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COMPROMISED TRUTH: POLITICAL AND PHILOSOPHICAL RELATIVISM IN HANS KELSEN'S *FOUNDATIONS OF DEMOCRACY**

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LA VERDAD COMPROMETIDA: EL RELATIVISMO POLÍTICO Y FILOSÓFICO EN *LOS FUNDAMENTOS DE LA DEMOCRACIA DE HANS KELSEN*

Abstract

This essay briefly investigates the relationship between truth and democracy in Hans Kelsen's political philosophy. Especially in *The Essence and Value of Democracy* (1920–1929) and *Foundations of Democracy* (1955–1956), Kelsen discusses the connection between democratic pluralism and epistemological and moral relativism, arguing that one cannot be given without the other. In the essay, I analyze Kelsen's argument, focusing on the critical and problematic implications of the absolute relativism he defends.

Keywords

democracy; relativism; value; politics

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Resumen

El objetivo de este ensayo es investigar en breve la relación entre verdad y democracia en la filosofía política de Hans Kelsen. Específicamente en sus obras *Esencia y valor de la democracia* (1920-1929) y *Los fundamentos de la democracia* (1955-1956), Kelsen estudia la conexión entre el pluralismo democrático y el relativismo epistemológico y moral, argumentando que el uno no puede darse sin el otro. En el ensayo analizo el argumento de Kelsen, pero me enfoco en las implicaciones críticas y problemáticas del relativismo absoluto que defiende.

Palabras clave

democracia; relativismo; valor; política

1. Introduction

After a long season during which attention to Hans Kelsen's philosophy was almost entirely reserved for his jusphilosophical reflection, the perspective on this fundamental author for twentieth-century thought has profoundly changed in recent years. Scholar debate has acknowledged the importance of his philosophical-political reflection (Baume, 2007; Lagi, 2021; Ragazzoni, 2016; Scalone, 2008). We could say we are witnessing a *Kelsen-Renaissance*, thanks to which Kelsen enters fully into the pantheon of the classics of political philosophy.

The purpose of this essay is not to broadly outline his political thinking, which I believe is now largely captured by the debate. The aim is far more circumscribed and precise and consists in considering the function of the problem of truth within Kelsen's philosophical-political perspective. In particular, I will focus on some issues that emerge from the essay *Foundations of Democracy*.

As we know, politics and truth are old accomplices. Plato placed the question of truth at the center of the political *logos*, and for a long time, at least until Machiavelli and Hobbes, it was held that there was no politics worthy of the name outside of truth. However, the changed social scenario makes it necessary to rethink the politics-truth nexus. Today, circumscribing even more the issue, we might reconsider it as the democracy-truth nexus. How are these two elements articulated in light of today's mass media and social networks that tend to produce a "*bubble democracy*" (Palano, 2020)? How do democratic politics and truth come together in an era dominated by so-called "post-truth" (Ferraris, 2017)?

These questions are clearly of undeniable urgency, not only because we live in an age of endless truth manipulation, to the point of radically dismantling the chance to distinguish between true and false, as in the deep-fake phenomenon (Appel & Prietzel, 2022), but also because as a flipside of this risk of living in a world of lies, theoretical perspectives on truth that are naïve to say the least have flourished. Within this framework, many have unwisely assigned to twentieth-century philosophical perspectives that aimed to undermine the rigidity of truth, the blame for the spread of populism, authoritarianism, and illiberal regimes when not outright dictatorships. Within this often very modest conceptual framework, Hans Kelsen's political philosophy can provide useful theoretical tools for rethinking, in a certainly updated way, the relationship between truth and democracy.

Political compromise and relativism

For Hans Kelsen, the purpose of democracy is the maximization of individual freedom as “autonomy.” By autonomy, Kelsen means each person’s obedience to self-imposed rules. Only through this interdependence is “the agony of heteronomy” tolerable (Kelsen, 2013, p. 27), which means the acceptance of domination by ontologically equal individuals. However, decisive questions remain open: How is it possible to make the realization of the instinct of freedom and the acceptance of domination compatible? And, above all, how is domination justifiable in a highly specialized society in which political representation and, thus, mediation dominate? Kelsen’s answer is well known: What makes domination justifiable within a democratic society is compromise, which, as Adam Przeworski has written with ironic correctness, is “Kelsen’s favorite word about democracy” (Przeworski, 2022). This is not the place to go through all the stages of Kelsen’s theory of compromise (Baume, 2017; Sferrazza Papa, 2022, pp. 148–159), nor is it the place to analyze the merits and flaws of the idea of compromise itself (Bistagnino, 2018; Fumurescu, 2014). Suffice it to point out that Kelsen transforms the Rousseauian general will into a “directive general will,” that is, into the mediation of different instances and expectations (Baumert, 2014). Compromise is a midpoint, not so much of full agreement as of least possible disagreement. Compromise, within Kelsen’s sociology of democracy, is the abandonment of what separates in favor of what unites. And it would be a mistake to regard Kelsen’s theory of political compromise as pure utopia or to assume that it is based on a positive anthropology: The necessity of compromise arises, conversely, from Kelsen’s strong political realism, for which society is constantly shot through with conflict, and compromise is the only way to keep social conflict from exploding.

But the pragmatic necessity of compromise also rests on a precise theory of knowledge, as well as on a view of truth that we might call, using a term made famous by Gianni Vattimo, “weak.” If compromise is the practical act proper to the concertation of interests in democratic society, it finds a theoretical foundation in a conception of absolute truth as foreign to human cognitive procedures. This cross-reference between democracy and philosophy as a theory of truth is exactly what makes Kelsen’s political speculation philosophically relevant and, for this reason, open to critical consideration too.

Kelsen devotes the final part of *Vom Wesen und Wert der Demokratie*, first published in 1920 and then in an enlarged edition in 1929, to demonstrating this articulation between democratic politics and truth theory. In a similar form, the same arguments will be taken up in other places in his work and, above all, in a broader manner in *Foundations of Democracy*, an extensive essay published between 1955 and 1956 in the journal

“Ethics,” whose stated purpose is “to find out the connection which exists between politics and philosophy” (Kelsen, 1955, p. 14).

No doubt, Kelsen is aware that this connection does not arise as a law of fact but as a political necessity. Like everything that does not belong to nature, it falls within the realm of *Sollen* and not *Sein*. There can indeed be considerable distortions between an epistemological conviction and a political belief:

just because it is within the soul of the empirical human being and not within a sphere of pure reason that politics and philosophy originate, we must not expect that a definite political view will always and everywhere be combined with the philosophical system which logically corresponds to it. (Kelsen, 1955, p. 14)

However, it is possible to draw a rough equivalence between the two fields of human existence and demonstrate the existence of

an inner relationship between the antagonism of autocracy and democracy, on the one hand, and philosophical absolutism and relativism, on the other, that autocracy as political absolutism is co-ordinated with philosophical absolutism and democracy as political relativism with philosophical relativism. (Kelsen, 1955, p. 14)

Through his reassessment of the relativistic perspective, Kelsen shows that he is fully and consciously immersed in the scientific-cultural season that marked the twentieth century, a historical phase innervated by the “general crisis of the logical-epistemological foundations of traditional physics” (Cacciari, 1976, p. 29). Innovations in the field of theoretical physics, in particular Albert Einstein’s discovery of relativity (Tilgher, 1923, pp. 21–48), as well as the suspicion about the stability and integrity of consciousness insinuated by Freud’s work (Lijoi & Trincia, 2015; Losano, 1977), had demolished the idea of the objective stability of the world and the self. Having collapsed the certainties in a specific and objective representation of reality, everything becomes relative. Inevitably, this upheaval had influenced Kelsen’s thinking from the beginning, who had to strive to find reasons for reasonable politics that could not, however, be based on any absolute and indubitable truth.

The substance of democracy

According to Kelsen, democracy essentially has to do with the procedural aspect of choosing between competing options. However, if democracy is declined on the procedure, i.e.,

on its formal side, what remains problematic is the question about its substantive content. The problem can also be formulated as follows: What *should* be the content of democratic laws? If it is true that the People—which for Kelsen remains a theological-political fiction, a false concept—must obey laws that they have given themselves, will this imply that it is the People themselves who know what is Good for society and that, therefore, legislative procedures must be entirely handled by the People? This hypothesis, according to Kelsen, would invest the People with a kind of divine mandate and unmotivatedly assign to them the ability to know the Truth and directly experience the Good:

In fact, various apologists for the idea of popular sovereignty have made similar claims. Even Rousseau is not far from doing so, when he justifies the binding nature of majority decision, i.e., the authority of the majority, on the basis that the minority has erred regarding the true content of the *volonté générale*. (Kelsen, 2013, p. 102)

Similarly, Kelsen repeats the same argument in *Foundations*:

it is easy to show that there is no such things as an objectively ascertainable common good, that the question as to what is the common good can be answered only by subjective value judgments which may differ essentially from each other; and that even if it existed, the average man, and hence the people, would hardly be able to know it. (Kelsen, 1955, p. 2)

The Kelsenian solution to this problem lies in the recognition of the epistemological equivalent of political compromise. Indeed, only in a fully nihilistic horizon, that is, one in which ultimate truth is considered either nonexistent or unattainable, can compromise rise to the status of a practical principle of political reason. In an even more radical form, Kelsen argues that only in such a nihilist horizon is the very possibility of democratic government conceivable: “The [very] assumption that knowledge of absolute truth and insight into absolute values are possible confronts democracy with a hopeless situation” (Kelsen, 2013, p. 101). The idea, in short, is that the democratic form is not weakened but strengthened by the very disappearance of truth.

In this way, Kelsen shows himself to be part of a “postmodern” strand, for which truth can no longer be grounded in a definite “texture” of Being but is rather the continuous negotiation between different points of view. Indeed, “this is the big question: Whether knowledge of absolute truth and insight into absolute values are actually

possible” (Kelsen, 2013, p. 102). In line with the outcomes of the modern nominalist tradition, Kelsen rejects for both theoretical and political reasons the existence of such knowledge of ultimate truth, taking this thesis to its extreme consequences, as Francesco Mancuso pointed out: “If democracy is the culmination of the modern state, it cannot but be intrinsically incompatible with any form of totalizing value-truth” (Mancuso, 2019, p. 313).

Some critical issues become immediately visible. In the first instance, the Kelsenian democratic system appears indistinguishable from autocratic systems by its content; only the fact that democratic procedures are managed through rationalization processes separates them. Democracy, in fact, is not the absence of domination but rather its rationalization in a procedural system consistent with the division of labor proper to highly developed societies. From the point of view of substantive content, such a democracy involves, on the one hand, continuously falsifiable truths and, on the other hand, an ethical attitude of openness to the truths of others, namely,

the viewpoint that only relative truths and values are accessible to human cognition and that, consequently, every truth and every value must—just as the human individual who finds them—be prepared to abdicate its position and make room for others. (Kelsen, 2013, p. 103)

Philosophically speaking, such a conception

leads to a critical or positivist worldview, where the latter is understood as that philosophical and scientific school of thought, which takes the positive—i.e., that which is given and perceptible—and experience—changeable and constantly in flux—as its starting point. (Kelsen, 2013, p. 103)

At this point, the thesis that welds politics and epistemology can be made explicit: “the idea of democracy [...] presupposes relativism as its worldview” (Kelsen, 2013, p. 103). If there is to be democracy, there can be no absolute truth; if there can be no absolute truth, the most appropriate cognitive form consists of both epistemic and moral relativism.

Democracy and philosophy

The relationship between politics and truth is expressed in Kelsen as the relationship between politics and philosophy, that is, between a way of organizing power and a specific

worldview. Absolute truth conspires against democracy, which can thrive only in the pluralism of truths that recognize themselves as relative, precarious, contingent, and fallible. In both camps, the same rationality of domination is extruded in the sense that philosophical absolutism, which “may very well be characterized as epistemological totalitarianism” (Kelsen, 1955, p. 26), prescribes the domination of the object over the subject just as political absolutism provides for the domination of the sovereign over subjects who do not participate in the legislative moment. As in Kantian correlationism, a dialectic is established in Kelsen whereby the subject, within transcendental laws and schematics that determine its possibilities, is a book to self-determination in the cognitive process. The *silhouette* of cognitive freedom conforms to the political one and vice versa. Both, in fact, share the possibility of self-determination despite limitations. It is this oxymoron that simultaneously makes the exercise of possibility possible and ensures that it does not degenerate into absolutist solipsism: “Freedom of the knowing subject —not the metaphysical freedom of will but freedom of cognition in the sense of self-determination— is a fundamental prerequisite of the relativistic theory of knowledge” (Kelsen, 1955, p. 17).

In this way, the difficulty encountered by any relativism, i.e., the acceptance of a cognitive pluralism in which one runs the risk of having to accept the truth of those who are strong enough to impose it, is overcome by recourse to political categories, and this shows the very close connection for Kelsen between political reflection and the doctrine of knowledge. Indeed, guaranteeing the impossibility of the prevalence of one point of view over others is the recognition of the equality of individuals, as it were the principle, together with the one of freedom, on which the possibility of democracy is based:

taking into consideration —as true relativism— the mutual relations among the various subjects of knowledge, this theory compensates for its inability to secure the objective existence of the one and same world for all subjects by the assumption that the individuals, as subjects of knowledge, are equal. (Kelsen, 1955, pp. 17, 18)

This implies that freedom —both in a political and gnoseological sense— is such only in the reciprocal limitation dictated by the freedoms of others, whereby “the subject of cognition is not absolutely, he is only relatively, free, free under the laws of rational cognition; and this freedom is not incompatible with the equality of all the subjects of cognition” (Kelsen, 1955, p. 18). This is an extraordinary scientific achievement of Kelsen’s political theory, which restores its full philosophical depth: The limitation of political freedom, which thus makes it exercisable in empirical contexts, turns out to have the same structure as the freedom of the conscious subject; so,

freedom and equality turn out to be fundamental conditions of both real democracy and cognitive relativism, and from this thesis comes the idea of their mutual reinforcement.

Democratic personality and the limits of Kelsen's theory

Through the thesis of the constant parallelism between epistemology and politics, Kelsen identifies not only the transcendental structures of democracy but also goes so far as to find them in the interiority of the political subject, thus drawing a true profile of the democratic personality: "From a psychological point of view the synthesis of freedom and equality, the essential characteristic of democracy, means that the individual, the ego, wants freedom not only for himself but also for the others, for the *tu*" (Kelsen, 1955, p. 25). The democratic personality is configured as renunciatory: it lays down the claim to the absoluteness and sovereignty of its own freedom in the name of freedom *tout court*, that is, the very possibility that freedom can be given. Recognizing that freedom and equality must necessarily manifest themselves simultaneously, the democratic personality accepts being momentarily not politically free (i.e., it accepts as legitimate the gap between its own will and the *volonté générale*) because, in this way, it maintains the possibility that it can be so in the more or less immediate future:

only if the individual considers the undeniable differences which exist between himself and the others as not essential, only if the ego- or self-consciousness is reduced to some extent by the feeling to be equal with others, can the ego honor the claim of the *tu* to be also an ego. (Kelsen, 1955, p. 26)

To realize itself empirically, in short, democracy needs a relativist philosophy that ensures its pluralism and a dialectic of recognition that innervates the moral fabric of the social body.

From what has been said so far, it is clear to me that in Kelsen, the correspondence of epistemology and politics acts in the form of a reasonable confirmation of the preferability of the democratic option. This is because democracy makes possible the empirical realization of the innate drive for freedom and succeeds in mediating this freedom with the heteronomy of social life. However, the correspondence between the two fields is, in many places, problematic and exposed to criticism. While it is true that Kelsen's political relativism aims to preserve a scientific framework, in the sense that science proceeds by proving hypotheses and refuting provisional theories, nevertheless, the two fields do not overlap point by point. A scientific theory, in fact, does not have the same falsifiability

as a worldview, which involves values, beliefs, and moral expectations that subjects are often reluctant to question. A worldview is not falsified like a scientific theory can be: There are no paradigmatic anomalies (in Kuhn's sense) that undermine it once and for all. Moreover, a worldview does not bear the same relationship to truth understood in the broadest possible sense, that is, as a reflection of a state of affairs in the world. The falsifiability to which a scientific theory lends itself is not the sum of reasonable arguments that lead to making one worldview preferable to another.

Kelsen, in short, seems to devalue the existential bearing of worldviews, whereby even good reasons fail to exert an effective compulsion on the individual. To avoid introjecting an ideological view of politics, Kelsen ends up underestimating the power of ideology. Kelsen's naive relativism ignores the contradictions and antinomies of the concrete experience of social individuals.

Moreover, Kelsen fails to account for the progress of different sensibilities that determine one historical moment versus another. The emancipatory process that Kantianly consolidates into legal structures and the protection and preservation of certain rights means that certain positions and worldviews are seen as repugnant. Value relativism has its effective emancipatory scope only when values compatible with maintaining the social structure are at stake. Democracy, in order to safeguard itself empirically, must put values contrary to it out of play: It must, in short, activate its own immune system.

Kelsen's unlimited relativism seems to run into a threefold obstacle. First, it does not contemplate a *Verwandlung* of relativism itself, that is, an empirical limitation of it. This, moreover, contradicts the entire structure of Kelsenian political philosophy, which aims to demonstrate the need for a limitation of the Idea so that it can be applied concretely. Second, it unduly transports the plane of the falsifiability of a scientific theory into that of the preferability of a *Weltanschauung*. Third, where applied to the extreme, it carries the empirical risk of destroying the democratic form itself by a defect of the immune system.

Conclusions

Kelsen's political philosophy has the merit of highlighting the nexus between democracy and truth in an age when both are entering a crisis. Nonetheless, Kelsen seems to get entangled in a typical twentieth-century contradiction, which, by the way, is once again haughtily rising in an age of "post-truth"—a historical phase marked by what Alessandro Ferrara has acutely called "hyperpluralism" (Ferrara,

2014). On the one hand, a plural democracy necessarily seems to have to be based on epistemological and moral relativism (the latter, however, with the condition that the effects of a moral belief are not incompatible with the values traditionally accepted and sedimented in positive law). Relativism, in fact, does not impose truth since the truth imposed can only be the extrinsic expression of an authority not necessarily recognized as legitimate. On the other hand, the absence of grounding risks putting the reasonableness of different opinions back not to the free play of intellects in dialogue but to an equally unfounded force. I believe that Kelsen fails to resolve this contradiction, which remains open and is handed over to us as a task. He himself recognizes that the challenge of philosophical relativism and its political translation is to make coexist values that, strictly speaking, cannot coexist: “That value judgments have only relative validity —one of the basic principles of philosophical relativism— implies that opposite value judgments are neither logically nor morally excluded” (Kelsen, 1955, p. 38). The enterprise seems, for all intents and purposes, hopeless. But if we keep in mind the historical period in which Kelsen attempted it, the darkest years of the last century, the years of Nazi delirium, we can understand his distrust of any totalitarianism, be it even that of truth (Jacobson & Schlink, 2000).

Moreover, it is noteworthy that Kelsen in *Foundations* emphasizes that “modern democracy cannot be separated from political liberalism” (Kelsen, 1955, p. 27). This brief passage is extremely relevant for properly understanding Kelsen’s proposal. It means that for Kelsen, there is a minimum content of historical democratic laws since he speaks about modern democracy and not democracy in a general and vague meaning. This minimum content, namely the substance of modern democracy, could be expressed in the form of essential liberal rights that constitute the classic core of negative liberties (Berlin, 2002, pp. 166–217): “Freedom of religion, freedom of opinion and press, belong to the essence of democracy and above all belongs freedom of science, based on the belief in the possibility of objective cognition” (Kelsen, 1955, p. 28).

It remains to be decided whether this substantive concession can be derived from the idea of a purely formal democracy or is external to it. It seems to me that the formalist requirement of Kelsen’s democratic theory precludes substantive content. Strictly speaking, following Kelsen’s argument, even minimal liberal rights should be regarded as fallible and revocable. Kelsen, in short, contradicts himself. However, it is possible to integrate Kelsen’s political proposal with a perspective that sees positive rights as the sedimentation of historical processes. To free procedures from formalism is to think of them historically as part of processes of collective emancipation.

The democratic procedures provided by advanced constitutional systems, which Kelsen looked upon with extreme favor, are the sedimentation of historical rights achievements, not neutral rules that reject the idea of a common interest of all participants in the democratic game. It is possible, in short, to hold form and content together as long as we see the form as sedimented historical content. This perspective, which harks back to the most up-to-date forms of neo-constitutionalism, seems to me to be the horizon within which a plural democracy must move, both open to competing moral values and capable of defending itself against antidemocratic positions eager to cause its collapse.

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