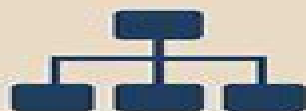


# HANS KELSEN'S PURE THEORY OF LAW

An overview of the core principles of Kelsen's legal theory

## BASIC NORM (GRUNDNORM)



Law is founded upon a fundamental norm that is presupposed and from which all other norms derive their validity

## HIERARCHY OF NORMS



Legal norms are organized in a hierarchical structure with the constitution at the top, followed by statutes, regulations, and decrees

## SEPARATION OF LAW AND MORALITY



Law should be analyzed independently of moral or ethical considerations; legality is distinct from morality

## LEGAL SCIENCE



Study of law should be "pure" and free from political, sociological, or moral elements, focusing on law as a system of norms

# Hans Kelsen And His Pure Theory Of Law

**George A. Lipsky**



## **Hans Kelsen And His Pure Theory Of Law:**

**Pure Theory of Law** Hans Kelsen, 2005 Reprint of the second revised and enlarged edition a complete revision of the first edition published in 1934 A landmark in the development of modern jurisprudence the pure theory of law defines law as a system of coercive norms created by the state that rests on the validity of a generally accepted Grundnorm or basic norm such as the supremacy of the Constitution Entirely self supporting it rejects any concept derived from metaphysics politics ethics sociology or the natural sciences Beginning with the medieval reception of Roman law traditional jurisprudence has maintained a dual system of subjective law the rights of a person and objective law the system of norms Throughout history this dualism has been a useful tool for putting the law in the service of politics especially by rulers or dominant political parties The pure theory of law destroys this dualism by replacing it with a unitary system of objective positive law that is insulated from political manipulation Possibly the most influential jurist of the twentieth century Hans Kelsen 1881 1973 was legal adviser to Austria s last emperor and its first republican government the founder and permanent advisor of the Supreme Constitutional Court of Austria and the author of Austria s Constitution which was enacted in 1920 abolished during the Anschluss and restored in 1945 The author of more than forty books on law and legal philosophy he is best known for this work and **General Theory of Law and State** Also active as a teacher in Europe and the United States he was Dean of the Law Faculty of the University of Vienna and taught at the universities of Cologne and Prague the Institute of International Studies in Geneva Harvard Wellesley the University of California at Berkeley and the Naval War College Also available in cloth

**General Theory of Law and State** Hans Kelsen, 2009 Reprint of the first edition This classic work by the important Austrian jurist is the fullest exposition of his enormously influential pure theory of law which includes a theory of the state It also has an extensive appendix that discusses the pure theory in comparison with the law of nature positivism historical natural law metaphysical dualism and scientific critical philosophy The scope of the work is truly universal It never loses itself in vague generalities or in unconnected fragments of thought On the contrary precision in the formulation of details and rigorous system are characteristic features of the exposition only a mind fully concentrated upon that logical structure can possibly follow Kelsen s penetrating analysis Such a mind will not shrink from the effort necessary for acquainting itself with the pure theory of law in its more general aspects and will then pass over to the theory of the state which ends up with a carefully worked out theory of international law Julius Kraft *American Journal of International Law* 40 1946 496

**Introduction to the Problems of Legal Theory** Hans Kelsen, 1992 Hans Kelsen is considered to be one of the foremost legal theorists and philosophers of the twentieth century His writing made significant contributions to many areas especially those of legal theory and international law Over a number of decades he developed an important legal theory which found its first complete exposition in *Reine Rechtslehre* or *Pure Theory of Law* the first edition of which was published in Vienna in 1934 This is the first English translation of the first edition of that work It covers such topics as law and morality

the legal system and its hierarchical structure and the state and international law **Hans Kelsen's Pure Theory of Law** Lars Vinx, 2007-09-06 Hans Kelsen is commonly considered to be among the founding fathers of modern legal philosophy. Despite Kelsen's prominence as a legal theorist, his political theory has so far been mostly overlooked. This book argues that Kelsen's legal theory, the Pure Theory of Law, needs to be read in the context of Kelsen's political theory. It offers the first comprehensive interpretation of the Pure Theory that makes systematic use of Kelsen's conception of the rule of law, his theory of democracy, his defense of constitutional review, and his views on international law. Once it is read in the context of Kelsen's political works, Kelsen's analysis of legal normativity provides us with a notion of political legitimacy that is distinct from any comprehensive and contestable theory of justice. It shows how members of pluralist societies can reasonably acknowledge the binding nature of law even where its content does not fully accord with their own substantive views of the requirements of justice, provided it is created in accordance with an ideal of fair arbitration amongst social groups. This result leads to a fundamental re-evaluation of the Pure Theory of Law. The theory is best understood as an attempt to find a middle ground between natural law and legal positivism. Later positivist legal theorists, inspired by Kelsen's work, failed to appreciate the political-theoretical context of the Pure Theory and turned to a narrow instrumentalism about the functions of law. The perspective on Kelsen offered in this book aims to reconnect positivist legal thought with normative political theory.

**Kelsen Revisited** Luís Duarte d'Almeida, John Gardner, Leslie Green, 2014-07-18 Forty years after his death, Hans Kelsen (1881-1973) remains one of the most discussed and influential legal philosophers of our time. This collection of new essays takes Kelsen's Pure Theory of Law as a stimulus, aiming to move forward the debate on several central issues in contemporary jurisprudence. The essays in Part I address legal validity, the normativity of law, and Kelsen's famous but puzzling idea of a legal system's basic norm. Part II engages with the difficult issues raised by the social realities of law and the actual practices of legal officials. Part III focuses on conceptual features of legal systems and the logical structure of legal norms. All the essays were written for this volume by internationally renowned scholars from seven countries. Also included in English translation is an important polemical essay by Kelsen himself. **The Pure Theory of Law** William Ebenstein, 1945

General Theory of Norms Hans Kelsen, 1991 Hans Kelsen is considered by many to be the foremost legal thinker of the twentieth century. During the last decade of his life, he was working on what he called a general theory of norms. Published posthumously in 1979 as *Allgemeine Theorie der Normen*, the book is here translated for the first time into English. Kelsen develops his pure theory of law into a general theory of norms and analyzes the applicability of logic to norms to offer an original and extreme position, which some have called normative irrationalism. Examining the views of over 200 philosophers and legal theorists on law, morality, and logic, and revising several of his own earlier positions, Kelsen's final work is a mandatory resource for legal and moral philosophers. *A Dynamic Approach to Hans Kelsen's General Theory of Norms* Monika Zalewska, 2024-12-12 This timely and compelling book delves into the dynamic interpretation of Hans Kelsen's

General Theory of Norms through the lens of 21st century jurisprudential debates Engaging with key contemporary philosophical concepts such as fictionalism in the philosophy of science explanation and understanding and supervenience this book sheds new light on Kelsen s original ideas By offering a contemporary interpretation of his later work it re examines classic concepts known from the Pure Theory of Law like the basic norm the separation of is and ought validity and efficacy imputation and the concept of the legal norm Integrating modern philosophy with Kelsen s lasting ideas this book presents a novel theoretical landscape inviting readers to explore fresh perspectives on Kelsen s contributions to legal theory and emphasising its enduring relevance

The Public International Law Theory of Hans Kelsen Jochen von Bernstorff,2010-10-28 This analysis of Hans Kelsen s international law theory takes into account the context of the German international legal discourse in the first half of the twentieth century including the reactions of Carl Schmitt and other Weimar opponents of Kelsen The relationship between his Pure Theory of Law and his international law writings is examined enabling the reader to understand how Kelsen tried to square his own liberal cosmopolitan project with his methodological convictions as laid out in his Pure Theory of Law Finally Jochen von Bernstorff discusses the limits and continuing relevance of Kelsenian formalism for international law under the term of reflexive formalism and offers a reflection on Kelsen s theory of international law against the background of current debates over constitutionalisation institutionalisation and fragmentation of international law The book also includes biographical sketches of Hans Kelsen and his main students Alfred Verdross and Joseph L Kunz

*Why Grundnorm?* Uta Bindreiter,2002-12-31 Who presupposes Kelsen s basic norm Is it possible to defend the presupposition in a way that is convincing And what difference does the presupposition make Endeavouring to highlight the role of basic assumptions in the law the author argues that the verb to presuppose with Kelsen has not only a conceptual but also a normative dimension and that the expression presupposing the basic norm is adequate in so far as it marks the descriptive normative nature of utterances made in specifically legal speech situations Addressed to legal theorists in general the treatise purports to show that Kelsen s doctrine lends itself to an interpretation according to which the very act of presupposing the Grundnorm can be understood as a Grund i e normative source of all positive law and what is more that this interpretation admits of addressing the issue of the formal legitimacy of supra national and directly applicable rules and other norms

**The Continuity of Legal Systems in Theory and Practice** Benjamin Spagnolo,2015-10-22 The Continuity of Legal Systems in Theory and Practice examines a persistent and fascinating question about the continuity of legal systems when is a legal system existing at one time the same legal system that exists at another time The book s distinctive approach to this question is to combine abstract critical analysis of two of the most developed theories of legal systems those of Hans Kelsen and Joseph Raz with an evaluation of their capacity in practice to explain the facts attitudes and normative standards for which they purport to account That evaluation is undertaken by reference to Australian constitutional law and history whose diverse and complex phenomena make it particularly apt for evaluating the

theories explanatory power In testing whether the depiction of Australian law presented by each theory achieves an adequate fit with historical facts the book also contributes to the understanding of Australian law and legal systems between 1788 and 2001 By collating the relevant Australian materials systematically for the first time it presents the case for reconceptualising the role of Imperial laws and institutions during the late nineteenth and early twentieth centuries and clarifies the interrelationship between Colonial State Commonwealth and Imperial legal systems both before and after Federation

**Sovereignty and the Limits of International Law** Todd Berry, 2023-11-29 The inspiration for this book comes from negotiations that are taking place under the auspices of the United Nations by an intergovernmental conference for a new International Legally Binding Instrument ILBI under the United Nations Convention on the Law of the Sea UNCLOS on the conservation and sustainable use of marine biological diversity of Areas Beyond National Jurisdiction ABNJ The proposed ILBI is attempting to fill existing gaps under international law over marine biodiversity and Marine Genetic Resources MGR in ABNJ One way it is attempting to do this is by having an Access and Benefit Sharing ABS schema over these resources in ABNJ that the United Nations Convention on Biological Diversity CBD and its Nagoya Protocol NP do not currently cover These existing frameworks that regulate genetic resources are grounded in the notion of sovereignty Effectively States have sovereign rights over their biological resources The ILBI however is attempting to regulate marine biodiversity and MGR in ABNJ Thus the notion that negotiators representing nation States under the auspices of the United Nations can regulate ABNJ is paradoxical are these areas beyond nation States jurisdiction or not Implicitly the negotiators are acting as though they have sovereignty over resources located in what has been historically a sovereign free space Thus the purpose of this book is to investigate this paradox Essentially this book critiques the notion that ABNJ can actually be regulated under the auspices of the United Nations by nation State negotiators

**Law and Politics in the World Community** George A. Lipsky, 2022-09-23 This title is part of UC Press s Voices Revived program which commemorates University of California Press s mission to seek out and cultivate the brightest minds and give them voice reach and impact Drawing on a backlist dating to 1893 Voices Revived makes high quality peer reviewed scholarship accessible once again using print on demand technology This title was originally published in 1953

**The Invisible Origins of Legal Positivism** W.E. Conklin, 2012-12-06 Conklin s thesis is that the tradition of modern legal positivism beginning with Thomas Hobbes postulated different senses of the invisible as the authorising origin of humanly posited laws Conklin re reads the tradition by privileging how the canons share a particular understanding of legal language as written Leading philosophers who have espoused the tenets of the tradition have assumed that legal language is written and that the authorising origin of humanly posited rules norms is inaccessible to the written legal language Conklin s re reading of the tradition teases out how each of these leading philosophers has postulated that the authorising origin of humanly posited laws is an unanalysable externality to the written language of the legal structure As such the authorising origin of posited rules norms is inaccessible or invisible

to their written language What is this authorising origin Different forms include an originary author an a priori concept and an immediacy of bonding between person and laws In each case the origin is unwritten in the sense of being inaccessible to the authoritative texts written by the officials of civil institutions of the sovereign state Conklin sets his thesis in the context of the legal theory of the polis and the pre polis of Greek tribes The author claims that the problem is that the tradition of legal positivism of a modern sovereign state excises the experiential or bodily meanings from the written language of the posited rules norms thereby forgetting the very pre legal authorising origin of the posited norms that each philosopher admits as offering the finality that legal reasoning demands if it is to be authoritative

*Artificial Intelligence and the Rule of Law* Armando Aliu, 2025-10-26 This book explores the most pressing challenges in AI technologies and practices the entanglements of the AI and law and AI and the rule of law nexus and digitally transformed fracturing world that is shaped by digital governance and digital ethics underpinned by responsible AI and AI4People viewpoints It draws attention to unraveling the legal labyrinth of regulatory frameworks on AI the rule of law digital human rights digital democracy and how these AI regulations intervene in the digital transformation of LegalTech across the world It emphasizes the need for a robust regulatory framework to mitigate the risks of AI and overcome legal hurdles The book scrutinizes the issues risks and opportunities of AI to uphold the rule of law promote human rights improve access to justice protect people's rights and fundamental freedoms and strengthen the inclusive society based on the rule of law Furthermore the book delves into the challenges and risks of AI protection of privacy personal data and the GDPR The book sheds light on the impact of AI use on the development of the rule of law and digital transformation in legal systems by considering the digitalization of justice systems the impact of AI on safeguarding human rights AI ethics AI governance AI use in justice systems computational jurisprudence Generative AI the age of LegalTech responsible humancentric explainable and trustworthy AI technologies AI interdisciplinarity procedural fetishism and substantive due process in AI governance and digital constitutionalism the right to be forgotten the legal feasibility of machine unlearning methods the EU AI Act regulatory framework digital vulnerability bio technological ethics and post anthropocentrism

Neutrality and Theory of Law Jordi Ferrer Beltrán, José Juan Moreso, Diego M. Papayannis, 2013-04-03 This book brings together twelve of the most important legal philosophers in the Anglo American and Civil Law traditions The book is a collection of the papers these philosophers presented at the Conference on Neutrality and Theory of Law held at the University of Girona in May 2010 The central question that the conference and this collection seek to answer is Can a theory of law be neutral The book covers most of the main jurisprudential debates It presents an overall discussion of the connection between law and morals and the possibility of determining the content of law without appealing to any normative argument It examines the type of project currently being held by jurisprudential scholarship It studies the different approaches to theorizing about the nature or concept of law the role of conceptual analysis and the essential features of law Moreover it sheds some light on what can be learned from

studying the non essential features of law Finally it analyzes the nature of legal statements and their truth values This book takes the reader a step further to understanding law

**The International Legal Personality of the Individual** Astrid Kjeldgaard-Pedersen,2018-08-09 This is the first monograph to scrutinize the relationship between the concept of international legal personality as a theoretical construct and the position of the ultimate subject the individual as a matter of positive international law By testing the four main theoretical conceptions of international legal personality against historical and existing norms of positive international law that regulate the conduct of individuals the book argues that the common narrative in contemporary scholarship about the development of the role of the individual in the international legal system is flawed Contrary to conventional wisdom international law did not apply to states alone until World War II only to transform during the second half of the 20th century so as to include individuals as its subjects Rather the answer to the question of individual rights and obligations under international law is and always was strictly empirical It follows of course that the entities governed by a particular norm tell us nothing about the legal system to which that norm belongs Instead the distinction between international law and national law turns exclusively on whether the source of the norm in question is international or national in kind Against the background of these insights the book shows how present day international lawyers continue to allow an idea which was never more than a scholarly invention of the 19th century to influence the interpretation and application of international law This state of affairs has significant real world ramifications as international legal rights and obligations of individuals and other non state entities are frequently applied more restrictively than interpretation without presumptions regarding personality would merit

**The Methodology of Constitutional Theory** Dimitrios Kyritsis,Stuart Lakin,2022-02-24 What sort of methods are best suited to understanding constitutional doctrines and practices Should we look to lawyers and legal methods alone or should we draw upon other disciplines such as history sociology political theory and moral philosophy Should we study constitutions in isolation or in a comparative context To what extent must constitutional methods be sensitive to empirical data about the functioning of legal practice Can ideal theory aid our understanding of real constitutions This volume brings together constitutional experts from around the world to address these types of questions through topical events and challenges such as Brexit administrative law reforms and the increasing polarisations in law politics and constitutional scholarship Importantly it investigates the ways in which we can ensure that constitutional scholars do not talk past each other despite their persistent and often fierce disagreements In so doing it aims systematically to re examine the methodology of constitutional theory

Essays on Kelsen Richard Tur,William Twining,1986 A very important collection of essays on the legal philosophy of Hans Kelsen The collection has a pleasant unity and includes a superb introduction by the editors that provides a framework for the essays and a perspective from which to evaluate Kelsen s contributions to legal theory Choice

Collective Rights Miodrag A. Jovanović,2012-01-12 A legal theoretical account of collective rights grounded in the normative moral view of value collectivism



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## **Table of Contents Hans Kelsen And His Pure Theory Of Law**

1. Understanding the eBook Hans Kelsen And His Pure Theory Of Law
  - The Rise of Digital Reading Hans Kelsen And His Pure Theory Of Law
  - Advantages of eBooks Over Traditional Books
2. Identifying Hans Kelsen And His Pure Theory Of Law
  - Exploring Different Genres
  - Considering Fiction vs. Non-Fiction
  - Determining Your Reading Goals
3. Choosing the Right eBook Platform
  - Popular eBook Platforms
  - Features to Look for in an Hans Kelsen And His Pure Theory Of Law
  - User-Friendly Interface
4. Exploring eBook Recommendations from Hans Kelsen And His Pure Theory Of Law
  - Personalized Recommendations
  - Hans Kelsen And His Pure Theory Of Law User Reviews and Ratings
  - Hans Kelsen And His Pure Theory Of Law and Bestseller Lists
5. Accessing Hans Kelsen And His Pure Theory Of Law Free and Paid eBooks
  - Hans Kelsen And His Pure Theory Of Law Public Domain eBooks
  - Hans Kelsen And His Pure Theory Of Law eBook Subscription Services
  - Hans Kelsen And His Pure Theory Of Law Budget-Friendly Options

6. Navigating Hans Kelsen And His Pure Theory Of Law eBook Formats
  - ePub, PDF, MOBI, and More
  - Hans Kelsen And His Pure Theory Of Law Compatibility with Devices
  - Hans Kelsen And His Pure Theory Of Law Enhanced eBook Features
7. Enhancing Your Reading Experience
  - Adjustable Fonts and Text Sizes of Hans Kelsen And His Pure Theory Of Law
  - Highlighting and Note-Taking Hans Kelsen And His Pure Theory Of Law
  - Interactive Elements Hans Kelsen And His Pure Theory Of Law
8. Staying Engaged with Hans Kelsen And His Pure Theory Of Law
  - Joining Online Reading Communities
  - Participating in Virtual Book Clubs
  - Following Authors and Publishers Hans Kelsen And His Pure Theory Of Law
9. Balancing eBooks and Physical Books Hans Kelsen And His Pure Theory Of Law
  - Benefits of a Digital Library
  - Creating a Diverse Reading Collection Hans Kelsen And His Pure Theory Of Law
10. Overcoming Reading Challenges
  - Dealing with Digital Eye Strain
  - Minimizing Distractions
  - Managing Screen Time
11. Cultivating a Reading Routine Hans Kelsen And His Pure Theory Of Law
  - Setting Reading Goals Hans Kelsen And His Pure Theory Of Law
  - Carving Out Dedicated Reading Time
12. Sourcing Reliable Information of Hans Kelsen And His Pure Theory Of Law
  - Fact-Checking eBook Content of Hans Kelsen And His Pure Theory Of Law
  - Distinguishing Credible Sources
13. Promoting Lifelong Learning
  - Utilizing eBooks for Skill Development
  - Exploring Educational eBooks
14. Embracing eBook Trends
  - Integration of Multimedia Elements

- Interactive and Gamified eBooks

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