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Abstract

SOLDIERS FOR DEMOCRACY: KARL LOEWENSTEIN, JOHN H. HERZ, MILITANT DEMOCRACY AND THE DEFENSE OF THE DEMOCRATIC STATE

By Ben Plache, Master of Arts

A thesis submitted in partial fulfillment of the degree of Master of Arts at Virginia Commonwealth University.

Virginia Commonwealth University, 2013

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This thesis explores the work of two German Jewish émigré scholars, Karl Loewenstein and John H. Herz, and how they confronted the conflict between fascism and democracy throughout the 1930s and during World War II. Loewenstein, in academic publications and later through a campaign of public advocacy, urged the adoption of his theory of militant democracy for the protection of democratic institutions. Originally conceived as temporary legislation to deprive fascists of the fundamental rights they abused in order to seize power, this theory evolved into the understanding by Loewenstein that fascist and democratic states could not coexist, and that fundamental changes must be implemented within the legislative and executive branches of democratic governments to create a more responsive, flexible system. Defined by his
pessimistic worldview, Loewenstein was acutely anxious about fascism, especially after the start of World War II. In contrast to Loewenstein, and despite his own pessimism, Herz conceived of an international system that combined both realism and idealism in order to obviate man’s violent and suspicious anthropology and create a peaceful international order in which nations, regardless of their particular political ideology, could coexist.
“Now the chasms of the 20th century were revealed: the abyss of racism that was to end in holocaust; total war, already foreshadowed in the blood-filled trenches of World War I… All of this destroyed [the] remnants of still existing rationalistic belief in “inevitable progress.” The world became a theater of the absurd, and I became more and more pessimistic.”

- John H. Herz
Introduction:

Karl Loewenstein, John Herz and the Flight from Fascism

In April 1933, shortly after his appointment as Chancellor, Adolf Hitler passed the “Law to Restore the Professional Civil Service,”¹ which, with few exceptions, removed non-Aryans from government positions, targeting Jews in particular.² For the thousands of German Jewish intellectuals working in government service and teaching at German universities, this law was cataclysmic, removing them from positions they had occupied for decades, and severing them from the life that they labored to build.³ Statistically, in 1933, following passage of the law, more than 16 percent of university faculty lost their jobs, and over the next six years, especially after passage of further restrictions, this number rose to greater than one-fourth of all university teachers.⁴ Social scientists and political scientists were especially hard hit, with some universities

¹ Gesetz zur Wiederherstellung des Berufsbeamtenums


⁴ Krohn, Intellectuals in Exile, 12.
losing over 50% of their staff, resulting in “the eliminat[ion] of an entire [new] research tradition critical of the historicism and idealism long dominant in German thinking.”

For many of these dismissed university professors, leaving Germany was the best option, and aided by newly formed international rescue committees, over 50% of those who lost their jobs in 1933 – 650 total – immigrated from Germany. By the end of the 1930s this number had risen to over 1,700, and, including doctors, lawyers, artists and writers, to over 12,000. While initially most of these émigrés chose to remain in Europe to stay closer to Germany, faced with Hitler’s march across Europe, as well as the difficulty of “shedding one’s status as an alien in Europe,” ever growing numbers of intellectuals chose to leave Europe for America, until by the start of World War II by far the largest proportion of German émigrés had found residence in the United States. In America, these intellectuals saw President Franklin D. Roosevelt, and especially his New Deal, as the heir to their progressive work during the failed Weimar Republic, and appreciated the ease with which they, as immigrants in a country full of immigrants, could blend into society at large, making “the process of reintegration exceedingly simple.”

Despite this openness, the path of the German Jewish immigrant was fraught with difficulties. These scholars were forced to compete for scarce permanent teaching positions at

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9 Krohn, *Intellectuals in Exile*, 17; Neumann, *Cultural Migration*, 18-19. See also Neumann’s entire description of his time in America. He writes: “[a]s impressive, if not more so, was the character of the American people, its essential friendliness, the neighborly, almost comradely spirit. Many have analyzed their traits and sung their praises, and I need not repeat all this.” Neumann, *Cultural Migration*, 18. There is no similar sentiment found in either Herz or Loewenstein’s papers.
xenophobic and anti-Semitic American universities that regarded them with suspicion.\(^\text{10}\) It was only after American universities realized the positive benefit German faculty members had on the academic quality of departments that a larger number of teaching positions became available, and American institutions became more willing to hire Germans.\(^\text{11}\) Even after securing teaching positions, these intellectuals still had to cope with the psychological consequences of their sudden dismissals and forced immigrations, and watch as Hitler and Nazi Germany successfully conquered much of Europe, spreading fascism across the European continent throughout the 1930s and 1940s.

Such experiences profoundly altered the worldview of some of these émigrés, causing them to both reassess their academic work, as well as look at the world through new, pessimistic eyes.\(^\text{12}\) This thesis tells the story of two of Jewish German émigré intellectuals, Karl Loewenstein (1891–1973) and John H. Herz (1908-2005), and how they responded, through their work, to their immigrant experience and the dilemma to democracy presented by fascism’s widespread success. While both are ancillary figures in the greater history of the émigrés, their work – and especially Loewenstein’s – showcase how scholars attempted to understand the new world they found themselves a part of, as well as to protect the nation that had become their home and represented the last bastion of democracy and free thought.

After his immigration to the United States in 1933, Loewenstein began to research the ways in which democracies could defend themselves from fascism. Faced with the apparent prospect of an endless, creeping tide of fascism, spreading across the globe and consuming democratic nations from within, he argued for the adoption of militant democracy, or the idea

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that democracies must proactively defend themselves against internal fascist threats. According to Loewenstein, fascists were able to abuse the fundamental rights granted to them by democratic constitutions – namely freedom of speech, press and assembly, and equal participation in the electoral process – to destroy democracy from within. The key to defending democracy and defeating fascists was to deny them these fundamental rights through temporary restrictive legislation. Loewenstein presented this idea in four academic articles published in 1935 and 1937.

Confronted with the success of Hitler and Germany throughout the 1930s, Loewenstein continued to develop his theory of militant democracy, and by 1938 had come to believe that beyond temporary legislation, it was necessary for democracies to transform their legislative and executive branches into smaller, more responsive bodies better able to cope with emergent situations and the speed of the modern state. Key to understanding this evolution is Loewenstein’s growing pessimism towards the future prospects of democracy, rooted in his forced immigration from Germany, as well as his mounting anxiety about fascism. In 1935 and 1937 he still approached the conflict between democracy and fascism as an objective academic, but by 1938 he became increasingly personally involved with the defense of democracy, arguing urgently for the quick adoption of militant democracy in the United States in order to protect America from the dire fascist threat.

This personal involvement manifested itself in an extensive campaign of public advocacy for the passage of restrictive legislation in the United States. While he never revealed his entire theory (especially his belief in the necessity to transform the American system), from 1938 until 1947 Loewenstein attempted, through book reviews, speeches and a pamphlet, to convince the public of the necessity of restricting the right of fascists, as well as of the threat posed to America by a hidden Fifth Column of fascist and fascist sympathizers poised to aid Hitler in
destroying the United States. This campaign took on a particular urgency in the aftermath of the surprising and rapid defeat of France in 1940. Following this defeat, Loewenstein attempted to do whatever he could to convince the general public of the urgent need to use militant democracy in America, including presenting himself as a defender of traditional Anglo-Saxon Christian American society, despite his nationality and ethnic heritage.

Following the attack on Pearl Harbor and the American entrance into the war, Loewenstein, like many other German émigrés, joined the American government, eventually assisting in denazification by interviewing Nazis as part of the Nuremberg prosecution. Even after the final defeat of Hitler, Loewenstein’s advocacy for militant democracy continued, and he remained pessimistic and anxious about fascism. He was publicly critical of denazification, believing that the German citizenry were unrepentant, and that the American failure to effectively root out and punish Nazis had set the stage for the reemergence of fascist Germany and the continuation of the threat to the United States and democracy. During this period, Loewenstein’s understanding of militant democracy continued to evolve as well, until, by 1944, he had come to believe that it was impossible for democracies and fascist states to coexist.

Unfortunately, Loewenstein’s pessimism, his particular views on fascism, his public campaign of advocacy for militant democracy and even the evolutions of this theory throughout the 1930s and early 1940s are entirely missing from the historiography. Over the past two decades, as scholars have confronted issues of domestic terrorism, human rights reforms and sovereignty in the wake of the Cold War, they have returned to the idea of militant democracy as a starting point for their research. As part of this research, Loewenstein has a newfound
relevance among political scientists, especially when examining democratic responses to national threats.\textsuperscript{13}

Little research has been done into Loewenstein for Loewenstein’s own sake. Virtually every scholar writing about him does so in the context of another event, and their work gives the impression that Loewenstein’s theory of militant democracy simply appeared in 1937, fully formed, and remained static over the next decade. The best examination of Loewenstein’s life and work to date is Markus Lang’s biography of Loewenstein, \textit{Karl Loewenstein: Transatlantischer Denker der Politik}, published in 2007 and based on Lang’s earlier dissertation. However, even Lang’s biography is deficient, devoting only fifteen pages to Loewenstein’s work on militant democracy, with no mention, beyond a single footnote, of Loewenstein’s campaign of public advocacy for adoption of militant democracy in the United States.\textsuperscript{14} Instead, Lang opts to focus on Loewenstein’s role in the development of political science as a field, and seeks to integrate Loewenstein into the growing category of émigré transatlantic intellectuals who, by leaving Germany, offered an implicit critique of the Nazi regime.\textsuperscript{15} Lang reiterated this approach in a chapter on Loewenstein, “Karl Loewenstein: From Public Law to Political Science,” as part of \textit{German Scholars in Exile: New Studies in Intellectual History}, published in 2011.

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\textsuperscript{14} Markus Lang, \textit{Karl Loewenstein: Transatlantischer Denker der Politik} (Stuggart: Franz Steiner Verlag, 2007), 207-222. The single reference to Loewenstein’s public campaign can be found in a footnote on page 222, where Lang references a speech given by Karl Loewenstein and Lawrence B. Packard at Amherst College in 1940. For more on this speech see Chapter Two. Unfortunately, Lang does not analyze this speech at all, or even quote from it.

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The majority of works on Loewenstein and militant democracy, on the other hand, use Loewenstein’s theories as part of a commentary on a present day dilemma – for example terrorism – and devote little more than a footnote to Loewenstein or his work. There is no hint of Loewenstein’s public advocacy for militant democracy, or of any evolution within his theory throughout the 1930s and early 1940s. Typical of this category of works is a recent dissertation on Loewenstein, “Militant Democracy,” by Svetlana Tyulkina, finished in 2011. While Tyulkina does an excellent job of tracing the influence of Loewenstein’s work in the modern world, as well as highlighting examples of legislation and constitutional amendments today that are examples of militant democracy, she spends no time exploring the development of the theory, or the greater intellectual context within which Loewenstein worked. Martin Klamt follows a similar approach in his chapter, “Militant Democracy and the Democratic Dilemma: Different Ways of Protecting Democratic Constitutions,” in *Explorations in Legal Culture*, published in 2007.

The only mention of Loewenstein’s public campaign for militant democracy is found not in a work within the Loewenstein historiography, but rather in an article about the German Jurist Carl Schmitt’s interrogations as part of the Nuremberg Trials. Loewenstein, in his capacity as an officer with the U.S. Military Government in Berlin (1945-1947), pressed American officials to arrest Schmitt. While describing Loewenstein and Schmitt, Joseph W. Bendersky references a letter to the editors of *The New York Times* written by Loewenstein that was highly critical of

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denazification. This letter, along with others composed by him on the same subject, were part of Loewenstein’s post-war campaign for the application of militant democracy in defeated Germany. Beyond this reference, as well as the one found in Lang’s biography, no other references to Loewenstein’s public statements exist.

Like Karl Loewenstein, John H. Herz’s immigration from Germany left him sharply pessimistic. After arriving in America in 1938, while studying at Princeton, he began to investigate the way in which international relations functioned, and how and why states came into conflict with one another. Like Loewenstein, Herz joined the American government during the war to help combat Nazism, and after the war was highly critical of denazification. During this period, Herz concluded that man was inherently concerned with his personal security, and that the knowledge that other men held the potential to kill him led to a state of constant, potential violence, regardless of actual intent. Relations between nations were this anthropological state, termed the security dilemma, writ large. Despite his pessimistic anthropological view, Herz believed that, through a combination of measured realism and idealism known as Liberal Realism, a peaceful world system could be achieved. Thus man, cognizant of his nature, could overcome his native state and work towards a peaceful future.

While Herz acknowledged this future was unlikely to come to pass, his theory still held the possibility for a world in which nations, independent of their political ideology, by pursuing Liberal Realism, could peacefully coexist. Written in the years before World War II and the beginning of the Cold War in the late 1940s, Herz’s theory was fundamentally concerned with describing a world in which nations of competing ideological orientations, in particular

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democracy and communism, could avoid destructive war. This potential for peace represents a working out of Herz’s pessimism, despite his biography and worldview, and, in contrast with Loewenstein, shows how unusual Loewenstein’s particular solution to the conflict between fascism and democracy was.

Compared to Loewenstein, the Herz historiography is considerably smaller, arising only in the past ten years, and focuses on Herz’s role in the development of international relations as a field, and his participation in the wider community of such scholars in the post-War world. As yet, no scholar has compared Herz to other émigré intellectuals, or explored the relationship between his theories and Loewenstein’s militant democracy. Today, the leading academics working on Herz are Peter Stirk, Jana Puglierin, Christian Hacke and Ken Booth. Puglierin has written the only contemporary monograph on Herz, *John H. Herz: Leben und Denken zwischen Idealismus und Realismus, Deutschland und Amerika*, published in German in 2011 and developed from an earlier dissertation. Puglierin also helped edit a 2007 issue of *International Relations* (a publication that Herz contributed to throughout his life) devoted to Herz’s work. In this issue she, along with Hacke, contributed two articles on Herz’s life and work, “John H. Herz: Balancing Utopia and Reality,” and “Toward Being a ‘Traveller Between All Worlds’.” Along with Hacke and Puglierin, Ken Booth has written on Herz’s *Political Realism and Political Idealism* in “Navigating the ‘Absolute Novum’: John H. Herz’s Political Realism and Political Idealism.”

Peter Stirk also contributed to the Herz issue of *International Relations*. In “John H. Herz and the International Law of the Third Reich,” he explores Herz’s conception of Nazi international law and his work on this subject. Stirk also mentions Herz in a work on Carl Schmitt, *Carl Schmitt, Crown Jurist of the Third Reich: On Preemptive War, Military Occupation, and World Empire*, presenting Herz’s understanding of international relations as an
alternative to Schmitt’s. Looking forward, with the recent release of Herz’s papers, catalogued at the University at Albany as part of their Jewish immigrants collection, it is likely that more works devoted to his life and theories will be forthcoming.

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The story of Loewenstein and Herz is, fundamentally, a story of their pessimism, and how this pessimism manifested itself in both their academic work and public discourse. Chapter one provides a detailed analysis of Loewenstein’s academic work on militant democracy, beginning in 1935 and ending in 1938. In this work, the evolution of militant democracy can be first observed, as well as Loewenstein’s growing concern with fascism and the threat posed by fascists to the United States. The second chapter explores Loewenstein’s public advocacy for the adoption of antifascist legislation in the United States, beginning in 1938 and concluding with his critique of denazification following his departure from government service in 1947. Throughout this period, despite the defeat of Hitler by the Allies in 1945, Loewenstein remained acutely anxious about fascism, and had little hope for the future of democracy. Chapter

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three moves beyond Loewenstein, focusing instead on Herz, and examines the relationship
between the two scholars, and how Herz, despite his similar biography and worldview,
developed a markedly different solution to the dilemma facing democracy. Finally, the
conclusion reflects on the position of militant democracy today, and how Loewenstein and
Herz’s worldviews evolved in the decades following World War II. While Herz remained
optimistic, Loewenstein, despite the emergence of a democratic Germany, remained pessimistic
until the end of his days.
Chapter One

The Academic: Karl Loewenstein and the Development of Militant Democracy

“If democracy is convinced that it has not yet fulfilled its destination, it must fight on its own plane a technique which serves only the purpose of power. Democracy must become militant.”

Karl Loewenstein was born in Munich, Germany in 1891 to a family of wealthy Jewish Bavarian industrialists, and traveled extensively during his childhood, including time spent living in England and South America. After several years at universities in Munich, Heidelberg – where he studied under Max Weber – Paris and Berlin, he received a law degree in 1914. During World War I he spent 1915 serving with the German infantry, and was admitted into the German bar in 1918. A year later Loewenstein received his doctorate in civil and ecclesiastical

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22 To this point, no comprehensive biography of Loewenstein has been published in English. While Lang’s biography, *Transatlantischer Denker der Politik* does provide an in-depth overview of Loewenstein’s formative years, it has yet to be translated.

23 Unfortunately little information is available about Loewenstein’s war service.

law at Munich.\textsuperscript{25} After practicing law throughout the 1920s in and around Munich, Loewenstein entered academia and became a lecturer at the University of Munich School of Law in 1931. He was forced to resign this position in 1933 as a consequence of the Nazi’s efforts to purge non-Aryans from public service, and shortly thereafter left Germany for the United States. While in America, with the help of the Emergency Committee in Aid of Displaced German Scholars, Loewenstein secured a two-year teaching position at Yale University in 1935, and in 1936 accepted a permanent position teaching political science at Amherst College.

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During this period, shortly after immigrating to the United States, Karl Loewenstein began writing academic articles about the spread of fascism, and, in particular, what steps the remaining western democracies should undertake to protect themselves from internal fascists threats.\textsuperscript{26} These articles provide much of the basis for the future importance of Loewenstein’s work, and show a clear progression of thought that mirrors European political developments throughout the 1930s. In the first of these articles, “Autocracy Versus Democracy in Contemporary Europe I and II,” published in \textit{The American Political Science Review} in 1935, Loewenstein examines the political makeup of Europe, as well as the prospect of the remaining democratic nations of succumbing to internal fascist movements. Within this analysis, he first describes what he later terms militant democracy, the idea that democratic nations must proactively defend themselves against fascism, as fascists are all too capable of utilizing democratic principles to enable their ascent to power. No longer are these principles alone


sufficient to protect the state – rather, these principles, and in particular the democratic belief in fundamental rights, in many ways enable the fascists to succeed.

Loewenstein continued his inquiry into the conflict between democracy and fascism in a pair of 1937 articles, “Militant Democracy and Fundamental Rights I and II,” again published in *The American Political Science Review*. These two articles continue his examination of fascism, while investigating the similarities between European fascists movements, and the steps these movements undertook to transition from the political fringe to the sole governmental authority within a state. Loewenstein also continues to outline possible steps that democratic nations must take to resist the spread of fascism, including what antifascist legislation has already been enacted by democratic states, and how these laws, which are examples of militant democracy in action, work to protect the democratic state.

Although much of the content of this article is similar to the earlier “Autocracy Versus Democracy I and II,” Loewenstein’s tone throughout is noticeably more alarmist. As he has witnessed the progressive spread and success of fascism throughout Europe, his hope for the continued existence of democratic states has waned. Further, the steps outlined by Loewenstein in “Militant Democracy” are a temporary abandonment of many of the principles and rights held most dear to democratic nations – an abandonment, that, in Loewenstein’s eyes, is necessary for the defense of democracy in the long term. This abandonment, forced upon democratic nations by the unique nature of the fascist threat, is one of the most fascinating elements of Loewenstein’s work during this period, and reflects both his pessimism – rooted in his recent immigration – as well as his growing anxiety about fascism.

Loewenstein continues this argument in his next pair of articles, “Legislative Control of Extremism in European Democracies I and II,” published in *Columbia Law Review* in 1938. Similar to “Militant Democracy,” in these articles Loewenstein surveys existing anti-fascist
legislation, and, in technical legal language appropriate for a law journal, analyzes the way in which these laws effectively deprive fascist groups of the tools necessary to seize power from the existing democratic system. Even when writing in such a legalistic context, Loewenstein cannot help but reaffirm the pessimistic way in which he views the prospects of the democratic states, as well as reveal his continued anxiety about the threat posed by fascism to the west. Even here he presents the conflict between fascism and democracy as a war, arguing that everything possible must be done to protect democratic institutions, no matter the cost.

Loewenstein published another article in 1938 on militant democracy, “The Balance of Legislative and Executive Power: A Study in Comparative Constitutional Law,” in The University of Chicago Law Review. Importantly, in this article, Loewenstein expands on his original theory of militant democracy, and argues for the necessity of implementing fundamental changes to the political process of the United States in order create a smaller and more responsive legislature better able to cope with the demands of a modern state, along with a more powerful, active executive. Unlike the temporary antifascist legislation, these proposed changes would be permanent, and represent a radicalization of Loewenstein’s thought, as well as the evolution of a second level to his theory of militant democracy, encompassing both temporary and permanent measures.

Examining Loewenstein’s articles during this period reveals the growing alarm with which Loewenstein describes the spread of fascism, transforming the dry, academic examination of fascism as a new political movement in 1935 into the panic of the late 1930s. Loewenstein believed that if radical steps were not taken, then the remaining democratic nations, including the United States, would fall to internal subversive fascist elements. This mounting anxiety reveals a fundamental change in Loewenstein’s outlook. He became, like so many other Jewish intellectuals who were forced to flee Germany after the Nazi Party seized power in 1933, a
pessimist. He was no longer content to simply hope that democratic principles, human nature and inevitable progress were safeguards against the darker forces of humanity embodied by fascism. Instead, democratic nations must participate in an active fight against fascism, taking whatever steps are necessary in order to prevent their internal destruction at the hands of fascist agitators.

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Loewenstein’s first examination of fascism and the prospects of its further spread throughout Europe can be found in “Autocracy Versus Democracy in Cotemporary Europe I and II,” published in 1935. These articles are the beginning of a new era in Loewenstein’s research and writing. The tone that Loewenstein takes throughout these article – that of an objective academic investigating a new political development – and the way he describes fascism are significant, and stand in contrast to his later works, where his personal involvement in the protection of democracy and his anxiety are much clearer. Beyond showing the development of his theory of militant democracy, “Autocracy Versus Democracy I and II” show the beginning of Loewenstein’s transformation from academic to advocate.

Loewenstein’s work here is a reflection of the political climate of Europe in the early to mid 1930s. Between 1933, when Loewenstein fled from Germany, and 1935, when he published “Autocracy Versus Democracy I and II,” Germany had reemerged as one of the Great Powers on the European continent, while the European democracies, suffering through the Great Depression, became increasingly unstable. Hitler, by pursuing an aggressive foreign policy that took advantage of the worsening relationship between England and France, was able to press Germany’s diplomatic position, forcing concessions from England and France on provisions from the Treaty of Versailles. Simultaneously, while fascist Germany prospered, the political power of France waned. Beset by serious internal strife and economic turmoil, French politics
throughout the 1930s was increasingly dominated by the radicalized elements of the far left and far right, with the possibility of outright revolution by either group festering just below the surface.\textsuperscript{27}

The position of the smaller democratic powers in Europe was particularly treacherous. Faced with the decline of France and the reemergence of Germany, these small powers – including Czechoslovakia, Belgium, Poland and the Baltic States – were forced to contend with an evolving international political landscape as well as internal unrest at the hands of the unemployed and dissatisfied who looked to Germany and Russia for an example of the proper response to the Depression.\textsuperscript{28} Read within the context of the unstable political landscape, Loewenstein’s analysis becomes more meaningful, as well as a clear response to the new reality of European politics in 1935.

Loewenstein begins by summarizing the “political scene of contemporary Europe,” pointing out that the European states, “are aligned in two fundamentally antagonistic camps,” democracy and liberalism, and autocracy.\textsuperscript{29} Loewenstein believes that Great Britain, the Irish Free State, France, Belgium, the Netherlands, Sweden, Norway, Denmark, Finland, Switzerland and Czechoslovakia fall into the former category, while Russia, Turkey, Germany, Italy, Portugal, Austria, Poland, Yugoslavia, Bulgaria, Rumania, Hungary, Estonia and Latvia compromise the latter.\textsuperscript{30} According to Loewenstein, in 1935 “by far the greater part of European territory and of European population is under dictatorial rule of one type or another,” and, facing


\textsuperscript{28} Sontag, \textit{Broken World}, 269-271.


\textsuperscript{30} Loewenstein, “Autocracy Versus Democracy I,” 571.
this reality, it is necessary to examine the prospects of the remaining democratic nations for becoming autocratic dictatorships.\textsuperscript{31}

Before undertaking this examination, Loewenstein briefly reviews the political history of democratic and autocratic forms of government, taking pains to point out that “the rationalization of government by the devices of free self-expression called democracy is a comparatively new phenomenon,” and that for the large part of human history man has lived under autocratic systems.\textsuperscript{32} Beyond the accuracy of this assertion, which functions to dispel much of the surprise surrounding the spread of dictatorships, as in many ways this spread can be seen as simply reverting to the mean, Loewenstein’s comments here do much to reveal the tone he takes throughout the article. At this stage Loewenstein is still attempting to approach his subject with an element of academic objectivity and distance. It is unclear at this point how he personally feels about autocracy, and in particular fascism, and what greater meaning he attaches to the prospect of the further spread of autocracy throughout the remaining democratic European nations. This attempt at objectivity is further evident in Loewenstein’s acknowledgement of the unique nature of this spread of autocratic governments. While “to the observer of history,” the reemergence of “Caesarism” is not surprising, the speed by which “the new dictatorial wave” has spread is unique, and prompts “deep concern to everybody who values democracy as a higher step of mankind toward progress and civilization.”\textsuperscript{33} By writing as such, Loewenstein is couching his analysis. For those who believe that democracy is the next step in mankind’s march of progress, fascism is a threat; but this belief is neither universally held nor necessarily correct.

\textsuperscript{31} Loewenstein, “Autocracy Versus Democracy I,” 571.

\textsuperscript{32} Loewenstein, “Autocracy Versus Democracy I,” 572.

\textsuperscript{33} Loewenstein, “Autocracy Versus Democracy I,” 573.
Importantly, in this first section, and in line with the title of the article, Loewenstein contrasts democracy and autocracy in general, and places both Russia and Germany, despite their opposing worldviews, within the autocratic category. Loewenstein acknowledges this relationship early on, pointing out that his use of autocracy as a descriptive term “embraces not only the fascist variety as presented by Italy and Germany, but also the communistic form of dictatorship in Russia.” This distinction is significant, as for the majority of his following articles, and, in fact, most of “Autocracy Versus Democracy,” he almost exclusively discusses the prospect of the continued spread of fascism, ignoring the obvious parallels between Russia and Germany, and the crimes of Stalin and Hitler.

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After briefly outlining the historical background of fascism, Loewenstein begins his analysis of the odds of the remaining democratic European nations for becoming fascist. Loewenstein first attempts to “distinguish between the general tendencies of the replacement of democratic by autocratic rule and the specific conditions arising from the economic and political situation of a given country.” Loewenstein here is presenting the adoption of fascism as the consequence of two diverse factors: those that are general and exist regardless of particular circumstance, and those that are the direct result of the Great Depression and economic unrest.

In general, much of fascism’s appeal comes from fulfilling what Loewenstein terms “the missionary spirit,” or the “individual’s obsession by belief in the absolute and indisputable value

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35 By this point in the article Loewenstein focuses almost entirely on “fascism” instead of “autocracy in general,” in large part because of his understanding that the for the time being “Bolshevik belief in a communistic world revolution has apparently receded into the background.” Yet, beyond this observation, there is something curious about this change – in large part it reflects Loewenstein’s propensity to excuse Stalin in his fervor for condemning fascism and Hitler. See Loewenstein, “Autocracy Versus Democracy I,” 574.

of his own devotion to a new basic principle of life,” which causes him to preach this ideology at every turn. The proponents of this new ideology act as missionaries, spreading the doctrine of fascism like a religion. This spread is further facilitated by local concepts of nationalism and regionalism, as within these beliefs fascism can be seen as a unifying ideology to help reunite populations that have been previously separated.

As to the particular, the appeal of fascism reflects the generally held belief that economic change requires a change in government. For populaces suffering under the spreading worldwide Great Depression, “national economic autarchy has become the catchword of the day,” which can only be achieved by an active government that interferes with the economy. This, in turn, necessitates an organized, centralized authority unfettered by private interests, and logically, the concentration of “political power in the hands of a government strong enough to cope with the obstacles during the transition period [from unplanned to planned economy].” Facing this crisis, “dictation from above becomes necessary, even where the spirit of the nation abhors compulsory methods of suppression of free institutions.” Thus, fascism is seen as the solution to economic depression, and the poorer the economic situation in a particular nation, the greater the prospects for this nation adopting fascism.

Beyond the two different motivations leading to the support of fascism, democracy in Europe is further threatened by the “facilities afforded by the fascist technique,” namely the encouragement of apathy and silence, which causes citizens who recognize the threat to do

40 Loewenstein, “Autocracy Versus Democracy I,” 578.
nothing.\textsuperscript{41} This encouragement in many way stems from what Loewenstein describes as the “science” of introducing fascism into a democratic state, which is a “typical procedure applicable to almost any state under the rule of democracy.”\textsuperscript{42} To Loewenstein, this science is a “rationalized and pre-calculated routine progressing, step by step, on the basis of experience and precedent,” and is aided by democracy itself.\textsuperscript{43} Although not fully explained, what Loewenstein is claiming is that the institutions of democracy provide fascism with the tools needed for the destruction of the existing government.\textsuperscript{44}

This passage is, for several reasons, one of the most important of the article. Loewenstein’s description of the way in which fascism actually utilizes the democratic process to destroy democracy itself is important. While he is by no means the first scholar to highlight the problems of relying on democratic ideals alone to protect the democratic state, he is one of the first to propose the solution that is first alluded to in “Autocracy Versus Democracy.” This passage is the beginning of what eventually will evolve in later articles into his theory of militant democracy. As he succinctly summarizes, in many fascist states, “the democratic constitution became the main obstacle against [the state’s] maintenance and the best tool for its destruction.”\textsuperscript{45}

According to Loewenstein, this phenomenon can be readily observed in the circumstances surrounding Hitler’s rise to power in Germany. While much of Hitler’s appeal came from his ability to tap into the public’s anger with the Treaty of Versailles and the other

\textsuperscript{41} Loewenstein, “Autocracy Versus Democracy I,” 579.
\textsuperscript{42} Loewenstein, “Autocracy Versus Democracy I,” 579.
\textsuperscript{43} Loewenstein, “Autocracy Versus Democracy I,” 579.
\textsuperscript{44} Loewenstein, “Autocracy Versus Democracy I,” 579.
\textsuperscript{45} Loewenstein, “Autocracy Versus Democracy I,” 580.
Western powers, he would have never been able to assume power (or even rise beyond a petty
demagogue) without being enabled by the “generous and lenient Weimar republic,” which
fashioned the mechanisms for its own doom by allowing “the existence of a resolute competition
to the legal authority of the state.”\textsuperscript{46} For Loewenstein, the Weimar government was destined to
failure “from the beginning... because it was pacifist\textsuperscript{47} instead of militant.”\textsuperscript{48} Here, again, the
seeds (and even language) of his later writings can be observed, and by providing concrete
evidence of the validity of his analysis, Loewenstein makes the threat posed by fascism to
democracies seem all the more acute. If democratic governments wait until the fascists have
begun to implement their scientific process, it is too late. The defensive measures must be
undertaken proactively, and long before the fascist party prepares to assume power.

After reviewing the actual process by which a fascist government subverts a democratic
state, Loewenstein begins his specific examination of the prospects of each remaining
democratic nation for becoming fascist in “Autocracy Versus Democracy in Central Europe, II,”
again published in in the \textit{American Political Science Review} in 1935. For the purposes of this
thesis, the importance of these predictions lies in what they reveal about Loewenstein’s
understanding of fascism and his worldview in 1935, and not in their eventual accuracy, as eerily
prescient as they may be. Much of Loewenstein’s analysis here rests on his contention that,
beyond economic prosperity, the single most important factor in determining a nation’s ability to

\begin{footnotes}
\item[46] Loewenstein, “Autocracy Versus Democracy I,” 580.
\item[47] Independent of the historical accuracy of Loewenstein’s statement (the Weimar government was not especially pacifist) it is instructive in the way in which he regarded Weimar during this time period, as well as his evolving theory of militant democracy.
\item[48] Loewenstein, “Autocracy Versus Democracy I,” 580.
\end{footnotes}
resist fascism is its tradition of democracy. If “self-government and democracy is lacking [the nation is] more susceptible to fascist propaganda and therefore more exposed to surreptitious change of government.”

Loewenstein begins with the Balkan states, for which he does not have high hopes of a continued relationship with democratic principles. He has particular reservations about Rumania, which can be seen as more an “autocracy than as a constitutional state,” as while the 1923 Rumanian constitution describes the Rumanian government as a constitutional monarchy, in reality the state is run by a government class composed of traditional aristocrats and wealthy landowners, who make up almost all members of the parliament. A similar system can be found in Yugoslavia and Hungary, and while early fascist efforts in Bulgaria (supported by German money) have not been particularly successful up until 1934, the growing popularity of anti-Semitic and racist rhetoric among Bulgarian leaders does not bode well for the nation’s continued resistance to fascism.

Of note is the importance of anti-Semitism to the acceptability of fascism implied by Loewenstein here – to him, fascism benefits from a popular acceptance of anti-Semitic beliefs, as this acceptance can serve as a rallying cry for a dispirited population, with Jews functioning as

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49 Interestingly, this early assertion is in contrast to much of his later advocacy on the part of his principles of militant democracy, as will become apparent. By this early standard (and as he acknowledges later in “Autocracy Versus Democracy II,”) the prospects of the United States becoming fascist are nonexistent – an important early prediction to bear in mind as Loewenstein’s work develops throughout the 1930s and early 1940s.


51 Loewenstein, “Autocracy Versus Democracy II,” 756.

52 Loewenstein, “Autocracy Versus Democracy II,” 756.

53 This is one of the few mentions of anti-Semitism in any of Loewenstein’s works. Despite his ethnic heritage, he seems entirely unconcerned with anti-Semitism or the fate of Jews in Germany or the rest of Europe. There is little evidence in his biography that Loewenstein practiced Judaism, or even felt a strong affinity with his fellow Jews.
an easy scapegoat for fascist rhetoric. In Bulgaria, with a long tradition of “popular animosity towards Jews,” especially among the rural population, anti-Semitism could serve as a wedge by which fascism could conceivably force itself into the Bulgarian government, and could prove more powerful than the nation’s legacy of constitutional monarchy.\(^5^4\)

Loewenstein next examines Greece. Following a period of turmoil, a democratic constitution was established in 1927, and a period of peace lasted until 1935, when tensions between the two political parties spilled into the streets, and the Venizelists attempted to overthrow the Tsaldaris government.\(^5^5\) Faced with a “resolute government in command of the ordinary military powers,” this attempt failed, and prompted constitutional reform that helped further concentrate power in the hands of the government party.\(^5^6\) While at first glance this successful resistance would be a promising sign for continued democracy in Greece, the subsequent concentration of power, and the actions that prompted this concentration, have followed “the beaten track of quasi-fascist methods,” which so often end in full blown fascism. Further, Loewenstein views recent agitation by Greeks for a reestablishment of the traditional monarchy as nothing more than an attempt to implement a “veiled form of autocratic rule.”\(^5^7\)

Thus, Greece is yet another example of a country that has poor prospects for resisting fascism. Interestingly, the path followed by the Greek government in instituting constitutional reforms to help resist internal disorder is similar in some ways to Loewenstein’s own idea of militant democracy – a proactive attempt by a sitting democratic government to head off emerging threats. Clearly such an attempt carries with it an implicit danger of enabling the ruling

\(^{54}\) Loewenstein, “Autocracy Versus Democracy II,” 756.

\(^{55}\) Loewenstein, “Autocracy Versus Democracy II,” 757.

\(^{56}\) Loewenstein, “Autocracy Versus Democracy II,” 757.

\(^{57}\) Loewenstein, “Autocracy Versus Democracy II,” 757.
party to entrench themselves within a state, and while Loewenstein never articulates this concern, it is important to bear in mind as he further develops his theory for the defense of democracy.\textsuperscript{58}

Loewenstein views Spain’s prospects in a similar light. Like Germany, during the 1920s Spain “failed to build up a strong middle-class party holding the balance between right and left,” leading to an ill-timed revolt by the leftist parties against the state and military.\textsuperscript{59} With little prospect of succeeding, this revolt will serve as a pretext for the Spanish right to further entrench themselves in power, using the “menace of dictatorship of the proletariat... for the organization of a ruthless white terror preparing the way for the establishment of fascist or authoritarian rule.”\textsuperscript{60} In this prediction, Loewenstein sees a similarity to the destruction of the Weimar state, wherein the tension (and open conflict) between the left and the right has provided enough “hatred to bid for a ferocious application of the fascist suppression.”\textsuperscript{61}

Loewenstein finds Czechoslovakia to be an especially interesting case. Democracy has functioned well under the benevolent leadership of President Masaryk, demonstrating what Loewenstein terms the “vitality of the democratic idea” – a phrase that seems to hint at his true feelings towards his subject matter. Further, Czechoslovakia is one of the few nations to actively implement prohibitions on fascist activity, especially of Nazi sympathizers, thereby fulfilling some of the precepts of Loewenstein’s prescribed defense of democracy. Yet, despite these positive signs, the continued agitation of Germany for recognition of German nationals, and the

\textsuperscript{58} Loewenstein, “Autocracy Versus Democracy II,” 757.
\textsuperscript{59} Loewenstein, “Autocracy Versus Democracy II,” 758.
\textsuperscript{60} Loewenstein, “Autocracy Versus Democracy II,” 758.
\textsuperscript{61} Loewenstein, “Autocracy Versus Democracy II,” 759.
growing support these nationals have found within Czechoslovakia, does not bode well for the future of the state.

Although never explicitly mentioned, Loewenstein here seems to be admitting that even an active defense against fascism may not be sufficient to protect the democratic institutions of a state. Such an acknowledgement seems to cast doubt on Loewenstein’s entire theory of militant democracy – as well as further emphasizes the threat posed by fascism. Unsurprisingly, Loewenstein does not elaborate on this subject, and as he continues to write on this topic throughout the 1930s, he presents his theory of militant democracy as a thoroughly effective tool for preserving a democratic state.

Loewenstein holds out high hopes for the Scandinavian states. Although Germany has spent considerable time and money attempting to develop fascist parties in Sweden, Finland and Denmark, none of these parties have taken hold among the citizenry. With a politically educated population well versed in democracy, as well as surprisingly resilient economies that have to this point shown little signs of depression, there is almost no prospect of any of these countries of becoming fascist. Sweden, in particular, can be seen as one of the strongest democracies in Europe due to its proactive defense against militarism and fascism. In 1933 and 1934 Sweden’s parliament “used their [powers] to enact the necessary legislation against the fascist propaganda,” outlawing uniforms, badges and other insignias of party allegiance. Even in Finland, where an extremist right wing has found some popularity, the presence of a strong

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63 Loewenstein, “Autocracy Versus Democracy II,” 762.
64 Loewenstein, “Autocracy Versus Democracy II,” 762.
middle class acts as a countervailing political force, ensuring that these extremists will never find a popular audience for their rhetoric. 

Like the Scandinavian States, Belgium has few prospects of becoming fascist, unless France, Belgium’s closest ally (and national home to many of its citizens) were to fall to fascism. With a tradition of democracy, and a responsive, “elastic” parliamentary system, Belgium has reacted well to the Great Depression. While discussing Belgium, Loewenstein makes his first reference to the United States, commenting that, faced with economic instability, Belgium, like the United States, delegated “vast [economic] powers to the government for a given period.” Loewenstein here is alluding to the election of Franklin Delano Roosevelt, and Roosevelt’s and the American Congress’ quick approval of government programs to shore up the economy, and is thus implying that America, like Belgium, has the necessary flexibility to resist a fascist threat.

Moving on to Switzerland, Loewenstein predicts that, despite a vocal fascist movement, “Swiss fascism has already reached its climax.” Lacking a charismatic, first-rate leader, and confronted by the “institutions of free self-government,” the Swiss fascist parties are beginning to dissolve. Unfortunately, despite these positive developments, the Swiss tradition of resolving important questions by public referendum may be the nation’s undoing, as fascists have proven to be particularly effective at winning popular votes through coercive techniques. This prediction is consistent with Loewenstein’s earlier, insightful observation of the unique way in

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65 Loewenstein, “Autocracy Versus Democracy II,” 763.
68 Loewenstein, “Autocracy Versus Democracy II,” 767.
69 Loewenstein, “Autocracy Versus Democracy II,” 767.
70 Loewenstein, “Autocracy Versus Democracy II,” 769.
which democratic institutions, acting with good intentions, may actually enable fascism to succeed.

Loewenstein next turns to France, the “unknown x in the political equation of Europe” that is “the critical point in the battle waging between dictatorial and democratic rule.”\textsuperscript{71} Since 1870 France has become increasingly democratic, and the French people, buoyed by an educated middle class, “are still imbued with the traditional ideology of liberalism and deeply conscious of the shortcomings of the communist and fascist paradises.”\textsuperscript{72} Unfortunately, despite this appreciation for democratic ideals, France throughout the 1930s has been wracked by political and parliamentary instability, and “scandals of far-reaching consequence.”\textsuperscript{73} Here, Loewenstein is clearly referring to the Stavisky Affair, and the procession of discredited and unpopular governments that followed.

In December 1933, an investigation into failed pawnshops in Bayonne, France, revealed an extensive bond-selling scheme overseen by Serge Alexandre Stavisky, a Russian born Jew.\textsuperscript{74} Faced with imminent arrest, Stavisky fled to Switzerland, where he was cornered by French police, and committed suicide.\textsuperscript{75} Throughout January and February 1934 the far right French press presented the suicide as a murder intended to cover up Stavisky’s ties to powerful French politicians, forcing the resignation of premier Camille Chautemps, who was replaced by Edouard Daladier. Daladier immediately acted to remove the conservative prefect of the Paris police, Jean Chiappe, prompting a series of demonstrations and riots that came to a head on February 6, 1934,

\textsuperscript{71} Loewenstein, “Autocracy Versus Democracy II,” 769, 782.

\textsuperscript{72} Loewenstein, “Autocracy Versus Democracy II,” 770.

\textsuperscript{73} Loewenstein, “Autocracy Versus Democracy II,” 770.

\textsuperscript{74} David Clay Large, \textit{Between Two Fires: Europe’s Path in the 1930s} (New York: W. W. Norton & Company, 1990), 28.

\textsuperscript{75} Large, \textit{Two Fires}, 23.
when far right protestors engaged in open street fighting with elements of the French left and police forces.\textsuperscript{76} In the aftermath of the riots, Daladier resigned, inaugurating several years of constant political unrest and turmoil, and reinforcing the belief of a large portion of the French populace that their government was unalterably corrupt.\textsuperscript{77}

These scandals, as well as a poorly written constitution that provides no protections for democracy itself, has left France “in permanent danger of a revolution.”\textsuperscript{78} Beyond the consequences of a populous, economically viable nation falling to fascism, France’s fate is in particular tied to the fate of Europe at large. France, allied with England, acts as the continental anchor of the Great Power alliance that defeated Germany in World War I and has attempted to govern European affairs since. Unfortunately, with a low birth rate and a population decimated by trench warfare, France is unable to bear this burden, and is, “in the position of an elderly man who undertakes a mountaineering excursion far beyond his real strength, but keeps up the appearance of enjoying it.”\textsuperscript{79} This need to maintain appearances only further exacerbates the domestic unrest, and France is at a crisis point, after which the existing state of affairs can no longer continue. The most obvious manifestation of this crisis is the growing presence of militant forces of the right and left. These forces showcase a special dilemma within France: any sign of upheaval may tip the nation over the brink into civil war, as both leftist and rightist groups are waiting for a sign of provocation to again spill into the streets.\textsuperscript{80} Loewenstein fears that in France, just as in Spain, the unstable situation may necessitate the application of “fascist

\textsuperscript{76} Large, \textit{Two Fires}, 47.
\textsuperscript{77} Large, \textit{Two Fires}, 52.
\textsuperscript{78} Loewenstein, “Autocracy Versus Democracy II,” 771-72.
\textsuperscript{79} Loewenstein, “Autocracy Versus Democracy II,” 774.
methods” by the French ministries such as “martial rule and the suppression of the civil rights to cope with a disturbance of order and safety,” thereby paving the way for a fascist takeover.  

In contrast to the instability of France, Great Britain stands as one of the lynchpins of democracy in Europe, and can be considered immune from fascism. Although Great Britain has suffered under the Great Depression, the fact that the populace has a “time-honored acceptance of democratic ideals and institutions,” as well as a tradition of compromise and free debate, guarantees that England will easily resist fascist pressure. Britain’s democratic tradition has proven so strong that the House of Commons has thus far declined to take legislative (or military democratic) steps to prohibit the display of private military uniforms, believing that such steps are unnecessary in the face of the widespread support for the sitting government.  

Loewenstein also briefly reviews the prospects for the rise of fascism in America. At this point, Loewenstein believes that

>America is] so remote from the European experience in fascism and the ideology of fascism is so alien to America thought, nourished by British traditions of self-government over a long period, that it seems unreasonable to expect the appearance or growth of any brand of European fascism. The effort of some irresponsible elements – adventurers or idealists – to import the European brand of fascism and dictatorship seems hopeless.  

Despite this hopeful assessment, Loewenstein adds a cautionary note, warning that “confidence in the superiority of democratic institutions and belief in the soundness and reasonableness of the masses do by no means suffice to safeguard the existing order.” If the American economy continues to struggle, and fails to absorb the large masses of unemployed, America could, at

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81 Loewenstein, “Autocracy Versus Democracy II,” 775.
82 Loewenstein, “Autocracy Versus Democracy II,” 776.
84 Loewenstein, “Autocracy Versus Democracy II,” 780.
85 Loewenstein, “Autocracy Versus Democracy II,” 781.
86 Loewenstein, “Autocracy Versus Democracy II,” 782.
some later point, conceivably see the growth of a national fascist movement.\(^\text{87}\) Even the nations with the strongest democratic traditions, and populations whose traditions run counter to fascist ideology, still harbor the potential to cultivate a fascist movement. No country is entirely safe.

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Overall, Loewenstein does not hold high hopes for the future of democracy in Europe. Beyond a few nations with a long tradition of democratic rule – most notably England and America – virtually every nation is susceptible to an internal fascist takeover. While this pessimistic analysis is to some extent the result of Loewenstein’s own personal experiences with fascism, in many ways it is completely in line with Loewenstein’s own explanation for the success of fascism, and his criteria for the susceptibility of a nation to fascist takeover. The majority of nations with a poor prospect for continued democracy are in the grips of economic turmoil and depression, have no tradition of democracy, and have populations that possess long-held discriminatory beliefs, especially anti-Semitism.

Yet, despite his gloomy outlook, Loewenstein at this point still approaches the subject of fascism through an attempt at academic objectivity. In 1935, his pessimism has not become full blown, and he still harbors hope that some nations will be able to resist the fascist allure. Even if this is not the case and fascism conquers the whole of Europe, as he points out early in “Autocracy Versus Democracy I,” this change could simply be the next step in the evolution of political systems throughout Europe, and is a natural consequence of the changing worldview of the west throughout the twentieth century. In short, it is possible that the intellectual sun has set on democracy, and, just as with earlier, discredited, political beliefs, it is time for a new system to fill the vacuum. Further, he gives no hint that the United States is at any risk of falling to fascism. Even though by 1935 the American economy had collapsed, setting into motion

\(^87\) Loewenstein, “Autocracy Versus Democracy II,” 782.
spiraling unemployment, Loewenstein sees virtually no chance of fascism taking root in America.

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Loewenstein followed up “Autocracy Versus Democracy in Central Europe, I and II” with two more articles about how democratic governments could resist fascist overthrow, “Militant Democracy and Fundamental Rights, I and II,” published in 1937. Just as with “Autocracy Versus Democracy,” “Militant Democracy I and II” must be examined within the context of the continuing political developments in Europe.\(^8\) During the two years between the articles, the position of democracy has declined throughout Europe. In 1935 fascist Italy invaded and conquered Ethiopia, one of the few remaining independent African nations, and in 1936 Hitler successfully remilitarized the Rhineland, which had previously been demilitarized in accordance with the Treaty of Versailles, as well as concluded a treaty with Italy, creating the Axis alliance that would serve as the backbone of a new fascist and authoritarian alliance structure throughout Europe. While the fascist nations prospered, and Germany continued its rapid rearmament and economic transformation, the remaining democratic powers suffered under the economic deprivations of the Great Depression, as well as an increasingly radicalized and divisive political climate. In 1936 the Spanish Civil War broke out between the rightist General Franco, supported by Germany and Italy, and the leftist Nationalist groups, loyal to the Spanish republic, leading to a brutal multi-year conflict.

In “Militant Democracy I and II,” Loewenstein fully realizes his theory of militant democracy, and is able, with examples of existing legislation, to articulate how a democratic

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\(^8\) For the purposes of examining “Militant Democracy and Fundamental Rights I” and “Militant Democracy and Fundamental Rights II,” Loewenstein’s earlier articles “Autocracy Versus Democracy in Contemporary Europe, I” and “Autocracy Versus Democracy in Contemporary Europe, II” will be abbreviated as “Autocracy Versus Democracy.” Each usage refers back to both earlier articles, with specific citation provided when necessary.
nation can, through legislative measures, protect itself from the scientific methods of fascism described in “Autocracy Versus Democracy.” Loewenstein’s tone in these articles is markedly different than his earlier work. Compared to 1935, he has become more personally invested in defending democracy, is much more anxious about the threat posed by fascism to the west, and is one step further along in his transition from academic to advocate.

Loewenstein begins “Militant Democracy and Fundamental Rights, I” by briefly summarizing what fascism is and the development of the historical growth of the facist political movement, which has “developed into a universal movement which in its seemingly irresistible surge is comparable to the rising of European liberalism.” While this section is similar to “Autocracy Versus Democracy,” of note is his distinction between constitutionalism, which “guarantees rationality and calculability of administration while preserving a definite sphere of private law and fundamental rights,” and fascism, which has “substitution [of] the rule of law [for] legalized opportunism.” This distinction is at odds with his earlier description of fascism as a science, which reflects his growing involvement in the conflict between fascism and democracy, and the fervor with which he believes fascism must be stopped.

Loewenstein’s feelings towards fascism are also shown in his description of a “fascist International of the multi-colored shirts… transcending national borders and cutting deeply across historical diversities of traditionally disjoined nationalisms.” By describing a linked worldwide network of fascist states and suggesting that no differences truly exist between the fascist regimes in Italy, Germany and Spain, Loewenstein is revealing his growing anxiety. He believes that fascism is a united, encroaching worldwide conspiracy that threatens the few

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remaining democratic nations. According to Loewenstein, further evidence of the existence of this conspiracy can be seen in the leaders of the fascist nations, as they show a “similarity of… personalities.” 92

After this brief overview, Loewenstein begins his analysis of how democratic nations fall to fascism, and how this process can be prevented by legislative and legal means. Loewenstein first describes this idea, termed militant democracy, by arguing that if democracy wishes to continue as a relevant and existent political mode, and is “not convinced that it has not yet fulfilled its destination, it must fight on its own plane a technique which serves only the purposes of power. Democracy must become militant.” 93 Loewenstein devotes the rest of “Militant Democracy I,” and all of “Militant Democracy II,” to describing this technique, which is the basis of much of his later relevance as a political theorist, and is clear evidence of his growing advocacy for democracy, as well as his mounting personal stake in the defense of democratic institutions.

For Loewenstein, much of fascism’s success has been “based on its perfect adjustment to democracy,” thus allowing, as he first pointed out in “Autocracy Versus Democracy,” the use of democratic institutions for their own destruction. Key to this destruction is the understanding by fascists that “democracy could not, without self-abnegation, deny to any body of public opinion the full use of the free institutions of speech, press, assembly, and parliamentary participation.” 94 Fascists use these institutions for their own gain, working to “systematically discredit the democratic order and make it unworkable by paralyzing its functions until chaos reigns.” 95

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93 Loewenstein, “Militant Democracy I,” 432.
then seize on this deadlock as justification for their own alternative program, and are able, through effective propaganda and emotional appeal, to garner widespread public support for a proposed solution to a problem originally of their own making. In short, “the mechanism of democracy is the Trojan horse by which the enemy enters the city,” and fascists have slipped into power while democratic fundamentalists have sat idly by, naively hoping that democratic principles themselves would protect the existing order.

The only solution to this threat is for democracy to take steps to actively defend itself. Fascism can only “be defeated… on its own plane and by its own devices, [and] mere acquiescence and optimistic belief in ultimate victory of the spirit over force only encourages fascism without stabilizing democracy.” Thus, democracies must take legal steps to limit the institutions that fascism exploits, namely freedom of speech and press, two rights that Loewenstein terms fundamental. By denying fascists these rights, democracies are able to proactively remove their opponents’ best tools for raising popular support, thereby guaranteeing that fascists will never have the popularity to attempt a takeover, through legal means or otherwise. While proponents of democracy have long been hesitant to interfere with freedom of speech, Loewenstein believes that, faced with the reality of fascism’s success throughout Europe, “legalistic self-complacency and suicidal lethargy [is giving] way to a better grasp of realities.”

This idea is the key to Loewenstein’s theory of militant democracy, and is, in many ways, the fundamental explanation for both the rest of his academic work, as well as his public efforts, over the next decade. Unlike in “Autocracy Versus Democracy,” Loewenstein now has a

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solution to the threat posed by fascism. By restricting the democratic institutions that fascism uses to such great effect, fascists will be deprived of the necessary means to gain power, and thus will never pose a threat in the first place.\footnote{Loewenstein, “Militant Democracy I,” 431.} By preemptively heading off fascism before fascists gather enough power to attempt a takeover, or force the issue during an emergency, democracy can proactively guarantee its continued security.\footnote{Loewenstein, “Militant Democracy I,” 431.}

An example of this style legislation can be seen in a law passed in March 1937 by the Belgian parliament to “prevent resignation from parliamentary seats merely for the sake of facilitating propaganda at the ensuing by-elections.”\footnote{Loewenstein, “Militant Democracy I,” 431.} The passage of this law, which acts to limit the freedom of elected officials in hopes of depriving fascists with a useful propaganda tool, is a “clear indication of the growing unwilling[ness] of democracies to lend parliamentary institutions to the fascist technique of exploiting them for selfish ends.”\footnote{Loewenstein, “Militant Democracy I,” 431.}

Loewenstein’s language and tone here are of particular interest. Throughout his description of militant democracy, and his defense of its principles, Loewenstein repeatedly employs martial language and metaphors. To him, the current conflict between fascism and democracy is similar to the conflict between democracy and the needs of a mobilized state seen during World War I, and there “democracies withstood the ordeal of the World War much better than did autocratic states – by adopting autocratic methods.”\footnote{Loewenstein, “Militant Democracy I,” 432.} As in recent wartime, when “few objected to the temporary suspension of constitutional principles for the sake of national self-defense,” defenders of democracy should understand the immediate need to abandon some of
their principles in the short term. Europe is under “a virtual state of siege,” and “during war… legality takes a vacation.”

The effect of Loewenstein’s language here is twofold. First, it reveals the extent to which he has become personally involved in this war – the conflict between autocracy and democracy is not, as in 1935, a subject viewed with academic detachment. Now, instead, it is a cause to agitate for, and defeating fascism is a battle cry to which Loewenstein himself is rallying. It would not be an exaggeration to go so far as to describe his language here as verging on the hysteric. By describing Europe in these terms, Loewenstein is also revealing his own increasingly pessimistic worldview. To him, Europe is on the brink, and the most extreme measures (“every possible effort”) must be undertaken to prevent it from tumbling over the edge and into the chaos of fascism. At this point, there is no question of how Loewenstein views his subject matter: he wants democracy to continue, and, in the defense of democracy, the ends justify the means.

Second, by using military language to describe the European political situation, and exaggerating the threat to the European democracies – only two years earlier England was described as immune to fascism – Loewenstein is using fascism’s own appeal to drum up support for militant democracy. As he has discussed repeatedly, fascism is grounded in emotion, and fascist parties make great use of the emergency situation, frequently using expediency as a justification for a quick transition to a fascist government. Loewenstein is essentially (and ironically) performing the same act. To him, the threat to democracy is so dire, and so apparent, that actions must immediately be taken – democracy “must live up to the demands of the

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Such an appeal is the essence of emotionalism. Just as the fascists use the threat of economic depression to mobilize a population, Loewenstein is attempting to use fascism to mobilize a government. To him, democratic governments must immediately follow the course laid out by him or risk destruction. There is something fundamentally different from simply proscribing the means by which a democratic government can protect itself from fascism, and casting the conflict between democracy and fascism as an apocalyptic and historic clash of worldviews. The fact that Loewenstein is doing the latter is significant, and has up until this point been glossed over by scholars working with his theories. Further, the stark differences between “Militant Democracy I” and “Autocracy Versus Democracy” are obvious, and show his increasingly pessimistic worldview, his growing personal involvement in the defense of democracy, his mounting anxiety, and his ongoing transition from academic to advocate.

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Loewenstein continues his discussion of militant democracy in his next article, “Militant Democracy and Fundamental Rights II.” Here he surveys specific European legislation that demonstrates the effectiveness of his earlier general arguments on what democracies must do to defend themselves against fascism. The countries covered by Loewenstein in this article include France, Belgium, the Netherlands, England, the Irish Free State, Sweden, Norway, Denmark, Finland, Switzerland and Czechoslovakia – a list that for all intents and purposes contains all of the remaining democratic nations left in Europe.108

Loewenstein categorizes anti-fascist legislation into fourteen different types, all of which, despite local or national differences, display “considerable uniformity... corresponding to the


uniformity of the fascist technique undermining the democratic technique."\textsuperscript{109} The most successful of these legislations are those enacted quickly, as “unduly delayed legislation [have] found it increasingly difficult to quell movements that had already cast their spell and taken root in the public attention.”\textsuperscript{110}

The first type of legislation is those laws meant to deal with “open rebellion, insurrection, armed uprising,” and other types of open conflict between fascists and the democratic government.\textsuperscript{111} While in most cases open rebellion can be easily be dealt with by a nation’s existing police and military forces, Switzerland (1934, 1936), Czechoslovakia (1923) and Belgium (1934) have “strengthen[ed] their political codes or… [introduced] special legislation against high treason” to head off the threat from a fascist uprising.\textsuperscript{112} The second type of legislation is those laws that attempt to limit fascism by “proscribing subversive movements altogether.”\textsuperscript{113} While this is the most direct way of stopping fascist groups, in particular specifically outlawing their existence, few legislatures have pursued this route. In general, those nations which have outlawed extremist groups, do so indiscriminately, and avoid a “[s]pecific legal definition of what constitutes a subversive party.”\textsuperscript{114}

The third and fourth types of laws are those that restrict private paramilitary groups and the wearing of military uniform and badges. Such laws have been passed by most democratic nations, and work to “strike at the roots of the fascist technique of propaganda, namely, self-

\textsuperscript{109} Loewenstein, “Militant Democracy II,” 644.
\textsuperscript{110} Loewenstein, “Militant Democracy II,” 644.
\textsuperscript{111} Loewenstein, “Militant Democracy II,” 645.
\textsuperscript{112} Loewenstein, “Militant Democracy II,” 645.
\textsuperscript{113} Loewenstein, “Militant Democracy II,” 645-646.
\textsuperscript{114} Loewenstein, “Militant Democracy II,” 646.
advertisement and intimidation of others.”¹¹⁵ These laws have not proved particularly controversial, other than in Germany, which repealed a federal ordinance prohibiting private armies in 1932 after only two months.¹¹⁶ Similar to the third and fourth types, the fifth type of law is a prohibition of the private manufacture, use and possession of firearms or other weapons. As part of these prohibitions, according to Loewenstein a “vigilant police force should be in position to prevent at least any large-scale accumulation of arms in private hands.”¹¹⁷ Although never stated, Loewenstein clearly believes that the threat implicit in this law is not particularly potent, considering the poor track record of fascism in overthrowing a democratic government through outright revolution.

The sixth type of laws are those that “deal with abuse of parliamentary institutions by political extremism.”¹¹⁸ While not popular, these laws act to deprive a fascist group of its legally represented spokesperson, thereby taking “the edge... off subversive propaganda.”¹¹⁹ Similar to the sixth type, although less severe, the seventh type of law is one that aims at “curbing excesses of political strife.”¹²⁰ Passed in Canada, the Netherlands and Czechoslovakia, these laws seek to prevent “political acrimony when it was directed against persons or classes of persons or institutions usually singled out for attack by fascism” by “forbidding incitement and agitation.”¹²¹

¹¹⁷ Loewenstein, “Militant Democracy II,” 650.
¹¹⁹ Loewenstein, “Militant Democracy II,” 650.
¹²⁰ Loewenstein, “Militant Democracy II,” 651.
¹²¹ Loewenstein, “Militant Democracy II,” 651.
The eighth type of law seeks to prevent fascists from creating disturbances through “organized hooliganism,” by curbing their right to assembly.\footnote{122} These laws, as well the ninth type and tenth type – laws that limit fascist speech – are examples of laws that curb a fundamental right. These laws are the embodiment of Loewenstein’s idea of militant democracy, and the reluctance of democratic nations from adopting them (they are the “thorniest problem of democratic states”) reveals the difficulty of convincing democratic nations to utilize autocratic techniques as part of their own defense.\footnote{123} As Loewenstein warns, “democracies that have gone fascist have gravely sinned by their leniency [of speech], or by too legalistic concepts of freedom of public opinion.”\footnote{124}

Part of any war is the maintenance of a standing army, and the eleventh type of law attempts to “protect [a nation’s] armed forces against infiltration by subversive propaganda.”\footnote{125} History has proven that “fascism is, on the whole, not unfavorably received by officers of the armed forces,” and some countries, including Belgium (1934) and Great Britain (1934), have enacted laws above and beyond existing military regulations that are “designed to curb incitement to disaffection among the armed forces.”\footnote{126} Unfortunately, these laws have done little to target fascism directly, and have been mainly (and misguidedly) aimed at communism,\footnote{127}

\footnote{122}{Loewenstein, “Militant Democracy II,” 651-652.}
\footnote{123}{Loewenstein, “Militant Democracy II,” 652.}
\footnote{124}{Loewenstein, “Militant Democracy II,” 652-653.}
\footnote{125}{Loewenstein, “Militant Democracy II,” 654.}
\footnote{126}{Loewenstein, “Militant Democracy II,” 654.}
\footnote{127}{Again, this comment is evidence of Loewenstein’s focus solely on fascism, and his willingness to ignore any similar acts committed by communists in pursuit of their own political agenda. Unfortunately, he spends little time discussing communism in his work, which provides little insight into why he dismisses communism as a legitimate threat, although it is clear, based on his biography, that he has been personally affected to a much greater degree by fascism. Still, his inability to recognize the threat posed by communism to democracy is a notable shortcoming in his thought.}
which Loewenstein clearly does not consider a threat to democracies in the way that fascism is.  

Similar measures have been undertaken to protect civil offices and public officials in the same way, and these measures constitute the twelfth type of law.  

The thirteenth type of law is perhaps the most controversial and proactive measure a democratic state can undertake, and involves the creation of a police force devoted solely to the “discovery, repression, supervision, and control of anti-democratic and anti-constitutional activities and movements.” While Loewenstein believes a force along these lines should be “established in any democratic state at war against fascism” – therefore all democratic states – by 1937 only Switzerland and the Scandinavian states have pursued this strategy, and only along limited lines. Loewenstein believes it is imperative for democratic nations to follow “the example of the dictatorial and authoritarian states,” including “making it an offense [for all citizens] not to report to the competent authorities information concerning unlawful and subversive activities.”  

The final type of laws are those that attempt to “parry [the] subversive activities directed against the state from the outside,” in particular fascist and anti-democratic propaganda. While nothing can be done to prohibit foreign radio broadcasts, Loewenstein believes that democratic states should work to prohibit “the political activities of foreigners or alien emissaries on national
territory,” and censor foreign newspapers.\textsuperscript{134} Just as with the thirteenth law, such laws would in practice stifle a population’s access to information, again demonstrating the ferocity with which Loewenstein believes democratic countries must confront fascism. This, in turn, emphasizes the implied threat of fascism. To him, such extreme measures are the only appropriate response to the calamity that is laying siege to Europe.

After reviewing the fourteen different types of anti-fascist legislation, Loewenstein makes a surprisingly optimistic observation, in contrast to his earlier dire predictions. He believes that “at last, the terrifying spell of fascism’s basilisk gaze has been broken… the fascist technique has been discerned and is being met by effective counteraction.”\textsuperscript{135} Despite this hopeful prediction, Loewenstein cannot help but end the article pessimistically, commenting that democracy should not be lulled by a false sense of optimism, and that democracy must undergo a transformation “of obsolete forms and rigid concepts into the new instrumentalities of “disciplined,” or even – let us not shy away from the word – “authoritarian,” democracy.”\textsuperscript{136}

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The progression from “Autocracy Versus Democracy,” published in 1935, and “Militant Democracy I & II,” published in 1937 is clear. In the former articles Loewenstein still attempts to approach the conflict between fascism and democracy as an objective academic. By 1937 this attempt at objectivity has been abandoned, and Loewenstein is an obvious supporter of the democratic system. His solution to the way in which fascism is able to subvert democracy for its own ends, first hinted at in 1935, is now fully formed, and can be seen as a complete formula for the defense of democracy. Implicit in this development is Loewenstein’s mounting anxiety about

\begin{itemize}
\item \textsuperscript{134} Loewenstein, “Militant Democracy II,” 656.
\item \textsuperscript{135} Loewenstein, “Militant Democracy II,” 656.
\item \textsuperscript{136} Loewenstein, “Militant Democracy II,” 657.
\end{itemize}
the threat posed by fascism to the west, an anxiety that is fundamentally informed by his own pessimism. While by this point Loewenstein is still confining his message to academic publications, he is one step closer to the full-blown public campaign for the defense of the democracy that he would soon lead. In that context, “Militant Democracy I & II” can be seen as another step forward on his journey from academic to advocate.

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In 1938 Loewenstein published another pair of articles, “Legislative Control of Extremism in European Democracies I” and “Legislative Control of Extremism in European Democracies II,” in the *Columbia Law Review*. These articles describe, in very detailed and technical terms, the way in which fascist states operate, how democratic states can use legislative power to curb fascist threats, and, just as in “Militant Democracy,” what anti-fascist legislation currently exists.

Loewenstein begins “Legislative Control I” with a lengthy introduction that summarizes the history of fascism. His writing here is similar in content to his earlier articles, although of note in this section is his review of the history of “legislative measures designed to protect the existing form of constitutional governments and to repress activities considered as subversive” in America.¹³⁷ Such laws have been passed during the American Revolution and throughout the nineteenth and twentieth century as part of the campaign to regulate immigration.¹³⁸ More recently, when faced with the rise of the Ku Klax Klan in the years following World War I, several American states utilized legislation “intended to combat criminal syndicalism, anarchism

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¹³⁸ Loewenstein, “Legislative Control II,” 592.
and sabotage” to root out Klan members.\(^{139}\) Despite the existence of such laws, which could be considered as militantly democratic, most legislative efforts have been primarily focused on stopping leftist and Communists and, “little attention… has been paid until recently to similarly subversive or destructive tendencies entertained by radical movements by the ‘right’ which are directed against the existing form of popular government.”\(^{140}\) Anti-fascist laws clearly fall into this category, and Loewenstein is in essence arguing that Americans have too long been concerned with threats from the left and not the right, and need to take steps to combat fascist tendencies.

Further, by mentioning America at all, Loewenstein is demonstrating his growing preoccupation with the idea of a fascist threat on American soil. While he does point out that “at present no serious threat exists that “authoritarian”… doctrines will penetrate into public opinion [in America],” he highlights a 1935 law passed by the State of New Jersey “designed to prevent the customary propaganda techniques of incipient National Socialist movements,” implying that similar laws should be adopted by other states.\(^{141}\) Clearly, Loewenstein is fearful of the fascist threat penetrating even America, the bastion of democracy.

While much of what is contained in “Legislative Control I and II” is simply a restatement of the content of the survey of anti-fascist legislation found in “Militant Democracy” in more technical language appropriate for a law journal, and therefore unnecessary to review, Loewenstein’s description of the conflict between fascism and democracy in Europe is

\(^{139}\) Loewenstein, “Legislative Control II,” 592.

\(^{140}\) Loewenstein, “Legislative Control II,” 592.

\(^{141}\) Loewenstein, “Legislative Control II,” 593.
significant. Just as in “Militant Democracy,” Loewenstein describes the conflict as a war, and the “the war of doctrines… between fascism and democracy is in full swing.”142 In Europe, democracy serve[s] as a battle ground for local fascist or National Socialist movements which aim at replacing the democratic form of government with an “authoritarian” regime modeled on the pattern of Italy, Germany, or one of the minor satellites of European fascism.143

These nations are exposed to “relentless propaganda” that is part of “a particular emotional technique of exploiting the existing democratic institutions rights for the vowed end of undermining and ultimately destroying democracy.”144 Similar to “Militant Democracy,” he characterizes the conflict as a war, lending his argument for the adoption of anti-fascist legislation an urgency that it would otherwise lack. While existing anti-fascist legislation shows a growing recognition that “the dangerous situation resulting from mere acquiescence or from the treacherous belief that, in the long run, the inherent superiority of democratic values will assert itself over fascist ideology,” more must be done.145

Also of note is Loewenstein’s repeated criticism of democracies that fail to enact proposed anti-fascist legislation out of a reluctance to limit the fundamental rights of their citizens. During his survey of European legislation, he highlights several failed measures – for example a proposed 1937 constitutional amendment in the Netherlands that would limit parliamentary participation of subversive parties – commenting that “thus once more fundamentalist scruples prevented the enactment of measures which, if applied, would have been an effective self-defense of parliamentarism against its uncompromising enemies.”146

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142 Loewenstein, “Legislative Control II,” 593.
143 Loewenstein, “Legislative Control II,” 593.
144 Loewenstein, “Legislative Control II,” 593.
146 Loewenstein, “Legislative Control II,” 617.
Loewenstein’s message here is obvious, and echoes his earlier agitation for the quick passage of laws limiting the fundamental rights of fascists. For him, it is a waste of time to worry about how legislation against fascism could conceivably violate democratic principles, as relying solely on these principles is what has allowed the conflict with fascism to progress to the current emergency situation.

Loewenstein continues his survey in “Legislative Control of Extremism in European Democracies, II,” which was published shortly after “Legislative Control I.” Again the content of this article is similar to that of “Militant Democracy,” and attention will be paid only to particularly noteworthy passages. In the article, Loewenstein summarizes anti-fascist legislation that concerns party uniforms, military formation of political parties, legislation against the carrying of arms, legislation protecting democratic institutions, against political propaganda and legislation restricting free assembly and speech. Just as in “Militant Democracy,” Loewenstein recommends that democracies adopt strict legislation regulating free speech, and in particular the press, and act to limit the ability of fascist parties to use a nation’s press organs for disseminating anti-democratic propaganda.\textsuperscript{147} While such laws did exist in Weimar before Hitler’s takeover, the state was hamstrung by its reluctance to enforce its own legislation, and because of the “legalistic inhibitions of the courts and hesitant enforcement by the governmental agencies [of the law]” enabled its own destruction.\textsuperscript{148} Once again Loewenstein is emphasizing that democratic principles are insufficient, and that only certain restrictive laws enforced without hesitation can protect democratic states.

While “Legislative Control of Extremism in European Democracies, I and II” do not show a marked changed in his idea of militant democracy, his tone throughout, especially in the

\textsuperscript{147} Loewenstein, “Legislative Control II,” 755.

\textsuperscript{148} Loewenstein, “Legislative Control II,” 755.
context of a law journal, further demonstrates the anxiety with which he regards the fascist threat, as well as his growing concern with the threat posed by fascism to America.

Loewenstein published another article on militant democracy in 1938, “The Balance Between Legislative and Executive Power: A Study in Comparative Constitutional Law” in *The University of Chicago Law Review*. While, again, much of the content of this article is identical to his earlier work (namely an in-depth summary of existing European legislation), significantly Loewenstein here argues for fundamental changes to the function and organization of legislative and executive bodies in democracies.

In his eyes, the traditional division between legislative and executive power is unsuited to the current political climate, and in particular the conflict between democracy and fascism. Instead, Loewenstein favors a small body other than a large elected parliament in order to guarantee quick decision-making during a crisis situation as “the classic task of the parliament, namely, law-making by deliberation and sanction, has been overridden by the need of swift decision which only a small body of men is suited to perform.”¹⁴⁹ Faced with the reality of the twentieth century, the “tenaciously upheld postulate of a separation of legislative and executive (or administrative) action is unrealistic, obsolete and may become at times even dangerous.”¹⁵⁰

While Loewenstein concedes that as part of this system “a rationalized method has to be found of how governmental leadership should be made amenable to political control of the people or their representatives,” he provides no detail about how this level of control should be accomplished.¹⁵¹ Further, despite this apparent acknowledgement of the importance of a check

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Loewenstein argues that “the technical arguments” for a division of powers or “attendant checks and balances” are no longer valid.\textsuperscript{152}

Loewenstein’s argument here is significant, and reveals his evolving understanding of what militant democracy is, constituting a second phase of his theory. What Loewenstein is describing here is a type of quasi-democracy that bears little resemblance to the traditional democratic system. Clearly, by believing that the structure of this new system should be defined through constitutional amendments within democratic states, what Loewenstein envisions is not a temporary solution to the threat posed by fascism to democracy. Instead, this new democracy, which strongly resembles autocratic governments, in certain aspects, through its “concentration of political action,” would be permanent. Thus, by 1938, Loewenstein believes that temporary antifascist legislation is insufficient to protect democracy alone. Now only a fundamental transformation of the democratic system in order to create a more powerful executive and a smaller, more responsive legislature can protect democracy from the threat it is faced with.

Loewenstein’s mounting anxiety about fascism is implicit in this evolution. Faced with success of Nazi Germany, the threat posed by fascism demands more than temporary legislation. In line with this new understanding, Loewenstein began to argue for the adoption of militant democracy in techniques in America outside of academic publications, beginning a campaign of public advocacy that would last for almost a decade.

\textsuperscript{152} Karl Loewenstein, “The Balance Between Legislative and Executive Power,” 608.
Chapter Two

The Advocate: Karl Loewenstein and the Public Campaign for Militant Democracy

“This is the greatest national emergency in which this young and great nation finds itself after a hundred years of comparative peace and prosperity.”

On September 1, 1939, Nazi Germany invaded Poland, beginning a global conflict that would span six years and claim tens of millions of lives. For Karl Loewenstein and other defenders of democracy, the quick capitulation of Poland, and Germany’s dramatic victory over France less than a year later, only reinforced their fear of an inevitably, creeping fascist tide overtaking the west. Faced with this new reality, Loewenstein began to engage in a public campaign for the adoption of militant democratic techniques within America, arguing that such legislation was necessary to prevent the United States from being defeated by a Fifth Column of fascist loyalists.

Loewenstein waged this war on several fronts. Beginning with two book reviews published in The Nation that hinted at his theory of militant democracy, by 1940 and the fall of France Loewenstein undertook his campaign with a new urgency, speaking publicly in favor of antifascist legislation at Amherst College and during a lecture to the American Bar Association,

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where he argued for the quick passage of a Federal Order Act limiting the activities of fascist sympathizers. In these reviews and speeches, Loewenstein’s pessimism about the future of democracy, as well as anxiety about an impending fascist takeover of the United States are clear, and these sentiments appear in his public correspondence even after the American entrance into World War II and the defeat of Nazi Germany in early 1945. In 1944, with American victory in Europe imminent, *The Nation* published an editorial in which Loewenstein argued that in post-war Germany, fascism, if not properly contained, would continue to pose a threat to America interests and democracy.

Even after the end of the fighting, and during his tenure working with the occupying American forces as part of the American Military Government (OMGUS), Loewenstein still could not escape his anxiety about fascism. In a series of letters to the editor published in *The New York Times* in response to an article about the progress and effectiveness of denazification, he argued that denazification had failed, and Germany was rife with fascists and Nazis. The tone in these letters is remarkably similar to his writings during the peak of Hitler’s success in Europe, and only further demonstrates his furor as an antifascist.

Throughout his writings and lectures, Loewenstein implicitly and explicitly refers back to his academic work on militant democracy, advocating at every turn for the adoption of strict antifascist legislation that would curb the ability of American fascists to take advantage of the democratic system in order to accomplish the destruction of the United States. To him, America was populated by a secret, undiscovered force of fascist loyalists who were prepared to act against the interests of the American people, and, if open warfare broke out, would aid the Germans in conquering America. The academic objectivity present in his early publications on militant democracy is absent. By 1940 and the collapse of France, Loewenstein was a full-fledged soldier for democracy, doing whatever he could to protect democracy and his adopted
homeland, even presenting himself as a defender of traditional Anglo-Saxon Christian values. Beyond the significance of an academic going so far as to give public speeches urging the acceptance of his political theories, this body of correspondence shows the maturation in Loewenstein of the new worldview outlined earlier.

Nevertheless, this new worldview, and the documents that show its development, are absent from the existing Loewenstein historiography. Even Lang’s lengthy Loewenstein biography glosses over his public advocacy for militant democracy, and the majority of publications discussed here are missing from his extensive Loewenstein bibliography. This historiographical deficiency is further evidence of the way in which scholars generally have, until this point, used Loewenstein, and that simply including him in a footnote as a way to introduce the idea of militant democracy misses a crucial element of both his theory, and the way in which émigré intellectuals confronted the political and military success of Nazi Germany.

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Loewenstein first alludes to militant democracy in non-academic publications in his *The Nation* book reviews of 1938 and 1939. In the first review, “Liberalism Restated,” published on July 16, 1938, Loewenstein reviews *Communism, Fascism, or Democracy?*, by

154 “Liberalism Restated” and Loewenstein’s other articles published in *The Nation*, which advocate against fascism, were in tune with that publications overall editorial policy during this period. For examples of other articles that espouse similar views, see Albert Viton, “Italy Under Hitler,” *The Nation*, January 31, 1938; “Editorials,” *The Nation*, March 4, 1939; Alexander Worth, “France at Its Best,” *The Nation*, November 4, 1939; Robert Bendiner, “Imagination and the War,” *The Nation*, October 10, 1941. In general, *The Nation* was antifascist and favored intervention into Europe once the war began, and especially after the fall of France. Bendiner’s article is especially instructive in summarizing the overall editorial policy. To him, Hitler is a “little Vienesse psychopath,” and America must help stop him. Bendiner, “Imagination and the War,” 365.

Eduard Heimann. According to Loewenstein, Heimann, a “well-known German scholar now in this country,” is attempting to conceive of “democracy in its “original” compass as historically though not logically interrelated with capitalism, and traces in a masterly fashion the development of both fundamental concepts.” While much of the review focuses on summarizing Heimann’s work – which Loewenstein views favorably – in his critique of several of Heimann’s political predictions Loewenstein reveals his anxiety about fascism and lays the groundwork for his later, and much more urgent, advocacy for the passage of antifascist legislation.

In particular, Loewenstein finds fault with Heimann’s prediction for the future success of democracy based on the value of humanism, an argument that he characterizes as an “incurable idealism, perhaps the heritage of [Heimann’s] German education which belies his Marxist propensities.” Instead, to Loewenstein

[t]hings have gone too far in these hectic years since the war; the masses have become too awakened, the bourgeois too frightened and too stubborn, the farmers too restless under the threat of mechanization, and, above all, the militaristic spirit has penetrated too deeply into our subconscious mind, to allow any idyllic solution which bases its arguments on the goodness or the reasonable of human nature.

Sadly, this idyllic solution is incompatible with the realities of 1938, and “the impending catastrophe will pay little heed to utopian dreams or wishful thinking,” as “the terrified world already hears the hoofs of the apocalyptic horse clanging over the devastated fields of civilizations.”

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While Loewenstein never explicitly states what this impending catastrophe is, his language here is remarkably similar to the language used earlier in “Militant Democracy I and II” to describe the conflict between democracy and fascism. Clearly, he believes that Heimann’s book, for all its virtues, fails to account for the threat posed by fascism to the democratic spirit, and that no logical or reasonable person could look on the coming years with optimism for the continued existence and prosperity for the institutions of democracy.\footnote{It is important to note that during this period, other émigré intellectuals advocated against Nazism. Perhaps the most notable of these was Carl J. Friedrich, a non-Jewish German immigrant, who as a well-known scholar of totalitarianism, helped the Council for Democracy to develop a pamphlet to counteract Nazi propaganda about Jews in 1941, an effort in which he was joined by Talcott Parsons, a prominent American sociologist who was an early activist against fascism. In producing this pamphlet, the Council queried well-known intellectuals on their opinions on anti-Semitism, as well their opinion on how America should respond to the threat posed by fascism. Replying to this questionnaire, Max Horkheimer, an émigré who was part of the prominent Frankfurt School, alluded to the necessity of pursuing militant democracy to combat anti-Semitism. Beyond publishing the aforementioned pamphlet, the Council also held public forums, published more pamphlets, and undertook media campaigns to advocate against fascism and anti-Semitism. For more on this topic see Joseph Bendersky, “Dissension in the Face of the Holocaust: The 1941 American Debate over Antisemitism,” Holocaust and Genocide Studies 24 (2010): 85-116, as well as a blog article on Horkheimer by Bendersky, Joseph Bendersky, “Horkheimer, “Militant Democracy,” and War,” TELOScope the telos press blog (blog), Telos, March 14, 2009, http://www.telospress.com/main/index.php?main_page=news_articles&article_id=303. The pamphlet that was eventually produced was Nazi Poison: How We can Destroy Hitler’s Propaganda Against the Jews (New York: Council for Democracy, 1941). The only other direct reference to militant democracy style thinking that I have seen is in Neumann’s The Cultural Migration, where he, when discussing Roosevelt and the positive attributes of America, states “to the skeptical German, the Roosevelt system meant that the Wilsonianism which had been preached since 1917 was not a mere piece of propaganda, but a reality. It was a demonstrating that a militant democracy could solve the very same problems on which the German Republic collapse.” Neumann, The Cultural Migration, 18. While the sentiment behind Neumann’s statement clearly parallels Loewenstein’s work, it’s conceivable that by the time Neumann published the book – the 1960s – the phrase militant democracy had entered popular academic parlance.} This argument is important for several reasons. First, although Loewenstein’s comments contain no direct reference to militant democracy, or any hint at a possible solution for the impending apocalypse facing civilization, this review can be seen as the first step in a public campaign advocating the adoption of antifascist techniques. When read in the context of his earlier academic work, Loewenstein’s references to realism speak to the common belief among defenders of democracy that democratic principles alone are sufficient to protect a democratic state from fascism. This belief – an idyllic solution – is inadequate when confronted by the reality of fascist techniques, and idealism is meaningless when measured against the science of...
fascist infiltration. Such writing is clear evidence of Loewenstein’s pessimistic worldview. He directly dismisses any idealistic vision of a future defined by democracy’s success. Instead – and clearly as a result of his own experience with fascism, as well as the forward march of Hitler and fascism across Europe throughout the 1930s – reality has shown that only by facing fascism head-on can democracy succeed in defeating the challenge it faces.

Second, Loewenstein’s description of the growth of a militaristic spirit that has penetrated into the subconscious mind provides an interesting insight into Loewenstein’s own thinking. Clearly, his belief in a reformed democracy that militantly and legislatively responds to threats is a product of his own belief in the militarization of the modern day mind. When viewed in this way, militant democracy can be seen as a solution uniquely suited to the world in which it was conceived.

Finally, simply through the act of using a book review as a medium to warn the public of the impending crisis, Loewenstein is revealing the urgency with which he has undertaken the defense of democracy. “Liberalism Restated” is a model for Loewenstein’s subsequent publications in *The Nation*. When given the opportunity, regardless of the circumstances, he attempts to warn the public of the threat posed by fascism, and by doing so, implicitly advocates for his unique solution to the crisis facing democracy.

This model is apparent in the second relevant book review of June 17, 1939. In “Collapse of the Weimar Republic,” he reviews *Inside Germany*, an account of the fall of the republic and the rise of the Nazi regime, written by Albert C. Grzesinski,162 a former Weimar government...

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162 Grzesinski was a member of the German Social Democratic Party (SPD) and was noted for his ruthless policies. He served as Prussian Minister of the Interior from October 6, 1926 until February 28, 1930, when revelations of an affair between Grzesinski and an American actress forced him to resign on February 28, 1930. He rejoined the government on November 6, 1930 as police president of Berlin, a post he had held earlier in his career. He was dismissed from this position as part of Franz von Papen’s coup in Prussia on July 20, 1932. He stayed out of politics for the remainder of his time in Germany, and fled Germany in 1933 after Hitler came to power. See
official. To Loewenstein, while Grzesinski’s account, to its credit, describes Weimar “without affectation or pretentious humility,” there is “surprisingly little in [his book] that is actually new.” Inside Germany fails to answer important questions about Weimar, especially about the conflict between Stresemann and German industry, which Grzesinski, because of his position in the government, could have provided particular insight into.

After identifying the deficiencies in Grzesinski’s work, Loewenstein presents his own explanation for Weimar’s collapse, referencing his earlier work on militant democracy. Loewenstein again advocates for antifascist legislation and a rigorous defense of democracy. According to him, Weimar did not collapse as the result of a poorly written constitution. Rather, it failed through the peculiar misfortune of the Germans: that a good constitution was bungled by incompetent or disloyal men. Few had the insight, and of these few none had the courage and the power to reform and if necessary to wreck the overtowering machinery of the army, the bureaucracy, and the courts which the republic had inherited from the imperial regime and which were kept inviolate before deluded public opinion. The democrats… had not the courage of their convictions.

America and the other democracies “commit the same sins of omission,” and “in discovering…the communistic mote in their neighbor’s eye [ignore] the fascist in their own.” The fall of Weimar was not unavoidable, and came about because “there was too much of civil rights in republican Germany, but for the wrong people, and too much militancy, but again by the wrong people.”

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166 Loewenstein, “Collapse of the Weimar Republic,” 706.

When compared to his academic publications, it is obvious to what Loewenstein is alluding. In Weimar, democrats, possessed of a belief in the infallibility of their democratic principles, granted access to their fundamental rights. The fascists, in turn, used these rights to destroy the democratic institutions, and implement their own system. In this failure Loewenstein sees a powerful warning that the remaining democracies must heed. As he first explained in 1935, fascism defeats democracy through the false belief of democrats in the infallibility of their institutions, leading them to avoid taking necessary proactive defensive steps.

Just as in “Liberalism Restated,” Loewenstein again is using a book review as a platform to warn the public about the consequences of a complacent democracy, although, unlike in 1938, he hints at a solution. Implicit in his description of the failures of Weimar, although never clearly stated, is the argument for the limitations of the civil rights for the wrong sort (fascists), the same argument at the core of Loewenstein’s theory of militant democracy. Significantly, this implication can be seen as his first public description of the techniques of militant democracy, and an important development within his advocacy. Now Loewenstein is presenting the readers of *The Nation* with a description of the dilemma facing America, and hinting at a scheme by which democracy can be protected.

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Loewenstein first reveals this scheme in a speech given to members of the American Bar Association on September 11, 1940, in Philadelphia, Pennsylvania, and here, for the first time, lays out a thorough plan for the prevention of fascist infiltration in America. The images and themes he stresses – in particular the idea of democracy acting as a Trojan Horse for fascism, and the threat to America posed by Fifth Column of hidden fascist sympathizers – appear in his public statements and writings throughout World War II and during the post-war period. As with
the *The Nation* reviews, no mention of this speech, or its subsequent coverage in *The New York Times*,\(^\text{168}\) appears in any of the secondary literature on Loewenstein.\(^\text{169}\)

Like his earlier academic writing, Loewenstein’s speech must be examined within the historical context that it was given. Between the publication of “Collapse of the Weimar Republic,” and the Bar Association speech, World War II had begun and the position of democracy in Europe had considerably worsened. Germany’s conquest of Poland in 1939 had led to a tense standoff between German and Allied forces in the west. This pause in hostilities ended on May 10, 1940, when Germany launched *Fall Gelb* (Case Yellow), the planned invasion of France, Luxembourg and Belgium. Within a month-and-a-half the French forces had been routed, and on June 25 the French and Germans concluded an armistice, after which France was divided into a large German occupied territory and a smaller German client state, Vichy. Many observers believed that the key to Germany’s rapid victory was the infiltration of fascist sympathizers and saboteurs into France prior to the invasion, viewing this “Fifth Column” as an essential part of the Nazi strategy.\(^\text{170}\)

While the British Expeditionary Force was able to successfully evacuate back to England, thereby saving a remnant of the Allies’ land forces and the prospect of continued resistance, the quick collapse of France was an unmitigated disaster. As Loewenstein emphasized in “Autocracy vs Democracy” in 1935, France was the key to a continued democratic presence on the European


\(^{169}\) In the greater context of this thesis and Loewenstein’s historiography, this speech is an especially important example of the clear articulation between the temporary and permanent elements of militant democracy, the latter of which are missing entirely from most secondary sources on the subject.

continent, and the destruction of one of the leading opponents of fascism represented a cataclysmic development in the war between the two ideologies. Faced with this development (and the apparent triumph of fascism it symbolized), Loewenstein redoubled his efforts to advocate for militant democracy, becoming even more anxious about fascism in the United States.

This anxiety is apparent in his next speech, titled “A Federal Order Act Against Subversive Political Activities.” Here Loewenstein warns his audience of the existence, in an obvious reference to the fate of France, of a Fifth Column of fascist loyalists living within America and waiting to support Hitler in an attack on the United States.171 While there have always been native groups opposed to the national interest of the United States during any conflict throughout its history, the fascist Fifth Column is unique, as it can be supported by fascist governments abroad, without these governments “committing themselves directly” or publicly to this support, and is thus particularly dangerous to democracy.172

Similar groups existed across Europe during the 1930s, and only after the outbreak of World War II were these groups, composed of “German nationals”173 as well as by citizens… [are] converted into Trojan horses who actively collaborated with the invaders in disintegrating

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172 Loewenstein, “Federal Order Act.”

173 Loewenstein’s comments here are in part a reflection of the tumultuous political climate of America in the late 1930s and into 1940. While Hitler never funded a Nazi Party in the United States, even in America Hitler “had imitators and supporters,” in particular the German Bund, a loose coalition of several pro-Nazi groups, made up of mainly German immigrants. For more on the Bund, see Sander A. Diamond, The Nazi Movement in the United States 1924-1941 (Cornell: Cornell University Press, 1990), 8-10. Beyond the Bund, the famous aviator Charles Lindbergh, one of the leading figures of the isolationist movement, held views that echoed the Nazi’s ideological racial thinking, and demonstrated a clear affinity for Germany. For more on Lindbergh, as well as presence of anti-Semitism in America during this period (and in particular in the United States Army), see Joseph Bendersky, The “Jewish Threat”: Anti-Semitic Politics of the U.S. Army (New York: Basic Books, 2000), 277-279. Despite the prevalence of the Bund and Lindbergh (as well as the infamous anti-Semitic radio host Father Coughlin), Loewenstein never specifically refers to a particular group that he views as part of the Fifth Column.
national unity and aiding military occupation.”174 The United States must learn from the example of these European nations, and should pass “appropriate legislative measures” intended to keep “subversive activities under control.”175 According to Loewenstein, while the Bill of Rights and democratic principles would seem to argue against these legislative measures,

it should be remembered, however, that during emergency situations in the past - and at the present our national institutions are more at stake than at any time since the foundation of our national Republic, - legislative limitations of fundamental rights were sustained by the Supreme Court.176

This legislation should act to “curb all political activities of aliens which are harmful to national interests,” and, more importantly, monitor the activities of “American citizens whether native or naturalized,” as “large sections of German-Americans and Italian-Americans are in active sympathy with the governments and policies of their homeland.”177

To accomplish these goals, Loewenstein proposes the speedy adoption of a Federal Public Order Act, with provisions that would include increasing the penalty for sedition, dissolving anti-democratic organizations, prohibiting the militarization of political groups, limiting speech intended to support fascism, and the close supervision of press organs that express sympathy with fascist ideology.178 If such a law is not quickly implemented, the ability of the United States to defend itself will be impacted, and fascists and fascist sympathizers will have free reign to disrupt public opinion.179

174 Loewenstein, “Federal Order Act.”
175 Loewenstein, “Federal Order Act.”
176 Loewenstein, “Federal Order Act.”
177 Loewenstein, “Federal Order Act.”
178 Loewenstein, “Federal Order Act.”
179 Loewenstein, “Federal Order Act.”
“A Federal Order” is an important speech, and is, up to this point, the clearest public reference to his academic works, as the Federal Order he proposes is virtually identical to the different types of laws he identified in “Military Democracy I and II” and “Legislative Control I and II.” There is something especially fascinating about Loewenstein, a German Jewish émigré himself, warning his audience about the threat posed by other German immigrants. By this point he clearly sees himself as distinct from his fellow émigrés. He shares in the America democratic tradition – “our national institution” – and, through advocating for militant democracy, is part of a group protecting American interests from national and international threats. This exceptionalism will appear again in later public statements.

Significantly, Loewenstein’s proposals here fall into only the first category of militant democracy. In his proposed law there is no mention of a permanent reorganization of the United States’ legislative body, or any alteration of the role or powers of the President. Clearly, Loewenstein is only proposing the portions of his theory that could conceivably find the widest acceptance – it is difficult to imagine an audience of lawyers applauding a proposed fundamental change to the structure of democracy and power in the United States. The fact that Loewenstein chose not to include the most radical part of his theory, despite his clear belief in its necessity and effectiveness, shows the urgency with which he believes the fascist threat must be contained. At this point, whatever legislation can be passed, regardless of how effective it might be in the long-term, is necessary.

Further, throughout the speech Loewenstein’s anxiety is clear. He states, in no uncertain terms, and without providing any evidence, that there exists a large army of fascist sympathizers waiting in the wings to attack America. Composed of more than aliens, this army contains naturalized and even native-born citizens, and, if not immediately contained, will infiltrate and destabilize the nation. Loewenstein sees his Federal Order Act not as simply another important
legislation, but rather as essential, and inextricably tied to national defense. While by 1940
Loewenstein was not alone in his fear of a fascist presence in America, or even in the belief that
this presence extended to naturalized American citizens, the fervency with which he advocated
for antifascist legislation is significant.180

“A Federal Order” marks a clear transition point for Loewenstein, and in this speech his
advocacy reaches its zenith. Here, in contrast to his earlier statements, he explains both the threat
posed to the United States, and how, through militant democracy, this threat can be contained.
To Lowenstein, such laws are vital to American interests, and are absolutely necessary to defend
the United States from fascist infiltration.

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Loewenstein followed up on his words to the Bar Association with another speech,
delivered on October 8, 1940 at Amherst College in Massachusetts. Loewenstein, along with
Lawrence B. Packard,181 a Professor of History at Amherst, spoke to a gathering of students and

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180 The most recent examination of the development of the aforementioned Fifth Column myth, as well as
fears among Americans about German spies, can be found in Richard Breitman and Allen Lichtman’s work FDR
and the Jews. Once Germany invaded Poland, Roosevelt tasked the FBI to investigate German activities on
American soil, vowing that America would not be hindered by sabotage as they had during the years leading up to
World War I. After France had fallen, these fears mounted, with many believing that France’s defeat was ushered in
by Nazi loyalists operating behind French lines. A Roper Pole in June 1940 found that only 2.7% of the population
believed that the government was doing enough to stop a Fifth Column from operating in the United States. A
suspicion of immigrants, particularly Jewish immigrants, developed hand-in-hand with this fear, and Breitman and
Lichtman believe that it was partially responsible for the failure of the American government to do more to help
Jewish refugees escape from Nazi Germany. Despite popular perception, there is little evidence of a Fifth Column
actually existing. It is also essential to note that Loewenstein’s anxiety about fascism predates the fall of France, and
his particular suspicion of American citizens, not just German nationals, was not entirely shared by the American
government. Still, it is important that Loewenstein’s claims in this speech were not entirely without merit, although,
regardless, the importance in his words here lies in the fact that they serve as another example of his public
advocacy, as well as a window into his anxiety and pessimism, not their historical accuracy or validity. See
Breitman and Lichtman, FDR and the Jews. See also Alistair Horne, To Lose a Battle: France 1940 (New York:
Penguin Books, 2007) for more on France and the myth of the Fifth Column.

181 While “America’s Eleventh Hour” was ostensibly written by both Packard and Loewenstein, it is difficult
to see any influence Packard might have had on the speech and subsequent published pamphlet. Born in 1887,
Packard worked at Amherst from 1925 – 1931, teaching French History. Before “America’s Eleventh Hour,” all of
his publications came in that field, and his most well-known work examined the reign of Louis XIV. By 1940,
Packard had retired, and had ceased publishing academic work. The content of “America’s Eleventh Hour” has
obvious precursors in Loewenstein’s earlier work, as covered in Chapter One, and while at this point no document
fellow academics. The content of this speech was later published in a pamphlet titled “America’s Eleventh Hour.” This speech is another clear example of Loewenstein’s public advocacy. Similar to the Bar Association presentation a month earlier, he argues in favor of restrictive, antidemocratic legislation, for vigilance against the Fifth Column, and, for the first time, for direct military intervention in Europe to aid Britain in resisting Hitler’s onslaught. In terms of his advocacy, this speech is the fullest expression of both his theory of militant democracy, as well as the various means he employs in hopes of convincing the public of the importance and necessity of the application of such techniques in America.

Packard and Loewenstein begin by stating in “unequivocal language” the necessity of America intervening militarily to aid Britain. America must, while there is still an opportunity, “give to Britain, the last democracy in Europe and our next-of-kin among nations, all the aid which we are able to render, without hesitation, restrictions, or limitations.” By 1940, events have progressed too far for America to stay out of the war, and if America wants to head off Nazi incursions into South America or the inevitable attack against the United States, Americans “must throw the full weight of our moral and material support behind Britain and the British Empire while there is yet a toe-hold in Britain from which to fight and hold off Nazi Germany.” According to Packard and Loewenstein, this argument is not “war mongering, nor… hysteria. It is simply common sense. It is the belief that an ounce of prevention is worth a

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182 Loewenstein and Packard’s words were recorded and published in a pamphlet, also entitled “America’s Eleventh Hour.” The citations and quotations from their speech are drawn from this pamphlet. While the pamphlet was not widely circulated in 1940, it has been recently republished. See Karl Loewenstein and Laurence B. Packard, *America’s Eleventh Hour* (New York: Literary Licensing, LLC, 2013).

183 Loewenstein, “America’s Eleventh Hour,” 3.

184 Loewenstein, “America’s Eleventh Hour,” 3.

185 Loewenstein, “America’s Eleventh Hour,” 3.
pound of cure.”¹⁸⁶ America “must defend America in Britain.”¹⁸⁷ Let us learn from the experience of Britain and France.”¹⁸⁸

Loewenstein’s argument and thought process here recalls his earlier explanation of the necessity for militant democracy. Throughout his academic publications, he presents militant democracy as a proactive solution to a problem that can be observed through close examination of the failures of the European democracies. Now, America, based on similar observations, must recognize the need to provide aid to Britain in order to head off a Nazi threat. If America fails to heed the warning provided by history, and allows Nazi Germany to defeat Britain, Hitler will assuredly turn next to South and North America, and the battle against fascism will have to be waged on American soil.

In arguing such, Loewenstein is adding a new dimension to his theory of militant democracy. Implicit in his advocacy for direct military and material intervention on the part of Britain is the understanding that preventive antifascist legislation can only go so far. Fascism has reached a point where force of arms is required to defeat it, and simply hoping – as Czechoslovakia and other European nations had earlier – that democratic ideals or even militant democracy will suffice to guarantee the future of democracy is foolish. This argument, in turn, further demonstrates the alarm with which Loewenstein views the spread of fascism. To him, and as he states throughout this speech, the stakes for America have never been higher. America is on the brink.

After arguing for the necessity for military intervention in Europe, Loewenstein and Packard describe the threat facing America. The United States is part of “a deadly struggle

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¹⁸⁶ Loewenstein, “America’s Eleventh Hour,” 3.
¹⁸⁷ Emphasis Loewenstein’s.
¹⁸⁸ Loewenstein, “America’s Eleventh Hour,” 4.
between two opposite ways of life, between two political principles which — as experience has taught us — cannot live peaceably side by side in this world.”\textsuperscript{189} This struggle is “a war of the Will to Power against our faith and religion, against tolerance and humanitarian values, against our national traditions and cherished ways of life.”\textsuperscript{190} Reference to Nietzsche notwithstanding, this description is particularly important, and shows Loewenstein’s continuing attempt to use any effective argument, regardless of its accuracy, in order to convince the public of the importance of his statements. Before this speech, Loewenstein has, at every opportunity, argued against an idealistic view of democracy, believing that, when confronted by the new reality of political life in the 1930s and 1940s, cherished ways of life and national traditions are irrelevant, and only the reality of the political scene matters. Yet, here, Loewenstein is using these very same arguments to convince his audience of the severity of the threat facing America. The same beliefs that he labored to discredit are now shown as the qualities that will be threatened by fascism.

This threat will appear on several fronts. Germany, after defeating England, “will be ready instantly for the attack on the United States.”\textsuperscript{191} Hitler’s assault will either take the form of an economic attack, by working to isolate the United States and deprive the nation of resources, or through a direct military attack. Loewenstein believes that Hitler hopes to destabilize America to the point where the despairing citizenry will embrace fascism, and flock to a growing American fascist movement. If this movement comes into existence, it would mean that

\begin{itemize}
  \item the under-privileged, those whom we call the dregs of society, the unsuccessful, the frustrated, the lunatic fringe, will eagerly seize the opportunity of gaining ascendancy. It will mean that the foreign nationalities in this country, the Germans, Italians, and other races, stimulated from their homelands under the Nazi whip, will try to oust their traditional control of the Anglo-Saxons. It means that the freaks and the ranks, the white trash, will rule your town council, your state government, and control the Federal authorities. We are headed for a civil war much more
\end{itemize}

\textsuperscript{189} Loewenstein, “America’s Eleventh Hour,” 4.

\textsuperscript{190} Loewenstein, “America’s Eleventh Hour,” 4.

\textsuperscript{191} Loewenstein, “America’s Eleventh Hour,” 5.
devastating than the War Between the States unless we do our part in stemming the totalitarian tide now.\textsuperscript{192}

This passage, again, shows Loewenstein’s newfound adaptability. He is presenting the conflict between fascism and democracy as not simply a war between nations, but as a clash between the traditional American way of life and a destabilizing force that seeks to destroy all of the institutions of the United States. Fascism is the ideology of the white trash, of the lower classes, and if Hitler is not defeated in Europe, and America does not intervene on the part of England, than the United States is headed for a civil war.

Further, there is something especially ironic about a Jewish German émigré speaking about Anglo-Saxon tradition. Just as in “A Federal Order Act,” Loewenstein, despite his heritage, is including himself as part of the ruling Anglo-Saxon class structure. While this inclusion may be partly explained by his affinity for England, as seen in his biography, it is more than likely simply another example of his willingness to use any argument possible to convince the public of the necessity of adopting militant democracy to fight off fascism. By late 1940, Loewenstein’s advocacy has progressed to the point where he is willing to do anything to further his cause. He has become a true soldier for democracy, fighting with the fervency of a zealot to protect the system he holds in such high regard. This sentiment stands in stark contrast to his earlier academic writings, especially “Autocracy vs Democracy,” where he takes considerable time to explain that the conflict between fascism and democracy may simply be part of the forward progress of changing political ideas, with democracy joining the ranks of other discredited belief systems.

Key to the fascist threat facing America is the existence of a large Fifth Column, hidden among the public. Today “the enemy is in our midst,” as “there are allies of the enemy in this

\textsuperscript{192} Loewenstein, “America’s Eleventh Hour,” 6.
country, organized, ready to organize, and as yet unorganized. We call them the Fifth Column, but we do not take them seriously enough.”¹⁹³ This group is “[f]ound among our fellow citizens… there are countless spies in this country, in our tool and armament factories, in our airplane plants; they may even be in our National Guard.”¹⁹⁴ Just as dangerous as the outright collaborators are those who are unwittingly part of the Fifth Column, the “isolationists, the anti-British, the socialists dreaming of the socialist millennium, the compromisers, the appeasers, the ostriches.”¹⁹⁵

According to Loewenstein, the crux of the problem is not in identifying disloyal and dangerous citizens, but rather that there are “no laws to deal with them; they are free to speak and to act under our democratic tenets.”¹⁹⁶ This argument is the core of militant democracy, and is one of the clearest, and most articulate examples, of its expression. Here is the heart of his advocacy: America is rife with traitors, yet we can do nothing to stop them. The solution – the passage of laws allowing the Fifth Column to eliminated – is obvious.

Unfortunately, despite the apparent obviousness of this need, much of America labors under what Packard and Loewenstein term “Our Dangerous Illusions,” which prevent the necessary steps to protect America from being taken.¹⁹⁷ While most of the public operate under the illusion that democracy is the status quo, in reality “democracy is something for the attainment of preservation of which human beings have to strain every muscle.”¹⁹⁸ Up to this point, America’s democracy has been “gained by force, and it cannot be retained without

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¹⁹³ Loewenstein, “America’s Eleventh Hour,” 7.
¹⁹⁴ Loewenstein, “America’s Eleventh Hour,” 7.
¹⁹⁵ Loewenstein, “America’s Eleventh Hour,” 8.
¹⁹⁶ Loewenstein, “America’s Eleventh Hour,” 8.
¹⁹⁸ Loewenstein, “America’s Eleventh Hour,” 9.
continuous vigilance and even, if need to be, without fighting for it.”\textsuperscript{199} Fascism cannot prosper without the destruction of “[f]ree and contented peoples living under rulers of their own choice.”\textsuperscript{200} As Loewenstein eloquently summarizes,

\begin{quote}
democracy, therefore, lest it remain a hollow shell, must be something for which we are willing to fight, and if need be, to die. Democracy is not only rights, as much more so, duties for those who do more than pay lip-service to an empty slogan.\textsuperscript{201}
\end{quote}

Here, again, Loewenstein makes the stakes as clear as possible to his audience. Failing to actively resist fascism is akin to working towards the destruction of the United States, as “[whoever] preaches isolation is either blind or one who works, consciously or unconsciously, for the totalitarian powers.”\textsuperscript{202}

The hysterical bent to his words is obviously apparent. Loewenstein envisions a secret force of citizens and non-citizens waiting in the wings to organize and aid Hitler in destroying America. Even those in favor of neutrality can be considered part of this enemy group: to him, you are either with him, with the Anglo-Saxon system, or a fascist sympathizer. There is no middle ground. Even Loewenstein’s description of Nazis, as revolutionary fanatics “of a nation deliberately stripped of all moral inhibitions and humanitarian impulses” borders on the hysterical, especially when spoken by a trained academic.\textsuperscript{203} As he describes them, National Socialists are akin to dangerous monsters bereft of human emotion, hell-bent on destroying America and democracy at all costs. To Loewenstein, there are no divisions within Nazi Germany, and the Germans that have joined the Nazi party have committed themselves to conquest.

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199 Loewenstein, “America’s Eleventh Hour,” 9. \\
200 Loewenstein, “America’s Eleventh Hour,” 9. \\
201 Loewenstein, “America’s Eleventh Hour,” 9. \\
202 Loewenstein, “America’s Eleventh Hour,” 10. \\
203 Loewenstein, “America’s Eleventh Hour,” 12.
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Fortunately, America can profit from the “blindness, weakness, self-deceit, and complacency” of the defeated European nations. American citizens must “learn by the lessons taught to the world,” namely the consequences of failing earlier to restrain Hitler’s past aggressions, and defend Britain. In fact, America is already part of this defense, as there is no compromise possible with Hitler, and the United States must prepare itself for the coming war.

Key to this preparation, and in line with all of Loewenstein’s academic work, is the implementation of temporary restrictions on the democratic process, as proscribed by militant democracy. America

must suspend democracy temporarily in order to save it permanently. Do not heed the clamor of our incurable liberals, who bemoan a spot on the wallpaper while the roof over their heads is aflame. It may well be that the emergency measures we have to take in wartimes – and we are already living under war conditions – will bring hardships and even injustice to individuals. But we cannot grant freedom of speech or of political organization to those who use them only for the ultimate destruction of democracy. Exaggerated liberalism benefits only the Fifth Column.

While these limitations are in large part identical to those described at the Bar Association speech, including restrictions on speech, political parties, the monitoring of foreign-born citizens, suspension of the right to organize, for the first time Loewenstein comments on the electoral process. To him, the current energy and attention devoted to the upcoming 1940 presidential election, with Roosevelt preparing to run for a third term, is an unnecessary diversion. Americans should “remember that petty party politics and the jealousies of party politicians and eroded France and England.” Instead, American citizens should recognize that there is little

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204 Loewenstein, “America’s Eleventh Hour,” 12.
207 Emphasis Loewenstien’s.
208 Loewenstein, “America’s Eleventh Hour,” 14.
209 Loewenstein, “America’s Eleventh Hour,” 15.
practical difference between Roosevelt and his opponent, and spend their energies preparing for the impending conflict with Hitler, as whatever changes are implemented by whoever wins the election will pale in comparison to the destruction Hitler will unleash on the America way of life if left unchecked.²¹⁰

This section is the first, and only, comment in any of Loewenstein’s public discourse that alludes to the permanent aspects of his theory of militant democracy, the proposed reorganization of the American legislative and executive branches. While Loewenstein is clearly not advocating for the extensive changes he proposes in “The Balance Between Legislative and Executive Power,” he is, in the same spirit, criticizing the existing American electoral process. To him, party conflicts help promote the “internal disunity [that] is the soil on which fascism thrives.”²¹¹

While the rest of “America’s Eleventh Hour” is devoted to outlining the aforementioned types of restrictive antifascist legislation, and is not substantially different from the Bar Association speech or even Loewenstein’s academic works, Loewenstein’s comments on the role of youth in America, and his concluding personal appeal to his readers to act as watchdogs for democracy, are worthy of special attention. To Loewenstein, America has “given too much weight to the opinions of our young people. Politics is a matter of the adult, the experience, for the older generation.”²¹² While the youth are important, they should not be allowed to participate “in the decision of our national destinies which their blind idealisms seem entitled to demand.” Here, once again, Loewenstein’s dislike of idealism, his emphasis on realism, and his pessimistic worldview, shine clear. In his eyes the youth are incapable of appropriately responding to the

²¹⁰ Loewenstein, “America’s Eleventh Hour,” 15.
²¹¹ Loewenstein, “America’s Eleventh Hour,” 16.
²¹² Loewenstein, “America’s Eleventh Hour,” 16.
crisis at hand, and must be deprived, just like fascists (although for different reasons), of the ability to participate in the democratic process.

Also noteworthy is that, for the first time, Loewenstein directly appeals to the public to participate in the effort to identify the Fifth Column. As part of his concluding comments, he extolls his listeners to act

if you believe… that you have discovered an activity detrimental to American interests and national defense, communicate your observations, under your name, to the federal authorities. Don’t take the law into your own hands, and don’t embitter our social relations by unwarranted suspicions.\textsuperscript{213}

To Loewenstein, the threat posed by fascism is so severe that all citizens must participate in a policing process to root out the Fifth Column. This argument is yet another manifestation of Loewenstein’s anxiety about the fascist threat facing the United States.

“America’s Eleventh Hour” is perhaps the best, and most thoroughly reasoned, example of Loewenstein’s public advocacy, and shows an academic starkly different from the one presented in most articles or monographs concerning militant democracy. In virtually every statement Loewenstein describes the threat facing the United States as dire, and argues that the only chance America has to resist Hitler is to quickly adopt laws in line with his theory of militant democracy

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Loewenstein’s advocacy for militant democracy relented from 1941 until 1944, especially after America joined the war following the attack on Pearl Harbor. During this period Loewenstein taught at Amherst and consulted part-time with the State Department on matters related to South America, another area of academic interest.\textsuperscript{214} His advocacy would reemerge in

\textsuperscript{213} Loewenstein, “America’s Eleventh Hour,” 18.

\textsuperscript{214} Between 1940 and 1944 Loewenstein produced a number of works on topics related to South America, including Karl Loewenstein, “South American Impressions of a Political Scientist,” \textit{Amherst Graduate Quarterly
1944, as the Allies found greater success on the battlefield, and the defeat of Nazi Germany became more likely.

On August 26, 1944 The Nation published an editorial written by Loewenstein, titled “The Trojan Horse,” in which he argues for harsh political restrictions on conquered Axis nations, lest fascism reemerge and continue to menace democracy.\footnote{Loewenstein expanded this argument into a book, Political Reconstruction, written in 1945 before he began his service with the Military Government and published in 1946. Here, in a “long manuscript that theorized the political, legal, and moral reconstruction of a fascist society,” just as in “The Trojan Horse,” article, Loewenstein discusses the necessity of ignoring traditional concerns with sovereignty during the occupation, as if left alone, Germany would return to fascism. While the work is a further indication of his suspicion, as it was published after the Military Government had already been setup (and thus after the fact), and because its content is not particularly different from articles and works already discussed, Political Reconstruction will not be examined in detail. For an examination of Loewenstein’s role in the political reconstruction of Germany and Political Reconstruction, see R. W. Kostal, “The Alchemy of Occupation: Karl Loewenstein and the Legal Reconstruction of Nazi Germany, 1945-1946,” Law and History Review 29 (2011): 14-15. Importantly, in this article Kostal never mentions “The Trojan Horse,” instead relying on Loewenstein’s personal diaries and correspondence from his time in Germany. See also Karl Loewenstein, Political Reconstruction (New York: Macmillian, 1946). Within Political Reconstruction, Loewenstein only mentions ‘militant democracy’ specifically once, commenting that the situation of the previous years had made the idea of militant democracy “less obnoxious than it would have seemed.” Loewenstein, Political Reconstruction, 129. Despite the dearth of references to the topic at hand, Political Reconstruction is an important work that scholars other than Kostal have neglected.} By late 1944, Allied victory in Europe was almost assured. America, British and Canadian forces had successfully landed at Normandy, and were progressively pushing the Wehrmacht back towards Germany’s borders. A week earlier leading elements of the Allied had entered Paris, and a day before the article’s publication the Germany garrison occupying the city officially surrendered. By any standard, the sun had set on Hitler’s ambitions, and, beset by American, British and Canadian forces in France, and Russian forces on the Eastern Front, the German stranglehold on Europe had been broken.

Yet, despite these positive developments – Hitler, the architect of Loewenstein’s immigration to America, and the standard bearer for the political ideology that he worked so hard
to combat, had failed in his quest to subjugate Europe – Loewenstein remains anxious about fascism. His editorial discusses the impending political reorganization of a subjugated Germany, arguing against the concept of political self-determination, or allowing German citizens to decide, without external input, on the form a new government would take.\textsuperscript{216} Instead, Loewenstein believes that

\[\text{there is no absolute right of internal self-determination, and consequently, that the victorious states must be prepared to claim, and must be permitted to exercise, the right of intervention in the internal affairs of any state which “chooses” a “form of government” constituting by its nature and potential development a threat to their own security and to universal peace.}\textsuperscript{217}

Loewenstein recognizes that this argument runs counter to the traditional notions of sovereignty, as “for more than a century no responsible authority has dared to challenge the equality, sovereignty, and independence of states as the premises of the law of nations.”\textsuperscript{218} But, faced with the possibility of a liberated Germany turning again to a fascist or autocratic government, this independence cannot be granted.

To Loewenstein, the past decade has shown the folly of such freedom. “Hecatombs of innocent victims have been sacrificed because the despots were permitted, under protection of the dogma of internal self-determination, to extinguish the freedom of their own people.”\textsuperscript{219} To prevent such a catastrophe from occurring in the future, and to guarantee that no new autocratic system emerges, as these systems are “diametrically opposed” to democracy, Loewenstein believes that the defeated Axis nations must be forced to follow a number of rules.\textsuperscript{220} While these rules fall short of forcing these nations to adopt a democratic form of government, they act

\begin{itemize}
\item \textsuperscript{216} Karl Loewenstein, “The Trojan Horse,” \textit{The Nation}, August 26, 1944, 235.
\item \textsuperscript{217} Karl Loewenstein, “The Trojan Horse,” 235.
\item \textsuperscript{218} Karl Loewenstein, “The Trojan Horse,” 235.
\item \textsuperscript{219} Karl Loewenstein, “The Trojan Horse,” 235.
\item \textsuperscript{220} Karl Loewenstein, “The Trojan Horse,” 236.
\end{itemize}
to allow democracy “to grow from within by popular acceptance,” thereby accomplishing the same effect.\textsuperscript{221}

First, after their defeat, each Axis nation should convene a constitutional convention overseen by the Allies in which a democratic constitution should be drafted and create plans for future free elections.\textsuperscript{222} Second, once these elections are convened, they should be held under the control of the United Nations, or of an international police if by that time it has been created. Certain categories of discredited people, such as Nazi officials, prominent sympathizers, notorious turncoats, collaborationists, and so on, are to be excluded from eligibility by law. Nor are parties with anti-democratic platforms, leaders, or techniques permissible.\textsuperscript{223} Third, at every step of this process, the Allied governments should have the ability to veto constitutional provisions that they view as “a danger to the operation of a democratic form of government” in order to protect their own interests.\textsuperscript{224} Fourth, the proposed constitutions must contain an extensive Bill of Rights, with special emphasis on the ability of citizens to freely participate in government.\textsuperscript{225} Fifth, and finally, once these steps have been met, and a sitting government is elected that is clearly pro-democracy, the Allied governments may step back, and allow the state to enjoy self-determination.\textsuperscript{226} If these steps are not taken, then America will again be threatened by an autocratic government risen from the ashes of Nazism. Germany and the other Axis nations, through their actions and choice of governments, have abrogated their right to self-determination, and only though an obvious commitment to democracy can this right be earned back.

\textsuperscript{221} Karl Loewenstein, “The Trojan Horse,” 236.

\textsuperscript{222} Karl Loewenstein, “The Trojan Horse,” 236.

\textsuperscript{223} Karl Loewenstein, “The Trojan Horse,” 236.

\textsuperscript{224} Karl Loewenstein, “The Trojan Horse,” 237.

\textsuperscript{225} Karl Loewenstein, “The Trojan Horse,” 237.

\textsuperscript{226} Karl Loewenstein, “The Trojan Horse,” 237.
Loewenstein’s words here show the continuing evolution of his understanding of what militant democracy means. While the steps he proposes Allied nations should force upon the defeated Axis states are similar in both content and approach to the provisions of militant democracy as outlined in “Militant Democracy I and II,” the restrictions on the rights of fascists included here are seemingly permanent, and not temporary in nature. Loewenstein gives no indication that Nazis or anti-democratic citizens, despite his apparent belief in the importance of free participation of all citizens in the democratic process, will ever be allowed to vote or hold office. This distinction shows his evolving theory of militant democracy, as well as the anxiety with which he regards the soon to be defeated Axis nations. Even though fascism has clearly failed, and through this failure become discredited, Loewenstein cannot help but envision a new autocratic system arising and again threatening democracy. While he argues that the Allies should not implement democracy from above, instead letting it arise organically from within, his proposal leaves virtually no option for the defeated nations to pursue an alternative form of government. Clearly by this point he believes that democracy is the only acceptable form of government, and for democracy to prosper autocracy must be stamped out. The two competing ideologies cannot peacefully coexist. This argument stands in stark contrast to his earlier, academic writings, in particular “Autocracy versus Democracy.”

Once again, this level of nuance is missing from most scholars’ description of militant democracy. If, for example, militant democracy, as understood in Loewenstein by 1944, was applied to the War on Terror – a popular topic among scholars referencing his work – it would seemingly suggest that the United States should destroy all existing autocratic systems, as these systems, when viewed in the context of Loewenstein’s work, cannot be allowed to coexist with democracy. The fact this argument has failed to appear in any secondary sources only further shows the cursory and insufficient way most scholars have used Loewenstein to this point. “The
Trojan Horse” again shows the complexity of militant democracy as envisioned by Loewenstein, his continual public advocacy for the adoption of these techniques, and how this appeal and theoretical progression are rooted in his ever-present anxiety about fascism.

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Loewenstein would continue to operate under this anxiety even after the end of World War II and the final defeat of the Axis. Shortly after the end of the war Loewenstein, while working with the Legal Division of the United States Office of Military Government for Germany as part of a team experts brought in to aid in the denazification process, wrote a letter to the editors of The New York Times, published on June 15, 1945, criticizing the growing demand to allow fraternization between Allied soldiers and German citizens.

According to Loewenstein, “all reports agree that the Germans are unrepentant, unshaken and impervious to self-introspection,” and it would be unwise to “expose our GI’s to the as yet undiluted poison of twelve years of Nazi indoctrination.” American soldiers would be especially susceptible to this indoctrination when coming from “the lips of an attractive female,” and, despite their best efforts, would be unable to distinguish between good Germans and Nazis. To Loewenstein, the argument against non-fraternization is akin to Hitler’s attack against the Treaty of Versailles, and it would be folly to “ourselves start [the Nazis] charitably on the road” towards abrogating their recently signed unconditional surrender.

Loewenstein’s argument here is clearly tinged with anxiety. He makes no distinction between members of the Nazi party and the average German citizen, instead presenting Germany

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228 Loewenstein, “Non-Fraternization Approved,” 18.

229 Loewenstein, “Non-Fraternization Approved,” 18.
by and large, with the exception of a few unnamed and undefined good Germans, as a unified
entity populated by rabid, ideological Nazis who are waiting for any opportunity to spread their
vile doctrine to innocent American soldiers. At this point, after the final defeat of Germany,
Loewenstein still cannot escape his fear of the threat posed by fascism. Barely a month after the
utter destruction of the Nazi government and the Wehrmacht, Loewenstein cannot help but
envision another war between fascist Germany and the Western democracies. While in this letter
to the editor Loewenstein never explicitly alludes to his theory of militant democracy or its
techniques, his writing here is the product of that same thought process. The same logic that led
him to earlier argue for the application of strict antifascist legislation, is now leading him to view
every German as a potential Nazi propaganda agent, waiting for their chance to convert an
unsuspecting American soldier. The fact that this thinking is still evident, even after the defeat of
Germany, shows how thoroughly Loewenstein has been consumed by his anxiety, and how
deeply he has become invested in the war against fascism.

This anxiety and suspicion continues to appear in Loewenstein’s writing into 1946. In
another letter to the editors of The New York Times, of December 8, he criticizes the America
denazification process, arguing that it, to this point, had been inadequate, and that Germany was
still rife with Nazis.²³⁰ Written shortly after leaving his position with the Legal Division and
returning to Amherst College, Loewenstein begins by explaining the importance of
denazification in the postwar process, as on it, and demilitarization, hinges the entirety of

²³⁰ Loewenstein also criticized denazification in private and in his correspondence with his superiors while
part of the Military Government. See Bendersky, “Carl Schmitt’s Path to Nuremberg,” 20-21. Among his
contemporaries, Loewenstein’s views on denazification were by no means unique. For examples other than Herz,
see Tom Bower, The Pledge Betrayed: America and Britain and the Denazification of Postwar Germany (Garden
Science 260 (1948): 43-52. Strater begins his article by declaring that, “[t]he opinion of the whole world, as far as
we Germans can survey it, agrees with the opinion of all German parties and the whole German press of the four
zones, that denazification as practiced in each of the four zones – the American, the English, the French, and the
Russian, each of which follows its own special rules – has up to this time been a complete failure.”
German reconstruction.\textsuperscript{231} Unfortunately, despite the importance of this process, to date the American Military Government has done an exceptionally poor job rooting out and punishing Nazis. While the task of discovering Nazis is difficult, especially due to a reluctance by the military to “oust technically competent men because of party membership,” the entire denazification process, which relies on small denazification boards to judge and mete out punishment, is flawed.\textsuperscript{232} To date, the German people have recognized that these boards are overtaxed and ill-suited to judging the nuance of Nazi political life, and willingly present themselves, despite their work for Hitler, as fellow victims of Nazism in order to effectively escape punishment.\textsuperscript{233} Unsurprisingly, this strategy, along with an eagerness of American officials to quickly race through the process, has led to a situation in which “punishments, as a rule, are light” and hardly any “Nazi gangster [has been tried] on the basis of German common law.”\textsuperscript{234}

Loewenstein believes the solution to this crisis is to reformat the denazification procedure. Key to this reformatting is an understanding of the character of the German people, who are “impervious to moral scruples, if not wholly unregenerate. They realize in the midst of their misery that they have lost the war. But they do not regret having been Nazis.”\textsuperscript{235} Bearing this in mind, instead of attempting to judge every member of the Nazi party, experts should be brought in to draw a strong line “between [the] small fry and socially prominent and

\begin{footnotesize}
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    \item \textsuperscript{232} Loewenstein, “De-Nazification Report,” 124.
    \item \textsuperscript{233} Loewenstein, “De-Nazification Report,” 124.
    \item \textsuperscript{234} Loewenstein, “De-Nazification Report,” 124.
    \item \textsuperscript{235} Loewenstein, “De-Nazification Report,” 124.
\end{itemize}
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professionally important former Nazis.”\textsuperscript{236} Once identified, these Nazis should be harshly punished through the German court system and by German common law, and “professions which are instrumental in the formation of public opinion should be thoroughly and ruthlessly purged from even nominal Nazis.”\textsuperscript{237}

Again, Loewenstein is presenting the German populace as an amoral entity, although he is by this point drawing a distinction between the most outrageous of Nazi criminals and the average party member who joined after Hitler’s rise to power. While Loewenstein never describes the consequences of failing to implement his proposed new denazification procedures, when read in the context of his academic writing, and when compared to other examples of his public writing, it becomes clear that he fears a reemergence of fascist Germany. Similarly, while he never references militant democracy, his argument for the permanent removal of any Nazis from positions in which they might have the ability to influence the public reads very similarly to his argument for the implementation of strict antifascist legislation to deprive fascists of propaganda tools before the War. Just as in “The Trojan Horse,” here Loewenstein gives no hint that his proposed restriction on the careers of former Nazis will be temporary. Instead, these former Nazis will be permanently barred from these professions. Underlying this entire letter is Loewenstein’s continuing anxiety. Even though over a year has passed since the German surrender, Loewenstein still fears fascism, and still believes it is his duty to convince the public of the necessity of a hard anti-fascist stance.

Unlike his earlier letter to \textit{The New York Times}, Loewenstein’s comments on the denazification process proved controversial, and solicited a response from Fritz Oppenheimer, a former Captain with General Dwight D. Eisenhower and later member of the team tasked with

\textsuperscript{236}Loewenstein, “De-Nazification Report,” 124.

reorganizing the German judicial system, published on January 12, 1947. Oppenheimer dismisses Loewenstein’s criticisms as unjustified, calling him a “nihilist,” and derides his proposed solution as unworkable.\textsuperscript{238} He argues that the German people are willing to atone for their crimes, and that “hooligans that have committed specific crimes under the Hitler regime are being treated as ordinary criminals, in accordance with principles of justice.”\textsuperscript{239} To date, the Military Government has investigated over 1,800,000 cases of Nazism, and is implementing a long range strategy to call all of those over 18 years of age to account for whatever crimes they have committed under Hitler’s rule.\textsuperscript{240} While Oppenheimer acknowledges that the task of denazification is complex and to date has not been completed, he believes that “we are far advanced on the road towards complete destruction of Nazism.”\textsuperscript{241}

Loewenstein responded to Oppenheimer’s letter on January 16, 1947, and although this response was not published by \textit{The New York Times}, it is yet another example of Loewenstein’s continued pessimism and anxiety. Loewenstein dismisses Oppenheimer’s response, claiming, “his rejoined seems to fall short of its objective in that it lacks elucidation as to how the [denazification procedures] stood the test in practice.”\textsuperscript{242} According to Loewenstein, the Military Government’s own figures, which show that 92\% of cases before the denazification boards “were declared not chargeable at all,” and recent scandals in the Bavarian government in which top officials were found to have been prominent Nazis, show the continued failure of the existing

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\textsuperscript{239} Oppenheimer, “Denazifying Germany,” 8.
\textsuperscript{240} Oppenheimer, “Denazifying Germany,” 8.
\textsuperscript{241} Oppenheimer, “Denazifying Germany,” 8.
\end{flushright}
denazification procedures. Loewenstein also takes issue with the tone of Oppenheimer’s reply, writing that

it is hardly an edifying experience that a citizen who in a free country brings his anxiety about what Dr. Oppenheimer rightly calls “the crucial test of Germany”, to the forum of public discussion, runs the risk of being accused, by a government official, of “nihilism”, a term obviously denoting disagreement with government policies.”

This letter is another entry in Loewenstein’s long list of public appeals on the subject of fighting fascism. Although unpublished, Loewenstein’s tone here, several years after the defeat of Nazism, is as anxious as in his writing during the height of Hitler’s triumph in Europe. Once again, Loewenstein’s thinking is driven by his anxiety about fascism, and his belief that the existence of any fascist government poses a dire threat to the continued prosperity of democracy and America.

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Throughout the late 1930s and 1940s Loewenstein engaged in an extensive campaign of public advocacy for the adoption of militant democracy and antifascist legislation, and, after the end of the war, continued vigilance towards purging the Nazi threat in order to guarantee that America would never again face a fascist Germany. During this advocacy, Loewenstein’s theory of militant democracy continued to evolve, until, by 1944, he was arguing for permanent measures to deprive fascists from participating in the electoral process, and, by 1946, measures to prevent fascists from even holding jobs in fields deemed important.

Further, throughout his writing and his public speeches, Loewenstein shows the anxiety with which he regards the fascist threat. During the war he believed in the existence of an extensive and unknown Fifth Column of fascist loyalists, composed of America-born citizens, naturalized citizens and resident aliens, waiting for an opportunity to leap into action and aid

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Hitler in destroying America. Even after the war, Loewenstein feared the influence of Nazis on American soldiers, believing that the German citizens were entirely unrepentant for their crimes, and, if not properly monitored, would again menace democracy. This anxiety at times caused Loewenstein to verge on the hysteric, and forced him, when advocating in public, to pursue any strategy he could to argue in favor for the speedy adoption of his ideas, including, despite his ethnic heritage and nationality, presenting himself as a defender of the traditional Christian and Anglo-Saxon American worldview.
Chapter Three

Brothers-in-Thought:
John Herz, Karl Lowenstein and the Pessimistic Worldview

“I saw my challenge in enlightening the world about the true character of Nazism.”  

Karl Loewenstein was by no means the only émigré intellectual struggling to understand the new political reality of life post-immigration. John Herz’s forced immigration also left him sharply pessimistic, and his work during the years leading up to World War II and its immediate aftermath shows a scholar struggling to reconcile the clash between fascism and democracy. He, too, sought to discover the way in which the surviving democratic systems could successfully navigate through an increasingly chaotic and troubled world. Unsurprisingly, Herz also worked with the American government during the war, and, after leaving government service, was sharply critical of denazification and the actions of the Military Government in postwar Germany.

Yet, despite their similar biographies and worldview, Herz arrived at a markedly different solution to the democratic dilemma than Loewenstein, foregoing the idea of militant democracy in favor of a nuanced outlook predicated on abandoning both idealism and realism for a

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measured and sophisticated combination of both he termed Liberal Realism. Consequently, Herz’s work, despite its pessimism, lacks much of the sharpness and anxiety so evident in Loewenstein’s thought, and functions as a counterpoint that demonstrates the uniqueness of Loewenstein’s theory of militant democracy, as well as an example of the way in which other émigré thinkers were able to understand the new world in which they found themselves. Where Loewenstein saw nothing but continual anxiety, Herz saw an escape from pessimism, and was able to conceive of a world with a functioning, peaceful international system which incorporated both democracies and non-democratic governments.\textsuperscript{245}

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Herz, like Loewenstein and hundreds of other intellectuals, was forced to flee Germany in 1933 after being dismissed from his job as a law clerk because of his Jewish heritage.\textsuperscript{246} He left Germany for Geneva, Switzerland, where he resumed his studies at the Geneva Graduate Institute of International Studies under Hans Kelsen.\textsuperscript{247} Herz had previously worked with Kelsen from 1927 to 1931 at the University of Cologne, where he was schooled in Kelsen’s Pure Theory of Law, which “tried to liberate legal theory from all religious, scientific, ethical, sociological and political elements.”\textsuperscript{248} Kelsen argued that “the legislator was not bound by fundamental

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\textsuperscript{245} Herz also provides particular biographical insight into how Loewenstein must have felt during the years immediately after immigration. Unlike Loewenstein, Herz’s archive contains lengthy biographical material written in English, including a self-translation of his biography. Unfortunately, for the purposes of this thesis, most of the biographical material written by Loewenstein, as well as secondary biographical work on Loewenstein, is written in German. See Lang’s biography.


\textsuperscript{247} Hacke and Puglierin, “Balancing Utopia and Reality,” 368.

\textsuperscript{248} Hacke and Puglierin, “Balancing Utopia and Reality,” 368.
moral values or ethical principles,” and that “every law passed in accordance with set procedures was binding and needed no further justification,” regardless of its content.249

While in Geneva, Herz, troubled by the spread of fascism across Europe and the failure of the League of Nations to prevent Italy from invading Ethiopia, began to move away from Kelsen’s Pure Law,250 eventually coming to believe that analyzing international law in a vacuum “in the Kelsian sense appeared increasingly absurd.”251 During this period he began to develop the particular theory combining realism and idealism that would underpin his work for the next several decades. For him, the question of the modern age was to define the way in which international relations functioned, and how “international law, apparently a system of practical, enforceable norms binding upon nation-states, can be conceived as a normative, functioning system.”252 In Herz’s eyes, Kelsen’s positivistic system failed to account for the fact that “international relations were essentially still anarchical in nature,” as well as to explain the reality of how, during this time, the European nations confronted each other.253

For Herz, the experience of being removed from his job due to his ethnic heritage and being forced to leave Germany was traumatic, and fundamentally altered his worldview, infecting him with a pessimism that would define much of his later academic output, especially

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during the period surrounding World War II. In his biography, he links the trauma of this
experience to his evolving understanding of international relations (and growing distance from
Kelsen), as well as clearly describes the overwhelming emotional impact of his forced
immigration. For Herz, the flight to Geneva

meant shifting from the area of the normative (law) to that of facts and events, the brutal realm of
politics. And brutal they were. [The Nazis] had destroyed my idea of a planned, orderly life and
career in an ordered, minimally decent, reformable environment. Now the chasms of the 20th
century were revealed: the abyss of racism that was to end in the holocaust; already foreshadowed
in the blood-filled trenches of World War I; absolutely brutal rulership, as prophesied by Jacob
Burckhardt. All of this destroyed remnants of still existing rationalistic belief in “inevitable
progress.” The world became a theater of the absurd, and I became more and more pessimistic.
Suicide might have been the logical consequence. I weighed the idea from time and time, but
youthful energy prevented me from taking the final step. Shifting my attention to the realm of
world politics, I found that complete resignation was not a propos. If not from within, fascism
might, perhaps, still be destroyed from without. Thus, to my theoretical interests in analyzing
situations there was added a very practical interest in action: What could be done to promote such
an objective?254

Beyond showing the development of Herz’s pessimism – a worldview shared with Loewenstein
– this description also provides insight into Loewenstein’s character. While Loewenstein’s
immigration to the United States was not as fraught with uncertainty as Herz’s, as he was both
older and more easily able to secure a teaching position, the experience of being forced,
overnight, to abandon the country in which he had spent his entire working life was no doubt
horrifying, and had lasting effects on his worldview. Unfortunately, for Herz, despite his
attempts at navigating the new world order he found himself a part of, after five years in
Switzerland “resignation and even pessimism and a feeling of depression [had] set in,” and he
decided to immigrate to the United States.255 To Herz, this journey was perilous, and he believed


that “the darkness of my fate seemed tied to the dark fate threatening Europe… my going away appeared to me as a taking leave from a continent doomed to die.”\textsuperscript{256}

After immigrating to the United States in 1938, Herz was accepted into the Institute for Advanced Study at Princeton University, where he worked from 1939 to 1941 under Edward M. Earle.\textsuperscript{257} While there, he was tasked with researching the historical British balance of power system, and concluded that “utopianism had too often produced peace plans built on the quicksands of wishful thinking and therefore highly likely to fail.”\textsuperscript{258} After leaving Princeton, Herz was hired at Howard University, and, following Pearl Harbor, joined the Office of Strategic Services (OSS) in hopes of playing a more active role in the fight against Nazism.\textsuperscript{259} While in the OSS, he helped plan the reconstruction of defeated Germany, and, like Loewenstein, was involved with the preparation for the Nuremberg Trials. Following disagreements over denazification, he left government service in 1948, and resumed teaching at Howard until 1952, after which he accepted a position at the City College of New York, where he stayed until his retirement in 1979. Like Loewenstein, during this period Herz publicly criticized denazification. After leaving government service, and during his second stint teaching at Howard University, Herz published his best known work, \textit{Political Realism and Political Idealism}. Therein, Herz attempts to solve the dilemma facing modern states and conceive of a new, functional international system. Despite the pessimism clearly evident in \textit{Political Realism and Political Idealism}, Herz’s solution is starkly different from militant democracy and contains hope for a

\begin{itemize}
\item \textsuperscript{256} Herz, “On Human Survival,” 129.
\item \textsuperscript{257} Hacke and Puglierin, “Balancing Utopia and Reality,” 370.
\item \textsuperscript{258} Hacke and Puglierin, “Balancing Utopia and Reality,” 370.
\item \textsuperscript{259} Hacke and Puglierin, “Balancing Utopia and Reality,” 371.
\end{itemize}
peaceful future where nations, regardless of political belief, could coexist. This work best demonstrates the theoretical differences between the two scholars.

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During this period, Herz first came into contact with Loewenstein. The earliest existing exchange between the two dates to January 11, 1940, although based on the content of this letter, it is clear that the two had been in communication earlier. Unfortunately copies of these earlier letters are not held in the archives of either scholar. Written from Loewenstein to Herz, this first correspondence is little more than formalities. Herz had originally contacted Loewenstein asking after a permanent position at Amherst – two years after immigrating he was still at Princeton and was encountering difficulty in securing a tenured placement – and while Loewenstein commiserates with Herz’s predicament, he’s unable to offer any help at this time, but will contact him if he hears of any positions opening.\(^\text{260}\) Although short, this letter is instructive in the burgeoning relationship between the two. Loewenstein clearly understands the difficult situation Herz has found himself in, and his willingness to aid Herz hints at the shared worldview between the two thinkers. Both have found themselves isolated in America after their forced immigration, and while Loewenstein has successfully found a placement by this point, both are part of an exclusive émigré community.

Herz wrote to Loewenstein again on September 26, 1944 along similar lines. At this point Herz is working with the OSS, on leave from his temporary position at Howard University, and is still on the lookout for a tenured faculty appointment as he sees the war drawing to a close in the near future.\(^\text{261}\) The main purpose behind Herz’s letter, beyond his job search, is to ask after a

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\(^{261}\) Herz to Loewenstein, September 26, 1944. John H. Herz Papers. Box 3, Folder 73.
proposed panel on which both he and Loewenstein would have sat.\textsuperscript{262} Herz feels the resurrection of this panel – the “Panel on Comparative Government” – would be especially timely, with the prospect of the reconstruction of “various European governments” and the “impending problems of post-Nazi German government” in the near future.\textsuperscript{263} Again, while short, this letter is further evidence of the growing academic relationship between the two scholars. Conceivably both are concerned with denazification and political reconstruction (a concern that will manifest in their academic work), and Herz regards Loewenstein highly enough to ask after a proposed panel.

Loewenstein responded to Herz on December 4, 1944. While he can offer no help in Herz’s job search, he reassures Herz that he has a “very high opinion of your work and I am very anxious to see you properly placed.”\textsuperscript{264} Loewenstein then concludes the letter on a telling, pessimistic note. While he believes that Herz’s opinion “that the War will be over soon... may be correct,” he cannot help but think otherwise, as “the Germans do not seem to be close to unconditional surrender as we might wish.”\textsuperscript{265} While brief, this comment is the first hint of Loewenstein’s pessimism within his correspondence with Herz. By mid-December 1944, and especially after the Battle of the Bulge, the defeat of Nazi Germany was almost entirely assured, with the recent liberation of France and the impending invasion of German territory by both Russian and German forces. Still, even faced with overwhelming evidence of the Allies’ progress, Loewenstein cannot help but express pessimism about the prospects of the war ending soon.

\textsuperscript{262} Herz to Loewenstein, September 26, 1944.
\textsuperscript{263} Herz to Loewenstein, September 26, 1944.
\textsuperscript{264} Loewenstein to Herz, December 4, 1944. John H. Herz Papers. Box 3, Folder 73.
\textsuperscript{265} Loewenstein to Herz, December 4, 1944.
This pessimism is much more apparent in the next exchange between the two scholars, which took place in early 1947. Herz had apparently written to Loewenstein to express agreement with Loewenstein’s letter to the editor critical of denazification published in *The New York Times* and to criticize Oppenheimer’s response in support of the existing denazification policies. Replying to Herz on January 18, 1947, Loewenstein first thanks Herz for his interest, and comments that, while he disagrees with Oppenheimer’s response, he is “not sure whether [he] shall answer,”266 as he “hates polemics.”267 Still, despite this hesitation, he is anxious that “once again we may miss the boat” in stopping fascism, even though he has “no personal ax to grind” on the topic.268 Loewenstein apparently pressed the same issue while part of the Military Government, but unsurprisingly found that nothing he said “would dissuade Oppenheimer, or anybody... of their God-like attitudes.”269 Loewenstein again ends the letter on a pessimistic note, citing a letter from Germany he received that morning which included the phrase “the crucial problem is not to denazify Germany, but to prevent M. G. officers from becoming nazified,” which he feels is a “neat summing up of the situation.”270

Herz replied to Loewenstein on January 26, 1947. Herz feels strongly that “something must be done to correct the wrong impression made in the public271 mind by such statements as Mr. Oppenheimer’s.”272 As to the frustration encountered by Loewenstein while he worked at the

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266 This comment by Loewenstein is curious, as by January 18 he had already responded to Oppenheimer, although, as discussed previously, *The New York Times* declined to publish his response.


268 Loewenstein to Herz, January 18, 1947.

269 Loewenstein to Herz, January 18, 1947.

270 Loewenstein to Herz, January 18, 1947.

271 Emphasis Herz’s.

Military Government, Herz, in his position with the State Department stateside, has found that “collaboration with the operating people has been quite satisfactory,” although it is still frustrating “to know, or not to know, what eventually happens to one’s suggestions. Final decisions, on the part of people ‘with the God-like attitudes’ seem often to be made without the required background knowledge of factual conditions – to put it mildly.”

This exchange of letters, more so than any earlier dialogue, shows the similarity in worldview between Herz and Loewenstein, and in particular the pessimism shared among the scholars. Herz, like Loewenstein, is disgusted with the track denazification is taking, and also feels the frustration of working within a government body with no real authority. As he bluntly describes, in his opinion frequently those who make the decisions on important – and clearly denazification is such an issue, considering the stakes – lack the requisite background knowledge to make an informed final choice. Loewenstein’s letter is particularly telling, and reveals the extent to which he was still, by 1947, preoccupied with defeating fascism. Underlying his critique of the denazification is a persistent fear that, without a more effective and thorough process, fascism will reemerge in Germany and once again threaten the west. As Loewenstein points out, in perhaps his most controversial comment to date, his fear by this point is not that Americans will become overzealous in their prosecution of Nazis; rather, he fears that the American soldiers will become nazified themselves. While Herz does not specifically express agreement with this sentiment, it is apparent through the content of his response, as well as his overall commiserating tone, that he at least in part shares Loewenstein’s concern. By this point, Herz shares in Loewenstein’s pessimism and anxiety about fascist, and as a result harbors little hope for an effective denazification process.

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273 Herz to Loewenstein, January 26, 1947.
Herz elaborated on his critique of denazification in an article published in the December 1948 issue of *Political Science Quarterly*. In “The Fiasco of Denazification in Germany,” Herz explains in detail the timeline of denazification, the gradual process by which the American commitment to denazification has been subverted both purposefully and through laxity, and argues that, at the time of publication, Germany was still rife with Nazis, and that these Nazis still occupied prominent political and economic positions. To Herz, it is clear that “denazification, which began with a bang, has since died with a whimper,” and that the process has “opened the way toward renewed control of German public, social, economic and cultural life by forces which only partially and temporarily had been deprived of the influence they exerted under the Nazi regime.”

Herz begins by reviewing the six stages of denazification, which lasted from 1945 until 1948, when the programs were shut down. In the first stage, beginning immediately after the German surrender, denazification was implemented directly by the American Military Government. Within this stage, particularly dangerous Nazis were arrested and placed in internment camps, while other categories of Nazis, as well as those Nazis prominent in the society, were dismissed from their positions. While the standards employed by the Military Government were “over-mechanical,” by and large “the program, on the whole, resulted in a fairly comprehensive purge of the administration and other fields.”

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274 John H. Herz, “The Fiasco of Denazification in Germany,” *Political Science Quarterly* 63 (1948): 569. As discussed earlier, Herz and Loewenstein were not the only critics of denazification.

275 Herz, “The Fiasco of Denazification in Germany,” 570-571.

276 Herz, “The Fiasco of Denazification in Germany,” 571.
The second stage began in 1946, when the Military Government, facing criticism that their system was unduly punishing nominal Nazis, transferred the administration of denazification to German authorities. These authorities operated under the Law for Liberation from National Socialism and Militarism, issued on March 5, 1946, which provided “very flexible and, on the whole, fair standards and categories.” Under this law denazification was transferred to local boards and appeal tribunals, and, while initially this move was viewed favorably, as “the proceedings took place in local communities, the hearings and trials were frequently characterized by intimidation or even terrorism on the part of Nazis and Nazi sympathizers.” The effect of this terrorism was that only a small number of those tried by the boards were classified as Major Offenders or Offenders, with most Nazis instead being classified as Followers and allowed to return to their positions. In particular, a Military Government review of the boards at the end of 1946 found that “less than 20 per cent of the persons MG had previously found ‘non-employable’ as majors Nazis had been placed in categories with employment prohibitions, while the remainder had been classified as “Followers” or had been exonerated.”

The third stage, beginning in August 1946, involved the passage of amnesty laws that precluded large portions of the German population from being tried by the denazification boards. While Herz approves of the intent behind these laws – to exempt obvious Followers from a timely prosecutorial process – “flexible investigation of individual cases” led to “many a

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277 Herz, “The Fiasco of Denazification in Germany,” 571.
278 Herz, “The Fiasco of Denazification in Germany,” 571.
prominent Nazi” escaping prosecution.\textsuperscript{281} Despite these issues, the amnesties, by reducing the caseloads of denazification boards, presented an opportunity for more careful examination of those suspected Nazis remaining.

Unfortunately, this opportunity was never taken advantage of, as in the fourth stage of denazification the Military Government agreed to amend the Liberation Law, allowing a prosecutor, with consent of the Military Government, to reclassify any Offender as a Follower.\textsuperscript{282} The effect of this change was to allow “the majority of the remaining ‘hard core’ Nazis” to go free, and, to Herz, was part of the “ever growing tendency to terminate denazification by wholesale extenuation.”\textsuperscript{283}

This tendency was even more apparent in the fifth stage, where, beginning in January 1948, Military Government approval for relabeling Offenders as Followers was no longer required. German authorities also introduced an “expediting procedure,” known as \textit{B-Verfahren}, which allowed Followers to be processed in a written procedure.\textsuperscript{284} By April 1948 over 75\% of all cases tried by the denazification boards were completed through this process, and in February 1948 a Military Government directive “provided for the release from internment camps” of large groups of remaining Major Offenders, allowing those “who expected severe punishment” to go underground.\textsuperscript{285}

The sixth and final stage of denazification began in the summer of 1948, during which the denazification program was shut down. Working to fulfill a deadline that “denazification was

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\textsuperscript{281} Herz, “The Fiasco of Denazification in Germany,” 574.

\textsuperscript{282} Herz, “The Fiasco of Denazification in Germany,” 574.

\textsuperscript{283} Herz, “The Fiasco of Denazification in Germany,” 574.

\textsuperscript{284} Herz, “The Fiasco of Denazification in Germany,” 576.

\textsuperscript{285} Herz, “The Fiasco of Denazification in Germany,” 576.
to be concluded by the summer of 1948,” the denazification boards were “instructed to cut down on the number of regular trials still to be held.”  

The overall result was that, by June 1948, denazification was “terminated under such conditions that premium was given to the ‘hard core’ of major Nazis who had managed to delay their trials in hope of forthcoming relaxations,” and “most of them now would get away without penalties.”  

These released Major Offenders were allowed to rejoin German society, along with tens of thousands of other Nazis, and resume their positions.

As proof of his argument, Herz provides examples of denazification cases, drawn from Military Government reports and German newspaper articles, that illustrate the specific ways in which the denazification process was subverted, corrupted, or was simply applied in a cursory and insufficient way. While these examples are too numerous and detailed to be reviewed here, in particular he highlights cases that evidence leniency shown to “former Nazi propagandists and ideologists,” “members of the Nazi terror machine (Gestapo, special courts, etc.),” and “public officials and party officials.”  

Herz also reviews the various means by which Nazis were able to circumvent or corrupt the denazification boards. Numerous Nazis were able to receive additional leniency through ridiculous and illogical explanations for their conduct, including joining the Nazi party “not for idealistic but for egoistic reasons,” or acting “not out of conviction but out of revenge feeling” when the evidence clearly proved otherwise.  

Herz also finds a significant

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number of cases that show a “laxity in procedures and in enforcement,” as well as those evidencing “pressure, intimidation, and terrorism in denazification procedures.”

The end result of this thorough and detailed case review is a clear argument for the failure of denazification. To Herz, denazification “even where handled under comprehensive regulations and procedures… has been a complete fiasco.” In the aftermath of this failure, “German public life… is in the process of being “renazified,” with the “denazified” former Nazis able and very willing to enter, or re-enter, public service, economic positions, cultural activities and so on.”

The consequence of their reentering is that the American policy of democratizing Germany has “simply delivered the fragile new democracy to the tender mercies of its enemies.” Faced with this development, Herz fears that “Neo-Nazism may yet justify the hope of the dying Nazi leaders that one day Germany will come out on top after all.”

Throughout “Fiasco,” Herz’s pessimism and anxiety about fascism is obvious. Like Loewenstein, by 1949 he feared that, as a consequence of the American failure to denazify Germany – either out of incompetence or unwillingness – there is a chance that Nazism will remerge and again threaten the western democracies. This fear further demonstrates the similarity in worldview between Loewenstein and Herz: both, despite the utter defeat of Hitler

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293 Herz, “The Fiasco of Denazification in Germany,” 592.
and the stirrings of a new, democratic Germany (at least in the American, British and French zones) believe that fascism will again seize control of the German government.\textsuperscript{295}

Herz followed up on “Fiasco” with a short letter to the editors of \textit{The New York Times}, published on May 25, 1949, addressing concerns about how effectively German officials were screened during denazification. Responding to an article written by the Berlin correspondent, which claimed that no Nazis who are barred from positions based on their classification currently held public posts, Herz argues that Germans hold a “cynical attitude towards denazification,” and that, based on his research, classification is a poor indicator of how much participation an individual had with the Nazi regime.\textsuperscript{296} After briefly summarizing his conclusions as presented in “Fiasco” – namely that the German-run denazification boards pursued denazification with an eye towards doing whatever they could to move past the Nazi era and not punishing those guilty – Herz concludes with a chilling sentiment.\textsuperscript{297} In his eyes, “we should not allow ourselves to be deceived into assuming that denazification has been a success,” as “we would be in for sorry surprises later.”\textsuperscript{298}

In writing this letter, Herz is showing again that he believes in the importance of academics addressing the public in hopes of warning them about the reality of post-war Germany and the failure of denazification. Just like Loewenstein in 1946 and 1947 (and in the same venue), Herz is doing his part to make the average citizen aware of the threat posed by a continuity of public officials between Hitler’s Germany and the new, purportedly democratic

\textsuperscript{295} Unfortunately Herz spends almost no time in his biography reviewing his wartime service, focusing instead on his relationship with fellow émigré intellectuals. He does not mention denazification at all, and does not hint at the frustration he felt with the denazification procedures.


\textsuperscript{297} Herz, “Screening German Officials,” 28.

\textsuperscript{298} Herz, “Screening German Officials,” 28.
state. While Herz never specifically explains this threat within his letter, when read with knowledge of his earlier works, it is clear that he is once again speaking of the possibility of a renewed fascist Germany threatening America.

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This pessimism can be further seen in Herz’s most well-known work, *Political Realism and Political Idealism*, published in 1951, although almost entirely written during his time at Princeton prior to World War II. While Herz scholars have analyzed *Political Realism and Political Idealism* at length, as of yet no work within the historiography has examined Herz’s book in terms of its pessimism, or used it as part of a comparative analyses with another émigré intellectual in the context of a shared worldview. In this work, Herz discusses his “understanding of the fundamental realities of international politics.” In this discussion, Herz presents a starkly different solution to the dilemma of international politics and the battle between competing political ideologies than Loewenstein, foregoing militant democracy in favor of a measured international system that combines realism and idealism. This system was predicated on simultaneously acknowledging the divisive fundamental nature of mankind (rendered by Herz as the security dilemma) and an idealistic hope that man, armed with this knowledge, could create a peaceful international system that would obviate this anthropological

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300 Unfortunately, *Political Realism and Political Idealism* is a difficult read. Written as a philosophical discourse on man and politics, Herz’s arguments are, in general, unsupported, and at times contradictory. While these difficulties do not change the way in which the work fits into Herz’s bibliographies, or the purpose it serves in this thesis, it is important to note. Scholars working on Herz acknowledge this difficulty, with Hacke and Puglierin describing the work as “…not an easy read. It is philosophical, abstract and analytical; one could even describe it as a typical work of a German professor secluded in his private study.” Hacke and Puglierin, “Balancing Utopia and Reality,” 373.

301 Emphasis Herz’s.

Herz’s pessimism can be seen both in the content of his analysis, which sees man as an inherently violent being, as well as the greater context which this analysis is presented. Yet, despite his pessimism, and despite his experiences with autocracies, in his theory Herz does not prescribe a particular political system, believing that, varying forms of government, regardless of their differences or ideologies, can coexist as long as they employ Herz’s combination of realism and idealism. This in turn demonstrates the uniqueness of militant democracy, and the radicalness of Loewenstein’s fight against fascism, especially during the end of the 1930s and World War II.

Herz’s argument is predicated on his understanding of man’s nature, the “sociopolitical constellation Herz identified as the starting point of all theoretical inquiry.” As he explains in his first chapter – now a “classic in the literature of IR [international relations]” – human beings are fundamentally concerned with the security dilemma, or the understanding that man is able to inflict violence and death on one another. As Herz describes it,

[...]

303 Returning to other academics working along side with Loewenstein and Herz, Hacke and Puglierin take care to compare Herz’s anthropology (the security dilemma) to the work of Carl Schmitt and Hans J. Morgenthau. Of Morgenthau and Schmitt they write, in regards to the feasibility of a cooperative international system, which Herz favored: “while Morgenthau was inspired by the friend-foe dichotomy of Carl Schmitt and emphasized the inevitability of conflict and conformation in international affairs.” Hacke and Puglierin, “Balancing Utopia and Reality,” 372. Herz’s security dilemma also bears obvious resemblance to Sigmund Freud’s understanding of the nature of man, best seen in Sigmund Freud, Civilization and its Discontents (London: The Institute of Psycho-analysis, 1946).


biological [sic], and makes the “homo homini lupus” a primary fact of the social life of man.”

Therefore, man, despite his best intentions, must always be suspicious of his neighbor – cognizant that, at any moment, violence could arise. The security dilemma forces men into a paradoxical situation. On one hand, “feeling himself exposed to dangers which threaten his very life, man begins to be concerned about finding some security against this menace.” This leads man to realize that, on the other hand, “even if he wanted to, he cannot destroy all those who might become a menace to his existence,” and that he depends on other men “in producing and obtaining the necessities of life.” These two realizations create a dilemma in which man must both rely and be suspicious of his neighbor, resulting in “competition for the means of security.” This competition takes the form of a struggle to acquire power, namely the accumulation of goods (food, clothing, or weapons) or control over those who produce goods.

In this struggle for power Herz sees the roots of politics, and the competition between political groups, or “political units.” These units, as well as the manifestation of these units – states - can be seen as the security dilemma writ large on a national and international stage. As Herz summarizes,

politically active groups and individuals are concerned about their security from being attacked, subjected, dominated, or annihilated by other groups and individuals. Because they strive to attain security from such attack, and yet can never feel entirely secure in a world of competing units, they are driven toward acquiring more and more power for themselves, in order to escape the

306 Man is a wolf to his fellow man. Referenced in modern political theory by Thomas Hobbes.
307 Herz, Political Realism and Idealism, 3.
308 Herz, Political Realism and Idealism, 3.
309 Herz, Political Realism and Idealism, 4.
310 Herz, Political Realism and Idealism, 14.
impact of the superior power of others.\textsuperscript{312} Thus, “to ensure survival, competing political units, whether they like it or not, have to play the power game.”\textsuperscript{313} Appealing to a “higher authority for their protection and survival” is useless, and the only way for a nation to ensure its security is by competing with its neighbors. This, in turn, ignites a “vicious circle of suspicion and counter-suspicion, power competition, arms races, and ultimately war.”\textsuperscript{314}

Herz believes that historically man has pursued either realism or idealism in an effort to obviate this conflict and overcome the truth that “man is born into a world of fundamental antagonism.”\textsuperscript{315} No matter how complex or protracted a theory is, through careful examination it can be reduced to one of these two “ideal types.”\textsuperscript{316} To Herz, realism “characterizes that type of thought which in one form or another, sometimes not fully and other times in an exaggerated manner, recognizes and takes into consideration the implications for political life of those security and power factors which... are inherent in human society.”\textsuperscript{317} In contrast, idealism is “that type of political thinking which in the main does not\textsuperscript{318} recognize the problems arising from the security and power dilemma.”\textsuperscript{319} Unfortunately, neither of these approaches is able to overcome the security dilemma and break man free of a perpetual cycle of war and conflict.

\begin{itemize}
\item \textsuperscript{312} Herz, \textit{Political Realism and Idealism}, 14.
\item \textsuperscript{313} Hacke and Puglierin, “Balancing Utopia and Reality,” 372.
\item \textsuperscript{314} Hacke and Puglierin, “Balancing Utopia and Reality,” 372.
\item \textsuperscript{315} Herz, \textit{Political Realism and Idealism}, 1-2; 7
\item \textsuperscript{316} Herz, \textit{Political Realism and Idealism}, 17.
\item \textsuperscript{317} Herz, \textit{Political Realism and Idealism}, 18.
\item \textsuperscript{318} Herz’s italics.
\item \textsuperscript{319} Herz, \textit{Political Realism and Idealism}, 18.
\end{itemize}
Yet, in these failures, Herz sees the key to a peaceful world, believing that by pursuing Liberal Realism, a combination of both realism and idealism, man can finally overcome the security dilemma and progress towards a more peaceful world. In the context of nations, Liberal Realism is “equidistant from hard-core realism and utopian idealism” and involves “seeking ways of equilibrium in foreign policy without lapsing into utopian thinking.”320 In short, while man should be aware his confrontational and aggressive nature, he should, armed with this knowledge, work towards creating a peaceful system in which aggression is unnecessary. Herz’s thinking here is clearly an attempt to wed the progressive values of traditional liberalism with an understanding of man’s violent, irrational character – a character that Herz observed first-hand during his forced immigration from Germany.

Herz recognizes that this proposed solution is unlikely to occur, acknowledging, “in the present stage of history, major trends seem hostile to such an endeavor, even beyond the more general realist power factors which have traditionally hampered the liberal ideal.”321 Still, despite the unlikelihood of this envisioned future coming to pass, Herz’s system still contains the possibility of a peaceful world order.322 Importantly, in describing this peaceful world, Herz never argues in favor of a particular political ideology or form of government. For him, unlike Loewenstein, the makeup of a government is apparently irrelevant.323 All that is necessary to achieve peace is the choice by all nations within this system to pursue Liberal Realism,

321 Herz, Political Realism and Idealism, 228.
323 Herz is even at times critical of democracy (clearly Loewenstein’s preferred system), going so far to equate some of the aspects of present-day democracy with totalitarianism. For him, “growing technical organization, leading to large scale organization of industry, society, and state, far from rendering the individual the ultimate unit of power and determination, by making him dependent on society for the fulfillment of an increasing number of wants, has increased his feeling of dependence and insecurity, and in actual practice has led to the entrenched power of the few in key positions over the organizational machines, and therewith over the mass of the people. This is true in the so-called democracies as well as in totalitarian regimes.” Herz, Political Realism and Idealism, 231-232.
regardless of their political organization. Thus, within Herz’s system, democracies and autocracies could conceivably coexist.

This understanding is clearly a consequence of the particular context in which *Political Idealism and Realism* was written and published. While much of the work was written during Herz’s time at Princeton, before World War II, the concluding chapter and the introduction were added during the opening years of the Cold War, amid the growing realization the world had been dived into “basically only two power groups,” democracy and communism. To Herz, this process, as well as the development of atomic energy and the threat posed by the atomic bomb, makes the pursuit of Liberal Realism essential for the continuation of mankind. If man destroys himself, “the atomic bomb... will then have made history the story of a race which could not solve its basic problem of power and security; the sad yet moving saga of hope and failure.”

At first glance, *Political Realism and Political Idealism*, and in particular Herz’s views on the nature of man are thoroughly pessimistic. Further, beyond the specific content of this theory, the way in which he introduces the work is instructive of his continuing pessimism. In the introduction to *Political Realism and Political Idealism* Herz describes the world order as “less harmonious” than in most of human history. Unable to accept eventual, impending doom, to man not “even the harmony of a pessimistic world-outlook seems to be granted.” Instead, we are simply confused in our views as to what has been, is, and will or should be. A general malaise is becoming increasingly evident, more so perhaps in the unformulated and unspoken sentiments and reactions of the multitude than in the statements and the treatises of the erudite.

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324 Herz, *Political Realism and Idealism*, 237.
325 Herz, *Political Realism and Idealism*, 251.
326 Herz, *Political Realism and Idealism*, ix.
327 Herz, *Political Realism and Idealism*, ix.
328 Herz, *Political Realism and Idealism*, x.
Herz even goes so far as to directly acknowledge his pessimism, writing, as part of an analysis of the way in which Realist Liberalism could be incorporated into the existing world order, “there is real cause for pessimism. We do not belong to those who feel duty-bound to end ‘on a hopeful note.’”\textsuperscript{329}

Yet, despite this apparent and deep held pessimism, and promise to avoid unnecessary positivity notwithstanding, Herz’s theory ends with a vision of a future, that, while not utopian, is free of violence and war, hinging on the fundamental understanding that “man can act,” and, by doing so, better his state of affairs.\textsuperscript{330} With this understanding, \textit{Political Realism and Political Idealism} and Realist Liberalism can be seen as an academic working out of Herz’s pessimism. By the end, Herz has moved past his fundamentally pessimistic anthropology, arguing that man, and therefore nations, can overcome the security dilemma.

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Comparatively, Loewenstein’s understanding of human nature, as conceived through militant democracy, is in line with Herz’s description of the security dilemma. Within Herz’s model, the idea that democracies must take steps to temporarily deprive fascists of fundamental rights in an effort to protect democratic institutions can be seen as an act by a political unit attempting to deprive a potentially hostile opponent of power, as part of an effort to feel more secure. However, beyond this initial understanding, the two theories diverge. While Loewenstein’s pessimism led him by 1944 and in the aftermath of the war to conceive of militant democracy as a permanent solution, even going so far as to argue that fascist states and democratic states could not coexist, thereby advocating for the proactive destruction of fascism

\textsuperscript{329} Hacke and Puglierin, “Balancing Utopia and Reality,” 228.

\textsuperscript{330} Herz, \textit{Political Realism and Idealism}, 134.
by democracies, Herz believes that through the creation of an international system peace could be achieved. If nations, irrespective of their political ideologies, are willing to follow the path of Liberal Realism, then a peaceful world order can be created and maintained. While Herz acknowledges that this theorized future is unlikely to come to pass, and is at least in part wildly idealistic, at least in his understanding of international relations and politics there exists a possibility for a future free of violence in which man has escaped the constraints of this anthropology. Contrastingly, in Loewenstein’s militant democracy, there is not.

In the end, Herz was able to overcome his pessimism, while Loewenstein was never able to escape his anxiety about fascism. This difference underscores the unique quality of Loewenstein’s militant democracy, as well as its theoretical and practical complexity, features lacking from the descriptions of militant democracy presented by scholars referencing Loewenstein’s theory. Despite their shared biographies and similar worldviews, Loewenstein and Herz arrived at dramatically different solutions for the dilemmas facing modern democracies.
Conclusion:

The Lasting Influence of Militant Democracy

On May 8, 1949 the new German constitution, the Basic Law for the Federal Republic of Germany, was approved, and, following review by the Allied Military government (which at that time still occupied Germany), came into effect on May 23, 1949.\footnote{Tyulkina, “Militant Democracy,” 4.} Included in this new constitution, with an eye the failures of Weimar and the emergence of the Nazi Party, Germany’s constitutional court, the \textit{Bundesverfassungsgericht}, has the ability to label political parties as unconstitutional.\footnote{For a detailed explanation of this law see Klamt, “Militant Democracy and the Democratic Dilemma,” 136-137.} Detailed in Article 21, section 2,

\begin{quote}
parties that, by reason of their aims or the behavior of their adherents, seek to undermine or abolish the free democratic basic order or to endanger the existence of the Federal Republic of Germany shall be unconstitutional. The Federal Constitutional Court shall rule on the question of unconstitutio\textperiodcenteredality.\footnote{Basic Law for the Federal Republic of Germany, 27.}
\end{quote}

The Federal Constitutional Court also has the ability restrict the fundamental rights of citizens if those citizens abuse these rights as part of an effort to undermine democracy, as outlined in Article 18, which states that

\begin{quote}
whoever abuses the freedom of expression, in particular the freedom of the press (paragraph (1) of Article 5), the freedom of teaching (paragraph (3) of Article 5), the freedom of assembly (Article 8), the freedom of association (Article 9), the privacy of correspondence, posts and telecommunications (Article 10), the rights of property (Article 14), or the right of asylum (Article 16a) in order to combat the free democratic basic order shall forfeit these rights. This forfeiture and its extent shall be declared by the Federal Constitutional Court.\footnote{Basic Law for the Federal Republic of Germany, 27.}
\end{quote}
These two provisions, which act to limit the ability of fascists, communists, or other extremists to abuse democratic rights in order to destroy the democratic system, are clearly examples of militant democracy in action, and represent the first time such provisions have been included in the constitution of a modern state.

Today, following the example of Germany in the Basic Law, numerous countries have either amended their constitutions to include provisions which can be characterized as militant democracy, or have passed legislation which seeks to temporarily deprive the fundamental rights of those that are attempting to overthrow the democratic order.335 Among others, these countries include Australia, Russia, Turkey and Spain, and today, amid new concerns about domestic terrorism activity, and in the aftermath of the September 11 attacks on the United States, even more nations are looking towards militant democracy as a possible solution for Muslim extremism as part of the War on Terror.336 While this global legislative and constitutional movement cannot be attributed solely to Loewenstein (similar legislation existed before he ever wrote on the subject), such laws can be seen as examples of the importance of his thinking, as well as the enduring legacy of militant democracy as a political idea. While the practical examples of militant democracy today fall chronologically into the earlier part of Loewenstein’s work – as of yet no nation has taken militant democracy to the logical conclusion that he did by 1944, believing that it is impossible for autocratic and democratic states to coexist – the ideas

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334 Basic Law, 25.


discussed by Loewenstein clearly have had a lasting influence of the way in which democracies respond to potential enemies.\footnote{As discussed earlier (see introduction), this topic – the relationship between Loewenstein’s early academic work and current legislation – is what occupies most scholars concerned with Loewenstein and militant democracy.}

Yet, despite these positive developments, as well as the fact that fascist Germany did not reemerge to threaten the west, Loewenstein remained pessimistic for the remainder of his life. Writing to Herz on October 13, 1960, Loewenstein is sharply critical of West Germany, expressing sympathy with the Soviet controlled East, as the “youth in Eastern Germany derives considerable satisfaction on building up a new country, and [this] achievement is considerable enough to compensate for the loss of certain western freedoms.”\footnote{Karl Loewenstein to John H. Herz, October 13, 1960. John H. Herz Papers. German and Jewish Intellectual Émigré Collection. Box 3, Folder 73, University at Albany, Albany, New York.} While Loewenstein’s affinity with a system that deprives citizens of their fundamental rights is not particularly surprising, it is notable that Loewenstein compliments this system while criticizing West Germany, which by 1960 was a fully functioning, independent democratic state with a constitution that contained many of Loewenstein’s theoretical ideas.

Writing again to Herz again on February 5, 1972, only a year before his death, Loewenstein is still clearly pessimistic. Responding to a number of articles (which are not named) that Herz had sent him, Loewenstein is highly critical of “the producers of the behaviorist nonsense,” and believes that

I think we [Loewenstein and Herz] should borrow from them a piece of their thunder and add that many of them, if not the majority, are Jewish, which does not seem to me purely accidental. I take some names at random; The Almond, Aptel, de Sola Pool, Deutsch, Easton, Eulau and so on. I have the hunch that plethora of Jews among the new scientists is a flashback to their former Talmudic training. Most of what they do, the subtle distinctions, the use of mathematical or psuedo-mathematical formulae, the graphs etc require a specific turn of mind that seems to me altogether Talmudic. The attraction of the game lies also in the incapability of being checked or controlled by objective standards. Nobody ever tests the formulae in practice. Of course this cannot be said in public because “science” is “objective” and beyond bigoted bias. Nonetheless,
it is worth considering.\textsuperscript{339}

Although discussing the development of behaviorism and not militant democracy or fascism, Loewenstein’s bitterness is readily apparent. Further, just as he did during his public campaign for militant democracy in the years before World War II, Loewenstein is taking care to separate himself from other Jews, going so far as to characterize Jewish thinking as coming from a particular Talmudic state of mind that obviously, by implication, he does not share. Clearly the pessimistic worldview that found expression in Loewenstein’s anxiety about fascism and campaign for militant democracy is still, at this late date, in existence.

On his part, Herz remained optimistic. In 1981 he published a follow up to \textit{Political Realism and Political Realism}, “Political Realism Revisited” in \textit{International Studies Quarterly}. Here, Herz reaffirms much of his original writing, arguing again that man is driven by the security dilemma, and that historically political systems can be defined as either realistic or idealistic. He still believes that through a combination of these two systems, which he originally described as Liberal Realism (a term that he does not use in this article), a peaceful international system can be achieved. During the thirty years since his original work was published, Herz has come to believe that two additional areas of inquiry are important as part of the effort to understand international relations: the development of a more “sophisticated” understanding of realism “that distinguishes ‘real’ facts and situations from the views of actors and publics have formed about them,” and an inquiry into the idea of purpose, the “ought to of politics... not in the utopian fashion of a moralist approach but in the sense of finding out what are attainable objectives in international politics.”\textsuperscript{340}


As part of a more nuanced understanding of realism, Herz is interested in the role played by “image and image-making, of status and ranking, of diplomatic symbolism, of recognition and nonrecognition” in international relations.\(^{341}\) While he does not undertake this investigation within this article (in fact “Political Realism Revisited” reads as more of a project proposal than an argument driven essay), he believes that research along these lines is important and necessary. In regards to purpose, to Herz the overriding concern behind international politics, in a “nuclear age, where all have become penetrable,” must be world peace, and “purpose, therefore, in a nuclear age, must be defined in a way that recognizes world peace as the overriding interest of all.”\(^{342}\) Herz’s understanding here is, in effect, a doubling down of his belief in the possibility for a world free of international conflict, a confirmation of the optimism seen originally in *Political Realism and Idealism*. Even after the American failure in Vietnam and three decades of nuclear standoff, he still imagines a future in which international politics can act as a means for mankind, despite ideological and political differences, to create a world system that provides security and obviates the security dilemma. Unlike Loewenstein, Herz was able to move past his pessimism.

This pessimism is essential to Loewenstein, and helps explain and reveal the distinctive evolution of militant democracy from 1935 until 1946. Beginning with Loewenstein’s “Autocracy Versus Democracy,” and ending with his critique of denazification following his exit from government service, militant democracy transformed from temporary restrictions on fascists to protect democracy into a full-fledged transformation of the democratic system, underscored by the belief that democracies and autocracies could never coexist. This evolution, and the documents that reveal it, are essential to understanding militant democracy. While Loewenstein’s more extreme thinking never found its way into any modern constitutions or

\(^{341}\) Herz, “Political Realism Revisited,” 187.

\(^{342}\) Herz, “Political Realism Revisited,” 188, 191.
legislation, it still represents an example of how an émigré intellectual responded to the conflict between democracy and fascism in the aftermath of his forced immigration from Germany due to his ethnic heritage. Ignoring this story is a misunderstanding of Loewenstein and his work, as well as his place within the greater émigré movement.
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