

The Legitimacy of Modern Democracy. A Study of the Political Thought of Max Weber, Carl Schmitt and Hans Kelsen

Pedro T. Magalhães

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Much has happened during the past ten years which has undermined the belief that liberal democracy had triumphed with the fall of the Berlin Wall and the collapse of the Soviet Union. During that time, faith in liberalism and belief in democracy have been under attack in Europe, South America, and even in the United States. That is why Pedro T. Magalhães' *The Legitimacy of Modern Democracy* is a welcome book because he illustrates the dangers by examining another period in which liberal democracy was also under siege. That period was the early twentieth century and Pedro T. Magalhães' examines the political thinking of Max Weber, Carl Schmitt, and Hans Kelsen. In his reading, Weber is an ambivalent elitist, Schmitt is an authoritarian populist, and Kelsen is a scientific pluralist. Each of these thinkers has a separate chapter but in Magalhães' discussion, there is often a welcome overlap. There is a fourth chapter in which he offers a provocative theory of pluralism which he suggests is able to transcend elitism and populism, which he claims are two sides of the same democratic coin.

The chapter on Carl Schmitt is the strongest and Magalhães offers an impressive survey of Schmitt's writings, from his dissertation to his major writings in the early nineteen thirties. He also refuses to succumb to the temptation to read Schmitt's later embrace of Nazism into these early works. And, he is successful in identifying Schmitt's hidden opponents, including Richard Thoma and Kelsen. Thus, it is somewhat surprising that there is no mention of the "Preußenschlag" – the dissolving of the Prussian government which led to Hitler's rise – because it pitted Schmitt against Kelsen. It is also puzzling that noted Schmitt expert Richard

Mehring barely rates a mention, especially since Magalhães had praised Mehring's Schmitt biography (2009).

The chapter on Hans Kelsen is also rather good; Kelsen's writings are not the easiest to understand and once again Magalhães provides the context and explanations for many of Kelsen's early writings. Neo-Kantianism plays a major role in the entire book but it is not clear that Magalhães has a proper understanding of it because his account is somewhat superficial and slightly misleading. This is evident in his misunderstanding of what Heinrich Rickert attempted to accomplish in the philosophy of history and what Emil Lask had attempted in the philosophy of law. This weakness may be because Magalhães relies on secondary sources. A larger puzzle is that he suggests that Kelsen was only interested in law, but Magalhães provides a rather compelling political account.

The least satisfactory chapter is the one devoted to Max Weber, and while Magalhães seems to have a good understanding of Weber's diagnosis of modernity, his account suffers a number of flaws. These include his claim that Weber's illness prompted him to retire from Freiburg when he had moved to Heidelberg. And, it includes the claim that the *Protestantische Ethik und der Geist des Kapitalismus* was his first sustained research project after recovering from his illness. Yet, Weber had already published the first part of *Roscher und Knies und die logischen Probleme der historischen Nationalökonomie* in 1903. It also includes the problem that he translates the title of the first chapter of *Wirtschaft und Gesellschaft* as "Basic Sociological Terms" when it is "Basic Sociological Concepts." Weber was almost indifferent to "Worte", but

he always placed considerable emphasis on “Begriffe.” Other problems include his account of Weber’s theory of “Herrschaft,” and especially the concept of legitimacy and the notion of charisma. Again, this may be a matter not understanding Weber’s sources and concepts: Georg Jellinek was extremely influential for Weber’s understanding of constitutions and legitimacy and Rudolf Sohm was only one of Weber’s sources for his notion of charisma. This seeming indifference to detail leads Magalhães to claim that Carl Schmitt did not have a profound knowledge of Weber’s notion of charisma and his theory of “Herrschaft.” However, Schmitt participated in Weber’s seminar and would have been known Weber’s claim that charisma and rationality were the two main powers in his 1920 lectures on *Allgemeine Staatslehre und Politik (Staatssoziologie)*. Magalhães might have avoided such mistakes if he had utilized the recent Weber biographies by Jürgen Kaube (2014), Gangolf Hübinger (2019), or Dirk Kaesler (2014) instead of relying on Joachim Radkau’s questionable psychobiography (2005).

These flaws are more apparent because the overall quality of the book is quite good. Magalhães confronts a major problem concerning legitimacy of modern democracy and he offers a rather compelling account of the political thinking of three key jurists. He acknowledges that his approach was two-fold: as an intellectual historian and as a political theorist. He may not have been fully successful as an intellectual historian but he certainly does succeed as a political theorist. As long as readers keep that in mind, they will find *The Legitimacy of Modern Democracy* to be a richly rewarding book.

References

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