
Abstract

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*.

Aiko Takahashi

On 20 July 1932, half of a year before the breakdown of democratic Weimar Republic, Field Marshal Hindenburg, the *Reichspräsident*, issued a decree ‘concerning the restoration of public safety and order in the area of the *Land of Prussia*’ under the authority granted the President by the emergency powers section of the Weimar Constitution—Article 48. It declared the Chancellor of the Federal Government, Franz von Papen, to become the Commissioner for the *Land of Prussia* and gave him authority to take over its political institution. At the same time, the Prussian Government was forcibly removed from office. It is the so-called Coup d’État of 20 July 1932.

After considerations and arguments among the Prussian Government, they decided to challenge the constitutional validity of the decree before the court, *Staatsgerichtshof* in Leipzig. It was held in October 1932 and some of the most significant law theorists at that time argued the constitutional validity of the decree before this court. Hermann Heller argued for the parliamentary party of the Prussian socialists on the one hand, and on the other hand Carl Schmitt argued for *Reich*, the Federal Government.

This article tries to explore the debates of both Schmitt and Heller before the court concerning the prerequisites and the authority of both paragraphs 1 and 2 of the Article 48, the limits of the competence of the emergency powers of the President, i.e. the dictatorship, and the competence of the court, *Staatsgerichtshof*, which was set up by Article 19 of the Weimar Constitution to resolve constitutional disputes between the Federal Government and the *Länder*.