
Abstract

Consideration about the Theoretical Connections as the Backgrounds of the Oral Pleadings of Carl Schmitt and Hermann Heller before the Court “*Land of Prussia against Reich*”: Concerning Schmitt’s Concept of an “Independent Jurisdiction Provision” and Heller’s Standpoint of a “Political Intention”.

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According to the conclusions in my another former article*, which I argued the whole of the oral proceedings of Carl Schmitt and Hermann Heller before the Court (*Staatsgerichtshof*) “*Land of Prussia against Reich*, German Federal Government”, held in Leipzig in October 1932, they have pleaded thoroughly based upon the political aspects. Heller completely pursued what was the true *political intention* (*politische Absicht / Motiv*) of *Reich*, based on which the Coup d’État of 20th July 1932 had brought about under the authority granted the President by the emergency powers section of Weimar Constitution, i.e. Article 48. Schmitt basically pointed out the significance of *two concepts of political situations* (*Bürgerkriegslage* and *Konfliktlage*). At the same time Schmitt defended *Reich* who had decided to execute the Coup d’État of 20th July, entirely based upon the legal concept of an “Independent Jurisdiction Provision” (eine *selbstsändige Zuständigkeitsvorschrift*).

This article pursues the theoretical backgrounds of both standpoints which Schmitt and Heller have expressed before the Court “*Land of Prussia against Reich*”. How Schmitt’s basic concept and Heller’s fundamental standpoint, especially Schmitt’s legal concept of eine *selbstsändige Zuständigkeitsvorschrift* and Heller’s consistent viewpoint of *politische Absicht / Motiv*, had been formed in their previous, various books or articles theoretically? To attempt to solve these problems in this article, I explore each theoretical connection among their several important discussions that have been previously published in Weimar period.

* Carl Schmitt and Hermann Heller before The Court “*Land of Prussia against Reich*, German Federal Government”: An Analysis of Both Debates before The Court, *Staatsgerichtshof*, *Bulletin of Seigakuin University General Research Institute* No.63, 2017, pp.99–243.