

On the concepts of power and state on the basis of Hermann Heller's theory of the state

*Seishu Yasu**

Introduction

As is widely known, such political upheavals in Europe from the first decade to the early thirties of the 20th century as the birth of the Soviet Union, the failed German Revolution, the birth of the Italian Fascist state, and particularly the birth and fall of the Weimar Republic, seem to be good examples that show how the modern state works in reality more vividly than behavioral political science teaches us.

A few influential German scholars such as Carl Schmitt, and Hans Kelsen who are well-known in the English-speaking world, had actually experienced the German political upheavals of the 1920s and the early 1930s published many works to explain the contemporary political affairs, especially what the modern state is and how it works from the standpoint of their political position for or against the Weimar Republic. Accordingly, their works were considered as reservoirs of valuable political theories about power and the state. In particular Carl Schmitt's concept of the political in term of the friend-enemy distinction and his theory of democracy as the identity of the ruler and the ruled have prompted Anglo-American scholars to rethink deeply about how a democracy should be linked with liberalism. Needless to say, Carl Schmitt had built up his anti-democratic theories as a theoretical weapon to criticize and ultimately overthrow the Weimar democracy. In recent decades most of his works have been translated into English. But his theoretical adversaries have not yet been introduced in English-speaking countries. In an effort to at least partially correct this imbalance, I wish to introduce the theory of the state of the German scholar, Carl Schmitt's noticeable adversary, Hermann Heller, who is from a Jewish family in the Austro-Hungarian Empire and is almost unknown to the English-speaking world. Heller was a professor of "Staatslehre" (the theory of state) at Frankfurt University for nearly one year from the spring of 1932. In the autumn of the same year he appeared as the legal representative for the parliamentary party of the Prussian Social Democrats in the case of "*Preussen v. Reich*", which tested the constitutional

* Doctor of Political Science, Professor of Graduate School, Daitobunka University.

Main Publications (Japanese):

An elucidation of Modern Political Science, 1999; and *An Introductory History of the German Social Democratic Party*, 1973, among others.

Main Japanese Translations: Hermann Heller, *Staatslehre* (1934), 1971; *Die politischen Ideenkreis der Gegenwart* (1926), 1981; Wolfgang Mommsen, *Max Weber und die deutsche Politik 1890-1920* (1973), 1993-1994; Carl J. Friedrich, *An Introduction to the Political Theory* (1967), 1977; C.A. Leeds, *Political Studies*, Third Edition (1981), 1987.

validity of the conservative federal government's *coup detat* against the Prussian state government called "the prelude to the collapse of the Weimar Republic". Shortly after Hitler took power, Heller was forced to seek refuge in Spain in the spring of 1933, due to his Jewish background and his desperate struggle for the defense of the Weimar Republic in the face of attacks by the conservatives allied with Hitler. He took a professorship at Madrid University where he attempted to develop a comprehensive exposition of his theory of the state (*Staatslehre*). And although he died at the age of 42 on November 5, 1933, the manuscript was sufficiently completed, and was published in 1934 in the Netherlands. This *Staatslehre* was translated into Japanese about 30 years ago. But regretfully, no English translation of it has been published, except a partial one by David Dyzenhaus.⁽¹⁾ However, among his works, only three articles written in English — "political science", "political power", and "Georg Jellinek" — are included in the "Encyclopedia of the Social Sciences" edited by E. R. A. Seligmann (1934). Given limitation of space, this paper does not attempt to introduce his theory of the state as a whole. Rather, as his theory of the state has a suggestion for us to develop and refine basic concepts like power and state, this paper confines itself solely to understanding what his theory of the state is, and tried to comment on the concepts of power and state on the basis of his theory.

A theoretical confrontation between Hermann Heller and Carl Schmitt

The largest and strongest of the Marxist-socialist parties in the early 20th century — the German Social Democratic Party — had the opportunity to bring about a socialist revolution in connection with the German Revolution which started in November 1918. However, the party, having observed the barbarous evolution of the Russian Revolution two years earlier, came to accept British Fabian Socialism, whose theory was to establish a democratic parliamentary democracy, and through it the laborers of the laboring classes trained themselves as independent citizens to be individual rulers and, with the majority of the population, to realize a social revolution by peaceful means. Therefore, this party cooperated with the bourgeoisie and tried to stop the Bolshevik Revolution. As a result, the new German state — the Weimar Republic — was established. This Weimar Republic was viewed by the socialists as a state in the process of becoming a socialist society. The conservatives, on the other hand, who wanted to protect capitalism, naturally tried to prevent the Weimar Republic from becoming a socialist state. Among them was Carl Schmitt, a representative of those

(1) Heller's collected work are published in a three-volume edition edited by Christoph Müller: Hermann Heller, *Gesammelte Schriften*, 2nd ed (Tübingen, 1992). The theory of state is included in: III: *Staatslehre als politische Wissenschaft*.

Recently the English translation of the selection of the major works of constitutional theory during the Weimar period — *Weimar. A Jurisprudence of crisis*, ed., by A.J. Jacobson & B. Schlink (University of California Press, 2000) — has been published, in which the partial parts of Heller's theory of state are translated by D. Dyzenhaus.

political scientists who tried to stop the on-going change by legal means.

In this way, in the early years of the Weimar Republic, the bourgeoisie and labour classes cooperated together as they wished to stop the Bolshevik Revolution. However, they disagreed as to the future of the Republic. After 1924, when the danger of the Bolshevik Revolution subsided, the differences between the two sides grew larger and showed a danger of becoming irreconcilable. Heller had learned from the historical experience in Britain and America that, without the existence of shared values and beliefs, no parliamentary democracy could exist. Therefore, he thought there would be no stability in the Weimar Republic without the establishment of shared values and beliefs, i.e., cultural homogeneity. Thus, he searched for this in the Weimar Republic, where the people belonged to the same nation residing in the same cultural sphere, i.e., the bourgeoisie and labour classes belonging to the German nation together as one cultural entity. Using it as a base for 'the organization and vitalization of the activity of the people', he insisted that both classes should try to maintain the Weimar Republic as a parliamentary democratic state. By so doing, he criticized Schmitt's political theory of the 'distinction between friend and enemy' as the restatement of the civil war. Rather, for him, politics was to avoid civil war which destroyed society, and to find out the *status vivendi*, on which the 'organization and vitalization of the activity of the people' could be realized.

Like this, Heller proposed his theory of the democratic state by defining politics as the process whereby people organize and vitalize society. By the way, it is common knowledge of the present 'science' of politics that Carl Friedrich had grouped many different definitions of power into two categories: the concept of power as a relation between the ruler and the ruled or leader and follower, and the concept of power as a substance by which the ruler coerces the ruled to obey.⁽²⁾ By applying Spinoza's famous saying — *oboedientia facit imperantem* ('obedience makes the ruler') —, Heller understood the power to move people-political power-and state power, which was created by the democratic cooperation of the people, which makes the people who belong to the same cultural circle obey willingly, and defined the 'state' as the political organization in which the coactivity of people is organized and vitalized by such state power. The 'theory of the state as organization' is developed further in unfinished shape in his above mentioned final book, *Staatslehre* of 1934. After the Second World War, Heller's ideas were accepted by many political scientists in West Germany and Japan as a basis for the 'science' of politics thanks to that theory's democratic characteristics.⁽³⁾

(2) Carl J. Friedrich, *Constitutional Government and Democracy*, revised edition, 1950, pp.22-24.

(3) Seishu Yasu, "Die Rezeption des Werkes von Hermann Heller in der Staatslehre von Hajime Akinaga und ihre theoretische Gründe", in: Christoph Müller and Ilse Staff, hrsg., *Der soziale Rechtsstaat. Gedächtnisschrift für Hermann Heller 1891-1933*, 1984, SS.199-210.

Two types of theories about the concepts of power and state

As it has become clear from the above explanation, the political theories of Heller and Schmitt stand in opposition to one another. Their theories on power and state differ in fundamental respects, revealing different theoretical starting points, and having characteristics opposed to each other. Needless to say, the world's political systems are divided into the liberal-democratic system and the authoritarian system, and the fundamental political concepts of politics, power and state can be further subdivided into two categories based on the type of political system itself.

The differences in the political theories advanced by Heller and Schmitt are nothing but a reflection of these two structures. Using the concept of power, I will explain briefly the relationship between these two structures and political theory.

Carl Friedrich states that the political science of the period of the birth of the modern state—exemplified by the works of Machiavelli and Hobbes—emphasized power, but did not show much interest in authority. During the period of the initial days of the modern state, when the state's very existence was in danger as a result of the intra-societal discrepancies, the substantive theory of power was emphasized. During the stable period of the modern state, when society's members strongly shared homogenous values and beliefs—and therefore society itself had a strong autonomy—, in contrast, the relative theory of power was emphasized.⁽⁴⁾ This equation becomes clearer when we look at each component of power. Let us, then, briefly look at the constituting elements of power.

In the relationship with A, whatever the reason is, if B follows or obeys A, A has power over B. The actual power relationship exists on a line which connects two opposing reasons for B's obedience. At one end is B's fear of death at the hands of A in failing to obey, which is usually the fear of having value deprived. At the other end is B's obedience to A. Through the use of physical oppression—external terror or threat of terror—power becomes substantive power, i.e., it includes not only physical violence but also psychological, economic and other forms of terror, which force people to move. A society where activity is organizational and vital can be achieved without the use of such coercive power. Where there are no shared values or beliefs among the people, division and conflict do not cease. So naturally the unity of political systems is emphasized, and in order to realize that unity, control from the top is strengthened. As a result, the occasion to use political force increases. In such a society, the obtaining and the maintenance of power becomes, in an extreme case, a violent power struggle and at the same time politics takes the form of conflicts and struggles.

In contrast, in a democratic society where the ruler and the ruled share the same values and beliefs, the ruled willingly obey the power if that power

(4) Carl J. Friedrich, *An Introduction to Political Theory*, 1967, pp.145-146.

is exercised in the pursuit of individual happiness and welfare where the ruled establish power themselves. In this case, power is identical with one the theory of relative power implies. This type of power is termed 'influence' in American political science.

However, I would prefer to use the word 'authority'. Usually, state power is believed by society's constituent parts to realize justice and, if power is established through proper legal procedure and acknowledged as just, this power is termed 'authority'. In this case, power-which is authority-is the power to serve for the justice of the ruled, who accept a natural obligation to obey it. And, if one does not obey, one experiences the feeling of insecurity within oneself, i.e., authority is the power to make people obey willingly. Power can be moulded into authority under the democratic system, where the identity of the ruler and the ruled are realized. However, establishing a perfect democratic system is impossible. Therefore, under the present liberal-democratic system the degree of compulsory power is quite high and the base of rulership is not necessarily authority itself.

Thus power and authority are usually considered as separate. However, theoretically, authority is power whose degree of coercive power is close to zero. The stage where the power relations is made perpetual is defined as rule or domination (*Herrschaft*). However, in order to sustain this stability of domination, the ruling power has to be changed to authority. Therefore, authority is understood as 'justified power'. Thus one cannot avoid looking at the 'justification of power' if one wants to clarify power and rule or domination.

The legitimation of the state and Hermann Heller's idea of the ethical right of resistance

In the textbooks of political science in Japan, when the justification of power is explained, it is Max Weber's three types of domination theory which is always cited. With the study of world history—particularly the rise and fall of states—Max Weber put the spotlight on why people obey rulers, and from that point of view he divided domination into three types: traditional, charismatic, and legal. Of course, when we distinguish various political ruling systems by means of the sociological method, this theory is one of the most useful. There is another form of justification of power—the theory of political ideology. In history, there are many theories to justify political power, democracy, liberalism, socialism, communism, nationalism, etc.

However, neither Weber's theory of the three types of rulership nor political ideological theory explain clearly why the ruled have to contribute life and property to the state. The theory of the justification of power cannot be avoided when we analyze the political change that is revolution. When the ruler loses his justification for rulership because the ruled will not obey without coercion, that ruling system faces collapse. At that point, another political leader appears to represent the ruled and get rid of the political

system of that time and establish the justified power which the ruled are willing to obey. Then rule or domination becomes stable once again. Thus, revolution means a change in justified power.

However, this kind of theory of the justification of power in political science is discussed only in such places as Germany, where the modern state was established only through "revolution from the top", and not through a civil revolution. In such a country, when political power is unjustified, the ruled have the power neither to resist nor revolt against it. Therefore, like Weber, it is important to explain sociologically the reason why people obey power and through such explanation to clarify the reality of political change. In contrast, in states like the UK or the USA, the citizens' right to revolt was granted, and their modern states were formed through civil revolt. There is no discussion of the theory of the justification of power in textbooks of political science. Instead, in both countries, where state power is based on social contract, we find discussion of political obligation. If state power was against the social contract, what should the citizens do? Naturally, it is stated that people have no obligation to obey a Government which breaks the contract. i.e., the theory of political disobedience comes from this theory of political obligation. That is to say, when a Government does the contrary of justified rule, it would be natural that some of the people exercise political disobedience. In this case, if the Government doesn't show regret, a justified revolution—which is election—must follow. Then, a change of Government will be necessary. If the government continues in power through the use of excuses, the whole nation will attend to the political disobedience movement, and this will finally become a 'revolution'.

It was Heller who proposed the theory of ethical justification from the British and American theory of political obligation to reinterpret the theory of the justification of power in Germany, which has no tradition of revolution. In his view, after the formation of the state—resulting from the division of labor and the development of transportation—its justification was to be made not in terms of its maintenance of legal certainty (*Rechtssicherheit*), but its efforts to realize justice on which the positive law is based. In other words, if state acts are repugnant ethical principles of law in the cultural circle to which the particular state belongs, because the state has lost its ethical justification, there is no necessity to obey. However, that conduct will possibly be punished by the criminal law. Nevertheless, according to Heller, one should attempt ethical resistance because, through such resistance, the possibility of an excess of state power may be diminished. But, on the other hand, he asserts that the ethical right of resistance could not be put into practice if one is not a hero; given our character as humans, such risk will not be taken. But when it happens, the one who does it must be the model of the people.⁽⁵⁾ At any rate, Hitler took power legally and after that established a totalitarian system. History teaches us that Hitler even

(5) Hermann Heller, *Staatslehre*, in: *Gesammelte Schriften*, III, SS.334-338; *Weimar. A Jurisprudence of crisis*, pp.265-271.

shut out the German ethical right of resistance. However, it is worth mentioning that, learning from the Nazi experience, the right of resistance which Heller asserted was adopted in the (West) German Constitution called the Fundamental Law (*Grundgesetz*).

After the French Revolution, democracy was established as the principles of the justification of state power, and in the twentieth-century it has become acknowledged worldwide. Therefore, any kind of state — however undemocratic it is in reality — has democracy in its name. This can be seen from the name of states like North Korea, for example, formally the Korean Democratic People's Republic.

As it will become clear, a government which is justified in the eyes of the people is naturally a democratic government. Democracy is the government built on the power which is justified, where rule is based on authority. Politics under this system developed with the adjusting of people's opinions and interests, and without relying on the means of coercing power by politicians and parties who are in charge of organizing the coordination of opinions and interests. According to the political ideal which the state promises to realize, the public sphere of politics is to show leadership to educate the people and lead them to cooperate to sustain and develop society as a whole. This kind of political leadership is the rule based on authority.

In contrast is the system of authoritarianism. There, the few members of the privileged class use coercive power — particularly the extreme method of physical force — to practice rule by terror. In this political system, politics develops in the shape of confrontation, conflict, and struggle, finally ending with the change of state power termed revolution. One political circle ends, and another begins. This kind of political regime is nothing but 'power state' (*Machtstaat*) organized by coercive power. It is natural that the concept of power as a basic constituting element of politics which attempts to explain this kinds of state cannot be avoided to incline to the theory of substantive power.

We have so far seen how the political concept can be divided into one of two categories according to which element of power is emphasized, and the particular political regime in question can also be divided into one of two categories. Let us finally look at the relationship between the above discussion and the concept of the state.

Hermann Heller's theory of the state

When civil society regulates itself, it is governed by the citizens themselves. There is thus no need for the state. However, there is no possibility of this happening in the real world, unless we confine our considerations to a closed, self-sufficient society with a very small population. In civil society, the more it loses its ability to regulate itself, the more it becomes to need the state. From the 18th century to the first half of 19th century in Britain—a nation whose dominant ideology was liberalism—people wanted small government which is also called "night-watcher state".

This was because civil society was being maintained with a high level of autonomy at that time. Even then, however, the necessity of having political organization which could deal with order within the state and external defense was acknowledged.

Around the end of the 19th century, with the establishment of highly advanced capitalism, discrepancies in civil society became revealed. Thus the state as a political organization which solved discrepancies in society became more autonomous *vis-a-vis* civil society. In order to pursue its task, the state strengthened its power. Mainstream political science at that time – which followed the pluralistic theory of state – developed a political theory as follows: with the appearance of the administrative state beyond its functions of maintaining order and self-defense, there was a danger that the state could develop into a "total state" (*Totaler Staat*) which controlled society wholly. In order to prevent this from happening from the point of view of the British tradition of liberalism, the current idea of the relationship between the society and the state was to be reinterpreted: civil society was redefined as community, and then within this community the larger and smaller groups to realize specific purposes emerged, and became known as 'associations'. They included trade unions, business interests, and the church. On the other hand, the state itself was ranked as one such association, and the state as an association was given limited functions to work for self-defense and the freedom of the citizens – who are organized into pluralistic groups – through the guarantee of people's rights.

As a result, when we define the state in this way in political science, we first of all come to define civil society because an understanding of the state changes according to how one understands civil society. Assuming that this is correct, we can consider three cases. First, if we take the example of Marxism, civil society is usually defined as a class society. The state is understood in terms of a tool of the ruling class. In other word, the civil society is understood as divided, and the state is explained as a ruler's tool of control-i.e., a machinery of power (*Machtapparat*) as Marx and Schmitt explained. Secondly, civil society is usually defined as a political or state society. When the state society has its people sharing similar values and formed by democratic means, the state is understood in terms of a political organization of self-governing people in a people's community. In this case the state is regarded as nearly the people's community. Finally, because the modern state is a state based on the rule of law (*Rechtsstaat*) which is thoroughly controlled by law, state power is exercised in keeping with the state's highest norm: the Constitution. This is the legal order itself. Hans Kelsen asserted that the state equals legal order.

Heller, on the other hand, criticized the above three theories on account of their inability to understand the state as a whole, but rather than merely as a sum of its component parts, and thus presented the above theory of the state as organization.⁽⁶⁾ Needless to say, the organization consists of three

(6) Hermann Heller, *ibid.*, SS.341-349.

elements: its purpose, members who are in agreement and who belong to it, and an organ which strives to vitalize its member's activity in order to realize its purpose. When one understands the state as organization, its members are the people; the purpose of its establishment is the legal order; and the organ of the organization is the Government. Therefore, viewing the state as a political organization which organizes and vitalizes the activity of the people, above of all, Government-which is the organ of the organization-should continuously make effort to organize and vitalize activity. As far as the Government is realizing justice as a function of the state, the justification of power is as firmly established as a rock, and democracy can exist. However, if the Government targets the realization of injustice against its people, the state organization changes into an organization of coercion and power, becoming autocratic.⁽⁷⁾ Thus, Heller's theory of "the state as organization" is thought to be the first theory of the state by which a liberal-democratic state can be immanently grasped.

Conclusion

As it has become clear from the above explanation, the concepts so far differently understood of politics, power, and state are roughly classified into two series of categories. As Karl Mannheim pointed out with great insight, any scholar who attempts to study the political must be restrained by his own existence. Accordingly, however sincerely he tries to be "value-free" in grappling with the subject-matter of the discipline, his theoretical framework would be necessarily "value-laden", because the scholar is unconsciously conditioned in building or operating his concepts by the political ideal or utopia which he longs to be realized in future.

This seems to be unavoidable in the social sciences, particularly the 'science' of politics. Consequently, as Carl Friedrich said, there are hundreds of definitions of power, but of course this applies not only to the definitions of power: there are also many different definitions of politics, and the state. As a result, basic concepts such as politics, power, and state with which we use in handling the subject-matter of the discipline are almost polysemous or ambiguous in its meaning-content. Therefore, any time when we would read any works of the political scientists, it is imperative that we make sure what each concept really means. Failing that, we would have no clear understanding of the work.

As has been evident from the above statement, it should be noted that first of all, we need to classify the fundamental concepts of the discipline and then clarify the exact meaning of each concept as to whether or not it corresponds to the subject-matter, which it is intended to explain, and finally establish the coherent relationship among the various concepts in their theoretical consistency. As we have seen, the theory of substantive power and the concepts related to it seem to be relevant in the political analysis

(7) Seishu Yasu, *op.cit.*, S.208.

which attempts to deal with the political affairs of the ages of birth and breakdown of the modern state, that is to say, the political upheavals like all kinds of revolution. On the other hand, the theory of relational power and the concepts connected with it seems to be relevant in the political analysis which deals with the political phenomenon at the stable period of modern state, especially in cases of liberal-democratic countries of Western Europe and the USA. In recent decades the American political science has begun to prevail in the world of the 'science' of politics of Western Europe and Japan beyond the USA, and a remarkable tendency emerges, in which the basic concepts of the discipline are closely related with the theory of relational power. As a consequence, most of the political phenomena have been explained by using the theory of relational power and the associated concepts, but there is no theory that attempts to explain the democratic state by the series of conceptions such as politics, power and state which are all together taken in its theoretical consistency. We may say, then, that although Heller's theory of the state is not yet known in the English-speaking world due to it being written in German, his theory gives us a suggestion with which we can construct the coherent and consistent theory of these three interrelated concepts of politics, power, and state. Therefore, his theory makes an original and profound contribution to the construction of the theory of democratic state and will be a foundation for a 'science' of politics which can explain how the political dynamics of liberal-democratic states really works in its theoretical consistency.