

IX. Constitutionalization Narratives

Another narrative strand concerning state sovereignty, and in which the *bellum iustum* concept comes to the fore, can be located in the following. Due to shared interests in peacekeeping, and during the course of international cooperation, regional integration and processes of institutionalization, the level of dependency among states has increased significantly. Additionally, as part of the horizontal and vertical differentiation of international law and within the framework of a multipolar world order, a growing part of non-state actors co-determines international law through different forms of participation.³⁶⁴ More and more of international law is being set and exercised beyond traditional state jurisdiction. As a result, constitutionalization narratives gain prominence, as the Westphalian narrative of unfettered state sovereignty no longer seems to match these developments. “The new world calls for a new narrative to justify and to limit state sovereignty,”³⁶⁵ a new central narrative of legitimation.³⁶⁶

Against this background, the thematic connections to progress narratives as well as to adapted just war concepts can be addressed: from “*value-neutral*” coexistence to “*value-oriented*” (Friedmannian) cooperation and constitutionalization, so to speak.³⁶⁷ The abandonment of a state-centered system of international law, which privileged “the iron *Gehäuse* of the nation state”³⁶⁸ in favor of a more global and people-oriented approach, as

364 See e.g. GUNTHER TEUBNER, *GLOBAL LAW WITHOUT A STATE*, (1996); Susan K. Sell, *Structures, Agents and Institutions: Private Corporate Power and the Globalisation of Intellectual Property Rights*, in *NON-STATE ACTORS AND AUTHORITY IN THE GLOBAL SYSTEM*, 91 et seqq. (Richard A. Higgott, Geoffrey R. Underhill & Andreas Bieler eds. 2000).

365 Kotzur, *supra* note 16, at 102 [transl. by the author].

366 See also Ranganathan, *supra* note 16, at p. 31.

367 See e.g. Simma & Paulus, *supra* note 323, at 271; Wihl, *supra* note 318, at 72; Schöbener, *supra* note 301, at 567; Kotzur, *supra* note 16, at 100.

368 Jochen von Bernstorff & Philipp Dann, *The Battle for International Law: An Introduction*, in *THE BATTLE FOR INTERNATIONAL LAW: SOUTH-NORTH PERSPECTIVES ON THE DECOLONIZATION ERA*, 13 (*id.* eds. 2019).

well as the enforcement of human rights, are associated with the idea of progress.³⁶⁹

Aside from that, it seems noteworthy that the theme of “positive” peace and of a consolidating international community are arising not only with regard to the creation of international institutions, juridification and treaty-making, but also in the area of law enforcement. Hence, it is hardly surprising that adapted just war concepts are gaining influence in accordance with constitutionalization narratives. It is within the scope of value-oriented constitutional approaches that a qualified or conditioned reading of Art. 2 (4), as well as extensive interpretations of permitted uses of force conducted in a manner “consistent with the purposes of the UN Charter,” find their dogmatic underpinnings.³⁷⁰

369 See Oliver Diggelmann & Tilmann Altwicker, *How is Progress Constructed in International Legal Scholarship?*, 25 *European Journal of International Law*, 434 (2014): “Human rights are treated as universal ethical imperatives whose expansion means progress”; see also Verdebout, *supra* note 102, at 246; Koskenniemi, *supra* note 75, at 156; *id.*, *Miserable Comforters: International Relations as New Natural Law*, 15 *European Journal of International Relations*, 403 (2009); Liliana Obregón, *The Civilized and the Uncivilized*, in *THE OXFORD HANDBOOK OF THE HISTORY OF INTERNATIONAL LAW*, 928 et seqq. (Bardo Fassbender & Anne Peters eds. 2012); Chimni, *supra* note 325, at 301.

370 See e.g. Rensmann & Herdegen, *supra* note 200, at 370; Shearer, *supra* note 185, at 20: “Moreover, the UN Charter should be viewed similarly to a constitution. [...] In the present writer’s view a wider interpretation must be given to article 2(4) in order to make the Charter relevant to the present and foreseeable future needs of the international community.”