

Can We Preserve Liberty in an Age of Terrorism?

Two Perspectives

'Preserving Liberty' by **Nicholas Southwood**

'What Price Security?' by **John Humphreys**

Security is essential for the enjoyment of freedom in a liberal society, but this does not mean that we should accept security at any price. In late 2003, The Centre for Independent Studies held the inaugural Ross Parish essay competition and invited entrants to consider whether, in an age of terrorism, the benefits of greater security outweigh the costs in reduced freedom. The first and second prize-winning essays appear in the pages that follow.

Nicholas Southwood, a 2004 Fulbright scholar, won first prize in the Ross Parish essay competition. **John Humphreys**, a consultant at the Centre for International Economics and Director of the Australian Libertarian Society (www.libertarian.org.au), won second prize. Third prize winner Andrew Nicol's essay is not printed here but can be accessed at <http://www.cis.org.au/L&S/HTML/home.htm>, where more information about Ross Parish and the essay competition can also be found.

Preserving Liberty

Nicholas Southwood

When we ask whether liberty can be preserved in an age of terrorism, we may be asking the empirical question whether the preservation of liberty is *feasible* in the context of a world in which acts of terrorism are becoming increasingly widespread. Alternatively, we may be asking whether the preservation of liberty is *justified* in the face of a growing terrorist threat. This is a moral question and one of an especially pressing kind. I shall, for the most part, concentrate on the moral question. It seems to me to be rather more in need of it.¹ Still, since issues of justification are not wholly logically independent of issues of feasibility,² it is worth pausing briefly to consider the following.

Axiomatically, the extent to which the preservation of a value *A* is feasible, given *B*, depends (at least)³ upon what we mean by *A*, what we mean by *B*, and what we mean by preservation. There are undoubtedly some ways of understanding liberty, terrorism and preservation that make pessimism virtually inevitable. If, for instance, one is a partisan of the conception of liberty according to which I am free just insofar as I am not subject to *any* form of external interference from others;⁴ if one conceives of the terrorist age ushered in by the events of September 11 as nothing short of a return to a state-of-nature, governed by the inexorable logic of Hobbesian intent; if one thinks of the preservation of liberty in straightforwardly deontological terms⁵ then the infeasibility thesis will obviously loom large and ominous.

Just as obvious, however, is the foolhardiness of thinking in these terms. First, liberty in the interesting sense does not mean freedom from 'any old interference'. As Philip Pettit has forcibly reminded us, not all forms of interference are on the same liberty-infringing footing.⁶ Clearly I can be subject to some forms of interference without being made unfree: say, those that I have voluntarily consented to; or those that, by my own lights, make me considerably better off in the long-run. Second, devastating as the attacks on New York City and the Bali bombings were, they remain isolated incidents in a much bigger

picture. To be sure, it is a little hard to discern with any precision the contours of this bigger picture given a decided absence of governmental transparency and an irresponsible media intent on exploiting our 'fascination of the abomination'.⁷

Finally, on the issue of preservation, unqualified political deontologists are pretty rare these days. It is virtually unanimously conceded that the interesting question is not whether it is possible to pursue the fight against terrorism without *ever* infringing *anyone's* liberty, but whether it is possible to pursue the fight without falling beneath some acceptable threshold. Liberty, like anything else worth fighting for, is a goal to be pursued as much as possible, not an inviolable side-constraint to be honoured.

Liberty in the interesting sense does not mean freedom from 'any old interference'. As Philip Pettit has forcibly reminded us, not all forms of interference are on the same liberty-infringing footing.

Perhaps the preservation of liberty will yet prove to be infeasible in the terrorist age we inhabit.⁸ But let us not make it easier on ourselves by playing semantic games and begging substantive questions. The infeasibility thesis is a complex empirical claim to be confirmed or denied by experience, not resolved by conceptual fiat. Rather than pursuing this issue further, let us turn instead to the moral question as to whether or not we can *justify* preserving liberty in an age of terrorism.

Those who say 'no' fall into two categories. The first are those who are led there on the grounds of deeper scepticism about the value of liberty in liberal societies. In what follows, I shall not consider these, but simply assume (without argument) that they are mistaken. The second—those of interest to us—are those who, while granting the importance of liberty, nonetheless believe that seeking to preserve the high levels of liberty we currently enjoy cannot, in the present

context, be justified. Let us, then, briefly rehearse the primary considerations that compel those of this second group towards such a conclusion.

One such consideration is the insistence that liberty can only be enjoyed with impunity once threats to liberty have been effectively dissolved. In this respect, liberty is rather like peace; undoubtedly a valuable thing, but one which, in order to mean anything at all, requires that antecedent structures of stability and security be firmly in place. There is no point to being free, it is argued, unless one can be relatively certain that one's freedom will not be taken away at the drop of a hat. And the activities definitive of the terrorist age are such as to remove all such certainty. Therefore, the preservation of liberty, important as it is, must play second fiddle to the preservation of security, at least in the short-to-medium term. The alternative would be akin to proclaiming 'peace in our time' while calmly watching one's belligerent neighbour arming himself to the teeth.

The discourse of liberty is all very well when adherence to the norms of international law and the Geneva Conventions is unanimous, or close enough. But when one's enemy inhabits another normative dimension altogether, we had better start thinking in other terms.

A second consideration, related to the first, is the belief that the pursuit of liberty will be, as it is sometimes put, 'self-defeating'.⁹ Just as contemporary utilitarians universally allow that the greatest happiness of the greatest number will be ill-served by agents who aim consciously and explicitly at that end, so too do some champions of liberty allege that, in the present exceptional circumstances, the inexorable drive to liberalise will, paradoxically, lead us straight down 'the road to serfdom'.¹⁰ The cause of liberty itself requires that we give up substantial quantities of our hard-fought liberty right now.

A third, rather different consideration focuses on the character of terrorists themselves. To seek to engage a charging bull in reasoned argument is probably a bad policy. To harp on about liberty in the face of an enemy who is convinced that his most violent acts will have him reclining luxuriously in Elysium, some argue, makes about as little sense. The discourse of liberty is all very well when adherence to the norms of international law and the Geneva Conventions is unanimous, or close enough. But when one's enemy inhabits another normative dimension altogether, we had better start thinking in other terms.

These are not insubstantial considerations. There is probably some truth in them all. Still, in spite of feeling their force, I confess to belonging to the opposing party: the party which insists that it is imperative that we continue to pursue the cause of liberty relatively unchecked. How might one defend a position so greatly at odds with apparent commonsense?

The first thing to be done is to diffuse the aforementioned considerations. Take the notion that before we can enjoy liberty, we must attend to security. While there is an important sense in which this is true, if we took it too literally, we would be committed to waiting for our liberty a very long time, if not eternally. We shall always face threats of one kind or another. The history of mankind is, in an important measure, the history of interminable battles fought, conflicts faced, obstacles overcome. The enemies of liberty are diverse and resilient. They have always been there and will always be there. Yet is not the most distinctive and important feature of liberal societies precisely their willingness to persist in granting and preserving the liberties of their citizens in the face of endless enemies and diverse threats?

An equally powerful response is available to the charge that the pursuit of liberty is self-defeating. Even if we are willing to overlook the 'schizophrenia' that seems inherent in the charge,¹¹ any sane liberal will be seriously disturbed by the frighteningly paternalistic, if not totalitarian, implications of the envisaged alternative, even if it is only supposed to be a

short-term one. Ideologues and despots may talk of short-term sacrifice for the sake of the long-term common good, just as they may talk of collective self-realisation through individual subordination. But such talk has no place in a liberal society when its most fundamental value, liberty, is at stake.

Finally, what of the thought that the preservation of liberty ignores the fact that terrorists are beyond the normative world as we know it? For my part, I confess to having somewhat more faith in the ability of those who are, after all, our fellow human beings to see the force of reason. I confess to being sceptical of the suggestion that terrorists have descended to such depths that we can give up any hope of relating to them in any remotely sane manner. But since such sentiment may invite the charges of 'idealism' and 'utopianism', let us concede the point that terrorists are utterly beyond redemption. Even so, it does not follow that we ought to make our destiny hostage to the way they choose to live their lives. A deep and important theme in the liberal tradition has always been that, while institutional design must not proceed on the basis of the wildly over-optimistic assumption that we are all saints, nor should it proceed on the basis of the wildly over-pessimistic assumption that we are all monsters. To give up on liberty is to deliver to terrorists and terrorism the sweetest of victories on a shining silver platter.

So far, we have been content merely to *defend* the importance of preserving liberty from its detractors. But we need not be defensive only. In this context, it bears thinking that the executors of the proposed liberty-infringing measures are not going to be infallible, deific beings, but rather the more familiar fallible and real-worldly ones that hold the reins of state power. This is not only, or even principally, an epistemic point, though that is relevant too; imperfect epistemic agents will, after all, sometimes get it wrong. Above all, it is a point about how ready we are to place our unrelenting trust in collective agencies which already possess the capacity to coerce us on a truly monumental scale. In these emotionally charged times, let

Only hopeless Utopians will claim that the cause of liberty requires complete abstinence, on the part of governments, from any potentially or actually liberty-infringing behaviour. But even hopeless Utopians have their point.

us not conveniently forget that the primary enemies of classical liberals like Locke and Hume, Montesquieu and Smith were states, not terrorists. It would seem to be a spectacular case of collective amnesia to look for a solution in the place where, until relatively recently, was thought to reside the problem.

Alongside this observation is another one: that we can only claim the moral high ground up to the point where we continue to live in line with our moral ideals. If we like occupying the moral high ground enough, this will seem important in and of itself. More important though is the fact that, as a matter of sociological fact, terrorism springs up and flourishes in contexts where real human beings feel alienated and double-crossed. This is not supposed to be an excuse. It is rather that those teetering on the precipice of extremism will more happily jump if Western countries abandon even the pretence of living according to their deepest moral ideals. Hate and anger breed more hate and anger; that is the depressing part. But the positive side is that optimism and liberty breed more optimism and liberty too.

Only hopeless Utopians will claim that the cause of liberty requires complete abstinence, on the part of governments, from any potentially or actually liberty-infringing behaviour. But even hopeless Utopians have their point; and their point, I take it, is this: Just as the ultimate mark of a true friend is how he responds in time of hardship, so too is it the ultimate test of a truly liberal society how it responds to serious challenges to its underlying structure and values.

Can we justify *not* preserving liberty in an age of terrorism? I think not.

Endnotes

- ¹ Moreover, my suspicion is that in order to make any real progress in answering the empirical question, we would need empirical data of a sort that is simply not yet available.
- ² I have in mind simply the familiar and uncontroversial point that 'ought' implies 'can'.
- ³ Of course, it also depends upon what we mean by 'feasible', but I shall not pursue that line of inquiry here.
- ⁴ This is the conception flirted with by Isaiah Berlin, but probably held by no one. See I. Berlin, 'Two Concepts of Liberty', in *Four Essays on Liberty* (London: Oxford University Press, 1969), pp.118-72.
- ⁵ By this I mean to treat any violation of liberty as always and everywhere morally impermissible. As it is sometimes put, this is to treat liberty as a 'side-constraint' (Robert Nozick, *Anarchy, State and Utopia*, New York: Basic Books, 1974); or a value to be 'honoured' or 'respected' (Philip Pettit, 'Consequentialism' in *Three Methods of Ethics*, ed. Marcia Baron, Philip Pettit and Michael Slote, Malden, Mass.: Blackwell Publishers, 1997).
- ⁶ Philip Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford: Oxford University Press, 1997).
- ⁷ For this phrase, I am indebted to Joseph Conrad *Heart of Darkness*, ed. Richard Adams (London, New York: Penguin Books, 1991).
- ⁸ Though frankly I doubt it.
- ⁹ For the idea of theories that are 'self-defeating', see Derik Parfit, *Reasons and Persons* (Oxford: Clarendon Press, 1984); and Peter Railton, 'Alienation, Consequentialism and the Demands of Morality', *Philosophy and Public Affairs* 13:2 (1984), pp.134-171.
- ¹⁰ The phrase is Hayek's but the argument is obviously not one that Hayek would endorse. Friedrich A. von Hayek, *The Road to Serfdom* (Chicago: University of Chicago Press, 1944).
- ¹¹ The 'schizophrenia' charge was advanced most famously by Michael Stocker, 'The Schizophrenia of Modern Ethics Theories', *The Journal of Philosophy*, 73:14 (1976), pp.53-466; and Bernard Williams, *Ethics and the Limits of Philosophy* (Cambridge, Mass.: Harvard University Press, 1985).

What price security?

John Humphreys

Apparently, we are at war. The 'war on terror' was declared by American President George W. Bush after the terrorist attacks of September 11, 2001, and has so far included the invasions of Afghanistan and Iraq, changed security rules, and introduced a new foreign policy doctrine of pre-emption and proactive intervention. Will this new international dynamic lead to a reduction in liberty? The answer is probably yes. This is not because terrorists will take our freedom from us, but because the West seems determined to give up our liberty voluntarily.

Terrorism does pose a direct threat to liberty. Any action that would deprive people of their rights to life, liberty and the pursuit of happiness is an affront to liberty, and terrorist acts certainly fall into that category. However, by far the greater threat to liberty is that fear will result in bad public policy as some people clamour to give up their freedoms in the hopeless pursuit of perfect safety.

The terrorist threat

To consider what price we should pay (both in liberty and in dollars) for the 'war on terror' it is necessary to know what benefits the 'war' offers us. As the benefits are presumably a reduction in terrorist attacks against the West, it is instructive to consider just how large the threat of terrorism is.

Chris Leithner points out that 'during the past ten years terrorist attacks have killed an average of 11 Australians per year and 55 per year during the past two years'.¹ If the trend from the last two years were to continue, then the annualised risk of death from terrorism would be about 1 in 333,333.² Leithner compares this with the rate of death from pesticide poisoning (1 in 200,000), lightning strikes (1 in 30,000), motor vehicle accidents (1 in 60) and disease caused by smoking one packet of cigarettes per day (1 in 6) and concludes that 'the "terrorist threat" is thus minuscule'.

Another way to consider the threat of terror and the value of the war on terror is to consider what the total benefit would be if all terror could be abolished. To calculate this potential benefit

we must make an assumption about how much terror would exist if the countries of the West had decided not to change their pre-9/11 policies.

A reasonable assumption might be that terrorists would successfully carry out one Bali-sized attack against the West (meaning North America, Europe and Australasia) every year. A 2003 report by the Centre for International Economics indicates that the total cost of the Bali bombing was about \$3 billion, of which about \$0.5 billion accrued to Australia.³ This estimate includes the fatalities, injuries, property damage, increased security spending in response, economic damage and policing costs. If we calculate the total present value of such attacks into the future then the total terror threat amounts to \$63 billion.⁴ That is, the highest potential benefit from the war on terror would be \$63 billion in the unlikely scenario that no terror attacks will ever again occur.

It is unlikely that the war on terror will ever entirely eradicate terrorist attacks. While terrorist groups remain determined to produce death and destruction it remains likely that attacks will continue. Indeed, some commentators believe that the war on terror may do more to increase terror (by increasing anti-Western hatred) than it will do to decrease terror (by killing terrorists, making terrorist attacks more difficult and reducing the institutional support of terrorist groups). It will not be possible, without the benefit of hindsight, to determine how effective the war on terror is at reducing terrorist attacks. If it is successful in reducing the costs of terror by 80% for 30 years then the benefits of the war will be about \$40 billion.

The politics of fear

More dangerous than the terrorist threat is the threat of bad public policy. Terror creates fear and insecurity which leads people to demand that their government does something to protect them. Irrespective of the costs and the likelihood of success, nothing builds support for government programmes more effectively than the idea that life is not safe. Despite the fact that life is inherently unsafe (and nobody gets out alive), some people are willing to give up their liberty and their money whenever their government promises them some more security. That the promised security is

undeliverable, or only temporary, or comes at an excessive cost is not important. It seems that the world has not heeded the warning from Benjamin Franklin when he suggested that people who 'give up essential liberty to purchase a little temporary safety deserve neither liberty nor safety'.

Most especially in times of war, fear drives people to accept the most burdensome demands on their freedoms and their wallets. Indeed, war is the lifeblood of governments.

This reality has been well understood by political agents for a long time and history is full of examples. We fear second-hand smoke, and so we give up our liberty for safety. In a brilliantly written article, Jack Gordon outlines how 'in the entire state of California there is no saloon with a clientele so reckless and depraved that the law will avert its eyes and permit them to take the insane risk of drinking beer in a building occupied by a person who might smoke a cigarette . . . We'd sacrifice the right to choose what foods to put in our mouths if only the dieticians would settle long enough on which ones are safest.'⁵

The fear of poverty is used to justify large (and largely ineffective) government welfare programmes and the fear of head injuries is used to justify compulsory helmets on bicycles. It was not until after Port Arthur that fear of guns resulted in Australians forgoing some more of their freedom to shoot. Following the insecurity of the Great Depression, Americans were convinced of the need for the New Deal and the dramatic increase in government power that went with it. Following the insecurity of the unstable Weimer Republic, Germans willingly embraced the stable and secure safety of Hitler.⁶ Most especially in times of war, fear drives people to accept the most burdensome demands on their freedoms and their wallets. Indeed, war is the lifeblood of governments.

While it may well be appropriate for people to give up some liberty for security, the shift between security and liberty seems only to move in one

direction. Thomas Jefferson once noted that it was 'the natural progress of things . . . for liberty to yield and government to gain ground' and it seems that the primary motivation for this is fear.

Economics teaches us that everything has a cost, including security, and that the government should only intervene when the benefits of their action exceed the costs. However, the rational realisation that some costs can be too high can easily be drowned out by the emotional insistence that safety must be pursued 'at any cost'. It is in such times that fear can lead to bad public policy and this is the true danger that terrorism poses for the future of freedom.

It has often been observed that the first casualty of war is the truth. A close second must be liberty, and the Western world has paid a relatively high price in liberty in our new quest for safety.

The war on terror

In many ways, the war on terror is a totally different type of war. The enemy is undefined, the goals are unclear, the strategy is uncertain and there is no way of determining when the war will be over. But in one way at least this war is the same as all others—it will come at a very high cost. For those who believe that no cost is too high, counting the cost is not relevant. However, for those who believe that government action (including war) can only be justified if the benefits exceed the costs then it is instructive to consider whether the costs of the war on terror exceed the expected benefits.

It has often been observed that the first casualty of war is the truth. A close second must be liberty, and the Western world has paid a relatively high price in liberty in our new quest for safety. Anti-terror laws (such as the Patriot Act in the United States and the ASIO Act in Australia) have curtailed civil liberties and weakened legal protections against potential misuse of state power. Luxuries such as privacy and the right to silence have been removed. While the Australian government has always been able

to detain people for questioning without charging them with a crime, the new ASIO powers allow the government to detain people when they are neither being charged nor questioned.

In the United States it is now seen as appropriate to jail people for an indefinite period without charge or trial or legal access, and then justify such actions on the basis of the obvious guilt of the imprisoned. The circularity of an argument that justifies not charging somebody because they are guilty has escaped many, both in the United States and Australia. Various reports in *The Economist* (a publication which supports the war on terror and supported the invasion of Iraq) outline how US agents have been 'torturing terrorist suspects, or engaging in practices pretty close to torture'⁷ and note other instances of unfair arrest and secret trials.⁸

However, the cost of this war can be measured in more than lost freedoms. It can also be measured in dollars. Many countries of the West have taken the opportunity to significantly increase their spending on defence, but the most expensive element of the war on terror so far has been the invasion of Iraq.

The war on Iraq

The Iraq war perhaps best signifies the link between fear and bad public policy. It is hard for any rational analysis of the war to reveal a net benefit for the 'coalition of the willing' and the West in general. It is even harder for some supporters of the war to accept the need for rational analysis of benefits and costs.

Relatively few lives were lost during the invasion of Iraq. The fact that more have died since the end of major hostilities says more about the success of the war than the failure of the peace. However, the financial cost has been huge. According to Yale economist William Nordhaus, the money currently spent or requested by the US government already exceeds the combined (inflation adjusted) costs of the American Revolutionary war, the US-England war of 1812, the US-Mexican war, the US civil war, the US-Spain war and the first Iraq war.

Excluding the cost to American allies, the potential further humanitarian and reconstruction costs and the impact on the economy,⁹ the Iraq

war can be expected to come with a price tag of approximately \$440 billion.¹⁰ This is more than two and a half times the Australian government's entire annual budget.¹¹ Putting this value in perspective, the estimated potential benefits of the *entire* war on terror (including a valuation of the lives saved) was estimated to be about \$40 billion.

Not only was the invasion of Iraq bad public policy, it would have been so even if Iraq was the *only* part of a *fully successful* war on terror, the benefits were *tripled* and the already conservative cost estimate was *halved*.¹² Despite this, many people continue to defend the invasion.¹³ In the light of fear and insecurity, many Australians seem willing to pay any price, suffer any losses and give up any freedoms necessary to reduce their fear. And the government is ready and willing to 'help'.

Thomas Jefferson is often quoted as saying that the price of liberty is eternal vigilance. The very thing that defenders of freedom must be vigilant against is that people, with the best of intentions, will gradually reduce our freedoms through the promise of safety. Terror is a danger to our freedom primarily because our new found (and somewhat unjustified) fear is a magnet for bad public policy. If we let our fears override rational analysis, then we may well be left with no liberty to defend. If this happens, then even if we win the war against terrorists we will still have lost.

Endnotes

- ¹ C. Leithner, 'The Terror Trap', *Policy* 19:1 (Autumn 2003), p.35.
- ² If the trend for the past 10 years were to continue, then the likelihood that an Australian will die from terrorism is 1 in 1,700,000. This data is taken from C. Leithner (see above).
- ³ CIE, *Analysis of the Costs of the Bali bombing* (Canberra: Centre for International Economics, 2003).
- ⁴ This analysis uses a discount rate of 5%. If we use a discount rate of 10% then the present value of future terror attacks is \$33 billion.
- ⁵ J. Gordon, 'Milkstop Nation', 1st prize in the 2002 Shell/*The Economist* essay competition, available at http://www.shelleconomistprize.com/essays/Milkstop_Nation_Jack_Gordon.pdf
- ⁶ It is particularly interesting to note that it was a

Not only was the invasion of Iraq bad public policy, it would have been so even if Iraq was *only* part of a *fully successful* war on terror, the benefits were *tripled* and the already conservative cost estimate was *halved*.

terrorist attack that was used by many to justify the Enabling Act which gave Hitler absolute power in Germany.

- ⁷ *The Economist*, 'Ends, Means and Barbarity' (11 January 2003).
- ⁸ *The Economist*, 'For Whom the Liberty Bell Tolls' (31 August 2002).
- ⁹ CIE have estimated that the potential economic costs of a short Iraq war (2 weeks) and occupation (1 year) would be approximately 1% of world GDP. Also, including the potential economic costs but still excluding the cost to America's allies, Yale economist William Nordhaus estimates the war could cost as much as \$3 trillion.
- ¹⁰ At the time of writing, the US government had currently spent or requested US\$166 billion, of which about \$10 billion is for Afghanistan. As the spending is being debt financed, we must add the costs of interest (assumed to be 4% over 10 years). Also, as the spending eventually has to be funded through taxation, we must include the deadweight loss (assumed to be 30%, based on various previous studies). After making these adjustments, the current estimate of the war in Iraq is about US\$285 billion. Using an estimated USD/AUD exchange rate of 0.65 the estimated cost is \$440 billion.
- ¹¹ In 2002/03, federal government expenditure totalled \$169.2 billion (2002/03 Final Budget Outcome, available at www.budget.gov.au).
- ¹² For the Iraq war to produce a net benefit we must assume that, without the invasion, terrorists would have conducted more than two 9/11-sized attacks every decade and that the Iraq war, by itself, defeated all terror for all time.
- ¹³ Some commentators have defended the invasion of Iraq on humanitarian/altruistic grounds, but such a defence doesn't pass a basic benefit-cost analysis either. Equivalent humanitarian benefits could be achieved elsewhere at significantly lower costs. For example, the money used to invade Iraq could have provided \$44,000 to each of the 10 million Africans that are expected to die next year due to poverty.