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HANS KELSEN'S NORMATIVISM

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Hans Kelsen's Normativism

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Abstract: Hans Kelsen's *Pure Theory of Law* is the most prominent example of legal normativism. This Element traces its genesis. In philosophy, normativism started with Hume's distinction between Is-and Ought-propositions. Kant distinguished practical from theoretical judgments, while resting even the latter on normativity. Following him, Lotze and the Baden neo-Kantians instrumentalized normativism to secure a sphere of knowledge which is not subject to the natural sciences. Even in his first major text, Kelsen claims that law is solely a matter of Ought or normativity. In the second phase of his writings, he places himself in the neo-Kantian tradition, holding legal norms to be Ought-judgments of legal science. In the third phase, he advocates a barely coherent naive normative realism. In the fourth phase, he supplements the realist view with a strict will theory of norms, coupled with set pieces from linguistic philosophy; classical normativism is more or less dismantled.

Keywords: Kelsen, normativism, Kant, neo-Kantianism, validity

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