

FREE HANS KELSENS PURE THEORY OF LAW LEGALITY AND LEGITIMACY

Legality and Legitimacy in Hans Kelsen's Pure Theory of Law

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.

Hans Kelsen's Pure Theory of Law

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.

Legality and Legitimacy

This text investigates one of the oldest questions of legal philosophy - the relationship between law and legitimacy. It analyses the legal theories of three public lawyers of the Weimar era, Carl Schmitt, Hans Kelsen, and Hermann Heller.

Pure Theory of Law

Reprint of the second revised and enlarged edition, a complete revision of the first edition published in 1934. A landmark in the development of modern jurisprudence, the pure theory of law defines law as a system of coercive norms created by the state that rests on the validity of a generally accepted Grundnorm, or basic norm, such as the supremacy of the Constitution. Entirely self-supporting, it rejects any concept derived from metaphysics, politics, ethics, sociology, or the natural sciences. Beginning with the medieval reception of Roman law, traditional jurisprudence has maintained a dual system of \"subjective\" law (the rights of a person) and \"objective\" law (the system of norms). Throughout history this dualism has been a useful tool for putting the law in the service of politics, especially by rulers or dominant political parties. The pure theory of law destroys this dualism by replacing it with a unitary system of objective positive law that is

insulated from political manipulation. Possibly the most influential jurist of the twentieth century, Hans Kelsen [1881-1973] was legal adviser to Austria's last emperor and its first republican government, the founder and permanent advisor of the Supreme Constitutional Court of Austria, and the author of Austria's Constitution, which was enacted in 1920, abolished during the Anschluss, and restored in 1945. The author of more than forty books on law and legal philosophy, he is best known for this work and *General Theory of Law and State*. Also active as a teacher in Europe and the United States, he was Dean of the Law Faculty of the University of Vienna and taught at the universities of Cologne and Prague, the Institute of International Studies in Geneva, Harvard, Wellesley, the University of California at Berkeley, and the Naval War College. Also available in cloth.

Why Grundnorm?

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.

Carl Schmitt's Early Legal-Theoretical Writings

Many of Carl Schmitt's major works have by now been translated, with two notable exceptions: Schmitt's two early monographs *Statute and Judgment* (first published in 1912) and *The Value of the State and the Significance of the Individual* (first published in 1914). In these two works Schmitt presents a theory of adjudication as well as an account of the state's role in the realization of the rule of law, which together form the theoretical basis on which Schmitt later developed his political and constitutional theory. This new book makes these two key texts available in English translation for the first time, together with an introduction that relates the texts to their historical context, to Schmitt's other works, and to contemporary discussions in legal and constitutional theory.

General Theory of Law and State

Reprint of the first edition. This classic work by the important Austrian jurist is the fullest exposition of his enormously influential pure theory of law, which includes a theory of the state. It also has an extensive appendix that discusses the pure theory in comparison with the law of nature, positivism, historical natural law, metaphysical dualism and scientific-critical philosophy. "The scope of the work is truly universal. It never loses itself in vague generalities or in unconnected fragments of thought. On the contrary, precision in the formulation of details and rigorous system are characteristic features of the exposition: only a mind fully concentrated upon that logical structure can possibly follow Kelsen's penetrating analysis. Such a mind will not shrink from the effort necessary for acquainting itself with...the pure theory of law in its more general aspects, and will then pass over to the theory of the state which ends up with a carefully worked out theory of international law." Julius Kraft, *American Journal of International Law* 40 (1946):496.

Kelsen in the Grenada Court

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.

The Normative Force of the Factual

This book explores the interrelation of facts and norms. How does law originate in the first place? What lies at the roots of this phenomenon? How is it preserved? And how does it come to an end? Questions like these led Georg Jellinek to speak of the “normative force of the factual” in the early 20th century, emphasizing the human tendency to infer rules from recurring events, and to perceive a certain practice not only as a fact but as a norm; a norm which not only allows us to distinguish regularity from irregularity, but at the same time, to treat deviances as transgressions. Today, Jellinek's concept still provides astonishing insights on the dichotomy of “is” and “ought to be”, the emergence of the normative, the efficacy and the defeasibility of (legal) norms, and the distinct character of what legal theorists refer to as “normativity”. It leads us back to early legal history, it connects anthropology and legal theory, and it demonstrates the interdependence of law and the social sciences. In short: it invites us to fundamentally reassess the interrelation of facts and norms from various perspectives. The contributing authors to this volume have accepted that invitation.

Introduction to the Problems of Legal Theory

Hans Kelsen is considered to be one of the foremost legal theorists and philosophers of the twentieth century. His writing made significant contributions to many areas, especially those of legal theory and international law. Over a number of decades, he developed an important legal theory which found its first complete exposition in *Reine Rechtslehre*, or Pure Theory of Law, the first edition of which was published in Vienna in 1934. This is the first English translation of the first edition of that work. It covers such topics as law and morality, the legal system and its hierarchical structure and the state, and international law.

The Public International Law Theory of Hans Kelsen

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.

Kelsen Revisited

Forty years after his death, Hans Kelsen (1881-1973) remains one of the most discussed and influential legal philosophers of our time. 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 essays in Part I address legal validity, the normativity of law, and Kelsen's famous but puzzling idea of a legal system's 'basic norm'. Part II engages with the difficult issues raised by the social realities of law and the actual practices of legal officials. Part III focuses on conceptual features of legal systems and the logical structure of legal norms. All the essays were written for this volume by internationally renowned scholars from seven countries. Also included, in English translation, is an important polemical essay by Kelsen himself.

Hans Kelsen and the Case for Democracy

Hans Kelsen and the Case for Democracy is a contextual analysis of this famous jurist's political thought.

Legality and Legitimacy

First English-language translation of one of Schmitt's major works, providing a missing link in the oeuvre of this influential and controversial political theorist.

The Foundation of the Juridico-Political

Hans Kelsen and Max Weber are conventionally understood as initiators not only of two distinct and opposing processes of concept formation, but also of two discrete and contrasting theoretical frameworks for the study of law. The Foundation of the Juridical-Political: Concept Formation in Hans Kelsen and Max Weber places the conventional understanding of the theoretical relationship between the work of Kelsen and Weber into question. Focusing on the theoretical foundations of Kelsen's legal positivism and Weber's sociology of law, and guided by the conceptual frame of the juridico-political, the contributors to this interdisciplinary volume explore convergences and divergences in the approach and stance of Kelsen and Weber to law, the State, political science, modernity, legal rationality, legal theory, sociology of law, authority, legitimacy and legality. The chapters comprising The Foundation of the Juridical-Political uncover complexities within as well as between the theoretical and methodological principles of Kelsen and Weber and, thereby, challenge the enduring division between legal positivism and the sociology of law in contemporary discourse.

The Pure Theory of Law

Explores how the central question of philosophy of law is the legal subject's: how can that be law for me?

The Long Arc of Legality

The Long Arc of Legality breaks the current deadlock in philosophy of law between legal positivism and natural law by showing that any understanding of law as a matter of authority must account for the interaction of enacted law with fundamental principles of legality. This interaction conditions law's content so that officials have the moral resources to answer the legal subject's question, 'But, how can that be law for me?' David Dyzenhaus brings Thomas Hobbes and Hans Kelsen into a dialogue with H. L. A. Hart, showing that philosophy of law must work with the idea of legitimate authority and its basis in the social contract. He argues that the legality of international law and constitutional law are integral to the main tasks of philosophy of law, and that legal theory must attend both to the politics of legal space and to the way in which law provides us with a 'public conscience'.

The Long Arc of Legality

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.

Domesticating Kelsen

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 Idea of a Pure Theory of Law

It gives me great pleasure to offer this foreword to the present work of my admired friend and respected colleague Ota Weinberger. Apart from the essays of his which were published in our joint work *An Institutional Theory of Law: New Approaches to Legal Positivism* in 1986, relatively little of Weinberger's work is available in English. This is the more to be regretted, since his is work of particular interest to jurists of the English-speaking world both in view of its origins and in respect of its content. As to its origins, Weinberger was reared as a student of the Pure Theory of Law, a theory which in its Kelsenian form has aroused very great interest and has had considerable influence among Anglophone scholars -perhaps even more than in the Germanic countries. Less well known is the fact that the Pure Theory itself divided into two schools, that of Vienna and that of Brno. It was in the Brno school of Frantisek Weyr that Weinberger's legal theory found its early formation, and perhaps from that early influence one can trace his continuing insistence on the dual character of legal norms -both as genuinely normative and yet at the same time having real social existence.

Law, Institution and Legal Politics

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

The Legitimacy of Modern Democracy

Raymond Wacks reveals the intriguing and challenging nature of legal philosophy, exploring the notion of law and its role in our lives. He refers to key thinkers from Aristotle to Rawls, from Bentham to Derrida and looks at the central questions behind legal theory, and law's relation to justice, morality, and democracy.

Philosophy of Law

Hans Kelsen and the Natural Law Tradition provides the first sustained examination of Hans Kelsen's critical engagement, itself founded upon a distinctive theory of legal positivism, with the Natural Law Tradition.

Hans Kelsen and the Natural Law Tradition

This book presents papers that deal with Hans Kelsen's legal philosophy, and includes contributions from Hedley Bull, J.W. Harris, Phillip Pettit, Joseph Raz, Jes Bjarup, and Stanley L. Paulson.

Essays on Kelsen

The first comprehensive study of international legal positivism and how this theory operates in twenty-first-century international legal scholarship.

International Legal Positivism in a Post-Modern World

Hans Kelsen and Max Weber are conventionally understood as the original proponents of two distinct and opposed processes of concept formation generating two separate and contrasting theoretical frameworks for the study of law. The Reconstruction of the Juridico-Political: Affinity and Divergence in Hans Kelsen and Max Weber contests the conventional understanding of the theoretical relationship between Kelsen's legal positivism and Weber's sociology of law. Utilising the conceptual frame of the juridico-political, the contributors to this interdisciplinary volume analyse central points of affinity and divergence in the work of these two influential figures. Thus, the chapters collected in The Reconstruction of the Juridico-Political offer a comprehensive reconsideration of these affinities and divergences, through a comparison of their respective reconstruction of the notions of democracy, the State, legal rights and the character of law. From this reconsideration a more complex understanding of their theoretical relationship emerges combined with a renewed emphasis upon the continued contemporary relevance of the work of Kelsen and Weber.

The Pure Theory of Law

Hans Kelsen is considered by many to be the foremost legal thinker of the twentieth century. During the last decade of his life he was working on what he called a general theory of norms. Published posthumously in

1979 as *Allgemeine Theorie der Normen*, the book is here translated for the first time into English. Kelsen develops his \"pure theory of law\" into a \"general theory of norms\"

The Reconstruction of the Juridico-Political

This book proposes a novel theory of justice in international trade law, examining what justice means and demands in this domain.

Legal Norms and Legal Science

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 Kelsen'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.

General Theory of Norms

Proceedings of a conference on Kelsen and Schmitt held Jan. 5-6, 1997 in Tel Aviv and organized by the Max Planck Institute of European Legal History, Frankfurt/Main and the Institute for German History at Tel Aviv University.

Distributive Justice and World Trade Law

This book critically examines the conception of legal science and the nature of law developed by Hans Kelsen. It provides a single, dedicated space for a range of established European scholars to engage with the influential work of this Austrian jurist, legal philosopher, and political philosopher. The introduction provides a thematization of the Kelsenian notion of law as a legal science. Divided into six parts, the chapter contributions feature distinct levels of analysis. Overall, the structure of the book provides a sustained reflection upon central aspects of Kelsenian legal science and the nature of law. Parts one and two examine the validity of the project of Kelsenian legal science with particular reference to the social fact thesis, the notion of a science of positive law and the specifically Kelsenian concept of the basic norm (*Grundnorm*). The next three parts engage in a critical analysis of the relationship of Kelsenian legal science to constitutionalism, practical reason, and human rights. The last part involves an examination of the continued pertinence of Kelsenian legal science as a theory of the nature of law with a particular focus upon contemporary non-positivist theories of law. The conclusion discusses the increasing distance of contemporary theories of legal positivism from a Kelsenian notion of legal science in its consideration of the nature of law.

Austrian Minds: Vienna Circle and Hans Kelsen

Institutions of Law presents the definitive statement of Sir Neil MacCormick's well-known 'institutional' theory of law, defining law as 'institutional normative order' and explaining each of these three terms in depth. It attempts to fulfil the need for a twenty-first century introduction to legal theory marking a fresh start such as was achieved in the last century by H. L. A. Hart's *The Concept of Law*.

Hans Kelsen's Legal Theory

The Nature of International Law provides a comprehensive analytical account of international law within the prototype theory of concepts.

Hans Kelsen and Carl Schmitt

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.

Law and Politics in the World Community

The present work offers an original approach on the legal notions developed by Hans Kelsen in his attempts towards a \"pure\" theory of Law, based on a philosophical analysis of the main legal concepts that have a strong philosophical feature, namely those notions which are somehow \"shared\" between the two fields in their name, but not always in their meaning. While the most striking notion to be approached via a philosophical perspective would probably be that of legal validity (since validity is a central term also in Logic), we aim, in the same way, to approach the notions of legal fictions, the notion of science in Law, normative conflicts or \"contradictions\" as they are commonly - and wrongly - named, and the rule of inference as it is applied in the context of normative creation, giving place to the wrong notion of practical reasoning. The notion of practical reasoning is very rich in this context of comparison, and will be a special one, as it serves for us to analyze traditional problems of legal theory, such as JOrgensen's dilemma, as well as it offers the opportunity of providing our own alternative of a legitimate logical treatment of the process of legal justification in the context of the creation of a norm. We aim to analyze the notion of legal and logical conditions as well, which represent a changing in Kelsen's perspective on the utility and legitimacy of the application of logic to the legal domain. Such a comparative study, even if it appears to be fundamental for clarifying those notions in their respective fields, is a task never before developed in this systematic manner. The objective of such a study is to provide a clear overview of the boundaries between the fields of philosophy (especially logic) and the legal norms. A clear understanding of the relations between those \"homonym\" notions may explain why they are - most of the time - misused when philosophers talk about law, as well as when lawyers and jurists try to justify the concepts composing their legal theories. The context of this study is the legal positivism as it is explained by the legal-philosopher Hans Kelsen. This choice is justified by the fact that Kelsen's legal theory appears to be the most suitable frame for an analytical, logic-oriented investigation. The work emphasized will be the General Theory of Norms (1979), mainly because of the fact that this book represents how intensively Kelsen dedicated himself to the legal problems mostly related to philosophy or logic, namely the question of the application of logic to norms and the clarification of problematic notions such as the Basic Norm as a fiction or, still, the notion of \"modally indifferent substrate,\" that we consider to be a path towards a conciliation between logic and law.

Kelsenian Legal Science and the Nature of Law

Institutions of Law

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