

IVR German Section Conference 2018
27–29 September 2018, Freiburg, Germany

Hans Kelsen's Pure Theory of Law: Conceptions and Misconceptions

Call for Papers

The German Section of the International Association for the Philosophy of Law and Social Philosophy, in collaboration with the Faculty of Law of the University of Freiburg, will hold its 2018 biennial conference in Freiburg. Up to 24 contributions to six panels will be selected by means of a call for papers.

Conference Theme

Hans Kelsen's Pure Theory of Law provides a particular approach to law and normativity. It offers a grammar and a vocabulary that helps us identify some legal concepts and problems as essential and to dismiss others as alien to the main tasks of legal scholarship. Far more fundamentally, it also is and claims a theory of what legal scholarship is, can or should be. This approach to what it means to engage in scholarship is often implicit and seldom discussed in literature – this lack of sustained attention means that it is also one of the more problematic parts of the Pure Theory inviting critique and dissent.

The Pure Theory of Law has not lost its potential to spark interest and controversy in the more than one hundred years since Kelsen first expounded it. However, it also still generates, as it always has, a fair amount of perplexity but also of misinterpretation. The international scholarly community has long discussed and continues to discuss some writings and some notions, yet large tracts of his work and many strands of argument are relatively unknown. In addition, while Kelsen's own writings are frequently read and discussed, this is not the case for other members of the Vienna School of Jurisprudence. The conference wants to broaden the debate on the Pure Theory between legal cultures by also including some of its lesser discussed aspects.

The conference thus attempts to bridge legal-cultural, linguistic and professional divides and will explore the relevance of the Pure Theory's arguments today. It will go beyond the exegesis of Kelsen's *oeuvre* and aims at open conversations about the merits and flaws of the Pure Theory of Law in confrontation and communication with fundamentally diverging views. Which of its conceptions are still helpful today, which of its misconceptions – or misconceptions about it – are to be avoided?

Topics

The organisers invite the submission of abstracts for six panels. Abstracts applying the Pure Theory's ideas to particular areas of black-letter law, reflecting on the problems faced by doctrinal scholarship and practitioners, are particularly encouraged, for example:

- **Private law:** legal personality, subjects of law; subjective rights and the autonomy of the subjects of private law (*Privatautonomie*); the distinctions and connections between material and procedural law
- **Criminal law:** exceptions/defences; causality and attribution
- **Public and international law:** constitutional avoidance (*verfassungskonforme Auslegung*); multi-level constitutionalism; private and public law analogies in international law; general principles of law; cosmopolitan constitutionalism: international political theory and international legal theory

The organisers also encourage submissions of other papers staying broadly within the conference theme. Potential topics for discussion include:

- **Philosophical foundations of the Pure Theory of Law:** making the philosophical *modus operandi* plausible for jurists and legal theory inviting for philosophers; confronting the Pure Theory of Law's implicit theory of legal scholarship (*Rechtswissenschaftstheorie*) with today's philosophy of science; anti-essentialism and the Pure Theory's criticism of legal dualisms
- **The normative access to the world:** about the possibility of norms; the Pure Theory of Law's concept of normativity confronted with alternative candidates; norms as reasons for action?; law and practical reason; the concept of 'positive law'
- **The structure and dynamic operation of the legal order (*Stufenbau*):** theoretical bases and other conceptions of legal ordering; empowerment norms; the unity of the legal system; Social Systems Theory as new Pure Theory of Law?; factuality in norm-creation; gaps in the law; conflict of norms; derogation; logic in law; the problem of erroneous decisions; *Fehlerkalkül*; tacit alternative clause; defeasibility; *Rechtskraft*
- **The Pure Theory of Law's theory of interpretation and modern approaches:** corpus linguistics; linguistic philosophy; hermeneutics
- **Judge-made law:** conceptualising law creation by legal officials; precedential authority
- **The sound of silence? Topics which the Pure Theory does not (or cannot) address**
- **Kelsen's *Schüler* and the next generations of Kelsen scholars**

Invited Speakers

- **John Gardner (Oxford):** Keynote Address
- **Robert Alexy (Kiel), Stanley L Paulson (St Louis, MO/Kiel):** The Philosophical Foundations of the Pure Theory of Law
- **Christoph Kletzer (London), Lena Foljanty (Frankfurt):** The Structure of the Legal Order
- **Alexander Somek (Vienna), DA Jeremy Telman (Toledo, IN):** Entanglements and Transculturality ('Lost in Translation')

Selection Procedure

Those interested in participating should submit an abstract, in English or German, of 800 words maximum, summarising the ideas they propose to develop for presentation. Successful applicants will be expected to deliver a talk of no more than fifteen minutes. Each of the six panels will include a general discussion of the papers of approximately 45 minutes. Papers that have been accepted for publication elsewhere are in principle eligible for consideration, provided that they will not appear in print before the conference. The organisers have secured funding to cover a significant part of the travel and accommodation costs for all speakers. However, participants will have to bear a small portion of costs themselves.

Abstract submissions should be sent to jvrtagung2018@jura.uni-freiburg.de by **20 October 2017**, together with the applicant's contact details, a short *curriculum vitae* and an indication whether they intend to present the paper in English or German. Questions regarding this call for papers may be directed to the same address.