

史密特的決斷論*

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本文的目的，是要論述史密特 1912-1933 年間法學思想的內在邏輯與系統結構。我認為，史密特的法學思想屬於他所說的「決斷論」思想類型；並且，史密特之所以會形成其決斷論思想，基本上是由其法學研究的出發點——法實現與法實踐——所決定的。從史密特思想的形成史上看，他的整個決斷論思想固然是由「法實踐的決斷論」出發，再逐漸發展出「主權的決斷論」以及「政治的決斷論」，但就其內在邏輯與系統結構的觀點而言，則順序剛好相反：後來發展出來的思想，乃是先前思想的基礎。

關鍵字：決斷論、決定、主權、例外狀態、政治、國家

Carl Schmitt's Decisionism

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ABSTRACT

The aim of this paper is to explore the inner logic and systematic structure of Schmitt's legal-political thought between 1912-1933. I argue that Schmitt's legal thought belongs to the type he called "decisionism" and that the development of his decisionism is determined by the starting point of his legal studies, namely *Rechtsverwirklichung* and *Rechtspraxis*. Starting from "decisionism of *Rechtspraxis*," Schmitt develops his decisionism step by step to what may be called "decisionism of sovereignty" and "decisionism of the political". From a systematic point of view, each development offers a basis for the earlier developed thought and all these three parts form an autonomous "type" of legal thought.

Key Words: decisionism, decision, sovereignty, exception, the political, state