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# The Miracle of Generative Violence? René Girard and the Use of Force in International Law

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## ARTICLES

# The Miracle of Generative Violence? René Girard and the Use of Force in International Law

GREGOR NOLL\*

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### Abstract

In this article, I apply René Girard's theory of generative violence to the international law relating to the use of force. I argue that texts of international law make gestures of referral towards an immanent normativity on the fettering of divine violence. The means to this end is a form of sacrificial violence that seeks to promote the preservation and cohesion of the 'international community'. The structuring of this violence through international law and its repeated staging reproduces the relationship of prophecy to miracle. Empirically, I draw mainly on excerpts from the 2006 US National Security Strategy.

### Key words

gesture; Girard; National Security Strategy; necessity; pre-emption; use of force; weapons of mass destruction; violence

## I. INTRODUCTION

The idea of an 'international community' presupposes an account of how violence is bounded within that community.<sup>1</sup> International law would seem to offer certain elements for such an account, in themselves insufficient for evoking the impression of violence being fully contained and ruled by law. Suffice it here to recall the absence of a definition of the term 'aggression', the loose contours of the use of force mandated by resolutions under Chapter VII of the UN Charter, or the legal vexations of 'humanitarian' or 'regime change' varieties of intervention. Notwithstanding this,

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1 If we understand references to the 'international community' as an epistemic community producing knowledge about the world, it will produce knowledge about violence. This production of knowledge is bounding violence in the most basic sense. 'To speak of epistemological violence in the 21st century might feel almost tautological. When the dominant strands of scientific, but especially technological, knowledge have not only served but also – perhaps more significantly – *driven* the development of military epistemologies and technologies, then one cannot talk of knowledge without evoking violence.' Ryan Bishop and John Philips, 'Violence', (2006) *Theory, Culture, Society* 377 (emphasis in original).

the standard response of many international lawyers to the challenge of violence is to account for a central norm comprising a prohibition of the use of force with two exceptions – self-defence and action under Chapter VII of the UN Charter.<sup>2</sup>

The handiness of that norm has not prevented *longueurs* in its exegesis. This can be nicely illustrated by juxtaposing two documents dealing with the matter. The UN High-Level Panel, in its 2004 report to the Secretary-General, concluded that, in all cases relating to decisions to use military force, ‘we believe that the Charter of the United Nations, properly understood and applied, is equal to the task’.<sup>3</sup> The phrase ‘properly understood and applied’ suggests the existence of a self-evident supplementing normativity beyond the wording of the UN Charter. In 2004–5 a group of international lawyers with roots in the UK discourse on international law tried to clarify this supplementing normativity delimited to the question of self-defence, and the result was published as ‘The Chatham House Principles of International Law on the Use of Force in Self-Defence’.<sup>4</sup> However, the introductory text casts doubt on the capability of ten pages of ‘principles’ to tell the whole story in this particular area of the law:

Finally, it will also be obvious that while the Principles are intended to reflect current international law, the law in this area is politically and legally contentious, and the application of the law (and therefore the Principles) to particular cases will often be difficult.<sup>5</sup>

This raises the question underlying this article: is the paucity of the central norm on the use of force in international law simply a sign of its current underdevelopment, to be remedied by persistent scooping from the sources of law?<sup>6</sup> Or does that paucity serve a function in itself, exciting international lawyers – including this one – to write yet another text on the use of force? If so, what is that function?

My hypothetical answer would be that this paucity of positive law on the use of force serves a function. It leaves room for referral to a violence that promotes the preservation and cohesion of a group, a community. This violence has been termed

2 Recent examples are A. Orakhelashvili, ‘Legal Stability and Claims of Change: The International Court’s Treatment of Jus ad Bellum and Jus in Bello’, (2006) 75 *Nordic Journal of International Law* 371, arguing that the consistent jurisprudence of the International Court of Justice undermines the argument of alleged legal changes in the legal regime governing armed conflicts pursuant to the conflicts in Kosovo, Afghanistan, and Iraq; and E. Benvenisti, ‘The US and the Use of Force: Double-Edged Hegemony and the Management of Global Emergencies’, (2004) 15 *EJIL* 677, explaining that the ‘Bush doctrine’ upsets the UN regime for managing global security risks. Michael Byers’s *War Law* deserves mention, because the author discusses humanitarian intervention as a potential third exception to the prohibition of the use of force only to discard it. M. Byers, *War Law: International Law and Armed Conflict* (2005).

3 Report of the Secretary-General’s High-Level Panel on Threats, Challenges and Change. A More Secure World: Our Shared Responsibility, UN Doc. A/59/565 (2004), at 13. For detailed statements, see para. 192 at 63; para. 198 at 65. The text quoted above is programmatically reproduced in the introduction to the ‘Chatham House Principles’, *infra* note 4.

4 E. Wilmschurst, ‘The Chatham House Principles of International Law on the Use of Force in Self-Defence’, (2006) 55 *International and Comparative Law Quarterly* 963.

5 *Ibid.*, at 963–4.

6 Another area of international law intimately dealing with the question of violence is human rights law. States have generated a saturated body of treaty law and a complex institutional environment in the same period in which the UN Charter has regulated the use of force. Yet my claim is not that the law on the use of force is extraordinary in some sense. The paucity of positive law is quite evident in it, which is why it makes a nice case for observing gestures of referral, as explained below.

'generative', its structuring through international law and its repeated staging reproducing the relationship of prophecy to miracle.

My argument is developed in two main steps. Section 2 is dedicated to a more detailed elaboration of the referral to generative violence. To that end I shall explore the distinction between 'violence' and 'force' in a standard textbook on international law and contrast it with Hannah Arendt's work. Thereafter, René Girard's theory of generative violence will be introduced. The meaning of making linguistic gestures is considered at the end of section 2, which is something of a toolbox for a close reading of a text of international law in section 3. This text is an excerpt from the US National Security Strategy of 2006, relating to the violent fettering of the violence emerging from weapons of mass destruction (presented in section 3.1). Section 3.2 looks into the way the 'principle of pre-emption' straddles the boundary between the inside and the outside of the international community; it is analysed as an obscuring gesture towards international law's immanence. Section 3.3 draws on the Articles on State Responsibility and a doctrinal text on humanitarian intervention to explain the exceptional space provided in the concept of necessity. This space provides for a controlled transition from law to religion and back. In the final section 4, I conclude that the portent of pre-emptive self-defence will become fully legible only at the moment of fulfilment, of 'miraculous appeasement'.

## 2. VIOLENCE AND FORCE, PROPHECY AND MIRACLE

I shall assume that a complete account of the use of force under international law presupposes the identification of norms additional to the UN Charter and the customary law of self-defence. Often these norms merely manifest themselves through a gesture of referral beyond formal law: to Christian ethics in the debate on just-war theory; to humanitarianism or an idea of human rights in discussions on humanitarian intervention as well as the responsibility to protect; and to political theory in exchanges on regime-change intervention. On a more general level, such referral sheds light on our assumptions as to the nature of man, history, and destiny. It is the very paucity of positive norms of international law which invites these gestures of referral. Had it been possible, purely hypothetically, to derive a complete, transparent, and conclusive answer from international law, there would have been no need to supplement its norms. This supplement grows from that which is not explicitly stated in positive law, incomplete circumscriptions, negative expressions, and omissive language.

Using a photographic metaphor, I might describe it as law's negative.<sup>7</sup> A photographic negative is material and fixed. It is not readily legible in itself, unless we have knowledge of the positive. It provides an intermediary step needed to develop the positive. In this intermediary position, however, it remains closer to what it depicts

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7 This construction draws on apophatic traditions in theology, assuming that language is largely or totally incapable of stating what God is. For an overview see B. Milem, 'Four Theories of Negative Theology', (2007) 48 *The Heythrop Journal* 187. The Greek term 'apophasis' means 'denial', and the apophatic mode of thinking about God is most prominently associated with the works of Pseudo-Dionysius the Areopagite.

than does the positive. It provides more information, as the printing of positives from negative originals causes losses. Also, it is temporally anterior to the positive. All these properties make the metaphor meaningful when I attempt to understand the functioning of law's negative. This 'negative' of the law cannot be reduced to a simple negation of positive law. The printing of a positive from the negative has caused a loss which is irretrievable.

I shall approach the relation between positive law and law's negative in the international law on the use of force by inquiring into the concepts 'violence' and 'force'. Much international legal doctrine appears to use these terms without distinction. This is how Shaw's *International Law* introduces a chapter on 'International Law and the Use of Force by States':

While domestic systems have, on the whole, managed to prescribe a virtual monopoly on the use of force for the governmental institutions, reinforcing the hierarchical structure of authority and control, international law is in a different situation. It must seek to minimize and regulate the resort to force by states, without itself being able to enforce its will. Reliance has to be placed on consent, consensus, reciprocity and good faith. The role and manifestation of force in the world community is, of course, dependent upon political and other non-legal factors as well as upon the current state of the law, but the law must seek to provide mechanisms to restrain and punish the resort to violence.<sup>8</sup>

Shaw's readiness to ascribe to law a will of its own is remarkable,<sup>9</sup> as is the underlying terminological order in this brief passage. 'Authority' is a term used to describe domestic systems, while it is absent in the qualification of international law. The 'role and manifestation of force' is set in contrast to 'violence' which is repressed through 'mechanisms to restrain and punish' it. Why have international lawyers chosen to speak of the 'use of force' as a function of the law, rather than of the use of violence?<sup>10</sup>

'Authority', 'force', and 'violence'; if we add 'power', these are four concepts around which Hannah Arendt's 1969 publication *On Violence* revolves.<sup>11</sup> Arendt lets 'power' correspond 'to the human ability not just to act but to act in concert. Power is never the property of an individual; it belongs to a group and remains in existence only so long as the group keeps together.'<sup>12</sup> Arendt notes that the 'concept of force is often used in daily speech as a synonym for violence, especially if violence serves as a means of coercion'. She suggests that it 'should be reserved, in terminological language, for the "forces of nature" or the "force of circumstances" (*la force des choses*),

8 M. N. Shaw, *International Law* (2003), 1013.

9 Whether the author fell for a metaphor or consciously wove a view on international law into the text I cannot tell. His ascription softens the link between law and human volition, sketching an autonomy and personality of the law which transcends the aggregate will of the human lawmakers. This kind of language is collusive. It serves to make the relationship between man and law harder to understand. Seen from a Girardian perspective, it serves the purposes of generative violence well, as we shall see below.

10 The terminological choice between 'force' and 'violence' and the conceptual differentiation that comes with it is particularly pertinent in English as well as in the Latin languages. Germanic languages do not readily allow for this terminological differentiation. The German term 'Gewalt' may denote force, violence, or power. The Swedish 'våld' denotes violence, but is used to describe the international use of force as well ('internationell våldsanvändning').

11 H. Arendt, *On Violence* (1969).

12 *Ibid.*, at 44.

that is, to indicate the energy released by physical or social movements'.<sup>13</sup> Her own text uses the term sparingly, and in a way that associates it with a philosophy of history. Violence, however, the word Arendt uses in the title of her book, is dealt with as the very last amongst her central terms, and with amazing brevity: 'Violence . . . is distinguished by its instrumental character. Phenomenologically, it is close to strength, since the implements of violence, like all other tools, are designed and used for the purpose of multiplying natural strength until, in the last stage of their development, they can substitute for it.'<sup>14</sup> While 'force' makes volition disappear in complexity, 'violence' is instrumentalist and strongly attached to short-sighted volition. 'Violence' as a term allows its user to avoid any implication of agent and end, and shuns any presumption of authority. Violence seems to be pure volition without law: it is short-sightedly instrumental, devoid of principle, unpredictable. Force is associated with the language of natural sciences, and vibrates with the necessary causality of a natural law. Hence force is associated with the law in the closest conceivable way, while violence is maximally detached from the law.

Shaw finds a 'hierarchical structure of authority and control' with 'domestic systems', yet he does not expressly ascribe such a structure to international law. Authority, Arendt suggests, 'can be vested in persons . . . or it can be vested in offices, as, for instance, in the Roman senate (*auctoritas in senatu*) or in the hierarchical offices of the Church . . . Its hallmark is unquestioning recognition by those who are asked to obey; neither coercion nor persuasion is needed.'<sup>15</sup> Obviously, international law lacks authority in the Arendtian sense. This assumption must be shared by Shaw when he explains that '[r]eliance has to be placed on consent, consensus, reciprocity and good faith', as law lacks enforcement mechanisms of its own.

Projecting Arendt's terms back on the quoted excerpt from Shaw, his omissions appear in a sharper light. Following him, the 'will' of international law, together with 'political and non-legal factors', would be the impulse which sets free the energy of the social movement of force. But these factors may be combined in endless variations, which begs the question of what actually triggers force. In Shaw's open constellation where law's will interacts with other factors, I see a gesture of referral to an unaccounted, immanent normativity governing the use of force, to law's negative. What is the power setting free this force? Who assembles in the 'group keep[ing] together' which is at the core of a power triggering force? These are questions Arendt invites me to ask, and I would add another one: is the social cohesion of that group in some way co-constitutive with its exercise of power?

Plausible as it might have been at first sight, I now have serious doubts whether the distinction between force and violence in the quote from Shaw is helpful at all.<sup>16</sup>

<sup>13</sup> Ibid.

<sup>14</sup> Ibid., at 46. Arendt understands strength as an individual property, essentially independent of other things or persons. This term does not have a bearing on the problems dealt with in the present article.

<sup>15</sup> Ibid., at 45. Her circumscriptions replicate the older distinction between the king's *potestas* and the pope's *auctoritas*.

<sup>16</sup> Shaw's excerpt would ultimately lead us to the trite conclusion that violence is volition by the maleficent and international law is volition by the righteous. This would make plausible that violence that calls for punishment, while force merely calls for containment. This raises an issue of cognition. Either one ascribes to the primary sources of international law transcendent qualities, in which the exegesis of doctrine partakes,

I would like to consider a different way of accounting for the use of force. Following the French philosopher and literary critic René Girard,

[t]he procedures that keep man's violence in bounds have one thing in common: they are no strangers to the ways of violence. There is reason to believe that they are all rooted in religion. As we have seen, the various forms of prevention go hand in hand with religious practices. The curative procedures are also imbued with religious concepts – both the rudimentary sacrificial rites and the more advanced judicial forms. Religion in its broadest sense, then, must be another term for that obscurity that surrounds man's efforts to defend himself by curative or preventative means against violence.<sup>17</sup>

This obscurity perseveres in the age of secularization, and can be tracked in the functioning of legal institutions:

It is that enigmatic quality that pervades the judicial system when that system replaces sacrifice. This obscurity coincides with the transcendental effectiveness of a violence that is holy, legal, and legitimate successfully opposed to a violence that is unjust, illegal, and illegitimate.<sup>18</sup>

Elsewhere, Girard expresses the function of religion in straightforward terms: it 'invariably strives to subduing violence, to keep it from running wild'.<sup>19</sup>

I would like to highlight two aspects which will prove relevant for the question raised in this article. First, Girard speaks of *violence*;<sup>20</sup> and, more particularly, of violence as a way to keep man's violence in bounds. This suggests that bounded violence is to be distinguished from violence bounding it. Projected onto the terminology of international law, this implies a particular, superordinate violence bounding the use of force as much as the stray violence which international law, following Shaw, must 'restrain and punish'. It is only this generative violence which seems to provide for the cohesion of a political community from which an Arendtian 'power' may emanate. Following Girard, this power will seek to maintain itself violently, and this violence, exercised within the 'international community', would be termed 'force' by international lawyers. In a way this violence authors power or, rather, provides a co-original authority to power. What is 'curative or preventive' within the logic of generative violence, is actually enabling the unleashing of violence from an external perspective. The logic of bounding violence is always a logic of enabling violence, too.

Second, Girard emphasizes the role of obscurity and enigma, and links it to the law. Obscurity possesses a distinct function in his analysis of violence, and Girard finds it to be present even in cases where violence can be successfully established as 'holy, legal and legitimate', thereby attaining 'transcendental effectiveness'. As international law represents a 'curative and preventative means', it falls neatly

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or one accepts that doctrinal texts such as Shaw's are obscuring moves veiling the relation of knowledge to power.

17 R. Girard, *Violence and the Sacred* (1977), 24.

18 *Ibid.*

19 *Ibid.*, at 21.

20 More than a century ago Sorel remarked that the 'problems of violence still remain very obscure', which can be taken as an involuntary confirmation that the central condition for the functioning of generative violence thrived in 1906, as well as in 1969, when Arendt approvingly quoted Georges Sorel. G. Sorel, *Reflections on Violence* (1961), 'Introduction to the First Publication', 60, as quoted in Arendt, *supra* note 11, at 35.

within the Girardian use of the term 'religion'. Provocative to some, this could be discarded as a definitional caprice, were it not for the suggestion that religion puts obscurity to productive use. If we follow Girard and read international law as religion, its incompleteness, its obscurity might be absolutely necessary for the law's 'transcendental effectiveness' in containing violence. That suggestion should be hard to accept for lawyers used to thinking in terms of predictability.

So what is Girard's point? A foundational assumption in his work is that we are driven by a desire for that which our fellow humans desire. This *mimetic desire* spreads, and spawns rivalry, conflict, and, ultimately, violence. The use of violence does not end the cycle of desire, though. Rather, it sets off retributive violence, which triggers further retribution, and so forth. In the long run, this *contagious* violence will threaten the continued existence of a community. In *Violence and the Sacred*, Girard explores a coping mechanism. By directing intra-community violence onto a surrogate victim and sacrificing him or her, this threat is externalized and eliminated with the victim, and the community emerges reappeased. Girard describes this victim as a *scapegoat*, who is a replacement for the potential victims of retributive violence and innocent in the sense that he or she bears no responsibility for the escalating violence.<sup>21</sup> To maintain cohesion in communities, this pattern is ritually repeated.<sup>22</sup> The 'vitality as an institution' of sacrificial institution 'depends on its ability to conceal the displacement upon which the rite is based'<sup>23</sup> – that is, the displacement of violence from the real victims of retributive violence to the scapegoat victim.<sup>24</sup> The impulse of jurists to 'fill the void' left by the letter of the law through the device of interpretation or by conjuring *lex ferenda* might be one of the collusive strategies covering up the displacement upon which the rite is based. In legal questions related to the use of force, filling the void is the lawyer's contribution to the act of scapegoating.<sup>25</sup> The lawyer produces knowledge that forms part of the infliction of violence on the scapegoat victim, multiplying the 'natural strength' of whoever is immediately inflicting physical violence on him or her. This displacement is the source of the 'obscurity that surrounds man's efforts to defend himself by curative or preventative means against violence' discussed above.

21 '[S]ociety is seeking to deflect upon a relatively indifferent victim, a 'sacrificeable' victim, the violence that would otherwise be vented on its own members, the people it most desires to protect.' Girard, *supra* note 17, at 4. 'The celebrants' of the sacrificial process 'do not and must not comprehend the true role of the sacrificial act. The theological basis of the sacrifice has a crucial role in fostering this misunderstanding. It is the god who supposedly demands the victims; he alone, in principle, who savours the smoke from the altars and requisitions the slaughtered flesh. It is to appease his anger that the killing goes on, that the victims multiply.' *Ibid.*, at 7.

22 Following Arendt, 'every decrease in power is an open invitation to violence – if only because those who hold power and feel it slipping from their hands, be they the government or be they the governed, have always found it difficult to resist the temptation to substitute violence for it.' Arendt, *supra* note 11, at 87.

23 Girard, *supra* note 17, at 285.

24 Anne Orford argues that the veiling of Picasso's *Guernica* tapestry at the entry of the Security Council premises on the occasion of the appearance of the then US Secretary of State Colin Powell before the Council on 5 February 2003 made the foundational violence of war visible. '*Guernica* is . . . troubling. . . because it freezes time at that moment when the violence that may yet found a new law is not yet "buried, dissimulated, repressed".' A. Orford, 'The Destiny of International Law', (2004) 17 LJIL 441, at 459. In Girardian terms, the veiling incident is an avowedly failed attempt to render the displacement of violence obscure.

25 And therewith, of course, to the generation of violence.

The displacement process also provides the link to religion, and the concept of the *sacred*, which Girard makes a centrepiece of his theory. The scapegoat, the sacrificial victim, appears to be simultaneously the cause and resolution of conflict, and his or her killing leads to the ‘miraculous consequence’ of peace. How can that be?

If it is true that the community has everything to fear from the sacred, it is equally true that the community owes its very existence to the sacred. For in perceiving itself as uniquely situated outside the sphere of the sacred, the community assumes that it has been engendered by it; the act of generative violence that created the community is attributed not to men, but to the sacred itself. Having brought the community into existence, the sacred brings about its own expulsion and withdraws from the scene, thereby releasing the community from its direct contact. . . . A total separation of the community and the sacred would be fully as dangerous as a fusion of the two. Too great a separation can result in a massive onslaught on the sacred, a fatal backlash; then, too, there is always the risk that men will neglect or even forget how to implement the preventive measures taught them by the sacred itself as a defense against its own violence.<sup>26</sup>

Hence Girard’s theory is a theory of generative violence, a violence engendering the community, and, in the moment of crisis, re-engendering it miraculously through the sacrificial act.<sup>27</sup> To conceal the displacement of the victim’s role is essential for its functioning. This displacement is effectively hidden by the sacrificial rite and integrated into belief structures, into ideas of a divine visitation of the community.<sup>28</sup> While Girard’s theory is much richer than is reflected by my sketch, no more is needed for the purposes of this article.

Save, perhaps, for an effort to protect Girard against a possible misunderstanding. ‘Nothing, in my opinion, could be theoretically more dangerous than the tradition of organic thought in political matters by which power and violence are interpreted in biological terms’, Arendt wrote in her *On Violence*.<sup>29</sup> The point of Girard’s theory is to develop a critique of the assumption that generative violence, well practised throughout history, is a somehow natural and necessary means of organizing human community.<sup>30</sup> International lawyers who open up an obscure space for the transcendental in their explanation of the norms governing the use of force expose themselves to the range of this critique. With Shaw, maleficent violence is addressed with the beneficent violence of international law (qua ‘use of force’), producing

26 Girard, *supra* note 17, at 282.

27 ‘Polarized by the sacrificial killing, violence is appeased. It subsides. We might say that it is expelled from the community and becomes part of the divine substance, from which it is completely indistinguishable, for each successive sacrifice evokes in diminishing degree the immense calm produced by the act of generative unanimity, by the initial appearance of the god. Just as the human body is a machine for transforming food into flesh and blood, generative unanimity is a process for changing bad violence into stability and fecundity.’ *Ibid.*, at 280–1.

28 ‘All sacrificial rites are based on two substitutions. The first is provided by generative violence, which substitutes a single victim for all the members of the community. The second, the only strictly ritualistic substitution, is that of a victim for the surrogate victim. As we know, it is essential that the victim be drawn from outside the community. The surrogate victim, by contrast, is a member of the community. Ritual sacrifice is defined as an inexact imitation of the generative act.’ *Ibid.*, at 284.

29 Arendt, *supra* note 11, at 75.

30 Girard himself has used his own model to denounce sacrificial practices from a Christian position and presented a ‘non-sacrificial reading of the Gospel texts’, culminating in a new Christology in his *Things Hidden since the Foundation of the World* (1987).

peace and security in the international community. This corresponds neatly to the Manichean ideas Girard's theory seeks to unravel and critique: the maleficent 'violence running wild' is addressed with the beneficent violence of sacrifice, producing appeasement, fecundity, and a socially stable community.

Before bringing this correspondence back to a selection of texts of contemporary international law, I have to consider the inner logic of these obscuring moves that ensure the success of sacrificial violence. Without an understanding of the specific function of positive law in conjunction with what I have termed law's negative, I will not be able to corroborate the correspondence between sacrificial violence and the use of force.

Above, my interest was mainly directed towards the relationship between sacrificial violence and the creation of social cohesion in a community. I tried to explain what law *cannot say*, in particular why the law cannot account for the logic of sacrificial violence without losing its effectiveness. Against the backdrop of Girard's 'miracle of appeasement', I have to consider what law *needs to signify* to ensure this effectiveness.

The obscurity which Girard considers to be so necessary for the proper working of the sacrificial process can only extend to the inner workings of that process. Its outcome, however, must appear as legible and meaningful for community members; the sudden re-legitimation of community after an accepted sacrifice is a reflection of a transcendental will. In itself, appeasement could not be understood as miraculous, were it not for a *portent* in the light of which the miracle becomes legible as a transcendental intervention. Or, as Franz Rosenzweig emphasized, the 'prediction, the expectation of a miracle, always remains the constitutive factor, while the miracle itself is but the factor of realization'.<sup>31</sup> Appeasement itself, together with the re-legitimation of community, is a secondary event. The constitutional moment of this community is that of the portent. Yet without the miracle the portent cannot be read properly.

But what is a portent? In his study on the materiality of the miracle, Eric Santner draws on Rosenzweig's *Star of Redemption*:

While today one can only imagine a miracle as a breach of natural law of some sort, 'for the consciousness of erstwhile humanity', Rosenzweig writes, a miracle was based on an entirely different circumstance, namely, on its having been predicted, not on its deviation from the course of nature as this had previously been fixed by the law. As Rosenzweig puts it, '[m]iracle and prophecy belong together' . . . In the first instance, Rosenzweig is thinking here of the efforts made by both Judaism and Christianity to anchor the ultimate miracle – that of revelation – in prior 'predictions' or signs.<sup>32</sup>

In a correlated way, reductive judicial formalism would invoke the portent as the first component of a breach of the law, and denounce an action or omission based

<sup>31</sup> F. Rosenzweig, *The Star of Redemption* (1985), 96.

<sup>32</sup> E. Santner, 'Miracles Happen: Benjamin, Rosenzweig, Freud and the Matter of the Neighbor', paper available at [http://www.cjs.ucla.edu/Mellon/Santner\\_Miracles\\_Happen.pdf](http://www.cjs.ucla.edu/Mellon/Santner_Miracles_Happen.pdf) (last visited 5 July 2007), 8, quoting Rosenzweig, *supra* note 31, at 95. The emphasis in the quote from Rosenzweig's text is Santner's.

on it as the realization of this breach.<sup>33</sup> It is precisely this re-projection of action or omission on a portent that allows for a teleological interpretation producing legality through legitimacy arguments.<sup>34</sup>

The preceding debate on humanitarian intervention delivered a portent in relation to the 1999 intervention in the province of Kosovo and its subsequent appeasement.<sup>35</sup> Its formal illegality was acknowledged by many international lawyers, yet superseded by a somehow undisputable legitimacy simultaneously read into it. The sense of historical purpose was perhaps most pertinently expressed in the reference by the German foreign minister Joschka Fischer to an imperative of not allowing a repetition of Auschwitz felt by 'his generation' to motivate his support for a NATO intervention.<sup>36</sup> Fischer's statement, along with the literature on humanitarian intervention, established the constitutive portent.

How should I understand the portent? In his essay on the German literary critic Max Kommerell, Giorgio Agamben elaborates on Kommerell's work on gesture:

Gesture is not an absolutely non-linguistic element but, rather, something closely tied to language. It is first of all a forceful presence in language itself, one that is older and more originary than conceptual expression. Kommerell defines linguistic gesture (*Sprachgebärde*) as the stratum of language that is not exhausted in communication and that captures language, so to speak, in solitary moments.<sup>37</sup>

Agamben then concludes that 'if speech is originary gesture, then what is at issue in gesture is not so much a prelinguistic content as, so to speak, the other side of language, the muteness inherent in humankind's very capacity for language, its *speechless* dwelling in language'.<sup>38</sup> Foreign Minister Fischer's reference to Auschwitz is a linguistic gesture towards what is, as the title of Dan Diner's book on the Holocaust suggests, 'beyond the conceivable'.<sup>39</sup> The 'significance' of this gesture, its

33 When using the term 'reductive judicial formalism', I think of an international lawyer interpreting a treaty entirely 'in accordance with the ordinary meaning to be given to the terms of the treaty in their context' and terminating an interpretive operation without involving the 'light of its object and purpose'. See Art. 31(1) of the 1969 Vienna Convention on the Law of Treaties, 1155 UNTS 331.

34 Considering, the 'ends' enumerated in the preamble of the UN Charter can be invoked to support teleological arguments. Indeed, were the world delivered into a state of tolerance, peace, security, and economic and social advancement, the UN Charter's preamble would be related to as a portent of that state.

35 Much of this debate followed a pattern in which all kinds of state practice were enumerated and the condensation of that practice into a legal concept of humanitarian intervention then denied. This retains the miraculous function of humanitarian intervention, while acknowledging the portents predicting it. See, e.g., S. D. Murphy, *Humanitarian Intervention. The United Nations in an Evolving World Order* (1998).

36 In a *Newsweek* interview published in the issue of 19 April 1999, Fischer was quoted as saying 'My generation was brought up with two experiences. The first is "Never Again War." And the second is "Never Again Auschwitz." It means standing up against genocide.' What might have seemed as a dilemma to some was neatly dissolved in the conclusion, suggesting that standing up against genocide cannot qualify as waging war. The sequential logic of this quote correlates with that employed by those international lawyers justifying the use of force by NATO on grounds of legitimacy. It is not without significance that a reference to Auschwitz was introduced at a time when the generation witnessing the annihilation policies of the German authorities in 1933–45 was thinning out and knowledge of its systems of homicide became increasingly mediated and institutionalized. Fischer's own formative experience was seeing images of Adolf Eichmann in his glass cage during the Jerusalem trial (*Süddeutsche Zeitung*, 25 January 2005).

37 G. Agamben, *Potentialities. Collected Essays in Philosophy* (1999), 77.

38 *Ibid.*, at 78 (emphasis in original).

39 'Beyond the Conceivable' is the title of Dan Diner's book on the Holocaust, published in May 2000 and discussing *inter alia* various strategies of debating the 'final solution'. D. Diner, *Beyond the Conceivable. Studies on Germany, Nazism and the Holocaust* (2000).

prophetic allure, is neatly reflected in Diner's suggestion that the commemoration of the Holocaust is increasingly becoming the core of a European memory, providing a central point of reference for a European identity as well as the foundation for European constitution building.<sup>40</sup>

It is surprising to what degree Rosenzweig's claim on the portent's constitutional position can assume literality.

Here I will conclude on my argument on the role of the law and, in particular, that of law's negative. Wherever a telos emancipating itself from the black letter of international law is reread into the law and a historical mission projected onto it, we are witnessing the making of gestures. These gestures are constitutional in the sense that they 'signify' law's negative as soon as a subsequent event is read as a miraculous appeasement. It is the making of gestures that I have to be attentive to when I now return to the texts of international law.

### 3. INTERNATIONAL LAW

One way of testing the usefulness of a Girardian approach would be to read a text on the international use of force with attention to the way in which it accommodates generative violence. I will first present that text, and then subject it to a Girardian reading.<sup>41</sup>

The text I have chosen is related to the international law on the use of force in self-defence in the context of the production and proliferation of biological, chemical, or nuclear 'weapons of mass destruction' (WMD). It is contained in the 2006 US National Security Strategy (NSS).<sup>42</sup> Controversial as it may be, it provides a wonderful object of study for those seeking to track the production of knowledge on divine violence through international law.

A passage from the NSS reads as follows:

Meeting WMD proliferation challenges also requires effective international action – and the international community is most engaged in such action when the United States leads.

Taking action need not involve military force. Our strong preference and common practice is to address proliferation concerns through international diplomacy, in concert with key allies and regional partners. If necessary, however, under long-standing principles of self-defence, we do not rule out the use of force before attacks occur, even if uncertainty remains as to the time and place of the enemy's attack. When the consequences of an attack with WMD are potentially so devastating, we cannot afford to stand idly by as grave dangers materialize. This is the principle and logic of pre-emption. The place of pre-emption in our national security strategy remains the

40 D. Diner, 'Haider und der Schutzreflex Europas' [Haider and the protective reflex of Europe], *Die Welt*, 26 February 2000. He elaborated this argument in D. Diner, 'Restitution and Memory: The Holocaust in European Political Cultures', (2003) *New German Critique* 36.

41 The steps of this reading draw inspiration from the title of the third Melbourne Legal Theory Workshop at the Institute for International Law and the Humanities, University of Melbourne, 22–4 November 2006.

42 Is the 2006 National Security Strategy merely a domestic policy instrument? Any analysis of customary international law on the use of force or of pertinent treaty law would have recourse to such instruments in the determination of *opinio juris*. In using the text as an example, I do not wish to take a position on the confluence of some or all of its express content with valid international law.

same. We will always proceed deliberately, weighing the consequences of our actions. The reasons for our actions will be clear, the force measured, and the cause just.<sup>43</sup>

The text is taken from a section headed by the following imperative: 'Prevent Our Enemies from Threatening Us, Our Allies, and Our Friends with Weapons of Mass Destruction'. This imperative is ostensibly directed towards the US institutions, yet it is as much an adjuration of the sacred. When describing the 'way ahead' under this heading, the author of the text identifies '[t]he need for action', and the quote represents the second sentence of the third paragraph and the fourth paragraph in its entirety. The quoted text is followed by a one-page text box on the issue of 'Iraq and Weapons of Mass Destruction'.

### 3.1. Limit

In its parts related to terrorist threats, the 2006 National Security Strategy operates with four hierarchical levels: that of a single superpower (the United States, on which it is incumbent to take the lead); the ordinary state, forming part of the 'international community' together with the United States; the rogue state, referred to frequently in the chapter from which my quote was taken, and subordinated to both; and, finally, the terrorist. The rogue state and the terrorist could be seen as two representations of the same actor, which is given an individual as well as an institutional form. To my mind, both rogue state and terrorist represent two different embodiments of divine violence, simultaneously located inside and outside the international community. This straddling of the limit between inside and outside, between divine and profane, is crucial for the function of sacrificial rites.<sup>44</sup>

The quoted text lives off a limit severing the ordinary violence of the 'use of force' from the extraordinary violence of 'mass destruction'. WMD are categorically distinct from 'nuclear weapons' in the possession of a state not qualifying as a rogue or a failure. With Girard, the proliferation of WMD could be said to represent the threat of an unfettered divine violence expressing itself through a globalized retribution (Girard's prime illustration of the contagious violence draws on the blood feud). In the NSS, the loss of fetters is represented by the keyword of 'proliferation' in a context propelled by the antagonists' 'murderous ideology'.<sup>45</sup> This violence could be channelled and ultimately bound by sacrificing a 'substitute victim'. The hierarchization of international actors provides for a group from which such victims can be chosen. In the logic of sacrificial violence, this avoids contagious patterns of retribution set off by the use of WMD.

With Girard, the sacrificial victim is a substitute for all members of the community. To make substitution work, the scapegoat must first be integrated into the life of the community. Girard uses the example of the Tupinamba people, whose prisoners of battle were brought into the community and lived there for a long

43 National Security Strategy 2006, at 23.

44 '[T]he surrogate victim constitutes both a link and a barrier between the community and the sacred'. Girard, *supra* note 17, at 286, where he also uses the term 'monstrous double' to describe the victim.

45 National Security Strategy 2006, at 9.

period before being ritually sacrificed.<sup>46</sup> The transfer of violence from community members to the scapegoat can only succeed if the former is ritually assimilated to community members. If we revert to an ‘international community’ of states, a plausible account of the fettering of violence would presuppose that any sacrificial victim would first be integrated into the ‘international community’ benefiting from the sacrifice. Whoever is sacrificed has to bear the traits of a community member and therewith be equipped with state attributes. As the scapegoat replaces community members, a sufficient degree of similarity and thus statehood is required. In describing the transition from the ritual integration of a captive to his ritual sacrifice, Girard emphasizes that it is the captive’s trespassing of a norm that triggers the actual process culminating in physical sacrifice. In the case of the Tupinamba, the ‘escape’ of the captive was arranged; he was recaptured and thereafter stimulated to violate the law. Only then were preparations for his violent sacrifice made.<sup>47</sup> The quality of ‘rogue’ neatly reflects the elusive nature of this trespassing, and a judgement of an actor as ‘rogue’ is certainly not based on any formal law. Also, it remains unclear exactly what obligations a state hosting an organization deemed terrorist has to assert control over this organization in order to avoid acts of self-defence by states seeing themselves as a victim of terrorist attack.<sup>48</sup> In Girard’s example as well as in international law, the scapegoat moves over a minefield, where each step could be the crucial infringement triggering her sacrifice.

In the quote above, the action to be taken against WMD is constructed in a peculiar way. First, there are references to collective action and the peaceful resolution of conflicts. These anchor the process of acting within the framework of international law. Then the reference to the ‘long-standing principles of self-defence’ forms a juncture between international law and the less direct references to the transcendental following in the second part of the paragraph.<sup>49</sup> In itself, the use of the very term ‘self-defence’ also reinforces the reference to international law. However, by embedding self-defence in a plurality of ‘principles’, this reference is transgressed. The plurality of ‘principles’ conflates positive legal normativity and some other normativity. It is where the generative violence of justice and the generative violence of the divine are intertwined as curative means against the threat of unfettered violence dissolving the community.

As I read on in the excerpt, I am made to understand why the author chose expressions *ex negativo* of *not ruling out* the use of force and *not being able to stand idly by* when great risks materialize. Just as we cannot fathom and delimit the consequences of unfettered divine violence, the potential of devastation represented by WMD can neither be grasped nor delimited by establishing a ceiling in language. The pattern so far – reasserting the primacy of peaceful means to then invoke an unfathomable

<sup>46</sup> Girard, *supra* note 17, at 289–96.

<sup>47</sup> *Ibid.*, at 290.

<sup>48</sup> See Wilmshurst, *supra* note 4, at 970, asserting such a right to self-defence against a state unable or unwilling to assert control over a terrorist organization located in its territory.

<sup>49</sup> International law as stated in the Chatham House Principles does not accept that a state may defend itself against a non-imminent threat. See *ibid.*, at 968. This extension of international law with a transcendental normativity is necessary mainly to stretch the temporal perspective from imminence to uncertain timing.

threat which actualizes the transcendence of a response which can only be described in negative terms – is closely trailing that of the ICJ's *Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons*.<sup>50</sup> After highlighting circumstantial evidence from various areas of international law, the Opinion builds the image of a law that verges infinitely towards illegality, without ever ending there. The frequently quoted paragraph 96 then toggles into law's negative, where 'the Court cannot lose sight of the fundamental right of every State to survival, and thus its right to resort to self-defence, in accordance with Article 51 of the Charter, when its survival is at stake'.<sup>51</sup>

Returning to the NSS quote, I gather that the use of WMD could imply the end of a nation-statist community, of democracy in that community, of the idea of an international community, of the world as we know it, and so forth. This open-endedness places a strong eschatological current in the text. Therefore the temporal issues governing pre-emption are open and indeterminate. '[E]ven if uncertainty remains as to the time and the place of the enemy's attack', force can be used 'before attacks occur'. As these paragraphs are part of an argument on the prevention of the proliferation of WMD as much as their use, this formulation widens the time span of intervention considerably. After these expansive moves, the text abruptly switches into a laconic mode by stating that 'this is the principle and logic of pre-emption'. On the basis of the foregoing, it is hardly possible to comprehend this 'principle and logic' in any rational way. Yet the seemingly offhand reference to a *single* principle of pre-emption helps us to understand the use of the plural form in the 'principles of self-defence' referred to earlier. This single 'principle' appears as one of the 'principles of self-defence'. Due to its appearance as a singular in a plural construction, it need not be subordinated to any other principle among the 'principles' of self-defence.

In a way, the National Security Strategy's 'principle and logic of pre-emption' can be read as repeating, in a more nuanced way, the gesture of referral made in paragraph 105.2.E of the ICJ Advisory Opinion, stating that 'the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake'.<sup>52</sup> The singularity and opaqueness of the 'principle and logic of pre-emption' in the National Security Strategy (and in the ICJ Advisory Opinion's quoted paragraph, I should add) might be explained by involving the figure of the 'kat-echon', the restrainer, who delays the appearance of the Antichrist and therewith the end of the current aeon. It is mainly reflected in 2 Thessalonians 2: 6–7, which refers to a power holding back the Antichrist until the second coming

50 *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, Advisory Opinion of 8 July 1996, [1996] ICJ Rep. 66; *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion of 8 July 1996, [1996] ICJ Rep. 226.

51 *Legality of the Threat or Use of Nuclear Weapons*, *supra* note 50, at 263. Martti Koskenniemi explained the Court's abstention from knowing the answer in terms of respecting a taboo: 'By lifting the matter onto the level of judicial reason, the Court would have broken the taboo against any use of nuclear weapons'. M. Koskenniemi, 'The Silence of Law/The Voice of Justice', in L. Boisson de Chazournes and Philippe Sands (eds.), *International Law, the International Court of Justice and Nuclear Weapons* (1996) 488, at 496. By violating the taboo, by making divine violence profanely cognizable, the potential for miraculous appeasement is cancelled out, too.

52 *Nuclear Weapons Advisory Opinion*, *supra* note 50, para. 105.2.E.

of Christ.<sup>53</sup> Historical exegesis usually equates this power with the Roman Empire. With reference to the medieval *Respublica Christiana*, Carl Schmitt remarked that it did not conceive of itself as eternal, but kept an eye to its own finality. The belief in its katechonic role – the holding off of the end of the world until the second coming of the Christ – allowed it to overcome a threatening eschatological paralysis.<sup>54</sup> The threat of such paralysis is real for those perceiving themselves as potentially threatened by weapons of mass destruction. The katechonic principle included in the National Security Strategy provides time, space, and legitimacy for the worldly power to counter this threat.

If WMD imply a threat of an eschatological dimension, the implications of the ‘principle of pre-emption’ can hardly be fettered and determined with the express language of international law. Rather, it gestures towards a normativity immanent in the law. An appeasement of divine violence would suggest a form of sacrificial exchange. By creating ‘unanimity’ within a community and offering the sacrificial victim to God, appeasement is produced.<sup>55</sup> But that relation is rendered obscure, and a society engaging in it needs to understand this appeasement of violence as a manifestation of the divine.

### 3.2. Exception

I should now like to turn to the interrelation of substantive norms on the use of force and the law of state responsibility. It could be argued that this relationship is part of a body of norms *ex negativo*, that is, norms which open a space permitting violence. This brings us to the circumstances precluding wrongfulness in the International Law Commission (ILC) Articles on State Responsibility.<sup>56</sup>

While Article 1 of the ILC Articles states that every internationally wrongful act by a state entails the international responsibility of that state, Article 2 sets out the elements of an internationally wrongful act by a state. There is an internationally wrongful act by a state, it says, when conduct consisting of an action or omission (a) is attributable to the state under international law; and (b) constitutes a breach of an international obligation of the state. Chapter V sets out circumstances precluding wrongfulness. The ILC deliberately chose the term ‘wrongfulness’ over ‘responsibility’ here, which safeguards the future existence of the international obligation in question. The idea of preclusion disallows the designation of the conduct in question as a breach of an international obligation. Theoretically, this preclusion might suggest ‘prior to material law’ or ‘outside material law’, which is remarkably unclear, as the secondary norms surely aspire to be sharing the materiality of international

53 In the translation of the New American Standard Bible, 2 Thess. 2: 6–7 reads as follows: ‘And you know what restrains him now, so that in his time he will be revealed. For the mystery of lawlessness is already at work; only he who now restrains will do so until he is taken out of the way.’

54 C. Schmitt, *Der Nomos der Erde im Völkerrecht des Jus Publicum Europaeum* (1950), 28–9.

55 Carl Schmitt’s description of ‘acclamation’ as the most authentic form of democracy by a ‘truly assembled people’ in a street demonstration or a political meeting on a public square needs to be explored in its correlation to Girard’s unanimity amongst community members on the sacrifice of the scapegoat. See C. Schmitt, *Verfassungslehre* (1970), 243.

56 Draft Articles on the Responsibility of States for Internationally Wrongful Acts, Report of the ILC on the Work of its Fifty-Third Session, UN GAOR, 56th Sess., Supp. No. 10, UN Doc. A/56/10 (2001), at 43.

law. I conclude that the vexing normativity created by preclusion of wrongfulness is a fine example of law's negative.

Among the circumstances precluding wrongfulness (yet another construction *ex negativo*), consent, self-defence, *force majeure*, and distress are listed. Also, in Article 25(1), I find a reference to necessity, which is constructed in a more complicated way:

Necessity may not be invoked by a State as a ground for precluding the wrongfulness of an act not in conformity with an international obligation of that State unless the act:

- (a) Is the only way for the State to safeguard an essential interest against a grave and imminent peril; and
- (b) Does not seriously impair an essential interest of the State or States towards which the obligation exists, or of the international community as a whole.

Read against the backdrop of an eschatological threat by WMD, any action taken by the United States would satisfy the demand of subparagraph (a).<sup>57</sup> By demoting an adversary against whom action is being taken to the subordinate level of a rogue state or a terrorist, there is no longer any 'State or States toward which the obligation exists'. As the international community is described in earlier parts of the Strategy as craving US leadership, the essential interests of its member states can hardly be seriously impaired. More importantly, perhaps, the sacrifice of a single rogue state would ensure the 'miraculous appeasement' of that community and therewith its future existence.

In withdrawing to the level of secondary norms, the law provides a space for controlled transition to religion, and back. For the international lawyer, this movement is almost too brief for explication; it is a moment in which the fear of divine violence is exchanged for indebtedness to divine violence. The law of this space is the law of exception. To a degree, it is a law: the listing of circumstances precluding wrongfulness ends with a reminder of their outer limit in *jus cogens*. It suggests that there is some boundary around that particular area of an international law of exception.<sup>58</sup> *Jus cogens* is, however, unable to function as a boundary in any positive, legal-technical sense, because its material content is so unstable and has an uncontrollable propensity for growth.<sup>59</sup> Teachings avowing the restraining power

57 The US president's introduction to the 2006 National Security Strategy describes it as the government's 'most solemn obligation' to protect the security of its citizens.

58 Article 26 reads, 'Nothing in this chapter precludes the wrongfulness of any act of a State which is not in conformity with an obligation arising under a peremptory norm of general international law.'

59 Using the principle of the non-use of force as a test case, Ulf Linderfalk has shown that it is impossible properly to delimit norms of *jus cogens* and norms of *jus dispositivum*. U. Linderfalk, 'The Effect of *Jus Cogens* Norms – Whoever Opened the Pandora's Box, Did You Ever Think about the Consequences?', (2008) *AJIL* 853. It is precisely this margin left by the malleability of *jus cogens* that allows international lawyers to make the signifying gestures discussed in section 2 of this article. Unsurprisingly, *jus cogens* has its roots in Catholic thought. Alfred Verdross might be named here as one of the main proponents of *jus cogens* as a concretization of natural law's *jus necessarium*. Bruno Simma commented that Verdross's 'Catholicism . . . provided a fitting, if not essential, foundation for his natural law philosophy as well as for his universalistic view of international law' on which his substantial contributions to the development of *jus cogens* must have rested. B. Simma, 'The Contribution of Alfred Verdross to the Theory of International Law', (1995) 6 *EJIL* 1, at 5.

of *jus cogens* actually collude with the open-endedness of the exception and thereby contribute to the obscure logic of sacrificial violence.<sup>60</sup>

Unsurprisingly, the concept of necessity provides ample opportunity for international lawyers devising legal absolutions for the use of force. Danish scholar Ole Spierman provides an example of how law's negative can be put to work and render positive normativity in his skilful justification of humanitarian intervention in the absence of a Security Council mandate.<sup>61</sup> In a first step, he denies Article 2(4) of the UN Charter the character of *jus cogens* and situates humanitarian intervention outside the scope of the concept of aggression (which removes another potential clawback on necessity, given that the prohibition of aggression is deemed to be *jus cogens*). Thereafter he concludes that the wrongfulness of a humanitarian intervention can be precluded for reasons of its necessity and, indeed, that humanitarian intervention can be justified on such grounds. I am struck, or perhaps rather startled, by the tacit metamorphosis in his text. The preclusion construction *ex negativo*, which carefully avoids statements on the extent of obligations under international law, is slowly turning into a positive construction, justifying humanitarian intervention as being within the space of international law.

#### 4. CONCLUDING REMARKS: EMERGENCY, MIRACLE, APPEASEMENT

This space of international law can be rendered productive. If we move the emphasis further away from ideas of exceptions in positive law, and towards law's negative, we are within the domain of *emergency*.

This movement towards a revelatory process is visible in the last two sentences of my quotation from the 2006 National Security Strategy. When inside the exceptional space of the 'principle of pre-emption', the author assures the reader that '[w]e will always proceed deliberately, weighing the consequences of our actions. The reasons for our actions will be clear, the force measured, and the cause just.'

In the first of these two sentences, the deliberation and the weighing still imply a reference to the rationality of men and women acting in the exceptional space of the law. In contrast, the second sentence is laconic and rests on an obscure premise: exactly what rules govern the weighing; exactly at what level of danger will the principle of pre-emption permit action? Yet the second sentence could also

60 'Necessity' can take us far indeed. John Rawls's 'Supreme Emergency Exemption' allows states to 'set aside – in certain special circumstances – the strict status of civilians that normally prevents their being directly attacked in war.' Using the example of the British bombing of Germany in a period of the Second World War up to the battle of Stalingrad, he believes that threats of the kind Nazism posed justify the invocation of this exemption. J. Rawls, *The Law of Peoples* (1999), 98–9. Rawls acknowledges that his teaching differs from that of the Christian doctrine of just war, which would not allow for such an exemption. Rawls, 104. Extrapolating and comparing eschatologies from Rawls's liberal treatise and the just war doctrine would be a worthy enterprise.

61 O. Spiermann, 'Humanitarian Intervention as a Necessity and the Threat or Use of *Jus Cogens*', (2002) 71 *Nordic Journal of International Law* 523. Spierman is, however, more thoughtful in developing his argument than Thomas Franck, who believes that an international lawyer asked to advise on a 'future Kosovo' should state the following: 'If a genocide is about to occur but the Security Council is incapacitated by a veto, the lawyer should advise that the law will not hold a government hard to account for doing what is palpably necessary to stop the commission of an imminent and greater wrong.' T. M. Franck, *Recourse to Force: State Action against Threats and Armed Attacks* (2002), 191.

be read as describing a process of revelation. Upon the use of sacrificial violence, clarity, measure, and justness will be evident rather than deducible. The portent of pre-emptive self-defence will become fully legible at the moment of fulfilment, of 'miraculous appeasement'.

Here I have come to the point where I have found a number of examples suggesting that international law accommodates a sacrificial violence that promotes the preservation and cohesion of a group, a community. It lives off law's negative, and its apologists unwittingly assume the role of prophets. I believe that I have shown that the paucity of the positive law on the use of force serves a function indeed. Whether there are alternatives to this primitive mode of re-creating the international community is a different question.