

# Hans Kelsen: Biographie eines Rechtswissenschaftlers

Thomas Olechowski, unter Mitarbeit von Jürgen Busch, Tamara Ehs, Miriam Gassner und Stefan Wedrac  
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Robert Schuett

University of Salzburg

E-Mail: robert.schuett@sbg.ac.at

Few figures divide opinion like Hans Kelsen. Some say he is the supreme 20<sup>th</sup>-century intellectual, living the open society ideal soon to be made famous by Karl Popper and George Soros. Hans Morgenthau, a seminal foreign-policy realist, was crystal clear, stating in 1971 that Kelsen stands for one thing: the 'fearless pursuit of truth'. Yet Kelsen's critics insist that the Pure theory of law is the height of folly. Benedict XVI, standing in front of a packed Bundestag in 2011, put it this way: you rebel against natural law philosophy only at the risk of spectacular failure.

Into this fray enters Thomas Olechowski, with a much-anticipated biography that proves to be well worth the wait. A legal historian at Vienna's Faculty of Law, Olechowski and his team, Jürgen Busch, Tamara Ehs, Miriam Gassner and Stefan Wedrac, do not just present us with a stale successor to Rudolf A. Méta11's dated womb-to-tomb tale. Instead, what the specialist as much as the general reader will appreciate, over the course of a thousand highly readable pages of fine archival-based scholarship, is a systematic approach that goes all out to answer one crucial question: how do we explain Hans Kelsen?

Three conclusions lie at the heart of Olechowski's intimate yet prudently detached analysis. The first, and most important, is that Kelsen merits continued consideration, particularly at the intersection of positive, legal and normative aspects of democracy and world politics.

It is not by chance that Olechowski kicks off what is set to become compulsory reading for anyone interested in Kelsen with Morgenthau's 1964 initiative, via the Rockefellers, to have the ageing thinker write down his life story in the tranquillity of the Villa Serbelloni, over-

looking Lake Como. The tale turns out to be inspired; as Olechowski goes on to say, while the Italy plan went nowhere (though it did lead to Méta11's official 1969 biography), the way that Morgenthau is linked from the start to his mentor and lifelong friend is a fascinating scene setter for the entire book.

Guided by Olechowski's elegant calm and confidence, the reader is taken on a four-part journey that sets out a cleanly structured chronology of a life scarred by upheavals and drama. There is the coming-of-age under the Kaiser, and the reluctant decision to read law; the years as a renowned yet eventually disowned law professor at Vienna; then the interludes in Cologne, Geneva and Prague, where things got ugly with the German nationalists; and, last but not least, the need for the Kelsens to start anew in America. What we also get to see along the way, from fascist Europe to Nixon's Cold War America, is a who's-who of mid-twentieth-century political scientists operating in Kelsen's orbit; one might single out Morgenthau and John Herz, but also Robert W. Tucker, a founding editor of the flagship realist quarterly *The National Interest*. To understand Kelsen is to grasp the nature and reach of his intellectual circle, a fact to which the biography testifies.

This brings us to the second conclusion. Olechowski's work deserves to be read by friend and foe alike. As a no-nonsense antidote to Schmittians old and new, Kelsen led the liberal assault on organic conceptions of authority, and within the methodological context of an uncorrupted legal positivism and monism, sucked out all the Hegelian grandeur of romanticized notions of nation-states vying for power in a Great Game world. That is a given, surely, but the added value here is that

Olechowski has written what Morgenthau wanted from Kelsen in *Bellagio*: a biography of his life and times.

This focus on Kelsen's environment and ideas leads to the third conclusion: that it is hard to understand the acumen and continued relevance of the Pure theorist of law, state and international legal order, if we perpetuate the myth that he was an ivory-tower Kantian. As his critics persist in saying, to recruit a naïve formalist in the increasingly bitter battles over the foundations of democracy, rule of law, and justice at home and abroad, is like throwing sand at battleships. But this is not accurate. As Olechowski's book demonstrates, Kelsen's life was steeped in both theory and practice: most notably, as a legal advisor to the k.k. war minister, and later, to American foreign intelligence, he had a privileged insider's view of strategy and statecraft at work in the real world.

Now we have come full circle. Olechowski portrays Kelsen as an exemplar of what makes a scholar, teaching his students to dissect available arguments and respect opposing ones, yet never compromising on human agency. This is what Morgenthau, half a century ago, referred to as Kelsen's shrewd ability, rooted in a life rich in original scholarship and government service, to pursue truth fearlessly. One would hope that this magisterial biography will soon be translated into English, so as to make available to a global audience of legal and political theorists everything it contains that is new, along with its signature achievement: explaining Hans Kelsen by explaining the ideal of freedom.