CHAPTER SIX

LIBERTY AND ARMAGEDDON

The greatest danger to civil liberties and human rights emerging in the aftermath of September 11 is that leaders will think we are without courage; without concern for non-citizens within the United States; indifferent to the welfare of citizens repressed by despotic governments; prepared to accept without question unequal treatment based on ethnicity; and unable or unwilling to see that there will and must be trade-offs even among our own freedoms and to share in considering them carefully.

—Philip Heymann

I

Terrorism requires us to think carefully about who we are as free peoples and what we need to do in order to remain so. When we are confronted with terrorist violence, we cannot allow the claims of national security to trump the claims of liberty, since what we are trying to defend is our continued existence as a free people. Freedom must set a limit to the measures we employ to maintain it. But this is not the only limit that our political and moral identity imposes. We must preserve ourselves and our freedom, but we cannot do so by denying the moral claims of others who do not belong to our national community. If we are constitutionally committed to respect the rights of our fellow citizens, it is in part because they are members of a national community and in part because they are fellow human beings. If being a free people means respecting the claims that human beings make upon one another as human beings, then we are obliged to do so, not merely for our own people, but for our enemies as well. This means that while a war on terror is indeed a war, in which we must defend ourselves with the force of arms, it is a war for the sake of law, and not a war against law
itself. Our constitutional commitments oblige us to respect the rights of enemies who do not respect us, to use lawful methods against those who observe no laws at all. Keeping faith with these commitments has never been easy, and our record against terrorism shows that we have not been immune from the temptations of nihilism, fear, and anger. Even when we succeed in resisting these emotions, necessity may require us to take measures that put constitutional commitments under real strain. Where lesser evils—preventive or investigative detention, targeted killing, intensive interrogation—become necessary in a war on terror, I have outlined principles to guide public policy so that they will not turn into greater ones.

If these are the constraints that our moral and political identity imposes on a war on terror, the question is whether we can continue to abide by them as the threats against us increase. So far in history, terrorists have made use only of conventional weaponry. While September 11 showed how devastating such conventional capabilities can be, they are by no means the worst that we can imagine.

What happens when terrorists acquire weapons of mass destruction? Although we have no direct evidence that this has actually occurred, it seems reasonable to suppose that it will. The director of U.S. Central Intelligence has told Congress that Al Qaeda is in the market for chemical, biological, and nuclear weapons. Both the cost and the size of these technologies are declining, and the capacity of states to maintain control over information relating to weapons of mass destruction is also decreasing. Already, miniature nuclear weapons, transported in backpacks or suitcases, are technically feasible. The first attempts to place mass casualty poisons in subways and water supplies have occurred. Weaponized anthrax spores have been sent through the U.S. mail. Inexorably, terrorism, like war itself, is moving beyond the conventional to the apocalyptic.

It is important to appreciate the historical departure this might represent. In the near future, if it has not happened already, the monopoly of the world’s states on the ultimate means of violence will be broken. When this happens, a liberal democ-
racy could then be attacked, not by another state, but by a small group consisting of only a few individuals equipped with lethal technologies.

A long historical parenthesis—the ascendancy of the modern state—might be closing. Since the Peace of Westphalia in 1648, ending the Thirty Years War, international order has depended on states’ possessing a monopoly of the legitimate means of force within their own territory and having this monopoly recognized by other states. Of course, states have been prodigal with violence, and the Westphalian system failed to stop the orgy of interstate war that nearly destroyed European civilization between 1914 and 1945. Despite these failures, such order as there is in international relations has depended on the fact that states alone possessed the capacity to make war, and that holders of state power could reliably assume that other holders of state power would desist from aggression if presented with a credible threat of force. Since 1945, this model of deterrence has achieved important victories for international stability. Nuclear weapons used twice in August 1945 have never been used since. Chemical weapons, used by major states in the First World War, have never been used thereafter. While Iraq did use them against its own population in 1987 and against opposing Iranian forces, the exception proves the rule: among modern states, the use of chemical weapons has remained beyond the pale. As for biological weapons, in 1969 the United States unilaterally forswore their use for “hostile purposes or in armed conflict.” Other nations have followed suit, continuing to stockpile them, but not to deploy them for defensive or offensive purposes.

The success of deterrence has encouraged us all to believe that states could be presumed to be rational enough not to engage in surprise or preemptive use of these weapons on any occasion. These assumptions have depended, to a degree we did not realize, on the belief that the weapons themselves would always remain so expensive to produce, so difficult to store safely, that only states would possess the financial and coercive power to maintain them. This era may now be ending. While it remains true that only states have the resources to produce the
key ingredients for nuclear weapons, components like highly enriched uranium have been stolen from ill-guarded nuclear plants in the former Soviet Union. We do not know whether they have reached terrorist networks, but it is possible that they will. Once these networks have the material, the necessary know-how is not difficult to assemble. These networks already have contact with nuclear weapons scientists and engineers, some of them trained in the Pakistani nuclear program. As for biological weapons, already terrorist cells have been arrested in Britain attempting to produce mass casualty agents like ricin. Relatively inexpensive, miniaturized weapons of mass destruction may soon be available for sale in the illegal international arms market.

In order to think about how the acquisition of these weapons by terrorists might play out, we need to distinguish among three distinct types of terrorism:

- loner terrorism
- self-determination terrorism
- the terrorism of the global spectacular

Not all terrorists are equally dangerous, because not all terrorists are undeterrable. As we have already seen, most terrorism is conducted in the name of a determinate people seeking emancipation from occupation or alien rule. While these terrorists may not care about their own lives, they may be deterred by the penalty likely to be inflicted upon the populations who support their cause. Palestinian suicide bombers, for example, are unlikely to detonate weapons of mass destruction, because they would kill many of their own people and inevitable Israeli retaliation would kill still more. This might not prevent Palestinian terrorists from seeking to acquire weapons of mass destruction to wield as a threat. If Palestinians made such a threat, Israel might feel compelled to preempt with a conventional response. Such action, of course, would inflict losses on Palestinians and Israelis alike. As long as terrorists represent populations who can be harmed by reprisal or retaliation, and as long as the state fighting them has populations who could be harmed by its
own reprisals, it seems safe, though by no means certain, to assume that the conflict between the two of them will remain conventional.

Matters stand differently with two other kinds of terrorism. The first type is what I have already called loner or issue terrorism, perpetrated by single individuals or small groups who do not have a constituency of support, and who therefore do not need to calculate the consequences for their own side when they contemplate the detonation of weapons of mass destruction. Loners who have nothing to lose but their own lives, and who are so isolated that they no longer care about the fate of anyone else, may be undeterrable in any circumstances. Before September 11, the worst terrorist attack on America was committed by American citizens, Timothy McVeigh and his right-wing coconspirators, who planted the bomb that destroyed the federal building in Oklahoma City. After September 11, the most serious security threat—the anthrax attacks claiming four lives—was probably mounted by a disgruntled American technician or scientist with access to the technologies necessary to weaponize the spores.7

While loners may be difficult to deter, not all of them have nothing to lose. Judging from the careers of loner political assassins, their motive is not to die for the sake of a cause but to survive and establish their place in history. The assassin of President Kennedy and the would-be assassin of President Reagan wanted notoriety at whatever price.8 This distinguishes their motives from purely destructive nihilism. Their point is to survive in order to savor the attention, however hostile or tawdry. Were such publicity-seeking loners to acquire weapons of mass destruction, they might seek not annihilation in itself but rather the publicity that comes from an apocalyptic threat. The chief cost here would be the immense amount of investigative resources required to find and neutralize them.

This leaves the true nihilist—the loner who is indifferent to fame and posterity and who wishes to destroy everything and everyone, including himself—as the chief menace. The frequency of random killings by loners, as the Columbine murders
and the Washington sniper case attest, suggests that there is no shortage of undeterrable nihilists. Nor are they confined to the United States. At the moment, their weapons of choice are high-powered sniper rifles. Acquiring weapons of mass destruction remains expensive and currently beyond the resources and abilities of such assassins, but sometime in the future they might not exceed the capacities of a superempowered, highly educated, and wealthy psychopath. If such weaponry comes within their grasp, liberal democracy will face a genuinely undeterrable threat. Western individualism is a great achievement, but it would be ironic indeed if its nemesis were to arrive in the form of a superempowered loner equipped with mass destruction weapons.

The third type of terrorist who might prove undeterrable were they to acquire these weapons is Al Qaeda itself. Unlike terrorists who serve the liberation claims of a particular group of people, Al Qaeda does not depend for its support on a particular population who could be subjected to revenge or retribution following an attack. Thus the attackers themselves cannot be restrained by fear that others they care about may suffer for their actions. The fact that Afghans were likely to suffer consequences after the terrorist spectacular of September 11 had no evident effect in restraining the terrorists who trained on Afghan soil. Once Afghanistan had served its function as a base, it was dispensable as far as Al Qaeda was concerned. Since their goal is not the acquisition of power itself but the punishment of the United States and its strategic allies, they cannot be stopped by political negotiation, concession, or appeasement. Nor are they susceptible to the incentives that make some armed groups conform to the laws of war in order to achieve international recognition or legitimacy.

This indifference to incentives and sanctions applies not merely to Al Qaeda but to any cult with charismatic psychopaths at its head. It is hard to see what political action a state could have taken to deter the Japanese cult group Aum Shinrikyo before it released toxic agents in the Tokyo subway system. Unlike political groups seeking liberation or national territory,
these cults cannot be engaged politically, and since they are closed and conspiratorial, they are difficult to infiltrate and neutralize. The logic of deterrence that once kept state violence in some kind of check has no traction with loners and the cult leaders of global terrorism. Since they promise their followers eternal life, they create a cadre of undeterrables.

This analysis, which warns of a breakdown in the state system of deterrence as weapons of mass destruction are privatized, might seem to neglect the extent to which terrorist individuals and their networks depend on the tacit support of states. If so, terrorists could be deterred by sanctioning the states that harbor them. It is true that terrorists need territorial sanctuary and the weapons that states provide. These states can be punished, and if they can be punished, they can be deterred. Libya was a sanctuary and base for terrorist activity until Western states decided to strike back with a concerted program of international sanctions and isolation. Now it is less obviously an instigator and paymaster of terror. Libya, however, is a cohesive state with control throughout its territory. Many of the other sanctuaries for terror are to be found in failing or failed states—like Afghanistan or Somalia—that do not actually control their territories.

The terrorist challenge to liberal democracy coincides with a double crisis of state order: first, the failure of many postindependence states in central and southern Africa and, second, the failure of democratic transitions in the states that won their freedom with the breakup of the Soviet empire. A band of failed states, running from Somalia on the east coast of Africa through Congo to Liberia on the west, offer territorial sanctuary, money-laundering facilities, and access to the international arms trade for modern global terrorists. A second band of failing states on the southern edge of the former Soviet empire—from Moldova through Georgia, Abkhazia, Kirghizstan, and Tajikistan, ending in Afghanistan—also offer sanctuary for terrorist operations. Some of these states have pledged to assist liberal democracies by denying terrorists’ sanctuary yet lack the capacity to do so. Of the 190-odd states in the international system, between 10 and 15 may lack the capacity to deny sanctuary to international
terrorist groups because they are weak, poor, and corrupt, or because they are split apart by internal territorial conflicts that terrorists can exploit. Westphalian deterrence cannot work when states do not have effective coercive control over their own territory. The walls of the state that once contained their monopoly of violence have broken down. Evil has escaped the prison house of deterrence.

This vision—collapsing states and cadres of undeterrables equipped with weapons of mass destruction—might seem a lurid exaggeration, and if so dangerous. Frightening scenarios of this kind might trigger the excessive reactions I have criticized earlier. It could be argued that the attack of September 11, terrible as it was, is unlikely to recur, since security has been tightened and Al Qaeda’s recent attacks have all been on secondary rather than primary targets. September 11 might turn out to represent the worst that will ever happen, rather than the first stage of an escalating series of apocalyptic spectaculars.

Yet even if every one of bin Laden’s followers is tracked down, the example of September 11 itself will remain as an inspiration to others. September 11 will have the same place in the history of Islamic terrorism as the assassination of Czar Alexander II had in the history of European terrorism. The nihilists of mid-nineteenth-century Russia were primitive amateurs by later standards, yet they created a template that inspired all antibourgeois insurrectionary politics from their day forward. September 11 is certain to have the same effect. In addition, the international grievances that fuel mass casualty terrorism—the power of America, the existence of Israel, the corruption and decay of the Arab and Islamic political order—are also likely to endure. Terrorism will remain a threat to liberal democracy, simply because liberal democracy cannot detach itself from a world that holds it responsible, rightly or wrongly, for its misery.

If weapons of mass destruction become available to terrorists, we may move from a pattern of high frequency–low casualty attacks to a low frequency–catastrophic casualty pattern. This second pattern will be even more difficult to defend against than the first. Terrorists will calculate—correctly—that no state, how-
ever vigilant and well-organized, can remain on guard forever and everywhere. Democracies, by their very nature, are less capable of vigilance than authoritarian regimes. The steady relentlessness necessary for vigilant security is not easily maintained in nations with four-year electoral cycles and constant turnover in their leadership elites. Terrorism is a waiting game and victory goes to the patient. Future terrorists may have the financial resources to let sleepers sleep for years at a time. Sooner or later, someone’s guard will slip—a container inspector will miss a container, an airport screener will miss a passenger or a bag, a water filtration system will fail—and an attack will succeed.

Liberal democracies are thus faced with an enemy whose demands cannot be appeased, who cannot be deterred, and who does not have to win in order for us to lose. The police, military, and intelligence agencies may succeed in detecting, stopping, or preempting ninety-nine potential attacks. But if the enemy possesses chemical, radiological, bacteriological, or nuclear weapons, they need succeed only once.

It is a commonplace of presidential and prime ministerial rhetoric to insist that their democracies cannot lose in a war on terror. My own analysis thus far has confirmed that no democracy has ever been toppled by a terrorist campaign, unless other factors, like economic collapse or military defeat, were present too. But faced with terrorism that deploys weapons of mass destruction, we cannot be as certain that the historical pattern, argued for in this book, would prevail in the future.

In other words, we could lose.

What would defeat look like? It would not be like invasion, conquest, or occupation, of course, but rather would entail the disintegration of our institutions and way of life. A succession of mass casualty attacks, using weapons of mass destruction, would leave behind zones of devastation sealed off for years and a pall of mourning, anger, and fear hanging over our public and private lives. Such attacks would destroy the existential security on which democracy depends. Recurrent attacks with weapons of mass destruction might not just kill hundreds of thousands of people. We might find ourselves living within a national security
state on permanent alert, with sealed borders, constant identity checks, and permanent detention camps for suspicious aliens and recalcitrant citizens. A successful attack would poison the wellsprings of trust among strangers that make the relative liberty of liberal democracy possible. Our police forces might descend to torturing suspects in order to prevent future attacks, and our secret security forces might engage in direct assassination of perpetrators or mere suspects as well. Our military might itself use weapons of mass destruction against terrorist enemies. If our institutions were unable to stop the attacks, the state’s monopoly of force might even break down, as citizens took the law into their own hands seeking to defend themselves against would-be perpetrators. Vigilantes would patrol blighted and deserted streets.

This is what the face of defeat might look like. We would survive, but we would no longer recognize ourselves or our institutions. We would exist but lose our identity as free peoples.

So what can be done? What resources do we possess?

As the threat of terrorism targets our political identity as free peoples, our essential resource has to be that identity itself. We cannot fight and prevail against an enemy unless we know who we are and what we wish to defend at all costs. If the automatic response to mass casualty terrorism is to strengthen secret government, it is the wrong response. The right one is to strengthen open government. Democratic peoples will not lend assistance to authorities unless they believe in the system they are defending. No strategy against terror is sustainable without public assistance and cooperation, without eyes that detect risks, ears that hear threats, and the willingness to report them to authorities. As two world wars have shown, a democratic people mobilized by fear and led by hope can prove a formidable foe. Despite their checks and balances, democratic systems do not have to be less decisive than authoritarian ones, and democratic institutions have the advantage of marshaling the wisdom, experience, and talent of the citizens as a whole rather than relying on the shallow pool of a closed elite.

Faith in democracy need not make us blind to its faults. Indeed, our democracies are not doing as well as they could in
dealing with conventional threats, and it is to be feared that they will do still worse with weapons of mass destruction. So far, information about risk has been doctored for public consumption. Media, with more concern for market share than for the public interest, have colluded in disinforming the public. Judges have accorded excessive deference to government actions. Legislatures have lacked the courage to subject the facts of risk to clear-eyed scrutiny. Government departments have abridged the liberties of aliens and minorities, safe in the knowledge that the victims lack the voice to make injustice heard. The public has gone along, unable or unwilling to force their elected officials to serve them better. When democratic institutions malfunction in this way, bad public policy is the result. Legislatures have crafted legislation that provides the police with powers they do not need; the public lends its support to measures that do not increase its security; the secret services, observing a deceived public and a deceiving leadership, may take the law into their own hands. A war on terror thus waged by secret and unaccountable agents, working on or beyond the margins of the law, on behalf of depoliticized and demobilized citizens who remain in the dark about what is being done in their name, may end up damaging democracy forever.

We do not want a war on terror fought on behalf of free peoples who are free only in name. What we need is a reinvigoration of the institutions of freedom—government by checks and balances, by open forms of adversarial justification in courts, legislatures, and the press. Reinvigoration means simply that our institutions need to do the job that they were designed to do. We need to understand what they are there for, trust in them, and make them work.

II

In addition to requiring a renewal of democracy at home, a war on terror cannot be successful unless states engage in a renewal of democracy abroad. Global terrorism, using weapons of mass destruction, challenges the stability of the state order itself, and
no single state, not even the United States, has the capability to defeat the challenge on its own.

Before September 11, state collapse and state failure were seen chiefly as humanitarian tragedies. Mass casualty terrorism helps liberal democracies to see them as potential national security threats. Strengthening honest government in burdened societies, helping them to deny sanctuary to terrorist groups, has passed from a merely desirable goal to an essential one. If apocalyptic nihilism feeds on political despair, it is in the rational self-interest of wealthy states to invest in assistance to help authoritarian societies in the Arab world—societies that have failed their people—to move toward democracy, even if the result is likely to bring Islamic parties to power. For sixty years, Western states have been on the wrong side in a suppressed civil war between Arab peoples and their government. It is time to get on the right side, and to do what we can to channel popular discontent into democratic political forms. Obviously such a path is risky, but clinging to discredited regimes that have failed their people is even riskier.

Where failing states possess nuclear weapons, we must prevent them from failing. Helping societies like Pakistan to secure their weapons program, to extend their control over the border regions with Afghanistan, and to pour resources into education and development is no longer one priority among many. Given the degree to which Al Qaeda feeds off the failures of Pakistan as a state, strengthening Pakistan’s state capacity without tipping it into outright authoritarianism has to be a central objective of any antiterrorism policy.

Terrorism also presents a very powerful argument for the reinvigoration of all forms of multinational and multilateral cooperation. September 11 did seem to herald a change in this regard. All member states of the United Nations condemned the attacks and passed resolutions pledging to impound the funding and weapons that make terrorism possible. This newfound unanimity reflects an important sea change in attitude. For as long as international terrorism has existed, it has depended on the complicity of states. Palestinians went to Czechoslovakia to buy
Semtex explosives and to Yemen or Syria for training. Nicaraguan contras and so-called Cuban freedom fighters looked to Washington for funding and support. Libya sponsored terrorists from Northern Ireland to Sierra Leone. Sudan provided refuge for Islamic terrorists, including Osama bin Laden. When it was under Taliban control, Afghanistan invited Al Qaeda to train its cadres in its remote valleys. The Al Qaeda recruits arrived first as guests of the Taliban government and then stayed on to become masters of the house. This pattern of state complicity depended on the calculation that “the enemy of my enemy must be my friend.” States supported terrorists because they destabilized rival states. States with imperial interests—like the United States or Soviet Russia—supported terrorist groups as proxies in their war with each other. As long as terrorist weaponry remained conventional, neighboring states were happy to support their favorite “freedom fighters,” safe in the knowledge that this support would destabilize their rivals without endangering their own interests.

As the threat of terrorism escalates from conventional to nuclear, states have begun to repent of their former promiscuity. As the phenomenon of mass casualty terrorism emerges, it has made nearly all states realize the danger of a complicity they once engaged in. Just as Hiroshima convinced the world of the unprecedented danger of nuclear weapons, September 11 awakened states to the reality that the terrorism they had once willingly sponsored now risked getting entirely out of their control.

The motives for reasserting control relate less to moral outrage than to vital national interest. Whatever their differences of religion and ideology, all states share an interest in keeping weapons of mass destruction under their own lock and key. In the case of nuclear weapons, the small club of nuclear states has an interest in preventing proliferation, but as Pakistan and India reveal, states have only limited capacity to stop other states from going nuclear. So the number of states with these capabilities will grow. Indeed, it is not obvious how nuclear states can stop other nations from going nuclear. Such weapons are the irresist-
ible coinage of power for states like North Korea that have failed to acquire power’s true coinage, the wealth of its people.

While it is inevitable that more states will acquire weapons of mass destruction, allowing individuals or criminal or terrorist groups to do so is another matter entirely. This might happen in one of three ways. First, rogue states might sell or transfer weapons of mass destruction to terrorist groups, in the mistaken belief that they can direct their use against the state’s enemies. Second, these capabilities might be stolen from reputable states and sold to terrorists on the black market. Finally, rogue scientists, working within either reputable or rogue states, might transfer weapons technologies or secrets to international groups. All three forms of proliferation—or civilianization—of weapons of mass destruction threaten the monopoly of states. All responsible states therefore have an interest in joining together to place these weapons and capabilities back in state hands.

Even a rogue state is not necessarily less rational than a reputable one, and rogue states can understand the dangers posed to them by terrorist groups possessing weapons of mass destruction. Moreover, rogue states can be made to pay a price. Libya, a notorious sponsor of terrorism, has been punished for its part in the Lockerbie bombing. Comprehensive international diplomatic isolation resulted in a change of heart, signaled by the repARATION agreement between the Libyan government and the victims. Three other rogues are extant. North Korea has a nuclear program that in the very near future will be capable of producing weapons. Iran is also using a civilian nuclear program to develop weapons. Finally, Iraq, under Saddam Hussein, engaged in a twenty-year program of research into chemical, biological, and nuclear weapons, though there is controversy over what weapons these programs actually produced by the time of his overthrow in April 2003. There was also no hard evidence that he had transferred technologies or scientific information to terrorist groups. What was not in doubt was that he had used weapons of mass destruction twice, against his own Kurdish population and against Iranian forces.
Rogue states could be controlled if they could be prevented from trading in the international market in lethal technology. When the illicit market in weapons was confined to small arms and conventional weapons, states turned a blind eye to it and allowed the development of a complex, global weapons transfer system. States did so because they had a strong economic interest in the trade or because it benefited powerful interests inside their own states. Now that we are on the threshold of a market in weapons of mass destruction, this long-standing complicity has ceased to be a minor embarrassment and threatens to become a danger to vital state interests.

Liberal democracy depends upon the existence of capitalist markets, but a free market in everything—including plutonium, anthrax, and ricin—poses a direct threat to the survival of liberal democracy itself. Economic globalization could become the means of our own destruction, unless globalization is accompanied by a steady expansion of regulatory capacity on the part of states, companies, and international institutions. Otherwise, neither the free market nor the liberal state will survive. Yet no single state, not even the global superpower, has the resources to police a global market in lethality. Hence all states have an interest in devising effective regimes of multilateral regulation.

As the number of problems—from environmental harm to cross-border weapons trading—has grown, the capacity of states to cooperate in devising means to solve these problems has failed to keep up. The reasons for this lie in the fact that liberal democracies have mostly benefited from globalization, while the costs—environmental, social, and economic—have been borne by less developed countries. Where transnational cooperation is most likely to develop is in those areas—crime, drugs, and terrorism—that do threaten the prosperity and order of liberal states. Global governance in these areas has ceased to be simply desirable. It has become a matter of mutual survival.

Such a global, multilateral effort against terrorism will entail some obvious lesser evils. One is more intrusive regulation of market transactions of all kinds. We will have to spend a great
deal of money in order to regulate, inspect, control, and interdict the small portion of international trade that poses a danger to our survival. This regulatory burden will have to be shared between business and government. Governments will have to invest in more sophisticated systems to control the flow of money, goods, and people across their borders, and companies with substantial transborder trade will have to invest in delivery systems that guarantee the security of cargo from point of production to point of sale.23

This is the price that international business and the international traveling public will just have to pay if they want to be safe from terror. The second price will be increasingly stringent international regimes that interfere in a sovereign state's capacity to do what it likes with these technologies. For these regimes to be legitimate, all states, and not just the rogues, will have to submit to intrusive inspection of their lethal capabilities, and, where international agreement is possible, to get out of their production and stockpiling altogether.

The successful effort by the Americans and post-Soviet states like Ukraine and Kazakhstan to identify and render safe the errant nuclear capabilities left behind by the departing Soviet military is one example of what can be achieved.24 The International Atomic Energy Agency, while underfunded and underresourced, has built up considerable expertise in regulating civilian nuclear programs and should be able to develop an authoritative international inventory of plutonium and other materials and enforce protocols for their transshipment, exchange, and deactivation.25 Obviously, it is less easy to do this with chemical and biological agents. Yet it should be possible to require global corporations with chemical or biological capabilities to desist from selling their technologies to rogue states, and to prevent, as far as they can, their networks of distribution and sale from being infiltrated by terrorist groups. The success of the UN weapons inspectors in Iraq, between 1992 and 1996, in tracing the origins of Iraqi chemical agents back to their European commercial suppliers suggests that it should be possible to police the international traffic in agents and technologies that produce
mass casualty weapons.\textsuperscript{26} It should also be possible for states to increase security at all commercial, government, and military laboratories that make use of these agents. And it could be made a crime for a scientist to knowingly contribute to the manufacture of weapons for terrorists.\textsuperscript{27}

One of the lesser evils that may become necessary is closer regulation of scientific research and free communication of its results. Already the U.S. Patriot Act requires any scientist working with certain biological agents to register with federal agencies and imposes penalties on anyone transporting agents or maintaining any scientific contact with a list of proscribed countries. U.S. university laboratories are prohibited, by presidential directive, from employing foreign students in research in biological fields with potential weapons applications. Editors of scientific journals have accepted that they should not publish scientific results where these might be used by terrorists, or even more broadly where the “potential harm of publication outweighs the potential societal benefits.”\textsuperscript{28}

Tightening up the security of labs, checking on the bona fides of all who work with sensitive agents, seems appropriate, provided that security remains in the hands of the free institutions—laboratories and university departments—that direct the research itself. The same principle should apply in determining what kinds of scientific research or publication do constitute a national security threat. This decision should also remain in the hands of scientists themselves, and the grounds for legitimate self-censorship should be precisely drawn so as to allow free publication of all but the most obviously dangerous papers. Dangerousness must be defined as an imminent, practical reality, not as a distant, speculative possibility, since it is impossible to accurately predict which forms of basic scientific research are likely to lead to dangerous applications. Maintaining free circulation of scientific ideas is a critical value, not just for science, but for democracy itself.

An era of mass casualty terrorism, in other words, forces us into a domain of lesser evils that did not arise when the threat was conventional: the regulation of the free market in technolo-
gies, technology transfer, and ideas themselves. Regulation cannot devolve on government alone; the task needs to be structured so as to allow maximum adversarial review. All of the parties—companies, universities, and government—must test proposals for regulation in open discussion and ensure that the regulators are themselves regulated. And regulation must seek a conscientious balance between the freedoms—of commerce and ideas—necessary for the survival of free peoples and the security that a new era of mass casualty terrorism requires.

In addition to regulation, there has to be leadership. This can come only from the United States, not simply because it is very powerful, but also because it is the principal terrorist target, as well as the chief site of weapons research and thus a possible source of rogue scientists. Even the United States, a nation with long-standing resistance to multilateral commitments that infringe on its sovereignty, can easily understand that it stands little chance of regulating the global market in lethal technologies on its own. International police cooperation between the United States and its European friends has proven crucial in apprehending active terrorist cells in cities from Hamburg to Madrid. Multilateralism in these matters has gone from being merely desirable to being a matter of life and death. States will either learn to cooperate or they will suffer the consequences separately. This will mean prohibition of the production, transshipment, and sale of weapons; the development of international regimes of coercive inspection for states that violate; and, as a last resort, the use of preemptive force to prevent the sale or distribution of such weapons to nonstate actors.

III

Preemptive military action, the last of the lesser evils to be considered in this book, poses three distinct problems: how to control the resort to preemption in a democracy, how to determine when it is justified, and who should authorize it internationally. Two obvious kinds of preemption come to mind: strikes against individuals or training camps in order to prevent them from exe-
cuting imminent attacks; and military action against states that harbor terrorists or that produce weapons of mass destruction. Hitting terrorists before they can hit you, provided that less risky and costly means are unworkable, is less problematic than full-scale war against states.

The first type of difficulty, with wars of preemption, relates to democratic regulation of the war-making powers of presidents and prime ministers. Fighting foreign wars and confronting international terrorism have both increased executive power at the expense of legislative review in the twentieth century. The power to make war, vested in a president, is supposed to be balanced by the power to declare war, vested in a legislature. In the course of the last sixty years, this legislative regulation has weakened. Presidents have committed the country to combat without legislative authorization at all, or they have sought it only when combat was well underway.29

Preemptive war against terrorist threats would be still harder for legislatures and electors to subject to control. The case for such wars will always be speculative, based on uncertain intelligence gathered by means that require the concealment of sources and methods, and therefore extremely difficult for an electorate, let alone a legislature, to judge for credibility. Instead of claiming in the run-up to the Iraq war, as they had good reason to do, that the Iraqi regime possessed both the intentions and the resources to eventually acquire weapons of mass destruction, the president and the British prime minister asserted that the regime had actually developed and deployed these weapons.30 In stretching the evidence, they sought to manipulate democratic consent for war, and even those who supported them cannot feel that a desirable end justified such means. As it happened, the war does not appear to have had a preemptive justification at all, since no actual weapons or advanced programs have been found in the year since the regime’s fall.

It will not be enough for our leaders to escort us down the path toward the lesser evil of preemption in the future by simply reassuring us, over and over, “If you only knew what we know . . .” The facts may not be entirely uncertain, and the truth may
not be as clear _ex ante_ as it is likely to be _ex post_, but we can and should be told what we need to know. We are entitled to some unvarnished facts about a state’s real capabilities and indications about whether these could be made available to global terrorists. Our leaders are under the strictest obligation, inherent in democratic government itself, to provide these facts and to consult our representatives before putting us all in harm’s way. Preemptive war can be a justified lesser evil only when the case for it is sustained by evidence that would convince free peoples.

Since the risks of action are inherently more knowable than the risks of inaction, and since the facts concerning the threat are never going to be clear, the bias of any citizen’s mind will be against preventive war. Such a bias helps to restrain political leaders from intemperate and unwise action, but a bias is not the same as a reason, still less a good one. We need to be open to the possibility that preventing the transfer of weapons of mass destruction from states to terrorist groups is a lesser evil necessary to forestall a still greater one.

Unless rogue regimes with a history of internal repression and external aggression can be prevented from acquiring and transferring lethal technologies, they become undeterrable. They can proceed to destroy dissident elements in their own populations, while making incursions into the territory of neighbors. Once they have weapons of mass destruction, they can transfer these with impunity to terrorist groups.

Although there is a case for preemption, where there is a feasible military strategy to prevent rogue states from transferring lethal technologies or terrorist groups from acquiring them, the threat must be imminent and demonstrable. Otherwise, preemption shades into aggression. Aggression is banned under the UN Charter, while actions in self-defense are not. Preemption is usually justified as a form of anticipatory self-defense, where the threat is imminent. The key issue to assess is how imminent the threat actually is and what signs from the enemy can be taken as a signal of hostile intent. The standard case of justified preemption, in Michael Walzer’s _Just and Unjust Wars_, was the Israeli preemptive strike of June 1967 against Egypt and the Arab
states. It was legitimate, according to Walzer, because of clear evidence that Arab countries were mobilizing for attack. But this case tells us little about how to evaluate when a covert weapons of mass destruction program has become an imminent danger. Nor does it tell us when to preempt in the case of terrorism, where by definition the signs of imminent attack will be concealed from all but the most determined intelligence service, and where, even in the case of covert transfer of weapons from states to groups, it may be all but impossible for a vulnerable state to acquire advance knowledge of the transfer.

At the same time, a third issue—who decides when preemptive action is justified—adds another dimension of complexity. Under UN Charter rules, the Security Council is supposed to decide whether to authorize force, but its rules do not allow preemption, and even if ways can be found to get around them, through a presentation of the problem as a “threat to international peace and security,” any state that feels itself threatened and contemplates preemptive force is not going to hand its right of self-defense over to a committee of other states, no matter how august. While the United States is castigated for its unilateralism, all states are likely to insist on a unilateral right of response to a threat from weapons of mass destruction. Hence while simple prudence suggests that any state should seek international legitimacy before using force and should secure as many allies as possible, it cannot cede its right to make final judgments about its national security to any other state or international organization. Even if it fails to convince other states that a threat requires preemption, it would be justified in going it alone—but only, of course, if the threat turns out to be real.

The intense debate about the legitimacy of the invasion of Iraq indicates that the supposed universal interest of states in effective institutions against proliferation is extraordinarily difficult to translate into universal action. The United States simply disagreed with its usual allies about the extent of the danger posed by Iraq’s weapons programs, and while these allies were unable to prevent the United States from using force, their opposition
did impose substantial costs on American action: first, it was perceived as illegitimate; and second, the costs of war and of postwar reconstruction were not shared but loaded chiefly onto the backs of American taxpayers. If only to increase legitimacy and reduce cost, multilateral agreement on the use of force is preferable to unilateral action. Yet further unilateral action is inevitable, given the extent to which the United States remains the first-order target for Al Qaeda and other Islamist groups.

The category of such states whose conduct could possibly justify preemptive war is very small. Even states with imperial capabilities know that it is in their interest to respect the sovereignty of other states most of the time, for the alternative is endless war. Besides, preemptive war is impossible against those who already possess such weapons, or who could, before defeat, inflict such damage on others as to impose prohibitive cost on preemptive action.

So preemptive war is going to be a rare occurrence, but even so it would be a lesser evil. It will kill people and cause humanitarian harms even if it succeeds in eliminating a dangerous regime and confiscating weapons of mass destruction. As a lesser evil, preemptive war should be strictly constrained: it needs to be authorized in conditions of genuinely democratic disclosure; states proposing preemption must make a sincere attempt to secure multilateral support; preemption can be justified only as a last resort, once attempts to disarm states through coercive inspection, diplomatic inducements, and other peaceful means have failed; and, finally, preemption must not leave things worse than before the action was contemplated. If a tyrannical state is overthrown, a democratic regime must be put in place. If military action is taken, it must not trigger a wider war. While these conditions are clear enough in theory, judging whether they have been met depends on two crucially difficult anticipatory judgments: is the threat so real that the risk is justified, and are the future benefits of action likely to outweigh the all too evident short-term harms? The effort to get these judgments right and to make them in good faith exposes any democracy
and its leaders to enormous moral hazard. The costs of error—when weapons of mass destruction are actually there—could be incalculable.

IV

Terrorism is disorienting to a liberal democracy because, first, it seems to set at naught its capabilities and the strengths that derive from its liberty. It is also disorienting because free peoples used to living at peace have difficulty admitting that they are actually faced with evil. This brings me, as I reach my conclusion, to the uses of ethical discussions like this one. Ethics matter, not just to constrain the means we use, but to define the identity we are defending and to name the evil we are facing. The point of ethics is to enable us to encounter the reality of evil without succumbing to its logic, to combat it with constitutionally regulated lesser evils, without falling prey to greater ones.

A liberal democracy is more than a set of institutional procedures and rights guarantees for the adjudication of conflict and the regulation of violence. Why would we keep faith with such a political system? Why would we care about it if it were procedure alone? We care about it because the procedures protect the rights of each human being who belongs. We care about rights because we believe that each human life is intrinsically worth protecting and preserving. We use rights to set limits to what majorities can do because we believe that the greatest good of the greatest number alone should not decide all political questions. If majorities must prevail as a matter of necessity, those individuals whose rights or interests are harmed are entitled to compensation and redress. We believe that the suffrage of our fellow citizens must be sought, one by one, and their opinions secured by means of argument rather than coercion or bribery. Their rights to due process of law, to basic dignity in treatment, are independent of conduct and irrevocable under any circumstance. We believe that even our enemies deserve to be treated as human beings.
These are just some of the things we believe, and they are not easy to live by. They impose substantial constraints on those who exert power in our name just as they impose constraints on our passions as citizens and individuals.

The major ethical problem in liberal democracies is not the absence or loss of stable, clear ethical values, but simply living within the real constraints of the values we have. These values are not relative, at least not for us, because they are the minimum conditions of our existence as free peoples.

Since these are principles we never fully live up to, they create a form of society that is required as a condition of its existence to engage in a constant, institutionalized process of self-justification. Measured against these standards of what is due each and every member, all liberal democratic societies fail and moreover know that they fail. So they are unique among forms of government in that they are, in the words of Lezsek Kolakowski, “under endless trial,” and if they do not accept this burden of justification, they are failing to live the ethical life they themselves prescribe.33

Societies under the endless trial of self-justification are apt to feel guilty about their success. But our success is not a fact to feel guilty about, and the failure of other societies is not our fault. It is an illusion, dear to liberal democrats everywhere, especially to Americans, to believe that we are responsible for all the evils of the world and that we are in a position to cure them, if only we possessed the will to do so. Certainly we have a responsibility to work toward relieving the global burden of injustice. But we should be clear that we are doing so for reasons of justice, not in the delusive hope of greater security. Having responded to injustice with justice, we have no right to expect peace and good feeling in return. This is to misunderstand evil, to forget terrorism’s essential connection to nihilism, its indifference to the suffering it purports to represent, its contempt for our gestures at reparation.

The success of liberal democracy should not be held as an accusation against us, nor are we entitled to claim it as a vindication of our superiority. The fact that we have succeeded in be-
coming both rich and free may be too much the result of a particular history and contingent good fortune for us to believe our life is a model for other peoples in other cultures. But the fact that our values may not have universal application does not make them any less compulsory for us.

The challenge of an ethical life in liberal democracy is to live up, as individuals, to the engagements expressed in our constitutions and to seek to ensure that these engagements are kept in respect of the least advantaged of our fellow citizens. The task is also to ensure that each of us actually believes in our society as much of the time as possible. In an age in which individuals are monstrously empowered, by technology and freedom, to bring Armageddon down upon their fellow human beings, it is suddenly no longer a minor matter that some of our fellow citizens, and some of the noncitizens who live among us, happen not to believe in liberal democracy but instead profess a variety of paranoias pretending to be politics. The existence of wild, vengeful, and deluded political opinions, if married to lethal technology in the possession of a single individual, suddenly becomes a threat to us all. I am haunted, as I think we all might be, by the specter of the superempowered loner as the cruel nemesis of the very moral care our society lavishes on the idea of the individual.

It is a condition of our freedom that we cannot compel anyone to believe in the premises of a liberal democracy. Either these premises freely convince others or they are useless. They cannot be imposed, and we violate everything we stand for if we coerce those who do not believe what we do. In any event, we cannot preemptively detain all the discontent in our midst.

So we are stuck, as we should be, with persuasion, with the duty, now more urgent than at any time in our history, to persuade each and every person who lives among us, whether as citizen or as visitor, of two perfectly plain propositions: that we are committed to respect their dignity, and that if they fail to respect ours, we will defend ourselves. The threat of terror, the possibility of a terrorist outcome if we fail to convince one of these superempowered loners, makes the burden of self-
justification that falls upon every citizen as a condition of membership in a liberal society heavier than it has ever been. We must be able to defend ourselves—with force of arms, but even more with force of argument. For arms without argument are used in vain. Since I believe in the arguments, since I believe that human beings are unique in their capacity to be persuaded, changed, even redeemed by good ones, I do not doubt that we will prevail.