

## VII. The Narrative of Secularization

“One of the master narratives of international law is the idea of secularization.”<sup>331</sup> Since the emergence of the early modern state, so the story goes, the basis of political organization was no longer rooted in the idea of a just order, i.e. the idea of a just peace. Instead, according to Thomas Hobbes, only a social contract and rule by an absolute sovereign could end the “solitary, poore, nasty, brutish, and short”<sup>332</sup> state of nature, the *bellum omnium contra omnes*,<sup>333</sup> as “it is manifest, that the measure of Good and Evil actions, is the Civil Law; and the Judge the Legislator, who is always Representative of the Commonwealth.”<sup>334</sup> Or, to put it with Martti Koskenniemi in more forthright terms: This signified the rise of positivism: “Just shut up and obey.”<sup>335</sup>

Within the framework of this secularization narrative, the *bellum iustum* doctrine is depicted as a theological rather than a legal concept. The *bellum iustum* doctrine is understood as a *pre-sovereign* thought. Although, this secularization narrative can certainly be contested, considering from a conceptual history viewpoint “that peace has never been, nor can it be, independent value.”<sup>336</sup> It always implied a certain form of peace, a certain notion of a domestic and international order. This becomes even more ap-

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331 Vec, *supra* note 76, at 135; see e.g. JAMES CRAWFORD, *BROWNLIE’S PRINCIPLES OF PUBLIC INTERNATIONAL LAW*, 7–11 (9th ed. 2019).

332 THOMAS HOBBS, *LEVIATHAN*, 115 (Minneapolis, MN: First Avenue Editions 2018).

333 *Id.*, *DE CIVE* (1642), Praefatio, XIV, 81 (Howard Warrender ed. 1983): “Immoto igitur quod jeci fundamento, Ostendo primò conditionem hominum extra societatem civilem (quam conditionem appellare liceat statum naturae) aliam non esse quam bellum omnium contra omnes; atque in eo bello jus esse omnibus in omnia.”

334 *Id.*, *LEVIATHAN*, Chap. 29 para. 168 (Oxford 1929, reprint from the edition of 1651).

335 Koskenniemi, *supra* note 67, at 399; with reference to the famous quote from MICHEL DE MONTAIGNE, *ESSAIS*, 1203 (1950): “Or les loix se maintiennent en credit, non par ce qu’elles sont justes, mais par ce qu’elles sont loix. C’est le fondement mystique de leur autorité; elles n’en ont poinct d’autre”; see also Fastenrath, *supra* note 23, at 20–21 and *Derrida*, *supra* note 322, at 12: “Laws are not just *as* laws. One obeys them not because they are just but because they have authority.”

336 Vec & Hippler, *supra* note 248, at 8.

parent in view of the varying narratives of international law's normativity, i.e. the oscillating strands between natural law and positivism throughout history.<sup>337</sup> Thus, Emmanuelle Tourme-Jouannet is on to something when she writes:

“Even so, while the new positivist spirit was transforming international law into science, that did not mean that natural law was left by the wayside. Vattelian dualism of the law of nations between natural law and positive law was to continue up until the Second World War. In correlation, the discourse of international law remained deeply attached to justice. Classical international law was a law that was still entirely ordered around the end-purpose of justice.”<sup>338</sup>

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337 See e.g. Steiger, *supra* note 76, at 97–140; Vec, *supra* note 76, at 140; *id.*, *From Invisible Peace to the Legitimation of War: Paradoxes of a Concept in 19th Century International Law Doctrine*, in PARADOXES OF PEACE IN NINETEENTH CENTURY EUROPE, 19–36 (*id.* & Thomas Hippler eds. 2015); Grewe, *supra* note 3, at 349, 493, 603; Lovrić-Pernak, *supra* note 129, at 126, 131, 139; Peter Haggenmacher, *On The Doctrinal Origins of Jus in Bello: From Rights of War to the Laws of War*, in UNIVERSALITY AND CONTINUITY IN INTERNATIONAL LAW, 325 (Thilo Marauhn & Heinhard Steiger eds. 2011); Koskenniemi, *supra* note 114, at 29 fn. 123; *id.*, *supra* note 182, at 96: “[...] ‘positivists’ or ‘naturalists’. They were always both at the same time [...]”; *id.*, *The Legacy of the Nineteenth Century*, in ROUTLEDGE HANDBOOK OF INTERNATIONAL LAW, 147 (James D. Armstrong ed. 2009).

338 Jouannet, *supra* note 145, at 114; see also *id.*, *supra* note 84, at 388.