This PDF is auto-generated for reference only. As such, it may contain some conversion errors and/or missing information. For all formal use please refer to the official version on the website, as linked below.

Opinion – Peace through Law? Political Realism and Hans Kelsen

https://www.e-ir.info/2021/03/02/opinion-peace-through-law-political-realism-and-hans-kelsen/

ROBERT SCHUETT, MAR 2 2021

What makes a great political realist? From Thucydides we learn that human affairs are unpredictable. Machiavelli tells us about the perils of hyper-partisanship. Hobbes wanted You and Me to understand that we most certainly can act honourably. What, then, is Hans Kelsen—the pure theorist of law, state, and international legal order, so hated by the Nazi jurist Carl Schmitt—doing here in a short awareness piece, ostensibly dealing with the question of what political realism is, and more importantly what progressive realism can realistically be? What these three Classical realists are telling us is a far cry from what some of today's top academic neo-realists are trying to sell to colleagues, students, and the general public—which is another way of saying that it is sad to watch what was once a respected tradition in political and International Relations theory mutating into a mere shadow of its former, glorious self. Certainly, I am biased towards the Classical brand of progressive realism; but I believe that all of us should be worried when even people within the Realist school are shocked by what appear to be 'Waltheimer's' increasingly radical, unrealistic, and arrogant views.

Perhaps, then, a real political realist is one who delves into the nature of man, the state, and war. And perhaps, trying to make sense of international relations via a methodology that Hedley Bull aptly called the Classical approach to the theory of world politics sounds old-fashioned. And yet I have to say that anyone who is willing to lift the veil will find themselves staring at two things that are both troubling and liberating: one is the perennial struggle for power, and the other concerns the reality of law in all political life.

If you are a Kelsenian—at least as I understand his life and work—you would simply not even talk about the fact that there is no Utopia anywhere in sight; we know that that is all wishful thinking. But that does not mean that we live in 'Powerland' either. For is it not so that where there is society, there is law? There was never total anarchy; we have seen law that we call either primitive or decentralised, but there has been law none the less. And where there is law, there is politics; and where there is politics, there is choice. The political, to Kelsen, cannot be the realm of Nature, God, or any other natural law. Politics is rather the twilight zone where the battle over interests, real or imagined, is raging.

Contrary to much conventional wisdom, and in light of the fake news coming from Schmittians old and new about Kelsen's place in the (bizarre) realism/idealism dichotomy, I cannot possibly see an 'idealist'. What I do see, of course, is that Professor Kelsen was a 'modest Old World gentleman', but nowhere is his deep-seated political realism more visible than in his view of human nature.

A Freudian to the core, to him there was never any doubt that there could ever be some sort of withering away of the state; or for that matter, that we could ever possibly get rid of the sanction mechanisms of positive law or of the fact of coercion in society, let alone the will to power in individual and collective life. For example, in what is perhaps one of the finest statements in the modern history of liberalism, in 'What is Justice?' Kelsen has little to offer when it comes to You and Me. Where there is so much Freud and Darwin in us, he says, who would believe that any form of natural law could be the basis of our living-together? In many ways, it is laughable that the FBI seriously thought of Kelsen as a Communist. Of course he was not; from first to last, he was far too realistic about our shortcomings.

In terms of second-image analysis, neither was he naïve about democracies and socialist governments. Clearly, as a Kantian-style progressive liberal coming out of Viennese Modernism, he radically deconstructed the Hegelian state and its conservative-organicist ideology of the status quo; and of course, the Schmittians and other pseudo-realists cannot but fear him because Kelsen's project has always been invariably linked to the idea of constitutional democracy, no matter what. Yet to say that democracies would not fight each other, according to him would not only have been wrong for empirical reasons, but would also be a rather dangerous illusion: for the core problem of what makes war—or allows for war to occur at any time, in any place—is the fact of international anarchy.

From the standpoint of pure legal technique, the only real pacifier of relations among nations both large and small would be a world state: in the form of either a centralised government, or a federal world state composed of as many nations as possible. What Kelsen tries to tell us is that we will have to understand, sooner rather than later, that the core logic of having You and Me locked in a coercive legal order with real teeth at its disposal does not—cannot, must not—stop at the water's edge. Yet doesn't that sound quite like just another jurist's legalistic-idealistic dream?

Not quite, I shall say; because Kelsen never said, or even gave the impression, that having a world state would be a realistic prospect anytime soon. Now, just as we cannot get rid of our Freudian instincts and passions writ large, it is all the less likely that a sort of Kantian international relations without the irrationalities inherent in flag-waving nationalistic egotisms is conceivable; even if this is true, though, it does not mean that the choice we have is one between either a naïve Utopia or a sterile Powerland. For as I see it, a real political realist such as Kelsen would point out with some analytical force: political life is much too grey, or actually much too colourful, to be so neatly squeezed into two such absolutes.

What political and international relations theorists can take away from Kelsen and his philosophy of law and politics is a position that is rather uniquely realist(ic). That is to say, Kelsen's political realism is perhaps much more true to life than what a lot of today's 'realism' offers, and at one and the same time *therefore* much more open to the real possibility of progress.

He is telling us that we must never believe in the mere power of ideals, as there is no escape from the political. Take the real You. Take the real Me. Do politics. Do diplomacy. Accrue as much power as you can possibly get—but then, use it very responsibly and use it wisely, for the good. For what every real political realist knows is this: no matter how long we have to live in a morally obscure political order of international anarchy, there will be violence and war.

But then, exactly because a Kelsenian style of pure political realism (even purer, perhaps, than that of his student and life-long friend, Hans J. Morgenthau) holds very little in store for us in terms of grand designs or plans to transform politics and international relations, it all comes back down to You and Me: to the question of individual conduct. And that is the realm where there are no excuses: where we are all alone in the room and will have to make the moral choice between light and darkness.

So, then, perhaps a great political realist is one who sees that the political has always been intimately linked to the legal, and that nothing in our dealings with one another is inevitable. And what is more: we may not all be super-enlightened Kantian angels, but You and Me can *do* good, and create the conditions for justice and peace by working unceasingly towards an ever-greater centralisation of what has to be an efficacious international legal order.

About the author:

Robert Schuett is a Visiting Fellow in the Political Science department at the University of Salzburg. He is particularly interested in the Classical approach to the theory of world politics. Author of *Hans Kelsen's Political Realism* (2021), he is an Honorary Fellow in the School of Government and International Affairs at Durham University, England, and lives and works in Vienna.