The European Journal of International Law Vol. 32 no. 3

'Let us suppose that universals do not exist': Bricoleur *and* Bricolage *in Martti Koskenniemi's* To the Uttermost Parts of the Earth

Nehal Bhuta*

1 Introduction

In this Symposium, we provide 12 commentaries on Martti Koskenniemi's massive text, *To the Uttermost Ends of the Earth: Legal Imagination and International Power, 1300–1870* (hereinafter '*Uttermost*'). Running to almost 1,000 pages of body text and spanning nearly 600 years of European history, the book's scope is daunting, even overwhelming – the result of at least 16 years of research and writing, the book is variously described by our commentators as 'monumental', 'impossible' and a 'masterpiece'. For many of us, I suspect, it would represent more than one life's work. To do it justice, we have assembled an eclectic and disciplinarily diverse group of scholars to critically reflect on each chapter. Classicists, political theorists, historians of political thought, historians of colonialism and slavery, scholars of medieval legal history and even those whose professional (de)formation does not extend much beyond international law (such as myself) have each been assigned one chapter which reflects the preponderance of their expertise and special interest. Each chapter, it turns out, is almost a monograph in itself, and thus can bear the weight of such intensive scrutiny. The aim of these commentaries is twofold – to appreciate, through the reflections of subject-area specialists, the sweep and scope of what is achieved in each part of the book, and to rigorously and meaningfully probe such an ambitious scholarly *opera d'arte*.

2 A History of What?

For the readers of the *European Journal of International Law*, the figure of Martti Koskenniemi requires only brief introduction. He proudly identifies as a 'former Finnish diplomat', but of course is known for several major – and countless shorter

* Professor of Public International Law, University of Edinburgh, Edinburgh, United Kingdom. Email: nehal.bhuta@ed.ac.uk.

– works which advance a theoretical diagnosis of the structure of international legal argument and international law, and which substantially inaugurated the explosive growth of research and writing in the history of international law.[1] He is not given to writing short books, but *Uttermost* is fairly described as his *capo lavoro*.

The Gentle Civilizer of Nations (2002) combined prosopography with intellectual history and an encyclopaedic engagement with adjacent secondary literatures, to paint a picture of a recognizable, nascent field of international law emerging from within an interconnected pan-European legal elite at the end of the 19th century. The projects pursued by these elites were diverse, from national unification to the recasting of republican and liberal political ideals, but they converged around the law and practice of late 19th-century colonialism and the common problematic of peace and order in Europe (two different, but closely linked, projects of civilization). Narrated with great flair, and kaleidoscopically detailed and evocative of 'people with projects',[2] *The Gentle Civilizer* was an inimitable and in many ways genre-defying text, that recovered and placed into relation innumerable major and minor figures and their writings. As such, it not only broke dramatically with what had been understood to be 'the history of international law' up to that moment (essentially, a subspecies of European legal history that had experienced a profound morbidity after 1950),[3] but also – through its prodigious source material and juxtapositions – opened multiple lines of inquiry that would be pursued by others.[4] Koskenniemi has always been rather circumspect about the nature of his methods.[5] The artifact produced through such prodigious, even virtuosic, writing, speaks for itself – and in a much more lively and interesting manner than any arid methodological debate. The proof of this pudding is in its reading, and in the many reactions its successfully provokes in the reader: fascination, puzzlement, doubt, a desire to look deeper, a sense of being enveloped within a vivid space of ideas and problematics.

In *Uttermost*, Koskenniemi's account of *what* he is doing equally does not take the form of a long reflection on methods, or even on the object of inquiry. He would rather *show* us. The book is organized into four parts, each containing three chapters which reconstruct a certain (territorially-defined) space of what Koskenniemi calls 'legal

1 A helpful survey is found in W. Werner, A. Galan and M. de Hoon (eds), *The Law of International Lawyers: Reading Martti Koskenniemi* (2017).

2 A. Lang and S. Marks, 'People with Projects: Writing the Lives of International Lawyers', 27 *Temple International & Comparative Law Journal* (2013) 437.

3 On the morbidity of 'the history of international law', see Hueck, 'The Discipline of the History of International Law', 3 *Journal of the History of International Law* (2001)194. On the related crisis of the *ars maior* of European legal history, see Duve, 'German Legal History: National Traditions and Transnational Perspectives', 22 *Rechsgeschichte* (2014) 16.

4 See, for example, the interest in examining the formation of national professional associations of international law as a means to grasp the construction of the discipline, or the pursuit of intertwined histories of ideas with biographical accounts of major and minor figures, such as V. Genin, *Le laboratoire belge du droit international: Une communauté épistémique et internationale de juristes (1869–1914)* (2018); P. Amorosa, *Rewriting the History of the Law of Nations* (2019).

5 See, e.g., M. Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law, 1870–1960* (2001), at 6–9.

imagination' – in France, Spain, Britain and Germany. This is avowedly an account of *European legal imagination*, and as numerous commentators point out with different degrees of reservation, non-Europeans feature only in so far as they are refracted through the legal imaginary of European writers. This first set of methodological choices is admitted to and partially defended by Koskenniemi as reflecting a history that cannot be avoided if one is narrating 'the formation and consolidation of the immensely powerful frame that juxtaposes sovereignty with property'[6] – a frame that came to lay siege to the entire world, with no small success. The result in *Uttermost* is a series of studies in which the lived experiences of those subjected to imperialism and colonial domination – and the territorially localized discourses of those encounters – are largely absent; this is not the place to look for much insight into the many legal, social, economic and political experiences of the dominat*ed*. It is, however, a lively and – especially when taken as a totality – original interweaving of a vast set of sources which is concerned to show how idioms of universal law and legal ordering have 'been used to justify, support and occasionally critique power', endowing us with an accumulation of experiences and vocabularies 'with which we today form our expectations for the future'.[7]

What Koskenniemi calls idioms of legal imagination denotes a very wide range of practical discourses: from theology to universal histories, to state sciences and political economy. In this sense, we can understand his insistence that 'this is not a history of international law'.[8] For most of the time span of which he is writing, international law is an anachronism; but neither does he limit himself to conventionally understood 'pre-cursors' such as *ius gentium* or *ius naturale*. Rather, the 'legal imaginary' is populated by a large number of discourses of power and persuasion, and its population changes over time: from Roman law and Aristotelian philosophy in the 14th century, to political economy and state science in the 18th. Every claim of universal authority is shown to be the product of highly particular people, in places, with problems they are tasked to solve. All imagination starts at home, and protagonists 'employed familiar legal vocabularies lying around to construct responses to new problems in order to justify, stabilize or critique the uses of power'.[9]

3 Methods and Murals

Context, in the sense of being able to identify *what counts* as a familiar vocabulary lying around and *which interlocutors* were presupposed by these attempts at communication, is densely necessary for such an enterprise in historical recounting. The drawing of contexts requires many interpretive choices, and Koskenniemi rarely enlightens us about how these choices have been made – this seems to have been relegated to the

6 M. Koskenniemi, *To the Uttermost Parts of the Earth: Legal Imagination and International Power 1300–1870* (2021), at 11.

7 *Ibid.*, at 13.

8 *Ibid.*, at 1.

9 *Ibid.*, at 2.

remote hinterland of 'the constraints of . . . rigorous "method"' that were already disavowed in the opening pages of *The Gentle Civilizer*.[10] As a result, some of his choices are contested by commentators in this symposium – not in order to vindicate some rigid account of what the right method is (the much-loathed contextualist policeman wielding his Skinnerian nightstick does not make an appearance in this engagement), but with a view to opening new avenues for conversation, reflection and further inquiry about how best to understand what is going on with the people and places that Koskenniemi so extensively treats. Much like *The Gentle Civilizer*, we can expect *Uttermost* to open many new cans of worms for future historically minded scholars to untangle and examine further.

The account is far from being a genealogy of any kind, and nor is it an exercise in historicism, in which a concept is shown to unfold from an *in nuce* intuition to an organizing Idea or system of thought. At least in part, Koskenniemi's starting point is close to Foucault's: 'Let us suppose that universals do not exist. And then I put the question to history and historians: How can you write history if you do not accept a priori the existence of things like the state, society, the sovereign, and subjects?'[11] But Koskenniemi believes that an organizing gravitational pull is nonetheless at work in bringing into relationship the discourses and problematics he describes across 600 years and four territorial spaces: property and sovereignty emerge as the (variously described and redescribed) master problems of this history of European legal discourses, and that the logic of European domination is not reducible to either pole (the sovereign state *or* capitalism),[12] but rather 'always [to] a particular, locally specific combination of the two'.[13] Here, we might hear an echo of Koskenniemi's first major work, *From Apology to Utopia*, in which international legal argument was shown to oscillate between two generative, structural limit-concepts, and resolve itself concretely into some combination of the two in any given instance.[14]

The enigmatic conclusion that '*sovereignty and property are the yin and yang of European power*'[15] will not be satisfying to all. Nonetheless, it discloses what Koskenniemi sometimes in conversation describes as his 'extreme nominalism', and its related dimension in this work: the idea of his histories of legal imaginations in particular places and times as a *bricolage*.[16] *Bricolage* is an artistic technique, often associated with mural construction and combining mosaic, sculpture, painting and photos. It can be unruly, not to everyone's taste and certainly subject to objections about how effectively it conveys what is sought to be conveyed. However, it also produces intricate and multilayered artifacts, that do not conceal their *assembled* nature beneath smoothed-over surfaces – the cracks, angularities, disconnections and adjacencies are

[10] Koskenniemi, *supra* note 5, at 10.

[11] MM. Foucault, *The Birth of Biopolitics: Lectures at the Collège de France, 1978–79*, ed. M. Senellart, trans. Graham Burchell (Palgrave Macmillan, 2008), at 3.

[12] Koskenniemi, *supra* note 6, at 958–959.

[13] *Ibid.*, at 959.

[14] M. Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (2nd ed., 2006).

[15] *Ibid.*, at 959 (emphasis in the original).

[16] *Ibid.*, Introduction and Conclusion.

visible for all to see and ponder. An artist who chooses the bricolage form cannot be criticized for failing to produce a seamless and smooth textured object: texturing *is* the mode of communication, with the broad stroke mingling with detailed patterning. The eye is alternately led inward to detailed compositions, and outward to bold gestures. The whole is the combination of all of these movements. This seems to me to capture the experience of reading this immense text.

But bricolage has another, high-modern, cultural association: a *bricoleur* is a figure in modern sociological thought, one deployed by Simmel in his accounts of the conditions of modern individuality.[17] *Bricolage* in this account is an *epistemological* and *psychological* strategy of modern life, in the sense that we are forced under the fragmented conditions of modernity to become *bricoleurs* of our personality and of our place in the world. The reflective, self-critical individual finds master narratives or grand theories inadequate to account for and mediate their relationship to the world; they must instead 'cobble together whatever meaning can be wrested from the irreducible and irreconcilable fragments of reality'.[18] In his steadfast refusal to reduce concepts to a mere summary of epochal power relations,[19] and his insistence that the singularizing logic of Big Concepts like Capitalism and Sovereignty cannot really capture 'the role of law in the consolidation of Europe's global hegemony',[20] Koskenniemi muddies any attempt to project a straightforward synchronic story on to his insistently diachronic one. Structure and agency are not axes on which history can be plotted as a series of points; they are loosely coupled temporalities moving at different speeds.

This bricolage could perhaps be said to reflect an authentic relationship with our fragmented present, one which takes seriously the political, economic and cultural condition of the present in which this history has been written.[21] Chakrabarty observed in 2000 that 'imaginations of socially just futures for humans usually take the idea of single, homogenous, and secular historical time for granted. Modern politics is often justified as a story of human sovereignty acted out in the context of a ceaseless unfolding of unitary historical time'.[22] But a bricolage history is made from

[17] G. Simmel, *The Metropolis and Mental Life* (1903).

[18] Weinstein and Weinstein, 'Georg Simmel: Sociological Flâneur Bricoleur', 8 *Theory, Culture and Society* (1991) 151, at 166.

[19] This is consistent with his long-standing critique of the only other work of comparable scope and ambition: Grewe's *Epochs of International Law* (De Gruyter, 2000). For Koskenniemi's methodological and political criticism of Grewe, see Koskienniemi, 'Grewe's *Epochs of International Law*. Book Review', 51 *International and Comparative Law Quarterly* (2008) 746.

[20] Koskenniemi, *supra* note 6, at 958.

[21] On the eternal youthfulness of the cultural science of history – and the senses in which it is always being re-written from the now-time of the present, see Weber, 'Objectivity and Social Sciences', in H.H. Bruun and S. Whimster (eds), *Max Weber: Collected Methodological Writings*, trans. Hans Henrik Bruun (Routledge, 2012) 100, at 114, 121. See also E. Troeltsch, *Protestantism and Progress: The Significance of Protestantism for the Rise of the Modern World*, trans. W.D. Montgomery (Fortress Publishers, 1987), at 17; R. Kosselleck, *Sediments of Time* (2018), at 103 ('Every history is *Zeitgeschichte* and every history was, is and will be a history of the present').

[22] D. Chakrabarty, *Provincializing Europe: Postcolonial Thought and Historical Difference* (1st edn., 2000), at 15.

fragments and pieces, refracting and reproducing the fragmented now-time in which it is written; it poses challenges to the contemporary imaginary – the imaginary from within which we 'simply cannot avoid being oriented toward the future'[23] – by declining to provide a singularly usable 'practical past'.[24]

Koskenniemi maintains that 'historical work on law is interesting and important to the extent that it is a history of power'.[25] Whether indeed the bricolage history presented in *Uttermost* can live up to such a demanding qualification for intellectual value ('*to the extent that . . .*'!) is highly debatable; but as an extraordinary and virtuosic monument to a decades-long labour by a gifted historical bricoleur, it seems to me to be interesting and important no matter what. As Michael Oakeshott, then aged 80, concluded in his review of Skinner's newly published *Foundations of Modern Political Thought* (both volumes):

> I am at least disposed to take what I am given, and there is plenty to be grateful for . . . . If the gift of historical understanding is that of the opportunity of seeing a passage of the past in terms of hitherto neglected relationships and of being able to imagine it freshly and more perspicuously, then this is a notable historical achievement.[26]

[23] *Ibid.*, at 248.

[24] On the idea of a practical past, see M. Oakeshott, 'Present, Future and Past', in *On History and Other Essays* (1983) 1 at 23.

[25] Koskenniemi, *supra* note 6, at 957.

[26] Oakeshott, 'Review: The Foundations of Modern Political Thought', 23 *The Historical Journal* (1980) 449, at 451.