

Legality And Legitimacy Carl Schmitt Hans Kelsen And Hermann Heller In Weimar

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The Guardian of the Constitution
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Hans Kelsen's Pure Theory of Law
Carl Schmitt's Early Legal-Theoretical Writings
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The Fruits of Exile
The Essence and Value of Democracy
Dan Diner David Dyzenhaus Lars Vinx Carl Schmitt Nikolaos Vagdoutis Andityas Soares de Moura Costa Matos (org.) John P. McCormick Pedro T. Magalhães Benjamin A. Schupmann Todd Berry Richard Bourke Pedro T. Magalhães Jochen von Bernstorff D.A. Jeremy Telman Tracy B. Strong Mariano Croce Richard Bodek Hans Kelsen
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proceedings of a conference on kelsen and schmitt held jan 5 6 1997 in tel aviv and organized by the max planck institute of european legal history frankfurt main and the institute for german history at tel aviv university

this volume provides the first english translation of hans kelsen s and carl schmitt s influential weimar era debate on constitutional guardianship and the legitimacy of constitutional review it includes kelsen s seminal piece the nature and development of constitutional adjudication as well as key extracts from the guardian of the constitution which present schmitt s argument against constitutional review also included are kelsen s review of schmitt s guardian of the constitution as well as some further material by kelsen and schmitt on presidential dictatorship under article 48 of the weimar constitution these texts show kelsen and schmitt responding to one another in the context of a debate focused on a concrete constitutional crisis thus allowing the reader to assess the plausibility of kelsen s and schmitt s legal and constitutional theories

the first english translation of hans kelsen s and carl schmitt s debate on the guardian of the constitution

this text investigates one of the oldest questions of legal philosophy the relationship between law and legitimacy it analyses the legal theories of three public lawyers of the weimar era carl schmitt hans kelsen and hermann heller

by showing how kelsen s theory of law works alongside his political philosophy the book shows the pure theory to be part of a wider attempt to understand how political power can be legitimately exercised in pluralist societies

makes available in english carl schmitt s early legal theoretical writings the intellectual background of schmitt s political and constitutional theory

initia via editora

this is the first in depth critical appraisal in english of the political legal and cultural writings of carl schmitt perhaps this century s most brilliant critic of liberalism it offers an assessment of this most sophisticated of fascist theorists without attempting either to apologise for or demonise him schmitt s weimar writings confront the role of technology as it finds expression through the principles and practices of liberalism contemporary political conditions such as disaffection with liberalism and the rise of extremist political organizations have rendered schmitt s work both relevant and insightful john mccormick examines why technology becomes a rallying cry for both right and left wing intellectuals at times when liberalism appears anachronistic and shows the continuities between weimar s ideological debates and those of our own age

by re examining the political thought of max weber carl schmitt and hans kelsen this book offers a reflection on the nature of modern democracy and the question of its legitimacy pedro t magalhães shows that present day elitist populist and pluralist accounts of democracy owe in diverse and often complicated ways an intellectual debt to the interwar era german speaking scholarly and political controversies on the problem s of modern democracy a discussion of weber s ambivalent diagnosis of modernity and his elitist views on democracy as they were elaborated especially in the 1910s sets the groundwork for the study against that backdrop schmitt s interwar political thought is interpreted as a form of neo authoritarian populism whereas kelsen evinces robust though not entirely unproblematic pluralist consequences in the conclusion the author draws on claude lefort s concept of indeterminacy to sketch a potentially more fruitful way than can be gleaned from the interwar german discussions of conceiving the nexus between the elitist populist and pluralist faces of modern democracy the legitimacy of modern democracy will be of interest to political theorists political philosophers intellectual historians theoretically oriented political scientists and legal scholars working in the subfields of constitutional law and legal theory the open access version of this book available at doi org 10 4324 9781315157566 has been made available under a creative commons attribution non commercial no derivatives 4 0 license

can a constitutional democracy commit suicide can an illiberal antidemocratic party legitimately obtain power through democratic elections and amend liberalism and democracy out of the constitution entirely in weimar germany these theoretical questions were both practically and existentially relevant by 1932 the nazi and communist parties combined held a majority of seats in parliament neither accepted the legitimacy of liberal democracy their only reason for participating democratically was to amend the constitution out of existence this book analyses carl schmitt s state and constitutional

theory and shows how it was conceived in response to the weimar crisis right wing and left wing political extremists recognized that a path to legal revolution lay in the weimar constitution s combination of democratic procedures total neutrality toward political goals and positive law schmitt s writings sought to address the unique problems posed by mass democracy schmitt s thought anticipated constrained or militant democracy a type of constitution that guards against subversive expressions of popular sovereignty and whose mechanisms include the entrenchment of basic constitutional commitments and party bans schmitt s state and constitutional theory remains important the problems he identified continue to exist within liberal democratic states schmitt offers democrats today a novel way to understand the legitimacy of liberal democracy and the limits of constitutional change

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

the first collaborative volume to explore popular sovereignty a pivotal concept in the history of political thought

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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

this volume explores the reasons for hans kelsen s lack of influence in the united states and proposes ways in which kelsen s approach to law philosophy and political democratic and international relations theory could be relevant to current debates within the u s academy in those areas along the way the volume examines kelsen s relationship and often hidden influences on other members of the mid century central european émigré community whose work helped shape twentieth century social science in the united states the book includes major contributions to the history of ideas and to the sociology of the professions in the u s academy in the twentieth century each section of the volume explores a different aspect of the puzzle of the neglect of kelsen s work in various disciplinary and national settings part i provides reconstructions of kelsen s legal theory and defends that theory against negative assessments in anglo american jurisprudence part ii focuses both on kelsen s theoretical views on international law and his practical involvement in the post war development of international criminal law part iii addresses kelsen s theories of democracy and justice while placing him in dialogue with other major twentieth century thinkers including two fellow émigré scholars leo strauss and albert ehrenzweig part iv explores kelsen s intellectual legacies through european and american perspectives on the interaction of kelsen s theoretical approach to law and national legal traditions in the united states and germany each contribution features a particular applications of kelsen s approach to doctrinal and interpretive issues currently of interest in the legal academy the volume concludes with two chapters on the nature of kelsen s legal theory as an instance of modernism

politics without vision takes up the thought of seven influential thinkers each of whom attempted to construct a political solution to this problem nietzsche weber freud lenin schmitt heidegger and arendt none of these theorists were liberals nor excepting possibly arendt were they democrats and some might even be said to have served as handmaidens to totalitarianism and all to a greater or lesser extent shared the common conviction that the institutions and practices of liberalism are inadequate to the demands and stresses of the present times in examining their thought strong acknowledges the political evil that some of their ideas served to foster but argues that these were not necessarily the only paths their explorations could have taken by uncovering the turning points in their thought and the paths not taken strong strives to develop a political theory that can avoid and perhaps help explain the mistakes of the past while furthering the democratic impulse

the legal theory of carl schmitt provides a detailed analysis of schmitt s institutional theory of law mainly developed in the books published between the end of the 1920s and the beginning of the 1930s by reading schmitt s overall work through the lens of his institutional turn the authors offer a strikingly different interpretation of schmitt s theory of politics law and the relation between these two domains the book argues that schmitt s adherence to legal institutionalism was a key theoretical achievement based on serious reconsideration of the main flaws of his own decisionist paradigm in the light of the french and italian institutional theories of law in so doing the authors elucidate how schmitt was able to unravel many of the impasses that affected his previous conceptual framework the authors also make comparisons between schmitt and other leading legal theorists h kelsen m hauriou s romano and c mortati and explain why the current legal debate should take into serious account his legacy

fresh insights on an underexplored moment in intellectual history the fruits of exile casts new light on the history of émigré thinkers escaping from the rise of fascism in central europe editors richard bodek and simon lewis along with an international group of contributors emphasize the contributions to american and british culture by the european intellectual diaspora of the 1930s through their careful study of artists scientists and cultural figures often ignored in previous studies of the era the contributors explore the careers in exile of novelists thomas mann and herman broch philosophers karl mannheim walter kaufmann and theodore adorno artists joseph albers and max reinhardt composers arnold schoenberg and béla bartók and a host of other participants in the pre world war ii exodus from central europe the essays enhance understanding of the diverse range of exile experience by analyzing larger groups of exiles than in earlier studies by broadening the geographic area examined and by delving into the initial difficulties these immigrants had in finding acceptance and welcome on foreign soil the fresh insights on this underexplored moment in history illustrate that intellectual careers of the highest order are both personally driven based strongly on the life of great thinkers and creators and structurally shaped by local and international patterns of culture

hans kelsen is widely recognized as one of the most important legal theorists of the 20th century surprisingly however his political writings are not nearly as widely known as his legal theory especially in the english speaking world this book fills the void between what is and isn t known about hans kelsen s political philosophy and the ways that philosophy has and will continue to shape political debates inherent to democracy in the future for the first time in english this classic book with an introduction by political theorist nadia urbinati provides an overview of kelsen s career and his contributions to 20th century political thought

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