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DETERMINING MORAL RECTITUDE IN THWARTING  
SUICIDE TERRORIST ATTACKS: MORAL *TERRA*  
*INCOGNITA*

It can be asserted without controversy that one of the principal concerns of the US government must be endeavoring to thwart suicide terrorist attacks – to actually prevent their happening, and not just to clean up the carnage, and prosecute any surviving perpetrators. It can also be asserted, and also without controversy, that in endeavoring to thwart suicide terrorist attacks, the United States could act in ways that are morally upright – or, alternatively, it could act in ways that are morally wrong.<sup>1</sup> However: distinguishing morally permissible endeavors from morally impermissible endeavors is no easy matter; *that is not* without controversy. For as a moment's reflection will reveal, to (genuinely) *thwart* an attack by suicide terrorists is, quite inevitably, to engage in *preventive* actions. And preventive actions are, notoriously morally problematical. How, then, is the determination to be made; how can the morally permissible endeavors be distinguished from the morally impermissible?

The most general thesis of this chapter is that we are entering uncharted moral territory. I attempt to secure that thesis by arguing that the threat posed by suicide terrorists is *sui generis*; in consequence, it does not comfortably “fit” extant moral models. In an earlier paper,<sup>2</sup> I argued that suicide terrorists are neither “common criminals,” nor soldiers; I synopsise those arguments in Section 1. In Section 2, I sketch a response to the *sui generis* threat posed by suicide terrorists that seems, intuitively, morally permissible. I then look for more solid moral grounding: in the distinction between prevention and preemption (Section 3), in just war theory (Section 4), and in a Kantian argument (Section 5). None of these seem to apply to this *sui generis* threat; there is much work here to be done by moral philosophers.

1. SUICIDE TERRORISTS AND SOLDIERS; SUICIDE  
TERRORISTS AND CRIMINALS

1.1 *Suicide Terrorists*

There are, to be sure, many different sorts of suicide terrorists: individuals willing to die for some cause or another, killing people in the process. In a chapter of this length, we need to focus on an exemplar. As the

perpetrators of 9/11 (and other attacks), and as constituting the gravest threat to the United States, let us focus on al-Qaeda. And when we need to place al-Qaeda in a philosophical – religious context, let us consider the version of Islamic extremism espoused by their (recent) Afghani hosts, the Taliban. I believe that the arguments constructed will be applicable to other organizations and causes *mutatis mutandis*.

### 1.2 *Suicide Terrorists and Soldiers*

Suicide terrorists are like soldiers in some respects. They operate across international borders, and they use an array of military weaponry – including “weapons of mass destruction” (WMD), if they can obtain them. Furthermore, like soldiers, they are not motivated by personal gain, but by some (alleged) “higher cause.”

But suicide terrorists are *unlike* soldiers in crucial respects.

First – and quite apparently – they do not wear any sort of uniform or other “fixed insignia,” as do members of a military.

Second, suicide terrorists quite intentionally target noncombatants. The deliberate killing of civilians – especially children, the elderly, etc. who decidedly cannot defend themselves – enhances the terror spawned by the attack, and thus is tactically preferred. Soldiers do not intentionally target noncombatants – or if they do, their actions constitute war crimes.<sup>3</sup>

Third, suicide terrorists are not the “army” of a nation-state; they are not under the command and control structure of any government. Consequently, they are under no authority that can formally declare war. Similarly, they are under no authority that can enter a treaty or sue for peace – to formally bring hostilities to an end.

Fourth, suicide terrorists are *undeterrable* adversaries. In this absolutely crucial respect, they differ from both soldiers and ordinary criminals; it makes sense, then, to turn to the ways in which suicide terrorists are like and unlike criminals – and then unite the argument on the issue of undeterrability.

### 1.3 *Suicide Terrorists and Criminals*

There is no denying the fact that suicide terrorists are criminals – at least, in the profoundly literal sense that they are persons who violate criminal statutes. Additionally, they engage in criminal conspiracies. In the aftermath, their “crimes” are investigated by (various elements of) police forces, especially forensics units. And they are mass murderers.

But suicide terrorists are *unlike* ordinary criminals in crucial respects.

Criminals do not target civilians – that is, innocent bystanders. To be sure, innocents can be caught in the crossfire – especially, for example, in

conflicts between rival gangs. Such a lack of concern for innocent bystanders is surely reprehensible – but just as surely, this unconcern is distinguishable from the intentional *targeting* of innocents.

#### 1.4 *Undeterrability*

The fervent hope, the firmest intention of both soldiers and criminals, is to *survive*. Typically, soldiers are committed to the geopolitical objectives of their (respective) governments; they believe that their (respective) nation's interests justify their being put in harm's way. Whether the objective of the war is securing essential resources, vanquishing a threatening adversary, or establishing secure borders, the soldier undertakes the perils of combat in order to secure, and then to enjoy, those benefits. Typically, criminals want to survive their illegal actions in order to enjoy their ill-gotten gains.

A necessary condition for both soldiers and criminals, of course, is to *live*. Suicide terrorists, *unlike* soldiers and criminals, intend to die.<sup>4</sup> And that – to paraphrase Robert Frost – makes all the difference.

The fact that soldiers and criminals want, hope, intend to *survive* their respective activities means that both are, in principle, deterrable. Both crooks and soldiers (by themselves or by means of the decisions of their governments) may be dissuaded from pursuing a particular course of conduct by means of credible deterrent threats: unless they do differently, the outcome will be worse for them, not better. They will be killed, or defeated, or even annihilated – *not* the outcomes they intended to bring about when initiating their actions. A credible deterrent threat provides compelling reason to *stop* – to reconsider, to do otherwise.

Consider now potential suicide terrorists and ask: What deterrent threat could we make, what could we threaten to do to them, that would dissuade them from their determined course of action? The answer is, of course: nothing. They are intending to die; they welcome death – and its promised rewards (in the afterlife). Unlike the deterrable criminal, who seeks to live lavishly; unlike the deterrable soldier, who seeks to survive the conflict; unlike the deterrable nation-state, which seeks to survive and prosper *as* a nation-state: suicide terrorists intend to *not* survive. Thus, the terrorist threat to be thwarted is posed by “un-deterrable” individuals. They cannot be dissuaded by threats; nothing we could plausibly threaten to do to them could be worse than what they intend to do to themselves – and while doing it, of course, also inflicting great evils upon us. Thus, the threat posed by suicide terrorists is quite distinct from the threat of the soldier or the criminal.<sup>5</sup> Indeed the threat is *sui generis*.

## 2. ENDEAVORING TO THWART SUICIDE TERRORIST ATTACKS

How can we, how ought we respond to this threat? Well, we can be *reactive*; we can take various “defensive” measures, attempting to interdict the terrorists at the presumed *sites* of attack. Quite obviously, however, there are too many targets, too many modes of destruction, too few ways of interception. So these defensive measures, while important, simply will not suffice. In addition to being reactive, we must be *proactive*.

I propose the following set of intuitively acceptable initiatives. We must enhance, deploy, and coordinate a full range of intelligence-gathering assets: satellites, aircraft, the interception of all modes of electronic communication, the infiltration of terrorist groups – all to learn precisely who poses a threat. And then we must take actions to *prevent* those individuals from actually launching an attack. When we discover individuals whom we reasonably believe to be suicide terrorists, who thus pose a clear and present danger to the United States, or US interests abroad, or to allies and their interests, these individuals must be *incapacitated*. This has *got* to be the goal. And the harsh new reality is that “incapacitation” means killing, or incarcerating for as long as they constitute a threat.<sup>6</sup>

Furthermore, I propose the following standard for an individual’s posing a threat: that responsible officials have a *bona fide* and reasonable belief that a person harbors ill will towards US interests, plus that that person commits (at least) one overt act that can reasonably be understood as preparation for an attack: an attack of one’s own, or an attack by one’s cohorts.<sup>7</sup> My proposal is that, if you chant “Death to America” and secure forged travel documents, or train at an al-Qaeda camp, or purchase explosives, or surveil targets, and so on – you have thereby signed your own arrest warrant. Or perhaps you have signed your own death warrant.

I introduced these measures with the claim that I found them “intuitively acceptable.” Can they withstand moral scrutiny? How are these initiatives to be morally assessed?

## 3. PREVENTION AND PREEMPTION

Philosophers who write on these issues draw a distinction between preemption and prevention. Roughly, a preemptive first strike is intended to interrupt an adversary’s attack “already in progress;” a preventive first strike is intended to disable an adversary prior to its initiation of an attack. Generally, preemptive first strikes are thought justified in certain

specifiable circumstances; generally, preventive first strikes are thought not justified – or at least, are (far) more morally problematical. But while this distinction is crystal clear when “preemption” and “prevention” are considered as Platonic Forms, applying the distinction to armed conflict is considerably more cloudy. Even more challenging is its application to thwarting terrorists.

Consider a hypothetical. Imagine that your geopolitical adversary embarks upon a decade-long military buildup. You witness an escalating percentage of its GNP devoted to weapons research and development, with production following successful testing. You witness an escalation in espionage – military, political, and industrial. You witness an escalation in troop strength: both combat troops, and support personnel. You witness an escalating rate of computer and network incursions: the theft and corruption of data, and the launch of destructive viruses and worms. All this culminates in general mobilization, and a repositioning of entire armies. In the media, there are belligerent references to past borders, and past conflicts. And then comes the invasion.

Intuitively, a justified (preemptive) first strike could be launched sometime before the tanks can be seen from the border guardhouses. Intuitively, an attack on the economic infrastructure ten years earlier, to preclude the buildup, would be an unjustified preventive attack. Quite quickly, matters get murkier. Let us call the various actions taken by one’s adversary that seem to be a buildup towards armed aggression “provocative acts” (in a mostly descriptive sense). Now any of the provocative acts in this sequence might instigate a “first strike.” Logically, there must be a pair of provocative acts that have this property: a first strike in response to the first of the pair would be a *preventive* strike and therefore likely unjustified (or at least morally problematical); a first strike in response to the second provocative act of the pair would be a *preemptive* strike, and therefore likely justified (or at least less morally problematical). In point of fact, there may be a span of time between these two provocative acts; given the lethargy of all the logistics involved, there will be a wide “window of opportunity” for determining whether a contemplated first strike would be preventive or preemptive.

But the same cannot be said about a suicide terrorist attack. Consider now another hypothetical, a person whose activities seem aimed at a suicide attack on a subway. This person builds a bomb in an apartment. One day, he straps it to his body, walks to a subway station, boards a train, and detonates the bomb in the first tunnel. How are we to distinguish between preventive and preemptive interdiction in *this* case? The total elapsed time, from departing the apartment to departing this life,

may well be a matter of mere minutes. Is there a corresponding “pair of events,” between which we can plausibly distinguish prevention from preemption? Is there a “window of opportunity” at all, given that there likely will be no “security checkpoints” along the road to perdition? Or are interdictions which *appear* to be problematical preventions really unproblematical preemptions?

In *Just and Unjust Wars*, Michael Walzer asks and answers our question as regards nation-states:

Now, what acts are to count, what acts do count as threats sufficiently serious to justify war? . . . The line between legitimate and illegitimate first strikes is not going to be drawn at the point of imminent attack but at the point of sufficient threat. That phrase is necessarily vague. I mean it to cover three things: a manifest intent to injure, a degree of active preparation that makes that intent a positive danger, and a general situation in which waiting, or doing anything other than fighting, greatly magnifies the risk.<sup>8</sup>

Well, as regards suicide terrorists, all three conditions for “sufficient threat” seem clearly to be met by the “intuitively acceptable” initiatives I sketched above. Chanting “Death to America!”, for example, or reacting with approval to calls for violence by an Imam, is evidence of a “manifest intent.” Overt acts of training, forging, gathering components, etc., could constitute “active preparation that makes that intent a positive danger.” We could set a standard: either one unambiguous component (C4 explosive, detonators), or two ambiguous components (bomb ingredients, pocketed undergarments) will suffice. And the practical impossibility of defending the vast array of purely civilian (i.e., noncombatant) targets “greatly magnifies the risk”; I submit that the third condition is continuously met.

If the prevention/preemption distinction bears on thwarting suicide terrorists at all, it certainly seems that many thwarting interdictions are indeed morally permissible. Nonetheless, we lack specificity as regards permissible and impermissible first strikes.

My conclusion here takes the form of a disjunction. Either the prevention/preemption distinction is not relevant to the endeavor of thwarting suicide terrorists (there being no contiguous pair of provocative events to sustain the distinction), or a wide range of “first strikes” that might *seem* to be preventive are really preemptive. But in either case, little moral guidance is offered by the distinction.

We are indeed entering moral *terra incognita*.

#### 4. JUST WAR THEORY: INAPPLICABLE

The Bush Administration and the media invariably refer to our endeavors to thwart suicide terrorists as the “War on Terrorism,” or more recently

the “Global War on Terror.” This could lead the unwary to look to the venerable tradition known as Just War Theory (JWT) when seeking to distinguish permissible from impermissible courses of conduct. However, endeavoring to thwart suicide terrorists is not the prosecuting of a war; neither the perpetrators (as we have seen), nor the conflict itself, “fit” the conditions of JWT.

Reflect for a moment on the US invasion of Iraq in 2003, and (especially) the subsequent “insurgency.” This is a perfect exemplar of what has come to be called “asymmetrical warfare” – a concept most easily understood through its contrastive, “symmetrical warfare.” In symmetrical warfare, we find adversaries of (roughly) comparable military strength, with (roughly) comparable weaponry and technology, fighting on a (relatively) well-defined battlefield. World War II in Europe, from D-Day to the German surrender, would be an instance of symmetrical warfare. But when the United States invaded Iraq, it relied upon an array of high-tech weaponry – fighters and bombers employing stealth technology, missiles guided by Global Positioning Devices, unmanned aircraft (Predators) used for surveillance, and later for armed attack. That fraction of the Iraqi military which did not melt into the civilian population simply was no match – an asymmetry of force.

The endeavor to thwart suicide terrorist attacks is not a “war” per se, but it *is* an asymmetrical struggle: wildly unequal forces, Boeings as weapons of mass destruction, Manhattan and Washington as “battlefields.”

JWT is, I contend, designed for the strategy and tactics of symmetrical warfare – and not the asymmetrical endeavor of terrorist-thwarting. Furthermore, I believe that JWT *presupposes* two distinguishable sorts of what we can call “moral symmetries” between the warring adversaries, a symmetry of their moral understanding of war and a symmetry of their fundamental political theory. Our conflict with al-Qaeda is morally asymmetrical in the moral understanding of war: Just War versus Jihad. In addition, it is morally asymmetrical in terms of the political theory: Liberal Democracy versus Wahabist Islam. So let us consider now the key provisions of JWT. Initially, my goal is to (briefly) explicate them and to show the morally symmetry, the moral universalism, that those provisions presuppose. After doing that, I examine the Taliban’s interpretation of Islam and the tactics of al-Qaeda. What will become clear, I submit, is that the Islamic fundamentalists’ repudiation of moral universalism, conjoined with al-Qaeda’s wholesale dismissal of just war provisions, move this asymmetrical conflict (well) outside the domain of JWT. In consequence, we really cannot look to JWT for moral guidance.

For a contemporary account of JWT, I shall rely upon William V. O'Brien.<sup>9</sup> As is traditional, O'Brien distinguishes the conditions that make going to war morally permissible (*jus ad bellum*) from the conditions that govern the prosecution of a war (*jus in bello*).

As regards *jus ad bellum*, the first condition is "competent authority:" war "must be waged on the order of public authorities for public purposes." The second condition is that the war must be waged for a "just cause." The third is that the war must be waged with the "right intention."

There are two main conditions for *jus in bello*. The first is "proportionality" which requires that the good produced in going to war must exceed the evil. The second is "discrimination," which "prohibits direct intentional attacks on noncombatants and nonmilitary targets."<sup>10</sup>

As their further development makes clear, the broader context of these conditions is the meta-ethical position of universalism: all human beings are members of a single moral "universe;" each has the same moral status, or moral standing. There is a single, unified "moral law" applicable to all, and to all equally.

Of the set of *jus ad bellum* conditions taken together, O'Brien writes:

The taking of human life is not permitted to man unless there are exceptional justifications. Just-war doctrine provides those justifications, but they are in the nature of special pleadings to overcome the presumption against killing.<sup>11</sup>

The phrase "is not permitted to man" is a clear indication that O'Brien considers the whole of humanity to constitute a single moral universe. And two further specifications of "right intention" are on point. "[R]ight intention requires that the just belligerent have always in mind as the ultimate object of the war a just and lasting peace. There is an implicit requirement to prepare for reconciliation even as one wages war." And more deeply, more metaethically telling: "[U]nderlying the other requirements, right intention insists that charity and love exist even among enemies. Enemies must be treated as human beings with rights."<sup>12</sup>

Moral universalism has implications throughout the just war doctrine; for example, in performing the calculations for proportionality, one is to "count" the deaths of one's enemies precisely the same as one counts the deaths of one's own. A war is unjust if the evil – including the *total* of the fatalities, one's adversary's as well as one's own – is disproportionate to the good to be achieved by the war.

In prosecuting a just war, each side continues to regard the citizens of the other nation as human beings, with rights equal to one's own. And they will respect each other in the morning – that is, after the war. Indeed, the goal of the just war must be a just peace.



The most perspicuous place to begin, I think, is at the end: with the competing conceptions of the “just peace” that is to follow the conflict. One party, the United States, seeks to continue its pre-9/11 pursuit of a liberal democracy (however fitful that pursuit sometimes seems). The ultimate goal sought by al-Qaeda, the other party, is a pan-Arabic Caliphate: Afghanistan under the Taliban, writ large. In such a society, there is no separation of church and state, most assuredly not a liberal democratic concept of religious tolerance. Furthermore, such a society is founded upon thoroughgoing gender inequality. One’s moral, religious, and legal status – and these are essentially the same – is a function of one’s gender. The US Department of State has issued a document with a telling title: “Report on the Taliban’s War Against Women.”<sup>13</sup> With a combination of anecdotes and discursive prose, it details the lives (and deaths) of women under the Taliban. Its summary: “[T]he Taliban’s discriminatory policies violate many of the basic principles of international human rights law. These rights include the right to freedom of expression, association and assembly, the right to work, the right to education, freedom of movement, and the right to health care.”

What we have here is not two discrete populations of a single moral universe – everyone subject to, and known to be subject to, an overarching moral law – but two discrete “moral communities,” which subscribe to deeply incompatible core beliefs and values. And they are locked in mortal conflict.

And how is this conflict being carried out? Asymmetrically. At the theoretical level, it is a clash between Just War and Jihad. The conflict is not a war per se, as it is not a conflict between nations. Neither Osama bin Laden nor Ayman Al Zawahiri can be considered “competent authorities.” To say that they aim at a “public good” would be to countenance the Caliphate and to renounce virtually every value constitutive of liberal democracy. The Taliban’s interpretation of Islam, and within it Jihad, rejects universalism’s moral equality; infidels have a (much) lower status than believers. In consequence, there are special rewards for killing infidels, or dying in the attempt.<sup>14</sup> The calculations of the just war principle of proportionality, which presuppose equality, are thereby rendered incoherent. JWT anticipates an end to the hostilities, and the subsequent repatriation of captured combatants – not unlike the Criminal Justice Model anticipates the release of a convict, after serving one’s sentence. But in the effort to thwart suicide terrorists, there is no competent authority to end the hostilities, and – as was argued above – there can be no sane thought of releasing suicide terrorists still intending to attack. Finally – and most obviously – al-Qaeda quite intentionally transgresses

the principle of discrimination, hoping thereby to enhance the terror aroused by its attacks.

More narrowly, I want to claim this: the struggle between al-Qaeda and the United States does not fit the conditions, nor the moral presuppositions, of JWT. And no amount of stretching or chopping by Procrustes could make it fit.

More broadly, all of this makes it more difficult to think about the moral constraints *on us* as we endeavor to thwart suicide terrorists. How constrained can we morally be, against an implacable and undeterrable adversary intending the destruction of our moral community itself?<sup>15</sup>

##### 5. KANTIAN CONSTRAINTS: FOUNDED ON A FALLACY

Is the United States, in taking preventive measures, committed – on pain of inconsistency – to countenancing “similar” preventive actions by other nation-states? This argument begins with the concern that a “relationship” will develop – and here it is difficult to be precise – between the United States’s acting preventively to thwart suicide terrorist attacks, and actions that will “come to be taken” by other nation-states. Those other nations will take note of US actions, and then – well, be *emboldened*, or *inspired*, or somehow *instigated* to elect allegedly “similar” actions, or at least to think themselves “justified” in taking allegedly “similar” actions.

Former Vice President Al Gore, in a major policy statement, expressed concerns about a *general* doctrine of preemption. And while the position I am defending is quite narrow – thwarting suicide terrorist attacks and not a general military doctrine of preemption – the argument’s format is noteworthy.<sup>16</sup>

President Bush now asserts that we will take pre-emptive action even if we take the threat we perceive is not imminent. If other nations assert the same right then the rule of law will quickly be replaced by the reign of fear—any nation that perceives circumstances that could eventually lead to an imminent threat would be justified under this approach in taking military action against another nation.<sup>17</sup>

In North Korea’s campaign of escalating rhetoric, Ri Pyong Gap, a Foreign Ministry deputy director, claimed that “Preemptive attacks are not the exclusive right of the U.S.”<sup>18</sup> And the usually thoughtful Michael Kinsley, towards the end of a critique of Bush Administration “diplomacy” – a critique with which I am in essential agreement – wrote: “[T]he president can start a war against anyone at any time, and no one has the right to stop him. And presumably other nations . . . have that same right.”<sup>19</sup>

Now it is not clear just what to make of these “positions,” just what is being alleged. They might be mere empirical predictions – in acting preventively, the United States will make *more likely* preventive actions by other nations. As such, they are predictions of (yet more) confirming instances of that mighty maxim, “Monkey see, monkey do.” But the fear of inspiring “copycats” cannot be a guiding principle of US policy regarding suicide terrorists; that would yield paralysis, rather than a morally superior policy.

This “position” is *most* interesting, in my judgment, if it is construed to rely upon a particular formulation of Immanuel Kant’s categorical imperative. In the *Grounding for the Metaphysics of Morals*, Kant writes: “Act as if the maxim of your action were to become through your will a universal law of nature.”<sup>20</sup> What we are to imagine is this: When we act in morally significant ways, maxims “effervesce” from those actions; in performing those actions, we thereby *endorse* those maxims.<sup>21</sup> As a matter of universalizability, we thereby countenance relevantly similar actions by others. Put another way: it is inconsistent to act under a particular maxim, while claiming that others, if similarly situated, may *not* act under that selfsame maxim. So the United States – it is alleged – in acting preventively against suicide terrorists, effervesces a maxim; other countries are thereby “authorized” to act under that maxim. It would be inconsistent of the United States to so act, and then to claim that others may *not*, or to criticize them for so acting.

Now there is a superficial credibility to this argument – but it cannot withstand philosophical scrutiny. Let us turn to the task of abrading its patina of plausibility.

I have no interest in denying the obvious – that in thinking about and speaking about “nation-states,” in praising them and criticizing them, we treat them as “agents,” as if they are individual, unitary “beings.” We speak of a nation-state as “acting” in various ways: as pursuing its objectives (narrowly), its policies (more broadly), or its destiny. And when a nation “acts,” we may speak of it as acting clumsily or adroitly; intelligently or stupidly; with or without foresight, etc. In doing all of this, we are employing a (very) convenient shorthand,<sup>22</sup> but we are *not* taking a metaphysical stand. Nation-states are not individuals; when we think and talk in these ways, what we are really saying is that the decision-makers of the nation-state – whether an (actual) individual, or a small cadre, or a ruling elite, or the executive branch (whether checked and balanced, or not) have made decisions and implemented them (or attempted to implement them, or failed to implement them): have ordered, enacted, or declared, etc. It would be awkward and tedious to say all of this on

every occasion. So I am not calling for linguistic reform here. But I do want to issue a (rather stern) reminder that this sort of talk is purely *metaphorical*, and that we must not be “captured” by a metaphor, coming to take seriously the notion that nation-states are agents per se.<sup>23</sup> In particular, nation-states are not *moral* agents. To mistake the *convenience* of speaking of them as if they were agents, for their *being moral* agents, is to commit the informal fallacy of “composition” on rather grand a scale.

The formulation of the categorical imperative cited above is intended to state succinctly two fundamental axioms of morality: to assert that every rational being is a moral agent, and to assert the moral *equality* of all the moral agents who comprise a “moral community.” My thesis is that, despite the convenient shorthand, nation-states are not moral agents as required by this formulation of the categorical imperative, and the set of nation-states does not constitute a moral community of equal moral agents. Showing these is sufficient to dismantle the Kantian obstacle to the United States’s acting preventively against suicide terrorists.

That individual human beings<sup>24</sup> are moral agents is philosophical bedrock.<sup>25</sup> So too is the moral equality of individuals constitutive of a moral community.<sup>26</sup> The Kantian argument we are scrutinizing depends upon a strong *isomorphism* between individual and nation-state; to the contrary, I believe that it is a weak analogy at best, and more aptly considered a mere metaphor. Consider a number of metaphysically important differences.

Historians and political scientists date the origin of the modern nation-state to the Peace of Westphalia (1648). Obviously, individual *homo sapiens sapiens* as moral agents predate the emergence of the nation-state.

Individual human beings are readily distinguishable; aside from obvious or arcane “exceptions,” their “boundaries” are pretty well-defined.<sup>27</sup> The “boundaries” of *some* nation-states are indeed well-defined. The boundaries of others, however, are the creations of cartographers: some conscientious, some capricious or whimsical, some with a knowledge of local realities, some ignorant of local realities.<sup>28</sup> Indeed: if we were to take the person/country isomorphism seriously, some contemporary nation-states are profoundly and incurably schizophrenic.

Although some nation-states are relatively homogenous, there is no fundamental, “internal unity” as there is in a human body – any analogies between hearts/lungs/central nervous system, and classes/castes/towns and farms, are fanciful at best.

The modern political philosophers Hobbes, Locke, and Rousseau took note of the fact that human beings are remarkably similar in size, strength, and capabilities; this similarity was both a cause of, and justification of,

mores – and, eventually, morality. To be sure, humans do vary in size. But the ranges of size, strength, and capabilities of contemporary nation-states are vastly greater. Consider some comparisons among the 192 members of the United Nations. The Gross Domestic Product of the United States is 74,514 times that of Palau. The population of China (1,284,972,000) is 116,816 times that of Palau (11,000). The landmass of the Russian Federation is 813,114 times that of Nauru. Add to these the disparities in natural resources, in the education and technological skills of the populace, and military capabilities – there is no (rough) equality among nation-states, as there is among human beings. So while we can – and should – speak poetically of the “community of nations,” we must avoid getting carried away. And when we consider all nations as “equals” under international law,<sup>29</sup> we are invoking a legal fiction; we are not discovering the fundamental metaphysics of morality. We must resist the temptation to think of nation-states as moral agents per se. And we must resist the temptation to think of the “community of nations” as a *moral* community of presumed equality among its members.

Finally, we must resist the temptation to think of nation-states as effervescent Kantian maxims, and endorsing them by acting, such that every state – regardless of size, population, GDP, military strength, etc. has the moral authorization to act under the maxims effervesced by any other nation-state. Surely the specification of the moral role of the world’s nations is more complex, more subtle, more textured than that. In particular, the sole superpower has *unique* permissions, and unique responsibilities. When under attack by those who would destroy it as a moral community, as the guarantor of essential rights – it need not seek the “consent” of other nations before acting.

But let us *now* consider the position that the individual/nation-state analogy *is* in fact a moral isomorphism, and, in consequence, that the relevant formulation of the Kantian categorical imperative is indeed applicable to the United States and all other nation-states. When the United States acts, any other nation-state, *similarly situated*, may act under *that maxim* – carefully specifying what it means to be “similarly situated,” and the maxim that effervesces from US actions.<sup>30</sup>

We are to conceive, then, a nation-state constitutionally committed and conscientiously attempting to establish and maintain the liberal democratic “meta-values” of toleration and mutual respect: freedom of conscience, freedom of speech, freedom of religion, freedom of assembly, freedom of the press, the rule of law, and due process of law.<sup>31</sup> We are to conceive that nation-state under attack by suicide terrorists, that is, undeterrable individuals quite deliberately targeting civilians and the

social and economic structure necessary for maintaining just institutions.<sup>32</sup> The suicide terrorists have a (long-range) goal of *repudiating* tolerance and mutual respect and imposing an antithetical ideology. The nation-state under attack has acceptably competent intelligence agencies for detecting suicide terrorists; it has an acceptably competent military for incapacitating those whom it finds. In using its military, it has no designs to expand territorially or impose any particular ideology. (Indeed, it is willing to devote considerable resources to assisting other nation-states in developing the institutions which guarantee tolerance and mutual respect.) Furthermore, the maxim which effervesces from its actions to thwart suicide terrorists contains essential constraining qualifications regarding the nature of the threat. If there were such a state, thus “similarly situated,” I would find it *quite* unobjectionable that it would act under the precisely qualified maxim. Indeed, I would *welcome* its so acting.

## 6. CONCLUSION

If the United States is to successfully thwart suicide terrorist attacks, it must engage in *preventive* measures. But what preventive measures are morally permissible? Where shall we turn for moral guidance? If my arguments are essentially sound, the threat posed by suicide terrorists is *sui generis*. The distinction between preventive and preemptive action is either inapplicable, or unsustainable; it provides little guidance. This asymmetrical struggle does not fit JWT; we do not find our guidance there. The Kantian Constraints proposed by some are based upon a fallacy; to speak of nations as moral individuals, as members of a moral community of nations, is to employ a convenient figure of speech, or to speak metaphorically. It is not a statement of moral metaphysics. To conclude: much work remains to be done by moral philosophers.

## NOTES

1. Intuitively, for example, it would be wrong to suspend the civil rights of all Muslims, or to herd them into interment camps, or to deport them.
2. “Thwarting Suicide Terrorists: The Locus of Moral Constraints and the (Ir)relevance of Human Rights,” in *Universal Human Rights: Moral Order in a Divided World*, ed. David A. Reidy and Mortimer N.S. Sellers (Lanham, MD: Rowman & Littlefield, 2005), pp. 209–228.
3. To be sure, various militaries are sometimes more scrupulous, and sometimes less scrupulous about preserving the safety of noncombatants – and the same must be said about criminals. But it is not the *intention* of either soldiers or criminals to injure “bystanders.”

4. They may well intend to prosper – but in the next life, not in this (foreshortened) life.
5. The deep difficulty with considering suicide terrorists as criminals is that the institutions of the criminal justice system look backwards rather than forwards: they are designed principally to investigate crimes that have already been committed, and then to arrest and prosecute those who have committed them. But it is the *thwarting* of suicide terrorists, the (actual) preventing their attacking, that is the task at hand.
6. This constitutes yet another reason for *not* considering suicide terrorists as criminals, within the confines of the Criminal Law Model. A central element of the criminal law is the concept of proportionate sentences. But what is the “proportionate” sentence for an attempted (but unsuccessful) terrorist attack? Here we encounter a conflict in intuitions. A life sentence, without the possibility of parole, may well seem too harsh, disproportionately long – after all, the individual is not guilty of a successful attack. However, setting free an individual who is still bent on a suicide attack is as heinous as it is surreal. What follows is not that we ought to amend the CLM to accommodate it, but that suicide terrorists do not fit the Model. They, and the threat they pose, are indeed *sui generis*.
7. In actual practice, I suspect, we will often have less information than we would like to have. As will become clear, however, we cannot afford to err on the side of inaction, of restraint.
8. Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977), pp. 80, 81.
9. I use a selection from O’Brien’s *The Conduct of Just and Limited War* (1981), Praeger Publishers, that appears in James P. Sterba, *The Ethics of War and Nuclear Deterrence* (Belmont, CA: Wadsworth Publishing Company, 1985).
10. O’Brien in Sterba, pp. 31, 39.
11. O’Brien in Sterba, p. 31.
12. O’Brien in Sterba, p. 36, italics added in second quotation.
13. US Department of State, “Report on the Taliban’s War Against Women,” Released by the Bureau of Democracy, Human Rights and Labor, November 17, 2001. <file:///E:/I/%20The%20Taliban's%20War%20Against%20Women.htm>
14. *The Holy Qur’an*, translated by A. Yusuf Ali (Brentwood, MD: Amana Corp., 1983). See especially Sect. 9: 20–3, and n. 1270, and n. 1271.
15. On this point, see Jonathan Schonsheck, “Geopolitical Realism, Morality, and the War in the Gulf,” *From the Eye of the Storm*, ed. Laurence F. Bove and Laura Duhan Kaplan (The Netherlands: Rodopi, 1995), pp. 162–163.
16. The contexts do not make clear whether Al Gore and Ri Pyong Gap are respecting the distinction between preemption and prevention (as typically drawn by philosophers and discussed above). If my rejection of the Kantian Constraints is successful, then neither preemption nor prevention is constrained.
17. The passage continues, “An unspoken part of this new doctrine appears to be that we claim this right for ourselves – and only for ourselves.” I address this portion of the position below. Al Gore, “Iraq and the War on Terrorism,” [www.gwu.edu/~action/2004/gore/gore092302sp.html](http://www.gwu.edu/~action/2004/gore/gore092302sp.html)
18. “N. Korea warns of pre-emptive strike,” MSNBC News Services, February 6, 2003. I suspect that the Deputy Foreign Minister is not an analytic philosopher – for a clear implication of the claim that such attacks are not the “exclusive” right of the United States, is that such attacks are indeed *a* right of the United States. [www.msnbc.com/news/850567.asp?0cv=CB10](http://www.msnbc.com/news/850567.asp?0cv=CB10)

19. Michael Kinsley, "Sovereign authority," slate.com, March 20, 2003. One does want to ask: why ever would we make such a "presumption?"
20. Immanuel Kant, *Grounding for the Metaphysics of Morals*, trans. James W. Ellington (Indianapolis, IN: Hackett, 1981), p. 30.
21. I am grateful to my colleague Dana Radcliffe for illuminating conversations about this formulation of the categorical imperative.
22. As I have done, at various points, in this chapter.
23. Neither does the fact that they are "legal fictions" in International Law change the fundamental metaphysics. Consider an analogy with business corporations – which can be large collectives of individuals too, which are "individuals" as legal fictions, which we speak about as if they were agents – but which are not agents, strictly speaking (i.e., metaphysically).
24. At least, mature and nondefective ones. (Other qualifications may be necessary.)
25. At least in the Western, liberal moral tradition. I readily acknowledge that, in other traditions, the family or group or clan might be the "smallest" unit of moral significance, rather than the individual. But that's quite some philosophical distance from the claim that the nation-state, which can be composed of a billion (or more) individuals, is the fundamental unit of morality, and not just an analogue in a scheme of analogical thinking.
26. This raises the issue of the scope, or extent, of "universalizability": whether all rational agents are included in a "global" moral community (as Kant seems to have thought), or all sentient creatures are included in such a moral community (as John Stuart Mill seems to have thought; cf. *Utilitarianism*). I have argued at some length for some time that this latter position is untenable. See, for example, "Constraints on *The Expanding Circle: A Critique of Singer*," *Inquiries into Values: The Inaugural Session of the International Society for Value Inquiry*, ed. Sander Lee, (Lewiston, NY: The Edwin Mellen Press, 1988), pp. 695–707. If international conflicts are considered clashes between moral communities, and not as clashes between nation-states within some moral community, the argument for my thesis here is vastly strengthened.
27. Some exceptions are conjoined twins and dead skin cells that slough off.
28. On this point, see Winston S. Churchill, "My Grandfather Invented Iraq." One version appeared in *The Wall Street Journal*, March 2003; a version is available at [www.warroom.com/iraqwar/churchill.htm](http://www.warroom.com/iraqwar/churchill.htm)
29. Corporations are "equal" legal individuals – but corporations are not roughly equal in size and wealth and power.
30. Kantian moral assessment depends crucially, of course, upon precisely formulated maxims.
31. Schonsheck, "Rudeness, Rasp and Repudiation." *Civility and its Discontents*, ed. Christine Sistare (University Press of Kansas, 2004), pp. 182–202.
32. See John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), pp. 274ff.