



TRANSCRIPT
THE HON JOE HOCKEY MP
SHADOW TREASURER

'IN DEFENCE OF LIBERTY'
ADDRESS TO THE GRATTAN INSTITUTE
6PM THURSDAY 11 MARCH 2010

* Check against delivery *

Since 1923, the 1,500 branches of the Returned Services League have commemorated their legacy under the maxim, “The Price of Liberty is Eternal Vigilance”.

This was the motivation that led Australians to go to the other side of the world to join wars against totalitarianism. And today we are waging war against terrorists and religious fanatics who threaten the values we believe are essential for human dignity and welfare.

The struggle for liberty has never been without cost.

Even for our generation it demands a price. Sometimes this is a national struggle, but often it is the efforts of individuals...who will ever forget that young man in Tian an Men Square who, with no thought for his own wellbeing, put himself in the path of a 50 tonne tank – all in the quest for democracy? And the Iranian protestor, Neda Agha-Soltan, whose death was beamed by YouTube around the world and that came to symbolise freedom in Iran.

It takes more than courage to do something like that – it takes conviction. The deep conviction that liberty is essential for achieving our human aspirations and for creating a better society. The deep conviction that freedom is worth the ultimate price that some of us may be asked to pay. Tonight, I want to reflect on that struggle – to bring to mind our own young soldiers in Iraq and Afghanistan, who we are asking to make a stand for freedom – and to stress that defence of liberty must remain at the centre of public policy debate in Australia.

It starts with what you believe in. In the Western tradition there has always been a choice between founding principles for societies. On the one hand there is the recognition and harnessing of the power of the individual. On the other there is the model of what Plato called “philosopher kings”.

These are the people who believe they know what’s best for us and are better qualified to rule than ordinary folks like you and me.

I believe that we are equal in our worth, if not necessarily in our talents. I have a role, you have a role, each of us has a role to play in the process of our own governance. This is what liberty means. This is what it means to be free.

It is no coincidence that the words “liberty” and “liberalism” come from the same root – the Latin word for “free” being “liber”. That is why you find that the core values of any liberal are personal liberty, political liberty, economic liberty, social liberty and international liberty. These values are not only timeless and enduring, they’re not negotiable.

Years ago I was introduced to the political party that is called Liberal. Its founder, Robert Menzies was very clear about their commitment to liberty – individual liberty as much as social liberty.

He said:

“We took the name Liberal because we were determined to be a progressive party, willing to make experiments, in no sense reactionary, but believing in the individual, his rights and his enterprise...”

I was ready to join such a party because in my younger days I had given great thought to the political philosophy that I found most compelling.

My mother has been a long time Liberal supporter. She came from a family drenched in the values of free enterprise, equality between the sexes and God, King and country. While my father shared most of those values, his political allegiances were initially different. After he migrated to Australia from Palestine in 1948, he felt indebted to the Prime Minister of the day, Ben Chifley and his Labor party – largely because these were the people who had provided him with this opportunity for a new life.

This mixture of family political allegiances left me in a kind of political middle ground. So at Sydney University, when I was elected as President of the Student Representative Council, I stood as an independent – something that was almost unheard of at the time. Here was a political novice in a role that had spawned a number of political leaders, so as you might imagine, I was courted by both sides of politics. The one thing I was sure of was that I had to be comfortable with the philosophy of any political movement that I was to join.

Fisher Library became my best friend, if only for a short period of time! As I rummaged through the old dusty book stacks in search of political enlightenment. I would like to think there was a moment of epiphany but in the end there was one writer who stood out to me – and that was John Stuart Mill. Sometimes you read something and just think to yourself “this guy makes sense”. It is a continual source of inspiration to me to reflect on those men and women who, without resort to force or the trappings of political power, but through words alone, can influence their generation and those that follow.

Mill is one of those people. Always clear, often difficult, usually provocative, among the earliest defenders of the equal rights of women, minorities and subjugated peoples. He was a champion

of fair, free and open elections. Himself a Member of Parliament and a political activist, Mill was above all an unrelenting champion of the principle that personal liberty was the essential element of a free and decent society.

His famous statement of liberal principles is that:

“the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant.”

And just in case we have a tendency to gloss over words like “freedom” and “liberty”, Mill defines it in the most compelling way:

“The only freedom which deserves the name is that of pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs, or impede their efforts to obtain it.”
Isn't this what we all want? That we be allowed to follow our own dreams, have our own beliefs, – as long as we don't harm others or limit their freedom?

I believe that individual liberty must be the foundation of our society, even when it clashes head on with the perceived communal good. That belief rests on John Locke's positive view about human nature – that there is an essential good, rationality and an innate desire to co-operate in all men and women. I share his conviction that happiness is achieved when individuals are permitted to flourish in ways of their own choosing, according to their own conscience and beliefs.

On the other side of the coin, though, individual liberty is based on an acceptance that we are all fallible – that there is no certainty that any one person or any one society knows “the truth”. It is only through diversity, debate and discourse that we can come closer to understanding what is right.

Mill recognised this, too. He said that individual rights went beyond simply stating what governments could not do. He envisaged a positive role for government in supporting individuals to fulfil their aspirations, particularly through the provision of education, which he saw as a prerequisite for a society that embraced liberty.

When Australians talk about a “fair go” and we use expressions like “standing on your own two feet”, we are reflecting those values first articulated by Mill. These are essential for the pursuit of liberty.

I don't think it is too much of a generalisation to describe the history of the last 500 years as the ceaseless struggle for greater individual liberty. While we think that this is a battle that has largely been won in the West, it wasn't always like this.

Apart from some Celtic societies, which could be described as having political systems based on the recognition of individual rights, our concept of individual liberty was alien to most Europeans during the Dark Ages. While some nations sought to limit the powers of their monarchs, or wanted to establish legal rights for some of its citizens, genuine freedom was remote for the vast majority of Europeans.

The institutions of State – which included the Church – ensured that the flame of individual liberty was never lit. Dissent, either political or religious, was crushed – often ruthlessly as was so dramatically demonstrated during the Inquisitions. The Church and its earthly princes conspired to maintain the orthodoxy of their beliefs and the primacy of their own interests and the powers of hereditary authoritarian governments.

It was the struggle for religious freedom that became the first international battleground. Erasmus opened the door and others like Luther and Calvin followed – although both the latter two proved to be as intolerant of dissent as the Church they sought to destroy.

It is perhaps hard for us to imagine today in Australia what this battleground of ideas was like in Medieval Europe. Just imagine the author of the God Delusion, Richard Dawkins being burnt

alive at the stake for his views and his books banned? I should point out that even today we are seeing similar sorts of brutal intolerance in some radical Islamic countries.

Fortunately, it was the European Age of Enlightenment, the quest for knowledge that science provoked and the battle against absolute monarchs that inspired philosophers of this period, like John Locke, and that led to an appreciation of individual liberty in its broader context.

Most of us have never studied a book of philosophy, let alone one from the 17th Century. But it is instructive to note just how much of an influence someone like Locke had on the way we think in the Western world today.

Among other things, Locke is regarded as a father of liberalism. His optimism about human nature was in such sharp contrast to the Hobbesian view about mankind. Thomas Hobbes, you may recall, had a rather pessimistic view of life as “solitary, poor, nasty, brutish, and short” without a strong central government. Locke, on the other hand, called for government to be based on freely given consent, personal liberty and private property rights. It was a view that was to influence and inspire Thomas Jefferson and those who drafted the United States’ Declaration of Independence, Constitution and Bill of Rights. Locke’s philosophy continues to inspire political leaders who are dedicated to freedom and democracy.

It took the horrors of two World Wars for something of an international consensus to emerge about human rights that were to become regarded as universal. Australia played a notable part in the development of those standards drawing on its own unique history. Our nation moved almost seamlessly from autocratic colonial rule to a liberal society without the violence and turbulence that marked the history of both America and most European nations – and we should be very grateful for that.

I think we can all recognise the fundamental difference between those societies based on individual liberty and those that reject that foundation principle.

On the one hand you have societies that are free and open. The press is free and the judiciary is independent. Elections are free and regular. An open mind and spirit of enquiry are fostered. The

arts and sciences flourish and innovation is encouraged. Multiculturalism, diversity and tolerance are hallmarks of a liberal society. The existence of dissent and debate are regarded as positive signs. Authority is respected only when that respect is earned. It is from this that economic and entrepreneurial activity arises in a way which, over time, raises the living standards and dignity of all citizens.

And on the other hand, you have societies that are not based on individual liberty. In those societies conformity and control are the guiding principles. The alleged good of society (usually only code words for the benefit of the ruling elites) are extolled above the rights of individuals.

There may be art and science, but there is little creativity. Dissent leads not to debate, but to detention. Economic activity is centrally controlled and usually stagnating. Wealth is created, but only for the few.

The way I see it, the choice is black and white...

Freedom for each and every one of us.

Or freedom for an elite few who want to tell the rest of us what to do.

In the Federal Parliament I represent the only political party that was established to advance the cause of liberty. It is a Party whose purpose is to advance the rights and liberties of the individual. While liberalism is a political philosophy that is arguably broader than just the concepts of liberty and freedom, they are the enduring principles at the heart of what modern liberals believe. Liberty is the foundation stone of liberalism.

The Liberal Party of Australia was formed just over 65 years ago. It was not the first Australian political party to bear the name Liberal and its roots lay very much in the liberalism of Alfred Deakin and the political movement he helped establish in the years following Federation.

The history of the Liberal Party has, however, been somewhat different to the intention of its founders. The Westminster system of parliamentary democracy tends to encourage the two-party system that has largely dominated the history of the Australian Parliament. The result has been

that the Liberal Party represents, to use one of John Howard's expressions, a "broad church" of the political spectrum. We are a party that brings together conservatives and liberals under the one banner.

Menzies summarised the liberal approach well when he spoke at the formation of the Liberal Party and commented on the Party's support for private enterprise using words that had been first used by Deakin:

"If the expression connotes 'each for himself and the devil take the hindmost', with no provision against depressions, with big monopolies running free and injuring the consumer, with an absence of proper government controls and government liabilities, then it is something which Liberalism cannot support."

It is this constructive role for government that distinguishes the liberal from the libertarian. Liberalism, in placing primacy on the individual, also stands in contrast to the philosophies of conservatism, socialism and communitarianism. They tend to share the belief that society and its institutions are the first and most important aspects of human existence and that individuals are always subject to some larger interest such as the alleged "community" or the state itself. Liberalism not only confers the rights of individual liberty on a nation's citizens, but it also demands that citizens accept their civic responsibilities.

I am however concerned that some of the liberties we take for granted in Australia are being eroded by the actions of government.

I fear that step-by-step and in a way that barely registers in the consciousness of most people, we are losing some of the protections against the arbitrary and interfering actions of the State.

Some of these changes are driven by the community itself. It is hard to empirically quantify, but I am concerned that our society is becoming less self-reliant and placing more store in government to solve our problems.

Again, Mill warned us against this:

“some, whenever they see any good to be done, or evil to be remedied, would willingly instigate the government to undertake the business...”

We see this attitude in so many areas of Australia today. If a company goes bust, then the government should save it. If we are eating unhealthily, then it's the government's fault for not regulating fast-food outlets rather than the problem of those who choose this diet. If some of our children are becoming delinquent, then it's our schools to blame and not their parents. If people are drinking too much then it's up to the government to change drinking hours and close liquor outlets-even as was suggested recently on Australia Day!

Such attitudes are encouraged by governments who want to be seen to be acting in response to the twenty four hour news cycle. But in many cases they should act through education and persuasion rather than more regulation. But by expanding those aspects of society that come under the control of government we ultimately diminish our own liberty.

My commitment to liberty as a principle is not just a matter of pragmatism – an understanding that liberty “works” and non-liberty does not. It has a deeper attachment for me. If I may be self-indulgent for a moment, and quote my own words – and I know someone else who likes to quote their own words - when I spoke In Defence of God I said:

“For us in Australia we owe our liberal democratic tradition to the understanding that comes from believing in the essential worth of every other human being. It is the message of the Golden Rule, to love thy neighbour as thyself, and it is inspired by the understanding that we are all the children of God.”

However everything is not all rosy and theoretical. I perceive a number of significant threats to the maintenance of liberty today. I am going to highlight three areas that illustrate our complex and ongoing struggle in defence of liberty. First, are the threats to our natural environment, second, the challenges facing the international community and third, infringements of liberty by our state and federal governments.

Whatever people may argue about global warming, international whaling, deforestation or anything else, we need to observe the precautionary principle – we cannot indefinitely plunder the resources and alter the environment of the planet without consequence.

We are merely transitory custodians of this planet and to deplete our natural environment leaves future generations with an impaired quality of life.

Food security, energy security, fresh water and clean air are surely necessary for the maintenance of a decent quality of life.

Liberty cannot flourish amid chronic and debilitating poverty. Lifting people out of poverty has been one of the mightiest triumphs of an economic system predicated on personal liberty and the ability to create personal wealth. Aspiration must be rewarded.

It is my strong belief that only through increased wealth creation and innovative renewable energy technology will we be able to move our civilisation towards environmental sustainability. Equally, liberty is essential for a society that must meet head on the challenge of complex global disease. From where have the great advances in medicine and public health come? They have come from free societies where the liberty of people to think and experiment has led to global benefits. It is no coincidence that the most significant advances to both eradicate and treat HIV have come from the West.

The contribution of the West is not limited to Google, Coke and Hollywood however. Freedom and liberty empower innovation and investment. The goals and achievements we have are much desired in countries. Globalisation is a derivative of the success of liberty.

Globalisation also represents the great potential of economic liberty. The breakdown of tariff walls, which restricted individuals and companies from trading, the internationalisation of the labour force, and the reform of failed centrally controlled economies has delivered wealth to large portions of the world's population.

We rightly paused during the recent financial crisis to reign in the excesses and address some of the flaws in the global financial system, but the shock of recent events has not diminished in any way my faith in either market forces or the positive power of a globalised economy.

Wealth of course should never be the sole indicator of progress. However globalisation, and the economic growth it is delivering to developing nations, is the most effective poverty reduction program in operation. For example, between 1990 and 2015 the World Bank estimates that the number of people living on less than \$1.25 a day will halve – from 1.8 billion people to 950 million people.

Internationally we have come to an understanding, arising from the horrors of two World Wars and genocidal experiences in places such as Cambodia and Rwanda, that free nations have a responsibility to stand up for the liberty of all oppressed and threatened peoples across the globe. Interventions in East Timor and Kosovo were expressions of the determination of free nations to ensure the liberty of others. Liberty and freedom are not merely Western concepts or constructions – they are universal.

Of course today the immediate challenge is our response to the threat of terrorism.

This is a global and domestic threat. The rise of religious extremist movements and their expressed belief that only violence can lead to justice – a proposition refuted by the examples of Ghandi, Mandela and Martin Luther King – represents a clear challenge to societies. Our response should be to enhance and expand liberty not to curb or curtail it. This is as important locally as it is globally.

As a liberal, a legislator and a lawyer, it is the Anti-Terrorism laws, enacted by a government of which I was a member, that has given me great cause to reflect on our individual rights.

Are there occasions I ask, in which the welfare of the majority warrants the restriction of the rights of the few? It is one of the challenges that we face in seeking to apply Mill's principles. In this case, the Australian government – like its counterparts elsewhere – was responding to terrorism threats that potentially put the lives of thousands of people at risk.

But did the solution also have the potential to limit the freedoms we hold so precious?

Under normal circumstances, much of the powers conferred on enforcement agencies by the Act are ones that I would be horrified to see any democratic government advance.

In particular, I make mention of “preventative detention” without charge that severely limits access to legal assistance or even outside communication; “control orders” that limit movement and may be in force for up to ten years; and expanded police stop, search and interrogation powers.

However, I reached the conclusion that the threat to liberty of so many justified the actions we took against so few. When effectively the whole polity is under threat from attack by people determined to bring it down, then the government’s primary responsibility is to secure the safety of its citizens.

These are, in my view, war-time measures. If the nation was under immediate threat of invasion, I suspect that debate and concern would have been more muted. However, the war against terrorism is far less tangible. It’s like a guerrilla war where the enemy is not as easily discernible.

What is important to me is that the restrictions on individual liberty contained in our Anti-Terrorism legislation do not become permanent. The Act includes a sunset clause for some of its more draconian elements, which is essential. There is a compelling case for those sunset clauses to be something less than their current ten years.

But what if the war against terrorism is to last a life time? As the government’s White Paper released last month concluded, there is no end point in sight. Do these laws effectively stay on the statute books forever because the threat of terrorism will persist for generations to come? It is my own view that the loss of individual liberty that these laws represent cannot stand for all time.

What we must do is objectively, dispassionately and regularly review their efficacy, preferably in a bipartisan way. If we find the laws have not been used, or have not been needed, then they

should be repealed. I would not find it acceptable to declare a situation an “emergency” one day and then declare it “permanent” the next.

And this brings me to other threats to our freedoms that are much closer to home. Some of these come from our own political leaders. They may seem trivial when you look at them individually, but add them all up and you see the liberty that we’ve fought so hard for starting to fray at the edges.

For example, there was a recent suggestion that the drinking age be raised to 21.

Yes, we have a problem with binge drinking and yes, this should be a cause for concern. But if you are old enough to fight for your country, if you are old enough to vote, if you old enough to be tried in a criminal court as an adult, then you are an adult and the concept of telling someone who is 18, 19 or 20 that they are prohibited from consuming alcohol is an infringement of individual liberty that goes way too far.

When the Police in New South Wales suggested banning the sale of full strength alcohol on Australia Day, not one politician bought into the debate despite this being an obvious direct attack on liberty. It was not accepted because it was clearly a ridiculous proposal, because for example, people would go home and drink or drink on the streets. But few people hear the Police call for less regulation and greater personal responsibility.

Similarly, we see the current Federal government seeking to introduce laws that will effectively censor the Internet. Of course we all want to stop unlawful material being viewed on the Internet. There are appropriate protections that are in place for that. But I have personal responsibility as a parent. If I want to stop my children from viewing other material that I feel is inappropriate then that is my responsibility to do something about it – not that of the government.

And this was the view of the Howard Government which proposed PC-based internet filters – a policy which I have always strongly supported. But what we have in the government’s Internet filtering proposals is a scheme that is likely to be unworkable in practice. But more perniciously

it is a scheme that will create the infrastructure for government censorship on a broader scale. Protecting liberty is about protecting freedoms against both known and future threats. Some may argue that we can surely trust a democratically-elected government in Australia to never try to introduce more wide-spread censorship. I am not so sure!

We would all like to think that liberty in Australia does not need defending however warning bells must surely have started clanging when the South Australian Labor government sought, in a ham-fisted and ultimately unsuccessful way, to actually censor political bloggers on the Internet in the lead up to their current election.

Perhaps such proposals for winding back liberty are not surprising from a Labor Party that argues for an ever-expanding role for government in the affairs of our nation and our personal lives.

I don't mean to suggest that there is no room for government intervention and regulation. There is probably a legitimate debate to be had about the controls (for example via the classification system) placed on extremely violent video games. I heard a compelling interview on ABC radio recently on this subject. Dr Wayne Warburton, a psychologist at Macquarie University was explaining how repeated exposure to violent games can influence the behaviour of their users. In contrast to watching a violent movie on the odd occasion, spending hours embedded in a game – actually “pulling the trigger” and “killing” virtual people that are now so realistic that fantasy and reality have merged – can rewire our brain.

What concerns me about these games is that they, at the most benign end, make us immune to violence or, worse still, encourage us to think of violence as a legitimate tool. Fundamentally, the loss of respect for human life and dignity that these games encourage becomes a threat to the respect we have for individual liberty.

In other areas such as DNA testing, data matching, credit history and mobile phone tracking we must be ever vigilant to prevent the punishment of the few becoming the entrapment of the many.

Huxley's Brave New World morphs from fiction into frightening fact – all by little increments and all in the name of just a little more security. But as Benjamin Franklin said: “those who would give up essential liberty to purchase a little temporary safety deserve neither liberty nor safety.”

In addition to this, we should be concerned about the rapid proliferation of CCTV cameras across our cities. Whilst they may be acceptable in crime hot spots do we really want to go down the path of Great Britain and find that it is impossible to travel any street without being recorded by the government or the police on video?

Even in my local area CCTV was set up to protect the welfare of revenue raising parking meters from vandals, but they have inadvertently provided a viewing platform of the local community going about its business.

Even when they should be helpful such as during a recent bombing of TIO offices in Darwin, the Police were allegedly using the cameras for inappropriate and unrelated purposes.

In every State and Territory there is an endless and rarely challenged demand for expansion in police powers – taken to extremes in Western Australia with a proposal to allow virtually unrestricted stop and search powers for police. I understand that similar proposals have also won favour in Victoria. Surely the Australian interpretation of liberty extends to the right of an individual to go about their daily business without being subject to a random body search by Police. The Police do not have to declare a reason for the random body search. In my view this goes too far.

Finally, I wanted to briefly touch on the issue of a Bill of Rights. The government has before it the report of the Brennan committee which recommends a Human Rights Act. The Federal Coalition has indicated its opposition to such a Bill, a position I support.

My concerns about a Human Rights Act lay in the power and authority that such an Act would give to the judiciary. Such responsibilities would be both undemocratic and ultimately undermine the independence of our Courts.

I referred earlier in my speech to the conflict that often occurs between different human rights. Many, if not all, involve contestable propositions that fall outside the usual role of judges to interpret the law through the prism of legal principles – they are essentially political rather than legal judgements. For example, the Courts could be asked to judge whether a law that bans tobacco advertising infringes free speech. This is not a legal issue but is one that should fall within the responsibility of democratically elected legislators to determine.

Judges are not elected, they do not necessarily represent the diverse range of views in society in the way that an elected Parliamentarian can, and they are not subject to the scrutiny and accountability of elected Parliamentarians. You will, very appropriately, never find judges fronting door-stops or public meetings to justify their decisions.

I also fear that by burdening the Courts with such a role that work will undermine the integrity and independence of the judiciary. I am a true believer in the separation of powers.

If Courts are making findings on contestable and essentially political issues, politicians and those in the community who support the actions of the Parliament will find themselves criticising their findings. Unwittingly, judges will find themselves players rather than arbiters and be the subject of the full weight of public opinion, public scrutiny and sanction.

There are better ways to guarantee human rights.

Fundamentally, our institutions are sound and those features of the Australian polity that I referred to earlier guarantee that we can and do, by large measure, ensure that human rights are protected.

Ultimately it is what beats in the hearts of Australians that forms the best protection of all. Our desire for a fair go. Our healthy scepticism. Our belief in self reliance, diversity and our multicultural society are the values that have guided Australia's development. They cannot be taken for granted. It is the duty of us all to ensure that every new generation of Australians – whether native born or recently arrived – share those ideals.

It is the fundamental duty of governments, parliaments, places of learning, and our civic and cultural institutions and for us as fellow citizens to fight to maintain the fire of liberty for which our Diggers fought and died.

And that is why it is right for our veterans to remind us on a regular basis that the price of liberty is eternal vigilance.

[ends]