

OCCASIONAL PAPERS

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MÜNCHEN

— X —

Sandro Chignola

“FETISHISM WITH THE NORM“ AND SYMBOLS OF POLITICS

Eric Voegelin between Sociology and
“Rechtswissenschaft”
(1924-1938)



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OCCASIONAL PAPERS, X, Juli 1999

Sandro Chignola, „Fetishism with the Norm“ and Symbols of Politics. Eric Voegelin between Sociology and “Rechtswissenschaft” (1924-1938)

Redaktion: Sebastian Brökelmann

OCCASIONAL PAPERS

Eric-Voegelin-Archiv, Ludwig-Maximilians-Universität München

Hrsg. von Peter J. Opitz und Dietmar Herz

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ISSN 1430-6786

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Acknowledgements

For their many helps and suggestions about this paper, and more generally, about my own entire, pluriennial, research on Voegelin, I warmly thank Prof. Dr. Peter J. Opitz (München), Dr. Geoffrey L. Price (Manchester), Prof. Giuseppe Duso (Padova), my colleagues and friends Dr. Adone Brandalise, Dr. Luigi Franco, Dr. Maurizio Merlo, Dr. Sandro Mezzadra, Dr. Mario Piccinini, Dr. Gaetano Rametta, Dr. Maurizio Ricciardi, Dr. Antonino Scalone, Jodi Cockeril, and my little brother Dr. Roberto Chignola.

This work is dedicated to Nina, Maurizio, Camilla, Chicco, Anna and Robi.

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“FETISHISM WITH THE NORM“ AND SYMBOLS OF POLITICS

Eric Voegelin between Sociology and
“Rechtswissenschaft”
(1924-1938)

I. For a definition of „outline“ in the early legal writings of Eric Voegelin

While preparing this work it appeared possible to take at least two things for granted. On the one hand, in consequence of the lively debate during the last few years about the work of Eric Voegelin¹, it seemed inappropriate to dwell again on his figure

¹ Just to mention the Italian case, we have to consider that the following works of Voegelin have appeared, in chronological order, in Italy: *La nuova scienza politica* [*The New Science of Politics*, 1952], Torino: Borla, 1968; *Il mito del mondo nuovo* [this anthology contains: *Science, Politics and Gnosticism*, 1968; *Religionsersatz. Die gnostischen Massenbewegung unserer Zeit*, 1960; *Wissenschaft, Politik und Gnosis*, 1959], Milano: Rusconi, 1970; *Anamnesis. Teoria della storia e della politica* [*Anamnesis. Zur Theorie der Geschichte und der Politik*, 1966], Milano: Giuffrè, 1972; *Eric Voegelin: un interprete del totalitarismo*, Roma: Astra, 1978; *Trascendenza e gnosticismo in Eric Voegelin*, Roma: Astra, 1979; *Caratteri gnostici della moderna politica economica e sociale*, Roma: Astra, 1980 (these last three books collect Eric Voegelin's essays in Italian translation); *Ordine e storia. La filosofia politica di Platone (Order and History, vol. III, Plato*, 1957], Bologna: Il Mulino, 1986; *La politica: dai simboli alle esperienze. 1. Le religioni politiche. 2. Riflessioni autobiografiche* [*Die politischen Religionen*, 1938; *Autobiographical Reflections*, 1989], Milano: Giuffrè, 1993. Other important essays by Voegelin have appeared separately. Among them we note: *Apocalisse e rivoluzione* [*Apocalyptic Revolution*, 1967], in: R. Pavetto (Ed.), *1867-1967: un secolo di marxismo*, Florence: Vallecchi, 1967; *Equivalenza di esperienza e simbolizzazione nella storia* [*Equivalence of Experience and Symbolization in History*, 1969], in: L. Pareyson (Ed.), *Eternità e storia. I valori permanenti nel*

in the form of a consistent „introduction“. On the other hand, it seemed necessary once and for all to become aware of the field of interest in which the thinking of Voegelin matured and found its own „definitive“² order. Therefore we will occupy ourselves here only marginally with the later work of Voegelin. And even less will we seek to enter -- beyond the threshold defined methodologically and chronologically in *The New Science of Politics*³-- the more radically philosophical results of his many years of study. We want, in other words, to

divenire storico, Firenze: Vallecchi, 1970; La dottrina della costituzione di Carl Schmitt. Tentativo di analisi costruttiva dei suoi principi teorico-politici [Die Verfassungslehre von Carl Schmitt. Versuch einer konstruktiven Analyse ihrer staats-theoretischer Prinzipien, 1931], in: G. Duso (Ed.), *Filosofia politica e pratica del pensiero*, Milano: Angeli, 1988; Essere eterno nel tempo [Ewiges Sein in der Zeit, 1964], in: „*Il Centauro*“, 1988, nn. 17/18, p. 215-236. However as far as the critical literature is concerned we will confine ourselves for the moment to referring to the followings monographs: Gf. Zanetti, *La trascendenza e l'ordine. Saggio su Eric Voegelin*, Bologna: CLUEB, 1989; G. Lami, *Introduzione a Eric Voegelin. Dal mito teocosmogonico al sensorio della trascendenza*, Milano: Giuffrè, 1993; S. Chignola, *Pratica del limite. Saggio sulla filosofia politica di Eric Voegelin*, Padova: Unipress, 1998; and to two collected volumes which assemble the views of those who have contributed most to the Italian debate: G. Duso (Ed.), *Filosofia politica e pratica del pensiero. Eric Voegelin, Leo Strauss, Hannah Arendt*, Milano: Angeli, 1988; R. Racinaro (Ed.), *Ordine e storia in Eric Voegelin*, Napoli: Esi, 1988.

² It is difficult to talk of „definitiveness“ with regard to the theoretical order through which Voegelin's journeying matured. I note also that the two most important projects of Voegelin -- *The History of Political Ideas*, for which a mountain of work had been prepared but was never concretely used, because the author, due to the sudden rise of theoretical problems, decided not to publish it, and *Order and History*, the *opus magnum* of Voegelin, constantly pressured by problems of coherence among which the original system and the positive developments were elaborated in the single volumes -- underwent constant reorganisation that the original intention was in some cases distorted.

³ E. Voegelin, *The New Science of Politics*, Chicago: The University of Chicago Press, 1952.

operate from a level that improves the current state of the Voegelin research by seeking to integrate the single interpretative structure, and this through reference to the intellectual ground and the cultural climate in which Voegelin's thinking found its own original reasoning.

From this point of view, it would be more helpful, not to enact a stereotypical reaffirmation and total reconstruction of Voegelin's work, but to go back to the first Voegelinian output -- much less well known and to challenge the now consolidated image of an „Atlantic“ Voegelin, one definitively relieved of the inherited weight of his own continental, sociologico-legal and intellectual education, in its development and progressive definition in Voegelin's maturity.

On this subject, it is a matter neither of introducing radically new interpretative perspectives, nor of proposing historiographical hypotheses which arrange, on a mono-dimensional plane, numerous and diverse Voegelinian speeches according to their presumed thematic continuity and contents. Nor is it a matter of providing for, for the sake of interpretative completeness, the simple chronological reconstruction of Voegelin's thinking through a coherent exegesis of his early work. We will seek rather to approach a theoretical journey, which, in our opinion, results in the essay on „Political Religions“⁴. This journey we understand as having been finished yet passed on in that hurried text, which resolved in some measure for later works the tormented relationship that Voegelin possessed with the German

⁴ E. Voegelin, *Die politischen Religionen*, Wien, 1938; München: Fink, 2. Auflage, 1996

„Staatslehre“ in the 20s and 30's. That is to say, by identifying the categorical system unfolding in the work we have employed as our term of reference, we identify the development of a „function-bridge“ between the two principal phases into which Eric Voegelin's philosophical-political speculation is divided. In effect, we will therefore clarify, through Voegelin's early stance regarding his contemporaries, the warning signs of his intellectual emancipation from the logical and methodological apparatus of politico-legal science -- that is, the first instance of a marked distance from origins of a strong search for autonomy. We also will clarify the evident, albeit not always manifestly declared, traces of dependency journeys which contribute to the elaboration of those same stances.

This deals with an attempt already partially advanced in the context of the Italian debate.⁵ If it is true that the name of Voegelin is being introduced for the first time into the Italian debate with regard to the criticism of modernity, and this through the use, in a controversial way, of the „gnostic“ concept -- a concept allowing by means of its unreflected categorical extension, a global criticism of the processes of modernity⁶ -- it is also true that, more recently, Voegelin's political anthropology, supported by its own rehabilitation of philosophy and classical metaphysics, has allowed that his

⁵ See: G. Duso / S. Chignola, Die Rezeption Voegelins in Italien. Ein neuer Weg der politischen Philosophie, in: *Zeitschrift für Politik*, 1990, Heft 4, S. 394-403.

⁶ For a correct interpretation of the gnostic concept in Voegelin, see now P. J. Opitz, La tesi sullo gnosticismo, in: *Filosofia politica*, XIII, 2/1999.

own theoretical project might be proposed again in the shadow of the so called *Rehabilitierung* of practical philosophy.⁷

For these reasons, some of the most recent stances within the Italian debate -- leaving aside the inner articulations and the immediate urgency to which the *Rehabilitierung der praktischen Philosophie* tries to respond programmatically -- have sought to recover the „words“ of Voegelin. The recent stances clarify these words by attempting an elaboration of a political philosophy *peri ta anthropolina*: not so much as an interpretative „model“ that might, as in the case of the German *Rehabilitierung*, play upon the specificity of the rationality of „action“ (a specificity recovered in that case from Aristotle's ethical works), as an attempt to develop a strain of epistemic thought concerning the Political. The latter might represent a positive attempt to leave and go beyond the methodological and conceptual attack highlighted by the residual phases of the Weimarian debate. By this means, the defined structures of Voegelinian discourse (theory of symbolism, concept of representation, philosophy of consciousness, for example) are returned to their background: They are compared with Carl Schmitt's *Verfassungslehre*⁸ or with the overall scene in which

⁷ The original German debate was caused by the volume M. Riedel (Hrsg.), *Rehabilitierung der praktischen Philosophie*, Freiburg i. B.: Rombach Verlag, 1972-1974, vol. 1/2. See furthermore: O. Höffe, *Praktische Philosophie. Das Modell des Aristoteles*, Salzburg und München: Anton Pustet Verlag, 1971; G. Bien, *Die Grundlegung der politischen Philosophie bei Aristoteles*, Freiburg i. B.: Karl Alber Verlag, 1973. This theme was introduced in the Italian context, with reference to Voegelin's work, through: C. Pacchiani (Ed.), *Filosofia pratica e scienza politica*, Abano: Francisci, 1980; W. Tega (Ed.), *Etica e politica*, Parma: Pratiche, 1984; E. Berti (Ed.), *Tradizione e attualità della filosofia pratica*, Genova: Il Melangolo, 1988.

⁸ C. Schmitt, *Verfassungslehre*, Berlin: Dunker & Humblot, 1928. That there was a relationship between Voegelin and Schmitt is established: besides

the confrontation of Voegelin and Max Weber⁹ matured. In the cases last cited historiographic interpretation was already

repeated mutual quotations and the review that Voegelin dedicated to Schmitt's *Verfassungslehre* in 1931, there is also evidence from the correspondence that the two maintained until at least 1955. See: *Eric Voegelin - Carl Schmitt: un carteggio inedito. Lettere 1931-1955*, transl. and edited by S. Chignola, in: *Filosofia Politica*, V, 1/1991, p. 142-151 (now reprinted in: S. Chignola, *Pratica del limite*, p. 169-182). On the theme of the relationship between the two, see G. Duso, *La crise de l'État comme forme juridique et la philosophie politique: Eric Voegelin et Carl Schmitt*, unpublished conference paper, Université de Cergy-Pontoise (Paris, France), 1993; P. Gottfried, *Erich Voegelin and the Interwar German Context*, unpublished paper submitted to the „Second International Conference on the Work of Eric Voegelin“, University of Manchester, 3-6 July, 1997; C. Galli, *Genealogia della politica. Carl Schmitt e la crisi del pensiero politico moderno*, Bologna: Il Mulino, 1996, p. 396-39.

⁹ On the relationship between Voegelin and Weber (developed especially from Voegelinian essays of the 1930s see: Über Max Weber, in: *Deutsche Vierteljahrschrift für Literaturwissenschaft und Geistesgeschichte*, 3 Jahrgang, Bd. III, 1925, p. 178-183; Max Weber, in: *Kölner Vierteljahresschrift für Soziologie*, Jahrgang, IX, 1/2, 1930, p. 1-16; Die Größe Max Webers, in: *Ordnung, Bewußtsein, Geschichte. Späte Schriften - Eine Auswahl*, hrsg. von P. J. Opitz, Stuttgart: Klett Cotta, 1988), see, as well as the *Autobiographical Reflections* of Eric Voegelin (Baton Rouge: LSU, 1989, p. 11-13), L. Franco, Voegelin e Weber. Ambiguità e trasparenza, in: *Il Mulino*, XXXV, 307, 1986, p. 775-797; P. J. Opitz, *Max Weber und Eric Voegelin*, Nachwort zu: Eric Voegelin, *Die Größe Max Webers*, München: Fink, 1995, p. 105-133. The most thorough work is perhaps still, W. G. Petropulos, *Die Rezeption von Max Weber in der politischen Philosophie von Eric Voegelin*, Schriftliche Hausarbeit zur Erlangung des Magistergrades an der Ludwig-Maximilian-Universität München, 1984. On the negative role played by Voegelin compared to Weber's postwar reception in Federal Germany, see: H. Maier, *Politische Wissenschaft in Deutschland*, München: Piper Verlag, 1985, p. 101; and G. Hübinger / J. Osterhammel / W. Welz, Max Weber und die Wissenschaftliche Politik nach 1945. Aspekte einer theoriegeschichtlichen Nicht-Rezeption, in: *Zeitschrift für Politik*, 1990, Heft 2, p. 181-204. On this theme, there is furthermore the remark of Carl Schmitt in a letter to Julien Freund: „Mais Max Weber ne semble plus être estimé à Munich. Sa chaire resta déserte de 1920 (sa mort) jusqu'à 1960 (à peu près), et son premier successeur est M. Eric Voegelin qui a condamné -- dans sa *Antrittsvorlesung* -- Hegel, Marx et toutes les rationalistes comme

attempted, releasing interpretation from the immediate, instrumental and ideologically motivated involvement of its initial reception, which again displaced the work of Voegelin in a cultural climate defined by the German debate on the doctrine of the State (*Staatslehre*) that came to be fully recognised and positively assumed. This historiographic interpretation, we emphasise, took the radicalness of Voegelin's philosophical beginnings back to the theoretical and political outline which had represented its initial motivation. As well as this, it dealt with recovering for Voegelin a part of his intellectual biography which had been deemed in some of the cases previously quoted, plainly preferable to pass over.

To some extent, the historiographic work is now reversing this same interpretative choice. Our work indicates that the essay on „Political Religions“ stabilised an entire period of harsh confrontation with the reality of the contemporary German debate. Moreover, the essay suggests a maturation of the extreme stances of the years immediately preceding.

Die Politische Religionen (1938), will be treated therefore both as transitional-work and as the *outcome* of the first stage of Voegelin's intellectual development. This is our starting point. Even though fully sharing in and having contributed personally to the attempt to interpret texts of Voegelin's early

gnostiques athéistes et déicides, *Gottesmörder*. Si Max Weber avait entendu une telle conférence dans sa chaire, il aurait eu une de ces explosions de tempérament qu'on redutait, et que j'ai vu plusieurs fois. Bref, on peut être curieux en attendant ce congrès de l'an 1964 à Heidelberg et en attendant le nouveau *Max Weber-Bild* dans l'Allemagne de l'Ouest dirigé par M. René König et M. Voegelin“. C. Schmitt, Letter to J. Freund, from „Plettenberg, le 25 août 1963“, in: *Schmittiana II*, hrsg. von P. Tommissen, Brussel: Economische Hogescholl Saint-Aloysius, 1990, p. 55-56.

output in reference to the mature texts of Voegelin, it seems now necessary to gain a more pronounced awareness of the autonomy of the intellectual processes which the early works emphasise, and to abandon the, so to speak, „backwards“ path that has been favoured thus far.¹⁰

We will therefore take on, in all its concreteness, the role played by Voegelin's first work in its subsequent results. We will at the same time press beyond the plateau which demands the necessity for logical connection between the two stages; we will abandon therefore the perspective which constructs, from a unique point, the lines of continuity and coherence between the different phases of Voegelin's intellectual development. To this end we will engage firstly in the „game“ which was established, totally independently, between Voegelin's initial position and his counterparts in the dialogue of the time. To this end also we will set the best-known Voegelin (the one reflected in *Anamnesis* or in the monumental *Order and History*) aside and to try instead to reconstruct the mosaic, the fragments of which were supplied by the precise polemic stances which matured after the 20s. This „mosaic“ is set in a framework already strongly distinguished in the philosophical-political sense by the more radical examples of the debate: namely by Hans Kelsen and the historical developments of the German „Staatslehre“, which found itself again confronting the problem of the relationship among sociology, law and constitution.

¹⁰ See my own: *Pratica del limite. Saggio sulla filosofia politica di Eric Voegelin*, Padova: Unipress, 1998, especially Chap. III, 71 et seq.

II. Crisis and „reconstruction“ of the doctrine of the State: the controversy with Hans Kelsen.

From the essay of 1924 dedicated to the relationship between the „Pure Theory of Law“ (*Reine Rechtslehre*) and doctrine of the State¹¹, Voegelin made a coherent attempt to delegitimize the split between legal positivism and the sociological tradition from which Kelsen had recently worked out his own argument concerning the sociological concept of State.¹² Although limiting itself to a confrontation, in the introductory paragraph of this essay, with Kelsen's *Hauptprobleme*¹³ and with the developments of the theses therein as already expounded by authors such as Sander and Merkl, Voegelin almost immediately shifted the central point of his attention: the real problem regarding the systematic-theoretic processes of subsumption of the State form, together with the much more

¹¹ E. Voegelin, *Reine Rechtslehre und Staatslehre*, in: *Zeitschrift für Öffentliches Recht*, IV, 1924, p. 80-131. A more „neutral“ presentation of Kelsen's *Reine Rechtslehre* for the American public will come later produced in E. Voegelin, Kelsen's pure Theory of Law, in: *Political Science Quarterly*, XLII, n. 2, 1927, p. 268-276. On this subject see: D. Herz, *Das Ideal einer objektiven Wissenschaft von Recht und Staat. Zu Eric Voegelins Kritik an Hans Kelsen*, Occasional Papers, III, Eric-Voegelin-Archiv der Ludwig-Maximilians Universität München, 1996; M. Castro Henriques, *A filosofia civil de Eric Voegelin*, Lisboa: Universidade Católica Editora, 1994, p. 33-34.

¹² H. Kelsen, *Der soziologische und der juristische Staatsbegriff*, Tübingen: Mohr, 1922.

¹³ H. Kelsen, *Hauptprobleme der Staatsrechtslehre*, Wien, 1911. On Kelsen and the „Pure Theory of Law“, in general, see: Engall / Métall (Eds.), *Law, State and International Legal Order. Essays in Honor of Hans Kelsen*, Knoxville: The University of Tennessee Press, 1968; Weinberger / Krawietz (Hrsg.), *Reine Rechtslehre im Spiegel ihrer Fortsetzer und Kritiker*, Wien: Springer, 1988; R. Tur / W. Twining (Eds.), *Essays on Kelsen*, Oxford: Oxford University Press, 1988.

general problem of „methodological“ definition of the logic of objectivisation of cultural phenomena. Such points of departure, explicitly tied to reconstruction and discussion of the formulas of normological reduction that allowed Kelsen to define the theory of *Zurechnung*, led Voegelin immediately into a wider confrontation with the tradition of the discipline. This tradition, in Kelsen's elaboration, had had the opportunity of being screened, rejected or, in a certain measure, reduced by being in some way recovered within it.

It is in our opinion also extremely significant in relation to the future development of the Voegelinian position how, in that first formulation, the *Reine Rechtslehre* confrontation was mediated by the exposition and discussion of the effect of Kelsen's „Organlehre“¹⁴: a precise, determined scrutiny of constitutional history and the German tradition of expertise in public law. This scrutiny in turn had represented the point of transition between the concreteness of the organisational form of the modern State, and the specificity of the role played by the jurist class in comparison with it and by their effort at systematisation.¹⁵

¹⁴ See, for example, E. Voegelin, *Zur Lehre von der Staatsform*, in: *Zeitschrift für Öffentliches Recht*, VI, 1927, p. 572-708.

¹⁵ On this point: W. Wilhelm, *Zur juristischen Methodenlehre im 19. Jahrhundert*, Frankfurt a. M.: Klostermann, 1958; K. Larenz, *Methodenlehre der Rechtswissenschaft*, Berlin - Göttingen - Heidelberg: Springer, 1960; M. Fioravanti, *Giuristi e costituzione politica nell'Ottocento tedesco*, Milano: Giuffrè, 1979. On the concept of *Organ* and its notion of legal person see, at least, E. W. Böckenförde, *Organ, Organisation, Juristische Person. Kritische Überlegungen zu Grundbegriffen und Konstruktionsbasis des staatlichen Organisationsrechts*, in: *Fortschritte des Verwaltungsrechts. Festschrift für Hans Wolff zum 75. Geburtstag*, hrsg. von C. F. Menger, München: Beck, 1973, p. 269-305.

In Kelsen, however, the refusal to anthropomorphize the State coincided - in the wake of the rationalisation of state law enacted by Laband - with the need to understand the entire expression of political power in legal formulas. This refusal at the same time provided the possibility of a decisive change. The legal norm no longer represented something already found, a „Befindliches“ allowing, as in Jellinek's systematic division, an integrated pairing of a „Soziallehre“ within the outline of an „allgemeine Staatslehre“ to the doctrine of state law¹⁶; rather, the norm came to determine how placement of the organs according to the procedure and ways decided by the „Grundnorm“ (fundamental law) might have defined its execution.¹⁷ From this point of view, incidentally, it is possible to prove a paradoxical convergence. If the requirement advanced by Jellinek preconizes a „splitting“ of the law (it mentions particularly a „Doppelleben“ of the law whereby the State assumes which social phenomenon *is* normative), then it also preconizes a division within which the sociological petition permits exposure of the error of the doctrine of natural law.¹⁸ The same requirement completely exhausts the theoretical possibility of taking into consideration a power of appropriation regarding the State form of public relations.¹⁹ In this, Jellinek's position is that of Kelsen:

¹⁶ G. Jellinek, *Allgemeine Staatslehre*, Berlin: Verlag von O. Haering, 1900, p. 21.

¹⁷ A. Massera, *Contributo allo studio delle figure giuridiche soggettive nel diritto amministrativo. Stato-persona e organo amministrativo. Profili storico-dogmatici*, Milano: Giuffrè, 1986, p. 67 et seq.

¹⁸ G. Jellinek, *Allgemeine Staatslehre*, p. 121.

¹⁹ G. Jellinek, *Allgemeine Staatslehre*, p. 10: „Das Recht ist eine der wichtigsten Seiten des Staates: Kein Staat ist ohne Recht möglich, aber es ist ein schwerer Fehler, der bis auf den heutigen Tag häufig begangen wird, die

tending towards identifying sovereignty with the legal systems from an exclusive logical premise reuniting „observer’s hypotheses“ and real validity²⁰, Kelsen ratifies a sensible perspective in the affirmation of the system compared to which it may seem impossible to exercise any latently „political“ expectation.

Regarding the theory of the personality of the State, Kelsen stressed from this point of view what could be defined as a point of no return: that is complete normative formalisation that ends in resuming the prerogative of the State as the final point of legal indictment and in fact hampers the relationship with the concrete actual permanent dynamics of the institution. That is to say, the relationship is hampered by the reality of the new mass society and the proliferation of new decision-making centres seeking, on the administrative level, positively to govern their processes.²¹

Staatslehre mit der Staatsrechtslehre zu identifizieren. Dieser Fehler rührt von dem historischen Ursprung der modernen Staatslehre an. Sie stammt nämlich aus dem Naturrecht, das nach dem Rechtsgrunde des Staates forschte. Diesen Rechtsgrund setzte das Naturrecht nicht selten dem historischen Entstehungsgrund gleich und betrachtete demgemäss den Staat ausschliesslich als ein rechtliches Gebilde“. On this theme see: A. Bixio, *Proprietà e appropriazione. Individuo e sovranità nella dinamica dei rapporti sociali*, Milano: Giuffrè, 1988, p. 134 et seq.

²⁰ H. Kelsen, *Das Problem der Souveränität und die Theorie des Völkerrechts. Beitrag zu einer Reinen Rechtslehre*, Tübingen: Mohr, 1920, Kap. II; Kap. IV, § 22.

²¹ A. Massera, *Contributo allo studio delle figure giuridiche soggettive nel diritto amministrativo*, p. 70-71; G. Berti, La parabola della persona Stato (e dei suoi organi), in: *Quaderni Fiorentini*, 11-12, 1982-1983, p. 1001-1033, 1015.

Of course, the point in question represents the point of approach to a theoretical period -- the period of the revival of German administrative law and its acquired constitutional centrality²²-- which saw the progressive erosion of the political predominance of the decision-making centres with respect to the administration. This erosion includes that sort of constitutional excess of the monarchical principle, one which still allowed the monarch immediately and in an almost „private law“ sense, to join his *Beamtentum*. This principle found at the end of the 30s is a further, persistent mutation in the theory of the *Führerprinzip* and in the relationship between the administration and the Nazi-Party.²³ This erosion had produced, exactly as with Kelsen's work, the attempt to reproduce administrative action in the form of direct

²² Analysis of this particular topic is to be found in M. Stolleis, *Geschichte des öffentlichen Rechts in Deutschland*, Bd. 2, *Staatsrechtslehre und Verwaltungswissenschaft 1800-1914*, München: Verlag C. H. Beck, 1992, p. 381 et seq.; P. Schiera, *Il laboratorio borghese. Scienza e politica nella Germania dell'Ottocento*, Bologna: Il Mulino, 1987, Chap. IV.

²³ On the events (in the sense of constitutional complexity) of the German administrative bureaucracy beyond Weimar and in the time of the Nazis, on its centralization and political control: F. Neumann, *Behemoth. The Structure and the Practice of National Socialism*, New York: Oxford University Press, 1942. On the transformation of administrative and private law in the early years of Nazi domination, see, in general: M. Stolleis, *Recht im Unrecht. Studien zur Rechtsgeschichte des Nationalsozialismus*, Frankfurt a. M.: Suhrkamp Verlag, 1994; B. Ruthers, *Entartetes Recht. Rechtslehren und Kronjuristen im Dritten Reich*, München: DTV, 1994²; B. Ruthers, *Die unbegrenzte Auslegung. Zum Wandel der Privatrechtsordnung im Nationalsozialismus*, 4. erweiterte Auflage, München: C. F. Müller, 1991; H Rottleuthner (Hrsg.), *Recht, Rechtsphilosophie und Nationalsozialismus*, Wiesbaden: Franz Steiner Verlag, 1983; J. Meinck, *Weimarer Staatslehre und Nationalsozialismus. Eine Studie zum Problem der Kontinuität im staatsrechtlichen Denken in Deutschland 1928 bis zum 1936*, Frankfurt - New York: Campus, 1978; F. J. Säcker (Hrsg.), *Recht und Rechtslehre im Nationalsozialismus*, Baden-Baden: Nomos, 1992.

administration by means of equivalent extension of the principle of legality. So it was that the same Kelsen contributed to the plan of an administration capable of enrolling itself in the new structural processes and of supplying negotiated services adapted to them. From this viewpoint, Kelsen's emphasis on formalisation was certainly not supplied as if it were in an „empty“ space. Nevertheless, the same Kelsenian model, from a point of view more consistent with the processes that would establish the period of the social State, would not substantially culminate in the pursuance of a dogmatic alternative course to the one still dominant.²⁴

Voegelin's attention, however, is not principally trained on this occasion on the administrative lapses of the „Pure Theory of Law“. It is focussed, rather, on the logic that established, as in the Kelsenian model, the relationship between organ, „Rechtssatz“, and legal indictment. For Voegelin, the fact that Kelsen's indictment strategies did not anticipate the „personal“ role of the structure, that is, that they troubled its „physische Willensakt“, the fact that they found their limit in a „Zurechnungsendpunkt“ obtained exclusively from induction, entailed precise consequences regarding the same processes of defining the will of the State: it was reduced to a simply „imaginäre Punkt“.²⁵

Kelsen, from this point of view, is placed in relation to that tradition which, marked by strong requests for formalisation, moves toward creation of the autonomous State as an empty

²⁴ Cf. B. Sordi, *Tra Weimar e Vienna. Amministrazione pubblica e teoria giuridica del primo dopoguerra*, Milano: Giuffrè, 1987, p. 139

²⁵ E. Voegelin, *Reine Rechtslehre und Staatslehre*, p. 84

machine. The process of depersonalisation of the State -- also achieved through the role which came to be reserved on a constitutional plane for the structure -- produces for Voegelin an area of paradoxical convergence: On the one hand, there is Jellinek's theory which both leads „Organ“ and „Verband“ to coincide²⁶ and positions in a supreme structure the request allowing „den Staat in Bewegung zu setzen“.²⁷ On the other hand there is Laband's doctrine of „Behörde“, which precludes anyone exercising its prerogative from making any subjective claim regarding his own position. Both theories are said to push to logical progression toward culmination in Kelsen's „Zurechnungsendpunkt“.²⁸ From this point of view, Voegelin's project seems rather clear: it is a matter of emphasising the *limits* of an eminently logical-categorical approach to the *social phenomenon* of the State, and of postulating the necessity of a reconstruction based on other principles than the traditional doctrine of the State.

Although less important, it should be noted that Voegelin does not grasp the real modernising significance implicit in the

²⁶ G. Jellinek, *Allgemeine Staatslehre*, p. 512-513: „Um die Rechtsstellung der Staatsorgane zu erkennen, ist scharf zu unterscheiden zwischen den Organen und den sie tragenden Menschen. Das Organ als solche besitzt dem Staat gegenüber keine Persönlichkeit. Es sind nicht zwei Personen vorhanden: Staatspersönlichkeit und Organpersönlichkeit, die zu einander in irgend einem Rechtsverhältnis ständen; vielmehr ist Staat und Organ eine Einheit. Der Staat kann nur vermittelt seiner Organe existieren; denkt man die Organe weg, so bleibt nicht etwa noch der Staat als Träger seiner Organe, sondern ein juristisches Nicht übrig. Dadurch unterscheidet sich das Organverhältnis von jeder Art Stellvertretung, Vertreter und Vetreter sind und bleiben zwei, Verband und Organ sind und bleiben eine einzige Person“.

²⁷ *Ibid.*, p. 507.

²⁸ E. Voegelin, *Reine Rechtslehre und Staatslehre*, p. 103.

methodological suppositions of the „Pure Theory of Law“. Nor does he recognise, how even Kelsen's argument with Jellinek and Otto Mayer might emphasise the strain of overthrowing the last dogmatic-legal defensive strongholds of the division between State and society.²⁹ Nor does he see, in the essay in question, a drastically stylised image of Otto von Gierke to be the simple defender of the „world of historical concepts“ (*historischen Begriffswelt*) of the law which came to be exhibited in the argument put forward to Laband.³⁰ On this subject, Voegelin mentions not a word seeking to understand how Gierke's same theory might suggest a breaking of the impasse into which the private law theories of representation poured.³¹ Moreover, Voegelin systematically passes over the

²⁹ M. Fioravanti, Kelsen, Schmitt e la tradizione giuridica dell'Ottocento, in: G. Gozzi / P. Schiera (Eds.), *Crisi istituzionale e teoria dello Stato in Germania dopo la prima guerra mondiale*, Bologna: Il Mulino, 1987, p. 51-103, 65. On this point, see the very important observations of A. Negri, *Fabbriche del soggetto*, Livorno: XXI Secolo, 1987, p. 86. On the theme of the division between State and civil society in German legal doctrine see furthermore: E. W. Böckenförde, *Staat und Gesellschaft*, Darmstadt: Wissenschaftliche Buchgesellschaft, 1970²; W. Conze, *Das Spannungsfeld von Staat und Gesellschaft im Vormärz*, in: W. Conze (Hrsg.), *Staat und Gesellschaft im deutschen Vormärz*, Stuttgart: Klett, 1970²; M. Riedel, *Gesellschaft, bürgerliche*, in: O. Brunner, W. Conze, R. Koselleck (Hrsg.), *Geschichtliche Grundbegriffe. Historisches Lexikon zur politisch-sozialen Sprache in Deutschland*, Bd. 2, Stuttgart: Klett, 1975, pp. 719-862; P. Koslowski, *Gesellschaft und Staat. Ein unvermeidlicher Dualismus*, Stuttgart: Klett, 1982.

³⁰ E. Voegelin, *Reine Rechtslehre und Staatslehre*, p. 99.

³¹ See, for example O. von Gierke, *Das Wesen der menschliche Verbände*. Rede bei Antritt des Rektorats am 15. Oktober gehalten, Berlin: Dunker & Humblot, 1902, p. 99: „Der Rechtsbegriff des Organs ist von spezifischer Art und darf nicht mit dem individualistischen Begriff des Stellvertreters zusammengeworfen werden. Hier handelt es sich nicht um Vertretung einer in sich geschlossenen Person durch eine in sich geschlossene Person [...] Durch das Organ offenbart sich also die unsichtbare Verbandsperson als wahrnehmende und urteilende, wollende und handelnde Einheit. Die

concreteness of the Kelsenian stance against Jellinek's theory of auto-obligation of the State -- for Kelsen a simple *theological* residue of its personification³² -- and reduces the whole subject to a discussion of the Simmelian notion of „Wechselwirkung“ and Kelsen's controversy with the „kryptojuristische Methode“ of sociology.³³

The key point in Voegelin's essay is in the end his discussion of Gerber's constitutional theory. For Voegelin, Gerber did not exhaust the problem of legal person and the theme of the personality of the State through his differentiation of organ and final point of indictment; he did it rather by virtue of a sociological declension of the concept of organ itself, was able to arrive at „opening“ the circle of formalisation towards the concrete processes of formation of the will of the State.³⁴ From this point of view, Gerber would have guided the doctrine of the State towards a specific „Qualifizierung“ of the organs of the State: The State-Person would find its own fulfilment in the „people“ (*Volk*) which, in a completely real form, teleologically represents the original indictment to constitute

juristische Person unseres Rechts ist kein des gesetzliches Vertreters bedürftiges unmündiges Wesen, sondern ein selbstätig in die Außenwelt eingreifendes Subjekt“. On the point in question: G. Leibholz, *Die Representation in der Demokratie*, Berlin: De Gruyter, 1973; M. Fioravanti, *Giuristi e costituzione politica*, p. 331; S. Mezzadra, *Il corpo dello Stato. Aspetti giuspubblicistici della Genossenschaftslehre di Otto von Gierke*, in: *Filosofia politica*, VII, 3/1993, pp. 445-476.

³² See: H. Kelsen, *Gott und Staat*, in: *Logos. Internationale Zeitschrift für Philosophie der Kultur*, Bd. 11, 1922-1923, pp. 261-284.

³³ See: H. Kelsen, *Der soziologische und der juristische Staatsbegriff*, p. 48.

³⁴ E. Voegelin, *Reine Rechtslehre und Staatslehre*, pp. 109-110.

itself into the same personality of State: „um des Volkes Willen besteht der Staat“.³⁵

The conclusion of the first part of Voegelin's essay deals with the centrality of the supplementary (and not only the supplementary) function that the historiographic consideration has the task of acquiring in the comparisons with a still possible „reconstruction of the doctrine of the State“ (*Rekonstruktion der Staatslehre*).³⁶ This assumes a methodology contrary to the normological reduction produced by the Kelsenian „Pure Theory of Law“, and beyond the Gerberian interpretation of the specificity of the organs of the State as „konstitutionelle Medien“ of the constitutional process.

The reference to the combination of problems that Gerber's position opens up, a combination regarding the logical-inductive formalism that substantiates, albeit in a different way, the individual results of Jellinek, Laband and Kelsen, finally leads Voegelin to elucidate all the new questions that were emerging. The „essential elements“ (*Wesenselemente*) of the doctrine of the State could not be changed by the structures of the formal-logical judgement, yet neither could they be reproduced in a simply categorical form. They would define themselves rather as „historical basic forms“, „historische Grundformen“, as Voegelin writes, and *not* therefore as simply conceptual instruments maintaining a considerable suppressed content. Such “forms” could be reduced neither to logical

³⁵ Ibid., 109.

³⁶ Ibid., 111.

objects nor to empty forms; they are present, in all their „substantial plenty“ (*inhaltliche Fülle*), within the State.³⁷

It is less important from this point of view to reconstruct precisely the passage that, through Dahlmann's „Politik“, led Voegelin to a first, positive evaluation of the *fundamental* processes linking the State to the original indictments („community“, „people“, „nation“) through which the phenomenon of political identity is actually produced. What is more interesting in this case is rather how Voegelin set out, from this early essay, to use this same reference to the structures of meaning available in history in order to „settle“ the confrontation with exclusively *formalistic* solutions of the problem of the processes and social actions. Thus the „konstitutionelle Medien“ which for Gerber exclusively fulfil and even exhaust the problem of the representative function regarding the *idea* of State (*Staatsidee*) and of political unity -- meaning the Monarch and the representative assembly -- can be analysed, through the role which they come to occupy in Dahlmann's analysis, as vehicles of a new, and finally not formalistic, doctrine of political symbols (a „nicht-zweckrationale [...] Symbollehre“, in the words of Voegelin).

Voegelin reconstructs in a way that is consistent with Dahlmann's idea of „Königswürde“ an analysis attending to the possibility of tracing within it „ein Symbol für die Idee eines Gemeinwesens“; a symbol, in other words, that is a meaningful structure ejecting every formalistic residue of the outline of constituent references to the constitutional processes, and allowing one perhaps to arrive at a definition of

³⁷ Ibid., 112.

the political form as historical concrete unity of meaning (*Sinneinheit*).³⁸

By substituting the idea of „Gemeinwesen“ with that of the methodologically more innovative „*Sinneinheit*“, the retention of structural unity of political form, symbol and idea in the unambiguity of their declension was permitted. This was arrived at also through the assumption of the definition of a problematic whole: that is, of speculative elements discussed in the work of Waitz or of historians such as Treitschke, Roscher or Spittler, in whose work the methodological signs of that opening up still existed fragmentarily. Voegelin's substitution of terms avoided a typologically banal classification of the constitutional models through the exclusive reference to varied combinations, concretely achieved, between constitutional organs and „Träger“ of the same.³⁹

The more explicit conclusion in Voegelin's polemic with Kelsen's „Pure Theory of Law“ is that the State cannot be analysed in an exclusively logical-formal way, because it does not immediately represent a „Wissenschaftssphäre“ and because the methodological assumption of Kelsen's doctrinal system programmatically refutes the possibility of instituting the comparison with the social as well as the anthropological

³⁸ Ibid., 120.

³⁹ Ibid., pp. 123-124. But for Voegelin's argument with the „typological“ classification of the constitutional model see particularly: *Zur Lehre von der Staatsform*.

reality supplying the concrete foundation to the process of symbolisation.⁴⁰

The methodological loosening sought by Voegelin in his argument with the „Pure Theory of Law“, therefore, defines itself in the logical progression reaching a displacement of the doctrine of the State by its immediate involvement with the logical-combining indictment of contemporary public law. And it is studied in a more marked approximation to the reality of the anthropological-social roots of symbolic interaction. Voegelin’s research, attracted only temporarily by specifically legal questions, culminates in a theory of the symbol (*Symbollehre*). This theory makes it possible to analyse the State as process, as modification and consolidation of significant structures rather than analysing it by means of categorical extension of interpretative models borrowed from the theory of knowledge. Only by working in „Symboltheorie“⁴¹ anyway, does the doctrine of the State break

⁴⁰ E. Voegelin, *Reine Rechtslehre und Staatslehre*, pp. 124-125. On the point in question, Kelsen’s position emerges particularly clearly through his confrontation with the sociology of the State constructed on the model of the „sozialen Gebilde“ (Eisler, Spann and Otto von Guericke, in his taking of organicism to the extreme) and with the processes of the establishment of reality (the objectivity of the science of society as „social science of the mind“) thematised by Othmar Spann in the introduction to his *Der Wahre Staat* (Jena, 1938) which they reflect. See: H. Kelsen, *Der soziologische und der juristische Staatsbegriff*, p. 33 et seq. On Voegelin’s critical argument with Kelsen, see: E. Voegelin, *Autobiographical Reflections*, edited with an introduction by Ellis Sandoz, Baton Rouge and London: LSU Press, 1989, Chap. 6.

⁴¹ E. Voegelin, *Reine Rechtslehre und Staatslehre*, p. 126: „Die Staatsformenlehre in ihrer Wendung als Symboltheorie ist die Staatslehre katexochen, von der aus die weiteren Stufen der staats- und rechtswissenschaftlichen Probleme erst mit Aussicht auf Erfolg bearbeitet werden können“.

the impasse marked by progressive evanescence of the reality of the State. The final point of the normological indictment is, for Voegelin, as we have seen, present in Kelsen's theory exclusively as an „imaginärer Punkt“. Where the anthropological-social processes which perform an authentic fundamental function in their confrontations are ignored, Kelsen's theory represents a subterfuge through which the possibility of thinking about the reality of the State as phenomenon of „Kulturobjektivation“ among others is definitely rejected.⁴²

Fundamentally, then, Voegelin's „Symbollehre“ counters Kelsen's theory of the State by substituting a logical-formal order of legal propositions with a concrete combination of symbols conveying the same possibility of thinking of the unity and identity of the State's political community (*Gemeinwesen*) in the form of its „Sinneinheit“⁴³. It is a methodological device that might „break down“ the perspective of the logical reduction of the law, because the system of law is not an empty formal sphere. In the words of Voegelin: „weil Recht keine Erkenntnisssphäre ist; seine

⁴² Ibid., 131: „Mit dieser letzten Verankerung der Staatslehre in der Ideenlehre ist der Punkt erreicht, von dem die Theorien anderer Kulturobjektivationen ausgehen können: neben die Lehre von der Idee des Staates kann die Lehre von der Idee der Kunst, der Sprache, der Religion, der Wirtschaft treten und in der Aufweisung der Zusammenhänge dieser Ideen stehen wir auf der obersten systematischen Stufe eines Systems der Gesellschaftsphilosophie; unmittelbar an diese Stufe reicht der Bau der hier entworfenen Staatslehre heran“. It is just the case to point out how in this project they might re-echo hypotheses borrowed by Othmar Spann. See, for example, O. Spann, Untersuchungen über den Gesellschaftsbegriff. Zur Einleitung in der Soziologie, Erster Teil, in: *Zeitschrift für die gesamte Staatswissenschaft*, 1903, pp. 573-595, in particular 577 et seq.

⁴³ E. Voegelin, *Reine Rechtslehre und Staatslehre*, p. 129.

formenden Elemente sind Symbole, Ideen, Fragmenthandlungen und die fundierenden Elemente“.⁴⁴

If the Kelsenian theory of „Zurechnungspunkt“ represents the final formalistic stage of a complete process of the theory of State in Germany -- still holding back from describing, in its version of „Staatsformenlehre“, the diverse constitutional models independently from the structural process of symbolic identification that are reflected in them⁴⁵ -- it represents at the same time in its exemplariness the point at which a more feasible and total „reconstruction“ of political science can get underway. And not only this. Even though remaining linked in its original version to a somewhat „static“ analysis of the phenomenology of symbolic forms, Voegelin's attempt indicates a widening. The anchorage (*Verankerung*) of the doctrine of the State to a theory of political ideas and symbols (*Ideenlehre*) allows a two-fold result: on the one hand, as we have already pointed out, it immediately becomes possible to bring the State back to the more general sphere of the phenomenology of the cultural forms, while on the other hand, according to Voegelin, the „highest systematic degree of a system of social philosophy“ (*die oberste systematische Stufe eines Systems der Gesellschaftsphilosophie*) can be finally achieved.⁴⁶

⁴⁴ Ibid. But on the point in question see also E. Voegelin, *Zur Lehre von der Staatsform*, p. 600: „Symbol und Rechtsinhalt stehen nicht im Verhältnis von Gegenstand und Merkmal zueinander, sondern in dem der Fundation“.

⁴⁵ E. Voegelin, *Zur Lehre von der Staatsform*, p. 602: „... das Symbol ist in der Sphäre des historischen Geschehens der mehr oder minder adäquate Ausdruck der Idee: ein Ausdruck, der sich, psychologisch genommen, aufbaut in den Wertungen der einem Staat angehörende Individuen“.

⁴⁶ E. Voegelin, *Reine Rechtslehre und Staatslehre*, p. 131.

III. „Symbollehre“ *and the sociology of politics. Eric Voegelin and Max Weber*

Voegelin's analysis of the German doctrine of the State therefore opens on a complicated front. On the one hand the State can be returned, by means of its symbolic core, to the level on which the phenomena of the collective life are reflected in their universality; on the other hand the path that allows Voegelin to study in depth, even in his final work, the relationship between the processes of symbolisation and their focus in the historical anthropology of man is unveiled methodologically. From this point of view, the close connection between the methodological indictments of the doctrine of political symbols (*Symbollehre*) and the attempt at systematic understanding of the cultural roots of Nazism, a connection still manifest in the essay of 1938⁴⁷, still reproduces the result of the early discussion about the symbolic quality of the historical phenomena of political identity.

Here is in our opinion a particular passage that is exhaustively covered in his work from the essay of 1924 to the treatise on political religions of 1938: a passage that represents an initial, resolute deepening of his early intuitions and an original turn in the direction of philosophical anthropology. If, in the essay on the „Lehre von der Staatsform“, an application of the

⁴⁷ E. Voegelin, *Die politischen Religionen*, Wien, 1938. On the Voegelinian concept of political religion see: D. Herz, Der Begriff der "politischen Religionen" im Denken Eric Voegelins, in: H. Maier (Hrsg.), *Totalitarismus und politische Religionen. Konzepte des Diktaturvergleichs*, Paderborn: F. Schöningh Verlag, 1996, pp. 191-209.

doctrine of political symbols still prevails, if that doctrine can make possible an historiographic grasping of the reality of the constitutional models and their rotation in relation to the processes of creation and change of the symbolic schemes of reference, then the successive texts will shift their central point to the same „point of indictment“ of the symbolisation processes: they will shift to the consciousness of man. A more determined application to the theme of the „dynamic“ of symbolisation will then be perceptible, and one will consequently find its own centre of gravity progressively changed by symbols to experiences of order (or disorder) generated from time to time.

From symbols, from the reality of the identifying and founding processes that are generated in the varied constitutional forms among the holders of symbolic meanings and the constitutional formula that juridically organise priority (from absolute monarch to president of the „empire“ (*Reich*), for Voegelin, it devotes itself thoroughly and exclusively to a difference in *intensity* in the process of symbolic representation of political identity in the form of „unity“ (*Sinneinheit*)⁴⁸, Voegelin's attention now moves with always greater decisiveness towards the *internal* dynamic of the same processes of symbolisation. His attention will consequently and finally be drawn to the point in which the theoretical project of a doctrine of symbols (*Symbollehre*) of cultural phenomena will become permanently liberated from the restriction of the essential controversial reference to the science of law.

⁴⁸ E. Voegelin, *Zur Lehre von der Staatsform*, p. 605.

The transition in question nevertheless had already assumed definite shape in the essay of 1927: the idea of „unity of meaning“ (*Sinneinheit*) is openly recognised within its extra-legal content and the traditional doctrine of „Staatsformen“ is removed from legal disciplines.⁴⁹

The conclusion which Voegelin reaches therefore naturally appears at this distance extremely radical: on the one hand it exposes the foolishness of using an ordinary classification of constitutional models into „Monarchies“, „Republics“, „Democracies“, in so far as the State does not only possess a „form“, but represents rather the result of focussing attention on its own symbolic references. On the other hand Voegelin's conclusion emphasises the possibility of tracing within the State the continuity of a unique formal element; the possibility, that is, of tracing in the concept of the „unity of meaning“ (*Sinneinheit*), common to *all* the political forms as phenomena of political identity, the last indictment that allows to history the possibility of comparative analysis.⁵⁰

It is a methodological starting point that will guide, by varied approximations, the whole period of Voegelin's research between the second half of 1920 and the end of the 1930. This

⁴⁹ Ibid., 607.

⁵⁰ Ibid., 608: „Die Klassifikation der Staaten in Monarchien, Republiken usw. ist sinnlos, weil nicht der „Staat“ eine Form hat, sondern im Staat eine Reihe von Symbolen -- vielleicht sehr komplexer Art -- sich an der Konstitution der obersten Organe und damit der Rechtsordnung beteiligen. Der Staat hat nur ein konstantes Formelement: die Idee der Sinneinheit, und sie ist für alle Staaten gleich“.

period, as Voegelin confirmed⁵¹, seems to be marked by considerable continuity, dealing once again with developing the methodological indictment of the theory of symbols (*Symboltheorie*) towards the overall interpretation of cultural phenomena, and with verifying how the same analysis of the processes of symbolisation opens on a perspective that, on first approximation, we have already had the opportunity to define as *dynamic*. And in this way, it draws on the level in which the theory of State (*Staatslehre*), once recognised as the State in its eminently representative capacity -- that is to say that foundation around which, in their concreteness, the social processes of identity rotate -- turns towards philosophical anthropology.⁵² From this point of view, the methodological indictment that had allowed the highlighting of the limits of the German politological-legal tradition, was propelled towards the „opening up“ of the same processes of symbolisation. And the symbols themselves, removed from the restriction that submits them to historiographic practice as possible indicators of a history of political ideas still to come,⁵³ are taken back to the original source on which their same creation depends.

It is extremely significant, in our opinion, how the confrontation with legal positivism in its Kelsenian declension

⁵¹ E. Voegelin, *Rasse und Staat*, Tübingen: Mohr, 1933. On this subject, see the entire *Einleitung* and, more specifically, the first paragraph significantly entitled *Der Mensch und der Staat*.

⁵² *Ibid.*, 2.

⁵³ See: E. Voegelin, *Autobiographical Reflections*, chapter 17: *From political Ideas to symbols of experience*. The never-before published *History of Political Ideas* by Eric Voegelin is now in print in his *Collected Works* (Columbia and London: Missouri University Press, volumes 19-28).

is reflected once again in this transition, how we will see Voegelin's constant controversial reference to it as much in „Rasse und Staat“ as in the book on the Authoritarian State of 1936⁵⁴ and how Voegelin came into confrontation with Weber at this stage.⁵⁵ If the book on the idea of race seeks to complicate the enforcement methods of the theory of symbols by lending a definitively anthropological perspective to political science, the reference to Weber demonstrates in turn the radical nature with which the passage invests the personality of the scholar (*Wissenschaftler*) and his role; this is achieved through the distinction produced by the discovery of the immediate symbolic content of the cultural phenomena. From this point of view, Max Weber becomes himself the „Symbol“ of the removal of meaning in the role of the intellectual, of his isolation in the sphere of polytheism and the equivalence of values⁵⁶, and of his renewed position of centrality as investigator of the structural substantiality of the symbolic processes. For the first time, through his reference to Weber, Voegelin confronts those processes of „loss of reality“ that would later characterise his critical attitude in confrontations with modernity and its symbolic apparatus in the post-war work.

⁵⁴ E. Voegelin, *Der Autoritäre Staat. Ein Versuch über das Österreichische Staatsproblem*, Wien: Springer, 1936.

⁵⁵ We refer particularly to: E. Voegelin, Über Max Weber, in: *Deutsche Vierteljahrschrift für Literaturwissenschaft und Geistesgeschichte*, Bd. III, 1925, pp. 177-193; and to *Max Weber*. Rede gehalten anlässlich der 10. Jahreswiederkehr seines Todestages am 14. Juni 1930 in der Wiener Soziologischen Gesellschaft, in: *Kölner Vierteljahresschrift für Soziologie*, Bd. IX, 1930, pp. 1-16.

⁵⁶ E. Voegelin, *Max Weber*, p. 4.

Weber is the thinker concerned with the routines of daily life and the „Entzauberung“: he assumes, embodying in his own „conduct of life“ (*Lebensstil*), the fragmentation of meaning produced by western rationalism. Nevertheless he converts -- and this for Voegelin is the decisive passage -- his own „disenchantment“ (*Glaubenlosigkeit*), the exact derivation in an ontologically deprived world into organisational *strength*.⁵⁷ Unlike that which Voegelin calls the „aesthetische Resignation“ of Georg Simmel, which at the highest point of contact with the polytheism of symbolic forms reaches a very weak and impolitic „Vielleicht“⁵⁸, Weber’s resignation changes in drastic acceptance of the responsibility to decide. The decision, of course, is the selection of perspective by which the historical segments of Western rationalisation: „die wissenschaftliche Tätigkeit Max Webers selbst ist ja ein konkretes Handeln“⁵⁹. It is an action that does not stop to contemplate, before the kaleidoscopic variety of forms and opportunities freed from the polytheism of values, but which, having made its decision through a „rationale Wissenschaft“, has already expressed a possibility in the confrontation of itself and the world.

Weber’s intellectual journey, from this point of view, is reconstructed by Voegelin through reference above all to two instruments independently moulded to this purpose: on the one hand a theory of concepts that exhausts the confrontation with

⁵⁷ E. Voegelin, *Über Max Weber*, p. 185.

⁵⁸ *Ibid.*, pp. 182-183.

⁵⁹ *Ibid.*, p. 188. On this theme see furthermore the very important J. Gebhardt, *The Vocation of the Scholar*, in: S. A. Mcknight / G. L. Price (Eds.), *International and Interdisciplinary Perspectives on Eric Voegelin*, Columbia and London: University of Missouri Press, 1997, pp. 10-34.

the neo-Kantian positions, and on the other a theory of value and the conflict between values that represents the possibility of defining a precise, and original, theory of history.⁶⁰ For Voegelin, there is no doubt that a genuine upheaval may be present, especially in the second case: the reference to value -- in Weber's theoretic system a simple outline of causal indictment that allow the subjective structure of knowledge to join with its request for validity both real and objective⁶¹-- subtracts from the value itself the evidence of its own objectivity. The point in question is emphasised exactly, for Voegelin, by systematic adoption on Weber's side of the criterion of the significance „for us“ (the „Kriterium des ‚für uns“⁶²) according to which possible result decide it through combinations of definite values, independently from the processes of the „Wertung“ definitely focussed on and left as sediment of the historical process. From this point of view, the researcher has the responsibility for his own choice: a choice that matures on the traceable „values“ in the process of the action that they represent. The „sources“ of the historiographical practice exclude in fact, according to Voegelin, the thoughtful research on the relationship of

⁶⁰ E. Voegelin, *Über Max Weber*, pp. 188-189. On the scanning that we are going to discuss: W. Schluchter, *Die Entwicklung des okzidentalen Rationalismus. Eine Analyse von Max Webers Gesellschaftsgeschichte*, Tübingen: Mohr, 1979.

⁶¹ See: M. Weber, *Die „Objektivität“ sozialwissenschaftlicher und sozialpolitischer Erkenntnis*, 1904.

⁶² E. Voegelin, *Über Max Weber*, p. 190: „Das Kriterium des ‚für uns‘ entzieht die Wertideen, unter denen man die Geschichte betrachtet, jeder objektiven Bestimmung, und sie werden damit zum Träger des persönlichen Elementes kulturwissenschaftlicher Forschung“.

„objective“ establishment between the same sources and the values that embody them.

So it is that Weber comes to be the „symbol“ of an age and an example of the concrete responsibility of the researcher within the only perspective that is allowed to him. The uncovering of the process of rationalisation and of „Entzauberung“ as „social history“ peculiar to the West, represents the place in which Weber works his own, drastic „reflexive Wendung“⁶³. It is in this unyielding caesura highlighting the fundamental role between the subjectivity of the researcher who, in solitary „dialogue with his daemon“⁶⁴ decides independently of the meaning of history and independently produces his own choice about historical topics (*Stoffenauswahl*) that makes it possible for Voegelin to compare it again with the reality and the concreteness of the process of symbolisation. The historic-sociological practice of Weber displays that which Voegelin assumes as the principal characteristic of the relation which exists -- now itself in *dynamic* perspective -- between the symbol and the opening that represents the *proprium* within.

Weber's acceptance of the world left by processes of rationalisation, his precise option in favour of it, his own conversion of the exact „Glaubenlosigkeit“ into a creative force, emphasise the fact that the structures of meaning operating in history are in some measure „open“. The category of meaning does not simply operate as „data“ within history, but the meaning of man's action must be always again

⁶³ Ibid., p. 191.

⁶⁴ Ibid., p. 193.

constantly „produced“⁶⁵; and this by man concretely acting within it, then by the historian and sociologist reproducing it in an hermeneutic form.

The single interpretative structure that Voegelin would borrow from Weber in the essay on „Political Religions“ could also be read, in his final remarks, as „answers“ to Weber’s theory of charismatic leadership and on the relationship it maintains, in particular in Weber’s sociology of religion, with the sociology of the sect.⁶⁶ Beyond these structures, however, it delivers something more: the passage through the essays dedicated entirely by Voegelin to Weber delivers a sort of crossroad: On the one hand there is the data of the absolute isolation of man and his responsibility as an illustration, a symbolic manifestation, of the destiny of the age; on the other hand there is the constituent bond which in this situation places itself between „meaning“ and „decision“. This crossroad forcefully reintroduces man as source and ineliminable subject of the processes of symbolisation. Moreover, it redefines, in a shorter form, the ultimate independence of the science of politics from the limited space of legal constructivism.

Of course, the reconstruction of Weber’s intellectual journey is not only fed by this positive evaluation. The consideration of the „subjectivist“ position presented in Weber’s theory of

⁶⁵ Ibid., p. 193: „Max Weber hat seine Geschichte so konstruiert, daß in der von ihm geschaffenen Welt er mit seiner Leidenschaft und Resignation, mit seinem Rationalismus und mit seinem entscheidenden Dämon eine verstehbare Stelle erhält, und damit exemplifiziert, daß -- etwas zugespitzt gesagt -- der letzte Sinn des Lebens ist, seinen Sinn -- nicht zu finden -- sondern fortdauernd zu schaffen“.

⁶⁶ See: M. Weber, *Gesammelte Aufsätze zur Religionssoziologie*, Tübingen: Mohr, 1920.

values represents the exposed side of a theoretical process strongly imprinted with disintegrating forms on the work within the age. It represents the data of an historiographic procedure that, partly ignoring the „objectivity“ of value reflected in the historically concrete processes of the „Wertung“, seems constantly at a loss. This position is suspended, as Voegelin succinctly writes, between the encyclopaedic monumental nature of it and the fragment; this judgement will return, finally becoming definitive, in the work on representation of 1952. In that case Weber remains the thinker „of the age“, the thinker for whom the *ratio* of knowledge cannot be increased, above all in relation to value, beyond the accusing outlines that restore the causality of the action.⁶⁷

Nevertheless, the confrontation with Weber represents a significant stage in the development of Voegelin's project through the historiographically „open“ side of his work and also through the consistency with Weber's reference to value: a reference that, purified of the subjective position presented in it, permits Voegelin to proceed on the path he undertakes one turning to translating the interaction of phenomenology of the cultural objectivisation in a symbolic form. Weber's concept of „value“ (*Wert*) productively carries over to the objective processes of „Wertung“ that represent their concrete, historic side, allows a definitive reference to philosophical anthropology to develop. That is to say it allows, from Voegelin's point of view, the assumption of the „dynamic“ side of the theory of symbol in the processes of „Wertung“ and of social identification: the point of departure from which it

⁶⁷ See: E. Voegelin, *The New Science of Politics*, Chicago, 1952, *Introduction*.

prove possible to proceed to the methodological subsumption of the relationship which links, in the symbol, the „objective“ production of the symbolic referent with the historic forms of its recognition.

It is also a question of restoring by this means the doctrine of the State emphasising what represents for Voegelin its concrete crucial point (*Brennpunkt*): the fact, that is, that „the roots of the State are to be found in the essence of man“ („daß die Wurzeln des Staates im Wesen des Menschen zu suchen seien“) ⁶⁸. Again in this case, the controversy with Kelsen seems indirectly radical: Kelsen, who in an essay of 1926 -- a significant step nearer the „Reine Rechtslehre“ of 1934 -- had reiterated his argument against the „naturalistic“ reduction implicit in the sociological consideration of the State, is not given to thinking about an „essence of the State“ to which the general „Sollgeltung“ of the legal system qualitatively crosses over. Man can only be thought of as „bearer“ (*Träger*) of the psychological actions and representations allowing a distinction between the normative *validity* and the *efficacy* of the law. From this point of view, the characteristic of „efficacy“, the possibility whereby the whole of the norms acquires real consistency compared to the expectation of its own performance, represents simply the fruit of the psychological actions of the social actors who recognise and identify themselves with the State. ⁶⁹ It is a recognition which

⁶⁸ E. Voegelin, *Rasse und Staat*, p. 2

⁶⁹ E. Voegelin discusses a similar argument in an unpublished manuscript -- perhaps dating from 1933 -- described as „Herrschaftslehre“ (Voegelin Papers, Hoover Institute, Stanford University, Box 53, Folder 5). On this text, see -- from different perspectives -- W. Petropulos, *The Person as "Imago Dei". Augustine and Max Scheler in Eric Voegelin's "Herrschaftslehre" and "The Political Religions"*, Occasional Papers des

subtract the State (the natural entity, sociologically representable according to causal mechanism) from the possible superimposition upon the lines of indictment crossing the system of norms toward the logical principle that realises the „validity“ of it.⁷⁰ The „validity“ of a system of norms and its „efficacy“ (the coercive representation of which it is possible to reach by attending to and returning to them the compulsion) opens up a space for Kelsen within which only the „mental“ processes -- as Kelsen defines them -- allow the attribution of sovereignty to the State.⁷¹ From a certain point of view, fundamentally, the Kelsenian discussion regarding the essence of the State shapes a coherent reduction of the political unity to the formal sphere of the general „validity“ (*Sollgeltung*) of law. It demonstrates how this general validity coincides with the system of norms, delegating at the same time to psychological representations the task of releasing scientifically and assuming politically the theme of „efficacy“ of obligation in the coercive procedures that guarantee the execution of the law. The conclusion which this type of argumentation reaches could be about, in advance of its publication, a passage of the Kelsenian „Reine Rechtslehre“ of 1934: the removal of the „prejudice against natural law“ that hinders the progressive identification between State and law

Eric-Voegelin-Archiv, IV, München, 1997; and my own: *The Experience of Limitation. Political Form and Science of Law in the Early Writings of Eric Voegelin*, in: G. Price / G. A. Hugues / S. Mcknight (Eds.), *Politics, Order and History*, Sheffield: Academic Press (in print).

⁷⁰ H. Kelsen, *Das Wesen des Staates*, Salzburg: Anton Pustet Verlag, 1926. But on this subject see also: H. Kelsen, *Das Problem der Souveränität und die Theorie des Völkerrecht. Beitrag zu einer Reinen Rechtslehre*, Tübingen: Mohr, 1920, I, § 24; H. Kelsen, Gott und Staat, in *Logos*, Bd. 11, 1922-23, pp. 261-284.

⁷¹ H. Kelsen, *Das Problem der Souveränität*, I.

will allow Kelsen in this case to eliminate from the normological outline any reference to the problem of legitimisation (to „ideology“ in the words of Kelsen).⁷²

It is also this reduction (a reduction that agrees to preclude any reference to the „Idee“ of legitimacy) that Voegelin eschews in the already quoted introduction to „Rasse und Staat“ (1933). Here, the work of Kelsen even ends up representing figuratively what for Voegelin is the genuine crucial problem of the German doctrine of the State: the facts that it lacks a theory of political ideas and symbols („eine Lehre von den Staatsideen“)⁷³. Kelsen lacks it also. This „shortage“ is, moreover, fully justified by the same logical order that sustains Kelsen’s project. Already in the fragments of the sociological debate that Voegelin discusses -- fragments such as the specific exponent of the debate on the problem of political power, that might in turn substantiate the orderly constituent outline of the doctrine of the State (Vierkandt, Freyer, Weber) -- it was possible to report a theoretical situation inclined to ignore the founding role maintained by the political ideas (*Staatsideen*) as effective „elements“ of the reality of the State.⁷⁴ The Kelsenian adaptation of the theory of the State to the theory of law (*Rechtslehre*) would reach, at its

⁷² H. Kelsen, *Reine Rechtslehre. Einleitung in die rechtswissenschaftliche Problematik*, Wien: Franz Deuticke Verlag, 1934, Kap. VIII, *Recht und Staat*.

⁷³ E. Voegelin, *Rasse und Staat*, pp. 6-7.

⁷⁴ *Ibid.*, p. 4: „Ich vertrete in dieser Frage die These, daß die sogenannten „Formen“ Ideen seien, wieder in dem prägnanten Sinne von Leitbildern und zwar Leitbildern besonderen Inhaltes, in denen sich für die Glieder der politischen Gemeinschaft die Wirklichkeit der politischen Gemeinschaft aufbaut. Die Staatsideen sind nicht eine Wissenschaft vom Staat, sondern ein wesentlicher Teil der Staatsrealität selbst“.

height, the logical foundation of support that the theory disregards: that is, the employment of the positivity of the system of norms as the ultimate and exhaustive interpretation of the State's reality, and this reached independently of its anthropological foundation.

This continual „return“ of this controversial use of Kelsenian model is, in our opinion, particularly significant. As we will see in more detail later on, such a return recalls the necessity of the confrontation with the one polemic referent putting itself forward as a dominant paradigm for interpretation of the relationship between society and State. It also demonstrates the whole difficulty to which any alternative model exposes itself, irrevocably testifying in a defensive position. Moreover such return is accompanied now for the first time by enumeration of Voegelin's possible allies in this kind of general anti-formalist revolt (Rudolph Smend, Carl Schmitt, D. Schindler) an enumeration that emphasises, negatively, the power of the normative machine in its putting itself forward, in all these cases as polemic referent.⁷⁵ Kelsen's paradigm, constructed, as we will see, on the premise of the legal system of norms as „productive link“⁷⁶, affirms the social power of the law and the productive autonomy of formalism; in so doing it removes once and for all the gap between State and society and denounces the intrinsic weakness of solutions to that relationship, in much the same way as that attempt by Hermann Heller, for example, to work on a political

⁷⁵ Ibid., 7.

⁷⁶ H. Kelsen, *Reine Rechtslehre. Einleitung in die rechtswissenschaftliche Problematik*, § 28.

redefinition of the correlation between community and normative system.⁷⁷

But it is not yet the moment to confront this problem fully. What is interesting for the moment, before looking at Voegelin's contributions immediately preceding the essay of 1938, is how Voegelin seeks to clear, from a constituent *lack* within the German theory of the State, the ground for the re-proposition, now in definitively anthropological terms, of a symbolic theory of politics.

„The roots of the State“, as quoted above, „are to be found in the essence of man“. For Voegelin this means above all the necessity to bring back to precise focus the political ideas and symbols, the original process through which the community is produced, and the necessity to approach the social and anthropological mechanism of identification that, independently and before any positivisation of the legal system, allow the definition and the maintenance of the social bond. Voegelin's research on the relationship between the idea

⁷⁷ See: H. Heller, *Die Souveränität. Ein Beitrag zur Theorie des Staats und Völkerrechts*, Berlin und Leipzig: W. de Gruyter & Co., 1927; Id., *Bemerkungen zur staats- und rechtstheoretischen Problematik der Gegenwart*, in: *Archiv des Öffentlichen Rechts*, 16, 1929, pp. 321-354. On H. Heller and his controversy with Kelsen: Ch. Müller, *Kritische Bemerkungen zur Auseinandersetzung H. Hellers mit H. Kelsen*, in: *Staatslehre in der Weimarer Republik. Hermann Heller zu Ehren*, Frankfurt a. M.: Suhrkamp, 1985; Id., *Kritische Bemerkungen zur Kelsen-Rezeption Hermann Hellers*, in: Ch. Müller / I. Staff, (Hrsg.), *Der soziale Rechtsstaat. Gedächtnisschrift für Hermann Heller 1891-1933*, Baden Baden: Nomos Verlagsgesellschaft, 1984, pp. 693-772; G. Robbers, *Hermann Heller: Staat und Kultur*, Baden Baden: Nomos Verlagsgesellschaft, 1983; U. Pomarici, *Oltre il positivismo giuridico. Hermann Heller ed il dibattito sulla costituzione weimariana*, Napoli: Prismi, 1989; S. Mezzadra, *Crisi dell'eticità ed omogeneità sociale: nota su H. Heller*, in: *Filosofia Politica*, V, 1/1991, pp. 161-175.

of race and the State, from this point of view, takes shape as an attempt to reaffirm the specificity of an approach that is thematically positioned by interest in the symbolic structure of politics. This approach is to be made within a disciplinary space significantly marked by the crossroads of methodological perspectives borrowed by the doctrine of the State, by anthropology and by sociology.

Through analysis of the concept of race, Voegelin seeks to develop the comparison with the present political configuration employed by the political idea of „body“. In the course of history, according to Voegelin judgement, a host of body metaphors have been tendered in the process of establishing the idea of the political community of the State. The idea of dynasty and blood relations for example; as far as exemplification more important and more immediately fitting with its own symbolic value, and up to the idea of the Church as „mystical body“ of Jesus Christ.⁷⁸ The „idea“ of race, from this point of view, represents the way through which the metaphor of the body contributes for its part to the establishment of the political community. It represents the last mutation of a symbolic structure that maintains, in terms of its own anthropological roots, a constancy that is almost ahistoric.⁷⁹ And this is perhaps the more immediately visible

⁷⁸ E. Voegelin, *Rasse und Staat*, p. 5.

⁷⁹ Interestingly the evidence came in a sense directly from Voegelin, interviewed in Paris in 1934 by E. E. Eubanck. See: D. Käsler, *Soziologische Abenteuer. Earl Edward Eubank besucht europäische Soziologen im Sommer 1934*, Opladen: Westdeutscher Verlag, 1985, p. 146: „1933 veröffentliche ich (*it is Voegelin speaking*) mein „Rasse und Staat“ in dem ich die Idee vorstellte, daß die Einheit der Gesellschaft eine körperliche Einheit war“. For a global analysis of the work of Voegelin on the concept of „Race“, see: T. W. Heilke, *Voegelin on the Idea of Race. An Analysis of Modern Racism*, Baton Rouge and London: LSUP, 1990.

limit of Voegelin's approach. If, in the scientific works of his maturity, the social process of establishing reality is supported by an elaborate philosophy of consciousness liberating the symbol of the fixed reference from the diachronic constancy of the idea⁸⁰, at this stage Voegelin still remains anchored in an analytical-phenomenological reconstruction of the historic concretisation of the „objective mind“. This reconstruction thereby reproduces itself in the diverse version of the contemporary antiformalism. From this point of view, Voegelin does not yet exceed, until the middle of the 1930s, the methodological positions reached by Alfred Schütz⁸¹ or

⁸⁰ Making the project of a traditional „History of Political Ideas“, which Voegelin was working during the first years of his stay in America, fail. See: E. Voegelin, *Autobiographical Reflections*, Chap. 17. On this subject: E. Sandoz / Th. Hollweck, General Introduction to the Series, in: E. Voegelin, *History of Political Ideas*, vol. 1, Hellenism, Rome and Early Christianity, ed. by A. Moulakis, in: *Collected Works of Eric Voegelin*, ed. by E. Sandoz, Columbia and London: University of Missouri Press, 1997, vol. 19, pp. 1-48; P. J. Opitz, Erste Spurensicherung: Zur Genesis und Gestalt von Eric Voegelins „History of political Ideas“, in: *Politisches Denken. Jahrbuch 1993*, hrsg. von V. Gerhardt, H. Ottmann, M. P. Thompson, Stuttgart-Weimar: J. B. Metzler Verlag, 1993, pp. 135-156.

⁸¹ A. Schütz, *Der sinnhafte Aufbau der sozialen Welt (1932)*, Wien: Springer, 1960. The relationship between Schütz and Voegelin was extremely close and complex. If, in the recorded interview with Eubanck, Voegelin uses flattering words in the comparison with Schütz -- mentioned as one of the most innovative and important sociologist of the time -- and dedicates almost simultaneously a review of his work of 1932 (appeared later on in the number 14 of *Zeitschrift für Öffentliches Recht* of 1934), numerous letters are left as a testimony to a relationship that spanned the '30s. Two letters from Voegelin to Schütz dating back to January 1953 are published by G. Sebba under the title *Eric Voegelin to A. Schütz*, in the Voegelin *Festschrift* edited by P. J. Opitz and G. Sebba for the Klett-Cotta Verlag of Stuttgart in 1981 (*The Philosophy of Order. Essay on History, Consciousness and Politics*, pp. 449-465). But see furthermore E. Voegelin, In memoriam Alfred Schütz, in: *Anamnesis. Zur Theorie der Geschichte und Politik*, München: Piper Verlag, 1966, pp. 17-20; and E. Voegelin / A. Schütz / L. Strauss / A. Gurwitsch, *Briefwechsel über „Die Neue*

those defined another way by Theodor Litt, Rudolph Smend or Hans Freyer. In each of these cases, in fact, and in diverse ways, there is an attempt to open up the reality of politics and law to the whole of „social meaning“ expressing itself in it: an opening up that drives, in the case of Voegelin, the whole controversy with the reductionism of legal positivism.

From this point of view, the assumption of an immediate symbolic value in the body metaphor acquires a decisive importance. Through this, Voegelin is in a position to question the philosophical roots of Kelsen's „validity“ (*Sollgeltung*) by means of a resolute re-examination of its Kantian background.⁸² Moreover he can set out once again to clarify the fundamental role maintained by the idea of body in its symbolic-political content („political body“, „identity of race“, „community of blood“), and this at the level of the possible thematic subsumption of the phenomena of order in history. If the reference to Kant demonstrates the impossibility of a painless transfer from the idea of „Sollen“ to the interpretative schemas of the „Pure Theory of Law“ -- a transfer that, in Voegelin's opinion, is systematically unfaithful to the original Kantian foundation of „Sollen“ on the basis of anthropology⁸³ - then the discussion of the concept of race as political symbol permits the development of the theoretical premise according

Wissenschaft der Politik“, hrsg. von P. J. Opitz, München: Alber, 1993. On this subject: G. Weiss, *Theorie, Relevanz, und Wahrheit. Zum Briefwechsel zwischen Eric Voegelin und Alfred Schütz (1938-1959)*, Occasional Papers des Eric-Voegelin-Archiv an der Ludwig-Maximilians-Universität in München, München, 1997.

⁸² E. Voegelin, Das Sollen im System Kants, in: A. Verdross (Hrsg.), *Gesellschaft, Staat und Recht. Untersuchungen zur Reinen Rechtslehre*, Wien; Springer, 1931, pp. 136-173.

⁸³ *Ibid.*, pp. 150-151.

to the motivation behind the whole of Voegelin's project at this stage. In other words, the race concept allows elaboration, in a thematically coherent form, of the relationship that constitutently hold together politics and idea.⁸⁴

It is extremely significant, in our opinion, how Voegelin reaches in this work his thinking about the process of symbolic articulation that permits the dynamism of the relationship between individual, social group and the general „idea“ of humanity. The process of foundation of the political community determines itself behind a precise scrutiny of the representative link postulating the progressive recognition of the individual and the group to the incision performed by the „idea“ of race (in its symbolic-political content) compared to the general „idea“ of humanity. This fundamental content of the „idea“ is exercised, for sake of its own symbolic-representative position, in the „Zwischenreich“ stretching between the two opposing poles of the group relationship. That is to say, the idea stretches between the two points of maximum dispersal of the relational tension allowing the definition of the social bond: the individual in his absolute isolation and humanity. In this space -- the space of foundation of political identity and social bond -- the symbolic-identificatory value of political ideas can actually be recognised. Political ideas include political communities by excluding from them other men or social groups: „sie schließen Gruppen von Personen zusammen und schließen sie

⁸⁴ E. Voegelin, *Rasse und Staat*, p. 14.

eben dadurch gegen andere Einzelmenschen und Gemeinschaften ab“.⁸⁵

From this point of view, the book on „Race and State“ represents a determined step forward towards the assumption of the mainly symbolic roots of politics. The social bond which emerges from the representative concretisation of the idea, from the identifying and self-identifying processes of the „Wertung“, and from the potential juxtaposition regarding community arrangements reflecting a diverse symbolic establishment, now exhibits entirely its own *existential* background. And this is the key that allows Voegelin to define, by now in an almost complete form, his own methodological system. It is this same methodological system that he turns to applying, towards the end of the ‘30s, to an interpretation of the constitutional dynamics of the authoritarian State and the political-religious phenomenology of the mass movements.

IV. “Fetishism with the Norm“ and the Authoritarian State

„Die Österreicher sind keine Nation, und die österreichische Republik ist kein Nationalstaat“.⁸⁶ From the first research explicitly directed at an interpretation of the Austrian political-constitutional statute, whatever Voegelin writes takes on the

⁸⁵ Ibid. 118. On the symbolic-representative value of political ideas in Voegelin’s books on the *Rassenidee*, see: T. W. Heilke, *Voegelin on the Idea of Race*, p. 57.

⁸⁶ E. Voegelin, Die österreichische Verfassungsreform von 1929, in: *Zeitschrift für Politik*, Bd. XIX, Heft 9, 1930, pp. 585-615, 583.

characteristics of a final judgement, a judgement that is repeated, with some significant variations, at the beginning of the book on „The Authoritarian State“ (1936). The Austrian constitutional problem exceeds the limits of dogmatic debate and necessarily opens consideration of the more general process of formation of the European national states. We notice here a line of development that sees Austria, for the sake of the structural processes drastically influencing its typological reality, as being in a certain measure „expropriated“ from the principal characteristic that makes a State into a Nation. From the defeat of 1918, as we will see later, the Austrian political-constitutional reality proves to be burdened with a heavy imperial heritage. It is a heritage that, in Voegelin’s judgement, contributes profoundly to the exclusion of the Austrian monarchy from the group of European national States and hinders any assimilation of their constitutional and unitarian model. It is a heritage, finally, that again contributes to defining the line of immediate response between the principal prerogative of the Austrian material constitution (*Verfassung*) -- the irreducible specificity of which Voegelin calls its „administrativer Stil“ -- and the theoretic model that has most included its characteristics: Kelsen’s.⁸⁷

Assuming a line of development spanning from the transfer from hereditary monarchy to the constitutional situation of 1933 allows a definitive confrontation with Kelsen’s „Pure Theory of Law“. Voegelin compares the theoretical style with

⁸⁷ E. Voegelin, *Der Autoritäre Staat*, Wien: Springer, 1936, p. 3: „Und die herrschende Verfassungslehre dieses politischen Gebildes, die reine Rechtslehre, zeigt in idealtypisch vollkommener Weise die Züge, die wir eben als die des „administrativen Stils“ herausgearbeitet haben“.

the structural processes and the constitutional dynamics of the Austrian State. Further, he denounces the political weakness with which the constitutional model developed by the „Pure Theory of Law“ confronted the transition in 1933. 1933 made explicit once and for all the transformation by which the democratic-parliamentarian system was replaced by the model of the authoritarian State and the „administrative style“ inherited from the Hapsburg monarchy definitely surpassed in the political sense. It is this transformation, fundamentally, that according to Voegelin contrasts the definitive transfer of the constitutional and political reality of the „empire“ with that of the State.⁸⁸

Moreover right behind this threshold, comes the simple but in our opinion emphatic peculiarity of Voegelin's treatment of the Austrian constitutional problem as compared to Kelsen's. His attempt at a „break down“ of the normative outline finishes by legitimising the transfer through which Austria confronts fascism. The existential and anti-formalistic approach of Voegelin, exceeding the range of the hoped-for methodological renewal of the doctrine of the State, allows the perception, at this level, of its own real problem: the problem of the inability to prove and take on the radicalness of the disintegration which, with the authoritarian turning-point of 1933, characterises the material Austrian constitution by means of a stylised Kelsenism. The construction puts forward an „administrative style“ and a „unitarian constitution“ -- thereby reproducing immediately the very methodological opposition that Voegelin sees to exist between Kelsenian normativism and an anti-formalistic doctrine of political symbols (*Symbollehre*); in doing so it crosses over the mere

⁸⁸ Ibid., p. 4.

notification of scepticism into which flows the „Pure Theory of Law“. This scepticism is regarding the political transformations accompanying the unfolding of the „autoritären Kurs“ introduced by Dollfuss. Voegelin sees the Kelsenian option to be one that represents, basically, the point at which the renewal of the doctrine of the State bends in immediate legitimisation of everything it concretely describes. At this point, Voegelin finds himself so near to the „existential“, which is the focus of his attention, that he runs the risk of identifying the renewal of the doctrine of the State with the constitutional structures of the authoritarian State as the subject of investigation. He runs the risk of theorising on, in a position of renewed centrality of the science of law, the coherency and the immediacy of a „patching-up“ which might still be possible between the outline of logical-legal reference of the „scientific“ indictment and its own historical referent with its radical transformations. It is exactly the „collapse“ of this perspective that will set up the turn perceptible after 1938 and the elaboration of the essay on „Political Religions“, in Voegelin’s intellectual evolution.

A consideration of the material constitution of the State that exclusively played on the prerogative of this last as „closed“ normative system and on the procedural scrutiny relating to the production of „Verordnungen“ and regulations -- what for Voegelin characterises the „administrative Style“ governing the Austrian constitutional situation before 1933 -- does not attain in fact the *existential* dimension that alone allows the assuming as underived fundamental norm of the outline of immediate superimposition within „people“ (*Volk*) and authoritarian organisation of power. And it is this last that defines the political identity of the State. In the Austrian constitutional scenario, the executive action (*Machtakt*) does

not represent a manifestation of power attributable to a determined „sovereign will“ (*Herrschaftswille*) -- that is to say, a will that immediately takes back the one who acts in the name of the State to its symbolic-representative content regarding the Nation -- but represents rather, for Voegelin, a simple normative order, legally qualified only according to the coherence that returns it to the anonymous „Machtapparat“ of the State. Consistent with this perspective, the sovereign and the statesman „are not in their actions symbols of nation“ („sind in ihren Akten nicht Symbole der Nation“)⁸⁹, as much as they are simple mechanisms of the apparatus of the State.

In this scenario of transition, the dominant dogmatic interpretation from the constitutional point of view looks at the constitution as a simple system of legal norms and relegates the same production of the law to undefined extension of the administrative procedure. It does not consider the constitution as the concrete form of political identity between the one who commands and the one who obeys. The Austrian backwardness regarding the maturing of symbolic-representative indictments defining the possibility of an existential bond between people and State derives from the Austrian drive to make the implicit constitutional law technical. This is the principal characteristic in the organisational dynamism of the Kelsenian system. And this is what obstructs the construction of an Austrian unitarian State. So, in brief, can Voegelin's opinion be summarised.

Basically, for Voegelin, it was a matter of questioning the radical outcome of the Hapsburg „administrative style“ and the theoretical paradigms that would have subsumed its

⁸⁹ Ibid., p. 2.

constitutional legitimacy, that is to say, the fact that it might be possible to develop an idea of constitution as simple system of norms. It was an idea which would have allowed the legality of the action (in the constitutional sense as well) to be judged only in relation to the deductive connection bringing it back to that system and to those norms. This is tantamount to saying that such a judgement of legality results in the employment of a definitive „Staatsorganisatorische Forderung“⁹⁰ exhausting any further possibility.

The problem on which Voegelin's attention was concentrated always was the difficulty of thinking about the political form independently from its own symbolic referents, in other words, independently from the representative core that made operative the indictments of legitimacy. Thanks to the latter the political scientists were permitted to analyse the legal-constitutional outline of the State as closed symbolic system (*Symbolsystem*). The formalistic problem of *legality*, in other words, does not exhaust for Voegelin the foundational problem of *legitimacy* of the political order. From this point of view, the same conceptual coining by means of which Schmitt, in the wake of Jünger⁹¹, sought to realise scientifically the structural transformation that was to be invested in the almost

⁹⁰ Ibid., p. 3.

⁹¹ E. Jünger, *Die totale Mobilmachung*, Berlin, 1930; *Der Arbeiter. Herrschaft und Gestalt*, Hamburg, 1932. On Jünger's notion of „totale Mobilmachung“ see: C. Galli, Ernst Jünger: la mobilitazione totale, in:., *Modernità. Categorie e profili critici*, Bologna: Il Mulino, 1988, pp. 191-204; Id., Strategie della totalità. Stato autoritario, stato totale, totalitarismo nella Germania degli anni Trenta, in: *Filosofia Politica*, XI, 1/1997, pp. 27-62. On the Schmitt-Jünger relationship, C. Galli, *Genealogia della politica. Carl Schmitt e la crisi del pensiero politico moderno*, Bologna: Il Mulino, 1996, pp. 650 et seq.

obsolete distinction between State and society that of the „total State“⁹² was in its symbolic capacity investigated and in a certain measure repelled by Voegelin; the reasons for it were its „Averroistic“ composition of the group-whole relationship⁹³ and the unsuccessful differentiation, structurally operative in it, between the theoretic-cognitive content of its individual conceptual components („politische Volk“, „politische Gemeinschaft“, „Führerprinzip“) and the immediate symbolic-identifying, and at the same time political or politically instrumental side of the latter. This is a sort of alignment between the scientific-conceptual architecture that support the theoretic effort and the empathetically symbolic content with which it culminated in the analysis of the constitutional transformations.⁹⁴ Fundamentally, Schmitt was not capable of producing and maintaining the *critical separation* („Trennung“) which allowed the symbolic and conceptual division of politics and political science. The separation would have him allowed to keep distinct the cool, analytical side of scientific investigation from its

⁹² C. Schmitt, *Der Hüter der Verfassung*, Berlin: Dunker & Humblot, 1969² (I. Aufl., Tübingen, 1931); Id., *Die Wendung zum totalen Staat* (1931), in: C. Schmitt, *Positionen und Begriffe im Kampf mit Weimar-Genf-Versailles 1923-1939*, Hamburg: Hanseatische Verlagsanstalt, 1944, pp. 146-157; Id., *Staat, Bewegung, Volk. Die Dreigliederung der politischen Einheit*, Hamburg: Hanseatische Verlagsanstalt, 1932.

⁹³ See: E. Voegelin, *Der Autoritäre Staat*, p. 22. Schmitt responded explicitly to this criticism in his *Der Staat als Mechanismus bei Hobbes und Descartes*, in: *Archiv für Rechts- und Sozialphilosophie*, 30, 1936-1937.

⁹⁴ See the very important, in our judgement, E. Voegelin, *Die Verfassungslehre von Carl Schmitt. Versuch einer konstruktiven Analyse ihrer staatsrechtlichen Prinzipien*, in: *Zeitschrift für Öffentliches Recht*, XI, 1931, pp. 89-109.

„Symbolakzenten“.⁹⁵ Therefore, Schmitt finished by losing the place from which, to Voegelin, it seemed possible to think in an antiformalist way about the role of the „symbolic property“ of politics and to set oneself to investigate scientifically its reality. The place Voegelin sought was the one in which all its evidence would finally be apparent for whoever might concentrate their own attention on the existential and concrete side of the symbolic-political processes of the „Wertung“ and of political identification. Only at that place could one establish the fact that politics and science are not the same („daß Wissenschaft und Politik nun einmal nicht identisch sind“).⁹⁶

The type of interpretative strategy employed in this way, moreover, exposed itself to another risk that Voegelin had constantly sought to avoid. The definitive drive originating in Schmitt's same analysis of constitutional changes would have ended with recognising a strong twisting in typological meaning in his imitators (for example Ernst Rudolph Huber). The process which for Voegelin remains *dynamic* is the process by which the State itself arrives at its own existential identification; this same process would have been overtaken by organicistic considerations resulting in the development of „Typenbildungen“ of the presumed historic-symbolic specificity of the Italian, or French or German, political synthesis. What it would have entailed, in fact, is the loss of

⁹⁵ E. Voegelin, *Der Autoritäre Staat*, p. 29.

⁹⁶ *Ibid.*, p. 29.

the real „Stellenwert“ of the symbol, and a renewed tightening of the analysis toward a simple *static* of the „Staatstypen“.⁹⁷

It is from this general methodological viewpoint that Voegelin confronts Kelsen. Here he attacks the theoretical modules right at their foundations: on the one hand, the process, by which the „Pure Theory of Law“ establishes its own object, a process strongly marked tautologically and distinguished by an unjustifiable extension to all the phenomena of the reality (*Seinsauschnitte*)⁹⁸ of the same categorical structure. This process seems to Voegelin seriously prejudiced already. On the other hand, he sees to have been lost from view the postulated identification between the State and law, the generality (and radical diversity) of the phenomena clinging to the State as concrete entity and political phenomenon (*Lebensform*), as well as the same establishment of the legitimacy as reality operating positively, *independently* and *before* its „re-production“ by legal science.

However, Voegelin contests the hard core of Kelsen's theory of law -- the same core on which we, for our part, have conversely insisted before -- with even more force. His critique denounces the conclusion of Kelsen's positivistic metaphysics, with the assumptions of its methodological system, born, in Voegelin's opinion, of the positivisation of Kantian elements. Kelsen's system changes into an ideology, the logical production of law; it openly converts the formation

⁹⁷ Ibid., pp. 32-33.

⁹⁸ Ibid., pp. 106-107.

of law into „Sozialtechnik“⁹⁹ (social technique) and this by means of a definitive compression of the excess of politics.

From this point of view, it would be possible to observe in Kelsen, a systematic fusion of methodological indictments borrowed from the sciences of nature (*Naturwissenschaften*) and the ideology of production. This fusion in fact allows Kelsen to arrive at a radical synthesis. The logical indictment that lays down the „fundamental norm“ (*Grundnorm*) stressing its static-material nature¹⁰⁰, verging on assuming the system of law to be a system characterised exclusively by its own coercive unambiguity. It is thus a system in which the production of law, guaranteed as to its legality by the imputative outlines that reproduce the permanence of the fundamental norm, determines itself within a formal outline that predetermines itself as its own technical potentiality, and by its own ability to reproduce, at every level in which it practises, the total normative content of the state monopoly of coercion. It is in this area that the relationship between Kelsen and sociology can be productively re-verified. What Kelsen ends by refuting in sociological thinking is exactly the „conflictual“ character of the sociological notion of State (which is constituted by naturalism and by the physical irreducibility of the action). And he also refuses the way in which political sociology, operating by means of a theory of

⁹⁹ Ibid., pp. 105-106: „Die Begeisterung für die Naturwissenschaften ist überdies gefärbt von der Bewunderung ihrer Erfolge auf technischem Gebiet. Die theoretischen Erkenntnisse gehen bei Kelsen häufig über ihre sozialtechnische Bedeutung, und innerhalb der Schule der reinen Rechtslehre ist neben anderen, sehr weit davon abweichenden Ideen auch der Gedanke einer Rechtstheorie als einer Sozialtechnik in Analogie zu der auf Naturerkenntnis fundierten Technik durchgebildet worden“.

¹⁰⁰ H. Kelsen, *Reine Rechtslehre*, V, § 27.

law exhausts itself in the late nineteenth century distinction between legal State and administrative State and thereby drastically reduces its own legal consciousness.¹⁰¹ This last conception is only unified by Weber's unreflective assumption.

However, as regards Weber, a point of strong convergence between the „Pure Theory of Law“ and sociology will be fixed. Kelsen's primary sense attributed to the law, that is to say, the outline of the logical imputation that constructs the idea of law as coercive norm, shows itself openly for the first time in Weber's „verstehenden“ sociology. Weber's proposition which defines the State in relation to the monopoly of legitimate physical coercion¹⁰², according to Kelsen, „says nothing more about how much the pure theory of law demonstrates“¹⁰³. But on the basis of the supposition that the State and law coincide, it can acquire the same meaning as Weber's position. It is a supposition that kills off, once and for all and in the same direction taken by Kelsen, the double-side theory (*Zweiseitenlehre*) of the State, and also one that allows confirmation of the unambiguity of the relationship which allies State and legal system and directs them towards a progressive identification.¹⁰⁴

¹⁰¹ On this point, and for much of the following, see: A. Carrino, Weber e la sociologia del diritto nella critica di Kelsen, in: *Sociologia del diritto*, 3, 1987, pp. 17-32.

¹⁰² M. Weber, *Wirtschaft und Gesellschaft*, VII, Soziologie des Rechts, § 2.

¹⁰³ H. Kelsen, Der Staatsbegriff der „verstehenden Soziologie“, in: *Zeitschrift für Volkswirtschaft und Sozialpolitik*, Neue Folge, Bd. I, 1921.

¹⁰⁴ A. Carrino, *Weber e la sociologia del diritto nella critica di Kelsen*, p. 30.

On this paradoxical convergence, Voegelin will develop his own definite opinion regarding Kelsen. The doctrine of the „types“ (*Typenlehre*) of Weber, as much as the pure theory of law, seem to him attempts driven by the same urgency, to elaborate rationally the mourning for the progressive loss of centrality, within the constitutional doctrine, of the category of legality. At the same time, they both simultaneously exhibit the same difficulty, the one Voegelin addresses within the framework of the „Pure Theory of Law“: the impossibility, that is, of understanding fundamentally *why* the norms determine, beyond the rational outline of formal legality, the effect of legitimisation ascribed to them.¹⁰⁵

We are now at the heart of Voegelin's argument with Kelsen. The progressive maturation of Voegelin's project — the attempt to develop a theory of politics settling finally on the methodological option of the doctrine of symbols (*Symbollehre*) — manages to isolate the implicit „enigma“ (*Rätsel*) in the theoretical system of Kelsen. The enigma is the fact that men may observe legitimate norms only on the strength of their formal coherence in respect of the „fundamental norm“ (*Grundnorm*) by which they are derived. Observation of norms, that is, is on the strength of a sort of *fetishistic obligation* towards the technical-procedural legality running through the system of norms. This Weberian-Kelsenian viewpoint is deprived of all philosophical-anthropological criteria and thereby allows no other evaluation of the concreteness and dense viscosity of the procedures of legitimisation that compensate for the harsh relationship of obligation between men and the norms. As a result, „die Norm

¹⁰⁵ E. Voegelin, *Der Autoritäre Staat*, p. 157.

wird zu einem Fetisch“, as Voegelin writes with severity¹⁰⁶, and the legality becomes merely a totemic residue of the obsessive search for continuity within the system.

Thus, what for Kelsen was the obvious dissolution of the ideology of legitimisation — dissolution logically consistent as much with overcoming the dichotomy between State and law as with the impossibility of „legitimising“ the one by means of the other¹⁰⁷-- translates, for Voegelin, into this ideology's inability to thematize in a strong way the relationship of obligation and the potential *discontinuity* of the system of law. The „Legalitätsglaube“, the superficial illustration of that fetishism, comes to occupy the role of reassuring substitute for what Voegelin calls the „Angst vor dem Ungeordneten“¹⁰⁸, the anguish experienced by the jurist in the presence of potential interruption of the mechanisms of transmission of the normative system.

It is much the same that happens with the „institutional“ coup d'état carried out by Dollfuss between 1933 and 1934: the „Pure Theory of Law“ recognises its principal theoretic problem in the form of the „Rechtsbruch“. It was a transition confronted, in Voegelin's opinion, by displacing yet again the problem of legitimacy, that insofar as facing that problem would itself require a return to a strong theoretical-methodological subsumption of that same transition. The focus was instead upon procedural legality over which may be thrown a normative „bridge“ between the two sides of the

¹⁰⁶ Ibid., p. 153.

¹⁰⁷ H. Kelsen, *Reine Rechtslehre*, VIII, § 48.

¹⁰⁸ E. Voegelin, *Der Autoritäre Staat*, p. 153.

„normative fracture“ (*Rechtsbruch*), a „bridge“ by means of which the anticipatory and productive character of the same formal sketchiness of the norms may therefore be reconfirmed.

From this point of view, Kelsen's normativism literally *does not* recognise crises. The power of legal formalism remains entirely all in its technical content, in its ability to absorb the possibility even of a methodological crisis through the continuous reproduction of an outline within which the law sets itself out as technical knowledge and productive practice, as „social technique“ (*Sozialtechnik*). This social technique would translate into reality the implicit indictments of dynamism in the same Kelsenian notion of „productive link“; it acts in a self-regulatory way by means of a complete deontologisation of reality.¹⁰⁹

The crisis, then, forms part of the normative perspective as a only simply disturbing spectre: in a scenario based on the same network of relationship and connections legally important to the produced result, it is not given to thinking of any catastrophe. The „fetishism of norms“, as Voegelin explicitly calls it, also reproduces itself through the pretension of planning the question of *legitimacy* by translating it into that of *legality* of the systemic transition.

Within this claim, however, is revealed the impassable limit that confines the „Pure Theory of Law“ to those processes substantiating the real existent dimension of the idea of constitution (*Verfassung*). The question of a constitution requires no less than going back to the centre of

¹⁰⁹ On this theme see: A. Carrino, *L'ordine delle norme. Politica e diritto in Hans Kelsen*, Edizioni scientifiche italiane, Napoli, 1990, pp. 137-138.

consideration, starting simply from the main theme of the „normative fracture“ and the anguish it brings to advocates of the absolute logical-productive continuity of the system; that retreat to what Voegelin calls the „primary knowledge“ (*Urwissen*) alone can give meaning to the legal discussion. It is about recognising in a thematically strong way the fact that „ein Nomos den Staat ordnet“ and that „sein Bruch die Gemeinschaft ins Ungeordnete stürzt und vielleicht vernichtet“. Ultimately it is about emphasising how every new normative system necessarily ought to compare itself with the Chaos from which it antithetically comes.¹¹⁰

What's more, the problem does not urge so much a theoretical verification of the process of „Befolgung“ that successively characterise the political obligation to impose a new coercive system, as the specificity of the principle of order that translates into the new legal-positivist definition of the normative system. This it does in its capacity as „Ordnungsprinzip“ of the community orders, and beyond the harsh fact of its own „bloße Setzung“¹¹¹.

From this new argument formulated by Voegelin, it appears possible to abandon once and for all the logical perspective in which the philosophical-legal options of the „Pure Theory of Law“ mature. In this, the relationship order/disorder, cosmos/chaos, does not gain consideration and the whole problem of the system of the State can be taken back on the supposed strength of a solution that Voegelin considers, on the contrary, extremely weak: to the question of the normative

¹¹⁰ E. Voegelin, *Der Autoritäre Staat*, p. 153.

¹¹¹ E. Voegelin, *Der Autoritäre Staat*, p. 154.

conformity of the actions. And this is just the place where it is positively primed, in Voegelin's opinion, where its logical course is determined, by virtue of a drastic „Ersatz“, by that passage from legitimisation to legality.¹¹² The „Ersatz“ indicates Kelsen's distance from the concrete processes of the „Wertung“ and of the construction of collective identities, noticeable from the sociological point of view within history.

Voegelin's critique of Kelsen, then, does not represent simply the critique of a dominant theoretic paradigm; it is rather a critique conforming to Voegelin's precise requirement. The process of alignment between the „administrative style“ of the Hapsburg empire and the logical-formal procedure that informs Kelsen's doctrine of the State, must be rejected on the basis of two lines of reasoning. On the one hand, the „normative fracture“ of 1933 cannot be scientifically understood through simple extension of the categories still bound to the legal order of the old Hapsburg empire. On the other, the transition to a new constitutional order, a transition that for Voegelin establishes Austria as a national State, requires a theoretical synthesis going beyond mere reference to the legal framework by which the new „Nomos“, the new legal system, was being made known. It therefore deals with a threshold beyond which it might be possible to arrive at a new combination between legality and legitimacy, a combination

¹¹² Ibidem: „Die Forderung der ‚Legalität‘ als Forderung der Normgemäßheit des Verhaltens setzt den Akt in Beziehung zu der Norm unter der stillschweigenden Voraussetzung, daß die Norm sich ihrerseits aus Quellen der sittlichen Ordnung des Gemeinschaftslebens legitimiere. Wenn das Bewußtsein dieser Voraussetzung verlorengelht, wenn die Legitimität der Norm nicht mehr überprüft wird, dann entsteht jener substanzentleerte, formalisierte Legalitätsglaube, denn wir zuvor als Fetischismus bezeichneten“.

exceeding in its turn the mere reference to formal law. The crossing would be escorted by theoretical paradigms that may concretely confront those processes of group and social identification driving the constitutional dynamics.

We have so far treated this passage at sufficient length to deal with it analytically. It seems nevertheless also worth noting, for other extremely significant reasons, the fact that Voegelin concludes his own argument with the „Pure Theory of Law“ through explicit reference to the sociology of the legal concepts of Carl Schmitt¹¹³ and a discussion of the theory of the institution.¹¹⁴ What for Voegelin proves to be decisive is the possibility, concretely available in Maurice Hauriou’s „vitalist“ paradigm, of crossing the threshold that restrains the discussion on constitutional reform to the legal level, without in this way slipping on the aporetic „allrechtliche“ dimension just contested. That is to say, by acquiring the possibility of verifying, within the idea of „institution“, the opportunity of a positive overcoming of the „subjectivist“ and „objectivist“ systems of law, the phenomena of foundation and fracture of the legal system are nevertheless allowed to be *juridically* qualified.¹¹⁵ From this point of view, the reference to Hauriou allows the theoretical consideration to be restrained in a space

¹¹³ See: C. Schmitt, *Legalität und Legitimität*, München-Leipzig: Dunker & Humblot, 1932. On this theme: G. Duso, *La crise de l’État comme forme juridique et la philosophie politique: Eric Voegelin et Carl Schmitt*, unpublished conference paper, Université de Cergy-Pontoise (Paris, France), 1993; S. Chignola, *Pratica del limite*, pp. 190 et seq.

¹¹⁴ On the admission that Hauriou’s institutionalism strongly influenced Voegelin’s interpretation of the Austrian constitution, see: E. Voegelin, *Autobiographical Reflections*, pp. 52-54.

¹¹⁵ See: M. Hauriou, *La théorie de l’institution et de la fondation. Essai de vitalisme social*, Paris, 1925.

juridically guaranteed. At the same time, if open from a sociological point of view, the idea of „institution“ which refers in Voegelin’s opinion to a „komplexes Sozialgebilde“ within which the founding power, the organisation of law, and the *idea* directing its foundation dynamically cohabit, and this without, because of a claimed position of logical superiority, a single „Rechtsregel“ presiding the process.¹¹⁶ In it, fundamentally, could be recovered something similar to that which Rudolph Smend — another of the references guiding Voegelin — had otherwise defined as the „politische Selbstgestaltung“ of the State.¹¹⁷ The theory of „political self-formation of the State“ deals with positively adopting the sociological aspects left by the theory of the State in order to obtain a „full“ awareness of the structural processes participating — both *inside* and *outside* — in the symbolic-representative dynamic that defines the *political* aspect of the constitutional synthesis. For Voegelin such a possibility represents the only view from which it may be possible to look at the reality of the law and its „life“ in a scientific way. Only in this way can the State be fully recognised in its existential meaning of an unitarian „form of life“ (*Lebensform*): it focuses attention juridically on an area of legitimacy constantly permeated by the addition of experiences *and* symbols (*Wertungen*) that determine historical reality and put into practice, from time to time, the coercive meaning of political identity.

¹¹⁶ E. Voegelin, *Der Autoritäre Staat*, p. 158.

¹¹⁷ R. Smend, *Verfassung und Verfassungsrecht*, München-Leipzig: Duncker & Humblot, 1928, I, § 9.

V. Political Religions

We now have all the elements to compare the methodological system of Voegelin's text on „Political Religions“ (1938) and to evaluate fully its potential for change. With this Voegelin pursues two objectives: on the one hand, that of uniting indissolubly politics and ontology, the feature that will be transmitted to his mature work. On the other hand, his objective is to produce a critique of Nazi totalitarianism that exceeds the implicit reductionism in its historiographical evaluation and collocation as simply „event“ within history.¹¹⁸ In his opening remarks, Voegelin denounces the inadequacy of a superficial definition of the State¹¹⁹ that proposes to isolate the „State“ from „Religion“; he emphasises instead the data of *the common symbolic background* of all historical phenomena sociologically noticeable as signs of the constancy of a definite principle of order. Further he adopts an approach of comparative study between symbolic systems that is able to be linked historiographically on the strength of their common membership. This is referred to as „Weltanschauungen“ which Voegelin sees to be essentially religious: „the core of the

¹¹⁸ This subject determines the controversy with Hannah Arendt. See: E. Voegelin, Review of Hannah Arendt. *The Origins of Totalitarianism* (New York, Harcourt - Brace, 1951), in: *Review of Politics*, 15, 1953, pp. 68-85 (now in: *Published Essays 1953-1965*, edited by Ellis Sandoz, *Collected Works of Eric Voegelin*, vol. 10, Baton Rouge and London: LSU Press, 1995); and the successive Reply by H. Arendt, in: *Review of Politics*, 15, 1953, pp. 76-84.

¹¹⁹ The „definition of school“ that opens Voegelin's observation on the State is -- in my opinion -- within this text recovered by Jellinek. Cf. G. Jellinek, *Allgemeine Staatslehre*, p. 159: „Der Staat ist die mit ursprünglicher Herrschermacht ausgerüstete Verbandseinheit sesshafter Menschen.“

question is of religious nature“ („der Kern der Frage ist religiöser Natur“).¹²⁰

If Voegelin's entire production of the 20s and 30s, as we have tried to show, exhaustively covers one subject, that of the doctrine of the State (*Staatslehre*) by progressive clarifying what cannot be simplified -- the formal sterility of the law in the structures of order that emerge, in their immediate symbolic content, from within constitutional law -- Voegelin's aim now is constructively to assemble the results of the entire period. The attempt at such assembly is made in order to be ready to compete with the mass movements active at the end of the 1930's, in order to highlight the topicality of the processes of symbolic self-identification linking the individual and the community.

In our opinion, the change of view implicit in Voegelin's choice is extremely evident, and is precipitated through a return to a discussion which is not simply or unambiguously „methodological“, to the potentiality of guaranteed appeal to the processes of science and the law which are underway. The case that, for Voegelin's entire journey, had represented the reason for the pursuit and acquisition of new anthropological perspectives on the doctrine of the State (and with the attempt to recover a renewed centrality of the exact categories of this last), is now, so to speak, *saturated* with overwhelming historical confirmation by Nazism. The entire spectrum of Voegelin's sociological and organic proposal unexpectedly withdraws from future reassembly among politics and totalitarian „Weltanschauung“. And it is just the result of this

¹²⁰ E. Voegelin, Volksbildung, Wissenschaft und Politik, in: *Monatschrift für Kultur und Politik*, Heft 4, 1936, pp. 594-603, 598.

„saturation“ that entails the abandonment, through collapse, of the legal perspective on which Voegelin had expected to be able to put forward his own proposal for „reconstruction“ and „renewal“ of the doctrine of the State.

The book on „Political Religions“, from this point of view, represents the point of greatest condensation outlined by the directions that, within the process of Voegelin’s maturation, order the definitive reduction of the law as the disciplinary and methodological centre of authority.

Voegelin’s effort, that in this case reiterates in certain ways, particularly in his final remarks, that of Hermann Schmalenbach¹²¹, now turns to interpreting the entire fortunes of the modern State de-composing the constitutional elements, and recovering through them the segments of a „history“ whose centre of gravity is progressively consigned to ontology. From this point of view, the same methodological results of Schmalenbach’s attempt – the modal interpretation of the concept of community and society derived from Ferdinand Tönnies, or for a new conceptual coining, that of Schmalenbach’s „Bund“¹²² – can be propounded again in order to indicate the peculiarity of Voegelin’s approach to the theme of political religions. „Community“, „society“, and „league“ (*Bund*) represent form of political „Dasein“, conceptual signs of the process of collective identification, that in Voegelin’s

¹²¹ H. Schmalenbach, Die soziologische Kategorie des Bundes, in: *Die Dioskuren. Jahrbuch für Geisteswissenschaften*, Bd. I, 1922, pp. 35-105.

¹²² *Ibid.*, p. 79. On Schmalenbach’s interpretation of Ferdinand Tönnies, see: M. Ricciardi, *Ferdinand Tönnies sociologo hobbesiano. Concetti politici e scienza sociale in Germania fra Otto e Novecento*, Bologna: Il Mulino, 1997, p. 382.

work maintain a statute which is both symbolic and has immediate priority with regard to the overall outline of politics. It is based on this priority that the brief fresco can be figuratively traced, through Voegelin, which for the first time defines the possibility of an interpretation of political phenomenology *as* reflection of religious structures.

Voegelin's option seems then to act on a double register: on the one side it permits definition of the continuity of a philosophico-historical process within which the mechanism of symbolisation prove to be „open“ regarding the constant anthropology that represents their origin. On the other, it seems to render recoverable a segment of this perspective, a „sociological“ interpretation of the phenomena of collectivism (and, notably, of Nazism); this interpretation would operate directly on the symbolic-representative link defining the characteristic historical phenomenology. By means of this Voegelin is able once and for all to identify the *dynamic* meaning assumed by the processes of symbolic identification beyond any reductionism of the „legal“ kind.

From this point of view, the entire categorical system at work in this attempt (which will remain as such, in Voegelin's intellectual biography¹²³), seems programmatically disposed to employing the alternative couple in the title, that of politics and religion; the symbolic-representative core which here becomes reference can without distinction refer to, as original opening, the religious roots of political phenomenology as much as to the opposite politicisation of religion carried out by every clumsy theological-political pronouncement. It is upon this crossroad that it seems appropriate for a moment to insist.

¹²³ See: E. Voegelin, *Autobiographical Reflections*, pp. 50-51.

From a certain point of view, in fact, this same crossroad represents the most obvious limit of Voegelin's proposal, a limit representing a step backwards regarding the same methodological premises previously brought forward.

If, from removal of the caesura that historically divide them, *every* phenomenon of political identity and order can and must be taken back to its own „religious“ background (and vice versa), it seems that „Religion“ and „Politics“, combined in the essay on „Political Religions“ according to a precise philosophico-historical hypothesis, might represent simple conceptual indices of the space within which the use of symbolisation ends by undergoing a strong typological torsion. The initial hypothesis finishes by being reabsorbed by a methodological system that, not yet having developed a philosophy of consciousness as focus of the process of symbolisation, seek to use „Religion“ and „Politics“ as typological extremes by means of which to verify the processes of integration between the individual and the community. From this point of view, the entirety of the symbols to which Voegelin refers in the course of his interpretation seems pre-established according to a „static“ of cultural phenomena; these are in turn rife with the basic themes we have progressively clarified from Voegelin's writings dedicated to the confrontation with the German tradition of the doctrine of the State. This limit is evident the entirety of the work of 1938 and will represent, for the mature Voegelin a „knot“ that is constantly brought back into discussion: a knot into which becomes interwoven the threads of a project theoretically strong, indeed, completely redefining the political declension of the relationship running between theory and practice. Into this knot is also woven the tension and also the temptation to simplification originating

from more than one unresolved confrontation with the philosophy of history. It is a confrontation Voegelin will only later, and not always in a perfectly coherent form, be able to resolve by means of the progressive elaboration of a philosophy of consciousness. To this philosophy of consciousness in turn can be entrusted the task of proving the *discontinuity* between symbol and idea, the discontinuity, that is, which always interrupts the relation between law and justice.¹²⁴

With this, Voegelin will produce a significant radicalisation of his own research, a radicalisation which is only outlined in the essay of 1938, yet which will in the end exceed the field of legal disciplines and the debate that crosses them. Escaping the basic philosophico-legal themes of the system of law and State, being critically independent in his own thinking, Voegelin will only now be able to begin to analyse man's political experience by means of the symbolic systems that convey his interpretation of order.

¹²⁴ Round this theme gravitates, so to say, my own entire interpretation of Voegelin's philosophico-political thought. See: S. Chignola, *Pratica del limite. Saggio sulla filosofia politica di Eric Voegelin*, Padova: Unipress, 1998.

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