From Apology to Utopia’s Conditions of Possibility

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Abstract
Martti Koskenniemi’s From Apology to Utopia is (rightly) considered a classic in international legal theory. The study tracks the oscillation of international legal argument over hundreds of years to reconcile seeming incongruencies: legal reasoning does not provide determinacy, but it brings weighted direction to political conflict; legal categories are amorphous, yet also an autonomous field of study. Though not commonly engaged, the methodological and theoretical posture of the book is significantly informed by a theory of history. This article focuses on this historical element within the text as a means to analyze some of its central claims and situate it within a broader sociology of knowledge production particular to late twentieth century legal academia.

Key words
international legal history; international legal theory; Martti Koskenniemi; political economy; sociology of law

There is agreement within the international legal academy that Martti Koskenniemi’s monograph, From Apology to Utopia: The Structure of International Legal Argument (hereafter, FATU) is a classic in contemporary scholarship. As such, the text is relevant not only for its (often eloquent) description of the field, but as an artifact in its own right that allows, on the one hand, analysis into its internal argumentative logic and, on the other hand, interrogation into what intellectual and socio-institutional conditions led to its initial production and continuing popularity. The irony of FATU that we will explore in this article is that while unquestionably a profoundly important text that brings to light central historical, methodological and theoretical problems confronting the discipline, it often does so inadvertently – in other words, it is exactly how these problems are circumvented, obscured, silenced in the text that brings them into focus. Exploring its inner constitution and outer environment, this article portrays FATU as a political wager to advance disciplinary capital through professional interventions into a perceived context that is no longer

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1 Though the text was originally published in 1989, this article will be focusing on the 2006 reprint, which includes an epilogue. See M. Koskenniemi, From Apology to Utopia: The Structure of International Legal Argument (2006).
2 The position here is not that FATU represents some ‘false ideology’ that may be uncovered to demonstrate the ‘real’ situation, or that FATU is missing important ‘materialist’ or ‘from below’ considerations which must be read back into the narrative, but rather what Louis Althusser explained as a ‘symptomatic’ reading. See L. Althusser and E. Balibar, Reading Capital (2009), 19–30.
the situation for the international legal academic today, but which points us in potentially new and fruitful directions that transgress contemporary heterodoxies within legal academia. Put more simply, my proposition is that FATU over-relied on ideational and linguistic dimensions to explain the momentum of historical change in law, and the experiment here is how to demonstrate this through an internal reading of the text’s claims that might actually reveal a suppressed appeal for a more critical historical sociology.3

The argument in FATU goes something like this. A ‘liberal theory of politics’ emerged between the early modern period and the Enlightenment, solidified into a specific cosmopolitan project in the nineteenth century with the academic and professional institutionalization of international law, which was subsequently lost over the course of the twentieth century to result in a contemporary existential challenge to the identity of the discipline. This liberal theory of politics first arose out of the gradual loss of faith in any objective order of truth (e.g., God, natural law), which in turn resulted in the anarchistic fragmentation of political legitimation in the institutions of the emperor and the church as any claim to authority or truth was viewed to be either a subjective rationalization for hegemony or unreasoned superstition.4 Disenchantment in the objective hierarchy of normative meaning resulted in a historically relative consensus ruled by subjectivity, of particular interests and incomplete knowledge, all of which had no recourse to any validity beyond its own claims. To manage this otherwise anarchical system of state, community and individual interests, a specific conceptual mechanism was slowly institutionalized – the rule of law – which might allow for formal procedural equality between actors on the basis that it was both a product of and a constraint on its subjects.5 Over the course of the early to late modern period, this institutionalized consciousness developed a complex (though relatively limited) set of argumentative techniques and dominant disputes within international law to struggle with this distinctly liberal subjective paradox that seemed to routinely threaten the coherence and legitimacy of the system.6

Jurists tended to combat challenges to the objective neutrality of the law by asserting various normative principles, such as reason and civilization, that worked to synthesize particular interests to a harmonious order, but this collapsed with the

3 Commentators (and Koskenniemi himself) have suggested his subsequent ‘turn to history’ is an answer to the limits of FATU. The thesis in this article should be distinguished, and even read to contest this claim, on two counts. First, there are significant methodological differences between historical sociology and intellectual history, and between types of intellectual histories. My sense is that the intellectual history chosen by Koskenniemi and many of his admirers is part of a distinct tradition that is prone to over-determination, or domestication, of particular individuals and events – dangers that other strands of intellectual history, especially those drawing on historical sociology, may adequately counter. See e.g., G. Wilder, ‘From Optic to Topic: The Foreclosure Effect of Historiographic Turns’, (2012) 117(3) The American Historical Review 723 (incorporating discourse analysis and socio-institutional history). Second, the argument here is not that FATU lacks a historical element that later works seek to supplement, but that the ‘historical’ is deeply engrained in FATU, at once submerged and prodding the argument forward, and which remains largely unacknowledged by Koskenniemi further obfuscates rather than engages this unsaid dynamic in the text. For an example of this style of analysis that looks at what the text does not say and why, see e.g., P. Macherey, A Theory of Literary Production (2006).

4 See Koskenniemi, supra note 1, at 77.

5 Ibid., at 107–8, 156–8.

6 Ibid., at 58–67.
tragedies of the twentieth century world wars and the dismemberment of colonialism. The international legal discipline in the post-1960s found itself caught between a rock and a hard place where it seemed forced to argue either for a utopian vision of law as a set of impartial normative constraints on state will (that increasingly distanced its adherents from policy relevance in the comfort of doctrinal ‘non-political’ certitude), or alternatively, an apologetic vision of law as the concrete expression of state behavior (that counseled a pragmatic technocratic attitude towards legal practice bordering on a cynical narcissism). To make matters more existentially dire, the choice of adopting the latter approach did not salvage the legal profession, for if law was merely politics by other means, its function was primarily instrumental, the draftsmen of the new visionaries of global governance arriving from the economic and international relations disciplines who claimed to offer a comprehensive explanation of how the world worked.

The dominant portion of FATU, and when it is at its best, is spent demonstrating this constant and inescapable oscillation between apology (e.g., facts) and utopia (e.g., norms) across the historical rise and fall of different intellectual legal disputes. The twist here for Koskenniemi, however, is that the indeterminacy of law and its inability to provide objective answers to its posed questions, which have been exposed through the ‘vicious circularity’ of its argumentation, is not a weakness but, quite to the contrary, its disciplinary strength against competing intellectual languages and the very basis for emancipatory hope in contemporary global governance. The reason for this is that, firstly, the liberal theory of politics rests on the premise of inescapable subjectivity, which in turn logically necessitates indeterminacy, because any claim to universality (e.g., legitimacy, the good, truth) always speaks from a specific location that can be subsequently undermined
exactly on the basis of its particularity. That international law consciously exhibits the challenge of indeterminacy is not a failing, but rather its eminence as the privileged language for mediating conflicting claims and understanding the fundamental character of our fallen world. Law makes transparent the political specificity of universalist claims and challenges hegemonic ambitions to become more inclusive and participatory.

And secondly, because claims and conceptions of the world are always mediated through particular, incomplete perceptions of reality, international law offers the most ideal choice for political contestation by requiring actors negotiate differences through communication, which itself demands a certain degree of procedural equality – to recognize the other as a participant in a dialogue of difference. Law is an argumentative practice, an interpretative lexicon, but this is exactly the point: there is no access to reality except through our interpretative lens. Structured linguistic traditions, as a historical overview of legal argumentation demonstrates, set the conditions of possibility for understanding ourselves and the world ‘out there’. What look like facts that give rise to our interpretative schemes are more often than not the results of an already existing set of ideological pre-dispositions, just as law seems to already exist in the interstice of any sequence of political dynamics (as opposed to existing simply as its product or effect). Rather than hide from the uncertainty that this inevitably entails, Koskenniemi offers a methodological polemic for legally minded diplomats and scholars to discern the binary codes (the ‘deep structure’ without epistemological foundations) that animate disciplinary language in order to clear up conceptual confusion, which is promised to offer a therapeutic effect for practicing international lawyers to embrace their professional identity as the preeminent political mediators. Disciplinary perspectives and political positions are all inevitably the stuff of language games, and international law is the best game in town.

Along with David Kennedy’s *International Legal Structures* (ILS), FATU presents possibly the most rigorous analytical attempt to sever the discipline from political dynamics and understand how its argumentative structures generate from underlying rhetorical patterns – to think international law as a grammar. Yet the substantive strength of its analytical skill does not in itself account for its popularity, though this is perhaps not immediately evident as it is common for explanations of what makes for a literary classic or an author’s fame to point to an individual’s charisma or the intrinsic aesthetic or intellectual power of argument. In the juxtaposition of Kennedy and Koskenniemi’s first masterworks, however, these explanations do

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11 Ibid., at 540–7 (what he describes as a ‘conversant culture’).
12 Ibid., at 4–12, 521–5.
14 D. Kennedy, *International Legal Structures* (1987). This should not imply that the two texts rely on the same set of intellectual inheritances.
not offer a space for any ready differentiation. What we might ask, in other words, is it that led to FATU being a big hit while ILS remains obscure despite the similarity of argument, rhetorical skill, and institutional prestige of their respective authors? Following this line of questioning, I believe, opens us to a set of more substantive methodological concerns with Koskenniemi’s argument in FATU and may allow for fresh perspectives into the text.

At least in part, FATU’s capacity to capture the imagination of a generation of international legal scholars and practitioners seems entwined with the specific historic conjuncture of its publication within academic and broader politico-economic circles. First, within the ‘invisible academy’ dealing with global governance in the post-Second World War era, there was an increasingly hostility towards metanarratives that reduced everything to political intention (e.g., fascism, Marxism) so that not only was it no longer intellectual viability to argue that law was simply a causational effect of political intentions, but to the contrary, it suddenly seemed almost trite to note that legal reasoning simultaneously developed in ‘relative autonomy’ from external political forces and that legal institutions were constitutive of any set of social relations (e.g., property, contractual individuals). To speak as Koskenniemi does - of the intellectual as finding oneself as ‘always in law’ – situated itself comfortably in this tradition popularized by Critical Legal History and Critical Legal Studies starting in the mid-1970s.16

Second, to always exist in law without falling into the temptation that legal paradigms either determined or simply reflected political forces meant that law was inherently an intellectual paradigm – in other words, it was constitutive of life as a form of consciousness, of communication and interpretation. In this sense, FATU’s emphasis on the idea that ‘every decision-maker has a legal adviser’ and the ‘need to study their grammar’ was in keeping with the structural linguistics and post-Marxist liberal turn in political theory that became all the rage across academic disciplines by the 1980s.17

Third, the emphasis on studying intellectual history as the rise and fall of paradigmatic structures of thought (e.g., the ‘liberal theory of politics’, the ‘rise and fall the gentle civilizing spirit’) counselled a set of methodological and theoretical

16 For a discussion of this intellectual trend, particularly in relation to Critical Legal Studies and Critical Legal Histories, see R. Gordon, ‘Of Mandarins, Legal Consciousness, and the Cultural Turn in US Legal History’, (2012) 36 Law and Social Inquiry 167; see also R. Gordon, ‘Critical Legal Histories Revisited: A Response’, (2012) 36 Law and Social Inquiry 200. There is a predilection within ‘non-mainstream’ international legal scholarship to stress the legal embeddedness of political interests as a significant observation that marks them out from their more conventional peers. It bears a curious similarity, however, to conservative twentieth century economic theory that pointed to the political-legal character of economic fields and interests (e.g., the ordoliberal principle that markets were not ‘natural’). For a fascinating, albeit economist-oriented explanation of the relationship between the ‘private’ and ‘public’ functions of governance, see R. Wray, Modern Money Theory: A Primer on Macroeconomics for Sovereign Monetary Systems (2012).

17 For an excellent survey of this intellectual development, see E. Clark, History, Theory, Text: Historians and the Linguistic Turn (2004). For partial accounts of how this trend came at the expense of more left-oriented structuralist traditions, see F. Dosse, History of Structuralism: The Sign Sets, 1967 – Present (1998). This shift, however, was less visible in histories by political economists; but interestingly, this disciplinary exception is largely ignored by international legal historians, despite the increasing importance within the discipline towards the historical relationship between international law and political economy. For an example of this style of structuralism within political economy, see e.g., G. Arrighi, Adam Smith in Beijing: Lineages of the 21st Century (2009).
preoccupations central to FATU: the focus on the literary production (e.g., doctrines) of legal mandarins (e.g., Vattel, Lauterpacht, Kelsen), the emphasis on ‘internal contradictions’ within the professional lexicon (since it was ‘relatively autonomous’ from external political forces), and the interest in archives and primary texts to explore how the often idiosyncratic subjectivities of individual lawyers engaged in dispute and to discover the possibilities of what could be said (since law was not determined, but a set of communicative practices and innovations).  

Fourth, within a broader socio-economic context, to focus on international law (especially as a language of political negotiation) was to revitalize the possibilities of social agency in the face of exhaustion with intellectual and political organization by left-oriented strata and the necessity of an abstract, formal mode of negotiating and transmitting diverse agendas and information into usable knowledge by an increasingly disaggregated organizational framework for management and production. Lawyers within the polemic offered by FATU suddenly appeared the ideal managerial specialists for the late twentieth century modes of socio-economic organization: technical specialists, but importantly, equally relevant through their guarantee to maintain an ‘authentic commitment’ to openness and neutrality in the midst of proliferating centers of professional expertise and knowledge, their mission to recruit an ever-enlarging pool of shareholders into the kitty of global governance. In summary, FATU is a literary child of the 1980s: disenchanted with ambitious left-oriented explanations of historical movement, enthralled by the importance of the rule of law in political life, tactically positioned to professionally advance and solidify the lawyer’s role in the new matrixes of managerial authority.

If these intellectual and socio-historical factors conditioned the initial production of FATU, as Kennedy notes in a recent reflection on their early professional experiences in writing their respective books, it is perhaps the distinct national contexts of the two authors that explain the difference in their popular reception. Whereas Kennedy found himself in academic and professional settings where older colleagues were comfortably anti-formalist and quite happy to accept the notion of legal indeterminacy, Koskenniemi arrived in an environment that, for intellectual and political reasons, was wedded to a formalist tradition of thinking about international legal reasoning. To speak of law’s indeterminacy in FATU could therefore function as a scandalous revelation but, at the same time, provided European international lawyers soothing reassurances to their damaged sensibilities: despite the indeterminacy of law, the unfolding of professional arguments demonstrated some important choreography could be found to resuscitate the importance of legal reasoning and that its members were not simply trapped in rhetorical equipoise but players with specific roles in a drama with high stakes. The European tradition

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19 For an insightful study into this managerial ethos that increasingly came to capture Western-oriented institutions from the 1960s onward, see L. Boltanski and E. Chiapello, The New Spirit of Capitalism (2006).
20 For an interesting general discussion of the changing institutional configuration and politics of knowledge production, see D. Rodgers, Age of Fracture (2010).
21 See Kennedy, supra note 9, at 987–9.
mattered exactly because of its failures; a hermeneutic of suspicion, produced specifically out of the European tragedies of the twentieth century, would be now the very intellectual pre-condition for thinking politics and authority to mediate global conflict. At our most uncharitable, there is a Eurocentric progress narrative lurking in the argument and reception of FATU, which troublingly exists simultaneously with its analytical wit and progressive impulses.

The point of this history is to begin to grasp a fundamental set of problems with FATU’s methodological and theoretical underpinnings, which we can only sketch briefly here in the space provided. The monographs (written by Kennedy and Koskenniemi) traversed alternative trajectories that cannot be explained simply by looking to the merit of their disciplinary ideas and rhetorical skill, but requires an appreciation of a diverse and interlocking institutional set of non-linguistic causational arrangements. Rather than see legal phenomena, such as the weight of a particular text like FATU, based in an anthropological, humanistic space of ‘natural subjectivity’ struggling for some ‘authentic’ freedom from bureaucratic alienation through innovative linguistic playfulness (a sort of pre-structural regress of individual choices), we might instead see the text and its actors as subject-effects, or forms, generated by a particular organization mode of production, which itself is all too often wildly under-theorized despite (or exactly through) the prevalent invocation of concepts like ‘capitalism’, ‘class’, ‘material conditions’, ‘neoliberalism’, ‘politics’, and so forth. Mastery of a linguistic code is not mastery of the interactions that shape the success or failure of particular knowledge regimes; extra-linguistic

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22 D. Kennedy, ‘Losing Faith in the Secular: Law, Religion and the Culture of International Governance’, in M. Janis and C. Evans (eds.), Religion and International Law (1999), 309 at 312. The position is analogous to Feuerbach’s argument to prove the importance of Christian virtue in the face of mounting skepticism: it is exactly the experience of feeling that a value is undermined or devalued that proves its existence, because if it did not exist, then there would be no sense of its loss. Doubt and failure was its surest proof. For an extended discussion of this theological mode of logic in Feuerbach and contemporary international legal theory, see J.D. Haskell, ‘The Scandal of Disenchantment: Blind Spots in Modern Anglo-American Approaches to the History and Politics of International Law’, (2013) 44 University of Memphis Law Review 39.

23 A. Rasulov, ‘Writing About Empire: Remarks on the Logic of a Discourse’,(2010) 23(2) LJIL 449, at 464–70. We could extend this contextual style of awareness to Koskenniemi’s GC42N. The move to history was not so much an intellectual grasping of deficiencies in FATU, but a response to new conditions of reproduction within the European academic market: the necessity of creating an ‘European’ legacy to tie together the already fracturing European political landscape (e.g., economic disenfranchisement, ethnic unrest, brewing international conflictual agendas), the sense of displacement over the intellectual authority of global governance (e.g., asserting the European tradition in the face of competing geographic localities), that funding was largely through ‘public’ bodies as opposed to soliciting private donors (e.g., Kennedy seeking funds from private financial institutions versus Koskenniemi looking to public European funding grants), and to regain control (or more charitably, model ‘best practices’) over the sudden democratization of archival resources due to technological advances, especially related to the internet.

24 The tendency to posit something like ‘capitalism’, ‘class’, or ‘labor’ as a coherent ‘thing’ is a frustrating tendency within left-oriented scholarship over the last decade, and which seems strikingly similar to the late twentieth century liberal appeals to ‘cultures’, ‘subjectivities’, ‘individuals’, and so forth. The attempt to escape these generalizations - through the claim of ultimate radical indeterminacy to any foundation and the eternal internal oscillation of professional discourse while simultaneously seeking to functionally differentiate institutional conditions and tendencies that lead to relatively predictable results and types of production (whether people, things, or more general ‘outcomes’) – is finding new life in recent years across a number of disciplines; for example, see O. Kessler and X. Guillaume, ‘Everyday practices of international relations: people in organizations’, (2012) 15(1) Journal of International Relations and Development 110. At the same time, there is the danger that these shifts towards curing conceptual abstraction play into the various brands of neo-institutionalism so popular over the last few decades.
objective structures of interaction in the dynamic of competition and production are also part of a language and demand theoretical rigor beyond appeals to a Sartrian or even Kantian idea of an almost eternal essence (e.g., human subjectivity) that would collapse distinct historical conjunctures and organizational configurations into a single paradigmatic response to all life occupations (e.g., a liberal theory of politics). At the purely intellectual level, this preoccupation with linguistics lends itself to suspicious historical claims that are central to FATU’s theoretical framework. For instance, if we recall, the liberal theory of politics (and by extension, subjectivity, the collapse of logic into rhetorical binary opposition, and the rule of law) was premised on the loss of faith in a theological-moral order of hierarchical with objective truth institutionalized in the political legitimacy of the church and the emperor. In this account, it is an intellectual paradigm (e.g., the loss of faith) that kick-starts the liberal consciousness and its subsequent organization into states. Concepts and lexicons move history in albeit dialectical engagements with socio-political factors and personal idiosyncrasies. History is a story of ideas sponsoring action, and by extension, since ideas are identified with creativity, with subjective dissent and solitary innovation in its original state, of individuals and human authenticity as the genesis and invisible hand of history. The difficulty with this description is that it reads into the interstices of history exactly what needs to be explained (e.g., the loss of faith) and obscures crucial dynamics that reconfigure the nature of change at play. As the historical sociologist Peter Burke illustrates, to the extent that there was the birth of a ‘liberal consciousness’, it can only be understood within an institutional context of knowledge production centered around a particular ordering of competition and production. It was not the breakdown of hierarchies and the threat of anarchy that fueled the liberal theory of politics, but rather the rise of the centralized state apparatus and its administrative needs to collect, coordinate and transform an increasingly dense amount of actors, information and resources into utilizable knowledge to maintain and extend its institutional legitimacy.

The rapid increase in printing due to these administrative necessities, themselves fragmenting into increasingly specialized knowledge regimes, not only opened the


26 For an analysis of this autonomized and creative subject that may escape their conditions is manufactured, see S. Singh, ‘Koskenniemi’s Images of the International Lawyer’, (2016) 29 LJIL 699–726. This orientation within public international law is a hallmark of the twentieth century move by its authors (e.g., Lauterpacht, Kelsen) to incorporate a distinctly ‘conservative’ set of private law concepts into the underlying logic of the field. See M. Garcia-Salmones Rovira, *The Project of Positivism in International Law* (2013). The tendency among liberal and left-oriented legal scholars to emphasize the ‘political’ character of the ‘private’ is ironic to the extent that it misses the extent that the ‘political’ aspects of law (e.g., its cosmopolitan sensibility, its institutional character) are modeled on ‘private’ market models.

27 P. Burke, *A Social History of Knowledge: From Gutenberg to Diderot* (2000). To be clear, the argument is not that we need a better understanding of subjects making history, but of the processes that facilitate these subjects and events and our capacity to discern what enters into memory.

door to new sites of competition and collaboration between intellectuals, but stressed the importance of a formal language (the rule of law) that was rooted within institutional sites loyal to the ‘secular’ sphere and which could transform diverse information into a uniform knowledge for contract and management.29 In short, the emphasis on anarchy allows international law to present itself as the last chance for order, just as minimizing the rise of centralization in favor of post feudal subjectivity creates the illusion of a link between liberalism and liberty – the very stuff of progress narratives. This imagined history rests on ideas (or even worse, some human essence) as the original motor of history; instead, we might see ideas riding the coattails of institutional conditions.

The difficulties with fully accepting these methodological and theoretical assumptions that undergird FATU’s analysis lead to a final, more practical consideration concerning the nature of the struggle facing the contemporary international legal discipline in academia and practice. At the most basic level, a hermeneutic of the ‘self’, the over-prioritization of concepts and ideas over institutional apparatuses in relation to production as the movers of history, and the subsequent call for an ethos of responsibility towards the solitary or disciplinarily sealed professional seems to easily slip into a reification of abstractions possessing a reality and endowed with social, or history making efficacy, which can lead to tactical miscalculation and disciplinary marginalization (and more immediately, personal/professional defeat). Reading FATU, we feel not only a (genuine) sense of acquiring insight, but we are more inclined to heed its deliberate call to act differently (as we should) and buy into the message that our acquisition from the text will inform our professional sensibility in a way that enacts meaningful change (here is where things begin to get more questionable).

Importantly, this belief in our particular agency requires a methodological prioritization of ideas and individuals (the very claim, I am suggesting, against which we should rebel, at least in our current moment). More specifically, the miscalculation in FATU’s polemic to the profession is that it misses out, not simply on the extra-linguistic rhetorical practices required to protect and expand intellectual terrain, but tends to forget that persuasion is not simply about mediating different opinions but the ability to explain the world in a way that both connects its adherents to an organized social base (e.g., law and economists / privately funded think tanks) and that is persuasive against competing ‘expert’ languages, especially in relation to the institutionalized necessities of endless growth and competition that increasingly seem to define our experience of living within the conditions of possibility for the law.

The wager alive in FATU is no longer available, intellectually or politically, but it serves in this sense as the text par excellence in global governance to locate the problems facing the legal scholar today. It is not simply a matter of demonstrating the limits of knowledge held by European economic technocrats (e.g., they should

29 Indeed, the Protestant Reformation was not so much a spiritual/intellectual result of radical religious thought or indignation to political hierarchies as it was the outcome of the over-production of printed literature and the debate over the proper scope of dissemination and use. See Burke, supra note 27, at 116–48.
recognize that markets are not natural but contingent political constructions with
distributive stakes) or American political scientists (e.g., they should recognize that
the American model is not universal nor that states simply act in an anarchical
solipsistic world disorder). Nor should this mean abandoning mastery of formal
legal technique and acute knowledge of ‘black letter’ law.30 What it may signal
is that analyzing and predicting conditions and outcomes requires a much more
ecumical and nuanced disciplinary toolkit, and that this professional posture is
essential to institutional relevance. In other words, there is a difference between
knowing how to adeptly deploy international legal argument and predict how legal
arguments will play in a court or administrative proceeding, and understanding why
a decision came out or an event arose or transpired as it did. My sense is that these
things often get confused, and that international legal scholars and policy makers
may have more to offer than simple ‘black letter’ technique. This requires seizing
the hubris to venture hegemonic explanatory frameworks for measuring risk and
structuring institutional movement.31 And it means leaving the humanist impulse
to moralize, to speak of transhistorical sensibilities, to confine ourselves as lawyers
to the role of mediating professional differences or political hostilities, and instead
seek out the ruthlessly anti-transcendental, almost inhuman mechanisms that rein
us into subjectivities.

30 For one of the more compelling (and conflicted) polemics for international legal formality, see J. d’Aspremont,
31 For an example in this direction, see P. Mirowski, Machine Dreams: Economics Becomes a Cyborg Science (2001);
see also N. Fligstein and D. McAdam, A Theory of Fields (2012).