Liberty, Security Notwithstanding

Glen Newey
Université libre de Bruxelles

Freedom and security have been seen as opposed in political rhetoric and theory. I contend that this simplifies the concepts themselves, and their interrelationship, drawing in particular on Spinoza to argue that the purpose of engendering security is to create the conditions of civic liberty. Recent debates over security in the face of the ‘terrorist threat’, and about the alleged need to ‘balance’ it against liberty, should be reorientated to engage not with statistically marginal risks, but with engendering collective freedom.

Introduction: Unstable Equilibrium

It is a staple of political rhetoric and much academic commentary that the value of security has to be reckoned against that of liberty. Very often this idea is put forward via talk of a need to “balance” security and liberty (Waldron 2003). The talk of “balance” is a metaphor, albeit a well-worn one. Its prevalence has grown with the heightened security concerns since the turn of the entury. A paper produced by the United Kingdom government in late 2005, as the incumbent European Union Presidency, in the sequel to the bomb attacks in London of July 7th 2005, used this very phrase.¹

In academic discussion, too, talk of “balance” seems hard to escape.² In Australia when Canberra’s Security Legislation Review Committee carried out its quinquennial review in 2006 of the terrorism offences proscribed by the Criminal Code Act 1995, the committee stated that in its view its remit required that “an appropriate balance must be struck between, on the one hand, the need to protect the community from terrorist activity, and on the other hand, the maintenance of fundamental human rights and freedoms”.³ The document goes on to deploy the “balance” metaphor repeatedly.

2 Cf. e.g. Posner & Vermeule 2006. See also: Smith 2007; Michaelson 2006a, 2006b; and Taylor 2003; de Hert 2005; Davis & Silver 2003; Posner 2001; for more sceptical views on the notion of balance, see Ashworth 1998; Waldron 2003; Neocleous 2007.
3 Security Legislation Review Committee, 3.
Talk of “balance” is then well established in discussions of security. But the metaphor is odd in itself (Waldron 2003). To strike a balance between two things is to place them in equilibrium. If one thinks literally of a scales, it is balanced if whatever is in one scale weighs the same as whatever is in the other. If the scales are initially in equilibrium, and then more is put into one scale, an amount of equal weight has to be put into the other scale in order to restore equilibrium. But in discussions of public policy, say in relation to concerns over terrorism, the talk of “balance” generally accompanies the suggestion that a greater measure of security must be bought at the cost of a loss in liberty or – less often – the converse. If more security needs to be “balanced” with less liberty, then they must have been out of balance to start with. Sometimes, incoherently, the idea is advanced that one “balance” between security and liberty needs to be replaced with a different one, for example in response to a perceived rise in security threats (e.g. Rosenzweig 2003).

The Liberty / Security Conflict

So it seems that the metaphor of balance is, to put it charitably, mixed. The idea the metaphor confusedly expresses is that governments and its agents have to negotiate a trade-off between liberty and security, such that (at least over significant parts of the curve) a gain in liberty necessarily incurs a loss in security, and conversely. The underlying idea here, roughly, is that there is a function of liberty and security, such that for all (or a significant range of) values, \( f(l + s) = C \); so that an increase in the value of security, relative to some baseline or reference value, must mean a diminution in that of liberty. The notion that there is a trade-off to be negotiated between liberty and security goes back some way. In his contributions as “Publius” to the Federalist Papers, Alexander Hamilton argued that liberty and security must come into conflict. When they do, citizens will inevitably forgo liberty for the sake of security:

---

4 Of course, if security and liberty are incommensurable goods, there is no homogeneous measure in terms of which the relative weights of security and liberty can be gauged, and so talk of balancing is empty. See Raz 1986, ch. 13; also Newey 1998.

5 In a speech to the Security Commission of the Institute for Public Policy Research in June 2008 the Prime Minister Gordon Brown endorsed the House of Commons Home Affairs Select Committee’s call “for both practical measures and principled commitments from the Government to ensure the balance of liberty and security is maintained”. Available at <www.labour.org.uk/gordon_brown_security_liberty> (accessed 5.3.2012).

6 “Significant events like Sept. 11 alter the balance between liberty and security, but the pendulum always returns to center as the threat diminishes”. Available at <www.washingtontimes.com/news/2003/may/26/20030526-104007-5926r/?page=all> (accessed 5.3.2012).

7 Schematically the relation might be thought of as similar to the graph of the function \( y = 1/x \). At values close to 45° to the origin, the marginal trade-off will be high, but not at the asymptotes.
Safety from external danger is the most powerful director of national conduct. Even the ardent love of liberty will, after a time, give way to its dictates. The violent destruction of life and property incident to war, the continual effort and alarm attendant on a state of continual danger, will compel nations the most attached to liberty to resort for repose and security to institutions which have a tendency to destroy their civil and political rights. To be more safe, they at length become willing to run the risk of being less free (Hamilton 2001: 191).

Thus Hamilton found himself raising the spectre of authoritarianism even as the Continental Congress was meeting to shape the U.S. Constitution. Of course, part of the point is to institutionalise checks on executive power so that the pressures towards repressiveness are held back. But Hamilton's final sentence discloses a familiar problem with the very idea of a trade-off, or conflict, or balance, between liberty and security: in downgrading liberty for the sake of security, the executive jeopardises security itself. For example, granting the police additional powers to arrest and detain terrorism suspects without charge must diminish civil liberties, such as the liberty not to be held without charge, or restricting certain kinds of speech on the ground that it may incite others to perform acts of violence. Debate then follows about whether the extension of police powers really will serve to enhance security. It is accepted on both sides that this extension retrenches on the civil liberties of terrorism suspects. But this also raises the concern that such measures, far from enhancing security, in fact diminish it.

The point is not that the measure may fail to achieve its objective, perhaps because extending detention times is not an effective way of screening for terrorists, or because it may prove counter-productive by radicalising those who would otherwise not become terrorists. If so, extended detention may fail to prevent future acts of terrorism, or even promote them. These are possible empirical consequences of the policy. However, this is only part of the point: the policy may be thought objectionable in itself on security grounds. The diminution of liberty could be seen, by the same token, as constituting a diminution in security.

Why? Summarily put, because if liberty itself is a good, as proponents of the “balancing” metaphor usually accept, then it is something which people have reason to value and hence to pursue. But also, if liberty is a good, it is itself something in relation to which people can be secure or insecure, and which they can enjoy or fail to enjoy. It could be said that the talk of trade-offs between goods may in turn be seen as figurative or elliptical, and that it says only that, at least in certain situations such as that of emergency, the goods will come into conflict. There is in fact no single way in which two goods A and B can conflict. One reason for the ambiguity is that what is in view when people talk of conflicting goods may be the good-types A and B, or tokens of them. The grounds for the conflict may, further, be held to be necessary, or to result from some empirical fact. And the conflict itself may take a zero-sum form – so that having \( k \) more units of A means having \( k \) fewer of B, and
conversely – or the conflict may be some weaker form, so that (say) having more of A generally means, or is likely to mean, that one has less of B. One could say that A and B necessarily conflict if there is no empirical fact which, if altered, will dispel the conflict.

The most obvious way in which A and B can conflict is if there is an empirical fact as a result of which getting a token of A means losing or forgoing one of B; or, more generally, that getting more of A means getting less of B. This is often said to be the case with security and liberty – as, notoriously, in Hobbes’ state of nature, where the unrestricted liberty of all leads to marked insecurity for each. Certainly the exercise of liberty by one person in a certain respect can bring about a reduction in security for others, as when a driver takes to the roads when drunk. Here the relevant empirical fact is something like this: excess alcohol consumption impairs the cognitive and motor skills needed to drive a vehicle competently. Even here, however, we are talking about primitive freedom in a state of anarchy (cf. Williams 2005), rather than liberties granted under law. It is only too obvious that primitive freedoms conflict not only with security, but with one another: notably in Hobbes the freedom each person has to defend his life (Hobbes 1996, ch. 14). The liberties, as distinct from primitive freedoms, have been designed precisely in order to fit with the supreme good of security, and to this extent are tailored to the avoidance of conflicts with it. In fact, talk of conflicts between security and liberty usually relate not to primitive freedom but liberty as an artefact of state power – one designed to limit the incursion of the state or other citizens on individuals’ scope for action. I return to this point below.

So empirical conflicts of this sort establish little about the general relation between goods. This becomes clearer when one considers conflicts between two tokens of the same good. Very familiarly, one person’s exercising his freedom to act in a certain way may be achieved only at the cost of another person’s freedom to act in a different (or, indeed, under some descriptions, the same) way. Thus an audience’s freedom to form judgments about the quality of advertised products will be diminished if advertisers are free to impart false or subliminal messages about those products. Indeed, one’s own freedom to act in one respect may conflict with one’s freedom to do so in another – the fundamental basis for contractual self-restraint. All these remarks apply, mutatis mutandis, to the value of security as well as other goods, such as equality or loyalty or attentiveness. Hence the mere fact of empirical conflict either does not establish that the goods in the abstract conflict, or else establishes that conflict is pervasive within value as well as between the specific values of liberty and security.

What about the idea that they necessarily conflict? The main way in which it might seem that there is a necessary conflict between liberty and security is by setting against one person’s or group’s gain in security a loss in liberty for another;
or conversely, where no empirical change of fact seems sufficient to eliminate the conflict. This can be so only where the conflict concerns the same object in the same respect(s), so the liberty of an agent to φ, as such, necessarily runs afoul of another’s security from being φ-ed. So someone’s freedom to torture, say, seems to conflict necessarily with another’s security from being tortured. But it seems that this contrast could be framed in terms of freedom as well – freedom from being tortured. A fork then suggests itself: either the values are indeed so closely related that their opposition is necessary. Then they look like alternative presentations of a single value; or the conflict is, after all, merely contingent. In the torture example, my freedom to torture you can certainly be thought of as opposed by your security from being tortured; but the opposition here arises from opposed modalities, such as “it is permissible that” and “it is not permissible that” in relation to the description “you are tortured”. The necessary conflict lies in the opposition between these modes, not in value-labels that may serve as shorthand for them.

Here the fundamental opposition, cast in terms of rights, is between a liberty-right and an immunity-right. Liberty-rights create an area of opportunity for their bearers to act by failing to assign them countervailing obligations. Immunities place others under obligations by entrenching the opportunity enjoyed by the liberty-right holder. It is, to be sure, one thing not to be under an obligation (say) not to speak one’s mind, and another to enjoy a guarantee under the First Amendment that the opportunity to speak one’s mind will not be rescinded. The latter may seem to sound in the register of security more than does the former. But both can still be seen as justified by reference to the valuing of freedom. It is only because they can that it makes sense to think of the immunity as securing, in the name of freedom, the liberty-right to speak. Once the situation is understood in this way, it seems that we could think of the opposition as not between liberty and security, but between alternative construals of liberty: of how, in the name of freedom, freedoms should be constrained within the law.

There is of course a very large literature devoted to analysing the value of liberty, which I cannot address here. In liberalism the classic “negative” account of it given by Berlin (Berlin 1969) has been extremely influential. Berlin’s formulation of the distinction is notoriously opaque. But it seems that in its final form, “negative” freedom connoted for him a normatively-defined protected zone of opportunity where individuals can pursue their purposes without hindrance by human agency. How should we view the relation between liberty, so understood, and security? The conflict between liberty and security might seem to embody that between Berlin’s positive and negative freedom, respectively. Certainly, the security from being tortured would seem to exemplify negative freedom. Thus negative

freedom secures a space within which individuals can act, and it then follows that guaranteeing such a space to all will involve imposing restraints – for example, those of the “harm” principle, or some ideal of autonomy – on the freedom of each. This seems to involve, precisely, a securing of the individual from certain kinds of action. If so, then either the “negative” conception is not, after all, a conception of freedom, or else it needs to be shown why maintaining such a space cannot be regarded as a security concern.

Security initiatives often aim to enhance the security of one group, such as airline passengers, while it is acknowledged that the liberty of those suspected of terrorism offences is diminished. Here it may not be out of place to talk of trading off a gain in security for the first group against a reduction in liberty for the second. But this does not show that there is some general incompatibility between security and liberty. Take the debate in the UK over the inclusion of innocent persons’ DNA on the national database maintained for the purpose of detecting and convicting criminals. DNA samples have been collected from crime scenes and from persons held in police custody. The number of profiles held on the database has grown rapidly since 2000.9 Its security use – to identify recidivists and other repeat offenders and match evidence at new crime scenes with a list of those known to have committed similar crimes previously – is obvious, and explains the UK government’s heavy investment in the supporting technology and infrastructure.10 Meanwhile, civil libertarians have opposed the profiling of all persons, subsequently charged or not, whose DNA is found by the police at crime scenes; DNA from persons arrested but not convicted also remains on the database.11

Suppose that holding the DNA profiles of unconvicted persons amounts, in itself or at least potentially, to a reduction of their negative liberty.12 It could be said that unconvicted persons on the database will be more likely to figure as suspects in future crimes, and thus open to the array of police powers which can be deployed in gathering evidence and in interviewing suspects. It was also argued that retaining the DNA of those convicted of minor offences like begging was indefensible and

---

9 At 31 March 2009, there were “an estimated 4,859,934 individuals whose DNA profile was held on the database” according to the National DNA Database Annual Report 2007-09, p. 5; available at <www.npia.police.uk/en/docs/NDNAD07-09-LR.pdf> (accessed 5.3.2012).


11 The profiling of innocent persons occurs in England and Wales, but not in Scotland, where the DNA of acquitted persons without an existing criminal record is destroyed.

that it was unjustifiable that the time-span for deleting innocent persons’ DNA is
greater if the sample is drawn from the scene of a terrorist crime rather than that of
less serious offences.¹³

So it could be argued, whatever the security benefits, that the DNA database
policy infringes on individual liberties. However, as regards each of the points raised
above, a similar claim could be made about individuals’ security. The database
could be said to reduce the security of those on it, because their presence on it
enlisted them among the suspects for future offence(s) in relation to which their
DNA profile had been entered on the database. They would also be more likely to
suffer a wrongful conviction – just because one can only be wrongly convicted if one
is first tried, and database inclusion made the latter, necessary condition for that
more likely.¹⁴ That is, these persons suffer reduced security against miscarriages
of justice.

Security as Freedom as Security

This is not to argue for or against the database either in principle or with regard to
the specific policies adopted towards it by the UK government. It is only to suggest
that the language of “liberty” can often be translated into that of “security”. This
is not surprising, given that liberty itself is a valuable thing, which one can hold
more or less securely.¹⁵ To have security requires that there be a reference object,
something which is secured. Elsewhere I have called this reference object the
valuables, as a shorthand for whatever is secured (Newey 2012). The things that
are secured are taken to be goods: that is, they are thought of as having value. It
does not follow that the reference objects of security must be really valuable. The
claim is only that something must have value ascribed to it if one is to be able to
have or enjoy security with regard to it. Suppose that something had no value at
all, such as dust. If dust has no real or ascribed value, then one cannot be said to
have security in relation to it.

Conversely, if something is believed to be a good, it is something in relation to
which one can believe that one has security, or lack it. A good is something such
that there is reason to value and hence to pursue it. If there is reason to value
the thing, then ceteris paribus the valuer can rank different worlds, according to

¹³ Liberty’s response to the Home Office’s Consultation, §30.
¹⁴ This is not to say that a person whose DNA was on the database when tried would be more
likely to be convicted than another person on trial who was not. The base rate for comparison
purposes is with the population generally, not other defendants.
Everyone has the right to liberty and security of person [sic]”. The article sets out citizens’ rights
to be safeguarded against arbitrary arrest and imprisonment, that is, liberties which convention
signatories undertake to secure for their citizens.
whether or not it exists in those worlds – exists, that is, in a form which realises value. If something's having value gives reason to pursue it, then there is reason to pursue those states of the world which contain the thing, rather than lacking it. But suppose we confine our attention just to those worlds where the thing exists in a value-realising form. Then, by the same token, one has reason to rank – that is, to value more highly – those worlds where the thing is held over those where it is not.

On some views, however, security might be thought simply to comprise a set menu of valuables, which might fail to include liberty. However, even if liberty is not a valuable, it still makes sense to talk of particular liberties as being held, or enjoyed, more or less securely, including some of those which contribute towards the non-interference notion of liberty held by classical liberals (Berlin 1969; Mill 1978). For example, suppose one takes the non-interference view of liberty again, and confines its scope to bodily integrity. Infringements upon one’s liberty – that is, violations of one’s bodily integrity – may clearly be more or less gross, but at all events will be experienced as an incursion upon something valuable.

Clearly, not all physical interventions by another person will constitute an infringement of liberty: for instance, surgery or dental treatment. The reason why such interventions fail to count as infringing liberty is that unlike mugging, say, or the infliction of grievous bodily harm, they are willed by the person who undergoes them. As such these interventions are not perceived by the person as depleting value – on the contrary. Of course, it is possible to ask whether that perception is correct: whether their being willed rests on a false ascription of value. For example, willed bodily transformations, such as piercings or tattoos, might be thought to fall into this category. But then suppose that these do indeed deplete value, rather than enhancing it. Then the person is acting freely, or she is not. If not – for example because in order to be free, a person must pursue what is really valuable, rather than what she mistakenly regards as valuable – then clearly, by hypothesis, no issue of freedom arises. But if on the other hand she is free in seeking bodily transformations because this has value for her, then it must be possible to be free despite pursuing something which in fact has no value. But then the person must, even so, value her freedom to pursue this. And indeed historically this has been an important line of thinking about freedom: that one can have reason to value it, in respect not only of oneself but also of others, even if its exercise foreseeably leads to people’s making worthless choices on occasion – in other words, choosing things which have no value.

In sum, either freedom has value imparted to it by the value of the objects of choice; or else it has value in its own right. In the latter case, there is reason to

---

16 This qualification is meant to cover cases where the thing still exists, but no longer has value.

17 That is, he mistakenly thinks the thing has value when it really has none, or mistakenly ascribes value to it when it actually has disvalue.
value and hence to pursue freedom for its own sake. Freedom may have value in its own right, or have value derived from the things with respect to which one is free. In the case of things that have no value, any value freedom has must be non-derivative. But even if its value is derivative, freedom does have value. So, either way, freedom can be treated as a valuable – as something which has value either in its own right, or from the objects of choice. In this it mirrors security itself.

It may be argued, however that there can be valueless freedom. Suppose that someone is faced with a choice between two objects, one of which has significant value while the other wholly lacks it. For instance, imagine that someone is facing the choice between a life of hedonistic bacchanalia and one of religious devotion. In this case, someone could say that since one of the options is wholly devoid of value, the choice between them cannot have any value either, in which case, having the freedom to choose must lack value. But this is mistaken. As in theodicies such as Plantinga’s, there can be value in having (or exercising) the choice, even though the consequence of doing so in some cases is that people choose valueless options. It is, however, less easy to think that someone could have security in relation to options that objectively lack value. I come back to this in a moment.

Hence we reach the conclusion that something has value if and only if it is possible to enjoy security in relation to it. So, in particular, if freedom has value, it is something in relation to which one can have or enjoy security. Or, to put it the other way round, if one can have or enjoy security in relation to it, then freedom must be a good. So a policy which assumes arbitrary powers of arrest, imprisonment, and so on, and thereby infringes on basic liberties – in other words, the “state of exception” of Schmittian theory (Schmitt 2005) – will thereby curtail individuals’ security as well. This is not to deny, of course, that there may well be other goods which will be secured by this action, but the operative contrast can as well be framed as being between liberty and liberty, or security and security, as between security and liberty.

Security / Liberty: an Asymmetry

So far I have argued that, contrary to the trade-off picture, threats to security can be seen as equally posing threats to liberty. I have illustrated this point with Berlin’s concept of negative liberty, but the same goes, say, for the “republican” idea of freedom as non-domination (e.g. Skinner 1997; Pettit 1997; Laborde 2008). Indeed, it goes also for Berlin’s “positive” conception, viewed as “self-mastery”, since this will be jeopardised by certain kinds of security threat: for example, those which menace the faculties or capacities on which self-mastery depends. This includes threats to cognitive, psychological and physical integrity, as well as to resources and opportunities.
All this might be thought to prove too much, and to impale the argument on one prong of the fork identified earlier – that security and liberty turn out to be disguised versions of one and the same value. And then, it could be said, the fact of conflict is dispelled, contrary to the widespread intuition that security and liberty can and do often conflict. Surely there is something in the idea that security can and does often conflict with liberty?

However, short of endorsing out-and-out axiological nominalism – in which every instantiation of a value is regarded as a distinct value – it is implausible to say that a value cannot be in conflict with itself (Newey 1998). As already argued, liberty may conflict with liberty, or security with security. So the effect of construing liberty and security as alternate presentations of a single value need not be to dispel conflict and thereby affront intuition. The claim that they are one and the same value may itself seem counter-intuitive. But I am not in fact going to argue that security and liberty are a single value in disguise. I have argued for the translatability of liberty claims into talk about security, but have not made the converse case. So in some situations where a person has or enjoys security, it may be inappropriate to talk about their having or enjoying liberty. For example, in a well-run jail the prisoners may enjoy security, say from assault by other prisoners, but not liberty (and so, trivially, would not enjoy security with respect to liberty itself). It is hard to believe, however, that the prisoners have liberty merely by dint of having security.

Like security, liberty requires certain goods or valuables in respect of which it is enjoyed. In the case of liberty, these goods will often (on some views, always) comprise opportunities for action, whereas with security, they comprise fundamental goods. This might suggest that liberty deals in opportunities, and security in goods, but this contrast is overdrawn. Opportunities for free action usually rely on access to goods, such as resources, for their exercise – a point well made by critics of purely legalistic conceptions of liberty (e.g. Sterba in Sterba & Narveson 2010). Meanwhile, the value of goods that are secured, such as bodily capacities, depends on their creating opportunities for action (Sen 2009). In each case, too, enjoying security or liberty relies on extending certain guarantees, though there is also a “brute fact” view that does not heed the belief-states of the free or secure person.

The philosophical alternatives seem to run in parallel. If the goods or options really lack value, then securing them, or having the liberty between them lack value too. Otherwise, security and liberty regarding the goods or options may have value despite this, for example because the goods or options are regarded as having value. Perhaps the mere fact of imputing value to the objects of choice, or to the supposed valuables, is enough to endow the correlative notions of security or liberty with value. Then the concepts move in step again.
It seems, then, that to have liberty with regard to valuable options is just to be secure with regard to them. What about the relation between *enjoying* liberty and enjoying security? It might be suggested that what it means to enjoy liberty as a good is not the same as what it means to enjoy security. We can then ask whether in each case the conditions for the enjoyment of the good are the same. One question concerns the relation between enjoying and good and being aware that one has it. Does the enjoyment of liberty as a good require the awareness that one has liberty? If not, it may be said, one can enjoy liberty without a reflexive awareness that the grounds which constitute liberty hold. A young child may have the liberty to choose between two sweets. In choosing between them, however, it need not follow that the child is conscious of the fact that she has the liberty to choose between them. She may successively be conscious of each sweet without being conscious that she is at liberty to choose between them.

This claim however seems hard to defend. She has the liberty to choose the chocolate, and she has the liberty to choose the lemon drop. But if, as imagined above, she is not aware of having both options, even if they are presented as exclusive of one another, it seems she does not have the awareness needed to constitute the liberty to choose between them. Rather each is presented successively as something that she can choose to have. The situation is in fact not so unusual. Suppose I am at liberty to go to supermarket A, which sells Blazzo washing powder, and supermarket B, which sells Bloppo. If I go to A and buy Blazzo, it does not follow that I have chosen between it and Bloppo. It follows only that I have chosen Blazzo. Conversely, compare the choice that I may face between two different professions. If I have the liberty to choose between a career as a milkman and as a painter, I must be conscious of being able to choose to become a milkman, and of being able to choose to become a painter; and if so, I must be conscious of being able to choose *between* the two. So in order to have the liberty to choose, one must be aware of having the liberty to choose.

To enjoy a good is to experience the benefit of having it. But if one is unaware that one has liberty, it is hard to see how one could experience the benefit of having it. A lack of knowledge of the alternatives between which one has a choice – that is, lack of knowledge of what the available alternatives are – seems to remove the value of liberty for the person who has it. So for example a prisoner in a locked cell clearly lacks the liberty to leave. But if, without the prisoner’s knowledge, a warder unlocks the cell door, it is not clear that he now enjoys the liberty to choose whether to stay in the cell or leave it. Such possibilities are important in those accounts of liberty which see it as requiring emancipation from “false consciousness” – a state of mind where options that are notionally open have been foreclosed, because subjects have been programmed to overlook or otherwise dismiss them. The fragmented awareness case suggests that liberty to choose does not always require the consciousness of having a choice. But, in general, it seems that enjoying liberty
to choose between options demands the awareness of having the liberty to choose between them. As the prisoner case shows, the liberty to choose something (and a fortiori to choose between it and something else) also requires awareness that one can choose it.

What about enjoying goods? As already noted, to enjoy a good is to experience the benefit of having it (Newey 2012). This seems to highlight a difference between security and liberty. The brute fact of being liberty is not enough to guarantee the ignorant prisoner’s enjoyment of it. By contrast, there seems to be an obvious sense in which someone who does not know she has security with regard to a certain good, such as health, nonetheless still enjoys security with regard to it. Note that we did not deny that one can have liberty without being aware of it (and, perhaps less obviously, that one can be successively aware that each of the options that comprise liberty is available without being aware of having liberty to choose between them). On the face of it, one can likewise be secure without being aware of this fact. This is the position of someone who is falsely insecure with regard to some valuable, such as a hypochondriac’s false insecurity with respect to the good of health. It seems possible, moreover, that one can also enjoy security without being aware of the fact. If, unbeknownst to me, my home is secured in a high-crime area via the installation of various security devices including cameras, police surveillance, and so on, it seems clear that I experience the benefits of having security. The benefit – not being burgled, for instance – is provided by these devices, notwithstanding the fact that I am unaware of having them. The secure person must thereby enjoy security.

Against this it may be said that cases of false insecurity such as that of the hypochondriac are precisely ones where the individual does not enjoy security, despite having it. But “enjoy” here means simply to experience the benefit of having a good, not necessarily to be aware of having it. The hypochondriac, by hypothesis, is not aware of having security with regard to the valuable of health – indeed, she does not believe that she has that valuable. Nonetheless, she can still be thought of as having the valuable of health. Because enjoying a good is experiencing the benefit of having it, she can be said to enjoy (good) health: she experiences the benefits of mobility, not being debilitated, and so forth. Against this, the objector may insist that the hypochondriac is, at least, not enjoying security with regard to her health. This objection trades on the idea that enjoying security regarding a good must add something extra to simply having the good. By hypothesis, again, she has security regarding health – that is why hypochondria exemplifies false insecurity. To experience the benefit of security as regards a good is just to experience the good stably, and this stability is not undermined by the hypochondriac’s false beliefs about her health. As Aristotle says, the good is “something proper to its possessor and difficult to take from him” (Aristotle 1926, 1095b25).
By contrast, since he does not experience the benefit of having it, the ignorant prisoner will not enjoy liberty. So it follows, in the case of security, but not that of liberty, that anyone who has it must enjoy it. Hence the brute-fact aspect of enjoying security seems not to apply to liberty. One might call the enjoyment of liberty *intrinsically reflective*. This helps to explain another difference between liberty and security. It is possible that liberty to choose has value in its own right even when the objects of choice lack value. The fact of having the choice may be regarded as valuable in itself (Raz 1986, ch. 14). But one could not say that security would have value in its own right if the “valuables” lacked value. This difference can be explained by the relation between enjoying a good and being aware of having it. If security is not an intrinsically reflective good, since one can have it without being aware of having it, then whatever value security has cannot consist necessarily in having this awareness. On the other hand, since one needs to be aware of having liberty in order to enjoy it, then its enjoyment is denied to the ignorant prisoner. Similarly, I may be at liberty to choose one thing, or to choose another, but not be at liberty to choose between them, being unaware of having the choice. I do not enjoy the liberty to choose between the things.

**Liberty v. Security: Saving Appearances**

I will now suggest that these differences may help to explain the persistent belief that there is not merely a difference, but a constitutive incompatibility, between liberty and security. If the notion that a trade-off, etc., has to be negotiated between security and liberty is so common, why has this misconception become so widespread? According to one explanation, liberal democracies are in the business of legitimation, as Weber pointed out (Weber 1948: e.g. 294–95). Legitimation co-opts key normative concepts – notably, in liberal democracies, that of liberty – in order to remove executive action from the realm of brute facticity to that of justification. As such it presents might as subject to the constraining pressure of right. The very notion of legitimation points beyond rightless might (Williams 2005: ch. 1). But, of course, one way of legitimating the very fact of relying on rightless might is to argue that the usual grounds of legitimation have to be suspended in the name of a higher necessity. Talk of security offers a convenient rhetorical standby when politicians want to concert acquiescence with state actions which may otherwise be unjustifiable (Neocleous 2007, 2008; cf. Waldron 2003). So, it may be said, democratic politicians’ thraldom to legitimation in general, coupled with the need on occasion to set aside the key legitimating value of liberty, leads them to reach for the language of security.

The trouble with this analysis is that it seems to end up by obscuring the explanation behind the *explanandum* itself. If there is a puzzle about why “liberty” is so often mistakenly opposed to “security” in political rhetoric, the puzzle is hardly
resolved by noting that the pressures of *raison d'état* mean that politicians need an alternative legitimating idiom to the libertarian one; for in that case, the perception that liberties need to be sacrificed to security may not be mistaken, after all. On this view, the basis for the rhetorical opposition is that liberty and security conflict not just rhetorically, but in fact. Some would-be debunking accounts of the rhetoric of security seem to end up, unwittingly, making a claim of this kind.

Security is sometimes said to be a non-excludable or non-rival good, meaning respectively that there is some group relative to which if some members of the group get the good, all do; and that one person’s getting more of it need not mean that any others get less (cf. Waldron 2006: 320f). This might be thought a contrast with liberty, since one can certainly exclude people from liberty (for example, by imprisoning them), and liberties can be rival (your liberty to eat your cheese sandwich excludes mine to eat it). But this contrast is again overdrawn. Security can be excludable. Often some people are exposed to higher levels of risk than others. The claim is a false generalisation from the fact that certain types of security goods, such as defence forces, may be non-excludable. Some liberties are non-excludable, such as the liberty to breathe clean air, or free speech rights. Again, sometimes security is a rival good, as in Kant’s example of shipwrecked sailors fighting over a piece of driftwood (Kant 1991: 81–82; Wood 1993: 91).

But it does not follow that all attempts to explain the opposition must fail. For example, the constructivist (Buzan et al. 1998; cf. Baine 2006; Hough 2008; Buzan 2008) analysis which represents “security” as being “socially constructed” can treat security as a catch-all to be called upon whenever policy demands that liberty be set aside (Loader & Walker 2007). So here “security” names *whatever* is invoked as a trump card against liberty. It provides an explanation of why it is widely believed that security and liberty clash – that political rhetoric treats them as incompatible, since when security is invoked to legitimate some policy, it is in order to set liberty aside.

However, this explanation voids security of content. Security has content – which is far from saying that specific judgments, say about risk, which are made in supporting some liberty-trumping security measure, are correct. I have argued that unlike liberty, security is a good that one can enjoy non-reflectively, that is, one can experience the benefit of having security without being aware that one has it. The valuable options between which one chooses in enjoying liberty are possibilities of action or “capabilities” (Sen 1993, 1999, 2009). The valuables on which security’s value depends may be possibilities as well, but need not be. More generally, the mode in which a person engages with the external objects differs as between security and liberty. Someone who enjoys the good of liberty is, so to speak, in a state of suspension between valuable possibilities: to this extent, enjoying liberty necessarily involves the experience of one’s own agency. On the other hand, one is
secure with respect to certain valuables insofar as they are invulnerable to losses inflicted by the agency of others (Newey 2012).

The awareness needed to enjoy liberty but not security, then, licenses the political argument that the liberties of which subjects are aware are jeopardised by the security which they take for granted. It is the very fact that security is less visible, in this respect, than liberty that leaves room for politicians to argue that “complacency” or lack of “vigilance” means that the security which is necessary to the continuance of political society, including liberty itself, has been neglected. Of course, the idea that security is necessary for liberty stands opposed to the claim, also often made when securitisation rhetoric is deployed, that security necessarily opposes liberty. I have already criticised that claim. The contrasting idea here is that unlike security, liberty is missed when it is removed, because as an intrinsically reflective good it is enjoyed through being aware of it.

The DNA database example, however, suggests that this needs qualification. Surely people may be deprived of liberties without knowing it? Perhaps unbeknownst to me my DNA was retrieved from a crime scene and now is on the database. Since its retrieval occurred without my knowledge, it has no direct experiential effect on me. However, this is precisely a case where the security of my liberty is under threat. It is clear why Hamilton and other American revolutionaries like Benjamin Franklin saw threats to liberty as necessarily threatening security, so that security-based arguments for retrenching on liberty must be self-defeating. It may be objected that if so, liberty cannot be intrinsically reflective, since it can be removed or reduced without one’s knowledge. This is right: the difference between liberty and security only arises when liberty is exercised, rather than when it is viewed as an opportunity-set (for this distinction, see Taylor 1979; cf. Nelson 2005). So, insofar as the idea that liberty and security conflict has a conceptual basis, it lies in the intrinsically reflective exercise notion of liberty. An opportunity-set can be seen as a valuable, and thus as something in respect of which one can have or lack security, irrespective of whether one is aware of having the opportunities. But without that awareness one cannot exercise the specific liberties that constitute the opportunities, nor can one choose between them. This means in turn that one cannot enjoy liberty in these forms.

None of this negates other explanations of the conflict between liberty and security, such as power-holders’ interest in using securitising rhetoric to override or short-circuit democracy (e.g. Honig 2010). Nor does the explanation just given entail that the conflict idea is justified after all. Even an exercise concept of liberty can be expressed in the language of security, in that the former requires opportunities. The idea that theirs must be the exercise conception of liberty has perhaps deterred republican theorists from embracing the value of security as wholeheartedly as they might (e.g. Skinner 1997; Pettit 1997; Laborde 2008). On any plausible view,
the collective freedom to act both threatens the freedom of some, such as fellow citizens (freedom conflicts with freedom); and requires security for its exercise, such as from external threats to the collectivity (freedom presupposes security). Understanding is helped neither by accepting securitisation rhetoric at face value nor, while seeking to subvert that rhetoric, to keep its foundation intact – the opposition of security and freedom.

Conclusion: Spinoza

I began by noting how freedom and security have been seen as opposed in political rhetoric and theory. But there has long been a contrasting tendency in political thinking about the relation of security to liberty. Spinoza suggests as much early in the *Tractatus Politicus*, where he argues that “liberty of the spirit, or courage, is a private virtue; but security is the virtue of the commonwealth” (Spinoza 1958: 264). This seems to demarcate spheres of security and liberty. But in the *Tractatus Theologico-Politicus*, Spinoza expresses a different view. There he argues that the object of political society is not security, but liberty:

from the explanation of the foundation of the commonwealth which was given earlier, it very clearly follows that its final purpose is not that of domination, nor is it to keep men cowed through fear and to subject them to the rule of another, but on the contrary to liberate each and all of them from fear so that each one may enjoy security insofar as he is able to do so, that is, so that he can best retain his own natural right of living and acting, without injury either to himself or to other people. The commonwealth’s purpose is not, I say, to change men from rational beings into brute beasts or robots, but on the contrary allow them to develop in safety the faculties of their minds and bodies, so that they may make free use of their reason and may avoid the conflict and the unjust mutual abuse that result from enmity, anger or deception. Therefore, the purpose of the commonwealth is, in fact, liberty (Spinoza 1958: 228-30).

Spinoza upholds here a merging of security and liberty as ends or purposes of civil association. The commonwealth comes into existence in order to free people from fear so that they can enjoy security. However, as Spinoza goes on to explain, this end (while presumably good in itself) serves the ulterior purpose of creating the conditions in which people can develop their mental and physical faculties and thereby “make free use of their reason” – which Spinoza identifies, for human beings, with liberty. It is unsurprising that Spinoza should see political liberty and security as having this close relationship. In Part III of the *Ethics* he defines liberty

18 Spinoza, *Tractatus Politicus*, §1.6. For commentary on this passage see James 2008.

19 Balibar 1998 argues that the incomplete *Tractatus Politicus* marked a shift in Spinoza’s thought towards a belief in security as the political *sumnum bonum*. Compare V ii of the *Tractatus*. See e.g. 116. For a contrasting view, see Feuer 1987, e.g. 193.

20 Ch. 20, §6; my translation.
or freedom as the *conatus* or striving by which a being strives to preserve itself in accordance with the dictates of its own nature. Its overriding drive towards self-preservation – which one could see as the valuable good *sine qua non* – is identified with a being’s freedom. Hence for Spinoza it would be mistaken to think of freedom as something which is traded away in exchange for self-preservation. Instead, freedom consists in the *conatus* by which all creatures strive to preserve their own nature.²¹

Even in the case of Hobbes, often cited as a thinker who gives security absolute priority over liberty,²² matters are not so straightforward. In Hobbes’s view the decision with which people are faced in the state of nature does not reduce simply to abandoning liberty in favour of security. Instead, in realising the rational necessity of obedience to a sovereign, they recognise that that form of freedom which consists in the right of each person to everything necessary for self-preservation needs to be given up for the condition of civil liberty. There, as Hobbes says in *Leviathan* ch. 21, each citizen’s freedom depends on “the silence of the laws”.²³ The apparently limitless freedoms embodied in the natural rights of the state of nature, whose rationale is self-preservation, are of little value without security, whereas liberties in the civil state, though circumscribed by the law, are underwritten by the sovereign power.²⁴ It is not that the imagined agreement to institute political authority involves a trading of liberty for security; but that, by the fact of agreeing, people create the security needed for their liberties to be effective.²⁵

References


---

²¹ Spinoza, *Ethics* Part III, Proposition VI: “Everything, insofar as it is in itself, endeavours to persist in its own being”.


²⁴ This point is well made by Skinner 2008, 52-53.

²⁵ This is not to ignore Locke’s famous gibe against a strongly statist view of political authority, that in instituting a monolithic power, it creates a remedy worse than the disease of private insecurity. Locke, *Second Treatise of Civil Government*, §93. The objection however does not turn on an opposition between liberty and security, but on the thought that any regime powerful enough to retrench on private liberties will be, by the same token, a bad bet as regards citizens’ security.


