
Risking a Colonial Anticolonialism

Chapter 10: Global Law: Ruling the British Empire

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1 Introduction

Martti Koskenniemi's 10th chapter offers a grand history in miniature, a 100-page sweep of British colonialism from the 16th to early 19th centuries. Although it opens with the trial of the governor-general of India Warren Hastings, an event that exercises a talisman-like hold on the imagination of historians of British liberal empire, the chapter is primarily devoted to legal justifications around colonialism in the Americas. More than fulfilling the book's objective of showing the force of legal vocabularies in global events, it illuminates the importance of vocabularies prior to the legal one – those of race and history. In the end, the legal imagination seems to have possessed more *ex post* than *ex ante* discursive power, its development a consequence of rather than a force in driving these events. In the disentanglement of notions of property and sovereignty, too, force seems at times to have mattered more than legal wranglings. The difficulty in adjudicating causality is rooted partly in the chapter's avoidance of chronological exposition, making it difficult to trace how and why ideas developed. Though Koskenniemi approaches the study of international law with a profound awareness of its rootedness in colonialism, his method and exposition leave us somewhat confused about how law mattered in colonialism and elide the extent to which it was contested and changed in colonial settings.

2 Race and History before Law

English claims to North America were grounded in ancient, even mythical, historical claims about discovery, an obligation to defend the faith and, more importantly, 'the many strategic and economic advantages of colonization', explains Koskenniemi.¹ In short, a practical argument laid the groundwork for theories about the connection between labour and landownership. The explicit pragmatic considerations – or,

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¹ M. Koskenniemi, *To the Uttermost Parts of the Earth: Legal Imagination and International Power, 1300–1870* (2021), at 704, 712.

realpolitik – that drove colonization gave rise to rich intellectual debate about rights and law, rather than the other way around.

The idea that colonization brought ‘advantages’ was part of a providential understanding of history as a story of progress. The legal imagination’s temporal commitment to improvement trumped atemporal questions of justice. Rights were historically minded: the right to improve mattered more than the right to exist. Providential arguments turned law into a kind of superstructure, taking its spread for granted and its content as automatically justified. The legal imagination rested upon this religio-historical one.

This historically informed legal imagination depended on a racialized understanding of the state of nature that man was destined to improve. Thus, as Koskenniemi reminds us, Thomas More’s Utopians celebrated their transformation of a ‘pack of ignorant savages’ into a ‘civilized nation’.² More employed the language of natural rights to justify the use of force in the name of progress: ‘If the natives won’t do what they are told, they are expelled from the area marked out for annexation.’ War might follow ‘when one country denies another its natural rights to derive nourishment from any soil which the original owners are not using themselves’.³ Racist ideas of savage and native as part of the ‘nature’ on which the language of rights is grounded preceded the invocation of natural rights. The language of natural rights justified but did not cause war; it was not what made war thinkable in the first place. That provocation arose from the savage’s natural state, his refusal of history. The legal imagination thus acquired force by co-opting racial and historical thinking. Not only were natural rights understood to derive from improvement of the land but English improving modes of agriculture were understood as divinely inspired, making Native American land use not only inefficient but immoral.⁴ With respect to slavery, too, a racial imagination preceded or was coextensive with the legal one: The Carolina constitutional article authorizing slave ownership spoke of absolute power over ‘negro slaves’, co-opting the racial definition of slavery as its legal justification.⁵ Koskenniemi’s discovery that, ‘[a]stonishingly, a racist system of plantation slavery arose in the Atlantic colonies’ without a clear legal basis⁶ forces us to question the extent to which legal vocabularies actually shaped the world.

A backward-looking historical imagination further legitimized practical arguments. In urging the duty to improve lands roamed by feckless ‘savage people’,⁷ the East India Company (EIC) director and key propagandizer of the Virginia venture Robert Johnson invoked the memory of the Romans ‘who had retired in idleness only

² T. More, *Utopia* (2003 [1516]), at 50, quoted in Koskenniemi, *supra* note 1, at 702.

³ More, *supra* note 2, at 60, quoted in Koskenniemi, *supra* note 1, at 703.

⁴ Koskenniemi, *supra* note 1, at 722–723.

⁵ Art 100 of Fundamental Constitutions of Carolina, 1 March 1669, in Thorpe, *Federal and State Constitutions*, V, at 2785, quoted in Koskenniemi, *supra* note 1, at 760.

⁶ Koskenniemi, *supra* note 1, at 758.

⁷ R. Johnson, *Nova Britannia. Offering Most Excellent Fruites by Planting in Virginia. Exciting All Such as Be Well Affected to Further the Same* (Samuel Macham, and are to be sold at his shop in Pauls Church-yard, at the signe of the Bul-head 1609), at B, quoted in Koskenniemi, *supra* note 1, at 705.

to bring decay and ruin onto themselves'.⁸ A historical imagination framing colonization as a matter of survival – through progress – rendered legal considerations somewhat superfluous.

Indeed, the companies that drove colonization – the EIC, the Virginia Company – were chartered *before* legal justifications mattered, with the mercantilist desire for profit providing sufficient justification. The City of London brokers who first supported them drew on a commercial rather than legal imagination, as Koskenniemi's account attests. The Virginia project initially made no legal justification.⁹ Koskenniemi himself recounts the brutal English response to the Jamestown uprising as the cause of Native American dispossession. In other words, settlers arrived, armed, without legal justification, triggering rebellion, and *then* spoke of 'retaliation for breach of natural law'. Koskenniemi's implicitly causal argument about the legal imagination does not explain how the conflict itself began, rendering it a *deus ex machina*. His account shows that legal justifications followed rather than authorized the conflict the settlers provoked: later patent holders were authorized to engage aggressively with the native population, who were portrayed as 'outsiders to the English legal system'.¹⁰

The English considered Spanish justifications for colonization religious unlike their more worldly idea of resurrecting Rome. This amounted to a defence of empire as historic destiny (however providential) for which legal writ was unnecessary. As Koskenniemi writes, 16th-century patents authorizing entry into an 'infidel' land were less a 'legal-technical expression' than a mimicking of Spanish exploits, 'celebrating the glories of expansion by an analogy to the greatness of Rome'.¹¹ He puts the matter succinctly soon after: 'a combination of engrained racism and images of Roman glory kept conquest as part of the legal frame'.¹² Thus, he explains, war against those who fell beyond the bond of human fellowship – as, for instance, Native Americans, to the European mind – required no apology. Law, then, appears merely to have restated the logic of racial thinking in a particular form. Its demarcation of what is justly permitted between humans rested on racially infused notions of humanity as rights-bearing subjects. It is not that racism and the memory of Rome kept conquest legal to 17th-century English minds, but that their notions of what was legal derived in the first place from a sense of 'who was encompassed in the bond of human fellowship and by Roman precedent.

Certainly, legal notions had an *ex ante* justificatory influence through the notions of individualism in which they are grounded. A 1609 sermon commissioned to reassure against moral qualms about dispossessing Native Americans explained that without property in the lands they roamed, no individual could complain of a 'particular wrong'.¹³ Here, too, racial notions provide the ground on which legal ideas are

⁸ Koskenniemi, *supra* note 1, at 705.

⁹ *Ibid.*, at 713.

¹⁰ *Ibid.*, at 738.

¹¹ *Ibid.*, at 715.

¹² *Ibid.*, at 717.

¹³ R. Gray, *A Good Speed to Virginia* (1609), at 23, quoted in Koskenniemi, *supra* note 1, at 706.

erected: rights are the patrimony of individuals not collectives, and an individual is an entity with a sense of property and rights. Koskenniemi shows the extent to which law's rhetorical force rests on the tautologies of racial thought.

To be sure, 'improvement' conducted by individuals was valued partly for its presumed 'public benefit', as Koskenniemi explains: Locke argued that labouring on one's land increased the 'common stock of mankind'.¹⁴ A promise of collective *benefit* was thus marshalled to undermine collective *rights* – in the colonies as much as in England, where land held in common was deemed waste and enclosed as private property also in the name of improvement. Improvement rested on a historical imagination in which individuals – namely, landowning nobles in this context – were the handmaidens of progress. In its providential claims, the progressive view of history built on a religious one – not least because the Roman past doubled as the early Christian past. (Thus, Christ's silence on slavery in the Roman era could justify modern slavery.¹⁵) Locke claimed divine sanction of the role of individual labour in establishing property rights.¹⁶

Perhaps the key question ought to be *when* legal vocabularies mattered. Jamestown's early failure, by threatening the Virginia Company's financing, incited an 'intensive propaganda campaign'.¹⁷ It may be that pragmatic, commercial notions were more causally important in the first place but gave rise, contingently, to legal ones. The Crown takeover of Virginia when the company unleashed crisis after crisis (anticipating later dynamics vis-à-vis the EIC) pushed the narrative of improvement to the foreground – enrolling Enlightenment ideas into the defence of benevolent empire. Legal-historical arguments followed on the heels of pragmatic, commercial causes, offering them intellectual cover after the fact. Their invocation does not, however, alter the historical reality that greed and racial prejudice were what *actually and explicitly* drove British colonialism.

After all, Koskenniemi observes, legal justifications had limited purchase. While practical realities dictated the outcome in Virginia, most Englishmen continued to see colonization as a 'pointless drain' of resources, doubting the 'justice of taking Indian lands'.¹⁸ The question remains, then, when and how did legal justifications acquire force? Who was their audience? And, why didn't the scepticism of the majority matter more?

3 Sovereignty Was Property, Property Was Sovereignty

Koskenniemi begins with the crucial foundational point that Britain's emergence as a global power depended on 'public-private partnerships'.¹⁹ It was 'a story of the

¹⁴ J. Locke, *Two Treatises on Government* (6th ed., 1764), at 225–226, quoted in Koskenniemi, *supra* note 1, at 707.

¹⁵ Koskenniemi, *supra* note 1, at 757.

¹⁶ *Ibid.*, at 725.

¹⁷ *Ibid.*, at 710.

¹⁸ *Ibid.*, at 736.

¹⁹ *Ibid.*, at 699.

co-optation of royal sovereignty by the property rights of landed elites and owners of trading companies and the paradoxical creation of sovereignty out of the property claims of settlers in the Atlantic colonies'.²⁰ He seeks to narrate the evolution of a 'powerful frame that differentiates and juxtaposes sovereignty with property', two legal idioms.²¹ Thus, for instance, settlers claimed they had occupied territory for themselves rather than as 'conquest' for the Crown – a legal conflict that fuelled the fateful confusion about parliament's versus colonial assemblies' prerogatives and relations. But, in fact, this account confirms that confusion continued through the period covered. Property and sovereignty were actually extricated from one another later, in the 19th century, as part of the effort to delineate clearer spheres of public and private institutional authority.

Until then, public and private power continued to overlap, making distinctions between property and sovereignty notional rather than practical. The state inaugurated with the revolution of 1689 made defence of property its *raison d'être*, the basis of its claim to sovereignty. As I have argued in *Empire of Guns*, firearms, the increasingly ubiquitous instruments of military defence of sovereignty, doubled as instruments of civilian defence of property, miniaturized cannon that militarized any setting, transforming a battle over property into a battle over the authority of the post-1689 regime.²² Guns were the weapons of those defending property and of those questioning a polity based on property – smugglers, highwaymen, poachers. The line between civilian and military realms was blurry at best. Troops routinely intervened in attacks on property, considering them attacks on sovereignty. A violation of a home was a violation of the kingdom. The law was integral to terrorization against property infractions. Like privately owned guns, it underwrote partnership between public and private power, in a time in which great landowners and merchant oligarchs held wide and unsupervised judicial and administrative powers, hogging unpaid local offices, commanding the militia and so on. It is impossible to discern where the state ended and a private sphere began until well into the 19th century. The state was not institutionalized enough to assert a monopoly on violence, existing in tension and continuity with semiautonomous sources of legitimate authority at local levels. In a sense, a situation in which propertied classes owned guns was the monopoly of violence by a state understood as a corporate formation, in which the Crown partnered with chartered companies, the Bank of England, powerful military contractors, aristocrats in frontier regions and so on. Guns were thus the individual-scale equivalent of the armed ships defending British property/territory around the world. The government and trading companies accordingly supplied them to colonial settlers (themselves often those displaced by the consolidation of private property in England), for whom they were weapons, tools and a currency for trade in the struggle to seize land abroad.

Legal cases that Koskenniemi claims distinguished settler from Crown claims instead reveal the continued practical and conceptual overlap of property and sovereignty.

²⁰ *Ibid.*, at 10.

²¹ *Ibid.*, at 11.

²² P. Satia, *Empire of Guns: The Violent Making of the Industrial Revolution* (2018).

Thus, a 1722 decision affirmed that wherever English subjects go, ‘they carry their laws with them’,²³ but practice deviated from such legal avowals. Settlers felt they embodied sovereignty as Englishmen. Colonial rebels defended their rights to property by referring not only to Locke but to Blackstone’s concept of property as ‘sole and despotic dominion’ over something.²⁴ ‘Freedom’ for them was all about property, the basis of their claim to sovereignty. The Crown, meanwhile, felt settlers extended the sovereignty it had over England, abroad. The companies involved also possessed sovereign powers.²⁵

The overlap of property and sovereignty is especially clear in company charters issued to carefully selected individuals. Just as sovereignty in Britain was traditionally corporate, depending on the partnership of feudal lords at the borderlands, these representatives were the Crown’s partners abroad. Such baronial properties were analogous to the ‘palatinate provinces that had been originally set up in English frontier areas . . . where the lord’s vice-regal prerogatives came in exchange for protecting the realm’.²⁶ To be sure, settlers began to claim natural rights earned through their improvement of the land,²⁷ and, in Virginia, arrangements continued to shift in the early 17th century. But pragmatism rather than legalism seems to have determined the outcome.

In seeking peaceful relations, the Crown extended its domination over ‘the Indians’ (Native Americans),²⁸ but Koskenniemi does not explain how this legal shift was justified. Rather than a story of the legal imagination creating distinctions between property and sovereignty, this is one of corporate understandings of sovereignty creating persistent legal confusion – evident in continued debate about whether the Second Amendment refers to personal or national defence today. Koskenniemi recounts the influential commentator and colonial administrator Thomas Pownall’s efforts to distinguish political from personal property in the context of Indian (South Asian) affairs,²⁹ but we never learn whether those thoughts might have informed his political-economic writings on American affairs.

More than the practical consequence of the legal imagination, Koskenniemi’s account reveals the *imaginarieness* of legality when it came to British settler colonialism, which proceeded by force rather than by reference to law, precisely because settlers saw themselves as sovereign. Land sales were coerced and fraudulent.³⁰ State prohibition of settlement west of the Ohio-Mississippi in 1763 had little effect;³¹ illegal land sales ‘skyrocketed’, and the military protected squatting settlers – in short,

²³ Case 15, Williams, *Reports of Cases Argued*, II, at 75–76, quoted in Koskenniemi, *supra* note 1, at 721.

²⁴ W. Blackstone, *Commentaries on the Laws of England in Four Books* (1893), II, at 2(1), quoted in Koskenniemi, *supra* note 1, at 750.

²⁵ Koskenniemi, *supra* note 1, at 730.

²⁶ *Ibid.*, at 732.

²⁷ *Ibid.*, at 722.

²⁸ *Ibid.*, at 738.

²⁹ *Ibid.*, at 773.

³⁰ *Ibid.*, at 740.

³¹ *Ibid.*, at 743.

the state's coercive arm did not require legal sanction to act in defence of its subjects, who declared *its* proclamation illegal. They had entered a 'state of nature' empowering them to engage with the local population as they saw fit, without reference to Crown prerogatives.³² Colonial laws could contradict English laws (as, for instance, on slavery) without loss of authority.³³ So, the question is also perhaps *whose* legal imagination mattered. Apart from the contest between the Crown and settlers, there was also that between settlers and indigenous people, although Koskenniemi does not consider how their alternative legal imaginaries may have shaped events.

4 Colonialism Made Invisible

After careful attention to the evolution of the legal foundations of settler colonialism in the New World, Koskenniemi offers a brief consideration of the role of the legal idiom in the conquest of South Asia and interactions in East Asia, where he takes the EIC's sovereign powers for granted in a way that eludes him in his consideration of the North American context. As in that context, Koskenniemi eschews consideration of the legal imagination of South Asian powers, though evidence of its force is plentiful in the *diwani*, *dastaks*, *firmans* and *vakils* that drive the action in this section. Certainly, full exploration of alternative legal idioms falls beyond the scope of this work, but he might have acknowledged that the European idiom did not operate in a vacuum but evolved in contestation and conversation with others. No wonder Britain's legal vocabularies about landowning 'failed to attain a workable grasp in a colonial reality to which its administration remained utterly alien'.³⁴ For all Koskenniemi's antipathy towards colonialism, the work is disinterested in the history of colonized people to the point of erasure, even claiming rather outrageously that 'resistance finally collapsed after the battle of Plassey' in 1757,³⁵ despite the ample record of continual Indian resistance, including massive wars. His reference to Native Americans as 'Indians' even outside contemporary usage is also troubling in this regard, even leaving aside the confusion it creates in a chapter that also covers India.

In South Asia, too, practical notions of historical purpose trumped the working of the legal imagination: doubt about the legality of company actions was assuaged by the presumption of a natural right to punish those who would obstruct trade. Here, too, state prohibitions against company aggression had little effect, as it continued to foment war in the cause of commercial advantage.³⁶ Profit, or perhaps more elementally, greed, was sufficient grounds for aggression, as in the Americas. The legal imaginary floated somewhere above such realities. As Charles Metcalfe, the British resident in Hyderabad, said in 1825, 'We have by degrees become the paramount State of India'.³⁷ In other words, this was a reality produced incrementally, almost

³² *Ibid.*, at 744.

³³ *Ibid.*, at 762.

³⁴ *Ibid.*, at 775.

³⁵ *Ibid.*, at 768.

³⁶ *Ibid.*, at 774.

³⁷ Metcalfe, quoted in Ranusack, *Indian Princes*, at 55, quoted in Koskenniemi, *supra* note 1, at 775.

inexorably, as part of the company's own dynamic historical power – an argument later reified by J. R. Seeley as empire acquired through a 'fit of absence of mind' – for which no legal justification was required.³⁸

Koskenniemi's account of how financial compromise between the company and the state settled the confusion over legal rights to land – whether the British had acquired sovereignty through conquest or treaty³⁹ – confirms that force alone was sufficient to enable and justify conquest. The very absence of legal clarity abetted colonialism by extending deniability about it. The state's taming of the company with the Regulating Act of 1773 again showed the power of political necessity over the legal imagination.

It remains unclear how the discussion of India advances the chapter's argument about the role of the legal imagination; the section ends abruptly with termination of the EIC monopoly in 1813, and Koskenniemi moves to China and a later time period, precluding comparative consideration with the earlier sections and leaving us uncertain about how these later events may have followed from earlier colonial interactions. Thomas Macaulay, the first law member of the Supreme India Council, appears briefly later in the chapter, but British use of law in India is not explored here or in the previous chapter on the same period, despite extensive literature on that subject by Elizabeth Kolsky, Nasser Hussain, Mitra Sharafi, Ritu Birla and others.⁴⁰

In the closing section, we find opium traders invoking the law of nations as above the actual laws of any particular nation (such as Chinese laws against opium), justifying the British threat of forceful action against the Qing government. Here again competing legal frameworks were subordinate to a racial imagination: James Matheson anticipates 'the most ignominious submission' from the Chinese to such a threat,⁴¹ ultimately justifying it on purely pragmatic grounds rooted in orientalist assumptions. Koskenniemi summarizes this account as proof of the 'legalistic treatment of Chino-British relations',⁴² though they appear to have been more about force and race. It remains unclear how the account of Lord Palmerston's mid-century foreign policy priority of maintaining the balance of power in Europe with naval force supports Koskenniemi's argument about the centrality of the legal imagination.

5 Conclusion

The chapter concludes, disappointingly and confusingly, by asserting that, though the empire 'did not emerge in a fit of absence of mind', it also was not the result of a 'policy of world conquest',⁴³ though the account itself attests to the importance of a

³⁸ J. R. Seeley, *The Expansion of England: Two Courses of Lectures* (1883), at 8.

³⁹ Koskenniemi, *supra* note 1, at 771.

⁴⁰ See, for instance, R. Birla, *Stages of Capital: Law, Culture, and Market Governance in Late Colonial India* (2009); N. Hussain, *The Jurisprudence of Emergency: Colonialism and the Rule of Law* (2003); E. Kolsky, *Colonial Justice in British India: White Violence and the Rule of Law* (2010); M. Sharafi, *Law and Identity in Colonial South Asia: Parsi Legal Culture, 1772–1947* (2014).

⁴¹ J. Matheson, *Present Position and Prospects of the British Trade with China* (1836), at 60, 69, quoted in Koskenniemi, *supra* note 1, at 778.

⁴² Koskenniemi, *supra* note 1, at 783.

⁴³ *Ibid.*, at 784.

consistent presumption of the right to conquest and ambition to conquer. We might as tediously point out that there was no stated ‘policy’ of aristocratic dominance of British society, though it is implicit in the entire tendency of Victorian governance. Koskenniemi winds up rehearsing Victorian claims about ‘reluctance’ to pursue dominance with force, despite well-established evidence to the contrary.⁴⁴ To argue that the oft-used gunboats were used reluctantly is to confuse the justificatory logic of empire with its reality – bafflingly, following an entire chapter on that reality. The argument that Victorian policy was an ‘opportunistic effort to survey the operation of the rules and the expansion of private influence through trade and take action only occasionally to support it’⁴⁵ defies the evidence of continual warfare in China, India and elsewhere, whose justification is left a mystery. Koskenniemi rightly notes that early Victorian imperialists like Macaulay distinguished themselves from predecessors like Robert Clive and Hastings, but ignores the important fact that Macaulay’s romantic essays on these two figures also helped rehabilitate their reputations.

The argument about legal vocabularies thus sort of peters out. Recalling the Indian rebellion of 1857, Koskenniemi fails to mention Indian and other observers’ justifications of it on the legal grounds that the British had betrayed treaties. The closing paragraph relays the law professor William Harcourt’s cautioning against ‘useless interference’ in *The Times*,⁴⁶ concluding cryptically that empires thrive more by letting others consent to the rules than by actively enforcing them. Koskenniemi imagines the empire to have actually contained resistance – as in his earlier claim about 1757 – in a manner that denies the history of constant refusal to consent, perplexingly describing even 1857 as a ‘scandal of misrule’ rather than a massive uprising that shook the empire’s foundations.⁴⁷ He lets Harcourt’s references to intervention in Greece and Belgium erase the memory of contemporaneous violent intervention in India, Afghanistan, Aden, Burma, New Zealand, China, the West Indies, West Africa and beyond, affirming Harcourt’s theory of liberal empire over its empirical reality. Instead of addressing the false claims still made today about the empire’s spread of the rule of law, Koskenniemi reinforces the false narrative of reluctant imperialism. More precise analytical scaffolding – clarity on the extent of the causal claims being made – might have ensured against such an outcome.

The myth of reluctant Victorian intervention obscures the astounding shelf life of the early arguments defending violent dispossession described in this chapter. The arguments in the run-up to the horrific assault on Benin City in 1897, for instance, closely echoed those of More and Locke. As one Niger River trader put it, ‘Not the slightest improvement in trade has taken place as any history carries us, and the horrible native sacrificial customs are as terrible as ever’.⁴⁸ As Dan Hicks notes in his book on this affair, similar arguments reappeared in the 2003 invasion of Iraq.

⁴⁴ See, for instance, the classic work, Gallagher and Robinson, ‘The Imperialism of Free Trade’, 6 *The Economic History Review* (1953) 1–15.

⁴⁵ Koskenniemi, *supra* note 1, at 791.

⁴⁶ W. Harcourt, *Letters by Historicus on Some Questions of International Law* (1863), at 50, quoted in Koskenniemi, *supra* note 1, at 794.

⁴⁷ Koskenniemi, *supra* note 1, at 787.

⁴⁸ J. Pinnock, February 1896, reprinted in *Scotsman*, 13 January 1897, at 7, quoted in D. Hicks, *The British Museums: The Benin Bronzes, Colonial Violence and Cultural Restitution* (2020), at 87.

The British made legalistic demands for reparations for ‘deprivations’ caused by Qing obstruction of the opium trade.⁴⁹ How does the language of reparation differ when, instead of military backing, it is articulated with moral force, as in today’s conversations about colonial reparations? With his blindness to the history of colonial resistance and to competing legal imaginaries, Koskenniemi can only conclude gloomily that sovereignty and property ‘structure much of what all of us today can have as experience of the world and the alternatives for acting within it’ and that the ‘space provided for doing something about it is extremely limited’.⁵⁰ Dipesh Chakrabarty likewise counsels accepting this European intellectual patrimony with ‘anticolonial . . . gratitude’, since our institutions for administering justice require us to speak and think through their language and logic.⁵¹ But, as I have argued elsewhere, we might still recover new values from history and imagine alternative futures.⁵² The shifting register of our understanding of reparations, from the legal to the moral, and incorporating questions of restitution, memorialization and apology, is itself an opportunity to recover through historical study the alternative understandings of our relations with one another and with land that commitments to sovereignty and property have long smothered.

⁴⁹ Koskenniemi, *supra* note 1, at 780.

⁵⁰ *Ibid.*, at 11.

⁵¹ D. Chakrabarty, *Provincializing Europe: Postcolonial Thought and Historical Difference* (2000), at 255.

⁵² P. Satia, *Time’s Monster: History, Conscience and Britain’s Empire* (2020).