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**George P. Fletcher: Romantics at War**

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## War's Appeal

Sometime they'll give a war and nobody will come.

— *Carl Sandburg*

When the first plane hit, we thought it was an accident. We did not anticipate an attack. We could not even muster fighter planes fast enough to protect the second World Trade Center tower or the Pentagon. If the passengers on the fourth hijacked jet had not been courageous, we might have suffered even more serious harm in Washington, D.C. But not only our military was caught by surprise. Our minds were also asleep.

We had received all the clues necessary to know that we were in danger. Islamic fundamentalist terrorists had already tried to blow up the World Trade Center. Al Qaeda had attacked the battleship *USS Cole* and the American embassy in Nairobi. We were put on notice that a dramatic attack was in the offing: We ignored it.

Experts rarely know what is going to happen tomorrow. The sovietologists did not foresee the collapse of the Communist empire in 1989. The market watchers—with few exceptions—did not expect the NASDAQ crash that hit investors in March 2000. September 11 was no more visible to the eye than these other world-shaking events.

But I am less concerned with the ability of military experts to



predict specific events than with our general ability to think clearly about the aftermath, about the life-and-death questions that have tormented us since we sat stunned in front of our television sets. We may have been unprepared for that morning, but there is no reason to muddle the meaning of that event and to accept our military and legal responses without serious reflection. We must ask ourselves how we justify our use of force to the rest of the world and, more importantly, to ourselves. Is this war? Are we engaged in self-defense, in the pursuit of justice, in establishing a “new world order?” Who is the enemy? These are not easy questions.

I write in an effort to bring some clarity to these issues. This is a book about going to war, about war’s appeal to us and to our enemy, about honor, about crimes that are committed in the name of war, and about the guilt of those who collectively commit crimes. In the face of a military attack, we all see our lives and our futures on the line. Without a firm understanding of the military actions taken in our name, we cannot be at ease; we cannot allow others to risk their lives and allow our opponents to die without knowing why.

Let us think first about the language we use. One word is on everybody’s lips — terrorism — but what does it mean? The concept eludes easy definition. Were the American revolutionaries not terrorists? Did they not fight without wearing uniforms? Did they not conduct unorthodox raids against English regulars marching in uniform? Were we engaged in an act of terror when we dropped the atomic bomb on Hiroshima? There are too many questions and too few easy answers.

We know that terrorism is about violence. But there is good violence and bad violence. Is every violent crime an act of terror? Hardly. It is not clear, when we use the word today, whether we mean to refer to haphazard violence — something like the terror that descended on the French with Robespierre and the guillotine — or we mean to talk about terror as an instrument of national policy, with clear objectives of intimidating and manipulating civilian populations. Dropping the A-bomb in Japan was not

haphazard, but it may have had the purpose of scaring the public into a posture of surrender. It is not clear whether the use of violence is worse when it is helter-skelter (à la Charles Manson) or when its purpose is to intimidate.

Fighting terrorism is not like going to war against Germany or Japan. We knew what Germany was, where it was. Not only do we not know where the terrorists are; we would not know them if we saw them. We are fighting with the most modern instruments, but we are flying in the dark.

### War and Justice

If the use of the word “terrorist” is problematic, what about “war”? We have been in a state of armed conflict with Al Qaeda and the Taliban in Afghanistan, but does this conflict amount to a “war”? Not every shootout at the OK Corral qualifies. Perhaps the United States is just acting like the sheriff bringing the culprits to justice. From the very beginning, President George W. Bush and his administration used the language of both war and justice—as though these two ways of thinking about violence were compatible. Bush has said repeatedly that the attack was “an act of war.” That makes it sound like Pearl Harbor. Yet the early mantra of the war was: “We have to bring them to justice.” That makes it sound like the prosecution of Timothy McVeigh.

War and justice are radically different ideas. War is about pursuing and protecting our national interests—in this case, the security of our own territory. We have the right to go to war without having any cause greater than survival. So why do we hear so much talk about justice?

The Pentagon initially labeled the military campaign “Infinite Justice,” and from the beginning of the military campaign the focus was on Osama bin Laden as the master criminal, the ring-leader of the whole operation. The bombing of Afghanistan—and the relentless search of the caves in Tora Bora—had the style of an episode in the hit television series *Law and Order*. Are

we serious? Is bombing a foreign country merely a case of doing justice by more violent means? If so, it is justice by violent reprisal.

Justice is about giving every person his or her due, about restoring moral order in the universe. Seeking to correct the balance leads to thinking about the interests of victims and the importance of reintegrating them into society. The government must prosecute criminals in order to do justice for the victims. The Latin Americans have bequeathed to the international community the term *impunidad* (impunity) to capture the particular corruption of governments that fail to prosecute. Abandoned victims, it is argued, suffer twice: first from the crime, and second from the failure of others to express solidarity with them by hunting down the culprits and punishing them.

The search for justice leads to the moral equation of an “eye for an eye” — the biblical principle of comparing the numbers of victims who have suffered with the number of offenders to be punished. If we lost three thousand people in the collapse of the World Trade Center, the theory goes, those responsible for the attacks should also lose three thousand lives.

Justifying war demands less of our moral sensitivities. Abraham Lincoln insisted on war against the eleven rebellious states not because the Union was a righteous cause but simply because it *existed*. The logic was simple: The Union was and it must be. As president he was committed to preserving the United States as a single nation. This was not a cause of rectitude but of survival. Later in the war, with the Proclamation of January 1, 1863, which liberated the slaves still under the control of the Confederacy, the “great emancipator” began to think of the Civil War as a moral cause. But even emancipation had a military purpose: the slaves so liberated would rise up as a fifth column and fight their former overlords. Other wars of national unity, fought at roughly the same time in Germany and slightly later in Italy, made no claim to being causes of justice at all. These were wars fought to realize the needs of the nation. The yearning of the culture to consoli-

date under a single government was all that was required to go to war. Lincoln was clear about the difference between a pragmatic war to preserve the Union and a moral war to abolish slavery. Would that we were so clear today.

To make an arrest, the police are not entitled to send in B-52s and target population centers just to eliminate the offender's base of operations. European police will not even enter a foreign country, except in "hot pursuit" — on the trail of a fleeing suspect. The claim that the United States is the sheriff of the world, entitled to use its armies as a means of law enforcement, verges on megalomania.

If this is justice, then we should be focused on the individual culprits. If this is war, then individuals are beside the point. No one cared about the Japanese pilots who returned safely from the attack on Pearl Harbor. They were not criminals but rather agents of an enemy power. They were not personally "guilty" for the attack, nor were their commanders, who acted in the name of the Japanese nation. The same principle arguably applies to the minions of the organized terrorist movement. They follow orders within the chain of command, even though in this case their sponsors and organizers may be as diffuse as the World Wide Web.

The worst part of the conceptual morass attendant on the war in Afghanistan is the accompanying silence on the issues that matter. The bombing was well managed but the arguments of justification are treated at best as disposable rhetoric. Words may not be laser-directed missiles but they have an explosive power of their own. Describing the conflict as war or justice lays a verbal mine that could be a treacherous obstacle in the future.

In Afghanistan the future came fast. A few months after the bombing began, the United States military forces began capturing enemy fighters, whom they shipped back to the Guantánamo Bay base in Cuba. Once again the Bush administration refused to choose between justice and war. Yet at this phase of the war it was not *both*; it was *neither*. Not war, not justice. Had it been

war, the military would have been obligated to treat the detainees as prisoners of war and accord them the protections of the Geneva conventions. The camp conditions were probably not sub-standard, but the military insisted on interrogating the detainees, and this was not likely to be successful with prisoners recognized as POWs. Under international treaty provisions, prisoners of war are required to disclose only their name, rank, and serial number.

If this is not war but the pursuit of justice — a criminal prosecution — the provisions of the Bill of Rights bearing on a fair trial should apply in Guantánamo as they do in the United States; some experts argue to the contrary, but there is little law on the subject. If the Fifth and Sixth Amendments apply to the detainees, then as detainees they are entitled to representation by counsel. Either way, the interrogations would have been practically impossible. Thus the Bush administration began in late September 2001 by being committed to both military principles and the criteria of justice, and by the beginning of 2002, it appeared devoted to neither. (Eventually the government conceded that the Geneva Conventions applied to the Taliban but not to Al Qaeda. Still, it refused to draw the necessary conclusion and treat Taliban fighters as POWs.)

This conceptual confusion creates a dangerous situation, one that will not be resolved without considerable intellectual battle. We need to rethink the basic concepts of our jurisprudence of war and assess which of these concepts can survive and apply in a world beset with nontraditional threats from agents we call “terrorists.”

The conflict in Afghanistan was certainly an “international armed conflict.” And perhaps that is all that is required to say that it is a war. Some international lawyers object to calling it a war because Al Qaeda is not an organized state recognized by other states. But this form of legal recognition was discarded a long time ago as a requirement of war. The Civil War was a war in the fullest sense even though no one recognized the Confederacy as a state. After the Battle of Bull Run, the Union and Confederate armies exchanged prisoners. Recognition of these recip-

rocal duties has made war respectable in the history of international armed conflict. War is supposed to be civilized behavior. That is why we have the Hague and the Geneva Conventions laying down the basic rights and duties of all nations at war.

Captured “terrorists” frequently want to be treated as POWs. It is a coveted status. It confers legitimacy and ensures that the detention cannot last longer than the war itself. When hostilities cease they are entitled to go home. Timothy McVeigh wanted to be treated as a POW, but he was not taken seriously. The captured Palestinian fighters in Israel also claim that they are entitled to POW status, but the Israeli government insists on treating them as criminals subject to prosecution for their crimes. At the same time, the Israeli military targets suspected terrorists for assassination, a justified procedure if this is an armed conflict between two combative states. Everyone—governments and rebels alike—wants to have it both ways. It is no wonder that we are in a conceptual morass.

There is much to be said for recognizing the battle against the elusive enemy of terrorists as a “war.” For many, this word breeds fear; it sounds too bellicose and dangerous. “Justice” sounds like a more humanitarian objective. But this is an illusion based on a misconception of the nature of war. In an international armed conflict we pursue particular policy objectives that can be achieved only by employing the lamentable means of destruction and death. It is bad enough to think of war as politics by other means. But to think of war as justice by other means runs the risk of imitating the holy mission of the enemy. Suppose the terrorists of September 11 credibly pledged never to attack again. Would we have any justification for harming a single soul? Yes—as punishment in the pursuit of justice. No—as action in pursuit of our military interests. Yes—for the sake of the victims. No—if the objective is safeguarding our security. This shows that the aims of war can be more merciful than the imperatives of seeking moral order.

Those now stuck in the idiom of justice argue that if the United States has killed more civilians in Afghanistan than the civilian losses it suffered on September 11, then the war cannot be justi-



fied. This argument is just as misleading as demanding an eye for an eye for every American lost. A war of self-defense does not seek to right the moral equation. It responds rather to fear. It seeks not revenge but safety. The purpose of neutralizing and disabling the enemy is solely to prevent future attacks and to restore the conditions of peacetime commerce.

A whole set of interconnected ideas beg for clarification. We want to know what a terrorist is, what war is, and what kind of groups can enter into war. These elusive concepts will continue to nag at us. I will attempt to make some sense of these ideas and provide some verbal tools for thinking clearly about American policies in the wake of September 11, but I cannot promise too much. We must live with a certain ambiguity.

To put our quandaries in an historical context, I shall argue that those sympathetic to war in our time are heirs to the Romantic tradition. We are the children of William Wordsworth's and Johann Gottlieb Fichte's ardor in resisting Napoleon. We think and feel in the moral currents still surging from John Brown's attack on Harpers Ferry and from Abraham Lincoln's conceiving of the United States as a single "nation under God" that must "long endure." We have come to think of our nation as an actor in a drama of good and evil—of the forces of freedom pitted against an "Axis of Evil."

The revival of Romantic sensibilities in the United States challenges the prevailing liberal orthodoxy in our liberal arts colleges, in the law schools, in the courts, and in the media. Liberal principles, drawn from Aristotle and Kant, support the commitment to abstract justice—an idea that should prevail in our courts but arguably should have only an incidental role in our foreign policy. In the age of terrorism we are torn between our Romantic and liberal selves, and this explains why we fluctuate in our thinking about war and justice.

The Romantic sensibility carries implications for the issues of our time. The flames and fears of war lead us to neglect constitutional principles in contemplating trials of our opponents. We are confused about issues of loyalty and the problem of treason against the na-

tion. The open recognition of our Romantic sentiments will enable us to understand, I argue, our perception of collective action in the commission of war crimes and genocide. It accounts for our inclinations to think of groups and nations as guilty for their crimes. The notion of collective guilt—long an anathema of liberals—becomes plausible in the Romantic perspective on collective action.

As the argument develops we will see that there is no reason to treat collective guilt, as do many liberals, as the expression of a primitive morality. There is another side to the story—a humanistic interpretation that leads to the mitigation of punishment in cases like those of Adolf Eichmann and Slobodan Milosevic. And yet within the Romantic tradition, there lies a great danger. If we take this alternative vision too seriously we encounter problems signaled by the words “national character,” “original sin,” and “authenticity,” and ultimately the problem of enforcing a moral order against those who, in full Romantic flowering, sincerely and violently act out their aberrant hatreds.

We are engaged, therefore, in a quest to reach a deeper understanding of our conflicted selves, of grasping how we are simultaneously drawn and repelled by war, how we believe passionately that the government is doing the right thing to the point that we implicitly subscribe to emergency maneuvers that are arguably in violation of the Constitution. We are undertaking a quest to understand a set of problems—the nature of war, honor, crime, and justice—in brief, the problems of glory and guilt in the age of terrorism. At the foundation of the inquiry, however, lies a pursuit for self-understanding, for grasping our existential condition in a time in which we seek, in Yeats’s words, to avoid “anarchy . . . loosed upon the world” and to hold the center when “the worst are full of passionate intensity.”

## Rediscovering the Appeal of War

We thought the age of war was behind us.

After nuking Hiroshima, after napalming Vietnam, we had only

distaste for the idea and the practice of war. As the twentieth century drew to a close we could think that it was the end of history—at least the history of wars that could change the map of civilization. After the collapse of the Soviet Union, wars seemed not only unnecessary but repulsive. The thought of dying for a noble cause, the pursuit of honor in the name of *patria*, brotherhood in arms—none of this appealed to us anymore. The disdain for war has accumulated slowly since the end of World War II. “I hate war and so does Eleanor,” opined FDR in the oft-repeated lyrics of Pete Seeger. In the 1960s Tom Lehrer caught the mood of the war-weary. “We only want the world to know / That we support the status quo. . . . / So when in doubt, / Send the Marines!” War had become taboo—or at least, so we might have thought.

A shift in our attitudes toward war became evident even before September 11. If the post–World War II and Vietnam eras found expression in films like *Dr. Strangelove* and *Apocalypse Now*, the new spirit of patriotism became visible in Steven Spielberg’s film *Saving Private Ryan* and in Tom Brokaw’s bestseller *The Greatest Generation*. Slightly more than fifty years after the event, the invasion of Normandy became a focal point of nostalgia and renewed interest in the lives of heroes bound together in the brotherhood of battle. Consider that Joseph Ellis, best-selling historian and professor at Mount Holyoke College, made up stories of his heroic military adventures to please his students. It would have been unthinkable for a professor circa 1970 or 1980 to think that he could impress a university audience by pretending to have fought against the Vietcong. The post–September 11 call to arms came when many Americans were yearning to believe, once again, that our highest calling lay in going to war for freedom and the American way.

On September 10 I was attracted to publicity for a new series on HBO—*Band of Brothers*—based on Stephen Ambrose’s novel of the same name. In the immediate aftermath of the attack, Hollywood speculated that no one would want to be reminded of

war and death on the silver screen. Family comedies were to become standard fare. But marketing experts are no more reliable than the experts who feared the military might of the Soviet Union or who predicted an ever-rising Dow Jones. It turned out that some of the most prominent films of 2001 relied upon themes of honor and glorified combat. *Lord of the Rings*—nominated for an Academy Award as the best picture of the year—invokes all the themes of honor and glory in combat that we thought had become passé in our political culture. As projected onto the hobbits and their mythological world, these themes could speak to the American public longing for orientation in a time of danger. Writing in the *New York Times*, Stephen Holden noted this theme in the leading films of 2001, in production well before September 11, and asked: “What is it about films that lends them such an eerie (if vague) predictive quality?”

Whatever happened on September 11, it happened to us. And being there, we bring with us our urges for romantic adventure, our yearning for national honor, our willingness to expose ourselves to risk and to conquer the dangers by using force. For many, “patriotic” became the word that fit the new mood of pride and resistance. In that period of fifty years when we thought that “right-thinking people” had nothing but contempt for war, we—and particularly we members of the chattering class who fill the media, blanket the air waves, and teach the young—also rejected the mind-set that makes war attractive. Honor and patriotism took on negative connotations. They were the symbols of a macho culture better left behind. We also had disdain for the Romantic view of the world that tends to glorify the nation and war as an expression of patriotism. But now perhaps we can begin to recognize that our national honor matters to us and that there is no sin in being patriotic about the United States and its leadership in the world. It may be time as well to recognize the appeal of Romanticism as a factor that inspires both patriotism and a willingness to go to war for the sake of national interests.

How do we explain the revival of Romantic sensibilities in our

time? Young Americans want to prove that they too can qualify as among the “greatest generations.” The fear of war has dissipated. The contempt for military incompetence is forgotten. As a symbol of the fighting forces, Secretary of Defense Donald Rumsfeld shows himself to have true grit in his CNN briefings. There is even some Romantic regard for the exotic fighters in the kaffiyeh and flowing robes of Al Qaeda. In ambivalent identification with the aggressor, professorial and student panels meet to ponder why “they” hate us so much. “What have we done wrong?” they ponder in the inevitable distortion of blaming the victim. A young American named John Walker Lindh goes to fight for the Taliban and he is captured. Some clamor for his immediate execution. Others, including top officials in Washington, see him as one of us who went astray in his search for authenticity and religious truth.

Romantic sensibilities are at large again. The feelings that inspired the English poets from Wordsworth, to Keats, to Byron flow once more through our veins.

Perhaps the half-life of historical influence is shorter than we think. Two and a half generations after the event, memory begins to distort. Nostalgia sets in. Fifty years after the end of the Civil War, we were ready once again for war on a grand scale, this time, in the words of Woodrow Wilson, “to make the world safe for democracy.” We forgot the brutality of the killing fields in Gettysburg and Antietam and began to think of war as a means of social progress. Fifty years after the end of World War II, we began to cultivate nostalgia for the heroism of our men at Normandy. The grandchildren of those who died would celebrate not only the victory over fascism but the meaningfulness of combat. The values of brotherhood, courage, and honor overwhelm the prior sense that shooting at other human beings is irrational and barbaric.

Though we rarely use the word “honor,” the virtue still appeals to us. We are familiar with the debate about whether the war against terrorism has any practical value. The critics argue, with

good cause, that bombing poor Muslim countries only has the effect of inculcating hatred of the United States in a new generation. We might get rid of bin Laden and Mullah Omar but there will be many to take their place. The conclusion is: Don't fight back, except by political, financial, and educational means. Don't use military violence because it will only yield more terrorist violence in the future.

There may be a lot of truth in this criticism. There is no way knowing for sure whether the bombing of Afghanistan will have the long-term effect of reducing or increasing spontaneous outbursts of killing and mass destruction. And if some catastrophe of mass destruction befalls us in two decades, we will not be able to determine whether it would have happened, had we taken a more conciliatory route in late 2001.

The implication is that our military policies cannot be justified solely by their short-term success. As we failed to anticipate the attack of September 11, we are probably failing now to calculate accurately all the consequences, for good or for ill, of our actions.

If we are not sure that a military response is the right response, there must be other factors at work in our thinking. In fact, we are more sensitive to national honor than we are inclined to admit. To sit back and suffer attack, without responding in kind, is to accept a form of national humiliation. It is precisely the humiliation that comes to the minds of Muslims when they think of the Crusades and the Christian invasion of Jerusalem in the eleventh century.

Of course, we do not speak easily of honor. We think of it as the ethic of the Mafia or of Pashtun tribesmen who claim that their honor requires that their wives wear burkas. But this concept that rarely speaks its name (at least in the West) may be driving, in part, the wars being fought at the beginning of the twenty-first century. Israelis and Palestinians, Indians and Pakistanis, Americans and Afghanis—we are all sensitive to our image of strength and military prowess. We cannot think rationally about the costs and benefits of going to war because *not* going to

war in response to a military attack is to sacrifice our national honor. And honor has its imperatives that are hardly measured in conventional trade-offs. We might dress up this argument by claiming that honor and strength are great values in the Arab world, and therefore we can gain influence in that part of the world only by profiling our power. As bin Laden put it in one of his videotapes, “When people see a strong horse and a weak horse, by nature they will like the strong horse.”

Sociologist David Mandelbaum describes the use of the word *izzat* in Arabic and Persian culture: “It is a word often heard in men’s talk, particularly when the talk is about conflict, rivalry, and struggle. It crops up as a kind of final explanation for motivation, whether for acts of aggression or beneficence.” The same Arabic word, meaning roughly “honor” is used in Turkish and thus signals a widespread reliance on this value we share with Islamic cultures.

But we should not think that we are much different on this score from our opponents. We care as much about honor as they do. As the Egyptians and Palestinians have felt recurrent national disgrace in losing one war after another to Israel, we would suffer debilitating humiliation by simply absorbing the catastrophe of military attack without a military response. All the arguments about counterproductivity, about producing more terrorists in the future, pale in comparison with this incessant drive to maintain our role as a superpower on the stage of world politics.

But adhering to an ethic of honor should give us second thoughts. Taking the blow on September 11 without a military response would be like suffering a slap in the face and not responding with a challenge to fight. If honor requires the use of bombs and missiles, then we are implicitly endorsing a dueling culture. Indeed, it may be true that though the behavior of *individuals* has evolved toward ways of coping with conflict on the basis of needs and interests, the values that move *nations* are rooted in the past.

One is reminded of the views expressed by the late eighteenth-

century German philosopher Immanuel Kant on the possibility of excusing a homicide committed in a duel. If someone kills another in a duel is he guilty of a felony? The slayer can say on his behalf, "My opponent agreed to the duel. It was either kill or be killed." In the ideal world, Kant reasoned, dueling would be abolished and the killing would be homicide. The culture of honor was, in his opinion, an atavistic throwback, but the law had nonetheless to recognize that honor matters to people as they are. If they wish to duel, therefore, their wishes must be respected. The survivor should not be prosecuted for homicide—at least as long as the culture of honor and of dueling still influence the minds of those who take up arms and march the prescribed number of paces.

We could say the same about the culture of violence in international affairs. Honor and strength go hand in hand. The culture of dueling lives on. Now it is called war.

The peculiar appeal of military violence brings to bear the Romantic view of the world that prevailed in Europe in the early nineteenth century, when the resistance against Napoleon and the affirmation of national identity filled the minds of poets, theologians, and even lawyers. Though Wordsworth initially subscribed to the universal pretension of the French Revolution, later he could think only of the glory of English soldiers joining with the Spanish to resist the march of Napoleon. Johann Gottlieb Fichte found his national fervor as an outgrowth of a version of Kantian philosophy, a version centering on the self and its capacity to define the world according to its inherent impulses. Like Lord Byron, who took his Romanticism seriously and devoted his fortune and ultimately his life to the cause of the Greeks in their fight for independence against the Turks, Fichte too became a man of action. According to legend he organized his own ragtag band of soldiers in Berlin to fight off Napoleon's armies. His "militia" included Friedrich Schleiermacher, the famous theologian who found a way to God in his Romantic indulgence in senti-



ment, and Friedrich Carl von Savigny, the legal philosopher who rejected the French Civil Code and insisted that Germany take its own path in the development of legal institutions.

The Romantics were thinkers who felt compelled to translate their thoughts into actions. And the actions often took the form of armed conflict. In the nineteenth century the outstanding example was Byron, who suffered a premature death from an illness contracted as he was preparing with Greek troops for battle on the island of Missolonghi. On the American side, we overflowed at midcentury with Romantics willing to fight, some of these a little more crazy than others. John Brown captured the life of action in his raid on Harpers Ferry, and later luminaries like Ralph Waldo Emerson and Henry David Thoreau wrote admiringly of his Romantic sacrifice for the nation.

Another good example on the American side was Francis Lieber, the immigrant philosopher, schooled in the idealism of his Kantian teachers, who joyfully left his classroom in a small South Carolina college to join German liberals as they fought in the uprising of 1848. He returned to the United States, became a professor at Columbia College in New York City, and devoted himself to writing the first codified law of war. He was a zealous defender of the Union cause and believed fiercely in Lincoln's Romantic creed that Americans were a single nation that had to live and die together.

In the beginning of the twentieth century, the appeals of Romantic war took center stage. As Barbara Ehrenreich describes the popular reaction to World War I, the outbreak of hostilities in 1914 unleashed "a veritable frenzy of enthusiasm . . . not for killing or loot . . . but for something far more uplifting and worthy." Romantics have not had an easy time articulating what is so "uplifting and worthy" about war; they simply know it when they feel it.

The Spanish Civil War had a similar appeal in the period between the World Wars. Thousands of Americans, craving adventure,

formed the Abraham Lincoln Brigade and left en masse to fight alongside other starry-eyed volunteers against General Franco's forces in Spain. Those who knew of Byron's escapades in Greece could not but feel the historical parallel. The escape of the quotidian, the pursuit of glory, fighting for a just cause—this is Romantic war at its best.

### Romanticism and Its Opposites

A good way to situate the contested concept of Romanticism in intellectual history is to see it as one pole in a larger set of oppositional concepts. On the one hand, we have stability, order, universality, and the boredom of the predictable and domestic. On the other hand, we have revolt, disorder, partiality, and the intense flames of lust and creativity. This is, of course, the way Romantics might describe the sentiments that move them.

The Romantic movement is, after all, about feeling. The English poets rallied around Wordsworth's dictum that poetry is "the spontaneous overflow of powerful feelings." The triumph of emotion is evident as well in the rise of Romantic music, the surge of Beethoven's symphonies in the concert halls of Europe. As lovers of emotion in the arts, we are children of the Romantics, but we easily forget the distinguished and respectable positions against which the Romantics were reacting.

Romanticism has many antonyms. In the context of music, the "Romantic" is opposed to the classical, represented by Haydn and Mozart, with, as one analyst put it, their "concern for musical form with a greater emphasis on concise melodic expression and clarity of instrumental color." Romantic music became associated with national self-expression. Johann Sebastian Bach wrote in the spirit of universal Christianity, but the Romantic music of the nineteenth century became identifiable as national music. Beethoven and Brahms saw themselves as German composers, and Chopin's music is considered Polish. In the world of painting, the

contrast is between the schools of Vermeer and Rembrandt, on the classical side, and the expressive and expansionist forms of the French impressionists, notably Delacroix, on the Romantic wing. In the realm of theology, the Catholic Church stood for orthodoxy and the rational defense of religious doctrine. Protestant theologians like Georg Hamann and Friedrich Schleiermacher broke new ground by appealing to the world of feeling as the premise of religious experience. Lawyers debated whether the Civil Code imposed by Napoleon in 1804 could become the model for all of humanity. In 1814 Savigny wrote his famous tract favoring the independent national development of legal cultures and, in particular, German law. He coined the famous expression *Zeitgeist*—spirit of the times—that has become synonymous with the Romantic resistance to universal culture.

The American analogue to Savigny might well have been Oliver Wendell Holmes Jr., who cultivated the common law tradition with a literary flair then novel in legal studies. As a veteran of the Civil War, wounded three times in battle, he was skeptical about whether right and wrong could be so clearly discerned that men should lay down their lives in battle. He became part of the pragmatic movement that took hold a decade after Appomattox and brought his philosophy of experience into the law, both as scholar and as judge on the Supreme Court. “The life of the law has not been logic but experience,” he wrote famously in 1881. As legal scholar Anne Dailey writes in a new interpretation of Holmes, the judge echoed great Romantic themes. Like Emerson, he was willing to flirt with ideas of the infinite and the profound. Thus he celebrated the profundity of legal thought in *The Path of the Law*: “[Through the remote aspects of the law of universal interest, you can] connect your subject with the universe and catch an echo of the infinite, a glimpse of its unfathomable process, a hint of the universal law.”

For poets, musicians, theologians—and yes, lawyers—the experience of the culturally embedded self becomes a path to truth. The world outside is understood as a reflection of the world within.

If we have to single out one figure to represent the alternative to this reliance on “leaps of feeling,” it would be Immanuel Kant, whose philosophy distinguishes rigorously between the realm of reason and the world of sensual impulse. Though he was later misinterpreted by Fichte and other Romantics, Kant is the leading Enlightenment expositor of faith in reason. Reason, a quality shared by all human beings, illuminates the path to objective truth. The slightest contamination of reason by sensual impulses destroys reason’s impartiality. The world of sensual impulse can lead, according to Kant, only to subjective judgments, with their “truth” limited to the person whose feelings are in play.

The notion of humanity, as Kant understood it, is based on the universality of reason. Human beings share the capacity to enter the world of pure reason and there discover the moral law that should govern their behavior. Only when they enter this world of reason—only when their wills free themselves of sensual input—only then can human beings claim to act “morally.” The essential point is that all of humanity is grounded in a single universal source of dignity—namely, the capacity to reason. Reason is not always available to us in our thinking about right and wrong, for we are subject to the incessant demands of our senses and our desires. To the extent that human beings can enter the realm of reason, however, they can become like God and the angels, who, according to Kant, live exclusively in a world of intelligence uncontaminated by sensual distractions.

The most difficult point to grasp in Kantian thinking is that reason inhabits a dimension beyond the five senses. We have to think about reason the way we think about a transcendental God. We can touch and feel neither God nor reason. The way to approach the Kantian realm is not to try to invoke one’s capacity to feel but just the opposite: to abstract oneself entirely from the world of sensual impulse. Herein lies the fundamental cleavage with the Romantic worldview: Kant fled from sensuality in order to embrace reason as the path to truth, while the Romantics embraced nature, sensual impulses, the inner world of feeling as the lamp of truth.

There is much to be said for the Kantian view of the world. Kant bequeathed to us the idea of human dignity—a quality shared by all human beings, regardless of culture, nation, history, race, or gender. Though the concept has not gotten much play in American legal thought, the notion of human dignity lies at the foundation of postwar European jurisprudence. The German Constitution of 1949 declares boldly in its first article: “Human dignity is inviolable.” And it continues: The primary duty of the state is to “protect and promote” human dignity.

Since the Second World War there has been an explosion of advocacy in favor of human rights—the rights that belong to all people simply because they are human. This entire movement trades on the Kantian idea that a single principle of dignity unites all members of the species.

This concept of universal dignity is as close as we can get in a secular world to the biblical idea that all human beings are created in the image of God. Being made in God’s image is, after all, the basis for thinking that we share some feature that makes us distinctively human. For both adherents of the Bible and devotees of Kant, the notion of universal human value carries important implications. In the Book of Genesis the prohibition against homicide is derived from our being made in God’s image. “He who sheds the blood of man, by man shall his blood be shed,” for we are made “in the image of God” (Gen. 9:6). Kant takes the same stance in favor of treating human life as an absolute.

As Kant was writing far to the east in Königsberg, the *philosophes* in Paris were preaching ideas that led to the crowning slogan of the French Revolution—*liberté, égalité, fraternité*. Thomas Jefferson, too, was a child of the same set of Enlightenment values. Without the influence of those who advocated the ultimate equality of all human beings, he would never have coined the immortal lines of the Declaration of Independence: “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights, among these life, liberty, and the pursuit of happiness.”

These claims constitute the foundations of our legal culture. Our commitment to individual rights and to equality before the law would not be possible had the values of the Enlightenment not triumphed in American culture. Yet these are precisely the values against which the Romantics rebelled.

This, then, is the fundamental and enduring conflict between the universalism of Kantian morality and the Romanticism of the poets, theologians, and lawyers who cultivate the self and the particular, the uniqueness of their national experience. Of course, as in any wholesale description of intellectual trends, there are, at the retail level, many exceptions and nuanced middle positions. Of interest in this study is not the proper classification of every well-known figure but the articulation of a way of looking at the world that is more closely associated with the Romantics than with any other self-identified collection of writers and artists.

The tension between the Romantic and universalist outlooks is captured in the careers of two critical words—honor and dignity. Honor is critical to the Romantic, dignity to the Kantian universalist. Honor is associated with appearance to others, in the way we fulfill our roles on the stage of social interaction. Dignity is intrinsic to the human condition. Everyone has it merely by virtue of being born. As the secular analogue to “being made in God’s image,” the Kantian value of dignity adheres to criminals and nobles alike. You can lose your honor but not your intrinsic dignity. Though you can act in an undignified way, your intrinsic worth, acquired at birth, is never extinguished.

The important implication of linking humanity and dignity is that nations have no inherent dignity. Their consolation is that they have honor—depending on how they act in the international arena. Nations have roles to play—they are like soldiers, lawyers, and politicians who fill parts on their respective stages. Nations can experience glory and grandeur as well as humiliation. But speaking about the dignity of nations is mixing incompatible vocabularies.

To be reminded of the different associations of honor and dig-

nity, think of the usage some generations ago when we spoke of women “losing their honor” by, say, becoming pregnant out of wedlock. Being a man or a woman in this culture was to play a certain kind of role defined by social conventions. It had nothing to do with intrinsic dignity, which was certainly not lost by going one’s own way in matters of sex and morality.

### **Expansionist and Reductionist Thinking**

At the core of the Romantic sensibility lies a way of looking at the world, a mode of thinking that I will call expansionist as opposed to reductionist. To understand this distinction, think about the world that is assumed in our daily conversations. Relative to this fuzzy baseline of conventional understanding, one can either expand on the conventional perceptions of the world around us or reduce these impressions to a set of agreed-upon units—like persons, drives, atoms, or elements in the periodic table. Reductionism is the more common vice. Strict empiricists seek to reduce scientific laws to observable data and nothing more. A good example is Hume’s analysis of causation as the recurrent concatenation of events. If B is observed to follow A on a regular basis, then it follows, supposedly, that A causes B. But this way of looking at causation fails adequately to account for the factor that Kant termed the relationship of “necessity,” an assumption that we make in order to account for the world we perceive.

Expansionists seek abstract entities to account for things we observe. They follow Kant and Plato in their willingness to posit entities that exist beyond the five senses. At one level we grasp reality in the world of the senses but our minds can roam beyond that which we touch and see and expand the range of our available concepts. In politics, the expansionist move is to find a clash of great ideas in seemingly earthly conflicts. By contrast, the reductionist seeks to localize the dispute and keep it close to the ground.

The expansionist Theodore Parker saw in every political dispute bearing on slavery a struggle between the Slave Power and the Freedom Power. The reductionist would see two individuals at odds about their immediate interests. The expansionist dwells on a grain of sand and like William Blake reaches out to the mysteries of the universe. The reductionist looks at a grain of sand and finds a chemical composition.

On the lighter side, a cartoon in the *New York Times* invoked this distinction in a satire of Al Gore's imagined comment on President Bush's 2002 State of the Union address. Addressing the linking of Iraq, Iran, and North Korea as a single compact of enemies, Gore is described as saying, "Now we're at war, we need a well-read wonk in the White House. I've read Ahmed Rashid. . . . Where others see 'evil axes,' I see the nuances of political stratega." The expansionist sees a mythological struggle between good and evil. The reductionist liberal "policy wonk" understands the nuances of the situation.

In a leap of imagination, the expansionist thinks about grand struggles. But beyond this, we don't know how much more the Romantic is willing to claim. The quest recalls Hamlet's protest to his friend: "There are more things in heaven and earth, Horatio, than are dreamt of in your philosophy." The element of "more" eludes definition. The Romantic yearns for the infinite and the profound. But as Isaiah Berlin reminds us, *la profondeur* represents a depth without limit. The deeper the probe, the more elusive the target.

The reductionist seeks to bring reality down to its component parts. The actions of groups become the sum total of individual actions. If Romantics express the expansionist impulse, individualists incline toward reductionism, seeing the world as consisting of units—in particular, of human beings acting as "sovereign" entities. The terms "struggle" and "movement" and "nation under God" resonate in the veins of the engaged Romantic. The reductionist replaces the expansionist self with the causal language of incentives and drives. If Romantic theologian Theodore



Parker saw the Civil War as the acting out of great ideas on the stage of history, an economically minded scholar like Richard Posner would prefer to think about the respective advantages of abolition and slavery.

Ironically, reductionism facilitates universalization. If the world consists fundamentally of individual persons, it is possible to generalize about these individuals wherever they happen to be, whatever language they speak, or whatever religion they may happen to profess. The reductionist impulse engenders the universalist spirit of the Enlightenment. Its language stresses rights, dignity, equality—all the values that constitute the foundations of the modern liberal state. Indeed they might call themselves “liberals,” as do many philosophers in the spirit of the Enlightenment. I am wary of that label because of its associations with economic liberalism and the “L” word in contemporary political conversations. But for want of a better term I will use it to refer to the universalist individualistic worldview at odds against the Romantic temperament.

The great moral philosophers of our time have all been liberal individualists. The list includes John Rawls, Ronald Dworkin, Amartya Sen, Joseph Raz, Thomas Nagel, and Bruce Ackerman. They may quarrel with economists such as Richard Posner and Milton Friedman, but the economists—with their theories of consumer sovereignty and free choice—simply represent another branch of the liberal tradition.

Lost in the contemporary debate is an understanding of the passions that drove the Romantic reaction to the Enlightenment and that continue to influence the way we think, albeit quietly and without proper recognition. We fail to appreciate the appeal of partiality and respect the demands of emotion. We are disinclined to acknowledge nations as actors in history or to understand the way they become guilty for their crimes.

The Romantics haunt us from the grave. Their spirit lives on, in part, in everyone torn by the conflicting sentiments of equality and loyalty, impartiality and solidarity, universality and commit-

ment to those whom we love. We live in the world but we need a home. And the Romantic spirit dwells in these yearnings for partiality and solidarity. The Romantics influence our thinking and yet we have failed to take their measure. We must retrieve them from the recesses of our culture and assess them as they actually shape our assumptions about politics, law, and war.