

Re-Reading Historic Articles in the ZaöRV: Anniversary Series

International Law and Power Politics: On Koskenniemi's *Perceptions of Justice*

Monica Hakimi*

Columbia Law School, New York, United States

monica.hakimi@columbia.edu

Abstract	739
I. Introduction	740
II. The American Universe	741
III. The European Universe	747
IV. A Final Rupture?	751
V. Conceptual Convergence	753
VI. Conclusion	757

Abstract

Martti Koskenniemi wrote 'Perceptions of Justice' against the backdrop of the 2003 Iraq War. The piece draws a stark distinction between American and European conceptions of justice – and approaches to international law. Over twenty years later, his distinction might still (or again) resonate. This retrospective analyses it in light of his other work and more contemporary events, arguing that it is a mix of misguided and confused. The United States and Europe have for decades, if not centuries, been profoundly entwined; each has significantly shaped and been shaped by its relationship with the other. The urgent question now is not what our distinct, essential characteristics might be but how we will redefine ourselves going forward, given the enormous challenges that we both, and the world more generally, confront. We are unlikely to make much progress on this question so long as we imagine, as Koskenniemi and the U.S. Trump Administration both seem to

* William S. Beinecke Professor of Law, Columbia Law School. I am grateful to Madison Finley for excellent research support and to Don Herzog, Jacob Katz Cogan, and the editorial team at HJIL for their valuable feedback on earlier drafts.

do, that if law does not constrain power, it must just be the sieve through which power runs.

I. Introduction

Martti Koskeniemi published *Perceptions of Justice: Walls and Bridges Between Europe and the United States* in 2004, with the 2003 Iraq War fresh in mind. The article ‘insist[s]’ on contrasting American and European sensibilities, in an effort to show that they are ‘informed by different, indeed incompatible notions of justice’ and ‘live in incommensurable conceptual universes’.¹ In this telling, Americans are imperial instrumentalists, eager to impose their worldview on others, often through the resort to military power and without regard to legal constraints. Europeans are more (for lack of a better word) enlightened. They better appreciate the importance of international law – and specifically, of adhering to international legal form and legal rules – as a way to recognise ‘the other as equal, even similar to oneself’.² Of the two sensibilities, Koskeniemi clearly prefers the latter. He suggests that it provides the best path forward.

The question is whether this analytic frame – which rests on a contradistinction between two stereotypes – illuminates ‘a deeper insight’ that should inform how international lawyers approach the enterprise.³ In 2026, the frame might still (or again) resonate. During the second Trump administration, the United States has promoted an ‘America First’ agenda⁴ that undercuts many multilateral institutions⁵ and relies heavily on U.S. military and economic coercion to advance supposed U.S. interests.⁶ Has the United States always behaved so imperialistically, or are we witnessing something new? And how does Europe fit into the picture? Does Europe offer ‘a normative alternative’⁷

¹ Martti Koskeniemi, ‘Perceptions of Justice: Walls and Bridges Between Europe and the United States’, *HJIL* 64 (2004), 305–314 (306).

² Koskeniemi, ‘Perceptions’ (n. 1), 313.

³ Koskeniemi, ‘Perceptions’ (n. 1), 306.

⁴ The White House, National Security Strategy of the United States of America: November 2025, November 2025, at 8, available at <<https://www.whitehouse.gov/wp-content/uploads/2025/12/2025-National-Security-Strategy.pdf>>, last access 22 June 2026.

⁵ Jacob Katz Cogan, ‘The Trump Administration Signals Major Reevaluation of U.S. Engagement with International Organizations’, *AJIL* 119 (2025), 777–789.

⁶ E.g., Ariane Tabatabai and John Drennan, ‘Understanding Trump’s Coercive Foreign Policy’, *Lawfare*, 13 February 2026, available at <<https://www.lawfaremedia.org/article/understanding-trump-s-coercive-foreign-policy>>, last access 22 June 2026.

⁷ Helmut Philipp Aust, Claus Kieß and Heike Krieger, ‘The End of an Era?: On US Intervention in Venezuela and Its Consequences’, *Verfassungsblog*, 3 February 2026, doi: 10.59704/ca1a455631ad72f8.

to the United States, one 'rooted in democracy, human rights, and the rule of law [...] based on the Enlightenment', or are the two more alike than they are different?⁸

Koskenniemi himself seems to have been of two minds on these questions. A few years after publishing *Perceptions of Justice*, he retreated from the stark dichotomy that he had earlier 'insist[ed]' on drawing.⁹ With the benefit of some reflection, he said, Americans and Europeans seem not to 'live in incommensurable conceptual universes';¹⁰ they instead 'appear to inhabit the same conceptual space'.¹¹ In Koskenniemi's then-more-considered opinion, both suffer from a common flaw. They 'appear equally fixated to the search for a right answer and the belief that this is accessible by technical reasoning, in one case through interpretation, in the other by 'rational choice'.¹²

My view, which I will develop over the course of this essay, is that this entire line of reasoning is misguided. Trading in simplistic narratives and convenient stereotypes does not give us a 'deeper insight' into the world.¹³ It misrepresents reality and distracts us from the serious task before us. In fact, the United States and Europe have for decades, if not centuries, been profoundly entwined. Each has shaped and been shaped by its extensive connections to the other. The questions that require urgent attention are not what the essential characteristics of each might be but how we can realistically redefine ourselves from here – both separately and together – given the enormous problems that we, and the world more generally, confront.

II. The American Universe

Koskenniemi begins *Perceptions of Justice* with an anecdote about America. In the 1970s, his eventual-wife Tiina spent a year as an exchange student in the American Midwest. As her year ended, 'all of [her American friends] were sorry that she would have to leave the US and felt that this was,

⁸ Anne van Aaken, 'From Cooperation to Anomie and Transaction in the Transatlantic Relationship? A View from Europe on the Trump Administration 2.0', *AJIL* 119 (2025), 723-734 (723).

⁹ Koskenniemi, 'Perceptions' (n. 1), 306.

¹⁰ Koskenniemi, 'Perceptions' (n. 1), 306.

¹¹ Martti Koskenniemi, 'The Politics of International Law – 20 Years Later', *EJIL* 20 (2009), 7-19 (16). The text that appears to retreat from the earlier claim reads: '[T]he more I think about the traditional (European) jurisprudence of exegesis and the managerialism that seeks to challenge it, the more the two appear to inhabit the same conceptual space.'

¹² Koskenniemi, 'Politics' (n. 11), 16.

¹³ Koskenniemi, 'Perceptions' (n. 1), 306.

ultimately a sad turn in her life, an aspect of the tragedy and injustice in the world – the injustice that not all can be Americans”.¹⁴ The story serves to expose what Koskenniemi takes to be the quintessentially American characteristic: the belief that ‘in every human being, more or less deep, lives an American’, and that the U.S. mission in the world is to ‘liberate that little figure’, including with the use of military force, when necessary.¹⁵

No doubt, some Americans can be seen in Koskenniemi’s stereotype, not least the neo-conservatives who were ascendant in President George W. Bush’s administration and drove the 2003 Iraq War. Stereotypes often *do* contain some truth. But they usually also distort reality and overlook contrary facts to create false impressions and significant blind spots. So, let me offer my own American story and explain why I think it offers a clearer window into America’s relationship with the rest of the world.

My parents came to America shortly before Tiina did, but they arrived from Iran, not Finland. They came neither with a ‘plan’, nor on an exchange program to get them settled, nor secure in the belief that they would soon return to life as normal at home.¹⁶ After the 1979 Iranian revolution, they never did return home. Some of my most salient childhood memories are of their struggles as they realised that they were destined to be American – watching television footage of the revolutionary takeover of the U.S. embassy in Tehran, trying in vain to contact close friends and relatives, inviting more recent emigres to live with us for months at a time, and of course, the constant discomfort of being asked, ‘Where are you from? No, where are you *really* from?’

I myself was too American for my Iranian relatives and too Iranian for my American surroundings. I remember deciding, as only a child could, that I would lean into becoming American. I wanted to leave behind what Iran for me, at the time, represented. Iran was closed, both practically and conceptually. Many of my relatives were stuck there for years after the revolution. They seemed to lack effective agency, even once they arrived in the United States, unable to adjust to their new surroundings. Relative to their American counterparts, they seemed, on the whole, insular, tribalistic, and misogynistic. There were certain ways to behave, and certain ways not to behave, and the rules for men and women were different. The United States was more open. But it was also more confounding. Even as I wanted to be American, I could not figure out what that meant, because as I came to realise, America is not one thing.

The United States is a highly pluralistic and diverse country. We have, internal to us, isolationists, humanists, xenophobes, and hegemonists. We

¹⁴ Koskenniemi, ‘Perceptions’ (n. 1), 305.

¹⁵ Koskenniemi, ‘Perceptions’ (n. 1), 307.

¹⁶ Koskenniemi, ‘Perceptions’ (n. 1), 309.

have insular religious communities and secular cosmopolitan ones. We have some of the world's best institutions for research and those who distrust and resent them. We have sizeable immigrant populations from all over the world. We have been, for most of my life, economically and culturally dynamic, democratic, and committed to – one might even say obsessive about – the practice of law. Any claim that we are uniformly committed to spreading a singular, American brand of freedom to the rest of the world, law be damned, strikes me as deeply unserious.

Indeed, although Koskenniemi posits that all Americans share a particular conception of the world, his account of the American conception seems to take different twists each time he references it. First, he presents the American conception as sceptical of the added value of international law. He reports that his 'friends in Massachusetts' deride him even for invoking foundational legal texts.¹⁷ 'Come on, ... Martti', they say, 'everything about Europe is dependent not on law but on American power!'¹⁸ These Americans attribute world events to U.S. power, 'not ... law'.¹⁹ Law is, for them, irrelevant. Second, Koskenniemi presents the American conception as amoralistic. International law might at times have value, in this version, but its added value depends on factors that lie outside it. Nothing internal to law makes it worthwhile, so there is not any reason to 'honour [it] simply because it is there'.²⁰ Third, the American conception is instrumentalist. International law 'has value as an instrument' for those whose interests are embedded in it.²¹ 'Once you opt for international law', he says, 'what you receive are treaties made by more or less democratic governments acting so as to advance the interests of their peoples or, perhaps more often, the elites of individual states'.²² Finally, the American conception is messianic. International law has value not just to the Americans whose interests are embedded in it but also to the rest of the world, since all are thought to benefit from the freedoms that the United States uses it to bestow.

One might reasonably ask whether this conception – in turns, sceptical, amoralistic, instrumentalist, and messianic – is internally coherent. For example, if Americans are across-the-board sceptical of the added value of international law, how can we also see it as an instrument for advancing U.S. interests or be messianic about it? If we think it is an instrument for embedding and advancing U.S. interests, wouldn't we also think that it carries the

¹⁷ Koskenniemi, 'Perceptions' (n. 1), 305.

¹⁸ Koskenniemi, 'Perceptions' (n. 1), 305 f.

¹⁹ Koskenniemi, 'Perceptions' (n. 1), 306.

²⁰ Koskenniemi, 'Perceptions' (n. 1), 308.

²¹ Koskenniemi, 'Perceptions' (n. 1), 307.

²² Koskenniemi, 'Perceptions' (n. 1), 307.

value of those interests? But putting aside these inconsistencies, one can find a throughline that ties Koskeniemi's different iterations together and to the overall tenor of the piece. The American conception is, at bottom, egoistic and self-involved.²³ For Americans, Koskeniemi suggests, international law never has any value independently of the United States. It has value insofar as it is backed by American power and advances American positions – as it often, when interpreted by Americans, does. We Americans deliver what we say law is, like a 'monologue [...] to a hostile world to which [we ourselves] remain closed'.²⁴ And we expect others happily to take what we give them.²⁵

To substantiate his claim, Koskeniemi references President Bush's 2002 remark that '[t]he ideal of America is the hope of all mankind'.²⁶ In fact, many Americans (in and out of government) found that sentiment to be problematic, especially as the basis for the 2003 invasion of Iraq.²⁷ Many wanted the government to leave Iraq and Afghanistan almost immediately upon arrival.²⁸

²³ See also Koskeniemi, 'Perceptions' (n. 1), 311 (describing the American conception as reflecting 'the position of the powerful actor [...]: a thoroughly self-reliant, self-centred identity, less imperial than aloof, fearful of corruption by contact with the outside').

²⁴ Koskeniemi, 'Perceptions' (n. 1), 311.

²⁵ See also Koskeniemi, 'Perceptions' (n. 1), 314 ('The instrumentalist bridge takes you over: you with everything that belongs to you.').

²⁶ Koskeniemi, 'Perceptions' (n. 1), 307 (citing Present George W. Bush's Remarks to the Nation: President's remarks to the Nation, Ellis Island, 11 September 2002, available at <<https://georgewbush-whitehouse.archives.gov/news/releases/2002/09/20020911-3.html>>, last access 22 June 2026).

²⁷ For evidence of the popular discontent, see Eric Lichtblau, 'Threats and Responses: Dissent; Tens of Thousands March Against Iraq War', *The New York Times*, 16 March 2003, available at <<https://www.nytimes.com/2003/03/16/us/threats-and-responses-dissent-tens-of-t-housands-march-against-iraq-war.html>>, last access 22 June 2026, ('[T]ens of thousands of antiwar protesters marched in several demonstrations around the country [on March 16, 2003] in opposition to the Bush administration's policy on Iraq.'). For different positions – many of them critical – by American legal scholars, see Lori Fisler Damrosch and Bernard H. Oxman, 'Agora: Future Implications of the Iraq Conflict Editors' Introduction', *AJIL* 97 (2003), 553–557 (555) (introducing a symposium that 'present[s] a diversity of perspectives on what the Iraq crisis suggests for the future of the UN Charter system and general international law on the use of force'); Sean D. Murphy, 'Assessing the Legality of Invading Iraq', *Geo. L.J.* 92 (2004), 173–258 (criticising the US legal argument for the 2003 Iraqi invasion). For the discontent among scholars from other disciplines, see Robert J. Art et al., 'War With Iraq Is Not In America's National Interest', *The New York Times*, 26 September 2002, archived at <https://sadat.umd.edu/sites/sadat.umd.edu/files/iraq_war_ad_2002_2.pdf>, last access 22 June 2026, ('War with Iraq is not in America's national interests'); Daniel W. Drezner, 'IR Scholars Weigh in Against Iraq', *Foreign Pol'y*, 12 October 2004, available at <https://foreignpolicy.com/2004/10/12/ir-scholars-weigh-in-against-iraq/#cookie_message_anchor>, last access 22 June 2026, (describing an open letter signed by 650 international relations scholars, including 'a wide array of realists, rational choice theorists, democratization activists, area experts, and liberal institutionalists' 'blasting the Bush administration's foreign policy').

²⁸ On Iraq, see, for example, Gideon Rose, 'Iraq's Descent Chronicle of a Death Foretold', *Foreign Aff.*, 9 July 2014, available at <<https://www.foreignaffairs.com/iraq/iraqs-descent>>, last

Many challenged the torture, rendition, detention, and targeted killing programs that the U.S. government instituted against suspected terrorists.²⁹ Barack Obama, who in 2002 opposed the government's decision to invade Iraq, won the U.S. presidency in 2008 on the promise to withdraw U.S. combat troops as soon as possible and to close the detention facility at Guantánamo Bay, Cuba.³⁰

access 22 June 2026, ('From 2003 to 2006, the Bush administration essentially kept one eye on the exit.'). Carroll Doherty and Jocelyn Kiley, 'A Look Back at How Fear and False Beliefs Bolstered U.S. Public Support for War in Iraq', Pew Research Center, 14 May 2023, available at <<https://www.pewresearch.org/politics/2023/03/14/a-look-back-at-how-fear-and-false-beliefs-bolstered-u-s-public-support-for-war-in-iraq/>>, last access 22 June 2026, ('In October 2003, a 56 % majority of Democrats said that U. S. forces should be brought home from Iraq as soon as possible.'). On Afghanistan, see Anna Shortridge, 'The U. S. War in Afghanistan Twenty Years On: Public Opinion Then and Now', Council on Foreign Relations, 7 October 2021, available at <<https://www.cfr.org/blog/us-war-afghanistan-twenty-years-public-opinion-then-and-now>>, last access 22 June 2026, ('[E]ven in the early days of the war, Americans harbored doubts about the chances of success and the potentially high price tag'); Amber Phillips, 'When and How Americans Started Souring on the War in Afghanistan', The Washington Post, 19 August 2021, available at <<https://www.washingtonpost.com/politics/2021/08/18/when-how-americans-started-souring-war-afghanistan/#>>, last access 22 June 2026, ('In 2004, just a few years into the war, 41 percent of Democrats considered the war in Afghanistan to be a mistake, compared with just 9 percent of Republicans [...].'); David Bacon, 'The Fierce, Enduring Legacy of America's Anti-Afghanistan War Protests', The Nation, 9 September 2021, available at <<https://www.thenation.com/article/world/photos-afghanistan-war-protests/>>, last access 22 June 2026, ('The first marches followed Congress's vote by just two weeks, at the end of September. Once the invasion began, in October, the protests only continued.').

²⁹ See Jameel Jaffer, *The Drone Memos: Targeted Killing, Secrecy and the Law* (The New Press 2016), 7 ('When President George W. Bush left office, he was unpopular and distrusted. The evidence he had cited to justify the invasion of Iraq had been exposed as a fiction. His administration's torture policies were widely viewed as an embarrassment and an outrage. The Supreme Court had repeatedly rejected his policies relating to military detention and prosecution.'). Paul Gronke, et al., 'U.S. Public Opinion on Torture, 2001-2009', *Political Science and Politics* 43 (2010), 437-444 (using a public-opinion survey data to document the opposition among Americans to torture throughout the Bush presidency).

³⁰ See Transcript: 'Barack Obama's Caucus Speech', The New York Times, 3 January 2008, available at <<https://www.nytimes.com/2008/01/03/us/politics/03obama-transcript.html?page-wanted=print>>, last access 22 June 2026, ('I'll be a president who ends this war in Iraq and finally brings our troops home.'). Barack Obama, 'Remarks in Washington, DC: "The War We Need to Win"', The American Presidency Project, 1 August 2007, available at <<https://www.presidency.ucsb.edu/documents/remarks-washington-dc-the-war-we-need-win>>, last access 22 June 2026, ('As President, I will close Guantanamo, reject the Military Commissions Act, and adhere to the Geneva Conventions. Our Constitution and our Uniform Code of Military Justice provide a framework for dealing with the terrorists.'). Executive Office of the President, 'Review and Disposition of Individuals Detained at the Guantánamo Bay Naval Base and Closure of Detention Facilities', Executive Order No. 13492, 27 January 2009, 74 Federal Register 4897, available at <<https://www.federalregister.gov/documents/2009/01/27/E9-1893/review-and-disposition-of-individuals-detained-at-the-guantanamo-bay-naval-base-and-closure-of>>, last access 22 June 2026, ('The detention facilities at Guantánamo for individuals covered by this order shall be closed as soon as practicable, and no later than 1 year from the date of this order.').

What's 'astonishing', then, is not 'to what extent American academics agree on the ethical-political desirability of military intervention',³¹ but the extent to which American policymakers have been rudderless and unable to right this ship. Over the past two decades, they have ambled from one foreign crisis to another without clear goals or markers of success and eager to limit their military entanglements but unable effectively to do so.³² Obama did not close the detention facility at Guantánamo Bay. He took almost his full first term to remove U.S. troops from Iraq only to re-insert them a few years later to degrade the so-called Islamic State in Iraq and Syria (ISIS).³³ In 2011, he first resisted and then acceded to conducting a significant military operation in Libya.³⁴ He announced that he would withdraw all U.S. troops from Afghanistan only to leave them there as he left office.³⁵ President Trump campaigned in 2016 on promises to leave Afghanistan, but he, too, reversed course. In his first year in office, he sent extra forces to Afghanistan on a

³¹ Koskenniemi, 'Perceptions' (n. 1), 308, n. 10.

³² See James Dobbins, Gabrielle Tarini and Ali Wyne, 'The Lost Generation in American Foreign Policy: How American Influence Has Declined, and What Can Be Done About It', September 2020, RAND, 1-39 (13-14), available at <<https://www.rand.org/pubs/perspectives/PEA232-1.html>>, last access 22 June 2026, ('Twenty-first century American foreign policy has been criticized for its overreliance on force, its unrealistic objectives, and its lack of strategic coherence [...]'); William C. Martel, *Grand Strategy in Theory and Practice: The Need for an Effective American Foreign Policy* (Cambridge University Press 2015), 300 ('[I]n the absence of a single, identifiable adversary, American grand strategy entered a period of drift and imbalance, often in the direction of being highly reactive to events.'). See also, e.g., Carroll Doherty, Alec Tyson and Rachel Weisel, 'Support for U.S. Campaign against ISIS; Doubts about Its Effectiveness, Objectives', Pew Research Center, 22 October 2014, available at <<https://www.pewresearch.org/politics/2014/10/22/support-for-u-s-campaign-against-isis-doubts-about-its-effectiveness-objectives/>>, last access 22 June 2026, ('The public continues to support the U.S. military campaign against Islamic militants in Iraq and Syria. But [...] just 30 % think the U.S. and its allies have a clear goal' in taking military action.').

³³ See Michael Brill, 'Revisiting the War Against ISIS: The History of Operation Inherent Resolve and Its Future Under the Trump Administration', Institute for Future Conflict, 15 May 2025, available <<https://ifc.usafa.edu/articles/revisiting-the-war-against-isis#:~:text=For%20as%20much%20as%20President,rolling%20back%20the%20ISIS%20caliphate>>, last access 22 June 2026, ('For as much as President Obama had staked politically in withdrawing all US troops from Iraq by the end of 2011 and attempting to avoid reengagement with the country's political turmoil thereafter, he reluctantly deployed US forces back to Iraq after the fall of Mosul to ISIS in June 2014.').

³⁴ See Interview by Bernard Gwertzman with James M. Lindsay, 'Obama's "Poorly Conceived" Libya Intervention', Council on Foreign Relations, 25 March 2011, available at <<https://www.cfr.org/interview/obamas-poorly-conceived-libya-intervention>>, last access 22 June 2026.

³⁵ See The Associated Press, 'A Timeline of U.S. Troop Levels in Afghanistan Since 2001', Military Times, 6 July 2016, available at <<https://www.militarytimes.com/news/your-military/2016/07/06/a-timeline-of-u-s-troop-levels-in-afghanistan-since-2001/>>, last access 22 June 2026.

more narrowly defined mission³⁶ before ultimately making a weak deal with the Taliban that rendered the U.S. withdrawal in 2021 a *fait accompli* – and a complete mess.³⁷

U.S. foreign policy – and specifically, military policy – during this period did not reflect a master ‘plan for [the] world’.³⁸ Neither was it particularly instrumentalist, if by that one means driven by clearly delineated policy goals or a concerted effort to spread ‘the universal value which is the same as the American value’ (whatever that means).³⁹ Instead, U.S. policy reflected a hodgepodge of competing impulses, none strong enough to command the full weight of the U.S. government behind it but each too strong to be ignored.

III. The European Universe

And what of Europe? How does Koskenniemi describe its defining characteristics, in contradistinction to the United States? He contends that, unlike Americans, Europeans are ‘modest, often dull and bureaucratic’ and ‘nervous about [...] “empire”’.⁴⁰ Whereas Americans seek to impose their vision on the world, Europeans object to the idea that ‘international law can, and should, be replaced by the unilateral, world-ordering politics of a self-appointed hegemon’.⁴¹ They are, in this account, ‘suspicious of blueprints and moral rhetoric’, with one notable exception.⁴² Europeans are staunchly committed to formal law,⁴³ transposing onto it ‘the virtues that justice traditionally possessed’.⁴⁴ Convinced that we are ‘[u]nable to save ourselves’, Koskenniemi says, Europeans believe

³⁶ See David Nakamura and Abby Phillip, ‘Trump Announces New Strategy for Afghanistan that Calls for a Troop Increase’, *The Washington Post*, 21 August 2017, available at <https://www.washingtonpost.com/politics/trump-expected-to-announce-small-troop-increase-in-afghanistan-in-prime-time-address/2017/08/21/eb3a513e-868a-11e7-a94f-3139abce39f5_story.html>, last access 22 June 2026.

³⁷ See, e.g., Reuters, ‘Scathing Report on US Withdrawal from Afghanistan Blames Trump and Biden’, *The Guardian*, 1 July 2023, available at <<https://www.theguardian.com/us-news/2023/jun/30/us-afghanistan-war-military-pullout-report-biden-trump>>, (‘The White House Report effectively blamed the chaotic US pullout and evacuation operation on a lack of planning and troop reduction rounds by Trump following a 2020 deal with the Taliban to withdraw US forces.’), last access 22 June 2026.

³⁸ Koskenniemi, ‘Perceptions’ (n. 1), 309.

³⁹ Koskenniemi, ‘Perceptions’ (n. 1), 308.

⁴⁰ Koskenniemi, ‘Perceptions’ (n. 1), 310.

⁴¹ Koskenniemi, ‘Perceptions’ (n. 1), 309.

⁴² Koskenniemi, ‘Perceptions’ (n. 1), 310.

⁴³ Koskenniemi, ‘Perceptions’ (n. 1), 310.

⁴⁴ Koskenniemi, ‘Perceptions’ (n. 1), 312.

that ‘only law can save’.⁴⁵ And by ‘law’, he clearly means formal legal rules. ‘[I]f rules govern, the formalist assumes, then I am not at the mercy of others’, because ‘[a]ppeal to the pure form of the rule not only constructs oneself as a potential other but also the other as equal’.⁴⁶

When Koskenniemi wrote *Perceptions of Justice*, he maintained that the dichotomy between the American and the European conceptions is stark. In this account, the American conception reflects the position of the powerful, eager to impose its will on others, while the European conception reflects ‘the position of the weaker party, the one for whom law is not about fulfilling policy-objectives but for protection: for whom normative ambiguity is not an opportunity but a threat’.⁴⁷ According to Koskenniemi, the strong benefit from normative ambiguity through which they can exert power; the weak, from clear rules that forestall such power. ‘The point of instrumentalism is to override rules just as certainly as it is the point of rules to prevent impunity’.⁴⁸ Thus, unlike the egoistic and self-involved instrumentalism of Americans, ‘the formalist’s values reach beyond such individual preferences and back to the community’, as reflected in formal law.⁴⁹

If this depiction of the European sensibility is accurate, it gets lost in the broad arc of European practices. We can even put aside the long history of European colonisation. During the period in question, France has persistently worked to keep Africa within its sphere of influence with policies that support African autocrats and render many of their countries militarily and economically dependent.⁵⁰ Europe also expanded and turned more hegemonic during this period. In 2004, the European Union grew from fifteen to twenty-five states, significantly increasing its weight in global affairs.⁵¹ On the whole, more decision-making shifted from the national level to the European Union (EU) and then rippled out to regulate conduct outside EU borders.⁵²

⁴⁵ Koskenniemi, ‘Perceptions’ (n. 1), 310.

⁴⁶ Koskenniemi, ‘Perceptions’ (n. 1), 312 f.

⁴⁷ Koskenniemi, ‘Perceptions’ (n. 1), 312.

⁴⁸ Koskenniemi, ‘Perceptions’ (n. 1), 313.

⁴⁹ Koskenniemi, ‘Perceptions’ (n. 1), 313.

⁵⁰ See, e. g., Paul Taylor, ‘Macron’s Africa Reset Struggles to Persuade’, Politico, 13 March 2023, available at <<https://www.politico.eu/article/france-emmanuel-macron-africa-reset-strategy-francafrique/>>, last access 22 June 2026; see generally Tony Chafer, ‘Chirac and ‘la Françafrique’: No Longer a Family Affair’, *Modern & Contemporary France* 13 (2005), 7–23 (discussing the history of the French ‘sphere of influence – the so-called ‘*pré carré*’ – in sub-Saharan Africa’).

⁵¹ See Council of Europe, ‘2004 Enlargement: Facts and Figures’, last updated 30 January 2025, available at <<https://www.consilium.europa.eu/en/infographics/2004-enlargement-facts-and-figures/>>, last access 22 June 2026.

⁵² See Anu Bradford, *The Brussels Effect: How the European Union Rules the World* (Oxford University Press 2020).

Moreover, Europe consistently acted in close military alliance with the United States.⁵³ The 1999 intervention in Kosovo and the extensive state-building exercise that followed were conducted by the North Atlantic Treaty Organization (NATO). The United States and Europe also worked together through NATO – and on another state-building exercise – in Afghanistan following the terrorist attacks of 11 September 2001. Several European states that were at the time or would soon become EU members participated in the so-called ‘coalition of the willing’ against Iraq in 2003, with still more state-building to follow.⁵⁴ The 2011 Libya operation was, again, a NATO operation. Dozens of states, many of them European, participated in or otherwise supported the operation against ISIS in Iraq and Syria. The list goes on. Notwithstanding the deep ‘suspicio[n] of blueprints and moral rhetoric’ that Koskenniemi attributes to Europeans, they were, in fact, integral to these military (mis)adventures.⁵⁵

And then, of course, there is Ukraine. A few years before Russia invaded the Crimea region in 2014, President Obama announced what was already evident to many keen observers of U.S. foreign policy: the United States sought to ‘pivot’ away from Europe and the Middle East toward the Indo-Pacific region.⁵⁶ The pivot stalled out. European leaders evidently wanted more, not less, attention from the United States.⁵⁷ By the time Obama left office in 2017, he acquiesced. Though he continued to press European states to invest more in their mutual defence and in addressing other global problems, Obama ultimately used the 2016 NATO summit ‘to state clearly what will never change – and that is the unwavering commitment of the United

⁵³ See generally NATO, ‘NATO Operations and Missions’, last updated 30 July 2025, available at <https://www.nato.int/cps/en/natohq/topics_52060.htm>, last access 22 June 2026 (detailing NATO actions in Kosovo, Afghanistan, and Libya).

⁵⁴ See Philip H. Gordon, ‘The Crisis in the Alliance’, Brookings, 24 February 2003, available at <<https://www.brookings.edu/articles/the-crisis-in-the-alliance/>>, last access 23 June 2026 (‘[E]ight NATO members and ten EU candidates publicly lining themselves up with Washington rather than with France, Germany, or their domestic public opinion [...] join[ed] the coalition [...]’).

⁵⁵ Koskenniemi, ‘Perceptions’ (n. 1), 310.

⁵⁶ Barack Obama, ‘Remarks by President Obama to the Australian Parliament: Parliament House: Canberra, Australia’, 17 November 2011, available at <<https://obamawhitehouse.archives.gov/the-press-office/2011/11/17/remarks-president-obama-australian-parliament>>, last access 23 June 2026 (‘After a decade in which we fought two wars that cost us dearly, in blood and treasure, the United States is turning our attention to the vast potential of the Asia Pacific region.’). See also Kenneth G. Lieberthal, ‘The American Pivot to Asia’, Brookings, 21 December 2011, available at <<https://www.brookings.edu/articles/the-american-pivot-to-asia/>>, last access 23 June 2026.

⁵⁷ See, e.g., Michael Crowley, ‘Obama’s Latest Pivot – to Europe’, Politico, 24 April 2016, available at <<https://www.politico.com/story/2016/04/obama-europe-crisis-222368>>, last access 23 June 2026.

States to the security and defense of Europe, to our transatlantic relationship, to our commitment to our common defense'.⁵⁸

Within just a few months, that unwavering commitment to Europe – like so much else in U.S. foreign policy during this period – wavered. To the collective horror of most European leaders, President Trump openly and persistently called into question the continued relevance and desirability of NATO for the United States.⁵⁹ And yet, even Trump did not in his first term break the NATO alliance. So, when President Biden entered office in 2021 with the triumphant declaration that ‘America is back’,⁶⁰ Europe again rallied behind him.⁶¹ And when Russia embarked on a full-scale invasion of Ukraine in 2022, it was Europe, not the American public, that kept pushing the U.S. government to get more deeply involved (a more accurate term might be ‘mired’) in the conflict, without any obvious end game in sight.⁶²

⁵⁸ Cheryl Pellerin, ‘Obama: U.S. Commitment to European Security is Unwavering in Pivotal Time for NATO’, DoD News, 10 July 2016, archived at <<http://defense.gov/News/News-Stories/Article/Article/832567/obama-us-commitment-to-european-security-is-unwavering-in-pivotal-time-for-nato/>>, last access 23 June 2026.

⁵⁹ See Ashley Parker, ‘Donald Trump Says NATO is “Obsolete,” UN is a “Political Game”’, The New York Times, 2 April 2016, archived at <<https://archive.nytimes.com/www.nytimes.com/politics/first-draft/2016/04/02/donald-trump-tells-crowd-hed-be-fine-if-nato-brake-up/>>, last access 23 June 2026; David E. Sanger and Maggie Haberman, ‘Donald Trump Sets Conditions for Defending NATO Allies Against Attack’, The New York Times, 20 July 2016, available at <https://www.nytimes.com/2016/07/21/us/politics/donald-trump-issues.html?_r=0>, last access 23 June 2026.

⁶⁰ See Jim Garamone, ‘President Biden Tells World: “America Is Back”’, U.S. Department of War, 19 February 2021, archived at <<https://www.war.gov/News/News-Stories/Article/Article/2509091/president-biden-tells-world-america-is-back/>>, last access 23 June 2026.

⁶¹ See Aamer Madhani, ‘Biden Declares “America is Back” in Welcome Words to Allies’, Associated Press, 19 February 2021, available at <<https://apnews.com/article/biden-foreign-policy-g7-summit-munich-cc10859afd0f542fd268c0a7ddcd9bb6#>>, last access 23 June 2026 (‘“Welcome back, America,” said European Council President Charles Michel, effectively summing up the mood of the Munich conference.’); see also Mark Landler, ‘Global Leaders Chart a New Course in Post-Trump Era’, The New York Times, last updated 12 May 2025, available at <<https://www.nytimes.com/live/2021/02/19/world/g7-meeting-munich-security-conference/global-leaders-chart-a-new-course-in-post-trump-era?smid=url-share>>, last access 23 June 2026 (‘Whatever their lingering differences over Brexit or how to handle Russia and China, Mr. Johnson and other European leaders are eager to take advantage of an American president who wants to banish the “America First” policy of his predecessor, Donald J. Trump.’), last access 23 June 2026.

⁶² See, e.g., Alexander Ward and Quint Forgey, ‘Baltics Quietly Push Biden to Pursue Stronger Russia Policy’, Politico, 21 January 2022, available at <<https://www.politico.com/newsletters/national-security-daily/2022/01/21/baltics-quietly-push-biden-to-pursue-stronger-russia-policy-495814#:~:text=President%20JOE%20BIDEN%20did%20tell,by%20all%20NATO%20member%20countries>>, last access 23 June 2026, (‘[T]hree Baltic states have quietly lobbied U.S. and NATO officials to take their own concerns about the situation seriously – and to do something about it.’); Paul McLeary, ‘“Please Guys, Wake Up”: European Leaders Push Biden, Congress on Ukraine’, Politico, 18 January 2024, available at <<https://www.politi>

IV. A Final Rupture?

The 2024 U.S. election was in many respects a referendum on what the United States had become – both domestically and on the international plane. The two are, of course, connected. As the United States became a more global entity, it changed rather dramatically on the inside. For me personally, many of these changes have been positive. The possibilities for social and economic mobility in the United States during the second half of the twentieth century allowed my family's Persian community and many other immigrant communities to thrive. The openness of elite institutions of higher education allowed me to build a fulfilling life that would have been unimaginable to my childhood self. The enormous diversity across the United States provides me with endless opportunities to learn, to create, and to explore. I could go on; even with my misgivings, my appreciation for this country and what it has given me run deep. I also share the strong sense among many Americans today that we have lost our way. Over the past twenty years, our country has become harsher, more militant, more polarised, less social, and less responsive to the basic wants and needs of most of its population.

The backlash against what the United States has become (however one describes it) has been fierce. This backlash is, at least in part, a reaction to the United States's global orientation. Under the second Trump administration, the United States has actively worked to destroy the international legal and political order that earlier U.S. administrations had helped to create and tried to sustain.⁶³ As the United States has redefined itself and its position in the world, it has pushed Europe to do the same. In the process, Europe has not upheld all of the pre-existing international legal rules – or even the most

co.com/news/2024/01/18/biden-congress-ukraine-europe-00136404>, last access 23 June 2026; Shannon Pettypiece, 'Biden Heads to Europe Amid Pressure to Ramp Up Support for Ukraine', NBC News, 23 March 2022, available at <<https://www.nbcnews.com/politics/white-house/biden-heads-europe-pressure-ramp-support-ukraine-rcna20832>>, last access 23 June 2026, ('Poland has been pushing the U.S. to do more to get involved in the conflict, including a proposal for a NATO peacekeeping mission to Ukraine.');

Laura Gozzi and Tom Bateman, 'Pressure Grows on Biden to Let US Weapons strike Russia', BBC News, 30 May 2024, available at <<https://www.bbc.com/news/articles/c844g9eyzz7o>>, last access 23 June 2026, ('Pressure on the US to relax the ban on Ukraine striking inside Russia has ramped up in recent days, with France's President Emmanuel Macron voicing direct support for the move.').

⁶³ On the dramatic changes in U.S. governmental practice during the first several months of the second Trump administration, see Jacob Katz Cogan (ed.), 'Special Issue on the Contemporary Practice of the United States and the Outset of President Trump's Second Term in Office', *AJIL* 119 (2025), 667-825.

sacrosanct of these rules – simply because of their legal forms and no matter the downside costs. Europe has repeatedly hedged between its supposed commitments to international law and its interests in advancing its strategic position, relative to those around it.

The 2026 war with Iran is illustrative. The United States and Israel initiated a massive military campaign against Iran with the apparent goal of instituting a regime change and/or denying it nuclear weapon capabilities. The campaign contravenes the formal legal rules on the use of force, codified in the United Nations (UN) Charter. Most European leaders have not insisted on fidelity to these rules.⁶⁴ As Anthony Dworkin details, ‘several European leaders have implied that a realistic view of global politics requires moving away from fully supporting the prohibition on the use of force’, or that international law must be ‘weighed against the principle of reality’.⁶⁵ Most European states have chosen to lean toward, not away from, the United States.⁶⁶ When Iran reacted to the campaign against it by attacking its Arab neighbours, European states gave the anti-Iran coalition military support, even if only for what they said were ‘defensive’ operations.⁶⁷ When the UN Security Council addressed the war, European states endorsed a resolution that condemned Iran for attacking its neighbours, without supporting one that would also have con-

⁶⁴ For summaries of global and European reactions, see Claudia Ciobanu and Sam McNeil, ‘World Leaders React with Alarm, Caution to U.S. and Israeli Strikes on Iran’, *Los Angeles Times*, 28 February 2026, available at <<https://www.latimes.com/world-nation/story/2026-02-28/world-leaders-react-cautiously-to-u-s-israeli-strikes-on-iran>>, last access 23 June 2026; Lili Bayer and Andrew Gray, ‘EU Nations Call for “Maximum Restraint”, Respect for International Law in Iran Conflict’, *Reuters*, 1 March 2026, available at <<https://www.reuters.com/world/middle-east/eu-nations-call-maximum-restraint-respect-international-law-iran-conflict-2026-03-01/>>, last access 23 June 2026.

⁶⁵ Anthony Dworkin, ‘War Over law: Europe’s Unforced Errors Over the Use of Force in Iran’, *European Council on Foreign Relations*, 12 March 2026, available at <<https://ecfr.eu/article/war-over-law-europes-unforced-errors-over-the-use-of-force-in-iran/>>, last access 23 June 2026, (quoting Belgian foreign secretary Maxime Prévot). See also, e.g., Matthias Matthijs, ‘Europe’s Disjointed Response to the U.S.-Israeli War With Iran’, *Council on Foreign Relations*, 6 March 2026, available at <<https://www.cfr.org/articles/europes-disjointed-response-to-the-u-s-israeli-war-with-iran>>, last access 23 June 2026.

⁶⁶ E.g., Max Colchester and Bojan Pancevski, *Europe is Quietly Playing a Crucial Role in the Iran War*, *The Wall Street Journal*, 23 March 2026, available at <https://www.wsj.com/world/europe/europe-is-quietly-playing-a-crucial-role-in-the-iran-war-aad34a00?st=NsG3X8&reflink=article_email_share>, last access 23 June 2026.

⁶⁷ See ‘The Iran War Serves as a Stress Test for European Strategic Autonomy’, *The Soufan Center*, 10 March 2026, available at <<https://thesoufancenter.org/intelbrief-2026-march-10/>>, last access 23 June 2026; John T. Psaropoulos, *After Iran’s Warning, Europe Fails to Unite on War Launched by US, Israel*, *Al Jazeera*, 4 March 2026, available at <<https://www.aljazeera.com/news/2026/3/4/amid-middle-east-crisis-europe-fumbles-towards-mutual-defence>>, last access 23 June 2026.

demned the campaign against it.⁶⁸ However one describes the European position in this war – whether ‘disjointed’,⁶⁹ reflecting a ‘strategic vacuum’,⁷⁰ or ‘confused and divided’⁷¹ – Europe seems more at sea than not, without the United States standing closely by its side.

V. Conceptual Convergence

Given the extent to which the United States and Europe have historically been entwined, can we really say that the two occupy ‘incommensurable conceptual universes’?⁷² Koskenniemi himself went from ‘insist[ing]’ on their incommensurability to suggesting that they are actually ‘the same’.⁷³ What unites them, Koskenniemi asserted, is that they ‘appear equally fixated to the search for a right answer and the belief that this is accessible by technical reasoning, in one case through interpretation, in the other by ‘rational choice’.⁷⁴

I agree that the American and the European conceptions are not dichotomous. But in my view, their shared conceptual foundation runs much deeper than a desire for and belief in ‘a right answer’.⁷⁵ Many international lawyers, on both side of the Atlantic, share the assumption that the only alternative to establishing and adhering to formal legal rules is an individualistic free-for-all in which ‘everybody had better carry a rifle’.⁷⁶ Some put faith in formal legal rules, as the only option for forestalling anarchy; others deny that formal legal rules can. But the assumption that these are the only options – rule by law or rule without law – is fairly constant.⁷⁷

Koskenniemi leaves the assumption unstated, so to see how extensively it permeates his logic, one has to dig more deeply into his conceptual ‘gram-

⁶⁸ UNSC Res 2817 of 11 March 2026, UN Doc. S/RES/2817; UN, Security Council Adopts Resolution 2817 (2026) Condemning Iran’s ‘Egregious Attacks’ against Neighbours as Middle East Violence Rapidly Escalates, UN Doc. SC/16315, 11 March 2026, available at <<https://press.un.org/en/2026/sc16315.doc.htm>>, last access 23 June 2026.

⁶⁹ Matthijs (n. 65).

⁷⁰ Atlantic Council Experts, ‘Experts React: How the World Is Responding to the U.S.-Israeli War with Iran’, Atlantic Council Dispatches, 3 March 2026, available at <<https://www.atlanticcouncil.org/dispatches/experts-react-how-the-world-is-responding-to-the-us-israeli-war-with-iran/>>, last access 23 June 2026.

⁷¹ Dworkin (n. 65).

⁷² Koskenniemi, ‘Perceptions’ (n. 1), 306.

⁷³ Koskenniemi, ‘Politics’ (n. 11), 16.

⁷⁴ Koskenniemi, ‘Politics’ (n. 11), 16.

⁷⁵ Koskenniemi, ‘Politics’ (n. 11), 16.

⁷⁶ Koskenniemi, ‘Perceptions’ (n. 1), 313.

⁷⁷ I defend this claim at Monica Hakimi, ‘Thinking Constructively about International Law’, *Yale J. Int’l L.* 51 (2026), 43-95.

mar'.⁷⁸ Koskenniemi regularly suggests that, where formal legal rules do not resolve what is to be done, operational decisions must be attributable to extralegal forces – for example, raw power, abject self-interest, or base political preferences.⁷⁹ Consider his early critique of the proceduralisation of international environmental law and the associated paucity of formal legal rules. He contends that 'a "pure" procedural orientation will lead to little more than extended reformulations of the principle of the free choice of means'.⁸⁰ In other words, '[i]n the absence of materially constraining law and an external legal *telos*', each state has 'free choice' on how to proceed.⁸¹ At that point, the state's operational decisions by 'necessity' reflect 'political choices' because they cannot be based on the binding and consensual rules of formal law;⁸² they inherently involve 'genuine disagreements about the setting of environmental and economic priorities'.⁸³ In this logic, the only alternative to establishing formal legal rules that settle disagreements about what is to be done is for states to exercise 'free choice' in advancing their own priorities, to the detriment of those who disagree. 'For if the law is indeterminate', Koskenniemi instructs, 'there is nothing that may obstruct or realize any purpose'.⁸⁴ What happens must be attributable to the forces that lie outside law.

This assumption – that law ends wherever the formal legal rules do – puts Koskenniemi in a bind, because he also contends that formal legal rules cannot resolve what is to be done. In his telling, formal legal rules work like empty vessels through which 'any conceivable position in regard to a dispute

⁷⁸ Martti Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (Reissue Cambridge University Press 2006), 566–569.

⁷⁹ Koskenniemi, 'Apology to Utopia' (n. 78), 599 ('Antagonism is embedded in the *raison d'être* of the law itself and carried within it as the endlessly repeated rejection of its "other" ["direction", "power", "violence", "corruption", etc.]).

⁸⁰ Martti Koskenniemi, 'Peaceful Settlement of Environmental Disputes', *Nordic J. Int'l L.* 60 (1991), 73–92 (74).

⁸¹ Koskenniemi, 'Peaceful Settlement' (n. 80), 74, 85.

⁸² See, e.g., Koskenniemi, 'Apology to Utopia' (n. 78), 595, 602 (responding to the criticism that he 'exaggerate[s] the role of conflict in international law' by emphasising that he never aimed to deny the 'constant move to reconciliation' in international law); Martti Koskenniemi, 'What is International Law For?', in: Malcolm D. Evans (ed.), *International Law* (2nd edn, Oxford University Press), 57–81 (69) ('The very ideas of treaty and codification make sense only if one assumes that there at some point emerges an agreement [...]. The point of law is to give rise to standards that are no longer merely "proposed." [...]).

⁸³ Koskenniemi, 'Peaceful Settlement' (n. 80), 85 f. See also Koskenniemi, 'Politics' (n. 11), 7 f. ('[T]he kinds of issues that lawyers had always pointed to when they discussed the use of "discretion" reflect "the inevitability of 'politics' in the profession of public international law".').

⁸⁴ Martti Koskenniemi, 'Legal Universalism: Between Morality and Power in a World of State', in: Sinkwan Cheng (ed.), *Law, Justice, and Power: Between Reason and Will* (Stanford University Press 2004), 46–69 (60).

or a problem' can be taken.⁸⁵ Their indeterminacy is not, in his view, a 'scandal or (even less) a structural "deficiency"'.⁸⁶ It is, he says, 'an absolutely central aspect of international law's acceptability'.⁸⁷ But it means that the formal legal rules cannot constrain or excise the other forces that seep into how people interpret or apply them. In his influential *From Apology to Utopia*, Koskenniemi emphasises the 'inevitability of political choice' in law, where, he says, 'political choice' 'cannot be grounded on law'.⁸⁸ If law extends no further than the formal legal rules, and these rules are themselves indeterminate, then politics must run throughout law. And law cannot be 'an instrument for more or less shared "values" or "interests"'; neither can 'its significance' be tied to 'whether it made nations "behave" towards some postulated end-state'.⁸⁹

The bind, once one assumes Koskenniemi's logic, is that we are damned if we do and damned if we do not. We need to adhere to formal legal rules to constrain the outside forces that reflect existing power disparities,⁹⁰ but because these rules are themselves indeterminate, they cannot 'save us'.⁹¹ Worse, because they are contingent on the very forces that they are supposed to constrain, they reinforce the '*structural bias* in the relevant legal institutions' that serves the already powerful.⁹² 'In any institutional context', Koskenniemi explains, 'there is always such a structural bias, a particular constellation of forces that relies on some shared understanding of how the rules

⁸⁵ Koskenniemi, '*Apology to Utopia*' (n. 78), 564.

⁸⁶ Koskenniemi, '*Apology to Utopia*' (n. 78), 591.

⁸⁷ Koskenniemi, '*Apology to Utopia*' (n. 78), 591.

⁸⁸ Koskenniemi, '*Apology to Utopia*' (n. 78), 602, 613.

⁸⁹ Koskenniemi, '*Apology to Utopia*' (n. 78), 564, 589. See also Martti Koskenniemi, 'The Fate of Public International Law: Between Technique and Politics', M.L.R. 70 (2007), 1-39 (7) ('Even if the institutions were to apply the same rules, they would apply them differently owing to "differences in the respective context, object and purposes, subsequent practice of the parties and *travaux préparatoires*". Everything depends on the bias of the institution.').

⁹⁰ See also, e.g., Martti Koskenniemi, 'Solidary Measures: State Responsibility as a New International Order?', BYIL 72 (2001), 337-356 (341) ('The conditions of coercion have to be carefully determined: vague clauses would give too much room for political abuse.'). Martti Koskenniemi, 'Methodology of International Law', in: Anne Peters and Rüdiger Wolfrum (eds), *MPEIL* (online edn, Oxford University Press 2019), Article last updated November 2007), para. 2 ('Arguments have binding force to the extent that they do not just describe what States – or other powerful actors – do or will, but actually require them to do something that they would not wish to do. To this extent, their persuasive force lies in their normativity, here being opposable to power.').

⁹¹ Koskenniemi 'Perceptions' (n. 1), 310.

⁹² Koskenniemi, '*Apology to Utopia*' (n. 78), 607. See also Koskenniemi, 'The Fate' (n. 89), 8 ('If there are no regime-independent ways of describing an issue, the door is open to the unilateral assumption of jurisdiction by experts who feel themselves powerful enough to have the last word.').

and institutions should be applied'.⁹³ His claim seems to be that the persistent 'structural bias' neuters the indeterminacy that would exist if formal legal rules could be detached from the social and political settings in which they have to be interpreted and applied.⁹⁴ So, rather than save us or do nothing, law becomes 'part of the problem'; it turns what are, in Koskenniemi's telling, political choices into 'expert', 'technocratic' practices that 'work [...] in favour of those who are privileged, against the disenfranchised'.⁹⁵

Koskenniemi's logic here converges with what he claims is the American conception: law cannot do anything independently of the other forces that operate alongside it – which, during the post-World War II period, included massive amounts of American power. To the extent that international law worked during this period, such that it had a practical effect, the logic would go, it must have been tied, in one way or another, to the U.S. power that saturated it. Indeed, in 2007, Koskenniemi echoed the views of his 'friends in Massachusetts'⁹⁶ in suggesting that, when all is said and done, 'we found no Kantian federation but the naturalism of Pufendorf and Hobbes – powerful actors engaged in strategic games with their eye on the Pareto maximum'.⁹⁷

The Trump administration takes this logic to its natural conclusion. '[Y]ou can talk all you want about international niceties', the White House deputy chief of staff has said.⁹⁸ 'But we live in a world, in the real world [...] that is governed by strength, that is governed by force, that is governed by power.'⁹⁹ Like Koskenniemi, Trump rails against the 'rule of unelected bureaucrats'¹⁰⁰ (a.k.a. technocrats) 'stealing your paychecks, attacking your values, and trampling your freedoms'.¹⁰¹ Koskenniemi claims that technocrats are 'part

⁹³ Koskenniemi, 'Apology to Utopia' (n. 78), 608.

⁹⁴ See also Koskenniemi, 'The Fate' (n. 89), 7 ('Everything depends on the bias of the institution.').

⁹⁵ Koskenniemi, 'Apology to Utopia' (n. 78), 608 f.; see also Koskenniemi, 'The Fate' (n. 89), 8 f. ('The resulting regulation may also be more geared toward *enabling* private power than limiting it. [...] In such (and other ways), traditional international law is pushed aside by a mosaic of particular rules and institutions, each following its embedded preference.').

⁹⁶ Koskenniemi 'Perceptions' (n. 1), 305.

⁹⁷ Koskenniemi, 'The Fate' (n. 89), 15.

⁹⁸ Stephen Collinson, 'Trump's New US Mission Statement: Strength, Force, Power', CNN, 6 January 2026, available at <<https://www.cnn.com/2026/01/06/politics/trump-green-land-venezuela-colombia-miller-analysis>>, last access 23 June 2026 (internal quotation marks omitted).

⁹⁹ Collinson (n. 98).

¹⁰⁰ Read the full text of Trump's speech to a joint session of Congress, PBS News, 5 March 2025, available at <<https://www.pbs.org/newshour/politics/read-the-full-text-of-trumps-speech-to-a-joint-session-of-congress>>, last access 23 June 2026.

¹⁰¹ Donald J. Trump, 'Remarks in Warren, Michigan', 29 April 2025, available at <<https://www.govinfo.gov/content/pkg/DCPD-202500540/pdf/DCPD-202500540.pdf>>, last access 23 June 2026.

of the problem'.¹⁰² Trump uses his power to diminish them, both in the U.S. administrative state and in international institutions. If there are differences between Koskenniemi's concerns in the early aughts and the ones Trump is now addressing, the differences seem to be more about rhetorical style than they are about substance. Trump seems simply to be taking the mask off what Koskenniemi tells us was already there.¹⁰³

Thus, in the final analysis, the European formalists and the American egoists that Koskenniemi describes share the same conceptual universe – which also appears to be *his* conceptual universe. In this universe, the powerful do what they want, except insofar as law constrains them. Many, on both sides of the Atlantic, seem to think that it cannot effectively do that, and that where it does not, it becomes 'functionally irrelevant',¹⁰⁴ inert, or just the sieve through which the contested preferences of the powerful flow.¹⁰⁵ Koskenniemi tellingly concludes *Perceptions of Justice* by comparing the practice of international law to what happens at the Western Wall in Jerusalem. Both, he says, have a 'somewhat mystical' quality that '[m]any people might find [...] silly, or incomprehensible', presumably because they do not, in Koskenniemi's telling, do much to bring about practical change.¹⁰⁶ They instead enable practitioners, who have been stripped of all agency, to 'open their hearts and save their prayers'.¹⁰⁷ American lawmakers who want to abdicate decision-making responsibility and, like true believers, avoid making the compromises that would be necessary to address rampant gun violence in the United States have a similar practice. Freed from operational relevance, they offer Americans thoughts and prayers and consider their work done.

VI. Conclusion

The fact that Koskenniemi can muster no more than wistful hope for international law – that he insists that formal law, when 'strictly followed', can 'unite[...]' and 'save' us, even as he tells us why it cannot – is revelatory.

¹⁰² Koskenniemi, 'Apology to Utopia' (n. 78), 609.

¹⁰³ For an articulation of the claim that, with Trump, 'the mask has slipped', see Balakrishnan Rajagopal, 'International Law In, and As, Crisis', *Verfassungsblog*, 23 January 2026, doi: 10.59704/d679b589d0be8910.

¹⁰⁴ Jack L. Goldsmith and Daryl J. Levinson, 'Law for States: International Law, Constitutional Law, Public Law', *Harv. L. Rev.* 122 (2009), 1791-1868 (1823) (describing the realist claim).

¹⁰⁵ For an elaboration of this logic, see Hakimi (n. 77).

¹⁰⁶ Koskenniemi 'Perceptions' (n. 1), 314.

¹⁰⁷ Koskenniemi 'Perceptions' (n. 1), 314.

It exposes that the conceptual apparatus behind his thinking is confused.¹⁰⁸ This apparatus assumes that law can meaningfully exist only in formal rules;¹⁰⁹ that law can have a practical effect only insofar as it overrides all the contrary forces in play;¹¹⁰ and that the only alternative to this kind of formal law is lawless anarchy, in which the powerful fight amongst themselves to be top dog and impose their will on everyone else.¹¹¹

I and others have challenged these assumptions. We have harnessed facts to show and offered theories to explain that law is not limited to formal rules; that law works in conjunction with other, often competing forces; that this alternative kind of law does not just replicate or reinforce the power dynamics that would exist without it; and that, for all its limitations, it still can serve something like a broader good.¹¹² Because law constitutes and reshapes – rather than merely channelling or reflecting – power,¹¹³ law opens possibilities for collective action that Koskenniemi's conception forecloses from the start. True believers have taken our challenges to their conception to be heretical. They have routinely and summarily dismissed our arguments that have contradicted them. Their blind faith has led them and all who listen to them without agency, howling thoughts and prayers into the wind, hoping to realise the heaven on earth that they promise they will deliver, once international law takes the form and does the work that they say all law must.¹¹⁴

For the rest of us, the project must be different. There is growing evidence that some of the most basic international legal norms of the post-World War II period are under significant strain.¹¹⁵ Trump is helping to destroy these norms. But while Trump himself is an American president, he is not a purely

¹⁰⁸ Koskenniemi 'Perceptions' (n. 1), 310, 314.

¹⁰⁹ See n. 45-49, 79 and 88-89, plus accompanying texts.

¹¹⁰ See n. 17-19, 80-84 and 90-95, plus accompanying texts.

¹¹¹ See n. 76 and 97, plus accompanying texts.

¹¹² In my view, the most sustained challenge in international law has come from the New Haven School of Jurisprudence. For an overview, see W. Michael Reisman, 'The Quest for World Order and Human Dignity in the Twenty-First Century: Constitutive Process and Individual Commitment', *General Course on Public International Law* 2012, 9-382. For some of my efforts to emphasise these points, see Hakimi (n. 77); Monica Hakimi, 'What Might (Finally) Kill the Jus ad Bellum', *Current Legal Probs.* 73 (2021), 101-123; Monica Hakimi, 'Why Should We Care About International Law?', *Mich. L. Rev.* 118 (2020), 1283-1306; Monica Hakimi, 'Making Sense of Customary International Law', *Mich. L. Rev.* 118 (2020), 1487-1538.

¹¹³ On this point, see Monica Hakimi and Jacob Katz Cogan, 'The End of the U.S.-Backed Order and the Future of International Law', *AJIL* 119 (2025), 279-290 (283-285).

¹¹⁴ I further defend this point at Hakimi (n. 77).

¹¹⁵ For some earlier warnings and defenses of this claim, see Ingrid Brunk and Monica Hakimi, 'The Prohibition of Annexations and the Foundations of Modern International Law', *AJIL* 118 (2024), 417-467 (discussing the international legal norms on annexations, the use of force, the right to self-determination, and the territorial entrenchment of state authority); Hakimi and Cogan (n. 113), 285-288 (discussing a broader range of norms).

American phenomenon. He is the product of a broader set of global trends that cannot simply be reversed – or prayed away.¹¹⁶ Whatever comes next will not be what came before. Those of us with humanist impulses, on both sides of the Atlantic and across the world at large, will need to find ways to alter these trends and harness some of the energy that is now behind them, so that we can build something new; the alternative, if we do not redefine ourselves together, is that we will keep sliding toward the lawless anarchy that Koskenniemi and his intellectual allies tell us we have always had.¹¹⁷

¹¹⁶ For one excellent discussion, see Rita Abrahamsen et al. (eds) *World of the Right: Radical Conservatism and Global Order* (Cambridge University Press 2024).

¹¹⁷ See, e. g., Abrahamsen et al. (n. 116) (calling for the same).

