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They who can give up essential liberty to obtain a little temporary safety, deserve neither liberty nor safety.

An age-old conflict: The struggle between liberty and security in the 21st Century

In the wake of the devastating terrorist attacks of September 11th 2001, Professor Heymann of Harvard Law School wrote that "At some level of danger to life and property, even people strongly committed to civil liberties – and not everyone is – are prepared to sacrifice some privacy, freedom of movement, and convenience to greater security."[1] This tension between liberty and security has been the subject of fierce debate and discourse since the inception of society, and never more so than in the aftermath of that tragedy. The vigour with which the topic has been seized upon by philosophers, historians and political commentators alike has not diminished over the centuries, nor has its resonance become weakened; on the contrary, since the events of 9/11 the issue has flared up and awoken in international society a fresh struggle to establish a successful equilibrium between liberty and safety.

The root of the issue lies within the symbiotic relationship between security and freedom, insofar as one simply cannot exist without the other. The question, therefore, is not whether one should sacrifice one for the sake of the other, but how we might go about calibrating the most effective balance between the two. History has shown us what can occur if this is not achieved – 1940 saw France being forced to surrender its liberty as a direct consequence of being unable to provide adequate security for itself, and after the Reichstag Fire of 1933 the German people, in a move that was to prove pivotal in the establishment of a Nazi dictatorship, submitted to a repression that resulted in the suspension of *all* civil liberties, ostensibly to safeguard the national security. Hitler – having been Chancellor for a mere four weeks – was able to ensure that such a decree was passed by convincing people that the communist party represented a major threat, and his success demonstrated not only how susceptible human nature is to the fear of danger and civil unrest, but also how effectively those in power can capitalise on this susceptibility in order to deprive people of fundamental rights.

The extent to which an individual is prepared, when feeling vulnerable, to forego elements of civil liberty is evidenced in the results of polls conducted in America immediately following 9/11; one conducted by ABC News and the *Washington Post* found that 71 percent of respondents were prepared to give up " some of Americans' personal liberties and privacy"; another, by CBS News and the *New York Times*, saw 74 percent of respondents agreeing that "Americans will have to give up some of their personal freedoms in order to make the country safe from terrorist attacks". Going further still, 39 percent of respondents, when asked if they would be "willing or not willing to allow government agencies to monitor the telephone calls and e-mail of ordinary Americans on a regular basis", replied in the affirmative.

Naturally during periods of civil and international unrest a person's conception of what 'essential' liberty ought to be becomes warped, but does this really mean we can do away with it entirely? In August of this year, in response to demands that hundreds of thousands of detained Tamil war refugees be released, Sri Lankan Foreign Secretary Dr Palitha Kohona said simply that it was "mischievous to talk of rights in the absence of security."[2] As well as suggesting that there are situations in which it is reasonable to strip citizens of their rights, this statement also introduces the idea that we are somehow not equipped or entitled to even bring the issue of fundamental liberty into the equation at times of peril. It is unclear what precisely Dr Kohona meant by this - perhaps that the our judgement is so clouded when fearing for our safety as to prohibit us from making sensible decisions, or maybe that an individual ought to be prepared to sacrifice whatever chunk of their civil liberty a government sees fit in order to safeguard national security. Of one thing we can be sure: once a precedent

[1] The Boston Globe, Sept 15th 2001
[2] BBC News Website, 10th August 2009 http://news.bbc.co.uk/1/hi/8194205.stm

has been established that a ruling government can take away your rights, freedoms and liberty when they decide that it's expedient to do so, it is reasonable to assert that they are perhaps no longer rights – rather, they are privileges to which one is entitled only for as long as that government sees fit.

This naturally brings us to the task of attempting to define what freedoms ought to fall within the category of civil liberties. Certainly Benjamin Franklin fails to define what should be covered by 'essential' liberty in his letter to the Governor of Pennsylvania, and, writing over a century earlier in his impassioned speech to the Parliament of England, Milton prioritizes *'the liberty to know, to utter, and to argue freely according to conscience, above all liberties'*.[3] Evidently certain aspects of liberty are, for some, dispensable – the phrase 'essential liberty' necessarily implies the existence of 'non-essential liberty'. In any case, arriving at a definition that describes liberty in absolute terms is nigh on impossible, due in part to the varying preferences of each individual, but also to the demands and strains to which a society might become accustomed over a length of time.

Whilst we have seen the short-term effects of a particular trauma or incident, in *The Spirit of the Laws*, Montesquieu highlights how great an influence the international state of affairs in general can have on a particular state's conception of civil liberty.[4] Citing as an example the differences between the commercial nations of his time and the smaller Greek city-states, he notes that the latter demanded political virtue of its citizens as a result of the ever-present threat of attack; the frequency with which a polis might have to go to war dictated that individual liberty must be limited to a certain degree in order to ensure political survival. By contrast, the larger nations with which we are more familiar go to war relatively infrequently, resulting in a change in emphasis where liberty is concerned – modern nations do not aspire so much to political virtue as to the political liberty of their citizens.

This argument is notable for two reasons: firstly, it makes clear just how important a role national security plays in the development of a nation's attitude towards personal freedom; secondly, it suggests the possibility of a reversion to a state of heightened anxiety more similar to that experienced by the Ancient Greeks. Where before we might perhaps have been fairly complacent about the relative stability of our international system, surely we must now come more readily to expect and prepare ourselves for possible attacks from terrorists, and this will inevitably mean a seismic shift in our attitudes concerning what liberty or liberties we might consider essential.

It is worth noting that were such a change to happen, it would be brought about not by a dictator or government, but by the population itself; indeed, Montesquieu observes that "in democracies the people seem very nearly to do what they want, [because] liberty has been placed in this sort of government and the power of the people has been confused with the liberty of the people"[5]. We must be aware that the people have a great deal more power than perhaps they themselves realise – although they might not necessarily know precisely what they want, it is they who have the power to effect change insofar as change in a democracy is almost always a response by the government to whatever it perceives to be of concern to the citizens. As is evident from the aforementioned polls conducted after 9/11, the population can impose change and even restriction upon itself.

One imagines that when Benjamin Franklin delivered his sweeping statement on liberty he did not expect that it would be adopted as a maxim by pro firearms organisations. The fact that it has been is testament to the wildly differing views on what should be understood by 'essential liberty'; in other words, a universal concept of liberty does not exist. As citizens of a democratic state, we must decide for ourselves what our own essential liberty should be, we must find our own balance between a security which does not compromise our fundamental

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[3] Milton, *Areopagitica*

[4] Montesquieu, *The Spirit of the Laws*, trans. Anne M. Cohler, Basia Carolyn Miller, and Harold Samuel Stone (Cambridge: Cambridge Univ. Press, 1989), bk. 3, chap. 3

[5] *SL bk.* 11 chap. 2

rights and a freedom which does not lay us bare to attack. In the face of increasing threats to our national and international security, we can only hope that we are able to remain committed to our convictions, not allowing them to become distorted by fear or the threat of danger in such a way as to permit us to sacrifice one thing for the sake of the other; for only through true freedom can true security exist.