Monumentalities

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Theorisations of international law have evolved from functionalism, to structuralism, and then to post-structuralism, contending at each phase with the anxieties and opportunities faced by its contemporary thinkers. This Article attempts to chart these developments in an imaginative way, illustrating the intellectual parallels between international legal theorists’ conceptualisation of their work with the seemingly disparate field of architectural theory. Inspiration is drawn from Barthes’ deconstruction of the Eiffel Tower. His insights will be applied to structuralist and post-structuralist readings of international law, and this Article culminates with a confrontation of Koskenniemi’s conceptualisation of international law as embodying an irreconcilable tension.

I. INTRODUCTION

The League of Nations, being indisputably a permanent contractual union of independent States having for its principal object the preservation of peace and protection against aggression, and possessing a permanent organisation for the realisation of these ends, is a confederation.

Corbett

In order to satisfy this great oneiric function, which makes it into a kind of total monument, the [Eiffel] Tower must escape reason. The first condition of this victorious flight is that the Tower be an utterly useless monument.

Barthes

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1 Percy Ellwood Corbett, ‘What is the League of Nations’ (1924) 5 British Yearbook of International Law 119, 147.

2 Roland Barthes, The Eiffel Tower and Other Mythologies (Richard Howard tr, Hill and Wang 1979) 5.
There is a tendency amongst international legal theorists to conceptualise international law in architectural terms, to visualise it as a concretised edifice in physical space. Many theorists, when describing international law’s organisation, even make reference to the existence of an actual ‘architecture of international law’ itself.\(^3\)

Gabriella Blum for example, describes legal institutions and regimes as ‘building blocks’,\(^4\) emphasising their relational existence as elemental components of international law’s ‘overall architecture’.\(^5\) Graeme Dinwoodie speaks of a ‘classical architecture’\(^6\) of international intellectual property law as being built upon ‘basic conceptual and institutional pillars’.\(^7\) This architectural articulation of international law has started to trickle into everyday discourse. In the United Nations Global Compact’s publication in 2013, titled ‘Architects of a Better World’, various ‘building blocks’\(^8\) necessary for its success were prominently highlighted.

My intention in this Article is to take this metaphor seriously by examining the ways in which architecture and international legal theory overlap. It is contended that their analytical frameworks are not only broadly similar, but that their developments over time also demonstrate stark parallels. Using Percy Corbett’s article, ‘What is the League of Nations?’, and Roland Barthes’ essay, ‘The Eiffel Tower’, I aim to construct an overarching narrative within both disciplines, one that traces an intellectual development away from functionalism towards structuralism.\(^9\)

By juxtaposing these developments, I hope to demonstrate how meaningful insights can be gained about international legal theory, its intellectual history, and its evolving relationship with the global order. At the end of this Article, I

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\(^4\) Blum (n 3) 324.

\(^5\) ibid 369.


\(^7\) ibid.


\(^9\) This Article seeks to chart the theoretical movements away from ‘use’ towards ‘meaning’, and in this respect explicitly avoids the question as to which of these texts I found the most useful. In a manner similar to that of structuralist analysis, I focus instead on deriving meaning from their oppositional relationship.
also seek to draw upon these understandings of architectural theory in order to articulate new possibilities for international law.

II. FORM AND FUNCTION

*Form ever follows function*, and this is the law. Where function does not change, form does not change.

Louis Sullivan

Up until the early 19th century, dominant understandings of architecture were pre-occupied with aesthetic principles inherited from the era of Classical Antiquity. Vitruvius’s fundamental principles of architecture – the triadic formula of strength, utility and beauty – were so embedded into consciousness that architectural theory was only ever based on, or was in dialogue with them. Even as the nineteenth century bore witness to a period of stylistic interpretations and variations, it was observed that this Vitruvian triad was ‘difficult to supersede or displace’.

2.1 ‘Form Ever Follows Function’

At the turn of the twentieth century, however, a paradigmatic shift in conceptualisations of architecture began to take place, illuminating practice and eventually culminating into what is now known as the period of Early Modern architecture. One of the most significant of these contributions is that of architectural functionalism, the philosophy that all constructed forms had to express their functions as purely as possible. Chicago architect Louis Sullivan, in particular, has been widely credited as the movement’s originator, and is remembered for coining the oft-invoked credo ‘form follows function’ that has permeated our cultural consciousness. His convictions were that ‘organic’ organisation and form could only ever be achieved through a contemplation of a building’s functions – constituted through ‘natural, social and intellectual factors’ – which are then subsequently expressed into honest materiality. His essential concern was to use architecture to ‘express human functions and needs, not structural laws’.

10 Louis Sullivan, ‘The Tall Office Building Artistically Considered’ (Lippincott’s Magazine March 1896) 408.
13 Kruft (n 11) 357.
14 ibid.
Sullivan’s immensely influential functionalist theorisations have since been used as an epistemological framework for modern approaches to architectural design, interpretation and criticism. The discipline has become ineluctably linked to a teleological methodology, such that it is now deeply invested in inquiries of use and utility and can only conceive of buildings using that framework. Le Corbusier expresses this paradigm best when he proclaimed that a house was essentially ‘a machine for living in’.\textsuperscript{15}

Roland Barthes also recognises that period’s dedication to ‘[r]ationalisations under the rubric of use’ when he notes how Gustave Eiffel had to justify the design of his tower by ‘scrupulously list[ing] all the future uses of the tower’, uses that were all scientific in nature.\textsuperscript{16} When the Tower first began to emerge in the Parisian skyline in 1888, Eiffel notably countered his critics by defending it on technical grounds, arguing that its aesthetic beauty would simply follow from its ‘perfect appropriateness to its use’.\textsuperscript{17} Its wide base and elegant curves were motivated not by the desire to convey strength and beauty, but by its resistance to wind. When the Tower faced calls for demolition in the early 1900s, Eiffel was said to have saved it again by gesturing towards its utility; he attached a radio transmitter at the top and offered it as a communications base to the French Ministry of War.\textsuperscript{18}

2.2 ‘This is the Law’

As the theoretical shifts towards architectural functionalism were occurring, a similar movement can be observed within international law from the early 20th century onwards. Positivism, which was perceived as too high-minded and too abstract for the post-World War I period, was deemed to be irrelevant. International lawyers began to turn towards realist accounts instead, increasingly looking towards the relationship between sociopolitical forces and international law in order to illuminate their work.

Hans Morgenthau was one such theorist. He sought to articulate an alternative account of international law by emphasising the importance of paying attention to the ‘psychological and sociological laws governing the actions of men in the

\textsuperscript{15} Le Corbusier, \textit{Toward an Architecture} (John Goodman tr, Getty Research Institute 2007) 151.
\textsuperscript{16} Barthes, \textit{The Eiffel Tower and Other Mythologies} (n 2) 5–6.
international sphere’. In doing so, he admitted that his ‘realist’ jurisprudence was in truth a ‘functional’ one – it was premised on the understanding of international law as the ‘function of the civilisation in which it originates’, made ‘real’ because it was guided by pragmatic and utilitarian considerations.

International law is therefore not merely characterised as architectural design, it is architectural design by function; it characterises itself as an instrument of social order, constructed around particular social purposes and appreciated for those utilities that it provides. Elements of this functionalist theorisation can be seen even today. Just as Eiffel based the design of his tower around his concerns about wind resistance, Gabriella Blum worries about the design of the ‘right legal architecture’ in terms of its ‘effectiveness, efficiency, and compliance’. Mario Giovanoli similarly wonders if the soft law character of the international financial standards regime is merely ‘fair weather architecture’, ineffective and unreliable during crisis situations.

Perhaps the most prominent example of functionalist theorisations in architecture and international law, however, can be seen in the ways in which theorists have attempted to classify and taxonomise. Both disciplines articulate a set of necessary principles and distinctions to make analysis possible, and they do so on the basis of functional definitions. A particularly salient example of this can be seen in the everyday ways in which we think about the buildings around us, such as the office, the bank, the residence, the school, and the museum. Each is essentially linked to the functional aspect that constitutes its identity. Even within these buildings themselves, we continue to erect walls and organise the space into functional sections, separating the kitchen from the study, and the lobby from the boardroom.

In international law, the tendency to categorise and essentialise by function is evident, particularly in the context of increased specialisation within the global order. As the International Legal Commission (ILC) observed in its Report on Fragmentation, what once appeared to just be ‘general international law’ is now a diversity of specialist regimes such as ‘trade law’, ‘human rights law’, ‘environmental law’, and ‘law of the sea’. They also noted that these self-

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20 ibid 274.
21 Blum (n 3) 362.
contained regimes did not emerge accidentally, but were instead ‘seek[ing] to respond to new technical and functional requirements’.24

This functionalist analysis is frequently displayed when international lawyers attempt to classify individual legal phenomena or institutions. Percy Corbett’s inquiry into the ‘legal character’ of the League of Nations, which is premised on a criteria of essentialist attributes he believes are possessed only by sovereign States, is a conspicuous example.25

In his investigation, the League’s various rights and obligations that appear to conform to this criteria are qualified by reference to its functions. For example, its right of legation is explained by recourse to the fact that ‘[a]ny international organisation established for purposes such as those which [it] was destined to serve’ must ‘inevitably’ have such a power.26 Its right to intervene between its Members in order to prevent hostilities, is similarly traced back to its functional origins as an ‘organisation of States for the preservation of peace’.27 Corbett makes similar appeals to the League’s purposive design when seeking to distinguish it from said criteria. In his argument that the League does not have duties and powers over the Saar Basin and the mandated territories amounting to that of sovereignty, he directs our attention to an analysis of the ‘the functions assigned to the League in connexion with [those territories]’.28

Corbett’s conclusion that the League should be classified as a confederation is buttressed by identifying the core functional attributes belonging to institutions in that genus: that of being established in order to ‘comprise an indefinite number of self-governing political communities’.29 Since the League was ‘established to perform tasks which would otherwise have been incumbent upon a small number of States’, it is, according to his analysis, such an entity.30 In sum and in substance, the unique purposes for which the League has been established to serve justify its status as an institution with a distinct ‘legal character’.

This alignment of use, function and purpose, in both architecture and international legal thought, has significant epistemological implications; these disciplines become reimagined as essentially instrumental projects, whose works

24 ibid [247].
25 Corbett (n 1).
26 ibid 122.
27 ibid 136.
28 ibid 127.
29 ibid 148.
30 ibid 147.
are meaningful insofar as they are capable of serving as a means to an end. Their impetus emanates from the perception of some social or human need that needs fulfilment.

The paramount project for these disciplines, therefore, is to identify and reveal what this unrealised social purpose is. This is what Morgenthau speaks of when he described that the task ahead for international lawyers was to discover ‘the laws which govern the social relations of men’ – just as natural scientists had to first discover the ‘laws governing nature’ – before attempting to master them.31

This process, however, is not an untroubled one. Functionalist social theory offers the promise of a scientific methodology, the possibility of an empirical analysis that can be used to identify essential needs, realise essential functions and classify essential characters. However, as Martti Koskenniemi pertinently notes:

Reducing international law to a mechanism to advance functional objectives is vulnerable to the criticisms raised against thinking about it as an instrument for state policy: neither regimes nor states have a fixed nature or self-evident objectives.32

The determination of human needs, in other words, is not a technical science, but is a site of struggle and contestation.

III. STRUCTURES AND SIGNS

In the ongoing semiotic bricolage of daily life, we orchestrate and combine anything and everything at our disposal to create a significant world, or simply to get a message across.

Donald Preziosi33

Around the mid to late 20th century, a new generation of architects became increasingly disenchanted with modern architecture’s preoccupations with function and utility.

Philosopher and aesthetic theorist Ernst Bloch, for example, condemned the sobriety of functionalist architecture as the product of a society that was

31 Morgenthau (n 19) 284.
emotionally impoverished and bereft of humanity. Architectural historian Joseph Rykwert similarly resisted what he saw as the ‘rationalist predilections of high modernists’ and called upon architects to explore the ‘emotional power’ of their work. Charles Moore also expressed the opinion that modern designs were giving ‘little in return besides the shelter of a cubical cocoon’.

3.1 ‘Semiotic Bricolage’

During this period of critical re-examination, an influential group of post-functionalist architects attempted to reinvigorate their oeuvre by steadily pushing back against, and redefining, disciplinary boundaries. They drew upon theoretical and methodological perspectives from various fields, such as literature and semiotics, studied the ways in which meaning was carried in these disciplines, and then translated these insights into architecture. Their goal was to challenge modern functionalism’s wilful sparseness of symbolic meaning and revive an interest in architectural signification.

Roland Barthes’ explorations into the semiology of architecture and urban landscapes have been particularly influential in this respect. Use, he proclaims, ‘never does anything but shelter meaning’, and its status as the sole basis for methodology must be displaced. Instead, semiologists must ‘read’ their objects of study in order to unravel meaning, similar to the way in which a literary critic ‘reads’ a poem, and it is only through this perennial process of unfolding signifiers that we are able to truly decipher its ‘language’ and make it sing.

Barthes’ approach to architecture is distinctly demonstrated in his eponymous essay on the Eiffel Tower, in which he semiotically explores this ‘pure’, ‘ineluctable’ and ‘inevitable’ sign, and coaxes out the various signified meanings that lurk underneath it. He lingers over its vertical scale, noting how, like the mad project of the Sun Tower and the legendary Tower of Babel, the Eiffel Tower similarly symbolises the human aspiration for ascension, the fascination...
with connecting heaven and earth through summit and base.\textsuperscript{41} With regards to the Eiffel Tower’s offering of a panoramic vision of the city of Paris, he finds meaning in the ways this promise of ocular sight can be compared to the possibility of an intelligible city, made coherent by our contemplative and constitutive gaze.\textsuperscript{42} Even the boundedness of the Eiffel Tower – the enclosure of its inside away from the outside – and the human process of entering and exploring that space is subject to Barthes’ semiotic unravelling; the tamed space of comfort and pleasure is likened to a ‘world away from the world’, and the gesture of touristic visitation is likened to a procession within this spectacular realm.\textsuperscript{43}

Gustave Eiffel’s own functionalist justifications – those same appeals to utility that inspired its original design and authorised its birth – now ‘seem quite ridiculous alongside the … human meaning which it has assumed throughout the world’.\textsuperscript{44}

The theoretical explorations undertaken in the 1970s, despite occurring during a period regarded as the apogee of semiotic interest amongst architects, were still seen as lacking the rigours of a ‘real methodology’, suitable only for criticism.\textsuperscript{45} Architectural theorists responded by intensifying their interdisciplinary projects, drawing upon structuralist analyses of linguistics in order to articulate an epistemological ‘grammar’ for the architectural process.\textsuperscript{46} What had previously been understood as only a metaphor – that is, the idea that architecture was a language in itself – became approached literally.

Drawing upon Saussurean linguistics, architectural theorists and semiologists began to approach the subject under a structuralist paradigm, which posited that the meaning behind certain phenomena (the \textit{langue}) could only be made intelligible by synchronically examining the interrelations between such phenomena (the \textit{parole}).\textsuperscript{47} In other words, ‘[t]hings do not have true essences which can be studied; their existence is defined by their relationship to other things’.\textsuperscript{48} One of the implications of this structuralist analytical framework is that it avoids ‘stress[ing] the genius of the architect or the autonomy of the

\begin{itemize}
\item \textsuperscript{41} ibid 4–7.
\item \textsuperscript{42} ibid 8–14.
\item \textsuperscript{43} ibid 14–17.
\item \textsuperscript{44} ibid 6.
\item \textsuperscript{45} Mallgrave and Goodman (n 35) 43.
\item \textsuperscript{46} Nesbitt (n 12) 34.
\item \textsuperscript{47} The term \textit{parole} refers to acts of speech, which are merely the surface appearance of language. \textit{Langue} refers to the socially constituted code in which \textit{paroles} receive meaning.
\end{itemize}
artistic tradition’, something that functionalist approaches, with their emphasis on mobilising architecture as an *instrumental* discipline, cannot achieve. Its goal is not to focus on the architectural object itself, but to examine its relationship with other objects in order to reveal the meanings that it expresses, and the underlying cultural machines that produce those meanings.

Umberto Eco, for example, developed on Barthes’ work on signs by writing extensively about architecture as a *system* of those signs. To him, architectural objects were not only capable of denoting functions through their form, but also symbolically connoting underlying meanings such as ‘family’, ‘security’ or ‘familiarity’. These denotative and connotative elements, he argues, are correspondingly ordered via an architectural ‘code-language’ that makes them coherent and meaningful. Charles Jencks evinces a similar approach with his views on ‘architectural semiotics’, the idea that architecture could be conceptualised as a language itself possessing syntax, semantics and metaphors that have the capacity to communicate certain meanings. In his book, *The Language of Post-Modern Architecture*, he proposes a structuralist framework for the interpretation of these meanings, an analysis that he argues makes clear the ways that they are inherently expressions of cultural assumptions, institutions and values.

The significance of these theoretical developments within the architectural discipline is best understood when they are juxtaposed against functionalist approaches. Whereas functionalist approaches conceive of an architectural object’s meaning as determined *a priori* in relation to its intended purpose, structuralist approaches conceive of architectural objects as possessing no inherent meaning, only the meanings that emerge from its *relations* with other objects. Under the functionalist paradigm, the architectural discipline asks if an architectural object is instrumental in fulfilling an existing social need. Under the structuralist paradigm, however, the architectural discipline asks what kind of social meaning it *expresses*, intelligible only through a synchronic analysis.

### 3.2 ‘A Significant World’

It was observed above that the tendency for international lawyers to conceptualise their work as architectural in nature was more than just

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51 ibid 182.


53 ibid.
metaphorical; the ways in which both disciplines theorise their subject-matters and articulate their intellectual approach also illustrates stark parallels. Several pertinent questions begin to emerge in light of the developments in architectural theory. Can these new theoretical paradigms be transposed into the context of international law? If so, what kind of insights do we potentially gain?

An examination of the development of international legal theory in the mid to late 20th century reveals that the trajectory of its development broadly parallels that of the discipline of architecture. Just as architects despaired over the lack of meaningful engagement in their work, international legal theorist David Kennedy noted how when he was entering the field in the late seventies, ‘[n]o one seemed to think that international law was intellectually rich’, and ‘[n]o one seemed to think that international institutional structures looked forward or provided socially and culturally engaged lives for their inhabitants’.54

Over the course of a decade, however, a new generation of international legal theorists – united under the banner of ‘New Stream’ scholarship, and afterwards, ‘Critical Legal Studies’ – began to introduce into the discipline a diverse array of methodological approaches from other fields.55 These interdisciplinary projects were so prolific that by the late eighties, ‘one [could] hardly peruse a law journal without encountering references to what once seemed the obscure texts of divergent disciplines’.56

This new outcropping of scholarship also demonstrates a similar turn towards structuralism, with clear influences from the field of linguistics and semiotics. Kennedy’s theses about international legal discourse, which was motivated by a perceived disconnect between international legal theory and practice, and his desire to see the law bridge the ‘gap between ought and is’, was articulated upon within an explicitly structuralist framework.57 In order to do so, Kennedy consciously concentrates on international legal discourse, through which he seeks to reveal the ‘hidden ideologies, attitudes and structures which lie behind [it]’.58 Martti Koskenniemi, whose own work was influenced by Kennedy and whose own ideological project was similarly aligned, also examines

56 Kennedy, ‘Critical Theory, Structuralism and Contemporary Legal Scholarship’ (n 48) 210.
58 ibid 355.
international legal discourse using the methodology of structural linguistics.\textsuperscript{59} To him, ‘express international legal arguments, doctrines and ‘schools’ are a kind of \textit{parole} which refers back to an underlying set of assumptions, capable of being explicated as the \textit{langue} or ‘deep-structure’ of the law’.\textsuperscript{60} By studying particular legal arguments, Koskenniemi’s goal is to explicitly reveal this ‘deep-structure’, the set of grammatical rules that govern the production of ‘conventionally acceptable’ legal arguments and constrain possibilities for those who work within it.\textsuperscript{61}

Both Kennedy and Koskenniemi engage in detailed examination of international legal argumentation, tracing the various rhetorical manoeuvres that it makes and revealing the common themes that resonate within its various sub-discourses. Kennedy observes how, even in seemingly disparate doctrinal practices within international law, one is still able to discern ‘echo[ing] themes and references familiar to one another’.\textsuperscript{62} Koskenniemi goes even further and claims that all international legal argumentation can be exhaustively designated into two broad patterns of justification.\textsuperscript{63} The first, which is premised on the understanding that international law \textit{determines} State obligations, gains argumentative purchase from notions such as ‘justice’, ‘common interest’ or ‘world community’, to which it relies upon to establish normative superiority over State behaviour.\textsuperscript{64} The second, which is premised on an understanding of State behaviour \textit{as a determinant} of international law, gains its rhetorical power on the basis of its construction around ‘factual’ State behaviour.\textsuperscript{65}

Koskenniemi then argues that these ‘descending’ and ‘ascending’ patterns of justification evince two different ways of conceptualising international law.\textsuperscript{66} On one hand, it can be understood as a \textit{normative} project distinct from international politics, whilst on the other, it can be approached as something \textit{concrete} and \textit{objective} instead, distinguishable from natural morality. These conceptualisations are, in a sense, the communicated meanings of a particular sign-image of international law, and as such can be correspondingly understood as its \textit{signified} content, finally made intelligible through synchronic analysis. Like Barthes’ semiotic unravellings of the Eiffel Tower, these meanings

\textsuperscript{59} Martti Koskenniemi, \textit{From Apology to Utopia: The Structure of International Legal Argument} (CUP 2006).
\textsuperscript{60} ibid 8.
\textsuperscript{61} ibid.
\textsuperscript{62} Kennedy, ‘A New Stream of International Law Scholarship’ (n 54) 37.
\textsuperscript{63} Koskenniemi, \textit{From Apology to Utopia} (n 59) 59.
\textsuperscript{64} ibid.
\textsuperscript{65} ibid.
\textsuperscript{66} ibid 17.
must be seen as fully constitutive of – and also inseparable from – the social fabric. In this case, Koskenniemi recognises them to be representative of contemporary tensions in the wider social and political world, reflecting the anxieties inherent in trying to understand the current character of the global order whilst also simultaneously trying to understand how it can be shaped within a liberal framework.67 By acknowledging how the ‘social life-process’ constitutes our conceptualisations of international law, we understand why the discipline is structured on such strong oppositional dichotomies, always presenting itself through an unmediated bifurcation of ‘descending/ascending, normative/concrete, utopian/apologist, or naturalist/positivist’ perspectives.68

IV. MONUMENTS AND MYTHOLOGY

[A]rchitecture is always dream and function, expression of a utopia and instrument of a convenience.

Barthes69

The ways in which we derive meaning from the world around us, whether through constructed edifices or doctrinal expressions of international relations, are paradigms that are constantly subject to change.

By juxtaposing these changes within architecture and international law, I have sought to demonstrate how these methods of theorising and conceptualising actually evince more commonality than difference. Further, by exploring in detail at least two of these paradigms – functionalism and semiotic structuralism – I have sought to illustrate the ways in which they not only shape disciplinary methodology, but also potentially articulate disciplinary worldviews about the wider social and political fabric.

To the extent that structuralist-inspired scholarship in international law seeks to make clearer this connection to broader ideological discourses, I find these accounts to be more insightful in understanding the global order than functionalism. Note, however, that neither paradigm can ever truly claim to be the ‘correct’ approach to understanding international law and its role within global social life, because a choice between two paradigms is a choice between which approach offers the best possibilities in realising a political goal. Just as functionalism enabled international law to emancipate itself from the perceived irrelevance of positivism, structuralism enabled international law to search for a

67 ibid 5.
68 Purvis (n 55) 104.
69 Barthes, The Eiffel Tower and Other Mythologies (n 2) 6.
broader social meaning within its own self-image. Correspondingly, no paradigm can, or ought to, have a monopoly over the way we witness the world.

To which I then ask: are there other kinds of ways in which we can conceive of international law? Through what other means do we want to think about international law? I do not seek to offer a comprehensive theory or a new analytical framework. Rather, I intend only to make a comment on a particular moment in David Kennedy’s and Martti Koskenniemi’s structuralist scholarship and to modestly build upon it.

Recall Koskenniemi’s interpretation of international law as embodying both a ‘normative’ and an ‘objective’ self-image. Kennedy makes a similar observation about the ‘moral dilemma’ faced by international law, a choice between ‘individual national particularism and community’, or ‘authoritative and cooperative identities’. Both writers understand these meanings not just as being in ideological opposition to one another, but also as mutually exclusive and irreconcilable. Indeed, Koskenniemi understands international legal arguments that are based on these conceptualisations as meaningful precisely because of this mutual exclusivity.

For both of them, this inability to reconcile the ‘normative’ and ‘objective’ conceptions of international law is perceived as a moment of crisis. Kennedy opines that neither understanding of the law is sufficient; the ‘normative’ without the ‘objective’ suffers from incapacity of determinative application, whilst the ‘objective’ without the ‘normative’ is insecure in its normative legitimacy. Koskenniemi similarly characterises international law’s position between politics and natural morality as a ‘terrain of irreducible adversity’.

These characterisations of crisis are indicative of Kennedy and Koskenniemi’s own political biases. Conceptual irreconcilability is not problematic per se, and is only seen as such because it disrupts their own visions as to what international law should be. Although not explicitly expressed by either of them, it is clear that they seek to (re)create an international law whose theory continues to speak to doctrine, whose professions continue to be relevant in today’s world, and whose distinct identity as a discipline is retained. In other words, a coherent, sensible and ‘real’ international law.

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70 Koskenniemi, *From Apology to Utopia* (n 59).
71 Kennedy, ‘Theses about International Law Discourse’ (n 57) 371.
72 Koskenniemi, *From Apology to Utopia* (n 59).
73 Kennedy, ‘Theses about International Law Discourse’ (n 57) 383.
74 Koskenniemi, *From Apology to Utopia* (n 59) 597.
4.1 ‘Expressions of Utopia’

As I consider this point, I am drawn back towards Barthes’ essay on the Eiffel Tower, which I think has the potential to hold key insights regarding this ‘problem’ of conceptual irreconcilability.

Barthes’ intellectual background, it should be noted, is not strictly structuralist. Despite identifying himself as such in his earlier works, he later evinced a transition towards a more post-structuralist outlook in his semiological work. Some evidence of this can be seen in his own attempts to read into the ‘overwhelming myth’ of the Eiffel Tower, where he acknowledged the impossibility of any fixed or finite understanding of it.75 The Eiffel Tower, which is characterised as an infinite cipher whose meanings are indeterminate, elusive and bottomless, is explored by Barthes within the realm of the ‘great human dream in which movable and infinite meanings are mingled’.76

The fact that these various meanings might be incompatible with one another, and thus constitute the Eiffel Tower as a ‘paradoxical monument’, is not seen as an event of imminent failure. Instead, it is precisely because of the Eiffel Tower’s escape from rational existence – its ability to be seeing yet be seen, to be open yet enclosed, to be spectacular yet familiar, and to be something yet nothing – that enables it to become the ‘total monument’ capable of satisfying its ‘great oneiric function’.77 Its ability to embody the paradoxical and the irrational is the very reason why it continues to inspire and live on in our imaginations. It offers the impossible dream.

It is within this space of untroubled impossibility that I am reminded of the concept of utopia, which describes the very kind of dream-like, aspirational quality that the Eiffel Tower embodies, even though it quite literally indicates in its name that ‘no such place’ can ever exist. I am also reminded of the object of the ‘monument’ itself, which exemplifies this notion of impossible existence through its etymology; until relatively recently, the word was used to refer to a burial place,78 thereby illustrating its ability to paradoxically be the presence demarcating an absence.

Do their paradoxical existences necessarily compel us to crisis? Do their illogicalities demand that we solve them like an eternal riddle? I am

75 Barthes, The Eiffel Tower and Other Mythologies (n 2) 5.
76 ibid 7.
77 ibid 5.

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unconvinced. There is something to be said that it is their very impossibility itself that defines them and ensures their continued existence.

In light of this, perhaps we should see international law’s conceptual irreconcilability as its defining feature. Its inability to resolve itself should not evoke anxiety but imagination. Its paradoxical self should be seen as offering the prospect of transcendence.
BIBLIOGRAPHY

BOOKS
Barthes R, *The Eiffel Tower and Other Mythologies* (Richard Howard tr, Hill and Wang 1979)
Bloomer KC and Moore CW, *Body, Memory, and Architecture* (Yale University Press 1977)
Corbusier L, *Toward an Architecture* (Goodman J tr, Getty Research Institute 2007)
Koskenniemi M, *From Apology to Utopia: The Structure of International Legal Argument* (CUP 2006)
Leach N (ed), *Rethinking Architecture: A Reader in Cultural Theory* (Routledge 1997)

JOURNAL ARTICLES
Corbett PE, ‘What is the League of Nations’ (1924) 5 British Yearbook of International Law 119
—— ‘Theses about International Law Discourse’ (1980) 23 German Yearbook of International Law 353
Morgenthau HJ, ‘Positivism, Functionalism, and International Law’ (1940) 34(2) American Journal of International Law 260

REPORTS

WEBSITES AND OTHER SOURCES
Sullivan L, ‘The Tall Office Building Artistically Considered’ (Lippincott’s Magazine March 1896)