
**SEMINAR IN THE PHILOSOPHY OF LAW:
HANS KELSEN
SYLLABUS FOR LAW 7296 AND PHIL 8820**

[last revised: March 29, 2009]

Prof. Edmundson
Spring 2009
Fridays 4:15-6:45 (2-3 credit hours)
Room 659

Discussion list e-mail: law7296wae.200901@gsulaw2.gsu.edu

In the Anglophone world, Hans Kelsen has the distinction of being one of the most influential and, at the same time, most neglected, figures in the philosophy of law. The work of this 20th century Austrian philosopher has been seminal for leading legal positivists, especially H.L.A. Hart and Joseph Raz. Nonetheless, many believe that Kelsen's Kantian orientation makes his work incompatible with the naturalistic and empirical bearing of contemporary work going on now, and that what is viable in it has been extracted and better presented by others. This seminar will closely examine translations of Kelsen's two most important philosophical works (Raz to Hart: "Do I have to read German to understand Kelsen?" Hart to Raz: "No." Lacey 2004). We will read Kelsen as we would any philosophical text, but with an eye to making an estimate of his proper standing among the legal theorists of this and the previous century.

Open to J.D. and M.A. candidates **only by permission of the instructor**; contact wedmundson@gsu.edu. There are no formal prerequisites; but a prior familiarity with the work of Kant and Hart is mandatory. E-mail the instructor if you have questions.

Required books

Kelsen, Hans. *Introduction to the Problems of Legal Theory: A Translation of the First Edition of the Reine Rechtslehre or Pure Theory of Law*, Bonnie Litschewski-Paulson and Stanley L. Paulson, trans. (Oxford: Clarendon 1997) [hereinafter, "IPLT"]

Kelsen, Hans. *General Theory of Law and the State*, Anders Wedberg, trans. (various editions; but recommended is the Transaction 2006) [hereinafter, "GTLS"]

Optional Books

- Kelsen, Hans. 1967. *Pure Theory of Law*. 2nd ed., trans. M. Knight. Berkeley: University of California Press [hereinafter: "PTL"]
- Ebenstein, William. 1945. *The Pure Theory of Law*. Madison: University of Wisconsin Press
- Lacy, Nicola. 2004. *A Life of H.L.A. Hart*. Oxford: Oxford University Press
- Paulson, Stanley L., and Bonnie Litschewski-Paulson, eds. 1999. *Normativity and Norms: Critical Perspectives on Kelsenian Themes*. Oxford: Clarendon Press
- Tur, Richard and William Twining, eds. 1986. *Essays on Kelsen*. Oxford: Clarendon Press

Articles and chapters

- Kelsen, Hans, "The Pure Theory of Law and Analytical Jurisprudence," 55 *Harvard L. Rev.* 44 (1941)
- Kelsen, Hans, "Law, State and Justice in the Pure Theory of Law" (1947-48) 57 *Yale L.J.* 377-90
- Kelsen, Hans, "What is the Pure Theory of Law?" (1960) 134 *Tulane Law Review* 769-76
- Kelsen, Hans, "Professor Stone and the Pure Theory of Law: A Reply," 17 *Stanford L. Rev.* 1128 (1965)
- Kelsen, Hans, "On the Pure Theory of Law," 1 *Israel L. Rev.* 1 (1966)
- Kelsen, Hans, "The Function of a Constitution" in Tur and Twining 1986
- Brand-Ballard, Jeffrey. 1996. "Kelsen's Unstable Alternative to Natural Law: Recent Critiques" *American Journal of Jurisprudence* 41:133-
- Bulygin, Eugenio. "An Antinomy in Kelsen's Pure Theory of Law" In Paulson and Paulson 1999
- Edel, Geert. "The *Hypothesis* of the Basic Norm: Hans Kelsen and Hermann Cohen" in Paulson and Paulson 1999
- Golding, Martin. 1961. "Kelsen and the Concept of a 'Legal System'" *Archiv für Rechts und Sozialphilosophie* 47:355-
- Hart, H.L.A., "Kelsen Visited," in H.L.A. Hart, *Essays in Jurisprudence and Philosophy* (Oxford: Clarendon, 1983)
- Hart, H.L.A., "Kelsen's Doctrine of the Unity of Law" in Hart 1983.
- Paulson, Stanley L. 1997. "Introduction" to Paulson and Paulson 1997.
- Raz, Joseph, *The Concept of a Legal System*, 2nd ed. (Oxford: Clarendon, 1980), esp. chs. III-V.
- Raz, Joseph, "Kelsen's Theory of the Basic Norm," in Joseph Raz, *The Authority of Law* (Oxford: Clarendon, 1979)

- Raz, Joseph. 1981. "The Purity of the Pure Theory" reprinted in Paulson and Litschewski-Paulson 1999
- Stewart, Iain. 1990. "The Critical Legal Science of Hans Kelsen" *Journal of Law and Society* 17:273-
- Marmor, Andrei, "The Pure Theory of Law," in *The Stanford Encyclopedia of Philosophy* (Winter 2008 Edition), Edward N. Zalta, ed., forthcoming URL = <http://plato.stanford.edu/archives/win2008/entries/lawphil-theory/>.
- Green, Michael Steven. 2008. Kelsen, Quietism, and the Rule of Recognition. In Matthew D. Adler, Kenneth E. Himma eds., *The Rule Of Recognition And The United States Constitution*. Oxford University Press, Forthcoming; available at SSRN: <http://ssrn.com/abstract=1280253>
- Green, Michael Steven, "Hans Kelsen and the Logic of Legal Systems," available at SSRN: <http://ssrn.com/abstract=455620>
- Wilson, Alida. "Is Kelsen Really a Kantian?" in Tur & Twining 1986.

Blog entries:

PrawfsBlog: "Why No Kelsen"?

<http://prawfsblawg.blogs.com/prawfsblawg/2007/10/why-no-kelsen.html>

Brian Leiter's Legal Philosophy Blog: "Why don't American philosophers of law talk about Kelsen?" <http://leiterlegalphilosophy.typepad.com/leiter/2007/10/why-dont-amer-1.html#comments>

PrawfsBlog: "An Alternative Theory of Kelsen's Neglect – Americans Lazy, Stupid" <http://prawfsblawg.blogs.com/prawfsblawg/2007/10/an-alternative-.html>

Legal Theory Blog: "Should We Study Kelsen?"

<http://lsolum.typepad.com/legaltheory/2007/10/should-we-study.html>

Online bibliography of Kelsen's works

<http://www-bunken.tamacc.chuo-u.ac.jp/scholar/morisue/datei.htm>

Interview with Hans Kelsen

<http://aeiou.iicm.tugraz.at/aeiou.film.data.film/o504a.mov>

The Grading System Explained

There will not be a final examination. Your grade will be based on a final paper of 12-15 (typed, double-spaced) pages. Your class participation will also be a factor. I encourage you to begin thinking right away about your paper topic. A first draft of your paper will be due on or before March 19th; and the final paper will be due by 5pm of the last day of the examination period. *All drafts including the final draft must be in MS Word or WordPerfect format and submitted by e-*

mail to wedmundson@gsu.edu . Those wishing to satisfy the upper level writing requirement for the J.D. should read and comply with the *additional* conditions set out in the following section.

Upper Level Writing Requirement

If you want your paper to satisfy the upper level writing requirement for the J.D. degree, you should be aware of this, from the COL website (http://law.gsu.edu/academics/legal_writing_requirement.php):

The following guidelines reflect general norms for papers that satisfy the upper level writing requirement....

1. The minimum page length should be 25 pages, double-spaced, excluding footnotes or endnotes. A longer minimum may be required in the discretion of the instructor.
2. At least one draft should be submitted to the instructor prior to the submission of the final paper.
3. An acceptable paper should reflect thorough research of primary and secondary materials. All sources used in writing the paper must be cited appropriately.
4. An acceptable paper should include original analysis by the student.
5. An acceptable paper should be well-organized and written in conformity with accepted rules of grammar, punctuation, and spelling.

Let me add this: to avoid misunderstanding and possible disappointment, those who wish to satisfy the upper level writing requirement in conjunction with this course *must* declare their intention of doing so on the cover page of their first draft (due no later than March 19th) and turn in a final paper complying with the above guidelines. Those who do not so intend may turn in a final paper of 12-15 pages that emphasizes analysis rather than research, or vice versa. Those who seek to satisfy the upper level writing requirement will be expected to exhibit proficiency in both dimensions: research and analysis. Organization, clarity, and appropriate and consistent citation -- it should go without saying -- are expected of all papers.

Attendance policy

Roll will be taken at each class meeting. Two or more unexcused absences will be grounds for the assignment of a failing grade. Please also note that class

nonparticipation may influence your final grade. Because absences due to illness or conflicting family, legal, military or business duties are routinely excused, you are encouraged **NOT** to telephone or e-mail me to ask that such an absence be excused.

Office hours

I will normally be in my office from 1:30 to 2:30 on Wednesdays; but I recommend that you call or e-mail for an appointment. My office is 458 ULB. My office telephone number is 404 413 9167.

Schedule

<u>Date</u>	<u>Topic and reading</u>
1/9	No meeting
1/16	<i>IPLT</i> , pp. 1-19 [optional: <i>PTL</i> pp. 193-214]
1/23	<i>IPLT</i> , pp. 20-36
1/30	<i>IPLT</i> , pp. 37-53
2/6	<i>IPLT</i> , pp. 55-75
2/13	<i>IPLT</i> , pp. 77-89
2/20	<i>IPLT</i> , pp. 91-106
2/27	<i>IPLT</i> , pp. 107-25
3/6	*** <i>Spring Break</i> ***
3/13	<i>GTLS</i> , pp. 24-29, 45-64, 112-40 [optional: <i>PTL</i> 114-19 and 221-36]
3/20	<i>GTLS</i> , pp. 162-78, 374-75, 203-05 [optional: <i>PTL</i> pp. 193-214]
3/27	H.L.A. Hart, "Kelsen Visited," and "Kelsen's Doctrine of the Unity of Law"
4/3	H.L.A. Hart, <i>The Concept of Law</i> (2nd ed, Oxford 1994). chs V, VI (esp. §1), and §5 of ch. X; and endnotes (esp. those to ch. VI); Scott Shapiro, "What Is the Rule of Recognition (and Does It Exist)?" (downloadable: http://ssrn.com/abstract=1304645); and Jeremy Waldron, "Who Needs Rules of Recognition?" (downloadable: http://ssrn.com/abstract=1358477)
4/10	J. Raz, <i>The Authority of Law</i> (Oxford 1979), chs. 7, 8
4/17	J. Raz, "The Purity of the Pure Theory"

Check this schedule frequently: it is subject to change without notice.