

# Professor Kelsen's Amazing Reappearing Act

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## Abstract

Hans Kelsen (1881-1973) ranks as one of the most important legal philosophers and liberal political theorists of the twentieth century. With his Pure Theory of Law, he set out to liberate legal and political discourse from anti-democratic baggage. So significant was Kelsen's intellectual influence that Hans J. Morgenthau once praised him thus: "To Hans Kelsen, who has taught us through his example how to speak Truth to Power." Bringing together a diverse group of thinkers whose works cross disciplinary boundaries, this special issue, "Kelsen, Politics, and Realism", asks whether Kelsen's thought is still relevant to our times. It is argued that Kelsen can help us think about government and international affairs in a moment when democracy and peace are threatened.

## Keywords

Democracy, Kelsen, liberalism, politics, realism

# Professor Kelsens verblüffendes Wiederauftauchen

## Zusammenfassung

Hans Kelsen (1881-1973) gilt als einer der bedeutendsten Rechtsphilosophen und liberalen politischen Theoretiker des 20. Jahrhunderts. Mit seiner Reinen Rechtslehre machte er sich daran, den rechtlichen und politischen Diskurs von antidemokratischem Ballast zu befreien. Kelsens intellektueller Einfluss war so bedeutend, dass Hans J. Morgenthau ihn einmal so würdigte: "Auf Hans Kelsen, der uns durch sein Beispiel gelehrt hat, wie man der Macht die Wahrheit sagt." Diese Sonderausgabe mit dem Titel "Kelsen, Politik und Realismus" bringt eine vielfältige Gruppe von Wissenschaftler:innen zusammen, deren Beiträge die Grenzen einzelner Fachdisziplinen überschreiten, und stellt die Frage, ob Kelsens Denken für uns noch relevant ist. Es wird argumentiert, dass Kelsen uns helfen kann, besonders in einer Zeit, in der Demokratie und Frieden bedroht sind, über Politik, Regierungshandeln und internationale Angelegenheiten realistisch nachzudenken.

## Schlüsselwörter

Demokratie, Kelsen, Liberalismus, Politik, Realismus

The author has declared that no competing interests exist.

## 1. Introduction

Hans Kelsen is a hard sell. He knew that he wouldn't make friends when he exploded on to the intellectual scene in Vienna a hundred years ago with his Pure theory of law, state, and international legal order (Jablonek 1998; Olechowski 2020; Schuett 2021). For the theory that had its roots in writing new positivist methodology of doing jurisprudence (Somek 2021a) was of course *political* (Vinx 2021). Or, at the very least, Kelsen's Kantian project of purity (Paulson 2018) was perceived to be a threat. He de-ideologized authoritarian and organicist doctrines coming out of 19<sup>th</sup>-century German *Staatslehre* (Górnisiewicz 2020). He purified public international law through a cosmopolitan legal monism (Gragl 2018). He enlightened us as to how positive law transforms brute power into normative authority (Dyzenhaus 2022). Marxist ideologues on the Left, as well as authoritarian populists on the Right, feared Kelsenian legal positivism as an ideology-critical method: because if applied to the theory and practice of government and international affairs, it makes it so much harder to conceal real motives of power for power's sake.

It was even worse than that, though. Critics and enemies were plentiful, chief among them the Nazi jurist Carl Schmitt (Vinx 2015). The fear of Kelsen and Kelsenian themes was more widespread and deeper, notably in the United States (Telman 2016). This is how Kelsen (1934, 3) judged it at the time, writing out of Geneva after fleeing Germany when the Nazis took over; it's a pointed testimony that seems worth quoting at length to illustrate against whom he was battling it all out for his vision of legal validity and political normativity:

"Fascists declare that the Pure Theory is on the side of democratic liberalism, while liberal or social democrats regard it as a trail-blazer for Fascism. Communists write off the Pure Theory as the ideology of capitalistic statism, while nationalists and capitalists write it off sometimes as Bolshevism, sometimes as covert anarchism. There are those who assure us that the Pure Theory is intellectually related to Catholic scholasticism, and others who believe that it has the characteristics of Protestant political and legal theory. And there are even those who would like to brand it as atheistic. In a word, the Pure Theory of Law has been suspected of every single political persuasion there is. Nothing could attest better to its purity."

Little wonder that Hans J. Morgenthau (1971), who received his *Habilitation* under Kelsen's guidance in interwar Europe, once lauded him as the embodiment of a consistent and fearless, true scholar of law and politics. How shall we think of Kelsen today? At a most precarious time in recent European and world history when neo-

Schmittians and other authoritarian populists are on the verge of destroying long-established legal, political, diplomatic, and moral norms of societal and international order (Scheuerman 2021), isn't any reconsideration of Kelsen for our times like throwing white sand at battle ships? What do we gain by revisiting the thought of a "modest Old World gentleman" (Schlink 1999)? Don't we have to accept, as William E. Scheuerman (2014) laments in "Professor Kelsen's Amazing Disappearing Act", that Kelsen is a has-been whom we occasionally drag out onto the stage in yet another Kelsen/Schmitt show?

The reader will see where I am going with this. Kelsen is too important to be defined by his foes. Kelsenian themes are too timely to be discussed only in the lecture halls of legal historians and historians of political thought. A comprehensive account of Kelsen would take us far beyond what is possible here. No single journal collection can hope to provide complete coverage of any thinker, even less so with someone like Kelsen who criss-crossed different academic disciplines and was forever concerned with perfecting his own thoughts: there's not *the* Kelsen. Recall that over the course of more than half a century of prolific writing in Europe and the United States, he published the equivalent of about 18,000 pages. Note also that the Herculean task of editing Kelsen's complete works, carried out by Matthias Jestaedt in collaboration with the Viennese Hans Kelsen-Institut, is progressing; eight out of the projected thirty-two volumes have been published by Mohr Siebeck.

Therefore, the remainder of this introduction to "Kelsen, Politics, and Realism" has two tasks. The first is to situate the special concern here with *Kelsen the realist*. The second is to say where the contributors are going to take us.

## 2. Kelsen, Politics, and Realism

It is not commonplace to associate Kelsen with realism, neither with legal realism nor with political realism. He is recognised as a modern legal positivist and, as such, as a most methodical theorist of the modern legal state, although that doesn't mean that there aren't any links between Kelsenian legal positivism and American legal realism (Bezemek 2016). He is also recognised as a so-called political idealist in the Kantian mould, although elsewhere I tried to make the case that Kelsen may be far more realistic in matters of human nature, politics, and international relations than is commonly acknowledged (Schuett 2018; 2021); of which more later. Important now—even at the risk of over-simplification—is to find a common point of departure.

One way to look at Kelsen is through the lens of legal theory. This can be painful. He writes in abstract

conceptual language (Wacks 2020, 111). His body of work is extensive, if not “excruciatingly repetitive” (Somek 2021b, 65n4). Any aspiring Kelsen expert cannot but fight their way through what are Kelsen’s six major books on legal theory, including the *Hauptprobleme der Staatsrechtslehre* (1911), his *Allgemeine Staatslehre* (1925), the two editions of the *Reine Rechtslehre* (1934; 1960), and his *General Theory of Law and State* (1945), as well as his posthumous *Allgemeine Theorie der Normen* (1979). What we get to see is a thinker and a method that are so pure and normative that one might be tempted to disregard the entire Kelsenian project as, well, too pure and normative, or as too idealistic in the face of the Schmittians old and new; that would be short-sighted, though, as the contributions collected here hope to show.

In a nutshell, Kelsen’s answer to the question, *Knowing what the nature of the law (and state) is*, was this: the law is a specific social technique that coerces You and Me into a certain kind of normatively prescribed behaviour through sanctions (Kelsen 1941). If p happens, q ought to follow. What is so distinctive about Kelsen’s non-naturalistic thinking is his insistence that law cannot but be normative. Enter the basic norm, the foundation of law, for to avoid the naturalistic fallacy in the normative production of law-creating acts (constitution, legislation, judicial ruling, acts of the bailiff or prison warder), at some point in the chain we reach the historically first constitution. Hence the question arises, *Whence does this constitution derive its legal validity?* From—the basic norm (Albrecht 2021). It is the heart of Kelsen’s normative conception of law, which is to say: the nature of law, all law, is understood as a hierarchy of legal norms unified by the basic norm.

What Kelsen’s focus on the construction of legal validity and, by the same token, on the primacy of political normativity translates into, is this one methodological key message. As Hans J. Morgenthau (1964, 210) puts it:

“It is one of the lasting merits of Hans Kelsen’s theory of law and state to have demonstrated the unity of the legal and political order, domestic and international.”

Law and the state are one and the same, and according to Kelsen’s core normative logic, there is also no dualism between domestic and international law: what we have out there is one single global legal system. To some, this is the hallmark of Enlightenment. He liberated our thinking about the state from the baggage of metaphysics, natural law, and political theology by radically conceptualising the “state as a legal function” (Jablonek 2016, 333). To others, such as the Hegelians and Schmittians, to think of the state—and state power (for that is what really matters to them)—in terms of legal validity and norm imputation is, at best, absurd

and unpolitical, and at worst, a dangerous aberration of just another one of the “zealots of a blind normativism” (Carl Schmitt quoted in Vinx 2015, 99).

Now, suppose that you are a political realist. But you are one of a so-called classical persuasion (Schuett/Hollingworth 2018). You are not a subscriber to John J. Mearsheimer’s world of reified structural anarchy from where there is no escaping, which is a “parody of science” (Lebow 2021, 33). Let me add here: that much of IR neo-realism in the mould of Kenneth N. Waltz (1979) and John J. Mearsheimer (2001) has little to do with so-called classical realism, in either its mid-twentieth century version or earlier historical variants, has been argued by political and IR theorists for decades (for a bibliography see Schuett 2021, 147n5; also Karkour 2022; Paipais 2022).

Thus, as this little thought experiment goes, with the likes of Hans J. Morgenthau (Zamernardi 2022), Reinhold Niebuhr (Hartnett/Ashworth 2021), and other mid-twentieth-century progressive or reformist realists (Scheuerman 2011), you believe in the ubiquity of power in all political life, as well as that “a world-state is the only rational polity” (Booth 2005, 352). It appears unlikely, from today’s perspective, that world politics is moving in a post-statist direction any time soon. It is clear to all “real” political realists old and new, and of course to many others realistic observers in political and IR theory, however, that unless “Westfailure” (Strange 1999) is reformed, there will be blood: over and over again.

Also suppose that you are interested in what comes out of today’s political and IR theory in terms of the concept of the state. You may be puzzled to see how under-theorised the state is, not least because understanding the modern state with its claim to sovereignty, domestic and international, was long deemed central to understanding politics and foreign affairs (Schuett/Stirk 2015). Then you come across Alexandria Innes’s (2022) aptly titled essay “Someone needs to stop these violent psychopaths!”—which is a contribution to a recent Duck of Minerva symposium on Adam B. Lerner’s (2021) thought-provoking *International Theory* article, “What’s it like to be a State? An argument for State Consciousness”—and you will read this:

“States don’t do violence to one another. They inflict violence on actual living beings. Once we start treating states as conscious entities, then we only further legitimate a way of thinking that conspires to obscure the violence and the suffering it causes.”

What might be a realistic reaction to her critique of ascribing to the state any form of consciousness?

It is, of course, meaningless to speculate as to what Morgenthau, Niebuhr, and other mid-twentieth-

century political realists would respond. Yet one can envisage their rejoinder: there is no such thing as state consciousness because there is no such thing as the state; there is nothing as notorious as the idea of the state as a person, as a macro anthropos, as a social organism, as real in any empirical sense, or anything like that. Morgenthau referred to the concept of the modern state as "*Rechtsstaat*" (1964, 223n1) and as "but another name [...] of the legal order of society" (1948, 489); Niebuhr pointed out that the "nation is an abstraction" (1932, 54); and E.H. Carr thought of state personification as "a fiction" (1939, 189). If this sounds Kelsenian, then that's because it probably is. If the old juxtaposition is correct whereby realists think of the state as real in any factual sense, while idealists say that the state is a system of legally valid norms (Grzybowski/Koskenniemi 2015, 27), then some of the political realists, such as Morgenthau, Niebuhr, or Carr, may not really fit into such a dichotomous view of political/legal/state theory.

Here's the twist, then. To say with political realists that human nature isn't good, that Freudian or other biopsychological dynamics explain violent nationalism, that social and international life is a struggle for power, that visions of post-statist reforms tend to have more foes than friends, isn't giving in to authoritarian-organicist and naturalistic state theory. Exactly the opposite is the case: if one is a real political realist, one who seeks to derive the political from the nature and actions of real human beings, you cannot but be an "idealist" in terms of state theory, analytically and morally. All of which is to say that states don't do violence. States don't choose to go to war. States don't think. States don't act. States don't have a nature. States don't have a consciousness—real people do!

Re-enter Morgenthau and Kelsen. As Morgenthau (1948, 98) keeps emphasising, representatives of the state are the agents of power and foreign policy. Or in Kelsenian (1934, 100-101) parlance, which so clearly shows the methodological critique inbuilt in the Pure theory of law, state, and international legal order, ready to be used as an ideology-critical tool:

"An act of a human being is an act of state only because it is qualified as such by a legal norm. From the standpoint of the individual acts of state that make up the state qua dynamic phenomenon, the problem of the state is a problem of imputation. Every act of state is first of all simply an act of a human being, and the problem of imputation is expressed in the question of why a certain human act is imputed not to the acting human being himself but to a subject imagined, so to speak, behind the human being. The only possible criterion for this imputation proves to be the legal norm. [...] [The state] is a point of imputation, which the cognizing theorist,

his intellect striving after imagery, is all too inclined to hypostatize, to posit as real, concrete, in order to imagine behind the legal system something essentially different from it, namely, the state."

And therefore, I present this for discussion: was Hans Kelsen the so-called Kantian idealist perhaps ahead of the political realists? Was he a sort of supreme realist, coming out of the Freudian tradition, who was acutely aware of the political need for a critical method, theoretical and practical, that helps us unmask pre-modern ideologies and anti-democratic visions of statecraft that had been framed as being neutral?

Let me be clear about what I have been saying, both overtly and implicitly, so that there can be no misunderstanding about my own biases and situatedness. First, Kelsen is important in his own right as a jurist and political theorist who delved into most fundamental questions in the twilight zone where law, philosophy, and politics meet. His Pure theory of law, state, and international legal order is one of the most important undertakings in jurisprudence in general, and modern legal positivism in particular; to know *What is the law?* requires careful study of Kelsen, not least because Kelsen revolutionised jurisprudential thought but also because some of today's major theoretical ventures in legal philosophy, such as Christopher Kletzer's (2018; 2021) *The Idea of a Pure Theory of Law* and David Dyzenhaus's (2022) *The Long Arc of Legality*, cannot be comprehended in scope and depth without Kelsen's original contribution.

Second, Kelsen's wartime book, *Peace through Law* (1944), deserves to be read by the expert reader and students of government and international affairs alike. Especially at a time of conventional warfare on European soil, one that involves the leaders of a great power who decide to invade a neighbouring country illegally with the most brutal force and horrific violence, it begs two questions, *What is international law?* And given the argument that the contours of the international legal order haven't changed that much (Nardin 2019) and that violence seems to be the real continuity of the political (Wight 2019), *What is international law good for?*

In what is otherwise a fine book, *The Internationalists: How a Radical Plan to Outlaw War Remade the World*, by Oona A. Hathaway and Scott J. Shapiro (2018, 244), Kelsen comes across as just another Kantian international lawyer who had "an almost naive optimism in the power of reason". That is questionable on two fronts: Kelsen's surgical take on the causes of war and the problems of a Kantian peace is as realist(ic) as it can possibly get (Schuett 2021), and once we are agreed, as tragic as it is that You and Me need to be coerced into social and peaceful behaviour through positive law, the question really is: do we trust in the ideal of the wise diplomat-

statesman of whom Morgenthau spoke? Or if we take the realist view of human nature, society, and the political to its very conclusion, as Kelsen does, don't we have little other choice than working in a piecemeal way towards an ever-greater centralisation of international law? This question or debate—and Kelsen's unique way of thinking and respect for human rights (Benhabib 2018, 9–33; Gozzi 2019, 141–165)—is as old as it is more urgent than ever.

Equally topical today, third, would seem to be Kelsen's theory of *What is democracy?*, and how we might defend democracy against its enemies at home and abroad. Across the West and the entire globe, authoritarian populists are resurfacing and regrouping; they are in the process of reshaping the nature of society and constitutionalism (Krygier et al. 2022), while also seeking to transform the global landscape through a toxic mix of an applied "critical" thinking with reactionary ends (Drolet/Williams 2021). In this regard, Kelsen's *The Essence and Value of Democracy* (1929) is a classical text of modern democratic theory, although I share Lars Vinx's (2021, 320) view that to this day, much of Kelsen's political writings are "entirely unknown to international, English-language scholarship".

Exceptions prove the rule, though. Re-reading Kelsen in the context of rising authoritarian populism, including notions such as illiberal democracy (Rupnik 2022), is like digging for buried treasure. How do we defend the ideal of freedom, the often messy reality of parliamentarism, the role of political parties, the very principle of constitutionalism? Which really is to say this: we can use "Kelsen" as an intellectual means, analytical and moral, to hold up a mirror to ourselves and ask what we have become as a society and, above all else, where we might be headed as a democracy (Urbinati/Invernizzi-Accetti 2013). Also, we can use "Kelsen" as a methodological backdrop to engage critically with all forms of anti-relativist discourse, such as that set forth by the Catholic Church (Dreier 2011; 2018; Invernizzi-Accetti 2015) in general, and relevant political programmes, such as Christian Democracy (Invernizzi-Accetti 2018) in particular. Think also of Kelsen's critical works on the Marxist project (1920; 1948; 1955).

One might say that for every political and IR theorist sceptical of Utopian thinking on the Left and Right, the project of the Pure theory of law, state, and legal order is a realistic reminder of a trivial yet consequential fact of all political life: Everything is possible. There is no telos, no inbuilt progress, or anything idealistic like that inbuilt in human affairs: that is, inbuilt in the actions of real people. It can go many ways. We can go many ways. That's why Kelsen was all for checks and balances, for judicial review, for the rule of law. And yet, at the time when he was out in the open, as Jan-Werner Mueller (2011, 146) cautioned us a decade ago, "German political

elites had gone with Schmitt rather than Kelsen." We could face such a fate again and that at some time soon, only that's not fate but man-made. And that we cannot excuse ourselves from this world, the one made and re-made by You and Me day in, day out, is one of the key messages of his 1952 Berkeley farewell lecture, "What is Justice?", which, at least to me, is one of the finest statements of real liberalism—and real political realism—in the history of modern political thinking.

And so, by way of capturing the essence of the critical yet constructive, demanding yet liberating, bits of Kelsen's Pure project for the present purpose, I find Miles Hollingworth's (forthcoming 2023) statement quite to the point:

"His pure positivism identifies history as a force in order to reject it. In its place, he posits rule by law, in which the latter is understood as a technique, applied after the fact of its mechanical possibility by humans. That is to say, the law recognises that humans can live by law, not that the law connects to anything natural or right. In this sense, we are always bigger than the law and Kelsen has successfully robbed the state, history, religion, et al. of all their enchantments."

To disenchant: isn't that—think of Morgenthau (Neacsu 2009)—what all real political realists do?

### 3. A Roadmap of the Special Issue

Reflecting Kelsen's diversity and the ways in which he has been appropriated by friends and foes alike, the contributors to this special issue are social and political philosophers, historians of political thought, and political and IR theorists. Accordingly, each opts for a different approach to re-reading Kelsen and puts the focus on different Kelsenian themes.

What contributors are agreed on, though, is that the Pure theory of law, state, and international legal order is worthy of continual, critical, and fresh reading and teaching. Kelsen may be a hard sell, for many reasons—the bad ones (theoretical misunderstanding), the very bad ones (ideological in-fights), and the ugly ones (anti-Semitic ploys)—and it's quite possible that he forever will be. We owe it to him, though, to try to get him right, and to critique, reject, or refine the Pure project from a firm footing. In that sense, then, the common thread running through the contributions is the argument that experts and students in the analytical and normative study of government and international affairs might want to re-consider if, and how, we might make use of the critical method and battery of democratic arguments he has given us to deal with brute power facts as much as with idealised yearnings for absolute justice.

Stephen P. Turner's (2022) "Kelsen in American Political Theory" starts off the special issue by asking what it is that explains Hans Kelsen's lack of impact, real or not, in the United States. That's a puzzle indeed, not least because as early as 1938, Charles Merriam, an early champion of American political science behaviouralism, tried to get the Continental-trained jurist Kelsen to Chicago. But as Turner explicates by means of returning to the dubious German-born Harvard professor of government, Carl J. Friedrich, the fact that eventually Kelsen didn't make it to either Harvard or Chicago was simply this: American political theory had moved on, and in the battles between the followers of Straussianism, Voegelinian quasi-theology, rational choice theory, Dahlian democratic theory, and people like Sheldon Wolin, there was no place for Kelsen and Kelsenian themes. What we learn from looking back is that there's a sort of a realistic third way for which Kelsen's Pure theory or political thinking stands as relevant to our times: to provide an intellectual space or framework for real discussion and democratic debate between absolutized ideologies.

Next is Sara Lagi's (2022) "Kelsen's Realistic Theory of Modern Democracy", a programmatic continuation of her book, *Democracy in its Essence: Hans Kelsen as a Political Thinker* (2021). At a time where the nature of democracy is contested along liberal/illiberal lines both in the West and elsewhere in terms of what might be the pillars of world order—and where there's no end in sight for such debates (*can they possibly ever end?*)—returning to the Pure theorist's attempts between the 1920s and 1950s to vindicate democracy vis-à-vis the procedural, Rousseauian, capitalist, Lockean, Hegelian, and Marxist visions is timely. And Lagi really means it, arguing that Kelsen may well be thought of as a political thinker in the best of the realist tradition from Machiavelli onwards. For if there is one major, recurring theme in Kelsen, it's his realistic distinction between an ideal democracy and a real one, associated with all the risks, tragedies, and responsibilities for You and Me. As Kelsen would have it, democracy demands a lot from us.

Third comes Pedro T. Magalhães's (2022) "The One and the Many: A Critical Reflection on the Foundations of Hans Kelsen's Democratic Theory", which challenges Kelsen's Pure theory of law, state, and international legal order in thought-provoking ways. Against the broader backdrop of Vinx's (2007) analysis that the Pure project may not be that pure after all—that is, that Kelsenian methodological jurisprudential purity can be shown to be part of a larger political vision adulterated with moral assumptions—Magalhães's core argument is a useful reminder that we shouldn't throw the baby out with the bathwater, both intellectually and politically. For according to his critical reading, Kelsen's non-naturalistic theory of law and politics, by means of

shifting from metaphysical ontology to relativistic epistemology, might lead us to a somewhat narrow understanding of what democracy really is: namely, a much fuzzier and more indeterminate human and social venture than what he argues is Kelsen's dichotomous or dualistic account of politics where there's only the modern democratic relativist worldview and where there's all the rest that falls outside of that worldview. I, for one, who recently have defended Kelsen as an open society prophet against the Schmittians (Schuett 2021), perhaps adding fuel to a good/evil flame, readily accept Magalhães's challenge; and I will respond to that come the time.

Equally challenging, fourth, to conventional readings of Kelsen's Pure democratic, political, and IR theory, is Benjamin A. Schupmann's (2022) "Hans Kelsen's Political Theology", which asks whether we can think of Kelsen as a political theologian. This is not about sticking yet another label on a man who had suffered enough at the hands of his contemporaries and interpreters past and present. But Schupmann points to a deeper issue that hitherto may have been overlooked. It is how Kelsen the Pure positivist, who was opposed to all kinds of transcendental and metaphysical justifications of law, state, and politics, can be seen as having developed a unique form of epistemological political theology that has a critical as well as positive edge to it. The former speaks to his attempts to sniff out illegitimate forms of public order and discredit dualistic state theory, while the constructive bit helped him theorise the difference between democracy and autocracy—thereby giving us additional ways to think about what makes democratic legitimacy in our times.

There follows, fifth, David Ingram's (2022) argument in "The Role of Recognition in Kelsen's Account of Legal Obligation and Political Duty" that the Pure theory of law, state, and international legal order merits close attention, if not productive re-consideration, by contemporary political and IR theorists interested in the ethics and politics of recognition. That, again, seems somewhat startling at first exactly because Kelsen was so adamant about having the question of law, the nature of law, purified from any ethical background content, such as voluntary recognition of mutual or commoninterests. What Ingrams does is to reveal that recognition plays a key role in Kelsen's defence of liberal democracy, and that to have—that is, to create and re-create day in, day out—a stable functioning of legal order, domestic and international, requires from You and Me a sustained commitment to an ethics of civility understood in terms of a certain kind of ethics of recognition: part and parcel of that is how we recognise one another as autonomous moral persons, in the domestic as well as the international (cosmopolitan) context.

Then, sixth, Ronnie Hjorth's (2022) "Kelsen's Legal Logic of International Pluralism" continues to explore Kelsenian themes regarding interpretive theoretical questions about the basic norm and sovereignty at the nexus of international law and world politics. And, again, neither is Kelsen perceived to be a naïve formalist detached from legal, political, and international reality, nor is the Pure method seen here as empirically inadequate. According to Hjorth, it is Kelsen's very legal logic of the state and the system or society of states that may help contemporary IR theorists and international political theorists to re-think the anatomy of international relations, analytically and normative, as well as past, present, and future. For a Kelsenian approach to government and international affairs that is capable of tracing both international pluralism and legal cosmopolitanism (ordinarily thought of as substantially different) back to the same conceptual roots, the basic norm, appears to be a realistic way to study the nature and evolution of international norms and practices without having to rely on a conventional notion of state sovereignty.

In what is the seventh contribution, Oliver Jütersonke's (2022) "Kelsen and Morgenthau in America: Betwixt Legal Philosophy and International Politics" takes the reader back to the question of Kelsen's lack of impact on the American scene. The vantage point of analysis is innovative, and so is the material—some might say, odd pair—under scrutiny: how did Kelsen the Pure legal philosopher fare in the United States compared with Morgenthau the emerging superstar of foreign-policy realism? Jütersonke, rooted in his *Morgenthau, Law, and Realism* (2010), presents us with an account of the sociology of knowledge production that in essence, and for the present purposes of a special issue on what may be the realist roots of Kelsen, tells us this: while Kelsen remained Continental in spirit, Morgenthau Americanised himself. And what both eventually ended up with, in what became their new home on the East and West Coasts respectively, was a deep concern with questions of the international where one finds as many differences as similarities in thinking and outlook. In a word, so-called idealism and so-called realism may not be on such different planes as some would have us believe today.

Last, but not least, is a contribution that is both Kelsenian and in the spirit of Morgenthau—and is therefore speaking in one way or the other to the many different themes covered in the previous seven articles presented by Turner, Lagi, Magalhães, Schupmann, Ingram, Hjorth, and Jütersonke. The core message of Felix Rösch and John Grima's (2022) "Practising International Thought as a Critique of Populism: Realist Accounts of a Democratic Political" is clear: where today's authoritarian populists reach back to a triptych

of *the people, the general will, and the elite*, what we can learn from people like Kelsen and Morgenthau is to think of democracy in terms of pluralism, compromise, and representation, and *how* to defend the concept of ideal democracy and the reality of real democracy without becoming hysterical and/or cynical.

And finally, as guest editor of this special issue, I may be at liberty to make a couple of personal remarks. One is a quick yet heartfelt word of thanks to all contributing colleagues, almost two dozen anonymous reviewers, and the entire team at the *Austrian Journal of Political Science*, who made it possible—with professional ease from first to last—to get "Kelsen" published in a political science journal. At a time when the disciplinary boundaries appear to be becoming narrower, that's quite an achievement. My hope is that scholars, students, and experts in the study of government and international affairs broadly conceived, will re-consider Kelsen for their work, as well as what it might mean to be a Kelsenian, and above all else, how Kelsen might help us today to know *how* to do realistic political thinking.

My other comment, naturally so, concerns the state of world politics, and hence, all politics. Suffice to say that in the words of Ken Booth, former E.H. Carr Professor at Aberystwyth, reflecting on the past 100 years on relations between human groups doesn't give us much confidence in a sort of Pinkeresque optimism that aggression, violence, or wars are declining—and really, that was the assessment in 2019! As a Kelsenian political realist, I leave it at exactly that, albeit in the hope that in what follows what the reader, however inclined towards Kelsen's Pure theory of law, state, and international legal order, will take away is this: once you peel away layer after layer of all the abstract, Continental, conceptual, and formalistic language, what you will get to see is Kelsen's true concern: which is You and Me, justice as social happiness, in *this* world not in another one. A hard sell, alas.

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