RELATIONS OF CRUELTY AND RAGE: THEORIZING PALESTINE, ISRAEL, AND THE LIBERAL INTERNATIONAL NOMOS AT THE ADVISORY INTERNATIONAL COURT OF JUSTICE

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Abstract

This essay develops a theoretical framework for understanding the normative stakes of international legal narration prompted by cruel acts. It centers passages from Palestine's oral argument, as detailed in the verbatim record of the "Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem" Advisory Opinion hearings at the International Court of Justice (March 2024). To contextualize the significance of Palestine's narration, this argument traces the history of the liberal international community, the imperial pasts of its institutions, the distinction between legality and legitimacy in international law, and the role of 'apt' anger in the airing of grievances. Through this process, the essay reveals cruelty's irresistible force in the liberal international legal arena—by implicating both the legal system and its normative universe, cruel acts raise the specter of not only a broken law but an illegitimate base. Palestine's oral argument, which arises in such a gross situation, forces a structural, legitimacy-reckoning for the international legal system in toto. In this way, this case becomes a test for the very possibility of justice under the given liberal order.

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[In] response to her judges when they asked her, "In what language do your voices speak to you?" ... she answered: "Better language than yours."

—Anne Carson

The degree to which our senses contest the imposed modes of the presence and absence of suffering is the degree to which we are political.

—Asma Abbas

Preamble

A video from Gaza. 9th March 2024. A young boy is speaking. Eyebrows furrowed, his tone an accusation. "They are humiliating us," he says, "dropping the aid into the sea with parachutes." Wide-eyed, his voice rises, furious in a way that is difficult to square with his smallness. It bellows, anger cresting desperation, cresting indigence and exhaustion ("They Are Humiliating us"). The boy is lucid. He points left, then right,

> We live in Tal al-Zaatar, but they throw it in the sea, so we would come here like dogs. I'm here just to get a meal for my siblings. They keep telling me they're hungry … I swear I didn't get anything. ("They Are Humiliating us")

Though tears stream down his eyes, now, the ferocity of testimony does not abate.

> Why won't they hand it to families in need? If there's a widow, who will bring food for her little hungry children. They are hungry, they can't find food. ("They Are Humiliating us")

Bisan Owda, a filmmaker, activist, and journalist, has reported daily from Gaza since October 2023—from the growing rubble of Israel's indiscriminate military campaign. Late last year, she asked, "Until when?" "We," she said bitterly, "recorded all kinds of massacres … and nothing has changed … I mean we've recorded everything, we've shown you things

you've never seen in Hollywood. We've recorded them. And nothing has changed" (Aziza 2024).

Months later, two humanitarian doctors, Feroze Sidhwa and Mark Perlmutter, testified to the brutality of Israel's assault. Witness to the domicide of Gaza and the de-worlding of its people ("We've Become Addicted"), from the overfilled bays of the European Hospital in Khan Younis, they pleaded for an ending. "We have," they said, "never seen cruelty like Israel's genocide in Gaza" (Sidhwa and Perlmutter 2024). The legal ascription was apropos. Less than three weeks prior, the United Nations Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, published her report on Gaza. "The threshold indicating Israel's commission of genocide," wrote Albanese, "is met" (Albanese 2024).

Introduction: The Vice of Cruelty

This is an essay on cruelty. I take this vice, after Judith Shklar (1984), a practice of pain-making upon an other, as the *summum malum* of a liberal politics (8). The *greatest* evil. Cruelty's forms deal both psychic humiliation and physical brutality. Though manifold in method, they are unified in objective: cruel acts produce "anguish and fear" (Shklar 1984, 37). They are attempts to rend a victim's "normative world and capacity to create shared realities," their values, community, and ability to narrate the core meanings of their life (Cover 1986, 1603).

My object is the cruelty of nations. Occasions when the military, juridic, and/or economic machinery of one state bears down upon the people of another with devastating consequences upon life and limb. The victim of state cruelty is put under immense strain. If, however, they manage to reach the other side of pain, they wield a great discursive power. On the condition that they are willing and able to put a grievance through the existing organs of international legal recognition, the sufferer of cruelty can use evidence of their dispossession to challenge the normative basis of the liberal international order.

My work is spurred by the State of Palestine's oral presentation at the International Court of Justice (ICJ), on the occasion of the advisory opinion hearings for the Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem[1] (2024). I intend to elucidate the normative and moral stakes of Palestine's argument therein. This narration implicates not merely the law but the moral basis of the international liberal nomos. The emotive, historical retelling, which emphasizes the humiliation and brutality of Israel's policies, imperils the very legitimacy of the international legal order at the Hague. Palestine is exemplary, here, for its use of language

[1] Future references will shorten the title to simply the 'Legal Consequences' case.

to contain the *summum malum*, for its place along a Third World lineage of international legal reform, and as a spectacular, juridico-philosophical case for the processing of cruelty, which demands space for *apt* anger.

Cruelty, and the horrific recognition of such an act's trespass on human dignity, this is what separates, to liberalism, the barbarian from the civilized (Asad 2015). Detailing, before the bench, the degradations of Israel's Occupation, Palestine makes legible the base quality of the violence committed—acts that require *decisive* judicial censure. A liberal institution, after all, cannot morally countenance cruel excess without becoming essentially incoherent to itself (and, thereby, risking legitimacy in the eyes of all its sovereign constituents).

Cruel acts strive to erode a victim's normative commitments, diminishing, by degrees, a sufferer's capacity to reply or accuse (Cover 1986). Thus, prior to all else, the very fact that Palestine activates the international legal system for accountability, from the throes of the world's longest—verging on deadliest—military occupation ("Israel Must End Its Occupation" 2024), in the midst of an unfolding genocide (Albanese 2024), is exceptional. It demonstrates a people's irrepressible will to liberation under world-destroying duress, vindicates the perceived power of the institutional matrix within which international law gains authority, and underlines the existential precarity each judicial decision either eases or aggravates.

As an advisory opinion, the Legal Consequences proceedings will not result in binding judgment. The ICJ, however, is at pains to stress that these opinions "carry great legal weight and moral authority" ("Advisory Jurisdiction"). Such an advisory opinion is the appropriate space for considering the vice of cruelty precisely because, prior to all else, it possesses a norm-elucidating mandate. My paper intends to establish clearly *why* Palestine

argued as it did, outlining, through a disquisition into international cruelty, how such acts trouble a liberal international order's formative moral commitments.

It behooves us to remember that the ICJ lacks an enforcement force in all cases. The effectiveness of its binding decisions, therefore, is also contingent on the consent of its parties. States' reactions to judgments are always already political and their adherence can never be taken for granted. To study the hearings and/or trace the development of a binding decision is to keep relative success/failure as well as issues of political credibility and practical utility in mind. My goal is to elide measurements of the law's particular effectiveness. Rather, by moving into the advisory domain, I hope to attune to the way Palestine presses the Court on certain legal violations using specific rhetorical strategies. I intend to map the moral-juridical challenge being leveled—a challenge that troubles the norms from which the Court's legitimacy derives.

This essay is structured in two parts; it is an attempt, primarily, to develop a theoretical framework for understanding the normative stakes of international legal narration prompted by cruel acts. The second and shorter portion of my text comprises passages from Palestine's oral argument, as presented by seven speakers. It serves to illustrate the theoretical proposition, as it played out in practice at the Hague in February 2024. To grasp the significance of Palestine's narration, however, I spend an extensive first section drawing the conceptual basis and history that informs the limited case. This portion signposts the liberal international community, the imperial history of its institutions, the distinction between legality and legitimacy as relevant to the discussion, and why accountability for normative violation, sought in legal idiom, requires space for apt anger. Suffusing all aspects of this essay is an engagement with the liberal *nomos*—the normative universe—within which a mechanism like the ICJ inheres. Over the paper, we come to see how an argument from cruelty exerts an irresistible force precisely because it implicates both the legal system

and its normative universe, raising the specter of not only a broken law but an illegitimate base.

Terms of Interest

The law is that which "imbue[s] action with significance" (Cover 1983, 8), marking the threshold of permissible variation from a defined expectation. This expectation arises within what the legal scholar Robert Cover called a nomos. This is the world of norms, held together by "interpretive commitments" (7). Commitments as to what is "right and wrong, … valid and void." They are, in part, moral commitments. Some are "small and private, others immense and public." Together, they enliven inert scratches on a page to deal with the acts occurring at relative scale, thereby "determin[ing] what law means and what law shall be" (7).

A nomos is not reducible to just the scene of judgment or even the legal proceedings of a case; it consists of the envelope of relevant interpretive commitments, which surround and inform a court's dispatch. In this case, the ICJ's prescriptions are fundamentally tied to a liberal international nomos—its legal determinations are a liability subset of all those behaviors that constitute a moral standard or norm. The ICJ operates within this organizing international metastructure. But metastructures change and no legal system is totally passive in its application of normative principles. The world wherein a law is situated is, by and by, affected and recalibrated by the mere fact of its operationalization or lack thereof (Cover 1983, 6).

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The political philosopher, Shklar, exerted much attention in delineating, over the course of her oeuvre, "the physiology of injustice" (Benhabib 1994, 479). Her work revolves around the precarity and plight of the marginal entity. She enunciates a minimal liberalism that can face down "the wickedness of actuality" (Shklar 1984, 66), one that, in the moment of cruelty, rushes without qualification to the victim's aid.

There is, in Shklar's explication of liberalism, neither virtue in nor monopoly on generic victimhood. There is, however, a formative and moral compulsion to ensure cruelty's immediate end. Her philosophy knows only "two figures and one place: victimizers and victims here and now" (Shklar 241)

I borrow Shklar's ethos in the pages that follow. Any discussion of a more perfect liberalism, of further nuance in the study of systemic obligations to human beings, can only come after a cruelty's cessation. Later, we will see *why* this is and how it informs Palestine's case before the ICJ. For now, it will suffice to note that liberalism requires a speaking subject—an agent who can act, communicate, and engage in a community of others along lines of responsibility and liability. If cruelty, by force of brutality and humiliation, impairs victims' capacity to do these things, it convolutes the liberal experiment that seeks consent and action along prescribed channels of mutual comprehension.

The Cruelty of Nations and the Claim of Law

When subject to the cruelty of a nation, what recourse does a victimized party have to set to rights the violation? Where neither their own polity nor their attackers' have the will to intervene, is there a third, compelling power? Especially in a world system of sovereign and equal states, to whom can one turn to remedy such cruelty without hazarding more harm?

The answer is the international community. A shaky oft-contested term, I use it, here, to describe an emergent quality of how states formalized interaction after 1945. These years saw intense institution-building, most notably with the United Nations (UN). Per Tod Lindberg (2014), such forums, whether it be for peace and security or trade and commerce, became the validated sites of multilateral, continent-spanning discourse. Each state—existent and newly independent—bought into, performed, and thereby reified the tropes of *proper* international relations as practicable in designated institutional spaces.

Choosing to enter organizations like the UN, states prioritized, at the zeroth degree, the underlying principle of cooperative possibility over noncommunicative hostility. With each ratification, mutual comprehension on the basis of certain *givens* trumped others: all states are sovereign equals, no state shall use force to acquire territory, etc. The growth of spaces where states begin, at minimum, to debate collective coordination within parameters of a shared interest shows a nomos taking shape. A universe of rights and wrongs whose "moral principles" emanate from classical liberalism (Lindberg 2014, 14). All this is not to say that we exist, or will ever exist, under a unitary world government. Rather, I highlight the ongoing systemization of global "quasi-governance," a showcase for a shared, if tenuous, commitment to a "common good," qualified as *good* within liberalism self-understanding (Lindberg 14). This is important to spell out, for while Shklar often talks about the United

States and its domestic affairs, her observations on liberalism carry over to an international order built in its image (Ikenberry 2018).

The international community may only be palpable on the grounds of those institutions where states must account for the sum of all others, directing one eye, at all times, upon a common agenda. Yet, the paradigmatic example of such an institution, the UN, creates the opportunity for a victim to appeal in its name. For the UN is also liberalism's endogenous higher normative authority. It, and the postwar sensibility that necessitates its creation, turns on the continuing viability of self-possessed, bounded, equal states. Only when certain norms are upheld can liberalism continue to imagine interstate coordination in the UN mold. And so, when national peace and security are threatened, especially by the scourge of cruelty, the afflicted can appeal to this authority for counteraction.

Under these conditions, there is often a need for a common language to spell out what a system's normative values are. Studying liberalism's reckoning with torture, the anthropologist Talal Asad (1996) traces a legalistic turn in the means for determining such commitment. Indeed, it is also in the 'claim of law,' as a statement of rights and duties owed to an equal and admissible member of a liberal-juridical institution, that the magnitude of a state's transgression becomes most knowable. Not merely, following Martti Koskenniemi (2004), as a private wrong but as a generalizable injury, granting it entry into the orbit of the institutionally punishable. Reaching for the irrepressible force of a judicial mandate, the claim of law seizes upon original moral obligation—at the ICJ, based on multilateral treaties and customary practice—articulating a *world society of consequences.* A violation is now, in the words of Koskenniemi, a "violation against *everyone in my position*, a matter of concern for the [liberal] political community itself" (214).

The claim of law holds the cruel act to the surgical light of the normative document, detailing the elements of the rule that is allegedly abrogated, the justiciability of cases in the type of the one at hand, the threat this poses to the legitimacy of the liberal internationalist project, and, in the case of *summum malum*, the moral fallout of non-cessation.

Yet, even international law originated as a warrant for imperialism. It provided, in its instrument, a language for colonial expansion, a rigorous means to justify the actions of 'pioneering' men who, upon reaching foreign shores, proceeded to expropriate, subjugate, extract, funnel, silence, hurt, and—failing all else—destroy Europe's other (Anderson 2023; Anghie 2006; Mutua and Anghie 2000). People who had, until then, navigated the dramas of their societies on local terms, producing orders of knowledge and relation rooted in place, were made subsidiary wholesale to the force and word of Europe.

The postwar international liberal order, however, sought to overwrite civilizational hierarchies. Under the auspices of the UN Charter and covenants in its spirit, there would be only self-determining, sovereign equals. Now, international law would not assume one set of regional interests as its raison d'etre. Indeed, much of the liberal order's language was universal, a nomos purporting rights and equality, fabricating no brutes. These norms were good norms.

With the gradual decolonization of Empire's territories ("Global Issues: Decolonization"), dozens of new states entered this world stage and its field of operations. What did they find? No utopia. Though the formative terms of the liberal international order towed a universal vision, in practice its regimes, "supported and promoted by international law and institutions … systematically disempower[ed] and subordinate[d] the people of the Third World" (Anghie 2006, 752).

Thus began an alternative project, the third world project (Mutua and Anghie 2000), on the back of majorities in spaces like the UN General Assembly. Herein, states engaged the existing institutional mechanisms to directly remake the shape and tenor of international relations. This is the rightful tradition of the claim of law: statements in the language of a given order that demand the practical realization of concepts like equality—normative aspirations that a Western liberal internationalism all too often celebrates only in self-interest or as lip service.

It is in this light that Umut Özsu (2015) recalls a generation of non-Western professionals like the Algerian judge at the ICJ, Mohammed Bedjaoui, who sought to change a system from within. Bedjaoui, who, despite being a key functionary at the bastion of the established order, fervently articulated a third world-centric New International Economic Order. "It was," according to him,

> because of [a] long-standing desire to reform, not to repudiate, the United Nations that Third World states pressed so vehemently, even desperately, for a new international order. Their disappointment with existing legal structures ought not to be confused with a dismissal of legality *tout court* [but] for adapting legal norms and institutions to changing circumstances. (Özsu 133)

Tragically, this reform agenda, especially its economic proposals, faced vicious Western backlash. It was, in the end, scuttled by the great powers.

Legality, Morality, and Legitimacy

Koskenniemi (2004) does not mince words when it comes to the visible hegemonic commitments of liberal international institutions. Yet, he is sanguine on the possibilities of the law as a technique. The making of a legal claim, utilizing a mechanism of the existing order, so as to conduit moral outrage over the infringement of the selfsame order's normative values—this is a method to demand, as fulfillment of original liberal obligation, a more virtuous international community (214-215). Mining her for an overlooked internationalism, Kamila Stullerova (2019) summates Shklar's work in a similar manner. Political rights, to Shklar, result "from situations where moral outrage was translated, via the vehicle of politics, into a legal form" (77).

We are dealing, here, with both a question of particular legality and systemic legitimacy. A concern, on the one hand, with by-the-book determinations of liability and punishment, and on the other about the very presumption that this liberal book, of all texts, is an apt source of organizing meaning.

Koskenniemi, in arguing for the legal claim, reaffirms the legitimacy of a liberal international nomos. Similarly, reform-minded third world lawyers and jurists legitimated the liberal normative universe. In pursuing change from within a system, by following designated procedures for revision, both approaches concede that though instances of international law might be improper or historically inequitable, the normative commitments that undergird its *specific* manifestations remain honorable.

This is in line with the political philosopher Philip Pettit (2012), who notes that in a liberal republican context

> Legitimacy imposes a *pro tanto* moral obligation [that] if you oppose certain laws or measures related to the laws, to oppose them in ways consistent with the system's

> surviving: to stop short of revolution or rebellion or, in an older word, resistance. It makes it permissible, invoking justice or some other virtue, to oppose certain laws within the system: in a word, to contest them. But it makes it impermissible to reject or resist the regime itself. (62)

The core concepts of the UN Charter, sovereign equality, self-determination, non-aggression, and fundamentally, the pursuit of interstate coordination and contestation through international institutions—these are morally good. Thus, despite the continuing failures of international law in practice to live up to certain standards, the underlying normative values are recoverable for a project of justice. The path to this recovery, the *other than the case*, is understood to involve contestation. Such disagreement is anything but, to use Monica Hakimi's (2017b) phrase, "corrosive to the association" (319). It is, rather, a drive toward refiguring obligations within the terms of the current international playbook.

Across theorists, to consider legitimacy is to enter moral philosophy. Whereas law as a social fact is linked to coercive enforcement, morality is a hazier conceptual space. Following philosophers such as Pettit (2012) and Arthur Isak Applbaum (2004), however, we do know that this moral space requires power and involves value determinations: good and bad, the allowable and the prohibited. Further, legitimacy and legality frameworks *can* but need not always align. The law operates as the social-regulational tip of a normative iceberg. It is impositional. It does not question the relative merits of the universe of commitments that give it this or that shape. Legitimacy, on the other hand, is meta-impositional. It asks, for Pettit, "whether the coercive imposition of the order is acceptable or justifiable or desirable" (60).

The anxiety of legitimacy is that it exposes the reasonable constructedness of all order—that each principle of every regime is held together, in the final analysis, à la Cover (1986), by immense acts of faith and the annihilative threat of violence. Moral arguments

take aim at not just *a* law but its animating nomos. Legitimacy opens the door to normative counterfactuals, muddying the sacred coherence of orders and their presumed immutability.

Anthea Roberts (2008) considers the splitting of law from legitimacy dangerous. Analyzing NATO's justification for bombing Yugoslavia during the Kosovo War, she posits three reasons that a state might use a rhetoric of legitimacy to justify actions beyond the scope of law. The first two are tempered by a skepticism. In one, legitimacy is understood as an alibi for a hegemon pursuing extralegal behaviors for its own interest. In another, legitimacy enables a state to selectively supplement the law to provide recompense in particular cases. In Roberts' third, and most optimistic case, "legitimacy may be resorted to with a view to critiquing the law and progressively developing it. Legitimacy provides a useful standpoint from which to assess the legal system and to see whether existing laws should remain the same or be modified" (208-09).

Proposing a legal modification on the back of an argument from legitimacy has a special purchase in international law. The absence of an enforcement force or higher world government means that new law often emerges from state practice. This jurisgenesis announces itself as not-yet-legal without undermining the signifying context of the international realm. By activating the register of legitimacy, a state can argue that it was acting morally, in accordance with some thus far under-articulated tenet of the liberal international nomos. Then, if widely accepted by other states, the illegal act can be framed as retrospectively filling in a legal deficit, in the spirit of an order's latent normative potential. No wonder Lindberg (2014) considers the international community itself "an ongoing transnational dialogue about right and wrong … [an] intersection of morality and politics on a global scale" (15-16).

Nomos, Cruelty, and Communication

When, then, is legitimacy lost? For Pettit (2012) there exist "reasonable thresholds such that at or above those boundaries regimes are just or legitimate, in an on-off sense, while below them they are unjust or illegitimate" (64). These on-off categories involve three freedoms: the freedom of certain choice, the freedom that such choice is guaranteed on an equal basis, and the freedom from domination (72).

Pettit is speaking about the intra-state, but the liberal disposition and expectation of freedom has, through the imperial 'modernizing' mission, suffused the constitution and influenced the practice of most nation-states. It is within this normative space that the terms of the post-1945 institutional debate, on matters of international concern and collective quasi-governance, were set. We can, therefore, approach the international system as cleaving to a modern liberal conscience, one which "regards the inflicting of pain without 'good reason' … as reprehensible and, therefore, as an object of moral condemnation" (Asad 1996, 1087). It names the excess-that-impairs cruelty.

Cruelty is a boundary event. It is domination through pain, a brutal disfigurement of a subject's capacity to choose or maintain higher-order commitments. Overwhelming force is deployed upon an other, violence past its object's submission. The cruel act, to Shklar (1984), is naked. It undoes dignity. Writing on torture—which, next to the act of killing, is the gravest of cruelties—Cover (1986) identifies a will to "complete domination" (1603). Though such an objective might be thwarted, cruelty contrives, in general, to "end … what the victim values," to brutally disintegrate "the bonds that constitute the community in which [those] values are grounded" (1603).

Citing Elaine Scarry's work in cultural theory, Cover draws attention to the interrogation that accompanies torture; in this scene

> the sheer, simple, overwhelming fact of … agony will make neutral and invisible the significance of any question as well as the significance of the world to which the question refers … [I]n confession, one betrays oneself and all those aspects of the world—friend, family, country, cause—that the self is made up of. (1603)

Cruelty, here, reduces the world to a binary of pain and non-pain. Its purpose: to annihilate one's subjective grasp on a normative milieu. Under cruelty, 'communication' is not recuperable within a liberal framework of autonomy or self-possessed choice. The intervening fact of pain fundamentally complicates the ordinary logic of language as self-calculated expression built upon an edifice of one's interpretive commitments. Cruelty bludgeons intricate interiorities into choosing either the prolongation or suspension of suffering. Under pain, the correct answer is the answer that grants reprieve. In this, one cannot fault the victimized.

To subject a person to such excess is to impair their capacity to communicate, at least in modes that are normatively recognizable to liberalism. State cruelty, leveled against a self-determining people, radically constricts the agency, equality, and communicative capacities of that group. It is a concerted, multiform assault upon the dignity of collective life, damaging the self-possessive base upon which liberal individuals and states ply their trade.

At this point, it is apposite to turn to Nadera Shalhoub-Kevorkian (2017) and her work on Occupied East Jerusalem, to illustrate the specific modality of cruelty operative in the Palestinian territories. Shalhoub-Kevorkian writes of Israeli state policy and settler practice as an 'occupation of the senses.' She theorizes a range of acts which cumulatively interdict the sensory capacities of Palestinians in both public and private turning "the colonized city [into] a space of exterminability" (1295). Shalhoub-Kevorkian styles this a "mundane uprooting and dispossession" (1281). An ambience wherein, among other things, children face multi-year mandatory sentences for simply throwing rocks, physical maiming

and deprivation visit pregnant mothers, and "totalizing acts of excisionary bodily violence," up to and including extrajudicial execution, are woven into ordinary life (1293-95).

These violations of bodily integrity and capacity, both singular and collective, present, per Shalhoub-Kevorkian, within "Israeli processes of domination" (1294). Across the Palestinian territories, the occupying regime claims and seeks to "optimize" an absolute power over how a Palestinian might live and when they must die (1280). Along these lines, politicians and officials foment a "moral gap" between "the civilized … colonizer and the barbaric colonized" (1294). A gap that normatively grounds the Israeli state's enactment and legitimization of violence against Palestinians.

Cover (1986) argues that given the bodily, ideal, and interpretive annihilation that cruelty purports, it is nothing short of miraculous "whenever the normative world of a community survives fear, pain, and death in their more extreme forms" (1603). It is seen this way by both those who were brutalized firsthand, as well as people of an extended collective, "who vividly imagine or recreate the suffering" (1603). Refracted through this lens of a collective, we can read the statements before the ICJ on Monday, 19 February 2024, as an iteration of miraculous persistence. Here, the representatives of Palestine deploy the legal argot of a liberal international genre to accuse Israel and stake a claim upon justice, refuting all the ways the cruel state attempts to silence, incapacitate, and dysfunction a people.

For Palestine to place an abridged history of its suffering in the remit of the ICJ, demanding an end to Israeli indemnity, a clarification of state responsibility, and prompt action toward remedy—this might seem, after seven decades of international inaction, an endeavor doomed to fail. Yet, an advisory opinion's non-binding "legal weight and moral authority" ("Advisory Jurisdiction"), disattached from the immediate politics of enforcement, facilitates an important event: international jurisprudential clarification. Whereas all the other

iterations of international legal decision-making must be measured, partially and for good reason, against a standard of effectiveness in particular circumstances, an advisory opinion is a moment for normative and theoretical stock-taking. It does not ask if a law can be just or whether apartheid can be remedied without great power sanctions. What an advisory opinion frames, and forces onto the world stage, is a question as to the interpretive capacity of the liberal international nomos. Does the ICJ possess the epistemic means to recognize the Palestinian catastrophe for what it is? All other binding litigations are corollary to this normative, metastructural question. Centuries after its expropriative origins, has international law truly changed at all? Or do the substantive implications of concepts like "self-determination" disintegrate at the once and future door of the darker nations?

It is important to rightfully secure the Palestinian argument apace Third World approaches to international law (TWAIL), a "reconstructive project" (Mutua and Anghie 2000, 39) geared towards revising the discriminatory basis of international law and critically deploying its powers to undo the underdevelopment of the Global South. Today, TWAIL has attained a centrality in the disciplinary discussion of the law of nations (Nouwen 2024). Now, it is a matter of determining to what extent an academic victory can translate inside the court of law, and whether it will inject—at this Palestinian juncture—a quantum of unqualified equality into the "development of international law" ("Advisory Jurisdiction").

Accusation and Anger

The gravity of the accusation, *summum malum* writ large, imbues Palestine's case with a searing moral force. Cruelty, we know, is anathema to the liberal conscience and self-conception; an appeal from one enduring all this pain, and, through it all, retaining their normative universe is extraordinary. For a people to remain interpretively committed to this legal order, which has allowed such violation to perpetuate, is both the staunchest declaration of continuing faith in the underlying international project and the harshest indictment of its daily failure to prevent suffering.

One may argue that non-engagement with the protocols of international liberal legibility—its institutional matrix—would render a political entity pariah, rescinding any global obligation to protection. I do not dispute this claim. But I ground this essay as a study of choices made and not imagined. Palestine might only be at the ICJ because any other modality of argument, from self-abnegation to violent resistance, would either betray itself or further alienate the powers that be. Yet, even if this choice is, ultimately, non-choice—even if the question posed is but anemic reification of "the conservative and partitionist logic of international law" (Erakat, Li, and Reynolds 2023)—the State of Palestine *did* put on a clinic in legal critique at the Hague. It held a larger system to task. Weaving the core precepts of the given world order into its narration, only to detail the human cost of Israeli dereliction, this case morphed into a watershed for a liberal law. It revealed a world order whose legitimacy-claims falter at the shores of a third world Rubicon.

Scholars of Palestine note that "a moral-ideological victory, on its own, will [not] shift the balance of forces" (Abourahme 2023). Nevertheless, it remains necessary. Here, we must see the Palestinian narration for what it is, much more than a mere recapitulation of facts and figures. Because the charge is so manifestly linked to the degradation of life,

because it has all to do with a state apparatus reveling in its cruelty, in its ability to maim (Puar 2017) and sentinel the "sheer sadistic pleasure" of settlers (Shulman 2024), the Palestinian argument is graspable only upon accounting for its moral register. A register naturally entangled with anger. This, we realize, is a rightful anger that flows from cruel oppression, an *articulate* rage of degraded life. A quality that the liberal international nomos must now assimilate if it seeks to remain a legitimate site for coordination and contestation between nations.

The philosopher Amia Srinivasan (2017) offers us a theory for this genre of *apt* anger, drawing on an American Black feminist tradition. She speaks of the innate, "epistemic productivity of anger" (126) in the face of a "moral violation" (129). For too long, rage has been maligned as either worsening an injustice, counterproductive to solution-seeking, or violative of some general liberal civility (130-32). Srinivasan seeks to theorize the ways in which it can be productive.

Addressing the first two arguments, she draws a distinction between reasons of prudence and ones of aptness. Anger, she argues, can help register and convey the lived experience of injustice in an independently valuable way. By virtue of this enablement, to get angry for reasons of aptness shares normative footing with prudential considerations. In this situation, it is equally valid to reach for either rageful or conciliatory maneuvers, depending on which norm takes precedence. As to the question of liberal civility, Srinivasan is unconvinced that such a stable collation of obligations exists—if indeed they do, would not a civic right to apt expression require space for anger too? (Srinivasan 2017, 131-33)

Extending her main point, Srinivasan writes that

> to get aptly angry is not merely to appreciate the disvalue of an unjust situation or an immoral act. Anger is also a form of communication, a way of publicly marking moral disvalue, calling for the shared negative appreciation of others. (132)

Anger, as communication, invites others "to share in its negative appreciation of injustice" (Srinivasan 2017, n.39 132). The idea here is that under certain pressures, anger is a sort of emotive augmentation of ordinary language. A means to more fully voice, and bring home to others, what Srinivasan calls the "badness of injustice" (138), what Shklar might term the wickedness of actuality. In the wake of moral devaluation, rage can serve to unconceal the atrocity—to show us what it is and how it has marked its object.

Under this theorization, anger is made manifest in many forms. One of these is "enviably articulate verbal expression," wherein dense, elegant rhetoric propels an unrelenting, seething acrimony (Srinivasan 2017, 138).

Far too often, victims of cruelty must domesticate their resentment in order to enter a process of conciliation, recompense, or repair. Srinivasan, in staying with anger, wants to highlight that having to "choose between making the world as it should be, and appreciating and marking the world as it is" is its own, additional form of affective injustice (133). The Palestinian case, as we shall see, exemplifies her argument. Theirs is a strategy of channeling outrage, of asking difficult questions and refusing to hold instances of violation apart. This is anger, emanating from brutalized bodies in Gaza and ambient Israeli cruelty in the West Bank and East Jerusalem, channeled through a legal argot that, in moments of fiery enunciation, pierces a hole in the dispassionate discursive envelope of the law.

Though Palestine seeks the clarification of legal obligation and a declaration of normative commitment, its rhetoric, spiked with rightful and raging political sentiment, brings a history of colonial injustice to bear upon the foundations of a liberal international order, giving the lie to its ruse of normality.

Excerpts: Theorizing the Verbatim Record of the Legal Consequences Case

Moving to examples from the Legal Consequences hearing, I shall limit myself to drawing out relevant passages from Palestine's presentation. The primary aim of my paper, after all, has been to set a cogent theoretical framework from which to read arguments from cruelty that implicate a state as well as a larger liberal international order. The excerpts, when transposed over my conceptual scheme, offer insight vis-à-vis both international law and liberal institutional legitimacy.

There is, in my view, an anger lining Palestine's presentation ("Verbatim Record" 2024). It is most palpable in the opening and closing statements in the verbatim record, when bitter criticism is twinned with the language of pain. In the beginning, it is Riad Malki, Minister for Foreign Affairs and Expatriates of the State of Palestine, who declares that "it has taken the Palestinian people decades of painful struggle to stand before you today" (56). He is bookended by Riyad Mansour, the Permanent Representative of the State of Palestine to the United Nations. "It is so painful to be Palestinian today," Mansour laments,

> How could we be just subjected to such loss and injustice, such lawlessness and humiliation, time and time again? What does international law mean for a nation bestowed with inherent rights, but enjoying none? … It took 75 years for the United Nations to commemorate the Nakba, our violent dispossession, displacement from our land and denial of our rights and existence. And we are seeing it happen all over again … And it goes on. And it will go on forever, unless and until international law is upheld. ("Verbatim Record" 112)

Malki and Mansour are emissaries to an international legal process oriented towards "making the world as it should be" (Srinivasan 2017, 133). Yet, their language, flecked with rhetorical questioning, bristles with a need to "appreciate and mark the world as it is" (133). It is the immensity of cruelty, I contend, that warrants this form, inflecting such phrases with a tactical zeal.

Liberalism, as an epistemology and politics made coherent in its opposition to suffering (Abbas 2010), must institutionally grant latitude to a sufferer's grievance, especially in the face of the *summum malum*. This allows for charged rhetoric on the basis of a sufferance. So Mansour can blaze, "What does international law mean for Palestinian children in Gaza today? It has protected neither them, nor their childhood. It has not protected their families or communities. It has not protected their lives or limbs, their hopes or homes" ("Verbatim Record" 2024, 111).

By submitting their complaints to the ICJ mechanism, Palestine defers to a liberal institutional matrix. It "reaffirms its unwavering commitment to the rule of international law" ("Verbatim Record" 2024, 55), accepting a normative prescription for conflict resolution. Yet, because cruelty strikes at the heart of the whole liberal international project, the appearance, and the platform, also expose an interminable failure. Palestine accepts and indeed reiterates that the ICJ words "have such power" (77). At the same time, they implore the judges to uphold international law, implying that it is only through the contents of their decision that these "powerful words will change the world" (77). A failure of the Court to operationalize its legal-linguistic power, it insinuates, would taint the ICJ's words on all future occasions.

It is in this context, of forestalled realization of Palestinian ambitions, under stark violence and deprivation, that the legal question cracks open. It is no longer a hermetically sealed study of legal consequences in the 'Occupied Palestinian Territory, including East Jerusalem.' It is the ongoingness of a genocide, of Gaza and its evisceration. Under cruelty, the representatives refuse to hold the units of Palestine apart or exceptionalize any one part. Rather, the arguments enfold each site into a clarified vision of Palestine. A territory and body politic under sustained Israeli oppression.

"Palestine," for Malki, "remains the greatest test of the credibility of this international law-based order, a test humanity cannot afford to fail" ("Verbatim Record" 2024, 57). The case is operative on both sides of the law-legitimacy nexus. The five lawyers between Malki and Mansour—Andreas Zimmermann, Paul Reichler, Namira Negm, Philippe Sands, and Alain Pellet—list out the specifics of Israel's derelictions. The two bracketing statements, however, strike at the heart of the liberal institutional model's legitimacy.

Mansour's words take on a sharp edge as he lists some of the state actions that have endangered Palestinians. Over the decades, Israeli decisions have flown in the face of the very international structures tasked with keeping the peace, whose covenants were ratified to protect human rights.

> In 1967, the Security Council "[e]mphasiz[ed] the inadmissibility of the acquisition of territory by war" and called for the "withdrawal of Israel armed forces from territories occupied in the recent conflict" ("Verbatim Record" 112).
>
> "Instead," he rues, "Israel started to colonize the land." The formula continues,
>
> The General Assembly, in resolution 3005 (XXVII) called upon Israel "to desist from, (a) [t]he annexation of any part of the occupied territories; [and] (b) [t]he establishment of Israeli settlements in those territories … Instead, Israel formalized its annexation of Jerusalem and other parts of the West Bank and poured hundreds of thousands of settlers into our territory.
>
> In 1974, 50 years ago, the General Assembly reaffirmed 'the inalienable rights of the Palestinian people in Palestine …' … Instead, Israel denied the existence of the Palestinian people. ("Verbatim Record" 112-3)
>
> "So here we are," he sighs, "though the law is absolutely clear, it is being trampled" ("Verbatim Record" 2024, 113). The words carry a bitter dissatisfaction with the associative enterprise that has allowed for such a trampling to occur in the first place. Malki asserts that "[i]t is time to put an end to the double standards that have kept our people captive for far too long. International law must be applied to all States without exception; no State can be absolved of its obligations under the law and no people can be deprived of its protection" (55).

Again, though voiced within the bounds of the ICJ's hearing, the criticisms implicate the international liberal order on an existential plane. "[M]illions around the world will be watching," says Malki ("Verbatim Record" 2024, 57). He dangles, in this framing, a higher mandate from a global demos. He invokes, in my reading, the idea of the 'people' embedded in the UN Charter's Preamble. The very first words, "We the *peoples* of the United Nations…" ("United Nations Charter: Preamble"). These viewers, per Malki, dot the globe, "hoping that their faith in the international system can be restored … that the Palestinian people will not be abandoned or discarded as expendable" ("Verbatim Record" 2024, 57). The unsaid "or else" is deafening. This faith is not unqualified. And here, it is important to remember the origins of international law, birthed to expropriate the lands of others—others who, today, form the world's majority peoples and bought into the ideals of a liberal humanism in good faith, hopeful that they would finally be equal to Western man.

"They," says Mansour of Israel, "defy the law and the law is barely fighting back. For Palestine, the law continues to be only a measure of the severity of breaches, rather than a catalyst for action and accountability" ("Verbatim Record" 2024, 111). It is this accountability that spurs the request for this advisory opinion—a charge that emanates from incalculable loss, from the better part of a century of suffering. Indeed, notes Malki, people *should* "be outraged by the reality we are living." One "known by every Palestinian, suffered by millions, generation after generation" (53).

Reichler, for his part, points one finger squarely at those who shield Israel from accountability. "Just how far in disregarding the international legal order will the United States go to exempt Israel from the consequences of its ongoing violation of peremptory norms, including the prohibition on acquisition of territory by force?" ("Verbatim Record" 2024, 74). It is, to Reichler, unconscionable that the foundational UN article 2(4) prohibiting

the acquisition of territory by force is so easily dismissed in the context of Palestinians' rights.

> For the United States [US], apparently, this peremptory norm does not exist when it comes to Israel's annexation and settlement of the Occupied Palestinian Territory. Only in such a lawless and United Nations Charter-less world could the Israeli occupation be described as 'not unlawful'. ("Verbatim Record," 74)

There appears to be an alternative, US-filtered version of international legal responsibility when it comes to Israel. This protection enables the annexation and settling of the Occupied Palestinian Territory. Here, those bedrock covenants that tenuously lace the world's states into a dialogue with *common* terms—into the continuity of a normative universe—are optional. This paints a dystopian picture of a world sans law and the UN Charter.

A context-independent disapprobation of cruelty and gratuitous pain is part of the normative vision of international liberalism; it is its minimal moral-juridical self-image. Yet, in Reichler's account of Israel's impunity, we see a reinscription of what Achille Mbembe calls "the principle of separation" (Mbembe 2016), which strictly prohibits equations between it and the rest of the world's states. Here, we must not seek "relations of reciprocity or mutual implication" between states (Mbembe 2016). When firewalled by the US, a state can shirk the repercussions of law-breaking. If, then, we recall Pettit's (2012) 'on-off categories' for legitimacy-determination, Israel's normative exceptionality disrupts the requirement for an equal base from which all parties exercise choice.

Cruelty, as previously argued, also strives to incapacitate a people's ability to access a coherent nomos, damaging the legibility of any reply and occluding paths to effective cessation or remedy. Attempts to block or dismiss both ICJ cases (in 2004 and at present) have, thankfully, not deterred Palestine's quest for resolution through proper channels. "We said years ago," proclaims Malki, "that we made a choice: justice, not vengeance"

("Verbatim Record" 2024, 55). The expression of such choice-making, of continuing to cling to a genre of liberal self-possession, must be understood in the face of world-destroying pain. Negm lists that ways

> [t]hrough indiscriminate killing, summary execution, mass arbitrary arrest, torture, forced displacement, settler violence, movement restrictions and blockades, Israel subjects Palestinians to inhumane life conditions and untold human indignities, affecting the fate of every man, woman and child under its control. ("Verbatim Record," 79)

The situation in Israel/Palestine, per Negm, is one of apartheid, with "[a]n exclusive right of one group and complete denial of the rights of another" ("Verbatim Record" 2024, 87). Such patterned inequality, amidst an atmosphere of dehumanization (84), suspends the proper exercise of one's human rights, including the capacity to determine, within reasonable constraints, *how* one lives. Yet Palestine, through the pain of it all, continues to preserve, presentation by presentation, through occupation, starvation, and under genocide, an idea of autonomy. When scaled to the level of a group and its political rights, the liberal order calls this self-determination.

Sands summarizes the Israeli denial of Palestinian self-determination best, offering a blistering indictment of the cruel state. Israel, he argues

> has arrogated to itself the right to decide who owns Palestinian land, who may live on it, and how it is to be used. On Israel's approach, it decides on the use of resources and allocation of benefits. On Israel's approach, it decides whether Palestinians remain or return. On Israel's approach, it decides how, if at all, Palestinians may meet, trade, teach, worship, live, love.
>
> … Tragically, *tragically*, Israel celebrates the manifest violation of international law inherent in its prolonged occupation. Tragically, *tragically*, Israel asserts 'the right of national self-determination in the state of Israel is unique to the Jewish people', under its own 2018 Basic Law. Tragically, *tragically*, Israel sets its face against the role of international law… ("Verbatim Record," 94)

The use of repetition adds both emotion and urgency to Sands' appeal. It serves to bring home the granular, lived effects of Israel's dominative impulse. Under Pettit's (2012) on-off categories, again, we see how unscrutinized domination calls the liberal order's

legitimacy into question. The acts, themselves, says Sands, are no minor breaches. They are in contravention of a "peremptory right" of international law, a norm that one must comply with on all occasions ("Verbatim Record" 2024, 94). By impeding Palestinians' ability to act toward their interests in every dimension of life—by occupying, to use Shalhoub-Kevorkian's (2017) words, their *senses*—Israel brutally prevents the realization of self-determination. The cruel, occupying state "does not have, and cannot have, a right of veto" on this matter ("Verbatim Record" 2024, 96).

Negm argues that a "prolonged repressive régime has dehumanized Palestinians, denying them the right to life, … safety, … to even exist, while confining and fragmenting them and their territory" ("Verbatim Record" 2024, 81). Under these circumstances, Reichler demands a "complete, unconditional and immediate" scrapping of the whole colonial project (77).

It is, to Palestine, the international community's "legal and moral obligation to bring [this situation] to a prompt end" ("Verbatim Record" 2024, 55). In contradistinction to Israel, which acts with scant regard for the law, imperiling the credibility of the liberal institutional matrix, Palestine seeks but the "legitim[ate] … fulfillment of the rights of [its] people" (55). Appealing to cruelty, once more, Palestine proceeds to link the unfulfilled nature of their demands to the worsening "massacres perpetrated for more than 140 days [in Gaza]" (80).

In the end, we see how the discursive practices of the lawyers tie the Palestinian case to the beating heart of the international order's continuing legitimacy. The claims they set forth are framed as those of a minimal liberalism: "only" a "demand … for [a people's] rights … nothing more … nothing less and nothing else" ("Verbatim Record" 2024, 114). Faced with cruelty for close to a century, the Palestinians have grown severe. "No one in this Great

Hall of Justice is starry-eyed about international law," says Sands, "but it is what we have" (94).

Palestine's desire at these advisory hearings is simple: equal recognition and respect. Pursuant to this, it insists on the "clearest statement possible on what the law is, what it requires and what it means in practice, for *all* Members of the United Nations" ("Verbatim Record" 2024, 115, emphasis added). A principled confirmation, in other words, that the organs of the liberal international nomos, beginning with the judiciary can, first, normatively apprehend the grossness of Palestine's humiliation and brutalization and, second, forcefully recite the rules put in place for all the world's states to prevent cruelty such as this.

Conclusion: The Possibility of Justice

The advisory opinion is both a legal and a moral document. It elucidates what the liberal nomos would have states owe each other—how this order understands, divides, and holds to account vile deeds in a world. Acts that must be pronounced right or wrong, valid or void, so as to form a coherent framework for international communing. The advisory opinion is poised to clarify what the associative paradigm derived from the UN Charter expects and, indeed, *requires* of its constitutive parts towards the realization of a great peace.

The cruelty of nations is a dangerous thing. Especially for a modern conscience defined by a sense of "moral responsibility," where it is "not the absence of rules that defines barbarism but the inability to respond with horror at cruelty, to recognize cruelty for what it is" (Asad 2015, 413-414). Practices of excess pain-making threaten to disorganize the terms and conditions of dialogue between states, self-determining peoples, and human beings who must, normatively, be *absolute* equals.

"The profound rupture we feel today between the past and the present," writes Pankaj Mishra, "is a rupture in the moral history of the world..." (Mishra 2024). This is a world history of colonialism that marks the universal terms of liberalism, rendering them always-already aspirational. The post-1945 order was formed knowing it would have to, year by year, earn its participants' keep, some nations having inherited by turns the wounds and wages of imperialism. So, the liberal order's terms—though irresistible in their rhetoric of individual and collective dignity—are perpetually being tested. Their investiture with global faith, with legitimacy, is contingent on how states once-colonizer and once-colonized fare in the deals struck and decisions made at the vaunted institutions of the given international community.

Palestine at the ICJ bears both the individual brunt of cruelty and galvanizes the eyes and ears of all the world's states who, by and by, see themselves either reflected in its struggle for accountability or threatened by its call for consequences. On an individual, normative level, Palestine's arguments stake a claim to liberal legibility, miraculously surviving brutality to make a demand of the ICJ. This is apt, for we inhabit a world stage where "*perpetual legal struggle* has … become the dominant mode of moral engagement" (Asad 1996, 1104-1105).

Indeed, the general evidence of Israeli cruelty makes this legal narration brim with frustration, even anger. Astute readers of Shklar would remind us that in her reading of liberalism, moral outrage sublimated into legal form is how political rights are always gained—both within and between states (Stullerova 2020, 77). Turning, here, to the international community, the unfolding of the advisory opinion hearings and its eventual conclusion will directly impact how a range of states conceptualize the liberal nomos' interpretive commitments. At play are considerations of the symbolic Global Southern resonance of an occupied Palestine, the sense of a Western-shielded Israeli project, and a test for the ICJ's capacity to recognize and relieve unbearable suffering no matter where it may be.

The crisis of cruelty in Palestine has long-term normative implications for a liberal international order in an increasingly multipolar world. Can a liberal law assimilate the grief of the humiliated and dignify the brutalized? Is Palestine justiciable within the institutions at hand? If it is not, perhaps it is time to expose the relationship between the darker nations and a liberal international order as one of cruel optimism. This being an "attachment to compromised conditions of possibility," (Berlant 2006, 21). Here, the institutions at hand—ones of goods and morals—though affecting a universal cloth, have served for the better half of a century to further the vital interests of only a fraction of humanity.

Ultimately, the purchase of Palestine's argument obtains in the fact that, irrespective of what the ICJ does, the international community of the 21st century must now indelibly reckon with an apt articulation of world-destroying pain—of abandonment, genocide, and the dereliction of an unqualified duty towards a people of this Earth. Palestine's moral clarity forces the liberal nomos onto the docket, laying out via negativa all the ways it fails us daily, as well as what must be done to form a more perfect international order. With Judith Butler (2020), now, I see "the demand, the appeal [itself, as one that] carries some other power even as it calls for justice where there is no one to call upon and justice is not easy to find. It demands the entry of justice into the world; it generates that ideal through its call" (14).

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