

## Reviews

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 Weimar/Wien and the  
 IDEA(L) of a Social  
 Science

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## PRELUDE

The main theme of this issue of *Cosmos + Taxis* is the evaluation of Vinten's book on Wittgenstein and social sciences. I have learned much from these evaluations, especially from Paul Roth's. What I have done is put together a very lengthy review essay—a review essay that focuses on books whose authors assume that there is a social science. In fact, many of these authors believe that there is an “ideal” social science which encompasses many different disciplines, including law, politics, philosophy, and especially, sociology.

Part One is a review of the recently published *Oxford Handbook* on the Weimar era and I have focused on the chapters which I think are most helpful in understanding the Weimar period. The time frame of 1919 to 1933 is often regarded as a transition period between Wilhelmine Germany and the Third Reich; however, many of the chapters underscore the social-political and economic challenges that the Weimar government faced and how they sought to employ new ways of social thinking to combat problems and to seek new solutions. Although sociological works were available in Germany prior to the Weimar Republic, the first professorship in sociology did not exist until 1919. One of the difficulties in understanding the history of sociology is that many scholars still think in terms of their own particular discipline. However, in the early decades of the twentieth century, discipline boundaries were not so fixed and scholars who had been educated in one area frequently wrote in others. This was certainly true of Max Weber, Werner Sombart, Ernst Troeltsch, Georg Simmel, and Ferdinand Tönnies. Weber and Sombart were trained in political economy, Troeltsch in theology, and Simmel and Tönnies in philosophy. But all five scholars are regarded as legitimate founders of German sociology—in large measure because they were the major figures at the first conference of the newly formed Deutsche Gesellschaft für Soziologie held in 1910. Hans Kelsen and Carl Schmitt are not usually regarded as sociologists, yet they participated in sociological conferences and some of their writings are sociological, even if they are not labeled as such.

Part Two is focused on Kelsen and to a lesser extent on Schmitt, but there is a third individual considered in the third review: Otto Kirchheimer. Kirchheimer is virtually unknown in the English language community but he was Schmitt's favorite student until Kirchheimer broke with the master. As a result, he shared with Kelsen the critical need for legal rules and idea of the fundamental importance of democratic politics.

Part Three is a review of four books which are devoted almost entirely to Hans Kelsen. There are two books by Hans Dreier, one by Robert Schuett, and one by Sara Lagi. Taken together they offer a theme: Reassessing Kelsen.

Part Four is a review of a volume in the *Ferdinand Tönnies Gesamtausgabe*. That book is devoted to some of Tönnies' final works. Some of these writings in this volume may lack clarity and finesse, but there are many which are models of social thinking. These include the articles that were published in Alfred Vierkandt's *Handwörterbuch der Soziologie* (1931). This large volume includes six essays by Werner Sombart, five by Vierkandt, and one each by Alfred Weber, Robert Michels, Franz Oppenheimer, and Karl Mannheim. Vierkandt's *Handwörterbuch* is a treasure for gaining an understanding of the early formulations of the social sciences.

Part Five returns to the theme of Weimar and is a review of a collection of essays by Jens Hacke on the difficulties that the Weimar leaders faced. Then, as now, people are confused by the pace of modernity and seek the means to understand it. Social sciences have often been relied on to accomplish this task. Hence, those who discount the importance of social science reduce our means to make sense of life and those who do not believe that social thinking can ever have the distinction of being a general science. If it was such a science, given the forces of ignorance (and oppression), it would just be another weapon against humanity.

Ludwig Wittgenstein is not mentioned in any of these books under review here. But as with Tönnies, Kelsen, Kirchheimer, and Schmitt, he breathed some of the same "Weimar/Wien Luft." Whether Wittgenstein thought highly of the social sciences must be left up to the Wittgenstein experts. However, Kelsen and especially Tönnies helped establish the social sciences in Germany and indeed for much of the world. The worlds of Weimar and Vienna have long passed, but people who are concerned with social science, should consider visiting them as they are found in these enlightening and informative books.

## PART ONE: THE OXFORD HANDBOOK OF THE WEIMAR REPUBLIC

Sandwiched between the end of imperial Germany and the beginning of Hitler's dictatorship is a period that is rather unknown and those who are familiar with it are unsure of what to make of it. This period is often referred to as the Weimar Republic and it lasted only fourteen years—from August 1919 until January 1933. Was the Weimar period really one of non-stop crises or did it have times of normality? Why is it referred to as the Weimar Republic when its official name was the "Reich"? Why is its constitution called the "Weimar Constitution" when its official name was the "Reichsverfassung"? As an indication of the Weimar period's uncertain status, there is only one chapter of the *Oxford Handbook of Modern German History* devoted to part of it. The essay is Thomas Mergel's "Dictatorship and Democracy, 1918-1939" and as the years indicate, it goes beyond the Weimar era. In fact, more than half of the article is focused on Hitler and the years 1933 through 1939 (Mergel 2011). Mergel's article is well worth reading but it suggests that one views the Weimar period as leading to Hitler's dictatorship. Fortunately, we now have a new book that is intended to attract much needed attention to this relatively neglected and misunderstood period in German history: *The Oxford Handbook of the Weimar Republic*. The term "intended" is deliberately chosen because this *Handbook* does clarify and elucidate a considerable number of issues regarding the Weimar Republic, it also contains a few serious problems. Nonetheless, it is an impressive book. *The Oxford Handbook of the Weimar Republic* has five Parts with a total of 33 essays. Many of them are simply excellent and most of them are rather good; however, there are a few which are disappointing.

Part I carries the title "Key Events and Political Developments" and includes some of the best contributions in the book. Christopher Dillon's "The German Revolution of 1918/1919" explains how the revolution delivered "an armistice, a republic, parliamentary democracy, and the first-ever socialist government of an advanced industrial economy." Dillon does a splendid job in recounting how the revolution occurred against the background of Germany's loss in the First World War and how the revolutionary forces sought to form a government that was both representative of the German population and was responsive to its needs. He is also very good in explaining how counter-revolutionary forces actively worked to undermine

these advances. He is also justified in advising us not to judge the Weimar period because it was followed by Hitler's Germany. What Dillon may not be so justified in is his rather obvious favoritism for the revolutionary forces because that slants his overall account of the first years of the Weimar Republic.

Martin H. Geyer's title is "The Period of Inflation, 1919-1923" and that is the focus of his discussion. At the beginning of 1922, one U.S. dollar cost 45 Marks; by June it cost 75; by August it cost 270; and by December it cost 1,807. Geyer does far more than provide an economic picture of these years; he discusses the political problems as well. These include a brief discussion of the Kapp Putsch of 1920 and he mentions that hundreds of Germans were assassinated, mostly by right wing groups. The German government tried to rectify some of the economic and political problems by decrees but Geyer suggests that many of the decisions were ill-considered and by the end of 1923 "German society was weary" and that Germans' initial enthusiasm had given way to "a new sense of reality." Geyer ends his essay by allowing that it is difficult to ascertain the short-and-long range repercussions of hyperinflation but he suggests that the Nazis probably had a much easier time convincing Germans that they should vote for them. In her book *Weimar. Die überforderte Republik* Ursula Büttner offered a fuller picture of hyperinflation. She wrote that it began in July 1922 when one dollar cost 402 Marks and by the beginning of October it cost 1,648 and by the beginning of 1923 it cost 7,525. On July 1 one dollar cost 160,400 Marks and by mid-October one single U.S. dollar cost 4 billion German Marks (Büttner 2008, pp. 779-780). Büttner's gloss just substantiates Geyer's claim that the period of inflation was economically devastating.

Mathew Stibbe has a major challenge in his "Coalition-Building and Political Fragmentation, 1924-1930" not just because he is covering the lengthiest period in Weimar's history but because he has to refute the contemporary assessment that Weimar failed as a government. Stibbe's response to both is admirable: he discusses in clear terms how various German parties did agree to form coalitions and how they served to strengthen Germany during these years. But he is also clear about how certain political leaders were less concerned with the country than with their own power and reputation and Stibbe is highly critical of Paul von Hindenburg. Stibbe explains that many Germans voted for Hindenburg as Reich president based upon his reputation as a war hero and the belief that he would reestablish Germany's preeminent place on the world stage. But Stibbe faulted Hindenburg for his lack of concern with governing and because of Hindenburg's abuse of presidential powers. Hindenburg was not entirely responsible for Hitler's rise to power, but Stibbe suggests that he helped pave the way.

Larry Eugene Jones' chapter has the provocative title "From Democracy to Dictatorship" but his subtitle explains what his essay is about: "The Fall of Weimar and the Nazi Rise to Power, 1930-1933." Jones excels at describing how Hindenburg chose Heinrich Brüning to be chancellor and how Kurt von Schleicher was the "driving force" in Brüning's cabinet. Jones indicates that Brüning was a "man of many contradictions" and he was basically a conservative, but he was committed to the "basic principles of parliamentary democracy". Jones also explains with great care how Hindenburg lost confidence in Brüning and how in June 1932 he appointed Franz von Papen. Von Papen did not share Brüning's commitment to principles and he favored a more authoritarian government. Papen had intended to bring Hitler and the Nazis into the government in order to "tame" them, but as Jones pointed out, Hitler reneged on some of his promises, but was appointed chancellor whereas Papen was demoted to vice chancellor. Jones' conclusions are largely negative: while Brüning was mostly a decent man, he was unable to choose the right means to solve Weimar's massive problems and to defuse the political situation. In contrast, Schleicher and Papen are regarded as schemers who underestimated the strength of the Nazi party. Jones maintains that while there was no doubt about the paralysis of Weimar democracy and the economic impact of the Great Depression, much of the end of the Weimar period was a "result of petty animosities, strategic miscalculations, and the willful disregard for consequences". Jones' essay is a masterful account of one of the most tragic periods of German history.

Part II carries the title "Polity, Politics, and Policies" and it comprises eight essays. All of them are good but there are three which deserve discussion. Peter C. Caldwell begins Part II with "The Weimar Constitution." Caldwell notes that the constitution was about "legal rules, processes, and rights" but insists that it was also about the viability of democracy. He notes further that the Weimar government faced many

different types of crises and that the constitution seemed ultimately to fail. However, Caldwell defends the beginnings of the Weimar government by explaining that Germany lacked an actual model of a democratic republic. The United States had failed in its Civil War and the French Third Republic was unstable. The Weimar Constitution invested the President with broad powers and as long as there was a person in that office who was committed to the safety and the well-being of all of his citizens, there was no fundamental existential threat. That was primarily the case with Ebert. But when Hindenburg was elected in 1925, he was not a dedicated democrat and his decisions helped to undermine the Weimar Constitution. Caldwell pays close attention to Article 48 which gave the President extraordinary powers. Ebert had invoked Article 48 a number of times during his time in office, but as Caldwell argues, he always did so within the frame work of the overall health of Weimar. In contrast, Hindenburg used it to attack democracy's defenders in Prussia and to install an authoritarian government. Whether one agrees with Caldwell (and I do) that Ebert's use of Article 48 probably saved the republic is debatable. But Caldwell's claim that "Article 48 destroyed the republic is only half correct" is not debatable. A full understanding of Article 48 shows that it was not the article itself, but it was the President's choice to use or to abuse it which determined whether the republic would be saved or destroyed. Anyone interested in understanding the Weimar Constitution should seriously consider starting with Caldwell's essay.

Another excellent essay is Benjamin Ziemann's first essay on the army and armaments: "The Reichswehr and the Armament Policies." Ziemann achieves many goals within his essay. First, he emphasizes how the beginning of the preparations for total war differed from previous military preparations—the need for massive industrial planning and execution meant that the military could no longer be regarded as being outside of social systems but was integrated into them. He also describes how the various paramilitary groups functioned in the early twenties, going so far as to claim that the "Free Corps" (Freikorps) "were the German state." That is in line with Max Weber's claim that the state holds the monopoly of power. He also explains the changes in the military in response to the Kapp-Lüttwitz coup. In addition, Ziemann discusses the fundamental shift from the Junker military traditions with their duels of honor to an educated and disciplined professional army. Finally, he clarifies that the Storm Troopers (Sturm Abteilung/SA) were not only heavily involved in street fights, but were active in homeland defense. The attempt to ban the SA backfired and by 1932, "there was a military dictatorship in all but name".

A third essay in this Part II that is also impressive is Thomas Mergel's "Elections, Election Campaigns, and Democracy." Mergel begins by citing a few sentences from the *Frankfurter Zeitung* from the end of the war—that the victor was democracy. But Mergel explained that at the time it was not yet certain which form this democracy would take. It could be a council system or a parliamentary democracy. As we know, it was the latter but Mergel's essay helps explain how that came about. One of the great assets about Mergel's essay is his rather detailed account of the expansion of voting rights. This meant that there were new voters because the age was reduced from 25 to 20 years. There were those hundreds of thousands if not a million people who had emigrated to Germany from areas that Germany had lost at the end of the war. Finally, there were the newly enfranchised women. Another important aspect is Mergel's discussion of the tensions among various groups which made up German voters and how that was a fundamental challenge to the notion of a genuine "people's community" (Volksgemeinschaft). Perhaps the two most important observations are Mergel's demonstration that voters often claim that they vote rationally, but evidence often undermines that claim, and that Nazi supporters were not outsiders but were regular citizens who longed for a sense of national unity and a "people's community."

There are two others in Part II which also deserve some mention: Jonathan Wright's "Foreign Policy: The Dilemmas of a Revisionist State" is quite good, especially for readers interested in Weimar's great Foreign Minister Gustav Stresemann. Wright notes the contrast between the eight individuals who served as Foreign Minister between January 1919 and August 1923 and Stresemann's occupation of that office from 1923 until his death in October 1929. Whether one accepts Wright's suggestion that Stresemann was one of the most important and principled officials in Weimar's history, there is little doubt that this politician was dedicated to serving Weimar and its citizens. Karl Christian Führer's "Social Policy in the Weimar

Republic” also deserves mentioning because his essay is devoted to one of the fundamental principles of the Republic and that was the creation of a welfare state. He argues that “social policy was an important pillar of the Weimar Republic” but added that economic conditions impacted on how that was implemented. He breaks the period into three sections: 1919-1924, 1925-1929, and 1929-1932. The first time period was difficult because of the vast number of returning soldiers who needed jobs, and the wounded who needed care, and the widows and orphans who needed social and economic support. The second period was comparatively calm and offered the most advances in social policy with measures like unemployment insurance. The third period was marked by the impact of the Great Depression which overwhelmed most of the governmental efforts to provide a safety net. Führer concludes his overview with the comment that the Weimar Republic may have failed to have achieved a “decent standard of living” for everyone but it did “further social progress” that it had “promised in its constitution.”

Part III is devoted to “Parties and Their Constituencies” and has a total of five essays. The first one is on liberalism and begins with promise by pointing out that the term “liberalism” has meant different things at different times. But then the essay dwells on party politics. Towards the end of his essay Philipp Müller returns to the notion of liberalism and compares Germany’s liberalism during the Weimar period favorably with other European countries.

There are three essays devoted to parties: one by Joachim C. Häberlen on the Left and Shelley Baranowski on parties on the Right. These two will be treated together while the third one on the Nazi party will be discussed separately. In “Social Democrats and Communists in Weimar Germany” Häberlen argues that the Social Democrats attempted to form a social welfare system that would benefit the working class. He suggested that “Weimar was *their* project, *their* state” and he insisted that the Social Democrats were the “most committed defenders of the republic.” The problem as Häberlen sees it is that the working class was divided with many wanting political and social reforms while many others wanted radical changes. Häberlen explains that this was true for the Communist Party but it was especially true for the Social Democrats. Those wanting more radical measures formed the “Independent Social Democratic Party” (Unabhängige Sozialdemokratische Partei Deutschlands, USPD) and for a while in 1918 it was larger than the SPD (Sozialdemokratische Partei Deutschlands, SPD). The radicals ended up losing many political fights and the SPD was the dominant party for most of the first years of the Weimar Republic. The SPD was attacked from the Left and from the Right—while the Communists and the Nazis were politically opposites, Häberlen argues that their members tried to project a masculine image and expressed a willingness to engage in violent action.

The second essay covers the political parties of the Right as the title indicates: “The Centre Party, Conservatives, and the Radical Right.” Baranowski notes that at first glance these parties seem to have little in common, but she maintains that the two main parties shared certain political ideals and Christian beliefs. The Centre party was Catholic (Katholische Zentrum Partei, Zentrum) and the German National People’s Party (Deutschnationale Volkspartei, DNVP). In particular their members believed that Christian ideals were preferable to materialism and both parties were interested in tradition, order, and security. Baranowski offers a strong defense of Chancellor Brüning of Zentrum for his efforts to include organized labor in his party. But she adds that that was part of “his undoing.”

Daniel Siemens provides a clear and enlightening account of National Socialism in the essay of the same name. However, in keeping within the confines of this collection, his account is focused on the Weimar period. He tells us that this is historically important and suggests that it also has warnings for today. Before discussing those, it is fitting to discuss his scholarly account. Siemens begins by setting out the origins of the National Socialist German Workers’ Party (Nationalsozialistische Deutsche Arbeiterpartei, NSDAP) and he notes that it grew out of the German Workers’ Party (DAP) that was founded in Munich on January 5, 1919. He explains that it was a “völkisch” and an antisemitic party but attracted few members. In the Fall of that year Adolf Hitler attended a meeting and shortly thereafter joined the party. He was appointed propaganda chief and evidently impressed enough members that on February 24, 1920, the party was renamed NSNAP and Hitler was elected leader. It was then that he unveiled his 25 point program that the following

year could not be changed. Siemens suggests that at this point the Nazi party shared with many others its hatred of communism and its antisemitism. Thus, it was not distinguishable from many other fringe parties of the time. Siemens reminds us that the Nazis' path to power was "neither probable nor inevitable" and Hitler's attempt at a revolution with Erich Ludendorff not only failed but caught more attention from the government. Siemens comments that for the most part, the Nazi Party was regarded mostly as a group of rowdy antisemites. However, he also emphasizes that the small band was highly organized and well-disciplined and increasingly was able to attract converts from other "völkisch" parties. Siemens points out that people such as Ernst Röhm and Heinrich Himmler were instrumental in helping Hitler establish control. The Munich authorities tried Hitler for the failed putsch but only sentenced him to four years in a fortress—which Siemens explains was the mildest form of punishment. It was the trial that served as a pulpit for Hitler to espouse his views and Joseph Goebbels was only one of many who were impressed by Hitler's ideas and style. But the party was banned from 1923 until February 1925 but when it was re-founded, it then began to attract far more people. Siemens argues that the party attracted many disaffected young people and that increased its ranks but that "two-thirds of those who joined between 1925 and 1929 later left the party." By 1930, its ranks began to swell again—partially as a result of the depression and partially a result of the Brüning government's failures. Because the Nazis were not part of the government they could not be condemned for the government's failure. Instead, people were more than willing to believe the Nazi promises. Siemens reminds us that the Nazi Party was not just a political party but was a messianic one. It promised its followers not just political power but also "salvation." Its "us against them" theme attracted huge numbers in the last years of the Weimar Republic. Siemens warns us that many of the same factors which led to discontent during Weimar have resurfaced and that we should not be making the same mistakes today that had led to the Nazi Regime in 1933.

The essay "Antisemitism in the Weimar Republic" by Susanne Wein and Martin Ulmer is a well-written but depressing account of the racial discrimination and verbal and physical attacks that many Jews faced during this period. Wein and Ulmer point out that antisemitism was not developed during the 1920s but had its roots decades earlier. The main difference between then and the turn of the century was that the antisemitic parties gradually disappeared; its presence was only marginally disguised. Germany's defeat in the First World War again brought antisemitism to the surface. Jews were accused of shirking military service during the war and they were considered the main culprits of the "stab in the back" myth. Jews were responsible for the world domination of banking but Jews from Eastern Europe were the ones who were the most discriminated against because of their alleged communist sympathies. Wein and Ulmer spend a considerable amount of time detailing how radical Germans learned to "disparage, humiliate, and hurt Jews." These means ranged from ensuring that Jewish plays and movies were not allowed to be shown to pogroms on the streets of Berlin. But it also manifested in more subtle ways such as suggesting the Weimar Constitution was not valid because Hugo Preuss was a Jew. It also manifested itself in less subtle ways, such as the shocking murder of Walther Rathenau on June 24, 1922. Wein and Ulmer note that this brutal murder shocked Germany, but this sense of horror soon subsided. Wein and Ulmer then discuss how the left-wing parties fought against antisemitism but that the right-wing parties embraced it. They argue that almost all of the "völkisch" parties were antisemitic but that it was the Nazi Party that vigorously promoted it. Wein and Ulmer conclude that antisemitism was prevalent throughout Europe during the Weimar period, but they note that it was only in Germany that there was a national party which "always openly proclaimed antisemitism."

Part IV is on "Economy and Society" and the essays on gender, youth, and modernity are probably of interest to a number of people. In contrast, the essays on economy are not about economics per se, but reveal the overlap between economics and society. There are five that should be considered in the economy bracket and all are informative and well-written. There are, however, three that should be singled out because of their excellence. Sharon Gillerman's "German Jews in the Weimar Republic" should be read in tandem with the earlier antisemitism essay. Gillerman begins by explaining how Jews had become "a part of the fabric of German society" during the nineteenth and the early decades of the twentieth century. They

lived primarily in German cities and Gillerman points out that they were well-represented in the trades and commerce as well as in the medical and legal professions. She also discusses the outsized roles that Jewish writers and philosophers played in the Weimar era and how most German Jews were committed to liberalism. Gillerman expertly explains how diverse Jews were in their interests yet Germans stereotyped them as the “Jew.” She also provides a convincing account of the Jewish community’s struggle to fit into modern German society and their efforts to combat the increasing antisemitism. Gillerman’s account is a necessary corrective to the view that Jews should be viewed through the lens of the Holocaust.

Pamela E. Swett’s essay would be best read alongside Benjamin Ziemann’s second contribution. Swett’s paper is “The Industrial Working Class” while Ziemann’s is “Agriculture and Rural Society.” Swett correctly notes that Weimar is often “closely associated with the industrial working class” but departs from most accounts by concentrating on the workers’ social lives rather than their political convictions. Swett observed that the early years of Weimar were optimistic ones for many factory workers but that the hyperinflation of 1922-1923 caused massive problems for not just the middle class but for the working class as well. She notes that workers did not achieve the pay level that they had prior to the war until 1928 and this success was short-lived because of the Great Depression. Swett devotes a considerable effort to describing workers’ lives—they lived in small, cramped apartments sharing toilets and baths with others. Swett discusses the workers’ spending habits and noted that most spent at least fifty per cent of their income on food and that their lives were often precarious. While workers had been promised a real safety net, it never was realized. While they had been given more rights under the Weimar Constitution, their lives were not noticeably better. In Swett’s opinion, we should not be surprised that many workers believed the Nazi Party’s promises of stability and prosperity.

Benjamin Ziemann begins by contrasting the urban consumer with the rural producer and while the city dwellers often viewed the agrarian community as beneath their dignity, they were dependent on agrarian workers for food. Ziemann reminds us that the agrarian community was not monolithic but consisted of three different types of farms. The largest ones were located in Prussia and were run mostly as they had been for centuries—they were patriarchal and rather rigid. The second type of farms were located in the north-west sections of Germany as well as in the southeast. Unlike the Prussian estates, these farms were run by a family with only a few helpers. The third type of farm was even smaller and were the results of inheritances. The sons were each given a small plot of land. These farms were mostly located in Germany’s southwest region. Ziemann spends most of his essay on the types of protests that agrarian workers engaged in—the grievances ranged from lack of fertilizer to price ceilings to excessive taxation. But most of these protests were met with resistance—from the landowners in the East and the governments in the West. Land reform had been promised but never enacted just as there was no labor reforms. Whereas industrial workers were restricted to eight-hour work days, peasants tended to work twelve to thirteen hours a day. Ziemann concludes with the observation that the Weimar government did not address the critical issues that agricultural workers faced so when the Nazis appeared with both a sense of solidarity and concrete proposals, many of them saw no real alternative. Swett and Ziemann provide compelling accounts of workers’ lives during the Weimar Republic and they both offer sympathetic approaches to the travails that the workers faced in the country and in the cities.

Part V is entitled simply “Culture” and has seven essays. While these essays provide accounts of a variety of cultural factors, there is only one that seems outstanding. That is the final essay by Claudia Siebrecht “The Presence of the First World War in Weimar Culture.” Siebrecht set herself the task of explaining how much the war experiences impacted the formation and development of Weimar as a political and social entity. She discusses the crucial question of war guilt and succinctly explains the “stab in the back” legend. Many Germans were convinced that the war had been forced upon them, and therefore they should not be singled out as the only country responsible for the war. There were many who believed that there were those who undermined the war effort—in effect, the soldiers were “stabbed in the back”. Siebrecht moves to discuss the first commemoration of the war that was held in 1924. Although it had been regarded in Britain as a celebration, she argues that it was rather somber and more like a funeral. Siebrecht expertly discusses the

problem of how much Germans adopted an antiwar stance because of the “wounds of war” and how much other Germans glorified the major battles such as the one in Tannenberg in 1914—which made the reputations of Hindenburg and Ludendorff.

Part V includes essays on architecture, icons, and mass culture. The essay “German Literature” is rather good but is marred by being a hurried exposé. “Religious Cultures and Confessional Politics” is more political and cultural than theological—thus Adolf von Harnack and Ernst Troeltsch are treated briefly as liberals rather than two of Weimar’s most prominent professors of Protestant theology. A similar flaw is found in “The Humanities and the Social Sciences” where Martin Heidegger receives less attention than Karl Mannheim and the Marburg neo-Kantian school only warrants a brief paragraph. There is no mention of Heinrich Rickert and the Southwest neo-Kantians. Hans Kelsen is mentioned only as being influenced by neo-Kantianism and being a harsh critic. Max Weber, Werner Sombart, and other political economists are also mostly dismissed as being intellectual “mandarins”. The term was introduced by Fritz Ringer back in the 1960s and why it is used here is not clear. One can object that Ringer was an historian and not a sociologist as is claimed. In fact, German sociology is mostly ignored—there is no mention of Ferdinand Tönnies and his role in maintaining the Deutsche Gesellschaft für Soziologie during the Weimar years. Part V is not as successful, but much of that is because the other Parts are so outstanding, which leads to the overall appraisal of this volume.

One way to evaluate a book is to compare the book with the stated goals of the author or editor. Nadine Rossol and Benjamin Ziemann are the co-editors of this book and they provide a useful guide to their intentions in the Introduction. They trace the attempts to understand the Weimar Republic from the 1950s to the present. For post-war Germans, Weimar was simply a failed attempt at democracy and these Germans were more interested in ensuring that the Federal Republic of Germany would not repeat that disaster. In the eighties and nineties, Hans Mommsen and Heinrich August Winkler each developed the thesis that Germany had embarked upon a “special way” (“Sonderweg”) that led from Bismarck’s authoritarianism to that of Hitler. Rossol and Ziemann grant that both Mommsen and Winkler had spent decades researching the Weimar period but they have two objections to Mommsen’s and Winkler’s work: it was too predetermined and it was overtly political. By predetermined, they meant that it seemed to Mommsen and Winkler that the Nazi period was an inevitable result of Weimar and by political, they meant that in Mommsen’s account as well as in Winkler’s there was no discussion of any social and cultural factors. Rossol and Ziemann acknowledge that Detlev Peukert’s book did not suffer from either of these flaws, but they suggest that he was overly concerned with the failures of modernity. In contrast to these three scholars, Rossol and Ziemann intended their collection to be far more encompassing and much more nuanced than any of their predecessors. That is, they wanted to have a much larger focus than just politics and they wanted their contributors to examine as many facets of their topics as possible. Rossol and Ziemann also encouraged their authors to consider the positive aspects as well as the negative. In the range, scope, and degree of nuance, Rossol and Ziemann have more than achieved their goals.

*The Oxford Handbook of the Weimar Republic* is a fine contribution to our understanding of this rather brief and perplexing period in Germany’s history. Whatever flaws this book has, they are rather minor and certainly do not lessen its considerable value. One hopes that this collection is successful in reaching potential readers; the Weimar Republic (or Deutsche Reich) deserves to be better known and better understood. *The Oxford Handbook of the Weimar Republic* goes a long way in accomplishing both.<sup>1</sup>

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## PART TWO: SCHMITT, KIRCHHEIMER, AND KELSEN

### INTRODUCTION

Very few scholars have not heard of Carl Schmitt and only a slightly larger group have not heard about Hans Kelsen. However, most scholars would probably fail to recognize the name Otto Kirchheimer, yet he has much in common with Schmitt and Kelsen. Kirchheimer was Schmitt's "favorite student" until he turned against the master. While not quite the defender of democracy that Kelsen was, Kirchheimer had a well-deserved reputation for defending the oppressed and the powerless. Schmitt, Kirchheimer, and Kelsen fought over democracy, but with different approaches. Using the well-known political division of states into three types, one may regard Schmitt as the proponent of monarchy or the rule of one; Kirchheimer as the opponent of oligarchy or the rule of the few; and Kelsen as the defender of democracy or the rule of all. This is the theme in which this review essay will approach three recently published books: Reinhard Mehring's *Carl Schmitts Gegenrevolution* (Mehring 2021), volume five of Kirchheimer's *Gesammelte Schriften*, (2020), and D. A. Jeremy Telmann's *Hans Kelsen in America* (2018). None of these three volumes are monographs, but instead, are collections: Mehring's is a collection of some previously written essays but many have been significantly revised. His volume also includes several new essays and the overall result is a rather coherent whole. Kirchheimer's book is composed of previously written articles and reviews. However, the volume contains a massive introduction which helps to unify the pieces and Band 5 is focused on Kirchheimer's post-war political thinking. The title of Telmann's collection is designed to reflect the ostensible focus on *Kelsen in America*, but a number of his contributors have essays that are only slightly related to that topic. All three volumes are rich in material and are worthy of detailed study; the focus here will be on fifteen pieces drawn from the three volumes.

This review essay has four sections: Section One is devoted to Mehring's book on Carl Schmitt and focuses on Schmitt's relations with five major figures regarding authority. Section Two is an examination of Kirchheimer's writings in which he attacks the powerful and defends the defenseless. Section Three is devoted to Kelsen's time in America; that is, after the Second World War. Section Four is a brief summary and an evaluation of the three books

### SECTION ONE: CARL SCHMITT AND THE AUTHORITY OF ONE

Reinhard Mehring is one of the most influential experts on Carl Schmitt. Among his books about Schmitt is his *Carl Schmitt, zur Einführung* (1991), *Carl Schmitt. Aufstieg und Fall* (2009), and *Kriegstechniker des Begriffs* (2014). His contention that Schmitt was an "outsider" is one of the themes of his *Carl Schmitts Gegenrevolution* (2021), but it is a contention that he has long held. It is found in an essay from 2013 on Schmitt's notion of the state of emergency (Mehring 2013, p. 147).

Mehring's theme of "counterrevolution" is built upon his view of history. The belief that the West and its democracy had won seemed to be confirmed after the Berlin Wall had fallen and the Soviet Union had collapsed. However, Mehring argues that after 9/11 and the fiascos in Afghanistan and Iraq, the reputation of the West was seriously damaged. The rise of China and Russia's rebirth challenged the West from the East. But Mehring further argues that it has been the rise of the illiberal leaders within the West that have brought some of the biggest challenges. It is not just Putin, Erdogan, Orban, and Bolsonaro, but Trump and his refusal to acknowledge his 2020 presidential defeat. Mehring argues that all of these attacks on democracy and liberalism have had the added feature of generating more interest in that major critic of liberalism: Carl Schmitt (Mehring 2021, pp. 12-13). Mehring's book is built upon this theme of Schmitt's own "counterrevolution" ("Gegenrevolution") against liberalism and he does so through essays on major figures in Schmitt's thought. Here the focus will be on Schmitt's tenuous relationships with five individuals.

Heinrich Triepel (1868-1946) was a highly regarded legal thinker who had taught at Leipzig, Tübingen, and Kiel before moving to Berlin in 1913. Mehring notes that Schmitt must have met Triepel there in 1922 and continued to have connections to him until Triepel's death in 1946. He also noted that Schmitt had sent the first two copies of his *Verfassungslehre* to Triepel and Rudolf Smend. While Schmitt approved mostly of Triepel's legal thinking because it was conservative, he would have objected to Triepel's glorification of Bismarck's power. This is evidenced by Schmitt's review of Triepel's major work *Hegemonie* which was published in 1938 (Mehring 2021, pp. 296-297). In "Führung und Hegemonie" Schmitt is less concerned with Triepel's notion of hegemony, which is the dominance of one state over others, but more concerned with his conception of "leadership" ("Führung"). Triepel argued that leadership was between "influence and domination/rule" ("Einfluß und Herrschaft") but Schmitt insisted that Triepel misunderstood the concept of personal leadership (Schmitt 1995, pp. 226, 230). Having disputed Triepel's understanding of leadership, Schmitt concluded his review by acknowledging the difficulties in determining the sociological and psychological conceptions of "Führung." He refers to Triepel's work as a great book written by a master ("Meister") (Schmitt 1995, p. 231). Mehring pointed out that Triepel had been released from teaching in 1935 because of his Jewish background and his Jewish wife and Schmitt would have recognized Triepel's rejection of National Socialism. And, Mehring also reminds us that Schmitt could have chosen to have his review of Triepel's book published in any of the Nazi journals, but chose to have it published in *Schmollers Jahrbuch*—probably because it was still one of the leading journals in Germany and because it, like Triepel, was associated with Berlin (Mehring 2021, pp. 299-300). But it might also have been an indication of Schmitt's respect for the old "Meister."

Reinhard Koselleck (1923-2006) is regarded as one of Germany's leading historians but was also among the most contested ones. This reaction to Koselleck's history is based upon two things: Heidegger's philosophical influence and Schmitt's political thinking. There is now a volume of correspondence between Schmitt and Koselleck, of which Mehring makes ample use. But Mehring explains that when Schmitt was released from imprisonment in 1947, he returned to Plattenburg to live out his life with his second wife Duschka Schmitt. But when Duschka was diagnosed with cancer, Schmitt spent considerable time with her in Heidelberg where she was undergoing treatment. Mehring believes that Schmitt first encountered Koselleck around the time of her death in December 1950 (Mehring 2021, p. 363). Mehring acknowledges that Heidegger's philosophical influence is found in Koselleck's philosophy of history, but he insists that Schmitt's *Der Leviathan* heavily influenced Koselleck's 1959 book *Kritik und Krise* (Mehring 2021, p. 364). Koselleck's *Preußen Zwischen Reform und Revolution* (1967) is still worth reading; Schmitt regarded it as an indication of Koselleck's honor for Prussia (Mehring 2021, p. 365). In 1973, Schmitt wrote to Koselleck and asked why Germany never had a Disraeli and he answered that Germany had two: "Stahl und Rathenau" (Mehring 2021). Koselleck had been captured by the Soviets towards the end of the war and he spent fifteen months in captivity. Mehring suggests that that ordeal colored Koselleck's thinking—and that it is revealed in his suggestion that death "democratizes" (Mehring 2021, p. 369).

If the name Johannes Winckelmann (1900-1985) is known today, it is most likely because of his editions of Max Weber's works during the fifties, sixties, and seventies. However, Winckelmann did more than editorial work; he wrote a slim volume *Legalität und Legitimität in Max Webers Herrschaftssoziologie*. This is not the place to offer an appraisal of that book, but it is important to note that Winckelmann's title recalls Schmitt's 1932 book *Legalität und Legitimität*. This is not the only connection between Winckelmann and Schmitt—Mehring discusses Winckelmann's connection to Schmitt via Max Weber in general and with Winckelmann's Weber editions in particular.

Schmitt enjoyed corresponding with his former pupils and his former colleagues, but he also enjoyed expanding his circle. Winckelmann fits in this last category; as Mehring points out, there are some one hundred letters and ten postcards from Winckelmann in Schmitt's "Nachlass" and the Bavarian Academy of Sciences is in possession of many from Schmitt to Winckelmann. Many of these pertain to Winckelmann's intension of reediting Weber's works. He was convinced that most of the editions from the twenties were defective but he was adamant that *Wirtschaft und Gesellschaft* was fundamentally flawed. And, he attributed

this to Melchior Palyi who had edited the “Festgabe” for the recently deceased Max Weber (Mehring 2021, pp. 348-350). Schmitt contributed the first three chapters of what was then published as *Politische Theologie*. Winckelmann did re-edit *Wirtschaft und Gesellschaft* but as Wolfgang Schluchter has convincingly shown, Winckelmann’s editions are just as flawed as the one that Marianne Weber had done with Palyi’s help. But the interest is not so much in Winckelmann as in Weber—Mehring suggested that Schmitt regarded Weber as a representative of the previous generation and that Weber could not “jump over the shadow of the time” because he was a child of that era (Mehring 2021, pp. 354, 357). It is this notion that goes to the heart of the matter for Mehring: Schmitt’s relation to Max Weber.

Max Weber (1864-1920) needs no introduction—he was one of the major founders of German sociology and *Wirtschaft und Gesellschaft* was recently determined to be the most important book in sociology. But Weber was also concerned with the intersection of law and politics and he insisted that scholars needed to keep facts separate from values. Scholarship was objective and its results could be debated, but values were subjective and as such were not open to scholarly analysis and sober debate. This was the “is/ought” distinction which was promoted by David Hume, but it became the “Sein/Sollen” distinction for Weber, Kelsen, and others.

Given Schmitt’s rejection of the “Sein/Sollen” distinction, it might be thought that there would be no question that Schmitt would have never regarded himself as a legitimate student of Max Weber. However, there is some evidence that he was Weber’s “student”—he attended some of Weber’s lectures and he participated in one or two of Weber’s seminars. In addition, he was asked to contribute to the *Erinnerungsgabe*. Mehring takes up the question of the relationship between Weber and Schmitt and he does so by pointing out that during the twenties and thirties, there was not much interest in Weber in Germany (Mehring 2021, p. 134). After the Second World War, scholars began to be more concerned with Weber’s works, and the notion that Weber was a liberal was imported into Germany from the United States. But in 1959 Wolfgang Mommsen published *Max Weber und die deutsche Politik* where he took issue with that portrait. Mommsen argued that Weber was a nationalist and believed in power politics. Thus, Mommsen suggested a clear linkage between Weber and Schmitt (Mehring 2021, p. 132). However, Mehring argues that there were fundamental differences between the two—Schmitt complained that Weber never understood the religious values of Catholicism and Schmitt found fault in Weber’s description of modern Germany as an industry (Mehring 2021, pp. 135, 146). Thus, Mehring’s answer to the question of whether Schmitt was a legitimate student of Max Weber is unclear. Later, he writes that Schmitt had attended Weber’s lectures and seminar, but he also insists “Schmitt belonged to no School and always understood himself to be an outsider in his discipline.” (“Schmitt gehörte keiner Schule an und verstand sich stets als Außenseiter im Fach.” (Mehring 2021, p. 345). Mehring may not be correct about Schmitt not belonging to any school; but he is correct that Schmitt was an “outsider”—just like Kirchheimer and Kelsen.

## SECTION TWO: OTTO KIRCHHEIMER AND THE DEFENSE OF THE MANY

Otto Kirchheimer (1905-1965) is not nearly as well-known as Carl Schmitt or Hans Kelsen, yet he shares a number of links to both of them. During the late 1920s he was regarded by Schmitt as his favorite student and he had served as Kirchheimer’s dissertation director. In 1932, Kirchheimer published an essay “Legalität und Legitimität” in which he broke with Schmitt over the importance of legality—Schmitt thought that legality was simply a modern legal positivist construct and he preferred the older notion of legitimacy which he associated with authority and with sovereignty. These are ideas that Schmitt set out in his own book *Legalität und Legitimität*. Kirchheimer responded with an essay devoted to criticizing Schmitt, which led to a final quarrel. In May of 1933, Kirchheimer was briefly detained by the Nazi authorities and upon his release, he fled to France and then emigrated to the United States. Mehring’s discussion of Otto Kirchheimer does not explore this break and its aftermath; instead, he addresses Kirchheimer’s early political philosophy in connection with Carl Schmitt. In particular, Mehring discusses Kirchheimer’s leftist thinking: Kirchheimer’s 1928 dissertation had focused partially on Marx, with Schmitt’s approval. But after

1933, Schmitt had no interest in Marxist thought. It would not be until the student movement of the 1960s that Marxism would attract Schmitt's interest again (Mehring 2021, pp. 190-191). In the 1930s Schmitt repudiated both Kirchheimer and his interest in class conflict; but in the 1960s Schmitt seemed to have welcomed the idea of Kirchheimer as being a "leftist Schmitt-follower" ("Links-Schmittist") (Mehring 2021, pp. 189, 205-206). Whether Kirchheimer ever thought of himself as a left wing ideologue is open to debate; whether he ever regarded himself a "Schmittist" after 1933 is not—he repudiated his master and fought against both Nazism and Communism.

Band 5 of Kirchheimer's *Gesammelte Schriften* contains 34 works which run from one page to almost sixty. The first essay was from 1950 and there are two which were posthumously published. Almost half are in German and several of these are book reviews. What will be discussed here are four in English.

Those people who believe that Kirchheimer was a leftist thinker will be rather shocked by two pieces in this volume on the subject of East Germany. In "The Government of Eastern Germany" (1951) he leaves aside the question whether West Germany is a "manipulated country" and focuses on East Germany. He answers that East Germany is one because it is a planned economy. He argued that each major aspect of East Germany's economy is controlled by the state, whether it is the industrial sector or the agricultural community, all is regulated by the state. As with the Nazi regime, "This manipulated society needs a huge bureaucracy." (Kirchheimer 2020, p. 196). And, like the Nazis, the Communist government engaged in purges in order to consolidate control. Its heavy-handed methods are intended to minimize dissent and to "keeping people in line" (Kirchheimer 2020, pp. 200-201). The issue is whether there is more "social equality" in East Germany than in West Germany, and Kirchheimer's answer is possibly—but it is because the former has a much lower standard of living. Kirchheimer concludes with two questions: 1) how will East Germany fare if the natural German interest in hard work is not allowed to reap material rewards? And 2) how will West Germany's future absorption of East Germany play out? (Kirchheimer 2020, p. 203). Kirchheimer died in 1965 so he was unable to see how East Germany was integrated into the West in 1990, but he was able to give some sense about the first question in a piece published in 1965. Entitled "The Problem of the East German Republic" Kirchheimer began by pointing out that the West German government found itself in a position that every student of diplomacy is taught to avoid: do not lose control over one's own policy. The problem was that the West German government declared that the East German government was "illegitimate" but as Kirchheimer pointed out, simply calling a country illegitimate does not make it so. He pointed out that there were many split countries: the two Chinas, the two Koreas, the two Vietnams, as well as the two Germanys. Furthermore, the West German government had contended that East Germany was intended to be the first step in dominating Western countries but that East Germany's past twenty years had shown that that might have been more wishful thinking on the part of the Soviet Union (Kirchheimer 2020, pp. 592-594). Kirchheimer warned that both sides seemed intent on viewing each other as an existential threat but he asked whether we need to abandon all hope that the two Germanys can be brought closer together and he asked "Must power politics eternally stand in the way of popular German desires?" (Kirchheimer 2020, p. 596). Rather than the two governments' tendencies towards reinforcing each-others' official recalcitrance, maybe they could allow both German populations to be involved with finding a path towards re-approachment (Kirchheimer 2020, pp. 598-599).

"Elite-Consent-Control in the Western Political System" was written in 1964 but was not published until 2014. However, it is a remarkable essay because it deals with how the elites maintain control and what happens when they are challenged. Kirchheimer began by referencing Raymond Aron's contention that political elites seek to maintain continuous control over the population and they do so by means of a large bureaucracy. However, Kirchheimer argues that members of the political elite have specific bureaucratic skills and are especially adept at manipulating opinion (Kirchheimer 2020, pp. 516-517). They may be part of a legal elite but what is more important for their standing is that they are considered legitimate. Rather than acting directly, the political elites manipulate the political situation with economic and political measures. Political measures are often promoted by political parties who seek to further their power by making it seem like their party is open to all similarly minded people (Kirchheimer 2020, pp. 519-520). Thus, they rule

by what appears to be consent and consensus. But Kirchheimer asks about what happens when many no longer consent? He noted that political violence had been prevalent in the twenties and thirties but with the Nazis trials after the war and the closeness of the German Democratic Republic, the threat of political violence had largely subsided. Historically, consent and control largely went hand in hand, but in the modern period it appears that the elites are largely losing both control and consent. The question is what will happen when the political elites do lose control? (Kirchheimer 2020, p. 526).

At first glance, Kirchheimer's "A Free Press in a Democratic State? The Spiegel Case" would not be of much interest to many people. First, it was about a German case involving the magazine *Der Spiegel* and second, the episode occurred in 1963. But a careful reading of this essay reveals Kirchheimer as both a master investigative journalist and a fierce defender of the freedom of the press. After detailing Franz Joseph Strauss' meteoric rise in the Bavarian Christian Socialist Union (CSU) party and his appointment by the elderly Konrad Adenauer as the minister of defense, Kirchheimer explains *Der Spiegel's* rise as one of Germany's most important post-war magazines. As its title indicates, the magazine is a mirror of Germany and its editors focused on detailing the follies of the political elite. Headquartered in the Socialist Party Germany (SPD) city of Hamburg, it represented much of the working class. As Strauss continued to amass power, *Der Spiegel* stepped up its investigation of his private and public life. Strauss responded with his favorite method—in court. Kirchheimer pointed out that Strauss was famous for making disparaging comments and jokes about others, but he was thin-skinned about himself (Kirchheimer 2020, p. 538). Strauss was involved in two relatively minor scandals and Kirchheimer details them. But the real scandal involved Strauss and his interest in atomic weapons. *Der Spiegel* published an article devoted to this topic and in doing so, drew from published sources. However, Strauss contended that this article was treasonous (Kirchheimer 2020, pp. 548-550). Not only did the police raid *Der Spiegel's* Hamburg offices in the middle of the night, the authorities also tried to arrange the arrest of some of the magazine editors who were out of the country on vacation (Kirchheimer 2020, pp. 554-556). What followed were public protests in a number of German cities and newspapers demanded that those behind the attack on *Der Spiegel* be made public. Many suspected Strauss to have orchestrated this, but he initially denied having any part of it. However, this seemed unbelievable given that he was Minister of Defense and it was his defense plan that *Der Spiegel* had been investigating (Kirchheimer 2020, pp. 557-560). It was about this time that the SPD decided that it needed to investigate the matter. Although it encountered resistance from the CDU and the rest of the German government, the investigation did uncover a number of facts. The most important one was that the Adenauer government had adopted the same approach that the Weimar government had and that was to treat "political foes as traitors" (Kirchheimer 2020, p. 574). Kirchheimer warned that this heavy-handedness threatened public opinion and he insisted that there needed to be a clear line between "security and liberty". In Kirchheimer's opinion, the *Spiegel* affair was the first real post war case of the opposition of "state power versus individual liberty" (Kirchheimer 2020, pp. 585-587). Although Kirchheimer did not state it, it was clear that his sympathies were on the side of *Der Spiegel* and individual liberty. The German government did not appear to learn much from this episode, and Franz Joseph Strauss emerged with his reputation mostly intact. He would never become German Chancellor but that was not so much that he was a bad choice but that most Germans were against having a Chancellor from the Bavarian CSU. Kirchheimer and Strauss were totally different types of people; the former believed in freedom while the latter preferred security. But they were both regarded by many as "outsiders."

### SECTION THREE: HANS KELSEN AS DEFENDER OF EVERYONE

D. A. Jeremy Telmann's *Kelsen in America* began as a conference dedicated to investigating why Hans Kelsen was neglected in America during his life time and even afterward. In his "Introduction" Telmann does more than offer a brief summary of the essays included in his collection: he also offers four reasons for this neglect: 1) Legal Realism was and is the dominant school of thinking in the United States, 2) Americans tended to view Kelsen's moral relativism as "politically anemic" and they complained that he did not attack

Nazism with sufficient vigor, 3) Kelsen's legal training was representative of that in much of the world and as such, was at odds with legal education in the U.S. In Europe, students attending universities went directly into studying law whereas Americans went to law school only after finishing a four-year education in humanities, and 4) In law school, students learned about common law and studied cases. In contrast, Kelsen was comfortable with learning legal theories as an undergraduate and he was at home with abstraction (Telmann 2017, p. 4). Telmann does not address these issues but leaves them up to his contributors.

Telmann does argue for Kelsen's continuing relevance in his final chapter which is devoted to Kelsen's posthumously published book *Secular Religion*. In "The Free Exercise Clause and Hans Kelsen's Modernist Secularism" Telmann explicates this 1940s work and he details how Kelsen's love for modern science prompted him to write in defense of it and against modern politics as an "ersatz" religion. Telmann reveals why Kelsen disliked analogies and metaphors—he believed they were not just indications of lazy thinking but that many, like Carl Schmitt, used them for justifying attacks on perceived enemies (2017, pp. 347, 349). Telmann grants that *Secular Religion* is made up of challenges to some of the leading thinkers of that decade, but he persuasively argues that the book has relevance today. As such, Telmann's concluding chapter is a fitting conclusion to a volume intended to show that Hans Kelsen's legal theories have continuing relevance.

Brian H. Bix's contribution is aptly titled "Kelsen in America: Still Misunderstood" and he offers a number of reasons for this misunderstanding and neglect. First, there is the difference between the American inclination towards natural law and Kelsen's refutation of it. Americans want morality with their legal theories, but Kelsen argued that they are distinctively different. Bix points specifically to Kelsen's separation of "is" and "ought"; it might have been helpful if Bix had alluded to Weber's "Sein/Sollen" distinction but he might have chosen to refrain because of another supposed mark against Kelsen's legal theory; namely, that since it is almost one hundred years old, it is outdated and could not compete with more recent legal doctrines. Second, Bix points to two interrelated factors which contributed to Kelsen's neglect: the fact that his style of writing was typically Germanic and that many of the English translations were fundamentally flawed. Third, Bix argues that even some of the most careful readers are often mistaken in their interpretations of Kelsen's legal thinking. Bix reminds us that when we attribute nonsensical theories to great thinkers, the source of this mistake is likely ourselves (Bix 2017, pp. 18, 26-27). Bix's plea is that Kelsen's ideas may not be fashionable or easily understood, but that he was a great legal theorist and we should take the time and make the effort to comprehend them.

Someone reading the first part of Lars Vinx's essay may be led to think that "The Kelsen-Hart Debate" referred to their actual debate in California in November 1961. However, the remainder of the title indicates that that is not so: "Hart's Critique of Legal Monism Reconsidered." Hart and Kelsen are frequently considered to have similar legal philosophies because both of them are Legal Positivists. In fact, some scholars have suggested that if one reads Hart, one does not need to bother reading Kelsen because Hart not only has the same legal philosophy but that he said it much better than Kelsen. Vinx's concentration is not on the similarities between the two Legal Positivists but is on Hart's critique of Kelsen's legal monism. Kelsen contended that not only was there only one legal system but that there could be one and only one legal system. Vinx suggested that this is a very strong view of legal monism and that Kelsen's view was not adopted by more than a handful of scholars. Hart was one of Kelsen's critics because he subscribed to a conception of legal pluralism. Vinx offers a "qualified defense" of Kelsen but it is less of a defense than it is an attempt to provide a clear account of Kelsen's legal monism (Vinx 2017, p. 61). Vinx is not entirely successful in this endeavor but it is not from the lack of trying. Rather, both Kelsen's legal monism and Hart's critique can be fully comprehended by legal specialists. But Vinx is helpful in noting that as Carl Schmitt would say, international conflicts cannot be magically wished away by thinking that there is one world order because there is no such thing. Vinx may not have produced the clearest account of Kelsen's legal monism but he has certainly achieved his goal in prompting another look at Kelsen's legal philosophy (Vinx 2017, p. 81).

Another essay in this volume that helps close a serious gap in our understanding of Kelsen is Elisabeth Le Fort's work on Kelsen and Leo Strauss. It carries a somewhat perplexing title: "Arriving at Justice by a

Process of Elimination: Hans Kelsen and Leo Strauss” and her point is that neither Kelsen nor Strauss gave a definitive answer to the question “What is Justice?” It is clear from reading Kelsen’s essay of the same title that he does not believe in one single conception of justice and that there is only his own view and not some absolute Idea of Justice. However, Strauss is taken to be an absolutist and that he embraces natural law and denounces moral relativism. Le Fort argues that despite the fact that Kelsen attacked natural law and held to a type of moral relativism, a comparison of these two thinkers is rewarding. That is because she believes that despite appearances, neither Strauss nor Kelsen believe that they have definite definitions of justice. Le Fort contends that both thinkers believe that simply thinking about justice is philosophically rewarding and she concludes that by contrasting the better-known Strauss with Kelsen is a step towards getting Americans more interested in Kelsen’s legal thinking (Le Fort 2017, pp. 118, 121, 131). In this, Le Fort is certainly correct and a comparison of the two is more than worthwhile. But what is rather perplexing is that Le Fort totally ignores Strauss’ earlier critique of Kelsen’s complaint about natural law. In a foreword written in 1931 to a planned book on Hobbes, Strauss juxtaposes his belief in natural law against Kelsen’s positive law and he argues that Kelsen’s formalism does nothing to maintain order in the state and that only natural law theories can do so (Strauss 2001, pp. 200-206).

Hans Kelsen was not just an outsider in America; he was an outsider almost everywhere. Although he was regarded as a major constitutional theorist and the author of the Austrian constitution, he was forced to leave Austria because of his defense of divorce. He was then forced to resign from his professorship at Bonn in the summer of 1933 because of his Jewish background. He moved to Basel to teach at the university there and then to Prague, but Nazi sympathizers made it impossible for him to lecture. He returned to Basel but knew his time in Europe was fast coming to an end—hence his emigration to the United States. One might think that after the war, Kelsen’s ideas might have found a receptive audience in Germany but as Frieder Günther points out in “The Neglect of Hans Kelsen in the West German Public Law Scholarship 1945-1980” such was not the case. Günther argues that during Weimar, anti-Semitism was a growing problem. Even after the defeat of the Nazis in 1945, anti-Semitism did not disappear; it only was less vocal. Günther suggests that the neglect of Kelsen’s writings from 1945 until 1980 was attributable to anti-Semitism but to several other factors as well. First, Kelsen was suspect because he had fled Germany and those who stayed behind felt morally superior to those who chose exile. What those who stayed behind did not want to acknowledge was that they were able to move up the academic ranks because of the departures of their former colleagues. However, Günther offers a second and even more substantial reason for the German’s dislike of Kelsen’s legal philosophy. His critics contended that Kelsen’s formalism led to totalitarianism and that it lacked a mechanism to distinguish between good and evil. Günther claims that this not-so benign neglect continued until the 1980s. Those few thinkers who defended Kelsen in print or at conferences were either ignored or condemned. Günther insists that it was only in 1986 with Horst Dreier’s dissertation on Kelsen’s legal philosophy that Kelsen’s reputation began to improve (Günther 2016, pp. 219, 222). Günther and all of the other contributors to this volume are convinced that Kelsen needs to be read more in America and the world. This book makes a compelling case for those convictions.

## EVALUATION

Each of these three books are rewarding in the same way—they tell us much about Schmitt, Kirchheimer, and Kelsen that we either did not know or did not sufficiently appreciate. Mehring’s Schmitt is shown to be a conscientious thinker who did more than simply defend the Nazis—he tried to make sense of modernity and he offered what he thought was a viable alternative to the chaos and multiple perspectives of modern life. One can dispute Schmitt’s preference for the authority of one, but decades after his death, there are many people who are more than willing to follow the Schmittian path of order instead of disorder. Kirchheimer is the least well-known of the three and perhaps that is part of the reason we can learn much from him. He was both a careful observer as well as a staunch defender of the many. But it was his faith in the power of a free press that probably earns him my greatest respect. Kelsen is revealed as a person who

seemed out of time and place—his positive conception of law had been replaced by natural law—especially in his final adopted country. But the fact that he has had a renaissance is sufficient indication that Kelsen was not just one of the great jurists of the twentieth century, but like Schmitt and Kirchheimer, one of that century’s greatest political observers. Perhaps what links these three thinkers is that they were all “outsiders.” They did, however, approach politics from different aspects: Schmitt’s authority of one, Kirchheimer’s defense of the many, and Kelsen’s insistence on freedom for all. Despite their political differences, there is no doubt that Schmitt and his “antipode” Kelsen would have echoed Kirchheimer’s assertion: “I love constitutional law” (Kirchheimer 2020, p. 194). And, they might have added “we love politics”—whether it is because of law or politics. Schmitt, Kirchheimer, and Kelsen deserve to be read and these three books are proper volumes to help promote that interest.

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## PART THREE: REASSESSING KELSEN

In his recent book *ad Hans Kelsen. Rechtspositivist und Demokrat* Horst Dreier reminds his readers that Hans Kelsen was the most significant jurist of the twentieth century. However, he also reminds them that we tend to ignore the fact that Kelsen was one of the great defenders of democracy (pp. 7, 32). Dreier's book is just one attempt to rectify this assessment of Kelsen; there are three other recent books which also encourage us to reassess our conception of Kelsen. *Political Realism*, and Sara Lagi's *Democracy in its Essence. Hans Kelsen as A Political Thinker*. Both of Dreier's books are in German while Schuett's and Lagi's are in English. Each of these four books focuses on varying aspects of Kelsen's political philosophy, but they all embrace the conviction that we need to reassess our understanding of Hans Kelsen. All three authors are motivated by Kelsen's commitment to democracy and pluralism and his conviction of the need for tolerance for realistic expectations. Accordingly, all four of these books provide sufficient justification for us to reassess our notions of Hans Kelsen as a scholar and as a person. I begin with Dreier's 2021 book, then his 2019 one, before moving to Schuett, and finally to Lagi. I do so for thematic reasons.

## HORST DREIER 2021

Horst Dreier's *ad Hans Kelsen. Rechtspositivist und Demokrat* may be a slim volume but it is rich in content.<sup>2</sup> This is unsurprising given that Dreier established his reputation as an expert on Hans Kelsen's legal thinking with the publication of his *Rechtslehre, Staatssoziologie und Demokratietheorie bei Hans Kelsen* in 1986 (Dreier 1986). It is composed of three essays. The first is "Hans Kelsen (1881-1973)" and was intended as a biographical sketch. For the most part it can be excluded here except for the brief section on democratic theory. Dreier emphasizes how Kelsen was one of the few defenders of democracy during the turbulent Weimar years and how Kelsen advocated for the freedom and the self-determination of the autonomous individual against the "collective-subject people" ("kollektiv-subjekt Volk") (p. 33). Dreier further stresses how Kelsen believed in a pluralistic, relativistic, and transitory democracy and fought against any form of a monolithic, objective, and permanent autocracy (p. 34). These are points which Dreier sets out in detail in the two other lengthier essays.

The third essay may be the least successful of the three partially because it is a slightly reworked essay in honor of Clemens Jabloner. Jabloner was not only a Kelsen expert but was the president of the Austrian administrative court. As such, this essay is both a "Festschrift" and a scholarly examination. While those interested in Dreier's comments on Jabloner will want to focus on the introductory and concluding remarks, those concerned with Kelsen's political theory will want to focus on the main sections of the third essay.

As the title of Dreier's third essay makes clear, it is about more than just democracy. Each of the three parts of the title "Johannes 18, Wertrelativismus und Demokratietheorie" point to apparently different things: theological interpretation, moral values, and political theory; but as Dreier argues, they are intimately related. Dreier reminds us that at the conclusion of *Wesen und Wert der Demokratie* Kelsen invokes the scene described in John 18 of the exchange between Pontius Pilate, Jesus, and the assembled crowd. Pilate asked Jesus whether he was the King of the Jews, to which Jesus replied that he was and that all who would hear the truth would hear his voice. Kelsen noted that Pilate was a member of a culture that was old and tired, which prompted him to ask "What is truth?" As a Roman who was inclined to democracy, Pilate turned to the people. He announced that he himself has not found any guilt in the man before him and that he was permitted to allow one man to go free. In response to his question whether they wanted to free the King of the Jews, the people replied no, and that Pilate should let Barbaras go. John added that Barbaras was a criminal. Kelsen wondered whether this story should be regarded as an argument against democracy. Dreier reminds us that not only was that the conclusion of John 18, but it was also the end of *Wesen und Wert der Demokratie* (pp. 74-76). And, Dreier reminds us that it is remarkable that one of the most important essays on the foundations of democratic theory ends with the words from the Son of God.

Dreier points out that a number of Kelsen's contemporaries referenced this Biblical passage and he mentions Oswald Spengler, Rudolf Bultmann, and Carl Schmitt. But Dreier chooses to focus on Joseph Ratzinger's attack on Kelsen, before he became Pope Benedict XVI (pp. 79-82). Ratzinger objected to two of Kelsen's key democratic principles: the principle of individual freedom and the principle of value relativism. Dreier wants to examine Ratzinger's attack on the second principle. Dreier notes that value relativism is a difficult notion to discuss and he reminds us that it was Max Weber who first drew attention to its importance but that he tended to restrict its application to the political sphere (pp. 82-83). In contrast, Kelsen thought it applicable to various other spheres, and it was especially important in legal circles to address the fundamental question: "What is justice?" ("Was ist Gerechtigkeit?") (p. 83). Kelsen argues that there is no single answer to this question because it is a matter of values. And, the emphasis is on many "values" and not on one single "value", so instead of an absolute value, Kelsen spoke of value relativism ("Wertrelativismus"). Dreier helps clarify this by pointing out that each individual needs to consider for himself or herself, what is more important: freedom or security?, life or freedom?, freedom or equality?, equality or truth?, truth or justice?, truthfulness or humanity?, or even the individual or the nation? Dreier insists that since the answer depends upon that "position of the judging subject" ("Standpunkt des urteilenden Subjekts") that it is relative (p. 84). Unfortunately, as Max Weber noted, the notion of value relativism is one of the most misunderstood concepts and he reminded us that the belief in the differences in values should never be taken to mean that values are unimportant. In fact, he argued that values are the most important factors in our life; and because they are values and not facts, they cannot be simply debated and disputed. As Dreier put it bluntly: "Value relativism does not mean value nihilism." ("Wertrelativismus meint nicht Wertnihilismus.") (pp. 85-87). After briefly discussing the repercussions arising from the religious wars of the seventeenth and eighteenth centuries, Dreier notes the opposition between Kelsen and his contemporary, Carl Schmitt. Schmitt regarded pluralism as a disturbing social factor, whereas Kelsen maintained that it was one of the most basic tenets of democratic theory. In contrast to Schmitt's hope that there can be a type of Leibnizian "pre-established harmony", Kelsen contends that there can only be "variety, difference, indeed conflict" ("Vielfalt, Differenz, ja Konflikt") (pp. 90-91). If conflict cannot be eliminated, then how can differences be resolved—Kelsen believes through tolerance and dialogue.

Dreier reminds us again that the individual is Kelsen's basic starting point and he notes that Kelsen argued that the "freedom of anarchy" is metamorphosed into the "freedom of democracy" (p. 93). And, this means majority "opinion" and not "truth" because "truth" implies something substantial and immutable and "opinion" means something transitory and subject to "change".<sup>3</sup> But Dreier emphasizes that the differences of opinion and the conflict of interests are not ever solved by resorting to "blood and sword" ("Blut und Schwert") but only by providing arguments and counterarguments—and that is because the highest task of democracy is peace (Dreier 2019, pp. 99-100). This is an indication whether the legal ideal is either peace or security; "however, science always [has] only one ideal, the *truth*." ("die Wissenschaft aber stets nur einen Ideal, der *Wahrheit*.") (pp. 100-101).

In contrast to the emphasis on biography in the first essay and on values in the third, democracy is front and center in the second—as indicated by the title "Kelsens Demokratietheorie: Grundlegung, Strukturelemente, Probleme." Here Dreier notes that Kelsen is one of the strongest defenders of democracy and he suggests that only Rousseau comes close. Kelsen and Carl Schmitt rarely agreed on anything, and as Dreier adds later in the essay that Schmitt was Kelsen's "antipode" (p. 53). But as Dreier points out, both Kelsen and Schmitt regarded Rousseau as one of the strongest advocates of democracy (p. 42). Kelsen's *Wesen und Wert der Demokratie* may not have achieved the classical standard that Rousseau's *Social Contract* has, but Dreier argues that it nonetheless is one of the most famous arguments put forward for democracy. He claims that it is not just Kelsen's academic reputation, but that the work itself is a clearly and elegantly written work (p. 39). He claims that Kelsen's democratic theory had two fundamental principles: freedom of the individual and the same freedom for all (p. 41). In this essay, Dreier also discusses the "metamorphoses" of democracy, but here he devotes more time to setting them out. The first metamorphosis is the change from freedom of anarchy to pluralism. The second one is the change from pluralism to the po-

litical form of parliamentary representation. The third one is the recognition that the government must not just be “for the people”, but must also be “by the people”. As Dreier has done in the other essay, he quotes this in English and italicizes the two words; thus, emphasizing the critical importance of these phrases (pp. 42-50).

Dreier adds that it is beneficial to help clarify Kelsen’s theory of democracy by contrasting it with its theoretical opposite—meaning Carl Schmitt’s political philosophy. Dreier not only maintains that Schmitt is Kelsen’s “antipode” but he also maintains that Schmitt’s doctrine of democracy is the opposite of Kelsen’s (pp. 52-53). While both Kelsen and Schmitt begin with the observation that democracy is that the ruler and the ruled are the same, they have radically different views of what that really means. For Kelsen, that means a plurality of opinions and rational discussions which lead to compromises. For Schmitt, it means the “homogeneity of the people” and that they share the same opinion. Whereas Kelsen embraced Parliament, Schmitt wants to eliminate it because it involves endless discussions with no resolution. Emergencies call for emergency measures and quick decisions. Rather than open ballots which reveal divisions, Schmitt extolls votes by acclamation which reveals the true “will of the people”. Kelsen endorsed democracy; Schmitt embraced dictatorship (pp. 52-57).

Dreier concludes with three questions about Kelsen’s theory of democracy: First, how can one reconcile the tension between the state’s need for order and the individual’s need for freedom of expression? (pp. 57-62). Second, how can one convince a believer in absolute value, that value relativism is a necessary property of any genuine democratic theory? (pp. 62-67). Third, and this is the most difficult of Dreier’s three questions: how can a democracy defend itself from its own citizens who are intent to undermine it? (pp. 67-72). Dreier does not attempt to answer these questions here, but he recognizes that these are three key issues that Kelsen’s theory of democracy never fully addressed.

## HORST DREIER 2019

The title *Kelsen im Kontext* suggests that this book is about Kelsen and for the most part it is. However, the subtitle (*Beiträge zum Werk Hans Kelsen und geistesverwandter Autoren*) indicates that it is a collection of essays; nine are regarded as being related to Kelsen and five of them are focused on him and his work. Two of them are reproduced as chapters one and two in Dreier’s 2001 book and there are four: on Max Weber, on Gustav Radbruch, on Adolf Merkl, and on Nikolaus Luhmann. All four are worth reading, but will not be discussed here. There are several on Kelsen and Kelsenian themes that are well worth close examination, and there are several that are indirectly related to him that also deserve discussion.

In “Hans Kelsens Wissenschaftsprogramm” Dreier begins by insisting that Kelsen holds the top position of German legal theorists of the twentieth century. He offers two quotations, one in which Kelsen is accused of being the blind zealot of blind normativity and another one in which he is accused of denying the moral-spiritual substance of law and state (Jestaedt and Paulson 2019, p. 27). Rather than directly refuting these types of criticisms, Dreier devotes his efforts to setting out Kelsen’s scholarly program. That involves clarifying Kelsen’s belief in the necessity of separating law from politics and separating the study of law from the study of nature. It also involves the separation of law from metaphysics (Jestaedt and Paulson 2019, pp. 29, 34, 38-39). But Dreier also emphasizes Kelsen’s positive doctrine and that means Kelsen’s central tenet that the state and the law are identical. That means that there is no state in itself, only one identical to law (Jestaedt and Paulson 2019, pp. 44-46). It also means that it is the law that gives the government its unity and not some mythical “will of the people.” What it does mean is Kelsen’s doctrine of the state is one that is non-ontological, relativistic, and especially pluralistic (Jestaedt and Paulson 2019, pp. 51, 56). Granted, Kelsen’s doctrine seems cold and pale compared with Rudolf Smend’s theory of total legal integration or Carl Schmitt’s theory of sovereign significance. However, both Smend’s thesis and Schmitt’s are simply illusions—the illusion of justice. Dreier quotes Kelsen’s claim that the norm is not granted by God nor found in nature, but is in each and every one of us. As Kelsen says in “What is Justice?”, his “justice” requires that

each individual must decide for himself or herself what is right or wrong (Jestaedt and Paulson 2019, pp. 65-66; Kelsen 1971, p. 22).

Dreier believes that Gerhard Anschütz belongs in the same category as Kelsen—a noted German constitutional jurist and a dedicated believer in democracy. In “Ein Staatsrechtslehrer in Zeiten des Umbruchs: Gerhard Anschütz (1867-1948)”, Dreier provides three reasons for Anschütz’ reputation as one of the founders of modern legal science: 1) he provided a template for constitutional commentaries, both in the one on the Bismarck constitution which was based upon the edition of Georg Meyer and even more so for his own on the Weimar constitution. 2) Anschütz’ personal and professional objections to the Nazi power grab. His 1933 request for retirement was no empty gesture but was a real threat to the Nazi claim to legitimacy. 3) Anschütz’ commentary on the Weimar constitution. *Verfassung des Deutschen Reichs vom 11. August 1919. Ein Kommentar für Wissenschaft und Praxis* went through fourteen editions with four fundamental revisions. As Dreier points out, Anschütz’ commentaries are paradigms of “conciseness, clarity, and precision” (Jestaedt and Paulson 2019, p. 205). But Dreier also lauds him for his defense of democracy. We praise Kelsen for defending democracy from the attacks by Carl Schmitt, but Dreier reminds us that it was Anschütz who appeared in the court on Prussia’s side in the Reich’s “Preußenschlag” (Jestaedt and Paulson 2019, p. 224).

Dreier’s special appreciation for the work of Richard Thoma is evident in the lengthy essay “Unbeirrt von allen Ideologien und Legenden—Notizen zu Leben und Werk von Richard Thoma.” This essay is a slightly revised version of the introduction to his edition of Thoma’s writings: *Rechtsstaat-Demokratie—Grundrechte* which appeared in 2008.<sup>4</sup> Thoma took over the chair of law at Heidelberg in 1911 after Georg Jellinek’s death earlier that year. Anschütz joined Jellinek at Heidelberg in 1900. However, Anschütz had moved to Berlin in 1908 and was happy to return to Heidelberg in 1916. Anschütz would teach at Heidelberg until his retirement in 1933; Thoma left in 1928 to move to Bonn where he would teach until 1945. But Thoma’s friendship would end only with Anschütz’ death.

Dreier points out that compared to some of his contemporaries, Thoma remains in the background. He lacked Kelsen’s international reputation and he did not have Schmitt’s polemical fame (Jestaedt and Paulson 2019, p. 234). But in Heidelberg, he established a good reputation. There, he lived close to Anschütz as they both resided on the Ziegelhäuser Landstraße; the former at number 35 and the latter at 27—in Max Weber’s house (Jestaedt and Paulson 2019, p. 242-243). Thoma worked with Anschütz, Max Weber, his brother Alfred, and Ernst Troeltsch to establish the Deutschen Demokratischen Partei. This new party was dedicated to leftist liberalism and to Germany’s new beginning (Jestaedt and Paulson 2019, pp. 244, 246). Unfortunately, the party failed and ultimately the Weimar government collapsed. As to be expected, the Nazi era was a difficult time for Thoma. He did not resign like Anschütz nor was he forced to emigrate like Kelsen; instead, he concentrated on administrative law and refrained from publishing much during those twelve years (Jestaedt and Paulson 2019, p. 250).

Thoma shared with Weber the insistence that value judgments have no place in scholarship. The former were values and therefore disputable, whereas the latter dealt with indisputable facts (Jestaedt and Paulson 2019, p. 264). He agreed with Kelsen that natural law doctrines were incoherent: Dreier cites Thoma’s 1927 response to Erich Kaufmann’s natural law position with the much-cited phrase “so to say, Chinese” (“sozusagen chinesisch”) (Jestaedt and Paulson 2019, p. 268). And, Thoma shared with Kelsen not only the personal conviction about the importance of democracy, but he shared the belief that there needs to be a clear theory of democracy which rests on two fundamental principles: freedom and equality (Jestaedt and Paulson 2019, pp. 283-284, 285-286). While Kelsen is regarded as the antithesis of Carl Schmitt, Thoma also defended Parliament from Schmitt’s anti-parliament polemics. And, he also attacked Schmitt’s 1928 book on the theory of constitution. Instead of Schmitt’s authoritative state, Thoma insisted on democratic self-determination (Jestaedt and Paulson 2019, pp. 289-293). Dreier concludes his essay on Thoma by repeating the words that he used in the essay’s title: “unbothered by all ideologies and myths”. The reference is to Thoma’s 1948 essay “Über Wesen und Erscheinungsformen der modernen Demokratie” and that all who wish to understand democracy must be free from all ideologies and myths (Dreier 2008, p. 406).

In “Zerrbild Rechtspositivismus” Dreier discusses two myths about positive law. Not only does he address these two with respect to Kelsen, Anschütz, and Thoma, he also comments on H. L. A. Hart and Felix Somló. As much as his comments on Hart and Somló are instructive, they will not be discussed here. The first myth revolves around the question of obedience to the law. Dreier quotes John Austin who maintained that the existence of a law and its merit or demerit is a different issue. In other words, Austin maintained a separation between law and morality (Jestaedt and Paulson 2019, pp. 312-313). Dreier argues that as much as Anschütz followed that distinction, his 1933 letter requesting retirement from Heidelberg is an indication that morality does matter when it comes to law (Jestaedt and Paulson 2019, p. 316). Richard Thoma addressed the issue of obedience by contrasting the force implied or used by monarchs and the lack of such a need in a democracy (Jestaedt and Paulson 2019, pp. 316-317). Once again there is a distinction made between law and morality with law providing its own justification of obedience because the source is a member of that democracy. Kelsen also held to the distinction between morality and law and insisted that law was not something objective and certainly not something to be glorified. As with Thoma, the obedience to law is given by the laws themselves (Jestaedt and Paulson 2019, p. 322).

The second myth is the claim that legal positivism means that law is reduced to a system of legal principles and a logical compilation of facts. In other words, it is a cold and barren theory and not a genuine theory of law. Dreier explains how the three positivists refute this. He quotes Anschütz’ claim that his belief in positive law does not negate his contention of the importance of facts as well as theory (Jestaedt and Paulson 2019, pp. 331-333). Dreier insisted that what applied to Anschütz applied as well to Thoma and he reminds us that both thinkers insisted on legal reality and both rejected a “sterile legal positivism” (Jestaedt and Paulson 2019, 334-335). Regarding Kelsen, Dreier invokes Kelsen’s notion of interpretation; that is, that his legal positivism is not some abstract legal theory where judgments are logically deduced. Instead, the judge must interpret the facts of each and every case before making his (or her) specific judgment. Rather than being a barren mechanical process, law is a matter of educated but personal interpretation (Jestaedt and Paulson 2019, pp. 337-340). Dreier concludes that positive legal theories are not immune to genuine criticism but that serious scholars should reject any inclination regarding myths (Jestaedt and Paulson 2019, p. 344).

“Rezeption und Rolle der reinen Rechtslehre” may at first glance seem to be a dry legal essay, but in reality, it is a brief yet fascinating account of how Kelsen’s legal thinking was received. His “Habilitationsschrift” from 1911 brought about a “new tone” in modern legal theory but it was so original that scholars could not place it in any existing school of jurisprudence (Jestaedt and Paulson 2019, p. 97). In the 1930s, Kelsen’s reputation continued to grow but his writings were regarded as being surgically cold and totally apolitical. In contrast, most German legal scholars thought along the lines of Carl Schmitt and that they were engaged in a heated political battle against sworn enemies. As a result, Kelsen was forced to give up teaching at Bonn because of his political position as much as his Jewish background (Jestaedt and Paulson 2019, pp. 97,103, 105-106). After World War Two, he was regarded as being both an anarchist and responsible for the Nazis. However, Dreier sees a suggestion of genuine scholarly interest in Kelsen’s legal theory because of two factors: 1) that a Swiss group published a paper in a German law journal on Austria’s most significant legal theorist and 2) that the Hans Kelsen Institute was continuing to generate interest in Kelsen and his work (Jestaedt and Paulson 2019, p. 113).

“Die (Wieder-) Entdeckung Kelsens in den 1980er Jahren” is the most subjective and the most personal of all of Dreier’s essays. In it, he explained how he chose Kelsen’s work as a dissertation topic. While he was advised to write on Rudolf Smend, Dreier chose Kelsen primarily because he believed that Kelsen was one of the most important theorists of democracy and, along with Anschütz and Thoma, was one of democracy’s staunchest defenders (Jestaedt and Paulson 2019, p.127). As a German, Dreier did not seem to have a natural affinity for Kelsen; as he noted, in Austria Kelsen was always present (Jestaedt and Paulson 2019, p. 120). However, it certainly seems to be the case that Kelsen “spoke” to Dreier.

ROBERT SCHUETT 2021

If Kelsen “spoke” to Dreier, he carries on a conversation with Robert Schuett. Schuett notes that not only is Hans Kelsen “my favourite philosopher” but he proclaims “I am a Kelsenian” (pp. 1-2).<sup>5</sup> He concludes *Hans Kelsen’s Political Realism* with the observation “Choices made, roads taken or not” (p. 145). Yet, this full-throated defense of Kelsen is somewhat unexpected given that Schuett has made a name for himself primarily as a proponent of political realism. He and Miles Hollingworth were the editors of *The Edinburgh Companion to Political Realism* (Schuett and Hollingworth 2018). In his essay on Kelsen in that volume, Schuett was somewhat tentative in making the case that Kelsen was a political realist and he indicated this by the question mark in the title “Hans Kelsen: A Political Realist?” (Schuett and Hollingworth 2018, p. 303). Schuett had answered this question in the affirmative. And, he argued that Kelsen combined the idealist’s belief in justice and peace with the realist’s recognition of the limits of human nature and the struggle for power (Schuett and Hollingworth 2018, p. 315). It is evident that Schuett carries these convictions into his book, but *Hans Kelsen’s Political Realism* is much more than an enlargement of his chapter in the *Companion*. It is a rich and compelling picture of Kelsen as an astute student of human nature and of the political aspects of legal theory. Whereas Dreier and Lagi sought to examine Kelsen’s thinking in a new and different light, Schuett intends to provide a more complete picture of the man and his ideas.<sup>6</sup>

Chapter Four is on Kelsen’s foreign policy realism and most of chapter Five is on Kelsen’s style of political thinking. Both are well-researched and clearly written, but the first three chapters are the ones that are not only the most interesting but also the most challenging for what Schuett calls a “Most Misunderstood Man” (pp. 34-35). According to much of Schuett’s entire book, Kelsen was often misunderstood and frequently maligned. But Schuett uses the phrase to talk about Kelsen’s conflicts with the FBI. As an immigrant from Austria, Kelsen was suspected of having communist sympathies. And those suspicions prompted two major investigations into Kelsen’s life. The first was in the 1940s when Kelsen was working for the Foreign Economic Administration and the second was in the 1950s and was even more problematic for Kelsen. As Schuett explains, Kelsen was teaching at Berkeley when the state of California passed the Levering Act which required all state employees to sign an oath swearing that they were not members of the Communist Party or any other organization intent upon overthrowing the United States government (pp. 8, 10-11). Kelsen had no problem with signing the oath, but some others were reluctant to do so. Kelsen objected to the fact that the university not only was firing him but was branding him as an academic rebel. Schuett explains that Kelsen knew from experience that he had to choose his battles wisely, but as a scholar dedicated to truth, he could not stand by and let ideology corrupt academic research. And Schuett points out that if the FBI had ever bothered to read any of Kelsen’s writings, they would know that he might be a liberal, but as an individualist and a thinker, he could never subscribe to communist ideology (pp. 8-9).

Schuett offers another example of Kelsen as a misunderstood and maligned individual. Schuett recounts how Kelsen had saved Hans Morgenthau’s academic career by having him rewrite his “Habilitationsschrift” twice so that it could be accepted at his university in Switzerland in the 30s. By the late 1930s both Kelsen and Morgenthau had gone to the United States and supposedly Kelsen was going to be offered a professorship at the University of Chicago. Unfortunately, Waldemar Gurian, a Russian-born German-Jew, Catholic convert, and friend of Carl Schmitt intervened. Gurian complained that Kelsen only offered “empty logicism and relativism” (p. 19). As a result, Kelsen was denied and the offer went to Morgenthau. Morgenthau repaid Kelsen by helping ensure that Kelsen was offered the Charles R. Walgreen Foundation lectures in 1954 and then later sent Kelsen a birthday letter in which he praised Kelsen for his fearless pursuit of truth and that he had tried to discharge his obligation to his friend by following his example (pp. 17, 21).

However, Kelsen’s greatest enemies were Carl Schmitt and especially the Nazis. As Schuett emphasized, “The Nazis hated him.” To them, Kelsen was not human. And he added: “To the Schmittians, he was a dangerous man” (pp. 22-24, 33-35, 67). Schuett suggests that Kelsen strongly believed in the things that Schmitt rejected: the state, democracy, and the rule of law. Schuett noted that Schmitt only believed in power. In contrast, Schuett explains that Kelsen always believed in the need to “tell truth to power” (pp. 40-41, 71).

Schuett devotes a chapter to Kelsen's time serving in the Ministry of Justice. He had completed his one-year military service in 1902 and held the rank of second lieutenant. When the war began in August 1914, he was called up, but a few months later he caught pneumonia. As a result, Kelsen was assigned to the Minister of War. Schuett describes the final meeting between Kelsen and his superior. The War Minister had summoned Kelsen and gave him President Wilson's response to the Austrian peace proposal. Kelsen could have tried to give a sense of hope but he recognized that Austria had not only lost the war but that it was the end of the monarchy. Schuett writes: "He saw it clearly. It was really over. Political realism!" (pp. 37-41).

Schuett suggests that Kelsen's political realism was based upon two sources: Dante and Freud. From the former, Kelsen learned about the idea of "an international society as a unitary order" and from the latter, he recognized that authority was rooted in human beings and not in natural law (pp. 47-48, 89-91). As Schuett notes, Kelsen maintained that since we are not "pure angels" we need authority. But the authority must be from ourselves and not some metaphysical entity (p. 121).

Schuett believes that the notion that Hans Kelsen was an idealistic jurist has determined people's opinions about him. Even scholars who knew him, thought he was naïve and an idealist (pp. 2, 13, 20, 29). But Schuett argues that Kelsen was a realist who understood that humans were not inherently good. Kelsen was no doubt a calm and gentle man, but he was also a man of convictions and a political realist (pp. 33, 65, 147 note 4). Schuett readily admits that "his" Kelsen is not the Kelsen of others; where as Kelsen's enemies regarded him as the "monster of Vienna", "his Kelsen" ("my Kelsen") is an "intellectual streetfighter" who combined a "gentle liberal mind" with a tough political realism (pp. 6-7, 22, 65, 89).

As much as Schuett concentrates on Kelsen as a political realist, he spends considerable effort on Kelsen the man. Rather than the "monster from Vienna", Schuett's Kelsen is a true Viennese gentleman. Unlike Joseph Schumpeter, Kelsen chose to live a reclusive life in America. Schuett recounts the time in 1945 when the Allied nations met in San Francisco to sign the United Nations charter. Someone had heard that the famous Hans Kelsen was teaching at Berkeley so a search was started to find out where he was. A Dean was asked to find out and he made a phone call. Not knowing much about his own faculty member, he asked Kelsen whether he was "the world-famous Austrian émigré jurist that the diplomats were looking for". Kelsen apparently responded with "a short and sweet 'yes.'" (p. 14). Schuett also emphasizes how much Kelsen supported his students both in terms of academic help and especially in provoking them to think (pp. 63, 144-145). What makes this even more amazing is that Kelsen fled Austria, then Germany, and then Prague. When in 1940, he finally left Geneva for the United States, he was almost sixty years old and had almost no money. The Nazis had taken his pension and "he had to start all over again" (p. 5). Rather than being embittered by his mistreatment, Kelsen continued to apply himself to scholarship. It is no wonder that Schuett is proud to announce that "I am a Kelsenian" (p. 2). It is not just Kelsen's ideas that draw people to him; it is Kelsen's personal combination of gentility and strength.

## SARA LAGI 2021

Sara Lagi differs from both Dreier and Schuett in that Kelsen does not seem to "speak" to her in the ways in which he "speaks" to them. Hence, there is considerable detachment in her discussion of Kelsen. In *Democracy in its Essence. Hans Kelsen as a Political Thinker* Sara Lagi sets herself the laudable task of "reasoned overview of Kelsen's political theory as it developed from the 1920s until the 1950s", which was a "defense of liberal and representative democracy" (pp. 10, 162).<sup>7</sup> Lagi has largely met this task, at least in substance. She does so by not just examining his political theories but by placing them within the historical context. Her book has four major chapters with each of them devoted to democracy and another political aspect.

The first chapter is "Democracy and Pluralism" and is the most convincing of the four chapters. Lagi begins by contrasting Kelsen's early legal thinking with the positivism of Georg Jellinek and the sociological legalism of Hermann Heller. Kelsen's issue with the former rested on Jellinek's notion of the state as a

“sovereign subject” and his complaint about the latter was that Heller dismissed the need for a pure legal theory (pp. 15-16, 18, 20). Lagi then examines Kelsen’s early political thinking in the two editions of *Vom Wesen und Wert der Demokratie*. She argues that while Kelsen defended the notion of democracy in both the 1920 and the 1929 editions, he focused more on defending Parliament in the earlier edition and he concentrated more on pluralism in the later one (pp. 33-34). Furthermore, she emphasizes Kelsen’s complaint that Rousseau’s concept of democracy was “idealistic” and he sought to provide a “realistic” conception. And, she correctly reminds us that in 1920, Austria’s future still looked promising, but by 1929 the “enemy” was not just the Soviet Union outside but the “reactionary political forces” inside (pp. 38, 41-42).

The second chapter has the title “Democracy and Constitution” and it is understandably not the strongest chapter given that Lagi readily admits that she is not a legal scholar. Nonetheless, she offers a rather compelling defense of Kelsen’s concept of constitutional jurisdiction, and more importantly on his treatment of nullification. In fact, Lagi maintains that it is in his defense of constitutional authority that clearly shows the connection between Kelsen’s constitutional theory and his political theory (pp. 64, 67). The difficulties begin with Lagi’s discussion regarding the relationship between Kelsen and Carl Schmitt. This is unquestionably a complex topic and involves not just the understanding of the two legal thinkers but also a full grasp of Weimar’s history. But Lagi does not provide either. While Kelsen and Schmitt had been at odds regarding Parliament, the major conflict was over the question of who was the guardian of the Weimar Constitution. For Kelsen, it was the constitutional court; but for Schmitt, it was the president. Schmitt had long argued that the Parliament could not function because it was composed of too many individuals with too many conflicting opinions, thus it was unable to do much more than deliberate. But Schmitt argued that the continuing crises called for decisive emergency measures. Kelsen defended both liberal Parliament and the rule of law. When the so-called “Preußenschlag” occurred in 1932, Kelsen sided with the Prussian Parliament whereas Schmitt argued in court for the German government and he insisted that Article 48 of the Weimar Constitution gave Germany the authority to disband the Prussian government. This entire episode is difficult to explain, but Lagi does not provide much help. For example, she does not clarify what Article 48 governed nor does she offer a realistic account (pp. 79-80). Part of that is because she does not intend to “demonize Schmitt or to sanctify Kelsen” (p. 73). While this is noteworthy given how often Schmitt is criticized, it does not do justice to either Schmitt or Kelsen to regard this as a dispute between two “rivals” (p. 72). Furthermore, she considered Kelsen’s and Schmitt’s positions to be equally “radical” and that the former believed in a “pluralist, parliamentary, and liberal” theory whereas the latter believed in a “monist, anti-liberal theory” (p. 81). She also insisted that she was not concerned with who was right or wrong (p. 78). This defensiveness is apparent throughout this book, rather than defending her scholarly thesis, she insisted that it was just “my opinion” (pp. 23, 29, 33, 34, 71, 102, 105, 106, 107, 134, 150). However, this was not some minor dispute about a technical legal issue; as Lagi herself recognizes, this was a major conflict about Germany’s political future. And, she knows full well that Schmitt’s arguments led to the Nazi horrors. Despite his insistence on separating facts from values, even Kelsen spoke out then and thereafter.

Chapter Three is on “Democracy and Relativism” and is a rather strong chapter. Lagi reminds us that democracy was a matter of a “world vision” or a “world outlook” (“Weltanschauung”) and that it involved the “dialectical relationship between the majority and the minority” (pp. 96, 107). Given that democracy’s “Weltanschauung” is relativism means that it is also antithetical to any form of absolutism. In this chapter Lagi explains Kelsen’s critique of natural law and defends his relativism. She notes how Kelsen criticized natural law theorists for not admitting that it lacked a genuine metaphysical basis and that they employed it in order to legitimize existing social and political orders (p. 99). She also explains that autocrats hide behind the belief in “absolute reality” and “absolute truth” in order to safeguard their power (p. 103). But for Kelsen, law could not rest on nature because it was a matter of norms. Furthermore, Kelsen objected to the notion that any ruler could demand obedience because in a democracy there was a type of equality in which the ruled granted consent (p. 105). Lagi utilizes Kelsen’s Pilate parable to explain the dichotomy between the “absolutism-autocracy” and the “relativism-democracy.” It was ironic that Jesus, like Plato, St. Thomas, Dante, Leibniz, and Hegel, believed in absolute justice and was chosen by the crowd to die whereas

the criminal Barbaras was allowed to live. Instead of the belief in absolute justice, Kelsen championed relativism and the tolerance of democracy (p. 107). But Lagi emphasized that Kelsen's relativism should not be taken to be moral indifference. She points to John Stuart Mill who believed tolerance of other voices was a necessary part of the "open, rational dialect among different visions". And she points to the similarly shared belief in tolerance as exemplified by Kelsen and Isaiah Berlin: for Kelsen, philosophical absolutism was tied to autocracy; for Berlin, monism was connected to totalitarianism. In Lagi's opinion, the liberal spirit was common to Mill, Berlin, and Kelsen (pp. 109-111). In an autocracy, there can be no room for compromise; whether it is a form of government or a type of church, the autocrat knows only the "Diktat" (p. 118). In contrast, in Kelsen's democracy, all individuals are born equal and therefore they all have equal rights. In Lagi's words "freedom of thought and expression had to be granted" (p. 120).

Chapter Four is "Democracy and Proceduralism" and like the preceding chapter this one is relatively clear and rather convincing. It does so in part by highlighting Kelsen's personal life. Lagi had either minimized or ignored many of Kelsen's personal trials, but here she stresses the impact that his move to the United States had on his personal and professional life. Regarding the former, Lagi simply mentions that it was a radical change but does not offer much in the way of details. In contrast, she dwells on the problems that Kelsen faced in his new academic environment. She clarifies that the legal studies in American universities were far more practical and empirically oriented than in European ones and that they rejected Kelsen's pure theory of law as being too abstract and too abstruse (p. 131). And, she reminds us that Kelsen was hired at Berkeley as a Professor of Political Science and not as a Professor of Law. But she also reminds us that his political views were regarded as suspect. But she does not specify in what ways and instead insisted that his writings from the 1950's were his attempts to "reinvent himself as a scholar in the United States" (pp. 131-132). Lagi's explanation about Kelsen's conception of international law and its reception is brief and not very helpful (pp. 132-133). In contrast, her discussions regarding Kelsen's criticisms of some of his contemporaries shows her at her best. This is particularly evident when she is discussing the contrast between Kelsen's political theory and those of others. She emphasizes Kelsen's conviction in the need for a government by the people in contrast to those who contend that what is needed is a government for the people. Kelsen opined that the latter's "concern" for the people could just be a cover for its own interests and that it reveals the belief that the governed do not know what is good for them. Kelsen objected that people may not always know what is best for them, but it is up to each individual to decide for himself or herself (pp. 143-145). She is also good at explaining how Kelsen and his former student Eric Voegelin could agree about the need for freedom but differ about the role of the state. As a matter of principle, Kelsen objected to any form of "transcendence" in politics—even one so well-intentioned as Voegelin's (pp. 147-148). Finally, Lagi is good in examining the differences between Kelsen and Hayek. Hayek's belief that economic freedom would lead to political freedom was countered by Kelsen's criticism that it amounted to a rule. Kelsen regarded it as a tendency and he objected that Hayek attempted to universalize something that was historically contingent. But Lagi's opinion that Kelsen had underestimated the "rule of law" seems unsupported and unlikely (pp. 149-151). Similarly, her discussion about the differences between Kelsen and Joseph Schumpeter are promising enough—she notes that Schumpeter's conception of democracy is fundamentally elitist and that he emphasized the role of competition more than Kelsen. But her claim that Schumpeter was Kelsen's "friend" seems an overstatement given their different views about democracy and their own vastly different personalities (pp. 140, 151-153). But these comments are mostly minor points and do not detract from the value of Lagi's exposition.

Normally, I tend to avoid mentioning a few typos and some minor mistakes. But Lagi's book is filled with so many problems that I would be remiss not to point out some of them. There are misspellings, like Berkley when it is Berkeley (p. 2). It is "Staatsrechtslehre" and not "Staatsrechts lehre" (p. 15). It is "Fiktion" and not "Finktion" (p. 27). And, it is "Weltanschauung" and not "Weltanschuung" (p. 102). "Bolshevik" is often problematic: "Bolscevism" (p. 48). "Bolshevik" is an example of the lack of consistency, as it is sometimes capitalized and sometimes not (pp. 26, 114, 140). *Vom Wesen und Wert der Demokratie* is often correctly given, but it is also given incorrectly as *Vom Wesen und Wert der demokratie* (pp. 22, 25,

29, 38, 39, 41, but not 27, 37). Sometimes *Demokratie* is both lower case and upper case on the same page (pp. 32, 34). In fact, there is often a problem with capitalization: “Nazi” should be capitalized throughout, as in Lagi (pp. 34, 79) and not “nazi” (pp. 8, 45, 80, 118, 120). Why is it “Alexis de Tocqueville” sometimes and “De Tocqueville” others? (pp. 9, 13, 31, but 108). Why is “von” capitalized in “Otto Von Gierke”, “Franz Von Pappen”, and “Friedrich Von Hayek”? (pp. 36, 79-80, 111, 136-140, 146, 149-151, 192, 194). And, why are “christian justice”, “christian natural law doctrine”, “catholic French”, “christian natural law”, “christian values” and “christian ideal of justice” not capitalized—especially when “Gospel” is capitalized? (pp. 143-145). German and Austrian political parties are problematic: The Social Democrats are referred to as “Social Democrats” but also “Socialist Democrats”, and “SocialDemocrats” (pp. 40, 110, 149; 33, 56-57, 77). The “Christian Social Party” also appears as “Christian Socials” (pp. 51, 77; 56-57, 61-62, 91). And, the German Social Democratic Party (SPD) is rendered “social democratic Party” (p. 45, but see 47). Anyone who has translated will acknowledge that it is often a subjective call; however, “Führer” is not “Chiefs”; “Grundzüge” are not “Lines” (pp. 47, 71, 91). And, if one is going to Angelize phrases then it should be the entire name: the “Wiener Juristische Gesellschaft” should be the “Viennese Legal Society” and not the “Wien Legal Society” and the “Wiener Psychoanalytische Gesellschaft” should be the “Viennese Psychoanalytical Society” and not the “Wien Psychological Society” (pp. 25, 122).

These are not just some minor blemishes and some of them are nothing less than “howling errors.” These include “In the late nineteenth century Max Weber returned to this concept...” when she is referring to Weber’s 1918 work “Parlament und Regierung im neugeordneten Deutschland” and “Carl Schmitt (1888-1980)” when Schmitt died in 1985 (pp. 28, 52). And, while she makes a reference to the neo-Kantian distinction between the “Naturwissenschaften” (“natural sciences”) and the “Geisteswissenschaften”, it is misleading to regard them as “the science of the mind” since that is psychology. More importantly, it was neither Heinrich Rickert nor Wilhelm Windelband who was responsible for Kelsen’s distinction between “is” (“Sein”) and “ought” (“Sollen”), but it was Max Weber (p. 17). In fact, much of what she says about Weber’s political thinking is either misleading or wrong, but to address that is beyond the scope of this review. It appears as if no one either copy edited the manuscript or checked the page proofs. All of these problems serve to distract the reader from the substance of this book. This is unfortunate because *Democracy in its Essence* is nicely printed and bound, and Lagi’s articulation of Kelsen’s theory of democracy is rather compelling.

## CONCLUDING COMMENTS

Dreier, Schuett, and Lagi have offered different views of Hans Kelsen. But they each have challenged the dominant opinion that Kelsen was misguided and even dangerous because he was a legal positivist. Rather, Kelsen was a fighter for freedom and a defender of democracy. It is fitting that Dreier ends two essays and Schuett concludes his book with the same passage from Kelsen’s concluding comment from his final Berkeley lecture:

[And, indeed, I do not know, and] I cannot say what justice is, the absolute justice for which mankind is longing. I must acquiesce in a relative justice and I can only say what justice is to me. Since science is my profession, and hence the most important thing in my life, justice, to me, is that social order under whose protection the search for truth can prosper. ‘My’ justice, then, is the justice of freedom, the justice of peace, the justice of democracy—the justice of tolerance (p. 38; Jestaedt and Paulson 2019, p. 114; Schuett 2020, p. 144; and Kelsen 1971, p. 24).

These are not the ideas of a dry legal thinker and a destroyer of values. Rather, they are the core convictions of a person devoted to ideals, but is fully conscious of human failings. These ideas also indicate that Kelsen understood the challenges that all thinkers face in the search for truth. The authors of these four books chose to take up Kelsen’s challenge and they should prompt us to reassess our conception of him

as just legal scholar. Dreier, Lagi, and Schuett have demonstrated that Kelsen was also a first-rate political thinker, a staunch defender of democracy, and a great believer in political realism. Accordingly, we should reassess our understanding of Hans Kelsen.

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PART FOUR: FERDINAND TÖNNIES ON SOCIOLOGY AND POLITICS—WRITINGS  
FROM 1931

Ferdinand Tönnies is primarily regarded as the author of *Gemeinschaft und Gesellschaft* and is remembered in sociology courses as the originator of the distinction between “community” (“Gemeinschaft”) and “society” (“Gesellschaft”). If anyone knows much more about him, it is the idea that he embraced the notion of the traditional, rural community and voiced disapproval for the concept of the modern, urban individualistic societies. In recent decades a few scholars have sought to go beyond that dichotomy—in 1995, a young scholar published an article in *Sociological Theory* and its title “Ferdinand Tönnies: Utopian Visionary?” ended with a question mark to indicate the author’s inability to make a firm decision. Was Tönnies an old, rural, patriarchic traditionalist who was stuck in the past, or was he a modern, intellectual sociologist who recognized both the positives and the negatives of modern life? This latest volume of the *Ferdinand Tönnies Gesamtausgabe* provides more evidence that Tönnies may not have been a utopian visionary, but he was certainly a modern, sociable sociologist who was well aware of the issues of modernity. This volume 21 is a collection of his publications for the single year 1931: it contains one book, at least a dozen articles, five book reviews, and a number of periodic pieces.<sup>8</sup> This output would be remarkable for a scholar in the prime of his or her life, but Tönnies was in his mid-seventies when he wrote and published them. This book is nothing short of a remarkable collection from the pen of a remarkable German intellectual.

The first piece included in this volume is listed as a monograph but was published in 1931 as a book. At almost three hundred pages, it is almost half of the entire text portion of this volume. Given that, it is somewhat shocking that Tönnies insists that there is nothing more obvious than the fact that his book is incomplete (p. 9). Much of it is reflected in his other writings, especially in the four articles that he wrote for Alfred Vierkanndt. But what is new and of interest are his comments on values, economics, and politics. For Tönnies, politics cannot be divorced from ethics, and that means social norms and shared values (pp. 152-165, 171-198). He also maintains that there is a tension between the moral-political community and the economic and rational individual. He concludes with two distinctions: in the first he distinguishes between the masculine rational individuality as opposed to the feminine spiritual sense of community. And, he suggests that modern culture is losing its feminine foundation and is increasingly becoming too rational and too egotistical (pp. 269-275). The other distinction is far less judgmental and much more scholarly and that is the distinction between “applied sociology” (“angewandte Soziologie”) and “empirical sociology” (“empirische Soziologie”). The former is more like philosophy and uses theories; the latter is more like a natural science and uses facts and statistics. For Tönnies, there is a tension between the two; while he likes the former, his inclination is more towards the latter (pp. 278-285, see also 468-470). However, Tönnies was trained as a philosopher and believed in concepts and theories, so his affection for facts was always coupled with a love for theories.

In 1931 Alfred Vierkanndt published his *Handwörterbuch der Soziologie*. In the editorial information to volume 21, Dieter Haselbach indicates that Vierkanndt has intended to publish a collection of essays on numerous aspects of the new discipline of sociology. Haselbach adds that these were to be of the highest quality and that Vierkanndt had gotten 37 authors to write on areas in which they were recognized as authorities. While most authors contributed a single essay, there were a few who contributed more than three. Werner Sombart wrote six, two others wrote five, and Tönnies was tasked with writing four (p. 612).

The first article to be discussed is on status and classes (“Stände und Klassen”). Most of it is rather dry because it is historical and because Tönnies appears to emphasize the economic part of status rather than the social. The historical and the comparative may be interesting to certain social historians but most scholars will not find much until Tönnies begins to discuss class struggle (pp. 375-380). He follows Max Weber’s opinion that much of what has been written about classes and struggle is more or less nonsense and that much of modern theories are based upon Rousseau’s enthusiasm for the “state of nature” (“Naturzustand”) (pp. 383-385). And, only those few scholars who are preoccupied with early twentieth century German

thinkers will find much of interest in the final pages of his article because they are devoted almost exclusively to those contemporary debates.

For a scholar with socialist leanings, the fact that Tönnies was asked to write the article on “property” (“Eigentum”) may seem surprising. However, his socialism was more oriented towards workers’ rights than to socialism and he had written a slim volume on *Eigentum* in 1926 so he was regarded as an expert on the topic. He begins the article by making a number of distinctions: first, that property is linguistically related to possession but that there are differences in types of possessing. The dog is said to possess teeth but no one thinks of them as being separate from the animal. In contrast, people are said to possess glasses and wigs but no one thinks that they are inseparable from the individual. Second, there are three different types of property: communal property, individual property, and societal property. The first one is where everything is held in common; the second is where it is the individual who owns the property, and the third one is where the property belongs to the state. In all three cases, ownership is regulated by law; hence, there is an affinity between the concept of property and the notion of natural law (pp. 300-302). It is noteworthy that the socialists disparage the notion of individual ownership while praising ownership by the state, whereas the conservatives denounce state ownership as an infringement on individual property rights (pp. 303-304).

Tönnies is often regarded as a family traditionalist and some passages in his article on the modern family (“Die moderne Familie”) may support that opinion. He does insist that the essence of the family is marriage and that sex is primarily for procreation (pp. 305-306). However, he also wrote about separation and divorce and he was concerned about the future of the family. Although some of this does suggest that Tönnies’ views about the family were rooted in nineteenth century values, his glowing review of the four-volume work on the family done under the editorial direction of Alice Solomon indicates his strong appreciation for the huge amount of statistical material and its careful analysis (pp. 587-588). In the nineteenth century, such a study would not have been published and certainly not by a woman. Here, Tönnies offers his praise and appreciation for the women who wrote this modern study.

Tönnies’ most important article in Vierkandt’s collection is the one on community and society and it is notable for its conciseness and its clarity in comparison to the book *Gemeinschaft und Gesellschaft*. As much as Tönnies had changed his mind about many things, he never really altered the concepts that he formulated in the first edition of *Gemeinschaft und Gesellschaft*. Published first in 1887, the book was partially a reflection of his early and substantial study of the philosophy of Thomas Hobbes. That influence is shown in the book by Tönnies’ emphasis on will. While Tönnies begins the 1931 article by discussing knowing and not knowing, his major concern is with the notion of will. This is partially shown by his general interest in emotions with his opposition between sympathy and antipathy and the contrast between trust and mistrust, but it is even more revealed in his comments about will. But as he points out, it is never a matter of just one single will, but is a matter of many wills which make up society. One of the most basic notions of social interaction is the economic activity of “exchange” (“Tausch”) (p. 338). We need to exchange the things we do not need for those that we do need—we want them and that is a manifestation of our will (pp. 341-342). Tönnies very briefly mentions the two double concepts from his earlier book: “community and society” (“Gemeinschaft und Gesellschaft”) and “essential will and artificial will” (“Wesenwille und Kürwille”). The contrast between the first two is relatively straightforward: the traditional rural small community versus the modern metropolis. The second contrast is less easy to explain but by “Wesenwille” Tönnies means the genuine essential will of the community where all are committed to each other’s well-being while “Kürwille” is indicative of the artificial, individualistic strivings of each person’s attempt at gaining the most advantage for one’s self (p. 344). In the community, exchange is for mutual benefit, but in modern capitalist society, it is used simply for one’s sole material gain. Tönnies concludes “Gemeinschaft und Gesellschaft” by setting out three types of “community relations.” First is the comrade type which is the relationship between two people. Tönnies uses Achilles and Patroclus as the example and suggests that there is some truth to the saying the person who has *friends* does not have a real *friend* (p. 348). The second type is the dominant type and here his example is the father and his child. Unlike the equality of the two friends, the father must protect the weak child. Of course, the child grows up and often seeks to overthrow

the father. Third is the mixed type and this rare type only warranted a few lines. In contrast to the two main types of “community relations” there is the “social relations.” Tönnies’ main concern with this type is with “civil society”—that is, the state. Its function is two-fold: to protect and to nurture, but Tönnies ends his essay here because going further would mean leaving sociology and moving towards politics (pp. 354-356).

Today the Deutsche Gesellschaft für Soziologie (DGS) is thriving in Germany but during the first half of the twentieth century, its birth and survival were not at all assured. Although Max Weber is often credited with its founding, Tönnies was also a founding member. More than that, Weber only attended the first conference in 1910 and resigned after the second one in 1912. It fell to Tönnies to ensure that the DGS continued to exist. The third conference was scheduled for October of 1914 but was canceled because of the war. The fact conferences were able to be held during the twenties (1922, 1924, 1926, 1928) is because of Tönnies’ massive efforts. The topic of the seventh conference from 1930 was likely Tönnies’ own—public opinion. He had published a book in 1922 on the topic and it continued to interest him. His concern was that too many people were being given slightly misleading information in German newspapers and he counseled that what was needed was not so much public opinion as it was “educated” public opinion. While Tönnies was never a member of the “Kathedarsozialisten”, he approved of the idea of the socialist professors and their attempt to broaden people’s minds. He specifically mentioned the great national economists Lujo Brentano, Gustav Schmoller, Adolf Wagner, and Georg Friedrich Knapp. Rather than being dismissed as impractical professors, these scholars should be respected for their considerable efforts (pp. 465-466).

If Tönnies’ comments on public opinion are not a sufficient indication that he was cognizant of the changes in Germany’s political situation, then several of his book reviews should put any reservations to rest. The first one was not specifically listed as a book review nor was it a cool and dispassionate account of a book. The volume that Tönnies was considering was one of the four volumes of the former German Chancellor von Bülow’s memoirs. The title that Tönnies chose for his critique—“Bülow und der Ausbruch des Krieges” (“Bülow and the Outbreak of the War”)—gives an indication of the disdain that Tönnies felt for von Bülow. Bernhard Fürst von Bülow had been Chancellor from 1900 until 1909 so he claimed with some justification that he was not responsible for the First World War. However, Tönnies pointed out that some of the decisions that he did make while in office actually made the war much more likely to occur. But in Tönnies’ opinion, von Bülow’s larger transgression was his insistence that if he had continued to be Chancellor, the war would certainly have been averted. This “self-praise” was not just naïve; it was simply wrong. Von Bülow claimed to be a worldly man who understood how it worked. But Tönnies countered that not only was he not worldly, he also was not very smart. Instead, von Bülow was a chauvinist and an imperialist who believed that aggression solved every problem. In Tönnies’ estimation, von Bülow may not have actually begun the war but his actions and his decisions made it all but inevitable. Rather than admitting that he had misjudged many things during his time in office, he blamed the German citizens for not being wise enough to have him continue to lead them. In his final assessment, Tönnies maintained that far from being a “great man”, von Bülow was nothing more than “average” (“mittelmäßig”) who made middling decisions (pp. 519-520. 527). Although he did not state it, Tönnies’ caustic comments about von Bülow were applicable to the many of the members of the growing Nazi movement.

The second indication of Tönnies’ ongoing recognition of the political situation comes in the form of an actual book review. The book was about patriotism and its author was Robert Michels. Michels was a rather strange and not very fortunate man—born and educated mostly in Germany, his early socialist leanings meant that he had no real future in German academia, despite his close friendship with Max Weber and his important book on political parties. But his book was published in 1911 and although he would write an entry in Weber’s *Grundriss der Sozialökonomik*, his friendship with Weber was unfortunately cut short by Weber’s death in 1920. By the mid-twenties, Michels was a convert to Italian fascism. In 1913 Michels had published an essay on patriotism in the *Archiv für Sozialwissenschaft und Sozialpolitik* but as Tönnies pointed out, that was a historical investigation. The 1929 work carried the title *Der Patriotismus* but the subtitle *Prolegomena zu einer soziologischen Analysis* indicated that Michels’ recent concern was with the sociological aspects of patriotism. Tönnies is of two minds about Michels’ patriotism book. On the one hand he ap-

pears to agree with Michels that patriotism is retrospective and reminds us of our youth. It is a longing for familiarity and togetherness and he credits Michels for expressly noting the importance of music in this patriotic remembrance of an earlier and less complex time. On the other hand, Tönnies is less than enthusiastic with this little volume and wishes that Michel had written less about feelings and had given more statistical analysis about what patriotism is for a German, a French person, or a British subject. However, Tönnies believes that this book is timely and that it was written with much passion and love (pp. 584-586).

The third indication of Tönnies' recognition of the oncoming problems with the National Socialists is found in a very brief article. "Die revolutionäre Situation" begins with a discussion of the revolutionary situation in Russia, but Tönnies' real concern is with the revolutionary situation in Germany. It lacks a revolutionary spirit; instead, its "Führer" and its party believes only in power and while it will use the typical revolutionary means it does not have the usual revolutionary goal. Tönnies was cautious enough not to spell out what he meant but he was smart enough to know that most readers would know that the traditional goal was "freedom" (pp. 565-567).

The fourth indication is in "Parteipolitischen Prognosen" and while it is ostensibly directed to the issue of the differences between the workers and the growing middle class and how the Social Democratic Party will respond, the numerous references to the "Hakenkreuzpartei" would be a sufficient indication that Tönnies means the Nazis. Plus, he bemoans the growing anti-Semitism and the increasing comments about the purity of German blood. And, he explicitly names "Herren Hitler, Göbbels, Frick, Franzen" as ones who are beyond laughable and are actually grotesque (pp. 507, 509, 511, 513). Far from looking back fondly on the past, Tönnies was focused on the growing threats of the future and he was sounding the warning—warnings that we now know many people refused to hear.

Volume 21 of the *Ferdinand Tönnies Gesamtausgabe* may not include such major works as *Gemeinschaft und Gesellschaft* or as important as his writings on Hobbes or Marx. It does not contain his contested writings on war nor his provocative essays on Nietzsche. Yet this volume contains many writings which reveal that he was a fully engaged political realist who was actively investigating the German political landscape and was sounding the warning on the approaching Nazi regime. This volume confirms that Tönnies was still at his intellectual best even into his seventies and it demonstrates that he was certainly no "utopian visionary".<sup>9</sup>

## REFERENCES:

Ferdinand Tönnies, *Ferdinand Tönnies Gesamtausgabe*. Band 21. *Einführung in die Soziologie. Schriften. Rezensionen 1931*. Herausgegeben von Dieter Haselbach. Berlin/Boston: Walter de Gruyter. 2021.

PART FIVE: JENS HACKE, LIBERALE DEMOKRATIE IN SCHWIERIGEN ZEITEN.  
WEIMAR UND DIE GEGENWART

The title of Jens Hacke's book may lead some people into thinking that they are going to read a unified account of the problems facing contemporary liberal democracy.<sup>10</sup> But Hacke's book is not a grand essay but is a composite of eleven chapters on a number of important socio-political thinkers from the Weimar era. As a close reading of many of these chapters shows, the book does not suffer in any way from being composed of separate essays. There are some eleven chapters; three of which address the problems that Weimar faced and the similar ones that are present now. Those are interesting and informative but the four which are more historical are singled out for discussion here. That is because they are clearly of the highest quality and are perhaps of the greatest interest. And, because they illustrate Hacke's thesis that the problems which plagued the Weimar of the nineteen-twenties share deeply troubling similarities with the problems confronting Twenty-first century democracies.

The name Robert Michels is mostly forgotten today, just like the name Vilfredo Pareto, but in the first two decades of the previous century, they both were highly respected thinkers. Michels and Pareto shared a number of interests: they were concerned with political parties and both wrote about the powers of political elites. They have also been among those sociologists and social theorists who have been misjudged and their writings misconstrued. Both Michels and Pareto have been accused of being proponents of Mussolini and advocates of Italian Fascism. While there is not much to support the criticism of Pareto, there is also some that appears to lend credence to the charge against Michels. It is to Hacke's credit that he is willing to accept some of that critique while demonstrating Michels' contribution to the study of political parties in modern democracies. In 1911 Michels published his ground-breaking book *Die Soziologie des Parteiwesens*. In it he discussed the role of parties in democracies and he argued that political parties' increases in efficiency were necessary but that they consolidated political power into the hands of the political elites. While political parties were necessary at the beginning of democracy, they ultimately served to undermine them. Whether his study led him to be discouraged about democracy is unclear. What is clear, is that he became more interested in fascism. Was that because he was too idealistic? Perhaps the most telling criticism of Michels came from Max Weber. In *Politik als Beruf*, Max Weber had famously distinguished between those who adhered to an "ethics of responsibility" and those who believed in an "ethics of conviction". Weber acknowledged that it was difficult for the politician to determine for himself whether a course of action was responsible or not. In contrast, he believed it was easier for those who did what they believed was right and left the consequences up to God. But Weber had little sympathy for those who wavered between the two—they tended to be idealistic and naïve and to believe in fictions. In an August 1908 letter to Robert Michels, Weber castigated his young friend for believing in such concepts as the will of the people, "the true will of the people" because "They are *fictions*." It is to Hacke's credit that he not only mentions this letter but cites this passage (p. 58). Like Weber, Hacke greatly admires Michels but is always ready to point out his intellectual shortcomings. It is also to Hacke's credit that he briefly discusses Herman Heller's and Moritz Julius Bonn's attacks on fascism.

The name Moritz Julius Bonn is also mostly forgotten and if he is remembered at all it is for his writings on the Weimar crises. But as Hacke points out, Bonn was not just a culture critic; he was an international banker and a professor of economics. Hacke emphasizes both of these factors in his chapter on Bonn. Hacke concedes that it is difficult to locate Bonn in terms of political schools of thought. Although he was well-connected, he placed little value in being a member of the intellectual elite. He was good friends with many of the leading political and intellectual leaders of the time—with Theodor Heuss, Thomas Mann, Alfred Weber, and Ernst Troeltsch, to name just a few. But his background in political economics made him different from them, and in Hacke's opinion, made him a more astute political observer. In this, Bonn was like Max Weber, and they shared the belief in the connection between capitalism and democracy and in political realism. They also shared the conviction that while Germany was capitalistic, its heavy industries were feudal in their hierarchy and inflexible in their outlook. Hacke emphasizes the impression that America

made on Bonn (without mentioning the similar impression it made on Weber during his 1904 trip to there). For Bonn, America combined individual freedom with social cohesion; as Hacked states there are no classes in America, only steps. One can take advantage of this economic and political freedom—there are “checks and balances” in the United States. But Hacked is careful to note that Moritz Julius Bonn was not blinded by his positive impression of America—he was too much of a genuine economist and a political realist to think that the United States was some kind of utopia.

As with Moritz Julius Bonn, the name Karl Loewenstein is not familiar to many people outside of Germany. However, Bonn had spent only some time in the United States whereas Karl Loewenstein was forced to leave Germany because of the Nazi rise to power. He moved to the United States where he would teach for most of the rest of his life, returning to Germany only for visits.

Hacked maintains that the questions of stability and continuity have always plagued the concept of democracy. Plato and Aristotle contended that democracies were inherently unstable and were necessarily not good. The question about the nature and permanence of democracies continued to be raised by the Romans and then by Machiavelli. Hacked suggests that it was only with the forming of the United States that the issues of stability and continuity were both raised and placed front and center. The Founders were concerned with tyranny on one side and the fickle will of the people on the other. Thus, they sought permanence through the Constitution and the ability to amend it. While that seemed to work in the United States, it did not work in Weimar Germany. Instead, democracy was not stable but was embroiled in constant crises. The question for some German thinkers was how to defend it. Democracy was regarded as a pacifistic form of government which repudiated force, but some German scholars were warning that democracy’s “legalistic self-complacency and suicidal lethargy” (p. 168) was going to destroy itself. Karl Mannheim is often credited with the idea of the “militant democracy” but Hacked insists that Mannheim developed this notion in 1941. In contrast, Karl Loewenstein was advocating it in 1931, even before the Nazis gained power. While some scholars have noted the similarity between Loewenstein and Hans Kelsen regarding the importance of rationality in law, Hacked insists that Kelsen placed more faith in the power of law while Loewenstein maintained that only a type of militancy could defend democracy. The current situation in many countries seems to give more weight to Loewenstein’s notion of power rather than to Kelsen’s theory of law.

The chapter on Carl Schmitt may be the strongest of all the chapters in this book. Hacked points out Schmitt’s many contributions to political thinking yet he does not shy away from pointing out Schmitt’s fundamental flaws. This chapter is only a sketch so Hacked can only point to the similarities between Schmitt and Martin Heidegger, both in their support of the Nazi regime and their shared vision of Germany as a great nation. Hacked also notes that they were anti-Semites and anti-liberalism. But Hacked reminds us that Schmitt and Heidegger embraced Nazism only after the 1933 grab for power and that both thinkers never subscribed to the Nazi ideology. Hacked is also cautious in discussing the claims about Schmitt’s anti-Semitism—while there is much of Schmitt’s written work that substantiates it, his own personal relations tend to deny it. But Hacked is clear that Schmitt’s need for authority and order began far earlier than 1930; his wartime experience, Germany’s defeat and its revolutionary aftermath, coupled with the chaos of the Weimar years, all combined to make him adopt his decisionist theory and his friend-foe distinction.

Hacked does not shy away from noting the conflict around Schmitt’s legacy. He acknowledges that Carl Schmitt is still regarded as a polarizing figure and he stresses that the debate whether Schmitt should be regarded as major political theorist continues. But his concern is not whether to praise or to condemn Schmitt, but to help us understand him. That is part of the reason that in a later chapter Hacked chose to contrast Schmitt with Hans Kelsen. While others have referred to them as antipodes, Hacked has decided to use them as Weberian ideal types (p. 158). Kelsen believed in law and freedom; Schmitt believed in legitimacy and authority. Politics was more fundamental than law; order was more important than freedom. Hacked notes that Schmitt never tired of invoking Hobbes’ claim “Auctoritas non veritas factis legem.” (p. 104). And, he spends considerable effort to explain Schmitt’s inclination to authoritarianism and his complaints regarding democracy and liberalism. Hacked provides four reasons for Schmitt’s extreme dislike of liberalism: 1) he believed that liberalism and democracy did not belong together and thought they were really at odds

with each other. 2) He believed that the liberal belief in pluralism was misguided and instead preached homogeneity. 3) He believed that it was naïve to think that there were universal values, such as equality. 4) He believed that only a strong leader was able to steer a nation through crises. Hacke also points out that Schmitt thought that parliamentarianism was fundamentally flawed—the belief that members could rationally discuss issues and reach compromises was not only flawed but dangerous. Germany could not afford the dithering and indecision; bold and decisive action were what the nation needed. Whether one agrees with Schmitt or not, is not Hacke’s issue—it was that Carl Schmitt was one of liberalism’s greatest critics and that we can still learn much from him.

The specter of Max Weber seems to loom over this book, not just because of Hacke’s review essay on recent Weber biographies, but because of his pervasive influence on many of these thinkers. Weber’s influence was substantial regarding Loewenstein, Michels, Bonn, but it is unclear how much impact his ideas actually had on Schmitt. The writings by Bonn, Loewenstein, and Michels seem to be rooted in the Weimar era whereas those by Schmitt seem to transcend the era. As much as the spirit of Max Weber permeates this book; that of Carl Schmitt does so even more. This is understandable for two reasons. First, Weber’s influence during the Weimar era was rather limited and it was only with Marianne Weber’s editions of her husband’s writings and her hagiographic biography that his reputation began to expand. Second, Schmitt’s reputation continued to grow during that decade with the appearance of so many provocative works. Weber’s defense of liberalism was never very strong and while people like Karl Loewenstein, Karl Löwith, and Richard Thoma strongly defended liberalism and plurality, they had difficulty in matching the power of Schmitt’s denunciation of liberalism and parliamentarianism. The attraction of authority and order tends to outweigh the belief in freedom and tolerance. What Carl Schmitt derided as idealistic and ineffectual and what he promoted as realistic, and even necessary, has echoes today. All of which makes Hacke’s book timely.

All but two of these essays have previously been published but they are far more accessible in this book form. While Hacke may not have published a book with a grand thesis, this volume contains enough thought-provoking comments to satisfy almost every reader. Hacke’s *Liberalismus in schwierigen Zeiten* is not just a commentary on the problems that plagued Weimar but also is a carefully worded warning about the challenges facing liberalism in our own difficult times.

## REFERENCES

Hacke, Jens. 2021. *Liberaler Demokratie in schwierigen Zeiten. Weimar und die Gegenwart*. Hamburg: Europäische Verlagsanstalt.

## NOTES

- 1 There is a German version of *The Oxford Handbook of the Weimar Republic* with the title *Aufbruch und Abgründe. Das Handbuch der Weimarer Republik*. At least eleven essays were translated by Christina Brocks into English. She evidently translated the English essays found in the Oxford collection into German. The German collection is just as impressive as the English one and it is considerably less expensive. See Rossol und Ziemann 2021.
- 2 Unless otherwise specified, all citations in this section refer to Dreier 2021.
- 3 The term “change” is given by Dreier in English and he has chosen to emphasize it by putting it in italics.
- 4 Dreier chose 20 of Thoma’s works, the first one is from 1910 while the last one is from 1953. The title indicates the legal state and fundamental rights, but Thoma’s central theme was democracy. Dreier 2008. Thoma wrote nine essays for the *Handbuch des Deutschen Staatsrechts*, the encyclopedia that Thoma and Anschütz jointly edited. The first volume appeared in 1930 and the second one in 1932. The first volume contains 60 essays and the second one 57; the combined pages amount to almost 1500. The entries may be 90 years old but many are still well-worth reading. These include not only those by Anschütz and Thoma, but the ones by Kelsen and Carl Schmitt. Anschütz und Thoma, 1930/1932. Dreier regards this work as monumental work of high quality and considers it to have continuing significance. Jestaedt and Paulson 2019: 248.

- 5 Unless otherwise specified, all citations refer to Schuett 2021.
- 6 Remarkably, Schuett (2021, pp. 6, 34) frequently rejects the idea that his work is an intellectual biography because in many respects it is. Granted it is not a complete biography and Schuett does not cover all of Kelsen's ideas. However, it is a genuinely powerful account of Kelsen as a man of ideas and convictions and as such is an intellectual biography.
- 7 Unless otherwise specified, all citations in this section refer to Lagi 2021.
- 8 Unless otherwise specified, all citations in this section refer to Tönnies 2021 [1931].
- 9 The essay "Ferdinand Tönnies: Utopian Visionary?" is found in *Sociological Theory*, volume 13, number 1, pages 58-65, and I was that young author. At the time, I had no idea that the invitation by the editor, Alan Sica, to write an essay on Tönnies would be the beginning of an almost thirty-year friendship and that that submission would lay the groundwork for me to become an internationally recognized Tönnies expert. Somehow, I think that Tönnies himself would not have been at all surprised by either matter—he had a remarkable understanding about human relationships and the chances for academic and scholarly success.
- 10 Unless otherwise specified, all citations in this section refer to Hacke 2021.