

## Review – Hans Kelsen’s Political Realism

Written by Felix Rösch

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<https://www.e-ir.info/2021/07/22/review-hans-kelsens-political-realism/>

FELIX RÖSCH, JUL 22 2021

### ***Hans Kelsen’s Political Realism***

**By Robert Schuett**

**Edinburgh University Press, 2021**

On 21<sup>st</sup> June 1940, the *SS Washington* arrived in New York, having left Lisbon on 1<sup>st</sup> June. Back then, Lisbon was one of the last ports from which people who the Nazi regime persecuted could leave Europe, offering regular steamer services to the United States until 1942 (Blum and Rei 2018). The voyage in June 1940 would almost have been the very last trip of the *SS Washington*, as on 11<sup>th</sup> June 1940 it was stopped by a German submarine off the coast of northern Portugal. More than 1,000 passengers and 500 crew members were given ten minutes by the submarine captain to abandon ship. Frantically signalling to the submarine that they were about to torpedo an American ship, it would eventually be clarified that the *SS Washington* was not a Greek ship. Captain Harry Manning and his crew were able to safely cross the Atlantic and bring the mainly American citizens home.

Not all of the passengers were Americans though. Indeed, if they had not clarified the mistake, the life of at least one passenger, Hans Kelsen, and his family would have been in great danger. It is safe to assume that the then nearly 60 year old legal scholar would not have survived the Second World War and the Shoah in Europe. Kelsen was not only Jewish but also an outspoken promoter of democracy and critical of any ideology. As we learn from Robert Schuett’s splendid new book *Hans Kelsen’s Political Realism*, this made him a target for Nazi persecution. Being forced to retire from his chair at the University of Cologne due to the Law for the Restoration of the Professional Civil Service from 1933, Kelsen found first refuge in Geneva, before taking a professorship at the University of Prague in 1936. However, he soon had to leave again, as he was harassed by pro-Nazi students. A “grotesque picture of academic freedom”, he had to have police protection with “one police officer ... in the front row [and] a second one at the back of the lecture hall” (p.124). After his emigration to the United States, Kelsen never regained his former status (Scheuerman 2014). In Europe, he had been one of the most important *Staatsrechtler* (constitutional lawyer) of the twentieth century, the most well-known proponent of Viennese legal positivism, and one of those who helped draft the post-First World War constitution for Austria. His gradual disappearance partly had something to do with the negative views that were held against him even by fellow émigrés like Waldemar Gurian (pp.18-19).

With *Hans Kelsen’s Political Realism*, Schuett has done International Relations a great service to help resurrect Kelsen and his thought – at least in our discipline – from oblivion. While many other émigré scholars, most notably Hannah Arendt and Hans Morgenthau, have been at the centre of what Oliver Jütersonke (2010, 51) once called a “cottage industry”, Kelsen by contrast has received little consideration in our debates. This is a grave oversight, as Kelsen was far more than a legal positivist. Rather, as Schuett shows succinctly in his book, Kelsen was also a prolific political theorist *and* political practitioner, as he was working in different official positions throughout his life-time. His contributions to key themes of political thought like state, war, and peace, were guided by practical concerns. Kelsen was a “liberal etatist” (p.5), but he was no idealist like some of his American coevals in that he would have believed in theories like democratic peace. To introduce us to this side of Kelsen’s thought, Schuett first maps the intellectual and personal constellations in which his thought developed, before focusing on Sigmund Freud’s relevance for Kelsen. These chapters serve the basis for his analysis of Kelsen’s political thought and contribution to foreign policy discourses in the final chapters of the book.



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What impressed me most in Schuett’s rereading of Kelsen is that he uncovers his relevance for international politics in the twenty-first century. Considering the recent rise of populism that proves to be an existential threat for democracies, as seen in the United Kingdom and the United States, Kelsen’s work is a reminder of not taking democratic foundations for granted and it provides an intellectual stimulus to reflect upon the characteristics of democracy. As Sandrine Baume (2013) wrote for *E-International Relations*, “Kelsen’s understanding of democracy has rid itself of the fictions of the general will, of political oneness, and of the objective interest of the state; the Kelsenian understanding takes conflicts of interest to be the central objects of enquiry, and resolutions of these conflicts occur only through compromises.” Hence, Kelsen’s theory of democracy encourages scholars and political practitioners to take an active stand against populists because, as Nadia Urbinati (2019, 112) warns, populism “can stretch constitutional democracy toward its extreme borders and open the door to authoritarian solutions and even dictatorship.”

Situating Kelsen within the intellectual and personal constellations of his life that span over two continents, Schuett does a formidable job in resurrecting Kelsen’s thought at large (not only his theory of democracy) and he has done it in a prose that I can only wish for. Like with any good, thought-provoking book, however, this does not mean that I would agree with all the points that Schuett makes. First, I am not convinced that these mid-twentieth century scholars really had such a tragic and pessimistic outlook on the world (Rösch 2014). Certainly, they were aware that the world around them was belligerent and that the nation-state had turned into a “monster”, as Morgenthau once put it. And why would they not? Theirs was a world of two world wars, of forced migration, and of a genocide the world has never seen before or since. However, this does not mean they were defeatist. When Morgenthau wrote to Arendt that “we are intellectual streetfighters” (Reichwein 2016, 72), he meant it. Despite their epistemological and methodological differences, this group of émigré scholars were also political activists (admittedly, not always successful ones), but they knew out of their own bitter experiences that democracies need active political engagement beyond the university boundaries. They would not have done that, if they did not believe that change is possible (Reichwein and Rösch 2021).

Second, and this is a more general point, over the years I have become cautious in using the term “realism”. It has done more harm than good. On the one hand, many in the discipline still have a very crude image of what mid-twentieth century realist scholarship stood for. On the other hand, it conflates the thought of these émigrés with the thought of American neo-realist scholars like Kenneth Waltz and John Mearsheimer. The last chapter of Schuett’s book discusses Kelsen in relation to Morgenthau and Waltz and Mearsheimer to an extent that I cannot follow. If the thought of Waltz and Mearsheimer is supposed to be realist, then Kelsen, Morgenthau, or Arendt were no realists and vice-versa. I do not see much of a connection between these two theories. But then again, I am not even sure when it comes to their study of (international) politics that these émigré scholars wanted to bring forward a “theory”. Their methodologies and epistemologies were just too diverse, but what united them was a (self-)reflexivity to provide a critical corrective of the politics of their time and to protect democracies. In the end, this means that while differences have to be acknowledged and they have to be given the opportunity to be voiced, these mid-twentieth century scholars also searched for a common ground that can only come to the fore in these expression of differences or “discussions” as Morgenthau (2012, 126) liked to call them.

Having said that, *Hans Kelsen’s Political Realism* is an important and timely book that provides us with another piece to add to the jigsaw that mid-twentieth century transatlantic thought still is and from which there is still much to learn.

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