

Symposium on Martti Koskenniemi, *To the Uttermost Parts of the Earth*.  
(Cambridge: Cambridge University Press, 2021) – Theme: ‘Theology and the  
Justification of Sovereignty and Property’

## 1 Introduction

I would like to express my thanks to the editors of JHIL, Anne Peters, Randall Lesaffer and Emmanuelle Tourme Jouannet, and also to the chairwoman of this online symposium, Inge Van Hulle, for having invited me to participate in this panel. It is a great honor for me to be in such distinguished company and I fear that my invitation is owed mostly to the spirit of generosity and exquisite legal imagination of the organizers. It is wonderful that they have decided to put Martti Koskenniemi’s phenomenal work, ‘To the uttermost parts of the earth. Legal Imagination and International Power, 1300–1870’, at the center of our attention tonight.

His book is so much more than a brand-new history of international law in the pre-modern era; it is a new history, it is an extraordinary piece of scholarship and writing that offers a thrilling history of the language (and I should perhaps use the plural: languages) of power and profit in local and international contexts. Moreover, it is not just a scientific work of the finest quality, but also an amazing literary achievement. Martti’s *brique*, if I may use a French word to denote voluminous and extremely important books, has seemingly been written during a never-ending flow of divine inspiration. This book takes you to the uttermost parts, not only of the earth, but also of your mind. It even brings you out of your mind. It is mind-blowing, really. It contains a dazzling amount of knowledge about so much more than international law. It also offers new views on intellectual history, medieval scholasticism, the history of early modern theology, and the history of law, *tout court*. As Randall Lesaffer has just said, it connects dozens of subjects which are usually treated separately. It covers topics that have received attention by only a few specialists, such as the role of sacramental theology in the development of property law, but then it also covers topics, such as slavery and colonialism, that are discussed in every corner of the world, on Twitter and on Facebook. *Bref*, there are as many ways of getting access to this book as there have been ways of defining *ius gentium* throughout history.

## 2 Theology and the Justification of Sovereignty and Property

My specific take on Martti's book tonight is the importance of theological language in international law. More specifically, the editors asked me to say something about 'Theology and the Justification of Sovereignty and Property'. According to M., 'sovereignty' and 'property', *dominium jurisdictionis* and *dominium proprietatis*, are 'the two most conspicuous forms of the exercise of power', and theology has played a major role in articulating them. This is of course a massive subject, and you will pardon me for not being able to address it in all of its details. I will limit myself to give a general comment on the importance that MK attaches to theology, give one specific example, but then quickly go on and submit three questions to Martti.

The reference to theology and religion is a constant in Martti Koskenniemi's book. It starts with the very title of his work: 'To the uttermost parts of the earth'. This is a phrase which is drawn from the New Testament (Acts 1:8). And as the epigraph following the copyright page attests, Martti borrows this passage from the NT from a sermon pronounced by John Donne in 1622 as he addressed the crew of the Virginia Company: 'You are to be witnesses unto me both in Jerusalem, and in all Judea, and in Samaria, and unto the uttermost parts of the earth.' By adding this reference in the title, and including it on the very first page of his book, I may assume that Martti Koskenniemi wanted us to pay special attention to the interconnectedness of religious beliefs, global commerce and political authority in the history of international law.

The reference to theology, the Church and Christian religion is central to Martti's argument, indeed, from his marvelously told story of the conflict between the French king Philip the Fair and Pope Boniface VIII at the outset of the 14th century to his sweeping account of the role played by German lawyers in the conceptualization of international relations in the 19th century, with Martens still arguing that Christianity was the strongest bond between European nations.

As you go through Martti's book, the most obvious place for finding a truly systematic account of how religion shaped the language of both local and international law is in part 1. But there are many other places where religion appears as well. For example, in the part on early modern France.

In the seventeenth century French experience, too, the Christian religion provided a major language for justifying sovereign power and commercial profit. Citing a title of justification that had also been used by the Spanish conquerors a century and a half before, Cardinal Richelieu stated that the principal objective of the *Compagnie de Nouvelle-France* was 'to give native inhabitants knowledge of le *vrai Dieu*', for which purpose 'the company must transport

three Catholic clergymen to each settlement' (p. 511; cf. also p. 503). Two centuries and a half later, King Leopold II of Belgium, or at least his legal counsellors, had not forgotten about that theological justification for large scale extension of sovereignty and property as he embarked upon his adventures in Congo... At the same time, Christian conscience and natural law arguments were also used to critique Leopold II's, or for that matter, the Spanish kings' colonial policies. Just think of Montesinos in the Spanish context or Jesuits such as Arthur Vermeersch in the Belgian one.

### 3 Questions

#### 3.1 *Question about the Ambiguous Nature of Theology / Natural Law as an Argument*

It is this ambiguous role of theology, and its ambivalent use of the language of natural law, in particular, as a tool to both *legitimize and limit* factual situations of the exercise of *dominium* that brings me to my first question. Given your incredible overview of almost a millennium of history of international law, have you found any kind of circumstances, of factors that help explain why religion, especially the Christian religion, tends towards the one instead of the other, that is, tends sometimes to justify almost without limits the holders of *dominium jurisdictionis* and, at other times, becomes a fierce vehicle of critique of it. In the context of the School of Salamanca, just think of the opposition between Tomas de Mercado, on the one hand, who called confessors and priests the fathers of the republic on account of natural law, and Juan de Mariana, on the other, who got jailed because he dared to attack the laxist monetary policy of the Spanish king and his arbitrary exercise of power, also on the grounds of natural law. Historically speaking, which framing of religious language has contributed more to the Christian religion justifying existing power structures rather than criticizing it. Which factors play a role here? You seem to imply in some of your discussions that the reasons can be anthropological and exegetical. I would be interested if you could elaborate a bit on that.

#### 3.2 *Question about the Impact of Different Forms of Theology*

My second question is slightly related to that. Through the examples you give in the book, it becomes clear that different interpretations of the same Christian religious language can lead to different theological accounts of sovereignty and its limits. These differences came to a head, of course, during the time of the

Reformation and Counter-Reformation. For example, you seem to assume that there is a connection between Alberico Gentili's Protestant tendencies, his lack of belief in reason, and therefore his support of political absolutism (p. 248). Natural law, in Gentili's Protestantized view, seems incapable of limiting the arbitrariness of political power, much against what we can see in Thomas Aquinas or the Salamanca scholars of his day. One could also refer to the doctrine, subscribed to by the Anabaptists, that people who have not been baptized are not capable of enjoying, let alone exercising any form of *dominium*, be it over goods or over men. As a result, they claimed sovereignty and property in the newly discovered territories entirely for themselves. So my question is, do you see a correlation between different confessional interpretations of Christianity, and different ways of developing justifications of sovereignty and property? Or are there just as many ways of interpreting Christianity as there are of interpreting natural law and *ius gentium* and is it impossible to establish any kind of logical coherence?

### 3.3 *Links with other Scholarship*

My third and last question is not so much about theology, as it is about the larger conceptual framework that you have developed to write this book. As you explain in the introduction and the conclusion, you have tried to pay attention to the incessant contest between rival languages of power, which resembles a faculty contest between law, theology, philosophy and economics. The imagination behind international law was sometimes driven by lawyers (period of the *ius commune*, the time of Nogaret), sometimes by theologians (especially in the Spanish and Portuguese empires), sometimes by philosophers (think of Kant), sometimes by economists (think of les *physiocrates* and developments in 19th century Germany and Belgium). You then pay attention to the way in which these languages migrate and move to other contexts where handymen (*bricoleurs*) adapt and use them to justify all kinds of power over goods (*dominium proprietatis*) and over people (*dominium iurisdictionis*). Looking back at your earlier writings, one can rightly say that you have written the standard history, not only of the development of the languages of international law in the 19th and 20th centuries (which was the main subject of 'The Gentle Civilizer of Nations'), but also of the pre-modern developments, basically from the renaissance of the Roman concepts in the 12th century until the period of the French-German wars. But what, I wonder, if you would write a third book, that is not so much about the past, but about the future? Are there any new languages that you see appear and that usher in a new paradigm? What role would attribute, if any, to the languages related to numbers, such as mathematics and technology?

I know that this question might lead us into the realm of 'science fiction', but, having enjoyed your incredible literary talent, I think it might actually not be a bad idea to try and convince you to enter that realm!

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