

Cambridge University Press
978-1-108-49448-9 — Carl Schmitt's Early Legal-Theoretical Writings
Edited and translated by Lars Vinx, Samuel Garrett Zeitlin
Frontmatter
[More Information](#)

'The Vinx–Zeitlin edition of *Carl Schmitt's Early Legal-Theoretical Writings* is a crucial and long-awaited contribution to the study of Schmitt's political thought, and to legal philosophy more generally. These essays exhibit a young Schmitt grappling with jurisprudential issues from a liberal statist perspective, anticipating and diverging from his later works, both famous and notorious, in often surprising ways.'

John P. McCormick, University of Chicago

'These excellent, long-overdue translations of Carl Schmitt's widely neglected – but hugely important – early contributions to legal thought place his controversial ideas in a new and fresh light. They remind us of a crucial fact too often obscured by recent Anglophone scholarship on Schmitt: Schmitt was a jurist first and foremost, and thus we need to situate his thinking within the context of modern jurisprudence in order to make proper sense of it. With an insightful introduction by two major experts on Schmitt, this volume is essential reading to anyone interested not only in Schmitt and German thought but also in modern legal theory.'

William E. Scheuerman, Indiana University

'This excellent edition of *Statute and Judgment* (1912) and *The Value of the State and the Significance of the Individual* (1914) not only sheds light on two pieces largely ignored in the literature, but also offers a fresh look at Schmitt's constitutional theory. The editors have notably clarified the continuities between these early legal-philosophical writings and subsequent works published after the First World War, which were marked in a completely different context by the social and political instability of their time.'

Sandrine Baume, University of Lausanne

'Lars Vinx and Samuel Zeitlin's meticulous edition of Schmitt's first substantial writings on jurisprudence equip an anglophone readership for the first time to see the trajectory of his thinking over the course of his lifetime, in a balanced and accurate way. It has the singular merit of enabling them to judge soberly just how he chose to use the intellectual resources open to him in deploying them across the drastically changing political contexts of his lengthy life. It is an indispensable resource for judging the weight (and the often erratic bearing) of his contribution to political understanding.'

John Dunn, University of Cambridge

Cambridge University Press
978-1-108-49448-9 — Carl Schmitt's Early Legal-Theoretical Writings
Edited and translated by Lars Vinx, Samuel Garrett Zeitlin
Frontmatter
[More Information](#)

'Carl Schmitt's early jurisprudential engagements in German debates over legal determinacy helped to pave the way for his classic works of political and legal theory. A clear and sophisticated introduction augments the excellent translation that Lars Vinx and Samuel Zeitlin have produced, and the results are indispensable as interest in Schmitt shows no signs of abating.'

Samuel Moyn, Yale Law School

'Lars Vinx and Sam Zeitlin have given us a welcome translation of Carl Schmitt's early – that is, pre-World War I – writings, along with a very informative and analytically important introduction. Why should we care?

Carl Schmitt has in the last thirty years become unavoidable – in political theory, jurisprudence, history and, even, literature. This is despite his well-known and apparently unrepented membership in the Nazi Party.

As Vinx and Zeitlin point out, Schmitt is best known for his opening sentences. "Sovereign is he who decides on the exception." "The concept of the state presupposes the concept of the political." These epigrammatic pronouncements date from the post-World War I period and have served as a springboard for a number of interpretations. For some, these understandings prepare the way for and merge easily with Nazism. For some more sympathetic others, they show that Schmitt was centrally concerned with dealing with the consequences of World War I on German domestic politics. Among those consequences were the "stab in the back" account of Germany's defeat and the vengeful peace imposed at Versailles. Both of these readings, however, understand Schmitt as in the end an ideologue whose thought was primarily shaped by external events.

It is the achievement of this volume to show that neither of these positions is tenable. It shows that, well before World War I, Schmitt was working out the basic elements of what will become his better-known work. The argument in *Statute and Judgment (Gesetz und Urteil)* is that "law" (*Recht*) is decision, and that legal decisions are on that which cannot be resolved in a usual manner. *Recht* decides the undecidable. Thus, from his earliest work, Schmitt was working out what becomes a powerful and troubling political theory, and this well before the problems and stresses of Weimar. It is not what becomes Nazism, but it is not incompatible with what Nazism might have been – and that is all the more reason for taking Schmitt seriously.'

Tracy B. Strong, Southampton University

Cambridge University Press
978-1-108-49448-9 — Carl Schmitt's Early Legal-Theoretical Writings
Edited and translated by Lars Vinx, Samuel Garrett Zeitlin
Frontmatter
[More Information](#)

CARL SCHMITT'S EARLY LEGAL-THEORETICAL WRITINGS

Many of Carl Schmitt's major works have by now been translated, with two notable exceptions: Schmitt's two early monographs *Statute and Judgment* (first published in 1912) and *The Value of the State and the Significance of the Individual* (first published in 1914). In these two works, Schmitt presents a theory of adjudication and an account of the state's role in the realization of the rule of law, which together form the theoretical basis on which Schmitt later developed his political and constitutional theory. This new book makes these two key texts available in English translation for the first time, partnered with an introduction that relates the texts to their historical context, to Schmitt's other works and to contemporary discussions in legal and constitutional theory.

LARS VINX is University Lecturer in Jurisprudence at the University of Cambridge. He is the author of *Hans Kelsen's Pure Theory of Law: Legality and Legitimacy* (2007), and also prepared an English-language translation of the debate between Hans Kelsen and Carl Schmitt on constitutional guardianship (*The Guardian of the Constitution: Hans Kelsen and Carl Schmitt on the Limits of Constitutional Law*, 2015).

SAMUEL GARRETT ZEITLIN is Hong Kong Link Early Career Research Fellow and College Lecturer in Politics at Corpus Christi College, University of Cambridge. His publications include editions and translations of Carl Schmitt's *Land and Sea* (2015) and *The Tyranny of Values and Other Texts* (2018), as well as articles in *History of Political Thought*, *The Review of Politics*, *Politisches Denken Jahrbuch*, *History of European Ideas* and *Modern Intellectual History*.

Cambridge University Press
 978-1-108-49448-9 — Carl Schmitt's Early Legal-Theoretical Writings
 Edited and translated by Lars Vinx, Samuel Garrett Zeitlin
 Frontmatter
[More Information](#)

CAMBRIDGE STUDIES IN CONSTITUTIONAL LAW

The aim of this series is to produce leading monographs in constitutional law. All areas of constitutional law and public law fall within the ambit of the series, including human rights and civil liberties law, administrative law, as well as constitutional theory and the history of constitutional law. A wide variety of scholarly approaches is encouraged, with the governing criterion being simply that the work is of interest to an international audience. Thus, works concerned with only one jurisdiction will be included in the series as appropriate, while, at the same time, the series will include works which are explicitly comparative or theoretical – or both. The series editor likewise welcomes proposals that work at the intersection of constitutional and international law, or that seek to bridge the gaps between civil law systems, the US, and the common law jurisdictions of the Commonwealth.

Series Editors

David Dyzenhaus

Professor of Law and Philosophy, University of Toronto

Thomas Poole

*Professor of Law, London School of Economics and Political Science**Editorial Advisory Board*

T.R.S. Allan, Cambridge, UK

Damian Chalmers, LSE, UK

Sujit Choudhry, Berkeley, USA

Monica Claes, Maastricht, Netherlands

David Cole, Georgetown, USA

K.D. Ewing, King's College London, UK

David Feldman, Cambridge, UK

Cora Hoexter, Witwatersrand, South Africa

Christoph Moellers, Humboldt, Germany

Adrienne Stone, Melbourne, Australia

Adam Tomkins, Glasgow, UK

Adrian Vermeule, Harvard, USA

Books in the series

Carl Schmitt's Early Legal-Theoretical Writings: Statute and Judgment, and The Value of the State and the Significance of the Individual Edited and translated, with an introduction and notes, by Lars Vinx and Samuel Garrett Zeitlin

Remedies for Human Rights Violations: A Two-Track Approach to Supranational and National Law Kent Roach

Europe's Second Constitution: Crisis, Courts and Community Markus W. Gehring

Cambridge University Press
978-1-108-49448-9 — Carl Schmitt's Early Legal-Theoretical Writings
Edited and translated by Lars Vinx , Samuel Garrett Zeitlin
Frontmatter
[More Information](#)

A. V. Dicey and the Common Law Constitutional Tradition: A Legal Turn of Mind Mark D. Walters

Administrative Competence: Reimagining Administrative Law Elizabeth Fisher and Sidney A. Shapiro

Legal Sabotage: Ernst Fraenkel in Hitler's Germany Douglas Morris

Proportionality in Action: Comparative and Empirical Perspectives on the Judicial Practice Edited by Mordechai Kremnitzer, Tayla Steiner and Andrej Lang

Constitutional Dialogue: Democracy, Rights, Institutions Edited by Geoffrey Sigalet, Grégoire Webber and Rosalind Dixon

The Veiled Sceptre: Reserve Powers of Heads of State in Westminster Systems Anne Twomey

Vigilance and Restraint in the Common Law of Judicial Review Dean Knight

The Alchemists: Questioning Our Faith in Courts as Democracy-Builders Tom Gerald Daly

Australia's Constitution after Whitlam Brendan Lim

Building the Constitution: The Practice of Constitutional Interpretation in Post-Apartheid South Africa James Fowkes

Dimensions of Dignity: The Theory and Practice of Modern Constitutional Law Jacob Weinrib

Reason of State: Law, Prerogative, Empire Thomas Poole

Bills of Rights in the Common Law Robert Leckey

The Guardian of the Constitution: Hans Kelsen and Carl Schmitt on the Limits of Constitutional Law Edited and translated, with an introduction and notes, by Lars Vinx

Parliamentary Bills of Rights: The Experiences of New Zealand and the United Kingdom Janet L. Hiebert and James B. Kelly

Lawyering for the Rule of Law: Government Lawyers and the Rise of Judicial Power in Israel Yoav Dotan

Balancing Constitutional Rights: The Origins and Meanings of Postwar Legal Discourse Jacco Bomhoff

Judges on Trial: The Independence and Accountability of the English Judiciary Shimon Shetreet and Sophie Turenne

Proportionality and Constitutional Culture Moshe Cohen-Eliya and Iddo Porat

The Politics of Principle: The First South African Constitutional Court, 1995–2005 Theunis Roux

The New Commonwealth Model of Constitutionalism: Theory and Practice Stephen Gardbaum

Cambridge University Press
978-1-108-49448-9 — Carl Schmitt's Early Legal-Theoretical Writings
Edited and translated by Lars Vinx , Samuel Garrett Zeitlin
Frontmatter
[More Information](#)

Searching for the State in British Legal Thought: Competing Conceptions of the Public Sphere Janet McLean

Judging Social Rights Jeff King

Proportionality: Constitutional Rights and Their Limitations Aharon Barak

Parliamentary Sovereignty: Contemporary Debates Jeffrey Goldsworthy

Cambridge University Press
978-1-108-49448-9 — Carl Schmitt's Early Legal-Theoretical Writings
Edited and translated by Lars Vinx , Samuel Garrett Zeitlin
Frontmatter
[More Information](#)

CARL SCHMITT'S EARLY
LEGAL-THEORETICAL
WRITINGS

Statute and Judgment
and The Value of the State and the Significance
of the Individual

Edited and translated, with an introduction and notes, by

LARS VINX

University of Cambridge

SAMUEL GARRETT ZEITLIN

University of Cambridge



CAMBRIDGE
UNIVERSITY PRESS

Cambridge University Press
 978-1-108-49448-9 — Carl Schmitt's Early Legal-Theoretical Writings
 Edited and translated by Lars Vinx, Samuel Garrett Zeitlin
 Frontmatter
[More Information](#)

CAMBRIDGE
 UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom
 One Liberty Plaza, 20th Floor, New York, NY 10006, USA
 477 Williamstown Road, Port Melbourne, VIC 3207, Australia
 314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre,
 New Delhi – 110025, India
 79 Anson Road, #06–04/06, Singapore 079906

Cambridge University Press is part of the University of Cambridge.
 It furthers the University's mission by disseminating knowledge in the pursuit of
 education, learning, and research at the highest international levels of excellence.

www.cambridge.org
 Information on this title: www.cambridge.org/9781108494489
 DOI: 10.1017/9781108658300

© Cambridge University Press 2021

This publication is in copyright. Subject to statutory exception
 and to the provisions of relevant collective licensing agreements,
 no reproduction of any part may take place without the written
 permission of Cambridge University Press.

First published in English by Cambridge University Press 2021 as *Carl Schmitt's Early
 Legal-Theoretical Writings*

This edition is a translation of *Der Wert des Staates und die Bedeutung des Einzelnen*,
 originally published in German by Duncker & Humblot GmbH (3rd edition, 2014) ©
 Duncker & Humblot GmbH, Berlin, and *Gesetz und Urteil: Eine Untersuchung zum Problem
 der Rechtspraxis* (3rd edition, 2009) © Verlag C. H. Beck oHG, München.

A catalogue record for this publication is available from the British Library.

Library of Congress Cataloging-in-Publication Data

Names: Schmitt, Carl, 1888–1985. | Vinx, Lars, editor, translator, writer of added
 commentary. | Zeitlin, Samuel Garrett, editor, translator, writer of added commentary. |
 Schmitt, Carl, 1888–1985. *Gesetz und Urteil*. English. | Schmitt, Carl, 1888–1985. *Der Wert
 des Staates, und die Bedeutung des Einzelnen*. English.

Title: Carl Schmitt's early legal-theoretical writings : Statute and judgment and the Value of
 the state and the significance of the individual / edited and translated by Lars Vinx,
 University of Cambridge; Samuel Garrett Zeitlin, University of Cambridge.

Description: Cambridge, United Kingdom ; New York, NY : Cambridge University Press,
 [2021] | Series: Cambridge studies in constitutional law | Includes bibliographical references
 and index.

Identifiers: LCCN 2021000632 (print) | LCCN 2021000633 (ebook) | ISBN 9781108494489
 (hardback) | ISBN 9781108714716 (paperback) | ISBN 9781108658300 (ebook)

Classification: LCC K230.S352 A2 2021 (print) | LCC K230.S352 (ebook) | DDC 340/.1–dc23
 LC record available at <https://lccn.loc.gov/2021000632>

LC ebook record available at <https://lccn.loc.gov/2021000633>

ISBN 978-1-108-49448-9 Hardback

Cambridge University Press has no responsibility for the persistence or accuracy of
 URLs for external or third-party internet websites referred to in this publication
 and does not guarantee that any content on such websites is, or will remain,
 accurate or appropriate.

CONTENTS

<i>Acknowledgements</i>	page xi
Introduction: Carl Schmitt and the Problem of the Realization of Law	1
Statute and Judgment: A Note on the Text and the Translation	37
Statute and Judgment	39
Foreword	43
Table of Contents	45
First Chapter The Problem	47
Second Chapter The Will of Statute	64
Third Chapter The Postulate of Legal Determinacy	83
Fourth Chapter The Correct Decision	103
Appendix	142
The Value of the State and the Significance of the Individual: A Note on the Text and the Translation	156
The Value of the State and the Significance of the Individual	159
Overview of the Contents	163
Introduction	165

Cambridge University Press
978-1-108-49448-9 — Carl Schmitt's Early Legal-Theoretical Writings
Edited and translated by Lars Vinx , Samuel Garrett Zeitlin
Frontmatter
[More Information](#)

x

CONTENTS

Chapter 1 Law and Power	174
Chapter 2 The State	189
Chapter 3 The Individual	217
<i>Bibliography</i>	243
<i>Index</i>	251

ACKNOWLEDGEMENTS

I am thankful for the opportunity to continue my studies and teaching, for which I am grateful to Dipesh Chakrabarty, Elisabeth Clemens, Joel Isaac, Sarah Johnson, John P. McCormick, Sankar Muthu, Jennifer Pitts, Nathan Tarcov and Linda Zerilli at the University of Chicago, and to Duncan Bell, Richard Bourke, Christopher Brooke, John Dunn, Marina Frasca-Spada, Shruti Kapila, Christopher Kelly, Duncan Kelly, Charles Read, Lucia Rubinelli, Martin Ruehl, Andrew Sanger, David Sneath, Sylvana Tomaselli, Lars Vinx, Emma Wilson and Harald Wydra at the University of Cambridge.

For *The Value of the State and the Significance of the Individual*, I am particularly thankful to Professor George Schwab for very helpfully checking the translation, as well as to Greg Conti, Adam Lebovitz, Lucia Rubinelli, Joshua Smeltzer, Lars Vinx and Joanna Williamson for their comments and encouragement.

Work on the translation of *The Value of the State and the Significance of the Individual* was completed during a research stay at the Stiftung Maximilianeum in Munich, Germany, and I am grateful to Hanspeter Beisser, director of the Stiftung, for his hospitality and generosity over many years.

To my teachers during my graduate studies, Timothy Hampton, Kinch Hoekstra, Victoria Kahn, Richard Serjeantson and Shannon Stimson, I remain deeply grateful for the example of their teaching and scholarship.

I am thankful for the love of my family: my mother, Elizabeth; my sister, Ellie; and my dear friend and partner, Joanna.

My work on this translation and edition is dedicated to Richard Bourke and Shruti Kapila, with gratitude and intellectual esteem.

Samuel Garrett Zeitlin

I am grateful to David Dyzenhaus, Matthew Kramer and Josh Smeltzer for their extremely helpful input to this project, and to Marianne Nield at Cambridge University Press for her unwavering patience and support.

It was a great pleasure to collaborate with Sam Zeitlin. I hope this will not have been the last of our shared projects.

The preparation of this manuscript received financial support from the Faculty of Law at the University of Cambridge.

Lars Vinx