The pure theory of Law

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Kelsen argued that an acceptable theory of law must be ‘pure’ i.e. logically self supporting & not dependent upon extra legal values, or other factors such as – sociological, political, economic etc.

It is called pure theory of law because it only describes the law attempts to eliminate from the object of this description.
The pure theory of law seeks to answer the basic question –

What is Law?  

It does not seek to answer –

What ought law to be?
There is no doubt that like Austin, Kelsen is a positivist – but a more extreme one.

Law is what it is & it doesn’t depend upon any moral, ethical or divine norms – but the norms set up by human in power.

Law is about compulsion & coercion – shall, shall not, shall be & not ‘ought’.
According to Kelsen –

- Law is normative science.
- A norm – is a pattern, model or standard regarded as typical of a specified group.
- Kelsen used norm in a very precise sense so that it connotes a standard to which individuals should compulsorily confirm.
- Legal norms make certain acts – legal or illegal.
Legal norms not only prescribe certain types of behavior. They attach certain sanctions to it.

Kelsen believed that law is a coercive order of human behavior.

He finds the whole essence of law in duty & not in right.

Kelsen propounded that the validity of a given legal norm depends solely on its having been authorized by another legal norm of a higher rank.
Groundnorm –

It is a presupposition & the other norms get validity from it. Every country has its own groundnorm from which the other norms are being originated. It is a basic norm. Kelsen recognized that groundnorm need not be same in every legal order. But there always a groundnorm like a written constitution or the will of director.
BASIC POSTULATES OF KELSEN’S THEORY

1. Law & states are two different things
2. There is no distinction between public & private law.
3. There is no difference between natural & judicial person.
4. There are no individual rights & legal duties which are essence of law.
5. International law is supreme.
1. The pure theory made substantial contribution to the jurisprudential thought by maintaining that law must be free from external influences, & guided only through the authority of the groundnorm.

2. Kelsen normative view has led to re-examination of many traditional doctrines of jurisprudence.

3. The ‘pure’ theory attempts to see law as a systematic, unified concept.
CRITICISM

1. Laws are related to and built upon moral principles. Kelsen disregards this vital fact.

2. Kelsen treats law solely in terms of formal structure leaving all issues or practical problems.

3. Kelsen’s theory turns the jurist or lawyer into meek (modest / mild) & unquestioning servant of whatever political ideology is dominant.
4. No practical significance it is based on hypothetical considerations
5. Natural law is ignored.