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## Fragmentation in International Law and Global Governance: A Conceptual Inquiry

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**Abstract:** This article examines the concept and metaphor of *fragmentation* and its underlying assumptions in international law and global governance. After engaging with *fragmentation* historically, we analyze current debates through five conceptual perspectives. Fragmentation is often perceived as a process, a gradation, a process with a single direction, a prognosis, and normatively as either loss or liberation. These interlinked tendencies carry conceptual implications, such as making *fragmentation* apparently inevitable or provoking positive revaluations of *fragmentation* in terms of *differentiation*. Furthermore, the conceptual coupling of fragmentation with modernity enhances these effects with an historical thesis. Consequently, *fragmentation* appears as a ubiquitous and necessary, rather than contingent, feature of modern law—a conceptual implication that may hinder empirical work, and that merits critical analysis.

**Keywords:** conceptual history, differentiation, fragmentation, global governance, international law, metaphor, modernity

*Fragmentation* has become a key concept in the analysis of international law and global governance in recent years. For many, *fragmentation* has both positive and negative aspects, but scholars are divided over which aspect is predominant. The development of fragmentation in international law and global governance through specialized mechanisms is for some a sign of healthy pluralism, while others warn about the dangers of division, legal complications, and managerialism. Scholars have also debated extensively over whether conflicts arising from fragmentation can be managed with existing techniques.

In this article, we seek to add novel comprehension to the current debate by bringing in the perspectives of conceptual analysis and conceptual history. In terms of content, we engage especially with global environmental governance—an area in which fragmentation has been used extensively as an analytical tool. We identify dominant conceptual presumptions in recent discussion and historically analyze the concept and metaphor of fragmentation. We also engage with the related ideas of differentiation and modernity. The conceptual history of *fragment* and *fragmentation* as social and historical categories has been mostly neglected prior to the analysis we offer in the historical section.

Scholars have recently called for theory-driven analysis of fragmentation “on the basis of well-elaborated concepts,”<sup>1</sup> and we similarly frame *fragmentation* as a primarily conceptual question. Rather than being “mere” words with meanings and etymologies, concepts have

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1. Fariborz Zelli and Harro van Asselt, “The Institutional Fragmentation of Global Environmental Governance: Causes, Consequences and Responses,” *Global Environmental Politics* 13, no. 3 (2013): 1–13, here 2, doi:10.1162/GLEP\_a\_00180.

histories in the strong sense of the term: these histories consist of the accumulation of semantic material by recurring usage, gradual shifts of meanings as later thinkers adopt former terms into dissimilar frameworks, occasionally abrupt novel usages for particular purposes, and sometimes mechanical recycling with unintended consequences. Our approach is that of pragmatic and historical conceptual analysis of contemporary discourses in light of the cumulated semantic resources, consisting of both conceptual and metaphorical elements. Rather than dictating a single correct usage from above, conceptual inquiry, in our view, should acknowledge the historical multiplicity of uses, and, on this basis, strive toward an enhanced understanding of what is at stake in the present discussion.

This, however, does not mean that all uses would be equally compelling. Earlier usages do not causally determine the present ones, but the available normative vocabulary of each period sets limits on what can be intelligibly and persuasively stated and “done” with concepts.<sup>2</sup> Some uses arise as novel initiatives and either intentionally or de facto challenge prevailing views, thus suffering relative disadvantage at least until semantic changes take place. We suggest there are such usages in the current fragmentation debate. Further, anyone who wishes to influence the world must initiate linguistic processes, and these achievements are stored in the histories of concepts, as Reinhart Koselleck has elaborated.<sup>3</sup> The work of contemporary scholars

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2. Compare Quentin Skinner, *The Foundations of Modern Political Thought, Vol. 1: The Renaissance* (Cambridge: Cambridge University Press, 1980), xi–xiii.

3. Reinhart Koselleck, “Die Geschichte der Begriffe und Begriffe der Geschichte,” in *Begriffsgeschichten: Studien zur Semantik und Pragmatik der politischen und sozialen Sprache* (Frankfurt: Suhrkamp, 2006), 56–76, here 57.

will therefore inevitably become a part of the conceptual history of *fragmentation* and set further guidelines for future usages. It is thus important to engage with the traditional conceptualizations of fragment. This knowledge benefits the participants in present scholarly debates regardless of whether they wish to affirm the conceptual heritage or throw it overboard.

We seek to show that the manifold, and at times seemingly paradoxical, conceptual starting points of the debate are in fact compatible with the various interpretations in the conceptual history of *fragment* and *fragmentation*. *Fragmentation* is a compelling concept precisely because it combines strong connotations with eventual ambiguity that allows for the inclusion of different theoretical projects under a single heading. Furthermore, there are several internal conceptual reasons in the way the concept is currently used that contribute to the observations of the ubiquity, if not inevitability, of fragmentation. This is far from trivial for political practice: concepts are an effective means of redirecting debates, negotiating the agenda, and producing political and institutional preconditions for action—or the intentional lack thereof.

We begin by identifying some key conceptual assumptions in the current fragmentation debates. At the second step of the argument, we engage with the conceptual history of *fragment* and *fragmentation*. After that we observe contemporary tendencies that resonate with the conceptual history of *fragmentation*, including the concept's intimate relation to modernity, and draw some critical conclusions.

### ***Fragmentation in Recent Debates***

Several topical issues in today's legal debates, such as whether specialized regimes are “self-contained” and what their relation to general international law is, were analyzed by Bruno

Simma already in 1985.<sup>4</sup> Fragmentation as such became topical in mainstream legal studies in 2000 with the inclusion of the theme in the work program of the International Law Commission (ILC), chaired first by Simma and, after 2002, by Martti Koskenniemi. The Commission's 256-page report thoroughly addressed the main concerns related to fragmentation.<sup>5</sup> The emergence of several specialized regimes kick-started the general legal debate in the ILC, but lately these regimes themselves have also been characterized as fragmented. Analysts have framed the evolution of specialized regimes in terms of fragmentation, for example, in international trade law,<sup>6</sup> global environmental governance,<sup>7</sup> the climate regime,<sup>8</sup> the biodiversity regime,<sup>9</sup> and the World Health Organization.<sup>10</sup>

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4. Bruno Simma, "Self-Contained Regimes," *Netherlands Yearbook of International Law* 16 (1985): 111–136.

5. International Law Commission, *Fragmentation of International Law: Difficulties Arising From the Diversification and Expansion of International Law*, UN Doc. A/CN.4/L.682.

6. Kati Kulovesi, *The WTO Dispute Settlement System: Challenges of Environment, Legitimacy and Fragmentation* (Dordrecht: Kluwer Law International, 2011).

7. Frank Biermann, Philipp Pattberg, and Harro van Asselt, "The Fragmentation of Global Governance Architectures: A Framework for Analysis," *Global Environmental Politics* 9, no. 4 (2009): 14–40, doi:10.1162/glep.2009.9.4.14.

8. Harro van Asselt, *The Fragmentation of Global Climate Governance: Consequences and Management of Regime Interactions* (Amsterdam: VU University, 2013).

It is no coincidence that the focus on fragmentation in legal science emerged after the end of the Cold War. The turn of 1989 catalyzed hopes for a revival of a coherent system in international law.<sup>11</sup> The proliferation, globalization, and fragmentation of law in world politics also inspired attempts to bridge the theoretical foundations of realism in international relations (IR) with international law.<sup>12</sup> Similarly, institutional research in global environmental governance from the perspectives of IR and political science started to bloom from the mid-1990s onward, focusing on regimes, governance architecture, and interplay between international institutions.

Building on these strands, theoretical and empirical work on fragmentation is gaining momentum, and global environmental governance, in particular, has become a hotspot for this

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9. Elisa Morgera and Elsa Tsioumani, “Yesterday, Today and Tomorrow: Looking Afresh at the Convention on Biological Diversity,” *Yearbook of International Environmental Law* 21, no. 1 (2011): 3–40, doi:10.1093/yiel/yvr003.

10. Erin Graham, “International Organizations as Collective Agents: Fragmentation and the Limits of Principal Control at the World Health Organization,” *European Journal of International Relations* 20, no. 2 (2014): 366–390, doi:10.1177/1354066113476116.

11. Martti Koskenniemi and Päivi Leino, “Fragmentation of International Law? Postmodern Anxieties,” *Leiden Journal of International Law* 15, no. 3 (2002): 553–579, doi:10.1017/S0922156502000262.

12. Casper Sylvest, “Realism and International Law: The Challenge of John H. Herz,” *International Theory* 2, no. 3 (2010): 410–445, doi:10.1017/S1752971910000242.

scholarship.<sup>13</sup> In addition to provoking contributions from, inter alia, leading scholars such as Oran Young, Robert Keohane, and David Victor, the theme has also featured in recent first-rate PhD theses, several books, a leading multi-disciplinary program *Earth System Governance*, and a special issue of *Global Environmental Politics*. The new momentum in environmental governance is also exemplified by growing “regime complexity” scholarship<sup>14</sup> that casts fragmentation as a secondary variable. These commentators take the multitude of formal international institutions as a starting point, develop criteria for a regime complex, and further

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13. Biermann et al., “The Fragmentation”; Harro van Asselt, Francesco Sindico, and Michael Mehling, “Global Climate Change and the Fragmentation of International Law,” *Law & Policy* 30, no. 4 (2008): 423–449, doi:10.1111/j.1467-9930.2008.00286.x; Van Asselt, “The Fragmentation”; Zelli and Van Asselt, “The Institutional Fragmentation”; Michael Zürn and Benjamin Faude, “On Fragmentation, Differentiation, and Coordination,” *Global Environmental Politics* 13, no. 3 (2013): 119–130, doi:10.1162/GLEP\_a\_00186; Sebastian Oberthür and Thomas Gehring, eds., *Institutional Interaction in Global Environmental Governance: Synergy and Conflict Among International and EU Policies* (Cambridge, MA: MIT Press, 2006); Arild Underdal and Oran Young, eds., *Regime Consequences: Methodological Challenges and Research Strategies* (Dordrecht: Kluwer, 2004); Oran Young, *The Institutional Dimension of Environmental Change: Fit, Interplay, and Scale* (Cambridge, MA: MIT Press, 2002).

14. Kai Raustiala and David Victor, “The Regime Complex for Plant Genetic Resources,” *International Organization* 58, no. 2 (2004): 277–309, doi:10.1017/S0020818304582036; Robert Keohane and David Victor, “The Regime Complex for Climate Change,” *Perspectives on Politics* 9, no. 1 (2011): 7–23, doi:10.1017/S1537592710004068.



analyze this complex with variables such as integration and fragmentation,<sup>15</sup> or centrality, density, and fragmentation.<sup>16</sup> Another related strand is the legal scholarship on “regime interaction,” which focuses on disparate sets of norms, decision-making procedures and organizations that have been developed to address functional issue-areas, and seek to understand how such regimes take one another into account during conflict resolution and in more general circumstances of lawmaking and implementation.<sup>17</sup>

Our focus is on global environmental governance, where the debate on fragmentation is of high political and societal relevance. Different legal and policy responses have evolved rapidly over the past two decades. International, transnational, national, and subnational institutions increasingly co-govern particular issue areas while differing in their members, predominant subject matter, and geographical scope. This growing complexity and the concomitant fragmentation matters: it carries direct consequences for the effectiveness and legitimacy of law and governance—both elements needed urgently, for example, in order to avoid the looming climate change catastrophe.

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15. Keohane and Victor, “Regime Complex,” 12.

16. Amandine Orsini, Jean-Frédéric Moran, and Oran Young, “Regime Complexes: A Buzz, a Boom, or a Boost to Global Governance,” *Global Governance* 19, no. 1 (2013): 27–39, doi:10.5555/1075-2846-19.1.27.

17. Margaret Young, “Fragmentation,” in *Oxford Bibliographies in International Law*, ed. Tony Carty (Oxford: Oxford University Press, 2014). See also Margaret Young, ed., *Regime Interaction in International Law: Facing Fragmentation* (Cambridge: Cambridge University Press, 2012).

The discussion among legal scholars reflects the wider trend of a rise of *fragmentation* in several fields of study. *Fragmentation* has, for instance, become a catch-all concept with no precise definition in media and communication studies.<sup>18</sup> Economists have similarly observed the fragmentation of markets as stock exchanges have lost some of their former status because of globalization and new technology.<sup>19</sup> With the fragmentation of its objects of study, sociology itself has been diagnosed as fragmented.<sup>20</sup>

There seems to be a need for a general category to encompass the aspects of diversity, decentralization, and increased specialization in many fields, and fragmentation is close to attaining this position. The term is obviously a derivative of the noun “fragment,” which is defined by the Oxford English Dictionary as “a part broken off or otherwise detached from a whole; a broken piece; a (comparatively) small detached portion of anything,” and possibly “a part remaining or still preserved when the whole is lost or destroyed.” A typical example is a broken vase, either in archaeological or contemporary settings. The latter aspect of the definition

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18. Ulrike Handel, *Die Fragmentierung des Medienpublikums: Bestandsaufnahme und empirische Untersuchung eines Phänomens der Mediennutzung und seiner Determinanten* (Wiesbaden: Westdeutscher Verlag, 2000).

19. Andreas Fleckner and Klaus Hopt, “Stock Exchange Law: Concept, History, Challenges,” *Virginia Law & Business Review* 7, no. 3 (2001): 513–559, here 554–555.

20. Shanyan Zhao, “Realms, Subfields, and Perspectives: On the Differentiation and Fragmentation of Sociology,” *The American Sociologist* 24, nos. 3–4 (1993): 5–14, doi:10.1007/BF02691915.

is prominent in the usage in art history, for instance, where fragment denotes “an extant portion of a writing or composition which as a whole is lost.”<sup>21</sup>

Taking this characterization as our starting point—yet by no means assuming a single correct use of “fragment” or “fragmentation” on the basis of dictionary definitions, etymology, conceptual history, or metaphoric aspects—we will next make preliminary observations on how “fragmentation” is used in contemporary discussions in international law and global governance. In the section that follows we historicize these observations with the conceptual history of *fragment*. With these two steps, we seek to identify conceptual reasons for the persuasiveness of “fragmentation”—in other words, to understand why the diagnosis of fragmentation is so compelling and why analysts with diverse aims use precisely this term.

Our first observations relate to fragmentation as a snapshot versus a process. *Fragmentation* may refer to the quality of being fragmented in the present, irrespective of how this state came about or will evolve. The expression *fragmentedness*, however, is extremely rare in contemporary debates, and scholars resort to *fragmentation*. Michael Zürn and Benjamin Faude, on the one hand, and Anne-Charlotte Martineau, on the other, use fragmentation as a synonym for diversity.<sup>22</sup> William Boyd, in turn, utilizes fragmentation and pluralism

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21. John Simpson and Edmund Weiner, *The Oxford English Dictionary, Vol. 6: Follow–Haswed* (Oxford: Clarendon Press, 1989), 137.

22. Zürn and Faude, “On Fragmentation,” 119–130; Anne-Charlotte Martineau, “The Rhetoric of Fragmentation: Fear and Faith in International Law,” *Leiden Journal of International Law* 22, no. 1 (2009): 1–28, doi:10.1017/S092215650800561X.

interchangeably.<sup>23</sup> Some scholars of global environmental governance, such as regime complexity theorists,<sup>24</sup> use a static definition, taking snapshots of institutional fragmentation at a given point in time or employing a comparative approach. Others prefer dynamic views. For instance, those who see fragmentation as caused by differentiation interpret fragmentation explicitly as a *process concept*, invoking at least implicitly the temporal dimensions of the concept and seeing fragmentation as a process by which something becomes fragmented (or more so). Zürn and Faude note that by labeling institutional variety as fragmentation, scholars perceive it as a “result of a *process* whereby something that had been a unit or a whole disintegrates into bits and pieces.”<sup>25</sup> Fariborz Zelli and Harro van Asselt agree that this view “does justice to the process character of fragmentation” and the common linguistic perception of the temporal dimension.<sup>26</sup> Fragmentation thus simultaneously describes a present condition and an on-going process, and unless a remark to the contrary is made, the former usage also implies the latter.

The process perspective already implies a position with regard to our second point, which is about whether fragmentation is an either/or situation or a matter of degree. In contemporary debates, the latter option dominates: we are aware of no instances of scholars explicitly framing

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23. William Boyd, “Climate Change, Fragmentation, and the Challenges of Global Environmental Law: Elements of a Post-Copenhagen Assemblage,” *University of Pennsylvania Journal of International Law* 32 (2011): 457–550.

24. Raustiala and Victor, “Regime Complex”; Keohane and Victor, “Regime Complex.”

25. Zürn and Faude, “On Fragmentation,” 121 (emphasis added).

26. Zelli and Van Asselt, “Institutional Fragmentation,” 3.

fragmentation dualistically. Furthermore, there is a close association between the process view and the view of fragmentation by degrees. Biermann and colleagues use *fragmentation* as a “relative concept,” implying that “all global governance architectures are fragmented to some degree.”<sup>27</sup> Keohane and Victor see fragmentation as a “continuum” or “spectrum” ranging from “comprehensive international regulatory institutions” to “highly fragmented arrangements.”<sup>28</sup> Further, Zelli and van Asselt view fragmentation as “a matter of degree” or “a continuum from domains with relatively low levels of fragmentation to highly intricate institutional complexes.”<sup>29</sup> Zürn and Faude posit equally that the degree of fragmentation rather than fragmentation per se causes problems.<sup>30</sup>

Third, where a gradual process is in play, the question of direction arises. In its standard dictionary meaning and its conceptual history (see next section), fragmentation strongly suggests a one-way street from entirety into pieces. Only the very recent example of the fragmentation of a computer hard drive allows for the intentional act of *de*-fragmentation (in this case by a specific software).<sup>31</sup> For the most part, fragmentation is liable to be interpreted as a process with a single direction already on account of the concept’s underlying metaphorical layers. This is

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27. Biermann et al., “Fragmentation,” 17.

28. Keohane and Victor, “Regime Complex,” 7.

29. Zelli and Van Asselt, “Institutional Fragmentation,” 3–4.

30. Zürn and Faude, “On Fragmentation,” 126.

31. International law has, on occasion, also been analyzed in terms of “de-fragmentation,” see Ole-Kristian Fauchald and Andre Nollkaemper, eds., *The Practice of International and National Courts and the (De-)Fragmentation of International Law* (Oxford: Hart Publishing, 2012).

enhanced by the tendency to view fragmentation as loosely co-extensive with the concept of entropy, borrowed from natural science. Randall Schweller, for instance, concludes that “information overload and entropy suggest increased fragmentation.”<sup>32</sup> The juxtaposition with entropy gives fragmentation the air of inevitability and, above all, suggests that the large-scale trend is to the direction of increased fragmentation unless specific effort is taken to the contrary.

Fourth, the process dimension also gives rise to the question of fragmentation as an analytical versus prognostic concept. Since a process is by definition something that has duration, the concept of fragmentation in the sense of a process implicitly refers to either the past or the future, or, in most cases, both. The concept thus has temporal dimensions. Unless noted otherwise, the very term implies that the trend will continue also in the future and that things will thus be more fragmented than they currently are. Rather than a concept that registers present observations of the world on the basis of past experience, fragmentation thus becomes a concept that reaches ahead in time and both registers and creates future expectations, regardless of whether these are formulated in positive or negative terms.<sup>33</sup> The concept of fragmentation in

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32. Randall L. Schweller, “Entropy and the Trajectory of World Politics: Why Polarity Has Become Less Meaningful,” *Cambridge Review of International Affairs* 23, no. 1 (2010): 145–163, here 152, doi:10.1080/09557570903456374.

33. Here we build on the vocabulary of Reinhart Koselleck. See Reinhart Koselleck, *Vergangene Zukunft: Zur Semantik geschichtlicher Zeiten* (Frankfurt: Suhrkamp, 1995), 369–372; Reinhart Koselleck, “Die Geschichte der Begriffe und Begriffe der Geschichte,” in *Begriffsgeschichten: Studien zur Semantik und Pragmatik der politischen und sozialen Sprache* (Frankfurt: Suhrkamp, 1995), 67–68.

such usage turns into an anticipatory tool of prognosis. This tendency is clearly perceivable in global environmental governance. Zürn and Faude, for instance, emphasize that fragmentation is to be understood “as constitutive for the emergence of a world polity,” that it works as a “functional response to the diverse governance problems arising in globalized world,” and that fragmentation, therefore, is “*necessary and expected* in modern world society.”<sup>34</sup>

The fifth and final conceptual aspect we wish to highlight here is that of *normativity*: whether fragmentation is a loss or liberation. In its typical form, the concept of fragmentation implies the splintering of an anterior entity. Where wholeness is valued positively, such as with vases and papyri, this very change connotes deterioration, and this is easily extendable to the social sphere, to the loss of unity in mechanized *Gesellschaft* à la Ferdinand Tönnies, for example. Further, in many cases, it is not the splintering itself but the loss of at least one piece that turns the other pieces of a puzzle, for instance, into fragments.<sup>35</sup> Without that loss the term would not be applicable. The conceptual history of fragment contains potential for other interpretations, too, but the connotations of splintered unity and loss dominate in standard language use. This is suggested by the very fact that so many scholars feel obliged to rebut the quasi-nostalgic implications of the term.<sup>36</sup> For several scholars, however, fragmentation is a

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34. Zürn and Faude, “On Fragmentation,” 126 (emphasis added).

35. As pointed out in Jacqueline Lichtenstein, “The Fragment: Elements of a Definition,” in *The Fragment: An Incomplete History*, ed. William Tronzo (Los Angeles: Getty Research Institute, 2009), 114–129, here 119.

36. Biermann et al., “The Fragmentation”; Van Asselt, “The Fragmentation”; Zelli and Van Asselt, “The Institutional Fragmentation.”

positive indicator of increased pluralism in legal norms,<sup>37</sup> and a sign of the expansion of international law to previously unregulated fields.<sup>38</sup>

Many of the points raised above contribute to the popularity of the fragmentation diagnosis. They are also cumulative. For instance, the term is comprised of both current “fragmentedness” and a process with temporal dimensions and can thus be used for analytical, explanatory, and prognostic purposes alike. Furthermore, some scholars actively seek to overcome the implicit single direction of the concept. Van Asselt and Zelli, for instance, use the term for emerging as well as disintegrating structures,<sup>39</sup> thus widening its possible uses. Through such usages fragmentation loses its inherent sense of direction. This enables normative revaluations, as the nostalgic connotations dissolve. The normative flexibility of the category further enhances its popularity. A similar effect also results from conceptualizing fragmentation as a matter of degree. By “fragmentation,” Biermann and colleagues refer to any institutional arrangements that fall short of being universal and based on full participation; and since this is the case with practically all treaties and institutions, the category becomes remarkably inclusive: “fragmentation, in other words, is ubiquitous.”<sup>40</sup> The degree approach switches the perspective into that of fragmentation rather than comprehensiveness, and now hypothetical cases close to zero on the scale can be perceived as special cases of fragmentation. Obviously, this enhances

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37. Koskenniemi and Leino, “Fragmentation of International Law?”; Bruno Simma,

“Fragmentation in a Positive Light,” *Michigan Journal of International Law* 25 (2004): 845–848.

38. International Law Commission, “Fragmentation of International Law.”

39. Zelli and Van Asselt, “Institutional Fragmentation,” 1–13.

40. Biermann et al., “Fragmentation,” 18.



the unanimity regarding the fragmentation diagnosis. Finally, the recognition of degrees links intimately with the rejection of a positively valued a priori unity—if fragmentation is ubiquitous, such unities become dubious. In this regard the account using degrees of fragmentation provides the first step also toward the normative reevaluation of fragmentation in either neutral or positive terms.

Given these cumulative trends, it is no wonder that scholars who disagree on detailed interpretations nevertheless share the fundamental assumption of institutional fragmentation in international law and global governance. However, the conceptual dynamics of the debate become more comprehensible once we engage with the conceptual history of *fragment* and *fragmentation*.

### **The Concept and Metaphor of Fragmentation: A Brief History**

Somewhat surprisingly, no full-scale conceptual history of *fragment* or *fragmentation* exists, although *fragment* has been analyzed historically as a category of art and aesthetics.<sup>41</sup> The

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41. For the main lines in the field of aesthetics, see Justus Fetscher, “Fragment,” in *Ästhetische Grundbegriffe, Band 2: Dekadent—Grotesk*, ed. Karlheinz Barck (Stuttgart: Metzler, 2001), 551–588. A wider treatment of fragmentation in aesthetical theory from Schiller to Derrida can be found in Eberhard Ostermann, *Das Fragment: Geschichte einer ästhetischen Idee* (Munich: Fink, 1991). For a general elaboration in literary theory, see Camelia Elias, *The Fragment: Towards a History and Poetics of a Performative Genre* (Bern: Peter Lang, 2004); for uses in antiquity and ancient studies, see Ernst Zinn, “Fragment,” in *Lexikon der alten Welt*, ed. Carl Andresen (Zurich: Artemis, 1965), 995–997. Essays on fragment in different fields of art,

genealogy of the fragmentation metaphor also remains largely neglected.<sup>42</sup> In international law, only Nikolas M. Rajkovic implements the perspective of metaphor studies, yet he, too, focuses merely on the spatial and geometric aspects of the fragmentation metaphor and links fragmentation to a particular form of “cartographic rationality.”<sup>43</sup> His essay, however, suggests that in contemporary debates fragmentation “has been conceptually assumed, ahistorically accepted and philosophically underexamined,” while in reality the problem of fragmentation is “deeply rooted in epistemology and conceptual history.”<sup>44</sup>

The conceptual and metaphorical aspects of fragmentation cannot be fully separated. Modern metaphor theory has established that metaphoric structures direct our most elementary cognitive interactions with the world and that the difference between literal and metaphorical

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including analyses of individual works, can be found in Lucien Dällenbach and Christiaan L. Hart Nibbrig, eds., *Fragment und Totalität* (Frankfurt: Suhrkamp, 1984) and William Tronzo, ed., *The Fragment: An Incomplete History* (Los Angeles: Getty Research Institute, 2009).

42. There is no entry for the topic in the German metaphor dictionary; see Ralf Konersmann, ed., *Wörterbuch der philosophischen Metaphern* (Darmstadt: WBG, 2014). A major treatise in the metaphors of history mentions fragment only once, see Alexander Demandt, *Metaphern für Geschichte: Sprachbilder und Gleichnisse im historisch-politischen Denken* (Munich: Beck, 1978), 390.

43. Nikolas Rajkovic, “On Fragments and Geometry: The International Legal Order as Metaphor and How It Matters,” *Erasmus Law Review* 6, no. 1 (2013): 6–16.

44. *Ibid.*, 6–7.

expressions should be constructed as a continuum rather than a dichotomy.<sup>45</sup> Metaphorical extension is one of the mechanisms for language in general to enlarge, and the opposite process of metaphoric dying, that is, the emergence of catachretic or “dead” metaphors, is a key method of linguistic normalization or lexicalization.<sup>46</sup> Consequently, many concepts, including the basic concepts of the social sciences, contain metaphoric elements in current usage or etymology.<sup>47</sup> Fragmentation is a case in point. Correspondingly, we see metaphors with Hans Blumenberg as the “substructures of thought” that direct the formation of the “systematic crystallisations” manifesting in concepts.<sup>48</sup> Far from being of interest merely to historians of language, the metaphorical layers actively direct our use of the concepts in the present by both enabling and restricting how the category can be used and applied to particular cases. In fact, conceptual history, as theorized by Reinhart Koselleck, and metaphorology à la Blumenberg not only

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45. George Lakoff and Mark Johnson, *Metaphors We Live By* (1980; repr., Chicago: University of Chicago Press, 2003).

46. René Dirven, “Metaphor as a Basic Means of Extending the Lexicon,” in *The Ubiquity of Metaphor: Metaphor in Language and Thought*, Wolf Paprotté and René Dirven, eds.

(Amsterdam: John Benjamins, 1985), 85–119; Zradvo Radman, “Difficulties with Diagnosing the Death of a Metaphor,” *Metaphor and Symbol* 12, no. 2 (1997): 149–157,

doi:10.1207/s15327868ms1202\_4.

47. Sabine Maasen and Peter Weingart, *Metaphors and the Dynamics of Knowledge* (London: Routledge, 2005).

48. Hans Blumenberg, *Paradigmen zu einer Metaphorologie* (1960; repr., Frankfurt: Suhrkamp, 1999), 13.

developed simultaneously and in shared social settings, but the two strands also share many starting points, and should be seen as supplementary perspectives. Despite Blumenberg's idiosyncratic focus on what he called "absolute metaphors" and the concomitant philosophical task of mapping the thought elements irreducible to pure conceptual language, he also noted the role of metaphors as indicators of past theoretical projects and former needs for knowledge, largely parallel to Koselleck's ideas.<sup>49</sup>

In antiquity, the Latin *fragmentum* was used only literally for splinters of material objects, such as wood, bricks, or breadcrumbs. In medieval theology, the word occurred in the Biblical myth of Jesus feeding five thousand people with five loaves and two fishes, thus gaining allegorical layers of meaning. The metaphorical and secular use, in the sense of an artwork that partially survived, emerged in fourteenth- and fifteenth-century Humanism.<sup>50</sup> According to the Oxford English Dictionary, the English word *fragment* stems from the sixteenth century and *fragmentation* from the 1880s,<sup>51</sup> while *Le Grand Robert* dates the French form of *fragmentation*

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49. See Frank Beck Lassen, "Metaphorically Speaking: *Begriffsgeschichte* and Hans Blumenberg's *Metaphorologie*," in *Eine Typologie der Formen der Begriffsgeschichte*, ed. Riccardo Pozzo and Marco Sgarbi (Hamburg: Felix Meiner, 2010), 53–70. For an attempt to combine conceptual history with analytical metaphor theory, see Rieke Schäfer, "Historicizing Strong Metaphors: A Challenge for Conceptual History," *Contributions to the History of Concepts* 7, no. 2 (2012): 28–51.

50. Zinn, "Fragment," 995.

51. Simpson and Weiner, *Oxford English Dictionary*, 137.

to 1840.<sup>52</sup> The term *fragmentation* is thus relatively recent, yet builds upon ancient and early-modern semantic material and metaphorical extensions. Particularly early-modern uses with regard to literature, art, and artifacts allow for gradual processes and degrees of fragmentation (such as ancient manuscripts being torn apart over centuries) instead of abrupt splintering (such as a vase falling on the floor). The modern usage follows this paradigm, perceiving degrees in the fragmentation of computer hard drives and international law alike.

Historically, fragmentation is intimately linked to the quarrel of the ancients and the moderns—not only the idea of the simultaneous loss of a tradition and its partial presence in the Renaissance, but also the later conscious breakaway. Michel de Montaigne utilized ancient wisdom fragmentarily in his essays. He self-mockingly described his essays as consisting of “samples cut from various pieces” and “monstrous bodies pieced together of diverse parts.”<sup>53</sup> Nevertheless, for Montaigne, it was still possible to construct meaningful wholes from ancient wisdom: a good student would adopt “pieces” from antiquity, yet transform these into something new like bees in producing honey.<sup>54</sup> In high modernity, the same metaphors rather underlined historical discontinuity. The art of the French Revolution adopted the mutilation of ancient

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52. Alain Rey, ed., *Le Grand Robert de la langue Française*, vol. 3 (*Enti–Incl.*) (Paris: Dictionnaires le Robert, 2001), 1001.

53. *Ibid.*, 302, 183.

54. Michel de Montaigne, *Les Essais* (1580; repr., Paris: Presses Universitaires de France, 1988), 152.

statues as a central visual trope; reinforced by the uncanny parallel with the guillotine, the dismembered human body became one of the emblems of modernity in art for centuries.<sup>55</sup>

Building on Johann Georg Hamann and Johann Gottfried Herder's earlier uses of fragment as a literary device,<sup>56</sup> Friedrich Schiller, Friedrich Schlegel, and Novalis further contrasted modernity with antiquity and accentuated the particularity of the modern experience. Schiller lamented the way culture had splintered into segments. In comparison with antiquity's smooth "combinations" of poetry and abstract wit in individuals, human nature had been torn into "pieces" (*Stücken*) or "fragments" (*Bruchstücken*) so that one had to study numerous individuals in order to get an overall view of human knowledge.<sup>57</sup> Before suggesting art and poetry as countermeasures, Schiller spelled out the diagnosis sharply: "Forever chained to a single small fragment" and with only "fragmentary participation" to the whole, "the human being itself becomes a fragment."<sup>58</sup>

Schiller's interpretation was a distinctively modern remake of Montaigne's melancholic observation of human nature. "We are all patches, and of so shapeless and diverse a texture, that

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55. Linda Nochlin, *The Body in Pieces: The Fragment as a Metaphor of Modernity* (London: Thames & Hudson, 1994), 7–11.

56. Ernst Zinn, "Fragment über Fragmente," in *Das Unvollendete als künstlerische Form: Ein Symposium*, ed. Josef Adolf Schmoll genannt Eisenwerth (Bern: Francke, 1959), 166–169.

57. Friedrich Schiller, *On the Aesthetic Education of Man in a Series of Letters: English and German Facing*, trans. Elizabeth M. Wilkinson and Leonard A. Willoughby (1795; repr., Oxford: Clarendon Press, 1982), 32.

58. *Ibid.*, 34.

every piece, every moment, plays its own game,” Montaigne noted, adding that one can hardly conceive each part as coming “from the same boutique.”<sup>59</sup> While Montaigne still observed a combined patchwork of motives within each human being, Schiller detached the pieces from any over-arching whole. Second, Schiller attributed the fragmentation of human nature to the mechanization of societies in modernity: the cause of fragmentation was thus externalized, and the fragmentation metaphor assumed an increasingly political and social tone. For Schiller, the complex “clockwork” of the state required differentiation and diversification, splintered the “inner unity of human nature” and made way for “mechanical life” consisting of “innumerable but lifeless parts.”<sup>60</sup> The fragment image was metaphorically transferred from art to society, and fragmentation was now perceived as a social process.

Such observations, for their part, renewed interest in literary fragments. While perceiving modern societies as fragmented, the thinkers of the Romantic period considered the literary fragment a suitable device to reflect these sentiments, thus giving impulses to later theorists of aesthetic modernity.<sup>61</sup> Schlegel noted that while the works of the ancient had *become* fragments, many works of the moderns *emerged* as fragments at the outset, and he also called for fragments

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59. Montaigne, *Essays*, 331.

60. Schiller, *Aesthetic Education*, 34.

61. Fetscher, “Fragment”; Hans Ulrich Gumbrecht, “Modern, Modernität, Moderne,” in *Geschichtliche Grundbegriffe: Historisches Lexikon zur politisch-sozialen Sprache in Deutschland, Band 4: Mi-Pre*, ed. Otto Brunner, Werner Conze, and Reinhart Koselleck (Stuttgart: Klett-Cotta, 1978), 93–131; Eberhard Ostermann, “Der Begriff des Fragments als Leitmetapher der ästhetischen Moderne,” *Athenäum* 1 (1991): 189–205.

that are complete in themselves and separated from their surroundings.<sup>62</sup> This was an important shift since Schlegel questioned the primacy of an anterior totality and advanced a particularly modern understanding of fragmentation. Yet in his call for “future-oriented” fragments, Schlegel still implicitly assumed the whole, now situating it only into the future and labeling it progressive rather than regressive.<sup>63</sup>

Schlegel’s work marks a turning point in the conceptualization of fragment in another sense. Schlegel identified fragment with “wit”—the human faculty of rapidly associating and dissociating things—and also metaphorically linked this with the chemical act of associating elements into more or less stable compounds. For Schlegel, modernity, since the French Revolution, was a period of selective chemical combinations rather than steady organic growth or a mechanical procession in a particular direction.<sup>64</sup> At this point, at the latest, fragmentation started to imply also the possibility of selecting some elements while rejecting others. Later theorists of modernity followed this initiative by underlining how such selections were in fact inevitable in modernity because of the lack of stable foundations. The idea of the fragmentation of ancient culture and art was, again, thereby metaphorically extended onto the questions of

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62. Friedrich Schlegel, “Fragmente,” in *Athenaeum: Eine Zeitschrift von August Wilhelm Schlegel und Friedrich Schlegel I*, ed. Curt Grützmacher (1798; repr., Hamburg: Rowohlt, 1969), 100–201, here 104, 137.

63. *Ibid.*, 103.

64. Asko Nivala, “The Chemical Age: Presenting History with Metaphors,” in *They Do Things Differently There: Essays on Cultural History*, ed. Bruce Johnson and Harri Kiiskinen (Turku: k&h, 2011), 81–108, here 81–82, 85–87.



identity and thought more generally, and the literary fragment—sometimes together with epigram, aphorism, or allegory—was perceived as the corresponding textual device.<sup>65</sup>

Søren Kierkegaard, in particular, utilized the fragmentary mode of expression to underline the fragmentation of identity and the necessity of an ultimately unfounded choice in modernity.<sup>66</sup> Friedrich Nietzsche devalued modernity's decadence and obsession with wholeness, and correspondingly adopted an aphoristic style.<sup>67</sup> Walter Benjamin took fragments rather than totalities as his starting point, proposed fragmented reading as the only suitable approach in modernity, and linked the experience of fragmentation with melancholy.<sup>68</sup> Theodor W. Adorno declared the whole to be “the untrue” in his aesthetic theory,<sup>69</sup> while Ernst Bloch incorporated the idea of fragment into his framework of utopian and eschatological anticipation, and, echoing

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65. For an overview, see Ostermann, “Fragment.”

66. Søren Kierkegaard, *Philosophical Fragments/Johannes Climacus* (1844; repr., Princeton, NJ: Princeton University Press, 1985); Søren Kierkegaard, *Either/Or: A Fragment of Life*, 2 vols. (1843; repr., Princeton, NJ: Princeton University Press, 1987).

67. Fetscher, “Fragment,” 577–578.

68. David Frisby, *Fragments of Modernity: Theories of Modernity in the Work of Simmel, Kracauer and Benjamin* (Cambridge: Polity Press, 1988), 207–230; Karlheinz Stierle, “Walter Benjamin: Der innehaltende Leser,” in Dällenbach and Nibbrig, *Fragment und Totalität*, 337–349.

69. Ian Balfour, “‘The Whole is the Untrue’: On the Necessity of the Fragment (after Adorno),” in Tronzo, *The Fragment*, 82–91.

the views of Romanticism, considered fragment a future-oriented form rather than a remnant of things past.<sup>70</sup>

Since the late eighteenth and early nineteenth century, fragmentation has been increasingly related to questions of the nature of modernity in particular and of the nature and direction of history in general. For both aesthetic and social theorists, a key interlocutor was G.W.F. Hegel for whom art, states, and history alike were manifestations of the Spirit becoming conscious of itself. In this unified process, “the whole” might temporarily “disintegrate” into “particular national spirits,”<sup>71</sup> yet history was the “rational, inevitable progress of the World Spirit,” which was “always one and the same.”<sup>72</sup> The theorists of aesthetic and political modernity repudiated such finalism, and the category of fragmentation was an effective means for anti-Hegelian impulses.

Starting with Nietzsche, at the latest, we can perceive a positive reaffirmation of the partial and contingent over that which is whole. This normative revaluation pushed further the reconsideration that Schlegel and others initiated. In his summary of the anti-Hegelianism of the historical school of hermeneutics, Hans-Georg Gadamer later invoked the traditional totalizing

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70. Achim Kessler, *Ernst Blochs Ästhetik: Fragment, Montage, Metapher* (Würzburg: Königshausen & Neumann, 2006), 77–78.

71. G.W.F. Hegel, *Grundlinien der Philosophie des Rechts oder Naturrecht und Staatswissenschaft im Grundrisse*, ed. Helmut Reichelt (1821; repr., Frankfurt: Ullstein, 1972), 301.

72. G.W.F. Hegel, *Vorlesungen über die Philosophie der Geschichte* (Frankfurt: Suhrkamp, 1986), 22.

metaphor of history as a book, yet noted that “the book of history is a fragment that ... breaks off in the dark,”<sup>73</sup> thus suggesting that there was no sufficient knowledge basis for universal history. Benjamin likened fragmentary philosophical reflections to “mosaics” that “are made up of the distinct and disparate” and “preserve their majesty despite their fragmentation into capricious particles.”<sup>74</sup> While valuing fragment positively as an independent form, Benjamin nevertheless resorted to the metaphor of mosaic that implied the existence of an overall image consisting of and going beyond the pieces. After this intermediary ambiguity, postmodernism rejected totalities completely. Gilles Deleuze and Felix Guattari, for instance, identified their age as one of “partial objects, bricks that have been shattered to bits, and leftovers,” yet rejected any notion of “primordial” or “final totality,” “unity,” or “harmonious whole,” either in the past or the future.<sup>75</sup> These thinkers, together with Jacques Derrida, for instance, took Schlegel’s initiative further and prepared a particularly postmodern affirmation of the category of fragmentation. Like Benjamin’s, their affirmative view of fragmentation, however, was in tension with the metaphor that underpinned it (mosaic for Benjamin, shattered bricks for Deleuze and Guattari) and still tacitly implied the whole.

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73. Hans-Georg Gadamer, *Wahrheit und Methode: Grundzüge einer philosophischen Hermeneutik* (1960; repr., Tübingen: Mohr, 1990), 203.

74. Walter Benjamin, *The Origin of German Tragic Drama*, trans. John Osborne (London: Verso, 1992), 28.

75. Gilles Deleuze and Félix Guattari, *Anti-Oedipus: Capitalism and Schizophrenia* (1972; repr., London: Continuum, 2008), 45–46.

While these questions arose mainly in aesthetics and philosophy, in social theory the central matter of dispute was whether fragmentation of human culture was a sign of mechanization and a detrimental effect of increased differentiation, or, on the contrary, something that enabled selection and unbounded identity-formation. Fragmentation thus linked not only with the question of the nature of art and culture, but also with that of the nature of modernity per se. The high Enlightenment spelled a crucial moment in the narrative of modernity: Enlightenment philosophers sought to undermine the power of both religious and secular authorities by arguing that the potential for critical reasoning was a natural property of each human being.

However, several scholars have perceived profound tensions in the core of their bold project. The new reason turned excessively instrumental and regressed to myth, Adorno and Max Horkheimer claimed.<sup>76</sup> The Enlightenment thinkers paradoxically supplemented their criticism of authority with arguments for the reign of a single abstract and secular reason, a closed set of universal truths and rights, and one pre-set direction for history toward rationalization, pacification, and effectiveness, as Koselleck critically argued.<sup>77</sup> A novel single standard, that of abstract rationality, thereby emerged, as claimed by Alasdair MacIntyre.<sup>78</sup> While subverting

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76. Max Horkheimer and Theodor W. Adorno, *Dialektik der Aufklärung: Philosophische Fragmente* (1947; repr., Frankfurt: Fischer, 1971).

77. Reinhart Koselleck, *Kritik und Krise: Eine Studie zur Pathogenese der bürgerlichen Welt* (Frankfurt: Suhrkamp, 1959).

78. Alasdair MacIntyre, *Whose Justice? Which Rationality?* (1988; repr., London: Duckworth, 2001).

previous sources of unity, modernity has not been able to provide novel stable and universally valid answers to the questions of meaning, and a sense of illegitimacy haunts the era in the common perception despite the modern outlook's manifold superiority vis-à-vis the Medieval theological worldview, as argued by Blumenberg.<sup>79</sup>

The outcome of these somewhat melancholic analyses is that for the want of an overarching principle, fragmentation has become one of the key experiences of modernity. The increased specialization and effectiveness is accompanied by a lack of unity and fragmentation of the sources of meaningfulness. This is how the narrative of modernity is usually told. Instead of undermining this close linkage of modernity and fragmentation, post-modernism rather underlined its topicality. While fragmentation was fully celebrated as liberation from totalities only in postmodernity, the diagnosis itself is characteristically modern. Rather than a countermove, postmodernism in this respect is to be seen as a trend that took the impetuses of modernism to their logical end. With the alleged shipwreck of all "grand narratives," the metanarrative of fragmentation emerged as one of the primary candidates for such a position. The paradox is recent but its key elements stem from Romanticism's observations of how the literary aesthetics of the fragment implied a logical thought process boiling down to the idea of the self as an incoherent set of fragments detached from other atomistic individuals.<sup>80</sup>

In social theory, several parallel categories to fragmentation have emerged to describe modernity. Max Weber perceived modernity in terms of rationalization, disenchantment, and

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79. Hans Blumenberg, *Die Legitimität der Neuzeit* (1966; repr., Frankfurt: Suhrkamp, 1996).

80. See F.R. Ankersmit, *Aesthetic Politics: Political Philosophy Beyond Fact and Value* (Palo Alto, CA: Stanford University Press), 146–148.

secularization and juxtaposed traditional authority with the modern “polytheism” of values.<sup>81</sup>

Many of his categories found their way into popular parlance, amounting to the diagnosis that as rationality increased, culture was splintered into segments. Classic European sociology offered numerous similar categories, such as Karl Marx’s alienation,<sup>82</sup> Tönnies’s transition from *Gemeinschaft* to *Gesellschaft*,<sup>83</sup> or Georg Simmel’s linking of the medium of money with increased specialization, alienation, and mechanization of human relations.<sup>84</sup> With the fragmentation of purposes and externalization of value into objective forms, also the social self was splintered. “We are all fragments, not only of the human being in general, but also of ourselves,” Simmel once exclaimed, echoing both Montaigne’s and Schiller’s earlier diagnoses in a paradigmatically modern context.<sup>85</sup>

Modernity, however, is open to an alternative reading: alongside fragmentation, the parallel processes of differentiation and the division of labor are constitutive aspects of modern

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81. Max Weber, *Wirtschaft und Gesellschaft: Grundriss der verstehenden Soziologie* (1922; repr., Tübingen: Mohr, 1956); Max Weber, *Die Protestantische Ethik und der Geist des Kapitalismus*, in *Aufsätze zur Religionssoziologie* (1904–1905; repr., Tübingen: Mohr, 1947), 17–206.

82. Karl Marx, *Ökonomisch-philosophische Manuskripte*, ed. Barbara Zehnpfennig (1844; repr., Hamburg: Meiner, 2005).

83. Ferdinand Tönnies, *Gemeinschaft und Gesellschaft: Grundbegriffe der reinen Soziologie* (1887; repr., Darmstadt: WBG, 2005).

84. Georg Simmel, *Philosophie des Geldes* (1900; repr., Frankfurt: Suhrkamp, 2011).

85. Georg Simmel, *Soziologie: Untersuchungen über die Formen der Vergesellschaftung* (1907; repr., Frankfurt: Suhrkamp, 1992), 49.

society. The key impulses here come from Émile Durkheim's theory of modernization in terms of the division of labor and the concomitant rise of a particular mode of organic solidarity and common purposes—not despite increased differentiation but precisely because of it. Like Comte and Spencer before him, Durkheim built on organistic analogies derived from pre-Darwinian evolutionist thought. In analyzing modern societies, he thus implicitly relied on ideas of a single entity the integration of which now became a key concern and the primary task of a shared “moral consciousness” in society. Durkheim was too much a modern thinker to celebrate the shattering of purposes or the dissolution of totalities like later postmodernists did, and the differentiation paradigm combined with organistic tendencies was essentially an attempt to save modernity from the pessimism of the narratives of fragmentation and mechanization. This positive re-description of modernity in terms of differentiation was a key turning point in the conceptual history of *fragmentation*. It lived on particularly in mid-twentieth-century systems theory, as did the concern with integration. Following Durkheim's initiative and addressing its shortcomings explicitly, Talcott Parsons identified the differentiation of societal subsystems, such as economy, politics, or norm systems, as a key characteristic of modernity and thereby a problem that would have to be addressed particularly by theorizing the integrative aspect of the socialization of individuals into the values and norms of society.<sup>86</sup> Parsons conceived the process of modernization in terms of not only the differentiation of basic societal functions into subsystems, but also the further differentiation of these subsystems. In fact, in high modernity, not even the integrative function could be served by a single sphere. In Parsons's work, the diagnosis of fragmentation thus expanded from perceived problems to suggested remedies, and

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86. Talcott Parsons, *The Social System* (1951; repr., London: Routledge, 1991).

this, in our interpretation, particularly highlighted the necessity of a positive reconceptualization of fragmentation in terms of differentiation. To suggest that societal fragmentation could be battled by “fragmentation” of the integrative functions would have been rhetorically self-defeating. This dilemma opened the road for “differentiation.” Later Niklas Luhmann’s systems theory, for instance, posited that world-scale societies were possible only in the absence of a single integrative pole.<sup>87</sup>

Overall, we propose, the diagnoses of functional differentiation and fragmentation were thus separate, even alternative, descriptions for exteriorly similar sociological trends. While the fragmentation diagnosis took social structures as starting points and described their historical dissolution, differentiation theory rather identified new actors and possibilities from the viewpoint of the expected result. Both kinds of analysis are in principle compatible with the concept of modernity, and both can lay valid claims to capturing a part of the modern condition. The differentiation analyses, however, rarely invoked the term “fragmentation” explicitly or developed the idea further, although they indirectly supported the fragmentation diagnosis later theorists would make explicitly. Building critically on Parsons, Jürgen Habermas, for instance, analyzed the trends of rationalization and fragmentation on the level of systemic analysis and diagnosed a “fragmentation of everyday consciousness” in the life-world, steadily jeopardized by

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87. Niklas Luhmann, *Soziale Systeme: Grundriß einer allgemeinen Theorie* (Frankfurt: Suhrkamp, 1984); Niklas Luhmann, *Die Gesellschaft der Gesellschaft* (Frankfurt: Suhrkamp, 1997).



the colonizing tendencies of the system.<sup>88</sup> Similarly Anthony Giddens underlined the potential for both “unification” and “fragmentation” in contemporary culture, and linked this particularly to modernity: “Modernity fragments; it also unites.”<sup>89</sup>

### **Implications for Contemporary Debates**

Let us note some central tendencies that arise from the conceptual-historical sketch above and resonate with contemporary discussions.

(1) First, the relation between wholes and parts is ambiguous in the fragmentation diagnosis—and has historically always been so in the concept’s history from breadcrumbs, splintered vases, and torn manuscripts, to poetical and philosophical fragments and the experiences of lost identity and social coherence in modernity. The question of origins and aims—whether fragments are autonomous or confined to an anterior or forthcoming unity—was debated, sometimes with unintentional tensions between the argument and its metaphorical basis. Already in its conceptual history, fragmentation has been an image that carries strong persuasive power, yet is vague enough to allow for various theoretical projects. Eberhard Ostermann has summarized this aptly with regard to aesthetic theory: the concept of fragmentation served to relativize “the aesthetics of the beautiful, the whole, and the true,” yet preserved the reference to the whole even when the whole was criticized or situated in the past or the future. The

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88. Jürgen Habermas, *Theorie des kommunikativen Handelns, Band 2: Zur Kritik der funktionalistischen Vernunft* (1981; repr., Frankfurt: Suhrkamp, 1995), 522.

89. Anthony Giddens, *Modernity and Self-Identity: Self and Society in the Late Modern Age* (Palo Alto, CA: Stanford University Press, 1991), 189.

effectiveness of the concept is based precisely on the fact that “it does not exclude the image of a whole but tacitly implies it, yet does not specify the status of this whole unequivocally, so that it is left for anyone who uses the concept to decide whether they wish to understand the whole fragmentarily as disintegrated, as cut into pieces, or as partially realized.”<sup>90</sup>

We suggest that this goes also for the uses of “fragmentation” in social, political, and legal frameworks. According to Simma and Pulkowski, the fragmentation of the international legal order “requires a simultaneous affirmation of its central systemic building blocks, including general international law.”<sup>91</sup> The flexibility of *fragmentation* guarantees, and explains, the concept’s notable success. As noted above, van Asselt and Zelli, for instance, utilize *fragmentation* remarkably broadly for both emerging and disintegrating structures.<sup>92</sup> This is a conceptually innovative move since it stands against the standard connotations of the disintegration of an anterior whole and explicitly challenges the assumption of unilinearity. This usage is not completely without precedents: the product of fragmentation, fragment, may in some cases in the world of music and letters denote “a portion of a work left uncompleted by its author [and hence] a part of any unfinished whole or uncompleted design.”<sup>93</sup> Further, some of these artistic portions can be intentionally produced as fragments, and such a use in fact emerged in the

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90. Ostermann, *Fragment*, 11–12.

91. Bruno Simma and Dirk Pulkowski, “Of Planets and the Universe: Self-contained Regimes in International Law,” *European Journal of International Law* 17, no. 3 (2006): 483–529, here 529.

92. Zelli and Van Asselt, “Institutional Fragmentation,” 1–13.

93. Simpson and Winder, *Oxford English Dictionary*, 137.

conceptual history with Schlegel's note on self-contained fragments or fragments oriented toward the future.

There are, however, two challenges in this present widening project. First, scholars in international law and global governance are scarcely aware of these Romantic uses. Luhmann once acknowledged the Romantic thinkers' polemical use of the term as "a protest against totalizing views of the world."<sup>94</sup> He did not, however, take Schlegel's initiative further, specify his own uses of the concept, or theorize anything resembling a theory of "fragments for the future" in international law. In the meanwhile, the use of fragmentation to describe emergent structures remains marginal and unsupported by systematic theorizing. Second, it is dubious whether the novel, non-unilinear sense could be extended from *fragment* to *fragmentation*. At least when interpreted as a process concept, *fragmentation* applies sensibly to fragments of the vase, manuscript, or hard drive type—to the either abrupt or gradual emergence of fragments out of a previous whole. To use *fragmentation* for the active and intentional production of fragments without an overarching category is unidiomatic in any language we know. There is thus presently a considerable semantic barrier against attempts to re-conceptualize *fragmentation*, rather than *fragment*, to include also emerging structures if analysts simultaneously wish to retain the process nature of the concept rather than take mere institutional snap shots.

(2) Despite the efforts of the proponents of aesthetic modernity to reevaluate fragmentation as liberation from repressive totalities, the traditional connotations still seem to dominate scholars' perceptions. This is evinced by the fact that so many scholars in global environmental governance are at pains to dissociate their analysis of fragmentation from the

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94. Luhmann, *Gesellschaft der Gesellschaft*, 550.

nostalgic vision of an overarching principle, a comprehensive set of norms, or a substantial unity. Analysts tend to note the term's vague implication that there was or is a homogeneous totality, yet denounce that their own usage assumes any universal order or trends toward such an order. Zelli and van Asselt, for instance, consider fragmentation a "value-free" term and deny that the concept would imply "a preference for institutional centrality" or that fragmentation would be a negative phenomenon on the conceptual level.<sup>95</sup> Numerous other recent contributors, such as Zürn and Faude, agree on the proposition of non-negativity.<sup>96</sup> Biermann and colleagues also "consider the concept of fragmentation ... to be value-free."<sup>97</sup>

"Fragmentation" is by far the most common term, but there are other similar descriptions in legal debates. Terms like "diversity," "pluralism," or "polycentricity" not only carry a comparatively "positive subtext," as noted by van Asselt,<sup>98</sup> but also relativize the vision of an antecedent normative unity. There are also alternative metaphoric depictions in scholarship that serve similar argumentative functions as *fragmentation*, yet have less pejorative connotations. Biermann and colleagues, for instance, identify a "*patchwork* of international institutions that are different in their character (organisations, regimes, and implicit norms), their constituencies (public and private), their spatial scope (from bilateral to global), and their [predominant] subject

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95. Zelli and Van Asselt, "Institutional Fragmentation," 3.

96. Zürn and Faude, "On Fragmentation," 120.

97. Biermann et al., "Fragmentation," 18.

98. Van Asselt, "Fragmentation," 46.

matter.”<sup>99</sup> Koskenniemi observes how “traditional international law is pushed aside by a *mosaic* of particular rules and institutions.”<sup>100</sup> Koskenniemi and Päivi Leino note that after 1989 the duality of East and West was “replaced by a *kaleidoscopic* reality.”<sup>101</sup>

The metaphors of patchwork, mosaic, and kaleidoscope alike respond to the same argumentative needs in that they describe a process of the creation of a multi-colored whole from heterogeneous fragments rather than a process of the fragmentation of a pre-existing totality. Patchwork and mosaic consist of “temporarily incomplete parts ... of a work in progress” and “elements” or “components” rather than fragments strictly speaking.<sup>102</sup> The kaleidoscope metaphor, interestingly, carries connotations of images being shattered although the kaleidoscope actually is an entertaining device designed to mechanically produce images otherwise unavailable. The other two, by contrast, carry largely neutral or positive connotations, emerge in the conceptual history *fragmentation*, and could replace *fragmentation* in affirmative analyses. This, however, seems to be rare. Contemporary scholars prefer to cling to *fragmentation* and attempt to dissolve the nostalgic connotations instead of employing one of the alternative

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99. Biermann et al., “Fragmentation,” 16 (emphasis added). The passage is also cited in Zelli and Van Asselt, “Institutional Fragmentation,” 3, and further recycled as Zelli and Van Asselt’s view by Zürn and Faude, “On Fragmentation,” 121.

100. Martti Koskenniemi, “The Fate of Public International Law: Between Technique and Politics,” *Modern Law Review* 70, no. 1 (2007): 1–30, here 9, doi:10.1111/j.1468-2230.2006.00624.x (emphasis added).

101. Koskenniemi and Leino, “Fragmentation of International Law?” 559 (emphasis added).

102. Lichtenstein, “Fragment,” 121.

metaphors. One of the key reasons is that patchwork, mosaic, or kaleidoscope do not easily allow for verbal forms, let alone anything with the suffix “-tion.” They are thus less capable of capturing the process dimension of fragmentation and the historical development that led to the present condition. This is yet another reason for the popularity of *fragmentation*.

(3) As noted above, historically, *fragmentation* became a key vehicle of anti-totalizing, particularly anti-Hegelian, ideas in the nineteenth and twentieth centuries. The melancholy observers of fragmentation thereby became also its guardians against false totalities, irrespective of whether totality was projected into the past by conservatives or to the future by socially and politically progressive thinkers. Particularly the critical theorists and their postmodern followers, such as Adorno, Benjamin, Deleuze and Guattari, or Derrida, battled false totalities with the aesthetics of fragmentation. Traces of this attitude can be perceived in the debate on fragmentation in international law. Influenced by postmodern thinkers, critical scholars of international law focus on rejecting “unities”—whether stemming from traditional sources or excessive liberal optimism. Prost, for instance, criticizes the “absurd nostalgia” for unity and claims that technical fragmentation analysis that does not focus on discourses is conducted “on the basis of conceptual categories created by and for the merchants of unity themselves.”<sup>103</sup> As Koskenniemi argues, international law and institutions have been formed by a professional ethos that has, since the end of the nineteenth century, sought to explain how sovereign states could be united as “order” at some deeper level of existence, either as philosophical principle or

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103. Mario Prost, “All Shouting the Same Slogans: International Law’s Unities and the Politics of Fragmentation,” *Finnish Yearbook of International Law* 17 (2006): 131–162, here 162.

sociological generalization.<sup>104</sup> Here fragmentation emerges against the background of the modern project of international law—as both evidence and an emblem of the failure of that project. In this reading, *fragmentation* implicitly refers to a lost unity and a rationalization process that backfired, and thus carries melancholic undertones, even in cases where division rather than intact unity has always prevailed.

It should be noted that the scholarly discussion on fragmentation and modernity arrived to international law rather late. This may be for institutional reasons—the post-Cold War proliferation of treaties—or because, as Koskenniemi noted, much of modern international law has been preoccupied with an ethos of unity. Because of this time lag between disciplines, some lawyers attach fragmentation, or the discourse on fragmentation, directly to post-modernity or late modernity. According to Koskenniemi, the world of many functional regimes is “nervously characterized by international lawyers through the language of ‘fragmentation,’ articulating (as that word always did) a sense of loss of the secure ground of tradition, memory of the time when everything still seemed somehow coherent (and international lawyers held the Prince’s ear).”<sup>105</sup> Koskenniemi does not think that we should excessively worry over institutional

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104. For a detailed account, see Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (Cambridge: Cambridge University Press, 2004), 179–352.

105. Martti Koskenniemi, “Miserable Comforters: International Relations as New Natural Law,” *European Journal of International Relations* 15, no. 3 (2009): 395–422, here 407, doi:10.1177/1354066109338229.

fragmentation,<sup>106</sup> in fact, fragmentation guards against one of his great concerns, the use of hegemonic international power. Although it may bring about institutional challenges, fragmentation, for him, at least shows that hegemonic projects are not complete.

Other scholars have been more alarmed by the idea of fragmentation as a technique of power, also known as “forum shopping” in international law and global governance. Here countries, typically great powers, “strategically select the venue to gain a favorable interim decision for a specific problem,”<sup>107</sup> or make threats to leave a venue if demands are not met. This concern on strategic behavior, pronounced strongly by Eyal Benvenisti and George W. Downs, was commonplace in the legal literature on fragmentation before, and has been since the ILC report.<sup>108</sup>

(4) For some scholars, however, fragmentation is more than a mere indicator and not a loss, either. The primary way of revaluing fragmentation positively is to reinterpret it as differentiation—a conceptual shift made possible by the earlier moves of Durkheim, Parsons, Luhmann, and others. Zürn and Faude, for instance, link fragmentation intimately with differentiation theory, according to which functional differentiation is a rational response to the

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106. Tomer Broude, “Keep Calm and Carry On: Martti Koskenniemi and the Fragmentation of International Law,” *Temple International & Comparative Law Journal* 27, no. 2 (2013): 279–292.

107. Karen J. Alter and Sophie Meunier, “The Politics of International Regime Complexity,” *Perspectives on Politics* 7, no. 1 (2009): 13–24, here 16.

108. Eyal Benvenisti and George W. Downs, “The Empire’s New Clothes: Political Economy and the Fragmentation of International Law,” *Stanford Law Review* 60 (2007): 595–632.



increasing complexity of societies. From the midpoint of their article on, they use “institutional differentiation” and “fragmentation” synonymously.<sup>109</sup> Crucially, these authors do not propose that the former replace the latter term but seek, rather, to amalgamate the two concepts.

We suggest that the idea of modernity is a crucial intermediary category here. It is a common conceptual move to see fragmentation as an inherent element of modernization and to link the observed condition of micro-level decentralization with this macro-level process. Already the ILC report on fragmentation has identified “the increasing specialisation of parts of society and the related autonomisation of those parts” as “one of the features of late international modernity.”<sup>110</sup> The proliferation of international institutions is often seen as resulting from a move from territorial differentiation based on national boundaries to sectorial differentiation based on the boundaries of specific issue areas.<sup>111</sup> In Alexandra Khrebtukova’s estimation, this sectorial differentiation can be seen as “an expression of the emergence of different rationalities or world views in modern societies.”<sup>112</sup> Similarly, Andreas Fischer-Lescano and Gunther

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109. Zürn and Faude, “On Fragmentation,” 122.

110. International Law Commission, “Fragmentation of International Law,” 11.

111. Andreas Fischer-Lescano and Gunther Teubner, “Regime-Collisions: The Vain Search for Legal Unity in the Fragmentation of Global Law,” *Michigan Journal of International Law* 25, no. 4 (2004): 999–1046; David Leebron, “Linkages,” *American Journal of International Law* 96, no. 1 (2002): 5–27.

112. Alexandra Khrebtukova, “A Call to Freedom: Towards a Philosophy of International Law in an Era of Fragmentation,” *Journal of International Law and International Relations* 4, no. 1 (2008): 51–103, here 61–62.

Teubner see the fragmentation of law as only “an epiphenomenon of the deeper multidimensional fragmentation of the world society itself,” and note that global problems have “a deep layer the analysis of which must begin with modernisation itself, that is, with functional differentiation and autonomous systemic dynamics.”<sup>113</sup>

The close link with modernization is a part of the conceptual history of fragmentation itself. In Koselleck’s terminology, *modernization* and *fragmentation* are “parallel concepts”<sup>114</sup>—that is, concepts that appear together so that their meanings overlap, but never quite merge. Modernization, as commonly perceived, is an autonomous process with a single direction, extendable to the future and capable of being valued as either loss or liberation (or, in some cases, both). These conceptual properties tend to be transmitted to the parallel concept of fragmentation, and this further enhances the effects of the five conceptual properties of fragmentation identified in section two. Consequently, the fragmentation diagnosis, again, appears as increasingly compelling.

(5) This, however, may have detrimental effects for the concept’s utility in contemporary analysis. Scholars are well-advised not to conflate too easily modernization and fragmentation *on the conceptual level* of scientific inquiry and not to give modernity the status of a structural force

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113. Andreas Fischer-Lescano and Gunther Teubner, “Fragmentierung des Weltrechts: Vernetzung globalen Regimes statt etatistischer Rechtseinheit,” in *Weltstaat und Weltstaatlichkeit: Beobachtungen globaler politischer Strukturbildung*, ed. Mathias Albert and Rudolf Stichweh (Wiesbaden: Verlag für Sozialwissenschaft, 2007), 37–61, here 40–41.

114. Reinhart Koselleck, “Richtlinien für das Lexikon politisch-sozialer Begriffe der Neuzeit,” *Archiv für Begriffsgeschichte* 11 (1967): 81–91, here 90.

that automatically brings about fragmentation.<sup>115</sup> We tend to perceive modernity itself in terms of fragmentation and discern as particularly “modern” those phenomena that correspond to our expectations in this regard by manifesting a considerable level of disintegration and non-coordination. Fragmentation and its large semantic field can thus become a *selective criterion* for the “modernity” of cultural forms, practices, and formal institutions.

Such a use is reflected in global environmental governance, for example, in Zürn and Faude’s note that a high level of institutional differentiation or fragmentation “is an important characteristic of all modernity.”<sup>116</sup> Without such characteristics we might not recognize the structures as particularly “modern” in the first place. Fragmentation is, for instance, perceived as “an expression of different rationalities or worldviews emerging in modern societies,”<sup>117</sup> and “an

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115. Our argument here builds on the largely parallel case of modernization and secularization. The tendency to conflate the two notions is noted in Vyacheslav Karpov, “Desecularization: A Conceptual Framework,” *Journal of Church and State* 52, no. 2 (2010): 232–270, here 251, doi:10.1093/jcs/csq058. The theme of *desecularization* has emerged in recent debates; Peter L. Berger, for instance, argued that modernization also brought about movements of counter-secularization and further warned against identifying the increased secularity on the sociological level with a decrease in the meaning of religion for individuals. See Peter Berger, “The Desecularization of the World: A Global Overview,” in *The Desecularization of the World: Resurgent Religion and World Politics*, ed. Peter Berger (Grand Rapids, MI: Wm. B. Eerdmans, 1999), 1–19, here 3.

116. Zürn and Faude, “On Fragmentation,” 120.

117. Van Asselt, “Fragmentation,” 45.

ubiquitous structural characteristic of global governance architectures today.”<sup>118</sup> Similar references to modernity are plentiful in the wider legal scholarship on fragmentation,<sup>119</sup> and the link is enabled typically by a broad understanding of fragmentation as differentiation, as addressed above.

On a critical note, the recurrent references to modernity in the fragmentation debate may contribute to an observational bias in the analysis of emerging legal and institutional structures. Here the fragmentation of law and governance appears inevitable, if not desirable, already based on abstract epochal qualities rather than detailed empirical observation or institutional expediency. The use of *fragmentation* thus imposes unnecessary historical prognoses upon the term’s empirical content. As noted above, fragmentation is often seen as a process rather than a mere prevailing state and often supplemented with the image of a single direction from an entirety to pieces. The nearly conceptual coupling of fragmentation with modernity enhances this effect with an historical thesis. However, modernization, as it is generally conceived, is a process multifaceted enough to encompass also partial tendencies towards defragmentation. At the very least, we should ensure that our shared conceptual apparatus does not prevent such analysis, or even observations of defragmentation, at the outset.

(6) Based on its conceptual history and current usage, fragmentation appears as a concept that can be employed for various theoretical and historical projects. However, international law and global governance are not only academic disciplines; conceptual tendencies in these fields also have direct implications for institutional praxis. The prognosis of fragmentation—on the

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118. Biermann et al., “Fragmentation,” 31.

119. Fischer-Lescano and Teubner, “Regime-Collisions”; Khrebtukova, “Call to Freedom.”

cultural, political, and judicial levels alike—will not go unheard among the relevant actors and is at risk of becoming a self-fulfilling prophecy. The conceptual coupling of this prognosis with modernization makes it all the more appealing. Scholars have, as noted, identified a tendency toward strategic “forum shopping” in international law and global environmental governance. The creation of the Asia-Pacific Partnership on Clean Energy and Climate in 2005 is a prime example of attempts to benefit from institutional fragmentation.<sup>120</sup> In this case, the conservative leaders in the US and Australia sought to appear active on climate issues by creating the vague partnership as a response to the multilateral and binding Kyoto Protocol.

Fragmentation is doubtless not merely a product of malicious intentional design, yet scholars must become aware of the potential for legitimizing such activities possessed by the authoritative category of fragmentation. It is important to notice that the invocation of fragmentation as a process concept, if not a structural category of history itself, is an effective rhetorical tool at the disposal of those who wish to hide from view their genuine degrees of freedom and the associated liabilities.

## **Conclusions**

Recently Martineau stated, critically, that the debate on fragmentation in international law is being exhausted by plentiful middle-of-the-road papers on the pros and cons of fragmentation,

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120. Jeffrey McGee and Ross Taplin, “The Role of the Asia Pacific Partnership in Discursive Contestation of the International Climate Regime,” *International Environmental Agreements: Politics, Law and Economics* 9, no. 3 (2009): 213–238, doi:10.1007/s10784-009-9101-2.

combined with proposals to manage fragmentation through coordination and cooperation.<sup>121</sup> However, she also emphasized the vitality of the fragmentation metaphor: rather than “an innocent description,” fragmentation is, for Martineau, “a powerful rhetoric with which to contest someone else’s project, [as well as] ... a powerful metaphor as it articulates the play between diversity and unity in a specific way,” and “a powerful intervention in the world.”<sup>122</sup> In our view, the tension between Martineau’s two observations captures the state of the fragmentation debate: *fragmentation* is a source of inspiration and analytical potential, yet its usage tends to turn excessively general and, in the lack of unequivocal usages and fruitful theoretical agendas, somewhat technical.

Yet almost all analysts tend to accept the basic proposition of fragmentation in international law and global governance. In the first step of our argument, we analyzed the conceptual background factors for this, identifying several cumulative conceptual mechanisms that make the unanimity comprehensible. Our brief conceptual-historical engagement in the second step marked the key turning points in the use of the concept and its metaphorical undercurrents, particularly underscoring the role of fragmentation in the modernity diagnosis. In the third step we critically examined some of the implications arising from the historical engagement for contemporary debates, such as the habitual conceptual linking of fragmentation with modernization.

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121. Anne-Charlotte Martineau, *Une analyse critique du débat sur la fragmentation du droit international* (PhD diss., University of Helsinki, 2014), 325, 329.

122. Martineau, “Rhetoric of Fragmentation,” 3, 5, 28.

With these critical perspectives, we obviously overstepped the limits of merely empirical conceptual history as exercised in the middle section. Yet such a critical thrust was always part and parcel of Koselleck's criticism of singular views of history and of his analysis of the use of concepts to bring about social and political changes. *Fragmentation* is no exception in this regard, and its argumentative potential is comparable to that of such key concepts of modernity as *civilization, emancipation, or progress*—the core difference being that *fragmentation* carries predominantly negative connotations that several current scholars are actively seeking to dissolve. However, the conceptual shift is still under way.