

## REVIEW

*Learning from Franz L. Neumann. Law, Theory and the Brute Facts of Political Life*

Edited by David Kettler and Thomas Wheatland

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The name Franz L. Neumann is not particularly well known, at least not in most of the English-speaking world. If his name is at all familiar it is likely because of Neumann's book *Behemoth*. It was published in 1942 and was his critical account of Nazism. However, as David Kettler and Thomas Wheatland have argued in *Learning from Franz L. Neumann*, Neumann wrote far more than just one book. They have set out to make Neumann's name more familiar and they have largely been successful. They have demonstrated that Neumann was a first-rate legal scholar and political thinker; one who consistently believed in the need to combine theory with practice.

After a very brief Chapter One which sets out the challenges of Franz L. Neumann, Kettler and Wheatland discuss Neumann's intellectual life during the 1920s Weimar Germany. They make the case that Neumann understood Marx's philosophy without fully endorsing it and they explain Neumann's role as an advocate for strengthening labor rights. They also helpfully place Neumann's early writings within the context of the ongoing conflict between the labor movement and the capitalists and they explicate his continuous complaint that the conservative government tended to side with the property owners. He particularly objected to how the government failed to "control cartels and monopolies" (170). During his time in Germany, Neumann not only explained the problems confronting Germany's workers but he offered concrete proposals on how to address the imbalance between labor and the capitalist state.

Neumann fully recognized the danger of the Nazi regime and he knew that he could not safely remain in Germany and so he left for England in 1933. He settled in London and began work on a second dissertation. He had received his

first doctorate in 1923 from Frankfurt with a dissertation on law and punishment (18), but his second dissertation focused on governance in political theory of law (18, 96). The second dissertation was written at the London School of Economics under the direction of Harold Laski with input from Karl Mannheim (122). In many respects it is a defense of the need for law—a theme that would appear again in Neumann's *Behemoth*.

Neumann left England to go to the United States in 1936 and while he had hoped to obtain a position teaching at a university, he was hired as a researcher by Horkheimer for the Institute for Social Research in New York. Kettler and Wheatland document Neumann's successes and failures during this time and they explain his unhappiness with his work in New York and with the time he had to spend in Argentina on behalf of the Institute. They refer to this period in the United States as Neumann's second exile (the first exile was his years in England). In the late nineteen-thirties into 1940, Neumann was working on the Institute's "Germany project" which was devoted to explaining what caused the collapse of democracy and the rise of Germany, themes that would be a part of *Behemoth*. Unfortunately, by 1942, Horkheimer was downsizing the Institute which prompted Neumann to go to Washington in search of employment (204-205, 208).

Kettler and Wheatland note that Neumann not only borrowed the title *Behemoth* from Thomas Hobbes, but that Hobbes played a number of roles in Neumann's earlier thinking (152, 249). One of these concepts was Hobbes' notion of sovereignty—one that Hobbes had defended in *Leviathan* and bemoaned the loss in *Behemoth*. This may be why Neumann decided to call his book after that by Hobbes because in Nazi Germany, the state was relegated to a lesser

status in favor of the leader and the party (255-256, 317). Neumann's *Behemoth* is partially historical and partially analytical—he faulted the Weimar politicians for neglecting the needs of the ordinary people, thus paving the way for the rise of Hitler (251-252). Neumann suggested that the West was suffering because of the economic disparity between capitalists and workers but he insisted that there were "additional reasons" for Germany's failed democratic planning. These include the "bankruptcy" of the Social Democratic Party and the "cowardice" of the leaders of the labor unions (292). Much of *Behemoth* is devoted to the role of law in Nazi Germany. There was a tension between the Party which wanted to manipulate the law for its own purposes or minimize its effectiveness and the jurists who were conscious of their obligation to uphold the law and further its sense of impartiality (300-312). Kettler and Wheatland observe that Neumann agreed with Hegel who had denounced the political theories of the Restoration period in Germany as being fanatical and hypocritical, but they also point out that those theories contained some theory of society while National Socialists did not (317). Neumann defended philosophy from the charge that it was somehow responsible for the rise of Nazi ideology and he insisted that its adherents were opportunistic and nihilistic. In his view, Germany was not a state because it not only lacked a (Weberian) rational foundation but was solely concerned with maintaining power (319-321). Kettler and Wheatland conclude the chapter on *Behemoth* with the observation that the book "is a bitter memorial to the defeat of the Social Democratic—and his own—project for Weimar." And, that Neumann had to start anew (323). Kettler and Wheatland argue that *Behemoth* is not just important because of its historical worth but because "the question of the displacing the state is once again alive among political thinkers" (250).

*Behemoth* drew the attention of many people and among them Walter Dorn who hired Neumann to work for him at the Office of Strategic Studies in February 1943 (329). Kettler and Wheatland admit that it is difficult to determine which reports Neumann authored because they were jointly written and rewritten. However, they are convinced that his influence was considerable because he was a sophisticated student of central Europe (340-341, 347). They conclude the chapter on "Franz Neumann in Washington" with a brief account of Neumann's considerable involvement in preparations for the Nuremberg trials (358-363).

Chapter Ten is about Neumann's move from working for the US government to teaching at Columbia University. Kettler and Wheatland note that Neumann and Her-

bert Marcuse shared the same view regarding the importance of their wartime experience in determining post-war America's position regarding both Germany and the Soviet Union. However, they also note that Neumann would not have approved of the manner that Marcuse chose (369). For Neumann, politics was a "separate discipline requiring its own faculty and institutes." And, he insists that politics is more than the "struggle for power"; it revolves around the tensions between freedom and governance, that is between "freedom and security" (393, 395, 421). These are topics which are again addressed in Chapter Eleven. However, Chapter Ten is among the finest in the book because here Neumann is not simply the subject of the book, but is presented as a real human being. Kettler was close to graduating when he met Neumann and he ended up participating in a number of Neumann's seminars at Columbia. Kettler provides a two- and a half page account of his connection with his professor and he recounts his last meeting with Neumann. Kettler was intending to write a dissertation on Karl Popper's critique of historicism but Neumann directed him to write on Adam Ferguson. Unfortunately, Neumann was killed in 1954 in a car accident in Switzerland, so Kettler had to write his dissertation under the direction of another Columbia professor. Kettler described Neumann as "an uncompromising but inspiring classroom teacher" and it is clear from this book that Kettler continues to be influenced by the memory of Neumann (388-390). However, this is not a biography of the man but an account of his ideas. Those seeking times and places will have some difficulty finding them; those wanting to learn about Neumann's ideas and principles will have little trouble locating them. Kettler and Wheatland set out Neumann's accounts of democracy and sovereignty and they explain the defense of law and his criticism of cynical politics.

The final chapter (Eleven) contains an account of Neumann's thinking in the years just before his death. He argued that neither power nor law was sufficient for humans. Against those who insist that power is an individual force, he maintained that "Power is a social phenomenon." Against those who believed that liberalism could subsume the power of the state to the rule of law, he suggests that history shows this to be unwarranted optimism (432-434). He also takes up the liberal conception that freedom is the "absence of restraint" and he credits Hobbes and others for this conception; however, it is "one-sided" (440, 460). For Neumann, freedom involves both will and intellect: one chooses based upon knowledge. Freedom includes self-determination which in turn presumes that one knows how

to “unfold” one’s potential. Unfortunately, the link between freedom and knowledge has been given over to utilitarian calculations (447, 460). Neumann insisted that “scientific discussion” was an absolute requirement and Kettler and Wheatland conclude this chapter by calling attention to Weber’s influence and by insisting that Neumann provided an exhortation for the intellectual life (464).

Neumann apparently always had a high regard for Max Weber’s social and political thinking, but he was often of conflicting opinions about Laski, Mannheim, and others. Carl Schmitt was an entirely different matter. Kettler and Wheatland note that in 1931 Neumann published an article on the concept of an “economic constitution” which had a number of positive references to Carl Schmitt. They explain that Neumann presented this as a paper in Schmitt’s university seminar and that many of the favorable comments are on Schmitt’s references. However, they maintain that Neumann rejected Schmitt’s claim for the need for presidential dictatorship (56-67, 252). Later Neumann will take issue with Schmitt’s reading of Article 48 of the Weimar Constitution which granted the government the right to employ any and all measures, including dissolving a lower government, to secure order and security. Schmitt claimed that the Weimar government was fully authorized by Article 48 to disband the Prussian government because it failed to contain the public displays of unrest (135). On the one hand, Neumann fiercely rejected Schmitt’s arguments but on the other hand, he was “consistently fascinated” by Schmitt’s “machinations” (176, 256). Kettler and Wheatland conclude that Neumann had had “complex intellectual relations” with Schmitt as well as with Otto Kirchheimer (103). However, Neumann always rejected Schmitt’s “clear authoritarian, anti-parliamentary design” (194).

The book is not without a few flaws but most of them are minor. First, the lack of a bibliography means that it is harder for a reader to determine which book is being referenced. It would have been helpful if there was even a bibliography of just Neumann’s works. Second, the chapter lengths vary considerably: Chapter One has eight pages and Chapter Four has eleven; whereas Chapter Ten has 61 and Chapter Five has 107. Finally, some readers may find that the book is not very easy to read. However, that is not really the authors’ fault, but is mostly due to the complexity of the material. Neumann’s legal and political thinking are not easy to understand but the authors have tried to provide sufficient historical context to make them easier to grasp. Kettler and Wheatland have provided a detailed and informative account of Franz L. Neumann’s works and intellectual life and

have given us ample reason to examine one of the most interesting legal scholars and dedicated political activists of the twentieth century. Kettler ends with a brief but personal recollection of Neumann—unlike Hannah Arendt or Leo Strauss, Neumann never founded a school. Kettler suggests that that unlike Arendt and Strauss, thinkers like Neumann are not to be accepted or rejected; rather, “they are intellectuals to be reckoned with, even some generations later.” Kettler (and Wheatland) have convincingly shown that Neumann is an intellectual and an activist who still worthy of being “reckoned with”. This book confirms how much Kettler and Wheatland have learned from him and is a remarkable call for us to try to learn from Franz L. Neumann.