

Rackets

Gerhard Scheit
Translated by Lars Fischer

The term racket first turned up in the context of Critical Theory toward the end of the 1930s and instantly attained considerable conceptual significance. In his notes and drafts for *Dialectic of Enlightenment*, Horkheimer identified the racket as the 'elementary form of domination'.¹ The term originated in the language of American legal scholars and criminologists. As Otto Kirchheimer noted, it commonly referred to 'monopolistic practices which are carried through by physical force, violence in trade disputes, or similar objectionable means'.² More recently, it was principally Wolfgang Pohrt who drew attention to the relevant texts and the significance of the concept for Critical Theory. He also pointed to the term's variegated connotations that evidently prompted its use to designate specific political and societal tendencies and the implosion of society as a whole. 'Rackets', Pohrt explained, 'are not just bands of blackmailers but also self-help groups and charitable associations'.³

THE RACKET AND THE PHILOSOPHY OF RIGHT

Rather remarkably, Horkheimer's notes published posthumously under the title 'Rackets and the Spirit' indicate that he initially understood the term not so much in sociological but predominantly in philosophical and psychological terms. One might infer from this that the very historical and sociological specificity inherent in the term, given its connection to contemporaneous phenomena in US-American society, was lost in this process of appreciation. Nor did the critique of political economy take center stage. Phenomena such as the commodity form and social relations in capitalism, the exchange value and the process of valorization feature merely as one means among others with which rackets exercise their domination. Rackets, Horkheimer noted, had

ruled as the rackets of clerics, of the royal court, of the propertied, of the race, of men, of adults, of

families, of the police, of crime, and, moreover, within each of these sectors as individual rackets against the rest of the respective sphere. Everywhere they have established the opposition between the inward and the outward. Man, if he belonged to no racket, was in a radical sense on the outside, was lost as man. Yet even in the head of the atomized individual the rackets still ruled by means of their concepts and modes of judgment, through the thought patterns and concerns that originated in their world.⁴

Yet on closer inspection it transpires that the domination of the rackets actually hinges on the safeguarding of the existing division of labor, bringing the mode of production and the issue of sovereignty into focus after all. Rackets, Horkheimer explained,

preserve the conditions required to guarantee the division of labor within which they hold a privileged position by resisting with force any change that might endanger their monopoly. ... The constellation of rackets based on a specific mode of production can be called the ruling class insofar as they jointly both protect and suppress the lowest strata of society. Depending on the economic dynamics that shape their material interest, the rackets can in fact be at odds with one another and may well, consciously or unconsciously, perpetuate their separation from one another, always provided that in doing so they can strengthen their safeguarding function.⁵

At this point a closer determination of the mode of production itself does not seem crucial for the development of the concept. Rather more important is its ability to help explain the relationship between the individual and the collective. 'The sclerosis of the racket towards those beneath it is identical with the sclerosis of the individuals it comprises. It has been consciously promoted throughout history. In the case of one's own children it is brought about by bringing them up and educating them.' It was 'only in those emphatically liberal periods, in which, for economic reasons, part of the racket was required to own authoritative characteristics', Horkheimer clarified, that the bringing up and education of children had

taken on humane qualities. In its cruelty previous practice still resembled the initiation rites of a

primitive tribe – itself a racket. For those who are not already entitled by descent to become part of the racket the requisite process resembles not the admission of youngsters into the tribe but the initiation into the privileged racket of the magicians. The individual's personality has to be crushed absolutely and iron-clad guarantees for its future dependability are required. The individual must relinquish all power and burn all its bridges.⁶

That Horkheimer assumed the rackets had been capable of change only in the era of liberalism already indicates that he views them as a dialectical counterpoint to the law. And yet, rather confusingly, Horkheimer also defines them as a form of social contract. 'As the true Leviathan,' he wrote, 'the racket demands the unreserved social contract.'⁷ If we follow Hobbes the crucial term in this formulation has to be 'unreserved'. While the individual benefits from the reserve powers of the sovereign who monopolizes the use of force, the racket is able to insist on an unreserved social contract even when the monopoly on the use of force is in the process of disintegrating or simply inexistent. From Hobbes's point of view, then, with whom this metaphor for the state originated, what Horkheimer described was in fact anything but the true *Leviathan* and had rather more to do with that other biblical monster, the *Behemoth*, which for Hobbes stood for unfettered civil war.

In the context of Critical Theory, then, the term racket was adopted to designate what Carl Schmitt (affirmatively) called 'non-derivative' power, a form of power, in other words, that exists 'extra-legally' even in states that maintain the rule of law, and that ordinarily seems to merit little attention.⁸ Yet the appropriation of the term in Critical Theory departed decisively from Schmitt's approach in that it takes the vantage point of the individual. For the Critical Theorists, the principal focus was on the continued or reconstructed personal dependency of the individual under conditions that had, in principle, abolished that dependency: the rule of law and the social relations of capitalism. Their adoption of the concept of the racket

reiterated Marx's well-established insistence, against the bourgeois economists, that, 'under their "rule of law", the law of the jungle lives on under a different guise'.⁹

The juxtaposition of rackets to the law also opens up a new perspective on the law. Their ultimate purpose is the forcible implementation of unity at the expense of the law. It is no coincidence that in the legal sphere the term racket refers to illegal economic practices and criminal methods that frequently run alongside contractual agreements or replace them and that must be combatted to maintain the rule of law. When the concept of the racket is applied to the issue of state sovereignty, the very principle of legality is called into question. Societies 'that organize themselves along totalitarian lines', Horkheimer explained, are embroiled in 'a struggle against the law, against all forms of mediation that have taken on a life of their own and linguistic form. The fundamentally illicit nature of the racket lies in its opposition to the Spirit, even where it is not only legal but in fact behind the law'.¹⁰ It is worth noting, though, that this defense of the forms of mediation created by the law by no means implied a belief in the reconciliation of the general and the particular or the existence of a 'true generality', neither of which – as even Franz Neumann emphasized – the law can achieve.¹¹ It amounted to no more than a defense of conditions that might allow this reconciliation and generality to become real at some point in the future. Yet this hope could be entertained only if one assumed that the law had become integral to the Spirit. That Horkheimer did so is evident from his contention that even in a democracy ruled by rackets the 'true concept' of democracy – invented to abolish this very form of rule – would never really disappear. The goal of politics, Horkheimer wrote, namely,

to disrupt the boundary between the inward and the outward, once achieved, will transform the world. The idea of true democracy leads a repressed subterranean existence among the masses and within it, the premonition of a society free of rackets has never been extinguished altogether.¹²

As indicated, this sketch of the concept of the racket is particularly remarkable in that Horkheimer did not deduce the defensive forces of the law with the means of the critique of political economy, even though this would have been a particularly obvious path to take, given the origin of the term racket. Instead, Horkheimer took recourse to the philosophical concepts of German – and especially Hegelian – idealism, which he sought to translate directly into political categories.¹³ In so doing, he also exposed the contradictory nature of idealism's conception of the state, which all the talk of Hegel as the Prussian state philosopher had obscured. Horkheimer's notion of a 'true idea of democracy' that continued to exist even in the worst real-existing democracy corresponded to Hegel's designation of the true state. Thus Horkheimer is still (or again) able to develop a positive concept of politics but this concept, like Hegel's concept of the state, is dependent on consciousness, on the Spirit, and precludes any notion of the state as a mere machine.¹⁴

One might respond to this Hegel-inspired determination of the 'Spirit' from the vantage point of the critique of political economy by pointing out that under the rule of law, the law presupposes a specific self-reflexive relationship of consciousness to itself. Consequently, it also maintains a non-theological truth claim. By contrast, the self-valorizing value of capital, as it were, blocks out such reflection, or rather, it permits self-reflection only through the legal relationship. The law thus emerges as a prerequisite for the conception of a categorical imperative (in lieu of god's command) and the distinction between the state's laws and what Kant called the 'moral law in me'.

THE SOCIOLOGY OF THE RACKET

While the draft on 'Rackets and the Spirit' was essentially an exercise in philosophy, in his essay, 'On the Sociology of Class Relations', Horkheimer attempted to offer a

sociological and materialistic definition. Here he concluded that ‘the modern concept serves to describe [the] past social relations’ and closed by quoting Marx’s statement that ‘the anatomy of man is the key to the anatomy of the monkey’.¹⁵ That Critical Theory approached the rackets as it would the human physiognomy from which one can reconstruct that of the monkey indicates that its central focus here was still on ‘man’, in other words, on contemporary society. It alone was really shaped by the rackets through and through. Only in the present had the totalization of the principle of the racket occurred. ‘The racket-pattern which has been typical of the behavior of the rulers toward the ruled is now representative of all human relations even those within labor,’ Horkheimer wrote.¹⁶ Critical Theory thus began to break out of the identification with the working class and the labor movement that characterized traditional Marxism. The proletariat was now understood as an integral part of capitalist society. The working class and its organizations blended into a constellation in which everyone fought for ‘as large a part as possible of the circulating surplus value’:

In the contemporary slang-use of racket as an equivalent for any profitable job there might be no conscious thought of all these implications, but objectively it expresses the idea that in present-day society every activity, whatever it may be, has as its content and goal no other interest than the acquisition of as large a part as possible of the circulating surplus value.¹⁷

Against the backdrop of Horkheimer’s comments about the family under liberalism¹⁸ the solidarity that had once been characteristic of the working class arguably emerged as exceptional in that it had been able to lend humane features to the racket, throwing into sharp relief the distinction between solidarity and charity. The Critical Theorists presumably took recourse precisely to the term racket to designate forms of personal dependency and direct compulsion because the term’s connotations included not only the gang but

also, rather oddly, the benevolent association. A gang qualified as a racket in the strict political sense only if its power depended not only on the threat of violence but also on the sort of voluntary recognition and collective identification within its realm or locale, just like the modern state must demand if it wants to survive. Alongside the use of force in ways totally unfettered by any legal constraints, this presupposed carefully fine-tuned forms of charity that often had to precede the deployment of terroristic means. Through its social and economic assistance the power of the racket lodges itself between civil society and the family. It does so whenever the state itself is unable to integrate divergent social forces. It is a self-destructive synthesis that conflates family and state and transforms all relationships mediated by society into direct relationships between individuals who, because they are unfree, cannot but threaten and suppress one another.

When the German sociologist Alfred Vierkandt sought to define solidarity, he already did so in accordance with the permeation of society by the precepts of the racket: ‘Solidarity is the ethos of a closely knit community,’ he wrote.¹⁹ Yet in Roman Law solidarity did not denote a community, close-knit or otherwise, let alone an ethos – both concepts that in a sense already reflect the perspective of the racket – but a specific legal relationship stipulating that each individual is liable for the whole, *in solidum*: for the entire amount. When the labor movement picked up the concept it maintained something of the consciousness that the common bond of solidarity is a mediated one. Rather than striving to create a community and demand a particular ethos, the priority lay on quite practical measures of mutual protection in the face of the menaces manifestly created by the capitalist relations of production. Whether one knows somebody or not is irrelevant to a form of solidarity predicated on the knowledge that one owes solidarity to others because their contract of employment places them in a position formally identical to one’s own. Yet among the

many forms of private charity the racket is evidently the only one capable of filling the space of solidarity in its entirety because it substitutes an ethos or faith for the awareness of the infinitely mediated character of society. The class conflict over the surplus value is reduced to immediate empathy and particulate aid. It is when the mass individuals identify with one another by substituting the figure of a leader for their ego ideal – a process Freud described in *Mass Psychology and the Analysis of the Ego* – that the unity is created that supersedes class consciousness.

In the past, charitable donors had expected their reward to come from God. The bourgeois benefactors who no longer believed in him or in divine rewards, however, were left with only the social prestige one acquires through one's actions. Yet the collective benefactor who relies on religious and national identity demands gratitude of its charges, demonstrated at the very least by the adoption of a specific ethos. In this context too, the effects of secularization can only ever be grasped in terms of the situation of the individual. Whether charities affirm the bourgeois society within which they operate in the way in which they mete out their benevolence or not is a crucial distinguishing feature. In other words, are the relations among the members, between the officials and the members, and between the benefactors and the beneficiaries organized in accordance with the principles of capitalist exchange, and is the relative autonomy and protective anonymity of the individual still maintained even when it is a pauper, or not? What constitutes good bourgeois charity is the willingness still to view the individual as a potential owner of goods even when it no longer possesses any, a willingness well matched to the embourgeoisement of the large denominations who were forced to open up, however reluctantly, to the dynamics of modern society.

Yet organized charity can also generate, at its core, the total rejection of civil forms of interaction. It can offer the individual precisely that from which it was emancipated by

those forms belonging to bourgeois society. In so doing it not only perpetuates pre-modern relations – direct compulsion and personal dependency – but modernizes them in order to arm itself against society's promise of emancipation. What it offers to the forlorn and atomized is the warmth of the 'original closeness of blood [*Blutsurenge*]'.²⁰ The ambivalence of secularization under capitalist conditions thus becomes evident. For the concept of the private concern can belie the fact that this concern, be it pastoral or charitable, can be understood by the rackets – who owe their very existence to the destruction of the individual's privacy – as being inherently theirs. Individual privacy, which needs to be defended even against the privacy of the family, indeed, precisely against the latter, is part and parcel of the 'dignity' of the individual in its capacity as what Marx called the 'owner of commodities'. Under the political pressure of the rackets the individual is still a 'commodity owner' yet loses even this last dignity, which belongs to it in that role. Thus the private is declared to be the immediately political and the rackets triumph over the law and prevail because they are able to offer an effective and popular ideological substitute for the promise the welfare state fails to keep.

As opposed to the welfare state, which embodies the anonymity of capitalist valorization, these rackets take care of the individuals *personally*. Within them, the individual gives up (or is forced to give up) the anonymity it owns as a private individual in bourgeois society. The individual finds itself in a secondary family, in relations that are not constituted by exchange but by *gift*, a form of exchange, in other words, in which the objects and services are not detached from the individual – as goods and labor are contractually. Rather, they accrue and adhere to the individual again, like the earlier privileges and obligations under pre-capitalist conditions. The beneficiary of such charity feels used in the most personal way imaginable – with his or her soul, body and entire existence.

Although the racket may bestow aid in monetary form the way in which the individual then makes use of that aid is based not on abstract labor but on concrete corporeality, albeit a form of corporeality that has no purpose other than to disappear at the right moment when it is sacrificed for the community and the racket.

RACKETS AND STATE CAPITALISM

The need for the concept of the racket arose when it became apparent that the social and political developments in Europe and the United States after the Great Depression – the process that Horkheimer described as the weakening of the defensive forces of the law – could not be explained by Pollock's theory of state capitalism alone. It also offered an opportunity to develop a substantive distinction between ongoing developments in the United States, on the one hand, and National Socialist Germany, on the other. Kirchheimer and Neumann in particular pursued this opportunity in their studies of National Socialism. Both of them were, of course, legal theorists and former students of Carl Schmitt.

As early as 1930, Walter Benjamin had already offered an analysis of the transition from the strong state to the state of gang rivalry taking place in the latter years of the Weimar Republic. He did so in a review of an essay collection edited by Ernst Jünger, *War and Warrior*. His review, quite appropriately, bore the title, 'Theories of German Fascism'. In the various contributions to the collection, among them Jünger's well known musings about 'total mobilization', Benjamin recognized 'an unrestrained application of the principles of *l'art pour l'art* to war'.²¹ At the same time, the state seemed to have been reduced to a negligible entity. That Jünger was aestheticizing a war that had, after all, transpired between states seemed insignificant, given the 'mysticism of world death'

that pervaded his vision.²² As Benjamin demonstrated, the forces for which Jünger stood in fact perpetuated the very 'failure of the powers of state' they bemoaned, indeed that very failure was their concept of the political and they embodied it. Benjamin thus anticipated some of the features that would subsequently characterize Kirchheimer's and Neumann's analyses of National Socialism and provided a first template for Horkheimer's concept of the racket:

Those hybrid military formations hovering between comradely fellowships and regular representatives of state power at the end of the war soon crystallized into independent, stateless hordes of mercenaries. The captains of finance and lords of the inflation began to question the efficacy of the state as the guarantor of their property and appreciated the availability of such hordes. Easily procured through private agents or the *Reichswehr* they could be relied upon to come rolling along like rice or turnips whenever they were needed. Even the publication under review resembles an ideologically worded recruitment prospectus for a new type of mercenary or, perhaps more accurately, a new type of condottiere.²³

Like Horkheimer and Neumann in their subsequent accounts, Benjamin too chose a broad historical perspective. While Horkheimer took recourse to the term racket and Neumann appropriated Hobbes for the title of his *Behemoth*, Benjamin, in his portrayal of developments in the Weimar Republic, referenced mercenaries and condottieri.²⁴ Benjamin's discussion of Ernst Jünger's 'total mobilization' was no less overtly polemical than the racket concept would subsequently be. As Kirchheimer stated explicitly:

The term *racket* is a polemical one. It reflects on a society in which social position has increasingly come to depend on a relation of participation, on the primordial effect of whether an individual succeeded or failed to 'arrive'. *Racket* connotes a society in which individuals have lost the belief that compensation for their individual efforts will result from the mere functioning of impersonal market agencies. But it keeps in equal distance from, and does not incorporate, the idea of a society wherein the antagonism between men and

inanimate elements of production has been dissolved in the image of a free association for the common use of productive forces.²⁵

Plucked from the ‘polemics’ of US-American legal practice, in the context of Critical Theory the racket became an *index falsi*, an ‘index of the untruth of identity’,²⁶ whose meaning becomes fully evident only when one takes Freud’s psychoanalysis and the Marxian critique of political economy into account. Only on the basis of the most emphatic recognition of this untruth of identity in its specific historical guise can one maintain the general idea of a whole within which the individual is not subjected to violence. The issue is raised by Adorno in the notes he took on Beethoven in 1940. There he formulated it as the question that faces all music: ‘How can there be a whole without subjecting the individual to violence?’²⁷ The Marxian notion of a free association of individuals was thus renewed in Critical Theory.

On Horkheimer’s reading, the fascist dictatorship amounted to an attempt to enlist the critique of the racket for the latter’s own purposes. It sought to compel a society disintegrating into rackets – be they labor organizations or monopolistic capital groups – to unite as a *Volksgemeinschaft*, an ethnically homogeneous community.

It embodied a massive exhortation [that] commanders even the true critique of the racket for the latter’s purposes [and that, under the pretext of an ostensible attack upon the weakened rackets in the sphere of finance capital has now embarked upon an extension of the fascist dictatorship of the industrial monopolies – presented as democracy – across the planet].²⁸

In Horkheimer’s typescript, Friedrich Pollock subsequently deleted the passage I have placed in square brackets. Evidently there was some doubt as to how fascist rackets could be distinguished from other rackets. Has the specific mode of motion within the rackets been transformed in the fascist rackets, i.e., in Hegelian words: has it been negatively sublated? Is this why the latter are

compelled to take the ‘struggle against the law, against all forms of mediation that have taken on a life of their own’ to its ultimate conclusion? Yet what exactly this would mean also remains unclear. A Racket generally ‘shows no mercy to life outside of it, it knows only the law of self-preservation,’ Horkheimer argued.²⁹ Yet while the new Empire of the Rackets indeed showed no mercy to life outside of it, it did not ultimately hinge on the law of self-preservation either. It was the fascist dictatorship that fulfilled the promise of the racket in its entirety for the first time: identity without non-identity, annihilation for the sake of annihilation. ‘Left with no way out, the question of whether it is directed against others or against the subject itself – a distinction it never considered absolute in the first place,’ Adorno explained, ‘becomes a matter of total indifference to the compulsion to annihilate.’³⁰

THE ANALYSIS OF NATIONAL SOCIALISM

Even in 1939, Horkheimer still assumed that ‘Germany could disintegrate overnight into chaos and infighting among gangsters’.³¹ The ‘massive exhortation’ of the *Volksgemeinschaft*, in other words, was failing. Yet subsequently, the Critical Theorists began to realize that the *Volksgemeinschaft* invariably amounted to more than just that exhortation and did not necessarily rule out chaos and the infighting of gangsters within it. In this vein, Adorno commented on Pollock’s essay on ‘State Capitalism’ in a letter to Horkheimer of 1941 as follows:

In terms of the content, the crucial problem is: does the tendency towards a crisis-free command economy presented in the text really express the objective tendency of reality or does the current antagonistic state of affairs continue to preclude the notional purity of this construct in future too? I feel in no position genuinely to answer this question. My instinct is as follows: the truth of the concept lies in its pessimism, i.e., the view that the chances of domination in its immediately political

guise being perpetuated are greater than those of getting out. Wrong is the optimism, even for others. What is being perpetuated is not so much a stable and in some way rational state of affairs but rather, for the foreseeable future, a relentless succession of catastrophes, chaos and terror but with that, conversely, also a renewed chance of escape.³²

However integral the role of rackets might be in the implementation of laws, under the rule of law their room for maneuver would ordinarily be severely curtailed. Like other forms of mediation, Horkheimer stressed, the law asserted its own essence and defensive force against the rackets. Since they were predicated on the need time and again to transcend the specific individual and its immediate integration into the racket, thus facilitating detachment, the means of domination were set up within these forms of mediation against domination as 'the reflection that unmasks it'.

Yet the permanent state of emergency allowed the rackets to come directly to the fore: among the rank and file of the mob, in the mass organizations and, equally, among the higher echelons and the ruling elites. All legality was so comprehensively appropriated by them as a technical resource for their rivalry that they merged, creating the precise opposite of market-based competition. Once human beings treated one another as ethnic comrades [*Volksgenossen*], it became impossible to transcend the specific individual and its immediate integration into the racket. 'With the accession to power of National Socialism', Kirchheimer explained,

the common legal bond of a generally applicable civil law disappeared more and more, and at the same time the professional organizations lost their voluntary character. The labor organization, economic groups, the handicraft and peasant organizations became compulsory organizations. By the same token the National Socialist system dispensed with an outside body to whose authority a group member could appeal when faced with an inequitable group decision.³³

The 'ideology of the community', in other words, 'deprived the weaker group member

of the right to appeal to an outside body which would be prepared to maintain the intra-group balance'.³⁴ All the rackets,

the industrialists and landowners, party and army, as well as the corresponding bureaucracies, jealously see to it that nobody trespasses into the provinces carved out for each by common agreement; the tendency is, therefore, towards departmentalization, towards disappearance of a unified system of law behind innumerable steadily increasing special competences.³⁵

The most successful racket in any given instance was the one that most consistently eliminated any remaining forms of mediation. Critical reflection became impossible since domination and the means of domination could no longer be juxtaposed. The means of domination were deployed exclusively to serve the domination of the racket in question, which drew its authority from the leader and the ethnic community.

Unlike Kirchheimer, Neumann did not resort directly to the concept of the racket in his analysis of National Socialism. Perhaps the term struck him as being too closely tied to legal terminology. Yet when he referred to 'gangs' and 'authoritarian corporations' in his discussion of power groups, the implications of the concept are nevertheless palpable.

Neumann denied the 'primacy of politics' stipulated by the concept of 'state capitalism'. He wanted to demonstrate that even in the current crisis in Germany the state was in no position to substitute planning for domestic class rule and the market mechanism. Yet in the event his analysis took him somewhere rather different than he had anticipated. Not only had the 'primacy of politics' not been enforced, Neumann argued, it would be impossible to enforce within the confines of the nation state. This he sought to demonstrate with empirical analyses of the German economy. He fundamentally questioned the stability of the National Socialist system and was convinced that the existing economic contradictions had to have some impact at a 'higher' level, even if that impact was concealed by the bureaucratic apparatus and the propaganda of the

Volksgemeinschaft. It was these economic contradictions that made war and ruthless expansion inevitable at the 'higher level'.

Neumann went beyond a traditional Marxist account and, in spite of himself, acknowledged an element of truth in the concept of state capitalism, namely, its focus on the form of crisis management that consisted in the elimination of the sphere of circulation as a form of social mediation. He appropriated this notion and in so doing radicalized some of the assumptions underlying the racket theory. Ultimately, he argued, it was questionable whether a formally and functionally united sovereign political authority actually still existed in Germany. National Socialism depended not simply on the abolition of the rule of law but on the disintegration of the latter's prerequisite, universal sovereign power. Neumann argued that the state was moving toward 'utter shapelessness'. Consequently, it could no longer be designated a state proper and should really be described as a 'gang, where the leaders are perpetually compelled to agree after disagreements'.³⁶ National Socialism actually no longer had a united apparatus of coercion at its disposal and was disintegrating into a number of political power centers. It was in this sense that Ernst Fraenkel had referred to the National Socialist state as a 'dual state'.³⁷ These power centers struck out all the more brutally since relations between them were not institutionalized and merely transpired on the personal level. The personal agreement reached in ad hoc negotiations no longer constituted unity in the sense of a state, be it a democracy or a dictatorship. National Socialism, on Neumann's reading, was a non-state characterized by anarchy and chaos.

Neumann's conclusion, then, was that National Socialism, in contrast, for example, to Italian fascism, constituted a non-state, effectively a totalitarian form of anarchy.

There is no need for a state standing above all groups; the state may even be a hindrance to the compromises and to domination over the ruled classes. ... But if the National Socialist structure is

not a state, what is it? I venture to suggest that we are confronted with a form of society in which the ruling groups control the rest of the population directly, without the mediation of that rational though coercive apparatus hitherto known as the state. This new social form is not yet fully realized, but the trend exists which defines the very essence of the regime.³⁸

Yet Neumann did not pursue any further the issue of the unity of this process, in other words, the question of what would replace the sovereign and what distinguished anarchy and chaos in the non-state from anarchy and chaos per se. He refrained from discussing the primacy of annihilation, annihilation, that is, for annihilation's sake. Indeed, in order to evade this primacy and maintain certain anachronistic notions of monopoly capitalism and the class struggle, Neumann fell short of the potential of Critical Theory in his assessment of antisemitism within the German *Volksgemeinschaft*, which he considered no more than a matter of propagandistic phraseology.³⁹ This blind spot was much more persistent in his case than it was with Adorno and Horkheimer who, in *Dialectic of Enlightenment*, achieved the decisive breakthrough in conceptualizing antisemitism in the development and crisis of capitalized society and placed its critique center-stage.

The fact that the first and most important study of the annihilation of European Jewry was written by one of Neumann's students gives an indication of how far Neumann had nevertheless progressed with his analysis. As Raul Hilberg acknowledged, he appropriated Neumann's concept of National Socialism as a 'non-state', in which the 'ruling elites' did not operate 'on the sort of unified rational basis we associate with a legislature or constitution'.⁴⁰ Yet Hilberg also pointed to a bias on Neumann's part that sprung from his Marxism. He had been quite right to analyze the aryанизation and liquidation of Jewish property as a means of promoting the tendencies toward greater concentration in the German industrial economy, yet he had then been unable 'to face

up fully to the fact that the Jewish people as such was being annihilated'.⁴¹ Hilberg went beyond this limitation and his perspective was inevitably inverted in the process. His analysis was predicated on the assumption that all relevant developments had to be examined from the vantage point of the 'German destruction effort'.⁴² It was this effort that necessitated the division of society into increasingly independent groups. As the process of annihilation gathered pace and became increasingly complex its implementation became dependent on an ever-increasing number of agencies, party offices, commercial enterprises and military entities. The annihilation of the Jews, Hilberg argued, 'was a total process'. The machinery it required 'was structurally no different from organized German society as a whole ... The machinery of destruction was the organized community in one of its special roles'.⁴³ It is one of the most peculiar paradoxes in the development and reception of Critical Theory that Hilberg evidently was only able to attain this insight by also appropriating from Neumann the inability to place antisemitism center-stage as the determinant delusion in this total process, as the actual reason why the process and the organized community became indistinguishable.

Against this backdrop the notion of the disintegration of the monopoly on the use of force that Neumann ascribed to National Socialism and his concept of the 'non-state', in turn, require some modification. An organization like the SS, for instance, gained a kind of monopolistic status, precisely because it served the protection of the Führer, who embodied it, on the one hand, while ultimately being in command of virtually all the workings of the machinery of annihilation, on the other.

The Concept of the Racket and Jihadism: On the Topicality of Critical Theory

Contemporary historians of the National Socialist state have appropriated some of

Neumann's and Hilberg's insights. Yet the issue of the gangs and rackets that invariably spring from the dynamics of this new *Behemoth* has been broken down into the positivist controversy between 'intentionalists' and 'functionalists'. This is possible only because the question of the unity of the process and of the state, and thus, by implication, of the relationship between state and capital, is no longer raised on either side of the debate. Against this tendency one should take recourse to those studies that were predicated on a notion of the whole as the untrue Adorno expressly acknowledged this in the short critical appreciation of Neumann he wrote some years after his untimely death for a planned collection of Neumann's texts. Neumann's concept of the *Behemoth*, Adorno wrote, stood 'in marked contrast to superficial notions of a monolithic fascism'. Neumann had demonstrated that

the National Socialist state, for all its conceit of total unity, was in truth pluralistic. Political decision making occurred through the haphazard rivalry of powerful social cliques ... [S]ociety disintegrates into a diffuse barbaric plurality, into the opposite of the reconciled plurality that alone would be a state of affairs fit for human beings.⁴⁴

Horkheimer in particular continued to think of this reconciled plurality in terms of a society liberated from the rackets.⁴⁵ Yet the concept recedes in the writings of Adorno, Horkheimer, and Kirchheimer after the demise of National Socialism. Having still played a certain role in *The Authoritarian Personality* and *The Psychological Technique of Martin Luther Thomas' Radio Addresses*, it subsequently featured only infrequently. How the rackets might be connected to the culture industry and the administered world was not discussed. Adorno, Horkheimer, Marcuse, and Kirchheimer undertook no further attempts to utilize and elaborate on the racket concept in the post-war context.

The concept only regained its poignancy in the reception of Critical Theory after the end of the Cold War, and initially just

in a German-speaking context and outside, or at best on the margins, of academic discourse. It has been advanced, as we saw, by Wolfgang Pohrt and by a number of authors who, like myself,⁴⁶ publish with the *Initiative Sozialistisches Forum* and the *ça ira* publishing house,⁴⁷ and in journals like *Prodomo* (Cologne) and *sans phrase* (Vienna). This return of the concept of the racket is owed not least to the appearance of djihadism and the way in which it relates to the monopoly on the use of force. In the context of Critical Theory this re-appropriation of the concept nevertheless amounts to the claim that it points to universal social trends the world over – in the ‘Orient’ as much as the West, in the countries of the former Soviet sphere of influence as much as the European Union and the United States – for all that these trends progress in different ways in the various countries depending on the persistence of the rule of law. The assertion of the racket against the rule of law can equally well take on a djihadist or right-wing populist guise, the attenuation of the defensive forces of the law can transpire through the partial implementation of Sharia law in the legal practice of Western states just as well as through the call of right-wing populists for referenda to replace the mediation of public opinion in representative democracy.⁴⁸

Precisely what had been most abstract in the insights of Critical Theory in the 1930s and 1940s turns out to be extremely efficacious in the concrete analysis of contemporary developments. This concerns, on the one hand, the notion that in a situation of crisis society disintegrates into gangs and thus eliminates the spheres of circulation and due process, turning the rackets into the principal articulation of the political. On the other hand, it emerges that any sense or form of unity within and in the face of this process of social disintegration can be attained only by fantasizing about a Jewish world conspiracy, in which mediation and circulation return in phantasmagorical form.

Inevitably, everything looks different in the current Middle East, the wellspring of djihadism. This concerns not only the opportunities for the rackets to profit from the dissolution of the mechanisms of circulation and their relations with, and position within, the world market. Given the current economic significance of oil and depending on their respective points of departure, these rackets take on a broad range of forms that would have been impossible against the backdrop of the highly developed and standardized industrial production in Germany in the 1930s. Perhaps the greatest change concerns the ideological guise of the evoked world conspiracy. Since unity is established through an annihilatory mania directed above all against one state – the Jewish state, which is imagined as the Jew among the states – the total process of which Hilberg spoke – in which the machinery of extermination became indistinguishable from German society as a whole – also takes on a different form. The ‘machinery’ within which a variety of djihadists on Israel’s borders – the Muslim Brotherhood in Egypt, Al Qaeda, and Islamic State in Syria and Iraq – ‘collaborate’ with the Iranian dual state (a form of collaboration that exists only insofar as it is predicated on their joint negative fixation with Israel and Zionism) is virtually indistinguishable from an entity that is *religious* rather than social in character. Needless to say, this too is ultimately a social issue, however, insofar as religion can only ever be understood as a social phenomenon. Even so, its specificity lies in the fact that, in this context, individuals, whether as clerics or as believers, refuse a priori and on principle to accept the separation of politics and religion and the distinction between public and private that are stipulated by the sphere of circulation and the rule of law.

On the other hand, the specific strand within Islam within which political functions are taken on directly by the clerics who become religious leaders and lay claim to absolute authority, marks a particular stage in the process through which the principle of

the racket becomes total. Within its sphere, this form of Islam is capable of bringing the rivalry between the rackets, which elsewhere assault each other in bloody gang warfare, under control and manages to lend the religious community a sufficient measure of stability and continuity. Consequently, politics in the Shiite realm still build to some extent on the old nation state and yet have long since transcended it as a non-state with the Islamic Republic of Iran as an organized center for the onslaught on Israel.⁴⁹ Israel has acquired its status as bogeyman quite independently of its state constitution which does in fact reflect a particular form, shaped by the diaspora experience and religious tradition, of that which characterizes every western state: a merging of universal legal structures and particularist racket structures, whose inter-relationship is never entirely fixed but constantly up for grabs in accordance with the political development in any given country.

Characteristic of those countries in which djihadism is dominant is the fact that the defensive forces of the law have no opportunity of developing in the first place or are promptly eliminated again by the racket structures. In the same way as the Revolutionary Guards and the 'regular' army coexist in the Islamic Republic of Iran, for instance, because it is impossible to create a unitary structure by subjecting one of these armed rackets to the other, the Islamic Republic also lacks a universal legal system. Instead, the legal system is fragmented. The Supreme Court and the civil and criminal courts are undermined from the outset by 'special courts'. Independently of one another the 'revolutionary courts' function alongside the military courts, the judiciary of the Revolutionary Guards and the Basij,⁵⁰ not to mention the 'court of administrative justice', the 'special clerical court', the 'press courts' and so on.⁵¹

Yet in this case too, due to the existence of a 'religious leader' who is the sole source of ultimate authority, the rivalry between the rackets does not lead to armed

conflict between them, as it does, for instance, between Islamic State and Al Qaeda in the 'civil wars' in Syria and Iraq. This leader, in turn, is simply the embodiment of the fact that all the competing rackets can be integrated and brought to refrain from resolving their conflicts with violence. In connection with a similar context, Thorsten Fuchshuber has spoken of a 'de facto monopoly on the use of force'.⁵² The flipside of this coin is the resolve to destroy Israel that has been constantly upheld since the inception of the Islamic Republic. It is precisely this resolve that lends the Revolutionary Guards a privileged position among the competing rackets. They are not only closest to the spiritual leader for whom they were created but also have a particularly significant role to play in connection with Iran's nuclear program and its weaponization.

THE DEFENSIVE FORCES OF THE LAW AND THE LOGIC OF CAPITAL

When Horkheimer referred to the means of domination standing against domination as the reflection that unmask it, his focus was never just on the specific law or the judiciary, even though the Hegelian language might suggest this, but also on the consciousness that creates or applies it. In this respect, then, there is a crucial distinction between the legal subject and the commodified subject. The former needs to know what it is doing. As for the latter, if we follow Marx: 'They do not know it but they are doing it.'⁵³ One might indeed say that the commodified subject, in contrast to the legal subject, is not in fact a subject at all. Steeped in the tradition of classical philosophy, Marx never once used this term, which has been so popular in the recent reception of Marx. He spoke of the 'commodity owner' who has to exist simply because the commodities cannot walk to the market themselves. When Marx referred to the subject in his critique of political economy he did so in

terms of the intentionally oxymoronic ‘automated subjects’, a term that, in the shift from structuralism to post-structuralism, has come to be understood as a pleonasm. Strictly speaking, then, one cannot really speak of a crisis in the context of institutionalized law but only of a state of exception. Yet the constant possibility of such a state of exception allows the crisis to draw into question, as a matter of principle, the rationality that allows the legal subject to know what it is doing.

As we saw, in his draft of 1939/40, Horkheimer still located the ‘Spirit’ in whom the law had become a substantive factor in the consciousness of the masses, where ‘the idea of true democracy’ supposedly led ‘a repressed subterranean existence’.⁵⁴ It is presumably owed to the fragmentary character of the text that he did not explicate that ‘the masses’ can only be conceived of as masses of individuals who could interact in the spirit of solidarity and need not identify with each other in the name of a leader and benefactor. What Horkheimer described as ‘Spirit’ cannot be understood separately from the consciousness of each individual. When it eventually became clear that the idea of democracy no longer led even ‘a repressed subterranean existence’ in Germany he was compelled to view the post-National Socialist state as a mere mechanism after all. The consciousness without which the Spirit cannot work for the idea of true democracy he then saw, quite legitimately, embodied only in the US-American occupation power.

This transference of the Spirit to the American hegemon reflects the eminently historical dimension of the defensive forces of the law, an issue that Horkheimer did not raise in his draft. It is precisely this historical dimension that first points unambiguously to the critique of political economy. Anyone who wants to assert themselves under the rule of law can do so only if they subsume their demands and claims under certain legal principles or laws. Anyone who wants to partake of society’s wealth – which everybody is forced to do simply for the purposes of self-preservation – will

do so only via participation, however circuitous and mediated, in capital’s valorization process. Analogously to Hobbes’s Leviathan, one could speak of an imaginary ‘original contract’ in the realm of political economy. In it, all those who want to partake of society’s wealth, even if it is just in order to survive, accept its form, albeit without knowing any more about it than their legal consciousness imparts to them. They do not need to know that this form is predicated on the distinction between exchange value and use value; on the fact that the concrete labor is valid only as abstract labor. They do not need to know, in other words, that society is held together by the measure of the socially necessary labor time required to produce any given commodity, which is ultimately the measure of all modern forms of mediation. The one thing they do need to know about this fictitious ‘original contract’ is that wealth can, in principle, be appropriated only through contracts. This means, conversely, that the defensive forces of the law depend on adherence to this principle.

Yet what if wealth can no longer be appropriated through contracts? As Marx explained, capital is an ‘automatic subject’ – and yet, at the same time it is not. It is an automatic subject in the absence of crisis, yet, as Marx also pointed out, it concurrently undermines its own prerequisites and thus provokes the ‘non-automatic’ subject. Why, if this generates a process of disintegration and one can no longer attain wealth through contractual relations, should one acknowledge the contractual principle? To do so would hardly be rational. The very means that are indispensable for self-preservation under capitalist conditions come to contradict the principle of self-preservation. These social relations ‘constantly reproduce the potential unfolding of worse options insofar as they totalize scarcity through the mere consummation of just relations of exchange’.⁵⁵ Capital’s own logic predisposes it toward reducing the variable component of capital ‘toward zero’ and thus ‘permanently

demotes man as a species being to a pauper and bounty hunter'.⁵⁶ What this cannot explain, however, is why human beings are prepared not only to affirm this degradation but to outdo it with pathetic projections and delusions of annihilation and victimhood. This simply cannot be explained, not even with *Dialectic of Enlightenment*. Individuals can only combat these projections and delusions, whatever the prospect of success, and adhere, even 'in the state of their unfreedom', to the new categorical imperative formulated by Adorno in *Negative Dialectics*: 'to arrange their thinking and conduct so that Auschwitz never repeat itself and nothing similar may occur ever again'.⁵⁷

Since Marx it has been considered the principal purpose of the critique of political economy to disavow the hope that the agents on the markets and in the state apparatuses have it in their gift to subjugate the valorization of value to reason and contain the irrational with the rationality of the law. With Auschwitz an additional task has arisen as a practical imperative: that of considering this principal purpose a means of rejecting any playing down of the impending menace – not least when such trivializations think they can invoke the law's force of resistance.

Notes

- 1 Max Horkheimer, 'Die Rackets und der Geist', in *Gesammelte Schriften* vol. 12 (Fischer, 1985), 287–91, here 287.
- 2 Otto Kirchheimer, 'In Quest of Sovereignty', in *Journal of Politics* 6, 2 (1944), 139–76, here 159.
- 3 Wolfgang Pohrt, *Brothers in Crime. Die Menschen im Zeitalter ihrer Überflüssigkeit. Über die Herkunft von Gruppen, Cliques, Banden, Rackets, Gangs* (Tiamat, 1997), 28. Before legal experts appropriated it, the term was used among criminals and denoted noise or a hubbub or commotion. This usage 'probably comes from a device adopted by the old New York gangs. It was common practice for social and political clubs of the era to sponsor benefit galas on their own behalf. These were noisy affairs, what with the brass band and the general boisterousness stimulated by heavy drinking, so that they came to be known as rackets. Grasping the opportunity for easy and, to all outward appearance, licit profit, a gangster would organize a benevolent association of which he was the sole member, announce a racket, and with threats of demolishing their premises compel the neighborhood shopkeepers and businessmen to purchase blocks of tickets' (John Kobler, *Capone: The Life and World of Al Capone* (Putnam, 1971), 32).
- 4 Horkheimer, 'Rackets', 291.
- 5 *Ibid.*, 288.
- 6 *Ibid.*, 288–9.
- 7 *Ibid.*, 289.
- 8 Carl Schmitt, *Politische Theologie* (Duncker and Humblot, 1996), 13.
- 9 Karl Marx, *Grundrisse*, Marx Engels Werke vol. 42 (Dietz), 23.
- 10 Horkheimer, 'Rackets', 290.
- 11 'In a society that cannot, given the principle on which it is based, avoid force, true generality is an impossibility. But the limited, formal and negative generality of the law in the liberal order facilitates more than just capitalist predictability. Given that formal freedom cuts both ways, this limited generality also allows for a minimum of actual freedom and offers the weak at least a chance of attaining legal redress' (Franz Neumann, 'Der Funktionswandel des Gesetzes im Recht der bürgerlichen Gesellschaft', in *Zeitschrift für Sozialforschung* vol. 6 (1937), 542–96, here 594).
- 12 Horkheimer, 'Rackets', 291.
- 13 It would be too simple to criticize Horkheimer's apparent Hegelianism or portray his concept of the law as a precursor of Jürgen Habermas's approach. Horkheimer stuck to the Hegelian scheme only insofar as he also became a supporter of the United States' entry into the war. Engaging Hegel's notion of the sublation of the particular and individual as elements within the self-motion of the Absolute, Horkheimer's emphasis lay on the dimension of preservation within that process. He sought to defend the prerequisites of a form of social unity that would not violate the individual. He stressed the element of formal deferment inherent in that mode of Hegelian reflection upon society that can be understood, with Marx, as the self-mediation of value. In it, Horkheimer saw not so much an opportunity to realize this unity but a chance temporarily to restrain power. Given the integral significance of the war of annihilation against the Jews for National Socialism, it is in any case obvious that we are not dealing with any straightforward parallel here to Hegel's attitude toward Napoleon.
- 14 Consequently, the attempt to facilitate its affirmation by conceptualizing the state as a machine cannot genuinely draw on Hegel's *Philosophy of*

- Right* nor does it offer a critique (rather than a mere inversion) of the *Earliest Systematic Programme of German Idealism*, which denounced the state as a machine. Against the backdrop of the evolution of industrial production, it seems remarkable that the term was used to refer to something other than the actual machines integral to this mode of production. Yet it also regained the pejorative connotation it held in Greek antiquity, associating machines with machinations, i.e., forms of deceit that can become a matter of ideology. If one does not bear this in mind and understands the term machine literally, the designation of the state as a machine itself falls prey to such deceit. The more neutral Latin-based term apparatus is better suited since it does not connote any deceit.
- 15 Max Horkheimer, 'On the Sociology of Class Relations', Typescript, Na 1 Nachlass Max Horkheimer, 639, box IX, file 16, Universitätsbibliothek Frankfurt. In one of the four typescripts the [the] in square brackets was crossed out. A German translation of the text was published as 'Zur Soziologie der Klassenverhältnisse' in *Gesammelte Schriften* vol. 12 (Fischer, 1985), 75–104, here 104.
 - 16 Horkheimer, 'Sociology of Class Relations', 101.
 - 17 *Ibid.*, 102.
 - 18 Max Horkheimer, 'Autorität und Familie', in *Gesammelte Schriften* vol. 3 (Fischer, 1988), 336–417, here 403–405.
 - 19 Alfred Vierkandt, *Gesellschaftslehre* (Enke, 1923), 45.
 - 20 Marx, *Grundrisse*, 95.
 - 21 Walter Benjamin, 'Theorien des deutschen Faschismus', in *Gesammelte Schriften* vol. 3 (Suhrkamp, 1972), 238–50, here 240.
 - 22 *Ibid.*, 249.
 - 23 *Ibid.*, 248.
 - 24 Benjamin had already engaged the issue of sovereignty in a specific historical context in which such forces had the upper hand in his famous though rarely read book on *The Origin of German Tragic Drama*. His interpretation of baroque literature hinged on the early failure of state power in Germany.
 - 25 Kirchheimer, 'In Quest of Sovereignty', 161.
 - 26 Theodor Adorno, 'Negative Dialektik', in *Gesammelte Schriften* vol. 6 (Suhrkamp, 1997), 7–412, here 17.
 - 27 Theodor Adorno, *Beethoven. Philosophie der Musik. Fragmente und Texte* (Suhrkamp, 1993), 62.
 - 28 Horkheimer, 'Rackets', 291.
 - 29 *Ibid.*, 290.
 - 30 Theodor Adorno, 'Minima Moralia', in *Gesammelte Schriften* vol. 4 (Suhrkamp, 1997), 118.
 - 31 Max Horkheimer, 'Die Juden und Europa', in *Gesammelte Schriften* vol. 4 (Fischer, 1988), 308–31, here 319.
 - 32 Adorno to Horkheimer, 2 July 1941, in Horkheimer, *Gesammelte Schriften* vol. 17 (Fischer, 1996), 95–9, here 96; Theodor Adorno, Max Horkheimer, *Briefwechsel* vol. 2: 1938–1944 (Suhrkamp, 2004), 159–63, here 160–1.
 - 33 Otto Kirchheimer, 'The Legal Order of National Socialism', in *Studies in Philosophy and Social Science [Zeitschrift für Sozialforschung]* 9 (1941), 456–75, here 457. Hereafter 'Legal Order'.
 - 34 *Ibid.*, 458.
 - 35 *Ibid.*, 469.
 - 36 Franz Neumann, *Behemoth* (Oxford University Press, 1944), 522.
 - 37 Ernst Fraenkel, *The Dual State* (Oxford University Press, 1941).
 - 38 Neumann, *Behemoth*, 469–70.
 - 39 See Gerhard Scheit, *Der Wahn vom Weltsouverän* (ça ira, 2009), 85–8; Philipp Lenhard, 'Blinder Fleck? Eine kurze Erwiderung auf Gerhard Scheit', in *sans phrase* no. 8 (2016), 226–9. That Neumann ignored antisemitism as the unifying factor in this process of disintegration to such an extent corresponds oddly to his legal positivism when discussing the 'rationality of international law', which occasionally results in his no longer recognizing what Hobbes and Hegel identified as the natural state of affairs, namely, that relations between states are in principle irrational.
 - 40 Raul Hilberg and Alfons Söllner, 'Das Schweigen zum Sprechen bringen. Ein Gespräch über Franz Neumann und die Entwicklung der Holocaust-Forschung', in Dan Diner (ed.), *Zivilisationsbruch. Denken nach Auschwitz* (Fischer, 1988), 175–200, here 176.
 - 41 *Ibid.*, 181.
 - 42 Raul Hilberg, *The Destruction of the European Jews* vol. 3 (Yale University Press, 2003), 1060.
 - 43 *Ibid.*, 1061.
 - 44 Theodor Adorno, 'Franz Neumann zum Gedächtnis', in Adorno, *Gesammelte Schriften* vol. 20.2 (Suhrkamp, 1997), 700–2, here 702.
 - 45 In the notes Friedrich Pollock took on his conversations with Horkheimer between 1957 and 1967, for instance, Horkheimer is recorded twice as commenting on the issue, suggesting that he still thought of the racket concept as a theoretical approach that had yet to be fully developed. See 'Theorie des Rackets' and 'Herrschende Klasse, die von Rackets beherrschte Klasse und die Rolle der Fachleute', in Max Horkheimer, *Gesammelte Schriften* vol. 14 (Fischer, 1988), 334–335 and 340. The concept also resurfaces in Adorno's later correspondence, for instance, in his letter to Siegfried Kracauer of 17 March 1965: 'I can rarely watch a film without sensing for a few seconds: this is what it should be, this is what would be possible – and then instantly becoming enraged at

- the way in which one is cheated by the rationale of the racket' (Theodor Adorno, and Siegfried Kra-cauer, *'Der Riß der Welt geht auch durch mich'. Briefwechsel 1923–1966* [Suhrkamp, 2008], 695).
- 46 Gerhard Scheit, *Suicide Attack. Zur Kritik der politischen Gewalt* (ça ira, 2004).
- 47 Manfred Dahlmann, 'Antwort auf Enderwitzens *Quo vadis Ça ira*', <http://www.ca-ira.net/isf/beitraege/dahlmann-antikritik.enderwitz.php> (10 May 2017).
- 48 Scheit, *Suicide Attack*, 411–26.
- 49 See Thomas von der Osten-Sacken, 'Die Schimäre vom kleineren Übel. Gespräch mit Thomas von der Osten-Sacken über die Lage im Nahen Osten', in *sans phrase* no. 5 (2014), 196–204.
- 50 David Menashri, *Iran. A Decade of War and Revolution* (Homes and Meier, 1990), 273.
- 51 Wahied Wahdat-Hagh, *Die Islamische Republik Iran. Die Herrschaft des politischen Islam als eine Spielart des Totalitarismus* (LIT, 2003), 217–9. The extent to which Kirchheimer's already quoted remarks about the National Socialist legal system apply here should be obvious: 'the common legal bond of a generally applicable civil law' disappears and the 'ideology of the community deprive[s] the weaker group member of the right to appeal to an outside body which would be prepared to maintain the intra-group balance' (Kirchheimer, 'Legal Order', 457, 458). Carl Schmitt similarly wrote that a people stratified by corporations – this is fascist jargon for the *Volksgemeinschaft's* rackets – would always be characterized by a plurality of orders, each of which had to form its own 'corporate judiciary' (Carl Schmitt, *Über die drei Arten des rechtswissenschaftlichen Denkens* (Duncker and Humblot, 2006), 53).
- 52 Thorsten Fuchshuber, 'Im permanenten Ausnahmezustand', in *Jungle World*, 7 January 2016, <http://jungle-world.com/artikel/2016/01/53261.html> (10 May 2017).
- 53 Karl Marx, *Kapital*, vol. I, Marx Engels Werke, vol. 23 (Dietz, 1962), 88.
- 54 Horkheimer, 'Rackets', 291.
- 55 Niklaas Machunsky, 'Rackets im Staat', in *Prodomo* no. 20 (2016), 78–88, here 79, <http://www.prodomo-online.org/ausgabe-20/archiv/artikel/n/rackets-im-staat.html> (10 May 2017).
- 56 Ibid. In this context it is worth noting that Robert Kurz's theory of capitalist society as an automatic subject falters because, not unlike that of Henryk Grossman, it is predicated on a logic of inevitable collapse. Marx, by contrast, in the third volume of *Capital* merely described the emergence, under the conditions of capitalist commodity production, of a tendency within the productive force of labor – the famous tendency of the rate of profit to fall – which from a certain point onward militates against it and constantly has to be overcome through crises. To designate this tendency a 'law' one would have to disregard the fact that this designation fails to encompass a genuine unity between the ostensible law and that which is subjected to it.
- 57 Adorno, 'Negative Dialektik', 358.