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Hans Kelsen (1881-1973)

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In Memoriam

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The news of Hans Kelsen's death on April 19, 1973, has grieved all who knew him, or knew his work. A giant of the law has left us. For half a century, his Pure Theory of law has been a focal point of debate for legal philosophers throughout the world. Whether one agreed or disagreed with Kelsen's theories, all would agree with Dean Roscoe Pound's assessment of Hans Kelsen as "unquestionably the leading jurist of the time."

Professor Kelsen authored hundreds of books and articles, many of them translated into more than two dozen languages. His major works deal with a conceptual analysis of the relationship between law and the state, culminating, in 1945, in his General Theory of Law and State, and, in 1960, in the second edition of Reine Rechtslehre, greatly enlarged and revised, the English translation of which appeared in 1967 under the title The Pure Theory of Law. While his most creative contributions lie in the field of legal theory, his range of interests was broad, particularly in his later career when he explored the philosophical and historical evolution both of great political thinkers and of fundamental political ideas and systems.

The California Law Review published an issue in tribute to Hans Kelsen in May, 1971, on the occasion of his ninetieth birthday. Therein scholars and friends have attempted to highlight for English-speaking people the intellectual importance of Professor Kelsen, many of whose works have not yet been translated into English. A bibliography of those works which have been translated, derived from the complete bibliography in R.A. Métall's Hans Kelsen (1969), is contained in the tribute issue.

The Editorial Board of the California Law Review could do nothing more appropriate to honor Professor Kelsen than to commend his
Hans Kelsen, an internationally famous jurist and authority on international law, joined the Department of Political Science as a faculty member in 1942. He served as Professor of Political Science until his formal retirement in 1952 at which time he became a Professor Emeritus. He was once described, with good reason, as "probably the greatest scholar to be affiliated" with the Political Science Department at Berkeley. He indeed stands out for his contributions to the Department, the University, and the broader worldwide scholarly and political community. He was the author of numerous books which have been translated into many languages and has been honored by professional societies, scientific academies and universities throughout the world.

Professor Kelsen was an international figure of great stature before coming to Berkeley. He had attended the Universities of Heidelberg, Berlin, and then Vienna where he received his LL.D. degree. For many years he remained affiliated with the University of Vienna as a professor of public law and jurisprudence and, for several years, as Dean of the Faculty of Law. It was during this period that he was the legal advisor to the Austrian government, wrote the draft of the Austrian Democratic Constitution in 1920, and was a member and permanent advisor of the Supreme Constitutional Court of Austria. In 1930, he was named a professor of international law and jurisprudence at the University of Cologne where he also later was Dean of the Faculty of Law. With the rise of Hitler, Hans Kelsen became one of the first of the foremost scholars to be forced to leave Germany. His subsequent path eventually led him to Berkeley after brief periods at the Graduate Institute of International Studies in Geneva and at Harvard as the Oliver Wendell Holmes Lecturer in Law.
During his tenure at Berkeley, Professor Kelsen attracted many new students into a very successful program in international law. He was much in demand as a lecturer both in this country and abroad. Many organizations, including the University of California, have formally recognized Kelsen's contributions to jurisprudence. He has received a number of awards including the Certificate of Merit of the American Society of International Law, a number of honorary degrees from leading institutions here and abroad, and the Feltrinelli International Prize awarded by the Academia Nationale Dei Lincei of Rome. The prestige of this latter honor has been characterized as rivaling that of the Nobel Prize within the academic world.

Few careers in the academic world and fewer still in the field of international law can approach the distinction of Professor Kelsen's long record of service and contribution. Even after his formal retirement from the Berkeley faculty in 1952, he taught in Geneva for one year and at the Naval War College in Newport for another. As a continuing tribute to his service, the Hans Kelsen Graduate Social Science Library was established at Berkeley in 1964, and, in 1971, the Austrian Government established the Hans Kelsen Foundation in Vienna with the Chancellor of Austria serving as the temporary Chairman.

The entire academic community has suffered a great loss with the passing of Professor Emeritus Hans Kelsen. He was a scholar of unparalleled eminence. The faculty of the Political Science Department at Berkeley joins the legion of scholars and friends who extend their sympathy to his family at this time. It may be of consolation in their sorrow to remember that Hans Kelsen lived a full and very productive life as a humane man. He contributed much to those whose path he touched and, in his efforts, he made the world a better place in which to live.

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Hans Kelsen was a gentle, humble, generous man—yet powerful, confident and disciplined in formulating and presenting the philosophical views to which he devoted his life. For these latter traits he was recognized throughout the world, but I am grateful that we at Berkeley were privileged to know him for the former qualities as well.

Even deep into his retirement years, when his hearing was failing, I remember his visits to Boalt Hall to lecture in others' classes and to meet informally with our students. Particularly I recall the celebration of his ninetieth birthday and his slightly earlier appearance before an overflow crowd of students, faculty and others in our largest class-
room to defend his ideas in strenuous debate with H.L.A. Hart. It always struck me that, although conscious of the importance of his theories, Kelsen never seemed to accept his own importance. To the very end he remained refreshingly, disarmingly surprised and appreciative whenever others wished to hear or to honor him. The human qualities are worth recording here, for such personal memories of this great man will last only as long as the lives he touched, in dramatic contrast to the immortality of his work.

His scholarly achievements have been noted elsewhere and often, especially in Latin America and in his native Europe from which he was driven by Nazism. A symposium issue dedicated to him was published in this Review (vol. 59, no. 3) two years before his death, the Editors noting that his work in legal philosophy "must be understood by any who aspire to know the meaning and nature of Law." I shall only add here that his work has been embraced enthusiastically by many, attacked vigorously by others, but can be taken lightly by none. Our literature and thought are vastly richer because of Hans Kelsen.

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