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*Speaking Truth to Power: Kelsen, Freud, and peace through law*

*Abstract:* Hans Kelsen and Sigmund Freud rank as path-breaking intellectuals and their ability to challenge the cultural status quo through social critique made them many friends, yet even more foes. Taking a fresh look at their biographical and intellectual relationship, this article recruits Kelsen as an important open society ally in today's battles over the question of world order in international society. Rooted in what is called a sustained Freudian human nature realism in Kelsen's international relations thinking, it is argued that a Kelsenian position of a peace through law is now as central for the social regulation of human and global affairs as it has ever been.

*Parole chiave:* Human nature, international relations theory, politics, realism, world order

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“To Hans Kelsen, who has taught us through  
his example how to speak Truth to Power”  
Hans J. Morgenthau (1970a)

## 1. Introduction

What is a political realist doing at the head of an article ostensibly about the purest of jurists and the world's most famous psychiatrist?<sup>1</sup> Why would Hans Morgenthau have learned from Hans Kelsen how to speak truth to power? How does Sigmund Freud, the eldest of them, fit into this? And above all else, aren't

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all three men intellectual dinosaurs in the age of artificial intelligence chatbots in classrooms and lethal autonomous weapons systems on the battlefield? The whole rest of this article must be the answer, but one way to glimpse where this is headed is by going back a hundred years ago.

As I tell the story in *Hans Kelsen's Political Realism* (Schuett 2021), one night in Vienna, in the autumn of 1918, what were the last days of the Austrian-Hungarian empire, Kelsen gets summoned to see the k. u. k. war minister, Colonel General Rudolf Stöger-Steiner Freiherr von Steinstätten, at once<sup>2</sup>. Years earlier war had broken out, the Great War, by many naively thought of as war that will end all wars. Even Freud the stoic, with whom Kelsen was in close touch, was patriotic, although it did not take Freud long to realise the madness that came with modern warfare.

Now, the hour was late. The war minister is in his nightgown. He receives Kelsen and hands him the latest US cable, which is frank and firm about American war aims. The message was loud and clear, re-iterating President Wilson's historic Fourteen Points Speech of 8 January 1918, where in terms of outlining a vision for a post-war international order, the tenth point was particularly challenging for Vienna: 'The peoples of Austria-Hungary, whose place among the nations we wish to see safeguarded and assured, should be accorded the freest opportunity to autonomous development' (Wilson 2006 [1918]: 405). Kelsen takes the cable, and while Kelsen goes through it point by point, Stöger-Steiner puts on his uniform jacket, and together they head from the Minister's private residence inside the colossal ministry building towards his office. As they walk along the corridors they pass the ministry's private ballroom, a grand and glamorous one. The war minister slows down, leans towards Kelsen, and sighs that he feels embarrassed that, in terrible war times like these, he lives in chambers as splendid as his in the very heart of beautiful Schorskean Vienna. It's a fair comment, no doubt, to which Kelsen (2007 [1947]: 50) responds drily: 'Especially, your Excellency, if one knows that one is the last Minister of War of the Monarchy.'

It is one thing to speak truth to power in theory, it is quite another to deliver bad news in real government life. So, naturally, as Kelsen (*ibidem*) recalls this episode, the minister's reaction came like a shot: 'Are you crazy? How dare you say something that awful!' But then, through Kelsen's eyes and how he assessed the military and strategic situation, there wasn't much else to say. So, Kelsen (*ibidem*) says it out loud: 'Considering President Wilson's answer to our peace proposal, I see no prospect of preserving the monarchy.' He saw it clearly, game over, as America was now fully committed to the cause of what were back then the Czechoslovaks and the Yugoslavs. Only a few days later, on 31 October, Kelsen's role as legal advisor in the war ministry ended. On that day, when outside the ministry an angry mob threw stones at the minister's car thereby cutting Stöger-Steiner's cheek, as Kelsen (*idem*) narrates these events, a pale old Stöger-Steiner shook the young jurist's

<sup>2</sup> I appreciate the permission to use material previously published in Schuett 2018; 2021; 2022.

hand, saying emotionally: ‘You were right. I am the last Minister of War of the Monarchy.’ And by 11 November, the war minister was history, while Kelsen was re-hired by the new government of the empire’s successor state to work out the constitution for what was the Republic of German-Austria.

In this article my goal is to add to the body of literature that explores the relationship between Kelsen and Freud by integrating the concerns of intellectual historians, political theorists and philosophers of law, with international relations (IR) theory.<sup>3</sup> In particular I want to carve out the philosophical roots – Freudian roots as they were – of Kelsen’s speaking truth to power: which is that in terms of world order we will have to work towards a peace through law.

Over the last two decades, there has been a remarkable resurgence of interest in Kelsen, in Freud, and in their many links. As for Kelsen, thanks to Thomas Olechowski’s (2020) colossal biography we do now have a tale of the Pure jurist’s tragic life circumstances, and there is considerable debate over nature and standing of Kelsen’s political and democratic theory (Lagi 2020; Schuett 2022; Dreier 2023; Turner & Mazur 2023). As for Freud, the publisher Norton’s decision to reissue *Civilization and its Discontents* in their Critical Edition series, edited by Samuel Moyn, shows not only that Freud (2021) is back, if he was ever really gone, but also that the insights of classical psychoanalysis continue to provoke our thinking of culture, society, and politics. And as for the Kelsen/Freud relationship, rooted in Clemens Jabloner’s (1998) early statement there is little doubt that the way how Kelsen and Freud interacted with one another is important for understanding the thinking and acting of each of them (Balibar 2017; Schuett 2021). By and large then the literature is thriving.

Yet what’s missing, at least from where I stand in the broader theoretical and practical context of English School-style IR thinking where states create and re-create structures and processes in international society, is to connect the Kelsen/Freud theme with some of the big questions of war and peace. For imagine this: Half a century ago, Morgenthau – who, so often, is seen as the so-called *realist* antipode to the so-called *idealist* Kelsen – works on the publication of *Truth and Power* (1970a), a collection of essays written during the 1960s, and sitting at his desk in Manhattan decides to reach out to his ageing teacher and friend on the West Coast. In a letter writes the political realist Morgenthau (1970b) to the legal philosopher Kelsen: ‘I can think of nobody worthier of the dedication of such a book than you. For if I understand the work of your life correctly, it has been its leitmotif to speak truth to power.’ Not even a week passed before Kelsen typed his reply letter of heartfelt appreciation. And thus, it soon was for the whole world to see how much Morgenthau saw himself in line with Kelsen’s intellectual tradition of ideology critique (see Schuett 2021; Jütersonke 2022).

3 I follow the standard convention of capitalizing International Relations (IR) when referring to the academic discipline and using international relations (lower cases) when referring to its object of analytic and normative study. For non-specialists, excellent forays into IR theory are Acharya & Buzan 2019; Booth 2019; Brown 2019.

From here I proceed as follows. Next, I make Freud a prime source of realist inspiration for Kelsen (section 2). I then connect Kelsen's so-called Freudian human nature realism to his political and democratic theory (section 3), and in a series of steps in analytical IR theory to his international relations thinking (section 4). In these two sections in particular, and as a methodological exercise in comparative political theory, I will, although for lack of space somewhat unsystematic here (for a lengthy treatment see Schuett 2021), juxtapose Kelsen with Morgenthau, exactly in order to carve out the realistic side of Kelsen. In the article's concluding thoughts (section 5), I make the case that Kelsen's reminder that there is no such thing as peace without law has never been more pertinent, and realistic<sup>4</sup>.

## 2. Kelsen and Freud: A brief state of play

Of all the many brains in Kelsen's rich Viennese intellectual universe in which he moved (see Olechowski 2020; Schuett 2021: chap 4), the one who perhaps had the most influence on him in terms of thinking was the Viennese doctor who Abraham Kaplan (1957: 224) rightly called to be 'the most thoroughgoing realist in western thought'. And likewise, in terms of IR theory Jean Bethke Elshtain's (1989: 54) has made an important point that as 'between the "realists" and "idealists" of international relations discourse, Freud would be one of the leading realists – tough and no-nonsense.' From first to last, from biography to political theory to his thinking about war and peace (as we shall see), Kelsen's interest in psychoanalysis was deep.

Kelsen was very well aware of the details of Freudian knowledge, and he knew how to use psychoanalytic ideas and concepts for his own theoretical purposes. What helped of course was that he had all the personal links to Freud and to his inner circle. For example, his father, Adolf Kelsen, knew Freud through B'nai B'rith, and Hans's wife, Margarete, was friendly with Freud's daughter, Anna. One of Kelsen's close friends was the Viennese lawyer and core Freud intimate, Hanns Sachs, a member of Freud's ultra-loyal Secret Committee that was tasked with keeping psychoanalysis pure. And it was most likely at the invitation of Sachs through which Kelsen took part in Freud's Wednesday evening meetings at Berggasse 19, where a select group of doctors, intellectuals and laypersons talked neuropathology. Kelsen joined the Vienna Psychoanalytic Society in 1911, and in the

4 Perhaps I should clarify at this early stage, even if only briefly in order to avoid potential confusion, my usage of the terms 'realist' and 'realistic'. To say that someone is a 'realist' implies that this thinker is, or can be, part of the so-called realist tradition in international relations; needless to say, there's a great deal of debate who is, and who isn't, part of such a realist canon, and whether it makes sense to speak of such a canon of political realism in the first place (see, for example, Schuett 2022). It is quite another thing, however, to say that this or that position that any given thinker may hold, is a 'realistic' one. For that implies, at least to me (following John Rawls' *The Law of Peoples* (1999)) that any given theorist, analytical or normative, takes a hard look 'at persons' moral and psychological natures and how that nature works within a framework of political and social institutions' (p. 7). In short, every proper realist is realistic, but not every realistic thinker may be a realist.

summer holidays of 1921, in Seefeld, Kelsen and Freud went for walks in the sun of Austrian Tyrol. Three decades later, already in America, Kelsen volunteered to do a psychoanalytic interview with the Viennese émigré Kurt Eissler, a Manhattan-based analyst and founder of the Sigmund Freud Archives. To Kelsen, it looks, Freudian psychoanalysis was much more than simply the latest fashion in human and social psychology.

By and large, at least to me, Kelsen's early attraction to Freudian psychoanalysis was driven by two concerns. One really was that as a Viennese intellectual he was interested in this new philosophy of human nature and in what it meant or might mean for us: we are obviously not as good or perfectible as some would have us believe as we don't seem to be able any longer to just wish away our earthly desires and interests. The other point that fascinated Kelsen was to where these new insights into individual and group behaviour might lead us in terms of our thinking about ourselves when it comes to questions of politics, society, and culture – Which is perhaps best captured in the Rousseauian quip by Konrad Adenauer, the first Chancellor of West Germany: 'Take people as they are, there are no other ones' (in Köhler 2005: 205). But then, to be a human nature realist in a Freudian mould is one thing; it is quite another to use psychoanalysis to tackle the question of the nature of political communities. For with Freud's help Kelsen was able to demystify the concept of the state, and the unmasking of natural law through psychoanalysis is nowhere clearer than in the 1924 English version of a talk that Kelsen gave at one of Freud's Wednesday evening meetings, published in what, back then, was Freud's flagship journal, *The International Journal of Psychoanalysis*, under a tedious title: 'The Conception of the State and Social Psychology: With Special Reference to Freud's Group Theory' (Kelsen 1924; also Kelsen 1922). What's in there is a powerful attempt to do away with organicist theories of the state, the ideological gibberish of a *raison d'État*, and the lofty notion of a timeless set of self-evident national interests (a theme to which I shall return to in the concluding section).

He was impressed with Freud's (1921) methodological logic laid out in *Group Psychology and the Analysis of the Ego*. For two reasons. First, Freud explained mass dynamics on the basis of changes in the individual mind, meaning that social psychology is necessarily a form of individual psychology. Second, Freud pushed his own investigation into the anatomical structure of the mind to a new level. Almost instantly then, Kelsen realised that Freud was a major ally in the scientific attempt to free the study of law, and concept of the state, from the ancient myth of Nature, God or causality. At the time Kelsen was hellbent on ridding Western philosophy and legal and political thinking of the mythical notion of the Hegelian state, and now here comes along Freud who provides Kelsen with a scientific psychology that helps attack the concept of *Massenseele* or group mind which the likes of Gustave Le Bon sought to popularise. By means of psychoanalytical methodology and applying it to the question of the concept of the state, Kelsen was now able to resolve reified social wholes such as the Hegelian state into the only reality there is: You and Me – and into all the good, bad and ugly forms of social and political behaviour that we have to reckon with given our intra-psychic battles between the id, ego and super-ego.

Kelsen was through and through a methodological individualist and much in line with what Viennese Modernism produced in terms of new ways of social thought, in which Freud and psychoanalysis played a major role. Yet reducing the Kelsen/Freud relationship to merely a zeitgeist phenomenon would not do justice to how rich the exchange between these two men was. Kelsen engaged with Freud at a time when his law colleagues either had little clue about psychoanalysis or waved it off with anti-Semitic undertones (Rathkolb 2000: 88-90). What they shared was a fearless willingness to confront all forms of animistic or mythical styles of political thinking as primitive, pre-modern and anti-democratic.

In fact, Kelsen was such a staunch methodological individualist that he even accused Freud of having hypostatised the state. He feared that Freud would think that what makes a political community or state could be explained by the fact of mass cohesion or a collective libidinal structure. In short, he thought Freud's concept of the state was sociological, treating the state as a mass reality. It looks as though Kelsen seems to have over-interpreted what Freud was saying. As Freud (1921: 87, note 2) points out in a footnote added to the 1921 edition of *Group Psychology and the Analysis of the Ego*:

I differ from what is in other respects an understanding and shrewd criticism by Hans Kelsen... when he says that to provide the 'group mind' with an organization of this kind signifies a hypostasis of it – that is to say, implies an attribution to it of independence of the mental processes in the individual.

Be that as it may, the fact is that Kelsen was super-anxious not to reify the state, ever, and the point remains the same either way in that Kelsen was drawn to how Freud attempted to resolve the many myths, hiding as they are behind the fig leaf of ideology, into the deeds of real human beings.

### 3. Kelsen, Freud, and the nature of the political

So then, in terms of us as human beings, who are we? Why? From an IR theory perspective over the question of human nature, where does Kelsen fit in? Let us imagine we know little about Kelsen but that against the backdrop of the Freud-Kelsen relationship, we want to take a fresh look at his anthropological thinking. This exercise is important in its own right, and it is vital for us to understand his international relations thinking in terms of peace through law, and why he was so firm in making the case for a global legal order with teeth.

This is where Morgenthau comes back in. The concept of human nature has always proved to be a very controversial one, and yet it has been at the heart of the realist logic of politics and international relation since its inception more than 2,000 years ago (Schuett & Hollingworth 2018). And in *Politics among Nations*, Morgenthau (1967 [1948]) was firm that realists and idealists stand in almost total theoretical, intellectual, political opposition to one another and that the reason for that divided are totally different image of human nature (see also

Niebuhr 1940). Call it realism versus idealism, or reality versus utopia (Carr 1939, 1961), it amounts to the same: one of the most fundamental yardsticks to determine who is standing on which side of the barricades is intimately tied to what we know, or believe, or assume about human nature. According to Morgenthau (1967 [1948]: 3-4), you are in the idealist camp if you trust in 'the essential goodness and infinite malleability of human nature'. You are one of the political realists if you believe 'the world, imperfect as it is from the rational point of view, is the result of forces inherent in human nature'. Realism old and new, Morgenthau says, has its roots in the 'theoretical concern with human nature as it actually is'. And as we learn in what is his boldest statement, *Scientific Man vs. Power Politics* (1946), Morgenthau's conception of human nature portrays You and Me as selfish and, worse, as being possessed by a limitless lust for power, the infamous *animus dominandi*.

Against this background, who would have thought that Kelsen looks like an arch-realist when it comes to the question of human nature? Rooted in a Freudian human nature realism, Kelsen even accuses Reinhard Niebuhr, perhaps the last century's most important figure coming out of the Christian realist tradition, to be naïve. In the mid-1950s, Kelsen was as no-nonsense as he ever was. Certain about the virtues of legal positivism and relativism, and for that matter, just as unrelenting about natural law and the idea of an absolute justice. In 1955, on the basis of his 1954 Walgreen Lectures at Chicago, he published 'Foundations of Democracy' in which Kelsen (1955) discusses the major ways how to vindicate democracy. He explored the procedural, the Rousseauian and the Soviet doctrine, the capitalist, the Lockean, the Hegelian and the Marxist vision. And he also tackled Niebuhr's position on how religion might relate to democracy, or democracy to Christian theology (see also Rice 2016). He was gentle with Niebuhr, devoting almost 10 per cent of his essay to this thoughtful Protestant theologian, and yet Kelsen grabbed him by the horns accusing him of distorting liberalism, seeking to expose Niebuhr's image of democracy and justice as pre-modern, anti-democratic, and idealistic.

From Kelsen's standpoint, the real question was this: in light of the attacks made against his positivism as being a pacemaker for radical movements, does democracy require a religious vindication? Niebuhr (1944: 82) thinks so, arguing that the 'most effective opponents of tyrannical government are today, as they have been in the past, men who can say, "We must obey God rather than man".' Naturally enough, Kelsen (1955: 54) responds by saying that this is not only dangerous, but also historically inaccurate:

For the source from which Christian theology takes the argument that 'we must obey God rather than man' furnishes also the argument: all governments are given their powers from God; this argument has been formulated by St. Paul for the very purpose of being used in favor of a demonic Caesar, and since then has been again and again used to support tyrannical rulers such as Ivan the Terrible of Russia, Louis XIV of France, or Frederick II of Prussia. Also Mussolini and even Hitler found Christian theologians who justified their governments.

The Niebuhrian idea we ought to rely on God rather than on Us when it comes to the ultimate questions of life, including how we defend democracy against its enemies, is absurd to him as the point of democracy, according to Kelsen (1955: 40) is, that it 'leaves the decision about the social value to be realized to the individual acting in political reality'. Political realism!

Of course, Kelsen the realist knows full well where the resistance to a Pure vindication of democracy has its roots: in Freudian psychology, and in the sweet scent of natural law. In *The Children of Light and the Children of Darkness*, the most detailed statement of Niebuhr's political philosophy, the starting point is, at least to Niebuhr (1944: xii), that to save Western democratic society from peril is to have a 'more realistic vindication than is given it by the liberal culture [and its] excessively optimistic estimates of human nature and of human history'. What optimism? Kelsen says he wouldn't be aware of any serious liberal thinker who doesn't take very seriously the human element of self-interest and egotism. It is exactly because of their profound human nature realism, Kelsen (1955: 55) writes, that 'none of the leading liberal philosophers... considers a coercive order as superfluous'. More bluntly, by taking a hardnosed look at You and Me through a Freudian prism, Kelsen (1941: 83) says that to believe in the power of natural law – that is to say, in any coercive power of a 'higher' law – is 'an illusion, the product of wishful thinking'. To him, there is no withering away of the state, nor of law, nor of coercion, nor of politics, nor of the struggle for power.

Do not then expect too much from Kelsen. For however we sugar-coat our deeds, or present ourselves on the social, political and international scene, the fact is, says Kelsen (1957a: 8), that our 'behaviour is not very different from that of animals. The big fish swallow the small ones, in the kingdom of animals as in that of men.' That is why he repeatedly sought to warn us – speaking truth to power – that the very idea of natural law and other Utopias are not only naïve but also dangerous, for it

proceeds from the notion that man is 'by nature' good. It ignores the innate urge to aggression in men. It ignores the fact that the happiness of one man is often incompatible with the happiness of *another*, and that therefore a natural just order that guarantees happiness to all, and so does not have to react against the disturbances with measures of coercion, is not compatible with the 'nature' of men as far as our knowledge goes. The 'nature' of natural law is not the nature of our scientific experience, it is a moral postulate (Kelsen 1941: 84).

As he (*ibidem*) makes clear: 'To count on a human nature different from that known to us is Utopia.' Kelsen was never one for utopian thinking.

All of which is to say that to Kelsen, coercive law is fundamental for human beings living together in peace, at least a relative peace. We may hope as often and well-intentioned as we like that through Nature, God or Reason, we can kill two birds with one stone: that is, that we arrive at a satisfying moral and political outcome, while not taking any responsibility for that very result in domestic and



international life. But then, of course, that is naïve and more so, a self-confession of one's own authoritarian mindset and self-myths. And so, Kelsen (1927: 54) keeps warning us (see also Dyzenhaus 2000: 20):

The question on which natural law focuses is the eternal question of what stands behind the positive law. And whoever seeks the answer will find, I fear, neither an absolute metaphysical truth nor the absolute justice of natural law. Who lifts the veil and does not shut his eyes will find staring at him the Gorgon head of power.

The choice is between accepting that fact or fleeing into the pseudo-safety or self-deception that natural-law philosophy, old or new, ever has been.

But then, who likes to be ruled? The way Kelsen tackles the problem of obedience is again the stuff of much psychoanalysis as he explores the roots of authority in terms of the early Freudian dramas in primitive societies. So, why ought we obey any given norm? His answer is intertwined with the concept of the basic norm. He takes us back to the idea of a very first constitution. Arriving there means this: the basic norm stipulates, as Neil Duxbury (2008: 52), puts it, that 'citizens ought to obey legal norms validly created in accordance with the historically first constitution'. The very norm, writes Kelsen (1957c: 262), that

we ought to obey the provisions of the historically first constitution must be presupposed as a hypothesis if the coercive order established on its basis and actually obeyed and applied by those whose behavior it regulates is to be considered as a valid order binding upon these individuals; if the relations among these individuals are to be interpreted as legal duties, legal rights, and legal responsibilities, and not as mere power relations; and if it shall be possible to distinguish between what is legally right and legally wrong and especially between legitimate and illegitimate use of force... It is the ultimate reason for the validity of positive law, because, from this point of view, it is impossible to assume that nature or God command obedience to the provisions of the historically first constitution, that the fathers of the constitutions were authorized by nature or God to establish it.

For almost fifty years, the basic norm was a fundamental hypothetical concept that Kelsen (1967 [1934]: 215) 'presupposed in juristic thinking'. In the early 1960s, due to his methodological concerns, Kelsen (1986 [1964]: 117) re-conceptualised it as a '(figmentary) act of will', a fictitious norm in the Vaihingerian as-if sense. Yet, for the present purpose, it suffices to say that the Kelsenian core positivist logic stayed very much the same. But then, what if Pure positivism's story of the basic norm is not a hypothesis?

As we have seen already, Kelsen proved to be well versed in what to take away from Freud in terms of legal and political thinking. In the early 1920s, at a time when he used Freud's *Group Psychology and the Analysis of the Ego* to de-ontologise the state, in 'God and the State' (Kelsen 1922/3; 1973), he used Freud's *Totem and Taboo* (1913) to de-ideologise the authority question. In what could be seen as coming straight from Freud, Kelsen (1973: 61) leaves us in little doubt as to where he is going:

The religious problem and the social problem exhibit a remarkable parallelism, and do so, in the first place, from the psychological point of view. For if one analyses the mode and manner in which God and society, the religious and the social, are experienced by the individual, it appears that in broad outline his state of mind is in both cases the same.

That is key and through explicating the political psychology of authority leads him to one key conclusion: ‘History confirms the saying: ubi societas, ibi jus’ (Kelsen 1941: 82). Now, that is to say that contra today’s neo-realists in IR theory, there never was total anarchy in human or social life as there has always been law: primitive law or decentralised law to be sure, but law none the less. What Kelsen (1973: 62) was saying with Freud’s help, is that God is perceived to be a ‘normative authority’, which leads to Freudian-style unpacking of the whole concept of authority in terms of deconstructing psychological processes of identification.

And again, to understand Kelsen is to acknowledge the Freudian human nature realism that is in-built in Kelsenian thinking. Kelsen the realist knew that there are no easy solutions to the problem of authority and for that matter, law, politics, and international relations, and notably in a democratic context. Little wonder that in *The Essence and Value of Democracy*, he starts off with a heavy dose of political realism. ‘In the idea of democracy’, Kelsen (2013 [1929]: 27) writes,

two postulates of our practical reason are united and two primitive instincts of man as a social being strive for satisfaction. First and foremost, there is the reaction against the coercive nature of the social condition: the protest against the subjection of one’s own will to the will of another and the resistance to the agony of heteronomy.

And then – how could he do otherwise? – Kelsen (idem: 27) moves on to what is familiar territory for anyone acquainted with the logic of Freud’s *Civilization and Its Discontents*:

Nature itself demands freedom and, thus, rebels against society. The more one man’s primary feeling of self-worth depends on the rejection of any other man’s higher worth, the more he perceives the foreign will, which the social order imposes upon him, as a burden. The more elementary the relationship between the subject and the master, the more likely the former is to ask: ‘He is a man like me; we are equal! What gives him the right to rule over me?’ ... For society and the state to be possible, there must be a valid normative order regulating mutual behavior of men, i.e. there must be rule. But if we must be ruled, then we only want to be ruled by ourselves.

No matter how we look at it, according to Kelsen, the fundamental antagonism between what is willed by You and willed by Me and what any political order demands from Us in terms of coercion and obedience, is unavoidable. Also true, this antagonism is unsolvable – hence the need for positive law. And if that’s so, why would it be different on the international plane?

#### 4. Kelsen, Freud, and the international

Given Kelsen's Freudian human nature realism, what is the jurist's take on the thorny issue of international anarchy, war, and peace? In *Collective Security under International Law*, Kelsen (1957b: 4) argues that there is no real distinction between national security and international security as both are, in essence, a 'police problem'. And he is quick to point out – or reminds us, speaks truth to power – that without any international emergency number, that is, without any kind of international police to come to our rescue, we are trapped in an anarchic situation, which though is not one created by Nature, God, or any causality but one of our own making, and where one principle prevails: 'self-help' (idem: 8). That's not it however, as he throws at us another piece of political realism, or warning really: as he says, 'to date the international organizations which have been established for the purpose of collective security have not been effective enough to prevent war' (idem: 49). How true!

So, what is to be done? Be good Wilsonians in terms of making the world safe for democracy, or relying on globalisation to do the trick? Kelsen couldn't be tricked. There is no doubt at all that Kelsen was democratic to the core, and it would be very much false even to insinuate that having more democratic states in international society (especially as the current picture looks rather grim) wouldn't make any difference as for human, social, and global justice. But then, at one and the same time, a structural condition of international anarchy, even in the imagined scenario of a Westphalian-style international society full of democracies large or small, would still be, well, a world of anarchy: an arena where war is endemic because there is no coercive body, such as the centralised Leviathan, that can effectively prevent inter-state violence from breaking out.

In 'Foundations of Democracy', Kelsen (1955) sounds like a democratic peace theorist, like a committed and very liberal one devoting one section to the question whether there is a sort of connection between democracy and peace. There, he starts out like a Wilsonian, referring to two types of government, each one of them – democracy versus autocracy – leading to two types of foreign-policy behaviour. A democracy, he says, is 'decidedly inclined to cherish a pacific ideal', whilst a government of 'the autocratic type shows unmistakable symptoms of imperialism' (idem: 32). It sounds rather Kantian, if not deterministic. But that's then only the one side, the other one is unambiguously more realistic as he never said that democracies wouldn't fight. They do. They even 'have waged wars of conquest' (ibidem). In democracies, the bar to wage war is higher, 'political inhibitions to overcome much stronger' (ibidem), but surely democratic states will find ways and means to go to war, if they think they must. And thus, although Kelsen clearly and passionately favoured democracy over autocracy for many reasons, he wasn't one who believed that democratising international society would by itself make war disappear.

Nor does he have any hopes for a kind of socialist foreign policy of peace. Since the whole philosophy of socialism is flawed, not least because, according to him, its thinking roots in utopian premises regarding human nature and the political, a socialist type of government is never able to achieve in the realm of international

society what it couldn't possibly achieve at home. Any serious claim that society, domestic or international, could be freed from coercion is a non-starter but a total non-starter. As a Pure positivist, to him, there is no such things as an intrinsic fact that would link a specific type of government to a specific type of behaviour. Likewise, Kelsen argues there is nothing that links a specific system of resource allocation or ownership to any notion of a Kantian peace. Put bluntly, regime type, political or economic, plays little role in the question of how to secure a lasting peace in international society. He is right, of course. As he writes, it is

an undeniable fact that policies for the realization of religious and nationalistic ideals have obtained the enthusiastic, even fanatic, support of the great masses regardless of the most severe restrictions of their economic welfare imposed upon them by these policies (Kelsen 1955: 70)

The point is that politics and economics are not intimately tied to another, and they do not, by nature or so, work in reasonable ways. One might say that Kelsen was very well aware that a possible kind of economic rationality is one thing, yet the fact of Freudian mass irrationality is quite another.

The elephant in the room is the question whether the realisation of socialist economic justice is the one royal road to world peace. In *Collective Security under International Law*, Kelsen (1957b: 23) tells us that this is wishful thinking: peace through Communism is 'utopian'. It is against all facts of human nature. The argument 'that violations of a social order are caused only or mainly by its economic insufficiency is contrary to all our social experience'. Sad but true, irrespective of economics or ideology, what we have to reckon with in all society, is the triad of 'hunger', 'ambition' and 'sexual desire'. Forever the Freudian, Kelsen goes on to say that if it were true that we could remove the economic side of conflict and war, it would mean that our yearning for prestige and pleasure would become all the more vicious. It is, Kelsen (*ibidem*) cautions us, 'an illusion to believe that, even if it could secure the satisfaction of all economic needs, a social order could prevent all its violations... and thus make the legal use of force, as a sanction, superfluous'. Again, political realism of a Freudian provenance.

Indeed, economics is a major factor in the day-to-day struggle for power and peace. But then, there is so much more to the question of war than the quarrel over energy supply and markets. In short, Kelsen (*idem*: 253) seeks to hammer home the point by quoting Lionel Robbins, an anti-Marxist, in that it is for everyone to see that the

ultimate condition giving rise to those clashes of national economic interest which lead to international war is the existence of independent national sovereignties. Not capitalism, but the anarchic political organization of the world is the root disease of our civilization.

From that perspective, it's clear enough why through another direct quote from Robbins, he (*ibidem*) concludes: 'We know today that unless we destroy the sovereign state, the sovereign state will destroy us.'

*Re-enter* Freud. What Kelsen is basically saying to us is this: Given human nature is what it is, the core logic of having You and Me locked in a coercive legal order, called the state, does not stop at the water's edge. Where law or the state are required to keep us at bay through the centralisation of force, it has to be the same in international life: hence a world state. And in *Peace through Law*, in which he concerns himself with how to 'eliminate the most terrible employment of force – namely war – from inter-State relations', Kelsen (1944: 4-5) is very clear that

no answer seems to be more self-evident than this: to unite all individual States or, at least, as many as possible, into a World State, to concentrate all their means of power, their armed forces, and put them at the disposal of a world government under laws created by a world parliament... There can be no doubt that the ideal solution of the problem of world organization as the problem of world peace is the establishment of a World Federal State composed of all or as many nations as possible.

If anarchy is the cause of war, we must, as Kelsen wants us to do, get rid of anarchy. Recall that already in *Collective Security under International Law*, he (1957b: 30) points out that the only pacifier – from the point of view of Pure legal technique – is a kind of world state, in the form of either a centralised world state or a world federal state. Even if the states comprising such a world federal state in international society were allowed to keep their means of force, what would happen is that any act of aggression by one state against any other would be dealt with by the world federal state's centralised police force which would enforce law.

But from the standpoint of the political, who would give up sovereignty? Nationalism? And national egotisms? Kelsen saw all these problems for world pacification. The centralisation of force comes at a price, one that in the eyes of too many peoples and nations is one considered too high. Limiting a nation's right to self-determination, the problem of a world state is, as he (1944: 11) writes, that it demands too much, not least because it will simply

comprise nations so different from one another in respect to language, religion, culture, history, political and economic structure, and in their geographic situation as are States of the American and States of the European continent, nations of western and nations of eastern civilizations.

This is not to say Kelsen was giving in to Hegelian-Schmittian nationalist sentiments (not at all), only – as he himself puts it – that we have to 'reckon with this phenomenon as with other decisive facts' (idem: 10). Key among these facts is what one might call human nature writ large, or even will to power writ large. It is perhaps in 'God and the State' that Kelsen (1973: 66-7) is most outspoken about the problem of Freudian identification in politics, domestic as well as international:

Just as the primitive at certain times, when he dons the mask of the totem animal which is the idol of his tribe, may commit all the transgressions which are otherwise forbidden by strict norms, so the civilized man, behind the mask of God, his nation or his state, may live out all those instincts, which as a simple group-member, he must carefully repress

within the group. Whereas anyone who praises himself is despised as a boaster, he may still unashamedly praise his God, his nation or his state although in doing so he merely indulges his own conceit; and whereas the individual as such is in no way thought entitled to coerce others, to dominate or even to kill them, it is nevertheless his supreme right to do all this in the name of God, the nation or the state, which for that very reason he loves, and lovingly identifies with, as 'his' God, 'his' nation and 'his' state.

Written in beautiful prose, it is a realistic picture of You and Me, making a world state or, for that matter, any other form of world society all the less likely.

Why would a polity want to give itself up for something like a world state? For that would be committing 'State suicide' (Kelsen 1944: 10). It is unrealistic that any state or government would ever do anything of substance that is not in the national interest. As Kelsen (1957b: 48) put it in *Collective Security under International Law*: 'No matter how a state acts, its action is motivated by egotism.' And he (*ibidem*) continues to go down this path: 'That all actions of a state are motivated by its egotism is an undeniable fact and the ascertainment of this fact is a truism'. Obviously, as to the scepticism of having a world state any time soon, or having even a form of world society, Kelsen was in good company with some of the most illustrious mid-twentieth-century realists. The following statements may sound cynical or elitist, or both, but at the time they are not wholly inappropriate. Surely, George F. Kennan (1993: 77-81) hit the nail on the head when he writes that romantic nationalism was a 'pathological form' of a 'mass emotional exaltation to which millions of people... appear to be highly susceptible'. Nor is it false when Walter Lippmann (2008 [1915]: 60) states in equally Freudian fashion that national sentiments are but a

cluster of primitive feelings, absorbed into a man and rooted within him long before conscious education begins. The house, the street, the meadow and hill upon which he first opened his eyes, the reactions to family and strangers which remain as types of his loves and hates, the earliest sounds which brought fear and pleasure – these are the stuff out of which nationalism is made. They constitute the ultimate background of the mind, its first culture and the most tenacious one.

And of course, Kelsen agreed and was as frightened as they were that nationalism was here to stay for a long time. One might say that pretty much all of the foreign policy realists writing at the time were scared to death (recall that many were Jewish) of what a Schmittian-style mass politics of exaltation means for political and international life. And so, understandably, Kennan (1993: 82) had an 'extreme dislike of all masses'. The notion of the 'omnicompetent, sovereign citizen' is as realistic, as Lippmann (1993 [1925]: 29) said, as for 'a fat man to try to be a ballet dancer'. In this regard, E. H. Carr (1936: 854) questioned the 'limited capacity of the elephant for aviation'. And Niebuhr (2008 [1952]: 169) warned us that 'collective man always tends to be complacent, self-righteous'. Some say this is elitism, others call it what it is: realism. Kelsen agreed.

But then, no single one of them ever said that progress or change is impossible. In *Collective Security under International Law*, in the section aptly called 'The Op-

position to International Security', Kelsen (1957b: 42-52) forces his friend and former student Morgenthau into a dialogue. He takes a swipe at Morgenthau's point in *Politics among Nations* that international politics is necessarily the realm of national egotism, and against his insinuation that virtually all systems of collective or international security are 'doomed to failure' because the 'only motive of national policy' is to 'serve its own national interest' (Kelsen 1957b: 47).

Now, as Kelsen (*ibidem*) has it, Morgenthau's line of 'argument is fundamentally wrong'. And what follows is Kelsen giving Morgenthau a quick lecture in political and foreign policy making. No doubt, he writes, 'No matter how a state acts, its action is motivated by egotism' (*ibidem*). To him that is almost too trivial to mention. But then, it is another thing to insinuate that the national interest that government pursues is like a natural law, like a government on autopilot, eternally against each and everything internationalist or globalist. For the national interest, says Kelsen quite rightly not only a fiction but also 'the result of a highly subjective value judgment' (*idem*: 48). It may sound trivial, but Kelsen (*ibidem*) goes on, for all the right reasons, to make it as clear as possible that

in the opinion of one government of a state a policy may be in the interest of the state, while in the opinion of another government of the same state under another political party, this same policy may not be in the interest of the state.

There is nothing 'objectively verifiable', he argues, that could have us say that the national interest does not allow for more international law, for more effective regimes of collective security or an ever-more centralised international legal order, if not also for a world society built around something like a world state (*ibidem*).

In the final analysis then, an even though people like Morgenthau were convinced that peace comes from a balance of power through good diplomacy whereas Kelsen was adamant that in order to make real progress in international society we will have to work unceasingly towards peace through law, both of these men were refreshingly clear that there is no such thing as a natural law-style 'national interest' out there. For politics is the realm of the normative, of the contingent. In *Politics among Nations*, Morgenthau was much in line with a sort of Kelsenian positivistic methodology rooted in a Freudian understanding of human nature. As he puts it, the national interest, like a norm, is not a product of Nature, Reason or God but it 'depends upon the political and cultural context within which foreign policy is formulated' and makes it clear enough: 'The goals that might be pursued by nations in their foreign policy can run the whole gamut of objectives any nation has ever pursued or might possibly pursue.' And exactly because he does not think that the 'conditions under which foreign policy operates... cannot be changed', he reaches this very conclusion:

Nothing in the realist position militates against the assumption that the present division of the political world into nation states will be replaced by larger units of a quite different character, more in keeping with the technical potentialities and the moral requirements of the contemporary world (all quotes in Morgenthau 1967 [1948]: 8-9).

That is quite a statement, all too often neglected by today's Schmittians in IR theory. What Kelsen and Morgenthau shared was not only a sustained human nature realism and clear view of anarchy as the real root cause of war, but also that some form of world state would be, at least in theory, a most efficacious pacifier in international society. So then, as William E. Scheuerman (2011) puts it so neatly to us his fascinating *The Realist Case for Global Reform* – 'Who's afraid of the World State?'

## 5. Conclusion: Speaking truth to power with peace through law

In this article I have reached back to the Kelsen-Freud relationship not to have us go back to times that may seem quite distant to the one that we are witnessing, but to make the case that the way how Kelsen spoke truth to power is as timely as it has ever been. Russia's ongoing war in Ukraine speaks volumes to the fact that the question how we order or structure today's and future international society is not a settled one. Of course, it will never be settled as there is no end in history, be it along the lines of Francis Fukuyama or any other ones.

As trivial as it sounds – and yet that really is key for us in the here and now – international order is what we make of it. It is rooted in our ambitions and aspirations, deeds and dreams, and actions. And in these debates, we better pay attention to the kind of Freudian human nature realism, which is the realistic intellectual substructure of Kelsen's juristic, political, democratic thinking: where there is one leitmotif: which is that there is no magic bullet in international life with which we can shoot ourselves into a new world freed from evil and injustice.

There are no magic bullets in political and international life. The real possibilities of ideas and rapid technological leaps may be endless (or so it seems), but re-reading Kelsen reminds us that we may not forget about the basics of politics and foreign affairs: one of which is, that where international anarchy is the root cause of war, we should be working towards less and less of it – and one way to do it, a most realistic one, would be through a bold strengthening of European and international law with real teeth wherever possible.

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