

BOOK SYMPOSIUM

## In the midst of theory *and* practice: a foreword

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### Abstract

This foreword frames the Symposium in two ways. It summarises the core themes running through the nine ‘meditations’ in *The Status of Law in World Society*. Moreover, it places these themes in the wider context of Kratochwil’s critical engagement with how we pursue knowledge of and in the social world and translate this knowledge into action. Ultimately, also his pragmatic approach cannot escape the tensions between theory *and* practice. Instead, we are in the midst of both.

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Friedrich Kratochwil’s *The Status of Law in World Society* could as well have been called *Essays and Treatises on Several Subjects* or *An Enquiry Concerning Human Understanding (and Acting)*.<sup>1</sup> This hat tip to David Hume is no coincidence; hardly any other philosopher, bar Wittgenstein perhaps, shines through Kratochwil’s work as much as the Scottish philosopher. Through his writings on human nature, causality, reason, and action, Hume’s philosophical stance as a sceptic and a critic interrupted the ‘dogmatic slumber’ of others.<sup>2</sup>

Pursuing Hume’s example – and despite its title – the *Status of Law* is a critical diagnosis of theory, knowledge, and action in the unusual form of nine ‘meditations’. Kratochwil uses meditations as a ‘largely forgotten mode of reasoning about practical problems’ in order to unearth ‘the realm of praxis’ and to pursue a satisfactory understanding of action.<sup>3</sup>

And also this Symposium does something unusual. First, instead of the common book forum format, where a few people discuss parts of a book, the Symposium’s contributors work things through with Kratochwil by engaging with his meditations individually. Second, the Symposium’s timing is unusual, because it comes

<sup>1</sup>Kratochwil 2014.

<sup>2</sup>Kratochwil 2011; Kratochwil 2014, 350–90.

<sup>3</sup>Kratochwil 2014, 39 and 40.

out after Kratochwil published his latest book *Praxis*.<sup>4</sup> Yet, the *Status of Law* is not part of a throwaway culture, to be forgotten soon after publication. Rather, despite its critique against ‘timeless theory’, Kratochwil’s analysis of social life through the prism of norms remains valuable. Having Kratochwil answer his co-meditators *after* he finished his book on praxis gives him hindsight and distance with a particular payoff: his reply is not just a clarification of his arguments, but it is a re-engagement that goes beyond both books and provides a *tenth* meditation on his scholarly path, on epistemology, and on practice.<sup>5</sup>

This foreword briefly outlines the *Status of Law* for those unfamiliar with it and contextualises Kratochwil’s reply to his critics. Wiener follows with an introduction to the Symposium’s contributions which argue with Kratochwil as much about his approach to politics and the social world as they engage him on his substantive arguments about the role of law in world society.<sup>6</sup>

### The paths of meditations

Kratochwil’s meditations reflect upon where we are in our pursuit of knowledge of the social world and of how legal norms translate into judgments and actions. At first encounter, though, the meditations are daunting.<sup>7</sup> Neither Kratochwil’s style of thinking and writing nor his excursions and argumentative leaps are always easy to follow – unless one has read all of Plato, Hume, Kant, Wittgenstein, and the most influential International Relations and legal scholars *and* placed their writings within the wider picture of history, philosophy, linguistics, sociology, and political theory. At times, much of that is condensed in a single sentence. Yet, the meditations are a way to ‘work things “through”, as in the talking cure that Freud – among others – suggested, and for that we need some “others” and not monologues’.<sup>8</sup> This Symposium provides such others.

The *Status of Law*’s introduction and the first two meditations set the scene by emphasising ‘the social’, particularly the open texture and the social embeddedness of law as a social practice. In the first meditation, Kratochwil critiques those epistemologies that depend on universalised *a priori* assumptions of reason, and he shows how these assumptions do not reflect the complex contingencies and unknown variables of decision-making in practice. In the second meditation, he places his conception of law in Wittgensteinian language theory and stresses the actual use and functions of legal norms which depend on publicly shared criteria and professional techniques.

Having confessed his intellectual worldview, Kratochwil proceeds to meditate on some of the fundamental developments and debates that have taken place in International Law over the recent years. In the third meditation, he reflects critically upon the constitutionalisation and fragmentation debates, thereby explaining how responses to structural changes in the international legal order are not merely a

<sup>4</sup>Kratochwil 2018.

<sup>5</sup>Kratochwil 2021.

<sup>6</sup>Wiener 2021.

<sup>7</sup>Kurowska 2021, 538; Sikkink 2021, 574.

<sup>8</sup>Kratochwil 2014, 40. Yet, see Onuf 2021, 522–3.

matter of professional ‘techniques’ or hierarchical levels but they are always related to political projects. In the fourth and the fifth meditations, Kratochwil cogitates on (political) actors in International Law and on their use of the language of law. Tactical moves and strategic interpretations reveal the political projects, specific interests, and justifications behind the veil of normative language. In the sixth meditation, he reflects on global administrative law as a quest for alternative sources of legitimacy for such softer law-making activities. Legitimacy remains elusive due to the functional limitations of organisations and the necessary trade-offs between different ‘common interests’ that need to be balanced. Neither constitutionalisation nor ‘expertisation’ or administration does away with politics, never mind such appealing narratives.

In the seventh and eighth meditations, Kratochwil turns to the politics, the limits, and the burdens of (human) rights – and he also returns to ‘the social’. Rights are not possessions; they are means to structure discourses and social relations. The modern conception of rights may have displaced a similar role played by (civic) virtues, and Kratochwil sees risks and problems in the proliferation of rights. Not only are there ever more conflicting rights in need of balancing without any easily available standard, but rights always depend on established social practices and institutions with their own politics and contingencies. His fundamental critique of ‘rights theory’ and ‘rights thinking’ shows how in practice new paradoxes and conflicts arise inevitably. Rights alone (or theories about rights) cannot solve these riddles.

In the final meditation, Kratochwil returns to the problem of ideal theory and how knowledge is produced and transformed into actions. He ruminates on the problems of ideal theory and proposes his own alternative: diagnostics (knowing how) that does not focus on the ‘cure’ (knowing what). He would start by diagnosing ‘specific failures’ in their particular contexts instead of first imagining some ideal state, goal, or solution (and then working backwards from there). Diagnostics is his recommendation of how we (should) know, act, and judge always in ‘the middle of things’ – a point he emphasises throughout the book.

### Knowledge and action

Thus, the meditations are not just deconstructions of dominant conceptions of law and modes of theorising. Taken together, they offer a path into his critique of a particular kind of epistemology and into his preferred action-based pragmatism. It is this critical pragmatism that assesses the meaning of theories or beliefs in terms of the success of their application.<sup>9</sup> The meditations are a ‘critical engagement with interdisciplinarity, translatability, and intertextuality’.<sup>10</sup>

Kratochwil urges us to start in the middle of things because ‘there is no view from nowhere’.<sup>11</sup> For him, the kinds of epistemologies that rely on some form of ideal theory, or on a scientific realism that claims to use universal reason, have failed. Instead, knowledge about the social world depends on an understanding of the concepts we use and on how we use them. The actual use of concepts, as

<sup>9</sup>See also Kratochwil 2018.

<sup>10</sup>Ibid., 5.

<sup>11</sup>Kratochwil 2014, 11 and 41.

Wittgenstein stressed, is central to Kratochwil's enquiries because the use informs us of the contingent meanings and of our inter-subjective understandings. This in turn makes it necessary to grasp the historical contingency of concepts, their relations to other concepts ('the semantic field') and the settled rules (and silent assumptions) that both enable and limit their use.<sup>12</sup>

Understanding and knowing how we should act requires that we start with concrete problems in their contexts and accept that we must choose between multiple non-ideal alternatives with possibly unknown outcomes. Thus, for Kratochwil, our predicament is this need to act in the absence of ideals, to make decisions, and to 'go on' despite uncertainty and disagreement over both ends and means. This, he says, is what politics (and life) is about.

### Distance and (re-)engagement

Kratochwil's reply in this Symposium is a reflection on living and acting in the (social) world. He seems to say that the answers we seek through 'scientific' or 'rational' knowledge, acquired by backward induction and based on a universal ideal or *telos*, may not be the answers we need. Only with distance and hindsight – like this Symposium provided for him – can we (re-)engage with our actions and their consequences. What may have been a success, time might reveal as a grave error, and *vice versa*.<sup>13</sup>

One should not be fooled by vocabularies claiming neutrality and objectivity, Kratochwil argues. The social world is artificial, with us as its makers and participants. The historical, situational, and semantic contingencies – the social embeddedness – are tied to the concepts we use. Social interactions are constitutive, and contexts matter because they guide, limit, and give meaning to our actions and assessments. Yet ambiguities, unintended consequences, and exceptions abound. All this, Kratochwil argues, should make one think about using 'scientific' theories as the basis for acting, deciding, or judging in practice.

Beware of shortcuts and inertia, he continues. There is always a human need to act, to engage with, and to participate in 'the making and shaping' of the social world. Yet there is also a need for distance in order to assess, to understand, to judge, and to decide. Both needs must be taken seriously while simultaneously preserving our status as *actors*, not as pawns to someone else's will: 'we are not "free" not to decide'.<sup>14</sup>

Resist big, bold theories, Kratochwil warns. Actions come with costs, with unknowns and with conflicting values. We need to act always within a historical context and with imperfect knowledge. The 'lessons' we may have learned, he points out, are not self-evident, unambiguous, or free from retrospective re-assessment. Compare actual outcomes in order to assess alternatives of action, he says. We need to remain responsible for our choices and (in)actions and if need be, deal with such socially cultivated emotions as regret and embarrassment. In all this, we are partially guided by our life projects, ideas about who we may wish to become. But lives or careers cannot be found on a shelf.

<sup>12</sup>Kratochwil 2007, 4.

<sup>13</sup>A more in-depth discussion of time and timing is in Kratochwil 2018, ch. 8.

<sup>14</sup>Kratochwil 2021, 589 (emphasis altered).

Kratochwil's heuristic stands close to active and experimental (re-)learning *in situ*. Since we lack an unlimited time horizon, we must decide and act, even though we know that the ideal decision or action is not possible. When (not if) we need to adjust our previous decisions by acting again, we are then, just like before, in the middle of things. With this pragmatic diagnosis of our predicament, Kratochwil leaves it upon us – including now the reader – to ‘go on’.

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