventually contributed to shaping the post-war West German social and economic policies of the so-called 'social market economy.' We read in *Autoritärer Liberalismus und soziale Marktwirtschaft* that when the Federal Republic of Germany was founded, the "ordoliberals [...] opted [votierten] for an authoritarian 'repair' of parliamentary democracy" (ibid.; my translation; cf. further: ibid., p. 117). Haselbach's proposal that one may discern a certain continuity between the attempt at reforming the German state into an authoritarian presidential republic in the late Weimar period and the eventual 'governmentality' of post-war

West Germany is what encourages us to claim in this dissertation that the continuity with late Weimar ‘authoritarian liberalism’ can be extended to European post-war neo-liberalism more generally. We suggest that this extension is possible because of a structural similarity between the institutional set-up proposed by the authoritarian constitutional reform in Weimar Germany and the set-up of the supranational framework of government established by the 1951 Treaty of Paris.

The question as to whether the government of the supranational institutions that emerged in post-war Europe contains authoritarian elements, or even constitutes an exemplar of the ‘authoritarian liberalism’ that Herman Heller described, has been commented upon on multiple occasions since the late 2000s by two scholars of constitutional law, Alexander Somek and Michael Wilkinson. Already in 2008, Somek published *Individualism: An Essay on the Authority of the European Union*, a book-length attempt at establishing what kind of authority is wielded by Europe’s supranational governmental institutions. Somek seeks to determine what “type of authority [...] is exercised by the European Union” (Somek, 2008, p. 1) by way of examining “*how* competence is exercised by the Union and by *whom* — by what variety of citizen — it would be viewed as legitimate” (ibid.). He answers the ‘how’-question by arguing that the governmental practises of the European Union are guided by a set of beliefs which he refers to as ‘market holism.’ To him, this means that the political competence of the European Union is in principle unlimited, as supranational institutions will always be able to claim competence by maintaining that economic interests are at stake: ‘market holism,’ we are told, is the view that the “internal market [...] is a regulatory space permeating the totality of public policy” (ibid., p. 89). His answer to the question by whom such a quasi-omnicompetence on the part of the European Union will be viewed as legitimate is “*a denationalized authority-trusting subjectivity*” (ibid., p. 156). In Somek’s view, this ‘variety’ of subject is not difficult to encounter:

“I am afraid”, he writes, “that many of our contemporaries would find limited authoritarianism acceptable as long as it remained indeed limited” (ibid. p. 152).

Following the 2008-09 financial crisis and the subsequent euro crisis, both Somek and Wilkinson began to query specifically whether the measures taken by the European supranational institutions of government to address these crises might not recall the authoritarian liberalism that Heller wrote about in late Weimar Germany. Michael Wilkinson first proposed this analogy in an article titled *The Specter of Authoritarian Liberalism*, published in the German Law Journal in 2013, arguing that European Union government after the 2008 crisis had revealed “an acute and increasing imbalance [in the post-national constellation] in favor of the interests of capital over those of democracy, an imbalance which presages a new political form in Europe: Authoritarian liberalism” (Wilkinson, 2013, p. 528). With reference to Heller, but without engaging with the broader historical context of Heller’s 1932 article, Wilkinson suggests that in the post-2008 context, authoritarian liberalism may be defined as “the dominance of the economic over the political and legal constitution in the various formal and informal responses to the crisis” (ibid.). This line of argument is reiterated by Wilkinson in a further article, *Authoritarian Liberalism in the European Constitutional Imagination*, published in 2015 in a special issue of the European Law Journal on, precisely, the topic of ‘authoritarian liberalism.’⁴ By way of reference to Karl Polanyi’s *The Great Transformation*, Wilkinson claimed in 2015 that the authoritarian liberalism Heller wrote about was in fact common in much of Europe during the interwar period (2015, p. 314 f.). On this basis, Wilkinson proposes that it is this authoritarian, interwar variety of liberalism to which Europe’s supranational governmental institutions have been returning post-2008. This time, however, authoritarian liberal government would be “turned outwards, towards debtor countries, which are directed — informally and formally through

⁴Herman Heller’s essay *Authoritarian Liberalism?* was also published for the first time in English translation in the above-cited special issue of the European Law Journal.

the institutions of the EU and the ‘Troika’ — to impose austerity on their populations in order to restore currency stability and be ‘good Europeans’ ” (ibid., p. 315).

In the same 2015 special issue of the *European Law Journal*, Alexander Somek published an article titled *Delegation and Authority: Authoritarian Liberalism Today*. In a similar vein to Wilkinson’s two articles on authoritarian liberalism, Somek holds in *Delegation and Authority* that the “[drastic curtailment of the] autonomy of Member States to decide their fiscal and economic policies” (Somek, 2015, p. 341) in response to the “banking crisis, [...] fiscal crisis and [...] real economic crisis” (ibid., p. 340) that hit European countries in the wake of 2008 made the European supranational governmental framework begin to function according to a logic that could be described as a logic of ‘authoritarian liberalism.’ He describes this logic as one which “put[s] authoritarianism at the centre and view[s] liberalism as a means to pursue it” (ibid., p. 355). Somek concludes his article from the 2015 special issue of the *European Law Journal* with a statement that seems exuberantly optimistic from the perspective of 2021, namely that “Europe is not doomed to stay the authoritarian liberal project that it currently is” (ibid., p. 359). All it will take to turn things around, we are told, is that “governments of the Member States pass on to the Union the democratic resistance that they encounter at home” (ibid.).

Wilkinson eventually developed his work on authoritarian liberalism and the European Union into a monograph, *Authoritarian Liberalism and the Transformation of Modern Europe*, which was published in June 2021 while the manuscript of this dissertation was being finalised. In his monograph, Wilkinson departs from his formerly held position according to which the post-2008 supranational framework constitutes a *revival* of the ‘authoritarian liberalism’ described by Herman Heller in 1932. He argues instead that the history of the development of supranational government in Europe can in fact be considered “a long and entrenched version of [Heller’s] authoritarian liberalism, signalling a slowly constructed pass-

ive transformation of Europe, depoliticizing the economy, and disarming any radical threats to the status quo” (Wilkinson, 2021, p. viii; cf. further: *ibid.*, pp. 5-8). While in 2013 and in 2015, Wilkinson still saw a faint glimmer of hope that “alternatives to authoritarian liberalism might come into view” (2013, p. 560) and that “[against all odds,] the cunning of history [might] procure a different, enlightened and potentially non-nationalistic democratic alternative” (2015, p. 339), the overall diagnosis of the current political conjuncture in Europe to be encountered in Wilkinson’s 2021 book is markedly more pessimistic. “Europe has reached a critical juncture” (2021, p. 3), we are told: it is “entrapped in a fractious position, unable to move forward or backward” (*ibid.*).

0.1.4 The Position Assumed Vis-à-vis These Works on Authoritarian Currents in European Neo-Liberalism

With regard to Somek’s 2008 monograph *Individualism*, it should be noted that it is in fact quite laudable that, in a sense, this book puts the question of ‘who is the subject of authority?’ centre stage. But despite this centrality of the question ‘to whom’ the European Union would be an authority, the answer Somek provides is somewhat brief. In the end, we are merely told that according to Somek’s own impression, trust in authority and acceptance of authoritarian forms of government, provided these refrain from ‘excesses,’ seem to be commonly encountered personality traits amongst inhabitants of Western liberal democracies (cf. Somek, 2008, pp. 152-158). From this observation, he eventually concludes that a good model for the subject of supranational authority can be found in Tocqueville, who, on Somek’s reading, describes the modern subject (*ibid.*, pp. 196 ff.) as individualistic and yet at the same time infatuated⁵ with “administrative authority” (*ibid.*, p. 196). In this dissertation, we approach the question of the subject of authority in a more theoretical manner. Our starting point here is

⁵He specifies that “[a]ccording to Tocqueville, people *love* this [administrative] power” (Somek, 2008, p. 196; my emphasis).

the anti-humanist assertion that we are constituted as subjects by our participation in practises of government and authority. If we indeed are subjects who, to use Somek's phrasing, 'trust' in authority, then the reason for this is that the interrelated practises of government and authority make us so. As for Somek's argument that supranational government in Europe depends on 'denationalised' subjectivity, this dissertation demonstrates moreover that such a 'denationalised' subjectivity is a feature of neo-liberal practises of government in general, which call upon individuals to perform the role of homo oeconomicus rather than that of homo juridicus.

While this dissertation concurs with Wilkinson's suggestion that the history of the development of supranational government in Europe can be read as a 'long and entrenched version' of late-Weimar authoritarian liberalism, we should emphasise that what is commonly referred to as the historical process of 'European integration' is studied here as part of the history of the development of neo-liberal governmentality in Europe. We treat the development of supranational government as such in Europe as an element of a broader process of 'dethroning' politics in Friedrich Hayek's sense: a process characterised by a general tendency to replace parliamentary democratic decision-making with 'executive-heavy,' authoritarian forms of government.

The two constitutional law scholars Somek and Wilkinson furthermore share a purely formal, ahistorical understanding of authority: essentially following Max Weber (1978, pp. 212-216), both Somek and Wilkinson associate authority with legitimate, accepted rule (Somek, 2008, p. 1; Wilkinson, 2021, p. 114; 2013, p. 547, p. 554). We might also venture to suggest that Somek and Wilkinson consider authority as the foundation which sustains a particular institutional order, and within this view then associate the development of supranational government with a broader shift from democratic legitimacy to economic legitimations of institutional action (cf. Wilkinson, 2015, pp. 326-331; Somek, 2008, pp. 217-227). While this observation is most certainly not wrong, it leaves us with a tenuous

understanding of authority at best, and a mystifying one at worst. The concept of authority developed in this dissertation casts authority as a historical social practise that forms part of the practise of ‘government’ in Foucault’s sense. Such an understanding should be able to paint a more accurate picture of the events that led to the emergence of the ‘authoritarian moment’ in early twenty-first century Europe by showing how the breakthrough of neo-liberal governmental practises was accompanied by the introduction of a ‘market-centred’ modality of practising authority, how this specific modality of authority would eventually enter into crisis, and how the ‘authoritarian moment’ constitutes a response to this crisis.

0.2 Structure of the Argument

The argument of this dissertation unfolds over the course of five chapters and a Conclusion. A linear historical narrative is developed throughout Chapters One, Five, and the Conclusion. This historical narrative runs from the early 1930s until the turn of the 2020s, and traces the immediate institutional and ideological developments that led to the ‘authoritarian moment’ in early twenty-first century Europe. Chapters Two through Four discuss the conceptual keystones of our genealogy of the ‘authoritarian moment.’ These keystones are: the distinction between *classical*, *social*, and *neo-liberalism*; *government* and *authority*; as well as *homo juridicus* and *homo æconomicus*, considered as *anthropological models on the basis of which individuals are subjectivated in governmental practises*. In so doing, the conceptual discussions of Chapters Two, Three, and Four moreover outline a number of *longue durée* elements of the genealogy of the ‘authoritarian moment.’ The oldest of these is authority itself, which this dissertation considers to be a social practise dating back to Roman antiquity. The contents of all five main chapters and Conclusion of this dissertation are now outlined below.

0.2.1 Outline of Chapters

Chapter One

Chapter One begins to trace the genealogy of the ‘authoritarian moment’ in early twenty-first century Europe by discussing the so-called *Neuer Staat* (‘new state’), a short-lived and ultimately unrealised plan pursued in 1932 by a group of conservatives around Franz von Papen to reform the constitution of the Weimar Republic along the lines of an authoritarian, corporatist presidential republic. We emphasise the primacy of the economy over democracy of this projected ‘new state’: its style of government would have been executive, and the decisions of the democratically elected legislature would have required approval by an appointed upper chamber. The chapter then skips twenty years ahead and considers the early phase of the development of supranational government in Europe. This early phase begins with the establishment of the European Coal and Steel Community through the Treaty of Paris in 1951; it made its next significant step with the establishment of the European Communities through the Treaties of Rome in 1957 and it reached its conclusion with the so-called Merger Treaty, whose entry into force in 1967 established the European Communities. By way of an analysis of the international treaties that inaugurated and expanded supranational government in Europe, we demonstrate that this supranational framework of government has an institutional structure comparable to that of the projected ‘new state,’ in which central importance is granted to the executive and from which any institution resembling a democratic legislature is absent. It is argued furthermore that supranational government in Europe has been an exemplar of neo-liberal governmental practises from the outset, insofar as this framework of government addresses its subjects exclusively as *homines oeconomici*. Chapter One concludes with the observation that the close of the early phase of the development of supranational government in Europe at the turn of the 1970s would

soon be followed by the breakthrough of neo-liberal practises of government on the level of the nation-state.

Chapter Two

Chapter Two, the first conceptual chapter of this dissertation, draws up distinctions between different liberal rationalities of government. The chapter provides a tripartite schema of the development of liberal governmental rationality throughout Western modernity, from a classical liberalism with origins in the late eighteenth century to what could be called a ‘welfare state,’ or social liberalism, which dates to the mid-nineteenth century, and from there to neo-liberalism, which, as a governmental rationality, emerged in the 1930s. Subsequently, the chapter examines the key characteristic of neo-liberal governmental rationality. It is argued that what distinguishes classical, ‘laissez-faire’ liberalism and ‘welfare-state’ or social liberal rationality from neo-liberalism is the circumstance that the subject of the first two forms of liberal governmental rationality is the citizen, or in other words, the modern subject of rights, whereas neo-liberal rationality casts the human being primarily as an economic agent. Through a reading of the proceedings of the Walter Lippmann Colloquium, we demonstrate that a further distinctive feature of neo-liberalism as a governmental rationality is the circumstance that it rejects both, the classical liberal doctrine of laissez-faire and social-liberal justifications for state intervention in economic processes. Instead, neo-liberal governmental reason ascribes to the capitalist market the function of a coordinator of social transactions, and proposes moreover that the conditions under which the market can fulfil its purpose of effectively coordinating social affairs must be *actively* created and maintained. The final part of this chapter turns to the thought of Friedrich Hayek. Drawing on Hayek’s *Law, Legislation and Liberty*, we argue that the reduction of the human being to homo oeconomicus and the insistence on the market as social regulator can be seen as part of a broader programme inherent to neo-liberal governmental rationality: that of a ‘dethronement of politics,’

with ‘politics’ here understood as the wilful deliberation over the common good. To shed light on the means whereby such a ‘dethronement’ can be pursued, we first resort to one of Hayek’s references, Heinz Otto Ziegler’s 1932 text *Autoritärer oder totaler Staat* (‘Authoritarian or Total State’), in order to argue that one way of ‘dethroning’ politics is by means of instituting an ‘authoritarian’ state which does not identify itself with the popular will. With reference to Hayek’s 1939 essay *The Economic Conditions of Intergovernmental Federalism*, we argue, however, that the preferred method of ‘dethronement’ consists in dissolving the state in post-national governmental frameworks.

Chapter Three

Chapter Three is the central conceptual chapter of this dissertation. Its main concerns are Michel Foucault’s understanding of ‘government,’ and the concept and social function of authority, considered from a historical perspective. This chapter synthesises Foucault’s concept of ‘government’ with what classicists and historical linguists refer to as ‘authority,’ and introduces a distinction between two modalities of practising authority: interpersonal and impersonal. Our engagement with Foucault centres on the concept of what we call ‘power-as-government’ as outlined in his 1983 essay *The Subject and Power*. It is explained that in this 1983 text, Foucault formally defines power as the neither essentially juridical nor essentially warlike practise of ‘conducting conduct,’ and connects ‘power,’ thus defined, to the Old French meaning of the term ‘government.’ The chapter then questions Foucault’s identification of this broad, formal definition of power with this older, pre-modern meaning of ‘government.’ With reference to legal-historical scholarship, it is suggested that the ancient Roman understanding of authority also corresponds fairly closely with Foucault’s 1983 definition of ‘power.’ A more extensive engagement with historical scholarship on authority then positions the latter as a subset of the Foucauldian practise of ‘power-as-government.’ This engagement establishes that the Roman *auctoritas* can be described as a social

practise conducted in interpersonal transactions, whose function is that of validating conduct and providing binding advice to its subjects. With reference to Hannah Arendt, we further propose that this Roman practise of authority was eventually adopted by the Christian Church, and in this way persisted into modernity. However, while Arendt diagnoses the general decline of authority in Western modernity, we draw on Leo Löwenthal's and Max Horkheimer's commentaries on the role of authority in the modern West in order to argue that the practise of authority bifurcated at the onset of modernity. Our reading of Löwenthal and Horkheimer proposes that while interpersonal authority processes continued to play an important role in industrial labour processes, the imperative of the self-valorisation of capital would now also force the owners of capital to engage in the practise of seeking validation and advice from impersonal economic indicators. Finally, we give examples of how this latter, impersonal practise of authority would become increasingly prevalent after the breakthrough of neo-liberal governmental practises in the second half of the twentieth century.

Chapter Four

The topic of Chapter Four are homo juridicus and homo oeconomicus, understood as distinct anthropological models that subjects of governmental practises are called upon to embody. The chapter takes as its basis the descriptions of homo juridicus and homo oeconomicus provided by Michel Foucault in his 1979 Collège de France lecture course *The Birth of Biopolitics* and seeks to expand on them. We first consider the figure of homo juridicus, arguing that the structure Foucault ascribes to the figure of homo juridicus, qua subject of rights, in *The Birth of Biopolitics*, is identical to the one he reads into the anthropology of Saint Augustine in *Les aveux de la chair* ('The Confessions of the Flesh'), the final, posthumously published fourth volume of *The History of Sexuality*. Both Saint Augustine's idea of the human subject and the modern subject of rights are, on Foucault's interpretation, characterised by the circumstance that, oddly,

their own will is split into a ‘voluntary’ and an ‘involuntary’ part, and that they are nevertheless considered juridically accountable for the ‘involuntary’ part of their own will. It is argued that there is in fact reason to assume that modern social contract theory still epitomises this Augustinian idea of the split will. We note although modern theories of the social contract attempted to replace theological with rationalistic justifications for political rule, this substitution can be said to have only resulted in a modification of Augustine’s remarks on the relation between authority and reason. Our commentary on *homo oeconomicus* focusses on Foucault’s portrayal of the emergence of this figure in the work of thinkers associated with the Anglo-Scottish Enlightenment, and on Foucault’s premise that the genealogy of the model of *homo oeconomicus* does not intersect with that of *homo juridicus*. We emphasise Foucault’s linking of the figure of *homo oeconomicus* to an empiricist and explicitly anti-contractarian social theory, in which the question of what stabilises a social order would be a matter of continuous debate. We then propose that in the course of this historical debate, Vilfredo Pareto would at the turn of the twentieth century eventually begin to explicitly theorise about *homo oeconomicus* as the figure whose actions would at least guarantee the stable functioning of exchange markets. The final part of this chapter turns to Jeremy Bentham’s ‘principle of utility’ as an example of how to imagine *homo oeconomicus*’ participation in impersonal, ‘market-centred’ authority practises. Here it is highlighted that the ‘principle of utility’ presents the human being as receiving guidance not from other persons, but from the immediate, visceral experience of pleasure and pain.

Chapter Five

The fifth chapter resumes the historical narrative begun in Chapter One, and connects arguments from the three previous three, conceptual chapters of this dissertation with our account of the immediate historical developments that led to the emergence of the ‘authoritarian moment.’ The historical narrative of Chapter

One is extended from the late 1960s, where we left it off in Chapter One, to the foundation of the European Union in 1992 and its aftermath. It is argued that in this period of history, the subject of neo-liberal government in Europe would be defined to a considerable extent by the supranational institutional framework whose historical emergence we described in the first chapter. We demonstrate that an active political and academic reflection about the subject of supranational government in Europe began at the turn of the 1970s, and we propose that the first significant outcome of this active reflection has been the concept of the ‘market citizen’ as formulated by the jurist Hans-Peter Ipsen in his 1972 compendium *Europäisches Gemeinschaftsrecht* (‘European Community Law’). With reference to Ipsen’s own description of the ‘market citizen,’ we argue that in practise, this figure played the expectable role of the homo oeconomicus of neo-liberal practises of government: the figure of the ‘market citizen’ was involved in the displacement of national governmental practises that call upon their subjects as homines juridici, and the interpersonal practise of authority. It is further argued that Ipsen’s decision to nevertheless refer to the subject of supranational government as a type of ‘citizen’ is indicative of a general ambivalence surrounding the active reflections around the subject of supranational government, and we propose that the introduction of the figure of the Union citizen with the Maastricht Treaty in 1992 eventually attempted to resolve this ambivalence. The figure of the Union citizen is then discussed as illustrating one possible end-point that the development of neo-liberal governmental rationality may reach. We characterise this model as a mixture: a homo oeconomicus-type figure which came to incorporate a ‘hollowed-out’ version of homo juridicus. The chapter explains that such combinations do not contradict Foucault’s postulate that homo juridicus and homo oeconomicus are structurally heterogeneous models of the human being. In a prefatory note at the beginning of this chapter and a commentary near the end of it, we emphasise that Foucault’s postulate merely means that any such combinations cannot become the anthropological centrepieces of new governmental

rationalities: they must always remain ‘unstable’ mixtures which might dissolve again anytime. Lastly, we suggest that the introduction of the model of the Union citizen ultimately brought the further development of supranational government in Europe to a standstill.

Conclusion

The Conclusion continues the historical narrative developed throughout Chapters One and Five to the beginning of the 2020s. We argue that although the introduction of the model of the Union citizen could be seen as having contributed to the stalling of the further development of supranational government in Europe, a figure of identical composition to that of the Union citizen, that is, a *homo juridicus* emptied of much of its content and subsumed within the figure of *homo oeconomicus*, is being utilised successfully by those political parties and movements that contribute to the ‘authoritarian moment’ in early twenty-first century Europe. We propose in this context that the neo-liberal, ‘market-based’ practises of authority were always fraught with a problem of legitimacy insofar as the breakthrough of neo-liberal governmental practises in the 1970s coincided with the onset of a prolonged period of slow economic growth in Western countries, a period to which the political economist Robert Brenner has referred to as the ‘long downturn.’ To this proposal, we then add the further claim that the legitimacy of the impersonal modality of practising authority collapsed entirely after the 2008-09 financial crisis. Ultimately, we suggest that by invoking a subject of the same structure as the supranational Union citizen, a hollowed-out *homo juridicus* subsumed within *homo oeconomicus*, it became possible for those national political parties and movements that define the ‘authoritarian moment’ in Europe to fill the vacuum created by the collapse of the authority of the market without deviating from neo-liberal policy agendas. We claim that, ironically, although the national political actors involved in the ‘authoritarian moment’ frequently agitate against supranational institutions, they thus appear to be continuing the

legacy of a decisionistic, ‘executive-heavy’ form of neo-liberal government pioneered by the supranational framework of government, whose development from the Coal and Steel Community of the 1950s into the European Union of the 1990s we have outlined in Chapters One and Five. Having concluded the genealogy of the ‘authoritarian moment’ in early twenty-first century Europe, we reflect on difficulties encountered during the research undertaken for this dissertation, and in so doing provide supplementary information on how the argument of Chapter Three, the central conceptual chapter of this dissertation, was arrived at.

Chapter 1

Towards the Genealogy of Europe's Authoritarian Moment

The first chapter of this dissertation establishes the pre-history of the authoritarian moment unfolding in early twenty-first century Europe. Over the course of two sections, this chapter discusses historical events and developments which occurred in the thirty-five-year period between 1932 and 1967 in chronological progression. The starting point of this narrative is a short-lived development in late Weimar Germany that preceded the appearance of supranational government in Europe by approximately two decades. Entitled *A Portent of Things to Come*, this first section discusses the never-realised plans for constitutional reform drafted in 1932 by a circle of conservatives around Franz von Papen in Weimar Germany. The discussion focusses in particular on the commentary on these plans written by the constitutional lawyer Hermann Heller in his 1933 essay *Authoritarian Liberalism?*, and gives close consideration to the points of reference of Heller's essay: a book-length political programme called *Der neue Staat* ('The New State') published in 1932 by Walther Schotte, and a speech entitled *Strong State and Sound Economy* delivered by Carl Schmitt to a gathering of industrialists that same year. In so doing, the discussion clarifies how Heller could see in these plans for constitutional reform the outline of an 'authoritarian

liberalism,' understood as a political system in which industrialists, landowners and bureaucrats govern by decree and without parliamentary oversight, while committing themselves to excluding the processes of market exchange from the sphere of state intervention.

This discussion forms the basis for the analysis of the first phase of the process of European integration in the second section of this chapter. The section entitled *The Emergence of Europe's Supranational Governmental Framework, 1951-1967* outlines the development of supranational government in Europe from its beginnings with the 1951 Treaty of Paris, which established the European Coal and Steel Community, through the 1957 Treaties of Rome establishing the European Economic Community and Euratom, and the 1965 Merger Treaty which created a single set of institutions to govern the affairs of these three supranational frameworks and thereby inaugurated the organisation known as the European Communities. With the basic assumption of this section being that the European Communities established by the 1965 Merger Treaty have replicated the institutional set-up of the Coal and Steel Community and broadened the scope of application of supranational government from one industry to economic activity in general, the analysis presented here will primarily be considered with regard to the European Coal and Steel Community. By reviewing the Treaty of Paris, we explain what makes the Coal and Steel Community a 'supranational' governmental framework. With recourse to Carl Schmitt's text *Legality and Legitimacy*, the argument that the decisionistic, anti-parliamentary, and 'executive-heavy' *modi operandi* of the proposed 'new state' and the Coal and Steel Community parallel one another is then substantiated. Finally, it is argued that insofar as the subjects of government of the Coal and Steel Community are exclusively economic actors, Europe's supranational governmental framework can be described as an early proponent of neo-liberal government.

A brief concluding section entitled *Widening the Perspective* serves as a segue to the subsequent conceptual chapters of this dissertation, which interpose them-

selves between the historical narrative begun in this chapter and its continuation in Chapter Five and the Conclusion. We note there that the 1970s marked the general breakthrough of neo-liberal practises of government and elevated the capitalist market to the role of an authority unto both subjects and institutions of government. Moreover, we emphasise that this introduction of the authority of the market is accompanied by the predicament that economic growth in Western countries would begin to stagnate in the 1970s. We conclude by explaining that it is necessary to outline a number of core conceptual ‘elements’ of our genealogy in more detail in order to obtain a clearer picture in Chapter Five and the Conclusion of how this predicament would eventually contribute to the emergence of the ‘authoritarian moment.’

1.1 A Portent of Things to Come: The ‘New State’ and Authoritarian Liberalism

In 1933, issue 44 of the literary journal *Die neue Rundschau* (‘The New Review’) appeared. Amongst the essays collected in this issue is a piece with the ominous title *Autoritärer Liberalismus?* (‘Authoritarian Liberalism?’),⁶ written by the constitutional lawyer Hermann Heller. Heller had been a regular contributor to *Die neue Rundschau*, but this 1933 essay was to be his last. *Authoritarian Liberalism?* was in fact not only his last contribution to *Die neue Rundschau*, but also the last piece of writing Heller would publish in his lifetime. In November of the same year, Heller unexpectedly succumbed to a heart attack in Madrid, where he had just taken up an engagement as a visiting lecturer, with the intention of resigning his chair in public law at the University of Frankfurt and emigrating from Germany. In the thirteen years of his life that he spent as a

⁶Heller’s essay only appeared in English translation in 2015, as *Authoritarian Liberalism?*, in a special issue of the *European Law Journal*, translated by Bonnie Paulson, Stanley Paulson and Alexander Somek. We will cite from this translation in the remainder of this chapter, and refer to Heller’s essay by its English title.

practising and academic lawyer, the social democrat Heller had certainly made a name for himself as an opponent of Germany's right-wing political establishment and intelligentsia at the time. Heller's opposition perhaps reached a high point in October 1932, immediately before his departure from the country, when he represented the Social Democratic government of the Free State of Prussia in a court case it had brought against its dismissal by the government of the German Reich. At any rate, Heller's involvement in *Preußen contra Reich* ranges amongst his most direct stand-offs with the German right: the Reich government was represented by a team of four defence attorneys, all of whom were academic lawyers, and some moreover well-renowned for their conservative political beliefs. A certain Carl Schmitt, for instance, belonged to this team of four; and it was with Schmitt in particular that Heller engaged in caustic verbal exchanges during the trial (Kaiser, 1984, p. 303 f.).

Although the subject matter of *Preußen contra Reich*, the 1932 coup d'état in Prussia, is not itself mentioned in Heller's subsequent essay, *Authoritarian Liberalism?* comments at length on the broader authoritarian turn of the Weimar Republic that started around the turn of the 1930s, and of which the deposition of the government of the state of Prussia was only one increment. Given the central place that Heller affords to discussing Carl Schmitt's opinions, the essay may well also be read as a continuation of the polemic with Schmitt which had flared up at the Leipzig state court. *Authoritarian Liberalism?* comments at some length on an address which Carl Schmitt gave in November 1932, only one month after the court proceedings in Leipzig, at the general meeting of the *Langnam-Verein*⁷ — the Rhine-Ruhr heavy industry employers' association. Heller's argument in *Authoritarian Liberalism?* is that in his address to the gathering of Rhine-Ruhr industrialists, Schmitt unwittingly accomplished a synthesis of two wholly antithetical categories, and in so doing, outlined a political system which deserves

⁷Literally the 'Long Name Association.' Its full name was *Verein zur Wahrung der gemeinsamen wirtschaftlichen Interessen in Rheinland und Westfalen* ('Association for the Protection of Common Economic Interests in Rhineland and Westphalia').

to be called ‘authoritarian liberalism.’ To understand how Heller could come to credit Schmitt with this particular achievement, it appears worthwhile to begin with an overview of the broader political developments in 1932 Weimar Germany.

1.1.1 The New State

At the time of the coup d’état in Prussia, on July 20, 1932, the conservative corporatist Franz von Papen had been at the head of the Reich government for barely a month. Only in June 1932 had Paul von Hindenburg, then-President of the Weimar Republic, appointed Papen as Chancellor of a new government to replace that of Heinrich Brüning. That Hindenburg had the power to dissolve and appoint governments by fiat at all was the effect of a deterioration of the democratic process that began shortly before the Chancellorship of Brüning and accelerated rapidly during his time as head of government. As Anna von der Goltz tells us, it was with Brüning’s “formation of a presidential cabinet [...] in March 1930” (Goltz, 2009, p. 167) that the Weimar Republic embarked upon a “[slow] [...] transform[ation] from a parliamentary democracy into a semi-authoritarian state” (ibid.). It was only as a result of this transformation that Hindenburg was “able to [...] use his far-reaching constitutional powers” (ibid.) without much contestation in order to install Papen as Chancellor when, two years into Brüning’s Chancellorship, “the political parties in parliament [had ended up] blocking and paralysing each other” (ibid.). Himself an outspoken anti-democrat and monarchist, Hindenburg chose with Papen a person with a set of political convictions very similar to his own to replace Brüning. *Die Auflösung der Weimarer Republik* (‘The Dissolution of the Weimar Republic’), Karl-Dietrich Bracher’s extensive historical study of the final years of Weimar Germany, describes Papen quite aptly as “one of the extreme representatives of an anti-parliamentarian, monarchist and corporative wing of the Zentrum Party, which frequently shared

the positions of the German National People's Party [gehörte ... zu den deutschnationalen Grenzgängern des Zentrums]" (Bracher, 1960, p. 518; my translation).

With Papen's appointment as Chancellor, the Weimar Republic made a turn from what von der Goltz refers to as a 'semi-authoritarian' government to a more or less fully authoritarian form of political rule. Although Brüning had already on occasion used powers granted by Article 48 — the article of the Weimar constitution that governed the use of emergency powers — in order to pass legislation without consulting parliament, Bracher tells us that Brüning nevertheless remained committed, and "disappointingly [enttäuschenderweise]" (ibid., p. 537) so in the eyes of the circle around Franz von Papen, "to a genuine emergency government tolerated by the democratic parties, and opposed all further experiments that involved going without or against the parliament" (ibid.; my translation). Papen's government, on the other hand, made no efforts whatsoever to retain even the semblance of parliamentary legitimacy, and instead drew up plans for reforming the constitution of the Weimar Republic in a manner that would have given full expression to Papen's contempt for parliamentary democracy. These plans, which Papen and his acquaintances referred to as plans to build a 'new state' ('Neuer Staat')⁸ are summarised in a book published by Papen's long-time confidante and advisor Walther Schotte in late 1932. In this book, simply titled *Der neue Staat* ('The New State'), Papen and his political coterie make it clear that the aim of their proposed constitutional reform is to establish a "presidential-authoritarian" government unrestrained by all "parliamentary or party-political dependence[s]" (Schotte, 1932, p. 33; my translation); and in a commentary which appeared the same year as the programme of Papen's consorts, the jurist

⁸Papen's plans thus share their name with the constitutional reforms implemented at the same time by António Salazar in Portugal. In his recent book, *Assault on Democracy*, Kurt Weyland notes that the similarities between these two plans in fact go somewhat beyond their sharing a name. According to Weyland, one of the main similarities between Papen's *Neuer Staat* and Salazar's *Estado Novo* is that both plans "diverged from [the model of] Italian fascism" (Weyland, 2021, p. 180) in one important aspect: he explains that "Papen lacked the mass base that had allowed [Benito Mussolini] to establish his dynamic, totalitarian fascism" (ibid., fn. 36), so that "instead, Papen drew support exclusively from elite sectors, just like Portugal's Salazar" (ibid.).

Otto Kirchheimer summarises the means and ends of the proposals mooted in *Der neue Staat* as follows:

“This [...] authoritarian constitutional reform had the primary aim of elevating into a decisive constitutional factor the political and social power currently enjoyed by a certain, clearly defined stratum of society, namely the higher bureaucracy, big landowners and industry, along with their social annexes.

This constitutional protection [of class interests] was to be provided by the creation of an upper house which was to stand on an equal footing with the Reichstag, and on whose approval the entire activity of the Reichstag would depend. It was to be composed to one third of representatives of the state governments (as a substitute for the Reichsrat), to another third of representatives of economic interest groups (as a substitute for the Reichswirtschaftsrat) and, to one final third, of representatives freely appointed by the President of the Reich according to the principle of worthiness [Würdigkeitsprinzip]” (Kirchheimer, 1981, p. 96; my translation)

On the basis of this description by Kirchheimer, perhaps we can conclude for now that although the state to which this constitution would have given rise indeed deserves to be called ‘authoritarian,’ it would not have been quite as ‘new’ as suggested by the name that Papen had in mind for it. We shall see in the third chapter of this dissertation, which discusses authority in more detail, that basically any bicameral system in which the upper chamber is composed of appointed representatives of the ruling class and exercises a kind of tutelage over the lower chamber composed of popular representatives, is reminiscent of the ‘original’ authoritarian political system of ancient Rome. There, the entry into force of legislative proposals made by popular assemblies was probably at all times in one or another way dependant on a gesture of validation by the Senate. To bring an authoritarian *state* into being, however, is not quite the same as instituting an authoritarian *liberalism*.

1.1.2 Authoritarian Liberalism

What is it, then, that prompted Hermann Heller to argue in his final contribution to *Die neue Rundschau* that with Papen's appointment as Chancellor in 1932, all signs were pointing towards the emergence of an authoritarian *liberalism*? Heller insists that the contradiction that inheres in this term is reflective of a real contradiction that had characterised German liberalism since its beginnings in the nineteenth century. We are told in *Authoritarian Liberalism?* that already in its early days, liberal government in Germany existed in the contradictory form of a "national liberalism," a "peculiar feudal-capitalist interbreeding" (Heller, 2015, p. 299) which resulted from "Prussian conservatism decidedly reject[ing] the bourgeois-liberal capitalism" for its "[dissolution of] the received social bonds" (ibid., p. 298) without being "in a position to hinder the development of [its] economic form[s]" (ibid.). Heller argues that when in the twentieth century, the German bourgeoisie finally overcame these ideological resistances and bourgeois society was able to develop unhindered, customs and traditions lost their ability to justify the existence of class hierarchies and -domination, and so the bourgeoisie, in what Heller presents as "a consistent further development of national liberalism" (ibid., p. 299), would flaunt the power that comes with its position in the class hierarchy with a cynical candour by establishing an authoritarian state, along the lines we have just described, in broad daylight.

According to Heller, the reason that the authoritarian state which emerged in early 1930s Germany would have given rise to an authoritarian-liberal socio-economic order becomes clear once consideration is given to the question of what "spheres of life [there are] in which the state is supposed to conduct itself in an authoritarian way and what limits its authority ought to respect according to the intentions of its spokesmen" (ibid. 297). Although Heller's point of reference in *Authoritarian Liberalism?* is the Papen government and its ambitions for reform, he makes relatively little reference in his article to the programme

described in Walther Schotte's *Der neue Staat* — which includes a plea for state non-intervention in economic processes (Schotte, 1932, pp. 91-124)⁹ — in his description of the link between state and economy in the projected ‘new state.’ Instead, Heller relies largely on Carl Schmitt’s November 1932 keynote.

Schmitt’s political views were in the process of changing when he delivered his address, titled *Strong State and Sound Economy* (‘Starker Staat und gesunde Wirtschaft’), to the general meeting of the *Langnam-Verein*. In autumn 1932, Schmitt was arguably still politically aligned with the anti-parliamentarian faction within the camp of German conservatives, and there is even reason to assume that he by and large considered Papen to be something of a kindred spirit.¹⁰ In *Carl Schmitt and Authoritarian Liberalism*, however, Renato Cristi notes that although at the time of his plenary address in Düsseldorf, Schmitt’s general political position was such that he “would not have objected to that formula [i.e., ‘authoritarian liberalism’] as a description of his system of ideas” (Cristi, 1998, p. 6; fn. 8), the deteriorating political situation in Germany meant that Schmitt did not see in Papen’s project of constitutional reform an appropriate means for establishing such an ‘authoritarian liberalism.’ Cristi summarises that although Schmitt “found the non-democratic features of this [proposal for constitutional reform] appealing” (ibid., p. 35), he did “in the present German circumstances” (ibid.) not believe that constitutional reform was the right path to pursue, and instead advocated the position that before any changes whatso-

⁹It is interesting to note that although *Der neue Staat* advocates free-market capitalism, this advocacy is not based on politico-economic arguments. That the ‘new state’ is one that favours free-market capitalism is presented in a decidedly Schmittian manner as the outcome of a sovereign decision. We read: “The Reich Chancellor is a conservative politician [...]. It is his conservatism that makes Mr von Papen affirm ‘the idea of private enterprise’ and express the opinion that ‘personal economic initiative and the free exercise of the rights and duties arising from private property are indispensable for a healthy economic development.’ [...] With the sentences quoted here, the Reich Chancellor has committed himself not only to individualism and private enterprise, but also to capitalism as an economic principle.” (Schotte, 1932, p. 94 f.; my translation).

¹⁰Günther Maschke, the editor of Schmitt’s collected works in *Staat, Großraum, Nomos*, writes that Schmitt “in his text ‘Legality and Legitimacy’ (‘completed on July 10, 1932’) still implicitly positioned himself in favour of [constitutional] reform, so that the thesis that, at that time, he was ‘a man of Papen’ [...] has a certain, albeit often overestimated plausibility” (Schmitt, 1995, p. 90; my translation).

ever could be made to the constitution, one would first have to create a ‘strong state’: “[w]ere we to have it,” Schmitt remarked, “we would then create new arrangements, new institutions, *new constitutions*” (Schmitt, 1998, p. 230; quoted in: Cristi, 1998, p. 35).

A key line of argument running through Schmitt’s plenary address is that the hallmark of a truly strong state (which he calls a *qualitatively* strong state, as opposed to a *quantitatively* strong one) (Schmitt, 1998, p. 217 f.) is the ability to withdraw from certain spheres of social life in which it had hitherto needlessly been involved. Such a truly, or qualitatively, strong state is capable of engaging in “[a] process of depoliticization, [a] segregation of the state from non-state spheres” (ibid., p. 221). One of these ‘non-state spheres’ from which the state ought in Schmitt’s opinion to withdraw is that of the economy. As it stands, Schmitt tells the general meeting, boundaries between state and private enterprise are all too often obscure, with states “appear[ing] as [...] economic agent[s] in all conceivable outfits: in public law and private law, as state, as treasury, as majesty, as company of limited responsibility and as stockholder” (ibid., p. 226). Schmitt’s address formulates the demand that the state must refrain from such ‘disguised’ and ‘concealed’ appearances and appear as an economic actor only “in simple, solid and non-ambiguous legal forms” (ibid.). Generally, he insists, the state must acknowledge that

“[t]here is an economic sphere which happens to belong to the public interest and should not be seen as separate from it. This sphere is a non-state sphere and must not ever be withdrawn from the public interest again, so that, in the manner of true self-determination, it can be organised and managed by those who sustain the economy themselves [i.e., entrepreneurs in this context].” (ibid.; translation modified)¹¹

¹¹Cristi’s translation of this passage is rather free. I have adapted it to bring it closer to Schmitt’s original sentence structure and choice of words. For comparison, the German text reads: „Es gibt eine Wirtschaftssphäre, die nun einmal dem öffentlichen Interesse angehört und ihm nicht wieder entzogen werden darf, die aber nicht staatlich ist, sondern, wie es zur echten Selbstverwaltung gehört, von den Trägern dieser Wirtschaft selbst organisiert und verwaltet werden kann“ (Schmitt, 1995, p. 80).

If Schmitt’s speech on the *Strong State* indeed offers us an idea of how the state apparatus of the Weimar Republic would have conducted itself vis-à-vis the economy had it implemented Papen’s reform plans,¹² then in *Authoritarian Liberalism?* Heller draws the obvious conclusion from Schmitt’s speech when he claims that “as soon as it concerns the economy, [this] ‘authoritarian’ state waives its authority altogether” (Heller, 2015, p. 299). Heller notes that the plans revealed in Schmitt’s plenary address would likely also involve a radical dismantling of the welfare state. Alluding to the decision of the German state to recapitalise banks and industry to mitigate the effects of the banking crisis of 1931 while instituting austerity measures in public spending (cf. Schotte, 1932, p. 118 ff.), Heller argues that the “retreat [of the state] from economic production and distribution” (ibid., p. 300) demanded by Schmitt implies “the authoritarian dismantling of social policy” (ibid.) because “[p]resumably, this [retreat of the state from the economy] does not mean abstinence on the part of the state where subsidising large banks, large industry and large agricultural enterprises is concerned” (Heller, 2015, p. 300). In one of the sections of *Authoritarian Liberalism?* that make direct reference to Walther Schotte’s *Der neue Staat*, we are told by Heller that the actual meaning of the ‘retreat of the state from economic production and distribution’ is revealed in those passages of the programme of Papen’s circle that teach us:

“that health insurance has done damage to public health and that unemployment is not worker’s fate — ‘the abundance of moonlighting proves that.’ Unemployment insurance has to be regarded as nonsense: ‘most often, the individual has to help himself!’ According to Mr. von Papen, the ‘authoritarian’ state is of course social, but von Papen defines as social a state ‘that defends work as a duty, as *the*

¹²Schmitt’s insistence on the withdrawal of the state from the economy would indeed appear to be consistent with the views expressed in *Der neue Staat*. Citing from this book, Heller summarises that, “Papen [emphatically] avows ‘the idea of the private economy’ and the ‘initiative and free labor power of all economically active people’. He wants the state and the economy to be ‘strictly’ separate from one another. The state has to take up a full ‘retreat’ from the economy” (Heller, 2015, p. 299; all text in single quotes cited from: Schotte, 1932).

psychological happiness of its people.” (ibid.; all text in single quotes cited from: Schotte, 1932)

Yet the plans for an ‘authoritarian’ constitutional reform in late Weimar Germany which Heller’s 1933 essay critically examines were to remain a fantasy. As has already been mentioned, Papen and his associates did not get an opportunity to realise their plans for the ‘new state.’ In December 1932, a mere six months after its appointment, the Papen government was replaced by a government led by the former Minister of Defence, Kurt von Schleicher, which itself would last only a mere two months before giving way to a government headed by Hitler on January 30, 1933, who would then proceed to set-up a totalitarian government of state and society in Germany which — as Hannah Arendt (1956, p. 410 ff.)¹³ and Franz Neumann (1964, pp. 236-247)¹⁴ have illustrated at length — was structurally different from any form of political rule that could be referred to as ‘authoritarian.’

It is interesting to note in the context of the broader concerns of this dissertation that Heller refers to the plans for the ‘new state’ as neo-liberal. Giving “a rough estimate of the substance of authoritarian liberalism” (Heller, 2015, p. 300), Heller notes that authoritarian liberalism can be

“more or less adequately characterised [as follows]: retreat of the ‘authoritarian’ state from social policy, liberalisation (Entstaatlichung)

¹³Arendt writes: “For brevity’s sake, it may be permitted to sum up the technical-structural differences between authoritarian, tyrannical and totalitarian government in the image of three different representative models. As an image for authoritarian government, I propose the shape of the pyramid [...] a particularly fitting image for a governmental structure whose source of authority lies outside itself, but whose center of power is located at the top, from which authority and power is filtered down to the base” (Arendt, 1956, p. 410). She goes on to assert that “[i]n contradistinction to both tyrannical and authoritarian regimes, the proper image of totalitarian rule and organization seems to me to be the structure of the onion, in whose center, in a kind of empty space, the leader is located; whatever he does: whether he integrates the body politic as in an authoritarian hierarchy, or oppresses his subjects like a tyrant, he does it from within, and not from without or above” (ibid., p. 411).

¹⁴Neumann associates authoritarianism with ‘Caesarism’ and ‘Caesaristic dictatorship’, which, to him, differs from a ‘totalitarian dictatorship’. “What distinguishes totalitarianism politically”, he lets us know, “is [...] the existence of a monopolistic state party. Such a party is required because the traditional instruments of coercion do not suffice to control an industrial society, and all the less so since bureaucracies and armies may not always be reliable” (Neumann, 1964, p. 244).

of the economy and dictatorial control by the state of politico-intellectual functions. According to Schmitt's quite credible reassurances, such a state has to be strong and 'authoritarian', for only a state of this type is able to sever the 'excessive' connections between the state and the economy. *Of course, the German people would not tolerate for long this neoliberal state if it ruled in democratic forms.* After all, it is the minister of finance of the Papen Cabinet, Count Schwerin-Krosigk, who is cited in Schotte's book [i.e., *Der neue Staat*] with the statement that nearly 90% of our people live off [of very meagre] income[s] [...]" (ibid., p. 300 f.; my emphasis)

This should certainly rank as one of the earliest uses of this term. Heller's use of 'neo-liberal' as a descriptor for the 'new state' plans comes five years before the conscious adoption of this term for the theoretical consensus that the group of liberal reformers gathered at the Walter Lippmann Colloquium in 1938 established between themselves. Insofar as Papen's plans for constitutional reform in the Weimar Republic remained unrealised, one can of course only speculate as to whether their implementation would have actually given rise to a neo-liberal governmentality if the latter is defined, as in these pages, as the art of guiding the conduct of individuals on the basis of the anthropological model of homo oeconomicus.

We would like to argue, however, that despite never having been put into practise, Papen's plans for the 'new state' and the debates to which these plans gave rise offer us an appropriate model for interpreting the supranational governmental structure that would come into being in Europe in the early 1950s. In the sections to follow, we shall take a closer look at the similarities between Papen's projected reorganisation of the governmental institutions of Weimar Republic and the institutional structure of the supranational governmental framework which came into being with the establishment of the European Coal and Steel Community in 1951. It is shown that like the proposed 'new state,' the Coal and Steel Community governs its subjects by way of executive directives, and, in a further parallel to the 'new state,' the post-war Coal and Steel Community is charac-

terised by the absence of a parliamentary-democratic political process. We show moreover that the obvious difference with the ‘new state,’ namely that the Coal and Steel Community is not a state and hence does not govern a people, but economic actors, is what allows us to claim that the Coal and Steel Community is indeed an exemplar of a neo-liberal government.

1.2 The Emergence of Europe’s Supranational Governmental Framework, 1951-1967

It is an irony of history that Heller invented the term ‘authoritarian liberalism’ in an essay that comments extensively on a speech delivered to a gathering of representatives of the primarily coal and steel-producing heavy industry of the Rhineland. After all, the process of establishing forms of government that supersede the governmental competences of nation-states in Europe, a process that came to be known as the process of European integration, would begin roughly twenty years after Schmitt’s speech with the creation of an institutional structure for governing the coal and steel industries of various Western European states. Seen from a historical perspective, it is not even a particular surprise that the post-war process of European integration would begin with the foundation of a European Coal and Steel Community (henceforth ECSC). As Stuart Scheingold notes apropos the driving force of European integration, “the integrative base is economic” (Scheingold, 1965, p. 8), and attempts at economic co-ordination of Europe’s coal and steel industries across nation-state boundaries existed as early as the 1920s.

Perhaps the best-known of these early efforts at trans-national economic co-ordination dates back to 1926, when “producers in Germany, France, Belgium, Luxembourg and the Saar Territories” (Clough, Moodie, & Moodie, 1969, p. 172) joined together and formed the International Steel Cartel in an effort to limit

international competition. The major difference between these two institutions is that the post-war ECSC was not founded on the initiative of industry, but on that of national governments, which gave the Coal and Steel Community a slightly different mission compared to that of the International Steel Cartel. While the Steel Cartel aimed to limit competition by setting production and export quotas (cf. League of Nations, 1969, p. 173), the ECSC was founded on the promise that it would establish and maintain a “normal operation of competition within the common market” (Art. 5, Treaty establishing the European Coal and Steel Community, 1951, p. 5) (henceforth cited as: ECSC Treaty). The founding treaty of the Coal and Steel Community would in fact prohibit “all agreements among enterprises, all decisions of associations of enterprises, and all concerted practices” whose effect would be to “fix or influence prices; [...] to restrict or control production, technical development or investments; [...] [or] to allocate markets, products, customers or sources of supply” (Art. 65, *ibid.*, p. 26).

That the ECSC lived up to the promise of maintaining market competition in the coal and steel industry is generally disputed in scholarly literature. John Gillingham, for instance, notes in *Coal, steel, and the rebirth of Europe, 1945-1955*, a study of the early years of European integration, that only two years after the inception of the ECSC, “[d]ecartelization had given way to reconcentration,” the decision-making process “was beset by paralysis,” and “the common markets created to discipline heavy industry had become its common property” (Gillingham, 2002, p. 299). In *European Integration, 1950-2003*, yet another historical study of European integration authored by Gillingham, the verdict cast on the Coal and Steel Community is that despite all intentions to the contrary, it effectively ended up being “[a] revived version of the old international steel cartel” (2003, p. 26). *Ever Closer Union*, Desmond Dinan’s history of European integration, refers to the coal-steel pool as a “[disappointment] for European federalists both in its conceptual framework and in its actual operation” (Dinan, 1999, p. 28); and already as early as 1965, the jurist Stuart Scheingold suggests

in his monograph on *The Rule of Law in European Integration* that those who championed the institutional structure brought into being to govern the coal and steel industries of Western European countries failed to “generate effective political support on the national level to back [their] own enthusiasm for Community solutions” (Scheingold, 1965, p. 266).

Yet despite the failure of the ECSC to live up to its economic promises, and to the expectations of those who wished for a federal governmental structure to emerge in Europe, the organisation has nevertheless been credited by historians for advancing an institutional model to serve as a basis for further experimentations in government beyond the nation-state. Both of Gillingham’s histories of European integration, which were written approximately half a century after the beginning of this process, maintain that the Coal and Steel Community has “advanced the process of integration” (Gillingham, 2002, p. 299) and argue that there is one particular element which outlived “the dismal performance of the coal-steel pool”: namely its “supranationalism” (2003, p. 27). This thought will be taken up and expanded upon in the section below, which takes a closer look at the operating principles of the Coal and Steel Community. This section clarifies what it means to refer to the ECSC as a supranational governmental framework, and shows that it can furthermore also be considered a ‘decisionistic’ and a neo-liberal framework of government. On the basis of these contentions, it is subsequently claimed that in addition to its ‘supranationalism,’ its ‘decisionism’ and ‘neo-liberalism’ also survived the ECSC when its entire organisational was replicated by the European Communities that came into existence after the 1957 Treaties of Rome and the 1965 Merger Treaty.

1.2.1 Between the Nation-State and the International Order: The Coal and Steel Community as a Supranational Governmental Framework, 1951-1957

When on April 18, 1951, representatives of the six national governments of Belgium, Luxemburg, the Netherlands, France, Germany and Italy convened in Paris to sign the Treaty establishing the European Coal and Steel Community, they formally relinquished the possibility of levying import and export duties and setting quotas between themselves for coal and steel, and they moreover committed themselves to leaving the capacity to actively shape the conditions under which their respective coal and steel industries did business to a new governmental framework which operated above and across nation-state boundaries. The governmental framework established by the Treaty of Paris consists of four institutions: a High Authority, a Court of Justice, a Common Assembly, and a Council of Ministers (Art. 7, ECSC Treaty, 1951, p. 6).

What is a Supranational Organisation?

Although the ECSC was brought into existence by a treaty in international law, its method of operation differed from that of what Stuart Scheingold refers to as “ordinary international organizations” (Scheingold, 1965, p. 300). Usually, the Coal and Steel community is described as a ‘supranational’ organisation. A convenient way to gain an understanding as to the difference between Scheingold’s so-called ‘ordinary’ international organisations and ‘supranational’ ones is to outline two events from the international diplomacy leading up to the 1951 signing of the Treaty of Paris. The first of these two events took place no more than a year earlier, in April 1950, when Jean Monnet, then-director of the French *Commissariat général du Plan*, gathered with three of his colleagues to write a memorandum containing concrete proposals for the project of pooling the French and German coal and steel industries, a project that had come to be considered

by French government as an important step towards normalising French relations with West Germany (cf. Fontaine, 1990, p. 12; Thiele, 2019, p. 26). In the course of one month, this memorandum had become the declaration read out by the French foreign minister Robert Schuman at a press conference on May 9, 1950 (cf. *ibid.*), in which he announced the intention of the French government “that Franco-German production of coal and steel as a whole be placed under a common High Authority, within the framework of an organization open to the participation of the other countries of Europe” (Schuman, 1950, Full Text section, para. 5). Although the term ‘supranational’ did not yet appear as a descriptor for this proposed ‘framework of organisation’ in Schuman’s declaration to the press,¹⁵ he would use this term shortly after, when he addressed the Consultative Assembly of the Council of Europe to explain the draft proposals for the pooling of the German coal and steel industries on August 10, 1950. Describing the High Authority, the institutional centrepiece of the proposed framework for governing the European coal and steel industries, Schuman says:

“The Authority will not be purely and simply a Committee or a board of directors. It will be an institution that is autonomous and, in consequence, one that has its own responsibilities. *The signatories of the Treaty will, with certain guarantees, submit to the authority that they will have set up.* In spite of its contractual origin, the Authority will exercise its powers according to an unfettered estimation of needs and possibilities, but always within the limits of its Charter. *It will itself be subordinated only to the objectives specified and the rulings arising therefrom.* The Authority thus set up will be the first example of an independant *supranational* institution.” (Schuman, 1952, p. 24; my emphasis)

Without making direct reference to Schuman’s description of the proposed High Authority, Scheingold could be said to draw out the implications of Schu-

¹⁵Martin Thiele specifies in his work on the history of the European Commission that although the term ‘supranational’ actually made it into one of the draft versions of the Schuman Declaration, it was later removed because of Jean Monnet’s personal distaste for it (Thiele, 2019, p. 26).

man's words quite clearly when he remarks the term 'supranational,' in the context of the European Coal and Steel Community, "mean[s] simply that the governments of the member states are — in matters specified by the treaty — bound by decisions of the Community institutions" (Scheingold, 1965, p. 13). This power of Community institutions to make binding decisions is what distinguishes the ECSC from what Scheingold calls 'ordinary international organisations,' "whose member states" are, according to him, "characterized by a fierce determination to guard national interests — a determination backed by an effective veto power" (ibid., p. 300). But the Coal and Steel Community did not set up a "federal government" either, writes Scheingold, where, "most simply defined [...] political power [is divided] between a central and a local government" (ibid., p. 4). In Scheingold's opinion, the reason the ECSC also bears no resemblance to a central government of a 'federal system,' and is thus situated on the supranational level in-between "the classic federal and international patterns" (ibid., p. 13), is that "the supporting institutional structure of the Community is incomplete" (ibid.).

How is the Supranational Government of the ECSC Organised?

At first glance, the institutional set-up of the Coal and Steel Community — High Authority, Court of Justice, Common Assembly, and Council of Ministers — would appear to mimic the tripartite, executive, legislative, and judicative system of checks and balances associated with the liberal nation-state of the modern West, with an additional, fourth institution in the form of a Council of Ministers, whose specific role of mediating between national governments and the High Authority results from the supranational character of the Coal and Steel Community. A closer look at the competences of these institutions as described in the Paris Treaty, however, shows that this comparison is indeed not entirely accurate, so that Scheingold's diagnosis of an 'incompleteness' when measured against the blueprint of the liberal nation-state is easy to corroborate.

Two out of the four institutions of the Coal and Steel Community can relatively straightforwardly be described as equivalents of the institutions of the liberal nation-state. The High Authority is clearly designed to function in the same manner as the executive organs of government on the level of the nation-state. Composed of nine individuals — eight chosen by national governments, the ninth chosen by the eight others amongst themselves (Art. 10, ECSC Treaty, 1951), the High Authority is capable of issuing “decisions, recommendations and opinions” (Art. 14., *ibid.*). Its decisions are binding “in all their details” (*ibid.*); recommendations are “binding with respect to the objectives” but with the “choice of appropriate means for attaining these objectives” left up to “those to whom they are directed” (*ibid.*); while opinions have no binding force (*ibid.*). In what we have come to know as the quintessential feature of Scheingold’s definition of supranational government, none of the parties to the Treaty are permitted to veto or otherwise annul decisions, recommendations, and opinions issued by High Authority, and they must refrain from making any “effort to influence the members of the High Authority in the execution of their duties” (Art. 9, *ibid.*). The only route available for the parties to the Treaty of Paris to resolve disagreements with the work of the High Authority is via the Court of Justice.

The Court of Justice is unambiguously equivalent to the judiciary branch of government in the liberal nation-state. The Paris Treaty specifies that its jurisdiction extends to “appeals by a member State or by the Council [of Ministers] for the annulment of decisions and recommendations of the High Authority” (Art 33., *ibid.*), to “violation[s] of the Treaty or of any rule of law relating to its application [and] abuse of power”, as well as to appeals of “enterprises [...] against individual decisions and recommendations concerning them, or against general decisions and recommendations which they deem to involve an abuse of power affecting them” (*ibid.*). As is observed by Stuart Scheingold, the Court of Justice is moreover also a court of last resort: “its word is final. No appeal is possible [...] There is, thus, only a single judicial instance: the Court of Justice is the

first judicial body to hear [a] suit, and there is no appeal from its judgments” (Scheingold, 1965, p. 48). In *The Rule of Law in European Integration*, Scheingold highlights that if supranational organisations differ from international ones by virtue of their ability to make binding decisions, this essentially amounts to a difference in competence between the Court of Justice of the Coal and Steel Community and the judiciary institutions of international organisations. The distinctive feature of all “judicial process in the international arena” (ibid., p. 8 f.), he reminds us, is that participation depends on the consent of the parties involved. Regardless of whether the process in question is one of arbitration or adjudication, “parties [are free] to refuse to subject themselves to either process. Compulsory jurisdiction is about as foreign to international adjudication as to international arbitration” (ibid., p. 9). The Court of Justice of the Coal and Steel Community, however, is characterised by the fact that “its jurisdiction is obligatory and not restricted to states” (ibid., p. 13), and that “parties have no choice whatsoever as to judges” (ibid.). This, we are told, is what makes the “Court of Justice [into an] ostensibly [...] orthodox judicial institution” (ibid.), similar to a supreme court in a national legal system.

Of the two remaining institutions making up the Coal and Steel Community, the Common Assembly might at first glance appear to resemble the parliaments of liberal nation-states. However, unlike a national parliament — that is, a legislative assembly of elected representatives of the people — the Common Assembly is “composed of representatives of the peoples of the member States of the Community” *appointed by the member states* (Art. 20, ECSC Treaty), and the Assembly has in fact no legislative capacity whatsoever. Its purpose is limited to supervising the work of the other governmental institutions (ibid.), and so it “tends toward controlling but certainly cannot legislate” (Haas, 2004, p. 51), as Ernst Haas puts it in his study of the early years of European integration. The task of the Council of Ministers, the last remaining institution set up by the Treaty of Paris, is restricted to that of “harmonizing the action of the

High Authority and that of the [member state] governments” (Art., 26, ECSC Treaty). Practically, Scheingold observes, its purpose is to make sure that “the real balance of political power” (Scheingold, 1965, p. 14) amongst the member-states is maintained in the decisions made by the executive of the Coal and Steel Community.

All things considered, it is thus not difficult to appreciate how Scheingold could assert that “the supporting institutional structure of the Community is incomplete” (ibid., p. 13) when compared to the tripartite checks-and-balances model of the liberal nation-state. The description in the Treaty of Paris of the tasks of the four institutions of the ECSC make clear that there is nothing that would count as a legislature “by orthodox [liberal] standards” (ibid.) amongst the institutions of the Coal and Steel Community. On this basis, Scheingold draws the conclusion that it is “the High Authority (HA) — the executive organ of the Community — which dominates the ‘legislative’ process” (ibid.), but notes “[i]ts decisions, which are binding and backed by sanctions, differ from ordinary legislation because the HA is in no way a representative body” (ibid.). In Scheingold’s view, the government of the ECSC is predominantly executive. We join his conclusion and shall draw out its implications with reference to Carl Schmitt’s *Legality and Legitimacy* in the next section.

The ECSC as a Decisionistic Framework of Government

Having established, with reference to the Treaty of Paris and Stuart Scheingold’s commentary on workings of the Coal and Steel Community, that the ECSC governs primarily through an executive and a judicial institution, the question to be addressed now is whether the form of government of the Coal and Steel Community can be described in more specific terms. For this purpose, reference is made to Carl Schmitt’s 1932 treatise *Legality and Legitimacy*, which has already been mentioned above in connection with Schmitt’s initial support of the projec-

ted ‘new state.’ In *Legality and Legitimacy*, Schmitt distinguishes between four types of state, a ‘legislative state,’ a ‘jurisdictional state,’ a ‘governmental state,’ and an ‘administrative state,’ each of which is associated with a particular form of government.

The preceding commentary on the organisation of the ECSC emphasised that a prominent feature of this supranational governmental framework of government is that it possesses no institution comparable to the legislature of a liberal nation-state. It is therefore already possible to rule out parallels between the ECSC and the type of government which Schmitt associates in *Legality and Legitimacy* with the “legislative state” (Schmitt, 2004, p. 3). Schmitt summarises the fundamental principle of this method of government in the aphorism “’[l]aws govern,’ not men, authorities, or nonelected governments” (ibid., p. 4). The state Schmitt describes as ‘legislative’ is precisely the kind of representative democracy in which the actions of elected parliamentarians determine the political process, whereas the institutional make-up of the Coal and Steel Community eliminates this form of government.

It should moreover be possible to assert that the manner in which the ECSC governs its subjects does not correspond to the method of government that Schmitt associates with the “jurisdiction state” (ibid., p. 8), where “the judge renders judgment directly in the name of law and justice without mediation of norms of justice from other, nonjudicial, political powers” (ibid.). We should recall at this point that that the fundamental ‘norm of justice’ which the Court of Justice is tasked to uphold is the Treaty of Paris itself, which confers upon the Court the duty to “ensure the rule of law in the interpretation and application of the present Treaty and of its implementing regulations” (Art. 13, ECSC Treaty).

This leaves us with two remaining options. There is, for one, the method of government corresponding to the “governmental state” (Schmitt, 2004, p. 8), where the political course of action is determined by the “exalted personal will

and authoritative command of a ruling head of state” (ibid.). For another, there is the form of government corresponding to “the administrative state” (ibid., p. 5). The form of government corresponding to this type of state, Schmitt tells us, is such that “command and will do not appear authoritarian and personal, [but government], nevertheless, does not seek the mere application of higher norms, but rather only objective directives” (ibid.). This means, Schmitt continues, that in the administrative state “men do not rule, nor are norms valid as something higher [, and] [i]nstead, the famous formula ‘things administer themselves’ holds true” (ibid.; punctuation altered). The latter should provide the most apt comparison for the manner in which the ECSC governs its subjects. This much is suggested by the Treaty of Paris, which states about the purpose of the supra-national government of the ECSC that it is to “assure the establishment, the maintenance and the observance of normal conditions of competition and [to] take direct action with respect to production and the operation of the market only when circumstances make it absolutely necessary” (Art. 5, ECSC Treaty).

Curiously enough, however, Schmitt claims that the methods of government associated with the ‘governmental’ and the ‘administrative’ state share an important characteristic. Both of them, writes Schmitt,

“perceive a distinctive quality in concrete commands, which are directly executable or easily obeyed, and they make an end of the advocate’s pleas accompanying the jurisdiction state as well as of the parliamentary legislative state’s tendency toward endless discussion, recognizing already in decisionism the immediately executable directive as a legal value in itself.” (Schmitt, 2004, p. 9)

Given Schmitt’s description of the administrative state as one in which government, although not centred on a *personal* figure of authority, is nonetheless grounded in a belief in the value of ‘immediately executable directives,’ we should now also be in a better position to understand the similarity between the Coal and Steel Community and the plans for the ‘new state’ drawn up by Franz von

Papen and his acquaintances. The similarity resides in the circumstance that the plans for the ‘new state,’ too, describe a decisionistic modality of government in which parliamentary legislature plays no significant role, even though the ‘new state’ would perhaps have been more likely to operate within the framework of what Schmitt calls the ‘governmental state.’

The ECSC as a Neo-Liberal Framework of Government

We may now elaborate on the claim that the Coal and Steel Community can be considered an early application of neo-liberal governmental rationality, so that, consequently, supranational government has been from its very beginnings one of the axes along which neo-liberal governmental practises were implemented in Europe.

Studies that touch upon the question of which political-economic rationality the Coal and Steel Community abided by occasionally make the claim that this very first phase of European integration was characterised by a tendency toward a ‘dirigiste’ approach to government, whose principles run counter to the dictum of neo-liberal governmental rationality not to intervene into market processes directly. Perry Anderson, for instance, remarks in an interesting footnote to his discussion in *The New Old World* that despite Friedrich Hayek’s great sympathies for the idea of European integration, “the Coal and Steel Community was too dirigiste to win his sympathy” (Anderson, 2011, p. 31; fn. 31); and John Gillingham claims in one of his book-length histories of supranational government in Europe that in the early stages of European integration, there was tension between “market-conforming [institutions] created to promote free trade” and “market-correcting ones built on the dirigiste model of the French Plan” (Gillingham, 2003, p. xv) — a tension which, he believes, can also be understood as a struggle of “Hayek versus Monnet” (ibid.).

It may certainly be true that, as Gillingham suggests, the institutions constituting the Coal and Steel Community did not all operate on the basis of the same politico-economic rationality, and that the various forms of politico-economic reason at work in the early years of European integration were in tension with one another. According to Gillingham's analysis, these 'dirigiste' elements did not fully disappear from supranational government until the general decline of welfare-statism began in the 1970s (ibid. p. xv f.). However, while Anderson and Gillingham doubtlessly provide us with insightful observations about the early phase of European integration from a history of ideas perspective, their remarks also raise questions which Chapters Two, Three, and Five of this dissertation address in more detail, namely the questions of how to define 'government,' and, specifically, 'neo-liberal government.' For now, let the summary definition already mentioned in the conclusion of the above discussion of the 'new state' and authoritarian liberalism be reiterated: for us, the criterion that determines whether governmental practises abide by neo-liberal reason is whether these practises call upon their subjects to play the role of economic actors. This criterion is certainly met by the Coal and Steel Community, given that those immediately affected by the government of the ECSC were, after all, industrial entrepreneurs and wage-labourers in the coal and steel industries of its member states.

That the creation of such a supranational framework of government in fact advanced the interests of European coal and steel entrepreneurs is argued in an essay by John Gillingham entitled *Zur Vorgeschichte der Montan-Union Westeuropas* ('On the Prehistory of the Coal and Steel Community of Western Europe'). In this essay, Gillingham proposes that the international diplomacy that led to the signing the Treaty of Paris was not the only factor in the emergence of the Coal and Steel Community. On the basis of research into European networks of entrepreneurs in the 1930s and 1940s, Gillingham claims that another decisive factor contributing to the eventual foundation of the ECSC was co-operation amongst coal and steel industrialists on the European continent during German wartime

occupation. Gillingham's basic hypothesis is that there was an "alliance between entrepreneurs from the Ruhr as well as from France, Belgium, the Netherlands and Luxembourg," that, "together with the policy of economic collaboration that they supported, would last throughout the entire period of the German occupation of Western Europe" (Gillingham, 1986, p. 396; my translation). This co-operation, Gillingham further asserts, outlasted German occupation, and the main reason for this continued co-operation is in his view to be found

"in the fact that German occupation has facilitated changes in economic structures which had already been underway for a long time, especially the transition from a liberal to an 'organised' form of capitalism. The occupation has thus not only 'homogenised' economic practises and institutions in Western Europe, but it has at the same time revived [...] the pre-war [...] vision of 'economic diplomacy,' the vision of a Europe functionally and economically integrated through producer agreements." (ibid.; my translation)

It must of course be acknowledged that 'integration through producer agreements' is hardly a valid description of the post-war ECSC with its mission of creating and maintaining market competition. Gillingham's argument, however, is that although the mission of the ECSC cannot be compared to that of the earlier, cartel-like forms of transnational industrial co-operation that existed in Europe, the structures of ownership in the European coal and steel industry had long transcended national boundaries, so that transnational policy co-ordination had therefore generally become desirable. The ECSC is thus "not to be interpreted merely as an expression of confidence in the possibilities of functional economic integration, but as a reflection of the fact that this integration had grown over 25 years during which economic views and structures converged" (ibid.; my translation), Gillingham asserts, and concludes that "[w]ithout these corporate antecedents, the Coal and Steel Community would be just as inconceivable as without the so-called Schuman Plan" (ibid., p. 405; my translation).

As a framework of government accepted by European coal and steel entrepreneurs, the ECSC would naturally also become a framework within which wage-labourers in the European coal and steel industries are governed. Dion Kramer reminds us in *From Worker to Self-Entrepreneur*, an essay in which he traces the transformations of the subject of supranational government throughout the history of European integration, that the question of how workers ought to be governed on the supranational level already played an important role during the negotiations that preceded the signing of the Treaty of Paris. In the early years of European integration, Kramer highlights, the government of workers revolved around the question of labour mobility, which received a conclusive answer with the “establishment of freedom of movement for workers in the European Economic Community (EEC) in 1968” (Kramer, 2017, p. 177). It is in the course of the emergence of a regime for regulating labour mobility, Kramer contends, that “the ‘worker’ as a subject of government was [eventually] transformed from a passive factor of production in the European market to an active agent of choice” (ibid.). The resolution of these early questions around labour mobility would eventually give rise to the figure of the ‘market citizen,’ the specific type of homo oeconomicus peculiar to supranational government in Europe, which we shall discuss in more detail in the Conclusion of this dissertation.

1.2.2 From the Coal and Steel Community to the European Communities: Expanding Supranational Government from *a* Market to *the Market*, 1957-1967

The foregoing discussions have established on the one hand that with the foundation of the Coal and Steel Community in 1951, a supranational framework of government emerged that resembles that of the ‘new state’-plans for constitutional reform from the late Weimar Republic insofar as the plans for the ‘new state’ project a kind of executive government that does not intervene in processes

of market exchange similar to the one later realised in the ECSC. For another, the above discussions have argued that the ECSC can be considered an early exponent of neo-liberal government in Europe if the latter is defined as a form of government that addresses its subjects as *homines oeconomici*.

On March 25, 1957, the same six national governments that signed the treaty establishing the ECSC concluded the Treaties of Rome. The Rome Treaties gave rise to two further supranational governmental frameworks in Europe: the European Economic Community (henceforth EEC) and the European Atomic Energy Community (henceforth Euratom). This section shows, with reference to the 1957 Treaties of Rome and the so-called Merger Treaty from 1965 (effective 1967), that the institutional design of these new communities is identical to the basic organisational pattern of the Coal and Steel community so that our previous observations about the decisionism and neo-liberal character of supranational government remain valid throughout the expansion of Europe's supranational governmental framework in the 1960s and beyond.

As Kiran Klaus Patel observes, just as “[t]he ECSC stood for a sectoral intervention creating shared rules for the coal and steel sectors [...] Euratom followed a similar sectoral approach for nuclear power” (Patel, 2020, p. 26). At a time when nuclear technology was still in its infancy, the founding mission of Euratom was “to create the conditions necessary for the development” of a “nuclear industry” (Pmbl., Treaty establishing the European Atomic Energy Community, 1957) (henceforth cited as: Euratom Treaty), which, in the eyes of the drafters of the Rome Treaties, is to be achieved primarily through the establishment of “a common market in specialised materials and equipment” as well as “the free movement of capital for investment in the field of nuclear energy and [...] freedom of employment for specialists within the Community” (Art. 2, *ibid.*). In the case of the EEC, establishing a common market is not one of various means to an ulterior end, but the mission of the community in itself. The Rome Treaties define the purpose of the EEC as that of “establishing a Common Market and

progressively approximating the economic policies of Member States” (Art. 2, Treaty establishing the European Economic Community, 1957) (henceforth cited as: EEC Treaty). The Treaty states indirectly that the scope of the common market of the EEC ought indeed to encompass all commercial goods and services except for those already in the remit of the ECSC or Euratom (cf. Art 232., EEC Treaty).

Analogously to the ECSC, the two communities brought into existence by the Rome Treaties are composed of four institutions: the EEC and Euratom Treaties each provide for the establishment of an Assembly, a Council, and a Court of Justice. The institutions corresponding to the High Authority of the ECSC are referred to as the Commission in the EEC and Euratom. The institutions of both supranational communities created by the Rome Treaties perform the same functions as their ECSC counterparts: the Commissions are executives, the Courts are judiciaries, the Assemblies supervise the executives, and the Council mediates between the respective supranational framework and their member-states. With Simon Hix we can say that the perhaps greatest difference between the communities established by the Treaties of Rome and the ECSC is a procedural one that concerns the EEC: a procedural difference “that made it easier for the Council [of the EEC] to accept a Commission proposal than to overturn it” (Hix, 2005, p. 33), and thus “allowed the new supranational executive significant ‘agenda-setting’ powers in the establishment of rules governing the common market” (ibid.).

Ever since supranational government began to expand its scope with the Treaties of Rome, care had been taken to avoid having a multiplicity of essentially identical institutions existing side-by-side. The Convention on Certain Institutions Common to the European Communities, a side treaty to the Euratom and EEC Treaties, made sure that neither the Courts of Justice nor the Assemblies of the EEC and Euratom would ever come into existence as separate entities. It provided furthermore that the unitary Court of Justice and the unitary As-

sembly of the EEC and Euratom would merge with the hitherto existing Court of Justice and the Assembly of the ECSC. To borrow Patel’s words, we can say that the effect of the Convention on Certain Institutions has been that “[t]he new Communities were neither part of the ECSC nor completely separate new entities. Instead this was an arrangement that could be compared to conjoined triplets (although the first was born five years before the other two)” (Patel, 2020, p. 26). A second step towards unifying the institutional structure of Europe’s supranational communities was taken when, on April 8, 1965, the Treaty Establishing a Single Council and a Single Commission of the European Communities was signed in Brussels; a treaty commonly known as the Merger Treaty. This treaty joins those institutions of the three supranational communities which the Common Institutions Convention left out: it establishes a common Commission to exercise the functions of hitherto performed by the High Authority of the ECSC and the Commissions of the EEC and Euratom and merges the Councils of all three supranational communities into one. When the Merger Treaty came into effect on July 1, 1967, “the three communities, while continuing to possess separate legal identities would share common organs of administration and would be known as the European Communities” (Miller, 1985, p. 92).

The coming into effect of the Merger Treaty in 1967 marks the end of a first phase of European integration, and the institutional framework it established has, in essence, remained in place until today. We may in order to substantiate this claim again refer to *Project Europe*, Kiran Klaus Patel’s history of European integration from 2018. Patel argues there that the structure that came into being when the Merger Treaty entered into force in 1967 remained in place unchanged until the 1992 Maastricht Treaty, which “rearranged the organisational structure” (Patel, 2020, p. 7) created by the Merger Treaty for the first time in decades. However, Patel claims further that although this ‘rearrangement’ involved the creation of the European “Economic and Monetary Union” (ibid., p.269) and the pursuit of a “Common Foreign and Security Policy” (ibid.) at the supranational

level, “Maastricht was not the absolute watershed it is often said to be” (ibid.), and he adds finally that “the new institutional arrangements agreed in Maastricht also built on informal developments over the course of the two preceding decades — quite apart from the obvious continuities to the existing treaties” (ibid.).

This concludes the first part of our outline of the immediate pre-history of the authoritarian moment in early twenty-first century Europe. What the foregoing discussion of the formation of Europe’s supranational framework of government contributes to the genealogy of the authoritarian moment developed in this dissertation is, first of all, the simple insight that a supranational framework emerged in the course of 1950s and 1960s, and expanded its scope from creating the conditions for economic exchange on the market of one particular sector of industry in its member-states, that is, coal and steel, to creating the conditions for economic exchange as such. In addition to this expansion of scope, the political autonomy of supranational government also increased throughout this early phase. By the year 1967, supranational government was conducted by an institutional framework for which, as French diplomat Michel Gaudet, involved in negotiating the Treaties of Rome, suggested in 1961 “the Treaties have often set merely the objectives and principles, leaving to the institutions to decide on common policies and common rules” (Gaudet, 1961, p. 13), while the governmental practise of the ECSC had been guided by “detailed rules and main lines of the common policy [which had been] been defined in the Treaty itself” (ibid.). Secondly, and more importantly, the preceding discussion contributes to our genealogy of the authoritarian moment by establishing that the formation of this supranational governmental framework marked the beginning of the introduction of neo-liberal techniques of government in Europe, and highlighting that the introduction of these techniques was accompanied by the development of a framework of government for which considerations regarding the democratic legitimacy of its decisions were only of secondary importance.

1.3 Widening the Perspective: The General Breakthrough of Neo-Liberal Governmentalities and the Authority of the Market in the 1970s

However, before we take a step back from the narrative outlined in this chapter so as to give closer consideration to some of the core conceptual elements of our genealogy of the ‘authoritarian moment’ in early twenty-first century Europe in the chapters that follow, let us throw a glimpse on the further developments in the immediate pre-history of this ‘authoritarian moment’ in order to obtain a first idea of a problematic that afflicts the history of neo-liberal government; a problematic to which we return in our Conclusion, where we shall consider its role in the genesis of the ‘authoritarian moment’ in the light of the findings of the conceptual chapters of this dissertation.

To do so, we shall leave the level of the supranational and refocus for a moment on the nation-state. As far as the level of the nation-state is concerned, we should be able to propose that nearly everywhere in Europe, the welfare state was still in its golden age at the beginning of the 1970s. In fact, that practises of government should serve the market and address their subjects as economic actors was still entirely alien to the institutions of government within the European Communities’ member-states, where the widespread introduction of neo-liberal techniques of government in the wake of the energy crises of the 1970s would constitute a reversal of the established social liberal forms of government with their emphasis on wealth redistribution. It would be a reversal in two senses: the breakthrough of neo-liberal governmentalities on the nation-state level resulted on the one hand in states no longer actively exerting influence on market processes, and, on the other, in states subordinating their governmental practises to what we shall call the ‘authority of the market.’ An arguably quite intuitive initial explanation of what might be understood by this ‘subordination’ to the authority of the market

is to be found in Wendy Brown's 2015 monograph *Undoing the Demos*. There, Brown offers us a list of what we could consider rhetorical artefacts that this subordination to the market has left behind in political discourse when she remarks how common it has become to hear "phrases like 'the markets are jumpy' or 'unhappy' or 'reacting to fears about Spanish debt'" (Brown, 2015, p. 82). We can say with Brown that the reason political discourse is full of phrases like these is that the 'jumpiness,' 'calmness,' 'happiness,' or 'unhappiness' of markets would become indices of good or bad government after neo-liberal governmentality broke through in the 1970s. A consequence of this ascent of neo-liberal governmentality, she argues, is that "governance according to market metrics" began to "[supplant] classical liberal political criteria (justice, citizen protection, balancing diverse interests) with concerns with economic growth, competitive positioning, and credit rating" (ibid., p. 110).

But these artefacts aside, what does it in fact mean to say that the market would become an authority for institutions and subjects? As is argued more extensively in the third chapter of this dissertation, authority, when considered historically, can be understood as the practise of offering a particular, 'binding' type of advice, and of validating the conduct of subjects. Authority is thus not the same as legality: one does not necessarily commit an offence when disregarding such 'binding' advice, or when carrying out an action which a figure of authority then refuses to acknowledge post-factum. We would like to propose that when considered from the perspective of individual subjects of government, what is first and foremost at stake in the practise of authority is recognition. By issuing 'authoritative' advice or declaring certain forms of conduct valid, practises of authority serve the purpose of offering recognition to subjects in the particular social roles they play, and so, in just the same manner as governmental practises more generally, authority-practises have an identity-constituting function. However, we should also be able to suggest that the acceptance of the authority of the market comes with a condition: if neo-liberal government leaves this task of

validating conduct up to the market, then in order for subjects of government to accept the market in this function, they must experience a constant increase in their material wealth over time. That this is the condition of acceptability of the authority of the market in fact appears to be acknowledged by the intellectual doyens of neo-liberal politico-economic thought. Friedrich Hayek's formulation of the trickle-down hypothesis, for instance, expresses this expectation of a steady increase in one's material wealth rather clearly. He puts the matter thus: "the comparatively wealthy are [...] *merely somewhat ahead* of the rest in the material advantages which they enjoy. They are already living *in a phase of evolution* that the others have not yet reached" (Hayek, 2011, p. 98; my emphasis).

As far as Europe is concerned, we are, however, obliged to note that it is precisely this catch-up dynamic which, in Hayek's view, constitutes a fundamental 'law of development' of capitalist economies that came to an end in the 1970s. The broad-scale breakthrough of neo-liberal government in Europe coincides with the beginning of a period of slow macroeconomic growth, increasing material inequality, and mass unemployment. Aaron Benanav reminds in the Preface to his *Automation and the Future of Work* that the relative stagnation of Western economies after the energy crises of the 1970s, coupled with an upwards redistribution of social wealth, has been a recurring subject in recent politico-economic scholarship. While "originally analyzed by Marxist economist Robert Brenner under the title of the 'long downturn'" (Benanav, 2020, p. x; cf. further: Brenner, 2006, pp. 239-249), this trend, writes Benanav, has also been "belatedly recognized by mainstream economists as 'secular stagnation' or 'Japanification'" (ibid.). To name but one of the more popular figures on the field, we find in Thomas Piketty's *The Economics of Inequality* the claim that as far as long-term developments are concerned, in the industrial economies of the West there has been a "pattern of growing inequality in the nineteenth century followed by declining inequality after that" (Piketty, 2015, p. 18), but this pattern received a "fatal blow [...] in the 1980s, when inequality began to increase [again] in the

advanced economies” (ibid., p. 20). In a study focussing more specifically on the effects of the 1970s energy crises, conducted by the Regulation School economists Jacques Mazier, Maurice Baslé, and Jean-François Vidal, this trend is articulated in even starker language: “[w]ith the 1970s,” the three co-authors suggest, “the leading economies entered a major crisis, marked above all by rising unemployment, stagnating investment, the crisis in industry, aggravated economic warfare, and increased domestic and foreign debt” (Mazier, Baslé, & Vidal, 1999, p. 142).

“The world economic crisis of the late twentieth century” (ibid., p. xxi), the authors wrote in the 1990s, “has lasted more than twenty years now” (ibid.). With the wisdom of hindsight, we can say that this crisis has in fact persisted into the early twenty-first century. To understand how this ‘crisis’ would eventually contribute to the emergence of what is in this dissertation referred to as Europe’s ‘authoritarian moment,’ we shall in the course of the next three chapters of this dissertation give close consideration to three groups of concepts which have been used further explanation in the narrative of this chapter. They are, in the order in which we address them: classical liberal, social liberal, and neo-liberal governmental rationality; government and authority; and homo juridicus and -o-economicus as the respective subjects of classical and social liberal, and neo-liberal government.

Chapter 2

Neo-Liberal Government as 'Dethronement of Politics'

In this chapter we broaden our perspective on the supranational framework of government whose emergence in the 1950s Europe we discussed previously. We do so by contextualising the historical emergence of neo-liberal governmental rationality, of which we have argued that it found application in the practises of government conducted by and through the supranational institutional framework the very beginning. Neo-liberal governmental rationality is here compared with its two historical predecessors, classical liberalism and social liberalism. The basic distinction we make between classical and social liberalism on the one hand, and neo-liberalism on the other, is that the first two are predominantly juridical rationalities, while neo-liberalism represents a predominantly economic rationality of government. The chapter finally turns to the work of Friedrich Hayek in order to discuss an authoritarian undercurrent with regard to the normative ideals of neo-liberal government. Central to this discussion is Hayek's proposal that a 'great society' is to be established by way of 'dethroning politics,' with 'politics' here defined as wilful deliberation over the common good. We read Hayek as suggesting that such a 'dethronement' could be accomplished by way

of establishing an openly authoritarian state, but ideally, it would be achieved by instituting post-national frameworks of government.

The narrative of this chapter is divided into three sections. The first section offers a brief discussion of classical liberalism and social liberalism as two varieties of nineteenth-century liberalism. The history of liberal rationality in the nineteenth century is presented as consisting of two phases, with the transition from one to the other having occurred roughly in the middle of the century. Drawing on historical studies authored by Xavier Lafrance and Christian Reus-Smit, the commentary on the first, classical phase of liberalism outlines its historical conditions of emergence and suggests that its main achievement is in the establishment of the individual as a rights-bearing and duty-bound citizen of the nation-state as the subject of governmental practise. Next, drawing mainly on work by Paul Erik Kraemer and François Ewald, we propose that social liberal governmental rationality came into being as a result of the social struggles that followed in the wake of the emergence of industrial capitalism, and we furthermore suggest that the emergence of a social liberal form of government gave rise to the impression that liberalism might already be transitioning into socialism, or would soon begin to. The final part of this section argues by way of recourse to the work of Michel Foucault and François Denord that what classical and social liberalism have in common is that they operate primarily through juridical discourses and institutions, and assign merely an auxiliary role to politico-economic rationality.

The second section of this chapter is concerned with neo-liberalism. The focus of this section is the *Walter Lippmann Colloquium*, a gathering of liberal intellectuals that took place in August 1938 in Paris. It was at this gathering that the term ‘neo-liberalism’ was arguably first used to designate the set of politico-economic beliefs it still designates today. Drawing on the historical research by Angus Burgin into the organisation of the *Lippmann Colloquium*, we first situate the *Colloquium* as part of the liberal reaction to the political crises of the 1930s. We then discuss Walter Lippmann’s 1937 monograph *The Good*

Society, the publication that prompted the organisation of the *Colloquium*, as a typical example of the neo-liberal rejection of the idea of ‘laissez faire.’ This leads us to turn to the proceedings of the *Walter Lippmann Colloquium* and Michel Foucault’s commentary on the emergence of neo-liberalism from *The Birth of Biopolitics*. With reference to the proceedings and Foucault’s lectures, we argue that one of the characteristic features of the neo-liberal consensus that emerged at the *Lippmann Colloquium* is the idea that the price mechanism of the capitalist market is the best imaginable regulator of social relations, but that it can only play this role if governmental intervention ensures that conditions of competition prevail on the market. With reference to Foucault’s *Birth of Biopolitics*, we suggest that the central role of the price mechanism in neo-liberal rationality is what effectively inverts the hierarchy between the juridical and the economic that characterised historically earlier forms of liberal governmental rationality by rendering the former instrumentally subordinate to the latter.

The final, third section of this chapter considers the work of Friedrich Hayek from the perspective of the neo-liberal consensus that emerged at the *Walter Lippmann Colloquium*. Referring primarily to Hayek’s chapter on *The Containment of Power and the Dethronement of Politics* from the final volume of his *Law, Legislation, and Liberty* trilogy, it is first shown how his own argument for the price mechanism as regulator of social relations is connected with a broader political programme to construct what might be called a neo-liberal utopia, which Hayek himself refers to as the ‘great society.’ This is followed by a discussion of the origins of Hayek’s conviction that an authoritarian state is better suited than what he refers to as ‘unlimited’ democracies to bring such a ‘great society’ into being. Here we pay attention to a footnote from *The Constitution of Liberty*, in which Hayek refers his readers to a short treatise by Heinz Otto Ziegler, *Autoritärer oder totaler Staat* (‘Authoritarian or Total State’), to support his claim that democracies can be totalitarian, and authoritarianism be true to liberal principles. Turning to this text, we show that Ziegler presents the total state as

one in which the will of the people and that of the state are indistinguishable, and describes the authoritarian state as one capable of opposing the popular will. In a last part of this third section, we argue that although Hayek expresses a preference for the authoritarian state over ‘unlimited’ democracies, his ideal method for creating his neo-liberal utopia ultimately consists of bringing into being a governmental framework beyond the nation-state, as this would limit from the outset the possibility of political parties and trade unions to enforce anti-competitive economic policies.

2.1 Governing with the Market: Classical and Social Liberalism

2.1.1 Classical Liberalism

The turn of the nineteenth century is frequently cited as the moment in history which marks the emergence of the liberal state and liberal society as concrete socio-political realities throughout the Western world. Amongst the more recent literature to take up this historical narrative is, for instance, Helena Rosenblatt’s 2018 book *The Lost History of Liberalism*, where we read “that France invented liberalism in the early years of the nineteenth century and Germany reconfigured it half a century later” (Rosenblatt, 2018, p. 3). The same historiographical claim, however, is also to be found in Eric Hobsbawm’s 1987 *The Age of Empire*, where, as he reflects on the entirety of his work on the history of modernity in the Introduction of his book, Hobsbawm writes that the “’long nineteenth century’ which runs from, say, 1776 to 1914” (Hobsbawm, 1989, p. 8) can be portrayed as “the century [of] the triumph and transformation of capitalism in the historically specific forms of bourgeois society in its liberal version” (ibid., p. 8 f.). And already in his 1944 *The Great Transformation*, Karl Polanyi hypothesises that the industrial revolution gave rise to a ‘nineteenth century civilisation’ which

was to last until the outbreak of the First World War (Polanyi, 2001, p. 3 ff.). It would appear commonplace for histories of modernity to credit either the last great bourgeois revolutions in France and America or the simultaneous beginning of industrialisation with having brought about an upheaval of social relations on a scale hitherto unknown in Western history; an upheaval in the wake of which not only new social institutions and technologies of production, but also a host of new social antagonisms, would emerge. Neither would there seem to be much dispute amongst historians of modernity that this period of upheaval was accompanied by the emergence of new rationalities which would ensure that the subjects of Western modernity would play their respective roles in liberal society.

A good example of how the dawn of the liberal state and liberal society had been accompanied by the emergence of new governmental rationalities can be drawn from Xavier Lafrance's *The Making of Capitalism in France*. Lafrance's book refers us to a series of legislative decrees enacted in France in 1791 to abolish feudal craft and trading guilds, prohibit workers' coalitions, and "[eradicate] state-enforced manufacturing rules" (Lafrance, 2019, p. 108), and argues that these decrees formed "part of a broader process" (ibid.) of post-revolutionary liberalisation which "aimed at redefining political sovereignty by rooting it in a nation formed of individual citizens, instead of in the principle of a monarch overseeing a series of intermediate bodies" (ibid.). Around the same time in England, Lafrance tells us further, the industrial revolution would set in motion a similar process of liberalisation. There, he asserts, this process would be driven by two distinct forces: on the one hand, there were "employers" who, "[under the whip of competitive market imperatives,] began increasingly to disregard customary regulations" (ibid., p. 128), and on the other, there were "justices of the peace [, who] began to rule against the enforcement of customary regulations within industry" (ibid.) and thereby created a dynamic in which "'local custom [would be] supplanted by state law'" (ibid.). Taking a more abstract perspective on the same historical developments, Christian Reus-Smit argues in *The Moral Purpose*

of the State that in “the period between the American Revolution in 1776 and the revolutionary turmoil of 1848 a new rationale for the state emerged” (Reus-Smit, 1999, p. 127) in the West, whose central tenet was to be found in the notion that “individuals are morally and practically primary to the state, their rights constitute the baseline, [and] the state is but a human artifact instituted to protect their liberties” (ibid., p. 128). It would thus seem that we can interpret Lafrance and Reus-Smit as telling us that when liberalism appeared as a concrete historical reality at the turn of the nineteenth century, it brought with it a form of governmental rationality centred on the individual understood as a juridical entity: a rights-bearing and duty-bound subject.

2.1.2 Social Liberalism

No less often, however, historians of the modern West highlight that liberalism underwent a significant change around the middle of the nineteenth century. A concise description of this mid-nineteenth-century change in the *modus operandi* of liberal government is offered by Paul Erik Kraemer’s 1966 dissertation *The Societal State*. Kraemer distinguishes two different phases in the history of the relation of state and society in the nineteenth-century West. According to him, there was a classical liberal period, where government was “based on the principles of private property and free competition” (Kraemer, 1966, p. 19), where “the State [was] to abstain as much as possible from interfering with the self-regulating societal organism” (ibid.). This period was allegedly succeeded by a “modern heavily industrialized and fully democratized socio-capitalist Society” (ibid.), where “the State is called in to coordinate and adjust [...] and has to assume responsibility for a whole new series of general welfare functions no private agency is qualified to perform” (ibid.). On Kraemer’s account, the transition from one form of government to the other was effected by the revolutionary “outbursts of 1848 and 1849” (ibid., p. 22), which “however anticlimactic in their immediate

consequences” (ibid.) would give rise to a second ‘phase’ of the historical process set in motion by “joint operation” (ibid., p. 26) of the industrial and French revolutions; a phase which “[dealt] the final blow [...] to ‘ancient feudal bureaucracy,’ and [prepared] the way [...] for the triumph of modern bourgeois society” (ibid., p. 22).

Similar to Kraemer, François Ewald’s *The Birth of Solidarity* claims that the transformation of liberalism that occurred in the middle of the nineteenth century was a historical inevitability. Ewald believes that “[t]he necessity of reforming the liberal diagram” (Ewald, 2020, p. 137) — his term for what Michel Foucault refers to as liberal governmentality — “was a part of the industrial process itself” (ibid.). What his study seeks to demonstrate is that such a reform of liberalism took place in France when insurance, a private business until then, became a national affair as an indirect result of the revolution of 1848, leading to the gradual construction of a system of social insurance in the country. In Ewald’s view, the emergence of social insurance in France would indeed inaugurate a new modality of liberal government. We read in *The Birth of Solidarity* that along with the emergence of social insurance, “a new conception of the social contract took shape, one that was encapsulated in the doctrine of solidarity” (ibid., p. 138), and “[a] new political rationality, a new way of identifying individuals, of analyzing their behavior, and formulating their obligations appeared under the form of the *welfare state*” (ibid.).

It is due to its association with the emergence of social welfare systems that the form of liberalism that emerged in the mid-nineteenth century is commonly referred to as a ‘social liberalism.’ As Ola Innset reminds us, commentators in fact occasionally suggest that the arguments of the intellectual proponents (he refers in particular to “John Stuart Mill [...], Thomas Hill Green [...] and Leonard Hobhouse”) (Innset, 2020, p. 11) of this reformed liberalism “against government passivity in economic affairs and in favour of extensive social programmes and redistribution [...] [would] [a]t times [...] be hard to distinguish from [arguments

for] socialism” (ibid.). Already at the time, the question of whether the changes the liberal art of government was undergoing in the second half of the nineteenth century had de facto brought about, or would bring about in the near future, a form of socialism was a topic of public debate. We could perhaps refer to Friedrich Engels’ 1878 *Anti-Dühring* as a whole, but a particularly poignant contribution to this debate is captured in a footnote to this text, where Engels states his opinion that “state-ownership of industrial establishments” (Engels, 1970, p. 303; fn. *) in Bismarck’s Germany has merely given rise to “a kind of spurious Socialism [...], degenerating, now and again, into something of flunkeyism” (ibid.).

2.1.3 Classical and Social Liberalism as a Government of Citizens

Yet if we follow the argument of Ewald’s *The Birth of Solidarity*, we can say that the subject of government for the social liberalism that emerged in the second half of the nineteenth century was still the same rights-bearing and duty-bound individual who had been the subject of classical liberalism. Ewald’s argument about the social struggles that eventually effected the mid-nineteenth century transformation of liberal government is that these were essentially struggles about “the recognition of the limit between what might be a right — and thus productive of collective constraint — and that which must remain a moral duty, stemming from individuals’ free wills” (ibid., p. 8). The case study of the French example we encounter in *The Birth of Solidarity* tells us that the central issue at stake in the process that ultimately led to the emergence of a social-liberal governmentality was that “of the limit between what may and may not be a right, the question of *the criteria of juridicity*” (ibid.). We should thus be able to suggest that what unites the classical and the social liberal modalities of government is that in both, juridical discourses and institutions would be the primary points of reference for governmental practise.

Although the rise of the liberal state and liberal society took place alongside the rise of industrial capitalism, we should, with reference to Michel Foucault's 1979 Collège de France lectures on *The Birth of Biopolitics*, be able to propose furthermore that, when considered from the perspective of governmental practise, political economy as a form of knowledge would play only a marginal role in both forms of nineteenth-century liberal government. While Foucault tends not to distinguish between a classical and a social variety of liberal government in these lectures, he makes the general suggestion that within the liberal governmentality that began to take shape at the turn of the nineteenth century, the function of politico-economic knowledge was limited to the purely negative role of imposing limitations on the scope of action of state institutions (Foucault, 2008, p. 20 ff.; fn. *). According to Foucault, the position which classical liberal government assumed vis-à-vis political economy held that:

“Economics is a science lateral to the art of governing. One must govern with economics, one must govern alongside economists, one must govern by listening to the economists, but economics must not be and there is no question that it can be the governmental rationality itself.” (ibid., p. 286)

Classical liberalism was therefore not a government *of* the economy, Foucault argues. Its object, he claims, was instead “civil society” (ibid.). We can say that Foucault portrays classical liberalism as a governmentality restricted to the sphere of bourgeois society, where subjects were governed as citizens of nation-states whose rights and duties were enshrined in constitutional texts and declarations. An argument in support of our claim that this also holds true for social liberal government can be found in François Denord's *Néo-libéralisme version française*. Denord reminds us that, at least in the French context, the ‘economy’ did not become “a category of public intervention in its own right” (Denord, 2007, p. 17; my translation) until the early twentieth century. His study opens on the claim that:

“France of 1900 can perhaps be presented as an archetypal liberal country. No public authority sought to impose medium- or long-term economic objectives on private actors. The country did not even have a national ministry of the economy [ministère de l’Economie nationale].” (ibid., p. 11; my translation)

It was only in the interwar period, Denord explains, that this changed and active governmental intervention in the ‘economy’ became politically imaginable (cf. ibid., p. 17). The appearance of governmental institutions to steer economic processes as a result of the First World War which Denord describes in his book was far from a uniquely French development. Perhaps we can propose that the idea of having an ‘economic policy’ was generally not readily imaginable before national economic ministries or planning councils appeared in Western countries either during the First World War or shortly thereafter.¹⁶ While these interwar developments would now arguably also offer a genuine opportunity for social liberalism to develop into socialism proper, they have also led to the appearance of neo-liberalism as reaction to this opportunity. When neo-liberalism eventually emerged as a governmental rationality, its proponents certainly questioned the work carried out by these new institutions for governing the economy, but the idea that the economy could be the object of active governmental interventions — which the emergence of these institutions made appear obvious — would ultimately be accepted by neo-liberals as well. As we will see in what follows, neo-liberalism would end the negative role of politico-economic rationality within the liberal ‘art of government.’

¹⁶We would like to refer in this context to the annual report of the United States National Planning Board for the year 1933-34, where we find an interesting, relatively comprehensive overview of the development of modern economic planning in Europe, the United States, and Japan. There, we also encounter a brief list of European countries in which economic councils had appeared in the interwar period. We read that “[t]he step towards a more specific concept of national economic councils was made in Europe in 1918-19. [...] The first councils were established in Germany and Russia. But similar movements were developing in France, Italy, Great Britain and elsewhere. [...] The main impulse was economic — to find a more effective way of integrating national economic policy” (United States National Planning Board, 1934, p. 100).

2.2 Governing for the Market: Neo-Liberalism

“[N]eo-liberalism,” remarks William Davies in a 2009 review of two publications on the history of this particular modality of liberal government, “is the product of two crises, not one. The 1930s are as important to its genesis as the 1970s” (Davies, 2009, p. 89). What Davies’ review essay does not say, and what we may thus perhaps add here, is that the first of these two crises led to the theoretical ‘genesis’ of neo-liberalism, whereas the second would catalyse the emergence of neo-liberal government as a practical reality. We already touched upon the emergence of neo-liberal government in the first chapter of this dissertation, suggesting that although Europe’s supranational institutional framework has been an exponent of a neo-liberal governmentality ever since its emergence in the 1950s, it was not until the energy crises of the 1970s that neo-liberal governmental practises would also be implemented on the level of the nation-state, and thus begin their rise to hegemony. In what follows below, we shall examine the ‘theoretical’ emergence of neo-liberalism in more detail. We do so by way of reference to a formative moment in the history of neo-liberal thought that occurred near the end of the 1930s, namely a conference organised by the philosopher and political theorist Louis Rougier in Paris from August 26 to 30, 1938. Our discussion of this conference, which the organisers would afterwards refer to as the *Walter Lippmann Colloquium*, will provide us with an understanding of a key difference between neo-liberal governmental rationality and its historical predecessors, namely the neo-liberal rejection of the ‘laissez-faire’ idea that governmental practises should address their subjects as *homines juridicii* while the economic activity of individuals should be left ungoverned.

2.2.1 Liberal Discontent in the 1930s and the Organisation of the Walter Lippmann Colloquium

The *Walter Lippmann Colloquium* brought together a group of twenty-six persons,¹⁷ most of whom were industrialists or economists, to discuss the main ideas of Walter Lippmann's recently published monograph *An Inquiry into the Principles of The Good Society*. This book, first published in 1937, came to be a long-sought source of inspiration for many liberals who, in the face of the political turmoil of the late 1930s, felt an urge to save their political convictions from what they perceived as an existential challenge posed by the rise of both socialism and fascism.

At the time of publication of Lippmann's *The Good Society*, Louis Rougier, the organiser of the *Lippmann Colloquium*, had himself been in the process of completing a monograph in which he formulated a critique of liberal orthodoxy and his vision of a reformed liberalism. In his 2012 study of the emergence of neo-liberalism, *The Great Persuasion*, Angus Burgin informs us that it was Friedrich Hayek who effectively tasked Louis Rougier with persuading Lippmann to participate in a symposium by putting the two thinkers in contact with one another in 1937 (Burgin, 2012, p. 67). Rougier and Lippmann would shortly thereafter express approval of each other's intellectual positions,¹⁸ and Burgin further tells

¹⁷The complete list of participants is: Roger Auboin, Raymond Aron, Louis Baudin, Marcel Bourgeois, José Castillejo, John Bell Condliffe, Auguste Detoeuf, Friedrich Hayek, Michael Heilperin, Bruce Hopper, Bernard Lavergne, Walter Lippmann, Etienne Mantoux, Robert Marjolin, Louis Marlio, Ernest Mercier, Ludwig von Mises, André Piatier, Michael Polanyi, Stefan Possony, Wilhelm Röpke, Louis Rougier, Jacques Rueff, Alexander Rüstow, Alfred Schütz, and Marcel van Zeeland (cf. Reinhoudt & Audier, 2018, pp. 53-78).

¹⁸Rougier's own book, *Les Mystiques économiques* ('The Economic Mystiques'), finally appeared in 1938, only a few months before the *Walter Lippmann Colloquium* convened. Central to the reformed liberalism Rougier describes in his book is the claim that in order to prevent the deterioration of a competitive economy into a monopoly economy, the economic activity of individuals must not be left free of governmental intervention of state institutions, but, much to the contrary, regulated by a tightly-knit legal framework whose aim is that of "[safeguarding] [...] the possibility of free [market] competition" (Rougier, 1938, p. 34; fn. 1; my translation). Lippmann's *The Good Society* received a favourable mention in the same footnote that we just quoted from, where Rougier describes it as a work written from a similar motivation and making similar recommendations to his own (cf. *ibid.*). Conversely, we read in Burgin's *The Great Persuasion*, "Lippmann [also] expressed his admiration for the contents of *Les mystiques économiques* upon its publication" (Burgin, 2012, p. 70).

us (ibid., p. 70) that Rougier would subsequently use his private correspondence with Lippmann to convince the latter to attend, as Rougier would eventually term it, in his invitation letter, “’a small and closed colloquium, to discuss the key theses of [*The Good Society*], with regard to the decline of liberalism and the conditions for returning to a renovated liberal order’ ” (Reinhoudt & Audier, 2018, p. 9).¹⁹

2.2.2 The Reformed Liberalism of Lippmann’s ‘The Good Society’

Angus Burgin proposes that Hayek’s reason for bringing Lippmann’s *The Good Society* to the attention of his interlocutors has been his own fascination with the arguments put forward by Lippmann. Burgin’s meticulous reconstruction of the events that led up to the organisation of the *Lippmann Colloquium* has it that when Hayek read the proofs of Lippmann’s *The Good Society*, he found it revelatory and “expressed [...] an unqualified endorsement of Lippmann’s arguments” (Burgin, 2012, p. 64). Hayek did not remain the only liberal intellectual to show great appreciation for the ideas expressed in Lippmann’s book. Burgin notes that “[Hayek’s] enthusiasm was shared, with only limited qualifications, across the transatlantic network of classical liberals with whom Hayek maintained active communication” (ibid.), and Burgin in fact goes on to claim that because of its positive reception, Lippmann’s 1937 book played a pivotal role in the emergence of what eventually came to be known as neo-liberal politico-economic thought. Seeing that Lippmann’s *The Good Society* contributed to a widening sense in Hayek and his interlocutors that “within what had until then remained a haphazard collection of disparate voices, a growing atmosphere of consensus” (ibid.) was finally emerging, Burgin argues that Lippmann’s *Good*

¹⁹Reinhoudt and Audier cite the copy of Rougier’s invitation letter preserved in Luigi Einaudi’s archive. They indicate their source as follows: “Letter sent by Louis Rougier to, among other, Luigi Einaudi, July 12, 1938, held in the Archivio Storico Fon[d]azione Luigi Einaudi, dossier Rougier” (Reinhoudt & Audier, 2018, p. 43; n. 35).

Society can be considered “the foundational text of neoliberalism: the first work to shape the conjoint critique of economic planning and laissez-faire into a holistic and popularly compelling philosophical program” (ibid., p. 67).

Given the influence of Lippmann’s *An Inquiry into the Principles of The Good Society* on liberal reformers in the late 1930s, it is advisable that we first provide an outline of the critique of classical liberalism Lippmann develops therein, before turning to the question of how Lippmann’s critique was then taken up and developed further in the *Walter Lippmann Colloquium*. *The Good Society* is a fairly large treatise, covering about 400 pages divided into four lengthy parts. The first part is concerned with the welfare state; the second with what Lippmann refers to as the ‘collectivist movement’; the topic of the third part is that of liberal reform; and the final part of the book offers what are essentially reflections on human nature and its supposedly inherent “will to be free” (Lippmann, 1938, p. 389). The part on liberal reform, titled *The Reconstruction of Liberalism*, begins with remarks on the historical significance of the industrial revolution, and we should be able to obtain a sense of the general thrust of Lippmann’s critique of classical liberalism if we now give consideration to two presuppositions of Lippmann’s historiography, which become evident in these remarks on the industrial revolution.

The first of Lippmann’s historiographical presuppositions revealed to us is his thesis of the incompleteness of the industrial revolution. Lippmann considers the industrial revolution to be the driving force of modern history, and although he praises the type of society it brought into being, suggesting that it is the first ‘great society’ to have emerged in the West since ancient Rome (ibid., p. 165), he immediately clarifies that he considers the industrial revolution to be a still-ongoing process at the time of his writing in the late 1930s,²⁰ so that its final outcome is thus ultimately unpredictable (cf. ibid., p. 167 f.). The second

²⁰It is a process, Lippmann claims, which “has now lasted for approximately five generations” (Lippmann, 1938, p. 167), and which “will take many more than five generations to complete” (ibid.).

historiographical presupposition is reflected in Lippmann's contention that the industrial revolution is permanently one step ahead of the beliefs, habits and traditions of the societies it affects. *The Good Society* presents a materialist history of Western modernity in which the changes to the material conditions of life brought about by industrialisation demand a permanent 'readaptation' in the realm of ideas and representations. The latter, in Lippmann's view, is always

"slower than the revolutionary changes, and therefore at all times in this epoch there has been what sociologists call 'a cultural lag' that is to say, men have brought to the solution of present issues ideas and habits appropriate to a situation that no longer exists. [...] Multitudes of men have had to readapt themselves not merely to a new mode of existence but to one in which the newest situation has soon been transformed into a still newer one. It has not been easy, and the sense of spiritual confusion, frustration, and insecurity which has pervaded all of modern culture has truly reflected the misery and the difficulty of the readaptation." (ibid., p. 166)

In his discussion of the symptoms of this delayed spiritual adaptation to the changing material conditions of existence in the industrial world, Lippmann already anticipates the critique of the classical liberal mantra of 'laissez-faire' that would eventually become a cornerstone of neo-liberal politico-economic thought. Lippmann's general diagnosis, as we shall see, had in fact already been met with broad approval at the *Lippmann Colloquium*.

To Lippmann, the phrase 'laissez-faire' refers to the "assumption that there was a realm of freedom in which the exchange economy operated and, apart from it, a realm of law where the state had jurisdiction" (ibid., p. 191). This notion, Lippmann argues, is the "cardinal [fallacy] of nineteenth-century liberalism" (ibid., p. 184) because in his opinion, no "aspect of work or of property is ever unregulated by law" (ibid., p. 186). "[C]apitalism", he insists, "developed in a context of historic law and not in the free realm of Nowhere" (ibid., p. 190), and so "[t]he whole regime of private property and contract, the whole system of enterprise by individuals, partners, and corporations, exists in a legal context, and

is inconceivable apart from that context” (ibid., p. 189). In Lippmann’s opinion, the true historical significance of the doctrine of laissez-faire is that it has been a political tool which emerged at the turn of the nineteenth century to aid the social classes that benefitted from the industrial revolution in their struggles against “the entrenched resistance of the vested interests which opposed the industrial revolution” (ibid., p. 185). As an inherently political doctrine, laissez-faire was never meant to provide a factually accurate representation of social affairs, and quickly outlived the only historical context in which it had a practical significance: it was, he contends, “the necessary destructive doctrine of a revolutionary movement. That was all it was. It was, therefore, incapable of guiding the public policy of states once the old order had been overthrown” (ibid.).

As far as the argument of Lippmann’s *Great Society* is concerned, the reason this doctrine became so entrenched in early nineteenth-century liberal thought is to be found in the circumstance that classical political economists were still so enthralled by the immense changes to social life brought about by the first few decades of the industrial revolution, where the demand of ‘laissez-nous faire!’ had indeed been used for the purpose of challenging aristocratic rule, that they, mistakenly, “turned to writing metaphysical treatises on the assumption that laissez-faire is [indeed] a principle of public policy” (ibid.). This mistake, Lippmann’s argument continues, is what led nineteenth-century political economy to develop a social theory that rigidly distinguishes between a realm of (private) economic activity supposedly unaffected by the laws that apply to civil society, and a realm of civic (that is, public) life where every social interaction is mediated by law. Lippmann’s reproach is that this amounts to a confusion of the real with the ideal: classical liberals have taken the concrete historical situation that existed at the turn of the nineteenth century for a natural situation; that is, for a situation governed by “a natural law originating in the nature of things and valid in a superhuman sense” (ibid.), and thus mistakenly dismissed as illegitimate all developments that, in their view, threatened to alter this supposedly natural

status quo. Anticipating another central aspect of neo-liberal politico-economic thought, however, Lipmann holds that nothing about the operation of markets is natural, and so a reformed liberalism should render “[t]he improvement of the markets a subject of continual study” (ibid., p. 221).

The question of how this permanent improvement of markets should be undertaken was one of the central topics of discussion at the *Walter Lippmann Colloquium*, to which we now turn. In discussing the proceedings of the *Lippmann Colloquium*, we acquaint ourselves with two specific aspects of the neo-liberal rejection of ‘laissez-faire.’ One of these is that neo-liberal governmental rationality considers the active upholding of market competition to be one of the most important tasks of the state. The other aspect is that under conditions of perfect competition, the capitalist market can function as a general regulator of social interactions. Our discussion of both these aspects will subsequently be expanded upon when we turn to the thought of Friedrich Hayek and its sources.

2.2.3 The Emergence of Neo-Liberal Rationality

The question of the means and ends of such a reformed liberalism would already be broached on the first day of the *Walter Lippmann Colloquium*. The programme of this first day of the *Colloquium* consisted of two opening addresses by Walter Lippmann and Louis Rougier in which both essentially summarised the arguments of their recent books. These opening speeches were followed by a round of discussion amongst all participants. Near the end of this first round of discussion, Michael Heilperin made an attempt to narrow down the issues to be discussed in the further course of the *Colloquium*. He states:

“What do we want to discuss? This gathering is a gathering of economists. Mr. Lippmann’s book raised the question: ‘Given that a certain economic order reigns, what is the most appropriate system for developing it?’ The core of the problem is economic. If we want

to speak of all its aspects, we would strongly risk not reaching conclusions. Therefore, general limits: problem of the economic system, role to play by the State in the framework of this economic system, place of the individual within this economic system.” (Reinhoudt & Audier, 2018, p. 115)

Heilperin’s insistence that ‘the place of the individual within the economic system’ merits particular discussion illustrates that the question of who is the subject of governmental practise, a question with which we are going to concern ourselves in more detail in Chapter Four of this dissertation, has played a central role within neo-liberal politico-economic rationality from the beginning. Immediately after he made this statement, Heilperin himself went on to propose an answer to the question he believes Lippmann’s book is raising. “The [market] pricing mechanism”, the transcript quotes him, “is the criterion that must serve to define the liberal system. That should be the point of departure of our discussions” (ibid.; original square brackets).

Governing as Taking Care of the Price Mechanism

The idea that commodity prices formed under competitive conditions on the market should play an important regulatory role in liberal government was in wide circulation at the time. When the *Lippmann Colloquium* took place in August 1938, it had barely been three years since Friedrich Hayek had published the collected contributions of his liberal colleagues to the so-called ‘socialist calculation debate’ in the volume *Collectivist Economic Planning*. His 1935 volume contained the first English translation of Mises’ 1920 essay on *Economic Calculation in the Socialist Commonwealth*. In this essay, Mises claims that the only means of “overcom[ing] the complexity of the relations between the mighty system of present-day production on the one hand and demand and the efficiency of enterprises and economic units on the other” (Mises, 1963, p. 129) is to be found in the banal fact that some decisions of economic agents will turn out to be

profitable while others will incur losses, and so in a capitalist economy, “technical considerations” (ibid.) concerning the organisation of production “can be based on profitability” (ibid.). In Lippmann’s 1937 *The Good Society*, this argument from Mises’ *Economic Calculation* essay would be reiterated. Lippmann claims in his book that in the modern world, where “the personal motive of production is profit” (Lippmann, 1938, p. 169) rather than subsistence, relying on the market as “[regulator of] production is economically more efficient than custom and inheritance”, and “has resulted in [...] a substantial improvement of the standard of life” (ibid., p. 170 f.).²¹

This assertion from *The Great Society* would also be the consensus of the discussions at the *Walter Lippmann Colloquium*; with Lippmann himself repeating this point on the penultimate day of the conference, when he declared that “[e]conomic liberalism recognizes as a fundamental premise that only the pricing mechanism functioning in free markets allows for obtaining an organization of production likely to make the best use of the means of production” (Reinhoudt & Audier, 2018, p. 177). Yet two particular aspects of the contention that the price mechanism should organise the social relations of production as well as the conduct of individuals which the *Colloquium* participants thought were in need of discussing were those of the conditions of market competition under which the price mechanism can perform this organising function, and what to do in case these conditions are not met.

In order to discuss potential answers to these questions, the *Colloquium* participants first had to position themselves in relation to Louis Rougier’s hypothesis that the capitalist economy will degenerate from a state of competition into a state of monopoly if it remains free of regulation. There was no doubt amongst participants that what Louis Rougier referred to as “the concentration of capital,

²¹While Lippmann does not explicitly refer to Mises when he makes this particular argument, he states earlier in *The Good Society* that he is familiar with the critiques of the possibility of socialist planning which Mises made in the *Economic Calculation* article and his book on *Socialism* (Lippmann, 1938, p. 94; fn. 6).

and the formation of corporations; of the replacement of atomistic capitalism by the capitalism of large units” (ibid. p. 119) was an accurate description of an actual historical trend which, at the time of the *Colloquium*, had been going on for decades. The only question in this context that the participants of *Lippmann Colloquium* thought of as being in need of discussion was (and here, we again cite Rougier) whether “economic concentration [is] a necessary effect of economic development or the result of legal privilege” (ibid.); or, put differently, the question of whether the demise of capitalism is an inevitable result of its internal contradictions, or whether problems around the operation of markets can be resolved by reform. It was Ludwig von Mises who perhaps articulated the clearest response to this question when he proclaimed that this “development of monopolies” (ibid., p. 120) was not, as “Marxist doctrine” (ibid.) would have it, the result of “the free play of economic forces, [but] [...] has in fact been brought about by an interventionist economic policy” (ibid.). It is interesting to note, however, that in his contributions to the *Lippmann Colloquium*, Mises did not reject state interventionism in principle. Speaking to his colleagues, Mises acknowledged that legitimate forms of interventionist policies exist, and he even declared in the last session of the *Colloquium* that “effectively, beyond any doubt that the main problem to study” (ibid., p. 187) for the proponents of the reformed liberalism outlined at the *Lippmann Colloquium* “will be that of the possibilities of and of the limits to interventionism” (ibid.).

Michel Foucault’s Collège de France lecture course on *The Birth of Biopolitics* gives us reason to suggest that a tentative answer to what Mises referred to as the problem of the ‘possibilities’ and ‘limits’ to state interventionism can already be found in Alexander Rüstow’s reflections at the *Lippmann Colloquium* about the social policy which a reformed liberal government should pursue. In a lengthy contribution to a session on the “Psychological [...] Sociological, Political, and Ideological Causes of the Decline of Liberalism” (ibid. p. 157; punctuation altered), Rüstow proposed that in order to ensure that market competition does

not collapse into monopoly, the governmental institutions of the state must effectively turn themselves into caretakers and mechanics of the price mechanism. Lucidly demonstrating the wider implications of Louis Rougier’s call from *Les Mystiques économiques* for a legal framework which safeguards market competition and Walter Lippmann’s demand from *The Good Society* for a ‘continuous study’ of how to ‘improve’ markets, Rüstow remarked at the *Lippmann Colloquium*:

“The fact that the market economy is, as we all know today, based on very specific institutional conditions, created and maintained voluntarily by men, and that it can function without friction and effectively only if a strong and independent State ensures the precise observance of these conditions, this fundamental fact, as well as its practical consequences of decisive importance, has been completely obscured by the theological-rational error pertaining to the nature of the laws of the market. [...] The coincidence of the selfish individual interest with the general interest that liberalism discovered and proclaimed with enthusiasm to be the mystery of the market economy applies only within the limits of the free competition of services, and, as a result, only to the extent that the State, tasked with policing the market, keeps watch that the economic actors very carefully observe these limits.” (ibid., p. 160)

This contribution by Rüstow already succinctly articulates what Foucault’s lectures on *The Birth of Biopolitics* consider to be the essence of neo-liberal governmental rationality. Drawing on the proceedings of the *Walter Lippmann Colloquium*²² and later sociological commentaries authored by Alexander Rüstow²³ and Wilhelm Röpke,²⁴ Foucault’s Collège de France lectures from 1979 note, on

²²The proceedings of the Colloquium were first published in 1939 with the Librairie de Médecis as *Compte rendu des séances du colloque Walter Lippmann* (cf. Foucault, 2008, p. 151; n. 3). In 2008, the proceedings were republished in French as *Le Colloque Lippmann: Aux Origines du Neo-Libéralisme* by Serge Audier, and in 2018, Serge Audier and Jurgen Reinholdt published the English translation of the *Lippmann Colloquium* transcripts from which we quote in this dissertation.

²³In particular to a lecture titled *Sozialpolitik oder Vitalpolitik* (translated into English as *Social Policy or Vitalpolitik [Organic Policy]*) (Rüstow, 2017), which Rüstow held at the Dortmund Chamber of Commerce in 1951 (cf. Foucault, 2008, pp. 148; 242 f.).

²⁴On at least two occasions, Foucault refers to Röpke’s 1942 monograph *Die Gesellschaftskrisis der Gegenwart* (translated into English as *The Social Crisis of Our Time*) (Röpke,

the one hand, that “for the neo-liberals, the most important thing about the market is not exchange [...] [t]he essential thing about the market is elsewhere; it is competition” (Foucault, 2008, p. 118), and, on the other, they contend that neo-liberal government is characterised by “permanent vigilance, activity, and intervention” (ibid., p. 133) rather than ‘laissez-faire.’ Let us now shift our focus from the proceedings of the *Lippmann Colloquim* to Foucault’s commentary on neo-liberal governmental rationality in order to describe in more detail the socio-political significance of Rüstow’s insistence that the purpose of a reformed liberal government is that of ‘taking care’ that the price mechanism is provided with proper conditions for its functioning.

Transforming Social Relations into Market Relations

Foucault admits that the construal of markets as sites of competition rather than exchange is not a novelty of neo-liberal schools of thought per se, but became a politico-economic commonplace with the neo-classical turn in political economy in the late nineteenth century. Ever since then, he contends, “more or less all liberal theory has accepted that the most important thing about the market is competition, that is to say, not equivalence but on the contrary inequality” (ibid., p. 119). Echoing Lippmann’s objection to the claim by advocates of laissez-faire that the concrete historical situation in Europe and North America at the turn of the nineteenth century was the result of the workings of a ‘natural law’ of the market (cf. Lippmann, 1938, p. 189), Foucault proposes that before neo-liberal politico-economic thought came into being in the mid-twentieth century, political economy considered competition to be “a sort of given of nature, something produced spontaneously which the state must respect precisely inasmuch as it is a natural datum” (Foucault, 2008, p. 120). In contrast to this, his explanation continues, the neo-liberals construe competition as “a principle of formalization”

1950). Both times, the context is the question of ‘permissible’ state intervention in neo-liberal government (cf. Foucault, 2008, pp 104; 133).

with an “internal logic” and “its own structure” (ibid.), whose effects will only appear “under certain conditions which have to be carefully and artificially constructed” (ibid.). Neo-liberal politico-economic thought, we are told, posits that competition “can only be the result of lengthy efforts and, in truth, pure competition is never attained” (ibid.). It is for this reason that Foucault describes neo-liberal governmentality, somewhat akin to a thermostat or other primitive cybernetic devices, as a modality of government that permanently monitors the conditions of competition and re-adjusts them as soon as they diverge too much from the ideal. He argues in *The Birth of Biopolitics* that as soon as governmental practises begin to abide by a rationality that assigns such a central role to the idea of the price mechanism as a regulator of social affairs as neo-liberal political-economic thought, this will necessarily lead to the extension of the logic of the market to the whole of society:

“[Neo-liberal] [g]overnment must not form a counterpoint or a screen, as it were, between society and economic processes. It has to intervene on society as such, in its fabric and depth. Basically, it has to intervene on society so that competitive mechanisms can play a regulatory role at every moment and every point in society²⁵ and by intervening in this way its objective will become possible, that is to say, a general regulation of society by the market.” (ibid., p. 145)

It should thus be possible for us to claim that if both classical liberal and social liberal practises of government alike guide the conduct of their subjects primarily by way of recourse to juridical discourses and institutions, and are

²⁵While this may indeed have increasingly been the aim of social policy in many Western countries from the 1970s onwards, it should be noted that in his commentary at the *Lippmann Colloquium* on the society that a reformed liberalism should bring into being, Alexander Rüstow remarked that he believes it is necessary to “determine [a] sector [of society] from which competition can be ousted” (Reinhoudt & Audier, 2018, p. 181). The reason Rüstow believes that society cannot be entirely governed by the principle of competition is that he, in fact, deems this to be corrosive of the social fabric. He describes the competitive market as “a realm of atomization, from which any vital integration is absent” (ibid., p 161), so that, consequently, a “need for compensation [arises]” (ibid.). To avoid that encouraging individuals to compete with one another does “harm to the whole of the social body, the link of [social] integration [...] has to be reinforced [...] elsewhere” (ibid.), Rüstow argues. In fact, the entire intention of the *Vitalpolitik* which Rüstow would describe in his 1951 lecture at the Dortmund Chamber of Commerce (Rüstow, 2017) is that of offering a respite from market competition.

only indirectly influenced by politico-economic rationality, the emergence of neo-liberal governmentalities will turn this hierarchy between law and economics upside down. We have in fact already seen in Alexander Rüstow's remark from the *Walter Lippmann Colloquium* quoted above that in neo-liberal practises of government, juridical discourses take on a secondary role in relation to the discourse of political economy when he refers to the subjects of government in his reformed liberal society as 'economic actors.' In the specific historical context of neo-liberal government, juridical discourse and institutions have lost their autonomy vis-à-vis economic rationality. The practises of government which became hegemonic throughout the West in the second half of the twentieth century would bring a world into being in which, as Foucault puts it in a remark about post-World War Two West Germany, "the economy, economic development and economic growth, produces sovereignty" (ibid., p. 84). We shall now illustrate in the final section of this chapter how this consensus that emerged at the *Walter Lippmann Colloquium* is reflected in the work of a key figure in the history of neo-liberal thought, namely that of Friedrich Hayek.

We first discuss Hayek's anti-rationalist case for the capitalist market as the best of all possible regulators of social life. By giving closer consideration to one of the sources of Hayek's thought, namely the sociologist Heinz Otto Ziegler, we then shed light on the background of Hayek's conviction that in order for the neo-liberal state to fulfil its purpose as guardian of the price mechanism, an authoritarian style of government is better suited than the deliberative style of government associated with what he calls 'unlimited' democracy. We then argue, however, that in comparison to the establishment of an authoritarian state, Hayek could be read as preferring the dissolution of the nation-state in post-national frameworks of government as a method for curtailing deliberative democracy. By proposing that as far as the means for implementing neo-liberal governmentalities are concerned, Hayek prefers the authoritarian state over 'unlimited' democracy, but considers both of them inferior to post-national frameworks of

government that delimit the scope of action of the nation-state from without, we lay the groundwork for a line of argument to be gradually developed throughout the course of Chapters Three, Four, and Five of this dissertation. These three chapters will illustrate that the neo-liberal governmental practises introduced in Europe in the second half of the twentieth century have sought to undo an interpersonal modality of practising authority — which ensured, amongst other things, the subsistence of authority relationships between individuals governed as subjects of rights and representatives of state institutions — by subjectivating individuals as economic actors and encouraging them to seek advice and validation of their conduct from the economic data produced by the price mechanism of the capitalist market, or to orient their conduct around abstract principles about the ‘ideal’ functioning of markets as formulated by various schools of neo-liberal politico-economic thought.

2.3 Governing for the Market, and Beyond the Nation-State: Hayek’s Neo-Liberal Utopia

2.3.1 The ‘Dethronement of Politics’ and the Apotheosis of the Market

To begin, we turn to the penultimate chapter of the third and last volume of *Law, Legislation, and Liberty*; a chapter which Hayek chose to title *The Containment of Power and the Dethronement of Politics*. Hayek’s primary concern in this chapter is with the ethics of what he refers to as the ‘great society.’ “[T]he sole indispensable foundations of civilization which government must provide” (Hayek, 1998, p. 131) in such a ‘great society,’ Hayek argues, are “Peace, Freedom and Justice” (ibid.), but he insists at the same time that these three values may only fulfil their purpose of providing the ethical foundation of a ‘great society’ so

long as they remain “[t]he three great negatives” (ibid.). He tells us in the chapter on the *Dethronement of Politics* that the reason that in a ‘great society’ all three of these values must not be given a positive definition is ultimately to ensure that individual liberty is maximised. “Only such negative rules,” Hayek claims, “make possible the formation of a self-generating order, utilizing the knowledge, and serving the desires, of the individuals” (ibid., p. 130).

This statement is first of all an expression of a general weariness on Hayek’s part with regard to all efforts at “[imposing] upon society a preconceived design” (ibid., p. 129). In his view, the imposition of a preconceived design is a pitfall because it “will lead to the extinction of all moral responsibility of the individual” (ibid.). Hayek in fact held the belief that the imposition of such preconceived designs on society by “the left” (ibid.) had at the time of his writing in the 1970s “already progressively removed, one after the other, most of those safeguards of individual freedom which had been built up through centuries” (ibid.). However, in addition to objecting on the grounds of a potentially detrimental effect on individual liberty, Hayek also formulates another, far broader ethical objection to any attempt at letting government be guided by positive ideals: he further justifies his insistence that a ‘great society’ must be founded on negatively defined values with what we may call an ‘epistemic pessimism.’ Hayek gives us a good impression of this ‘pessimism’ when he tells us of his belief in “the unalterable ignorance of any single mind or any organisation that can direct human action” (ibid., p. 130).

Perhaps we can suggest that the fundamental characteristic of the ethics Hayek outlines in his chapter on the *Dethronement of Politics* is that of a general scepticism towards human, interpersonal authority. If all historical declensions of liberalism understand government as a practise whose goal is that of bringing about the greatest good for the greatest number, then Hayek’s anthropological insistence here would be that it is categorically impossible for human knowledge, be it individual or collective, to determine what this good is, and hence there

cannot possibly be a human authority to evaluate which political strategies are most likely to achieve it. In order to be able to determine the good, persons or governmental institutions would need a “knowledge of the immeasurable multitude of particular facts which must determine the order of its activities” (ibid.), and it is precisely the possession of such knowledge that Hayek deems unattainable, regardless of what technological means are drawn upon to assist in this endeavour. In the absence of the ability to positively determine the good and voluntarily bring it into existence, the most a political society can do, in Hayek’s opinion, is to “assist (or perhaps make possible) the formation of an abstract pattern or structure in which the several expectations of the members approximately match each other” (ibid.).

That the production of such an approximate ‘equivalence in expectations’ is the task of the capitalist market is an idea that recurs throughout Hayek’s entire oeuvre. For instance, he dedicates an entire chapter in *The Mirage of Social Justice*, the second volume of *Law, Legislation, and Liberty*, to the argument that establishing an approximate “correspondence of expectations” (1998a, p. 124) is precisely the task of the ‘market order’ (cf. ibid., pp. 115-120; p. 124 f.). But already as early as in his 1944 *The Road to Serfdom*, Hayek suggested that because

“all the details of the changes constantly affecting the conditions of demand and supply of the different commodities can never be fully known [...] some apparatus of registration [is required] which automatically records all the relevant effects of individual actions, and whose indications are at the same time the resultant of, and the guide for, all the individual decisions. This is precisely what the price system does under competition, and which no other system even promises to accomplish.” (2006, p. 51 f.)

Hayek suggests moreover in the chapter on the *Dethronement of Politics*, that the counter-position to this belief in the regulatory ingenuity of the price mechanism, that is, the position which holds that “relationships determining the

processes of society” (1998, p. 141) can be directed by an individual or a collective will, on the basis of individual or collective knowledge, could be called the “anthropomorphic interpretation of society” (ibid.). Such ‘anthropomorphic’ interpretations, he explains, are misguided because all “processes of social revolution [that lead to cultural evolution] take place without anybody willing or foreseeing them” (ibid.).

2.3.2 The Authoritarian State as Guardian of Individual Liberty: Hayek and Heinz Otto Ziegler

Hayek’s conviction that the belief in the possibility of steering society towards positively defined ends is symptomatic of an erroneous, ‘anthropomorphic’ interpretation of society offers us an occasion to consider the possibility that, curiously enough, it might be precisely this opposition to the voluntary direction of society that ultimately justifies Hayek’s defence of authoritarian government. For reasons which should become clear momentarily, we may suppose that his rejection of the ‘anthropomorphic’ interpretation of society is related to his rejection of ‘unlimited democracy,’ which we already encountered in our commentary on his 1978 letters to the editor of *The Times* in the Introduction to this dissertation. Hayek reiterates this rejection when, eventually, he introduces democracy as a fourth negative value of his hypothetical ‘great society’ in his chapter on the *De-thronement of Politics*. In a passage which appears remarkably cynical in light of the apologia he issued in *The Times* for the coup d’état against Salvador Allende only a few months before the final tome of *Law, Legislation, and Liberty* was published, Hayek writes that:

“The true value of democracy is to serve as a sanitary precaution protecting us against an abuse of power. [...] Or, to put it differently, it is the only convention we have yet discovered to make peaceful change possible. [...] But it is far from being the highest political

value, and an unlimited democracy may well be worse than limited governments of a different kind.” (Hayek, 1998, p. 137 f.)

We already know from his 1978 letters to the editor of *The Times* that Hayek held the opinion that “in modern times there have [...] been many instances of authoritarian governments in which personal liberty was safer than under many democracies” (1978a, p. 15). His public dispute with David Steel and William Wallace in *The Times*, however, did not mark the first time that Hayek articulated this idea in writing. He already spelled out a variation of this idea in a passage of his 1960 monograph *The Constitution of Liberty*, where he writes that “a democracy may well wield totalitarian powers, and it is conceivable that an authoritarian government may act on liberal principles” (2011, p. 166). In a footnote, Hayek then adds the following remark: “On the origin of the conception of the ‘total’ state and on the opposition of totalitarianism to liberalism, but not to democracy, see the early discussion in Heinz Otto Ziegler, *Autoritärer oder totaler Staat*” (ibid., p. 166; fn. 1). In what follows, we shall take Hayek up on his proposal, and turn to Ziegler’s short treatise from 1932²⁶ in order to shed light on Hayek’s reasons for considering the authoritarian state more capable of safeguarding individual liberty than an ‘unlimited democracy.’

We read in Ziegler’s *Autoritärer oder totaler Staat* (‘Authoritarian or Total State’) that the term ‘total state’ refers to “the idea that the development of political rule [Herrschaftsentwicklung] in modernity is greatly influenced by the increasingly total mobilisation of society for the state” (Ziegler, 1932, p. 6; my translation). Ziegler goes on to explain that this idea of the ‘increasingly total mobilisation of society for the state’ in modern history is part of a broader theory about the historical development of state and society in Western modernity whose main argument can be summarised as follows:

²⁶It should perhaps also be noted that, in an essay from 1938, Carl Schmitt already refers to this text by Ziegler as a good exemplar of the viewpoint “that democracy is necessarily associated with the total state” (Schmitt, 1940, p. 255; my translation). According to Schmitt, this point of view enjoyed a broad popularity amongst “liberal democrats [Liberaldemokraten]” (ibid.) at the time.

“Instead of an opposition or juxtaposition of ‘state’ and ‘society,’ these two came to be equated. This equation necessarily brought with it an increasingly far-reaching, and in principle unlimited expansion of the competences and powers of the state, which led at the same time to a total politicisation of all social spheres and relations of life [Lebensbereiche und -bezüge]. The total state neither knows limits with regard to the domains to which its rule extends [seiner Herrschaftszuständigkeit], nor to its power [seiner Herrschaftsmacht]. The state can and must seize and order every aspect [Inhalt] of social existence; the state is necessarily a welfare state [Fürsorgestaat], a providing state [Versorgungsstaat], and an economic state [Wirtschaftsstaat] [...]” (ibid.; my translation)

Initially, Ziegler leaves it unclear as to whether the viewpoint he describes here is also his own, but the further course of his elaborations quickly reveals that it is. As a matter of fact, Ziegler holds the belief that the emergence of the ‘total state’ thus defined has been the inevitable consequence of “[t]he entire continental development of political rule [Herrschaftsentwicklung] since the French Revolution, insofar as its formative core [gestaltender Kern] is the realisation of national democracy” (ibid., p. 8; my translation). Also exposing his inclination towards idealist historiography, Ziegler further tells us that the driving force behind this historical development is to be found in Jean-Jacques Rousseau’s notion of the ‘general will.’ He argues that:

“The ultimate conceptional basis [Die letzte ideelle Grundlage] for this indissoluble connection between the democratisation and the nationalisation of statehood can [...] be found in *Rousseau’s* category of the *volonté générale*. [With the *volonté générale*], a concept has been created that goes beyond the individualistic and human rights-oriented maxims that are also present in the *Rousseauian* oeuvre, and whose actual content is to be found in the justification and emphatic affirmation of the absolute, indivisible and unlimited sovereignty of the people: the *volonté générale* elevates the people to the status of subject of the state and unified political agent [einer politisch handlungsfähigen Einheit].” (ibid., p. 11; my translation)

The ‘total state’ is contrasted by Ziegler with two other organisational models for the modern state. The “antithesis [Gegenbegriff]” (ibid., p. 6) of the ‘total state,’ we read, is the “‘neutral state’ of at least partial non-intervention” (ibid.; my translation); essentially a constitutional monarchy, which, according to Ziegler, distinguishes itself from the “monism and centralism of statehood” (ibid.; my translation) in the total state by way of adherence to a constitutional model capable of adequately keeping the governmental institutions of the state in check,²⁷ and by ensuring “furthermore in particular the independence of the economy from state policy” (ibid., p. 6 f.; my translation). The second of these two organisational models is that of “an authoritarian state [eines autoritären Staates]” (ibid., p. 8).

We should emphasise that for Ziegler, the concept of the ‘authoritarian state’ does not carry any negative connotation whatsoever, and simply designates a state that does not identify itself with the popular will. An authoritarian state is a state that possesses a will of its own, which it may, on occasion, assert against that of the people. Or, to put it in Ziegler’s own words: in response to “today’s ‘social pluralism’ [... des heutigen ‘sozialen Pluralismus’]” (ibid., p. 8), the authoritarian state “[organises the unity of people] as an independent and self-responsible [eigenverantwortlicher] ruling state [Herrschaftsstaat]” (ibid.; my translation). Apropos the historical significance of such an authoritarian state, Ziegler argues that “the real vital question [Lebensfrage] of the state of the twentieth century no longer seems to be that of the alternative: neutral or total state” (ibid., p. 38; my translation), because “the development of the French Revolution and the nineteenth century has already given a clear answer in that matter: total state” (ibid.; my translation). What is at stake instead in “[t]he future task of shaping the state”, he tells us, is “rather [...] the living tension

²⁷He writes: “We find an example of such a ‘neutral state’ in the constitutionalist constitutional model [... die konstitutionalistische Verfassungsform], since its dualism of crown and parliament imposes limits on the power of government” (Ziegler, 1932, p. 6; my translation).

that exists between the status of the total and the authoritarian state” (ibid.; my translation).

This discussion of Ziegler’s *Autoritärer oder totaler Staat* should clear up some of the ambiguities surrounding Hayek’s assertion in his 1978 letters to *The Times* that sometimes ‘personal liberty is safer under authoritarian governments than under democracies.’ Likewise, we should now be able to understand the source of the distinction between totalitarianism and authoritarianism he invoked, not long after his 1978 letters to *The Times*, in a discussion of the Chilean coup d’état during a 1981 interview, in which he urged his interlocutor not to “confuse totalitarianism with authoritarianism” (Hayek, 1981, p. 4; quoted in: Ebenstein, 2001, p. 300), and then went on to add: “I don’t know of any totalitarian governments in Latin America. The only one was Chile under (former Marxist president Salvador) Allende” (ibid.). The standpoint Hayek would appear to hold is that the authoritarian state is a more suitable guardian of individual liberty than an ‘unlimited’ democracy because the former possesses the ability to oppose the will of the masses, whereas the latter, by definition, does not. But while we may now have gained a better understanding of Hayek’s argument around authoritarian states being more capable of maintaining individual liberty than ‘unlimited’ democracies, there is good reason to assume that Hayek considers a state apparatus capable of opposing the popular will to be only the second-best option for bringing his ‘great society’ into being.

2.3.3 From Nation-State to Interstate Federation: Hayek on the Logical Evolution of Liberalism

Still in the chapter on the *Dethronement of Politics*, Hayek indicates that the ideal institutional conditions for his neo-liberal utopia cannot be fulfilled without thinking globally. Near the end of the chapter, Hayek remorsefully tells his readership that he “had wished at the end of this work to give some indication of the

implications of the principles developed for international affairs,” but “[found] it impossible to do so without letting the exposition grow to undue length” (Hayek, 1998, p. 149). All he offers there in terms of an explanation of how international affairs should ideally be organised comes in the form of his proposal that they should be governed by “a true international law which would limit the powers of national governments to harm each other” (ibid.). But Hayek had expressed his views on the organisation of international affairs decades before the publication of the final volume of his *Law, Legislation, and Liberty* trilogy. In an article which first appeared in 1939, entitled *The Economic Conditions of Interstate Federalism*, we encounter a detailed discussion of how a post-national governmental framework could be organised to contribute to the ‘dethronement’ of politics and the limitation of democracy on the level of the nation-state.²⁸

The essay on *Interstate Federation* appeared barely one year after he met his fellow liberal intellectuals at the *Walter Lippmann Colloquium* and assisted in elaborating the basic principles of neo-liberal politico-economic rationality. While in *The Economic Conditions of Interstate Federalism*, he still agreed with his colleagues in Paris that the purpose of government is ultimately to ensure the proper functioning of markets, Hayek would specify in his 1939 essay that such a government for the market should ideally rely as little as possible on the institutions of individual nation-states and be instead carried out by a federation of nation-states. Hayek argues that it is not even the prospect of a gain in material wealth that would make the establishment of such an interstate federation a desirable goal. As is perhaps not overly surprising given the historical moment in which he wrote this essay, Hayek’s primary preoccupation in *The Economic Conditions of Interstate Federalism* is with the question of how to “secure peace”

²⁸International affairs is also the topic of the final chapter of Hayek’s *Road to Serfdom* (2006, pp. 225-244), which bears the title *The Prospects of International Order*. The arguments from *The Road to Serfdom* concerning international organisations are similar to those Hayek made in his earlier essay on *Interstate Federation*. We shall, however, keep our focus here on his 1939 essay, as this text more clearly highlights the link between the appropriate organisation of international order and his rhetoric around the ‘dethronement’ of politics.

(1958, p. 255). To Hayek, the establishment a governmental framework beyond the nation-state is ultimately a countermeasure to the perceived historical tendency towards an increasingly ‘unlimited,’ which is to say, ‘totalitarian’ democracy. Establishing a federation of nation-states, as he puts it himself, “will set very definite limitations to the realization of widely cherished ambitions” (ibid.).

Hayek clarifies that, in principle, he is a pragmatist with regard to the precise means by which this ‘main purpose’ of securing peace is to be achieved. If this purpose could be reached by way of establishing a union between nation-states restricted to purely political matters, then this would already be sufficient. However, he doubts the feasibility of a purely political union, citing the lack of historical precedent as the main reason for his scepticism: “there is no historical example”, writes Hayek, “of countries successfully combining in a common foreign policy and common defense without a common economic regime” (ibid., p. 256). It is possible, he contends, for an economic union between states to exist without a political union, but not vice-versa. Using the Austro-Hungarian monarchy as an example, Hayek claims that “a common representation in foreign countries and a common foreign policy is hardly conceivable without a common fiscal and monetary policy” (ibid.). Only this, we read, will make it possible to “conduct a defense policy without being hampered at every stage by considerations of local interests” (ibid., p. 257), and, consequently, only this will “preserve the internal coherence of the Union” (ibid.) in the long run.

The examples Hayek provides as to how the economic union between nation-states that he believes should serve as a basis for his proposed interstate federation would generate internal coherence read like an handbook for neo-liberal reform *avant la lettre*. He gives us to understand that amongst the most “important consequences” (ibid., p. 258) of the establishment of an economic union between nation-states is that it would limit “to a great extent the scope of the economic policy of individual states” (ibid.), and that it would furthermore weaken the bargaining position of organised labour: “these limitations,” Hayek explains the

latter point, “[would] apply [...] also to economic policy conducted by trade and professional organizations extending over the territory of the state” (ibid., p. 261). In addition to these two concrete effects, he also suggests somewhat more generally that an economic union would weaken the position of ‘local interests’ by undermining the political import of tradition. According to Hayek, the larger the union, the fewer “common ideals and common values” (ibid., p. 264) may potentially exist between its inhabitants; and he considers this insofar an advantage as he sees in such ‘common ideas’ and ‘values’ a basic prerequisite for any form of “[p]lanning, or central direction of economic activity [...] and the degree to which planning can be carried out is limited to the extent to which agreement on such a common scale of values can be obtained or enforced” (ibid.).

The interstate federation envisioned by Hayek, by embedding a host of different states in a superordinate structure, in which their individual scope of action is limited from the outset, provides the aspiring neo-liberal reformer with a mechanism for ‘dethroning’ politics and maximising individual liberty, and makes it possible to bypass the laborious and uncertain process of changing the operational dynamics of individual nation-states from within. We are told that the internationalisation of government in the sense just described is a necessary step in the historical development of liberalism. In a noteworthy display of double-standards — insofar as it suggests that he only finds the imposition of ‘preconceived designs’ on society problematic if these serve political aims that he disagrees with — Hayek argues in *The Economic Conditions of Interstate Federalism* that whereas on the one hand,

“an essentially liberal economic regime is a necessary condition for the success of any interstate federation [...] the converse is no less true: the abrogation of national sovereignties and the creation of an effective international order of law is a necessary complement and the logical consummation of the liberal program.” (ibid.)

Hayek's argument is here running close to Hermann Heller's claim from his 1933 essay on *Authoritarian Liberalism?* according to which liberalism is intrinsically internationalist, so that the 'national' liberalisms that we could actually observe in modern history have always existed under the sign of this contradictory and conflicted conjunction of nationalism and liberalism. Even if unlike Heller, Hayek does not see the reason for the historical conflation of liberalism and nationalism in conservative resistance to the social transformations brought about by the rise of industrial capitalism, and rather argues that nationalists and liberals had in the nineteenth century a common enemy in the aristocracy, he nevertheless reaches the same conclusion. "[R]eal liberalism" (ibid., p. 271), Hayek writes, adheres to an "ideal of [...] internationalism" (ibid.), and he suggests that one of the main difficulties of liberalism in the nineteenth century was "that its advocates did not sufficiently realize that the achievement of the recognized harmony of interests between the inhabitants of the different states was only possible within the framework of international security" (ibid., p. 270). We can propose that his argument about the internationalist character of 'real' liberalism from his *Interstate Federalism* essay makes it plain to see how his plea for a 'dethronement' of politics amounts to a proposal that an art of government operating through juridical discourses and institutions be supplanted by a governmentality centred around economic discourses and institutions. Hayek himself in fact could hardly be clearer that the intended outcome of his plans is the elimination of governmental practises which address their subjects as rights-bearing individuals qua citizens of the liberal nation-state when he writes that "[the] liberalism" (ibid., p. 271) that such an interstate federation would bring into being is "of course, not a party matter" (ibid.).

We have now familiarised ourselves with Hayek's suggestion that the conditions for a neo-liberal programme of government are ideally fulfilled by creating a post-national governmental framework to delimit the governmental capacity of the nation-state and its institutional apparatus; with his approving reference to

Heinz Otto Ziegler's case for the authoritarian state; and with his insistence that the price mechanism ought to regulate social affairs to insure individual liberty against the potentially detrimental effects of what he believes to be the limitations of human understanding. This discussion should have rendered it clear that the supranational framework of government whose historical emergence we outlined and contextualised in Chapter One can be considered a suitable embodiment of the spirit of this ideal programme of neo-liberal government à la Hayek; even if Hayek himself, as we mentioned in the first chapter, initially did not seem satisfied with the operation of this framework (cf. Anderson, 2011, p. 31; fn. 31). More generally, our preceding discussion should have given us a good illustration of how neo-liberal governmental rationality challenges important presuppositions of historically prior forms of liberal rationality, such as their positioning of the state as the central political formation; the presupposition that government is concerned with the welfare of citizens, which requires a basic esteem for democracy; and the presumption that the norms of good conduct are upheld interpersonally, rather than by the price mechanism of the market.

The following two chapters of this dissertation describe how these challenges would lead to a break with long-established conventions once neo-liberal rationality began to inform governmental practise.

Chapter 3

Government and Authority:

From Persons to Markets

Chapter Three discusses the two central concepts of this dissertation, government and authority, and puts them in relation to one another. To do so, this chapter engages both in conceptual and historical commentary. To substantiate a central theoretical claim of this dissertation, namely that a ‘governmentality’ in the Foucauldian sense always implies a particular modality of practising authority, this chapter performs the conceptual task of synthesising what we refer to as Michel Foucault’s notion of ‘power-as-government’ with descriptions of the concept and practise of authority as encountered in the work of historians of Roman antiquity. This synthesis positions authority as a subset of ‘power-as-government’: we propose that ‘power-as-government’ can be understood as a catch-all term for practises of guiding the conduct of individuals and groups, and argue that ‘authority’ refers to the specific practises of validating the conduct of subjects and providing them with ‘binding’ advice. The historical argument of this chapter is concerned with a shift in the modality whereby authority is practised. Drawing on the work of Leo Löwenthal and Max Horkheimer, we claim that the introduction of neo-liberal governmentalities in the second half of the twentieth century was accompanied by a displacement of the interpersonal

practise of authority with an impersonal, ‘market-centred’ modality of practising authority. We claim that this marks a break with long-standing governmental conventions insofar as the interpersonal practise of authority had been the norm since the historical emergence of authority in Roman antiquity. The chapter is divided into three sections.

The first section discusses Foucault’s concept of ‘power-as-government.’ We propose that Foucault’s reflections on ‘government’ grew out of a quest to formulate a methodology for analysing power relations in a ‘non-juridical’ fashion; a quest which he embarked upon in 1976. Our narrative highlights that Foucault eventually began to conceptualise power relations as relations of ‘government’ in his 1978 *Security, Territory, Population* lectures at the Collège de France, after abandoning his 1976 attempts at avoiding the ‘juridical theory of power’ by positing that power relations are essentially warlike. We note that after some back-and-forth, Foucault eventually provided a definitive formulation of the concept of ‘power-as-government’ in the 1983 essay *The Subject and Power*. We outline the basic features of ‘power-as-government,’ and then comment on this concept with the aim of preparing its synthesis with historical commentaries on the notion of authority. Our commentary questions whether Foucault’s formal definition of power as the sum total of practises for ‘conducting conduct’ must necessarily be associated with the Old French meaning of the term ‘government.’ For this purpose, we resort to two legal-historical studies on the notion of sovereignty. This choice might seem odd, but it is intentional. We use these studies to propose that Foucault’s attempt to establish a rigid distinction between ‘juridical’ and ‘non-juridical’ understandings of power might not be tenable, and to draw attention to the claim that the modern notion of sovereignty can be analysed as a conglomerate of the Roman ideas of *auctoritas* and *potestas*. This allows us to present authority as a set of social practises for ‘conducting conduct’ remarkably similar to those that Foucault refers to as practises of ‘government.’

In the second section of this chapter, we synthesise Foucault’s notion of ‘power-as-government’ with the notion of authority as described by historians of Roman antiquity. To perform this synthesis, we fashion three key properties of ‘power-as-government’ listed by Foucault in *The Subject and Power* — where we read that ‘power-as-government’ is an ‘action,’ that it ‘constrains,’ and that it forms a ‘total structure’ — into an analytical grid to organise our study of the ancient Roman *auctoritas*. Apart from positioning authority as a subset of practises of ‘government’ in Foucault’s sense, this synthesis also provides us with an outline of the interpersonal modality of practising authority which we claim would still be the norm in classical and social liberal governmentalities. Drawing on historical-linguistic scholarship, we indicate that the term *auctoritas* indeed primarily denotes practises, rather than the status of a person or a thing. We then propose that *auctoritas* can be characterised as an interpersonal, spoken practise whose main, constraining functions consist in the provision of ‘binding’ advice and the validation of the conduct of its subjects. Finally, we assert that the practise *auctoritas* can be interpreted as forming a ‘total structure’ insofar as initially, the validity of the entire Roman legal order depended on the *auctoritas* of the socially most privileged group within the Roman community.

The final section of this chapter addresses the historical shift from interpersonal to impersonal practises of authority. We begin by siding with Hannah Arendt’s claim that the interpersonal practise of authority that emerged in Roman antiquity was eventually taken up by the Church, which carried it over into modernity. Subsequently, however, we distance ourselves from Arendt and contrast her belief that authority has vanished in modernity with Leo Löwenthal’s and Max Horkheimer’s commentaries on authority and its function in the modern West. Löwenthal’s and Horkheimer’s contributions are used by us to explain how authority eventually came to be practised impersonally. We first draw on Löwenthal’s work to argue that although interpersonal practises of authority were retained in modernity, the dynamics of the capitalist mode of economic produc-

tion increasingly rendered reasonable subordination to interpersonal authority impossible for wage-labourers. Following this, we outline Max Horkheimer's argument that modernity differs from earlier historical periods insofar as the imperative of the self-valorisation of capital would require the classes at the top of the social hierarchy to accept that their own conduct, too, would now be validated by market outcomes; and that this irrational form of authority would in the course of modernity eventually be commonly accepted. Finally, we discuss examples of these impersonal practises of authority in order to illustrate that they too can be said to serve the purposes of validating conduct and providing 'binding' advice.

3.1 Michel Foucault: Power, Government, and Authority

At the same time as Friedrich Hayek, David Steel and William Wallace were engaged in the public dispute over the relation between individual liberty, democracy, and the capitalist market in the Letters pages of *The Times* that we mentioned in our Introduction, Michel Foucault outlined a genealogy of what he would alternately refer to as the 'arts of government,' 'practises of government,' or 'governmentality' in two consecutive series of lectures at the Collège de France. The historical breadth of these two lecture courses is impressive, covering a historical period from late antiquity to the late twentieth century, with occasional forays into the worlds of ancient Hellenic, Hebrew, and Egyptian thought. The first of these two series, which ran from January to April 1978 under the title *Security, Territory, Population*, describes how the conjunction of Christian pastoral practises of government, the modern state that emerged in the Renaissance, and political economy and statistics, which appeared as forms of knowledge at the turn of the nineteenth century, would give rise to the modern art of government in its classical liberal form. The subsequent *The Birth of Biopolitics*, held

between January and April 1979, extends the historical timeline of the analysis of the ‘arts of government’ to the immediate present of Foucault’s teaching by providing a detailed commentary on the emergence of the neo-liberal variety of this modern art of government from the 1930s onwards. In fact, these two lecture courses from the late 1970s were merely the beginning of Foucault’s turn to the concept of government, for until his death in 1984, he returned to it in lectures, essays, interviews, and in the final three of the now four volumes of *The History of Sexuality*.

The process that eventually led Foucault to engage with the concept of ‘government,’ however, already began two years earlier, in 1976. In this year, Foucault on two occasions declared his intention to establish a clear set of methodological principles for the genealogical analyses of modern power relations which he had been conducting since his appointment to the Collège de France at the turn of the 1970s. The chronologically first expression of this intention is to be encountered in his 1976 Collège de France lecture course ‘*Society Must Be Defended*’. Right at the beginning of these lectures, Foucault announces (with remarkable rhetorical vigour) that he wishes to dedicate his 1976 course to the purpose of establishing the basic rules of method for analysing the operations of power in Western modernity. In the opening lecture of ‘*Society Must Be Defended*’, Foucault specifies that the method for analysing power that he wishes to devise is guided by a double assertion. The first of these guiding assertions is that power is to be construed as a practise, which is to say, “something that is exercised and that [...] exists only in action” (Foucault, 2003a, p. 14), as opposed to an object that can be possessed. The position that power is an ‘object’ that can be possessed is one that he would seem to primarily associate with social contract theory, where, on Foucault’s account, “power is regarded as a right which can be possessed in the way one possesses a commodity, and [...] therefore [...] transferred or alienated” (ibid., p. 13). According to second principle guiding Foucault, power is “primarily, in itself, a relationship of force” rather than “primarily the perpetuation and

renewal of economic relations” (ibid., p. 15) — the latter being a position he sees embodied in Marxist thought.²⁹

The other expression of Foucault’s methodological ambitions appeared nine months after the ‘*Society Must Be Defended*’ lectures came to a conclusion, when, in December 1976, *The Will to Knowledge*, the first volume of *The History of Sexuality*, was published. In *The Will to Knowledge*, Foucault dedicates an entire chapter to explaining his proposed methodology for analysing power relations (1998, pp. 92-102). In this chapter, Foucault repeats the basic methodological precepts that he had already mentioned in ‘*Society Must Be Defended*’ and adds to these a number of further, auxiliary guidelines. In the 1976 first volume of *The History of Sexuality*, Foucault emphasises once again that he wishes to develop a method for analysing power that does not fall back on what he refers to as the “juridical notion of power” (ibid., p. 86); and he also reiterates another central methodological postulate he already mentioned in his 1976 Collège de France lectures. A key theme of ‘*Society Must Be Defended*’ is that power relations are to be construed as essentially warlike relations. This much is already expressed in Foucault’s claim we quoted above, according to which power is ‘not the perpetuation of economic relations, but in itself a relationship of force.’³⁰ In the chapter on *Method* from *The Will to Knowledge*, Foucault tells us that power is a “multiplicity of force relations” (1998, p. 92) that constantly transforms itself in a “process [of] [...] ceaseless struggles and confrontations” (ibid.). We read further that if one wishes to apply the method described in *The Will to Knowledge* to

²⁹We should perhaps note here that Foucault’s remarks on the understanding of power he ascribed to the Marxist tradition of thought quickly attracted criticism. In *State, Power, Socialism* — a book that appeared only two years after Foucault gave the ‘*Society Must Be Defended*’ lectures and published *The Will to Knowledge* — Nicos Poulantzas firmly rejects Foucault’s portrayal of the Marxist understanding of power. Poulantzas writes: “It is not true, as Foucault or Deleuze would have it, that relations of power are, for Marxism, ‘in a position of exteriority vis-a-vis other types of relation: namely, economic processes ...’. The economic process *is* class struggle, *is* therefore relations of power — and not just economic power. (It is understood that these powers are specific through being attached to exploitation — a phenomenon rarely mentioned by Foucault and Deleuze)” (Poulantzas, 2000, p. 36).

³⁰For further remarks on this particular methodological postulate in ‘*Society Must Be Defended*’, (cf. Foucault, 2003a, pp. 15-19; pp. 43-48).

the analysis of political processes, one should therefore let oneself be guided by the assumption that “politics is war pursued by other means” (ibid., p. 93).

Precisely this postulate of the essentially warlike character of power relations, however, disappeared again from Foucault’s thought and teaching once he returned from his 1977 sabbatical and resumed his lectures at the Collège de France in 1978.³¹ The *Security, Territory, Population* lecture course of 1978 marks the beginning of a gradual identification in Foucault’s conceptual vocabulary of the term ‘power’ with that ‘government’;³² the latter being understood by Foucault as the practise of guiding the conduct of subjects (2007, pp. 120-123). In Foucault’s post-1978 work, we encounter some initial ambiguity as to whether relations of government are merely one specific type of power relations or whether the terms ‘power’ and ‘government’ should in fact be considered synonyms. It should be possible to claim that Foucault only definitively settled on the position that ‘power’ and ‘government’ are synonyms in his conceptual vocabulary in the 1983 essay *The Subject and Power*. In what follows, we shall trace Foucault’s post-1978 oscillations between these two positions, and then outline the definition of ‘power-as-government’ he established in *The Subject and Power*. With regard to this 1983 definition, we argue that its formal breadth makes Foucault’s decision to identify the exercise of power with the practise of government qua ‘conduct of conduct’ ultimately appear somewhat arbitrary.

³¹We provide a supplementary commentary on Foucault’s methodological ambitions in the second section of the Conclusion of this dissertation, *A Retrospective on an Archival Find*. There, we speculate at greater length about the political and intellectual tradition with which Foucault might be associating himself when he adopts the position that power is to be understood as an essentially warlike relation, and question whether his later renunciation of this position fundamentally changes this association.

³²Already in *Abnormal*, his 1975 lectures at the Collège de France, Foucault would speak of ‘government’ and the ‘art of government’ in the same manner as later in 1978 (Foucault, 2003, p. 48 f.). In *Abnormal*, however, Foucault’s references to government remain only passing remarks.

3.1.1 Power-as-Government: The Identification of ‘Power’ with ‘Government’ in Foucault’s post-1978 Work

The position that ‘power’ and ‘government’ are entirely interchangeable terms was first articulated by Foucault not long after he concluded his *Security, Territory, Population* lecture course. While Foucault still insists in the *The Birth of Biopolitics* lecture series delivered at the Collège de France between January and April 1979 that “governmentality, that is to say, the way in which one conducts the conduct of men, is no more than a proposed analytical grid for [...] relations of power” (Foucault, 2008, p. 186), he would already insinuate for the first time in October 1979, during a series of lectures he gave under the title *Omnes et Singulatim* at Stanford University, that ‘power’ and ‘government’ designate one and the same kind of relation. We say ‘insinuate’ because Foucault does not yet explicitly argue for their identity, but hints at it relatively clearly when he asserts that “[t]he characteristic feature of power is that some men can more or less entirely determine other men’s conduct” (1990, p. 83). This first tentative identification of ‘power’ with ‘government’ is followed by a period in which Foucault oscillates between the position that government is merely one particular type of power relation, and the position that ‘government’ and ‘power’ are synonyms. For example, in a public discussion following a lecture titled *Truth and Subjectivity* given at Berkeley in October 1980, Foucault presents government as a particular kind of power relation, declaring that his “problem is to analyze not power relations but government” (2016, p. 103), and specifying further that the term government would refer to a “technique which permits people to conduct the life of other people *despite or through the fact that there are always relations of forces* between people in a society” (ibid.; my emphasis). Approximately half a year after these statements, however, in an interview conducted after delivering a series of lectures entitled *Wrong-Doing, Truth-Telling* in April and May 1981 in Louvain, Foucault again assumed the position that ‘power’ and ‘government’

are synonyms, stating that “when one examines what power is, one sees that it is the exercise of something one could call government, in the broadest sense of the term” (2014, p. 240).

A first comprehensive account of what it entails to identify relations of power in their entirety with relations of government can be found in *The Subject and Power*, an essay Foucault contributed in 1983 as an afterword to the second edition of *Beyond Structuralism and Hermeneutics*, a book-length commentary on Foucault’s work authored by Hubert Dreyfus and Paul Rabinow. The definition of what we shall call ‘power-as-government’ that Foucault presents in his 1983 essay retains from the ‘non-juridical’ method for analysing power relations he outlined in the 1976 *The Will to Knowledge* the insistence that power is not to be thought of as intrinsically repressive (1998, pp. 83-85), but rather as a productive, “positive [mechanism]” (ibid., p. 73). *The Subject and Power* states that although relations of power can assume the form of physical violence or a conscious subordination to the will of another, the essence of a power relation should be sought in neither of these two situations. We read in Foucault’s 1983 essay that although “the bringing into play of power relations does not exclude the use of violence any more than it does the obtaining of consent” (1983, p. 220), this is not the “the principle or the basic nature of power [...]. In itself the exercise of power is not violence; nor is it a consent” (ibid.). This line of thought reaches its conclusion in a first definition of ‘power-as-government,’ according to which:

“The exercise of power can produce as much acceptance as may be wished for: it can pile up the dead and shelter itself behind whatever threats it can imagine. In itself the exercise of power is not violence; nor is it a consent which, implicitly, is renewable. It is a total structure of actions brought to bear upon possible actions; it incites, it induces, it seduces, it makes easier or more difficult; in the extreme it constrains or forbids absolutely; it is nevertheless always a way of acting upon an acting subject or acting subjects by virtue of their act-

ing or being capable of action. A set of actions upon other actions.”³³
(ibid.)

Foucault then promptly casts aside any doubts that may at this point persist about his intention to identify ‘power’ and ‘government’ when he follows up the passage just quoted with the remark that “one of the best aids for coming to terms with the specificity of power relations [is the equivocal nature of the term *conduct*]” (ibid.).

When he outlined his notion of ‘government’ for the first time in his 1978 *Security, Territory, Population* lectures, Foucault in effect let his audience know that he would like to revive a pre-modern understanding of the term ‘government’ which he gleaned from a study of “historical dictionaries of the French language” (2007, p. 120). In 1978, he listed some meanings he claimed to have encountered in Old French dictionaries³⁴ to suggest that in the late Middle Ages, the term ‘government’ referred to the practise of guiding the conduct of subjects in economic, epistemic, and moral matters.³⁵ To clarify what is supposedly so ‘equivocal’ about the term ‘conduct,’ Foucault’s 1983 essay then repeats virtually point-by-point the list of pre-modern meanings of ‘government’ that he previously presented in *Security, Territory, Population* (cf. 2007, p. 120 ff.). In this subsequent second definition of ‘power-as-government,’ which is worth quoting at some length, Foucault writes that:

³³This definition seems *prima facie* very close to Émile Durkheim’s concept of the ‘social fact’ as described in *The Rules of Sociological Method*. In the first chapter of this book, suitably titled *What is a Social Fact?*, Durkheim defines his notion of the ‘social fact’ as follows: “[a] social fact is any way of acting, whether fixed or not, capable of exerting over the individual an external constraint; or: which is general over the whole of a given society whilst having an existence of its own, independent of its individual manifestations” (Durkheim, 2013, p. 27; original emphasis).

³⁴The editors of Foucault’s 1978 Collège de France course note that “[t]he [lecture] manuscript [...] refers to the *Dictionnaire de l’ancienne langue française et de tous ses dialectes du IX^e au XV^e* of Frédéric Godefroy (Paris: F. Vieweg, 1885) vol. IV” (Foucault, 2007, p. 132, n. 11).

³⁵When Foucault defines the term ‘government’ in his 1978 lectures, he tells his audience amongst other things that prior to modernity, ‘government’ has had “the material [...] meaning of supporting by providing means of subsistence” (Foucault, 2007, p. 121), but could furthermore mean “‘to impose a regimen’ on a patient for example: the doctor governs the patient” (ibid.), or it could signify “a sexual relationship” (ibid. p. 122).

“The exercise of power consists in guiding the possibility of conduct and putting in order the possible outcome. Basically power is less a confrontation between two adversaries or the linking of one to the other than a question of government. This word must be allowed the very broad meaning which it had in the sixteenth century. ‘Government’ did not refer only to political structures or to the management of states; rather it designated the way in which the conduct of individuals or of groups might be directed: the government of children, of souls, of communities, of families, of the sick. It did not only cover the legitimately constituted forms of political or economic subjection, but also modes of action, more or less considered and calculated, which were destined to act upon the possibilities of action of other people. To govern, in this sense, is to structure the possible field of action of others. The relationship proper to power would not therefore be sought on the side of violence or of struggle, nor on that of voluntary linking (all of which can, at best, only be the instruments of power), but rather in the area of the singular mode of action, neither warlike nor juridical, which is government.” (1983., p. 221)

With his 1983 essay, Foucault thus settles on identifying the term ‘power’ with a specific type of intersubjective relation to be studied by means of diverse genealogical analyses; namely relations of ‘government,’ understood loosely as relations in which a person or an impersonal factor guides the conduct of one or more subjects.

3.1.2 Government and Authority: On Lines Not Clearly Drawn

The formal definition of ‘power-as-government’ that Foucault offers us in *The Subject and Power* is fairly general. ‘Power-as-government’ is defined by Foucault as a set of practises for guiding and directing individuals or groups. Foucault’s explicit insistence that power relations are not in essence physically coercive suggests that ‘power-as-government’ is to be thought of as predominantly exercised through spoken, or at least symbolic practises, but with the further proviso that

one should not let one's analyses be restricted by the methodological presupposition that these symbolic practises are, at bottom, legitimised by a contract between governors and governed.

In what follows, we are going to question as to whether it is historically necessary to associate this formal definition of power relations with “the very broad meaning that [the word ‘government’] had in the sixteenth century” (Foucault, 1983, p. 221). For this purpose, we first turn to *Sovereignty*, Dieter Grimm’s 2009 history of the eponymous notion, to venture the suggestion that Foucault’s formal definition of power from his 1983 essay might also apply to the pre-modern form of sovereignty that Grimm outlines in his book. We then continue our questioning of Foucault’s association of ‘power’ with the Old French meaning of ‘government’ by referring to a second historical commentary on the notion of sovereignty, namely an essay by the legal theorist Jesús Fueyo in which we encounter the argument that the modern notion of sovereignty is a compositum of two ancient Roman forms of rule: *auctoritas* and *potestas*. We draw on Fueyo’s essay to propose that ‘authority’ is another historical social practise that could be described in the same terms as those used by Foucault to describe ‘power-as-government:’ a neither intrinsically juridical nor intrinsically warlike practise of ‘conducting conduct.’

Foucault discussed the ‘juridical’ understanding of power from which he sought to distinguish his own analytic methodology at numerous points in his oeuvre. We encounter a first genealogical outline of this ‘juridical’ understanding of power in ‘*Society Must Be Defended*’ (2003a, pp. 34-40). A more detailed account, covering its formal as well as its historical aspects, can be found in the chapter entitled *Objective* in *The History of Sexuality, Volume One* (1998, pp. 81-91); and the 1978 lectures on *Security, Territory, Population* then offer a further set of formal and historical descriptions of this essentially ‘juridical’ notion of power (2007, pp. 11-23; pp. 64-79).

As far as the formal properties of this understanding of power are concerned, we are told in *The History of Sexuality, Volume One* that this ‘juridical’ understanding presents power as a thoroughly negative phenomenon: “it is a power whose model is [...] centered on nothing more than the statement of the law and the operation of taboos” (1998, p. 85). Moreover, as we already remarked further above, Foucault’s ‘*Society Must Be Defended*’ lectures suggest that he considers this ‘juridical’ understanding to treat power as an object or property, something that can be held and exchanged (cf. 2003a, p. 13). The historical description from *The History of Sexuality, Volume One* refers us to the Middle Ages as the point of emergence of this ‘juridical’ understanding of power. In his 1976 book, Foucault connects the emergence of this notion of power with “[t]he great institutions of power that developed in the Middle Ages [, namely] monarchy [and] the state with its apparatus” (1998, p. 86; punctuation altered), and insists that these burgeoning ‘great institutions’ have given rise to this ‘juridical’ understanding of power in an effort at formulating “a principle of right that [transcends] all the heterogeneous claims” (ibid.) of the “multiplicity of prior powers [on the basis of which these institutions rose up]” (ibid., p. 86). In his ‘*Society Must Be Defended*’ lectures, Foucault names his conceptual adversary somewhat more directly as the “juridico-political theory of sovereignty” (2003a, p. 34), whose emergence he links there to a medieval revival of Roman law (ibid.).

Dieter Grimm’s historical research on the notion of sovereignty allows us to add a little nuance to Foucault’s history of the ‘theory of sovereignty’ and relax Foucault’s rigid conceptual distinction between ‘essentially’ juridical and non-juridical understandings of power. The historiography we encounter in Grimm’s 2009 monograph *Sovereignty* roughly concurs with that of Foucault in claiming that the institutional ensemble we nowadays call the state did not exist prior to the transition from the Middle Ages to the Renaissance (Grimm, 2015, p. 24). However, contrary to Foucault, Grimm does not believe that the emergence of the state also coincides with the emergence of the notion of ‘sovereignty’

as such. Grimm's argument is that the concept of sovereignty with which we are familiar from the Renaissance and Enlightenment theories of the social contract already emerged in the High Middle Ages, but then underwent a significant change in meaning on the cusp of early modernity (ibid., pp. 13-23). Subscribing to Grimm's account should thus enable us to propose that Foucault's narrow focus on Roman law and its medieval revival might have made him miss out on a substantial part of the pre-history of the modern 'theory of sovereignty'; and it should moreover allow us to claim that counter to Foucault's characterisation of sovereign power as exercised in a top-down fashion from a single locus, sovereignty might initially have been practised in a relatively decentralised manner.

To see how, let us briefly summarise Grimm's remarks on the history of sovereignty prior to modernity. Grimm claims that the term 'sovereignty' first appeared in the francophone world of the twelfth century, where it initially designated "concrete phenomena of significant height, such as mountains or towers", or simply "the power of God" (ibid., p. 13). A century later, the term 'sovereignty' would for the first time be "linked to political rule" (ibid.), but by contrast with its present meaning,³⁶ Grimm insists that in the thirteenth century, the term still "described not an abstract but a concrete position of power" (ibid., p. 14). In this medieval meaning, 'sovereign' referred to particular individuals considered to be "the highest, final decision-making authority" (ibid.) in particular social contexts.³⁷ This circumstance, he suggests, has ultimately had the consequence that in the Middle Ages, "[o]ne could only be relatively, not absolutely, sovereign" (ibid., p. 14). To put matters crudely, what Grimm's exposition indicates is that there has been a relatively high density of practitioners of sovereignty in the feudal system: local rulers held the status of sovereign ("[t]he character-

³⁶According to Grimm, the modern understanding of 'sovereignty' has been decisively influenced by Jean Bodin, for whom the term 'sovereign' referred to the " 'final source of authority and jurisdiction' " (Grimm, 2015, p. 16).

³⁷He implies that the 'decision-making authority' associated with the medieval role of 'sovereign' was "usually practiced as an annex to a certain status, generally that of property owner" (Grimm, 2015, p. 17)

istic of being sovereign in fact extended down to the barons”, Grimm remarks) (ibid.), and “[e]ven the holders of certain offices, such as offices at [an aristocratic] court, were considered sovereign if they were the final decision-making authorities within their spheres of responsibility” (ibid., p. 14 f.). Although its reach might perhaps not have been quite as pervasive as that of the practises to which Foucault refers as practises of ‘government,’³⁸ we may thus surmise nevertheless that the medieval practise of sovereignty as outlined by Grimm has also been an important factor in all aspects of public community life.

Another legal-historical commentary on the modern notion of sovereignty goes back even further in history than Grimm and presents modern sovereignty as a continuation of ancient Roman ideas of political rule. This attempt, which should call Foucault’s argument that the ‘theory of sovereignty’ promotes an essentially juridical understanding of power further into question, was made in the 1956 essay *La idea de ‘auctoritas:’ génesis y desarrollo* (‘The Idea of ‘Auctoritas’: Its Genesis

³⁸Grimm is consistent in describing sovereignty as a concept associated with political rule in the conventional sense of the administration of public affairs. If we wish to compare and contrast Grimm’s exposé of pre-modern sovereignty and Foucault’s association of ‘power’ with the Old French meaning of ‘government,’ we should thus admit that an exercise sovereignty ‘over children’ or over ‘the sick,’ to name but two items from Foucault’s list of domains of governmental practises from *The Subject of Power* (cf. Foucault, 1983, p. 221), is presumably not thinkable on the basis of Grimm’s descriptions. Note should also be taken of Grimm’s insistence that medieval sovereignty was exclusively associated with secular rule (Grimm, 2015, p.16). These specifications aside, however, Grimm’s account of pre-modern sovereignty still would seem to call into question the credibility of Foucault’s claim that the exercise of power, understood as “an action upon an action” (Foucault, 1983, p. 220), does itself belong to a *sui generis* category of human activity — that when exercising ‘power-as-government,’ one engages in a “*singular* mode of action, neither warlike nor juridical” (ibid., p. 221; my emphasis), as Foucault has it. Although Grimm emphasises that the medieval practise of sovereignty frequently served the purpose of “dispensing justice” (Grimm, 2015, p. 17), he refrains from equating this early form of sovereignty with jurisdiction. While dispensing justice was part of it, we are told that medieval sovereignty was essentially a type of “‘executive power’ ” (ibid., p. 15), and Grimm claims furthermore that it “did not include the right to autonomous lawmaking” (ibid., p. 17). Perhaps Grimm’s representation of pre-modern sovereignty as expressing itself both in an executive decisionism and jurisdictional practises should thus offer a good occasion to ask ourselves whether there is ever a compelling reason *not* to also characterise jurisdiction, the activity of ‘speaking justice,’ as an ‘action on the scope of possible action of individuals.’ Foucault briefly considered this perspective in his 1981 Louvain lectures, *Wrong-Doing, Truth-Telling* (cf. Foucault, 2014, p. 23 f.), but then appears to rule it out again in *The Subject and Power*.

and its Development’)³⁹ by Jesús Fueyo, a Spanish Falangist legal theorist.⁴⁰ The central claim of Fueyo’s 1956 essay is that in the modern notion of sovereignty, two other, historically earlier understandings of political rule have become confused in a thoroughly systematic, “methodical [die methodische Verwirrung ...]” (Fueyo, 1968, p. 213) fashion. These two earlier understandings of political rule, Fueyo tells us, are those associated with the Roman concepts of *auctoritas* and *potestas*. Somewhat grandiosely, perhaps, Fueyo argues moreover that this confusion of *auctoritas* and *potestas* is “by no means merely an academic one, but one that is intimately connected to the real process of creating the modern political order” (ibid.; my translation).^{41, 42}

³⁹Throughout this chapter, we cite from the German translation by Gudrun Forsthoff, which appeared in 1968 as *Die Idee der ‘auctoritas’: Genesis und Entwicklung in Epirrhosis*, a collection of essays published by Hans Barion et. al. on the occasion of the eightieth birthday of Carl Schmitt.

⁴⁰Unsurprisingly, *La idea de ‘auctoritas’* articulates the counter-position to Dieter Grimm’s thesis that sovereignty loses its association with “discrete, concrete powers in the hands of individuals” (Grimm, 2015, p. 31) in modernity.

⁴¹Fueyo’s attempt to describe the modern notion of sovereignty on the basis of ancient Roman ideas of rule is certainly interesting, and equally suitable for questioning Foucault’s rigid dichotomy between ‘juridical’ and ‘non-juridical’ understandings of power as Dieter Grimm’s commentary in *Sovereignty*. If we accept Fueyo’s interpretation of *auctoritas* and *potestas*, we could ask ourselves, for instance, whether classical liberal social contract theory (e.g. Locke) could not be read as stipulating that for political society to function, it is of utmost importance that the privilege of government is ‘recognised’ in the sense suggested by Fueyo, and that the legal power associated with public office is worthless without such recognition. Conversely, we could ask whether absolutist theories of the social contract (e.g. Hobbes) might not in fact place a high value on the legal powers that Fueyo associates with *potestas*, while considering the ‘public recognition of privilege’ to be only of secondary importance when it comes to the formal criteria of a functioning political society. With regard to the claim that it is possible to practically fuse *auctoritas* and *potestas* together as instruments of political rule, Fueyo is not alone either, even if other authors make no claims of such entanglements in modernity. Instead, they cite an instance of such an entwinement at the time of the emergence of imperial Rome at the beginning of the current era. Both Theodor Eschenburg (1976, p. 30 f.) and Horst Rabe (1972, p. 9 ff.) propose that such a confusion of *auctoritas* and *potestas* was embodied by the Roman Emperors that came after Augustus. These accounts suggest that the practical entwinement of forms of political rule akin to those of the Roman *auctoritas* and *potestas* are not *specifically* modern, and were already occurring far earlier. It should therefore be appropriate to ask in how far Fueyo’s argument about modern political practise can be seen first and foremost as an attempt at justifying Francoism by portraying an occasionally observable political phenomenon — the practical entanglement of forms of political rule akin to those of the Roman *auctoritas* and *potestas* in ‘governmentalities’ organised around individual leader-figures — as the vanishing point towards which all politics in Western modernity is inevitably drifting.

⁴²Note that Fueyo’s 1956 essay is also an important point of reference for Giorgio Agamben’s argument in the chapter on *Auctoritas and Potestas* from *State of Exception* (cf. Agamben, 2005, pp. 74-88). Agamben takes up Fueyo’s thesis around the entanglement of *auctoritas* and

While we should be sceptical of Fueyo’s claim that the confusion of *auctoritas* and *potestas* is a defining feature of modern political *practise*, his suggestion to refract the modern *notion* of sovereignty through Roman ideas of political rule has its merits; and Fueyo’s distinction between *auctoritas* and *potestas* is indeed capable of providing a new outlook on Foucault’s late identification of the exercise of power with practises for ‘conducting conduct.’ *Potestas*, Fueyo suggests, denotes a legal “title to which every public institution [Behörde] refers, [and which] simply designates the totality of the public powers that belong to an officium” (Fueyo, 1968, p. 216; my translation). *Auctoritas*, however, describes according to Fueyo a “public recognition” that has “nothing to do with a juridical act of recognition in the modern sense” (ibid., p. 219; my translation). The public recognition that *auctoritas* entails is in Fueyo’s view “primarily the public recognition of privilege [Vorrang] in community life” (ibid., p. 218 f.; my translation). This now brings us back to Foucault.

In an interview Foucault gave to a graduate student at Berkeley in November 1980, which remained unpublished in full until it came to be included as an appendix to a 2016 edition of lectures Foucault gave at Dartmouth College the same year as the interview, we find an early definition of his concept of ‘power-as-government,’ whose later, more detailed definition from *The Subject and Power* we have discussed above. With Fueyo’s description of *auctoritas* in mind, we should be able to claim that in this 1980 interview, Foucault suggests that the exercise of ‘power-as-government’ either intersects with, or is in fact wholly identical with the practise of authority. In this passage, Foucault answers the question of whether power should be thought of as ‘open’ or as ‘repressive.’ He says this:

“[p]ower is a relation between two persons. It is a relation that is not of the same order as communication, even if you have to make use of instruments of communication. It is not the same as saying

potestas in the modern notion of sovereignty essentially unquestioned (ibid., p. 75; cf. further: ibid., p. 86 f.)

to you ‘the weather is fine’ or telling you ‘I was born in this or that year.’ I exercise a power on you, I act or seek to act on your conduct, and I seek to conduct your conduct and direct your conduct. The simplest means, obviously, is to take you by the hand and force you to go here or there. I would say that this is, so to speak, the degree zero of power. It is the limit form, and basically at that point power ceases to be a power and becomes no more than physical force. On the other hand, when I use my age, my social situation, knowledge I may have about this or that way of getting you to conduct yourself in this or that way — that is to say, when I do not force you at all and leave you free — then that is when I exercise power.” (Foucault, 2016, p. 129)

If Foucault’s concept of ‘power-as-government’ indeed refers to practises for ‘conducting conduct’ in which actors most commonly resort to their ‘age,’ ‘social situation,’ ‘knowledge,’ et cetera, then the exercise of ‘power-as-government’ should indeed quite frequently be identical to the exercise of authority if the latter is understood as the use of the privileges associated with one’s position in social hierarchies for guiding the conduct of others. There thus appears to be a possibility that, ironically, Foucault’s mid-1970s attempt at finding a new method for analysing power, motivated as it was by an attempt at escaping the ‘Roman’ discourse of ‘juridical power’ (cf. 2003a, p. 73 f.) that ostensibly lives on in the ‘modern theory of sovereignty,’ might have unintentionally landed him back in the eternal city: the terminus of all roads.

3.2 *Auctoritas*: The Emergence of Authority in Roman Antiquity

We are now going to expand the preliminary rapprochement between Foucault’s concept of ‘power-as-government’ and the notion of authority that we began above into a more comprehensive synthesis. To perform this synthesis, we avail ourselves of the three formal properties that Foucault assigns to ‘power-as-govern-

ment’ in *The Subject and Power*. In Foucault’s 1983 essay, we read that ‘power-as-government’ should be understood as a practise, that its exercise narrows the scope, or, in other words, constrains the possibility of action of others, and that the exercise of ‘power-as-government’ forms a ‘total structure’ (cf. Foucault, 1983, p. 220). We will use these three properties as a grid to structure a discussion of various nineteenth- and twentieth-century texts by classicists and historical linguists on the idea and practise of authority at its point of historical emergence in antiquity. The basic assumption guiding our engagement with authority in antiquity is that it is essentially Roman in provenance and has been alien to the ancient Hellenic world; a claim made by both Hannah Arendt and Richard Heinze (cf. Arendt, 1961, p. 104 ff.; Heinze, 1925, p. 363 f.).

By synthesising Foucault’s concept of ‘power-as-government’ with scholarly literature on authority at its point of historical emergence in Roman antiquity, we offer the first out of two⁴³ illustrations of the claim we made in the concluding remarks of Chapter Two: that the challenges that neo-liberal governmental rationality would mount to important presuppositions of earlier forms of liberal thought (centrality of the state, basic esteem for democracy, interpersonal maintenance of norms of good conduct) have led to a break with long-established governmental conventions once neo-liberal rationality began to inform practises of government. The section below seeks to establish that the interpersonal practise of authority — replaced, as described later in this chapter, by the impersonal, ‘market-centred’ authority practises in the wake of the twentieth-century emergence of neo-liberal governmentalities — is a convention that originated in antiquity.

The synthesis we perform, however, is also of a central conceptual importance to the genealogy of the ‘authoritarian moment’ developed in this dissertation. We show in the course of this synthesis that the Roman *auctoritas* essentially mani-

⁴³The second break, concerning the shift from homo juridicus to homo oeconomicus as the anthropological model that subjects of governmental practises are called upon to embody, will be discussed in Chapter Four of this dissertation.

festis itself in interpersonal practises of validating the conduct of subjects and providing ‘binding’ advice. This demonstration allows us to position *auctoritas* as a subset of what Foucault refers to as practises of ‘government’. Our argument in the very last part of this chapter, *The Impersonal Authority of the Market Illustrated*, then proceeds to show that the validation of conduct and provision of advice is still the function of the impersonal, ‘market-centred’ practises of authority, whose broad-scale introduction coincided with that of neo-liberal governmentalities in the second half of the twentieth century. Our emphasis on this functional identity between the interpersonal practise of authority that emerged in Roman antiquity and the modern, impersonal ‘authority of the market’ will eventually enable us to claim, in the Conclusion of this dissertation, that the early twenty-first century ‘authoritarian moment’ can be characterised as a moment of reconfiguration of neo-liberal governmentality in Europe: an attempt at getting the old, interpersonal modus of practising authority to work within a neo-liberal governmentality so as to replace the more recent, impersonal authority-practises centred around economic indicators after this modality of practising authority had entered into a profound crisis.

Finally, discussing literature on the Roman *auctoritas* equally grants us an insight into what could be called, to recover the Foucauldian wordplay, the *mentality* of authoritarian *government*. If the discussions of anti-parliamentarian currents in liberal and neo-liberal government in the previous chapters of this dissertation already suggested that overt appeals to the principle of authority are commonly made as part of efforts at reinforcing the privileges of social elites, then our engagement with authority in Roman antiquity will now tell us that this has in fact been the function of the practise of authority from the very start: we illustrate that the practise of *auctoritas* used to be the prerogative of the most privileged groups in the Roman community, and that its practitioners would legitimise their social privilege by way of reference to what we shall call the myth of the *auctor* as an ontically creative person.

Our engagement with the Roman *auctoritas* proceeds in three steps. First, we comment on the etymology of the term *auctoritas*, the etymological root of the modern English ‘authority,’ in order to claim that *auctoritas* can essentially be considered a practise, and that its practise is closely connected to the myth of the *auctor*. Following this, we describe the key characteristics of the practise of *auctoritas*: drawing on the work of historians of Roman antiquity, we argue that *auctoritas* is an interpersonal practise which constrains the scope of action of its subjects by providing them with ‘binding’ advice and validating their conduct. Finally, we demonstrate by way of further reference to scholarship on the history of Rome that the practise of *auctoritas* forms a ‘total structure’ insofar as its original purpose was that of validating the legal order of the Roman community in its entirety.

3.2.1 *Auctoritas* as a Type of Action

If we wish to show that engaging with scholarship on the Roman *auctoritas* enables us to position authority as a subset of what Foucault refers to as practises of ‘government,’ it seems appropriate to keep our portrayal of the Roman *auctoritas* at a relatively high level of abstraction. After all, *auctoritas* splintered into numerous subtypes in the course of Roman history, and it would be a study in itself to examine all of these with regard to the specific types of action they involve; a study which, moreover, has already been undertaken by Fritz Fürst in his 1934 doctoral dissertation on *auctoritas* in public and private life in republican Rome (cf. Fürst, 1934). In this section, we shall therefore confine ourselves to the bare minimum required for situating authority within the Foucauldian framework of ‘power-as-government.’ We argue that although Foucault’s remarks about ‘power’ — that it is often spoken of as though it were a material artefact or a property that attaches to a person — could also be seen as applying to ‘authority,’ given that in everyday language, one regularly refers to someone or something as ‘having’

authority, there are good reasons for asserting that *auctoritas* primarily denotes actions performed by persons, and only secondarily refers to a status held by a person or a thing.

For this purpose, we resort to the technique of considering the etymology of the term ‘authority’ in order to outline the semantic field in which it is embedded. Our enquiry begins with a look at *Origins*, Eric Partridge’s etymological dictionary of modern English.⁴⁴ The entry in *Origins* for ‘author, authoritative, authority, authorize’ directs us to a section of the entry for ‘augment’ (Partridge, 2006, p. 183), where it is remarked that the English noun authority as it is used today derives from the Latin noun *auctoritas*. *Auctoritas*, the dictionary suggests further, is identical in meaning to another Latin noun: *auctor*. Both *auctoritas* and *auctor* designate “an increaser, hence a founder, an auctioneer, an author” (ibid., p. 178). The common root of both *auctoritas* and *auctor* is the verb *augere*: “to enlarge, increase” (ibid.). If one of our aims is to show that *auctoritas* designates a type of action, then Partridge interpreting *auctoritas* as an agent noun formed from a verbal base should already provide some initial backing for this claim.

Further support for the claim that the term *auctoritas* ultimately refers to an activity is to be found in Richard Heinze’s essay *Auctoritas*, which offers a slightly more detailed etymology of *auctoritas* than that provided by Partridge. One detail of particular importance for Heinze’s analysis is that *auctoritas* “belongs to a small group of nouns derived with the suffix *-tat(i)-* from other nouns” (Heinze, 1925, p. 349; my translation). This derivation gives Heinze reason to assume that the noun *auctoritas* belongs to the “oldest [Latin] vocabulary,” since the suffix *-tat(i)-* “became restricted to adjectival derivations at an early stage [in the development of the Latin language]” (ibid.; my translation). What all

⁴⁴For other etymological reference works, cf. (Skeat, 1924, p. 39; Onions, 1985, p. 63; Barnhart, 1988, p. 66). None of these, however, would appear to provide more substantial information on the etymological derivation of the English noun ‘authority’ than Partridge does, nor do they contradict the analysis he offers.

Latin nouns formed with this suffix have in common, Heinze argues, is that their initial function consisted in designating a status which attaches to a person after a particular event has occurred. Using *dignitas*, *hereditas* and *civitas* as examples of other nouns in this derivation, Heinze explains that:

“just as *dignitas* designates the defining characteristic of a *dignus*; *hereditas* must initially not have signified the (concrete) inheritance, but the defining characteristic of a *heres*; *civitas* not the (collective) citizenry, but the defining characteristic of a *civis*; and *auctoritas*, therefore, the defining characteristic of the *auctor*; or as one might perhaps better say, to rule out the misleading thought of an abstraction detached from the person, ‘the state [Zustand] of *auctorem esse*.’” (ibid.; my translation)

Only in the wake of subsequent linguistic developments, Heinze’s argument continues, has *auctoritas* ceased to designate “the *auctorem esse*, or, the activity of the *auctor* in a particular case” and begun to mean “a permanent property inherent to the *auctor*” (ibid., p. 354; my translation). If Partridge claims that *auctoritas* and *auctor* are synonyms, then we may add with Heinze that this status is acquired rather than congenital:⁴⁵ in the original sense of the word, referring to a person as *an auctoritas* would not have made much sense.

In listing both ‘increaser’ and ‘founder’ as possible meanings of *auctor*, Partridge’s dictionary entry suggests that the noun *auctor* can designate both someone who augments an already existing foundation, and the original creator of a foundation which others may augment in the future. An attempt at resolving this ambiguity is to be found in Émile Benveniste’s entry on *The Censor and Auctoritas* from his dictionary of *Indo-European Language and Society*. According to Benveniste, ‘increaser’ is, etymologically, a secondary meaning of *auctor*. He

⁴⁵This view is also held by Pierre Noailles, who writes in his 1947 monograph *Fas et Jus* that only “[t]hrough successive efforts of abstraction, *auctoritas* has become a quality of the *auctor* independently of this or that situation in which he plays a role. It [*auctoritas*] eventually became an abstract quality, independent of the person of the *auctor* and applies to abstractions such as law [loi] or right [droit]” (Noailles, 1948, p. 261; my translation).

claims that if one traces the meaning of the verb *augere*⁴⁶ back far enough, the meaning of ‘to increase’ disappears, and a quasi-religious connotation of *augere* becomes apparent. “Scholars persist in translating [*augere*] as ‘increase’ ” (Benveniste, 1973, p. 421), writes Benveniste, but he insists that this perspective is in need of correction. This translation, we are told by him,

“is accurate for the classical period but not for the earliest texts. For us ‘to augment’ is equivalent to ‘increase, make something *which existed before bigger*’. Herein lies unnoticed the difference from [*augere*]. In its oldest uses [*augere*] denotes not the increase in something which already exists but the act of producing from within itself; a creative act which causes something to arise from a nutrient medium and which is the privilege of the gods or the great natural forces, but not of men.” (ibid., p. 421 f.)

We may thus bring our outline of *auctoritas* as a type of activity to an end by way of noting with Benveniste that the practise of *auctoritas* may be said to be ultimately grounded in the myth of the *auctor* as an ontic creator: “[e]very word pronounced with authority” (ibid., p. 422), we are told by Benveniste,

“determines a change in the world, it creates something. This mysterious quality is what [*augere*] expresses, the power which causes plants to grow and brings a law into existence. [...] ‘[T]o increase’ is a secondary and weakened sense of [*augere*].” (ibid., p. 422 f.)

3.2.2 *Auctoritas* as Constraint

In the first book of his four-volume *History of Rome*, Theodor Mommsen suggests that one cannot gain an adequate understanding of the structure of the Roman state unless one has conducted a thorough study of the structure of the patrician

⁴⁶Benveniste’s dictionary of *Indo-European Language and Society* uses the term *augeo*. *Augeo* is the first conjugation of *augere*. Ana Isabel Clemente Fernández notes in her *La Auctoritas Romana* that, generally speaking, Romance scholars and linguists use the infinitive *augere* and the inflection *augeo* interchangeably when writing about the etymon of *auctoritas* (Clemente Fernández, 2014, p. 111 f.; fn. 302). To ensure stylistic consistency, we shall alter Benveniste’s uses of *augeo* to *augere*.

family and their status in Roman society. Mommsen lets us know as much in his book chapter on *The Original Constitution of Rome*. There, he first outlines the organisation of the patrician family household and its network of dependents, and then segues into a discussion of the political organisation of the early Roman city-state on the claim that “the [patrician] clans resting upon a family basis were the constituent elements of the state, so the form of the body-politic was modelled after the family both generally and in detail” (Mommsen, 2009, p. 66). For this and the next part of our positioning of authority as a subset of ‘governmental’ practises in Foucault’s sense, we shall follow the movement of thought which Mommsen makes in his reflections on *The Original Constitution of Rome*.

By way of commenting on how *auctoritas* functioned in the private context of the patrician family, we demonstrate now that the practise of *auctoritas* can be thought of as having a constraining function. This part of our synthesis of ‘power-as-government’ and authority illustrates that authority has originally been exercised in interpersonal transactions; and it proposes moreover that the reason authority can be considered part of techniques for the ‘conduct of conduct’ in general is that *auctoritas* is exercised in spoken practises whose purpose consists in the retroactive validation of someone else’s conduct or the provision of ‘binding’ advice. In the next part of our discussion, we give consideration to the practise of *auctoritas* in public life to demonstrate its ‘totality.’

For the purpose at hand, we do not require a particularly detailed account of the structure of the patrician family, and it should suffice for us to refer merely to Mommsen’s description of its staunchly patriarchal character. Mommsen tells us in Volume One of *The History of Rome* that “from a legal point of view [...] the family was absolutely guided and governed by the single, all powerful will of the ‘father of the household’ (*pater familias*). In relation to him all in the household were destitute of legal rights” (ibid., p. 61). If we now return to Jesús Fueyo’s article *La Idea de ‘Auctoritas:’ Genesis y Desarrollo*, then it appears as though we could add a further privilege of the *pater familias* to

Mommsen’s description, namely that the *pater familias* is also the only member of the household who “has auctoritas [and] is auctor of his decisions” (Fueyo, 1968, p. 215; my translation). Fueyo goes on to explain that, conversely, this means for the remaining members of the patrician household that “their actions can [only] be [legally] relevant, [...] by virtue of the auctoritas to which they are subject” (ibid.; my translation). It is in this dependence of the legal validity of the conduct of the members of the patrician household on the *auctoritas* of the *pater familias* that we find a good illustration of the constraining character of *auctoritas*. We can argue that *auctoritas* constrains by making the validity of the conduct of those whom *auctoritas* is exercised over depend on the approval of the *auctor*. As Richard Heinze puts it, “*auctor* is he who decisively and effectively ratifies [... maßgeblich und wirkungsvoll gutheißt] an action [...] to be performed by someone else” (Heinze, 1925, p. 351; my translation).

Scholarly commentaries seem to indicate that the technical means whereby *auctoritas* was practised as a validation of conduct were of an essentially spoken nature. This has, for instance, been noted by Giorgio Agamben in the chapter on *Auctoritas and Potestas* from his *State of Exception*, where he writes that “[in order to confer legal validity on the act of a subject who cannot independently bring a legally valid act into being] [,] the person sui iuris (the *pater familias*) [had to] pronounc[e] the technical formula *auctor fio* [I am made *auctor*]⁴⁷” (Agamben, 2005, p. 76; original square brackets where indicated). Theodor Eschenburg’s *Über Autorität* (‘On Authority’) adds to our claim that *auctoritas* is primarily a discursive practise by telling us that, most commonly, the exercise of *auctoritas* would voluntarily be solicited by those who wished to subject themselves to it. Eschenburg writes in *Über Autorität* that “[t]he effect of auctoritas would primarily be triggered by consultation [durch Befragen]” (Eschenburg, 1976, p. 20; my translation), and he explains further that this form of consultation “was

⁴⁷This translation of the Latin formula appears as such in the original text.

not only a right, but also an obligation required by custom and habit [Sitte und Übung]” (ibid.; my translation).

It should in this context moreover be mentioned that the distinguishing feature of the advice one would receive upon soliciting the practise of *auctoritas* is that was difficult to ignore. In his essay *Auctoritas*, Richard Heinze remarks apropos the impelling force of the practise of *auctoritas* that “the *auctor* as adviser must originally have been more than a simple *suasor*, his *auctoritas* more than a simple ‘advice,’ it is rather a decisive piece of advice [ein maßgeblicher Rat] or an assessment [ein Gutachten]” (Heinze, 1925, p. 353; my translation). Heinze is not the only classicist to ascribe this impelling quality to such ‘authoritative’ advice obtained by solicitation: in Volume Three of *Römisches Staatsrecht* (‘Roman Constitutional Law’), Heinze’s academic mentor Theodor Mommsen already describes the practise of *auctoritas* as a speech act that conveys “more than advice and less than an order; [it conveys] advice one cannot conveniently [füglich] fail to comply with, such as that issued by the specialist to the layman, and by the leader to his followers in parliament” (Mommsen, 1888, p. 1034; my translation). It would seem that only the most privileged members of the Roman community could easily decide to go against such ‘binding’ advice. When Hannah Arendt writes that “authority implies an obedience in which men retain their freedom” (Arendt, 1961, p. 106), this might be an accurate description of the practise of *auctoritas* within the highest echelons of ancient Roman society, but presumably not generally true. Richard Heinze, in any case, suggests that those who did not participate in public life as *sui juris* persons, “by asking [for *auctoritas* to be exercised over them], subordinate[d] themselves from the outset” (Heinze, 1925, p. 353; my translation) to the advice they would receive. With these considerations in mind, we shall move on to discussing the role of *auctoritas* in public life at Rome.

3.2.3 Auctoritas as a Total Structure

Let us recall Mommsen’s claim from the first volume of *The History of Rome* that the structure of the patrician family household served as a model for the political system of the Roman city-state. Concerning the organisation of the Roman state, Mommsen explains that its isomorphic relation to the patrician household would give rise to a political system where an elected ruler — simultaneously “a ‘leader’ (*rex*) and ‘commander’ (*dictator*), a ‘master of the people’ (*magister populi*)” (Mommsen, 2009, p. 66) — would govern “the Roman community” (ibid.) in the same, nearly absolute manner in which the *pater familias* governed the house (ibid.). We say ‘nearly absolute’ since Mommsen insists that the private patrician custom⁴⁸ of seeking the advice of others before taking important decisions was carried over into Roman public life, where it appeared in the form of a restriction on the absolute rule of the early Roman monarchs, obliging these monarchs “to consult in all affairs not of a purely military or purely judicial kind [...] the Council of the Elders (*Senatus*)” (ibid., p. 70). Mommsen does not specify the type of important decisions for which the senate had to be consulted, but he lets us know that because of these customary consultations, the senate “acquired a decisive influence over the most momentous affairs of the land without at the same time trenching in law on the absoluteness of the regal power” (ibid.). It would thus appear worthwhile to subject the practise of this specifically senatorial *auctoritas* to closer scrutiny.

For this purpose, let us first consider the description of the *auctoritas patrum* as provided by Fritz Fürst in his typology of the different types of *auctoritas* in republican Rome.⁴⁹ In his study, Fürst defines the practise of the senatorial

⁴⁸Mommsen tells us in the first volume of *The History of Rome* tells us that within the patriciate, there existed “the principle that it was not becoming [...] to decide matters of importance without having taken counsel of other men” (Mommsen, 2009, p. 143).

⁴⁹While Fürst only claims to provide an overview of the subtypes of *auctoritas* in the republican period of Roman history, his overview of the *auctoritas patrum* states that historical sources (he refers to Cicero and Livy) regularly associate this type of *auctoritas* already with the earliest, regal period of Roman history. According to Fürst, in this earliest period of Ro-

auctoritas patrum as consisting in “the validation [Bestätigung] of the decisions of the *populus* by the assembly of the *patres*. It is a necessary validation, without which the popular decision is legally invalid” (Fürst, 1934, p. 38; my translation; my emphasis). Fürst makes a very significant observation here, as this means that initially, the entirety of the legal order of the Roman community depended on the *auctoritas patrum*. For apart from the customary duty to consult the senate in matters of importance, Mommsen also identifies a further restriction on the power of the Roman monarch, namely that it was never within the remit of the monarch to pass legislation. “The legal check, again, upon the king’s power” (Mommsen, 2009, p. 70), we read in the first volume of Mommsen’s *History of Rome*, “lay in the principle that he was entitled only to execute the law, not to alter it” (ibid.). The activity of passing legislation was precisely the task of the assemblies of the Roman *populus* (cf. Mommsen, 1888, p. 1039; Fürst, 1934, p. 39).

What warrants our suggestion that *auctoritas* is a ‘total structure’ extending over the entirety of the Roman community is therefore the decisive role that the *auctoritas patrum* played in the shaping of the Roman legal order. This original dependence of the legal order in Rome on senatorial approval is what prompts Mommsen to describe the *auctoritas patrum* as a “Gesetzbestätigung” (Mommsen, 1888, p. 1033) — a validation of the laws. This should allow us to venture the suggestion that to the extent that the practise of the *auctoritas patrum* functioned as guarantor of the validity of the Roman legal order, it also reinforced the rule of the *patres*, the most privileged group of patricians, over the remainder of the community. Theodor Eschenburg at least would seem to confirm this assumption when he writes in his monograph *Über Autorität* that the *auctoritas patrum* could never be exercised in an overtly self-interested manner

man history, one “also encounters the height of its significance” (Fürst, 1934, p. 37 f.; my translation).

and required a stable relationship between the different social strata composing the Roman community. “Political *auctoritas*,” writes Eschenburg,

“had its strongest effect in Rome between the middle of the fifth and the second century B.C.E., when social and economic antagonisms could be subdued and balanced by the upper classes by virtue of their political hegemony [Überlegenheit] and their not undeserved social prestige.” (Eschenburg, 1976, p. 22; my translation)

In this period, Eschenburg argues, social stability ensured a “selflessness [Selbstlosigkeit]” (ibid.) on the part of the upper classes in their exercise of the *auctoritas patrum*. This selflessness, he remarks, eventually “gave way to the defence of interests” (ibid.; my translation) when the “primacy of the landowning aristocracy was put into question” (ibid.; my translation), and as a result to these challenges to the hierarchy of social class, “*auctoritas* decayed [die *auctoritas* verfiel]” (ibid.).

There would appear to be a consensus amongst historians that in the course of Roman history, the overt practise of the *auctoritas patrum* gradually diminished. While Fritz Fürst claims that “the historical tradition [Überlieferung] to which Cicero and Livy had access generally held that in the early days, popular decrees could only obtain legal validity if they were subsequently granted the *auctoritas patrum*” (Fürst, 1934, p. 38; my translation); François Terré suggests in his *Introduction* to Alexandre Kojève’s *The Notion of Authority* that “at the time of the Law of the Twelve Tables, towards the middle of the fifth century BCE [...] [a]*auctoritas* [...] became a preliminary senatorial agreement, before it developed into mere opinion, though laws were passed only rarely against the view of the Senate” (Terré, 2014, p. xx). But while its initial import might have faded with the years, *auctoritas* never disappeared from the political life in Rome. In fact, Terré maintains that the “visible reduction” of *auctoritas* only led to the “augmentation of the mystical and sacred foundation of authority” (ibid.).

3.3 Authority in Western Modernity

In her studies of authority from the 1950s and 60s, Hannah Arendt proposes that the Roman *auctoritas* continued to be a “decisive factor in human communities” (Arendt, 1961, p. 104; punctuation altered) at the very least until the advent of modernity. In her 1961 essay *What Is Authority?*, Arendt remarks that the Church eventually became the institution to preserve and carry over the Roman practise of *auctoritas* into Western modernity. “[A]fter the decline of the Roman Empire, [...] Rome’s political and spiritual heritage passed to the Christian Church” (ibid., p. 125) she writes in *What Is Authority?*, and already in an essay from 1956, entitled *Authority in the Twentieth Century*, she declares the Church to be “one authentically authoritarian institution [that] has managed to survive the onslaught of the modern age” (1956, p. 405).

We would like to join Arendt’s assertion that the Church has ranked amongst the most important institutions to preserve the Roman practise of *auctoritas* and carry it over into modernity. In Chapter Four, we indeed argue that a reading of Foucault’s posthumously published final volume of *The History of Sexuality, Les aveux de la chair* (‘The Confessions of the Flesh’) allows for the proposal to be made that homo juridicus qua modern subject of rights — the model of the human being on the basis of which classical and social liberal practises of government interpellate their subjects — stands in the long shadow of Saint Augustine’s theological interpretation of the Roman *auctoritas*. We disagree, however, with Arendt’s claim that “authority has vanished from the modern world” (Arendt, 1961, p. 91). This is not to deny that the interpersonal practise of authority we outlined above has seen severe challenges in recent history, and particularly so in the second half of the twentieth century, but merely to propose that these challenges to interpersonal authority are only one half of the story. *Pace* Arendt’s thesis of the modern ‘vanishing’ of authority, we invoke an argument of the early Frankfurt School, according to which a second, impersonal modality of exercising

authority emerged in modernity as a result of the rise of industrial capitalism. With reference to this argument, we may say that the other half of the story of authority in modernity is the appearance of this impersonal authority: a form of practising authority centred on the capitalist market.

In this final chapter section, we outline the modern transition from the interpersonal to impersonal modality of authority by way of recourse to the work of two theorists associated with the first generation of the Frankfurt School, namely Leo Löwenthal and Max Horkheimer. Our primary references are a 1934 essay draft by Leo Löwenthal entitled *Autorität in der bürgerlichen Gesellschaft*⁵⁰ ('Authority in Bourgeois Society'); Max Horkheimer's essay contribution to the 1936 *Studien über Autorität und Familie* ('Studies on Authority and the Family'), entitled *Authority and the Family* in English translation; and an untitled set of lectures on authority that Horkheimer gave at Columbia University in 1937, published by the German editors of his work as *Aus Vorlesungen über Autorität und Gesellschaft* ('From Lectures on Authority and Society'). Löwenthal's draft on authority in bourgeois society, which had initially also been intended for publication in the *Studien über Autorität und Familie*, is a text with a roughly identical structure to that of Horkheimer's *Authority and the Family*, and it moreover shares much of Horkheimer's argument about the development of authority in modernity. We shall therefore begin our consideration of authority in the modern West by considering the overlap between the arguments put forward by Löwenthal and Horkheimer.

⁵⁰The 1934 draft on authority was translated by Theodor Weeks as *Toward a Psychology of Authoritarianism* for the English edition of the *Falsche Propheten*, Volume Three of Löwenthal's collected works, published as *False Prophets* by Transaction Books in 1987. However, a comparison of Weeks's English translation with the text of the 2017 second German edition of *Falsche Propheten*, first published by Suhrkamp in 1990 (on the basis of an earlier collection entitled *Schriften 3. Zur politischen Psychologie des Autoritarismus*, published in 1982) revealed the English text to be an abridged version, which, in certain places, was severely truncated. To the best of my knowledge, no explanation of this circumstance by the editor, nor by the translator, is provided in the 1987 Transaction Books edition. For this reason, in the establishment of this text, I have referred to the 2017 German edition and translated quotations into English myself.

3.3.1 From the Interpersonal to the Impersonal: Leo Löwenthal on the Modern Transformation of Authority

One point of intersection between both commentaries can be found in the circumstance that both Horkheimer's and Löwenthal's respective accounts of authority in the modern West are set against the backdrop of a nearly identical description of the form and significance of authority relations in the European Middle Ages. Both contend that medieval relationships of authority differ from those of the modern West insofar as in the Middle Ages, authority relationships were plain and relatively stable. Both argue moreover that that social life in the Middle Ages was replete with relationships of authority. Löwenthal lets us know that medieval Europe was characterised by the existence of a "closed authority system [... geschlossenes Autoritätssystem] of competing powers" (Löwenthal, 2017, p. 273; my translation) such as "empire and pope, central monarchical power and particular feudal lords, Roman sovereign and exacting ecclesiastical princes" (ibid; my translation) to which "broad urban and peasant masses, but also lesser lords and dignitaries [would] submit" (ibid.; my translation). In the same spirit, Horkheimer tells us in his 1937 lectures on authority that "in the Middle Ages every person in the Christian West was subject to the authority of the Catholic Church with their entire mind, and with their entire soul" (Horkheimer, 1985, p. 48; my translation). Horkheimer, however, adds to this observation the significant qualification that it was "neither the revelation, nor God, but rather the priesthood that was in charge of all decisive questions of human life" (ibid.; my translation). Medieval practises of authority, Horkheimer tells us, were characterised by their demand of "respect for persons [Respekt vor den Personen]" (ibid., p. 58).

Löwenthal and Horkheimer also coincide in arguing that the omnipresent, yet plain and one-dimensional authority relations of the Middle Ages would be

transformed into composite and contradictory, but no less ubiquitous relationships of authority in modernity. Horkheimer suggests that a good starting point for gaining an understanding of the contradictory nature of modern authority is to consider the complete disconnect between the representation of the human being in modern thought and the material reality human beings would experience in modern times. He highlights in *Authority and the Family* that “the individual, that basic concept of modern thought” (1972, p. 77) is an entirely abstract representation of the human being qua rational actor whose capacity to reason is seen precisely as what runs counter to the principle of authority. The prototype of this modern concept of the individual, he tells us in his 1936 essay, can be found in the Leibnitzian monad; an anthropological model which pictures the individual as “a self-enclosed, metaphysical centre of power, separated from the rest of the world [...] [, whose] destiny [...] lies within its own determination” (ibid.). In his Columbia lectures, however, Horkheimer notes that any attempt on the part of the actually existing subjects of modernity to realise the freedom that modern thought ascribes to them would instantly be thwarted “by hunger, [...] [or] by the need for a certain regularity of earnings, for security of existence” (1985, p. 55; my translation), and so one actually has no choice but to keep subordinating oneself in authority relationships if one wishes to sustain one’s material existence. “Those masses of the last centuries” (ibid., p. 56; my translation), he remarks, “were no longer ordered to get to work, but in place of the command, the circumstances of reality [die Verhältnisse] appeared” (ibid.; my translation).

Löwenthal, in turn, illustrates the contradictory status of authority in modern thought by way of emphasising that it is characterised

“on the one hand [...] [by] the struggle against the authoritarian principle proclaimed in philosophy and the sciences, but on the other hand, [by the fact that] political literature [... ,] broad pedagogical currents, and, of course, theological literature all contain testimonies

about the power of authority which not seldom turn into affirmations [Bekanntnisse].” (Löwenthal, 2017, p. 256; my translation)

After all, the first “classic of post-feudal [political thought]” (ibid.; my translation), Löwenthal reminds us, is none other than Machiavelli. But apart from the observation that modern thought had a contradictory relationship to authority from the outset, we may also claim that Löwenthal’s 1934 draft contains a broad and schematic explanation of the historical process whereby in modernity, a new form of practising authority would eventually appear to complement those old practises of authority which, in Horkheimer’s words, demanded a ‘respect for persons.’ In order to see how Löwenthal offers us such an outline, it should first be acknowledged that a fundamental postulate underpinning his essay on authority in bourgeois society is that it is not in principle unreasonable to accept the subordinate position in a relationship of authority. It is thinkable, he tells us, that accepting one’s subordinate position in a relationship of authority may “coincide with the real interests [den realen Interessen] of those subordinating themselves” (ibid. p. 257; my translation) and ultimately serve “objective social interests” (ibid.; my translation). Yet Löwenthal argues at the same time that a reasonably justifiable subordination in relationships of authority is something that modernity has rendered difficult (cf. ibid., p. 261 ff.).

Löwenthal notes that the interpersonal practises of authority so characteristic of the Middle Ages persisted into capitalist modernity where, because of the more intricate division of labour, they would in fact assume an even more important role. Löwenthal reminds us that “[t]he new methods of production” (Löwenthal, 2017, p. 260; my translation) introduced by the industrial revolution required “very specific skills and qualities [...] from the individuals themselves [von den Menschen selber], without which the rational process of mechanical production could not have been mastered” (ibid., p. 261; my translation). On the basis of this observation, Löwenthal argues further that the “measure of diligence, carefulness, order, punctuality, willingness to adapt to the continually changing conditions of

the mechanical apparatus” (ibid.; my translation) necessitated by the modern division of labour has given rise to “authoritarian forms of education towards the requirements of machinic production, some of which have assumed utterly terroristic forms [... die terroristischsten Formen angenommen ...] in the production of discipline, punctuality, and intensity of work” (ibid.; my translation).

According to Löwenthal, these circumstances alone, however, did not yet make it unreasonable to accept one’s subordinate position in a relationship of authority: any subordination to authority in the process of production, he suggests, is reasonable so long as the “labour process takes place [...] for the purpose of producing socially necessary goods” (ibid.; my translation). Löwenthal recognises that such a production of socially necessary goods also takes place in modernity, but he simultaneously emphasises that the production of the goods required for the reproduction of social life is not the main purpose of the modern labour process. We read in Löwenthal’s draft that the reason that in modernity, it would become difficult to justify that acceptance of authority is in ‘real interests of those who subordinate themselves’ is to be found in a peculiarity of the capitalist mode of economic production. He grounds this argument in a reading of the chapter on *Co-operation* from the first volume of Marx’s *Capital*. For Löwenthal, the decisive passage from this chapter of *Capital* is Marx’s remark that “capitalist leadership is two-sided [zweischlächtig] in its content” (Marx, 1991, p. 299; my translation; quoted in: Löwenthal, 2017, p. 262). Paraphrasing Marx,⁵¹ Löwenthal tells us that the labour process on which modern society relies for the production of socially necessary goods can be described as ‘two-sided’ because it “serves at the same time the purpose of the self-valorisation of capital [der Verwertung des Kapitals]” (ibid.; my translation). It is this circumstance, he suggests, that

⁵¹The passage from *Capital* that Löwenthal quotes has Marx claiming that if ‘capitalist leadership’ is ‘two-sided,’ this is “because of the two-sidedness [Zweischlächtigkeit] of the process of production itself, which is on the one hand a social labour-process [gesellschaftlicher Arbeitsproceß] for the purpose of the production of a good, and, on the other, a process of the self-valorisation of capital [Verwerthungsproceß des Kapitals]” (Marx, 1991, p. 299; my translation).

renders it difficult to reasonably subordinate oneself to authority in modernity: nothing can guarantee that doing so will provide material sustenance — at best, one may *hope* that this will be the case. In modernity, Löwenthal writes, “to the overwhelming majority of people, the authority generated by the relations of production appears as a blind, alien power, entirely beyond one’s own grasp” (ibid., p. 262; my translation).

Löwenthal’s draft from 1934 considers the effects of the emergence of industrial capitalism on the practise of authority from the perspective of the wage-labourer. Turning to Max Horkheimer, however, we may obtain a somewhat broader perspective, allowing us to take Löwenthal’s observations further by proposing that when profit became the primary motive of production, the social practise of authority would in fact bifurcate into two different modalities. With reference to Horkheimer’s work, we explain how the imperative of the self-valorisation of capital demanded that the owners of the means of production assume a subordinate position within a new, and wholly irrational, modality of practising authority; and we claim furthermore with Horkheimer that this new practise of authority would over time become the predominant practise of authority in Western modernity.

3.3.2 Impersonal Authority

The Impersonal Authority of the Market as Conceptualised by Max Horkheimer

In his 1937 Columbia lectures, Horkheimer illustrates by means of an example why it is that in Western modernity, the dominant classes in the social hierarchy could no longer exclusively assume a superordinate role in relationships of authority. His example concerns a modern factory owner, and he explains why even he is not unconditionally free to do whatever he wants. The constraint on the factory owner, Horkheimer notes, is that he can only “[put] a huge factory in

the service of his free will [so long as he has money]” (Horkheimer, 1985, p. 56 f.;⁵² my translation). If, however, the factory owner wishes to realise a return on the capital he invested, Horkheimer points out that, evidently, this factory owner would then have no choice but to produce goods for which there are buyers (cf. *ibid.* p. 57). As to the question of what it is that this factory owner would subordinate himself to, if he obeys the imperative of the self-valorisation of capital, Horkheimer points out that the counterpart of the factory owner is not another person, but the seemingly objective and unalterable circumstances of his reality. This much we learn when Horkheimer explains, apropos of the hypothetical factory owner who produces only what he wishes, that

“[o]ne day, perhaps, he might notice that society does not appreciate [his products] as much as he does, and that will then put an end to his existence as producer. This circumstance does not reveal itself to him because his craft guild forbids him from producing this type of commodity in those amounts, or through the decree of some other authority [Behörde], but simply because no one buys his products, that is, *it reveals itself through facts* [Tatsachen].” (*ibid.*, p. 57; my translation; my emphasis)

With this example, Horkheimer clarifies an idea that we already find expressed in the 1936 essay *Authority and the Family* (cf. 1972, pp. 79-82). In his text from 1936, the argument that even the entrepreneur cannot realise the absolute freedom that modern thought ascribes to the abstract individual is coupled with the observation that the pursuit of profit on the part of the entrepreneur is necessarily an irrational process. He explains that the basis for entrepreneurial planning is always the entrepreneur’s own prior experience, yet at the same time, there can never be a guarantee that this past experience will in fact be of use in future situations. An entrepreneur, we are told, is forced to speculate: “in the present system economic projects are largely a matter of divination, that is, of

⁵²In this quotation, the order of the text has been reversed. The first part of this quote appears in the original text on p. 57, whereas the addition in square brackets at the end of the above quotation appears on p. 56.

hunches” (1972, p. 80). Horkheimer concludes from this observation that in order to carry out his economic activity, an entrepreneur must ultimately subordinate himself to the authority of a “blind power [...] a faceless economic necessity” (ibid., p. 82). We thus encounter in the modern entrepreneur “an acceptance of the blind power of chance, a long since discredited authority relationship” (ibid.).

But Horkheimer concludes his reflections on the subordination of the entrepreneur to authority upon the suggestion that in the course of modernity wage labourers, too, would eventually become direct subjects of this ‘authority of the market.’ He claims in *Authority and the Family* that “[t]he fullest possible adaptation of the subject to the reified authority of the economy is the form which reason really takes in bourgeois society” (ibid., p. 83). In his 1937 lectures, he adds to this the thought that this process of ‘adaptation’ has replaced practises of authority that required a “respect for persons [Respekt vor den Personen]” (1985, p. 58) with a manner of practising authority that requires a “respect for facts [Respekt vor den Tatsachen]” (ibid.). This, he stresses in the 1937 lectures, is true, regardless of class or profession: “[t]o take account of facts” (ibid., p. 57; my translation), he asserts, is “an absolute requirement for the worker as well as for the factory owner, for the employee as well as for the writer and artist in this modern age” (ibid.; my translation); and he concludes in his lectures that in modernity, “authority is no longer an immediate relation between persons, but a relation mediated by things [Sachen]” (ibid.; my translation). As to the question of what ‘things’ Horkheimer has in mind here, we find a brief, exemplary list in his 1936 essay on *Authority and the Family*, where he writes that in the modern world:

“Acceptance of the authority relationship between classes, does not take the direct form of acknowledging an inherited claim of the upper classes, but consists in the fact that men regard economic data (for example, the subjective valuations of goods, prices, legal forms, property relationships, and so forth) as immediate or natural facts, and

think they are adapting themselves to such facts when they submit to the authority relationship” (1972, p. 89).

Our commentary on Horkheimer’s work on authority in modernity should allow us to claim that the consensus among the participants of the *Walter Lippmann Colloquium*, that society ought to be regulated by the price mechanism of the market under competitive conditions, was merely an open and conscious expression of the ‘common sense’ of the spirit of the times in which the participants of this conference were living. In their 1944 *Dialectic of Enlightenment*, Max Horkheimer and Theodor Adorno discuss the role of faith in modernity. There, Horkheimer and Adorno assert not only that faith persists throughout history, but they claim that in modernity, faith does indeed play a more significant role than it did in earlier periods of history: faith, in modernity, “becomes [the] favorite instrument [of world-history], its particular stratagem” (Horkheimer & Adorno, 1989, p. 20), we read. In the light of our preceding discussion, we might get the impression that with their demand for the market as a social regulator, the participants in the *Lippmann Colloquium* were perhaps proving this assertion of Adorno and Horkheimer true. One could interpret the consensus that emerged at this conference as a plan for a society governed by what Horkheimer and Adorno deem a secularised, modern form of faith; that is, “a swindle [whose] [...] irrationality turns it into an instrument of rational administration by the wholly enlightened” (ibid.). In retrospect, we can in any case say that the introduction of neo-liberal governmental practises in the second half of the twentieth century has in fact successfully introduced practises of authority centred around what Horkheimer refers in *Authority and the Family* as ‘economic data.’

The Impersonal Authority of the Market Illustrated

Many examples of such practises of authority can be found from the second half of the twentieth century onwards. Currently, at the beginning of the third dec-

ade of the twenty-first century, perhaps the most striking extension of practises of authority involving Horkheimer’s ‘economic data’ can be found in the tendency to resort more and more to algorithmic decision-making in government and private enterprise (cf. Mau, 2019, p. 123 ff.). But already in the late 1990s anthropologists were studying what they referred to as ‘audit cultures’ in public management in Western states (cf. Strathern, 2000), with some of those anthropologists suggesting that the emergence of various forms of ‘performance measurement’ in public institutions amounted effectively to the introduction of “rituals of verification” (Strathern, 2000a, p. 3). However, if we turn to William Davies’ 2015 monograph *The Limits of Neoliberalism*, we can see that the introduction of authority practises that rely on ‘economic data’ in the broadest sense of the term goes back to the very beginnings of neo-liberal governmentalities, and we should be able to see moreover that these practises of authority make an exemplary contribution to the Hayekian project of the ‘dethronement of politics.’ Let us briefly consider two examples from Davies’ study.

One example provided by Davies is the case of the Directorate General (DG) for Competition, an organisational subdivision of the European Commission created to oversee the prohibition of state aid deemed ‘anti-competitive’ as stipulated by the 1957 Treaty of Rome. Davies tells us that when the DG Competition took up its work, the definition as to what constitutes aid “was formal, rather than empirical” (Davies, 2017, p. 182). We are told that with the DG Competition, from the start there was “a ritual of [...] evaluation” (ibid., p. 183). However, initially there was “no technical or empirical test with which to assess whether a particular instance of state aid is anti-competitive or not” (ibid.). According to Davies, this changed in the 1980s to the effect that the assessment of state aid became “increasingly empirical (or ‘effects-based’)” (ibid., p. 184); a process which would “[require] DG economists [...] to gather and analyse data, which would then be fed into the legal procedure” (ibid.).

A further example Davies refers us to is that of national competitiveness evaluations. We learn that that the first significant attempt at undertaking such evaluations was made by the international business scholars Richard Farmer and Barry Richman in the mid-1960s. The purpose of their evaluation, Davies explains, was to provide a “measurement and comparison of nations” (ibid., p. 126) with respect to “the conditions that nations offer to management” (ibid.). Davies argues that effectively, this approach towards measuring the ‘competitiveness’ of nations reduces all spheres of social life to nothing more than a “conditioning factor, to be understood in terms of how successfully it supports management” (ibid.), and thus “colonizes every non-business sphere [...] with a managerial mode of evaluation” (ibid.). Farmer and Richman’s work, we are told, would eventually become an example to the World Economic Forum (ibid., p. 125) which, inspired by the project of the two scholars of international business, published its first annual global competitiveness report in 1979 (ibid., p. 113). “Competitiveness institutes and think-tanks” (ibid., p. 127), Davies lets us know further, then “multiplied over the course of the 1980s” (ibid.), and the findings of these evaluations would assume considerable importance in political decision-making (cf. ibid., pp. 133-136).

These practises still serve the same social function as that already served by the Roman *auctoritas*: the purpose of these impersonal practises of authority is still that of offering ‘strong’ advice to their subjects, as well as that of validating their conduct; and these impersonal practises of authority still ultimately benefit those groups that find themselves at the top of the social hierarchy. It would be a mistake to assume that simply because everyone has come to adopt the authority practises, or indeed, authority rituals of the ruling class, everyone also stands an equal chance at gaining approval from this impersonal ‘authority of the market.’ However, with the transformation of the social practise of authority from one that persons exercise between themselves to one that is exercised between persons and any one of a number of artefacts of the seemingly unalter-

able conditions of modern life, the form of the practise of authority has changed fundamentally, and probably for the first time in its history. The most significant effect of this break with the governmental convention that authority is practised interpersonally is that it of course makes it more difficult to enter into any kind of negotiations with authority: the verdict of the market is absolute, and its impersonal form also makes it easy to portray the verdicts of the market as impartial. It would indeed be appropriate to argue that the impersonal practises of authority that were introduced alongside neo-liberal governmentalities serve the purpose of depoliticising the practise of authority, given that neo-liberal rationality considers the market an entity beyond the social contract, and hence incapable of being subjected to democratic government. We continue the idea of the opposition of economic rationality to the political rationality associated with the modern theory of the social contract in the following chapter, where we discuss a second break with long-established governmental conventions brought about by the introduction of neo-liberal governmental practises: the replacement of the anthropological model on the basis of which subjects would be governed from *homo juridicus*, the subject of rights, to that *homo oeconomicus*.

Chapter 4

Split Will, Whole Interest: Homo Juridicus and Homo Œconomicus as Subjects of Government

This chapter is the second and last in which we elaborate on our claim that that the introduction of neo-liberal governmental practises in the second half of the twentieth century resulted in a break with long-established governmental conventions. The break we are concerned with here pertains to the particular role that governmental practises call upon their subjects to perform. Our basic assumption is that any governmental rationality contains an ultimately fictional description of its own subjects; or, in other words, every governmental rationality contains a particular conceptual representation of the human being, an anthropological model, which practises of government then enjoin flesh-and-blood individuals to embody.

It has been claimed in the second chapter of this dissertation that both varieties of nineteenth-century liberalism, classical and social, subjectivate individuals on the basis of the model of homo juridicus; that is, as the subject of rights we encounter in the modern theories of the social contract. We also claimed in

Chapter Two that neo-liberal governmental practises, by contrast, call upon their subjects to perform the role of homo œconomicus, the self-interested economic actor. In this fourth chapter, we now give close consideration to these two different models of the human being by way commenting on the outlines of the figures of homo juridicus and homo œconomicus drawn by Michel Foucault in *The Birth of Biopolitics*, his 1979 course of lectures at the Collège de France. The main purpose of our commentary is to highlight Foucault's reasons for claiming that the models of homo juridicus and homo œconomicus are structurally heterogeneous, which is to say, that neither figure can ever be fully dissolved in the other. In focussing on Foucault's argument about the heterogeneity of the models of homo juridicus and homo œconomicus, this chapter lays the groundwork for the subsequent fifth chapter and the Conclusion of this dissertation, in which we discuss an attempt at combining homo juridicus and homo œconomicus into a single figure in the governmental practises of the European Union, and the implication of this attempt in the 'authoritarian moment.'

This chapter is divided into two sections; each dedicated to one of the anthropological models of concern to us. The model of homo juridicus functions as a foil against which we set off the model of homo œconomicus, and so our discussion of homo juridicus will be somewhat shorter than that of homo œconomicus.

The first section of this chapter is dedicated to homo juridicus, and begins with a summary overview of scholarly literature on this model of the human being. It is claimed that in this literature, we encounter essentially two different manners of conceptualising homo juridicus. On the one hand, there has been the universalistic anthropology of Alain Supiot, in which the human being *as such* is identified with the model of homo juridicus; on the other, the figure of homo juridicus is identified specifically with the modern subject of rights. We argue that although we encounter genealogical approaches to the figure of homo juridicus amongst these latter contributions, these genealogies do not venture particularly far back into history and restrict themselves to sketching out the

immediate conditions of the historical emergence of the model of the subject of rights in the Renaissance and Enlightenment periods.

With recourse to the work of Michel Foucault, section one then proceeds to suggest that the modern model of the subject of rights is not a historical novelty, but a modification of an understanding of the human being that emerged in late antiquity. For this purpose, we draw on Foucault's discussion of the anthropology of Saint Augustine from the final part of the fourth volume of *The History of Sexuality, Les aveux de la chair*.⁵³ We highlight two features of Foucault's interpretation of the anthropology of Augustine: that it presents the will of the human subject as split into a voluntary and an involuntary part, and that the subject is seen as juridically accountable for the involuntary part of the will. It is demonstrated that the structure Foucault identifies in the Augustinian subject in *Les aveux de la chair* is identical to the one he ascribes to the modern subject of rights in the 1979 lectures on *The Birth of Biopolitics*. Finally, we propose that when seen in the light of Foucault's genealogy of homo juridicus qua modern subject of rights, one of the most significant achievements of the modern theories of the social contract is that they reversed the logic of an early Christian theological appropriation of the Roman notion of *auctoritas*: Saint Augustine's theory of authority. Whereas Augustine believes that the process of learning to use of one's faculty of reason must necessarily begin with blind trust in personal authority, social contract theory attempts to provide *a priori* reasons for the need for participation in practises of authority.

The topic of the second section of this chapter is the model of homo oeconomicus. We begin this section on the note that when Foucault argues that the models of homo oeconomicus and homo juridicus are structurally heterogeneous, he appears to be positioning himself against another hypothesis about the histor-

⁵³An English translation by Robert Hurley appeared with Penguin Books in 2021, shortly before this manuscript was completed, as *The History of Sexuality, Volume Four: The Confessions of the Flesh*. However, the chapter was composed citing the original French with my own translations into English, and when the manuscript was finalised, I decided to keep these translations.

ical emergence of the model of ‘economic man’ in the transition from feudalism to capitalism. It is argued that this other hypothesis can be found in Albert Hirschman’s 1977 *The Passions and the Interests*, where Hirschman proposes that the historical emergence of the notion of ‘(self-)interest’ can be interpreted as a moral reevaluation whereby Augustine’s idea of the vicious passions took on a positive connotation. We then emphasise that Foucault himself would seem to have articulated a similar position to that of Hirschman in his 1978 *Security, Territory, Population* lectures, before shifting one year later, in *The Birth of Biopolitics*, to the position that that ‘interest’ is a sui generis concept in the history of Western thought.

Subsequently, we expand the outline of the genealogy of homo oeconomicus as provided by Foucault in *The Birth of Biopolitics*. Starting from Foucault’s discussion of the arguments for the precedence of (self-)interest over law made by intellectual figures associated with the Anglo-Scottish Enlightenment, we focus on the work of David Hume and Jeremy Bentham, and show how their accounts of the origin of political society are set up as deliberate counter-positions to the theories of the social contract. This exposé of Hume and Bentham serves to highlight the dilemma raised by their rebuttals of the theories of the social contract, a question that became of central importance for the transformation of the Anglo-Scottish empiricists’ subject of ‘interest’ into homo oeconomicus: how can a stable social order emerge from the free play of interests? It is shown that although classical political economy would invent the metaphor of the invisible hand in response, this question would become the centre of politico-economic enquiry with the emergence of the neo-classical tradition in the 1870s, where the figure of homo oeconomicus would at least come to be seen as the source of a stable order on exchange markets. We will outline Vilfredo Pareto’s understanding of the figure of homo oeconomicus, proposing that although Pareto himself was fully aware that this figure is a theoretical abstraction, this abstraction would eventually find political use as an ideal to against which to measure reality. In

conclusion, we associate the anthropological model of homo oeconomicus with what Edmund Husserl refers to as a ‘morality of feeling,’ and argue that its connection with this morality is what makes this figure function within the impersonal authority practises mediated by the capitalist market.

4.1 Homo Juridicus: “A Subject Who Accepts Negativity”

4.1.1 Orthodoxies

If we agree to apply the term homo juridicus to any model of the human being constructed on the basis of the postulate that the process of being socialised into a legal order constitutes individuals as human subjects,⁵⁴ then we should be able to say that this understanding of the human being has been explored by the scholarly literature essentially in two different ways. One approach we encounter in the literature on homo juridicus consists in presenting this model as *the* universal definition of the human being; the other consists in treating homo juridicus as a distinctively modern figure.

Homo Juridicus as a Universal Model of the Human Being

We find the preeminent exemplar of the former approach in Alain Supiot’s eponymously titled monograph, *Homo Juridicus*, from 2005. In this book, Supiot uses the term homo juridicus as a shorthand for an understanding of the human being as a mind-body duality held together by the ‘symbolic construct’ (Supiot, 2017, p. x) of “[l]egal personality” (ibid.); a construct whose function, in his opinion, is

⁵⁴A point of view implicit, for instance, in Nicos Poulantzas’ assertion that “law is a constitutive element of the politico-social field” (Poulantzas, 2000, p. 83) from *State, Power, Socialism*, and in Karl Klare’s project of formulating a “constitutive theory of law” (Klare, 1979, pp. 128-133 passim).

that of “posit[ing] the unity of body and mind [...] [while simultaneously] formulat[ing] a prohibition: that the human being should never be reduced onesidedly to either” (ibid.). While Supiot insists that in modernity, we encounter homo juridicus predominantly in the form of “the subject of human rights” (ibid., p. 188), he believes that the human being has in effect been understood as a homo juridicus for a considerable amount of time: it is an understanding of the human that is “common to [all] the civilizations of the Book” (ibid., p. ix). A central claim of Supiot’s *Homo Juridicus* is that in the Hebrew and the Christian world, “[t]he law” (ibid.) has always been considered that which “connects our infinite mental universe with our finite physical existence[,] and [that] in so doing [, the law] fulfils the anthropological function of instituting us as rational beings” (ibid.).

One part of Supiot’s argument that we shall be in agreement with is his suggestion that the anthropological model of homo juridicus is a progeny of religious thought. Beyond this particular claim, however, it is difficult for us to align ourselves any further with Supiot’s perspective. The reason for this is one of method: as the subtitle (*On the Anthropological Function of the Law*) of his 2005 book promptly reveals, Supiot’s intention is to write an anthropology; a treatise on how the model of homo juridicus reflects immutable truths about the essence of our humanity. Supiot thus follows the opposite path with regard to the one on which we wish to embark in this section. While we aim to present homo juridicus as one amongst many contingent answers to the question of ‘what is the human being?’ to be encountered throughout Western history, Supiot writes the history of *the* human being *as* homo juridicus.

Homo Juridicus as a Fiction of Western Modernity

For this reason, the literature that portrays the tendency to conceptualise the human being as a homo juridicus as eminently modern (Santoro, 2003; Gear, 2010,

pp. 40-95) is of somewhat greater interest for our purposes. This is not because its core proposition is more agreeable: what we would like to demonstrate, after all, is that the figure of homo juridicus that emerged in Western modernity — the model of the subject of rights as outlined in the modern theories of the social contract — can readily be traced back beyond modernity. What makes this literature interesting for us are the genealogies of homo juridicus qua modern subject of rights that we encounter in it. A concise genealogical outline can be found in a section entitled *The Genesis of Liberal Rights and the Liberal Legal Subject* from Anna Grear’s 2010 monograph on the entwinement of human rights and corporate interests, *Redirecting Human Rights*. Drawing on the work of a variety of legal-historical commentators, Grear provides a rudimentary genealogy, which we would like to contrast with the outline that we shall subsequently construct by way of a reading of the work of Michel Foucault. We can summarise Grear’s account as follows.

With recourse to Boaventura de Sousa Santos’s *Towards a New Legal Common Sense*, Grear explains there that the social contract theories of Hobbes, Locke, and Rousseau — three thinkers who, as Grear notes, Santos lists in his book as “the founding fathers of social contract theory” (Grear, 2010, p. 71) — emerged from within a broader attempt in the seventeenth century at shifting natural law theories from theological onto rationalist foundations (Grear, 2010, p. 72; cf. de Sousa Santos, 2002, p. 30). Drawing on John Finnis’s *Natural Law and Natural Rights*, Grear furthermore tells us that in the course of this seventeenth-century attempt at putting natural law theories on a new foundation, the Roman notion of *jus*, which had hitherto had a purely abstract meaning and designated “the just thing itself” (Finnis, 1980, p. 206; quoted in: Grear, 2010, p. 70) became “something that a subject possesses” (Grear, 2010, p. 71). Grear suggests that once the idea that rights can attach to human subjects had become common sense, the social contract theories of Hobbes, Locke, and Rousseau would go on to “establish the identity of the ‘man’ of natural rights [...] by subtracting from

embodied persons whatever made them unique” (ibid., p. 72). This, we are told by way of reference to Costas Douzinas’s *The End of Human Rights*, is what would eventually give rise to the modern subject of rights; a conceptualisation of the human being in which the latter appears as “an artificial construct of reason, a naked human being endowed only with logic, strong survival instincts and a sense of morality” (Douzinas, 2000, p. 65; quoted in: Gear 2010, p. 72).

Yet Gear’s exposé also reminds us that at least the idea that political society is constituted by a social contract already existed prior to modernity. She directs us here once more to Douzinas’s *The End of Human Rights*, namely to a passage in which Douzinas argues that the social contract theories of the seventeenth and eighteenth centuries form part of a modern revival of “Epicurean ideas, according to which the *polis* was the outcome of an original contract, and the Stoic belief that the law should be in harmony with the reason of the world” (Douzinas, 2000, p. 64 f.; quoted in: Gear, 2010, p. 71). In what follows, we propose, in the same spirit, that the model of the subject of rights as outlined in social contract theory is not a *sui generis* modern invention either, but a descendant of an anthropological model that can be traced back to late antiquity. This we do by joining two separate parts of Foucault’s œuvre: his engagement with Saint Augustine’s anthropology, from *Les aveux de la chair*, and his remarks on the subject of the theories of the social contract from the 1979 *The Birth of Biopolitics* lecture course.

4.1.2 Conceptualising Homo Juridicus with Foucault

Saint Augustine’s Anthropology as Discussed in *Les aveux de la chair*: “... A Split Now Marks His Or Her Own Will”

Foucault’s commentary on the anthropology of Augustine can be found in the final section of *Les aveux de la chair*, which the editors have titled *La libidinisation du sexe* (‘The Libidinisation of Sex’). In order to situate this section of *Les aveux*

within the broader set of topics that Foucault touches upon in the four-volume *History of Sexuality*, it is perhaps best to refer to a remark that Foucault made during a lecture he gave as part of his 1981 course on *Subjectivity and Truth* at the Collège de France. Although this remark was merely meant to clarify the plan for his lectures at the Collège that year, it also happens to provide us with a good summary of the contents of all four volumes of *The History of Sexuality*. When Foucault declares at the beginning of the fourth lecture of his 1981 course that he wishes to distinguish the ancient Hellenic experience of “aphrodisia” from “the Christian experience of the flesh and the modern experience of sexuality” (Foucault, 2017, p. 76), then we may claim on the basis of this statement that the first volume of *The History of Sexuality* is concerned with the ‘modern experience of sexuality’; the second and third with the Hellenic, or, in fact, Greco-Roman (cf. 1992, p. 35) experience of ‘aphrodisia’; whereas *Les aveux de la chair*, the fourth volume of *The History of Sexuality*, has the ‘Christian experience of the flesh’ and its historical emergence as its topic.

We may in fact explain further that within the above schema, the final section of *Les aveux*, in which we encounter Foucault’s commentary on the anthropology of Saint Augustine, is concerned with a crucial moment in the historical process whereby this Christian ‘experience of the flesh’ would emerge, namely the moment in late antiquity when the term *libido* would assume the specific meaning in relation to sexual conduct that it still holds today. Foucault argues in his reflections on the ‘libidinisation of sex’ that it has been in the wake of the work of Augustine that *libido*, the Latin term usually rendered in English as ‘lust’ or ‘desire,’ began to be considered “an internal structural element of the sexual act” (2018, p. 329; my translation); that is, as a constitutive element of desire present in all sexual conduct. More specifically, on Foucault’s reading, Augustine identifies as the defining characteristic of libido the circumstance that it gives the sexual desire of the human subject an “involuntary form [forme involontaire]” (ibid., p. 333). Foucault highlights that in the thought of Augustine, sexual

desire has taken on this specific, libidinous form as a result of the biblical Fall of humanity into sin, which has broken the will of the human subject in two.⁵⁵

Augustine's contention, we read in *Les aveux de la chair*, is that all sexual conduct prior to the Fall has been "entirely under the control of the subject of will [intégralement habité par le sujet volontaire]" (ibid., p. 331). The primary effect which Augustine attributes to the expulsion from Eden is according to Foucault that it brought about the "[irruption of the] involuntary [...] into the realm of the voluntary" (ibid., p. 333; my translation). As a structural element of desire, libido hence also constitutes for Augustine the "transhistorical link which connects the original sin, of which it is the consequence, with the actuality of this sin in every human being" (ibid., p. 348; my translation). A more detailed description of the structure of the desiring subject to which this 'irruption' of libido, as a "punishment-consequence of the fault" (ibid., p. 334; my translation), would give rise is provided by Foucault when he argues that for Augustine, libido

"is not situated in-between body and soul, nor in-between matter and spirit: it is situated in the subject itself, which from now on revolts against itself (body and soul included). The fallen human being has not fallen under a law or a force that exercises complete control over him or her; it is rather that a split now marks his or her own will, which is henceforth divided, turned against itself, and whatever it may want is from now on constantly going to elude it. The fundamental principle in Augustine is that of the *inoboedientia reciproca*, of reciprocal disobedience. The revolt in the human being reproduces their revolt against God." (ibid.; my translation)

Another observation central to Foucault's discussion of the 'libidinisation of sex' — one that brings us closer to the connection between Saint Augustine's anthropology and the subject of rights — is that Augustine "[inscribes his analysis of concupiscence] in a system of juridical references" (ibid., p. 351; my

⁵⁵For a summary of the positions in early Christian theology from which Augustine distances himself by insisting that libido is a structural component of all sexual conduct (as opposed to it being merely an excess of sexual desire), and that libido only appeared as a result of the Fall, see (Lorenzini, 2019, p. 462 f.).

translation). Foucault argues that the clearest evidence for what he refers to as Augustine’s “juridification” (ibid., p. 351 f. *passim*) of libido can be found in Augustine’s text *On Marriage and Concupiscence*, where Augustine states that “*libido is sui juris* [la libido est sui juris]” (ibid., p. 339). We are told that ultimately, this juridification of libido culminates in Augustine proposing that despite the involuntary character of libido, the subject can be held juridically accountable for its libidinous desire. “The sinner ought not attempt to take refuge behind the excuse that it is not he who acted, but the concupiscence in him” (ibid., p. 350 f.; my translation), Foucault summarises Augustine’s position, for “such a discourse would only prove that he does not know himself” (ibid., p. 351; my translation). In Augustine’s anthropology, law and desire are thus inextricably entwined. As Foucault puts it, Augustine “[thinks] the subject of desire and the subject of right [sujet de droit] simultaneously and [in]⁵⁶ one form” (ibid., p. 352; my translation; original square brackets where indicated).

The Subject of Modern Social Contract Theory as Described in The Birth of Biopolitics: “... Who Agrees To A Self-Renunciation And Splits Himself”

We have now seen how in Volume Four of *The History of Sexuality*, Foucault presents the Augustinian subject as a figure with two primary characteristics. First, its will is divided in such a way that it possesses an ‘involuntary’ part that may potentially turn against the ‘voluntary’ one and thus bring about the subject’s (self-)destruction. Second, the subject is considered juridically accountable for this ‘involuntary,’ and potentially destructive part of its own will: it has, as it were, a legal duty of care for that which is involuntary about itself. In his 1979 Collège de France lecture course on *The Birth of Biopolitics*, Foucault resorts to

⁵⁶This insertion has been made by the editors of Foucault’s manuscript and appears as such in the original text.

a similar conceptual vocabulary as he describes the subject of the theories of the social contract.

Foucault outlines the subject of social contract theory in the penultimate lecture of his 1979 course, the same lecture in which we also encounter the beginnings of his genealogical outline of homo œconomicus. There is no doubt that when he uses the term homo juridicus, Foucault refers to the subject of political society described by social contract theory: when he distinguishes homo œconomicus from homo juridicus at one point in his lecture, Foucault describes the latter as “the man of right, homo juridicus, [who] says to the sovereign: I have rights, I have entrusted some of them to you, the others you must not touch” (2008, p. 283). This homo juridicus qua “subject of right” (ibid., p. 292) is described by Foucault as a figure constituted by a “dialectic of the renunciation of his own rights or their transfer to someone else” (ibid.); a dialectic, he specifies earlier in this lecture, which produces “the division of the subject, the existence of a transcendence of the second subject in relation to the first, and a relationship of negativity, renunciation, and limitation between them” (ibid., p. 275). Thus constituted, the subject of rights of the modern theories of the social contract is, in Foucault’s view, “by definition, a subject who accepts negativity, who agrees to a self-renunciation and splits himself” (ibid.).

Given the similarity of this description to the manner in which he describes Augustine’s subject in *Les aveux*, we may venture to suggest that Foucault’s account of the subject of rights in his 1979 lectures at the Collège outlines in advance the historical endpoint of the development of a type of subject whose emergence he intended to describe in his discussion of Saint Augustine’s anthropology in the fourth volume of *The History of Sexuality*; a book originally intended for publication in the mid-1980s. This suggestion appears to be supported by Daniele Lorenzini’s archival research. In his 2019 essay *The Emergence of Desire*, Lorenzini claims that Foucault already presented research on the anthropology of Augustine just one year after he lectured on *The Birth of Biopolitics*: we read

in Lorenzini’s essay that an unpublished manuscript of a talk Foucault gave at “a 1980 seminar at the New York Institute for the Humanities [...] [already contains] a synthetic overview of what, two years later, would eventually become the final version of *Les aveux de la chair*” (Lorenzini, 2019, p. 464; fn. 48).

To bring this section to a close, let us return to Anna Grear’s more orthodox genealogy of the subject of rights. In her opinion, one historical condition for the emergence of the subject of rights was the redefinition of the Roman notion of ‘jus’ in the seventeenth century (Grear, 2010, p. 70). In light of our preceding discussion, we would like to surmise that this redefinition modified the anthropological model created by Saint Augustine — which, in the Foucauldian genealogy of governmentality, has arguably played a considerable role ever since the emergence of Christian pastoral practises of government in the wake of the institutionalisation of the Christian Church in late antiquity (cf. Lorenzini, 2019, p. 467 ff.) — and thereby transformed it into the modern subject of rights. Yet even if this process had merely modified a long existing model of the human being, it might nevertheless have enabled a distinctive liberal governmental practise to split off from Christian pastoral governmentality and become a mode of government unto itself. Perhaps it is indeed feasible to suggest that at the same time as it transformed the Augustinian subject into the modern subject of rights, this seventeenth-century redefinition of ‘jus’ has made possible what we have come to refer to as the ‘politics of rights’; which is to say, in Thomas Biebricher’s words, the characteristically liberal “political practice of rights-claiming” (Biebricher, 2012, p. 302). This might be the most significant effect of the process whereby Augustine’s subject became the modern subject of rights: the institutionalisation, in the form of the politics of rights, of the practise of bargaining over the manner in which one is governed.⁵⁷

⁵⁷Note in this context also Foucault’s own remark in *What is Critique?*, a lecture he delivered to the Société française de philosophie in May 1978, “that from the 15th century on and before the Reformation, one can say that there was a veritable explosion of the art of governing men” (Foucault, 2007a, p. 43), accompanied by a proliferation of the question of “[h]ow to govern” (ibid., p. 44), but also of “how not to be governed” (ibid.). He argues that this ‘explosion of

4.1.3 Homo Juridicus and Authority

One significant objection could be raised with respect to our attempt at drawing on Foucault in order to portray the modern subject of rights as a variation of a model of the human being which has first been thought up by Saint Augustine. Here we need to return once more to Anna Grear’s ‘orthodox’ genealogy of the subject of rights as provided in her *Redirecting Human Rights*. As a further condition which allowed for the historical emergence of the model of the subject of rights, Grear refers us to Boaventura de Sousa Santos’s claim that the broader intellectual conjuncture from which the modern theories of the social contract arose was the attempt, whose beginnings Santos also identifies in the seventeenth century (de Sousa Santos, 2002, p. 25), to replace the hitherto theological foundation of natural law theory with a rationalist one (Grear, 2010, p. 71 f.). While it could be argued with reference to this historical development that our Foucauldian hypothesis around the continuity between Augustine’s anthropology of the split will and the emphasis on renunciation in the modern model of the subject of rights is not credible, we would like to highlight that there exists a considerable body of scholarly literature which casts a certain degree of doubt on the success of the attempt made particularly by the modern theories of the social contract at deriving the axiomatic principles of their natural law theories from rationalist philosophy rather than theology. For each of the three paradigmatic modern theorists of the social contract listed by Santos — Hobbes, Locke, and Rousseau (cf. de Sousa Santos, 2002, p. 30) — there exist studies arguing that a strong theological basis has been retained in their respective explanations of the transition from the state of nature to the state of political society.

Helen Thornton’s 2005 monograph *State of Nature or Eden*, for instance, highlights the parallels with the biblical story of the creation of the world in Thomas Hobbes’s account of the emergence of political society. The point of the art of governing’ went hand-in-hand with the emergence of the “critical attitude” (ibid., p. 48) of the modern West, an ‘attitude’ with which Foucault sought to identify in the late 1970s.

departure of Thornton's argument is the circumstance that although Hobbes still held in the 1651 English publication of *Leviathan* that "the state of nature was never generally so" (Thornton, 2005, p. 1), he revised this claim "in the Latin edition of *Leviathan*, published in 1668" (ibid.), where he "[replaced it with a] citation of the example of Cain's murder of Abel in defense of his war of all against all" (ibid., p. 2). In Thornton's opinion, with this modification "Hobbes finally associated his state of nature with a specific moment in Biblical history, i.e. the fallen condition" (ibid., p. 2; cf. further: p. 4 f.; pp. 41-45; pp. 159-163). Kim Ian Parker emphasises in *The Biblical Politics of John Locke* that the entire discussion of property in Chapter Five of the 1689 *Second Treatise of Government* suggests that Locke, too, thinks the state of nature in homology to the post-lapsarian condition of humanity as described in Genesis (Parker, 2004, p. 133 ff.). As for Rousseau, Jean Starobinski argues that his 1755 *Discourse on the Origin and Foundations of Inequality Among Mankind* constitutes a deliberate attempt at creating "a thoroughly religious work [...], a substitute for sacred history" (Starobinski, 1988, p. 290); a 'substitute' which effectively provides an alternative Genesis story, grounded in a speculation as to how human society might have developed had God created humanity (Gen. 1:27) but never addressed it (Gen. 1:28) (cf. Rousseau, 2002, p. 88 f.).⁵⁸

If it is thus feasible to propose with Foucault that the subject of rights is a modification of the model of the human being already outlined by Saint Augustine, we could argue further that the historical significance of the modern theories of the social contract is reflected in the circumstance that they docu-

⁵⁸Moreover, while Rousseau's approach towards biblical history from the *Discourse on Inequality* is certainly to be seen as part of his broader anthropological project of rejecting the idea that human nature is evil or otherwise flawed as a result of original sin, it could nevertheless be argued that despite his belief in the fundamental goodness of the human being, he reintroduced the Augustinian notion of the divided will through the backdoor. Jeremiah Alberg highlights here that Rousseau's anthropology of the inherently good human being is also a dualistic anthropology in which the human is understood as a simultaneously spiritual and corporeal being (Alberg, 2001, p. 783). In the context of this anthropological dualism, Alberg explains, Rousseau's basic presupposition around the inherent goodness of the human expresses itself in the form of a distinction between "two different goods which conflict with one another" (ibid.), namely "the good of the body and [...] the good of the soul" (ibid.).

ment a changing attitude towards the practise of authority. We should generally have reason to believe that the model of homo juridicus qua subject of rights, whose genealogy we outlined here by way of recourse to relevant passages from *Les aveux de la chair* and *The Birth of Biopolitics* can be associated with the interpersonal modality of practising authority we described in the previous chapter of this dissertation. If we follow the scholarship on social contract theory and Genesis just mentioned, then references to the biblical story of the creation of the world we encounter in Hobbes's, Locke's and Rousseau's social contract theories draw a parallel between the state of nature and a moment in sacred history in which humanity finds itself left alone by God and in need of organising a political society on its own. The question raised by these three social contract theorists, and in this sense they perhaps stand in for modern contractarianism as a whole, is that of the conditions under which it is justified to subordinate oneself to the authority of other persons.

To introduce a figure of thought that will also be of some importance in the coming section of this chapter, let us conclude on the question of whether the modern theories of the social contract might not in fact perform an 'inversion' of an early Christian theological appropriation of the Roman notion of *auctoritas* we discussed in Chapter Three, namely the Augustinian theory of authority as formulated in his dialogue *On Order*. There, Augustine expounds his understanding of authority in a discussion of the process of learning. Although Augustine distinguishes between divine and human authority and declares the former superordinate to the latter, he also suggests that the scope of divine authority is in fact already exhausted in its issuing of the "[command to the human being] not to stick to the level of the senses, to which all those vain things seem marvelous, but to soar to the level of the intellect" (Saint Augustine, 2007, p. 87). But in order to follow the imperative to use its reason, the human being must make itself subject to the authoritative guidance of another human being. To Augustine, one learns to reason by entering into a dialectical process between a

particular human figure of authority and one's own intellect, but with authority always "[coming] first in time" (ibid., p. 85) in this process. The influence of enlightenment rationalism on modern social contract theory eventually made it possible to break with 'custom' and 'tradition' as justifications for the practise of authority; justifications implied by Augustine's idea that one needs to make a 'leap of faith' and first trust authority blindly in order to develop one's own aptitude for reason.

4.2 Homo Œconomicus: "A Sort of Political Challenge To The Traditional, Juridical Conception ... Of The Sovereign"

When we encounter the term 'homo Œconomicus' today, we can probably by and large assume that it is either used to suggest that human beings spend a large portion of their lifetime engaged in one or another kind of economic activity and are expected to make use of a specific form of rationality when they do so, or that it already refers to the more radical idea that the human being can be reduced to the status of an economic agent *tout court*. The term homo Œconomicus itself first appeared around the turn of the twentieth century in the work of Vilfredo Pareto, a neo-classical economist associated with the Lausanne School, but the implicit consensus in the scholarly literature on the model of homo Œconomicus is that Pareto merely gave a name to an understanding of the human being which was already implicit in the classical politico-economic thought of the eighteenth and nineteenth centuries (Demeulenaere, 1996, p. 27 f.; Fey, 1936, pp. 29-63; Foucault, 2008, p. 271 ff.; Laval, 2007, pp. 15-26; Morgan, 1996; Morgan, 2006; Wolff, 1926, pp. 2-7). What the studies we just listed generally agree upon is that the central concept around which the model of homo Œconomicus is constructed is that of 'interest,' or, respectively, 'self-interest,' and that this concept did not

appear in Western history as such until the seventeenth century, approximately. Homo oeconomicus is thus presented as a thoroughly modern understanding of the human being: a point of view to which we subscribe as well in what follows.

If there is one significant conceptual disagreement within studies of the anthropological model of homo oeconomicus, it concerns the question of how the model of homo oeconomicus relates to the Christian ethics that finds expression in the model of homo juridicus qua subject of rights, described in the previous section of this chapter. While it is often argued that the moral philosophy that undergirds the model of homo oeconomicus is an inversion of the Christian value system as outlined in our above discussion of homo juridicus, the brief genealogy of homo oeconomicus from Michel Foucault's 1979 lecture course on *The Birth of Biopolitics* suggests that 'interest,' the central notion for the model of homo oeconomicus, is a sui generis concept; a historical novelty which bears no relation to the Christian ethics behind the model of homo juridicus qua subject of rights. We encounter perhaps the most compelling description of the first position, which we might call the 'inversion-thesis,' in Albert Hirschman's study *The Passions and the Interests*. We shall now examine Hirschman's argument in more detail before moving on to discuss Michel Foucault's diverging standpoint from *The Birth of Biopolitics*.

4.2.1 Homo Oeconomicus as the Subject of (Self-)Interest

Interest as a New Name for an Old Passion in the Work of Albert Hirschman

In his 1977 *The Passions and the Interests*, Hirschman tells us that contrary to what is suggested by "[a] vast literature [...] contrast[ing] the aristocratic, heroic ideal of the Feudal Age and the Renaissance with the bourgeois mentality and the Protestant Ethic of a later era" (Hirschman, 2013, p. 4), it would be a mistake to assume that the collapse of feudal ideals and the rise of a modern,

bourgeois mentality are “two distinct historical processes” (ibid.). Hirschman does not deny that “a lengthy ideological change” (ibid.) took place during the transition from feudalism to capitalism in Europe, but he contends that this change was “an endogenous process” (ibid.) rather than the effect of “the rise of an independently conceived, insurgent ideology concurrent with the decline of a hitherto dominant ethic” (ibid.).

We can say with Hirschman that the broader intellectual climate in which classical political economy, and with it the model of homo oeconomicus, emerged in the eighteenth century still recognised the Augustinian idea that the passions of the human being harbour a dangerous potential in need of mitigation (ibid., pp. 9-12). Hirschman’s explanation as to what exactly would change in relation to the theme of the ‘dangerous passions’ during the transition from feudalism to capitalism foregrounds the emergence of a positivist tradition in political philosophy in the seventeenth century which began with Machiavelli and continued with Spinoza and Hobbes (whose social contract theory we considered in the previous section of this chapter for its arguably not insignificant theological undertones) (ibid., p. 12 ff.). That these thinkers insisted “on looking at man ‘as he really is’” (ibid., p. 14) and not as one would like him to be, as Hirschman puts it with reference to Spinoza’s famous opening phrase of the *Political Treatise*, has at least in Hirschman’s opinion “a simple explanation” (ibid.): he argues that “a feeling arose in the Renaissance and became firm conviction during the seventeenth century that moralizing philosophy and religious precept could no longer be trusted with restraining the destructive passions of men” (ibid., p. 14 f.).

Hirschman’s historical narrative puts a considerable importance on what in the seventeenth century would be referred to as ‘doux commerce,’ that is, the idea that, as Montesquieu puts it, “[c]ommerce ... polishes and softens (adoucit) barbarian ways” (Montesquieu, 1849, p. 272; quoted in: Hirschman, 2013, p. 60). We are told that once ‘moralising philosophy’ had no longer been trusted

to restrain the destructive passions of the human being, new political strategies for mastering the passions would be sought, and in the course of this process it eventually became accepted opinion that it is best to channel the human passions towards commercial activity, because there, so the idea went, the passions could be released from their restraints without causing much harm and destruction (cf. Hirschman, 2013, pp. 16-20). According to Hirschman, one of the first advocates of this approach, Bernard Mandeville, would still write of ‘passions’ whose destructive potential could be neutralised by channelling them into free commerce, but Adam Smith eventually “[substituted] for ‘passion’ and ‘vice’ such bland terms as ‘advantage’ or ‘interest’ ” (ibid., p. 19). The overall claim we encounter in Hirschman is that the transition from feudalism to capitalism did not break with the Augustinian idea that the human passions are dangerous, but merely made this idea undergo a pragmatic reassessment in the light of new socio-economic circumstances. This process led to a considerable transformation of public morality, turning what was formerly considered the greatest vice into the greatest virtue: up until the “seventeenth century,” we read in Hirschman’s book, “avarice [would be assessed] [...] as the deadliest Deadly Sin [, ...] [b]ut once money-making wore the label of ‘interests’ and reentered in this disguise the competition with the other passions, it was suddenly acclaimed” (ibid., p. 41).

Interest as a Sui Generis Concept in The Birth of Biopolitics

When Foucault first made reference to the notion of (self-)interest in his 1978 *Security, Territory, Population* lectures at the Collège de France, he in fact seemed to agree with this ‘inversion-thesis.’ The 1978 lectures essentially portray the notion of interest as a return of the “old notion [of desire] that first appeared and was employed in spiritual direction” (Foucault, 2007, p. 72) dressed in the garb of virtue. The context of these remarks in *Security, Territory, Population* is a discussion of the concept of population in eighteenth-century physiocratic

thought. A population, Foucault argues, was understood by the physiocrats as emerging from the “naturalness of desire” (ibid., p. 73), and “[d]esire,” he asserts further, “is the pursuit of the individual’s interest” (ibid.). Summarising the physiocrats’ viewpoint, Foucault states that according to them, “the [...] both spontaneous and regulated play of desire will in fact allow the production of an interest, of something favorable for the population” (ibid.). It is this passage that Miguel de Beistegui refers to in his 2018 *The Government of Desire* in order to substantiate his general claim that a reading of Foucault’s late œuvre allows for a continuous genealogy of the modern, liberal subject to be traced from the late ancient subject of pastoral government to the modern homo oeconomicus. As far as Beistegui is concerned, with these remarks from *Security, Territory, Population*, “Foucault puts his finger on [...] the key point — namely, the identification or translation of desire as interest. Desire is wrested from its Christian, and specifically Augustinian, framework and is now identified with a force of good” (de Beistegui, 2018, p. 55).

What Beistegui omits, however, is that Foucault in fact abandoned this line of argument just one year later in the 1979 lectures on *The Birth of Biopolitics*, where he would insist instead that ‘interest’ should be thought of as a concept sui generis. This change of position doubtlessly evidences the exploratory nature of Foucault’s lectures at the Collège de France, but it is nevertheless somewhat curious in light of this volte face that Beistegui’s Foucault-inspired genealogy of the liberal subject pays no attention to it. Apart from this new approach to the concept of ‘interest,’ *The Birth of Biopolitics*, after all, explicitly discusses the question of the subject of liberal government, with Foucault differentiating between homo juridicus qua subject of rights and homo oeconomicus qua subject of interest. What Beistegui instead presents to us as the ‘key point’ in the emergence of liberalism and neo-liberalism (cf. ibid., p. 63 f.) as a ‘government of desire’ is a passage from *Security, Territory, Population* whose purpose, as Foucault himself remarks, is that of highlighting “a very important phenomenon” (Fou-

cault, 2007, p. 75) in the emergence of liberalism as an anti-, or non-absolutist form of government: “the entry of a ‘nature’ into the field of techniques of power, of a nature that is not something on which, above which, or against which the sovereign must impose just laws” (ibid.).

Our earlier joining up of Foucault’s passage on the ‘libidinisatio of sex’ from *Les aveux de la chair* with his description of homo juridicus qua subject of rights from *The Birth of Biopolitics* should help us understand here why Foucault would in his 1979 lectures insist that ‘interest’ is precisely not a positive revaluation of the Augustinian notion of desire. We could say that in *The Birth of Biopolitics*, Foucault argues that compared to Augustine’s idea of the split will, which locates an ambivalent and contradictory element at the centre of the human subject, ‘interest’ is an entirely one-dimensional concept. On Foucault’s reading, there are no splits and contradictions with regard to self-interest: self-interest is singular, straightforwardly knowable, and, most importantly of all, also straightforwardly pursuable. Legal constraints are thought to be already factored into one’s interest, or seen as a secondary issue in relation to knowing what one’s interest is. Consider how Foucault himself describes this notion of ‘interest’ in the 1979 lectures.

In *The Birth of Biopolitics*, Foucault associates the notion of ‘interest’ with “English empiricism” (2008, p. 271), and claims that the Anglo-Scottish empiricists of the eighteenth and nineteenth centuries constructed an entirely new model of the human being on the basis of this concept; a model which would become the archetype of what “Walras and Pareto” (ibid.) would eventually refer to as homo oeconomicus. That Foucault sharply distinguishes ‘interest’ from the Augustinian themes of the will, libido and desire becomes clear when we consider that he credits the Anglo-Scottish empiricists with having

“[introduced] — let’s say, roughly, with Locke — and doubtless for the first time in Western philosophy [...] a subject who is not so much defined by his freedom, or by the opposition of soul and body, or

by the presence of a source or core of concupiscence marked to a greater or lesser degree by the Fall or sin, but who appears in the form of a subject of individual choices which are both irreducible and non-transferable.” (ibid., p. 271 f.)

The subject’s self-interested choices, Foucault goes on to explain, are irreducible because when thinking within the framework of ‘interests,’ one may only question the motivation behind these individual choices up to a certain point. There, one reaches what could be called a fundamental layer of ostensibly ‘natural,’ or, self-evident experience (ibid., p. 272); a layer of experience that Stephen Engelmann, commenting on Jeremy Bentham’s variant of empiricism, refers to as that of the “self-evident viscosity of pleasure and pain” (Engelmann, 2003, p. 6). These self-interested choices are ‘non-transferable,’ we are told in *The Birth of Biopolitics*, because regardless of how many other sentient beings would be affected by them, “[i]n the end the principle of my choice really will be my own feeling of painful or not-painful, of pain and pleasure” (Foucault, 2008, p. 272). This “principle of an irreducible, non-transferable, atomistic individual choice which is unconditionally referred to the subject himself” (ibid.), we are told in *The Birth of Biopolitics*, “is what is called interest” (ibid.) by the Anglo-Scottish empiricists.

As for the relation between the notion of ‘interest’ and law, Foucault clarifies in his discussion that the former “constitutes something irreducible in relation to the juridical will” (ibid., p. 274). The answer we are given in *The Birth of Biopolitics* to the question of why interest cannot be reduced to the notion of the will as encountered in social contract theory is that according to the Anglo-Scottish empiricists, interest is the foundation that makes juridical rationality possible, and juridical rationality is understood as an instrument serving the pursuit of self-interest. In any case, this is what Foucault would seem to imply when he concludes from a discussion of David Hume’s work that the Anglo-Scottish empiricists see ‘interest’ as something that “overflows [...], surrounds [...],

and is the permanent condition of [...] [the] functioning” of law (Foucault, 2008, p. 274). In Foucault’s reading, Hume claims that when subjects of interest enter into a contract, “the contract [does] not [replace] a subject of interest with a subject of right” (ibid.), and so the subject of interest is ultimately always going to reason that “if [...] the contract no longer offers an interest, nothing can oblige me to continue to comply with it” (ibid.).⁵⁹ It is this line of argument that will eventually lead Foucault to assert that “the emergence of the notion of *homo æconomicus* represents a sort of political challenge to the traditional, juridical conception, whether absolutist or not, of the sovereign” (ibid., p. 293 f.), and that “the figure of *homo æconomicus* and the figure of what we could call *homo juridicus* or *homo legalis* are absolutely heterogeneous and cannot be superimposed on each other” (ibid., p. 276).

4.2.2 Interest and the Social Bond

If we accept Foucault’s proposition that the “form of will called interest” (Foucault, 2008, p. 273) does not tally with “the juridical will” (ibid.), and that therefore, by giving rise to the figure of the ‘subject of interest,’ “English empiricist philosophy” (ibid.) brought into being an anthropological model “which absolutely did not exist before” (ibid.), then perhaps we should now raise the question as to which representatives of Anglo-Scottish empiricist thought might be considered contributors to the genealogy of this subject of interest.

Foucault’s claim that John Locke is first figure in the history of Western thought to have formulated a model of the human being qua ‘subject of interest’ might perhaps be true: Locke’s *Essay Concerning Human Understanding* offers

⁵⁹The editors of *The Birth of Biopolitics* offer a suggestion as to which passage from Hume’s 1739 *Treatise of Human Nature* Foucault might be paraphrasing in the above quote at (Foucault, 2008, p. 288; n. 19). It should be noted moreover that the claim that self-interest overrides contractual obligations was already formulated in modern political philosophy prior to Hume. In Spinoza’s 1670 *Theologico-Political Treatise*, for instance, we find the claim that “a compact is only made valid by its utility, without which it becomes null and void” (Spinoza, 1891, p. 204).

us a portrait of the human subject which couples the characteristically empiricist rejection of innate ideas with the idea of self-interest as primary motivator for virtuous behaviour. “Virtue is generally approved, not because [it is] innate, but because [it is] profitable” (Locke, 1997, p. 77; sidenote), we are told there by Locke, and human beings thus contribute to “public happiness” (ibid., p. 78) not because of reverence for “the law-giver, that prescribed these rules” (ibid.), but because of “self-interest and the conveniences of this life” alone (ibid.). Yet as part of the genealogy of the subject of interest, Locke is an ambivalent figure insofar as despite the empiricist position taken up in the *Essay*, his two *Treatises of Government* are rooted in a theory of natural law. As Torrey Shanks notes, this peculiar circumstance made Peter Laslett refer to Locke in the introduction to his edition of the two *Treatises of Government* as the “’perhaps the least consistent of all the great philosophers’ for the incompatibility of his appeals to natural law in the *Two Treatises* and his thoroughgoing critique of innate ideas in the *Essay [Concerning Human Understanding]*” (Shanks, 2014, p. 13).⁶⁰

To steer clear of such ambiguity, it appears appropriate to limit our commentary on the genealogy of the subject of interest to those thinkers of the Anglo-Scottish Enlightenment in whose work we encounter explicit rejections of the ideas of natural law and the social contract. Explicit opposition to natural law and social contract is not difficult to come by in this tradition of thought: we find it, for instance, in David Hume, Adam Ferguson (whose *Essay on Civil Society*, where Ferguson expresses his opposition to the theories of the social contract, is in fact extensively discussed in *The Birth of Biopolitics*), and in the work of Jeremy Bentham. We shall now turn to two thinkers from this list, David Hume and Jeremy Bentham, to obtain an overview of the characteristic features of the empiricist theory of the emergence of political society: that political society emerges ‘naturally’; that the principle of subordination to government is

⁶⁰The reference for the quotation in the quotation is to (Laslett, 1999, p. 82).

habit; and that social life may oscillate back and forth between state of nature and state of political society.

Interest as the Constitutive Force of Society: The Rejection of Social Contract Theory in Hume and Bentham

A look at the story about the origins of political society that Hume tells in his 1739 *Treatise of Human Nature* should allow us to appreciate that proponents of the ‘inversion thesis’ in fact have ample material to draw upon in support of their perspective. If we recall our earlier discussion of Saint Augustine’s anthropology as potential progenitor of the modern subject of rights, we must acknowledge that Hume can indeed easily be read as standing the Augustinian evaluation of the human passions on its head. The point of departure of Hume’s account of the emergence of society in the *Treatise* is the contention that “the passions of lust and natural affection” (Hume, 1960, p. 486) are “the first and original principle of human society” (ibid.). It is precisely the free play of these passions, we are told by Hume, that has given rise to a gradual process of ‘cultivation,’⁶¹ in the course of which, through the generations, “custom and habit [will operate] on the tender minds of the children [and make] them sensible of the advantages which they may reap from society, as well as [fashion] them by degrees for it, by rubbing off those rough corners and untoward affections, which prevent their coalition” (ibid.; punctuation altered). What we observe in the Humean narrative of the ‘natural’ emergence of political society is a theme that would soon be relatively common in the anglophone political thought of the eighteenth and nineteenth centuries: namely, that subordination to government may simply be explained as a matter of habit: “a promise [to obey a government] [...] arises entirely from human conventions, and is invented with a view to a certain interest” (ibid., p. 550), as Hume reiterates later in the *Treatise*.

⁶¹Hume suggests that the free play of the passions will gradually lift human beings out of “their wild uncultivated state” (Hume, 1960, p. 486) and thus render them increasingly “sensible of [the] advantages [of forming a society]” (ibid.).

The same positivistic opposition to the natural law idea of a contractual obligation as the source of obedience to government can, for instance, also be found in one of Jeremy Bentham's earliest publications, the 1776 text *A Fragment on Government*. Bentham proposes in the *Fragment on Government* that “[t]he difference between the two states” (Bentham, 1891, p. 141) — that which he refers to as the “state of natural society” (ibid., p. 137) and the state of political society — “lies [...] in the habit of obedience” (ibid., p. 141), and nothing more. What Bentham adds to the position already articulated by Hume is the idea that it is equally ‘natural’ for society to constantly oscillate back and forth between natural society and political society. Bentham insists in his 1776 *Fragment* that to regard the boundary between natural society and political society as permanent and stable would fail to acknowledge the inherent dynamism of human communities (cf. ibid., pp. 144-149).

The definitions of the state of political and natural society Bentham provides in this text are relatively intuitive. The *Fragment on Government* explains that a state of natural society exists “[w]hen a number of persons are supposed to be in the habit of conversing with each other” (ibid., p. 137) without at the same time being “in the habit of paying obedience to a person, or an assemblage of persons, of a known and certain description (whom we may call governor or governors)” (ibid.); whereas a political society exists precisely “[w]hen a number of persons (whom we may style subjects) are supposed to be in the habit of paying obedience” (ibid.). Bentham, however, immediately follows up these remarks with the claim that such a habit of obedience never exists in a perfect state in any given society at any time in history. A habit of obedience, Bentham suggests in the *Fragment on Government*, may only ever occur in different degrees: “[g]overnments [...] [may] recede from [...] [or] approach to a state of nature” (ibid., p. 138; punctuation altered), and sometimes it is “difficult to say whether a habit, perfect, in the degree in which, to constitute a government, it is deemed necessary it should be perfect, does subsist or not” (ibid.).

What Bentham proposes in his *Fragment on Government* is that in a society populated by subjects who ultimately only have regard for their self-interest, social life is characterised as a perpetual cycle of political society de-constituting and re-constituting itself, where only in relatively stable phases is a clear division into governors and governed discernible. Similar to Hume, Bentham tells us that such stable phases are characterised by the circumstance that those who are governed derive a sufficient amount of utility from their subordination (ibid., p. 163). But as Bentham's remarks about the difficulty of determining whether or not in a given society enough of a habit of obedience to government exists in order to speak of the existence of a governed political society already reveal to us, there is indeed one thing that we cannot expect to discover in the *Fragment on Government*: a description of the conditions under which such a stable phase, where the governed derive enough utility from their subordination, comes about.

Interest and Order: From the Invisible Hand to Homo Œconomicus as Source of Market Equilibria

In our commentary on interest as a constitutive force of society in Hume and Bentham, we have thus been able to touch upon a problem which has been of importance not only for the Anglo-Scottish authors whose work contributed to the genealogy of the subject of interest, but also for later political economists: namely the question of how the unrestrained interaction of self-interested subjects would bring about a stable social order. We shall consider two attempts at finding answers to this question, one in the Anglo-Scottish traditions and one in late nineteenth-century neo-classical political economy, in order to finally demonstrate in the next section that it was as a part of the latter attempt to explain how a stable order emerges from the free play of interests that, at the turn of the twentieth century, Vilfredo Pareto would begin to refer to the Anglo-Scottish model of the subject of interest as a homo Œconomicus.

In his 2007 monograph *L'homme économique*, Christian Laval notes that the idea that society would emerge 'naturally' if human subjects were left to pursue their self-interest without restraint is a "common trait [trait commun]" (Laval, 2007, p. 221) amongst the intellectual representatives of the Anglo-Scottish Enlightenment: as far as he is concerned, "the sociable nature of the human being is a postulate which [at least] all of [the Scottish authors] share, even if this postulate is interpreted differently by each individual author" (ibid.; my translation). In his book chapter on *L'ordre spontané des intérêts* ('The Spontaneous Order of Interests'), Laval singles out Adam Smith as a particularly influential exponent of this school of thinkers. Perhaps Laval's spotlighting somewhat overstates the extent of Adam Smith's achievements: if we read in his chapter on *L'ordre spontané des intérêts* that Smith's intellectual 'revolution' consisted in the "radical elimination of the moral and juridical starting point in the analysis of social and economic relations and its replacement with a practical principle" (ibid., p. 219; my translation), then we can say on the basis of our above discussion of Hume and Bentham that the 'elimination' of such a 'moral-juridical' starting point is far from unique to Smith, and should probably be seen as the other side of the assumption of 'the sociable nature of the human being' that one encounters so frequently in Anglo-Scottish Enlightenment thought.

If David Hume describes political society as the product of the habitual obedience of children to parents and subjects to a government, passed on and refined from generation to generation, and if the early Bentham defines political society in terms of a habitual obedience of subjects to government which comes and goes in the course of history, then these two figures consider their descriptions to be positive statements of fact, rather than moral tales. What Laval rightly suggests, however, is that Smith was arguably the first thinker to have made an argument for the moral goodness of the free play of self-interests without making a moral

judgement about the ends of the individual self-interests involved in this free play (ibid., p. 220 ff.).⁶²

It is in the broader context of this attempt at “[deducing] the objective source of morality from a mere description of the passions and their dynamics” (ibid., p. 222; my translation) that Smith’s ‘invisible hand’ provides us with an illustration of how the free play of self-interests produces a stable and desirable social order. In light of our suggestion that the ‘elimination,’ as Laval puts it, of the ‘juridico-moral’ starting point of analysis has led to a descriptive style of analysis amongst the Anglo-Scottish empiricists, it is fairly interesting to note that Laval’s discussion in his book chapter on *L’ordre spontané des intérêts* suggests that with the ‘invisible hand,’ Smith produced first and foremost a moral parable; a thoroughly metaphorical answer to the question of why the unrestrained pursuit of self-interest leads to a stable and desirable social order, a metaphor that is precisely not a detailed description of a social or economic mechanism.⁶³ We could in fact contend with Laval that the conceptual content of Smith’s ‘invisible hand’-hypothesis exhausts itself in the assertion that “[b]y seeking one’s own interest, one unknowingly pursues the interest of others — of all others, in fact — because one brings them the goods that they lack” (ibid., p. 223; my translation).

While Adam Smith has provided us with a memorable metaphor but only a rudimentary explanation in response to the question of how a stable order can emerge from the free play of interests, this question would one hundred years after Smith’s lifetime once more assume a central role in politico-economic thought

⁶²This is a frequently encountered assessment of Adam Smith’s achievements as a moral philosopher. Reiner Manstetten notes in *Das Menschenbild der Ökonomie* (‘The Concept of the Human Being in Economics’) that “Smith is [commonly] credited with recognising and illustrating the economic import and moral value [... stittlichen Wert] of self-interest” (Manstetten, 2000, p. 16; my translation).

⁶³Laval highlights moreover that in the entire Smithian oeuvre, the term ‘invisible hand’ appears only twice: first in *The Theory of Moral Sentiments* in a passage in which Smith justifies landlordism (Laval, 2007, p. 223), and later in *The Wealth of Nations* as a justification for his ‘laissez-faire’ conviction that “the capitalist should be at liberty to use his capital as he sees fit” (ibid.; my translation).

with the emergence of the ‘marginalist-,’ or, ‘neo-classical’ tradition in the 1870s. The stable order with which the neo-classical economists were concerned, however, was not that of society as such, but that of the exchange market.

As Simon Clarke tells us in his *Marx, Marginalism and Modern Sociology*, a central aspect of the neo-classical approach — whose first proponents he identifies as “[William] Jevons in England, [Léon] Walras in Switzerland and [Carl] Menger in Austria” (Clarke, 1991, p. 183) — is that it “[derives] the rationality of capitalism from the subjective rationality of the economic actor” (ibid., p. 9) while simultaneously performing a complete “abstraction of the economic actor from the social relations of production”⁶⁴ (ibid.). The theoretical programme of neo-classical political economy is summarised by Clarke as a programme that explores “how prices emerge on the basis of [...] elementary exchanges” (ibid., p. 190) between “isolated individual[s] making subjective private decisions about the management of [their] scarce resources” (ibid., p. 195) in order to draw conclusions on the basis of these considerations as to how supply and demand achieve equilibrium on exchange markets (ibid., pp. 195-198). With reference to this neo-classical effort at formulating a general theory of market equilibrium, Reiner Manstetten writes in *Das Menschenbild der Ökonomie* (‘The Concept of the Human Being in Economics’) that it “claims to scientifically substantiate the [Smithian] invisible-hand hypothesis by proving that in an ideal market economy, a [maximally efficient allocation of resources] arises automatically when the utility of individuals is maximised” (Manstetten, 2000, p. 163; my translation). Manstetten in fact argues that the theoretical work of the neo-classical political economists consisted mainly in adjusting their model of the economic actor until it could prove what it was supposed to prove. According to Manstetten, the theory of general equilibrium is essentially an answer to the question: “[h]ow should one

⁶⁴Clarke notes, however, that although the marginalists’ would insist that their theory is based on an entirely abstract model of the economic actor, they in fact never ceased to let “the liberal theory of private property, the naturalistic conception of production, and the rationalistic conception of exchange” (Clarke, 1991, p. 9) influence their conception of their model.

design the *homines oeconomici* whose interaction unintentionally brings about a state which is economically optimal in some sense [...]?” (ibid., p. 166; my translation).

Homo Œconomicus in Vilfredo Pareto’s Work: A Useful Abstraction

It would be in the work of Vilfredo Pareto, who “succeeded [Léon] Walras in 1893 on the chair of Political Economy at the University of Lausanne” (Backhaus & Maks, 2006, p. 1), that the model of the human being which Foucault identifies in Anglo-Scottish empiricist thought and refers to as the subject of ‘interest’ would eventually come to be called ‘homo Œconomicus.’ That Pareto’s homo Œconomicus is the subject driven by self-interest that Foucault identifies in Anglo-Scottish empiricism becomes apparent relatively quickly, and Pareto leaves no doubt either that, just as Manstetten suggests in the passage we quoted above, he does indeed place this figure of homo Œconomicus at the centre of his theory. In a letter he sent in 1893 to fellow political economist Maffeo Pantaleoni, Pareto delineates his politico-economic theory as follows: the theory of “[p]ure economics studies the homo Œconomicus who is guided solely by the desire to obtain the maximum utility with the minimum effort” (Pareto, 1962, p. 386; my translation), while his theory of “[a]ppplied economics adds to this main quality of homo Œconomicus” — that of maximising utility — “all the other qualities we know” (ibid., p. 386 f.; my translation). Pareto furthermore clarifies at the beginning of the first volume of his *Cours d’économie politique* (‘Course in Political Economy’), first published in 1896, that the homo Œconomicus he has in mind is indeed pursuing his or her self-interest in the sense of making those ‘irreducible’ and ‘non-transferrable’ choices that Foucault describes in *The Birth of Biopolitics*. His *Cours* begins by explaining that in his work, he wishes to replace the term *utilité* (‘utility’) with the neologism *ophélimité* (‘ophelimity,’ from

the Greek *ωφελιμος*)⁶⁵ in order to rhetorically distance himself from the moral opposition between ‘useful’ and ‘harmful’ (Pareto, 1896, p. 3). Pareto adds to this the explanation that what his homo oeconomicus pursues is the satisfaction of entirely subjective needs, regardless of whether they are “legitimate or not [légitime ou non]” (ibid.), or indeed harmful to oneself.⁶⁶

We should in fact be able to claim that by putting the question of the subject of economic activity at the centre of his reflections, Pareto helped set the stage for a theme which would become central to neo-liberal politico-economic thought and governmental practise in the course of the twentieth century: that of homo oeconomicus as the ‘entrepreneur’ of him or herself. Somewhat later in the first volume of the *Cours d’économie politique*, Pareto indicates that the “homo oeconomicus” (Pareto, 1896, p. 70) at the centre of his pure theory of economics is always simultaneously engaged in “capitalisation, production, and consumption” (ibid.; my translation), since “[e]ach individual sells the use of the capital he or she possess (the use of his or her own personal capital is labour), buys what he or she consumes, and saves the difference between the two” (ibid.; my translation). Immediately after, Pareto adds the remark that although all homines oeconomici therefore “try to solve the equations of exchange, some of these individuals assume, *at least ideally*, another quality: that of being entrepreneurs” (ibid.; my translation; my emphasis).⁶⁷ Although Pareto was open about the circumstance

⁶⁵Pareto’s substitution of ‘ophelimity’ for ‘utility’ might not quite express the nuance that he would like it to, given that the Greek *ωφελιμος* after all appears to be most commonly translated as ‘beneficial,’ ‘profitable,’ or ‘useful’ — precisely those meanings that Pareto attempts to avoid.

⁶⁶This last point is made in his 1906 *Manual of Political Economy*, where Pareto illustrates his notion of ‘ophelimity’ qua *economic* usefulness by way of the example of morphine: “morphine is not useful, in the ordinary sense of the word;” we read there, “on the contrary it is harmful to the addict; on the other hand morphine is economically useful to the addict, for it satisfies one of his wants, however unhealthy” (Pareto, 2014, p. 78).

⁶⁷Pareto goes on to offer a technical definition of the entrepreneur, and finally encapsulates this definition in a metaphor worth noting. “Entrepreneurs are those people,” he claims, “who transform savings into capital, and capital services [les services des capitaux; i.e., capital income] into directly consumable economic goods” (Pareto, 1896, p. 70; my translation). Following some further explanation, Pareto eventually reaches the conclusion that “the entrepreneur under consideration by us looks like a squirrel in a rotating cage. The cage rotates to the extent that the squirrel runs upwards” (ibid.; my translation).

that he considered his figure of homo oeconomicus an abstraction far removed from everyday life, that did not prevent it from being put to practical use. Simon Clarke notes in this context that neo-classical economists did see in their politico-economic theories “an ideal world against which reality could be measured and against which proposed reforms could be evaluated” (Clarke, 1991, p. 203), and so would often resort to the argument in defence of their theories that if “the real world does not accord with the abstractions of marginalism it is not the economic theory that is in error, but the real world that is in need of reform” (ibid., p. 203 f.).

4.2.3 Homo Oeconomicus and Authority

Our above considerations should now allow us to comment on the question of how the model of homo oeconomicus could be thought of as participating in the social practise of authority. What should have become clear is that a subject of government who has internalised and performs the role of homo oeconomicus will not participate in interpersonal practises of authority: we have seen that homo oeconomicus is a figure which is thought of as existing independently of, and prior to any social contract, and driven by an interest which, as Pareto is careful to stress, is completely subjective and devoid of any considerations whatsoever as to whether it is “conducive to the development and thriving [prospérité] of an individual, of a race, or of the entire human species” (Pareto, 1896, p. 3; my translation).

It would, however, be equally wrong to conclude that homines oeconomici therefore do not participate in the social practise of authority at all. As Foucault’s analysis of the concept of interest makes clear, homo oeconomicus qua subject of interest has a permanent relation to an instance that provides him or her with binding advice and validates his or her behaviour. We illustrated the principle upon which the subject of interest makes choices by way of reference

to Stephen Engelmann’s remark about the “self-evident viscerality of pleasure and pain” (Engelmann, 2003, p. 6). Engelmann’s remark itself refers to Jeremy Bentham’s principle of utility, and if we take a look at the first lines of the eponymous chapter from Bentham’s 1789 *Principles of Morality and Legislation*, it should become clear to us that the visceral experience of pleasure and pain can well be understood to act as authority unto homo oeconomicus qua subject of interest. Bentham writes that “[n]ature has placed man under the dominion of two sovereign masters, pain and pleasure. To them alone it is incumbent to show us what we ought to do, and to determine what we shall do” (Bentham, 2000, p. 14).

It should be worthwhile to mention in relation to the idea that pleasure and pain may act as sources of authoritative ‘advice’ and validation that Alfred Fey, in his 1936 study of the figure of homo oeconomicus in classical political economy, makes an indirect reference (Fey, 1936, p. 20) to Edmund Husserl’s distinction between a “*Verstandesmoral*” (a ‘morality of reason’) (Husserl, 1988, p. 251), which Husserl associates with philosophical rationalism (ibid., pp. 407-411), and a “*Gefühlsmoral*” (a ‘morality of feeling’) (ibid., p. 251), which Husserl links to empiricism (ibid., pp. 384-390). Fey suggests in passing that the model of homo oeconomicus emerged within a tradition of thought predicated on precisely such a ‘morality of feeling.’ We should be able to add here that insofar as the model of homo oeconomicus can be associated with the maxim that “all valuation is merely a matter of feeling” (ibid., p. 62; my translation), then this is the principle whereby homo oeconomicus is connected to what we have previously, with Löwenthal and Horkheimer, referred to as the impersonal practise of authority mediated by the capitalist market. If the price mechanism of the capitalist market is to regulate society, entirely in the spirit of Friedrich Hayek, then this society will ideally consist of subjects who do not relate in any rational manner to the data produced by this market, but who, as Max Horkheimer suggests in his essay contribution to the 1936 *Studies on Authority and the Family*, consider these

data “immediate or natural facts” (Horkheimer, 1972, p. 89), which is to say, as empirical givens, “and [...] [adapt] themselves to such facts” (ibid.) according to their affective response.

The manner in which these two anthropological models, that of homo juridicus and that of homo oeconomicus, are implied in the ‘authoritarian moment’ in contemporary Europe will now be examined in Chapter Five and the Conclusion of this dissertation.

Chapter 5

Ill-Resolved Ambiguities: The Genealogy of Europe's Authori- tarian Moment, c. 1967–c. 2005

In this final chapter of the dissertation, we return to the historical narrative of Chapter One and continue it from the turn of the 1970s, where we left off, into the early 2000s. While our focus in Chapter One has been on the institutional development of the supranational governmental framework that emerged with the Coal and Steel Community in the 1950s, we now concern ourselves with the governmental practises that this institutional framework gave rise to. In so doing, we incorporate the observations around the distinctions between neo-liberalism and historically earlier forms of liberal government, between interpersonal and impersonal authority, and between *homo juridicus* and *homo oeconomicus* from our intermediate chapters into our continuation of the narrative we began in Chapter One. This chapter closes on a discussion of a series of events from the 1990s and early 2000s that we consider as marking the beginning of the ‘authoritarian moment’ in early twenty-first century Europe. The historically most recent event we discuss in this connection is the failure to ratify the Treaty establishing a Constitution for Europe in 2005.

Applying the ideas developed in Chapters Two, Three, and Four to the analysis of the supranational diffusion of neo-liberal governmentality in Europe begun in Chapter One, we first demonstrate that the government conducted by and through the institutional framework of the European Communities from the turn of the 1970s up until the conclusion of the Maastricht Treaty in 1992 can be read as a case study in the displacement of social liberalism by neo-liberal governmental practises, and of interpersonal authority by the impersonal ‘authority of the market.’ We then focus our attention on the figure of the ‘Union citizen’ as introduced by the 1992 Maastricht Treaty. This figure is presented as an ‘unstable mixture’ of homo juridicus and homo oeconomicus, and the broader historical context surrounding the introduction of the figure of the Union citizen in the 1990s and early 2000s is discussed. This discussion then transitions seamlessly into the Conclusion of this dissertation. The final part of this chapter and the Conclusion form a connected narrative: there, we argue that although the combination of homo juridicus and homo oeconomicus embodied by the figure of the Union citizen ultimately presented an obstacle to the further development of supranational government in Europe, the successful application of the same ‘unstable mixture’ of homo juridicus and homo oeconomicus in national politics would eventually become the defining feature of the ‘authoritarian moment’ in early twenty-first century Europe.

5.1 Opposites Repel, Opposites Attract: A Prefatory Note on the Concept of ‘Heterogeneity’ to Which We Subscribe

Before we commence with the argument of this chapter, however, a clarification on Foucault’s postulate of the structural heterogeneity of the anthropological models of homo juridicus and homo oeconomicus is required. How exactly is this

postulate to be interpreted? One possible interpretation of this claim is that it is categorically impossible to consolidate these two models, and so whenever they occur together in a specific socio-historical context, one will necessarily drive the other away. This, in fact, might be the most intuitive interpretation of Foucault's claim from *The Birth of Biopolitics* that homo oeconomicus "represents a sort of political challenge to the traditional, juridical conception [...] of the sovereign" (Foucault, 2008, p. 293) — a remark that is but one particular expression of his general conviction in *The Birth of Biopolitics* that homo juridicus and homo oeconomicus "have an essentially different relationship with political power" (ibid., p. 276).

Our discussion of the practical operation of supranational government in this chapter seeks to demonstrate that historically speaking, this was indeed how these two anthropological models would relate to one another for most of the time during the introduction of neo-liberal governmental practises in Europe. As our synopsis above already revealed, however, we also argue in this chapter that in the course of the development of supranational government in Europe, there would eventually be an attempt at combining these two figures. It thus seems appropriate to preface this chapter with a note of clarification that this claim of ours does not contradict Foucault's understanding of 'heterogeneity' as presented in *The Birth of Biopolitics*.

What needs to be emphasised in this context is that when Foucault insists in his 1979 lectures at the Collège that "*homo oeconomicus* and the figure of what we could call *homo juridicus* or *homo legalis* are absolutely heterogeneous and cannot be superimposed on each other" (ibid.), he does not seek to rule out the possibility of convergence between these two models *per se*. Foucault's concern would rather seem to be with the method of any such convergence: his suggestion, we may argue, is that no attempt at joining these two different models of the human being could ever lead to a dialectical resolution of the structural dichotomy that obtains between them (cf. ibid., p. 42 ff.). It could thus be held further

that as far as Foucault is concerned, there can never be a stable synthesis of these two models, and so regardless of how one ends up combining homo juridicus and homo oeconomicus, this combination, theoretically, must always fall apart again at some point.

However, that it is in principle still possible to join homo juridicus and homo oeconomicus into a singular figure is something that Foucault suggests fairly clearly in two different sections of the published version of his 1979 *The Birth of Biopolitics* lectures: in a marginal remark near the end of the second lecture of this course, and in a passage from his manuscript for the first lecture which he did not elaborate orally. We are told in these two passages that “heterogeneity is never a principle of exclusion; it never prevents coexistence, conjunction, or connection” (ibid., p. 42), even though such coexistences and conjunctions are always disharmonious, characterised by “tensions, frictions, mutual incompatibilities, successful or failed adjustments, unstable mixtures” (ibid., p. 21; fn. *).⁶⁸ The figure of the Union citizen, as we shall argue, is precisely such an ‘unstable mixture.’

5.2 Narrowing the Perspective: The Argument of this Chapter

With these thoughts in mind, let us now continue the historical narrative from the first chapter of this dissertation. The narrative of Chapter One opened with a discussion of the authoritarian liberalism of the projected ‘new state’ in the early 1930s and continued up until the merger of the overlapping institutional arrangements of the European Coal and Steel Community, the European Economic Community, and Euratom with the entry into force of the Treaty of Brussels in 1967. We argued in Chapter One that the institutional arrangement of the

⁶⁸Foucault’s proposals could be seen as bearing a vague resemblance to the Deleuzo-Guattarian notion of the “disjunctive synthesis” (Deleuze & Guattari, 2003, pp. 75-78 passim).

supranational framework of government that emerged with the Coal and Steel community in the 1950s parallels that of the projected ‘new state’ in terms of disregard for popular elections, marginal status of legislative institutions, and orientation towards an executive, decisionistic style of government. The aim of this chapter is to provide a commentary on the concrete practises of government enabled by the institutional arrangement of this supranational framework of government. For this purpose, we shift the focus from the structure of our supranational institutional framework⁶⁹ to the subject of supranational governmental practises. With subjectivation to supranational government now at the centre of our narrative, we continue our genealogy of the ‘authoritarian moment’ in early twenty-first century Europe up until the aftermath of the conclusion of the Maastricht Treaty in 1992 and the eventual failure to ratify the Constitutional Treaty in 2005. Our commentary gives consideration to both, the historical development and the function of the subject of supranational government.

Our argument in this chapter begins with a discussion of Dion Kramer’s 2017 essay *From Worker to Self-Entrepreneur*; an essay commenting on the historical development of the subject of supranational government in Europe from the time of the Coal and Steel Community of the 1950s until the Maastricht Treaty of 1992. This is to clarify our suggestion from Chapter One that Kramer’s essay can be drawn upon to illustrate the persistently neo-liberal character of supranational government in Europe in the light of Kramer’s own association of early supranational government with a ‘classical liberalism.’ Following these clarifications

⁶⁹We assume that no major reforms of the institutional structure of European Communities took place between approximately 1967 and 1992, and so the predominantly executive character of supranational government persisted the entire time. We are certainly not the first to make such a suggestion. In support of this claim, we can for instance refer to a 1998 study by Dimitris Chrysochoou, Stelios Stavridis, and Michael Tsinisizelis of the so-called ‘democratic deficit’ of the European Union. The authors define this democratic deficit as “the inadequacy of parliamentary institutions, whether national or European, to hold the executive branches of the EU accountable for their actions, as [well as] [...] the absence of a transnational *demos*, capable of directing its democratic claims to, and via, the central institutions” (Chrysochoou, Stavridis, & Tsinisizelis, 1998, p. 110). The authors reach the conclusion that still in 1998, “if one takes a holistic approach, it is possible to argue that the combined effect of all [...] different types of ‘democratic deficits’ [...] make the whole question of democratic accountability in the EU rather precarious” (ibid., p. 126).

ory remarks, we let Kramer draw our attention to what we consider an important event in the history of supranational government in Europe: the moment in the late 1960s when the subject of supranational government would become an object of active political and academic reflection. We discuss this historical moment, and contend that a distinctive feature of these active academic and political reflection that began in the late 1960s is that they portray the subject of supranational government in a fundamentally ambivalent manner. These reflections present the subject of supranational government as an economic actor who operates in a dedicated, economic jurisdiction beyond the nation-state; and yet at the same time, the ability of this subject to pursue its economic interests beyond national jurisdiction is continuously spoken about in social contractarian language, as a ‘civic’ right.

The next part of our commentary on the subject of supranational government considers what could be called its ‘governmental’ function. Our main point of reference here is Hans-Peter Ipsen’s 1972 treatise *Europäisches Gemeinschaftsrecht* (‘European Community Law’). We introduce Ipsen’s work as a paradigmatic example of the academic side of these active reflections on the subject of supranational government, whose late-1960s emergence we outlined earlier with recourse to Dion Kramer’s study. In this context, we propose that Ipsen’s name for this subject, ‘market citizen,’ perfectly captures the ambivalent character of the discourse on the subject of supranational government; and we argue that Ipsen’s *Gemeinschaftsrecht* indicates moreover how being governed as a ‘market citizen’ amounts in practise to being governed as homo oeconomicus, a self-interested economic actor. To expand our discussion of the practical identity of ‘market citizen’ and homo oeconomicus, we then take up Ipsen’s reference to a challenge by the European Communities to a ‘dirigiste’ tax policy implemented by the West German government in the late 1960s; a policy which sought to divert freight traffic from road to rail. We explain that this policy was challenged by the European Communities because it was seen as amounting to ‘anti-competitive’ economic

steering, and then discuss the proceedings of this challenge in order to illustrate two related processes. First, to show how governmental practises on the level of the nation-state that address their subjects as *homines juridici* were displaced by supranational governmental practises that call upon their subjects to perform the role of *homo oeconomicus*. Second, as an example of the displacement of interpersonal authority by impersonal, ‘market-centred’ authority practises.

In bringing the argument of this chapter to a close, we re-centre our perspective on the historical development of the subject of supranational government. Our main concern in the final stretch of this chapter is the figure of the Union citizen as introduced by the Maastricht Treaty of 1992. It is argued that the pre-history of the introduction of this figure begins with an early 1980s initiative by the European Commission to ‘complete’ the internal market of the European Communities. With reference to communications by the European Commission, we demonstrate that this initiative also bears the mark of the ambivalence between function and representation which we claim is a defining feature of the active academic and political reflection about the subject of supranational government.

We hold that this ambivalence is reflected in the circumstance that although the Commission proposed to give the subject of supranational government an ‘image’ closer to that of the citizens of nation-states by decoupling pre-existing freedom of movement regulations from the requirement to be in active employment, the Commission would justify this measure in economic terms: as a necessity for improving the functioning of the common market. Following this, we discuss the figure of the Union citizen itself. As far as the formal characteristics of this figure are concerned, our argument is that it can be described as a conglomeration composed of a minimalistic, ‘hollowed out’ variety of *homo juridicus*, qua liberal subject of rights, and the model of the ‘market citizen’ that hitherto functioned as the subject of supranational government. Apropos the broader historical significance of the figure of the Union citizen, we suggest that the conjunction of

homo juridicus and homo oeconomicus embodied by this figure constitutes one possible end-point of the development of neo-liberal governmental rationality.

As a bridge to the Conclusion of this dissertation, we finally consider the broader historical context surrounding the 1992 conclusion of the Maastricht Treaty and comment on the stalling of the process of European integration post-Maastricht. These developments are presented as marking the beginning of the ‘authoritarian moment.’

5.3 The Market Citizen and The Union Citizen: Defining the Subject of Neo-Liberal Govern- ment in Europe, 1967-1992

This section outlines the contribution of the supranational institutions of the European Communities to the proliferation of neo-liberal governmentality from the late 1960s onwards. Let us begin by reiterating once more the conceptual and historical presuppositions guiding this outline. We contend that, generally, the historical ascent of neo-liberal governmental practises, that is, practises of government which call upon their subjects as *homines oeconomici*, has taken place through a gradual displacement of social liberal practises of government, which address their subjects as *homines juridici*. Our basic assumption is that there exist discrete situations in which individuals are called upon to act as subjects of government. The further the diffusion of neo-liberal governmentalities progresses historically, the more often will individuals be asked to play the role of *homo oeconomicus* in these interpellative situations; and conversely, situations in which one is addressed on the basis of the model of *homo juridicus* will become increasingly rare.

In Europe, this process would not exclusively be driven by supranational institutions of government. As has already been hinted at in the closing remarks of Chapter One, in the wake of the energy crises of the 1970s, national policy would also increasingly play its part in the displacement of social liberalism through neo-liberal governmental practises.⁷⁰ If one wishes to obtain a general overview of the process of ‘neo-liberalisation’ in Europe, however, our focus on the contribution of supranational institutions to this process offers a decisive advantage: the supranational ‘method,’ as it were, for displacing governmental practises that address their subjects as *homines juridici* found more or less uniform application in all member states of the European Communities.

5.3.1 The Market Citizen: *Homo Oeconomicus* by Another Name

Chapter One of this dissertation made reference to Dion Kramer’s 2017 essay *From Worker to Self-Entrepreneur*, an essay tracing the development of the subject of supranational government from the 1950s into the 1990s, to support the argument that the governmental practises conducted by and through the supranational framework that eventually evolved into the European Communities were informed by neo-liberal rationality from the outset. We now return to Kramer’s 2017 essay to illustrate how the subject of supranational government became an object of active political and academic reflection near the end of the 1960s.

⁷⁰One example of how such processes of displacement also occurred as a consequence of developments within nation-states can be found in François Denord’s 2007 *Néo-libéralisme, version française* (‘Neo-Liberalism: The French Version’). Denord explains that the “medium- and long-term” (Denord, 2007, p. 240; my translation) economic planning policies of the immediate post-war period in France, which some economic historians in fact already label ‘neo-liberal’ (cf. *ibid.*, p. 239), “[lost their credibility] under the impact of the oil crises of the 1970s” (*ibid.*, p. 240; my translation) and were subsequently challenged both by “a left that dreamed of ‘changing life’ ” (*ibid.*; my translation) and “a more radical liberalism, partly inspired by Anglo-Saxon experiences, which flourished in the business world and in universities” (*ibid.*; my translation). As far as Denord is concerned, these challenges ultimately resulted in the triumph of those who advocated for the extension of the “the cost-benefit calculation” (*ibid.*; p. 288; my translation) associated with the “model of *homo oeconomicus* [to all areas of life: costs and benefits of children, marriage, unemployment, crime, et cetera]” (*ibid.*; my translation).

As Kramer’s work is now going to play a somewhat more important role for the development of our argument, we should, however, first take note of the circumstance that Kramer’s understanding of what constitutes neo-liberal government is slightly different from the one that we promote in this dissertation. In *From Worker to Self-Entrepreneur*, he draws a distinction between two different models of the subject of supranational government: an early subject of supranational government qua wage-labourer, and the Union citizen as introduced by the 1992 Maastricht Treaty. A central argument of Kramer’s essay is that one can distinguish between these two figures on the grounds that the former is associated with what he describes as “classical” (Kramer, 2017, p. 172) politico-economic rationality, whereas the latter is a product of “neoliberal economics” (ibid.). Concerning the follow-on question of how ‘classical’ liberalism is different from ‘neo-liberalism,’ Kramer tells us that what distinguishes them is that the first is active and the second passive with regard to its subjects: neo-liberalism “[targets] [...] the individual him/herself as a responsible, active bearer of economic capability or ‘human capital’ ” (ibid., p. 173), he writes, whereas ‘classical’ liberalism casts “the worker as a relatively passive subject tied to external economic mechanisms” (ibid.).

If we wish to use Kramer’s study of the subject of supranational government for our purposes, we thus need to put aside his own active/passive distinction between ‘classical’ and neo-liberalism, and substitute for it the homo œconomicus/juridicus distinction we elaborated previously. Interestingly, if we read Kramer’s essay consistently through our homo œconomicus/juridicus schema for telling neo-liberalism apart from earlier forms of liberal government, Kramer’s account of debates amongst supranational policymakers around freedom of movement — debates that began in the mid-1950s and eventually led to the 1968 introduction of a first comprehensive, supranational freedom of movement regime — in fact offers us a good example of how these policymakers initially conceptualised the ‘worker’ as precisely the homo œconomicus that we already encountered

in our section on Vilfredo Pareto in Chapter Four. In the early years of supranational government in Europe, we are told by Kramer, freedom of movement was primarily discussed in technical terms, as part of the broader problematic of balancing supply and demand on a supranational labour market (ibid., p. 178 ff.). As he puts it himself, workers were in this context seen primarily as “production factor[s] which [respond] to the economic mechanisms of demand and supply in the European coal and steel market” (ibid., p. 180).⁷¹

Kramer furthermore argues in *From Worker to Self-Entrepreneur* that in the course of the 1960s, the question of “free movement rights” (ibid., p. 180) for workers in the European Communities would cease to be framed in technical terms and increasingly be “conceived of in terms of [...] individual freedom” (ibid.). Kramer’s clearest examples for this process stem from that period the late 1960s when the first comprehensive regulatory framework for the free movement of workers in the European Communities, which we already alluded to above, eventually came into operation. This framework emerged, he reminds us, with the “[adoption of] Regulation 1612/68 and Directive 68/360” (ibid., p. 180) in 1968, which granted workers a general “right to accept employment and work in another Member State” (Council Regulation EEC 1612/68, p. 476; quoted in: Kramer, 2017, p. 180). He links these developments to the appearance of the theme of ‘individual freedom’ because of the wording of Regulation 1612/68, which describes freedom of movement as “a fundamental right of workers and their families” (Council Regulation EEC 1612/68, p. 475; quoted in: Kramer, 2017, p. 180). Apart from the language used in Regulation 1612/68, Kramer moreover emphasises the circumstance in the context of the adoption of these instruments in 1968, Lionello Levi-Sandri, then Vice-President of the European

⁷¹With regard to Kramer’s distinction between neo-liberalism and classical liberalism more generally, we can say that there no doubt emerged something like an ideology of the self-entrepreneur as neo-liberal governmentalities became more widespread, in which the dismantling of social welfare and employment rights would be portrayed as creating new opportunities for individuals to ‘actively’ shape their own destinies. But the fundamental presupposition of this entrepreneurial variety of neo-liberal government, too, is that the human being is *essentially* an economic actor who responds to economic stimuli.

Commission, would describe the new regulations around freedom of movement as “ ‘an incipient form — still embryonic and imperfect — of European citizenship’ ” (Levi-Sandri, 1968, p. 5; quoted in: Kramer, 2017, p. 181).

To explain what makes these developments so important for our own argument, perhaps we should now avail ourselves of the categories of the ‘active’ and the ‘passive’ as well. Seen through the lens of this dyad, we can say that these developments matter to us insofar as they mark the historical moment when the subject of supranational governmental practises would cease to be merely *passively* reflected upon as a production factor, and instead became an object of *active* and *conscious* reflection; recognised as a *distinctive* element of the governmental practises conducted by and through supranational institutions in Europe. Besides this, it also deserves attention in this context that Lionello Levi-Sandri’s remarks already offer an example of how this *active* reflection about the subject of supranational government would make use of social contractarian language. This ‘contractarian’ rhetoric would remain a constant feature of the discourse around the subject of supranational government from this late-1960s moment onwards. Whenever the question arose as to whom supranational government is actually directed at, commentators would from now on frequently insist that they are directed at citizens of a polity yet to be fully established. The argument would be that the ability to pursue one’s economic interests beyond national jurisdictions, which supranational government affords to its subjects, inaugurates a novel type of citizenship.

It would be a mistake, however, to think that as a result of these developments, matters pertaining to the supranational government of individuals and groups would cease to be spoken about in terms of its purely economic purposes. In the further course of this chapter, we seek to substantiate the claim that the late-1960s commencement of conscious reflection about the subject of supranational government would in the end give rise to the ambiguous coexistence of two distinctive discourses: descriptions of supranational government as a govern-

ment of economic actors would henceforth exist side-by-side with a discourse of ‘citizenship’ and ‘civic’ rights; a discourse which would keep implying that the economic activity enabled by supranational government contains the kernel of a new political community. This ambivalence, we contend moreover, is what the introduction of the figure of the Union citizen with the 1992 Maastricht Treaty eventually attempted to resolve.

The figure of the Union citizen moves to the centre of our attention later in this chapter section. First we shall illustrate that initially, this rhetorical ambivalence had no practical consequences: in practise, supranational government would continue to treat its subjects as *homines oeconomici*. To develop this claim, the section below turns to the work of the jurist Hans-Peter Ipsen. As we shall see, Ipsen makes for a good interlocutor insofar as he directs our attention to a concrete example of how post-1968 supranational government practically continued to address its subjects as economic actors; and insofar as he coined a near perfect signifier to encapsulate the rhetorical ambiguity surrounding the active reflection on the subject of supranational government. Ipsen would refer to this subject by way of the delightfully contradictory term of *Marktbürger* — ‘market citizen.’

The Market Citizen in the Work of Hans-Peter Ipsen

In his trilogy of essays on the European Union published in the *London Review of Books* in late 2020, Perry Anderson describes Hans-Peter Ipsen somewhat uncharitably but certainly not inaccurately as “a jurist from Hamburg who joined the SA in 1933 and the NSDAP in 1937, becoming a full professor at the age of 32 [in 1939],” and whose “better than average Nazi career was [eventually] capped with postwar honours as he became the doyen of European law, in 1972 authoring a monumental summum on the subject” (Anderson, 2020). In this ‘monumental summum,’ entitled *Europäisches Gemeinschaftsrecht* (‘European

Community Law'), we encounter a relatively comprehensive discussion of this figure of the 'market citizen' that Ipsen believes to be the subject of government of the European Communities.

Ipsen's treatise begins by delineating the "scope and object [Bereich und Gegenstand]" (Ipsen, 1972, p. 10) of the law of the European Communities. He explains there that although the European Communities are "*economic communities* [*Wirtschaftsgemeinschaften*]" (ibid.) and European Community law has therefore essentially "*the economy as its object*" (ibid., p. 11; my translation), the "norms [of Community law ultimately] *extend beyond this object*" (ibid.; my translation). It is in the course of this general outline that Ipsen mentions the figure of the 'market citizen' for the first time in his book. As he continues his outline of Community law, Ipsen tells us that "[w]here Community law circumscribes the rights and obligations of the market citizen [... des Marktbürgers], it also speaks in the manner of [in der Art von] regulations pertaining to the fundamental rights and obligations of individuals encountered in constitutional law" (ibid.; my translation). While Ipsen initially leaves us in the dark as to what these rights and obligations might be, he refers us later in his book to Article 48, Section 3 of the Treaty establishing the European Economic Community from 1957 as one example of how "Community law itself also confers [positive] rights [on the market citizen]" (ibid., p. 742; my translation). The specific 'fundamental right' at issue here, Ipsen tells us, is the "right of the worker to take up an employment" (ibid.; my translation).

We should thus be able to claim right away that Ipsen's work constitutes another example of the emergence of the theme of 'civic rights' in the discourse around the subject of supranational government near the end of the 1960s, which we commented upon with recourse to Dion Kramer's work in the previous section of this chapter. However, Ipsen's own description of the 'market citizen' in *Europäisches Gemeinschaftsrecht* equally seems to offer evidence in support of our contention that recourse to contractarian rhetoric such as that of 'fundamental

rights’ in the discourse on the subject of supranational government have a purely supplementary, ornamental character devoid of practical relevance; or, to put it in words closer to Ipsen’s own, that such rhetoric constitutes an actual case of ‘speaking in the manner of,’ from which we cannot derive any substantial insights into the actual practise of government conducted by and through the institutions of the European Communities. Commenting on the Treaty of Paris as well as on the Treaties of Rome, Ipsen suggests that the supranational communities to which these international treaties have given rise were never designed to govern their subjects on the basis of the liberal model of *homo juridicus* qua subject of rights. He tells us as much when he writes that “the problem [das Problem]” (ibid., p. 86) to which the foundational treaties of the Communities respond is that of

“creating a new autonomous public organisation [öffentliche Hoheitsorganisation] in the form of an economic community *without creating a political organisation, with due respect for generally accepted principles of national constitutions and the rule of law; without anticipating political communitarisation* [Vergemeinschaftung], *but also without precluding it definitively*” (ibid.; my translation; my emphasis)

While these remarks already indicate that the emergence of the discourse on ‘citizenship’ and ‘civic rights’ did not alter the circumstance that supranational government addresses its subjects as *homines oeconomici*, the passage from Ipsen’s book from which we took the above quotation moreover offers an explicit commentary on how the ‘market citizen’ of the European Communities is to be understood in this context. Following on immediately from the excerpt quoted above, Ipsen suggests that the foundational treaties of the European Communities therefore effectively define the ‘market citizen’ as “the individual [den einzelnen] (person and corporation [Individuum und Unternehmen]) in their capacity of a participant in the [common market⁷²]” (ibid.; my translation). He goes on

⁷²Ipsen writes “as participant in the economy [... als Teilnehmer der Wirtschaft],” but he clarifies at a later point in *Europäisches Gemeinschaftsrecht* that the “designation [of ‘market

to claim that “the task [die Aufgabe]” (ibid.) of the treaties that establish the Communities is that of “integrating [... einzufügen]” (ibid.) such ‘market citizens’ “into a new public community order [öffentliche Gemeinschaftsordnung] without depriving them of their status as citizens of their respective states” (ibid.; my translation).

We are told by Ipsen that he chose the term ‘market citizen’ for the subject of supranational government in order to distance himself from the attempt to characterise the subject of this ‘new public community order’ as a ‘community citizen,’ or *Gemeinschaftsbürger*, a term he associates with the work of fellow jurist Eberhard Grabitz (ibid., p. 187; fn. 10). According to Ipsen, it is inaccurate to speak of ‘community citizens’ for the simple reason that “the communities are not states” (ibid., p. 187; my translation). Regardless of whether one understands a state as “a real political unit [or] the organisation of political deliberation [Willensbildung] about the common good” (ibid.; my translation), the European Communities, Ipsen tells us, do not meet either of these criteria. He characterises the European Communities as follows:

“[N]either [are they] real political units, nor do they determine the common good per se. While they do have a jurisdiction [Zuständigkeiten] within the territory of the member states, they do not possess the sole competence [Alleinzuständigkeit] of sovereign power [hoheitlicher Ordnung] in the member states. They have no members of the community [... keine Gemeinschaftsangehörigen]. They have no personal sovereignty [Personalhoheit] over market citizens and do not exercise the protective power [Schutzgewalt] that a state would exercise over its citizens.” (ibid.; my translation)

Ipsen’s *Gemeinschaftsrecht* thus certainly offers theoretical support for our claim that despite the appearance of this contractarian discourse, supranational government continued to treat its subjects as economic actors in practise. Regardless of whatever intentions for future development there might have been, citizen’] applies to the individual citizens of a member state in their participation in the common market” (Ipsen, 1972, p. 251; my translation).

the supranational organisations created by the Treaties of Paris and Rome were, on Ipsen's account, simply not designed to govern anything other than economic actors.

In the next two parts of this chapter section, we offer further illustration of our claim around the initial practical inefficacy of this contractarian discourse by way of reference to a particular instance of the practise of supranational government from around the turn of the 1970s. Our discussion of this example seeks to explain two things: first, it illustrates what it means to say that the European Communities contributed to the proliferation of neo-liberal governmentality by *displacing* governmental practises addressing their subjects as *homines juridici*; second, it shows how the displacement of interpersonal authority by the impersonal 'authority of the market' can be imagined. We take our example from Ipsen's *Gemeinschaftsrecht*, and expand on Ipsen's commentary.

The Market Citizen as Displacing Homo Juridicus as Subject of Government

The second chapter of this dissertation argued that Friedrich Hayek saw two different ways for achieving the 'dethronement' of politics understood as wilful deliberation over the common good. One is the establishment of post-national governmental frameworks capable of preventing nation-states from acting in ways that would hinder the market pricing mechanism from fulfilling its role as regulator of social interactions. The other is to institute an authoritarian state that openly opposes the popular will to ensure that 'ideal' market conditions prevail. While we suggested in the second chapter that Hayek seems to have preferred a post-national solution for bringing about his 'neo-liberal utopia' where politics qua wilful deliberation over the common good no longer exists, we saw in Chapter One that when it comes to their internal organisation, there need in fact not be much of a difference between an authoritarian-liberal state and

a post-national framework of government operating on the basis of neo-liberal rationality. In Chapter One, we argued that both the projected authoritarian-liberal ‘new state’ and the framework of supranational institutions that emerged with the establishment of the Coal and Steel Community in 1951 explicitly dedicate themselves to governing with a view to serving economic ends and interests. Both, we held moreover, favour executive decisionism over parliamentarism, and sideline the political significance of popularly elected legislatures.

Executive instruments of government also play an important role in the displacement of social liberal governmental practises on the level of the nation-state by practises of government that call upon their subjects as ‘market citizens’ of the European Communities. It seems reasonable, therefore, to begin our discussion of this displacement process by giving consideration to Ipsen’s explanation of the significance of these executive instruments for the government of the European Communities.

His explanation first calls the basic structure of the legal order of the European Communities back to our minds: primary Community law, he reminds us, consists of the foundational treaties, the Treaties of Paris and Rome at the time of Ipsen’s writing, whereas all executive instruments of government — the regulations, directives, and decisions that supranational institutions may issue — are part of the secondary law of the European Communities (Ipsen, 1972, p. 111). Ipsen explains furthermore that these secondary, executive instruments may be directed at essentially two different recipients. We read that there are secondary instruments that “legally only reach the member states directly, and consequently do not directly reach their citizens, who, in turn, are only reached through legislation [Normsetzung] on the part of the member states” (ibid., p. 121; my translation). Apart from these, however, Ipsen remarks that there are also executive instruments which “legally reach citizens directly, as market citizens, so that in this case, legislation [Normsetzung] on the part of the member states is not a prerequisite because these *reach through* state sovereignty [die Staatshoheit

durchgreifen]” (ibid; my translation; my emphasis). It is the latter of these two modi operandi of secondary community legislation that enables the displacement of national welfare-state liberalism addressing their subjects as *homines juridici* by supranational governmental practices that effectively call upon their subjects to perform the role of *homo oeconomicus*.

Ipsen metaphorically refers to these ‘directly effective’ provisions as *Durchgriffsnormen*⁷³ — literally ‘reach-through norms.’ He believes that because of their directly effective character, these provisions of Community law “are of the utmost importance for the functioning and the progress of communitarisation [Vergemeinschaftung]” (ibid., p. 123; my translation), and he moreover tells us that at the time of the publication of his monograph in 1972, these ‘immediately effective’ provisions of Community law are steadily on the increase. The effect of this increase is described by him as follows:

“The intensification of the creation and application of directly effective community law, and thus of the direct integration, no longer susceptible to influence by national sovereignty [nationaler Hoheit], of the market citizen into community law results in his or her ‘emancipation’ [„Emanzipation“] from national law, and thus brings about a change in the balance of interests [between nation-states and the Communities].” (ibid.; my translation)

A key example to which Ipsen returns several times (cf. ibid., pp. 123-126) in his discussion of the proliferation of directly effective community legislation are judgements reached by the European Court of Justice on the issue of a tax on long-distance road transportation in West Germany (the so-called ‘Leber-Pfennig’⁷⁴-judgements), introduced by the social democratic Minister of Trans-

⁷³A term Ipsen borrows from German law, where it refers, as Ipsen himself puts it, “to the assertion of legal claims [rechtliche Inanspruchnahme] against the concrete individuals that one encounters behind the legal fiction of the person; that is, to a ‘reaching-through’ [Durchgriff] to the human beings behind the legal person” (Ipsen, 1972, p. 121; my translation). In German law, Ipsen tells us, *Durchgriffsnormen* are to be encountered “primarily in commercial and corporate law” (ibid.; my translation).

⁷⁴A composite of ‘Georg Leber’ and ‘Pfennig,’ the smaller monetary unit of the Deutschmark. The rate of this tax ranged between one to five Pfennig per tonne-kilometre.

port Georg Leber in the late 1960s to promote the use of the railway network for long-distance freight transport.

This transportation tax came into force as a temporary measure from January 1969 until December 1970, but it had already been well known beforehand that this measure would conflict with a series of Decisions and Directives of the Council of the European Communities concerning the establishment of common rules on transportation and taxation.⁷⁵ Apart from these Council Decisions and Directives, the Commission of the European Communities in fact also addressed a Recommendation (68/96/EWG) to the West German government in January 1969 specifically about this conflict between the proposed tax policy and the declared interests of the Communities. In this Recommendation, the Commission explicitly requested the West German government not to implement its proposed tax plans.

The actual ‘Leber-Pfennig’-judgements of the European Court of Justice are the outcome of legal actions brought before the Court by road hauliers from Germany, France, and Austria, all of whom were requested to pay taxes on their business activities under the Leber plan by German customs offices at some point in 1969.⁷⁶

All three plaintiffs challenged the payment of this tax arguing that it contravened the common tax and transport rules laid down in the Council Decision of May 13, 1965 (65/271/EEC). The procedural question that the Court had to decide in all three cases was whether the plaintiffs, acting as individuals, had any standing at all to bring a claim against the West German tax administration. The legal crux was that Article 189 of the Treaty establishing the European Economic Community only expressly mentions *Regulations* as applying directly in the various member states of the Communities and hence producing Ipsen’s

⁷⁵Council Decision 65/271/EEC and Council Directive 67/227/EEC. See also Council Directive 69/463/EEC, which postpones the deadline for the framework laid down in Directive 67/227 from January 1, 1970 to January 1, 1972.

⁷⁶Franz Grad v Finanzamt Traunstein (Case 9/70); Transports Lesage & CIE v Hauptzollamt Freiburg (Case 20/70); and Erich Haselhorst v Finanzamt Düsseldorf-Altstadt (Case 23/70).

‘reach-through’ effect, but precisely this specific secondary instrument had not been used by the Council of the European Communities when it drafted its common transport and tax framework.

The Court granted the plaintiffs standing and decided in their favour in all three cases. With regard to the central procedural question, the Court declared in its judgments that the framework specified in Decision 65/271/EEC is “unconditional and sufficiently clear and precise to be capable of producing direct effects in the legal relationships between the Member States and those subject to their jurisdiction” (Haselhorst v Finanzamt Düsseldorf-Altstadt, 1970, p. 893).⁷⁷ Explaining its judgement, the Court states that “although it is true that by virtue of Article 189 regulations are directly applicable and therefore by virtue of their nature capable of producing direct effects, it does not follow from this that other categories of legal measures mentioned in that article can never produce similar effects” (Haselhorst v Finanzamt Düsseldorf-Altstadt, 1970, p. 892).⁷⁸ To this, the Court then adds the further observation that:

“Particularly in cases where, for example, the Community authorities have, by means of a decision, imposed an obligation on a Member State or all the Member States to act in a certain way, the effectiveness (‘l’effet utile’) of such a measure would be weakened if the nationals of that state could not invoke it in the courts and the national courts could not take it into consideration as part of Community law.” (ibid.)

This expansion of the capacity to produce direct effects to executive instruments of the European Communities other than *Regulations* thus gives us a concrete example of the process of displacement of social liberal governmental practices on the level of the nation-state which call upon their subjects as homines

⁷⁷All text we quote from the judgement in the Haselhorst case, that is, Case 23/70 ECJ, can also be found in identical wording in the reports for Case 9/70 and Case 20/70.

⁷⁸It could perhaps be said that by virtue of its reasoning, the European Court of Justice makes the Council of the European Communities, in its capacity to issue executive decrees, appear as a practitioner of authority in Theodor Mommsen’s sense, who, as we saw in Chapter Three, defined the Roman *auctoritas* as a speech act which is not a direct order, but nevertheless more than simple advice (cf. Mommsen, 1888, p. 1034).

juridici by supranational practises of government, which effectively address their subjects as *homines oeconomici*. As Ipsen himself notes, this ‘intensification of the creation and application’ of ‘directly effective’ provisions has led to a situation in which “member states [...] now find themselves exposed to legal claims their nationals make as market citizens on the basis of immediately effective Community law” (Ipsen, 1972, p. 123 f.; my translation).

The Displacement of Homo Juridicus and the Establishment of the Authority of the Market

Besides effecting a displacement of *homo juridicus* by *homo oeconomicus* as subject of governmental practises, the ‘Leber-Pfennig’-judgements of the European Court of Justice also exemplify how the interpersonal practise of authority came to be replaced with the authority of the market as an ‘impersonal’ validator of conduct and provider of binding advice. We should not let the text of the judgements lead us astray here. If the judgements claim that ‘decisions of Community authorities’ would be ‘imposing obligations on member states,’ they overlook that these ‘Community authorities’ were themselves guided in their decisions by considerations about the ostensibly ‘ideal’ functioning of the market.

To expand on this claim, let us first give closer consideration to the explicitly stated intent of the 1965 Decision of the Council of the European Communities which Georg Leber’s road transport tax would eventually come into conflict with. In its Decision “on the harmonisation of certain provisions affecting competition in transport by rail, road and inland waterway” from May 13, 1965 (65/271/EEC), the Council tells us that its proposed “measures to harmonise or approximate certain laws, regulations and administrative provisions relating specifically to transport” (ibid., p. 67) are intended “to eliminate disparities liable to cause substantial distortion in competition in the transport sector” (ibid.).

While this wording might suggest at first sight that Decision 65/271/EEC was driven by an isolated interest on the part of the Council in ensuring ‘appropriate’ competition in the transport sector alone, the text of the Decision ultimately renders it clear that the Council’s proposals for harmonising ‘provisions relating specifically to transport’ are in fact part of a more comprehensive set of measures for realising what could be called one of the overall ‘governmental objectives’ of the European Communities. In the preamble of Council Decision 65/271, we read that far beyond distortion of competition in transport, the ulterior purpose of the proposed harmonisation measures is to give effect to Articles 75 and 99 of the EEC Treaty (*ibid.*), which mention the establishment of a common transport policy (Art. 75, EEC Treaty) and a common framework of fiscal rules (Art. 99, *ibid.*) as two partial objectives towards the establishment of the common market envisaged by the 1957 Treaty. In the end, we can thus say that the Council’s proposed measures for the ‘harmonisation’ of transport policy are merely one part of a broader catalogue of measures outlined by the European Communities’ executive organs in fulfilment of their fundamental obligation under Article 3 of the EEC Treaty to “[establish] a system ensuring that competition shall not be distorted in the Common Market” (Art. 3.f, *ibid.*).

In the concluding section of Chapter Three, we already referred to William Davies’s commentary from *The Limits of Neoliberalism* on the methods used by the executive institutions of the European Communities to meet their obligation to ensure that competition on the common market is not ‘distorted.’ The measures for the ‘harmonisation’ of transport policy formulated by the European Communities in the mid-1960s still belong to what Davies considers to be a first, early approach of the Communities towards establishing and maintaining competition on the common market, where, as Davies puts it, “the commitment to the principle of competition [was purely formal]” (Davies, 2017, p. 183) and measures were not yet based on a “technical or empirical test with which to assess whether a particular instance of state aid is anti-competitive or not” (*ibid.*).

Despite still falling within this early, ‘formal’ regime for safeguarding market competition identified by Davies, we noted above that the ‘Leber-Pfennig’-judgements already had the effect of enabling individuals to act as *homines oeconomici* on behalf of the ‘governmental programme’ of the European Communities. The governmental practises of the European Communities allowed individuals to become active agents working towards the fulfilment of the Communities’ obligation to ensure that economic considerations about the ‘ideal’ conditions for pursuing one’s interests on markets receive priority over all other political considerations. In this case, these other considerations were redistributive measures to achieve what representatives of democratically elected governments had deemed to be in the interest of the common good.

In fact, in its Recommendation to the West German government from January 31, 1968 to refrain from its proposed taxation plans, the Commission of the European Communities stated quite explicitly that political considerations of this kind must come second to the maintenance of the supposedly ‘ideal’ *modus operandi* of the common market. In its Recommendation, the European Commission expresses its understanding that the proposed taxes on road transportation were intended to ameliorate, amongst other things, “the rising deficit of the [national railway corporation]” (68/96/EWG at 2.a; my translation) and “the congestion of a part of the road network” (*ibid.*; my translation). However, the Commission also makes clear its position that “that taxes for the purpose bringing about an allocation of the volume of transport [... einer Verkehrsteilung] [to different transport networks] that has not been caused by market forces [... Kräfte des Marktes]” (*ibid.* at 4; my translation) contradict the principles that guide the European Communities’ framework for a common transport policy. One of these principles, we read in the Commission’s Recommendation, is that “taxes must be neutral” (*ibid.*; my translation), both as far as the “relationship between the transport industry and other sectors of the economy, and [...] the relationship between [...] different modes of transport” (*ibid.*; my translation) is concerned.

It is therefore principles like these, about the ‘ideal’ functioning of markets, to which subjects of supranational government would ultimately have to turn for guidance and advice with regard to the question of how to conduct themselves; and as the so-called ‘Leber-Pfennig’-judgements of the European Court of Justice have shown, it is also in the name of these principles that subjects of government could now expect to receive validation of their conduct.

5.3.2 The Union Citizen: An ‘Unstable Mixture’ of Homo Juridicus and Homo Œconomicus

Yet irrespective of the circumstance that practically, the government of the European Communities contributed to the displacement of homo juridicus and interpersonal authority, active reflection about the subject of supranational government would only continue to resort to ‘contractarian’ rhetoric. We will now consider how, with the conclusion of the Maastricht Treaty in 1992, the persistence of the contractarian themes of citizenship and civic rights in the discourse around the subject of the governmental practises of the European Communities eventually gave rise to an attempt at formally endowing this ‘market citizen,’ whose governmental function we have just explored, with a minimal, and by and large symbolic, set of attributes of homo juridicus.

The story of the transformation of the ‘market citizen’ of the European Communities into the Union citizen of the Maastricht Treaty begins in the early 1980s. It was at this time that the European Commission took initiative and began to call upon other policymakers within the Communities to renew their commitment to the project of “[establishing] [...] a complete common market” (Commission of the European Communities, 1981, p. 1). If we follow the Commission’s narrative, renewing this commitment has become necessary because “Member States have” in the crisis- and recession-ridden 1970s “not completely withstood the temptation to yield to national protectionism” (ibid.), which in

turn led to the appearance of a host of “non-tariff and administrative barriers of all types” (ibid.). Repeated insistence on the part of the Commission would eventually bring the heads of member states of the Communities to pledge at a summit meeting in March 1985 to take “action to achieve a single large market by 19[9]2,⁷⁹ thereby creating a more favourable environment for stimulating enterprise, competition and trade” (Bulletin of the European Communities, No. 3, 1985, p. 12). Three months after this pledge, a detailed white paper on *Completing the Internal Market* (Commission of the European Communities, 1985), containing more than 200 directives and a timetable for the implementation of each of them, was published and the realisation of the objective set out in this white paper became a legally binding objective of the European Communities when, in February 1986, the Single European Act was signed.⁸⁰

One of the measures proposed to ensure the adequate implementation of the white paper on *Completing the Internal Market* was that of extending the rights that citizens of each member state of the Communities hold in other member states. While this particular proposal had not yet been mentioned in the original 1985 white paper on market completion, it eventually appeared⁸¹ in the first report on the *Completing the Internal Market* white paper: this report, required by the Single European Act and published in 1988, suggests that in order to ‘complete’ the internal market, it is necessary to grant a *general* right of residence to nationals of each member state of the European Communities in all other member states. This proposition effectively amounted to detaching the already existing right to reside in other member states for work-related purposes — whose late-1960s emergence we outlined further above — from the latter con-

⁷⁹The document states ‘1982’ in error.

⁸⁰Cf. Article 13 of the Single European Act, and the specification on timing from the political declaration annexed to the SEA (‘Declaration on Article 8a of the EEC Treaty’; Annx., Single European Act, 1987).

⁸¹It should perhaps be noted further in this context that the Draft Treaty on European Union from 1984 also already included a provision to establish the category of ‘Union citizenship,’ but left the content of this category almost entirely unspecified (cf. Art. 3, Draft Treaty establishing the European Union, 1984), describing it merely as a “right of citizens to address petitions to the Parliament” (Art. 18, ibid.).

dition and grant it also “to persons not in gainful employment” (Commission of the European Communities, 1988, p. 17).

Of particular interest to us in this context is the Commission’s justification for granting such a right. This justification suggests that the idea of decoupling the right of residence from employment status should not be understood as a step away from an essentially economic governmental rationality towards a governmentality based on the subject of rights, the fiction of the social contract, and the practise of wilful deliberation over the common good. The rationale for extending this right provided by the European Commission is that doing so would help the European Communities attain a certain appearance. “In the Commission’s view,” the report states,

“the establishment of the internal market necessarily implies a general right of residence for all Community citizens. The current restriction of that right to the working population only is not in keeping *with the image the community must give to its citizens.*” (ibid.; my emphasis)

This proposed adjustment of the ‘image’ of the figure to which Hans-Peter Ipsen has referred to as the ‘market citizen’ would then actually be realised with the conclusion of the Maastricht Treaty in 1992. In what is arguably one of the better-known elements of the Maastricht Treaty, or, Treaty on European Union, its Article G creates the category of a “Citizenship of the Union” and bestows the status of Union citizen upon “[e]very person holding the nationality of a Member State” (Art. G.C, Treaty on European Union, 1992). Union citizenship, the Treaty states, entails the right “to move and reside freely within the territory of the Member States” (ibid.), the right to active participation in municipal politics in whichever member state one is a resident of, and the right to seek help from diplomatic missions of any member state (ibid.).

The explicit recasting of what began as a scheme to facilitate labour migration in the language of citizenship and civic rights undertaken by the Maastricht

Treaty is admittedly a novelty in the process of European integration, and a measure which no doubt carried a great symbolic force. Symbolism aside, however, the introduction of the category of Union citizenship in 1992 is functionally no different a measure towards the ‘completion’ of the internal market of the supranational governmental framework that eventually morphed into the European Union than the common transport and taxation framework from the late 1960s that we commented upon above. It is essentially an add-on item to the following list of measures proposed in the 1985 white paper on *Completing the Internal Market*:

“[A]bolition of barriers of all kinds, harmonisation of rules, approximation of legislation and tax structures, strengthening of monetary cooperation and the necessary flanking measures to encourage European firms to work together.” (Commission of the European Communities, 1985, p. 4)

Insofar as the motives behind the introduction of the figure of the Union citizen were again predominantly economic, we should thus be able to propose that what the Maastricht Treaty refers to as the Union citizen is still at core the ‘market citizen’ whose function we described earlier with reference Ipsen, but dressed in the somewhat more traditional garb of the subject of rights. The model of the Union citizen incorporates a minimal, symbolic residue of the subject of rights and its concomitant ideas of social contract, political community, rights, obligations, and the common good into the neo-liberal governmentality of the supranational institutional framework that just renamed itself ‘European Union’. Ipsen jumped the gun: while the subject of supranational government that he referred to as a ‘market citizen’ was still none other than the regular, neo-liberal homo oeconomicus working to undo a governmentality that interpellates its subjects as homines juridici, the figure of the Union citizen introduced by the Maastricht Treaty might now, in fact, deservedly be called a ‘market citizen.’

5.3.3 Spiritual Cannibalism: The General Significance of the Figure of the Union Citizen for Neo-Liberal Government

If it is true that since the late 1960s, supranational government in Europe was characterised by a tension stemming from the ambivalent co-existence of the economic rationality informing its governmental practises and the contractarian rhetoric accompanying the discourse about the subject of these practises, then we could argue that the introduction of the category of Union citizenship by the Maastricht Treaty marks an attempt at resolving this tension between function and representation. In attempting to resolve this tension, the Maastricht Treaty gave expression to the idea that maintaining the semblance of an older form of liberalism — in which the pursuit of self-interest on the capitalist market would be depicted more as a necessary evil for the generation of social welfare than a quasi-natural activity and end in itself — might allow a radically economic, neo-liberal governmentality to function more efficiently.

We would like to propose that when seen in this light, the significance of the introduction of the category of Union citizenship in fact extends far beyond the narrow historical context of the development of supranational government in Europe. The broader significance of the figure of the Union citizen, as a composite of a ‘hollowed out’ variety of *homo juridicus* and *homo oeconomicus*, is that it constitutes one possible end-point of the development of neo-liberal governmental rationality as such. The analysis developed in this dissertation allows us to claim that incorporating the symbolic essence of the anthropological model that neo-liberal governmental practises would formerly only displace, and attempting to reconfigure practises of government around the modified figure thus obtained, concludes the Hayekian process of the ‘dethronement of politics.’ This outcome could perhaps be described as ‘dethronement by spiritual cannibalism’.

In his 1979 Collège de France lectures on *The Birth of Biopolitics*, Michel Foucault refers us to Ludwig Erhard's arguments for the establishment of a West German state after the Second World War to suggest that in the extreme, a neo-liberal governmental rationality will insist that the economy, and specifically what we have elsewhere called 'economic indicators,' are generative of political sovereignty (Foucault, 2008, pp. 83-87). Bad economic performance, however defined, delegitimises the state, whereas 'good' economic performance legitimises not just the activities of the governmental apparatus of the state, but in fact its entire existence. This, Foucault emphasises, is diametrically opposed to earlier forms of liberalism, where it is in the end still political sovereignty that generates what we ordinarily call the 'free market' (ibid., p. 86 f.).

It could be argued that with 'composite' figures such as that of the Union citizen, neo-liberal governmental rationality makes one step beyond this 'extreme case' that Foucault drew up with reference to Erhard: what we can observe in such figures is the extraction of symbolic references from the political imaginary of social liberalism for their emotional value, and their subsequent transformation into instruments in the service of a governmentality driven first and foremost by considerations around markets and their 'ideal' functioning. True to the words of the European Commission from 1988, politics qua wilful deliberation over the common good, community, sovereignty, etc., here become 'images,' accompanied by hollow rhetoric — hollow to the extent that this contractarian rhetoric has become unmoored from its erstwhile anchoring points in the governmental institutions of the social-liberal welfare state.

Whether it will be possible to govern individuals by way of addressing them on the basis of such a 'mixture' of homo juridicus and homo oeconomicus in practise, and if so, how long for, are of course different questions. As we already saw in our conceptual note from the beginning of this chapter, if the figure of the Union citizen is a 'mixture' of homo juridicus and homo oeconomicus, then it is inevitably also an *unstable* mixture, a combination of two structurally hetero-

geneous models, and not an irremediable synthesis. Theoretically speaking, the figure of the Union citizen and similar composites are thus barred from becoming the anthropological centrepieces of new governmental rationalities, and may decompose into their constituent parts again at any time.

Earlier in this chapter, we mentioned moreover that in Europe, the governmental practises of the supranational framework whose development we have now traced from the 1950s into the 1990s were not the only historical vector through which the implementation of neo-liberal governmentality took place. As we remarked, the implementation of neo-liberal government would from the 1970s onwards also increasingly be driven by political actors on the level of the nation-state. We would like to specify here that nothing in theory rules out the possibility of national political actors also availing themselves of a hollowed out contractarian rhetoric in pursuit of neo-liberal policy agendas.

On the national level, however, bringing about such a modification of neo-liberal government is slightly more difficult. What stands in the way of formally decreeing the reorientation of governmental practise around a new role model for its subjects, as it happened with the Maastricht Treaty, is the circumstance that on the national level, contractarian rhetoric about rights and obligations of citizens is no novelty, and at least on paper, many of the welfare-state institutions to which this rhetoric refers still exist today. The introduction of neo-liberal governmental practises on the national level therefore also had to be conducted in immediate opposition to the direct, material obstacle posed by the institutions of the welfare state by and through which social liberal government would be practised. As we contend in the Conclusion, it required a fundamental crisis of the impersonal, 'market-centred' practise of authority before it eventually became feasible for political actors on the national level to address individuals on the basis of a figure of identical composition to that of the Union citizen in order to continue the pursuit of policy agendas informed by a neo-liberal politico-economic rationality.

It is well worth noting that when, in the context of the ‘authoritarian moment,’ national political actors eventually began to call upon individuals on the basis of the same ‘mixture’ of homo juridicus and homo oeconomicus as encountered in the figure of the Union citizen, this had a stabilising effect and would enable neo-liberal rationality to continue to define governmental agendas for the time being; whereas on the supranational level, the introduction of the figure of the Union citizen has arguably had the contrary effect. We can say that the introduction of the figure of the Union citizen destabilised supranational government insofar as post-Maastricht attempts at introducing further ‘contractarian’ elements into the neo-liberal governmentality of the European Union have effectively brought the process of European integration to a standstill. In the final section of this chapter, we describe how this standstill came about, and we outline how, at the same time, the first signs of what would eventually develop into the ‘authoritarian moment’ began to appear.

5.4 End of the Road: The Post-1992 Stalemate of European Integration

It was not long after the 1992 introduction of figure of the Union citizen that academic commentators began to express bewilderment at this new figure supposed to be the subject of supranational governmental practises. In her 1995 essay *The Legacy of the Market Citizen*, Michelle Everson notes apropos the category of Union citizenship introduced by the Maastricht Treaty that “while there is a degree of certainty as to how this citizen may be constituted in legal terms” (Everson, 1995, p. 75), the figure of the Union citizen is surrounded by a “conceptual obscurity” (ibid.) as well as a lack of clarity “as to his or her political or social relevance within the Union” (ibid., p. 76). Similarly, Jo Shaw highlights in her essay on *The Interpretation of European Union Citizenship*, dating from

1998, that the Union citizen is surrounded by a lack of conceptual clarity insofar as the “[elevation of] the underlying market principles of EC law [...] to the status of ‘fundamental’ right” (Shaw, 1998, p. 300), which, in her view, is what the figure of the Union citizen effectively accomplishes, “creates a confusion between the idea of the market citizen, the *Marktbürger*, who is a limited figure in the economic sphere, and the true citizen, who must be sovereign within a democratic political system” (ibid.).

But the bewilderment over the new model on the basis of which supranational government was supposed to operate would not only remain academic: uncertainty about the course on which the development of supranational government had embarked in the early 1990s eventually also expressed itself in popular opposition to efforts at continuing the process of European integration post-Maastricht. As far as these subsequent efforts are concerned, we could say that if the figure of the Union citizen already constituted a first attempt at giving legal form to the contractarian discourse on citizenship and civic rights that accompanied the active reflection on the subject of supranational government since the late 1960s, then the projected further development of supranational government sought to formalise this contractarian discourse even more fully.

After the Treaty of Amsterdam from 1997 and the Treaty of Nice from 2001, the next major step at advancing the process of European integration began in the early 2000s with the drafting of a text for a future Constitutional Treaty. It is also with this projected Constitutional Treaty that the process of European integration eventually came to a halt. The text of the Constitutional Treaty was finalised in 2004, but its ratification by the parliaments of member states could not be completed after the Treaty was rejected by referenda held in France and the Netherlands in 2005.

It should be fair to say that Turkuler Isiksel does not express a particularly contentious opinion when she remarks in her 2016 monograph *Europe’s Functional*

Constitution that the “dismal failure of [the] clumsily staged ‘constitutional moment’ [of the European Union] in the early 2000s” (Isiksel, 2016, p. 4) should be interpreted as indicating a lack of “political legitimacy” (ibid.) of the European supranational framework of government amongst national electorates. Isiksel also draws an apt conclusion from the failure of the Constitutional Treaty when she writes that although it had been

“[d]esigned to generate civic engagement with the European integration project, the Constitutional Treaty scored a perverse victory: it mobilized citizens in two founding member states against further integration, and demonstrated the powerful political evocations of the term ‘constitution’ as well as the public’s sensitivity to them” (ibid.).

Isiksel promptly adds a further interesting thought to this observation. She notes that the opposition to the attempt at generating civic engagement with supranational government in Europe should serve as a warning that “[a]lthough it has an aspirational ring, constitutional language does not provide a shortcut for discharging the burden of legitimation that international institutions face” (ibid.). This might be true, but even if we follow Isiksel’s analysis up to here and agree that the reason for the failure of the Constitutional Treaty was indeed a lack of ‘political legitimacy’ of the supranational framework of government in Europe,⁸² we should nevertheless have grounds for doubting Isiksel’s implication that the public opposition in the French and Dutch referenda could have been averted had representatives of supranational institutions only made a better effort at “[securing] the kind of political legitimacy implied by [the] term [‘constitution’]” (ibid.).

⁸²In view of our argument that the widespread introduction of neo-liberal governmental practises in the second half of the twentieth century went hand-in-hand with the introduction of impersonal, ‘market-centred’ authority practises, we should be able to propose that what is sometimes called the ‘legitimacy problem’ of supranational government in Europe is in fact a deliberate construction. After all, one of the purposes of the supranational framework of government that emerged with the Coal and Steel Community in the 1950s was that of facilitating referrals to ‘the market’ as an external arbiter on the question of what counts as good, or, legitimate government, and what does not.

On the basis of our arguments from this and the previous chapter, we could equally propose that the public opposition faced by the Constitutional Treaty has been an expression of a certain ‘public sensitivity’ around political form: the attempt at implementing the Constitutional Treaty after all conflicted noticeably with the conventional ‘contractarian’ idea that the establishment of the political institutions of citizenship and civic rights are the *results* of a constituent process, and not their *causes*. When Isiksel claims that the ‘constitutional moment’ of the European Union had been ‘clumsily staged,’ we can add that this statement should also be accurate in the sense that the reversal of the causal sequence ‘social contract — homo juridicus’ that manifested itself in this ‘constitutional moment’ might have given away the strategy whereby supranational government in Europe has been making its contribution towards the ‘dethronement of politics’ all along.

Before we move on to the Conclusion, where we comment on how a composite of homo juridicus and homo oeconomicus identical to that of the Union citizen allowed neo-liberal government to adapt itself to the breakdown of the authority of the market after the 2008-09 financial crisis, we shall bring this chapter to an end by giving consideration to two additional factors which, in our view, played a role in bringing the process of European integration to a standstill post-Maastricht. We remarked in the closing paragraphs of Chapter One that the tacit justification for the introduction of an impersonal, ‘market-centred’ modality of practising authority had been the assumption that if the market were left to regulate social affairs, material wealth would increase constantly over time and more or less uniformly throughout society. In this context, we would now like to propose that perhaps a certain disappointment that the ‘trickle-down’ promise,⁸³ on whose realisation the authority of the market ultimately depends, had not in any notable sense materialised in the 1990s might certainly have been another

⁸³In the first chapter of this dissertation, we already noted that this promise is expressed in Hayek’s claim from *The Constitution of Liberty* that “the comparatively wealthy are [...] *merely somewhat ahead of the rest in the material advantages which they enjoy*” (Hayek, 2011, p. 98; my emphasis).

factor that contributed to the stalling of the process of European integration after 1992. The broader trend which Robert Brenner refers to as the ‘long downturn,’ that is, the trend followed by industrial economies since the 1970s, of “snail-like growth of investment, productivity, and wages, more severe cyclical crises, weaker cyclical upturns, and rocketing unemployment” (Brenner, 2006, p. 241) would after all continue well throughout the 1990s (cf. Brenner, 2006, pp. xxiii-xxix; Mazier, Baslé, & Vidal, 1999, pp. 216-234).

Lastly, the end state socialism in Eastern Europe should provide us with another explanation as to why Christopher Bickerton, Dermot Hodson, and Uwe Puetter could claim that post-Maastricht, a previously existing “‘permissive consensus’” (Lindberg & Scheingold, 1970, p. 121; quoted in: Bickerton, Hodson, & Puetter, 2015, p. 25) around European integration could no longer be taken for granted. With regard to this process, we would like to join Philip Ther’s argument that the dissolution of the Eastern bloc and the consequent emergence of a plethora of politically and economically reconstituted nation-states resulted in a considerable change of the political dynamics on the national level; a change of dynamics which not only affected these newly constituted political societies, but also those whose political and economic organisation had remained the same. As Ther puts it, the 1990s were characterised by a condition which could be described as a “party-political and ideological vacuum that emerged after [...] the end of state socialism not only in the former Eastern bloc, but also in Western Europe” (Ther, 2019, p. 101; my translation); a conjuncture which in fact also marked the beginning of the process that would eventually develop into the authoritarian moment of the early twenty-first century. As Ther reminds us, this 1990s ‘vacuum’ has not only given rise to Italian Berlusconi (ibid., p. 101 ff.), but it also made the Austrian Freedom Party (FPÖ) run election campaigns characterised by overtly xenophobic rhetoric for the first time in its history (2016, p. 307). Moreover, on Ther’s account, discontent with post-socialist state transformation in 1990s Poland would eventually pave the way for the first Law

and Justice (PiS) party government in 2005 (ibid., pp. 81-85; 156-159), and he suggests that a similar process gave rise to the lasting government of Fidesz in Hungary (ibid., pp. 156-159).

With these thoughts in mind, we now make our way to the Conclusion.

Conclusion

The Authoritarian Moment Since 2008

If two of the reasons for the stalling of European integration post-1992 have indeed been a confusion amongst the broader public over the further course of development of neo-liberal governmentality in Europe and the onset of a disenchantment over the increasing inability of impersonal, ‘market-centred’ practises of authority to provide the advice and validation that they were supposed to, then we should be able to argue by extension that the financial crisis of 2008-09 eventually fully dispelled whatever remaining acceptance these ‘market-centred’ authority-practises might still have enjoyed. Seen in this way, it should then also come as no great surprise that although an open advocacy of social inequality, xenophobia, and nationalism already began to play a more prominent role on the political stage in various European countries in the 1990s, the ‘authoritarian moment’ would eventually escalate into a decisive political factor in European politics in the years after the 2008-09 financial crisis.

A feature common to all of the political parties and movements involved in the 1990s build-up and the post-2008 escalation of the ‘authoritarian moment’ is that they practise, to a greater or lesser extent, what Maurice Duverger has referred to as “the cult of the leader, considered as a person and not as the holder of an office” (Duverger, 1959, p. 179). Our claim that the emergence of neo-liberal governmentalities was accompanied by a transition from interpersonal

to impersonal practises of authority allows us to argue now that this resurgence of the authority of individual, political leader-figures in the context of the ‘authoritarian moment’ does not constitute a sudden re-emergence of authority and authoritarianism from the oblivion into which Hannah Arendt (1956; 1961) believed they had disappeared in the mid-twentieth century. ‘Authority’ has never been absent from the neo-liberal governmentalities of the second half of the twentieth century, it would merely no longer be practised from person to person as much as had been previously. And while the early twenty-first century ‘authoritarian moment’ may well involve the coming-to-surface of “a *non-public opinion* [...] whose statements [...] circulate alongside the statements of the public opinion like the monetary units of a *second currency*” (Böhm, 1955, p. XI; quoted in: Weiß, 2020, p. 47 f.), as Volker Weiß suggests with reference to the findings of the group experiment⁸⁴ conducted by the Institut für Sozialforschung in 1950-51, we would like to suggest that its decisive characteristic is that it in fact marks a backwards transition from a historically novel, impersonal modality of practising authority to the previous, personal practises.

Yet despite this renewed resort to an interpersonal modality of practising authority on the part of political parties such as the AfD, the Rassemblement National and eventually also Emmanuel Macron’s LREM, the Lega, first UKIP and now the British Conservative Party itself, Fidesz, PiS, Vox, and the FPÖ to name only a handful, commentators have taken note of the circumstance that the political programmes of many of these parties do not mark the slightest break with neo-liberal governmental rationality. Supporting our theoretical claim from Chapter Five that one will not arrive at a new governmental rationality by combining the heterogeneous models of homo juridicus and homo oeconomicus

⁸⁴The ‘group experiment’ was conducted by the Institut für Sozialforschung in 1950-51 after its return to Germany, where “[i]n groups of approximately 8-16 participants, around 1,800 people from all strata of the population [were invited to discuss] questions [of political ideology]” (Pollock & Adorno, 2011, p. 32). As Andrew Perrin and Jeffrey Olick summarise, the “crucial finding [of this group experiment] [was] that, given the right social setting and linguistic cues, ordinary Germans in the immediate postwar occupation were able to enact elements of fascism with distressing ease” (Perrin & Olick, 2011, p. xxxvi).

and calling upon individuals to play the role of such ‘unstable mixtures,’ Philip Ther highlights for instance that supporters of the United Kingdom’s withdrawal from the European Union in the British Conservative Party have produced no other “discernible vision [erkennbare Vision]” (Ther, 2019, p. 40) for the United Kingdom post-Brexit apart from “making [the country] stand out as a low-tax economy” (ibid.; my translation),⁸⁵ and that “also Viktor Orbán [in Hungary] and the FPÖ-led government in Austria have pushed through extensive welfare cuts, and the AfD has similar plans for Germany” (ibid., p. 41; my translation). He follows up on this observation with the prophecy that “[t]heir voters will not realise that [the] economic and social policies [of these parties] are not as populist as they pretend [...] until it is too late” (ibid.; my translation).

We may thus propose in conclusion that the ‘authoritarian moment’ can be characterised as the adjustment of neo-liberal governmentality to the crisis and eventual collapse of the ‘authority of the market’. This adjustment took place through a transfer of the same composite figure of homo juridicus and homo oeconomicus that we already encountered in the supranational model of the Union citizen into the arena of national politics. While the ‘contractarian’ rhetoric surrounding the model of the Union citizen was met with a certain degree of bewilderment in the supranational context, this rhetoric could be deployed successfully within national politics, particularly in response to the post-2008 breakdown of ‘market-centred’ authority practises.

⁸⁵The United Kingdom would in fact appear to become an increasingly good example for the obstinate persistence of neo-liberal governmental rationality despite the salience of a political rhetoric suggesting otherwise. William Davies observes in a commentary on Boris Johnson’s address to the British Conservative Party conference in October 2021 that one could easily obtain the impression that Johnson’s address struck a certain ‘dirigiste’ tone, occasionally seeming to discuss “the essence and direction of capitalism” (Davies, 2021). However, given the absence of any substantive policy proposals to go with them, Davies claims that these passages of Johnson’s conference speech can hardly be considered more than a rhetorical accessory, a “bluster that ‘works’ to the extent that it allows [Johnson] to spin a good yarn” (ibid.). We would only like to add here that amidst all the rhetoric, the suggestion that “[Vilfredo Pareto provides] the economic theory behind” (Johnson, 2021) the so-called ‘levelling-up’ policy of the Conservative government, a vague set of proposed measures to tackle regional inequalities, would appear to stand out as a credible ideological avowal in Johnson’s conference speech.

As to the reasons for this success, we may assume that in the context national politics, such contractarian rhetoric is still capable of credibly conjuring up the ‘image’ — to say it in the words of the European Commission — of the bygone era of social liberal government. We should, however, also be able to claim that even within national politics, this rhetoric would ultimately remain the practical equivalent of a nostalgic film projected on the wall in Plato’s cave to provide the unhappy consciousness of homo oeconomicus with a touch of false, but nevertheless soothing comfort for the broken promise of a fulfilling life in an unfettered market society. Far from heralding the end of a ‘post-political era,’ the authoritarian moment is the epitome of a kind of pseudo-politics. The ‘authoritarian moment’ is a pure spectacle of resentment, devoid of any substantive deliberation over the common good — politics after the ‘dethronement of politics’.

The analyses we undertook in this dissertation moreover enable us to highlight a remarkably ironic aspect of the ‘authoritarian moment’ in early twenty-first century Europe, namely that the supranational framework of government, whose development from the 1950s until the early 2000s we examined here, has become such a persistent object of agitation for the political parties and movements that contribute to this ‘authoritarian moment.’ The irony is that as far as our analysis is concerned, the national political parties and movements at the forefront of early twenty-first century authoritarianism are the heirs of an authoritarian variety of neo-liberal government, favouring executive decree over parliamentary process, meticulously developed for half a century by the very supranational institutions of government that they agitate against.

In the Introduction of this dissertation, we referred to Cas Mudde and Cristóbal Rovira Kaltwasser’s definition of populism as a political rhetoric involving “some kind of appeal to ‘the people’ and [denunciation of the] ‘the elite’ ” (Mudde & Rovira Kaltwasser, 2017, p. 5). We remarked in the Introduction that the conceptual framework developed in this dissertation acknowledges that ‘populist’ rhetoric of this kind forms part of the ‘authoritarian moment,’ but consigns it to

the status of an epiphenomenon of the crisis of the impersonal, ‘market-centred’ modality of practising authority. In the previous chapter, we illustrated a somewhat paradoxical process: we argued that the variety of neo-liberal government practised by and through the supranational framework that eventually became the EU has contributed to the displacement of social liberal governmentality; but that in the end, supranational government still appropriated the ‘contractarian’ language associated with social liberalism and gave it expression in the figure of the Union citizen. We may now say that in highlighting this tension between function and representation in supranational government, we have also given one example how the contractarian rhetoric that would eventually fuel the ‘populism’ described by Mudde and Kaltwasser could subsist in Europe despite its initial loss of relevance for governmental practise.

Although the genealogy of the ‘authoritarian moment’ developed in this dissertation knowingly treats the notion of ‘populism’ in a somewhat diminutive manner, as a tactical use of ‘contractarian’ political rhetoric within neo-liberal governmentalities enabled by the crisis of the ‘authority of the market,’ the content of this rhetoric is not entirely uninteresting to us. With regard to its content, we can say that the ‘authoritarian moment’ in early twenty-first century Europe is accompanied by a Manicheanism that manifests itself in a variety of ‘us-versus-them’-type friend-enemy distinctions. Occasionally, such distinctions take the form of the ‘people versus elite’-discourse that Mudde and Kaltwasser consider paradigmatic of populism,⁸⁶ but very often the formulae are also a xenophobic or nationalist ‘the people versus the enemy at the gates,’ or ‘the people versus the (ethnically-defined) enemy within.’⁸⁷

It is due in particular to the ease with which these last two types of rhetoric could be deployed on the level of the nation-state after the 2008-09 financial

⁸⁶We could perhaps consider this formula to be characteristic of a left-wing populism calling for a new social contract.

⁸⁷These would then be the formulae of a right-wing populism which resorts to social contractarian rhetoric to entrench the socio-political status quo.

crisis that neo-liberal governmental rationality could retain its hegemony in spite of accelerating wealth inequality and the increasingly palpable effects of the ecological destruction wrought by capitalism in the early twenty-first century. The post-2008 successes of political parties and movements that availed themselves of xenophobic and nationalist forms of populist rhetoric seems to confirm two well-known proposals about the surge of reactionary attitudes. One of them is the thesis put forward by Otto Bauer in his 1924 *The Question of Nationalities and Social Democracy* according to which “[n]ational hatred is transformed class hatred” (Bauer, 2000, p. 213); the other is Leo Löwenthal and Norbert Guterman’s suggestion that it is remarkably easy for political agitators to take advantage of the ‘malaise’ of modern life by offering the oppressed the option “to join [the oppressors], to become one of the policemen, one of the destroyers in the service of destruction” (Löwenthal & Guterman, 1987, p. 151).

Our analysis of the modern subject of rights as a remote descendant of Saint Augustine’s anthropology of the split will moreover allows us to specify that the success of dualistic ‘in-group, out-group’-rhetoric in times of crises of social life is not only due to the fact that it can be used to authorise the transformation of the frustration of its addressees into an anger to be taken out on substitute objects. When seen through the lens of the genealogy of the modern subject of rights as presented in this dissertation, we can say the success of such rhetoric is equally due to the circumstance that it authorises *those who use it* to demand personal sacrifice and the renunciation of wishes and desires from those they subject to it. That politics should revolve around sacrifice, renunciation, and substitution in the first place is not at all an ahistorical matter of course.

This brings us to the question of whether there is a way to break with the eternal recurrence of this ‘cult of the leader,’ that is, the exaggerated, theatrical, and often eventually deadly resort to the interpersonal practise authority, in times of crisis. In Chapter Three of this dissertation, we subscribed to Hannah Arendt’s and Richard Heinze’s proposition that authority is an ancient Roman

‘invention,’ and we held that authority has remained an integral part of social techniques for ‘conducting the conduct’ of individuals and groups until today. In the course of our argument in Chapter Three, we observed that although Arendt presents authority as a long-standing ‘factor’ in Western societies, she also suggests that there is no reason to assume that it should not eventually wither away. Arendt in fact believed that authority was already in the process of disappearing from social life in the mid-twentieth century West, and her assessment of the consequences of its alleged disappearance was rather pessimistic. In *Was ist Autorität?*, the 1957 German version of what would become her 1961 essay *What is Authority?*,⁸⁸ Arendt concludes that “[p]olitically speaking, the most evident sign of the disappearance of authority in modernity is, of course, the emergence of the totalitarian apparatuses of rule [Herrschaftsapparate]” (Arendt, 2020, p. 163; my translation).

In Chapter Three, we contradicted Arendt’s ‘disappearance thesis’ by arguing with Leo Löwenthal and Max Horkheimer that Western modernity has given rise to a historically novel, impersonal modality of practising authority. This impersonal practise of authority, we further held there, would from the mid-twentieth century onward increasingly replace the interpersonal practise of authority. Our claim that the practise of authority never disappeared, but merely became impersonal, should now also allow us to object to Arendt’s implication that the social practise of authority functions as a kind of *katechon* against totalitarianism. If the social practise of authority is not timeless, but has nevertheless, in its impersonal modality, remained an integral part of neo-liberal ‘market societies,’ then asking whether there is a way to break with the eternal recurrence of the ‘cult of the leader’ should ultimately be the same as asking what social conditions

⁸⁸The 1957 German text, published in the collection *Fragwürdige Traditionsbestände im politischen Denken der Gegenwart* (‘Questionable Traditions in Contemporary Political Thought’), is identical in structure to the 1961 *What Is Authority?*, but differs slightly from her 1961 publication in terms of content. The passage quoted above is missing from the English text.

would be needed in order for us to speak with conviction of the disappearance of authority relations.

We can only provide an indicative answer to this question here. A good starting point for such contemplations, in any case, can be found in Max Horkheimer's 1936 essay contribution to the *Studien über Autorität und Familie* ('Studies on Authority and the Family'). Taking a position similar to that of Friedrich Engels in his 1874 article *On Authority*, which berates "the anti-authoritarians" (Engels, 1978, p. 733) around Mikhail Bakunin⁸⁹ as confused reactionaries who would not know how to conduct a successful revolution (for Engels, revolutions are "certainly the most authoritarian thing there is") (ibid.), Horkheimer argues in his 1936 essay that "the radically anti-authority attitude of the anarchist is but an exaggeration of the bourgeois awareness of personal freedom" (Horkheimer, 1972, p. 96). The demand for *all* authority relations to end *right* here and *right* now, we read in Horkheimer's essay, "flows from the idealist view that material conditions play no real role" (ibid.). His fundamental conviction is that as long as there is a division of labour in society there will also be relations of authority, because of a necessary "distinction between the management and execution functions in work" (ibid.).

There is of course nothing wrong *per se* in claiming that such a distinction is a structural requirement of any form of collective labour. We can, however, add a qualification to Horkheimer's claim. Our discussion of the Roman practise of *auctoritas* — which emphasised the link between authority and class privilege — suggests that it might not make sense to refer to practises of validating the conduct of subjects and providing 'binding' advice as practises of *authority* unless

⁸⁹Bakunin is not named explicitly in Engels's *On Authority*. However, although it was only published in 1874, we know that Engels already wrote *On Authority* in October 1872 (cf. Engels, 1978, p. 730; editorial note), immediately after the September congress of the *International Workingmen's Association* in The Hague. At the Hague congress, the decision was made to expel Mikhail Bakunin from the *Association* for what was deemed to be conspiratorial activity. Some passages from *On Authority* are reproduced verbatim in a report on Bakunin's activities that Marx and Engels wrote slightly later on behalf of the participants of the Hague congress (cf. Marx & Engels, 1976).

these practises also serve the wider purpose of maintaining the privileges enjoyed by those groups situated at the top of the social hierarchy. In a hypothetical future society in which the ulterior motive of economic activity is not the self-valorisation of capital but the satisfaction of human needs, such practises of validating conduct and providing advice would doubtlessly still be necessary in collective labour and other aspects of social life, but these practises would no longer serve the purpose of sustaining class privilege.

If this latter aspect is absent, it might despite Engels's reservations (cf. Engels, 1978, p. 732) perhaps in fact be more meaningful to refer to these practises by the social context in which they occur, or by the social function they serve, and add the prefix 'co-' to each of them. This would give us: *co-habitation*, *co-laboration*, *co-operation*, *co-ordination*, et cetera. We should assume that these practises of validating conduct and offering advice would still rely on markers of hierarchy, but these will be mutable markers, such as differentials of knowledge or experience. In this hypothetical classless society, there would then also be a general awareness that such practises are not 'natural,' and that they ought not play a ceremonial role, that is, the role of preserving traditions for their own sake either. This awareness would go together with the understanding that these practises instead serve the purely functional purpose, always open to re-evaluation, of ensuring that particular social formations make particular material contributions towards the broader social objective of satisfying material need.

If it is indeed the eternal recurrence of the 'cult of the leader' that we wish to break with, then Engels's *On Authority* is at least instructive insofar as it raises the question of whether or not past revolutions are good role models with regard to the means by which such a hypothetical society is to be created. We could now of course go on to ponder what it would even entail to speak of a 'revolution' in the twenty-first century, but perhaps this question is more fruitfully addressed in different fora. To bring this line of thought to a close, we shall therefore leave it at the observation that recent times have demonstrated over

and over that regardless of how forcefully it sometimes is orchestrated, no amount of anti-egalitarian, nationalist, and xenophobic perversion of social contractarian rhetoric can ultimately prevent the existential malaise of our times from finding expression in the demand that fundamental matters of economic organisation be opened up to democratic decision-making.

A Retrospective on an Archival Find

It seems fitting, then, to address, last but not least, the inevitability of scholarship to assume a position vis-à-vis the question of what is the common good. This dissertation endeavoured to contribute to research on early twenty-first century authoritarianism by means of a genealogical approach which outlined a variety of historical developments, some of a *longue durée*, others more short-term, that play a primary role in the genesis of what has here been called the ‘authoritarian moment’ in early twenty-first century Europe: an upsurge in popular support for right-wing political parties and movements that promote nationalism, xenophobia, and the supposed naturalness of hierarchy and inequality in society.

The narrative of this work is part descriptive, part exegetical, and it also contains evaluative passages. In these latter, evaluative passages, I make no attempt to hide that my overall normative standpoint is one of opposition to the gradual hollowing out of democracy, with its associated xenophobia, nationalism and anti-egalitarianism, that I describe in other passages of this dissertation. If there has been one formative lesson that the research I undertook for this dissertation has taught me, it is that not every author and every school of thought reputed to engage in ‘critical analyses of power,’ in the broadest possible meaning of that phrase, is equally suitable to provide the intellectual foundation for pursuing a research agenda informed by this basic normative position. Having already written previous academic works in a manner that could be called ‘Foucauldian’ (or at least aspired to this label for some odd reason of narcissistic identification),

I began my research for this doctoral dissertation in the belief, naïve perhaps, that the work of Michel Foucault could be fashioned into a theoretical resource for studying authority and authoritarianism relatively effortlessly. After all, Foucault, the analyst and critic of “the disciplines and normalization” (Foucault, 2003, p. 52) has the nimbus of some sort of anti-authoritarianism playing around him, or does he not? Perhaps this is so. But even if that is actually Foucault’s reputation, it needs to be acknowledged that authority itself has never explicitly been a category of his thought,⁹⁰ and so some conceptual groundwork will always have to be undertaken if one wishes to use Foucault’s œuvre for studying authority and authoritarianism specifically. Moreover, and more problematically, my research has also led me to doubt whether the Foucauldian œuvre is indeed as categorically anti-authoritarian as it is sometimes claimed to be.

In the course of my research, I obtained the unfortunate impression that Foucault, whose lack of candour regarding his own normative presuppositions has already been famously highlighted by Jürgen Habermas (1998, pp. 276-293; cf. also: 1982), might in fact have been disingenuous, and perhaps even deliberately so, about the intellectual, and consequently normative positions that inform his own work. This impression left me feeling that my choices were between abandoning Foucault and returning to square one, or retaining a broadly Foucauldian conceptual framework and attempting to derive the critical leverage required for the pursuit of my research objectives from what should count as a subversive gesture of sorts, namely insisting that what Foucault calls ‘government’ is nearly identical with what others would refer to as ‘authority.’ On these last pages of this dissertation, I would like to explain how this impression came about.

In July 2019, I undertook research in Michel Foucault’s archive deposited at the Bibliothèque nationale de France. The primary aim of my archival research was to obtain a more complete picture of the sources Foucault drew upon in pre-

⁹⁰The closest Foucault arguably ever came to speaking decidedly on the topic of authority was in *What Is an Author?*, a 1969 lecture given to the Société Française de Philosophie in which he defends the historiographical method of his 1966 monograph *The Order of Things*.

paration of his Collège de France lecture courses on governmentality from 1978 and 1979. In this context, I worked amongst other things with Box 19 of the documents deposited at the Bibliothèque nationale, which bears the title *Économie, Libéralisme de Smith à Hayek, Notes de lecture* in the archival catalogue. This box contains a set of reading notes on the sources of Foucault's teaching at the Collège de France in the second half of the 1970s. Since my visit in 2019, the contents of this box of the Fonds Foucault have been digitised and made available as an online resource by the *Foucault Fiches de Lecture* project, a research initiative and presentation platform funded by the French Agence nationale de la recherche. As the editors of the website of the *Foucault Fiches de Lecture* project aptly observe, the notes themselves are not dated but the majority of the materials in Box 19 overlap with the topics that Foucault discusses in the 1979 *The Birth of Biopolitics* lectures (Équipe FFL, 2021): for example, the box contains collections of excerpts from texts on the welfare state, the rule of law, civil society, and the thought of Léon Walras and Vilfredo Pareto. The editors notice moreover that some material overlaps with the topics under discussion in the 1978 *Security, Territory, Population* lectures (ibid.): there are, for instance, notes on the Physiocrats, Adam Smith, and Thomas Malthus. What the editors of the website of the *Foucault Fiches de Lecture* project would seem to have overlooked, however, is that there is also some material in Box 19 that intersects with the topics Foucault discusses in his 1976 *'Society Must Be Defended'* lecture course. The latter material can be found in the fifth dossier of notes from Box 19, enclosed in a jacket whose title page has been labelled "N.S / National socialisme" (NAF 28730, Box 19, sheet 151) by Foucault.

It should be accurate to say that this dossier mainly contains excerpts and summaries of literature capable of shedding light on what could be called the 'governmentality' of the Nazi party, with many of these excerpts focussing on the role of law and the judiciary in Naziism. However, what prompted my suspicion that Foucault, at least in the mid- to late 1970s, might not have entirely honest about

the sources of his own thinking has been a reading note on Erich Ludendorff's 1935 monograph *Der totale Krieg* ('Total War') (NAF 28730, Box 19, sheet 169).⁹¹ On the note itself, the French title of Ludendorff's book, *La guerre totale*, is used, suggesting that Foucault had worked with Arthur Pfannstiel's French translation, which first appeared in 1936. The reading note refers to page 14 of the book. On this page of the 1936 French edition, Ludendorff begins to develop a key argument of his treatise: that Carl von Clausewitz's dictum 'war is the continuation of politics by other means' must be turned around in the light of the supposedly total dimension that warfare had attained in the first World War (Ludendorff claims, somewhat questionably, that in Germany, "the military and the people were one" during that conflict) (Ludendorff, 1935, p. 5; my translation).⁹² The line of argument which unfolds from around page 14 of the French edition eventually concludes, some pages later, on the following remark:

“All of Clausewitz's theories are to be overturned [sind über den Haufen zu werfen]. War and politics both serve the purpose of preserving the life of the people, but war is the highest expression of a people's will to live [völkischen Lebenswillens]. Therefore, politics ought to serve warfare.” (ibid., p. 10; my translation)

This passage, which we translated here from the 1935 German edition, is quoted almost in its entirety on Foucault's reading note.⁹³ In the following paragraphs, I would like to explain why my discovery of this note led me to believe that regardless of whether or not it is reasonable to claim that Foucault actually adopted this thought by Ludendorff as a methodological principle of his own, he

⁹¹Sheet 169 is reproduced in the *Appendix* as **Figure 2**.

⁹²In the last paragraph on page 13 of the French edition, which breaks over onto page 14, Ludendorff introduces this argument by claiming that “[j]ust as the character of warfare has changed over the course of the last century, which is to say, since Clausewitz, so too has the relationship between politics and war” (Ludendorff, 1936, p. 13; my translation).

⁹³According to my literal transcription, Foucault writes: « “les rapports entre la politique et la stratégie / militaire doivent se modifier. Ttes les théories / de Clausewitz sont à remplacer. / La guerre et la politique servent la conservation / du peuple, ~~et~~ mais la guerre reste la suprême expression de / la volonté de vie raciale. C'est prquoi la politique / doit servir la guerre. » (NAF 28730, Box 19, sheet 169). See (Ludendorff, 1936, p. 22) for this passage in Pfannstiel's 1936 French translation.

would in any case seem to have attempted to obscure the likely sources of some of the ideas he presented in *'Society Must Be Defended'*.

As we noted in Chapter Three, Foucault begins his *'Society Must Be Defended'* lectures by declaring his intention to formulate a number of methodological principles for analysing power relations. He states that his motivation for drawing up a new method for analysing power is that of distinguishing himself from the analytical methodology ostensibly implicit in both Marxist thought and all political theory that resorts to the notion of the social contract. In the inaugural lecture of his 1976 course at the Collège de France, Foucault begins to outline the cornerstone of his proposed methodology saying this:

“[I]f power is indeed the implementation and deployment of a relationship of force, rather than analyzing it in terms of surrender, contract, and alienation, or rather than analyzing it in functional terms as the reproduction of the relations of production, shouldn't we be analyzing it first and foremost in terms of conflict, confrontation, and war? That would give us an alternative to the first hypothesis — which is that the mechanism of power is basically or essentially repression — or a second hypothesis: Power is war, the continuation of war by other means. At this point, we can invert Clausewitz's proposition and say that politics is the continuation of war by other means.” (Foucault, 2003a, p. 15)

Having made this statement, Foucault goes on to discuss a number of different meanings of his proposed 'inversion of Clausewitz,' and he eventually brings these explanations to the following conclusion:

“So you see, once we try to get away from economic schemata [N.B.: 'economic' here refers both to Marxism and 'social contract'-type political theory] in our attempt to analyze power, we immediately find ourselves faced with two grand hypotheses; according to one, the mechanism of power is repression — for the sake of convenience, I will call this Reich's hypothesis, if you like — and according to the second, the basis of the power-relationship lies in a warlike clash between forces — for the sake of convenience, I will call this Nietzsche's hypothesis.” (ibid., p. 16)

This passage is immediately followed by Foucault positioning ‘war’ as the primary term of his proposed analytic method, arguing that “[r]epression is no more than the implementation, within a pseudopeace that is being undermined by a continuous war, of a perpetual relationship of force” (ibid., p. 17).

It must be mentioned that Clausewitz and the question of the ‘correct way’ of putting war and politics in relation to one another have presumably regained a somewhat broader currency shortly before Foucault began his ‘*Society Must Be Defended*’ lectures.⁹⁴ Clausewitz and his ‘war continues politics’-formula, for instance, are also topics of discussion in Carl Schmitt’s *Theory of the Partisan*,⁹⁵ originally published in 1963, which first appeared in French translation in 1972. In *Theory of the Partisan*, Schmitt presents Clausewitz as the first in a series of four defining modern theorists of partisan warfare, the others being Lenin, Mao Zedong, and oddly, Raoul Salan, the dissident French General who eventually became leader of the *Organisation d’Armée Secrète*. In the chapter of his book devoted to Lenin, which contains a discussion of the significance of Lenin’s reading of Clausewitz (Schmitt, 2007, pp. 48-54),⁹⁶ Schmitt effectively uses Lenin

⁹⁴In 1976, Raymond Aron also published *Clausewitz, Philosopher of War*, which discusses Clausewitz’s formula that ‘war is the continuation of politics by other means’ and its later ‘twists’ (cf. Aron, 1986, p. 239) in some detail. However, I need to admit that I have been unable to establish when exactly in 1976 Aron’s book was published, and therefore do not know whether Foucault theoretically could have had access to it when he delivered ‘*Society Must Be Defended*’.

⁹⁵We know from Michel Senellart that Foucault was familiar with Schmitt’s *Theory of the Partisan*. Senellart writes in his *Course Context* for the 1978 *Security, Territory, Population* lectures that a “[m]anuscript on governmentality” (Senellart, 2007, p. 398; fn. 103), which Foucault put with the lecture manuscripts for his 1979 *The Birth of Biopolitics* course, contains an explicit reference to Schmitt’s 1963 book (ibid., p. 390). Insofar as Foucault’s misspelling of Schmitt’s name in this manuscript (‘K. Schmitt’) (cf. ibid.) matches the misspelling in the entry for the 1972 French translation of *Theory of the Partisan* in the catalogue of the Bibliothèque nationale de France, we in fact have reason to assume that Foucault worked with the French translation rather than the German text.

⁹⁶Lenin’s reading of Clausewitz is also the topic of Étienne Balibar’s 2007 essay *The Philosophical Moment in Politics Determined by War*. In this essay, Balibar explains that Lenin indeed held that “[w]ar [...] is a form that contains the essence of politics” (Balibar, 2007, p. 214). However, Balibar also emphasises that while Lenin read Clausewitz at the same time as he read Hegel, publications of Lenin’s *Philosophical Notebooks* of 1914-15 only reproduce his notes on Hegel and omit those on Clausewitz (ibid., p. 213). According to Balibar, this omission is significant. He believes that through the simultaneous engagement with these two thinkers, Lenin ultimately came to be convinced that “the practical translation of the historical dialectic [...] does not simply involve reading Hegel through Marx, but also through Clausewitz” (ibid., p. 214). In connection with this suggestion by Balibar, it is worth mentioning further

to illustrate his own idea of the friend-enemy distinction as the essence of the political. In Schmitt's view, Lenin not only picked up on Clausewitz's idea that 'war continues politics by other means,' but was also the first to understand that politics *is* the friend-enemy distinction, and that the enemy is the *primary* term in this couplet (ibid., p. 51 f.). There are thus other possible sources than Ludendorff for the ideas that Foucault presented in the passages from '*Society Must Be Defended*' I referred to above. What I believe can be said nevertheless is that Foucault's 'convenient' reference to Nietzsche is likely a conscious attempt to divert attention from these more recent texts, which all highlight the political implications of the standpoint that power is to be understood essentially as 'a warlike clash between forces.' The 'inversion of Clausewitz's proposition,' a recurring phrase in the passage of '*Society Must Be Defended*' that leads up to my last quote from Foucault's lectures above, should have nothing to do with Nietzsche directly.

Foucault tells his audience in the inaugural lecture of '*Society Must Be Defended*' that all of his research since 1970 had been carried out on the methodological basis of this 'war-repression' schema (ibid., p. 17), but also expresses his dissatisfaction with this schema due to a supposed inadequacy of the notion of 'repression' (ibid., p. 17 f.). While he initially promises to explain his problem with the concept 'repression' in subsequent lectures (ibid., p. 18), he ultimately does not return to this topic. Foucault instead sketches out a genealogy of the discourse of 'power-as-warfare,' in which the latter is presented as the eventual progeny of an essentially biblical "discourse of rebellion and prophecy, of knowledge and of the call for the violent overthrow of the order of things" (ibid., p. 74). Interestingly, at the beginning of the third lecture in '*Society Must Be Defended*' Foucault in fact even tells us that he develops this genealogy in order to

that a late interlocutor of Carl Schmitt, the philosopher and self-professed Maoist Joachim Schickel, suggested that Schmitt's friend-enemy distinction, which Schmitt illustrated by way of reference to Lenin, is in fact construed in an entirely non-dialectical manner (Schickel, 1993, p. 9 f.; 64 ff.; 79 f.).

circumvent a discussion of “[w]ho [...] had the idea of inverting Clausewitz’s principle and [...] thought of saying ‘[i]t is quite possible that war is the continuation of politics by other means but isn’t politics itself a continuation of war by other means?’ ” (ibid., p. 47 f.; punctuation altered) — circumvent it by attempting to establish that “the principle that war is a continuation of politics by other means [sic!]⁹⁷ was a principle that [already] existed long before Clausewitz” (ibid., p. 48).

As we also already remarked in Chapter Three, apart from ‘*Society Must Be Defended*’, we furthermore encounter the notion that power relations are to be thought of as essentially warlike in a key passage of *The History of Sexuality, Volume One*, published in December 1976. The chapter on *Method* in Foucault’s 1976 book provides a list of precepts for undertaking ‘non-juridical’ analyses of power relations, which is prefaced with the following remarks:

“[P]ower must be understood in the first instance as the multiplicity of force relations immanent in the sphere in which they operate and which constitute their own organization; as the process which, through ceaseless struggles and confrontations, transforms, strengthens, or reverses them [...].

Should we turn the expression around, then, and say that politics is war pursued by other means? If we still wish to maintain a separation between war and politics, perhaps we should postulate rather that this multiplicity of force relations can be coded — in part but never totally — either in the form of ‘war,’ or in the form of ‘politics’; this would imply two different strategies (but the one always liable to switch into the other) for integrating these unbalanced, heterogeneous, unstable, and tense force relations.” (1998, p. 92 f.)

Habermas’s identification of Foucault with the ‘young conservatives’ of the Weimar Republic (Habermas, 1981, p. 13) — who eventually became part of the larger political-intellectual movement known as the ‘conservative revolution’ —

⁹⁷This is in fact a slip on Foucault’s part. It should be ‘... the principle that *politics* is a continuation of *war* by other means ...’.

had always appeared to me as an exaggeration, but my work with the archival material deposited at the Bibliothèque nationale left me with the impression that at least as far as Foucault's work from the 1970s is concerned, this proposition deserves to be taken seriously. Whatever one thinks of Lenin's reading of Clausewitz, or of Schmitt's interpretation thereof, Foucault was in any case no dialectician: "history [is not] the ruse of reason" (Foucault, 1998, p. 94), and power, consequently, "is [not] the ruse of history" (ibid.), he remarks in one of his precepts from *The History of Sexuality, Volume One*. What remains when this option is methodologically foreclosed? Martin Greiffenhagen once identified the glorification of struggle for struggle's sake, grounded ultimately in the Heraclitan idea that "war is a primordial law [Urgesetz] of life" (Greiffenhagen, 1977, p. 258; my translation) as one of the most prominent features of the thought associated with the 'conservative revolution.' This also seems to be the fundamental premise of Foucault's research methodology of the early to mid-1970s.

We mentioned furthermore in Chapter Three that Foucault abandoned the 'power-as-war' hypothesis once he resumed his annual lectures at the Collège de France in 1978 after his 1977 sabbatical. Foucault now made 'government' into the central category of his analyses of power relations, and he would, in fact, now also seek to associate his own work with that of the 'critical tradition' of the Enlightenment (cf. Foucault, 2007). War would now be a symptom of the failure of an exercise of power thought to function predominantly by way of individuals' participation in practises of 'conducting conduct.' With his shift to 'government' and 'governmentality' in 1978, Foucault thus gave up on his old method of writing the history of Western modernity as the history of anonymous power-knowledge *dispositifs* which give rise to the modern subject while also determining the latter in its totality. Foucault began to write histories of practises of government by virtue of which individuals are led to perform specific social roles. Individuals cannot not participate in these practises as they go about their social lives, but in

theoretical terms, the practise of government can never exhaustively determine somebody's identity.

It may therefore well be, as Mitchell Dean and Daniel Zamora have recently suggested, that Foucault's post-1978 ethico-political agenda is one that espouses increasing the autonomous 'self-government' of the individual in the modern world (and thereby reducing the heteronomy of being governed by state institutions) in order to allow us "to invent ourselves as works of art" (Dean & Zamora, 2021, p. 155) as far as possible. While Dean and Zamora resist the Habermasian interpretation of Foucault as a conservative thinker (cf. *ibid.*, p. 172 f.), we would like to propose that Foucault's post-1978 repositioning need not necessarily signify a departure from an overall conservative intellectual outlook. It could as well be understood as a turn towards a different variety of conservatism. This 'new' conservatism is no longer preoccupied with the birth of the modern subject from a continuous series of 'small wars' waged by anonymous power-knowledge *dispositifs*: its central category is the Nietzschean, and arguably also Hayekian, heroic-aristocratic ideal of the human being as a 'free spirit.'

My determination to render Foucault's conceptual apparatus useful for the purposes of this study in spite of what was not merely a conceptual difficulty, but also a normative reservation, made me construct the argument I pursue in Chapter Three. There, I held that the connection Foucault established in his 1983 essay *The Subject and Power* between his formal definition of power as the 'non-judicial' and 'non-warlike' practise of 'conducting conduct' and the 'sixteenth-century' meaning of the term 'government' appears to a certain extent arbitrary. I proposed that engaging with historical scholarship on authority allows for the latter to be presented as a set of 'non-judicial,' 'non-warlike' practises for guiding the conduct of subjects as well.

This synthesis of Foucault's notion of 'power-as-government' and a historical understanding of authority was encouraged by another find in Box 19 of the Fonds

Foucault, namely the reading note immediately preceding that on Ludendorff's *Der totale Krieg*. This preceding note is on a book by Roger Bonnard entitled *Le Droit et l'Etat dans la doctrine nationale-socialiste* ('Law and State in National Socialist Doctrine'), a study of the role of law and juridical concepts in Nazi political thought arguably 'descriptive' enough to be effectively apologetic of the forms of political rule practised by the Nazi party. The note has been titled "La notion de Führung" (NAF 28730, Box 19, sheet 168 recto)⁹⁸ by Foucault, and Foucault's interest has been with the distinctions between the notions of 'leadership' (Führung), 'government' (Regierung), and 'guidance' (Leitung) that Bonnard makes on page 46 of this book. Bonnard writes there that in Nazi doctrine, "*Führung* is distinguished very clearly from *Regierung*, which is to say, from 'government' in the broadest sense of the term" (Bonnard, 1936, p. 46; my translation). Bonnard then goes on to provide his own interpretation of what 'government' supposedly means in contradistinction to *Führung*. He posits that:

"to govern is essentially to command and to be obeyed. Government involves the exercise of a *Herrschaft* by virtue of which it commands. It therefore implies subjects and relationships of subjection. A governed people consists of the sum total of subjects who are commanded and who obey." (ibid.; my translation)

Whether this definition has had an influence on what we have referred to as Foucault's concept of 'power-as-government' must remain an open question for now,⁹⁹ but Bonnard's further insistence that government, thus defined, is also

⁹⁸Sheet 168 is reproduced (recto and verso) in the *Appendix* as **Figures 1.a.** and **1.b.**

⁹⁹For what it is worth, Foucault wrote down a more or less complete summary of Bonnard's definition of 'government.' My literal transcription is: « 1 Führung se di[s]tingue de Regierung / Regieren, c'est gverner en fonction d'1 Herrschaft. / Ça implique des sujets et un rapport de sujétion. / Ds la démocratie le rapport de Regierung subsiste / mais il y a identification entre g^vnant et gverné » (NAF 28730, Box 19, sheet 168 recto). Perhaps one could actually use the reading notes contained in the 'National Socialism' dossier of Box 19 of the Fonds Foucault as a starting point for a study of twentieth-century authors who pronounced an understanding of 'government' comparable to that of Foucault. I would like to remark on this occasion that a few decades before Foucault, Oswald Spengler already made reference to a so-called 'art of government' (Spengler's German phrase is 'Kunst des Regierens'). Spengler, not entirely unlike Foucault, opposes the 'art of government' to the notion of "government as right [... des Regierens als Recht]" (Spengler, 1934, p. 146). Also not unlike Foucault,

characteristic of modern democracies, where in his opinion “governors and governed [are identical]” (ibid.; my translation) in Rousseauesque manner, persuaded at least my own mind to leap from Foucault’s reading note on Bonnard’s notion of ‘government’ to Max Weber’s definition of authority as *legitime Herrschaft* (cf. Weber, 1980, p. 124), and from there to historical scholarship on authority.

This dissertation has sought to establish a novel perspective on authoritarianism in early twenty-first century Europe. We hope to have demonstrated that for understanding the recent resurgence of authoritarianism in Europe, it is helpful to adopt the working hypothesis that the introduction of neo-liberal governmental practises in the second half of the twentieth century concurred with two other significant historical developments: the displacement of homo juridicus by homo oeconomicus as the basic role that subjects of government are called upon to perform, and the replacement of an interpersonal modality of practising authority with an impersonal one. The dissertation could only provide a broad outline of authority as a historical social practise, but we are confident that this outline offers a solid basis for further research. This could include conceptual studies, as well as studies in the history of practises of authority and investigations of contemporary society on the basis of the understanding of authority we outlined.

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Spengler privileges the former understanding of ‘government’ over the latter. We are told by Spengler that “the art of government is not the first, but in fact the only problem of grand politics. All else follows from it. This art has determined world history” (1934a, p. 205; my translation). During my archival research, I did not encounter any references in Foucault’s notes to *Politische Pflichten der Deutschen Jugend* (‘Political Duties of the German Youth’) and *Neubau des Deutschen Reichs* (‘Reconstruction of the German Reich’), the two essays by Spengler just cited by me. However, my own decision to subject Spengler’s writings collected in *Politische Schriften* (‘Political Writings’) to a cursory reading came after my discovery in the ‘National Socialism’ dossier in Box 19 of the Fonds Foucault of a note on another of the essays included in this volume of Spengler’s writings, namely the 1920 text *Preussentum und Sozialismus* (‘Prussianism and Socialism’) (NAF 28730, Box 19, sheet 154).

Bibliography

List of Cases

Franz Grad v Finanzamt Traunstein (Case 9/70) [1970] ECR 825.

Transports Lesage & CIE v Hauptzollamt Freiburg (Case 20/70) [1970] ECR 861.

Erich Haselhorst v Finanzamt Düsseldorf-Altstadt (Case 23/70) [1970] ECR 881.

Primary Sources

Treaty Documents

League of Nations. (1969). The International Steel Agreement, 1926. In S. B. Clough, T. Moodie, & C. Moodie (Eds.), *Economic History of Europe: Twentieth Century* (pp. 172-178). London: Palgrave Macmillan.

Unconsolidated version of the Treaty establishing the European Coal and Steel Community. (1951, April 18). *Centre Virtuel de la Connaissance sur l'Europe*. Retrieved April 8, 2020, from https://www.cvce.eu/obj/treaty_establishing_the_european_coal_and_steel_community_paris_18_april_1951-en-11a21305-941e-49d7-a171-ed5be548cd58.html

Unconsolidated version of the Treaty establishing the European Atomic Energy Community. (1957, March 25). *Centre Virtuel de la Connaissance sur l'Europe*. Retrieved October 1, 2021, from <https://www.cvce.eu/en/obj/>

[treaty_establishing_the_european_atomic_energy_community_rome_25_march_1957-en-a3390764-3e75-421b-9c85-f52de5a14c2f.html](https://www.cvce.eu/content/publication/1999/1/1/cca6ba28-0bf3-4ce6-8a76-6b0b3252696e/publishable_en.pdf)

Unconsolidated version of the Treaty establishing the European Economic Community. (1957, March 25). *Centre Virtuel de la Connaissance sur l'Europe*. Retrieved October 1, 2021, from https://www.cvce.eu/content/publication/1999/1/1/cca6ba28-0bf3-4ce6-8a76-6b0b3252696e/publishable_en.pdf

Unconsolidated version of the Single European Act [1987] OJ L169/30.

Unconsolidated version of the Treaty on European Union [1992] OJ C191/35.

Secondary Instruments of the European Communities

Commission Recommendation 68/96/EWG of 31 January 1968 an die Bundesrepublik Deutschland zu den Entwürfen von Gesetzen — über die Besteuerung des Straßengüterverkehrs, — zur Änderung des Güterkraftverkehrsgesetzes, — zur Änderung des Gesetzes über den gewerblichen Binnenschiffsverkehr, — zur Änderung des Personenbeförderungsgesetzes [1968] OJ L35/14.

Council Decision 65/271/EEC of 13 May 1965 on the harmonisation of certain provisions affecting competition in transport by rail, road and inland waterway [1965] OJ 1500/67.

Council Directive 67/227/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes [1967] OJ 1301/67.

Council Regulation (EEC) 1612/68 of 15 October 1968 on freedom of movement for workers within the Community [1968] OJ L257/2 .

Council Directive 69/463/EEC of 9 December 1969 on the harmonisation of legislation of Member States concerning turnover taxes — introduction of value added tax in Member States [1969] OJ L320/34.

Archival Documents

Bulletin of the European Communities, No. 3. (1985). Part One. Special Features. *European Council in Brussels and March Council Meetings*.

Commission of the European Communities. (1981, June 17). Communication from the Commission to the Council on the State of the Internal Market. *COM(81) 313 final*. Strasbourg.

Commission of the European Communities. (1985, June 14). Declarations by the European Council Relating to the Internal Market. *Completing the Internal Market. White Paper from the Commission to the European Council (Milan, 28-29 June 1985)*. *COM(85) 310 final*. Brussels.

Commission of the European Communities. (1988, November 17). Completing the Internal Market: An Area Without Internal Frontiers. The Progress Report Required by Article 8b of the Treaty. *COM(88)650 final*. Brussels.

Draft Treaty establishing the European Union. (1984, February). Luxembourg: European Parliament. Directorate-General for Information and Public Relations.

Foucault, M. (Undated). Fonds Foucault, Bibliothèque nationale de France: *NAF 28730, Box 19, sheet 151*. *N. S. [National Socialisme] [couverture chemise]*. Équipe FFL (projet ANR Fiches de lecture de Michel Foucault), plate-forme EMAN. Retrieved November 21, 2021, from <https://eman-archives.org/Foucault-fiches/items/show/8915>

Foucault, M. (Undated). Fonds Foucault, Bibliothèque nationale de France: *NAF 28730, Box 19, sheet 154*. *Spengler, Oswald. Preussentum und Sozialismus*. Équipe FFL (projet ANR Fiches de lecture de Michel Foucault), plate-forme EMAN. Retrieved November 21, 2021, from <https://eman-archives.org/Foucault-fiches/items/show/8918>

Foucault, M. (Undated). Fonds Foucault, Bibliothèque nationale de France: *NAF 28730, Box 19, sheet 168. Bonnard, Roger. Le Droit et l'Etat dans la doctrine nationale-socialiste. La notion de Führung.* Reproduced in the *Appendix* as **Figures 1.a** and **1.b**.

Foucault, M. (Undated). Fonds Foucault, Bibliothèque nationale de France: *NAF 28730, Box 19, sheet 169. Ludendorff, Erich. La guerre totale. La politique et la guerre.* Reproduced in the *Appendix* as **Figure 2**.

Hayek, F.A. (1978, July 11). The dangers to personal liberty. *The Times*, p. 15.

Hayek, F.A. (1978a, August 3). Freedom of choice. *The Times*, p. 15.

Levi-Sandri, L. (1968). Free movement of workers in the European Community. *Bulletin of the European Communities, No. 11*, 5-9.

Steel, D. (1978, July 3). A plea for non-selective liberty. *The Times*, p. 14.

Wallace, W. (1978, July 24). Defending freedom. *The Times*, p. 13.

Literature

Agamben, G. (2005). *State of Exception*. (K. Attell, Trans.) Chicago, IL, and London: The University of Chicago Press.

Alberg, J. (2001). Rousseau and the Original Sin. *Revista Portuguesa de Filosofia*, 57, 773-790.

Althusser, L. (1971). Ideology and Ideological State Apparatuses (Notes towards an Investigation). In *Lenin and Philosophy and other Essays* (B. Brewster, Trans., pp. 127-188). New York, NY, and London: Monthly Review Press.

Amable, B., & Palombarini, S. (2021). *The Last Neoliberal. Macron and the Origins of France's Political Crisis*. (D. Broder, Trans.) London: Verso.

Anderson, P. (2011). *The New Old World*. London: Verso.

- Anderson, P. (2020, December). *Ever Closer Union?* Retrieved January 3, 2021, from The London Review of Books: <https://lrb.co.uk/the-paper/v43/n01/perry-anderson/ever-closer-union>
- Arendt, H. (1956). Authority in the Twentieth Century. *The Review of Politics*, 18(4), 403-417.
- Arendt, H. (1961). What Is Authority? In *Between Past and Future. Six Exercises in Political Thought*. New York, NY: Viking Press.
- Arendt, H. (2020). Was ist Autorität? In H. Arendt, & U. Lutz (Ed.), *Zwischen Vergangenheit und Zukunft. Übungen im politischen Denken 1* (pp. 159-200). Munich: Piper.
- Aron, R. (1986). *Clausewitz. Philosopher of War*. (C. Brooker, & N. Stone, Trans.) New York, NY: Simon & Schuster.
- Backhaus, J., & Maks, H. (2006). From Walras to Pareto. Introduction. In J. G. Backhaus (Ed.), *From Walras to Pareto* (pp. 1-8). New York, NY: Springer.
- Balibar, É. (2007). The Philosophical Moment in Politics Determined by War: Lenin 1914–16. In S. Budgen, S. Kouvelakis, & S. Žižek (Eds.), *Lenin Reloaded. Towards a Politics of Truth* (pp. 207-221). Durham, NC: Duke University Press.
- Barnhart, R. K. (Ed.). (1988). *Chambers Dictionary of Etymology*. Edinburgh: Chambers Harrap.
- Bauer, O. (2000). *The Question of Nationalities and Social Democracy*. (E. J. Nimni, Ed., & J. O'Donnell, Trans.) Minneapolis, MN: University of Minnesota Press.
- de Beistegui, M. (2018). *The Government of Desire. A Genealogy of the Liberal Subject*. Chicago, IL: The University of Chicago Press.
- Benanav, A. (2020). *Automation and the Future of Work*. London: Verso.

- Bentham, J. (1891). *A Fragment on Government*. (F. C. Montague, Ed.) Oxford: Clarendon Press.
- Bentham, J. (2000). *An Introduction to the Principles of Morals and Legislation*. Kitchener, ON: Bartoche Books.
- Benveniste, E. (1973). *Indo-European Language and Society*. (E. Palmer, Trans.) London: Faber and Faber.
- Bickerton, C. J., Hodson, D., & Puetter, U. (2015). The New Intergovernmentalism and the Study of European Integration. In C. J. Bickerton, D. Hodson, & U. Puetter (Eds.), *The New Intergovernmentalism: States and Supranational Actors in the Post-Maastricht Era* (pp. 1-50). Oxford: Oxford University Press.
- Biebricher, T. (2012). Foucault and the politics of rights. *Journal of Political Power*, 5(2), 301-318.
- Böhm, F. (1955). Geleitwort. In F. Pollock (Ed.), *Gruppenexperiment. Ein Studienbericht* (pp. IX-XXVII). Frankfurt am Main: Europäische Verlagsanstalt.
- Bonnard, R. (1936). *Le droit et l'état dans la doctrine nationale-socialiste*. Paris: Librairie générale de droit & de jurisprudence.
- Bracher, K.-D. (1960). *Die Auflösung der Weimarer Republik. Eine Studie zum Problem des Machtverfalls in der Demokratie* (3rd ed.). Villingen/Schwarzwald: Ring-Verlag.
- Brenner, R. (2006). *The Economics of Global Turbulence. The Advanced Capitalist Economies from Long Boom to Long Downturn, 1945-2001*. London: Verso.
- Brown, W. (2015). *Undoing the Demos: Neoliberalism's Stealth Revolution*. New York, NY: Zone Books.

- Burgin, A. (2012). *The Great Persuasion. Reinventing Free Markets Since the Depression*. Cambridge, MA: Harvard University Press.
- Chrysochoou, D. N., Stavridis, S., & Tsinisizelis, M. J. (1998). European democracy, parliamentary decline and the 'democratic deficit' of the European Union. *The Journal of Legislative Studies*, 4(3), 109-129.
- Clarke, S. (1991). *Marx, Marginalism, and Modern Sociology. From Adam Smith to Max Weber* (2nd ed.). Basingstoke: Macmillan.
- Clemente Fernández, A. I. (2014). *La Auctoritas Romana*. Madrid: Dykinson.
- Clough, S. B., Moodie, T., & Moodie, C. (1969). Cartelization of Industry. In S. B. Clough, T. Moodie, & C. Moodie (Eds.), *Economic History of Europe: Twentieth Century* (p. 172). London: Palgrave Macmillan.
- Cristi, R. (1998). *Carl Schmitt and Authoritarian Liberalism. Strong State, Free Economy*. Cardiff: University of Wales Press.
- Davies, W. (2009). Review Essay: The Making of Neo-Liberalism. *Renewal. A Journal of Social Democracy*, 17(4), 88-92.
- Davies, W. (2017). *The Limits of Neoliberalism. Authority, Sovereignty, and the Logic of Competition*. London: Sage.
- Davies, W. (2021, October 9). *When others stay silent about the ills of British capitalism, liars like Johnson rush in*. Retrieved November 21, 2021, from The Guardian: <https://www.theguardian.com/commentisfree/2021/oct/09/ills-british-capitalism-liar-boris-johnson>
- Dean, M., & Zamora, D. (2021). *The Last Man Takes LSD. Foucault and the End of Revolution*. London: Verso.
- Deleuze, G., & Guattari, F. (2003). *Anti-Oedipus. Capitalism and Schizophrenia*. (R. Hurley, M. Seem, & H. R. Lane, Trans.) Minneapolis, MN: University of Minnesota Press.

- Demeulenaere, P. (1996). *Homo oeconomicus. Enquête sur la constitution d'un paradigme*. Paris: Presses Universitaires de France.
- Denord, F. (2007). *Néo-libéralisme, version française: Histoire d'une idéologie politique*. Paris: Demopolis.
- Dinan, D. (1999). *Ever Closer Union. An Introduction to European Integration* (2nd Ed. ed.). Boulder, CA: Lynne Rienner.
- Douzinas, C. (2000). *The End of Human Rights. Critical Legal Thought at the Turn of the Century*. Oxford: Hart.
- Durkheim, É. (2013). *The Rules of Sociological Method. And Selected Texts on Sociology and its Method* (2nd ed.). (S. Lukes, Ed., & W. D. Halls, Trans.) Basingstoke: Palgrave Macmillan.
- Duverger, M. (1959). *Political Parties. Their Organization and Activity in the Modern State*. (B. North, & R. North, Trans.) London: Meuthen & Co.
- Ebenstein, A. (2001). *Friedrich Hayek. A Biography*. Basingstoke: Palgrave Macmillan.
- Ellul, J. (1973). *Propaganda. The Formation of Men's Attitudes*. (K. Kellen, & J. Lerner, Trans.) New York, NY: Vintage Books.
- Engelmann, S. (2003). *Imagining Interest in Political Thought. Origins of Economic Rationality*. Durham, NC, and London: Duke University Press.
- Engels, F. (1970). *Herr Eugen Dühring's Revolution in Science (Anti-Dühring)*. (C. P. Dutt, Ed., & E. Burns, Trans.) New York, NY: International Publishers.
- Engels, F. (1978). On Authority. In R. C. Tucker (Ed.), *The Marx-Engels Reader* (pp. 730-733). New York, NY: W.W. Norton.
- Équipe FFL. (2021, April 23). *Boite_019 / Économie, libéralisme de Smith à Hayek*. Retrieved November 21, 2021, from Foucault fiches de lecture: <https://eman-archives.org/Foucault-fiches/collections/show/393>

- Eschenburg, T. (1976). *Über Autorität*. Frankfurt am Main: Suhrkamp.
- Everson, M. (1995). The Legacy of the Market Citizen. In J. Shaw, & G. More (Eds.), *New Legal Dynamics of European Union* (pp. 73-90). Oxford: Clarendon Press.
- Ewald, F. (2020). *The Birth of Solidarity. The History of the French Welfare State*. (M. Cooper, Ed., & T. S. Johnson, Trans.) Durham, NC, and London: Duke University Press.
- Fey, A. (1936). *Der homo oeconomicus in der klassischen Nationalökonomie und seine Kritik durch den Historismus*. Limburg a.d. Lahn: Limburger Vereinsdruckerei.
- Finnis, J. (1980). *Natural Law and Natural Rights*. Oxford: Clarendon Press.
- Fontaine, P. (1990). *Europe — A fresh start. The Schuman Declaration 1950-90*. Luxembourg: Office for Official Publications of the European Communities.
- Foucault, M. (1983). The Subject and Power. In H. L. Dreyfus, & P. Rainbow, *Michel Foucault: Beyond Structuralism and Hermeneutics* (2nd ed., pp. 208-226). Chicago, IL: The University of Chicago Press.
- Foucault, M. (1990). Politics and Reason. In L. D. Kritzman (Ed.), *Politics, Philosophy, Culture. Interviews and Other Writings, 1977-1984* (A. Sheridan, Trans., pp. 57-85). London: Routledge.
- Foucault, M. (1992). *The Use of Pleasure. The History of Sexuality: Volume Two*. (R. Hurley, Trans.) London: Penguin Books.
- Foucault, M. (1998). *The Will to Knowledge. The History of Sexuality: Volume One*. (R. Hurley, Trans.) London: Penguin Books.
- Foucault, M. (2003). *Abnormal. Lectures at the Collège de France 1974-1975*. (V. Marchetti, A. Salomoni, F. Ewald, A. Fontana, A. I. Davidson, Eds., & G. Burchell, Trans.) London: Verso.

- Foucault, M. (2003a). *'Society Must Be Defended'. Lectures at the Collège de France, 1975-76.* (M. Bertani, F. Ewald, A. Fontana, A. I. Davidson, Eds., & D. Macey, Trans.) New York, NY: Picador.
- Foucault, M. (2007). *Security, Territory, Population. Lectures at the Collège de France 1977-78.* (M. Senellart, F. Ewald, A. I. Davidson, Eds., & G. Burchell, Trans.) New York, NY: Picador.
- Foucault, M. (2007a). What is Critique? In S. Lotringer (Ed.), *The Politics of Truth* (L. Hochroth, Trans., pp. 41-81). Los Angeles, CA: Semiotext(e).
- Foucault, M. (2008). *The Birth of Biopolitics. Lectures at the Collège de France 1978-79.* (M. Senellart, F. Ewald, A. Fontana, A. I. Davidson, Eds., & G. Burchell, Trans.) New York, NY: Picador.
- Foucault, M. (2014). *Wrong-Doing, Truth-Telling. The Function of Avowal in Justice.* (F. Brion, B. Harcourt, Eds., & S. Sawyer, Trans.) Chicago, IL, and London: The University of Chicago Press.
- Foucault, M. (2016). *About the Beginning of the Hermeneutics of the Self. Lectures at Dartmouth College, 1980.* (H.-P. Fruchaud, D. Lorenzini, Eds., & G. Burchell, Trans.) Chicago, IL, and London: The University of Chicago Press.
- Foucault, M. (2017). *Subjectivity and Truth. Lectures at the Collège de France 1980-1981.* (F. Gros, F. Ewald, A. Fontana, A. I. Davidson, Eds., & G. Burchell, Trans.) London: Palgrave Macmillan.
- Foucault, M. (2018). *Histoire de la sexualité 4. Les aveux de la chair.* (F. Gros, Ed.) Paris: Gallimard.
- Fuchs, C. (2018). Racism, Nationalism and Right-Wing Extremism Online: The Austrian Presidential Election 2016 on Facebook. In J. Morelock (Ed.), *Critical Theory and Authoritarian Populism* (pp. 157–206). London: University of Westminster Press.

- Fürst, F. (1934). *Die Bedeutung der auctoritas im privaten und öffentlichen Leben der römischen Republik*. Marburg: Joh. Hamel.
- Fueyo, J. (1968). Die Idee der "auctoritas": Genesis und Entwicklung. In H. Barion, E.-W. Bockenförde, E. Forsthoff, & W. Weber (Eds.), *Epirrhosis. Festgabe für Carl Schmitt* (G. Forsthoff, Trans., pp. 213-236). Berlin: Duncker & Humblot.
- Gaudet, M. (1961). The Legal Framework of the Community. In T. B. Law (Ed.), *Legal Problems of the European Economic Community and the European Free Trade Association* (pp. 8-27). London: Steven & Sons.
- Gillingham, J. (1986). Zur Vorgeschichte der Montan-Union Westeuropas. Kohle und Stahl in Depression und Krieg. *Vierteljahrshefte für Zeitgeschichte*, 34(3), 381-405.
- Gillingham, J. (2002). *Coal, Steel, and the Rebirth of Europe, 1945-1955. The Germans and French From Ruhr Conflict to Economic Community*. Cambridge: Cambridge University Press.
- Gillingham, J. (2003). *European Integration, 1950-2003. Superstate or New Market Economy?* Cambridge: Cambridge University Press.
- Goltz, A. (2009). *Hindenburg. Power, Myth, and the Rise of the Nazis*. Oxford: Oxford University Press.
- Grear, A. (2010). *Redirecting Human Rights. Facing the Challenge of Corporate Legal Humanity*. Basingstoke: Palgrave Macmillan.
- Greiffenhagen, M. (1977). *Das Dilemma des Konservatismus in Deutschland*. Munich: Piper.
- Grimm, D. (2015). *Sovereignty. The Origin and Future of a Political and Legal Concept*. (B. Cooper, Trans.) New York, NY: Columbia University Press.

- Haas, E. B. (2004). *The Uniting of Europe. Political, Social, and Economic Forces 1950-1957* (3rd ed.). Notre Dame, IN: University of Notre Dame Press.
- Habermas, J. (1981). Modernity versus Postmodernity. *New German Critique*, 22, 3-14.
- Habermas, J. (1982). The Entwinement of Myth and Enlightenment: Re-Reading Dialectic of Enlightenment. *New German Critique*, 26, 13-30.
- Habermas, J. (1998). *The Philosophical Discourse of Modernity. Twelve Lectures*. (F. Lawrence, Trans.) Oxford: Polity Press.
- Haselbach, D. (1991). *Autoritärer Liberalismus und soziale Marktwirtschaft*. Baden-Baden: Nomos.
- Hayek, F. A. (1958). The Economic Conditions of Interstate Federalism. In *Individualism and Economic Order* (pp. 255-272). Chicago, IL: The University of Chicago Press.
- Hayek, F. A. (1981, May 15). [Interview]. *Daily Journal (Venezuela)*.
- Hayek, F. A. (1998). Volume 3: The Political Order of a Free People. In *Law, Legislation, and Liberty. A New Statement of the Liberal Principles of Justice and Political Economy*. London: Routledge.
- Hayek, F. A. (1998a). Volume 2: The Mirage of Social Justice. In *Law, Legislation, and Liberty. A New Statement of the Liberal Principles of Justice and Political Economy*. London: Routledge.
- Hayek, F. A. (2006). *The Road to Serfdom*. Abingdon: Routledge.
- Hayek, F. A. (2011). *The Constitution of Liberty*. (R. Hamowy, Ed.) Chicago, IL: The University of Chicago Press.
- Heinze, R. (1925, July). Auctoritas. *Hermes*, 60(3), 348-366.
- Heller, H. (2015). Authoritarian Liberalism? *European Law Journal*, 21(3), 295-301.

- Hirschman, A. O. (2013). *The Passions and the Interests. Political Arguments for Capitalism Before Its Triumph*. Princeton, NJ: Princeton University Press.
- Hix, S. (2005). *The Political System of the European Union* (2nd ed.). Basingstoke: Palgrave Macmillan.
- Hobsbawm, E. (1989). *The Age of Empire, 1875-1914*. New York, NY: Vintage Books.
- Horkheimer, M. (1972). Authority and the Family. In *Critical Theory. Selected Essays* (M. J. O'Connell, Trans., pp. 47-128). New York, NY: Continuum.
- Horkheimer, M. (1985). [Aus Vorlesungen über Autorität und Gesellschaft]. In G. Schmid Noerr (Ed.), *Gesammelte Schriften, Band 12: Nachgelassene Schriften 1931-1949* (pp. 39-68). Frankfurt am Main: Fischer.
- Horkheimer, M., & Adorno, T. W. (1989). *Dialectic of Enlightenment*. (J. Cumming, Trans.) New York, NY: Continuum.
- Hume, D. (1960). *A Treatise of Human Nature*. (L. A. Selby-Bigge, Ed.) Oxford: Clarendon Press.
- Husserl, E. (1988). *Husserliana, Band 28. Vorlesungen über Ethik und Wertlehre 1908-1914*. (U. Melle, Ed.) Dordrecht: Kluwer.
- Innset, O. (2020). *Reinventing Liberalism. The Politics, Philosophy and Economics of Early Neoliberalism (1920-1947)*. Cham: Springer.
- Ipsen, H. P. (1972). *Europäisches Gemeinschaftsrecht*. Tübingen: J.C.B. Mohr (Paul Siebeck).
- Johnson, B. (2021, October 6). *Boris Johnson's Conservative conference speech*. Retrieved November 21, 2021, from The Spectator: <https://www.spectator.co.uk/article/full-text-boris-johnson-s-conservative-conference-speech>
- Kaiser, A. (1984). Preußen contra Reich. Hermann Heller als Prozeßgegner Carl Schmitts vor dem Staatsgerichtshof 1932. In C. Müller, & I. Staff (Eds.),

- Der soziale Rechtsstaat. Gedächtnisschrift für Hermann Heller, 1891-1933* (pp. 287-312). Baden-Baden: Nomos.
- Kirchheimer, O. (1981). *Von der Weimarer Republik zum Faschismus: Die Auflösung der demokratischen Rechtsordnung* (2nd ed.). (W. Luthardt, Ed.) Frankfurt am Main: Suhrkamp.
- Klare, K. (1979). Law-Making as Praxis. *Telos*, 40, 123-135.
- Kraemer, P. E. (1966). *The Societal State. The modern osmosis of State and Society as presenting itself in the Netherlands in particular: A case study of a general trend*. Meppel: J.A. Boom en Zoon.
- Kramer, D. (2017). From worker to self-entrepreneur: The transformation of homo economicus and the freedom of movement in the European Union. *European Law Journal*, 23(3-4), 172-188.
- Lafrance, X. (2019). *The Making of Capitalism in France*. Leiden: Brill.
- Laslett, P. (1999). Introduction. In J. Locke, & P. Laslett (Ed.), *Two Treatises of Government* (pp. 1-136). Cambridge: Cambridge University Press.
- Laval, C. (2007). *L'homme économique. Essai sur les racines du néolibéralisme*. Paris: Gallimard.
- Lenk, K. (1994). *Rechts, wo die Mitte ist. Studien zur Ideologie: Rechtsextremismus, Nationalsozialismus, Konservatismus*. Baden-Baden: Nomos.
- Lindberg, L. N., & Scheingold, S. A. (1970). *Europe's Would-Be Polity. Patterns of Change in the European Community*. Englewood Cliffs, NJ: Prentice-Hall.
- Lippmann, W. (1929). *Public Opinion*. New York, NY: The Macmillan Company.
- Lippmann, W. (1938). *An Inquiry into the Principles of The Good Society*. Boston, MA: Little, Brown & Co.
- Lorenzini, D. (2019). The Emergence of Desire: Notes Toward a Political History of the Will. *Critical Inquiry*, 45, 448-470.

- Löwenthal, L. (2017). *Autorität in der bürgerlichen Gesellschaft. Ein Entwurf.*
 In H. Dubiel (Ed.), *Falsche Propheten. Studien zum Autoritarismus: Schriften 3* (pp. 239-241). Frankfurt am Main: Suhrkamp.
- Löwenthal, L., & Guterman, N. (1987). *Prophets of Deceit: A Study of the Techniques of the American Agitator.* In L. Löwenthal, *False Prophets. Studies on Authoritarianism* (T. R. Weeks, Trans., pp. 9-178). New Brunswick, NJ, and Oxford: Transaction Books.
- Ludendorff, E. (1935). *Der totale Krieg.* Munich: Ludendorffs Verlag.
- Ludendorff, E. (1936). *La guerre totale.* (A. Pfannstiel, Trans.) Paris: Ernest Flammarion.
- Manow, P. (2019). *Die politische Ökonomie des Populismus.* Frankfurt am Main: Suhrkamp.
- Manstetten, R. (2000). *Das Menschenbild der Ökonomie. Der homo oeconomicus und die Anthropologie von Adam Smith.* Freiburg im Breisgau and Munich: Karl Alber.
- Marx, K. (1991). *Das Kapital. Kritik der politischen Ökonomie: Erster Band, Hamburg 1890. (MEGA, Bd. 10).* Berlin: Dietz Verlag.
- Marx, K., & Engels, F. (1976). *Ein Komplott gegen die Internationale Arbeiterassoziation. Im Auftrage des Haager Kongresses verfaßter Bericht über das Treiben Bakunins und der Allianz der sozialistischen Demokratie.* In *Marx-Engels-Werke (MEW), Band 18* (pp. 327-471). Berlin: Dietz.
- Mau, S. (2019). *The Metric Society. On the Quantification of the Social.* (S. Howe, Trans.) Cambridge: Polity Press.
- Mazier, J., Baslé, M., & Vidal, J.-F. (1999). *When Economic Crises Endure.* (M. Rosen, Trans.) Armonk, NY: M.E. Sharpe.
- Miller, W. J. (1985). *Dictionary of International Commerce.* London: Chapman and Hall.

- Mises, L. (1963). Economic Calculation in the Socialist Commonwealth. In F. A. Hayek (Ed.), *Collectivist Economic Planning. Critical Studies on the Possibilities of Socialism* (S. Adler, Trans., pp. 87-130). London: Routledge.
- Mommsen, T. (1888). *Römisches Staatsrecht* (Vol. 3). Leipzig: S. Hirzel.
- Mommsen, T. (2009). *The History of Rome* (Vol. 1). (W. P. Dickson, Trans.) Cambridge: Cambridge University Press.
- Montesquieu. (1849). *Esprit des Lois*. Paris: Librairie de Firmin Didot Frères.
- Morgan, M. S. (1996). The Character of 'Rational Economic Man'. *London School of Economics & Political Science Working Papers in Economic History*, 34(96), 1-24.
- Morgan, M. S. (2006). Economic Man as Model Man: Ideal Types, Idealization and Caricatures. *Journal of the History of Economic Thought*, 28(1), 1-27.
- Mouk, Y. (2018). *The People vs. Democracy. Why Our Freedom Is in Danger and How to Save It*. Cambridge, MA, and London: Harvard University Press.
- Mudde, C., & Rovira Kaltwasser, C. (2017). *Populism: A Very Short Introduction*. Oxford: Oxford University Press.
- Neumann, F. L. (1964). Notes on the Theory of Dictatorship. In F. L. Neumann, & H. Marcuse (Ed.), *The Democratic and the Authoritarian State. Essays in Political and Legal Theory* (pp. 233-256). London: The Free Press.
- Noailles, P. (1948). *Fas et jus. Études de droit romain*. Paris: Les Belles Lettres.
- Norris, P., & Inglehart, R. (2019). *Cultural Backlash. Trump, Brexit, and Authoritarian Populism*. Cambridge: Cambridge University Press.
- Onions, C. T. (Ed.). (1985). *The Oxford Dictionary of English Etymology*. Oxford: Clarendon Press.

- Pareto, V. (1896). *Cours d'économie politique. Tome premier*. Lausanne: F. Rouge.
- Pareto, V. (1962). *Lettere a Maffeo Pantaleoni, 1890-1923. Volume Primo, 1890-1896*. (G. de Rosa, Ed.) Rome: Edizioni di Storia e Letteratura.
- Pareto, V. (2014). *Manual of Political Economy*. (A. Montesano, A. Zanni, L. Bruni, J. S. Chipman, M. McLure, Eds., & J. Chipman, Trans.) Oxford: Oxford University Press.
- Parker, K. I. (2004). *The Biblical Politics of John Locke*. Waterloo, ON: Wilfrid Laurier University Press.
- Partridge, E. (2006). *Origins. A Short Etymological Dictionary of Modern English*. London: Routledge.
- Patel, K. K. (2020). *Project Europe. A History*. Cambridge: Cambridge University Press.
- Perrin, A. J., & Olick, J. K. (2011). Translators' Introduction. In F. Pollock, T. W. Adorno, A. J. Perrin, & J. K. Olick (Eds.), *Group Experiment and Other Writings. The Frankfurt School on Public Opinion in Postwar Germany* (A. J. Perrin, & J. K. Olick, Trans., pp. xv-lxi). Cambridge, MA: Harvard University Press.
- Piketty, T. (2015). *The Economics of Inequality*. (A. Goldhammer, Trans.) Cambridge, MA: Harvard University Press.
- Polanyi, K. (2001). *The Great Transformation. The Political and Economic Origins of Our Time*. Boston, MA: Beacon Press.
- Pollock, F., & Adorno, T. W. (2011). *Group Experiment and Other Writings. The Frankfurt School on Public Opinion in Postwar Germany*. (A. J. Perrin, J. K. Olick, Eds., A. J. Perrin, & J. K. Olick, Trans.) Cambridge, MA: Harvard University Press.

- Poulantzas, N. (2000). *State, Power, Socialism*. (P. Camiller, Trans.) London: Verso.
- Rabe, H. (1972). *Autorität — Elemente einer Begriffsgeschichte*. Konstanz: Druckerei und Verlagsanstalt Konstanz Universitätsverlag.
- Reinhoudt, J., & Audier, S. (Eds.). (2018). *The Walter Lippmann Colloquium. The Birth of Neo-Liberalism*. Cham: Palgrave Macmillan/Springer Nature.
- Reus-Smit, C. (1999). *The Moral Purpose of the State. Culture, Social Identity, and Institutional Rationality in International Relations*. Princeton, NJ: Princeton University Press.
- Rosenblatt, H. (2018). *The Lost History of Liberalism. From Ancient Rome to the Twenty-First Century*. Princeton, NJ: Princeton University Press.
- Roufos, P. (2021, May 5). *Die autoritäre Transformation*. Retrieved August 31, 2021, from jungle.world: <https://jungle.world/artikel/2021/20/die-autoritaere-transformation>
- Rougier, L. (1938). *Les Mystiques économiques. Comment l'on passe des démocraties libérales aux états totalitaires*. Paris: Librairie des Médecis.
- Rousseau, J.-J. (2002). Discourse on the Origin and the Foundations of Inequality Among Mankind. In S. Dunn (Ed.), *The Social Contract and The First and Second Discourses* (pp. 87-148). New Haven, CT: Yale University Press.
- Runciman, D. (2019). *How Democracy Ends*. London: Profile Books.
- Rüstow, A. (2017). Social Policy or Vitalpolitik (Organic Policy). In T. Biebricher, & F. Vogelmann (Eds.), *The Birth of Austerity. German Ordoliberalism and Contemporary Neoliberalism* (D. Steuer, Trans., pp. 163-178). London, and New York, NY: Rowman and Littlefield.
- Ryder, A. (2020). *Britain and Europe at a Crossroads. The Politics of Anxiety and Transformation*. Bristol: Bristol University Press.

- Röpke, W. (1950). *The Social Crisis of Our Time*. (A. Schiffer Jacobssohn, & P. Schiffer Jacobssohn, Trans.) London: William Hodge & Co.
- Saint Augustine. (2007). *On Order [De Ordine]*. (S. Borruso, Trans.) South Bend, IA: St. Augustine's Press.
- Santoro, E. (2003). *Autonomy, Freedom and Rights. A Critique of Liberal Subjectivity*. Dordrecht: Springer Science+Business.
- Scheingold, S. A. (1965). *The Rule of Law in European Integration. The Path of The Schuman Plan*. New Haven, CT, and London: Yale University Press.
- Schickel, J. (1993). *Gespräche mit Carl Schmitt*. Berlin: Merve.
- Schmitt, C. (1940). Völkerrechtliche Neutralität und völkische Totalität. In *Positionen und Begriffe im Kampf mit Weimar-Genf-Versailles, 1923-1939* (pp. 255-260). Hamburg: Hanseatische Verlagsanstalt.
- Schmitt, C. (1995). Starker Staat und gesunde Wirtschaft. In G. Maschke (Ed.), *Staat, Großraum, Nomos. Arbeiten aus den Jahren 1916-1969* (pp. 71-94). Berlin: Duncker & Humblot.
- Schmitt, C. (1998). Strong State and Sound Economy: An Address to Business Leaders. In R. Cristi, *Carl Schmitt and Authoritarian Liberalism. Strong State, Free Economy* (R. Cristi, Trans., pp. 212-232). Cardiff: University of Wales Press.
- Schmitt, C. (2004). *Legality and Legitimacy*. (J. Seitzer, Trans.) Durham, NC, and London: Duke University Press.
- Schmitt, C. (2007). *Theory of the Partisan. Intermediate Commentary on the Concept of the Political*. (G. L. Ulmen, Trans.) New York, NY: Telos.
- Schotte, W. (1932). *Der neue Staat*. Berlin: Neufeld & Henius.
- Schuman, R. (1950, May 9). *The Schuman Declaration — 9 May 1950*. Retrieved April 9, 2020, from European Union: https://europa.eu/european-union/about-eu/symbols/europe-day/schuman-declaration_en

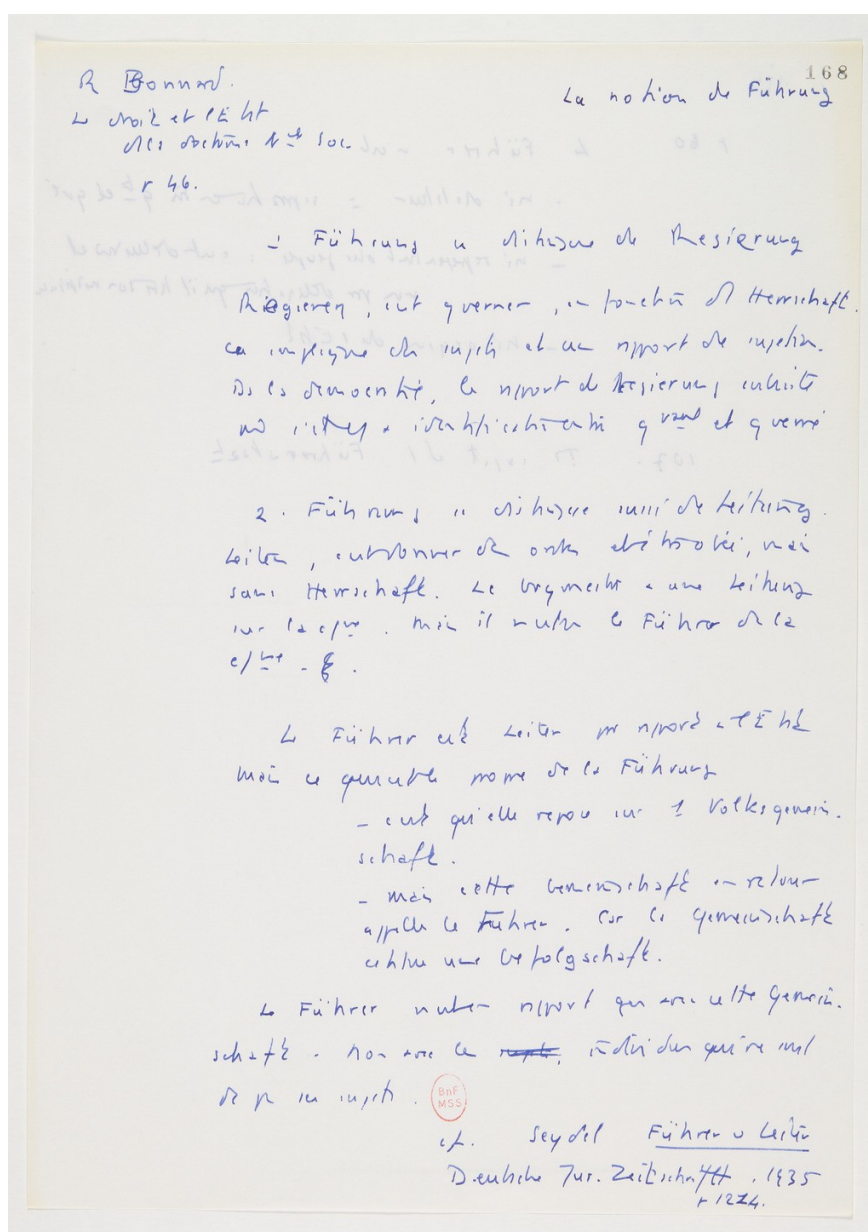
- Schuman, R. (1952). Speech by Monsieur Robert Schuman to the Consultative-Assembly. In *The Council of Europe and the Schuman Plan* (pp. 23-35). Strasbourg: Directorate of Information of The Council of Europe.
- Senellart, M. (2007). Course Context. In M. Foucault, *Security, Territory, Population. Lectures at the Collège de France 1977-78* (pp. 369-401). New York, NY: Picador.
- Shanks, T. (2014). *Authority Figures. Rhetoric and Experience in John Locke's Political Thoughts*. University Park, PA: Pennsylvania State University Press.
- Shaw, J. (1998). The Interpretation of European Union Citizenship. *The Modern Law Review*, 61(3), 293-317.
- Skeat, W. W. (1924). *An Etymological Dictionary of the English Language* (1st ed.). Oxford: Clarendon Press.
- Somek, A. (2008). *Individualism. An Essay on the Authority of the European Union*. Oxford: Oxford University Press.
- Somek, A. (2015). Delegation and Authority: Authoritarian Liberalism Today. *European Law Journal*, 21(3), 340–360.
- de Sousa Santos, B. (2002). *Toward a New Legal Common Sense. Law, Globalization, and Emancipation* (2nd ed.). Cambridge: Butterworths LexisNexis.
- Spengler, O. (1934). Politische Pflichten der Deutschen Jugend. In *Politische Schriften. Volksausgabe* (pp. 127-156). Munich and Berlin: C.H. Beck'sche Verlagsbuchhandlung.
- Spengler, O. (1934a). Neubau des Deutschen Reichs. In *Politische Schriften. Volksausgabe* (pp. 185-296). Munich and Berlin: C.H. Beck'sche Verlagsbuchhandlung.

- Spinoza, B. (1891). A Theologico-Political Treatise. In *The Chief Works of Benedict de Spinoza*. Vol. 1 (R. H. Elves, Trans., pp. 1-278). London: George Bell and Sons.
- Starobinski, J. (1988). *Jean-Jacques Rousseau. Transparency and Obstruction*. (A. Goldhammer, Trans.) Chicago, IL: The University of Chicago Press.
- Strathern, M. (Ed.). (2000). *Audit Cultures. Anthropological studies in accountability, ethics and the academy*. London: Routledge.
- Strathern, M. (2000a). New accountabilities. Anthropological studies in audit, ethics and the academy. In M. Strathern (Ed.), *Audit Cultures. Anthropological studies in accountability, ethics and the academy* (pp. 1-18). London: Routledge.
- Supiot, A. (2017). *Homo Juridicus. On The Anthropological Function of the Law*. (S. Brown, Trans.) London: Verso.
- Terré, F. (2014). Introduction to the French Edition. In A. Kojève, & F. Terré (Ed.), *The Notion of Authority. A Brief Presentation* (H. Weslati, Trans., pp. ix-xxxiv). London: Verso.
- Ther, P. (2016). *Europe Since 1989. A History*. (C. Hughes-Kreutzmüller, Trans.) Princeton, NJ: Princeton University Press.
- Ther, P. (2019). *Das andere Ende der Geschichte. Über die große Transformation*. Berlin: Suhrkamp.
- Thiele, M. (2019). *Motor der Integration: Europarechtsgeschichtliche Grundlegung der Europäischen Kommission*. Tübingen: Mohr Siebeck.
- Thornton, H. (2005). *State of Nature or Eden? Thomas Hobbes and His Contemporaries on the Natural Condition of Human Beings*. Rochester, NY: University of Rochester Press.
- United States National Planning Board. (1934). *Final Report—1933-34*. Washington, DC: United States Government Printing Office.

- Weber, M. (1978). *Economy and Society. An Outline of Interpretive Sociology.* (G. Roth, C. Wittich, Eds., E. Fischhoff, H. Gerth, A. M. Henderson, F. Kolegar, C. Wright Mills, T. Parsons, . . . C. Wittich, Trans.) Berkeley and Los Angeles, CA: University of California Press.
- Weber, M. (1980). *Wirtschaft und Gesellschaft. Grundriss der verstehenden Soziologie.* (J. Winckelmann, Ed.) Tübingen: J.C.B. Mohr.
- Weiß, V. (2020). Afterword. In T. W. Adorno, *Aspects of the New Right-Wing Extremism* (W. Hoban, Trans., pp. 42-64). Cambridge: Polity Press.
- Weyland, K. (2021). *Assault on Democracy. Communism, Fascism, and Authoritarianism During the Interwar Years.* Cambridge: Cambridge University Press.
- Wilkinson, M. A. (2013). The Specter of Authoritarian Liberalism: Reflections on the Constitutional Crisis of the European Union. *German Law Journal*, 14(5), 527-560.
- Wilkinson, M. A. (2015). Authoritarian Liberalism in the European Constitutional Imagination: Second Time as Farce? *European Law Journal*, 21(3), 313–339.
- Wilkinson, M. A. (2021). *Authoritarian Liberalism and the Transformation of Modern Europe.* Oxford: Oxford University Press.
- Williamson, V., Skocpol, T., & Coggin, J. (2011). The Tea Party and the Remaking of Republican Conservatism. *Perspectives on Politics*, 9(1), 25-43.
- Wolff, H. (1926). *Der homo economicus, eine nationalökonomische Fiktion.* Leipzig and Berlin: Gebrüder Paetel.
- Ziegler, H. O. (1932). *Autoritärer oder totaler Staat.* Tübingen: J.C.B. Mohr.

Appendix

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Figure 1.a: Reading Note Bonnard, La notion de Führung (Recto)

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Ludendorff
La guerre totale.

p 14

"Le rapport entre la politique et la stratégie militaire doit être modifié. Et la théorie de l'unité entre eux.

La guerre et la politique sont la conséquence du peuple, ^{qui} la guerre est la suppression de la volonté de vivre. C'est pourquoi la politique doit unir la guerre.

Pour le peuple représente une de leur vie. L'âme du peuple se manifeste, et le meilleur exemple de la vie sont élevés, ... + il est dans elle est la politique qui cherche l'existence de la guerre. Et qui avec elle l'expression de la guerre totale. Elle est par elle et accepte la politique réelle et "mettre droit" au moment de la guerre, car elle doit avoir qui est tout: la conscience du peuple."

La politique totale est ^{elle} l'union de la guerre à l'union cette lutte entre les deux de guerre.

Source gallica.intramuros.bnf.fr / Bibliothèque nationale de France, Département des Manuscrits, NAF 28730 (19)

Figure 2: Reading Note Ludendorff, La politique et la guerre