# 1

# Safety and security

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People talk about a trade-off between security and liberty. But what do they mean by *security*? We know what's at stake in the definition of liberty – the difference between positive liberty and negative liberty, and the old distinction between liberty and license.[2] We know something of the distinction between liberty as a generic category and particular liberties that may be regarded as basic or described politically under the category 'civil liberties.'[3] We try to be clear about 'liberty', because it may make a difference to the trade-off. But we almost never address the question of what 'security' means. Although we know it is a vague and ambiguous concept and although we should suspect that its vagueness is a source of danger when talk of trade-offs is in the air,[4] still there has been little or no attempt in political theory to bring any sort of clarity to the concept.

[1] A version of this was presented as the Roscoe Pound Lecture at the University of Nebraska, College of Law, on January 26, 2006 and – in a much longer form – it was published in the *Nebraska Law Review*, 85 (2006). That version also appeared as a chapter in Jeremy Waldron, *Torture, Terror and Trade-offs: Philosophy for the White House* (Oxford University Press, 2010). The present version is adapted from a lecture given at the University of Exeter in February 2009.

[2] See Isaiah Berlin, 'Two Concepts of Liberty', in his collection *Four Essays on Liberty* (Oxford University Press, 1969). For the distinction between liberty and license, see Ronald Dworkin, *Sovereign Virtue: The Theory and Practice of Equality* (Cambridge, MA: Harvard University Press, 2000), at p. 128.

[3] For the distinction between liberty, generically, and particular liberties, see Ronald Dworkin, *Taking Rights Seriously* (Cambridge, MA: Harvard University Press, 1978), p. 191; see also John Rawls, 'The Basic Liberties and their Priority,' in his book *Political Liberalism* (New York: Columbia University Press, 1993) and (on the definition of 'civil liberties') Jeremy Waldron, 'Security and Liberty: The Image of Balance', *Journal of Political Philosophy*, 11 (2003), p. 191 at p. 195. (This last essay is reprinted also in Waldron, *Torture, Terror and Trade-offs*.)

[4] In *United States* v. *United States District Court* 407 U.S. 297 (1972), at 320, the US Supreme Court spoke of the 'inherent vagueness of the domestic security concept ... and the temptation to utilize such surveillance to oversee political dissent.'

There is of course an immense literature on national security and also on collective security in the theory and study of international relations. But these concepts are not quite the same as the security I have in mind. The idea of collective security operates at the wrong level; it concerns security as among the nations of the world (or various subsets of them) as determined by institutions, alliances and the balance of power, whereas I am interested in security conceived of as an attribute of individuals and populations. And national security conveys ideas about the integrity and power of the state itself as an institutional apparatus, which may or may not be related to the idea of ordinary citizens being more secure. Maybe 'homeland security' is a better term. 'Human security' is another phrase in increasingly common use.

In this chapter I shall try to address some of the theoretical issues that a proper analysis of the concept of security – serviceable, for example, for the purposes of a liberty/security trade-off – might involve.

## 1. Hobbes

If any thinker in the canon of political philosophy could serve as a starting point for a modern discussion of security, surely it would be Thomas Hobbes. For Hobbes, as we all know, the whole point of the political enterprise is security. It is for the sake of security – security against each other, and security against outsiders – that we set up a sovereign.[5] It is the drive for security that leads us to give up our natural liberty and submit to the sovereign's commands.[6] It is the exigencies of security that determine the scale, level, duration, and quality of organization that is requisite in the political realm.[7]

Now, Hobbes was a great analyst of concepts. Yet almost alone among the leading concepts of the political realm, security is not subjected by Hobbes to any extensive analysis. The closest he comes is in a passage from *The Elements of Law*, where he writes:

> a man may ... account himself *in the estate of security*, when he can foresee no violence to be done unto him, from which the doer may not be

[5] See Thomas Hobbes, *On the Citizen*, Richard Tuck and Michael Silverthorne eds. (Cambridge University Press, 1998), pp. 77–8.

[6] See e.g., Thomas Hobbes, *The Elements of Law, Natural and Politic*, J. C. A. Gaskin ed. (Oxford University Press, 1994), p. 111.

[7] See e.g., Thomas Hobbes, *Leviathan*, Richard Tuck ed. (Cambridge University Press, 1996), p. 118.

> deterred by the power of that sovereign, to whom they have every one subjected themselves.[8]

Beyond this, Hobbes says surprisingly little about what 'security' actually means. He is followed in this by his modern commentators, who as far as I can tell do not so much as list the concept in their indexes. Maybe this is because security operates as a sort of *adjectival* value in Hobbes's account. Hobbes is interested in security of self-preservation, security of life and limb, security against violent death, security of 'living out the time, which Nature ordinarily alloweth men to live.'[9] Perhaps what I should be looking for in the index is safety, survival or self-preservation, not security as such. And in fact there *is* some discussion in Hobbes's book *On the Citizen* of safety and the sovereign's obligations in respect of his subjects' safety. We are told that '[b]y safety one should understand not mere survival in any condition, but a happy life so far as that is possible,' and we are told also that, because the sovereign can operate only through general laws, 'he has done his duty if he has made every effort, to provide by sound measures for the welfare of as many of them as possible for as long as possible.'[10] Both points will be important in what follows.

## 2. Christian security

Defining security is evidently not a simple matter, and there are additional complications for those who view the issue of security through the lens of Christian faith. Christian doctrine is replete with ideals that seem to resonate with the values pursued in political philosophy. But under scrutiny, they often reveal an other-worldliness that challenges worldly preoccupations. So it is, for example, with the concept of peace. Sometimes in scripture and liturgy it is identified with repose. For example, in the old Anglican Book of Common Prayer, the Second Collect, the Collect for Peace, at Evening Prayer included this expectation: 'that, by thee, we being defended from the fear of our enemies may pass our time in rest and quietness.' There is a similar association of

[8] Hobbes, *Elements of Law*, at p. 111. In the same chapter, *ibid.*, 112, Hobbes also adds an external dimension: 'And forasmuch as they who are amongst themselves in security, by the means of this sword of justice that keeps them all in awe, are nevertheless in danger of enemies from without; if there be not some means found, to unite their strengths and natural forces in the resistance of such enemies, their peace amongst themselves is but in vain.'

[9] Hobbes, *Leviathan*, p. 91. [10] Hobbes, *On the Citizen*, p. 143.

'peace' in the prayer book with a life of subdued virtue – in the reference to our 'leading a quiet and peaceable life in all godliness and honesty' in the prayer of thanksgiving for 'Restoring Publick Peace at Home.'

On the other hand, Christians are also taught that earthly safety is not the be-all and end-all, and that the peace we should look for is not necessarily peace as the world understands it; it is 'the peace of God which passeth all understanding' in the blessing at the end of the Eucharist. Or, again, the peace we pray for at Evensong: '[G]ive unto thy servants that peace which the world cannot give.' Or finally the peace Jesus promised his disciples: 'Peace I leave with you; my peace I give to you. Not as the world gives do I give to you,'[11] a peace that was apparently consistent with his prediction,

> the hour is coming when whoever kills you will think he is offering service to God . . . I have said these things to you, that in me you may have peace. In the world you will have tribulation. But take heart; I have overcome the world.[12]

As for security, in worldly terms the liturgical tradition associates it with defense against fear and danger. In the Book of Common Prayer, the third collect at Evensong reads as follows:

> Lighten our darkness, we beseech thee, O Lord; and by thy great mercy defend us from all perils and dangers of this night; for the love of thy only Son, our Saviour, Jesus Christ.

I guess this is intelligible as a plea for security. And in the Bible security is imagined, much as the world imagines it, as a matter of respite from danger, providing an opportunity for the activities of ordinary life. One of Job's comforters offers the hope of security in the wake of purification:

> And your life will be brighter than the noonday; its darkness will be like the morning. And you will feel secure, because there is hope; you will look around and take your rest in security. You will lie down, and none will make you afraid.[13]

In the book of Judges, we are told that the tribe of Dan sent out five young men to spy out the land that the tribe might want to occupy and to consider the manner of life of its inhabitants:

[11] John 14:27 (English Standard Version; all biblical quotations are to this translation unless the contrary is indicated).
[12] John 16:2 and 33. [13] Job 11:17–19.

> Then the five men departed and came to Laish and saw the people who were there, how they lived in security, after the manner of the Sidonians, quiet and unsuspecting, lacking nothing that is in the earth and possessing wealth.[14]

These are nice images, but there are also warnings. We are told in the First Epistle to the Thessalonians that

> While people are saying, 'There is peace and security,' then sudden destruction will come upon them as labor pains come upon a pregnant woman, and they will not escape.[15]

These passages are all quoted from the English Standard Version (ESV). But in the King James Version, the word translated in the ESV as 'security' is usually translated as 'safety.' It is 'Peace and safety' that people say, not knowing that the day of the Lord is at hand, and safety is the condition of the people of Laish, observed by the five young men of the tribe of Dan.

## 3. The pure safety conception

The identification of security with safety is common enough, and I think it is something we should hold onto – even if it is not the whole story. Safety seems to be a straightforward idea, indicating the absence (or the acceptable reduction) of danger to life and limb. But is security the same as personal safety? Even in secular discourse I am not sure.

I am safe to the extent that I am alive and unharmed, and to the extent that there is no danger of my being killed or injured. Or we can make it a matter of degree. We might say: *I* am more secure against terrorist attack when the probability of *my* being killed or injured as a result of such attack goes down; and *we* are more secure when this is true of many of us. It is surely tempting to associate the 'security' that we talk about when we juxtapose liberty and security with pure physical survival and the absence of injury, if only because death and injury seem to be the currency of terrorist attacks, which are what elicit this talk of trade-offs in the first place.

I call this *the pure safety conception* of security. It makes sense to put great emphasis on physical safety. But I do not think we should be satisfied with the pure safety conception. It is a radically stripped-down idea, and there are many issues it fails to raise and concerns (associated with the security side of the liberty/security balance) that it does not address.

[14] Judges 18:7. [15] 1 Thessalonians 5:3.

## 4. Ways of life

People worry about the loss of their lives in relation to terrorist attacks; they also worry about being injured or maimed. Beyond that, there are concerns for material well-being, particularly inasmuch as protecting material property may be a matter of safeguarding the role that people's possessions play in their individual and family mode of life. By mode of life, I mean not just daily routines but also the reasonable aspirations people have for their lives – the trajectory of their lives, if you like. Each individual has and pursues a mode of living, a life plan (in a very informal sense), for herself and her family members, and many things play a part in that. People value the protection of all that, and I think it is reasonable for them to call for it under the heading of their security. I do not mean that people are entitled, as a matter of security, to an assurance of success in their lives. But they may well think themselves entitled, as an aspect of security, to protection for the assets they have accumulated for themselves and their families as part of a normal attempt to put an ordinary plan of life into action. A situation in which lives were safe from attack but one's mode of life was not (because a lot of time had to be spent cowering in sealed rooms), or a situation in which one's daily routines were safe and protected, but at the expense of the ordinary aspirations that most people have for the trajectory of their lives (pursuing a career, raising a family, seeking education, promotions, etc.) – neither of these would or should be regarded as a situation of security. The pure safety conception ignores factors like these; but a deeper notion of security will insist on taking them into account.

## 5. Freedom from fear

Each person wants not only protection for his or her life, health, possessions, and mode of living, but also not to be fearful about these things. Fear seems to be a mental state that is itself partly *constitutive* of insecurity.[16] And as a constituent of security, it is not just an emotional response to an actual enhancement of danger. The significance of fear is indicated by the word 'terrorism' itself. Terrorism is a mode of attack on people's lives which is calculated to generate an enormous amount of

[16] One meaning of the word 'security' connotes nothing but the absence of this fear: 'Freedom from care, anxiety or apprehension; a feeling of safety or freedom from or absence of danger.' This is the third meaning given for 'security' in the online *Oxford English Dictionary*.

fear and anxiety, not to mention the anguish and horror that accompany the loss of life and limb associated with terror attacks. Fear itself is something to be dreaded inasmuch as it can have a psychologically debilitating effect.[17] It is therefore an issue in its own right, and the diminution of fear seems to be an essential ingredient in security, whether or not it is associated directly with a diminution of danger.

My point here is that fears are not always rational. They do not always conform to the objective probabilities or follow them up or down in any orderly fashion. Inasmuch as the two diverge – inasmuch as fear of attack does not correspond exactly to probability of attack (e.g., with fear remaining high even when probability diminishes) – the reduction of fear ought to be regarded as an additional and independent element of security.

On the other hand, treating fear as an independent aspect of insecurity gives rise to all sorts of dangers. Suppose many Americans experienced a level of fear of terrorist attack in 2006 that would have been rationally appropriate to the actual frequency of attack in (say) Israel at that time but not to the actual frequency of attack in the United States. Should the American government have responded to that insecurity with measures that would be appropriate to the Israeli situation, in the hope that this would allay Americans' fears to some extent? If we say 'No,' it sounds as if we think the government should not take people's fear seriously; I feel that this seems condescending to those who are afraid, telling them in effect that we will respond only to rational fears, not to the debilitating fear that they actually experience. On the other hand, we need to remember that pandering to exaggerated fears may also involve adverse effects on others. What if people's irrational fears will not be allayed unless we incarcerate all young Muslim men in our cities? Certainly there will be objections to this from the civil liberties side of the balance. But are we clear what to think about this from even the security side?

I can imagine someone responding that all this provides a good reason for keeping the discussion of security simple, for keeping it focused on objective facts about safety, tying it down (if need be) to the pure safety conception. If we try to enrich it with psychology, we get into these terrible conundrums about what security requires in regard to irrational

[17] See also the discussion in Jeremy Waldron, 'Terrorism and the Uses of Terror', *The Journal of Ethics*, 8 (2004), 5. (This is reprinted also in Waldron, *Torture, Terror and Trade-offs*.)

fears. I think this is a mistake. We should not define our concepts just to avoid difficult questions. We did not begin with any guarantee that the concept of security was straightforward or morally unproblematic. Our task in analyzing the concept is to find out whether that is so. I think it is better to say upfront that there seems to be an inherent reference to levels of subjective fear in our concept of security and that therefore the pursuit of security is fraught with moral difficulty, than to try sanitizing the concept and pretending that all its difficulties arise exogenously from competition with other values.

The other side of this connection between fear and insecurity is the connotation of *assurance* or *guarantee* that many people associate with the concept of security. I am secure not just when I *happen* to be safe, but when I am *assured* of not being killed or harmed. It is not enough that we turn out to be safe. We are not really secure unless we have an *assurance* of safety. We need that assurance because we want not only to *have* our lives and limbs but to *do* things with them, make plans and pursue long-term activities to which an advance assurance of safety is integral. Our safety is not just an end in itself, but an indispensable platform or basis on which we will enjoy other values and activities. It cannot serve those other values unless it is assured. We may be thankful for our survival, but we cannot use our safety if survival is simply the fortuitous outcome of a long process of shivering terror.

This connection between security and assurance was key to some arguments about the relation between law and property in the work of the early nineteenth-century utilitarian theorist, Jeremy Bentham. In his writings on civil law, Bentham invited us to:

> consider that man is not like the animals, limited to the present ... but ... susceptible of pains and pleasures by anticipation; and that it is not enough to secure him from actual loss, but it is necessary also to guarantee him, as far as possible, against future loss.[18]

Expectation is crucial to human life, according to Bentham:

> It is hence that we have the power of forming a general plan of conduct; it is hence that the successive instants which compose the duration of life are not isolated and independent points, but become continuous parts of a whole.[19]

[18] Jeremy Bentham, 'Principles of the Civil Code', in *The Theory of Legislation*, C. K. Ogden ed. (New York: Routledge & Kegan Paul, 1931), at p. 110.
[19] Bentham, *The Theory of Legislation*, p. 111.

The need to secure expectations was the basis of Bentham's conception of property. He argued that if people do not have an assurance projected into the future that what they have they can hold, the enjoyment of property and the incentives that are supposed to derive from that enjoyment will simply evaporate.

> When insecurity reaches a certain point, the fear of losing prevents us from enjoying what we possess already. The care of preserving condemns us to a thousand sad and painful precautions, which yet are always liable to fail of their end.[20]

Bentham claimed that in the field of property, expectation is entirely the work of law: 'I cannot count upon the enjoyment of that which I regard as mine, except through the promise of the law which guarantees it to me.'[21] Law guarantees property rights against fraud and injustice, which conspire to appropriate the fruits of our labor. But to sustain security, it is not enough that threats of this kind be repelled. There must be an assurance that they will be repelled, an assurance that people can count on and build upon in advance of the outcome of any particular attack.

What Bentham says is not exactly on point for our discussion; his emphasis on property rights takes him in a slightly different direction. But the connection between security and the integrity of expectations is very important for our inquiry, for, as Bentham notes, it seems to be partly constitutive of our sense of ourselves and our agency.

## 6. Security and rights

Bentham's association of security with property also indicates that it may be a mistake to think of security simply as a condition to be valued in and of itself (in the way that physical safety is valued). It may be more sensible to think of security as a mode in which other goods are enjoyed. I may enjoy my property securely or my health. If this is right, then security is not only a good in itself but an underwriting of other values, a guarantor of other things we care about. Some of these other values might be liberties. We might think of ourselves as secure (or insecure) in the privacy of our homes, secure (or insecure) against arbitrary incarceration, secure (or insecure) in our religious freedom. A demand for civil liberties is often a demand for security in this regard.

[20] Bentham, *The Theory of Legislation*, p. 116.
[21] Bentham, *The Theory of Legislation*, p. 112.

This has the potential to complicate the alleged trade-off between liberty and security. One question we must ask is whether this idea – enjoying one's liberties securely – shows that the relation between security and liberty is internal, so that talk of a balance or trade-off is inappropriate. (Usually it is independent values that we balance and trade off against one another.) I think that conclusion would be too hasty. There is certainly *a sense* of 'security' in which it refers to a mode of enjoying liberty (and other goods), and *in that sense* it might be inappropriate to talk of a liberty/security trade-off. But that does not mean there cannot be trade-offs between liberty and security, in a sense of security that is tied more closely to safety. The dimension of assurance is *added* to the pure safety conception. It shouldn't be conceived of as a way of making the concern for pure safety evaporate.

The point I am making is a delicate one. I do think we need to deepen our notion of security so that it is not just a matter of probability of bodily harm, and I do think that any reasonable notion of security has to indicate some degree of confidence or assurance in regard to the goods it protects. But deepening the concept and paying attention to the element of assurance should not be undertaken as a way of evacuating it of its distinctive content. Those who want to persist with talk of a liberty/security trade-off may be perfectly happy to talk, in more complicated terms, about a trade-off between assurance (or security) of liberty and assurance (or security) of safety, and we should not play wordgames to obstruct this.

Then there is one further twist to this. If security is something we value in connection with our rights – enjoying them securely – then it begins to look as though defenders of rights should be hesitant about voicing rights-based complaints against increases in security, since security is the *sine qua non* for the enjoyment of the very rights that are spuriously opposed to security. But again this moves too quickly. Even if security is the necessary condition for the enjoyment of rights, it does not necessarily follow that that security should have absolute priority. For one thing, a necessary condition for X is worth supplying only if there is a practicable possibility of securing sufficient conditions for X; if there is no such possibility, then we should forget about the necessary conditions for X.[22] More importantly, there is something perverse about

[22] This can be illustrated with an analogy. A necessary condition for me to visit the moon is that I should begin astronaut training right now. But even assuming that my visiting the moon is highly desirable, the necessary condition for it is simply of no interest since *it is not going to happen*. See the discussion in Waldron, 'Security and Liberty', at pp. 208–9.

giving absolute priority to security over rights if security is valued only for the sake of rights. Surely we do not want to devote all our resources and energy to a necessary condition for something we value, and nothing at all to the thing that we value. We need to find some balance between the conditions for securing a value and (perhaps sometimes precarious) enjoyment of the value itself.[23]

In any case, it may be a mistake to think of physical security only as a basic condition for the enjoyment and exercise of rights. As I have indicated, I do not want to lose hold of the safety dimension. People value their safety, their physical survival, and their bodily integrity as such, and they will fight to preserve their lives long after it has become evident that, for them, a life of enjoyment and autonomy is unavailable. It may seem odd to some of us that life should be clung to apart from its quality, or that bodily integrity should be valued apart from the freedom to decide what to do with our bodies, but there it is: many people's values work in this way and an understanding of security should be sensitive to that.

## 7. Depth and breadth

Addressing the issues I have raised so far is a matter of deepening our understanding of security. We ask: how shallow is an account of individual security which focuses on nothing but physical safety? Are there aspects of people's apprehensions or their sense of what they have to lose that this fails to take into account? Should our estimation of security take into account not just actual danger to life and limb, but also the fear of such threats (whether substantiated or not), and the assurance that people crave as against such apprehensions? What we face here, I think, are not just choices – 'Let's *decide* to think about security this way or that' – but the exploration of reasons. The pressure to deepen our notion of personal security arises from the fact that many of the reasons that motivate the pure safety conception also seem to point us towards a deeper conception.

In a recent article, I also considered ways in which we might consider enriching the pure safety conception in respect of its *breadth*.[24] Depth looks to the enrichment of our notion of one person's security; breadth

[23] See Robert E. Goodin, *Political Theory and Public Policy* (University of Chicago Press, 1982), p. 233.

[24] See Jeremy Waldron, 'Safety and Security', *Nebraska Law Review*, 85 (2006), 454. (This is reprinted also in Waldron, *Torture, Terror and Trade-offs*.)

looks to the enrichment of our notion of a whole community's security. What breadth addresses is how to think about the application of that somewhat deeper notion of security across a whole population of millions or hundreds of millions of individuals. Only by doing this is it possible to think about security as a political goal, as opposed to an individual goal.

So: suppose we accept that security for each person is a matter of more or less, and that our discussion of depth has indicated that this 'more or less' might have to be assessed across various dimensions. How are we to think about cases where some individuals could be made much more secure (in some dimensions) by making others somewhat less secure? What are the implications of such possibilities for our talk of the security of a whole population?

Earlier we heard Thomas Hobbes suggesting that because a sovereign can operate only through general laws, 'he has done his duty if he has made every effort, to provide by sound measures for the welfare of as many of [his subjects] as possible for as long as possible.'[25] Is this satisfactory? Is security a majoritarian concept (like the greatest happiness of the greatest number)? Is Hobbes's reason – the generality of law – sufficient to convince us of that? In fact, Hobbes provides no argument for the position that the sovereign is always required to act through general rules in matters of security, and that he is not also empowered to act sometimes directly on the basis of discretionary intervention. In other words, Hobbes provides no argument against what John Locke would later call 'prerogative power.'[26]

Whatever Hobbes's view of prerogative power, the underlying principle remains unclear. Why should security be something that we aim to maximize without regard to its distribution? Should we perhaps think of security more in the light of a basic right, to be guaranteed at least at a minimum level to everybody, or perhaps as a primary good, to be subject to principles of distributive justice?[27] Or should it take its task to be purely additive – to make as many people as secure as possible, even if that means accepting the endangerment of some for the sake of the security of the greater number?

[25] Hobbes, *On the Citizen*, p. 143.

[26] See John Locke, *Two Treatises of Government*, Peter Laslett ed. (Cambridge University Press, 1988), pp. 374–5 (II, pp. 159–60).

[27] For the basic rights approach see Henry Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy* (Princeton University Press, 1980). For primary goods, see John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), pp. 90–5.

These are difficult questions. We need to explore the possibility that diminutions or enhancements in security may be unevenly distributed, that the government may respond to a threat to the security of some but not to a threat to the security of others. Above all, we need to say something about the prospect that the security of some is protected or enhanced only because the security of others has been reduced (and reduced or even threatened by state activity, not just by neglect). To be sure, security is not another word for distributive justice. But if it is conceived as a good, then the question of how it is distributed – who enjoys it and who does not enjoy it – cannot be ignored. So: under the heading of *breadth*, we will try to understand security for a whole community as a *complex* function of individual safety – a function that pays attention to the means by which safety is assured, and the relational aspects of the distribution of safety so far as that is upheld in a public order of a certain kind. I cannot explore these issues of breadth very much further here, and I refer readers to my discussion in the longer article.

However, the issue of breadth does arise indirectly in considering some of the ways in which even individual security may be enriched. I indicated earlier that the pure safety conception focuses mainly on the individualized facts of death, injury, and loss rather than more diffuse harms to people in general, resulting from disruption of their way of life or the interruption of familiar routines. In that regard, it fails to capture the connection between the idea of security and the idea of social order, which, by definition, is something enjoyed by many.

## 8. Identifying with others

Issues of breadth involve familiar problems of competition, aggregation, and distribution. But what about ways in which one person's security may actually depend on that of another, or ways in which one person's security may be an ingredient in another person's security? After terrorist attacks, people often act co-operatively and publicly to show that they are determined to maintain their way of life, even in the face of great anxiety or great anger. When this sort of action takes place, it is a clear instance of collective provision of security – of security being maintained by a whole community showing its determination not to degenerate into a disaggregated set of terrified individuals. It is an instance of a general point about the relationship between security and mutual assurance. Security is something we provide for each other by enjoying together the

social order of activity and interaction that defines our way of life, and by acting in solidarity with one another to ensure that the benefit of this system is available to all.

I think this is worth dwelling on. Accepting Bentham's insight that each of us thinks of our security not just momentarily but projected into the future, we may be concerned about what happens to others as prefiguring what may happen to us. If something happens to another person, X, to diminish his safety (perhaps in order to enhance my safety at a given moment), I cannot necessarily detach, from *my* sense of safety at that moment, the threat that what happened to X (for my sake) may happen to me for someone else's sake at a later time.

So far, this is just algebra.[28] But you may say: in the real world, I often *can* have such an assurance based on my ethnicity. If I am white (or at any rate, if I do not look like an Arab or dress or bear myself like a Muslim), if I look, sound, and behave like the popular stereotype of a native-born American, there is little chance that I shall suffer the impact of measures designed to combat terrorism. To the extent that this is so, then I can regard my security as independent on others' security. Even if my security is being upheld by diminishing the security of (say) Arab-Americans, there is no reason here for apprehension on my part, since there is little likelihood that the tables will be turned and people like me will be incarcerated or tortured to maintain the security of others. That may be so. But then this may already represent a cost to me in terms of political identity. Instead of now organizing my sense of security around my identity as an American, I have to retreat to some narrower (and in other contexts, more invidious) sense of identity: I am secure on account of my identity as a white American or my identity as an American who does not look Arabic. That may be a cost to me: I now suffer this (as a result of terrorism or as a result of the state's response to terrorism), viz., that I have to change the way I think about the connection between identity and security. And that may compromise something that an appropriately deep conception of security would be concerned about.

[28] But the algebra reminds us of the famous Martin Niemoller poem: 'When the Nazis came for the communists, I remained silent; I was not a communist./When they locked up the social democrats, I remained silent; I was not a social democrat./When they came for the trade unionists, I did not speak out; I was not a trade unionist./When they came for the Jews, I did not speak out; I was not a Jew./When they came for me, there was no one left to speak out.' The exact form and original source of this poem are a matter of controversy. For a useful survey, see www.history.ucsb.edu/faculty/marcuse/niem.htm (visited on April 2, 2011).

## 9. Our familiar routines

I spoke earlier of the importance to individuals and families of their mode of life. There is obviously a connection between individuals and families valuing their own routines, their own mode of life, and their own reasonable aspirations for the trajectory of their lives (on the one hand) and (on the other hand) their valuing a whole way of life for society. Usually, people's mode of life is both an instance of and dependent upon the broader way of life that the members of society treasure in general. Many of the activities we pursue make no sense except as pursued in a wider social context. At the very least, we rely on the existence of something called 'public order' – securing the basic conditions of action and interaction in public places, parks, sidewalks, streets, and highways. But it is also much more than this. Our social actions make sense when we play roles in narratives that also assign roles to others – whether as co-workers, customers, neighbors, babysitters, teachers, team members, and so on. We live together and interact with others and, even if we feel relatively secure, we cannot cut ourselves off from others' insecurities.

The routines of ordinary life whose security we value are not just first-order routines, like shopping, schooling, and soccer; but also secondary routines that respond to what might be thought of as routine problems. There are fires, crimes, and accidents; there are threats from nature and sometimes threats from outsiders; there are disagreements about what ought to be done in response to these. Among our repertoire of mechanisms for dealing with danger, disorder, and dissent, we have fire brigades, hospitals, and police forces; we have a legal systems, courts, and prisons; we have FEMA (Federal Emergency Management Agency) and the national guard; we have our political system, at municipal, state, and federal levels; and we have our Constitution, our fundamental rights, and our settled obligations under human rights law.

The existence and the effectiveness of these mechanisms is crucial to the assurance that security in normal times involves. Disruption of these mechanisms may enhance our anxiety and undermine our security; and sometimes the appropriate response may be to strengthen them or transform them so that they become more effective against the dangers they are supposed to protect us from, even at the cost of other values they are supposed to embody.

But these mechanisms are also valued in and of themselves as parts of our way of life and our social routines. As such, they are valued for the

way they reconcile the demands of security and other values. We like knowing that searches cannot be conducted without a warrant, that those who are arrested must be Mirandized, and are entitled to legal representation and an early hearing, and that there are limits on what can be done to people – not just to us, but to anyone – under the auspices of our crime-control system. If these mechanisms are transformed in an emergency to make them more effective against threats, then that transformation may itself be experienced as a disruption of the very way of life we say we are trying to protect. The detention and indefinite incarceration of citizens; the prison at Guantánamo Bay; changes or suggested changes in our legal system to permit cruel, inhuman, and degrading treatment during interrogation; and the widespread use of extraordinary means of surveillance and wire-tapping – these changes may be justified but they are without doubt transformative and disruptive of many people's expectations as to how their society and their legal system operates.

## 10. Security as a public good

It is sometimes said that security is a public good. And if it is, it may be possible to avoid some of the issues about breadth (e.g., about aggregation and distribution), by virtue of what the economists call the non-excludability or the non-crowdability of public goods. In *The Logic of Collective Action*, Mancur Olson observed that security and national defense are public goods:

> The basic or most elementary goods and services provided by government, like defense and police protection, and the system of law and order generally, are such that they go to everyone or practically everyone in the nation. It would obviously not be feasible, if indeed it were possible, to deny the protection provided by the military services, the police, and the courts to those who did not voluntarily pay their share of the costs of government.[29]

The idea is that if the government provides a national defense to stop our enemies from attacking our homeland, then it provides it willy-nilly to all members of the nation. There is no way any particular person can be excluded from its benefits (say, for refusing to pay a specific fee or tax). You cannot sell tickets for national defense. We might say, too, that

[29] Mancur Olson, *The Logic of Collective Action: Public Goods and the Theory of Groups* (Cambridge, MA: Harvard University Press, 1971), p. 14.

defense is a paradigm case of the non-competitiveness sometimes associated with the economist's notion of public goods: the benefit to any individual of being protected from invasion by the Russians is not reduced by anyone else's enjoyment of this good. We can neither exclude nor crowd others out of this benefit.

Unfortunately, the economist's characterization of security as a public good is a bit of a cheat. What we all enjoy – non-exclusively and non-crowdably – in regard to national defense is the benefit of being a member of a nation that is not attacked by its enemies. By definition, this makes the good public, more or less. But it leaves it unclear whether security – in the sense of individuals' *safety* being actually secured against the threat posed by enemy attack – is provided equally and in the same way.

There are certainly elements of a public good, for example, in the state's anti-terrorist policy. If we assume that the terrorists attack large targets and that there are a small number of terrorists in proportion to the number of their intended victims, then frustrating any one terrorist or any one terrorist cell may protect many people against large-scale and repeated attacks. When a cell is 'taken out,' a large number of people benefit from the elimination of a threat to life and limb, and the elimination of a source of fear; and the enjoyment of this good by some who would otherwise be threatened is not affected by the enjoyment of it by others.

On the other hand, it is evident that security is far from a perfect example of 'publicness.' Firstly, people may be differently situated with regard to a given threat. Some regions may be more vulnerable than others. And some people may be forced into situations where they are more likely than others to be victims of terrorist attack (e.g., poor people in Israel who have no choice but to use buses). Secondly, the authorities may attempt to secure members of the community against some threats and not others, or they may act for the sake of some people's safety and not others' safety, and so people may benefit differentially from state action. Also if homeland security resources are scarce, then people and communities may quarrel over them and their allocation will pose issues of distributive justice. Thirdly, some of the actions by which the government provides security may in fact compromise the safety of some members of the population. When a government shoots on sight those it suspects of participation in terrorist attacks, then people who match closely the profile of terrorist suspects may be much less secure against deadly attack than other

members of society (taking into account the prospect of deadly attack by the government as well as the prospect of deadly attack by terrorists).

For these reasons, it is a mistake to assume that, as a matter of fact, security is necessarily provided equally, even-handedly, non-competitively and non-exclusively as a public good, to the extent that it is provided at all.

## 11. Security as a communal good

The term 'public good' is used in a number of different ways. As well as the technical economist's sense of the term, there is also the idea of a good enjoyed communally. Many goods that are public in the economist's sense are enjoyed individually: even when they are non-crowdable and non-exclusive, they are still individual goods. Clean air is an individual good in the sense that its ultimate benefit is to the lungs and respiration of each individual. But not all goods are enjoyed individually. Some goods are communal in the sense that their enjoyment by any one person depends on their enjoyment in common with him by others.[30] Many social institutions and the realization of many social aims and ideals are public goods in this sense; their enjoyment, non-exclusively and non-crowdably, by many people at a time is not a contingent factor of the technicalities of their provision, but an essential part of their social existence.[31] The good of a tolerant society, a cultured society, or a society which exercises self-determination: these are all examples of communal or non-contingent public goods.[32]

Should we regard security as a public good in this sense? In an article on policing published some years ago, Ian Loader and Neil Walker have made a suggestion to this effect. They want to emphasize 'the irreducibly social nature of what policing offers to guarantee,' and they say we should think of this not just in terms of individualized safety but in terms of a communal good.[33] Citing my earlier work on communal goods, they refer to goods which are valuable for human society without their value being adequately characterizable in terms of their worth to

[30] See the discussion in Jeremy Waldron, 'Can Communal Goods Be Human Rights?' in Jeremy Waldron, *Liberal Rights: Collected Papers* 1981–91 (Cambridge University Press, 1993) at pp. 354–9.

[31] See also Joseph Raz, *The Morality of Freedom* (Oxford University Press, 1986), pp. 198–9.

[32] For these examples, see Raz, *The Morality of Freedom*, pp. 198–209.

[33] Ian Loader and Neil Walker, 'Policing as a Public Good: Reconstituting the Connections between Policing and the State', *Theoretical Criminology*, 5 (2001), 9.

any or all of the members of the society considered one by one.[34] They ask about policing and security: 'Is this a public good in this wider, communal sense?' Their answer is 'unequivocally in the affirmative.'[35] And they argue that 'public safety is inexorably connected with the quality of our association with others' and that it 'depends upon the texture of social relations and the density of social bonds.' Some of us might be safer, they say, under a regime of very aggressive policing, but 'our security [would be] degraded as a public good by distributive degradation in our scheme of civil liberties.'[36]

There is some plausibility to Loader and Walker's argument. Security is certainly connected with the public enjoyment of public order and we have seen that it involves aspects of our shared way of life. But it would be wrong to exaggerate the communal element or pretend that it exhausted the content of the concept. Much of my work in this chapter has sought to deepen and broaden what I called the pure safety conception of security. But I have said, from the beginning, that it is important for the concept of security to remain anchored in the physical safety of individual men and women. That anchoring is irreducible and non-negotiable. Security is in the end about elementary matters of harm and survival. It may have communal aspects and it may be something that we provide jointly and mutually for one another in various ways, but most of the complications developed here have attempted to show that security is a complex and structured function of individual safety, not an amiable communal alternative to it.

It is not part of my agenda in this essay to denigrate the pure safety conception, or to propose replacing it with some more amiable notion of communal solidarity. The Hobbesian link between security and survival is without doubt the core of the concept. It is not unreasonable for people to be preoccupied with their personal safety, under the heading of 'security,' when they contemplate trade-offs between liberty and security in relation to the threat from terrorism. The threat from terrorism is deadly, not just disruptive, and no attempt to make it into a more sophisticated value can possibly be adequate if this cuts it adrift from the element of physical safety. At the same time, it is worth considering what a richer notion of security involves, if only to see how much we are

[34] Loader and Walker, 'Policing as a Public Good', p. 25, citing Waldron, 'Can Communal Goods Be Human Rights?'
[35] Loader and Walker, 'Policing as a Public Good', p. 26.
[36] Loader and Walker, 'Policing as a Public Good', p. 26.

panicked into losing when we become preoccupied with physical safety under the immediate pressure of events.

## 12. Trade-offs

The task of establishing a clear understanding of security, sensitive to its conundrums and complexities, is particularly important in these troubled times, when security is constantly invoked as a reason for diminishing the extent of other values, such as liberty, or for truncating the application of individual rights. If we face a trade-off between liberty (or civil liberties) and security, then it is as important to know what security is as it is to know what liberty is (or what civil liberties are), so we can see what is at stake on either side of the equation.

I have expressed doubts about the more simple-minded versions of the liberty/security trade-off elsewhere.[37] I did not undertake this study of security specifically to undermine this talk of trade-offs. But throughout this essay, I have said we should be alert to the possibility that the relation between liberty and security is more complicated than it first appears.

One set of complications is that we are not talking about trade-offs among abstract homogeneous values, but among values that may be distributed unevenly across a population. We know already that this is true for liberty: even if liberty starts out being roughly equally distributed in the community, the changes that are envisaged as a result of the trade-off are not evenly spread changes in everyone's liberties, but a diminution in the liberties of some against the general background in which most citizens' liberties are unaffected. This is also true for security. Some of the changes that are advocated and undertaken for the sake of security actually have an uneven impact on security; they protect the security of some while neglecting or actively undermining the security of others. To point this out, with regard to liberty and security, is not to deny that changes might need to be made, and that these changes might need to be justified for security's sake. But we must not think childishly about the changes. It is not a case of everyone giving up a few liberties so that everyone can be more secure. Some are making a slight sacrifice of liberty, others are making a very considerable sacrifice of liberty, and a few are actually losing their liberty altogether, so that most can be more secure. If we plan on justifying this, we should not do so insouciantly

[37] See Waldron, 'Security and Liberty', *passim*.

using the discourse of a simple trade-off between liberty and security. Instead we should think in terms of a distributive matrix of liberty or civil liberties, uneven across different peoples or categories of people (e.g., majorities and minorities) who experience a distributive matrix of security, uneven across different people or categories of people, again for majorities and minorities. And we should think about the prospect of various changes in the values arrayed in the two matrices. If we can begin thinking like that – thinking in terms of *whose* liberty, *whose* security is being enhanced or diminished – then we will have made some progress.

A second point – and the one that I have mainly concentrated on in this chapter – is that this matrix of distributed security must be understood in all the various aspects and facets that the idea of security presents. It must be understood in light of its connection with safety, certainly; but it also must be understood in terms of its connection with fear and assurance, for example, and its association with the integrity of a way of life. These dimensions also complicate any talk of trade-offs, particularly the connection between security and the assurance that we can continue in a valued mode of life. That is not just an egoistic concern, and so it is not necessarily a concern that can be heightened for a given person by diminishing some other person's liberties. Our mode of life is to live with others in liberty. Security for that will often involve paying as much attention to liberty for all as to each person's physical safety.

Finally, I have said little in this chapter to unravel the conundrums set out in section 2, concerning the meanings of peace and Christian security as they are commended in our faith. I leave them standing as an open reproach to those who say that security, as the world understands it, is all-important. And I leave them unresolved as an icon of humility in regard to the difficulty that is involved in analyzing this hard-headed concept.

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