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## Reimagine International Law and Relations?

A Short Reflection

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## Reimagine International Law and Relations?

A Short Reflection

This new monumental book further consolidates the reputation of Martti Koskenniemi as one of Europe's most influential and stimulating historians of international law in our time. Surveying a large body of European writing on domestic and international law, commerce, and politics from the 13th to the late 19th centuries, the book provides a remarkably thorough, insightful, and critical analysis of the relevant literature. It is filled with illuminating passages about the core arguments of celebrated theologians, philosophers, diplomats and lawyers, ranging from Thomas Aquinas, Francisco de Vitoria, Jean Bodin and Hugo Grotius through Thomas Hobbes and John Locke to Adam Smith and Emer de Vattel, before ending with international lawyers like Georg Friedrich von Martens. Unlike most conventional studies of these texts, however, the book is »not a history of international law but a history of the legal imagination« (953). It explores how the legal arguments about the power of sovereignty and the power of property were imaginatively employed to rationalize, critique, or codify the ideas and practices of the European states and empires in face of considerable domestic changes or international expansion. Contrary to the interpretation of much of the pre-existing scholarship, the author argues that »European power is neither the power of sovereignty nor of property but always a particular, locally specific combination of the two. *Sovereignty and property are the yin and yang of European power*« (958–959). Needless to say, the discourses on sovereignty and property were central not just to the emerging European nation states but also to the formation and transformation of the modern international order. This book is a highly valuable contribution to the critical scholarship to further demonstrate how and why that was and has been the case.

Since many an expert has already commented on what is discussed in the book, I will use the very limited space to briefly note what has been suppressed or excluded by the European legal imagination about sovereignty and property, which, as the author has pointed out, was a Eurocentric »male imagination« throughout this period (12–13, 956).

Its ethnocentric assumptions often left the European thinkers and empire builders ill prepared for international encounters in which their presumably natural, international or universal legal principles were not only unrecognized as such but tenaciously contested or counteracted. Such encounters and resulting epistemological jolts called into question the taken-for-granted sense of identity and hierarchical boundary between *oneself* and the racial, cultural, political or juridical *other*. In this regard, China was, and to a great extent has remained, a classical example.

In a book of over 1000 pages, China is discussed only in about six pages (777–782), focusing on the perspectives of British officials and empire builders during the period from 1834 to 1860, around the time of the two Opium Wars. Besides the fact that this book is already huge and understandably cannot cover many topics, this brief coverage and its focus are also partly attributable to the nature of the sources. This instance thus highlights the difficulty of trying to achieve what the author has envisioned as a major contribution of this book: critically re-examining the history of Eurocentric legal imagination in order to enable us to re-imagine the historical and contemporary international legal and political orders. One recurring question for this reader is: To what extent can we actually achieve that reimagining when our sources, knowledge, epistemology, and normative assumptions are still so profoundly influenced by the once dominant colonial legal discourse that Koskenniemi has so brilliantly analyzed.

Moreover, instead of treating the history of Sino-European encounters as just another example of the global expansion of European culture and power, it might be more fruitful to understand it as a counterhegemonic case in which the universalist or ethnocentric assumptions of the European discourses of sovereignty and property were seriously challenged. From the early 16th through the early 19th centuries, the late imperial Chinese government not only refused to recognize the European assertions of cultural superiority or »natural« rights to trade, travel, and proselytize in Chinese territory, but also had the resolve, resources, and institu-

tional capacity to frustrate most European attempts at securing those »rights« and to avoid what happened to Mughal India and elsewhere at that time. To the dismay of the European empire builders, the Chinese authorities also had their own discourses and imagination about domestic and international power, national security and interest, and cultural and political hierarchy. These Chinese discourses and policies have long been dismissed by commentators – then and later by modern scholars – as ethnocentric, primitive, or irrational. That once dominant interpretation was considerably influenced by the competing European legal discourses and imagination analyzed by Koskenniemi and other postcolonial scholars. As revisionist scholarship has recently shown, it is these competing interests, ideologies, imaginations, and politics of empire *in specific and changing* historical circumstances, not the alleged clash of *essentialized* cultures or civilizations, that accounted for the Sino-Western conflicts in the 18th and 19th centuries. This then leads to the question of what impact this kind of direct, external challenge might have had on the European legal imagination itself.<sup>1</sup>

In fact, China would remain the biggest and most notorious obstacle to the global domination and symbolic hegemony of European colonial powers. Given that China still had about one third of the world's total population and the largest GDP even on the eve of a humiliating defeat of the Opium War of 1839–1842, what the above-noted European writers long imagined to be natural, universal, or international legal principles or practices could *not* be convincingly so considered until the Chinese had been brought into the fold. The post-1842 Sino-Western relationship, based on the treaty system, foreign extraterritoriality, and gun-boat diplomacy in China, only served to temporarily codify the Euroamerican discourses of sovereignty, property, and domination. In spite of enormous changes over the last one and a half centuries since then, China, for various reasons, has remained an essential and essentialized marker to

signify the cultural, ideological, and racial *other* and negative foil in the evolving Euroamerican legal imagination. The current rise of Sinophobia in many places, dramatized by the tensions and politicized sentiments surrounding the Covid-19 pandemic, is only the most recent reminder. The fact that the balance of economic and geopolitical power has gradually shifted back in favor of China in recent years has further complicated the dynamics of international relations.

One of the significant contributions of Koskenniemi's book lies in its nuanced analysis of how those European ideas and texts acquired symbolic power and became the hegemonic discourse about sovereignty and property in the modern era. Given that the rules of the game of the modern international order have continued to be largely determined by some of the same (former) colonial or imperial powers, the deep-rooted exclusionary and hierarchical logic of the earlier legal imagination can hardly be expected to vanish anytime soon. Readers may wonder, once again, how a new international society can be reimagined – under the current international power structures – differently from two or three centuries ago. If it cannot, what kinds of fundamental changes have to be effected before that becomes realistic? Relatedly, in what ways will a critical re-examination of the history of earlier European legal imagination like Koskenniemi's facilitate that kind of change or rethinking?

Furthermore, Koskenniemi's analysis includes numerous examples of the divergent or even irreconcilable views among the leading European thinkers under study even though he did not go further to explore the implications of these internal tensions. For instance, Sir William Blackstone maintained that »[t]he law of nations is a system of rules, deducible by natural reason, and established by universal consent among the civilized inhabitants of the world« (648), while his contemporary British compatriot Adam Smith proclaimed that »[t]he regard for the laws of nations, or for those rules that independent states profess or

1 See, e. g., LI CHEN, *Chinese Law in Imperial Eyes: Sovereignty, Justice, and Transcultural Politics*, New York 2016; TEEMU RUSKOLA, *Legal Orientalism: China, the United States, and Modern Law*, Cambridge (MA) 2013; LYDIA H. LIU, *Clash of Empires: The*

*Invention of China in Modern World Making*, Cambridge (MA) 2006; JAMES HEVIA, *English Lessons: The Pedagogy of Imperialism in Nineteenth-Century China*, Durham 2003; JOHN Y. WONG, *Deadly Dreams: Opium, Imperialism, and the Arrow*

*War (1856–60) in China*, Cambridge 1998.

pretend to think themselves bound to observe in their dealings with one another, is often very little more than mere pretence and profession» (671). Despite these contradictions, the European law of nations was often presented by the European empire builders to the Chinese (and other non-Western peoples) as universally true and legally binding during the 18th and 19th centuries. Instead of stressing the seemingly totalizing domination of the Euroamerican discourse of international law and power, a critical re-examination of the historical processes and forces that helped to suppress these internal contradictions and universalize the imperial discourse may allow us to

challenge, *from within*, its presumed coherence and legitimacy in the past and present.<sup>2</sup> A history of the early modern European legal imagination is also a history of the politics of boundary-making and the present book certainly helps lay bare many of the taken-for-granted epistemological and normative prejudices of that imagination and their enduring influence upon the international legal and political order of our own time. Let us hope that a very different kind of reimagination will be on the horizon.



2 CHEN, Chinese Law in Imperial Eyes (n. 1).