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Klabbers, Jan

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The Love of Crisis

Jan Klabbers

An idea is 'true' so long as to believe it is profitable to our lives.¹



1 On Change and Crisis

It is one of the standard *topoi* of contemporary social and political thought that change is a good thing. Political movements, whether #MeToo or Black Lives Matter, whether pro-life or pro-choice, typically go to the streets to achieve change: if not a change in legislation, as is usually the case,² then at least a change in people's hearts and minds. Politicians invariably campaign on a ticket advocating change, even those who think of themselves as conservative. They may campaign by pointing to a glorious past which needs to be rekindled ('Make America Great Again') or a brave new world waiting just around the corner (whether socialist, fascist or neo-liberal), but either way, they campaign for change. And understandably so: the politician who campaigns on a theme of keeping things as they are, who merely wishes things to remain as they are, will be portrayed as boring in the press, will not raise many funds, and will not attract many votes. She will be seen as privileged (why else would she resist change?), or as deluded, or both, and be kept far from elected office. Differences of opinion amongst contenders and activists may exist with respect to the proposed pace of change, separating the revolutionaries from the others, but either way: change is the key word.

Consequently, in order to make change attractive, the existing situation must be depicted in terms of crisis, and again, this applies to politics regardless of precise orientation. Making America Great Again suggests a country that had

1 William James, *Pragmatism* (Bruce Kulick ed, Hackett Publishing Co 1981) 36.

2 This is bafflingly ignored by most political thinkers: political action tends to be oriented to affecting the law, but political scientists of many stripes tend to treat law as irrelevant, as merely epiphenomenal.

temporarily lost its greatness, due to the work of the 'other side' or, more sinister, as the result of dark forces or conspiracies – and it helps if the opposition can be depicted as evil and in conspiracy terms. A century or so ago, Spengler's diagnosed decline of the West and Nietzsche's diatribes against modern man suggested a civilization in crisis. Half a century or so ago, Habermas pointed to the legitimization crisis of the modern State, and on a smaller scale many have been the complaints about systems in crisis. It is, in other words, not hard to find reports about situations of crisis. By contrast, it is far more difficult to find reports about social, political, legal, or economic systems being in good shape, and where those exist, they tend to be written as responses to earlier reports about crisis. If the death of article 2(4) of the UN Charter had not been proclaimed, Louis Henkin is unlikely to have written, with a wink and a nod to Mark Twain, that reports of the death of the prohibition of the use of force were greatly exaggerated.³

The emphasis on crisis talk is no surprise, and stems in large measure from the commodification of information. As the old newspaper editor's quip goes: 'dog bites man' is not a story; 'man bites dog', however, might be interesting. Reporting on the normal, the quotidian, on what works, is not considered appealing. It will not sell newspapers, and it will not win its authors any awards, to propose that all is well with the world. Tabloid editors either depict famous people in relationship crisis, yearning for a break-up, or depict them as yearning for a family. In both cases, change is again the key word, and the need for change is most easily made visible if a crisis can be observed.

Likewise, the international law scholar proposing to investigate the mundane will be shrugged off as, well, mundane. Try and imagine submitting a research grant proposal that does not promise a paradigm shift, and the point will become clear. Try and imagine submitting a paper to a learned journal that suggests that the topic under review works just fine, a paper that does not offer a critique, and the point will become clear. The house that is not on fire will not attract reporters; the house on fire, however, will. Crisis takes epistemic priority, with change following in its wake.

In this light, the call by the editors of this volume for papers on crisis narratives must be seen for what it is, a clever appeal to the general affection for thinking in terms of crisis and possibly change. A call for papers on 'the current crisis' does not convey whether there truly is a crisis, regardless even of

3 Louis Henkin, 'The Reports of the Death of Article 2(4) are Greatly Exaggerated' (1971) 65 *AJIL* 544. True to form, this responded to an earlier observation about the death of Article 2(4) – the other way around is highly unlikely to happen.

questions of definition and conceptualization. Instead, it appeals to a classic, standard *topos*.

2 On International Lawyers in Crisis

Still, there might be good reason to speak of crisis narratives: the fact that it taps into a standard *topos* does not render it false in and of itself.⁴ But realizing that a *topos* is being utilised suggests that there might be something about the utilisers that is worthy of exploration: if not a crisis of international law, then perhaps there is a crisis of international lawyers. That international law is in crisis is both accurate in some way (it always is) and not very interesting: international law is always said to be in crisis, and can be said always to have been in crisis, ever since day one, regardless of when exactly 'day one' is located. If located in the writings of the Spanish theologians, then the crisis, with hindsight, is a moral one: international law enabled colonialism and imperialism. If located in the Westphalian peace with its emphasis on sovereignty, then the crisis is both moral (sovereignty is often considered a bad word) and conceptual (States may be sovereign in name, but this merely covers up immense power differences: organized hypocrisy, one might say). If located in the professionalisation of the late nineteenth century, then the crisis is an epistemic one, turning international law into bureaucratic structures with their own bureaucratic interests and turf wars and accompanying structural and institutional biases. And if located in the interbellum, it failed to prevent World War II and the Holocaust – all good intentions of Wilson, Briand, Kellogg, and others notwithstanding.

International law is in a state of perennial crisis, and at best displays the workings of an accordion: when some parts seem to be going right (whatever that may entail), other parts will not – some parts inflate while others deflate. To put it bluntly: the establishment of the World Trade Organization and the creation of the International Criminal Court, both once heralded as marking the progress of international law, as manifesting the 'legalization' of world politics,⁵ are now considered flawed achievements, with the WTO being paralyzed and possibly moribund, and the ICC having become the thinking world's laughing stock. And lest we forget, the New International Economic Order, that earlier hallmark of the progress of international law, died a painful death at

4 The role of *topoi* in thinking about international affairs is extensively discussed in Friedrich Kratochwil, *Rules, Norms, and Decisions* (CUP 1989).

5 See Judith Goldstein and others (eds), *Legalization and World Politics* (MIT Press 2001).

roughly the same time the WTO was created, and that was possibly no coincidence. The ICC was purposively limited to elusive political crime, leaving the structural crime of exploitation of individuals, and even transboundary common crime, unaffected. And that too was probably no coincidence.

So, the international legal order is said to be in crisis also around the year 2020, and indeed, plenty of evidence suggests this is the case. States that used to be important are leaving behind cooperative schemes, whether it is the momentous stupidity of Brexit or the irresponsible moves of the 'stable genius' occupying the White House in Washington, DC. The ICC has done little of note and yet still manages to tick off the US, most of Africa, and many well-meaning people who balk at the levels of incompetence, judges doubling as ambassadors, and the regular hanging out of dry laundry from the bench – and its judges nevertheless feel entitled to a significant salary boost. The jewel in the WTO's crown, the Appellate Body, is treading water to survive and temporarily (... ?) replaced by a stop-gap mechanism. And tin pot European dictators dream of endless terms in office for sitting presidents, ending the independence of the judiciary, and similar illiberal moves. Come to think of it, this points less to a crisis of international law, and more perhaps to a crisis of liberal democracy – see below.

And yet at the same time, governments join international regimes (sometimes conveniently left out of the crisis narratives):⁶ the US decided to join the International Exhibition Bureau, has been seriously contemplating joining the UN World Tourism Organization and made a U-turn with respect to the venerable Universal Postal Union, which it had earlier threatened to withdraw from. North Macedonia not only settled its long-standing dispute with Greece in a peaceful manner, but also wants to join the EU, as does Albania. On some level, the 'normalization' of relations – if that's what it is – between Israel, the United Arab Emirates and Bahrain can no doubt be spun as a victory for international law. States keep concluding investment treaties and producing model investment treaties, signifying on some level a belief in some version of international law. The OECD is creatively trying to combat tax evasion through international law, while UNCTAD is busy regulating debt relief, and even if NAFTA disappeared, it was replaced by a different agreement. While some leaders in their infinite wisdom feel the need to withdraw from the World Health Organization in times of a global pandemic (possibly to cover for their own incompetence), others have realized that during a global pandemic global

6 As becomes evident from Stefan Talmon, 'The United States under President Trump: Gravedigger of International Law' (2019) 18 Chinese JIL 645. One also cannot help but wonder why exactly his article was published in the Chinese Journal of International Law.

cooperation, i.e., international law and international institutions, might actually be a decent idea.

In other words, to diagnose a crisis of international law typically depends on one's underlying set of values, and is often based on underlying and unspoken epistemic assumptions, such as the mistaken idea that international law is by definition a force for good. This is a mistake, obviously: multilateralism, cooperation, and international law are neither inherently good nor bad – as a moment's thought will reveal. The mistake is understandable though: generations of international lawyers have told themselves and their students (and whoever wanted to listen) that international law is inherently a force for good, mostly because the extreme alternative (unbridled anarchy) will mean a world where life is nasty, brutish, and short. And if you are often enough told that international law is inherently benign, then sooner or later this becomes its own truth.

3 On Accountability as Crisis

This suggests that the crisis is not so much a crisis of international law, but a crisis of international lawyers. The problem is not that States are suddenly 'against international law' (as if that is a credible political position to take in isolation from what specific international legal regimes demand and offer), but rather that the *praxis* of international law⁷ reveals some untenable facets. The most obvious signifier is the apparent importance, highly popular for some two decades now, of accountability, of 'ending the culture of impunity'. The international law blogs, which have become useful barometers of fashion, are filled with calls for accountability. Typical contributions advocate the need for strong Security Council Resolutions against States such as Myanmar, or discuss many of the niceties of international criminal law in quite some detail and often on the level of hypothesis (as in: should individual X ever be indicted, and should he be arrested and arraigned, and should his State of nationality ratify the ICC Statute, what then would be the legal situation?). There is even much discussion of the possibilities of holding someone, anyone, accountable for the outbreak of COVID-19, or for its consequences, or the costs it has generated, or all of the above: the wars on drugs and terror are superseded by the war

7 This does not refer to specific practices or to practitioners, but rather to the way the discourse around international law is shaped, by academics and (some) practitioners alike. On praxis, see generally Friedrich Kratochwil, *Praxis: On Acting and Knowing* (CUP 2018).

on COVID-19. International lawyers, in other words, are terribly busy finding ways to hold others to account.

Doing so, however, reveals both a moral and an intellectual crisis, if nothing else. The moral crisis (if crisis talk is appropriate here), entails that the drive towards accountability is a manifestation of an urge to punish – a primitive urge dressed up in the respectable language of accountability, responsibility, or the unimpeachable desire to bring an end to the culture of impunity. The language is respectable; the urge less so, if only because punishment (*excusez*: accountability) tends to harden political positions. This is well-known: many have realized that starting war crimes proceedings against political leaders will drive those leaders away from the negotiating tables. But no worries, because for this as well a glorious *topos* is available: ‘no peace without justice’, which seems plausible, but only as long as justice is somehow reduced to punishment – and that is a position few political philosophers would find compelling, but which nonetheless passes for deep wisdom in international legal circles.

What is more, often a drive to hold someone accountable is a drive to impose one’s own values. Admittedly, war crimes and the like are formulated in positive international law, and thus capable of being applied by a court, but in the international legal order as we know it, there are many situations where it is less obvious that someone has actually done something really wrong. Surely, the World Bank may act callously when suggesting that a group of people should not complain when being displaced so as to allow for the building of a dam, but there is little law to be found which could be applied as standards for accountability. Moreover, such international legal rules as do exist may point in different directions, in that the Bank is expected to behave in a certain manner under its Articles of Agreement, and in different manner under customary international human rights law – presuming the latter applies to the Bank to begin with. Callousness is not illegal (if only ...), and neither is the building of dams, even less so if done in the sincere expectation that doing so would contribute to the common good of those same people. In such circumstances, claiming that the Bank should be held accountable sounds hollow: accountable for what, exactly? There may be (no, there is) a lot wrong with the World Bank, but invoking international law to stop the construction of a dam (or infrastructure, or other projects) mostly smacks of substituting one’s own value system for that of the Bank. Again, this is not to deny that there may be a lot about the activities of international organizations and other actors that is wrong, but punishing them for doing their job is not the way to go about it – there will be considerably more merit and mileage in changing their job descriptions. That, though, is much harder work, and much less visible; it will be hard to mobilize activists and donors for trying to change the Bank’s mandate.

Insisting on punishment (sorry: accountability – doing it again ...) has the additional drawback that it serves to keep in place highly problematic ideas about international law. International law (law in general), after all, is not only relevant if it can contribute to punishment – that is an early nineteenth century sentiment that is no longer tenable and has been discarded by most observers.⁸ Instead, the main relevance of law, including international law, lies elsewhere: in weaving the fabric of international society. Law facilitates every social action, whether people are aware of it or not. Contract law facilitates commercial transactions, and does so not by insisting on punishment, but by making clear what is expected once a contract is concluded and what exactly constitutes a contract, when a contract is valid, how it should be understood, and how it can be terminated. Any system of contract law will devote a few words to what happens when a contract is breached, but this is only a small part: contract law is not about punishment for breach, but is about facilitating social action in all walks of life. One might rebut that it supports an unfair capitalist economy, and that would be on target, but against the background of such an economy, it is clear that contract law (or private law generally) facilitates social action and interaction, and is considerably less interested in constraining action. Likewise, administrative law facilitates and controls executive action; family law makes family life possible, et cetera. All those branches contain structural biases and leave some worse off and others better off (and are thus susceptible to critique), but none of them can be equated with punishment alone. The rules of the road are not about punishing those who drive over the speed limit; instead, these rules make it possible for people to move from one place to another without lapsing into chaos and constant accidents.

The contrast with the punishment drive endorsed by international lawyers is striking. The punishment drive suggests that international law is mostly about constraining action – otherwise it is thought to be useless. International lawyers are not alone in this crude sentiment: so-called ‘realist’ international relations (IR) scholars think much the same, and sadly, many international lawyers take their cues from such impoverished IR thinking. But the thought that law is only relevant when it constrains action reveals intellectual poverty – perhaps even an intellectual crisis.

8 John Austin, *The Province of Jurisprudence Determined* (Wilfred Rumble ed, CUP 1995).

4 On Crisis Talk

A good crisis also calls for attention and action, and there is thus a premium on framing issues as “crises” rather than “problems” or “challenges”. A “problem” can be met, so it is typically presumed, by working a little harder, or thinking a little deeper, or being a little smarter. “Challenges”, likewise, do not disturb the status quo ante: some creative tinkering may be sufficient; some reshuffling of staff or attention will be considered an apt response to most challenges.

But a proper crisis probes deeper, and does so in pretty much all walks of life. A football club losing three games in a row may have a problem, which perhaps can be solved by replacing the central midfielder by a younger player from the academy, or by tweaking the tactics during games a little. The same club playing against a better team faces a challenge, which may call for a twist in the starting formation, or the adoption of a more cautious attitude. But proclaiming that the club is in crisis provides an excuse for buying a new player or two, or sacking the coach. The crisis narrative, in other words, provides a ready-made excuse for drastic action.

This holds true not just for football clubs, but across the board. The crisis narrative is, paradoxically perhaps, a winner. Authors predicting or diagnosing a crisis sells books. And scholars are awarded large research grants on the promise of either diagnosing a crisis or solving a crisis – any crisis. The very term ‘crisis’ carries an association with urgency, with emergency, with the need for a radical response, far more than the same story would if and when cast in terms of ‘challenge’ or ‘problem’.

The same applies ultimately in politics. The political leader confronted with a refugee ‘problem’ or ‘challenge’ may be tempted to just re-arrange how the migration authority works or free up additional funds, but refer to the situation as a ‘crisis’ and all of a sudden it seems justifiable to make shady deals with untrustworthy but necessary partners, or even close the borders altogether. The crisis narrative is a potent political weapon. Our political culture puts a premium on the identification of crises; it is only the crisis which justifies immediate and strong political action.

Whether the crisis actually is a full-blown crisis is often difficult to verify and, in an important sense, beside the point. In our socially constructed world, what matters is not whether the labels are true or false, but whether they come to be accepted or not. Whether the crisis is ‘real’ or ‘manufactured’, assuming the difference can be spotted to begin with, is irrelevant. Likewise, whether a proposed solution actually works is irrelevant, for it can always be

embedded in a narrative of success. Half a century of austerity policy in western Europe provides an educational example. Austerity has always been sold as necessary, in order to stave off a coming economic crisis, and true to form, the impending economic crisis that spurred on the policies has yet to materialize. Whether this is the result of those policies is anyone's guess; one might as well adopt the narrative that since the same policies need be invoked time and again, they signify a constant failure. And one might as well suggest that the one truly major crisis that hit (the 2008 financial crisis) owed much to those same austerity policies, but that too would be beside the point: a good crisis, one might say, is its own reward – at least for those who gain something, whether material gain or gain in the form of re-election or some immaterial benefit. And indeed, the 2008 financial crisis shows the mechanism at its most glorious: those mostly responsible for the crisis (the irresponsible parts of the banking world) came out best, having been bailed out after making indecent profits.

Since crisis talk sells and can be hugely profitable, it should come as no surprise that crisis talk is endemic. One important ramification though, and one that is insufficiently examined, is that crisis talk thus also comes with winners and losers. Someone gains from referring to a situation as a crisis: that someone can justifiably claim more funds, or will sell more books, or will generate more retweets or Facebook likes and thus potentially attract greater revenue, than those of us who do not immediately grasp for the c-word. No one donates money to an NGO that is merely out to contribute to solving a problem, let alone an NGO that wants to leave things as they are; ending a minor crisis is the least that the NGO should aspire to (and if the crisis is not acute but chronic, it may be called a 'culture', as in 'ending the culture of impunity'). These things are related, of course: change is costly, and thus requires a crisis to be justified. Not changing things, by contrast, is perceived (often wrongly) as cost-free. Like political activists looking for NGOs to sponsor, no research funder is going to provide a grant to someone merely promising an incremental increase in knowledge to solve what is presented as at best a challenge; instead, the promise must involve solving, or at least managing, a crisis, and preferably in one fell swoop, through a paradigm shift rather than an incremental increase. And no statesman (sticking to the masculine pronoun seems reasonably appropriate here) will benefit from downplaying a crisis – unless he is hopelessly incompetent, and unable to handle a crisis. In that case, crisis language is best avoided (current occupants of the White House and 10 Downing Street need not respond). The sheer inevitability of crisis talk in politics owes much to the strong and deep cultural appeal of the crisis.

5 On Crisis Culture

For it is not just the case that we talk of crisis because we want to make a buck, or because bureaucrats wish to earmark additional funds, NGOs wish to attract donations, and politicians wish to get re-elected – or even because we don't really give it much thought and the crisis talk comes naturally. None of this would be effective without the deep-seated cultural appeal of the crisis. For a good crisis, properly understood, promises authenticity,⁹ promises truthfulness; it separates the men from the boys, so to speak. It is arguable, at the very least, that the crisis that was World War II catapulted Churchill, and to a lesser extent Roosevelt perhaps, to eternal fame. It is only during a crisis that people can become heroes; it is during a crisis that true characters are revealed. And thus some aspiring political leaders cannot help but manufacture a crisis, which then calls for their leadership.¹⁰ US President Trump invented an immigration crisis, without any provocation; UK Prime Minister Johnson, in his bid to become Churchill 2.0, helped to generate his own so-called crisis, in which Britain is being enslaved by the EU.

Hollywood delivers the archetype cultural referent, whether in western movies (where the settlers are invariably attacked by wild natives and need to circle the wagons in order to survive) or gangster movies (where rival families fight it out). Even in romantic comedies, the impending romance first needs to survive a misunderstanding or two, a crisis of sorts, before catharsis is possible and Bridget can get together with (no coincidence) her human rights lawyer boyfriend. In all those cases, it is during the crisis that authentic character is revealed. Some, like Michael Corleone, become leaders; others remain followers. Some, like Fredo Corleone, will commit treason for personal gain; others will display loyalty to their families, romantic partners, or groups. Some will show courage in the face of danger and adversity, others will run away, proverbial tail between their legs. Either way, character traits that remain hidden in mundane, non-crisis times, will come to the fore in a crisis. We live, as someone once said, through the stories we tell, and any decent story needs some drama – any decent story needs a crisis of sorts; otherwise there can be no happy ending.

9 This is itself a strange cultural phenomenon: we seem to strive for authenticity, but only in a stylized manner: faux authenticity, so to speak. But that's a story for another day.

10 There is, sadly perhaps, little unusual about this – politics and manipulation have long gone hand in hand. "Traditions" are often invented; communities likewise are often "imagined". See e.g., Benedict Anderson, *Imagined Communities* (first published 1983, Verso 1998).

As a result, in times of crisis, we are culturally programmed to seek out leaders. In times of crisis there is no Habermasian ideal speech situation thinkable; deliberation and compromise seem luxuries we can ill afford under siege. Hence, the conception of politics as inherently involving crises has an equally inherent, built-in, flaw: sooner or later, the crisis will engender a call for strong leadership, and during such times, all non-essentials are suspended. When the wagons are circled, most ordinary activities will seem folly. Likewise, dancing on the volcano is strongly dissuaded, as is fiddling while Rome burns, or rearranging the deck chairs aboard the Titanic. All of these are expressions of the same underlying trope: in times of crisis, one should act with a sense of purpose, one should act decisively.

The absence of the ideal speech situation associated with crisis talk is difficult to reconcile with liberal democracy. It is no coincidence that human rights conventions typically contain clauses which make it possible to suspend liberal democracy in times of crisis – article 4 ICCPR and article 15 ECHR are the best-known examples. The underlying rationale is clear: there is a threat (a crisis, an emergency) which justifies the suspension, in order for the crisis to be staved off and normality to be restored, at which point the suspension should be lifted and liberal democracy can resume.

This suspension works as long as the crisis is temporary, or perceived to be temporary. But where a crisis is perceived to be of longer duration, liberal democracy becomes a luxury. Whether the crisis stems from refugee flows or global pandemics, domestic or foreign terrorists or the so-called ‘deep state’, or even a pending economic catastrophe, there will be a call, in liberal democracies too, for strong leadership. Whether that leadership is really strong (or really leadership) is, again, beside the point: Trump, Erdogan, Bolsonaro, Orbán, Duterte, Putin – all have been democratically elected, as was Hitler less than a century ago. Liberal democracies in the eastern part of Europe have stopped being very liberal and very democratic, and established democracies in the western world, with a longer democratic tradition, have nonetheless succumbed to electing autocrats to high office, and have typically done so amidst much crisis talk, invariably manufactured.

6 On Moral Holidays

All this points to an inevitable and hugely ironic conclusion: if it is plausible to say that international law is in a state of crisis because autocrats left, right and centre play fast and loose with treaties and other commitments, it is precisely this kind of crisis talk that has facilitated the emergence of autocratic leaders

playing fast and loose with treaties and other commitments. If it is plausible to suggest that talk of crisis engenders responses appropriate to crisis, then the only remedy is to put a stop to the crisis talk. Our political leaders cannot be counted upon to tone down their rhetoric: they have too much at stake. But the praxis of international law might be able to just about afford some responsibility – tone down the crisis talk and reserve it for really catastrophic developments. The US leaving a handful of multilateral regimes is silly and will cost it dearly, but this does not mean that international law's grave must be dug. Duterte may be committing a crime against humanity, but legal rules have rarely, if ever, stopped atrocities, as the citizens of Rwanda know all too well – and that might be a useful thing to realize. Duterte's conduct can justifiably be called a crisis for the Philippines, but it is not a crisis of or for international law. Brexit is mostly thoughtless, and harmful to the British population, but does not mean that international law is in crisis. Boris Johnson sponsoring a bill that authorizes the breach of treaty is not a glorious moment for international law, but it is nothing new, really: irresponsible politicians (and some responsible ones perhaps as well) have suggested similar moves for centuries. The point is not to close our eyes to these and similar developments, but quite the opposite – there is nothing wrong with insisting that, generally speaking, legal rules should be respected – call this a culture of formalism, if you will. The point is, rather, to stop calling everything a 'crisis', because the concept of a crisis calls for desperate measures and gives cynical autocrats the language that they need to justify their bullying.

In the end, it is not so much international law that is in crisis, but liberal democracy. This has been propped up for 75 years by parts of international law, but they are not identical – international law is just as easily capable of propping up colonial exploitation or the vagaries of neo-liberalism. It has done so in the past, and will do so in the future, if only because international regimes are always someone's project and cannot be well-understood in the absence of its political and economic drivers and effects. But if there is a crisis at present, it is a crisis of liberal democracy, exemplified by Orban's explicit philosophy of 'illiberal democracy' formulated a decade ago, or the indecent haste in which elite politicians in the banana republic formerly known as the USA have responded to the death of a Supreme Court Justice. And this, in turn, suggests that liberal democracy carries the seeds of its own demise within it. International law is incapable of doing much about it. Individual international lawyers, however, may do something, however minimal perhaps: by refusing to let power alone triumph, by keeping a standard of decency alive, by thinking of alternative designs and regimes. This is difficult, far more difficult than embracing lazy slogans about 'crisis' and prevailing 'cultures' or proposing to

resort to punishment and does not allow anyone to take a 'moral holiday'.¹¹ Crisis talk is perennial and not always appropriate. But if we insist on there being a crisis of international law, then this is the time to work towards a better international law. Liberal democracy is hard work, placing serious intellectual and mental demands on the electorate. If international lawyers are to assist liberal democracy, they cannot insist on accountability and punishment and cry 'crisis' every other week, but rather they must vigilantly patrol the borderline between decent and indecent uses of power, between just and unjust manifestations of authority.

11 The idea was developed more than a century ago by pragmatist philosopher William James and elaborated on in the international law setting in Jan Klabbers, 'On Epistemic Universalism and the Melancholy of International Law' (2018) 29 *EJIL* 1057.