

# Review of: "Carl Friedrich's Path to "Totalitarianism""

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Potential competing interests: No potential competing interests to declare.

Some immediate reactions to this pre-print article (and I don't see why I have to include a quant rating - cf Declaration on Research Assessment, so probably my only visit to this site.)

This is a timely and well presented article by Stephen Turner. Carl Friedrich is placed in his historical context: brought up in Germany with a Protestant background and emigrating to the United States after the collapse of the German Empire and then engaging with the liberal currents of American democracy. The question is raised whether Friedrich is the author of a general theory of totalitarianism and the degree to which his thinking was swayed by the contingency of his situation. Today contingency weighs heavily on our assumptions of the stability of constitutional democracies. Things go wrong, how can we stabilize the ensemble?

Friedrich apologised for putting his faith in President Hindenburg as a way of stabilizing the Weimar Republic at a time of extreme conflict between highly ideological political parties. The context suggests more research lines could be opened. Hindenburg was a disastrous President for a fledgling social democracy trying to emerge from the ruins of the Wilhelmine Empire. He stood for tradition, the legitimacy of the Kaiser and the army and the Prussian civil service. The Weimar constitution gave the President emergency powers to override the parliament. His predecessor, the Social Democrat Friedrich Ebert, had used this multiple times. Hindenburg's appointment of Chancellor Papen was one of the fatal steps in destroying German democracy. Prussia was effectively abolished by Papen in March 1932, ending Germany's federal democracy. The force of conservatism should not be underestimated, a phenomenon in itself. Prussia voted social democratically but the institutions of the army, the judiciary and the large civil service were conservative and anti-republican. Understandably, though not to pardon, this was the context of pitching the case for a rigid regime against an unstable multi-party democracy.

One point I would be interested in following up is just when Friedrich recanted his support of presidential emergency decrees. Did he still support this in 1933, after Prussia had been eliminated as a federal state? How does this square with Friedrich's vigorous support and construction of the German federal states after 1945?

The other aspect in the article worth exploring is the idea of the *Rechtsstaat*. Turner sets up the opposition of *Rechtsstaat* and *Obrigkeitsstaat*, with Friedrich in the latter camp: a stable state is an authoritarian state. In the tradition of American participative democracy, this does not even begin to compute. The legitimacies are simply alien to each other. The article however leans to the juristic opposition of the place of law in relation to the executive and its bureaucracy. Kelsen and Hayek uphold the idea of liberal democracy as operating within incontrovertible legal rules. Friedrich allows for the discretionary state to override the rules and conventions.

I am not quite sure this covers it. Kelsen and Hayek are imports from a tradition of positive state law. The state was a legal institute, this was the basis of both its authority and legitimacy. The liberal Heidelberg jurist, Georg Jellinek, who worked for constitutional reform to lessen the powers of the Emperor, accepted legal positivism. Max Weber specifically challenged Jellinek on his reluctance to root the problem in the lack of parliamentary democracy in Germany. The bias in jurisprudence was against parliamentary assemblies. Weimar changed the basis of its jurisprudence to one based on social justice and not the primacy of state law. The primacy of law is a positive law tradition, which is also a component of the larger and imprecisely defined idea of the *Rechtsstaat*. The conversations between Hans Kelsen and Herbert Hart on the sociological basis of legal norms perhaps sheds more light here - though probably a different article.

It is worth remarking that Weberian political sociology is taught to students through the ideal type of legal rational legitimacy. This tends to go unquestioned, but this holdall needs to be unpacked. Legitimacy and validity are two different things, and how the institutions of democracy and those of the state are configured, and why the ensemble should be designated as legal (through legislative enactment) are topics that require further attention. Friedrich condemned Weber for his "relativism", a point which is always open to the counter accusation of the "absolutist" basis of such a critique. Friedrich, as noted, rooted his belief in the the Calvinist and cooperative sense of Althusius. Not exactly modernity proofed, but interesting as a basis for federal states.

The material on Friedrich's chairing a conference in 1953 on totalitarianism is interesting to return to. The article asks quite why socialist movements in a number of European countries should be an argument to override America's own deeply rooted democratic and legal practices in favour of an administrative state. The latter can be justified as "output legitimacy", but to my mind this raises a host of other problems - separate from Friedrich, since this is the retrospective defence now used by any number of governmental agencies.

One final point for discussion: there is a large semantic difference between a bureaucrat and an official; their powers, authority, autonomy and the degree of control over them are different. This point emerges in current neo-Weberian state theory - the subject of the current issue of Max Weber Studies.