Security in Simplicity

by Richard A. Epstein

It is a great honor to be asked to give a few remarks on the occasion of this distinguished convocation, even in these uncertain and perilous times. In more peaceful and joyous times, I have no doubt that Kofi Annan, the estimable Secretary General of the United Nations, now otherwise engaged, would have been able to come to Ghent to claim his richly deserved honorary degree. I am equally confident that he would have stood on this podium to deliver some well-chosen remarks about the United Nations’s precarious diplomatic task of obtaining and maintaining collective security on our most divided planet. But he would have, of course, begun by offering his cordial thanks to the University of Ghent and its distinguished faculty, who have bestowed on us the honorary degrees that we receive today.

I wish I had the knowledge and insight to speak directly to the epic decisions of war and peace that too often divide the United States from its long-standing European allies. But I do not. My professional expertise starts with the cross between legal and political theory, and concerns questions of economic and social regulation. Accordingly, I shall address the great question of security from this more remote academic vantage point.

To do so, I will address two interlinked terms: simplicity and security, in order to show how the former promotes the latter. Simplicity urges us to make sure we concentrate our limited resources on a few well-defined tasks, with clear and measurable outputs, which are most important for government to achieve. For its part, security stresses as its core element defense against aggression and, parenthetically, such dangers as pollution and communicable diseases. These allow us to create a durable legal framework that makes it possible to achieve world peace through free trade.

In many high places, this thesis is not a popular one today. But remember that the protection of bodily integrity is not achieved behind high tariff walls, either in the United States or the European Union. Too often we erect trade barriers (such as the American tariffs on imported steel) while glossing over the question of “security against what.” All of us crave security, but we must craft our objectives carefully, lest security for some creates greater insecurity for others.

In taking a simple, but not simplistic, approach to this security, we must put first things first. The first order of business, domestic or foreign, is to protect citizens against bodily assaults and attacks by other persons. Self-preservation is not the only aspiration of a civilized society, but it is, as Hobbes and Grotius have long noted, the sine qua non for any and all individual or collective pursuits. Achieving this simple end, however, is no simple task. The clever aggressor does not only bludgeon his opponents, often the credible threat of force alone allows him to achieve his ends.

Abstractly, it’s always possible to postulate some self-reliant individual who deludes himself into thinking that he is better off in the war of all against all than he is under some collective guarantee of civic peace. But such foolhardy souls are few and far between. The original social contract theorists had the right insight: all individuals gain more when they sacrifice their “liberty” to attack others in exchange for security against the like attacks of others. That proposition generalizes well from small communities to large societies.

Yet that simple aspiration is unattainable in many portions of the globe today, for much remains to be done to turn this well-nigh universal aspiration into a series of stable
social practices. Bitter experience teaches that only force can counter force; yet placing all power in the hands of a single person, unrestrained by the rule of law, only works the unhappy swap from anarchy to tyranny. We have to therefore invest heavily in institutions that turn this simple directive into the practicable and sustainable world of ordered liberty. We are driven into extended discussions of the use and limits of the principle of self-defense: when may force be used in anticipation of harm, how much force is excessive. These matters were as urgent to Locke and Grotius as they are to us. No matter how hard we try some error will creep in when we seek to balance the risks of moving too precipitously with those of not moving at all.

In the end it is only with the separation of powers, and checks and balances between the branches, that we can hope our political institutions will strike the right balance. Exactly how these powers are divided and checked is a point for intelligent debate that might address the relative desirability of Parliamentary versus Presidential governance. These issues do not get any easier in countries that have been driven apart by ethnic conflict and the distrust that it creates. But no matter what form is chosen, we need a judiciary that is free from corruption and bias to enforce these commands, and we must accept that some taxation, equitably distributed, is the price we pay for both liberty and security.

Our initial object lesson is that the path to the simplest and most indispensable notion of security is fraught with obstacles. In western democracies, we take justifiable pride in the belief that we have solved the problem of order writ large. But as we look around the world, we must recognize that many nations and people have failed, or have been thwarted, in their efforts to achieve this goal. We should be humbled into recognizing that the business of achieving the minimal state, as some political theorists have termed it, is no small undertaking.

How far then should it go? One imperative extension is the security of exchange allowing every trader that if she keeps her part of the bargain, the law will hold the other party to his. Moral philosophers worry, in my judgment, too much about the “moral” force of promises without recognizing that their enforcement works to achieve gains from trade by allowing greater flexibility in exchange over time. This point should not be construed solely in narrow economic terms, for free trade has far broader implications for security. Let the opportunities for voluntary exchange be blocked, and the returns from private violence seem more attractive. We should therefore expect to see some movement from the world of joint consent to the world of unilateral aggression. Limit free trade, and we shall struggle to form those intermediate voluntary organizations that mediate between the individual and the state. Limit the gains from trade, and we will shrink the resource base available to fund and monitor those institutions needed to preserve social order. That inescapable perception of a shrinking economic pie will, in turn, set haves and have-nots against each other. Material prosperity offers its strong contribution to civil peace domestically, and the same arguments play themselves out in the international arena. War is less likely to break out between nations that have healthy systems of voluntary trade between them. Each nation will have domestic blocs that will lose from the conflict, which they will accordingly oppose.

This far we should take the notion of security. But how much further? Here in both the European Union and the United States, a common aspiration is the dream of obtaining
a modern system of social security that goes beyond protection of bodily integrity and voluntary exchange. It hopes to insulate through legal rules a safety net that secures all individuals against misfortunes that have no human origins, or even those which are in some sense self-inflicted. These new forms of protection are in some cases specific: farmers clamor for a guaranteed price for their crops. Workers demand guaranteed wages and protection against dismissal. But remember, these new obligations do not increase security in a systemwide sense. As Friedrich Hayek reminded us in *The Road to Serfdom*, we can say with mathematical certainty that any effort to create extra security against the fluctuations in nature result in superior fortune for some but increases residual insecurity for others. If farmers have guaranteed returns, come rain or shine, then city dwellers must bear the risk of weather, against which they are less able to plan and guard. If workers are given guaranteed positions, then their fixed claims against the wealth of the firm poses greater risks to shareholders, which cannot be fully diversified away.

Note, too, the ominous long-term consequences. The effort for selective security can lead to an erosion of some simple rule-of-law guarantees that were once thought inviolate. Retroactive statutes are more easily justified, as are selective impositions of taxes and regulations on certain disfavored groups. Second, the state must divert its limited resources from the protection of bodily integrity and voluntary exchange. The finest minds in the nation are now preoccupied with defining the word "hour" for the minimum wage law or with selecting which crops are entitled to agricultural supports. Third, as should be evident in many parts of Europe today, these ever higher levels of protections lead to declining levels of productivity, higher levels of unemployment, and greater levels of social unrest. The influence of lobbyists likewise increases because there are more opportunities for legislative mischief. The United States and the European Union pursue the case for expanded economic security in different ways. We are partial to extravagant judicial enforcement; you favor powerful administrative decrees. On balance, the economic dislocations seem larger on your side of the Atlantic, but neither of us should take comfort for our own blunders in the errors of the other.

What then can we do to roll back the tide of increased expectations for insulation against all forms of insecurity? No quick cure comes easily to mind. Indeed it is very difficult to unravel entitlement programs once these are put into place. New entitlements breed new interest groups that will defend their hard-won rights no matter how great the dislocations from boycotts and strikes. Organizing the transition back to a simpler and more secure legal order is the work of a lifetime. Rolling back legal protection to the core requires individuals to be realistic about the few possibilities and the multiple limitations of social engineering.

Unfortunately, if we lose sight of those fundamental principles of social order, then we shall continue down the current path toward stagnant growth and political discord. To succeed we must be confident enough in our social judgments to limit our aspirations to get still more from the state, not an easy task in the face of constant calls for bold new social initiatives. Ironically, we have to learn to abandon great ambitions. We must aim low in our objectives, while being sure that we hit the target. That is the challenge of our generation, as it will be the challenge of the generation that follows us.