

## “THE LAST FULL MEASURE OF DEVOTION:” SACRIFICE AND TEXTUAL AUTHORITY

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### I. THE PROBLEM POSED IN TERMS OF “SACRIFICE” AND “AUTHORITY”

There are principles worth dying for. There can be no exhaustive list of these principles or of fitting deaths on their behalf. Many people have given their lives within mobilized collective struggles against injustice. Others have become martyrs—they have accepted deadly violence turned against them and not forsaken the principles by which they lived and for which they were persecuted. These deaths, and the choices and personal character they exhibit, command our respect. We respect or admire those who gave their lives to advance worthy causes, or who were martyred because they held to decent commitments even in the face of pain and violence. But do their sacrifices give us additional reasons that guide our own conduct and beliefs, above and beyond the reasons supplied by the worthiness of the principles for which they sacrificed?

Posing the question in these terms invites attention to the concept of “sacrifice” itself. Consider those who die in battle—are we using the word “sacrifice” metaphorically when we use it to describe these soldiers, their deeds, or their deaths? If the use is metaphorical, in what ways is the metaphor apt, and in what ways not?<sup>1</sup> The origins of the word lead us back to ritual action performing the work of consecration or hallowing.<sup>2</sup> An offering is consecrated to God or to the gods, set

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<sup>1</sup> If we follow René Girard, who concludes that “sacrifice is primarily an act of violence without risk of vengeance,” RENÉ GIRARD, *VIOLENCE AND THE SACRED* 13 (Patrick Gregory trans., John Hopkins Univ. Press 1977) 1972, we would have to say that deaths in battle are not “sacrifices” in the ritual sense (though they could be well-described as “sacrifices” in other descriptive and moral senses).

<sup>2</sup> *L. sacrificium* is derived from *sacrum facere*, “to perform a religious ceremony.” THE OXFORD CLASSICAL DICTIONARY 1345-46 (Simon Hornblower & Antony Spawforth eds., 3d ed., rev. 2003) (entry “sacrifice, Roman”). *Sacrum* means, most generally, “something consecrated;” *sacer*, sacred, means “consecrated to a deity” or “hallowed.” OXFORD LATIN

aside from others of its kind, whether vegetable or animal, and consumed according to strict standards. As defined by Hubert and Mauss, “[s]acrifice is a religious act which, through the consecration of a victim, modifies the condition of the moral person who accomplishes it or that of certain objects with which he is concerned.”<sup>3</sup> But this general description covers a great diversity of ritual contexts. Sacrifices figure in seasonal festivals, life-cycle celebrations, daily or weekly worship, as well as in the meeting of special needs caused by personal illness or social crisis. The action of sacrificial ritual is also various, as there are many ways in which the offering may be consecrated, transmitted, and consumed. As this diversity suggests, sacrifice is heterogeneous in its aims—such as propitiating an angry god, expiating sin, or offering thanks for deliverance. Any one of these aims, moreover, may be expressed and pursued either publicly or privately; with great conviction and inwardness or as a matter of unremarkable routine; on behalf of all people, or of some, or of just one.<sup>4</sup>

The linguistic facts about sacrifice also point dramatically toward differentiation in action and aim. The Hebrew Bible, for example, uses many different words to describe or name ritual acts that are deceptively integrated into a common category when they are described, in English Bible translations, as “sacrifice” or “offering.” In a Christian theological context, issues of Christology, soteriology, and the ethics of neighbor-love reflect this complex semantic inheritance. In just what sense is Christ a “sacrifice” or “offering?” In what sense are Christians called upon to imitate, repeat, or participate in this “sacrifice” or “offering?” In what sense of “sacrifice,” if any, does love of neighbor (*agape*) call for sacrificial love?

I raise these questions to make clear that the diversity of fitting deaths, as for example in collective resistance to injustice or in accepting martyrdom when the only alternative is to abandon or betray decent commitments, is not distilled into a moral unity when such deaths are described as sacrifices. Nonetheless, such a description does call attention to two features of worthy deaths that suggest lines of response to our question: what, if anything, do such deaths add to the weight of the principles for which people die? To this question the familiar description of such deaths as “sacrifices” adds the depth that comes when this-worldly struggles are situated within the frames of sacred time, sacred space, and the holiest or most sanctified realms of being, truth, righteousness, and joy. And the description adds the

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DICTIONARY 1674 (1982) (entry “sacer”).

<sup>3</sup> HENRI HUBERT & MARCEL MAUSS, *SACRIFICE: ITS NATURE AND FUNCTION* 13 (W. D. Halls trans., Univ. of Chi. Press 1964) (1898) (emphasis omitted).

<sup>4</sup> On the heterogeneity of sacrifice, see Victor Turner, *Sacrifice as Quintessential Process: Prophylaxis or Abandonment?*, 16 *HIST. RELIGIONS* 189 (1977).

related idea that the worthy deaths are somehow *addressed* to me or to my people (whomever they may be); that they speak to me in some way—authorizing me to believe, to act, or just to be; directing me on the course of my own life and death; ultimately, revealing the worthy death that is sacrifice as the higher meaning and destiny of my own existence.

These dimensions of authorization, direction, and revelation, all belonging to deaths that are not just self-regarding (as if the martyr were concerned only to preserve his or her personal purity) or instrumental (as if the deaths in resistance were completely dispensable once the evil had been averted) but somehow addressed to me in the form of a person-to-person communication, I encompass generically within the concept of “authority.” Now, the concept of authority<sup>5</sup> is in many respects as bewildering, as irreducibly complex and ramified, as the concept of sacrifice. Certainly, both concepts have given rise to competing theories—to various degrees descriptive and normative—whose merits or failings implicate the problem I am pursuing here. For present purposes, though, it must suffice to mark or sketch out an indefinite conceptual space where sacrifice and authority intersect.

I am particularly interested in the stature of texts that speak to us on behalf of the worthy dead, or embody the prestige of those who gave up their lives for worthy causes. Of course, any such stature is quite problematic. The worthy dead seldom, if ever, speak in their own voices—not from the precise standpoint of their ultimate sacrifice itself. We have abundant materials, such as soldiers’ diaries and letters, which express what was felt and what was intended in the face of horrible risk, suffering, and possible death. But even soldiers facing almost certain death on the eve of battle might hesitate to speak on behalf of the dead themselves. It is the sacrificed who have standing to communicate to us the effect or the meaning of their sacrifice for us: and their voices are stilled. But notable texts express, or function as if they express, the message of the worthy dead to the living. In some cases, as with Christian Scripture, such communication is central (so I will argue) to textual authority. In other cases, as with the American constitutional text generally, the authority of the text seemingly has nothing to do with acts of sacrifice. But perhaps the Reconstruction Amendments are exceptional in this respect. It is one purpose of this paper to ask whether they, and some of the civil rights acts enacted pursuant to them, have a special authority borrowed from the sacrifice of life in the Civil

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<sup>5</sup> See JOSEPH RAZ, *THE MORALITY OF FREEDOM* 23-109 (1986); Joseph Raz, *Authority, Law and Morality*, 68 *THE MONIST* 295 (1985); Joseph Raz, *Authority and Justification*, 14 *PHIL. & PUB. AFF.* 3 (1985); Steven Lukes, *Perspectives on Authority*, in *AUTHORITY REVISITED* 59 (J. Roland Pennock & John W. Chapman eds., 1987) (alternate title: *Nomos XXIX: Yearbook of the American Society for Political and Legal Philosophy*).

War (if the deaths there are properly to be understood as sacrifices).<sup>6</sup> Finally there are texts, of which Lincoln's *Gettysburg Address* is a very good example, which are not ordinarily thought to be "authorities" in any sense, but whose prestige or stature nonetheless owes a great deal to their work in realizing or communicating the change in the moral condition of the living that has been effected by worthy deaths. I will try to say a little about the claim such texts make on us on behalf of the dead.

I assume here that there is a set of minimum moral conditions that must be met, in the ends for which a war is fought and in the means by which it is fought, if worthy deaths in battle are to work a change, via sacrifice, in the moral state of the living. I refer here to the living generally—Lincoln at Gettysburg addressed himself to "the world" and to the people of "the nation," not specifically to the families grieving for their brothers, sons, or fathers slain in battle. Second, I assume that a fair distribution of the burdens of sacrifice is itself one element of the moral minimum applicable to war. But unlike a soldier who gives up his life for an evil cause, the soldier who had to bear a disproportionate share of the burden of sacrifice can still die the kind of worthy death that binds (too strong a word perhaps) the living. In fact, it would be unjust to these worthy dead twice over, first to make them bear an unfair share of the burden of sacrifice, and then to deny them the peculiar kind of respect that the living can pay to the dead by acknowledging how the dead have changed the moral condition of the living. The problem comes rather with voluntariness—with the question: in what way or to what extent must deaths in defense of principle or deaths in resistance to injustice be voluntary in order to count as sacrifices? I will have to leave that very important question largely unexplored here. Mingled together in the graves of Gettysburg are soldiers who faced the same risks as all the others but were unlucky; soldiers who embraced risk for a worthy cause and those who faced death because otherwise they would be thought cowards; those who led the charge and those who lagged behind. Lincoln does not distinguish among them, and I will follow him in this respect.

Recently, Paul Kahn has written thought-provoking work on an

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<sup>6</sup> Issues pitting the structural values of equality against those of federalism, or against individual property rights or freedom of association, where all the interests at stake are of constitutional magnitude, might be among those turning on whether the Reconstruction Amendments, and civil rights legislation enacted under their congressional enforcement provisions, have a special authority. Because the ground, nature, and weight of textual authority carry implications for norms of textual interpretation, the special stature of the Reconstruction Constitution may be expressed in an appreciation for its special meaning, an appreciation which in turn may color the meaning we find in other constitutional provisions. But I will not attempt here to work out how we would vindicate, or conform our judgments to, the special authority of the Reconstruction Constitution.

important aspect of the problem of fairness in the distribution of wartime burdens of sacrifice.<sup>7</sup> He has argued that a country can go to such lengths to reduce its risk of wartime casualties that the justice of war is undercut in two ways. First, the democratic deliberative process that is necessary for an informed choice to go to war cannot be relied upon if the public's interest is not aroused—which it is not if there are no real risks for the nation's fighters. "A political leadership that must justify in democratic debate a policy of sacrifice is likely to be disciplined by the force of public opinion."<sup>8</sup> Second, as in the air war in Kosovo, a decision to conduct a campaign that minimizes risks to one side fails to express and support the principle of human rights that the war is ostensibly fought to vindicate.

A willingness to sacrifice offers a form of moral assurance, an assurance that one is serious about the ends and willing to pursue those ends, within a single calculus in which the lives of Kosovars count at least on the same scale, if not exactly the same amount, as the lives of NATO troops.<sup>9</sup>

I must acknowledge the importance of claims such as these without being able in this paper to take a stand on them. Instead, I can only say that whatever conditions apply to the justice of warfare, including conditions that specify a fair or just distribution of sacrifice within a combatant nation, across combatants, or among soldiers and civilians, supply limits to the moral power of sacrifice to transform moral relations. My question here—the question of whether worthy deaths really share with ritual "sacrifice" the power to transform moral conditions of others—assumes that the deaths in question are worthy.

Though I do not address here the problems of proportionality or the calculus of risk in wartime, I find much to admire in Kahn's claims about the community-making power of sacrifice. Kahn says that "[w]hen we are willing to sacrifice on the field of battle, we actively remake the boundaries of communities. The expansion of the moral community of identification is at the foundation of justified intervention."<sup>10</sup> We agree that sacrifice builds communities of identification across borders. Where Kahn's interest is in community across national borders, mine is in community across the generations—or, put otherwise, a community of identification between the living and the dead.

In describing worthy deaths as sacrifices, I am acknowledging that these deaths yield a normative surplus in relation to me—a surplus

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<sup>7</sup> Paul W. Kahn, *War and Sacrifice in Kosovo*, 19 PHIL. & PUB. POL'Y 1 (1999), available at [http://www.publicpolicy.umd.edu/IPPP/spring\\_summer99/kosovo.htm](http://www.publicpolicy.umd.edu/IPPP/spring_summer99/kosovo.htm).

<sup>8</sup> *Id.* at 5.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 6.

above the moral weight of the principles themselves for which the sacrifice was made. This surplus in relation to me is the authority of sacrifice.<sup>11</sup> And when, as is almost always the case, the worthy deaths address me through the medium of a monument or memorial of some kind, in the voice not of the worthy dead themselves, but of some representative that fittingly embodies the whole ritual process that gives to sacrifice its articulate form, we must consider the authority of this medium or memorial, the authority of the text of sacrifice. If we begin with the question, "What claim have the worthy dead upon me," we soon enough find ourselves asking, "Who speaks for the worthy dead? How, or in what respects, is the text of sacrifice authorized to enfold me in the worth of lives yielded up for principles independently discernible (perhaps) as just and decent?"

## II. "FOR THE UNION DEAD"

Perhaps I may borrow the title of one of Robert Lowell's poems, "For the Union Dead,"<sup>12</sup> to present some ways in which the problem of sacrifice and textual authority arises. We cannot help but be in awe of the sheer immensity of death that was visited upon our country in the Civil War. The statistics are appalling in their own right—by any measure, this war was the bloodiest in our history. The quality of these deaths, their moral worth in relation to us, the living, in any generation, stands out even more prominently than their quantity. But how can such a claim be squared with the ghastly facts that strip warfare of its pretenses? In the Civil War, as in every war, hosts of bewildered, or angry, or homesick young men terrified one another and killed one another for reasons as many as there are stars in the sky—or even for no reason at all. In some way, though, the moral horizons of their mutual slaughter are defined not exclusively by the fragmented and urgent consciousness of the soldiers as they went to battle, but also and more prominently by memorial texts. The awe we feel for those slain on the

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<sup>11</sup> This moral surplus is constrained, as I have said, by the requirements that justice imposes on war. It is also constrained by whatever minimum value must be assigned to the worth of present freedom of deliberation, decision, and action. In this respect, the moral weight of yesterday's sacrifice is subject to much the same limitations as the moral weight of yesterday's entrenched constitutional norms. Finally, if worthy deaths count in the moral register by binding me with the authority of sacrifice, they may also count morally in a different, evidentiary way. Too many deaths on either side of a conflict may require me to revise my preliminary assessment of the worth of war aims in comparison with war costs. I am grateful to Eric Talley for pointing out to me that a complete moral accounting of worthy deaths must include adjustments made in light of martyrdom's strategic or manipulative deployment, and reappraisals of the levels of commitment which both sides bring to the conflict.

<sup>12</sup> ROBERT LOWELL, *For the Union Dead*, in *LIFE STUDIES AND FOR THE UNION DEAD* 70, 70-72 (1956).

Civil War battlefields is mediated by songs, speeches, and other texts. Each of us will have to decide whether on reflection this mediation is honorable or whether it improperly sentimentalizes or glorifies the costs and casualties of war.

If the awe we feel “for the Union dead” is specifically inflected with respect for worthy deaths as sacrifices, this is surely due in no small measure to Lincoln. Nearing the close of his *Second Inaugural Address*, he said—we said through him, I might almost put it—that in their mysterious and almost inexplicable depths, these sufferings might be offerings to God in atonement for the injustice of slavery.

Fondly do we hope—fervently do we pray—that this mighty scourge of war may speedily pass away. Yet, if God wills that it continue, until all the wealth piled by the bond-man’s two hundred and fifty years of unrequited toil shall be sunk, and until every drop of blood drawn with the lash, shall be paid by another drawn with the sword, as was said three thousand years ago, so still it must be said “the judgments of the Lord, are true and righteous altogether[.]”<sup>13</sup>

Lincoln’s larger argument in the speech, of which this speculation forms a part, is that if the Union prevails, the victors ought to abstain from acts of vengeance against the vanquished. The reason for this forbearance is that we humans are so limited in our knowledge (none foresaw the length and difficulty of the conflict or fully understood its causes), so prone to self-deception and rationalization (all appeal to the same Bible to justify their conduct), and so mutually implicated in sinfulness (including slavery, an institution predicated on denying at least one aspect of our status as sinners—our obligation to earn our bread by the sweat of our *own* faces, not that of others), that we lack standing to be vengeful. “[L]et us judge not that we be not judged.”<sup>14</sup> If the war is indeed a penance for complicity in injustice, and more fundamentally for prideful denial of the human condition, then the victors cannot indulge in vengeance without repeating the choices that must result in new rounds of penance and divine judgment. But it is to be hoped that atonement, the blood drawn with the sword that pays for the blood drawn by the lash, will break the cycle of judgment. The duty of the victors is to pursue what is right firmly, but with charity (love), and not malice.

The shedding of sacrificial blood changes the moral condition of the living by bringing us out from under the judgment of a righteous God. In fact, just an attitude of “as if” (we are to act as if the protracted and brutal war were a penance visited upon us all) better orients us to our moral situation, and disposes us to forgiveness and forbearance.

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<sup>13</sup> Abraham Lincoln, Second Inaugural Address (Mar. 4, 1865), in 8 THE COLLECTED WORKS OF ABRAHAM LINCOLN 332, 333 (Roy P. Basler ed., 1953) (quoting *Psalm* 19:9).

<sup>14</sup> *Id.* (quoting *Matthew* 7:1= *Luke* 6:37).

Lincoln here walks a fine line. If he asserts as indisputable fact that the war is indeed penance for sinfulness, he risks exceeding the very epistemic limits which he sets himself and which lay the foundation for his argument. So his posture instead is one of hope and prayer—and he limits his argument to the conditional form, “if God wills . . . so still it must be said.”<sup>15</sup>

Closing his address, Lincoln urges us to act “[w]ith malice toward none; with charity for all.”<sup>16</sup> He identifies, as an important part of this work, our obligation “to care for him who shall have borne the battle, and for his widow, and his orphan.”<sup>17</sup> It is worth noting that though the suffering and self-giving of the war dead, on behalf of (what is hoped to be) a just cause and the torn nation’s common good, create such an obligation in the survivors, this obligation is distinct from the transfiguring moral effect of sacrifice as laid out in the preceding argument. It is distinct in its moral basis—it sounds in justice rather than in the abatement of justice or judgment that is atonement. And it is distinct in its duration and effect. The obligation to care for the widows and orphans of the war dead will run its course over the years, but the “just and lasting peace” which the expiatory sacrifice makes possible will hopefully last forever. As Lincoln says at Gettysburg: “we here highly resolve that these dead shall not have died in vain—that this nation, under God, shall have a new birth of freedom—and that government of the people, by the people, for the people, shall not perish from the earth.”<sup>18</sup> Sacrifice that enables new birth and eternal life effects a permanent change in moral condition, not only short-term obligations of care for the soldiers and their families.

In comparing the *Gettysburg Address* to the *Second Inaugural*, we see more attention to the ritual or specifically sacralizing effect of sacrifice and less suggestion that the nature of the sacrifice is expiatory. Dedication of the war cemetery at Gettysburg, Lincoln did not speak in the idiom of penitence or substitutional atonement. But because the ritual occasion was provided by the dedication of a cemetery, Lincoln did speak (more explicitly than in the *Second Inaugural*) in terms of sacrifice as a consecration that changes the nation’s moral condition. It was a time to “dedicate,” “consecrate,” and “hallow” the ground in which the slain were to be buried or reburied. It turns out, unsurprisingly, that the worthy dead have already set aside this soil as sacred space; the upshot is that it is we the living who must be

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Abraham Lincoln, Address Delivered at the Dedication of the Cemetery at Gettysburg (Nov. 19, 1863), in 7 THE COLLECTED WORKS OF ABRAHAM LINCOLN, *supra* note 13, at 17, 23 [hereinafter Gettysburg Address] (final text).



sanctified, dedicated anew, recommitted. If the *Second Inaugural* stirs in us a respect owing to those who died for us in relation to two and a half centuries of historical injustice, the *Gettysburg Address* argues that the only form in which we truly honor these worthy dead is to be newly consecrated toward a future of greater justice, “a new birth of freedom.”

We act, then, always on two planes: for justice itself (and those wronged by injustice), and for the Union dead. Any such claim supposes that the deaths in battle are coherent enough to direct us in these ways. But this assumption can hardly be vindicated without recourse to the organizing and concentrating powers of memorial speech. “The world will little note, nor long remember what we say here, but it can never forget what they did here.”<sup>19</sup> But this is not how things have turned out, in the United States at least. Whatever “the world” remembers or forgets about Gettysburg, Americans recall Lincoln’s words even if we cannot recall, even if we never learned much about, what the soldiers actually did. It is much easier, of course, to “remember” a short speech than to “never forget” complex lines of action and planning, surprises and agonies, inflicted and endured over days of bloody battle. In fact, “remembering” a short speech has an operational meaning that lacks any counterpart in “never forgetting” the complexities of social action. For most of my life, I have been able to recite the *Gettysburg Address* out loud—by heart, to use that description, so appropriate in this case. In that sense I “remember” it, as do countless others who learned it as schoolchildren. But it is uncertain, to put it mildly, what acts I would need to perform, what beliefs I would need to hold, in order for me to be said to “remember” the action at Gettysburg.<sup>20</sup>

When it comes to being remembered, Lincoln’s speech has every advantage over the battles, the tactics, the historical context, the sheer suffering and death at Gettysburg. The short speech observes all of the unities that bloody combat lacks. The speech is given in a single voice, while the battle is given in many voices, most of them unrecorded, and many choices, either unrecorded or contested. But as if to compensate for its more facile immortality, the speech subordinates itself to social action. It is in the service of “those who here gave their lives that that nation might live”<sup>21</sup>—those who sacrificed. And it is also in the service of present social action and the renewal of commitment—

It is for us the living, rather, to be dedicated here to the unfinished work which they who fought here have thus far so nobly advanced. It is rather for us to be here dedicated to the great task remaining

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<sup>19</sup> *Id.*

<sup>20</sup> It is true, of course, that I can “never forget” that which I could never have “remembered” in the first place. But this is hardly Lincoln’s point.

<sup>21</sup> *Gettysburg Address*, *supra* note 18, at 23.

before us—that from these honored dead we take increased devotion to that cause for which they gave the last full measure of devotion . . . .<sup>22</sup>

The speech concludes by affirming the immortality, not of the deeds of the soldiers in memory, or of words that preserve or transmute that memory, but of the republican form of government that is the object and the treasure secured by the deeds and the words.

The prestige of the *Address* is largely attributable to its effectiveness in relating the sacrifice of the war dead—“those who here gave their lives that that nation might live”—to present claims upon our own lives and choices, all for the sake of a preserved and renewed republican government. In “remembering” what Lincoln said, we are “never forgetting” the sacrifice of the war dead in a peculiar sense—yielding to slayers and slain, through the text, the authority to bring us to resolution. We are moved from grateful acknowledgment to renewed commitment, from remembering “the last full measure of devotion” to asserting “that we here highly resolve,” with no hiatus other than the caesura that is Lincoln’s pause for breath. So quickly and immediately does Lincoln fill the gap that the span is hardly perceptible as such, yet the void to be spanned presents a difficulty: the very difficulty I am exploring here. Yes, the “proposition” to which we are “dedicated”—the principle of equal freedom, or “all men are created equal”<sup>23</sup>—condemns slavery as injustice, and requires of us new efforts of imagination and will toward ever greater and fuller actualization. But to every reason to act for equality and freedom, there is added a new reason to act for the Union dead. Their sacrifices require us to follow where they have led.

Forging these reasons in his speeches, Lincoln made skillful use of premises derived from Biblical theology. In the *Second Inaugural*, many of these premises stand as firmly on the ground of the Hebrew Bible as they do on specifically Christian foundations. But sometimes the argument from sacrifice is more narrowly and provocatively Christian. Hear the Union soldiers singing their hymn:

In the beauty of the lilies Christ was born across the sea,  
With a glory in His bosom that transfigures you and me;  
As He died to make men holy, let us die to make men free,  
While God is marching on.  
Glory! Glory! Hallelujah!  
Glory! Glory! Hallelujah!  
Glory! Glory! Hallelujah!  
His truth is marching on.<sup>24</sup>

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<sup>22</sup> *Id.*

<sup>23</sup> THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

<sup>24</sup> ACE COLLINS, STORIES BEHIND THE HYMNS THAT INSPIRE AMERICA 38-39 (2001)

In singing these lines, the soldiers position the meaning and worth of their self-sacrifice for freedom's sake within the memory and example of Christ's own sacrificial death (itself framed within the larger gospel story of his birth, transfiguring mission, and ultimate return in triumph).<sup>25</sup> "As He died to make men holy, let us die to make men free."<sup>26</sup> But how does Christ's death, or the purpose or effect of that death, authorize, enable (through the "glory . . . that transfigures"), or direct the soldiers to die for the freedom of others? Does the "as He died . . ." lyric offer not only confident analogy, but also persuasive reason?<sup>27</sup>

I will pursue these questions in the next Part of the paper. It must suffice now to notice what must be a transition or attenuation in the chain of sacrificial warrants. Suppose some theological account of Christ's identity, ministry, death, and resurrection, such that we Christians ought to imitate or follow Christ by yielding or offering up our lives for the sake of the freedom of others. Suppose, for example, that in so offering our lives we are following the great commandment, to love God and to love our neighbors as ourselves.<sup>28</sup> Such a principle of neighbor-love supplies to Christians an independent reason for self-sacrifice, much as principles of justice supply to all an independent reason to resist the injustice of slavery, even if such resistance exposes us to grave risks that we will lose our own lives. But what additional reason for such resistance, or for resistance to other unjust inequalities and oppressions in our time—what reason specifically for a resistance in which we say "let us die to make men free"—is supplied by beliefs and conduct of soldiers who went marching to their deaths singing *The Battle Hymn of the Republic*? Shall we say, "As they died to make people free from the oppression of slavery, let us die to make people free from structural racial injustice today?" And if we do say this, what has the second metaphor—the one in which we warrant that we are dying once again for the Union dead—to do with the first—in which the Union soldiers asserted Christ's sacrificial death as a warrant for their own? Must we disassociate ourselves from their warrant for sacrifice if we are to cede to their sacrifice—or to the texts through which their sacrifice addresses us—legitimate authority to direct our beliefs and choices today?<sup>29</sup>

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(reprinting the text of the *Battle Hymn of the Republic* by Julia Ward Howe).

<sup>25</sup> The hymn's iconography—the wine of wrath, the sounding trumpet, the acclamations of "hallelujah" to a god revealed in power and glory—are those of the *Book of Revelation*. See, e.g., *Revelation* 1:10, 14:10, 19:1, 19:6 (all Bible quotations and citations are from the Revised Standard Version unless otherwise stated).

<sup>26</sup> COLLINS, *supra* note 24, at 39.

<sup>27</sup> *Id.*

<sup>28</sup> *Matthew* 22:36-40.

<sup>29</sup> We might similarly interrogate Lincoln's expiatory warrant. Apart from the wrongness of

Such problems require for their solution some concept of what Rawls has called “public reason”<sup>30</sup>—some theory of what counts as a legitimate reason for public political choice about matters of fundamental justice within a liberal republic. Though I am unable to develop any such account here, the radically and centrally Christian-theological nature of the *Battle Hymn*’s metaphorical invitation to sacrifice deserves to be underscored. It is different in this respect from other theo-metaphors in politics, such as the assertion that “all men are created equal” or the invitation to emulate the Good Samaritan by treating the needy stranger as a neighbor.<sup>31</sup> The former can pass as a figurative way of referencing natural law, the latter as a familiar and innocent-enough figure for compassion. The proposition that Christ died to make us holy is much farther out of the theological closet, and its uses in political justification are comparably in need of searching examination.

It is not difficult, though, to find less challenging instances—arguments in which sacred prototypes for political sacrifice are just visible. I will close this Part with such an instance, supplied by the Reverend Al Sharpton’s recent speech at the Democratic National Convention. Sharpton’s speech is like the other texts considered so far, in that it is “for the Union dead”—though Sharpton admits more of the worthy dead to that honored company than Lincoln intended or foresaw. I close with it here, however, not because of this oratorical expansion, this desegregation if you will, of the national cemetery at Gettysburg, and not because Sharpton’s rhetoric softens the edges of theological warrants for political action. His speech deserves our attention rather because it goes precisely where, in my judgment, every construal of Civil War sacrifice ought to go: and that is to the authority and the meaning of the Reconstruction Amendments and of the civil rights legislation enacted pursuant to them.

The abolition of slavery and involuntary servitude, the prohibition against state action denying to any person the equal protection of the laws, the principle that the right to vote shall not be abridged on account of race—all are provisions that count as authorities in the American legal system. They are controlling directives—binding on lawmakers and, in the case of the Thirteenth Amendment, on all actors within the

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unequal freedom, do we have other good reasons to offer our lives to resist injustice? And do the Civil War deaths supply such a reason, if those deaths were offered in expiation of the political sin of slavery in the United States?

<sup>30</sup> John Rawls, *The Idea of Public Reason Revisited*, 64 U. CHI. L. REV. 765 (1997).

<sup>31</sup> THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776); President George W. Bush, First Inaugural Address (Jan. 20, 2001), available at <http://www.whitehouse.gov/news/print/inaugural-address.html> (“And I can pledge our nation to a goal: When we see that wounded traveler on the road to Jericho, we will not pass to the other side.”). President Bush here refers to the Parable of the Good Samaritan. *Luke* 10:25-37.

United States. There is a surplus of reasons why they enjoy this directive authority: they were adopted by the constitutionally-specified process of supermajoritarian consent or within an Ackermanian constitutional moment of comparably generative legitimacy;<sup>32</sup> the principles they articulate or on which they rest are revealed by suitable reflection as central and indispensable to republican self-government and to a just state; time has honored them, enfolding them within traditions of deference or accomplishment and buffing them to a fine patina of shining prestige. All of this is fair enough; all can equally be said of the First Amendment, or even of the Commerce Clause. But hundreds of thousands of Americans died in the Civil War that gave rise to the Reconstruction Amendments—and more were killed and brutalized by slavery itself, more during the abolitionist struggles, more fell to lynching and mob violence, more during the campaigns for civil rights and an end to Jim Crow, in an honor roll on which the last name has not yet been inscribed. Does their sacrifice lend additional authority (whatever that may mean) to authoritative constitutional texts?

Sharpton answered in the affirmative. Framing his argument as a reply to President Bush's appeals for votes from black voters, Sharpton recalled for his audience Fannie Lou Hamer and the struggle for voting rights in 1964 and 1965.<sup>33</sup> He went on to say:

The promise of America is that every citizen's vote is counted and protected, and election schemes do not decide the election.

It, to me, is a glaring contradiction that we would fight, and rightfully so, to get the right to vote for the people in the capital of Iraq in Baghdad, but still don't give the federal right to vote for the people in the capital of the United States, in Washington, D.C.

Mr. President, as I close, Mr. President, I heard you say Friday that you had questions for voters, particularly African-American voters. And you asked the question: Did the Democratic Party take us for granted? Well, I have raised questions. But let me answer your question. . . .

Mr. President, the reason we are fighting so hard, the reason we took Florida so seriously, is our right to vote wasn't gained because of our age. Our vote was soaked in the blood of martyrs, soaked in the blood of Goodman, Chaney, and Schwerner, soaked in the blood of four little girls in Birmingham.

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<sup>32</sup> Professor Ackerman identifies Reconstruction as one of three "constitutional moments" in American history—extraordinarily transformative seasons in which the basic principles of the republic are reconceived, and legal institutions made to rest on a new groundwork. 1 BRUCE ACKERMAN, *WE THE PEOPLE: FOUNDATIONS* 6, 21, 58 (1991).

<sup>33</sup> REPORTING CIVIL RIGHTS: PART TWO: AMERICAN JOURNALISM 1963-1973, at 99-106, 176-78 (courage and leadership of Fannie Lou Hamer in the movement to advance the political and civil rights of blacks in Mississippi) (Clayborne Carson et al. eds., 2003); *id.* at 110-11, 113-17, 197-229, 244-49 (movement for voting rights)

This vote is sacred to us.

This vote can't be bargained away.

This vote can't be given away.

Mr. President, in all due respect, Mr. President, read my lips: Our vote is not for sale.<sup>34</sup>

The argument, in short, is that the right to vote is special because so many people gave their lives for it. Sharpton stresses those killed in the twentieth century civil rights struggle, but he also, in parts of the speech I did not quote, looks back to slavery and reconstruction. He refers specifically to the Voting Rights Act of 1965 and to the Emancipation Proclamation, though not to the Fifteenth Amendment. If he had appealed to that Amendment or any of the Reconstruction Amendments, and said of them what he says of the right to vote itself (and of the Voting Rights Act)—that they are binding because they are “soaked in the blood of martyrs”—we would have a clear instance of the kind of claim about constitutional authority and sacrifice whose meaning and plausibility we are exploring here.

Now, Sharpton could have contented himself with saying that the right to vote is inalienable. He could have coupled this unspectacular claim with an interpretation of the right to vote that explains why

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<sup>34</sup> Reverend Al Sharpton, Address at the Democratic National Convention (July 28, 2004), available at <http://www.americanrhetoric.com/speeches/convention2004/alsharpton2004dnc.htm>; see also REPORTING CIVIL RIGHTS, *supra* note 33, 19-33 (deaths of Cynthia Wesley, Denise McNair, Carole Robertson, and Addie Mae Collins in the 1964 bombing of a black church in Birmingham); *id.* at 120-22, 157-75 (murder of civil rights workers Andrew Goodman, James Chaney, and Michael Schwerner). Compare Lyndon Johnson's 1963 speech before a joint session of Congress, urging passage of the civil rights bill in memory of President Kennedy who had been killed just weeks earlier:

First, no memorial oration or eulogy could more eloquently honor President Kennedy's memory than the earliest possible passage of the civil rights bill for which he fought so long. We have talked long enough in this country about equal rights. We have talked for one hundred years or more. It is time now to write the next chapter, and to write it in the books of law. . . .

So let us here highly resolve that John Fitzgerald Kennedy did not live—or die—in vain.”

President Lyndon B. Johnson, Address Before a Joint Session of the Congress (Nov. 27, 1963), in 1 PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES: LYNDON B. JOHNSON: 1963-64, at 8, 9-10 (1965). Note that in quoting the *Gettysburg Address*, Johnson is not trying to draw an analogy between the two slain Presidents, but is instead positioning us toward the slain Kennedy as Lincoln positions us toward the slain soldiers. Our own resolution in the present is named as the only fitting response to the call of the honored dead. This is the authority of sacrifice: as Johnson puts it, “John Kennedy's death commands what his life conveyed . . . .” *Id.* at 10. I am grateful to my colleague Mary Dudziak for calling my attention to Johnson's speech, and for pointing out to me that the obligating force of the martyrs' deaths invoked by Reverend Sharpton must differ from that of the soldiers' deaths invoked, e.g., by Lincoln. The young women killed in the Birmingham church bombing had not undertaken to risk their lives when they went to church that day. Whatever their subjective awareness may have been, though, there is a sense in which all Christians accept that bearing witness to their faith ultimately means offering to lay down their lives for others. See *infra* text accompanying note 45.

residents of the District of Columbia ought to be separately represented in Congress, why *Bush v. Gore*<sup>35</sup> was wrongly decided, why Florida should not put Ralph Nader's name on the ballot, and so on. And then he could have identified a set of shared interests that should lead black voters to vote for the Democratic and not the Republican candidate for President. As I understand what Sharpton actually said, however, he assumes all of this; rightly or wrongly, he takes it for granted. The burden of his argument is to show that there is an additional consideration, another warrant for the same conclusions. For those who resisted injustice have addressed us and "given testimony"—they are the martyrs, and they bind us by soaking the text in their blood.

I suspect that if a meaning for the *Battle Hymn* argument can be worked out—if we can figure out why, or in what sense, Christ's death and resurrection is a warrant for our own readiness to die for the freedom of others—it will actually support its own reading of the Reconstruction Amendments and civil rights acts. Love of neighbor as oneself yields, perhaps, a meaning of "equal protection" (for example) with implications that differ from those of the familiar options (the anti-discrimination principle and so on). But any such difference in meaning might be indebted, in part at least, to a distinctively Christian notion of sacrificial love. To explore this difference, and to investigate what difference it makes morally or politically that Christ and/or the Union dead have given their lives for us, it is useful to introduce a modest counterfactual.

### III. A MODEST COUNTERFACTUAL

Suppose we were to wake up one morning to newspaper headlines: "Revisionist Historians Deny War Deaths." "World War II GI Death Count: Zero." Reading the articles, we learn that close inspection of war records by teams of forensics experts and historians has proven unmistakably that not a single American soldier died in battle: not in Iraq, Vietnam, Korea, Iwo Jima, Germany, or France. Not a soldier fell at Bull Run or Chancellorsville. The Continental Army suffered no losses at Bunker Hill or Trenton.

In the face of these amazing discoveries, much would be different in the everyday lives of many Americans. Families would be stunned—the deaths of beloved fathers, sons, brothers in battle were just nightmare sorrows vanishing in the light of a new day. Government too would adjust to the newly found facts. Pension benefits would have to be recalibrated, medals of valor reinvestigated. But we would not think

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<sup>35</sup> 531 U.S. 98 (2000).

the Constitution less authoritative or change the ways we identify or rely on constitutional cases and authorities. And the Supreme Court would not bother to order reargument of cases awaiting decision—the Commerce Clause and the privilege against self-incrimination, for example, would be understood to have just the same meaning in this brave new world that they always had before, back when it was mistakenly thought that our system of government rested on repeated bloody sacrifices of life itself. We constitutional scholars too would continue on as if nothing had changed that could disturb the lines of academic engagement. Textualists would still pursue close readings; the hunt for original intentions would go on as before; Posner and Dworkin would not call a truce.

In reading the Reconstruction Amendments, we would not hear echoes of Lincoln's eulogy to the Union dead, or be bound by the soldiers' sacrifice to uphold the commitment—theirs? ours?—that the Union shall not die. But we might still be moved, if what lies back of constitutional texts has the power to move us. No longer hearing the (sacrificially mediated) voices of the battle-slain, would we then hear better, or not so well, the voices of the enslaved themselves—the voices of Dred and Harriet Scott, and their children, and of Margaret Morgan and her children?<sup>36</sup>

But now suppose that, reading further in this amazing edition of the newspaper (amazing but credible, because its every account is supported by the best weblogs and by CNN), we learn: "Jesus of Nazareth Died of Natural Causes." "Scientists Identify Jesus' Remains: Bone Scans Show Cancer Was Cause of Death." Reading these accounts, coming slowly to accept them—first with notional acceptance but then, however reluctantly and haltingly, with settled conviction—many of us who say we are Christians would be thrown into despair. The one whom we thought had died for us on the cross was never crucified; the one we thought had risen bodily from the dead experienced no such resurrection. What will we do next Sunday morning—surely we cannot any longer recite together the part of the Nicene Creed in which we say: "I believe in . . . one Lord Jesus Christ . . . who, for us men and for our salvation . . . was crucified also for us under Pontius Pilate; he suffered and was buried; and the third day he rose again, according to the Scriptures; and ascended into heaven."<sup>37</sup> Stung and disoriented, we find it even harder than usual to get the kids off to school and make the 7:30 train to work.

Life goes on. Endowed as we are with a seemingly endless

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<sup>36</sup> *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857); *Prigg v. Pennsylvania*, 41 U.S. (16 Pet.) 539 (1842).

<sup>37</sup> 2 THE CREEDS OF CHRISTENDOM 58-59 (Philip Schaff ed., Baker Books 6th ed. 1993) (1931).



capacity to reconcile our dissonant cognitive states, we continue on, much as before. On the playground, children talk about Jesus but also of video games; and in any event, the bell rings for class. Attendance at worship services in some congregations nosedives, while other churches experience historic rates of growth. In some hearts and minds, a conviction that God has entered history as a human person, a conviction that already describes itself as a “scandal,”<sup>38</sup> as “unto the Jews a stumblingblock, and unto the Greeks foolishness,”<sup>39</sup> has little difficulty rising to the challenge presented by new evidence. In for a penny, in for a pound—who needs factual or historical validation anyway?

But in spite of all this, the state of Christians in the face of the historical facts (unimpeachably confirmed) is despair. The Creed includes the description “under Pontius Pilate” precisely to insist that true God has become embodied in, and suffered crucifixion in, and been resurrected in, true human history. Unless the history is as stated, our faith as Christians—my Christian faith too—is in vain. Paul makes the point explicitly in his first letter to the Corinthians (the same text in which he proclaims the Christian faith as scandal and as foolishness).

Now I would remind you, brethren, in what terms I preached to you the gospel, which you received, in which you stand, by which you are saved, if you hold it fast—unless you believed in vain.

For I delivered to you as of first importance what I also received, that Christ died for our sins in accordance with the scriptures, that he was buried, that he was raised on the third day in accordance with the scriptures, and that he appeared to Cephas, then to the twelve. Then he appeared to more than five hundred brethren at one time . . . .

Now if Christ is preached as raised from the dead, how can some of you say that there is no resurrection of the dead? But if there is no resurrection of the dead, then Christ has not been raised; if Christ has not been raised, then our preaching is in vain and your faith is in vain. We are even found to be misrepresenting God, because we testified of God that he raised Christ, whom he did not raise if it is true that the dead are not raised. For if the dead are not raised, then Christ has not been raised. If Christ has not been raised, your faith is futile and you are still in your sins.<sup>40</sup>

The argument here is: Christians live by faith in the gospel, if that gospel is true. For Christians to live by faith, rather than exist in dread

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<sup>38</sup> Greek *skandalon* (offence, temptation to sin, stumbling-block). See 1 *Corinthians* 1:23 (King James Version).

<sup>39</sup> *Id.*; see also *Matthew* 18:7 (“Woe to the world for temptations to sin [*skandalōn*]! For it is necessary that temptations [*skandala*] come, but woe to the man by whom the temptation [*skandalon*] comes!”). This verse is quoted by Lincoln, and forms an important premise in the structure of his argument, in the *Second Inaugural Address*

<sup>40</sup> 1 *Corinthians* 15:1-6, 15:12-17.

of sin and death, we must stand in the faith—we must embrace it and it must embrace us. This requires the historical veracity of what is recorded in Scripture. But if what is recorded in Scripture is untrue, our faithfulness has no object and no objective support. If Christ was not crucified and was not then resurrected—Paul specifies the resurrection in history in just the same way that the creed specifies the crucifixion—we are still in our sins.

On Paul's account of the Christian faith, then, everything changes if Jesus died as our concededly true newspaper article reports—if he died of cancer and his bones linger on to tell their tale of mortality; if he was not crucified for us and was not raised on the third day. Our relation to the law changes, and our relation to sin and to death changes, if Jesus did not die for us and was not resurrected. But nothing changes in our constitutional law if no one ever died for us. Everything is surprising, and we need to relearn our history and rewrite the textbooks, but our fundamental law has not changed, nor has our relation to it changed.

#### IV. CONTRASTING AUTHORITY OF SCRIPTURE AND CONSTITUTION: A PROVISIONAL VIEW

What accounts for this striking contrast in constitutional and in Christian fate? Is the contrast even convincing—and what does it really amount to? To pursue these questions we must look into the authority of the Constitution and the authority of Scripture. The dual hypotheses tested by our counterfactual are: (1) if there is no sacrifice of life on behalf of the Constitution, its authority remains unchanged; but (2) if Jesus' sacrifice preached in the gospel never occurred in history, the authority of Scripture is fundamentally negated. Now we must look into the matter a little more closely.

Paradoxically, Paul's own text, which is canonical Scripture to us Christians (however Paul himself, or his audience, may have understood the status of his preaching and his letters), asserts truth conditions for the authority of Scripture itself. Only on the assumption that Paul's teaching is authoritative for Christians must we believe that we are still in our sins if the gospel narratives are false. Suppose now, that it must be conceded that Jesus was never crucified and that he did not rise from the dead. Then the flood of undeniable historical factuality has risen so far that the scriptures are submerged. The scriptures that foretell (what is done "in accordance with the scriptures")<sup>41</sup> and the scriptures that

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<sup>41</sup> 1 *Corinthians* 15:3-4 ("For I delivered to you as of first importance what I also received, that Christ died for our sins in accordance with the scriptures, that he was buried, that he was raised on the third day in accordance with the scriptures.").

narrate the culmination and actualization of all that has been foretold (the gospels, the preaching of the good news) have sunk beneath the waves of factuality, and all hope placed in them has been in vain. But Paul's own text still stands above the flood—does it not? He must have a place to stand, from which to teach us that this other faith has been overtaken by events and revealed as misrepresentation. True, if Jesus did not really appear to Cephas, and to the twelve, and to the five hundred, in all probability he never appeared to Paul either. And if he never appeared to Paul, did not call to him on the road to Damascus and make him a latter-day apostle, in whose name does Paul speak? Why should we listen to him? Yet Paul's argument supposes its own counterfactual validity. He is telling us, as one with authority, that we are in despair if Jesus did not die for us and was not raised from the dead for us. But what remains of his authority on those very premises?

The physician tells us that she knows what is making us sick; we are skeptical, but we let her subject us to a few tests and administer the first few treatments. Perhaps we are feeling better, perhaps not; and in any event, our feelings are at most indirect signs of the illness itself. Then the physician tells us that she has bad news: we are incurable; we are going to die and there is nothing to be done. Now we believe her completely; there is nothing tentative about it. Is there any sense in this? Why should we, who if the truth be told could never really accept the good news, be so quick to accept the bad news—and from just the same source?

If the paradox dissolves, it is only because in spite of everything in us that makes us want to accept the bad news, something in us continues to recognize truth in the words of hope. This is Paul's conviction in his first letter to the Corinthians—that faith, hope, and love are abiding realities in a life-world in which we are known by God but do not yet know as we are known.<sup>42</sup> These responses can only be understood, Paul says, as responses to real love shown to us. Ultimately we too are enabled to give up our lives on behalf of our faith, imitating and following Christ's love for us. The testimony to us that is Scripture is confirmed, continued, and correlated in the testimony from us that is martyrdom.

The Christian argument, then, runs in three steps. First, Jesus' sacrificial death for us is the content of Scripture; it is the love for us recorded there. "For God so loved the world that he gave his only Son, that whoever believes in him should not perish but have eternal life."<sup>43</sup> "In this is love, not that we loved God but that he loved us and sent his Son to be the expiation for our sins."<sup>44</sup> Second, it is in virtue of its

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<sup>42</sup> 1 *Corinthians* 13:1-13.

<sup>43</sup> *John* 3:16.

<sup>44</sup> 1 *John* 4:10.

proclamation of these saving events that Scripture is authoritative for Christians, in the life of our church as in our theological efforts. Third, the response appropriate to the content and authority of Scripture is to love as we are loved. The *Gospel of John* records these three steps, with emphasis upon the third, in the following account of Jesus' teaching. Jesus speaks here in full foreknowledge of his own impending betrayal, suffering and death. He is preparing his disciples for what will follow, and revealing the meaning of what must seem harsh and desolating.

As the Father has loved me, so have I loved you; abide in my love. If you keep my commandments, you will abide in my love, just as I have kept my Father's commandments and abide in his love. These things I have spoken to you, that my joy may be in you, and that your joy may be full.

This is my commandment, that you love one another as I have loved you. Greater love has no man than this, that a man lay down his life for his friends. You are my friends if you do what I command you. No longer do I call you servants, for the servant does not know what his master is doing; but I have called you friends, for all that I have heard from my Father I have made known to you. You did not choose me, but I chose you . . . . This I command you, to love one another.

If the world hates you, know that it has hated me before it hated you. . . . If they persecuted me, they will persecute you; if they kept my word, they will keep yours also. But all this they will do to you on my account . . . . But when the Counselor comes, whom I shall send to you from the Father, even the Spirit of truth, who proceeds from the Father, he will bear witness [*marturēsei*] to me; and you also are witnesses [*martureite*], because you have been with me from the beginning.<sup>45</sup>

To anyone who rests the authority of Scripture upon its record of the commands of God, this text offers a friendly amendment. Scripture not only records God's commandments, comprehended within the love command, but also reports (and through the Spirit, supports) a befriending of humankind by God. God not only commands love but enables a human response to this love by means of a loving sacrifice of life itself.<sup>46</sup> The human response enabled by self-sacrificing love is also self-sacrificing love. To be befriended by this saving love is to bear witness to it, and thus to be persecuted.

The authority of Scripture, then—what it means to say that “we stand in it,” that “we have received it,” that by it “we are saved if we

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<sup>45</sup> *John* 15:9-16, 17-18, 20-21, 26-27.

<sup>46</sup> *John* 3:16 (“For God so loved the world that he gave his only Son, that whoever believes in him should not perish but have eternal life.”).

hold it fast”<sup>47</sup>—consists in Scripture not only commanding but also enabling the faith and love that are from God. The death and resurrection of Jesus, just as much his teaching, are proclamatory—the “good news” reaches, befriends, and enables us to give testimony (martyrdom) ourselves. Our Christian who has read the morning paper, then, is confronted with “bad news” that undercuts the gospel. But what if our reader nonetheless remains able to be persecuted? What if our reader remains able to lay down life for his or her friends? Such a one can say: “In spite of everything, I will love the Lord my God, and my neighbor as myself; I will take the part of the despised and rejected; I will act as if God had died for me.” The moral worth of such a commitment is not in question; what is uncertain is whether the commitment is in any sense under authority, that is, undertaken in response to a directive that is binding upon belief and conduct.

Now let us set the two sets of newspaper articles side by side. One reports that the person who Christians thought had died for us did not do so—this is the “bad news” about Jesus that runs up against the “good news” that invites us (authorizes us?) to lay down our lives for our friends. The other article reports that the people who we thought had died for us did not do so; this is the “good news” about American soldiers in battle (they did not have to die for us after all!) that leaves everything unchanged. And high on the list of things left unchanged is that each of us may choose to lay down our lives for our friends in battle. We had always thought the principles of equal freedom and equal justice worth dying for. The premise that no one has yet died in battle defending the United States and its Constitution does nothing to shake the conviction that if the choice falls to us, we will put our lives at risk to defend principles for which (we think) our Constitution stands.

### CONCLUSION

Recently there has been much discussion of sacrifice—and calls for more of it. Dedication of the National World War II Memorial provided an occasion to remember the war dead and to reflect on the value of sacrifice—especially in connection with the ongoing “war against terror.” Many commentators, remembering the scale on which American soldiers suffered and died in World War II, the military draft that distributed war’s risks broadly, and policies such as tax increases and rationing that brought the burdens of war into everyday domestic life, noted obvious contrasts to the way in which the “war on terror” has been conducted thus far. John McCain stated that

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<sup>47</sup> Cf. 1 *Corinthians* 15:1-2.

“[t]hroughout our history, war has been a time of sacrifice. . . . But about the only sacrifice taking place [today] is that by the brave men and women fighting to defend and protect the liberties we hold so dear, and that of their families. It is time for others to step up and start sacrificing.”<sup>48</sup>

Robert Dole, who had worked to make the new war memorial possible, made the same point.<sup>49</sup>

Perhaps, as McCain and Dole imply, the worth of war is a function of the willingness to sacrifice, or of a wide or fair distribution of that willingness. Even if they are right about this—either in terms of war’s effectiveness in defeating the enemy or in terms of war’s place, if any, in building moral community—it must be added that no sacrifices (however defined) and no distribution of sacrifices can render war worthy if other conditions of justice are not satisfied. Still, my interest is less in the content of their invitation to “step up and start sacrificing” than in their prestige or stature as Vietnam and World War II veterans who suffered horribly for their country. More specifically, I am interested in why, or whether, such suffering authorizes the sufferer to direct or guide the beliefs and choices of the rest of us—guide us to join in sacrifice.

Dedication of the war memorial supplied an objective correlative to McCain’s and Dole’s personal narratives. Their personal authority as wounded survivors is amplified by, or absorbed into, the authority of the worthy dead. As these dead cannot give testimony themselves, other than through their great labor of dying, the living must speak for them just as the living must carry on what Lincoln at Gettysburg called their “unfinished work.” Through such speech, fixed into the marble and the soil of the war memorial or the cemetery, worthy deaths take effect as sacrifices that communicate with and alter the moral condition of the living. The text is an element of the ritual process and necessary to its logic and completion.

In his famous and peculiar interpretation of the *Akedah*, the Biblical account of the binding of Isaac, Kierkegaard insisted that Abraham could not speak. There was nothing he could say, because his act of faith lay outside the sphere of the ethical, which is the domain both of universalizable norms and of articulate speech.

Abraham cannot speak, for he cannot utter the word which explains all (that is, not so that it is intelligible) . . . . If the significance of his life consists in an outward act, then he has nothing to say, since all he says is essentially chatter whereby he only weakens the impression

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<sup>48</sup> Ronald Brownstein, *GOP Leaders Leaving Sacrifice for the Generations to Come*, L.A. TIMES, May 24, 2004, at A10 (first alteration in original).

<sup>49</sup> Johanna Neuman, *WWII Veterans Dole, McGovern Eye to Eye on War*, L.A. TIMES, May 29, 2004, at E1.

he makes, whereas the ceremonial of tragedy requires that he perform his task in silence, whether this consists in action or in suffering.<sup>50</sup>

The very name of the pseudonymous author of *Fear and Trembling*, Johannes de Silentio, further makes the point that the work of faith in and through sacrifice is essentially inarticulate. In our status as condemned for our ethical shortcomings, we are in the universal and can speak, but in the individual relation to God there is *ad extra* only silence. “In addition,” as my colleague Ed Santurri notes in his study of the logic of *Fear and Trembling*, “the third person observer brings no general principles away from his study of Abraham’s case. One cannot be edified by Abraham.”<sup>51</sup>

Kierkegaard (or de Silentio) has looked at the act of faith, the willingness to sacrifice, from the standpoint of Abraham—of the sacrificer. When we encounter the war dead, they are instead Isaacs—the ones brought to the altar. The whole principle of sacrifice, as I have understood it here, is that we are indeed edified by their service on our behalf. The authoritative texts of sacrifice truly are “chatter”—as Lincoln observed, “[t]he world will little note, nor long remember what we say here, but it can never forget what they did here.”<sup>52</sup> All speech is relativized by the worthy deaths, but the worthy deaths transfigure us, if at all, through speech.

Abraham was a “knight of infinite resignation” because he was ready to give up his beloved son of promise; but he was a “knight of faith”<sup>53</sup> because he knew that somehow through this yielding up, God would restore his son to him. The metaphor of the Battle Hymn teaches that this double movement holds good ethically in the resistance against injustice. As God gave his beloved son and received him again, so we will die to make men free. Though we die, freedom is born anew and the nation shall not perish. But we are not God, and we are not Abraham; nor can we find an individual relation to the absolute in our wars and in our acts of service to any state, including “the nation . . . under God.” But this too is edification—if we accept, as did Lincoln, that the worthy dead have brought us to humility.

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<sup>50</sup> SØREN KIERKEGAARD, *Fear and Trembling*, in *FEAR AND TREMBLING AND THE SICKNESS UNTO DEATH* 124-25 (Walter Lowrie trans., 1941).

<sup>51</sup> Edmund N. Santurri, *Kierkegaard's Fear and Trembling in Logical Perspective*, 5 J. RELIGIOUS ETHICS 225, 239 (1977).

<sup>52</sup> Gettysburg Address, *supra* note 18, at 23.

<sup>53</sup> Kierkegaard contrasts the “knight of infinite resignation” and the “knight of faith” in SØREN KIERKEGAARD, *Preliminary Expectoration*, in *FEAR AND TREMBLING AND THE SICKNESS UNTO DEATH*, *supra* note 50, at 38, 38-64.

