



HAL
open science

Legal Imagination as Resistance

Jean d'Aspremont

► **To cite this version:**

Jean d'Aspremont. Legal Imagination as Resistance. *Rechtsgeschichte - Legal History. Journal of the Max Planck Institute for European Legal History*, 2021, 2021 (29), pp.265-266. 10.12946/rg29/265-266 . hal-03971450

HAL Id: hal-03971450

<https://hal-sciencespo.archives-ouvertes.fr/hal-03971450>

Submitted on 3 Feb 2023

HAL is a multi-disciplinary open access archive for the deposit and dissemination of scientific research documents, whether they are published or not. The documents may come from teaching and research institutions in France or abroad, or from public or private research centers.

L'archive ouverte pluridisciplinaire **HAL**, est destinée au dépôt et à la diffusion de documents scientifiques de niveau recherche, publiés ou non, émanant des établissements d'enseignement et de recherche français ou étrangers, des laboratoires publics ou privés.



Distributed under a Creative Commons Attribution| 4.0 International License

Rechtsgeschichte Legal History

www.lhft.mpg.de

<http://www.rg-rechtsgeschichte.de/rg29>

Zitiervorschlag: Rechtsgeschichte – Legal History Rg 29 (2021)

<http://dx.doi.org/10.12946/rg29/265-266>

Rg **29** 2021 265 – 266

Jean d'Aspremont*

Legal Imagination as Resistance

* Sciences Po Law School, Paris, jean.daspremont@sciencespo.fr



Jean d'Aspremont

Legal Imagination as Resistance

In its author's own saying, *To the Uttermost Parts of the Earth* constitutes a history of legal imagination understood as a history of the ways in which ambitious men, mostly in Europe, used the legal vocabularies available to them in order to react to import events in the surrounding world« (1). As a history of legal imagination, *To the Uttermost Parts of the Earth* continues – and decisively contributes to – a now firmly established scholarly tradition of engagement with legal imagination in the international legal literature. In fact, nowadays, international lawyers often invoke imagination to refer to the discursive, argumentative, interpretive, performative possibilities that are offered (or refused) to them by their tradition, their training, their discipline, their vocabularies, their forms, their symbolic universe, their history, their regime of truth, their belief system, the structure of their argumentation, etc. That the author perpetuates such engagement with legal imagination is no coincidence, for Martti Koskenniemi himself has long been instrumental in elevating legal imagination into one of the points of entry into the scrutiny of international lawyers' ways of thinking.

Limited space has been allocated to the contributors of this *Forum*. Because I feel embarrassed to speak about an impressive 1107-page long history of legal imagination within such a restricted space, I want to start by saying something about space. I particularly wish to say a few words about the space provided by Martti Koskenniemi's book *as a book*. A book often comes across as a neat, linear, totalizing and systematic container for a set of pre-existing ideas, historical findings, stories, arguments, etc. The 1107 pages of *To the Uttermost Parts of the Earth* can certainly be perceived this way. Yet, in my view, there is no book that functions just as the container for pre-existing ideas, historical findings, stories, arguments, etc. Indeed, for I believe there is no content that pre-exists its inscription, a book cannot be distinguished from its content. A book, as inscription, always supplants its ever deferred and always absent content. This book is no exception to that.

The reason I am making this point – which I noticeably borrow from French poststructuralist literary theory – is to highlight why I believe that Martti Koskenniemi's *To the Uttermost Parts of the*

Earth offers us less a set of pre-existing ideas, historical findings, stories, arguments, etc. that ought to be interpreted by exegetic readers but more a *space* where something happens and will be happening in the decades to come. As a book, it is a space for a great variety of events that are yet to come. What happens and will happen in the space provided by his monograph is and will be the result of his readers exercising imagination. What I mean here is that the readers of *To the Uttermost Parts of the Earth* are bound – just as the contributors to this *Forum* are as they venture into the space offered by that volume, to fill it through the exercise of imagination. Imagination is one of the ways in which one fills the space provided by the inscriptions with which one engages in order to make something happen. Interestingly, *To the Uttermost Parts of the Earth*, as a book on the history of legal imagination, offers a space now for imagining how lawyers, theologians, merchants, poets, philosophers, medical doctors and economists have themselves filled the space available to them through their imagination then. In that sense, *To the Uttermost Parts of the Earth* is a happening about centuries of happenings or, said differently, it is a space about uses of space then and now. This entails that the readers are not only following the footsteps of all the protagonists whose stories and interventions are told by Martti Koskenniemi in his new book; they are also caught in the same indefinite space.

The abovementioned emphasis on the idea of space could be construed as supporting a reading of *To the Uttermost Parts of the Earth* as yet another book on the constraining dimension of structures and, thus, on the limited repertoire of possibilities left to international lawyers by virtue of their specific regimes of truth. After all, the idea of space comes with the idea of capacity, limit, boundary, possibility, etc. What is more, a reading of *To the Uttermost Parts of the Earth* that foregrounds the limited discursive, argumentative, interpretive, performative possibilities available to international lawyers would not be entirely unwarranted, for Martti Koskenniemi has long been interested in how structures govern and repeatedly made the point that only certain discursive, argumentative, interpretive, performative possibilities are within

reach because of the work of structures. In that sense, it is very tempting to read this book as a continuation of the author's structural work on international law's limited possibilities. Yet, I read *To the Uttermost Parts of the Earth* in the opposite way. I actually take it as a work on the thinking of the impossible then and now. Let me explain this point, which is my way to fill the space provided by the book in the very limited space allotted by the convenors of this *Forum*.

Whilst Martti Koskenniemi is prompt to recognize – drawing on Gaston Bachelard's notion of epistemological obstacles – that vocabularies constitute »the historical baggage that limits what is possible to imagine in a persuasive fashion today« (4), he regularly indicates that exercises of imagination by the lawyers, theologians, merchants, poets, philosophers, medical doctors and economists that populate his history of legal imagination are works *around* the vocabularies that »block« thinking and »simplify« reality (3). For Martti Koskenniemi, imagination is a tool that allows one to shift between discourses, distort vocabularies, and possibly use the language against itself. This is also how I read what the author is trying to tell the readers in the last chapter of the book. Indeed, in that final part, the author, after rejecting point blank the old modernist assumption that language mechanically carries content and thought, immediately takes distance from the opposite view according to which language enjoys full primacy over content and thought. Martti Koskenniemi specifically writes that »[o]ne of the ways in which I find the thesis about the primacy of language to thought and action to be too strong is that it exaggerates the passivity of imagination« (952–953). In my own reading of that concluding chapter, the author is telling us that the structure governs *but not entirely*. This dent in the sovereignty of the structure is, for Martti Koskenniemi, the work of imagination. To put it simply – and maybe somewhat simplistically – imagination, for Martti Koskenniemi, is the way out of the structure. ■

That imagination, according to my reading of Martti Koskenniemi's understanding it, is the way out of the structure is the very reason why I read *To the Uttermost Parts of the Earth* as a work on the thinking of the impossible. For I believe that there is no way out of the structure and that the outside of the structure remains within the structure, the striving for an »outside« of the structure that comes with the exercise of imagination is bound to belong to the impossible. In other words, trying relentlessly to get out of the structure is a type of thinking of the impossible.

It should be made clear that thinking about the impossible is no minor thing, let alone a fantasy. It could be argued that, as a form of thinking, thinking about the impossible is the greatest form of resistance at the disposal of international lawyers against their tradition, their training, their discipline, their vocabularies, their forms, their symbolic universe, their history, their regime of truth, their belief system, the structure of their argumentation, etc. In that sense, imagining, as it is construed by Martti Koskenniemi in *To the Uttermost Parts of the Earth*, is resisting. His history of legal imagination is thus a history of resistance.

A final observation is warranted. Whether all the multitude of acts of resistance by these ambitious European lawyers, theologians, courtiers, professors, advisers, political writers, etc. have resisted the just or the unjust is yet another question – and *To the Uttermost Parts of the Earth* allows us to think that more often than not resistance has gone hand-in-hand with injustice. Speaking of a better world, as Martti Koskenniemi recalls on several occasions in his book, requires that we are able to speak of the injustices of the past as they have been produced by exercises of imagination, including by the work of resistance.