

## The Strategies of Rupture in International Law: The Retrenchment of Conservative Politics and the Emancipatory Potential of the Impossible

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### A. Introduction: The Limits and Possibilities of Rupture

The concept of rupture straddles the space between revolution and reform, anarchy and order—a paradoxical term to demarcate, on the one hand, the possibility of a complete falling away of one systematization, without necessarily initiating some new regime, and on the other hand, the conditions of improvement and renewal, an opportunity of reassessment, and quite often re-entrenchment. Thus, rupture is not necessarily the same as speaking about revolution, or even emancipation for that matter, because it does not necessitate any giving up of a certain system of ideas or authority, at least not in any long-standing sense.<sup>1</sup> To put it bluntly, it is neither progressive nor reactionary, but in some sense, perhaps best understood, and I will expand on this shortly, as simply the very conditions of establishing and/or maintaining any symbolic order (by which I mean the albeit uneasy synthesis of political, social, economic, religious relationships that constitute what ends up getting called a ‘system’ or ‘order’).<sup>2</sup> Rupture is a strategy, in other words, of both understanding and political action, but which itself carries no necessary affiliation with any ideological disposition.<sup>3</sup> We might say, therefore, to speak of rupture is to enlist a

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<sup>1</sup> Revolution and emancipation are analogous words, the former referring to political organization, the second linked more closely to personal expression, and both suggesting not merely some right to do or utilize something, but the ability to act in opposition to some other set of desires.

<sup>2</sup> Rupture, therefore, may play into either an actual revolutionary break, or some sort of reform or retrenchment into some already existing ordered system.

<sup>3</sup> Rupture, as configured here, is thereby universal in mobilization, though capable of being genealogically traced through historical moments, and always given content in relation to a specific “material” context.

set of concerns, disagreements, traditions, ideas, and so on, that are useful when attempting not just to describe a situation, but to move towards some political decision as a group, though what exactly that would be is open to contestation.

My purpose here is to reconsider the tactical-functional and strategic-ideological character of rupture in the theoretical toolbox of international lawyers, and specifically to situate it within the emergence of what falls under the rubric of political theology.<sup>4</sup> Analyzing the various approaches to rupture in international legal conversation, my thesis is that the terrain of argument is actually far narrower than often imagined, and that the juxtapositions between “progressive” and “conservative” voices may be collapsed within a shared imaginative logic. In fact, what looks progressive, for this very reason, may actually be the most insidious form of conservatism, a closeted restoration anxiety, while what sometimes appears as a dangerous political fanaticism, usually associated with conservative voices, may actually suggest the very conditions of a meaningful emancipatory program for international law, at least in relation to its structural aspects. In contrast to the current spectrum of argument, I will conclude by drawing upon the ‘New Philosophy’ school, especially Alain Badiou’s synthesis of Lacan and St. Paul, to advance a short proposal for an alternative vision of how rupture might be deployed, what I will call a *politics of truth*.<sup>5</sup>

### B. Tactic 1: Creative Dismemberment as Ideational Retrenchment

In *Capital*, Karl Marx observes that the capitalist system, and particularly those class interests which most benefit, is dependent upon the incessant dismemberment and reconstitution of all aspects of social life at large:

The bourgeoisie cannot exist without constantly revolutionizing the instruments of production, and thereby the relations of production, and with them the whole relations of society . . . Constant revolutionizing of production, uninterrupted disturbance of all social conditions, everlasting uncertainty and agitation distinguish the bourgeois epoch from all earlier ones.

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<sup>4</sup> I am thankful to Rob Knox for pointing out the importance of clarifying the relationship between strategy and tactics. See generally FRANTZ FANON, *THE WRETCHED OF THE EARTH* (1961).

<sup>5</sup> See generally ALAIN BADIOU, *THEORY OF THE SUBJECT* (2006); see also ALAIN BADIOU, *ST. PAUL: THE FOUNDATIONS OF UNIVERSALISM* (1996). My reading of Badiou, however, is mediated through a host of other dispositions, which there is not sufficient space here to delineate. While Badiou derives his political framework from the Maoist tradition, my own reading is mediated through authors such as the cultural critic, Slavoj Žižek, and the Marxist theologian, Robert Boer, as well as the broader literary traditions of Critical Legal Studies (e.g. CLS, Peter Fitzpatrick, Duncan Kennedy), New Approaches to International Law (e.g. NAIL, David Kennedy), and new left voices in international law (e.g. China Mieville, Akbar Rasulov).

All fixed, fast frozen relations, with their train of ancient and venerable prejudices and opinions, are swept away, all new-formed ones become antiquated before they can ossify. All that is solid melts into air, all that is holy is profaned, and man is at last compelled to face with sober senses his real condition of life and his relations with his kind.<sup>6</sup>

Assessing the recent financial crisis, this is exactly what the investor Jim Rodgers calls “creative destruction,” the process of failure and reorganization to turn a profit, if not potentially create whole new markets and forms and means of production. Creative destruction, of course, comes with enormous distributive costs, and not only strictly economic or political in nature.<sup>7</sup> At the same time, ruptures of this kind are not only visited upon the laboring classes and the poor. For example, the bourgeoisie, essentially the class that do not control but facilitate and feed off the momentum of capital, are also caught up in the anxieties of destruction, even as they participate in propelling it forward. Traditional hierarchies of authority and family allegiances, as Adam Smith notes, crumble in the face of an all-encompassing commercial order maintained through the formal medium of capital.<sup>8</sup> No set of investors or producers are exempt—capital is, in this sense, like God, no respecter of persons, but instead the neutral judge that holds all accountable to a single standard: namely, that of adaptable efficiency.<sup>9</sup> Capitalism is the mechanization of a universalizing-driven hedonism, which operates not only in the figure of the ethical individual, but more importantly, the structured ground beneath our feet, both imaginatively and materially.

However, if this variety of capitalist rupture is costly in terms of not only its economic but human toll, the traditional tone towards these events is nevertheless optimistic in two respects: firstly, authors supporting particular ‘ruptures’ are often fully aware that the source of violence materializes from within the rationale of the system itself, and secondly, such authors generate arguments on the underlying agreement that these costs are paramount to the healthy functioning of the system itself. For the traditionally posited founders of this approach (implicated today in neo-liberal economic thought), such as Smith and Voltaire,<sup>10</sup> the ruptures of commerce were the very guarantees of progress, the

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<sup>6</sup> See KARL MARX & FRIEDRICH ENGELS, *THE MANIFESTO OF THE COMMUNIST PARTY* ch. 1 (1848).

<sup>7</sup> See generally John Haskell & Boris Mamyluk, *Capitalism, Communism... and Colonialism? Revisiting ‘Transitology’ as the Ideology of Informal Empire*, 9 *GLOBAL JURIST* 1293 (2009) (discussing the material impact of multiple “shock therapies”).

<sup>8</sup> See ALBERT HIRSCHMAN, *THE PASSIONS AND THE INTERESTS* 80 (1997).

<sup>9</sup> See Haskell & Mamyluk, *supra* note 7, at 5 (discussing this notion in greater detail as the “economization of progress”).

<sup>10</sup> See generally ISTVAN HONT, *JEALOUSY OF TRADE* (2006).

invisible hand (e.g. Providence, the finger of God) moving humans despite themselves to embrace both an individual ethos of self-discipline and a dispassionate sociability regardless of former prejudices.<sup>11</sup> We see this repeated today in the wake of the financial crash in the calls for better regulation and government regimes shifting to the right of the political spectrum, privileging corporate tax cuts over social safety nets for the unemployed. Rather than destabilizing order, therefore, the function of rupture here is specifically to reify the existing trajectory of commercial logic in an almost messianic, or mystic, register—of brutal sacrifice, but with the promise of a better world, just not yet, to maintain hope and fidelity in a sublime plan.

This messianic rationale structures the dominant accounts within international law as well.<sup>12</sup> The ruptures that periodically upset the global community are themselves not simply some crude form of politics invading the peaceful terrain of a rule-bound order, but the very indication of a politics oriented towards improvement.<sup>13</sup> Here, as we will explore more fully in the next section, rupture is an opportunity for growth and self-reflection, if not also a moment to prove the resolve of the profession to legislate the 'Word' in the face of despair.<sup>14</sup> The logic runs, if World War I reflects the outcomes of a colonial project of overweening imperial nation-states, its aftermath marks a turning away from empire building. If World War II witnesses the rise of fascism and politically organized anti-Semitism, then the UN Charter and the subsequent decades of decolonization mark the concerted effort to eradicate all, at least overt forms, of political oppression on the basis of traditional prejudices against individuals or groups via the State through some legal vehicles of human rights and national self-determination or ethnic minority protections. Rupture is, in other words, the very stuff of apology, the opportunity to be reborn, to renovate the international legal order to not only changing circumstances, but weathered experience, and all without disrupting any fundamental set of underlying affiliations towards liberal democratic political structures or capitalist market economics. If we wished to place this again in a religious language, we might say that rupture is the name for the tribulations and trials of the flesh, the condition of fallen humanity slowly grasping the divine will for our lives, both individually and as a collective brotherhood, of being tested like Job to demonstrate the severity of our fidelity. If capitalist relations for 18<sup>th</sup> century scholars resulted inadvertently in the extension of Christian sociability, then the horrors of the international legal order over the past two centuries or so represent the challenges facing the believer in their daily faith that must be overcome in order to be born again through the blood of the lamb, what today would constitute the laboring poor.

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<sup>11</sup> See Voltaire, *On the Church of England*, in *PHILOSOPHICAL LETTERS: VOLTAIRE 26* (Ernest Dilworth ed., 1961).

<sup>12</sup> See Martti Koskenniemi, *Legal Cosmopolitanism; Tom Franck's Messianic World*, 35 N.Y.U. J. INT'L L. & POL. 486 (2003).

<sup>13</sup> See generally China Mieville, *The Commodification Form Theory of International Law: An Introduction*, 17 LJIL 271 (2004).

<sup>14</sup> See generally THOMAS SKOUTERIS, *NOTIONS OF PROGRESS IN INTERNATIONAL LEGAL DISCOURSE* (2010).

### C. Tactic 2: Progressive Critique as Restoration Anxiety

In the more progressive, or critical, camps of international legal and political theory, the notion of rupture follows two interrelated understandings. First, rupture acts as a methodological principle, reminding international lawyers that the history of the profession is pockmarked by “catastrophes and mutations” in attempts to resist adequate recompense.<sup>15</sup> In the genealogical approach advanced by Foucault towards historical study, the role of the theorist is not to find origins or maintain the scholastic adherence to fixed principles in order to ward off chaos, but rather to “cut” and expose inconsistencies between facts and perception, to foreground irreconcilable juxtapositions, to elevate incoherence and uncertainty.<sup>16</sup> To celebrate indeterminacy claims thus requires an openly existential courage whereby the theorist, or practitioner for that matter, is challenged to face up to the horrors of the past without any clear prescription that might either make sense of the past or present a comfortable way forward.<sup>17</sup> In this sense, rupture is seen as a useful vehicle to bring new externalities to light, whether for the purpose of opening the system to previously marginalized groups, or alternatively, taking into account new risks and opportunities for the future.

Second, if the historical methodology is one of highlighting discontinuities and alternative narrative accounts that may undermine the verities of orthodoxy, the concept of rupture also instigates a more encompassing sentiment about the very nature of politics and law, expressed most often in gendered terms that carry deep-seated religious connotations. Here, the rupture constitutes a double movement which leaves the profession divided between two diametric lines of thought. The first movement of rupture is the radical separation of human community from any transcendental reference point that might provide a totalizing closure or certainty to either personal or public life—under the banner of the “death of God,” the emerging disenchanting politico-legal imaginative terrain leaves its subjects without foundations, in a type of metaphysical, yet constitutive, void. The creation of a community still carries a trace of the divine, but it is no longer capable of being fully represented other than through an almost pantheistic chain of unending equivalences, what Ernesto Laclau frames as the ineffable character of God within the

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<sup>15</sup> See Nathaniel Berman, *In the Wake of Empire*, 14 Am. U. Int'l. L. Rev. 1515, 1523 (1999).

<sup>16</sup> See Michel Foucault, *Nietzsche, Genealogy, History*, in THE FOUCAULT READER 76 (Paul Rabinow ed., 1984).

<sup>17</sup> See generally Berman, *supra* note 15; see also DUNCAN KENNEDY, A CRITIQUE OF ADJUDICATION (1998) (celebrating an attitude of perpetual indeterminacy).

Christian mystic tradition.<sup>18</sup> In other words, rupture is the breaking from any firm ground into a gap or space of pure existential contingency.<sup>19</sup>

The second movement of rupture moves from religion to gender, the Absolute empty signification of the void forcing two responses—the *phallic* and the *feminine*—positioned as the contrasting ends of the political spectrum, the phallic standing for some form of right wing fascistic or imperialist tendencies, the feminine signifying a more liberal cosmopolitan ideal of governance. Following Freudian literature, the *phallic* approach designates the penis (*e.g.* the privileged idea of community or rulership) as the unary trait of identification, establishing the father (*e.g.* the sovereign will) as the symbolic phallus, both the exception to castration and the particular site of obedience—what Lacan coins in the 1950s as “the All,” or the “Big Other.”<sup>20</sup> For authors, perhaps most infamously the Nazi jurist, Carl Schmitt, the concept of rupture within the phallic stream is two-fold. On the one hand, following the Genesis account of God’s creation, rupture marks an “extraordinary and fully arbitrary intervention of creation *ex nihilo* into the darkness of primal chaos” that is both unanticipated and outside of any pre-established normative agreement.<sup>21</sup> If the precondition of existence, therefore, is nothingness, then the divine spark of life depends on a moment of rupture that is solely dependent on a decision, a will to power, what Schmitt describes as the “exception,” or “miracle” of political existence.<sup>22</sup> On the other hand, even though the notion of rupture as some decision that tears through a prior state of affairs renders void the distinction between law and lawlessness, Schmitt does not conceive it as a nihilistic act. To the contrary, in a move that seems to almost directly model the Catholic Church’s traditional predisposition to institutionalize a clear distinction between the faithful and the damned in starkly public terms, the logic of rupture here is that each new community is by necessity grounded in some ongoing

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<sup>18</sup> See Ernesto Laclau, *On the Names of God*, in *POLITICAL THEOLOGIES IN A POST-SECULAR WORLD* 137 (Hent de Vries & Lawrence Sullivan eds., 2006).

<sup>19</sup> Might we not say that this fall into Christian mysticism is idolatry (and ideology) at its purest—professing a distaste for illusory, self aggrandizing images, the contemporary mystic nevertheless sees divine ineffability only in context of relationships among subjects within a system, rather than seizing upon and naming the First Cause of that given system itself. In this sense, the tendency to mystify the grounding of society deviates attention from the material coordinates at play, and thereby diminishes the possibilities of agency.

<sup>20</sup> See generally LOREZNO CHIESA, *SUBJECTIVITY AND OTHERNESS: A PHILOSOPHICAL READING OF LACAN* (2007).

<sup>21</sup> *Id.*

<sup>22</sup> See CARL SCHMITT, *POLITICAL THEOLOGY: FOUR CHAPTERS ON THE CONCEPT OF SOVEREIGNTY* 7 (2005). Over the last two decades, Schmitt has become an increasingly important figure, within political philosophy and theoretical literature in international law and international relations. In addition to being part of the focus of a series of European Society of International Law workshops, scholars such as Tracy Strong have translated and provided commentary on a growing number of Schmitt texts. But see JENS BARTLESON, *A GENEALOGY OF SOVEREIGNTY* (1995) (tracing these themes back to the Machiavellian era).

moment of pure antagonism—what Schmitt describes in terms of a “friend/enemy” distinction that refuses any compromise.<sup>23</sup>

In contrast to the phallogentric-logic of castration obsessed to locate some pre-castrated organ (*e.g.* political nostalgia) that can routinize all erogenous zones (*e.g.* particular political desires) into a unified global field (*e.g.* the rule of the dictator/state as Father), the *feminine* position holds that we are always already castrated, or “lacking,” to the extent that the constitutive emptiness—the “Not-All”—grounding political identity undercuts any teleological aspirations before it is even declared. Rather than suffer anxiety over the loss of any fixed transcendental reference, the feminine position celebrates the post-foundational moment as the very precondition of an ethical political stance towards competing differences and agendas. “Only if I experience the absolute as an utterly empty place can I project into contingent courses of action a moral depth,” professes Ernesto Laclau, “[s]erious moral engagement requires .... that no content can have any a priori claim to be the exclusive beneficiary of [an] engagement.”<sup>24</sup> The attenuation to contingency and emptiness at the heart of political existence, in other words, is the best guard against the brutal hegemonic excesses of cultural (*e.g.* Eurocentricity, patriarchy) and political oppression (*e.g.* imperialism, colonialism, fascism). In putting aside any totalizing political claims, authors within the feminine tradition champion a liberal cosmopolitan sentiment that places a premium on tolerance, and usually tie this attitude to one form or another of liberal democratic constitutionalism.<sup>25</sup> Thinking rupture as the constitutive void of politico-legal existence, critical voices in international law counsel a professional attitude that cultivates an appreciation of margins and ambivalence,<sup>26</sup> and seek to concretize subjectivity as a global political regime that finds expression through liberal political institutions.<sup>27</sup>

The sin of critical cosmopolitanism in international law, therefore, is to propose any political project that might mount a serious challenge to the existing ordering on the basis that it will either lead to the horrors of the Gulag and the Holocaust, or alternatively, the

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<sup>23</sup> See CARL SCHMITT, *THE CONCEPT OF THE POLITICAL* 27-28 (1996).

<sup>24</sup> See generally Laclau, *supra* note 18.

<sup>25</sup> See ERNESTO LACLAU, *EMANCIPATION(S)* 34 (1996); see also MARTTI KOSKENNIEMI, *THE GENTLE CIVILIZER OF NATIONS: THE RISE AND FALL OF INTERNATIONAL LAW 1870-1960* 504 (2004). The critique of pragmatic technocracy, what Koskenniemi describes as the “police in the temple,” in favor of some larger socio-political (theological) set of principles is also transmitted through darker traditions. See *e.g.* JOHN P. MCCORMICK, *CARL SCHMITT’S CRITIQUE OF LIBERALISM: AGAINST POLITICS AS TECHNOLOGY* (1999).

<sup>26</sup> See generally DAVID KENNEDY, *THE DARK SIDES OF VIRTUE: ASSESSING INTERNATIONAL HUMANITARIANISM* (2005).

<sup>27</sup> See Nathaniel Berman, *Legalizing Jerusalem, or, Of Law, Fantasy, and Faith*, 45 *CATH. U. L. REV.* 823 (1996) (arguing the gateway into progressive politics and law requires one embrace a love of nationalism mixed with liberal cosmopolitanism).

crude phallic closure of the pure temporality of difference in favor of sure, illusory “foundation”:

[T]he classical ideal of Revolution .... [involves] the idea that violence had to be directed towards a very specific end, which was to give a new foundation to the social order. Now, from this point of view I am a reformist, not because my social aims are limited but simply because I do not believe that society has such a thing as a foundation . . . Even the events which in the past have been called revolutions were only the over-determination of a multiplicity of reforms which cover vast aspects of society but by no means the totality of them. The idea of turning the whole society upside-down does not make any sense. (Which does not mean that many ugly things were not committed in the attempt to perform this impossible operation).<sup>28</sup>

Despite its ambitions to maintain a heretical, anti-establishment perspective towards the dominant discourses and agendas of power, I think that the logic of the critical camp here begins to cycle back to the very structures and assumptions it originally sought to challenge. What becomes clearer now is that the ideological strength of the *feminine* is its capacity to enlist the subjectivist critique of radical ignorance (*e.g.* its inability to count the “All”) as the front-line assault against any political project that might challenge the underlying co-ordinates that prop up the networks of institutions, beliefs and distributional effects of liberal cosmopolitanism—no longer is sovereignty based on declaring the exception, but rather to be materially insulated from the necessity of decisions.<sup>29</sup> The underlying assumption of the message is that the cosmopolitan international legal order offers a neutral, and thereby inclusive, field of political engagement where disparate angles may negotiate their particular differences in peaceful, though antagonistic, deliberation.<sup>30</sup> To put this in economic terms, the feminine logic opens the marketplace of (ethical/political/legal) principles to new participants, thereby increasing the wealth of not only the established agents (*e.g.* European “high society”), but transforming potential outlaws into invested shareholders (*e.g.* formerly colonized classes) and cycling outdated wares in favor of new products (or at least, to extend our metaphor, repackaging them). In this sense, the value of the feminine logic is that it promises reform without revolution, to make the world a more entertaining and lovely place through non-violent competition, to

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<sup>28</sup> See LACLAU, *supra* note 25.

<sup>29</sup> The particular phrasing of this idea comes out of a conversation with Rob Knox.

<sup>30</sup> This perhaps helps explain the curious move by critical historians of international law, such as Antony Anghie, who enter the argument with guns firing, claiming the vocabulary and practices of international law are enmeshed in the workings of Western imperialism, but end up reaffirming those very targeted coordinates, now disciplined of their dangerous excesses.



transform capitalist modernity without having to remake the existing institutional logic, structures and traditions from scratch.<sup>31</sup> Indeed, to stretch the analogy to the market, there is a curious relation between the role of capital as a neutral medium of exchange that initiates subjects as formally equivalent actors, despite actual differences in power, and the claim that international law constitutes an open space of hegemonic struggle between formally equal sovereigns. The logic of capital remains at the heart of progressive critique, its *bête noire*.

To the extent that political opposition refuses to accept the existing conceptual terrain, its position is rendered thereby perfunctorily irrational, which equates as incapable of dialoguing, and hence is posited to necessitate “exceptional” measures to eradicate its threat. The irony of the feminine regime of subjectivist knowledge and its politics of deferral as the basis of political legitimacy therefore is that it seeks to define itself based on a critique that plays out to in fact be the mirror of its own authoritarian logic. In characterizing its ideals as “empty,” or resistant, to particular cultural/political content, the critical approach assumes to stand in a one-to-one relationship with the pre-human void, donning an almost metaphysical status to liberal cosmopolitan political institutions that discounts the violent and exclusionary forces that sustain the liberal space—exactly the challenge that it levels upon the “All” logic of the *phallus*.<sup>32</sup> In this sense, the critical camp comes to constitute a reactionary defense of the status quo, a disavowal of its own material foundations: initially abstracting cosmopolitan ideals from any “deep” structural criticism, which adds up to an implicit act of “de-politicization,” and subsequently projecting politics outward, both “canonizing” the basic structure and logic of cosmopolitan democracy and “naturalizing” the conception of a fallen world of power politics to explain when these ideals fail.<sup>33</sup>

#### D. Politics of Truth

The word *capitalism* carries with it a certain caution when uttered in academic settings; yet it is exactly this that remains the prime condition of all further moves within international legal theory. It might serve us to state it bluntly: international law operates, in both its conservative and critical camps, within and through the symbolic order of liberal capitalism. The potential of “rupture” as it currently stands is therefore not to be mistaken for constituting any revolutionary force, or for that matter, emancipatory potential, at

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<sup>31</sup> See BADIOU, *supra* note 5, at 10-11.

<sup>32</sup> See generally JUDITH BUTLER, ERNESTO LACLAU & SLAVOJ ZIZEK, *CONTINGENCY, HEGEMONY AND UNIVERSALISM: CONTEMPORARY DIALOGUES ON THE LEFT* (2000) (in particular, Zizek’s essays).

<sup>33</sup> See generally Wendy Brown, *Why We Are Civilized and They Are the Barbarians*, in *POLITICAL THEOLOGIES*, *supra* note 18, at 298; see also Susan Marks, *False Contingency*, 62 *CLP* 1 (2009).

least to the degree that emancipation presupposes a radical break from an existing set of conditions. This is not necessarily a predicament, especially if one is more or less comfortable, or at least resigned, to the logic of a liberalized capitalist world system. After all, it is difficult to conceive of an alternative vision of global governance that would not draw heavily upon the existing framework of political, if not economic, axioms of contemporary life—in other words, how could we conceive of something fundamentally different, even if we wanted to and had the opportunity? For those of us that find this is the case, then I think it would behoove us as legal scholars and practitioners to drop any language that hints at the revolutionary potential implicit in ideas of (an almost divine) emancipation. International lawyers are, quite simply, bureaucrats and advisors, not prophets or radical political thinkers.

And yet ... this resignation tastes somehow bitter, if not disingenuous. It is bitter because for all our reservations, the profession of international law was founded under the romantic vision that a radically new world, a Kingdom of Heaven on earth, was not only to be struggled for, but actually possible. The first generations of international lawyers, as Martti Koskenniemi has revealed, did not simply think that such a world would be without contradiction and antagonism *per se*, but their efforts were organized around the idea that the political realities of life on a grand scale were open to human agency.<sup>34</sup> Emancipation was, quite simply, possible, and international lawyers carried an important role in any such struggle. Likewise, the current resignation is disingenuous in that the increasing sentiment is that the existing global order is no longer adequate to meet the challenges of the future, whether that is economic, political, or social. The confessions of ambivalence nowadays within the literature of international law mask a lurking suspicion that we stand upon the precipice of a new, emerging order that is still waiting to be defined, but which will descend upon us whether we wish it or not. Rupture, in other words, remains pregnant with an emancipatory, revolutionary content, and which promises ultimately to be felt, not only at some future moment, but rather, as both an immanent and profoundly material element that will force every knee to bow and be reckoned.

In the remainder of this paper, I would like to briefly explore what it might mean to restore the concept of rupture with its heaven-storming potential—or more bluntly, to reconnect rupture to emancipation. My argument is that the dormant capacity of rupture is exactly that it allows us to instigate a politics of Truth, which would provide a universalizing methodological grounding while remaining contingent, or context specific, in substance. To proceed, we might postulate three axioms of an international legal theory of emancipation: first, a militant fidelity to a Truth is possible, and demands both that the fundamental ground of the existing topography is discarded, and that an alternative overarching vision of language and relationships are implemented (though, this is not to

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<sup>34</sup> See generally KOSKENNIEMI, *supra* note 25. That they may have chosen to push their activities towards imperialistic ventures does not necessarily negate the structural dimensions of their activism.

call for a 'cultural revolution' in the Maoist sense of the word); second, that such a Truth is universal across time and space to the extent that it constitutes the actual nature of political existence (that it is, one might say, almost metaphysical); and third, that the specific content or character of this Truth will be determined by the particular material conditions its adherents find themselves operating within, what we describe as its contingent aspect. Here, as in the case of our discussion of critical theorists, let us explain the politics of Truth in a double movement, beginning with the third axiom, and then taking the first and second together.

In relation to axiom three, the contingent yet fundamental character of Truth .... the early work of J. Lacan is remembered in part for his borrowing from linguistic theory to explain the relational, or mediated, construction of identity, encapsulated in the well-worn postmodern phrase within more critical voices of international legal theory, that "meaning is relational." What is often dismissed is that Lacan's later work expands on this idea to illuminate that while meaning is always tied to a more or less infinite set of equivalences (what makes up a "symbolic order"), this set is itself conditioned on some violent exclusionary logic that constitutes and sustains its corporeality as a system – what he comes to describe as "the Real."<sup>35</sup> To put this in slightly more philosophical terms, Schmitt's analysis of political existence is actually not that far off, political existence is to be part of a given symbolic order, which itself originates and is maintained through some violence that it seeks to suppress or keep out of sight. The Real, in other words, is what cannot be represented within the symbolic order without collapsing the order itself. In our conversation to date, the symbolic order that structures the existing terrain of international legal existence (*e.g.* its logic, its relationships, its actors, and so on) is some form of liberal capitalism. Truth is, here, completely at odds with two actually quite paradoxical claims within the contemporary reign of international law: on the one hand, that we exist within a pluralist, or open, world system;<sup>36</sup> on the other hand, that the current background norms which ground our subjectivity are closed to radical contestation.<sup>37</sup> What the critical scholars postulate as the basis of existence, the metaphysical void, is in fact the abstracted theory of a particular set of material relations and interests. In contrast, to take from Lacan's later work, rupture is not the pre-human void, but rather the violent exception, or (materialist) gap, which constitutes and maintains the form, the void, and its subjects.<sup>38</sup>

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<sup>35</sup> See generally CHIESA, *supra* note 20.

<sup>36</sup> Usually privileging "culture" over economic organization, and discounting the cohesiveness of the existing political landscape via words such as "fragmentation."

<sup>37</sup> Might we not see this as some bastardized version of Fukuyama's "end of history?"

<sup>38</sup> The critical camp's historical approach that privileges gaps over origins thereby misses the importance that historical foundations maintain in politico-legal theory—namely, while a survey of gaps seeks to be inclusive, a study of origins, or forced choices, emphasizes the logic that governs any subsequent inclusion.

Second, in relation to Truth as constituting a universal methodological structure that requires a militant fidelity to put forward a new symbolic order, or we might even say, a new religion.... the French philosopher and artist, Alain Badiou, draws upon the writings of St. Paul to postulate the need for a radical rupture, or cut, between the domain of Truth and knowledge. In *1<sup>st</sup> Corinthians*, St. Paul unpacks the radical and untimely nature of his claim to Truth:

Where is the wise man? Where is the scholar? Where is the philosopher of this age? Has not God made foolish the wisdom of the world? For since in the wisdom of God the world through its wisdom did not know him, God was pleased through the foolishness of what was preached to save those who believe. Jews demand miraculous signs and Greeks look for wisdom, but we preach Christ crucified: a stumbling-block to Jews and foolishness to Gentiles, but to those whom God has called, both Jews and Greeks, Christ the power of God and the wisdom of God. For the foolishness of God is wiser than man's wisdom, and the weakness of God is stronger than man's strength.... Brothers think of what you were when you were called. Not many of you were wise by human standards; not many were influential; not many were of noble birth. But God chose the foolish things of the world to shame the wise; God chose the weak things of the world to shame the strong. He chose the lowly things of this world and the despised things—and the things that are not—to nullify the things that are ....<sup>39</sup>

"Truth" here is something that cannot be arrived at through the existing processes of knowledge and opinion, for it is exactly what cannot be counted and arrives on the scene therefore not only as irrational, but illicit.<sup>40</sup> Moreover, that God chooses to instigate this Truth as an act of "grace" points to its universal character, for if all are unworthy, the offering of this opportunity, comes to us completely without preconditions—the offering must be embraced, and with it thereafter come conditions, but the offering itself is unearned and hence open to all to partake in. Truth is inherently universalist in its call to arms.<sup>41</sup>

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<sup>39</sup> See ST. PAUL, *1<sup>ST</sup> CORINTHIANS 1:20-28* (New Kings James Version).

<sup>40</sup> See generally ALAIN BADIOU, *BEING AND EVENT* (2007).

<sup>41</sup> See BADIOU, *supra* note 5, at 77-78. Here, we should see that the illumination of the violence of any given system is not actually a useful critique. Violence always sustains the boundaries of a given symbolic order, and carries no normative weight *per se*. The challenge, therefore, is not the danger or longing for some form of pacifist utopia, but rather seizing on the reality of both blindness and political antagonism as fundamental to human systems of authority, and which necessitates the old Leninist maxim: freedom for whom, and to do what?

At the same time, however, to partake in this truth is transformative on the experiential level of the individual whereby one becomes simultaneously a slave and vehicle to the content of truth, but also an outcast to the existing world. To be a subject to one system means to give up one's subjectivity to another—you have to be a servant, but you cannot serve two Gods. To mix Lacan and Paul for a moment, to seize upon and labor under the inherent, but disavowed, structural limitation of a symbolic order, its radical excess that cannot be counted, necessarily actualizes the destruction of the old order of knowledge.<sup>42</sup> Again, in *1<sup>st</sup> Corinthians*, St. Paul elaborates on the consequences of becoming a new subject to the Truth:

Now it is required that those who have been given a trust must prove faithful. I care very little if I am judged by you or by any human court.... For it seems to me that God has put us apostles on display at the end of the procession, like men condemned to die in the arena. We have been made a spectacle to the whole universe, to angels as well as to men. We are fools for Christ, but you are so wise in Christ! We are weak, but you are strong! You are honoured, we are dishonoured! To this very hour we go hungry and thirsty, we are in rags, we are brutally treated, we are homeless. We work hard with our own hands. When we are cursed, we bless; when we are persecuted, we endure it; when we are slandered, we answer kindly. Up to this moment we have become the scum of the earth, the refuse of the world.<sup>43</sup>

The divergence between St. Paul and critical legal scholars today occurs at the site of "truth" that magnifies into an antagonism between the politics of the Real (*e.g.* the impossible) and the anxiety of restoration (*e.g.* knowledge). For St. Paul, the 'truth' is the name of the substantive excess that structures an existing topography and which constitutes the opportunity (or the content of the opportunity, which is grace) to displace what exists and effectuate itself through faith (*e.g.* courage) as the new corner stone of meaning. To labor in the "truth" is to act completely outside the rational subjective determinations of the symbolic order, and thereby demands a full wager (*e.g.* faith, courage) since the "truth" and its advocates will be undoubtedly equated with some dangerous irrationality or chaos that must be routinized at all costs (*e.g.* in the state of anxiety or emergency).<sup>44</sup> Since the "truth" is exactly that which cannot be spoken or thought under the symbolic order of the law, its justice is an experience or claim of 'the

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<sup>42</sup> *Id.* at 42-43, 59.

<sup>43</sup> Selections from St. PAUL, *1<sup>ST</sup> CORINTHIANS 4* (New King James Version).

<sup>44</sup> See generally ROBERT BOER, *CRITICISM OF HEAVEN: ON MARXISM AND THEOLOGY* 335 (2009).

impossible', which being impossible, is beyond justifications—born of grace, the truth as the disorder to an existing terrain comes as a call for justice in the here and now (*e.g.* Derrida defines justice in this way, as “impatient, uncompromising, and unconditional”<sup>45</sup> that cannot be justified but simply demands in its universalist gesture to be either embraced in human action or denied (*e.g.* close to the operation of Schmitt’s friend/enemy).<sup>46</sup> Its legitimacy, to turn to St. Paul, rests on merely the declaration of our lips, a public fidelity that escapes any need for further rationalization within the baseline challenge it poses to the existing rubric of political being.<sup>47</sup> The truth of St. Paul, we can say, enacts the politics of the Real.

### E. Conclusion: From Congregations to Religion

The concept of rupture seems to be increasingly a point of reference within international legal theory, a technique of both rhetoric-polemics and analytical scrutiny. Rupture itself as an idea comes from a long and convoluted set of trajectories, but more troubling is that too often it functions to claim a radicalism, or freedom of thought, that does injustice to its actual emancipatory potential. Within both the conservative and more progressive camps in international law and politics today, the invocation of “rupture” is the temptation to (re)submit to the “idolatry” of the Word, to the realm of knowledge, whereby the acknowledgement of the failures and irrationality of the current symbolic order are explained as somehow either ‘natural’ or coming from somewhere “outside.”<sup>48</sup> The critical genealogist of the morning, in Nathaniel Berman’s model of international legal personality, becomes the renewer/restater of the afternoon. What makes this so tragic is at least two-fold: on the one hand, the violence we condemn ends up becoming part of the

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<sup>45</sup> See Jacques Derrida, *Force of Law: The “Mystical Foundation of Authority”*, 11 *Cardozo L. Rev.* 919, 967-973 (1990)

<sup>46</sup> Here, it is important to distinguish this conception of truth from the Kierkegaardian “leap of faith” at two levels of difference. First, the Kierkegaardian “leap of faith” is ultimately an individual act, which distinguishes itself by its separation from the community at large, and advances a personalized ethos of not only otherworldly, but also post-death salvation. One’s community, for Kierkegaard, is limited to Jesus Christ, as the personal savior of an atomized humanity, and the past and future generations that received salvation through the blood of the Lamb. Second, following from the prior conception of salvation, the leap of faith envisioned by Kierkegaard is filled with uncertainty towards the reward of salvation, and which is mediated through the Scriptures and meditation. Though the spirit of self-critique is not to be lost in undertaking a more Catholic conception of truth, it deviates strongly in respect to both its understanding of the subject (needing to venture into the wilderness of the private sphere of home, but also thoroughly and positively engaged in a community) and the substance and conditions of salvation (otherworldly in its ability to speak to the Real and propose an impossibility, but focused on the material conditions structuring the widest meanings of existence).

<sup>47</sup> See generally BADIOU, *supra* note 5.

<sup>48</sup> See *e.g.* PHILIPPE SANDS, *LAWLESS WORLD: AMERICA AND THE MAKING AND BREAKING OF GLOBAL RULES* (2005).

rationalizations for the very structural relations and logic that led to the character of violence in the first place; on the other hand, the elevation of tolerance to a quasi-metaphysical ideal ends in a betrayal of the almost divine potential of human agency, especially in its organizational-social capacity, to seize the gift of freedom, of emancipation, and remake the law and ourselves as subjects in a new light—in a spiritual register, from the creation of a congregation to what would be a new religion, to speak something that appears other-worldly in all its grandeur. For rupture to reclaim its emancipatory potential, if this is a calling that speaks to our hearts, we as international lawyers should open ourselves to the possibility that now is a time to allow those sometimes bold, sometimes tentative, leaps of faith required not only to demonstrate courage to name what is unspeakable, but as importantly, to sever the connection between knowledge and truth, and answer to what is only impossible so long as we are unwilling to hope militantly in its coming.