

Religious violence? The politics of a higher law

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The graphic killings, captured on video and posted for the world to see, are horrific enough—and they only begin to tell the tale. The insurgent force known as ISIS, ISIL, or, as it now demands, the Islamic State has slaughtered more than a thousand civilians and practiced ethnic cleansing on a massive scale. Leaders of the Islamic State have justified these acts as part of the process of establishing what they have declared to be a caliphate, a political entity governed by a successor of the Prophet and ordered by Islamic law. In the name of this higher law, the Islamic State has committed acts of violence that seem to know no limit.

From crusaders to colonizers to bombers of abortion clinics to revolutionaries of many kinds, people who declare their loyalty to a higher law have been responsible for terrible violence. To justify their actions, they may appeal to Christianity, Judaism, Islam, or other religious traditions or to traditions that are not usually identified as religious. What they share is a commitment to some code that stands above the established laws of the land.

This long history of violence has led many people to reject any kind of appeal to a higher law. Andrew Delbanco, a scholar of American literature and culture, criticizes what he calls the “abolitionist imagination” (in reference to some fervent 19th-century Americans’ effort to abolish slavery). “All holy wars,” he writes, “whether metaphoric or real, from left or from right, bespeak a zeal for combating sin, not tomorrow, not in due time, not, in Lincoln’s phrase, by putting it ‘in the course of ultimate extinction,’ but *now*.”

Delbanco recommends instead a posture of “articulate ambivalence,” which involves a little less conviction and a little more patience. He would turn our gaze from higher laws to the slow, difficult task of working with others to improve the laws that exist.

Delbanco assumes that a politics oriented toward a higher law is more likely to produce violence. This line of argument has intuitive appeal: it seems commonsensical that holding firmly to ultimate values is likely to lead to ultimate violence. And this can happen, as in the case of the Islamic State. But Delbanco ignores the ways that ambivalent, pragmatic, earthbound convictions can also lead to violence without limits.

Civil War general William Tecumseh Sherman, for instance, had nothing like an abolitionist imagination. He refused both the narrative that made war into a theater of glory and the invocation of higher laws that sustained that narrative. “War is cruelty,” he wrote to the mayor and city council of Atlanta in September 1864, “and you cannot refine it.”

When Sherman’s troops left Atlanta two months later, they burned much of the city on their way out of town. Winning the war, Sherman had come to believe, required the destruction of anything that could be used to support the enemy’s war effort. Whether these tactics met the threshold for “total war” or were, as Mark Grimsley argues, merely a form of “hard war,” they clearly went beyond established constraints on violence. But Sherman’s goal was not to make the South conform to a higher law but simply to win the war and enforce the rule of existing federal laws. It was ambivalent, this-worldly pragmatism that pushed violence to new levels.

This pattern of escalation exposes a fault line in Delbanco’s argument about the higher law and violence. Rejecting all talk of higher law does not necessarily prevent the emergence of something close to total war. Furthermore, when political processes refuse talk of higher laws, the prevailing laws and institutions can become insulated from a thoroughgoing critique. They can attain what the German critic Walter Benjamin called “mythic” qualities. They can begin to appear natural and necessary. The work of preserving these existing laws and institutions then assumes something like an ultimate importance, and this presumption of ultimate importance can justify even extreme violence so long as it is done by agents who are authorized by existing laws to preserve the order created by those laws.

Martin Luther King Jr. named these dynamics in his 1963 “Letter from Birmingham Jail.” King addressed the letter to moderate white religious leaders who displayed all the virtues of Delbanco’s articulate ambivalence.

As tensions rose in Birmingham, eight leaders of Protestant, Catholic, and Jewish communities in Alabama wrote a public letter they dubbed “A Call to Unity.” The authors of the letter were not fanatical segregationists. On the contrary, all eight of them had signed an earlier public letter condemning the extremism of Governor George Wallace. On April 12, 1963—Good Friday—they again called for moderation and the rule of law in a letter criticizing King and other leaders of the Birmingham civil rights campaign. Positioning themselves against the “extreme measures” of both Wallace and King, the white moderates expressed their sympathy for “the natural impatience of people who feel that their hopes are slow in being realized.” But they termed the demonstrations “unwise and untimely.” They counseled patience and respect for the laws of the land.

King, on the other hand, displayed an abolitionist imagination. Responding to the moderates’ call for law and order, he argued that working for justice might require breaking some earthly laws and accepting the penalty that came with such actions. Just laws deserved to be obeyed, but unjust laws had no authority.

“How does one determine when a law is just or unjust?” King asked. “A just law is a man-made code that squares with the moral law, or the law of God. An unjust law is a code that is out of harmony with the moral law.” Such laws, King wrote, citing Augustine, were “no laws at all.” Justice as defined by the higher law required immediate action. African Americans had already waited, King wrote, for more than 340 years. He called for justice in the very time frame that Delbanco says defines the abolitionist imagination: “not tomorrow, not next year, but *now*.”

King saw the need for a politics of the higher law. Appealing to a standard above the established law of the land has the power to break the hold of an unjust order on moral imaginations.

King’s definition of a just higher law could end up legitimating violence—if it was pried out of King’s larger gospel vision. As this example shows, what we need is not a ban on appeals to a higher law but the capacity for critical, theological conversations about the form of the higher law and its relation to earthly politics.

References to a higher law often regard it as the same kind of thing as positive, earthly law. That is, the higher law is frequently presented as a code involving obligations and prohibitions. These codes are phrased in the imperative mood; they are commands. And these commands offer mythical legitimation for violence. For if the higher law is something like the perfection of public policy, and if fulfillment of the law is earthly conformity to this heavenly rule, then believers in the higher law can understand themselves as called to violent action to establish this state of affairs. The logic of code is the logic of theocratic violence.

Christian ethics is steadily tempted by such theocratic logic. When Christian ethics sees its task as discerning God's code for ordering the world, devising a set of policies that approximates that code, and figuring out ways to realize and enforce them, a theocratic logic is at work.

This logic sits uneasily with commitments to democratic process. It also sits uneasily with commitments to a pluralist society that involves people who would resist the implementation of the divinely sanctioned code. Both of these commitments require amendments to the theocratic impulse.

One strategy for managing the violent potential of the higher law joins great confidence about the ability to know the higher law with a principled refusal to do violence for the sake of fulfilling that law. This strategy informs much of contemporary Christian ethics, which often joins theocratic logic to something like a rider clause forswearing violent action outside the law.

But this strategy still assumes that the higher law takes the form of a code that requires some kind of violence for its fulfillment. It typically assigns that violence to the state. Even if it would limit violence in wars abroad and criticize excessive violence in enforcing policies at home, this ethics still presumes a necessary role for state violence in establishing and maintaining justice. And it is just that notion of "necessity" that opens the door to mythic justifications of violence.

When the higher law is reduced to a code, we are left with a choice between a higher law that legitimates variations on holy war, on the one hand, and on the other, a flat, immanent pragmatism that legitimates a stealthier form of mythic violence.

The poverty of these choices reveals the real cost of secularization: not the declining numbers of members of religious institutions but the constriction of the imagination,

the reduction of beatific visions to policy proposals, the loss of the ability to think of a higher law as anything but a better code.

I want to take seriously the danger of violence in the name of a higher law. But the answer to that problem is neither to refuse all talk of higher law nor to write a code with better content. What is needed is a better and deeper understanding of the higher law.

This better and deeper version of the higher law is marked by four qualities: an *indicative* mood that serves to *negate* absolute obligations in this age in ways that invite a *free response* in history that is *permeated by the presence of God*. I will focus here on the first two qualities.

Understanding justice as an *indicative* rather than an imperative detaches the higher law from its alliance with violence. An imperative usually calls for enforcement. An indicative, on the other hand, just is. An indicative higher law would require no more enforcement than the law of gravity. A higher law in the indicative mood would still give a picture of justice, a vision of relationships in the New Jerusalem, but it would not demand that we take action to establish that city.

Just so, Jesus does not give people a plan for bringing in the reign of God but announces that the reign is at hand. Mary does not return from the tomb waving a list of things to do but proclaiming that Christ is risen. Paul writes that God was in Christ, reconciling the world to Godself, naming the indicative quality of a past event that continues into the present. The great creeds of the church are entirely in the indicative.

We can, of course, fashion imperatives from these indicatives. But they are derivative and constructed. The higher law, the new commandment, is not first of all a code we are called to enforce.

The indicative of the gospel relates to the world as negation. It shatters the structures of obligation of earthly laws not by proposing better content for those laws but by declaring a fulfillment in Jesus Christ that undoes the absolute quality of the whole category of earthly law. The proclamation that the reign of God is at hand does not bring with it a new set of imperatives, for such imperatives would betray the gift they announce. The proclamation of the reign of God instead relativizes the full spectrum of this-worldly obligations. Because God's reign is at hand, obligations to Caesar, to families, and even to one's own life lose the sheen of absoluteness.

And because the sign of the reign is the cross, new obligations do not arise to fill the gaps left by the old. On the cross Jesus does not squeeze himself into Caesar's throne. He does not offer a new and improved edition of Roman law. The indicative of the higher law breaks the absoluteness of every earthly imperative without establishing a new one in its place.

Because the reign of God is always already among us, like a seed growing secretly, this dynamic is always at work. But sometimes it becomes more visible to us, as it did in the mass civil rights demonstrations in Birmingham. They shattered the facade of legitimacy that sustained the laws on the books of the city as policed by Bull Connor. The words of King and other leaders made the case. And those words were sealed by the testimonies of thousands of people willing to defy unjust laws, even in the face of dogs, truncheons, water hoses, imprisonment, and worse. Their actions made plain the indicative statement that was already true: the laws on the books of Birmingham were no laws at all. And the use of force to sustain those laws was mob violence in uniform.

The shattering of that old order makes possible a different kind of politics—but it does not determine the form those politics must take. King's letter from Birmingham jail, like the actions of the protesters, did make positive claims about the nature of God's justice. But if we read those claims about justice as divine legitimation for a new code, we perpetuate the old pattern by which revolutions devour their own children.

We should rather see these claims as destroying the legitimacy of one order and opening up space for the free pursuit of a different kind of life. This freedom has direction: it is for politics that are not bound to the project of sustaining racial hierarchy. But it is still a freedom to create a life together and not merely a command to bring the world into conformity with a code, even if that code is just. It therefore locates temporal authority and responsibility in human choices. It does not pretend to offer divine sanction for violence.

This vision of the higher law makes possible a messianic politics that is an inversion of theocratic politics. For theocratic movements, politics are prior to the fulfillment of a higher law. They seek to make the world what a divinely given code says it should be. Politics—with words or weapons—is the means to make the world correspond to the standard set by the code. When that correspondence has been achieved, politics comes to an end.

If, on the other hand, the higher law is an indicative that has already been fulfilled, then these patterns are reversed. The fulfillment of the law precedes politics. Fulfillment undoes the need for violence. But it makes possible new kinds of collective deliberation about the nature of a free and faithful response.

The richest forms of political life are possible only when people are free to do more than conform their societies to preexisting codes, whether those codes claim to be set by earthly or divine powers. Because people are born into a world already ordered by codes of many kinds, some kind of emancipation is necessary for political life to begin. If talk of “divine violence” makes any sense at all, it is only to describe this shattering of the mythical pretensions of earthly orders. And, as Jesus and King saw, such shattering does not require the shedding of blood.

This account of a politics of the higher law suggests some ways that Christians might make sense of the Islamic State. Christians have no reason to join those who criticize the Islamic State simply for mixing theology and politics. Christians too believe that God has relevance for how humans order our lives together.

Moreover, banning theological reasoning from politics contributes to the conditions in which the secular state can become absolute in itself. Ironically, it takes a dose of political theology to preserve the secularity of the secular.

The question is not whether theology should shape politics, but how. The theology I have sketched here would not denounce the Islamic State for looking to a higher law. It would argue instead with the Islamic State’s interpretation of Shari’a as a code that could and should be imposed by violence. It would seek out Muslim allies who think of Shari’a in other ways. And it would not propose some rival Christian, secular, or cosmopolitan code that should be imposed instead of Shari’a but in the same way that the Islamic State imagines. For even if the content of that code stressed democracy, human rights, and peaceful coexistence, regarding the code as a divinely sanctioned imperative would authorize ideological escalations of violence—as we saw in the administration of George W. Bush.

A better understanding of the higher law would reveal the violence of the Islamic State to be fitful and fruitless, a real but not ultimate threat. It would break the spellbinding quality of the Islamic State’s terror, refusing the sleight of hand by which it becomes an evil so evil that it justifies limitless violence in response. It would reject both the fantasy that violence can create a final peace and the

destructive, reciprocal violence of an eye for an eye. It would make different kinds of responses possible, including nonresistance, nonviolent resistance, and even limited violence in defense of life. And it would remind Christians that the event that most demands a response from us is not the rise of a terrorist movement but the fulfillment of the law in Jesus Christ.

Such fulfillment does not prescribe the content of every faithful response. It does not become a new code, not even in the purified form of a principled pacifism or the chastened form of a realist ethics. Instead, its breaking of the spell of terror creates freedom for a range of responses—and for collaboration in and dialogue about them with Muslims, Jews, secularists, and other members of a plural society. The messianic fulfillment of law is the beginning of politics.

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