

# CONTENTS

PREFACE / xi

TRANSLATION AND APPARATUS / xiii

## INTRODUCTION · CONSTITUTIONAL CRISIS: THE GERMAN AND THE AMERICAN EXPERIENCE

*Arthur J. Jacobson and Bernhard Schlink* / 1

## PROLOGUE · THE SHATTERING OF METHODS IN LATE WILHELMINE GERMANY

Introduction

*Stefan Koriath* / 41

On Legal Theory and Sociology (1911)

*Max Weber* / 50

Constitutional Amendment and Constitutional Transformation (1906)

*Georg Jellinek* / 54

On the Borders between Legal and Sociological Method (1911)

*Hans Kelsen* / 57

Statute and Judgment (1912)

*Carl Schmitt* / 63

## ONE · HANS KELSEN

Introduction

*Clemens Jabloner* / 67

Legal Formalism and the Pure Theory of Law (1929)

*Hans Kelsen* / 76

On the Essence and Value of Democracy (1929)  
*Hans Kelsen* / 84

TWO · HUGO PREUSS

Introduction  
*Christoph Schoenberger* / 110

The Significance of the Democratic Republic for  
the Idea of Social Justice (1925)  
*Hugo Preuss* / 116

THREE · GERHARD ANSCHÜTZ

Introduction  
*Walter Pauly* / 128

Three Guiding Principles of the Weimar Constitution (1922)  
*Gerhard Anschütz* / 132

FOUR · RICHARD THOMA

Introduction  
*Peter C. Caldwell* / 151

The Reich as a Democracy (1930)  
*Richard Thoma* / 157

FIVE · HEINRICH TRIEPEL

Introduction  
*Ralf Poscher* / 171

Law of the State and Politics (1926)  
*Heinrich Triepel* / 176

SIX · ERICH KAUFMANN

Introduction  
*Stephen Cloyd* / 189

On the Problem of the People's Will (1931)  
*Erich Kaufmann* / 196

SEVEN · RUDOLF SMEND

Introduction  
*Stefan Koriath* / 207

Constitution and Constitutional Law (1928)

*Rudolf Smend* / 213

## EIGHT · HERMANN HELLER

Introduction

*David Dyzenhaus* / 249

Political Democracy and Social Homogeneity (1928)

*Hermann Heller* / 256

The Essence and Structure of the State (1934)

*Hermann Heller* / 265

## NINE · CARL SCHMITT

Introduction

*Volker Neumann* / 280

The Status Quo and the Peace (1925)

*Carl Schmitt* / 290

The Liberal Rule of Law (1928)

*Carl Schmitt* / 294

State Ethics and the Pluralist State (1930)

*Carl Schmitt* / 300

## EPILOGUE · THE DECLINE OF THEORY

Introduction

*Reinhard Mehring* / 313

The Total State (1933)

*Ernst Forsthoff* / 320

Legal Community as National Community (1935)

*Reinhard Höhn* / 323

The Constitution of Freedom (1935)

*Carl Schmitt* / 323

The Administration as Provider of Services (1938)

*Ernst Forsthoff* / 326

New Foundations of Administrative Law (1934)

*Theodor Maunz* / 327

Administration (1937)

*Theodor Maunz* / 327

Constitution (1937)  
*Ernst Rudolf Huber* / 328

Form and Structure of the Reich (1941)  
*Ernst Rudolf Huber* / 330

"Positions and Concepts": A Debate with Carl Schmitt (1941)  
*Ernst Rudolf Huber* / 331

Reich, Sphere of Influence, Great Power (1942)  
*Reinhard Höhn* / 332

NOTES / 335

EDITORS AND CONTRIBUTORS / 391

COPYRIGHT ACKNOWLEDGMENTS / 393

INDEX / 395