

## Terrorism, Shared Rules and Trust\*

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WHAT is the moral significance of terrorism? To answer this question, I begin with the following assumptions, for which I offer no argument: all acts of terrorism are morally objectionable and there is at least one (non-moral) feature that makes all acts of terrorism morally objectionable (that is, all acts of terrorism are morally objectionable in at least one and the same way). This does not rule out the possibility that some acts of terrorism may be morally permissible or even morally required.<sup>1</sup> Permissible and obligatory acts may nonetheless fail to be morally “pure.” They may have some morally objectionable features. In this way, a terrorist act is like all acts to which “thick” predicates are applicable.<sup>2</sup> For example, all brutal acts are morally objectionable. But there might be cases in which a brutal act is nonetheless excusable or even morally required. A rude comment is always objectionable (although perhaps not morally so), but there might be some cases in which it is excusable to be rude. In such instances, we might say that it is regrettable that such actions had to be taken and we might condemn those who put us in the position to have to resort to such objectionable measures even if they are the same people who are the objects of our morally objectionable act (and we therefore end up in a sense blaming the victim). We might say, with only modest inaccuracy, that good people are being forced to do bad (which is to say, morally objectionable) things.

Let us call the ineliminable moral objectionableness of all terrorist acts the *special objectionableness of terrorism*. So we can put the question addressed in this paper in the following way: What accounts for the special objectionableness

\*Thanks to Shelly Kagan, Avery Kolers, Susanne Sreedhar, the participants of the Twilight of Sovereignty Lecture Series at Yale University, Robert Goodin and two anonymous referees for their very generous and insightful comments.

<sup>1</sup>In “Terrorism, Rights and Political Goals,” *Violence, Terrorism and Justice*, ed. R. G. Frey and C. Morris (New York: Cambridge University Press, 1991), pp. 59–85, Virginia Held rejects the unambiguous position that terrorism can never be morally justified.

<sup>2</sup>There is substantial literature on thick moral predicates. For the first discussion of thick moral concepts, see P. Foot, “Moral arguments,” *Mind*, 67 (1958), 502–513. She discusses the concept of “rudeness.” For another discussion of thick moral predicates, see John McDowell, “Are moral requirements hypothetical imperatives?” *Proceedings of the Aristotelian Society, Supplementary Volume*, 42 (1978), 13–29. See also Bernard Williams, *Ethics and the Limits of Philosophy* (Cambridge, Mass.: Harvard University Press, 1985), pp. 140–52 and Allen Gibbard, *Wise Choice, Apt Feelings* (Cambridge, Mass.: Harvard University Press, 1990), pp. 112–14.

of terrorism? My answer is that terrorism is especially objectionable because terrorist acts threaten two very valuable things: valuable shared rules of war and valuable trusting relationships between both international allies and nations at war. In Section II, I argue that shared rules of war are instrumentally quite valuable in virtue of being shared – so valuable that they may be morally preferable to unshared rules, even if those unshared rules are in some restricted sense morally superior. I conclude that threatening to destroy or actually destroying such rules is deeply morally objectionable. In Section III, I argue that shared rules of war generate and sustain international trusting relationships that are themselves instrumentally extremely valuable and that threatening to destroy or actually destroying these trusting relationships is also deeply morally objectionable. In the final section, I show how terrorism uniquely threatens shared rules of war and international trusting relationships.

Before getting down to business, I must address some preliminaries. First, I provide at this stage neither a firm definition of the word “terrorism” nor necessary and sufficient conditions for an act to be a terrorist act.<sup>3</sup> Instead, I shall leave a discussion of the distinctive characteristics of terrorism to the final section. At this point, I shall make only a stipulative description, built upon Annette Baier’s description of terrorist acts as violent demonstrations.<sup>4</sup> My stipulative description is that terrorist acts are spectacular acts of violence that transgress shared rules of war. This description fits well with some canonical cases of terrorism such as the 1946 bombing of the King David Hotel by the Irgun, the September 11, 2001 attacks in the United States, the IRA bombing at Omagh, the 2002 bombing of a nightclub in Kuta, Bali, and Palestinian suicide bombings within the pre-1967 borders of Israel. There are likely many penumbral cases of terrorism that sit uncomfortably with this stipulative definition. But at this stage in my reflections I do not see any reason to take a stand on whether these penumbral cases are cases of terrorism.

Second, due to space restrictions, the subject matter of this paper is limited to international terrorism committed outside the context of war and any terrorism committed within the context of war (including civil wars, revolutionary wars, guerilla wars and wars involving non-state actors). I also focus only upon terrorism committed by members of a group and in the service of political struggle. I exclude from my reflections domestic terrorism, one-off terrorist acts that are not a part of broader campaigns and so-called eco-terrorism.

<sup>3</sup>Here I follow Samuel Scheffler, “Is terrorism morally distinctive?” *Journal of Political Philosophy* 14 (2006), 1–17. See also Virginia Held, “Terrorism and war,” *Journal of Ethics*, 8 (2004), 59–75 and R. M. Hare, “On terrorism,” *Journal of Value Inquiry*, 13 (1979), 4–23.

<sup>4</sup>In Annette Baier, “Violent demonstrations,” *Violence, Terrorism and Justice*, ed. Frey and Morris, pp. 33–58; reprinted in Annette Baier, *Moral Prejudices* (Cambridge, Mass.: Harvard University Press, 1994), pp. 203–21.

## I. THE RULES OF WAR

I believe that most rules of war are conventional norms in the sense that they are social practices that resolve recurrent cooperation problems.<sup>5</sup> But in the following two sections, I argue only that shared rules of war (whether conventional or not) are extremely valuable. I begin with the observation that war is a moral disaster; while it may sometimes be morally justifiable, it is nonetheless a moral disaster (and so war, like terrorism, is always morally objectionable although it may sometimes be morally justified). One reason why war is such a moral disaster is that so many people undeservingly suffer premature, violent and intentionally caused deaths (as opposed to many dying prematurely as a result of a natural disaster, which would be a disaster but not a *moral* disaster). It seems clear that, *ceteris paribus*, anything that limits the moral disaster of war is extremely valuable, albeit instrumentally so. The claim I defend here is that rules of war, especially shared rules of war, fulfill that function and so are instrumentally quite valuable.

We can distinguish two broad categories of rules along roughly the same lines as we distinguish the old *jus ad bellum* and *jus in bello* rules. The first category consists of rules stipulating what counts as an act of war (what is technically referred to as an act of aggression). The second category consists of rules governing the limits of wartime violence. I will focus primarily on the second set of rules, but a few words about the first set of rules would be worthwhile.

Most wars have their preliminaries: failed negotiations, ultimatums, military build-ups and public posturing by leaders. Most politicians, diplomats and generals take it to be the case that there are lines that, once crossed, are tantamount to explicit declarations of war. The first set of rules determines what these lines are. Examples of this sort of rule would be rules stipulating that trade sanctions, spying and even border skirmishes do not amount to acts of war. These rules, then, mark off the boundary between mere saber rattling and grave announcements of one party's willingness to engage in all out military conflict. Crossing such lines amounts to the public abandonment of previously held moral commitments and so invites both one's enemies and one's allies to abandon that violent Hobbesian pose, "the state and posture of Gladiators; having their weapons pointing, and their eyes fixed on one another,"<sup>6</sup> and to engage in actual fighting. A rule stipulating a well-demarcated boundary up to which an aggrieved

<sup>5</sup>This is not a novel view. David Hume argues for this position in *Enquiries Concerning the Principles of Morals*, ed. Tom Beauchamp (New York: Oxford University Press, 1999), §3.1.11. More recently, we find a similar argument in George Mavrodes, "Conventions and the morality of war" and Lawrence Alexander, "Self-defense and the killing of non-combatants," *International Ethics*, ed. Charles Beitz, et al. (Princeton, NJ: Princeton University Press, 1985), pp. 75–89 and 98–107, respectively. For more on conventions, see David Lewis, *Convention* (Oxford: Blackwell, 1969). For more on conventions as solutions to cooperation problems as opposed to coordination problems (and therefore unlinking the concept of convention from Nash equilibria), see Peter Vanderschraaf, "Convention as correlated equilibrium," *Erkenntnis*, 42 (1995), 65–87.

<sup>6</sup>Hobbes, *Leviathan*, 2.13.12.

party might charge but pull away from when he is just shy of it, thereby avoiding all out conflict but nonetheless making clear the seriousness of his demands or resentment, can allow for the useful blowing off of steam and perhaps may even facilitate advancement in peaceful negotiations between enemies in lieu of all out war. Thus, such rules limit the moral disaster of war by limiting the incidence of war and are therefore valuable rules.

The second set of rules also limits the moral disaster of war. Among the most important of these rules are the rules stipulating who is a legitimate target (but these are not the only rules). All things considered, the smaller the number of legitimate targets allowed by the rule, the better.<sup>7</sup> For example, it would be best if only two parties were legitimate targets: one “hero” from each warring party. There would be a battle to the death between the two heroes and whoever won would win the war for her side. Since this is not a realistic rule, we must seek alternatives. For example, there may be a rule stipulating that only uniformed members of the military are legitimate targets. Or, there may be a rule stipulating that only uniformed members of the military and all others who work for the military are legitimate targets. Or, there may be a rule stipulating that all (even non-uniformed) members of the military and all those who live nearby military installations (or encampments) are legitimate targets. And so on.<sup>8</sup>

We have good reason to think that in almost all cases having some rule will likely limit the moral disaster of war more than having no rule at all. So we can conclude here that because the rules of war limit the moral disaster of war, such rules are extremely valuable. They are not intrinsically valuable, of course, but that is not reason to take them not to be very valuable. We are therefore faced with the next question of what the content of these rules might be. Suppose a single community discovers what are, in some restricted sense, the best possible rules of war.<sup>9</sup> Suppose that, unfortunately, this community is the only community in the world to have discovered these rules – every other community has a different view of the rules of war. Ought the community with the information about the best possible rules of war attempt to impose those rules on other communities? If this community has the power of Hobbesian sovereign over all

<sup>7</sup>The exception would be the case in which it is clearly the case that one side winning the war would be a moral disaster. This, though, is rarely the case.

<sup>8</sup>It is no objection to this account of the value of the rules of war to say that there may be cases in which following these rules has negative consequences for either or both sides because it is possible that a few more soldiers may die or suffer wounds as they try to follow the rules of war. For, overall, having and obeying these rules is best. As David Hume nicely puts this point in his discussion of the emergence of property rights: “But however single acts of justice may be contrary, either to public or private interest, ’tis certain, that the whole plan or scheme [of rules] is highly conducive, or indeed absolutely requisite, both to the support of the society, and the well-being of every individual. ’Tis impossible to separate the good from the ill” (*Treatise on Human Nature* 3.2.2.22).

<sup>9</sup>A rule might be morally superior *in a restricted sense* because on its face it maximally respects, say, rights while at the same time failing in an all things considered way to be better than a rule that does not maximally respect rights. We might say, slightly mixing our terms here, that when a rule is morally superior in a restricted sense it is *pro tanto* the best rule although not the best rule all things considered.

other communities, perhaps this would be a feasible arrangement. But since there is no global Hobbesian sovereign, this is a non-starter. So, instead, suppose that the community with the best possible rules simply follows these rules, regardless of whether any other communities are following those rules. Is there a reason *not* to follow unilaterally this conception of the laws of war regardless of the rules others follow? There is.

The reason is that, in most cases, the fact that shared rules of war are shared generates valuable consequences that unshared rules are not likely to generate. I argue that even if these shared rules are, in some restricted sense, second, third or *n*-th best, and some of the unshared rules are, in some restricted sense, morally preferable to the shared rules, sacrificing the value generated by the shared rules for the sake of unilaterally following rules that are, in some restricted sense, morally preferable may not be the right thing to do. The first valuable consequence generated by sharing rules which is not as likely to be generated by unshared rules is the limitation (and perhaps even abatement) of the moral disaster of war. I argue for this claim in the remainder of this section. The second valuable consequence which is generated by sharing rules, but unlikely to be generated by unshared rules, is a trusting relationship between enemies. I shall argue for that claim in the next section.

If there is disagreement between two warring parties about what the laws of war are, then there will be disagreement about how the war is to be fought laid on top of the disagreement that led to the war in the first place. Each side will take themselves to be fighting not only a just war but fighting justly, while the other side is fighting not only an unjust war but is fighting the war only as scoundrels would fight. This is very likely to generate greater antipathy on each side and may lead, for example, to overcalculation of how much force is proportional to the threat posed by the enemy.<sup>10</sup> This is likely to increase the moral disaster of war (but possibly without abandoning commitment to a unilaterally adopted proportionality of force rule).

This seems especially likely in cases in which the two sides do not agree on who counts as a combatant. At least one side – if not each side – will take the other side not only to be fighting as scoundrels but also to be aiming at illegitimate targets and therefore to be particularly bloodthirsty. This has a tendency to produce amongst each side a willingness to take extreme measures (once again, possibly within the requirements of a proportionality rule) in order to prevent attacks against (what each side takes to be) non-combatants, like, for example, using greater force than normal, bulldozing houses of enemy civilians who have a familial relation to enemy fighters, abridging civil liberties at home, treating prisoners of war unusually poorly and taking the urgency of the battle to be

<sup>10</sup>Such increases in the intensity of war in response to rule-breaking in war are already codified as “belligerent reprisals,” which give each side the right to engage in proportionate breaches of the shared rules in response to the other side’s breaches. I thank an anonymous referee for this point.

serious enough to warrant the employment of usually prohibited measures such as torture. Let us call this the *escalation problem*. The escalation problem need not threaten to diminish each side's own unilateral rule following (although it can). It may only push rule-followers to use their rule-sanctioned discretion to increase the level and intensity of violence to the greatest degree permitted by the rules. Even this, though, may lead to an increase in the moral disaster of war.

In addition to the escalation problem, there is another problem, which I shall call the *motivation problem*. It is unlikely that the rules unilaterally adopted by one side could motivate the appropriate behavior of its own soldiers if following the rules *systematically* puts the soldiers at a disadvantage to which the other side does not systematically subject itself (even if the other side may prefer different rules that systematically generate different disadvantages). So soldiers not only believe that they are fighting dishonorable scoundrels, they also know from the experience of unilaterally following their own rules that following these rules puts them at a disadvantage in their struggle against those they take to be dishonorable scoundrels. This just increases the unlikelihood of each side's own soldiers following their preferred rules during the heat of battle. For the motivation to follow these rules is a fragile one, surely to be overcome by many sentiments, such as the intense uncertainty and fear that dominates the battlefield and the allegiance each soldier has for her fellow soldiers. Such sentiments are either augmented by or simply added to as a result of the rules of war not being shared. After all, soldiers operating under such conditions have no reason to view the fact that their enemy avows commitment to some *different* set of rules as a reason to follow their own unilaterally adopted rules of war. Robust self-policing might ensure some compliance. But robust self-policing in the face of widespread internal discontent about unilaterally adopted rules which put the soldiers at a systematic disadvantage may either threaten morale or simply proceed in bad faith. So we have reason to believe that such self-policing is likely neither to be pursued nor to be effective if pursued.<sup>11</sup> On the other hand, when rules are shared there is both internal and external pressure to obey the rules and to police those who fail to follow the rules.<sup>12</sup> The internal pressure comes from the party's commitment to uphold the rules and the external pressure from the shared commitment to uphold the shared rules. In short, the motivation for each side to

<sup>11</sup>Unfortunately, we have substantial evidence from current events that self-policing fails. During the recent Intifada, members of the Israeli Defense Forces have rarely suffered significant consequences for violations of their code of military conduct. The US Military attempted even to cover up the torture scandal at Abu Ghraib prison in Iraq and then prosecuted only very few of the lowest level soldiers involved. The Abu Ghraib fiasco is well-documented. For information on the IDF's failure to police itself, see: <http://www.btselem.org/English/Beating%5Fand%5FABuse/> (accessed Dec. 23, 2005). Whether either of these cases are connected with the absence of shared rules is an open question. But the fact that in both cases those who suffer from this poor treatment are routinely referred to as terrorists is suggestive.

<sup>12</sup>There are several interesting examples of how shared rules restrained the conduct of war in Gabriel Kolko, *A Century of War* (New York: New Press, 1995), ch. 1. Jean Renoir's 1937 film *Grand Illusion* cynically explores this.

follow their unilaterally adopted rules faces hurdles that the motivation on each side to follow shared rules does not face.

If both the escalation and the motivation problems are consequences of unilaterally adopting rules of war, then unilaterally adopting such rules threatens to defeat the purpose of the rules, namely to limit the moral disaster of war. It seems like a perverse fetishism to insist on certain rules of war because they are judged morally best even if such insistence generates a spiraling out of control of the moral disaster of war. Agreement about the rules of war, on the other hand, diminishes the severity of both the escalation problem and the motivation problem. This in turn limits the moral disaster of war. So shared rules are instrumentally extremely valuable, and perhaps so valuable that they may be morally preferable to unilaterally adopted rules that are, in some restricted sense, morally superior to the shared rules. Threatening to destroy or successfully destroying shared rules of war either by abandoning rules one once shared or by causing rules shared by others to be abandoned by them is therefore, all things being equal, deeply morally objectionable.

## II. SHARED RULES AND TRUST

In this section, I offer another argument for the view that shared rules of war – whatever their moral status (that is to say, regardless of whether they are, for example, laws of nature or conventional social norms) – are extremely valuable because, in virtue of being shared, they provide a minimal but sufficient basis for trusting relationships even between mortal enemies. This trusting relationship in turn makes possible many extremely valuable trust-dependent goods, such as shorter wars, strong just peaces and post-war surplus-generating cooperative relationships. These trusting relationships, then, are exceedingly valuable (although only instrumentally valuable). In this section I defend this claim that shared rules of war generate trusting relationships that in turn make possible many valuable trust-dependent goods.

Annette Baier describes trust in the following way: “Trust . . . is letting other persons (natural or artificial, such as firms, nations, etc.) take care of something the truster cares about, where such “caring for” involves some exercise of discretionary powers.”<sup>13</sup> The critical feature of Baier’s account is someone’s granting discretionary powers to another person with respect to something the first person values. A paradigmatic case of trust is the trust of parents in a babysitter hired to care for their child. Here the parents are entrusting something they value – their child – to another person – the babysitter. Importantly, there are

<sup>13</sup>Annette Baier, “Trust and Antitrust,” reprinted in *Moral Prejudices*, p. 105; see also chs. 7–9. See also Russell Hardin’s “encapsulated interest” model of trust in “Trusting persons, trusting institutions,” *The Strategy of Choice*, ed. Richard J. Zeckhauser (Cambridge, Mass.: MIT Press, 1991).

scope restrictions on the discretion they grant to the babysitter. For example, the babysitter has (some) discretion over when to feed the child but has no discretion over the color of the child's bedroom even if it is the case that the babysitter *in fact* would choose the best color for the child's bedroom.<sup>14</sup> The reason why is that the parents are not entrusting all aspects of caring for their child to the babysitter. They only entrust certain aspects of caring for the child.

If this three-part relation – the relation between the truster, the trusted and the entrusted – is a workable model of a trusting relationship (and I shall presume it is), then how do shared rules generate and sustain such relationships? The easiest way to see how is, in fact, to consider the most counterintuitive case, namely the case at hand: shared rules of war. Shared rules of war, I shall argue below, are sufficient (but not necessary) for generating and sustaining trust between mortal enemies.

If two enemies are bound by shared rules of war, then each warring party, despite massive enmity for the other, can be certain in their expectations that their enemies will follow the rules. This allows enemies to view each other as agents capable and willing to bind themselves to publicly recognizable rules each can take to be reasonable. This is to be contrasted with cases in which two enemies fail to be bound by shared rules of war. In such a case, each party confronts the other as utterly alien and not the sort with whom society is possible. Locke, in the *Second Treatise on Government*, makes just this point with respect to his law of nature: “In transgressing the law of Nature, the offender declares himself to live by another rule than that of reason and common equity . . . and so he becomes dangerous to mankind. . . .”<sup>15</sup> Locke's law of nature not only is publicly recognizable but is also shared since “reason, which is that law, teaches all mankind who will but consult it.”<sup>16</sup> So when Locke compares the man who has “renounced reason, the common rule and measure God hath given to mankind” to “a lion or a tiger, one of those savage beasts with whom men can have no society nor security,”<sup>17</sup> he is comparing those who fail to bind themselves to publicly recognizable and shared rules to beasts which threaten the peaceful coexistence of humans in a society. In general, shared commitment to shared rules is a sign that one is not a savage beast with which others can have neither society nor security.

It is important to see that binding oneself to a set of shared rules does more than just make one's behavior predictable by others. In fact, one may be able to predict the behavior of someone who refuses to bind themselves to any shared rules at all, for example, one can predict that the agent will regularly fail to follow

<sup>14</sup>This example is from Baier, *Moral Prejudices*, p. 101.

<sup>15</sup>John Locke, *Second Treatise*, §8. This is an important premise to one of Locke's arguments in defense of all persons in the state of nature having the right (and possibly the duty) to punish those who violate the laws of nature.

<sup>16</sup>*Ibid.*, §6.

<sup>17</sup>*Ibid.*, §11.

certain rules.<sup>18</sup> In addition to predictability, abiding by shared rules – especially shared rules of war – gives their mortal enemy evidence that they are both willing and able in the future to adopt and to sustain shared rules governing deeply important matters. This, in turn, provides evidence that, despite being enemies today, one’s enemy is the sort with whom peaceful and prosperous coexistence may be possible. Despite being enemies today, both recognize that, fundamentally, their opponent is not “a lion or a tiger, one of those savage beasts with whom men can have no society nor security.”

How does this relate to trusting relationships? A crucial consequence of enemies publicly guiding themselves according to shared rules of war is that it provides each party with a basis for giving their enemies discretion over things each cares about, such as who will be a legitimate target of violence (which in turn is related to the strategy each will employ in the war). For when each is committed to and therefore guided by a shared rule (and knows that the other party is guided by the rule and knows that the other party knows that she is guided by the rule),<sup>19</sup> each, with respect to the behavior governed by the shared rule, suspends strategic evaluation of the others who are committed to and guided by that rule. That just is how shared rules work: they circumvent constant evaluation and re-evaluation of how other parties will act. Agents guided by a shared rule simply take it to be the case that the other parties committed to the rule will act as the rule requires. In the case of the rules of war, this means leaving to the discretion of others certain matters about which one cares a great deal. So binding oneself to a shared rule generates the conditions Baier identifies as constitutive of a trusting relationship. In short, shared rules of war generate trusting relationships because each party willingly makes itself vulnerable to its enemy by giving its enemy discretionary powers over something each party cares about.<sup>20</sup>

We can conclude that a trusting relationship can exist in an especially arid environment: trust can exist in the near-total absence of cooperation.<sup>21</sup> Each party must merely believe<sup>22</sup> that the other can and often will hold herself (or her

<sup>18</sup>*Pace* Samuel Scheffler, who argues in “Is terrorism morally distinctive?” that fear is what Hobbes argued drove us into a state of war. Expectation of non-compliance with putatively shared rules (i.e., covenants) explains why a Hobbesian state of nature is a state of war. Hobbesian agents in the state of nature can form highly reliable expectations about others, namely they expect others to defect. The absence of trust is what the establishment of a sovereign remedies and it is the presence of this kind of trust that shared rules of war maintain.

<sup>19</sup>This parenthetical remark is the briefest recapitulation of a simple form of what is known as the common knowledge requirement. See, e.g., Lewis, *Convention*, pp. 52–60.

<sup>20</sup>See esp. Baier, *Moral Prejudices*, ch. 7.

<sup>21</sup>The question ought not be what motivates trust but what conditions facilitate the emergence and reproduction of trust. Trust may even be the primordial goo that is the *source* of good will. For more on how cooperation and trust come apart, see Karen Cook, Russell Hardin and Margaret Levi, *Cooperation Without Trust?* (New York: Russell Sage Foundation, 2005).

<sup>22</sup>Or is it that each party must feel something? It is hard to tell what sort of state one is in when one trusts someone. See the brief remarks in Baier, *Moral Prejudices*, p. 132. For interesting case studies about the relationship between signaling and trust, see Diego Gambetta and Heather Hamill, *Streetwise: How Taxi Drivers Establish Customers’ Trustworthiness* (New York: Russell Sage Foundation, 2005).

agents) responsible to shared rules. Those rules to which we believe that someone can and will hold herself and her agents responsible define the boundaries of our trusting relationships. When we trust someone, we limit both our vigilance and our reliance on threats to get the trusted to follow rules and instead accept that those whom we trust will act according to shared rules to which they have signaled they are bound: we do not take their true intentions, at least with respect to what we trust them to do, to be inscrutable.<sup>23</sup>

The intersubjective recognizability of these shared rules – that there is some shared conception of the rules – is very important. But it is not sufficient for the parties merely to talk about the rules. Shared rules as I conceive of them necessarily involve regularities in behavior and not merely mutual understandings (even if these understandings are the subject of international treaties). This is why the shared rules of war should be understood primarily as *spectacles* and not as written agreements such as treaties.<sup>24</sup> The spectacle of parties following shared rules – or the spectacle of a certain regularity of behavior – is a public demonstration of each party’s trustworthiness to its enemies. And this leads the warring parties to trust each other in at least a minimal fashion. This minimal trust then grounds confidence that one’s enemy will be honest and perhaps even reasonable negotiators when it comes time to cease hostilities. Such confidence is precisely the sort of thing that not only can shorten wars but can also lead to a just and (relatively) lasting peace.<sup>25</sup> Grotius wrote, citing Quintillian, that “public good faith . . . is what makes truces between armed adversaries and upholds the rights of states which have surrendered.”<sup>26</sup>

<sup>23</sup>There is therefore an even deeper matter of trust here, namely our trust that their signaling is in fact an effort to signal at all. See Baier, *Moral Prejudices*, pp. 175–6.

<sup>24</sup>Although the existence of treaties may help to make clear what each side takes the content of the shared rule to be.

<sup>25</sup>See Immanuel Kant on the Sixth Article of perpetual peace in I. Kant, *Perpetual Peace: A Philosophical Sketch*, trans. Ted Humphrey (Indianapolis: Hackett, 1983), p. 96: “No state at war with another shall permit such acts of hostility as would make mutual confidence impossible during a future time of peace. Such acts would include the employment of assassins or prisoners, breach of agreements, the instigation of treason within the enemy state, and so on.”

<sup>26</sup>Grotius, *De Jure Belli Ac Pacis*, trans. William Whewell (Cambridge: Cambridge University Press, 1835), 3.19.1. Grotius goes on in his chapter on peace treaties (cumbersomely but aptly entitled “Public Good Faith in the Ending of a War; in Particular, Treaties of Peace, Decisions by Lot and by Single Combat, Arbitration, Surrender, Hostages and Pledges”): “Agreements between enemies consist of promises, either expressed or tacit” (*De Jure Belli Ac Pacis* 3.20.1). But how can there be promises in the absence of trust? If one takes a Humean practice view of promising, then the utter absence of shared practices makes the promise underlying the peace treaty not a promise at all. If one rejects the practice view and adopts Scanlon’s Fidelity Principle (Principle F) as the basis for the promissory obligation, the situation is no better. For Principle F requires that assurance is taken by the assured to be sincerely given. But, in the absence of trust, why believe that the assurance is sincerely given? See Thomas Scanlon, *What We Owe to Each Other* (Cambridge, Mass.: Harvard University Press), ch. 7. In the absence of trust, what is required is total submission of the defeated so that they are unable to resist the terms of the “peace.” Such arrangements are invitations to long-simmering resentments that can easily lead to fresh war. Grotius wisely pointed out: “Since men seldom arrive at peace by a confession of wrongdoing, treaties should be interpreted in such a way as to put both parties, as far as possible, on a level with regard to the lawfulness of the war” (*De Jure Belli Ac Pacis*, 3.20.11).

This suggests that trusting relationships between enemies are particularly valuable. So long as these trusting relationships exist, there is the possibility of both sides coming to a binding agreement that will end the war and lay the groundwork for a mutually acceptable and hopefully long-term peace.<sup>27</sup> For, when we trust our enemies, we are willing to give our enemies the benefit of the doubt. We trust them to use their best judgment, given their public commitment to shared rules of war, when they aim their weapons so that they aim only at those people who are members of groups the membership of which is grounds for becoming a target.<sup>28</sup> This benefit of the doubt is extended to peace negotiations and then to the subsequent peace itself.

We can conclude that trust between warring parties produces what Baier has called “trust-dependent goods” such as, for example, a quicker end to war, just and lasting peaces and smoothly-functioning surplus-generating trade relationships.<sup>29</sup> Destroying this trust is therefore deeply morally objectionable because it removes one important source of extremely valuable trust-dependent goods.

Before turning our focus to the special objectionableness of terrorism, it is worthwhile to highlight the robust feedback between trust and shared rules of war. On the one hand, shared rules deteriorate quickly in an environment without trust. On the other hand, shared rules themselves generate and shore up trusting relationships. The two cannot be disentangled. Establishing and sustaining shared rules that depend upon trusting relationships strengthens these trusting relationships (and as noted above creates possibilities for new, peaceful and trusting relationships). As the trusting relationship strengthens, the shared rules become more robust – that is, they play more significant roles in determining the behavior of the parties governed by the rules. And, as the shared rules become more robust, so does our trusting relationship and so on in a virtuous circle.<sup>30</sup> This feedback becomes especially important – and especially

<sup>27</sup>As I argue below, there is a reciprocal or feedback relationship between trust and shared rules. Thus, the minimal trust that is sustained through war can also facilitate conditions in which post-war tribunals pursuing some form of restorative justice or political reconciliation not only can be established but can function effectively. For more, see essays collected in Robert I. Rotberg and Dennis Thompson, eds., *Truth v. Justice* (Princeton, NJ: Princeton University Press, 2001).

<sup>28</sup>And, even when there are failures of trust, we must be willing to take a few letdowns in stride. As I have argued, shared rules of war can exist only in a climate of trust. If we allow a few errors to destroy that climate of trust, then the shared rules of war will be fragile and will quickly collapse, leaving us far worse off.

<sup>29</sup>Baier, *Moral Prejudices*, p. 146. In ch. 6 she points out that not all forms of trust are valuable; but this is surely a valuable form of trust.

<sup>30</sup>Baier offers in a footnote an illustrative quotation from Albert Hirschman: “Trust is one of our resources whose supply may well increase rather than decrease through use; . . . these resources do not remain intact if they stay unused; like the ability to speak a foreign language or to play the piano, these moral resources are likely to become depleted and to atrophy if *not* used” (Albert Hirschman, “Against parsimony: three easy ways of complicating some categories of economic discourse,” *American Economic Review (Papers and Proceedings)*, 74 (1984), 88–96 cited in *Moral Prejudices*, p. 340, n. 45). Here it is not so much trust that is used but the trust-dependent good – the social norm – that is used. And the virtuous feedback is what strengthens the trust.

apparent – when all other trusting relationships and shared rules have come undone. Shared rules of war are a sort of backstop: they and the concomitant trusting relationships, however thin and fragile, prevent us and our enemies from falling into utter savagery toward each other in which the only peace between us is likely to be the peace of the graveyard.

### III. TERRORISM, SHARED RULES AND TRUST

Terrorism is specially objectionable because it is uniquely likely to threaten to destroy two extremely (albeit instrumentally) valuable things, namely shared rules of war and the trusting relationships that sustain and are sustained by those shared rules. In this section, I explain how terrorism uniquely threatens shared rules of war and international trusting relationships. If I am successful, then I will have given an account of the special objectionableness of terrorism.

First, though, I will elaborate upon the stipulative description of terrorism I gave in Section I. There I began with Annette Baier's description of terrorists as, first and foremost, "violent demonstrators."<sup>31</sup> How ought we to understand this? Because terrorist acts are not only violent but are also public demonstrations of violence, they are both *spectacular* and *performances*. Terrorist acts are spectacular because they command our gaze. They are performances because they are produced in order to be seen. To get clearer on this, let us distinguish terrorists from assassins and serial killers. For assassins and serial killers, killing is the primary end. If they kill enough people and do it sloppily enough, assassins and serial killers create violent spectacles. But to do this is generally not the goal of the assassin or the serial killer (a serial killer may create drama by alerting the police or the public to his violent acts once they have been committed, but serial killers commit their violence furtively). For terrorists, on the other hand, the aim is to generate violent displays that both utterly command an entire community's gaze and become deeply imprinted into that community's collective memory. Killing is one way to achieve this goal, but a successful terrorist need not kill (or kill many people) in order to create a spectacle.<sup>32</sup> So long as the violence is sufficiently spectacular, then it is a candidate for being terrorist violence. This is what separates terrorism from (covert) assassinations, serial murder and even war crimes: unlike these acts of violence, terrorism is violence for public consumption.

Terrorist acts, though, are not merely about creating a violent spectacle. The way in which terrorist acts are spectacular performances of violence is also a

<sup>31</sup>See Baier, *Moral Prejudices*, p. 203.

<sup>32</sup>The 1995 Achille Lauro hijacking is a good example of this: a single death, spectacularly rendered (a murdered wheelchair-bound man thrown overboard in front of television cameras) was the extent of the violence. Compare this with the unnoticed murders of dozens by a serial killer working as a nurse who euthanizes his victims.

distinctive hallmark of terrorism.<sup>33</sup> To explain, I must distinguish two kinds of spectacles from each other. One can publicly generate a spectacle by simply overwhelming the viewer's senses. Deafening roars and blinding lights demand attention in virtue of the brute physical effect they have on our senses. Let us call such spectacles *physical spectacles*. Or, one can generate a spectacle by ostentatiously transgressing shared rules. Deliberately flaunting the rules of fashion (for example, showing up at a black-tie affair in jeans and T-shirt) and openly rude behavior (refusing, with a flourish, to shake someone's hand when it is offered) can command our gaze simply because they are such flamboyant violations of widely-followed rules. Let us call these *transgressive spectacles*.<sup>34</sup> My claim is that terrorists create spectacles by generating particularly massive and public transgressive spectacles. It is possible to create a particularly massive and public transgressive spectacle without being a terrorist. For example, during more prudish times, publicly flaunting sexual mores – especially sexual mores regarding homosexuality and interracial sex – could create massive scandal and even horror, but it would not be terrorism. What is distinctive about *terrorist transgressive spectacles* is that they are spectacles of the transgression of a particular set of shared rules, namely the shared rules of war.

It's largely because terrorist victims have settled expectations and patterns of behavior with respect to violence in war that terrorists are able to generate the spectacles they generate through their violent demonstrations. The publicity and performativity of the transgression is what makes terrorist violence stand out in a way that deeply affects not only the victims and their family and friends, but all those in the community (and perhaps beyond) who take themselves to be bound by the shared rules transgressed by the terrorists; that publicity and performativity is what allows terrorist violence to command the community's gaze. A consequence of this view is that in the absence of shared rules of war, there cannot be terrorism. This does not rule out the fact that there can still be monstrously brutal violence committed in the absence of shared rules – violence that is far more morally objectionable than most terrorist acts. But there cannot be terrorist violence since terrorist violence, in order to be a transgressive spectacle, requires a background of shared rules of war.<sup>35</sup>

Having described some of the central features of terrorism, in what follows I explore how terrorist acts, in virtue of being transgressive spectacles, threaten to destroy both shared rules of war and the concomitant trusting relationships. I will

<sup>33</sup>After all, a horrifying (or beautiful) photograph might command a community's gaze.

<sup>34</sup>The first form of spectacle may depend upon the *relative* strength of the noise or light. In a library even a regular talking voice can be physically arresting simply because it is so loud against the background of quiet. But, just because relative loudness or brightness may depend upon background shared rules (as in the library case), the physical spectacle is not the same as the transgressive spectacle.

<sup>35</sup>This suggests that we already have found one uniquely objectionable feature of terrorism, namely that it involves a particularly distressing form of free-riding. But, I do not take this to be central to the special objectionableness of terrorism.

then offer further reflections upon why threatening shared rules of war and trusting relationships is both deeply and uniquely objectionable.

First, let us consider how terrorist acts threaten the shared rules of war. I presume throughout this discussion that there are in fact widely shared rules of war, codified perhaps in treaties such as the Geneva Conventions or just widely practiced but uncoded. When there are widely shared rules, a natural default assumption of rule-followers is that others are also rule-followers. Thus, even if an organization has failed to sign a treaty declaring commitment to widely shared rules, others may reasonably expect that the organization and its members are also committed to the widely shared rules. The transgressive spectacle of terrorism decisively reveals that terrorists are not committed to the widely shared rules of war. This, in turn, both removes strong moral reasons for the victims following standing rules of war in their fight against the terrorists and creates particularly bad cases of the motivation and escalation problems.

Two candidate moral reasons terrorist victims have to continue to follow the shared rules of war in their response to terrorists are, first, that the shared rules of war are morally obligatory independently of whether they are actually shared; and, second, that they do not want to appear to others with whom they share commitment to the rules of war to be defecting from these shared rules. The first candidate moral reason is of dubious merit. The specific rules of war that are actually shared are artifacts of historically contingent forces. So their precise formulation and the widely shared understanding of the content and texture of that formulation are unlikely to track the reality of whatever actual moral requirements there might be, if there are any. Thus, the moral pressure to comply with shared rules of war stems primarily from the fact that they are shared with one's enemy. But if the terrorists have publicly and spectacularly rejected these rules, the moral pressure on the victims to fight a war guided by the shared rules is diminished.

The second reason, while plausible, faces a particularly bad version of the motivation problem. Even if the terrorist attack does not diminish the moral requirement that victims respond according to rules shared with non-terrorists, the spectacularly transgressive nature of the attacks can (at least temporarily) alter victims' attitudes towards what is morally required of them. Fits of rage and fear in response to significant enough threats are not out of the ordinary, and terrorist attacks are just the sort of acts to produce both an irrationally voracious desire for revenge and a deep-seated and irrational "existential" fear. These two sentiments, if widely enough felt in a population, can easily overcome the strength of politicians' and soldiers' commitment to demonstrating to others who are not involved in the war against the terrorists a commitment to shared rules of war. Even if a commitment to shared rules is retained, these two sentiments, if widely enough felt, are likely to generate a particularly strong drive to employ levels of violence at the upper reaches of the shared rules' proportionality requirement. In short, even if there are in fact

strong moral grounds for being guided by rules not shared with the terrorists, terrorist attacks will either (a) render victims insensitive to the subtle moral pressure (if there is one) to be guided by the generally shared rules of war, which creates an acute instance of the motivation problem; or (b) push victims to use the maximum amount of violence allowed by the shared rules. We can conclude that terrorist attacks either threaten the moral grounds for following shared rules of war (thereby leaving victims with little reason to follow these shared rules) or generate particularly serious instances of the motivation and escalation problems. Thus, terrorists, through their actions, ensure that the violence employed in response to their attacks will be less likely to be fully restrained by the widely shared rules of war. As a result, the moral disaster of war in response to terrorist attacks will be greater than it would have been had the terrorists employed non-terrorist violence.

Let us now turn to how terrorist attacks threaten to destroy trusting relationships between enemies.<sup>36</sup> The terrorist, through his spectacular transgression of the shared rules of war, declares that he is motivated by an uncompromising commitment to certain values that are consistent only with publicly binding himself to the slimmest range of rules. Michael Walzer comes close when he writes that “terrorism is associated with the demand for unconditional surrender and, in similar fashion, tends to rule out any sort of compromise settlement.”<sup>37</sup> Terrorist violence, by expressing spectacular contempt for shared rules, makes the terrorist appear to lack a feature that, along with rationality, is among the signal traits of human beings. Citing the Stoics as his source, Hugo Grotius called this trait “sociableness” [*oikeiosis*], or the capacity and willingness to share a society with other human beings:

Man is, to be sure, an animal, but an animal of a superior kind, much farther removed from all other animals than the different kinds of animals are from one another; evidence on this point may be found in the many traits peculiar to the human species. But among the traits characteristic of man is an impelling desire for society, that is, for the social life – not of any and every sort, but peaceful, and organized according to the measure of his intelligence, with those who are of his kind; this social trend the Stoics called “sociableness” [*oikeiosis*].<sup>38</sup>

Sociableness is not something robust like friendliness. Rather, sociableness consists largely of a willingness to be “organized according to the measure of

<sup>36</sup>Terrorist acts also involve free-riding on the back of a relatively pedestrian form of trust. When terrorists board planes with weapons or drive through streets with bombs without fear of being molested by the authorities, they take advantage of a general environment of trust. But, this is just the regular trust that permeates a well-functioning political community. This more mundane form of trust – the trust of those who are pressed against each other on crowded subways or who gather in a public place to watch summer fireworks – can also be threatened or destroyed by industrious thieves or crude editors who splash sensationalist stories about regular crime across the front page of the daily newspaper.

<sup>37</sup>Michael Walzer, *Just and Unjust Wars*, 3rd edn (New York: Basic Books, 2000), p. 203.

<sup>38</sup>Hugo Grotius, *De Jure Belli Ac Pacis*, Prolegomena 6.

[one's] intelligence, with those who are of [one's] kind," that is, a willingness to bind oneself to publicly determined, publicly recognized, shared rules that facilitate human coexistence. Those who refuse to bind themselves to publicly shared rules fail to display sociableness and cannot enter into a relationship of equal coexistence with others. By so spectacularly demonstrating his rejection of the rules of war, the terrorist thereby rejects his enemies as being "of his kind" and so apparently does not have any interest in sharing with his enemies a life that is "peaceful, and organized according to the measure of his intelligence, with those who are of his kind." The terrorist appears unwilling to be part of a society with his enemies and therefore appears unwilling to accept anything but the unconditional surrender of his targets – the surrender of the slave to its master or of the livestock to the rancher.

Through his terrorist attack, the terrorist, whether or not he intends to, is announcing that he is not open to leaving anything he cares about to the discretion of his enemies. Instead, the terrorist is declaring that he can accept only a situation in which, like the conquerer to the utterly conquered, he dictates all terms of the relationship. He therefore declares himself unwilling to enter into trusting relationships with his enemies. This is a striking and horrible declaration since even when we engage in battle because our grievances with our enemies are great, we still rely on a background of trust in the hope for an agreed-upon settlement at some point down the road. The terrorist, though, is like Aristotle's person lacking any political society (*apolis dia phusin* or cityless by nature), whom Aristotle aptly describes using a supposed quote from Homer as "clanless, without customs, without a hearth." Aristotle goes on to say: "for this person is in his very nature . . . a lover of war, being unyoked like a piece in the dice-game."<sup>39</sup> Recall that the supreme good for Aristotle is *eudaimonia* – a flourishing, happy life – and that this can be achieved only within the context of a well-functioning city. It is, in many ways, a truly trust-dependent good. Because the person who is *apolis dia phusin* cannot be trusted, she cannot be a partner in the social project of seeking *eudaimonia*. Like a person who is *apolis dia phusin*, then, the terrorist also appears to be someone with whom no trust-dependent goods could ever be realized.

This is where the feedback loop between trust and shared rules mentioned above becomes critically important. The terrorist's victims may perceive the terrorist as utterly untrustworthy. This may make the unconditional surrender that follows the slaughter of one's enemies appear to the victims of terrorism as the only achievable form of peace with the terrorist, while peace coming from compromise and mutual forbearance may begin to look like foolhardy cowardice. Thus, even if victims remain committed to the rules of war shared

<sup>39</sup>Aristotle, *Politics* 1.3: 1253a1-7, quoted in Martha Nussbaum, *The Fragility of Goodness: Luck and Ethics in Greek Tragedy and Philosophy* (New York: Cambridge University Press, 1986), p. 351. Homer's subject was the Cyclopes.

with others, their lack of trust in the terrorists may feed back and interfere with the restraints that once limited violent excesses during war. The bombs of terrorist *victims* may begin to mangle civilian neighborhoods in which terrorists purportedly hide. Those who are perceived as vaguely connected to terrorist threats may be swept up in raids, and their houses razed. Thucydides, discussing domestic revolution, aptly summarizes the conditions that may emerge as a result of terrorists threatening the shared rules of war and international trust:

Indeed men too often take upon themselves in the prosecution of their revenge to set the example of doing away with these general laws to which all alike can look for salvation in adversity, instead of allowing them to subsist against the day of danger when their aid may be required.<sup>40</sup>

And, even when some form of dialogue opens up between terrorists and their targets, it is unlikely that one side will take the other to mean what they say. Again, we can look to Thucydides, who, in reflecting on the failures of trust at the domestic level that accompanied the wave of revolutions that spread throughout the Hellenic World during the early stages of the Peloponnesian War, wrote: “Oaths of reconciliation, being only proffered on either side to meet an immediate difficulty, only held good so long as no other weapon was at hand.”<sup>41</sup> But if what is proffered are oaths abandoned at the first chance of gaining an upper hand, then these are not oaths at all. The prudent individual will believe his enemy to be using language cynically and insincerely. Such a sentiment precludes even *beginning* peace negotiations, much less completing them.

On the other hand, it is possible for victims of terrorist attacks to make peace with terrorists and terrorists to negotiate with their victims. But I have been arguing that the damage done by terrorist attacks is distinctive. The appropriate response to this damage is probably a project of reconciliation – a project in which the victims of terrorist attacks and the terrorists, along with those who are seen as allied with the terrorists, seek not redress for past wrongs but instead seek grounds for reconciliation that can make future trusting relationships possible. Absent such a project of reconciliation, the most one can hope for in the immediate future is an uneasy truce and, in the longer term, for the emergence of new generations whose futures are not poisoned by the mistrust generated by the terrorist campaign and the victims’ response.

Do terrorist attacks threaten shared rules globally or just shared rules governing war between terrorist victims and terrorists? In some cases, they do threaten shared rules globally. Shared rules are, I argued in Section II, above all *practiced* rules. The spectacle of armies and their soldiers following shared rules

<sup>40</sup>Thucydides, *The History of the Peloponnesian War*, trans. Rex Warner (New York: Penguin Classics, 1954), III.84.2.

<sup>41</sup>Thucydides, *History of the Peloponnesian War*, III.82.7.

is what undergirds the shared rules. Since terrorist attacks destabilize the practice that constitutes the shared rules of war by leaving it to the shocked and scared victims to hew to the line of the shared rules of war in the midst of debate about whether there is any immediately apparent moral or prudential reason to do so, terrorism pushes victims to respond to terrorist violence with spectacles of war-making not guided by the globally shared rules of war. Terrorist violence, in short, invites victims to create spectacles that in an important way mirror terrorist violence. If enough states are faced with terrorist attacks or if terrorists target lynch-pin states (in other words, states whose practices can determine what rules other states follow) or if the terrorist attack is spectacular enough (for example, if the attack is a nuclear attack), then the destabilization of the shared rules may spread, thereby globally threatening shared rules of war.<sup>42</sup>

At this point, I have argued that terrorism threatens both valuable shared rules of war and valuable trusting relationships. Why do these consequences of terrorism make it *uniquely* objectionable? That is, what *morally* separates terrorism from murder – even serial murder – and violations of shared rules by soldiers? Murder, serial murder and irregular violations of shared rules of war do not in any serious manner threaten our shared rules of war and therefore do not threaten international trusting relationships between enemies. Of course, if war crimes occur regularly or spectacularly enough, they do threaten both shared rules of war and trusting relationships. But because these war crimes are systematic or spectacular, they are no longer simple violations of shared rules of war, that is, they are no longer simple war crimes. Indeed, such cases of systematic or spectacular war crimes may have greater moral similarity to terrorism than to simple war crimes. This suggests that we cannot draw bright, focused moral lines that follow the contours of all our concepts: some war crimes just are radically morally dissimilar from other war crimes. This, though, is not news.

This concludes my account of the special objectionableness of terrorism. But a final reflection is in order. It is, of course, up to the terrorist's victims to choose how to respond to terrorist violence. A community can always take steps to shore up their commitment to shared rules and to protect trusting relationships when these things are threatened by terrorism. And one can always ask why human beings, who after all are not *apolis dia phusin*, would be reduced to acting as if they were. After all, what peculiar pathology drives someone to become a terrorist – to become as if *apolis dia phusin* or, as Locke put it, “a lion or a tiger, one of those savage beasts with whom men can have no society nor security”?

<sup>42</sup>Baier, *Moral Prejudices*, p. 197, puts it this way: “Both trust and mistrust tend to be self-fulfilling and tend to be contagious.”

Hume claimed that the only creatures with whom we are bound by the artificial principles of justice are those who can “make us feel the effects of their resentment.”<sup>43</sup> Perhaps terrorists, through terrorist acts, seek to make the effects of their resentment – justified or not – felt.<sup>44</sup> This difficult question, it seems to me, is of the deepest significance and may be at the core of our reflections about both the justifiability of terrorism and the moral status of different responses to terrorism.

<sup>43</sup>Hume, *Enquiries*, sec. 3.

<sup>44</sup>See Baier, *Moral Prejudices*, ch. 10 for some reflections on this question.