The Law and Gospel of Human Rights and Duties: John Paul II and Michael Perry on Sacredness and Intentional Killing

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THE LAW AND GOSPEL OF HUMAN RIGHTS AND DUTIES: JOHN PAUL II AND MICHAEL PERRY ON SACREDNESS AND INTENTIONAL KILLING

Timothy P. Jackson*

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INTRODUCTION: TWO KENTUCKY SCHOOLS AND THREE FUNDAMENTAL QUESTIONS

For those of us who affirm the morality of human rights, as well as for many others, no questions are more important than those that concern the intentional killing of human beings.

—Michael J. Perry

Faced with the progressive weakening in individual consciences and in society of the sense of the absolute and grave moral illicitness of the direct taking of all innocent human life, especially at its beginning and at its end, the Church’s Magisterium has spoken out with increasing frequency in defence of the sacredness and inviolability of human life.

—Pope John Paul II

In his The Idea of Human Rights: Four Inquiries, Michael Perry notes that he was born and raised in Kentucky and that the state’s name “derives from a Native American word meaning ‘a dark and bloody ground.’” He plausibly observes that “[t]he twentieth century has surely been as unrelentingly dark and bloody as any in human history.” Two world wars and countless more “limited” conflicts demonstrated that we will fight and kill over God, honor, lineage, land, wealth, power, and, perhaps most of all, over meaning. Professor Perry goes on to write:

One fundamental response to the problem of meaning is “religious”: the trust that the world is finally meaningful, meaningful in a way hospitable to our deepest yearnings. The word “religion” derives from the Latin verb “religare[,]” which means to bind together again that which was once bound but has since been torn or broken; to heal.

I too am from Kentucky; in fact, I attended a secular prep school, Louisville Country Day, that was and is a scholastic and athletic rival of Perry’s Roman Catholic high school, Saint Xavier. I even remember getting into a gang fight after a football game between Country Day and Saint X. No one was killed that day, but recalling the incident has driven home to me two undeniable facts: that religion itself can both unite and divide, and that human beings will despise and assail each other for almost any reason, or for no reason at all.

1 M ICHAEL J. PERRY, TOWARD A THEORY OF HUMAN RIGHTS: RELIGION, LAW, COURTS 64 (2007).
4 P ERRY, supra note 3, at 4.
5 Id. at 14.
6 Both Michael’s and my schools were all-male in our day—Saint Xavier still is—so one might imagine that the belligerence to which I refer is primarily a testosterone problem rather than the generic human condition.
I did not know Michael back in the Bluegrass, but fast forward to the twenty-first century and Emory University, where Perry and I now teach. In my Emory course, “The Morality of Peace and War,” we investigate, among others, three fundamental questions: first, whether there is a general duty to defend the common good with violence or, in contrast, there is a right to nonviolence even in the face of social injustice profoundly affecting that common good; second, whether duties of charity are distinct from duties of justice, such that the latter have associated rights enforceable by civil law but the former do not; and third, whether religious beliefs about God’s heart and mind (i.e., divine law) have anything distinctive to contribute to our understanding of intentional killing.

In this Essay, I explore these issues with reference to Pope John Paul II’s *Evangelium Vitae* and Michael Perry’s *The Idea of Human Rights: Four Inquiries* and *Toward a Theory of Human Rights*, paying particular attention to war, but touching also on abortion, the death penalty, and euthanasia. More specifically: I first clarify the vocabulary of peace and war as I shall deploy it (Part I); then, I do the same for the language of love and justice, contrasting my diction with that of John Paul II (Part II); then, I formulate brief and provisional moral cases for in-principle pacifism (Part III) and just war theory (Part IV); next, I articulate my critical understanding of Professor Perry’s views on sanctity and human rights (Part V); then, I defend what I call “conscientious” forms of Christian pacifism and just war (Part VI); penultimately, I offer some general comments on social advancement and the limits of rights and self-righteousness in our violent world (Part VII).

I write as a Christian, but I engage secular views as well, including those of my old teacher, Richard Rorty. My basic thesis, partially derived from Perry’s work, is that we must rebind the law and gospel of human rights and duties. All too often, justice and the legal adjudication of interest-based rights associated with dignity are either conflated with or ripped apart from love and the religious expression of need-based duties associated with sanctity. This “Law vs. Gospel” dichotomy is at least as old and false as the supposed opposition between Judaism and Christianity. A nuanced account of justice and love, as well as

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I have no doubt that men’s hands bear the vast majority of the blood spilled across history, but girls can be cruel and violent too, and women now voluntarily serve in combat in all branches of the United States military. Think, too, of Abu Ghraib, where the commander of the prison was a woman and many of the abuses of prisoners were carried out by women. See Barbara Ehrenreich, *Feminism’s Assumptions Upended, in Abu Ghraib: The Politics of Torture* 65, 65, 69 (2004).

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7 Pope John Paul II, supra note 2; Perry, supra note 3, Perry, supra note 1.
8 Throughout this Essay, I treat “the sacred,” “sacredness,” and “sanctity” as equivalent expressions.
rights and duties, informed by Perry’s insights, suggests that both violent and nonviolent resistance to wrongdoing can be embraced by people of good conscience, including Jews and Christians. Pope John Paul II and Michael Perry refer to “human sacredness” and “inherent human dignity” interchangeably, whereas I tend to emphasize the distinctiveness of “the sanctity of human life.” (How the quoted terms are defined will prove crucial.) But the deeper message shared by all three of us is the need to reconcile the quoted terms. (Religion must heal itself, so to speak.) The precise form one’s response to intentional killing takes will ultimately depend as much on how one understands love and forgiveness as on how one interprets justice and rights.

What is not legally, ethically, or religiously defensible, I contend, is aggression against the innocent and lack of practical concern for the victims of that aggression. Law, morality, and faith should rule out, then, both an unbridled bellicism that sees war (and domestic policing) as beyond ethical governance, and a nonresistant quietism that withdraws from the world and feels no need to respond to evil directed at self or others. The morality of human rights and duties does not settle all disputes around “the intentional killing of human beings,” but it does rule out these extremes. Relatedly, many just-war-tradition vs. in-principle-pacifism debates assume a too complete and adversarial dichotomy between the two schools.

I myself am now Roman Catholic, and I can smile penitently at the old Country Day vs. Saint Xavier animosities. I remind myself that Jim Bowie, Jefferson Davis, Judge Roy Bean, and Carry Nation—icons of pugnacity, slavery, malfeasance, and intolerance—were from Kentucky; but so were notable defenders of human rights and responsibilities: Abraham Lincoln, John Marshall Harlan, Louis Brandeis, Muhammad Ali . . . and Michael Perry. In the spirit of the latter, my Conclusion is a plea for patience and humility when addressing questions of life and death, even in good causes where violence and intentional killing are deemed justified.

I. CLARIFYING THE VOCABULARY OF PEACE AND WAR

I begin by defining some crucial terms relevant to peace and war. By “force,” I shall mean any concentrated energy deployed for a particular purpose. So understood, force characterizes a range of human actions, from unscrewing a tight bottle cap to participating in a boycott to integrate city buses. As such, the word is often morally neutral. By “violence,” I shall mean force that is physically or psychologically injurious, even unto death. Here the word is more axiologically freighted, but many people consider some forms of violence to be
morally permissible—for example, self-defense against unprovoked attack. By “aggression,” I shall mean unjust forms of violence: instances of injuring or killing that are immoral. Thus defined, “force,” “violence,” and “aggression” are cumulative notions: aggression is a particular form of violence and force, while violence is a particular form of force. Not all forms of force are violent or aggressive, however.

With these clarifications in mind, I contrast “nonviolent resistance to evil” and “quietist nonresistance to evil.” The former position—nonviolence—actively responds to and seeks to curtail wrongdoing, but it refuses to employ violent (and thus also aggressive) means to do so. Forceful measures such as marches and strikes may be embraced, but the line is drawn short of palpable injuring and killing. The latter position—nonresistance—declines to use any kind of force in response to evil. Here, the posture is that of passivity and/or withdrawal.

I also distinguish between “homicide,” which is any taking of a human life, and “murder,” which is the intentional and unjust taking of a human life. On my reading, all murders are homicides, but not all homicides are murders. It is immediately apparent, of course, that for someone categorically committed to nonviolence, my contrasts between “violence” and “aggression” and between intentional “homicide” and “murder” will be distinctions without a difference. For the in-principle pacifist, that is, all violence is immoral and all intentional homicide is murder. My definitions announce, then, that I remain a (chary) defender of the just war tradition.

Next, I would discriminate types of pacifisms. Under the broad heading of “Qualified Pacifisms,” I would include these types: tactical, supererogatory, first-person, and nuclear. All of these types fall short of a categorical commitment to nonviolence. Tactical pacifism embraces nonviolence only because and insofar as it effectively achieves one’s political and economic ends. Were nonviolence to cease to be instrumentally successful, other means, including perhaps violent ones, would be employed. Supererogatory pacifism deems nonviolence to be admirable, but not morally mandatory. Here the refusal of violence is judged an action above and beyond the call of duty. First-person pacifism is the view that one ought not to use violence in defense of oneself, but that one may use it, within limits, in defense of others. Saint Augustine affirmed

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10 Thanks to my Emory colleagues, John Witte and Michael Perry, I am aware that in the Model Penal Code, Section 210.1 on Criminal Homicide distinguishes between murder, manslaughter, and negligent homicide: MODEL PENAL CODE § 210.1(2) (AM. L. INST. 2020). For my purposes, the contrast between murder and (noncriminal) homicide is sufficient.
this perspective as distinctly Christian and sought to elaborate it into a doctrine of just war. Nuclear pacifism holds that, while other forms of warfare may be permissible, nuclear warfare is not, since the weapons involved (for example, intercontinental ballistic missiles) cannot be kept discriminate or proportionate (more on these ideas later).

Under the broad heading of “in-principle pacifisms,” I would list the humanistic and the eucharistic. Both of these embody a categorical commitment to nonviolence. Humanistic pacifism rejects violence because it is judged always and everywhere incompatible with something inherent in human nature (for example, dignity). Eucharistic pacifism eschews violence because it is judged always and everywhere incompatible with God’s heart and mind (for example, divine holiness). Typically, these two camps are distinct, but it is possible emphatically to shun violence because it is seen to contradict both humanity and Deity.

Finally, there are five main practical reactions to, or theoretical appraisals of, war and its accompanying violence, which I will refer to as follows: (1) holy war, (2) unbridled bellicism, (3) the just war tradition, (4) in-principle pacifism, and (5) quietist nonresistance. Holy war conceives of (some) armed conflicts as ordained by God, with the Deity providing both the motives for war (divine commands) and a guarantee of its success (divine providence). Exemplars here include the Hebrew prophets Samuel and Joshua. Unbridled bellicism is the view that war is simply not subject to normative constraints but is rather an amoral activity in which (like love) all is fair. The only limits on violent conflict, on this account, are technical and psychological. Exemplars here include Machiavelli and Adolf Hitler. The just war tradition classically rejects the idea that God directly mandates or controls war, and instead sees war as chiefly an affair of the state, arising from its obligation to support and protect the common good of a nation or people. Just war thinking eschews the crusade mentality aimed at the religious conversion of others and puts political violence on trial, but it judges that the use of injurious and lethal force may be morally justified (or even mandatory) to protect the innocent against aggression. Exemplars here include Saint Augustine and Hugo Grotius. In-principle pacifism, as I have

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11 In his “Letter XLVII” to Publicola, Augustine writes, “As to killing others in order to defend one’s own life, I do not approve of this, unless one happen to be a soldier or public functionary acting, not for himself, but in defence of others or of the city in which he resides, if he act according to the commission lawfully given him, and in the manner becoming his office.” See NICENE AND POST-NICENE FATHERS, ser.1, at 293 (Phillip Schaff ed., J.G. Cunningham trans., 1964) (Letter XLVII); see also AUGUSTINE, ON FREE CHOICE OF THE WILL, ON GRACE AND FREE CHOICE, AND OTHER WRITINGS 9–10 (Peter King ed. & trans., 2010).

12 See 1 Samuel 15:3; Joshua 6:2.
noted, sees all uses of violence as morally wrong at all times and places, regardless of historical consequences. As I understand it, in-principle pacifism rejects every form of violence, but it allows for (or even requires) nonviolent resistance to injustice and other social evils. Exemplars here include Mahatma Gandhi and Martin Luther King, Jr. Finally, quietist nonresistance considers any effort (even if nonviolent) to combat wrongdoing to be ethically unacceptable. The rationale in this case is often that evil is either insignificant or illusory. Exemplars here include Gautama Buddha (on some readings) and Jesus Christ (on some readings).

In what follows, I will not write much about holy war, since this is not a central locus of rights talk and is now incompatible with most Western value systems (I deem jihadist Islam an Eastern value system). Instead, I will focus on just war and in-principle pacifism, since each of these camps is a kind of moral compromise, and each frequently employs the language of human rights. The just war tradition seeks to carve out a middle way between unbridled bellicism and in-principle pacifism. In-principle pacifism, in turn, tries to articulate a third alternative to just war and quietist nonresistance to evil. Both just war theory and in-principle pacifism can be unstable and risk collapsing, in practice, into what they reject or resist in theory. More specifically, in endorsing some species of injurious and lethal violence, just war thinking risks “dirty hands” and licensing behaviors that brutalize one’s character. In-principle pacifism, on the other hand, risks a “moral dandyism” in which one values tranquility over justice and seeks to keep one’s hands clean, thereby allowing the world to go to hell. For all this, forms of both just war thinking and in-principle pacifism are compatible with the morality of human rights, which cannot be said of aggression, unbridled bellicism, or quietist nonresistance. Rights become unintelligible in these extreme cases.

II. CLARIFYING THE LANGUAGE OF LOVE AND JUSTICE

I continue by defining some terms relevant to love and justice. By “love,” I shall mean “love of God or neighbor”—what theologians often refer to as “charity” and the New Testament calls “agape.” Agape is both a trait of character and a mode of action, exemplified interpersonally by three features: (a) unconditional willing of the good for the other, (b) equal regard for the well-being of the other, and (c) passionate service, open to self-sacrifice, for the sake of the other. By “justice,” I shall mean what Cicero dubbed “*suum cuique*”13—giving each person his or her due. More specifically, distributive justice is

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concerned with who receives what and why, and its focus is usually on merit; retributive justice attends to who is punished for what and why, and its focus is usually on demerit; while, procedural justice dwells on the contingent vehicles of informed consent, and its focus is usually on contracts. Some theorists also speak of productive justice and/or restorative justice, but these categories are not directly germane to my argument.14

What is germane are two sets of additional distinctions, between (i) dignity and sanctity, and (ii) duties of justice and duties of charity. In Evangelium Vitae ("The Gospel of Life"), Pope John Paul II writes that human life on earth "remains a sacred reality entrusted to us, to be preserved with a sense of responsibility and brought to perfection in love."15 On the next page, he avers, "The Gospel of God’s love for man, the Gospel of the dignity of the person and the Gospel of life are a single and indivisible Gospel."16 Throughout the encyclical letter, the Pope reflects common Roman Catholic usage in moving back and forth between reference to the sacred/sanctity and reference to dignity, treating them as synonymous.

For reasons which I have elaborated at length elsewhere, I find it more helpful to distinguish the two dimensions more in accordance with their historical etymologies.17 In the original Roman context, human dignity (from Latin dignitas) was a function of elite political or economic status, associated with powerful roles or honorable offices occupied by a worthy few.18 Importantly, these roles or offices could be won and lost, entered and exited. Thanks to Immanuel Kant, dignity is often identified today with our being self-aware agents, capable of formulating and acting on life principles. Kant labelled this faculty “autonomy” (German “Autonomie”), and he sought to universalize it ethically by equating it with rational personhood deserving categorical respect.19 As such, dignity is a temporal achievement, something we grow into and exercise across time and something we may damage or lose. Human sanctity (from Latin sanctitas), on the other hand, was initially a religious notion

15 John Paul II, supra note 2, at 4.
16 Id. at 5.
18 Dignitas, A LATIN DICTIONARY (1945); Dignity, OXFORD ENGLISH DICTIONARY (2d ed. 1989).
connoting divine preciousness and inviolability, holiness as an unearned gift from above. Thus, I judge “sanctity” a more appropriate term for the sort of inherent worth John Paul II is properly concerned to protect. I see sanctity as a function of the human need and potential for love, rather than of the personal capacity to reason or choose. In an era so deeply shaped by science, technology, and medicine, I would emphasize that a crucial aspect of sanctity/sacredness is that it is given to us rather than made by us, something to be honored rather than used.

Rather than being identified with the power or proper use of autonomy, biblical sanctity is a matter of bearing the image of God. Since “God is love” ([agape]) (1 John 4:8), the *imago Dei*, in turn, I see as constituted by the need or ability to give or receive agapic love. This is characteristic of every human life. In my lexicon, agape is concerned with justice as rewarding merit, punishing demerit, and keeping contracts, but it first of all and, most of the time, preserves the sanctity of life and nurtures the human capacities that depend on that sanctity. Agapic love recognizes human need and potential, and bestows value, whereas justice examines personal choice and history, and appraises value. Again, sanctity is a non-additive good that cannot be increased by external acts or agents; to bear the image of God is to possess finite sacredness, no more and no less. But *agape* first recognizes the reality of the *imago Dei*, and, second, builds on that foundation in feeding, sheltering, clothing, educating, and otherwise caring for another human being. A primary aim of this attention is, with God’s help, to teach another to love.

John Paul II connects humanity’s “sublime dignity” to being made in God’s image, which he equates with “those spiritual faculties which are distinctly human, such as reason, discernment between good and evil, and free will.”

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20 *Sanctitas*, A LATIN DICTIONARY, supra note 18; *Sanctity*, OXFORD ENGLISH DICTIONARY, supra note 18.

21 I am very grateful for science, technology, and medicine; they have often contributed to the reduction of human fear and suffering, and they have saved my life more than once. But they have also made possible new forms of human exploitation and misery, and they can leave us with the false impression that everything is subject to our autonomous control. I live two miles from the Center for Disease Control and Prevention, but the COVID-19 pandemic and the unwillingness of many Americans to mask up for the common good demonstrate the limits of human will.


25 John Paul II, supra note 2, at 61, 62.
When he goes on to attribute dignity to both unborn children and mature adults, however, his reasoning can be confusing. A fetus is not yet possessed of reason, moral discernment, or the capacity for free choice, though it has the essential potential for these faculties. I am a Roman Catholic convert, and I agree with the Pope’s affirmation of “the sacred value of human life from its very beginning until its end,” even as I share his earnest critique of elective abortion, capital punishment, and active euthanasia. Whereas the Pope regularly calls these three “crimes” against “personal dignity,” however, I see them as violations of the sanctity of “human life.”

For all its wisdom and beauty, a fundamental problem with John Paul II’s encyclical is that at times it identifies dignity with human life itself, while at other times it identifies dignity with higher cognitive or volitional powers that must be acquired with time and growth. In these latter cases, contrary to the Pope’s intent, not all human lives would have dignity or, by implication, bear the image of God. The danger of conceptual confusion due to not distinguishing dignity and sanctity is further manifest in what the Pope goes on to say about sin. In places, he talks about sin as a “threat” to human dignity, such that dignity is “degraded” or even “contradicted” and “denied,” thus something one with faith “regains.” In other passages, he asserts that “[n]ot even a murderer loses his personal dignity,” and that dignity is “indestructible.” The definitive connection between human dignity and the imago Dei entails, for John Paul II,

27 Id. at 77 passim.
28 Id. at 5.
29 There is an enormous literature on how to define “personhood.” There are many linguistic complexities and alternatives here, but, for my part, I differ with the Pope and find it plausible to limit the appellation “person” to a purposeful agent, self-aware across time. The lead Oxford English Dictionary definition of a “person” is “[a] character sustained or assumed in a drama or the like, or in actual life.” Person, OXFORD ENGLISH DICTIONARY (3d ed. 1923). Such a definition resonates with the original Latin meaning of “persona” as a mask or character that one consciously chooses. See Persona, A LATIN DICTIONARY, supra note 18. The dawn of self-conscious agency is reasonably associated with language acquisition, usually at a year to two years of age, and it is here that dignity arises, as I understand it. I hasten to reiterate, however, that a conceptus, a fetus, and a babe in arms is a human life bearing the image of God and thus possessing sanctity. As such, it has a right to life that should be ethically and legally recognized and protected. (Away with all personolatry that valorizes only autonomy and neglects the prior good that is its precondition!) Despite our terminological differences, on this crucial moral point I fully concur with John Paul II and the Magisterium of the Roman Catholic Church. As the Pope writes, “Human life is sacred and inviolable at every moment of existence, including the initial phase which precedes birth. All human beings, from their mothers’ womb, belong to God.” John Paul II, supra note 2, at 109.

30 John Paul II, supra note 2, at 74.
31 Id. at 61–62.
32 Id. at 6, 8.
33 Id. at 34, 37.
34 Id. at 58.
35 Id. at 18.
36 Id. at 55.
that sin also “deforms the image of God.” Yet, we are told as well that “[man] bears within himself an indelible imprint of God.”

In my diction, which I believe escapes catachresis and permits more consistent and perspicuous reflection, dignity admits of degrees and can be so abused or assaulted as to be erased. To sin is, indeed, to diminish or destroy one’s own or another’s dignity, as common parlance allows. Insofar as dignity, as I understand it, is grounded in rational agency, an end-stage Alzheimer patient and a severe torture victim have substantially been deprived of it. (Alas, we are that vulnerable to nature and to one another.) Sanctity, in contrast, cannot be lost so long as we live, since we constantly need to and can receive God’s love, regardless of how we use, abuse, or lose our rational agency. The abiding sanctity of the murderer’s life, his continuing to bear the image of God in spite of extreme guilt, is what ought to lead us to prohibit capital punishment, for example. To repeat, it is sanctity in this sense and the related right to life that John Paul II admirably wishes to defend.

Related to this concise contrast of dignity and sanctity is the demarcation of duties of justice and duties of charity. In the sphere of justice, duties are chiefly generated by personal interests and agency: either actions I have performed (something positive or negative I have done) or my achieved purposeful identity (someone I have naturally grown into or someone I have contingently chosen to become). More importantly for my purposes, duties of justice are normally accompanied by correlative rights. If I have a duty to person X to do Y or provide Z, then X has a presumptive right to demand Y or Z from me. It would be unjust were I not to execute the relevant action or deliver the appropriate item. In the sphere of love or charity, on the other hand, duties are produced by essential human needs and potentials. They are not a matter of achieved dignity or indignity (a function of autonomy) but rather of intrinsic sanctity (a function of bearing the image of God).

Moreover, duties of charity are frequently not accompanied by correlative rights. A Christian is under an agapic duty to forgive someone who sins against her, for instance, but the sinner has no right to demand that forgiveness. As Matthew 18:22’s “seventy times seven” suggests, forgiveness is not supererogatory for the Christian, something admirable yet optional; it is an unconditional obligation not to despise or will harm for the wrongdoer. On the

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37 Id. at 64.
38 Id. at 63.
39 Id. at 109.
40 See JACKSON, supra note 23, at 84–115.
contrary, one who is Christ-like prays for and does “good” to one’s enemies (Luke 6:27–35). Nevertheless, the wrongdoer cannot insist on this attitude or action. It is a scruple of holiness, one might say, rather than a requirement of fairness. To take another example, a Christian should feel obliged by agape not to seek the death penalty for someone demonstrably guilty of first-degree murder, I believe, even though such a sentence is perfectly compatible with strict justice (for example, the lex talionis). As I have indicated, it is Christ-like love’s attention to the sanctity of life that is decisive here, not a just respect for dignity. In profoundly misusing his moral agency, a murderer has lost or diminished his dignity, but not his sanctity.

It is crucial to reiterate that sanctity is not a contingent achievement; it is inherent in being a creature made in God’s image. Like John Paul II, I consider the imago Dei to be present from conception onward. From the moment the two haploid cells merge to form the diploid, we have a unique, never-to-be repeated human life that possesses the need and ability to receive agapic love. (Barring twinning, that life also bears a unique genotype.) We are created to require and obtain caring relations to God and other humans, and this sanctity is what gives us the right to life, not our rationality. Neither a conceptus, nor a fetus, nor a month-old baby is an autonomous, self-aware person. As a human life matures and acquires rational agency, its personal dignity ought to be justly respected, but from its conception on, its human sanctity has a claim on all of us that should be lovingly honored. Eventually, if nurtured, a human life develops the capacity to give agape, as well as receive it, and this development is the culmination of the divine purpose: to love God and neighbor and to be loved by God and neighbor. Indeed, as John Paul II declares, this is to participate in God’s “very life.” Elective abortion, what the Pope calls “procured abortion,” willfully deprives another of this supreme gift, as does infanticide—not by degrees but all at once, and not such that it can be regained in time but forever.

Understanding the sanctity of life helps us avoid both a crude vitalism that makes an idol of vestigial biological functions and a crude voluntarism that worships dignity-as-autonomy. A medical patient in a persistently vegetative state, who is permanently beyond both giving and receiving care, is already
dead, even if there is some minimal brain stem function or even respiration. He
is beyond love and so no longer bears the image of God. Analogously, however,
a patient who has permanently lost autonomy and even self-awareness across
time, such as an end-stage Alzheimer sufferer, still possesses sanctity since she
still has interests that can be cared for. She may not be able to give love in an
intentional way, but in being in need of it and able to receive it, she still has the
right to life. Weakness and vulnerability, including the absence or loss of
rationality, do not negate sanctity—they reveal it. The widow and orphan of
yesterday are the embryo and fetus of today.

III. A PROVISIONAL CASE FOR IN-PRINCIPLE PACIFISM AND A CHRISTIAN
DUTY OF NONVIOLENCE

What does all of this have to do with the morality of intentional killing? Does
either the sanctity of life or the dignity of the person dictate an in-principle
rejection of violence, including all war? Is there a right or duty to nonviolence
such that all people should be in-principle pacifists, or at least all Christians? A
myriad of passages in the New Testament bear on these questions, but I will
quote only five central ones:

* Blessed are the peacemakers, for they will be called children of
  God.
Blessed are those who are persecuted for righteousness’ sake, for
theirs is the kingdom of heaven.
Blessed are you when people revile you and persecute you and utter
all kinds of evil against you falsely on my account. (Matthew 5:9–
11)

* You have heard that it was said, ‘An eye for an eye and a tooth for
  a tooth.’ But I say to you, Do not resist an evildoer. But if anyone
strikes you on the right cheek, turn the other also. (Matthew 5:38–
39)

* Then they came and laid hands on Jesus and arrested him.
Suddenly, one of those with Jesus put his hand on his sword, drew
it, and struck the slave of the high priest, cutting off his ear. Then
Jesus said to him, ‘Put your sword back into its place; for all who
take the sword will perish by the sword.’ (Matthew 26:50–52)

* I give you a new commandment, that you love one another. Just as
  I have loved you, you also should love one another. (John 13:34)
* Peace I leave with you; my peace I give to you. I do not give to you as the world gives. Do not let your hearts be troubled, and do not let them be afraid. (John 14:27)

Among many things, what is striking about these lines (especially Matthew 5:38–39) is that, taken literally, they mandate not merely nonviolence in the face of evil, but quietist nonresistance. Nonresistance is manifestly incompatible with Jesus’ own actions as far as we know them, however. He did resist natural and moral evil in curing the sick (Matthew 9:35), challenging the Scribes and Pharisees (Matthew 23:1–39), raising Lazarus (John 11:1–44), driving the money changers out of the Temple with a whip (John 2:15), and so on. Therefore, any simple doctrine of evil-as-illusion and enlightenment-as-non-action is not credibly attributed to the Christ. Jesus is not recorded as using the Aramaic equivalents of “sanctity” or “dignity,” but the quoted lines above do, nevertheless, constitute a very strong prima facie case for in-principle Christian pacifism. (It is debatable whether “the cleansing of the Temple” involved violence or merely dramatic force.)

IV. A Provisional Case for the Just War Tradition and a Christian Duty to Protect the Common Good

It is sometimes asserted that for several centuries the early Christian church was universally in-principle pacifist, but this is an overstatement. There was certainly a general commitment to nonviolence, but this did not always take the form of in-principle pacifism. Most Christians did refuse to serve in the military during the first two centuries C.E. Yet by the year 173, some Christians appear to have fought as recruits under Marcus Aurelius, mentioned by Tertullian (c.160–c.220) in his *Apology*. Under Constantine (274–337), of course, Christians were increasingly influential within the Roman Empire—Christianity

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46 Defending Christians against the Roman charge of being “useless in the affairs of life,” Tertullian writes, “We sail with you, and fight with you, and till the ground with you; and in like manner we unite with you in your traffickings—even in the various arts we make public property of our works for your benefit.” See Tertullian, *Apology*, in 3 ANTE-NICENE FATHERS 17, 49 (Alexander Roberts & James Donaldson eds., S. Thelwall trans., 2d ed. 1995). John Helgeland, Robert J. Daly, and J. Patout Burns observe, “In making these statements, Tertullian, among other things, had in mind the story of the Thundering Legion . . . which had Christians in it.” They go on to note that “Eusebius tells the fascinating story of the *Legio XII Fulminata*, the Thundering Legion, that was credited with decisively aiding Marcus Aurelius in the year 173.” See JOHN HELGELAND, ROBERT J. DALY & J. PATOUT BURNS, CHRISTIANS AND THE MILITARY: THE EARLY EXPERIENCE 22, 31 (Robert J. Daly, ed., 1985). Tertullian himself refers with apparent pride to Christians “fighting under” Marcus Aurelius. See Tertullian, *Apology*, in 3 ANTE-NICENE FATHERS, supra, at 17, 22. Tertullian wrote his *Apology* ca. 197, but by the time he wrote *On Idolatry* ca. 211, he had converted to Montanism and was adamantly opposed to Christians participating in the Roman army.
being officially tolerated in 313—and they increasingly entered military service. This period thus represents the end of widespread Christian pacifism. By 403 there is even “evidence that only Christians were allowed to enter the military.”\(^{47}\) In any case, the historical facts alone do not settle the moral questions that concern us today. What were the moral reasons for early Christian behavior, and are they normative now?

There were four main reasons for the refusal to engage in war by many early Christians:

1. **Religious refusal to commit idolatry**: Emperor worship seemed implied by throwing incense on the altar, showing obeisance to military standards, and the like. In his *On Idolatry*, Tertullian points to two primary offenses against the faith expected of a soldier: “taking part in sacrifices,” and carrying out capital punishments.\(^{48}\) For him this meant that Christianity and Roman military service were incompatible, thus he argued against enlistment and quite generally against dilution of Christian faith and praxis by the many demands of Roman culture.

2. **Love for the brethren**: Early Christians constituted a small mutual-aid society which required little or no responsibility for the larger political community. In fact, the larger political community (Rome) was often trying to oppress or kill Christians.

3. **Apocalyptic expectation**: The end of the age was thought to be near, so there was little point in prolonged fighting for temporal causes.

4. **Obedience (in intention and in practice) to Christ’s command to love one’s neighbor, even one’s enemy, to turn the other cheek, not to live by the sword, etc.** (Matthew 5:44 & 26:47.): In fact, Jesus says little directly about war in the New Testament. He does disarm his disciple in the Garden of Gethsemane, but elsewhere he tells his disciples to gather swords; he does instruct the disciples to turn the other cheek, but elsewhere he drives out the money changers with a whip. This is not to say that Jesus is inconsistent, but rather that he is not legalistic. His main concern is with obedience to God in the form of love of neighbor, with establishing the conditions for true peace and justice.\(^{49}\)

For his part, Paul Ramsey contends that the transition to just war doctrine was “not a ‘fall’ from the original purity of Christian ethics” but rather “a change


\(^{49}\) Ramsey, supra note 47, at xv–xvii.
of tactics only”; the “basic strategy” of “responsible love and service of one’s neighbor” remained unchanged.\(^5\) He writes:

Christians simply came to see that the service of the real needs of all the men for whom Christ died required more than personal, witnessing action. It also required them to be involved in maintaining the organized social and political life in which all men live. Non-resisting love had sometimes to resist evil.\(^5\)

The change of tactic was not merely self-defense expanded, but also based on the duty to defend innocent others from unjust attack. Augustine believed, as I have noted, that lethal self-defense was not proper for Christians: one ought not to prefer one’s own life of that of one for whom Christ died. From love and the need to restrain evil the Christian can engage in public defense, however, though the norm of charity and natural justice lead to placing limits on war and to accepting martyrdom rather than commit murder. The result is a middle way between unbridled bellicism and in-principle pacifism, between the view that “all’s fair” and the view that lethal force is always wrong, between an idolatrous elevation of nation or technology and a dereliction of duty to preserve an ordered peace and the common good. (We must realize that for centuries, wars of conquest, expansion, conversion, and elimination were common—think of Alexander the Great, Julius Caesar, Napoleon, Hitler—and just war theory was designed fundamentally to check these without lapsing into unbridled bellicism.)

V. MICHAEL PERRY ON SACREDNESS AND HUMAN RIGHTS

In The Idea of Human Rights: Four Inquiries, Michael Perry writes:

The idea of human rights consists of two parts: the premise or claim that every human being is sacred (inviolable, etc.), and the further claim that because every human being is sacred (and given all other relevant information), certain choices should be made and certain other choices rejected; in particular, certain things ought not to be done to any human being and certain other things ought to be done for every human being.\(^5\)

Professor Perry—like John Paul II in Evangelium Vitae and the Congregation for the Doctrine of the Faith in The Dignity of a Person\(^5\)—uses the words

\(^{50}\) Id. at xvii.

\(^{51}\) Id. at xvii–xviii.

\(^{52}\) Perry, supra note 3, at 57.

“sacred,” “inviolable,” and “having inherent dignity” as synonyms. He typically affirms that “every human being” is sacred and thus has rights, but he sometimes attributes sanctity to a “human life,” a “human being,” or a “human person,” or he quotes others who do. There is nothing wrong, per se, with such usage; it is quite common and comprehensible. I have argued, nevertheless, that there are good reasons to distinguish “sanctity” from “dignity” and to note a contrasted continuum of “human lives,” “human beings,” and “human persons.” Such distinctions allow us to make some important points more readily and with more nuance than does much of the literature on rights. Armed with such contrasts, I am now in a position to (1) characterize Perry’s understanding of human rights in more detail, (2) evaluate that understanding, and (3) apply it to the concrete matter of pacifism vs. just war.

The title of Perry’s book indicates that he presents “four inquiries,” but he actually raises five distinct issues that deserve discrete treatment. The first and fifth are about the general meaning of his account, while the second, third, and fourth are specific challenges to its viability. I paraphrase Perry: (A) One might wonder if human rights talk is intrinsically or irreducibly religious. A judge or constitutional lawyer might well ask about this in anticipation of church-state-separation issues. I would call this the logical or semantical status inquiry. (B) One might contend that sanctity is either a false or a nonsensical notion. In this case, no human being is thought to be sacred either because sanctity does not exist or because sanctity is an incoherent idea. I would call this the axiological implausibility objection. (C) One might maintain that sanctity is real and intelligible but that only a few human beings possess it, such as one’s own family, tribe, fellow citizens, or co-religionists. I would call this the limited extension objection. (D) One might claim that even for the few human beings that are sacred there are no shared “certain things” to be done and not done that apply to all. There is simply too much variability among human beings and their circumstances to make sense of a “good” or “evil” applicable to everybody. I would call this the limited intension objection. (E) One might accept that the idea of human rights is inherently religious, that sanctity is real and comprehensible, that every human being is sacred, and that some things are good or bad for everybody; and yet, one might still wonder if the related

54 Perry, supra note 3, at 5, 13, 43.
55 Id. at 11–13, 59.
56 Perry, supra note 3, at 12.
57 Id.
58 Id. at 58.
59 Id. at 30.
moral norms are absolute—i.e., categorically binding in all conceivable cases.60 This last question, then, is about the cogency of rights and duties, rather than about their defensibility.

Below, I comment at some length on (A) through (E). I find Professor Perry’s responses to his first four questions persuasive but in need of elaboration, yet I disagree with his take on the fifth question concerning absolutes.

A. On the Logical or Semantical Status Inquiry

In response to (A), Perry vigorously maintains that “[t]here is no intelligible (much less persuasive) secular version of the conviction that every human being is sacred; the only intelligible versions are religious.”61 For him, “a religious vision” is one “according to which the world is ultimately meaningful (in a way hospitable to our deepest yearnings).”62 That is, human rights talk must be “cosmologically embedded” such that our existence is not merely tragic or absurd.63 I am inclined to read Perry’s “religious” account as a nontheistic humanism, but I am not sure of this interpretation. What I still find confusing is his apparent reliance on eudaimonism: “[T]hat an important constituent of one’s own well-being—of one’s authentic flourishing as a human being—is concern for the well-being of one’s sisters and brothers.”64 To violate another’s rights is, Perry writes, “to succumb to a kind of blindness”; more specifically, “to fail to love the Other as sister/brother—worse to hate the Other—is to succumb to the pathology of estrangement; it is, to that extent, to wither as a human being rather than to flourish.”65 He concludes, “[Jesus’] imperative to ‘love one another as I have loved you’ can be understood (and in my view should be understood) not as a piece of divine legislation, but as a (truly, fully) human response to the question of how to live.”66

In the wake of such passages, the divine legislator seems to drop out. Perry’s defense of human rights often sounds anthropocentric rather than theocentric—seemingly grounded, to repeat, in an understanding of collective human well-being or eudaimonia.67 From such a perspective, I ought to respect and care for

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60 Id. at 7.
61 Id. at 11.
62 Id. at 16.
63 Id.
64 Id. at 19.
65 Id.
66 Id. at 20–21.
67 “Eudaimonia” is sometimes translated as “happiness,” but in its original Greek philosophical context, it meant much more than subjective pleasure or satisfaction. Id. at 123 n.96, (quoting Richard Taylor, Ancient
all human beings because this promotes authentic flourishing for myself and others, and because without this I “wither.”68 There is no (or at least there need not be a) personal, transcendent God behind the order of the universe or behind the intelligibility of rights talk. I share with Perry the conviction that a personal afterlife ought not to play a central role in Christian ethics, that it certainly should not be a motive for love of God or neighbor. But I consider a creative and commanding Deity to be real and to provide the necessary condition for ethics, including rights language. (More on this below.) As I initially read him, Perry seemed, in his own words, not “a theological realist,” i.e., he apparently let go of belief in an Ultimate Personal Reality that made the world and gives it meaning and value.

In Anticlericalism and Atheism, Richard Rorty explicitly champions such a view of “religion.”69 In the wake of the anti-essentialism and historicism of modern and post-modern Western thought, he recommends construing religion as without truth and power and, finally, as without theism. In the name of freedom and democracy, religion should be privatized and identified with “love alone.”70 For my part, I can let go of dogmatic certainty; I can give up personal immortality; I can even forget about a Second Coming of Christ in history . . . and still feel my religious faith undiminished, even enhanced. But I cannot imagine surrendering God and truth, and still consider myself a “believer.” Indeed, Rorty would liberate religion from “belief” itself and see “holiness” as hope for “a global civilization in which love is pretty much the only law.”71 He endorses Gianni Vattimo’s understanding of the Incarnation “as kenosis, God’s turning everything over to us,”72 thus he “completes the secularization process begun in the Protestant Reformation.”73 This reading of the Incarnation has little to do with Jesus and what we can make out as his actual historical creed, however. His Incarnation, for the Christ, was evidently an invitation to turn everything over to God—not the secularization but the sanctification of humanity and society. I can no more think it does not matter whether God is real than I can deem it inconsequential whether my wife exists, or my neighbor, or

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68 Id. at 19.
70 Id. at 33, 35, 36, 39.
71 Id. at 39–40.
72 Id. at 38.
73 This is how Rorty once put it to me in conversation.
myself. Does not love of another itself require a commitment to the truth of that other, their perceived and prized existence outside of oneself?

Pace Rorty, no sentient human being has ever fought free of “the old Greek distinctions between the apparent and the real and between the necessary and the contingent.” When he applauds Vattimo’s seeing “all the great unmaskers of the West, from Copernicus and Newton to Darwin, Nietzsche, and Freud as carrying out works of love,” Rorty is not overcoming “epistemology and metaphysics,” but endorsing a particularly romantic metanarrative within them. The very idea of “unmasking” presupposes the distinction between appearance and reality. Rorty was my Philosophy thesis advisor at Princeton, and to this day I admire his learned opposition to arrogance and dogmatism—what he called “knowingness”—but the meaning of his words is incompatible with believing them. If philosophy and science are not centrally about “[what really exists],” with ethics building on them to specify what ought to exist, then Rorty’s hope for an ideal future of a loving and egalitarian society makes no sense. Such a hope presupposes that such a society does not yet exist—an unhappy contingency?—but ought to. If “truth and knowledge are a matter of social cooperation,” then the very unloving and inegalitarian Nazi Germany had one of the most truthful and knowledgeable cultures in history. QED.

Professor Rorty was the quickest and most well-read mind I have ever met, and he was always very kind to me, but his avoidance of dogmatism about truth by making objective truth itself meaningless seems akin to evading heartbreak in love by being a solipsist. We Platonists grant that physical objects “roll around somewhere between not-being and being” and do not care how they are represented, thus it is hard to make firm knowledge claims about them; but human beings have needs and interests and an inwardness of real experience, including pain, that can be understood and ought not to elicit indifference. Rorty’s extolling of sentimental and convictionless religion will not help us avoid hatred and aggression, I fear, but rather make it impossible to name these evils accurately. The implications of his work, however unintentional, remind me of these lines from William Butler Yeats:

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74 Rorty, supra note 69, at 30.
75 Id. at 37–38.
76 Id. at 29, 40.
77 Id. at 39–40.
78 Id. at 39.
Mere anarchy is loosed upon the world,
The blood-dimmed tide is loosed, and everywhere
The ceremony of innocence is drowned;
The best lack all conviction, while the worst
Are full of passionate intensity.80

Which brings me back to Michael Perry. Perry explicitly criticizes Rorty’s pragmatism, citing some articles of mine, but how specifically does his own construal of religion and morality depart from a broadly pragmatic humanism?81 Once more, I continue to wonder about how the ontological solidarity of human beings—their reliance on one another for full existential thriving—relates to the idea of human rights. Sometimes it sounds like what makes all human beings “sacred,” for Perry, is their being bound together in a web of mutual dependence and support. The world “hangs together,” to borrow a phrase from Perry, because we hang together (or at least ought to).82 Yet Perry himself offers an extended critique of (merely) self-regarding reasons for respecting human rights. He writes, for instance:

According to the self-regarding strategy, it is good for oneself or for one’s family/tribe/nation/race/religion/etc. that certain things not be done to any human being and certain other things be done for every human being. This strategy needs to be distinguished from (lest it collapse into) the different (and inescapably religious?) strategy according to which every human being is sacred and it is good for everyone to recognize that fact and act accordingly.83

[T]he self-regarding strategy is probably availing only or mainly as a buttress, a complement, to the strategy that relies on human rights—on the conviction that every human being, even the lowliest inhabitant of the most alien, distant, and weak community, is sacred. Significantly, neither individually nor even cumulatively can self-regarding reasons by themselves begin to account for the passionate other—regarding character of most discourse in support of human rights claims.84

Perry clearly remains an ethical realist in that he takes the term “sacred” to have “an objective sense” that outstrips our de facto social preferences. He writes, “‘[S]acred’ in the objective sense is not fundamentally a matter of ‘sacred to

81 PERRY, supra note 3, at 37–40.
82 Id. at 24.
83 Id. at 31–32.
84 Id. at 35.
you’ or ‘sacred to me’; it is, rather, a matter of how things really are.”85 But, to repeat, it is unclear to me whether he is also a theological realist who holds that “how things really are” includes (and depends upon) a Deity. The least one can say, I think, is that Perry’s theology is so apophatic that the term “God” either does not refer at all—or refers only—to a complete mystery. I have some sympathy with the epistemic modesty of this view, but even Thomas Aquinas, whom Perry admires, allowed that we can prove God’s existence and formulate analogical propositions about His nature.86 How, if God is entirely unfathomable, do we keep the case for human rights from being exclusively an anthropocentric and secular affair? Many would welcome such a limited hermeneutical horizon, but then why insist, as Perry does, on rights being a “religious” idea? Some forms of Buddhism function without a personal Creator and are considered “nontheistic religions,” and Perry may agree with fellow Kentuckian Thomas Merton that the Zen mystic’s intuition of “inscrutable freedom, love, and grace” is quite compatible with Roman Catholicism.87 If nontheistic Buddhism is primarily about therapeutic techniques, rather than metaphysical beliefs, however, then of course the compatibility is practical rather than theoretical, a matter of action rather than doctrine.

B. On the Axiological Implausibility Objection

Many contemporary thinkers, such as Peter Singer, reject “the sanctity of human life” because the idea smacks of a discredited theism.88 If one does not interpret sacredness as a function of being loved by God or of being created in the divine image, however, one might still locate sanctity (or dignity?) in something intrinsic to finite human nature. Theological realism (belief in a Deity) may seem implausible, but humanistic realism based on the value of reason or autonomy or community, say, might be affirmed as an “enlightened” alternative. As Perry notes, Ronald Dworkin was an example of a secular philosopher who still wanted to talk about the sacredness and inviolability of human beings.89

85 Id. at 28.  
87 THOMAS MERTON, MYSTICS AND ZEN MASTERS 254 (1967).  
89 PERRY, supra note 3, at 28–29 (citing RONALD DWORKIN, LIFE’S DOMINION: AN ARGUMENT ABOUT ABORTION, EUTHANASIA, AND INDIVIDUAL FREEDOM 71, 78, 81–84 (1993)).
Others today who champion human rights, like Martha Nussbaum, embrace a variant of Aristotelian eudaimonism, in which the transcendent Platonic Good, as well as the biblical God, has effectively been replaced with human nature and its capabilities.90 We can look to ourselves and our societies to find the non-nihilistic (if not “religious”) significance of existence. As Perry well knows, a common critique of eudaimonism is that it supplants moral reasons in favor of prudential ones.91 If I respect and care for others because this conduct will ultimately pay off in terms of my own interests, then my motive is basically self-love, rather than neighbor love (agape). There is nothing wrong with proper forms of self-regard, but it is not identical to altruism or even justice. The subtler forms of eudaimonism do not tie all actions to the selfish (or even the self-conscious) desire for personal profit, but it remains the case that the sine qua non of virtuous action is that it contributes to my authentic thriving. If it did not, I would not perform the action. That is the corrupting fact of the matter and why I wish Perry himself would distinguish more explicitly between possible utilitarian consequences of a deed and the aretaic and deontic reasons for doing it. If I genuinely honor the sanctity of another’s life, I will respect her rights regardless of whether this redounds to my own flourishing.

Consider Jesus’ Passion. On the cross, Christ’s character was holy, and his action agapic, because he was doing the will of God and blessing the world with suffering service, despite the fact he was not flourishing in any intelligible temporal sense. No end of mischief is caused by trying to make other-regarding (and Other-regarding) virtues essentially self-interested and thus not costly or not requiring the assistance of the Holy Spirit. This is the flip side of what Dietrich Bonhoeffer called “cheap grace”92—call it “cheap righteousness.” In contrast to a cheap righteousness that is really a form of prudence, we ought to love our neighbors and God because they are owed our love by virtue of who they are, not because it pays dividends to us. This may well cost us our happiness or our lives. We might hope that a life of faith and love will eventuate in worldly well-being or even Beatitude in Heaven, but such a “happy ending” cannot be the motive for theological virtues without subverting them.

91 PERRY, supra note 3, at 31 (citing JAMES W. NICKEL, MAKING SENSE OF HUMAN RIGHTS: PHILOSOPHICAL REFLECTIONS ON THE UNIVERSAL DECLARATION OF HUMAN RIGHTS 91 (1987)).
In the end, I agree with Perry that there is no way to reduce the eternal Good of participation in God’s own life to temporal values alone.\textsuperscript{93} A Christian agapist looks not to human nature or society, or even to the wider cosmos, for meaning and obligation—but rather to the supernatural Lord whom the Jews call YHWH. Finite sanctity depends on infinite sanctity. As Glenn Tinder saw, and Michael Perry quotes, if there is no such Deity or some comparable transcendental reality, then “‘[w]e must give up Christian morality too.’”\textsuperscript{94}

C. On the Limited Extension Objection

The problem of limited extension is basically a point about sympathy or the lack of it. How do we break out of parochialism and persuade people to care about strangers and even enemies as possessing sanctity like themselves? The controversies around restrictive and often cruelly punitive U.S. immigration policies, policies in place long before Donald Trump became President,\textsuperscript{95} highlight the difficulty of breaking the habit of tribalism. American abortion practices are also emblematic of our unwillingness to welcome the weak and vulnerable, even in our own families. What is elective abortion but the refusal to allow the needy neighbor to emigrate from the womb into our own “healthy and sovereign” state? The borders of the United States were often expanded by aggressive and murderous tactics that render more fluid boundaries a matter of justice rather than charity. We owe it to displaced and abused Mexicans and Native Americans, for example, to make compensatory room for them.\textsuperscript{96} Barring rape, however, the neediness of the fetus is also something that we ourselves have voluntarily (if not intentionally) induced by our actions.

Pace Judith Jarvis Thomson, the fetus is not like the anonymous victim found beaten, robbed, and stripped by the Good Samaritan.\textsuperscript{97} The fetus’s dependent condition is not merely discovered by it parents—it is created by its parents, and by extension, by all of us responsible for the wider society and its

\textsuperscript{93} PERRY, supra note 3, at 23–25 (arguing a secular cosmology of religious morality proves unintelligible).

\textsuperscript{94} Id. at 23 (quoting Glenn Tinder, Can We Be Good Without God: The Political Meaning of Christianity, THE ATLANTIC, Dec. 1989, at 69, 80).

\textsuperscript{95} The practice of Prevention through Deterrence (PTD), which forces those who would illegally enter the United States from Mexico to risk their lives by crossing through the Sonoran Desert, was instituted under the Clinton and Obama administrations. See Bryan Ellrod, Can These Bones Live? Christian Ethics and a Politics of Responsibility for the U.S. Borderlands (Spring 2021) (Ph.D. dissertation, Emory University) (on file with the Emory University Library).

\textsuperscript{96} See TISHA M. RAJENDRA, MIGRANTS AND CITIZENS: JUSTICE AND RESPONSIBILITY IN THE ETHICS OF IMMIGRATION (2017); MIGUEL A. DE LA TORRE, EMBRACING HOPELESSNESS (2017).

laws. Thus, the fetus is owed more than optional philanthropy. It is a duty of justice, as well as a duty of charity, to honor the right to life of an unborn human life, since it too is sacred, and its vulnerability is our own doing. To gainsay this notion is to falsify history, even as do those who deny the atrocities at the Battle of Chapultepec or Wounded Knee. How frequently does the language of “pro-choice” advocates valorize autonomous power and echo the rationale of “eminent domain” and “manifest destiny”?98

No one should need to be reminded that unwanted pregnancy is often an extremely trying and enormously disruptive experience, and no one should diminish the fact that many abortions are thought necessary because expectant mothers have been abandoned (both emotionally and financially) by their callous and irresponsible boyfriends or spouses. Especially poignant are cases where a seeming “conflict of care” exists between attending to children already born and sustaining the unborn. But our present laws encourage us to resolve all such cases by intentionally killing the innocent, including partial-birth abortions and the infanticide of “live births” that unexpectedly survive “induced fetal demise.”99 Compassion for all parties is indispensable here, as is a holism that links pro-life advocacy with pre-natal and post-natal care, universal health insurance, holding deadbeat dads legally accountable, and so on. Nevertheless, I know of a no more appropriate way to protest the appalling status quo and appeal to the residual moral sensitivity of a nation than to force representatives of the law to confront people willing to be arrested for the sake of “the least among us”: the fetus.100 In nonviolent civil disobedience, one may use the law to heal, or at least to challenge, even as it has previously been used to hurt. Wisdom makes room in the ark, and the most potent witnesses to the idea that every human life is sacred—from embryos to aliens, in peace and in war—are persons willing to be martyred rather than tolerate the violation of the innocent.

After all, we were all once suffered to live by our mothers and fathers or their proxies—and we are all now fellow fetuses to God.

99 In JACKSON, supra note 14, at 172, I argue for a legal compromise wherein elective abortion would be limited to the first trimester.  
100 Id. at 205.
D. On the Limited Intension Objection

The problem of limited intension is basically a point about contingency and multiplicity. Can we generalize our moral norms (negative and positive) based on universal human needs and potentials, or are time, tide, individuals, and cultures too complex to allow this?\footnote{Perry frames this objection as a “relativist challenge” to human rights. See Perry, supra note 3, at 61–64.} The reports quoted by Perry detailing the rapes, tortures, and murders committed by the Bosnian Serbs in their “ethnic cleansing” of their Muslim neighbors drive home a first salient point, as do other recent headlines.\footnote{Id. at 62–63.} Perry notes that “[s]ome things are bad, indeed some things are horrible—conspicuously horrible, undeniably horrible—for \textit{any} human being to whom the thing is done.”\footnote{Id. at 63.} Secondly, “[j]ust as we can confidently identify some things, indeed many things, that are bad for any human being, we can confidently identify some things that are good for every human being: for example, ‘affection, the cooperation of others, a place in a community, and help in trouble.’”\footnote{Id. (quoting Philippa Foot, \textit{Moral Relativism}, in \textit{RELATIVISM: COGNITIVE AND MORAL} 152, 164 (Jack W. Meiland & Michael Krausz eds., 1982)).}

We may quibble about specifics, of course. Like many folks of my generation, I find tattoos and the various forms of body piercing currently popular to be aesthetically unappealing, but I do not usually condemn them morally. Only in the most extreme forms would I see them as culpably offending self-respect or infringing on human rights. But what about the foot-binding of Chinese girls, the Indian suttee ritual, or female genital mutilation in Kenya, to take some standard examples? Is it merely “Eurocentric” to object to these practices? I do not think so, any more than it is merely “Afrocentric” to object to abduction and slavery. I suspect that many who defend such behaviors would flinch if they themselves were subjected to them. In any event, the big three of rape, torture, and murder do qualify as harmful to everyone involved, as Perry avers.\footnote{Id. at 93.}

E. On the Question of Absolutes

On the final page of the body of \textit{The Idea of Human Rights}, Perry writes as follows:
No one claims that *all* human rights are, either as moral rights or as legal rights, absolute. Many human rights are, both as moral rights and as legal rights, conditional, not unconditional. The serious claim is that *some* human rights are, as moral rights, absolute. I have argued in this chapter to the contrary.  

The overriding reason for Perry’s conclusion is that there may be occasions when the consequences of not violating another’s most basic rights would be so catastrophic that it would be irresponsible, foolish, imprudent, or insane not to do so. What if an entire nation would suffer annihilation unless one agreed directly to take an innocent person’s life? Perry says there would be no categorical prohibition against such a murder, though I am not sure if this amounts to a *duty* to commit murder in such a case, or merely a *permission*. Moreover, Perry’s position here seems to depart from Michael Walzer’s notorious scenario of “supreme emergency” in which mass murder to deliver a society from imminent and massive calamity might be deemed required by “the rule of necessity.” In his initial statement of the dilemma, Walzer granted that the mass murder would be morally *wrong*, a criminal transgression against our most fundamental ethical principles, but he nonetheless insisted that it might be practically *necessary*. Perry, in contrast, seems to condone the violation of the right to life more completely, less paradoxically. For Perry, if I read him right, there is nothing *malum in se* and thus nothing absolutely forbidden morally. 

Assuming my exegesis is correct, I must register for the first time my robust disagreement with Professor Perry. Whatever the existential context—suicide, abortion, euthanasia, the death penalty, peace, war, boundary maintenance—and whoever the agents and patients—me or you, fetuses or the frail elderly, male or female, gay or straight, friend or enemy, family or stranger, citizen or refugee—I see the prohibition on directly taking innocent human life as categorical and unexceptionable. Crucially, this judgment holds regardless of utility calculations—i.e., even if the heavens tumble. I affirm this one ethical absolute

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106 Id. at 106. 
107 Id. at 95–104. 
108 Id. at 95–99. 
110 Id. Walzer characterizes “the supreme-emergency argument” as providing “an account of when it is permissible (or necessary) to get our hands dirty.” MICHAEL WALZER, ARGUING ABOUT WAR 46 (2004). Notice that now the word “permissible” softens the hard deterministic dilemma depicted in JUST AND UNJUST WARS, supra note 109. 
111 Under the category of “innocent human life,” I would include human lives that are unarmed or restrained such that they are not an ongoing threat to others or themselves. This distinction is why I am opposed to the death penalty but open to just war theory.
because the only credible reason to take a human life, at least for a Jew or Christian, is that it materially threatens another sacred bearer of God’s image. A Christian may well forego lethal self-defense, but Christ-like love itself occasionally may take up the sword to defend innocent human life against aggression, I have argued. It would be palpably self-contradictory, however, if I then licensed direct lethal assault on the innocent.

If I love God and my neighbor, I must resist evil in myself and others in some fashion, but I may not do evil that good might come (see Romans 3:8). That way is theoretically incoherent as well as practically self-defeating, implying that it is absolutely required of us to deny all absolutes. Such an attitude and related action is a mortal sin and an offense to God. I agree with John Finnis, as quoted by Perry, that in a situation like Walzer’s supreme emergency, all one can do is trust in God’s providence. One should, of course, try to prepare in advance to evade catastrophe by not allowing an adversary to force you either to lose a just war or to win it unethically. But there may indeed be extremities wherein the only faithful option is accepting death. Where Walzer sees supreme emergency and the necessity of mass murder, the Christian sees the cross and the necessity of martyrdom. Christianity, that is, puts severe limits on what the individual and the State can do, even in legitimate self-defense. Call this eternal law grounding and constraining natural law. (I hasten to add that I am not saying that I would have the courage to embrace the cross in this way, but I am declaring that it would be demanded by faith, hope, and love.)

Perry faults a number of secular philosophers for failing to ground human rights in what is morally normative, but I worry that he gives the game away when he himself shifts from ethical foundations to legal sanctions and rejects all moral absolutes. The last sentence of his text is: “Even if no human rights are, as moral rights, absolute, some human rights, as international legal rights, should be—and, happily, are—absolute.” We require instead, I believe, an account of morality that is neither subordinate to positive law nor grounded in natural law eudaimonism, mutual-love fellowship, nor a contractarian modus vivendi. Strong agapism is just such an account, being based on (a) the holiness of God revealed in the Torah and the Christ, (b) gratitude for the shared gift of a life that has the need and/or ability to give and/or receive agapic love, and (c) compassion for the universal fact of death.

112 Perry, supra note 3, at 104.
113 Id. at 106.
Interest-based rights simultaneously serve as a realistic “snapshot” and an idealized “portrait” of the body politic. They tell us what we think dignity and justice are, or ought, to be. For all their importance, however, such rights do not fully capture who we are or aspire to be. On this, I agree with Perry’s favorable assessment of Mary Ann Glendon’s *Rights Talk*. The even more crucial ingredient in a culture is how we see and record ourselves as individuals before God. This is the picture of the moral soul, so to speak, and it can only be depicted in religious terms like “sanctity” and “charity.” Sanctity, I have argued, carries with it the right to life, but this is a need-based right that is not grounded in autonomous interests, but rather in the need or ability to give or receive divine love. Some deem “sanctity” and “charity/agapic love” fuzzy, imprecise, or even illusory, but they are as indispensable to our spiritual well-being as are food and clothing to are our physical well-being. Without them, we stumble around half-blind in a world of hubris or despair, and on the heels of hubris or despair often come rape, torture, and murder. Even those who strive to honor sanctity and to practice charity will not be immune to unhappiness and tragedy, but they will, with divine grace, escape the alienation from God and self that is the worst hell of all. All the saints agree that physical suffering and death are to be preferred to such spiritual death.

VI. A DEFENSE OF CONSCIENTIOUS PACIFISM AND JUST WAR

A. Moral Dandyism, Dirty Hands, and the Absolute Prohibition on Murder

Is there a difference, as John Howard Yoder suggests, between the police function within a nation and the military function typically concerned with international relations and war? There are other ways to be socially responsible than to take up the sword, so an in-principle commitment to non-violence need not mean withdrawing entirely from politics. But if one holds that a Christian ought not to be either a police officer or a soldier, since both sometimes deploy violence, then is it inconsistent to rely on these roles for one’s own safety? Unless you are a hermit, are you letting others do your dirty work?

As I have noted, active nonviolent resistance to injustice already departs from a literal reading of Matthew 5:39’s “resist not an evildoer.” The crux is not to return evil for evil, nor to hate those who mistreat you. To claim that pacifism is “a way of life” or “what I must do” risks removing it from moral scrutiny;

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114 *Id.* at 49–55 (citing and quoting *Mary Ann Glendon, Rights Talk: The Impoverishment of Political Discourse*, at x–xiii, 12–14 (1991)); *see infra* Part VII (further discussing Glendon).

There can be tensions and tradeoffs on both sides of the pacifism vs. just war debate. An exponent of pacifism must wrestle with the prospect of “moral dandyism,” of maintaining one’s religious purity while letting the world go to hell. But defenders of just war must, in turn, face the challenge of “dirty hands,” the tendency of violence to brutalize one’s soul and to displace or overrun moral accountability. Moral dandyism and dirty hands are not irrelevant concerns, but they are not necessarily dispositive. Some forms of nonviolence may avoid moral dandyism and thus be ethically and theologically plausible, even as some forms of violent policing and just warfare may avoid dirty hands and thus also be ethically and theologically credible. Hence, pacifism and just war may not be mutually exclusive. So much depends on circumstances; it is hard to make perfectly general rules. But just war and pacifism agree on one thing: “Thou shalt not murder.”

Like many Protestants and most Catholics, I consider the image of God to be inviolable. As I have said, the principle of “no direct taking of innocent (or relevantly disarmed) human life” is categorical and applies in contexts of abortion, euthanasia, capital punishment, just war, suicide, and so on. A key point, however, is that such a stricture is theoretically incoherent and practically impossible if there is no God. Who can understand or accept martyrdom without the grace of the Lord and the faith that participation in God’s life is the ultimate reward? It is the holiness of God as revealed on the cross, and communicated via the Holy Spirit, that is the heart of the matter. I trace the absoluteness of “no murder, even in just self-defense,” back to Judaic and Christian ethics being theocentric and ultimately rejecting of all eudaimonistic starting points. On this crucial principle both Christian pacifists and Christian just warriors can agree, and this consensus will frequently cause them to converge in judgment and behavior.

B. Universally Obligatory vs. Conscientious Forms of Pacifism and Just War

In Part I, I defined in-principle pacifism as the view that all uses of violence are morally wrong in all times and places, regardless of historical consequences. This is a categorical statement, but it still might be indexed to myself, my particular identity and circumstances. I might judge, that is, that it is always and everywhere wrong for me to use injurious or lethal force. I might hold this view, for example, as part of my perceived religious vocation. In-principle pacifism in this sense can still be distinguished from what I call “universally obligatory
Universally obligatory pacifism is the even stronger (if not dogmatic) view that violence is morally wrong in all times and places, and for all individuals and institutions, regardless of historical consequences. On this account, everyone, without exception, has a duty to be nonviolent at all times.

In Part I, I defined just war theory as the view that the use of injurious and lethal force may be morally justified (or even mandatory) to protect the innocent against aggression. The parenthetical phrase points to the fact that, here too, there is a stronger and a weaker version of the position. The stronger, which I call “universally obligatory just war,” holds that violence is morally required of all (relevant) individuals and institutions in the face of an unjust threat to the vulnerable. (I say “relevant” to make it clear that all able-bodied citizens of the state, say, are envisioned here, but not children or the frail elderly.) On this account, everyone in the broadly appropriate category has a duty to take up the sword to defend the innocent and thus sustain the common good.

So defined, universally obligatory in-principle pacifism and universally obligatory just war theory are obviously mutually exclusive. They must of needs condemn each other morally. Being absolutist about no direct killing of the innocent allows one, however, to be less dichotomous about pacifism and just war. Rather than seeing them as an exclusive either/or requiring that each side fault the other, I defend conscientious forms of both. Inspired in part by The Challenge of Peace,116 I hold that an upright Christian conscience may embrace either nonviolent resistance or just war, depending on individual character and sense of call from God. In my estimation, there have been too many faithful defenders of just war (Saint Augustine, Thomas Aquinas, Martin Luther, John Calvin, Reinhold Niebuhr, Paul Ramsey, Jean Bethke Elshtain) and too many faithful defenders of pacifism (Tertullian, Menno Simons, Martin Luther King, Jr., Dorothy Day, John Howard Yoder, Stanley Hauerwas) to think that one or the other position is categorically mistaken. Morality is not simply a matter of numbers—whole populations and long-lived traditions may be in error—hence I say “faithful defenders.” I cannot judge those Christians sinful who fought to curtail American slavery or to stop Hitler and Nazi genocide.

116 The National Conference of Catholic Bishops assert the universal obligation “to defend peace” but acknowledge that the means of doing so offer “moral options.” Nat’l Cath. Bishops, The Challenge of Peace: God’s Promise and Our Response ¶ 73 (1986). Thus, they accept the legitimacy of forms of both Christian pacifism and Christian just war thinking. The American Bishops too use the words “dignity” and “sanctity” interchangeably. See, e.g., id. ¶ 15.
Here, then, we have an inclusive either/or: the right to be either and the duty to be one or the other. Both the pacifist and the just warrior put violence on trial, so to speak, and both cleave to the absolute prohibition on directly taking innocent human life, together with the willingness to accept martyrdom rather than violate that prohibition. The just warrior will call the prohibition the \textit{jus in bello} principle of discrimination/noncombatant immunity, and he or she will point to the likes of Hugh Thompson, Jr. for illustrations of the heroic upholding of this ideal in combat. The just warrior will maintain that, \textit{in extremis}, agapic love itself may take up the sword in defense of the innocent other, while the pacifist will decline that option in favor of nonviolent forms of service and protection.

The two positions I think are categorically contrary to the Law and Gospel of rights are quietism in the face of evil visited on others, on the one hand, and unbridled bellicism, on the other. Literal non-resistance to social injustice is irresponsible and un-Christlike, as is the “realist” view that war is an amoral activity in which anything goes and even mass murder may be necessary to defend the nation. Both of these extremes are forms of sin: the former is escapist, while the latter is idolatrous. No one has the right to be oblivious to the rights of others, and no one has the right to be unjust or amoral.

VII. THE LIMITS OF RIGHTS AND SELF-RIGHTEOUSNESS

Much remains to be done, but there have been important advancements in political and economic rights during the last seventy-five years, nationally and internationally. Think of the United Nations Charter (1945), \textit{Brown v. Board of

\begin{footnotesize}
117 I depart here from both Paul Ramsey and Stanley Hauerwas in \textsc{Speak Up for Just War or Pacifism: A Critique of the United Methodist Bishops’ Pastoral Letter “In Defense of Creation”} (1988), since both men see the two moral options as exhaustive and fully incompatible, at least for Christians.

118 On March 16, 1968, U.S. soldiers led by Captain Ernest Medina and Lieutenant William Calley, Jr., murdered between 350 and 500 unarmed civilians, including women and children, in or near the Vietnamese village of Son My. See Truda Gray & Brian Martin, \textit{My Lai: The Struggle Over Outrage 33 Peace Change} 90, 90 (2008). Hugh Thompson, Jr., together with his crewmen Glenn Andreotta and Lawrence Colburn, helped to stop what came to be called the My Lai Massacre by putting his Hiller OH-23 helicopter down between the American troops and the civilians and ordering his men to shoot anyone who fired on the noncombatants. See \textit{id.} at 94. Thompson, Andreotta, and Colburn all acted heroically, but they were upholding the principle of noncombatant immunity, which is still explicitly mandated by the U.S. Army. See \textsc{Nat’l Sec. L. Dep’t, Judge Advoc. Gen. Legal Ctr. & Sch., U.S. Army, Operational Law Handbook} 57–72 (2020) (illustrating principles for protection of noncombatant civilians). The \textit{Operational Law Handbook} reads, in part, “Principle of Distinction:[\textit{ sometimes referred to as the principle of discrimination, this principle requires that belligerents distinguish combatants from civilians and military objectives from civilian objects (\textit{i.e.}, protected property or places). In keeping with this ‘grandfather’ principle of the LOAC, parties to a conflict must direct their operations only against combatants and military objectives.” \textit{id.} at 59.
\end{footnotesize}
Education (1954), the Equal Pay Act (1963), the Civil Rights Act (1964), the Voting Rights Act (1965), Medicare and Medicaid (1965), the Occupational Safety and Health Act (1970), the Consumer Product Safety Act (1972), the Anti-Ballistic Missile Systems Treaty (1972), the Comprehensive Anti-Apartheid Act (1986), the fall of the Berlin Wall and the reunification of East and West Germany (1989-1990), the Americans with Disabilities Act (1990), the Brady Handgun Violence Prevention Act (1993), the Children’s Health Insurance Program (1997), and so on. We rightly celebrate and seek to expand these social goods. Like many others, nevertheless, I am troubled by what might be called “the moral climate” of our day.

In the 1950s and ‘60s, civil rights activists often sang together, “We Shall Overcome,” with the central refrain, “We’ll walk hand in hand?” The message was, “We will resist what we see as hated and injustice, but we will do it with love and an eye toward eventual reconciliation.” Today the chant is “Hey, hey . . . ho, ho . . . racism, sexism, classism, capitalism, Zionism [fill in the blank] has got to go!” Here the message sounds, in effect, like an angry, if not malevolent, “If you offend us, we will roll over you and eliminate those like you!” These are anecdotal observations, but I and others perceive a substantive change in our national mood. What accounts for it?

Mary Ann Glendon and others offer us some clues. In her landmark book, Rights Talk: The Impoverishment of Political Discourse, Glendon documented the limits of the language of rights and the ways in which, for all its importance, it had become overweening and begun to subvert our collective actions and reflections. What falls out of much of the human rights literature, Glendon noted, is social responsibility and a sense of the common good. A dogmatic winner-take-all attitude tends to prevail when moral and religious disputants rely on an all-or-nothing, up-or-down verdict—what Glendon calls “total victory”119—provided by a law court, instead of allowing local organizers or elected representatives to debate an issue more fluidly, hammering out a consensus or at least arriving at a “compromise” solution. I fear that our contemporary culture wars have proven Glendon prophetic. Gleaning from her text the likelihood of civil discourse becoming more and more sclerotic (and public disagreement becoming more and more explosive) as young activists are further alienated from nuanced political give-and-take, one might have foreseen 2016 as a critical transition to a new political generation. Twenty-five years after Glendon, I take the incivility and smugness of both political parties in the 2016 Presidential campaign to be partial verification of Glendon’s main theses. She was not alone

119 GLENDON, supra note 114, at 6.
in sounding warning bells about an undue emphasis on personal legal rights, of course. There was the groundbreaking work of Michael Perry.

In 1999, in a laudatory review of Michael Perry’s *The Idea of Human Rights: Four Inquiries*, Jean Bethke Elshtain wrote:

Much of the regnant version of the primacy of rights understood as wants or preferences—for that is the current view—is derivable, by a circuitous (some might claim tortuous) route, from seventeenth-century contractarianism which posits the self as given prior to any social order. A view of a primordially “free” self haunts the modern rights project.\(^{120}\)

She concluded that “we cannot do without human rights but the way in which rights get generalized and universalized may, over time, be incapable of sustaining those very rights.”\(^{121}\)

Despite her many insights, I find it regrettable that Elshtain, like John Paul II and Michael Perry, moves seamlessly from reference to the “sacred” to reference to “dignity,” treating them as the same thing. Notice the “in other words” summary in the opening lines of her meditation, which quote Perry at some length:

The heart of Michael Perry’s argument lies in his claim that “every human being is sacred” and, that being the case, it follows that there are “some things that ought never (for example, under any circumstances or conditions) to be done to any human being or some things that ought always (under all conditions) to be done for every human being?” The “foundational” claim is that every human being, because sacred, is owed a certain regard and that this regard, in our time, has taken shape as, and congealed around, the idea of human rights. The dignity of the person, in other words, is a necessary prior assumption from which rights derive.\(^{122}\)

I might also mention Robert H. Bork’s *The Tempting of America: The Political Seduction of the Law*, which details how the U.S. Supreme Court has gradually usurped the governing role the Founding Fathers intended the Senate and House to fulfill.\(^{123}\)

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121 Id. at 55.
122 Id. at 53 (quoting Perry, supra note 3, at 7).
A litigious society’s over-reliance on an adversarial mentality is not merely a jurisprudential issue (the relation between the courts and Congress), it is, most fundamentally, a theological issue: the relation between creatures and the Creator. In *Works of Love*, Søren Kierkegaard distinguishes between two types of victory. The “first victory” is human good overcoming evil, and it may be won in an external sense without acknowledging God’s support. The “second victory” involves turning over the first to the Deity, realizing that we are all sinners before God and that real triumph comes through forgiveness and reform empowered by divine grace. Kierkegaard writes:

> Surely the difference between the religious and the worldly cannot be expressed more exactly than to say: The worldly speaks continually of only one victory, the religious continually of two. The worldly mentality can also get into its head that no human being should count himself happy before he is dead (and has thereby left it up to his survivors), but on the other hand the worldly mentality will become impatient if it hears talk of the second victory.

This sense of “the second victory” is missing from the virtue signaling and cancel culture of our era. That culture presumably aims at identifying and combatting discrimination and other social wrongs, and it can cogently utilize the language of “justice” and “rights.” It forgets, however, the finitude and fallibility that we all share as creatures dependent on God. Without a sense of human frailty, faith, hope, and love are supplanted by a self-righteous and hypocritical political correctness that intentionally kills souls and memories, if not bodies. Even excommunication in the Roman Catholic Church is intended “to foster genuine conversion and repentance” such that the individual sinner may then return to full communion within the congregation.

A politically correct society without humility and self-critique will soon charge a Jew or Christian or Muslim who speaks of “mercy” and possible “reconciliation” with being “an enemy of the people,” but that same society will inevitably self-destruct. The self-destruction will involve, first, the silencing of true (if flawed) prophets like Kierkegaard—and Abraham Lincoln, Saint Elizabeth of Russia, Mahatma Gandhi, Martin Buber, and Martin Luther King, Jr.—who recognize and resist wrongdoing but refuse to embrace a Manichaean dualism in which all goodness resides with “us” and all evil inheres in “them.”

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124 SØREN KIERKEGAARD, WORKS OF LOVE 331–44 (Howard V. Hong & Edna H. Hong eds. & trans., 1995).
125 Id. at 332–33.
126 JOHN PAUL II, supra note 2, at 112.
As King insisted

We must meet the forces of hate with the power of love; we must meet physical force with soul force. Our aim must never be to defeat or humiliate the white man, but to win his friendship and understanding. . . . The aftermath of nonviolence is the creation of the beloved community, while the aftermath of violence is tragic bitterness.127

Second, the self-destruction will eventually muzzle anyone who believes in a transcendent Lord and Judge, since such belief threatens the self-sufficiency of all worldly values, causes, and institutions—including liberal democracy and The New York Times.

It is time that we recognize and name again the hazards of dogmatism and hubris, even in a good cause. Reinhold Niebuhr observes:

There is no deeper pathos in the spiritual life of man than the cruelty of righteous people. If any one idea dominates the teachings of Jesus, it is his opposition to the self-righteousness of the righteous. . . . The criticism which Jesus levelled at good people had both a religious and a moral connotation. They were proud in the sight of God and they were merciless and unforgiving to their fellow men. Their pride is the basis of their lack of mercy. . . . Forgiving love is a possibility only for those who know that they are not good, who feel themselves in need of a divine mercy, who live in a dimension deeper and higher than that of moral idealism, feel themselves as well as their fellow men convicted of sin by a holy God and know that the difference between the good man and the bad man are insignificant in his sight.128

This does not mean that one turns a blind eye to or fails to combat social injustice, but it does mean that one does not simply vilify or “erase” anyone who is imperfect or who disagrees with the zeitgeist. (Kierkegaard, Lincoln, St. Elizabeth, Gandhi, Buber, and King also had their sins, as do we all, but they typically admitted them.) Proper naming also implies that taking offense at what others say or do is not synonymous with those others being culpably offensive. The criteria for plausible ethical judgment outstrip mere subjective feelings and assertions of individual autonomy. Finally, forgiveness and reconciliation are perfectly compatible with holding persons accountable and with basic forms of restraint, reform, and punishment. What mercy does preclude, however, is animosity and vengeance, even as it recommends an epistemic humility that grants that people of good conscience can disagree about important issues. Some

principles are bedrock—for example, “Thou shalt not murder”—but our social policies can and should still be fluid and pluralistic.

Again, this is not a prescription for quietism before evil—righteous indignation and both resistance and retribution have their place—but a merciful humility is an essential part of love of God and neighbor. Such humility recognizes that no cultural, political, or economic revolution will finally put an end to aggression, alienation, and suffering. We cannot “immanentize the eschaton,” to borrow Eric Voegelin’s phrase, and to think that we can fully erase sin from history is likely to license more abuse than it remedies. “If only we eliminate this class or that party of infidels, if only we do away with private property or sexual difference, we will realize the kingdom of God in time!” That, in effect, is the totalitarian mantra of Torquemada, Stalin, and Mao, and it fails to see that the worm at the heart of human nature goes deeper than any ideological rigor, social reform, or medical remedy. Utopia is always dystopia. This is why Christians believe that ultimate trust must be in God and grace, rather than in humanity and rights.

**CONCLUSION: A PLEA FOR PATIENCE AND HUMILITY**

Extolling duties of charity and warning against exclusive reliance on the rights and duties of justice may sound naïve or elitist; the product of the effete sensibilities of someone who has never been victimized or marginalized. How can a straight white male from a privileged socio-economic background recommend to the oppressed that they love their enemies, forgive their oppressors, eschew aggressive war, and have reverence for every human life? Is this not all rather self-serving, a subtle way of propping up tyrants or at least of sustaining the status quo which has served me rather well? I have the boldness to write as I have for two main reasons. First, I did not invent these ideals; I am echoing the central message of the Hebrew prophets and the Christian Messiah, virtually all of whom suffered for these truths. Second, it is precisely because I care about the oppressed and seek to assist their liberation that I emphasize what I have also learned from my own flawed life: A singular focus on personal freedom and retribution becomes intolerant and inhumane, as authors from Deutero-Isaiah to Shakespeare to Hugo have warned us; similarly, without the


honoring of sanctity and the offering of unearned care to the needy, dignified persons do not emerge or survive. Without compassion and forgiveness, our political and economic “triumphs” will be worse than hollow for everyone. Need I add, given hatred’s tendency toward aggression, it is the enemy not only of love but also of justice, for oneself as well as for others.

It does not honor a group to think it beyond the demands and protections of love and justice; it is, rather, a not-so-subtle form of bigotry and dismissal. Nobody—not young or old, rich or poor, strong or weak, black or white, male or female, gay or straight, innocent or guilty—is served when our “rights” become pitiless preludes to wrongs like unbridled bellicism or sectarian apathy and withdrawal. As I see it, the Roman Catholic Magisterium is correct in holding that a holistic ethic of life demands that we reject elective abortion, capital punishment, and active euthanasia. These are “cracked cisterns, that can hold no water” (Jeremiah 2:13). Many readers will disagree on the meaning (and Maker) of the right to life, but I would be a poor teacher and scholar if I trimmed to avoid controversy. Michael Perry would not.

CODA: PERRYVILLE AND PERRY

The Battle of Perryville in Kentucky, on October 8, 1862, was the culmination of “the Heartland Offensive” of the Confederate States of America. Southern General Braxton Bragg was leading the Army of Mississippi northward toward Louisville to try to secure control of the Ohio River and to sow seeds of secession in a slave state that had, to date, remained with the Union. In the Chaplin Hills west of Perryville, Bragg’s troops met and fought Northern General Don Carlos Buell’s Army of the Ohio. After an initial skirmish in which the Confederate forces prevailed, Buell succeeded in driving Bragg’s men out of the Bluegrass and into Tennessee. The Federals sustained an estimated 4,211 casualties to 3,401 on the Confederate side, but the Federals retained jurisdiction in Kentucky for the duration of the Civil War, and the state never formally left the Union.

In my Atlanta den, I have a cannon ball and several Minié balls retrieved from the Perryville battlefield, and I often think of how fateful that October day was for me and my country. Perryville was not as significant as Gettysburg or the Battle of Atlanta, and President Lincoln had already issued the preliminary

\[ \text{See Lowell H. Harrison, The Civil War in Kentucky 33–56 (1975).} \]

\[ \text{See Perryville: Battle of Chaplin Hills, AM. BATTLEFIELD TRUST, https://www.battlefields.org/learn/civil-war/battles/perryville (last visited May 9, 2022).} \]
Emancipation Proclamation on September 22, 1862, but securing the “dark and bloody ground” was strategically essential to the Union cause. (In September of 1861, Lincoln said of his birth-state: “I think to lose Kentucky is nearly the same as to lose the whole game.”)\footnote{Abraham Lincoln, “To Orville H. Browning,” in Abraham Lincoln: Speeches and Writings, 1859-1865, at 269 (1989); see also William H. Townsend, Lincoln and the Bluegrass: Slavery and Civil War in Kentucky, at viii (1955) (putting the Browning letter in context).} I consider the American Civil War to be a just war, and I am very glad that some people were willing to take up arms (and die) to defend the rule of law in the (dis-)United States and uphold the principle, in Michael Perry’s words, that “certain things ought not to be done to any human being and certain other things ought to be done for every human being.”\footnote{Perry, supra note 3, at 13.} I am well aware that, especially in the border state of Kentucky, motives and loyalties were mixed, and I am not endorsing every tactic employed by the Federals. But without the Union success at Perryville, there is likely no Michael Perry and his defense of human rights, which would be sad indeed.