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[The Irgun's] method, expressed succinctly by their leader, Menachem Begin, was "a prolonged campaign of destruction."[1]

The London Times July 23 [1946] published a list of Jewish terrorist actions since the beginning of 1946. The incidents:

Jan. 1—A series of attacks on government and army establishments in Jerusalem, Jaffa and Tel Aviv. Arms and explosives discovered by police.

Jan. 13—A train derailed and robbed at Hadera.

Jan. 19—A police officer and an army captain killed in Jerusalem. Terrorists tried to blow up the broadcasting studios.

Jan. 20—Givat Olga coastguard station, south of Haifa, blown up.

Jan. 21—An attempted attack on RAF station at Mount Carmel.

Jan. 28—Raids on RAF camp at Aqir; 200 machine guns stolen.

Feb. 3—RAF camp at Tel Aviv raided by armed terrorists.

Feb. 5—Abortive attack on Safad police headquarters.

Feb. 6—British officer killed in terrorist raid on African soldiers' camp at Agrobank, near Jaffa.

Feb. 17—Superintendent of police at Haifa attacked.

Feb. 20—RAF radar station at Mount Carmel blown up (Haganah acknowledged responsibility).

Feb. 22—Attacks with explosives on 3 Palestine police camps.

Feb. 26—Extensive damage to aircraft and installations at RAF stations at Qastina, Petah Tiqva and Lydda.

Mar. 6—Sarafand military camp attacked by terrorists.

Apr. 2—Railways and bridges attacked by terrorists.

Apr. 23—Simultaneous attacks on Ramat Gan police fortress and Tel Aviv railway station.

Apr. 25—5 British soldiers and a British policeman killed in raid on Tel Aviv police station. 7 British soldiers killed in raid on car park between Jaffa and Tel Aviv.

June 10—3 trains derailed and blown up between Jaffa and Jerusalem.

June 17—Railway workshops near Haifa blown up and set afire. (Haganah claimed it had destroyed 11 bridges in the previous night's attacks.)

June 18—5 British officers kidnaped [sic] in Tel Aviv.[2]

[The King David Hotel] opened in 1930 and was considered one of the wonders of the East, an object of pilgrimage for aficionados of the good life from all over the world. . . . One tourist from America thought it was the renovated Temple of Solomon. . . . The King David turned into a center and symbol of British power, and one of its wings held British administration offices. On July 22, 1946, Jewish terrorists managed to sneak several milk cans filled with explosives into the hotel's basement. Ninety-one people were killed . . . .[3]

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2. ISRAEL & THE ARABS: PRELUDE TO THE JEWISH STATE 81-82 (Anne Sinai & I. Robert Sinai eds., 1972) [hereinafter ISRAEL & THE ARABS].

3. TOM SEGEV, ONE PALESTINE, COMPLETE: JEWS AND ARABS UNDER THE BRITISH MANDATE 7 (Haim Watzman trans., 2001). Segev is a columnist for *Ha'aretz*, Israel's leading newspaper. The cited book received the National Jewish Book Award, among other honors. *See id.*, the back outside cover.

> *The Jewish Agency denounced what it called "the dastardly crime" perpetrated by a "gang of desperadoes", and called on the Jews of Palestine "to rise up against these abominable outrages". The Sephardi Chief Rabbi, Ben Zion Uziel, spoke of his "loathing and abhorrence" of the crime. The Jewish Community Council warned of the "abyss opening before our feet by irresponsible men" who had carried out a "loathsome act".[4]*

> *The Irgun Zvai Leumi's underground radio ... admitted responsibility for the bombing.[5]*

> *Begin's picture, that of a wanted terrorist, was posted in all British prisons and offices in Palestine. The British conducted an extensive manhunt for Begin, who had a price on his head that began at $8,000 but was raised to % [sic] 50,000. Begin escaped the British dragnet by disguising himself as a bearded Orthodox rabbi.[6]*

> *Menachem Begin was never prosecuted for any of his actions as head of the Irgun. In 1977, he became sixth Prime Minister of Israel.[7] In 1978, he was awarded the Nobel Peace Prize.[8]*

Is terrorism moral? In the face of the September 11, 2001, terrorist attacks, the question seems almost obscene. Yet it is a question worth asking, for at least three reasons. At the very least, a clear answer may persuade others to help us fight terrorism.[9] Indeed,

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4. GILBERT, *supra* note 1, at 135.
5. ISRAEL & THE ARABS, *supra* note 2, at 83.
6. From an obituary of Menachem Begin on the website of the Orthodox Union. *Menachem Begin-6th Prime Minister of Israel*, UNION OF ORTHODOX JEWISH CONGREGATIONS OF AMERICA, *at* http://209.67.0.195/chagim/yomhaatzmauth/begin.html (last visited Mar. 13, 2002) [hereinafter Orthodox Union].
7. *See id.*
8. *See id.*
9. In response to U.S. statements suggesting that it might expand its war against terrorism to Iraq, Iran, and North Korea, Russian Defense Minister Ivanov stated the following: "To our regret, [the coalition] ... has failed to

if we can articulate a compelling enough answer, we may even be able to dissuade potential terrorists themselves. Second, although terrorism today is almost exclusively associated with people we do not like, this was not always so. I have prefaced this article with excerpts describing some of the Jewish "terrorism" (so labeled by mainstream Jews of the time) that helped drive the British from Palestine and thus paved the way for the creation of Israel. The Boston Tea Party, which helped trigger the American Revolution, would constitute "terrorism" under most current U.S. legal definitions of that term.[10] John Brown's raid on the federal arsenal at Harpers Ferry similarly helped lead to the abolition of American slavery.[11] These examples make plausible the question: Can the

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elaborate a generally recognized legal definition of international terrorism . . . . As you may know, it complicates the introduction of an international legal basis for agreement on a framework to effectively counter the threat on a collective basis." Carol J. Williams, *U.S. Defends Terrorism War to Wary Allies as a Righteous Fight*, L.A. TIMES, Feb. 4, 2002, at A9 (alteration in original) (citations omitted).

10. On December 16, 1773, a group of Massachusetts colonists, disguised as Native Americans, boarded ships of the East India Tea Company anchored in Boston Harbor and destroyed their cargos of tea by dumping them into the water. *See* WILLIAM LANGER, AN ENCYCLOPEDIA OF AMERICAN HISTORY 91 (Richard B. Morris & Jeffrey B. Morris eds., 1996). In retaliation, the British Parliament enacted the Boston Port Act, which closed the port of Boston; the Massachusetts Government Act, which deprived the Massachusetts colonists of most of their chartered rights; the Administration of Justice Act, which provided that persons accused of a capital crime in aiding England could not be tried in the colony in which the crime was committed; and the Quartering Act, which permitted the quartering of troops in private buildings. At the same time, the Parliament enacted the Quebec Act, which extended the boundary of Quebec to the Ohio River, cutting off claims of Massachusetts, New York, Connecticut, and Virginia. Although apparently not enacted in response to the Boston Tea Party, many colonies perceived the latter as punitive as well. *See id.* at 92-93. In response, on September 5, 1774, the colonies convened the First Continental Congress. *See id.* at 93. The Revolutionary War commenced some seven months thereafter. *See id.* at 95.

11. In May 1856, proslavery forces raided an antislavery town in Kansas, and Senator Sumner, an abolitionist, was severely beaten by a Southern Congressman on the floor of the Senate. In retaliation, Brown attacked proslavery sympathizers in Pottawatomie Creek, killing five persons in what came to be known as the Pottawatomie Massacre. *See Pottawatomie Massacre*, PBS ONLINE/WGBH, *at* http://www.pbs.org/wgbh/amex/brown/ peopleevents/pande07.html (last visited Feb. 26, 2002). In December 1858, Brown raided two slaveholding farms in Missouri, freeing the slaves and killing one person. *See The Missouri Raid*, PBS ONLINE/WGBH, *at*

political context in which terrorist acts arise ever justify such acts? If so, we must consider the possibility that a terrorist act by someone we do not like may be justified. Third, when we describe terrorism as immoral, one of our purposes is almost always to justify our own response. Implicitly, the question, Is terrorism moral? includes the mirror question, Is our response to terrorism moral? The answer to the latter question is important both because we may lose a practical advantage if we respond in ways that others deem wrong and because, at least under some moral theories, we should feel obligated to behave morally regardless of the instrumental costs and benefits.

This Article will proceed in four parts. To answer the question, Is terrorism moral? we must first define both terrorism and morality. Therefore, Part I explores problems in the definition of terrorism. I adopt the common rhetorical use of the term: the killing, disruption, or destruction of something of value for political purposes by someone other than a government or its agents acting overtly. In assessing the morality of terrorism, however, I further conclude that it makes sense to treat terrorism as a subset of politically motivated violence, including violence initiated by governments, to explore the morality of such violence without regard to actor, legality, or victim, and then to ask separately whether any of these factors affect our moral conclusions. Part II explores three of the most widely accepted contemporary moral theories—consequentialism, deontology, and virtue ethics—and applies each to the issue of

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http://www.pbs.org/wgbh/amex/brown/peopleevents/pande08.html (last visited Feb. 26, 2002). Finally, in October 1859, he organized a raid on the federal arsenal at Harpers Ferry, hoping to instigate a large-scale slave rebellion. He was defeated by federal troops, tried, and hanged. *See The Harpers Ferry Raid*, PBS ONLINE/WGBH, *at* http://www.pbs.org/wgbh/amex/brown/peopleevents/pande09.html (last visited Feb. 26, 2002). In his speech at Harpers Ferry on May 30, 1881, Frederick Douglass declared:

> Did John Brown fail? ... John Brown began the war that ended American slavery and made this a free Republic. Until this blow was struck, the prospect for freedom was dim, shadowy and uncertain. The irrepressible conflict was one of words, votes and compromises. ... When John Brown stretched forth his arm ... [t]he time for compromises was gone—the armed hosts of freedom stood face to face over the chasm of a broken Union—and the clash of arms was at hand.

5 THE FREDERICK DOUGLASS PAPERS 35 (John W. Blassingame & John R. McKivigan eds., 1979).

LOYOLA OF LOS ANGELES LAW REVIEW [Vol. 35:1227

terrorism.   Each, I conclude, is ultimately unsatisfactory; consequentialism because it fails to match our moral intuitions and may require extended suspension of our moral judgment; deontology because it lacks any culturally neutral foundation for its conclusions; and virtue ethics because it offers distressingly little practical guidance. Therefore, Part III outlines a new theory of ethics based on evolutionary and game theory that I am currently in the process of developing;[12] and Part IV applies that theory to the problem of terrorism and our responses to it. Politically motivated violence, I conclude, suffers from an inherent moral ambiguity that cannot be resolved without further evolution of our existing moral codes. The context in which such violence arises can, at least arguably, serve to justify it to some, but because of its inherent moral ambiguity is unlikely to justify it to all. Since law and the state play a special role in my theory, I conclude further that state enforcement of neutral rules, including violent enforcement, may be inherently moral, but that outside of this special context the identity of the actor and lawfulness of the act are largely irrelevant. Identity of the victim, by contrast, is crucial. Finally, the theory offers concrete guidance with respect to appropriate responses to terrorism.

I. WHAT IS TERRORISM?

Before we can decide whether terrorism is immoral, we must first decide what terrorism is.   Unfortunately, there exists no consensus definition in U.S. or international law.[13] U.S. law, for

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12. I have previously used my proposed theory to analyze the problem of intergenerational decision making. *See* Theodore Seto, *Intergenerational Decision Making: An Evolutionary Perspective*, 35 LOY. L.A. L. REV. 235 (2001). In a forthcoming paper, I use it to define and explore the problem of evil. *See* Theodore Seto, *Reframing Evil in Evolutionary and Game Theoretic Terms*, *in* PROCEEDINGS OF THE 3RD GLOBAL CONFERENCE ON EVIL AND HUMAN WICKEDNESS (forthcoming 2002). I have described the theory more fully in a much longer paper, still in process. *See* Theodore Seto, *An Evolutionary Theory of Motivation and Normative Obligation* (forthcoming 2003).

13. *See, e.g.,* Louis René Beres, *The Legal Meaning of Terrorism for the Military Commander*, 11 CONN. J. INT'L L. 1, 3-4 (1995); Louis René Beres, *The Meaning of Terrorism—Jurisprudential and Definitional Clarifications*, 28 VAND. J. TRANSNAT'L L. 239, 239-40 (1995) ("Despite the growing volume of academic publications dealing with terrorism, little if any serious progress has actually been made in suitably clarifying the identity of the

example, contains multiple inconsistent definitions. For foreign relations purposes, terrorism is defined as "premeditated, politically motivated violence against noncombatant targets by subnational groups or clandestine agents."[14] In other words, act, motive, actor, and victim are all specified; the legality of the violence appears to be irrelevant. United States Special Forces trained to operate clandestinely against economic targets would apparently constitute "terrorists" under this definition. For immigration law purposes, by contrast, terrorism consists of any of a list of specified violent unlawful acts; the identities of the actor and victim are irrelevant, as are the actor's motives; an act is unlawful if it violates the laws of any jurisdiction.[15] Members of the Israeli cabinet who have authorized selective assassination of Palestinian leaders[16] would thus appear to be terrorists for U.S. immigration law purposes, but not for foreign relations purposes. For U.S. criminal and national defense purposes, terrorism is defined generically as any violent or life-

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'terrorist,' or in clearly distinguishing terrorism from various other uses of force in world politics and from related crimes under national or international law. Indeed, the standard definitions of terrorism now in 'professional' use offer little or no operational benefit for scholars or tactical commanders. The term has become so comprehensive and vague that it sometimes embraces even the most discrepant and unintended activities. Ironically, using certain of the prevailing definitions of terrorism adopted by some U.S. government agencies and some scholars, the American Revolution, the Gulf War (Desert Storm), the contra insurgency in Nicaragua, and the anti-Castro insurgency supported by the United States are all conceivably examples of 'terrorism.'"); Ileana M. Porras, *On Terrorism: Reflections on Violence and the Outlaw*, 1994 UTAH L. REV. 119, 124 ("Everyone uses the word 'terrorism' to mean a kind of violence of which he or she does not approve, and about which he or she wants something to be done. The sense of the word always stays the same; it is the referents that change."); David Aaron Schwartz, Note, *International Terrorism and Islamic Law*, 29 COLUM. J. TRANSNAT'L L. 629, 631 ("No single, simple definition currently prevails over others . . . .").

   14. 22 U.S.C. § 2656f(d)(2) (1994 & Supp. 2000).

   15. *See* 8 U.S.C. § 1182(a)(3)(B) (2000).

   16. *See, e.g.*, Nachman Ben-Yehuda, *When you live by the sword . . .*, GLOBE & MAIL, Oct. 19, 2001, at A17 (an Israeli expert on Jewish assassination, who opposes the precedent, noting that historically sixty percent of the victims of assassinations by Jews were themselves Jewish); Vincent Cannistraro, *Assassination Is Wrong—and Dumb*, WASH. POST, Aug. 30, 2001, at A29; Michael L. Gross, *Just and Jewish Warfare*, TIKKUN, Sept. 1, 2001, at 31; *Israeli Supreme Court Refuses to Outlaw Assassinations of Palestinians*, AGENCE FRANCE PRESSE, Jan. 29, 2002 [hereinafter *Israeli Supreme Court*].

threatening unlawful act undertaken with specified (generally political) motives; again the identities of actor and victim are irrelevant.[17]

As the term is most commonly used in political rhetoric, terrorism involves killing, disruption, or destruction of something of value for political purposes by someone other than a government or its agents acting overtly. The term also carries implications of powerlessness; it is almost always used to refer to the actions of persons without the conventional military or legal power to achieve their ends, and rarely to refer to analogous actions of the powerful.[18] Hamas engages in "terrorism"; the CIA, by contrast, in "covert activities."[19] Commenting on the mid-1946 British arrests of Zionist leaders, Chaim Weizman, later first President of Israel, noted that "[t]he excuse for the arrests. . . , for the seizure of the Jewish Agency and for the countryside searches and arrests, had been the 'deplorable and tragic' acts of Jewish terrorism of recent months. Yet those acts 'have sprung from despair of ever securing, through peaceful means, justice for the Jewish people'."[20] If we substitute "Palestinian," "Arab," or "Muslim" for "Jewish," he might just as well have been speaking in defense of today's Al Fatah or Al Qaeda.

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17. *See* 18 U.S.C. § 2331 (2000); 50 U.S.C. § 1801 (1994 & Supp. 2000).

18. As M. Cherif Bassiouni (then Secretary General, International Association of Penal Law) noted in 1985:

> Terrorism has been defined as "a strategy of violence designed to instill terror in a given population in order to achieve a power outcome or to coerce a government to act contrary to its policies and practices." Under that definition terrorism can be categorized five ways. . . . The first of these five categories [by states against their own populations to preserve a given political regime] is the one that historically and today produces the most harm. People are killed, injured, tortured and abused by the millions. The last category [political dissident groups who seek to alter governmental policy or to change the regime in a country] produces the least harm quantitatively, but it is the one that governments and the world media focus most upon, at times almost to the total disregard of state-sponsored terror-violence.

Michael A. Grimaldi, *Human Rights v. New Initiatives in the Control of Terrorism*, 79 AM. SOC'Y INT'L L. PROC. 288, 288-89 (1985).

19. Hamas, an acronym for the "Islamic Resistance Movement," describes itself as a "popular national resistance movement which is working to create conditions conducive to emancipating the Palestinian people." Palestinian Information Center, *The Islamic Resistance Movement Hamas*, at www.palestine-info.com/hamas (last visited Apr. 2, 2002).

20. GILBERT, *supra* note 1, at 134.

This is problematic. If terrorism is limited to acts of the powerless, condemning terrorism while failing equally to condemn similar acts of the powerful violates the most fundamental premise of any moral theory—that moral principles be neutrally applied. Condemnation of terrorism becomes merely an instrument for the preservation of existing power relationships. Before we can be persuasive in our condemnation of terrorism, therefore, we need to be clearer about what it is we are condemning. What are the elements of terrorism?

A. Act and Motive

There is relative consensus about the acts and motives required for terrorism. The term is most commonly used to refer to acts involving loss of life or the destruction of property, but is not inherently so limited. Hostage taking is an obvious counterexample; others are possible as well. Imagine Osama bin Laden next attacking the United States by releasing a particularly virulent computer virus on the Web, thereby wreaking economic havoc. Most of us would have no trouble labeling such an act "terrorism," or perhaps coining a new term: "cyberterrorism."[21] What is key is that he would be disrupting or destroying something of value. Since the phrase "killing, disruption, or destruction of something of value" is awkward, I refer to such acts simply as violence, but do not mean thereby to limit terrorism to conventional violent acts.

A political motive is also necessary for violent acts to comprise terrorism. Ordinary crime often includes killing or destruction. To label all such crime as terrorism would substantially dilute the usefulness of the term. Virtually all nations and ideologies purport to oppose crime. Because of its political nature, however, terrorism invites less agreement; its political nature is therefore one of its most important aspects.

B. Actor and Legality

Once we move beyond act and motive, consensus begins to break down. Terrorism is often restricted to unlawful violent acts undertaken by someone other than a government or its agents acting

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21. *See, e.g.*, Charles Piller & Dave Wilson, *The Terrorists Are Winning the Cyber War*, L.A. TIMES, Sept. 19, 2001, at A4.

overtly. If these restrictions are added, the American bombings of Hiroshima and Dresden during World War II no longer constitute terrorism since they were undertaken by a government overtly, in a manner arguably consistent with the laws of war (although undoubtedly in violation of the laws of Japan and Germany). As a practical matter, many believe that such restrictions are necessary; otherwise, all war would be classified as terrorism—again diluting the usefulness of the term. Terrorism, more narrowly conceived, often does receive governmental support, but such support is generally covert.

The problem, of course, is that the powerful tend to make the laws and the powerless tend not to have recognized governments through which to act. If we restrict terrorism to unlawful acts performed by nongovernmental parties, we insulate many of the most powerful actors on the international stage from this line of moral scrutiny. In effect, we are claiming that it is moral for us to kill, bomb, and maim, but not for Al Qaeda to do so. We may want to leave open the possibility that such a claim has merit. But we cannot assume its merit without examination simply by defining terrorism narrowly. It is therefore useful to break the question, Is terrorism moral? into at least two parts: Is politically motivated violence (of which terrorism is a subset) moral? and Does it matter whether that violence is lawful or conducted overtly by a state?

C. Victim

"Terrorism" is sometimes further limited to acts against specific types of victims, commonly characterized as "innocent." I question whether any such limitation would survive a serious reality test. Had the September 11 strike killed Defense Secretary Donald Rumsfeld, whose offices were in a different part of the Pentagon, no one, I suggest, would have asserted: "He was not innocent, therefore that was not terrorism." The U.S. definition of terrorism applicable for foreign relations purposes illustrates this tension, limiting "terrorism" to acts against noncombatants. Apparently, for foreign relations purposes the September 11 strike against the World Trade Center was terrorism, but the strike against the Pentagon was not. We are immediately tempted to argue that the Pentagon housed civilian workers, and that such workers ought to be treated as noncombatants. We ourselves, however, would likely feel justified in bombing the

Ministry of Defense in Afghanistan, Iraq, North Vietnam, or any other hostile country, regardless of whether the occupants were technically part of that country's uniformed armed forces. We would likely reject accusations that we had thereby violated U.S. or international law by targeting noncombatants.

Even assuming we are willing to limit terrorism to acts against innocent victims, innocence is at best a slippery concept. Animal rights activists, for example, have occasionally thrown paint on women wearing fur coats.[22] Are such women innocent? Palestinian activists object to Jewish settlements on the West Bank. Are attacks on such Jewish settlers attacks on innocent people? Both fur-coat-wearing women and Jewish settlers on the West Bank are noncombatants in the ordinary international law sense. Nevertheless, both are direct participants in what their respective attackers view as illegitimate—indeed, immoral—acts.

The problem is compounded in the case of attacks on citizens of a democracy. In theory at least, our government is acting on our behalf, with our approval, for our benefit. If our government's actions are objectionable, it is somewhat disingenuous to argue that We the People cannot and should not be held accountable. For purposes of regulating the conduct of war, it may be in all parties' interest to limit violence to particular types of targets. Back when most governments were non-democratic, it made moral sense as well to limit violence against noncombatants, since they were morally blameless for their governments' acts. Unfortunately, as citizens in a democracy, we are not.

This does not mean, however, that all targets are equally justified. Assume that in July 1946, the Irgun, seeking to drive the British from Palestine, had a choice of three targets: (1) the King David Hotel in Jerusalem, a symbol of British might, and used in part as a British administrative center; (2) a noncombatant Arab village; and (3) a black township in South Africa. Assume that each attack would have killed the same number of people and received the same amount of publicity. Most of us would view the King David Hotel as

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22. 18 U.S.C. § 43 defines the federal crime of "animal enterprise terrorism." If the victim in question were a model employed by ₁ a manufacturer of fur coats and the actor traveled interstate or used the mails, throwing paint at her would apparently violate this statute. Throwing paint at a mere fur coat owner, however, would apparently not.

the only legitimate target, regardless of how much we might object to such an attack. Most would view the attack on the South African township as least justified. Intuitively, at least, the victim's identity matters.

At this point, I am not trying to use theory to justify our moral intuitions; I am merely trying to identify them. The key factor in our intuitive response, I suggest, is not innocence or noncombatant status; it is rather the relationship of the target to the political motive for the attack. We may abhor an attack by animal rights activists on women wearing furs. Nevertheless, we understand the choice of target. If terrorism is moral at all, it can only be moral when the target is related in some way to the attacker's political motive. Random choice of targets adds a second, serious layer of immorality. Unfortunately, this factor adds an unavoidable element of uncertainty to our moral assessment of terrorism. No bright line separates "related" from "unrelated" targets. Relationship is often very contextual.

Yet a further problem complicates the role of victim identity in assessing the morality of terrorism. The powerful commonly have the ability to strike effectively at targets with the most direct relationship to their political objectives; the less powerful are commonly more limited in their choice of targets. Israel, for example, has been able to assassinate many top Palestinian leaders.[23] Palestinians, by contrast, have had very limited success in assassinating top Israeli leaders.[24] If we endorse as moral the

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23. As of January 29, 2002, Israel had killed over eighty Palestinians pursuant to its policy of "targeted killings." *See Israeli Supreme Court, supra* note 16. These targeted killings included the leader of the Popular Front for the Liberation of Palestine, Mustafa Zibri (popularly known as Abu Ali Mustafa). *See* Cannistraro, *supra* note 16, at A29. In addition, it apparently attempted but failed to kill Mohammed Dahlan, Chief of Palestinian Security, immediately after a negotiating session between Dahlan and Israeli authorities, and West Bank Fatah leader Marwan Barghuti. *See* Gross, *supra* note 16, at 46-47; *Headlines Across the Middle East on Sunday*, AGENCE FRANCE PRESSE, Aug. 5, 2001.

24. The only Israeli leader killed by the Palestinians appears to have been Rehavam Zeevi, then Israel's Tourism Minister. *See* Uri Dan, *Hardline Israeli Pol Shot in Head*, N.Y. POST, Oct. 17, 2001, at 2. The Popular Front for the Liberation of Palestine claimed responsibility, asserting that the killing was in retaliation for Israel's killing of its leader, Mustafa Zibri. *See id.* Zeevi was perhaps best known for advocating the wholesale expulsion of Palestinians from the West Bank and Gaza. He compared Palestinians to lice: "We should

extralegal killing of directly related individuals by the powerful but condemn as immoral the similarly extralegal killing of less directly related individuals by the powerless, we again risk applying moral principles that favor the powerful.

In the analysis that follows, I use the term "terrorism" in a manner consistent with its most common rhetorical usage; that is, I use it to mean the killing, disruption, or destruction of something of value for political purposes by someone other than a government or its agents acting overtly. In assessing its morality, however, I treat terrorism as a subset of politically motivated violence. I explore the morality of politically motivated violence in general, without regard to actor or legality, and then separately ask the question: For moral purposes, does it matter who the actor is and whether the violence is lawful? I also treat as separate, not as implicit in the definition of terrorism itself, the moral consequences of the identity of the victim.

II. CONTEMPORARY MORAL THEORY

It would be impossible adequately to summarize contemporary moral theory in an article of this length. I must therefore oversimplify, perhaps even caricaturize. With this caveat, contemporary theory can be grouped roughly into three categories: consequentialism, deontology, and virtue ethics. Consequentialism comes in many flavors. At bottom, however, consequentialist moral systems hold that an act or rule about acts is morally right if and only if its consequences are desirable.[25] Consequentialists argue that focusing solely on duties and ignoring consequences is itself immoral. Thus a seemingly immoral act, such as killing an innocent child, may be moral—indeed, it may be morally required—if the net effect is good; for example, if killing that child would permit us to save a million other lives.[26] Deontological moral systems, by contrast, hold that acts or rules are right or wrong in and of

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get rid of the ones who are not Israeli citizens the same way you get rid of lice." Carol Rosenberg, *Slain Official Had Little Love for Arabs; Hard-liner Compared Palestinians to Lice*, DENVER POST, Oct. 18, 2001, at A8.

25. *See generally* Philip Pettit, *Consequentialism*, in A COMPANION TO ETHICS 230 (Peter Singer ed., 1991). This approach to moral theory has greatly influenced contemporary legal scholarship. *See, e.g.*, Louis Kaplow & Steven Shavell, *Fairness Versus Welfare*, 114 HARV. L. REV. 966 (2001).

26. *See* Pettit, *supra* note 25, at 234.

themselves, regardless of their consequences.[27] Ends do not justify means. It is wrong to kill an innocent child, deontologists assert, no matter how many other lives we might thereby save. Unlike consequentialism and deontology, virtue ethics focuses on actors rather than on acts, rules, or consequences. Our objective, it asserts, should be to be the right kind of person.[28] How we act may be important, but it is important primarily because it reflects on who we are. We should not be the kind of person who would kill an innocent child. Or perhaps, alternatively, we should not be the kind of person who would allow a million people to perish for failure to kill an innocent child. All three modes of ethical analysis have adherents, all three critics. When applied to the problem of terrorism, all three prove unsatisfactory in important regards.

A. Consequentialism

Consequentialism is most helpful when applied to relatively easy moral questions—for example, whether to require a railroad to compensate farmers for crop fires caused by sparks thrown off by its engines.[29] When applied to the morality of politically motivated violence—in my view a more difficult question—it provides distressingly little practical guidance. Consistent with its name, consequentialism determines whether politically motivated violence is right or wrong by looking at its consequences. Politically motivated violence is morally right if it produces good results; it is morally wrong if it produces bad results.

The most obvious problem with this mode of analysis is that it sometimes requires conclusions we are unwilling to accept. Under consequentialism, whether September 11 was right or wrong depends on its consequences. If the positive consequences outweigh the negative consequences, then September 11 was morally right. It is true that some 3,000 American lives were lost,[30] and that to our

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27. *See generally* Nancy Ann Davis, *Contemporary Deontology, in* A COMPANION TO ETHICS, *supra* note 25, at 205.

28. *See generally* Greg Pence, *Virtue Theory, in* A COMPANION TO ETHICS, *supra* note 25, at 249.

29. *See* R.H. Coase, *The Problem of Social Cost*, 3 J.L. & ECON. 1, 41-44 (1960).

30. *See* Sara Kugler, *Official WTC Death Toll Near 2,800*, AP ONLINE, Feb. 8, 2002, 2002 WL 11689415 (reporting 2,843 dead at the World Trade Center, 184 at the Pentagon, and 40 in Pennsylvania).

knowledge none of those 3,000 "deserved" death. But on the other side of the ledger, Americans are now more united than at any time in recent memory, polls show that large majorities believe the country is "moving in the right direction,"[31] Afghanistan has been freed from a horribly oppressive regime and is on its way to democracy,[32] humanitarian aid can now flow freely into that country, and as a result perhaps millions of Afghanis who would otherwise have died will now live.[33] Indeed, September 11 may have resulted in a very significant net saving of lives; it also appears substantially to have improved the quality of life of those Afghanis who would have survived anyhow. Consequentialist analysis may thus lead to the disquieting conclusion that instead of putting bin Laden on our most wanted list, we should be awarding him the Congressional Medal of Honor. Regardless of how appealing the logic of consequentialism may be, the possibility that it may require us to conclude that the destruction of the World Trade Center was morally right is, for most, unacceptable.

We might attempt to save our analysis by attributing the bad results to bin Laden but refusing to allow him any credit for the good results—in other words, to apply something analogous to proximate

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31. An Associated Press poll on December 14-18, 2001, found that Americans believe the country is moving in the right direction, fifty-six percent to thirty-three percent. *See Poll Update Associated Press: 56% Say U.S. is Moving in the Right Direction,* AM. POL. NETWORK, Jan. 3, 2002. Immediately after the 2002 State of the Union Address, a CNN/USA Today poll found that ninety-one percent of those polled believed that President Bush's policies would move America in the right direction. *See* Gerard Baker, *President Rides High on Foreign Policy Successes,* FIN. TIMES, Jan. 31, 2002, at 8.

32. *See, e.g., Afghan Leader Promises to Have Elections in 2 Years,* ORLANDO SENTINEL, Jan. 30, 2002, at A6 (reporting Karzai's promise to hold elections within two years); Doug Struck, *Commission Launched to Shape Afghan Rule; Group Will Develop Council to Choose Next Government, but Tribal Fissures Threaten Process,* WASH. POST, Feb. 8, 2002, at A18 (commission to set form for grand council to shape broad-based government to replace interim government after six months). *But see* Robert J. Barro, *Don't Bank on Democracy in Afghanistan,* BUS. WK., Jan. 21, 2002, at 18 (finding democracy unrealistic; instead the author advocates an "efficient authoritarian regime").

33. *See, e.g.,* George McGovern, *The Other War—Against Starvation,* WALL ST. J., Feb. 5, 2002, at A19 (reporting that aid saved between six and eight million Afghanis from starvation or acute hunger this winter).

cause analysis for moral purposes.[34]   The greatest strength of consequentialism, however, is its apparent objectivity.   Proximate cause analysis undermines that strength, requiring subjective, ultimately deontological moral judgment. Just as it would allow us to condemn bin Laden for actions that ultimately make the world a better place, so it would also allow us to praise those we like, even if their actions ultimately bring disaster, by crediting them with the good results of their actions and absolving them of responsibility for the bad.

There is a further, perhaps more subtle problem that makes consequentialism particularly unhelpful in analyzing the moral attributes of politically motivated violence—and that is that the consequences of such violence may not be apparent for many years. Until we can ascertain those consequences, we are forced to suspend our moral judgment.   John Brown's terrorism helped trigger the abolition of slavery.[35] Its net effect therefore appears to have been positive.   But if that same terrorism had ultimately failed in its object—if slavery had survived—the net effect of Brown's killing and destruction would probably have been negative.   In the

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34. One explanation of proximate cause is the following:
> "Proximate cause"—in itself an unfortunate term—is merely the limitation that courts place upon an actor's responsibility for the consequences of his conduct.   In a philosophical sense, the consequences of an act go forward to eternity, and the causes of an event go back to the discovery of America and beyond. It could be argued that the fatal trespass done by Eve was the cause of all our woe. Yet, any attempt to impose responsibility on such a basis would result in infinite liability for all wrongful acts and would "set society on edge and fill the courts with endless litigation." As a practical matter, legal responsibility must be limited to those causes which are so closely connected with the result and of such significance that the law is justified in imposing liability.

Stephen Scallan, *Proximate Cause Under RICO*, 20 S. ILL. U. L.J. 455, 457 (1996). The legal doctrine of proximate cause is one of the least well-defined doctrines of any in common use. *See, e.g.*, Paul T. Hayden, Butterfield *Rides Again: Plaintiff's Negligence as Superseding or Sole Proximate Cause in Systems of Pure Comparative Responsibility*, 33 LOY. L.A. L. REV. 887, 941 (2000) (stating "that the doctrines of superseding and sole proximate cause often confuse bench, bar, and jury can hardly be denied"); Patrick J. Kelley, *Proximate Cause in Negligence Law: History, Theory, and the Present Darkness*, 69 WASH. U. L.Q. 49, 50 (1991) ("proximate cause remains a hopeless riddle").

35. *See* 5 THE FREDERICK DOUGLASS PAPERS, *supra* note 11, at 35.

meantime, however, we need to know whether to praise him or hang him. This short-term indeterminacy substantially reduces the real-world utility of consequentialism as a moral tool.

Because of its focus on ends, consequentialism is not inherently concerned about the details of means, such as the identities of actor and victim or the lawfulness of the action. The unlawful killing of an innocent person by one not normally authorized to kill—for example, John Brown's killing of a black bystander at Harpers Ferry[36]—may be justified under a consequentialist approach if it results in net social good. By contrast, the lawful killing of a person deserving death by one authorized to kill—perhaps John Brown's execution after trial in accordance with U.S. law—may be condemned under a consequentialist approach if it results in net social harm.[37] It may be that respect for law and order itself has positive consequences, in which case the scales should be tilted somewhat in favor of lawful killings by authorized killers. Any such bias can still be overcome, however, if an unlawful killing produces other sufficiently positive consequences or a lawful killing produces other sufficiently negative ones.

B. Deontology

The deontological position that actions or rules about actions are right or wrong regardless of their consequences solves many of these problems. From a deontological stance, we can properly assert that September 11 was wrong regardless of its consequences. This, in turn, allows us to make moral assessments immediately. In addition, deontology allows us to take clear positions with regard to the definitional issues raised in Part I. We may distinguish between lawful and unlawful conduct on the ground that it is inherently wrong to break laws. We may distinguish among actors on the

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36. *See   Pottawatomie   Massacre,*   PBS   ONLINE/WGBH,   *at* http://www.pbs.org/wgbh/amex/brown/peopleevents/pande01.html (last visited Mar. 15, 2002).

37. John Brown's death became a rallying cry for anti-slavery forces, providing early lyrics for what was to become the Battle Hymn of the Republic, anthem of the Union forces during the American Civil War. *See History   of   "John   Brown's   Body,"*   PBS   ONLINE/WGBH,   *at* http://www.pbs.org/wgbh/amex/brown/sfeature/song.html (last visited Mar. 15, 2002). It is therefore speculative whether his execution resulted in net good or net harm.

ground that it is morally permissible for governments to kill in a much broader range of circumstances than is morally permissible for individuals. We may distinguish among victims on the ground that it is inherently wrong to attack the innocent. Or, on each of these issues, we may take the contrary position, with equal clarity and certainty.

The problem is that proponents of deontology have been unable to offer any persuasive culturally neutral explanation of the origins of moral duty. I can say: My moral code says that September 11 was evil. But bin Laden can reply: My moral code says that September 11 was morally necessary. Deontologists have no neutral way of resolving this disagreement. In the case of September 11, we Americans have, through force of arms, asserted the superiority of our moral position. To assert that this establishes the correctness of our position, however, comes dangerously close to conceding that morality issues from the barrel of a gun. The problem is particularly acute in the case of terrorism, since terrorism commonly involves violence between different moral cultures. Terrorists typically believe that they are engaged in a righteous cause; they believe their acts are moral and justified. They are therefore quite unlike the ordinary criminal, who knows that what he is doing is wrong but does it anyway. But if terrorists believe that they are right, and we believe they are wrong, who then is correct? Deontology offers no neutral foundation for morality; deontological morality simply is.

In practice, of course, this indeterminacy does not inhibit moral judgment. Deontologists feel fully justified—in a way that consequentialists perhaps should not—in responding to terrorism with the full force of their righteous anger. A deontological moral stance based on Western culture, values, and politics, however, will be of limited effectiveness in persuading those with other cultures, values, and politics to support us. And ultimately, we should be concerned that history—including our cultural descendants—may not share our current deontological stance. Our slaveholding ancestors vigorously defended the morality of slavery;[38] many white Americans apparently felt no moral qualms about committing

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38. *See, e.g.,* DAVID F. ERICSON, THE DEBATE OVER SLAVERY: ANTISLAVERY AND PROSLAVERY LIBERALISM IN ANTEBELLUM AMERICA 18-26 (2000) (reviewing both deontological and consequentialist arguments in favor of continued black slavery in the American South).

genocide against indigenous American peoples.[39] To win today but be judged by history as having committed serious evil would not represent a defensible moral victory.

C. Virtue Ethics

Virtue ethics' shift from act to actor does not solve this problem. Is the terrorist, who sacrifices his own needs and interests to a larger cause, truly the "wrong kind of person"? In most contexts, we would view this kind of self-abnegation as altruistic, not evil. If he were dedicated to a cause in which we believed, we might even admire him.

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39. For example, Oliver Wendell Holmes, father of the U.S. Supreme Court justice and famed Harvard physician, commentator, and poet, observed in 1855 that Native Americans "were nothing more than a 'half-filled outline of humanity' whose 'extermination' was the necessary 'solution of the problem of his relation to the white race.'" DAVID STANNARD, AMERICAN HOLOCAUST: THE CONQUEST OF THE NEW WORLD 244 (1992). William Dean Howells, then America's leading literary intellectual, wrote in the *Atlantic Monthly* on the occasion of the nation's 1876 Centennial: "The red man . . . is a hideous demon, whose malign traits can hardly inspire any emotion softer than abhorrence." *Id.* at 245. He expressed his "thrill of patriotic pride" to advocate "the extermination of the red savages of the plains." *Id.* G. Stanley Hall, then America's leading psychologist and educator, wrote in 1904: "Never, perhaps, were lower races being extirpated as weeds in the human garden, both by conscious and organic processes, so rapidly as to-day. . . . The world will soon be overcrowded, and we must begin to take selective agencies into our own hands." *Id.* Soon-to-become-president Theodore Roosevelt opined that the extermination of the Native Americans and expropriation of their lands "was as ultimately beneficial as it was inevitable." *Id.* A New York Times article further captured these attitudes when it reported that "[m]any of the Western settlers are very anxious for a war of extermination against the Indians, and assert that outrages and atrocities will never cease until this is adopted and ended." ROBERT G. HAYS, A RACE AT BAY: NEW YORK TIMES EDITORIAL ON "THE INDIAN PROBLEM," 1860-1900 1 (1997). During the late 1800's, the Times tended to support the Native American cause on most issues. *See id.* at 3-4. Even while doing so, however, it referred to Native Americans as "aborigines," "red-skins," "greasy red men," "copper-colored inhabitants of the plains," and "dusky savages," and described them as lazy, shiftless, and vulnerable to alcoholism. *Id.* at 4. The Times also denied that Native Americans had in fact declined in number. *See id.* at 33-34. Modern estimates suggest that Native American populations declined by some ninety-five percent during the first century or two after the arrival of Columbus. *See* JARED DIAMOND, GUNS, GERMS, AND STEEL 211, 373-75 (1999); STANNARD, *supra* at x.

Available descriptions of the September 11 hijackers, for the most part, are inconsistent with standard notions of evil. Mohammed Atta, for example, had earned a graduate degree in urban planning at Technical University in Hamburg, Germany.[40] One of his German colleagues, who had studied Cairo traffic patterns with him, described him as "a very engaged urban planner. . . . He was a very complex person. On the one hand, he was a very religious person. . . . On the other hand, he was very full of idealism and he was a humanist. He was very much interested in social work."[41] Another German friend, an architect who worked with Atta studying the restoration of the old quarter of the city of Aleppo, Syria, recounted that "[f]rom the onset of their friendship, Atta was troubled by what he saw as social injustice and the inequitable distribution of wealth in the world. . . . He didn't believe in fighting injustice with injustice, at least when I knew him . . . ."[42] A Florida car rental agent who rented cars to Atta described him in ordinary terms: "He just seemed like a businessman. . . . He spoke English very well. . . . He was just your everyday, local guy."[43] Atta is believed to have helped hijack American Airlines Flight 11 and crash it into the north tower of the World Trade Center.[44]

Salem Alhazmi was "a polite man who . . . never caused trouble. . . . [His] English was sketchy, but he was outgoing. In the mornings, he often stopped by the rental office and said hello to the managers. He drank coffee and ate cookies with them."[45] He "even posted a message on a lonely hearts Web site: 'Saudi businessman looking for a bride who would like to live in this country and Saudi Arabia.'"[46] Alhazmi is believed to have helped crash American Airlines Flight 77 into the Pentagon.[47] Ziad Jarrah's uncle described him in the following terms: "He attended Christian school and was always a good student. And he's a good student at the university. He had one more year to study. Then he was planning to return to

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40. *See* Carol J. Williams et al., *Mainly, They Just Waited*, L.A. TIMES, Sept. 27, 2001, at A1.
41. *Id.*
42. *Id.*
43. *Id.*
44. *See Hijackers' Photos Released*, L.A. TIMES, Sept. 28, 2001, at A3.
45. Williams et al., *supra* note 40.
46. *Id.*
47. *See id.*

Lebanon and marry his girlfriend."[48] Jarrah is believed to have been one of the hijackers of United Airlines Flight 93, which crashed in Pennsylvania.[49]   An owner of the Bimini Hotel in Hollywood, Florida, at which several suspected hijackers stayed, said of them: "They were nice kids .... Clean-cut, nice looking and courteous. Lots of hellos and thank yous."[50]

To characterize the terrorist as "bad," we typically first have to demonize him—pretend that he is someone who does not love children, enjoy relaxing with friends and family at the end of the day, pray with humility, or laugh at himself when he makes a mistake. As a Pentagon spokesman defending U.S. treatment of detainees at Guantanamo asserted recently: "[T]hey'd probably meet you and slit your throat as quickly as they'd shake your hand."[51] Inasmuch as the Pentagon has thus far declined to disclose the names of any of those detained,[52] this assertion is difficult to confirm or rebut. We tend to take the position, by contrast, that our own law-breaking heroes, equally dedicated to a larger cause (but this time to a cause with which we sympathize), are fundamentally different. They do not lie when they cut down cherry trees;[53] they are good spouses, good parents, good countrymen;[54] they only bomb people who deserve to be bombed.

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48. *Id.*

49. *See id.*

50. *Id.*

51. Eric Lichtblau, *Petition Assails U.S. on Prisoners*, L.A. TIMES, Feb. 20, 2002, at A12.

52. *See* Richard A. Serrano, *Detainees in Cuba Refuse to Eat After Cell Incident*, L.A. TIMES, Mar. 1, 2002, at A32.

53. George Washington was probably guilty of treason and numerous counts of murder. Had he been captured, he undoubtedly would have been tried and executed; he escaped punishment by founding a new nation. *See, e.g.*, ENCYCLOPEDIA AMERICANA, *The American Presidency*, *available at* http://gi.grolier.com/presidents/ea/bios/01pwash.html (last visited Apr. 4, 2002); NetLondon.com, *George Washington Tried for Treason—At Last!* (Jul. 20, 2000),   *at*   http://www.netlondon.com/news/2000-29/40AF6832C194D49C802.html.

54. *See, e.g.*, Orthodox Union, *supra* note 6. The Orthodox Union website states the following:

> [Menachem] Begin's devotion to his wife was legendary.... He embodied the history of Jews in this century, particularly those whose lot was inextricably interwoven with the birth and continuance of the state of Israel.... [He] proved a punctilious parliamentarian who incalculably enriched Israel's democratic life.... [His] impact on

Like deontology, virtue ethics offers no credible starting point from which to distinguish the good from the bad. Unlike deontology, it often does not even offer useful practical guidance either. Proponents most commonly offer lists of virtues—courage, generosity, honesty, and the like—which they seem to defend primarily by reference to intuition.[55] Presumably, they would view courageous, generous, and honest terrorists as "good" and cowardly, stingy, and dishonest terrorists as "bad"—not much of a guide to an appropriate response. Aristotle added the requirement of moderation in such virtues[56]—not too brave, not too cowardly, not too generous, and not too stingy. Unfortunately, his amendment does nothing to solve the practical problem of what to do with the terrorist once we catch him.

In my view, existing moral theories are not particularly helpful in assessing the morality of terrorism. To the contrary, the problem of terrorism seems to bring their weaknesses to the fore.

III. AN EVOLUTIONARY THEORY OF ETHICS

I offer an alternative. My theory of ethics begins with the premise that we are generally motivated to behave as we do because such behaviors are adaptive—that is, because such behaviors make it more likely that we will survive and reproduce. The mathematics of probability tells us that individuals who are more likely to survive and reproduce will, in the long run, constitute an increasingly larger portion of the population as a whole. Thus, individuals motivated to behave in adaptive ways should, in the long run, come to dominate the population of which they form a part.

Most of us, at least to some extent, are motivated to be good. The simplest evolutionary explanation is that being good must be adaptive—that is, being good must make individuals so motivated more likely to survive and reproduce. If this were not so—if being good required, on average, some sacrifice to an individual's chances

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Israel's first generation was surpassed only by his arch political foe, David Ben-Gurion.

Id.

55. *See, e.g.,* JAMES RACHELS, THE ELEMENTS OF MORAL PHILOSOPHY 179-81 (1999).

56. *See* Christopher Rowe, *Ethics in Ancient Greece, in* A COMPANION TO ETHICS, *supra* note 25, at 128.

of surviving and reproducing—then, all else being equal, over time the percentage of individuals so motivated would decline, eventually to the point where the average person would not care about goodness.

But why is goodness adaptive? The most likely answer, I suggest, can be found in the branch of mathematics known as the theory of repeat games, particularly in the game called the repeated Prisoner's Dilemma. In the Prisoner's Dilemma, each of two players makes one decision: He can choose either to cooperate (C) or to defect (D). Each player then receives a payoff, which depends on the decisions of both. The game is defined formally as one in which the payoff table is as follows:

FIGURE 1

		Player 2	
		C	D
	C	x,x	z,y
Player 1			
	D	y,z	w,w

where $y > x > w > z$.[57] In each pair of outcomes, the first payoff belongs to Player 1, the second to Player 2.

Nonmathematicians often find the game easier to understand if numbers are substituted for the letter variables. The payoff table might, for example, look something like this:

FIGURE 2

		Player 2	
		C	D
	C	3,3	1,4
Player 1			
	D	4,1	2,2

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57. *See* MICHAEL TAYLOR, THE POSSIBILITY OF COOPERATION 64-66 (1987).

To read the table, select a column and row and view the respective payoffs. Thus if both players cooperate (row C and column C), each gets three points; if they both defect (row D and column D), each gets two points; if Player 1 defects and Player 2 cooperates (row D and column C), Player 1 wins four points, while Player 2 gets only one.

In a single play, Player 1 should always defect. If Player 2 chooses to cooperate, Player 1 will be better off (4 > 3). If Player 2 chooses to defect, Player 1 will still be better off (2 > 1). Indeed, no matter what Player 2 chooses to do, Player 1 should defect. And since the players' situations are symmetrical, the same incentives apply to Player 2. But if both defect, each will have a payoff of 2; whereas if both cooperate, they will both be better off—they will each have a payoff of 3, hence the dilemma.

A different dynamic operates if the players know that the game will be played more than once. Now, if Player 1 defects in the first game, she knows that Player 2 is likely to defect in the second game, as a result of which each will earn a series of 2s rather than a series of 3s. What strategy will now produce the best average payoff against all others?

Computer simulations suggest that many of the most successful strategies are variations of a strategy known as Tit for Tat.[58] Tit for Tat can be viewed as consisting of three parts: (1) begin by cooperating ("Do unto others as you would have them do unto you"), (2) if the other player defects, punish immediately ("An eye for an eye, a tooth for a tooth"), and (3) if the other player returns to cooperation, immediately return to cooperation as well (forgiveness). In other words, three of our most fundamental moral principles are part of the most successful solutions to a mathematical game that roughly models a wide variety of human interactions. My theory of ethics is based on the assumption that this is not a coincidence.

Real life, of course, is far more complex than any two-person game with a single two-option decision for each player. Unfortunately, we have not yet specified a game that captures all of life's complexity. My theory assumes that the optimal strategy for

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58. *See* ROBERT AXELROD, THE EVOLUTION OF COOPERATION 7-8 (1984); *see also* JON ELSTER, THE CEMENT OF SOCIETY: A STUDY OF SOCIAL ORDER 17-49 (1989); RUSSELL HARDIN, COLLECTIVE ACTION 23-25 (1982); EDNA ULLMANN-MARGALIT, THE EMERGENCE OF NORMS 18-19 (1977).

playing such a game, if such a game could be specified, would not be substantially different from Tit for Tat. I call the optimal strategy for playing this hypothetical game the "principle of reciprocity." Since, by assumption, it resembles Tit for Tat, the principle of reciprocity consists roughly of three parts: the Golden Rule, punishment, and forgiveness. Actions are morally right if they are consistent with this principle; they are morally wrong if they breach it. It is therefore morally right to follow the Golden Rule; it is morally right to punish the defections of others;[59] and it is morally necessary to forgive when others return to cooperation. Because being motivated to comply with the principle of reciprocity is adaptive, if we are so motivated we are more likely to survive and reproduce than if we are not. These are not merely rules for right action, they are rules for evolutionary success.

Human beings have struggled to be moral for millennia; game theory is recent. How can we be motivated to comply with the principle of reciprocity if we do not even know what it is? My theory does not assume that humans are either rational or knowledgeable. Rather, it assumes that moral behaviors are learned and that learned behaviors are subject to evolution, much like genes. Individuals who carry adaptive learned behaviors (including learned behaviors consistent with the principle of reciprocity) are more likely to survive and reproduce than those who do not. The process is primarily one of trial and error, although we can and sometimes do use intelligence to speed it along. Today's population consists of the survivors of this process. We are motivated to comply with the principle of reciprocity not because we understand that principle or believe it to be in our self-interest, but purely because of the mathematics of probability. Being motivated to comply with the principle of reciprocity was an evolutionary advantage. We happened to be so motivated; therefore we happened to survive.

Indeed, rationality can even interfere with moral behavior. Sharing, for example, might not seem to be in one's rational self-interest. An individual motivated solely by reason therefore might not share. My theory assumes that learned behaviors implementing the principle of reciprocity are passed from generation to generation

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59. This conclusion may require modification in cultures where the punitive role is transferred to a neutral third party. *See* Part IV.B, *infra.*

through a process of internalization. Each new generation, if properly socialized, feels a compulsion to engage in behaviors consistent with the principle of reciprocity, regardless of their apparent irrationality, and discomfort (guilt or shame) if it does not. This allows non-obvious implementations of the principle to evolve in contexts where rational self-interest might instead appear to require defection. Thus, over the generations, because of the mathematics of repeat games, individuals who have internalized the motivation to share have survived and reproduced more successfully than those who have not. Sharing has become part of the surviving population's internalized implementation of the principle.

Just as a species consists of a group of individuals with common genes, so a culture consists of a group with common learned behaviors. Each human culture has evolved its own implementation of the principle of reciprocity. I call any such implementation an "ethos of reciprocity." While the principle of reciprocity itself is part of the mathematics of the universe and therefore universal, any given ethos merely represents what a particular culture has learned to date about the principle, taking into account any special challenges that culture faces. Moral rules, therefore, vary from culture to culture. This does not mean, however, that morality is simply a cultural artifact. Its evolution is constrained by an underlying mathematics. For this reason all major moral codes—Christian, Buddhist, Jewish, Hindu, Muslim, Confucian, and Zoroastrian—resemble each other at their core.[60]

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60. The Golden Rule is common to all of these traditions. See in Christianity: THE NEW AMERICAN BIBLE, *Matthew* 7:12 (Members of the Catholic Biblical Association of America trans., 1970) ("Treat others the way you would have them treat you: this sums up the law and the prophets."); in Judaism: *Shabbat* 31a ("What is hateful to you, do not to your fellowmen. That is the entire Law: All the rest is commentary."); in Islam: Mohammed, in the *Hadith* ("Do to all men as you would wish to have done unto you, and reject for others what you would reject for yourselves."); in Confucianism: ANALECTS OF CONFUCIUS 15.24 (Simon Leys trans., 1997) (Confucius was asked, "Is there any single word that could guide one's entire life?" And he replied, "Should it not be *reciprocity*? What you do not wish for yourself, do not to do others."); in Hinduism: MAHABHARATA 5, 1517 (J.A.B. van Buitenen trans., 1973) ("This is the sum of duty: do naught to others which would cause you pain if done to you."); in Buddhism: UDANAVARGA 27 (W. Woodville Rockhill trans., 1892) ("[H]urt not others with what pains yourself."); in Taoism: T'AI-SHANG KAN-YING P'IEN 53 (Teitaro Suzuki & Dr. Paul Carus trans., 1906) ("Regard your neighbor's gain as your own gain, and regard your

Culture brings us together, but it also separates us. An ethos of reciprocity operates most effectively across the set of individuals who share that ethos, which I call the "We" of that ethos. Different We's may not—indeed, commonly do not—involve radically different rule structures; they more commonly involve different definitions of the boundaries of the We itself. Irish Catholics and Protestants subscribe to essentially identical moral codes; an Irish Catholic, however, is more likely to treat another Catholic as a member of his We, an Irish Protestant another Protestant. We feel compelled to care about and behave morally towards other members of our We, and expect them to respond in kind. We typically feel less compelled to care about or apply our ethos to individuals who are not members of our We; after all, since they do not share that ethos, they are less likely to respond in kind. This means that well-socialized individuals (good people) who adhere faithfully to their ethos vis-à-vis members of their We may still be nasty to outsiders.

Ultimately, of course, the mathematics of repeat games makes it maladaptive not to develop a common ethos of reciprocity with such other individuals as well—in other words, to expand our We. Over the generations, our We's have therefore expanded—from tribe to city-state to nation. The United States, for the most part, shares a common ethos of reciprocity in a way that the Roman Empire did not; for this reason it is far more stable. The European Union represents a conscious attempt to develop such a common ethos among historically hostile cultures. Nevertheless, humanity still consists of multiple We's. Within a given We, members are normally able to resolve their differences in accordance with their We's ethos of reciprocity; between We's, they often face conflicts that their inherited behaviors are less helpful in resolving.

My theory thus shares elements with each of its three principal competitors. Ultimately, it is consequentialist: It seeks ultimate justification in objective consequences.[61] Operationally, however, it

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neighbor's loss as your own loss."); and in Zoroastrianism: *Dadis-tan-i-dinik* 94, 5 ("That nature alone is good which refrains from doing unto another whatsoever is not good for itself."). Punishment is equally universal. Forgiveness receives more varied emphasis.

61. One of the ways in which consequentialist theory varies is in its choice of measuring values. Some consequentialists look at attainment of pleasure and avoidance of pain, some at preference satisfaction, some at purportedly more objective forms of utility or welfare. My theory looks to adaptivity—the

is deontological, generally requiring that we comply with internalized rules regardless of consequences.   And because internalization plays an essential role, my theory looks both to actor and act. It may treat an act committed by one who is fully socialized differently from an identical act with identical consequences committed by one who is not. As in virtue ethics, character counts. My theory is different from its competitors, however, in important ways. Unlike all others, it offers an objective basis for moral rules. It recognizes the possibility of different implementations of the underlying mathematics.   It predicts frictions when those implementations interact. Finally, it places less faith in reason than its competitors, more in trial and error.   Evolution is the one sure algorithm we have for identifying optimal paths in the face of overwhelming complexity. It is how nature produces adaptive species; it is how humans identify the paths of righteousness. Reason can accelerate this process, but cannot supplant it.

IV. THE MORALITY OF TERRORISM

A. The Inherent Moral Ambiguity of Politically Motivated Violence

The principle of reciprocity tells us that when another player defects, it is generally necessary to defect in response—that is, it is generally necessary to punish. Punishment, therefore, is moral, even as unprovoked defection is not. The problem is that in the absence of conventions for moral assessment (normally provided by a common ethos of reciprocity), it is sometimes very difficult to tell whether a given nasty action is an unprovoked defection or is rather punishment for some prior defection by another player.   In the absence of a common ethos of reciprocity, therefore, defection is inherently ambiguous. The result is that repeated mutual defection (in common parlance, the "blood feud") can be a stable evolutionary outcome even if both parties are merely applying the principle of

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ability to survive and reproduce—and in this regard, differs from all existing mainstream versions of consequentialism.   Because of the extraordinary richness of our behavioral ecosystems, this single value, I contend, justifies behaviors as diverse as love, friendship, literature, music, religion, gourmet cooking, politics, philosophy, science, and travel.   Defense of this premise, however, is beyond the scope of this article.

reciprocity—in other words, even if both parties are acting "morally."

Politically motivated violence, of course, is a form of defection. When it arises between We's, and therefore in the absence of a common ethos of reciprocity, it suffers from the same ambiguity and the same risk of degenerating into a state of evolutionarily stable mutual defection as any other form. Consider, for example, the Iranian hostage crisis of 1979-1980.[62] Shortly after the overthrow of the Shah, Iranian students took more than fifty United States diplomats hostage and held them captive for 444 days. Most Americans viewed their actions as unprovoked, an expression of irrational hatred—in short, a defection. After all, what had we ever done to them? At least one Iranian answer related to events that had occurred a generation earlier. In the early 1950s, the Iranian Parliament angered the West by nationalizing the Iranian oil industry.[63] The Shah appointed Mohammed Mossadegh Prime Minister. In 1952, Mossadegh's party handily won the national elections.[64] The United States feared Mossadegh's leftist leanings and in August 1953 therefore overthrew him, and indeed, Iranian democracy in general.[65] The vastly unpopular[66] but pro-Western

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62. *See generally* GARY SICK, ALL FALL DOWN: AMERICA'S TRAGIC ENCOUNTER WITH IRAN (1985) (providing an overview and analysis of American foreign policy in Iran during the late 1970s).

63. *See id.* at 6.

64. *See id.*

65. *See id.*

66. A secret assessment of the Iranian political situation from the American Embassy in Tehran, Iran, to the U.S. Department of State dated June 14, 1964, for example, stated:

> [O]ne of the remarkable intangible factors in the present situation is that the regime has so few convinced supporters. Evidence of this is found at every turn. Prominent members of the New Iran Party who express the belief, quietly and privately, that their party is a sham and a fraud and that no political party can be expected to do useful work as long as the Shah's heavy hand rests on the decision-making process; hand-picked Majlis members who deplore "American support" for a regime which they term a travesty of democracy; Civil Adjutants of the Shah, who belong to his most devoted supporters, yet who express the belief that Iran will never be able to solve its problems as long as there is no freedom of expression, no delegation of authority, and so little selection of personnel for merit; prominent judges who declare, with surprising lack of circumspection, that the anti-corruption campaign cannot get anywhere as long as it is known that certain

Shah thereafter exercised absolute power until his overthrow in 1979. A quarter of a century later, most Americans had forgotten their government's role in what Iranians perceived to be the suppression of their democracy (if Americans had ever been aware of it in the first place), but Iranians had not. To Iranians, the hostage taking seemed justified; to Americans, it did not. Of course, it might be argued that Mossadegh's nationalization of the oil industry was itself a defection and the 1953 United States-led coup merely a punishment. But nationalization, Iranians might argue, was justified by the exercise of the Anglo-Iranian Oil Company's franchise in a manner inconsistent with Iranian interests. And so it goes. Today, no doubt in part because of residual hostility from the hostage crisis, President George W. Bush has labeled Iran part of an "axis of evil," leading even the most moderate of democratically-elected Iranian politicians to denounce the United States.[67] Defection between

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people are immune from prosecution; military officers who tip off the National Front regarding actions planned against its demonstrators; Foreign Ministry officials who privately advise against courses of action they are officially urging on the U.S. with respect to the treatment of opposition spokesmen in the United States. These are not members of the opposition. They are members of the Establishment who, even while loyal to the Shah, are suffering from a profound malaise, from lack of conviction in what they are doing, from doubts whether the regime deserves to endure .... [T]here remains the fact that the Shah's regime is regarded as an unpopular dictatorship not only by its opponents but, far more significantly, by its proponents as well.

INST. FOR THE STUDY OF DIPLOMACY, A VIEW FROM TEHRAN: A DIPLOMATIST LOOKS AT THE SHAH'S REGIME 6-7 (1964).

67. *See, e.g.,* Nikki R. Keddie, *Why Reward Iran's Zealots?,* L.A. TIMES, Feb. 17, 2002, at M2 (reformers "now have no alternative but to unite behind the conservative clerics' virulent anti-Americanism"); James E. Young, Letters to the Times, *Nations Demonized as an 'Axis of Evil,'* L.A. TIMES, Feb. 17, 2002, at M4 ("Moderate Iranians have made friendly overtures to the West, and the government cooperated in arresting militant fundamentalists. Now they are so angry at the U.S. they are demonstrating and carrying signs that read 'Death to America.'"); *see also China Condemns Bush's "Axis of Evil" Comments,* AGENCE FRANCE PRESSE, Jan. 31, 2002 ("We advocate in international affairs all countries should treat each other as equals."); Barbara Demick, *Visit Stirring up Anti-Americanism,* L.A. TIMES, Feb. 18, 2002, at A3 ("A survey by the ruling party found that South Koreans believed, by a margin of 3 to 2, that Bush's characterization of North Korea was inappropriate."); *France Cool On Bush "Axis of Evil" Speech: Chirac Aide,* AGENCE FRANCE PRESSE, Feb. 1, 2002 (stating that "the rhetoric of good and evil is not suitable

moral cultures is inherently ambiguous, inherently risking degeneration into blood feud.

The Iranian hostage crisis is not unique in this regard. To the extent their voices are heard, terrorists almost always claim that their actions are responses to prior defections by the other side. The Palestinians claim to respond to Israeli injustice, Peru's Shining Path to class oppression, American Revolutionaries to taxation without representation, the Irgun to British limitations on Jewish immigration, John Brown to slavery. We can argue about whether their causes were or are just or their means worthy. In most cases, however, consensus is inherently unlikely. We can apply our own ethos of reciprocity to September 11, declaring it to be a violation of that ethos and therefore wrong. In honesty, however, we must also acknowledge that most of the peoples of the Middle East are not part of our We. Bluntly speaking, we care very little about their problems. Until the Taliban's actions affected us directly,[68] we did little.[69] We continue to ignore the suffering of the people of Iraq. We have tolerated, even funded, actions against the Palestinians that we would never tolerate against members of our own We. We have made little effort to determine what claimed injustice motivated those responsible for September 11 and whether such claims had any

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for the reality of today's world"); James Gerstenzang & Edwin Chen, *U.S., Russia Disagree on 'Axis of Evil,' Direction of Terror War*, L.A. TIMES, Feb. 5, 2002, at A3 (Russian Prime Minister Kasyanov: the U.S. and Russia must "identify dangers, real dangers, rather than imaginary" ones); *Islamic Body Blasts Bush's "Axis of Evil" Statement*, AGENCE FRANCE PRESSE, Feb. 4, 2002 (Organization of Islamic Conference denounces statement).

68. The Taliban appears to have been an exceptionally brutal regime. *See, e.g.,* Mary McNamara, *Keep Women's Rights in Mind, Group Urges*, L.A. TIMES, Sept. 20, 2001, at A12 (oppression of women); AMNESTY INTERNATIONAL, AFGHANISTAN: CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (Nov. 1999) at http://www.amnesty.org (treatment of prisoners); AMNESTY INTERNATIONAL, AFGHANISTAN: THE HUMAN RIGHTS OF MINORITIES (Nov. 1999) at http://www.amnesty.org (oppression of ethnic minorities); AMNESTY INTERNATIONAL, MASSACRES OF HAZARAS IN AFGHANISTAN, (Feb. 2001) at http://www.hrw.org/reports/2001/afghanistan/afghan101.htm, (oppression of ethnic minorities); AMNESTY INTERNATIONAL, WOMEN IN AFGHANISTAN: PAWNS IN MEN'S POWER STRUGGLES (Nov. 1999) at http://www.amnesty.org (oppression of women).

69. *See, e.g.,* AMNESTY INTERNATIONAL, AFGHANISTAN: INTERNATIONAL RESPONSIBILITY FOR HUMAN RIGHTS DISASTER (Nov. 1995) at http://www.amnesty.org.

merit. I do not intend to cast blame on Americans in this regard (we are no different from most), merely to note that in the absence of an ethos of reciprocity that includes all relevant peoples, any moral assessment we make is likely to be incomplete.

B. The Role of Law

Law solves the problem of evolutionarily stable mutual defections by removing the punitive role to a neutral third party—the state.   Punishment by a third party is much less likely to be misconstrued as unprovoked defection.   To the extent law is perceived as biased, of course, it will be less effective at solving this problem. The most effective legal order is one that treats all players as equal under neutral rules. In my theory, the rule of law and equality under law are both solutions to a game theoretic problem.

Domestic enforcement of neutral rules by a state is therefore inherently moral, even when it requires violence. I do not speak here of the morality of the details of enforcement—the severity of the punishment or the process accorded the accused, for example—but merely of the morality of punishment itself.[70] State violence loses this mantle of morality in at least two contexts. First and most obviously, in the international arena states are merely players, not neutral enforcers.   Second, even domestically, a state that takes sides—a state that does not treat all players as equal under neutral rules—may come to be perceived as just another player, in which case it becomes subject to the same risk of ambiguous defection and blood feud as any other.

The issue is further complicated by the fact that states have developed an ethos of reciprocity to govern relations among themselves; we call it international "law," even though it generally does not involve enforcement by a neutral third party. This ethos is limited in ambition, preventing only the worst barbarities, often permitting actions that would be viewed as heinous crimes if committed by individuals. The fact that an action is permitted under international law sometimes tempts us to exclude that action from moral scrutiny. And since only state action is so protected, we are

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70. My theory of ethics obviously suggests a theory of punishment different from existing theories. I plan to explore its implications for punishment more fully in a future article.

therefore sometimes led to apply different moral standards to, for example, terrorists than to state agents acting within the bounds of international law.

The application of such different moral standards is unwarranted. Within my moral theory, there is no reason to treat states differently from anyone else, except when they are acting as neutral enforcers of neutral rules. Our respect for the lawfulness of state enforcement of neutral rules reflects the game theoretic function of such enforcement. The lawfulness of state action under international law, by contrast, is largely irrelevant to its morality; certainly international law has never purported to define the bounds of morality. While we may find it convenient to exclude most state actions from the definition of terrorism, both are subject to the same ambiguities, the same risks of evolutionarily stable defection, and therefore the same moral concerns. The principle of reciprocity applies to princes and paupers alike.

This means that if we are going to condemn a particular type of politically motivated violence when undertaken by terrorists, we must equally condemn the same type of violence when undertaken by the U.S. Army or the CIA. If we are going to permit the justification of politically motivated violence undertaken by the U.S. Army or the CIA, we must similarly admit the possibility that similar violence undertaken by Al Qaeda may be equally justified. The fact that the U.S. Army and the CIA are agents of a state does not make their actions any more or less moral.

C. Victim Identity

Our intuitive sense that it matters who the victim is can easily be justified by my theory. Punishment, I have argued, is often morally necessary. We may have a hard time telling whether a particular defection constitutes punishment, or is rather itself unprovoked and therefore wrong. Nevertheless, terrorism (and other politically motivated violence intended as punishment) requires a different moral analysis than simple unprovoked defection.

But punishment, to be moral, must be aimed at a prior wrongdoer. The King David Hotel, for example, was a symbol of British might in Palestine and housed British administrators, albeit

primarily civilian.[71] The Irgun could credibly claim that its bombing was punishment for prior British actions. Had the Irgun instead bombed a black township in South Africa, it could not credibly have made that claim. Such a bombing would have been an unprovoked defection, and therefore morally wrong under my theory.

The problem with September 11 is that we still do not really understand what bin Laden was angry about and therefore why he selected the targets he chose. Part of this miscommunication may be our fault, but part of it is clearly his. If terrorism is to make any claim to morality, it needs to include a communicative component. Blowing up buildings without disclosing why is inherently and unnecessarily likely to increase the risk of evolutionarily stable mutual defection. It is therefore wrong. I do not mean to suggest that if bin Laden had articulated his purposes, his actions would have been moral. I do mean, however, that his failure to do so diminishes any claim to morality he might otherwise have had.

D. The Morality of Our Response

1. Expanding our We

Punishment is moral. We therefore must punish, as we have. In the absence of a common ethos of reciprocity, however, punishment is likely to feed a cycle of mutual defection. In the short run, we can seek to disrupt the organizational structures that make terrorism possible. Unfortunately, terrorism requires very little organization; the Israelis have attempted this solution for decades, and have utterly failed. The only real long-term solutions are (1) expansion of our We to include the terrorists, or (2) the genocidal elimination of populations that feed the terrorists. The second is inconsistent with our internalized moral codes, for good reason; it is also impractical in most circumstances. Were we to try to eliminate all Muslims in the world, we would probably pay a price too high to contemplate; if we did, most would conclude that we got exactly what we deserved. Our only real choice is to work to expand our We—to develop an ethos of reciprocity that includes the terrorists, even as we punish them.

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71. *See* SEGEV, *supra* note 3.

Demonization of terrorists is therefore counterproductive. It may serve our short-term interests. In the long run, however, it makes breaching the walls between our respective We's that much harder. Muslims may well condemn the September 11 terrorists' actions; even if they have sympathy with some of the terrorists' resentments, most condemn their means of expressing those resentments. The same Muslims are likely to resent demonization. We humans are all intensely aware of actions or statements that exclude us from another's We. Demonization reinforces that exclusion. Attorney General John Ashcroft's reported statement: "Islam is a religion in which God requires you to send your son to die for him. Christianity is a faith in which God sends his son to die for you"[72] was therefore a step in the wrong direction.[73] Under my theory, it was not merely immoral. Because morality is adaptive, by reinforcing the exclusionary boundaries of our We, Ashcroft's reported statement actually reduced the likelihood that we will survive and reproduce.

2. Expanding the rule of law

If law and equality under law are solutions to the problem of evolutionarily stable mutual defection, as I contend, it follows that we should try to use these tools affirmatively to address problems related to terrorism. International law still does not provide legal procedures for the neutral resolution of many of the most important sources of international conflict. I do not suggest that it would be realistic or necessarily desirable to seek a single coherent rectification of this omission—in effect, through an international constitutional convention. We can, however, move forward in a series of baby steps, through trial and error—in other words, through evolution.

In the absence of third party enforcement of neutral principles, a useful first step is collective action. If the preponderance of the international community signs on to a moral assessment and

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72. Dan Eggen, *Ashcroft Invokes Religion in U.S. War on Terrorism*, WASH. POST, Feb. 20, 2002, at A2.

73. This is so regardless of whether his statement was true. The problem is that the statement was made in a context in which it served to reinforce the limited boundaries of our We and to exclude groups that we should be working to bring into our We.

endorses a punishment, that punishment is less likely to be construed as an unprovoked defection. My theory predicts that collective action is less likely to result in blood feud and more likely to result in the development and reinforcement of a more inclusive ethos of reciprocity. The use of collective action by the first President Bush in conducting the Gulf War was a significant move in this direction. The similar use of collective action by the current President Bush at the outset of the Afghan War was similarly constructive and successful. More recently, as the United States has moved away from collective action and towards unilateralism, we have, in effect, stopped working on the development of a more inclusive ethos and, as a result, been significantly less successful.

My theory also suggests that we would ideally arrange for the trial of those involved in September 11 before one or more international tribunals, not before exclusively U.S. courts. The Nuremberg War Crimes Trial was not generally perceived simply as the trial of losers by winners precisely because it was international. As a result, most viewed its actions as punishment, not merely as further defections requiring retaliation. By foregoing international participation in the punishment of September 11 defendants, the United States risks the perception that such punishment is not neutral, and risks further that such punishment will constitute a further step in the development of an evolutionarily stable mutual defection. What matters is not our perception; it is rather the perception of those sympathetic to the defendants. If we can obtain an apparently neutral international imprimatur for the September 11 defendants' trial and punishment, my theory predicts that their sympathizers will less likely believe that further retaliation is required.

CONCLUSION

Unless I am grossly mistaken, terrorism will be with us for a long time to come. My own view is that if September 11 is the worst that ever happens to us, we should count ourselves lucky. The causes of terrorism, although social and political, have intensely moral elements. It is not sufficient simply to declare terrorists to be evil. We need to develop a better understanding of those elements. Existing moral theory is not adequate for this purpose. The theory of ethics I have outlined in Part III above, I suggest, offers substantially

greater insight into both the moral problems presented and the likely solutions to those problems.