

>> Peter Robinson: Welcome to uncommon knowledge, I'm Peter Robinson. Philip Bobbitt teaches at the University of Texas and at Columbia University where he is the Director of the Center for National Security. He has served in a number of government posts including The National Security Council. Dr. Bobbitt's most recent book: *Terror and Consent: The Wars for the Twenty-First Century*. Dr. Philip Bobbitt's view of the world, you write, quote: "We must reform our ideas about terrorism, war and the war aim if we are to win the wars of the 21st century in order to preserve states of consent and prevent the triumph of states of terror." Some definitions here, what are the wars of the 21st century?

>> Dr. Bobbitt: Well, wars --

>> Peter Robinson: Why do you use the plural by the way.

>> Dr. Bobbitt: -- yeah, wars potentially come in all sorts of shapes and sizes, what I had in mind were wars against terror. And I saw these as existing in three different dimensions. First, wars against 21st century market state terrorism, and we may want to talk about that term, the use of a force, diplomacy and other measures, sanctions, to preempt the distribution, dissemination of weapons of mass destruction, and third the use of force, aid, assistance, to prevent and where not possible to prevent to mitigate human catastrophes, either manmade like genocide or ethnic cleansing or natural such as earthquakes, or sometimes indeterminate like epidemics. Each of these different phenomena can produce terror, they don't produce an enemy that takes over your territory and seizes your state but they threaten -- they threaten civilians and, if the state cannot protect civilians, they jeopardize systems of consent.

>> Peter Robinson: All right. You have in this book an intricate and revealing system of thought but we have to begin by getting your definitions down here. You mention that we're at war on terror and it is by now become a common place to say terror is a technique of warfare it is not an enemy, we're not at war on terror per se, we're at war against Islamic radicals but you say, no, no and I'm quoting you directly: "We are fighting terror not just terrorists." Explain that distinction, explain why you insist on what has been so been roundly rejected.

>> Dr. Bobbitt: It's not that -- I think most people's whose views I respect think you can't have a war against terror. It would be like a war against nostalgia or a war against any particular emotion.

>> Peter Robinson: Right.

>> Dr. Bobbitt: And they also think that terrorism is a technique, and therefore, it's always just a means to an end. The key word I would draw from that proposition is "always", it is typically in the past been a means to an end but it can also be for some groups an end state itself. If what you want to do is to make people too fearful to exercise choice, if they're just absolutely terrified too terrified to exercise their own political religious moral and social choices, then what you want is a state of terror in both

senses of the phrase. You want a state that maintains this terrifying atmosphere and you want to induce in the individual a constant fear, the presence of fear.

>> Peter Robinson: So, it is the preeminent duty of the modern state to protect the state of mind of its own citizens?

>> Dr. Bobbitt: That would be going a little far, I don't know that we have to make people jolly and --

>> Peter Robinson: But we do have to --

>> Dr. Bobbitt: -- but be an optimistic. But you have to protect civilians, and not just your civilians, from that terror that would keep them from doing what they have a lawful right to do.

>> Peter Robinson: All right. And you use the term state of consent, state of terror is a state that promulgates a frame of mind which is frightened, too frightened to act freely. State of consent?

>> Dr. Bobbitt: States of consent like states of terror are ancient. They just come in different forms. We might have trouble thinking of the Florentine Oligarchy as a state of consent, they were all men, they were all property owners, they were all prominent figures but they drew on many patterns of kinship and mercantile relations to get consent from the society that they governed, as opposed to a state like roughly contemporary with that was Henry VIII's state which was really a state of terror, although, we think -- we think of that in perhaps more benign terms but, if you were Catholic in Henry VIII's state, you were living in a state of terror in all senses of the term.

>> Peter Robinson: Right. So -- so is this implicit -- you don't mention this but are you drawing implicitly on the notion of the social contract and Rousseau that the state, it is seldom expressed explicitly that the state is giving something to citizens, protection, order, in return for which they say fine, they give their consent to the way that they're living.

>> Dr. Bobbitt: No.

>> Peter Robinson: No.

>> Dr. Bobbitt: I'm not saying that, although, that is an interesting point. What I have said in a previous book to this in which most of this book too is that the nature of a constitutional order is defined by the bargain on which it claims power. So kingly states might say give me power because my father had power.

>> Peter Robinson: Right.

>> Dr. Bobbitt: I'm part of the dynasty. Give me state because I'm the protector of our religion. Give me state because I'm elected. Give me power because I will maximize your wealth. The sorts of states we knew in the 19th century dominated the great powers, imperial states said give us power and we will forge the national consciousness. The state you and I lived in all of our lives, 20th century industrialized nation states said: Give us power and we will maximize your material well-being. Franklin Roosevelt said that but so did Hitler, so did Stalin because they all lived in the same constitutional order. So, there is something to this bargain but that's not what I mean when I say a state of consent. State of consent is a state, it may be a democracy, it may not be but it is a state where authority can be withdrawn when the consent of the people is withdrawn and it can be withdrawn peaceably.

>> Peter Robinson: Let's pursue this, the terror and the constitutional order. You write in *Terror and Consent*, quote: "The changes in warfare and terrorism are both a consequence of and a driver of the change in the constitutional order." Close quote. Now you were just talking about this but, if I can get you to, again, let's begin with definitions. You draw a distinction between the nation state and the market state.

>> Dr. Bobbitt: Right.

>> Peter Robinson: Can you draw those distinctions briefly now?

>> Dr. Bobbitt: I don't know but I can draw them, let me try. When I say we want to look at terrorism in light of changes in the constitutional order, I'm trying to remind the reader that we think we know terrorism because we know the IRA, the PKK, the FLM, the PLO, we know 20th century nation state terrorism but we're not thinking about the sectarian mercenaries who sacked Rome in 1527, or who sacked Antwerp in 1576. We're not thinking about the pirates who raised Panama or the Barbary pirates who attacked territorial states or the North American savages who were hired by French and Indians to massacre settlements.

>> Peter Robinson: And who had no permanent designs on power within that state.

>> Dr. Bobbitt: That's exactly right. We -- we're not even thinking about the anarchists of the 19th century. We're thinking just about this particular epoch in which we have lived perhaps this is a natural thing but each kind, each form of the constitutional order produces its own peculiar kind of terrorist and the sort of state that we and the European Union and the states in Asia are becoming, a state that outsources that privatizes its activities, that is global that is networked that kind of state will produce a terrorism that is global, networked, outsources and privatizes its terrorism.

>> Peter Robinson: Okay. Now, what I think is intuitively graspable is that and I think what I'm describing here is just one corner of what you're saying, so I'd like to describe the bit that's easy to grasp and have you tell me what I'm missing or have me expand on it, is one very simple item, the Internet. We have this technical and free market and great technical prowess, we develop the Internet and suddenly you can send an e-mail to

Turkey in 12 seconds. And we then very promptly --and you can do so anonymously. You can build in all kinds of security and then we very promptly discover that this wonderful device, this instrument of freedom and free markets can be used by terrorists in secrecy to create a global nonstate network, that bit I've got.

>> Dr. Bobbitt: Right.

>> Peter Robinson: But you're saying more than that, are you not, that they mirror the new, the emerging market state --

>> Dr. Bobbitt: Yes, as I look back at terrorism in the past it is a symptom. It's an epiphenomena of a particular constitutional order. What happened to the anarchists of the 19th century?

>> Peter Robinson: They faded away more or less didn't they?

>> Dr. Bobbitt: Exactly, they weren't defeated. They faded away when the form of the state which they had mimicked and attacked, the imperial state, was destroyed in World War I, so when they encountered revolutionary groups like the fascists or the communists in Spain, they began as the strongest party because they were not terrorists of the nation state they simply couldn't compete. Al-Qaeda will be, I think, studied because it was the first of the market state terrorist. It outsourced its activities to old-fashioned terrorists, often groups that had been at each others' throats for years. It paid them, it gave them logistical support, sometimes it gave them weapons, but its purposes were not to seize any particular national capital. Its purposes were global and the fact that it fed on jihadist religious sentiment meant that it had a global base to begin with.

>> Peter Robinson: Now, you're talking about Al-Qaeda as something that represents a kind of prototype --

>> Dr. Bobbitt: Yes.

>> Peter Robinson: -- that can be studied, copied and so forth, a kind of virus that can be reproduced for different, for slightly different ideological ends. So you would reject, out of hand, the notion that what we're engaged in is a war on radical Islam.

>> Dr. Bobbitt: Well, I think you could have both, the Dutch Revolt --

>> Peter Robinson: You're saying that's merely the form it takes right now --

>> Dr. Bobbitt: Yeah, I'm --

>> Peter Robinson: -- that we need to be prepared -- go ahead, I don't mean to interrupt you but --

>> Dr. Bobbitt: No, you're right on both points.

>> Peter Robinson: All right.

>> Dr. Bobbitt: The first one is that you don't have to choose. The Dutch Revolt in 1618 was an important --

>> Peter Robinson: Against the Spanish was that, they're still in Spain?

>> Dr. Bobbitt: That's right.

>> Peter Robinson: All right.

>> Dr. Bobbitt: What was an important political event in its own right in the history of the low countries, it was also part of the 30 Years' War. Now, we do have a war against Al-Qaeda but it is also a part of a war against terror, and so it's not really one or the other but what I'm writing about is really a war against terror of which the war against Al-Qaeda is just a part and, if the jihadists suddenly all became Presbyterians, our vulnerabilities and the kinds of threats we face would not materially change.

>> Peter Robinson: "The rule and the role of law" -- again, quoting from Terror and Consent -- "the states of consent must conform their strategic behavior to the rule of law and the law to which they conform must be reformed to take into account changes in the strategic context." Closed quote. Now if I may let me -- let me ask a few questions, first about international law and then about domestic law. The argument here is that the law matters a very great deal. Now as a practical application, however, the United Nations got in the way of matters in Iraq when at a stage at which the Bush Administration simply -- at least it was casting the argument in this way, that it wanted to enforce the U.N.'s own resolutions. The U.N. has proven 100 percent ineffective in Darfur, in other words, I can quite see your formulation as an aspiration but it -- I -- the gears seem to me to slip when one applies it as a kind of practical tenant. I'm sure I'm mistaken and you're about to tell me how.

>> Dr. Bobbitt: I am.

>> Peter Robinson: All right.

>> Dr. Bobbitt: Let me begin a little further back though, in the 20th century we quite studiously separated law from strategy. We did that for, I think, very wise reasons despite the fact we fought almost a century of war we did not militarize the domestic environment. We had the Palmer Age, we had McCarthyism, we had slips along the way but I think we have to rank that as a great success, despite the struggles against fascism and communism we did not resort to a police state at home --

>> Peter Robinson: I see, I see.

>> Dr. Bobbitt: -- in which a militaristic warlike environment pervaded the domestic theater. At the same time we fought overseas, though we persisted with the laws of war -
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>> Peter Robinson: Right.

>> Dr. Bobbitt: -- we did not expect our strategies to be guided by law. There weren't political commissars in every -- in every company or battalion, people were not guided by -- by legal rules, they won the war and then the law followed.

>> Peter Robinson: Right.

>> Dr. Bobbitt: -- as in Nuremberg --

>> Peter Robinson: Right, right.

>> Dr. Bobbitt: -- or as in Japan. The 21st century I think we face the problem of reuniting these two that we want our strategy in the future to be guided by law because that is what we are fighting for, and war against terror is a war to protect civilians so they can do what they have a lawful right to do. It may be voting but it may be something mundane like going to the supermarket or the marketplace or putting a child on a bus. What distinguishes the freedom fighter from the terrorist is the terrorist is trying to use violence to prevent people from doing what they have a lawful right to do, the freedom fighter who assassinates Adolph Hitler --

>> Peter Robinson: Right.

>> Dr. Bobbitt: -- is trying to prevent someone from doing something he has no lawful right to do whether its genocide or an aggressive war against his neighbors or whatever now that's the strategy side. The side you're pointing to is the law side, how do you conform law to strategy and this has both, as you implied, a domestic and an international dimension although the two often flow into one another.

>> Peter Robinson: Sure.

>> Dr. Bobbitt: And the other --

>> Peter Robinson: Not if Antonin Scalia has his way.

>> Dr. Bobbitt: Well, I don't know Scalia's -- I know Scalia's views about international law, but --

>> Peter Robinson: Right.

>> Dr. Bobbitt: -- as to --

>> Peter Robinson: But when --

>> Dr. Bobbitt: -- as to interplay --

>> Peter Robinson: -- Justice Kennedy started quoting European precedents and Scalia said he'll have none of that.

>> Dr. Bobbitt: He had no patience with that. The United Nations is a formidable and on the whole successful instrument of international policy. It is of a piece with the League of Nations. It springs from an American idea that emerged in the first World War that states could behave towards each other as individuals behaved in a rights respected democracy.

>> Peter Robinson: Right.

>> Dr. Bobbitt: And it took the American Constitution and sort of blew it up with an Executive, a Judiciary --

>> Peter Robinson: Right.

>> Dr. Bobbitt: -- a Legislative body --

>> Peter Robinson: Right.

>> Dr. Bobbitt: -- it failed at the end of the first World War and it has had failures at the end of the Cold War but on the whole I think it's been a very successful institution. What it cannot do is transcend the characteristics of its member states, they are nation states, so they will obey national imperatives that's why you won't get action in Darfur that's why you wouldn't have gotten action in Cambodia or in Kosovo or Congo --

>> Peter Robinson: Right.

>> Dr. Bobbitt: -- nation states trying to advance the interests of their own nations will let global problems, climate change might be one, slip because they're not prepared to make the sacrifices to address them.

>> Peter Robinson: And the way around this problem, we simply have to deal with the United Nations as best we can?

>> Dr. Bobbitt: I think we'll develop new institutions but I think we'll reinvigorate old ones and I'll give you two examples: NATO has lost its regional purpose but it has a global purpose and I can easily imagine what some people have called an Alliance of Democracies.

>> Peter Robinson: John McCain has used that term.

>> Dr. Bobbitt: John McCain, among others, to be their successor, so instead of just the Democratic states of Europe you might have South Africa, India, Indonesia, Latin American states that are democracies, however, you're not going to have a global institution that leaves out Russia and China as successful.

>> Peter Robinson: Right.

>> Dr. Bobbitt: So, for global problems that are not simply security problems you need something like, I think, the G8.

>> Peter Robinson: I see.

>> Dr. Bobbitt: The G8 has already taken up some security responsibilities.

>> Peter Robinson: So your notion -- you're not a U.N. man, we've got to make the U.N. work and we have to live with its deficiencies, what you're saying is we need to find some way of producing a body of international law and if it's piecemeal, if it emerges through various institutions which are useful for specific purposes, still let's pursue that route, we'll use the G8 for certain -- we may have a league of democracies, the Anglo sphere, the English speaking world, India, Britain, South Africa, Australia. We just push on all fronts in effect.

>> Dr. Bobbitt: I do believe that although I wouldn't write off the U.N.

>> Peter Robinson: No.

>> Dr. Bobbitt: I'm not a --

>> Peter Robinson: No, but you're not shackling us to it.

>> Dr. Bobbitt: That's right.-- anti-U.N. person, that's right, I think we can't rule out that alone --

>> Peter Robinson: All right. New segment then, let me turn to domestic law. You've written, again, in *Terror and Consent*, a book that deserves to be held up to the camera again as we begin this segment, with respect to domestic law, turning from international to domestic law, with respect to domestic law, "The United States must so construe its Constitutional law that it protects human rights and this will often mean strengthening the powers of government.", close quote.

>> Dr. Bobbitt: Yes.

>> Peter Robinson: All right. Now let me put to you what I know from reading this book you will find a flawed example, the Patriot Act is duly proposed by the Bush Administration, duly enacted by both houses of Congress and signed by the President of the United States. It involves a certain judicial structure, via the courts and so forth,

pretty good performance, right, I ask knowing however that you have serious reservations about the Patriot Act but use that as an example to show what where the deficiencies lie what ought to have been done. It looks to me perfectly lawful. It looks like the kind of example of what you're talking about except that you say it isn't.

>> Dr. Bobbitt: Well, it has some flaws, I'm sure, but in the book I say that while I'm prepared to address some things like a sneak and peak searches and FISA and so forth. I don't really write much about the Patriot Act per se because it would have sunsetted by the time the book came out. The real problem I think, Peter, is the way of looking at the relationship between rights and powers that so many of us share. I certainly have it though I struggle against it, it's an idea that there's a spectrum along which exists the rights of the government and the rights of the people. In times of emergency the needle on this spectrum tends towards the government and its powers are greater and the rights of the people are less. In times of tranquility it may go back the other way --

>> Peter Robinson: Right.

>> Dr. Bobbitt: -- the people have more power and the government has less and I think this is a deeply misleading little paradigm. The Declaration of Independence says: That the purpose of government is to protect rights. Full stop. That's the only purpose stated in the Declaration of Independence. Our Constitution was a -- instituted a stronger government, a more powerful government than had hitherto existed in the Continental Congress and the Articles of Confederation solely to protect our rights. You can weaken a government, you see this in Somalia for example, and people's rights are weakened also or you can strengthen a government, if you do it wisely, and the people's rights are also strengthened. It isn't the case that just because you have a National ID System that your rights have been lessened even though the government's powers of information have been increased.

>> Peter Robinson: So here's the sort of thing you would have liked to have seen a long time ago, I'm supposing, we go into Afghanistan, we go into Iraq, and we pick up terrorists in the field and recognizing that we don't have a legal regime that can cope with this problem we stick them in Guantanamo, but you'd have liked to have seen the administration say, the President could simply have been forthright enough to say this in a speech: We are in a new set of circumstances. The law by its very nature tends to be reactive, I am hereby appointing a commission of distinguished jurists to attempt to draft laws that can deal with this extremely difficult situation which bears on the security of the nation both as regards the detainment of these many -- these people whom we have reason to believe are terrorists and bears on the security of the nation to the extent that we must always preserve our self-respect as a nation of laws. That would have been the solution you would have wanted?

>> Dr. Bobbitt: I wish you'd written that for the President to say.

>> Peter Robinson: Okay. So simply direct address to the problem and a recognition that law tends to lag behind.

>> Dr. Bobbitt: And also that we need law desperately, when you move into a new situation, legitimacy is the first thing that begins to ebb away from government because our people don't know what to expect, they don't have the precedence on which to rely, to know what the government is going to do.

>> Peter Robinson: Let me push you one more time -- go ahead.

>> Dr. Bobbitt: What we did is kick that away. We tried to operate in this new environment without reforming law. All right. I interrupted you.

>> Peter Robinson: Well, no I just want, last question with regard to the importance of law in the domestic scene, you -- well, give me your take on the conundrum of the ticking bomb, the terrorist --

>> Dr. Bobbitt: Right.

>> Peter Robinson: -- there's a bomb ticking, hundreds of thousands of lives are at stake, we have reason to suppose the terrorist in this darkened room has knowledge of the whereabouts of that bomb, how legally do we address that problem.

>> Dr. Bobbitt: Well, I don't know that the law should address that problem and I'll tell you what I mean by that. The ticking bomb problem is not for me anyway a difficult problem. If you have a terrorist and if he has information and if that information would lead you to diffuse a bomb that would kill masses of innocent people, I don't see any trouble with using whatever methods you need to get the information, not only would I torture him, I'd torture you. If you told me right now, I have information that will save a hundred thousand people in Palo Alto, I'm not going to tell you, I'd do what I could to get it out of you. I've no trouble with that. That doesn't require change in the law, that can be unlawful, and we can go before any jury in the country and, if you really have information you on good grounds believe to be just as we've said, which is a pretty high standard --

>> Peter Robinson: Yes, it is a very high standard.

>> Dr. Bobbitt: -- It's not just someone you suspect of having this, if you really have that, no jury in the country will convict you, that's the ticking bomb problem is a non-problem.

>> Peter Robinson: This is the old principle of hard cases make bad law, is that what you're asserting or are you asserting something more.

>> Dr. Bobbitt: In this case I'd say hard cases make no law. It's best not to try to conform your law to such an extreme, to such an extreme case.

>> Peter Robinson: All right. Alliances, in Terror and Consent, quote: "The wars against terror cannot be won by the states of consent without alliances, indeed alliances can be one of our chief advantages over states of terror." Closed quote. Now, let me tell you my general line of questioning here, I felt the same impulse reading that that I felt when you talked about international law which is all very well and good as an aspiration but as a matter of actual political reality there are all kinds of problems, as witnessed, our critical allies for decades have been the Europeans. Henry Kissinger said on this very program earlier this month that the dissolution -- not the full dissolution, the dissolving, so to speak, of the nation state into the wider entity of the European Union has very markedly diminished the ability of the nation state to demand sacrifices from citizens.

>> Dr. Bobbitt: Yeah.

>> Peter Robinson: Right. Serious problem, if you look at the troop figures in Afghanistan we have some 34,000, all our NATO allies combined have only 26,000 most of them are in noncombat positions or regions, so it seems to me that if you -- I'm concerned about constraining the United States of America in unrealistic ways.

>> Dr. Bobbitt: Let me state this more categorically, if we don't have global alliances to fight wars on terror, we cannot win. Full stop. Our problem right now is not Al-Qaeda in Afghanistan or even Al-Qaeda in Iraq, our problem is the terrorist in Europe who will be coming here from Europe. So, if we can't build an alliance with our oldest and closest allies to say nothing of global alliances, we cannot possibly hope to defeat the terrorists. So it can't simply be aspiration this is a necessity. Now it may not- It may require more in the way of leadership and diplomacy than we have right now in our resources. It may require more politically in Europe than is realistically and currently available. We may have to suffer some terrible atrocity. Alliances are usually forged out of necessity not out of affection.

>> Peter Robinson: So what you're making is a kind of existential proclamation here. Well, let me just keep pushing you then, here's the demographic argument, Mark Stein makes this point. Take your population, 90 percent of which has a birthrate of below replacement level and 10 percent of which has a birthrate of three times replacement level and within two generations 90 and 10 have gone to 50/50 and that's a pretty good description of France today. So we have the notion that Europe is in flux that the Europe that shared our values and represented a firm ally through so many decades, indeed centuries I think one could argue, is simply evanescent. How do we cope with that? You're saying we must cope with it.

>> Dr. Bobbitt: Well, I don't -- I don't really accept the premise that the Muslim population in Europe doesn't mean a population without European values. It's always striking to me when I visit my old college or when I travel to an ancient city how strong the power of a local culture is, how the kids at my old college now, when I was in college it was an all boys school up in New Jersey, we wore tweed jackets and we talked about the prom and that sort of, house parties and that sort of thing. Now it's a much more diverse environment, something like 60 percent of the kids there come from so-called

minorities and, of course, half of them are women, it's a very different place and yet it's -- it's not that different from Scott Fitzgerald's world and that has to do, I suppose, with the immutability of culture. So I don't believe that when, for example, in northern Europe there are more Muslims than Catholics or southern Europe where there are more Muslims than Protestants things that will happen really within the next few years that means that you'll have alien, non-European cultures. I don't think that has to happen and the counter-example that gives me hope is our own country where we have brought people from many distant and sometimes alien worlds and they have become Americans in rather short order, not only Americans but passionate Americans, Americans who feel as deeply as anyone the commitment to our freedoms our way of life.

>> Peter Robinson: All right. So you're an optimist as regards Europe, but whatever, whatever happens in Europe you continue to insist we must work with them, with European nations, we have to have those alliances.

>> Dr. Bobbitt: I put it this way because I get this question a lot --

>> Peter Robinson: Amsterdam becomes a -- is on track to become a majority Muslim city by 2015.

>> Dr. Bobbitt: Or even sooner.

>> Peter Robinson: Or sooner.

>> Dr. Bobbitt: And Rotterdam and Antwerp.

>> Peter Robinson: Right.

>> Dr. Bobbitt: I like to quote Leo Ziegler [phonetic] the Hungarian physicist, he said: An optimist is someone who thinks the future is uncertain. So all I'm saying is --

>> Peter Robinson: That's very good.

>> Dr. Bobbitt: -- that demographics are not an iron law that will make Europe a stranger to us. All right. But in terms of an imperative, yes I will state the imperative, we must have alliances to win this war.

>> Peter Robinson: All right. Dr. Philip Bobbitt, the author of *Terror and Consent*, thank you very much. For *Uncommon Knowledge*, I'm Peter Robinson at the Hoover Institution, thanks for joining us.