

The Ideal Foundations of Republic Democracy: On the Thinking about Spiritual Foundation of the Constitutional Order of Liberal Democracy in German Theory of the Conditions of the Constitution

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Abstract

This article tries to discuss the theory of the conditions of the constitution (Theorie der Voraussetzungen der Verfassung) in German constitutional theory, and its thinking on the spiritual foundation of the constitutional order of liberal democracy. This article analyzes this theory with the method of idea history, in order to explore the historical background and problem consciousness of the theory of the conditions of constitution. It also analyzes how the theory of the conditions of constitution explains the spiritual and cultural foundations for the constitutional order of liberal democracy.

This article points out that the contemporary theory of the conditions of constitution is influenced by the theories of the state (Staatslehre) and legal theory during the Weimar Republic (especially by the anti-positivism in the Weimar Republic). It is believed that the constitution must rely on a specific spiritual and cultural foundation. Without these foundations, the liberal democracy and its constitution can't operate well. These foundations are also the keys to the successful implementation of various constitutional principles. At the same time, Carl Schmitt's analysis of the crisis of the democratic constitutional order in the late Weimar Republic period also constituted an important awareness of issues the contemporary theory of the conditions of the constitution.

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The contemporary theory of the conditions of constitution is based on supporting the parliamentary system of liberal democracy and points out the importance of state organizations and processes for the liberal democracy; it also proposes the theory of republican democracy to solve the problem of how to overcome the challenges of contemporary pluralistic regimes to the liberal democratic constitutional system. The theory of the conditions of constitution also points out that the principle of office (Amtsprinzip) is an important spiritual and cultural foundation for a liberal democratic country. The principle of office requires that officials must act according to the public interest and obey the constitution and the law. Through this requirement, contemporary theory of the conditions of constitution hopes to overcome the bad influence of party politics. Contemporary theory of the conditions of constitution also tries to point out the basis for the legitimacy of state actions and requires the state to implement public interest to gain people's support. This theory will help us to think about how to solve democratic crisis, which is brought by the contemporary populist politics.

Keywords: The Theory of the Conditions of Constitution, Constitutional Theory, Public Interest, Principle of Republic, Republic Democracy, Principle of Office