

The Price of Security: a roundtable. First published in *The Philosophers' Magazine* 53 (Summer 2006); reprinted in *What More Philosophers Think*. Eds. J. Baggini and J. Stangroom Continuum (2007): 19-32.

TPM : What has been your general impression of the measures introduced in the UK as part of the "war on terror", such as detention without trial and control orders?

McWalter : The incredible rush to legislate on such matters in a matter of days in the UK is completely anti-philosophical. One of the things you expect a philosopher to do is to see not only the consequences of a proposal, but the consequences of the consequences; and even the consequences of the consequences of the consequences. That's why we do philosophy, because policy has unobvious repercussions. Given that policy on terrorism is such a difficult area, to take executive decisions about what the legal framework is going to be within a very short time is itself deeply invidious to the welfare of society and the liberty of its subjects.

TPM : Isn't it a little precious of philosophers to say "We need to take our time and think things through?" Isn't it a political necessity that sometimes things do have to be dealt with quickly?

Audard : The rush itself is not a drawback. What is important is the inclusion of a sunset clause, so that any legislation on those matters has to stop at one stage and be re-enacted and reconsidered again. That's crucial.

Meckled-García : It's quite right that under certain circumstances governments, executives and legislatures have to take measures which are emergency sensitive. But that has to be balanced against two other factors. One is the scale of the threat: how large is the imminent danger? And also there has to be a level of proportionality. I think the more draconian the measures, the more you have to think about how hasty the legislation is. In this case I think the measures that were proposed were so out of proportion – especially as they contravened the convention of human rights and other civil liberties standards – that the haste was indecent.

Voorhoeve : I wonder if the problem is not the government's haste, but instead the belief that the government will not, on balance, lose votes in the next election by appearing to be tough on terror. The government will therefore intentionally push the boundaries, and take controversial measures. But we should be reluctant to limit rights that have withstood the test of time, that have proven to be good solutions to perennial social problems. Limiting the right of *habeas corpus* and allowing secret evidence, as is happening in the case of control orders, for example, shows a lack of respect for tested ways of ensuring that detention is justified.

TPM : None of this so far suggests that any of the measures themselves are actually wrong, or that there are any principled objections to them, only that they've been brought in too hastily.

McWalter : The issue is not the measures, it's the evidence-base on which those individuals are selected to be the objects of those measures. We all know, particularly in the age of George Bush, how lamentable governments can be, and how wrong their systems can be. Post-the Iraq war we all know how rotten the briefings which are meant to give them the information on which they take these decisions can be.

Voorhoeve : The principle is this: we should be very careful about giving officials power to effectively punish people without proper checks. We don't have to believe in ill intent or recklessness on the part of government in order to consider this an important principle. It's just that mistakes are very often made, as intelligence on Iraq and other cases show.

Audard : I think we need to remember the notion of civil liberties where security is a basic right. If people could understand national interest or national security in more convincing ways, then the threat of terrorism would make more sense. Instead in Britain we see it as a

conflict between *raison d' état* – of the state and the executive – and civil liberties. Things are not like that. Liberty without security is meaningless. Beyond the conflict the aim should be about including reasonable access to security within our framework of civil liberties and reaching a balance instead of rushing into conflicts of principles. A measure of pragmatism is important. Do the preventive measures have reasonable chances of success? Probably not. This should be explained too: what minimal level of security can democracies provide their citizens? How much extra or non-derogatory power does the state need to meet these new risks? Information and public debate about calculated risks should have happened prior to the legislation to avoid hysteria. But this would be too philosophical.

McWalter : I think it is wrong for the government to take non-derogatory powers. A power is derogatory if it is subject to independent assessment, which may conclude that a minister took a decision against an individual which he or she should not have done. A non-derogatory power says "I'm going to make this decision as Home Secretary and I am not responsible to anybody and nobody is going to oversee this." That is in my view the weakness of the 2005 legislation. The overall consequence of that is that we have a power which has never been implemented, but it shows the tip of an iceberg, that there is constant move towards a non-derogatory system rather than a derogatory one.

Audard : But the difficulty is that we are trying to prevent terrorism, not simply to clean up afterwards, and that is a difficult grey area. We are giving non-derogatory powers to prevent terrorism, and that's really tricky.

McWalter : We have a strong system built up over generations, which has immense wisdom about how we try to reconcile these different aims; if you're faced with a new threat you seek a new statement of what you do to continue that tradition but to apply it in new ways. Non-derogatory powers went well beyond that and you wouldn't have arrived at the same legislation if someone had been given a proper chance to say "hang on a minute, this is going to affect innocent people in ways which are far too detrimental not just to their interests but the interests of the wider society."

Rée : This is beginning to look like old Labour meets Burke. Tony is speaking like a traditionalist getting high on the aroma of old British ways. But they have been abridged often enough, for example, during the Second World War, much more severely than now, with the compulsory internment of enemy aliens. I'm afraid that if this is the kind of thing that philosophy wants to contribute to political discussion then it is not going to get very far: politicians would respond, "That's all very well, but politics is about emergencies in which you have to balance one thing with another. Talking about consequences of consequences of consequences is something that may make you feel very pleased with yourself, but remember that philosophers talked about consequences of consequences of consequences and found themselves solidly backing the Soviet Union, China and Nazi Germany."

Meckled-García : I thought the consequences of consequences point was that the government continuously declares itself to be in favour of what it calls "evidence-based policy making", the idea that you really need to know what the policy does in terms of evidence, that you can show it works; yet in instances like this it comes out guns blazing. That was the point, rather than that philosophers should sit around thinking about consequences until the cows come home.

One thing that the government seems to be very good at doing is blurring traditional boundaries within the legal system, in particular the boundary between a suspect and somebody who's come through the courts and who has had their innocence tested. When you allow the status of "suspect" to have such drastic penal consequences for the individual, you are blurring the boundaries between that concept and the concept of convicted criminal. I think there is a principled question there.

TPM : You say that people have blurred the boundaries between things like suspect and criminal. Maybe the reason they do that is that conceptual distinctions are never as neat in the

real world as they are in theory. As soon as you enter the world of practice, you have to blur distinctions. You refuse to do so at your own peril.

Rée : Surely the problem is that until you've committed your terrorist act, like 9/11, you haven't actually committed a crime, and so you can't be treated in the same way as someone suspected of fraud or drug dealing. A drug dealer is committing a crime now. Someone planning a terrorist attack in a year's time isn't....

Voorhoeve : Yes they are – committing acts preparatory to terrorism and conspiracy to commit an act of terror are crimes.

McWalter : The point about needing 90 days to gather evidence is because there isn't any direct evidence in terms of say explosives, because the conspirators don't need such materials until the day before their planned action.

TPM : There is a topical example, actually. Recently the “radical Muslim cleric”, as he is usually described, Abu Hamza was sentenced to seven years. It is so obvious now that the number of people who were involved in very actual and often horrific crimes who can be traced back to him is very large. Surely people who are going to defend what are called “draconian measures” are going to say this is exactly an example of what happens if you are too afraid to take pre-emptive measures before the event. By the time you step in, by the time there's even a plot it's too late.

McWalter . This is not relevant at all because Abu Hamza was committing acts which were illegal even under the 1861 act, and therefore you don't need new laws and statutes to cope with them. The fact that our security people were pussy-footing around is neither here nor there. You didn't need a new statute to deal with him, whereas in these other cases, as Jonathan has correctly said, you clearly do, because those who recruit suicide bombers actually get people who are completely clean in terms of their records. If you shoplifted as a 14-year-old you're not going to be a suicide bomber because you have a record somewhere in the system and they will pick you up. So potential recruits have to be completely clean and those who recruit know that they have enough people who are completely clean to carry out these acts.

Meckled-García : What's fascinating is that “completely clean” reminds me of Meno's paradox, which is: how do you know what you're looking to find out unless you already know what it is; until you know the shape of the thing you are trying to investigate, how will you know you've found it? Crazy, being “completely clean” can make you a suspect because no one knows which completely clean individual is a threat until they have committed a crime. Arrests, then, become random. You end up in the situation in cases in the States when you had all these incarcerations effectively, and only five people were eventually charged, and even the things they were eventually prosecuted for were just passport inconsistencies and things like that.

Voorhoeve : I accept the need to stop people before they've committed an atrocity. That is probably what the terrorism bill has done well – to bring in a lot of new crimes which relate to planning and supporting terrorism. But once you have that, it's not clear to me that you also need a very long period of detention without charge on the basis that they haven't committed a terrorist act yet, since they may have committed one of these other offences.

TPM : So the dominant view seems to be that if you legislate against the right kinds of crime and the powers are derogatory, then you don't need the more draconian measures like detention without trial for extended periods.

Rée : It strikes me that one advantage of creating a non-derogatory power – if I've understood what it means – is that it then clearly belongs to an accountable minister. And it's actually quite a good idea that it should be someone who is nameable and responsible. It wouldn't be much better if it were done by an anonymous panel of experts.

Meckled-García : The point with non-derogatory powers is that they're just decisions which ministers make, and they can be made *in camera*, they can be completely secretive.

Voorhoeve : Reasons for government decisions should generally be made publicly accessible in terms which every reasonable citizen could understand and accept.

TPM : This is all checks and balances stuff. So imagine all the checks and balances are in place, with the proper things legislated against. Could we imagine a justifiable, well-drafted bill for 90-days detention without trial, with derogatory powers?

Meckled-García : But if the right things are made illegal, if something warranted your being detained for 90 days, it would be recognised as a criminal offence.

Voorhoeve : None of us are saying, "Under no circumstances could 90 days detention be justified." It's just that given the great importance of not giving government powers to punish people without putting the punishment through a court, the case has not been made.

Audard : I was wondering whether Britain would be better off with a written constitution, because the balance of power and the checks and balances would really be working. If we have the law lords saying, "no way, that's impossible", there would nothing for us to protest against.

TPM : What about the laws concerning glorification, justification, promotion and fermenting of terrorism?

Audard : Advocacy of revolutionary and subversive doctrines is part of free speech and is allowed. But would glorification of terror fit into that category? That's not glorification of a doctrine, it's a glorification of means that leads to criminal activities, to inflicting death sentences on innocents, etc. Are these discourses completely disconnected from criminal acts? Are discourses in the void or should not the speaker or the author be held to account?

Meckled-García : I don't have a problem with fermenting, but normally a liberal principle of free speech is one that regards expressions of free speech to be available and permissible so long as those expressions don't themselves lead to a particular kind of consequence. So you don't judge an expression of free speech in terms of its content, you judge it in terms of its consequences.

TPM : This isn't just hypothetical. What would the law make of Ted Honderich's book *After the Terror* ?

Meckled-García : That's a good example. Honderich continues to entertain the idea that some forms of what he identifies as terrorism – and incidentally it's a different definition – are in some instances justified. The Palestinians, in his words, are morally entitled to their terrorism. Now if the government or the appropriate body were to identify that as a statement which fits in with its definition, he would be a criminal. I think it would be quite likely that there would be individuals calling for the crown prosecution service to prosecute him, because he is justifying certain forms of terrorist acts. I think that would be a mistake. If it can be shown that you're directing terror, that's an entirely different ball game, because you're talking about very specific consequences.

McWalter : I think your argument is in part to do with a perception in the wider society that philosophy is impotent, and hence it can be tolerated. Not all would agree. I think that it's very interesting that the Catholic church, when they ran the Index, the books they put on the top were philosophy books. Kant's *Critique of Pure Reason* was on the proscribed list until the list was itself abolished in 1967. The reality is that, if people think that if a case is really well argued – and I agree with Jonathan that philosophers don't have a monopoly on that – and if the view becomes absorbed into society, not always with people even explicitly reading the book, some people may say that's far more dangerous than some nutcase raving on the lawn outside Finsbury Park Mosque. Philosophers often are tolerated by society because we are seen

as impotent; but following the conviction of Irving in Austria, where it is clear that the assumption that history is sociologically impotent has been rejected, there is a distinct possibility that the tabloid press in the UK can put a philosopher in the spotlight today, and the freedom of philosophers can be curtailed tomorrow. That is why Catherine was right to say we need a written constitution, for we should see such freedoms as defining our society.

TPM : That does seem to question the attempted distinction between incitement and justification. What you seem to be saying is that a justification for terrorism could do more to actually bring about terrorism than a random person standing on the street saying "bomb the bastards". The question is: can a sincerely argued justification for terrorism be seen as incitement and something which the law could justifiably punish? Imagine a law which criminalises incitement but not justification specifically: could a justification be taken as incitement if it could be shown that that justification had consequences?

Audard : The reaction of some Muslims has been to say that of course many of those who are called terrorists in the West are in reality freedom fighters such as we have had in the past too in Europe or in the ex-colonies and so we should understand their glorification of terror as legitimate. That's a very strong form of justification but it is unacceptable because the aim of terror is the prevention of any democratic form of conflict resolution.

Meckled-García : It's not about consequences or no consequences. Any piece of writing can have consequences and they're often unpredictable. You can see why incitement has immediate and obvious consequences, it's telling people directly to do something. Giving a view that there are theoretical justifications why terrorism is sometimes justifiable – I'd like to see that, just like the current tracts that argue torture is justifiable, because you want to be able to engage the arguments and you want the public debate to continue on that basis. Now that might have consequences down the line.

TPM : Are there any other aspects of the legislative response to the terror threat that interest you?

Audard : My worry about all this concerns the perception of terror and what it means in a free society, compared to the kind of terror people experienced during the war. We mentioned terrible injustices, the internment of aliens in Britain, etc. I have a feeling that after 9/11 and 7/7, things have gone out of control, and that they should be brought into perspective with what Britain has been through with the Irish question. Historical awareness and public debates are important to help to assess the situation. My question is: are these new crimes? Are we really so vulnerable that we need entirely new measures? We are not sure enough of our principles – that Tony earlier labelled as strong and wise. The bases of democratic life are not really clear enough in this country, or in the liberal West in general.

Voorhoeve : Catherine talked about the continuities with the threat of the IRA and so on, but the current threat seems different. I don't think that the IRA had the intention of killing as many people as possible in Britain. It wanted attention for its cause, it wanted to push public opinion in a certain direction, but I cannot imagine that it was its intention to kill, if possible, 100,000 people in Britain.

Rée : I'm not convinced that there's that much of an overreaction to terrorism, though I'd agree that terrorism is too vague a word. Surely the basic question is whether or not the society we live in is under threat from Islamo-fascism. If it isn't then we need not get worried; but if it is then we need to think again.

I am worried by something that keeps coming up in our discussion: a general suspicion of the motives of politicians. I'm afraid that people like us are vacating the proper sphere of politics in the name of a kind of purism.

One thing we keep coming back to is that maybe this legislation isn't really necessary because there are already statutes which cover these offences. But the state is not like an academic

committee devising a set of exam regulations. Legislation is a political act as well as a legal act and there can be reasons why it is proper for a state to introduce legislation that from a theoretical point of view may not be absolutely necessary. Legislation that repeats existing legislation can energise discussion.

And I would like to make a more general point about what's changed over the last twenty years: the rise of what I would call moralistic masochism: which is to say people scanning the political horizon in the hope of finding things which make them feel deeply depressed. We embrace bad news as a confirmation of our own moral discrimination. There's a wonderful remark that Kierkegaard makes about people producing political opinions not in order to contribute to discussion about what society should be like but to contribute to the image of their own moral praiseworthiness. It's happened among people who like to think of themselves as progressive in the west and it's the exact mirror image of certain kinds of fascistic movements particularly within the Islamic world, where radicalism thrives on bad news. If the protesting Islamists thought that the diffusion of those offensive cartoons was damaging what they hold dear they wouldn't have gone about their protests the way they have.

That's what I mean by moral masochism, and I call it moral because it seems to me to be turning every issue into one about individual righteousness rather than one about the collective interests of society. An elementary fact that philosophers should be deeply aware of is that political imperatives and moral imperatives often conflict, that moral imperatives often conflict with each other and that political imperatives sometimes have to be allowed to trump moral imperatives, quite apart from negotiating between them. And I'm afraid that the whole way we're approaching these discussions, and tearing out our hair about infringements of civil liberties, is part of a process in which the political field is being evacuated, political arguments are being removed from the political sphere and replaced with moralistic soap-boxing.

Meckled-García : I haven't seen any political theorist write any work in which they identify this autonomous area of the political which is somehow devoid or distinct from principles.

Rée : But moral principles are not the only kind of principles...

Meckled-García : If you mean practical principles of action, then I think that all practical principles of action, if they are going to motivate the organisation of our social life, then have to at some point engage with morality and social principle. And if you want to say they are specific things called political principles then I think they're just a subset of moral principles.

Rée : Hannah Arendt has a neat way of distinguishing the political and the moral: the moral is about what kind of person you'd like to be and the political is about what kind of society we'd like to see.

Audard : The distinction does not make sense because as a person I have strong views about the kind of society I want to live in and the kind of good social life represents. Living in a democracy and not under State terror – or religious terrorism – means that my view of the good can translate into the political.

TPM : I'm sure we could go on much further, but we've run out of time, so we need to end it there. Thanks for your contributions.

Catherine Audard is visiting fellow at the London School of Economics and the co-founder of the Forum for European Philosophy.

Tony McWalter is a former Labour MP and lecturer in philosophy at the University of Hertfordshire .

Saladin Meckled-García is Lecturer in Political Theory and Human Rights at University College London.

Jonathan Rée is a freelance philosopher and historian, and visiting professor at Roehampton University and the Royal College of Art.

Alex Voorhoeve is a lecturer at the Department of Philosophy, Logic and Scientific Method at the London School of Economics.