

## II. Security and the Challenge to Liberal Values

Security is valuable to any society. For each society, security offers a form of stability in the face of vulnerability, but within liberal democratic polities, security also provides – at least in theory – a social environment within which individual citizens and other dwellers can flourish. That is, security offers to citizens and others a stable framework for the pursuit of the various goods that they seek to realize for themselves. Henry Shue speaks of individual security as a basic right – indeed, as a right that underwrites all other rights, including, in his view, other basic rights such as subsistence and liberty.<sup>1</sup>

How security is to be understood and how it is most appropriately achieved are questions that we will address in the course of this study (especially in Chapter VIII). What is to be noted here, however, is the impact that the events of 9/11 had on conceptions of security and the ways of achieving it, as well as on the relations between security and other important liberal values such as liberty, autonomy, privacy, dignity and the maintenance of one's identity.

It is indisputable that the events of 9/11 constituted a massive failure of security – not only of security procedures at various US airports but also of larger federal security processes directed against terrorism and threats to national security. Such failures naturally raised questions concerning the adequacy of security at both local and federal levels.

More than one response to such circumstances might be proffered:

1. It might be argued that the security measures in place were as good as they could have been expected to be and that the breaches that occurred represented a cost that needed to be borne. That is, it might be argued that even with our best efforts it could not be expected that we would be impervious to all breaches. Relatively few have been willing to argue that (and even fewer since the Christmas 2009 bombing attempt). The benefits of hindsight have made it clear that even though we might expect there to be unanticipated and unpreventable breaches of security, the particular failures that occurred were realistically preventable and should not have happened. We need not have accepted what occurred as the cost of remaining a decent society.

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<sup>1</sup> Henry Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy*, second ed. (Princeton, NJ: Princeton University Press, 1996), ch. 1.

2. It might be argued that although the security measures already in place could have been utilized to prevent the particular attacks from occurring they occurred as a result of technical or human failings. No more was needed except for what already existed to have worked better than it did.<sup>2</sup> Although this position was taken by some, and might indeed have much to be said for it, it was not a politically popular one.<sup>3</sup> In part, dissatisfaction with such a position was associated with the view that the magnitude of the threat had been underestimated and that for such threats heightened measures need to be in place.
3. Although many accepted that some failures of otherwise adequate security procedures had occurred, they argued that what was really called for was not simply that the existing system be made to work but also that security measures needed to be dramatically increased. We needed much tighter security to ensure such events would not happen again.

One significant cost of giving most weight to the third of these responses was that ramping up security placed pressure on other values also held dear within liberal democratic polities. In particular, it was argued that an “imbalance” had occurred between liberty and security and that this needed rectification.<sup>4</sup> We would need to give up some liberty in order to bring our security to an acceptable level, but liberty – in the sense of social freedom – was not the only value placed under pressure. Privacy was also compromised and along with it autonomy, or the inner freedom that is so greatly prized within liberal democratic theory. Furthermore, insofar as certain people were more heavily targeted than others as a result of enhanced security measures, issues of identity, dignity and equality, or non-discrimination, were brought to the fore.

We will later have occasion to question the metaphor of “balance” to characterize the relations between security and other values, such as liberty. For one thing, increased security does not necessarily imply a trade-off in terms of a significant reduction in freedom or privacy; it might simply involve greater expenditure of resources on security without any lessening of legal and ethical constraints on the powers of security agencies. For another thing, where trade-offs do actually occur the metaphor can mask them by misleadingly implying that the rectification of an imbalance was a costless process, as though the resulting liberty were not significantly impaired. But it is more relevant at this juncture

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2 There are numerous white papers, news articles, podcasts and webinars that suggest ways of doing this. See, for example, the webinar of Patrick Howard, Chief Information Security Officer, Nuclear Regulatory Commission, “Creating a Culture of Security – Top 10 Elements of an Information Security Program”, available at: [www.govinfosecurity.com/webinarsDetails.php](http://www.govinfosecurity.com/webinarsDetails.php).

3 The point was made just as plausibly – though hardly more popularly – with respect to the Christmas Day 2009 bombing. See: <http://i.cdn.turner.com/cnn/2010/images/01/07/summary.of.wh.review.pdf>.

4 Here the term “imbalance” was often implicitly understood in terms of a trade-off.

to note some of the ways in which the ramping up of security has impinged on these other values. We confine ourselves here to cases involving the use of digital technologies.

There has, first of all, been a growth in the use of surveillance technologies. This is no doubt partly a function of the increased availability and greatly enhanced power of these technologies. After all, they are being used in a wide variety of settings for reasons other than security, such as in the workplace.<sup>5</sup> However, security concerns have been a key driver. The uses of these technologies have included the proliferation of closed-circuit television (CCTV) and other visual surveillance devices, along with their greater centralization. Increased use has been made of wiretapping and other measures designed to access communications between people. The use of X-ray-type devices to scan persons and their possessions has also greatly expanded.

Secondly, increasing use has been made of data gathering and data mining activities. Vast numbers of public – and not so public – documents that once needed to be sought on an as-needed basis, often with some effort, have now been digitalized and their data centralized in huge databases where they are available for access or purchase (by commercial, private and government organizations). Such data have enabled the construction of identity narratives for the purpose of investigation or profiling.

Thirdly, data mining has enabled the development of profiles for various purposes, including the investigation (and even perpetration) of crime and terrorism. Although profiling (especially where race was implicated) came under heavy criticism during the latter years of the twentieth century it made a powerful comeback after the events of 9/11. Aspects of this issue pose serious challenges for liberal democratic values.

In this study we seek to outline the development of these technologies in order to identify the ethical, social and legal risks associated with them, to examine possible responses to those risks and to make some recommendations concerning best practice.

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<sup>5</sup> See Seumas Miller and John Weckert, "Privacy, the Workplace and the Internet", *Journal of Business Ethics* 28, no. 3 (2000): 255–65, and John Weckert (ed.), *Electronic Monitoring in the Workplace: Controversies and Solutions* (Hershey, PA: Idea Group Publishing, 2005).