

FROM INTERDISCIPLINARITY TO COUNTERDISCIPLINARITY: IS THERE MADNESS IN MARTTI'S METHOD?

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INTRODUCTION

Over the past two decades, Martti Koskenniemi's writings have firmly established him as one of contemporary international law's most innovative and influential thinkers. During this time, his intellectual pursuits have marked him as more fox than hedgehog; as his attention and professional engagements have shifted, he has addressed an astonishingly wide range of subjects—human rights; international criminal law; collective security; noncompliance mechanisms in international environmental law; the fragmentation and constitutionalization of the international legal order; and, more recently, international law's historiography, among other topics. Perhaps the constant movement across diverse fields helps explain not only his productivity, but also the versatility and originality of his thought. Nevertheless, despite addressing a dizzying array of subject matters, certain themes run prominently throughout his work—many of which are thoughtfully explored in this Symposium.

In this short essay, I wish to highlight one theme in Koskenniemi's writings that has received relatively little attention, namely his approach to the scholarly enterprise itself and, in particular, questions of method and the relationships between law and other disciplines in international legal scholarship. During Koskenniemi's career, legal writing in general, and international legal scholarship in particular, have experienced an increasing self-consciousness regarding questions of method and a marked turn to interdisciplinarity research. Thus, it should not be surprising that from early publications drawing upon structural linguistics to later works mapping international law's history, questions of inter- and cross-disciplinarity have been prominent and recurrent in Koskenniemi's writings.

Koskenniemi has drawn upon other disciplines to illuminate and resolve certain puzzles. His early writings draw upon structuralism and linguistics to explore the puzzle of how legal argument is highly determined as a formal matter,

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and yet simultaneously highly indeterminate as a doctrinal matter. Later writings explore the related puzzle of how legal doctrine can be highly indeterminate and yet simultaneously possess a strong status quo bias. Similarly, Koskenniemi's turn to history illuminates another puzzle—how international law's mid-nineteenth century founders were highly cosmopolitan, but at the same time strongly nationalistic.

However, close examination of Koskenniemi's use of other disciplines and reflections on scholarly method reveals an approach to interdisciplinarity that itself raises several puzzles. How should readers understand the logic that drives Koskenniemi's embrace of certain disciplines and rejection of others—particularly in light of his forceful claim that it is not possible to sensibly choose among scholarly methods? And why, exactly, does Koskenniemi view the turn to international relations as so problematic—particularly given that Koskenniemi sometimes criticizes international relations approaches as being too Kantian, and other times criticizes international relations theory for not being Kantian enough?

To begin to unpack these puzzles—and Koskenniemi's complex orientation to methodological questions—this paper proceeds in four parts. Part I details Koskenniemi's sometime embrace of other disciplines, particularly his use of structuralism and history, as well as his claims regarding the very possibility of deciding among disciplinary frameworks when engaging in legal scholarship. It does so by examining three influential writings in which questions of method are particularly prominent. Part II explores his antipathy toward certain interdisciplinary projects. It focuses, in particular, on his sharply critical response to a body of writings that apply insights and methods from the discipline of international relations to international legal phenomena. Taken together, Parts I and II provide an overview of Koskenniemi's influences, enthusiasms, and antagonisms.

Part III assesses and extends related themes found in Koskenniemi's writings on interdisciplinarity. In particular, it explores the links between the nature and purposes of law and the methods appropriate to study the law. Koskenniemi's methodological commitments are intimately related to his understanding of international law's purpose. These commitments likewise help to explain his memorable claim that the turn to IR can be understood as an effort to “conquer” and colonize law—to undermine its autonomy. But the fear of conquest may be exaggerated, and I wish to explore whether it is precisely the features of law Koskenniemi highlights that permit it to appropriate insights from other disciplines—including international relations—without being “colonized” and losing its status as an autonomous discipline.

In Part IV, we shift attention from law's *purpose* to law's *promise*. Koskenniemi's writings on interdisciplinarity suggest that lawyers should engage in a particular form of critique—namely, unmasking “false universals,” by identifying the particular that lies behind every claim of the universal. But these writings also suggest an equally important affirmative task for law and lawyers—namely, to understand and justify particular decisions in universal terms. Understanding how lawyers can simultaneously find the particular in the universal and the universal in the particular presents, perhaps, the most difficult puzzle of all.

I offer a way of reading Koskenniemi that provides a resolution to this puzzle.

I.

To unearth Koskenniemi's challenging and multifaceted position regarding the use of cognate disciplines in legal scholarship, I highlight three instances when questions of method and interdisciplinarity loom particularly large: in his first book, *From Apology to Utopia*,¹ in a short "letter to the editors" of a symposium on "method in international law" published in the *American Journal of International Law*,² and in his more recent turn to history, illustrated by *The Gentle Civilizer of Nations*.³

A. *The Turn to Linguistic and Structural Analysis in From Apology to Utopia*

Koskenniemi burst upon the scholarly stage with the 1989 publication of *From Apology to Utopia*.⁴ *From Apology to Utopia* was informed by Koskenniemi's broad experience practicing international law in a foreign ministry and represented an effort to try to bridge the substantial disconnect he perceived between scholarly accounts of international law and the lived experience of a practitioner.⁵ It is neither possible nor necessary to summarize the book's arguments here; for current purposes, I highlight only one important set of claims.

From Apology to Utopia argues that international lawyers typically confront a two-pronged attack. On the one hand, to counter the familiar claim that international law is not "real law," they argue that it is "concrete." That is, in fact most states mostly comply with its strictures; international law is thus firmly rooted in social practice and reflects state interests. But this claim invites the

1. MARTTI KOSKENNIEMI, *FROM APOLOGY TO UTOPIA: THE STRUCTURE OF INTERNATIONAL LEGAL ARGUMENT* (Cambridge Univ. Press 2005) (1989) [hereinafter KOSKENNIEMI, *FROM APOLOGY TO UTOPIA*].

2. Martti Koskenniemi, *Letter to the Editors of the Symposium*, 93 AM. J. INT'L L. 351 (1999) [hereinafter Koskenniemi, *Letter to the Editors of the Symposium*].

3. MARTTI KOSKENNIEMI, *THE GENTLE CIVILIZER OF NATIONS: THE RISE AND FALL OF INTERNATIONAL LAW 1870-1960* (2002) [hereinafter KOSKENNIEMI, *THE GENTLE CIVILIZER OF NATIONS*].

4. Almost immediately, the book—a revised version of his doctoral thesis—was widely reviewed, and earned considerable praise. For example, Vaughan Lowe praised the text's "brilliant series of critiques of central figures and topics in international law" and characterized the volume as "a work of the highest quality and . . . exceptional interest." Vaughan Lowe, *Book Reviews*, 17 J.L. & SOC'Y 384, 389 (1990). Others were even more effusive in their praise, including claims that "this is the single most original book-length contribution to the field in the past decade," David Kennedy, *Book Reviews*, 31 HARV. INT'L L.J. 385, 391 (1990), and "I cannot praise this book highly enough," David J. Bederman, *Book Reviews*, 23 N.Y.U. J. INT'L L. & POL. 217, 229 (1990). To be sure, not all reviews were quite so glowing. For example, a review in a leading political science journal found the text to be a straight-forward application of critical legal studies arguments to international legal phenomena, and suggested it would be of limited utility to those not convinced of the value of deconstruction. Lea Brilmayer, *Book Reviews: International Relations*, 85 AM. POL. SCI. REV. 688 (1991).

5. See KOSKENNIEMI, *FROM APOLOGY TO UTOPIA*, *supra* note 1, at 562.

criticism that law simply provides an “apology” that legitimates and justifies actions states would take in any event. To deflect this criticism, lawyers also emphasize that law is “normative,” i.e., it is distinct from state interests, and is binding regardless of the interests or opinions of the state against which it is invoked. But claims that law binds states against their will are open to the criticism of being “utopian.”

Koskenniemi famously argues that every account of international law is subject to one or another of these criticisms and that no account of law can successfully meet both criticisms. Koskenniemi then extends the argument to claim that individual legal rules and doctrines can be criticized on similar grounds. Any doctrine that is too concrete—too firmly rooted in state practice—loses its normative character; doctrines that are strongly normative—aspirational and divorced from actual practice—can be characterized as utopian. According to Koskenniemi, the formal structure of legal argument follows certain recurrent patterns: “a constant dissociation and association of arguments about normativity and concreteness.”⁶ As a result, “law is incapable of providing convincing justifications to the solution of normative problems.”⁷ The paradoxical result is that the formal structure of legal argument is highly determinate, but the legal solution to any doctrinal controversy is highly indeterminate.⁸

For current purposes, Koskenniemi’s *style* of argument is as interesting as its substance. *From Apology to Utopia* opens with the ambitious claim that: “[t]his is not only a book in international law. It is also an exercise in social theory and in political philosophy.”⁹ But *From Apology to Utopia* is not an exercise in social and political philosophy in the way that the writings of, say, Dworkin or Rawls are. Koskenniemi does not set out to defend a conception of justice, or consider how best to distribute social entitlements from behind a veil of ignorance. Rather, *From Apology to Utopia* draws heavily upon various strands of structural thought. The strong influence of structural linguistics, argument theory, and deconstructionism is evident throughout; the brief introductory chapter alone contains citations to Foucault, Derrida, Saussure, Barthes, and other continental thinkers. There is also a strong and readily acknowledged affinity to claims found in contemporaneous writings by critical legal studies scholars in the United States, prominently including David Kennedy’s groundbreaking work on the structure of international

6. *Id.* at 69.

7. *Id.*

8. This outcome, in turn, reflects the dominant strands of liberalism that inform Western conceptions of political order. In Koskenniemi’s account, the liberalism that replaced natural law theories is agnostic about ultimate values: “[t]here is no natural normative order.” *Id.* at 21. This subjectivity of value promotes liberty, at the individual level, and sovereignty at the state level. Of course, absolute freedom is inconsistent with social order, and one actor’s freedom can be constrained to prevent harm to others. But liberalism faces an unresolvable dilemma: “if it preserves its radical skepticism about values it cannot solve problems of conflicting or disputed individual rights; and if it finds some standard for determining which individual rights should prevail over others it conflicts with its own premises.” Lowe, *supra* note 4, at 385. Not surprisingly, an international legal order premised upon a liberal political order shares the incoherence of that order.

9. KOSKENNIEMI, FROM APOLOGY TO UTOPIA, *supra* note 1, at 1.

legal argument.¹⁰

In addition to the use of critical theory and linguistic philosophy, *From Apology to Utopia* has a notable historical orientation. A chapter on “doctrinal history” begins with discussions of early Christian writers and proceeds through treatments of “classical” writers such as Emer de Vattel and nineteenth century international lawyers (some of whom reappear in later writings).¹¹ This analysis sets up a detailed discussion of leading twentieth century writers, including Georg Schwarzenberger, Hans Morgenthau, Myres McDougal, and Alejandro Alvarez.¹² However, Koskenniemi’s is not a conventional history in the sense of a chronological account of events; throughout, Koskenniemi emphasizes that his concern is less historical than structural. *From Apology to Utopia*’s history reviews the trajectory of international legal thought, not to show that doctrine responds to external developments, but rather to examine the structure and internal tensions of legal thought.

Thus, although *From Apology to Utopia* is strongly influenced by non-legal literatures, much of the argumentative style and content retains a distinctively “legal” feel. For example, after setting out the general argument, Koskenniemi demonstrates how the contradictions in legal argument unvaryingly play out in area after area of traditional doctrinal areas, such as sovereignty, sources, and custom. Koskenniemi frequently illustrates his points about the structure of and tensions within legal thought with quotes from well-known International Court of Justice opinions and other familiar legal instruments. In Koskenniemi’s own words, “I shall not use the very technical conceptual apparatus of structuralism, semiotics or deconstructive philosophy. I have here situated my approach in the broad framework of these fields only to highlight its holistic, formalistic and critical character.”¹³ Moreover, unlike other interdisciplinary efforts that purport to show how politics, economics, or culture determine law, Koskenniemi characterizes *From Apology to Utopia*’s argument as “a ‘pure law’ approach in that it relies on the self-regulating nature of legal argument. Any study of separate social, historical or psychological ‘factors’ is excluded from it. Rather, it understands discourse to be the means towards reaching society, history and psychology.”¹⁴ Thus, despite the use of other disciplines, *From Apology to Utopia* remains very much “a lawyer’s book, written to lawyers.”¹⁵

Nonetheless, *From Apology to Utopia*’s wide range of intellectual inspirations and use of non-legal sources is striking. The text liberally intersperses insights from other disciplines without apparent concern for disciplinary limits or boundaries. However, a series of later writings—some of which would explore the conundrums involved in defending the use of one scholarly method over others,

10. See, e.g., *id.* at 10 n.7.

11. See, e.g., *id.* at 71–157.

12. See *id.* at 182–223.

13. *Id.* at 13.

14. *Id.*

15. Martti Koskenniemi, *A Response*, 7 GERMAN L.J. 1103, 1107 (2006).

others which embraced history, and still others critical of alternative methods—would reveal a highly nuanced approach to method and interdisciplinarity.

B. Comparing Different Scholarly Methods: A Letter to the Editors of the American Journal of International Law

In 1999, the *American Journal of International Law* (AJIL) organized the “Symposium on Method in International Law.”¹⁶ The Symposium featured scholars prominently associated with leading methods in contemporary scholarship. Each was tasked with explaining his or her method and showing how it applied to the then-topical issue of individual accountability for violations of human dignity committed in internal conflict. Contributors were asked to address why their method was better than others, and the symposium was designed, in part, to assess “the usefulness of these various methods to the practicing lawyer . . . as opposed to the academic analyst.”¹⁷ The AJIL editors invited Koskenniemi to contribute a paper on “critical legal studies.” He responded with a controversial “letter to the editors.”¹⁸ While I do not mean to equate the scholarly significance of a relatively brief Symposium contribution with that of a monograph like *From Apology to Utopia*, the letter does contain a number of themes that recur in Koskenniemi’s writings, so it is worthy of our attention.

The letter vividly challenged the very idea of a symposium designed to facilitate comparisons among scholarly methods. “I [have] a difficulty with the suggested shopping mall approach to ‘method,’ the assumption that styles of legal writing are like brands of detergent that can be put on display alongside one another to be picked up by the customer in accordance with his/her idiosyncratic preferences.”¹⁹ To anticipate a theme developed more fully in Part III, Koskenniemi rejected efforts to evaluate international legal methods only in terms of utility to potential decision-makers: “To participate in the Symposium on those terms, however, would have been to subsume what I think of as a variety of different, yet predominantly anti-instrumentalist, legal styles into an instrumentalist frame: ‘who is going to be the diplomat’s best helper?’ This seemed to make no sense.”²⁰

Koskenniemi’s letter offers three distinct reasons why the effort to compare different methods “makes no sense.” The first is epistemological. Koskenniemi argues that the Symposium’s purpose—to compare the utility of different scholarly methods—presupposes a neutral or objective perspective from which evaluation

16. *Symposium on Method in International Law*, 93 AM. J. INT’L L. 291 (1999). The symposium included papers on positivism, policy-oriented jurisprudence (the New Haven school), international legal process, international relations theory, law and economics, feminist legal theory, and critical legal studies. The contributions to this symposium, along with a paper on third world approaches to international law, were later republished in *THE METHODS OF INTERNATIONAL LAW* (Steven R. Ratner & Anne-Marie Slaughter eds., 2004).

17. Steven R. Ratner & Anne-Marie Slaughter, *Appraising the Methods of International Law: A Prospectus for Readers*, 93 AM. J. INT’L L. 291, 299 (1999).

18. See generally Koskenniemi, *Letter to the Editors of the Symposium*, *supra* note 2.

19. *Id.* at 352.

20. *Id.*

can occur. But it is not possible to attain a truly “objective” standpoint: “[t]here is no such neutral ground . . . there is no (credible) external perspective on ‘method’”²¹ Every observation or judgment is necessarily made from a particular perspective, and every one of those perspectives is subject to critique from competing perspectives.

Next, Koskenniemi offers what we might consider a structural or sociological argument in support of the claim that the inability to choose which method is best does not mean that all methods are equal. Adopting a position similar to Stanley Fish’s reader-response approach to interpretation, Koskenniemi suggests that the persuasiveness of different methods—different styles of argumentation—is a function of the context in which they are employed and audience to which they are directed: “[t]he final arbiter of what works is nothing other than the context (academic or professional) in which one argues.”²² A method or argumentative style that works in academic contexts is more a reflection of scholarly conventions and expectations than of some intrinsic value found in that style, and much the same holds true in legal practice. “To write a deconstructive memorandum for a permanent mission to the United Nations would be a professional and social mistake”²³

Finally, Koskenniemi presents a political claim. To say that it is not possible to choose objectively among competing methods, and that a method’s success is a product of the social milieu in which it is used, is *not* to say that the choice of argumentative style is therefore without consequence.²⁴ Legal language is, in part, a vehicle for communicating about our social world. But legal language does more than simply describe. Language does not merely reflect, but rather helps to shape social meaning; the use of different terminology expresses and privileges different values and preferences. In short, as Koskenniemi wrote elsewhere, “words are politics.”²⁵

In this context, Koskenniemi notes that when law and economics analyses translate criminal law into a pricing mechanism, “they simultaneously effect a change in the way we understand and interpret the relevant acts;” similarly, when international relations scholars address systemic acts of violence in terms of “atrocities regimes,” “it is not only language but also the world which undergoes a slight transformation.”²⁶ Thus, any scholarly method—indeed, any style of legal

21. *Id.* at 352–53.

22. *Id.* at 356. Later, Koskenniemi would sharpen this argument with the claim that the success or failure of a legal argument has less to do with the argument’s intrinsic worth than with the preferences of the institution before which the arguments are presented. *See generally* Martti Koskenniemi, *Hegemonic Regimes*, in *REGIME INTERACTION IN INTERNATIONAL LAW: FACING FRAGMENTATION* 305 (Margaret Young ed., 2012).

23. Koskenniemi, *Letter to the Editors of the Symposium*, *supra* note 2, at 357.

24. *Id.*

25. Martti Koskenniemi, *Miserable Comforters: International Relations as New Natural Law*, 15 *EUR. J. INT’L REL.* 395, 395 (2009) [hereinafter Koskenniemi, *Miserable Comforters*].

26. Koskenniemi, *Letter to the Editors of the Symposium*, *supra* note 2, at 357.

argument—is necessarily a “mechanism of inclusion and exclusion.”²⁷ The promise of alternative methods lies “in their ability to shed light on mainstream law’s hidden priorities, the way legal translation articulates some participant values but fails to do so for other values.”²⁸

Koskenniemi concludes his letter by noting that one purpose of legal language is to articulate experiences of injustice. Since dominant styles necessarily repress some injustices, “a change of style may be necessary.”²⁹ While some law and literature advocates suggest that various dimensions of justice and injustice cannot be captured in legal discourse³⁰ and may require recourse to literature, Koskenniemi concludes with the thought that “[i]t is not always necessary to aim that high: a letter may sometimes suffice.”³¹

It is hardly necessary to underscore the difference in style and tone. *From Apology to Utopia* is written in a largely conventional and depersonalized academic style. It sets out its central thesis regarding the structure of legal argument and then carefully and methodically illustrates this thesis through analysis of a set of classic doctrinal issues, such as sovereignty and customary international law. It seamlessly draws on a variety of insights from academic disciplines other than law. The letter, in contrast, is written in a deeply personal and, at times, nearly confrontational style. It rests its claims about the implications of choosing among various scholarly methods on a theory of the constitutive nature of language that is absent from *From Apology to Utopia*. Moreover, the letter criticizes dominant forms of international legal discourse not because they are inherently contradictory or necessarily oscillate from apology to utopia, but because of the ways that they redescribe or recreate our world—and particularly because of the ways that they obscure certain forms of injustice in the world. In short, the argument has moved from a broad embrace of insights from numerous non-legal fields to illuminate legal discourse to a sharp critique of numerous scholarly methods—including interdisciplinary methods drawing on social sciences—used by legal scholars. A fuller elaboration of the critique of these forms of interdisciplinarity would appear in future writings, and will be discussed in Part II below.

C. The Turn to History

In many of his more recent writings—including the important contribution to this Symposium—Koskenniemi has turned to historical analysis. To date, his most influential contribution in this vein is *The Gentle Civilizer of Nations*, a landmark study of the history of international law.³² Koskenniemi describes the book as “an

27. *Id.* at 352.

28. *Id.* at 358.

29. *Id.*

30. The point is more fully elaborated in Martti Koskenniemi, *Faith, Identity and the Killing of the Innocent: International Lawyers and Nuclear Weapons*, 10 LEIDEN J. INT'L L. 137 (1997) [hereinafter Koskenniemi, *Faith, Identity and the Killing of the Innocent*].

31. Koskenniemi, *Letter to the Editors of the Symposium*, *supra* note 2, at 361.

32. KOSKENNIEMI, *THE GENTLE CIVILIZER OF NATIONS*, *supra* note 3.

experiment in departing from the constraints of the structural method [used in *From Apology to Utopia*] in order to infuse the study of international law with a sense of historical motion and political, even personal, struggle.”³³ *The Gentle Civilizer of Nations*’ argument grows out of two fundamental intuitions. The first intuition is that previous treatments of the discipline’s history failed to identify the radical nature of the changes that occurred in the field during the first half of the nineteenth century and the emergence of a new self-consciousness and enthusiasm between 1869 and 1885. This intuition leads to the rather startling claim that modern international law did not begin with the works of Grotius, Vattel, or other classic writers, but rather with the founding of the *Institut de droit international* and the publication of the *Revue de droit international et de législation comparée*. The book’s opening two chapters focus on the “men of 1873” who founded modern international law, shared an *esprit d’internationalité*, and viewed themselves as the “legal conscience of the civilized world.”

Koskenniemi artfully locates the views and preoccupations of *Institut* members within larger social and political contexts. For example, chapter two of *The Gentle Civilizer of Nations* provides a detailed account of the relationship between prominent international lawyers and European colonialism. Although some lawyers were sharply critical of the colonial project, many others shared a belief in the superiority of European civilization and viewed colonialism as historically inevitable. Koskenniemi’s nuanced account of debates over colonialism presents a picture of international lawyers who were sincerely concerned with the well-being of native populations, but who more often than not supported the imperial policies of their own states.

The second intuition that motivates this text is that the disciplinary sensibility that began around 1869 had run its course by approximately 1960. Koskenniemi’s basic claim is that the reformist sensibilities that the men of 1873 had written into international law no longer enjoyed either widespread political support or a persuasive theoretical justification. Thus, *The Gentle Civilizer of Nations*’ final two chapters detail the “end” of an era of international law, and the resultant emergence of a depoliticized legal pragmatism, on the one hand, and the ascendance of an imperial policy agenda, on the other; many of these arguments are explored in more detail below. The concluding parts of *The Gentle Civilizer of Nations*’ last chapter set out Koskenniemi’s controversial call for a “culture of formalism.”

The Gentle Civilizer of Nations both reflected and reinforced a dramatic turn to history in international law scholarship. The text makes several contributions to the field. As a substantive matter, it presents a strikingly original claim about the origins of the discipline, and Koskenniemi’s analysis of the role of international law and lawyers in constructing and justifying European colonialism remains one of the best treatments of this vexed issue. As a conceptual matter, Koskenniemi’s version of the story of the “men of 1873” emphasizes discontinuity in a field

33. *Id.* at 2.

whose histories, even today, often foreground continuity.³⁴ As a methodological matter, *The Gentle Civilizer of Nations* stands as an implicit rebuke to standard histories of the field, which tend either to emphasize a parade of “epochs” following one another or to trace the development of prominent individuals or ideas, such as “sovereignty” or “rights.” Instead, *The Gentle Civilizer of Nations* presents a series of narratives that form “a kind of experimentation in the writing about the disciplinary past in which the constraints of any rigorous ‘method’ have been set aside in an effort to create intuitively plausible and politically engaged narratives about the emergence and gradual transformation of a profession that plays with the reader’s empathy,”³⁵ and that has strongly influenced subsequent historical inquiries.

In the years since *The Gentle Civilizer of Nations*, Koskenniemi has continued his historical investigations and published papers on a wide variety of historical topics, including articles on the “prehistory” of international law,³⁶ the role of Spanish writers such as Vitoria in developing a theory of private rights applicable to international economic relations,³⁷ the role of Martens in the development of positivism,³⁸ the religious and ideological origins of international trade law,³⁹ and the idea of an “international community” as found in the writings of Dante, others writing between the fourteenth to eighteenth centuries, and Vattel.⁴⁰ A very recent essay sets out a “history of international law histories” that typologizes international legal histories, shows how the problems in each form of historiography prompted alternative historical approaches, and laments the continuing centrality of the European experience in historical accounts of the discipline.⁴¹

Koskenniemi’s wide-ranging contribution to this symposium touches on many of the topics addressed in his earlier historical writings. However, the paper also embarks on an important new path. Starting with *The Gentle Civilizer of Nations*,

34. See, e.g., EMMANUELLE JOUANNET, *THE LIBERAL-WELFARIST LAW OF NATIONS: A HISTORY OF INTERNATIONAL LAW* (Christopher Sutcliffe trans., 2012).

35. KOSKENNIEMI, *THE GENTLE CIVILIZER OF NATIONS*, *supra* note 3, at 9–10.

36. Martti Koskenniemi, *International Law and Raison d'état: Rethinking the Prehistory of International Law*, in *THE ROMAN FOUNDATIONS OF THE LAW OF NATIONS: ALBERICO GENTILI AND THE JUSTICE OF EMPIRE* 297 (Benedict Kingsbury & Benjamin Straumann eds., 2010).

37. Martti Koskenniemi, *Colonization of the 'Indies': The Origin of International Law?*, in *LA IDEA DE LA AMÉRICA EN EL PENSAMIENTO IUS INTERNACIONALISTA DEL SIGLO XXI* 43 (Yalanda Gamarra ed., 2010).

38. Martti Koskenniemi, *Into Positivism: Georg Friedrich von Martens (1756-1821) and Modern International Law*, 15 *CONSTELLATIONS* 189 (2008).

39. Martti Koskenniemi, *The Political Theology of Trade Law: The Scholastic Contribution*, in *FROM BILATERALISM TO COMMUNITY INTEREST: ESSAYS IN HONOUR OF JUDGE BRUNO SIMMA* 90 (Ulrich Fastenrath et al. eds., 2011).

40. Martti Koskenniemi, *'International Community' from Dante to Vattel*, in *VATTEL'S INTERNATIONAL LAW IN A XXIST CENTURY PERSPECTIVE* (Vincent Chetail & Peter Haggenmacher eds., 2011).

41. Martti Koskenniemi, *A History of International Law Histories*, in *THE OXFORD HANDBOOK OF THE HISTORY OF INTERNATIONAL LAW* 943 (Bardo Fassbender & Anne Peters eds., 2013).

many of his historical writings emphasized the importance of *contextualizing* international legal writers and concepts. In this vein, he has urged that our historical inquiries take “legal vocabularies and institutions as open-ended platforms on which contrasting meanings are projected at different periods . . . each devised so as to react to some problem in the surrounding world.”⁴² And in his keynote paper, Koskenniemi demonstrates what he means by contextualization, by providing illuminating readings of both Vitoria and Grotius.⁴³

However, the concluding section of Koskenniemi’s symposium contribution marks a significant departure in his thinking, as it identifies an important limitation of efforts to contextualize. As he notes, there is no single or correct “context” for legal historians to use.⁴⁴ Rather, all efforts at contextualization inevitably involve a number of decisions about scale and scope, and these decisions necessarily act as mechanisms of inclusion and exclusion. Moreover, in his discussion of Anthony Anghie’s critique of Vitoria, Koskenniemi emphasizes that it is not possible to “contextualize” historic thinkers or ideas independent of our current commitments.⁴⁵ These observations lead him to call for those who engage in legal history to move “beyond context.”⁴⁶ It remains to be seen whether this call will lead Koskenniemi to move “beyond history.”

II.

As outlined above, Koskenniemi’s writings have incorporated insights and approaches from a variety of disciplines. However, to be open to some forms of interdisciplinarity is not to be open to all. In particular, a number of Koskenniemi’s recent writings critique the use of insights and methods from international relations (IR) to analyze international law (IL).⁴⁷ Before examining his multi-pronged critique, it is useful to provide a brief introduction to the literature that has sparked such a sustained and spirited attack.

Over the last century, the academic disciplines of IL and IR have had an uneasy relationship.⁴⁸ During the inter-war years, scholars in both fields pursued

42. *Id.* at 969.

43. Martti Koskenniemi, *Histories of International Law: Significance and Problems for a Critical View*, 27 TEMP. INT’L & COMP. L.J. 215 (2013).

44. *Id.*

45. *Id.*

46. *Id.*

47. See KOSKENNIEMI, THE GENTLE CIVILIZER OF NATIONS, *supra* note 3; Martti Koskenniemi, *Law, Teleology and International Relations: An Essay in Counterdisciplinarity*, 26 INT’L REL. 3 (2011) [hereinafter Koskenniemi, *Law, Teleology and International Relations*]; Koskenniemi, *Miserable Comforters*, *supra* note 25.

48. See generally Jeffrey L. Dunoff & Mark A. Pollack, *International Law and International Relations: Introducing an Interdisciplinary Dialogue*, in INTERDISCIPLINARY PERSPECTIVES ON INTERNATIONAL LAW AND INTERNATIONAL RELATIONS: THE STATE OF THE ART 3 (Jeffrey L. Dunoff & Mark A. Pollack eds., 2013); Anne-Marie Slaughter Burley, *International Law and International Relations Theory: A Dual Agenda*, 87 AM. J. INT’L L. 205 (1993).

common scholarly interests, and cross-disciplinary dialogue was common. However, World War II brought this era of disciplinary harmony to a halt, and thereafter a dominant school of political science “realists” rejected the idea that IL could serve as a meaningful constraint on states’ pursuit of national interests. Over the next four decades, IR and IL scholarship developed along separate—and rarely intersecting—paths.

This period of mutual neglect subsided with the end of the Cold War and the apparent revitalization of international rules and institutions. On the legal side, Ken Abbott and Anne-Marie Slaughter introduced international lawyers to key IR concepts, such as game theory and collective action problems, political and economic market failures, and “liberal” IR theory, which breaks open the “black box” of the state and focuses on the ways national governments represent individuals and groups operating in domestic and transnational society.⁴⁹ On the IR side, the key development signaling political science’s “rediscovery” of international law was the publication of a special symposium issue of *International Organization*, devoted to “Legalization and World Politics.”⁵⁰ Thereafter, scholars from both disciplines contributed to a substantial body of “IL/IR” scholarship, with some even going so far as to call for a new “joint discipline.”⁵¹

Like many efforts to challenge disciplinary boundaries, the emergence of an IL/IR literature sparked disciplinary tensions and some degree of backlash. Among legal academics, Koskenniemi has been one of the most articulate and persistent critics of this body of scholarship. Because his critique differs markedly from other critiques of this literature, and as it has changed over time, it is worth examining in some detail.

A. What’s Wrong with International Relations: How Do I Count the Ways? or the argument in The Gentle Civilizer of Nations

The fullest articulation of Koskenniemi’s critique of IL/IR appears in the final chapter of *The Gentle Civilizer of Nations*.⁵² This chapter opens with a detailed account of the similarities and differences in the approach to international law found in the thinking of Carl Schmitt and Hans Morgenthau, and then analyzes the more recent turn to international relations scholarship. In the course of his discussion, Koskenniemi identifies several areas where Schmitt’s and Morgenthau’s thought converged. First, both thinkers claimed that by the mid-

49. See Kenneth W. Abbott, *Modern International Relations Theory: A Prospectus for International Lawyers*, 14 YALE J. INT’L L. 335 (1989); Slaughter Burley, *supra* note 48. See also Anne-Marie Slaughter, *A Liberal Theory of International Law*, 94 PROC. AM. SOC. INT’L L. ANN. MTG. 240 (2000).

50. Judith L. Goldstein, Miles Kahler, Robert O. Keohane & Anne-Marie Slaughter, *Introduction: Legalization and World Politics*, 54 INT’L ORG. 385 (2000).

51. Anne-Marie Slaughter, Andrew S. Tulumello & Stepan Wood, *International Law and International Relations Theory: A New Generation of Interdisciplinary Scholarship*, 92 AM. J. INT’L L. 367, 367 (1998).

52. For a more comprehensive analysis of this chapter not limited to questions of interdisciplinarity, see Samuel Moyn, *The International Law That Is America: Reflections on the Last Chapter of The Gentle Civilizer of Nations*, 27 TEMP. INT’L & COMP. L.J. 399 (2013).

twentieth century, a “European era” that had regulated world order for some three centuries had come to a definitive end. The new order that replaced it viewed international law as part of a liberal strategy of “depoliticization.”⁵³ Liberalism viewed conflict between states as fundamentally irrational, “an atavistic residue of primitive ages that was to be replaced by the rational management of the States system, economics, and the harmony of interests.”⁵⁴ But each thinker saw the liberal strategy as illusory. The move to depoliticization was more accurately understood as “a politics by the status quo powers to consolidate their advantages.”⁵⁵

Second, both writers noted the rise in the use of moralistic language as a justification for international legal doctrine, and each believed that this moralism would greatly exacerbate international conflicts. The process of introducing moralistic thought started with a war guilt clause in the Versailles Treaty and the indictment of William II based, not on law, but on the basis of an offense against international “morality.”⁵⁶ Conceptualizing war as a “crime” justified total warfare against a nation adhering to false or even evil ideologies.⁵⁷

Finally, and perhaps most importantly, each thinker embraced an “anti-formalist” understanding of international law. Schmitt argued that when concrete disputes arise, governments make decisions not via application of neutral principles of law, but on particularized assessments of national interests in specific contexts. Thus, to understand the operation of law, Schmitt argued, it is necessary to focus not on abstract normativity, but on specific decisions made by particular actors (“decisionism”).⁵⁸ The resulting *deformalization* of law led both thinkers to elevate the political over the legal. In Morgenthau’s words, from this perspective “[t]he choice is not between legality and illegality but between political wisdom and political stupidity.”⁵⁹ Thus, each thinker’s critique of legal formalism led him to foreground a “decisionism” that left little room for law’s constraining role.

After fleeing Europe for the United States, Morgenthau would become a leading figure in the field of “international relations.” In Koskenniemi’s account, Morgenthau and other Weimar refugees had an equally substantial impact on international law in America. One impact was inducing a “pervasive rule-skepticism” that helped shift scholarly attention from analysis of legal instruments to broader patterns of international cooperation and conflict.⁶⁰ Koskenniemi argues that the various schools of international legal thought that emerged in the post-war era all shared Morgenthau’s deformed concept of law, where international law

53. KOSKENNIEMI, THE GENTLE CIVILIZER OF NATIONS, *supra* note 3, at 461.

54. *Id.*

55. *Id.*

56. *Id.* at 418, 462.

57. *Id.* at 462.

58. *Id.*

59. KOSKENNIEMI, THE GENTLE CIVILIZER OF NATIONS, *supra* note 3, at 463 (citations omitted).

60. *Id.* at 475.

is not centrally concerned with judicial decisions and legal texts, but “had to be conceived in terms of broader political processes . . . [designed to achieve] policy ‘objectives.’”⁶¹ Another manifestation of Morgenthau’s influence is an embrace of interdisciplinarity, on the premise that a fuller understanding of international law can be found through incorporating insights from sociology, ethics, and other disciplines. According to Koskenniemi, these various influences are most pronounced in those (primarily American) scholars who call for an integration of international law and international relations scholarship.⁶²

In *The Gentle Civilizer of Nations*, Koskenniemi offers at least four distinct, albeit related, lines of critique regarding international law’s turn to international relations. First, in (mis)directing our attention to issues of efficiency, effectiveness, and compliance, IL/IR literature “silently assumes that the political question—what the objectives *are*—has already been resolved” and transforms what should be debates over ends into debates over means.⁶³ Second, this redirection has institutional and political implications, in particular by seriously impairing law’s constraining role. The focus on what works—and elision of questions about what goals the law is or should be designed to serve—turns law into “a smokescreen for effective power.”⁶⁴ Third, the new IL/IR scholarship embraces a moralism that both Morgenthau and Schmitt warned against. In particular, it adopts what Koskenniemi calls a “Kantian morality” that, its advocates claim, reflects not a particular interest or class, but reason itself.⁶⁵ Because reason is necessarily universal, the morality that flows from it is likewise universal; states or peoples who do not share this morality are simply mistaken and need not be treated as equals. In this sense, the lawyers’ turn to international relations leads to a form of “imperialism.”⁶⁶ Fourth, and finally, Koskenniemi claims that the IL/IR literature has a strongly nationalistic, if not hegemonic, dimension. Koskenniemi vividly claims that IL/IR:

is an American crusade [T]he interdisciplinary agenda itself, together with a deformed concept of law, and enthusiasm about the spread of “liberalism,” constitutes an academic project that cannot but buttress the justification of American empire . . . This is not because of bad faith or conspiracy on anybody’s part. It is the logic of an argument—the Weimar argument—that hopes to salvage the law by making it an instrument for the values (or better, “decisions”) of the powerful that compels the conclusion.⁶⁷

The Gentle Civilizer of Nations presents perhaps the fullest, and certainly the most memorable, critique of IL/IR writings found in legal literature.⁶⁸ One might

61. *Id.* at 479.

62. *Id.* at 483–88.

63. *Id.* at 485–86.

64. *Id.* at 486.

65. KOSKENNIEMI, *THE GENTLE CIVILIZER OF NATIONS*, *supra* note 3, at 489.

66. *Id.* at 491.

67. *Id.* at 483–84.

68. A related critique, offering similar claims, can be found in Jan Klabbers, *The Relative Autonomy of International Law or The Forgotten Politics of Interdisciplinarity*, 1 J. INT’L L. &

question whether its depiction of contemporary IR as a discipline is entirely accurate.⁶⁹ Or whether IL/IR scholarship is better understood as part of a hegemonic political project, as Koskenniemi suggests, or as a set of conceptual approaches that raise a series of questions and processes of inquiry regarding international legal phenomena. As Professor Pollack's Symposium contribution thoughtfully addresses these and related issues,⁷⁰ I now turn to some alternative criticisms Koskenniemi developed in later writings.

B. What's Wrong with International Relations? Miserable Comforters

If *The Gentle Civilizer of Nations* criticizes IL/IR for being too Kantian, we can understand *Miserable Comforters* as criticizing the same literature for being *insufficiently* Kantian. This article highlights the analogies between two moments of international change when competing vocabularies of international law clash against each other—the end of the seventeenth century, on the one hand, and the late twentieth and early twenty-first centuries, on the other. To understand that first moment, the article outlines Samuel Pufendorf's efforts to articulate a new understanding of international law in the aftermath of the revolutionary changes brought by the Thirty Years' War.

Writing at a time when traditional ways of thinking about government and society seemed inadequate, Pufendorf sought to develop a “science” of government rooted in “the application of reason on empirical data.”⁷¹ For Pufendorf, the “most basic datum about human beings was their self-love, connected with an intense drive for self-preservation in the conditions of pathetic weakness.”⁷² Given any individual's inability to provide for himself, reason dictates “sociability.”⁷³ And this requirement of sociability, of engaging in the complex social interactions required to advance individual interest, in turn drove the necessity of laws, and a sovereign to enforce those laws. For Pufendorf, since these claims rested on human nature, they were universal—equally valid for all peoples and all human societies.⁷⁴

Similar principles of *socialitas* were applicable to the international domain. The imperatives of self-preservation and self-love produce an image of states as egoistic but interdependent sovereigns whose interest in cooperation outweighs that in fighting. The international law that emerges from their interactions is

INT'L REL. 35–39 (2004–2005).

69. Mark A. Pollack, *Is International Relations Corrosive of International Law? A Reply to Martti Koskenniemi*, 27 TEMP. INT'L & COMP. L.J. 339 (2013); Jeffrey L. Dunoff, *The Perils, Promise and Practice of Interdisciplinarity: The Curious Case of International Law and International Relations*, in THE POWER OF LEGALITY: PRACTICES OF INTERNATIONAL LAW AND THEIR POLITICS (Nikolas Rajkovic, et al. eds., forthcoming).

70. Pollack, *supra* note 69.

71. Koskenniemi, *Miserable Comforters*, *supra* note 25, at 397–98.

72. *Id.* at 398.

73. *Id.*

74. *Id.*

binding because it is socially necessary. Thus, as a conceptual matter, Pufendorf's writings:

created a secular vocabulary of politics and law that sounded like natural science in its rigorous empiricism—but differed from the latter by its moral tone; and that also resembled philosophy by being rigorously rationalist—but differed from it by claiming practical applicability in government. [These moves] had important conclusions for international law. It consolidated political authority around a notion of secular sovereignty, and made official the anthropomorphic metaphor of states acting in the international world as 'moral entities' seeking self-preservation and self-fulfillment under the dictates of natural reason.⁷⁵

Pufendorf's conceptualization implied a central role for international lawyers. Because "[r]uling is a complicated business," the wise Prince will seek guidance from individuals who know "all records of Treaties and other Transactions of States between them,"⁷⁶ as well as the conditions and intentions of other states. Thus, natural lawyers emerge as "the experts in the authoritative vocabulary operating the post-Westphalian, post-confessional order."⁷⁷

After skillfully analyzing Pufendorf's thought, *Miserable Comforters* turns its attention to the period following the end of the Cold War—another moment of social transformation when conventional thinking seemed unable to meaningfully address pressing social problems. In response, a new "managerial vocabulary" emerged that focused not on rules but on "the 'objectives', 'values' and 'interests' behind them."⁷⁸ This new vernacular, of course, is the vocabulary of international relations, and Koskeniemi discusses various key conceptual moves in this development, including the conceptual and linguistic shifts from institutions to regimes; from rules to regulation; from responsibility to compliance; and from law to legitimacy.⁷⁹ In each instance, the new vocabulary presents decision-makers with an anti-formalist grammar of strategic action. This new conceptualization of international law is designed to discern strategies of institutional or instrument design that can incentivize international actors to behave in ways that will more effectively achieve the decision-maker's ends.

Perhaps not surprisingly, the final move in this development is "a shift in the [identity of the] authoritative speaker."⁸⁰ If government decision-makers are no longer to be guided by the normative constraints found in international legal rules, but rather by instrumentalist choices among policy options, then they need no longer consult lawyers to determine whether an action is lawful or not. Rather, they should use experts in international relations to advise on how to change other states' cost/benefit calculations to produce certain conduct. In short, once the instrumental dimensions of strategic actions take precedence over the normativity

75. *Id.* at 402.

76. *Id.* at 401 (quoting THOMAS HOBBES, *LEVIATHAN* 308 (1981) (1651)).

77. Koskeniemi, *Miserable Comforters*, *supra* note 25, at 401.

78. *Id.* at 406.

79. *Id.* at 406–11.

80. *Id.* at 410.

of legal rules, the voices of international lawyers will predictably be replaced by those of international relations experts.

Koskenniemi reminds us that Immanuel Kant famously characterized the founders of international law—including Pufendorf—as “miserable comforters.”⁸¹ For Kant, Pufendorf’s elevation of a technical vocabulary designed to promote security and welfare has the effect of appearing to turn “political judgment into an exercise of technical skill.”⁸² The fiction that practical judgment can be replaced by technical vocabularies offering algorithms for decision-making is designed “to ensure that the novel vocabularies will hold the Prince’s ear.”⁸³ But this novel vocabulary would also strip humanity of its cardinal Kantian virtue—freedom—by reducing humans to creatures who, like animals, can be easily manipulated by changing their calculation of costs and benefits.

Koskenniemi argues that modern advocates for the vocabulary of international relations can be criticized on similar grounds. Both Pufendorf and modern IR theory generate a conception of international law that is excessively instrumentalist; both hide political judgment behind the veneer of technical expertise; both conceive of legal expertise as an instrumental skill; and both ambitiously purport to provide “an appropriate formulation for prescribing policy options and evaluating existing institutions.”⁸⁴ As a result, both end up attempting to substitute “the hubris of instrumental knowledge” for the reality of a world that is marked by political contestation.⁸⁵ Thus, modern international relations theory follows Pufendorf in denying the reality and necessity of judgment, and the primacy of practical over theoretical reason, and in so doing threatens to undermine human freedom.

In contrast to *The Gentle Civilizer of Nations*’ critique, which foregrounds the political dimensions of the IL/IR project, *Miserable Comforters* criticizes IL/IR in Kantian terms. Here, the problem is less that the turn to IR is intended to justify U.S. hegemony in international affairs, but that IR’s reductionist view of human psychology and motivation has the effect of denying the distinctly human qualities of autonomy and freedom.

C. What’s Wrong with International Relations? International law’s teleology and international relations’ realism

Koskenniemi’s most recent exploration of the turn to IR is found in *Law, Teleology and International Relations: An Essay in Counterdisciplinarity*.⁸⁶ After describing how IR’s “realism” represents, in part, a reaction to the idealism

81. See IMMANUEL KANT, PERPETUAL PEACE: A PHILOSOPHICAL SKETCH (1795), reprinted in POLITICAL WRITINGS 93, 103 (1991).

82. Koskenniemi, *Miserable Comforters*, *supra* note 25, at 414.

83. *Id.* at 413.

84. *Id.* at 408 (quoting Barbara Koremenos, Charles Lipson and Duncan Snidal, *The Rational Design of International Institutions*, 55 INT’L ORG. 761, 767 (2001)).

85. *Id.* at 413.

86. Koskenniemi, *Law, Teleology and International Relations*, *supra* note 47, at 3.

associated with international legal thinking, the paper identifies three separate moments when efforts were made to “update” international law in light of tendencies in U.S. political science. The first began in the 1960s with an extension of the behavioral turn in political science to international law.⁸⁷ Scholarship at that time “focused on the way the law communicated values and expectations and structured decision-making contexts.”⁸⁸ A second generation began in the late 1980s, and is represented by Slaughter and other IL/IR scholars who “rearticulated” international law in the vocabulary of “regimes,” “governance,” “accountability,” and the like.⁸⁹ However, Koskeniemi argues that little interdisciplinary collaboration followed, because “[m]ost lawyers failed to see the point of translating law into the vocabulary of political science of which they would no longer be the native speakers.”⁹⁰ The IL/IR effort was “espoused by a liberal elite,” both of which “collapsed together in September 2001.”⁹¹

The third moment consists of the “turn to law and economics, rational choice and game theory.”⁹² This move foregrounds questions of effectiveness and compliance. Koskeniemi argues that this approach is associated with a “commitment to intentionalism,” the view that the meaning of a rule is found in the intent of the rule’s creator.⁹³ But legislative intent is just as indeterminate as legal text. “There are no clear and easily identifiable purposes behind international [legal] rules. International agreements typically come about as bargains, complex packages of conflicting considerations and criss-crossing political or economic objectives. If we now open the rules up to realise such objectives – well, then no-one is constrained.”⁹⁴ Koskeniemi argues that, by undermining international law’s constraint function, this interdisciplinary approach to international law is “ideologically conservative, statist, and closely aligned with the preferences of US academic institutions.”⁹⁵

Thus, *Counterdisciplinarity* concludes that interdisciplinary approaches informed by IR are “blind to the difference between the objectives of particular, especially dominant, actors and the point of law.”⁹⁶ Of course, this claim—as well as Koskeniemi’s other critiques of interdisciplinarity—begs the question of what, exactly, is the point of law?

87. *Id.* at 15.

88. *Id.*

89. *Id.*

90. *Id.* at 16.

91. *Id.*

92. Koskeniemi, *Law, Teleology and International Relations*, *supra* note 47, at 16.

93. *Id.* at 17.

94. Martti Koskeniemi, *Global Governance and Public International Law*, 37 KRITISCHE JUSTIZ 241, 250 (2004) (Ger).

95. Koskeniemi, *Law, Teleology and International Relations*, *supra* note 47, at 16.

96. *Id.* at 17.

III.

Unlike many scholars who explore questions of method and disciplinarity, Koskenniemi's writings on these issues do not involve, for example, critiques of the way disciplinary lines have historically been drawn, or analyses of how contemporary understandings of disciplinary boundaries artificially compartmentalize knowledge. Rather, Koskenniemi's interest in interdisciplinarity is rooted in his understanding of law's nature and purpose. For him, "[l]aw is an interpretative craft."⁹⁷ As such, law's truths arise out of institutional practice: law's "standards and performances are internally validated."⁹⁸ Moreover, as an argumentative practice, law frequently operates "in institutional contexts characterized by adversity."⁹⁹ Thus, international law is, above all, a site of contestation.¹⁰⁰ While international law is surely a tool that those in power can wield to entrench their positions, it also provides a conceptual vocabulary—"human rights," "peace," "justice"—that those struggling against oppression can assert against those in dominant positions.

Moreover, law's peculiar discursive and institutional qualities give it a transformative dimension. Absent law, individuals confront one another as subjects of interests and preferences.¹⁰¹ Interactions follow an instrumentalist logic, as each actor seeks to satisfy her private and idiosyncratic desires. Law transforms this dynamic; to assert a claim in a legal idiom—to participate in a legal process—has several implications. First, legal debates differ from political debates in:

the manner in which they are conducted: by open reference to rules and principles instead of in secret and without adequate documentation; by aiming toward coherence and consistency, instead of a selective bargaining between "old boys"; by an openness to revision in light of new information and accountability for choices made, instead of counting on getting away with it.¹⁰²

Second, and relatedly, "[t]he form of law constructs political adversaries as equals, entitled to express their subjectively felt injustices in terms of breaches of the rules of the community to which they belong no less than their adversaries."¹⁰³ Moreover, international law's aspirational vocabulary has a particular political valence. Although international law of course can be—and has been—used as a tool by the powerful to exploit the less powerful, it also provides a vocabulary that

97. *Id.* at 19.

98. *Id.* at 20 (citing Neil MacCormick, *Norms, Institutions and Institutional Facts*, 17 L. & PHIL. 301 (1998)).

99. *Id.* at 19.

100. See, e.g., Martti Koskenniemi, *International Law and Hegemony: A Reconfiguration*, 17 CAMBRIDGE REV. INT'L AFF. 197, 198 (2004) [hereinafter Koskenniemi, *International Law and Hegemony*].

101. Martti Koskenniemi, *The Place of Law in Collective Security*, 17 MICH. J. INT'L L. 455, 478 (1996).

102. *Id.*

103. Martti Koskenniemi, *What is International Law For?*, in INTERNATIONAL LAW 32, 45 (Malcolm Evans ed., 3d ed. 2010) [hereinafter Koskenniemi, *What is International Law For?*].

disempowered individuals and groups can use to engage with more powerful actors from a position of juridical equality. For this reason, international law can also be understood as “a promise of justice.”¹⁰⁴ Notably, however, law’s justice is not reducible to particular substantive values or interests; it has no specific institutional form. The discipline’s history teaches that efforts to translate values such as “justice” or “peace” into concrete policies necessarily privilege some interests over others, and are subject to a critique of “false universalism.”¹⁰⁵

We can now see the links between Koskenniemi’s approach to method and his conception of law, and begin to identify the features that distinguish those methods and disciplines with which international lawyers can be productively engaged, and those that should be resisted. For example, given his understanding of law’s purposes, Koskenniemi is attracted to methods that emphasize the *inescapably situated* nature of legal claims and arguments. Thus, *From Apology to Utopia* illuminates the logical structure within which all international law arguments are situated, and the counterarguments that can inevitably be offered. The “letter to the editors” of the *AJIL* criticizes the abstract and untethered effort to compare scholarly methods because it presupposes that there is an objective or neutral position from which evaluation can be made. But there is no external standpoint from which we can objectively survey the strengths and limits of different methodological approaches. Given these positions, the turn to history follows quite naturally. Koskenniemi’s history is premised on the deceptively simple insight that “[n]o actual person, State or people lives in abstraction from particular histories, contexts, and qualities.”¹⁰⁶ Thus, the international law histories detailed in *The Gentle Civilizer of Nations*, and elsewhere, help us to situate specific influential thinkers—Suarez, Vitoria, Pufendorf, Kant, Lauterpacht—in their particular historical, cultural, and political contexts.

Koskenniemi’s historical inquiries hold many lessons, but one central and recurring theme is that of the discipline’s repeated embrace of “false universals.”¹⁰⁷ Koskenniemi is insistent that “behind every notion of universal international law there is always some particular view, expressed by a particular actor in some particular situation.”¹⁰⁸ Thus, Koskenniemi engages in historical examinations that illustrate how the meaning of central international legal concepts, such as “sovereignty,” *jus gentium*, ‘property,’ or indeed ‘law’ is dependent on the context where it is used—especially on what one intends to use it for or what one tries to achieve through it.”¹⁰⁹

This line of argument has at least two important implications. First, there is

104. *Id.* at 51.

105. Martti Koskenniemi, *International Law in Europe: Between Tradition and Renewal*, 16 EUR. J. INT’L L. 113, 116 (2005) (emphasis omitted).

106. KOSKENNIEMI, *THE GENTLE CIVILIZER OF NATIONS*, *supra* note 3, at 490.

107. *See, e.g.*, Koskenniemi, *International Law and Hegemony*, *supra* note 100, at 199.

108. *Id.*

109. Martti Koskenniemi, *Histories of International Law: Dealing with Eurocentrism*, 19 RECHTSGESCHICHTE—LEGAL HIST. 152, 166 (2011) (Ger.) [hereinafter Koskenniemi, *Histories of International Law*] (original emphasis removed).

little reason to believe that contemporary international law differs from its predecessors in this regard. Current international law understands itself as having overcome its historic Eurocentric bias. Its central themes—economic and technological development, promotion of global security, preservation of environmental resources, and the protection of human rights—are presented as technocratic, functional tasks, free of geographical or cultural bias. But “[t]his view remains as much a teleological narrative as any,” and today’s “technical professionalism speaks a thoroughly Eurocentric language.”¹¹⁰ Thus, Koskeniemi has devoted substantial energies to illuminating how today’s seemingly universal terms like human rights and the fight against impunity are better understood as “hegemonic maneuvers,” typically asserted by powerful actors like the United States or Europe against actors from other cultures.¹¹¹

More recently, Koskeniemi has undertaken a series of historiographical surveys that critically review various efforts to write the history of international law.¹¹² Some accounts are criticized for overemphasizing the hegemonic influence of great powers that create and shape grand “epochs” of international law.¹¹³ Other efforts, which present the history of international law as a succession of conceptual writings by political philosophers, theologians, and jurists, fail to properly contextualize the schools of thought they describe.

Thus, both approaches are guilty of a form of reductionism—one for leaving no space for other than a handful of powerful states, the other for any but a handful of brilliant thinkers. That said, Koskeniemi’s epistemology necessarily implies that the historians’ selectivity is, of course, unavoidable. Any history “entails the production of a perspective from which to include and interpret relevant material and exclude material that is regarded irrelevant to explain the past.”¹¹⁴ Thus, Koskeniemi’s excursion into historiography emphasizes that “histories of international law come to us through the historian’s own conceptual prejudices thus underlining the political and rhetorical aspects of legal history itself.”¹¹⁵ Whether from the perspective of doctrine, politics, or epistemology, it seems that a central task for international lawyers is to highlight the “situatedness” of claims

110. *Id.* at 160.

111. See, e.g., Martti Koskeniemi, *The Subjective Dangers of Projects of World Community*, in *REALIZING UTOPIA: THE FUTURE OF INTERNATIONAL LAW* 3, 9–11 (Antonio Cassese ed., 2012).

112. See, e.g., Martti Koskeniemi, *A History of International Law Histories*, in *THE OXFORD HANDBOOK OF THE HISTORY OF INTERNATIONAL LAW* 943 (Bardo Fassbender & Anne Peters eds., 2013).

113. See, e.g., WILHELM G. GREWE, *THE EPOCHS OF INTERNATIONAL LAW* (M. Byers trans., 2000). For critiques, see Martti Koskeniemi, *Review of the Epochs of International Law*, 51 *INT’L & COMP. L.Q.* 746, 747 (2002); Martti Koskeniemi, *Epochs of International Law*, 35 *KRITISCHE JUSTIZ* 277 (2002) (Ger.).

114. Arnulf Becker Lorca, *Eurocentrism in the History of International Law*, in *THE OXFORD HANDBOOK OF THE HISTORY OF INTERNATIONAL LAW* 1034, 1035 (Bardo Fassbender & Anne Peters eds., 2013).

115. Koskeniemi, *Histories of International Law*, *supra* note 109, at 166.

and arguments—and that to do so they can fruitfully use methods and disciplines, like history, that foreground the particular to be found in every claim of the universal.

This perspective likewise explains the antipathy towards international relations, as well as law and economics and other modern forms of “natural law” thinking. These approaches all rest on universalizing claims, and therefore are at odds with Koskenniemi’s valorization of the open-ended nature of international legal discourse. Where law promotes contestation of values, IR and its intellectual fellow travelers assume a fixed set of final values (pursuit of wealth, power, preference maximization, etc.). Where the language of law transforms subjective preferences into generalizable claims, the conceptual apparatus of IR and kindred approaches offer strategies for maximizing individual preferences. Where law foregrounds the necessity and inevitability of practical judgment, IR offers the exercise of technical skill. Koskenniemi concludes that IR’s focus on means-ends rationality, with an eye toward efficiency and effectiveness promotes “a thoroughly function-dependent, non-autonomous law.”¹¹⁶ A more pointed articulation of this idea is that “‘interdisciplinarity’ [is] a path to academic takeover,”¹¹⁷ and interdisciplinarity involving IR “is not really about [disciplinary] cooperation but conquest.”¹¹⁸

Whether understood in metaphorical or literal terms, the vocabulary of conquest is highly, perhaps deliberately, provocative—all the more so given international law’s widely acknowledged role in the legitimation and justification of the European colonial project.¹¹⁹ I believe that it is also almost certainly substantially exaggerated. Law, historically, has been highly resistant to conquest and colonization by other disciplines—ironically, for reasons that Koskenniemi has emphasized.

First, Koskenniemi’s historical investigations suggest that the twentieth century encounter with international relations is hardly the first time that an alternative and technocratic vocabulary highlighting utilitarian or other universalizing approaches has been on offer. To the contrary, international law’s history is, in many ways, a history of such vocabularies. Recall that *Miserable Comforters* explicitly analogizes Pufendorf’s seventeenth century scientific conceptualization of international law to twentieth century U.S. political science approaches, and other writings emphasize that international law has witnessed a succession of quasi-natural law vocabularies. Despite the centuries-long progression of utilitarian vocabularies, international law has not been conquered or vanquished in the past, and Koskenniemi points to little in current circumstances

116. KOSKENNIEMI, THE GENTLE CIVILIZER OF NATIONS, *supra* note 3, at 487.

117. Martti Koskenniemi, *The Politics of International Law – 20 Years Later*, 20 EUR. J. INT’L L. 7, 16 (2009).

118. Koskenniemi, *Miserable Comforters*, *supra* note 25, at 410.

119. Koskenniemi’s writings have helped to illuminate this role. See generally KOSKENNIEMI, THE GENTLE CIVILIZER OF NATIONS, *supra* note 3. For book length treatments of the topic, see ANTHONY ANGHIE, IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW (2005); NATHANIEL BERMAN, PASSION AND AMBIVALENCE: COLONIALISM, NATIONALISM AND INTERNATIONAL LAW (2011).

that suggests a different outcome this time.

To be sure, past performance is no guarantee of future results. But efforts at interdisciplinary conquest inevitably confront the social reality that law, as Koskenniemi repeatedly reminds us, is *both* an academic discipline and a professional practice. As an academic discipline, law lacks a strong methodological orientation and does not produce cumulative knowledge in the way that other academic disciplines do.¹²⁰ Legal knowledge is very much a professional knowledge, a set of rhetorical and argumentative practices.¹²¹ Thus, even the disciplines that are most successful at entering legal scholarship neither conquer nor colonize the field.¹²² Consider, for example, the economic analysis of law. Starting in the 1980s, many legal academics in the United States embraced economic analysis as a new way to carry out legal scholarship's traditional research program of the rationalization or critique of existing doctrine, and the evaluation of alternative rules for promoting particular policy goals.¹²³ However, the "economics" used in legal journals differs significantly from that found in economics journals. The economics found in "law and economics" is for the most part a form of "policy rhetoric" that is compatible with the skill sets of legal academics.¹²⁴ As such, it hardly constitutes cutting-edge economic research and is frequently criticized by "real" economists as a form of "rhetoricized, arm-chair" economics.¹²⁵ Moreover, despite its widely-acknowledged influence, economics did not conquer or colonize law; rather, academic lawyers employed economic concepts and insights to further legal scholarship's purposes and goals. In short, the encounter with economics did not change the basic assumptions or many of the questions academic lawyers ask—even as they absorbed new information and skills.¹²⁶ And, to the extent that IR has been less influential in academic international law circles than economics has been in domestic law, there is even less reason to fear colonization by IR.

The epistemology that informs Koskenniemi's "letter to the editors" and other writings serves to emphasize the difficulty of disciplinary conquest. Koskenniemi persuasively argues that the success of an argument is a function of the particular social setting in which it is offered. This claim might be read to imply that when a new method (say, from IR) is transferred into a different social practice (say, law), it can only be received in terms the practice already recognizes:

[T]erms and distinctions could arrive intact in the passage from one discipline to another only if they had some form independent of the

120. See J.M. Balkin, *Interdisciplinarity as Colonization*, 53 WASH. & LEE L. REV. 949, 964 (1996).

121. See, e.g., FRIEDRICH V. KRATOCHWIL, *THE STATUS OF LAW IN WORLD SOCIETY: MEDIATIONS ON THE ROLE AND RULE OF LAW* (Cambridge University Press, forthcoming).

122. Balkin, *supra* note 120, at 967.

123. *Id.* at 968.

124. *Id.*

125. *Id.* at 968.

126. *Id.* at 965.

discipline in whose practices they first became visible; but . . . terms and distinctions are no less socially constructed than anything else, and therefore the shape they appear in will always be relative to the socially constructed activity that has received them and made them its own.¹²⁷

This is not to say that disciplines are impervious to change or do not evolve over time. Disciplines are always in flux, and healthy disciplines are sufficiently robust to contain both mainstream and dissident voices. But it is to say that any effort at disciplinary conquest runs a significant risk of co-option, as the putatively colonized discipline transforms methods and concepts and makes them its own.

Moreover, to the extent international law is also a professional practice, there is even less reason to fear conquest. As we have seen, Koskenniemi critiques IR for offering a telos for legal rules and regimes. But elsewhere Koskenniemi argues that the purpose of a rule—like the meaning of a rule—is always and necessarily a matter of contestation: “[T]here never are simple, well-identified objectives behind formal rules. Rules are legislative compromises, open-ended and bound in clusters expressing conflicting considerations.”¹²⁸ Law’s argumentative structures and practices mean that even when other disciplines—such as IR—proffer certain goals or ends, the deeply embedded logic of legal argument is to challenge and contest those ends. Koskenniemi notes that “[t]he identity of international law as a distinct practice . . . is nicely evident in the profession’s ability to resist recurring academic calls to integrate rational means-ends calculations or a greater sensitivity to moral axioms.”¹²⁹ For all of these reasons—not to mention Koskenniemi’s claim that efforts to promote IL/IR scholarship “collapsed” after September 2001¹³⁰—I believe the fear of international law being colonized by international relations is exaggerated.

But this analysis raises one final question. Koskenniemi’s writings on law’s *purpose* identify a critical project for international lawyers: identifying the particular behind the universal. They also identify a more constructive element that I call law’s *promise*: the articulation of particular claims in universal terms. The puzzle is how international lawyers can simultaneously pursue law’s purpose and law’s promise? In the hands of a less capable writer, this apparent paradox could be easily discounted. But, as the essays in this issue attest, Koskenniemi is one of the most prominent and celebrated international legal academics of our times. In the work of highly talented authors, paradoxes like these often lead to the very center of their work and provide a clue toward a true understanding of both the problems that motivate them and the possibilities and limits of their project.

127. STANLEY FISH, *Being Interdisciplinary Is So Very Hard to Do*, in THERE’S NO SUCH THING AS FREE SPEECH AND IT’S A GOOD THING, TOO 231, 239 (1994).

128. Koskenniemi, *What is International Law For?*, *supra* note 103, at 41.

129. Martti Koskenniemi, *Between Commitment and Cynicism: Outline for a Theory of International Law as Practice*, in COLLECTION OF ESSAYS BY LEGAL ADVISERS OF STATES, LEGAL ADVISERS OF INTERNATIONAL ORGANIZATIONS AND PRACTITIONERS IN THE FIELD OF INTERNATIONAL LAW 495, 500 (United Nations ed., 1999).

130. Koskenniemi, *Law, Teleology and International Relations*, *supra* note 47, at 16.

IV.

As we have seen, Koskenniemi's writings, including particularly his writings on method, seem to leave the international lawyer positioned at the heart of an existential dilemma. On one hand, the lawyer participates in a profession that has embraced a teleology of progress and enlightenment. On the other hand, the discipline's history suggests that international law's lofty aspirational goals are, seemingly inevitably, cloaks for particular and often nationalistic interests. Perhaps not surprisingly, the trajectory of international law is a repetitive cycle of large aspirational claims followed by a steady stream of disappointments.

Moving from abstract ideas about the profession as a whole to particular rules or doctrines leads to much the same conclusion. No legal rule, norm, or principle can provide the means of its own justification. Rather, the argumentative structure of international legal discourse seems to render all questions fundamentally undecidable. Whether looking at theory or practice, the possibility of productive—let alone coherent—action by international lawyers seems depressingly low. What is to be done?

The title of this paper asks whether there is madness in Koskenniemi's method. The question is intended not simply as a familiar play on Polonius's famous line regarding Hamlet, but as an inquiry worthy of serious consideration. Indeed, the question is prompted by an enigmatic passage in one of Koskenniemi's writings. In the context of examining how lawyers can decide how to act in the face of deep and insolvable uncertainty, Koskenniemi writes:

Each of [instrumentalism and formalism] is, again, indeterminate. None of them explain why *this* argument was held relevant, why *that* interpretation was chosen. The decision always comes about, as the political theorist Ernesto Laclau has put it, as a kind of 'regulated madness', never reducible to any structure outside it.

A court's decision or a lawyer's opinion is always a genuinely political act, a choice between alternatives not fully dictated by external criteria.¹³¹

This passage contains several ideas that point toward the heart of Koskenniemi's project. In various writings, he has devoted significant attention to explaining how decision-making by international lawyers under conditions of uncertainty and ambiguity necessarily implicates a form of *politics*. The use of this term is meant to underscore several points. First, it is intended to "undermine the feeling of naturalness" associated with current institutional practices;¹³² in fact, they are the result of contingent and contestable choices, many of which are explored in Koskenniemi's various historical writings. Second, it serves as an implicit critique of the prescriptive nature of much legal scholarship, which typically contains specific proposals for doctrinal or institutional reform. But

131. Koskenniemi, *What is International Law For?*, *supra* note 103, at 47; see also Ernesto Laclau, *Deconstruction, Pragmatism, Hegemony*, in *DECONSTRUCTION AND PRAGMATISM* 47, 58 (Chantal Mouffe ed., Routledge 1996).

132. KOSKENNIEMI, *FROM APOLOGY TO UTOPIA*, *supra* note 1, at 601.

Koskenniemi's central arguments about indeterminacy suggest that institutional design is "far less relevant for the distribution of material and spiritual values . . . than [is] commonly assumed."¹³³ Moreover, proposals to modify or reform institutions would appear to embody precisely the sort of pragmatic instrumentalism that Koskenniemi's many writings on method strongly critique. Finally, Koskenniemi has explored how, despite indeterminacy, the politics that inform international legal decision-making exhibit deeply embedded structural biases that not only favor certain actors and outcomes, but also entrench existing imbalances and inequalities.¹³⁴

Koskenniemi's readers will thus have a strong sense of what it means for a decision to be political. But will they have an equally well-developed sense of what it means for a "decision" to come about as a result of a kind of "regulated madness"? What can it mean for a "madness" to be "regulated"? Does this mean that, like all human activity or conditions, "madness" is deeply embedded in, and reflects the understandings of, a particular political, economic, and historic context? And what sort of madness—regulated or otherwise—can make or justify choices that are not dictated by external criteria? Surely, not the forms of madness associated with mental illnesses, which render individuals unable reliably to comprehend or connect with the world around them. Given the political commitments revealed in many of Koskenniemi's other writings, I strongly doubt it can be the type of "madness" we associate with a Lear, which reflects a form of spiritual failing or moral obtuseness. This sort of madness is hardly a foundation from which we could expect wise or enlightened policy decisions to flow. Nor can this passage be read to endorse the type of "madness" that Hamlet feigns—an inauthentic "antic disposition" intended to deceive powerful actors and advance individual interests.

Despite many writings that describe the dilemmas that underlie moments of decision, it appears that Koskenniemi has not explained in any detail how the "regulated madness" that drives these decisions operates. Perhaps our understanding of this term can be enhanced by returning, one last time, to Koskenniemi's writings on method in an attempt to uncover the conceptual link between the "regulated madness" that drives decisions and Koskenniemi's controversial embrace of a "culture of formalism" in the final chapter of *The Gentle Civilizer of Nations*.

At first glance, Koskenniemi's endorsement of a "culture of formalism" seems curious, particularly in light of the indeterminacy critique. I take Koskenniemi's defense of this move to be rooted in many of the themes that inform his writings on method. The "culture of formalism" is offered in response to the widespread and opposing culture marked by pervasive rule-skepticism and the rise of a flexible concept of international law—in short, the culture associated with the rise of international relations. But what can the "culture of formalism" offer? After all, as Koskenniemi correctly emphasizes, it is not possible to

133. *Id.* at 604.

134. *See id.* at 606–07.

“unlearn” or forget the indeterminacy critique.¹³⁵ So a “culture of formalism” is not about finding “correct answers” in legal doctrine; it does not obviate the need for decisions, for “regulated madness.”

Rather, the “culture of formalism” is offered because it is “a culture of resistance to power, a social practice of accountability, openness, and equality whose status cannot be reduced to the political positions of any one of the parties whose claims are treated within it.”¹³⁶ As we have already seen, one of international law’s virtues is the provision of a “shared surface . . . on which political adversaries recognize each other as such.”¹³⁷ Koskenniemi emphasizes that the surface is “flat [and] substanceless.”¹³⁸ Thus, to engage in law is not to endorse or privilege particular substantive values. However, it is to alter the nature of the relationship between actors. Legal subjects meet as juridical equals, even if they are unequal in many other respects. More importantly, as discussed above, legal subjects articulate their claims in the universalist language required by law.

Can we thus understand international law’s culture of formalism providing the location—the social field—where lawyers make judgments and take action? If so, what do international lawyers bring to this field? Perhaps this is where the international lawyer’s “regulated madness” comes into play. An international lawyer’s judgments and decisions are “regulated” in the sense that international law defines the “rules of the game”: who can even be a player in the first place (legal rules regarding international legal personality, legal standing, etc.); what moves are available to these players (diplomacy, litigation, etc.); what tactics can the players utilize (diplomatic measures, trade sanctions, use of force, etc.); and what ends are permissible to pursue (territory, jurisdiction, authority, power, etc.).

So, how might international lawyers choose among available tactics, strategies, objectives, and ends? Perhaps this is the moment when the lawyer’s “madness” comes into play. If, as suggested above, the lawyer’s madness is not that of a Lear or a Hamlet, perhaps it has some affinities with a type of madness that Socrates extols in the *Phaedrus*.¹³⁹ Socrates’s second speech in this dialogue contains a short and curious passage that praises certain forms of madness for being able to shape judgments and actions that are superior to those attainable via the use of reason alone. Given Koskenniemi’s insistence on the limits of (technocratic) reason, I wonder if the lawyer’s “madness” is similar to what, in other writings, Koskenniemi sometimes calls “commitment,”¹⁴⁰ sometimes

135. See KOSKENNIEMI, *THE GENTLE CIVILIZER OF NATIONS*, *supra* note 3, at 495–96 (“The critique of rules and principles cannot be undone.”).

136. *Id.* at 500. This should be understood to be more an empirical claim than a conceptual claim as “[f]ormal rules are just as capable of co-existing with injustice as informal principles.” *Id.* at 496. In this sense, we should understand the culture of formalism’s virtues to be historically contingent.

137. Koskenniemi, *What is International Law For?*, *supra* note 103, at 52.

138. *Id.* at 44.

139. PLATO, *Phaedrus*, in 1 *THE DIALOGUES OF PLATO* 233, 248–50 (B. Jowett trans., Oxford University Press 1920) (1892).

140. See Koskenniemi, *Law, Teleology and International Relations*, *supra* note 47, at 21.

“faith,”¹⁴¹ sometimes “secular faith,”¹⁴² and sometimes “love.”¹⁴³ In different places in Koskenniemi’s works, each of these is said to drive or motivate the actions of international lawyers, yet none of these are ultimately motivated or justified by reason or logic. Moreover, and notably, none rest on or are justified by “truth.” Truth is, in these contexts, a problematic notion; it is “despotic” for it brooks no contestation.¹⁴⁴ Indeed, by offering totalizing claims that cannot be contested, truth destroys the very possibility of what Koskenniemi understands by law and politics. On the other hand, madness, faith, commitment—these are all grounded in particularity. Might it be that, in exercising “regulated madness” in the space created by international law, the lawyer can realize both law’s *purpose* and law’s *promise*?

I readily concede that the line of argument here is underdeveloped and fuzzy, at best, and I am acutely aware that these ruminations may or may not bear much relationship to anything in Koskenniemi’s thought. This may be because I misread Koskenniemi’s writings. It may be that the workings of regulated madness are discussed somewhere in his prolific writings that I have not yet found. Or, it may be because, as we approach these issues, we begin to move well beyond the domains of knowledge that even the most talented and erudite international lawyers possess, and begin to approach what Koskenniemi has, in some places, called the “acts of translating among competing vocabularies” that can reveal—or perhaps even produce—“the meaning of life.”¹⁴⁵

In any event, I hope that in the future Koskenniemi explicitly addresses how international lawyers can realize both law’s purpose and its promise. Perhaps this is not a fair question to ask; perhaps even posing the question in this way is itself a form of madness. But even if Koskenniemi cannot or chooses not to address this question, we can acknowledge our indebtedness to him for highlighting the centrality of questions concerning how international lawyers act under conditions of indeterminacy and for thoughtfully—and oftentimes brilliantly—illuminating the paths that bring us to these questions.

CONCLUSION

Martti Koskenniemi is one of the most influential legal academics of our times. This short essay is the first to explore his approach to questions of interdisciplinarity. His early works drew heavily upon structuralism and linguistics

141. See Koskenniemi, *Faith, Identity and the Killing of the Innocent*, *supra* note 30, at 141.

142. Martti Koskenniemi, *The Fate of Public International Law: Between Technique and Politics*, 70 MOD. L. REV. 1, 30 (2007).

143. See Martti Koskenniemi, *Human Rights, Politics, and Love*, 13 FINNISH Y.B. INT’L L. 79, 79 (2002).

144. HANNAH ARENDT, *Truth and Politics*, in BETWEEN PAST AND FUTURE 227, 241 (1968); see also Jan Klabbers, *Commissioning the Truth*, 8 IUS GENTIUM 57 (2002) (exploring the implications of Arendt’s claims about truth for international law). Koskenniemi examines the complex role of truth in international criminal trials in Martti Koskenniemi, *Between Impunity and Show Trials*, 6 MAX PLANCK YEARBOOK OF UNITED NATIONS LAW 1 (2002).

145. Koskenniemi, *Miserable Comforters*, *supra* note 25, at 416.

to illuminate the nature of legal reasoning, and his most recent works have been rooted in legal history. In between, he generated a powerful criticism of international law's turn to international relations theory. I have argued that Koskenniemi's approach to different disciplines is rooted in his complex understandings of international law's purposes, and I have suggested one way that his approach to different disciplines sheds light upon how international lawyers can simultaneously find "the particular in the universal" and "the universal in the particular."