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978-1-107-09268-6 - The Guardian of the Constitution: Hans Kelsen and Carl Schmitt
on the Limits of Constitutional Law

Lars Vinx

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THE GUARDIAN OF
THE CONSTITUTION: HANS KELSEN
AND CARL SCHMITT ON THE LIMITS
OF CONSTITUTIONAL LAW

This volume provides the first English translation of Hans Kelsen's and Carl Schmitt's influential Weimar-era debate on constitutional guardianship and the legitimacy of constitutional review. It includes Kelsen's seminal piece, 'The Nature and Development of Constitutional Adjudication', as well as key extracts from the 'Guardian of the Constitution' which present Schmitt's argument against constitutional review. Also included is Kelsen's review of Schmitt's 'Guardian of the Constitution', as well as some further material by Kelsen and Schmitt on presidential dictatorship under Article 48 of the Weimar Constitution. These texts show Kelsen and Schmitt responding to one another, in the context of a debate focused on a concrete constitutional crisis, thus allowing the reader to assess the plausibility of Kelsen's and Schmitt's legal and constitutional theories.

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A NOTE ON THE TEXTS

The translations in this volume contain the page numbers of the German source-texts in square brackets. References to the translated texts in the introduction, cross-references in and between the translated texts, and references in the notes at the end of the volume all use these bracketed page numbers. The ellipses in chapters 2 and 3 indicate the beginnings of passages of Schmitt's *Guardian of the Constitution* that are not included in this volume.

An asterisk in the translated text indicates an editorial note that provides background information on a point discussed in the translated text. These editorial notes can be found at the end of this volume, starting on p. 254. They are likewise identifiable by reference to the bracketed page numbers.

The bibliography lists all literature cited in the introduction and in the editorial notes. Kelsen's and Schmitt's works are referred to by the year of original publication.