Making Democratic Theory Democratic: Democracy, Law, and Administration after Weber and Kelsen

Stephen Turner & George Mazur
New York 2023: Routledge, 214 pp.

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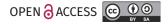Diplomatic Academy Vienna
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The book is provocative and clear. It is provocative because to argue that democratic theory is to be made democratic again implies it no longer is; which is a controversial claim. It is also clear because what *Making Democratic Theory Democratic* does, is to use Max Weber and Hans Kelsen to discuss fundamental issues about democracy, law, and bureaucracy. That may sound dry, but it is not. First, today it is fashionable in Western politics to rail against the so-called 'deep state' (Rifkind 2023). Second, the book's critiquing of today's democratic theory, rooted in a Weberian/Kelsenian de-mystifying realism, confronts the reader from first to last; as the core of the book's nine chapters is laid out forcefully through a unifying 'Theoretical Preface' that speaks to the question of how to do political theory.

Divided into three parts, with issues ranging from the rule of law's administrative state problem, through free speech and toleration questions, to democracy's danger of 'ideological uniformity' (p. 16), what the book explains are the implications of the idea that positive law is the central, necessary means of democracy.

The starting point for Stephen Turner, who has written widely on the subject (including in this Journal, see Turner 2022), and George Mazur is this—Kelsenian metamorphosis: where there is democracy, there is law; and thus where there is a coercive legal system, there is the reality of public administration whereby interests and values voiced by the people get transformed, through leader selection and law making procedures, into bureaucratic actions by state organs. The problem is a principal-agency relationship in which agents' incentives are in political and administrative practice misaligned with those of the democratic principal, i.e., the people; that's not always the case of course, but under certain conditions. What's more, say Turner and Mazur, everything coming out of democratic theory in Robert Dahl's wake 'after Weber and Kelsen' has been a trailblazer for 'an academic consensus on the political good and a self-imposed task to justify certain tendencies in political life itself' (p. xi). The concept of democracy, they criticise, has become synonymous with 'democracy' where certain values are now *normatively* inbuilt into what democracy 'really' or 'genuinely' *is*. And that, according to Turner and Mazur, is undemocratic if not outright anti-democratic. Hence, the need to 'make democratic theory democratic'.

Yet, how is that to be done? In Turner and Mazur's attempt at metapolitical thinking, there are two interrelated methods how to purify democratic theory from ideological baggage (as they would like it to see happening). One, they say, is to analyse any given democratic theory, old and new, in a way that separates procedure from content: that is to say the question what the content of democracy is or ought to be, is not the subject of a democratic theory, but the choice of the people at the beginning of Kelsenian metamorphosis of turning original values into positive law and administrative actions. On that basis, chapter 4 provides a critique of Woodrow Wilson's politics as a prime example of 'anti-democratic ideas to be presented as "saving democracy," or true democracy, when it is in fact a means of expanding the power of the state, and its discretionary power, which can then be used for "progressive" ends' (p. 82). Therefore, the second

method, Turner and Mazur argue, concerns a hardnosed ability for a democratic *Ideologiekritik*. In a US case study, chapter 6 tries to show how the gradual expansion of administrative law in relation to research, teaching and campus life jeopardizes academic freedom in terms of pushing progressive agendas. Consequently, chapter 9, which is aptly titled 'The Rule of Law Deflated', explains why the critical thinking of Weber and Kelsen provides us with a robust intellectual framework for realistic democratic debate: they 'allow us to cut through the haze to see […] the rule of law is consistent with a wide range of values, and intrinsically to a few of the political ideas and values with which it is normally associated' (p. 174-75).

With what *Making Democratic Theory Democratic* leaves the reader, is two-fold. It is an extremely bold programmatic call—theoretical and political (perhaps inadvertently)—for 'returning the discourse about democracy to the people' (p. 18). But then, how? To say from their perspective that what is to be done is 'to control the metamorphoses of state action and their potential for abuse' (p. 22) through legal electoral devices with teeth, is one thing; it is quite another to change longstanding modes of thinking and vested interests. The book will be met with opposition from Dahlian 'democratic' theorist (in Turner and Mazur's language), adds to both the Weber and Kelsen community in social, political, and international relations theory, and is of interest to those in the analytical and normative study of politics who have adopted a less-is-more approach to democracy theory and thinking, especially in an age of widespread ideological excess and absolutized moral self-righteousness.

References

Rifkind, Hugo (2023), 'Deep state' delusions are hard to shake off, in: *The Times*, 28 August.

Turner, Stephen (2022), Kelsen in American Political Theory, in: *Austrian Journal of Political Science*, vol. 51, no. 3, 'Special Issue: Kelsen, Political, and Realism', edited by Robert Schuett, pp. 11-21.