

Terrorism, Innocence, and War

Robert K. Fullinwider

The events of September 11, 2001 defy the power of words to describe, console, or even explain. Nevertheless, because the United States must respond in one way or another, and because people must give or withhold their support to any national course of action, words necessarily come into play, words to formulate goals and words to justify the means to achieve them. "Terrorism" is one of the words ubiquitous in the aftermath of September 11, "war" another.

Carlin Romano, a philosopher and critic, writes in the *Chronicle of Higher Education* that a third word, "innocence," should get more attention than it has received. The "clarification and defense of innocence" by intellectuals, social commentators, and public officials, Romano believes, could add an important element to the fight against terrorism.

Innocence

"Innocence" links "war" and "terrorism." Terrorists are counted as murderers because they kill the innocent. Similarly, in war, military forces are prohibited by common custom and international law from targeting civilians. This prohibition "assumes innocence at its core," notes Romano. Perhaps so, but not "innocence" in the sense that underwrites Romano's initial condemnation of terrorists.

Romano insists that terrorism cannot be justified morally, no matter what its political aims, because terrorists select their victims haphazardly, without concern for innocence or guilt. Here, he construes "innocence" under a model of crime and punishment. On that model, punishment should fall on the guilty, not the innocent, on the wrongdoer, not the mere bystander. Just punishment, accordingly, must allow for some sort of antecedent "due process," in which individuals are found guilty according to evidence and only then subjected to penalties in proper proportion to their wrongs. Since the terrorist kills "haphazardly," he doesn't fulfill this minimal demand of just punishment.

In war, however, the notion of "innocence" has nothing to do with lack of blameworthiness. Rather, it divides individuals into two classes: those who may be

directly targeted by military force and those who may not. The former includes uniformed armed forces (combatants), the latter ordinary civilians (noncombatants). This division derives not from the imperatives of crime and punishment but from the imperatives of self-defense. In resisting aggression, a state may direct lethal force against the agency endangering it, and that agency is the military force of the aggressor.

From the point of view of moral-wrongdoing and just punishment, many of the aggressor's military personnel may be innocent; they may be reluctant conscripts with no sympathy for their nation's actions. Likewise, among ordinary civilians, many may actively support and favor their country's criminal aggression. They are not innocent. But *from the point of view of self-defense*, the moral quality of the conscript's reluctance and the civilian's enthusiasm is not relevant. What matters is that the former is a combatant, the latter not.

Consequently, war must be prosecuted by means that discriminate between the two classes. Specifying membership in the two classes is, of course, a difficult and somewhat arbitrary affair. Combatants are first of all those in a warring country's military service. They wear uniforms, bear arms, and are trained to be on guard. Because they wield the means of violence and destruction directed at a defending nation, such soldiers are fair targets of lethal response by that nation, even when they are in areas to the rear of active fighting and even when they are sleeping. However, not all enemy soldiers may be attacked. Those rendered *hors de combat* through injury, capture, or some other means possess the same immunities from being killed as civilian noncombatants. Conversely, individuals not in uniform but actively participating in the war effort, such as civilian leaders and managers directing overall military policy, are fair targets of attack. They count as combatants. The operative language in the Geneva Convention of 1949 and in the U. N. Resolution on Human Rights of 1968—two legal protocols governing the prosecution of war—confers immunity on those "not taking part in hostilities." Obviously, there is plenty of room to construe this phrase in very different ways. Even so, some people—the very old and the

very young, for example—clearly qualify for noncombatant immunity on any construal.

While the two points of view—of crime and punishment, on the one hand, and self-defense, on the other—understand “innocence” in different ways, either of them seems clearly to indict the perpetrators of the September 11 attacks. First, those who used hijacked passenger planes as bombs targeted civilians as such, at least in their attack on the World Trade Center. If the attackers considered themselves at war, they violated one of war’s laws. Second, the attackers provided no advance notice of their plan to exact punishment from the occupants of the World Trade Center and no forum for the occupants to answer any accusations or charges. If the attackers thought of themselves as avenging angels, they violated due process.

Terrorism

That Osama bin Laden and his network stepped across a clear line marking right from wrong seems signaled by the universal condemnation of the events of September 11. Even the League of Arab States expressed its “revulsion, horror, and shock over the terrorist attacks” against America. Nevertheless, matters may not be as simple as the foregoing account suggests.

First of all, the laws of war and the distinctions they draw are creatures of *states* and *state interests*. Individuals and groups who have no states to represent their grievances, or who stand at odds to the arrangements of power imposed by the prevailing state system, are barred from using violence to vindicate their just demands (as they may see them). Indeed, whatever their cause, they are condemned as criminals if they resort to violence. The U. N. International Convention for the Suppression of Terrorist Bombings (1997), for example, makes it a crime to explode a lethal device “in a public place” or even to attack a government facility such as an embassy. These acts, it goes on to say, constitute terrorism and “are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, [or] religious . . . nature.” No cause however good warrants violent response if the actor is an individual or group, not a state.

Since the United States is a country founded on violent rebellion against lawful authority, we can hardly endorse a blanket disavowal of the right by others violently to rebel against their own oppressors. Indeed, Thomas Jefferson offered a small paean to political violence in letters he sent to Abigail Adams, James Madison, and William Smith in 1787. “I hold that a little rebellion now and then is a good thing,” Jefferson wrote, “& as necessary in the political world as storms in the physical What signify a few lives lost in a

century or two? The tree of liberty must be refreshed from time to time with the blood of patriots & tyrants. It is its natural manure.” The occasion of Jefferson’s letters was the just-suppressed Shay’s Rebellion, the violent resistance by desperate farmers in western Massachusetts against the due process of law that, in a time of economic distress, was grinding them into dust. Only a handful of lives were lost in the short affair, but it lent a degree of urgency to delegates from various states scurrying off to Philadelphia to replace the Articles of Confederation.

Nor is Jefferson alone in looking favorably at a “little rebellion” by people who resort to violence in the name of a great cause. John Brown remains for many Americans a martyr in the fight against slavery, though his actions would count as terrorism under contemporary definitions and international conventions. While leading a gang of anti-slavery guerilla fighters in eastern Kansas in 1855, Brown took revenge for an assault by slavers on the town of Lawrence by dragging five men out of the small pro-slavery settlement of Pottawatomie Creek one night and hacking them to death. In 1859, in his ill-fated attempt to seize the United States armory at Harper’s Ferry, and precipitate (he fancied) a vast slave rebellion, Brown seized sixty hostages from the neighboring precincts.

Killing “innocents”—Brown’s victims at Pottawatomie Creek were not accorded any due process, nor were they combatants in uniform—and taking civilian hostages: these are the very deeds deplored and condemned by U. N. resolutions and conventions.

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They make Brown a quintessential terrorist. Yet many people refuse to view Brown this way because they don’t accept the uncompromising U. N. position that “irregular” violence—violence initiated by individuals and groups—is “under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, [or] religious . . . nature.” They believe that in some circumstances a cause *may* be sufficiently weighty to justify shedding blood, even “innocent” blood.

So, too, believes the League of Arab States. Though it condemned the September 11 attack as “terrorism,” it refuses to accept an unqualified version of the U. N.’s view that, for example, exploding a lethal device “in a public place” counts always as terrorism. In its 1998 Convention for the Suppression of Terrorism, the

League starts with a definition pretty much in line with the United Nation's. Terrorism is

[a]ny act of violence, whatever its motives or purposes, that occurs in the advancement of an individual or collective criminal agenda and seeking to sow panic among people, causing fear by harming them, or placing their lives, liberty or security in danger....

A "terrorist offense" is any act in furtherance of a terrorist objective.

So far, so good (though we may wonder about the force of the modifier "criminal" in reference to the terrorist's "agenda"). But the Convention then adds:

All cases of struggle by whatever means, including armed struggle, against foreign occupation and aggression for liberation and self-determination, in accordance with the principles of international law, *shall not be regarded as an offense.*

What does this added qualification mean? Read one way (putting emphasis on the clause "in accordance with the principles of international law"), it can be taken as proscribing the same deeds outlawed by U. N. conventions. Read another way (taking account of the fact that the definition of "terrorism" is prefaced by an initial affirmation of "the right of peoples to combat foreign occupation and aggression by whatever means, in order to liberate their territories and secure their right to self determination"), it can be taken as licensing some irregular violence (that directed against foreign "occupation" and promoting Arab "self-determination") while precluding other violence (that on behalf of a "criminal agenda"). Moreover, the matter is muddled further by the fact that the U. N. itself recognizes a fundamental right to self-determination, a right to resist "colonial, foreign and alien domination." Through Osama bin Laden's eyes, the attack of September 11 fell upon an alien dominator of Arabia and bespoke a campaign that would not end "before all infidel armies leave the land of Muhammed." What could the right to self-determination mean if it tied one's hands against the very source of "humiliation and degradation" imposed upon the Islamic world from the outside for eighty years?

Carlin Romano writes that it probably never occurred to bin Laden "how awful it is to kill innocent people." But bin Laden's own self-justification indicates the contrary. "Millions of innocent children are being killed as I speak," he declared, children who are dying in Iraq as a putative consequence of the economic embargo imposed on that state by an American-led coalition. Osama bin Laden purported to act on behalf of innocence. Why should he not calculate, as Jefferson implied, that shedding the blood of a few now may save the lives and liberty of many others in the long run?

Moreover, why should he feel restrained by the conventional views of innocence? Isn't it arbitrary to immunize from attack people who may be causally

implicated in the oppression one is resisting? By convention, the civilians of an aggressor nation who buy their country's war bonds are noncombatants and immune from attack. But without those war bonds, the aggressor nation would not be able to buy the guns and planes and bombs that enable it to prosecute its aggression. Why should those citizens be counted as "innocent" or made immune? (Judith Lichtenberg explores answers to these questions in her contribution to this issue of the *Quarterly*.)

Terrorists, writes Romano, must believe in some "philosophy of innocence, however pinched." They assume the guilt of their victims, but on "transparently flimsy grounds" Obviously, their grounds won't line up with the considerations operative in the conventions of international law, but those conventions weren't endorsed by the terrorists in the first place and don't take their perspectives to heart.

Consider the infamous massacre of Israeli athletes at the 1972 Munich Olympics by Black September, a Palestinian terrorist organization. Weren't those athletes uncontroversially innocent? From the point of view of Black September, they were not. They were the knowing and willing representatives of Israel to an international affair where their presence would lend

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further international credibility and legitimacy to their state. From the point of view of their attackers, the athletes were active and informed accessories to a continuing "crime"—the support of the "criminal" state of Israel. These are not flimsy grounds for charges of "guilt," although they are grounds thoroughly contestable and clearly lying outside the scope of considerations allowed by international law.

The Rule of Law

It is too easy to dismiss the terrorist as evil incarnate, as a demon beyond the human pale. "The terrorist," claims one writer, "represents a new breed of man which takes humanity back to prehistoric times, to the times when morality was not yet born." But this characterization seems wrong. If anything, terrorists are throwbacks to a "prehistoric time" when morality was not yet under control. What is scary about terrorists is that they appeal to morality without appealing to law. They act as a law unto themselves. Let me explain.



View of the courtroom inside the Palace of Justice on November 21, 1945, the second week of the Nuremberg War Crimes Trials. America's Chief Prosecutor, Robert Jackson (on leave as a justice of the U.S. Supreme Court) addresses the bench. The judges are seated on the far right, with their clerks seated in front of them. Defendants are seated in two rows on the far left, with their counsel seated in front of them. (The prosecution section is barely visible at the bottom of the photo. The press and visitors' sections, which are not shown here, are located behind the prosecution.) (AP Wide World Photo/ AP Pool)

Political theorists tell a story about the "State of Nature" to explain and defend government. The State of Nature proves to be intolerable for its inhabitants, whose lives are "solitary, poore, nasty, brutish, and short" (according to Thomas Hobbes). Contrary to common impressions, however, the problem in the State of Nature is not that people are so immoral, so lacking in any sense of justice or decency, that they prey wantonly upon one another. The problem is that people are *so moral*, so determined to vindicate rights or uphold honor at any cost that they become a menace to each other.

The distinctive feature of the State of Nature, as John Locke points out, is not the absence of morality but the absence of *law*. It is a circumstance in which the "law of nature"—the moral law—must be enforced by each individual. Each is responsible for vindicating her own rights and the rights of others. All prosecution of crime and injustice in the State of Nature is free-lance. Such a situation is the spawning ground of the never-ending chain of retaliation and counter-retaliation of the blood feud. "For every one in that state being both Judge and Executioner of the Law of Nature, Men being partial to themselves, Passion and Revenge is very apt to carry them too far, and with too much heat, in their own

Cases; as well as negligence, and unconcernedness, to make them too remiss, in other Men's."

Even if persons were not biased in their own favor, the problems of enforcing justice in the State of Nature would remain deadly. How would crime be defined? How would evidence for its commission be gathered and validated? Who would be punished, and in what manner? What would constitute legitimate self-defense? Who would calculate the rectification due from unjust aggression? Nothing in the State of Nature ensures any common understanding about these questions. The contrary is the case. Private understanding pitted against private understanding produces an escalation of response and counter-response that lets violence erupt and feed on itself.

The solution, of course, is, as Locke proposed, "an establish'd, settled, known Law, received and allowed by common consent to be the Standard of Right and Wrong, and the common measure to decide all Controversies," and "a known and indifferent Judge, with Authority to determine all differences according to the established Law." This solution prevails, more or less, in the domestic case. In most states, a common law tolerably resolves disputes, even if that law is not always the product of common consent. The law does

not always work well enough, however, and rebellious violence against its inflexibilities and oppressions as often elicits our sympathy as it invokes our fear and antipathy. "Irregular justice"—or vigilantism—can redirect the law toward a more just course. Moreover, sometimes the existing regime of law is so oppressive that outright revolution seems in order. At the end of the eighteenth century, a great many Americans, newly born of their own "revolution," sympathized with the revolution in France that destroyed a decadent monarchy and substituted republicanism; a great many others recoiled in horror at the revolution's excesses as it tumbled into tyranny. In the years since, Americans have both supported and resisted revolutions abroad. Our ambivalence is rooted in twin impulses: to warm to the oppressed in their liberation struggles and to fear the disorder of Private Judgment substituting for law.

At the international level, the rule of law likewise rescues the community of states from intolerable anarchy, though unlike domestic law, international law is a

patchwork of treaties, conventions, and understandings among independent actors, each jealous of its sovereignty. Few tribunals exist where "a known and indifferent Judge" possesses full "Authority to determine all differences" among nations; nor is there a common agent of coercion to enforce the judge's rulings on recalcitrant parties. Still, laws and conventions bring some order to international affairs, including the laws of war and the conventions against terrorism referred to earlier. Admittedly, these laws and conventions stack the deck against non-state actors. And—as the posture of the League of Arab States indicates—some people and some states will want to support non-state actors in violent response to perceived wrongs and oppressions. But even behind such sympathizing and support lies the worrisome specter of Private Judgment. Osama bin Laden, in his isolated redoubts in the Afghan mountains, elects himself as the vindicator of Islamic honor and rights. He answers to no one or no community but to his own sense of justice. Self-elected vigilantes on the international scene may be tolerated—or



General view of the World Court on the opening day of Germany's lawsuit against the United States at The Hague, November 13, 2000. Speaking from the podium is Bruno Simma, representative of Germany, which accused the United States of violating international law in detaining two German citizens, who later received the death penalty and were executed in Arizona. (AP Wide World Photo/Michael Porro)

even supported—by states when their vigilantism remains a mere thorn in the sides of enemies; but when the vigilantes hold in their hands the power to destroy people by the scores and hundreds of thousands, the face of Private Judgment is hideous even to those who join in its chosen cause. When the League of Arab States proffered its condemnation of the September 11 attacks, it had not suddenly forgotten the experience of eighty years of “humiliation and degradation” noted by bin Laden, it had not suddenly abandoned the cause of Palestinian justice, it had not suddenly converted to non-violence. Rather, it had suddenly lost its taste for Private Judgment. Osama bin Laden is beholden to no one, not even to the Arab states themselves. Consequently, he is a peril to all.

Private Judgment is not only a menace when exercised by individuals but when exercised by states as well. Countries undermine the efficacy of international law by reserving to themselves Private Judgment about its application. For example, in 1928, Western powers agreed in the Kellogg-Briand Pact to outlaw war as a tool of national policy. They determined that armed aggression was henceforth a crime. But each of the Pact’s signatories reserved to itself final judgment about when its acts were proper self-defense and when improper aggression against a neighbor. As a consequence, the Kellogg-Briand Pact inhibited war the way matches inhibit fire.

In the aftermath of World War II, when Nazi leaders were put on trial for war crimes, they interposed a potentially fatal objection: the Nuremberg tribunal before which they appeared had no standing to judge Germany’s war policy since the Kellogg-Briand Pact

This new principle was an important step for international law, since a system of law in which each party can veto the application of the law to itself is no system of law at all. So long as each party remains the sole judge of its own case, the State of Nature remains in place.

Having struck a notable blow for the principle of law at Nuremberg, the United States has not always honored its own vital handiwork. For example, in 1985, when Nicaragua alleged in the World Court that we were guilty of aggression for supporting the Contras, we did not defend our support by arguing that it constituted collective self-defense. We argued instead an interpretation of the United Nations charter that made the question of whether we were acting in self-defense nonjusticiable. We argued that our actions could be reviewed only by the Security Council of the U. N., where, of course, we have a veto. In effect, the United States argued that only it could judge whether its actions were aggression or self-defense. Having so argued, our subsequent insistence that other, smaller states—states without a veto in the Security Council—must submit to the bar of collective judgment looks self-serving rather than principled. Private Judgment—whether manifested in the person of a terrorist like Osama bin Laden or in the agency of a rogue state like Iraq—increasingly reveals itself for the hazard it is. Our own interests as well as our principles demand that we put a stake through its heart. We must not claim it as our special prerogative.

Innocence Revisited

Suppose that the ideas of due process and non-combatant immunity referred to by Carlin Romano are nothing but conventions accepted within and among states. Still, they are precious ideas, hard-won in their application. They require that legitimate institutions resort to violence in ways that discriminate between those adjudicated guilty and those not, between those taking part in hostilities and those not. These are the rules fallible humans have fashioned to keep us out of the State of Nature. They issue, in part, from our collective recognition that the partiality toward our own interests and the unconcern we feel for the interests of others—those two facets of human nature remarked on by Locke—invariably distort Private Judgment and make it unreliable.

But what if you were assured of reliable judgment? What if you were assured of infallibility? Then you would need no conventions of innocence to guide you. No conventional limitations withstand the conceit that God is on your side, since whatever God does must be right. If God orders you to war against, and to “save alive nothing that breatheth” among, an enemy; if He commands you utterly to destroy the Hittites and the

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reserved to each country final judgment about whether it was acting lawfully. In rebuttal, the United States joined Great Britain in arguing that although a state may be free in the first instance to decide whether it is acting in self-defense, its exercise of the right of self-defense is nevertheless ultimately subject to review by the international community. Whether this was an ingenious construction of the Kellogg-Briand Pact or an invention from whole cloth, the argument won the day and established an important principle of international law: that no state can take complete refuge in Private Judgment. Ultimately, states must face the bar of collective judgment and justify their violent conduct in terms acceptable to the common moral sense of mankind.

Amorites, the Canaanites and the Perizzites, the Hivites and the Jebusites; then you destroy without compunction and without distinction.

When Christians, who from the Middle Ages on have developed a profoundly influential doctrine of just war that puts special emphasis on noncombatant immunity and on the innocence, particularly, of those too young, too old, and too ill to be "taking part in hostilities"—when Christians, I say, read Deuteronomy 20, they must feel a considerable indigestion. Still, the text says what it says, and if "God by revelation made the Israelites . . . the executioners of His supernatural sentence" then the "penalty was within God's right to assign, and within the Israelites' communicated right to enforce"—so reads a passage from the *Catholic Encyclopedia*. As "Sovereign Arbiter of life and death," God can take or give as he pleases, and it must be just. But we who are without God's eyes "cannot argue natural right" from these Biblical cases of wholesale slaughter, the *Encyclopedia* passage goes on to say. Indeed we cannot. We must hew to those distinctions and discriminations embedded in the conventions on war and terrorism and we must wholeheartedly strive to see them everywhere honored.

The delusion that he and God act in concert is what makes Osama bin Laden's self-election as avenging angel a special threat to humanity. Had he the power, he would not hesitate to kill all that breathes among his "enemy." He would not hesitate to destroy whole cities, entire populations. America was "hit by God," declares bin Laden in his taped message after the September 11 attacks. God has made America the enemy and bin Laden merely executes His will.

Two days after the September 11 horrors, an unnerved Jerry Falwell intemperately offered his own version of bin Laden's delirium. God, announced Falwell, had lifted the curtain of protection around America, angered by the ACLU, gays and lesbians, abortionists, pagans, secularists, and the Federal court system. "God will not be mocked," he declared. But Falwell quickly repudiated his remarks in the face of widespread criticism. He apologized for his words, pleading weariness for his thoughtlessness. "[My] September 13 comments were a complete misstatement of what I believe and what I've preached for nearly 50 years," Falwell said in an interview. "Namely, I do not believe that any mortal person knows when God is judging or not judging someone or a nation." He repeated the point: "I have no way of knowing when or if God would lift the curtain of protection" around America. "My misstatement included assuming that I or any mortal would know when God is judging or not judging a nation."

In his recantation, Falwell is surely on the mark. He does not know God's will or God's plan. Neither he, nor you, nor I know, nor does Osama bin Laden.

Civil Society, Democracy, and Civic Renewal

Robert K. Fullinwider, Editor

Civic society is receiving renewed attention from academics, politicians, journalists, community leaders, and participants in the voluntary sector. *Civil Society, Democracy, and Civic Renewal* brings together several of America's leading scholars—of history, sociology, political science, and philosophy—to explore the meaning of civil society, its positive and negative effects, its relation to government, and its contribution to democracy.

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In limning the salutary effects of a little political violence, Thomas Jefferson posed a standard against which to reckon its justification. "What signify a few lives lost in a century or two?" he asked. He meant: the favorable course of events will let us look back from afar and tolerate the violence that set it in motion. If this is the right standard, then the United States has it within its power now, by prudent and measured

Truth v. Justice: The Morality of Truth Commissions

Robert I. Rotberg and Dennis Thompson, Editors

The truth commission is an increasingly common fixture of newly democratic states with repressive or strife-ridden pasts. From South Africa to Haiti, truth commissions are at work with varying degrees of support and success. To many, they are the best—or only—way to achieve a full accounting of crimes committed against fellow citizens and to prevent future conflict. Others question whether a restorative justice that sets the guilty free, that cleanses society by words alone, can deter future abuses and allow victims and their families to heal. Here, leading philosophers, lawyers, social scientists, and activists representing several perspectives look at the process of truth commissioning in general and in post-apartheid South Africa. They ask whether the truth commission, as a method of seeking justice after conflict, is fair, moral, and effective in bringing about reconciliation.

"This book discusses the vast and complex range of choices in between blanket amnesty and total accountability through criminal justice, and does so with engaged and critical sympathy."

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—Michael Walzer

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action, to make sure that in a century or two the lives lost on September 11 continue to signify something—a profound and everlasting wrong.

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Sources: Carlin Romano's comments occur in "Why Innocence Matters," *Chronicle of Higher Education*, 48 (October 12, 2001). The texts of the Nuremberg Laws, the Geneva Convention of 1949, and the 1968 United Nations Resolution on Human Rights can be found at www.dannen.com/decision/int-law.html. The U.N. Convention on the Suppression of Terrorist Bombing (A/RES/52/164) along with other pertinent documents such as Measures to Eliminate International Terrorism (1994) (A/RES/49/60), Human Rights and Terror (1997) (A/RES/52/133/), and Universal Realization of the Right of Peoples to Self-Determination (1997) (A/RES/52/113) can be found at www.un.org/documents/resga.htm. The statement of the League of Arab States and its 1998 Convention on the Suppression of Terrorism are available at www.leagueofarabstates.org/e_LASToday.asp. Judith Lichtenberg, "The Ethics of Retaliation," *Philosophy & Public Policy Quarterly*, vol. 21, no. 4. The characterization of terrorists as a throwback to prehistoric times is by Ben Zion Netanyahu, "Terrorists and Freedom Fighters," in *Terrorism: How the West Can Win*, edited by Benjamin Netanyahu (Farrar, Straus, Giroux, 1986). Osama bin Laden's statement can be found in the *Washington Post* (October 28, 2001). For the inconveniences in the State of Nature, see Thomas Hobbes, *Leviathan*, edited by Richard Tuck (Cambridge University Press, 1996), Chapters 13, 15, & 29, and John Locke, *Two Treatises of Government* (Mentor Books, 1965), Book II, Chapters 2 and 9. For Jefferson's letters, see Thomas Jefferson, *Writings* (The Library of America, 1984), pp. 881, 889, 911. For the life of John Brown, see Stephen B. Oates, *To Purge This Land with Blood: A Biography of John Brown* (Harper & Row, 1970). My discussion of the Kellogg-Briand Pact draws upon Paul W. Kahn, "From Nuremberg to the Hague: The United States Position in Nicaragua v. United States and the Development of International Law," 12 *Yale Journal of International Law*, vol. 1 (1987). The gloss on Deuteronomy 20 is taken from the 1913 edition of the *Catholic Encyclopedia*, accessible on the Web at www.newadvent.org/cathen/. Jerry Falwell's remarks can be found in Peter Carlson, "Jerry Falwell's Awkward Apology," *Washington Post* (November 18, 2001). A few paragraphs in the text above are taken from R. Fullinwider, "Understanding Terrorism," in *Problems of International Justice*, edited by Steven Luper-Foy (Westview Press, 1988), pp. 248–259 (used by permission).

