

July 23, 2008

# States of Terror, States of Consent: Philip Bobbitt's Strategic Transnational Politics for the Twenty-First Century

Kenneth Anderson

July 23, 2008

# States of terror, states of consent

## **Philip Bobbitt's strategic transnational politics for the twenty-first century**

Kenneth Anderson

Philip Bobbitt **TERROR AND CONSENT** The wars for the twenty-first century 688pp. Allen Lane. £25. 978 0 713 99784 2

Philip Bobbitt's *Terror and Consent* is a big book, enormous in concept and sweep, full of portent for transnational politics in the twenty-first century. Portentiousness in a book can be a good thing, provided it delivers as promised, and this one delivers more intellectual punch on the fraught relationships between state and society, terrorism and terrorists, than any book I know. Not everyone feels this way; one indicator of the book's intrinsic interest is the volatility of the reviews. *The Economist* was distinctly cool; Bobbitt's grand ambition, it said, "is confusing, hard to digest, and perhaps wrong". Niall Ferguson, on the other hand, recently called it the "most profound book on the subject of American foreign policy since the attacks of 9/11 – indeed, since the end of the cold war".

A problem with much current analysis of this nature is that it thinks small. Today's most serious efforts tend to avoid anything resembling a grand strategy for winning a long-term struggle against terrorists and terrorist organizations, and the states that sponsor and shield them. Favoured instead is the narrowing method of cost-benefit analysis and (adopting one version of it) an endorsement of defensive, immediate measures that are most obviously cost-effective. Talk of "victory" or "winning", meanwhile, might resemble talk of "war" – but these days few dare call it war, at least if one wants to remain respectable among Western policy, academic and political elites. Governments shrink back, in fear of precisely the Muslim backlash their timidity invites. *Terror and Consent*, for its part, is heterodox on a long list of things. Bobbitt thinks that the struggle against terrorism is plainly a war, to be called a war and fought as a war, against religiously driven Islamist ideologues who seek to establish, he says, their vision of

the caliphate. These figures operate in what he flatly calls “states of terror” that must be defeated. Nonetheless, changing conditions of twenty-first-century war, because of changing conditions of the twenty-first-century state, mean that war is not as it has long been.

Recent approaches to terrorism are driven not just by narrow cost-benefit analysis, but by a still narrower focus on something we might call “event-specific catastrophism”: preventing the next attack.

This is understandable for the Bush administration, considering what its officials see every day in secret threat assessments. The US Attorney General since late 2007, Michael Mukasey, has mused publicly about how constant and serious the threats against the US are; despite no successful homeland attacks since 9/11, he is “surprised by how surprised I am”. This may well be self-serving administration rhetoric, but much US policy is based less on “war” than on the last defensive perimeters: airport security, daily monitoring of cellphone traffic, internet analysis, watch lists, and many, many cement barriers. This is counterterrorism in a vital but stiflingly narrow sense. The cost-benefit analysis underlying such planning bears little resemblance to any strategic conceptual response to jihad that goes beyond preventing particular events of uncertain probability and magnitude.

Indeed, since 9/11, the Bush administration has undertaken only one genuinely strategic gambit – rolling the dice on Iraq and inviting al-Qaeda and other jihadists to make their stand there. But this is a post-hoc rationale: the Bush administration obviously undertook the Iraq war on a very different strategic basis.

The Bush administration’s numerous critics ridicule US counterterrorism policy in great measure within the same narrow framework that the administration has used. Sometimes the cost-benefit analysis would scarcely pass muster in an undergraduate economics class – the political scientist John Mueller, in his bestselling *Overblown* (2006), or the journalist James Fallows, each breezily announcing that the chances of getting killed in a terrorist attack are less than getting struck by lightning, or that 9/11 killed 3,000 people whereas 40,000 Americans die each year in automobile accidents and, ergo, well what? Cost-benefit comparison of opportunity costs makes sense only if comparing genuinely apposite opportunities. There have been some serious cost-benefit analyses offered in criticism of US policy. Cass R. Sunstein, for example, in his impressive,

thoughtful Worst-Case Scenarios (2007), calmly demolished the so-called “One Percent Doctrine” – Vice-President Cheney’s assertion that even a 1 per cent chance of a catastrophic terrorist event requires a response as though it were a complete, 100 per cent certainty. Not even all the instruments of the national will (what President Bush committed to the fight against terrorism after 9/11) are unlimited. Choices still have to be made and priorities established and, as Sunstein observed, preventative actions bring risks of their own.

Nonetheless, even sophisticated analysis takes the prevention of particular events as the fundamental analytic objective. There is an important political reason for this. The American public has been gradually downgrading terrorism as a political priority, even while continuing to say that it supports serious measures against it. American elites, for their part, have been sliding to a dismissively contemptuous view that questions the whole idea of counterterrorism as a serious, large-scale necessity. The threat is downgraded, deploying cost-benefit-style arguments to call the administration’s counterterrorism programmes trumped up and exaggerated, and to suggest that the terrorist threat is quite capable of management without special military or even extraordinary intelligence measures.

Leaving aside the frequent starting assumption that the Bush administration has illegitimately grabbed executive power, and that this, rather than terrorism, is the primary thing against which to protect, the fundamental factual claim is that the probability of a successful attack has been seriously exaggerated. How to interpret, in other words, the fact that the US has not been hit on its territory since 9/11: as evidence of the effectiveness of the anti-terrorism efforts, or evidence that the threat was always more chimerical than real? Thus, in Barack Obama’s reckoning, Islamist terrorism is just one threat among so many: climate change and poverty, genocide and disease. The task is to learn to do as Western European countries do, and manage terror and terrorism, preferably within the existing confines of the criminal justice system. A certain amount of terrorism is normal, because a certain amount of criminality is normal. Of course, the strategic circumstances of Western Europe are different from the US (the threat to Britain, for example, lies mostly within, not without); and few in the US stop to consider that the European approach is as much a matter of necessity as strategic preference.

It might make sense to pursue policies that can at least command wide if

shallow support. The kind of fundamental agreement that bound the Cold War's "Vital Center" in the US over decades appears not to be forthcoming. Even so, few will oppose measures narrowly tailored, through recourse to cost-benefit analysis, towards preventing the next attack. But the difficulty with this policy minimalism, as Bobbitt has observed, is that event-specific cost-benefit analysis is "relentlessly tactical". Even when not event-specific – even when it takes "Islamist terrorism" as a whole – it is by its very nature reactive. Cost-benefit analysis does not propose solutions; it evaluates proposed solutions offered by other processes. It is not a strategic form of thinking.

Terror and Consent, by contrast, offers strategic thinking on an unapologetically grand scale. It is synthetic across three large fields: history, law and strategic international politics. Bobbitt is able to combine academic and real-world experience – a Democrat by affiliation, he has served in senior positions in both law and intelligence in the Clinton and Bush senior administrations. His core insight is that transnational jihadist terrorism must be understood on the largest historical scale, and that requires understanding the shifting nature of the state and society in both the liberal democratic West and the rest of the world. For Bobbitt, jihadist transnational terrorism gets going by being able to exploit the interstices of the state system, not just on a geographical basis – the failed state of Afghanistan, for example – but on a historical basis, as the nature of the state moves from its incarnation in the twentieth century to something quite different in the twenty-first. Bobbitt's main point is that al-Qaeda terrorism, and what might eventually replace and transform it, cannot be understood without reference to the state system and its evolution over a long period of time. This leads Terror and Consent into a long walk through the history of the state in the West.

Narrow specialists will register many particular objections, and if one rejects in principle the notion of grand synthetic history, then one's reaction will be positively allergic. Bobbitt outlines, as a deliberate caricature, a kind of rough historical sketch (picking up the thread of his earlier masterwork, *The Shield of Achilles*, reviewed in the TLS, June 21, 2002), that the "princely state" system of Europe eventually gave way to the nation-state system that gradually emerged in the nineteenth and then dominated the twentieth century. Wars of the twentieth century were wars between Westphalian nation-states, and enemies in the wars of the twentieth century nation-states; even the wars of decolonialization were fought largely by parties that aspired to the status of nation-states. Since the end

of the Cold War, however, liberal democratic nation-states – what Bobbitt calls “states of consent” – have been moving towards something different from the nation-state, which Bobbitt calls the “market-state”. In the market-state, consent becomes less that of the citizen and more that of the consumer, for whom the state is a supplier of services. The market-state itself bears some resemblance to a corporation, outsourcing and privatizing significant activities; it is more relaxed about its territorial sovereignty while at the same time being willing to extend its regulatory reach beyond its borders. Globalization’s increased wealth is one driver of the market-state, but so is the secular (in both senses of the term) drive of individuals towards greater individual liberty. “States of consent” contrast with “states of terror” – the end aim of the transnational, nongovernmental and, today, Islamist terrorist groups that are also able to grow in the ecosystem of economic globalization and the relaxed conditions of, and among, market-states. States of terror are the evil twin of the states of consent – parasitical upon and enabled by the states of consent, at once pre-modern and postmodern but never really modern, and hostile toward states of consent.

Bobbitt’s market-states crucially retain key markers of states. This is not the dissolution of the state. On the contrary, it is precisely because market-states continue, for Bobbitt, meaningfully to be states that they are able to have national interests, marshal resources against the states of terror, and provide security for their citizens. Indeed, because Bobbitt insists on market-states as states, he likewise insists that the response to terrorism is a war on terror. These are criminals, yes, but also enemies – and states make war upon their enemies. War enables forms of strategic thinking about jihadist terror organizations that neither cost-benefit analysis nor the legal conception of terrorists purely as criminals allows as a conceptual frame. The double-sided vision of Bobbitt’s market-state leads Terror and Consent to a remarkably rich strategic vision of how concretely to make war against terror, terrorists and violent jihad – a vision that will make everyone, however, on every side of the strategic debate, unhappy in some measure.

Law, including international law – the Geneva Conventions, for example – is crucial. The Bush administration’s forays into arguments of permanent emergency displacing the rule of law, reminiscent of the political theories of Carl Schmitt, have been as disastrous as they are wrong. On the other hand, while deeply respectful of international law, Bobbitt does not think it – its meaning, interpretation and evolution – lies in the hands of

international-law professors and international bureaucrats. He is a committed multilateralist, not a purveyor of utopian supranationalism. His is a nuanced and practical international-law regime gradually shaped by the practices of states as conditions shift – very much, in fact, the pragmatic view that the US State Department has held of international law over many generations. As to domestic law and terrorism, *Terror and Consent* is, for example, decisively against Alan Dershowitz’s “special circumstance” arguments for torture. Yet the constitution is no “suicide pact” for Bobbitt – he endorses pre-emptive detention for terrorist suspects, significant increases in electronic and other surveillance, and coercive techniques short of torture in some circumstances.

He sharply criticizes the Bush administration for the incompetence of its post-invasion Iraq policy. He observes that many mistakes arose from the profoundly erroneous belief that this was a war of nation-states in which the fall of the regime completed things, whereas, in the wars of market-states and terrorist and insurgent groups, the war was just getting underway. Yet Bobbitt not only supported the Iraq war, he firmly believes in preventative war – and he thinks we will need more of it over the long run.

Each bit of this will discomfit someone. But the success of *Terror and Consent* as an argument depends largely on whether “market” and “state” can be corralled together as Bobbitt proposes, or whether, instead, the categories fly apart. In my estimation, the argument is highly persuasive; its success as policy in the real world, however, depends upon something different: whether the market-state partakes of more than simply the ethic of the market. The logic of the market, after all, is to write off the past as past, cut losses and get out as soon as cost-benefit analysis says things are looking dim. Is that really enough? If these are indeed its market values, is the market-state sufficiently nurtured by other values to have the will to defend itself? And this defence is not only against external terrorist enemies, but against those, for example, who would see liberal democracy converted, in the name of multiculturalism, to a form of religious tribalism. George W. Bush and Tony Blair have found it weirdly easier, after all, to send whole armies to fight in faraway places than ever to say no to the demands of communalist, ultimately illiberal, Muslim groups at home.

As a believer in liberty and consent, I should greatly like to share Philip Bobbitt’s hopes for the market-state. It does not take a conservative to wonder, however, whether this is enough to sustain liberal democracy in the face of spiritual threats. A long tradition of what Lawrence Solum has

called the “left Burkeans” – Christopher Lasch, for example, or Zygmunt Bauman – has argued that the market is as much socially corrosive of the values of liberal democracy as it is materially supportive. The market and democracy are both sustained by wells of social capital that stable material prosperity helps to deepen, but which are not the moral logic of the market itself.

The market of the market-state is not self-sustaining. On the contrary, it requires a form of social life that goes outside it in order to function in the long term. Honour, loyalty, sacrifice, gratitude to those who came before – these are not the evident virtues of capitalism, but they are necessary virtues in a liberal-democratic-capitalist form of life. Without them, society eats its seedcorn, the social capital bequeathed by the past to bless the future. Even after the marvellous argumentation of this marvellous book, therefore, room remains to question whether the market-state pays sufficient attention to the spiritual habits of the heart that make the market-state – and the willing defence of states of consent against states of terror – over the long struggle of years in this twenty-first century even possible.

**Kenneth Anderson** teaches law at American University, Washington DC. He is a Research Fellow of the Hoover Institution, Stanford University, and a member of its task force on national security and law.