THE POLITICS OF LIBERTY AND SECURITY:

The New Human Rights Approach and its Role in the Era of the 'War on Terror'

William JACKSON

School of Humanities, Languages and Social Sciences
College of Arts and Social Sciences
University of Salford, Salford, UK

CONTENTS

PART 1 – The Role of the Liberal Intellectual

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ABSTRACT

This thesis is concerned with the role of human rights in contemporary liberal democracy and considers this role specifically in the context of the 'war on terror'. The thesis examines the relationship between human rights and security developed in this context and considers the processes through which this relationship has been formulated as well as the various players involved in development and maintenance of what needs to be understood as a liberty-security regime.

The analysis begins from a critical understanding of contemporary liberalism still very much grounded in its classical tradition and seeks to interrogate the liberal character of the current regime. The necessary unraveling of this regime is done in part through a comparative analysis of the relationship between liberty and security as formulated in state strategy in the UK, Australia and the US. However, rather than understanding this regime as developed and sustained solely at the level of state or government action, the crucial role of civil society actors, particularly of certain intellectual strata and of human rights advocacy organisations, in constructing and legitimating such a regime, as well as the interplay between these perspectives, is also at the core of this study. The thesis demonstrates the pivotal role that liberal intellectuals and human rights organisations play in not only legitimating the current regime but also influencing its current form. Fundamentally, the research suggests that this legitimating function exists not in spite of their apparently critical position but because of it.

The analysis in turn aims to establish whether the role of human rights in this context is indicative of an inherent political functionality or whether there is the possibility that human rights can be part of an alternative and above all emancipatory politics. To develop this consideration, a critical review is provided of certain thinkers on the left who utilise human rights principles as central to a critique of the current regime and as part of their vision of an alternative, leftist politics. By demonstrating that the effect of a human rights framework on critical interventions is not restricted to those working within the liberal tradition, this thesis suggests that a commitment to human rights principles in this context cannot be part of the development of a substantive critique of both the current regime and the wider liberal-capitalist status quo.

Introduction

The politics of liberty and security in the era of the 'war on terror'

This research seeks to provide a critical analysis of the human rights approach developed in the era of the 'war on terror' and the function human rights fulfil in the context of that 'war'. It aims to investigate how the development of such a human rights regime is shaped by the security concerns underpinning the current security strategies put in place by governments who claim scrupulous respect for human rights. Since the events of 9-11, the notion of security has been infused almost completely with the notion of a *'war'* against terrorism and we are told that national security relies entirely on its success. This apparently novel interpretation of security has been accompanied, in the UK at least, by an official commitment to human rights principles, whilst paradoxically courting critique for its impact on human rights. In the UK, the state's management of the concern for human rights and the concern with national security has therefore given rise to a *liberty-security regime* whereby the state's commitment to human rights is initially juxtaposed and soon subordinated to security strategies which have been criticised for impacting negatively on the human rights of certain populations.

Liberty and security have in this era been intertwined in a rhetoric of 'war' that continues to reveal new frontiers and necessitate new strategies. More pressingly, the relationship between human rights and security has moved beyond a simple juxtaposition to the point that the two concepts have been conflated and security itself has powerfully emerged and been constructed as a right – or rather, as a peculiar variant of the right to security. The formulation of and the emphasis on security as a right is indicative of the dominance of rights discourse which leads both to formulate diverse concerns or interests as a matter of rights and to present them as compatible with other rights, above all with those which seem threatened. The emphasis on security as a right, and a fundamental one, illustrates that human rights are not simply in close proximity to security policy but that they have infused the very language of security. The dominance of the rights language is further highlighted by the fact that not only supporters of the 'war on terror', but

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overwhelmingly the majority of its critics have articulated their positions primarily in the language of rights. Despite the undoubted conflict between the various views and opinions on the liberty-security relationship there appears to be an underlying, if perhaps unacknowledged, agreement that this relationship has to be negotiated in the contemporary era within the parameters set by human rights.

This research seeks therefore to unravel this liberty-security regime. We will try to decipher the way in which the current formulation of the relationship between liberty and security has enabled the state to manage the apparent conflict between its concerns for human rights and the security strategies it deems essential. However, rather than understanding this liberty-security regime as developed and sustained solely at the level of state or government action, the crucial role of civil society actors ('civil society' understood in the Gramscian sense, see below), particularly of certain intellectual strata and of human rights advocacy organisations, in constructing and legitimating such a regime, as well as the interplay between these perspectives, will also be at the core of our study. The research will therefore seek to determine the extent to which the current regime in its present, hegemonic form is a result of this interplay between the state, an intellectual 'class' and human rights organisations – three kinds of players which will constitute the central strands of empirical investigation (see below). Crucial here will be to enquire whether this interplay is based on a convergence of views and, beyond that, the extent to which a common approach or framework underlies not only convergences but divergences.

For if this is so, if in reality a common approach underlies the very interplay between these different players, beyond their divergences, then the question arises – a question absolutely crucial for this research – as to the nature of the *political* terrain in which these agents operate, that is, about the politics they pursue and the parameters it sets for political action. Do the current critiques of the liberty-security regime (and so of state security and war politics) involve a different politics, that is do such critiques involve and pursue true political alternatives? The possibility that the conflicting views between so prominent players be mere differences in the context of a basically shared understanding about the fundamentals, strongly points, as daily observation in principle confirms, towards a politics essentially concerned with the maintenance of the *status quo*

and ready to, almost as a matter of course, de-legitimise and, in certain cases, criminalise, any alternative politics, above all emancipatory politics. The denial of the possibilities for any transformative action seems indeed a major and decisive aspect, as some thinkers have emphasised (cf, Badiou, Douzinas, Žižek and Ranciere among others), of such politics.

Now it seems beyond doubt that such politics is *liberal* politics. In other words the existence of a common approach to liberty and security hinges arguably on the essentially liberal doctrine on which the liberty-security regime has been established and continues to operate. To understand the regime as it currently operates, a theoretical framework needs to be developed that enables one to take into account what is at stake in liberalism and, from here, enables a substantive critical analysis of liberalism as manifested in the current liberty-security regime and human rights approach. To this purpose the analysis must be grounded in a critical understanding of what liberalism is. The apparent flexibility of the term in contemporary popular political discourse on both sides of the Atlantic suggests an empty notion that can be applied by, and in reference to, ideas and thinkers on both the left and the right. However, there exists a popular understanding that can be summarised as follows: 'liberalism is the tradition of thought whose central concern is the liberty of the individual'[1]. In light of the apparent conflict between security and liberty in the policies introduced by liberal states in the context of the 'war on terror' this understanding requires interrogation. The preservation and prioritisation of the liberty of the *individual* in itself requires consideration to ascertain what precisely this means in a liberal politics and how this is translated into the current politics of security.

To bring out the fundamental principles of liberalism as a specific politics a return to the foundational ideas of liberal thought is required. A critical understanding of contemporary liberalism demands in the first instance a return to the 'classical' liberal tradition to ascertain the underlying assumptions behind the apparent prioritisation of the liberty of the individual. In the following pages we will therefore turn to the foundations of liberal thought focussing on classical thinkers within the liberal tradition and drawing upon a series of key interventions in the critique of liberalism enabling this analysis to set

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[1]Domenico Losurdo, *Liberalism: A Counter History*, (London: Verso, 2011), 1.

out a clear understanding of what liberalism is. This analysis is also crucial because of the status assigned to several key classical liberal thinkers in current debates about the liberal nature of the 'war on terror'. It is vital that a critical understanding of classical liberalism is established to determine the role these thinkers play (or are assigned) in the development of its contemporary form.

From this point it will be possible to firstly to determine the way in which the liberal understanding of the relationship between liberty and security was formulated and the extent to which this formulation continues to define the current liberal position. Secondly, this will enable us to highlight the main consequences of such liberal politics and to consider the extent to which they have intensified in the era of the 'war on terror'. Finally, we shall set out the empirical strands of this research and the main methods through which they will be addressed.

From Hobbes to Locke: the reordering of liberalism's priorities?

As Mark Neocleous has noted[2], the commonly held understanding of liberalism defined by a concern with liberty is founded on an apparent reversal of Hobbes' emphasis on security by Locke. In this story Hobbes and Locke are positioned either side of a security-liberty 'balance' and it is only with Locke's reversal of Hobbes' prioritisation of security that the popular notion of liberalism defined by a concern for liberty emerges. In this sense Locke is (rightly) understood as providing the foundation of contemporary liberal political thought but the notion of a split from Hobbes and a reversal of priorities require consideration.

Hobbes's understanding of human nature demands the absolute power of a sovereign to ensure security. The perpetual war of all against all that characterises the state of nature can only be averted by a central authority whose priority can only be security. The power of the sovereign must be sufficient to ensure the security of all, without which man is reduced to relying 'on his own strength and art, for caution against

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[2] Mark Neocleous, "Security, Liberty and the Myth of Balance: Towards a Critique of Security Politics", *Contemporary Political Theory*, 6 (2007); Mark Neocleous, *Critique of Security*, (Montreal: McGill-Queens University Press, 2008)

all other men'[3]. The pursuit of security requires the entrance into a political covenant through which the individual enjoys the security provided by the sovereign. But, escaping the insecurity of the state of nature also requires an individual to relinquish a certain degree of the absolute liberty that characterises this pre-social state. As Quentin Skinner has noted, in the bargain Hobbes foresees 'we lose only those aspects of our natural liberty that if retained, would undermine our own safety and the more general value of peace'[4]. For Skinner there are two elements of natural liberty in this formulation; everyone must retain the rights to free movement and the 'right not to be incommoded'[5] but in reality these aspects of natural liberty are simply what could be called, paraphrasing Alain Badiou, the liberties of the human animal, as they are exclusively concerned with self-preservation. Therefore, in Hobbes' vision the degree of liberty given up by free men who enter such a political covenant is determined by the return they receive: 'How far therefore in the making of a commonwealth, a man subjecteth his will to the power of others, must appear from the end, namely security'[6]. Security is achieved at the expense of liberty but this is ultimately inescapable.

We have therefore in Hobbes a very clear relationship between security and liberty and it is this relationship that is said to be radically altered by Locke; as noted above such a reconfiguration of central concerns is said to provide the foundation of contemporary liberal thought. However, as Neocleous has demonstrated through a consideration of Locke's account of prerogative power, we find in Locke not a reversal of Hobbes to a tradition of liberty, but instead 'much more a *liberal* discourse on the *priority of security*'[7]. This non-reversal has also been noted by other scholars such as Leo Strauss who suggested that 'in spite of the limitations which Locke demands, the commonwealth remains for him, as it was for Hobbes, "the mighty leviathan": in entering civil society, "men give up all their natural power to the society which they enter into"'[8]. Liberties in

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[3] Thomas Hobbes, *Leviathan*, (Harmondsworth: Penguin, 1968 [1651]), 224.

[4] Quentin Skinner, *Hobbes and Republican Liberty*, (Cambridge: Cambridge University Press, 2008), 53.

[5] Skinner, *Hobbes and Republican Liberty*, 53

[6] Hobbes in Skinner, *Hobbes and Republican Liberty*, 53.

[7] Neocleous, *Critique of Security*, 14 (original emphasis)

[8] Leo Straus, *Natural Right and History*, (Chicago: University of Chicago Press 1965 [1953]), 231.

this sense remain understood as powers conceded on entry into civil society and in continuity of Hobbes's central contribution 'Locke essentially identifies the function of the sovereign as the production of security'[9]

This rejection of the standard definition of liberalism is of crucial importance to a critical understanding of the liberty-security relationship in liberal political thought and exposes a disconnection between the presentation of liberalism and the reality of its founding ideas. Maintaining the fundamental status of this apparent reversal has a *crucial ideological function* for the presentation of liberalism and this will be a central concern of this thesis. In the first instance this requires a more sustained consideration of Hobbes' true influence over the liberal tradition.

Hobbes' influence over the development of liberal thought and Locke's relation to Hobbes cannot be reduced to this overly simplistic and ultimately misleading notion of a reversal of central concerns. Instead it is crucial to understand Hobbes' influence over the foundation of the liberal tradition as a product of his understanding of the individual. It is from this perspective that we can understand that instead of a departure or reversal 'Locke completed an edifice that rested on Hobbes's sure foundation'[10].

The liberal tradition founded in Hobbes enacted a reversal of the seventeenth century way of understanding the individual. They enforced a downward move in considering the human from below and this had the novel effect of presenting *self-preservation* as the defining feature of the human being, and as a result, of society. The liberal doctrine developed what has been appropriately called *possessive* individualism[11]. This possessive individualism is founded in the model of society that Hobbes infers, identified by MacPherson as a 'possessive market society'[12]. Within this possessive market model there must be a 'compulsive framework of law' which protects life, and

[9]Neocleous, "Security, Liberty and the Myth of Balance", 139

[10]Crawford Brough MacPherson, *The Political Theory of Possessive Individualism: Hobbes to Locke*, (Oxford: Oxford University Press, 1962), 270

[11] MacPherson, *Possessive Individualism*

[12] MacPherson, *Possessive Individualism,* 46

crucially, property[13]. Hobbes removed man from society and made him the centre as the 'subject of modernity and the source of law'[14].

Hobbes' concept of equality was twofold, consisting of equal insecurity of men and their equal subordination to the market. The equal submission to the market was derived from the inevitability of the market system. The only concept of justice that could therefore be conceived was that of the market and this was because 'a rational individual realised his true position as a mere unit in a market society'[15]. Thus Hobbes cemented not simply the validity of the market system but more importantly its inevitability. The market system was naturalised and from this the only possible concept of justice was enforced. While the influence of Hobbes still resonates in the contemporary period his argument is confused by his concept of equality. The market system necessitates unequal insecurity to maintain the dominance of the propertied classes. Hobbes neglected the reality of the class based system in the pre-revolutionary capitalism that he so fervently supported. For this to be rectified one would have to wait for Locke.

However, prior to Locke's *adaptation* and *refinement* of Hobbes, the Levellers' 'Agreement of the People' reinforced the centrality of property. MacPherson illustrates that the individualism implicit in the Leveller's demands credits their contribution to the liberal tradition and not to democracy as they are often associated. They developed the naturalisation of property evident in Hobbes and the securing of the right to property formed the basis of their demands for extended franchise. The Levellers asserted that the primary role of government was the preservation of property. The right to property was central to their demands and the extension of franchise they are so known for was simply a tactic to preserve this right. Franchise was in fact only 'required' by those propertied classes and thus the exclusions from their demands of a large majority of the population could be justified. The Levellers' formulations of the individual right to property as a natural right and their insistence that its preservation was the pivotal goal of government paved the way for the doctrine of Locke.

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[13] MacPherson, *Possessive Individualism*, 57-58

[14] Costas Douzinas, *The End of Human Rights*, (Oxford: Hart Publishing, 2000), 71.

[15] MacPherson, *Possessive Individualism*, 86

The individual natural right to property is central to Locke's theory on civil society and government. In development of the established tradition, Locke asserted that the preservation of property was the main aim of government. MacPherson saw that Locke's 'astonishing achievement' was to 'base the property right on natural right and natural law and then to remove all the natural law limits from the property right'[16]. As a result 'private property appears, not as a social institution, but as a logical entailment of the individual's self-sufficiency'[17]. He in turn crucially justified the rejection of limits on appropriation. He explained that the introduction of money removed the practical restrictions to appropriation and that the value of money was derived precisely from its unequal value. Locke fundamentally justified the specifically capitalist appropriation of land and money.

He utilised partial quotations and manipulations of traditional, and thus legitimacy-giving, sources such as the Bible and what he call 'the judicious Hooker' to justify the morality of his doctrine. Whilst explaining that the abandonment of the idea of common land was granted by God, Locke set up two classes of people: the 'industrious and rational' and the 'quarrelsome and contentious'[18] (also referred to as the 'lazy and inconsiderate'[19]). Locke's view of free society is better understood as consisting of 'two *races*: the property owners and labourers'[20] exposing the fact that for Locke humans are equal only in their desire for self-preservation, not in the rational means to it. The labouring 'race' is incapable of raising their thoughts beyond the basic requirements of subsistence and their subordinate position is maintained in the most part by their own lack of reason.

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[16] MacPherson, *Possessive Individualism*, 197

[17] Louis Dumont, *Essays on Individualism: Modern Ideology in Anthropological Perspective*, (Chicago: University of Chicago Press, 1986), 81.

[18] John Locke, *Two Treatises of Government*, ed. Peter Laslett, 1690 (London: Cambridge University Press, 1988), 291

[19] John Locke, *An Essay Concerning Human Understanding*, Abridged and Edited by Kenneth P. Winkler, 1689 (Indianapolis: Hackett Publishing, 1996), 28.

[20] Karl Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time*, (Boston: Beacon Press, 1944), 119 emphasis added.

However, Locke is careful to demonstrate the additional components of his 'free' society that maintain this inequality. The role of religion is crucial to the instruction of the people:

> The greatest part cannot know, and therefore they must believe ... the instruction of the people [is] best left to the precepts and principles of the gospel ... Hearing plain commands, is the sure and only course to bring them to obedience[21].

Beyond this it is the role of the government to maintain the pacification of the labouring masses. He remains aware that the labourer's reward is set at the bare minimum and there remains a risk of the poor struggling directly with the rich for their share. This however only happens in 'male-administration of neglected, or mismanaged government'[22]. The state thus has a pivotal role to play in defending inequality and in protecting the property of the 'industrious and rational' minority. As Neocleous explains, 'in positing the key function of the state as the protection of property rights, Locke's recodification of the relationship between politics and economics could hardly fail to point to security rather than liberty as the main liberal thematic'[23]. The notion of Locke reversing Hobbes's emphasis on security is here exposed as an ideological construction that serves only to mystify the fact that liberty and security in liberal thought cannot be separated in the way inferred by the notion of a reversal of concerns. Liberalism has as its central concerns the liberty of the minority to exercise their right to private property *but* more so the security of such property and its owners[24].

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[21] John Locke, *The Reasonableness of Christianity*, ed. Ian Thomas Ramsey, 1695, (Stanford: Stanford University Press 1958), 66.

[22] Locke in MacPherson, *Possessive Individualism*, 223

[23] Neocleous, *Critique of Security*, 22

[24] The critical reading of Locke found in MacPherson is not without its own critics. James Tully's *A Discourse on Property* provides a reinterpretation (or *rehabilitation*) of Locke and rejects MacPherson's vision of his work defined by the justification of unlimited individual appropriation and the self-interested exploitation of the labouring classes. Crucial to Tully is the notion of *charity* set out in the First Treatise as a fundamental duty that for him undermines MacPherson's reading. For Tully, Locke's theory is 'constructed in opposition to an unlimited rights theory' and cannot be read in the way that attributes him a pivotal role in the justification of private property. See, James Tully, *A Discourse on Property: John Locke and his adversaries*, (Cambridge: Cambridge University Press, 1980), 131-132. Tully's 'rehabilitation' of Locke has itself been criticized for its attempt to deny or conceal the exclusionary logic running through Locke's understanding of 'the people'. Neal Wood, who is not without his own contentions with MacPherson's text, concurs with the notion that Locke acknowledges and sees as desirable the social

An exclusionary logic

Locke stated that unlimited appropriation had divine sanction as the land given in common was really intended for the 'industrious and rational'. By this he offered a justification of the already established inequality between the propertied and the non-propertied classes, and the perseverance of this inequality. Locke further justified the 'morality' of this inequality through his manipulation of the work of Hooker who is well quoted (and misquoted) in the Second Treatise. Locke twisted Hooker's duty of mutual love and used it to establish the natural inequality of men. This duty was subsequently reduced to the much less onerous duty of not harming others[25]. This manipulation of Hooker is necessary to transcend the duty of mutual love which capitalist appropriation would oppose. Reducing duty to 'not harming each other' thus withdrew restraints to unlimited capitalist appropriation and its exacerbation of inequality.

The resulting inequality was made natural by Locke in his novel formulation of the state of nature and its necessary laws. In Locke's state of nature every man has the right to be the 'Executioner of the Law of Nature'[26]. Right in this sense is to be understood as a power. This was combined with Locke's notion that 'the first and strongest desire God planted in man and wrought into the very principles of nature is self preservation[27]. This acceptance of self-preservation as a natural right reinforced the right to unlimited appropriation.

Locke's doctrine of the laws of nature naturalised not only capitalist appropriation but the central capitalist principles of 'labour as a commodity' and the wage relation. Locke professed that the right to the appropriation of the produce of another's labour was

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divisions of labor that defined the unequal society he confronted. See, Neal Wood, *The Politics of Locke's Philosophy: A Social Study of An Essay Concerning Human Understanding,* (Berkeley: University of California Press, 1983); Neal Wood, *John Locke and Agrarian Capitalism,* (Berkeley: University of California Press, 1984). However, the validity of MacPherson's analysis is reinforced more clearly by the fact that such an opposing theorist as Leo Strauss can admit "considerable agreement" between MacPherson analysis (specifically here in reference to a 1951 paper that preceded and informed *Possessive Individualism*) and his own interpretation of Locke. See, Strauss, *Natural Right and History,* 234fn; Crawford Brough MacPherson, "Locke on capitalist appropriation" *Western political quarterly* 4 (1951).

[25] Locke, *Two Treatises,* Second Treatise 5

[26] Locke, *Two Treatises,* Second Treatise 8

[27] Locke, *Two Treatises,* First Treatise 88

'part of the natural order'[28]. The final acceptance in the justification of capitalist relations was in the affirmation of class differentiation as part of the natural order. The establishment of class differentiation *in* rights and rationality enables Locke to provide a 'positive moral basis for capitalist society'[29]. The assumption that individual rights are based in the most honourable traditions of western philosophy arguably overlooks, or fails to realise, how Locke's development contravenes arguments for justice and encourages inequality. Locke's constitutionalism was thus a defence of the rights of expanding property rather than the rights of the individual over the state. Locke's real effect on the liberal tradition is evident in the formalisation of his ideas on unequal property which were bound as a role of government in the Federalist Papers:

> The diversity in the faculties of men, from which the rights of property originate, is not less an insuperable obstacle to a uniformity of interests. The protection of these faculties is the first object of government. From the protection of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results; and from the influence of these on the sentiments and views of the respective proprietors, ensues a division of the society into different interests and parties[30].

Ensuring the security of the authentic human

Marx outlined several of the central tenants of possessive individualism which were later illustrated by MacPherson. In *On the Jewish Question*, Marx noted that liberty as a right of man, as constructed in the French Declaration of the Rights of Man the Citizen, stood as a right based on the separation, and not association, of men[31]. Indeed Marx was well aware that the liberty spoken of in the Declaration amounted to a right to private property in its practical application. He also noted that the right to property amounted to a right of

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[28] MacPherson, *Possessive Individualism,* 220

[29] MacPherson, *Possessive Individualism,* 221

[30] Alexander Hamilton, James Madison and John Jay, *The Federalist: with Letters of 'Brutus'*, ed. by Terence Ball, 1787-88, (Cambridge: Cambridge University Press, 2003), 41, Federalist No. 10, attributed to Madison.

[31] Karl Marx, "On the Jewish Question", in *Writings of the young Marx on Philosophy and Society*, ed. Easton, LD &Guddat, KH, 1843, (New York: Anchor Books, 1967)

self-interest. Equality as composed in the Declaration of 1795 is restricted to the equal right to liberty as explained above.

Fundamentally, with regard to the relation of the individual to society, Marx dissects the construction of society in the Constitution of 1793 to be focussed solely on security. Specifically, he states that:

> Security is the supreme social concept of civil society, the concept of the police, the concept that the whole society exists to guarantee each of its members the preservation of his person, his rights, and his property[32].

In fact, security stands as the guarantee of the egoism found in, and necessary for, capitalist society. Marx offered a scathing critique of the apparent goal of equality in the Declaration. He found it 'curious' that a nation just beginning to free itself and supposedly 'tear down the barriers between different sections of the people' should proclaim the justification of the egoistic man. This is less curious when one accepts that, as did Marx, 'man as bourgeois rather than man as citizen is considered to be the *proper and authentic* man'[33]. This 'man' stood as the basis of the political state which was unsurprising for Marx as the goal of the French revolution was restricted to political emancipation. Political emancipation for Marx was 'a reduction of man to a member of civil society, to an egoistic independent individual on the one hand and to a citizen, a moral person, on the other'[34]. Political revolution is bourgeois revolution and it serves to give the right to private property. The resulting state form thus legitimates the inequality inherent in private property.

Locke's fundamental role is to set out a logic which allowed liberals to simultaneously advocate 'freedom' and 'non-interference from the state' and put in place what has to be qualified as a ferocious regime of regular violence and coercion against the people. The primary recipients of this violence are of course the people, among whom there are many who Locke qualified as the 'lazy and inconsiderate' who must be pacified to maintain a system of inequality. This is clearly a logic of total segregation and

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[32] Marx, "On the Jewish Question", 236

[33] Marx, "On the Jewish Question", 237 original emphases

[34] Marx, "On the Jewish Question", 241

exclusion upon which the liberal tradition has been able to justify what appear fundamentally illiberal practices. This is most explicit in the fact that many liberals (including Locke) have found no problem in aligning the vindication of slavery in the colonies with their condemnation of political 'slavery'[35] that they saw as the want of monarchy. The separation of society into two distinct races demanded a process of dehumanisation that legitimated the violence directed at the labouring masses at home in the same way that it legitimated the slavery of black populations overseas. The separation into two races sets the 'authentic' man apart from the inauthentic or more specifically sets the human apart from the subhuman. This distinction is made clear by Locke:

> There is a difference of degrees in men's understandings, apprehensions, and reasonings, to so great a latitude, that one may, without doing injury to mankind, affirm that there is a greater distance between some men and others in this respect than between some men and some beasts[36]

The subhuman race does not require liberty or security; these issues within liberalism have to be understood in reference to the minority for whom they are a concern. Security then must be understood not only as the supreme concept of bourgeois society but the 'supreme concept of liberal ideology'[37]. For Neocleous, who certainly echoes Foucault's thesis[38] here but only follows it in part, liberalism must be read 'less as a philosophy of liberty and more as a technique of security'[39]. Indeed as Neocleous has suggested, the development of Hobbes' ideas in liberal thought needs to be understood not in terms of a reversal of the understanding of security vis-à-vis liberty but a move to treat them as synonymous[40]. This move required a particular vision of security and equated to the 'liberty of private property' and in this sense became the 'ideological guarantee of the

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[35]Losurdo, *Liberalism*, Chapter 1.

[36] Locke, *An Essay Concerning Human Understanding*, 331

[37]Neocleous, *Critique of Security*, 31

[38] See, Michel Foucault, *Security, Territory, Population: Lectures at the Collège de France 1977—1978*, (Basingstoke: Palgrave Macmillan, 2007); Michel Foucault, *The Birth of Biopolitics: Lectures at the Collègede France, 1978-1979*, (Basingstoke: Palgrave Macmillan, 2008).

[39]Neocleous, *Critique of Security*, 31

[40] Mark Neocleous, *The Fabrication of Social Order: A Critical Theory of Police Power*, (London: Pluto Press, 2000), 43

egoism of the independent and self-interested pursuit of property within bourgeois society'[41].

Domenico Losurdo's counter-history of liberalism makes clear that the image of liberalism defined by freedom or moreover by a *free market* needs to be revised. He illustrates that the market was not a site of free exchange by equals but for centuries was 'a site of exclusion, dehumanisation and terror'[42]. This alternative image is revealed through a critical analysis of the foundations of liberal thought and this makes clear that the liberal state is not restrained by its central concerns but is instead willing and able to employ all the means necessary to ensure the maintenance of the status quo. But the standard definition of liberalism's central concern lying with liberty serves a crucial ideological function and the selective history of liberal ideas mystifies the reality of liberal politics.

Liberalism, a 'consistent, comprehensive metaphysical system'

It remains crucial then to set out how contemporary liberalism as the heir of this political philosophy is to be understood. The work of Carl Schmitt is understood by many on both the left and the right to provide an useful critique of contemporary liberalism. This critique, set out predominantly in his work of the Weimar period, is recognised as providing an insight into the reality of a liberal politics and has become increasingly influential since the translations of his work into English in the latter part of the twentieth century. The status of Schmitt's work demands here a consideration of his understanding of liberalism and its relevance to an analysis of the current liberty-security regime. More specifically, Schmitt's focus on the principles of human rights within his critique of liberalism suggests an important theoretical contribution to assist in the consideration of the role of human rights in relation to, or as part of, the current politics of security.

More recently the work of Alain Badiou has provided arguably the most incisive critique of contemporary liberalism and has, like Schmitt, placed an emphasis on human rights and humanitarian ethics at the core of such a critique. Although Schmitt and

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[41]Neocleous, *The Fabrication of Social Order*, 43

[42]Losurdo, *Liberalism*, 344

Badiou are diametrically opposed thinkers, they provide crucial contributions to a critical analyses of liberalism and human rights– critiques whose fundamental common points are seemingly all the more significant in that they stem from utterly opposed premises and understandings[43]. Therefore, the following section will consider the utility of an engagement with Schmitt and Badiou focussing in the first instance on Schmitt's contribution to an understanding of liberalism and its potential relevance to a critique of the current liberty-security regime. From this point it will consider the critical analysis of human rights developed by both thinkers to ascertain the effect the current humanitarian ethics has on the form and function of a contemporary liberal politics.

It is through Schmitt's critique of liberalism that the disparity between the presentation of liberalism and the reality of its operation is made most clear and in negotiating us through this void Schmitt for many provides unrivalled assistance in acquiring an understanding of what contemporary liberalism is. In the first instance Schmitt understood liberalism as a 'consistent, comprehensive metaphysical system'[44]. This comprehensive system is based on the following general principle which constitutes the kernel of liberalism: 'That the truth can be found through an unrestrained clash of opinion and that competition will produce harmony'[45]. The notions of unrestrained clashes of opinion and the utility of competition obviously equate with the liberal enthusiasm for free trade and unrestrained economic competition but Schmitt reveals that this principle, and liberalism's resulting engagement, extends beyond the economic sphere – indeed it is at the core of the liberal understanding of politics.

The emphasis on this 'clash of opinion' reveals the central importance of debate within the liberal system. Understanding this central position is for Schmitt crucial to

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[43] An engagement with Schmitt's ideas has influenced a number of figures on the left who reject the politics of human rights (here one could point toward Hardt and Negri's *Empire* and Žižek's work) and the convergence between Schmitt and Badiou's political thinking is a point of consideration here. However, it is important to note from the outset as Nina Power has made clear that the convergence around a conceptualisation of the political and a critique of the liberal attempt to deny the political that is evident between Schmitt and Badiou (and will be discussed below) do not infer a convergence of their politics or political aims. See, Nina Power, "Towards An Anthropology of Infinitude: Badiou and the Political Subject", *Cosmos and History: The Journal of Natural and Social Philosophy*, vol. 2, no. 1-2, 2006.

[44] Carl Schmitt, *The Crisis of Parliamentary Democracy*, trans. Ellen Kennedy, (London: The MIT Press, 1988 [1923]), 35

[45] Schmitt, *The Crisis of Parliamentary Democracy*, 35

explain the significance of the two political demands made by liberal rationalism. These two demands are the 'postulate of *openness* in political life and the demand for the *division of powers*[46]. The second demand is more specifically understood as 'the theory of balance of opposing forces from which *truth* will emerge automatically as an *equilibrium*[47]. The notion of *balance* is given central importance in the liberal system as *the* method through which truth can be achieved.

Both points are structured around the notion of competition, whether of interests or of opinions, and the elevated status it receives as the means through which truth, whether profit or a balanced view, will emerge. The concept of balance, which in its different uses involves an astonishing conflation of reason (or reasoning) and interests (or the calculation of interests) whereby the former is subordinated to the latter, is all pervasive extending way beyond the balance of powers; we will find it at the very centre of the debate on the liberty-security regime as the pivotal concept around which 'opposing forces' are reconciled.

Unsurprisingly, liberalism constructs the state as a mediator 'balancing' opposing forces. The concept of balance reduces the workings of the state to this mediating role and ultimately legitimises the existing order, for the state is supposed to work with what there is, thus without affecting the existing distribution of forces. Balance is a major object of Schmitt's critique of liberalism as it obscures the reality of political decision making and exposes a glaring distinction between liberalism's presentation of the workings of the state and the reality the operation of the state, including fundamentally the liberal state. Liberalism's emphatic commitment to parliamentarianism is symptomatic of the fear of the reality of political decision making – parliamentarianism provides liberalism with its response to naked power and force, justified by the claims to achieve truth and justice. The total liberal commitment to parliamentarianism is justified through the commitment to the processes of discussion, openness and the balancing of interests.

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[46] Schmitt, *The Crisis of Parliamentary Democracy*, 36 emphasis added

[47] Schmitt, *The Crisis of Parliamentary Democracy*, 36 emphasis added

Discussion, or 'negotiation', is not simply one central idea in liberalism, it replaces the political process. These concepts are for Schmitt a 'cautious half measure'[48] that is utilised by liberalism to delay or avoid the exacting political decision that is at the core of any politics. Parliamentary debate serves to replace the 'definitive debate' or the 'decisive bloody battle' with deliberation and in turn permit 'the decision to be suspended forever'[49]. Liberalism in this sense fears the 'bloody battle' that must be waged by the state. It constructs the state as a benign institution concerned only with balancing opposing forces instead of making the vital decisions necessitated by the reality of the political process. Schmitt exposes most clearly the void between the liberal explanation of the workings of the state and the actual reality of state operation including under liberal governments.

The liberal state and the rule of law

This liberal construction of the role of the state for Schmitt raises the issue of *exception*. The concept of exception occupies a central position within Schmitt's critique and ultimately provides the test that Schmitt subjects liberalism to. It is crucial here to expand Schmitt's notion of the exception to consider its central place in his critique of liberalism and fundamentally to consider its relevance to an analysis of the contemporary liberal politics.

Exception understood in a Schmittian sense is irretrievably bound with the concept of sovereign power through the famous statement that 'sovereign is he who decides on the exception'[50]. Key to understanding the sovereign through the exception is the notion that exception does not relate solely to emergency decrees or exceptional circumstances but refers to 'a general concept in the theory of the state'[51]. Indeed, Schmitt explains that 'it is precisely the exception that makes relevant the subject of

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[48] Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, trans. George Schwab, 1922, (Chicago: University of Chicago Press, 2005), 63

[49] Schmitt, *Political Theology*, 63

[50] Schmitt, *Political Theology*, 5

[51] Schmitt, *Political Theology*, 5

sovereignty'[52]. The relation between norm and exception is decided by the sovereign and the decision made is a decision 'in the true sense of the word'[53]. The exception can never be wholly prescribed in law and thus cannot in effect be derived entirely from the norm. If the exception involves transcending the norm, then deciding if an exception exists is an extra-legal decision.

This basic formulation makes an alignment between Schmitt and Locke's account of prerogative power that is obscured in the dominant but highly selective appreciation of Locke's influence over contemporary liberal thought. If we understand that in Locke we find 'a space for the exercise of prompt and flexible action outside the legal limits placed on the state'[54] then there exists more shared ground between these thinkers than many would be willing to acknowledge (including Schmitt himself[55]). However, the importance of Schmitt's conceptualisation is that he makes clear that the liberal obsession with regulation and checks and balances obscures the sovereign. Who the sovereign is, is clear simply when the action is not subject to control in this sense. The relation between sovereign and legal system is one of interest when opposed to the liberal misconception that regulation is appropriate or even possible. Schmitt is clear in his explanation that while the sovereign stands 'outside the normally valid legal system, he nevertheless belongs to it, for it is he who must decide if the constitution must be suspended in its entirety'[56].

What Schmitt's analysis reveals most fundamentally is that the liberal formulation of exception is therefore characterised by an impossible attempt at regulation and at least a *formal* containment of the exception (and by extension, a containment of the sovereign). Essentially what characterises an exception is unlimited power and thus Schmitt is careful to point out throughout his discussion that not every emergency decree is necessarily an exception. The attempt to regulate the exception and thus repress the

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[52] Schmitt, *Political Theology*, 6

[53] Schmitt, *Political Theology*, 6

[54]Neocleous, "Security, Liberty and the Myth of Balance", 136

[55] See, Schmitt *Political Theology*; Leonard Feldman, "Schmitt, Locke, and the Limits of Liberalism", *Konturen: Interdisciplinary Journal for German Cultural Analysis,* I (2008)
<http://konturen.uoregon.edu/vol1_Feldman.html >

[56] Schmitt, *Political Theology, 7*

question of the sovereign is however to misunderstand, or misrepresent, the nature of the exceptional situation in which 'the state remains, whereas law recedes'[57]. The recession of the law in this situation is implicit and contradicts the attempt to regulate the exception through law. Indeed, Schmitt illustrates that the tendency of liberal constitutionalism to regulate the exception as precisely as possible gives rise to the peculiar instance in which the law spells out in detail the case in which it suspends itself. For Schmitt the liberal drive to legally regulate the exception is an oxymoron born out of liberalism's unwillingness or even inability to acknowledge political reality. The norm cannot define and regulate the exception; instead the exception 'confirms not only the rule but also its existence, which derives only from the exception'[58]. In suggesting that the exception is crucial to the operation of the state, Schmitt takes to task the liberal denial of sovereign power that while crucial to a liberal presentation of politics, is dismissed entirely by the facts of the liberal state. Balance and exception are entwined in this contradiction; indeed, the very idea of a sovereign power denies the idea of 'truth' arising out of a competition between interests.

Violence and the law

Schmitt's concept of the exception has been highly attractive to a range of scholars seeking to understand liberal politics and more specifically the current politics of security. Schmitt's concept of the exception has been adopted as the framework by which the recourse to, and development of, emergency powers in the context of the 'war on terror' can be critically understood. However, there appears a tendency among certain versions of this scholarship – versions of what could be referred to as a 'Left-Schmittianism[59] – to define state violence exclusively as the result of the suspension of the law. According to Neocleous the problem with this turn to Schmitt in the current

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[57] Schmitt, *Political Theology*, 12

[58] Schmitt, *Political Theology*, 15

[59]Neocleous, *Critique of Security*, 73

context[60] is a tendency to produce a critique based on the idea that the emergency powers introduced in the name of security are *exceptional* both in terms of them marking a departure from the norm and involving a transcendence of the law. This assumption leads many leftist critiques of the 'war on terror' to conclude that the violence of the state only occurs when the law is absent and the necessary response is thus reduced to a 'less-than-radical'[61] demand for a return to the rule of law.

While this is a valid critique of certain leftist analyses produced in recent years, as a blanket conclusion it is a product of a misreading of Schmitt who makes clear that emergency powers and the exception are not equivalent phenomena. We can accept, as Neocleous suggests, that many emergency powers conducted in the name of security both pre and post 9/11 are *unexceptional* both in terms of being a central feature of normal political management and crucially, emerging from within the law[62] but this does not preclude the relevance or importance of Schmitt's critique to an analysis of contemporary liberalism. A reading of Schmitt as utilised here accepts, as many others on the left have made clear, that 'law is inextricably linked with violence'[63] and avoids a formulation of law and violence in opposition that is essentially at the core of the liberal commitment to legal regulation. In accepting that there is a far more complex relationship between law and violence this analysis remains aware that the concept of exception needs to be understood not simply as a reference to emergency decrees but, as already noted, a general concept in the theory of the state. An acceptance of the state's capacity to transcend the law and an exposure of the liberal rule of law as simply representing one side of liberalism, are not new to left or Marxist theory[64] and the analysis here heeds Joachim Hirsch's warning that we must remain aware of the two sides of bourgeois

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[60] For a critique of any attempt to utilise Schmitt as part of the development of a left politics see: Mark Neocleous, "Friend or enemy?: Reading Schmitt politically". *Radical Philosophy* 79 (1996); Richard Wolin, *The Frankfurt School Revisited*, (New York: Routledge, 2006), chapter 13.

[61]Neocleous, *Critique of Security*, 73

[62]Neocleous, *Critique of Security*, 72

[63]Douzinas, *The End of Human Rights*, 330

[64] See, Bob Jessop, *State Theory: Putting Capitalist States in their Place*, (Cambridge: Polity Press, 1990), 57-8; See also, Andreas Kalyvas, "The Stateless Theory: Poulantzas's Challenge to Postmodernism" in *Paradigm Lost: State Theory Reconsidered*, ed. Stanley Aronowitz and Peter Bratsis, (Minneapolis: University of Minnesota Press, 2002) 109.

rule[65]. It is from this perspective that an understanding of the liberal state as *Janus-faced* – and thus capable of managing the apparent contradiction between its commitment to the rule of law and its reliance on open violence – is crucial. It is precisely here, in exposing this Janus-faced nature of liberalism, that Schmitt is most useful. This analysis seeks therefore to use Schmitt analytically as a source of conceptual tools through which a substantive critical analysis of contemporary liberalism and liberal politics can be conducted. Fundamentally, to establish an understanding of human rights and their central place in liberal politics such a use of Schmitt is an essential starting point.

Depoliticisation: a premise and a major consequence of liberal politics

For Schmitt the denial of sovereign power underpins a politics that is ultimately depoliticised, denying the reality of decision making that is at the core of any effective politics, substituting it for discussion and negotiation. In his analysis the concepts of balance and exception must be understood as central to this depoliticisation; their status in liberal politics exemplifies the underlying premise of depoliticisation, and depoliticisation is a major consequence of their employment as detailed above. An analysis of the liberty-security regime that is concerned with the liberal employment of these concepts in the context of war must consider how such a depoliticisation obscures both the reality of conflict and the regime's capacity for violence (both the violence of the law and the violence that results from its suspension).

The depoliticisation of liberal politics is more substantively rooted in two major ideas that will be expanded below: first, the concept of *humanity*; and second, the submission of a single, overarching universal 'ethics' that denies the *singularity of situations*. Liberal politics puts human rights at its very centre and by doing so, constructs politics in a moral and moralising fashion by means of two major divisions inherently tied to the concept of humanity and the *dehumanisation* it invokes in its current usage.

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[65] '[The state] is also prepared to use coercion outside of the framework of law to secure bourgeois rule whenever the proletariat threatens the foundations of the capitalist order. Freedom, equality, and the rule of law are only one side of bourgeois rule: its other is *raison d'état*, class bias, and open violence. Both facets are essential to the reproduction of bourgeois society and neither should be neglected'. Joachim Hirsch in *The Capitalist State: Marxist Theories and Methods*, by Bob Jessop (Oxford: Martin Robertson, 1982), 123

Badiou makes clear the perseverance of a liberal politics that is based as it has been from its outset on the division of the people into the human and the non-human. The first division involves a distinction between human beings and the 'in-human' criminal or terrorist while the second division emerges from the 'split subject' of human rights whereby the 'active' subject (the human) is confronted by a 'sub-human' 'passive' victim. Both these divisions are based on essentially depoliticised terrain established by the concept of humanity and will be explained in turn below.

Schmitt made clear that the central principle of human rights – absolute human equality – was essentially a liberal formulation that presents 'equality without the necessary correlate of inequality, and as a result (is) conceptually and practically meaningless, an indifferent equality'[66]. This formulation of equality is in reality impossible in the political realm as it is not possible to 'abstract out what is political leaving only universal human equality'[67] and indeed in different realms of socio-political life it is not possible to deny the essential inequality that gives equality its meaning and substance. Inside a democratic state a level of real equality does exist based not on humanity but on citizenship and the homogeneity within necessitates the inequality of those outside the nation[68]. To suggest that all people are equal solely on the basis of their humanity devalues political equality based on citizenship and moreover as a result 'the sphere of political and therefore politics itself would be devalued at least in the same degree, and would become something insignificant'[69]. Placing human rights at the centre of politics illustrates the devaluation of political equality and the necessary devaluation of politics more generally that characterises liberal politics.

The use of the apolitical concept of humanity in political situations has more specific consequences especially relevant in the context of a war against terrorism. It denies the concept of enemy and thus negates the friend/enemy distinction that is at the

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[66] Schmitt, *The Crisis of Parliamentary Democracy*, 12

[67] Schmitt, *The Crisis of Parliamentary Democracy*, 11

[68] Beyond the global situation the affect of this 'abstracting' out the political within states raises a crucial conflict with the concept of political equality and more will be made of the affect this has in specific situations below.

[69] Ibid, 12

crux of the political in the Schmittian sense[70]. It denies, to express it more aptly with Badiou, avoiding the Schmittian essentialisation and objectification of the political category as something given in advance, the possible political emergence or production of 'the Two' of politics.[71]. The concept of humanity does not however, in its denial of the political, involve a redundancy of violence and indeed war. The concept of a war fought in the name of humanity, a humanitarian war (or 'intervention' to give it its contemporary resonance), paradoxically provides the very basis and crucially, the legitimation, of the most extreme forms of war. Since such wars are fought against dehumanized beings, not against human enemies, they are not political wars aimed to simply defeat the enemy, but – as the current 'war on terror' plainly shows[72] – moral wars of annihilation aimed to eradicate evil:

> When a state fights its political enemy in the name of humanity, it is not a war for the sake of humanity, but a war wherein a particular state seeks to usurp a universal concept against its military opponent. At the expense of its opponent, it tried to justify itself with humanity in the same way as one can misuse peace, justice, progress, and civilisation in order to claim these as one's own and to deny the same to the enemy[73]

In monopolising claims to this concept of humanity the enemy is denied the quality of being human and declared a criminal or even 'terrorist' who must be annihilated with all the violence available to the state. The 'war on terror' has in its official rhetoric usurped the concept of humanity to frame a war in which human beings fight against the 'inhuman' terrorist who is located outside humanity and indeed an

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[70] Carl Schmitt, *The Concept of the Political: Expanded Edition*, trans. George Schwab, 1932 (London: The University of Chicago Press, 2007)

[71] Alain Badiou, *Manifesto for Philosophy*, ed& trans. Norman Madarasz (New York: SUNY Press, 1999) 90-91.

[72] As, at this very moment, it shows how a very slow and apparently difficult change of perspective, after years of failure, is taking hold. This change is most telling, for it involves, as can be seen in Afghanistan today, abandoning the war of annihilation and fighting instead a much more selective war and ostensibly focusing the main efforts on the reconstruction of the invaded territories and the protection of the civilian populations.

[73] Schmitt, *The Concept of the Political*, 54

enemy of it[74]. The depoliticisation of the terrorist is compounded by the current hegemonic, depoliticised understanding of terrorism:

> It must be said that today, at the end of its semantic evolution, the word 'terrorist' is an intrinsically propagandist term. It has no neutral readability. It dispenses with all reasoned examination of political situations, of their causes and consequences[75].

A war in this sense does not confront a legitimate enemy but an 'outlaw of humanity' and war can thereby be 'driven to extreme inhumanity'[76]. The moralising function exemplified by the assignment of good (those on the side of humanity) and evil (the enemy of humanity) provides the legitimation for the most amazing violence that accompanies the humanitarian 'effort'. Thus used the concept of humanity is ultimately inseparable from violence potentially in its most extreme forms.

The concept of humanity as it is currently applied involves a dehumanisation that operates concurrently on two levels. The second level that occurs adjacent to the dehumanisation of the enemy, involves the dehumanisation of the subject of human rights in the form of the sub-human figure of the victim. The subject of human rights is for Badiou, split into active and passive beings and this split establishes a relationship within which the active subject takes on an intervening role to save or protect the passive victim that is utterly powerless ultimately as a result of its *subhumanity*[77]. The extreme powerlessness of this victim is a result of its dehumanisation and the division establishes a politics of 'humanitarian intervention' within which the active subject is compelled to intervene with whatever means required.

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[74] George W Bush framed the war on terror as a response to the terrorists' 'war against humanity' defining Al Qaida as the *'enemies of humanity'*- George Bush, "President Discusses the War on Terror" *National Endowment for Democracy*,
<http://georgewbushwhitehouse.archives.gov/news/releases/2005/10/20051006-3.html> (2005) emphasis added

[75] Alain Badiou, *Infinite Thought: Truth and the Return to Philosophy*, ed. & trans. Oliver Feltham and Justin Clemens (London: Continuum, 2005), 109.

[76] Schmitt, *The Concept of the Political*, 54

[77] Alain Badiou, *Ethics: An Essay on the Understanding of Evil*, trans. Peter Hallward (London: Verso, 2001) 9-13 original emphasis

Ethics in the contemporary era is underpinned by this split subject and conceived of primarily as an 'a priori ability to discern Evil' because, fundamentally 'Evil is primary'[78]. This ethics in its humanitarian formulation is dominated by the prevalence of evil and crucially stands as the 'ultimate principle of judgement'[79]. Political judgement is in this sense reduced to a process whereby 'good is what intervenes visibly against an Evil that is identifiable a priori'[80]. The major consequence of this formulation of ethics is of course an amazing depoliticisation in which judgement is no longer political but based on the confrontation of good and evil. Moreover, reducing the understanding of 'good' to purely that which intervenes against an Evil denies any possibility of 'uniting people around a positive idea of the Good'[81]. Collective action is in this sense dismissed as an evil reaffirming the dominance of the contemporary ethics and confirming the 'politics of humanitarian intervention' as the only legitimate framework for action. The 'necessity' of intervention is ultimately the result of both levels of dehumanising; the in-human terrorist necessitates a war of annihilation and the subhuman victim demands a civilising intervention. Both of these interventions are considered in an apolitical framework that denies the reality of conflict and legitimates the use of extreme violence.

As a result of this split subject, the situation in which intervention is deemed essential is depoliticised, considered only in terms of human rights and the civilising mission directed at the active subject:

> Since the barbarity of the situation is considered only in terms of 'human rights' – whereas in fact we are dealing with a political situation, one that calls for a political thought-practice, one that is peopled by its own authentic actors – it is perceived, from the heights of our apparent civil peace, as the uncivilised that demands of the civilised a civilising intervention[82].

Denying the existence of a political situation is more substantively based in stripping situations of their singularity that is a result of the a priori determination of Evil. For

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[78]Badiou, *Ethics*, 8

[79]Badiou, *Ethics*, 8

[80]Badiou, *Ethics*, 8

[81]Badiou, *Ethics*, 13

[82]Badiou, *Ethics*, 13

Badiou the particular situation is the starting point for all properly human action and the ethics of human rights denies this 'properly human action' by remaining concerned at the level of the abstract denying the specificity of singular situations. There is no need for an overarching ethics but instead a clear view of what is demanded in a certain situation. The depoliticisation of liberal politics is enforced by this inability to consider particular situations that is ultimately a result of the 'ethics' of human rights that prioritises evil over good. The good becomes only the avoidance of evil and maintaining or improving the status quo. The 'good' is what there is; it is the current status quo, and thus it must not be disturbed by any alternative political thought-processes that would be demanded if the specificity of particular situations was acknowledged.

The preservation of the status quo is ensured by the depoliticised framework for action imposed by the current 'ethics'. The maintenance and *legitimisation* of the status quo is a pivotal effect of this depoliticisation and ultimately, a grounding premise of liberal politics. The 'ethics' of human rights as formulated through a split subject legitimises the global-political conditions that characterise the contemporary era[83]. The active intervener and passive victim positions are not floating, they have a fixed identities designated along global-political lines obviously denied in the universalist rhetoric of humanitarianism. Contemporary ethics is a civilising mission in which the role of the West as intervener is inevitable. Global political situations are reduced to the West's active intervention to the benefit of the third world victim who has apparently created the mire in which he finds himself. As Douzinas has clearly illustrated[84], human rights therefore play a central *legitimising* role securing the hegemony of the current global-political hierarchy.

In the post 1989 era the apparently irreplaceable position of human rights has gained increasing confidence and their status is seemingly reaffirmed at the 'end of history'. The dismissal of all attempts at unifying and connecting people serves to reinforce the hegemonic status that liberal individualism, in its continuing possessive

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[83] Schmitt is probably the first thinker who made clear that 'the concept of humanity in its ethical-humanitarian form is a specific vehicle of economic imperialism'. Schmitt, *The Concept of the Political*, 54

[84] Costas Douzinas, *Human Rights and Empire: The Political Philosophy of Cosmopolitanism*, (London: Routledge Cavendish, 2007).

guise,[85] holds. Any real attempt to bring equality out of the abstract is dismissed as an evil and collective action is denied, rendering real political alternatives to the individualism that underpins both human rights principles and liberal capitalism, impossible. The legitimising function of this 'ethics' is not only exerted at the global political level but fundamentally reinforces local political and economic conditions through its wholesale demands for the preservation the status quo.

In reality most of the issues involved in depoliticisation are also at the core of the attempt to gain legitimacy for the liberal system[86] as depoliticisation has the central effect of rendering any truly alternative politics impossible. Political and economic conditions are inherently bound together in liberalism and their current manifestation on the local and global stage provides the conditions of a status quo that is sustained through the denial of any legitimate alternative.

Understanding liberalism as a comprehensive metaphysical system, within which the idea of balance as truth struck out of competition and an inherent problem with the concept of exception are dominant themes, will provide a framework for an analysis of the liberty-security regime. The questions of depoliticisation and legitimisation must accompany the understanding of liberalism laid out above and if indeed these are major principles and consequences of liberalism one can expect to find them in prominent positions throughout the operation of the liberty-security regime.

The empirical analysis of the most prominent 'voices' in the current liberty-security regime

In conformity with the perspective on liberalism outlined in the previous pages, and with a view to investigating the extent to which a common approach underlines the debates and divergences about the current liberty-security regime, the research will be structured around three main empirical sections.

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[85] Macpherson, *Possessive Individualism*

[86] The denial of collective action; the construction of politics in a moralising fashion; and the politics of humanitarian intervention are all key examples of the process of depoliticisation that enforces the legitimacy of the liberal system.

The first section considers the role of the liberal intellectual in the debate on the relationship between liberty and security. This focal point is essential given the extent and potential impact of the intervention of a range of liberal intellectuals in this debate in the post-9/11 era. The relationship between liberty and security – or more precisely between human rights and security – and its liberal character in the current context has been a preoccupation of intellectuals tied to the liberal tradition and the analysis seeks to consider the content of this intellectual work and its effect on the current regime.

In relation to the potential hegemonic status of the current liberty-security regime the literature under review must be considered from the perspective of the role of the intellectual in the work of Antonio Gramsci (1971)[87]. Essentially one must consider to what extent the scholars and practitioners have the function of intellectuals as Gramsci understood it[88]. This section of the research considers the intellectual broadly in terms of their *function* as intellectuals both in relation to individuals formally recognised as scholars and academics but also other individuals and organisations that can be understood to share this function. This understanding is based not in the intrinsic nature of intellectual activities but in the 'ensemble of the system of relations in which these activities (and therefore the intellectual groups who personify them) have their place in the general complex of social relations'[89].

This first empirical section concerned with the role of the intellectual is divided into three strands that each focus on a different 'level' of intellectual intervention in the debate on the relationship between liberty and security in the context of the 'war on terror'. These three strands are comprised of firstly, the work of liberal public intellectuals; secondly, that of scholars and academics; and thirdly, interventions made by human rights advocacy organisations. The first strand is concerned with renowned public

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[87] Antonio Gramsci, *Selections from the Prison Notebooks*, ed. and trans. Quentin Hoare and Geoffrey Nowell Smith (London: Lawrence and Wishart, 1971) 8

[88] 'Every social group, coming into existence on the original terrain of an essential function in the world of economic production, creates together with itself, organically, one or more strata of intellectuals which give it homogeneity and an awareness of its own function not only in the economic but also in the social and political fields'. Gramsci *Prison Notebooks*, 5

[89] Gramsci, *Prison Notebooks*, 8

liberal intellectuals who have the status of reference points for a liberal understanding of a range of issues that in turn provides them a readership far beyond scholarly circles and the academy. The concern here lies with their ability to reach a wide public audience but also with the use of their work as a foundation for 'lower' levels of intellectual work. The apparently novel post-9/11 situation demands liberal democracies rethink their management of the liberty-security relationship and for many scholars and academics as well as a wider international public there have been certain public intellectuals whose work has been accredited with a degree of authority as a liberal compass helping the state and the intellectual community find its way in this 'new' era.

The second strand turns to the scholarly and academic debate on the liberty-security relationship and concerns itself with the content of this debate and more specifically with the parameters in which it takes place. There will be particular attention paid to the potential influence of the public intellectual stratum over this 'lower' level of intellectual work but there remains a focus on the potential impact of this international debate that has drawn in such a number and range of scholars – in terms of their status/rank, their location and their critical starting point (or lack thereof). The constant concern lies with the possibility of a convergent position underlying the debate that has occupied so many scholars and academics working in a number of disciplines around the world.

The focus on human rights organisations in the third strand begins from an understanding of them as having the function of intellectuals in the Gramscian sense. It is concerned with their understanding of the relations between liberty and security as expressed through programmatic and mission documents, their participation in debates and in lobbying and campaigning activities, and more broadly at where and how they position themselves in their mission of championing of human rights. The importance of looking at human rights organizations takes full account of the popular sentiment that these organisations stand as the most legitimate guardians of liberty in the contemporary period. Such status is born of the fact that it is human rights principles that are supposed to provide the framework within which *all* concerns for liberty must be articulated. Crucially, there will be a special emphasis on the language used by such organisations as a pivotal signifier of the convergence (or divergence) in the logic that underpins their

position with that of public intellectuals, scholars and academic as well as with that found at state level. The possibility of a convergent approach among apparently diversely situated intellectuals raises a core concern around the parameters set to the debate on the liberty-security relationship. Furthermore, the possibility of a convergence in approach between human rights organisations and the state raises significant concerns about the potential for true political challenges to the current liberal regime.

These three levels of 'intellectuality' are of central importance due to the ways in which these intellectuals, scholars and practitioners inform public opinion[90]. The empirical data will be drawn from an in depth content analysis of the academic and public literature produced by this intellectual 'class'. The substantive issue within this strand must be the extent of debate in the literature – the extent of convergence or substantive disagreement – between public intellectuals, scholars and practitioners, a debate usually underpinned or guided by the interventions of prominent intellectuals and usually heavily relying on the liberal tradition, in their quest to define the most appropriate relationship. A critical analysis of such literature will seek to define the substance of such a debate and more importantly identify the parameters within which such a debate takes place. The content of the literature and the extent of both the conflict within this literature, and the conflict in relation to the state must be carefully analysed in order to see the extent to which a shared understanding and common approach arises or exists that potentially revolves around an adherence to the central themes explained above. Therefore, this strand will establish the position held by intellectuals, scholars and practitioners working on the liberty-security relationship and identify the extent to which the margins of dispute are curtailed by relying on a shared language and principles.

These three strands do not form an exhaustive list of participants in current debates on the liberty-security regime but they arguably stand as three of the most important and seemingly influential 'voices' on the liberal liberty-security relationship in the contemporary era. The research seeks to attend to each strand in turn, as well as to the interplay, and critically evaluate their interventions, understandings and formulations of the liberty-security relationship. In accordance with the theoretical underpinnings

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[90] The research does not suggest that this literature is authored by a homogenous group. The public intellectuals, scholars and practitioners work on different levels so to speak but as an identifiable area of literature it plays a pivotal role in shaping public opinion a process that will be considered in this analysis.

explained above, the analyses will be particularly attentive to the role of the idea of balance in the debates and policy documents, the way in which the exceptional measures are presented, interpreted and justified, and the issues of depoliticisation and legitimisation. The relation these three groups of intellectuals have, as articulated in the literature, to both the state and civil society actors must be a key concern.

There is more to this theoretical approach and to the particular selection of the empirical strands for analysis. In particular, the concept of hegemony as articulated by Gramsci (1971) provides substantive coherence to the major research question about the possible existence or emergence of a common approach to the relations between liberty and security which would underline the differences between the state, civil society and the intellectual 'community'. If so, the question arises as to the extent to which such major actors, different as they are, constitute a kind of hegemonic formation, however heterogeneous. In the 'struggle for hegemony' Gramsci made clear that governments are reliant on rallying social support for specific policies. The dominance of the leading group is not secured solely at the state level but is dependent on securing popular consent that is mobilised within the various institutions and relations in civil society. Fundamentally, Gramsci's theory of hegemony exposes the central importance of the relations between state and civil society[91]. Gramsci also made clear that intellectuals play a pivotal role in the struggle for hegemony. The role of the intellectual is decisive in informing, organising and persuading the population and thus the intellectual is crucial to both conservative and revolutionary movements[92]. In a conservative sense the intellectual has a vital function in organising the consent of the population to the rule of the dominant group, but in the revolutionary sense the intellectual is at the core of the formulation of a counter hegemony[93]. The intellectual is located within civil society and must be seen as playing an essential role in determining the relations between state and civil society by way of their ability to mobilise or dismantle the consent of the population. The relation

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[91] Civil society does not of course constitute a unified whole.

[92] For Gramsci the very function of intellectual activity provides the intellectual with the ability to contribute 'to sustain a conception of the world or to modify it'. Gramsci, *Prison Notebooks*, 9

[93] For Gramsci the new intellectual in the revolutionary movement must be at the forefront of the struggle: 'The mode of being of the new intellectual can no longer consist in eloquence, which is an exterior and momentary mover of feelings and passions, but in active participation in practical life, as a constructor, organiser, "permanent persuader" and not just a simple orator'. Gramsci, *Prison Notebooks*, 10

these intellectuals have, as articulated in the literature, to both the state and civil society actors must be a key concern. If indeed this literature is symptomatic of the work of intellectuals the empirical component of this research will consider where the allegiances of these intellectuals lie, how they shape the substance of the regime and to what extent their intervention is decisive in the 'struggle for hegemony'.

Part 2: The state and the official presentation of the liberty-security regime

The second major section of empirical analysis is concerned with state security strategy and more pressingly the politics of security that will be drawn from these documents[94]. This will in the first instance involve a documentary analysis of both national security and counter-terrorism strategy documents. The emphasis on strategy documents lies in the status of these publications and their role distinct from policy documents or pieces of legislation in setting out the official understanding of an area of policy and the context (political, economic, historical) in which it has been or needs to be developed. These documents have a 'marketing' function attempting to 'sell' official policy to the public. They provide an account of strategic thinking in a given area of policy (or at least an official presentation of the logic that underpins the development of such policy) and for this reason they offer a unique and unparalleled source of information on the *official* state

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[94] The analysis here does not propose to offer a substantive theorisation of the state but begins from a conceptualisation of the state grounded in the first instance in the works of Nicos Poulantzas. Poulantzas' understanding of the state as a *social relation* provides an essential foundation to such an analysis as proposed here that demands a critique of the contemporary liberal state. Avoiding the misconception of the state as subject or object as well as that of presenting the state as a single intrinsic entity, this analysis follows Poulantzas' definition of the state as '*rather a relationship of forces, or more precisely the material condensation of such a relationship among class fractions, such as this is expressed within the state in a necessarily specific form*'. Nicos Poulantzas, *State, Power, Socialism*, trans. Patrick Camiller (London: New Left Books, 1978) 128-9 original emphasis. The analysis begins from an acceptance of the continued relevance of Poulantzas ideas but also of the utility of the development of his work not least by Bob Jessop. Jessop's assertion that the state can be analyzed as the site, generator and product of strategies arguably offers a great deal to a consideration of the state politics of security. Bob Jessop, *State Theory*, 260-271; See also, Peter Bratsis, *Everyday Life and the State*, (Boulder, CO: Paradigm Publishers, 2006). There is no attempt here to equate Jessop's notion of 'strategic selectivity' with the specific security strategies in consideration here, but this understanding of the state potentially offers an additional set of conceptual and theoretical tools through which this analysis can get to grips with the importance of security politics to the liberal state.

position[95]. For the purposes of this analysis security strategy documents provide an account of the official understanding of the relationship between security and human rights, the ways in which the current post-9/11 context has affected this relationship and the ways in which the state has had to respond.

Security strategy in the era of a war on terror is undoubtedly rooted in counter-terrorism initiatives and there will be a proportional emphasis on these strategies. However, the analysis seeks to ascertain the current politics of security more broadly and will thus be concerned with the potential for 'securitisation' to extend beyond the threat of terrorism and frame state strategy in areas seemingly distant from traditional understandings of security. The contemporary conception of security must be unravelled and in doing so the analysis will attempt to locate the politics of security within the broader politics of the state in the current era. Such an analysis is crucial to determine the official understanding of the relationship between liberty and security as defined in strategy documents and to assess to what extent this influences the emergence of a common approach between the state and civil society.

As we have insisted on the possibility of a common approach underlying the differences between the main actors, it is necessary to highlight also that the tension-ridden interplay between state and civil society will also be of central importance to this analysis. The research must ascertain to what extent the regime is shaped by and thus partly a result of, such interplay, particularly in the long term, rather than being the direct, unmediated consequence of state or government action. This reinforces the relevance and importance of the Gramscian concept of hegemony in understanding the process by which the regime is developed and more critically the impact it has on the state's ability to maintain the current status quo. The subjects of empirical analysis considered here are taken therefore to constitute, each at its own level, fundamental pillars in the construction of hegemonic dominance.

To provide wider scope and depth to this analysis, an international comparison between the UK and Australia will also be carried out throughout the first two empirical

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[95] The assertion is not made here that these documents contain the true nature of the state's understanding of an issue but that they provide an overview of how these issues are presented. The liberal state's *official presentation* of the issue of security and its relationship to human rights is the core concern of this section of empirical analysis.

sections in relation to both the intervention of liberal intellectuals and state security strategy. This comparative element seeks to extend the analysis of the emergence of a common approach to liberty and security beyond the UK and to consider to what extent there are antipodean similarities in the approach at the intellectual level and the resulting regime in place in Australia. The comparison with Australia is justified by the fact that the Australian Federal government has in the past considered adopting a human rights regime based on the existing UK model[96]. This proposal followed an apparent official confidence on behalf of the new administration in the UK (or Westminster) system that appeared to show their alignment with scholars, practitioners and civil society actors who had for some time suggested that the UK human rights regime had 'proved effective in balancing issues such as the need to fight terrorism with the democratic and other principles required for a free society'[97].

The UK-Australia comparison will provide a more clear indication of the liberty-security regime and the political context in which it has been developed and is currently sustained than just focusing on the UK in isolation. More specifically, the apparent convergence in approach to the liberty-security relationship between the UK and Australia points to the emergence of a common Anglo-Saxon liberty-security regime. The potential of a specifically Anglo-Saxon liberty-security regime is in itself therefore a focus of concern and this must be interrogated through an unravelling of the empirical strands in both the UK and Australian context. However, whilst the UK-Australia comparison is itself a central concern the UK and Australia have stood firm as the two closest US allies in the so called 'Coalition of the Willing'. The relationship of both

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[96] This proposal was put forward by the Rudd government following their defeat of the Liberal government of John Howard in 2007. The Rudd government established a National Human Rights Consultation Committee that was to consider the possibility of the adoption of a statutory bill of rights. The recommendations of the Committee were implemented in part in the establishment of a new Human Rights Framework in 2010 that established a number of features of the UK human rights regime without committing to a statutory bill of rights. The failure to implement any substantive statutory instruments has been for some a sign of failure of the current government but the consultation process and its initiation following the UK (and New Zealand - as another 'Westminster' system) example is sufficient basis for a comparative component to this analysis. See, David Erdos, "The Rudd Government's Rejection of an Australian Bill of Rights: a Stunted Case of Aversive Constitutionalism?", *Parliamentary Affairs*, 65, 2, (2012)

[97] George Williams "Victoria's Charter of Human Rights and Responsibilities: Lessons for the National Debate ", *Papers on Parliament* No. 46,

<http://www.aph.gov.au/SEnate/pubs/occa_lect/transcripts/070706/070706.pdf,> (December 2006)

countries to the US in the context of the 'war on terror' is also of importance in understanding the possible development of an Anglo-Saxon liberty-security regime identifiable in the UK and Australia in the era of the 'war on terror'. While the analysis will remain concerned with the specificity of the UK-Australian context, the relationship to the US and its influence on both domestic and foreign policy in both countries in the 'war on terror' will provide a backdrop to the consideration of UK-Australia relations.

The potential for an Anglo-Saxon liberty-security regime exposes the importance of understanding how a liberty-security regime is shaped by a specific 'political culture' – an idea understood here as the configuration of prevailing societal self-images, aspirations, dispositions, attitudes and, as Tocqueville famously put it, 'habits of the heart'[98] which broadly but effectively orientate political understanding and practice on the part of states, civil society actors and individual citizens. Fundamental aspects of the current political culture of liberal democracies, that is, aspects which arouse strong self-images and passionate commitments, are above all to do with democracy, equality, human rights and humanitarian ethics. Therefore, the comparative element seeks to further unravel the influence of the specific political culture in which the liberty-security regime is installed and maintained, deciphering any interrelations between this culture and the liberal framework outlined above.

Following the analysis of the state politics of security there will be a return to the role of the intellectual. This will consider more specifically the direct role of the liberal intellectual in the service of the liberal state in the era of the 'war on terror'. The relationship between the liberal intellectual and the liberal state will be interrogated and the analysis will seek to chart the potential influence of liberal intellectuals over the development of state security strategy.

Part 3: Human rights, the politics of security and the possibilities for critique

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[98] Alexis de Tocqueville, *Democracy in America*, ed. And trans, Harvey C. Mansfield and Delba Winthrop, 1835 and 1840, (Chicago: University Of Chicago Press, 2000); See also, Robert N. Bellah, et al, *Habits of the Heart: Individualism and Commitment in American Life*, updated edition 1985, (Berkley: University of California Press, 1996)

Through the interrogation of the current liberty-security regime this research aims to make an important addition to the critical literature on human rights. It seeks to provide a critical analysis of the human rights approach in the current political context of the war on terror. The critical literature is almost as old as human rights themselves (Burke on the conservative side and, later on, Marx on the progressive one) and has continued to grow at a pace, particularly after the fall of the Berlin wall, within the works of Alain Badiou, Slavoj Žižek, Michael Hardt and Antonio Negri, and Costas Douzinas among others. At the core of this critical literature is a focus on the liberal character of human rights that ultimately denies them any truly transformative potential. This research will add to this literature and illustrate that in the current political context human rights are implicitly and exclusively tied to the liberal system.

As set out above the point of interjection in this literature comes through a focus on the ways in which the human rights approach is potentially constituted in the contemporary period through the dialogue between seemingly disparate groups both within the state and civil society. In a development of the critique of liberalism that is at the core of the critical literature on human rights, this research will seek to consider whether the dialogue on the liberty-security relationship is defined and ultimately restrained by the liberal parameters in which it takes place. There is a novel utility in the application of this material in the specific context of the war on terror and this research will thus consider the (in)ability for human rights to operate independently of the liberal system. The research will remain in dialogue with the critical literature on human rights and the work of a number of these authors, most notably Schmitt and Badiou, will be utilised as tools, on the basis of which I will try to develop a critical perspective to analyse the current human rights approach.

The liberal intellectual intervention is characterised by an attempt to reinforce the position of human rights at the core of liberalism and thus the debate around the human rights approach in this context is reduced to an affirmation of the liberal system. At the forefront of this literature is the attempt to define the liberal approach to the war on terror and to 'save' liberalism from the descent into exceptional measures that the war on terror demands. This research does not obviously seek to contribute to this literature but instead posits it as a central object of critical analysis, since it is assumed that it plays a

potentially pivotal role not only in the development of the current human rights approach but also in the definition of the terrain in which politics and the possibilities for true alternatives to the current situation may take place. The two distinct areas of literature identified above are therefore both of central importance but have antithetical statuses: the first as the basis for developing a theoretical framework for the research; and the second as primary source of information and evidence for understanding the liberal approach, including human rights, which will be subjected to critical scrutiny.

The research will however confront a third area of literature as part of the critique of the liberal underpinnings of human rights and as a fundamental component of the analysis of the current politics of liberty and security. This third area is identified with intellectuals and scholars commonly considered to be on the political left who employ human rights principles as part of and even as central to a critical left wing perspective. As part of the critique of the contemporary human rights approach, and more in particular in connection with the question of the nature of the political terrain in which debate and conflict take place and the possibilities for true political alternatives, there is a real need for this research to engage with the more complex issue of the utilisation of human rights principles on the left that complicates the seemingly simplistic dismissal of human rights on the basis of their appropriation by liberalism, or their inherent submission to it. In this connection, the question we pose is: are human rights inherently tied to liberal principles, or do they embody principles of their own which can provide the basis for, or otherwise be put to use in the context of, alternative, emancipatory politics?

While the critique of human rights in the work of the liberal authors named above is done as part of a wider critique of liberalism, there are a number of prominent intellectuals and scholars who place themselves on the left and retain a commitment to human rights principles. The works of Noam Chomsky, Judith Butler, and Jurgen Habermas are all symptomatic of a left-wing perspective, or so considered, that utilises human rights as a major foundation, if not the *basis* of, a critique of liberal policies, and more generally of the liberal status quo. These three authors have also turned their attention (or focussed their existing concerns) to the 'war on terror' and, to varying degrees, the wider politics of security. They have each articulated critiques of the current regime that utilise human rights as a foundation for their political opposition.

The research seeks therefore to engage with and confront the fundamental tension on the left around the question of human rights and their ability to transcend liberalism. The undoubtedly critical stand of those left thinkers in the third category of literature suggests that human rights are central to freedoms in the broadest sense. Indeed the employment of human rights in work of such eminent critical theorists reaffirms the dominance of human rights discourse in the current context and exposes the tension on the left that has its roots in the claimed assimilation of a critique of human rights with a defence of Stalinism.

Without claiming that human rights are always and at all times conservative and devoid of any utility in emancipatory struggles, this research will try to show that in the current political context of the war on terror human rights are wholly tied to the liberal project; beyond that, it will also try to enquire, as we mentioned before, whether or not this connection is a contingent one (e.g. dependent on the peculiarities of the so-called 'war on terror'). An exposition of the liberal character of human rights informed by a critique of liberal politics seems essential to assess the affect the current human rights approach has on the current dominance of the politics of security. Beyond that, its central concern is to do with the potential for true political alternatives in the contemporary era.

Chapter 1

Defining the liberal response to terrorism
The liberal intellectual approach to the liberty-security relationship

This section focuses on the work of Michael Ignatieff, Michael Walzer, Ronald Dworkin and Richard Rorty. Each of these thinkers has defined themselves as liberal and has long positioned their work as a defence of the liberal tradition. This project has provided the overarching framework for their diverse intellectual output for many decades and has been reiterated most vehemently in their responses to the 'war on terror'. While they have each consciously assumed the role of defenders or guardians of liberalism this role has also been reinforced by the frequent use of their work as a reference point to ground a *liberal* understanding of a range of issues not least, in the post 9/11 era, the relationship between liberty and security.

The interventions in the liberty-security debate made by these four intellectuals are presented in the first instance as critiques (or critical analyses) of the current regime. They seek to outline the points of divergence from the liberal tradition that have been introduced in the name of the 'war on terror' in those liberal democracies tied to this 'war'. These intellectuals seek in response to dictate an alternate, liberal approach to security in relation to human rights that reinstates the vision of liberalism defined by the prioritisation of liberty over security. The development of a liberty-security regime that has characterised the post 9/11 era has led Ignatieff, Walzer, Dworkin and Rorty to turn their attention to the function the liberal framework can – and must – play in structuring the response to international terrorism. While there is no assertion made here that these intellectuals constitute a homogenous group, the four can be seen to have converged in this period around the apparent need for a revisiting and subsequent rethinking of the relationship between liberal principles and the requirement for states to provide security.

However, since this intellectual intervention, broadly conceived, remains committed to and defined by liberalism it is, in Peter Hallward's conceptualisation, tied ultimately to an intellectual stance of alignment with the world as it is[1]. In this sense these liberal intellectuals are aligned with the dominant ideology and their

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[1] Peter Hallward, "The Politics of Prescription", *South Atlantic Quarterly* 104, 4 (Fall 2005)

position is characterised by an acceptance of all that really matters. The idea of alignment with or acceptance of the world, that is to say, of the status quo, appears - by seemingly confirming the insubstantial nature of a liberal critique of the liberal state - to render the liberal intellectual an easy target for critique. However, this critique may be 'easy', except when, which is not often the case, it grasps the actual, invaluable service the liberal intelligentsia renders to the current liberty-security regime and, more generally, to the status quo. That the liberal intellectual fulfils a decisive function in relation to the politics of security is quite obvious. Much less obvious is the precise nature of this function, the way in which it is performed and the far-reaching consequences of it. For such liberal 'critique' may actually be a critique only in appearance and may fulfil legitimising functions which can only be fulfilled in the form of a critique or the semblance of it.

This analysis therefore seeks firstly to ascertain the extent to which the liberal intellectual intervention in the security arena has not simply been a reaction to the current politics of security, but is instead bound up in the formulation and subsequent legitimisation of the current security regime. There has arguably been an intensification of the relationship between intellectuals and security politics in the last decade influenced most explicitly by the unrivalled expansion of 'security studies'. While this essentially conservative discipline has by virtue of its own fetishization of security served only to reinforce the concerns of the state[2] (a practice that pre-dates 2001), there is a need to look beyond this specialism to consider whether the ability to influence and legitimate the current regime is exclusively the recourse of those intellectuals who formally locate themselves within it.

Secondly, the analysis seeks to consider the potential legitimating function played by the liberal critique of security politics and more specifically to consider the extent to which this is a function unique to the liberal intellectual by virtue of their ostensibly external position from the current politics of security. Thirdly, the attempt is made here to point toward the convergence between the liberal intelligentsia's views on security and the position of the state that will be considered more fully in the fourth chapter. Finally, this analysis seeks to provide an initial analysis of the consequences of the liberal intervention. Taking into account that a significant process of depoliticisation has been shown to be a major consequence of human rights

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[2]Neocleous, *Critique of Security*

promotion and activism, the analysis is above all concerned with the potential depoliticising effects that may be born out of the liberal contribution to a debate that is at once premised on human rights advocacy and conducted on a political terrain defined by liberalism. At the core of the thesis there is a concern with what it actually means to be a liberal intellectual in concrete terms and what this suggests for any alternative intellectual project able to politicise security and radically question the logic of current security politics.

I wish to illustrate, by way of a focus on these four public intellectuals, that they both embody the central tenets of the liberal intellectual position on the current politics of security and precisely because of that, play a pivotal role in (re)defining them in the current, allegedly new, situation of the 'war against terror'. There are of course many other academics, scholars, journalists, analysts and commentators who potentially perform the same function as intellectuals in the Gramscian sense[3] but the role of this public intellectual 'strata' needs to be set out to illustrate the specific effect it has had on defining the parameters for debate on the liberty-security relationship, and by extension, the parameters for any critical discussion of the politics of security.

A 'new' approach to a 'new' problem

The need for an intellectual 'rethinking' of the liberal framework in an age of international terrorism is founded on two major assumptions that these intellectuals appear to share with those western governments leading the 'war on terrorism': that there is such a thing as a 'war against terrorism'; and that furthermore, the character of terrorism and the extent of the threat are unprecedented and thus necessitate a carefully (re)thought response. It is of the utmost importance to note as a starting point for this analysis that the very incentive for the revision of liberalism in the post 9/11 period is for each intellectual seemingly founded on an uncritical acceptance of the basic principles of the current status quo.

The approach to the current liberty-security relationship is based (for the four intellectuals in focus here and numerous others) in an agreement that the 'war on terror' has distorted the equilibrium that is the central characteristic of liberalism. The

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[3] See the two following chapters

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first marker of the essentially shared position between these intellectuals is agreement that the defining feature of the current era is an unavoidable confrontation with a set of opposing concerns. There is disagreement on which concerns are the most relevant and pressing but all four are united in their agreement that the concept of balance provides the appropriate framework for the necessary reestablishment of the central equilibrium.

Ignatieff and Walzer predictably confront largely the same set of requirements – ultimately liberty and security – and seek to articulate the appropriate liberal balance between these two. Ignatieff assures us that his *The Lesser Evil*[4] approach is not a simple application of the balance metaphor as this metaphor isn't 'honest enough about the difficulties'[5]. The 'Lesser Evil' perspective is Ignatieff's response to the events of September 11th 2001 that have apparently forced him to rethink how the human rights principles he holds so dear and have been central to his work in all its guises[6], fit into a new era defined by an 'unprecedented' threat from terrorism. This era, defined in *The Lesser Evil* as 'an age of terror', is one seemingly characterised by the clash of concerns with liberty and security. Ignatieff seeks to mediate this conflict and accommodate both human rights concerns and a 'realistic' approach to the new security threat. In his role as a contemporary champion of liberalism he seeks to propose a truly liberal approach to liberty and security that recognises that the fight against terrorism 'requires violence' and may also require 'coercion, deception, secrecy and violation of rights'[7]. The Lesser Evil perspective is in Ignatieff's terms an attempt to reconcile the contradiction that the 'age of terror' imposes on a liberal democracy between concerns for liberty and 'necessary' security strategies.

However, despite his initial claims of a distinction of the Lesser Evil from balance, it is clear that the concept of balance ultimately guides Ignatieff's position. The concept is dominant in the wording of his argument and in the very framework for action that he provides, even explicitly[8]. Ultimately the liberal commitment to balance shines through what is essentially a minimal reworking of the liberal

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[4] Michael Ignatieff, *The Lesser Evil: Political Ethics in an Age of Terror*, (Edinburgh: Edinburgh University Press, 2005)

[5] Ignatieff, *The Lesser Evil*, xiv

[6] See, Derrick O'Keefe, *Michael Ignatieff: The Lesser Evil?*, (London: Verso, 2011)

[7] Ignatieff, *The Lesser Evil*, vii

[8] Ignatieff explains that the 'ethics' he proposes is an 'ethics of balance'. Ignatieff, *The Lesser Evil*, 9

approach to any opposing forces as explained by Schmitt. Ignatieff is, as Schmitt's analysis would suggest, emphatic about the potential for a reconciliation of liberty and security in the contemporary era based in a balancing act that is possible, realistic and dependable when orchestrated within a 'democracy'[9].

As Ignatieff pitched his Lesser Evil approach between moral perfectionism and 'false necessity', Walzer's Just War Theory (JWT) is located between essentially the same two perspectives that are both in their own way unsuitable as a responsible *liberal* approach to war. Walzer is clear that JWT is 'opposed to "realism" but not unrealistic'[10]. Defining a realistic as opposed to a realist approach has been at the core of Walzer's approach to JWT since its inception[11]. Walzer has long devoted his attention to arguments around the morality of war, attempting to define the instances in which war is necessary and legitimate and this work stands as a central component of his intellectual work. *Arguing about War* involves the application of JWT to the current era and his subsequent articulation of a liberal approach to the 'war on terror' defined by this balancing process that is, despite his assurances (and those from the liberal press[12]), not restricted to overseas military tactics in its legitimisation of the approach to terrorism post 9/11.

Dworkin and Rorty[13] are not so explicit in their approach to the liberty-security dynamic but are both in agreement that balance is the framework that liberalism dictates. Dworkin denounces the idea of a balance between liberty and security on the basis that it obscures the agency within the implied calculation. The idea of a simple calculation of increased security through placing restrictions on liberty that underpins the balance metaphor in its current application is for Dworkin 'deeply misleading'[14]. In reality the balance involves a targeted reduction in the

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[9] As the true liberal he purports to be, Ignatieff uses the term democracy in place of liberalism as though the two were interchangeable and without distinction

[10] Michael Walzer, *Arguing about War*, (London: Yale University Press, 2004), xv

[11] Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, (New York: Basic Books, 1977)

[12] See, James Mann, "Rules of Engagement", *The American Prospect*, 13 August 2004, accessed 23 January 2011. <http://www.prospect.org/cs/articles?article=rules_of_engagement>.

[13] It must be made clear at this point that the concern in this analysis is not with the broader scope of Rorty's work. There is no attempt to align the work of these individuals as a whole and this is certainly not the case for Rorty's wider philosophy. The emphasis on Rorty (as with the others) is with the intervention in the debate around the liberty-security relationship and the potential convergence of these thinkers on this specific issue.

[14] Ronald Dworkin, "The Threat to Patriotism", *The New York Review of Books*, February 28, 2002, 8.

liberty of a specific group to the supposed advantage of the security of the majority: 'Most of us pay nothing in personal freedom when such measures are used against those the President suspects of terrorism'[15]. The balance between liberty and security obscures the real issues that arise from its application and has therefore to be rejected.

There exists therefore an apparent conflict between Dworkin's commitment to a liberal politics of compromise[16] and his rejection of the idea of balance. However, on further inspection it becomes clear that Dworkin does not in fact reject the concept of balance – the very idea remains at the core of his understanding of politics – but instead rejects the specific balance between rights and security. He offers instead an alternative set of concerns whose mutual accommodation should guide our response to the contemporary security environment. Instead of balancing liberty and security we should balance 'our security against our honor'[17].

For Rorty the response to the current security agenda is based on his concern with the potential marginalisation of the courts, the restriction of judicial independence and most pressingly with the potential the 'war on terror' has to disturb the balance of powers. The threat to these essentially liberal markers is symptomatic of the grave danger that the response to terrorism – and furthermore the response to a potential nuclear terrorism – poses to liberal democracy and the march toward Rorty's utopian vision of the globalisation of this framework. The use of the balance metaphor is here less explicit than it is for Ignatieff for example, but Rorty's overarching concern with the balance of powers confirms that ultimately each of these intellectuals is incapable of operating outside the balance metaphor.

The idea of striking a balance is further entrenched in the proposals made by all four intellectuals through their agreement that the response to terrorism must follow a 'third model' or 'middle way' between alternatives – that is clearly a variant of the balance metaphor[18]. Ignatieff's *Lesser Evil* perspective and Walzer's return to

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[15]Dworkin, "The Threat to Patriotism", 8

[16] The problem at the crux of US political life for Dworkin is the series of oppositions that makes compromise impossible. While there is room to contest the idea that on substantive issues there is real distance between 'red' and 'blue' – and more will be made of this below – Dworkin sees the central problem of contemporary politics being the lack of shared principles. See, Ronald Dworkin, *Is Democracy Possible Here?: Principles for a new political debate*, (Princeton: Princeton University Press, 2006)

[17]Dworkin, *Is Democracy Possible Here*, 51

[18] The depoliticising effect of the construction of political projects (or politics as a whole) in the sense of a 'third' or 'middle' way has been illustrated in critiques of the New Labour project and its subscription to the 'Third Way' approach set out in this context by Anthony Giddens. See, Peter

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Just War Theory both frame this 'middle way' essentially between left and right, crudely defined for them by pacifism and realism respectively. The simplistic binary distinctions on which this 'middle way' is based is reinforced by Ignatieff's attempt to mediate between what he determines as the human rights concerns of civil society and the legitimate concern for security of liberal governments. His solution is essentially for the various perspectives to converge on a common approach and render any conflict redundant. The politics of Ignatieff's theory is essentially a liberal politics of compromise, assuming a shared understanding of the political terrain, which he opposes directly to terrorism understood to be a 'form of politics that aims at the death of politics itself'[19]. Terrorism is ultimately apolitical as it refuses to conform to the politics of deliberation and compromise, which, in a true liberal fashion, he posits as the only basis for a sound politics[20].

Dworkin and Rorty seek to define a 'third model' but focus rather on the unsuitability of both the 'war' and 'crime' models of response to terrorism. Dworkin concedes that the 'war' and 'crime' models of response to terrorism are both unsuited to the current threat and acknowledges that he agrees to some extent with the Bush administration that this necessitates a 'third model' for action[21]. However, the pivotal and almost immediate point of departure from the US government's position comes in his emphasis on the restraints that must be imposed on this third model. He notes that the Bush administration have emphasised the unsuitability of the war and crime models – and thus of their corresponding restraint mechanisms – to justify an absence of restraint over the state in the 'war on terror'. However, his response is to combine (as opposed to abandon) the two models of restraint in the current era to guide the response to international terrorism. Rorty is in agreement that the posed 'third way' model of response – conveniently for its proponents and worrying for the liberal – is

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Burnham, "New Labour and the politics of depoliticisation", British Journal of Politics and International Relations 3, 2 (June 2001); Jim Buller, and Mathew Flinders, "The Domestic Origins of Depoliticisation in the Area of British Economic Policy", British Journal of Politics and International Relations 7, 4 (October 2005). While in this analysis the emphasis is initially on the effects of the particular construction of a 'third' or 'middle' way approach to liberty and security it also remains concerned with the potential correlation this has with the broader 'third way' approach to politics.

[19]Ignatieff, The Lesser Evil, 111.

[20] The events of 9/11 were for Ignatieff carried out by 'apocalyptic nihilists' whose intentions were 'not political'. Ignatieff, The Lesser Evil, 99)

[21]Ignatieff, The Lesser Evil, 91-2. In this case the rejection of the 'war' model is based on the suggestion that the notion of a political war against a legitimate enemy is insufficient or inappropriate as a response to international terrorism. Dworkin offers limited but arguably crucial legitimacy to the idea that the 'war on terror' is not a war in the conventional sense.

devoid of regulation. The third model must instead be defined by increased openness and transparency.

It is important to note that a concern with the seemingly novel policing function of the 'war on terror' is indeed a point of convergence for all four intellectuals. In Rorty's words the threat in this period to 'civilisation' comes from people who 'were not exactly enemy combatants and not exactly criminals'[22] and thus necessitates an alternative model of response. The construction of the liberal response as in some way a departure from both war and policing serves only to mystify the nature of security.

Avoiding the question of the exception

This demand for openness and regulation highlights the second major point of convergence between the four intellectuals around an avoidance of the question of the exception. It is in relation to this issue that the division into two strands – Ignatieff and Walzer; Dworkin and Rorty – is most pronounced. Dworkin and Rorty's positions do not explicitly allow for any concessions in regulation. Rorty's overall response to the political developments in the era of the 'war on terror' is simply to return to the two demands made by political rationalism as defined by Schmitt: 'the 'postulate of openness in political life and the demand for the division of powers'. His concern with regulation continues in this traditional liberal framework demanding the legal regulation of the exception. He suggests that Western governments should be made to 'disclose and discuss what they plan to do in various sorts of emergency'[23]. As Schmitt predicted, the paradox of a regulated exception is lost on Rorty and his only response is to continue to clamour for increased openness and regulation. According to Rorty, the problem in this contemporary period, seemingly reinforced by the events of 9/11, is that the belief among the elite in the US and the EU that national security can only be effective if carried out in secret. In contrast, the only possible response for liberty to be protected is to ensure that the liberal frameworks of regulation and restraint symbolised by both the judiciary and the free press are not repressed. The seemingly illiberal paradigm evident post 9/11 has to be resisted by increased

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[22] Richard Rorty, "Fighting Terrorism with Democracy", *The Nation*, October 21 2002, 3

[23] Richard Rorty, " Post-Democracy", *London Review of Books* 26, 7, April 1, 2004, 5

openness in political life starting in the field of security if the march toward the liberal democratic utopia is to remain on track.

The emphatic commitment to a framework of regulation leads both Dworkin and Rorty to formulate the response to terrorism in the form of a regulated exceptional situation[24]. The contradiction in such a formulation – or indeed the fact that it is essentially an oxymoron - is lost on both authors or at least denied. The promotion of regulation through a commitment to liberal principles allows them to present the 'revised' liberal position on counter-terrorism as an enhancement of the framework of restraint.

Dworkin's emphasis on human rights in this context is based in their regulatory function that must be at the centre of a third model for action in response to international terrorism. For a response to be legitimate it must conform to human rights standards and this cannot be watered down or traded away. A war – including a 'third-way' 'war on terror' – must be regulated by the concept of absolute human equality. The regulation imposed by an acceptance of 'shared humanity' is notably absent in calls for decreased regulation that came from the Bush administration and continue to come explicitly or implicitly from other proponents of a balance between liberty and security. It is this understanding of shared humanity that for Dworkin prevents the prioritisation of 'our' (American) security over 'their' liberty that the balance metaphor in this context allows.

This framework of regulation set out by Dworkin appears to establish space between his position and that of Ignatieff and Walzer. The 'Lesser Evil' and 'Just War' theories are in essence calls for limited decreases in regulation over the response to terrorism framed through an essentially liberal moralising approach to politics. Dworkin's 'reformulation' of liberal politics for the post-9/11 era is distinguishable to a limited degree on the basis that he refuses to except that a liberal response to terrorism can be formulated through anything but an absolute commitment to the regulation of sovereign power. For Ignatieff and Walzer, Dworkin and Rorty's approach would arguably fall into the 'unrealistic' category as it refuses to

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[24]Rorty has suggested that Western governments should be made to 'disclose and discuss what they plan to do in an emergency' to allow for the required openness and regulation of exceptional situations. Rorty, " Post-Democracy", 5. Dworkin has conceded that within his proposed framework of regulation the 'new regime of principle may be open to exceptions in truly extraordinary situations'. Ronald Dworkin, "Terror & the Attack on Civil Liberties", New York Review of Books, November 6, 2003, 95.

acknowledge that the new threat necessitates a loosening of the ties that bind the state's hands in its response to international terrorism. Their shared position amounts an outright denial of the necessity of a state of exception and their response consists in reiterating the two demands made by liberal rationalism. They are unwilling to accept that the state's past and current response is conceivably within the remit of what is expected of a liberal state.

In contrast, Ignatieff and Walzer's respective positions have opened them up to a critique that mirrors much of the criticism aimed at the state on the grounds of their apparent concession that the response to terrorism cannot be effective if constrained by regulation[25]. The novel model required to confront the unprecedented threat to security must for Ignatieff and Walzer be underpinned by a process of rethinking the framework of regulation imposed on the state. In the presentation of the lesser evil perspective Ignatieff is predominantly concerned with the concept of emergency and its impact on the relationship between liberty and security. The preoccupation with the concept of emergency and the resulting exceptional measures is symptomatic of the liberal concern with dispelling as much as possible the idea that exceptional measures against liberty are anything to do with the 'exception', and Ignatieff's project is based on defining the liberal approach by establishing an appropriate regulatory framework[26]. The 'realism' of Ignatieff's position is essentially an acknowledgement of the relevance of the exception in the context of the 'war on terror'. From a liberal perspective he is exhibiting the conviction this era supposedly demands, confronting this 'reality' and moreover, attempting to shield himself from the critiques aimed at a so called naïve moral perfectionism. However, the liberal within shines through and his account of the emergency is overrun with examples of its legitimacy based on the regulation that a 'democracy' provides and his perspective aims to enhance.

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[25] For critiques of Ignatieff's position see: Laurie Taylor, "No more Mr Nice Guy: Laurie Taylor on Michael Ignatieff", *New Humanist* [internet] 120, 5, (September/October 2005), accessed August 9, 2010 <http://newhumanist.org.uk/1299/no-more-mr-nice-guy-laurie-taylor-on-michael-ignatieff>.

[26] Ignatieff has concerned himself with the ways in which 'terrorist emergencies put these universalist commitments under strain' but has remained committed to the principles of openness and regulation in confronting the necessary derogations or exceptions: 'where derogations or exceptions are required, they must be publically justified and approved by court order', i.e. not politically. Michael Ignatieff, "Human Rights, the Laws of War, and Terrorism" *Social Research* 69, 4 (Winter 2002). So, the courts are the 'sovereign', which, whilst confirming Schmitt's view, accords with Pierre Manent's analyses of the empire of the judges. See, Pierre Manent, *A World Beyond Politics? A Defense of the Nation-State*, trans. Marc LePain (Princeton: Princeton University Press, 2006) particularly chapter 16.

As with Ignatieff, and in line with Schmitt's analysis, Walzer's suggested confrontation of emergency is not substantive and the emphasis at the core of JWT is as expected on the processes of constraint and regulation. His framing of the concept of emergency in the post 9/11 period is continued from his previous work through what he terms a 'polemical and paradoxical' approach to the theory of "supreme emergency"[27]. In this approach revisited for the 21st century 'constraints do have a hold' but 'political leaders could do whatever was required to meet the danger'[28]. In this formulation of emergency Walzer presents JWT and his subsequent idea of 'supreme emergency' as applicable to the 'new politics of the global age'[29] in which the reality of the 'war against terrorism' has to be confronted head on. However, the acknowledgement of the reality of the exception that is suggested in his build-up of the concept of 'supreme emergency' is notably absent. He remains committed to the regulation of emergency and while he is aware that rules have to be overridden he is unwilling and ultimately incapable to accept the need for 'the rules' to be suspended[30].

The doctrine of 'supreme emergency' is essentially part of the formulation of a 'middle way' – a *balance* – between opposing forces. The doctrine is for Walzer a 'way of manoeuvring between rights absolutism and the radical flexibility of utilitarianism'[31]. This opposition in the true liberal sense cannot ever be fully abolished and whilst avoiding the use of the concept, Walzer sets up his approach as a balancing act that must accept the importance of regulation whilst also conceding the reality of the danger facing the US in the current era. The doctrine of 'supreme emergency' involves repealing restraint on military action to avoid disaster. Ultimately, to make the link with Ignatieff explicit, it is a doctrine that legitimates the 'lesser evil' (in Walzer's terms the 'dirty hands'[32]) of warfare to avoid the greater evil of attacks from terrorism.

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[27]Walzer, *Arguing about War*, 33

[28]Walzer, *Arguing about War*, 33-34

[29]Walzer, *Arguing about War*, 15

[30] 'There are moments when the rules can be and perhaps have to be overridden. They have to be overridden precisely because they have not been suspended'. Walzer, *Arguing about War*, 34

[31]Walzer, *Arguing about War*, 34

[32] The 'problem of dirty hands' is a idea that Walzer has discussed in previous work and a fuller exposition of the concept of dirty hands in politics more broadly is discussed in a 1973 paper: Michael Walzer, "Political Action: The problem of Dirty Hands" *Philosophy and Public Affairs* 2, 2 (1973). In this paper Walzer's concept seeks to confront the reality that it is 'easy to get one's hands dirty in

Both authors in turn wrestle with the concept of exception but are ultimately unable or unwilling to suggest that exceptional measures leave spaces unregulated or outside the law (e.g. the detention, interrogation and treatment of suspects of terrorism). They do to some extent set themselves apart from Dworkin and Rorty by a rhetorical commitment to revise the regulatory framework but ultimately they remain committed to the fact that a liberal response must be defined by regulation. The preoccupation with the concept of emergency and the resulting exceptional measures is symptomatic of the liberal concern with dispelling as much as possible the idea that exceptional measures against liberty are anything to do with the 'exception'.

The gap between formal presentation and actual operation: the fallacy of regulation

While in the formal presentation of their interventions Ignatieff and Walzer continue in reality to avoid the question of exception this does not mean that their respective projects constitute in any form a revision of, or extension to, a framework of restraint. The idea that their perspectives seek to depart fundamentally from the current 'war on terror' project and provide a substantive critique of the politics of security is nonsensical. The essentially liberal distinction between the formal presentation of the state and its actual operation is exemplified in the work of Ignatieff and Walzer and as a result their work plays a decisive legitimating function sanctioning extreme violence from behind a façade of regulation.

The construction of the 'war on terror' as a legitimate project builds on the justifications for humanitarian intervention found in Ignatieff's earlier work. Much of his work has been devoted to opening up a space to justify such action as well as the inevitable 'collateral damage' from within the liberal framework. Actually, in *The Lesser Evil* he develops this 'ethics of intervention' justifying the 'war on terror' on

politics and often right to do so'. Walzer, "Political Action", 174. As part of the seemingly overarching goal of formulating a 'middle way', the theory of 'dirty hands' derives from an effort to 'refuse "absolutism" without denying the reality of the moral dilemma'. Walzer, "Political Action", 162. While this additional component of Walzer's theory appears to again confront the idea of exception, his inability to consider political action *outside* of the law is exposed. The concept of dirty hands formulated in the 1970s and transported into the post 9/11 era in the doctrine of 'supreme emergency' remains shackled by the liberal obsession with legal regulation. Walzer's ability to consider rules being overridden is distinct from the necessary acceptance of the suspension of the law: 'when rules are overridden, we do not talk or act as if they have been set aside, cancelled or annulled'. Walzer, "Political Action", 171. As a liberal in the Schmittian sense, Walzer is, despite his claims to be realistic, incapable of confronting the exception and the suspension of the law that it requires.

the basis of the same moralising approach. Justifying the resort to the most extreme action (as humanitarian interventions always involve) as a 'lesser evil' is ultimately possible because Ignatieff's position embodies the active subject of human rights. This places him on the 'right side' in the battle between good and evil that frames the politics of humanitarian intervention and in the same sense, frames the 'war on terror'.

This binary opposition between 'good' and 'evil' is at the core of the depoliticised, moralising framework of human rights that defines the 'Lesser Evil' perspective. Wendy Brown has suggested that human rights in Ignatieff's work 'take their shape as a moral discourse centred on pain and suffering rather than political discourse of comprehensive justice'[33]. The emphasis is on the suffering of the individual and as opposed to suggesting an alternative formulation of justice all collective justice projects are seemingly dismissed as utopian – the protection of human rights is in Ignatieff's words 'the most we can hope for' [34]. This reinforces Badiou's warning that in the contemporary 'ethics' of human rights 'every collective will to the Good' is seen to 'create Evil'[35].

Furthermore, Ignatieff's approach to human rights involves a reduction of their remit to simply 'a decidedly "thin" theory of what is right, a definition of the minimum conditions for any kind of life at all'[36]. This reduction of human rights activism to the preservation only of what resembles Agamben's 'bare life' illustrates that for Ignatieff the passive subject of human rights – the focus of his humanitarian 'concern' – is, as Badiou has noted, defined by its 'subhumanity', by bare biological or animal life. Both Ignatieff and Walzer's interventions are rooted in the moralising approach that characterises liberal politics and defines the liberal state's approach to security. The promotion of their proposals as being defined by regulation is in reality yet another mobilisation of the liberal pretence of restraint that attempts to deny not only the reality of war but the fact that a 'just war' is a war unrestrained in its violence.

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[33] Wendy Brown, ""The Most We Can Hope For......": Human Rights and the Politics of Fatalism," *The South Atlantic Quarterly* 103, 2/3, (Spring/Summer 2004) 453

[34] Michael Ignatieff, *Human Rights as Politics and Idolatry*, (Princeton: Princeton University Press, 2001) 173

[35] Badiou, *Ethics,* 13

[36] Ignatieff in Brown, "The Most We Can Hope For", 454

Denying the terrorist's human status and locating him outside of humanity, confirms Ignatieff's subscription to the liberal moralising approach to the 'war on terror'. This contrasts with his construction of human rights playing a regulatory function in a war of this type, but this is again symptomatic of his liberal politics that obscures both the dehumanisation inherent in the concept of humanity and the legitimating role of human rights in a war of potentially extreme inhumanity. Ignatieff has thrown his support behind the 'war on terror' that is, as Schmitt predicted, based on the opposition of the defenders of humanity and their enemies. As the terrorist confronted in the contemporary era justifies its actions outside of the language of rights it cannot for Ignatieff be a political movement to be met by politics, but instead it must be met 'only by war'[37].

In development of this idea Walzer suggests that the terrorism faced by the west in the current era is distinct from the terrorism fought in the past premised as it is not on ideas of fighting for freedom but on *jihad* that for Walzer is characterised comprehensively by a 'fundamentalist religious response to modernity'[38]. The required response should not therefore be avowedly political but instead needs to be a 'combined cultural-religious-political explanation' that has to focus explicitly on the 'creation of an Enemy'[39]. For Walzer the creation of an Enemy that can be justifiably annihilated has been central to terrorist movements prior to Islamic terrorism and is indeed a central effect of wartime propaganda. However, the creation of an Enemy in this vein within Islamic terrorism – demonised and ultimately denied of humanity – is tied into an essentially fundamentalist religious agenda that posits the 'infidel' as its target whose 'world leader is the United States and whose local representative is Israel'[40].

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[37]Ignatieff, *The Lesser Evil*, 99

[38]Walzer, *Arguing about War*, 133

[39]Walzer, *Arguing about War*, 132

[40]Walzer, *Arguing about War*, 133. The emphasis on Israel as the target of the enemy's violence is crucial to Walzer's formulation. Walzer has long been, and continues to be, a supporter of Israeli policies – including more recent incursions into Lebanon in 2006 and Gaza in 2008 – and has through his work sought to square this support with his attachment to the left. See, Jerome Slater, "On Michael Walzer, Gaza, and the Lebanon War", *Dissent* 54, 1 (2007) 93; Mathew Phillips, "War and Michael Walzer", *Mondoweiss* [online], January 9, 2011, accessed July 23, 2012. <http://mondoweiss.net/2011/01/war-and-michael-walzer.html>.The apparent contradiction between these two commitments arises from an acceptance of the idea that Walzer's politics in general, as especially his thinking around war, are capable of (or indeed aim toward) providing a substantive critique grounded in a truly alternative politics. See below for further discussion of Walzer and the left.

The emphasis on jihad as the defining backdrop for international terrorism illustrates Walzer's acceptance that contemporary terrorism is characterised not only exclusively by religion but more specifically by a synonymous affiliation with Islam. This position shared by Walzer and those liberal states at the forefront of the 'war on terror' is at the very core of the dominant discourse on 'international terrorism' and points to what Wendy Brown has termed the 'culturalization of politics'[41], that constitutes one of the most significant 'discourses of depoliticisation' in contemporary liberal democracies[42].

Brown additionally notes that this process is ascribed to 'Them' (clearly in this context to the terrorist) but 'We' in the west are not seen to be driven by culture. This illustrates the liberal denial of the *mirroring process* evident between the opposing ideologies at the core of the 'war on terror'. That this process is at the very core of the liberal intellectual analysis of terrorism –for Walzer and substantively for Ignatieff as well – illustrates an apparent critical point of convergence between these intellectuals and the state in the so-called 'age of terror'.

As a result of this approach the issue of international terrorism is one for the Islamic world and for Islamic communities in the west who have failed (or refuse) to modernise. What is fundamentally a combined psychopathological and 'cultural' explanation of the causes of Islamic terrorism presents it as defined by an unwillingness – or incapability – to modernise and ultimately an unwillingness to consider any alternative action. Walzer's construction of the Islamic terrorist draws upon the idea of the *fanatic* to construct the 'war on terror' as an Enlightenment struggle against the regressive forces of religious fundamentalism[43]. Therefore, in agreement with Ignatieff, terrorism is presented as an apolitical nihilism that requires

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[41] This process involves a 'reduction of political motivations and causes to essentialized culture (where *culture* refers to an amorphous polyglot of ethnically marked religious and nonreligious beliefs and practices)' whose ultimate effect 'analytically vanquishes political economy, states, history, and international and transnational relations'. See, Wendy Brown, *Regulating Aversion: Tolerance in the Age of Identity and Empire*, (Princeton: Princeton University Press, 2008) 20.

[42] Alongside the 'Culturalization of politics' these discourses of depoliticisation include: *Liberalism* (the legal and political formalism of liberalism); *Individualism*; *Market rationality*; and *Tolerance*. Brown, *Regulating Aversion*.

[43] '...the idea of fanaticism has served to support the widespread belief that we are experiencing the repetition or continuation of that struggle between reason and unreason, freedom and subjection, knowledge and ignorance that was first played out in the seventeenth and eighteenth centuries'. Alberto Toscano, *Fanaticism: On the Uses of an Idea*, (London: Verso, 2010) 101. Walzer is here building upon the well-established association of Islam and fanaticism and he is reliant upon, as well as having the effect of reinforcing, notions of the 'civilizational subalternity of the Islamic world and its supposed collective 'rage'' Toscano, *Fanaticism*, 162.

a repressive response by the west that will out of necessity involve a real (and by definition *just*) war as part of its legitimate response[44]. The appropriate response to terrorism is constructed for both Ignatieff and Walzer in opposition to this apolitical nihilism – the response itself is presented as justifiably and overtly apolitical as local and global political factors are obscured to the point of denial. The depoliticisation of terrorism and of the proposed response is as Schmitt predicted based in the moralising approach to war that both Ignatieff and Walzer explicitly subscribe to – it is indeed this moralising that allows both project's to assume a sense of legitimacy.

While Walzer recognises the dehumanisation of the Enemy within the terrorist ideology, he is unsurprisingly at pains to deny the mirroring of this dehumanisation in the response to terrorism – a response that the Lesser Evil perspective and JWT ultimately seek to reinforce. The 'war on terror' is distinguished from the idea of jihad at the core of Islamic terrorism on the basis that the terrorists target innocent people. The 'war on terror' by way of response is a targeted and calculated project aimed solely at those fundamentalist militants who refuse to accept the realities of modernity and seek nihilistic violence as their only considered tactic. Walzer is keen to express the significant difference (apparently lost in the Bush administration) between a just war and a crusade 'as if a war can be just only when the forces of good are arrayed against the forces of evil'[45]. Despite the assurances that the liberal intellectual response is more complex and nuanced than this apparently simplified 'good versus evil' opposition, it captures precisely the framework of justification that these intellectuals provide.

The construction of the terrorist as the enemy is obvious in this approach to the 'war on terror' but it is outwardly formulated in opposition to concept of enemy in the terrorist ideology. The opponent in the 'war on terror' is portrayed clearly as an inhuman, criminal terrorist who targets innocent civilians with wanton abandonment and must therefore be opposed by the *just* forces of modernity. The 'war on terror' is legitimate because it is based on a distinction between the guilty and the innocent and is thus supposedly restrained by the moralising approach that Ignatieff and Walzer promote. This sense of legitimacy is however inaccessible to the terrorist because the

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[44]Ignatieff makes a distinction between political and 'apocalyptic' goals with international terrorism – personified by Al Qaida – being based solely on the latter. The resulting lack of political goals render such movements incapable of political engagement or negotiation and thus in Ignatieff's words, echoing Walzer, they 'can only be fought by force of arms'. Ignatieff, *The Lesser Evil*, 126.

[45]Walzer, *Arguing about War*, 10

distinction between the guilty and the innocent is denied in two ways. Firstly, in Walzer's presentation of the terrorist ideology there are 'no innocent Americans'[46]; and secondly, in both the denouncement of the 'culture of excuse and apology' and the essentially depoliticised interpretation of terrorism, Walzer removes any sense of 'guilt' from the west and in turn withdraws any possible legitimate political motivation from the terrorist. The opposition between guilt and innocence that is central for a legitimate and just war in Walzer's theory is therefore entirely absent in the terrorist cause. Essentially Ignatieff and Walzer formulate a paradox whereby an apolitical cause is at the basis of both terrorist's illegitimacy *and* the legitimacy of the 'war on terror'.

Indeed within this paradox the terrorist's absolute lack of legitimacy serves ultimately to reinforce the legitimacy of the 'war on terror' and to present it as a *just* war. The construction of a dehumanised enemy for which Islamic terrorism is denounced is essentially mirrored in the construction of the enemy to be confronted by the 'war on terror'. As the terrorist is unwilling to distinguish between guilt and innocence his legitimacy – and ultimately his 'protected' status as an enemy in war – is withdrawn. The terrorist is not therefore a human enemy to be defeated in a political war but an enemy of humanity who must be annihilated. Defining the enemy as a terrorist from the outset constructs the 'war on terror' as a just war. Ignatieff and Walzer serve to refine this construction and provide it with the gloss of an ostensibly detailed expansion of the illegitimacy of current terrorist movements.

It is thus clear that Ignatieff and Walzer's theories are rooted in the moralising approach that characterises liberal politics. Their promotion of this approach serves to reinforce the monopoly of legitimacy that the proponents of the 'war on terror' require. Schmitt made clear that 'the discriminatory concept of the enemy as a criminal and the attendant implication of *justa causa* run parallel to the intensification of the means of destruction and the disorientation of the theatres of war'[47]. This process is clear in the both the liberal intellectual approach shared by Ignatieff and Walzer and in the development of the 'war on terror' at the state level. Walzer's theory serves to unite the concept of the enemy as criminal and the just cause – and

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[46]Walzer, *Arguing about War*, 134. Indeed for Walzer this sense of a blanket of guilt across America is at the core of certain extremist Islamic group's defence of terrorism.

[47] Carl Schmitt, *The* Nomos *of the Earth: in the International Law of the* Jus Publicum Europaeum, trans. Gary Ulmen, (New York: Telos Press Publishing, 2006) 321

even a brief analysis of the 'war' on its foreign and home fronts illustrates its use of unrestrained violence in tackling terrorism[48].

Walzer's application of JWT to the 'war on terror' is at once a process of legitimisation and a derestriction of the means of destruction utilised to combat terror. The formulation of just war in this context is not a return to Medieval Christian doctrines of just war but simply an effect of the criminalising of the enemy. Stripping out any sense of political motivation or incitement serves to reinforce the naked criminality of Islamic terrorism and to reinforce the *justa causa* of the 'war on terror' in its military endeavours. Walzer's attempt to distinguish the military campaign from the other 'components' of the 'war on terror' – suggesting that military action can be conceptually detached from the policing project – serves only to further mystify the nature of security. This mystification is a valuable tool utilised by the liberal intellectual to legitimise the 'war on terror'.

The neutralisation of conflict and the depoliticisation of politics

While there is some degree of separation between Ignatieff/Walzer and Dworkin/Rorty in terms of their formal commitment to regulation, in terms of their over-arching political framework the distinction is ultimately insubstantial. Dworkin and Rorty's total commitment to regulation is combined with the moralising and depoliticising approach to politics that characterises Ignatieff's and Walzer's work. By way of a clear example, hinging the liberal approach on the apolitical concept of 'shared humanity' is coherent with the liberal approach to politics exposed by Schmitt and confirms Dworkin's subscription to a depoliticised framework for action in response to terrorism. While Dworkin would undoubtedly seek to distance himself from the calls for reduced regulation found in Ignatieff and Walzer's work – as he has with the same calls from within the Bush administration – his presentation of regulation built on this moralising framework arguably provides further legitimacy to the dehumanisation at the core of the war on terror.

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[48] The 'disorientation of the theatres of war' is also an undoubted factor of the 'war on terror'. The geographic boundaries of the war are constantly reformulated and expanded to open ever new fronts outside the conventional understanding of warfare constrained by geographic boundaries (and political boundaries if we consider Guantanamo Bay for example).

The distinction between the intellectual (re)formulation of the liberal approach to the 'war on terror' and the reality of state operation is at its most pronounced in Dworkin's work. His emphatic commitment to regulation reveals his inability or unwillingness to acknowledge the reality of the liberal state's conduct that is exposed most glaringly in its response to terrorism. By conflating regulation with the moralising approach to politics Dworkin actually provides crucial legitimation to both the Ignatieff/Walzer approach and by extension to the state's use of unrestrained violence that comes as part of its war against the inhuman terrorist. Moreover, the depoliticisation at the core of Dworkin's approach renders the current status quo – of which the 'war on terror' is a prominent feature – effectively undisturbed. Dworkin's concern with the relationship between human rights and security is part of his broader concern with the 'war like' formulation of US politics in which conflict between the 'two cultures' of red and blue prevents 'shared principles' and political debate[49]. Dworkin is explicit that liberalism should define the new politics – indeed liberal politics for Dworkin *is* politics – and the concept of shared humanity alongside a reaffirmation of liberal individualism should form the basis around which politics can be 'rejuvenated' and conflict denied[50].

In his construction of these 'two principles of human dignity' Dworkin offers a 'Third Way' in political philosophy between the appreciation of equal value of every human life (often associated with the Left) and personal responsibility for the realisation of such value (associated with the Right)[51]. Dworkin's project in relation to US politics makes explicit the depoliticising function of the construction of a Third Way and this approach to politics runs throughout his work and not least in response to the liberty-security relationship in the post-9/11 era. It is important to understand that the third way approach to politics has, in its liberal formulation, the effect of defining all non-liberal perspectives as 'extremist' (and thus illegitimate) and it is clear that as the under-current to Dworkin's political philosophy this approach serves further to confirm the monopoly of legitimacy for liberalism in the current era[52]. It is

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[49]Dworkin, *Is Democracy Possible Here?*, 160.

[50] This aspiration is in line with the liberal aspiration *par excellence*: to overcome conflict and thus to overcome politics leaving only economic competition and the competition of opinions.

[51] Jules Townshend, "Review: Is Democracy Possible Here? Principles for a New Political Debate", *Democratiya*, 9, (Summer 2007) 118.

[52] This approach to politics is not novel to the post 9/11 era, although it has been given additional impetus in this period. Arguably it is post 1989 (as opposed to post 2001) that this notion of legitimate

in the context of this broader depoliticising project that his approach to the liberty-security relationship is situated.

Dworkin's function as an intellectual can be aligned with Ignatieff and Walzer to the extent that his articulation of the 'true' liberal response serves to reinforce the legitimacy of not only current security policies but also the broader political and economic arrangement. The reinvigoration of liberalism serves only to further marginalise and delegitimise conflict and deny any potential for truly alternative politics. The reformist strain in Dworkin and more clearly in Rorty's work does at least initially mark them apart from Ignatieff and Walzer but it is clear on further analysis that the marginalisation of conflict remains a process unaffected by reform.

Rorty's reformist project in relation to human rights was proposed prior to the era of the 'war on terror'[53] but understanding the thrust of these reforms illustrates much about his response to the post 9/11 security regime. His reformulation is not an attempt to transcend the human rights framework but to reconfigure the process by which this framework is 'sold' outside the Enlightenment tradition. There is nothing innately problematic for Rorty in appeals to shared humanity – it is not the cause of the construction of the inhuman or subhuman that he rightly notes has continued in the human rights era – it is simply insufficient as a method of rallying the rest of humanity to respect each other's human rights[54]. His concern with the current response to terrorism lies more specifically with the potential this has to hold back the globalisation of the liberal democratic framework and the human rights principles so central to it.

The aim of promoting a Eurocentric human rights culture beyond the West amounts, *de facto* to an attempt to extend the essentially liberal depoliticised political framework. A sense of Enlightenment continues to be the reserve of the Westerner as

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politics has been more firmly entrenched, although Dworkin illustrates that it preceded this historical marker as well.

[53] See, Richard Rorty, "Human Rights, Rationality and Sentimentality" in *The Politics of Human Rights*, ed. The Belgrade Circle (London: Verso, 1999)

[54] Rorty assumes that the idea of universal human nature finds its only basis in the idea of rationality which Eagleton has noted is clearly not the case. See, Terry Eagleton, *The Idea of Culture*, (Oxford: Blackwell, 2000) 136n. It is this assumption of a direct correlation that seemingly leads to Rorty's outright rejection of the idea of a universal human nature. In reality his problem lies with appeals to rationality and his alternative approach does not involve the substantive rejection of the principle of appeals to absolute human equality that Badiou locates at the core of a critique of the politics of human rights. Rorty's appeals to acquaint people on the basis of a shared 'similarities' seems in essence to replace one apolitical process with another.

there is a pivotal difference in the construction of a sense of identity between people in the West and those outside. For those 'untouched by the European Enlightenment' their sense of identity is 'bound up in a sense of who they are *not* '[55] and thus rooted in conflict. The concern with this sense of identity and the drive to rectify it is symptomatic of Rorty's fear of conflict which is rooted in his subscription to the moralism of the contemporary humanitarian ethics that his 'revised' approach to human rights is incapable of transcending.

It is clearly apparent that Rorty's project is not based on a substantive confrontation with the politics of human rights as is found at the core of Schmitt and Badiou's critiques – indeed his hardened liberalism would make that impossible. Instead, his 'reformulation' of human rights involves a recasting of the promotion of human rights that leaves the depoliticisation at their core undisturbed. Acquainting people on the basis of a sentimental education as opposed to appeals to reason does not involve a return to ideas of *political* equality or a truly political basis for action. The process of making connections on the basis of sentiment is as apolitical as appeals to a sense of shared humanity. While the dehumanisation at the core of appeals to an absolute human equality appears to be negated, Rorty's construction of the unenlightened other of the non-western world fails to make any impact on the absence of political relations at the core of the human rights framework. If 'the moralist inevitably feels antipathy towards politics as a domain of open contestation for power and hegemony'[56] this is as clear in Rorty's essentially depoliticised framework as it is for Ignatieff, Walzer and Dworkin. The aim of the liberal intellectual is the neutralisation of conflict and this lies at the root of the pervasive depoliticisation evident in their work pre and post 9/11.

It is ultimately clear that Dworkin and Rorty contribute – in the same way as Ignatieff and Walzer – to the project of imposing formal regulation on the state that in turn paradoxically provides a sense of legitimacy to the same political and military project they seek ostensibly to resist. This two pronged contribution with its inherent contradiction serves to sustain the void between formal presentation and operation of the state. In converging with the position of those liberal states leading the 'war on terror' all four intellectuals serve to bolster this 'war' by offering a sense of

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[55]Rorty, "Human Rights, Rationality and Sentimentality", 75 original emphasis

[56] Wendy Brown, *Politics out of History*, (Princeton: Princeton University Press, 2001) 30.

legitimacy to the violence it employs. This contradiction is seemingly implicit in what appears to be a shared understanding of the role of the liberal intellectual.

The convergence between liberal 'critique' and state policy: There is no alternative

At the core of the position of each of these intellectuals is a drive to legitimate and sustain the current political and economic conditions defined as they are by liberal democracy and free-market capitalism. A critical analysis of their work pre and post 9/11 illustrates that their function as intellectuals consists ultimately in upholding the conception of the world shared by the liberal state. This has continued post 9/11 in the form of a clear convergence with the liberal state around the necessity of a 'war on terror' and an agreement on the form it should take.

Illustrating the convergence between the liberal intellectual and the liberal state around the form and subsequent legitimacy of the 'war on terror', Walzer has been cited in the introduction to The U.S. Army/Marine Corps Counterinsurgency Field Manual (2007) for having 'restored our ability to think clearly about war – including its legitimacy and its demands'[57]. The fact that Walzer has been able to provide this assistance to the state whilst maintaining his position as one of (if not *the*) leading leftist critic in the US[58] illustrates the vital service the 'critical' liberal intellectual provides to the liberal state. The legitimating function of such 'critical' interventions is only most explicitly illustrated in the apparent paradox of Walzer's position vis-à-vis 'the left' and the state. His intervention has provided a pivotal source of legitimacy to the 'war on terror' that is at present the most explicit current manifestation of the logic of security but his function is not unique. The liberal intellectual is in fact continually occupied in a process of helping the state to 'rethink' its approach to security ultimately allowing it to continually present violence and war in the guise of peace. If the 'war on terror' stands as the latest in a long line of code

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[57] See, Sarah Sewall, "Introduction to the University of Chicago Press edition. A Radical Field Manual" in The U.S. Army/Marine Corps Counterinsurgency Field Manual, ed. United States Army and United States Marine Corps (Chicago: University of Chicago Press, 2007) xxii.

[58] Walzer is editor of Dissent magazine that purports to 'dissent from the bleak atmosphere of conformism that pervades the political and intellectual life of the United States ...The accent of Dissent will be radical'. Lewis Coser, "A Word to Our Readers," Dissent 1, 1 (1954) 3

words for the 'permanent *pacification* required in/of the bourgeois polity'[59] then the liberal intellectual serves only to reinforce the mystification of this process.

To further grasp the conservative function of the liberal intellectual it is crucial to understand that fundamentally, Ignatieff's articulation of the human rights project has been from its inception an attempt to provide 'a political-economic account of what markets need to survive'[60]. It is in this context that his Lesser Evil perspective seeks at its core to reinforce the status quo in both political and economic terms post 9/11. Ignatieff's intervention makes clear that the current politics of security are intrinsically bound up in the liberal political and economic project. His fundamentally uncritical (re)articulation of the 'true' liberal approach illustrates that the function of the liberal intellectual in this epoch is to sustain the conception of the world that defines this project.

This attempt must be placed at the core of the liberal intellectual project. The collective articulation of the 'true' liberal response serves to reinforce the legitimacy and hegemonic status of not only the current security policies but also the broader political and economic arrangement. As Peter Gabel noted at the time of publication of Dworkin's seminal text on human rights[61], 'the specific behaviours legitimated by Dworkin's theory are those which are made necessary by the immanent logic of capitalism during the current historical period'[62]. The drive to legitimate the economic framework in which the liberty-security regime is located defined as it is by market capitalism remains a central force behind Dworkin's work. By way of clear example, in *Is Democracy Possible Here* Dworkin not only 'confronts' the relationship between human rights and security but also taxation and the central tenets of the economic framework required for a rejuvenated *liberal* America. The two issues (of the human rights-security relationship and economic 'justice') are in reality inseparable, conjoined in the overarching project of legitimating and sustaining the liberal status quo. His central principle of personal responsibility – essentially a reaffirmation of liberal individualism – can for him unsurprisingly only be properly achieved through market capitalism. Townshend has suggested that the world that Dworkin constructs

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[59] Mark Neocleous, "War as peace, peace as pacification", *Radical Philosophy* 159, (Jan-Feb 2010), 17 emphasis added.

[60] Brown, "The Most We Can Hope For", 457

[61] Ronald Dworkin, *Taking Rights Seriously*, (London: Duckworth, 2007)

[62] Peter Gabel, "Review of Taking Rights Seriously". 91 *Harvard Law Review* 302(1977) 309

in economic terms confers with, and is underpinned by, the notion of 'possessive individualism' so clearly set out by Macpherson[63]. This suggestion is underpinned by the idea that Dworkin's conception of human dignity is not Kantian: this is not true human reason but instead is *acquisitive* reason. Dworkin's formulation of human dignity in this sense underpins his emphatic commitment to human rights and one is thus pointed to the idea that rights in this formulation serve to secure the acquisitive capacity to property.

It should be noted that the centrality of this human rights theory in the liberal intellectual response to security in no sense constitutes a deviation from the current politics of security. If security is the supreme concept of bourgeois society then it is entirely unsurprising that it is intertwined with the refrain of "human rights" that is 'nothing other than the ideology of modern liberal capitalism'[64]. Indeed, the depoliticisation at the core of human rights is an integral component of the politics of security and the liberal intervention based as it is on human rights serves by definition to reinforce the mystification of the violence at its core.

Walzer and Rorty's engagement with the left – as well as Ignatieff's drive to remove any 'left tilt' and political ambition from human rights projects and Dworkin's attempt to neutralise political conflict – is premised on the attempt to maintain the status quo. For this to be possible political alternatives have to be marginalised and rendered illegitimate – no wonder then that the attempt to 'reform' or reconfigure the left be central to this project. Walzer has called for the formation of a 'decent' left that will be able to contribute to a 'serious debate' about security on the basis of its transcendence of any ideological framework. From this standpoint any critical perspective that rejects the liberal framework and instead locates itself on the left in truly emancipatory terms should be excluded from any debate on security. For Walzer a 'decent' left is one that is explicitly post-ideological and refuses to maintain the seemingly archaic and unhelpful distinctions between liberalism and the left.

Rorty has advocated similar 'reforms' based on his wish to dismantle the Marxist hold on leftist politics that is again at the root of a desire to abandon any

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[63] Townshend, "Review: Is Democracy Possible Here?"

[64] Alain Badiou in Christopher Cox & Molly Whalen "On Evil: An Interview with Alain Badiou", *Cabinet Magazine Online* [online] 5, (Winter 2001/02), <http://www.cabinetmagazine.org/issues/5/alainbadiou.php>

distinction between liberalism and the left[65]. The unwillingness to accept – so the claim goes – the viability of capitalism and the cluttered vocabulary of words such as 'commodification' and 'ideology' are symptomatic of the redundancy of Marxism that renders the leftist-liberal distinction outmoded. It is vital to note here that for Rorty (and the liberal intellectual more generally) a rejection of the validity and legitimacy of capitalism is symptomatic of a dead politics. We have passed the end of history and must in this post-ideological age be willing to accept the seemingly self-evident logic of capitalism. Unsurprisingly, given what we know about security, any political project that resists the legitimacy of bourgeois society is rejected outright.

The supposed transcendence of an ideological 'age' and the substitution of ideology with a culturalization of politics is the central premise of this depoliticised approach to security that is exemplified by the liberal intellectual in the response to terrorism. A failure to engage in the debate on liberal terms depicts the left as nihilistic not only devoid of any meaningful contribution but itself a threat to security that must be opposed (aligned in this sense with international terrorism on the basis of the resort to nihilism). This essentialist 'analysis' of the contemporary left unites all leftist anti-war (or anti 'war on terror') sentiment together to be readily dismissed. The fear of any truly alternate politics confirms that notion of leftist politics offers only a reinstatement of the liberal framework. The 'decent left' cannot offer an alternative political alignment not least because it is unwilling to reject the politics of security.

The liberal response to security reinforced by the 'decent left' is symptomatic of today's post-politics that serves to 'undermine the possibility of a proper political act' based as it is on the depoliticisation of economics[66]. This political stance instead creates the space for an avowedly apolitical response to the contemporary world including to the current security regime. The depoliticisation at the core of the liberal intellectual's intervention serves to further mystify the issue of war and its role at the heart of security. However, this must not be considered as an issue confined to the 'war on terror' as it is 'a long-standing ideological feature of the global war of

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[65] Richard Rorty, *Achieving Our Country: Leftist Thought in Twentieth-Century America*, (London: Harvard University Press, 1998) 42

[66]Slavoj Žižek, *The Ticklish Subject: The Absent Centre of Political Ontology*, (London: Verso, 1999) 353

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capital'[67]. The liberal intelligentsia stands as the vanguard of liberal politics masking of the social war of capital through the depoliticisation that defines their intervention. The importance of human rights to the liberal intellectual project is based on their main effect being the 'depoliticisation of politics itself'[68]. If we understand rights as having become in the current context 'rewards for accepting the dominant order' and have the effect of 'depoliticising conflict'[69] then their integral status in the politics of security is unsurprising.

The conservatism of the 'critical' liberal intervention

The critique of the left is intrinsic to the liberal intellectual project. The conservatism of these intellectuals is founded in the conscious attempt to legitimate and sustain the current political and economic order. Human rights are exposed as vital tools to this project. The commitment to human rights principles and the critique of alternative politics are two sides of the same political position and Rorty's intervention illustrates only most clearly the coherence of this politics. His project does nothing to restore a political identity and is aimed at maintaining the current global political hierarchy. A sense of Enlightenment continues to be the reserve of the 'Westerner' and it is thus no surprise that the human rights culture has developed and been secured in the west. Rorty's 'reform' of human rights is an attempt to reinvigorate the current 'ethics' and his view of the role of the West exemplifies Badiou's observation that this ethics coincides with (and arguably heightens) 'today's sordid self-satisfaction in the West'[70].

Rorty's approach – and the now seemingly obligatory approach for the West – toward the non-Western human rights abuser is not to treat him as irrational but as 'deprived'[71]. The sense of deprivation is based for Rorty not on a lack of moral knowledge but on an absence of two 'more concrete things: security and sympathy'[72]. There is an obvious lack of sympathy outside the West exhibited by the continued

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[67]Neocleous, "War as peace, peace as pacification ", 16

[68]Douzinas, *Human Rights and Empire,* 102

[69]Douzinas, *Human Rights and Empire*, 108

[70]Badiou, *Ethics*, 13

[71]Rorty, "Human Rights, Rationality and Sentimentality", 77

[72]Rorty, "Human Rights, Rationality and Sentimentality", 77

abuse of human rights. Furthermore, the concept of 'security' that Rorty sees as found wanting is a precondition of sympathy understood as: 'conditions of life sufficiently risk-free as to make one's difference from others inessential to one's self-respect, one's sense of worth'[73]. Without the conditions of security appeals to sympathy cannot be expected to take hold – people cannot be expected to exhibit the altruistic concern for others when their own situation is drastic. This is why the human rights culture premised on sympathy has been able to take hold only in the West where the necessary conditions of security can be observed. In this formulation only the west can be sympathetic as it has the conditions of security and material wealth that allow us to transcend our egoism.

In this formulation 'spiritual and material progress here go hand in hand'[74] because security is here understood in essentially material terms. For Rorty the move toward the Enlightenment utopia – that the development of a human rights culture is symptomatic of – can only be brought about by material gain. In a true liberal formulation security is understood to be economic security brought about by material progress – security is not without reason the supreme concept of bourgeoisie society. Rorty's project serves only most explicitly to exert the necessity of the globalisation of Western capitalism as a cornerstone of the spiritual progress brought about by the development of the human rights culture. The maintenance of the status quo that has been identified as a core consequence, if not premise, of the liberal intellectual project clearly extends to the economic as well as the political framework. The idea that these intellectuals (and most specifically Rorty given his pretence) are reformers must at this point be fully abandoned. Their mission involves only an affirmation of the liberal system seeking to make the politics of human rights more powerful and ultimately more suited to the process of globalisation.

The function of the liberal public intellectual

The liberal intellectual would on the basis of their appeal to human rights seem to be at the other end of the intellectual spectrum to the security intellectual, yet in reality they have the same conservative function. If we understand security studies to be 'as

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[73]Rorty, "Human Rights, Rationality and Sentimentality", 77

[74] Eagleton, *The Idea of Culture*, 47

far as could be imagined from the idea of critique'[75] then the liberal critique based on human rights is equally as distant. This is because they both occupy the same essentially liberal political terrain and both share the 'central categories and key conceptions of power, subjectivity and knowledge' with the hegemonic powers[76]. However, the precise legitimating function of liberal intellectual cannot be played by a straight defender of the current security regime because the regime is not predicated solely on the notion of security. Security is intertwined with the discourse of human rights and thus the most decisive legitimating function can only come from those who by virtue of their own position and status are willing and able to rubber stamp the role of human rights in the 'war on terror'. Having the guardians of liberalism (and human rights) substantively sanction the use of human rights in the 'war on terror' provides and unrivalled source of legitimacy to the orchestration of this 'war' from within the liberal democratic framework.

The prioritisation of security above all else is categorically liberal but so too is the maintenance of a façade that posits liberty as the primary concern. The role of the liberal intellectual is to maintain this age old façade that posits liberty as the central concept in liberalism. The continued assertion that liberalism prioritises liberty over security is reliant upon the perseverance of the mythical distinction in this sense between Hobbes and Locke. It is crucial to understand that the utility of this concept of balance (inevitably the central tool for the liberal intellectuals) continues to be based in its ability to hide the fact that security is the supreme concept of liberal society. A critical analysis that deconstructs this mystification must make clear that the politics of security are liberal politics and not some form of aberration or distortion. The attempt to define an alternate, truly liberal relation between liberty and security is not simply a fruitless task (from the point of view of any true alternative politics) but its dominance as the overarching goal of the liberal intellectual maintains the façade that is the crucial source of liberalism's perceived legitimacy.

Following Gramsci's analysis it is clear that the public liberal intellectual plays a pivotal role in organising the consent of the population to the current order in political and economic terms as much as in relation to the liberty-security relationship. Despite the overwhelming focus on the international dynamic of the 'war

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[75]Neocleous, *Critique of Security*, 183

[76]Neocleous, *Critique of Security*, 183

on terror' in these intellectual's accounts it is in the internal 'realm' – in which central freedoms are continually eroded – that organising the consent of the population is so vital to the state. Therefore, it is in this context of legitimating the curtailment of freedoms and delegitimising any possible alternatives within the liberal state's committed to the 'war on terror' that the function of the intellectual is so important. Their role as mediators between the state and what liberalism understands as civil society seems decisive in securing liberalism's hegemony.

It would therefore be absurd to continue to labour under the apprehension that the public liberal intellectual's approach to the current politics of security constitutes anything close to a critical intervention contesting the current regime in any form. There is a fundamental concern in the following analyses (of the interventions made by scholars and academics and of the interventions by human rights organisations) with the influence this intellectual position has on other levels of intellectual activity. In the first instance the concern is with the 'guidance' the key themes and language in this substantively shared position (between Ignatieff, Walzer, Dworkin and Rorty) provides to those scholars, academics and practitioners working on the liberty-security relationship. The potential for the central themes exposed above to set the parameters for all further interventions on this topic suggests the possibility of a common intellectual approach to the relationship between liberty and security. This in turn raises concerns about the dominance of a depoliticising approach to security politics that delegitimises and marginalises all effective critique.

Chapter 2

Critiquing an illiberal regime and charting the return to liberalism:
The scholarly and academic approach to the liberty-security relationship

This chapter seeks to identify the features of the debate that has occupied scholars and academics working on the post-9/11 relationship between liberty and security. More specifically, the review of literature in this chapter seeks to ascertain the extent of convergence or substantive disagreement between those contributors to this debate. The analysis will therefore seek to identify the parameters within which such a debate takes place to decipher firstly if this debate is confined solely to a liberal terrain and secondly, if it exhibits evidence of guidance provided by those public intellectuals considered above. The potential for Ignatieff, Walzer, Dworkin and Rorty to have, through direct or indirect influence, confined the debate at this level of intellectual activity is of central importance to identifying a common intellectual approach to the relationship between liberty and security. The narrower readership for this literature (in comparison to the public intellectuals) does not negate the potential influence that these scholars and academics have over the existing liberty-security regime. Their function as intellectuals is still arguably incisive in terms of their ability to reinforce the shared liberal intellectual position set out by Ignatieff et al above, or alternatively in terms of their ability to diverge from this position and forge a new approach from within an alternative political and intellectual framework.

The analysis will therefore seek to determine if the four themes of balance, exception, depoliticisation and legitimisation structure and define the response of this specific intellectual stratum. The identification of relevant literature at this level was grounded in the UK-Australia comparison that will run through into the analysis of state strategy. The dialogue between the governments of these two nations has been accompanied by a conversation between scholars and academics focussed primarily on the differences in the formalisation of the liberty-security relationship at the antipodes. This particular focal-point does not confine the literature considered here but it is used to provide a starting point from which some of the central reference points for the debate are sketched out and considered in detail. This specific debate is considered initially with a view to allowing the identification of subsequently connected and relevant areas of debate. This section will therefore begin with that

literature that considers explicitly what a liberal approach to the liberty-security relationship should look like in a post-2001 liberal democracy. The latter part of the chapter will consider some of the ostensibly critical accounts of the liberty-security regime found in this literature to identify the substantive basis of such criticism and to subsequently ascertain if this debate is capable of accommodating interventions that consider a truly alternative political framework to the one that defines the current regime.

This section begins with a critical analysis of the position of George Williams who as a prominent Australian legal scholar and campaigner for human rights legislation has been at the centre of calls for the introduction of human rights legislation in Australia. Beginning with Williams' framing of the issue of human rights protection in the era of the 'war on terror', the analysis seeks to reveal the central principles on the basis of which this campaign has become for many liberal scholars symptomatic of the attempt to address the seemingly fraught relationship between liberty and security in the contemporary era. Taking this as a starting point for a broader review of literature enables the analysis to reveal the central principles of the scholarly elucidation of the relationship between liberty and security in the context of this popular campaign. This in turn will ground an interrogation of the central concepts that frame the broader debate among liberal scholars and academics.

Australia and the adoption of UK style human rights legislation: solving the fraught liberty-security relationship

Australia is the only western democracy without a Charter or Bill of Human Rights[1]. On the basis of this absence there have been repeated calls for the introduction of some formal, legal recognition of human rights obligations in Australia and these calls have more recently been contextualised by Australia's commitment to the 'war on terror'. While Australia has been at the forefront of the intervention by the *Coalition of the Willing* in Afghanistan and Iraq, the domestic response to the 'war on terror' has been focussed on the introduction of the first Commonwealth anti-terrorism

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[1] "Charter or Bill of Rights: Questions and Answers", Law Council of Australia, accessed July 27, 2012, http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file_uuid=A13B1804-1E4F-17FA-D2DD-1CF652F16AB2&siteName=lca

legislation[2]. The introduction of anti-terrorism law as the necessary response to international terrorism has for several commentators enhanced the calls for corresponding human rights law. The campaign in the current epoch has been underpinned by a concern about the relationship between liberty and security in a state that is committed to the 'war on terror' but does not have a human rights Bill or Charter.

At the centre of this campaign, providing its academic presentation has been George Williams who is professor of law at the University of New South Wales and a practicing barrister. Williams' calls for a human rights bill predate the events of 9/11 and the introduction of Commonwealth counter-terrorism policy. These developments have however given added impetus to Williams' scholarly work on not only the potential benefits of human rights legislation, but its absolute necessity post 9/11. In the 2004 edition of his series of 'Briefings' on the case for a Charter or Bill of rights[3] Williams has explained that in the context of a heightened security environment in which anti-terrorism laws are passed with 'great haste', the legal system and its underlying principles of 'the rule of law and the liberty of the individual can come under considerable strain'[4]. It is within this context that a Bill of Rights has even more of a central role to play in a liberal democracy:

> They [Bills of Rights] remind governments and communities of a society's basic values and of the principles that might otherwise be compromised at a time of grief and fear. After new laws have been made, a Bill of Rights can also allow courts to assess the changes against human rights principles. This can provide a final check on laws that, with the benefit of hindsight, ought not to have been passed. The absence of such a check is one reason why, in some respects, Australian law after September 11 has restricted individual rights more than the equivalent regimes in Canada, the United Kingdom and the United States[5]

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[2] *The Security Legislation Amendment (Terrorism) Act 2002* was the first ever Commonwealth anti-terrorism legislation.

[3] Williams series of books on the case for human rights legislation in Australia began with George Williams, *A Bill of Rights for Australia* (Coogee: UNSW Press, 2000) and has included George Williams, *The Case for an Australian Bill of Rights: Freedom in the War on Terror* (Coogee: UNSW Press, 2004) and George Williams, *A Charter of Rights for Australia* (Coogee: UNSW Press, 2007).

[4] Williams, *The Case for an Australian Bill of Rights*, 28

[5] Williams, *The Case for an Australian Bill of Rights*, 28

Williams shares the confidence of the public intellectuals considered above in the role human rights play (and the validity of human rights legislation) in restraining the state and yet he remains wholly committed to this function in the context of the 'war on terror'. However, by way of an apparent departure from Ignatieff's position, Williams suggests the relationship need not be *re*thought in Australia as it is yet to formally take shape. In general for Williams, human rights obligations need not render the state's security policies impotent and instead a Bill of Rights may 'serve as an anchor at times of crisis'[6]. The relationship between a Bill of Rights and national security is for Williams, as for Ignatieff, one of balance:

> After September 11, new laws on terrorism must strike a *balance* between national security, on the one hand, and important public values and fundamental freedoms on the other[7].

The concept of balance is at the core of Williams' campaign for a Bill or Charter of Rights for Australia and is for Williams the appropriate tool for managing the relationship between liberty and security in the era of the 'war on terror'. The calls for the adoption of a UK style human rights policy in Australia, of which Williams has been most vocal[8], is based on the idea that the UK Human Rights Act 1998 has provided the necessary restraint to counter-terrorism policy and enabled the UK to combat terrorism while maintaining basic rights[9].

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[6] Williams, *The Case for an Australian Bill of Rights*, 28

[7] Williams, *The case for an Australian Bill of Rights*, 28 emphasis added

[8] Williams played a pivotal role in the adoption The Victorian Charter of Human Rights and Responsibilities Act 2006 (Vic) that along with the ACT Human Rights Act 2004 'demonstrates how an Australian state or territory can enact better protection for human rights without undermining parliamentary sovereignty, transferring power to the courts or causing a surge in litigation'. These laws are openly based on the UK Human Rights Act 1998 and for Williams as a human rights scholar and in his advisory role at state and federal level, the UK HR Act is the model to follow because basing the Australian state and territory legislation on the UK Act (as opposed to the US Bill of Rights for example) enables them to be 'innovative if modest, changes to the Australian system of government in the form of an ordinary act of parliament that protects a range of civil and political rights that have broad popular support'. Williams, *A Charter of Rights for Australia*, 72

[9] Indeed Williams is supported in this confidence in the UK HRA by those who (not in an altogether celebratory fashion) define the UK human rights record with respect to counter-terrorism 'as a balancing act between a US-influenced interpretation of national insecurity and the European Court's conditioning of domestic legal regimes'. This balance reflects Williams' and Ignatieff's confidence in the UK style regime that can plot a realistic course through the opposing concerns for liberty and security. See Alison Brysk, "Human Rights and National Insecurity" in *National Insecurity & Human Rights: Democracies Debate Counterterrorism*, eds. Alison Brysk and Gershon Shafir, (London: University of California Press, 2007)

Williams' scholarly work on the relationship between counter-terrorism and human rights has been predominantly concerned with an elucidation of a balancing approach to explain that it is in fact at the core of the state's operation and should thus be openly acknowledged and confronted from a scholarly standpoint. In response to this, Williams' work has sought to give 'content, structure and direction to what is an imprecise task'[10] but ultimately to assert the appropriateness of such a tool in a liberal democracy. Williams has presented the balancing approach in opposition to the construction of counter-terrorism legislation as 'human security legislation' as has been done at the state level in both Canada and Australia[11]. The notion of human security in this sense is based on a supposed reconciliation of human rights and national security that denies the opposition of these two concerns that is at the core of the idea of balance. The campaign for a Bill of Rights based on the UK model for Williams is encouraged by the ability of such legislation to enable an ongoing process of weighing and balancing through the inclusion of derogation clauses that enable rights to be continually rebalanced against security within the context of a legal framework of human rights protections. It is this process of derogation that underpins Williams' confidence that a Bill of Rights will not debilitate counter-terrorism efforts and upset the balance in favour of liberty.

Debating the concept of balance and the securitisation of rights

The notion that liberty and security are irreconcilable and therefore in need of 'balancing' has been adopted by other scholars who like Ignatieff and Williams, see the metaphor as essential to simultaneously prevent the debilitation of the state in the face of terrorism, and ensure the restraint on the state necessary in a liberal society[12]. In a seemingly contradictory fashion, the central opposition of liberty and security

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[10] Ben Golder and George Williams, "Balancing National Security and Human rights: Assessing the Legal response of Common Law Nations to the Threat of Terrorism", *Journal of Comparative Policy Analysis* 8, 1, (March 2006)

[11] Golder and Williams, "Balancing National Security", 44

[12] Dieter Grimm, Visiting Professor of Law and Oscar M. Ruebhausen Distinguished Senior Fellow at Yale Law School, is a subscriber to the view that 'it is impossible to maximise both security and liberty at the same time'. While he is aware that 'the price for enhancing security is paid by liberty', 'there are limits maximising security if one wants to preserve the liberal system' and this is why the acceptance of security measures 'depends on the right balance'. Dieter Grimm, "How to Balance Freedom and Security", *Spiegel Online: International* April 26, 2007, accessed February 12, 2010, http://www.spiegel.de/international/world/0,1518,479668,00.html,

inherent in the balance metaphor has enabled it to be adopted by both 'extremes' of the debate within liberalism. The concept has been employed by both scholars who present it as maintaining a central place for human rights in the war on terror, and those who see it allowing for an increased emphasis on security and corresponding reduction in liberty[13]. On both sides of this debate within the adoption of the concept of balance there is agreement that it is *the* tool to maintain a relationship between liberty and security that is loyal to the principles of a liberal democracy.

Striking a balance between liberty and security has however been criticised from within the same liberal circles for oversimplifying the issue that confronts a liberal democracy in the post 9/11 period. It has been suggested that an alternative approach should involve the balancing not of abstract understandings of liberty and security but instead of different sets of rights[14]. The conflict between liberty and security is presented as a clash between two 'equally significant human rights values'[15] that are 'not completely compatible'[16]. In this case the critique of the balance does not involve a substantive disagreement with the concept itself but a dispute over the opposing forces that must be reconciled in the context of a 'war on terror'. The concept of security in this alternative approach is understood through the human right to security that retains the understanding of human rights as system of limitation but at the same time accepts that the right to security is imperative in a liberal democracy and is not wholly compatible with the exercise of all other central

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[13] The concern that human rights are not only irreconcilable but antithetical to security concerns has given the balance metaphor credence among liberal security 'experts' who see the post 9/11 environment as necessitating a rebalance in favour of security as exemplified by Bertil Duner: 'The events of 11 September 2001 may have changed the balance or tipped the scales to the detriment of human rights'. Bertil Duner, "Disregard for Security: The Human Rights Movement and 9/11", in *Terrorism and Human Rights*, eds. Magnus Ranstrop and Paul Wilkinson, (Abingdon: Routledge, 2008). Professor of International Relations and acclaimed 'terrorism expert' Paul Wilkinson, has noted that the vulnerability of democracies to terrorism is compounded by their openness and central freedoms and thus lead him to confirm that the response to terrorism must come in the form of a 'balanced multipronged strategy': Paul Wilkinson, *Terrorism and Democracy: The Liberal State Response*, (Abingdon: Frank Cass Publishers, 2006).

[14] See, Clive Walker, "The United Kingdom's Anti-Terrorism Laws: Lessons for Australia", in *Law and Liberty in the War on Terror*, eds. Andrew Lynch, Edwina MacDonald and George Williams (Annandale: The Federation Press, 2007) 191. Walker employs a denouncement of the concept of balance that involves a substitution of the 'language of balance' with a 'language of rights'. However, the shift to a language of rights is essential only to enable a 'balance within rights discourse' (Ibid, 191).

[15] Stefan Sottiaux, *Terrorism and the Limitations of Rights: The ECHR and the US Constitution*, (Oxford: Hart Publishing, 2008) 8

[16] Michael Freeman, "Order, Rights and Threats: Terrorism and Global Justice", in Richard Ashby Wilson, (ed) *Human Rights in the 'War on Terror'*, ed. Richard Ashby Wilson, (Cambridge: Cambridge University Press, 2005) 52

freedoms. This complex arrangement within a liberal democracy can for these scholars still be accommodated through an application of the balance metaphor but the difficulties must be acknowledged in defining *what* is to be balanced.

The concept of security as a right denies the notion of a conflict between liberty and security and suggests instead that respect for individual liberty and human rights are actually at the very heart of security. Rejecting a conflict that apparently causes complications for a liberal democratic state compelled to present its commitment to both liberty and security in the current context has made the concept of human security very attractive as a political tool for liberal governments[17]. The particular interpretation of human security found at the official level has enabled a further entrenched status of the concept of balance within official discourse.

However, the official interpretation of 'human security' has been the subject of criticism by human rights scholars. The governments who have adopted the concept of human security have supposedly responded to the critiques of a simplistic application of the balance metaphor by offering a more 'refined' approach that retains balance whilst diffusing the conflict that a necessary opposition between liberty and security infers. The concept of a right to security in this sense serves to give further legitimacy to the 'war on terror' (to which they are committed) placing it in the *just* war tradition. Framing security as a right enforces the *moralisation* that is implicit in the good vs. evil rhetoric of the 'war on terror' and at the very core of the contemporary humanitarian ethics. The utility of this approach to the official justification of the 'war on terror' has been outlined in response to Walzer's employment of just war theory in this context but the construction of security as a right (at least in the official version of this) reinforces the moral justification of this 'war' that defines it in the tradition of humanitarian interventionism.

The critique of the concept of human security as employed by certain liberal governments is however based on it being a misappropriation of a critical term that has been developed by human rights and development scholars. The concept of

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[17] The former Australian Attorney General Phillip Ruddock has drawn on the view of Canada's former Attorney General, Irwin Cotler in denying the conflict between liberty and security that is evident in the status of the human security as the most fundamental human right. See Andrew Lynch, "Achieving Security, Respecting Rights and Maintaining the Rule of Law", in *Law and Liberty in the War on Terror*, eds. Andrew Lynch, Edwina MacDonald and George Williams (Annandale: The Federation Press, 2007). The commitment of the UK government to the concept of balance is set out in their 2005 European Union Presidency Paper. See, Charles Clarke "Liberty and Security: Striking the Right Balance" speech given to EU Parliament, Brussels, Belgium, October 2005

human security has been developed to 'shift the focus of debate from the security of the state to the security of the people'[18] and this development has in turn been perverted by the likes of Phillip Ruddock to retain the emphasis on the state and reinforce the formulation of liberty and security already dominant in state policy. The concept of human security in the scholarly literature has emerged in the context of the confidence in human rights after the end of the Cold War and seeks to attend to the apparently insuperable opposition between liberty and security in the current context. This concept has been presented as the solution to the search for 'a new language of reconciliation' between liberty and security that has 'for liberals....become one of the most urgent intellectual challenges'[19]. A solution to this liberal challenge is imperative in the wake of the apparent damage to the liberal position invoked by the simplistic use of the balance metaphor. For these scholars, despite Ignatieff's assurances, balancing liberty and security is an illiberal response that jeopardises the intrinsic principles of liberal democracy and has given justification to a security environment in which rights are compromised. These intrinsic principles of liberal democracy are understood to be defined through the notion that 'security is a precondition of liberty, and human rights as the constituents of liberty, are thus inherent parts of the broader liberal democratic project'[20]. Ultimately, despite the disagreement there is widespread acceptance that liberty is to be understood exclusively through human rights principles.

The idea of human security has expanded the discussion of security beyond the military defence of a sovereign state and attempts to infer a positive right to security that instils a requirement on the state to provide for the more substantive *social* security of the population. It takes issue with both the current understanding of security that emphasises only protection from harm by others and the current 'rights talk' that has been used to undermine rights[21]. The reconceptualisation of security infers that the 'state's positive duty to provide security from poverty, illness and

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[18] Simon Bronitt, "Balancing Security and Liberty: critical Perspectives on Terrorism Law Reform", In *Fresh Perspectives on the 'War on Terror'*, eds. Miriam Gani and Penelope Mathew (Canberra: ANU Press, 2008) 69

[19] Benjamin Jervis Goold and Liora Lazarus "Introduction Security and Human Rights: The Search for a Language of Reconciliation", in *Security and Human Rights*, eds. Benjamin Jervis Goold and Liora Lazarus, (Oxford: Hart Publishing, 2007) 1

[20]Goold and Lazarus, "Introduction Security and Human Rights", 2

[21] Sandra Fredman, "The Positive Right to Security" in *Security and Human Rights*, eds. Benjamin Jervis Goold and Liora Lazarus, (Oxford: Hart Publishing, 2007) 307

degradation is at least as fundamental as the duty to protect individuals from harm by others'[22]. The right to security seeks to fill the gaps in existing rights as opposed to consuming them under one ultimate right as has been done in the various official uses of the term. As formulated by human rights scholars, the concept must be as narrow as possible and avoid the perils of 'securitising rights' that has been so seductive to human rights campaigners and scholars in the heightened security environment post 9/11. The right to security should be grounded in other fundamental rights as opposed to inferring their usurpation and must be aware of the perils of harnessing the language of security that risks 'the danger of simultaneously eroding the non-instrumental foundations of rights'[23]. The concept ostensibly involves a 'return to rights' and an injection of further legal regulation over the state that is lost in the current political discourse on the right to security[24]. However, there is a real lack of consideration of the implication even this 'critical' use of the term has on legitimising the broader project of the securitisation of politics that will be discussed in chapter four.

The debate on the concept of human security revolves to a large extent around on a scholarly critique of the official manipulation of the idea. The appearance of conflict between scholars is misleading as the arguments against are aimed at the official line[25] and the arguments for are based in the scholarly exposition outlined above. There is widespread agreement that the official interpretation found in official discourse in Australia and Canada denies the regulatory potential of human rights. Underlying the appearance of conflict is a common opinion among scholars and academics that the liberal response must be lead by human rights principles and despite the rejection of balance by some scholars, the emphasis remains on the potential regulatory function of rights. There is agreement that this regulatory function is at the core of the relationship between liberty and security in a liberal democracy.

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[22]Fredman, "The Positive Right to Security", 307

[23]Liora Lazarus, "Mapping the Right to Security" in *Security and Human Rights*, eds. Benjamin Jervis Goold and Liora Lazarus, (Oxford: Hart Publishing, 2007) 327

[24] There is merit given the dangerous opacity and rhetorical power of security, to injecting a more sober and legalistic approach into the political discourse surrounding the 'right to security'. Lazarus, "Mapping the Right to Security", 329

[25] See, Andrew Lynch, "Exceptionalism, politics and liberty: a response to Professor Tushnet from the Antipodes", *International Journal of Law in Context* 3, 4, (2008) 306

The 'debate' is about the formulation of this regulatory function and the relation of rights vis-à-vis security.

Balance as applied by Ignatieff and Williams is rejected by some scholars as illiberal on the basis that it is perceived to imply, or at least give way to, an inferior position for liberty as a result of the construction of an opposition with security. The human rights scholars who have formulated the right to security have had to distance themselves from the 'balancing act' to secure the reconciliation of liberty and security that is for them intrinsic to the liberal response. They seek to reinforce the legalism of security discourse that is found wanting in the current 'climate of exceptionalism'[26]. The concern with addressing exceptionalism through a restoration and enhancement of the regulatory function of human rights is unquestionably liberal. These scholars have at the core of their work a defence of a vision of liberalism defined by a liberty as its central concern. The maintenance of this façade defines their contributions.

Liberty here is understood in opposition to security and this formulation drives the overarching project of 'rescuing' liberalism from the security policies measures seemingly legitimated by the concessions inherent in the politics of compromise that defines the approach exemplified by Ignatieff et al (and thus also by Williams)[27]. The emphasis on the supposedly truly liberal prioritisation of liberty (over security) illustrates a fundamental lack of awareness – or arguably more an unwillingness to accept – the primacy of security in liberal politics. The emphasis of these scholars (and the public intellectuals in consideration above) on the prioritisation of liberty demonstrates the ideological function crucial to their work that is shored up further by the pretence of a serious debate between positions. Essentially, their contributions and the debate in general serve to legitimise the liberal framework in this context. The presentation of divisions between camps obscures the unanimous agreement on the ultimate goal of defending the monopoly of legitimacy that liberalism is understood to possess in the current era.

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[26] Lazarus and Goold, "Introduction Security and Human Rights", 4

[27] It is worth noting that the project of formulating a right to security with its rejection of an opposition between liberty and security would however resign these scholars to the 'moral perfectionism' that Ignatieff sees as unrealistic and Williams sees as unneeded (in the context of 'effective' HR legislation).

Shoring up the presentation of the liberalism

The right to security approach is in reality a reconfiguration of *what* is being balanced as opposed to an outright rejection of the principle. For these human rights scholars their project is understood as a pragmatic response to a culture of 'rights scepticism' that has accompanied the rise of human rights discourse since 1945[28]. It is this very scepticism towards human rights principles that has left rights discourse 'vulnerable to the competing and increasingly powerful discourse of security'[29] and it is in response to this crisis that the right to security has been formulated to reconcile security and human rights. The question that these scholars seek to answer is 'how to balance between the individual and the collective, between political and the legal, and between political sovereignty and the rule of law'[30]. The concept of balance is in fact retained in this approach as the inevitable liberal approach to any opposing concerns and the project of mapping a right to security is exposed as yet another liberal attempt to wrestle with the relationship between state sovereignty and the rule of law. The importance of human rights is reinforced on the basis of their regulatory function that prevents the demise into exceptionalism. The right to security is therefore ultimately a reconceptualisation of the same project at the core of Ignatieff's work of imposing the appropriate framework of restraint to prevent the state from declaring an exception. The 'debate' within the literature is reduced to a disagreement over the formulation of the opposing forces that dominate the current context. Balance is either explicitly or more subtly at the core of each of these perspectives and the convergence on this 'tool' for action is widespread among liberal scholars.

The avoidance of the question of exception is at the core of these various interpretations of the balance metaphor as would be expected in a liberal approach to the state and illustrates a reiteration of the substantive position of the liberal public intellectual 'class'. However, in this scholarly literature there has been further criticism of the concept of balance for denying the legal regulation that should be at the heart of a liberal response. In the context of UK security policy human rights are

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[28] 'Although human rights have been the benchmark of the liberal democratic ideal, there are deep controversies as to how they should be realised, under what institutional conditions they should be pursued, and which specific rights may be branded as sufficiently fundamental to trump majoritarian desires'. Lazarus and Goold, "Introduction Security and Human Rights", 6

[29] Lazarus and Goold, "Introduction Security and Human Rights", 6

[30] Lazarus and Goold, "Introduction Security and Human Rights", 7

perceived by some scholars to be 'traded away as a threshold issue'[31] through a balancing model that allows for what has been termed an 'uncivil politics of law reform'[32]. The legal principles evident in counter-terrorism legislation in both the UK and Australia is characterised by a 'sense of impending apocalyptic disaster' that 'promotes a fatalism in which both liberalism and established legal norms are viewed as simply too costly'[33].

The decoupling of balance and regulation within this liberal response illustrates a further mystification of the liberal framework. Despite the critique of the UK and Australian government policy, the concern is with attending to and revising the liberal position which in this case attempts to deny that balance is central to any liberal response to opposing concerns. There is a paradox created here within which these liberal scholars are attempting to save liberalism from itself.

The view that human rights principles are too costly in the fight against terrorism has been cited as underpinning the UK government's approach to the Human Rights Act 1998 (HRA) in the post 9/11 period. While the HRA has had an apparent restraining effect on certain counter-terrorism powers[34] this has lead only to a marginal shift in policy and the subsequent employment of what have been identified as 'devious legal strategies'[35] that have seemingly enabled the government to circumvent the regulation imposed in human rights law. The 'human rights era' is now apparently marked by the use of 'more subtle tools'[36] that allow the continuation of repressive and under-regulated counter-terrorism measures. In this context the UK government has been able to utilise these 'devious legal strategies' to provide the mechanisms for constraining the liberties of a small group of suspect individuals[37].

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[31] Lazarus and Goold, "Introduction Security and Human Rights", 82

[32] Lazarus and Goold, "Introduction Security and Human Rights", 83

[33] Lazarus and Goold, "Introduction Security and Human Rights", 83

[34] See, ConorGearty, "Human Rights in an Age of Counter-Terrorism: Injurious, Irrelevant or Indispensable?" *Current Legal Problems* 58, (2005)

[35] Colm O'Cinneide, "Strapped to the Mast: The Siren Song of Dreadful Necessity, the United Kingdom Human Rights Act and the Terrorist Threat" in *Fresh Perspectives on the 'War on Terror'*, eds. Miriam Gani and Penelope Mathew (Canberra: ANU Press, 2008) 339

[36] O'Cinneide, "Strapped to the Mast", 340

[37] Following Dworkin, the notion of the restriction of the liberties of a few to supposedly enhance the security of the majority is a common theme of several critiques of the concept of balance. Balance is attacked for the way it obscures the agency implicit in the tradeoff between liberty and security and hides the fact that the restriction of liberty is in most cases predominantly the restriction of the human rights of a 'suspect' population. See Daniel Moekli, *Human Rights and Non-Discrimination in the*

These 'devious legal strategies' are not understood to be intrinsic to the functioning of the law but instead the result of manipulation by those who fail to conform to liberal principles. In this commitment to legal regulation the law remains an unproblematic entity in stark opposition to the violence that characterises those spaces outside the law.

The process of restraining the rights of the few is stated to be at odds with human rights principles by scholars who emphasise the paradox of a selective withdrawal of universal rights[38]. However, despite the problems highlighted in the use of the HRA by the UK government, the focal point of these critiques is not the impotence of human rights legislation but instead the lack of legal regulation. The HRA fails to impose the full regulatory function of human rights and the solution to the problem of current counter-terrorism policies is further legal regulation as opposed to any real alternative solutions being considered. In agreement with the public intellectuals the necessary dominance of human rights principles is confirmed.

The lack of legal regulation has apparently given rise to and sustained a culture in which emergency powers are utilised repeatedly without the required restraint. Legal processes are held up as the mechanism for 'nudging the use of emergency powers towards greater conformity with normal criminal law'[39]. Some scholars are willing to accept that the current use of human rights legislation in the context of the 'war on terror', in the UK at least, has provided a veil of legitimacy to enable the state to continue to employ repressive counter-terrorism powers. Yet this veil of legitimacy is not attributed to human rights principles per se but is instead apparently the result of an insufficient commitment at the official level to human rights and a resulting diffusion of the regulatory function. The issue to be confronted for these scholars is the government's attempts to manoeuvre within the constraints of human rights principles and the commitment to human rights as a system of limitation

'War on Terror, (Oxford: OUP, 2008); Jeremy Waldron, "Security and Liberty: The Image of Balance", in The Journal of Political Philosophy 11, 2 (2003)

[38] 'The very predicate of a "human" right is that it stems from the respect owed to every human being by virtue of their very humanity'. David Cole, "Human Rights and the Challenge of Terror" in Democratic Responses to Terrorism, ed. Leonard Weinberg, (Abingdon: Routledge, 2008) 161. See also, Clive Walker, "The United Kingdom's Anti-Terrorism Laws: Lessons for Australia", Law and Liberty in the War on Terror, eds. Andrew Lynch, Edwina MacDonald and George Williams, (Annandale: The Federation Press, 2007) for an application of the universality of rights that should underpin the liberal approach to HR legislation in Australia.

[39] O'Cinneide, "Strapped to the Mast", 351

is instead reinforced by this critique. Comprehensive regulation of counter-terrorism powers is vital to maintain the principles of a liberal democracy and avoid the slippery slope into exceptional measures that is seemingly a result of the watering down of the legal regulation implicit in human rights principles.

To come full circle, the campaign for a UK style human rights act for Australia is underpinned by the commitment to legal regulation of counter-terrorism powers that is ultimately to be provided by human rights law. The lack of a HRA in Australia is posited as evidence that political controls over security policy are insufficient while the UK HRA is held aloft as the proof that legal regulation is essential and ultimately effective[40]. The emphasis on legal regulation in the form of human rights legislation is underpinned by an essentially liberal inability to conceive the mutual exclusion of judicial and political controls[41] and more pressingly an inability to conceive of politics outside the liberal framework. Politics as conflict is denied and the emphasis on legal regulation serves to further depoliticise the liberal scholarly response to the 'war on terror'.

The limited preference for political control of exceptional measures is based in the liberal commitment to parliamentarianism, yet the lack of a corresponding commitment to legal regulation is criticised as insufficient in a liberal democracy in the current context. Ultimately, for rights scholars, legal and political controls cannot be distinguished to enable a choice between one and the other, The UK liberty-security regime is presented as allowing the appropriate regulatory framework in allowing political and legal controls to 'interact'[42]. The UK HRA has induced a 'culture change' in which the courts have a greater willingness and ability to intervene[43]. This added potential for the courts to regulate is not absolute but an added emphasis on the 'empire of the judges'[44] has been posited as a potential improvement of the UK regime for Australia.

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[40] Lynch, "Exceptionalism, politics and liberty"

[41] See, Mark Tushnet, "The Political Constitution of Emergency Powers: Parliamentary and Separation-of-Powers Regulation", *International Journal of Law in Context* 3 (2007), for an exposition of the idea that political controls are favourable to the protection of human rights than legal ones.

[42] Lynch, "Exceptionalism, politics and liberty", 307

[43] Walker, "The United Kingdom's Anti-Terrorism Laws"

[44] See, Manent, *A World Beyond Politics?*. Specifically Manent highlights that in the contemporary situation the desire is that 'not only should law rule but that it alone should rule'. Manent, *A World Beyond Politics?*, 171. The critique of political controls is, despite the claims of an interaction between politics and law, underpinned by an essentially liberal formulation of the sovereignty of the courts.

Throughout the debate on the relationship between liberty and security in this literature the law is positioned as the guarantor of a liberal framework. A commitment to a legal framework – ensured through human rights legislation – is the guarantee of liberty and current security politics are illiberal through their real or potential departure from legal regulation. The liberal approach is defined by a 'legal fetishism'[45] in which the law is understood as autonomous and capable of providing the ultimate defence against the violence of the state. Even among those scholars most critical of the state's approach to security there remains an understanding that state violence is indicative only of the withdrawal of law. The only possible (liberal) response is to demand a return to law and its exclusive rule.

The liberal as external observer of the 'war on terror'

It is from the perspective based on an absolute commitment to legal regulation, that Ignatieff in particular (as the chief proponent of balance albeit phrased alternatively) has come under attack. Ignatieff has been decried as a 'post-liberal' by proponents of the 'human security' position for his acceptance of the division of human rights that underpins his Lesser Evil perspective[46]. The selective concession of rights to a security agenda, as Ignatieff's position allows, has been cited as the underpinning of the demise into exceptional measures through which seemingly unthinkable acts such as torture can be legitimated. By conceding the regulatory function of human rights and supposedly abdicating from the absolute status of the rule of law Ignatieff has conceded his liberal status. Ignatieff's support for 'humanitarian intervention' in Iraq, legitimised in his Lesser Evils text and elsewhere in his work, has opened him up to condemnation as an apologist for torture and human rights abuses[47] and for some a necessary exorcism from the liberal tradition.

The articulation of this critique arguably sits these scholars in the 'naïve moral perfectionist' camp that Ignatieff makes clear the 'realistic' liberal response must avoid. However, the resulting critical exchange reinforces the fact that the debate here

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[45]Neocleous, *Critique of Security*, 73

[46]Brysk, "Human Rights and National Insecurity", 12

[47]Gearty described Ignatieff as 'probably the most important figure to fall into this category of hand-wringing, apologetic apologists for human rights abuses'. Conor Gearty, "With a Little Help From Our Friends", *Index on Censorship* 34, (2005)

remains concerned primarily with the precise character of a liberal response. Ignatieff's concessions to the security agenda (and those by other liberals who reject 'perfectionism') have been highlighted as the underlying cause of a liberal culture capable of accommodating torture. It has been suggested that the transformation of liberal culture to accept such a non-liberal idea only appears so difficult to imagine if one 'underestimates the ability of intellectuals to change the nature of the discussion, and of lawyers to explain why there is no conflict between torture and our liberal code of laws'[48].

The new security agenda that has developed since September 11 is defined by Donald Rumsfeld (and his supporters – the 'Rumsfeldians') and has been able to take its current form within a liberal democracy because there has emerged a 'coterie of well-meaning liberal intellectuals and human rights lawyers (who have) handed him (Rumsfeld) the intellectual tools with which to justify his government's expansionism'[49]. Ignatieff is cited as probably the most important figure to fall into this category and the Lesser Evil position specifically contains those essential intellectual tools that have legitimised the post 9/11 security agenda. The legitimating function of Ignatieff's intervention(s) has been illustrated above and while this type of critical analysis ostensibly arrives at a similar conclusion it is necessary to set out the central points of contention on which this critique is based.

This argument appears to denote a substantive point of division in the liberal literature setting Ignatieff (and others) apart on the basis of their understanding of, and intervention in, the current liberty-security regime. However, the impotence of such a critique is exposed through its selective interpretation of the central principles of Ignatieff's project. From this perspective, such an intellectual aberration from liberal principles as exemplified by Ignatieff starts with taking 'the 'human' out of 'human rights'[50]. Human rights have in this vein been transformed into a 'larger narrative' and are now presented as 'a key component in the story of democratic success, and an important, perhaps the supreme, indicator of the moral and cultural superiority of this

[48]Gearty "With a Little Help From Our Friends", 46

[49]Gearty "With a Little Help From Our Friends", 51

[50]Gearty "With a Little Help From Our Friends", 47

form of government'[51]. It is therefore seemingly inevitable that the threat from terrorism raises the stakes to the point that 'they encompass our very survival as a set of democratic communities'[52]. In this sense the opposition between 'the West' and terrorism is constructed to be one between 'good and evil' and fundamentally it is at this moment that the human rights discourse 'has fatally compromised its integrity'[53].

Identifying the moralisation inherent in Ignatieff's project is crucial but the explanation of its root cause in a deviation from the fundamental principles of human rights – as opposed to identifying it as the central premise of the current humanitarian ethics – is, whilst unsurprising, a critical obfuscation of human rights and their function within liberalism. That a moralising approach to human rights leads to the legitimation of massive human rights abuses is not presented as a problem of human rights discourse per se but a result of a 'reconstruction of the language of rights' through which they are able to be to appropriated by those orchestrating the 'war on terror'. Human rights must be conceptualised solely as regulatory tools firmly rooted in international humanitarian and human rights law. It is this legal formulation of human rights that has supposedly involved a pivotal *de-moralising* of human rights 'removing the language of good and evil from the relationship between states[54].

This selective but much echoed (mis)understanding of the moralisation in current human rights discourse is exemplified by the summary of the importance of human rights law being based on 'our shared humanity rather than the superiority of our particular cause'[55]. This, we are told, should have enabled just war theory to be superseded but through Ignatieff's (and one would suggest here, Walzer's) intervention and its accommodation by the likes of Rumsfeld we are 'back in a pre-rule stage where, in effect, despite the liberals' best hopes, anything goes'[56]. This illustrates the widely held concern that human rights are, through this apparent reconstruction, bereft of their regulatory function and denied their essential legalistic foundation. The liberal fear of exceptional measures is made explicitly clear whilst

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[51]Gearty "With a Little Help From Our Friends", 47. Here one is reminded of Rorty's assertion that there is no shame in the globalisation of an essentially Eurocentric (human rights) culture because it is undoubtedly 'morally superior' to any potential alternative

[52]Gearty "With a Little Help From Our Friends", 47.

[53]Gearty "With a Little Help From Our Friends", 49

[54]Gearty "With a Little Help From Our Friends", 50

[55]Gearty "With a Little Help From Our Friends", 50

[56]Gearty "With a Little Help From Our Friends", 50

the foundation of the moralisation implicit in humanitarian ethics is reinforced through this confused account. In contrast the 'true defenders of human rights' are the judiciary[57] (not the liberal intellectual) as they alone are willing and able to preserve the regulatory function of human rights principles and keep them grounded in their legal form. The liberal commitment to an *empire of the judges* is exemplified in this 'reconceptualisation' of the foundation of human rights.

This critique highlights the narrow parameters in which much of this debate takes place. The unwillingness to accept that the concept of shared humanity is at the root of this moralisation and moreover, lays out the terrain on which a just war to defend the human from the inhuman is fought, prevents a substantive critique of Ignatieff or indeed of the current liberty-security regime. The legitimising function of the liberal intellectual is openly apparent in this context and the analysis in the preceding section here has illustrated this is not confined to Ignatieff. However, this critique of the intellectual fails to identify the basis for the legitimisation of the current security regime committed as it is to human rights and liberal politics. The function of the liberal intellectual is of vital importance to this regime but those scholars articulating this 'critical analysis' are clearly not devoid of such a legitimating function even if their position is in this context based on an opposition to others. Within this critique, the substantive features of the current liberty-security regime as outlined by Ignatieff are largely reinforced[58].

The notion that at the core of the current liberty-security regime there is an absence or a distorted interpretation of human rights principles forms the basis of other ostensibly critical interventions. Following Dworkin's critique of the specific

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[57]Gearty "With a Little Help From Our Friends", 51

[58] Whilst the debate is clearly devoid of an alternate framework and serves only to reconfirm the narrow parameters within which discussion on the liberty-security relationship is permitted, the response to this article does reveal more about the role of the liberal intellectual and the possibilities for criticism. Ignatieff responded to this article by resigning from the editorial board of the journal in which it was published and demanded that all syndication of the article be ceased. His concern lay with the impact on his reputation that arguably extended beyond his intellectual status and most pressingly to his attempted move into Canadian politics. It was noted following this intellectual 'spat' that while Ignatieff had been previously quite prepared to accept critique from the left over his support for intervention in Iraq he now found himself 'being attacked by those who had always constituted his principle reference group: liberal academic human rights practitioners'. Taylor, "No more Mr Nice Guy". The response by Ignatieff reemphasises a predominant dynamic in the literature in that, arguably a result of the dismissal of any relevance of the left, a liberal critique questioning a commitment to liberal principles incites greater hostility than a critique offered from the outside the liberal tradition. This is symptomatic – as is Gearty's intervention – of the fact that the debate around the liberty-security relationship is a debate almost exclusively about the formulation and presentation of a *liberal* regime.

balance between liberty and security due to its ability to obscure agency in this process, it has been suggested that the current regime has jeopardised the 'most fundamental of all moral principles: the principle of shared humanity'[59]. Even those scholars aware of the dehumanisation that characterises the current approach to human rights (ultimately rendering those most in need of human rights outside the political community) have exhibited an unwillingness to consider how this central principle of the current humanitarian ethics is implicated in this process. Dworkin's influence is further exemplified by the underlying notion in such a critique that the states orchestrating the current 'war' in the domestic and foreign policy arenas are becoming 'less liberal'[60]. The notion of a distortion of human rights is also applied to the current regime to explain the apparent paradox of a human rights regime that accepts the denial of human rights to specific populations. The current liberty-security regime is for these scholars not based on a loyal interpretation of human rights but instead on one that is tarnished by a securitisation of rights discourse. The human rights abuses that characterise the 'war on terror' are a result of states having abandoned the central principle of universality enshrined in the notion of shared humanity.

From this perspective the UK Human Rights Act must be secured (even if reformed) to prevent the country being lead into 'unchartered waters'[61]. As in the concern with preventing a situation where 'anything goes', the term 'unchartered waters' is clearly a euphemism for a non-regulated exception that these authors devote much time and space to seeking to avoid through their unfailing commitment to human rights principles. The reliance on euphemisms further illustrates what is in reality an attempt to avoid the question of exception. The emphasis in this intellectual intervention is on reform to the *interpretation* of human rights and by definition the approach is incapable (or unwilling, despite its professed critical intention) of considering an alternate politics to the one that defines the current regime.

Such a 'critique' is unsubstantial due to its unwillingness to abandon those very principles that in reality underpin the dehumanisation inherent in the current 'war

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[59] Derek McGhee, *The End of Multiculturalism? Terrorism, integration and human rights*, (Maidenhead: Open University Press, 2008) 27; Derek McGhee, *Security, Citizenship and Human Rights: Shared Values in Uncertain Times*, (Basingstoke: Palgrave Macmillan, 2010).

[60] McGhee, *The End of Multiculturalism*, 14

[61] McGhee, *The End of Multiculturalism*, 179

on terror'. Indeed there is evidence of an intellectual lineage[62] that whilst not restricted to these specific scholars illustrates the development of a convergent, and one would argue based on this review, a dominant approach to the liberty-security relationship. The acknowledged influence of Dworkin and the much disputed but latent influence of Ignatieff suggest that the shared position exhibited by the public intellectuals has provided guidance to the 'lower' levels of intellectual activity. The position set out by these public intellectuals has seemingly set the parameters to subsequent interventions and this appears to have reinforced a common approach to the liberty-security relationship that locates the required response firmly in the liberal tradition. From this perspective, despite the line in the sand drawn between this 'critical camp' and the likes of Ignatieff, these authors are still implicated in the same process of legitimising the basic principles of the current framework (as illustrated above by revealing the substantively shared approach between Dworkin and Ignatieff).

The idea that critical analysis need only be externally focussed – on the supposedly non-liberal features of the current regime – defines the critical component of this literature. The process of revisiting the liberal framework to reconfigure the liberty-security relationship is not resigned only to the public intellectuals and structures much of the scholarly and academic literature leading to a seemingly hegemonic position that suggests that the supposedly illiberal features of the 'war on terror' are a result of the contamination of this project by non-liberal forces – or at least by those who have abandoned their liberal credentials. The very nature of the *war* on terrorism has incited the critique that the current era is characterised by the 'illiberal practices of liberal regimes'[63] in which exceptionalism is maintained inside liberalism. Employing the concept of war has seemingly enabled the justification of *any* practice that can be legitimated ostensibly on the basis of the protection of a liberal regime. This contemporary conundrum of a liberal exceptionalism rooted in the current politics of security is, as would be expected, denounced as illiberal. There

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[62] Most clearly from Dworkin to Gearty and to McGhee who is not alone in presenting this line of criticism. Among others considered above, see: Ben Hayes "There is no 'balance between security and civil liberties – just less of each", in *The War on Freedom and Democracy: Essays on Civil Liberties in Europe*, ed. Tony Buyan, (Nottingham: Spokesman Books, 2005)

[63] See Didier Bigo and Anastassia Tsoukala, "Understanding (in)security" in *Terror, Insecurity and Liberty: Illiberal Practices of Liberal Regimes after 9/11*, eds. Didier Bigo and Anastassia Tsoukala. Abingdon: Routledge, 2008

is unsurprisingly a complete absence of introspection within the liberal intellectual community in terms of a critique of the central principles of liberalism and the resulting project is one preoccupied with maintaining the 'purity' of liberalism. The overarching goal of these ostensibly critical accounts of the current regime is to posit a 'purified' liberal framework (the precise formulation of this is the source of much of the 'debate') as the solution to the problems encountered in the post-2001 liberal democracy.

For these scholars an exceptionalism that denies the rule of law cannot be part of liberal politics and the idea that security measures can and do transcend legal regulation must be resisted to maintain the truly liberal status of liberal regimes. Security 'cannot be conceptualised as 'beyond normal politics' and as a 'politics of exception''[64] because liberalism demands a 'normal [read liberal] politics' in which the rule of law is absolute. The problem for many is that the lack of a 'normal politics' is a result of those external forces that have constructed the 'war on terror' in an alternate – non-liberal – framework within a liberal democracy. For many this external force is identified as neo-conservatism, presented as a distinct political framework that has risen to dominate post-9/11 politics (in the US at least) and by doing so has marginalised the truly liberal perspectives within the debate around liberty and security.

The identification of this 'external' threat has forced the liberal to face in two directions: confronting global terrorism *and* American neo-conservatism[65]. Put simply, the assertion is that the threat to security comes from global terrorism but the threat to liberty is a result of a *neo-conservative* response. Liberalism is positioned as a middle way between these two forces and ultimately a liberal response is defined once again as a balancing act. Defining an alternate 'liberal grand strategy', involves acknowledging the threat from terrorism but more pressingly highlighting that by virtue of the dominance of neo-conservatives the current strategy of response to terrorism is distinctly non-liberal. Identifying the 'neo-cons' (or alternatively, the 'Rumsfeldians') removes any compulsion to think critically about the liberal character of this regime – the problem is an external force that must be identified and rebutted.

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[64]Bigo and Tsoukala, "Understanding (in)security", 5

[65] Tom Farer, *Confronting Global Terrorism and American Neo-Conservatism: The Framework of a Liberal Grand Strategy*, (Oxford: Oxford University Press, 2008)

A liberal strategy must by definition be distinct from the 'proudly illiberal' neo-conservative project that has in the context of security politics illustrated its antithetical status to liberalism through its 'championing of uninhibited executive power post 9/11 whatever the consequences for civil liberties and human rights'[66]. The liberal strategy is once again defined in opposition to an unregulated approach and this in turn brings together the central themes of the liberal literature that essentially revolve around the primacy of human rights and their regulatory function. The neo-conservative project is devoid of regulation because it defines itself on the vague notion of democracy without the necessary correlate of human rights.

Liberalism provides the only viable political framework from which to respond to global terrorism because it is most open to 'reasoned and fact-based argument' and, by virtue of it being the culmination of the Enlightenment tradition, posits 'no one great truth'[67]; fundamentally, liberalism is presented as being without a defining ideology[68]. It can therefore avoid a reductionist account of terrorism that fails to consider causes and is instead open to 'political solutions'. Liberalism is said not to be restricted by ideological conviction and is therefore capable of a measured and rational response to terrorism that is unavailable to the neo-con project.

Liberalism is positioned in opposition to the reductionist account of terrorism supposedly articulated only by non-liberal scholars (or again by those who have lost their way) and subsequently mirrored by both the state and the terrorist in the current era. The mirroring of opposing reductionist perspectives in the 'war on terror' is a crucial insight[69] but it is presented as one unconnected to the liberal intellectual and characteristic of only those who sit outside the liberal tradition. The critique of a reductionist account that refuses to accept any political causes for international

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[66] Farer, *Confronting Global Terrorism*, 223

[67] Farer, *Confronting Global Terrorism*, 224

[68] This understanding of liberalism is for Farer aligned with the post-war UK Conservative party and New Labour under Tony Blair as it is supposedly devoid of a set of rigid ideas and thus able to accommodate a wealth of differing perspectives. The notion of *New* Labour having moved beyond ideology converges clearly with Giddens' notion of post-ideological politics in which liberalism is essentially the only political option. Indeed, Giddens is echoed further as liberalism is essentially positioned 'beyond left and right'. The depoliticising function of the construction of a middle (or third) way is made explicit in this account. The idea of liberalism being free from the shackles that restrict both the 'old left' and the 'new right' further entrenches Walzer and Rorty's shared understanding of liberal politics in the era of international terrorism.

[69] See Chapter 4 for further discussion

terrorism – defining it to be instead 'immured in a culture of death'[70] – is not in this account aimed at Ignatieff and Walzer as required. The critique is directed outward from a selective understanding (or selective presentation) of the liberal framework that is unable to accept that the political division between liberals and neo-conservatives is, in the context of the 'war on terror', largely a façade.

The critique of military intervention is based on its motivation. Due to a lack of humanitarian motivations couched in the language of human rights there has been for a number of scholars an inevitable lack of regulation restraining the 'war on terror' in its foreign escapades. In response to this, human rights are posited as the basis for a regulated intervention because 'a crusade to defend core human rights has built-in restraints that a crusade for the general expansion of democracy does not'[71]. In denying that a war for human rights is defined by a lack of restraint, this confirms the influence of Ignatieff (and Walzer) by suggesting that war in the liberal understanding must be restrained by human rights principles and ultimately must always be understood to be a 'lesser evil'[72].

This apparently critical analysis of the liberal intellectual however blurs the liberal/neo-conservative distinction claiming Ignatieff for the liberal camp whilst critiquing many of his central points. As with the dominant liberal critique of the application of human rights in the current context, this critique of just war theory in relation to the 'war on terror' is short-sighted at best, focussed on the *misuse* of what should be a mechanism of restraint over warfare. The confidence in just war theory extends to a view that it will, if employed correctly, lead to a break with the current status quo despite its use by Ignatieff (and more explicitly by Walzer) to substantively reinforce the formation of the current regime[73]. Human rights have in this

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[70] Farer, *Confronting Global Terrorism,* 230

[71] Farer, *Confronting Global Terrorism,* 40

[72] Ignatieff is referenced directly here and also provided a blurb for the book in which he describes Farer's account as 'a passionate, reasoned case for a liberal grand strategy of containment which will enable America and her allies to master the challenges of the 21st century—terrorism, war, nuclear proliferation and genocide—without sacrificing the principles of prudence, human rights and basic decency on which America's legitimacy as a world power depends', Michael Ignatieff, "Early Review", review of *Confronting Global Terrorism and American Neo-Conservatism: The Framework of a Liberal Grand Strategy,* by Tom Farer, www.tomfarer.com, accessed August 6, 2012, http://www.tomfarer.com/reviews.html. Moreover, Farer suggests that coercion in general is for liberals a *lesser evil* with the preference lying with a 'search for cooperative mechanisms'. Farer, *Confronting Global Terrorism,* 245 emphasis added.

[73] Farer's critique of the misapplication of just war theory is aimed predominantly at Jean Bethke Elshtain and her book *Just War Against Terror.* See, Jean Bethke Elshtain, *Just War Against Terror:*

interpretation been co-opted by a non-liberal project that has led us down the path to the 'war on terror'. What is required is a return to a liberal framework for responding to terrorism that centres on a 'true' interpretation and application of human rights norms. The dominant line in this literature is reiterated here: liberalism and human rights are in no way implicated in the violence of the current regime; instead it is due to a *lack* of these principles that this 'war' has been characterised by such violence at home and abroad.

In agreement with the public intellectuals considered above, liberalism is legitimated on the basis of its apolitical, post-ideological approach to terrorism and it alone is capable of considering the root causes of terrorism and the necessary responses without a predominant recourse to military means. The fallacy of this presentation of liberalism is further exposed (if further proof was needed) by the account given of the necessary political and economic response to terrorism. Economic 'restructuring' is advocated in response to the 'relevance of poverty' but is limited to a reallocation of military expenditure to education projects in the Muslim world without any broader consideration of a redistribution of wealth[74]. In the true liberal sense poverty and inequality are not viewed as systemic features of the global capitalist system and their existence in the Muslim world is unrelated to the economic system defined and legitimated by liberalism.

The mystification of the reality of liberal responses to terrorism in the current era is astounding in this account as indeed it is throughout the liberal literature. The support for (and returned by) Ignatieff serves to reinforce a façade that ultimately revolves around the selective critique of the function of the intellectual (and the denial of its relevance for those scholars articulating these critiques). Fundamentally, the

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The Burden of American Power in a Violent World, (New York: Basic Books, 2003). Elshtain's intervention has for Farer provided an intellectual articulation of the neo-conservative project from a formally liberal standpoint and on this basis requires critique. Elshtain's position on the 'war on terror' serves to extend the justification for military intervention to Iraq (as opposed to stopping at Kabul as many of her contemporaries have done) through the application of just war theory. She derides the left for its inability to understand the reality of the threat (much like Walzer has sought to do in his application of just war theory) and outlines an account of the 'war on terror' that echoes much of Ignatieff and Walzer's position. The critique however for Farer does not extend to these liberals and is focussed on Elshtain in typical fashion on the basis of her apparent abdication of liberal principles.

[74] Based on this 'redistribution' the assertion is that the 'poverty' of the Muslim world is an intellectual one before an economic one. This can be attended to without any substantive reordering of the economic status quo and in Farer's understanding requires the empowerment (financially and intellectually) of liberal leaning scholars in the Muslim world. The implied intellectual poverty of the Muslim world echoes Rorty's construction of the unenlightened other of the non-Western world. Intellectual acumen is measured solely by the adoption of liberal ideas.

depoliticisation of the response to terrorism is combined with the presentation of the liberal approach based on an outright denial of its ideological foundation. The liberal strategy is ultimately one that reaffirms 'limits on violence' and seeks to return to a liberal foundation abandoning the unrestrained, unbalanced and overtly ideological project defined at present by the Right. Liberalism is politically a third way between equally unsuitable political 'extremes' – a 'moderate', 'measured' response has been lacking only due to a marginalisation of liberal voices[75].

The legitimisation of the current regime through support and 'critique'

While not all contributors share the confidence of those scholars behind the Australian campaign for a HRA, the emphasis on human rights principles as the essential regulatory tool for the response to terrorism endures throughout the critiques aimed at the current regime. The concern with the real or potential slide into exceptional measures is a continuous theme among liberal scholars and academics working on the liberty-security relationship and ultimately reinforces a common approach based on human rights principles employed to secure the sovereignty of the law. The proponents of balance in their multifarious guises see it as the essential tool to maintain the place of human rights and concerns for liberty in the current politics of security that will ultimately restrain the state to remain within the rule of law. Those few who are altogether dismissive of balance base their critique on the idea that it provides the justification for an overriding concern for security to be imposed without regulation and opens the door for the type of exceptional measures that liberalism cannot sustain. The arguments for and against balance ultimately involve no more than a disagreement about how to regulate the sovereign.

There is undoubted evidence of a convergence among liberal scholars in the contemporary era on the concept of regulation being based in human rights principles. As Schmitt forecast, the concept of balance is for the predominant number of scholars the essential liberal tool for the reconciliation of opposing forces. The apparent conflict in this literature is in reality superficial and there is widespread agreement on the importance of withdrawing from the 'dangerous' politics of security in which the

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[75] The potential influence of this perspective beyond the academic sphere is arguably enhanced by the position of Farer and Gearty on the advisory board of Human Rights Watch. The relevance of this will be considered in the next chapter.

executive is free to make exceptional decisions. Applying the concept of exception in a Schmittian sense as a test to submit liberalism to reveals that the intellectual and scholarly approach to the relationship between liberty and security conforms to the essential depoliticised framework of liberal politics that Schmitt exposed. The location of human rights principles at the centre of law and the subsequent prioritisation of these principles as regulatory tools underpins a common approach that unites the voices across the levels of intellectuality. These contributions are united through a commitment to the rule of law that posits the law as an autonomous force that serves to restrain the state and if imposed (or return to) the violence that characterises the current regime would be avoided.

This common approach serves to exclude any alternative perspectives that seek to confront the current politics of security outside the parameters of legal regulation. Any substantive critique of the status quo that would go so far as to substantively question the validity of human rights principles and legislation is dismissed as a dangerous ploy to provide the state with unrestrained power. This potential cannot be accommodated within the liberal system and the quest to 'save' liberalism from exceptionalism unites the liberal intellectual and scholarly community concerned with liberty in the context of the 'war on terror' and marginalises the 'solution' to within a set of essentially depoliticised parameters.

The influence of the public intellectual strata is clear throughout the literature and has had the effect of defining the debate as one exclusively about the liberal relationship between liberty and security. The apparent range of perspectives accommodated in this debate share the common view that the resulting framework arising from these interventions should be liberal in character. There exists an apparently paradoxical situation in which those interventions that purport to advocate a critical perspective offer an essential source of legitimacy to the current regime. Critical perspectives accommodated within this debate are ultimately devoid of substance as their inclusion is premised by conformity to a liberal agenda. These critical analyses are tied up in the same project as their more conservative counterparts of revisiting and revitalising the liberal framework (despite the occasional identification of an alternate project) and are all defined by an unwillingness or inability to transcend the parameters to the debate set by the public intellectuals considered above.

The accommodation of critical perspectives ultimately gives the impression of a regime that is open to critique and transformation and thus the resulting common approach is presented as the result of much soul-searching within the intellectual community. This façade of self-critique provides a vital source of legitimacy to the current intellectual debate and fundamentally presents the political regime as one that is able to sustain critical evaluation. In reality, truly alternative perspectives that are willing to consider a different political framework in which to confront the current regime are marginalised, stripped of any legitimacy and dismissed as extreme to the point of constituting a threat of their own. Indeed, the threat they pose is real in terms of an attack on the legitimacy of the current political framework in which the liberty-security regime is located yet this threat is equated with or assimilated to the threat to 'security' that apparently defines the current epoch[76] . The dismissal of political alternatives is done through a process of depoliticisation that is aimed at all threats to the status quo. Liberalism is the only option available to organise the response to terrorism as much as it is the only option we have to organise the current political and economic regime. It is from this understanding that the current debate – including here the interventions of public intellectuals and the scholars and academics considered above that labour under their direct or indirect influence – is confined to the revisiting and 'reforming' the liberal framework.

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[76] The threat is equated with a physical threat to security but this equation arguably reveals further that the concern with security is in reality a concern with the stability of the current regime before it is a concern with the physical security of the nation.

Chapter 3.

Outside looking in?
Human rights organisations and the politics of liberty and security

This chapter considers the intervention of human rights organisations in the debate on the liberty-security relationship in the context of the 'war on terror'. The legitimating effects of the 'debate' that has occupied those working within the traditional intellectual sphere raises questions about the extent to which the function of the liberal intellectual extends beyond this sphere. This chapter therefore seeks to ascertain if this legitimising function can be understood to inform, or even define, the work of human rights organisations. The literature drawn upon here is taken from some of the most well known human rights organisations that have an international remit including *Amnesty International* and *Human Rights Watch* as well as those who have a more regional focus including *Liberty*. In the post 9/11 era the apparent effect that the 'war on terror' has had on the protection of human rights has emerged as one of the foremost issues occupying leading national and international human rights organisations. These organisations have at different intervals focussed their attention (and subsequent campaigning activities) on specific national issues and development of legislation as well as on the broader international impact the 'war on terror' has had on the position of human rights vis-à-vis security.

These national and international human rights organisations are considered in terms of their intellectual function understanding that they constitute a different level of intellectual activity to those individuals considered in the previous sections. Understanding the human rights organisation as having an intellectual function to some extent distinct from the academic or even public intellectual (although there are of course individuals and groups who cross these 'boundaries') is based in their work being aimed predominantly 'on the ground' so to speak. The active campaign work that defines these human rights organisations separates them – at least in popular understandings of their function – from the intellectual whose work is first and foremost from the chair. The decisive legitimating function of interventions that remain (in this over-simplified sense) 'on the page' has been illustrated above but the concern in this section is with the literature produced by human rights organisations in accompaniment to their campaigning activity.

The analysis seeks to ascertain what is specific about this literature as well as identifying any points of convergence with the central principles exhibited in the intellectual 'levels' considered in the previous two sections. Given that the legitimating function of the liberal intellectual is one which cannot be played by the more conservative or straight supporters of such security politics this analysis seeks to ascertain if there is a more specific (and potentially more powerful) legitimating function that is the sole preserve of the human rights *organisation* by virtue of their role and status in a liberal democracy. The relationship between the state and these organisations is a central concern and the analysis is concerned with the potential legitimating function these organisations have in relation to specific national security regimes and the broader politics of security.

The international reputation of these organisations as well as their campaign budgets and ability to disseminate information to a public audience suggests their intervention in this debate is potentially decisive – a concern reinforced by their popular status as the guardians of human rights. Furthermore, in a liberal understanding of politics these organisations are understood to be apolitical. Their status as NGOs (non-governmental organisations) is seen to detach them from the political process and present them as objective observers able to provide impartial critique. Understanding the crucial legitimising function that a professed apolitical status plays in liberalism this analysis will critically consider these interventions to decipher whether in reality the position of these organisations is essentially conservative, or if in their presentation of various critical analyses there exists a substantive contestation with the political framework in which this regime is constructed and sustained. The depoliticising potential of interventions made from an apparently apolitical perspective is a central concern in this chapter.

Liberty as the means to security

The intervention of human rights organisations is presented almost universally as a critique of the current regime. At the core of this critique is the idea that in the context of the 'war on terror' states have been willing to devalue human rights and deconstruct the framework of regulation provided by the commitment to the rule of law and an independent judiciary. In reference to the UK's involvement in this 'war' there is some acknowledgement that the understanding of counter-terrorism (or

security more generally) requiring a revised and reduced commitment to human rights is not entirely a feature of the post 9/11 environment. The tendency to erode human rights in the fight against terrorism is one well established in the UK response to the 'troubles' in Northern Ireland and human rights organisations have been vocal in their critique of UK counter-terrorism policy for many years[1]. However, despite the initial acceptance that some foundations to current counter-terrorism policy were laid in the pre 9/11 period (in the UK at least) there is a unified sense among human rights organisations that the rapid evolution of security strategy in the current post 9/11 period has been marked by a fundamental, epoch defining departure from the principles of liberal democracy. The assertion is made that we have seen a departure from a previous age in which states were willing and able to stay loyal to the liberal tradition and sought to maintain security without impacting negatively on human rights. The obfuscation of liberal politics and the history of liberal state intervention in domestic and foreign policy is pronounced from the outset.

That the condemnation of the current liberty-security regime is premised on the negative impact on human rights is unsurprising but the additional concern of each of the main human rights organisations is that the abdication of human rights principles is not simply problematic from a human rights point of view but is, moreover, counterproductive. *Amnesty International, Human Rights Watch* and *Liberty* are committed to the goal of ensuring security and share the idea that 'true security is ultimately about ensuring an environment in which all human rights are fulfilled, respected and protected'[2]. The opposition between liberty and security that has occupied both sides of the debate is for these organisations ultimately a false one. The notion of balance is to be retained to provide the appropriate framework for accommodating all rights[3] and indeed they are at pains to point out that there is an

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[1] Catherine Scorer, *The Prevention of Terrorism Acts 1974 and 1976*, (London: National Council of Civil Liberties, 1976); Amnesty International, *Northern Ireland: Report of an Amnesty International Mission to Northern Ireland* [28 November 1977 - 6 December 1977], (London: Amnesty International, 1978); Catherine Scorer, Patricia Hewitt, Sarah Spencer and National Council for Civil Liberties, *Prevention of Terrorism Act: The Case for Repeal*, (London: Civil Liberties Trust, 1985); Human Rights Watch, *Human Rights in Northern Ireland: A Helsinki Watch Report*, (New York: Human Rights Watch, 1991)

[2] Human Rights Watch, *In the Name of Counter-Terrorism: Human Rights Abuses Worldwide*, (New York: HRW, 2003)

[3] Amnesty International, *Cruel. Inhuman. Degrades Us All: Stop torture and ill-treatment in the 'war on terror'*, London: Amnesty International, 2005)

'inherent balance' built into the human rights system[4] but human rights law is not seen to be in opposition to security – the inverse relationship that underpins the position of many advocates of the balance metaphor is rejected. The understanding of the conditionality of security on liberty has built explicitly on the perceived validity and utility of Ignatieff's framing of the issue[5] and the notion of the interrelationship between liberty and security is a central feature of this literature.

There is agreement that human rights law is not an obstacle to security as it is 'sufficiently flexible to allow governments to respond to security threats without tearing up the rules'[6]. Regulation is ensured by human rights and while exceptional measures are ostensibly permissible they remain, in the defining paradox of liberal interventions in this debate, regulated by human rights principles and law. Human rights are constructed as a *means* to security with security constituting the ultimate end of human rights advocacy. This is of course a true representation of the liberal tradition in which liberty is subordinated to security – they exist in fact as synonyms rather than antonyms[7] – but the implications of this are in reality antithetical to what these human rights organisation formally advocate in the primacy of human rights.

Human rights are presented as non-negotiable because they are ultimately 'the route to security'[8] and thus any security strategy that impacts negatively on human rights is at once illegal and destined to failure. Counter-terrorism strategy must confront the fact that terrorism is 'the very antithesis of human rights'[9] (to the point that it is explicitly defined as *evil*[10]) and thus effective security strategy must be based

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[4] Human Rights Watch, *Dangerous Ambivalence: UK Policy on Torture Since 9/11*, (New York: Human Rights Watch, 2006)

[5] 'I thought he (Ignatieff) had it exactly right. We *do* need to explain how respect for human rights increases our security rather than jeopardizes it' William Schultz, *Tainted Legacy: 9/11 and the Ruin of Human Rights*, (New York: Thunder Mouth Press/Nation Books, 2003) 10 original emphasis. At the time of writing and publication of this book Schultz was the Executive Director of Amnesty International USA. The book is sole authored by Schultz as opposed to being formally authored or published by AI but he grounds his discussion in his role as Executive Director. On account of this he is arguably granted greater freedom in the articulation of his argument unconstrained by an official publication but he makes no substantive departure from the line pressed in AI publications.

[6] Human Rights Watch, *Dangerous Ambivalence*, 9.

[7] Burchell in Neocleous, "Security, Liberty and the Myth of Balance", 133

[8] Amnesty International, *United Kingdom: Human rights are not a game*, (London: Amnesty International, 2005)

[9] Human Rights Watch, *In the Name of Counter-Terrorism*; see also, Amnesty International, *Terror and Counter-Terror: Defending our Human Rights*, (London: Amnesty International, 2006)

[10] Schultz, *Tainted Legacy*, 19

in response on the preservation and promotion of human rights. In constructing rights as *the* condition for security they are definitively *securitised* and implicated as a central component of the logic of security. A critique of the current security regime that is at its core concerned with its inability to ensure security fails absolutely to transcend this logic: instead, it serves only to reinforce the legitimacy of security and the unquestionable status of the current regime.

From war to law: the 'reformation' of counter-terrorism

For these organisations, the fundamental problem with the current regime, and the reason why it is incapable of realising the centrality of human rights, is that it is based on a model of war and not one of criminal justice. As a result of this, the counter-terrorism framework has been based on an alternative or 'shadow criminal justice system'[11] within which the rule of law is compromised and the balance of powers distorted as power is passed from the judiciary to the executive. The revised human rights led response advocated by these organisations is defined by a move (or return) from 'war to law'[12] and the reinstatement of the 'ordinary' criminal justice system as the framework for the response to terrorism. This reform is championed on the basis that it will restore the independence and power of the judiciary and the rule of law that have been casualties of the 'war on terror' on both sides of the Atlantic[13]. Essentially, these organisations construct their response again in the form of the two political demands of liberal rationalism outlined by Schmitt: the postulate of openness in political life and the demand for the division of powers.

This proposed reformation of security strategy that unites the major human rights organisations is predicated on an absolute faith in the legitimacy of the criminal justice system and the rule of law. It is unsurprising that organisations defined by the commitment to human rights law base their criticism on the illegality of the current regime but through this agreed approach law itself is presented as wholly unproblematic and the only sound basis on which to restrain state violence. This

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[11] Amnesty International, *Human rights are not a game*, 3

[12] Liberty, *From 'War' to Law: Liberty's Response to the Coalition Government's Review of Counter-Terrorism and Security Powers 2010*, (London: Liberty, 2010)

[13] Human Rights Watch, *Fighting Terrorism Fairly and Effectively: Recommendations for Obama*, (New York: HRW, 2008)

narrow response reinforces a legal fetishism based as it is on the liberal myth of law as the foundation of justice[14]. In treating the law as an autonomous reality designed to protect human rights these organisations contribute decisively to the mystification of the foundation of the rule of law in something other than class domination and oppression[15]. Furthermore, the equation of law and justice allows for (and necessitates) a commitment to policing powers that are presented in this dichotomy between war and law as the legitimate force (even if in need of increased restraint through oversight mechanisms) to tackle terrorism. The 'from war to law' model is underpinned not only by a legal fetishism but by a *fetishism of the police* that is based on the same absolute commitment to the rule of law[16]. By way of illustration, these organisations are willing to accept an extension of police powers[17] as a supposed alternative to the current regime defined through the model of war.

That an extension of police powers can be presented as part of an 'alternative' framework illustrates how the critique offered by these organisations is fundamentally insubstantial. It is clear that a commitment to the rule of law prevents any truly alternative politics and locates the human rights organisation on precisely the same liberal terrain as those states orchestrating the 'war on terror'. By emphasising the rule of law and the implied legitimacy of the police these organisations confirm the conservative character of their intervention.

The legitimising function of these organisations is based ultimately on the preservation of the state's monopoly on the legitimate use of violence. This is illustrated in both the faith in police powers that is central to the return to the criminal justice model and in their response to the proscription of violent groups. As part of a concern for preserving freedom of speech there has been condemnation of criminalisation of 'extreme' organisations and 'offensive' speech[18] in the context of counter-terrorism. However, there remains a wholesale commitment to the proscription of 'violent' groups with an apparent faith in the state's ability to designate the boundary between offensiveness and violence. The understanding of

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[14] Neocleous, *The Fabrication of Social Order*, 110.

[15] Mark Neocleous, "The problem with normality: taking exception to "permanent emergency"", *Alternatives* 31, 2 (2006).

[16] Neocleous, *The Fabrication of Social Order*, 110.

[17] Human Rights Watch, *Hearts and Minds: Putting Human Rights at the Center of United Kingdom Counterterrorism Policy*, (New York: Human Rights Watch, 2007) 17

[18] Liberty, *From 'War' to Law*, 9

what constitutes an extreme politics posited here does not disturb the state's definition and these organisations reinforce the pacification that is a central feature of both human rights principles and the politics of security. The call for the tightening of state powers is based on this distinction between violent and non-violent dissent and in reality there remains a commitment to counter-terrorism powers as long as they are only aimed at those individuals and organisations that promote and incite 'violence'. The terrorist, on the basis of their commitment to violence and rejection of human rights is to be not only to be expelled from political debate but to be legitimately subjected to the force of the state on the basis of their inhumanity.

From this perspective human rights must be at the forefront of security strategy to prevent peaceful political dissent disintegrating into extremism and violence[19]. However, the support for dissent remains circumscribed within liberal notions of politics defined by discussion and negotiation. The potential for truly alternative politics that seek to transcend this liberal understanding of legitimate politics is denied as a result of the presentation of the 'politics' of human rights. In agreement with Dworkin, human rights are to be the rallying point for modern politics[20], with modern politics understood to operate between poles marked by Conservatives and the liberal-left. All other political perspectives that cannot, or will not, unite around a campaign for human rights are excluded from the political process. The marginalisation of alternative politics is not simply insufficiently criticised by these organisations, it is reinforced and exacerbated as they promote the idea that 'by their very nature, human rights serve the more moderate elements in any culture'[21].

The politics of human rights (organisations)

The notion that human rights should provide a point of unity for a contemporary politics – a politics defined by both security and the protection of human rights[22] – has led these organisations to celebrate the supposedly apolitical status of human rights.

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[19] Human Rights Watch, *In the Name of Counter-Terrorism*, 3

[20] ShamiChakrabarti, preface to *Churchill's Legacy: the Conservative Case for the Human Rights Act,* by Jesse Norman and Peter Oborne, (London: Liberty, 2009).

[21] Schultz, *Tainted Legacy,* 200

[22] This 'dual' concern seemingly now presents a tautology given that they cannot exist for these organisations in isolation from one another.

Human rights abuses fuel terrorism (and in turn render a counter-terrorism strategy not led by human rights counterproductive) through recruiting individuals and groups to the opposition to the 'war on terror'. Therefore, the maintenance of human rights avoids the 'politicisation of the uncommitted'[23] and reduces the reserve army of terrorists. The notion that politicisation is to be avoided and moreover, is negated through human rights is a clear illustration of the depoliticisation that is not only latent in the position of these organisations but is positively celebrated.

The discussion of terrorism is typically rooted in discussions of Islamic terrorism and Al Qaeda. The targeting of the West by terrorist groups is presented as a cynical ploy to exploit the grievances of the 'uncommitted' and recruit them to a cause that they would otherwise reject. The assertion is, following Walzer, that international terrorism is defined exclusively by a religious fanaticism and any resemblance of politics is only 'bolted on' as a propaganda tool. The absolute separation of religious fanaticism and politics is again here crucial to the hegemonic construction of the oppositions that define the 'war on terror'; this rejection of the relationship between religious fanaticism and politics, of *religious politics*, serves a crucial ideological function in this construction[24].

The discussion of the events of 9/11 is symptomatic of the depoliticised interpretation and presentation of international terrorism:

> Those who died that day, regardless of their realities of their respective lives, stood in for all people around the globe who wish little more than to live productively, care for their children, do no harm to their neighbours, spread good will as it is given to them, and stave off the magnet of death[25].

The site, or as Žižek puts it, the 'obstacle'[26], is nowhere acknowledged: the site of the World Trade Centre is irrelevant and the WTO is presented effectively as an entity 'spreading good will' around the globe. The blanket depoliticisation of terrorism is crucial to the depoliticised framework in which the human rights led response to terrorism is constructed.

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[23] Amnesty International, *Cruel.Inhuman.Degrades Us All*, 21.

[24] Contra to this construction, the possibility of an understanding of religious fanaticism as political, not least in relation to Islam, as constituted in political thought is discussed in depth by Toscano. Toscano, *Fanaticism*, 149-171.

[25] Schultz, *Tainted Legacy*, 198.

[26] Slavoj Žižek, *Violence*, (London: Profile Books, 2008) 78.

The fact that human rights and human rights organisations are vital to the reduction of politics to a process that takes place within exclusively liberal parameters is not an altogether surprising finding but it is vital to reiterate that these organisations are not at any level offering a vision of liberalism that differs from the current regime. Of course like the liberal intellectuals considered above the rationale for these supposedly critical interventions is to reform the current regime and return it to its previous liberal foundations – and indeed this justifies the human rights organisation's existence as much as the liberal intellectual's – but the literature produced by these organisations quickly reveals the insubstantial nature of their reforms[27]. The conservatism of the human rights organisation is illustrated most clearly in a document published in the UK by *Liberty* entitled *Churchill's Legacy: The Conservative Case for the Human Rights Act* published in 2009. This document seeks to explain that the Human Rights Act is an essentially conservative (and Conservative) document and while this is not a new perspective and not a new one to come from Conservatives, the fact it was published by *Liberty*, one of the leading human rights organisations in the UK and one that has been continually vocal in its criticisms of the current regime is illustrative of the substance (or lack of) of such critique and the absence of a truly alternative perspective.

That a leading human rights organisation has been willing to put its name to a document that celebrates the central ideas of the ECHR as 'restraint on the power of the state and a deep understanding of the link between individual liberty and private property'[28] is indicative of the politics that underpin human rights organisations more generally. Understanding the UK Human Rights Act as a 'charter against socialism

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[27] The convergence between the liberal intellectual and the human rights organisation in this context is apparent here. The physical proximity of the liberal intellectual and these organisations is illustrated further in the advisory committee of Human Rights Watch (HRW) that includes Tom Farer and Conor Gearty (see above for analysis of their respective interventions). This advisory committee also includes Bruce Hoffman who is arguably one of the security intellectuals *par excellence*. Hoffman's importance to HRW points to the intellectual convergence of the human rights intellectual and security intellectual as well as illustrating their shared importance to human rights organisations. Hoffman has served as Scholar-in-Residence for Counterterrorism at the Central Intelligence Agency and as an adviser on counterterrorism to the Office of National Security Affairs, Coalition Provisional Authority, Baghdad, Iraq. The fact that one of the leading human rights organisations takes advice from some of the same sources as the US government demonstrates how close the human rights organisation sits to the official position on counter-terrorism and the liberty-security relation more generally. Again here we are reminded of Walzer's provision of intellectual assistance to the US Marine Corp as further illustration of the close relationship between the state, the liberal intellectual (both human rights focussed and their security counterparts) and the human rights organisation.

[28] Norman and Osborne, *Churchill's Legacy*, 6.

and state interference'[29] as well as one that should be celebrated on the basis that it asserts no right to economic equality[30] is liberal in the purest sense but does not sit comfortably with the vision of liberalism formally professed by human rights organisations. The reality of contemporary liberalism, still tied firmly to the central tenants of the classical tradition, is here brought to the surface.

There is an attempt by these Conservative human rights advocates to maintain a distinction between Conservative and liberal or even radical conceptions of rights[31] but it is clear on further inspection of this literature that the Conservative and liberal[32] understanding of the politics of human rights is essentially the same. They remain grounded in notions of balance (including the capacity to be flexible and thus realistic in the current so-called 'Age of Terror'), compromise and the restraint of executive power. This document provides an illustration of the reality of liberal principles that continue to underpin human rights and define them as an essentially conservative tool in political and economic terms. This reveals why human rights can, and must, provide the rallying point for a contemporary politics that extends only as far as Conservatives and the liberal-left that are in reality two 'poles' in very close proximity.

The notion of a new politics being implicitly bound up with human rights places the human rights organisation at the heart of the political framework. The basis for human rights has been posited as 'political consensus'[33] a concept that suggests again that human rights are the rallying point for a unification of disparate groups who seek political empowerment. This consensus should include human rights courts (and by extension the judiciary) and human rights organisations who have in this sense a definitively legalistic role in monitoring the transgression of human rights law. The truly political character of this 'consensus' is exposed when guidelines for its realisation instruct the human rights organisations and human rights advocates more generally to stop thinking of generals, police chiefs and politicians as adversaries and

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[29] Norman and Oborne, *Churchill's Legacy*, 6

[30] Norman and Oborne, *Churchill's Legacy*, 9

[31] See chapter 6 below for consideration of the 'radical' or leftist conceptions of rights and of their substantive difference from Conservative or liberal understandings.

[32] This based on an understanding of those human rights organisations in focus here assuming a *liberal* presentation of rights that bares great resemblance to the liberal intellectual position that has been substantively expanded in the previous two chapters.

[33] Schultz, *Tainted Legacy*, 116.

start thinking of them as 'potential partners' because 'we' are 'all in this together'[34]. The emphasis on political consensus understood to be defined by the dissolution of conflict and of critique is, even given what we have revealed about the depoliticising force of the liberal intellectual, quite staggering. 'They' are all in this together because the human rights organisation is focussed in reality not toward an alternative goal but toward ensuring their (distinctly non-counter-hegemonic) understanding of security is maintained. The human rights organisation can work with the general, the police chief and the politician because they understand there to be the same end to each of their work and there is in reality only insubstantial disagreement about the most appropriate, or effective means of achieving it[35].

Understanding the future achievement of this 'political consensus' to be a beneficial reform to the current regime is based on the idea that we currently have a system in which those various groups offer fundamentally opposed views about the liberty-security relationship. This is clearly not the case and indeed we already have 'political consensus' established through the hegemonic status of the liberal political framework in which those who subscribe to liberal principles – of which human rights are of central importance – are accommodated into the political debate and those who reject them are themselves denied any sense of legitimacy. This 'reformation' is in the continuation of the character of liberal reforms an attempt to confirm the monopoly of legitimacy that liberalism requires.

Law or war or both

The most important effect of this political consensus is the legitimisation of a liberal interventionism. Humanitarian intervention according to these organisations must be sanctioned by the international community and human rights are presented as the only legitimate basis for military intervention. As long as we understand military intervention to be 'a last resort'[36](or indeed a *lesser evil*) it is quite reasonable for the

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[34] Schultz, *Tainted Legacy,* 193

[35] Reinforcing this consensus, David Chandler has cited Peter Fuchs' (the Director General of the International Committee of the Red Cross) observation that 'the respective roles of the politicians, generals and humanitarian actors are not clear anymore' – See, David Chandler, "The Road to Military Humanitarianism: How the Human Rights NGOs Shaped a New Humanitarian Agenda", *Human Rights Quarterly* 23, 3 (2001)

[36] Schultz, *Tainted Legacy,* 141

human rights organisation to be involved in the decision to go to war (and indeed they must). This is justified on the construction of humanitarian intervention as a policing project and, as it is one based on human rights principles, as a legally regulated project. The legal fetish and the fetish of the police underpin the legitimisation of military intervention. Fundamentally, it has been through the discourse of human rights that these organisations have been able to advocate 'war' by another name and play a major role in the construction of humanitarian militarism as a tautology[37].

The criticism of the military form of response to terrorism in the 'war on terror' is not concerned with the violence of war *per se* but with the lack of human rights based regulation of the military and security services. These human rights organisations' reports and campaigns serve to mystify the nature of warfare and exacerbate this by presenting a humanitarian intervention as a legally regulated project in which illegitimate violence is avoided and violence in general is limited. These organisations thus play a pivotal legitimating role in the context of military intervention and serve to reinforce the idea that legitimate violence is the sole reserve of the human rights defender – violence is only legitimate when accompanied seemingly paradoxically by a concern for human rights. For these organisations, war is not really a model to be abandoned but it must be justified along the right lines to be legitimate. Through this formulation the notion that violence and law are not in opposition but inextricably bound up together is reinforced. In accepting this we are not to discount the very real possibility for truly exceptional violence in the arena of war but it is made clear that legal regulation through human rights is not a guarantee of non-violence, but for the liberal it is a guarantee of *legitimate* violence.

The dual constraints of the NGO model and the human rights framework

In continuation of the liberal intellectual justifications for humanitarian intervention the ostensibly apolitical character of the human rights organisation provides them with a perceived objectivity and subsequent legitimacy. Those on the left who opposed the war in Iraq for example are again castigated for 'indulging their ideology at the expense of others' suffering'[38]. Those who refuse to accept the post-political

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[37] Chandler, "The Road to Military Humanitarianism".

[38] Schultz, *Tainted Legacy*, 145

framework in which humanitarian intervention is deemed to take place are denied all legitimacy. We have to be willing to work on a post-ideological terrain and those who continue to assert a political character to military intervention are following Walzer, Rorty and others' criticism, deemed to be so out of date as to have nothing to offer. We are told critique is not enough, the current era demands pro-active work on the ground; it demands that all resistance and intervention in current debates take on the model of the human rights organisation. The channels of political expression are reduced to speaking as (or being spoken for by) a human rights organisation in their capacity as an 'influencing organisation'[39].

It is unsurprising from this perspective that there is an active call for what Arundhati Roy has termed 'the NGOization of resistance'[40] because this process of constructing all political movements in the model of these human rights organisations serves to turn confrontation into negotiation. NGOs act as a buffer between the state and the people diffusing conflict and political anger and ultimately denying politics[41]. The depoliticising force of the NGO framework is also in this context reinforced by the legalism of human rights campaigns. Legalism serves to 'translate wide-ranging political questions into more narrowly framed legal questions'[42] divesting political questions of their most crucial concerns and this process is exacerbated by the human rights framework that fundamentally restricts – if not closes – the options for legitimate resistance. Having the human rights organisation follow this model and essentially assuming a monopoly on what constitutes legitimate 'resistance' is therefore very useful to the current regime. As Roy has noted, 'it is not for nothing that the "NGO perspective" is becoming increasingly respected'[43]. The major human rights organisations are increasingly invited to contribute to reviews of counter-terrorism legislation marking explicitly their inclusion in the liberty-security debate[44].

The inclusion in this debate appears to be based on their operation on the same political terrain as the state. This is marked by a shared moralisation that is ultimately

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[39] Lars Jørgensen, "What are NGOs Doing in Civil Society?" in *NGOs, Civil Society and the State: Building Democracy in Transitional Societies*, ed. Andrew Clayton (Oxford: INTRAC, 1996) 53.

[40] Arundhati Roy, *Public Power in the Age of Empire*, (New York: Seven Stories Press, 2004) 43

[41] Roy, *Public Power in the Age of Empire*, 43

[42] Wendy Brown and Janet Halley, 'Introduction' in *Left Legalism / Left Critique*, ed. Wendy Brown and Janet Halley (Durham and London: Duke University Press, 2002) 19.

[43] Roy, *Public Power in the Age of Empire*, 44.

[44] See, Liberty, *From 'War' to Law*.

the marker of state rhetoric and human rights organisations campaigning (and of the liberal intellectual) in this context. Human rights organisations have sought to 'justify their strategic choices through the language of morals and ethics rather than politics' in an attempt to maintain their neutral and "non-political" status[45]. Human rights discourse has been integral to preserving the façade of an apolitical framework for these organisations in the same sense that it has apparently allowed the state to present its security policy as an apolitical response to an apolitical problem. The human rights organisation serves as the model par excellence of post-politics and as a result these organisations have an exclusive legitimising function in relation to the politics of security.

Possibilities for critique?

In being told that critique is not enough we are expected to abandon the 'outmoded' ideological constraints of 'previous' political models. We have to 'modernise' and assume a post-political framework exemplified by the human rights organisation. It clearly serves these organisations' own interest if political engagement is dependent on their involvement and leadership but there is a need to illustrate that this framework for (political) engagement is pivotal to the politics of security that define the current regime. Human rights organisations define this supposedly new politics because they are (as they are only too happy to explain) willing to 'set aside personal political predilection, doctrine or ideology'[46]. They do this because human rights values themselves apparently transcend ideology: they are post-political in that they can and should be adopted by all political perspectives – bearing in mind that the spectrum of (legitimate) political opinion is very narrow. The transcendence of 'culture, ideology and faith' is done 'in service to that which is recognisable to all: the human face of suffering'[47] reinforcing Ignatieff's reading of human rights reduced to a definition of the minimum conditions for any kind of life at all[48]. The NGO

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[45] Chandler, "The Road to Military Humanitarianism", 683

[46] Schultz, *Tainted Legacy*, 207

[47] Schultz, *Tainted Legacy*, 208

[48] 'The campaigning human rights-based NGOs did much to denigrate the non-Western state and legitimize Western activism through the creation of the *incapable human rights victim*'. Chandler "The Road to Military Humanitarianism", 691 emphasis added.

framework and human rights principles are not simply manifestations of but vital components in this post-political politics that serve fundamentally through their operation and formal presentation to obfuscate the real political decisions and ideology that operate behind this thin façade erected at the so-called end of history.

The thinness of this façade is clearly exposed throughout the literature produced by these organisations. There is an acceptance that as human rights are central to security in the so-called Age of Terror, human rights organisations are directly implicated in counter-terrorism. These organisations are central to the 'battle for ideas' that is crucial to the fight against terrorism[49]. This involves for example substantive support for the UK government's PREVENT (counter-radicalisation) programme[50] as well as a more explicit acknowledgement that the 'battle for ideas' requires the promotion of 'our' political and economic systems as an 'alternative ideology' that 'the retinue needs if it is to reject the dead-end blandishments of Al Qaeda'[51]. The human rights organisation does not operate abstracted from 'our' political and economic frameworks and is intrinsically bound up in the opposition to terrorism that is challenged by not simply by the assertion of human rights but by the assertion of liberal democracy and free-market capitalism. Those who refuse to offer alternatives and 'resort' to critique are indulging their ideologies but those who seek to oppose terrorism in this explicitly western-centric fashion are not indulgent or ideological but pragmatic in their Rorty-esque assertion that human rights culture and the political and economic models it is borne of and in turn reinforces are 'the best we've got'.

In reality, in this framework critique is not 'insufficient' as we are told, but is disruptive and must be marginalised. True critique that seeks to identify and name the politics of security is again identified as a threat in itself. The conservative, legitimating function of the human rights NGO is here in line with that provided by the liberal intellectual. Presenting critique as nihilism and the mark of lazy ideologues standing in contrast to the constructive and effective intervention from within the NGO framework serves to further mystify the nature of true political action and reinforces the monopoly of legitimacy for the human rights organisation. If instead we

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[49] Human Rights Watch, *Hearts and Minds*, 1

[50] See chapter 4 for a consideration of this programme

[51] Schultz, *Tainted Legacy*, 62

understand critique allowing for a 'focus on the workings of ideology and power in the production of existing political and legal possibilities'[52] then it is vital for an alternative politics that must expose the ideological and expressly political character of the current liberty-security regime and by extension the expressly political nature of human rights advocacy within this organisational framework.

The role of the human rights organisation is to be understood in line with the liberal intellectual as broadly conceived here, but we must remain aware of the specific character of the intervention by these organisations. Their status as the guardians of human rights and their direct public campaigning provides them with far greater potential to affect public opinion and the legitimating function of their intellectual work is intensified on this basis. The popular acceptance of their location outside the political sphere again provides them with a legitimating function not wholly available to the liberal intellectual work confined to 'the chair'. The relation of these organisations to the state is one of legitimisation that builds upon the organisation's apparently apolitical position and the pretence of (objective) critique. Substantively their position is in line with the liberal intellectual reinforcing the convergence in position between apparently diversely situated voices but their proximity to the state (demanded by their 'influencing' role) provides them with an intensified legitimating function the result of which needs to be considered through an analysis   of   state   strategy.

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[52] Brown & Halley, *Left Legalism*, 27

Chapter 4

The official presentation of the liberty-security relationship
Drawing out the state politics of national security

This section is concerned with the state politics of security. Having established an understanding of the true nature of the liberal intellectuals' intervention and illustrated the depoliticisation and subsequent legitimisation of the 'war on terror' that is at the core of their work, there is a need to consider how the state in the current era understands, presents and enacts its approach to the security in this context. This chapter therefore considers precisely how the politics of security have been set out and developed through the production and evolution of the official approach to security in the post-9/11 era. The analysis seeks ultimately to draw the politics of security from the security strategy documents produced in this period.

The analysis focuses on the national security and counter-terrorism strategy documents produced by the UK, Australian and US governments in the era of 'war on terror'. In continuation of the UK-Australia comparison this analysis seeks to identify at the level of state strategy the extent to which there has emerged a common liberty-security regime at the antipodes. The analysis seeks to identify if there exists a specifically *Anglo-Saxon* regime shaped by the specific political culture and legal system in the UK and Australia in which the liberty-security regime is installed and maintained or alternatively whether there exists a convergence between all three nations considering the influence of the US formulation of security on its allies in the 'war on terror'. The analysis is concerned with how these states conceive security – in both domestic and international contexts – in the current epoch but moreover how they define the current situation within which security strategy is developed and employed. Essentially, this equates to how the state positions the politics of security historically and this question is at the heart of the analysis.

From this starting point, against the backdrop of an official understanding of the current situation, the analysis seeks to ascertain how the state defines security issues in relation to those populations and phenomena it credits with posing a risk to security. At its core, this involves a focus on the construction of an enemy; the process by which the state establishes and subsequently defines the opposition that characterises the liberal state's approach to security. This will involve a consideration

of how the state defines both external and internal enemies in the current era as well as a continual focus on the strategies employed to legitimise the response.

The analysis begins from an acceptance that much of what is to be drawn from these documents is, in a broad sense, well known. However, there is a need to demonstrate clearly the ideas that guide current liberal politics and to analyse the extent to which simplistic ideas that have already been subject to critique do in fact provide the level of guidance that is attributed to them. Engaging in a critique of the liberal state is again on first impression an easy target in this context, yet, as has been demonstrated in the previous chapters, such an 'easy target' may only be so when an analysis fails to consider in depth the decisive function that these ideas may have and the political consequences of their employment. The analysis therefore remains concerned with the ideas that underpin the state's presentation of the current situation considering throughout the ideological function of what appears in these documents to be a process of *marketing* the politics of security.

Security in the age of human rights

The emphasis on 'national security' as a specific state concern is a feature of the latter part of the twentieth century[1] and the production of national security strategy (NSS) as a standalone document is a new phenomenon to the post-9/11 era. From the outset, the formal presentation of the current situation has been the central concern of these strategy documents. There is universal agreement across these documents that the issue of (in)security and its response have to be understood in the specific context in which they have evolved and as a result strategy documents play a vital role in presenting a very specific, state sanctioned vision of the world. This is an explicit role of security strategy and of the counter-terrorism strategies that are located under the banner of national security. It is essential in this analysis to decipher how the current era is presented through security strategy to establish the vision of the world presented by the liberal state. From this point the analysis will be able to ascertain how the politics of security are historically located and positioned in relation to (and as an integral part of) the broader politics of the liberal state.

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[1] Mark Neocleous, "From Social to National Security: On the Fabrication of Economic Order", *Security Dialogue* 37, 3 (2006).

In the first instance we are told that both the contemporary threat to security and the state response to it have to be understood in line with how the world has changed in the twenty-first century. The current situation is located this side of a definitive break between centuries and the features of this new era are we are told, integral to understanding the current security situation. The twentieth century ended, albeit eleven years early, with a 'decisive victory for the forces of freedom' that left 'a single sustainable model for national success' defined by 'freedom, democracy, and free enterprise'[2]. The struggles of the twentieth century have been overcome with the 'forces of freedom' unanimously victorious. The defining opposition of this period, that between 'two power blocs' driven by ideology (and located either side of a freedom/tyranny binary), has been replaced by 'more complex and unpredictable sets of relationships' leaving a 'transformed international landscape'[3]. Essentially, this 'transformed landscape' is one on which their remains no defining opposition between nation states, 'power blocs' or ideologies. The current era began in 1989 with the defeat of *the* opposing world view and there is now no 'sustained global challenge to the liberal, market-oriented vision of a free society'[4]. We have reached the end of history; the age of political oppositions, of politics, is over.

So how then is the current era to be understood? It is clearly to be understood in the first instance not as an age of politics – not as an age in which world views or ideologies compete and conflict – a 'fact' much celebrated by the 'victorious forces of freedom'. These forces have therefore carte-blanche to define this era in their own image and this is as a result an age of freedom, democracy and human rights starkly distinguished from a previous era blighted by war, barbarism and inhumanity. The 'militant visions of class, nation and race which promised utopia and delivered misery have been defeated and discredited'[5] and in its place we have a vision of the world defined by human rights:

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[2] Executive Office of the President United States, *National Security Strategy of the United States of America*, (Washington, DC: Government Printing Office, 2002) iv

[3] HM Government, *National Security Strategy of the United Kingdom: Security in an interdependent world*, (London: HMSO, 2008) 3.

[4] HM Government, *National Security Strategy of the United Kingdom: Update 2009 - Security for the Next Generation*, (London: HMSO, 2009) 5.

[5] National Security Strategy of the United States of America 2002, 1

113

In the twenty-first century, only nations that share a commitment to protecting basic human rights and guaranteeing political and economic freedom will be able to unleash the potential of their people and assure future prosperity[6].

Human rights are central to the victorious forces of freedom that closed the twentieth century in possession of the only viable political and economic models. Moreover, human rights have not simply replaced visions of class, nation and race they have replaced politics becoming the only point of distinction between nations. As has been noted above, this formulation reinforces the idea that the main contemporary effect of human rights is to 'depoliticise politics itself'[7] and it is in this frame that the current era is presented. The age of politics has given way to an unavoidably depoliticised age of human rights.

However, it is important to note that freedom is defined in political *and* economic terms. Free-market capitalism is presented post-1989 as the victorious economic model and in turn as an inevitable defining feature of the current era. We are to understand the post-1989 period as the period of the triumph of the market which has secured universal acceptance as the only route to 'peace, prosperity and liberty'. There is now no possibility, or even desire, for an alternative model:

> People everywhere want to be able to speak freely; choose who will govern them; worship as they please; educate their children—male and female; own property; and enjoy the benefits of their labor. These values of freedom are right and true for every person, in every society—and the duty of protecting these values against their enemies is the common calling of freedom-loving people across the globe and across the ages[8].

The economy, in its current very specific form, is taken as a given both as the defining feature of the current global situation and as the end point for the development and consolidation of the new post-political era. Free trade is understood to be 'real freedom'[9] and the economy is thus presented in this formulation as the overcoming of the political. The economy is depoliticised – the age of politics in which economic models and political ideologies were opposed has given way to an 'age of freedom' defined by free-trade and the free-market – and global capitalism is posited in the

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[6] National Security Strategy of the United States of America 2002, iv

[7] Douzinas, *Human Rights and Empire,* 102

[8] National Security Strategy of the United States of America 2002: iv

[9] National Security Strategy of the United States of America 2002: 18

contemporary era as the objective state of things. As history is here divided in two eras either side of 1989, global capitalism (or moreover the economic sphere in general) is withdrawn from consideration; the end of history marks the end of questioning the role and form of the economy.

This vision of the age of freedom is set out most explicitly in twenty-first century US security strategy produced in its first form in 2002. UK and Australian documents produced later in the last decade (2008, 2009, 2010) demonstrate the subsequent convergence of all three states around this formulation; the existence of a post-political age of human rights and the free-market are taken as a given. There has remained a clear need throughout the evolution of security strategy in each nation reinforce this vision of the world and this is ultimately because security is to be understood in this frame.

The goal of security strategy is to 'safeguard the nation, its citizens, our prosperity and our way of life'[10]. 'Our way of life' has to be understood in line with the presentation of the current era, defined by a commitment to human rights and the free-market. The defence of this 'way of life' is framed in terms of the defence of these 'shared values' (human rights and free-enterprise) that is both premise and consequence of security strategy. The notion of an international order defined by (human) rights is shared in UK, US and Australian NSS and the defence of this order is at the core of security strategy. Accordingly, we are told that there exists a broad consensus on the features of security strategy among those who share 'our' values and goals[11]. Security is presented as a common goal of those who share a commitment to human rights and by extension the formulation of current security strategy advocated by these states is presented as compatible with, and essential for, the defence of human rights. The fusion of human rights and security here serves to extract any political dynamic from the international relations that characterise the current security environment. Security becomes solely about the protection of rights not about the defence of a given political order. In this sense, conflict is reduced to disagreements about rights and politics is effaced from security strategy.

However, given the conflation of 'freedom and free-enterprise' (human rights and the free-market) security is about the defence of 'our way of life' understood in

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[10] National Security Strategy of the United Kingdom 2008: 3

[11] See, Kevin Rudd, *The First National Security Statement To The Australian Parliament*, 4th December (2008), 3

economic as well as (post)political terms. Based on the status of the capitalist economy as an objective feature of the current era integral to our freedom, defending the free-market as a central component of defending 'our way of life' can be presented as an uncontentious, non-political feature of security strategy. Building a consensus among allies in the 'war on terror' around shared values is clearly about developing a unified force behind the promotion of human rights but is also about sustaining and expanding the consensus around the unequivocal status of free-market capitalism. Indeed the two cannot be separated; security is about defending the current political and economic status quo, but presented in a depoliticised frame that mystifies what is clearly a well defined political project.

The utility of the notion of balance

The relationship between freedom and security in security strategy is, as expected, unanimously mediated through the application of the metaphor of balance. As we have seen in relation to the liberal intellectual this is an almost universal liberal tendency and it is unsurprising that the state follows this approach. However, the specific formulation of a balance between liberty and security as currently deployed in security strategy has several crucial effects that reveal much about the liberty-security relationship and its integral role in the 'new' era of post-politics. In the first instance, the apparent opposition between liberal notions of liberty and security is emphasised through its application allowing the prioritisation of security (as liberalism in reality demands) to be concealed behind a balancing act that supposedly serves to protect the concern for liberty.

As an indicative example, the UK NSS (2009) positions 'core values' in a balance with security and the right to life. Equating security with the 'right to life' in effect sets up a balance *between rights*, understanding security to be a right in itself. However, security is here not simply one right amongst others to be balanced, but the foremost right that will be guaranteed through security strategy[12]. The formulation of security as the supreme right illustrates the hegemonic status of the language of rights

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[12] 'There is no greater individual liberty than the liberty of individuals not to be blown up on British streets or in British skies'. Jacqui Smith, "Home Secretary's statement on the counter-terrorism bill", October 13th 2008, accessed April 14, 2011,
http://www.labour.org.uk/jacqui_smith_statement_on_counter-terrorism_bill,2008-10-13

within the politics of security. Moreover, it enables the balance between liberty and security to be reduced to a balance of rights which in turn enables all security measures to be presented as a defence of rights. The 'opposition' between security and liberty is diffused in this formulation as security is presented as the ultimate right – the right to security – and as a result freedom is reduced to the freedom from insecurity.

As the application of balance allows for the prioritisation of security, it opens the space for the expansion of security measures whilst maintaining the essentially liberal charade of balance as a regulatory force. While there is widespread agreement that striking this balance is the 'fundamental challenge for any government'[13] balance is not simply a framework for the necessary accommodation of opposing forces; it is the route to a more 'effective'[14] and 'coherent'[15] security strategy. Balance defines the official approach to the relationship between liberty and security but also defines the response to a number of opposing concerns within the context of security strategy. The supposed novelty of the new security environment has required a deconstruction of the distinction between domestic and international security[16] and in response there has been an attempt to 'rebalance the instruments of statecraft'[17]. The (re)balancing process here affords the government the flexibility to reorder the tools it has at its disposal in defence of security and leaves open the option of extended state powers as

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[13] HM Government, *Pursue Prevent Protect Prepare: The United Kingdom's Strategy for Countering International Terrorism*, March 2009, (London: Stationary Office, 2009) 55. The idea that striking a balance between liberty and security is the fundamental challenge or dilemma of the current era was explained by Tony Blair in his speech to the Labour Party conference in 2006 'The fundamental dilemma: how do we reconcile liberty with security in this new world?' Illustrating the dominance of this idea, David Cameron suggested in a paper setting out the plan for a British Bill of Rights (a paper in which he criticised Tony Blair and New Labour's approach to the liberty-security relationship) that 'the fundamental challenge, then, is to strike the right balance between security and liberty'. See, Tony Blair, 2006, "Speech to the Labour Party Conference", *The Guardian*, 26 September, accessed April 14, 2011, http://www.guardian.co.uk/politics/2006/sep/26/labourconference.labour3; David Cameron, *Balancing Freedom and Security – A Modern British Bill of Rights*, (London: Centre for Policy Studies, 2006) 2.

[14] Australian Government, *Counter-Terrorism White Paper: Securing Australia – Protecting Our Community*, (Canberra: Department of Prime Minister and Cabinet, 2010) i.

[15] National Security Strategy of the United Kingdom 2008, 58

[16] This fusion of international and domestic elements of national security and counter-terrorism is a feature of security strategy in UK, Australian and US strategy and is central to the 'new' approach. It was integral to the Australian 'national security reform agenda' under Kevin Rudd. See, Kevin Rudd, Robert McClelland and Stephen Smith, *Securing Australia, Protecting Our Community Joint media release - Prime Minister, Attorney General, Minister for Foreign Affairs*, Canberra, 23 February 2010, accessed April 15, 2011, http://www.foreignminister.gov.au/releases/2010/fa-s100223.html

[17] United States Executive Office of the President, *National Security Strategy of the United States of America*, (Washington, DC: Government Printing Office, 2010), 18

long as these can be subsequently justified within the framework of balance. The use of force in defence of domestic and international security is, we are told, indicative of the resolve to 'maintain a balance of powers that favours freedom'[18]. Security strategy and the 'war on terror' more specifically are seemingly not restrained in their tactics by the balance framework; its employment appears to widen as opposed to narrow the state's options in protecting national security.

In this formulation security and freedom 'should be reinforcing'[19] as they both form part of the *national interest* but have become through the current formulation in NSS to a large extent interchangeable. The concept of a 'national interest' is comprised of security, freedom and prosperity and these three concerns are said to be 'interconnected'[20] suggesting that the realisation of any one of these is conditional on the simultaneous realisation of the others. The inclusion of prosperity as a central concern alongside, or more accurately, bound up in the notion of national security, is a feature of NSS in the UK, Australia and the US. Prosperity underpins security by affording the 'skills and capabilities needed to advance our security from military training and arms, to technical and scientific expertise and equipment'[21]. In this sense, prosperity and security are said to form a 'virtuous circle'[22] through which security is conditional on the preservation or extension of prosperity. In effect we cannot be secure without being prosperous enough to buy the weapons required to defend ourselves. By extension, we cannot preserve the 'core values' and freedoms that a liberal democracy provides without being prosperous enough to buy our security. Protecting prosperity and the means by which prosperity is secured are thus the definitive aims of security strategy. Here the understanding of freedom defined by the free-market is reiterated and infused with notions of security, allowing the essential aim of the defence of the free-market to be central to the defence of 'our way of life' and the national interest. Human rights as the rights to prosperity and more specifically, to property ownership, must be defended.

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[18]National Security Strategy of the United States of America 2002, 29.

[19] HM Government, *A Strong Britain in an Age of Uncertainty: The National Security Strategy*, (London: HMSO, 2009) 23

[20] National Security Strategy of the United Kingdom 2010, 22

[21] National Security Strategy of the United Kingdom 2010, 22

[22] National Security Strategy of the United Kingdom 2010, 22

Depoliticising the Other

It is from this starting point that the claim that counter-terrorism strategy is 'grounded entirely in human rights'[23] needs to be understood. Terrorism threatens these rights and thus constitutes the primary (traditional) threat to security – defined by the US as the 'common foe'[24] – for the international community. This 'community' is here defined by its commitment to human rights as those who reject their validity are 'isolated', or more appropriately, excluded. The terrorists' unwillingness (or inability) to justify its actions inside the language of human rights posits them as relics of the previous age of politics; they are presented as the 'heirs of all the murderous ideologies of the twentieth century.....following the path of fascism, Nazism and totalitarianism'[25]. Given that this age of politics, definitively resigned to the twentieth century, is over, the terrorist's commitment to politically motivated violence and ideology is seen to distort political action. The idea that the security environment is defined by a clash of ideologies is rejected in NSS (and counter terrorism strategies) because ideology is the sole preserve of the terrorist. The ideological foundation of terrorism is not to be opposed by an alternate ideology but by values[26] of which human rights are central. Official security discourse relies upon a false opposition between values and ideology as though an ideology is something other than organised ideas and values; and as though 'values', even more so when they are fundamental or 'core' values, are anything other than valued-ideas (i.e. ideology).

Legitimate forms of political action – defined exclusively by (the values of) liberal democracy – are said to be antithetical to terrorism and this is essentially because the terrorist fails to circumscribe their politics within the parameters set by human rights. Terrorism is underpinned by 'destructive visions of political change'[27] and these must be undermined through counter-terrorism. The goal is to bring about a

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[23] HM Government, *Pursue Prevent Protect Prepare* 2009, 55

[24] Executive Office of the President United States, *National Strategy for Countering Terrorism*, (Washington, DC: Government Printing Office, 2003) 2

[25] George W Bush, "Address to a Joint Session of Congress and the American People", September 20, 2001, in *US National Strategy for Combating Terrorism*, February 2003, 5.

[26] National Security Strategy of the United Kingdom 2010, 16

[27] Executive Office of the President United States, *National Strategy for Countering Terrorism* 2003, 29

consensus around one vision of politics and political action defined through human rights.

The essential problem that security strategy is to address arises from the impossibility of an age of post-politics. As the reality of true politics is insurmountable there exists a major issue with how political oppositions that arise in the current era (or transcend the apparent break between ages) are to be managed. It is here that security strategy has its decisive role. The process of constructing issues as ones of (in)security is about seeking to negate, or at least obscure, the political and it is in this frame that security strategy seeks to define the current threat.

The presentation of the current threat(s) to security involves at its core the construction of an enemy that is distinguished from 'us' not in terms of a political opposition but through its inability or unwillingness to share the vision of the world articulated above. It is vital that security strategy documents provide the space to set out this vision as it allows for the subsequent construction of an enemy understood as its antithesis.

Security strategy documents provide space for the official understanding of the threat to be set out definitively on a depoliticised terrain framed by the distinction between two eras. The ability to locate the threat historically and politically has a fundamental effect on the content of the counter-terrorism strategy that has become more pronounced in the most recent developments. One of the key revisions to the UK counter-terrorism strategy in 2009 was the addition of a 'detailed account of the history of the terrorist threat to the UK, explaining what led to the emergence of the threat we face today. It also theorises as to how the situation may evolve in the coming years'[28]. The provision of such a historical analysis arguably allows the state unrivalled control over defining the current threat that is crucial to the justification of the response.

The historical account provided affirms the dominant diagnosis that the threat is driven *solely* by a 'violent extremist ideology'[29] and in this sense this further reinforces the notion of a post-political era. This is reinforced through a selective account that attributes no western involvement with, or incitement of, any of the factions of the terrorist threat. The threat is identified by a shared attachment to Islam

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[28] Home Office "Taking a new approach to counter-terrorism", March 23, 2009, accessed April 25, 2011, http://www.homeoffice.gov.uk/about-us/news/taking-new-approach-ct

[29] Gordon Brown, Foreword to *Pursue Prevent Protect Prepare* 2009 by HM Government, 4

and only really tied together in the contemporary era by the Al Qaída 'organisation'. This account serves by way of an introduction, to homogenise and thus depoliticise the whole range of movements and causes that are lumped together under the banner of international terrorism. The fact that the only common link is supposedly provided by Al Qaída and their 'extremist ideology' further dismisses the idea of coherent grievances deriving from common causal factors. The history of western military, political and economic involvement in the Middle East is not part of the history of the evolution of the contemporary terrorist threat. The role of UK foreign policy in inciting the terrorist threat does appear to be acknowledged but instead this connection is restricted to 'perceptions'[30] of foreign policy. By formulating views of western foreign policy as 'perceptions' the suggestion is made that all such views are unfounded[31]. This provision of a selective and favourable historical account alleviates the west of any involvement in the development of the contemporary terrorist threat and thus essentially depoliticises the response of those groups defined as 'terrorist'. Ultimately, this historical analysis is set in opposition to the 'fabricated narrative of contemporary politics and recent history'[32] that is said to be at the root of an extremist ideology[33].

This account is reinforced by the continued emphasis on the distinctive nature of the contemporary terrorist movement in contrast to that faced in previous decades. The previous threat is presented as having been manageable through conventional methods and distinct in motivations and strategy from the modern threat that 'is intent

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[30] HM Government, *Pursue Prevent Protect Prepare* 2009, 9

[31] The FCO is undertaking a major program of foreign policy outreach to domestic Muslim communities. Led by the Foreign Secretary, 'Bringing Foreign Policy Back Home' is a campaign to debate and explain foreign policies to 'challenging audiences'. These challenging audiences include domestic Muslim populations who harbour these apparent 'misunderstandings about UK foreign policy that give rise to perceptions of grievances. The US have also more recently expressed a need to 'do a better job of explaining US policies to foreign publics and debunking myths about the United States' See, Daniel Benjamin, *US Government's Efforts To Counter Violent Extremism*, Testimony Before the Emerging Threats and Capabilities Subcommittee of the Senate Armed Services Committee, March 10th 2010, accessed May 11, 2011, http://www.state.gov/s/ct/rls/rm/2010/138175.htm. The problem clearly is that 'foreign' populations just don't *understand* Western foreign policy.

[32] HM Government, *Channel: Supporting individuals vulnerable to recruitment by violent extremists: A guide for local partnerships*, (London: HMSO, 2010) 10.

[33] The US Strategy for Combating Terrorism presents the extremists' worldview as underpinned by a 'subculture of misinformation and conspiracy'. Executive Office of the President United States, *National Strategy for Countering Terrorism*, (Washington, DC: Government Printing Office, 2006) 10.

on inflicting mass casualties without warning, motivated by an extremist ideology'[34]. The distinction between 'old' and 'new' terrorism is based on the partial acknowledgement of the political goal and resulting political status of previous threats that is now conclusively absent in the modern threat[35]. This distinction is based on a distinctly revisionist account of previous terrorism that allows the current strategy to attribute to it a political cause. This marks a fundamental departure from the official line on the IRA in the 1970s and 1980s for example that was defined predominantly through a process of criminalization[36]. This revised understanding of past terrorist movements allows the UK government to point toward a relationship between the devolution of powers to the Northern Ireland Assembly and the decline of terrorist groups in this context. Most importantly, it also allows them to depoliticize and discredit all dissident Republican groups that continue to oppose the post-Good Friday Agreement arrangement in Northern Ireland.

The emphasis on the political nature of the 'old' terrorism accompanied by an emphasis on the shift to a new and distinct contemporary form, serves to further depoliticize the present threat and sustain the formulation of the two eras that frames security strategy. Accordingly, we had a political and to some extent 'legitimate' terrorism that was confronted (and ultimately defeated or placated) in previous decades and this stands in stark contrast to a new terrorism driven exclusively by a violent extremist ideology underpinned by a religious fundamentalism. The culturalization of contemporary international terrorism in security strategy is both explicit and comprehensive. The religious ideology that supposedly underpins all contemporary terrorist activity is understood as apolitical because it stands outside of

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[34] Brown, Foreword to Foreword to *Pursue Prevent Protect Prepare* 2009 by HM Government. See also, Robert Cornall, 2006, "International Responses to a Changing Security Environment", speech by Robert Cornall, Secretary, Attorney-General's Department, May 9, accessed April 25, 2011, http://www.oilforfoodinquiry.gov.au/www/agd/agd.nsf/Page/AbouttheDepartment_Speeches_2006_Int ernationalresponsestoachangingsecurityenvironment.html

[35] Robert Cornall, secretary, Attorney General's Department (Australia) described several differences between 'old' and new terrorism. His final point was presented as follows: The final point of difference is that those earlier attacks were intended to achieve a political objective and not just the random killing of innocent citizens in pursuit of an imprecise jihad against Western countries and their values. This political definition gave their attacks some structure and predictability. Today's terrorist threat is very different'. Cornall, "International Responses to a Changing Security Environment"

[36] Most specifically this was evident from 1976 and the removal of special category status for Republican prisoners, but was further reinforced under Thatcher emblemised through her mantra that 'there is no such thing as political murder, political bombing, or political violence. There is only criminal murder, criminal bombing, and criminal violence', Margaret Thatcher quoted in Timothy Shanahan, *The Provisional Irish Republican Army and the Morality of Terrorism*, (Edinburgh: Edinburgh University Press, 2008) 172.

what constitutes politics in the liberal framework. Official strategy reinforces the idea of the *fanatic* central to Walzer's account (and shared by so many of his contemporaries) of the current terrorist threat. This construction creates what Toscano has described as a 'spurious form of political simplification, an ersatz intelligibility that leaves us none the wiser about religious politics and global conflicts'[37]. It is precisely the aim of security strategy to keep us in this state of ignorance.

UK strategy sets out four strategic factors that have led to the emergence of the contemporary international terrorist threat: conflict and instability, ideology; technology; and radicalisation. This framing of the drivers of international terrorism is broadly illustrative of a shared understanding between the UK, Australia and the US. The acknowledgement of the relationship between conflict, instability and terrorism involves recognition that contemporary international terrorism 'is specifically connected to disputes and conflicts which involve Muslims and the Islamic world'[38]. While this involves recognition of the relationship between disputes and instability in countries such as Palestine, Afghanistan and Iraq and the present 'international terrorism', the history of western involvement in these countries is not acknowledged. The denial of the history of western interference in these three countries among others serves to maintain the pretence that grievances with western foreign policy are based wholly on unfounded perceptions.

The concept of an ideologically generated and led terrorist movement is tied firmly to Al Qaída and radical Islam:

> This ideology challenges the legitimacy of Israel and claims that western states sustain 'un-Islamic" governments and are engaged in a global attack on Islam. It therefore tries to turn grievances about specific regional issues into grievances about the West[39].

The connections between conflict and instability in Palestine and the challenge to Israel are not explored. Grievances about the West in the Islamic world are presented as the result of a fabrication by extremists seeking to exploit 'regional issues' and 'force local events into a global narrative'[40]. By formulating the wealth of grievances

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[37]Toscano, *Fanaticism*, 101

[38]HM Government, *Pursue Prevent Protect Prepare* 2009, 39

[39]HM Government, *Pursue Prevent Protect Prepare* 2009, 40

[40]HM Government, *Pursue Prevent Protect Prepare* 2009, 41

in this way the account presents them as separate local concerns that have no broader global political connection or significance. The use of the concept of radicalisation as a general theme for all dissenting voices in this arena serves to delegitimate critique and construct every act defined as terrorism as the apolitical response of unstable and irrational individuals who depend on a 'extremist ideology' drawn from a 'distorted' interpretation of Islam. In effect, this formulation of the 'mindset' of the terrorist involves a mirroring of a distinctly unilateralistic presentation of opposing forces in the 'war on terror'. Both sides seek to present the other as operating without provocation; detached from one another in their respective projects, justifying their intervention without acknowledgement of their interrelationship. For example, the current round of counter-terrorism strategy is at pains to explain that the terrorist ideology is 'based upon a selective interpretation of Islam, contemporary politics and history'[41]. Yet at the same time much of the work of counter-terrorism strategy is devoted to setting out a selective account of contemporary politics and history that has itself a vital depoliticising function. The 'war on terror' is defined by an opposition between sides who seek, at the core of their approach, to depoliticise the other.

As the terrorist threat is presented in a way that reaffirms the existence of two eras, the possibility of the terrorist providing a political opposition is denied. The distinction is defined here on the basis of their position vis-à-vis human rights. The construction of an enemy in this way serves two purposes: to maintain the depoliticised framing and to legitimise the state's response. The legitimacy of security strategy is dependent on the maintenance of the façade of an absence of politics both in terms of the threat and the response.

Defining/dehumanising the external enemy

The 'war on terror' was declared a war for human rights by Donald Rumsfeld in 2002 and this idea has (despite a partial withdrawal from emphasis on the notion of *war*) continued to infuse counter-terrorism and national security strategy. The concept of war infused with, or underpinned by, human rights norms is integral to the distinction between the war against terrorism and the 'war' waged by the terrorist. Obama's

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[41] HM Government, *Pursue Prevent Protect Prepare* 2009, 44

Nobel Prize acceptance speech in 2009 set out the distinction between a just war and a holy war that is integral to this distinction:

> These extremists are not the first to kill in the name of God; the cruelties of the Crusades are amply recorded. But they remind us that no Holy War can ever be a just war. For if you truly believe that you are carrying out divine will, then there is no need for restraint[42].

The mystification of the unlimited violence permitted in a just war is secured in this distinction.

The terrorist here is distinguished on the basis of its rejection of human rights and also on the basis of its religious or cultural motivation that is in stark contrast to the secular liberal tradition underpinned instead by a commitment to the rule of law. A just war is here defined by restraint and it is through this stark misrepresentation that the 'war on terror' continues to be presented reinforcing again a distinction with the enemy who is devoid of a framework of regulation. The mystification of just war is compounded by the assertion that it alone is the form of war compatible with peace and peace is conditional on the respect for human rights. Walzer's 'assistance' to the state's rethinking of war is as clear in counter-terrorism strategy as it is in Obama's Nobel lecture and the depoliticisation of the 'war on terror' is here clearly compounded through the dominance of human rights.

The humanitarian character of the 'war on terror' is opposed to the religious 'war' waged by the fanatical terrorist. But the analysis of Walzer and Ignatieff above has illustrated that a just war does in fact provide the orchestrator with a sense of 'divine will' that withdraws the requirement for restraint. Despite this, or more accurately because of this, the notion of regulation is a continuing theme throughout security strategy seeking to emphasis both the distinction between 'us' and 'them' (we self-regulate they do not) and to legitimize the state's response as one that conforms to the rule of law.

NSS documents in the UK, Australia and the US devote significant space to set out a framework for regulation that is seemingly the definitive feature of contemporary security strategy. It is here that human rights have their fundamental role; to ground the approach to security and keep it within the parameters demanded

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[42] Barack Obama, 2009. *A Just and Lasting Peace*, Nobel Lecture, Oslo, Norway, December 10, accessed May 5, 2011, http://nobelprize.org/nobel_prizes/peace/laureates/2009/obama-lecture_en.html

in a liberal democracy. Security strategy – and even more so counter-terrorism strategy – is said to be 'governed' by human rights and the rule of law[43]. Commitment to international regulation through the UN and compatibility with ECHR are presented as markers of the self-imposed regulation that defines security strategy and it is through international and domestic law (including human rights law) that security strategy is to be restrained. The emphasis on the legal regulation of security policy is an omnipresent feature of security strategy and has increasingly become the predominant message relayed through these documents.

The response to security, and most notably the response to terrorism, is presented as a legal response that sits comfortably within a commitment to the rule of law and in the UK, alongside human rights law. While the novelty of the threat has necessitated changes to laws – ostensibly to allow the state to adapt and respond as required – there exists a continual emphasis on the fact that such revisions have remained within the parameters of what is expected of a liberal democracy[44]. As with the commitment to balance, the regulation of security policy is presented as a condition of its success. The commitment to 'core values' and 'guiding principles' is at its core an attempt to illustrate conformity to liberal principles of which human rights and the rule of law are universally accepted (across UK, Australian and US NSS) as the foundation of effective and appropriate security strategy.

More recent strategy documents have been utilised to set out a program of 'reform' within that has been based on attending to the existing security regime established under a previous administration[45]. The emphasis here is on ensuring that enhanced regulation is imposed so that the approach to security can be more clearly (re)accommodated within the domestic and international legal system. Criticism of previous regimes is focussed on the apparent inability or unwillingness to orchestrate a security and counter-terrorism strategy that remained at all times under an effective framework of regulation. The proposed changes seek to return security strategy to its

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[43] HM Government, *Pursue Prevent Protect Prepare* 2009, 7

[44] 'Our response has included changes to our laws to reflect the threat we face, but has at all times upheld the principles and values of the UK as a liberal democracy'. HM Government, *Pursue Prevent Protect Prepare* 2009, 17

[45] This is most notable in the Obama and Rudd administration's critique of their predecessors but also is a central point of the UK Coalition government agreement of 2010 that sought to 'introduce safeguards against the misuse of anti-terrorism legislation'. See, HM Government, *Review of Counter-Terrorism and Security Powers: Review Findings and Recommendations*, (London: The Stationery Office, 2011) 4.

rightful place within the 'legitimate' legal system[46] through which the introduction and operation of new (and existing) powers will be more effectively restrained by law and overseen to ensure transparency. Despite an emphasis on regulation having been a continual feature of security strategies there has been a distinction drawn between 'legitimate' and 'illegitimate'[47] legal frameworks within which the revised security agenda initiated by these 'reformers' is, unlike their predecessors, regulated to the standard demanded in a liberal democracy.

In line with the academic debate on the liberty-security relationship, criticism of the existing security regime is based on its supposedly 'illiberal' transcendence of the framework of legal regulation. There remains an unwillingness to accept that security strategy employed in the post 9/11 era has transcended the law. The issue is with *illegitimate regulation* as opposed to a lack of regulation in the same sense these criticisms assert not that balance was absent in previous strategy but that the *wrong* balance was struck[48]. This approach prevents the critique aimed at previous administrations from having to accept that exceptional measures imposed in the name of security have been outside the law. The nature of this criticism is actually essential for those 'reformers' given that their reform is largely ineffectual in terms of the substantive features of the security policy. Critique remains rhetorical, confined to security *strategy* documents and seemingly incapable of affecting actual policy[49]. Reform is exclusively a project aimed at (formally) returning security strategy to the liberal terrain defined by the rule of law. This is predominantly a process of imposing enhanced oversight of security powers while the continual 'evolution' of the legal structures that define security strategy is not put on hold by increasing regulation.

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[46] See, Australian Government, *Counter-Terrorism White Paper* 2010, 56.

[47] 'The decisions made over the last eight years established an ad hoc legal approach for fighting terrorism that was neither effective nor sustainable – a framework that failed to rely on our legal tradition and time tested institution; that failed to use our values as a compass' . See, Barack Obama, 2009, Remarks of President Barack Obama - As Prepared for Delivery Protecting Our Security and Our Values, National Archives Museum, May 21, 2009, accessed April 18, 2011, http://www.america.gov/st/texttrans-english/2009/May/20090521112349eaifas0.6532862.html.

[48] The UK Coalition government produced a Green Paper in 2011 that sought to *re*consider the 'difficult' balances that security strategy demands. See, HM Government, *Safety and Justice Green Paper*, (London: HMSO, 2011). This reconsideration is at the core of the new government's response to the 'failures' of the New Labour administration and their subsequent 'change of course'. National Security Strategy of the United Kingdom 2010, 4

[49] See here the Rudd government's continuation of the National Counter Terrorism Plan in Australia introduced under John Howard, the UK Coalition government's adoption of the *Pursue Prevent Protect Prepare* strategy and Obama's failure to close Guantanamo or substantively change tack in his response to overseas intervention.

There remains a commitment to developing the law to take account of the new and continually changing security threat but this seemingly eternal project must be held to account through increased oversight and review processes. Transparency is posited as a key 'guiding principle' understood to be an integral aspect of the rule of law and the concern with increased oversight and continual review of security powers is another omnipresent feature of NSS and counter-terrorism strategy.

The enhanced framework for review of security policy (again here the emphasis is on counter-terrorism) is posited as a reform that allows for continual assessment of the proportionality of security powers (arguably emphasised in more recent strategies to placate the criticisms of such powers). However, there remains an assertion that whilst the review process has the potential to impose further regulation and restraint of security powers, it also leaves the door open to 'any further need to expand them or tailor them to deal with any changes in the nature of the threat in the future'[50]. Enhanced 'regulation' in this sense does not seek to limit what the state can do in the name of security; it serves only to (re)emphasize the commitment to regulation that is the definitive feature of liberal security discourse.

As set out in security strategies, regulation (including here the proposed reforms) is based both on commitment to (or return to) liberalism and the assertion that regulation is itself a driver of security. The rule of law and human rights are, as noted in relation to balance, posited as central conditions of effective security strategy. The international strength and influence of liberal democracies is said to be based on the commitment to 'democracy, human rights and the rule of law'[51] and respect for the rule of law and human rights in turn drive stability, security and success[52]. Through this formulation the desire for increased regulation does not necessarily reverse the prioritisation of security over liberty that has been the feature of so many criticisms of security strategy. The rhetorical commitment to regulation is not a new feature – indeed it has been a central component of both NSS and counter-terrorism strategy in the post 9/11 era – but the increased emphasis on regulation in more recent strategy allows for an audible response to critique and the presentation of a renewed commitment to liberalism. At the same time this renewed 'commitment'

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[50] Australian Counter-Terrorism White Paper 2010, iv

[51] National Security Strategy of the United States of America 2010, 2

[52] National Security Strategy of the United States of America 2010, 36

allows for the preservation of current priorities within the liberty-security regime and the maintenance of the same security agenda as well as the total avoidance of the question of exception.

The commitment to regulation is ultimately about defining the liberal character of the approach to security and more specifically in the current era, the liberal character of the 'war on terror' that serves to set up the distinction between the liberal and the illiberal terrorist. Daily observation illustrates the great gap between the rhetorical commitment to regulation and the reality of the 'war on terror' but the emphasis on human rights and legal regulation throughout these documents is essential to maintain the distinction between "us" and "them" as well as to set up a depoliticised notion of war that allows for the most extreme violence to be employed in the name of security.

This process is further compounded by a universal commitment to tolerance[53]. Terrorists are incapable of tolerance as much as they are incapable of operating within parameters set by human rights. The state response is to emphasize the commitment to this value (among others) to reinforce the distinction between those seeking security and those who resort to terrorism as well as to stress the liberal nature of the security regime if we understand tolerance as a, if not *the*, central liberal value.

Tolerance discourse has the effect of framing a multitude of problems as ones of (in)tolerance as opposed to inequality, exploitation and injustice. This is achieved through the liberal emphasis on (and commitment to) the culturalization of politics[54] through which politics is effaced and cultural differences are instead emphasized withdrawing any potential for political conflict:

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[53] Tolerance is listed as one of the core values of the approach to security in every UK National Security Strategy (2008, 2009, 2010) and UK counter-terrorism strategy (2009), in US National Security Strategy under Bush and Obama (2002, 2010) and in US counter terrorism strategy (2003, 2006). There is no mention of tolerance in the Australian security documents in focus here but it has a central place in ancillary security documents in Australia. The Australian National Action Plan designed to 'reinforce social cohesion, harmony and support the national security imperative in Australia by addressing extremism, the promotion of violence and intolerance, in response to the increased threat of global religious and political terrorism' has as one of its central aims the encouragement of tolerance. See, Australian Government, Department of Immigration and Citizenship, 2005, *A National Action Plan to Build on Social Cohesion, Harmony and Security*, accessed May 8, 2011, http://www.immi.gov.au/living-in-australia/a-multicultural-australia/national-action-plan/nap.htm

[54] See, Brown, *Regulating Aversion*; Slavoj Žižek, "Tolerance as an Ideological Category", *Critical Inquiry*, Autumn 2007, accessed May 9, 2011, http://www.lacan.com/Žižek-inquiry.html

Political differences, differences conditioned by political inequality, economic exploitation, etc., are naturalized/neutralized into "cultural" differences, different "ways of life," which are something given, something that cannot be overcome, but merely "tolerated"[55].

The commitment to tolerance so central to contemporary security strategy gives rise to an obligation on the state to challenge those who promote intolerance[56] and it is here, given the status of terrorism as the ultimate expression of intolerance, that the rationale for counter-terrorism is reaffirmed. International terrorism faced in the current epoch is understood to be based on a 'violent and intolerant distortion of Islam'[57] and through such an understanding the notion of (in)tolerance sits within a framing of terrorism defined exclusively through culture[58]. That the culturalization of politics fosters depoliticisation in the context of the contemporary liberal approach to security and counter-terrorism has been illustrated above in reference to the presentation of terrorism by the liberal intellectual. The notion of terrorism driven exclusively by religion (read here Islam) is all pervasive in contemporary security strategy set out most clearly in the 'historical analysis' of the new threat and it is against this backdrop that the discourse of tolerance has its crucial contribution to the depoliticisation of security strategy.

Tolerance is understood in liberalism to be the reserve of the West; it is considered to be synonymous with liberal democracy, with Enlightenment and modernity and crucially in this sense, it serves to further distinguish "us" from "them"[59]. The crude distribution of tolerance in security strategy ("we" have it, they don't) serves to refine the liberal character of the West's response to terrorism and as a consequence the intolerant terrorist is marked out further as an aberration, definitively opposed to the liberal West. Moreover, marking the terrorist out to be driven by religion and an alien culture is a clear reflection of the process whereby 'non-liberal polities are depicted as "ruled" by culture and religion'[60]. In stark contrast

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[55]Žižek, "Tolerance as an Ideological Category", 1

[56] HM Government, *Pursue Prevent Protect Prepare* 2009, 87

[57] US National Strategy for Combating Terrorism 2006, 5

[58] This understanding of terrorism in the current epoch framed exclusively by Islam (or an interpretation of it) is universal across NSS in the three countries in focus here and certainly not restricted to them. It will be considered further in terms of its specific manifestations below.

[59]Brown, *Regulating Aversion*, 17

[60] Brown, *Regulating Aversion*, 171

the liberal state is presented as being ruled only by law, an assertion that is again ubiquitous in security strategy. The 'war on terror' is presented as a war defined by religion which needs to be understood in the supposedly post-ideological context; ideology has been replaced by religion as the defining feature of twenty-first century oppositions. However, in its response the West does not posit an alternate religion, it responds through a secular, legally regulated strategy. Religion (much like ideology pre-1989) is only what defines "them".

The UK NSS seeks to challenge the 'climate of intolerance and distrust in which violence as a tool of political discourse becomes acceptable'[61]. This understanding of the relationship between intolerance and violence is indicative of the fact that intolerance has become a 'code-word......for fundamentalism identified with the non-west, with barbarism and with anti-Western violence'[62]. The 'climate of intolerance' is in this sense associated with the Islamic terrorist who focuses their intolerance toward the West. The terrorists' 'intolerance' is understood to be entirely irrational, driven by culture and religion and indicative of the void between the opposing forces in the 'war on terror'. Through this interpretation the distinction between these opposing sides cannot be overcome nor can it be contested politically; it is reduced to cultural difference, the response to which can only be tolerance.

The opposition between the tolerant and the intolerant that frames security strategy (with particular emphasis in relation to counter-terrorism) involves, according to Wendy Brown, a fusion of the 19th century opposition between the civilized and the primitive and the Cold War opposition between freedom and tyranny, given that tolerance is aligned in contemporary liberal discourse with civilization and freedom and intolerance equated with fundamentalism and barbarism[63]. In contemporary security strategy (considering the UK, Australia and the US) the concept of civilization is given explicit acknowledgement only in the earlier Bush era US NSS (2002). In this document terrorism is positioned clearly as the 'enemy of civilization'[64] but the proclamation of an opposition between civilization and barbarism has on first inspection been withdrawn from subsequent security strategy in the three countries in focus here. However, if one understands that 'tolerance and

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[61] National Security Strategy of the United Kingdom 2009, 78

[62] Brown, *Regulating Aversion*, 16

[63] Brown, *Regulating Aversion*, 6

[64] National Security Strategy of the United States of America 2002: v

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civilization not only entail one another but mutually define what is outside of both'[65] the continued commitment to tolerance in current security strategy suggests that its employment serves to sustain the opposition as the backdrop for security strategy and more specifically for the 'war on terror'. The political is associated with barbarism, in this sense aligned with the previous age and civilization remains the reserve of the ostensibly apolitical liberal. Political conflict is effaced; the irreducible confrontation is instead between those with the capacity for tolerance (the civilized) and those without (the barbaric).

If we understand that the governmentality of tolerance as it circulates through civilizational discourse has as part of its work 'the containment of the (organicist, non-Western, non-liberal) Other'[66], then the role of tolerance in security strategy becomes clearer; it serves to delineate the defining oppositions that apparently colour the current security environment. That the opposing forces are non-Western and non-liberal is to be taken as given against the back drop of a culturalized framing of terrorism. However, the notion of an organicist Other defined through the notion of tolerance has wider implications. Here, we must understand that tolerance in liberal discourse can only be generated by autonomous individuals and thus those who are intolerant are defined by their rejection of (liberal) individualism. The rule by culture and/or religion that defines the intolerant, and in our case definitively marks the contemporary international terrorist, illustrates their opposition to and devaluation of the autonomous individual. The liberal individual is itself naturalized, posited as a universal norm that only the non-political fundamentalist would seek to challenge.

The utility of the alignment of tolerance in security strategy with human rights is here illustrated more clearly when one considers how the discourse of tolerance compounds the process whereby any collective identity or collective will is dismissed as an evil. Collective identity is presented as the sole reserve of the non-liberal intolerant other. In a circular fashion their intolerance is a product of their collective identity and their intolerance compounds their rejection of liberal individualism. It is ultimately this devaluation of the autonomous individual that defines the intolerant as so opposed to the liberal model that it is to be understood as *intolerable*. In this formulation liberalism becomes the 'only political rationality that can produce the

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[65] Brown, *Regulating Aversion*, 182

[66] Brown, *Regulating Aversion*, 166

individual, societal and governmental practice of tolerance and at the same time liberal societies become the brokers of what is tolerable and intolerable'[67]. This monopoly over the brokerage of tolerance arguably influences the formulation of security strategy and has lead to tolerance becoming such a core value in NSS and the approach to counter-terrorism. It has allowed the liberal state to define terrorism through the cultural difference and to posit tolerance as the only possible mediating force. By way of illustration, the primacy of the individual in current security politics is reinforced in the UK NSS 2009 as the discussion moves swiftly from its denouncement of intolerance to its defense of the commitment to individual privacy as a central principle of a liberal democracy. The emphasis on privacy cannot be separated from the emphasis on human rights and tolerance in security strategy as it is serves to reinforce the centrality of the autonomous individual. Indeed, individual privacy, or in Žižek's terms, the freedom from harassment, to be kept at a safe distance, has become the 'central human right of advanced capitalist society'[68]. Tolerance in this sense is understood to reinforce the distance between individuals; 'the other is welcomed insofar as its presence is not intrusive, insofar as it is not really the other'[69].

Framing security strategy through tolerance serves to distinguish the 'free' from the 'fundamentalist'. It serves to defend this boundary and render it insurmountable. Political conflict is denied and any true politics is effaced. The backdrop to security strategy – the opposition not *between* cultures or civilisations but between secular liberalism and the religious fundamentalist – is comprehensively depoliticised removing any formal consideration of a political response to terrorism from the security agenda. However, it is crucial at this stage to acknowledge that by framing the terrorist as intolerant and equating intolerance as a byword for fundamentalism and anti-western violence the terrorist is depicted as intolerable[70]. From this premise the response to terrorism is justified in summoning the most

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[67] Brown, *Regulating Aversion*, 166

[68] Slavoj Žižek, "Against Human Rights", *New Left Review* 34, July-August 2005, 120.115-131

[69] Žižek "Against Human Rights", 120

[70] 'In short, with our friends and allies, we aim to establish a new international norm regarding terrorism requiring non-support, non-tolerance, and active opposition to terrorists'. US National Strategy for Combating Terrorism 2003, 24.

extreme violence to oppose a threat that is both incapable of being tolerated and unable to be met by politics.

Security strategy is built on the continued refinement of the essential opposition between 'us' and 'them' defined by whichever specific opposition is most convenient in each given area of emphasis. Essentially, this opposition is reduced to the liberal/illiberal and equated to the human/inhuman opening up the possibility of a 'war' of extreme violence. The emphasis on tolerance and the confrontation with the intolerant expands this further to build on notions of 'just war' and humanitarian intervention that have been shown above to legitimate what in practice is an abdication of all regulation and restraint. The emphasis on human rights and tolerance allow for the isolation of an external enemy with whom a confrontation will be characterised by the legitimate rolling back of civilisation principles and restraint ostensibly provided by human rights. The external threat is dehumanised leaving the state free to summon whatever force is available.

Criminalising the internal threat

The construction and definition of the external threat has been an integral part of the post-911 approach to security. Since its beginning, the 'war on terror' has relied on this thinly veiled construction to legitimate the interventionist strategies and provide a legitimising gloss to the broader politics of security. Yet in recent years there has been an intensification of the internal components of this 'war' as it has been increasingly directed at those within the nations at the forefront of the fight against terrorism. This internal component has been couched in the language of counter-radicalisation and has been to a large extent developed along the lines of the UK model. The concern here has been with the identification of an internal enemy supposedly revealed through the domestic terrorist attacks orchestrated by those with citizenship in the target nation. The London bombings of 7th July 2005 have been presented as the prime example of this internal threat and the approach to radicalisation and extremism has developed significantly since[71]. The potential for the 'war on terror' to assume an internal policing role (if indeed this can be separated) raises questions about the diffusion of the logic of security throughout state institutions and civil society.

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[71] The UK counter-radicalisation strategy 'Prevent' was formally developed after 2005.

UK and Australian counter-terrorism strategies now share an emphasis on 'radicalisation' and violent extremism understood to be the most important strategic factors in the encouragement of terrorism and thus a predominant focus in current strategy[72]. In response, UK strategy presents and discusses the 'causes' of radicalisation in some detail as the backdrop to a counter-radicalisation strategy that forms a significant component of counter-terrorism work. The UK approach to (counter-)radicalisation has been cited as a model toward which the Australian government has sought to develop their approach[73] and more recently the US have cited both UK and Australian counter-radicalisation programmes as 'possible templates' for the development of a US counter violent extremism strategy[74]. That counter-radicalisation has become such a prominent part of counter-terrorism is logical given the official understanding of terrorism fuelled predominantly (if not exclusively) by a radical, fundamentalist ideology.

The 'analysis' of radicalisation involves a continued confrontation with and rebuttal of the perceptions of western foreign policy that are understood to be at the core of the radicalised individual who is in turn 'vulnerable' to the lure of terrorist movements. Beyond those grievances that underpin the radicalised subject there exists

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[72] The US have been slow to take up the idea of a specific counter-radicalisation strategy or strategy to counter violent extremism but under the Obama administration efforts have been made to establish such a programme with domestic and international projects. See, Benjamin, *US Government's Efforts To Counter Violent Extremism*.

[73] The Howard era approach to radicalisation shared much with the UK policy in its apparent drive to delegitimise opposition to Western policy in the Islamic world presenting it as radical and misguided. While the Rudd government proposed some sort of departure from the Howard era in its approach to the Islamic community, the continuation of legislation and planning suggests that the departure in the approach to 'radicalisation' was not substantive. The Rudd government's proposed point of departure was discussed more specifically in the immediate post-election period as the addition of 'effective social policy that enhances social cohesion and lessens the appeal of radical ideology' to sit alongside security policy. The proposed construction of such policy was said be informed by an analysis of the UK response. See, Angus Campbell, 2007, *Home-Grown Terrorism in Australia: The Way Forward*, speech at the Security in Government Conference December 7, accessed May 10, 2011, http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(756EDFD270AD704EF00C15CF396D6111)~SIG+2007+-+Panel+Discussion+-+Mr+Campbell.pdf/$file/SIG+2007+-+Panel+Discussion+-+Mr+Campbell.pdf

[74] The UK and Australian models for countering extremism through 'challenging police work with diaspora communities' have been of particular interest to the US government. Benjamin, *US Government's Efforts To Counter Violent Extremism*, 4. Furthermore, the US Department of State currently (2010) have on detail a senior member from the UK's Foreign and Commonwealth Office's Counterterrorism Research Group from whom there is hope to gain 'greater understanding of the UK's experience with countering violent extremism as well as how the U.S. government can create effective, locally-targeted programmes and enhance its efforts to counter extremist narratives'. Benjamin, *US Government's Efforts To Counter Violent Extremism*, 4

'a range of social and psychological factors'[75] that lead to radicalisation. This explanation focuses on the 'vulnerability' of individuals and points to 'a crisis in identity and, specifically, to a feeling of not belonging'[76]. The association of radical ideas with vulnerable individuals is reiterated in other government counter-terrorism policy statements[77] reinforcing the idea that those who share any radical or 'extreme' ideas are vulnerable as a result of their psychological frailties. In this sense the extremist is aligned with the mentally ill as they are both outside of reason. It is this condition and resulting crisis of identity that give rise to a departure from the mainstream. This addition to the 'analysis' of radicalisation comprehensively depoliticises the 'radical' and positions these ideas firmly as characteristic of individual Muslims, Muslim families or the Muslim community more generally (the emphasis on the responsibility of the family and community is shared in Australian proposals[78]). This has the effect of discrediting the political and economic grievances previously mentioned and constructs the 'perceptions' of western and UK foreign policy as a result of the individual social and psychological issues attributed to Muslims[79]. This employment of classic psychological positivism serves to explain radicalisation as the result of an internal issue within the Muslim community and more specifically, demonstrates the continued concern with the 'Arab and Muslim 'mind'' that Toscano notes has been a long-term concern of the Atlantic discourse on Islam[80]. As a result in the official framing of radicalisation the Muslim community 'suffers' from this infliction due to its lack of family ties, its composition of recent migrants and crucially, its member's psychological frailties[81].

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[75] Benjamin, *US Government's Efforts To Counter Violent Extremism*, 42

[76] Tufyal Choudhury, *The Role of Muslim Identity and Politics in Radicalisation [A Study in Progress].* (London: Department for Communities and Local Government, 2007)

[77] Home Office. 2008. *Government steps up the fight against extremism*, December 10, accessed April 24, 2011, http://press.homeoffice.gov.uk/press-releases/government-fight-extremism

[78] Campbell, *Home-Grown Terrorism in Australia*

[79] The emphasis on psychological frailties is shared by Australian counter-terrorism strategy specifically in the focus on radicalisation.

[80] Toscano, *Fanaticism*, 162

[81] The concern with the border security agenda is further legitimated here in the association made between recent migrants and the crisis of identity that leads to radicalisation. The association is at this point made between the Muslim community, migrant populations and radical views and this has the effect of associating the Muslim community with recent or unsettled immigration status as well as reaffirming the association of immigration and terrorism. Conclusively, this series of associations legitimates the current emphasis in security strategy on the Muslim community that in turn reinforces the depoliticisation that is grounded in the culturalization of security politics.

The programme of counter-radicalisation work that sits in UK strategy in the Prevent component of UK counter-terrorism strategy (the component vaunted by the Australian government under Kevin Rudd) is diffused into all aspects government widening the state's policing of suspect populations. All local authorities have the accommodation of Prevent built into their 'performance framework' as the facilitation of this programme has been installed as an integral part of governance and an internal measure of its success[82]. Diffusing counter-terrorism work throughout government and public services is possible as a result of the fact that those orchestrating the 'war on terror' have sought to break 'old orthodoxies that once confined out counterterrorism efforts primarily to the criminal justice domain'[83]. Releasing counter-terrorism from its confinement within the criminal justice system has been of great use in the 'war on terror' as it has enabled the blurring of the boundaries between policing and war; between domestic counter-terrorism and counter-insurgency in occupied territories, allowing for military adventures to be presented as counter-terrorism initiatives. However, presenting the fight against terrorism as not simply the work of the police (although of course vital to contemporary policing) has allowed such policing measures to expand beyond the criminal justice domain and infiltrate all aspects of government. The logic of security (and here counter-terrorism) has become all pervasive and seemingly all-consuming defining the work of a whole range of disparate institutions and services who are transformed through this new (or intensified) policing function.

In the first instance, counter-radicalisation is led by the police but it is not concerned with those in custody or even necessarily those guilty of criminality arguably marking it as a policing initiative designed to police ideas not (illegal) actions. The desire to silence critical thinking let alone political dissent is illustrated by the fact that those organisations expected to facilitate the monitoring and reporting of extremist ideas include schools, colleges and universities as well as children's services, health services, social workers and community groups. This project of

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[82] The diffusion of counter-terrorism measures across government was presented in the US National Strategy for Combating Terrorism 2003 as a means to 'maintain momentum' and 'keep the global war on terrorism in the forefront'. US National Strategy for Combating Terrorism 2003, 19. As counter-radicalisation work is rolled out across local authorities there is evidence that the desire to 'maintain momentum' and sustain the prominence of the 'war on terrorism' remains a driving force behind counter-terrorism strategy.

[83] US National Strategy for Countering Terrorism 2006, 1

countering extremism is a state project in the true sense. It unites a multitude of state institutions, illustrating Jessop's contention that the state is merely an 'institutional ensemble'[84] and also demonstrates the difficultly of marking clearly a state – civil society distinction in the case of security politics. The project is reliant on the collaboration of innumerable individuals, groups and institutions to assist the police (and assume their role) in the monitoring of ideas seemingly with no age group or place of sanctuary immune[85]. The predominant focus of this component remains of course with the Muslim community and the teacher, lecturer or social worker must be especially diligent in relation to Muslim children/students but the climate of suspicion serves to further problematize or marginalise, and in several cases criminalise, dissenting voices.

The notions of radicalisation and extremism[86] set against – or in opposition to – liberalism and liberal politics (defined again here through 'shared values') already infers a dangerous marginality in political terms. The discursive practice of designating ideas and populations as radical is in itself an act of depoliticisation and when compounded by this official 'analysis' the notion of radicalisation locates said ideas and populations outside the realm of legitimate politics[87]. That the promotion of shared values is integral to countering violent extremism sets up an opposition in which extremism is defined by a rejection of liberal values. Non-liberal voices are here defined as extreme and thus illegitimate. Ultimately, these ideas are deemed to be non-political on account of their rejection of liberal values that define the current

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[84] Jessop, *State Theory*, 270

[85] The effects of the policing of university students and the role of universities themselves in facilitating the surveillance and physical policing of suspect (Muslim) individuals and other dissenting voices is illustrated in the case of Rizwaan Sabir. Sabir's case illustrates the government's project of transforming lecturers (as well as school teachers and social workers etc) into informers and also illustrates how the willingness to quash political dissent inside these institutions has been intensified under the Prevent agenda. The treatment of academic Rod Thornton who attempted to expose the institutions complicity in this process is further evidence of the proliferation of the policing of ideas. See, Polly Curtis and Martin Hodgson. 2008. "Student researching al-Qaida tactics held for six days ", *The Guardian*, May 24, accessed April 24, 2011, http://www.guardian.co.uk/education/2008/may/24/highereducation.uk; Jeevan Vasagar. 2011. "Row after university suspends lecturer who criticized way student was treated", *The Guardian*, May 4, accessed May 11, 2011, http://www.guardian.co.uk/education/2011/may/04/nottingham-university-row-after-lecturer-suspended

[86] The revised version of the UK counter-terrorism strategy (2009) expanded its remit from tackling violent extremism to tackling all forms of extremism illustrating more clearly the concern with extreme (non-liberal) politics.

[87] The revised version of the UK counter terrorism strategy (published in March 2009) widened the focus of the *Prevent* section (focused on opposing violent extremism) to include the 'promotion of shared values' as well as (or more appropriately, integral to) opposing violent extremism.

hegemonic understanding of politics. All politics have to subscribe to liberal principles to be accepted; a rejection of liberal values and hence liberal politics is tantamount to an abandonment of politics itself. In the current era the only available politics is liberal politics; the notion of politics defined by conflict between political positions is dead. The lack of a clear definition of what constitutes 'radicalism' and 'extremism' (and indeed their conflation) allows for the delegitimisation, and in this framing criminalisation, of all ideas and actions that can be designated as such.

The official presentation of extremist ideology and the flexibility[88] of its definition provided by in official strategy have the ability to denounce all substantive political criticism of the current security agenda - as well as criticism of the current political and economic status quo – as extremist. The rejection of 'shared values' is sufficient to be labelled as an extremist; 'violence' is no longer a prerequisite. It has been illustrated above clearly that those who are unwilling to work on the terrain defined by human rights and tolerance are excluded from the political process, denied all political legitimacy. The attempt to undermine any of the 'core (liberal) values' is enough to be designated as, at the very least, 'vulnerable' to extremism (that is in itself enough stigma to be equivalent to a full diagnosis). Indeed, a personal opinion that illustrates an 'uncompromising rejection of the principle of the rule of law and the authority of any elected Government in this country'[89] is sufficient to be an indicator of (vulnerability to) extremism. A rejection of the legitimacy of liberal democracy or indeed a strident political critique of its failings is easily classified as 'extremist'[90]. The radical and the extremist are comprehensively depoliticised in security discourse and this has the ultimate effect of closing the door to all truly dissenting (non-liberal) voices. The utility of this formulation to the state is unquestionable.

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[88] 'The terms 'moderate' and 'extremist' are at times defined in practice by the degree to which Muslims support or oppose central government or local authority policies' Arun Kundnani, *Spooked: How not to prevent violent extremism,* (London: Institute for Race Relations, 2009) 35. Given the large amount of funding available and its apparent conditionality on support for, and alignment with, government policy the 'moderates' are clearly those who conform to the state position.

[89]Kundnani, *Spooked*

[90] Of the key factors that contribute to radicalisation, the Australian Counter Terrorism White Paper makes explicit that these include 'the identification with, and adoption of, particular ideologies and belief systems that are hostile to liberal democratic norms and values'. Australian Government. *Counter-Terrorism White Paper,* 66. The US Institute of Peace (established and funded by Congress) has defined 'cognitive radicalisation' (radicalisation that falls short of violent expression) by the refutation of 'the legitimacy of the existing social order' Lorenzo Vidino, *Countering Radicalisation in America: Lessons from Europe– United States Institute of Peace Special Report,* (Washington: United States Institute of Peace, 2010) 4.

The criminalisation of dissent in this form is essential because the radical seeks at its core to reverse the process of the culturalization of politics. The culturalization of terrorism through its exclusive alignment with Islam is at its most explicit in the work on radicalisation and extremism[91]. Radicalisation is understood to be a 'cultural rejection of modernity, rooted in the misinterpreting of globalisation and modernisation as western impositions'[92]. The radical, through their 'misinterpretation' seeks to define globalisation and modernisation as conscious processes orchestrated – or at least assisted or fuelled – by western interests. This involves at its core the politicisation of processes – globalisation most explicitly – that are presented as 'self-regulating and implacable Force(s) of Nature'[93]. Radicalisation is 'seen as the politicisation of a cultural problem'[94] and thus has the potential to undo the work behind the current official presentation of terrorism defined as noted above by the culturalization of politics. This explicit politicisation is inherently dangerous to the liberal security agenda. It is opposed to a politics of security defined by depoliticisation and in response it must be depoliticised by the state to ensure it is suppressed. By reinforcing the non-negotiable liberal parameters imposed on contemporary politics the construction of the radical and the extremist are effectively cast out of the political arena safeguarding the depoliticised framing of terrorism. Depoliticisation is at its most apparent and is most necessary in direct response to explicit attempts at politicising security issues.

The official presentation of radicalisation exposes its opposition to liberalism at a deeper level in Australian strategy. Here the problem of radicalisation is that it discourages 'full participation in Australia's social and economic life'[95] illustrating that the opposition to liberalism posed by radicalisation cuts to the heart of the liberal production of the subject. Radicalisation prevents the subject from fulfilling their productive potential and clearly must be opposed. The concern with the

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[91] Counter-extremism work is ostensibly focused on all extremism but the allocation of funding has illustrated that it is exclusively focussed on Muslim communities. Indeed, local authorities have been 'pressured to adopt 'Prevent' in direct proportion to the number of Muslims in the area'. Kundnani, *Spooked*, 10.

[92] MI5 statement on radicalisation quoted in Kundnani, *Spooked*, 45fn

[93] Stuart Hall, "The Great Moving Nowhere Show", *Marxism Today* (Special Issue), November/December, (1998), 11. Hall made clear that this understanding of globalisation defined the New Labour project and underpinned the wider neoliberal presentation of global processes.

[94]Kundnani, *Spooked*, 45fn

[95]Australian Government. *Counter-Terrorism White Paper*, iv

marginalisation of the radicalised Other is genuine but not driven by a concern with the participation of the individual in social and political life. The concern lies with the potential for the individual to opt out (or be lured out) of the economic system altogether; to refuse to contribute to the labour force and compromise the broader productivity of the capitalist system. Radicalisation does indeed pose a direct threat to the liberal (economic) system and counter-radicalisation becomes more pertinent once liberal state's realise that they have a problem with an 'internal enemy'[96]. The possibility of unproductive subjects outside the West is troubling, but the idea of internal forces who seek to reject the validity of the current domestic order in economic terms requires decisive action. This is a point noted explicitly in Australian strategy but implicated throughout the approach in the UK and US. Security is again confirmed as the supreme concept of the bourgeois system.

The battle of 'ideas'

The official response then seeks to return the radical to mainstream (liberal) politics by undermining extremist ideas and essentially by enforcing a convergence on liberal shared values. This process of *de*radicalisation is facilitated by 'mainstream' or 'moderate' voices that support the state in the central 'battle for ideas' that defines counter-radicalisation. These voices are selected on the basis that they essentially do not question – or are willing and able to extenuate – the culturalization of terrorism and extremism. In the UK the role of these voices and organisations is integral to counter-terrorism and explicit in current strategy. Such 'voices' include state funded organisations like *The Quilliam Foundation* (QF) whose mission is to 'challenge

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[96] The focus on counter-radicalisation and counter-extremism work has increased greatly in more recent years following an acknowledgement by governments that the threat is now internal as well as external. The London bombings (7/7/05) have been cited as evidence of this internal threat and the prospect of 'locally generated attacks' by both UK and Australian governments: The UK government intensified their commitment to the Prevent section of their counter-terrorism strategy and its counter-radicalisation component in the updated version of UK counter-terrorism strategy in 2009; The Australian Counter-Terrorism White Paper 2010 noted that the threat had evolved since the last count-terrorism white paper in 2004 effected by the 'increase in the terrorist threat from people born or raised in Australia'. Australian Government. *Counter-Terrorism White Paper,* ii; Vidino has noted that 'the recent surge in American Muslims involved in terrorism has led U.S. authorities to question the long held assumption that American Muslims are immune to radicalisation, and to follow the example of other Western democracies in devising a comprehensive counter radicalisation strategy'. Vidino, *Countering Radicalisation in America,* 1

extremism' and 'promote pluralism'[97] reinforcing from the outset the idea that the 'war on terror' is defined through a series of oppositions of which the opposition between fundamentalism and pluralism is crucial[98]. Counter-radicalisation in this guise serves only to enforce the dominant, official understanding of the causes and necessary responses to terrorism. The causes remain confined to the Muslim community (domestically and internationally) and QF advocates that the response to extremism should at its core involve 'a more self-critical approach (to) be adopted by Muslims' in which 'Westophobic ideological influences and social insularity needs to be challenged within Muslim communities by Muslims themselves'[99]. These 'moderate' voices justify the state's suggestion that 'some of our counter-terrorism powers will be disproportionately experienced by the Muslim community[100] and in the case of QF, their framing of the issue converges more so with Martin Amis' famous assertion that in the interest of security 'the Muslim community will have to suffer until it gets its house in order'[101]; an idea that arguably sits behind the liberal state's position.

In addition to QF, the UK government have heavily funded 'roadshows of 'mainstream Islamic scholarship' to tour Britain to 'counter extremist propaganda' and 'denounce it as unIslamic''[102]. These roadshows, clearly integral to the battle for ideas have been run by an organisation called 'The Radical Middle Way'. The dissolution of the term radical through its juxtaposition with the concept of a middle way is clearly intentional. The idea that radicals and extremists can be 'turned' by converging on a 'middle way' illustrates the depoliticising function of this organisation and its integral role in counter-terrorism strategy as well as pointing toward the convergence between official strategy and the liberal intellectual. There

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[97]Quilliam Foundation. 2011. "About Us." Accessed May 15.http://www.quilliamfoundation.org/

[98] The commitment to pluralism is itself another mode of depoliticisation given that the notion of a harmonious accommodation of different opinions and interests in pluralism serves to mask the innumerable power struggles that exist in any given society.

[99]Quilliam Foundation, "About Us.".

[100] Hazel Blears (the then Home Office minister) quoted in Vikram Dodd and Alan Travis. 2005. "Muslims face increased stop and search", *The Guardian*, March 2. Accessed May 11, 2011 http://www.guardian.co.uk/politics/2005/mar/02/terrorism.immigrationpolicy1

[101] Martin Amis quoted in Terry Eagleton, "Rebuking obnoxious views is not just a personality kink", *The Guardian*, October 10, 2007,accessed May 11, 2011, http://www.guardian.co.uk/commentisfree/2007/oct/10/comment.religion

[102]Kundnani, *Spooked*, 37

142

should be little surprise that the UK government is leading the way in counter-radicalisation strategy and sought after as a model to follow by the US and Australia[103].

The response to extremism remains best served by the state as these 'voices' fail (or arguably refuse on the basis of state funding) to question the state's monopoly over counter-terrorism and counter-radicalisation. The broader solution to the problem of Islamic extremism advocated by these moderate voices is epitomised by the co-director of QF who has suggested a need for the creation of 'an apolitical western Islam'[104]. This chimes so clearly with the state's culturalized, depoliticised framing of international terrorism that the extensive funding channelled to QF, The Radical Middle Way and similar organisations is highly unsurprising. These organisations are the 'credible voices' that the UK government seeks to recruit as a key element of counter-terrorism to assist in the communication of policy. These 'communications' are directly opposed to and involved in the refutation of the *propaganda* of Al Qa'ida. Opposing communications to propaganda illustrates both strands of depoliticisation; the depoliticisation of terrorism and of counter-terrorism. The argument suggests that because of its reliance on a misrepresented and selective analysis of politics and history, and because ultimately it has no legitimate political claims, terrorism has to resort to propaganda. Yet the response to terrorism need not be dragged into a political battle, it instead posits a technical, bureaucratic response that involves simply effective communication of information (not ideology).

The idea that counter-terrorism can now be defined by a battle for ideas is not new. The development of a counter-radicalisation strategy along the lines set out above has become a major point of convergence for contemporary counter-terrorism strategy through which the UK, Australian and US government have been involved in a mutually beneficial, multi-directional exchange of policy ideas. The 'revised' approach to counter-terrorism with its predominant focus on counter-extremism measures is not however new to the 'war on terror'. The integral role of the 'war of ideas' was set out in US counter-terrorism strategy in 2003 and whilst the concept of counter-radicalisation was not used here, the emphasis on promoting 'values' as a

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[103] The extension of this model of counter-radicalisation at EU level is also well underway. See, COT et al. *The EU Counterradicalization Strategy. Evaluating EU policies concerning causes of radicalization.* (The Hague: COT, 2008).

[104]Kundnani, *Spooked*, 36

means to counter extreme ideas is clear[105]. The discourse now contains discussion of a 'struggle over narratives'[106] between the west and the terrorists that maintains the opposition between 'their' ideology and 'our' values. A battle between narratives is but the most recent framing of an opposition that is essentially depoliticised and the central construction of the Islamic terrorist through the idea of the fanatic demonstrates its continued application as a 'remarkably resilient and adaptable weapon in a wide array of political and philosophical confrontations'[107].

The conjunction of a battle of arms and a battle of ideas has been set out to define the 'war on terror' as 'different kind of war'[108]. This definition, in which terrorism will be fought on the (undefined) battlefield as well as being fought through the promotion of values, is accepted by the UK, Australia and US (and across each of the different administrations in these countries in the post 9/11 era) and serves fundamentally to frame counter-terrorism strategy. The mystification of war that is involved in the presentation of the 'war on terror' as in some way unique and novel compounds the processes of depoliticisation that at their core serve to obscure the fact that this is a war of extreme violence much as any other military project. The infusion of a battle of ideas serves essentially to delegitimise the terrorist 'narrative' and reinforce the legitimacy of this 'war' in its external and internal components as well as the legitimacy of the politics of security.

Security discourse needs to be understood as being underpinned by a popular racism that is mobilised by the state to divide those who are to be subjected to the new security and policing techniques introduced in the name of national security. The intensification of an already well established state-sanctioned Islamophobia after 9/11 serves to reinforce the exclusion that is crucial to liberal security politics. Liberalism was founded on a logic of exclusion and the contemporary mobilisation of appeals to race and nation in the name of security is illustrative only of the liberal character of the current regime. Successive liberal governments of both right and left persuasions have seen, and realised, the potential in the recruitment of a popular racism to

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[105] President Obama has reiterated more recently that 'a campaign against extremism will not succeed with bullets and bombs alone' confirming the continuing need for a battle of ideas as well as reiterating the need for continuing military endeavours. See, Benjamin, *US Government's Efforts To Counter Violent Extremism,* 1

[106] Benjamin, *US Government's Efforts To Counter Violent Extremism,* 2

[107]Toscano, *Fanaticism,* 249

[108] US National Strategy for Combating Terrorism 2006, 1

reinforce the project of exclusion that defines security politics[109]. The focus on a specific 'suspect' population to justify increasingly repressive policing measures has always defined the police project and, as Losurdo demonstrates clearly, the history of liberalism is a history of racism with the liberal state playing a central role[110].Clearly then, the emphasis on Muslim populations at home and abroad does not signal a new approach for the liberal state but stands only as the clearest example of what A. Sivanandan has defined as a 'new state racism that promises to safeguard the patriot nation from the shadow enemy within'[111]. This is only the most recent form of the liberal state's conscious process to mark out a suspect population against which an appeal to the nation can be mounted and a loyalty to the state secured[112].

The inauguration of a counter-radicalisation strategy complete with legal sanctions enhances the process of marginalising radical ideas and the 'suspect' populations who harbour them and initiates a formal process of criminalising the internal enemy. From the more recent 'realisation' of an internal threat (ostensibly from 2005 onwards) this process of criminalising the internal populations has been incorporated into the central project underway in the 'war on terror' which involves identifying and isolating an 'enemy'. The 'moderate voices' play a central role in the approach to radicalisation reinforcing, and clearly legitimising the official narrative and the subsequent state monopoly over the response. In this sense they serve a vital function in sustaining the main thrust of counter-radicalisation which is to criminalise dissent. The strategies of deradicalisation provide a convenient gloss to what is in reality a clear project of the state utilising its force to silence dissent.

The status of the enemy is further reinforced when one returns to the concept of balance and considers its dual function in security strategy. It is employed as detailed above to conflate liberty and security and provide for the prioritisation of security under the façade of a commitment to liberty. However, the concept of

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[109]This is clearly not new to the post 2001 era although in its focus on the Muslim community has intensified since 9/11. Poynting and Mason have made clear that in relation to the Muslim community this began in the post 1989 period not after September 2001. This reinforces the idea that the origins of the current approach to security need to be situated at the end of the short twentieth century as opposed to the beginning of the twenty-first. See, Scott Poynting and Victoria Mason, "The resistible rise of Islamophobia: Anti-Muslim racism in the UK and Australia before 11 September 2001," *Journal of Sociology* 43, 1(2007).

[110]Losurdo, *Liberalism*

[111]A. Sivanandan in Graham Murray, "France: the riots and the Republic" *Race& Class* 47(2006) 36

[112] "Deployed in the name of security, loyalty and identity help organise the political imagination around the state." Neocleous, *Critique of Security*, 141

145

balance is employed in fact in this vein only to (at least formally) protect 'our' liberty; when it comes to the liberty of those designated as the enemy (externally and more specifically internally) the true nature of the balance metaphor is revealed. The confusing formulation of liberty and security in which they are both opposing concerns and interchangeable aims remains in part because of the hegemonic status of balance within liberalism – the liberal state like the liberal intellectual is seemingly unwilling or unable to conceive of any other approach – but also because the relationship between liberty and security does not imply an equal status for all those subject to security strategy. 'Our' liberty and security are indeed one and the same but the liberty of the enemy has to be balanced with the security of the nation. The agency implied in the use of the balance metaphor that Dworkin cited as his reason for abandoning the liberty-security balance is, in NSS, acknowledged and accepted.

This selective application of balance is, we are told, 'inherent in the business of intelligence and security'[113] within which the rights of those who pose a threat to security must be balanced against the 'rights of society as a whole to security and freedom'[114]. Clearly here the conflation of security and freedom – as well as the protection of freedoms as this is now conditional on the securitisation of rights – is a selective project not extended to those suspect populations identified in counter-terrorism strategy. The use of the balance metaphor allows for the restriction of the fundamental liberties of a select population and this process is of even greater importance in regard to the internal enemy. The notion of balance is used to justify the deportation of terrorism suspects to countries in which they face the risk of torture as the safety of the community is balanced against the risk to the individual[115]. The increased restrictions on movement through borders in the name of security is also justified on the basis that they are targeted at a 'minority' who pose a threat with the intention of allowing the free movement of 'the vast majority'[116]. Freedoms in these cases are not interconnected with security; indeed in these cases they are fundamentally opposed, presented as inversely proportional in the true sense of the idea of balance. At the same time as constructing freedom and security as interconnected there remains a commitment to balance to allow the state to restrict the

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[113] National Security Strategy of the United Kingdom 2009, 34

[114] National Security Strategy of the United Kingdom 2009, 34

[115] HM Government, *Pursue Prevent Protect Prepare*, 65

[116] HM Government, *Pursue Prevent Protect Prepare*, 117

freedoms of select (suspect) individuals or populations and to reduce their commitment to 'core values' on the international stage when required by security strategy[117]. Balance stands as a key liberal tool as one would expect but it has a dual function: to reinforce the distinction between "us" and the enemy; and to legitimise the liberal state's response.

The deployment of balance is in part predicated on the dissolution of the domestic/international distinction in security. This distinction is however maintained through the construction of external and internal enemies. It is clear that the populations identified are linked in both spheres but the maintenance of what is actually a false binary policing and war has allowed for the legitimisation of two processes of defining an enemy and responding to it in the required fashion given its location inside or outside of the nation. The response to this enemy is the same in terms of the state's free use of violence but this violence is framed in differing ways. As Neocleous has noted, 'the violence monopolised by the state is expressed as war when directed against foreign powers and as law when exercised internally'[118]. Thus we have policies of foreign intervention and counter-radicalisation that fit into the same project of ensuring the maintenance of the current political and economic status quo, a project held in place ultimately by the state's recourse to the use of violence.

The idea that domestic and international spheres have been merged does not stop the reliance on a key liberal myth that there are distinct arms to the 'war on terror' between 'war' or military means and the internal policing of illegal populations. Given that the 'war on terror' definitively refuses the notion of equal enemies facing each other on a clearly defined field of battle, the notion that this 'war' (or its military components) can be distinguished from policing is false. The project of imposing a given international order relies at different times and in different places on a variety of means that fall under the traditional notions of war and police but essentially this distinction is, in this context, a façade that the liberal state maintains to secure its own legitimacy. If one understands, as security strategy across the liberal

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[117] 'Protecting our security requires us to work with countries who do not share our values and standards of criminal justice. In working with them to protect our country from terrorist attacks and other threats we do not compromise on our values. We speak out against abuses and use our own conduct as an example. But we have to strike a balance between public condemnation of any deviation from our values and the need to protect our security through international cooperation'. National Security Strategy of the United Kingdom 2010, 23.

[118]Neocleous "War as Peace, Peace as Pacification"

states in question reveals, that 'the 'war on terror' is thus the violent fabrication of world order in exactly the way that the original police power involved the violent fabrication of social order,[119] then this war/police distinction falls flat. Given the policing of those suspect populations deemed to constitute a radicalised or extremist threat, the police power at work in the 'war on terror' continues to impose a social order in the domestic context and plays a clear role in the fabrication and maintenance of the given world order in political and economic terms.

Securitisation as depoliticisation: widening the security agenda

The construction of the enemy, which is vital to the perceived legitimacy of the 'war on terror', takes place within an overarching project of depoliticisation. The dehumanisation of external suspect populations and the criminalisation of the internal 'threat' are both essentially about maintaining the façade of an apolitical 'war', a formulation that is required to maintain the all encompassing idea of a post-political age. The essential task of sustaining the presentation of an age in which politics has been overcome is a continuous one and security strategy is universally employed to depoliticise both the threats to security and the required responses. Post-1989 'national security' has become simply the banner under which the state continues its essential task of self-preservation and the preservation of the current order. The formulation of national security as a radically new concept for the 'new' era (understood both post-1989 and again reemphasised post-9/11) has been a central component in the perseverance of the notion of an age of post-politics. Here the notion of an expanded security environment incorporating a range of formally distinct issues under the security banner is crucial. This process of securitisation is at its core a central tool in the depoliticisation of security and the maintenance of this façade. This process involves the incorporation of disparate issues into the security arena of which several are already substantively depoliticised in the dominant understanding. This serves to reinforce the need for purely technical solutions to these newly securitised issues as well as to the wider problem of insecurity fundamentally withdrawing any consideration of the role that the current political and economic frameworks play in

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[119] Mark Neocleous, "The Police as Civilisation: The War on Terror as Civilising Offensive", *International Political Sociology* 5, 2 (2011)

creating and sustaining these problems. Furthermore, through this restriction of possibilities the state assumes a monopoly over the response to all issues labelled as security threats further reinforcing the legitimacy of the state's response and broadening the reach of strategies imposed to close the possibility for any alternative politics. In this sense the remit of security politics is extended greatly allowing the insidious nature of logic of security to reach out beyond its former parameters.

The liberal state in the current era presents itself – and its strategy – as a *reactive* force in a changing security environment. The proliferation of national security strategies in the UK, Australia (and the US) is based ostensibly on the state's response to a fundamentally changed and continually evolving set of threats to national security. The liberal state's relationship to security is thus constructed in terms of a necessary and proportional response, playing no direct active role in the prioritisation (and fetishization) of security. However, the presentation of the contemporary security environment in these strategy documents reveals much about the state's role in defining security as well as the effects of such a (re)definition.

The post-9/11 security environment we are again told is better understood in the post-1989 context. The defining feature of the Cold War era – a clear security threat posed by a single state – has been replaced by a 'diverse but interconnected set of threats and risks'[120]. Understanding the 'diversity' of the new threats illustrates that the need for new strategy is premised on a major reconceptualisation of what constitutes (a threat to) national security. The novelty of the current era lies in the fact that the state now has to confront both 'traditional' and 'non-traditional' security threats[121] that combine to create an increasingly 'complex and unpredictable' security landscape[122]. The distinction between these two strands of the threat lies in the fact that traditional threats are those that threaten the 'interests and integrity of the sovereign state' while non-traditional threats instead target 'citizens and respective ways of life'[123]. Terrorism is defined as a traditional threat whilst the non-traditional

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[120]The National Security Strategy of the United Kingdom 2008, 3. The US were quicker to utilise the NSS format and in the US National Security strategy 2002, the post-Cold War era is defined by the unrivalled status of the triumphant liberal free market model and thus the threats to security are from the outset threats to this political and economic model. See George Bush. 2002. Foreword to *The National Security Strategy of the United States of America*, September 2002, iv.

[121] Rudd, *The First National Security Statement To The Australian Parliament*

[122] HM Government, *Pursue Prevent Protect Prepare*, 10

[123]Gordon Brown and Kevin Rudd. 2009. "Joint Statement by Gordon Brown and Kevin Rudd", March 31. Accessed May 15, 2011. http://www.publicpolitics.net/news/archive/145423

strand encompasses diverse phenomena such as threats to the environment, global poverty, trans-national crime, energy security, pandemics and natural disasters[124]. The contemporary threat is distinguished by its dual stranded composition but the seemingly diverse threats are presented as linked, enabling a 'coherent'[125] and overarching strategy. This formulation, presenting the threat as both diverse and interconnected, forms the basis of joint agreements between UK and Australian governments and provides the backdrop to more recent US NSS. The connections between the diverse threats legitimate the continued revision and expansion of security strategy into 'uncharted territory' necessitating new measures previously uncalled for.

Beyond justifying the continual development of security policy and the increasing prominence afforded to security in official discourse the implications of this broadened conception are more insidious. Fusing counter-terrorism with the fight against climate change for example allows the state to co-opt popular support for state action and thus bolsters support for the wider 'security' agenda. Arguably, this is done by building on the depoliticized approach to climate change that defines state strategy in both the UK and Australia[126]. Climate change is understood in official discourse to be an unintended consequence of human action definitively disconnected from the capitalist mode of production. The response to it does not require a questioning of the current order let alone its transformation; instead it stands to open up new opportunities for investment and entrepreneurialism[127]. The capitalist mode of

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[124] Brown and Rudd, "Joint Statement", 2

[125] Rudd, *The First National Security Statement To The Australian Parliament*, 3

[126] The UK government has attempted to construct climate change as an issue for the UN Security Council a move that constructs climate change as predominantly, if not exclusively, a security issue. The issue of climate change in this approach becomes one of climate security and the response is monopolised by the most powerful Western governments. Referring climate change to the Security Council as opposed to the Economic and Social Council of the UN is a clear indication of the securitisation of the issue as well as its withdrawal from any discussion of the political and economic framework in which it has emerged as an international problem. See, Mike Hulme, *Why We Disagree About Climate Change: Understanding Controversy, Inaction and Opportunity*, (Cambridge: Cambridge University Press, 2009).

[127] David Cameron has summed up the current governmental approach to climate change presenting the issue not as problem but as a new 'opportunity' for the reinvigoration of free-market capitalism: "I passionately believe that by recasting the argument for action on climate change away from the language of threats and punishments and into positive, profit-making terms, we can have a much wider impact. That's why this government has set up the Capital Markets Climate Initiative – to help trigger a new wave of green investment in emerging economies and make the City of London the global capital of the fast-growing green investment sector". David Cameron, "Use the profit motive to fight climate change", *The Observer*, November 28, 2010,accessed April 11, 2011,http://www.guardian.co.uk/commentisfree/2010/nov/28/david-cameron-climate-change-cancun

production is not at the root cause of the crisis of the environmental and conversely, in the same sense as for the response to global poverty, it is presented as its only possible saviour. This approach arguably defines the liberal response to climate change more generally[128] to the extent that is has been argued that the hegemonic approach to climate change is not simply a symptom of depoliticisation but that this approach 'ultimately reinforces processes of depoliticisation and the socio-political status quo'[129].

The liberal state's response to climate change is defined by an ideology of market environmentalism within which a 'carbon capitalism' seeks to 'extend property rights to the atmosphere'[130] – through the commodification (and subsequent fetishization) of CO_2[131] – and solve the problem by trading these rights regulated only by an 'invisible green hand'. By securitising climate change this inherently conservative approach is rendered closed to critique. Securitization results clearly in depoliticisation and in turn serves to reinforce the current order by confining these 'security' issues within the current post-political condition. In relation to campaigns around climate change that are aligned with alternative politics, securitisation of the issue undermines the possibility of a proper political act and enforces subservience to the state.

The securitisation of climate change is however not the only mode of its depoliticisation. It certainly contributes in a decisive fashion to the process by which climate change is rendered conclusively non-political but the desire that the hegemonic approach to climate change reflect and infuse the post-political condition is fulfilled by various means. These must be understood to consider how the process of securitising climate change involves a two way process of depoliticisation effecting both ecology and security; reinforcing in the latter case the fact that security threats (and security itself) are essentially apolitical. Comprehending this mutually beneficial process (for those with a vested interest in the status quo) is vital to understanding the prominence of depoliticisation in security strategy.

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[128]Anabela Carvalho, "Ideological cultures and media discourses on scientific knowledge: re-reading news on climate change" *Public Understanding of Science* 16, (2007)

[129] Eric Swyngedouw, "Apocalypse Forever?: Post-political Populism and the Spectre of Climate Change" in *Theory Culture Society* 27 (2010) 214.

[130] Hulme, *Why We Disagree About Climate Change*, 300-303

[131]Swyngedouw, "Apocalypse Forever?"

The characterisation of climate concerns with a range of populist manoeuvres that typically infuse the post-political post-democratic condition is integral to their depoliticisation[132]. The current hegemonic approach to climate change expresses some of the classic tenets of populism that reveals much about the utility (and ease) of the fusion of climate change and traditional security threats for a conservative project. In the first instance climate change is constructed as a humanitarian issue[133] positing no political subject but instead baring down on the 'people' as universal victims of a global threat. Here the incorporation of climate change into a security agenda within which human rights have central stage is a 'logical' development. As a result of the securitisation of climate change security strategy becomes even more so a humanitarian effort seeking to defend (human) rights. The approach to security is here located definitively in the age of human rights.

Furthermore, the presentation of climate change as a humanitarian issue is at the core of the rise of ecology understood through 'the rights of Nature' that has been condemned as 'a giant operation in the depoliticisation of subjects' rendering ecology the 'contemporary form of the opium of the people'[134]. In addition, the detachment of the current political and economic order from the problem of climate change is secured by externalising ecological problems and their solutions[135]. The problem/enemy is reduced to 'levels of CO_2'and the form and operation of the current system are not implicated in production of the 'threat'. As a result the solution is (as mentioned above) incontrovertibly to be found *within* the system.

It is here that the role of the liberal intellectual in constructing the issue as one detached from the liberal political and economic framework is becoming more clearly decisive[136]. The role of the liberal intellectual in the securitization of climate

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[132]Swyngedouw, "Apocalypse Forever?"

[133]Swyngedouw, "Apocalypse Forever?"

[134] Alain Badiou, "Live Badiou: Interview with Alain Badiou, Paris, December 2007" in *Alain Badiou: Live Theory*, ed. Oliver Feltham, (London: Continuum, 2008) 139.

[135]Swyngedouw, "Apocalypse Forever?", 222

[136] See Anthony Giddens, *The Politics of Climate Change: National Responses to the challenges of global warming*, (London: Policy Network, 2008). The role of the intellectual in constructing climate change as an apolitical issue is exemplified in Giddens' intervention. Giddens illustrates how the climate change issue is presented without a politics – denying decades of political activism – and in need of a political *consensus* to achieve the necessary solutions. The understanding of politics is here exclusively parliamentarist. The market must be tamed in its excesses and regulation will steer economic forces in a sustainable direction but ultimately the political and economic status quo need not, or more accurately must not, be transformed. The liberal enthusiasm for action on climate change is premised on this understanding and it is thus easily accommodated into a security agenda that seeks

change[137] – through the fusion of climate change and energy security or indeed the reduction of climate change to the issue of energy or climate security – is a decisive intervention that (based on current NSS in the UK, Australia and the US) illustrates a further example of the role of the liberal intellectual in the service of the liberal state. As a clear example, Giddens' apparent attempt to instigate a politics of climate change is instead a process of securitization. It is definitively a process of depoliticisation and seeks ultimately to confine the political activism in this field within a post-political vision of security that mystifies the true nature of security and its importance to the liberal state. Giddens aims explicitly to summon a political consensus from which climate change can be addressed. The idea that solutions will come through consensus is classically liberal and this idea underpins the hegemonic approach to climate change. Indeed, ecology in the 'West' is 'practically consensual'[138] and this undoubtedly closes the possibility for human emancipation that must come through alternative politics to those that define the current status quo.

Consensus, fostered by intellectual intervention and reinforced through securitisation, serves to annul dissent closing the possibility for true politics. Governance is enacted through a stakeholder-based arrangement within which the state operates together with 'responsible' or 'moderate' partners who are included on the basis that they accept the inevitability of the current order politically, economically and ecologically. NGOs find their place in this consensus allowing them the space to discuss and critique the current state strategy as long as the fundamental features of the status quo are not disturbed; equating to a willingness to maintain the notion of a non-political age. Given what we have uncovered about the NGO response to the liberty-security relationship above, it is unsurprising that their contributions are expressly invited by governments; they sit firmly within the consensus on security and

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essentially to reinforce the unquestionable status of liberal free-market capitalism. It is also indicative of the compatibility of liberal approaches to climate change and security that securitisation is reinforced not only in security discourse but in the climate change literature. The issue of energy *security* is the driving force behind 'action' on the issue.

[137] It is widely acknowledged that the construction of social and environmental issues as matters of national security has been a conscious aim in intellectual circles for many years as an attempt to enhance their importance. See, Joshua W Busby, "Who Cares about the Weather? Climate Change and U.S. National Security" *Security Studies* 17, 3 (2005)

[138]Badiou, "Live Badiou", 139

their inclusion in debates on climate change is indicative of their failure (or unwillingness) to substantively contest the features of the status quo[139].

The incorporation of climate change into the security arena involves the incorporation of the 'post-political environmental consensus'[140] that posits as its central idea that the problem/threat can be dealt with through a reproduction – and ultimately a reinvigoration – of the current liberal-capitalist order. Accordingly, there is no viable alternative to the current system and given the construction of the problem and its solutions we shouldn't be looking for one. The 'securitization' of climate change (as well as other 'non-traditional' issues) serves predominantly to bring the already well established depoliticised approach to these issues firmly into security strategy. Notably the UK, Australian and U.S. governments all attempt to deny their active role in this process of securitisation through their continual assertion that the current security environment has simply and autonomously evolved in the post-1989 period. The expansion of the security threat and by extension the understanding of what constitutes a threat to national security is something that the states have to respond to as opposed to leading through the production of the current NSS.

If we understand that through security 'authority inscribes itself deeply into human experience, neutralizing political action and encouraging us to surrender ourselves to the state and the institutional violence which underpins it'[141] then the securitization of these issues has major implications. It serves to neutralize all political action that in the case of climate change has for decades sought to confront these issues outside of state structures (the transformation of the engagement of NGOs from contestation to negotiation is a major indicator of this). It serves to bring these issues into the state, place them under state control and as a result those with a desire for action must surrender themselves to the state. The state assumes an overarching position through which it alone can define the problem and orchestrate and/or sanction the solutions.

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[139] The past few decades have seen the transformation of many NGOs engaged in green politics from a previous engagement in a politics of contestation to an incorporation into stakeholder-based negotiation agreements. See, Swyngedouw, "Apocalypse Forever?".

[140] Swyngedouw, "Apocalypse Forever?", 228

[141] Mark Neocleous, "Inhuman security", Critical Perspectives on Human Security: Rethinking emancipation and power in international relations, eds. David Chandler, and Nik Hynek, (Abingdon: Routledge, 2011)

The state is able to dictate which individuals and organisations are 'responsible' enough to be included in the debate and which, by virtue of their (political) understanding and subsequent strategic approach to the problem must be excluded. Ultimately, all substantive critique of the current order that seeks to name and implicate the capitalist mode of production – and indeed the capitalist state – in the creation and sustenance of these problems is marginalised[142]. Securitization serves to exclude in the first instance all but the state from the process of defining the problem and its solution. Those who wish to contribute must conform to the state's position and ultimately must tailor their understanding of climate change or global poverty (and the liberty-security relationship as we have seen above) to fit with the current logic of security.

Those who seek to politicise issues are in the current era marginalised, labelled as extremists and in many cases criminalised. In this context, the concept of 'domestic extremism' has been constructed within which those involved in 'single-issue' protests, such as animal rights, environmentalism, anti-globalisation or anti-GM crops'[143] outside of the acceptable forms of political expression are constructed as extremists. Reinforcing the foreignness of the Muslim Other this formulation also allows for an expansion of the strategy of criminalising dissent to include what are defined as 'individuals or groups whose activities go outside the normal democratic process and engage in crime and disorder'[144]. The causal relationship presented here between abandoning the democratic process and engaging in criminal activity obscures the real process by which the narrow parameters set to the 'democratic process' allow all truly political activism to be criminalised. The politicisation of all issues cannot be tolerated and once issues become incorporated into the security agenda they are comprehensively closed off from any kind of alternative, critical analysis; in this sense politics *is* extreme. Those who seek to question the status quo and by definition politicise these issues through a rejection of the impotent channels

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[142] It is from this understanding of climate change for example that Giddens is able to suggest we have had, and will continue to have, no politics of climate change until the state assumes leadership. It is also this understanding of effective and legitimate intervention that allows Giddens to depict those who politicise the climate as 'radicals'.

[143] National Extremism Tactical Coordination Unit. 2010. "*What is domestic extremism?*", accessed June 6, 2011.http://www.netcu.org.uk/de/default.jsp. The National Extremism Tactical Coordination Unit is a national policing unit set up by Association of Chief Police Officers to respond to the threat of domestic extremism in England and Wales.

[144] National Extremism Tactical Coordination Unit, "*What is domestic extremism?*"

of liberal political expression available will be met by the full force of the state's violence. The caveat attached to extremism strategy that 'legitimate peaceful protest is to be respected' is itself restricted to those actions that take place in a 'peaceful and safe manner and does not cause unnecessary disruption to a community'[145]. Policing protest is a, if not *the*, central function of policing and the development of counter-extremism strategies in this vein formalise further the police's role in the fabrication of a social and political order. The applicability of counter-terrorism powers to contexts seemingly beyond their remit is not simply a fortuitous coincidence; as Toscano has noted, 'antiterrorism has become a full-fledged method of government, a wilfully vague expedient in the arsenal of the modern state'[146]. The legal regulation of extremist ideas and behaviour only reveals further that the primary role to which law has been devoted in bourgeois society is order[147]. The criminalisation of alternative politics is at the core of security strategy and as a result the liberal monopoly over the definition of the political, which is in the current epoch a definition devoid of true politics, is secured through the approach to security.

Securing the hegemonic status of the liberal world view

This analysis has demonstrated a shared understanding of the current situation between the three liberal states in question. There appears not to be any specifically Anglo-Saxon character to the regime as the US has undoubtedly provided a significant degree of influence over the development of both UK and Australian security strategy. The presentation of the current era of 'insecurity' shared between these states was set out by the US government in the first instance and the convergence illustrated above between all three states suggests this is an essentially *liberal* presentation of a *liberal* regime as opposed to the product of a specific political culture. This is not to say that the influence over the formulation of security strategy (and security policy) has been a one-way process. There is clear evidence of a process of policy transfer running in multiple directions between the UK, US and Australia.

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[145] National Extremism Tactical Coordination Unit, "*What is domestic extremism?*"

[146] Alberto Toscano, "Criminalising Dissent", *The Guardian*, January 28, 2009, accessed May 25, 2012, http://www.guardian.co.uk/commentisfree/libertycentral/2009/jan/28/human-rights-tarnac-nine.

[147]Neocleous, *The Fabrication of Social Order*, 110.

What is crucial to this shared understanding is the need to rid the notion of security of any political dynamic. The overarching formulation of the current situation – at the local and global levels – as one in which politics has been overcome is absolutely fundamental to the legitimacy of the subsequent security regime. Intertwining human rights and security is both part of the process of depoliticisation and, as a result, pivotal to the legitimation of the 'national security' project. Returning to Schmitt and the notion of a void between the presentation of the liberal state and its actual operation, we can see that these security strategies have a vital role in maintaining the approved vision of the state and the context in which it operates. In presenting the liberal state as a post-political entity struggling to combat the forces of barbarism that remain wedded to an age of politics that is (thankfully) over, these documents have a crucial ideological function maintaining the perceived validity of the dominant understanding of contemporary liberalism and the state's loyalty to it. These strategies are effectively marketing documents tasked with the role of selling domestic and foreign policy initiatives that are located within, or can be brought into, the security agenda.

The state as site, generator and product of strategies is arguably brought to the fore here. Without inferring that security strategies as considered here in the formal sense are directly equivalent to Jessop's notion of state strategy, there is a sense that the liberal state's pursuit of security can be understood as the defining *state project* in the contemporary era. The approach to security in its various facets provides us with clear view of the state as institutional ensemble understandable as *producer* of political strategy, ultimately here aimed at the maintenance and consolidation of global capitalism; but also the state as currently constituted is produced through its past and current strategies. The policing (in the broadest sense) that defines security politics involves the (re)configuration of a multitude of institutions within the state (and beyond). If, as Jessop states, 'the structure and modus operandi of the state system can be understood in terms of their production in and through past political strategies and struggles'[148] then we can suggest that while the state's structure is the product of its past political strategies, the current form is being reconfigured through its approach to security. If security is the supreme concept of bourgeois ideology then we should not be surprised that the capitalist state reveals itself to be increasingly

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[148] Jessop, *State Theory*, 261

157

enamoured with the concept but we should be concerned with the ways in which the pursuit of security affects how the state is structured. A critical analysis of security politics, and by extension a *critique of security*, demands a focus on the state and we must be continually mindful of both the ways in which the state leads (although not in isolation) the formulation of security politics and in turn, the way in which the approach to security affects, if not determines, the structure of the state.

We have arrived at a point in which the convergence between the liberal state and the liberal intellectual is clear. There exists a shared understanding of the current situation and a universal acceptance of the threat presented by international terrorism. The impact of security politics on domestic populations (not least in terms of the restriction of fundamental freedoms), whilst experienced in varying degrees depending on social location, requires the organisation of widespread (although not universal) consent for the consolidation of this security regime. The liberal state clearly understands the importance of this project and the production of these security strategy documents with such frequency and at such length needs to be understood in this sense. However, these documents alone are not sufficient for a task of this magnitude and it is here that the liberal intellectual becomes of great importance. The organisation of consent in the internal 'realm' is crucial to the state and it is in this context that the individuals and organisations working at the various levels of intellectual activity are so useful to the state in legitimising the state politics of security.

The convergence between the state and the liberal intellectual is however not a result of a simple one way process of influence. The shared understanding of the current situation and the agreement on the presentation of security politics is the result of an exchange of ideas that points toward in the first instance, the utility of the liberal intellectual's work to the state's project of self-legitimisation; and secondly toward the subservience of the liberal intellectual to the state. The convergence is ultimately the result of a shared commitment to the liberal tradition but there is a need to consider further the direct role of the liberal intellectual in the service of the liberal state.

Chapter 5

The role of the liberal intellectual in the service of the liberal state

In response to the clear convergence between state and intellectual in the liberal framing of the liberty-security regime, this chapter seeks to consider the direct role of the liberal intellectual in the service of the liberal state in the era of the 'war on terror'. The analysis considers two documents that may be best understood as *manifestos* produced in the post 9/11 era by groups of intellectuals who sought directly to intervene in political debates around the legitimacy of the 'war on terror'. The consideration of these documents is located at this point in light of both the analysis of the liberal intellectual in the current epoch and the subsequent consideration of state security strategy in the previous chapter. Based on a much clearer understanding of the liberal state's role in the development of the politics of security this analysis seeks to examine the liberal intellectual's direct intervention in political debates and consider the motivation for interventions in this form and effects they had in relation to state strategy. These manifestos, *'What We're Fighting For: a Letter from America'* published in 2002 and *The Euston Manifesto* published in 2006 provided direct political interventions at specific points in the chronology of the 'war on terror' and were produced, albeit in different times and places, to have a direct impact on public and political opinion in relation to the 'war on terror' and by extension, the wider politics of security. The purpose of this analysis is to consider the content of these documents and to more specifically assess the service they provided to the liberal state.

The contribution of this section to the wider analysis is in developing an understanding of the relationship between the liberal intellectual and the liberal state. The analysis above has suggested that fundamental to this relationship is the role the liberal intellectual plays in legitimating the liberal state and in the current context the legitimation of the state's security strategy is primary importance. Central to the liberal intellectual's legitimating function is the engagement with critique and the process by which the assertion of the necessity and legitimacy of a liberal approach involves the curtailment, if not the outright denial, of the possibilities for alternatives. The analysis of the manifestos in this section focuses on this process and considers the extent to which the use of this form of political intervention is defined by a more

159

direct engagement with critical accounts of the 'war on terror'. The analysis will thus consider if these manifestos need to be understood as examples of the direct 'policing' of critique that seemingly defines the liberal intellectual's work and considers the effect this has on alternative perspectives on the 'war on terror' and security politics more generally. This attempted narrowing or closure of alternative positions is clearly most important when one considers the response to the left in this context. A central concern of this analysis is to assess the role the liberal intellectual plays in attempting to marginalise if not exclude any truly leftist positions. Understanding the liberal state's reliance on the depoliticised framing of the current regime and the effect this framing has on narrowing the parameters for critical interventions – both reinforced by the wider work of the liberal intellectual – it is crucial that these manifestos are considered in depth at this point.

The function of the liberal intellectual

The analysis set out in chapters one to three has illustrated the convergence in position between liberal intellectuals in the era of the 'war on terror'. This analysis has made clear that the appearance of debate and even conflict within liberal intellectual circles obscures the fact that there exists a common position shared among intellectuals, scholars and human rights organisations in relation to the appropriate relationship between liberty and security. This shared intellectual position reinforces the state's prioritisation of security and fundamentally, despite claims to the contrary, the liberal intellectual intervention broadly conceived serves to legitimise the state's use of violence in the response to 'terrorism'. The dual concern of the liberal intellectual leads supposedly to a critical intervention facing in two directions – toward international terrorism *and* toward apparently illiberal counter-terrorism policies – has been shown to be a façade. It has been illustrated through the interventions covered thus far that substantively the liberal intellectual and the liberal state speak with one voice in the condemnation of international terrorism *and,* despite much fanfare to the contrary, effectively stand together in defining and justifying the state response.

The intervention of the liberal intellectual – in the various forms this has taken – has been shown to be shaped by depoliticisation that is both premise and consequence of their work. The liberal intellectual has served to depoliticise the current security regime and crucially the concept of security itself. The eternal

wrangling over the prioritisation of liberty over security – and/or their appropriate balance – has served to obscure the fact that the politics of security are liberal politics. Paradoxically, the attempt to disassociate liberalism from security politics and return the liberal state to a mythical liberal heaven in which terrorism can be legitimately tackled and security ensured without compromising liberty, has ultimately allowed the liberal state to reinforce its liberal credentials. As a result, the liberal 'critique' of the current regime directed at both the domestic and the externally focussed state response serves instead to reinforce the current legitimacy of such policies and effectively sanction their continued development and 'innovation'.

The output of the liberal intellectual across the three strata has been prolific and in varying degrees reached a wide audience both inside the nations leading the 'war on terror' and beyond. The legitimating function that defines their role is a product of the continued output in their already existing forums. However, the publication of '*What We're Fighting For: a Letter from America*'[1]and *The Euston Manifesto*[2] was indicative of the utilisation of a distinct format for intervention that had an immediacy, reach and direct impact unavailable to the standard forms of scholarly output. The necessity of this form of intervention is made clear when both documents are understood in general terms as responses to criticism of the 'war on terror' that sought to speak in a timely fashion to a much wider audience and have a direct impact on public and political opinion. It is this form and its potential impact in relation to the state politics of security that demands analysis here.

Liberals saving the 'war on terror' from itself

The purpose of both of these documents was to respond to criticism of the 'war on terror' and the form or medium chosen, the manifesto, is most suited when one understands the response to criticism in both documents as essentially a (re)statement of liberal political principles. At their different points of interjection and in their

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[1] Institute for American Values. 2002. "*What We're Fighting For: A Letter from America*", Accessed January 1, 2012. http://www.americanvalues.org/html/wwff.html; Also available as: 60 U.S. Intellectuals, "What We're Fighting For: A Letter from America" in *The Islam/West Debate: Documents from a Global Debate on Terrorism , U.S. Policy, and the Middle East*, eds. David Blankenhorn et al. (Maryland: Rowman& Littlefield, 2005). References here will be for the most part from the version published in Blankenhorn et al.

[2] Norman Geras et al. 2006. "*The Euston Manifesto*". Accessed January 7, 2012.http://eustonmanifesto.org/the-euston-manifesto/

different geographic contexts both *What We're Fighting For* (WWFF) and *The Euston Manifesto* (EM) were attempts to dispel criticism of the response to terrorism by (re)framing the 'war on terror' as a liberal project. This is not a new pursuit for the liberal intellectual but there appeared to be at both points of publication a perception of the need to combat anti-war criticism that had failed to remain confined to academic or scholarly circles; essentially as the critique of the 'war on terror' had 'become' political as opposed to theoretical or philosophical, these groups of intellectuals seemingly felt the need to break free of their confinement in traditional[3] intellectual circles. Moreover, they are responses to criticism that had emphasised the incompatibility of the 'war on terror' project with liberal values or in the case of EM, with values held by those on the left.

The role of WWFF in responding to criticism is made clear through its targeted publication and subsequent impact. WWFF made little impact in the U.S. due to its confinement to the website of its publishers/commissioners The Institute for American Values. In reality it was a document addressed to the Europeans published initially in Le Monde as '*Lettre d'Amérique, les raisons d'un combat*'[4]. The emphasis on publication in Europe was a response to political and public disquiet on the 'war on terror' that had been voiced from its inception. This is not to deny the popular protest movement in the U.S. before and during the 'war on terror' was formally launched in Afghanistan but the authors clearly felt the tide of public opinion was with them on that side of the Atlantic. In Europe dissenting voices were given space and appeared to be having a negative impact on political and intellectual support for the 'war on terror' and it was arguably in response to this that the document was drafted.

From a popular understanding of political positions WWFF is signed by intellectuals from a range of political backgrounds. It brings together individuals associated with neo-conservatism such as Samuel Huntingdon, Francis Fukuyama and Jean Bethke Elshtain with renowned left-liberals such as Robert Putnam and Michael Walzer. The idea of a fusion of neo-conservatives with more traditional 'liberal' (in the popular American sense) thinkers appears to illustrates a non-partisan and by

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[3] The use of this term does not imply the suggestion that traditionally liberal intellectuals have refrained from legitimating the power of the liberal state; this has always been their role.

[4] Institute for American Values. 2002. "*Lettre d'Amérique, les raisons d'un combat*" Le Monde, February, 15, Accessed January 12, 2012. http://www.americanvalues.org/le_monde_1.PDF

extension non-political stance. However, it is clear that this document relies upon and espouses liberal principles and it is a commitment to these principles that unite the signatories behind the 'war on terror'. The liberal/(neo)conservative distinction that defines US political discourse mystifies the liberal nature of US politics and the security politics that define the 'war on terror'. The allegiance of Walzer with the likes of Huntingdon, Fukuyama and Elshtain is not surprising as they share a commitment to the liberal understanding and subsequent prioritisation of security. The analysis above has sought to illustrate that while there are clearly important reasons for both sides of the liberal/conservative distinction to maintain a charade of opposition and conflict (both for themselves and for the continued presentation of the political pluralism of liberal democracy) in the context of security politics at the very least this distinction is revealed to be a false one.

The façade of non-partisanship is of course itself a liberal trait and it is reinforced by a continual emphasis throughout WWFF with 'universal values' that are, as in state strategy, presented as defining the American nation, the political system and the response to terrorism (once understood as compatible with Just War theory). These values are moreover the *cause* of terrorism. The attackers who struck on 9/11 'despised not just our government, but our overall society, our entire way of living'[5] indeed 'their grievance concerns not only what our leaders do, but also who we are'[6]. The depoliticisation of the intellectual intervention is coupled with, or more accurately bound up in and reliant upon, the depoliticisation of terrorism beginning, crucially at this point in the chronology of the 'war on terror', with the events of 9/11. The attack was on *American society*; the authors note that those who died on September 11 were known (to their attackers) only as Americans[7]. The symbolism of the site(s) is again here obscured entirely and the emphasis on values (as the cause of the attack as well as the reason for, and defining feature of, the response) is maintained. Ultimately, the document serves to reinforce the notion that they hate 'us' for our 'values' not our politics.

A subscription to the 'universal values' of freedom, democracy, tolerance and moderation set out in the WWFF document aligns the forces of good against an evil

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[5] 60 U.S. Intellectuals, "What We're Fighting For", 22

[6] 60 U.S. Intellectuals, "What We're Fighting For", 22

[7] 60 U.S. Intellectuals, "What We're Fighting For", 27

enemy. The 'war on terror' is framed as a response to an 'unmitigated global evil'[8], an 'implacable enemy'[9] who refuses to conform to these universal and essential values. The rejection of these values and centrally the rejection of human rights – which are posited as the 'basis of any civilisation oriented to human flourishing, justice and peace'[10] – is a sign of barbarism that, as noted above, renders the terrorist outside humanity and the wrong side of the good/evil binary that defines the 'war on terror'. The moralising approach that defines the position of these intellectuals is unsurprising as it reflects the general theme of the liberal intellectual's intervention but it is crucial in its reaffirmation of the state's depoliticised framing of the response to terrorism.

The support for the 'war on terror' in WWFF is explicit and the authors (and by extension the signatories) make clear that they see themselves and the American public as aligned with the state in waging the war[11]. The authors position themselves from the outset as working in the service of the state but it is the means by which this service is carried out that are important. It is not simply a valorisation of the 'war on terror' although this is certainly part of its job; the general purpose is to present the 'war on terror' as a project in line with liberal principles continuing the state's own work to this end that, as noted above, defines the multitude of security strategy documents. This is made clear by the summary of WWFF provided by the Institute for American Values: in their terms WWFF 'sought to redefine the struggle against terrorism in terms of universal human values'[12]. This is an attempt to rescue the 'war on terror' from the rhetoric of the Bush administration that was, for some liberals, in the early months and years of the 'war', all too cavalier in their framing of the response to terrorism for it to be clearly compatible with the operation of a liberal state (here we are aware this concern is in reality with maintaining the formal presentation of the liberal state). There is no attempt here to suggest the Bush/Rumsfeld/Cheney orchestration of the 'war on terror' made a departure from

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[8] 60 U.S. Intellectuals, "What We're Fighting For", 29

[9] Alex Roberts, "Introducing the Debate" in *The Islam/West Debate: Documents from a Global Debate on Terrorism , U.S. Policy, and the Middle East*, eds. David Blankenhorn, (Maryland: Rowman & Littlefield, 2005)

[10] 60 U.S. Intellectuals "What We're Fighting For", 28

[11] The opening paragraph makes clear that the document is responding to the need that 'those who would wage the war state clearly the moral reasoning behind their actions'. 60 U.S. Intellectuals "What We're Fighting For", 21.

[12] Roberts, "Introducing the Debate", 15

what should be expected from a liberal state but one could suggest that they failed at times to maintain the façade of restraint that defines the liberal presentation of state violence. It is at this point that the liberal intellectual's essential role in reconstructing the façade of restraint becomes crucial. While this has been exhibited throughout the work of a range of liberal intellectuals – and rescuing the 'war on terror' from neo-conservative rhetoric has occupied many – the publication of this document should be understood as a direct, immediate and far reaching example of the fulfilment of this essential role and a clear example of the subservience of the liberal intellectual to the state.

There are 'alternatives'

The central framework through which the 'war on terror' is defined as compatible with universal values is Just War theory. For this reason it is unsurprising that Walzer is a key signatory and indeed a vital influence over the original authors of which Elshtain (known for her application of just war theory in the post 9/11 context) is understood to be the leading figure[13]. The application of just war theory to the 'war on terror' serves to legitimate the U.S. state as a legitimate authority that is able to orchestrate a just war and a response to terrorism that conforms – again through its commitment to 'values' – to the restraint of a war fought in this tradition. It does this to of course legitimate what was at this point the well established military intervention in Afghanistan and to pave the way for future action that was by 2002 already being discussed in relation to Iraq.

The effect of this framing is not simply a 'redefinition' of the struggle against terrorism (and by this it is understood to allow a retrospective legitimation of past and already existing military endeavours as well as future ones) but it is a crucial part of curtailing the possible positions available for inclusion in the debate around the 'war on terror'. The original document included a long endnote dividing the possible intellectual positions on war into four categories: realism, holy war, pacifism, and just war[14]. This serves to fundamentally narrow the possibilities for opposition to the 'war on terror' and conflates any support for vaguely defined notions of justice and

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[13] See, Edward Said. 2002. "Thoughts about America" in *Al-Ahram Weekly Online*, 28 Feb. – 6 March, No. 575. Accessed July 25, 2012.http://www.lacan.com/said2.htm.

[14] Institute for American Values, "*What We're Fighting For: A Letter from America*"

freedom with support for the 'war on terror'. The attempt is made to undermine all critique and exclude any possibility of dissent. True political alternatives that refuse to subscribe to any of the four available options are rendered to the extremes and denied all legitimacy; through this framing of the debate all effective critique is denounced. The liberal intellectual illustrates again here the decisive function unavailable to the straight supporter of both the 'war' and security politics more generally[15]. That Walzer is at the core of this process confirms the fallacy of his commitment to the left and dissolves the (neo-)conservative/liberal/left-liberal distinction that defines U.S. politics if not all liberal democratic politics.

The debate that resulted from the publication of WWFF much championed by its authors illustrates the result of this framing of possible positions. Those who join the debate from one of these four sanctioned positions are included and engaged with (including for example a strident critique supposedly from Osama bin Ladin or al-Qa'ida's representatives[16]) but a critique that rejects them finds no response and is effectively excluded. al-Qa'ida can be included because they subscribe (in the caricature of the Islamic terrorist that they are aligned with and reinforce through their own rhetoric) to an apparently apolitical position. They can be included in the debate because they ultimately, on the basis on their adoption of or allocation to one of the possible 'alternatives', have nothing (political) to contribute in opposition to the liberal framing of the security regime.

The response to a critical intervention provided by a group of leftist US intellectuals[17] to this debate illustrates the charade of 'inclusivity' to this much vaunted debate. Unlike the responses by Muslim scholars and al-Qa'ida that elicited lengthy counter-responses from the original authors of WWFF, the intervention by scholars on the left provoked only silence[18]. An intervention that makes clear the

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[15] "As well as acting as conduits for the distribution of policy justifications, the liberal pro-war intellectuals help frame arguments for policy-makers in terms more palatable to potentially hostile audiences". Richard Seymour, The Liberal Defence of Murder, (London: Verso, 2008) 2.

[16] "Osama bin Ladin", "Letter to the American People", 2002. in The Islam/West Debate: Documents from a Global Debate on Terrorism , U.S. Policy, and the Middle East, eds. David Blankenhorn, et al. (Maryland: Rowman & Littlefield, 2005)

[17] 140 U.S. Intellectuals, "Letter from United States Citizens to Friends in Europe". 2002. in The Islam/West Debate: Documents from a Global Debate on Terrorism , U.S. Policy, and the Middle East, eds. David Blankenhorn, et al. (Maryland: Rowman & Littlefield, 2005)

[18] It has been included on the archive pages of the Institute for American Values website and was included in Blankenhorn et al's compilation but this is seemingly to maintain the charade of an open

166

ideological context in which the 'war on terror' is fought and in which WWFF was drafted does not warrant inclusion on the basis of its departure from the narrow range of alternative positions available. That the authors of this leftist intervention sought to directly politicise the sites of the 9/11 attacks by noting that 'the World Trade Center clearly symbolised U.S. global economic power, while the Pentagon represented U.S military power'[19] and thus sought to directly undermine the pivotal idea that the U.S. was attacked because of its 'values'. This meant that it need not, indeed could not, be accommodated into the debate.

Furthermore, the leftist intellectuals go as far as to implicate the authors and signatories of WWFF in the reinforcement of the façade of the U.S state as the defender of universal values. By making explicit reference to the function of the intellectual in the context of the 'war on terror' they transcend the parameters of the debate fixed by the liberal intellectual and reinforced happily by the liberal state. The leftist intellectuals offer a choice available to intellectuals as to whether or not they join 'the chorus of those who celebrate brute force by rhetorically attaching it to "spiritual values"'[20] which is clearly where they locate the authors and signatories of WWFF designated as 'pro-war celebrants'. Those leftist intellectuals understand there to be an alternative beyond those laid out in WWFF; this involves 'taking up the more difficult and essential task of exposing the arrogant folly of power and working with the whole of humanity to create means of reasonable dialogue, fair economic relations and equal justice'[21]. The fact that this alternative falls outside the four options available in the WWFF framing of possible perspectives on the 'war on terror' means they do not warrant a response.

However, the fact that they understand the alternative in reference to the category of *humanity* and speak in terms that fail to name the system that ensures *unfair* economic relations means their intervention is worthy of a place at the end of Blankenhorn's collection and a spot on the Institute for American Values website which is indicative of inclusion in some basic form if ultimately regarded with indifference. One could suggest that if they had made their opposition without these

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debate. In reality the lack of a response illustrated the unwillingness of the liberal intellectual to engage with anything approaching a substantive political critique.

[19] 140 U.S. Intellectuals, "Letter from United States Citizens to Friends in Europe", 255

[20] 140 U.S. Intellectuals, "Letter from United States Citizens to Friends in Europe", 256

[21] 140 U.S. Intellectuals, "Letter from United States Citizens to Friends in Europe", 256

caveats they could not have been included in the debate as defined by the intellectuals tied to the Institute for American Values. The indifference with which this critique was treated is seemingly a consequence of its failure to push its critique as far as required. Holding back from the required naming of the both the politics of security and the capitalist system it sustains allowed for inclusion on liberal terms; but in this context it can be suggested that 'exclusion' would be a sign of a level of critique possible in this situation and clearly required from the left.

In light of the reference to humanity, this leftist intervention was understood only to make a basic point that 'the U.S. is an arrogant and militaristic enemy of humanity'[22]. This is because the basic ideological opposition (though clearly not pushed as far as it is able) could not be acknowledged without the apolitical presentation of the 'war on terror' becoming unravelled. The relevance of ideology in the WWFF framing is reserved only for 'Islamism' that is itself subsequently dismissed as essentially apolitical as it refuses to conform to liberal standards. In a clear echo of state strategy, politics is here ultimately denied; the current security regime is re-positioned at the 'end of history'. The leftist intellectuals do attempt a politicisation of security and make clear an ideological opposition to the liberal framing of the 'war on terror' and for this reason they transcend the narrow boundaries set to the debate by the liberal intellectual. However, their failure to push this political opposition to the point of an explicit anti-capitalism, exposing at the same time the bourgeois foundation of the concept of security, prevents them effectively disturbing the hegemonic status of the current framing. The question here is whether there can be an effective critique from the left that remains committed to principles shared with liberalism: can the left be truly critical if it is unwilling or unable to fully transcend the principles that define the current regime?

The redefinition of the left and the policing of dissent

Edward Said noted at the time of the publication of WWFF that the letter 'augurs a new and degraded era in the production of intellectual discourse'[23] that has seen intellectuals form the most powerful country in the world 'align themselves so

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[22] Roberts, "Introducing the Debate", 19

[23] Said, "Thoughts about America"

flagrantly with that power, pressing that power's case'[24]. This is of course not a new phenomenon and the level of support lent by intellectuals (including liberal intellectuals) to the state in this context is arguably not unprecedented but in light of this Said suggests we have returned to the 'bad old days of the intellectual war against communism' in which all too many intellectuals chose the path currently followed by the authors of WWFF. The idea of an intellectual war on terrorism appears to have more in common with the intellectual war on communism than a subservience of intellectuals to state strategy. The allegiance of liberal intellectuals and the liberal state in denouncing and fundamentally delegitimising all substantive political alternatives continues to define the twenty first century in the U.S. and beyond much as it did in the days of anti-communist witch-hunts[25]. The intellectual war against terrorism needs to be understood as a war against alternatives and most specifically against the left. It is a war against political alternatives that reinforces the 'war on terror' because it follows the same binary opposition and separation into two races: good and evil. The good is the forces of civilisation, freedom, tolerance, democracy etc (read liberalism) and the evil is *any* opposition. The liberal intellectual needs to be understood as engaged in this intellectual war and these manifestos bring this out most explicitly. The liberal intellectual's service to the state in the contemporary period continues to arise from the intellectual weight they bring to the delegitimisation of any possible opposition to the liberal state and capitalism.

The denial of political alternatives has always been central to the role of the liberal intellectual in the service of security. The appeal to notions of nation and demand for loyalty to those 'values' that define the nation (and are used to construct a national identity) are mobilised for security now as much as they were in the 'bad old days' of the twentieth century. If we understand that 'deployed in the name of security, loyalty and identity help organise the political imagination around the state'[26] then the central theme of WWFF is in line with the liberal intellectual's wider role in the service of security. The role of the liberal intellectual in the security regime

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[24] Said, "Thoughts about America"

[25] The continuity between the Cold War and the 'war on terror' in this sense lies in the perception of a threat posed to liberal capitalism by the so-called 'forces of evil'. For many the continuity of this threat is understood through a conflation of communism and Islam warranted on the basis of their shared commitment to a revolutionary egalitarianism: '…for many veteran or belated Cold Warriors, the menace posed to liberal capitalism by the Islam of the twentieth century (communism) has been relayed by the communism of the twenty-first (Islam)'. Toscano, *Fanaticism*, 239.

[26] Neocleous, *Critique of Security*, 141

is brought out most explicitly in this document but it makes no fundamental departure in nature from the substantive feature of the work considered in previous sections.

The intellectual war on communism can be understood as a crucial episode in the continual intellectual war on political alternatives that has always employed the liberal intellectual and remains at the core of their vital function in legitimising the liberal security regime. We see in WWFF and in the wider contribution of the liberal intellectual only a continuation of this in the post 9/11 period. As has been noted above it is the pretence of distance – in ideological standpoint or more precisely in the rejection of ideology – between the 'critical' liberal intellectual and the 'war on terror' that provides it with an unrivalled legitimating function. The 'war' on political alternatives is far more successful if it is fought on liberal terrain.

The emphasis on Walzer's signature in WWFF – raised here and reiterated by Said[27] – arises from the pretence of distance between his ostensibly leftist (or socialist) politics and the politics of the 'war on terror'. It was noted in chapter one that Walzer's professed commitment to the left or his version of the 'decent' left allowed for a legitimating function that is borne out of the pretence of critique and the incorporation of political alternatives into a debate on security politics. The notion that the debate around the 'war on terror' can sustain substantive critique – and demands this on the basis of its liberal commitment to debate and the quest for consensus – affords Walzer's 'leftist' position an important voice in the debate much as it reinforces the importance of Rorty's intervention as discussed above. The legitimating function of the liberal intellectual that arises from their apparent political distance is arguably further compounded when these intellectuals locate themselves on the left. Their attempt to dissolve any leftist/liberal distinction has clearly been internalised in relation to their own politics and enables a pretence of leftist politics to be sustained while Walzer signs up to a document like WWFF. It arguably provides the document with a heightened legitimating function on the basis that it is apparently the result of a consensus among diversely situated intellectuals. This is of course a nonsense; the signatories are united through their commitment to a liberal politics that is, on the basis of its flexibility in popular political discourse at times given (or adopted) labels ranging across a liberal political spectrum from neo-conservative to liberal-left. While the involvement of the likes of Huntingdon and Elshtain is

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[27] Said, "Thoughts about America"

170

important in terms of the provision of intellectual support for the 'war on terror' the WWFF document provides a greater legitimating function on the basis of the apparent diversity of the political backgrounds of the signatories.

The role of the 'decent' left in the era of the 'war on terror' is evident in the work of Walzer and Rorty but runs much deeper into the intellectual support for the current security regime. The 'decent' left has a pivotal and arguably unrivalled role to play in policing 'legitimate' alternatives that is fundamental in reinforcing what constitutes an acceptable 'critical' intervention. It is from this 'decent left' perspective that Walzer has been able to restore the ability of the The *U.S. Army/Marine Corps* to 'think clearly about war – including its legitimacy and its demands'[28]. The decent left is not a political alternative and Walzer is not a critic in any true sense; he and his vision of the left provide a pivotal source of legitimacy to the liberal state that has been of great importance to the marketing of the 'war on terror' to a liberal audience. However, the inclusion of the 'decent' left as an apparently distinct political perspective from both the neo-conservative and liberal interventions allows for the maintenance of the pretence of inclusivity and the ability of the security regime to accommodate substantive critique. The Euston Manifesto needs to be situated in this tradition.

The concept of a 'decent left' is acknowledged as being borrowed from Walzer's understanding of the need for a reformed left in the post 2001 era and in its current formulation, set out following the invasion of Iraq, it has been defined by those outside the movement as *the pro-war left*[29]. This specific position initially merits focus because of its proclaimed willingness to 'propose a fresh political alignment'[30] in the context of the response to the current liberty-security regime. The influence of Walzer's (and the other public intellectuals') position on the response to terrorism running through the various levels of intellectual activity[31] is seemingly

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[28] See, Sewall, "Introduction to the University of Chicago Press edition. A Radical Field Manual" xxii

[29] See, Johann Hari. 2007. "Johann Hari: The pro-war left's disastrous misjudgment", *The Independent*, July 23, http://www.independent.co.uk/opinion/commentators/johann-hari/johann-hari-the-prowar-lefts-disastrous-misjudgment-458361.html.

[30] The Euston Manifesto, A. Preamble

[31] The fact that this position has been seemingly adopted not only by academics but also bloggers and scholars suggests a notably diffusion of the position of the public liberal intellectual (Walzer at the very least) even beyond the readership of their own work. This grouping of intellectuals has the potential to popularise the liberal intellectuals' political approach to the current liberty-security regime. Given the legitimating function this approach has been shown to have the subsequent diffusion of these ideas is a key concern here.

171

confirmed in this document and the idea that this has given rise to 'a fresh political alignment' warrants further scrutiny.

The development of Walzer's concept of a 'decent left' reveals much about this 'fresh political alignment' and its approach to the relationship between liberty and security. In essence, the concept of a 'decent left' has been employed to legitimate support for the military intervention central to the 'war on terror' from a supposedly left wing perspective. Much as Walzer (and Rorty) consider the left to be incapable of 'keeping up' with the demands of the new age of international terrorism, the articulation of this position has been incited by the apparent failure of the anti-war movement (aimed predominantly at the intervention in Iraq) to remain both realistic and true to the values of the left[32]. The supposedly new political alignment revolves around Walzer and Rorty's notion of abandoning the leftist/liberal distinction and 'reaching out beyond the socialist Left toward egalitarian liberals and other of unambiguous democratic commitment'[33]. It is an approach defined by a liberal understanding of democracy that shares Walzer and Rorty's frustration with the failure of the left to modernise. Modernisation of the left is understood to mean an abandonment of Marxism but moreover dissolution of the left/liberal distinction and an abandonment of any true opposition to the status quo. This 'modernisation' of the left involves an abandonment of its core principles; it is a demand for 'suicidal' reform that in light of Walzer and Rorty's articulation of the demands may be better understood as a conscious process of attempting to kill off any true leftist politics. From this conservative foundation it is unsurprising that the 'decent left' is a perspective committed to human rights principles and the legitimacy of the use of military intervention to fight terrorism. The novelty or 'freshness' of this alignment lies in defining what it is to be on, or of, the left and not in defining a response to the current security regime.

The emphasis lies once again with a project of revisiting what a left-liberal position on the 'war on terror' should look like. Fundamentally, the project for these

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[32] The preface to Alan Johnson's 'Global Politics After 9/11' was written by Walzer and he used this space to reiterate his notion of a decent left as considered in chapter 1 above. The introduction by Johnson seeks to set out how through the pages of both the Euston Manifesto and the Democratiya journal this concept has been developed ultimately to reveal its relevance (and necessity) for the post 9/11 era. See, Alan Johnson, *Global Politics After 9/11: The Democratiya Interviews,* (London: The Foreign Policy Centre and Democratiya, 2008)

[33] The Euston Manifesto, A. Preamble

'leftists' is the same one that has united many of these scholars returning to the foundations of the liberal (and in this case the leftist) tradition to set out a true response to terrorism. These scholars, journalists, bloggers etc locate themselves on the left and from here seek to rethink the *liberal* relationship between liberty and security. That they take Walzer's purportedly leftist (and ultimately liberal) perspective as their starting point is unsurprising but it is further illustration of the broad influence of the public intellectual strata. The political alignment proposed here is instead again distinctly liberal, and develops out of the work of the liberal intellectuals with the influence of WWFF implicit in both its content and form. This is illustrated not least by the fact that the response to global inequality is restricted to 'radical reform' of the major institutions of global economic governance[34]. The fallacy of this perspective purporting to offer an alternative politics to that that defines the current regime is clear: this is not a project of the left, defined by an alternative politics to the current liberal regime, but a rearticulation of the liberal framework formally positioned on the left as an attempted grasp for legitimacy both for the current regime and for those supposedly on the left who support it.

In true liberal fashion, following the dominant approach set out in the literature considered above, the liberal response is positioned between two opposing forces. In this case the threat is not from terrorism and neo-conservatism but from terrorism and another illiberal threat – that of the 'old left'. The left that refuses to accept the politics of the current regime is lumped together under the banner of 'excusers of terrorism and tyranny'. Mirroring the 'with us or against us' rhetoric that defined the 'war on terror' from the outset, a leftist opposition to war in Iraq is equated with excusing terrorism; arriving at the same conclusion that renders the leftist intellectual response to WWFF mentioned above to fall on deaf ears (despite in that case its own failings to develop its critique and state the seemingly 'unstatable'). The EM develops the conflation of leftist opposition to military intervention and terrorism through the definition of the 'far left' as nihilists[35] echoing Ignatieff's definition (reinforced by both the consensus of liberal intellectual opinion and of course in liberal state security discourse) of international terrorists as 'apocalyptic nihilists'.

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[34] The Euston Manifesto – B. Statement of Principles

[35] Nick Cohen, *What's Left: How Liberals Lost Their Way*, (London: Fourth Estate, 2007) 14.

173

The apparent leftist sympathy with authoritarian or terrorist regimes has been discussed by one of the original authors of EM (and leading figures of the 'decent left') as being underpinned by a 'new authoritarian Marxism' that, under the leadership of Badiou and Žižek, is articulating a "terrorist" theory of the state[36]. This simplistic, superficial 'analysis' of the contemporary left is based initially on a reductionist vision that unites all leftist anti-war (or anti 'war on terror') sentiment together to be readily dismissed. But more pressingly, the labelling of a 'terrorist theory of the state' exhibits the liberal attempt to delegitimise any truly alternative politics and utilises the most effective label available in the current epoch to dismiss the legitimacy of any position: terrorist. Given that the construction of the terrorist in the current epoch is inseparable from the idea of the fanatic, we see in this dismissal of the left − for Johnson exemplified in the work of Badiou and Žižek − a re-emergence of the critique of Marx and Marxism on the grounds of its own fanaticism[37]. This critique is intended to be particularly potent given Johnson's (and the 'decent' left's) role in the construction of the Islamic terrorist as a fanatic in the context of the 'war on terror'.

The fear of any truly alternate leftist politics, that is in reality a fear of transformation, confirms that this 'fresh political alignment' is clearly a reiteration of the liberal framework maintaining the legitimacy of the current status quo. The position of Žižek and Badiou is dismissed as the 'reactionary Left-cum-Right'[38] as part of the attempt to cleanse the left of any true opposition to liberalism. Liberalism is understood as compatible with the left as the left in this vision is understood as the inheritors of the bourgeois revolutions of the eighteenth century. A rejection of this tradition and any attempt at its transcendence is from this position a betrayal of the principles of the left and must be aligned with or transplanted to the right. The simplistic and very selective, if not wholly disingenuous, reading of history allows for a redefinition of what the left is and what it means to be on the left. Crucially, here the leftism of Žižek and Badiou is aligned with the terrorist on the basis of their rejection of human rights. Both can be understood as outside legitimate politics by virtue of this rejection. If the left is understood in this way as the direct inheritors of the bourgeois

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[36] Alan Johnson, 2010. "The New Authoritarian Marxism: A Terrorist Theory of the State", *Dissent Magazine Blog*, May 17. Accessed January 24, 2012.http://www.dissentmagazine.org/atw.php?id=122.

[37] Toscano, *Fanaticism*, 173

[38] Alan Johnson. "The Reckless Mind of Slavoj Žižek" in *Dissent* 56, Fall (2009)

revolutions it has to be committed to human rights; any attempt at a leftism that does not define its critique in the language of human rights has seemingly abandoned the left and this is precisely what the EM, and the decent left, assert. As a result it would seem that the possibilities for effective critique and dissent in the current epoch are denied. In terms of the 'engagement' with the contemporary left the 'decent left' serves only to give further legitimacy to a regime that has been condemned most vociferously (on the page and the street) by those on the left[39]. The rewriting of the recent history of left wing protest and dissent at least in response to the 'war on terror' is a shared feature of both WWFF[40] and EM as they both remain at their core defenders of the state in the face of dissent[41].

We have in the form of the EM the fulfilment of Walzer and Rorty's demand (by no means unique to them) for the dissolution of the left/liberal distinction. The equation of the left with the liberal is not simply the result of the confusion of the terms in popular US political discourse; to be on the 'decent' left is to be liberal and in the current context this means to be wholesale supporters of the liberal security regime. Supporting the regime is of course only a sign that the liberal-left like the liberal more generally is firmly committed to (the politics of) security; it could not be in any way in opposition by virtue of its alignment with the status quo. It is this vision of the left that allows one of its leading lights and disciples of Walzer[42], Alan Johnson to see fit to work for the UK government in a consultative role in the development of its counter radicalisation and counter-extremism strategies[43]. Johnson's work in

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[39] There is no attempt here to make the same reduction of the left to one essential position and nor is there the attempt to defend or legitimate all leftist positions and subsequent alliances made in the anti-war movement. The point made is that the 'decent left' is not of the left if one understands the left to be defined in opposition to the current status quo. It is instead liberal and suffers from the classic fear of any alternative politics that are willing to challenge the current status quo in terms of its political and economic arrangement.

[40] WWFF supports 'not only our government's but society's decision to use force of arms against them (the terrorists)' ignoring – and thus dismissing – the waves of protest in the US against the invasion of Afghanistan. See, 60 U.S. Intellectuals, "What We're Fighting For", 29.

[41] "The Euston group provides a counter-pressure against shifts to the Left that the antiwar movement has produced". Seymour, The Liberal Defence of Murder, 230

[42] Johnson was the founder of the journal Democratiya in 2005. The journal has since been incorporated into Dissent magazine where the link with Walzer was made formal through Johnson's admission to the editorial board of Dissent. Democratiya was defined as 'a free quarterly online journal of social-democratic and anti-totalitarian politics and culture' that reveals much about its underlying politics as well as its link to, or influence on, the central themes of EM. Dissent. 2009. "Democratiya". Accessed February 2, 2012.http://dissentmagazine.org/democratiya.php [Accessed 3/2/12]

[43] 'Alan recently completed a consultancy project for the UK government, studying journeys taken by young British Muslims 'in and out of extremism' and helping to develop strategies and

developing the EM and the wider work of the 'decent' left must be understood as playing an integral informal role in the development of this counter-extremism/radicalisation strategy that complements Johnson's formal role. The 'decent' left plays a fundamental part in defining both what constitutes extreme or radical (and in Johnson's view 'terrorist') politics and thus play a vital role in policing political alternatives and reinforcing the legitimacy of the status quo (a role that is arguably even unavailable to the explicitly liberal intellectual).

The decent left's willingness, if not compulsion, to legitimise the state's security regime is brought out only most explicitly by Nick Cohen, one of the lead authors of the EM, in reference to Iraq. In a rebuke of Robin Cook's resignation in protest at the invasion of Iraq, Cohen developed the line of the EM equating opposition to war with support for (and in Cook's case responsibility for) the deaths of Iraqis under the former regime. Cohen's absolute support for the British involvement in the invasion led him to define the British Army in that context as 'the armed wing of Amnesty International'[44]. The legitimising effect of this framing of British military involvement is arguably without parallel; it is a framing that the state so desired in its own documentation of the time but the state could never be as brazen as to conflate 'humanitarian (military) intervention' with the work of the HR organisation despite its insinuation of this link in its justification of the war. It is here that the role of the apparently independent intellectual (an independence reinforced by Cohen's status on the left) becomes crucial in not simply reinforcing the state's position but being able to frame the state's role in terms unacceptable in official discourse. Notwithstanding Amnesty's own work legitimising the state, the equation of military intervention with human rights advocacy in Cohen's work[45] seeks to position the state alongside Amnesty and others and usurp their position in the popular consciousness as the guardians of human rights. In this framing, protest against the war in Iraq is equated with an opposition to human rights and by extension an opposition to the emancipation of those Iraqis who were the victims of the violence of Saddam Hussain's regime. In a further reduction of WWFF's narrow choice of

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communications aimed at countering radicalisation and extremism.' World Affairs Journal. 2011. "*Alan Johnson*". Accessed February 2, 2012. http://www.worldaffairsjournal.org/users/alan-johnson.

[44] Nick Cohen, "A question of guilt", *The Observer*, July 13, 2003, accessed April 15, 2011, http://www.guardian.co.uk/politics/2003/jul/13/iraq.iraq1

[45]Notably in his role as a columnist for *The Observer*, the natural 'home' for Britain's left-liberal anti-war middle classes.

positions in relation to the 'war on terror', there are for Cohen and the EM only two choices: support for the war *and* human rights (read here freedom) or an opposition to both. Phrased another way, this choice is framed as one of support for the US and British state or support for the Iraqi state under Saddam Hussain. The attempt to 'simplify' the options available is of course an attempt to quash resistance to the state's military and political project.

The decent left and liberalism's exclusionary logic

The mobilisation of a popular anti-Islam, anti-immigration, xenophobic racism that characterises security discourse is a crucial component in the process of establishing support for the current security regime. In light of this, we should not be surprised that the state is reliant on the support and assistance of an intellectual class to develop and legitimate this racism[46] but we must however, be aware of the specific role within this of the liberal intellectual who has the capacity (and the willingness) to reinforce this construction of the Other and to do so in such a way that it can be presented as in line with liberal democratic values. Recent history alone attests to the fact that the liberal state is willing to impose a regime of racist violence directed at the most marginalised sectors of the population[47], but the legitimating function of the liberal intellectuals support for the construction of the Muslim Other (the Muslim extremist/fundamentalist) is vital. The role of the decent left in this is significant. A critique of contemporary security politics, and the racism that they entail, cannot restrict its focus to the political right and instead must be mindful of what Badiou has referred to as 'the crushing responsibility of those, very often – they say – "of the left,"'[48]. While in this sense we must refer to both governments and intellectuals (nominally) of the left, we must clarify that in these cases those governments of the right and the left who have depended on these exclusionary measures are differentiated by name only. The labels of right and left must in reality be dismissed;

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[46]Alain Badiou, "The Racism of the Intellectuals" ["Le racisme des intellectuels"], *Le Monde,* May 5, 2012, trans. Edward P. Kazarian, accessed August 14, 2012. http://darkprecursor.net/2012/05/07/badious-the-racism-of-the-intellectuals/

[47] See, A. Sivanandan (1981) "From resistance to rebellion: Asian and Afro-Caribbean struggles in Britain," *Race & Class* XXIII, 2/3 (1981)

[48]Badiou, "The Racism of the Intellectuals"

these regimes, located either side of what is a false divide, are in substance *liberal* and it is in this sense that the political position of the decent left is to be understood.

The role of the liberal intellectual in the service of the liberal state is here crystallised. What is professed in these manifestos only reinforces the wider work of the liberal intellectual including here the work of the human rights organisation. If social engagement is the marker of true intellectual activity[49] then the liberal intellectual as conceived here is indeed worthy of this title. More crucially, it fails in any way to depart from the position of the liberal state and what we have here is but another forum through which the liberal intellectual can legitimise the state politics of security. The form taken here is significant in that it demonstrates the commitment of contemporary intellectuals to rally to the support of the state as well as their willingness to adapt the medium to fit the message. The veil of independence and autonomy is of course crucial to both the legitimacy of the intellectuals and to what is basically a statement of support. Not discounting a genuine *sense* of impartial critique on the part of many liberal intellectuals, we are reminded through this analysis that the regime we are considering is truly liberal and that its current form is the result of a series of interventions. The state is pivotal in the development of this regime but its form, and its endurance, is a result in part of the support it receives from apparently independent non-state actors of which the intellectual, and most specifically the 'critical' intellectual, are of utmost importance. The claims to be on the left is an attempt to extend this 'critical' independence and the legitimating function provided through the intervention from the liberal-left while not new[50] is fundamental.

It is clear that the 'decent left' is incapable of, but also unwilling to provide, critique. The narrowing of possibilities for dissent so crucial to its role in the current era raises questions about its framing of the left in the post 2001, if not post 1989, period. We have in the shape of WWFF and EM the qualification of the charge that the liberal intellectual's labour can be defined by the quest to disqualify any political reasoning that is not their own. This attempted decimation of the possibility for truly

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[49]Radhika Desai, "Second-Hand Dealers in Ideas: Think-Tanks and Thatcherite Hegemony", *New Left Review* 1, 203 (1994) 37

[50] "Imperialism is not a distant relic, but a living reality, and the moralization of the means of violence has been the task of the liberal and progressive intellectuals since the first competed with clerics for moral authority. The liberal façade is important for the empire, because those claiming to draw on leftist traditions are not, like their militaristic friends on the right, sullied by having espoused principles of inequality for decades". Seymour, *The Liberal Defence of Murder*, 218.

alternative perspectives founded on an alternative political reasoning is a decisive political manoeuvre that confirms the importance of the liberal intellectual and their role in the maintenance of liberal hegemony. This process makes clear that liberalism enacts a form of political rationality that is defined by the prioritisation of security[51] and the liberal intellectual is employed in defending this rationality as the only legitimate possibility for contemporary politics. From this stance any true opposition to security in its current form(s) is symptomatic of alternative politics that must be delegitimised and in reality excluded.

In the provision of this support the signatories of WWFF and EM highlight once again the role of human rights as an integral component of the politics of security. The framing of the current political context by the authors of WWFF and EM highlights the apparent centrality of human rights principles to their political reasoning and as a result their importance in marking the illegitimacy of alternative politics that refuse to conform to liberal principles. The pervasiveness of this framing is reinforced through the idea that not only is a commitment to human rights a marker of legitimacy in the debate about the response to terrorism but it is also an essential marker of a true leftism and this raises a central question about the use of human rights on the left. The decent left has illustrated that its own commitment to human rights is not to strengthen its capacity for criticism but precisely the opposite; it is to reinforce the legitimation of the current regime and to reinforce the politics of security. The question here seems instead to be whether it is possible to remain committed to the principles of human rights whilst still opposing the current status quo from a truly alternative politics. The response to WWFF provided by the 140 leftist intellectuals appears to suggest that a commitment to these principle at the very least dilutes a critique, and while it does not infer the complicity of the 'decent left' in their intervention, it fails to establish a position that can name and truly challenge the politics of security. There is a need to consider further whether a commitment to human rights is a fundamental hindrance to the leftist critique that the current regime and the politics of security in general require. The suggestion is not automatically that a human rights perspective on the left is by definition impossible but that it is, based on this analysis thus far, difficult to see how the maintenance of a commitment to

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[51]Neocleous "Security, Liberty and the Myth of Balance"

what appears to be an essentially liberal principle – certainly one that defines the liberal position – can be compatible with a politics that refuses a liberal political reasoning, rejects security and is truly in opposition to the status quo.

Chapter 6

Human rights in Left Politics / Emancipatory Politics in Human Rights?

While the previous sections have highlighted an apparently inherent relationship between human rights and liberal politics, this chapter seeks to respond to the more complex issue of the attempt to employ human rights principles as part of, and even as central to, a critical left wing perspective. Focussing on the work of Noam Chomsky, Judith Butler and Jurgen Habermas this analysis seeks to consider how intellectuals who locate themselves on the left (and in this case intellectuals who are lauded as three of the most prominent leftist intellectuals) understand an emancipatory potential for human rights. Given what has been revealed about the depoliticising function of human rights activism and the conservative function human rights have as an integral component of liberal politics, the analysis considers how human rights can be employed on the left in the face of current (and past) critiques. Fundamentally, the analysis considers the extent to which leftist intellectuals who see human activism as central to their work seek to mark a definitive distinction between their position and the liberal understanding of human rights.

The analysis begins by setting out the conception of human rights on the left as defined by these thinkers. While considering the work of Chomsky, Butler and Habermas to be by no means homogenous, the analysis seeks in the first instance to outline how human rights are understood as compatible with a leftist politics as well as the similarities and divergences in position offered by these three. Secondly, the analysis seeks to consider in what ways, and to what extent, this leftist position departs from the liberal understanding. The central question here lies with the possibility for human rights to be detached from liberal politics, relieved of their legitimising function in relation to the current status quo (in both its political and economic formation) and put to service in the context of alternative, emancipatory politics. The analysis begins by determining if a leftist understanding of human rights in itself constitutes a challenge to the current structures that define the status quo.

The second major strand of this analysis turns to the specific application of human rights as part and even central to critiques of the current security regime. The primary concern here lies with the departure these critiques make from the critique offered by liberal intellectuals and scholars considered above. The analysis will

181

consider the extent to which these critiques offered from the left question the substantive features of the status quo as opposed to being restricted to highlighting abuses of human rights. In this sense, the analysis poses a central question about the efficacy of a critique of liberal politics based on human rights. Furthermore, the analysis asks how a defence of human rights is separated from the right to security and ultimately, the security of property and the securitisation of society; in other words, are human rights decoupled from the notion of security in the current context?

The concern remains throughout with the seemingly paradoxical application of human rights as part of, if not at the core of, a left politics. In the context of the 'war on terror' this paradox appears to be compounded by the role human rights play in legitimating the politics of security and the analysis here will therefore attend to both the pre and post-9/11 interventions made by these authors to decipher if a leftism that relies on human rights can constitute a truly alternative political formulation. The analysis asks if human rights are inherently tied to liberal principles, or do they embody principles of their own which can provide the basis for, or otherwise be put to use in the context of emancipatory politics.

Contesting the foundation of human rights

The relationship between language and politics is a central concern for Chomsky, Butler and Habermas (albeit in different ways) but it is arguably in Chomsky's work that his concern with language and subsequent linguistic theory is most integral to his understanding of human rights. Despite Chomsky's continual refutation of the idea of any substantive link between his linguistic work and his political writings, his understanding of human rights is grounded by the central theme that emerges from his linguistic theory, namely, that of human nature. Chomsky's theory of *Universal Grammar*[1] posits an innate human capacity to learn grammatical rules and develop language. In his formulation of a *Cartesian linguistics*[2] Chomsky maintains that the general features of grammatical structure are common to all languages and reflect certain fundamental properties of mind. He identifies himself as a Cartesian rationalist grounding his linguistic theory on the idea that there are certain intrinsic properties of

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[1] Noam Chomsky, *Aspects of the Theory of Syntax*. (Cambridge, MA: MIT Press, 1965)

[2] Noam Chomsky, *Cartesian Linguistics: A Chapter in the History of Rationalist Thought*, (New York: Harper & Row, 1966)

human nature[3] and it is this central idea that, despite his claims to the contrary, marks a fundamental connection between his linguistic and political work.

On the basis of an acceptance of human nature, ethics as well as language find their foundation in innate, fundamental human qualities. Chomsky sees himself joining a long tradition of thinkers who develop the notion of innate rights as part of the natural world understood through rational enquiry[4] and as a result he positions himself as a politically neutral scientist who is employed in revealing fundamental human qualities that can be applied to the political realm. Ethics is grounded in human nature, residing 'in fundamental human qualities, in terms of which a "real" notion of justice is grounded'[5].

While a commitment to human rights presupposes an association of rights and the notion of humanity, Butler starts from a confrontation with the meaning of 'humanity' in questioning whether 'human rights take the human as their ground'[6]. This starting point illustrates the conceptual distance between Chomsky and Butler and Butler's further question as to the possibility that 'human rights do not so much presuppose the human as conjecture (but) posit its future possibility'[7] marks clearly her rejection of the tradition of innate rights within which Chomsky locates himself.

Butler asserts a need to 'distinguish between humanity understood as the quality of being human and the human as subject position secured through juridical power[8] and from this point we begin to unravel the centrality of this apparent reinterpretation of human rights to her politics. Butler suggests that the status of being human is not in the current mainstream political culture a universal. Humanness, as currently constituted, is an exclusionary concept and Butler's work involves a critical analysis of the definition of the human and a subsequent attempt at a reconstitution of

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[3] See, Alison Edgley, "Chomsky's Political Critique: Essentialism and Political Theory", *Contemporary Political Theory* 4 (2005).

[4] Noam Chomksy, *Chomsky on Anarchism*, (Edinburgh: AK Press, 2005) 173.

[5] Noam Chomsky and Michel Foucault, *The Chomsky-Foucault Debate: On Human Nature*, (New York: New York Press, 2009) 55.

[6] Judith Butler, "Afterword – The Humanities in Human Rights: Critique, Language, Politics" in *PMLA* 121, 5 (2006).

[7] Butler, "Afterword", 1659

[8] Butler, "Afterword", 1659

this category. Butler is aware that 'certain humans are recognised as less than human'[9] but the required response involves a contestation with what counts as a human life.

The notion of human rights grounded in human nature is also emphatically rejected by Habermas leaving the Chomskian position, at least in this group but arguably more generally, isolated on the left. Human rights are for Habermas constructions as opposed to being pre-given moral truths[10] that need to be understood as being 'Janus-faced, looking simultaneously toward morality and law'[11]. This dualist conception of human rights is set out in Habermas' attempted refutation of Schmitt's critique of the moral foundation and moralising effects of human rights. For Habermas contra Schmitt, human rights 'do not have their origin in morality but rather bear the imprint of the modern concept of individual rights hence of a specifically juridical concept'[12]. The charge that human rights have a moral foundation is for Habermas based in an overemphasis on the fact that moral arguments are sufficient for the justification of basic rights and a resulting disregard of their existing juridical character. The moral justification for rights provides them with a universal validity claim but does not turn them into moral norms[13].

Fundamentally, human rights 'owe their character to their structure, not their content'[14] and their structure is determined by 'the structure and form of modern law'[15]. Yet the relationship between law and morality remains central to Habermas' conceptualization of human rights:

> Human rights circumscribe precisely that part (and only that part) of morality that can be translated into the medium of coercive law and become political reality in the robust shape of effective political rights[16].

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[9] Judith Butler, *Undoing Gender*, (New York: Routledge, 2004) 2.

[10] Jürgen Habermas, *The Postnational Constellation: Political Essays*, (Cambridge MA: MIT Press, 2001) 122

[11] Habermas, *The Postnational Constellation*, 118.

[12] Jürgen Habermas, *The Inclusion of the Other: Studies in Political Theory*, (Cambridge: Polity Press, 1996) 191.

[13] Habermas, *The Inclusion of the Other*, 191

[14] Habermas, *The Inclusion of the Other*, 191

[15] Jeffery Flynn, "Habermas on Human Rights: Law, Morality, and Intercultural Dialogue", *Social Theory and Practice* 29, 3 (2003) 434.

[16] Jürgen Habermas, "The Concept of Human Dignity and the Realistic Utopia of Human Rights", *Metaphilosophy* 41, 4, (2010) 470.

Habermas positively celebrates the coercive capacity of law for its ability to fill the void left by a depleted common morality in modern complex societies. The connection between morality and law is further conceptualized through the idea of human dignity that 'forms the "portal" through which the egalitarian and universalistic substance of morality is incorporated into law'[17]. A conception of existing equality is grounded in human rights through the legal recognition of the equal dignity of human beings and for Habermas this 'interplay' between law and morality could (and seemingly in his terms, should) give rise to a political order founded on human rights[18].

Whilst human dignity is the moral 'source' from which 'basic rights derive their meaning'[19] it is only social and political struggle that make violations of human dignity possible[20]. Habermas' conceptualization is for Flynn indicative of the active component of human dignity through which it is made central to the 'moral and political constructivism of the content of human rights'[21]. In this sense Habermas promotes an understanding of human rights that avoids visualizing violations of human dignity in overly passive terms. There exists an apparent distinction between the logics of humanitarianism and human rights as they are grounded respectively in a passive and active component of human dignity that have for Flynn given rise to different politics. Habermas' politics of human rights is based in the active component that understands others as the subject of rights as opposed to mere 'objects of concern or pity'[22]. We have then in Habermas's conceptualization an active subject of human rights that is presented as distinct from the idea of the victim that is central to the logic of humanitarianism.

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[17]Habermas, "The Concept of Human Dignity," 469

[18]Habermas, "The Concept of Human Dignity," 469

[19]Habermas, "The Concept of Human Dignity," 466

[20] Jeffery Flynn, "Human Rights, Humanitarianism, and the Politics of Human Dignity" (paper presented at the Annual Meeting and Exhibition of the American Political Science Association, Seattle, WA, September 1-4, 2011), accessed May 11, 2012, http://ssrn.com/abstract=1899837

[21] Flynn, "Human Rights, Humanitarianism, and the Politics of Human Dignity," 14

[22] Flynn, "Human Rights, Humanitarianism, and the Politics of Human Dignity," 19

Rejecting the concept of innate rights: universality as an unfinished project

While the universality of humanity is a finished project for Chomsky, international lesbian and gay politics involves for Butler a process of 'reconstituting the human'[23] taking universality as a 'site of contest'[24] to reimagine and redefine who counts as a person. This struggle is at the very core of human rights activism for Butler as pursuing rights and their ongoing universalization is a struggle to extend the recognition of who (which individuals or groups) count as persons recognised in their humanity. The struggle for rights is for Butler fundamental to the process of transformation. Reconstituting the human, opening up this category to include those otherwise excluded individuals (and groups) is presented as a radical, emancipatory process and underlies Butlers political project; universalisation is an ongoing process brought about by a critical human rights activism.

Understanding human rights as a strategy aimed at ever widening inclusion of particularities dissolves Butler's human rights project into a politics of recognition; an *identity politics*, the implications of which must be considered further. We must ask of this project (as of any human rights project) what kind of politicisation it desires; as Wendy Brown has suggested, we must ask 'what kind of political recognition can identity based claims seek'[25]. We must also in the context of the current politics of security ask what possible critique can an identity politics – or a human rights politics based on the recognition of identity(s) – produce if it fails to acknowledge the relevance of class politics. If, as Brown suggests, identity politics is at least partly dependant on the demise of a critique of capitalism and of bourgeois cultural and economic values, and as a result reinscribes bourgeois ideals leaving the status quo untouched, we must consider what potential a human rights project based on these premises has for the left? How can the politics of security be contested by a political project that avoids a confrontation with capitalism? A project that reinscribes bourgeois ideals is incapable of confronting the current regime with a view to

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[23] Butler, *Undoing Gender*, 30

[24] Judith Butler, "Restaging the Universal", in *Contingency, Hegemony, Universality*, eds. Judith Butler, Ernesto Laclau, and Slavoj Žižek, (London: Verso, 2000) 38

[25] Wendy Brown, *States of Injury: Power and Freedom in Late Modernity*, (Princeton: Princeton University Press, 1995) 55.

transform it and here we must be mindful of the possibility that this formulation of a human rights politics may serve to reinforce the impenetrability of security.

Human rights are thus intrinsically tied to Butler's understanding of an transformative politics; the exclusion that characterises the current understanding of humanness is not an inherent feature of human rights, it is only a feature of an 'imperialist' conception of international human rights. The category of the inhuman or the subhuman is not a creation of human rights as per Badiou's critique but is instead viewed as the result of the curtailment of the recognition of universal humanity grounded in a particular (and clearly dominant) conception of human rights. Fundamentally, the challenge to this narrow interpretation of personhood can come through human rights activism as 'international human rights is always in the process of subjecting the human to definition and renegotiation'[26]. This process leaves open the possibility for an 'anti-imperialist or, minimally, non-imperialist conception of international human rights' that 'calls into question what is meant by the human'[27]. This involves challenging the human as subject position secured through juridical power and instead basing a recognition of humanity on the quality of being human.

For Habermas human rights are understood to carry a universal range of application despite their obvious unequal application. Here then as for Butler, universalisation is an incomplete process that must be extended and ultimately concluded, but unlike Butler, in Habermas' conceptualization this process is a legal one that is to be achieved through exhausting the human rights content of basic law[28]. The distinction between Habermas' and Butler's understanding of the process universalisation comes through Habermas' denial of a specifically *political* process and its substitution with a *legal* one. This is fundamental to Habermas' understanding of human rights and the subsequent promotion of a vision of societies wholly governed by law but there also remain questions as to the specific character of the politicisation that Butler demands that we will return to.

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[26]Butler, *Undoing Gender*, 33

[27]Butler, *Undoing Gender*, 37

[28]Habermas, *The Inclusion of the Other*

Human rights in *alternative* politics?

From an understanding of ethics as an 'a priori structure of consciousness'[29] Chomsky's political writings, indeed his politics in general, can be characterised as the pursuit of justice understood to be defined by the defence of these innate human rights. Popular struggles are therefore reduced to upholding human rights; emancipatory struggle in Chomskian terms is the struggle to uphold the natural rights that exist by virtue of one's humanity. Chomsky's conception of human rights is central to his own political framework that he defines as anarchist with 'origins in the Enlightenment and classical liberalism'[30]. It is this 'classical' liberalism that grounds the notion of innate rights and there is a need to decipher how this tradition is accommodated into what is positioned as (and widely championed as) a transformative, emancipatory politics.

There exists for Chomsky a classical, pre-capitalist liberalism that has at its core a notion of the common good. This concept of a liberalism defined by equality and in turn central to the notion of democracy is an integral component of Chomsky's leftist, anarchist politics[31]. Equality is understood to be grounded in human nature and framed by the equal rights we hold on the basis of our humanity. The contents of human nature that give rise to this equality are thus the only possible basis for a legitimate social order. The classical liberalism of Adam Smith and James Madison is by virtue of a rehabilitation of their work afforded a central influence in the development of an alternative politics. He sees not only a pre-capitalist but even an anti-capitalist theme in the works of Smith and Madison that obscures (or attempts to rehabilitate) the fundamental contribution made by these thinkers to the foundation of a bourgeois ideology. In particular Chomsky's reformation of Madison to an 'anti-capitalist' position (or at least to one having anti-capitalist themes) involves the suggestion that Madison's defence of the right to unequal property and his assertion that the defence of this right should be the first object of government (to ultimately protect the differential acquisitive capacities of men) are not reflective of the 'spirit'

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[29] Christopher Wise, *Chomsky and Deconstruction: The Politics of Unconscious Knowledge*, (New York: Palgrave MacMillian, 2011) 74.

[30] Chomksy, *Chomsky on Anarchism*, 191

[31] Noam Chomsky, "The Common Good" (speech delivered at The Progressive Challenge, Capitol Hill, Washington D.C. January 9, 1997) accessed May 12, 2012, http://www.cooperativeindividualism.org/chomsky_commongood.html

of his work and his politics. For Chomsky classical liberalism can be understood as a set of ideas that were superseded, or moreover swept away, by the 'rising tides of state capitalist autocracy'[32]. The suggestion that Madison's ideas were 'swept away' by the development of state capitalism as opposed to being at its very core involves a startling denial.

On the basis of such obfuscation Chomsky suggests that this classical liberalism and its defining concept of innate rights have a transformative, in the sense of emancipatory, potential. Indeed, the notion of innate rights grounds the only possibility for radical change; a rejection of human nature is ultimately conservative 'as it legitimates existing hierarchies'[33]. As a result a politics based on human rights is presented as essentially transformative given that it seeks by definition to challenge existing structural inequality.

The overlap between classical liberalism and anarchism is not unique in Chomsky's work and has its most pronounced link in terms of the relationship to law and the faith in its capacity to restrain the expansion of state power[34]. Chomsky's indebtedness to the classical liberal tradition lies not only in his understanding of innate rights but in the faith he puts in their ability to restrain the state and moreover to uphold individual rights against the privileged[35]. Human rights are understood to have a levelling effect in the pursuit of an egalitarian social order and a regulatory effect in relation to the state. Chomsky's anarchism aligns itself with a liberalism apparently uncontaminated by the oppressive conception of rights (rights allocated other than by virtue of one's humanity) that resulted from the 'growth of the industrial economy, and the rise of corporate forms of economic enterprise'[36]. The radical change in the concept of human rights that brought about the inclusion of any 'individual, branch, partnership, associated group, association, estate, trust, corporation or other organization (whether or not organized under the laws of any State), or any government entity'[37] symbolises the shift from classical (pre or even

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[32] Chomsky, *Chomsky on Anarchism*, 191

[33] Chomsky, *Chomsky on Anarchism*, 175

[34] See, Robert F Barsky, *The Chomsky Effect: A Radical Works Beyond the Ivory Tower*, (Cambridge MA: The MIT Press, 2007) chapter 4.

[35] Barsky, *The Chomsky Effect*, 188

[36] Noam Chomksy, "Market Democracy in a Neoliberal Order: Doctrines and Reality", *Z Magazine*, November 1997, accessed August 15, 2011, http://www.chomsky.info/articles/199711--.htm.

[37] *Survey of Current Business*, in Chomsky, "Market Democracy in a Neoliberal Order".

anti-capitalist) liberalism to the contemporary form that allows the abuse of human rights and in turn gives rise to an oppressive force underpinning liberal governance and market principles that was supposedly absent in the days of Smith and Madison et al.

It is clear then that the notion of human rights as grounded in human nature is at the core of Chomsky's politics and central to his understanding of both existing equality and of the left's ability to mount a challenge to the current status quo. His even partial adherence to classical liberalism – a form supposedly detached from contemporary liberalism and its intrinsic relationship with capitalism – provides for a confusing presentation of contemporary politics and the strategies for activism that ground his intellectual interventions. In his formulation of human rights progressive political struggle need not be theorised; we must instead focus on revealing the truth and making the facts of human rights abuses public. Given Chomsky's political starting-point – human rights as biologically given – theory and ideology become in this formulation superfluous, if not a hindrance, to a transformative politics. Chomsky's explicitly anti-theoretical approach to political writing[38] and the tendency to suggest an even post-ideological basis[39] to his interventions is a result of this innatist conceptualisation of human rights. The extent of his opposition to theory is illustrated in his rejection of Gramsci's assertion that 'a main obstacle to change is the reproduction by the dominated forces of elements of the hegemonic ideology' that is replaced by the maxim "just tell the truth"[40]. Telling the truth is opposed to 'repeating ideological fanaticism'[41], as though an alternate politics can be formulated outside of ideology. Chomsky here demonstrates the continued currency of fanaticism as a term of abuse and more alarmingly echoes Alan Johnson's dismissal of the radical left through the negative association of contemporary emancipatory politics and fanaticism. This simplistic understanding of the operation of ideology reduces strategy on the left to a process of disseminating the truth based on an understanding

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[38] See, Slavoj Žižek, "Introduction: Between the Two Revolutions" in *Revolution at the Gates: A Selection of Writing from February to October 1917* by Vladimir I Lenin, ed. Slavoj Žižek (London: Verso, 2004) 4.

[39] 'Chomsky....steps outside of all groups and eschews all ideologies'. Chris Hedges, Foreword to *Power and Terror: Power and Terror: Conflict, Hegemony, and the Rule of Force*, by Noam Chomsky, (London: Pluto, 2011)

[40] Noam Chomsky, *Imperial Ambitions: Conversations with Noam Chomsky on the Post 9/11 World*, (London: Hamish Hamilton, 2005) 63.

[41] Chomsky, *Imperial Ambitions*, 63

that facts alone are enough[42]. We potentially enter here a post-political formulation within which Chomsky's leftism is seemingly based not on an alternative politics but on an impossible attempt to step outside ideology and operate on a terrain defined ultimately by human rights.

Human rights beyond politics

Habermas' notion of a political order based on human rights stands at the heart of his project of articulating a worldview in which the democratic process is taken beyond the nation state. This *postnational constellation* is posited as a transformative response to neo-liberalism[43] and in this idea of an ostensibly radical cosmopolitan democracy the demos is unbounded by nation states instead understanding the populace to be humanity at large[44]. The notion of transcending national citizenship is grounded in Habermas' conceptualization of rights that refer to individuals on the basis of their humanity. The postnational framework needs to be understood as the fulfillment of Habermas's understanding of the potential of rights. The global expansion of human rights can come about through the transformation of states into constitutional democracies through which 'nationality' would become the result of a free choice as opposed to something imposed on the individual. As this is, as Habermas admits, some way off, an alternative route would emerge if each individual 'attained the effective enjoyment of human rights immediately as a world citizen'[45]. The concept of 'citizen' here loses its meaning; the concept of a bounded 'people' on which a notion of equality can be grounded is lost through its substitution with a universal humanity.

The centrality of human rights to Habermas's vision of world politics is further illustrated in his assertion of the co-originality of human rights and popular sovereignty. In line with his theory of communicative action, Habermas rejects the idea of a problematic, tension ridden relationship between human rights and popular

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[42] See, Slavoj Žižek, "An interview with Slavoj Žižek", *Left Business Observer*, April 17, 2003, accessed August 15, 2011, http://www.leftbusinessobserver.com/Žižek.html

[43] Habermas, *The Postnational Constellation*, chapter 4 – "The Postnational Constellation and the Future of Democracy".

[44] Andrew Fraser, "A Marx for the Managerial Revolution: Habermas on Law and Democracy", *Journal of Law and Society* 28, 3 (2001).

[45] Habermas, *The Postnational Constellation*, 119

sovereignty. The connection is based on the fact that 'human rights institutionalize the communicative conditions for a reasonable political will formation'[46]. The relationship between human rights and democracy is filtered through Habermas' understanding of deliberative democracy for which human rights are a formal condition[47]. This formulation of a consensus based politics illustrates that Habermas' suffers from what Mouffe has termed 'the incapacity of democratic theorists and politicians to acknowledge the paradox of which liberal-democratic politics is the expression'[48]. His deliberative politics based on human rights is fundamentally depoliticised – and depoliticising – as it seeks to deny the conflictual nature of politics and the ineradicability of antagonism[49]. This is arguably unsurprising given the depoliticising effects of a conceptualization of rights based on the concept of a common humanity that is so central to Habermas' political framework.

If we accept from Žižek that 'a leftist position should insist on the unconditional primacy of the inherent antagonism as constitutive of the political'[50] then Habermas' position on the left is brought into question. While for a right-wing lawyer such as Andrew Fraser, Habermas' communicative model of preceduralist law making is considered to be designed to promote the revolutionary transformation of Western civilisation[51], in reality his political vision, based as it is on a pivotal deconstruction of the democratic conception of equality, denies the possibility for any substantive alternative, emancipatory politics. Habermas's 'leftism' at best suffers from the delusion that the status quo can be contested through a repression of the political; at worst it converges with a liberal reformism that brings Habermas very close to so-called left liberalism of Rorty.

The fallacy of his claims to a truly transformative leftist politics is further exposed through his concern with the rejuvenation of Europe. When one considers that the transcendence of the nation state involves (although cannot be reduced to) an

[46]Habermas, *The Postnational Constellation*, 117

[47]Jürgen Habermas, "Human Rights and Popular Sovereignty: The Liberal and Republican Versions", *Ratio Juris*7, 1 (1992)

[48] Chantal Mouffe, *The Democratic Paradox*, (London: Verso, 2000) 8

[49]Mouffe, *The Democratic Paradox*, xi

[50]Slavoj Žižek, "Carl Schmitt in the Age of Post-Politics", in *The Challenge of Carl Schmitt*, ed. Chantal Mouffe, (London: Verso, 1999) 29

[51] Fraser, "A Marx for the Managerial Revolution"

apparent transformation of the international economic system[52] this appears to signal Habermas' desire for a substantive reordering of the current political and economic frameworks. However, his apparent desire to transform the economic status quo is at odds with the basic premise of his manifesto for the renaissance of Europe[53] in which he fundamentally fails to acknowledge – or seeks to obscure – that a crucial dimension to the European project is strengthening the competitiveness of European capitalism and in turn reinforcing neo-liberal capitalist hegemony[54]. His project for transformation is instead shown (at least in the European context) to be something of a 'Third Way project for international politics'[55] and this points toward the conservative effect of his vision of human rights that appears in reality to undermine his professed desire for transformation. It becomes clearer at this point that human rights play a central role in a project of *reform* but substantive transformation based on a truly alternative and above all emancipatory politics is denied through his conceptualization of a politics based as it is on a rejection of a notion of substantive equality.

Transformation of/through human rights

Despite Chomsky's assertion of a distinction between classical and contemporary liberalism, in terms of political effects his understanding of human rights merges with the current liberal one based as it is on a façade of political neutrality. Regardless of whether the liberal begins from the conception of human rights based in human nature or not, Chomsky's formulation of a politics based on human rights suffers from the same delusion that there exists a space outside of politics within which an 'uncomplicated' human rights based critique can be offered. It has been shown in the preceding chapters that the liberal critique mounted on the pretence of an apolitical defense of human rights has a pervasive depoliticising effect withdrawing any substantive critical discussion of the broader structural features of the status quo.

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[52]Habermas, *The Postnational Constellation*, 68

[53]Jürgen Habermas and Jacques Derrida, "February 15, or What Binds Europeans Together: A Plea for a Common Foreign Policy, Beginning in the Core of Europe", *Constellations* 10, 3 (2003)

[54] See, Frank Deppe, "Habermas' Manifesto for a European Renaissance: A Critique", *Socialist Register* 41 (2005)

[55]Deppe "Habermas' Manifesto for a European Renaissance," 17

Chomsky's politics of human rights runs the same risk undermining his professed desire for transformation and this will be considered further in the latter part of this section.

For Habermas, understanding the basis of his ultimately conservative vision of human rights involves a return to the explicitly legalistic aspect his politics. Habermas accepts that a human rights fundamentalism is a possibility but that it is avoided not through a rejection of the politics of human rights but through 'a cosmopolitan transformation of the state of nature among states into a legal order'[56]. The danger of a moralization of politics is for Habermas avoided by a legal formalization of morality. Habermas succumbs to the ever present illusion that law 'must and will be increasingly the sole regulator of social life'[57]. He advocates the juridification of politics as a response to real and potential oppressive effects of power politics and in this framing human rights, understood to be specifically juridical in nature, play a central role in regulating politics. This approach is underpinned by an absolute faith in the regulatory capacity of law and moreover, a faith in the neutral function of law in a liberal capitalist democracy.

Clearly Habermas is occupied in a defense of human rights both in terms of refuting 'selective readings, tendentious interpretations, and narrow-minded applications'[58] – a list of charges for which Schmitt is seen to be guilty of all – and exposing and rejecting 'the shameless instrumentalization of human rights that conceal particular interest behind a universalistic mask'[59]. Criticisms of human rights are therefore based on either unfounded attempts to delegitimise an innately legitimate framework or on confusion between the misuse of human rights and their inherent meaning. Yet Habermas fails to challenge the moralization of politics given that his response is reduced to the criminal prosecution of human rights violations. His confrontation with Schmitt and subsequent defense of human rights is based on a supposed 'subversive force' of human rights that knows no geographical bounds[60] but when one considers the closure of political possibilities that Habermas enacts through his expressly legalistic perspective, the existence of a truly subversive force behind

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[56]Habermas, *The Inclusion of the Other*, 201

[57]Manent, *A World Beyond Politics?*, 171

[58]Habermas, *The Postnational Constellation*, 129

[59]Habermas, *The Postnational Constellation*, 129

[60]Habermas, "The Concept of Human Dignity," 478

194

human rights and an affirmative political project that Flynn accredits to Habermas ultimately fall flat.

While Chomsky and Habermas fail to confront and thus fail to substantively transform the reality of liberal politics, Butler's re-imagining of the subject of human rights through a reconstitution of the category of the human is a process symptomatic of Butler's understanding of a transformative, *performative* politics[61]. Within this 'performative politics' repetition or reiteration of the universal can have transformative effects:

> Conventional and exclusionary norms of universality can, through perverse reiterations, produce unconventional formulations of universality that expose the limited and exclusionary features of the former one at the same time that they mobilise a new set of demands[62].

This practice is at the core of Butler's vision of human rights claims that can and must involve a questioning of the hegemonic formulation of the universal. Human rights claims in this sense are political in that they contest the universal and demand through its reformulation a new set of claims as opposed to a simple assimilation of the rights claimant into an existing regime of explicit understandings of rights.

Butler is well aware that positing a transformative conception of human rights runs the risk of appearing to remain on the same (liberal) political terrain. A performative politics that is employed in 'challenging existing forms of legitimacy, breaking open the possibility of future forms'[63] appears antithetical to the formulation of human rights exposed in the critique of liberal intellectuals above. However, in Butlers understanding of transformative politics, 'rights-claiming may be best understood as performative'[64]. This understanding requires an acceptance that one must follow a 'double path' in the politics of rights-claiming. In this sense claiming rights is never simply a 'citation of liberal norms'[65] and while Butler accepts that we have to operate in terms of human rights she suggest that we must also 'subject our

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[61] Judith Butler, *Excitable Speech: A Politics of the Performative*, (New York: Routledge, 1997)

[62] Butler, "Restaging the Universal," 40

[63] Butler, *Excitable Speech*, 147

[64] Karen Zivi, "Rights and the politics of performativity," in *Judith Butler's Precarious Politics: Critical encounters*, eds. Terrell Carver and Samuel Chambers, (Abingdon: Routledge, 2008) 165.

[65] Zivi, "Rights and the politics of performativity," 167

very categories to critical scrutiny'[66]. The double movement of innovation and critique allows Butler to utilize human rights as a central component of an alternative politics through a transformation of liberal norms. Human rights therefore provide a site for transformation and open a space for 'remaking reality' by querying the human as a 'site of power differentials'[67]. This is reliant on the rejection of the Chomskian understanding of human rights as the notion of the human as ground for Butler renders any attempted transformation of current inequalities incapable of coherence and ultimately of success:

> Only when the human is ungrounded, then, can we ask, how does the human come into being at the expense of the inhuman, and how do these qualities become allocated on the basis of power differentials?[68]

Butler clearly attempts to posit a reformulated, anti-imperialist and 'just' human rights activism that appropriates the discourse of human rights from its liberal hegemonic foundation. This involves an opening up of the category of the human viewing universalisation as an uncompleted process that *only* a reimagined human rights activism can fulfil. Human rights are presented in this sense as rigorously critical, distinct from the liberal understanding with a transformative potential that cannot be dismissed by the left. The contestation of the construction of the inhuman that is so evident in the contemporary epoch requires for each of these intellectuals not a rejection of human rights but their maintenance. However, Butler is explicit that human rights activism must refuse to concede a critical relation to power in its drive to be effective; it cannot refuse to 'rock the boat' and be silent in the face of current power relations in its attempt to be taken seriously. This is not a complete defense of human rights activism as it exists now, as Butler is well aware that in the drive to be pragmatic human rights activists runs the risk of neglecting their capacity to be truly critical in relation to the current hierarchies of power but this is not understood to be a innate feature of human rights. They have in their current dominant form become (or have the potential to become) depoliticised and in turn legitimating but Butler remains

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[66]Butler, *Undoing Gender,* 37

[67]Butler, "Afterword," 1660

[68] Butler, "Afterword," 1659

committed to a revised vision of human rights that is an invaluable tool to a leftist politics that seeks to contest and refashion the status quo.

An alternative critique of the liberty-security regime?

Given the apparent tendency of Chomsky and Habermas to fail to substantively engage with the relationship between liberal politics and human rights the nature of their critique of the current security regime requires critical analysis. The central question posed here in relation to all three authors is how these critiques differ from the liberal criticisms of the 'war on terror'. If the ostensibly alternative conceptualization of human rights fails to substantively depart from the liberal formulation it appears to constrain, if not negate, the possibility for a truly critical analysis of the politics of security; a critique that avoids the obfuscation of liberal politics that defines liberal critiques. At the core of this analysis the potential for a truly critical human rights based critique of liberal politics must be assessed.

Chomsky's critique of the current security regime is, in line with much of his political writings over the last forty years, essentially an empirical account of state violence. His writing on post-9/11 interventions as well as the development of (or intensification of) a domestic regime of policing under the rubric of counter-terrorism provides numerous vital insights and expositions of the basic facts of the content and effects of state policy. However, his critique rarely, if ever, moves beyond what is essentially a journalistic style of critical analysis. His aversion to theory and commitment to making facts public renders his wealth of contributions to leftist literature on the 'war on terror' devoid of any substantive political critique. He remains committed only to exposing the apparent hypocrisy or hidden intentions that lie behind official rhetoric. Fulfilling his understanding of the responsibility of the intellectual set out in his very early work[69] he seeks to respond to power through the exposition of truth. Truth is understood as an uncomplicated notion and 'factual truths', understood as autonomous from the socio-political context in which they arise, are awaiting identification and exposition. For Chomsky this process forms a sufficient basis for a philosophical and political strategy. The responsible intellectual

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[69] Noam Chomsky, "The Responsibility of Intellectuals", *The New York Review of Books*, February 23, 1967, accessed August 25, 2011, http://www.chomsky.info/articles/19670223.htm.

must regardless of political persuasion insist on the truth and Chomsky remains committed to this ostensibly non-partisan, non-political framing of intellectual intervention.

The lack of theoretical content leaves his critique and subsequent defense of human rights without substance. The centrality of human rights to the rhetoric of the liberal states orchestrating the 'war on terror' is not subjected to a truly critical analysis. Human rights are understood to be uncontestable; they cannot in Chomsky's understanding have any kind of intrinsic legitimating function as they remain grounded in the fundamentals of human nature. As a result, the only possible explanation for the fusion of human rights and security in the current regime is that human rights are exploited and misappropriated in the service of Western imperialism. Human rights are understood to be antithetical to the use of force in international politics and in Chomsky's view the US must choose which path to follow, one governed by human rights or one of power politics[70]. In this framing human rights are exonerated from any essential function in the 'war on terror' and Chomsky's role – and indeed the role of any 'responsible' intellectual – is reduced to exposing the hypocrisy behind the US government's commitment to human rights.

Chomsky relieves himself of the need to confront the relationship between law and violence in liberal politics that would require a substantive exposition of the distinctions between classical liberalism and its contemporary form. By rejecting the utility and necessity of political theory Chomsky avoids naming the current politics and through a comprehensive depoliticisation of human rights he denies any possibility for a politics of human rights to be bound up in the maintenance of the current status quo. Fundamentally, the central charge of an exploitation of human rights aligns Chomsky's critique with the essential liberal criticism of the 'war on terror'. In his critique he is arguably more willing to expose the violence of the liberal state than some of the more apologetic liberals but this is never developed into a substantive critique of liberal politics as that would necessitate a confrontation with both human rights and the concept of security in the liberal tradition (including in the 'classical' tradition).

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[70] Noam Chomsky, "Distorted Morality: America's War on Terror?", (Speech delivered at Harvard University, Cambridge, MA. February 2002), accessed August 25, 2011.http://www.chomsky.info/talks/200202--02.htm

Chomsky's assertion of a pre-capitalist liberalism fails to acknowledge (or chooses to obscure) the fact that the prioritization of security over liberty is not a feature confined to the period following his suggested break in formation of liberal ideology. Critical accounts of the prominence of security in the development of liberal ideology beginning with Marx make clear that security existed as *the* central liberal category in its founding thinkers including those directly cited by Chomsky as influences on his politics[71]. Chomsky's failure to substantively expose and dissect the current politics of security is arguably a result of his professed intellectual debt to the likes of Smith, Madison and von Humboldt within whose work liberty is already subsumed under the idea of security. If security is the supreme concept of bourgeois ideology and indeed of liberal ideology, Chomsky's distinction between classical and contemporary liberalism falls flat. His avoidance of theory prevents what would be a most uncomfortable reconfiguration of his own politics brought about by a consideration of the concept of security. His predominant recourse to legal regulation through human rights as opposed to a coherent political critique of liberal ideology is a result of this problematic intellectual lineage in his work and he thus spares himself the need to think critically about the role of human rights in the current security regime.

The convergence of left and liberal: further legitimation of the status quo in the guise of critique

While Chomsky portrays a continuation in the US state's reliance on the use of violence between the pre and post-9/11 periods, Habermas suggests that the 'war on terror' marks a significant turning point in the US state's regard for the law. For Habermas the response to 9/11 marks an 'unprecedented rupture with a legal tradition that no previous American government had ever explicitly questioned'[72]. Presenting the current security regime as novel converges with the current and historical liberal presentation of a supposed exceptional rejection of legal regulation on behalf of the liberal state. Habermas' political theory illustrates his clear commitment to the fundamentally liberal idea of an intrinsic relationship between legality and legitimacy

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[71] See, Neocleous, *Critique of Security*; George Rigakos, et al, *A General Police System: Political Economy & Security in the Age of Enlightenment*, (Ottawa: Red Quill Books, 2009).

[72] Jürgen Habermas, *The Divided West*, (Cambridge: Polity, 2006) 182.

and the resulting understanding of the 'war on terror' is of an exceptional circumstance in which the liberal state has conceded legitimacy by rejecting the regulatory role of law.

The central charge in Habermas' critique of the current security regime – that it is characterised by a novel rejection of the law – is grounded in an acceptance of the essential legitimacy of the liberal democratic tradition and its conformity to the rule of law. The legitimacy of liberal democracy is based primarily in its relation to, and respect for, the regulatory function of the law but also on the inherent capacity to develop and sustain channels for communication that are the precondition for an effective and legitimate politics. These two points are however two sides of the same coin when one understands that for Habermas' 'legitimate lawmaking is always simultaneously a process of generating communicative power'[73]. A legitimate politics is conditional on the legal formalization of relations between individuals that allows for communicative processes through which a consensus can be reached. Liberal democracy prevents the speaker and listener from becoming estranged avoiding a situation in which communication would be distorted or denied. While this starting point reveals a delusional (and characteristically liberal) belief that a politics of consensus arrived at through the rejection of conflict is both effective and desirable, it grounds the critique of the current security regime and the position of human rights therein.

In this formulation legitimate politics is that which is tamed or more accurately repressed by the power of the law. Habermas' appreciation of the liberal democratic form is underpinned by the misunderstanding that in a true liberal democracy politics are subordinate to law and legal regulation is absolute. The façade of the liberal state's commitment to legal regulation is here maintained and from this point the 'war on terror' can be condemned as an abrogation of liberal principles orchestrated by 'neoconservatives' who have definitively broken with the UN human rights policy[74]. Habermas occupies the same vantage point as Tom Farer and other liberals above who view the 'war on terror' as an illiberal project that the liberal can and must critique from an independent external position.

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[73] William E Forbath, "Short-Circuit: A Critique of Habermas's Understanding of Law, Politics and Economic Life", *Cardozo Law Review* 17, 4-5, (1996).

[74] Habermas, *The Divided West*, 28

Relying on such a decisive obfuscation of the liberal state's relationship to law and the role of law in bourgeois society, Habermas is able to present terrorism as the antithesis of liberal democracy. Understanding terrorism as the most extreme version of the distortion of communication[75] it is presented as the negation of the political that requires in response not a withdrawal to illiberal power politics unrestrained by the law but instead a truly liberal democratic project though which the channels of communication can be rebuilt. Liberal democracy is again presented as under threat from two sides: from terrorism and from the neoconservative response that both threaten the liberal drive to pacify conflict. Terrorism must instead be opposed by a return to the principles of liberal democracy defined ultimately by legal regulation.

On this basis Habermas opposes the 'war on terror' for its reliance on the exercise of political power in the 'dimensions of the military, the intelligence services and the police' that 'endangers the mission of improving the world in accordance with liberal ideas'[76]. The apparent subscription to a distinctly liberal vision of reform accords with the analysis above in which transformation of the political and economic status quo is denied in Habermas' politics and this frames his critique of the current security regime. His critique of the exercise of political power through the police does not however preclude him from legitimating the policing of domestic and global contexts in the name of security. His understanding of the relationship between law and politics allows for, if not necessitates, a support for the policing of terrorism but he presents this as a distinct project from the one in place in the 'war on terror' as it must be underpinned by a commitment to the law. The desired 'transformation' advanced by Habermas is of 'international and selective punitive wars into police actions authorized by international law'[77] that would conform to his vision of a cosmopolitan international order in which justice between nations can only be secured through the juridification of international relations. Policing is seen to be a legitimate part of a liberal response to terrorism as it serves to respond to the adversary in a manner compatible with criminal justice procedures. The vision of policing underpinned by the rule of law seeks to reinforce a distinction between the exercise of political power through the police and the processing of criminals through the

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[75]Habermas, *The Divided West*, 64

[76]Habermas, *The Divided West*, 34

[77]Habermas, *The Divided West*, 100

criminal justice system. Again, politics can and should be effaced through a commitment to the law.

Habermas attempts the impossible task of cleansing the concept of policing of all its political connotations suggesting that a form of policing authorized and regulated by law (in both the domestic and international context) is uncontentious. In maintenance of the liberal façade of legal regulation, liberalism is here presented as opposed to the exercise of political power through military and policing means. The conformity to the liberal notion of the political neutrality of the law (and by extension, the police) is all too clear in Habermas' 'alternative' and it is ultimately his conceptualization of the political that allows him to posit an ostensibly non-political vision of policing. His marginalization of the political to a distinctly liberal theory of consensus building enables him to depoliticize the police and detach the function of the police from its inherent relationship to the state. Policing becomes solely about defending liberty in a critique built on a startling mystification of the nature of security and denial of its supreme position in liberal ideology. Habermas sustains a false opposition between war and policing whilst at the same time obscuring their symbiotic relationship in service of the liberal system. If we accept that the war/policing opposition is false, Habermas' defense of the 'war on terror' in its policing guise has potentially a similar legitimating effect as that provided by the "just war" left.

As for Chomsky, human rights are positioned as detached from and antithetical to the current security agenda only implicated because they have been instrumentalized by the state in service of the 'war on terror'. As a result of this position a defense of human rights can only come through a 'return' to an inherently legitimate rule of law. Fundamentally, the leftist critique of the current security regime articulated by Habermas and Chomsky relies on the same notion of the illiberal activities of the liberal state that forms a fundamental theme in the liberal public intellectual and scholarly critique. While Habermas' position is more explicitly implicated in the legitimation of the liberal system, the failure of this leftist position is for both authors brought back to a failure to engage critically with the concept of security and its central position in liberal ideology. There is an unwillingness to name the current politics of security and engage in a comprehensive critical analysis of the liberal affiliation with security both in its contemporary form and its classical tradition. Both authors leave themselves no option but to withdraw to fundamentally

liberal terrain on which on ground their critique; legal regulation through the promotion of human rights has the potential to return the liberal state to its liberal foundations (regardless of how far back one has to go to identify these foundations). Liberty, formalized in terms of human rights, is in this vision of liberal ideology presented as the central liberal principle that has been neglected by an abrogation of the liberal tradition that took place either at the point in which classical liberalism was distorted by the development of industrial capitalism or in the response to the events of 9/11. Both accounts involve a pivotal distortion of liberal ideology on the basis of which a leftist critique is rendered impotent.

Whilst this is ultimately true for both Chomsky and Habermas' interventions, the explicit positioning of law as a counterweight to politics in Habermas' work leads his critique to elicit more clearly the same depoliticising effects as those born out in the interventions made by Dworkin and Rorty et al. Chomsky at least remains committed to exposing the levels of violence that the liberal state employs in the pursuit of security even if he fails to develop this form of critique. Habermas on the other hand acknowledges approvingly the critiques posited by Dworkin and Rorty[78] and the convergence in critique illustrates a more obvious convergence in political position in which Habermas' leftism merges with the liberalism articulated by the 'critical' liberal intellectuals. In fact Habermas' understanding of the left and left politics is made clearer in his portraits of Rorty and Dworkin within which the patriotism of both thinkers is applauded. In these accounts Rorty's position on the left is celebrated for its promotion of a tolerant society that 'keeps people together in solidarity despite growing diversity and recognizes no authority as binding that cannot be derived from deliberation and revisable agreements of all'[79].

That Habermas sees a place on the left for Rorty's own deliberative politics is ultimately a sign of the liberal reformism that defines his own political project[80]. Furthermore, it confirms his subscription to a politics of consensus that he applauds as the basis for Dworkin's confrontation with the 'frightening political polarization' blighting the contemporary US. While Chomsky's critique falls short of the required political critique and fails in turn to provide a political alternative, Habermas is bound

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[78] See, Jürgen Habermas, *Europe: The Faltering Project,* (London: Polity, 2009); Habermas, *The Divided West,* chapter 7.

[79] Habermas, *Europe,* 15 original emphasis.

[80] See, Hallward, "The Politics of Prescription"

up in the depoliticisation of politics and the subsequent legitimation of the liberal system that serves in turn to reinforce the apparently unquestionable status of the current politics of security. He falls into the category of liberal reformism in the broadest sense and his critique of the security regime is, in line with Rorty et al, an attempt to rescue the liberal state from a perceived crisis of legitimation. The location of Habermas on the left understood in opposition to the current status quo is a blatant error that serves only to cloud the left-liberal distinction that must be asserted to expose and confront the liberal character of the current security regime.

Human rights beyond liberalism?

The leftist critique based on human rights appears therefore to be either incapable or unwilling to escape the narrow parameters placed on the possibilities for political critique by the hegemonic liberal framing of the liberty-security relationship. However, Butler begins from an acceptance that the left is in the current epoch in need of reorientation to take it 'beyond the liberal antinomies on which it currently founders'[81]. There is therefore an apparent acceptance by Butler that much of the left has failed in the post-9/11 period to transcend the liberal terrain and thus been unable to offer a critique that exposes the liberal character of the current regime seeking seriously to offer a political alternative. Given the failure of Chomsky and Habermas to offer a leftist defense of human rights that truly transcends liberal ideology, Butler's vision of a reoriented left that remains wedded to human rights as a central concept and tool for critique requires careful scrutiny.

The analysis of Chomksy and Habermas above illustrates Butler's broader point that the left continues to founder on liberal antinomies and is as a result incapable of adequately grasping the current politics of security. Butler subjects the "just war" liberal-left to critique for its reinforcement of the liberal state's construction of a 'with us or with the terrorists' binary and here Walzer is rightly implicated as a central figure in this so-called leftist response. The role played by the liberal-left in policing dissent in the 'war on terror' is a crucial observation and a rejection of the narrow parameters reinforced by Walzer – and one would now argue certainly by Habermas and to a lesser degree by Chomsky – serves to at least

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[81] Judith Butler, *Frames of War: When is Life Grievable?*, (London: Verso, 2009) 27.

rhetorically to mark Butler's departure from the liberal-left. However, Butler's understanding of the current situation in which the left needs to be reformulated is brought into question when she suggests that the left is found wanting in light of 'new forms of state violence' that include those that 'seek to suspend legal constraints in the name of sovereignty, or which fabricate quasi-legal systems in the name of national security'[82]. The problem exists not in her verdict on the left's failings but on the suggestion that the current situation in which unregulated state violence is employed in the name of national security is novel. The security regime understood in the terms set out by Butler is in reality not exceptional as it did not mark a departure from the security apparatus that had been in the making for decades and as the targets of this ostensibly new 'war' were themselves not new. The question therefore arises as to whether this misconception of the current regime is the result of a leftist intellectual who in reality remains within the liberal framing of the current situation and who as a result, is unable (despite intentions to the contrary) to truly conceptualize the politics of security and the subsequent political and intellectual response required of a reoriented non-liberal left.

It makes sense then to consider further Butler's vision of a reoriented left to ascertain the extent to which her reformulated leftist critique of the current regime transcends the liberal parameters that constrain Chomsky and Habermas. Butler is clear that her work (at least in the post-9/11 context) seeks to reorient politics on the left 'toward a consideration of precarity as an existing and promising site for coalitional exchange'[83]. Precarity is for Butler a 'politically induced condition in which certain populations suffer from failing social and economic networks of support and become differentially exposed to injury, violence, and death'[84] and her recent work has involved an emphasis on this concept as a way of understanding the construction of less 'grievable' populations in the context of the 'war on terror' and beyond. It appears therefore to be bound up in Butler's understanding of the possibilities for a politics of human rights that contests the current exclusionary construction of the human.

[82] Butler, *Frames of War*, 28

[83] Butler, *Frames of War*, 28

[84] Judith Butler, "Performativity, Precarity and Sexual Politics", *AIBR : Revista de Antropologia Iberoamericana*, 4, 3, (2009)

The critique of the current security regime articulated through the concept of precarity recognizes the dehumanization that is a central feature of the construction of the specific suspect or criminal populations in the 'war on terror'. Butler refers to the 'derealization' of populations that results from and is the premise of their dehumanization and serves as a crucial method of managing populations. She appears through this line of critique to begin to get the heart of the politics of security but the development of this critique draws her into a confrontation with, and emphasis on, the supposed novelty of the current regime. Determining exactly how the security regime is novel in Butler's conceptualization brings us closer to understanding how human rights are perceived to have a place in an alternative politics.

Butler's critique of the 'war on terror' focuses in on what she refers to as the 'new war prison'[85] within which the current form of state power is *re*configured through the contemporary interrelation of governmentality and the exercise of sovereignty. It is seemingly this fusion of modes of state power that gives rise to the novelty of the political project underway in the 'war on terror'. The practice of indefinite detention manifested in Guantanamo Bay, Abu Ghraib and elsewhere is for Butler illustrative of a 'resurgent sovereignty' revealed through the exercise of prerogative power that belies the notion of history as chronology'[86]. The myth that sovereignty exercised through the suspension of the law has been superseded is for Butler exposed in the context of the war prison. But it is not simply unrestrained power at work in Guantanamo Bay etc but bureaucratic systems in which managerial officials decide who will be detained and this illustrates that 'a parallel exercise of illegitimate detention is exercised within the field of governmentality'[87]. Sovereign power operates within the field of governmentality and in this resurrected form it is for Butler a 'lawless and prerogatory power, a "rogue" power *par excellence*'[88] within which human rights are withdrawn from certain populations.

Fundamentally, in this understanding human rights are withdrawn when, and because, the law is suspended. The denial of due process that defines the detention of suspects in the 'war on terror' is an unnecessary measure to ensure security and the

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[85] Judith Butler, *Precarious Life: The Powers of Mourning and Violence*, (London: Verso, 2004) chapter 3.

[86] Butler, *Precarious Life*, 54

[87] Butler, *Precarious Life*, 54

[88] Butler, *Precarious Life*, 56 original emphasis

condemnation of this Butler acknowledges emerges from a human rights perspective. However, she suggests that distinct from this position a critique of power must also 'object, politically, to the indefinite extension of lawless power that such detentions portend'[89]. The separation of a human rights point of view from that of a critique of power (or at least the acknowledgement that a critique of power demands more than a human rights perspective) illustrates that Butler does not have the same level of confidence in human rights as Chomsky and Habermas who conflate the two.

So if Butler refutes the idea that human rights are the sole principles on which to base a substantive critique we must return to her understanding of universalization as a political project to account for how the two remain inter-related. In her more recent work the recognition of precariousness is positioned as a central precursor to the pursuit of universality in which all lives become recognized as human and all populations are realised. The recognition of a shared precariousness 'introduces strong normative commitments of equality and invites a more robust universalizing of rights'[90] and thus the 'politics of precarity' and by extension leftist politics, is to be realised through a demand for rights. In her critique of the 'war on terror' as well as her work on sexual politics, the subject of human rights as currently constituted is exposed as fixed in an exclusionary form. Butler's politics of human rights involves a reconstitution of the subject facilitated by the continual political process of universalization that is brought about by the demand for groups to be recognized in their humanity. Fundamentally, equality is something proclaimed through political struggle marking a clear distinction between the Butler's understanding of human rights and that offered by Chomsky and Habermas.

In the context of the 'war on terror' the category of the human is limited by a cultural understanding in which 'we' are human and 'they' are not. Dehumanization has become 'the condition for the production of the human' through which cultural lines are drawn between the civilized and the inhuman[91]. The rejection of this cultural framing does not for Butler involve a rejection of the term "human" as a political category but it necessitates a questioning of what it forecloses and the possibilities it leaves open. Butler's maintenance of a potential within human rights born out of the

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[89] Butler, *Precarious Life*, 63

[90] Butler, *Frames of War*, 28-9

[91] Butler, *Precarious Life*, 91

possibility of redefining the subject aligns her position to some degree with that of Ranciere. More specifically, the possibility for universalization achieved through political struggle arguably illustrates Butler's unacknowledged debt to Ranciere's assertion that the subject of human rights can be (re)created in scenes of dissensus[92]. For Butler the process of denying or 'derealizing' the humanity of an individual or whole population is one that can and must be contested through a political struggle. Crucially, the distinction between Butler and Habermas' conception of human rights can be understood in terms of the distinction between projects aimed at dissensus and consensus. By denoting the process of universalisation as a political instead of legal strategy Butler understands the subject of human rights as a political subject who can construct a dissensus against their exclusion as opposed to being rendered politically impotent in the pursuit of consensus. In terms of a leftist conception of human rights Butler appears to be distinct from Chomsky and Habermas by virtue of the inherent antagonism that she retains as the central feature of the defense and extension of human rights.

However, this distinction is apparently clouded by Butler's retention of the law's ability to regulate the exercise of sovereignty through the demand for rights. Butler develops her critique of the current configuration of state power to understand what place law has in the response to the current resurgent sovereignty. Rights in this sense continue to have a role in the limiting and conditioning of claims of state sovereignty. Butler concedes that her analysis of the process by which populations are managed through the derealisation of their humanity and subsequent 'desubjectivation', points toward her wish that 'the state were bound to law in a way that does not treat the law merely as instrumental or dispensable[93]. Yet she rejects the idea that this can be reduced to a narrow commitment to the rule of law; instead the place of law in the articulation of an international conception of rights that has the capacity to regulate the exercise of sovereign power is a central concern. The question arises here as to the extent to which the retention of the supposed regulatory power of the law reduces the distance between Butler and Habermas.

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[92]Jacques Rancière, "Who is the Subject of the Rights of Man?", *South Atlantic Quarterly* 103, 2/3 (2004)

[93] Butler, *Precarious Life*, 98

Recognising humanity?: Identity politics and the left

In considering the distinction between Butler's position and that of Habermas and Chomsky the underlying concern remains with the location of these thinkers on the left. Arguably a central component in this assessment is the extent of Butler's commitment to an identity politics and by extension the extent to which this defines her approach to human rights. If, as Brown suggest, identity politics is at least partly dependant on the demise of a critique of capitalism and of bourgeois cultural and economic values then Eric Hobsbawm's conclusion that 'the Left cannot *base* itself on identity politics (because it has) a wider agenda' continues to ring true[94]. Fundamentally, given the understanding of the politics of security set out above we must investigate the centrality or at least the visibility capitalism in Butler's work and specifically here, in her post 9/11 interventions. Understanding at this point that Butler's critique of the current security regime is built on a politics of human rights we must ask how this politics distinguishes itself from, and seeks to transform, the politics that define the status quo.

For Hobsbawm the Left must be against identity politics, not to deny the relevance of oppression experienced on the basis of gender, race, sexuality etc, but because a politics of identity fails to mobilize more than a minority and in doing so isolates these minorities. In this isolated and isolating approach the central, bourgeois features of the status quo are understood to be no longer relevant and such politics as a result plays a vital role in further obscuring the central features of the current regime. Indeed from the standpoint of identity politics class politics are seen as an increasing irrelevance to the point that they are now understood to be 'just one species of identity politics'[95]. From this perspective class, class struggle and capitalism are 'largely fetishes disposed of any precise meaning'[96] and this version of left politics becomes paradoxically refocused away from the substantive features of the current regime. The politics of security are invisible from this vantage point confusing, if not obscuring the truly fetishized concept of the current era. A critique based on a politics of identity cannot but leave the current regime untouched. We must turn then briefly

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[94] Eric Hobsbawm, "Identity Politics and the Left", *New Left Review* I, 217 (1996) 44 original emphasis

[95] Ernesto Laclau, "Structure, History and the Political", in *Contingency, Hegemony, Universality*, eds. Judith Butler, Ernesto Laclau, and Slavoj Žižek, (London: Verso, 2000) 203.

[96] Laclau, "Structure, History and the Political," 201

to Butler's positioning of her identity politics, or politics of recognition, to understand the extent to which her work and more specifically her vision of human rights falls into this category.

Butler has directly engaged in the debate around the role of identity politics on the Left. Her intervention(s) have sought to respond to an orthodox, economistic Left that decries any politics of recognition as 'merely cultural'[97]. Her defence of a post-structuralist influence on the left (and indeed on Marxism) has led her into an attempt to reconfigure the relationship between cultural studies and political economy that has itself been the target of criticism[98]. Butler understands the evolution of new social movements (and by *new* we mean fixed to a specific identity) as a reaction to a hegemonic left as much a response to a 'complicitous liberal centre and a truly threatening right wing'[99]. The exclusion of questions of race and sexuality has lead to the evolution of what Butler has termed a neo-conservative Marxism that now defines this hegemonic left.

The notion of a neo-conservative Marxism, whilst reminding us again of Johnson's depiction of the 'totalitarian Marxism' of Žižek and Badiou, leads Butler to attempt to reformulate the understanding of the cultural sphere and its relationship to the economic. Butler's attempt is not to dismiss the relevance of the economy (and she is compelled to make this clear by the critiques of cultural studies and identity politics that preceded her) but to explain that the cultural and the economic cannot be analytically separated. For Butler the cultural operates as the 'constitutive outside' of the economic or more specifically, 'the cultural is the condition of possibility for the economic'[100]. As opposed to this necessarily inferring the reduction of class into identity politics as per Laclau, Anna Marie Smith has suggested that Butler here drifts into structuralist Marxist and specifically Althusserian territory. In place of Althusser's ideological underpinning of the reproduction of the economic, Butler suggest that the economic necessarily depends on the cultural.

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[97] Judith Butler, "Merely Cultural", *New Left Review* I, 227, (1998)

[98] See, Nancy Fraser, "Heterosexism, Misrecognition, and Capitalism: A Response to Judith Butler", *Social Text* 0, 52/53 (1997)

[99] Butler, "Merely Cultural", 36

[100] Anna Marie Smith, "Missing poststructuralism, missing Foucualt: Butler and Fraser on capitalism and the regulation of sexuality" in *Judith Butler's Precarious Politics: Critical encounters*, eds. Terrell Carver and Samuel Chambers, (London: Routledge, 2008)

The underlying premise of this apparent reconfiguration of the Left (one that accepts the relevance of cultural or identity politics but remains aware of the central but not primary importance of the economic) is that a transformative politics is one that 'properly combines redistributive and recognition struggles'[101]. Butler's position, initiated as a response to the 'merely cultural' critique found on the left, was to insist that an emphasis on new social (cultural) movements was not to the detriment of an emphasis on political economy. Rather than ascribing to Fraser's distinction between a politics of distribution and the politics of recognition[102] (a distinction that stands only in the abstract ultimately intertwined in concrete historical conditions and combined in actual movements) Butler insists that capitalism is necessarily intertwined with cultural identity issues, most specifically, with the perpetuation of compulsory patriarchal heterosexuality that forms a core focus of Butler's critical work.

Capitalism then is ostensibly retained as a central concern of Butler's vision of identity politics. However, she remains committed to a politics of recognition that maintains an importance to cultural differences that for many pose an obstacle to a united left. A left that retains cultural or civil distinctions and marginalises the importance of class and moreover, in Rousseau's terms, the importance of the thinking subject[103] is ultimately incapable of a transformative response. Stating the insignificance of 'cultural' difference is not the same as disputing their existence. Badiou's reference to 'the immortal' to be understood in his terms through 'our capacity for truth – our capacity to be that 'same' that a truth convokes to its own 'sameness'"[104] illustrates the possibility for a leftist perspective that can move beyond the cultural and particular to the universal.

For Butler we have the postulation of a universal but instead of a political category we have humanity. Butler's human rights approach is indeed connected to her vision of an identity politics and her vision of the left. We move beyond the particular (and negate the critique of the orthodox, if not 'neo-con', left) by positing a

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[101]Smith, "Missing poststructuralism, missing Foucualt." 87

[102] Nancy Fraser, *Justice Interruptus: Critical Reflections on the 'Postsocialist' Condition*, (New York: Routledge, 1997)

[103] See, Jean-Jacques Rousseau, *Emile: Or, on Education*. 1762. trans. Allan. Bloom, (New York: Basic Books, 1979) book I, 3rd Maxim, 225.

[104]Badiou, *Ethics*, 27-28 original emphasis

reconfigured, expanded vision of (who constitutes) the human. Questioning the hegemonic formulation of the universal through a 'performative reconfiguration' is for Butler the central task of the left that can widen the universal to enable the inclusion of infinite particularisms in the future. As a result equality is not a current condition, a starting point, but something to be realised in the future once the struggle to expand the concept of humanity to its all-inclusive conclusion has been realised. This vision of the left, regardless of the apparent recognition of capitalism, is incapable of a truly transformative politics.

While capitalism is retained as an issue of importance the actual effects of Butler's commitment to politics of recognition (even if it is widened to the recognition of a shared humanity) are borne out in her interventions that focus on the current security regime and its contemporary effects. Capitalism and bourgeois cultural and economic values do not feature as predominant concerns in Butler's analysis of the politics of security. As a result of this absence (and its underlying premises) human rights can be retained as the basis for a critique and the foundation of a political struggle. We have to return at this point to Butler's notion that a performative reconfiguration, as is pivotal to her reconfiguration of the human, can in itself form the basis for a truly transformative politics. This understanding has been brought into question in terms of the extent to which it actually allows for a contestation with the entire regime:

> One should maintain the crucial distinction between a mere 'performative reconfiguration', a subversive displacement which remains *within* the hegemonic field and, as it were, conducts an internal guerrilla war of turning the terms of the hegemonic field against itself, *and* the much more radical *act* of a thorough reconfiguration of the entire field which redefines the very conditions of socially sustained performativity.[105]

Butler's reconfiguration of the human at the core of her human rights approach arguably stands as an 'internal guerrilla war' concerned with the terms of the hegemonic field. It remains within the current regime and is unable and unwilling to reconfigure the entire field. With Butler we have at least this internal guerrilla war conducted through a political struggle that aims at the construction of a dissensus, a struggle that is almost non-existent in Chomsky and Habermas' approach, but

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[105]Žižek, *The Ticklish Subject*, 264.

ultimately the critique available from her position is insufficient. On the basis of what is in reality a demand for only a partial politicisation she fails to grasp and thus redefine the current conditions.

Furthermore, despite the distinction between Butler's and Habermas's (and Chomsky's) human rights approach, for Butler human rights remain *ends* in themselves. The realisation of a universal humanity and the receipt of rights by those who have been historically denied them are seen as the end points of a transformative politics. This politics of recognition does not encompass a politics of redistribution but instead marginalises it and we end up with a critique of the current security regime that denies the inherent legitimating function of human rights and one that fails to reveal the intrinsic relationship between security and the capitalist system it is rooted in and serves only to defend.

Human rights in this sense are the ideal bedfellows of identity politics and, despite Butler's defence of identity politics and its apparent reformulation or reorientation, human rights and a politics of recognition have similar depoliticising effects that are magnified in their seemingly inevitable fusion. Butler's critique makes a number of important critical observations about the effects of the current political of security, and gets closer than Habermas and Chomsky by a long way to drawing out the significant problems of the current liberty-security regime but her political framework ultimately constrains her critique. Fundamentally, her departure from the liberal position – as exemplified by the liberal intellectuals considered above and essentially in this context by Habermas and Chomsky – is seemingly constrained by her commitment to human rights. By maintaining a central place for human rights in her understanding of an alternative politics her critical intervention retains a legitimating function. The idea of a critique that seeks truly to contest the status quo being built on (or retaining a space for) human rights appears, on the basis of this analysis, to be unworkable. The question remains whether human rights are inherently tied to the liberal system or whether they can be 'disconnected' to enable a substantive critique of the status quo; ultimately, we must ask whether they can be part of an alternative, emancipatory politics that is capable of rejecting the logic of security.

213

Conclusions

The function of human rights in the context of the 'war on terror'
The (im)possibility of critique

This analysis set out to determine the role human rights fulfil in the era of the so-called 'war on terror'. In doing so it sought to unravel what needs to be understood as a liberty-security regime, a regime within which concerns for liberty and security are intertwined. The analysis began from an understanding that the politics of liberty and security cannot be separated, except analytically, and only in a provisional way. An understanding of the formulation of either concept in the current epoch requires a concomitant analysis of the other and a concern with the ways in which they are entangled. In liberal politics liberty and security have always been interchangeable and conflicting only in appearance and this relationship continues in the twenty-first century. However, it is important to note that an alternative, if not antithetical, presentation of this relationship is fundamental to the perceived legitimacy of such politics. This chapter aims to bring together the preceding analyses and set out how the current liberty-security regime is to be understood and in doing so the intention is to determine the function of human rights in this regime. We must ask whether the current liberty-security regime demonstrates qualities inherent to human rights that ultimately render them a hindrance to an alternative politics, or whether alternatively, human rights can be drawn out of this context detached from the politics of security and (re)claimed for the left. The possibility in the current situation of an emancipatory politics that relies upon human rights must be considered in light of a critical analysis of the role of human rights in the current regime.

The analysis began from the idea that an unravelling of this liberty-security regime was only truly possible on the basis of a critical understanding of the liberal politics that underpin it. Liberalism needs to be understood as a specific politics and there was an understanding of the necessity of a substantive critical analysis of the current regime unhindered by the misleading definitions of liberalism that abound in contemporary political discourse. Therefore, the introductory analysis provided an exposition of what liberalism is, established in the first instance through a critical analysis of the classical liberal tradition. We have as a result an image of a liberal tradition defined by security and not liberty in the sense that it is traditionally

presented. The liberty-security relationship has been defined through a long tradition of classical thinkers who have, despite their own claims and those of liberal scholars who champion their work, developed a politics of security that defines liberty in terms of a narrow, exclusionary defence of private property. The liberal tradition, heralded as the foundation of a commitment to liberty, is instead defined by an exclusionary logic that serves to maintain, if not exacerbate, the inequalities that define a capitalist society.

In this connection, it is fundamental to observe that there exists a void between the presentation of liberal politics and the reality of politics in a liberal democracy. The maintenance of a dominant presentation of liberalism defined by liberty has a crucial ideological function in the current epoch that is reinforced by a selective and misleading reading of the classical tradition. A major role of liberal discourse is precisely to deny the void between the presentation of the liberal state and the reality of its operation and to obscure totally the fact that the liberal state is unafraid of the use of violence as a fundamental tool for the maintenance of the status quo. In response to this, establishing a counter-hegemonic image of contemporary liberalism – still very much indebted to its foundation in seventeenth century liberal thought – is crucial as a starting point for a critical analysis of the current liberty-security regime. A critical analysis of contemporary liberal politics must begin from an understanding of the ideological function served by the maintenance of the dominant image of liberalism.

The role of the intellectual and the hegemonic politics of security

The liberty-security regime and its formal presentation need to be understood as installed and maintained not simply at the level of state or government action but as involving a number of influential actors who work, consciously or not, alongside the state to formulate the current approach to liberty and security. The role of the liberal intellectual is fundamental to this regime and the legitimacy of the regime relies upon the support of not only the straight defenders of security policy, but also a mass of intellectuals who are understood to be, or appear as, independent and, in many cases, even in opposition to current state politics. Despite the claims of critique, or more accurately because of it, the liberal intellectual provides a legitimating function to the current regime that is not available to its straight defenders. Liberal intellectual

activity takes place at various levels but there exists a common position in which the major premises of the state's understanding of the current situation are not contested. This position has been influenced heavily by the interventions of a series of high profile public intellectuals who serve as a reference point in a long, drawn out 'debate' about the liberal relationship between liberty and security.

This intellectual activity extends beyond traditional academic and scholarly circles and it is possible and indeed fundamental, to understand human rights organisations to fulfil a major intellectual function in this context. The intervention of leading human rights organisations in the debate about the liberty-security relationship demonstrates their conformity to the liberal framework and their response provides a legitimating function to the current regime that surpasses that provided through the other levels of intellectual activity. The legitimating function of the human rights organisation reinforces the belief that there is an independent critique emanating from an alternative position – consolidated in this context by their 'non-governmental' status and the popular perception, reinforced by the institutions themselves, of them as 'thorns in the side of the state' in relation to human rights issues – a belief that is pivotal to the legitimation of liberal politics.

The ability to accommodate critique, to reflect upon it, and arrive at an agreement through compromise is quintessentially liberal and reinforces the state's continually reiterated assertion that the current regime remains true to the liberal tradition at all times. The legitimacy of liberalism depends upon the idea that alternative perspectives can be accommodated and the end result of a process of debate is a compromise that takes all perspectives into account. This is crucial both to the current regime and to the existence of some kind of debate around the liberty-security relationship that suggests that the regime is able and willing to take alternative, critical perspectives into account and arrive at 'the truth' through such a process. That liberal intellectuals are presented as, and in many cases believe themselves to be, critical observers of this regime consolidates the vision of a regime produced through a process of reflection on the criticism it receives. In reality, the critique provided by the liberal intellectual is not only insubstantial but reinforces the vision of the state whilst purporting to hold the state to account.

Therefore, the idea of loyalty to the liberal tradition is true in two senses: in the first instance the liberal state (in its formal self-presentation) and the liberal intellectual broadly conceived are unwilling or incapable of transcending the defining

characteristics of a liberal politics. Their shared response is defined by the application of the notion of balance as the only reasonable way to mediate between opposing concerns. In addition, they are both unable to confront the concept of exception and to concede in a formal sense that the liberal state is willing and able to transcend the regime of legal regulation that is central to liberalism. The premise and consequence of the shared position is a startling depoliticisation that is crucial to the legitimisation of the current regime and, central to this, the veiling of the reality of the liberal state's politics. Secondly, however the liberal character of the current regime is reinforced certainly not by the state's actual conformity to these principles of balance, negotiation and subservience to the law but by a kind of unconscious loyalty to, and an apparent incapacity to conceive a political reality other than, the reality of liberal politics. The current politics of security do not reveal a liberal state unwilling and incapable of making a decision but a state that is willing and able to use both legal and extra-legal violence to maintain the current order in conformity with the history of the liberal state.

The regime that exists underneath the presentation provided by official actors and the legions of liberal intellectuals engaged in the debate are focussed upon the maintenance of the current political and economic status quo. Security is confirmed as the supreme concept of bourgeois society and security policy is unsurprisingly ultimately aimed at policing opposition to liberal democratic capitalism. The current logic of security is all pervasive and the extension of the reach of security policy is a conscious process to reinforce the state's control over the current order; securitisation always involves a process of depoliticisation through which issues are bracketed off and handed to the state. The expansion of the remit of security strategy is a clear attempt to expand the state's ability to ensure that the current order, defined in the post 1989 as opposed to post 2001 context, is secured. This is not to dispute the fact that there is always a certain fragility to the state's ability to maintain order as we see at regular intervals. The process of securitisation is without end and the dominance of the liberal state's world view is not a testament to its omnipotence. The crisis situations that punctuate the continued march of the neoliberal order serve to undermine, if only temporarily, the stability of the status quo and security politics play a decisive role in attempting to consolidate the current order. The criminalisation of dissent is central to security politics and we see in times of crisis an intensification of the continuing curtailment of the right to protest justified in the name of security.

The policing of protest is most explicit in relation to groups who seek openly to question the legitimacy of the status quo and anti-capitalist movements have been increasingly policed using powers introduced and justified in the name of countering terrorism[1]. This cannot be explained away as a 'misuse' of these powers; powers introduced in the name of security are aimed at policing dissent in all true forms. We must be mindful of the ways in which the self-presentation of the state and its direct or indirect backing from intellectuals serves not simply to mask the vulnerability of the current order but to consolidate its form by delegitimizing emancipatory alternatives.

The specific formulation and maintenance of the current regime through a necessary convergence of what tends to appear as a multiplicity of 'voices' around a common liberal position, demonstrates the importance of a form of hegemonic politics at the core of the politics of security. The role of the liberal intellectual as "persuader" – following Gramsci's terms but here in a conservative, counter-revolutionary sense – is arguably decisive in enabling the state to achieve sufficient support for security politics. Of course the state does not require unanimous support and the consent of all of those at the sharp end of security policies, those who must be policed, is not required. There is instead a need to persuade a sufficient number of the population that it is their security and their liberty that is being ensured and that this is being done in a manner compatible with the 'values' of a liberal democracy. Here the liberal intellectual offers a degree of reassurance that the state cannot provide. The curtailment of liberties has to be presented in such a way that it is clear that the trade of liberty for security is worth it and/or that the real loss of liberty will only be felt by a minority population who are identified as not simply 'suspect' but as a threat to the nation.

In every facet of the current regime the role of the intellectual is crucial to the imposition and maintenance of policies that shore up the current status quo. The willingness of many of the authors, scholars, academics, etc. considered above to engage directly in public debates on the 'war on terror' is indicative of their function as intellectuals in the Gramscian sense. This function, demonstrated in the context of the 'war on terror' – and intensified through the pretence of critique – is not new but a

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[1] Daily observation also illustrates how 'security forces' are increasingly employed with ever greater freedom to suppress anti-austerity protests throughout Europe and beyond. The police have a fundamental role in defending the current order and this has to be intensified when this order appears to be in crisis.

critical analysis of the politics of security must make clear the influence of this intellectual class and the ways in which its intervention is crucial to the legitimacy of the liberal state.

The importance of the liberal intellectual to the hegemonic status of liberal security politics is unsurprising if we understand that 'the questions of hegemony and that of the intellectuals are, in a strict sense, indissoluble'[2]. The intellectual defined by 'active participation in practical life, as constructor, organiser, "permanent persuader" and not just simple orator'[3] is fundamental to the consolidation of a hegemonic project. The intellectual has always been crucial to the dominance of liberal politics and we see in the current context only the most recent manifestation of the relationship required in all political projects:

> Every group, coming into existence on the original terrain of an essential function in the world of economic production, creates together with itself, organically, one or more strata of intellectuals which give it homogeneity and an awareness of its own function not only in the economic but also in the social and political fields[4].

However, as we have observed the development of a specific liberty-security regime that defines liberal politics in the twenty-first century, the elaboration of a new group of *organic* intellectuals has been of pivotal importance. The argument here is not that the current politics of security constitutes an entirely new class project, indeed the analysis above has illustrated that the liberal project has always been defined by security, but that its current form demands a specific group of intellectuals whose role it is 'to elaborate such organisation in both ideological and practical terms'[5]. In this context, the public liberal intellectual along with their disciples – and here one can point most clearly toward the authors and signatories of WWFF and the EM – has a decisive mediating function. We should also note here that this function is crystallised in the work of the human rights organisation whose status in the contemporary liberal regime affords them a power to mediate in this sense inaccessible to the other strata of liberal intellectuals.

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[2] Gianni Francioni in Peter Thomas, *The Gramscian Moment*, (Leiden, NL: Brill, 2009) 406.

[3] Gramsci, *Prison Notebooks*, 10

[4] Gramsci, *Prison Notebooks*, 5

[5] Thomas, *The Gramscian Moment*, 416

It is possible to make the claim that there are academics and scholars who have been considered above that would seem to fit more appropriately the label of traditional intellectuals in Gramscian terms. For many there is a genuine sense of opposition to the 'war on terror' and a feeling that what is happening in the name of security is indicative of the liberal state's transcendence or abandonment of liberal principles. These individuals are marked by an essentially conservative function hidden under the guise of an intellectual independence that is symptomatic of the function of the traditional intellectual. Indeed many of these could be understood as Peter Thomas puts it, to be 'unwilling, at best, or, at worst, unable, to recognise their continuing political function'[6] as Gramsci made clear that the assumption of autonomy and independence is 'not without consequences of in the ideological and political field'[7]. Indeed, this analysis has focussed on uncovering the ideological consequences of the liberal intellectual's pretence of autonomy and independence.

In broad terms however, the liberal intellectual needs to be understood as the contemporary type of organic intellectual tied to, and crucial to the success of, the current hegemonic project of the liberal state[8]. Thomas's summary of Gramsci's understanding of the function of the intellectual captures much of what is directly relevant to an understanding of the liberal intellectual in the current epoch:

> They function not simply as constructors of the 'trenches' that characterise the complexity of a fully developed modern state-formation; with the seemingly 'non-political' organisation they undertake in the realm of civil society, they function as points of prestige and attraction for a class's hegemonic project and embody those trenches themselves, as 'functionaries' of the superstructures, or 'agents' of the state in its integral sense as 'organised disequilibria'[9].

The apparently non-political status of the liberal intellectual and their role as 'points of prestige and attraction' demonstrates the importance of Gramsci's thesis to a

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[6] Thomas, *The Gramscian Moment*, 417

[7] Gramsci, *Prison Notebooks*, 7

[8] It is possible to suggest that firstly, this exposition of the specificity of the liberty-security regime, whilst not making claims to its exhaustive character, makes a crucial contribution to periodizing the state and secondly, that an understanding of the process by which hegemony is sought is vital to this project. There is insufficient space here for this to be developed but it is worth noting that an understanding of the current regime is, as we noted above, vital to an understanding of the current state form and the implication this has for the development of emancipatory alternatives. On hegemony and periodization see, Jessop, *State Theory*, 214-5

[9] Thomas, *The Gramscian Moment*, 413

critical understanding of the current state politics of security and the process by which we have seen emerge a specific liberty-security regime.

Human rights and political possibilities in the 'age of terror'

The role of the liberal intellectual brings out further the specificity of the current regime. It reinforces the fact that the politics of security as currently in place across Western liberal democracies cannot function as they do currently without the correlate of liberty that infuses both the discourse through which they are 'sold' and, at a deeper level, the basic principles on which they rest. Human rights are integral to the current regime; human rights understood as the rights to property are the cornerstone of security policy. Human rights are both the goal of security strategy and its guide. In both roles they provide a legitimating function to the regime that is unsurpassed in a contemporary liberal democracy. The depoliticising function of human rights is vital, rendering the regime closed to opposition and further reinforcing the unquestionable legitimacy of liberal security politics. The relationship between security discourse and human rights principles is mutually beneficial reinforcing their unrivalled status and in turn shoring up liberalism's monopoly of legitimacy. Fundamentally, the split subject of human rights (with its active and passive sides) ensures that the politics of security are not only compatible with the contemporary humanitarian ethics but that they need to be understood as inseparable.

Human rights have to be central to the framework adopted by the liberal intellectual and the liberal state and it is this condition that leads a critical analysis of the current regime that bases its opposition on human rights principles to not only fail to provide a substantive critique but instead gift the current regime a source of legitimacy. Ultimately, the fact that liberal critiques are formulated giving so central a place to the language of (human) rights serves to set the parameters for all subsequent critique. Failing to circumscribe one's critique in the language of rights leads to rejection from any debate around security – legitimacy is ultimately the reserve of the human rights advocate. A critique that seeks to contest the politics of security and the politics of human rights (as indeed they cannot be separated) is rendered literally to the extremes.

We have then a paradox characteristic of liberalism by which to be taken seriously a critique must refrain from saying anything serious. In other words, to be

accepted within the current debate an intervention must not be truly critical of the current regime; essentially, this comes down to the fact that political economy of contemporary liberalism must remain obscured. If a commitment to human rights is a precondition for incorporation into the debate we must ask, as we have done in this thesis, what effects the incorporation of human rights has upon a critical standpoint. In the context of the current regime, a human rights based critique is acceptable precisely because it remains within the boundaries of liberalism and therefore fails to expose the politics of security as they are currently constituted. Such a critique is by definition, incapable of exposing the key role human rights play in this regime. Attempting to extract human rights from this regime and detach them from security, positioning them instead as the basis for a critique of liberal politics, leads inevitably to the conclusion that the liberal state is violent precisely because it has neglected its human rights commitments.

A critique based on human rights is seemingly incapable of acknowledging the pivotal role human rights have as part of the current politics of security and therefore ultimately unable to understand the current regime. Its inability to grasp the fundamentals of the regime renders such a critique less 'dangerous', less threatening, and thus acceptable. But what is the critical weight of a critique that does not pose any threat? The depoliticising function of human rights, well documented above, begs the question here, posed by Žižek, as to "what kind of politicization do those who intervene on behalf of human rights set in motion against the powers they oppose?"[10]. This question seems vital in the assessment of human rights as a tool for the left.

In the case of those thinkers on the left who maintain a place for human rights in their vision of an alternative politics, the politicisation they set in motion is, at best, limited. For the likes of Chomsky and Habermas, their intervention is in reality leftist by name only; they conform to the fundamental principles of a 'critical' liberal position and fail to envisage an alternative politics that can be realised through political struggle. Butler's intervention suggests that a leftist politics of human rights is not necessarily as depoliticised and conformist as for example, Habermas's work on the 'war on terror' would suggest, but the politicisation set in motion is still only partial. The confrontation with the status quo still fails to identify the structures that

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[10]Žižek, "Against Human Rights", 126

define contemporary liberal societies and the transformation demanded by a politics of human rights remains limited, incapable of pursuing a true alternative.

The impenetrability of the politics of human rights lies in their status as an antipolitics[11] in a situation which gives credit to this (political) position. This only reinforces the politics of security, which is in the same sense defined by the suppression of political action. It is ultimately impossible to mount a contestation of the current regime on the basis of a commitment to human rights. If we accept that human rights activism 'displaces, competes with, refuses, or rejects other political projects'[12] there is seemingly a major contradiction in trying to oppose through human rights a political regime that relies upon their central position. There is a need to accept that the legitimating function human rights play in the context of the 'war on terror' is emblematic of the pivotal role they play in securing a monopoly of legitimacy for liberalism. If, as Brown has noted, an analysis of the type conducted here is initially confronted by 'the impossibility of saying anything generic about the political value of rights'[13] it is crucial that her subsequent conclusion be noted:

> It makes little sense to argue for them (rights) or against them separately from an analysis of the historical conditions, social powers, and political discourses with which they converge or which they interdict[14].

In the context of the politics of security – within which human rights undoubtedly converge with the dominant political discourse– it is possible, and indeed necessary, to articulate a scathing critique and an unequivocal rejection of human rights as tools for critique.

If we return to Marx's reminder about liberal rights, as summarised by Brown, we can see that a human rights based critique is innately depoliticising and in fact an inherent hindrance to an alternative politics. The inevitable fusion of a cultural politics and human rights found in Butler's critique is not a sign of their compatibility in any transformative sense but a result of their shared capability to reify the social powers they ostensibly confront:

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[11]Brown, '"The Most We Can Hope For..." 453

[12]Brown, "*The Most We Can Hope For...* ", 453.

[13] Brown, *States of Injury*, 98

[14] Brown, *States of Injury*, 98

Rights in liberal capitalist orders, Marx reminds us, are bits of discursive power that quintessentially privatise and depoliticise, that mystify and reify social powers (property and wealth but also race, sexuality and gender) as the natural possessions of private persons, that analytically abstract individuals from social and political context, that are in fact *effects* of the social powers they obfuscate.[15]

Moreover, we must understand that human rights are bound to a dominant politics which defines what legitimate politics are by virtue of their inherent and seemingly inescapable capacity to mystify property and wealth. A liberal politics, defined from its outset by a possessive individualism and a defence of the institution of private property continues to rely upon rights to obscure the social powers that maintain the status quo. The relationship between liberty and security is not one mediated by balance or indeed a relationship of opposing concerns, but a conveniently adaptable pair based on the idea of property. In this sense the emphasis can be changed depending on the situation. The idea of balance simply serves to veil the liberal staunch defence of the inherent inequality that capitalism demands and creates.

For a political project that tries to abandon the constraints of liberal reformism and seeks instead to confront the world as the world is with a view to transform it, human rights reveal themselves to be not only of little utility but arguably a detrimental accompaniment. If a drive for collective justice – or indeed for any true sense of justice which by definition must include a fundamental collective dimension – is to be at the core of emancipatory politics then human rights cannot, by way of their equation with liberal individualism, assist such a project. This revelation should provide real cause for concern for those on the left who seek to articulate critiques of the violence of liberal politics – including the current security politics – in the language of human rights.

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[15] Brown, *States of Injury*, 123 original emphasis

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