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Forget equality? Security and liberty in the “war on terror”

Claudia Aradau*

Abstract

The ‘war on terror’ has triggered intense debates about the role of security and liberty, the trade off between security and liberty, the meaning of security and the power of civil liberties. Nonetheless, while security has been closely dissected either as a governmental or exceptional practice, liberty has been largely shrouded in silence. Rather than contesting practices of security, liberty appeared degraded, a fetish, justifying restrictions and regulating conduct. This article unpacks the conditions of possibility for the degradation of freedom in the ‘war on terror’ and argues that freedom degenerates when its relation with equality is severed and it is instead tied up with security. Rather than the dichotomy liberty-security, I consider the triadic relationship with equality and the implications of the double demise of equality: on the one hand, the demise of equality from theories of security (starting with Hobbes) and on the other, the demise of equality in contemporary social and political thought.

Critical engagements with the “war on terror” have analysed the governance of terrorism by exploring either the element of continuity or discontinuity with liberal governance entailed by the new practices of war, security and risk. Those who draw inspiration from Carl Schmitt’s and Giorgio Agamben’s theories of the exception argue about exceptional measures that are no longer temporally or spatially bound, but have become the norm. Guantánamo Bay, indefinite detention, extraordinary rendition, Abu Ghraib have been exposed as particular practices in a generalised exception¹ or “global matrix of war”². Others draw on governmental analyses and emphasise the continuity of practices of policing the international, of risk management, of biopolitical governance, the exclusion of aliens and the role of law.³ If there are discontinuities that characterise the “war on terror”, these are located within governmental rationalities: the influence of neoliberal rationality upon liberal democracies, the practices of empire, the merging of internal and external security at the end of the Cold War or the catastrophic imaginary of precautionary risk.⁴

While security practices have been subjected to increased scrutiny and their location in the continuity or discontinuity of normal practices of liberal states hotly debated, liberty has been largely shrouded in silence.⁵ Even if the war on terror has rekindled debates on the trade-off between security and liberty, it is security that is closely and critically dissected and not liberty.⁶ Yet, if Drucilla Cornell is right that “defending ideals” has become a necessary element of critical approaches to the “war on terror”, these engagements need to get to grips with the use of freedom as a fetish or an

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emblem rather than as an ideal.⁷ Dismissing the usage of freedom in the “war on terror” as a simple fetish does not shed light on the conditions of possibility of the degradation or fetishisation of freedom. In what sense can freedom be seen as a fetish and what are the conditions of possibility for an atrophied discourse of freedom?

In his lectures on *History and Freedom*, Adorno has argued that “ideas that originally had a utopian complexion and critical complexion tend, notwithstanding their truth content, to degenerate in the course of history into ideologies”.⁸ He identifies the “infallible sign” for the degeneration of freedom in the way freedom lends itself to the “justification for restrictions on freedom, in other words, where talk about freedom is perverted into the exact opposite of what it is supposed to achieve”.⁹ If Adorno exposed the conditions of possibility for the degradation of freedom in a conjuncture defined by Nazism, today we need to understand the particularities of the fetishist and degraded use of liberty in the “war on terror”. Freedom nowadays does not only justify restrictions on freedom, but also positively defines the space of regulated behaviour. We are required to act in conformity with the externally given rules of freedom, to become responsible and turn our lives into a responsible enterprise.¹⁰ This paper unpacks the conditions of possibility for the degradation of freedom in the “war on terror” and argues that freedom degenerates when its relation with equality is severed and it is instead tied up with security. To explore the singularity of this triadic relationship, I shall place liberty both in the continuity of modernity and consider it in its singularity through the “forgetting” of equality as a political principle. Firstly, I diagnose the particularities of the use of freedom in the “war on terror” and unpack its relation to security. Secondly, I revisit Hobbes – the theorist who is most often invoked for privileging security in the trade-off with freedom – to expose the conditions of possibility for the degradation of freedom through the social contract of security, namely the exile of equality as a political principle. Lastly, I consider the exile of equality within the political and theoretical developments of the current conjuncture, variously defined as late modernity, empire or neoliberal globalisation. Contra these critiques and the foretold demise of equality, a different concept of equality is offered.

Freedom, whose freedom?

In close connection with the security imperative of the war on terror, liberty has been mobilised as either a justification for counter-terrorist measures or as the last rampart against governmental encroachments of human rights. On the one hand, infringements of liberty are seen as the necessary consequence of matters of national security. Hence, the British government has, for example, argued – against the SIAC judgment concerning the 2001 Anti-Terrorist Act unlawful discrimination between nationals and foreigners – that the state has always discriminated between citizens and foreigners in matters of national security.¹¹ The limitation of freedom appears acceptable when security is at stake. On the other hand, restrictions upon civil liberties are taken to undermine the freedoms that define democracy. Liberty is the ultimate challenge against the new technologies of identification and surveillance, the practices of risk assessment and the dismantling of the private/public distinction. Civil rights organisations and activists have reversed the

argument of the trade-off and have claimed that certain liberties (such as *habeas corpus*, for example, or the right to a fair trial) cannot be suspended for anybody, be those foreigners or citizens. Debates about the role of identity cards in the UK, biometric identifiers, data bases, monitoring of communications, indefinite detention and even extraordinary rendition are formulated in terms of the illegitimate destruction of freedoms and denial of human rights.

These debates are plagued by the contradictions that have been constitutive of the concept of liberty in political modernity. As Peter Wagner has put it, modernity is characterised by an ambiguous discourse of liberty and discipline.¹² Modernity's project of liberty had to be contained within certain limits and boundaries created against its own claims of freedom. The discourse of the excesses of liberty that need to be tamed has been explicitly invoked in the "war on terror". Faced with the looting that the demise of Saddam triggered in Iraq, Donald Rumsfeld expressed the challenge of excessive freedom for the rationalities of order and discipline:

Freedom's untidy, and free people are free to make mistakes and commit crimes and do bad things...They're also free to live their lives and do wonderful things. And that's what's going to happen here"¹³

In modernity, the excesses of liberty have been tamed by disciplinary and even authoritarian practices. In another instantiation of the degradation of freedom, civil liberties are thought to allow for the unrestrained use of violence. Thus, it is only proper that these freedoms be restricted to fight the terrorist threat, as an overwhelming majority of the British public agrees according to the 2007 British Social Attitudes Survey.¹⁴ The freedoms that define the realm of action, of being a subject have already undergone a restriction and delimitation, their boundaries carefully policed against dangerous excesses.

The "taming" of excessive and unruly freedom is reinforced by yet another reversal of freedom into restrictions and limits. Freedoms do not only need to give way to security imperatives, security becomes a necessary step in the preservation of freedom. Tony Blair has offered a vivid description of the reversal of freedom into security:

When crimes go unpunished, that is a breach of the victim's liberty and human rights. When organised crime gangs are free to practice their evil, countless young people have their liberty and often their lives damaged. When ASB goes unchecked, each and every member of the community in which it happens, has their human rights broken. When we can't deport foreign nationals even when inciting violence the country is at risk.¹⁵

Cast here in the ideological form that Adorno recognised in the justification of repression, freedom is placed in a continuum with security practices, creating a space of governed subjects and regulated behaviour.

In this instantiation, freedom is divided among social groups and unequally allocated depending on the regulated/excessive use it is put to. David Blunkett's comment on the 2001 Anti-Terrorism Act shows liberty as always already divided among categories of the population:

[The proposed reforms in the Anti-Terrorism, Crime and Security Bill contained] proportionate and targeted measures which will ensure and safeguard our way of life against those who would take our freedom away. [...] Because we are talking only about a handful of people, we are not threatening the civil liberties of this country, but we are ensuring those handful don't threaten those civil liberties.¹⁶

What matters here is not the utilitarian implication of Blunkett's discourse, but the legitimisation of practices that divide freedoms among categories of population. Anastassia Tsoukala has aptly analysed the elements of selective liberties in British political discourses. The "rhetorical defence of the implicitly democratic British way of life is conceivable not only because the terrorist attacks of September 11th have been widely qualified as attacks on democracy and freedom, but also because it is presumed that the law on human rights is designed solely to protect the many and not the few".¹⁷ Anthony Burke has deciphered a similarly selective and inegalitarian understanding of freedom in the American discourse of freedom. This freedom is "exclusive and self-regarding", it is something America brings to the world for itself and from within itself".¹⁸

The categorisation and distribution of populations into groups whose freedoms can be upheld, limited or eliminated implicitly undermines the ideal of equality. Klaus Günther has suggested that the acceptance of restrictions on liberties may be due to how restrictions operate as a promise of security to "good" citizens against "evil" ones in the international struggle against organised crime and international terrorism. People may be ready to put up with restrictions on liberties because they are given reason to expect that, as "good" citizens, they will in any case not be affected.¹⁹ This understanding of freedom is selective; only some aspects are regarded as dispensable and only for a minority of "evil" citizens. Freedom is not something "granted to individuals as such and in general: it is granted to certain individuals only and within particular circumscribed domains".²⁰ The curtailment of procedural rights – for example those that concern arrests, wire tapping, or investigations – and the recent diminution of liberty in the US already applies more to alien residents than to US citizens and permanent residents. The anti-terrorist police powers in the UK have been used disproportionately against the Muslim population and all those detained indefinitely in the UK have been Muslim.²¹

Criticisms of counter-terrorist policies focus on the contestation of selective freedoms and their granting to particular categories of the population. When "genuine" asylum-seekers become "collateral damage" to a policy designed to target terrorists, when surveillance and data collection are liable to be extended to everybody and infuses our everydayness, when categories get blurred and overlap, when Muslim communities appear to be the illegitimate target to these policies, then there is a manifest discontent with security measures. However, these criticisms hint at a need for better categorisation and more adequate selection and description of the categories to be targeted and do not question the premises of inequality that select these categories as privileged targets for anti-terrorist measures.

For example, the European Commission has emphasised in a Working Document on internal security and international protection that "*bona fide* refugees and asylum seekers should not become victims of the recent events, and [...] there should be no

avenue for those supporting or committing terrorist acts to secure access to the territory of the Member States of the European Union”.²² A Report by the International Organization for Migration (IOM) on “International Terrorism and Migration” also agrees that “[t]he stricter the regime and the more difficult it is to secure visas, the greater the potential for deterring *bona fide* visitors and businessmen”.²³ The measures that IOM advises as part of counter-terrorist policies are simply boundary-drawing; they focus on the categorisation and identification of risk groups. Externally, such measures should focus on increased border and entry control, as well as improved information and identification systems (biometrics, data collection and exchange). Internally, the IOM report advises tighter measures against suspects, designation of terrorist organizations, holding of persons, in-country identification, and language analysis. All these measures consider how to categorise and identify suspects, how to delimit a population group that is potentially dangerous.

Dividing populations and taming particular freedoms for selected categories of population is characteristic of freedom’s role in modernity. There is no absolute unruliness or excess of freedom in modernity. For Kant, who defines freedom as the practical side of reason, the modern subject’s capacity for right and correct thought, the use of freedom entailed inegalitarian limitations and restrictions. While reason makes the individual the ultimate measure of freedom, the public use of freedom presupposes restrictions on freedom. This is noted by Adorno in the form of the “disastrous word “as” that introduces a restriction of the freedom to “make public use of one’s reason in all matters”.²⁴ The public use of freedom can be made *as* a writer and scholar, not however as servant of the state. Adorno shows the restriction of reason and hence of freedom as concomitant with the division of labour in which human beings find themselves involved.²⁵ The restriction of freedom as the public use of reason is rendered here as the division of labour in societies governed by a state apparatus.

Kant’s injunction “Have the courage to use your own understanding!” is undermined by the allocation of subjective positions.²⁶ What matters is not the distinction between private and public that Kant draws in arguing that the public use of reason is prohibited when the individual is just a “cog in the machine”. For Adorno, the public use of reason itself is rendered inegalitarian through the division of labour. However, the public use of reason holds the promise of critique that can be formulated if we know “how the use of reason can take the public form that it requires, how the audacity to know can be exercised in broad daylight”.²⁷ How is the regulation of freedom decided externally – by the state – and internally – by the subject and what is different about the current situation? I start with the external limitation of freedom through the constitution of the “society of security” to be protected by the state.

Hobbes, liberty and (in)equality²⁸

Unlike the Kantian concept of freedom that is based on characteristics of man as a rational being endowed with accountability, Hobbes has a very restricted concept of liberty which only encompasses the absence of impediments to motion. Such a restricted concept of freedom allows him to formulate the shift from natural freedom to civil freedoms with the Leviathan as unproblematic for the fate of freedom. The institution of

the Leviathan is based on the distinction of two types of freedom: freedom as a prerogative of the individual prior to the social contract (which will be shown to be no freedom at all) and freedom within the constraints and limitations of the Leviathan (civil liberty).

The transition from natural to civil liberty does not mean, however, the simple prioritisation of security over freedom. Rather than subsumed under the regulation of civil liberty, it is the unruliness of natural freedom that leads to the constitution of the Leviathan. With Hobbes, nobody is unfit for the task of politics. There are no slaves or people of lesser intellect who could not join in the constitution of the state and the “equality of all under one”. Yet, this moment of the constitution of the state through the multiplicity of individual wills contains the very promise of its unmaking. As the Leviathan has been constituted through individual wills, it can also be undone through civil war. The ambiguity of the very constitutive moment of the Leviathan leads Hobbes to set up a mechanism of government that would make the eruption of civil wars if not impossible, at least preventable.

Marxist and post-Marxist readings of Hobbes have considered the problem of revolts and political divisions as immanent to the constitution of the Leviathan.²⁹ In this approach, Hobbes’s theory is understood as a theoretically preventive attempt of the causes and outburst of civil wars. In Étienne Balibar’s formulation, “[h]is entire organization of the state, including the way in which the distinction between the public and private sphere operates, can be understood as a system of preventive defence against the mass movements that forms the basis of civil wars (of classes and of religions) and of revolutions”.³⁰ Foucault has also argued that “[i]t is a discourse of struggle and permanent civil war that Hobbes wards off by making all wars and conquests depend upon a contract, and by thus rescuing the theory of the state”.³¹

Once individuals enter the Commonwealth, the state is allowed to “do whatsoever he shall think necessary to be done, both before hand, for the preserving of Peace and Security, by prevention of Discord at home and Hostility from abroad”.³² Although subjects are free to disobey commands that would contradict natural law and free to resist the sovereign when attacked, they cannot challenge the actions of the Leviathan. And yet, the very spectre of sedition and resistance comes to haunt the Leviathan. The transfer of rights to the state does not do away with the possibility of civil war.

The spectre of resistance that unsettles the Leviathan is represented by the spectre of what Kant was later on to call the “public use of reason”. Hobbes is adamant against the freedom of man to be the judge of good and evil, as this liberty could be a direct challenge to the state.³³ Citizens cannot be private judges of public affairs and need to submit their judgement to that of the sovereign. The essence of freedom as the use of reason and right judgement is ousted from the state of peace and order ensured by the Leviathan. The freedom of judgement can only be true of the state of nature, as in the Leviathan the freedom of judgement would undermine the sovereignty of law and would be dangerously close to seditious actions. Hobbes’s diatribe against Roman and Greek understandings of liberty, which could buttress claims of individuals against the state, entrenches the boundary that divides freedom depending on the two forms of life, nature and civilisation.³⁴ In *Behemoth*, he clearly states among the causes of the English civil war the exceeding number of men who had been educated by famous books on ancient

Greece and Rome, in which “popular government was extolled by the glorious name of liberty, and monarchy disgraced by the name of tyranny”.³⁵

The state can deprive individuals of freedom to various extents or, in a positive formulation, citizens are allowed to enjoy as much freedom as does not lead to seditions. The only logically possible freedom within the state is a qualified form of freedom, a freedom with limits enforced by the sovereign state.³⁶ The remaining freedoms are defined by the “silence of the law”; and for such silence to be correctly interpreted and not lead to revolt, ordered and disciplined citizens are required. The preservation of civil peace requires practices of liberty that are consonant with the goals of the state. Civil peace requires both an absolute sovereign and a population trained and educated in the civic virtues of justice, gratitude and complaisance³⁷. David Burchell persuasively makes the argument that Hobbes’s “education” (*disciplina* in the Latin original) covered a wide range of “disciplines” by which human beings are made into citizens.³⁸ Chapter xxx of the *Leviathan* lists the virtues that need to be inculcated into people so as to make rebellion impossible: not to exalt fellow-citizens above the sovereign, not to speak evil of the sovereign, to respect their parents, not to deprive fellow subjects of their legitimate possessions, and not to have unjust intentions.

Peace, security and order can only be achieved through a process of permanent ordering, regulation and normalisation of subjects. The individual is “the product of the civil society which is to regulate it, and the Hobbesian problem is how to form it so that it will be able and willing to abide by the natural laws and contracts appropriate to civil society”.³⁹ Although the order of the Leviathan entails the normalisation and regulation of freedom, liberty continues to manifest itself through the assertion of equality. Hobbes is wary of the multitude, the crowds who shun political unity and resist authority. If the constitution of the Leviathan entails the move from the “multitude” to the “people”, the multitude reappears within the state. Virno singles out this remarkable sentence in Hobbes: “When they rebel against the state, the citizens are the multitude against the people”.⁴⁰ The multitude re-emerges as a permanent remainder of the state of nature in the middle of the commonwealth.⁴¹ As Virno has noted, the multitude is a negative concept, the very negation of the state of civil peace and its techniques of normalisation. In *De Cive*, Hobbes defines a faction as a multitude of subjects united in opposition to the sovereign authority. Factions, he points out, are unjust, being “contrary to the peace and safety of the people”.⁴²

The peril associated with the multitude is the practice of excessive words, words improperly used or words without a referent. The body politic is threatened by words and phrases like “one must listen to the voice of conscience not to the voice of authority” or “it is right to kill a tyrant”.⁴³ The greatest fear of the Leviathan is not the “regicide”, the sedition itself, but the naming of regicide as tyrannicide.⁴⁴ When the king is called a tyrant, other forms of justification of political action challenge the authority of the Leviathan. In *De Cive*, Hobbes rejects the idea that tyrannicide is lawful as a seditious doctrine. “For what does thou call him a *Tyrant*”, asks Hobbes, “whom God hath made a *King*, except that though being a private person, usurpest to thy self the knowledge of *good* and *evil*”.⁴⁵ Tyrannicide is synonymous to the excessive or unruly use of liberty and the enactment of equality against relations of domination. The word “tyrant” challenges the rightfulness of the sovereign and points to relations of domination and inequality. Claims of tyrannicide also re-enact the political equality that Hobbes could

make solely a moment of departure of the Commonwealth and in this limit freedom through an internal critique.

Hobbes uses the concepts of liberty and equality in a counter-revolutionary move to create a pact, a social contract through which everybody is alienated. The inequality between the Leviathan and its subjects is also preserved through the fiction of the state of nature/the international as a state of pernicious equality, an equality that only leads to insecurity. For Hobbes, equality leads to a state of nature that is comparable only with the international. The liberty that comes with the equality of the state of nature is what is to be abandoned in the Commonwealth. Just as liberty becomes split between natural and civil, the equality of all is restricted in the Commonwealth by the domination of the one. This inequality between the one and the “all” makes not only possible, but necessary, the selective allocation of freedom.

Since Hobbes, equality has been an awkward intruder in discussions of security, as security is a practice of drawing borders, creating hierarchies and limiting political communities. Security legitimises inequality and the unequal relations between sovereign and subjects, state and individual, inside and outside, domestic and international. As the relative equality of human beings in the state of nature has been conducive to insecurity, this equality is to be surpassed in the Leviathan. At the same time, in the international realm, sovereign states re-enact the fiction of equality as conducive to insecurity. Equality leads to insecurity, while security depends upon necessarily inegalitarian liberty.

The Hobbesian fiction of the state of nature (reproduced in the international sphere) as the realm of pernicious equality, liberty and insecurity obscures and renders invisible the inequalities and divisions that security brings about. Rather, the international is constituted through the legitimation of specific forms of inequality.⁴⁶ Global patterns of economic inequality, the principle and historical experience of “great powers” as a guarantee of “international order”, the capacities of certain kinds of political community to participate in the modern system of states, and the constitutive field in which the international is judged as the negation of positive values attributed to the domestic are all forms of inequality that Rob Walker identifies as legitimated by the international.⁴⁷ The insecurity of the international is intrinsically related to the forms of inequality it protects, not to the myth of equality as suggested by Hobbes. Security legitimises inequalities between the domestic and the international, as well as practices of inequality among the different members of the realm of the international, be those states, political communities or other types of actors. The qualified form of liberty allowed in the Commonwealth is accompanied by forms of discipline, inequality, hierarchy and division of populations. The initial political equality of the social contract is underpinned by inegalitarian practices of ordering and disciplining populations. Through these practices, freedom is itself divided, differentially granted to particular subjects.

Security, therefore, becomes thinkable only through the intrusion of inequality into political life. Insecurity is not the result of the equality of every human being with any other human being, as Hobbes would have it, but is the legitimation of inequalities. Even when equality appears to define security relations, as in Schmitt’s egalitarian friend/enemy relations, this supposed equality rests upon the delegitimation of the internal enemy, the foe.⁴⁸ Security becomes coextensive with divided liberty when the basis for these practices is inequality. However, these contradictions are exacerbated in a political conjuncture in which equality has become largely disposable. If the liberal state

has a long history of people who have been denied freedom, the recovery of freedom has been rendered possible by the politicisation of egalitarian claims. In the current political conjuncture, this politicisation has suffered innumerable theoretical and practical setbacks. The next section considers the defining theoretical elements that have contributed to the demise of equality as a potent political idea and considers what a “revival” of the concept of equality means.

Equality beyond its demise

Equality does not only portend insecurity, as Hobbes would have us believe, thus requiring the hierarchical organisation of the Leviathan that promises security only through the naturalisation of another form of inequality. In liberalism, equality also cedes the place of political primacy to freedom. “Premising itself on the natural equality of human beings”, Wendy Brown has argued, “liberalism makes a political promise of universal individual freedom in order to arrive at social equality, or achieve a civilized retrieval of the equality postulated in the state of nature”.⁴⁹ With liberalism, equality is deferred, turned into a goal to be achieved, while liberty is seen as primary. Thus, while making a promise of potential equality, liberalism also legitimises existing inequalities. For Rawls, equality needs to be divided into acceptable forms of equality to be achieved (e.g. via redistribution) and necessary forms of inequality. According to the *Theory of Justice*, all “social primary goods – liberty and opportunity, income and wealth, and the basis of self-respect – are to be distributed equally”.⁵⁰ The inequalities that are tolerated are the natural ones. Rawls’ model of a liberal society ends up by legitimising inequalities as “natural” and suppresses the possibility of resisting inequalities.⁵¹

The demise of equality is also manifest in the liberal concern with tolerance. In an analysis of the role of equality in the comparison of the Jewish Question and the Woman Question, Brown asks: why have these two questions of emancipatory politics triggered two different responses, tolerance for the Jews and equality for women? Tolerance, she argues,

is invoked in liberal orders when a hegemonic norm cannot colonize or incorporate its other with ease, when that norm maintains or regroups its strength through a new order of marginalization and regulation rather than through incorporation and direct relations of subordination.⁵²

Tolerance appears to be the liberal reaction against the disrupting potential of more radical equality. While the equality of women remains partial, women being still embedded in relation of subordination in the private and economic realm, the Jews’ access to political equality could also mean their access to labour rights. Tolerance replaces claims to equality which could disrupt the liberal capitalist order.

The political liberalism of equality is further undermined by its twin, economic liberalism. Only limited equality is desirable/possible in liberalism, as inequality itself is considered to be the motor of capitalist development. In some versions of this story, equality would mean that the poor can go along not doing anything, thus taking away any incentive for profit from the entrepreneurial subjects of capitalism. The only equality that

is allowed is the equality of the market. We can all enter the market and we are all exposed to the same goods in the shop windows. That the equality of the market that does not exclude anybody (there is no outside to the market in neo-liberalism, everybody is potentially included) does not say anything about the forms of inequality that its own practices entail. Moreover, the constitution of subjects for the market has further undermined the political potential of equality and freedom. Civil liberties and equality are unnecessary to *homo economicus* and the neoliberal subject is the “undemocratic citizen” who wants neither freedom nor equality, even of the liberal sort.⁵³ The neoliberal subject does not need to make public use of reason as an equal self-legislating subject, but is only required to make proper use of the freedoms allocated by the state.⁵⁴

Besides the liberal restrictions on equality, its exile from the social contract of security and the constitution of the neoliberal diminished subject of freedom, equality has also come under sustained attack from the political left. In the poststructuralist and feminist “difference” tradition, equality is often portrayed as a negative concept associated with totalitarianism. Equality erases difference, destroys individuality and suspends freedom. The feminist problematique of equality-versus-difference has furthered the demise of equality, although some authors have attempted to reconcile equality and difference.⁵⁵ The equality theorists were thought to accept the basic claims underpinning liberal political theory, that the idea of equality is neutral vis-à-vis gender.⁵⁶ The difference theorists argued that equality is actually anthropocentric and called for women’s specificity to be recognised in feminist struggles rather than effaced in claims for equality. The formal character of liberal equality was seen as “severely compromised by the character of a (white, bourgeois, male, heterosexual) hegemonic subject”.⁵⁷ Equality plays out in the acceptance and rejection of individual and group identity ascriptions. Nonetheless, there is a political aspect of equality that points beyond the horizon of identity. Despite a more general concern with identity and difference, Joan Scott names equality as “protest against discrimination”.⁵⁸ Rather than a stand-in for identity, equality is a protest against discrimination and injustice.

Geneviève Fraisse has rejected the subsumption of equality to identity in feminist theory and has questioned the reasons for linking a philosophical, ontological concept such as difference – whose correspondent is obviously identity – with a political principle such as equality – whose correspondent is liberty.⁵⁹ Feminist literature has brought together the ontological discussion of identity/difference and the political one of equality/liberty through a combination of equality and difference. The rationale of such a move takes equality through the ontological prism of identity and assumes that equality is destructive of difference. Fraisse has suggested that the “difference of the sexes” should not impede the formulation of a politics of equality and liberty. Thus, even when claims against discrimination depend on the refusal of ascribed representations and in the process constitute other representations, equality is not identification or representation, but a claim against social injustice and discrimination. Even if claims to equality rely on identity predicates and representations, equality is not coterminous to those. The struggle of dominated groups is never simply formulated in terms of “being black”, “being women”, “being gay”, etc. but is a struggle against inequality in which subjects emerge as other-than-represented.

Equality could therefore be understood as a practice that processes political claims against injustice. Several authors have derived such a concept of equality from

the reinterpretation of the French Revolution.⁶⁰ I draw here on Christoph Menke's and Jacques Rancière's reformulations of equality as a practice and "maxim for action". Menke's discussion of the critiques of the French revolution fleshes out some of the main elements of this understanding of equality as a claim and a practice.⁶¹ Burke and Babeuf attacked the French Revolution for mistakenly doing too much or too little to achieve equality. If for Burke, the revolution is a misguided attempt to make men equal that can only end in terror, Babeuf reproaches the revolution from exactly the opposite stance: the revolution has not stayed true to its own principle of equality. Marx on the other hand shows the two criticisms as flawed inasmuch as the aim of the French Revolution is not the achievement of perfect equality, but the imperative of undoing all relations of inequality. Equality appears therefore as negative, the principle that unmakes relations of "debasement, enslavement, neglect and contempt" as Marx had called them.⁶² In Menke's succinct formulation, "The demand for equality is raised in an objection to individually experienced injuries. The egalitarian relationships which are demanded by revolution remain related to these injuries in accordance with their normative meaning".⁶³

This understanding of equality is neither restricted in the liberal fashion nor in the utopian one. Demands for equality are always raised against all situations which are experienced as injury, as debasement or enslavement. By re-reading Marx's interpretation of the French Revolution, Menke uncovers a concept of equality that is not substantive or identitarian, but is understood as a practice of processing social and political discrimination. Rather than thinking of equality as lying at the end of a political process—a matter of what one receives—he places it at the beginning. Equality is a "*pre-supposition* rather than a goal, a *practice* rather than a reward situated firmly in some distant future to so as to all the better explain its present infeasibility?"⁶⁴ Politics begins with the presupposition of equality that needs to be verified in new situations by different subjects. It is thus not a question of identity or even of unification.

Rancière has also argued that equality is equivalent to the processing of a social wrong and thus it is a point of departure and not a destination.⁶⁵ The wrong can be any situation of dependence, domination, discrimination or debasement that can be interpreted socially and politically. A situation of dependence and debasement engenders a particular social reality and a particular distribution of social positions. However, as Rancière points out in relation to the 1833 tailors' strike, claims of equality are possible given the "inscription of equality, as it appears in the founding texts, from the Declaration of the Rights of Man to the preamble of the Charter".⁶⁶ In the interval between the social reality and the legal/political inscription, a new social equality can emerge. As equality is enshrined in legal and political texts, it can be subsequently translated, displaced and maximised in everyday life.⁶⁷ Equality is a process that cannot be specified a priori, but *happens* in the resistance to social wrongs and injustices. It functions through a process of translation and interpretation of forms of wrong that are seen as social wrongs rather than individual problems. The neoliberal "therapeutic governance" of social problems individualises social wrongs and forms of injury and leads to private psychological interventions upon the individual rather than upon the social.⁶⁸ By means of these therapeutic interventions, the political processing of the wrong through the verification of equality is lost.

Equality as a maxim for action is not linked to any form of particularity or difference, but intervenes in any situation in which difference is formulated as unfreedom

or inequality. If the allocation of selective freedoms to particular categories of the population buttresses practices of security, equality as the processing of claims against social wrongs also reclaims the practice of freedom. This unruly freedom is a freedom internally regulated by its relation to claim of equality. By way of conclusion, I explore how this concept of equality can be used more fruitfully in rethinking the debates about security and liberty.

Concluding remarks: equality claims in the “war on terror”

To see how the debates between security and liberty are led at a distance from the concept of equality, I want to focus by way of conclusion on the House of Lords judgement in *A and others v. Secretary of State for the Home Department*, which struck down the government’s detention policies for terrorist suspects.⁶⁹ The judgment is important in the light of the arguments made here, as it introduces the question of equality within the debates that had been framed in terms of the balance between liberty and security.

This judgement by the House of Lords is probably best known for having rejected the government’s policies of indefinite detention against the so-called “Belmarsh detainees”, who were non-UK nationals residing in the UK and who were suspected of terrorism. The Law Lords agreed a judgement that upheld the principles of the European Convention on Human Rights, incorporated by New Labour into domestic policy in 1998, against the government’s arguments about the necessity of derogation from its provisions.

Lord Bingham, for example, argued that the European Convention on Human Rights guarantees the fundamental human right of personal freedom: “Everyone has the right to liberty and security of person” (Article 5 (1)). This right is reinforced by Article 1, according to which states party to the Convention must provide rights and freedoms for “everyone within their jurisdiction”.⁷⁰ The Convention contains, however, a series of derogations from the rights of personal freedom. These derogations concern deportation processes as well as emergency situations and they were invoked by the Attorney General for the Secretary of State. For example, the derogation of public emergency states that:

In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.⁷¹

In these situations, security trumps freedom, be it only to a certain extent and within reasonable limits defined by the exigencies of the situation. One of the arguments made by the appellants concerned the prohibition of discrimination or, to put it positively, the exigency of equality. The detainees’ lawyers argued that the detention of suspected international terrorists who are not British nationals was in breach of Article 14 of the European Convention on Human Rights, as the same rules did not apply to British nationals who were suspected “international terrorists”. Article 14 of ECHR prohibits discrimination by stating that

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.⁷²

Against these provisions, the Attorney General representing the Home Secretary argued that states have always discriminated between nationals and aliens and that international law sanctions such differential treatment in times of war or public emergency. While all the judges, with the exception of Lord Hoffmann, accepted the definition of the situation as a public emergency, they disagreed on the discrimination that such detention measures entailed. Lord Bingham argued that the decision to detain one group of suspected international terrorists and not another cannot be justified.⁷³ The Law Lords decided that government measures entailed a breach of the provision of non-discrimination contained in the ECHR.

Nonetheless, what at first sight might appear as a victory for equality, is subsequently revealed as only its denial. In the wake of the Lords' decision, the UK government decided to extend the detention measures to all suspected international terrorists in order to abide by the requirement of non-discrimination. Thus, the 2005 Prevention of Terrorism Act applies to "individuals who are known or believed to be involved in terrorism-related activity"⁷⁴. The government decision to extend detention to all terrorism suspects is not only a limitation of freedoms deployed in the name of security, but also a denial of equality. As I have argued here, equality is a claim raised against a social wrong and not the arithmetical equalisation of A and B. What the UK government did in the wake of the Lords' judgement was to entrench the substantive equalisation of A and B in a state of domination.

Amnesty International's injunction against the government decisions on indefinite detention, "Prosecute don't persecute"⁷⁵, suggests that what is at stake in these debates is the claim of equality in response to a situation of social wrong. What counts is not the exchangeability of A and B, but the assertion of equality in response to a wrong. The wrong is the denial of access to law – only in light of this wrong, can a claim to equality be formulated. Thus, the equality of all independent of immigration status implies access to law and not the denial of access to law to everybody, which would be equivalent to a denial of freedom. The government's decision on detention, as well as the decision taken by the House of Lords, cannot buttress unruly freedoms that are internally limited by claims to equality. Their decision allows for a form of "equality in slavery" or equality under domination which, in the case of the "war on terror", entails the external limitation of freedom by security.

As this article has argued, the degradation of freedom in the war on terror needs to be understood both by placing it in the context of modernity and in the current conjuncture. The social contract of security that constitutes political communities through practices of inequality and unfreedom risks being undone by the equality and freedom that are relegated outside the boundaries of the Leviathan. In Hobbes, the multitude can challenge the right of the sovereign to be the judge of good and evil and reintroduce the question of equality at the heart of the political. However, if equality was the spectre that haunted political modernity and undermined the Hobbesian qualification and restriction

of freedom within the Leviathan, the current political context is characterised by a quasi-total demise of equality. Equality has come under attack both from the right and the left of the political spectrum. Neoliberalism is destructive even of the limited liberal understanding of equality and freedom, while the political left has often rejected the concept of equality as either limited to material factors or destructive of difference. In the absence of an internal limit provided by claims of equality against social wrongs, freedom is externally regulated by security imperatives that deny its “unruliness” and tame its excesses by selectively bestowing its regulated use upon particular categories of population.

Notes

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¹ Jean-Claude Paye, *Global War on Liberty* (London: Telos Press Publishing, 2007)..

² Vivienne Jabri, “War, Security and the Liberal State”, *Security Dialogue* 37, no. 1 (2006)..

³ Louise Amoore and Marieke de Goede, “Governance, Risk and Dataveillance in the War on Terror”, *Crime, Law and Social Change* 43 (2005), Claudia Aradau, “Law Transformed: Guantanamo and the “Other” Exception”, *Third World Quarterly* 28, no. 3 (2007), Didier Bigo, “Globalized (In)Security: the Field and the Ban-opticon”, in *Illiberal Practices of Liberal Regimes: the (In)Security Games*, ed. Collection Cultures & Conflits (Paris: L'Harmattan, 2006), Michael Dillon, “Governing Terror: The State of Emergency of Biopolitical Emergence”, *International Political Sociology* 1, no. 1 (2007), Mark B. Salter and Elia Zureik, eds., *Global Surveillance and Policing: Borders, Security, Identity* (Cullopton: Willan Publishing, 2005).

⁴ On neoliberal and the demise of the liberal subject, see Wendy Brown, “Neo-Liberalism and the End of Liberal Democracy”, *Theory and Event* 7, no. 1 (2003).; on empire and war, Michael Hardt and Antonio Negri, *Multitude. War and Democracy in the Age of Empire* (New York: The Penguin Press, 2004).; on the erasure of boundaries between internal and external security, Didier Bigo, “The Möbius Ribbon of Internal and External Security(ies)”, in *Identities, Borders, Orders. Rethinking International Relations Theory*, ed. Mathias Albert, David Jacobson and Josef Lapid (Minneapolis: University of Minnesota Press, 2001).; on the new rationalities of catastrophic risk, see Claudia Aradau and Rens van Munster, “Governing Terrorism through Risk: taking precautions, (un)knowing the future”, *European Journal of International Relations* 13, no. 1 (2007) and Marieke de Goede, “Beyond Risk: Premediation and the Post-9/11 Security Imagination”, *Security Dialogue* 39 nos 2/3: 155-176.

⁵ Freedom and liberty will be used interchangeably here. For a discussion of the subtle difference between liberty and freedom in Arendt, see Hanna Fenichel Pitkin, “Are Freedom and Liberty Twins?” *Political Theory* 16, no. 4 (1988).

⁶ For an exception, see Anthony Burke, “Freedom's Freedom: American Enlightenment and Permanent War”, *Social Identities* 11, no. 4 (2005). Although the trade-off between security and liberty has been debated in political theory (for example, Jeremy Waldron, “Security and Liberty: The Image of Balance”, *Journal of Political Philosophy* 11 no. 2: 191-210), these discussions remain normative, without taking into account the social practices that claims to security and freedom buttress nowadays.

⁷ Drucilla Cornell, *Defending Ideals. War, Democracy and Political Struggles* (London: Routledge, 2004), 88.

⁸ Theodor Adorno, *History and Freedom. Lectures 1964-1965*, ed. Rolf Tiedemann, trans. Rodney Livingstone (Cambridge: Polity, 2006), p. 197.

⁹ *Ibid.*

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- ¹⁰ ‘Government through freedom’, a phrase coined by Nikolas Rose, refers to these technologies of the self that turn freedom into something positive and create incentives for the self to become responsible, autonomous and self-governed. These technologies have been well documented by an important body of literature that analysed neoliberalism or advanced liberalism by drawing on Foucault’s analyses of governmentality. See for example, Nikolas Rose, *Powers of Freedom: Reframing Political Thought* (Cambridge: Cambridge University Press, 1999) and Marianna Valverde, *Diseases of the Will: Alcohol and the Dilemmas of Freedom* (Cambridge: Cambridge Univ. Press, 1998).
- ¹¹ Home Office, *Counter-terrorist action since September 2002* (2004 [cited 20 February 2005]); available from http://www.homeoffice.gov.uk/docs/counter_terrorism.pdf.
- ¹² Peter Wagner, *A Sociology of Modernity: Liberty and Discipline* (London: Routledge, 1993).
- ¹³ Sean Loughlin, *Looting in Iraq: “Stuff happens”* (CNN, 2003 [cited 26 August 2005]); available from <http://www.cnn.com/2003/US/04/11/sprj.irq.pentagon/>.
- ¹⁴ John Carvel and Lucy Ward, “Huge majority say civil liberty curbs “price worth paying” to fight terror”, *The Guardian*, 24 January 2007 2007.
- ¹⁵ Tony Blair, *Speech by Tony Blair MP, Prime Minister and Leader of the Labour Party. 26 September 2006* (2006 [cited 4 November 2006]); available from http://www.labour.org.uk/index.php?id=news2005&ux_news%5Bid%5D=primeminister&cHash=7e84d2fbb8.
- ¹⁶ The Guardian, “Blunkett plays down fears over anti-terror bill”, 13 November 2001.
- ¹⁷ Anastassia Tsoukala, “Democracy in the Light of Security: British and French Political Discourses on Domestic Counter-Terrorism Policies”, *Political Studies* 54 (2006): 611.
- ¹⁸ Burke, “Freedom’s Freedom: American Enlightenment and Permanent War”: 328.
- ¹⁹ Klaus Günther, “Word Citizens between Freedom and Security”, *Constellations* 12, no. 2 (2005): 385..
- ²⁰ Barry Hindess, “The Liberal Government of Unfreedom”, *Alternatives: Global, Local, Political* 26 no. 2 (2001): 97.
- ²¹ Liberty, *The Impact of Anti-Terrorism Powers on the British Muslim Population* (2004 [cited 30 August 2007]); available from <http://www.liberty-human-rights.org.uk/publications/6-reports/anti-terror-impact-brit-muslim.PDF>.
- ²² Evelien Brouwer, “Immigration, Asylum and Terrorism: A Changing Dynamic. Legal and Practical Developments in the EU in Response to the Terrorist Attacks of 11.09”, *European Journal of Migration and Law* 4 (2003): 411.
- ²³ IOM, “International Migration and Terrorism”, (Brussels: IOM, 2003), 23-25.
- ²⁴ Theodor Adorno, *Kant’s Critique of Pure Reason*, ed. Rolf Tiedemann, trans. Rodney Livingstone (Stanford: Stanford University Press, 2001).
- ²⁵ Ibid.
- ²⁶ Immanuel Kant, “An Answer to the Question: “What is Enlightenment?””, in *Kant. Political Writings*, ed. Hans Reiss (Cambridge: Cambridge University Press, 2001).
- ²⁷ Michel Foucault, “What is Critique?” in *The Politics of Truth*, ed. Sylvère Lotringer (New York: Semiotext(e), 1997).
- ²⁸ A Lockian perspective on the liberty/security balance could also be considered. For the purposes of this paper, it is not the distinctions between Hobbes and Locke that are of interest, but the way in which they both set out a framework that prioritises security by limiting freedom. For an interesting illustration of the Lockian perspective, see Mark Neocleous, “Security, Liberty and the Myth of Balance: Towards a Critique of Security Politics”, *Contemporary Political Theory* 6, no. 2 (2007): 131-149.
- ²⁹ Richard Ashcraft, ‘Ideology and Class in Hobbes’ Political Theory’. *Political Theory* 6, no. 1 (1978): 27-62; Étienne Balibar, *Masses, Classes, and Ideas. Studies on Politics and Philosophy Before and After Marx* (London: Routledge, 1994).
- ³⁰ Balibar, *Masses, Classes, and Ideas*, p. 16.
- ³¹ Michel Foucault, *Society Must Be Defended*, trans. David Macey (London: Penguin Books, 2004), 99..
- ³² Thomas Hobbes, *Leviathan, Penguin Classics* (London: Penguin, 1985), p. 233.
- ³³ Ibid., 365.
- ³⁴ Ibid., 369.
- ³⁵ Thomas Hobbes, *Behemoth or the Long Parliament* (Chicago: University of Chicago Press, 1990), p. 3.
- ³⁶ R. B. J. Walker and Andrew Neal, “Notes on European Liberty and Security: Problems, Principles, and Contradictions”, (FP5 Project Elise: European Liberty and Security, 2005).

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- ³⁷ “Man is made fit for society, not by nature, but by education” David Burchell, “The Disciplined Citizen: Thomas Hobbes, Neostoicism and the Critique of Classical Citizenship”, *Australian Journal of Politics and History* 45, no. 4 (1999)..
- ³⁸ Ibid..
- ³⁹ William Connolly, *Political Theory and Modernity* (Oxford: Basil Blackwell, 1988), 27..
- ⁴⁰ Paolo Virno, *Grammaire de la multitude. Pour une analyse des formes de vie contemporaines*, trans. Veronique Dassas (Paris: Editions de l’Eclat & Conjonctures, 2002), 10..
- ⁴¹ Malcolm Bull has suggested that it is a “faction” as a simulacrum of the people and not the multitude that Hobbes opposes. Malcolm Bull, “The Limits of Multitude”, *New Left Review* 35 (2005).. Yet, factions are a “multitude of citizens”, in many ways similar to other illicit organisations that Hobbes finds dangerous.
- ⁴² Richard Ashcraft, “Ideology and Class in Hobbes” *Political Theory* 6, no. 1 (1978): 42..
- ⁴³ Jacques Rancière, *Les noms de l’histoire. Essai de poétique du savoir* (Paris: Seuil, 1992), 43.
- ⁴⁴ Ibid., 369.
- ⁴⁵ Thomas Hobbes, *On the Citizen*, ed. Richard Tuck and Michael Siverthorne, *Cambridge Texts in the History of Political Thought* (Cambridge: Cambridge University Press, 1998)..
- ⁴⁶ R. B. J. Walker, “International/Inequality”, *International studies Review* (2002): 8.
- ⁴⁷ Ibid..
- ⁴⁸ Carl Schmitt, *The Concept of the Political*. Translated by Tracy B. Strong (Chicago: University of Chicago Press, 1996).
- ⁴⁹ Wendy Brown, *States of Injury. Power and Freedom in Late Modernity* (Princeton: Princeton University Press, 1995), 67..
- ⁵⁰ John Rawls, *A Theory of Justice* (Harvard: The Belknap Press, 1971), 303..
- ⁵¹ This critique of Rawls is expounded in Jean-Pierre Dupuy, *Avions-nous oublié le mal? Penser la politique après le 11 septembre* (Paris: Bayard, 2002)..
- ⁵² Wendy Brown, “Tolerance and/or Equality? The “Jewish Question” and the “Woman Question””, *differences: A Journal of Feminist Cultural Studies* 15, no. 2 (2004)..
- ⁵³ Wendy Brown, “American Nightmare: Neoliberalism, Neoconservatism and De-Democratization”, *Political Theory* 34, no. 6 (2006): 692..
- ⁵⁴ For an analysis of freedom as proper use versus freedom as excess and its roots in the Leviathan, see Claudia Aradau, *Rethinking Trafficking in Women. Politics out of Security* (Basingstoke: Palgrave Macmillan, 2008). The literature on ‘government through freedom’ that analyses the technologies of governing through freedom in neoliberalism does not discuss these differences in the ideal of freedom. Focusing on fleshing out the political rationalities and technologies of freedom in neoliberalism, it does not inquire into the conditions of possibility of its “degradation”.
- ⁵⁵ For example, Anne Phillips, “From Inequality to Difference: A Severe Case of Displacement?” *New Left Review* 224, no. July/August (1997). and Chris Armstrong, “Complex Equality: Beyond Equality and Difference”, *Feminist Theory* 3, no. 1 (2002)..
- ⁵⁶ Judith Squires, *Gender in Political Theory* (London: Polity Press, 2000), 118..
- ⁵⁷ Wendy Brown, *Politics out of History* (Princeton: Princeton University Press, 2001), 9..
- ⁵⁸ Joan Wallach Scott, *The Conundrum of Equality* (Institute for Advanced Studies, 1999 [cited 20 August 2007])..
- ⁵⁹ Geneviève Fraisse, *La controverse des sexes, Quadrige* (Paris: Presses Universitaires de France, 2001), 251-53..
- ⁶⁰ Balibar, *Masses, Classes, and Ideas. Studies on Politics and Philosophy Before and After Marx*, Christoph Menke, *Reflections of Equality*, ed. Mieke Bal and Hent de Vries, trans. Howard Rouse and Andrei Denejkine, *Cultural Memory of the Present* (Stanford: Stanford University Press, 2006), Jacques Rancière, *On the Shores of Politics* (London: Verso, 1995)..
- ⁶¹ Menke, *Reflections of Equality*, 163.
- ⁶² Ibid., 170.
- ⁶³ Ibid.
- ⁶⁴ Kristin Ross, “Rancière and the Practice of Equality”, *Social Text* 29 (1991): 67.
- ⁶⁵ Jacques Rancière, Solange Guénoun and James H. Kavanagh, “Literature, Politics, Aesthetics. Approaches to Democratic Disagreement”, *SubStance* 29, no. 2 (2000): 3.
- ⁶⁶ Rancière, *On the Shores of Politics*, 48.

⁶⁷ Ibid.

⁶⁸ On discussions of therapeutic governance and the role of risk in depoliticising social wrongs, see Vanessa Pupavac, “Therapeutics Governance and Psycho-Social Intervention and Trauma Risk Management”, *Disasters* 25, no. 4 (2001).

⁶⁹ House of Lords, *A and others v. Secretary of State for the Home Office* (House of Lords, 2005 [cited 3 March 2007]); available from <http://www.parliament.the-stationery-office.co.uk/pa/ld200405/ldjudgmt/jd041216/a&oth-1.htm>.

⁷⁰ Council of Europe, *European Convention on Human Rights* (1950 [cited 7 May 2008]); available from <http://www.hri.org/docs/ECHR50.html#C.Art1>.

⁷¹ Ibid.

⁷² Ibid.

⁷³ House of Lords, *A (FC) and others (FC) (Appellants) v. Secretary of State for the Home Department (Respondent)* (2004) (2004 [cited 7 May 2008]); available from <http://www.publications.parliament.uk/pa/ld200506/ldjudgmt/jd051208/aand-1.htm>.

⁷⁴ Home Office, *The Prevention of Terrorism Act* (2005 [cited 3 March 2007]); available from <http://www.homeoffice.gov.uk/security/terrorism-and-the-law/prevention-of-terrorism/>.

⁷⁵ Amnesty International, *Prosecute don't persecute* says Amnesty as law lords hear appeal on control orders cases (2007 [cited 8 May 2008]); available from http://www.amnesty.org.uk/news_details.asp?NewsID=17406.