

Editorial: The same performance, and so different. Marking the re-publication of *From Apology to Utopia*

By Morag Goodwin and Alexandra Kemmerer*

The re-issuing of Martti Koskenniemi's seminal work *From Apology to Utopia* by Cambridge University Press is undoubtedly cause for celebration. No more the frustrated search for its distinctive blue and red cover in the library, at the second-hand book store, on abebooks.com, its re-publication constitutes a smudging of the boundaries between one generation of international lawyers and the next: now we can all own a copy!

Yet whilst we can perhaps all agree that CUP's decision to re-issue the original text of Koskenniemi's doctoral thesis with a new epilogue is a good thing, FATU is one of the most divisive texts in international law. It has created disciples and dissidents, produced admiration and alienation. While *From Apology to Utopia* appears often to act as a sort of lightning rod for all that we disagree upon, the strength of our reaction to it – revelation or sacrilege – is unifying: no-one would deny its importance. Indeed, it is described in this symposium as probably “the last great original treatise in the international law field”.

The suspicion that FATU represents a turning-point in the discipline of international law, that when a future scholar of a similar stature does for the 21st century history of international law what Koskenniemi has done for the 19th, they might begin in the 1980s and with FATU, is reason enough to celebrate it. Yet the inspiration for this symposium stemmed as much from intellectual curiosity as the desire to pay homage; what is it about this text that draws us in, that – love it or loathe it – continues to fascinate still 18 years after its original publication?

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What has become apparent in the preparation of this symposium, and which should perhaps have been obvious to any one who has attempted to take up the challenge that FATU represents, whether in print or in the privacy of one's own workspace, is the seemingly infinite number of ways in which one can engage with this text. Like the doctrines of international law that Koskenniemi set himself the task of unravelling, FATU can apparently support almost any interpretation. In doing so, it appears to have inspired within the discipline a new creativity, a variety of styles and formats, a fresh and unorthodox art of legal writing.

Thus while the purpose of this symposium is to celebrate FATU, yes, it is to do so by questioning it, by engaging in a conversation with a text, its author and its readers. And with their texts and their readers. And so on, *ad infinitum*. As Koskenniemi's book enters this second phase of its existence, this symposium is intended as prolegomenon for further conversation as well as an attempt to understand what it is that makes this text so influential that it continues to draw young international lawyers to it, its promise spread by word of mouth and dog-eared photocopies. What is it that its readers are hoping to find there, what needs do they expect to be fulfilled? What do they, what do we, actually find there?

Our contributors to this symposium are a range of scholars from different locations, career positions, and perspectives, although, as is often the case, there is not perhaps as much variety in the end as we would have hoped for. Rather than presenting contributors with the questions we had ourselves raised, we asked them instead to tell us about their personal experience of FATU, about what it has meant to their work, how it has shaped their thinking, what it has done to their self-understanding of themselves as an international lawyer. Instead of attempts at comprehensive interpretations of the text or the new epilogue, we hoped for personal engagements with the book which could act as a window to its beguiling character. Many such windows were opened and more perspectives offered than one could possibly have expected. We found answers to our own questions, but also new questions, and questions questioning us, and the text, and the law.

One of our contributors is a contemporary and a fellow-traveller of Koskenniemi. Like two explorers aware of the other's expedition, purveying the same terrain, but starting from different points on the map, David Kennedy has accompanied Koskenniemi on the journey to map the intellectual contours of our discipline.¹ His personal account of their voyage from a Geneva cocktail party, on the seas of international law, to the status of revered admirals (our conclusion, not his), ends with a call for a critical re-engagement with Koskenniemi's text, a book that should

¹ The language of exploration is borrowed from Anne Orford in this symposium.

be treated not as “a given, a rock to be digested or manoeuvred around”, but rather as “a provocation to engage and revise”.

But for this one notable exception, our contributors (as we ourselves) were not around for the original publication. What has FATU meant to them?

Jason Beckett presents the beginnings of an argument that to understand a text is to be sympathetic to it. His contribution is both a confession to misunderstandings of the past as well as an apology for following up his desire for commensurability within Koskenniemi’s writings; his is a statement of intention to accept and respect fragmentations and crooked paths in that writing without trying to impose unity.

While for Beckett FATU represents a rejection of universalism, it is for Jochen von Bernstorff akin to Kelsen’s universalism of the empty legal form, “in itself already a highly political project”. Anne Orford presents FATU as an argument for international law as the grammar of political discourse, while Beckett sees in it a claim for international law as the language itself. Where Beckett sees FATU as positioned between the normative rock of the rejection of universalism and the hard place of a commitment to peace, von Bernstorff sees in the text a critical, deconstructivist rejection of the Kelsenian belief of “peace through law”, the “evolutionary vision of an international law gradually constraining the dark forces of nationalistic policies”.

Christoph Möllers discovers in the pages the voice of a lawyer talking to lawyers, a master of his craft introducing the reader to “a form of criticism that is itself methodologically deeply indebted to the craft of public international law”; Anne Orford sees a diary of the day-to-day experience of *being* an international lawyer; Mario Prost finds it a journal of *becoming* an international lawyer by overcoming the “positivist blues”. Kennedy has read in it an intellectual history of the discipline, while Balakrishnan Rajagopal assesses the “critical thrust” of FATU to be its immanent “critique of power”, which has been further developed in Koskenniemi’s “own subsequent writings on hegemony, imperialism and the role of ethics”.

In his concluding comment, the author himself sets out to “re-imagine the game”, to analyze two constant sources of puzzlement emerging from the discussion around FATU, in particular highlighting its “pervasive and relentless, even tiring binarism” by taking the elegant metaphorical detour of remembering a dance performance, no less “binary”, he saw while writing FATU in the late 1980’s. In his characteristically subtle voice, Koskenniemi engages his readers in a crisply fresh conversation on “normativity” and “concreteness”, thereby opening new avenues of reception for an already classical treatise.

It is too difficult to predict the reception of FATU among future generations of international law students (although this clunky CUP edition is much less inviting than the blue and red volume from the Finnish Lawyer's Publishing Company, and smacks more of textbook than the subversive contraband feel that the look and scarcity of the original held). What can perhaps be hoped for the future is, as Kennedy calls for, more serious critical engagement with the text itself, less disciples and more interlocutors.

What FATU appears to represent for all our contributors is a plea for a professional ideal that Florian Hoffmann labels in his contribution as "passionate coolness", for a virtue called in a language almost forgotten "sobria ebrietas", "sober drunkenness". Ultimately, FATU represents a plea to question our assumptions about our practice of international law whether as practitioners or as academics, as a call to search out the inherent biases in the structures and institutions that we use, to recognise the choices we make and to take responsibility for them. Who can argue with that? Hopefully everyone.