“Professor Kelsen’s Amazing Disappearing Act”

William E. Scheuerman

Why is Hans Kelsen, perhaps the mid-twentieth century’s most significant continental European liberal political and legal thinker, now an intellectual nonentity among US political scientists? Kelsen (1881–1973) arrived in the United States in 1940, and thus spent over three decades of his long and impressive career there. Unlike many other academic refugees, he was already a famous figure upon his arrival, and within a few years was able to establish himself at one of the country’s leading universities, the University of California (Berkeley), in the Political Science Department, where he held his only permanent position in the United States until his retirement in 1953.1 Many of Kelsen’s publications in the immediate post-war years appeared in the discipline’s pre-eminent publications (e.g. the American Political Science Review). Addressing democratic theory, the status of natural law, and the proper relationship between science and politics, they spoke directly to topics of broad interest to political scientists, and especially political theorists.

Yet, Kelsen is now pretty much forgotten among political scientists. To be sure, he makes an occasional appearance in the cloistered scholarly preserves in which political theorists gather, though generally only in the context of the ongoing revival of interest in his Weimar-era rival, the extreme right-wing Carl Schmitt. Among a dwindling band of political scientists with some knowledge of international law and European jurisprudence, and those with a European intellectual background, his name is familiar, even if his complicated theoretical legacy remains less so. Kelsen’s disappearance from political science is especially striking in light of the fact that so many other refugee scholars who fled Nazi Germany not only helped shaped post-war US political science, but even today remain objects of intensive scholarly interest. In some notable cases (e.g. Hannah Arendt, Leo Strauss, Eric Voegelin, and the Frankfurt...
School), their sizable contingents of disciples remain active – and, in some cases, hyperactive – in the field. In other cases, not only did the figures (e.g. Hans Morgenthau) decisively influence their scholarly field, but scholars are now reconsidering their intellectual legacies in order to highlight their contemporary relevance. Although some Anglophone jurists have done the same for Kelsen, political scientists continue to ignore him.2

In what follows, I suggest the following answer. In the aftermath of the Second World War, US political science – for reasons widely discussed in recent disciplinary histories – was characterised by a growing preoccupation with its professional and scientific credentials. The discipline's fervent attempt to undergird its scientific traits, in part as an attempt to ward off the widespread perception that it represented political advocacy masquerading as scholarship (Ball 1993), played a decisive role in delineating it from cognate fields such as law and sociology, while simultaneously carving up the discipline into its own ever more specialised subfields (American politics, comparative politics, International Relations (IR), and political theory). Unfortunately, post-war professionalisation inadvertently narrowed the discipline's intellectual horizons. As I hope to show, it played a key role in Kelsen's surprising disappearance, for which political science has arguably had to pay a price.

Most obviously, Kelsen's approach clashed with the ever more pervasive view after the Second World War that political science needed to move beyond a conventional focus on legal and constitutional analysis. In the subfield of political theory, where one might have expected some of his writings to have a major impact, Kelsen was quickly out of tune with the dominant intellectual tendencies. Unlike many other émigré scholars, Kelsen was not easily employed against what political theorists, many of whom seemed anxious about the field's scientific pretensions and embrace of a strict delineation of "is" from "ought", soon viewed as empirical political science's pathologies. Yet another disciplinary subfield, IR, similarly took shape as part of an implicitly anti-Kelsenian moment. Key post-war figures like Morgenthau and John Herz, who had studied with Kelsen in interwar Europe, rejected much of Kelsen's legacy, particularly his attempt to discard conventional ideas of the state and sovereignty.

Kelsen meets US political science

Once in the United States, where he initially taught law at Harvard before gaining a permanent position at Berkeley, Kelsen rapidly