From Apology to Utopia

THE STRUCTURE OF INTERNATIONAL LEGAL ARGUMENT
“Law is incapable of providing convincing justifications to the solution of normative problems.”

Martti Koskenniemi
Today’s Presentation

- Author
- Structure of the book
- Juxtapositions
- Example: jus cogens
- Beyond objectivism
- Epilogue
Martti Koskenniemi

- Born 1953 in Finland (67 years old)
- International lawyer and diplomat
- Professor at many prestigious universities
From Apology to Utopia

- Doctoral thesis in 1989
- Systematic criticism of legal doctrine and argument
- From one unresolvable debate to another
- Incoherent, contradictory and indeterminate argumentative structure
Juxtapositions

- Normativity vs. concreteness
- Ascending vs. descending
- Apology vs. utopia
Juxtapositions

UTOPIANISM

- Moralistic nature
- Underlegitimizing

APOLOGISM

- Infinite flexibility
- Overlegitimizing
Juxtapositions

NORMATIVITY
- Law applicable even against a state which is opposed to it
- Autonomy from particular state behavior, interest and will
- Utopia

CONCRETENESS
- Responsiveness to changing state behavior, will and interest
- Process aspect of law
- Law verifiable and justifiable independently of what anyone might think that law should be
- Apology
Juxtapositions

DESCENDING
- Code is superior to the state
- Non-consensual
- Privileges normativity

ASCENDING
- State is superior to the code
- Consensual
- Privileges concreteness
Example: Jus Cogens

- Compromise of descending and ascending
- Expectations of objectivity failed
- Either based on a theory of justice or cannot be opposed to a non-consenting state
Beyond Objectivism

- Reimagine the game and reconstruct its rules
- Deviations from the rule of law and movement towards politics
- No application of ready-made legal principles
- Open political conflict and constant institutional revision
- Critical-normative practice

Re-establishing the identity of international law by re-establishing that of the international lawyer as a social agent
Epilogue and Conclusion

“International law is what international lawyers make of it.”

- 2005
- No “centre”
- Indeterminacy: central aspect of international law’s acceptability
- Decisionism
- Structural bias in the legal institutions