Practising International Thought as a Critique of Populism: Realist Accounts for a Democratic Political

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Abstract

Starting the third decade of the twenty-first century feels like a hundred years before: a virus has led to a pandemic, economies are struggling, unemployment is rising, and democracies are under threat by populist demagogues. In contrast to the 1920s, however, particularly countries with long democratic traditions are threatened by populism today. To identify potential pathways to protect democracies, this paper returns to the 1920s by focusing with Hans Kelsen and Hans Morgenthau on scholars who had first-hand experiences with populism in Europe. While both pursued contrasting approaches to deal with their experiences, they took a similar stance to anti-democratic forces. A reengagement with their thought helps to sensitise current scholarship to understand why such demagogues are resurfacing again.

Keywords

Democracy, Hans Kelsen, Hans Morgenthau, Pluralism, Populism, Realism

Internationales Politisches Denken als Kritik am Populismus. Realismus, Demokratie und das Politische

Zusammenfassung

Der Beginn der dritten Dekade des 21. Jahrhunderts fühlt sich wie vor hundert Jahren an: ein Virus hat eine Pandemie verursacht, die Weltwirtschaft hat einen Einbruch erlitten, die Arbeitslosigkeit steigt und Demokratien sind in Gefahr von Populisten unterwandert zu werden. Im Gegensatz zu den 1920ern sind heute jedoch vor allem Staaten mit einer langen demokratischen Tradition von Populisten bedroht. Um Wege aufzuzeigen, wie sich Demokratien vor Populismus schützen können, beschäftigt sich dieser Artikel mit dem Wirken von Hans Kelsen und Hans Morgenthau; zwei Intellektuelle, deren Werk von eigenen Erfahrungen mit Populismus in der Zwischenkriegszeit geprägt wurde. Obwohl Kelsen und Morgenthau gegensätzliche Ansätze aus ihren Erfahrungen entwickelten, waren sie doch in ihrer Ablehnung anti-demokratischer Kräfte in der Weimarer Republik vereint. Eine Wiederbeschäftigung mit ihrem Denken lohnt sich daher für gegenwärtige Politikwissenschaft, da sich aus dem Werk Kelsens und Morgenthaus Rückschlüsse über das Wiedererstarken von populistischen Bewegungen heutzutage gewinnen lassen.

Schlüsselwörter

Demokratie, Hans Kelsen, Hans Morgenthau, Pluralismus, Populismus, Realismus

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1. Introduction

The Covid-19 pandemic seems to have stalled the global rise of populism. Donald Trump lost the American presidential elections, the AfD in Germany and DVV in the Netherlands could not repeat previous election successes, and Jair Bolsonaro faces an increasing backlash from Brazilians due to his failure to curb the pandemic. However, it would be delusional to believe that the populist surge is over, especially with the rise of nationalist sentiments (Woods et al. 2020). Right wing populism has been successful in many Western democracies in recent decades and Covid-19 even offers new opportunities for demagogues around the world. Indeed, it is the success of the populist right that has led some commentators to call "for a left populism" (Mouffe 2018). Hence, populism is not only seen as a malaise from which democracies suffer in the twenty-first century but also as its potential remedy. As Wolfgang Palaver (2013, 131; also Hann 2017) asked: "populism — challenge or useful corrective for contemporary democracy?"

The aim of this paper is to argue for a cautious approach to conceiving populism as a democratic corrective. Regardless of its political inclinations, populism is an existential threat to democracy. While there is a substantial debate on what constitutes populism (Müller 2016; Stengel/MacDonald/Nabers 2019; Urbinati 2019a), this paper starts from its minimal consensus in which populism emerges as a political movement that is anti-elitist in the sense that it pitches one group of people within a society against another one. Populism is also anti-pluralist, meaning that these movements claim to speak for one particular group of people. Often represented by a 'charismatic' leader, populist movements aim to silence dissenting voices. This may happen through direct forms of violence but also structurally, for example, through the instigation of "spirals of silence" (Noelle-Neumann 1993) on social media. With these minimal characteristics, populism can be characterised as a "thin-centered ideology" that has to be taken seriously as a potential steppingstone for "thick-centered ideology[ies]" of which authoritarianism and totalitarianism are examples (Mudde/Rovira Kaltwasser 2017, 6). In other words, as Nadia Urbinati (2019a, 112) warns, populism "can stretch constitutional democracy toward its extreme borders and open the door to authoritarian solutions and even dictatorship".

To further substantiate this argument and understand the populist threat better, this paper engages with two scholars who at first seem an unlikely choice, as they never used the term 'populism' in their writings: Hans Kelsen and Hans Morgenthau. Having most likely emerged in the wake of Russian and American democratisation processes in the nineteenth century (Mudde/Rovira Kaltwasser 2017, 21; Urbinati 2019a,

112), the term 'populism' was already in use during their lifetime, but a Google Ngram search reveals that it only took off in the late 1960s, shortly before Kelsen's death and Morgenthau's retirement from the University of Chicago. However, both were part of a generation of scholars that had to observe the rise of fascist movements in interwar Central Europe that used populist strategies to gradually hollow out democracies, eventually turning them into totalitarian states. Being forced to emigrate to save their lives, they became "political scholar[s]" (Söllner 2018). Their work tried to come to terms with these experiences and was intended by their authors to serve as a corrective to help protect post-war democracies from the same fate which proved fatal to the Weimar Republic (Bell 2008; Greenberg 2015; Jütersonke 2010; Rösch 2015; Rohde/Troy 2015). It therefore makes sense to return to Kelsen, Morgenthau and their time, as their work and political activism reminds us, in the twenty-first century, of the threat that *any* populist movement constitutes for democracy. Democracies have to remain vigilant against these movements and protect themselves without renouncing their democratic freedoms because to think "that fascism in one guise or another is dead and gone ought to think again", as Judith Shklar remarked in 1989 (in Scheuerman 2021, 1), at a time when others spoke of 'the end of history'.

Certainly, the situation today is not the same as it was in the 1920s and 1930s and we must be cautious in making comparisons and drawing conclusions. However, in the spirit of recent re-readings of these mid-twentieth century scholars (most recently, Reichwein/Rösch 2021; Schuett 2021), contextualising their work within their everyday experiences, enables us to distil elements that were central to their understanding of democracy and implicitly therefore populism upon which International Relations (IR) scholarship can reflect to learn about twenty-first century populism. After all, following Barry Buzan and George Lawson (2015), political developments that have been instigated in the nineteenth century and carried over into the twentieth century still inform politics today.

Contextualising, however, does not imply a discussion of both thinkers that is independent from the wider "traditions" (Hall/Bevir 2014) or "thought-styles" (Mannheim 1985), to use a term with which Kelsen and Morgenthau were familiar with, in which their thoughts were embedded. Although their thought about politics developed in tandem (Rice 2016, 135), both pursued scholarship from opposing methodological and epistemological ends, which is why the elements that surface in our discussion were not insular occurrences but shared across intellectual divides. Hence, while our discussion proceeds on a micro-level, considering wider macro-developments enables us to investigate to what extent their works is still of relevance today.

To achieve this ambition and give evidence to our argument, the discussion unfolds by gradually moving from more theoretical, macro-level considerations to practical, meso- and micro-level implications of their thought. In doing so, this paper engages with three notions that were central for their understanding of democracy — pluralism, compromise, and representation — acting as a counterbalance to core populist concepts like the people, general will, and the elite (Mudde/Rovira Kaltwasser 2017, 9).

2. Pluralism

In a first step, this paper considers Kelsen's and Morgenthau's position towards the constitution of the people, that is, the entirety of humans that live together in a political community, most commonly the nation-state in today's world. This latter, relatively new form of sociation, is seen by right-wing populists as the only conceivable, historically given political community. Taking a dualistic, Manichean perspective, populists claim to represent an "authentic" (Müller 2016, 4), "pure" (Mudde/Rovira Kaltwasser 2017, 6), or "true" (Urbinati 2019a, 120; 2019b, 165) people that are being deprived from exploring their full potential by an 'elite', otherised as corrupt and/or illegitimately in power. As exemplified in former American President Trump's rhetoric of 'draining the swamp in Washington' and the storming of the United States Capitol by his followers on January 6th, 2021, populists even go so far as to invoke images that characterise this 'elite' as an impurifying element of society that has to be removed to maintain or resurrect the people as a homogenous group.

By contrast, both Kelsen and Morgenthau had a different understanding of the people and took a different stance towards the state. Positioning themselves against natural law traditions, Kelsen (1955) and Morgenthau (2012) perceived the people and therefore the state not as existing a priori but as imagined. This imagination is continuously recreated, reformulated, affirmed, or challenged in human relations. As Kelsen (1973, 108) put it, the state is not to be conceived

> "as something existing over and above its subjects, as an entity dominating men and therefore essentially different from those dominated […] rather […] men make up the state […] as a specific order of human behaviour the state does not exist outside or above men, but in and through them. The political theory of this type of person can be summed up in the words: 'l'état, c'est nous'. The tendency of this view is directed, not to an absolutising, but rather to a relativising of the state."

Normally, however, this imagination is not being challenged or even perceived as such, as most of the changes to it happen subconsciously through everyday interactions. As such, people are provided with stability by these imaginations and their tempocentric narratives of belonging.[1] Late in his life, however, Morgenthau highlighted that the current imagination with the nation-state as the central element to modern narratives of belonging was incapable to keep up with global developments. For Morgenthau (1979, 42), "we are living in a dream world" because, on the one hand, global issues like the squandering of natural resources and climate change required cooperation between and beyond states. On the other hand, the modern imagination had ideologised the state ("nationalistic universalism", see Popović 2020), creating a belligerent world in which nuclear weapons gave humans the opportunity to eradicate humanity altogether for the first time, forfeiting the sense of stability and security that the imagination of the state aimed to convey in the first place.

If the people were only imagined for Kelsen and Morgenthau, then so was the idea that they are guided by a general will. Populists claim to be able to unearth this will and, as discussed below, represent it to free the people from 'the elite' (Behr 2017, 23). By contrast, focusing on the human condition and informed by their own experiences as refugees, Kelsen and Morgenthau spoke in favour of open societies that can only be established in pluralist democracies. Certainly, both scholars diverged in how to sustain pluralism. For Kelsen, positive law would ensure that all society members can contribute to decision-making processes. Morgenthau (2012, 126), by contrast, focused on questions of the political. For him, not all issues could be solved via legal means but had to be discussed freely in public to have a bearing on these processes. Morgenthau (1957, 11; 1959, 6) remarked that "[d]emocracies create it [public consent] ideally through the free interplay of plural opinions and interest, out of which the consensus of the majority emerges." Both agreed, however, that "the assumption of a unified will of the state [*Staatswille*] … is only the expression of a unified organisation … [it] has nothing to do with a socio-psychologically grounded general will", as Kelsen (in Ooyen 2017, 8) put it.

While Robert van Ooyen (2017, 8) concludes in reference to Ernst Fraenkel that stressing the importance of pluralism in democratic decision-making processes only allows to be translated into an "a posteriori common good", we are even more cautious. For Kelsen and Morgenthau, while these processes must be guided by a willingness to find a common good, this

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1 Recent IR scholarship investigates this imaginations in reference to Anthony Giddens's work as "ontological security". See, for example, the work of Jennifer Mitzen (2006) and Brent Steele (2008).

is never attainable. The spatio-temporal conditionality of the human condition and the constant flux of human relations neither allows to determine a common good in absolute terms, nor can it be established retrospectively, even if contextualised (self-)reflexively.

Why were both scholars so cautious in this regard? For Morgenthau (1957, 6), the objectivity that people find in what they perceive to be "social truth" is merely "conditional or partial". This is because as humans, people face two interconnected limitations (Morgenthau 1953, 2). First, a "limitation of origin", meaning that human take on reality are conditioned by space and time. Even if this limitation is recognised, its foundations are difficult to put in words. While Morgenthau acknowledged that his own thought was informed by European values, trying to formulate them, he produced little more than platitudes like freedom, peace, and tolerance (Rösch 2018, 5; Frei 2001). Second, there is a "limitation of purpose", implying that there is always a specific reason why people are interested in one aspect of reality and not in others. Frequently, this happens subconsciously, as this interest is not only informed by rational considerations, but emotions also play a role and so do the often random human relations in which these interests evolve (Morgenthau 2012). Ultimately, their understanding of pluralism resonates with the one recently put forward by Daniel Levine and David McCourt (2018, 92) as one of "epistemological scepticism", not only towards the position of others but also one's own.

Therefore, to be able to approximate an always changeable and reversible common good through which people can derive conditional objectivity, democracies are for Kelsen and Morgenthau the only political system under the conditions of modernity in which the state is still the standard form of human sociation. They provide for the free exchange with others in what can be called after Robert Schuett (2010, 186) "practised humility", enabling people to reflect on their own positions and identify their subjectivity (also Molloy 2020). As further elaborated below, through this humility, democratic societies at least have the option to take a position that serves majoritarian interests and considers minoritarian ones, with proponents of the latter knowing that the 'public consent' as the amalgamation of these interests can be altered in processes of discursive exchange.

Arguing for pluralistic discourses in democracies, Kelsen and Morgenthau had to move their focus "away from the 'state' to the human" (Ooyen 2017, 28). In doing so, both were influenced by psychoanalysis and Sigmund Freud in particular (Jabloner 1998; Schuett 2007; 2021), as can be seen in one of Morgenthau's unpublished manuscripts from the 1930s. In this manuscript, Morgenthau (1934, 5) reasoned that the human condition is characterised by two drives, the drive for self-preservation and the drive to prove oneself. The latter initiates human relations, as it is only through contact with others that one can temporarily satisfy this drive. Arguing that human relations are driven by situations in which humans can show "what they can", Morgenthau (1934, 6) was under no illusion that they always would be amicable. Rather, human relations are power relations. As he put it in one of his later publications that was inspired by this early manuscript: "[t]hus the scholar seeking knowledge seeks power; so does the poet who endeavours to express his thoughts and feelings in words … They all seek to assert themselves as individuals against the world by mastering it" (Morgenthau 1972, 31).

As further elaborated in the next section, only in democracies, the resulting conflicts can be turned into a force for good, as people are given the opportunity to express their interests freely and discuss them publicly, meaning that all these interests are taken into consideration in political decision-making processes. This is because, following Kelsen, in human relations, people can experience themselves in and through the other. Humans have different interests but in engaging with the other's interests, they can be understood as equal contributions towards the approximation of a common good. Freedom to express one's interests, therefore, is always concomitant with the freedom of others to express their interests. Unlike Morgenthau, who further substantiated his idea of the human condition with ancient Greek political thought (Rösch 2017), Kelsen found inspiration in Hindu philosophy. The *mahavakyas* (great sayings) of the Upanishads, in particular *tat tvam asi*, meaning 'that essence are you' (Olechowski 2018, 21) showed Kelsen that gaining any understanding about oneself requires interacting with others.

3. Compromise

Denying the socio-political and cultural pluralism that characterises any society and reminiscing about a 'true' people, populism would have been little more than a "meta-political […] illusion" for Kelsen (2013, 40). As mentioned, the people are not a homogenous group, but their interactions are characterised by manifold pluralities, due to their own spatio-temporal conditionalities and indeed those of their interactions. This pluralism expresses itself in what Morgenthau repeatedly framed as an 'antagonism of interests'. As he wrote in the 1950s, "politics is a conflict of interests decided through a struggle for power" (Morgenthau 1957, 7) and two years later Morgenthau (1959, 7) added that because of this antagonism a common good can "at best be approximated through the ever temporary balancing of interests and the ever precarious settlement of conflicts."

These quotes epitomise that the generation of Kelsen and Morgenthau, having experienced the rapid and brutal decline of democracies first-hand, was under no illusion that these antagonisms of interests could evolve free of conflicts. Even under ideal conditions with all society members wanting to achieve a common good – hence, unlike situations with populist movements clothing their particular interests in a rhetoric of mythical unity — there would be conflicts. Essential for them, therefore, was to avoid that they turn into violent conflicts, as this would bring about the end of democracies.

However, as Chantal Mouffe (2005, 12) highlighted with her distinction between agonism and antagonism, violence cannot be averted simply by trying to rationalise political decision-making processes or simply turn them into administrative acts, as these interactions continue to be power relations. People would feel disenfranchised from these decision-making processes and would become politically apathetic. For Morgenthau, this state of political apathy could only ever be temporary. Ultimately, people would turn to violence to enforce their political positions (Rösch 2015, 123-124). Hence, there needs to be a mechanism in place that not only acknowledges the different, often divergent societal interests and understands that these interests are also influenced by other factors like emotions but also demonstrates that they are taken into account in decision-making processes. Making positive experiences with democratic processes of change helps people not to become subsumed by fears of instability that might make them susceptible to populist rhetoric.

For Kelsen, resolving conflicts peacefully required finding a compromise. "After all, the entire parliamentary process, whose dialectical procedures are based on speech and counterspeech, argument and counterargument, aims for the achievement of compromise" (Kelsen 2013, 69). "This is because democracy is the political expression of social harmony, of the balancing out of extremes, of a mutual understanding that settles in the middle" (Kelsen 2020, 723) and to achieve this, society members need to be willing to find a compromise. Dissent, if it is being brought forward within the fundamental parameters of democracy, is therefore not something to be silenced and people with opposing views are not to be hindered from expressing their opinions. Rather, they have to be accepted and, what is more, fora have to be maintained within and outside parliaments where these opposing views can be voiced and be put up for debate.

As the next section shows and as recently confirmed by Gustav Meibauer (2021), communicating these compromises balances on a thin line, as people may perceive them as signs of being indecisive. However, not seeking compromise is no option either, as not letting people speak freely would not make these opposing views disappear. They could only be temporally supressed through violence. Hence, agreeing to decisions supported by a majority makes for "the first and most fundamental compromise" (Urbinati 2019b, 73), as people supporting minority positions comply with the majoritarian position and do not resort to violence. They only agree to do so, however, if they are assured that in expressing their own views they have contributed to the decision-making process and that the decision that is eventually taken is the outcome of a temporary agreement that is subject to change as soon as positions and conditions change. "Without this compromise, no political community of free and equal members in power would be possible" (Urbinati 2019b, 73). In other words, as Sandrine Baume (2013) writes, "the Kelsenian understanding takes conflicts of interest to be the central objects of enquiry, and resolutions of these conflicts occur only through compromises."

Kelsen and Morgenthau, however, diverged in what kind of environment these compromises could be established. While both were in agreement that this would happen in the public sphere ('the political') and both repudiated Carl Schmitt's distinction of friend and enemy because this could lead to 'thick-centred ideologies', Kelsen tried to protect the state, as the guardian of the public sphere in modernity, by conceiving of it strictly in legal terms. In doing so, he hoped to lay the ground for legal equality, in which everyone would live under the same legal system to the same extent (Rösch 2020, 614). Separating the 'is' from the 'ought' in this way would enable people to acknowledge pluralism in society and turn their socio-cultural differences in a creative force to shape a society that in their political decision-making processes aims to approximate a common good. Hence, "Kelsen views democracy as a process […] in which equality has the appropriate political meaning that everyone should have an equal right in participating in the process of collective self-government" (Rice 2016, 156).

For Morgenthau, by contrast, conceiving of the state only in strictly legal terms would be impossible in practice. This is because not all conflicts can be settled by legal means. Rather, some of these conflicts that Morgenthau (2012, 86) termed "tensions" evoke such intense emotional reactions among people that, even if legal equality is established in a constitutional democracy and acknowledged by people as such, they cannot be brought to a satisfactory end. They are therefore not conflicts that could be solved within the parameters of positive law. For Morgenthau, seeking compromises to alleviate these tensions had to happen within the political itself. In doing so, Morgenthau acknowledged that the political cannot be separated from other societal realms, as Kelsen had in mind with

his pure theory of law. This is because for Morgenthau (2012, 101; italics in the original), the political was to be understood as "a *quality*, a tone, which can be peculiar to certain objects, but which does not by necessity attach itself to any of them." Therefore, any societal realm or parts of it can be absorbed in the political by turning into a source of tensions.

Although Kelsen and Morgenthau conceived of the space in which compromises in political decision-making processes are being sought differently, both agreed that the question of representation is central to democracies in order to find compromises and avoid tensions that emerge in human interactions turning into violent conflicts.

4. Representation

Representation was central for these two émigré scholars, as neither Kelsen nor Morgenthau supported direct democracy. Living in Austria and Germany during the interwar years, they had experienced first-hand how easily these tensions can be exploited and turned into violence by a charismatic demagogue with the help of a media — in Weimar it was controlled by the nationalist industrialist Alfred Hugenberg — willing to misguide the public, a declining economy, and a political class that appears to be detached from the rest of the population. Still today, similar constellations contribute to the rise of populism (Mudde/Rovira Kaltwasser 2017, 100-101). The majority of people in the United Kingdom, for example, voted against their interests in the Brexit advisory referendum after years of austerity, a media landscape that eagerly provided a platform for right-wing populists, and after a politician, who in the British context appears to be charismatic, backed Brexit.

Being cautious about the prospects of direct democracy, however, did not mean that Kelsen and Morgenthau would have been in favour of a strong presidential system either. Both had witnessed how the excessive use of emergency decrees, which the Weimar constitution granted the president, by Paul von Hindenburg contributed to the decline of democracy. Kelsen, one of the "architect[s]" of the Austrian constitution (Olechowski 2018, 20), even helped to establish a political system that does not grant the president rights as extensive as in the Weimar Republic. Rather, the president's role in Austria has been mainly representative since the end of the First World War. Instead of direct or presidential democracies, Kelsen and Morgenthau promoted parliamentary democracy (Schuett 2021, 58-59). For them, parties should act as brokers to ensure that all public interests are being considered in the political decision-making process. A few years after drafting the Austrian constitution, Kelsen

(1925, 5) wrote in this regard that parliamentarism is "the only possible form […] in which the idea of democracy can be fulfilled in today's world." This is because

> "only in a direct democracy is the social order […] created by a majority of all persons possessing and exercising political rights in a popular assembly. Given the size and manifold responsibilities of the modern state […] direct democracy no longer represents a feasible political form. Rather, modern democracy must […] be a parliamentary democracy, in which the ruling will of society is created by a majority of those who are elected by the majority of persons possessing political rights" (Kelsen 2013, 41-42).

This does not mean that democracies are reduced merely to poll democracies, of which also their coevals on the other side of the Atlantic like the Romanian-British pluralist David Mitrany warned (Holthaus 2018, 214). Rather, it implies that, to protect the sociation at large, the freedom for the individual has to be moulded into individual freedom for all (Olechowski 2018, 21). Otherwise, there would be no freedom for the individual either. If this transfer does not happen, societies break up in what the sociologist Andreas Reckwitz (2020, 286) recently called "neo-communities". These communities pursue particularistic interests to satisfy their own sensitivities, but no wider societal debates for a common good could evolve. In fact, there is a danger that people would interact only within these communities because essentializing bordering practices would prohibit people to reach out across boundaries. Ultimately, this threatens the very existence of democracies that are supposed to guarantee freedom for individuals in the first place (Morgenthau 1974, 14).

Freedom for all, however, is not based on individual equality (Rice 2016, 156) either but on the "principle of the majority" (Kelsen 2013, 31; 2020, 742). It is not possible to satisfy all interests in a democracy, but this does not mean that democracies must turn into a tyranny of the majority either. Rather, Kelsen (2013, 103) argued that

> "[t]he idea of democracy […] presupposes relativism as its worldview. Democracy values everyone's political will equally, just as it gives equal regard to each political belief and opinion, for which the political will, after all, is merely the expression. Hence, democracy offers every political conviction the opportunity to express itself and to compete openly for the affections of the populace. That is why the dialectical process in both the popular assembly and parliament, which is based on speech and counterspeech and paves the way for the creation of norms, has been identified […] as being democratic. The rule of the majority, which is so characteristic of democracy, distinguishes itself from all other forms of rule in that it not only by its very nature presupposes, but actually recognizes and protects –

by way of basic rights and freedoms and the principle of proportionality — an opposition, i.e., the minority."

For Kelsen, therefore, parliaments had a major role to play in democracies. They are the sites of political decision-making, publicly debated and conducted by parties as aggregates of the different interests in society (Olechowski 2018, 22). As such, parliaments not only demonstrate to societal minorities that the majority not simply enforces its political will, but minorities also contribute to this process through the opposition and in doing so can alter the outcome. This process is constantly evolving and reversible, as parliaments are fora for the opposition to convince the majority of the people of their political agenda.

Populists, by contrast, ultimately want to overcome parliamentarism. What they favour is a form of government that Urbinati (2019a, 120) calls "direct representation". As the leader is the voice of the people's will, there is no need for political decision-making processes or consideration of minority opinions (Mudde/Rovira Kaltwasser 2017, 68). Elections are merely intended to approve the populist leader and parties turn into acclamation organisations. As Urbinati (2019a, 120) writes, "[t]he construction of the leader as representative of the true people occurs by means of his direct and permanent communication [...] It is the representative agent that is 'direct' in its relation to the citizens; the populist leader bypasses intermediary associations, like parties". Dissenting voices are not seen as an important corrective in formulating an approximation of the common good, but as dangerous outsiders that threaten the homogeneity of the people. Consequently, they have to be purged, as happened to Tory dissenters after Johnson was elected Conservative leader and appointed British prime minister in 2019.

Also, Kelsen and Morgenthau were under no illusion that democracies require leadership to function, but theirs was one of "fragmenting leadership" (Urbinati 2019b, 68). For both scholars, this had two implications. First, leadership is not restricted to one person or even the wider government, but political power in democracies rests on many shoulders and a system of checks and balances ensures that not one branch of government can take control over the other branches. Regular elections furthermore make sure that the personnel of all branches are being changed, as they are intended to keep "the political space open to the circulation of leadership [...] fragmenting and diffusing power" (Urbinati 2019b, 69). This makes it more difficult for individuals to amass power and for democratic dynasties to evolve. As Kelsen (2013, 91) wrote,

"the idea of leadership becomes obscured by the fact that the executive must be thought of as subordinate to a parliament [...]; the power to rule shifts from a single leader to a multitude of persons, among whom the function of leadership [...] is divided. This means that the creation of many leaders becomes the central problem for real democracy, which [...] is not a leaderless society. It is [...] the abundance of leaders that in reality differentiates democracy from autocracy. Thus, a special method for the selection of leaders from the community of subjects becomes essential to the very nature of real democracy. This method is the election."

There is a further element of fragmenting leadership that can be found in the work of Morgenthau. Not only leadership per se needs to be fragmented but political leaders also need to have the intellectual and moral capacity to be "personally accountable for their acts" (Morgenthau in Klusmeyer 2010, 400). This means that Morgenthau promoted a type of ethics of responsibility (Williams 2005, 169; Troy 2013, 10; Rösch 2016, 24) in which politicians feel obliged to ensure that all the different interests in the public are being taken into consideration in political decision-making processes. Politicians have to acknowledge that the final decision can never satisfy everyone, which is why politics was an art for Morgenthau — an art in balancing different interests and opting for the lesser evil. Any political decision has positive *and* negative impacts on people. Politicians therefore need to have the capacity to make decisions that at least endeavour for a common good, consider all interests at stake, and are not openly informed by individual interests. At the same time, these decisions have to be communicated as always reversible if the interests that have brought them about and if the socio-political contexts in which they are embedded change. To be able to satisfy this aspect of fragmenting leadership, politicians need to be able to react to changing circumstances, they would need to have what Morgenthau termed the capacity of wisdom:

"Wisdom is the gift of intuition, and political wisdom is the gift to grasp intuitively the quality of diverse interests and power [...] and the impact of different actions upon them. Political wisdom, understood as sound political judgement, cannot be learned; it is a gift of nature [...] As such, it can be deepened and developed by example, experience, and study" (Morgenthau 1971, 620).

Certainly, Morgenthau did not believe that there would be many politicians that satisfy these demands. However, it still can serve as a reminder to politicians and parties at large about their important role in democracies and to caution them on the effects of abusing their power, which can consequently play into the hands of populist narratives.

5. Conclusion

In 1932, Kelsen published a short piece in *Defence of Democracy* for the journal of the *Deutsche Staatspartei* (German State Party; previously *Deutsche Demokratische Partei*), a predominantly liberal left party during the Weimar Republic. In this piece, Kelsen (2020, 724) concluded that

> "[a] democracy that takes a stand against the will of the majority, that tries to make such a stand even with violence, has ceased to be a democracy. Rule of the people cannot remain when it is set against the people [...] No one who supports democracy may entrap themselves in the fatal contradiction of trying to save democracy by reaching for dictatorship. We must remain true to our banner, even if the ship sinks, and take with us into the depths only the hope that the ideal of freedom is indestructible and that the deeper it sinks, the more passionately it will be revived."

At first, this may seem defeatist. There would be little that democracies can do to defend themselves from populist movements. Given that the Nazis seized power in Germany just a few months afterwards, it seems that Kelsen was right.

However, it is precisely this pluralism that makes it more difficult for populists to take over power. This is because for both Kelsen and Morgenthau, citizenship was not restricted to being part of some kind of people, defined in ethnic and/or nationalistic terms. After all, this is pure "fiction" (Kelsen 2013, 36). Rather, people, occupying the same space, form legal communities to which anyone living in this space can belong. In other words, one did not need to have a passport for Kelsen and Morgenthau to become part of a particular political community. All it takes is to be willing to contribute to a political community by bringing oneself into the discussions that try to approximate a common good. Anyone who actively contributes to a political community and is willing to adhere to its laws and rules, knowing that they are only the result of temporary agreements and can therefore be changed through these discussions, can become a member of this community.

While Morgenthau argued that the political in which these discussions are taking place must exist prior to establishing political institutions, Kelsen's insistence on parliamentarism demonstrates that these institutions play a significant role in encouraging people to live the plurality of interests in their communities and in maintaining these discussions. In other words, parliaments, by both scholars, were conceived of as the central space for sharing and debating different political interests. To avoid having them labelled as 'Schwatzbuden' (talking shops), parliaments have to be embedded in a political system that credits all these interests and

facilitates compromise. In countries with first-past-the-post electoral systems like the United Kingdom and the United States this is less true, as populist movements can more easily seize power if they manage to infiltrate one of the typically two major political parties. Having an absolute majority enables them to change the democratic fundaments from within, as they do not have to seek compromise, for example, by forming coalitions. In countries with proportional electoral systems that give political minorities a voice and make them visible in parliament, populist movements may also arise, but it is less likely that any such movement gains an absolute majority that puts it into a position to threaten democracy altogether because these systems institutionalise compromise seeking.

Studying the work of scholars like Kelsen and Morgenthau, therefore, provides insights on how to address populism. First, it encourages academics *and* politicians to reconsider the idea of citizenship that would enable, for example, even asylum seekers to contribute to political decision-making process by granting them a vote. Second, it also portends that democracies need to constantly adapt their political institutions to ever changing global environments to protect and maintain the fruitful tensions of their political difference. Electoral systems that may have had their purpose in the past to curb the powers of a monarch are no longer capable of addressing the dangers for democracy in the twenty-first century that populism poses.

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