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## RELIGIOUS EXTREMISM AND INTERNATIONAL LEGAL NORMS: PERFIDY, PREEMPTION, AND IRRATIONALITY

*Louis René Beres\**

The French dramatist and diplomat, Jean Giraudoux, inquires in *Sodom et Gomorrhe*, “*C’est beau, n’est-ce pas, la fin du monde?*”<sup>1</sup> “It is beautiful, isn’t it, the end of the world?”

Like the ironic playwright who explodes the myth of an ordered cosmos, the contemporary terrorist often sees great beauty in the ultimate form of disorder, in chaotic visions of an apocalyptic end to “heresy,” “blasphemy,” “apostasy,” and all other forms of unbelief. For the terrorist who remains defined in many different ways by the diverse worlds of law and politics, violence is not only a sacred path to universal cleansing and redemption, it is the only path. What is more, this “path”—to continue the metaphor—is more than a means to an end. It is in essence *the end*, an end unto itself.<sup>2</sup>

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<sup>1</sup> JEAN GIRAUDOUX, *SODOME ET GOMORRHE* 96 (1943).

<sup>2</sup> Today this path can even include nuclear terrorism. For earlier writing by this author on such mass-casualty terrorism in particular, see generally LOUIS RENÉ BERES, *APOCALYPSE: NUCLEAR CATASTROPHE IN WORLD POLITICS* (1980); LOUIS RENÉ BERES, *TERRORISM AND GLOBAL SECURITY: THE NUCLEAR THREAT* (2d ed. 1987); Louis René Beres, *Is Nuclear Terrorism Plausible?*, *NUCLEAR TERRORISM: DEFINING THE THREAT* 45–53 (Paul Leventhal & Yonah Alexander, eds., 1986); Louis René Beres, *Preventing Nuclear Terrorism: Responses to Terrorist Grievances*, in *PREVENTING NUCLEAR TERRORISM* 146–59 (Paul Leventhal & Yonah Alexander eds., 1987); Louis René Beres, *Responding to the Threat of Nuclear Terrorism*, in *INTERNATIONAL TERRORISM: CHARACTERISTICS, CAUSES, CONTROLS* 228 (Charles W. Kegley, Jr. ed., 1990); Louis René Beres, *Confronting Nuclear Terrorism*, 14 *HASTINGS INT’L & COMP. L. REV.* 129 (1990); Louis René Beres, *Hic Sunt Dracones: The Nuclear Threat of International Terrorism*, *PARAMETERS: J. U.S. ARMY WAR COLLEGE* 11–19 (1979); Louis René Beres, *International Terrorism and World Order: The Nuclear Threat*, 12 *STAN.*

For the individual terrorist—and today we really mean the *Jihadist* terrorist—violent destruction of blasphemers, infidels, and apostates is incontestably a distinct form of religious sacrifice.<sup>3</sup> And as is the case with all such forms of worship, sacrifice is meant to alleviate the death fears of the perpetrator (the “high priest”) by bringing death to “others.” It is generally believed that the suicide-bomber is fearless, cruel, and not only willing, but even eager to die for the greater glory of Allah. In fact, nothing could be farther from the truth. The suicide-bomber kills himself in order to avoid death. One must understand that the “death” the suicide-bomber expects to suffer is little more than a momentary inconvenience on the way to eternal life—to immortality. Paradoxically, it is his or her exceptionally acute fear of death that occasions “suicide.”<sup>4</sup>

This important conference has explored the links between sacred violence, religion and terrorism.<sup>5</sup> On its face, the dreadful connection between violence and terrorism seems to be a function of religion.<sup>6</sup> Religion,

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J. INT'L STUD. 131 (1977), reprinted in STUDIES IN NUCLEAR TERRORISM 360 (Augustus R. Norton & Martin H. Greenberg, eds., 1979); Louis René Beres, *Israel, the "Peace Process," and Nuclear Terrorism: A Jurisprudential Perspective*, 18 LOY. L.A. INT'L & COMP. L.J. 767 (1996); Louis René Beres, *On International Law and Nuclear Terrorism*, 24 GA. J. INT'L & COMP. L. 1 (1994); Louis René Beres, *Preventing "The Blood-Dimmed Tide:" How to Avoid Nuclear Terrorism Against the United States*, 24 STRATEGIC REV. 76 (1996); Louis René Beres, *Terrorism and International Law*, 3 FLA. INT'L L.J. 291 (1988); Louis René Beres, *Terrorism and International Security: The Nuclear Threat*, 26 CHITTY'S L.J. 73 (1978); Louis René Beres, *The Threat of Palestinian Nuclear Terrorism in the Middle East*, 15 INT'L PROBS 48 (1976); Louis René Beres, *The United States and Nuclear Terrorism in a Changing World: A Jurisprudential View*, 12 DICK. J. INT'L L. 327 (1994).

<sup>3</sup> For the best current discussion of Jihad, see THE LEGACY OF JIHAD: ISLAMIC HOLY WAR AND THE FATE OF NON-MUSLIMS (Andrew G. Bostom ed., 2005). This magisterial collection, using extensive primary and secondary source materials, reveals that for centuries jihad sought to expand Islamic dominance by massacre, pillage, enslavement and deportation. The argument reproduces extensive quotations from the Qu'ran and the Hadith, along with Qu'ranic exegeses by the best-known classical and modern commentators. Consequently, the book thoroughly discredits the position that merely by radical misinterpretation has jihad warfare been justified.

<sup>4</sup> Here, too, we must note that in addition to the promise of immortality, the considerable incentive of sexual fulfillment. For aspiring suicide-bombers, the promise of beautiful virgins in the afterlife is entirely literal. It is not mere metaphor. See EFRAIM KARSH, ISLAMIC IMPERIALISM 19 (2006).

<sup>5</sup> From a purely military standpoint, terrorism is generally understood as a form of irregular warfare, or sometimes low-intensity conflict. The U.S. Joint Chiefs of Staff include terrorism and insurgent warfare in their definition of low-intensity conflict. Heinz Vetschera, *Low-Intensity Conflict: Theory and Concept* in 3 INTERNATIONAL MILITARY AND DEFENSE ENCYCLOPEDIA 1578, 1578–79 (Trevor N. Dupuy et. al. eds., 1993).

<sup>6</sup> For core conventions in force concerning or related to terrorism, see Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, Including Diplomatic Agents, Dec. 14, 1973, 28 U.S.T. 1975, 1035 U.N.T.S. 167; Vienna Convention on Diplomatic Relations, Apr. 18, 1961, 23 U.S.T. 3227, 500 U.N.T.S. 94; Convention on

and more specifically Islam, is allegedly the root cause of the problem. This is certainly not incorrect. But I argue that religion here is not the actual underlying cause, but rather the visible part of something much deeper—a deep and enduring pathology in the human spirit, which is now especially pervasive in Islam. I refer to the human fear of death, a fear that much has been written about from the times of Epicurus,<sup>7</sup> Lucretius, Epictetus,<sup>8</sup> and Marcus Aurelius<sup>9</sup> to those of Sigmund Freud, George Santayana,<sup>10</sup> Eugene Ionesco,<sup>11</sup> and Ernest Becker.<sup>12</sup>

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Offenses and Certain Other Acts Committed on Board Aircraft, Sept. 14, 1963, 20 U.S.T. 2941, 704 U.N.T.S. 218; Convention for the Suppression of Unlawful Seizure of Aircraft, Dec. 16, 1970, 22 U.S.T. 1641, 860 U.N.T.S. 105; Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, Sept. 23, 1971, 24 U.S.T. 565, 974 U.N.T.S. 177; G.A. Res. 40/61, U.N. Doc. A/RES/40/61 (Dec. 9, 1985) (stating for the first time that all acts of terrorism are “condemn[ed] as criminal,” but failing to fully define terrorism except for such acts as hijacking, hostage-taking and attacks on internationally protected persons).

<sup>7</sup> In his Letter to Menoeceus, Epicurus counsels: “Become accustomed to the belief that death is nothing to us. For all good and evil consists in sensation, but death is deprivation of sensation. And therefore a right understanding that death is nothing to us makes the mortality of life enjoyable, not because it adds to an infinite span of time, but because it takes away the craving for immortality.” Letter from Epicurus to Menoeceus, in *THE STOIC AND EPICUREAN PHILOSOPHERS* 30 (Whitney H. Oates et. al. eds., 1940).

<sup>8</sup> Aware that Socrates called death fears “bogies,” Epictetus inquires: “What is death? A boggy. Turn it round and see what it is: you see it does not bite. The stuff of the body was bound to be parted from the airy element, either now or hereafter, as it existed apart from it before . . . .” Discourses of Epictetus, in *THE STOIC AND EPICUREAN PHILOSOPHERS* 282 (Whitney H. Oates et. al. eds., 1940).

<sup>9</sup> We are each “a little soul, carrying a corpse,” says Marcus Aurelius. Marcus Aurelius, *Meditations*, in *THE STOIC AND EPICUREAN PHILOSOPHERS* 514 (Whitney H. Oates et. al. eds., 1940).

<sup>10</sup> Santayana wrote: “In endowing us with memory, nature has revealed to us a truth utterly unimaginable to the unreflective creation . . . the truth of mortality . . . . The more we reflect, the more we live in memory and idea, the more convinced and penetrated we shall be by the experience of death; yet, without our knowing it, perhaps, this very conviction and experience will have raised us, in a way, above mortality.” GEORGE SANTAYANA, *THE LIFE OF REASON OR THE PHASES OF HUMAN PROGRESS: REASON IN RELIGION* 260 (1905).

<sup>11</sup> How does killing in world politics hold out a promise of immortality for the perpetrator? According to Eugène Ionesco, “I must kill my visible enemy, the one who is determined to take my life, to prevent him from killing me. Killing gives me a feeling of relief, because I am dimly aware that in killing him, I have killed death . . . . Killing is a way of relieving one’s feelings, of warding off one’s own death.” Eugène Ionesco, *Journal (II)*, *ENCOUNTER*, May 1996, at 25, 27.

<sup>12</sup> The idea of death as a zero-sum commodity is captured especially by Ernest Becker’s paraphrase of Elias Canetti: “Each organism raises its head over a field of corpses, smiles into the sun, and declares life good.” ERNEST BECKER, *ESCAPE FROM EVIL* 2 (1975). Similarly, according to Otto Rank: “The death fear of the ego is lessened by the killing, the Sacrifice, of the other; through the death of the other, one buys oneself free from the penalty of dying, of being killed.” OTTO RANK, *WILL THERAPY AND REALITY* 130 (Alfred A. Knopf 1950) (1936).

There is also a great deal for us to learn about death and eternal life from the Spanish existentialist Miguel de Unamuno, whose *Tragic Sense of Life* has a marvelous chapter on "The Rationalist Dissolution" and another on "The Hunger of Immortality."<sup>13</sup> How underestimated and ignored is this primal hunger in our still-limited understanding of terrorism, religion, and "sacred violence." Oddly enough, we Americans, Canadians, Australians, and Europeans are fond of projecting our own sense of rationality upon our adversaries. Acknowledging that Western philosophy has always oscillated between Plato and Nietzsche, between rationalism and irrationalism, we have unthinkingly cast our lot with the Greeks and their inheritors. But we are now up against an entirely different ordering of the universe, and we would actually do far better as opponents of terrorism to read Dostoyevsky<sup>14</sup> or Kafka than to dwell on Grotius, Pufendorf or even Jefferson.<sup>15</sup> I am fond of understanding everything (including international law and counter-terrorism) through drama, art, and literature.

I began this paper with a reference to the French playwright Jean Giradoux. Let me now proceed to some equally apt words offered by the Italian dramatist Luigi Pirandello. In his *Henry IV*, we are confronted with the "logic" of madness, a logic before which all of the rules of rational behavior crumble:

Do you know what it means to find yourselves face to face with a madman—with one who shakes the foundations of all you have built up in yourselves, your logic, the logic of all your constructions? Madmen, lucky folk! construct without logic, or rather with a logic that flies like a feather.<sup>16</sup>

I'm not at all sure that our present terrorist enemies should be characterized as "mad," but in a practical sense they are certainly energized by

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<sup>13</sup> I am fond of advising my students that Unamuno's great work is supremely important to any serious understanding of the world—including the world of international relations. See MIGUEL DE UNAMUNO, *TRAGIC SENSE OF LIFE* 38–57, 79–105 (J.E. Crawford Fritch trans., Dover Publications unbar. ed., 1954) (1921).

<sup>14</sup> Above all, perhaps, Dostoyevsky reminds us: "And what is it in us that is mellowed by civilization? All it does, I'd say, is to develop in man a capacity to feel a greater variety of sensations. And nothing, absolutely nothing else. And through this development, man will yet learn how to enjoy bloodshed. Why, it has already happened . . . Civilization has made man, if not always more bloodthirsty, at least more viciously, more horribly bloodthirsty." FYODOR DOSTOYEVSKY, *NOTES FROM UNDERGROUND* 108 (Andrew R. MacAndrew trans., New American Library 1961) (1862).

<sup>15</sup> On international law, Jefferson is most interesting in his "Opinion on the French Treaties." THOMAS JEFFERSON, *OPINION ON THE FRENCH TREATIES* (1793), reprinted in *THE POLITICAL WRITINGS OF THOMAS JEFFERSON* 113–14 (Merrill D. Peterson ed., 1993).

<sup>16</sup> Luigi Pirandello, *Henry IV*, in *NAKED MASKS* 139, 192 (Eric Bentley ed., Edward Storer trans., 1952).

a wholly different hierarchy of preferences and values. From the standpoint of international law and world order,<sup>17</sup> we must absolutely and immediately begin to understand the limits of imposing our own notions of compliance and justice upon an altogether different kind of civilization.

For the Judeo-Christian world, the Treaty of Westphalia, as a matter of law, put an end to the idea that an enemy in war was a criminal or heretic upon whom one necessarily waged a war of annihilation.<sup>18</sup> Following the Thirty Years War, this idea was refined and codified in such a way as to render an opponent a “just enemy,” or an enemy upon whom one waged limited war in order to protect our purely secular rights.<sup>19</sup> Although there have surely been instances of an absolutely profound disregard for this transforming idea, it has at least been acknowledged in principle as authoritative and normatively binding.<sup>20</sup> Significantly, however, the present and

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<sup>17</sup> The concept of “world order,” also referred to as a “world public order,” as both an organizing dimension of scholarship and as a normative goal of international affairs has many contemporary intellectual origins. See MYRES S. McDOUGAL ET AL., *HUMAN RIGHTS AND WORLD PUBLIC ORDER: THE BASIC PRINCIPLES OF INTERNATIONAL LAW OF HUMAN DIGNITY* (Yale Univ. Press ed. 1980); GREENVILLE CLARK & LOUIS B. SOHN, *WORLD PEACE THROUGH WORLD LAW: TWO ALTERNATIVE PLANS* (Harvard Univ. Press 3d ed. 1966) (1958); *INTERNATIONAL LAW: A CONTEMPORARY PERSPECTIVE* (Richard A. Falk et al. eds., 1985). This author, who was an original participant in the World Law Fund’s World Order Models Project (WOMP), has written several earlier works on this topic. See generally LOUIS RENÉ BERES, *AMERICA OUTSIDE THE WORLD: THE COLLAPSE OF U.S. FOREIGN POLICY* (1987); LOUIS RENÉ BERES, *PEOPLE, STATES, AND WORLD ORDER* (1981); *PLANNING ALTERNATIVE WORLD FUTURES: VALUES, METHODS, AND MODELS* (Louis René Beres & Harry R. Targ eds., 1975); LOUIS RENÉ BERES, *REASON AND REALPOLITIK: U.S. FOREIGN POLICY AND WORLD ORDER* (1984); LOUIS RENÉ BERES & HARRY R. TARG, *REORDERING THE PLANET: CONSTRUCTING ALTERNATIVE WORLD FUTURES* (1974).

<sup>18</sup> The Articles of the Treaty of Peace, Oct. 1648, 1 Consol. T.S. 271; A Treaty Between the Empire and Sweden, Oct. 1648, 1 Consol. T.S. 119. Together, these two treaties constitute the “Treaty of Westphalia.”

<sup>19</sup> Consider, here, an expression of limits under the law of war offered by Samuel Pufendorf:

As for the force employed in war against the enemy and his property, we should distinguish between what an enemy can suffer without injustice, and what we cannot bring to bear against him, without violating humanity. For he who has declared himself our enemy, inasmuch as this involves the express threat to bring the worst of evils upon us, by that very act, so far as in him lies, gives us a free hand against himself, without restriction. Humanity, however, commands that, so far as the clash of arms permits, we do not inflict more mischief upon the enemy than defense, or the vindication of our right, and security for the future, require.

SAMUEL PUFENDORF, 2 *ON THE DUTY OF MAN AND CITIZEN ACCORDING TO NATURAL LAW* 169 (James Tully ed., Michael Silverthorne trans., 1991).

<sup>20</sup> See Alberto Moreiras, *Against Cultural-Political Closure*, 104 S. ATLANTIC Q. 263, 272 (2005), available at [http://humanitiesinstitute.buffalo.edu/content/research\\_publications/documents/moreirasagclosure.pdf](http://humanitiesinstitute.buffalo.edu/content/research_publications/documents/moreirasagclosure.pdf).

seemingly immutable cry of *jihad*<sup>21</sup> represents a pre-Westphalian notion of total war that is premised upon the enemy's irremediable lack of sacredness.

To understand the vital linkages between sacred violence, religion, and terrorism, we first need to understand that our present enemies wholly reject our post-Westphalian system of international law. This is a stunning rejection, one with unimaginably grave implications for the so-called "War on Terror," as well as the counter-proliferation effort.<sup>22</sup> It means, *inter alia*,

<sup>21</sup> Historically, Islam has sought to establish a world public order based on divine legislation and enforce it by *jihad*. *Jihad* is the Islamic Just War (*bellum justum*) and represents the very core of Islam's relationship to the nations. For an authoritative study of Islam and international law, see Shaybanis Siyar, *THE ISLAMIC LAW OF NATIONS* (Majid Khadduri trans., 1966).

<sup>22</sup> On the "nuclear regime" under international law, including the anti-proliferation measures, see The Antarctic Treaty, December 1, 1959, 12 U.S.T. 794, 402 U.N.T.S. 70; Memorandum of Understanding Between the United States of America and the Union of Soviet Socialist Republics Regarding the Establishment of a Direct Communications Link, U.S.-U.S.S.R., June 20, 1963, 14 U.S.T. 825; Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water, U.S.-Gr. Brit.-U.S.S.R., Aug. 5, 1963, 14 U.S.T. 1313; Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, Jan. 27, 1967, 18 U.S.T. 2410, 610 U.N.T.S. 205; Treaty for the Prohibition of Nuclear Weapons in Latin America, Apr. 26, 1968, 634 U.N.T.S. 326; Treaty on the Non-Proliferation of Nuclear Weapons, July 1, 1968, 21 U.S.T. 483, 729 U.N.T.S. 161; Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil Thereof, U.S.-U.S.S.R.-G.Brit., Feb. 11, 1971, 23 U.S.T. 701, 955 U.N.T.S. 115; Agreement on Measures to Reduce the Risk of Outbreak of Nuclear War Between the United States of America and the Union of Soviet Socialist Republics, U.S.-U.S.S.R., Sept. 30, 1971, 22 U.S.T. 1590; Agreement Between the United States of America and the Union of Soviet Socialist Republics on Measures to Improve the USA-USSR Direct Communications Link, U.S.-U.S.S.R., Sept. 30, 1971, 22 U.S.T. 1598; Treaty Between the United States of America and the Union of Soviet Socialist Republic on the Limitation of Anti-Ballistic Missile Systems, U.S.-U.S.S.R., May 26, 1972, 23 U.S.T. 3435; Interim Agreement Between the United States of America and the Union of Soviet Socialist Republics on Certain Measures with Respect to the Limitation of Strategic Offensive Arms, U.S.-U.S.S.R., May 26, 1972, 23 U.S.T. 3462; Basic Principles of Relations Between the United States of America and the Union of Soviet Socialist Republics, May 29, 1972, 66 DEP'T ST. BULL. 898 (1972); Protocol to the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Underground Nuclear Weapon Tests, July 12, 1974, 71 DEP'T ST. BULL. 217 (1974); Limitation on Anti-Ballistic Missile Systems, July 3, 1974, U.S.-U.S.S.R., 27 U.S.T. 1645, T.I.A.S. No. 8276; Joint Statement on the Limitation of Strategic Offensive Arms (the Vladivostok Agreement), Apr. 29, 1974, 70 DEP'T ST. BULL. 677 (1974); Final Act of the Conference on Security and Cooperation in Europe (the Helsinki Accords), Aug., 1, 1975, 14 I.L.M. 1292; Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (the Moon Treaty), Report of the Committee on the Peaceful Uses of Outer Space, G.A. Res. 34/68 U.N. Doc. A/RES/34/20 Annex II (1979); 18 I.L.M. 1434 Dec. 5, 1979; The South Pacific Nuclear-Free Zone Treaty, Aug. 6, 1985, 24 I.L.M. 1440; The Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Elimination of Their Intermediate-Range and Shorter-Range Missiles (the INF Treaty), Dec. 8, 1987, 88 DEP'T ST. BULL. 24 (Feb. 1988); *see also* Treaty Between the United States of America and the Union of Soviet Socialist Republics on Un-

that all prevailing jurisprudential ideas of treaty-based agreements and other sources of international law<sup>23</sup> listed in Article 38 of the Statute of the International Court of Justice only bind us.<sup>24</sup> We are therefore now contending with adversaries who do not accept even the most basic jurisprudential assumptions regarding compromise, negotiation, peaceful settlement, or even humanitarian international law. For the perpetrators of religious extremism international life is largely a zero-sum game, and the only acceptable outcome is a transformation of the *dar al-harb* into the *dar al-Islam*.<sup>25</sup>

By itself, violence is not necessarily irrational. In the words of Rene Girard, whose book *Violence and the Sacred* should be the underlying text for any discussion of religion and terrorism, violence sometimes has its reasons.<sup>26</sup> Girard—with his usual level of sophistication and extraordinary anthropological and literary insight—posits that, “[w]hen unappeased, violence seeks and always finds a surrogate victim. The creature that excited its fury is abruptly replaced by another, chosen only because it is vulnerable and close at hand.”<sup>27</sup>

What does this mean to us? Consider the endlessly barbaric Palestinian insurgency against Israel.<sup>28</sup> What happens when the Israelis build a

derground Nuclear Explosions for Peaceful Purposes, May 28, 1976, 74 DEP’T ST. BULL. 802 (1976); The Treaty Between the United States of America and the Union of Soviet Socialist Republics, the SALT II Treaty, June 18, 1979, S. Exec. Doc., 96th Cong., 1st Sess. 37 (1979).

<sup>23</sup> These other sources include *customary* international law. Article 38(1)(b) of the Statute of the International Court of Justice describes international custom as “evidence of a general practice accepted as law.” Statute of the International Court of Justice art. 38, June 29, 1945, 59 Stat. 1031, T.S. 993. The essential significance of a norm’s customary character is that the norms bind even those states that are not parties to the pertinent codification. Even where a customary norm and a norm restated in treaty form are apparently identical, these norms are treated as jurisprudentially discrete. Discussing the merits phase of *Nicaragua v. U.S.*, the International Court of Justice stated: “Even if two norms belonging to two sources of international law appear identical in content, and even if the States in question are bound by these rules both on the level of treaty-law and on that of customary international law, these norms retain a separate existence.” See *Military and Paramilitary Activities (Nicar. v. U.S.)*, 1986 I.C.J. 14, 85 (June 27) (Merits).

<sup>24</sup> See Statute of the International Court of Justice, June 26, 1945, 59 Stat. 1031, T.S. No. 993.

<sup>25</sup> The “World of War” into “The World of Islam.”

<sup>26</sup> RENÉ GIRARD, *VIOLENCE AND THE SACRED* 2 (Patrick Gregory trans., Continuum Books 2005) (1988).

<sup>27</sup> *Id.*

<sup>28</sup> See THEODORE HERZL, *THE JEWISH STATE* 40 (Joseph H. Lookstein ed., Dover Publ’ns 1988) (1946) (discussing the State of Israel and Jewish self-determination). This Dover edition is an unabridged reproduction of the work published in 1946 by the American Zionist Emergency Council, which was in turn based on the first English-language edition. *Id.* The Herzl text was originally published in Vienna, in 1896, under the title: *Der Judenstaat*. *Id.* Recognizing that “[t]he nations in whose midst Jews live are all either covertly or openly



wall and make the Palestinians' sacrificial killings (suicide bombings) more difficult? The Palestinian Arabs slaughter each other— Hamas murders Fatah and Fatah murders Hamas.<sup>29</sup> Until they can reconcile temporarily, whereupon they both resume the murder of Jews.

Islamic hatred of Israel is rooted in religion, not land. Even before the re-creation of the State of Israel in 1948, considerable support for genocide against "The Jews" was displayed enthusiastically and openly while the Holocaust was underway.<sup>30</sup> On November 21, 1941, the Grand Mufti of Jerusalem, Haj Amin, met in Berlin with Adolph Hitler.<sup>31</sup> The purpose of this meeting, which followed Haj Amin's organization of SS troops in Bosnia, was to ensure cooperation on "The Jewish Question."<sup>32</sup> It was essential, Haj Amin insisted, that all Jews be sent to countries "where they would find themselves under active control, for example, in Poland, in order thereby to protect oneself from their menace and avoid the consequent damage."<sup>33</sup>

It is also noteworthy that the Palestinians and most other Arabs have never publicly criticized the Mufti's complicity in the Holocaust genocide. During the 1950s and 1960s, Hitler remained an enormously popular figure in the Arab world.<sup>34</sup> Responses amongst these Islamic populations to the Eichmann trial in Jerusalem (1961) treated the Nazi mass murderer as a "martyr" and congratulated him for having "conferred a real blessing on humanity" by enacting the Final Solution.<sup>35</sup>

In a prevailing Arab/Islamist view, the Jewish State is always the individual Jew in macrocosm.<sup>36</sup> This Jewish State must be despised *because* of this relationship—because of the allegedly innate "evil" of the individual Jew.<sup>37</sup> This is very different from the view that Jews should be hated be-

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anti-Semitic," Herzl put the Jewish Question in the briefest possible form: "Are we to 'get out' now, and where to? Or, may we yet remain? And, how long?" *Id.*

<sup>29</sup> See *Palestinian Rivals: Fatah & Hamas*, BBC NEWS, June 17, 2007, [http://news.bbc.co.uk/2/middle\\_east/5016012.stm](http://news.bbc.co.uk/2/middle_east/5016012.stm).

<sup>30</sup> Cf. JOAN PETERS, FROM TIME IMMEMORIAL: THE ORIGINS OF THE ARAB—JEWISH CONFLICT OVER PALESTINE, 382–83 (1984) (stating that Britain's unwillingness to help Jewish immigration "amount[ed] to [a] tacit endorsement [of the Holocaust]").

<sup>31</sup> *Id.* at 436–37.

<sup>32</sup> See *id.* at 437 (translating Mufti's diary stating that he was "resolved to find a solution for the Jewish problem").

<sup>33</sup> *Id.* at 436–7 (reproducing the Mufti's own account of his meeting with Hitler).

<sup>34</sup> See Stephen Wicken, *Views of the Holocaust in Arab Media and Public Disclosure*, 1 YALE J. INT'L AFF. 103, 107 (2006), available at <http://www.yjia.org/userfiles/file/Volume%201%20Issue%202%20-%20Spring%202006/9--Stephen%20Wicken.pdf>.

<sup>35</sup> ROBERT S. WISTRICH, ANTISEMITISM: THE LONGEST HATRED 247 (1991) (quoting Y. HARKABI, ARAB ATTITUDES TO ISRAEL 279 (Mishalovich trans., 1972)).

<sup>36</sup> Louis Rene B  res, *Israel, The "Peace Process," and Nuclear Terrorism: A Jurisdictional Perspective*, 18 LOY. L.A. INT'L & COMP. L.J. 767, n.13 (1996).

<sup>37</sup> *Id.*

cause of an association with the State of Israel—as a corollary of being “Zionists.”<sup>38</sup> In this view, the Israeli must be loathed not as an “occupier,” but because he is a Jew.<sup>39</sup>

In an oft-reprinted article published in *al-Ahram*, on September 27, 1982, Dr. Lufti Abd al-Azim wrote:

The first thing that we have to make clear is that no distinction must be made between the Jew and the Israeli, which they themselves deny. The Jew is a Jew, through the millennia . . . in spurning all moral values, devouring the living and drinking his blood for the sake of a few coins. The Jew, the Merchant of Venice, does not differ from the killer of Deir Yasin or the killer of the camps. They are equal examples of human degradation. Let us therefore put aside such distinctions, and talk only about Jews.<sup>40</sup>

In a popular Egyptian textbook of “Arab-Islamic History” used in many teacher-training colleges, we encounter these similar words:

The Jews are always the same, every time and everywhere. They will not live save in darkness. They contrive their evils clandestinely. They fight only when they are hidden, because they are cowards. The Prophet enlightened us about the right way to treat them, and succeeded finally in crushing the plots that they had planned. We today must follow this way and purify Palestine from their filth.<sup>41</sup>

According to the Charter of Hamas:

Peace initiatives, the so-called peaceful solution, and the international conferences to resolve the Palestinian problem, are all contrary to the beliefs of the Islamic Resistance Movement. For renouncing any part of Palestine means renouncing part of the religion; the nationalism of the Islamic Resistance Movement is part of its faith, the movement educates its members to adhere to its principles and to raise the banner of Allah over their homeland as they fight their *Jihad* . . . . There is no solution to the Palestinian problem except by *Jihad* . . . . In order to face the usurpation of Palestine by the Jews, we have no escape from raising the banner of *Jihad* . . . . We must imprint on the minds of generations of Muslims that the Palestinian problem is a religious one, to be dealt with on this premise . . . . I swear by that [sic] who holds in His Hands the Soul of Muhammad! I indeed wish to go to war for the sake of Allah! I will assault and kill! Assault and Kill! Assault and Kill!<sup>42</sup>

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<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*; BERNARD LEWIS, SEMITES AND ANTI-SEMITES 195 (W.W. Norton Co. 1999) (1987).

<sup>41</sup> LEWIS, *supra* note 40, at 218–19.

<sup>42</sup> *Charter of Allah: The Platform of the Islamic Resistance Movement (Hamas)*, in FUNDAMENTALIST ISLAM AND ISRAEL 132, 140–43 (Raphael Israeli trans., 1993). Hamas is

Neither Hamas nor Fatah or even the broader "moderate" Palestine Authority has any interest in a "two-state solution." In this connection, the currently operative emphasis of religion is merely the latest manifestation of the Palestinian Liberation organization's (PLO) "Phased Plan" of June 9, 1974.<sup>43</sup> Here, in its twelfth session, the PLO's highest body, the Palestinian National Council, reiterated the PLO's aim to achieve "their right to return and their right to self-determination on the soil of their homeland."<sup>44</sup> However, departing from its then previous strategy, which called for the *immediate* destruction of Israel and the establishment of a Palestinian state<sup>45</sup> over all of "Palestine," the Phased Plan was adopted as follows: "First, to establish a combatant national authority over every part of Palestinian territory that is liberated" (article 2); Second, to use that territory to continue the fight against Israel (article 4); finally, to start a pan-Arab war to complete the liberation of all Palestinian territory; i.e., to eliminate Israel (article 8)."<sup>46</sup>

Among the Palestinians, and amidst the Arab/Islamic terrorist groups in general, "sacred violence" draws very heavily upon repressed or thwarted sexuality.<sup>47</sup> It is hardly a coincidence that "sacred violence" is now most common in the Arab/Islamic world, where repressed sexual desire accumulates a relentless energy that, sooner or later, must burst. Most of the world watches the Jihadist orchestrations of terror, and believes that this "sacred violence" is essentially political or revolutionary. Nothing could be farther from the truth.

I prepared this paper for a law school conference. Thus, while it is important that I draw upon creative psychological, literary, and anthropological insights to better understand "sacred violence," I must also explore jurisprudential normative controls and determine what the vital connections are between these various disciplines.

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the acronym for the Islamic Resistance Movement—Harakat Muqawama Islamiyya—meaning, literally, "enthusiasm," "zeal," "fanaticism." *Id.* at 161 n.15. The cited references concerning the Hamas imperative to "assault and kill" Jews is taken from Bukhari and Muslim, authors of the two most authoritative and widely accepted collections of *Hadith* (traditions of the Prophet). *Id.* at 163, n.32.

<sup>43</sup> *Political Programme for the Present Stage of the Palestinian Liberation Organization Drawn up by the Palestinian National Counsel*, 3 J. PALESTINE STUD. 224–26 (1974).

<sup>44</sup> *Id.* at 224.

<sup>45</sup> Under international law, any Palestinian declaration of statehood would need to satisfy the settled criteria codified by the Convention on Rights and Duties of States ("The Montevideo Convention") concerning control over a fixed and clearly defined territory, a population, a government, and the capacity to engage in diplomatic and foreign relations. Convention on Rights and Duties of States art. 1, Dec. 26, 1933, 49 Stat. 3097, 165 L.N.T.S. 19.

<sup>46</sup> EDDIE CHUMNEY, *RESTORING THE TWO HOUSES OF ISRAEL* 337 (1999).

<sup>47</sup> See Candice Lys, *Demonizing the "Other": Fundamentalist Pakistani Madrasahs and the Construction of Religious Violence*, 11 MARBURG J. RELIGION 1, 15 (2006).

First, international law obviously permits various expressions of organized violence, including not only “just wars,” beginning with the Hebrew Bible and Aristotle, but also certain forms of insurgency.<sup>48</sup> We have known for a long time that “national liberation” and “self-determination” are perfectly appropriate legal reasons for the assertion of insurgency as there is ample evidence for this in both codified and customary international law.<sup>49</sup> At the same time, we must recall that every use of force in international law must always be judged twice, once with regard to the justness of the cause, and once with regard to the justness of the means.<sup>50</sup> Here we must think in terms of aggression,<sup>51</sup> self-defense,<sup>52</sup> and international humanitarian law, or the law of armed conflict.<sup>53</sup>

<sup>48</sup> For a discussion of authoritative criteria to distinguish permissible insurgencies from impermissible ones, see Louis René Beres, *The Legal Meaning of Terrorism for the Military Commander*, 11 CONN. J. INT’L L. 1, 6–11 (1995).

<sup>49</sup> Louis René Beres, *Self-Determination, International Law and Survival on Planet Earth*, 11 ARIZ J. OF INT’L & COMP. L. 1, n.1 (1994). See Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, G.A. Res. 2625, at 123, U.N. GAOR, 25th Sess., Supp. No. 28, U.N. Doc. A/8028 (Oct. 24, 1970); Declaration on the Granting of Independence to Colonial Countries and Peoples, G.A. Res. 1514, at 66, U.N. GAOR, 15th Sess., Supp. No. 16, U.N. Doc. A/4684 (Dec. 14, 1960); Principles Which Should Guide Members in Determining Whether or Not an Obligation Exists to Transmit the Information Called for Under Article 73e of the Charter, G.A. Res. 1541, at 29, U.N. GAOR, 15th Sess., Supp. No. 16, U.N. Doc. A/4684 (Dec. 15 1960).

<sup>50</sup> According to the authoritative rules of international law, the global community must judge every use of force twice: once with regard to the underlying right to wage war (*jus ad bellum*) and once with regard to the means used in actually conducting war (*jus in bello*). Following the Kellogg-Briand Pact of 1928 and the United Nations Charter, there can be absolutely no right to aggressive war. However, the long-standing customary right of post-attack self-defense remains codified at Article 51 of the U.N. Charter. U.N. Charter art. 51. Similarly, subject to conformance, *inter alia*, with *jus in bello* criteria, certain instances of humanitarian intervention, and collective security operations may also be consistent with *jus ad bellum*. The law of war, the rules of *jus in bello*, comprise: (1) laws on weapons, (2) laws on warfare, and (3) humanitarian rules. Codified primarily at the Hague and Geneva Conventions, these rules attempt to bring discrimination, proportionality and military necessity into all belligerent calculations. Hague Convention IV Respecting Laws and Customs of War on Land, Oct. 18, 1907, 36 Stat. 2277, 1 Bevans 630.

<sup>51</sup> See Resolution on Definition of Aggression, G.A. Res. 3314 (XXIX), at 142, U.N. Doc A/9890 (Dec. 14, 1974); U.N. charter art. 53.

<sup>52</sup> The right of self-defense is a genuinely peremptory or *jus cogens* norm under international law. Vienna Convention on the Law of Treaties art. 53, May 23, 1969, 1155 U.N.T.S. 332. According to Article 53 of the Vienna Convention on the Law of Treaties: “a peremptory norm of general international law is a norm accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.” *Id.*

<sup>53</sup> The law of armed conflict is largely concerned with the principle of *proportionality*, which has its jurisprudential and philosophic origins in the Biblical *Lex Talionis*, the law of

Whatever authoritative sources we examine at Article 38 of the Statute of the International Court of Justice (which should include Natural Law,<sup>54</sup> as it underlies all positive or codified international law)<sup>55</sup> insurgents

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exact retaliation. See INGRID DETTER DE LUPIS, *THE LAW OF WAR* 75 (1987). The "eye for eye, tooth for tooth" can be found in three separate passages of the Jewish *Torah*, or Biblical *Pentateuch*. MARVIN HENBERG, *RETRIBUTION: EVIL FOR EVIL IN ETHICS, LAW AND LITERATURE* 60 (1990). These Torah rules are likely related to the Code of Hammurabi (1728–1686)—the first written evidence of penalizing wrongdoing with exact retaliation. *Id.* at 62. In matters concerning personal injury, the code prescribes an eye for an eye (#196), breaking bone for bone (#197), and extracting tooth for tooth (#199). *Id.* Among the ancient Hebrews, we must speak not of the *Lex Talionis*, but of several. *Id.* at 68. The *Lex Talionis* appears in only three passages of the *Torah*. *Id.* at 69. In their sequence of probable antiquity, they are as follows: *Exodus* 21: 22–25; *Deuteronomy* 19: 19–21; and *Leviticus* 24: 17–21. HENBERG, at 69. All have similarities to various other Near Eastern legal codes. *Id.* These three passages address specific concerns: hurting a pregnant woman, perjury, and guarding Yahweh's altar against defilement. *Id.* In contemporary international law, the principle of *proportionality* can be found in the traditional view that a state offended by another state's use of force, if the offending state refuses to make amends, "is then entitled to take 'proportionate reprisals.'" DE LUPIS, at 75 (1987) (citation omitted). Evidence for the rule of *proportionality* can also be found in the International Covenant on Civil and Political Rights. United Nations International Covenant on Civil and Political Rights art. 4, Dec. 16, 1966, 999 U.N.T.S. 171, 174, 6 I.L.M. 368, 369–70. Similarly, the American Convention on Human Rights allows such derogations "in time of war, public danger or other emergency which threaten the independence or security of a party" on "condition of proportionality." American Convention on Human Rights: "Pact of San José, Costa Rica" art. 27 (1), Nov. 22, 1969, O.A.S. T.S. No. 36, art. 5, 1144 U.N.T.S. 143, 151. In essence, the military principle of *proportionality* requires that the amount of destruction permitted must be proportionate to the importance of the objective. In contrast, the political principle of proportionality states "a war cannot be just unless the evil that can reasonably be expected to ensue from the war is less than the evil that can reasonably be expected to ensue if the war is not fought." DOUGLAS P. LACKEY, *THE ETHICS OF WAR AND PEACE* 40 (1989).

<sup>54</sup> The idea of natural law is based upon acceptance of certain principles of right and justice that prevail because of their own intrinsic merit. Eternal and immutable, they are external to all acts of human will and interpenetrate all human reason. See CICERO, *DE RE PUBLICA*, *DE LEGIBUS* 211 (T.E. Page et al. eds., Clinton Walker Keyes trans., Harvard Univ. Press 1966) (1928). This notion and its attendant tradition of human civility runs almost continuously from Mosaic Law and the ancient Greeks and Romans to the present day. The Stoics regarded nature itself as the supreme legislator in a moral order where man, through his divinely-granted capacity to reason, can commune directly with the gods. See *id.* at 323. As set forth in *De Republica* and *De Legibus*, Cicero's classical concept of natural law underscores a principle that is now very much a part of the United States constitutional foundation: that is, the imperative quality of the civil law is always contingent upon being in perfect harmony with reason. See *id.* at 211, 317, 321–323, 333. According to Cicero, justice is not—as the Epicureans claimed—a mere matter of utility. See *id.* at 333, 345. Rather, it is a distinct institution of nature that always transcends expediency and that *must* be embodied by positive law before such normative obligations can ever claim any proper human loyalties. See *id.* 317–53.

<sup>55</sup> Emmerich de Vattel's *The Law of Nations* gave important emphasis to the natural law origins of all international law. See Albert De Lapradelle, *Introduction* to EMMERICH DE VATTEL, *THE LAW OF NATIONS* 114–16 (James Brown Scott, ed., Charles G. Fenwick trans.,

are expected to comply with the basic principles of the Martens Clause<sup>56</sup> and the St. Petersburg Declaration.<sup>57</sup> This means that no matter how just the cause of an insurgent group engaged in “sacred violence” may be, any resort to unjust means is automatically an incontestable indication of terrorism.<sup>58</sup> Philosophically, the just cause problem here is international law’s mistaken emphasis on a collective self. If our jurisprudence had sought to “determine” the self of the individual, not the aspiring nation-state (the “primal horde” of Freud, the “herd” of Nietzsche,<sup>59</sup> the “crowd” of Kierkegaard<sup>60</sup>) we would instead be on the gainful path to some serious resolution of terrorism and “sacred violence.” In this connection, the work of the Swiss psy-

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Oceana Publications 1964) (1758). Arguing from the assumption that nations are no less subject to the laws of nature than are individuals, he concluded that what one man owes to other men, one nation, in turn, owes to all other nations, “[s]ince Nations are bound mutually to promote the society of the human race, they owe one another all the duties which the safety and welfare of that society require.” *Id.* at 113. With this in mind, Vattel proceeded to advance a permanent standard by which we can distinguish between lawful and unlawful practices in global affairs: “[s]ince, therefore, the necessary Law of Nations consists in applying the natural law to States, and since the natural law is not subject to change, being founded on the nature of things and particularly upon the nature of man, it follows that the necessary Law of Nations is not subject to change. Since this law is not subject to change, and the obligations which it imposes are necessary and indispensable, nations can not alter it by agreement, nor individually or mutually release themselves from it.” *Id.* at 4.

<sup>56</sup> The Martens Clause is included in the Preamble of the 1899 Hague Conventions. International Convention with Respect to the Laws and Customs of War by Land Preamble, July 29, 1899, 187 Consol. T.S. 429, 430. The clause is paraphrased and is given higher status in the 1977 Protocol I by being included in the main text of Article 1. Protocol Additional to the Geneva Convention of 12 August 1949 art.1, June 8, 1977, 125 U.N.T.S. 3, 7, 16 I.L.M. 1391, 1396–97. In situations not covered by this Protocol or by other international agreements, the Clause provides that “civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity, and from the dictates of public conscience.” *Id.*

<sup>57</sup> See Declaration Renouncing the Use in Time of War, of Explosive Projectiles Under the 400 Grammes Weight, Dec. 11, 1868, 138 Consol. T.S. 297.

<sup>58</sup> Under international law, terrorists are always *hostes humani generis*, “common enemies of mankind.” Research in International Law: Draft Convention on Jurisdiction with Respect to Crime, 29 AM. J. INT’L L. (Supp. 1935) 435, 566 (quoting King v. Marsh (1615), 3 Bulstr. 27, 81 Eng. Rep 23 (1615)) (“*a pirate est Hostes humani generis*.”)).

<sup>59</sup> “[T]he State,” says Nietzsche, “lies in all the tongues of good and evil; and whatever it says it lies—and whatever it has stolen. Everything about it is false . . . All-too-many are born: for the superfluous, the State was invented.” Friedrich Nietzsche, *Thus Spoke Zarathustra*, in THE PORTABLE NIETZSCHE 160, 161 (Walter A. Kaufman trans., The Viking Press 1967) (1954).

<sup>60</sup> Recognizing the “crowd” as “untruth,” the nineteenth-century Danish philosopher warns, “[A] crowd in its very concept is the untruth, by reason of the fact that it renders the individual completely impenitent and irresponsible, or at least weakens his sense of responsibility by reducing it to a fraction. . . . For ‘crowd’ is an abstraction and has not hands; but each individual has ordinarily two hands . . .” Søren Kierkegaard, *That Individual*, in EXISTENTIALISM: FROM DOSTOEVSKY TO SARTRE 92, 92–94 (Walter A. Kaufmann ed., 1956).

chologist Carl G. Jung,<sup>61</sup> as well as the American transcendentalists, especially Emerson and Thoreau, could actually be quite helpful.

The title of this paper includes the word "perfidy."<sup>62</sup> Perfidy is a codified violation of the law of war, especially as a "grave breach," and has the effect of placing jurisprudential responsibility for pertinent non-combatant harms entirely upon the perfidious party.<sup>63</sup> In other words, the legal effect of perfidy is exculpatory for the party that is actually inflicting the harm, so long as that party itself has just cause for its resort to force and seeks to minimize collateral harms within the bounds of "military necessity."<sup>64</sup>

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<sup>61</sup> Carl G. Jung observes: "[I]f people crowd together and form a mob, then the dynamics of the collective man are set free—beasts or demons which lie dormant in every person till he is part of a mob. Man in the crowd is unconsciously lowered to an inferior moral and intellectual level, to that level which is always there, below the threshold of consciousness, ready to break forth as soon as it is stimulated through the formation of a crowd." Carl G. Jung, *Psychology and Religion*, in 2 THE WORLD OF PSYCHOLOGY: IDENTITY AND MOTIVATION 476-77 (G.B. Levitas ed., 1963).

<sup>62</sup> Deception can certainly be legal under the law of armed conflict, but the Hague Regulations clearly disallow any placement of military assets or personnel in populated civilian areas. Prohibition of perfidy is codified at Protocol I of 1977, additional to the Geneva Conventions of 1949, and at Geneva IV, Art. 28. Protocol I, *supra* note 56; Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 28, Aug. 12, 1949, 6 U.S.T. 3516, 3542, 75 U.N.T.S. 287, 308. It is widely recognized that these rules are also binding on the basis of customary international law. Perfidy represents an especially serious violation of the law of war, one that is identified as a "Grave Breach" at Article 147 of Geneva Convention IV. Geneva Convention IV, at art. 147. Significantly, in our current context, the legal effect of perfidious behavior is always to immunize the preempting state from any unavoidable harms done to the perfidious party's noncombatant populations.

<sup>63</sup> The term "Grave Breaches" applies to certain infractions of the Geneva Conventions of 1949 and Protocol I of 1977. Protocol I, *supra* note 56. The actions defined as "Grave Breaches" in the four Conventions must be performed willfully or intentionally, and against the different groups of "protected person" identified by each Convention. *Id.* The High Contracting Parties to the Geneva Conventions are under obligation "to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed," a grave breach of the Convention. Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 147, Aug. 12, 1949 75 U.N.T.S. 287, 6 U.S.T. 3516. Grave Breaches "shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or willfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly." *Id.*; The Secretary-General, *Interim Report of the Commission Established Pursuant to Security Council Resolution 780, Annex I*, art. 47, delivered to the Security Council, U.N. Doc. S/25274 (Jan. 26, 1993).

<sup>64</sup> The principle of "military necessity" has been defined authoritatively as follows: "Only that degree and kind of force, not otherwise prohibited by the law of armed conflict, required

Iran is a current example of this. The President of Iran has repeatedly advocated genocide against the State of Israel (in violation of the codified provisions of the Genocide Convention).<sup>65</sup> At the same time, Iran is prepar-

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for the partial or complete submission of the enemy with a minimum expenditure of time, life and physical resources may be applied.” *Introduction*, in DOCUMENTS ON THE LAWS OF WAR 1, 10 (Adam Roberts & Richard Guelff eds., Oxford Univ. Press 3d ed. 2000) (1982) (citing U.S. DEP’T OF THE NAVY (JOINTLY WITH HEADQUARTERS, U.S. MARINE CORPS AND DEP’T OF TRANSP., U.S. COAST GUARD), NAVAL WARFARE PUBLICATION 1-14M: THE COMMANDER’S HANDBOOK ON THE LAW OF NAVAL OPERATIONS, at 5-1 (1995)). The term “military necessity” is found, *inter alia*, in the 1946 Judgment of the International Military Tribunal at Nuremberg: Extracts on Crimes Against International Law, referring to Article 6(b) of the London Charter, August 8, 1945: “War Crimes: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to murder, ill-treatment, or deportation to slave labor or for any other purpose of civilian population of or in occupied territory, murder of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by *military necessity*.” *Judgment of the International Military Tribunal at Nuremberg: Extracts on Crimes Against International Law* (1946), reprinted in DOCUMENTS ON THE LAWS OF WAR 175, 177 (Adam Roberts & Richard Guelff eds., 3d ed. 2000) (1982) (emphasis added).

<sup>65</sup> See Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 102 Stat. 3045, 78 U.N.T.S. 277. Although the criminalizing aspect of international law that proscribes genocide-like conduct may derive from a source other than the Genocide Convention (i.e., it may emerge from customary international law and be included in different international conventions), such conduct is clearly a crime under international law. Even where the conduct in question does not affect the interests of more than one state, it becomes an international crime whenever it constitutes an offense against the world community *delicto jus gentium*. See Universal Declaration of Human Rights, G.A. Res. 217A, at 71, U.N. GAOR, 3d Sess., 1st plen. Mtg., U.N. Doc A/819 (Dec. 12 1948); American Convention on Human Rights: “Pact of San José, Costa Rica,” Nov. 22, 1969, O.A.S. T.S. No. 36, art. 5 1144 U.N.T.S. 143, 146; International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171, 174–75; International Covenant on Economic, Social and Cultural Rights, Dec. 19, 1966, 993 U.N.T.S. 3, 6 I.L.M. 360; International Convention on the Elimination of all Forms of Racial Discrimination, Mar. 7, 1966, 660 U.N.T.S. 211, 5 I.L.M. 352; Declaration on the Granting of Independence to Colonial Countries and Peoples, G.A. Res. 47/135, Annex, U.N. Doc A/Res/47/135/Annex (Dec. 18, 1992); Convention on the Political Rights of Women, Mar. 31, 1953, 27 U.S.T. 1909, 193 U.N.T.S. 135; Convention Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 137 (this Convention should be read in conjunction with the Protocol Relating to the Status of Refugees, Jan. 31 1967, 19 U.S.T. 6224, 606 U.N.T.S. 267); Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 222; The Universal Declaration of Human Rights, The International Covenant on Civil and Political Rights (together with its Optional Protocol of 1976), and the International Covenant on Economic, Social and Cultural Rights—known collectively as the International Bill of Rights—serve as the touchstone for the normative protection of human rights. Universal Declaration of Human Rights, G.A. Res. 217A, at 71, U.N. GAOR, 3d Sess., 1st plen. Mtg., U.N. Doc A/819 (Dec. 12 1948); International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171, 174–75; International Covenant on Economic, Social and Cultural Rights, Dec. 19, 1966, 993 U.N.T.S. 3, 6 I.L.M. 360.

Jurisprudentially, we are also speaking here of “crimes against humanity.” See Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis,



ing to develop nuclear weapons. Assuming that Israel, under customary international law, would have the right of anticipatory self-defense<sup>66</sup> against Iran, then what of the many Iranian civilians who might die in the Israeli preemptive strike against pertinent nuclear infrastructures? As Iran has purposefully moved noncombatants into areas with sensitive nuclear targets, and has correspondingly moved sensitive nuclear structures and assets into noncombatant residential areas,<sup>67</sup> the full legal responsibility for any harms

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Aug. 8, 1945, 59 Stat. 1544, 82 U.N.T.S. 279 (providing a definition of "crimes against humanity"). The principles of international law recognized by the Charter of the Nuremberg Tribunal and the judgment of the Tribunal were affirmed by the U.N. General Assembly as Affirmation of the Principles of International Law Recognized by the Charter of the Nuremberg Tribunal, G.A. Res. 95 (I), U.N. GAOR, 1st Sess., pt. 2, at 1144, U.N. Doc. A/236 (Dec. 11, 1946). This Affirmation of the Principles of International Law Recognized by the Charter of the Nuremberg Tribunal was followed by General Assembly Resolution 177 (II), adopted November 21, 1947, directing the U.N. International Law Commission to "(a) Formulate the principles of international law recognized in the Charter of the Nuremberg Tribunal and in the judgment of the Tribunal, and (b) Prepare a draft code of offenses against the peace and security of mankind . . ." G.A. Res. 177(II), U.N. GAOR, 2d Sess., U.N. Doc. A/519 (Nov. 21, 1947). The principles formulated are known as the Principles of International Law Recognized in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal, U.N. GAOR, 5th Sess., Supp. No. 12, at 11–14, U.N. Doc. A/1316 (1950).

<sup>66</sup> For earlier writings by this author on anticipatory self-defense under international law, see Louis René Beres, *Israel's Strategic Future, Project Daniel*, Ariel Ctr for Poli'y Res. Policy Paper No. 155 (2004); Louis René Beres, *Israel's Survival Imperatives: The Oslo Agreements in International Law and National Strategy*, Ariel Ctr for Poli'y Res. Policy Paper No. 25 (1998); Louis René Beres, *Security Threats and Effective Remedies: Israel's Strategic, Tactical, and Legal Options*, Ariel Ctr for Poli'y Res. Policy Paper No. 102 (2000); Louis René Beres, *After the Gulf War: Israel, Preemption and Anticipatory Self-Defense*, 13 HOUS. J. INT'L L. 259 (1991); Louis René Beres, *After the Scud Attacks: Israel, 'Palestine,' and Anticipatory Self-Defense*, 6 EMORY INT'L L. REV. 71 (1992); Louis René Beres, *Assassinating Saddam Hussein: The View from International Law*, 13 IND. INT'L & COMP. L. REV. 847, 859–60 (2003); Louis René Beres, *Israel and Anticipatory Self-Defense*, 8 ARIZ. J. INT'L & COMP. L. 89 (1991); Louis René Beres, *Israel, Force, and International Law: Assessing Anticipatory Self-Defense*, 13 JERUSALEM J. OF INT'L REL. 1 (1991); Louis René Beres, *The Newly Expanded American Doctrine of Preemption: Can it Include Assassination*, 31 DENV. J. INT'L L. & POL'Y 157, 164 (2002); Louis René Beres, *On Assassination as Anticipatory Self-Defense: Is it Permissible?*, 70 U. DET. MERCY L. REV. 13 (1992); Louis René Beres, *Preserving the Third Temple: Israel's Right of Anticipatory Self-Defense Under International Law*, 26 VAND. J. TRANSNAT'L L. 111 (1993); Louis René Beres, *On Assassination as Anticipatory Self-Defense: The Case of Israel*, 20 HOFSTRA L. REV. 321 (1991); Louis René Beres, *Rejoinder*, 9 TEMP. INT'L & COMP. L.J. 445, 447 (1995); Louis René Beres, *Striking 'Comp.' Israel's Post Gulf War Options Under International Law*, 14 LOY. L.A. INT'L & COMP. L. REV. 1, 4–8 (1991).

<sup>67</sup> GREENPEACE, AN OVERVIEW OF NUCLEAR FACILITIES IN IRAN, ISRAEL AND TURKEY: A GREENPEACE BRIEFING 8–12 (2007), available at <http://www.greenpeace.org/raw/content/international/press/reports/nuclear-facilities-iran-israel-turkey.pdf>.

accruing from an essential act of Israeli anticipatory self-defense would fall entirely upon Iran.<sup>68</sup>

In the case of Iran and Israel, “sacred violence” is what animates Iranian nuclearization. In this case, Iranian “perfidy,” (codified primarily by Geneva Law) could have the effect of deterring an Israeli preemption.<sup>69</sup> This would follow from Israeli concerns about injuring and killing Iranian non-combatants. Nonetheless, at least, from the standpoint of law, Israel would not need to be so deterred.<sup>70</sup>

Another term that appears in the title of my remarks is “irrationality.” I have noted before, per Rene Girard, that violence need not necessarily be irrational.<sup>71</sup> Usually, from the standpoint of strategic studies, we define a rational state actor as one who values its continued existence more highly than any other preference or combination of preferences.

What if, in the near future, a state such as Iran was willing to “die” in order to achieve a particular religious outcome—in essence, to become a suicide-bomber in macrocosm? This is not a silly question. On the contrary, Iran’s current president is a believer in the return of the missing Twelfth Imam (the Mahdi), and in the idea that such coming must take place in the context of an apocalyptic war against the “unbelievers.”<sup>72</sup>

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<sup>68</sup> Here we must recall that criminal responsibility of leaders under international law is not limited to direct personal action nor is it limited by official position. On the principle of command responsibility, or *respondeat superior*, see, e.g., Yamashita v. Styer, 327 U.S. 1 (1945); Trial of Wilhelm von Leeb (Case No. 72) 12 L. Rep. Trials War Criminals 1 (1948); William V. O’Brien, *The Law of War, Command Responsibility and Vietnam*, 60 GEO. L.J. 605 (1972); William H. Parks, *Command Responsibility for War Crimes*, 62 MIL. L. REV. 1 (1973). The direct individual responsibility of leaders is also unambiguous in view of the London Agreement, which denies defendants the protection of the act of state defense. See Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis art. 7, Aug. 8, 1945, 59 Stat. 1544, 82 U.N.T.S. 279.

<sup>69</sup> See generally Louis René Beres, *After the Falling Rockets from Lebanon: Interrelated Commentaries on Israel’s Performance and Survival*, 10 NATIV ONLINE (2006), available at <http://www.acpr.org.il/english-nativ/10-issue/beres-10.htm>.

<sup>70</sup> Additional legal arguments can be mustered here in support of Israel. Recalling that the right to self-defense is absolutely peremptory, and is also deducible from antecedent natural law, from which *all* international law ultimately derives, each state must cooperate in the protection of Israel from the effects of any perfidy and planned aggression. See *supra* note 50 and accompanying text. Here, the words of William Blackstone are especially elucidating: “Each state is expected to “aid and enforce the law of nations, as part of the common law; by inflicting an adequate punishment upon offenses against that universal law . . . .” William Blackstone, 4 COMMENTARIES ON THE LAWS OF ENGLAND, 73 (1769). Of course, Blackstone’s jurisprudential correctness is apt to be less compelling than presumed geopolitical and “sacred” enemy expectations.

<sup>71</sup> GIRARD, *supra* note 26, at 2 (“Violence is frequently called irrational. It has its reasons, however, and can marshal some rather convincing ones when the need arises.”).

<sup>72</sup> Con Coughlin, *Will the 12th Imam Cause War with Iran?*, DAILY TELEGRAPH, Sept. 28, 2007, <http://www.telegraph.co.uk/opinion/main.jhtml?xml=/opinion/2007/09/28/do2804>.

I have done some looking into the idea of apocalypse (it has interested me since I first wrote a book with that word in the title in 1980),<sup>73</sup> and it seems certain that both the Jews and the Christians drew some of their eschatology, "last things," from ancient Persia (now modern-day Iran).<sup>74</sup> Indeed, there is substantial evidence (I think especially of the Dead Sea Scrolls and the document called *The War of the Sons of Light and the Sons of Darkness*) that the Jews—who passed along their apocalypse in some form to the Christians—were themselves deeply influenced by the earlier Persian Zoroastrians.<sup>75</sup> The latter were distinctly Manichean, and subscribed to a stark dualism between Good and Evil.<sup>76</sup>

Not much has changed in the broadly conceptual world of "sacred violence." It is, to various Arab/Islamic terror groups and states, still a constant war between "us" and "them."<sup>77</sup> In this war, as I had mentioned earlier, there can be absolutely no possibility of compromise.<sup>78</sup> As for international

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<sup>73</sup> See generally LOUIS RENÉ BERES, *APOCALYPSE: NUCLEAR CATASTROPHE IN WORLD POLITICS* (1980).

<sup>74</sup> See, e.g., James Barr, *The Question of Religious Influence: The Case of Zoroastrianism, Judaism, and Christianity*, 53 J. AM. ACAD. RELIGION 201, 201 (1985) ("The development within Jewish religion of such matters as angels, dualism, eschatology, and the resurrection of the body is commonly attributed to the impact of Iranian religion.").

<sup>75</sup> See, e.g., *id.* at 205 (stating that several scholars have "greatly confirmed the idea" that the Dead Sea Scrolls are proof of Iranian influence on Judaism); A.V. Williams Jackson, *Zoroastrianism and the Resemblance Between It and Christianity*, 27 Biblical World 335, 335 (1906) ("[There are] numerous resemblance between Zoroastrianism and Christianity, and points of contact with Judaism in earlier times.").

<sup>76</sup> See Manfred Hunter, *Manichaeism in the Early Sasanian Empire*, 40 NUMEN 2, 5–6 (1993) (stating that Zoroastrians believed in a "dualism which showed good and evil in the spiritual and in the material").

<sup>77</sup> Under international law, the question of whether or not a condition of war actually exists between states is somewhat unclear. Traditionally, a "formal" war was said to exist only when a state made a formal declaration of war. The Hague Convention III codified this position in 1907. Hague Convention III Relative to the Opening of Hostilities art. 1, Oct. 18, 1907, 26 Stat. 2259, 205 Consol. T.S. 263. This Convention provided that hostilities must not commence without "previous and explicit warning" in the form of a declaration of war or an ultimatum. *Id.* Presently, a declaration of war may be tantamount to a declaration of criminality because international law prohibits aggression. See General Treaty for the Renunciation of War as an Instrument of National Policy art. 1, Aug. 27, 1928, 46 Stat. 2343, 94 L.N.T.S. 57; 1 Trial of the Major War Criminals 171 (1947) (stating the "Nuremberg Judgment"), U.N. Charter, art. 2, para. 4. A state may compromise its own legal position by announcing formal declarations of war. See Hague Convention III Relative to the Opening of Hostilities art. 1, Oct. 18, 1907, 26 Stat. 2259, 205 Consol. T.S. 263. It follows that a state of belligerency may exist without formal declarations, but only if there exists an armed conflict between two or more states or at least one of these states considers itself "at war."

<sup>78</sup> Cf. KARSH, *supra* note 4, at 1; Kenneth LEVIN, *THE OSLO SYNDROME; DELUSIONS OF A PEOPLE UNDER SIEGE* x (2005); THE LEGACY OF JIHAD: ISLAMIC HOLY WAR AND THE FATE OF NON-MUSLIMS 24 (Andrew G. Bostom ed., 2005).

law, it is little more than tactically expedient; to be used and manipulated only according to the presumed will of Allah.<sup>79</sup>

Conceptually, I have sought to link “sacred violence” with international law, perfidy, preemption, and irrationality. The links here are tentative, but worthy of a continuing and much deeper examination. At the most obvious level, virtually all of the violence that we now face as a civilization is “sacred violence,” and essentially all of this threatened violence, (which could include mass-destruction terrorism) has its roots in acute death fear<sup>80</sup> and systematically repressed sexuality.

It is also rooted in elements of an Arab/Islamic civilization that positively loathes the individual (making it diametrically opposite to the individualism that we have learned to value in our own societies)<sup>81</sup> and that makes membership in the group (the sacred group) the very highest kind of expectation.

Finally, “sacred violence” draws upon the universal human need for *ecstasy*, a need that cannot be readily fulfilled in the Arab/Islamic world, and which therefore needs to be sublimated into very destructive forms of individual and collective behaviors.<sup>82</sup> Citing to Euripides’ *Medea*, René

<sup>79</sup> It is therefore an Islamic variant of secular *realpolitik* or “Power Politics.” The classic expression of *realpolitik* is Thrasymachus’ comment: “justice is nothing else than the interest of the stronger.” PLATO, *THE REPUBLIC* 29 (Benjamin Jowett trans., The World Publishing Co. 1946).

<sup>80</sup> The fact of having been born augurs badly for immortality, and the human inclination to rebel against an apparently unbearable fate produces the very terrors from which humans always seek to escape. In their desperation to live perpetually, human societies and civilizations embrace a broad panoply of faiths that promise life everlasting in exchange for “undying” loyalty. In the end, such loyalty is transferred from the Faith to the State, which then battles with other States in what is generally taken to be a “struggle for power,” but which is often, in reality, a perceived Final Conflict between the Sons of Light and the Sons of Darkness. See NEIL ASHER SILBERMAN, *THE HIDDEN SCROLLS* 254–7 (1994). The advantage to being on the side of the Sons of Light in any such contest is nothing less than the promise of eternal life. This “advantage” is now especially apparent in the expanding power of Islamic radicalism throughout the world.

<sup>81</sup> In contrast, note here that Jewish Law (*Halakah*) rests upon the twin principles of the sovereignty of God and the absolute sacredness of the Individual. On the centrality of the dignity of the Individual to the Talmudic conception of law. See S. BELKIN, *IN HIS IMAGE: THE JEWISH PHILOSOPHY OF MAN AS EXPRESSED IN RABBINIC TRADITION* (1960). From the sacredness of the Individual, which derives from each person’s resemblance to Divinity, flows the human freedom to choose. Failure to exercise this freedom represents a betrayal of legal responsibility. On human freedom to choose good over evil. J.B. SOLOVEITCHIK, *THOUGHTS AND VISIONS: THE MAN OF LAW* 725 (1944).

<sup>82</sup> I think here of Eugène Ionesco, who comments instructively: “People kill and are killed in order to prove to themselves that life exists.” EUGÈNE IONESCO, *THE HERMIT* 102 (Richard Seaver trans., Viking Press 1974) (1973). This is not an obvious reference to the human need for ecstasy, but upon more deliberate consideration, it becomes apparent that all ecstatic feeling must exist along a continuum, ranging from mere affirmation of existence (Ionesco) to utterly explosive reminders (the suicide bomber).

Girard reminds us of another fundamental truth about "sacred violence:" "If left unappeased, violence will accumulate until it overflows its confines and floods the surrounding area. The role of sacrifice is to stem the rising tide of indiscriminate substitutions and redirect violence into 'proper channels.'"<sup>83</sup>

We are those "proper channels." It follows that we must now work with vastly more imaginative approaches to international law, in order to curtail the pace of religious sacrifice in certain portions of the Arab/Islamic world.<sup>84</sup> This means exploring paths for remediation that have never been explored before; that have, indeed, never even been imagined or understood. In principle, we could try to think of ways to move from a no longer useful Westphalianism, to a new global cosmopolis, this would never work in time. In principle, we could try to think of ways to limit Arab/Islamic death fears and institutionally repressed sexuality, but, in fact, that would take centuries to work, if ever at all.

Much as I would prefer to end on a hopeful note, "sacred violence" will likely propel the planet toward mega-terrorism and apocalyptic war in the next several years unless we can fashion certain appropriate near-term solutions. Recalling the legal implications of perfidy for anticipatory self-defense, and understanding the potentially dreadful fusion of enemy irrationality with weapons of mass destruction, our only immediate remedy appears to lie in preemption.<sup>85</sup> It is an imperfect remedy, to be sure, one that

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<sup>83</sup> GIRARD, *supra* note 26, at 10.

<sup>84</sup> Here it must be recalled that terrorism in most instances in the Arab/Islamic world is now an expression of precisely such religious sacrifice, and that counter-terrorism under international law must rest upon longstanding ideas of "universal jurisdiction." VATTEL, *supra* note 55, at 93. Jurisprudentially, these terrorist sacrificers are *hostes humani generis*, international outlaws within the scope of universal jurisdiction. BLACK'S LAW DICTIONARY 755 (8th ed. 2004) (defining *hostes humani generis* as "[e]nemies of the human race; specif., pirates"). "[W]hile the jurisdiction of each State is in general limited to punishing crimes committed in its territory, an exception must be made against those criminals who, by the character and frequency of their crimes, are a menace to public security everywhere, and proclaim themselves enemies of the whole human race. Men who are by profession poisoners [sic], assassins, or incendiaries may be exterminated wherever they are caught; for they direct their disastrous attacks against all Nations, by destroying the foundations of their common safety." VATTEL, *supra* note 55, at 93.

<sup>85</sup> The customary right of anticipatory self-defense, which is the legal expression of preemption, has its modern origins in the *Caroline Incident*. Beth M. Polebaum, *National Self-Defense in International Law: An Emerging Standard for a Nuclear Age*, 59 N.Y.U. L. REV. 187, 190 (1984). This was part of the unsuccessful rebellion of 1837 in Upper Canada against British rule. *Id.* at 190-191 (noting that the *Caroline Incident* transformed the right of self-defense from an excuse for armed intervention into a customary legal doctrine). Following the *Caroline*, even the *threat* of an armed attack has generally been accepted as justification for a militarily defensive action. *Id.* at 191. In an exchange of diplomatic notes between the governments of the United States and Great Britain, then-U.S. Secretary of State Daniel Webster outlined a framework for self-defense that does not actually require a prior armed attack. *Id.* (citing R.Y. Jennings, *The Caroline and McLeod Cases*, 32 AM. J. INT'L L. 82, 90

does not get to the heart of the problem, and one that is necessarily partial and transient. Nonetheless, all options presently before us are manifestly unattractive,<sup>86</sup> and our only rational choice is to select the least unattractive option.<sup>87</sup>

International law is not a suicide pact. Facing various intolerable expressions of “sacred violence,” the civilized community of states must quickly understand the availability of authoritative norms supporting anticipatory self-defense. Recalling Cicero’s earlier warnings on attempting to deal with force without force, we may also consider his speech in defense of Milo:

[I]f our life be in danger from plots, or from open violence, or from the weapons of robbers or enemies, every means of securing our safety is honorable. For laws are silent when arms are raised, and do not expect themselves to be waited for, when he who waits will have to suffer an undeserved penalty before he can exact a merited punishment.<sup>88</sup>

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(1938)). Here, a defensive military response to a threat was judged permissible as long as the danger posed was “instant, overwhelming, leaving no choice of means and no moment for deliberation.” Polebaum, at 191.

<sup>86</sup> “For what can be done against force without force?” inquires Cicero. MARCUS TULLIUS CICERO, *CICERO’S LETTERS TO HIS FRIENDS* 78 (D.R. Shackleton Baley trans., Scholars Press 1988).

<sup>87</sup> Here it must also be understood that all conclusions are necessarily tentative, and that there must be a *continuing* intellectual effort to identify better policy options. See Jack Meziorow, *Transformative Learning as Discourse*, 1 J. TRANSFORMATIVE EDUC. 58, 61 (2003). It is essential, in this connection, that dialectical reasoning be employed. See *id.* “The term ‘dialectic’ originates from the Greek expression for the art of conversation.” *Dialectic in 2 THE ENCYCLOPEDIA OF PHILOSOPHY* 385 (Paul Edwards ed., 1967). Today, a common meaning is that *dialectic* represents a method of truth-seeking via correct reasoning. See *id.* The following operations may be identified as crucial but non-exclusive components of a strategic dialectic: (1) a method of refutation by examining logical consequences, (2) a method of division or repeated logical analysis of genera into species, (3) logical reasoning using premises that are probable or generally accepted, (4) formal logic, and (5) logical development of thought through thesis and antithesis to a synthesis of opposites. *Id.* Dialectic likely began in the Fifth Century, as Zeno, author of *Paradoxes*, was acknowledged by Aristotle as its inventor. DIOGENES LAERTIUS, *LIVES OF THE PHILOSOPHERS* 59, 249 (A. Robert Caponigri ed., trans., 1969). In the middle dialogues of Plato, dialectic emerges as the highest form of “intelligence.” Plato, *Republic*, in *THE COLLECTED DIALOGUES OF PLATO, INCLUDING THE LETTERS* 575, 746, 765 (Edith Hamilton & Huntington Cairns eds., Cooper et al. trans., Pantheon Books 1961) (1938). In one dialogue, Plato describes the dialectician as one who knows how to ask and answer questions. See Plato, *Gorgias*, in *THE COLLECTED DIALOGUES OF PLATO, INCLUDING THE LETTERS* 229, 232, 234.

<sup>88</sup> *The Speech of M.T. Cicero in Defense of Titus Annius Milo*, in *CICERO: SELECT ORATIONS*, 174, 178 (C.D. Yonge trans., 1889). Both Grotius and Vattel parallel the Jewish interpreters on preemption and what we now call “anticipatory self-defense.” HUGO GROTIUS, *ON THE LAW OF WAR AND PEACE* (1646), reprinted in 3 *CLASSICS OF INTERNATIONAL LAW* 169–75 (James Brown Scott ed., Francis W. Kelsey trans., Clarendon Press 1925) (1913); VATTEL, *The Law of Nations or the Principles of Natural Law*, reprinted

"All those who are merciful to the cruel," warns the Talmud, "will come to be cruel to the merciful."<sup>89</sup>

"C'est beau, n'est-ce pas, la fin du monde?"<sup>90</sup>

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in 3 THE CLASSICS OF INTERNATIONAL LAW 130 (James Brown Scott ed., Charles G. Fenwick trans., Oceana Publ'ns Inc. 1964) (1916). The Torah contains a provision exonerating from guilt a potential victim of robbery with possible violence, if, in self-defense, he struck down and if necessary even killed the attacker before he committed any crime. See RAMBAN: COMMENTARY ON THE TORAH 377-378 (Rabbi Dr. Charles B. Chavel, trans.) (1973) (commenting on verses in Exodus). In the words of the rabbis: "If [a man] come[s] to slay [you], forestall by slaying him." II *Sanhedrin*, in 6 THE BABYLONIAN TALMUD 465, 489 (H. Freedman, trans.) (1935).

<sup>89</sup> See Eliav Shochetman, *He Who is Compassionate to the Cruel Will Ultimately Become Cruel to the Compassionate*, 6 NATIV ONLINE, <http://www.acpr.org.il/ENGLISH-NATIV/06-issue/shochetman-6.htm> (describing the origins and uses of this popular folk saying); see also MOSES MAIMONIDES, II THE GUIDE OF THE PERPLEXED 554 (Shlomo Pines trans., 1963); see also ECCLESIASTES, in 8 MIDRASH RABBAH at 199 (Rabbi Dr. H. Freedman, et al. eds. Rabbi Dr. L. Rabinowitz trans.) (1983). This Talmudic warning takes on an additionally important jurisprudential meaning because of the clear and continuing connection between Jewish law and natural law: "Whatever a competent scholar will yet derive from the Law, that was already given to Moses on Mount Sinai." See 19 CHICAGO STUDIES IN THE HISTORY OF JUDAISM, THE TALMUD OF THE LAND OF ISRAEL 143 (Jacob Neusner, et al eds., Jacob Neusner, trans., Univ. of Chicago Press 1987) (1982). Here, derivatively, we may also recall Thomas Aquinas' commentary on Augustine: "St. Augustine says: 'There is no law unless it be just.' So the validity of law depends upon its justice. But in human affairs, a thing is said to be just when it accords aright with the rule of reason; and as we have already seen, the first rule of reason is the Natural Law. Thus, all humanly enacted laws are in accord with reason to the extent that they derive from the Natural Law. And if a human law is at variance in any particular with the Natural Law, it is no longer legal, but rather a corruption of law." A.P. D'ENTREVES, NATURAL LAW: AN INTRODUCTION TO LEGAL PHILOSOPHY 42-43 (H.J. Paton ed., 1964) (1951) (citing ST. THOMAS AQUINAS, II SUMMA THEOLOGICA 1014 (Fathers of the English Dominican Province trans., Christian Classics 1981) (1911)).

<sup>90</sup> GIRAUDOUX, *supra* note 1, at 96.