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# Hans Kelsen (1881–1973)

## Biographical Note and Bibliography

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Hans Kelsen was not only a very great jurist, he was a man of exceptional personal qualities who overcame many obstacles and setbacks in a life rich in events, changes and challenge. To date, the only complete biography published was written by his former student and assistant Rudolf Aladár Metall, *Hans Kelsen, Leben und Werk* (1969). This volume provided the main source for the present sketch. Kelsen was born in Prague on 11 October 1881. At the age of three, his family, of German-speaking, Jewish and middle-class origins, moved to Vienna, where Kelsen pursued his academic studies. In 1906 he was awarded a doctorate in law, even though his lifelong interests were largely concentrated in the humanistic and classical fields (philosophy, literature, logic, but also mathematics and natural science). His passion for knowledge in these areas however clearly exercised an important influence on much of his work throughout his life.

Although Kelsen was resolutely agnostic, he converted to Catholicism in 1905 in an attempt to avoid integration problems. His particular concern was to ensure that his ambition to lecture at university would not be jeopardized by his family's religious background. Unfortunately, this solution did not prove to be very useful. Indeed, Kelsen's Jewish ancestry caused him serious difficulties on many occasions, right until his decision to emigrate. The year 1905 was also notable for the publication of Kelsen's first book, *Die Staatslehre des Dante Alighieri*. In 1908, he attended a seminar in Heidelberg led by Georg Jellinek, an authority in public law. In 1911 Kelsen qualified as a teacher in public law and philosophy of law at the University of Vienna with his first major work, *Hauptprobleme der Staatsrechtslehre*, a 700-page study on the theory of public law. In 1914 he established and edited the *Austrian Journal of Public Law* (three volumes).

During World War One Kelsen acted as adviser to the military and justice administration as well as having the politically sensitive role of legal adviser to the war minister. In 1918 he became associate professor of law at the University of Vienna.

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and in 1919 he was made full professor of public and administrative law. The next ten years constituted a highly rewarding and stimulating period of teaching and research. Many of his students became important legal theorists, including Adolf Merkl, Alfred Verdross, Felix Kaufmann, Fritz Sander, Erich Voegelin, Alf Ross, Charles Eisenmann, Luis Legaz y Lacambra and Franz Weyr. Together these notable intellectuals formed the cultural movement known as the *Wiener Schule*. Kelsen was also in contact with well-known scholars like Otto Bauer, Max Adler, Joseph Schumpeter and Ludwig van Mises. Politically, he continued to remain neutral, choosing not to become involved in any party, although he sympathized with the Social Democrats.

The year 1919 was particularly important for Kelsen. Not only did he secure a significant advance in his academic career as the founder and editor of the *Journal of Public Law* (23 volumes running to 1924), but he also became an important personality in the history of his country as he was entrusted with the task of drafting of the new Austrian Constitution. Adopted in 1920, this document has remained unchanged in its fundamental principles right throughout this century. Kelsen gave primary importance to one particular aspect of the new Constitution, namely the justiciability of the Constitutional Court. In 1921 Kelsen was appointed as a member of the Austrian Constitutional Court, where he exercised a strong influence over its rulings on many occasions. He was, however, dismissed from the Court in 1930 for political reasons. Despite the fact that Austria's administrative authorities permitted remarriage in Catholic Austria, the lower courts considered these dispensations invalid. Led by Kelsen, the Constitutional Court overturned these rulings, but in the final score the Christian Social Party won the case. And Kelsen lost his place on the Court.

The political attacks on Kelsen were so vehement as a result of this major controversy that he decided to move to Cologne. There he taught international law at the university, focusing in particular on a new area — positive international law. Until this point in his academic career he had mainly reflected on the relationship between state law and international law. Above all, he concentrated his attention on the concept of sovereignty. Indeed, his Cologne experience proved to be highly beneficial for his future international courses in Geneva, Prague and the United States. In 1931 he published *Wer soll der Hüter der Verfassung sein?*, a reply to Carl Schmitt, and in 1932 he delivered his second series of lectures in The Hague (the first took place in 1926).

However, when the Nazis seized power in 1933 the situation at the University of Cologne changed rapidly, with the result that Kelsen was removed. Together with his wife and two daughters, he left for Geneva in autumn 1933 to start a new academic career at the *Institut Universitaire des Hautes Etudes Internationales*. Despite having to confront and override various difficulties, not least of which that of teaching in a foreign language, this was an important and fruitful period for Kelsen. In Geneva he met and worked with notable figures in the field, including Georges Scelle, William Rappard, Paul Mantoux, Maurice Bourquin, Guglielmo Ferrero, Paul Guggenheim and Hans Wehberg. Concentrating largely on international law, Kelsen held courses and wrote on themes such as the transformation of international law into state law, the revision of the Covenant of the League of Nations and customary law. In 1934 he

published a study in both French and German on legal technique in international law and the legal process. Also in 1934 his prodigious *Reine Rechtslehre* appeared, which contained a substantial part of his theory of international law: the hierarchical levels of international norms and the basic norm, international law as a primitive legal system, obligations and rights in international law, the unity of international law and state law, the relation between the two systems of norms, the monistic and dualistic theory, the primacy of the state legal system, the contradictions between the two systems, the state as the organ of the international legal community, the Pure Theory and the development of world law. In addition to his courses in Geneva, Kelsen taught international law at the University of Prague. But again he was forced to resign for political reasons. Increasingly strong anti-Semitic sentiments among students, leading to overt cases of harassment, made it impossible for him to continue.

The beginning of the Second World War and his conviction that Switzerland would be involved in the conflict motivated Kelsen's decision to leave in 1940 for the United States. Once again, the hurdles he was compelled to cross in settling into a new environment were by no means insignificant. Just on 60 years of age, with a poor knowledge of English, with no certainty regarding his career or his future, Kelsen embarked on yet another new life.

In 1940–1942, Kelsen, as research associate, delivered lectures at Harvard Law School (the renowned Oliver Wendell Holmes Lectures published in 1942 as *Law and Peace in International Relations*). In 1942, with the support of the famous American jurist Roscoe Pound, who considered Kelsen to be one of the leading jurists worldwide, he became visiting professor at the University of California, Berkeley, in the Department of Political Science. For the period 1945–1952 he was full professor. He also became an American citizen this same year. At Berkeley Kelsen finally found a calm environment conducive to his intense and productive activities, largely focused on his teaching in international law. In 1944–1945 the themes covered in his lectures included the origins of legal institutions, *obligatorische Gerichtsbarkeit*, collective and individual responsibility, the international legal statute of Germany, the principle of sovereign equality, and a comparison of the Covenant of the League of Nations and the Charter of the United Nations. He also published prolifically during this period, including *Peace through Law* (1944) and the *General Theory of Law and State* (1945). In 1945 he became legal adviser to the United Nations War Crimes Commission in Washington, with the task of preparing the legal and technical aspects of the Nuremberg trial.

During this period Kelsen also devoted considerable attention to issues relating to the maintenance of peace and international cooperation, especially in relation to the Charter of the United Nations. He wrote several studies on the Security Council, examining questions of membership, organization and the legal status in general, sanctions and the functions of the Organization. This research culminated in the publication of *The Law of the United Nations* in 1950. This major publication, extending to more than 900 pages, was reprinted several times until 1966. Although considered outdated in many respects today, this work was so successful at the time that it was cited and quoted in practically all the literature bearing on the Charter. In 1951

Kelsen held courses on international organizations in Seattle and on 25 April 1952 he retired from his teaching duties.

Kelsen remained highly active and productive, even after his retirement. In 1952, for instance, he published his seminal work, *Principles of International Law*, a systematic study of the most important aspects of international law, including international delicts and sanctions, reprisals, the spheres of validity and the essential function of international law, creation and application of international law and national law. He also continued to travel all over the world, teaching and giving conferences as visiting professor in Geneva, Newport, The Hague (where he gave his third series of lectures in 1953), Vienna, Copenhagen, Stockholm, Helsingfors, Edinburgh and Chicago. He received 11 honorary doctorates (Utrecht, Harvard, Chicago, Mexico, Berkeley, Salamanca, Berlin, Vienna, New York, Paris, Salzburg) and innumerable awards from all corners of the academic world.

Hans Kelsen died in Berkeley on 19 April 1973 at the age of 92 years, leaving behind him almost 400 works, legacy of an immensely productive life. Several of these works have been translated into as many as 24 languages. In 1971, to celebrate his 90th birthday, the Austrian government founded the Hans Kelsen Institute in Vienna which houses most of his original writings and is responsible for maintaining this important cultural heritage. The Institute, for instance, produced the first edition of the path-breaking *General Theory of Norms* in 1979). The influence of Kelsen continues to be felt in areas as far-ranging as the general theory of law (Pure Theory of Law), critical legal positivism (constitutional law and international law), philosophy of law (issues of justice, natural law), sociology (causality and retribution), political theory (democracy, socialism, Bolshevism) and critiques of ideology. Indeed, Hans Kelsen remains an essential point of reference in the world of legal thought.

## Works by Hans Kelsen on International Law

A complete bibliography of Hans Kelsen's writings listed chronologically and thematically may be found in R. Walter, *Hans Kelsen — Ein Leben im Dienste der Wissenschaft* (1985). We list here Kelsen's main works on international law and refer readers to Walter's bibliography for a complete guide to Kelsen's works.

### 1 General Works

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