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# Law, peace, and world order: Hans Kelsen's global thought in the 1940s

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## Abstract

In the mid-twentieth century, the jurist Hans Kelsen envisaged a new legal and political international order. His global thinking revolved around his idea of a 'world state' as a means to preserve peace. The article contends that Kelsen's ideas on global legal and political order and a world state in the 1940s drew on his intellectual biography and on his earlier theoretical writings on order in the national scale. Another important source for understanding Kelsen's global thinking is his critique of the Chicago World Constitution Draft, a mid-century project which proposed the establishment of a federal world state. As this study shows, Kelsen's global thinking is characterised by a multi-scalar logic and an emphasis on positive law as the foundation of political and legal order. These elements render his ideas distinct in the historical trajectory of modern global thought, and deserve the attention of global historians today.

**Keywords:** global history; world state; Hans Kelsen; global intellectual history; history of political thought; world order

## Introduction

What kind of world order could be conducive to peace? During and in the immediate aftermath of the Second World War, this question interested many political thinkers in the United States and Europe. In light of the atrocities and destruction generated by the global conflict emerged a growing realisation of the need to envisage the peace from a global perspective as well.<sup>1</sup> While thinkers embraced the notion that a new political order would be necessary to guarantee peace, and that such an order should be 'global' in scope, there was no consensus about its specific characteristics or the means for its realisation.

This article seeks to position the jurist Hans Kelsen as a significant figure within debates on world order in the 1940s by investigating his ideas about a world state, legal international order and global constitutions. Scholars of international law and political theory have recognised Kelsen's theoretical contribution to international law, especially through his theories of the purity of law and constitutional democracy, yet his work has not featured significantly in global history scholarship.<sup>2</sup> This study argues that his contribution to thinking about political order on a global scale renders him a significant thinker in the history of global thinking.

<sup>1</sup>See, for example, David Reynolds, *One World Divisible: A Global History since 1945* (Allen Lane, 2000).

<sup>2</sup>The historiography on Kelsen in international law and political theory is vast, including, for example Lars Vinx, *The Guardian of the Constitution: Hans Kelsen and Carl Schmitt on the Limits of Constitutional Law* (Cambridge University Press, 2015); Lars Vinx, 'Hans Kelsen and the Material Constitution of Democracy', *Jurisprudence* 12, no. 4 (2021): 466–90; Sara Lagi, *Democracy in Its Essence: Hans Kelsen as a Political Thinker* (Rowman & Littlefield, 2020); Eerik Lagerspetz, 'Kelsen on Democracy and Majority Decision', *Archives for Philosophy of Law and Social Philosophy* 3 no. 2 (2017): 155–79. On Kelsen's

Although the term 'global' does not feature explicitly in Kelsen's writings, he was interested in this scale of order, and his work offers an original approach for thinking about global legal and political order. In this sense, we can read his work as an implicit interpretation of the political implications of order on a world scale, and thus as a contribution to global political thought. As Samuel Moyn and Andrew Sartori argue, global intellectual history includes an important strand of histories of the 'global' itself, its representations and imaginaries in different spatial and temporal contexts.<sup>3</sup> By employing a multi-scalar approach to political order, which includes both national and global dimensions, and prioritising a positivist legal interpretation of world order, Kelsen's writings on legal cosmopolitanism and world constitutions embody not only a distinctive reflection on the conditions for peace, but also an important example of the ways in which the political and legal aspects of global thinking intertwined during the mid-twentieth century.

Kelsen's ideas about the global sphere were part of a wider conversation that took place in the 1940s, as the Second World War led political thinkers to envisage new world orders. Emphasising the global dimension of the war, which involved the vast majority of the world's territories and polities, political thinkers argued that the post-war peace should also be planned on a global scale. The foundation of new international organisations, including the United Nations (UN) in 1945, did not exhaust the flow of ideas about future world orders, especially those aimed at preserving peace.<sup>4</sup> A plethora of diverse figures, including, for example, Barbara Wootton, Clarence Streit, Hannah Arendt, Kwame Nkrumah, Harold Laski, Owen Lattimore, W. E. B. DuBois, Friedrich Hayek, David Mitrany, and Alfred Zimmern, envisaged the foundation of new federations, functional orders, and pluralist or anticolonial unions as the foundation for global political order.<sup>5</sup> The end of the war was, for them, a moment of potentially global world-making, a time when the construction of a new political imaginary of the global space might be possible.<sup>6</sup>

Federal schemes were particularly appealing for mid-century thinkers, in the United States and Europe as well as the colonial world, as these offered an alternative to both nation-state and empire. By extending their political gaze from the national sphere to the regional, international, and eventually global domains, proponents of federalism were critical of the existing world order of nation-states and empires, and saw federations as the desirable framework for the maintenance of peace and political diversity alike.<sup>7</sup>

In this context, a group of Chicago-based academics came up with the idea of writing a constitution for a world federation, a legal document that could transform the relations between

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international law, see Carlo Nitsch, *Diritto e forza nella comunità degli stati: Studi su Hans Kelsen e la teoria del diritto internazionale* (Satura, 2012). For Kelsen's influence on International Relations see Robert Schuett, *Hans Kelsen's political realism* (Edinburgh University Press, 2021). For a classical interpretation of Kelsen's political thought see Norberto Bobbio, *Diritto e Potere* (Giappichelli, 2014). Kelsen has often been compared with the jurist Carl Schmitt; see Hidemi Suganami, 'Understanding Sovereignty through Kelsen/Schmitt', *Review of International Studies* 33, no. 3 (2007): 511–30.

<sup>3</sup>Samuel Moyn and Andrew Sartori, 'Approaches to Global Intellectual History', in *Global Intellectual History*, eds. Samuel Moyn and Andrew Sartori (Columbia University Press, 2013), 1–28.

<sup>4</sup>Mark Mazower, *Governing the World: The History of an Idea* (Allan Lane, 2013).

<sup>5</sup>Recent works on mid-century visions of world order include, for example, Adam Dahl 'Constructing Colonial Peoples: W. E. B. Du Bois, the United Nations, and the Politics of Space and Scale', *Modern Intellectual History* 20, no. 3 (2023): 858–82; Peter Lamb, 'Harold Laski's International Functionalism: A Socialist Challenge to Federalism', *The International History Review* 41, no. 3 (2019): 581–603; Douglas Klusmeyer, 'Hannah Arendt's Case for Federalism', *Publius* 40, no. 1 (2010): 31–58.

<sup>6</sup>Duncan Bell, 'Making and Taking Worlds', in *Global Intellectual History*, 254–80.

<sup>7</sup>For historical accounts of twentieth-century federal international thought see, for example, Frederick Cooper, *Citizenship between Empire and Nation: Remaking France and French Africa, 1945–1960* (Princeton University Press, 2014); Glenda Sluga, *Internationalism in the Age of Nationalism* (University of Pennsylvania Press, 2013); Adom Getachew, *Worldmaking after Empire: The Rise and Fall of Self-determination* (Princeton University Press, 2020); Or Rosenboim, *The Emergence of Globalism: Visions of World Order in Britain and the United States, 1939–1950* (Princeton University Press, 2017).

peoples and governments, and potentially generate a peaceful world order.<sup>8</sup> It was one among many schemes for world federation aired at the time, which gained public interest despite their vagueness around potential members and means of realisation.<sup>9</sup> This document, published in 1948, is historically and theoretically significant as one of the most elaborate attempts to outline a world constitution as a means to bring about global political change. At the time, its publication drew great attention in the United States and beyond. Kelsen was invited by the committee to comment on the draft before publication. Given Kelsen's interest in the Chicago project, this study suggests that his commentary on the world constitution draft can shed light on his own global thinking too. His comments on the constitutional draft thus help show his interpretation of issues that were of key concern for proponents of federalism at the time.<sup>10</sup> His rejection of the Chicago constitution shows his own priorities in envisaging global political transformation through law.

In his own work, as well as in his commentary on the Chicago constitution, Kelsen's views emerged as distinct from other proponents of global change through law in two aspects—scalar logic and positive law. Unlike the Chicago constitutionalists, he rejected natural law as the foundation for a new world order, relying on the principles of the pure system of positive law instead. In addition, he did not consider constitutions as the foundation for a new world order, but rather as a means of ordering within an already-existing order of international public law, which could generate legal norms. Thus, the use of scalar logic allowed Kelsen to build on his practical and theoretical experience in national constitution-making and extend his ideas to the global scale. By analysing Kelsen's ideas about the global sphere in the 1940s in relation to his earlier theories of law and politics, and to his commentary on the Chicago constitution, this article argues that Kelsen made an important contribution to the historical development of global thinking in the twentieth century, which merits the attention of global historians today.

### Kelsen's global political thought

Hans Kelsen was born in 1881 to a Jewish family in Prague, studied law at the University of Vienna, and in 1911 obtained his *habilitation* in Austrian public law and legal philosophy. In 1918, he was appointed associate professor at the University of Vienna.<sup>11</sup> If before the First World War he was concerned with the constitutional problems of a multi-ethnic empire, in the immediate aftermath of the conflict he made a significant contribution to writing the constitution of the new Austrian republic as an adviser to the Chancellor, Karl Renner. This constitutional moment became for him an opportunity to imagine a new order that could provide a better equilibrium between universal and particular aspirations.<sup>12</sup>

Kelsen's juridical publications in the 1920s and 1930s, including his 'pure theory' of law, won him an international reputation.<sup>13</sup> His ambitious attempt to describe the origins of law—a formal and hypothetical 'ground-norm' on which the entire legal system relied—was innovative and challenging, leading to a new positivist legal approach which endowed the state with a prime role

<sup>8</sup>On the constitution see Robert Maynard Hutchins and Committee to Frame a World Constitution. *Preliminary Draft of a World Constitution* (University of Chicago, 1948). Also online at [https://en.m.wikisource.org/wiki/Preliminary\\_Draft\\_of\\_a\\_World\\_Constitution\\_1948](https://en.m.wikisource.org/wiki/Preliminary_Draft_of_a_World_Constitution_1948) (last accessed 8 September 2024).

<sup>9</sup>World federation was particularly prominent in American debates. See, for example, *Chaos, War, or a New World Order? What We Must Do to Establish the All-Inclusive, Non-Military, Democratic Federation of Nations* (Campaign for World Government, 1942); M. Gwyer, 'A World Constitution', *World Affairs* 103, no. 3 (1940): 138–41.

<sup>10</sup>Or Rosenboim, 'Globalismo attraverso il diritto: Kelsen, lo stato mondiale e la ricerca della pace', *Storia del pensiero politico* 1 (2023): 65–86.

<sup>11</sup>For a detailed biography of Kelsen, see Thomas Olechowski, *Hans Kelsen: Biographie eines Rechtswissenschaftlers* (Mohr Siebeck, 2020).

<sup>12</sup>Natasha Wheatley, *The Life and Death of States: Central Europe and the Transformation of Modern Sovereignty* (Princeton University Press, 2022), ch. 6.

<sup>13</sup>Hans Kelsen, *Reine Rechtslehre* (Mohr Siebeck, 2020 [1934]).

in the making of legal and political order, excluding ‘nature’, ‘God’, or other external elements.<sup>14</sup> As he affirmed in his study of sovereignty, the international and national dimensions of the law cannot be in contradiction, as they form part of the same legal system, in which, importantly, international law holds the primacy.<sup>15</sup>

In 1930, Kelsen accepted a professorship at the University of Cologne. Yet three years later, the Nazi regime enacted the *Gesetz zur Wiederherstellung des Berufsbeamtentums* (Law for the Restoration of the Professional Civil Service), stripping him of his post. He spent time teaching in Czechoslovakia and Switzerland before moving to the United States in 1940, where he gave the Oliver Wendell Holmes Lectures at Harvard on Law and Peace in International Relations.<sup>16</sup> In 1945, he became a full professor in the department of political science at UC Berkeley. Despite his recognition as one of the world’s leading theorists of international law, he never managed to secure a position in American law departments.<sup>17</sup> This disciplinary transition changed not only the academic-sociological environment in which he produced his later scholarship, but also gave rise to a growing interest in international politics and the global political order.<sup>18</sup> In this context, his publications outlined an innovative vision of how the law could become a means of pacification on a global scale, calling for the establishment of a world tribunal, world parliament, and, at least theoretically, a world state.<sup>19</sup>

In wartime United States, Kelsen was busy imagining the future of world politics at the end of the conflict and the necessary means for the maintenance of the peace. He outlined the terms of his investigation as distinctly political. His 1944 treatise *Peace through Law* opens with a clear condemnation of war:

such a truth is: that war is mass murder, the greatest disgrace of our culture, and that to secure world peace is our foremost political task, a task much more important than the decision between democracy and autocracy, or capitalism and socialism; for there is no essential social progress possible as long as no *international organization* is established by which war between the nations of this earth is effectively prevented.<sup>20</sup>

What is the meaning that Kelsen attached to the ‘international organisation’ he proposed as a war-prevention means? Would it be a similar treaty-based organisation to the extant League of Nations, or a different legal-political structure?

During the 1940s, as Kelsen published in English his theory of the unity of the state and the law, these questions remained at the background of his writings. In his major work of that period, *General Theory of Law and State*, he argued that the state cannot be defined independently of legal concepts, and rejected the dualism of law and statehood.<sup>21</sup> The state, for Kelsen, was the personification of the legal order, rather than its antecedent or creator. What kind of state might be the personification of the *international* legal order? While it is beyond the scope of this study to examine in detail Kelsen’s theory of the state, it is important to note that such questions had

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<sup>14</sup>In the 1920s, Kelsen’s work on national constitutions and his role as a judge in the Austrian constitutional court gave him a direct understanding of the role of constitutions in shaping political and legal order in both the national and international spheres. See also Hans Kelsen, *La Garantie juridictionnelle de la constitution (la Justice constitutionnelle)* (Marcel Giard, 1928); Wheatley, *The Life and Death of States*, 225.

<sup>15</sup>Hans Kelsen, *Il Problema della sovranità e la teoria del diritto internazionale*, trad. Agostino Carrino (Giuffrè, 1989), originally published as *Das Problem der Souveränität und die Theorie des Völkerrechts. Beitrag zu einer Reinen Rechtslehre* (Mohr Tübingen, 1920).

<sup>16</sup>Hans Kelsen, *Law and Peace in International Relations* (Harvard University Press, 1942).

<sup>17</sup>Oliver Jütersonke, ‘Kelsen and Morgenthau in America: Betwixt Legal Philosophy and International Politics’, *OZP* 51, no. 3 (2022): 72–82.

<sup>18</sup>Hedley Bull, ‘Hans Kelsen and International Law’, in *Essays on Kelsen*, eds. Richard Tur and William Twining (Oxford University Press, 1986), 321–36.

<sup>19</sup>Hans Kelsen, *Peace through Law* (The University of North Carolina Press, 1944).

<sup>20</sup>Kelsen, *Peace through Law*, viii. Italics added.

<sup>21</sup>Hans Kelsen, *General Theory of Law and State* (Russell & Russell, 1945).

attracted Kelsen's attention since the 1920s, and resonated in the 1940s with increasing public debate on the future world order to be established after the end of the war. In an earlier iteration he sought to resolve the problem of the lack of a world state to correspond to the international legal order, with a distinction between two kinds of states, the state *lato sensu*, which corresponds to the legal order, and the state *stricto sensu*, which embodies the power structures of the political system. Thus, the international order reflects elements of statehood, yet it is not a state like Italy or Sweden.<sup>22</sup> While such a distinction helps clarify Kelsen's view on the different meaning of statehood on different scales, it does not necessarily elucidate what kind of statehood could be attributed to the 'world state', or the political personification of the international legal order. This issue remained, in Kelsen's work, relatively vague.

Kelsen's global thinking reflected his political preference for a form of legal cosmopolitanism, a position he developed through his critique of sovereignty.<sup>23</sup> He outlined this idea in his 1920 treatise on sovereignty, where he ambitiously argued that international law is a total and superior legal order, in which states form partial orders. Sovereignty belongs, thus, with this universal order, rather than with any particular or partial one, such as a nation-state. For him, therefore, a desirable world order would be based on a world-encompassing structure of positive international law that would not entail the 'loss' of sovereignty by nation-states, as these can only be partially sovereign.<sup>24</sup> Indeed, Kelsen argued that critiques of supra-national institutions have used the concept of sovereignty in a specific way—as an absolute value supposedly in insurmountable tension with an international order—to justify particular political interests, rather than express an actual logical limit of this concept. Judicial decisions which represent a common agreement rather than particular interests do not lead to the loss of state sovereignty nor limit sovereign equality, but in fact guarantee the 'co-existence of the States as sovereign and equal communities'.<sup>25</sup> Political order depended, for him, on juridical cooperation on a global level. Thus, the establishment of a global order—or a form of a world state—was not only possible but desirable.

From the late 1930s, political theorists of power, sovereignty and conflict moved away from state-centric positions to envisage a new peaceful order on a global scale.<sup>26</sup> The Second World War led some of them to cite nationalism as the cause of global conflict and to embrace alternative political orders to guarantee world peace.<sup>27</sup> One of these was Hans Morgenthau, who received his *habilitation* under Kelsen's supervision before the Second World War. He suggested in the 1940s that a world state—or a world legal-political system—was the ideal solution for the problem of war, but national sovereignty and nationalist ideologies prevented its realisation.<sup>28</sup> In Britain, internationalist thinkers such as David Mitrany and H. G. Wells also advanced new models for world order, a transnational or supra-national one, that would be a better guarantee against war. For Mitrany, new communication technologies could help set up a supra-national 'functional' network, that would enhance collaboration where necessary without demanding political unity.<sup>29</sup>

<sup>22</sup>On Kelsen's conception of the state, see Hans Kelsen, *Dottrina generale dello Stato* (Giuffrè, 2013) (originally published as *Allgemeine Staatslehre: Studienausgabe Der Originalausgabe*, 1925); Kelsen, *General Theory of Law and State*; Michel Troper, 'Kelsen, Weber and the Problem of the Emergence of the State', in *The Reconstruction of the Juridico-Political: Affinity and Divergence in Hans Kelsen and Max Weber*, eds. By Ian Bryan, Peter Langford, and John McGarry (Routledge, 2015), 110–21.

<sup>23</sup>Lars Vinx, *Hans Kelsen's Pure Theory of Law: Legality and Legitimacy* (Oxford University Press, 2007), ch. 6.

<sup>24</sup>Kelsen, *Il Problema della sovranità*, 422 ff.

<sup>25</sup>*Ibid.*, 49.

<sup>26</sup>William E. Scheuerman, *The Realist Case for Global Reform* (Polity, 2011).

<sup>27</sup>For example, E. M. Earle, *National Power and World Order* (University of Denver Press, 1948).

<sup>28</sup>Hans Morgenthau, *Politics among Nations* (A. A. Knopf, 1948): 401–3; James P. Speer, 'Hans Morgenthau and the World State', *World Politics* 20, no. 2 (1968): 207–27.

<sup>29</sup>David Mitrany, *A Working Peace System* (Royal Institute of International Affairs, 1943); on Mitrany see Per A. Hammerlund, *Liberal Internationalism and the Decline of the State: The Thought of Richard Cobden, David Mitrany, and Kenichi Ohmae* (Palgrave Macmillan, 2005).

Wells, in contrast, suggested that technological innovation could foster the creation of a world state, a new organisation to guarantee peace.<sup>30</sup>

In the same 1944 lectures, Kelsen provides some more details, though no clear definition of his idea of post-war world order to guarantee peace:

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. The realization of this idea, however, is confronted with serious and, at least at present, insurmountable difficulties.<sup>31</sup>

In his reflections on global order, Kelsen used a scalar logic to connect his previous experience in domestic constitution-writing to the world scale of constitutional change required after the war.<sup>32</sup> When thinking about a future political world order, Kelsen argued that the law—including legal institutions such as a constitution—could generate a universal world order to guarantee peace. Legal agreements, rather than common ideology, religion, race or shared history, could become an effective bond in the creation of a meaningful new peace-keeping multi-layered system. The national, regional, imperial, international, and global political domains were thus not detached and separate, but potentially connected by a common legal system with universal reach. In this sense, Kelsen's writings on an international legal system, or on a 'world state', illustrate an understanding of the global as a significant dimension of both law and politics, which was part of a multi-layered system rather than distinct spatial domain.

Kelsen seems to belong, therefore, to a tradition of mid-century cosmopolitan world federalists, who, as Scheuerman shows, envisaged a 'world state' not as the global extension of the familiar Weberian state, but rather as a multi-layered system.<sup>33</sup> At the time when he was giving his Holmes lectures, the idea of world federation was gaining traction especially in the English-speaking world. While existing scholarship has not associated him directly with these mid-century proponents of a world federation, he was absorbed by these concerns, and often read and commented on the ideas of his contemporaneous global thinkers. For example, he cited Lionel Robbins, a British economist and proponent of federalism, in arguing that the 'anarchic political organization of the world' is the major cause of war.<sup>34</sup>

Robbins and Kelsen shared a critical position towards national sovereignty as a defining element in international relations. For Robbins, absolutist ideas about national sovereignty were to blame for international conflict, rather than any particular economic or political system such as socialism or capitalism. Thus, in the early 1940s, he joined Federal Union, a British organisation that proposed the federal union of Britain with other democracies as the foundation of a new post-war world order based on peace, democracy, and prosperity.<sup>35</sup> Federation, or the division of political power across local and supra-national entities in a multi-layered political order, could undermine nationalistic enmities, enhance cooperation across national boundaries, and thus offer

<sup>30</sup>H. G. Wells, *The New World Order. Whether It Is Attainable, How It Can Be Attained and What Sort of World a World at Peace Will Have to Be* (Secker & Warburg, 1940). On Wells' internationalism see John S. Partington, 'H. G. Wells and the World State: A Liberal Cosmopolitan in a Totalitarian Age', *International Relations* 17, no. 2 (2003): 233–46.

<sup>31</sup>Kelsen, *Peace through Law*, 5.

<sup>32</sup>On scale in historical studies see, for example, Jan de Vries, 'Playing with Scales: The Global and the Micro, the Macro and the Nano', *Past & Present* 242, supp. 14 (2019): 23–36.

<sup>33</sup>Scheuerman, however, does not mention Kelsen or include him in the analysis. William E. Scheuerman, 'Cosmopolitanism and the World State', *Review of International Studies* 40, no. 3 (2014): 419–41. For similar mid-century proposals for world federation (including by Frederick Schuman) see Scheuerman, *The Realist Case for Global Reform*, ch. 3.

<sup>34</sup>Lionel Robbins, *The Economic Causes of War* (J. Cape, 1939). Cited in Hans Kelsen, 'Some Remarks on A Preliminary Draft of a World Constitution', in Committee to Frame a World Constitution Records 1945–1951, Platzman Library, University of Chicago, box 36.

<sup>35</sup>On Lionel Robbins and Federal Union see Rosenboim, *The Emergence of Globalism*, ch. 5.

a potential peaceful change. Robbins and his colleagues at Federal Union—including William Beveridge, Barbara Wootton, and Friedrich Hayek—embraced the federal cause since 1939, yet during the early years of the war focused their efforts on the realisation of a regional European federation as a first step towards a world federation, which like Kelsen they deemed theoretically worthy yet impractical at the time.<sup>36</sup>

The proposal for a post-war global order was not without ambivalence. Kelsen advanced the argument that a world federation could be an ideal solution for the problem of international war, but at the same time, suggested that ‘international peace can be secured without the establishment of a World State’.<sup>37</sup> The notion of centralisation helped him to distinguish between the centralised national legal order and the decentralised international legal order, and thus he envisaged a less centralised international organisation—namely an international court with compulsory jurisdiction based on international law—that would form an initial guarantee against international conflict.<sup>38</sup> Yet it remains far from certain that he intended to replicate the modern state’s model in the international realm; possibly, he accepted that the international sphere entailed a decentralised or multi-layered order. A flexible, multi-layered federation could be better equipped to overcome global political and legal challenges, and accommodate a plurality of political relations, each formulated through legal agreements: ‘the hope for such an international organization with an international court of compulsory jurisdiction at its center rests on more solid ground than the dream of a world state’.<sup>39</sup>

Like the federalists at Federal Union, Kelsen was concerned with the feasibility of the global federal project. He suggested that the scale of the international organisation should be decided pragmatically: ideally, it should be global, but in absence of world-wide consensus, Kelsen accepted a ‘union’ of more limited power and scale, which would include only some of the world’s states, arguing that ‘as long as it is impossible to constitute this union of states as a federal state, it seems to be more correct to limit its task to the maintenance of international peace, and to leave protection against external aggression to political alliances between Member states’.<sup>40</sup> Thus, he was able to affirm that loose alliances could turn into closer unions, for example in Western Europe, between the UK and the United States, or in the ‘American hemisphere’.

The prevalence of Europe, the UK, and the United States echoes other mid-century federal projects including a widely popular one by the American journalist Clarence Streit, who called for a federation of western democracies as a nucleus for a world federation.<sup>41</sup> The distinctiveness of Kelsen’s global thinking was its emphasis on the co-constitutive features of politics and law, which extended also to the international realm given the universality of the legal public order. The notion of global order for him did not imply necessarily ‘world state’, intended as the global extension of the institutions and organs typical of the modern state, but instead he envisaged the global realisation of a universal legal order, which could have a particular expression in a political federal project. Whereas the economists at Federal Union put their trust in the binding powers of economic structures—whether free trade or state-regulated—Kelsen’s international order highlighted the legal aspects of the global sphere ruled by the norms of positive international law.<sup>42</sup> In this context, Kelsen

<sup>36</sup>Philip H. Kerr and Patrick Ransome, eds., *Studies in Federal Planning* (Macmillan & Co., 1943). On Federal Union see Tommaso Milani, ‘From Laissez-Faire to Supranational Planning: The Economic Debate within Federal Union (1938–1945)’, *European Review of History* 23, no. 4 (2016): 664–85. Other similar visions in Federal Union included William B. Curry, *The Case for Federal Union* (Penguin, 1939).

<sup>37</sup>Kelsen, *Peace through Law*, 9.

<sup>38</sup>*Ibid.*, 13–14. See also Troper, ‘Kelsen, Weber and the Problem of the Emergence of the State’.

<sup>39</sup>Kelsen, *Peace through Law*, 57.

<sup>40</sup>*Ibid.*, 55.

<sup>41</sup>Clarence K. Streit, *Union Now: A Proposal for a Federal Union of the Democracies of the North Atlantic* (Harper & Brothers, 1939). On Streit’s internationalism see Talbot Imlay, *Clarence Streit and Twentieth-Century American Internationalism* (Cambridge University Press, 2023), ch. 3.

<sup>42</sup>Kelsen, *Peace through Law*, 38.

accepted the invitation to review the world constitution draft written by the Chicago Committee as the foundation of a peaceful world federation.

### The Chicago Committee to Frame a World Constitution Draft, 1945–51

In August 1945, just days after the Americans dropped the atomic bombs on Japan, a group of intellectuals at the University of Chicago decided to launch a project aimed at drafting a world constitution.<sup>43</sup> The catastrophic consequences of nuclear weapons persuaded the Italian literary scholar Giuseppe Antonio Borgese and the American philosopher Richard McKeon that the only way to avert disaster was to turn away from national politics by establishing a democratic world federation. With the blessing of the university's president, Robert M. Hutchins, they invited a dozen scholars from American universities to join them in writing a new constitution draft for the future world federation.

The Chicago Committee to Frame a World Constitution Draft convened regularly from December 1945 to July 1947. Its members were influential and authoritative figures in the humanities and social sciences, including McKeon, Hutchins, Borgese, Mortimer Adler, Charles Howard McIlwain, James M. Landis, Reinhold Niebuhr, Wilber G. Katz, Rexford Tugwell, Robert Redfield, William E. Hocking, Beardsley Ruml, Albert Leon Guérard, Stringfellow Barr, Harold Innis, and Erich Kahler. Lewis Mumford, Norman Cousins, Jacques Maritain, and Luigi Sturzo lent their support.<sup>44</sup> Like Borgese, who fled Italy as an anti-fascist—many of the members of the initiative were recent migrants who escaped persecution in Europe. This experience might have given further urgency to their endeavour, which sought to provide a global framework for peaceful collaboration across borders.

The Committee published its final document in 1947, a world constitution draft that generated widespread political debate in the United States and beyond.<sup>45</sup> The proposed draft opened with a preamble, which aimed to highlight the universal values of the constitution, which, presumably, applied to all of humankind. The following section included a 'declaration of rights and duties' which would be the foundation of the 'universal government of justice', in conformity with the 'Law of Nature'. The declaration included the abolition of servitude, freedom of speech and assembly, the defence of liberty, dignity, and the self determination of minorities, and concluded with a recognition of the 'four elements of life—earth, water, air, energy' as the 'common property of the human race'.

The subsequent sections of the constitution outlined the foundations of the proposed world state. Starting with the 'grant of powers'—which entailed enforcing the rights and duties declaration, maintaining peace, settlement of disputes, tax collection, administration of justice, organisation of armed forces, and management of ex-colonies—the constitution then turned to the institutional structure of the state. The proposed institutions included a Federal Convention elected by popular vote in nine regional Electoral Colleges. The Convention would meet every three years to elect the executive body: a President and a Council. The President would nominate a Chancellor leading the cabinet, and establish advisory representative bodies: House of Nationalities, a Syndical Senate representing professions, and an Institute of Science, Education and Culture, as well as a Planning Agency. The constitution further outlined the structure of the legal system, including the Grand Tribunal and the Supreme Court, as well as five minor tribunals dealing with conflicts between the world government, member states, and local individuals and associations. The Tribune of the People would serve to defend the natural and civil

<sup>43</sup>Joseph Preston Baratta, *The Politics of World Federation* (Praeger, 2004), 248; Mazower, *Governing the World*, 232–3; Wesley T. Woley, *Alternatives to Anarchy: American Supranationalism since World War II* (Indiana University Press, 1988), 44.

<sup>44</sup>Niebuhr and Adler left the project before the constitution was published. For a detailed analysis of the constitution project see Rosenboim, *The Emergence of Globalism*, ch. 6.

<sup>45</sup>Hutchins et al., *Preliminary Draft of a World Constitution*.

rights of individuals and groups. A Chamber of Guardians would be established to control the armed forces of the Federal Republic of the World, which would oversee the manufacturing and use of arms on local and federal levels. The constitution established that the World Republic would select a federal capital and a common language, currency, and calendar.<sup>46</sup>

The constitution was the outcome of two years of deliberations. The project's archives, hosted at the University of Chicago, includes the minutes of the committee's meetings that reveal that the authors of the constitution sought to put their intellectual faculties to public service and produce a document that could become the beginning of a global conversation about practical political change on a world scale. They hoped to offer a practical and realistic political vision, and debated the desirability of democracy on a global scale and the moral value of political pluralism. The archives also include reports and comments from all around the world, which demonstrate the interest that the constitution generated, if only on a theoretical level.<sup>47</sup> By engaging with other scholars, the Chicago Committee extended the debate beyond its members, to reflect on the merit of the draft, its flaws, and the desirability of the whole project in the context of the quest for a new world order in the war's aftermath. The central themes discussed in the constitution resonated with Kelsen's concerns at the time: What institutions were needed to guarantee peace? Could a constitutional document bring about the foundation of a peaceful world order? How to reconcile the world's political diversity in a new system that could effectively settle disputes and avert armed conflicts? These were some of the questions that he addressed in his commentary on the constitution draft.

### Kelsen's critique of the Preliminary Draft of a World Constitution

Problems of global political and juridical orders have interested Kelsen since the beginning of his career, but he did not engage in writing a world constitution in any substantial detail. The idea of a world state remained appealing as the ultimate defence against war, but, as he concluded in 1944, its realisation was uncertain. While he did participate in group discussions on international order before—mostly in Vienna and Geneva but also in Berkeley—he turned down the invitation to join the Chicago Committee's constitutional discussions. His detailed review of the 'Preliminary Draft of a World Constitution', however, offers an important opportunity to gauge his interpretation of the concept of world state. His commentary highlights not only the flaws he found in the constitution that the Chicago scholars had composed, but also sheds light on his own understanding of notions of universalism and pluralism, statehood and sovereignty, which played a foundational role in his global thought.

Kelsen's reflections on the constitution began with a spotlight on the conceptual confusion that mired, in his view, the project: who gets to decide to establish the world state?<sup>48</sup> Kelsen was generally hostile to the idea of constituent power. For him, a people not legally organised was a mere multitude, and therefore the notion of constituent power was meaningless. In his theory of democracy, he sought to eliminate the concept of the people as a unitary object equipped with a will which supposedly produces laws.<sup>49</sup> The democratic constitution was not the expression of the constituent power possessed by the sovereign people but rather as a compromise between different projects, ideas, and visions which depended on legal norms.<sup>50</sup> He pursued this line of argument in his critique of the Chicago constitution, suggesting that the reliance on a conceptually and legally vague notion of the will of the 'constituent people' posed a real challenge to any world constitution (and to any constitution, as such).<sup>51</sup> He requested to clarify whether the constituent power should

<sup>46</sup>Ibid.

<sup>47</sup>Committee to Frame a World Constitution Records 1945–1951, Platzman Library, University of Chicago.

<sup>48</sup>Kelsen, 'Some Remarks'.

<sup>49</sup>Hans Kelsen, *The Essence and Value of Democracy*, trans. Brian Graf (Rowman & Littlefield, 2013) (originally published as *Vom Wesen und Wert der Demokratie*, 1920).

<sup>50</sup>On the sources for democratic constitutions see, for example, Kelsen, *La Garantie juridictionnelle de la constitution*.

<sup>51</sup>On the constituent power see Lucia Rubinelli, *Constituent Power: A History* (Cambridge University Press, 2020).

be invested in the people of the world as such (as individuals, citizens, or social groups), or in the governments of member states. For him, the constitution's assertion (drawing on the American constitution) that 'the people of the earth' have agreed to establish a world government was meaningless, as the world's population had no legal significance. Instead, the constitution should detail specifically the 'governments of definite states (not "nations")' that would join the federation since 'it is not probable that all the states of the world will become contracting parties to the agreement as the original members of the World Federal State'.<sup>52</sup> Thus, he suggested that the federation would include only those states that agreed to join it, rendering it transnational or regional rather than global, at least initially.

This critique of global constitutionalism was later repeated in Kelsen's lengthy book on the UN law, published in 1950.<sup>53</sup> The book offers a critical assessment of the Charter of the United Nations; it focused on the legal problems arising from the document, but acknowledged that the legal dimension of the UN cannot be fully divorced from political concerns. In one of the chapters, Kelsen concerned himself with the preamble, and highlighted some issues that he previously addressed also in his critique of the Chicago constitution. For Kelsen, the preamble failed to specify clearly whether the constituents of the international organisation were the people of the world or the member states. The aspiration to include the 'people of the world' as the founders of the new international organisation—be it the UN or the World Federation—seemed to him legally imprecise and politically improbable. Turning to individuals or 'peoples' as constituent power was equally misleading for Kelsen. While individuals had liabilities and responsibilities under international law, the legal (international or national) system was not founded by individual will, but depended on the Grundnorm.<sup>54</sup>

In his review of the Chicago constitution, Kelsen criticised vague thinking about politics and law, objecting to the use of aspirational terminology, in continuity with his earlier reflections from the 1920s where he had expressed a similar objection to putting strong principles into national democratic constitutions.<sup>55</sup> He rejected the constitution's claim for universal validity based on morality and argued that the constitution was a 'instrument, the function of which is to establish obligations, responsibilities, competences and rights, that is to say to prescribe human behaviour, not to describe facts by presenting explanatory theories'.<sup>56</sup> Thus, the notion of global moral values was irrelevant for its institution. Instead, he emphasised the importance of a universal public international law, which provided the legal norms for the global sphere. The federation that the Chicago constitution sought to establish depended, for Kelsen, not on global morality but on the existence of such an international legal order, though it was not to be identified with it.

Kelsen recognised the moral and political value of the term 'justice' for 'propaganda purposes'. He advised, however, against using it in legal documents because it was 'impossible to define' and thus legally meaningless. He considered the Chicago constitution as a different conceptual creation from his own view of the law as a universal order. While the constitution's authors might have found inspiration in Kelsen's own thesis about the primacy and universality of international law over state law, he thought that their vision lacked proper legal foundation. Evidently, the issue he took with the constitution was linked not only to its abstract wording, but also to the constitutional attempt to seek foundation in external elements, such as the notion of 'justice'. Thus, the problem with the constitution was not its geographical or political scope—a global

<sup>52</sup>Ibid.

<sup>53</sup>Hans Kelsen, *The Law of the United Nations: A Critical Analysis of Its Fundamental Problems* (The Institute of World Affairs, 1950); an excerpt on the preamble was published in 1946, during the deliberations of the Chicago Committee. Hans Kelsen, 'The Preamble of the Charter—A Critical Analysis', *The Journal of Politics* 8, no. 2 (1946): 134–59.

<sup>54</sup>Danilo Zolo, 'Hans Kelsen: International Peace through International Law', *European Journal of International Law* 9, no. 2 (1998): 306–24.

<sup>55</sup>Kelsen, *La Garantie juridictionnelle de la constitution*. See also Vinx, *The Guardian of the Constitution*, 22–78.

<sup>56</sup>Kelsen, 'Some Remarks', 2.

project—but its reliance on external justifications which for him had no place in legal and political thought.

Conceptually, Kelsen challenged the uses of fundamental terms—not only justice but also sovereignty—in which the constitution invested significant importance. He suggested that the constitution should altogether avoid the term ‘sovereignty’, since this concept is not as foundational for instituting a world federation as the Chicago Committee might have assumed. As we have seen above, Kelsen challenged dogmatic understandings of sovereignty as absolute also in the national context. From the viewpoint of international law, he argued that the draft misguidedly sought the source of sovereignty in external entities: the member states, nations, the people of the world, or the human person. Contesting the constitution’s claim that ‘the sovereignty of the Federal Republic of the World resides in the people of the world’, Kelsen argued that:

sovereignty means supreme authority. Even in a democratic state the people is not sovereign. If it exists as a legal entity at all, it is an organ of the State and as such, as all organs, under the authority of the law, hence not sovereign in the true sense of the term. If by ‘sovereignty of the people’ a democratic form of government is meant, it is for the student of the Constitution to decide whether this constitution establishes the so-called sovereignty of the people.<sup>57</sup>

He added that:

one of the fundamental presuppositions of the Constitution is the existence of an international law, and under international law no sovereignty in the true sense of the term exists: sovereignty is always relative, imperfect and incomplete. It is one of the main purposes of the Federal Republic of the World to destroy the last remnants of the ghost called ‘sovereignty’.<sup>58</sup>

For Kelsen the solution for the problem of the source and legitimacy of sovereignty was much simpler: the source of sovereignty was internal and not external to the legal system. It was the law itself which gave the political authority—in this case the world federal state—the sovereign power to act.<sup>59</sup> He argued that the Chicago constitution existed within the ‘fundamental law’, the basic norm which founded the legal order and therefore embodied its sovereignty. Indeed, he rejected the claim that the founding document of the world government could be a Declaration of Duties and Rights, suggesting that the government’s power is founded on the constitution itself, which might stipulate specific rights to individuals, but did not depend upon such stipulation. He rejected the idea that the world government had a duty to ‘work for the advancement of the people’ as stated in the constitution, highlighting the vagueness of this stipulation and the need for greater clarity regarding its effective content. The constitution should have determined what kind of legislative and administrative acts were necessary to bring such ‘advancement’, but it did not do so.

Similarly, the right ‘not to be poor’ would be legally void without a global economic system to exclude poverty. While Kelsen argued that designing a global economic system in detail might be inadvisable in the early stages of the pro-constitution campaign, he recognised that without such a plan any anti-poverty assertion would remain meaningless. The problem of economic justice—or as the constitution puts it, the right to claim the ‘release from the bondage of poverty and from the servitude and exploitation of labor’—refers, for Kelsen, to the necessary choice between capitalism and socialism as the foundation of a global economic system.<sup>60</sup> Thus he also recognised the

<sup>57</sup>*Ibid.*, 3.

<sup>58</sup>*Ibid.*

<sup>59</sup>Martti Koskeniemi, *From Apology to Utopia: The Structure of International Law Argument* (Cambridge University Press, 2009), 231.

<sup>60</sup>Kelsen, ‘Some Remarks’, 7.

political context of the constitutional project, and, writing in 1948, he brought to attention the limits that Cold War politics set for the realisation of the constitution, even in terms of economic organisation, not just political agreement.

Kelsen repeated the same line of criticism demanding concrete legal measures to back up vague principles in his rejection of a section of the constitution's preamble which states that the 'the four elements of life—earth, water, air, energy—are common property of the human race'. For him, the constitution's attempt to form a legal claim about natural resources and their distribution remained too abstract in both wording and conceptualisation. Without specifying how these 'elements' were selected and what might be their meaning beyond mythical symbolism, how they would be managed 'for the common good', and intentionally avoiding a choice between socialist and liberal economic systems, such declarations would be, for Kelsen, too superficial. Thus, he suggested that they should be avoided in a legally binding constitutional document. He made a similar comment about the right of personal protection from subjugation, a legal commitment that lacked content if the constituent states were not compelled to accept a democratic form of government, and if the constitution did not stipulate a centralised military power to enforce its claim to protection (the proposed federal military body, the Guardians of the Peace, did not have such powers according to the constitution).<sup>61</sup> Again, as in his earlier writings on national democratic constitutions, he suggested avoiding strong principles in the constitutional text and focusing on clear legal principles instead.

Kelsen's criticism targeted the constitution's supposedly excessive reliance on natural law. 'Who is competent to interpret nature?' he asked, accepting that 'it may be argued that since man according to the Constitution cannot alienate these rights, it is upon man to decide what his natural rights are'. Yet, in positive law, the opinions of judges, legislators, and individuals on what rights constitute natural rights may differ. The constitution's assumption of consensus around the meaning of natural law and its universal validity was unfounded, and could lead, he warned, to paradoxical outcomes.

Among the natural rights the right of resistance is advocated by many followers of the natural law doctrine. If the Constitution admits the existence of natural rights not stipulated by positive law, the right of resistance against a constitutionally established authority which does not recognise a natural right claimed by an individual or by a group of individuals may be exercised under the Constitution itself: which means that the Constitution undermines its own authority.<sup>62</sup>

Such a conclusion was logically possible, but its outcome could be politically paradoxical. The constitution's authors ignored it, and thus weakened the legal structure of their world federation.

The difference of opinions about the content and implications of natural law among individuals, legislators, and judiciaries, would generate a high degree of uncertainty about the rights of man, 'to which the Constitution attributes such extraordinary importance that it declares the Government of the World to be founded on them, should be avoided' by replacing references to natural law with 'precisely formulated obligations concerning the treatment of [the government's] subjects, obligations to abstain from interfering in certain spheres of interest with their subjects and obligations to satisfy certain interests of their subjects by *positive* actions'.<sup>63</sup> For Kelsen, a world constitution needed to be concrete, specific, and based on positive law; otherwise, it could not overcome the inherent ambiguity of political and value pluralism.

Finally, Kelsen returned to a foundational aspect of the constitution (and the world state project in general): its explicit peace-keeping aim. Peace was a major motivation for instituting a world

<sup>61</sup>*Ibid.*, 8.

<sup>62</sup>*Ibid.*, 10.

<sup>63</sup>*Ibid.*, 12. Italics added.

state through law, but he suggested that the maintenance of the peace was not emphasised strongly enough in the Chicago constitution. For example, he demanded a clearer obligation of member states to refrain from threat and use of force, drawing on Article 2 of the UN Charter. He suggested that a mere ‘prohibition’ of recourse to interstate violence was hardly strong enough to prevent war as such. In this light, he saw the world state as the responsible body for pacifying belligerent tendencies in global politics, and sought to provide it with the necessary institutions and powers to fulfil this aim. He pushed the committee to go further in its ambition to create a functioning world government, specifying the law-making powers that the government would hold, and highlighting the hierarchy of powers between the central federal government and the member states. A clearer design of the political relations between the constitutive parts of the federal world order and their military bodies would have rendered the constitution more effective in preventing war, in Kelsen’s view.

The Chicago constitution lacked, therefore, both concreteness and ambition. For Kelsen, it was both too much and not enough. He suggested, for example, that the world government should not only supervise and approve ‘of laws concerning emigration and immigration and the movements of peoples’ in a weak Kantian vein, but should ‘oblige the government of the member states to grant free movement to all citizens of the World Federal Republic’.<sup>64</sup> More detailed provisions of the kind of world citizenship should be provided, especially regarding how world citizenship would relate to existing citizenship laws in member states and in colonial territories, as well as to stateless people. For example, a world passport should, in Kelsen’s opinion, undermine the need for state passports, as ‘otherwise a man could have two passports which is not convenient’. This, in fact, would have resulted in the abolition of national citizenship as a form of political membership. Belonging to a national community would translate into a token of personal identity that would not have implied a specific and distinct set of rights, as these would be universalised to all citizens of the world state.

Kelsen’s critique of the Chicago constitution helps us see the differences between their approaches to global order. The Chicago constitutionalists thought that their draft could provide the foundation for a new world state, in a federal form, as an agreement between the ‘peoples of the world’. The constitution was therefore a powerful tool capable of political change in itself. The Chicago constitutionalists’ reliance on natural law to justify the constitution on moral terms was for Kelsen particularistic and therefore misguided. In his view, the global sphere could not be shaped by the new constitution *per se*, but by the international legal order in which the constitution could exist as a particular order. Thus, Kelsen’s global thinking offered an alternative to the approach advanced by the Chicago Committee, as two distinct ways to refer to the law as the foundation of a peaceful global order.

Thinking about political and legal order on the global scale embodied a continuation of Kelsen’s previous nationally focused thought, and did not necessitate new conceptual tools. Thus, his emphasis on the legal coherence between the national and global scales of the law reflected his multi-scalar approach to global thinking. Yet the two scales of political and legal thought were not identical: extending his ideas globally did not entail simply replicating the modern nation-state model on a global scale. Thus, for him ‘world state’ could require different institutions and organisation than those needed on the national scale. His ‘world state’ could therefore include an international court but not necessarily an international government or executive. In contrast, the Chicago Committee was uninterested in national legal and political systems, and envisaged a world federation featuring executive power, legislative parliament, and a system of international courts. They demanded no coherence between the federal and national legal and political systems (accepting also non-democratic member states in the democratic federation). Examined through Kelsen’s theoretical lens, such tensions rendered their project conceptually inappropriate.

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<sup>64</sup>*Ibid.*, 17.

Instead of the proposed constitution, Kelsen called for the development of a positivist, coherent, and self-contained supra-national legal structure. He emphasised the importance of global political institutions to create a peaceful world order, which were distinct, and dependent upon, a positivist normative international legal system which, in its turn, necessitated a political power of enforcement.<sup>65</sup> His solution to the ambiguities that mired the Chicago constitution was simple: the world government should appropriate the authority to define 'rights' and express them in positive law. Kelsen tried to 'translate' parts of the Chicago constitution into positive juridical terms, but reminded the committee that the essence of their document remained legally unclear because it conflated legal norms with moral and sociological claims, and ignored the importance of a legal specificity that was required for the world state's successful functioning.

## Conclusion

By the end of the 1940s, interest in constitutionalism and federalism on global scale has declined. The rise of the Cold War mentality, and the increasing hostilities between the United States and the Soviet Union led many to believe that the foundation of a new, peaceful world order was no longer feasible. In hindsight, Kelsen's doubts regarding the possibility of establishing a new federal world state seem justified. In the 1950s, instead of establishing new legal-political orders, greater attention was given, also by Kelsen himself, to improving the mechanisms of the UN. Yet, as this article attempted to show, discussions on world state and global constitutions provided Kelsen with an opportunity to outline his interpretation of legal-political order on global scale. Thus, the examination of his ideas on this theme helps us situate him in the history of thought about the global space in the twentieth century.

As this study has shown, Kelsen's ideas of world state and constitutions reflected a sustained theoretical engagement with the global scale. Like other mid-century thinkers, such as the Chicago constitutionalists, Kelsen's global thinking focused on envisaging a legal-political order that could advance and guarantee peace. This objective justified, for him, the realisation of a public international legal order. Within this order, a world constitution or global political and legal institutions could for him become part of a new 'world state', but this legal-political order remained relatively vague in his writings. He did not fully solve the tension between the existence of a legal international public order, and the lack of a political personification of this order on global scale. Yet he did emphasise that the fundamental meaning of democracy was a compromise involving a plurality of diverse forces. His criticism of the Chicago constitution draft suggested that the proposed document failed to outline a truly democratic world constitution in this sense, and therefore fell short on its promise.

In coherence with his legal thought on the national scale, Kelsen envisaged an international legal order based on an international ground-norm. Such an order could also generate a world state, in a federal form, which remained for him a desirable possibility that could exist only within the sphere of an international public legal order, which would provide the justification of its legal norms. The realisation of such a system, he argued during the Second World War, was justified as a political goal because it could warrant peace on a world scale. Kelsen's global thinking thus stems from his legal positivism and cosmopolitanism, which sees legal order as rationally applicable on a global scale. It is characterised by a scalar logic, and by an emphasis on positive law as the desirable approach for designing and realising global order.

While Kelsen's global thinking is somewhat limited by the sparse details about the nature of the 'world state' he envisaged, or about the specific means for the realisation of the international order he proposed, his ideas suggest that a peaceful global space required legal ordering in a multi-scalar structure, and that rational legal positivism was the best means to do so. This assumption, which is

<sup>65</sup>Jochen von Bernstorff, *The Public International Law Theory of Hans Kelsen: Believing in International Law* (Cambridge University Press, 2010), 2.

at the core of this theorisation, renders Kelsen worthy of historical attention as a distinctive global thinker, whose ideas can shed light on the multiple and competing conceptual iterations of global visions in the twentieth century.

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