

Philosophy and the Politics of Unreason

Paul W. Kahn†

Stephen Holmes has presented a lecture full of good ideas and genuine common sense.¹ If I were in a position to hire him as deputy secretary of state for policy and planning, I would. Over the past few years, he has produced a number of pieces that identify the errors and dangers in arguments made by the Bush administration and its supporters.² He writes in praise of the rule of law, drawing our attention to the institutional wisdom embodied in our traditions of constitutional governance. Since these arguments all seem so reasonable, I always come back to the question: why does our government continue to act in ways that are so unreasonable? The answer, I will argue, is because reason is not the only measure of political action.³

Although Holmes, for the most part, avoids overt partisan critique, critics have received his essays in just that manner. Regardless of how objectively pragmatic any commentator tries to be, the issues at hand are inevitably understood as political. There is no neutral position from which one can offer an analysis of the facts of the matter, because the language of reason is the language of political critique in American life.⁴ We, meaning the political opposition, think that everything is clear. Because of the allure of reason, we come away feeling that were we in office we would do better. A longer view, however, suggests that we might not.

Copyright © 2009 California Law Review, Inc. California Law Review, Inc. (CLR) is a California nonprofit corporation. CLR and the authors are solely responsible for the content of their publications.

† Robert W. Winner Professor of Law and the Humanities and Director of the Orville H. Schell, Jr. Center for International Human Rights, Yale Law School.

1. This article is a response to Stephen Holmes, Keynote Address at the 11th Annual Thomas M. Jorde Symposium: In Case of Emergency: Misunderstanding Tradeoffs in the War on Terror (Nov. 5, 2007), in 97 CALIF. L. REV. 301 (2009) [hereinafter Holmes, *In Case of Emergency*].

2. Many of these essays are collected in STEPHEN HOLMES, *THE MATADOR'S CAPE: AMERICA'S RECKLESS RESPONSE TO TERROR* (2007).

3. Holmes himself wrote one of the more interesting analyses of the role of the unreasonable in the response to terror. See Stephen Holmes, *Is Defiance of Law Proof of Success? Magical Thinking in the War on Terror*, in *THE TORTURE DEBATE IN AMERICA* 118 (Karen J. Greenberg ed., 2006).

4. See PAUL W. KAHN, *THE CULTURAL STUDY OF LAW: RECONSTRUCTING LEGAL SCHOLARSHIP 7-18* (1999) [hereinafter KAHN, *CULTURAL STUDY*].

The mistakes of the Bush administration are similar to the mistakes of the Johnson administration in Vietnam. They seem to be the characteristic mistakes of nations fighting wars in which tactics of informal warfare appear; perhaps they are the characteristic mistakes of nations fighting any wars. Consider the British in Northern Ireland, the French in Algeria, or the Israelis in the Middle East: torture and lawlessness seem to follow terror. We have seen similar mistakes made by the Russians in Chechnya and by the various authoritarian regimes in Latin America over the last fifty years. The issues here do not fall out on a line that divides democratic from authoritarian regimes, any more than they fall out on the partisan divide of American politics. In truth, therefore, we do not have much reason to be confident that we would do better. Accordingly, the questions I want to address are, first, whether the type of pragmatic analysis of the administration's failings that Holmes offers gets to the heart of the matter, and, second, what an alternative analysis might look like.

I

WHAT DO PHILOSOPHERS ADD?

Let me be clear from the very beginning that my criticism of "In Case of Emergency" is by no means meant as a defense of the Bush administration's policies or actions. I agree with virtually everything that Holmes has to say as to the failure and foolishness of those policies. That agreement fuels my political opposition to the administration; it does not put me in a nonpolitical space of critique. More importantly, my political opposition is not a function of any insights I gather from my pursuit of a philosophical inquiry into law and politics. Holmes and I are both philosophers by training. Nevertheless, the issue that separates us is not about political choices, but about what philosophy can contribute to our understanding of our political lives. At stake in our different approaches, then, is not a set of political practices, but differing visions of the nature of philosophy.

When philosophers argue, as Holmes does, for a reasonable public policy—one that considers long-term consequences, the likely sources of mistakes, and the benefits of public transparency—philosophy becomes just another form of the modern pursuit of reason. Reasonable rules for political practice are the ordinary domain of lawyers, at least since the New Deal made lawyers central to the administration of the modern state. Indeed, part of the "scandal" of the Bush administration, from the legal point of view, has been its displacement of ordinary career lawyers from participation in policy decisions.⁵ Not surprisingly, that displacement resulted in a loss of institutional knowledge, leading to multiple policy failures.

5. See PHILIPPE SANDS, *TORTURE TEAM: RUMSFELD'S MEMO AND THE BETRAYAL OF AMERICAN VALUES* 213-15 (2008) (describing marginalization of traditional government and military lawyers).

Holmes's lecture is, above all, a call for a return to the rule of law in its most ordinary, bureaucratic, and administrative sense. Philosophers can be as skilled at making such arguments as lawyers. The philosopher as lawyer used to be called a "sophist."⁶ While there is nothing wrong with the legal, sophistic perspective—indeed, it is necessary—that form of argument gives up the uniqueness of a philosophical analysis. Philosophy need not aim higher, but it should aim deeper. We already have enough lawyers.

Holmes's entire lecture is a plea for reasonableness. But philosophy, in my mind, is not about reasonableness, but about truth. To identify truth and reasonableness is itself a polemical position. It is what the political opposition will always claim in the modern liberal state: reason supports our politics against theirs.⁷ Partisan interests are always cast as contrary to reason, while the common good is always described as that to which all reasonable people would agree. Modern, liberal political theory builds models of pure practical reason, as in Rawls's original position or Habermas's ideal speech conditions.⁸ Philosophically, we would do better by beginning from the premise that there is little that is reasonable about the truth of our political condition. In short, the divide between Holmes and myself is simultaneously insubstantial—at the level of policy—and deep. In exploring this divide, I hope to say something about the nature of the political, but nothing at all about what the administration should do. In practical terms, it should follow the reasonable rules that Holmes articulates.

II

HOW RATIONAL ARE WE?

The fundamental assumption behind Holmes's analysis appears immediately in the example of his daughter, Alexa, in the hospital.⁹ The example works on the assumption that the ends of the state and the hospital are the same: to replace danger with security. For Holmes, saving his daughter's life is paradigmatic not just of rule-governed behavior, but of the appropriate end for the state. The story is straight out of liberal political theory. A child has suffered an accident. Accidents happen in the state of nature. Without rules, all of life would be a succession of accidents, for there could be no rational planning. The state tames nature and saves lives by enacting and following rules. In the hospital, these rules are protocols of treatment; in the state, these rules are laws. Rules represent the presence of reason; adherence to the rules

6. See, e.g., PLATO, *GORGIAS* 452E-457c (Robin Waterfield trans., 1992) (describing the sophist Gorgias as engaging in the lawyerly skills of rhetorical persuasion).

7. This is reflected in a number of recent books by the liberal opposition. See, e.g., AL GORE, *THE ASSAULT ON REASON* (2007); ROBERT B. REICH, *REASON: WHY LIBERALS WILL WIN THE BATTLE FOR AMERICA* (2004).

8. See generally JURGEN HABERMAS, *THE THEORY OF COMMUNICATIVE ACTION* (Thomas McCarthy trans., 1987); JOHN RAWLS, *A THEORY OF JUSTICE* (rev. ed. 1999).

9. See Holmes, *In Case of Emergency*, *supra* note 1, at 301-02.

represents the commitment to reason over nature. Holmes wants us to see that deviation from the rules is irrational, since the consequence will likely be a return to a state of nature. Hospital and state are two loci of a common project: to advance individual well-being. Thus, both hospital and state pursue a modern project of eliminating pain through the application of reason.¹⁰

Our paths divide at just this point, for I do not assume that the end of the state is to advance individual well-being. I do not say that the state is indifferent to well-being, but that this is neither the sole, nor the most important, end for the state.¹¹ If we were to look, without any theoretical presuppositions, at the histories of modern nation-states—including our own—I do not think we could say that the state is pursuing the same end as the hospital. Regardless of its position on health care, the state is also an institution willing to deploy violence, death, and destruction. Our national narrative is organized around killing and being killed, at least as much as it is around the lowering of mortality rates or increasing gross domestic product. The federal government spends about as much on violent destruction as it does on health care. Surely it has been a good deal easier to appropriate funds for the war in Iraq than it has been to extend health care to everyone. This is so even though everyone knows that we could have saved more lives by investing in health care the money that we instead spent in Iraq.

So what are we doing? Are we making “mistakes” or are we doing something else? If acts of violence are not merely the result of a failure of reason, Holmes may be applying the wrong measure. Liberal theory tells us that the state’s interest is in advancing individual well-being—as if this end is the only common denominator upon which all can agree. If one takes this point of view, then one inevitably ends up arguing that the state often acts against its own end.¹²

I approach politics as a set of practices sustained by beliefs. To use a term coined by Clifford Geertz, the state is a “web” of meanings.¹³ Its primary end is to sustain the world that those meanings constitute.¹⁴ The political is not an exercise in means-ends rationality, serving some extra-political end. Rather, it is a structure of the imagination that makes sense of experience by embedding it in narratives. To trace the web of meanings is to construct a narrative,

10. The elimination of pain—and the violence that causes pain—can be seen as the common end of diverse modern practices including medicine, science, punishment, and politics. I owe this point to Samuel Moyn.

11. See PAUL W. KAHN, *PUTTING LIBERALISM IN ITS PLACE* 228-91 (2005) (arguing that the political meaning of the state cannot be reduced to a means to some non-political end, including the aggregate of individual well-being).

12. Of course, there may be—and indeed are—good normative reasons for pursuing these interests in one’s own political practices. Again, my point is philosophical, not political.

13. See CLIFFORD GEERTZ, *Thick Description: Toward an Interpretive Theory of Culture*, in *THE INTERPRETATION OF CULTURES* 5 (1973).

14. KAHN, *PUTTING LIBERALISM IN ITS PLACE*, *supra* note 11, at 276-79 (explaining the final cause of the state to be only its continuation as a historical presence).

because meanings only exist in relationship to each other and to the whole. There are multiple narratives of American political experience, most of which are so common as to appear banal—for example, notions of the American dream, self-evident truths, the rule of law, or “we the people.” There is no internal norm or external constraint that requires all of these narratives to cohere in a logical order. There are, in fact, serious tensions among them.

Indeed, what is perhaps most interesting about our political narratives, and least acknowledged by liberal political theory, is how they embrace both well-being and destruction. Which is a better icon of the meaning of the United States as a political community: our struggling health care system or a nuclear bomb? Which is our dominant political narrative: the rise of the welfare state or the performance of individual sacrifice?

From within the political order, we will, of course, pursue our own individual ends. That is, we will deploy means-end rationality for our own purposes. But this partial, internal perspective does not offer us an adequate view of the whole. We will similarly try to use science or religion as an instrument to achieve our particular ends, but that does not tell us what science or religion is. For example, although I might pray for divine intervention in pursuit of my ends, religion is not simply a means to my ends. This remains true even if we consider the aggregate of everyone’s personal ends. The state, like religion or any other cultural formation, is not trying to be anything other than itself.

Of course, political practices and beliefs express norms, and a cultural practice, including the state, may invite individuals to pursue reform of particular practices through the application of these norms. The rule of law in particular includes the reform of law as an element of its practice.¹⁵ But we should not think that the pursuit of reform places us in some neutral space outside of the cultural formation. Holmes is pursuing reform of our professional practices from within. This is a practice familiar to lawyers, but it is not a philosophical contribution.

A philosophical inquiry only begins when we suspend belief in our political norms, at least for the time of the inquiry. This creates the free space of thought; it is not a space of practice. When we bracket our beliefs for the sake of philosophy, we find they are more complex than those articulated through our ordinary political theorizing. Indeed, there are practices and beliefs that political theory may fear to voice. In particular, modern political theory would rather speak of “mistakes” than acknowledge the place of violence in our politics.¹⁶ Philosophy, on the other hand, cannot discount violence as merely a

15. See KAHN, *CULTURAL STUDY*, *supra* note 4, at 7-18 (describing central place of reform in the legal imagination).

16. The bracketing of normative commitment is essential. The point is not to celebrate violence, as fascist political theory did, but to understand how violence generates political meanings.

failure of law, but must take up the question of how violence creates political meaning.¹⁷

Too often, we succumb to a temptation to think that the violence of the state is merely aberrational or a burden imposed upon us by others—as if we really want to be something other than what we are. In a law school, we think that all state behavior should be measured by law, and that the object of law is security, not violence. But why do we think that? Are we confusing the state—the actual, not the theoretical state—with the hospital, which should indeed operate along the single normative metric of lives saved? The problem for the state is not simply to reduce violence, but to sustain two forms of meaning: one realized through law and the other through violence. The United States has been in a virtually continuous state of war for the past one hundred years. The reason is not that we just happen to have enemies. Rather, it is because we are prepared to see a world in which our national existence calls forth the sacrificial act. Violence against the enemy is only the inverse side of citizen sacrifice. In the United States, the phenomenon of sacrifice remains at the very heart of political meaning.¹⁸ After 9/11, we chose war over law not because we judged it more efficient, but because we imagined a world populated by enemies, not criminals.¹⁹ Other states responded differently, not because they had different information—and not because they were more rational—but because they imagined the world differently.

In short, the state may not be pursuing the ends that Holmes assumes it to be pursuing. The economy of violence, of killing and being killed, may be one of waste and inefficiency from the perspective of our normal economy.²⁰ Our ends may be mythical, not practical, as Holmes himself has recognized.²¹ Speaking of national security may be just a polite way of speaking of the realization of meaning through the performance of violence. It may be the performance itself—not some goal outside of the violence—that is of most significance to us.

Connected to this misperception of the character and sources of political meaning is a set of assumptions about psychological motivation with which I also disagree. Generally, critiques of the administration veer between explanations that rely on a psychology of pathology and those that rely on one of self-interest: Rumsfeld was pathological, Cheney self-interested. Most

17. For a recent popular exploration of this theme, see CHRIS HEDGES, *WAR IS A FORCE THAT GIVES US MEANING* (2002). For a philosophical inquiry, see PAUL W. KAHN, *SACRED VIOLENCE: TORTURE, TERROR, AND SOVEREIGNTY* (2008) [hereinafter KAHN, *SACRED VIOLENCE*].

18. See KAHN, *SACRED VIOLENCE*, *supra* note 17, at 107-19.

19. In distinguishing criminals from enemies, I mean to be invoking Schmitt's friend-enemy distinction. See CARL SCHMITT, *THE CONCEPT OF THE POLITICAL* 26 (George Schwab trans., expanded ed. 2007).

20. See GEORGES BATAILLE, *THE ACCUSED SHARE: AN ESSAY ON GENERAL ECONOMY* 19-27 (Robert Hurley trans., 1991).

21. See Holmes, *supra* note 3.

analyses take the second route, self-interest: the administration's actions are explained by concerns about oil, or Halliburton, or the electoral strategy of the right. The behavior, it turns out, is rational, but not public-spirited.

"In Case of Emergency" is more interesting than most partisan critiques because Holmes generally prefers the first route: the explanation lies in psychological deficiencies that arise from the circumstances of decision.²² For the most part, Holmes identifies the failures of the administration's policies as failures of rationality. Decision-makers under stress will fall prey to predictable temptations: for example, they do not want their mistakes exposed, they will panic and feel a compulsion to do something, they do not want to hear bad news, or they will simply fail to take the longer view into account.²³ These are predictable failures; they are exactly the sort of thing that a well-designed national security policy should address. Bruce Ackerman too has proposed a legal framework to respond to this problem of decision-making under stress.²⁴ Law is intended to make up for the deficiencies of natural man. Unless we plan early—that is, pass reasonable laws—ordinary psychological vices will likely keep us from acting rationally.

Holmes's account of psychological pathology blends easily into a partisan political narrative. Those in power failed, we are to believe, because they were not pure of heart. In America, to be pure of heart is to listen to the voice of reason, for our politics is surely to be understood as an Enlightenment project. We fight our partisan battles through the rhetoric of public interest. The positions we oppose are always held by "special interests" or, to use the classical term, "factions." The party in power has failed to rise above personal circumstance; we, in the opposition, promise to reconstruct policy on the basis of reason alone. Accordingly, Holmes offers a platform of reasonable reform. Because he speaks in the language of reason, he can claim to speak for the common good.

Holmes pursues this ideal of a politics of reason down the predictable lines of American centrism. Reason will cure psychological temptation, whether grounded in individual failure of character or partisan ambition. The form of that cure will be procedural, and procedure is embodied in the institutions of legality. Not war, but law. More separation of powers on the one hand, and more due process, on the other. This is procedure writ large and small.²⁵ The failure to comply with law can have no value in and of itself. It is "unreasonable," and it goes without saying that an unreasonable practice has

22. See Holmes, *In Case of Emergency*, *supra* note 1, at 307-08.

23. *Id.* at 324. Here, Holmes shows the influence on his thought of the behavioral economics trend of analysis that is popular in much contemporary legal analysis. See BEHAVIORAL LAW AND ECONOMICS (Cass Sunstein ed., 2000).

24. See BRUCE ACKERMAN, *BEFORE THE NEXT ATTACK: PRESERVING CIVIL LIBERTIES IN AN AGE OF TERRORISM* (2006).

25. For an earlier model of this form of reasoning, see JOHN HART ELY, *DEMOCRACY AND DISTRUST: A THEORY OF JUDICIAL REVIEW* (1980).

little chance of success. This deep belief in the intersection of reason and law is supported, in the American case, not just with the appeal to theory, but also by citing the founding fathers,²⁶ who represent that miraculous moment at which reason and will were one.²⁷

All of this is an admirable demonstration of conviction on the part of Holmes: the conviction that the ends of the political community are to advance individual well-being, to secure a just order between individuals and the state, and to advance justice among states. Here, I choose my words carefully: this is all a matter of faith. The term we often use for this faith is “the rule of law.”²⁸ I am not at all sure, however, that, standing alone, this describes the political faith of the American citizenry. I am quite sure that it fails as an adequate description of our political practices and beliefs.

Once the state takes up the practice of killing and being killed, reason is not much of a guide to action, and law is not the boundary of political meaning. If the state performs its meaning through acts of sacrificial violence, it should not surprise us that it continues to fall into the pattern of “mistakes” that Holmes identifies. What seems irrational and counterproductive may be working in a different register of meaning. Politics in this broad sense is not a technical enterprise; it is not like a hospital. It is more like love: its end is to bring forth and sustain meaning in the world, and it is not necessarily moved by the claims of reason. To act counter to reason—that is, beyond the boundaries of reason—can be a measure of love.²⁹

If the state is not trying to be reasonable in its pursuit of death over life, then we can understand why preaching reasonable reform rarely has much effect on state practices. The sources of meaning at stake do not hold themselves accountable to reason. Affirming a lack of such accountability may be perfectly irrational but nevertheless wholly meaningful. This is the starting point of religious faith for many: one does not test faith by reason. Setting ourselves the task of theoretical understanding, we may miss the phenomenon of political belief. People do not reason themselves to faith, whether in God or nation. They find themselves already entangled in a web of meanings. This does not mean that they cannot subject those beliefs and practices to the scrutiny of reason. To argue that they should—or even that they do—is to make a political claim. It is to take a stand within the practice.

26. See Holmes, *supra* note 3.

27. See Paul W. Kahn, *Reason and Will in the Origins of American Constitutionalism*, 98 YALE L.J. 449, 457-62 (1989).

28. See PAUL W. KAHN, *THE REIGN OF LAW: Marbury v. Madison AND THE CONSTRUCTION OF AMERICA* (1997).

29. Recall King Lear’s famous plea in response to his daughter’s stern use of reason to defeat his demand for care, “O! reason not the need.” See PAUL W. KAHN, *LAW AND LOVE: THE TRIALS OF KING LEAR* 64-68 (2000).

III

THE ENDS OF THE POLITICAL

This takes me to the second issue I raised at the start: what are the terms of an alternative analysis? I have already been speaking in these terms, but let me try briefly to summarize my perspective.³⁰ No less than an institution for individual welfare, the modern state—even the liberal state—has been a hugely successful enterprise of sacrifice. Of course, the liberal state does protect life, property, and well-being. Consider this the moment of law. But, in a crisis, this same state takes life, destroys property, and causes massive injury. Consider this the moment of sacrifice. The state reserves the right to claim every life and to consume all material wealth—public and private. This is exactly the meaning of the total wars of the twentieth century—wars that systematically ignored the distinction of combatants from non-combatants.³¹ The distinction failed again in the wars of decolonization, and was completely abandoned in the Cold War threats of mutual assured destruction. Unsurprisingly, it is failing once more in the war on terror.

Popular sovereignty expresses itself one way in the rule of law: democratic procedures of law-making are intended to ground the legitimacy of positive law. Popular sovereignty expresses itself another way in the democratization of sacrifice. The modern democratic state did not just extend the franchise universally, it extended the imaginative possibility of sacrifice. To sacrifice is to give up the finite self for the realization of the sacred. This is the core of the Christian idea of martyrdom. Our high rhetoric of the “ultimate sacrifice” appeals directly to ideas of consecration—for example, “hallowed ground”—and to resurrection—“through death the nation might live.” The tradeoff that Holmes speaks of rests less on claims of efficiently meeting threats than on the deepest aspect of Western religious faith: only through death comes life.

The modern social imaginary holds together beliefs in law and in sacrifice that are in substantial tension.³² For example, these beliefs point in quite different directions when considering political origins: one looks to a social contract, the other to a pledge of life. They describe quite different narratives of national history: one speaks of the progressive development of law to secure individual well-being; the other speaks of a continuous line of violence from Revolution, to Civil War, to the great wars of the twentieth century, to the war on terror. This double character of the national narratives regularly breaks out: for example, revolution and constitution, war and law, sacrifice and well-being.

30. For a systematic analysis see KAHN, *PUTTING LIBERALISM IN ITS PLACE*, *supra* note 11.

31. On the nineteenth-century origins of total war see DAVID A. BELL, *THE FIRST TOTAL WAR: NAPOLEON'S EUROPE AND THE BIRTH OF WARFARE AS WE KNOW IT* (2007).

32. On the idea of the social imaginary as a descriptive category, see CHARLES TAYLOR, *MODERN SOCIAL IMAGINARIES* (2004) (describing the social imaginary not as a set of ideas, but rather as that which enables the practices of a society by making sense of those practices).

In times of such conflicts, we often become quite confused. The move from one narrative to the other can be as abrupt as a declaration of war.

That we are drawn to both law and sacrifice is no surprise. Neither perspective can fully subordinate the other; neither perspective can even make sense of the other. This is a tension that must be managed rather than resolved.³³ Its management is a way of living, not a set of arguments. The high form of our political rhetoric always appeals to sacrifice as that act in which the truth of the individual and the truth of the state realize a kind of unity of ultimate meaning. We are all called upon to overcome our individual interests for the sake of realizing the truth of the nation, a truth that is beyond words in the same way that the sacred is beyond words. But moments of such rhetoric and such sacrifice always are just that: moments. They are the political equivalent of the ecstatic, after which we fall back into our ordinary pursuits, secure in a world of law. Americans are not interested in permanent revolution, but neither do they think that law can endure without a readiness to engage in sacrificial violence.

State violence necessarily appears from the legal point of view as self-defense.³⁴ It must, since the end of law is individual well-being. But we have no reason to accept this as the only point of view. From the point of view of sacrificial violence, law appears as a set of limits quite incommensurable with the meanings at stake in political life. There is no point within the law at which an individual is required to sacrifice himself, although he may have to expose himself to risk.³⁵ Sacrifice is a way of making sacred, and that is always beyond the legal imagination. Sacrificial violence is the expression of sovereign existence in and through the body of the citizen. This needs no further justification, as if it is a means to some other end. Of course, it can be thought of as the defense of the legal order, but it can just as easily be thought of as the foundation or source of all political meaning.

All of this is quite familiar in the deeper history of the Western imagination: do we practice a faith of law, or of sacrifice that puts an end to law? Judaism put law at the center of its beliefs and practices, while Saint Paul proclaimed “Christ is the end of the law.”³⁶ To believe in the redemptive power of Christ’s sacrifice is to be beyond the ordinary concerns of well-being under law. We carry forward both narratives in our political community. We need to understand our political culture as maintaining a commitment to both individual welfare through law and to sovereignty through sacrifice. We should resist claims of priority: each sees the whole from its own point of view. Each can displace the other, but is subject to displacement in turn. There is nothing new

33. On the technique of management, see KAHN, SACRED VIOLENCE, *supra* note 17, ch. 5.

34. Symbolically, the Department of War became the Defense Department in 1947, just at the time that the threat of weapons of mass destruction extended to the entire population.

35. See KAHN, SACRED VIOLENCE, *supra* note 17, at 94.

36. *Romans* 10.4 (Revised Standard Version).

in this: it may be the oldest problem of the Christian Church, which had to span admiration for the sacrificial practices of those enthralled with Christ, on the one hand, and a concern for individual well-being in the ordinary domestic settings of family and work, on the other.³⁷ What did it mean to be a good Christian: to become priest and practice celibacy, or to participate in the sacrament of marriage and raise a family within the church? In our political faith, we have become more democratic: the double character of living and dying—of well-being and sacrifice—attaches directly to each of us. In an age of weapons of mass destruction, just as in the prior age of total war, everyone is subject to both sources of meaning. Today, the transition from one to the other can be as quick as finding oneself in the wrong building or on the wrong airplane on a September morning.

What we find when we trace the web of meanings constitutive of the political imagination is not theoretical coherence in support of individual well-being. We find no priority given to reason; we do not even find a commitment to the principle of non-contradiction. We find that waste can be as meaningful as efficiency, that violence can be more important than security, that acting outside of the law can be as much a source of meaning as staying within law, and that humiliation competes with dignity as a norm of political behavior. We find, if we are honest, that we have the same capacities for killing, injuring, and humiliating that we see in the enemy.

Forget, for the moment, the aspiration for individual accountability under legal norms. Think instead of the actual practices of Western politics over the last two centuries. Over and over, political identity has been a ground of life or death: one died because one was German, French, or American. One killed for the same reason. For the most part, those who killed and those who died were both morally innocent. As individuals, neither had offended the other. In the American Civil War, relatives and friends found themselves engaged in political acts of killing and being killed. They killed and died even as they remained friends.

CONCLUSION: PHILOSOPHY AND 9/11

The practices of killing and being killed for the state must be explained. They should be at the center of any philosophical account of our political experience. This is just the imaginative construction within which the 9/11 attack was framed. It was an attack on our national existence, not because the nationhood was actually threatened, but because individuals died as citizens. Such a death is read as a sacrifice. That reading is quite independent of “the facts of the matter,” ignoring, for example, that many noncitizens died as well. This is the imaginative construction under which the nation goes to war. Not

37. For a contemporary treatment of the Christian phenomenon of sacrifice, see ELIZABETH A. CASTELLI, *MARTYRDOM AND MEMORY: EARLY CHRISTIAN CULTURE MAKING* (2004).

because war is a more efficient response than law enforcement, but because archetypes of political meaning have been triggered.

War is a practice of reciprocal sacrifice. It moves forward in the political-psychological dimension of humiliation, for nothing is more humiliating for a nation than defeat. The blow struck on September eleventh worked in this dimension, and so has the response. To think that the destruction of war is compatible with individual dignity is to confuse warfare with dueling. Those days are over, if they ever existed. Modern warfare is about the anonymity of destruction, not about mutual respect. On the battlefield, we are as far away as possible from the idea of dignity that informs the rule of law. Of course, there is the law of war, but this is a code of death and destruction, specifying who can be killed and at what costs to others. We may have good reasons to support adherence to humanitarian law, but we should not confuse that law with the ends of dignity and equal recognition that ground the domestic order of law.

The response to an enemy willing to engage in his own acts of sacrifice is to humiliate, for humiliation is intended to break the sacrificial practices of the other. Mere violence is not a threat to the martyr; rather, it is an opportunity to realize meaning. One wins in a sacrificial conflict only by moving the enemy from an experience of martyrdom to one of humiliation. A nation or people that experiences violence only as martyrdom and not as humiliation cannot be defeated, even if victory will take decades. This was the lesson the West should have learned from the wars of decolonization.

The experience of the failure of sacrifice is exactly the experience of humiliation. It is to admit defeat, to confess that one no longer believes. The practice of humiliation is the practice of torture, whether it meets the legal standard or not. No one should ever be surprised that the practice of state violence leads to torture. This is simply another way of saying that we are no longer in the world imagined by law. We are following other forms of meaning. Today, we find ourselves pursuing a practice of humiliation because we are deep within the imaginative configuration of political violence. These are things that law cannot bear to see. When forced to look, it will necessarily condemn. But we should not take that condemnation at face value. There are reasons that few violators of humanitarian law are ever prosecuted, and that when we look closely at the war hero, he often turns out to be indistinguishable from the war criminal.

None of what I have said is spoken from a normative point of view. I have not tried to convince anyone to take up the burden of sacrifice or to be satisfied with the limits of law. One is not bound to the social imaginary as one is bound to nature. We can choose law over war; we can seek to reform our practices and beliefs. We can think them wrong from a moral point of view. What we should not think, however, is that our political practices are trying to be something other than what they are. We need to look clearly and speak the truth as well as we can, if we are to understand what is done in our name by the state. Those

not listening to the good advice offered in Stephen Holmes's excellent essay are hearing other music, under which their actions cannot be considered mistakes. Instead, they are performing the primitive rituals of violence as they make themselves known in our post-modern times.

