

## Security vs. Liberty? Is There a Trade off?

Written by Miriam Dornan

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# Security vs. Liberty? Is There a Trade off?

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MIRIAM DORNAN, JUN 23 2011

Security is a tricky subject. This essay aims to explore but one aspect of security; it will examine whether or not there is a trade-off between the security of some and the liberty of others. In an age of what appears to be increasing insecurity, do we have to make a choice between being secure and maintaining our liberty? This debate will draw heavily from evidence surrounding the war on terror, an increasingly relevant area of discussion in security studies.

Before examining the debate between security and liberty, it will be useful to outline what it meant by these terms. As has been previously alluded to, security is “a slippery term indeed” (McSweeney: 1999: 199). It is possible to suggest security is socially constructed with its meanings differing depending on each different society (Weiner: 1993). In the current global age, it is perhaps useful to extend the definition of security beyond the traditional conception of security as state-centred security (Hough: 2008). Moving away from the security of nation-states, focus can be placed on international security and its attempt to deal with the most “fundamental questions of war and peace” (Freedman: 1998: 48). International security and the concept of security studies have often been associated with the realist tradition as much of the focus has been on military action and the quest for survival (Freedman: 1998). For the purpose of this discussion, security will cover various aspects, from individual to state and global level, retaining its fluidity in order to fully analyse any possible trade-off between security and liberty. However, there may be a perceived over-emphasis on state security.

With an attempt a brief definition of security, attention can now be turned to offering a definition of the other key concept in this debate, liberty. The Oxford English Dictionary defines liberty as “the state of being free within society from oppressive restrictions imposed by authority on one’s behaviour or political views” (Oxford Dictionary: 2010). It appears that liberty is also a socially constructed term. The concept of liberty can be linked to legal frameworks outlining the rights of individuals. The authors of the Johannesburg Principles believed that “freedom of expression and freedom of information are vital to a democratic society... and for the enjoyment of other human rights and fundamental freedoms” (Coliver et al.: 1999: 1). In this sense it is possible to identify liberty as the freedom to express oneself and also the right to access information in a democracy.

Having defined the terms of the debate, it is now possible to turn full attention to analysis of the debate itself. This discussion between security and liberty can also be viewed as national security versus human rights.

It is possible to argue that a trade-off between the security of some and the liberty of others does exist. Drawing on the contemporary example of the ‘war on terror’, the division between security and liberty is perhaps more noticeable, thus illustrating an obvious trade-off. In support of such an argument is the idea that in wartime, civil liberties become categorized as luxury items (Baker: 2003). This idea implies that the security of some in a state of war, be it a nation-state or particular group of society, is more important than the civil liberties of that group and of others. The concept of war super-ceding liberties is also advanced by recognition of *inter arma silent leges*, ‘in time of war the law is silent’ (Walzer: 2006: 3). Using these concepts it is possible to suggest that securitizing a situation allows those in power the legitimacy to put security interests ahead of ‘luxuries’ such as civil liberties. Using a contemporary example, Baker argues that the Bush administration’s decision to launch a ‘war on terror’ after the events of September 11<sup>th</sup> has resulted in the centralization of power within the Oval Office (Baker: 2003: 548). This centralization of power appears to allow key figures such as Attorney General John Ashcroft to override certain civil liberties under the justification of ensuring national security (Baker: 2003). By overriding civil liberties

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and labeling them as 'luxury' items in times of war, one cannot help but notice a trade-off between the security of a nation-state and liberty of its citizens.

Having established the possibility of a trade-off between the security of some and the liberty of others, in what ways can we identify the creation and justification of the substitution of security for liberty? Using the war on terror as an example, it is possible to suggest that in framing the war as "a new type of warfare" allowed the political and military elite the opportunity to legitimize their actions (Silberstein: 2004: 49). Silberstein identifies how the use of rhetoric in the aftermath of 9/11 allowed the Bush administration to create and build upon a sense of national unity where inevitably security of the nation would be put ahead of civil liberties (Silberstein: 2004). This idea of President Bush addressing American citizens several times in the hours and days following 9/11 attacks can be linked to the Copenhagen School's concept of 'speech act'. An important aspect of the speech act is the recognition by the audience (i.e. American and perhaps all citizens of the Western world) of the existence of an "existential threat and the mobilization of extraordinary measures to respond to it" (Vultee: 2010: 77). In the case of 9/11, terrorists were identified as the threat with Bush vowing to "hunt down" and punish those responsible using whatever means necessary to "protect America and Americans" (Silberstein: 2004: 5). It may be possible to suggest that the rhetoric used allowed the Administration to justifiably enforce measures perceived as restrictions on civil liberties.

Much of the literature surrounding the war on terror focuses on the Patriot Act of 2001. Baker suggests this legislation effectively gave the FBI a "blank warrant" (Baker: 2003: 547). However, Section 102.(B)(1) of the Patriot Act itself states,

[T]he civil rights and civil liberties of all Americans, including Arab Americans, Muslim Americans, and Americans from South Asia, must be protected, and that every effort must be taken to preserve their safety (Patriot Act: 2001).

This statement perhaps presents a tension between national security and the individual liberty of American citizens. It could be argued that the explicit reference to Americans of Arab, Muslim and South Asian descent illustrates that their security and civil liberties are under threat, not only from terrorists but potentially from fellow citizens and even the government elected to protect them. It has been suggested that the war on terror can be viewed as a new era of "McCarthyism" whereby specific ethnic minorities have seen their liberties reduced at the expense of the security of others (Silberstein: 2004: 14). The idea of a new McCarthyism appears to demonstrate explicitly that there does exist a trade-off between the security of some and the liberty of others. This concept is further illustrated by noting the ethnicity of those suspected or arrested under terror charges since September 11<sup>th</sup>. Human rights and other such campaigners have been vocal in their disgust at the use of ethnic profiling in the search for terrorists; it is argued that ethnic profiling harms individuals as they are often arrested or imprisoned based on "weak circumstantial evidence", which is largely based on religious, ethnic or national stereotypes (Open Society Justice Initiative: 2007: 11). Investigation into ethnic profiling and the 'war on terror' found that the FBI's 'Top Ten Most Wanted Terrorists' all appear to be of Arab or Muslim backgrounds thus feeding the perception terrorists fit a distinct ethnic profile (FBI: 2010). In this sense, it is clear that ethnic profiling contributes to the perception that there is an obvious trade-off between the security of some and the liberty of others.

Linked to the issue of ethnic profiling is the concept of a double standard whereby the security interests of citizens are pitted against the liberty interests of a group without a voice (Cole: 2003). It has been noted that Attorney General Ashcroft was willing to use every law at his disposal to "keep suspected terrorists off the street" (Cole: 2003: 340). It is possible to argue that the liberty of some (in this case those who engage in terrorist activity) is less important than the security of others (America). While it may be argued that a key feature of the US legal system is that a person is innocent until proven guilty, this assumption has been suspended in the wake of 9/11 (Baker: 2003: 556). It has been suggested that around 4000 people have been detained in connection with the war on terror, most of them foreign nationals with little or no voice in the political process of the country by which they have been detained (Cole: 2003). In this sense it appears clear there has been a trade-off between the security of US citizens and the liberty of foreign nationals.

Although practices such as the ethnic profiling of terror suspects are a key aspect illustrating the trade-off between the security of some and liberty of others with regard to the war on terror, this is not the only aspect of liberty sidelined

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by security. It is possible to suggest, as Baker does, that this war has placed several restrictions on the civil liberties of 'ordinary' citizens (Baker: 2003). As has been previously mentioned when war is declared, this often means civil liberties will be put in danger (Silberstein: 2003). To draw once more on the war on terror example, this danger is illustrated in the decisions taken by those close to the Bush Administration, be they in the Oval Office or Justice Department. It has been suggested that a core component of the administration's anti-terrorism agenda, even prior to 9/11, was to control and limit the flow of information thus trading liberty for security (Baker: 2003). Senior figures such as Attorney General Ashcroft justified actions such as refusing to disclose data on individuals being detained by the federal government by arguing that civil liberties can be exploited by terrorist organizations (ibid.). In this sense the national security of America is valued more than the liberty of its citizens.

The practice of valuing security over liberty is not confined to the US; it is possible to argue that anti-terror measures in the UK also involve a trade-off between the security of the nation and the liberty of individuals within that nation. A discussion paper published by the UK government in 2004 admits that, since the introduction of the Terrorism Act, "others have been convicted for a range of criminal offences" with one example being credit card fraud (Blunkett: 2004: 3). This appears to suggest that the measures legalised under the Terrorism Act have undermined civil liberties in such a way that it has resulted in the conviction of criminals who would not have been caught under conventional measures. Terrorism Act 2000 has drawn criticism from civil liberties groups in the UK who view the legislation as intimidating to protestors, particularly when the authorities misuse or abuse the powers of stop and search (Guardian: 2009). With civil liberties campaigners criticising legislation focussed on maintaining national security, it is once more possible to identify a trade-off between the security of some and the liberty of others.

This trade-off can perhaps also be identified at European level. While it may be argued that as all EU member states have signed up to the European Convention of Human Rights (ECHR), the freedoms and rights of the citizens of these states are therefore guaranteed; this is not always the case (Bunyan: 2002). European Civil Liberties Network (ECLN) argues that "civil liberties... are under attack as never before" (ECLN: 2010). This appears to be suggesting that the war on terror and emphasis on security that such a war requires is threatening the importance of civil liberties in Europe. Analysis into the ECHR appears to illustrate a tension in Europe between the exercise of freedom and the "protection of other lawful rights...including national security" (Mahoney & Early: 1999: 109). It is possible that the EU's definition of terrorism is so broad that the freedom of EU citizens, which the ECHR aims to protect, is put at risk (Bunyan: 2002). A key part of the ECHR is the individual's freedom of expression, which may be viewed as "an integral part of each individual's self-fulfilment" (Mahoney & Early: 1999: 111). However, with protests potentially coming under the scope of terrorist acts, it may be argued that the EU citizen's right to freedom of expression has been replaced by the authorities need to maintain security of the member states (Bunyan: 2002). This again demonstrates that in certain situations, there is a trade-off between the security of some and the liberty of others.

The discussion thus far has focussed on the ways in which a trade-off between the security of some and the liberty of others may be identified. It has suggested that the security of the political and military elites, under the guise of national security, is deemed more important than the civil liberties of individuals, particularly during periods of war.

Having discussed the ways in which a possible trade-off between the security of some and the liberty of others may be identified, it is now possible to turn attention to the argument that there is no trade-off between security and liberty.

The discussion so far has stressed that liberty can appear sidelined in periods of war or conflict, however it could be suggested wars are fought in order to maintain liberty; if this is the case then it is possible to argue liberty is valued more than security. McSweeney notes that state security can be identified as "a moral judgement about human needs" (McSweeney: 1999: 199). While this statement could be linked to the realist argument stating that the primary need of a nation is to ensure its survival, it could also be argued that the security of a nation-state rests upon its ability to ensure the rights of its citizens are not undermined by any internal or external threats. In this sense it could be possible to argue that for state to uphold its security, there is a responsibility for the leadership in that state to maintain the rights of its citizens to be free from oppression, i.e. for a state to be secure it has to protect liberty. This argument is perhaps supported by reference to the International Covenant on Civil and Political Rights (ICCPR); Article 19 of ICCPR protects the right to "hold opinions without interference" meaning that states cannot violate this right on national security grounds (Evatt: 1999: 84). With national security being denied the opportunity to restrict

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freedom of expression, it could be argued that due to legal obligations there should be no trade-off between the security of some and the liberty of others.

In developing this point further, it could be argued through a realist perspective that “what we conventionally call inhumanity is simply humanity under pressure” (Walzer: 2006: 4). This statement could be seen to justify why in certain situations, i.e. moments of extreme pressure, restrictions on civil liberties are justified in order to prevent further depletion of liberty. Again, this suggests that a trade-off between security and liberty does not exist but rather that without liberty there can be little compulsion to securitize and engage in conflict. Linking back to earlier examples from the war on terror, it could perhaps be possible to argue that it was an attack on America’s right to freedom that led to the war thus illustrating that security comes to the fore only when fundamental liberties are under threat. This point is emphasised in Bush’s address to the nation on the evening of September 11<sup>th</sup>,

[O]ur way of life, our very freedom came under attack in a series of deliberate and deadly terrorist acts (Silberstein: 2004: 6).

In this sense, it is possible to argue that if the liberty of a nation had not come under threat as happened to the US on 9/11 then there would be a vastly reduced incentive to engage in warfare with an unpredictable and at times faceless opponent; without the initial attack on liberty there would be no need to heighten the security threat level and place restrictions on civil liberties, which many had previously taken for granted. Perhaps it could be argued there is no trade-off between the security of some and the liberty of others. In this example, it may appear in the short-term that liberty has been diminished in order to maintain national security but a war is being waged in order to protect and restore liberty in the long-term. In support of such an argument is the perception by American citizens that they are not forfeiting civil liberties in order to increase security (Cole: 2003). When asked in a public radio poll whether they had to give up any “important rights or freedoms” due to the war on terror only seven percent said yes (Cole: 2003: 339). Although civil liberties groups may argue that civil liberties are being traded for an increase in national security, citizens themselves do not feel their rights and freedoms have been eroded. This would appear to add weight to the perception that there is no trade-off between security and liberty.

Another way in which it could be argued that there is no explicit trade-off between security and liberty is Huysmans’ observation that “security policy is not simply a practice of protecting and/or limiting a pre-given freedom” but rather is an action of “governmental practice” attempting to mould an abstract concept (freedom) in to a concrete and legitimate practice (Huysmans: 2010: 2). It may be suggested then that the trade-off does not exist between security and liberty but between the government and the citizens affected by policy implementation. It could also be possible to argue that governing institutions, such as the European Union (EU), face a difficult task in balancing security and liberty (Huysmans: 2010). This means that instead of trading one for the other, there is a willingness to ensure that neither enjoys a privileged status above the other. However, as has been noted previously, although governmental bodies may wish to obtain a balance between security and liberty it is not always possible for them to do so, thus resulting in a trade-off between the security of some and the liberty of others.

In conclusion, it appears that there is a trade-off between the security of some and the liberty of others. This perception of a trade-off between security and liberty is particularly convincing when evidence from the on-going war on terror is used to illustrate the argument. However, it should be noted that there are two sides to every coin and it is possible to argue that any trade-off between liberty and security is short-term and illusory.

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Date written: December 2010