Hans Kelsen And His Pure Theory Of Law

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Hans Kelsen in America - Selective Affinities and the Mysteries of Academic Influence Edward Elgar Publishing
Hans Kelsen's Pure Theory of Law is the most prominent example of legal normativism. This text traces its origins and its genesis. In philosophy, normativism started with Hume's distinction between Is- and Ought-propositions. Kant distinguished practical from theoretical judgments, while resting even the latter on normativity. Following him, Lotze and the Baden neo-Kantians instrumentalized normativism to secure a sphere of knowledge which is not subject to the natural sciences. Even in his first major text, Kelsen claims that law is solely a matter of Ought or normativity. In the second phase of his writings, he places himself into the neo-Kantian tradition, holding legal norms to be Ought-judgments of legal science. In the third phase, he advocates a barely coherent naive normative realism. In the fourth phase, he supplements the realist view with a strict will-theory of norms, coupled with set-pieces from linguistic philosophy; classical normativism is more or less dismantled.
A Critical Analysis of Hans Kelsen's Pure Theory of Law Univ of California Press
This timely and fascinating book focuses on the dynamic interpretation of Hans Kelsen's "General Theory of Norms". Hans Kelsen (1881-1973) was an Austrian jurist and legal philosopher. He is renowned for his work Pure Theory of Law which was first published in 1934 and is one of the most influential theories of law of recent times. This book reconstructs Pure Theory of Law through the lens of 21st-century jurisprudence debates. The book sheds a new light on Kelsen by engaging with key contemporary philosophical concepts, such as explanation and understanding, supervenience, and conceptual metaphors. This unique approach provides a contemporary interpretation of Kelsen's latest theory; creating a new perspective on Kelsen's classic concepts, such as basic norm, and separation of "is" and "ought". By considering both contemporary philosophy and classic concepts, the book creates a novel theoretical landscape worth exploring.
A Critical Analysis of Hans Kelsen's Pure Theory of Law GRIN Verlag
Historically, revolution has been one of the principal means of founding a new state. But can this new state have any moral legitimacy, born as it is out of violence? That is the critical question for legal theorists. The late Hans Kelsen, arguably one of the leading legal theorists and philosophers of the twentieth century, in his Pure Theory of Law, articulated this theory of revolutionary legality as a part of his general theory of law. Kelsen in the Grenada Court: Essays on Revolutionary Legality examines revolutionary legality in the context of the Grenada coup d'etat of March 1979, which brought the People's Revolutionary Government (PRG) to power. The 1973 Constitution was suspended, the executive authority of the country changed, parliament was reconstituted and a new Supreme Court established. The governing principles of political life in Grenada were transformed. The PRG had established a new legality. The courts however, were confronted with questions of their validity and jurisdictional competence. Called upon to judge the validity of the PRG regime, the issue of the validity of the courts was also called into question. Following the demise of the PRG regime in sensational fashion, culminating in the invasion of Grenada by the US army in 1983, the validity of the court was again challenged. This collection of clear, readily

understood essays, shows that the Court determined its own validity as a matter of necessity. Using examples from around the Commonwealth, the case of Bernard Coard & Ors. v. The Attorney General, known popularly as the Maurice Bishop murder trial, or the Grenada Thirteen, McIntosh criticizes the Grenada Court and its handling of the subject of revolutionary legality; while addressing Kelsen's theory of continuity and discontinuity of law and the doctrine of necessity.

Introduction to the Problems of Legal Theory Ian Randle Publishers

Most contemporary legal philosophers tend to take force to be an accessory to the law. According to this prevalent view the law primarily consists of a series of demands made on us; force, conversely, comes into play only when these demands fail to be satisfied. This book claims that this model should be jettisoned in favour of a radically different one: according to the proposed view, force is not an accessory to the law but rather its attribute. The law is not simply a set of rules incidentally guaranteed by force, but it should be understood as essentially rules about force. The book explores in detail the nature of this claim and develops its corollaries. It then provides an overview of the contemporary jurisprudential debates relating to force and violence, and defends its claims against well-known counter-arguments by Hart, Raz and others. This book offers an innovative insight into the concept of Pure Theory. In contrast to what was claimed by Hans Kelsen, the most eminent contributor to this theory, the author argues that the core insight of the Pure Theory is not to be found in the concept of a basic norm, or in the supposed absence of a conceptual relation between law and morality, but rather in the fundamental and comprehensive reformulation of how to model the functioning of the law intended as an ordering of force and violence.

The Pure Theory of Law The Lawbook Exchange, Ltd.

This analysis of Hans Kelsen's international law theory takes into account the context of the German international legal discourse in the first half of the twentieth century, including the reactions of Carl Schmitt and other Weimar opponents of Kelsen. The relationship between his Pure Theory of Law and his international law writings is examined, enabling the reader to understand how Kelsen tried to square his own liberal cosmopolitan project with his methodological convictions as laid out in his Pure Theory of Law. Finally, Jochen von Bernstorff discusses the limits and continuing relevance of Kelsenian formalism for international law under the term of 'reflexive formalism', and offers a reflection on Kelsen's theory of international law against the background of current debates over constitutionalisation, institutionalisation and fragmentation of international law. The book also includes biographical sketches of Hans Kelsen and his main students Alfred Verdross and Joseph L. Kunz.

Peace Through Law Routledge

By re-examining the political thought of Max Weber, Carl Schmitt and Hans Kelsen, this book offers a reflection on the nature of modern democracy and the question of its legitimacy. Pedro T. Magalhães shows that present-day elitist, populist and pluralist accounts of democracy owe, in diverse and often complicated ways, an intellectual debt to the interwar era, German-speaking, scholarly and political controversies on the problem(s) of modern democracy. A discussion of Weber’s ambivalent diagnosis of modernity and his elitist views on democracy, as they were elaborated especially in the 1910s, sets the groundwork for the study. Against that backdrop, Schmitt’s interwar political thought is interpreted as a form of neo-authoritarian populism, whereas Kelsen evinces robust, though not entirely unproblematic, pluralist consequences. In the conclusion, the author draws on Claude Lefort’s concept of indeterminacy to sketch a potentially more fruitful way than can be gleaned from the interwar German discussions of conceiving the nexus between the elitist, populist and pluralist faces of modern democracy. The Legitimacy of Modern Democracy will be of interest to political theorists, political philosophers, intellectual historians, theoretically oriented political scientists, and legal scholars working in the subfields of constitutional law and legal theory. The Open Access version of this book, available at https://doi.org/10.4324/9781315157566, has been made available under a Creative Commons Attribution-Non Commercial-No Derivatives 4.0 license

Normativity and Norms Oxford University Press, USA

There exists a genuine degree of scepticism as to whether Hans Kelsen's pure theory of law can rationalise the intricacies of the English legal system. This groundbreaking book examines pertinent aspects of English law relating to constitutional patterns of law-making, the relationship between law and policy, and the ultimate efficacy of the legal order, through the pure theory's prism. This insightful book demonstrates that Kelsen's theory is highly suitable to examine some of these issues, and in some aspects of English law it actually possesses the analytical cutting edge. Beginning with an overview of the outlook and methodology of the pure theory of law and placing it within the broader focus of positive scholarship, Orakhelashvili moves on to offer a description of the relationship between methods of the legal theory and the workings of a legal system, along with assessments of the relationship between law and policy in legal theory and in judicial practice, and of criticisms of the pure theory. Thoughtful and perceptive, this book will be valuable reading for legal scholars, social scientists, judges, practicing lawyers, legal historians, political scientists, and law students.

Law and Politics in the World Community Routledge

Who presupposes Kelsen's basic norm? Is it possible to defend the presupposition in a way that is convincing? And what difference does the presupposition make? Endeavouring to highlight the role of basic assumptions in the law, the author argues that the verb "to presuppose', with Kelsen, has not only a conceptual but also a normative dimension; and that the expression 'presupposing the basic norm'is adequate in so far as it marks the descriptive-normative nature of utterances made in specifically legal speech-situations. Addressed to legal theorists in general, the treatise purports to show that Kelsen's doctrine lends itself to an interpretation according to which the very act of "presupposing" the Grundnorm can be understood as a Grund, i.e. normative source of all positive law; and, what is more, that this interpretation admits of addressing the issue of the (formal) legitimacy of supra-national and directly applicable rules and other norms.

General Theory of Law and State Hart Publishing

This collection of new essays takes Kelsen's Pure Theory of Law as a stimulus, aiming to move forward the debate on several central issues in contemporary jurisprudence.

The Pure Theory of Law Bloomsbury Publishing

One of the leading legal philosophers of this century, Kelsen published this short treatise in 1934, when the neo-Kantian influence on his work was at its zenith. An earlier, "constructivist" phase had been displaced by his effort to provide something approximating a neo-Kantian foundation for his theory. If this second phase represents the Pure Theory of Law in its most characteristic form, then the present treatise may well be its central text. And of Kelsen's many statements of the Pure Theory, this one is surely the most accessible. Topics covered include the legal norm and Kelsen's normativity thesis, law and morality, the role of ideology, the concept of the legal person, legal interpretation, the identity of law and state, and the theory of international law. Among the appendices is an annotated bibliography of secondary literature on Kelsen.

What is Justice? Bloomsbury Publishing

This title is part of UC Press's Voices Revived program, which commemorates University of California Press’s mission to seek out and cultivate the brightest minds and give them voice, reach, and impact. Drawing on a backlist dating to 1893, Voices Revived makes high-quality, peer-reviewed scholarship accessible once again using print-on-demand technology. This title was originally published in 1953.

Hans Kelsen's Normativism EUP

First published in 1998. Routledge is an imprint of Taylor & Francis, an informa company.

An Introduction to the General Theory of Law Oxford University Press on Demand

There exists a genuine degree of scepticism as to whether Hans Kelsen’s pure theory of law can rationalise the intricacies of the English legal system. This ground-breaking book examines pertinent aspects of English law relating to constitutional patterns of law-making, the relationship between law and policy, and the ultimate efficacy of the legal order, through the pure theory’s prism. It demonstrates that while Kelsen’s theory is highly suitable to examine some of these issues, in relation to some aspects of English law it actually possesses the analytical cutting edge.

Hans Kelsen and the Natural Law Tradition Cambridge University Press

Using newly translated papers and some of the best extant writings on Kelsen's theory, this volume covers topics including competing ideas on the nature of law, legal validity, legal powers and the unity of municipal and international law.

Kelsen Revisited The Lawbook Exchange, Ltd.

Academic Paper from the year 2018 in the subject Law - Philosophy, History and Sociology of Law, grade: A-, , course: Philosophy of Science, language: English, abstract: This Article seeks to explain Kelson’s pure theory of law and his whole contribution to legal positivism was influenced and bolstered by his early stay in Vienna, even though the foundational stone laid by Kelsen on legal positivism is clearly distinguished from logical positivism propounded by the pioneers of Vienna circle, in this article I argue the intellectual uplifting Kelsen underwent during the youth he spent in Vienna had left a hallmark in his thoughts. Furthermore this article illustrates how both logical positivism and legal positivism grew parallel in a same time period during two great wars. Central argument I seek to explain in this article is to demonstrate Hans Kelsen as a legal modernist and how Vienna circle made impacts upon his thoughts.

The Legitimacy of Modern Democracy OUP Oxford

Positivist legal theorists inspired by Kelsen's work failed to appreciate the political-theoretical potential of the Pure Theory of Law and thus turned to a narrow agnosticism about the functions of law. The Pure Theory of Law, I conclude, may offer a paradigm of jurisprudential thought that could reconnect jurisprudence with political theory as it was traditionally understood: namely as a reflection on the best constitution and on the contribution that different legal actors and institutions can make to its realization.

The Idea of a Pure Theory of Law Routledge

"A very important collection of esays on the legal philosophy of Hans Kelsen....The collection has a pleasant unity and includes a superb introduction by the editors that provides a framework for the essays and a perspective from which to evaluate Kelsen's contributions to legal theory." --Choice

Principles of International Law The Lawbook Exchange, Ltd.

Excerpt from The Law of the United Nations: A Critical Analysis of Its Fundamental Problems T1115 book is a juristic - not a political - approach to the problems of the United Nations. It deals with the law of the Organisation, not with its actual or desired role in the international play of powers. Separation of law from politics in the presentation of national or international problems is possible in so far as law is not an end in itself, but a means or, what amounts to the same, a specific social technique for the achievement of ends determined by politics. It stands to reason that in dealing with legal questions the elimination of the political issues involved is always relative, never absolute. In a merely juristic inquiry the political ends of the law-maker, in so far as they are ascertainable in an objective way, are taken for granted, and, hence, not subjected to a criticism, except to the degree that it may properly be restricted to the law as a means to these ends. Juristic in contradistinction to political has the connotation of technical.' It is not superfluous to remind the lawyer that as a jurist he is but a technician whose most important task is to assist the law-maker in the adequate formulation of the legal norms. About the Publisher Forgotten Books publishes hundreds of thousands of rare and classic books. Find more at www.forgottenbooks.com This book is a reproduction of an important historical work. Forgotten Books uses state-of-the-art technology to digitally reconstruct the work, preserving the original format whilst repairing imperfections present in the aged copy. In rare cases, an imperfection in the original, such as a blemish or missing page, may be replicated in our edition. We do, however, repair the vast majority of imperfections successfully; any imperfections that remain are intentionally left to preserve the state of such historical works.

Hans Kelsen's Pure Theory of Law Springer

This volume explores the reasons for Hans Kelsen’s lack of influence in the United States and proposes ways in which Kelsen’s approach to law, philosophy, and political, democratic, and international relations theory could be relevant to current debates within the U.S. academy in those areas. Along the way, the volume examines Kelsen’s relationship and often hidden influences on other members of the mid-century Central European émigré community whose work helped shape twentieth-century social science in the United States. The book includes major contributions to the history of ideas and to the sociology of the professions in the U.S. academy in the twentieth century. Each section of the volume explores a different aspect of the puzzle of the neglect of Kelsen’s work in various disciplinary and national settings. Part I provides reconstructions of Kelsen’s legal theory and defends that theory against negative assessments in Anglo-American jurisprudence. Part II focuses both on Kelsen’s theoretical views on international law and his practical involvement in the post-war development of international criminal law. Part III addresses Kelsen’s theories of democracy and justice while placing him in dialogue with other major twentieth-century thinkers, including two fellow émigré scholars, Leo Strauss and Albert Ehrenzweig. Part IV explores Kelsen’s intellectual legacies through European and American perspectives on the interaction of Kelsen’s theoretical approach to law and national legal traditions in the United States and Germany. Each contribution features a particular applications of Kelsen’s approach to doctrinal and interpretive issues currently of interest in the legal academy. The volume concludes with two chapters on the nature of Kelsen’s legal theory as an instance of modernism.

Introduction to the Problems of Legal Theory Oxford University Press

Hans Kelsen is commonly considered to be among the founding fathers of modern legal

philosophy. Despite Kelsen's prominence as a legal theorist, his political theory has so far been mostly overlooked. This book argues that Kelsen's legal theory, the Pure Theory of Law, needs to be read in the context of Kelsen's political theory. It offers the first comprehensive interpretation of the Pure Theory that makes systematic use of Kelsen's conception of the rule of law, of his theory of democracy, his defense of constitutional review, and his views on international law. Once it is read in the context of Kelsen's political works, Kelsen's analysis of legal normativity provides us with a notion of political legitimacy that is distinct from any comprehensive and contestable theory of justice. It shows how members of pluralist societies can reasonably acknowledge the binding nature of law, even where its content does not fully accord with their own substantive views of the requirements of justice, provided it is created in accordance with an ideal of fair arbitration amongst social groups. This result leads to a fundamental re-evaluation of the Pure Theory of Law. The theory is best understood as an attempt to find a middle ground between natural law and legal positivism. Later positivist legal theorists inspired by Kelsen's work failed to appreciate the political-theoretical context of the Pure Theory and turned to a narrow instrumentalism about the functions of law. The perspective on Kelsen offered in this book aims to reconnect positivist legal thought with normative political theory.