

Martti Koskenniemi's (German) Legal Imagination and the Politics of Panorama

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Earlier this summer, on a long car trip that took me from my hometown of Seligenstadt am Main (a small but significant *lieu de mémoire* of that very idea of Roman-European *translatio imperii* that features repeatedly in Martti Koskenniemi's new book) to Berlin, my GPS directed me to and through Halle, to avoid heavy traffic on my usual route. Stopping at a red traffic light on the monstrous highway that the GDR bureaucracy had built right through the historical city center, I found myself standing in front of the main building of the Francke'sche Stiftungen (Francke Foundations), an empire of schools, hospitals, children's homes, kindergartens, churches, museums, libraries, and collections that the Protestant theologian, pastor and educator August Hermann Francke had founded in 1695. It was the day before Ascension Day, when in Christian churches the paragraph from Acts 1:8 is read that, as quoted in John Donne's famous 1622 Sermon to the Virginia Company, has given the book its title: *To the Uttermost Parts of the Earth*.

Waiting for green lights in front of Francke's missionary empire, founded the year after the establishment of the University of Halle by elector Frederick III of Brandenburg, I thought of the illuminating, beautifully written and wonderfully readable book in my trunk – which yet seemed almost impossible to review. Its proof pages traveled with me several more times across Germany during this summer, from Heidelberg via Seligenstadt to Berlin, through the Fulda Gap, past Gotha, Erfurt, Weimar, Jena, Halle, Leipzig, Dessau, and Potsdam. And back. Most of these places were familiar. But as a seasoned ICE traveler in pre-pandemic times, I had seen and accessed them always from the same old angles. Now, suddenly beyond my familiar railroad tracks, I took the chance to visit and revisit familiar and less familiar places during travel breaks, while trying to find a roadmap through Martti Koskenniemi's monumental volume.

„Imagining starts at home“, he writes (p. 8), and that short sentence captures the book's entire agenda. Or at least one of its many agendae, gesturing towards current debates on comparative international law. In any case, it reflects my mindset as a reader and reviewer, as I shall reflect on a very European, indeed decidedly Eurocentric book in this blog post, on a striking example of reflexive situatedness, its possibilities and limits. Since the museums, churches, libraries, and collections along my West-East route had often been closed in recent months, and since I have not crossed any international borders since January 2020, getting out of the car in well-known-yet-unknown places and spaces sometimes prompted imaginations, new and old. In the following I will share some of these imaginations. And of course, as promised to the conveners of this symposium, comment on Part IV of the book, „Germany“. Will there be just unrelated bits and pieces, disjointed fragments? Well, *c'est bricolage*.

Beyond Realism

Once upon a time, in the East. On a barren hill in the north of Thuringia, on the Schlachtberg near Bad Frankenhausen, in the shadow of the Kyffhäuser mountains, the painter [Werner Tübke](#) was wrestling with a project of extraordinary scope and ambition. Tübke, a leading member of the 'Leipzig School' transcending the strict confinements of Socialist Realism, had been commissioned by the Ministry of

Culture of the German Democratic Republic (GDR) to create a panorama in the best bourgeois traditions of 19th-century nationalist identity-building, marking the 450th anniversary of the German Peasants' War, in 1974-75. As recorded in the files of his clients, the circular panorama (spanning 14 metres by 123 metres, one of the largest monumental works in the visual arts of the twentieth century) should [“aim to be a work of art that was monumental in both its relevance and design”](#). Tübkes *Bauernkriegspanorama Bad Frankenhausen. Monumentalbild “Frühbürgerliche Revolution in Deutschland”* (Peasants' War Panorama Bad Frankenhausen. Monumental Painting „Early Bourgeois Revolution in Germany“) attests to the artist's impressive erudition, creativity, and intellectual independence.

The supposedly heroic story of the Peasants' War, the people's uprising against their oppressors, is turned into a captivating, anarchic *theatrum mundi*, depicting apocalyptic social and religious conflicts, and the ruptures and transformations of renaissance and reformation. During his intense 12-years commitment to the project, Tübke delved deep into 16th century art and history – and replaced the linear-progressivist teleology of his sponsors with a cyclic concept of history, subverting any theological or ideological promise of salvation. Giving visual form to his more than 3000 protagonists became for Tübke, particularly in the case of the central figure of Thomas Müntzer, an almost autobiographical exercise. By 1979, when the gigantesque canvas woven in one piece in the textile factory in Sursk, Soviet Union, had arrived in Frankenhausen, the master had produced, [as Eckhart Gillen has counted](#), 143 drawings, 5 watercolors, 16 chalk lithographs and 11 paintings as ‘early versions’, exploring his narratives, perspectives, and the complex interrelations between the painting's core scenes and protagonists.

Meanwhile, fifteen hundred kilometres north-northeast, a young Finnish lawyer had just embarked on a career in diplomatic service (and, as it would soon turn out, in international law), in these bleak years of the Cold War. His sobering experiences as a practitioner in New York, Geneva, and The Hague prompted him to reconstruct [“the argumentative architecture of international law in its many variations, \(...\) an account of it as a language and a professional competence”](#). In September 1989, when the Frankenhausen Panorama was finally opened to the public, the republic it was meant to celebrate shaken by peaceful protest, Martti Koskenniemi had just successfully defended and published his doctoral thesis *From Apology to Utopia. The Structure of International Legal Argument*, and [“it became an instant classic in the analysis of law's rhetorical structures”](#).

Another Era, Another Monument

32 years later, on the brink of yet another era of international (dis)order, another instant classic by the Finnish master has seen the light of the day. And we have seen the light of his day, in this summer of a global pandemic and regional floods and fires, entering Martti Koskenniemi's Panorama for a first glimpse onto the monumental canvas of his international legal imagination.

Browsing through the 1107 pages of the proof, skimming the table of contents, at first, I thought that I had before me the central panel of a large triptych: the missing link between *From Apology to Utopia* and *The Gentle Civilizer of Nations*, Koskenniemi's 2001 instant classic that strongly influenced international law's much discussed (and theorized), profoundly transformative [‘historiographical turn’](#). Indeed, with its focus on legal imagining, on “law as *bricolage*”, “the combination of materials lying around in order to persuade those whose opinions and words matter” (p. 958), *the Uttermost Parts of the Earth* builds on its author's seminal work on international law as language, and analysis of its rhetorical structures and argumentative practices. As “a history of the legal imagination as it sought to capture actions of policies with consequences outside the domestic sphere during roughly the period 1300 – 1870” (p. 2), the book is also, in certain respects, a prequel to the (hi)story of modern international law as told in *The Gentle Civilizer of Nations*.

And yet, there is so much more going on here. We see familiar takes and ideas, motifs and narrations from the author's two preceding opera magna as well as bits and pieces of ‘early versions’ he published during the last 15 years or so, rearranged into a monumental panorama, in forceful and imaginative historiographical moves which can also be described with Claude Lévi-Strauss' structuralist term *bricolage*, as introduced by Martti Koskenniemi as a description of international legal imagining *tout*

court (p. 2). His global audience, now pouring into CUP's carefully protected architectures of knowledge production, eagerly climbing up the stairs to the gigantesque dome of Koskenniemi's Panorama, will marvel at all the erudite details and astute observations, point out blind spots and dark corners, and imaginative *bricolage* will go on as we are gathering outside, at the end of an impressive intellectual tour de force, discussing our own first impressions and imaginations.

To the Uttermost Parts of the Earth is a monument of sorts, another 'last treatise' from Helsinki that will shape our understanding of international law and power as we might have reached the end of another era, also of international legal imagination. It offers a rich intellectual history of the field, and it would be tempting to delve into methodological explorations, or to set out on an analysis of conceptual shifts this project underwent during the years of its gestation – for example, from a [focus on capitalism in initial stages](#) towards more dynamic, situated, yet also more ambivalent narratives connecting the fix points of property and sovereignty (p. 958-959). Or to engage in comparisons with other histories of the field, among them the book of another diplomat and historian of international law, Wilhelm Grewe's *Epochs of International Law*, [“a book of exceptional importance and influence”](#), as Bardo Fassbender wrote in his 2002 essay marking the book's publication in English.

International Law as a German Discipline

However, I have been kindly invited by the editors of this symposium to offer some thoughts on Part IV of the volume (chapters 11 and 12), dedicated to the development of international legal imagination in “Germany” (as that part is titled, in a slightly anachronistic way – after all, we are encountering the German nation state only in the second part of chapter 12, following our explorations in the *Holy Roman Empire of the German Nation*), discussing “the transformations of German academic vocabulary of *ius naturae et gentium* from a Protestant technique of advice to princes to a rationalist philosophy of statehood on the one hand and an empirical science of society on the other” (p. 10-11). Martti Koskenniemi has long argued that “international law is a specifically German discipline”, and these two chapters provide a detailed and erudite reconstruction of the ‘grammar’ of international law as inheritance of “the constitutional struggles of the German-Roman Empire” (p. 800). His “Germany” describes not an epoch in the never-ending power struggles for global hegemony, but an intellectual space where influential individuals, princes and (their) professors, develop legal imaginations and conceptual languages for European modernities with global impact and outreach. To Koskenniemi, the *Reich* is not of interest as a political *Grossraum* (as for Grewe, the [“Atlantic Realist”](#)), but merely as a plural and fragmented political sphere, a legal-intellectual constellation where “the problem of fitting the sovereign equality of individual princes to the overall structure of an empire” (p. 11) is constantly addressed and negotiated.

Inspired by the conceptual frames of a *Wissenschaftsgeschichte des öffentlichen Rechts* (History of Public Law Science) as developed by the late Frankfurt legal historian Michael Stolleis in his 4-volume opus magnum [Geschichte des öffentlichen Rechts in Deutschland](#), and drawing from Stolleis' seminal work on the *ius publicum* of the early modern era, Martti Koskenniemi introduces his readers to “the palatial world of German public law that I still think provides the historical frame for much of international law as we know it.” (xiv). The world of German public law that *To the Uttermost Parts of the Earth* takes us to is, however, not a world of courts and palaces, but first and foremost a world of universities. Zooming in on the leading universities of the enlightenment, Halle (1694) and Göttingen (1734), and on their academic stars Thomasis, Wolff, Gundling, Schmauss, Achenwall, Justi, and Martens, we witness en détail the “migration of authority between theology, law, politics and economics but also their intermixture at particular moments for particular purposes” (p. 955) that forms one of the three “large stories” woven into the book's narrative texture, appropriately named by its author with Kant's term “the contest of the faculties”. Along the way, we have of course also met Samuel Pufendorf, on “the first chair in 'natural law and the law of nations', established in the Heidelberg philosophy faculty in 1661 and designed for teaching 'according to Grotius'” (p. 816), and we see Vattel work on his “elaboration of developments in German natural law no longer limited to the German context” (p. 865).

State Machines and the End of Natural Law

To the Uttermost Parts has long been announced (and awaited) as (also) a history of a political economy of international law. Martti Koskenniemi's focus on the metaphor of the 'State-Machine' (and its science), as first illustrated by Barbara Stollberg-Rilinger in her work on the rationalisation of the absolute state in the enlightenment era, mirrors his strong interest in the holistic nature of the natural law-based *ius publicum* of the Holy Roman Empire, the *Reichsstaatsrecht*. "German natural law encompassed both international and domestic action to search for security and welfare. Its ambition was to produce a total view of how the state machine was to be operated; the Holy Roman Empire, after all, had been both domestic and international" (p. 866). But there is more than the lens of political economy: the 'State-Machine' and one of its most influential theorists, Johann Heinrich Gottlob von Justi, lead the reader also to "The End of Natural Law", in chapter 12, a chapter that "traces the transformation of natural law into four languages that would take its place in the 19th century and beyond: the languages of empirical political science (Schmauss), economics (Justi), critical philosophy (Kant) and modern law of nations (Martens)" (p. 877).

While Koskenniemi has rightly (and extensively) highlighted the important influence of the Prussian Kings, in particular Frederick II, on these developments, another royal patron of the idea of the enlightened "State-Machine" and its theorists is only mentioned once, and in passing (p. 851): the Habsburg Empress Maria Theresia, [a seasoned expert and practitioner of the *ius publicum universale et gentium*](#) who preferably hired lawyers and other officials trained at the new Protestant reform universities (among them Justi, who taught for some years at the *Theresianum* in Vienna), and – while sceptical about 'modernist' enlightenment philosophy – promoted the establishment of natural law and international law also in the Catholic universities of the *Reich*. Anna Amalia of Brunswick-Wolfenbüttel, Duchess of Sachsen-Weimar and regent of the states of Saxe-Weimar and Saxe-Eisenach from 1758 to 1775, might be one other example of powerful and learned female readers of *Reichsverfassungsrecht* in the German princely courts. A generation later, Rahel Varnhagen, Henriette Herz and Caroline Schelling hosted and curated in their salons conversations on law and politics, with Georg Wilhelm Friedrich Hegel, Wilhelm von Humboldt, Friedrich Carl von Savigny among their habitual guests. Maybe the formative 'German era' of international legal imagination was not as exclusively a world of white privileged European men as Koskenniemi's narrative has it, and if we count in Moses Mendelssohn, the towering figure of German and Jewish enlightenment (also a [noted scholar of natural law](#) whom Kant called a '*Rechtsforscher*' – a legal scholar), then it was also not exclusively Christian (Varnhagen and Herz were also of Jewish origin). [Anton Wilhelm Amo](#), an African philosopher originally from what is now Ghana and the first African-born person known to have attended a European university, professor of philosophy at the universities of Halle and Jena after studying there, might be another protagonist to include in a broader picture.

The Last Thing to Perish

However, these are suggestions for another panorama, for future reconfigurations in the never-ending *bricolage* of international legal imagination. And it surely seems a bit nit-picky to propose such additions here. But we should keep alternative stories and protagonists in mind, as we emerge from the panorama of Koskenniemi's monumental European *theatrum mundi*, a lecture hall and courtroom, forum and battlefield that will shape and inspire international legal imagination for a long time. After all, a panorama is not only a project, but a world-making machine creating imaginations for generations. The painter Werner Tübke, in his apocalyptic pictorial worlds a more somber mind than the sober idealist Martti Koskenniemi, [once declared to his communist patrons](#), not without self-confidence, that when the world finally came to an end and everything was already burned to cinder, his art would be the last thing to perish.

Zitieren als

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