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## 9/11 and the Ethics of Fear: Maintaining the High Ground in the Face of Uncertainty

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### INTRODUCTION

The coordinated terrorist attacks on 9/11 took the lives of almost 3,000 people, destroyed \$55 billion worth of infrastructure, and caused \$123 billion in other economic impact.<sup>1</sup> Perhaps just as tragically, the attacks destroyed Americans' sense of security. Though the United States had experienced terrorist attacks before, the scale of the September 11 attacks transformed acts previously considered to be criminal to acts of war. Indeed, the Pearl Harbor attack, which led to the United States' direct involvement in World War II, resulted in 2,403 persons killed, of whom 68 were civilians.<sup>2</sup> When compared to that attack, 9/11 seemed to be the start of a new kind of threat for which prior counterterrorism efforts were inadequate.

The idea terrorists could effectively wage war further destroyed Americans' sense of normalcy. Normalcy, as used here, does not simply apply to routine; it also applies to the sense the world is governed by norms that is in one's interest to abide by, even when other actors do not. In such a world, one is not immune to attack; however, one's permitted responses are clear. When a state violates another state's sovereignty and territory, war is justified. When a nonstate actor commits an act of terror, law enforcement conducts investigations to identify the perpetrators and then arrest them so they may face justice. When these actors lie outside the reach of law enforcement, military force may be employed, but before 9/11, this force would have typically been quite limited, as was the case with the cruise missile strikes against al-Qaeda targets in Sudan and Afghanistan in response to embassy bombings in Africa.<sup>3</sup> In both cases, though fearing such threats is reasonable, the response to this fear is governed by norms that specify how one may respond to the threats without committing further moral harms of one's own.

But when an organization that may only be criminal commits violence that crosses the threshold into war, law enforcement and limited military measures seem inadequate. The

attorney general at the time, Alberto Gonzales, indicated this thinking informed the US response when he wrote in a January 25, 2002, memorandum al-Qaeda was a new kind of threat, and the United States was engaged in a “new kind of war.”<sup>4</sup> Fighting wars is, of course, the role of the military; however, the US military at the time was more postured to fight state competitors than criminal organizations. The resulting confusion, coupled with the reasonable fear of similar attacks in the future, drove the United States to abandon long-held moral commitments to upholding human dignity and the international order in its search for a new way of war. Given the high likelihood the United States will again face such fear and confusion, considering norms that govern responses to the unknown beforehand seems wise.

## **RESPONDING TO FEAR**

The French philosopher Michel de Montaigne once mused fear was a “strange passion . . . none which more quickly sweeps our judgment from its due place.”<sup>5</sup> Regardless of one’s views of the initial effectiveness of post-9/11 responses, Montaigne’s point seems right. Though military operations against al-Qaeda and the Taliban were undoubtedly necessary, much of what followed, in retrospect at least, was not. Costly efforts at nation building in Afghanistan and Iraq generated few positive results. Moreover, practices such as rendition and enhanced interrogation techniques provided little actionable intelligence and alienated US allies and partners.<sup>6</sup>

From a moral point of view, one of the first casualties of this demise of judgment was the United States’ long-standing commitment to prohibitions against torture and cruel and inhumane treatment. The story, of course, is familiar to most. On February 7, 2002, then President George W. Bush, upon receiving advice from the Departments of Justice and the DoD, issued a memorandum that created the category of “illegal enemy combatant.”<sup>7</sup> Though the memorandum insisted on the humane treatment of such persons, it noted their status did not entitle them to it. Moreover, the memorandum conditioned humane treatment on the demands of military necessity.

By November 27, 2002, then Secretary of Defense Donald Rumsfeld had approved a number of interrogation techniques for use at the Guantanamo Bay detention camp, some of which violated standards set by the Geneva Conventions as well as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>8</sup> In response to objections raised by Judge Advocate General of the Navy Alberto Mora regarding the legal and moral status of these techniques, Rumsfeld rescinded the previous memorandum and directed the general counsel of the Department of the Air Force to establish a working group to assess “legal, policy, and operational” issues related to interrogation.<sup>9</sup>

The report recommended 35 techniques, some of which it recognized might violate the Geneva Conventions.<sup>10</sup> Rumsfeld subsequently approved 24 techniques, of which he required

notification for four because of their dubious legal status. To reduce any legal liability, both the working group report and the memorandum stated detainees should be treated humanely and in conformity with the Geneva Conventions and the convention against torture, subject to the demands of military necessity.

The problem, of course, is the report's subordination of humane treatment to military necessity. Given the intelligence value of detainees rests with their knowledge of the terrorist organization's network as much as any knowledge of actual operations, every detainee potentially has knowledge that could save lives and thus against whom defenses of necessity and self-defense could apply. This logic thus turns every interrogation into a ticking-time-bomb scenario that pits innocent lives against the discomfort of the terrorist. Therefore, even if the techniques in question could be applied in accordance with the Geneva Conventions and the convention against torture, the report's logic bakes into the process an incentive to exceed those standards.

The second casualty was the United States' respect for the just war tradition and derivatively international law, at least as it applies to initiating conflict. Though the United States' right to self-defense justified a military response against al-Qaeda and its supporters in Afghanistan, the subsequent global war on terrorism placed the United States at war with a means and, thus, any organization that employed them. As a result, the identity of the enemy expanded to other adversaries who may have employed or supported terrorist organizations in the past but did not have a connection to September 11 attacks.

Indeed, in Bush's famous "Axis of Evil" speech in January 2002, he specified Iraq, Iran, and North Korea as "rogue states" that supported terrorist organizations.<sup>11</sup> Though this statement was true, the organizations to which these organizations provided support did not have a direct connection to the 9/11 attacks. Nor did the Bush administration posit any connections. Rather, as then National Security Advisor Condoleezza Rice later elaborated, these countries were lumped together because of their weapons of mass destruction programs and the possibility they would provide such weapons to terrorists in the future.<sup>12</sup> Moreover, these states hardly comprised an axis. Iraq and Iran at the time were still bitter enemies after a decade-long war, and North Korea had no discernible connections to al-Qaeda. Indeed, the Bush administration took North Korea off the State Sponsors of Terrorism list in 2008.<sup>13</sup>

But, by including these countries in the axis, these disparate states were, in a rhetorical instant, legitimate targets for military operations. Of course, the United States only went to war with Iraq, for which the Bush administration offered multiple reasons.<sup>14</sup> Eventually, the administration settled on the possibility Saddam Hussein possessed weapons of mass destruction, as stated in Colin Powell's speech to the UN General Assembly.<sup>15</sup>

The problem with this justification is it blurs the distinction between preventive and preemptive wars. As Michael Walzer argues in *Just and Unjust Wars*, wars initiated against

adversaries because they might attack in the future are unjust. Such preventive wars are justified by fear alone and not by any harm an adversary has threatened or imposed. Generalizing a permission to resort to war simply because of fear, of course, sets conditions for the proliferation of war because, generally, states always have reasons to fear something.<sup>16</sup> Whether acting on such a permission leads to the proliferation of war is not important here. What matters is acting on such a permission allows for war because such permissions work against the current international order the United States benefits from and seeks to defend.

Of course, sometimes, even absent an attack, the threat itself is harmful. Walzer cites as an example the 1967 Six Day War in which the Egyptians mobilized on the Israeli border and closed the Straits of Tiran, which effectively blockaded Israel's only Red Sea port. Although Israel mobilized in response, its reliance on reservists meant it could not sustain the mobilization or endure the blockade without seriously damaging its economy. Because the impact on the economy would force Israel to demobilize at some point, failure to act would have left it defenseless. As Walzer asserts, "[S]tates may use military force in the face of threats of war, whenever the failure to do so would seriously risk their territorial integrity or political independence."<sup>17</sup> Put another way, when harm is both grave and imminent, one has no obligation to wait for it to come.

The difficulty with applying the preemptive formula to Iraq's weapon of mass destruction program is the uncertainty about the program rendered the imminence condition meaningless. Moreover, such weapons always represent a grave threat, rendering the intent behind their use irrelevant. When the threat is always grave and whether the weapons will be used is uncertain, one's options are waiting for more evidence, which may never come until it is too late, or striking first. Under such conditions, striking first can seem like the prudent option. The trouble of course is without the imminence condition, preemptive war reduces to preventive war with all the moral failings it entails.

Thus, this discussion so far establishes a first condition for an ethics of fear: Regardless of the new norms one embraces, one must be willing for others to act on them as well. This generalization, of course, is simply a restatement of Immanuel Kant's categorical imperative, which formed the basis for the "cosmopolitan" international order he argued would arise if everyone respected everyone else as ends in themselves and not merely means.<sup>18</sup> Of course, such a world will never likely exist; however, a willingness to submit to the same kinds of treatment one gives to others serves as an important first step when considering how to respond under conditions of profound uncertainty.

## **TOWARD AN ETHICS OF FEAR**

Though generalization is an important necessary condition for an ethic of fear, it is not sufficient. One may reasonably agree under conditions of intense fear, one would accept similar

behavior from others, even if directed at oneself. For example, the United States could consistently take the position loosening restrictions on interrogation techniques should generally be permitted against terrorists, and international treaties restricting such techniques should be amended. Given doing so violates another form of Kant's categorical imperative—treat others as ends, not means—more needs to be said about when fear justifies violating or revising norms.<sup>19</sup>

Aristotle points out in *Rhetoric* people have good reason to fear when something happens “at the hands of unexpected people, in an unexpected form, and at an unexpected time.”<sup>20</sup> These conditions certainly seem to apply to the 9/11 attacks. In the face of such fear, reconsidering the kinds of restraints one observes in response is reasonable. Though the threat al-Qaeda posed may not have exactly been new, it was one to which the United States was unprepared to respond. Therefore, in the wake of such a novel and devastating attack, considering whether the traditional law enforcement approach, occasionally amplified with limited military strikes, would be adequate to address the threat al-Qaeda represented was reasonable. The United States, however, went beyond these considerations and rejected warfighting norms as well.

While the United States should have maintained these commitments one must remember that, at the time the need for such restraint was not so clear. The US Senate, for example, voted with an overwhelming majority to endorse the invasion of Iraq.<sup>21</sup> Moreover, the torture by military police at Abu Ghraib prison fell outside what the secretary of defense authorized, which only applied to Guantanamo and which stipulated additional restrictions that would have precluded the actions of the military police.<sup>22</sup> Rather the proliferation of these techniques was more a function of a widely held narrative that “the gloves had come off,” and restraint need not apply. The point here is not that the authorizations that did exist were somehow reasonable or justified. Rather, the point is that these techniques proliferated beyond those authorizations because a lot of people felt that they were necessary and that necessity overrode humanitarian considerations.

This point entails a second condition associated with an ethics of fear: The “gloves” never really come off, at least in the sense necessity becomes an overriding principle. When governments choose to fight, they impose risk on others, many of whom will have had nothing to do with the original provocation. The others are both the servicemembers the government relies on for its defense and the innocent civilians who are collaterally harmed in the defensive response. Thus, an ethic of fear entails accounting for risk.

A reasonable place to start in discussing an ethic of risk is an application of the “precautionary principle,” which could be stated as “Risking more to avoid loss than to achieve gains is rational.”<sup>23</sup> The logic is straightforward: When one is attacked, one is forced to choose to surrender or fight. Thus to keep what one has one is forced to take some risk, especially in situations where that loss entails risks of its own. Seeking gains, on the other hand, forces no choice and thus entails no necessary risk. This rationale, however, only applies to risks to

oneself. This point suggests two things. First, any additional risk imposed on those responsible for one's defense should be directed only at the source that forced the choice. Second, one should not impose more risk, especially on those not involved in the fight, than one is willing to accept. Given the point of the response to a terror attack like 9/11 is to prevent future harm to one's own civilian population, one should thus avoid risk transfer to civilians of other countries as well.

Of course, any ethic of fear must avoid paralyzing action. Sometimes necessary measures to confront a new threat exceed the norms that govern their use. An ethic of fear that prohibits an effective response to the source of the fear is not sustainable. Therefore, especially where military force will be used, responding effectively without placing innocents at risk may be impossible. In *Imposing Risk: A Normative Framework*, John Oberdiek points out deciding where and how to impose risk involves two types of situations. The first is when one engages in an activity that one knows will harm someone, even if one does not know in advance who will be harmed. The second is an activity that will expose others to the risk of harm, but whether anyone will be harmed is uncertain.<sup>24</sup> When responding under conditions of fear and uncertainty, the latter is preferable to the former.

The reason for this preference is the latter does not necessarily violate rights, whereas the former does. By way of illustration, police are not permitted to use lethal force if they know an innocent bystander will be harmed. On the other hand, police are permitted to conduct high-speed chases, even though doing so increases the chances of getting into an accident that could harm a bystander. One way to understand this permission is failure to apprehend the suspect represents a risk to the community greater than the risk of the high-speed chase. The balancing of risk places further limits on the actions police can take during a chase, such as driving fast in a crowded area, because placing bystanders at greater risk than one is trying to protect them from seems self-defeating.

In summary, an ethic of fear first requires one to narrowly aim one's response at the actor who forced one to choose whether to fight. Second, an ethic of fear requires one to balance necessity with other moral commitments, not prioritize it. Third, this balancing requires one to avoid harming those not associated with or responsible for the original harm as well as in instances in which limiting the risk to which one exposes others is not possible. Applying such an ethic to the 9/11 response would of course have ruled out enhanced interrogation and toppling regimes because of the potential threat they represent. Of course, these actions probably did more to undermine US counterterrorism efforts than they did to bolster them. Enhanced interrogation emboldened US adversaries, alienated US allies, and produced little actionable intelligence in return.<sup>25</sup> Invading Iraq cost billions of dollars and distracted the United States from counterterrorism operations against al-Qaeda.<sup>26</sup>

The point here, of course, is not to ignore the role fear should play in informing responses to significant threats, but to channel it in constructive ways. Montaigne goes on to paradoxically

point out fear also “gives to us the courage which it has stolen from our duty and our honor.”<sup>27</sup> This view fits neatly into that of Aristotle, who understood courage as the appropriate response to fear. But courage was not simply acting in the face of fear; it was acting in the right way and for the right reasons. Doing so may mean living with some fear and uncertainty to preserve one’s values and avoid self-defeating means to achieve otherwise legitimate ends.

## ENDNOTES

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<sup>1</sup> “September 11 Attacks,” History.com, August 25, 2018, <https://www.history.com/topics/21st-century/9-11-attacks>; and Shan Carter and Amanda Cox, “One 9/11 Tally: \$3.3 Trillion,” *New York Times*, September 8, 2011, <https://archive.nytimes.com/www.nytimes.com/interactive/2011/09/08/us/sept-11-reckoning/cost-graphic.html>.

<sup>2</sup> “How Many People Died at Pearl Harbor during the Attack?,” Pearl Harbor, n.d., <https://pearlharbor.org/faqs/how-many-people-died-at-pearl-harbor-during-the-attack/>.

<sup>3</sup> “US Missiles Pound Targets in Afghanistan, Sudan,” CNN, August 20, 1998, <http://www.cnn.com/US/9808/20/us.strikes.01/>.

<sup>4</sup> Alberto Gonzales, attorney general, “Decision RE Application of the Geneva Convention on Prisoners of War to the Conflict with al Qaeda and the Taliban,” memorandum to George W. Bush, January 25, 2002.

<sup>5</sup> Michel de Montaigne, “Of Fear,” *Essays*, ed. George B. Ives (New York: Heritage Press, 1946), 95.

<sup>6</sup> Andrew Cohen, “The Torture Memos, 10 Years Later,” *Atlantic*, February 6, 2012, <https://www.theatlantic.com/national/archive/2012/02/the-torture-memos-10-years-later/252439/>.

<sup>7</sup> Cohen, “Torture Memos.”

<sup>8</sup> William J. Haynes II, general counsel of the Department of Defense, “Counter-Resistance Techniques,” memorandum to Donald Rumsfeld, November 7, 2002; and UN General Assembly, Resolution 39/46, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (December 10, 1984).

<sup>9</sup> Jane Mayer, “The Memo,” *New Yorker*, February 19, 2006, <https://www.newyorker.com/magazine/2006/02/27/the-memo>.

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<sup>10</sup> Working Group, *Working Group Report on Detainee Interrogations in the Global War on Terrorism: Assessment of Legal, Historical, Policy, and Operational Considerations* (Washington, DC: DoD, April 4, 2003).

<sup>11</sup> Andrew Glass, “President Bush Cites ‘Axis of Evil,’ ” Politico, January 29, 2002, <https://www.politico.com/story/2019/01/29/bush-axis-of-evil-2002-1127725>.

<sup>12</sup> Alex Wagner, “Bush Labels North Korea, Iran, Iraq an ‘Axis of Evil,’ ” *Arms Control Today* 32, no. 2 (March 2002).

<sup>13</sup> Mark E. Manyin et al., *North Korea: Back on the State Sponsors of Terrorism List?*, R43865 (Washington, DC: Congressional Research Service, January 21, 2015).

<sup>14</sup> Esther Pan, “IRAQ: Justifying the War,” Council on Foreign Relations, February 2, 2005, <https://www.cfr.org/background/iraq-justifying-war>.

<sup>15</sup> Colin Powell, “US Secretary of State’s Address to the United Nations Security Council” (speech, UN Security Council, New York, NY, February 5, 2003).

<sup>16</sup> Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 5th ed. (New York: Basic Books, 2015), 77–78.

<sup>17</sup> Walzer, *Just and Unjust Wars*, 82–84.

<sup>18</sup> Garrett Wallace Brown, “State Sovereignty, Federation and Kantian Cosmopolitanism,” *European Journal of International Relations* 11, no. 4 (December 2005): 495–522.

<sup>19</sup> Robert Johnson and Adam Cureton, “Kant’s Moral Philosophy,” Stanford Encyclopedia of Philosophy, updated July 7, 2016, <https://plato.stanford.edu/entries/kant-moral/>.

<sup>20</sup> Aristotle, *Rhetoric*, in *The Basic Works of Aristotle*, ed. Richard McKeon, trans. W. Rhys Roberts (New York: Modern Library, 2001), 1430.

<sup>21</sup> “Senate Roll Call: Iraq Resolution,” *Washington Post*, October 11, 2002, [https://www.washingtonpost.com/wp-srv/onpolitics/transcripts/senaterollcall\\_iraq101002.htm](https://www.washingtonpost.com/wp-srv/onpolitics/transcripts/senaterollcall_iraq101002.htm).

<sup>22</sup> James R. Schlesinger, *Final Report of the Independent Panel to Review DoD Detention Operations* (Washington, DC: Office of the Secretary of Defense, August 2004).

<sup>23</sup> Alan Ryan, “Risk and Terrorism,” in *Risk: Philosophical Perspectives*, ed. Tim Lewens (New York: Routledge, 2007), 175–76.



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<sup>24</sup> John Obiediek, *Imposing Risk: A Normative Framework* (Oxford, UK: Oxford University Press, 2017), 145.

<sup>25</sup> Brian Michael Jenkins, “The Invasion of Iraq: A Balance Sheet,” *RAND Blog*, March 22, 2013, <https://www.rand.org/blog/2013/03/the-invasion-of-iraq-a-balance-sheet.html>.

<sup>26</sup> Jenkins, “Invasion of Iraq.”

<sup>27</sup> Montaigne, “Of Fear,” 97.

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