III. The Narrative of *bellum legale*

Joachim von Elbe concluded in 1939 that "the Versailles Treaty became the starting-point for a movement once more to distinguish between just and unjust wars."[171] Alongside Elbe, a very diverse group of authors (Strisower, Scott, Le Fur, Kelsen, Schmitt, Verdross, Wright, Lauterpacht, Guggenheim, Grewe) shared the opinion that the Covenant of the League of Nations epitomized a return to the concept of *bellum iustum* in international law.[172] The divergences between Hans Kelsen and Josef L. Kunz are exemplary for the basic controversy in this regard. Kunz criticized his former teacher for misjudging the decisive founding axiom of a *bellum legale*. According to Kunz, within the framework of the newly created collective security system, there was no room left for the concept of a just war.[173]

However, as already indicated in the introduction, the question of a normative judgment on the resort to war correlates primarily with one's preconception of legal theory. Depending on the respective horizon of understanding (*Verständnishorizont*),[174] different authors apply and adopt

171 Joachim von Elbe, *The Evolution of the Concept of Just War in International Law*, 33 American Journal of International Law, 687 (1939).

172 *See* CARL SCHMITT, DIE WENDUNG ZUM DISKRIMINIERENDEN KRIEGSBEGRIFF, 2, 38 (1938); *id.*, DER NOMOS DER ERDE IM VÖLKERRECHT DES JUS PUBLICUM EUROPAEUM, 232 (2nd ed. 1960); Kelsen, *supra* note 3, at 333–34; Hersch Lauterpacht, *The Grotian Tradition in International*, 23 The British Yearbook of International Law, 41 (1946); *see* also the further references at v. Elbe, *supra* note 171, at 687 fn. 169 and BERNHARD ROSCHER, DER BRIAND-KELLOGG-PAKT VON 1928, 22–29 (2004); *see* also Hans Wehberg, Krieg und Eroberung im Wandel des Völkerrechts, 19 et seqq. (1953); Neff, *supra* note 104, at 279; Delbrück & Dicke, *supra* note 1, at 201; Grewe, *supra* note 3, at 424; Lesaffer, *supra* note 105, at 50; *id.*, *supra* note 106, at 91; *id.*, *Conclusion*, in PEACE TREATIES AND INTERNATIONAL LAW IN EUROPEAN HISTORY: FROM THE LATE MIDDLE AGES TO WORLD WAR ONE, 410 (*id.* ed. 2004); Miller, *supra* note 3, at 261, 282.

173 *See* Kunz, *supra* note 2, at 529, 532; *id.*, *Kriegsbegriff*, in WÖRTERBUCH DES VÖLKERRECHTS, VOL. 2, 330 (Karl Strupp & Hans-Jürgen Schlochauer eds., 2nd ed 1961).

174 *See* Fastenrath, *supra* note 19, at 65: "[…] textual understanding depends on previous knowledge, fore-understanding, and the 'horizon' (*Verständnishorizont*) of the recipient. […] Legal methodology has little influence on the fore-understanding with which the recipients approach legal texts, ie the anticipation of the meanings with which they read texts and by which their understanding is fore-structured. The

different just war concepts. With this in mind, it would be misguided to postulate a "right" or a "wrong" use of language. It can be emphasized that today, a direct recourse to criteria of justice no longer seems appropriate (*Value Relativism / Werterelativismus*).[175] But this critique does not preclude the possibility of an adapted just war concept in international law, i.e. the compatibility of *bellum legale* and *bellum iustum*.

To be sure, the *bellum iustum - bellum legale* controversy continued as the UN Charter came into being. But eventually, what has been said about the Covenant of the League of Nations also applies to the Charter system. The *bellum iustum* concept was not "purged" from international law by the narrative of excluding "just" reasons for war from the collective security system, nor could it be eradicated. Rather, the variations of adapted just war conceptions became even more diverse. Some authors drew on a so-called Grotian tradition,[176] some on a Schmittian discriminatory concept of war,[177] others on a specific American doctrine.[178] Some make reference to an adapted concept of just peace, which is being perceived as a "significant

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fore-understanding is strongly influenced by different theoretical legal concepts, legal traditions, and not least by the legal education in individual countries."

175 *See generally* ARNOLD BRECHT, POLITICAL THEORY: THE FOUNDATIONS OF TWENTIETH-CENTURY POLITICAL THOUGHT, 207, 231 et seqq. (1967); *see* also Fastenrath, *supra* note 29, at 330: "In the words of P. Reuter, there will always be '*plusieurs équités*'. […] As certainty of cognition has disappeared and pluralism is now reigning, one is forced, in recognizing the validity of other perceptions of social life, to admit the limited extent of one's own-perceptions. M. Koskenniemi designates these perceptions as visions of Utopia which according to D. Kennedy, convince only those who already believe"; *id.*, *supra* note 23, at 36–37, 75–76, 231, 287; Martti Koskenniemi, *The Police in the Temple: Order, Justice and the UN: A Dialectical View*, 6 European Journal of International Law, 343 (1995); NIKLAS LUHMANN, AUSDIFFERENZIERUNG DES RECHTS, 374 et. seqq. (1981); *id.*, DAS RECHT DER GESELLSCHAFT, 223 (1993); HANS WELZEL, AN DEN GRENZEN DES RECHTS: DIE FRAGE NACH DER RECHTSGELTUNG, 24–25 (1966); Staake, supra note 22, at 232 et seqq., 241, 247.

176 *See* Lauterpacht, *supra* note 172, at 41; *see* also Grewe, *supra* note 3, at 192.

177 *See* e.g. Schmitt, *supra* note 172; Grewe, *supra* note 3, at 416, 422, 424; *see* on Schmitt also MARTTI KOSKENNIEMI, THE GENTLE CIVILIZER OF NATIONS: THE RISE AND FALL OF INTERNATIONAL LAW 1870–1960, 425–26 (5th ed. 2008); Smeltzer, *supra* note 8, at 360.

178 *See* e.g. Tucker, *supra* note 4, at 11; Miller, *supra* note 3, at 264; *see* also KNUD KRAKAU, MISSIONSBEWUSSTSEIN UND VÖLKERRECHTSDOKTRIN IN DEN VEREINIGTEN STAATEN VON AMERIKA, 337–42 (1967).

paradigm in international law."[179] Authors have adopted formal concepts of just war, i.e. a new form of procedural justice,[180] as well as material concepts, i.e. postulating that Article 2 (4) UNC implies the *positive* use of force in a manner *consistent* with the Purposes of the UN Charter.[181] Some take their cue from the idea of war as law enforcement,[182] some from the inherent right of self-defense,[183] others from a "combination of moral and legal arguments on which the early concepts of modern *ius contra bellum* were founded"[184] and point to the enforcement measures taken by the UN Security Council. For them, "[p]olice actions by the Security Council would be just wars of the purest kind, for the countering of aggression and the upholding of community values."[185] Others stress that "[t]oday's *jus ad bellum*, especially the peremptory norm against aggression, is not only the law; it also forms the minimum threshold of a just war under just war

179 Markus Kotzur, *Frieden und soziale Gerechtigkeit – droht ein Paradigmenwechsel im Völkerrecht?*, 1 Berliner Online-Beiträge zum Völker- und Verfassungsrecht, 5 (Heike Krieger ed. 2007) [transl. by the author].

180 *See* Corten, *supra* note 28, at 266; *see* also Eugene V. Rostow, *Competent Authority Revisited*, in CLOSE CALLS: INTERVENTION, TERRORISM, MISSILE DEFENSE, AND 'JUST WAR' TODAY, 44 (Elliott Abrams ed. 1998); Roda Mushkat, *How useful is the concept of the just war in international law?*, Revue de Droit International de Sciences Diplomatiques et Politiques, 163 (1988).

181 *See* UNITED NATIONS CONFERENCE ON INTERNATIONAL ORGANIZATION, VOL. VI, 346; Patrick M. Butchard, *Back to San Francisco: Explaining the Inherent Contradictions of Article 2(4) of the UN Charter*, 23 Journal of Conflict & Security Law, 243, 249 (2018).

182 *See* Neff, *supra* note 104, at 57; Strisower, *supra* note 151, at 20, 42, 128; HANS KELSEN, PRINCIPLES OF INTERNATIONAL LAW, 40 (1952); *id.*, *Unrecht und Unrechtsfolge im Völkerrecht*, 12 Zeitschrift für öffentliches Recht, 484, 561 (1932); PAUL GUGGENHEIM, TRAITÉ DE DROIT INTERNATIONAL PUBLIC, VOL I, 590 (1953).

183 *See* Neff, *supra* note 104, at 326; Lesaffer, *supra* note 105, at 50; *id.*, *supra* note 106, at 91; *id.*, *supra* note 178, at 410.

184 Simon, *supra* note 102, at 128; *see* also Miller, *supra* note 3, at 282; JESSICA JENSEN, KRIEG UM DES FRIEDENS WILLEN: ZUR LEHRE VOM GERECHTEN KRIEG, 268 et seqq. (2015).

185 Neff, *supra* note 104, at 281; *see* also Ivan Shearer, *A Revival of the Just War Theory?*, in INTERNATIONAL LAW AND ARMED CONFLICT: EXPLORING THE FAULTLINES. ESSAYS IN HONOUR OF YORAM DINSTEIN, 7, 13 (Schmitt & Jelena Pejic eds. 2007); *Jensen*, supra note 184, at 280.

theory."[186] Some rely on a natural law reading,[187] especially in the context of humanitarian interventions,[188] others prefer a strict positivist adoption of the *bellum iustum* concept.[189]

So, what can be inferred from all these adaptations is this: A reasoned repudiation of a respective use of language based on the narrative that considerations of justice have been expelled from the modern collective security system is not to be equated with a "general overcoming"[190] of the legal notion of a just war. On the contrary, the normative theme of *bellum iustum* is still very much alive in international law. Moreover, it seems misleading to reduce this long-standing controversy to different legal

186 O'Connell, *supra* note 12, at 33; *see* also Tucker, *supra* note 4, at 11: "[…] a legal expressions of the moral law."

187 *See* e.g O'Connell, *supra* note 12, at 33; *id.* & Caleb M. Day, *Sources in Natural Law Theories: Natural Law as Source of Extra-Positive Norms*, in THE OXFORD HANDBOOK ON THE SOURCES OF INTERNATIONAL LAW, 572–73 (Samantha Besson & Jean D'Aspremont eds. 2017); *id.*, *Self-Defence, Pernicious Doctrines, Peremptory Norms*, in SELF-DEFENCE AGAINST NON-STATE ACTORS, 236 (id., Christian J. Tams & Dire Tladi eds., 2019); Benedetto Conforti, *The Doctrine of "Just War" and Contemporary International Law*, in TOWARDS WORLD CONSTITUTIONALISM: ISSUES IN THE LEGAL ORDERING OF THE WORLD COMMUNITY, 712 (Ronald MacDonald & Douglas M. Johnston eds. 2005): "My only purpose is […] to affirm that the problem of the right to make war cannot be solved unless we resort to natural law"; Nigel Biggar, *Just War and International Law: A Response to Mary Ellen O'Connell*, 35 Journal of the Society of Christian Ethics, 53 (2015): "However, whereas I use this to argue that sometimes natural law trumps positive law, O'Connell argues that positive law incorporates natural law completely and that no gap remains between them."

188 *See* e.g. Fernando R. Tesón, *The Liberal Case for Humanitarian Intervention,* in HUMANITARIAN INTERVENTION: ETHICAL, LEGAL AND POLITICAL DILEMMAS, 93 (Jeff L. Holzgrefe & Robert O. Keohane eds. 2003); Gregory Reichberg, & Henrik Syse, *Humanitarian Intervention: A Case of Offensive Force?*, 33 Security Dialogue, 313 (2002); Francesco Francioni, *Balancing the Prohibition of Force with the Need of Protect Human Rights: A Methodological Approach*, in CUSTOMARY INTERNATIONAL LAW ON THE USE OF FORCE: A METHODOLOGICAL APPROACH, 269 (Enzo Cannizzaro ed. 2005); Anne Peters & Simone Peter, *Lehren vom „gerechten Krieg" aus völkerrechtlicher Sicht*, in DER GERECHTE KRIEG: ZUR GESCHICHTE EINER AKTUELLEN DENKFIGUR, 86 (Georg Kreis ed. 2006).

189 *See* Kelsen, *supra* note 3, at 331–34; *see* also Wright, *supra* note 10, at 367; Guggenheim, *supra* note 182, at 590–93; LOTHAR KOTZSCH, THE CONCEPT OF WAR IN CONTEMPORARY HISTORY AND INTERNATIONAL LAW, 291 (1956); Demetrios S. Constantopoulos, *Bellum justum et bellum legale*, 1 Internationales Recht und Diplomatie, 236 (1956).

190 *See* exemplarily Delbrück & Dicke, *supra* note 1, at 205–06.

cultures (*Civil* and *Common Law*)[191] or to a "tension between formalism and anti-formalism,"[192] which causes some authors to detect a "methodological schism"[193] in the legal sphere. It will not do to simplify the debate by "contrasting European and American approaches or conservative and progressive scholarly stances."[194] There is no uniform or consistent European or American approach regarding the *bellum iustum - bellum legale* controversy. On top of this, the *bellum iustum* concept manifests itself in both "formalist" and "anti-formalist" approaches, and either type can be used to justify or oppose the use of force in a specific political context.[195]

To buttress this view, the following aspects can be highlighted: (1) Apart from Paul Guggenheim[196] and Hans Kelsen, "the bitter antagonist of natural law," who advocated a pure theory of law and who according to Josef L. Kunz became "the principal champion of the doctrine of *bellum justum*,"[197] it will suffice to point to the various European authors who take recourse to an adopted just war concept in international law.[198]

(2) As previously implied, when it comes to the justifications for the use of force in international law, it stands to reason to consider doctrinal changes and methodological trends as context-dependent scholarly strategies in order to strengthen or to contest the authority of respective legal claims.[199] To argue on the basis of particular theoretical schools and in favor of a certain narrative is a matter of choice.

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191 *See* e.g. Grewe, *supra* note 3, at 677; Corten, *supra* note 27, at 803–22; *id.*, LE DROIT CONTRE LA GUERRE: L'INTERDICTION DU RECOURS À LA FORCE EN DROIT INTERNATIONAL CONTEMPORAIN, 9 (2014); *see* also Scheuner, *supra* note 22, at 585–86; Holger P. Hestermeyer, *Die völkerrechtliche Beurteilung des Irakkrieges im Lichte transatlantischer Rechtskulturunterschiede*, 64 Zeitschrift für ausländisches öffentliches Recht und Völkerrecht, 316–18 (2004).

192 Corten, *supra* note 28, at 269.

193 *See* e.g. Bianchi, *supra* note 27, at 651–53, 658, 671 (2009); Corten, *supra* note 27, at 803, 822; Rensmann, *supra* note 109, at 361.

194 Bianchi, *supra* note 27, at 652–53.

195 *See* also Corten, *supra* note 27, at 822; *id.*, *supra* note 28, at 266; v. Bernstorff, *supra* note 123, at 236.

196 *See* Guggenheim, *supra* note 182, at 590–93.

197 Kunz, *supra* note 2, at 529.

198 *See* e.g. Grewe, *supra* note 3, at 416, 422, 424; Peters & Peter, *supra* note 188, at 93; Corten, *supra* note 28, at 266–67; Lesaffer, *supra* note 105, at 54.

199 *See* v. Bernstorff, *supra* note 123, at 260; Paulina Starski, *The Silent State and Normative Dynamics of the Prohibition on the Use of Force – Legislative Responsibility in Situations of Enhanced Normative Volatility*, 4 Journal on the Use of Force and International Law, 33, 35, 59 (2017): "[…] legality claims."

To add complexity, this choice cannot be made *in abstracto*. It will always depend on the concrete situation at hand, the respective horizon of understanding (idiosyncratic legal cultures, representations and faiths, philosophical traditions), prevailing power constellations, as well as the interests of the states concerned.[200] What is more, the spirit of the times (*Zeitgeist* und *Zeitumstände*) co-determines the concept of law. "Within culture the worldview alters and alongside the spirit of the age the law changes."[201]

To give an example: Such doctrinal shifts between (restrictive) "static formalism" and a more "dynamic approach" could be observed when the Federal Republic of Germany became a non-permanent member of the Security Council in 1977[202] as well as in the post-9/11 legal debate about a right of self-defense against non-state actors.[203]

(3) To postulate that a "typical" extensive American "anti-formalist" approach basically implies that moral and other "*non-legal* considerations" will be taken into account, i.e. "values or objectives that supposedly lie behind the rules, or even in referring to natural law notions such as that of the 'just war,'"[204] ignores the fact that law is value-related. Ultimately, legal norms are nothing else than values congealed into bindingness ("*zu Verbindlichkeit geronnene Werte*"[205]). They are "the result of a political contradiction," i.e. the result of different value conceptions (*Wertvorstellungen*) and they "express this contradiction without resolving it."[206] Not surprisingly, this contradiction

200 v. Bernstorff, *supra* note 123, at 237; Corten, *supra* note 28, at 264, 266; Thilo Rensmann & Matthias Herdegen, *Is There a Specific German Approach to the Prohibition of the Use of Force?*, 50 GERMAN YEARBOOK OF INTERNATIONAL LAW, 373 (2007).

201 REINHOLD ZIPPELIUS, DAS WESEN DES RECHTS: EINE EINFÜHRUNG IN DIE RECHTSTHEORIE, 52 (6th ed.2012) [transl. by the author].

202 *See* Rensmann & Herdegen, *supra* note 200, at 363.

203 *See* e.g. Thomas M. Franck, *Terrorism and the Right of Self-Defense*, 95 American Journal of International Law, 839 (2002); Christopher J. Greenwood, *International law and the "War against Terrorism"*, 78 International Affairs, 301 (2002); Claus Kreß, *Major Post-Westphalian Shifts and Some Important Neo-Westphalian Hesitations in the State Practice on the International Law on the Use of Force*, 1 Journal on the Use of Force and International Law, 11 (2014); Federica Paddeu, *Use of Force against Non-State Actors and the Circumstance PrecludingWrongfulness of Self-Defence*, 30 Leiden Journal of International Law , 93 (2017).

204 Corten, *supra* note 27, at 809.

205 Staake, *supra* note 22, at 276; *see* also Jouannet, *supra* note 81, at 387: "All law transcribes the values of those that create it; it is not a substance-less form, but the translation of the values of the society it regulates."

206 Corten, *supra* note 28, at 254; *see* also Staake, *supra* note 22, at 276; Brock & Simon, *supra* note 165, at 35–36; W. MICHAEL REISMAN, THE QUEST FOR WORLD

also finds consecutive expression on the level of norm interpretation, most notably with regard to Article 2 (4) and 51 of the UN Charter.[207]

Thus, the positivist narrative, which denies the values that lie behind legal norms and insists on the necessity of differentiating law from politics and morality, is flawed from the outset.[208] Or to put it differently: "There is no avoiding the essential relationship between law and politics,"[209] i.e. "the political dimension of law,"[210] for even such a denial of inherent political and social factors "is not without political and social consequence."[211] It only results in goals and preferences being introduced indirectly and covertly, while "laying claim to a spurious purity"[212] of "the majesty of positive law."[213]

However, to refer in this context solely to open-texturedness – since the meaning of a legal proposition is not limited to its semantic content and thus ethical, political and social aspects can be included in the inter-

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ORDER AND HUMAN DIGNITY IN THE TWENTY-FIRST CENTURY, 97 (2013).

207 *See* e.g. Corten, *supra* note 28, at 254–55: "Article 51 of the UN Charter, for example, does not put an end to the contradictions among the different conceptions of self-defence"; Diggelmann & Altwicker, *supra* note 18, at 83: "[…] To provide an example: One may interpret the notion of 'armed attack' in Art. 51 of the UN Charter either by referring to State practice or by invoking a vision about the international legal community and the role of self-defense therein. Whatever position one adopts, though, it will always be possible to come up with an argument of the other category, leading to a *regressus ad infinitum*."

208 *See* exemplarily HANS KELSEN, WAS IST GERECHTIGKEIT?, 40 (1953); Fastenrath, *supra* note 23, at 293: "By contrast, from a positivist point of view the content of legal norms is entirely irrelevant"; *see* also McDougal, Lasswell & Reisman, *supra* note 44, at 250: "[…] questions such as the policy content [that means *value* content – A/N] of the regulation, the degree of its effectiveness and so on, are […] beyond the perimeters of juristic operations"; *id*., at 256 (1968): "[…] the Viennese school, for example, has been militant in its peculiar *value relativism*. […] Kelsen totally rejects the relevance of […] the clarification of goals and attempts"; Henninger, *supra* note 19, at 43–44.

209 Rosalyn Higgins, *Integrations of Authority and Control*, in TOWARDS WORLD ORDER AND HUMAN DIGNITY, 85 (Burns H. Weston & William Michael Reisman eds. 1976).

210 Fastenrath, *supra* note 19, at 68.

211 Higgins, *supra* note 209, at 85: "Policy considerations, although they differ from 'rules', are an integral part of that decision making process which we call international law; the assessment of so-called extralegal considerations is *part of the legal process*, just as is reference to the accumulation of past decisions and current norms. A refusal to acknowledge political and social factors cannot keep law 'neutral', for even such a refusal is not without political and social consequence."

212 Fish, *supra* note 59, at 162.

213 Franck, *supra* note 115, at 177.

pretation process – would only scratch the surface. As already indicated, "Normativity is part of the political sphere"[214] for the simple reason that every *Ought* is based on a value judgment about a political *Is*.[215] "Values do not stand *next* to legal norms. Values are the *basis* of legal norms."[216] This is also why value relativism by no means implies the need "to create a syntactical construct of norms without regard to their value content"[217] (as Kelsen did), nor would that be desirable or even possible. In legal reality (*Rechtswirklichkeit*), the *Is* and the *Ought* cannot be artificially separated.[218] A conceptual dichotomy between the *Is* and the *Ought*, i.e. the fact that a *logical* distinction must be made between descriptive and prescriptive utterances,[219] does not also presuppose a *functional* dichotomy,[220] as Kelsen and his positivist followers erroneously assumed.[221]

Therefore, it needs to be highlighted that no modern legal theory still relies on the naive standpoint that a categorical distinction between law, politics and morality would be possible.[222] Regardless of "however much the law wishes to have a formal existence, it cannot succeed in doing so,"[223] since every norm creation and application signifies a constructive endeavor, which necessarily implies value judgements. As a consequence, legal interpretation simply cannot be detached from political and moral considerations. Today, a static method of interpretation is irreconcilable with modern philosophy of lan-

214 Fastenrath, *supra* note 19, at 68; *see* also Alexy, *supra* note 19, at 13–14.
215 *See* Delbrück & Wolfrum, *supra* note 62, at 41; Staake, *supra* note 22, at 264 and 380.
216 *Id*., at 275 [transl. by the author].
217 McDougal, Lasswell & Reisman, *supra* note 44, at 256.
218 See Delbrück & Wolfrum, *supra* note 62, at 41; HEINRICH HENKEL, EINFÜHRUNG IN DIE RECHTSPHILOSOPHIE, 455 (1964); Fastenrath, *supra* note 19, at 58 et seqq., 67; *id*., *supra* note 23, at 85, 130, 139; Henninger, *supra* note 19, at 29, 33; Higgins, *supra* note 27, at 3 et seqq.; Wolfgang Graf Vitzthum, Begriff, Geschichte und Rechtsquellen des Völkerrechts, in VÖLKERRECHT, para. 26 (id. & Alexander Proelß eds., 8th ed. 2019).
219 *See* e.g. Philip Allott, *Language, Method and the Nature of International Law*, 45 The British Yearbook of International Law, 101 (1971).
220 *See* also Staake, *supra* note 22, at 379.
221 *See* Kelsen, *supra* note 208, at 38; *id*., REINE RECHTSLEHRE, 5, 60–71 (2nd ed. 1960); *id*., *Was ist juristischer Positivismus?*, 20 Juristenzeitung, 468 (1965); Bruno Simma, *Bemerkungen zur Methode der Völkerrechtswissenschaft*, in FESTSCHRIFT FÜR ERNST KOLB ZUM SECHZIGSTEN GEBURTSTAG, 340 (Herma v. Bonin ed. 1971); Voos, *supra* note 49, at 249.
222 *See* Fastenrath, *supra* note 23, at 71–81, 85, 130, 190, 231, 293; *id*., *supra* note 19, at 60; Corten, *supra* note 27, at 809; Henninger, *supra* note 19, at 26–27; Lescano & Liste, *supra* note 80, at 222; Staake, *supra* note 22, at 292, 310 et seqq., 446.
223 Fish, *supra* note 59, at 162.

guage and modern legal theory. Relative normativity in international law and a dynamic understanding of legal rules is inevitable.[224]

So, instead of contrasting alleged "characteristic" European and American approaches or "traditional-conservative positivist" and "dynamic-progressive anti-positivist" scholarly stances, it seems worthwhile to take a closer look at the basic objections regarding contemporary just war concepts in international law.

224 *See* Fastenrath, *supra* note 23, at 190, 295; *id.*, *supra* note 29, at 306–07, 312.