Department of Political Science

Institut d'Études Politiques de Bordeaux

Major in Security

Major in International Affairs

Chair of Comparative Public Law

Chair of Critical Security Studies

How Securitization is Threatening the Rule of Law:

The End of Liberal Democracy?

SUPERVISORS

CO-SUPERVISOR

Prof. Giovanni Rizzoni

Prof.ssa Elena Griglio

Prof. Anthony Amicelle

CANDIDATE

Anna Bruschetta

LUISS Student ID: 645862

Academic Year 2021/2022

Table of Contents

Acknowledgements

Introduction

In 1989, Francis Fukuyama wrote one of the most criticized provocations in terms of global ideology by affirming that the international scene had reached "the end of history."[1] Notwithstanding the wild debate this caused in the academic world, Fukuyama recently revived his idea in a more moderated version in "Liberalism and Its Discontents"[2] which still upholds that after the fall of the Berlin wall, the world order has witnessed the "universalization of Western liberal democracy as the final form of human government."[3] In presenting his argument, he also explains that "It's all about political power. You don't win by making academic arguments. You win because you bring people to your side."[4] By using this statement as a point of departure, we shall not question whether we have reached "the end on history" as this has long been dwelled upon for the past 3 decades, but, on the contrary, we shall ask ourselves: have we reached the end of liberal democracy?

To proceed in answering this question, we shall adopt a hybrid approach that exploits two important realms that are somehow linked to Fukuyama's above-mentioned quote: that of law and that of security. The normative reality of liberal democracy is, in fact, perhaps the foundation of liberal democracy that distinguished itself from other political regimes where a sovereign or political authority maintains the ultimate rule rather than law. In contrast, Fukuyama's statement draws on the *demos*' power in the regime implying that as long as the people are on your side, you have the power. It is therefore legitimacy that counts rather than legality. At this point we can introduce the second realm, that of security. When security intersects with the liberal democratic regime, it undergoes the traditional process of debate between *demos* and sovereign to gain legitimacy, be conformed to the norms and then be implemented. However, given the symbolic power attached to such realm, the debate is transformed in a unique process of securitization. This process also occurs between *demos* and authority that take the role respectively of an audience and a securitizing actor. But why can we say that the process is unique with respect to other democratic debates to the point that it

---

[1] Francis Fukuyama, The "End of History?" (Washington, D.C.: United States Institute Of Peace, 1989).
[2] Francis Fukuyama, Liberalism and Its Discontents (London: Faber and Faber, 2022).
[3] Francis Fukuyama, The End of History and the Last Man (1992; repr., London: Penguin, 1992).
[4] Jennifer Schuessler, "Francis Fukuyama Predicted the End of History. It's Back (Again).," The New York Times, May 10, 2022, sec. Arts, https://www.nytimes.com/2022/05/10/arts/francis-fukuyama-history-liberalism.html.

has a name of its own? The reason behind this is that the logic and the repercussions involved in the process differ widely from that of liberal democracy. The logic is in fact transformed in a security rather than democratic one, and the legitimacy is such that the step where security practices are 'conformed to the norm' can be completely bypassed. So here Fukuyama's quote is particularly pertinent as "you win because you bring people to your side" and not because you respect the liberal democratic normative framework. The problem at this point, is that securitization gives security a huge potential, that of imposing itself on the rule of law, that of universalizing the rule of security rather than that of Western liberal democracy. What is more, is that ever since 1989, with the hegemonic rise of liberal democracy, the securitization process was simultaneously reinforced as it can thrive when it plays out between *demos* and authority. This antithetical reality, which has been gradually built with the end of history, set the recipe for the end of liberal democracy. In fact, securitization stems from liberal democracy supported by the rule of law, but as it is implemented, it threatens it. The age of security establishes a critical paradox which is crucial to understand how the pioneers of the end of history set up a self-destructive frame targeting their own values. If the end of history corresponds to the universal spreading of the final form of human government, that same government elaborated a security rhetorical weapon to globally destroy itself. In light of these considerations, we can narrow down our research question to understand whether liberal democracy is coming to an end specifically because of its clash with securitization:

Has securitization established a permanent rule of security above the law of liberal democracy?

This dilemma has been widely discussed across literature ever since the term 'securitization' was coined to label the process. The model used to describe it formally was designed by Barry Buzan, Ole Waever and Jaap de Wilde[5] (and more broadly the Copenhagen School) and then expanded upon by exponents of the Paris School such as Claudia Aradau.[6] The model was also criticized by several scholars such as Bill McSweeney and subsequently by Michael C. Williams especially due to the assumptions made by the Copenhagen School concerning

---

[5] Barry Buzan, Ole Waever, and Jaap De Wilde, Security: A New Framework for Analysis (Boulder, Colo. Lynne Rienner, 1998).
[6] Claudia Aradau, "Beyond Good and Evil: Ethics and Securitization/Desecuritization Techniques," Rubikon: International Forum of Electronic Publications, 2001.

identity[7] for the former and the way in which securitization is established for the latter.[8] It was also questioned and deepened by Holger Stritzel,[9] concerning context, and Thierry Balzacq,[10] concerning the audience (or *demos*). More importantly, for the purpose of our research, we must consider the literature concerning the conflictual relationship between securitization and liberal democratic values. This contrast is already presented by the original developers of the securitization theory when they advocate in favour of desecuritization such as Waever.[11] It is also acknowledged by Didier Bigo[12] in considering the loss of liberty and democracy in the strive for global security and developed by Aradau with a focus on the democratic scene.[13]

Given the wide range of literature available in relation to such dilemma, the aim of this thesis is that of exploring and combining it in order to analyse the relationship between rule of law and rule of security and understand whether one is exclusive with respect to the other. Furthermore, even though most of the analysis will be based on theoretical models and abstract ideas, these are only worthy when verified concretely. Therefore, to answer our research question comprehensively we shall consider all that is illustrated in theory through practical examples and subsequently combine them in a case study. Our aim, therefore, does not only consist in re-presenting existing arguments on the security/liberal democracy dilemma in another form, but rather in exploring the magnitude that this has reached in the actual world order. How extensive, permanent, and fatal is securitization to the liberal order imposed by the end of history?

To analyse this, in the first chapter we shall introduce the securitization model and its various developments. From a methodological point of view, it is particularly important that this be our point of departure as it will allow us to re-apply the model throughout the other chapters and

---

[7] Bill McSweeney, "Durkheim and the Copenhagen School: A Response to Buzan and Wæver," Review of International Studies 24, no. 1 (1998): 137–40.

[8] Michael C. Williams, "Words, Images, Enemies: Securitization and International Politics," International Studies Quarterly 47, no. 4 (December 2003): 511–31, https://doi.org/10.1046/j.0020-8833.2003.00277.x.

[9] Holger Stritzel, "Towards a Theory of Securitization: Copenhagen and Beyond," European Journal of International Relations 13, no. 3 (September 2007): 357–83, https://doi.org/10.1177/1354066107080128.

[10] Thierry Balzacq, "The Three Faces of Securitization: Political Agency, Audience and Context," European Journal of International Relations 11, no. 2 (June 2005): 171–201, https://doi.org/10.1177/1354066105052960.

[11] Ole Wæver, "Securitization and Desecuritization," in On Security (New York: Columbia University Press, 1995), 46–86.

[12] Didier Bigo, "Internal and External Aspects of Security," European Security 15, no. 4 (December 2006): 385–404, https://doi.org/10.1080/09662830701305831.

[13] Claudia Aradau, "Security and the Democratic Scene: Desecuritization and Emancipation," Journal of International Relations and Development 7, no. 4 (December 2004): 388–413, https://doi.org/10.1057/palgrave.jird.1800030.

understand how certain contexts produce certain repercussions. The second chapter will instead shift to the legal realm and consider all aspects of security tied to the rule of law. Here the securitization model is temporarily set aside as the approach is primarily a legal one applied comparatively in order to make conclusions on the role of security in the Western world as a whole. Once the norms in relation to security have been clearly set in chapter II, we will be able to establish when these are not respected but especially when those committing violations are not held accountable due to the establishment of a state of exception by securitization. Here, to illustrate the magnitude of the issue at stake, we shall make use of the terms 'global exceptionalism,' an association of words that has not been used by scholars on the matter but that perfectly conveys the extent to which violations are being perpetrated at home and abroad by liberal democracies. In the third chapter in fact, we consider how the macrosecuritization framework allows for this phenomenon to occur and operate in a necro-political reality. Shifting to the fourth chapter, we finally resort to a more empirical approach as one of the most striking demonstrations of global exceptionalism is analysed: the US-led drone warfare in Pakistan. The choice of a non-liberal democratic country is deliberate as we can observe how the antinomic essence of liberal democracy operates in realizing itself universally. In fact, exporting liberal democracy is often equated with destroying its values. But what is crucial in our study, is the fundamental source of legitimacy allowing for it: securitization keeps the exception alive making it a norm. We shall observe how the violations witnessed in Pakistan are no longer violations, they are the rule. So, is liberal democracy doomed to expand its antithetical rule abroad and at home causing its own demise? In the fifth and final chapter we shall also consider whether there is a possible response to this fate and our conclusive remarks will attempt to respond to the question guiding our analysis.

Methodology

This thesis does not aim to conduct a comprehensive analysis of securitization in the Western world as a wide amount of literature already covers it thoroughly and it would be redundant. Instead, the purpose of this research is that of exploring the dangers of securitization and the paradox of the end of history. Due to the fact that our main framework of analysis is that of securitization, our research will initially be built on theory surrounding this aspect. The documents supporting it were selected in order to initially provide an overall understanding of the matter and of its development, but also different kinds of criticism to present new insights that complement the theory at stake or that disagree with its assumptions entirely. This is done

in an attempt to limit possible bias and avoid a one-sided view. Other than a security studies-based perspective, a legal perspective will prevail in certain chapters (specifically chapter II and chapter IV, section b). Here a multilevel approach will be adopted as we shift from a comparative analysis on a micro-level scale between nation states to a macro-scale analysis at an international level. Documents selected in this regard are mainly primary legal sources in order to ensure precision complemented by law-based journals and other secondary sources to provide appropriate interpretation.

Even though the theoretical component is fundamental to define our subject, empirical evidence is necessary to ensure its relevance as a "real world" issue of political science. Each chapter will therefore be supported by empirical examples in order to illustrate the argumentation concretely. Data collected is primarily qualitative and relies on extracts from official speeches available on government archives, media articles and interviews reported by civil society organizations. As our theoretical framework is centred around rhetorical instruments, this sort of data is more relevant for our research. However, especially in chapter IV, quantitative data will also be used as a means to derive conclusions on the results of the analysed process. In this case statistical data will be illustrated with the visual aid of graphs and tables for the purpose of clarity and conciseness. In order to avoid biases based on the data collection methods of each source, several sources are presented and compared in an attempt to go beyond Western-centric reporting of information and give a more complete numerical picture of the study.

I.   The Age of Security

The omnipresence of security is one of the defining characteristics of the 21st Century. This term has come to monopolize the media, public discourse, national and especially international politics. In other words, we are living in the century of security. But what does this mean concretely?

The etymology of the term derives from the Latin *securitas*, from *securus* literally translatable as "free from care." This noun has however acquired a much broader meaning depending on the perspective adopted and on the connotation attributed to it. As a Westphalian view of the world order came to be, it became the ultimate objective of the nation state but in the past few decades, its broadening and widening have expanded its meaning even further. This makes security an essentially contested concept, with no standard definition, nor interpretation. More than defining it, we can orient it or understand it as "a historically shifting set of social and political practices, not an objective condition or fixed set of perceptions."[14]

The uncertainty around the term, is itself indicative of how the 'Age of security' we have entered at the beginning of the 21st century is not necessarily characterized by a status of security, especially from an objective perspective, as its meaning is under constant debate. Instead, what makes this era one of security, is the realization that security is a perpetually changing notion and is therefore a tool rather than a status. This implies that, according to the context in which it is applied, it can be used and adapted to achieve certain goals. It is in fact a "set of practices." For this reason, the object of analysis is not security itself, as findings on its meaning are limited and contestable as they remain in the abstract realm. On the contrary, what security can do, is very concrete, and this allows us to answer the question set above: the century of security is the century of securitization, where security becomes a verb, a process, that alters realities concretely.

---

[14] Keith Krause and Michael C. Williams, "Broadening the Agenda of Security Studies: Politics and Methods," *Mershon International Studies Review* 40, no. 2 (1996): p. 229, https://doi.org/10.2307/222776.

A. Securitization Theory: The Evolution of the Understanding of Security in Liberal Democracy and Its Institutions

The original conceptual development of securitization stems from the Copenhagen School which distinguishes its approach from traditional security studies. The use of security is that of working as a framework of analysis. Moreover, the emphasis on non-military aspects of security, embedded in a constructivist perspective, leads to the establishment of concepts that are at the core of critical security studies. Among these concepts, securitization is undoubtedly the most renowned. It equips security studies with a ground-breaking alternative to the realist rooted understanding of security[15] enriching it with different levels of analysis in relation to threat construction. "The exact definition and criteria of securitization is constituted by the intersubjective establishment of an existential threat with a saliency sufficient to have substantial political effects"[16] implying that the subjective perception of security constructed abstractly leads to the determination of concrete measures. The way in which this takes place, according to Ole Wæver, is through a speech act with an ad hoc structure[17] which an actor exploits to shift an issue, area, topic or group of people from the political to the security realm.[18] This act enables to mobilize and legitimize extraordinary resources towards the threat which has been socially constructed and associated to survival as "if not handled now it will be too late, and we will not exist to remedy our failure."[19]

To better picture how the process takes place, it can clearly by synthesised in two main phases, a political and a security one, as depicted by Emmers in Figure 1. Excluding the 'non-politicized' stage that is not relevant to the analysis, in the first 'politicized' stage, issues are

---

[15] Claudia Aradau, "Security and the Democratic Scene: Desecuritization and Emancipation," *Journal of International Relations and Development* 7, no. 4 (2004): pp. 388-413, https://doi.org/10.1057/palgrave.jird.1800030.
[16] Barry Buzan, Ole Wæver, and Jaap de Wilde, *Security: A New Framework for Analysis* (Boulder, CO: Lynne Rienner Pub., 1998).
[17] Aradau, "Security and the Democratic Scene: Desecuritization and Emancipation,"9.
[18] Ole Wæver, "Security, the Speech Act: Analysing the Politics of a Word - Working Paper 1989," Academia.edu, June 3, 2014, https://www.academia.edu/2237994/Security_the_Speech_Act_working_paper_1989.
[19] Barry Buzan, "Rethinking Security after the Cold War," *Cooperation and Conflict* 32, no. 1 (1997): pp. 5-28, https://doi.org/10.1177/0010836797032001001.

Non-politicized

– The state does not cope with the issue

– The issue is not included in the public debate

Politicized

– The issue is managed within the standard political system

– It is 'part of public policy, requiring government decision and resource allocations or, more rarely, some form of communal governance' (Buzan et al. 1998: 23)

Securitized

– The issue is framed as a security question through an act of securitization

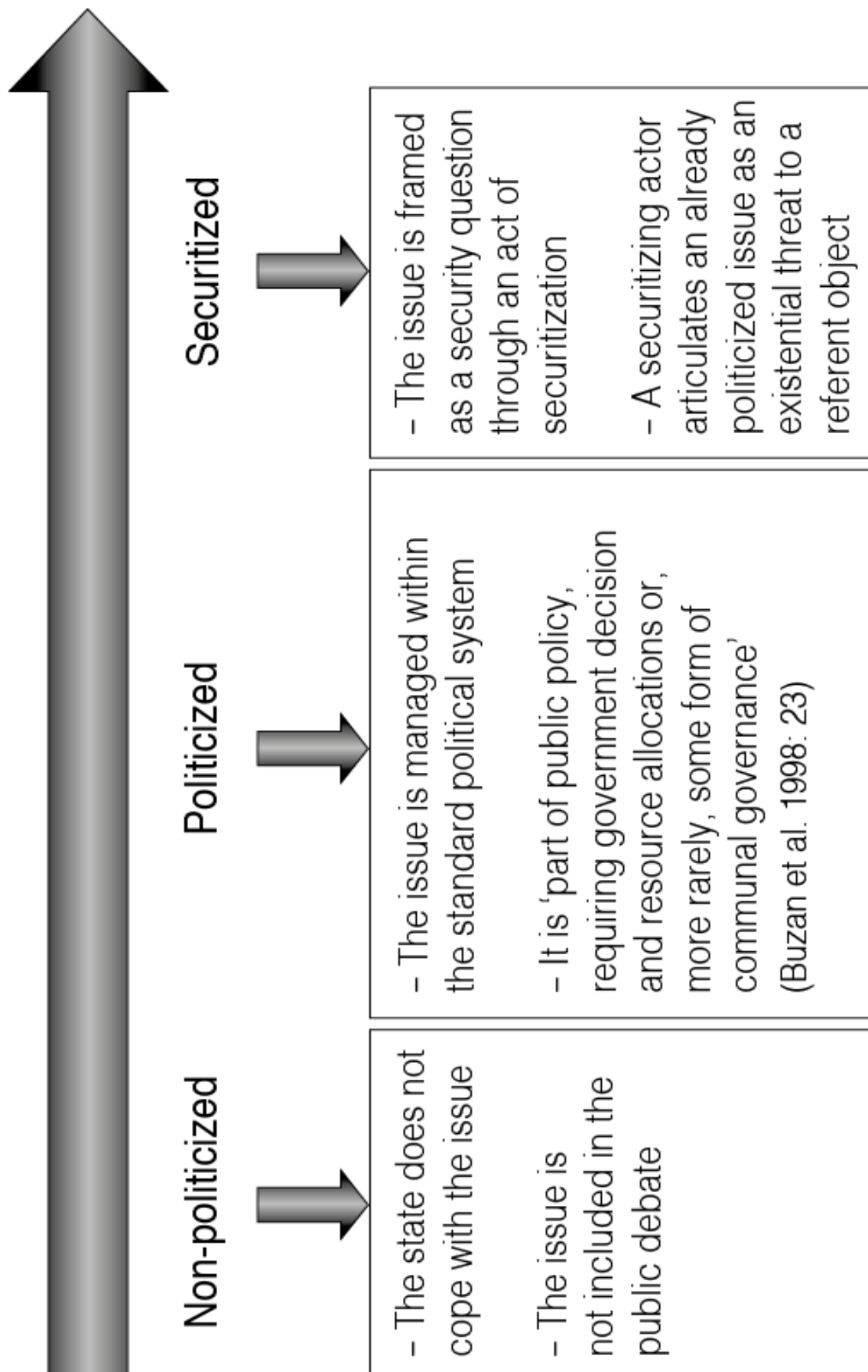– A securitizing actor articulates an already politicized issue as an existential threat to a referent object

Figure 1- Securitization spectrum. Source: Ralf Emmers, "Securitization," in Contemporary Security Studies (New York: Oxford University Press, 2010).

framed a specific way, but it is the second one that enables the success of securitization when an audience is convinced that a referent object faces an existential threat. The verbal act, therefore, is not "productive of security" but rather "one component of the inter-subjective construction of security"[20] that depends on the combination of "language and society."[21]

To understand this shift, it is important to look at how the first stage involves state or non-state actors that present a threat to a targeted community as a 'supreme priority' making security a socially constructed practice that depends on the combination of internal linguistic forms and contextual conditions concerning the authority of the actor. Being independent of the existence of an actual threat, security becomes a "self-referential practice."[22] However, as afore mentioned, the intersubjectivity of security is a crucial factor for securitization as the receiver (the audience) of the public discourse concedes the adoption of extraordinary measures towards the framed threat. Therefore, security has a performative objective and a target to appeal to. This is illustrated by the image of security as "a quality actors inject into issues by securitizing them, which means to stage them in the political arena and then to have them accepted by a sufficient audience to sanction extraordinary defensive moves."[23] Such a description of securitization demonstrates that the effectiveness of the process is very audience centred going beyond the importance originally given to the speech act and opening the floor to criticisms. Originally, Weaver's emphasis was specifically on that of verbal communication. The speech component, in fact, is paramount for the securitization process to take place. Second generation scholars, such as Wilkinson, criticize this, pointing out how Western-oriented this focus is, and Michael Williams asserts that limiting security to a performance is "potentially too narrow to grasp fully the social contexts and complex communicative and institutional processes of securitization at work in contemporary politics."[24] Contesting the fact that "simply by saying something is done" is definitely the most diffused criticism but also a point of departure to elaborate on securitization. Balzacq in fact underlines, as aforementioned, the importance of the audience but also that the effectiveness of securitization is also necessarily affected by context and power relations.[25] This means that, the linguistic, communicative element must

---

[20] Matt McDonald, "Securitization and the Construction of Security," *European Journal of International Relations* 14, no. 4 (2008): pp. 563-587, https://doi.org/10.1177/1354066108097553.

[21] Buzan et al., *Security: A New Framework for Analysis,* 32.

[22] Ibid, 24.

[23] Ibid, 204.

[24] Michael C. Williams, "Words, Images, Enemies: Securitization and International Politics," *International Studies Quarterly* 47, no. 4 (2003): pp. 511-531, https://doi.org/10.1046/j.0020-8833.2003.00277.x.

[25] Thierry Balzacq, "The Three Faces of Securitization: Political Agency, Audience and Context," *European Journal of International Relations* 11, no. 2 (2005): pp. 171-201, https://doi.org/10.1177/1354066105052960.

take place in a specific institutional setting. The success of "speaking security" depends on the ability of the actor to impact the symbolic power relations existing within the institutional field in which the audience is persuaded that mobilization is necessary.[26] So, securitization according to a sociological view, integrates the communicative aspect in a broader reality. This reality is made up of three assumptions: the audience at the centre, co-dependency between agency and context and finally the Foucauldian notion of *dispositif*[27] with the structuring force of practices.[28] Considering these three assumptions allows to use the criticisms to the securitization theory as constructive and productive expansions of the concept that enlarge its scope making it relevant to everyday realities. It is, therefore, important to take them into account as they will serve as instruments to better develop the topic of research.

The first assumption concerns the audience, which is vaguely acknowledged by the Copenhagen School, but gains a core role among the 'second generation' of scholars developing on the concept of securitization. The audience is an 'empowering' one, as it allows the actor that has performed the speech act, to take action. This also means that such actor is compelled to "tune his/her needs language to the audience's experience."[29] Furthermore, giving for granted that the audience to a singular one is also limitative as often there are multiple audiences to be convinced.[30] Among these, the most important distinction can be made between the general public and policy makers.[31] Each audience can morally or formally support the securitizing process but only the latter conceded by policy-making institutions concretely enables countermeasures to the depicted threat.[32] However, moral support can have an impact on the decision of providing formal support, especially in anticipation of legislative elections. Therefore, even though the different audiences require a distinct targeted "logic of

---

[26] Michael C. Williams and Keith Krause, "From Strategy to Security: Foundations of Critical Security Studies," in *Critical Security Studies: Concepts and Sases* (London: Routledge, 2003), pp. 33-66.

[27] "A thoroughly heterogeneous ensemble consisting of discourses, institutions, architectural forms, regulatory decisions, laws, administrative measures, scientific statements, philosophical, moral and philanthropic propositions–in short, the said as much as the unsaid. Such are the elements of the apparatus. The apparatus itself is the system of relations that can be established between these elements" is the definition of dispositive given by Foucault himself in "The Confession of the Flesh" (1977) interview. In Power/Knowledge Selected Interviews and Other Writings (ed Colin Gordon), 1980: pp. 194–228.

[28] Thierry Balzacq, *Securitization Theory: How Security Problems Emerge and Dissolve* (Milton Park, Abingdon, Oxon: Routledge, 2011).

[29] Balzacq, "The Three Faces of Securitization: Political Agency, Audience and Context," 184.

[30] Christian Kaunert and Sarah Léonard, "EU Counterterrorism and the European Neighbourhood Policy: An Appraisal of the Southern Dimension," *Terrorism and Political Violence* 23, no. 2 (September 2011): pp. 286-309, https://doi.org/10.1080/09546553.2010.538276.

[31] Paul Roe, "Actor, Audience(s) and Emergency Measures: Securitization and the UK's Decision to Invade Iraq," *Security Dialogue* 39, no. 6 (2008): pp. 615-635, https://doi.org/10.1177/0967010608098212.

[32] Balzacq, "The Three Faces of Securitization: Political Agency, Audience and Context," 185.

persuasion,"[33] their relationship can be a determinant, pushing the actor to convince "as broad an audience as possible."[34]

Moving on to the second assumption, allows to consider the impact of context on the agency that the securitization move aims at. Whilst the Copenhagen School does introduce context as a contributing factor of securitization but only as a dependent variable of the speech act, Balzacq's externalist approach[35] suggests that on the contrary it is context that allows for discourse to reach its objective.[36] McDonald also remarks that, considering context only in relation to how it is altered by the speech act in a specific moment in time, does not allow to grasp the temporality of the securitization process that often develops across a prolonged period of time.[37] The temporal problem is also brought up by Stritzel who positions the speech act into a "broader discursive context."[38] Therefore, the external context cannot only be considered in the specific moment in which the act takes place but rather in its comprehensiveness and evolution over time.

Finally, the third assumption regarding practices is, perhaps, the most relevant for the purpose of this thesis. Security practices are in fact not necessarily only consequences of the speech performance[39] but may at times be the actual cause of a security issue. Securitization goes from being a universal pragmatic speech act to a "pragmatic sociological practice" that constructs rather than creates security through the use of policy tools.[40] Among these, Balzacq distinguishes two tools used by security actors: regulatory and capacity ones. The former affects societies behaviour through normative constraints, the latter imposes external discipline and is related to the *dispositif* representing a "specific threat image through which public action is configured to address a security issue."[41]

Moulding peoples' behaviour, however, does not have to derive from the imposition of a formal rule but can also take place through powerful and disruptive imagery. Williams emphasizes the role of the media relating a visual rather than verbal message to audience and context.[42] This

---

[33] Léonard and Kaunert, "EU Counterterrorism and the European Neighbourhood Policy: An Appraisal of the Southern Dimension".

[34] Balzacq, "The Three Faces of Securitization: Political Agency, Audience and Context," 185.

[35] Antonia Does, "Securitization Theory," in *The Construction of the Maras* (Graduate Institute Publications, 2013).

[36] Balzacq, *Securitization Theory: How Security Problems Emerge and Dissolve*.

[37] McDonald, "Securitization and the Construction of Security."

38 Holger Stritzel, "Security, the Translation," Security Dialogue 42, no. 4/5 (2011): pp. 342-355, https://doi.org/10.1057/9781137307576.

[39] McDonald, "Securitization and the Construction of Security."

[40] Balzacq, *Securitization Theory: How Security Problems Emerge and Dissolve*.

[41] Balzacq, Ibid.,16.

[42] Michael C. Williams, "Words, Images, Enemies: Securitization and International Politics,": 5.

is what really allows to construct what Vultee calls a "frame."[43] "Securitization works as an independent media frame" where there is no need to resort to sophisticated discourse as an image conveys the need for urgency and mobilization that the audience seeks. In addition to this, being socially constructed, a frame is not necessarily mediatic but can stem from any portrayal of a threat. Going back to the assumptions, such a portrayal establishes a frame that is strategically negotiated between the securitizing actor and the audience.[44]

This sheds light on why securitization has moulded the *modus operandi* of liberal democracies and not that of other regimes for the past couple of decades. Authoritarian regimes do not seek for explicit consent of their *demos* to be re-elected therefore convincing discourse is not a necessary condition, and the framing of a threat does not require negotiations. Not by chance, one of the major limits of this concept notwithstanding its development, is its eurocentrism (or Western centrism). The paradox is that, notwithstanding the fact that it is applicable only in liberal democratic regimes, even though the securitizing process follows the principles of democracy as it is in fact dependent on the audience, the *demos*, its consequences are at odds with liberal practices. The process in fact, depends on a negotiated frame that is constituted by "conceptual structures or sets of beliefs that organize political thought, policies, and discourse"[45] where framing implies selecting specific aspects or issues to "make them more salient."[46] The frame, however, cannot be constructed unilaterally, it needs audience acceptance as a main building block. The struggle or negotiation between the securitizing actor and the audience determines what type of frame is set: diagnostic, prognostic or motivational.[47] The first is explanatory of a situation and defines it with the purpose of attributing the responsibility to something or someone, the second aims to find solutions and the third is a call to action. All three frames take place in different moments of the securitization process depending on the speech act and tools used together with the public's response. Therefore, the power relations Balzacq refers to are in a perpetual flux and can be understood according to

---

43 Fred Vultee (2011) 'Securitization as a Media Frame: What Happens When the Media "Speak Security"', in Thierry Balzacq (ed) Securitization Theory: How Security Problems Emerge and Dissolve, pp. 77-93. London-New York: Routledge.
44 Dagmar Rychnovskà, "Securitization and the Power of Threat Framing," *Perspectives* 22, no. 2 (2014): pp. 9-31.
45 Teun A. Van Dijk (2001) 'Critical Discourse Analysis', in Deborah Schiffrin-Deborah Tannen-Hei
Hamilton (eds) The Handbook of Discourse Analysis, pp. 352-371. Oxford: Black.
46 Robert M. Entman (1993) "Framing: Toward Clarification of a Fractured Paradigm," Journal of Com nication 43 (4): 51 -58.
47 David A. Snow and Robert D. Benford (1988) "Ideology, Frame Resonance, and Participant Mobilization," International Social Movement Research 1 (1): 19.

the dynamics deriving from threat negotiations.[48] This multilateral interaction occurring between securitizing actors, multiple audiences within a certain context are, therefore, to some extent respectful of traditional democratic processes. Even though the language used by actors may be strategic or manipulative at times, the *demos* is not coerced, nor obliged to accept frame and actively plays a role in setting it.

Frame-setting, however, legitimizes consequences that do not necessarily take into account the *demos*. This is because securitization has five main strands, as identified by Juha A. Vuori, and these indeed potentially bypass liberal democratic checks and balances.

Strand of securitization	Elementary speech act sequence	Illocutionary point	Perlocutionary aim	Temporality	Degree of strength
Raising an issue on the agenda	Claim Warn *Suggest* (e.g.)	Directive	Convincing	Future	Has to be argued
Legitimating future acts (Wæver)	Claim Warn *Request*	Directive	Legitimacy	Future	Has to be argued
Deterrence	Claim Warn *Declare*	Declarative	Intimidation/ Deterrence	Future	Declaration: Requires formal authority
Legitimating past acts or reproducing a security status	Claim Warn *Explain*	Assertive	Legitimacy	Past	Has to be argued
Control	Claim Warn *Require*	Directive	Obedience/ Discipline	Future	Compelling: Requires formal authority and a reason

Figure 2 - The Five Strands of Securitization. Source: Juha A. Vuori, "Illocutionary Logic and Strands of Securitization: Applying the Theory of Securitization to the Study of Non-Democratic Political Orders," European Journal of International Relations 14, no. 1 (2008): pp. 65-99, https://doi.org/10.1177/1354066107087767.

[48] Rychnovskà, "Securitization and the Power of Threat Framing."

As illustrated by the table, securitization has several strands which have a different sequential construction of the speech act, a specific aim in how it is communicated affecting public behaviour (illocutionary point) to obtain a certain result (perlocutionary aim), and an effect in time (temporality). Although Vuori's final aim was to provide a framework that enabled securitization analysis in different political regimes,[49] it also works in the original liberal democratic state, the homeland of securitization. It is in fact relevant to observe the relationship between the first, fourth and fifth column as each strand of securitization has a perlocutionary aim that, being applicable also in authoritarian regimes, anticipates that it may not be entirely respectful of liberal democracy. Even though all strands potentially have illiberal repercussions, the riskiest are the second, third and especially the last. For instance, "legitimizing future acts" whose aim is legitimacy, has a future temporal effect. Whilst according to the Copenhagen School this only occurs as a repercussion of the speech act, the introduction of practices that derive from it are more long lasting. This can cause an issue for accountability because being long-term, such legitimization set the foundations for further practices outside the realm of liberal democracy as long as they meant to tackle the threat that has been framed as such (as will be further discussed in the following chapters). A specular function is served by that of "legitimizing past acts/reproducing security issues" where even though the temporal focus is in the past, the perlocutionary aim is always that of justifying actions which would be evaluated as illegitimate in normal circumstances[50] setting a precedent for the adoption of present and future illegitimate measures. Both these strands however, still 'have to be argued' (sixth column) leaving the public some say in the matter. Finally, the most evident violation of liberal principles is provided by the last strand of "control" whose aim resembles that of a military regime more than a democracy. Being the table created to be applied also to authoritarian regimes, this last point appears to pertain exclusively to those. However, one of the points of discussion of the thesis will revolve around to what extent the 'degree of strength' is actually argued in liberal democratic regimes and whether control and compulsion have become legitimate in the Age of Security.

At this point, it is important to underline that until now we have presented the concept of securitization from a Western-centric perspective. Even though its criticisms and add-ons have been integrated to complement the original theory, there is still a lot to be said on the matter.

---

[49] Juha A. Vuori, "Illocutionary Logic and Strands of Securitization: Applying the Theory of Securitization to the Study of Non-Democratic Political Orders," *European Journal of International Relations* 14, no. 1 (2008): pp. 65-99, https://doi.org/10.1177/1354066107087767.
[50] Ibid.

For the purpose of this first chapter however, it is sufficient for us to remain with this understanding of the framework. This will however be expanded upon especially with the introduction of the exceptionalism it provokes, as we shall see from the third chapter. Adopting a non-western view will help us analyse the issues of securitization more objectively and understand how scholars themselves contribute to the problem if theory only revolves around 'us' leaving out the non-western world.

As we shift from the development of concepts and the evolution of an expanded, criticized theoretical framework to its application in the real world, an important controversy on the age of security must be made. The age of security is, indeed, characterized by a paradox: it corresponds to the 'age of terror'. In fact, the securitization process developed by the Copenhagen School at the very end of the 20ᵗʰ Century, found its most exponential expression in the Global War on Terror declared after the attack to the Twin Towers on the 11 of September 2001. This event however, fuelled securitization moves in their original meaning (speech acts carried out by state actors) but also adapted them to the context and situation. As what had been waged was a 'global' war, securitization could occur within the state only to a certain extent. Even though national security remained crucial, global security was paramount implying a trans-nationalization of securitization. This process was put in place by the liberal democracy par excellence and, not by chance, the direct target of the attacks: the United States (US). As a pioneer of the war on terror, the US was also a pioneer of the exacerbation of securitization. To magnify the impact of this process, security discourse and threat framing must be fused with security practices as aforementioned. The emphasis on practices was particularly expanded upon by Didier Bigo who underpinned how a 'transversal field of globalized (in)security' had emerged as a result of the deconstruction of inside and outside security.[51] The new narrative, therefore, is not nation-state vs other nation-state but rather 'us' vs 'them.' 'Us' embodies the international community, which is by no means international, but rather a propagandistic appellation of Western states. 'Them' refers to the perpetrators of the attacks but also to all those who could potentially threaten 'us,' therefore all those who do not respect the rules of the game played in the international liberal order. Such a narrative was put at the core of the speech act and accordingly implemented through security practices. This results in a sacrificial logic: the security of one group, the West, leading to the insecurity of

---

[51] Didier Bigo, "Internal and External Aspects of Security," European Security 15, no. 4 (2006): pp. 385-404, https://doi.org/10.1080/09662830701305831.

another, the rest. What must be sacrificed is determined by the *mise en place* of securitization which implies that in some circumstances, even the group that has to be secured, must give up its values or, at times, its individual security for the purpose of so called 'global security.' The result is that insecurity is an inescapable status of the age of security, where security and insecurity are inherently interdependent.[52] Therefore, even though his statement preceded the events of 9/11, Mark Neocleous had undoubtedly been far-sighted when he claimed that "it appears that […] all the other 'ages' we are said to have been through have now been replaced by the 'age of insecurity.'"[53]

Keeping this in mind, allows to better understand the effects of securitization in practical terms which will be discussed in the following section and why it was so successful in the age of (in)security notwithstanding potential contrasts with liberal democracy.

---

[52] Bigo, "Internal and External Aspects of Security."
[53] Mark Neocleous, "Against Security," Radical Philosophy, January 2000, pp. 7-15.

B. 9/11: A Turning Point?

In the previous section, the topic of securitization has remained strictly academic. The debate around it, however, serves a more practical purpose which is that of establishing a broader theoretical framework of the one which had initially been supplied by the Copenhagen School. Shortly after its formulation, such framework found its practical ground in the apex of the age of (in)security: 9/11. What remains unclear, is whether the attack to the Twin Towers actually represents a turning point for the implementation of security practices and, therefore, for the concretization of the framework. And more importantly, for the purpose of our research, whether it has constituted a real shift towards the demise of liberal democracy.

The answer, as for most realities, is nuanced. In some respects, in fact, the securitization implemented post 9/11 was simply a reformulation of already existing securitization but in others it paved the way for an unprecedented, globalized insecurity triggered by the collapse between internal and external dimensions. A way of understanding this duality is provided by Bigo's distinction of the Classics and the Moderns, the main competing groups within security professions which strive to define security threats. The former remains narrowly focused on borders as they consist in traditional separated internal police and external armed forces.[54] The latter, instead, depicts the new threat as a de-territorialized one that contemplates the need for borderless or transnational security. For the Moderns in fact, the local is inherently dependent on the global as insecurity pervades all levels.[55] Both groups provide us with important insights that explain the unquestionable legitimacy achieved by 9/11. Therefore, even though the perspective of the Moderns, which contributes to the identification of a new threat as a turning point for securitization, will be at the core of the argumentation, we shall start by illustrating the analogies between past securitization and the one following September 2001. This view is more in line with that of the Classics, as elucidating the similarities of the securitization narrative during the Cold War and the 21st Century allows to conceive a state-centred and border-defined security strategy. In other words, if nothing has changed, why should response change? This view relies on the consistency of securitization dynamics which helps us explain how liberal democracies had already set the environment for the securitization following 9/11

---

[54] Didier Bigo, "Internal and External Aspects of Security," European Security 15, no. 4 (2006): pp. 385-404, https://doi.org/10.1080/09662830701305831.
[55] Didier Bigo, "La Mondialisation de l'(in)sécurité?," Cultures & Conflits, no. 58 (January 2005): pp. 53-100, https://doi.org/10.4000/conflits.1813.

to be effective. After that, we shall draw upon the Modern's perspective to derive the importance of a change of discourse complemented by an institutional and practice-oriented shift at an international and national level. This will allow us to consider how the 9/11 discourse has evolved and the repercussions it had in the following decades. During our analysis, for the purpose of a more comprehensive understanding of the securitization process effect across levels and the complexity of its dynamics, we shall combine interaction between national and international levels with internal and external evolution of security.

Before 9/11, the taunting date that set the American security environment was the 7th of December 1941. 'Remember Pearl Harbor' was a defining motto in the management of armed and security services.[56] This served as a new security era, one of caution in the awareness of the possibility of devastating disruptive events that could threaten even a rising hegemon, the United States. Until then, the US, like most liberal democracies, differentiated internal and external security actors. Liberalism conceived the police as a defendant of society rather than a coercive instrument of the government, separating it from the armed forces.[57] The modern nation-state had witnessed a removal of the army from the domestic environment[58] aiming for minimal interaction with internal police for the purpose of the upholding of democratic values.[59] Moreover, this renaissance of the police as a societal tool was accompanied by an evolution of its specialized functions. These led towards a complex of internal security that enabled the freedom guaranteed by liberal governments.[60]

However, the Japanese attack of 1941, contributed to a gradual abandonment from the understanding of security as a means to freedom. The unexpected element of the attack in fact, transformed security into an end. A new wave of securitization influenced the institutionalization of national security during the Cold War as the Soviets became potential surprise attackers.[61] Here, analogically to 9/11, it is important to acknowledge how a single date can be definitive for the securitization process that takes place for the following decades. The lack of preparedness encountered by the United States at Pearl Harbor, affected the framing

[56] Michael J Hogan, *A Cross of Iron : Harry S. Truman and the Origins of the National Security State*, 1945-1954 (Cambridge: Cambridge Univ. Press, 2007).
[57] Robert Reiner, "Policing a Postmodern Society," The Modern Law Review 55, no. 6 (November 1992): 761–81, https://doi.org/10.1111/j.1468-2230.1992.tb00940.x.
[58] Anthony Giddens, The Consequences of Modernity (Padstow Polity Press, 1990).
[59] Bigo, "Internal and External Aspects of Security."
[60]Richard Victor Ericson and Kevin D Haggerty, Policing the Risk Society (Oxford Clarendon Press, 2002).
[61]John Lewis Gaddis, "The Insecurities of Victory: The United States and the Perception of Soviet Threat after World War II," in The Long Peace (Oxford: Oxford University Press, 1987), 20–27.

of the US-Soviet conflict.[62] This was translated in the drafting of the 1947 National Security Act following the start of the Cold War. The document merged civil-military functions fuelling the security complex at the base of both the National Security Council and later the Department of Defense.[63] A single isolated event triggered a new security discourse founded on the evocation of the past. As the US established itself as an international securitizing authority, this link was not only featured in public speeches in the political world but was the guiding rationale among policy makers in the security world. The audience was therefore other states, mainly the Western bloc, and the ensemble of professionals involved in security issues. Moreover, the fact that other decision-making actors were responsive to the US authority as a security actor, impacted the establishment of new institutions operating according to the Classic's perspective. Their aim was that of 'insulating domestic life' by reinforcing the non-permeability of borders to protect the inside from the outside.[64] The issue was that even though this was still supposedly in the respect of liberal democratic values, re-thinking of the role of borders occurred in a new institutional design that developed its own 'logic of appropriateness.'[65] This allowed to set new expanded boundaries in which security actors could operate, another crucial similarity to the securitization amplification after September 2001. Such institutionalization is not only relevant to how an external threat is tackled but has a long-term narrative that affects the type of state. In fact, the ideas and circumstances building the institutional design are then reflected by the actors "whose interests are served by it."[66] Gearing institutions towards enhancement of securitization can lead to the reifying of a particular state, the state of security dominating over the political regime of liberal democracy.

Therefore, the parallelism with Pearl Harbor allows us to derive how the securitization discourse and practices post-9/11 were implemented in a context which had already undergone and accepted major shifts in the security environment, especially institutionally. Such changes were also based on the use of discourse revolving around a past event as a legitimizer.

---

[62]Bryan Mabee, "Re-Imagining the Borders of US Security after 9/11: Securitisation, Risk, and the Creation of the Department of Homeland Security," Globalizations 4, no. 3 (September 2007): 385–97, https://doi.org/10.1080/14747730701532567.
[63] Ibid.
[64] John Lewis Gaddis, *Surprise, Security, and the American Experience* (Cambridge, Mass. ; London: Harvard University Press, 2005).
[65] James G. March and Johan P. Olsen, "The New Institutionalism: Organizational Factors in Political Life," American Political Science Review 78, no. 03 (December 1983): 734–49, https://doi.org/10.2307/1961840.
[66] Judith Goldstein and Robert O Keohane, Ideas and Foreign Policy : Beliefs, Institutions, and Political Change (New York: Cornell University Press, 1993).

At this point, we can mention how even though it was not the first time that traditional liberal democratic boundaries were re-defined, the attack to the Twin Towers did stimulate a new enhanced securitization that paved the way for the argument of the Moderns. The 9/11 Commission in fact, did compare the event to Pearl Harbor but emphasized how in some ways it was definitely worse.

> While by no means as threatening as Japan's act of war, the 9/11 attack was in some ways more devastating. It was carried out by a tiny group of people, not enough to man a full platoon. Measured on a governmental scale, the resources behind it were trivial. The group itself was dispatched by an organization based in one of the poorest, most remote, and least industrialized countries on earth. This organization recruited a mixture of young fanatics and highly educated zealots who could not find suitable places in their home societies or were driven from them.[67]

The event *per se*, in fact, cannot be compared to a full scale-on war. Even though the al-Qaeda plane hijacking resulted in 2823 deaths at the World Trade Centre in NYC,[68] 189 deaths at the Pentagon[69] plus 45 in rural Pennsylvania,[70] this is nothing with respect to millions of combatant deaths and civilian casualties resulting from war conflict. Perhaps it was this that made the attack so menacing as it revolutionized the conception and fear of terrorism. Whilst there is no standard definition of the term, it can be broadly summarized as "the substate application of violence or threatened violence intended to sow panic in a society, to weaken or even overthrow the incumbents, and to bring about political change."[71] The attack under study was particularly powerful in its symbolism as it targeted emblematic landmarks of the United States and to some extent, of liberal democracy itself. The planes crashed on governmental buildings of the hierarchical pinnacle of democracies killing citizens working for global trade, a core pillar of liberalism. The public discourse of the chief of state deriving from this, highlighted its uniqueness reinforcing the means for securitization.

> Americans have known wars – but for the past 136 years, they have been wars on foreign soil, except for one Sunday in 1941. Americans have known the casualties of war – but not at the centre of a great city on a peaceful morning. Americans have known surprise attacks

---

[67] National Commission on Terrorist Attacks upon the United States (The 9/11 Commission). "Final Report." New York: W.W. Norton, 2004, quoted in Mabee, "Re-imagining the Borders of US Security after 9/11: Securitisation, Risk, and the Creation of the Department of Homeland Security."

[68] Tom Templeton, "9/11 in Numbers," the Guardian (The Guardian, August 18, 2002), https://www.theguardian.com/world/2002/aug/18/usa.terrorism.

[69] Ibid.

[70] Ibid.

[71] Walter Laqueur, "Postmodern Terrorism," Foreign Affairs 75, no. 5 (1996): 24, https://doi.org/10.2307/20047741.

– but never before on thousands of civilians. All of this was brought upon us on a single day – and night fell on a different world, a world where freedom itself is under attack.[72]

Furthermore, as underlined by the 9/11 Commission, the group in question, was a non-state actor, shifting away the framing of a threat from the national dimension. This implies a radical change in line with the perspective of the Moderns for the type of necessary response required to tackle a de-territorialized enemy with a transnational impact. Such impact was so incisive that, as illustrated by the words of the President, the only way to face it was the waging of a war, a new type of war that blurred lines across all dimensions exacerbating the age of (in)security.

The global war on terror has blurred the lines of war, terror, and human rights. This new kind of armed conflict—geographically and temporally unlimited—is fought between terrorists and counter-terrorists, both of which violated human rights, as is now known definitively from a vast literature on the topic […] The furthest-reaching societal effects of the war on terror are yet to be felt. A sense of permanent insecurity, widespread surveillance, Islamophobia, and other kinds of xenophobia have already resulted in the proliferation of conspiracy theories and general decay of trust in politics and experts. The war on terror has come home to roost.[73]

This unprecedented global war was implemented according to the academic understanding of a 'world risk society'[74] which has important temporal and spatial elements. Being risk the "modern approach to foresee and control the future consequences of human action,"[75] it implies a future oriented strategy focused on predicting and preventing unwanted consequences. The narrative of the Moderns, in fact, relies on the detection of potential danger with a pre-emptive aim both at an internal and external level.[76] Spatially, the world risk society has a strictly connected local and global dimension which are interdependent. Response needs to be integrated and traditional spheres of action are abandoned in favour of intelligence guided cooperation between internal security actors such as the police and external military forces.[77] The spread out feeling of globalized risk was a crucial determinant to re-invent security

[72] George W. Bush, "Address to a Joint Session of Congress and the American People," https://georgewbush-whitehouse.archives.gov/news/releases/2001/09/20010920-8.html.
[73] Rohan Gunaratna, "The 9/11 Effect and the Transformation of Global Security," Council of Councils, September 1, 2021, https://www.cfr.org/councilofcouncils/global-memos/911-effect-and-transformation-global-security.
[74] Ulrich Beck, "The Terrorist Threat: World Risk Society Revisited," *Theory, Culture & Society* 19, no. 4 (August 2002): 39–55, https://doi.org/10.1177/0263276402019004003.
[75] Ibid.
[76] Bigo, "Internal and External Aspects of Security."
[77] Ibid.

discourse.[78] Suddenly, the local became global as the United States came to represent the whole liberal democratic world order: "9/11 has taught us that terrorism against American interests 'over there' should be regarded just as we regard terrorism against America 'over here.' In this same sense, the American homeland is the planet."[79]

Notwithstanding the resonance of the 'here' and 'there,' the Cold War discourse of the 'West' against the 'East,' the border existing between the 'over here' and 'over there' has collapsed due to the claim of global security. Depicting the United States as the 'homeland' of the planet also sheds light on the dependency of smaller states on information and strategies implemented by the larger ones. This results in a competitive decision-making process that takes place at an international and national level among the more powerful states. Especially internationally, pioneering securitization is oligopolistic, and in some cases monopolistic.[80] A single state can in fact act as a securitization hegemon.

In light of this consideration, to better analyse the repercussions of 9/11, we shall look at the response that was given on both scales. The global and national level struggle but also mirror one another as the security policies are the outcome of the debate occurring within liberal democratic institutional settings across levels. Even though securitization processes allow them to escape public debate, negotiations are not always too straight forward as some national interests have more of a grip on the outcomes produced by international institutions. Due to the fact that we are considering securitization within a 'global' risk society, we shall firstly focus on the international level in the decision-making forum par excellence: the United Nations (UN), and more specifically the Security Council (UNSC). Then we shall shift to the national level in two among the liberal democracies of the permanent members of the UNSC at different points in time, as previously explained in the first section, as temporality is a crucial aspect to consider among the effects of securitization.

In the first place, when considering the discourse and practices coming from the UN Security Council, we must take into account the importance of context during the securitization process. The UNSC is in fact endowed with extraordinary competences which are institutionalized from a formal point of view in the UN charter[81] and practically implemented in resolution outcomes.

---

[78] Mabee, "Re-imagining the Borders of US Security after 9/11: Securitisation, Risk, and the Creation of the Department of Homeland Security".

[79] National Commission on Terrorist Attacks upon the United States (The 9/11 Commission), "Final Report" (New York: W.W. Norton, 2004).

[80] Bigo, "Internal and External Aspects of Security."

[81] Dagmar Rychnovskà, "Securitization and the Power of Threat Framing," *Perspectives* 22, no. 2 (2014): pp. 9-31.

If we consider resolutions preceding 9/11, the Council underwent several phases. Immediately after its creation, the two blocks constituted a substantial impediment to its activity and terrorism was considered on an ad hoc basis according to its local setting implying that it was far from being framed as an actual threat for peace and security.[82] Anyhow, notwithstanding the increase in counterterrorist activity following the end of the US-Soviet conflict, the UNSC still focused on terrorism as a state sponsored act.[83] For the first time, on the 12th and 28th of September 2001, resolutions 1368 and 1373 were passed respectively and radically changed the lexicon used in relation to terrorism framing it as "a threat to international peace and security."[84] The securitization process implemented internationally took place through construction of a frame that was barely negotiated as resolutions were undertaken unanimously in a minimal time-span. The urgency of the matter, a primary security concern, lead to the quasi-imposition of a frame by the pinnacle of international hierarchy. The first resolution, 1368, calls upon UN member states to stop "perpetrators, organisers and sponsors of these terrorist attacks"[85] by adhering to international counter-terrorism conventions as "all necessary steps to respond"[86] must be taken by the United Nations. This set a diagnostic frame which used the attacks of 9/11 to derive a general definition of terrorism as a threat to international peace and security. The blame is attributed to the 'perpetrators' of the attacks but implicitly also to all states that do not contribute to countering their activity. The second Resolution, instead, is more comprehensive as it presents a series of nexuses with terrorism that is "motivated by intolerance and extremism."[87] The frames set by these resolutions are also to some extent prognostic and motivational. Prognostic in its illustration of preventive measures for future terrorist attacks (even though these needed further elaboration).[88] Motivational in the call to action to member states to cooperate for the criminalization of terrorism through the urgency conveyed in the language used. Terrorism now has a "global outreach, lesser reliance on direct state support and greater destructive potential" requiring the adoption of a new response.[89] The securitization designating terrorism as a global threat to peace and security

---

[82] David Cortright and George A Lopez, *Uniting against Terror : Cooperative Nonmilitary Responses to the Global Terrorist Threat* (Cambridge, Mass. ; London: Mit Press, Cop, 2007).

[83] Rychnovskà, "Securitization and the Power of Threat Framing."

[84] UN (2001) S/RES/1368 (2001). New York: United Nations; UN (2001) S/RES/1373 (2001). New York: United Nations.

[85] UN (2001) S/RES/1368 (2001). New York: United Nations.

[86] Ibid.

[87] UN (2001) S/RES/1373 (2001). New York: United Nations.

[88] Rychnovskà, "Securitization and the Power of Threat Framing."

[89] Monika Heupel, "Adapting to Transnational Terrorism: The UN Security Council's Evolving Approach to Terrorism," Security Dialogue 38, no. 4 (December 2007): 477–99, https://doi.org/10.1177/0967010607084997.

triggered a series of newly implemented policies which are not fully in line with what the Security Council is legitimately allowed to do.[90] The mobilization encouraged by the resolutions is unprecedented tackling areas that do not belong to the competencies of the Council. The reason behind the acceptance of such overstepping is twofold. The UNSC had in fact already built a prognostic frame through its terrorism discourse that was simply institutionalised with the more general response of the new Resolutions that emphasized implementation. However, the decisive element is the new frame of terrorism that is now a global, not local, threat that could come from non-state actors. This allowed for a true shift towards coordinated pre-emption and the targeting of individuals rather than states.[91]

The issue when analysing the international scale, and in particular the Security Council, is that multiple audiences have to necessarily be addressed for securitization to be successful. The securitizing actor must in fact confront itself with the P5, with non-permanent members, with UN member states and with their populations or, in other words, with the whole international community. As aforementioned, being at the apex of the international order, the UNSC but more specifically the Big 5, have unique status as global securitizing actors. Their voices are in fact a lot louder as they rely on power dynamics in their favour. This implies that their public discourse and threat framing can result in game changing resolutions that allow for new security measures affecting all audiences at once. Not by chance, the first permanent member to perform a securitizing move, was the United States. The generalisation of terrorism was exacerbated to it targeting "all of us who support peace and democracy and the values for which the United Nations stands"[92] by the US representative. The audience welcomed the message in its support for the UNSC actions in this regard. Both permanent member states (such as France and the United Kingdom) and other countries (such as Ireland, Norway, Columbia) echoed this framing depicting 9/11 as an assault on UN values and humanity itself.[93] The fear spreading through liberal democratic societies made the motivational frame more effective as the whole international community accepted and encouraged the war on terror. This was possible especially because of the position and credibility of the securitizing actor. Moreover, the strong mediatic coverage emphasized the urgency of the problem depicted as a military threat and therefore calling for an actual global war, an exceptional war.

---

[90] Vaughan Lowe and et al., *The United Nations Security Council and War : The Evolution of Thought and Practice since 1945* (New York: Oxford University Press, 2008).

[91] Ilias Bantekas, "The International Law of Terrorist Financing," The American Journal of International Law 97, no. 2 (April 2003): 315, https://doi.org/10.2307/3100109.

[92] UN (2001a) S/PV.4370. New York: United Nations.

[93] Rychnovskà, "Securitization and the Power of Threat Framing."

The need for such exceptional measures was projected from the national to the international level. By establishing a securitization framework in the most influential liberal democracy, the global response mirrored the actions of the United States. The pre-eminence of the US in the international liberal order at the time of 9/11 functioned as a trampoline for securitization to extend its reach globally. However, the core securitizing actor implemented a much stronger mobilization in its homeland which served as an example for the rest of the world. This took place both in the verbal dimension and following in the practical dimension. President George W. Bush constructed the image of an enemy that "committed an act of war against our country"[94] and reinforced it by introducing the notion of the axis of evil that aimed to "threaten the peace of the world."[95] The neo-conservatives named this new threat hyper-terrorism[96] which, according to the Modern's perspective, was fuelled by a global network. The network that had been revealed in September 2001 therefore required a major shift not only in the implementation of security practices but in the understanding of the threat: unpredictable and global. These characteristics made traditional long paced democratic practices appear burdensome in providing efficient reaction and response. The only solution is a permanent state of exception with a looser judicial control[97] (which will be further elaborated upon in the following chapters).

The degree of securitization allowed by the urgency and the impact of the attack was such that extra-ordinary mobilization of resources was complemented by extra-ordinary powers. As the issue is defined as an existential threat (figure 1), not only to the country but to the "world" in the President's words, it is shifted from the political to the security realm stalling the system of checks and balances. The Bush Administration aimed to concentrate as much power as possible in the hands of the executive. It resorted, in fact, to the unitary executive theory[98] to make the President the decision-maker with regards to terrorist attacks.[99] A series of memoranda enlarged presidential powers questioning the pillars of liberal democracy. For instance, the

---

[94] George W. Bush, "Address to a Joint Session of Congress and the American People."

[95] The Washington Post, "President Bush's 2002 State of the Union Address," Washingtonpost.com, January 29, 2002, https://www.washingtonpost.com/wp-srv/onpolitics/transcripts/sou012902.htm.

[96] John B. Alexander and Charles 'Sid' Heal, "Non-Lethal and Hyper-Lethal Weaponry," Small Wars & Insurgencies 13, no. 2 (August 2002): 121–32, https://doi.org/10.1080/09592310208559186.

[97] Bigo, "Internal and External Aspects of Security."

[98] "Unitary executive theory is the concept that the president controls the entire executive branch of the American government. The doctrine is rooted in Article Two of the United States Constitution, which vests 'the executive power' of the United States in the President. Although that general principle is widely accepted, there is disagreement about the strength and scope of the doctrine." Lessig, Lawrence & Sunstein, Cass (1994). "The President and the Administration", Columbia Law Review. 94 (1): 1–123. doi:10.2307/1123119. JSTOR 1123119.

[99] David Schultz, "Democracy on Trial: Terrorism, Crime, and National Security Policy in a Post 9-11 World," Golden Gate University Law Review 38 (2008): 195–248.

Detainee Memo allowed the US President to temporarily suspend treaties, something that was put in practice in relation to the protection of war prisoners established in the Geneva Convention.[100] The Wiretapping Memo, instead, gave the President the possibility of operating without warrants if the purpose was related to foreign intelligence[101] in order to take forward the war on terror. Additionally, as often pointed out, one cannot overlook the illiberal nature of the Patriot Act of the 26th of October 2001. The discriminatory implications towards foreigners and immigrants violated principles of equality, tolerance and non-discrimination. The intelligence's covert operations with wiretapping violate privacy of American citizens as well.[102] The limited access to governmental information infringes democratic transparency and dialogue.[103] Critical opinion and expression towards these practices were framed as acts of betrayal, touching upon the *modus operandi* of authoritarian regimes that silence public debate.[104]

The war on terror, therefore, is not only waged abroad, but it firstly takes place at home. It takes place due to the securitization in the mother country of liberal democracy eroding its own beliefs as it fights against those who threaten its freedom. The projection of this war as a global war means that as multiple audiences are convinced of its legitimacy, the securitization process produces permanent changes in values as it sets a precedent. Living in the age of (in)security means that these exceptional practices become everyday practices until the perceived threat is annihilated. This has important temporal repercussions as by revolutionizing what can be considered legitimate after 9/11, the United States set an example through discourse and measures for future responses in other liberal democratic countries.

In this regard, it only seems logical to present a brief comparison with another P5 liberal democratic member which has been affected by a similar symbolic attack: France. Here we can clearly see why 9/11 response is potentially considered a turning point as its underlying logic kept on evolving across the age of security. More than 13 years after the al-Qaeda attack, 12 victims were killed by two radicalized Muslims in reaction to the publication of religious satire

---

[100] Schultz, "Democracy on Trial: Terrorism, Crime, and National Security Policy in a Post 9-11 World."

[101] Ibid.

[102] Marlies Glasius, "What Authoritarianism Is … and Is Not: A Practice Perspective," International Affairs 94, no. 3 (May 1, 2018): 515–33, https://doi.org/10.1093/ia/iiy060.

[103] Paul T. Jaeger and Gary Burnett, "Information Access and Exchange among Small Worlds in a Democratic Society: The Role of Policy in Shaping Information Behavior in the Post-9/11 United States," The Library Quarterly 75, no. 4 (October 2005): 464–95, https://doi.org/10.1086/502787.

[104] Michael L. Butterworth, "Ritual in the 'Church of Baseball': Suppressing the Discourse of Democracy after 9/11," Communication and Critical/Cultural Studies 2, no. 2 (June 2005): 107–29, https://doi.org/10.1080/1479420500082635.

cartoons on the magazine Charlie Hebdo.[105] That same year, in November 2015, once again jihadists attacked French soil murdering 137 civilians. Just as the US President had at the time, President Hollande acted as the securitizing actor in defining the attacks as acts of war leading to a two-year state of emergency. The audience, in this case French citizens, were already familiar with this type of response and could do little but abide by the securitization practices that had been depicted as necessary in light of the threat. This allowed for security zones, curfews, searches, preventive measures towards suspicious individuals and the amplification of digital data collection,[106] all American-inspired counter-terrorist activity. Hollande also announced the possibility of denaturalizing French born citizens involved in any attack if in possession of another nationality setting a double standard in violation of the right to national identity.[107] The discriminatory nature of this measure resonates, with a more mitigated tone, the Patriot Act of the United States. Furthermore, judicial review was only conducted *a posteriori* leaving the expanded competencies of the executive to potentially make mistakes and be corrected only after the act.[108] Finally, the most concerning issue, is the extension of the state of emergency. As repeatedly mentioned throughout the chapter, temporality is a crucial factor of the securitization process. The speech conducted by the French President and the resulting practices lead to exceptional undertakings in the state of emergency that only ceased with the drafting of counterterrorism law formalizing those exceptions. Since September 2001, by depicting terrorism as an act of war, securitization gradually led to the institutionalization of emergency response beyond the limits set by liberal democracy.

In light of what has been discussed so far, we can conclude that even though the securitization process post 9/11 is rooted in already existing narratives and institutional realities preceding the attack, the measure to which it was extended did represent a turning point. This is particularly true with respect to the exceptions that have been taking place with respect to liberal democratic values. Whilst these values in the past could only be set aside in extreme contexts of war requiring a status of emergency, the global war on terror has set the premises

---

[105] Eva Połońska-Kimunguyi and Marie Gillespie, "Terrorism Discourse on French International Broadcasting: France 24 and the Case of Charlie Hebdo Attacks in Paris," European Journal of Communication 31, no. 5 (September 24, 2016): 568–83, https://doi.org/10.1177/0267323116669453.

[106] Myriam Feinberg, "States of Emergency in France and Israel – Terrorism, 'Permanent Emergencies', and Democracy," Zeitschrift Für Politikwissenschaft 28, no. 4 (October 8, 2018): 495–506, https://doi.org/10.1007/s41358-018-0147-y.

[107] Marie Beauchamps, "Perverse Tactics: 'Terrorism' and National Identity in France," Culture, Theory and Critique 58, no. 1 (February 28, 2016): 48–61, https://doi.org/10.1080/14735784.2015.1137480.

[108] Ibid.

for a perpetual war implying that exceptional violations to liberal democracy are legitimized as lawful with an alarming frequency. This leads us to develop on how we can position law with respect to security in the liberal democratic context and how this relationship was moulded by the age of (in)security.

II. The Relationship between Law and Security in Liberal Democracy

Starting from the premise that our research is based in a 21st Century reality and therefore concerned with a modern conception of law belonging to the nation state, if we were to consider the relationship between law and security in relation to any state regime, it would be quite straight forward. Being the primary interest of the state to survive, the norms it enforces will supposedly be focused on ensuring national security. This derives from the original Westphalian conception of the state in conformity with Thomas Hobbes' social contract theory.[109] The Leviathan, that rules above all within the state, is tasked with ensuring security and in exchange the people give up their sovereignty. There is therefore no need to put into discussion the way in which security is practiced as it is entirely determined by the Leviathan without the need of approval from those it is securing.

Our focus of analysis, however, is a specific regime type, the regime type that nurtures the securitization process discussed in the previous chapter: liberal democracy. Notwithstanding its multiple variations, some common features characterize this form of government. Democratically elected representatives act according to principles of classical liberalism among which the rule of law, the separation of powers and the equal protection of human rights, civil liberties, and political freedoms, stand paramount. In this context, the position of security within the legal framework is more complex as, like all other national objectives, it must be balanced or can be limited by the rights enshrined in liberal democratic constitutions (as in most countries with written constitutions) or constitutional documents with a constitutional value (like in the case of the United Kingdom that has an uncodified constitution, or the European Union whose treaties have constitutional elements). What is crucial here, is that the balancing between security and these rights occurs according to the rule of law principle which by far predates modern liberal democracies and constitutions. This principle has been part of Western law ever since the ancient Greeks when Aristotle claimed that: "It is more proper that law should govern than any one of the citizens: upon the same principle, if it is advantageous

---

[109] Thomas Hobbes, Leviathan (1651; repr., Mineola, New York: Dover Publications, Inc, 1651).

to place the supreme power in some particular persons, they should be appointed to be only guardians, and the servants of the laws."[110]

This is particularly important to ensure that every citizen is submitted to the law, including those in a governing position. Being fundamental rights, in a liberal context, inherently part of such law, the rule of law contributes to their safeguard enhancing and protecting the pillars of liberal democracy. As long as the objective of security is submitted to such rule and does not override other fundamental rights, it should not constitute any particular issue. However, if we introduce the securitization process in this reality, several controversies may occur regarding the hegemony of law.

In the first place, the securitizing actor may temporarily, or indefinitely, position itself above the law for security purposes acting in an extra-legal realm. Secondly, such actions may alter the position of security within the legal framework permanently transforming its guiding principles and endangering liberal democracy.

For this reason, for the purpose of our research, it is crucial to examine the role of security in liberal democratic normative frameworks and its evolution according to contextual changes. Then we shall consider how this evolution allowed securitization to potentially determine a new status for security, changing the very implementation of the rule of law.

---

[110] Aristotle, *Politics* (Indianapolis, Indiana: Hackett Publishing Company, Inc, 2017), 3.16.

A. The Role of Security in Liberal Democratic Normative Frameworks

As all elements which interact with law, the position of security underwent gradual and, in some cases, sudden changes which are very context dependent. In this first section, our purpose is that of understanding what these consist in, and which contexts or factors determined them. To do so, as for the first chapter, different levels of analysis will be observed in order to understand whether there is an interplay between the international and national level. This is particularly relevant as any norm which has been established internationally since 1945, but especially since the end of the Cold War, has been designed to govern what should be a liberal democratic world order. For the national level, once again, when necessary, we shall resort to a comparative approach for the purpose of identifying similarities and differences on the position of security in constitutions and domestic policy.

When looking at the international level, speaking about law is always a tricky issue given the status of anarchy of the international system. The concept of international society undoubtedly encourages the submission to an international rule of law governed primarily by the UN charter and international treaties complemented by the respect for *Jus Cogens*. However, a powerful state positioned high up in the unofficial international hierarchy, can potentially resort to severe violations of international law. Regardless of the numerous sanctions imposed against it, no actual Leviathan will impede its illegal actions.[111] Anyhow, what concerns us is, whatever its degree of authority, where can we collocate security in international law? According to the liberal democratic model that has dominated the international legal framework ever since the end of the Cold War, the universal respect for human rights and fundamental freedoms as articulated in article 55 of the UN charter[112] is a necessary element for international security. International law, therefore, and in particular the legal safeguards it provides regarding the

---

[111] This could not be more evident than in the current state of affairs where Russia's attack on Ukraine has incessantly been condemned by the international community without, at least during the time of writing, managing to put an end to the war.

[112] United Nations Charter (adopted on 26 June 1945, entered into force on 24 October 1945) art. 55: "With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

a. higher standards of living, full employment, and conditions of economic and social progress and development;

b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and

c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."

respect of the first generation of human rights, acts as a pre-condition to international security.[113] This "human rights peace theory" goes hand in hand with democratic peace theory which has been corroborated by empirical evidence[114] demonstrating that democratic states are less likely to go at war with each other. Additionally, states which are more incline to disrespect human rights domestically have a higher probability of doing so internationally.[115] More importantly, a factor playing a crucial role in the international level of analysis in this regard, is whether there is a constitutional protection of such rights at a national level. Here we can see the importance of the interplay between levels as the domestic reality has important repercussions on the international order: states will have a tendency to protect the same values they are bound to protect at home also at an international level.[116] It appears therefore that in relation to international law, international security is an objective as mentioned in article 39 of the UN Charter.[117] An objective that can be achieved as a consequence of the respect of human rights for the prevention of war at a global level.

On the other hand, if we observe the interaction with the national level of analysis, the protection of individual security as a right domestically, fosters international security. Abusing personal integrity/security rights from state governments has an inverse relationship with reaching an international security objective.[118] Nevertheless, one must also consider the circumstances in which the opposite is true, and this is particularly relevant for the universal project of liberal democracy. In fact, for the purpose of future perpetual peace, a state that respects fundamental rights and supports the values of international law, may resort to international aggression when another state is deemed not to be acting in conformity to such values.[119] Paradoxically, protecting individual security nationally may result in a crusade to protect such security abroad, temporarily setting aside international security. This was not only accepted but also legitimized formally through the Responsibility to Protect doctrine. The latter

[113] Piet Hein van Kempen, "Four Concepts of Security--A Human Rights Perspective," Human Rights Law Review 13, no. 1 (February 4, 2013): 1–23, https://doi.org/10.1093/hrlr/ngs037.

[114] Historically and empirically collected data in Dan Reiter and Allan C Stam, Democracies at War (Princeton, N.J.: Princeton University Press, 2002) clearly supports this.

[115] Burke-White, "Human Rights and National Security: The Strategic Correlation," Harvard Human Rights Journal 17 (2004): 254–64.

[116] Burke-White, "Human Rights and National Security: The Strategic Correlation," 255.

[117] United Nations Charter (adopted on 26 June 1945, entered into force on 24 October 1945) art. 39: "The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security."

[118] Oskar N. T Thoms and James Ron, "Do Human Rights Violations Cause Internal Conflict?" Human Rights Quarterly 29, no. 3 (2007): 674–705, https://doi.org/10.1353/hrq.2007.0034.7

[119] Anna Geis, Lothar Brock, and Harald Müller, "From Democratic Peace to Democratic War?" Peace Review 19, no. 2 (June 2007): 157–63, https://doi.org/10.1080/10402650701353570.

cannot be regarded as actual law but is widely recognized as an international norm that aims to protect principles of international law.[120] Here international security is simultaneously an obstacle and a goal. The ultimate purpose of R2P is of guaranteeing security, but it has to violate it to obtain it. What is even more interesting however, is that this quasi-international norm, which is revolutionary in the conception of fostering liberal democratic values, is the product of a securitizing process as will be discussed in the next section. It's controversial relationship with security is therefore the outcome of a global debate in the name of security.

Therefore, at an international level, 'security' *per se* is to some extent fluid in its role with respect to law. It is only formally codified as an objective in relation to peace but does not hold a fixed status. This implies that particular contexts can change its role more easily than if it were a static principle.

At a national level, instead, the situation in liberal democracies is very different as law is strictly binding, codified and hierarchically submitted to the constitution, at least in most liberal democracies. Whilst international law and the protection of human rights is a precondition for security which is an international objective, human security is a precondition for constitutional guarantees but generally not the final purpose[121] of a constitution.[122] Negative security provided by the state is in fact an imperative for the protection of human rights and human security. The former however, are more strictly involved in the judicial relationship established between state and individual whilst the vagueness of the latter covers a much broader set of dimensions that can change according to context.[123] What concerns us at present, however, is how security is conceived in liberal democratic national legal frameworks, and here constitutions are our first and primary documents of analysis.

The first thing to point out is that security is not traditionally regarded as a constitutional principle,[124] something which is particularly relevant to acknowledge in light of the changes brought about in the constitutional reality considered in the next section. Security, however, is

---

[120] Alex J. Bellamy, "The Responsibility to Protect-Five Years On," Ethics & International Affairs 24, no. 2 (2010): 143–69, https://doi.org/10.1111/j.1747-7093.2010.00254.x.

[121] With the exception of Switzerland and Hungary.

[122] Konrad Lachmayer, "A Comparative Analysis of Security as an Element of Constitutional Design: Is Global Terrorism Changing the Conditions of International Constitutional Law?" Online Paper submitted at the VII World Conference of the International Association of Constitutional Law – Workshop 8: Constitutions and Global Terrorism 2007, https://www.lachmayer.eu/wp-content/uploads/2014/05/2007_A-Comparative-Analysis-of-Security.pdf.

[123] Ryerson Christie, "Critical Voices and Human Security: To Endure, to Engage or to Critique?" Security Dialogue 41, no. 2 (April 2010): 169–90, https://doi.org/10.1177/0967010610361891.

[124] With very few exceptions such as in Brazil – Constitution of the Federative Republic of Brazil (1988) art 144: "[Public Security] Public security, which is the duty of the State and the right and responsibility of all, is exercised to preserve public order and the invulnerability of persons and property, by means of the following agencies [...]."

not only an implicit precondition of constitutions as it is explicitly mentioned in several parts of it attributing different roles to it. Whilst preambles usually omit it, security is often used for the regulation of the legislative or executive branches of parliament.[125] In conformity with the analysis of the international level, external relations mention it as an aim[126] but some constitutions also regulate it with regard to international treaties.[127] Other than this important but secondary, at least for our analysis, mentioning of security, security contributes to the formulation of the protection of fundamental rights established by the constitution. It does so in two regards. In the first place, in line with traditional first-generation rights, it is associated with the right to personal integrity such as in the South African constitution where it is defined as an actual right: "Everyone has the right to bodily and psychological integrity, which includes the right (b) to security in and control over their body."[128] Here therefore we are looking at a negative right curtailing the power of the sovereign state in a liberal fashion.[129]

Secondly, it takes part in formulating limits to fundamental rights that, as aforementioned, must often be balanced against each other or with society's objectives. As long as it occurs according to the principle of proportionality, national security can restrict human rights in some circumstances. These are defined by and adhered to at a European level by the European Convention on Human Rights (ECHR) that uses the security formula "except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety" with a few of variations in articles 8 (respect for private and family life), article 9 (freedom of thought conscience and religion), article 10 (freedom of expression) and article 11 (freedom of assembly and association) to limit such freedoms.[130] Similar wording is used in some national constitutions such as the limit to assembly in the Italian constitution

---

[125] Federal Constitution of the Swiss Confederation (1999) art. 173:
"The Federal Assembly has the following additional duties and powers: […]
      b.   Taking measures to safeguard internal security."
Art. 185:
"1. The Federal Council takes measures to safeguard external security, independence
and neutrality of Switzerland.
2. It takes measures to safeguard internal security."
[126] Ibid. and Constitution of India (1950) art. 51: "Promotion of international peace and security. The State shall endeavour to (a) promote international peace and security."
[127] Constitution of the Republic of South Korea (1948), art 60: "[Consent to Treaties]: (1) The National Assembly has the right to consent to the conclusion and ratification of treaties pertaining to mutual assistance or mutual security."
[128] Constitution of the Republic of South Africa (1997) Sec. 12(2).
[129] Konrad Lachmayer, "A Comparative Analysis of Security as an Element of Constitutional Design: Is Global Terrorism Changing the Conditions of International Constitutional Law?"
[130] Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR).

where the authorities "may prohibit them only for proven reason of security or public safety"[131] or the limit to the right to information in the Greek constitution whose restriction can be justified "for reasons of national security."[132]

So, security takes part in the constitutional framework for the protection of human rights in relation to human security but also as a restrictive justification that limits those same rights to ensure collective (or national) security. These limits are always defined as an exception to the guarantee of the right. There is, however, a circumstance in which such exception is exponentialized limiting multiple rights at once. This circumstance is legitimately enabled by a legal framework put in place by liberal democracy itself in the clauses on the 'state of emergency', whose implications were already briefly considered in the French case study in chapter I. Even though the state of emergency is more likely to be declared in a dictatorial regime until the end of its endurance, liberal democracies do recur to it in exceptional situations. The declaration of the state of emergency made by the executive is a reaction to security issues that are so threatening for the country that they cannot be solved within traditional institutional time-lapses needed for democratic procedures, nor fully respect liberal rights. For the state of emergency to be effective, at least from a formal point of view, a legal framework must be made compatible with an operational one that respects the formers' standards.[133] In order to avoid putting human rights at risk, the ECHR and ICCPR stipulated guidelines[134] for states to comply with as the state of emergency that is not always part of the constitution[135] due to its need for flexibility. These are:

- Temporality (the declaration must be limited to the minimum possible time-lapse without abusing its permanence).

---

[131] Constitution of the Italian Republic (1948) art 17.
[132] Constitution of Greece (1975, as revised by the parliamentary resolution of May 27th, 2008) art 5.
[133] Geneva Centre for the Democratic Control of Armed Forces, "States of Emergency," October 2005, https://www.files.ethz.ch/isn/14131/backgrounder_02_states_emergency.pdf.
[134] Ibid.
[135] Several countries refer to it in different ways. According to data provided by the Venice Commission, for example, emergency provisions are contained in Part Eighteen of the Constitution of India. "The President of India has the power to impose emergency rule in any or all the Indian states if the security of part or all of India is threatened by 'war or external aggression or armed rebellion,'" Part XVIII of the Constitution of India, Ministry of Law and Justice, Government of India. Retrieved 20 March 2013.
Germany's basic law, instead, puts in place certain procedural and organizational rules to ensure the functioning of the constitutional order in situations of external or internal emergency.
In Italy, such power is instead vested in the Parliament that "has the authority to declare a state of war and vest the necessary powers into the Government."
Secretariat of the Venice Commission, "Venice Commission - Observatory on Emergency Situations," Coe.int, 2020, https://www.venice.coe.int/files/EmergencyPowersObservatory/T03-E.htm.

- Exceptional threat (an imminent danger to the nation state and its society).

- Declaration (meaning that citizens must be aware of it as it is public).

- Communication (other states/monitoring bodies concerned with human rights must be informed about the measures and policy which are undertaken).

- Proportionality (between the measures and the emergency threat).

- Legality (even though some ways of operating are suspended, the rule of law must remain intact).

- Intangibility (for fundamental rights that do not allow for any derogation: the right to life, prohibition of torture, freedom from slavery, freedom from *post facto* legislation, freedom of thought conscience and religion. Plus, according to the UNHRC, also the "humane treatment of all persons deprived of their liberty, prohibitions against hostage-taking and unacknowledged incarceration, protection of the rights of persons belonging to minorities, the prohibition of propaganda advocating war or national, racial, or religious hatred, procedural guarantees and safeguards designed to ensure the integrity of the judicial system."[136]

In any case, these guidelines are by no means binding therefore each country has the faculty to follow its own procedures. These procedures usually involve the undertaking of 'special' powers, powers which are out of the ordinary that can be assigned to special judicial bodies, such as in the United Kingdom (UK),[137] or to existing governmental branches, as in Germany where the setting up of emergency bodies is forbidden.[138] It is within the nature of liberal democratic regimes however, to supply some safeguards against potential abuses of special powers. To ensure that it is not a single branch of government beholding the entire power in case of emergency, several states require a parliamentary ratification and review of the executive's declaration, or the declaration being made by parliament itself, like in Italy. In the meantime, the courts must ensure a fair trial especially considering the higher likeliness of fundamental rights endangerment. The judicial system can therefore review legality criteria of the measures adopted. Notwithstanding the precautions undertaken at a formal level, in practice, ensuring that emergency measures conform to the legal system can be exceptionally

---

[136] UN Human Rights Committee in Geneva Centre for the Democratic Control of Armed Forces, "States of Emergency."
[137] Cabinet Office, "Responding to Emergencies - the UK Central Government Response," gov.uk, April 19, 2013, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/192425/CON OPs_incl_revised_chapter_24_Apr-13.pdf.
[138] The Germany Emergency Acts (1968), 17th constitutional amendment to German Basic Law.

tricky. This occurs especially when the security threat is perceived as particularly urgent, and the securitizing performance has been effective.

The reason for introducing this clause at this point of our analysis, is that the state of emergency reveals an important aspect of the relationship between law and security. This concerns an emergency scenario where the constitution itself puts law at the disposal of security purposes. The security threat conveys a sense of urgency that legally enables extraordinary measures in its response. To some extent, this reminds us of the securitizing process where the securitizing actor in this case is the constitution itself. Given the fact the authority performing the securitizing move is the primary source of law itself, it does not need for the acceptance of the audience, the *demos*, because technically, it acts within legal boundaries.

However, the concept of state of emergency and its exceptional status will be further expanded upon in the next chapter. This introduction to the concept was only necessary to better define the role of security with respect to the constitution whose clauses/provisions can be instrumentalized for the former's aims. The role of security is therefore that of a justifier and legitimizer of law suspending laws. This internal legal conflict, where law is compelled to self-restrain itself, can be interpreted as a warning of the repercussions on liberal democratic legal frameworks driven by security aims that require the betrayal of their own principles.

We can conclude that to some extent, liberal democracy provides a formal constitutional loophole that set the ground for the transformation of the role of security. As we shall see, with the complementation of the securitization process, liberal democracies themselves set a new standard of security in constitutional realities. As the status of security became a verb, a process, it gained the capacity to evolve into a principle.

B. Towards a New Principle of Constitutionalism

As discussed until now, security has multiple roles within a normative framework making its relationship with law dynamic and everchanging. What exacerbated these changes was the implementation of securitization. Security per se, was already a multifaceted concept which was conceived differently in each constitution, but the increased frequency of securitizing moves globally, triggered its omnipresence in society and in its governance. This allowed to drastically alter its role in liberal democratic legal realities.

In this case, once again, we shall briefly start from the securitizing process at an international level and then move to the national level to really observe how it impacted constitutional reality.

In the previous section, we concluded that security is primarily an objective in international law. The issue is that if such an objective achieves a certain level of urgency which is depicted as such by powerful actors, the securitization process that occurs internationally has an effect which resembles national states of emergency. Given the extensive differences in national cultures and the criteria necessary for the state of emergency across countries implies that this status is, at least in theory, restricted to the boundaries of the nation state. The reason for this is also in part that threat perception is subjective and can be shared by a national community relying on the same values. However, the framing of certain issues, especially when related to war, taps on to a larger audience that can transcend the limits of the state. In fact, the securitization effect of resolution 1373 explained in chapter I, led to what was perceived as an international emergency, calling into action laws that bypass the traditional limits set by constitutions, like those of a state of emergency. How this occurred was anticipated in the second section of the previous chapter but here we shall highlight what the consequences were from a law-oriented perspective in a liberal-democratic constitutional reality.

As aforementioned, the leading securitizing actor was the pinnacle of liberal democracy par excellence: the United States. The securitizing process it undertook followed both first- and second-generation scholars' interpretations. Firstly, the US acted through securitization discourse in a more restricted but far-reaching audience of the Security Council. The UNSC not only accepted its call to action, but it formalized it internationally through the resolution, making itself the securitizing actor that enacted a binding legal document. Secondly, in line with the 'practice' oriented approach of securitization, the United States resorted to the implementation of a series of new security policies which were accepted and encouraged by

national audience causing a domino effect internationally. The audience made up of national governments welcomed these securitizing practices due to the position of authority of the United States, not only as a global power but also a constitutional role model. If the mother country of freedom was willing to introduce a normative framework which aligned with security objectives, it meant that liberal constitutions were supposedly able to preserve their integrity even with new security law. The fact that the main securitizing actor corresponded to the leading example of constitutionalism, made, and keeps on making the securitization process in the legal realm ever more effective. The rule of law is 'legitimately' bent by its own modern founder, by the leader of the liberal order. Law seems in fact to take a back seat with respect to the security objective so how can we expect it to keep on effectively 'ruling'?

In this security-oriented environment, introducing new international norms becomes dependent on security rather than on principles of international law, principles that were once considered inviolable. At this point, going back to the importance of the temporality factor and securitization context, we can observe how they can determine long-lasting repercussions which persist in international law. The affirmation of the incontestable importance of security through the global war on terror was followed by the International Commission on Intervention and State Sovereignty's (ICISS) report on humanitarian intervention.[139] Even though the reasons supporting the interventions (the first military, the second humanitarian) were inherently different, they were both directed towards the aim of a liberal world order, which required to implement security universally, in line with the argument brought forward in section a concerning the promotion of fundamental rights at home and abroad. This resulted in the evolution of the ICISS's report in one of the most contested international doctrines: the Responsibility to Protect (R2P).[140]

The fact that the R2P doctrine followed the 9/11 counter-terrorist measures triggered a global debate around this international security and human rights norm,[141] if we can call it so. To be

---

[139] International Commission on Intervention and State Sovereignty, "The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty" (Canada: International Development Research Centre, December 2001).

[140] "At the 2005 World Summit, all Heads of State and Government affirmed the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. The responsibility to protect (commonly referred to as 'RtoP') rests upon three pillars of equal standing: the responsibility of each State to protect its populations (pillar I); the responsibility of the international community to assist States in protecting their populations (pillar II); and the responsibility of the international community to protect when a State is manifestly failing to protect its populations (pillar III). The adoption of the principle in 2005 constituted a solemn commitment, which included much expectation of a future free of these crimes". Ivan Šimonović, "The Responsibility to Protect," United Nations, 2010, https://www.un.org/en/chronicle/article/responsibility-protect.

[141] UNA-UK, "R2P - in Detail," United Nations Association, 2021, https://una.org.uk/r2p-detail.

accepted as such, this norm, like the global war on terror underwent a similar securitization process which found a security prone audience: the international community. Feeding on to the rhetoric of the 'us' against 'them' where the latter is made up of non-liberal states perpetrating crimes against humanity, the R2P doctrine represented a double solution to international security in the liberal democratic order. In the first place, it intended to protect the societies (and human security) of those same states which were not upholding their internal sovereignty responsibility to respect the basic rights of its own people. Secondly, it countered mass atrocity crimes in countries which were more likely to then act violently at an inter-state level or potentially harbor terrorist related activity hampering international security. Both aspects appear to foster future liberal democratic values but, by setting aside international norms, at present they put them at risk for the purpose of security.

The security argument was already a compelling one, but in a context injected with fear of those which do not respect the values of the international community, the securitization effect echoed even louder. The securitizing actor in this regard was the UN Secretary-General Kofi Annan whose performative act captured the international audience: "[…] if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica […]."[142]

This securitization process depicts R2P as itself a speech act where the issue is "elevated above normal politics"[143] according to a first-generation scholars' perspective. The doctrine, however, can also be seen as a pragmatic practice of securitization, in a second-generation scholars' understanding, that acts into a specific context and is therefore more relevant for our analysis in relation to the securitized environment it took place in. The audience, made up of UN member states and more specifically, the international community, hold a certain psychological disposition combined with a commonly shared culture. This culture is based on "non-linguistic world knowledge"[144] implying that any crisis calling for R2P will be set in the remembrance of the turbulent period of 2001. Responsibility to Protect language seeks, in fact, to create a "consensual response in extreme, conscience-shocking cases."[145] On the other hand,

---

[142] Kofi Annan quoted in International Commission on Intervention and State Sovereignty, "The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty."

[143] Eli Stamnes, "'Speaking R2P' and the Prevention of Mass Atrocities," Global Responsibility to Protect 1, no. 1 (February 2009): 70–89, https://doi.org/10.1163/187598409X405488.

[144] Thierry Balzacq, "The Three Faces of Securitization: Political Agency, Audience and Context," European Journal of International Relations 11, no. 2 (June 2005): 171–201, https://doi.org/10.1177/1354066105052960.

[145] Gareth Evans, "The Responsibility to Protect: An Idea Whose Time Has Come … and Gone?" International Relations 22, no. 3 (2005): 283–98, https://doi.org/10.1177/0047117808094173.

we cannot limit R2P to being a simple rhetorical device as it has compelling repercussions on the international normative framework. The responsibility to protect has in fact also been deemed to be a 'policy agenda informed by commitment to normative principles.'[146] Such commitment would supposedly occur within normal peace and security response of the UN rather than calling upon out of the ordinary methods.[147] This normalcy was depicted as having a legal support, but this too involved the typical speech act initiating the securitization process. For instance, this was the case during the Libyan crisis where the pioneering members of the international community called UN member state to action through the R2P: "[…] the military action that is being embarked upon has broad support, a legal base and recognises our responsibility to protect the Libyan people."[148]

However, the original drafter of the doctrine, the ICISS itself, stated in its initial report that "military intervention for human protection purposes is an exceptional and extraordinary measure"[149] which essentially describes the third pillar of R2P as requiring securitization by default. The only way to establish its legitimacy and acceptance, notwithstanding technical illegality, is through securitization. This is because, notwithstanding its noble objectives and its revisitation of sovereignty as having "a dual responsibility: externally, to respect the sovereignty of other states, and internally, to respect the dignity and basic rights of all the people within the state,"[150] it still counters crucial principles of international law and articles of the UN Charter. The first article that needs to be mentioned being perhaps the core essence of the United Nation's foundations, is article 2(4) that states that: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."[151]

This article serves as an absolute interdiction of the use of force and should not be read into a crisis context but rather in that of the original aims of the UN as explicated in the *travaux*

---

[146] Alex J. Bellamy, "The Responsibility to Protect-Five Years On," Ethics & International Affairs 24, no. 2 (2010): 143–69, https://doi.org/10.1111/j.1747-7093.2010.00254.x.

[147] Ibid.

[148] As the leader of the opposition at the time, Edward Miliband echoed the words of the Prime Minister (UK) when expressing his support for the intervention. Edward Miliband, "UN Security Council Resolution (Libya) - Friday 18 March 2011 - Hansard - UK Parliament," hansard.parliament.uk, 2011, https://hansard.parliament.uk/Commons/2011-03-18/debates/11031850000007/UNSecurityCouncilResolution(Libya).

[149] International Commission on Intervention and State Sovereignty, "The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty."

[150] Gareth Evans and Mohamed Sahnoun, "The Responsibility to Protect," Foreign Affairs 81, no. 6 (2002): 99–110, https://doi.org/10.2307/20033347.

[151] The United Nations Charter (1945) art 2(4).

preparatoires. The territorial integrity mentioned in the article is comprehensive in the inclusion of inviolability and sovereignty of the state[152] in order to avoid any loopholes.[153] The only legally defined provision to this is found in Chapter VII, article 51 but with strictly defined *jus ad bellum* criteria related to self-defence, not humanitarian intervention. United Nations intervention is in fact further prohibited in article 2 (7): "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter Vll."[154]

Therefore, whilst the limits to the use of force and non-intervention complemented by the principle of respect of sovereignty are made clear in the Charter, nowhere is there an allusion to humanitarian intervention nor responsibility. Forcibly implementing human rights[155] is not contemplated by the UN's preamble which aims to prevent war in future generations. Moreover, the maintenance of "international peace and security" in article 1(1) takes precedence over the protection of human rights by non-peaceful means.

On the other hand, this constant referral to 'security' can easily be isolated from its relation to 'peace' in a context of crisis which is open to accept securitization. The rapidity with which the Responsibility to Protect was acclaimed by the international community at the World Summit in 2005[156] shows the urgency of the matter was widespread. The need to provide human security to other communities camouflaged the need to impose international security and prevent threats to liberal democratic nation-states. This need was so compelling that is overcame international norms formulated by the international community itself. In some way, security has altered the principles of international law such as that of the respect of sovereignty and non-intervention in internal affairs.

By illustrating this international doctrine, we introduced an important concept for chapter IV concerning the 'dronification' of warfare. The erosion of the non-intervention principle

---

[152] Ronli Sifris, "Operation Iraqi Freedom: United States v Iraq – the Legality of the War," Melbourne Journal of International Law 4 (2003): 31.

[153] Jonathan I. Charney, "Anticipatory Humanitarian Intervention in Kosovo," The American Journal of International Law 93, no. 4 (October 1999): 834, https://doi.org/10.2307/2555348.

[154] The United Nations Charter (1945) art 2(7).

[155] Charney, "Anticipatory Humanitarian Intervention in Kosovo."

[156] Alicia L. Bannon, "The Responsibility to Protect: The U.N. World Summit and the Question of Unilateralism," The Yale Law Journal 115, no. 5 (March 1, 2006): 1157, https://doi.org/10.2307/20455648.

complemented by the global war on terror are in fact at the basis of the legitimization of the demise of liberal democratic values which we shall than expand upon through the case study. In the meantime, however, we shall shift to the national (and macro-regional) plane. We have concluded that security has bypassed some of the principles of international law, questioning any chance of a rule of law in the international realm even further. The existence of a global rule of law is still very weak in practice due to the absence of a superior authority enforcing liberal democratic principles without the influence of national state interests. The issue is a lot more concerning at the national level where rule of law is at the core of the regimes under analysis. Here we shall observe how security strives towards a constitutional status, acting as, or towards the becoming of, a constitutional principle.

Whilst in previous sections the interplay between levels was an element to take into consideration, in this section the two are even more interconnected. This is because securitization processes enabling the enhancing of security on the international level, have an important impact on national legal frameworks – especially on how liberal democratic norms influence and are translated between one another. Being the securitization process expanded to a global scale, threats which should be nationally different are to some extent homogenized.

What can be identified as the 'standardization' of national security law[157] initially occurred as a counterterror effect but slowly came to permeate constitutional realities. In a comparative law perspective, the existence of legal families tendentially implies that multiple commonalities appear across national legal systems belonging to the same family.[158] A series of different terms are used to describe the way in which the systems pass on certain traits between one another. In some circumstances countries feel the need to 'borrow'[159] legal mechanisms during the writing of constitutional texts[160] or resort to using foreign law as an instrument for legal adjudication domestically.[161] In others they shall be encouraged to 'transplant'[162] them, which is more commonly associated with private law[163] due to the fact

---

[157] Kim Lane Scheppele, "The International Standardization of National Security Law," Journal of National Security & Policy 4 (2010).

[158] Jaakko Husa, "Legal Families," in Elgar Encyclopedia of Comparative Law 382, 2006.

[159] L. Epstein and J. Knight, "Constitutional Borrowing and Nonborrowing," International Journal of Constitutional Law 1, no. 2 (April 1, 2003): 196–223, https://doi.org/10.1093/icon/1.2.196.

[160] Richard Bellamy, Constitutionalism in Transformation : European and Theoretical Perspectives, ed. Dario Castiglione (Oxford: Blackwell, 1996).

[161] Julia Laffranque, "Judicial Borrowing: International &(And) Comparative Law as Nonbinding Tools of Domestic Legal Adjudication with Particular Reference to Estonia," International Lawyer 42, no. 4 (2008).

[162] Michele Graziadei, "Comparative Law as the Study of Transplants and Receptions," in The Oxford Handbook of Comparative Law, 2006.

[163] Alan Watson, "From Legal Transplants to Legal Formants," The American Journal of Comparative Law 43, no. 3 (1995): 469, https://doi.org/10.2307/840649.

that constitutions are permeated by their own culture and transplanting a concept entirely is supposedly unfeasible. Sometimes also the word 'migration'[164] is used to describe how more than the legal rules, what migrates "is very often the idea."[165] These metaphorical terms indicate how over time, laws in the same, and in the last few decades different, legal families undergo a legal cross-fertilization which occurs horizontally[166] across countries.

What occurred with the securitization following 9/11, therefore, presents an anomaly because of a temporal and a spatial aspect. In the first place the rapidity with which countries resorted to establishing very similar security laws regardless of their legal family was unprecedented. Secondly, the space in which this occurred was not only horizontal but also vertical due to the "common template"[167] moulded internationally. As aforementioned, Resolution 1373 called for a general widespread call to action that required parallel implementation of counterterror national law for the purpose of annihilating a global security issue.[168] From a legal perspective this was very compelling as the UNSC acted as a quasi-national legislator. Furthermore, it was extremely successful in doing so as demonstrated by the fact that countries all over the world complied and standardized their national security law. In fact, "Most States in the Western Europe and other States, Eastern Europe, and Central Asia and the Caucasus regions have introduced comprehensive counter-terrorism legislation. More than half of the States in South-Eastern Europe and almost half of the States in South America have comprehensive counter-terrorism legislation […]."[169]

As an authoritative international securitizing actor, the UNSC managed to globally standardize one the most critical type of laws that are strictly related to the sovereignty and survival of the state. Additionally, it requires for states to automatically implement measures on groups or individuals in order to prevent terrorist financing to contribute to the war on terror. Asset freezing and travel bans occur automatically,[170] without the need for a domestic procedure other than the blacklisting of the Security Council. A minimal internal review is possible to

---

[164] Sujit Choudhry and Cambridge University Press, The Migration of Constitutional Ideas (Cambridge: Cambridge University Press, Dr, 2014).

[165] Alan Watson, "Comparative Law and Legal Change," The Cambridge Law Journal 37, no. 2 (November 1978): 313–36, https://doi.org/10.1017/s0008197300093338.

[166] Kim Lane Scheppele, "The International Standardization of National Security Law."

[167] Ibid.

[168] Paul C. Szasz, "The Security Council Starts Legislating," American Journal of International Law 96, no. 4 (October 2002): 901–5, https://doi.org/10.2307/3070686.

[169] Counter-Terrorism Committee, "Survey of the Implementation of the Security Council Resolution 1373 (2001) by Member States" (U.N. Doc S/2009/620, December 3, 2009).

[170] Kim Lane Scheppele, "The International Standardization of National Security Law."

allow for a request to be de-listed[171] but the procedure does not comply to traditional liberal democratic standards. It in fact lacks transparency and is performed by the same individuals which had determined the blacklisting in the first place preventing a neutral independent body to take on the task of reviewing. Furthermore, the fact that the UNSC does not share the information on the reasons for which a citizen has been blacklisted, means that he or she is prevented from having a proper hearing to ensure whether this was justified or not. The result is a "legal limbo"[172] where nation states (aided by private actors such as banks and airlines) have to enforce sanctions but there is no way of checking whether they have been legitimately implemented. The circumstance evidently questions the principle of due process. This is only one example among the many security measures that have changed the way in which law is implemented and the conception of constitutional principles themselves.

In fact, the vertical relationship existing between the securitizing international actor (the Security Council) and national audiences (liberal democracies) produced substantial effects on constitutional realities. Even though no formal amendments were actually made, the way in which the constitutional design was affected[173] generated a new relationship between law and security. In this previous section, when observing the national level, we had in fact identified the role of security as that of a constitutional minimal requirement,[174] a precondition for the constitution that can however be limited by it. At the same time, it can also act as a restriction to rights in certain circumstances but always within the limits imposed by proportionality. The evolution of the securitized environment in which liberal democratic constitutions must currently rule, is instead more prone to frequent declarations of the state of emergency[175] as a broadening of security threats has taken place. These are justified, accepted, and legitimized by a national and international audience that lives in constant fear in the context of the age of (in)security, in particular since 9/11. The increased frequency of undertaking and then routinizing measures in the name of security has gradually been transforming security into a

---

[171] UN Security Council Sanction Committee, "Focal Point for Delisting", http://www.un.org/sc/committees/dfp.shtml
[172] Kim Lane Scheppele, "The International Standardization of National Security Law."
[173] Konrad Lachmayer, "A Comparative Analysis of Security as an Element of Constitutional Design: Is Global Terrorism Changing the Conditions of International Constitutional Law?" Online Paper submitted at the VII World Conference of the International Association of Constitutional Law – Workshop 8: Constitutions and Global Terrorism 2007, https://www.lachmayer.eu/wp-content/uploads/2014/05/2007_A-Comparative-Analysis-of-Security.pdf.
[174] Ibid.
[175] For example, during the Charlie Hebdo attack in France and more recently in multiple countries around the world with the outbreak of COVID19.

constitutional principle.[176] This implies that rather than being limited by the constitution, security is considered on the same level as other principles and fundamental rights and is equally balanced against them. If we insert this new conception of security applied at a national level within an international context that set security as an objective, nation states (that must abide by the rules of IOs or macro-regional organizations) risk to shift the balance towards security rather than other traditional constitutional principles. This is because even though domestically security would have the same weight as another right, when inserted in an international reality that pursues it as an objective, security is more likely to prevail.

This is particularly relevant when a country finds itself within grounds where multi-level constitutionalism is observable. Here the European Union (EU) serves as an example as, even though there is no official constitution, its treaties have a constitutional validity.[177] This macro-regional implementation of law is somewhat a meso-level between the national and the international and therefore constitutes an interesting merger of the interplay between levels. In the Treaty of the European Union, article 3 (2) states that: "The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime."[178]

The article gives the same value to freedom, security and justice, three equal principles which are balanced with one another. The issue is that whilst the area of security has been substantially enhanced, we cannot say the same for other EU principles. In this regard both legislative acts and bodies have been developed transforming law in a tool for the achievement of the ultimate goal: security. The third pillar of the EU on the Cooperation in Justice and Home Affairs (JHA), that later became the Police and Judicial Co-operation in Criminal Matters (PJCCM), revolves around such purpose. Important directives and decisions have contributed to the continuous standardization to national security law such as the framework on combating terrorism of 2002[179] established soon after 9/11 but also more recent measures such as the Interoperability

---

[176] Lachmayer, "A Comparative Analysis of Security as an Element of Constitutional Design: Is Global Terrorism Changing the Conditions of International Constitutional Law?"

[177] Otto Pfersmann, "The New Revision of the Old Constitution," International Journal of Constitutional Law 3, no. 2-3 (May 1, 2005): 383–404, https://doi.org/10.1093/icon/moi025.

[178] Council of the European Communities, and Commission of the European Communities. 1992. Treaty on European Union. Luxembourg: Office for Official Publications of the European Communities, art 3(2).

[179] Council Framework Decision of 13 June 2002 on combating terrorism (2002/475/JHA).

Regulations of 2019.[180] The latter were a response to the securitization of European borders to protect EU-citizens from outsiders, building on the 'us' vs 'them' well-known rhetoric that persisted and was perhaps reinforced across time. Such regulations, however, were deemed to be compromising the right to privacy established by articles 7[181] and 8[182] of the EU Charter of Fundamental Rights together with the principle of non-discrimination.[183] Concerning security bodies and agents, we also witnessed the European Police Chief Task Force[184] created to coordinate and share communication concerning security among top level officers together with Europol's competences increase through an additional Protocol to the original convention.[185]

In contrast, the other constitutional principles mentioned together with security, freedom, and justice, but also those enshrined in article 2 such as human rights and the rule of law, have not been equally developed and their protection macro-regionally is still weak in some areas. Concerning the 'justice' aspect, the ECJ jurisdiction remains limited especially in relation to the third pillar. This implies that the rule of law is also at risk in this regard as it lacks its 'guardians' (the court) in the realm of security. For human rights the Nice Charter of 2001 is not a mandatory document, and the well-known issue of the democratic deficit still taunts the EU notwithstanding the expanded competences of parliament. What happens at this meso-level implicitly becomes part of the constitutional realities of all member states that adhere to the EU's principles which, in this case, is that of security.

This process related to the transformation of the status of security within constitutional grounds, is also occurring in liberal democracies outside the European continent. Being the mother country of the enhancement of securitization during the 21st Century, the United States

---

[180] Regulation (EU) 2019/818 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration and amending Regulations (EU) 2018/1726, (EU) 2018/1862 and (EU) 2019/816, *Official Journal of the European Union* L135.

[181] Charter of fundamental rights of the European Union, 2000, art 7: "Respect for private and family life: Everyone has the right to respect for his or her private and family life, home and communications."

[182] Charter of fundamental rights of the European Union, 2000, art 8: "Protection of personal data: 1. Everyone has the right to the protection of personal data concerning him or her [...].
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority."

[183] Cristina Blasi Casagran, "Fundamental Rights Implications of Interconnecting Migration and Policing Databases in the EU," Human Rights Law Review 21, no. 2 (2021): 433–57.

[184] Hoek van Holland, *European Police Co-operation in the Union s mutual fight against the illegal trafficking of drugs*, Master Thesis at the Erasmus University Rotterdam, February 2007.

[185] Konrad Lachmayer, "A Comparative Analysis of Security as an Element of Constitutional Design: Is Global Terrorism Changing the Conditions of International Constitutional Law?"

is also treating security as a constitutional principle. Paradoxically, the fact that the constitution does not set any explicit framework for security, allowed for national legislation to establish security as equal if not superior to other constitutional principles. The already mentioned US Patriot Act and the Homeland Security Act are the most emblematic representation of such process. The surveillance law established by the former had in fact already been rejected by Congress in the past, but the securitized environment provided by 9/11 allowed it to pass through without debate. The Act, in line with typical securitization initial phase, was completely de-politicized as no discussion nor modifications (such as amendments) were allowed.[186] The fact that it could not be altered was particularly problematic regarding the violation of the first[187] and fourth[188] amendments. Section 215 in fact, violated the freedom of speech, the right to privacy and allowed for unreasonable searches and seizures. Notwithstanding the limits imposed to civil liberties and the conflict with constitutional principles, the Patriot Act of which most provisions were set to expire in 2005, was extended in 2006 and once again by the new administration in 2012. By enabling the bypassing of constitutional principles beyond the situation of emergency following the attacks of 2001, the temporal repercussions of securitization demonstrate how security is gradually becoming a constitutional principle that cannot be limited by constitutional guarantees, only balanced at best. Furthermore, security is not only being conceived as a constitutional principle, but as a dominant one that is naturally in contrast with the hegemonic nature of law in the rule of law. Securitization's challenging of the law has been so compelling that the last couple of decades have gone towards the subduing of certain legal principles and values to security. The risk is that of a new guiding framework for liberal democracies: the rule of security. Instead of being submitted to the law, as stated in the introduction to the chapter, all citizens become subjected to security. Instead of protecting fundamental rights guaranteed by the liberal democratic legal frameworks, even the law is set beneath security implying that the rights it protects can be bent for security purposes.

---

[186] American Civil Liberties Union, "Surveillance under the USA/PATRIOT Act," American Civil Liberties Union, 2022, https://www.aclu.org/other/surveillance-under-usapatriot-act.
[187] U.S. Const. amend. I: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."
[188] U.S. Const. amend. IV: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Even though whether this has occurred or not is still to be discussed in the following chapters, we can conclude that the relationship between law and security in a liberal democracy is a dynamic, controversial struggle. One seeks to dominate over the other through principles and mechanisms of the regime itself. Whilst the essence of liberal democracy relies on the rule of law, this rule is constantly challenged by securitization put in place by actors which should instead safeguard liberal democratic principles.

In order to transition to the next chapter, it is important to determine why this relationship was analysed. The reason is that the new role of security that has evolved as a constitutional principle has created a new space, the space of exception. Having defined the basic principles of liberal democracy enabled us to set the norm. At this point we can understand from what securitization sets an exception, an exceptional space to these norms. The issue is that this space has lost its spatial and temporal limits. It has become the rule, a rule endorsed by a quasi-constitutional principle that is inherently part of liberal democratic constitutional realities.

Even though the concept of exception has been developed in close relation to securitization processes, it was crucial to divert our analysis towards a brief assessment of the securitization effect on liberal democracy before introducing this 'space.' In this way, we have a clear understanding of how the exception is introduced (through securitizing processes) and to what norms it can be defined as an exception (liberal democratic constitutional ones). The concept of 'exception' would in fact make no sense if applied in another regime which tolerates violations of human rights and has no regard for the rule of law.

III.   Towards Perpetual Exceptionalism

The term 'exception', its attributes 'exceptional' and its synonyms 'extraordinary' and 'out of the ordinary,' have been repeatedly used throughout the previous two chapters. The reason for this is that the securitization process goes hand in hand with the exceptional, it creates and thrives in the exception where it can rule unchallenged. On the contrary, law, does not. As a matter of fact, etymologically, exception derives from the Latin *ex capere* 'to take outside' which, from the late 14th Century, came more specifically to mean 'a reservation' or 'something that is excepted' form the past participle of *excipere.*[189] The notion of exception is meaningless without its contrary: the exception is an exception to the rule, the exception is what law is not. The term 'norm' is, in fact, self-explanatory in defining the normalcy of governance, the general rule that is indefinitely applicable and lives on in codified documents and customs. As illustrated by chapter II, the norm at the core of liberal democracy is that set out by the constitution. It is particular to the state, but also entrenched in the international norms of the liberal order, with the purpose of upholding its principles to regulate and limit specific short-term measures across time.

As we have defined what the exception is from, in this chapter we shall analyse how it comes to be, what it implies and why it is a central aspect of our argumentation and case study. The first point has already been introduced in the previous chapters. The exception is the result and somehow the aim of securitization. The mobilization of extra-ordinary resources and the acceptance of non-traditional means to tackle a security threat, is triggered by securitizing mechanisms. This is particularly effective in a context which we have already presented as it is contemplated by law itself, the context of emergency. Liberal democracy, therefore, does acknowledge the possibility for the exception to take place, a possibility which is defined in law, which is part of the rule of law. However, due to the controversial relationship between law and security we have observed and the rise of the latter's importance and protection, the condition of emergency is gradually coming to be ruled by security. The hegemonizing of securitization that has permeated the 21st Century has worked towards normalising the state of emergency.[190] The exception, therefore, is the new norm which, by default, is not law. Liberal

[189]   Vocabolario   Treccani,   "Eccezióne,"   www.treccani.it,   accessed   June   18, 2022, https://www.treccani.it/vocabolario/eccezione/.

[190] Anna Krasteva, "Editorial of Special Focus: Securitisation and Its Impact on Human Rights and Human Security," Global Campus Human Rights Journal 1, no. 315 (2017).

democracy has been plunged in a status of perpetual exceptionalism, an expression of the age of (in)security.

To analyse how this constitutes a threat to its own principles, in the following sections, we shall firstly expand on how, from a theoretical point of view, the securitization process has transformed the constitutionally legitimized state of emergency in a security legitimized state of exception remaining. Then, following a brief parenthesis on the metaphor of war, we shall consider its concrete implications which allow to extend the state of emergency legitimizing non-liberal democratic practices for the purpose of security. This aspect is crucial to set the premises for our case study in Chapter IV as such practices are accepted at home and exported abroad.

A. The State of Emergency as the New Normal

The state of emergency as a legally established clause finds its conceptual roots centuries before the age of (in)security. The idea of resorting to emergency powers in unexpected situations of urgency dates back to Roman law[191] but, as we are concerned with the impact it has on modern law, we shall consider it starting from Carl Schmitt's explanation of this state. Schmitt describes European nation states of the 19th Century as being based on legislation where "not men and persons rule, but rather, where norms are valid."[192] This, in other words, can be synthesized as the rule of law. Parliamentary bodies, as representatives of the people, where therefore to establish such norms that were then applied by the executive according to law.[193] Even though the concept of rights is not contemplated, here Schmitt introduces the milestones which will come to build the modern liberal democracies of the post-world war order. He also, however, elaborates on the possibility of these regimes of incurring in situations of emergency where the disorder is such that "there exists no norm that is applicable to chaos."[194] The situation of chaos is an obstacle to the correct application of the law requiring for non-normative measures to be adopted to re-assert a situation of order and 'normalcy' where norms can rule again. This implies that the state of emergency as originally conceived by Schmitt has two important interconnected elements concerning objective and time. The purpose of the state of emergency is to self-defeat itself. Its declaration serves the purpose of enabling measures that will allow the state to exit it. Such purpose must be achieved in the shortest possible timeframe. This temporal aspect cannot be underestimated as prolonging the state of emergency longer than required implies it fails to achieve its own aim, that of coming to an end.

The way in which such a state comes to be declared is also out of the ordinary, however it is still part of the normative framework. It is in fact a 'sovereign' declaration that "emerges from nothingness"[195] where sovereignty has no legal bounds.[196] In illustrating the state of emergency

---

[191] Robert J. Bonner, "Emergency Government in Rome and Athens," The Classical Journal 18, no. 3 (1922): 144–52.
[192] Carl Schmitt, Legality and Legitimacy (Durham: Duke University Press, 2004).
[193] Ibid.
[194] Carl Schmitt, Political Theology: Four Chapters on the Concept of Sovereignty (Chicago: University Of Chicago Press, 2005).
[195] Ibid.
[196] Daniel McLoughlin, "Giorgio Agamben on Security, Government and the Crisis of Law," SSRN Electronic Journal 21, no. 3 (2012), https://doi.org/10.2139/ssrn.3965656.

Schmitt reframes the concept of sovereignty itself where rather than conceiving it in a Hobbesian perspective as having the monopoly on violence, it is the monopoly on the resorting to emergency powers that defines a sovereign.[197] So, if the state of emergency does not legally restrict sovereignty, how can it be part of law? This is because it is allowed by law as its temporary suspension. At the same time, just as the norm tells us what the exception is from, the exception confirms the rule.[198] The negative condition defines the positive one, it is intrinsically part of it, so the legal order somehow depends on the exception as "the norm does not define the exception, but the exception defines the norm."[199]

The state of emergency therefore somehow came to define modern nation states and this legacy was inherited by liberal democratic constitutions. The emphasis here remains on the state of emergency in Schmitt's conception, above the law but within its definition, and not on the 'state of exception' that will be expanded upon afterwards. In the meantime, a comparative approach will be adopted to observe how the state of emergency came to be part of modern liberal democracies and shaped their law.

A pioneer in this regard is undoubtedly France as the 'state of siege'[200] dates back to the Revolution of 1789. Starting from the Directorial law of the 27th of August 1797[201], the '*état de siège fictive*' or '*état de siège politique*' gained its own position in the legal framework. The possibility of suspension of the constitution was reiterated by Napoleon but more importantly it was articulated in the *Charte* of 1814 where art. 14 grants the possibility to "make the regulations and ordinances necessary for the execution of the laws and the security of the State."[202] This clause leaves a wide margin of action[203] to implement emergency measures to the point that "it is possible that one fine morning the whole *Charte* will be forfeited for the benefit of Article 14" according to Chateaubriand.[204] It is important to note however, that such a state could only be declared through a law as required by the *Acte additionel* to the

[197] Nick Vaughan-Williams, "Borders, Territory, Law," International Political Sociology 2, no. 4 (December 2008): 322–38, https://doi.org/10.1111/j.1749-5687.2008.00054.x.
[198] Carl Schmitt, Political Theology: Four Chapters on the Concept of Sovereignty.
[199] Jef Huysmans, "International Politics of Exception: Competing Visions of International Political Order between Law and Politics," Alternatives: Global, Local, Political 31, no. 2 (April 2006): 135–65, https://doi.org/10.1177/030437540603100202.
[200] Vik Kanwar, "Giorgio Agamben, State of Exception (Stato Di Eccezione). Translated by Kevin Attell. University of Chicago Press, 2005. 104 Pages," International Journal of Constitutional Law 4, no. 3 (July 1, 2006): 567–75, https://doi.org/10.1093/icon/mol023.
[201] Ibid.
[202] Britannica, T. Editors of Encyclopaedia, "Charter of 1814," in Encyclopedia Britannica, 2009.
[203] Giorgio Agamben, *State of Exception*, trans. Kevin Attell (University Of Chicago Press, 2005).
[204] Ibid.

constitution of 1815.[205] The circumstance in which disorder, in Schmitt's words, is at its apex, is war. This led to a long-lasting state of emergency during World War I initiated by a decree converted into law within a two-day time-lapse in 1914 and terminated only in 1919. Notwithstanding the extensive length of this status, the need to respond to an urgency such as war justifies the temporal strain which was implemented for the purpose of ending the state of emergency. Furthermore, at the time, notwithstanding the liberal democratic principles that were already present in the French constitution, we cannot say that the regime was entirely conform to the liberal democracies following 1945. Currently, it is article 16 that gives the President of the Republic the sovereign power to resort to necessary measures in situations in which "the institutions of the Republic, the independence of the Nation, the integrity of its territory or the fulfilment of its international commitments are under serious and immediate threat, and where the proper functioning of the constitutional public authorities is interrupted."[206] We shall consider the practical repercussions of this formal (and legal) enabling capacity in the next section.

The second country under study, is Germany. The first article on emergency powers was established just over half a century after the French in the Constitution of Otto von Bismarck.[207] The constitutional context at this point in time, however, was very different from that of the French Republic that, notwithstanding the political dominance of certain singular figures, was far from the German Reich. What interests us a lot more for the purpose of our analysis is its successor, the Weimar Constitution, known for its liberal democratic features which were avant-garde for the period. Yet, it is also the same constitution that allowed for the regime to fall into the most striking state of emergency of modern times: the Second World War. The degree of international emergency status in which a constitution with universal suffrage, a bill of rights and division of powers[208] managed to plunge the entire global order says a lot about the risks of an article on the state of emergency in a liberal democracy. Article 48 of the constitution is, not by chance one of the most quoted articles in relation to the weaknesses of

---

[205] Conseil Constitutionnel, "Acte Additionnel Aux Constitutions de l'Empire Du 22 Avril 1815," conseil-constitutionnel, https://www.conseil-constitutionnel.fr/les-constitutions-dans-l-histoire/acte-additionnel-aux-constitutions-de-l-empire-du-22-avril-1815.

[206] Constitution of the Fifth Republic (1958). French Text and English Translation. New York: French Embassy, Press and Information Division, 1958, art 16.

[207] Inspired by the Constitution of the North German Confederation, the Constitution of the German Reich was the German basic law in the period from 1871 to 1919. In art 68 of the Constitution of the German Empire (1871) "The Emperor shall have the power, if the public security of the Empire demand it, to declare martial law in any part thereof, until the publication of a law regulating the grounds, the form of announcement, and the effects of such a declaration, the provisions of the Prussian law of June 4, 1851, shall be substituted therefor."

[208] The Weimar Constitution (1919).

the Weimar Republic. The reason for this, is that it explicitly establishes the sovereignty of the President of the Reich in a Schmittian sense, with no legal bounds. It does so, in the name of security, that allows the head of the executive to trump the law:

> If public security and order are seriously disturbed or endangered within the German Reich, the President of the Reich may take measures necessary for their restoration, intervening if need be, with the assistance of the armed forces. For this purpose, he may suspend for a while, in whole or in part, the fundamental rights provided in Articles 114, 115, 117, 118, 123, 124 and 153.[209]

The way in which this clause is articulated is striking in how it exacerbates the powers of a single branch of government in stark contrast to the rule of law as several norms can be partially or entirely suspended. Schmitt's words to describe it in 1925, were in fact much more impactful with respect to those used by Chateaubriand for article 14 of the *Charte,* when he said, "no constitution on earth has so easily legalized a *coup d'état* as did the Weimar Constitution."[210] The prediction was more than confirmed, leading to a complete lack of such emergency powers in the Constitution of 1949. Paradoxically, after much debate it was the allies themselves which imposed for the German emergency acts to be passed in 1968 as the 17th constitutional amendment to the Basic Law.[211] This plays into the fact that a guarantee to ensure security is conceived as a crucial requirement by liberal democracies that use the exception to define the norm.

It is only natural that we also consider the state of emergency in the American context where liberal democratic constitutionalism has been ruling the longest. Here the situation is quite different from the European counterparts as the state of emergency is never mentioned in the actual text of the constitution.[212] Resorting to 'emergency powers,' therefore, largely depends on the outcome of the conflict between branches of government based on the competences granted by constitutional articles. Contrarily to France, Germany and many other countries, the United States has been quite unique in maintaining its original constitution intact with the

---

[209] Weimar Constitution (1919), art 48.
[210] Punsara Amarasinghe and Sanjay K. Rajhans, "Agamben's Two Missing Factors; Understanding State of Emergency through Colonialism and Racial Doctrine," Open Political Science 3, no. 1 (April 22, 2020): 34–46, https://doi.org/10.1515/openps-2020-0003.
[211] C.C. Schweitzer, "Emergency Powers in the Federal Republic of Germany," Political Research Quarterly 22, no. 1 (March 1, 1969): 112–21, https://doi.org/10.1177/106591296902200109.
[212] William B. Fisch, "Emergency in the Constitutional Law of the United States," The American Journal of Comparative Law 38 (1990): 389, https://doi.org/.

exception of 27 amendments in more than two centuries.[213] This struggle, therefore, largely depends on the interpretation of articles that are somewhat vague or at least do not explicitly specify certain elements. In particular, we are talking about three articles, namely article 1[214] in relation to the powers of Congress, article 2[215] for the powers of the President and article 4[216] or the 'guaranty clause.' The first conflict lies in the powers of the two branches in the situation of emergency *par excellence* – war, an external security threat. Whilst the legislative has the power to declare war, the President is the Chief of the army. The second is caused by the 'options' set in article 4 that contemplates protection to be applied by the "legislative or the executive" from external ("invasion") and internal ("domestic violence") security threats. Historically the retaining of exceptional powers has largely depended on context with alternations between presidential and congress dominance.[217] However, as in most other countries, in situations of war the struggle has remained purely abstract as Congress abided by the actions of the President. A shift, however, can be witnessed in the *modus operandi* of the presidents in time. In fact, whilst in the 19th Century Abraham Lincoln resorted to methods that resembled those of a dictatorship,[218] as transatlantic societies came closer to one another, Woodrow Wilson made extensive use of emergency powers but through the approval of exceptional laws (making the legislative part of the process) which comes closer to European responses to emergency.

On another note, even though the Constitutional text never mentions the state of emergency it does mention several exceptions. The first one, in article 1, concerns the "writ of *habeas corpus*" which tolerates no suspension "unless when in Cases of Rebellion or Invasion the public Safety may require it."[219] In the same article, section 10 makes a second concession

---

[213] The White House, "The Constitution," The White House, 2021, https://www.whitehouse.gov/about-the-white-house/our-government/the-constitution/.

[214] Constitution of the United States (1789) art 1 (8): "The Congress shall have Power To […] declare war […] raise and support armies […] To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions …],"
art 1 (9): "[…] The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it[…]."

[215] Constitution of the United States (1789) art 2 (2): "The President shall be Commander in Chief of the Army and Navy of the United States […]."

[216] Constitution of the United States (1789) art 4 (4): "The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence."

[217] Sergio Fabbrini, America and Its Critics: Virtues and Vices of the Democratic Hyperpower (Cambridge: Polity, 2008).

[218] Carl Schmitt, Dictatorship: From the Origin of the Modern Concept of Sovereignty to Proletarian Class Struggle (Polity Press, 2013).

[219] William B. Fisch, "Emergency in the Constitutional Law of the United States," The American Journal of Comparative Law 38 (1990): 389, https://doi.org/10.2307/840550.

concerning the impossibility of states to engage in war "unless actually invaded, or in such imminent Danger as will not admit of delay."[220] The fifth amendment, instead, states that "No person shall be held to answer for a capital, or otherwise infamous crime, […], except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger."[221]

A few remarks must be made about the abovementioned exceptions allowed by law. The Founding Fathers set very specific circumstances of exception that can transgress the general norm implying that such exception can only be applied in a particular situation, it is not the rule. It is also noteworthy to take into account that all these provisions are a response to a potential situation of war (a metaphor which we shall expand upon in the next section) or general insecurity, setting the base for the securitization process we shall consider in the following paragraphs.

However, before moving on to the interaction between the securitization process and the state of emergency, a brief parenthesis must be opened for the *état de siege* in the UK. This is because even though the law does not provide for such a state, the closest thing it has to it is martial law described as a "justification by the common law of acts done by necessity for the defence of the Commonwealth when there is war within the realm."[222] This description is particularly relevant for the final part of this section where we shall consider the application of the state of emergency beyond Western borders.

Now that we have a clear idea of the evolution of the state of emergency as defined by law in several liberal democracies, we shall project this state into the age of (in)security and observe how it becomes the norm. To differentiate it from what we discussed until now, we shall exclusively refer to this perpetual condition as "the state of exception" which, notwithstanding its synonymous connotation, has different characteristics and repercussions. "In every case, the state of exception marks a threshold at which logic and praxis blur with each other and a pure violence without logos claims to realize an enunciation without any real reference."[223]

This quote is particularly relevant to build our argument especially in light of the case study that will be analysed in the next chapter. What we seek to illustrate is in fact that securitization has transformed the state of emergency (above but within the rule of law) towards a state of

---

[220] Constitution of the United States (1789) art 1 (10).
[221] Constitution of the United States (1789) Fifth Amendment (1).
[222] Quote from the English jurist Sir Frederick Pollock.
[223] Giorgio Agamben, State of Exception (Chicago: University of Chicago Press, 2005).

exception (outside of the law) which corresponds to this state of "pure violence" as shall be argued in chapter IV.

The state of exception has been at the core of the work of Giorgio Agamben that described the 20th Century as having entered into a state where 'anomie' and law can no longer be considered distinct[224]. He traces this back to the state of siege introduced by the French Revolution that, not by chance, we have mentioned previously, and has evolved and reproduced across other liberal democratic legal frameworks. The concept of the exception as the rule, therefore, seems to derive from the intensified frequency with which the state of emergency was declared leading to the continuous rule of the executive.[225] This gradually incapacitated the 'sovereign' ability to use the exception to restore order making the anomie the law.[226] The result is in stark contrast with the two elements that must be upheld by the state of emergency: the objective of going back to normalcy and the limit of the temporal framework to do so.

What we need to emphasize for the purpose of our research, however, are in particular two aspects of the state of exception. The first concerns the fact that rather than simply stemming from continuous declarations of emergency, its exit from the legal bounds derive specifically from its interaction with the securitization process of the age of insecurity. The state of exception is in fact outside of the law, but it is legitimized as the apex status of securitization. Such legitimization occurs through securitizing measures drawn both from first- and second-generation scholars as we have mentioned throughout the previous chapters. The declaration of the state of emergency is per se a speech act (first generation scholars' school of thought). The act is performed by the securitizing actor which in this case is the 'sovereign' corresponding to the executive branch of the liberal democracy. Once it is accepted by the audiences, which are both the other branches of government and the national *demos*, it contributes to the instauration of a securitized context. The securitized context gives life to the routinization (second generation scholars) of securitized or rather emergency measures which become the norm. It is precisely when the emergency becomes the rule that the dialectic between law and exception ceases to exist. This is the state of exception.

The second aspect is related to law and its transformation into a self-referential practice.[227] As there is no dialectic between law and exception, the debates that persist in this securitized state

---

[224] Daniel McLoughlin, "Giorgio Agamben on Security, Government and the Crisis of Law."
[225] William E. Scheuerman, "Globalization and Exceptional Powers. The Erosion of Liberal Democracy.," Radical Philosophy 93 (1999): 14–23.
[226] Agamben, State of Exception.
[227] Ibid.

are "illusory."[228] This implies that it is not even necessary to implement a performance to resort to extraordinary measures because those measures are now ordinary, they are the norm. There is no need to justify the suspension of rights to solve the conflict between liberty and security[229] because bypassing such rights in the name of security has been permanently legitimized. Whilst the rule of law keeps on operating in a formal, abstract conception of the state of liberal democracy, the rule of security operates in the concrete reality: the state of exception.

At this point, we must also acknowledge that perpetual exceptionalism is not a phenomenon that liberal democracies have reserved only to their own regimes. Given the regime type under study, our analysis is necessarily euro-centric or more precisely Western-centric. Liberal democracy is only well established in that part of the world labelled as Global North and, as already stated, extending our research to other regimes would be pointless. At the same time, it is fundamental to acknowledge how modern liberal democracies have in the past implemented the state of 'perpetual' emergency abroad. This aspect of the state of emergency has more often than not been entirely disregarded especially by the scholars that are most notorious for their work on this status.[230] It is instead a crucial factor to take into account as, even though it relates to non-liberal democracies, the approach remains extremely Western-centric. The focus in fact remains on the actions of European states which have contributed to writing the 'us' vs 'them' narrative that has continued its legacy across centuries exacerbating the effect of securitization in the age of (in)security.

The 'doctrine' of the state of emergency, if so we can call it, has been used as a weapon for oppression long before the advent of the state of exception in liberal democracies. Western colonial empires had entirely replaced the rule of law by a series of extraordinary measures as the core normative framework in their colonies. Post-colonial scholars identified this prolonged state of emergency in non-Western states as a state of exception.[231] Among these, Achille Mbembe introduced the concept of 'necropolitics' dominating in colonial regimes. This neologism plays in contrast to biopolitical theory where social life is included in political calculations. The Foucauldian concept of biopower was conceived as a new form of political rationality that considers populations in their togetherness rather than individuals. It implies

---

[228] Huysmans, "International Politics of Exception: Competing Visions of International Political Order between Law and Politics."
[229] Agamben, State of Exception.
[230] John Reynolds, "Empire, Emergency and International Law," (Cambridge University Press, 2017).
[231] Punsara Amarasinghe and Sanjay K. Rajhans, "Agamben's Two Missing Factors; Understanding State of Emergency through Colonialism and Racial Doctrine."

that states treat their people with techniques for the purpose of achieving the "subjugation of bodies and the control of population."[232] This condition is exacerbated by Mbembe that by substituting social life (*bio*) with the realm of the dead (*necro*), alludes to the condition of the colonized populations which are treated like corpses.[233] Essentially it derives from the fact that the suspension of the law and any rights it protects by the state of emergency, legitimizes any sort of inhumane treatment disrespecting of the dignity and life of the people living in that state. This resonates with a concept used by Agamben, that of 'bare life.' The term is self-explanatory as it refers to a life which is stripped of everything but its own form, a life that in fact resembles that of a corpse. Such concept does not only pertain to the state of exception within liberal democracies but also to the way in which non-Western bodies are treated, as subjugated communities, communities that are nothing but bare life.[234] Borrowing from Mbembe's lexicon, 'necropower'[235] is used as a means for oppression where the West asserts its dominance over the colonial state of exception. Depriving these 'outsider' communities of basic rights of freedom and resistance which were aggressively pursued by the 'insiders' was depicted as a necessary practice for the greater good. The emergency taking place was that of uncivilized territories that had to urgently be submitted to European civilization practices.

A clear example of this is provided by the application of another category of law from the British Empire over its colonies.[236] This explains why we introduced martial law as the only form of British state of emergency previously. Such law was "abandoned at home because of its perceived violent and tyrannical character" but was "regularly imposed by the Crown's agents in India and throughout the empire to protect British interests, consolidate imperial sovereignty and prevent native dissent against everything from colonial taxes and agrarian policies to the maltreatment of slaves."[237] Here the term 'regularly' is key to underline the routinization of exceptional practices. Such practices were in stark contrast to those upheld in the British territory where even though modern human rights had not yet fully developed, first

---

[232] Michel Foucault, The History of Sexuality, vol. 1, 1976.; see also Michel Foucault, "Security, Territory, Population," Lectures at the Collège de France, 1977-1978.

[233] Achille Mbembe, "Necropolitics," Public Culture 15, no. 1 (January 1, 2003): 11–40, https://doi.org/10.1215/08992363-15-1-11.

[234] Hollly Cade Brown, "Figuring Giorgio Agamben's 'Bare Life' in the Post-Katrina Works of Jesmyn Ward and Kara Walker," Journal of American Studies 51, no. 1 (April 6, 2016): 1–19, https://doi.org/10.1017/s0021875816000566.

[235] Used as opposed to biopower as the analysis of the strength of discipline and normalization mechanisms which formed to change and influence the life of human. Tom Frost, "Agamben's Legalization of Foucault," Oxford Journal of Legal Studies 30, no. 3 (April 21, 2010): 545–77, https://doi.org/10.1093/ojls/gqq015.

[236] Punsara Amarasinghe and Sanjay K. Rajhans, "Agamben's Two Missing Factors; Understanding State of Emergency through Colonialism and Racial Doctrine."

[237] John Reynolds, Empire, Emergency and International Law. (Cambridge University Press, 2017).

generation rights had gradually been established ever since the Magna Carta Libertatum in 1215. The basic right to *habeas corpus* for instance was considered a privilege only reserved to those living in the civilized part of the world.[238] Ordinary laws were suspended for the purpose of a civilized future, but such future was indeterminate resulting in perpetual exception.

To some extent, this process can be considered analogous to that of securitization that leads to the state of exception today. Affirming this is obviously quite disputable as the context in which it took place was radically different from that envisioned by the Copenhagen School. The performative act needed to de-politicize an issue was certainly unnecessary in governmental apparatuses that did not need the acceptance of the national *demos* to proceed with their imperial objectives. Furthermore, the inexistence of the liberal international order asserting the right to self-determination and all that came along with the UN charter made the road to colonization a lot more straightforward than what it would be today. On the other hand, it is the rationale supporting the securitization process that is the same. Even though the notion of international community was only introduced at the end of the 20th Century, its European predecessor has been taking shape ever since the Congress of Vienna in 1815.[239] The Concert of Europe set a series of common norms and values shared among the states that came to form a primordial international community. Far from actually being international, this community rationalized a form of international law rooted in racial discrimination.[240] However, even though interference in other states and violation of fundamental rights was not illegal, it still required some form of justification that could legitimize the use of these measures that did not conform to the shared norms. Therefore, even though the securitizing actors remain the states, what we can compare to an 'audience' of the time were the other states that were part of the European community formed during the Concert. The discourse (analogous to the performative act) legitimizing the state of exception also echoes that of today. The idea is that of suspending rights temporarily to ensure civilization (which today would correspond to ensuring security) as a precondition to guarantee rights in the future. As right suspension is normalized and exceptionalism becomes the law, the future becomes the present and what was temporary becomes permanent.

---

[238] Nasser Hussain, The Jurisprudence of Emergency : Colonialism and the Rule of Law (Ann Arbor: University of Michigan Press, 2003).
[239] Dario Battistella, "The Rise and Decline of Pax Britannica" lecture 4, History of International Politics, Sciences Po Bordeaux, 27th September 2021.
[240] Henry Wheaton, Elements of International Law (Boston, 1866).

B. Legitimating Anti-liberal, Non-democratic Practices

An emergency is most often than not entirely unpredictable, and any kind of regime will need to resort to non-ordinary measures to preserve itself.[241] The issue, as already stated, arises when such non-ordinary measures become routine. The dichotomy between norm and exception that has come to cease, plunges liberal democracy into its antithetical reality. "If laws are rules and emergencies make exceptions to these rules, how can their authority survive once exceptions are made?"[242] Even though it is true that by implementing emergency powers the state is not a liberal state anymore, it is also true that, by not doing, so the state may jeopardize its own survival.[243] But if emergency legitimizes the violation of liberal democratic practices and the emergency is perpetual, how can we even distinguish a liberal democracy from an illiberal one?

This dilemma that security has thrusted upon liberal democracy has been at the core of our analysis until now. Ever since the *mise en place* of emergency clauses in the drafting of constitutions, their application has been threatening the rule of law, as recently ruled by the Spanish Constitutional Court *(see relevant footnote for a more up to date ruling on the matter[244])*. After observing the conflictual relationship between law and security and the conceptual implications for liberal norms and rights in the state of exception, this section will draw upon two important elements that have been introduced in chapter I but not discussed in

---

[241] Nomi Claire Lazar, States of Emergency in Liberal Democracies (Cambridge: Cambridge University, 2013).

[242] Jennifer M. Welsh and Michael Ignatieff, "The Lesser Evil: Political Ethics in an Age of Terror," International Journal 60, no. 1 (2004): 285, https://doi.org/10.2307/40204036.

[243] Ronald Dworkin, Terror and the Attack on Civil Liberties. New York Review of Books 50 (2003):37–41.

[244] According to art. 116 of the Spanish Constitution, emergency circumstances can be distinguished among three different legal categories: "estado de alarma", "estado de excepción" and "estado de sitio". Following the restrictions applied with the breakout of the pandemic in March 2020 under the state of alarm, six out of eleven judges found the measures unconstitutional. The reason behind the decision stemmed from the fact that the limitations imposed by the central government by far exceeded the limits of a state of alarm which does not allow for the suppression of fundamental rights enabled by the state of emergency. The issue is that for such state to be put into practice, it requires to be taken to Congress for parliament to declare it, whilst a state of alarm can be agreed upon by government and then go through Congress. Lacking the prior approval of the Congress of Deputies, the decree put into place was therefore deemed to be unconstitutional. The Constitutional Court came to the same conclusion for the second state of alarm decreed in November 2020 by the Spanish government.
(José María Brunet, "Spain's Top Court Rules That the Coronavirus State of Alarm Was Unconstitutional," EL PAÍS English Edition, July 14, 2021, https://english.elpais.com/spain/2021-07-14/spains-top-court-rules-that-the-coronavirus-state-of-alarm-was-unconstitutional.html.)
Even though situations of emergency related to health are out of topic, the fact that an unconstitutional decree was twice put into place in a liberal democracy is a further manifestation of the risks brought about by such clauses and exceptions to fundamental rights. We shall not dwell upon this matter in the following paragraphs as our focus is not concerned with matters related to COVID. It was however necessary to make this remark in order to briefly illustrate one of the many examples of the most recent developments that have been triggered by global crisis with respect to such clauses.

depth. The first is related to an abstract concept, that of the metaphor of war. It was briefly mentioned how public discourse resorted to this to start off the securitization process. What we shall expand upon in this section is how after triggering the state of exception resorting to 'war' related language in any security aspect can prolong the state of exception making it indefinite.[245] To do so, concrete examples will be drawn upon from liberal democracies which we have already introduced and with whose normative frameworks in relation to emergency we are more familiar with. In the first place the locus of exception that Agamben has defined as the 'camp' will be central. Whilst a clear reference is that of the concentration camps, we shall consider a similar reality in the modern era, in the age of (in)security: Guantanamo Bay. Even though this example is important as particularly revealing of the extent to which liberal democracy can contradict its own values, we cannot limit ourselves to certain *loci*. In fact, it must be taken into account that for the complete effectiveness of the legitimization process, in line with second generation security scholars, processes and practices play a substantial role. Whilst the locus has a spatial limit, the practice does not. Additionally, the practice is more easily propagated in time as its acceptance projects it into the normalcy of the state of exception. Here we shall resort to the second element briefly presented in the first chapter related to the presentation of the Charlie Hebdo response used to draw a parallelism and a continuity with the US in the context of the war on terror. Now, instead, we shall attempt to get a better picture of how the securitized environment sets the context to welcome the normalization of exception. Whilst a defined state of emergency with a temporal and spatial limit (as envisioned by Schmitt) is legal and within the contemplated normalcy of a liberal democratic framework, securitization makes it perpetual expanding it in time and space, outside the bounds of legality. The acceptance provided by securitization implies we therefore have the legitimization of illegal practices taking place at home and exported abroad – bringing us then to our case study.

As anticipated in chapter I, a frequent metaphor that rings an alarm bell in the minds of the audience, is that of war. Notwithstanding the circumstances in which it actually does constitute an urgent emergency, it can be used as a rhetorical device that triggers mass legitimization. It

---

[245] This, as demonstrated by the situation of emergency triggered by COVID19, can occur in a variety of circumstances and in relation to a broad set of topics. As anticipated, for the purpose of this thesis however this aspect will not be taken into account given that the pandemic is still taking place and its concrete repercussions on regime type are still to be determined. Furthermore, it would be out of scope for the concepts introduced which, in light of our case study, focus on violations of liberal democratic principles revolving mainly around the use of violence conceived as a threat and legitimized as a liberal democratic measure.

is therefore a cardinal tool for securitizing actors. Metaphors must in fact, not be underestimated as more than simple ornamental or descriptive figures of speech, they actually structure our understanding of the world.[246] One of the commonalities between countries concerning the increased resort to the state of exception, is that of starting it during periods of war and expanding it afterwards. This occurs either by maintaining some of the practices which are routinized, or by declaring a new state of war which is not necessarily intended in a traditional sense but associated as such by the audience. "In debating social policy through the language of war, we often forget the moral reality of war."[247] The effectiveness of such language is obtained by triggering a certain knowledge or feeling that is vivid in the audience when the subject of the metaphor can be easily compared to other topics.[248] This allows to define a knowledge hierarchy contributing to nourishing a certain set of beliefs.[249] War terminology achieves this as it evokes a strong and intense imagery of fear that belongs to the structural knowledge of most communities.[250] It is also particularly effective as a communication tool as it prevails on others, it imposes itself as hierarchically dominant.[251] It is a long-standing metaphor that is quickly processed by the audience from a cognitive point of view[252] and can be projected on to a wide variety of topics constructing actual realities. Moreover, it highlights a distinct set of parties that are in violent conflict between one another where one is usually depicted as the 'good' (of which the audience to whom the securitizing actor appeals to is supposedly part of) and the 'bad' (the threat against which the securitizing process is built on). This narrative generates an effect that is very similar to that intended by the securitization process and therefore amplifies its impact. A war declaration automatically implies a diversion of resource and fund allocation which respond to a prioritized policy agenda[253] directed towards the target. This generates a unanimous and uncontested action against the enemy which de-politicizes the issue altogether. Those that do not share such

---

[246] George Lakoff and Mark Johnson, Metaphors We Live By (Chicago: University of Chicago Press, 1980).

[247] James F. Childress, "The War Metaphor in Public Policy: Some Moral Relections," in The Leader's Imperative: Ethics, Integrity, and Responsibility (Purdue University Press, 2001), 181–97.

[248] Paul H. Thibodeau, Rose K. Hendricks, and Lera Boroditsky, "How Linguistic Metaphor Scaffolds Reasoning," Trends in Cognitive Sciences 21, no. 11 (November 2017): 852–63, https://doi.org/10.1016/j.tics.2017.07.001.

[249] Lori Hartmann-Mahmud, "War as Metaphor," Peace Review 14, no. 4 (December 2002): 427–32, https://doi.org/10.1080/1040265022000039213.

[250] Stephen J. Flusberg, Teenie Matlock, and Paul H. Thibodeau, "War Metaphors in Public Discourse," Metaphor and Symbol 33, no. 1 (January 2, 2018): 1–18, https://doi.org/10.1080/10926488.2018.1407992.

[251] Ibid.

[252] B.F. Bowdle and D. Gentner, "The Career of Metaphor," Psychological Review 112, no. 1 (2005).

[253] Hartmann-Mahmud, "War as Metaphor."

actions are to be considered treasonous.[254] The steps, as we have previously observed, are analogous to those of securitization and, not by chance, the authority resorting to the war metaphor and possibly declaring an emergency usually corresponds to the securitizing actor. As security threats have broadened, so have the types of wars: the war on drugs, the war on poverty, the war on cancer,[255] are only very few among the multiple examples we could mention.

The largest internationalized and prolonged support has been generated by the war on terror as a hegemonic securitizing actor felt politically but especially culturally undermined.[256] The latter is particularly relevant in homogenizing liberal democratic response in light of the threat to culturally shared values. Once again, the 'us' vs 'them' is an extremely powerful narrative that plays into the security discourse and can be initiated by the metaphor of war. The extra-ordinary measures enabled by such narrative are not only accepted by the community whose government has declared the war, but they are encouraged as the audience becomes prone to 'fight' against the common enemy. This is emphasized by Foucault's understanding of the state of exception which is inherently intertwined with cultural forces.[257] More specifically, in accordance with the last part of the previous section, the state of exception is also enabled by racial factors. The war discourse can, in fact, also be a race discourse.[258] This easily allows to resort back to the necropolitical colonial era mode of governance. The most blatant example is provided by Nazi Germany which overturned the Weimar Constitution by incorporating a war based on race into exceptional sovereign power: "It will become the discourse of a battle that has to be waged […] by a race that is portrayed as the one true race, […] entitled to define the norm, against those who deviate from that norm."[259]

The war rhetoric is so powerful that it enhances nationalism to the point of bypassing the law. This enables it to define the norm itself to tackle a security threat. Such security threat is identified as the 'bad,' the 'them,' the 'other' race that does not share 'our' values and is therefore by default a menace. In the 21st Century, even though the ideological aims of the Nazi party seem far gone, we can witness a double-faced more subtle form of nationalism that comes

---

[254] Hartmann-Mahmud, "War as Metaphor."

[255] Louise Amoore and Marieke de Goede, Risk and the War on Terror (Abingdon, Ox: Routledge, 2009).

[256] William J Bennett, Why We Fight: Moral Clarity and the War on Terrorism. (Washington, D.C.: Regnery Pub, 2002).

[257] Michel Foucault, "Society Must Be Defended: Lectures at the Collège de France, 1975-76," review by Mark Hearn, Labour History, no. 86 (2004): 218, https://doi.org/10.2307/27515985.

[258] Saul Newman and Micheal P. Levine, "War, Politics and Race: Reflections on Violence in the 'War on Terror,'" Theoria: A Journal of Social and Political Theory 110 (August 2006): 23–49.

[259] Foucault, "Society Must Be Defended: Lectures at the Collège de France, 1975-76."

to life through war. The war on terror is, on the one hand, a means to defend the nation state patriotically, a way to shield the American way of life. On the other, it transcends the nation state abandoning a narrow identity which is replaced by universally shared liberal aspirations.[260] The latter enshrine the goals of the international community which camouflages the fight against race with a war on non-liberal principles. The public discourse defining liberal democratic values as "God's gift to humanity"[261] elevates 'our' regime type to a globally superior one that needs to be shared if not imposed on the others.[262] Even though it appeals to a new, more widespread 'us,' that of the international community, the war waged is still a racial war. Additionally, the exceptionalism it enables is also one that is more widespread. The shift of the 'us' from a national to the international scale also upgrades the realm of the exceptional in the same way. From this point of view the war on terror is a lot more compelling on the suspension of the norm. By uniting the international community, rather than a *state* of exception it generates a *global* (or Western) exception.

From a practical standpoint, the effects of the war on terror can be witnessed in the detention facility established by the United States. Camp Delta in Guantanamo Bay, Cuba is the most emblematic representation of the exception. This extra-judicial space[263] controlled by the US military and Defense Department is not subject to the United States' normative framework nor to its jurisdiction. The *locus* has, not by chance, been placed offshore to enable exceptionalism to take its most extreme form in what resembles a necropolitical reality. In 1950, the Supreme Court ruled that enemy aliens that have not entered the country do not have access to US courts.[264] Liberal and democracy are two concepts that are unknown to the caged detainees of Camp Delta whose scope is to deprive the 'other' of all that 'we' stand for. This condition is fuelled by the metaphor on war, a state where the legitimacy bar stands much lower. In fact, detention standards reflected those of war but without any form of legal protection.[265] By labelling the prisoners as 'unlawful enemy combatants' rather than prisoners of war, they are

---

[260] Andrew W. Neal, "Cutting off the King's Head: Foucault's Society Must Be Defended and the Problem of Sovereignty," Alternatives: Global, Local, Political 29, no. 4 (October 2004): 373–98, https://doi.org/10.1177/030437540402900401.

[261] Using President Bush's language, The White House Archives, "Presidential Message," georgewbush-whitehouse.archives.gov, 2003, https://georgewbush-whitehouse.archives.gov/news/releases/2003/12/text/20031225.html.

[262] Andrew W. Neal, "Cutting off the King's Head: Foucault's Society Must Be Defended and the Problem of Sovereignty."

[263] Newman and Levine, "War, Politics and Race: Reflections on Violence in the 'War on Terror.'"

[264] Johnson v Eisentrager, 306, U.S. (1950)

[265] Newman and Levine, "War, Politics and Race: Reflections on Violence in the 'War on Terror.'"

stripped of their legal rights. Not only does the US legal system not apply, but also the international legal system is suspended as the 1949 Geneva Convention does not mention this category. The convention clearly states in article 4 that:

> Prisoners of war, in the sense of the present Convention, are persons belonging to one of the following categories, who have fallen into the power of the enemy:
> (1) Members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces.
> (2) Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions:
> (a) that of being commanded by a person responsible for his subordinates; (b) that of having a fixed distinctive sign recognizable at a distance; (c) that of carrying arms openly; (d) that of conducting their operations in accordance with the laws and customs of war.[266]

According to the United States, al-Qaeda fighters did not qualify for any of these criteria and therefore also constituted an exception from the Geneva Convention.[267] Here we can observe one of the symptoms of the *mise en place* of global exceptionalism where international law is also suspended by liberal democracies. In its place, sovereign power rules unquestioned as it is free of any constraint. This space is comparable to that of actual wartime where in WWII "the camp is the space that is opened when the exception begins to become the rule."[268] Concentration camps also took place in a situation of global emergency, but they did so in a world that was under the attack of Nazi, fascist and totalitarian regimes. Ever since then, the establishment of a world order protected by legally established liberal democratic pillars was supposed to avoid similar exceptions fostering a future of peace and security. In contrast, the war for security opened the 'camp' once again where the treatment of prisoners "is considered an extension of war itself, not as a post war question of appropriate trial and punishment."[269]

By tapping back into historical narratives and re-evoking the existence of an international conflict based on values, the securitization process used the war on terror as weapon for exception. The 'us' vs 'them' keeps on nourishing the existence of an élite international community that replaced empires of the past. Detainees are subject to the same lawless status

---

[266] The Geneva Conventions of 1949 and their additional protocols (1949), art 4.
[267] Micheal C. Dorf, "What Is an 'Unlawful Combatant,' and Why It Matters," FindLaw for legal professionals, 2002, https://supreme.findlaw.com/legal-commentary/what-is-an-unlawful-combatant-and-why-it-matters.html.
[268] Judith Butler, Precarious Life : The Powers of Mourning and Violence. (S.L.: Verso, 2004).
[269] Giorgio Agamben, Homo Sacer: Il Potere Sovrano E La Nuda Vita (Torino: Einaudi, 2005).

of the colonies where sovereignty was exercised above the rule of law.[270] The rule is more one of imperialism or absolutism rather than one of law. But at the base of its legitimization, lays always the same concept: security. Security of the United States, security of the international community, security of liberal democracy, security of fundamental rights and security of the rule of law. The paradox is that all can be put aside to grant their own security so in the end we are left with security of security. The rule of security legitimizes illiberal practices. Officials are entitled to "interrogate, humiliate, torture and kill."[271] Basic inalienable rights do not apply as security dominates the *locus* of exception. In this locus law and violence become undistinguishable, violence is the norm.[272]

Going beyond the *locus* of the state of exception enables us to understand how when it intersects with the securitization process it is protracted in space and time through the routinization of securitized emergency practices. All this takes place in a context of what is perceived as 'war', a perpetual war that can only be fought under the rule of security.

The war on terror in fact, continued to manifest itself, changing the 'face' of the other according to the security agenda. The attacks in France in 2015 undoubtedly constituted a dramatic event that called for the declaration of a state of emergency. However, being in a securitized environment set in a war context, a state of exception was the result. On the other hand, in light of what we have discussed till now, it is more correct to assert the fact that the state of exception has been present all along. It is a constant in the age of (in)security. The attacks simply provided a reminder of how far it can legitimize stringent non-democratic practices. The term 'legitimize' is particularly revealing in this circumstance. Its origin traces back to the past participle medieval Latin *legitimatus* "make lawful."[273] This is very different from actually being legal and therefore determined by the rule of law. It is an active verb that is set in motion by securitization. The French President's declaration did exactly this: it performed a speech act that resorted to the state of emergency in a condition of exceptionalism which was already prone to legitimize extraordinary measures. The call for emergency temporarily sets them within a legal framework, but their continuation operates beyond it. Invoking article 16 of the constitution allowed to establish the state of emergency for three months which was

---

[270] Amy Kaplan, "Where Is Guantanamo?" American Quarterly 57, no. 3 (2005): 831–58, https://doi.org/10.1353/aq.2005.0048.
[271] Newman and Levine, "War, Politics and Race: Reflections on Violence in the 'War on Terror.'"
[272] Ibid.
[273] Etymonline, "Legitimate | Etymology, Origin and Meaning of Legitimate," www.etymonline.com, accessed June 20, 2022, https://www.etymonline.com/word/legitimate.

subsequently extended for other three and so on.[274] The issue is that, as expressed by Prime Minister Manuel Valls, the emergency is set to keep on operating until the termination of the "total and global war" on ISIS.[275] Once again, liberal democracies appeal to a global emergency, inside and outside of the state. The fight against the 'other' also takes place at home, within the liberal democracy, depriving 'us' of our own values. This was acknowledged by the United Nations denouncing the executive's "excessive and disproportionate restrictions on human rights."[276] Such restrictions are enabled by the non-democratic concentration of powers in the President, the sovereign, whose authority is enforced through the police forces. The latter are also the expression of the state of violence, where the use of force becomes the normalcy. This violence can be physical but also cultural as violations of fundamental rights are a violence against liberal democracy. Second generation civil and political rights such as the right of associating and the right to manifest are suspended. But also first generation negative rights are as, those who do associate/manifest or are suspected to do so can be arrested even in the lack of formal charge in violation of the writ of *habeas corpus* (just like for the detainees in Guantanamo,[277] even though their living conditions are hardly comparable).

The founding father of the state of exception himself expressed his concerns regarding the situation implying that France has become a "security state" with "limitless control" for the protection of de-politicized citizens.[278] As political debate surrenders to security, democracy is sacrificed. The power of the people is lost paving the way for the necropower, belonging to the colonial mentality, to be applied. The securitization process finds its completion in the state of exception and at the same time eases its imposition. Here, the legitimacy for the practices involved is also perpetual as the metaphor of war evokes a fear that can "integrate political communities according to friend/enemy lines and creates homogenous identities that need to

---

[274] Davide Giordanengo, "The State of Exception," E-International Relations, 2016, https://www.e-ir.info/2016/06/21/the-state-of-exception/.

[275] Darren Boyle, "France Extends State of Emergency 'until ISIS Is Defeated,'" Mail Online, January 22, 2016, http://www.dailymail.co.uk/news/article-3411547/France-.

[276] Lizzie Dearden, "Paris Attacks: France's State of Emergency Is Imposing 'Excessive' Restrictions on Human Rights, UN Says," The Independent, January 20, 2016, https://www.independent.co.uk/news/world/europe/paris-attacks-france-s-state-of-emergency-is-imposing-excessive-restrictions-on-human-rights-un-says-a6822286.html.

[277] Giordanengo, "The State of Exception."

[278] Giorgio Agamben, "Giorgio Agamben: 'de l'Etat de Droit à l'Etat de Sécurité," Le Monde.fr, December 23, 2015, http://www.lemonde.fr/idees/article/2015/12/23/de-l-   etat-de-   droit-a-   l-etat-   de-securite_4836816_3232.html.

be defended."[279] Liberal democracies resemble more and more authoritarian states, surviving states, security states.

To transition to the next chapter, it is finally worthy to emphasize once again how the necropolitical practices put into place by liberal democracies through securitization are re-defining the standards of violence. This is also because acting through necropower establishes what Chamayou calls 'necro-ethics' specifically in relation to warfare.[280] This critical term used as an expansion of Mbembe's concept, is particularly relevant to our case study as it refers to the killing means used by modern liberal democracies in order to maximise consent: drones. By abiding by the terms set according to necro-ethics, traditional war practices are set aside depriving the enemy of a chance to react and stripping warriors of their honour as they escape the risk of the battle scene entirely.[281] The arguments of minimal risk and minimal casualties will be among the main topics of debate in the following chapter as they provide the legitimacy basis for illegal operations which are, more often than not, not restricted to national borders. In fact, as emphasised multiple times, liberal democracies do not limit their reach to the domestic sphere. Their universal objectives necessarily impose a significant presence in the international domain affecting different regime types. In the previous section we looked at the constant presence of the state of exception which was established in the place of a legal framework altogether. By keeping the 'us' vs 'them' narrative alive, postcolonial countries keep on suffering deeply from the repercussions of such frameworks. By setting this 'globalised emergency,' securitization measures are adopted beyond state boundaries to attack and, often, to prevent. This implies that exceptionalism acts as a "claim about inhumanity"[282] as the colonial legacy treats individuals as pre-humans lacking proper legal orders.[283] Biopolitical practices erode liberal democracies from within and necropolitical practices de-humanize everything in their reach. To globally securitize liberal democracy conceptually, antithetical means are revealed concretely. As violence against fundamental rights is routinized at home, pure violence is the norm abroad.

---

[279] Claudia Aradau and Rens Van Munster, "Exceptionalism and the 'War on Terror,'" The British Journal of Criminology 49, no. 5 (2009).

[280] Grégoire Chamayou and Janet Lloyd, Drone Theory (London: Penguin Books, 2015).

[281] James Simpkin, "Necro-Ethics Part 1: Drone Theory and the Categorical Imperative.," Medium, May 28, 2020, https://jsimpkin.medium.com/necro-ethics-part-1-drone-theory-and-the-categorical-imperative-f2d3be7d8b95.

[282] R. B. J. Walker, "Lines of Insecurity: International, Imperial, Exceptional," Security Dialogue 37, no. 1 (March 2006): 65–82, https://doi.org/10.1177/0967010606064137.

[283] Ibid.

IV. The Pakistani Case Study

In the course of the previous chapters, there has been a continuous reference to the upcoming analysis of the case study that shall be illustrated in the following pages. The reason for this is that even though there are multiple states around the world that have been the victims of the age of (in)security or where emergency measures have taken drastic magnitude, the situation resulting from the US-led drone strikes that have occurred in Pakistan since 2004 is the explicit culmination of all the topics discussed until now. It is, in fact, the manifestation of the outcome of securitization practices (chapter I) implemented by liberal democracies establishing global exceptionalism (chapter III). Being strengthened by the metaphor on war based on the 'us' vs 'them' narrative (chapter III), the US action in Pakistan blatantly disregards the rule of law and the values it protects (chapter II) which are supposedly upheld by those who initiated the securitization process in the first place (chapter I).

As anticipated in the initial introduction, the choice of a non-liberal democratic country is purposefully used to show how the effects of liberal democratic securitization can expand limitlessly through space. Furthermore, analysing the drone strikes in Pakistan which started in 2004 also allows us to observe the expansion through time given that the initial spark for the strikes dates back to September 2001. Finally, Pakistan is particularly relevant for us as an example with respect to other countries which have been impacted by the war on terror due to the fact that there is no way to draw a direct line of responsibility between the Pakistani population and the security threat to the United States. This makes legitimacy for the use of security measures against it even harder to justify showing to what extent securitization can provoke exceptional circumstances.

To introduce how Western-led drone warfare was popularized in the age of insecurity, we shall draw on the last paragraph of the previous chapter to re-emphasize how Chamayou's necro-ethics has permeated the rules of the game regulating the use of drones. As he starts from Achille Mbembe's work, it is worth mentioning that Mbembe also elaborated on drones used "under conditions of vertical sovereignty and splintering colonial occupation"[284] leading us back to the historical example of chapter III. What he emphasizes in relation to UAVs is the

---

[284]Achille Mbembe, "Necropolitics," Public Culture 15, no. 1 (January 1, 2003): 11–40, https://doi.org/10.1215/08992363-15-1-11.

establishment of separated communities according to a "y-axis" that separates the colonizers (in our case, the West) from the colonized (non-liberal democratic countries). Such axis:

> […] leads to a proliferation of the sites of violence. The battlegrounds are not located solely at the surface of the earth. The underground as well as the airspace are transformed into conflict zones. There is no continuity between the ground and the sky. Even the boundaries in airspace are divided between lower and upper layers. Everywhere, the symbolics of the top (who is on top) is reiterated. Occupation of the skies there- fore acquires a critical importance, since most of the policing is done from the air. Various other technologies are mobilized to this effect: sensors aboard unmanned air vehicles (UAVs), […] Killing becomes precisely targeted.[285]

So how did the use of these 'precise target'-ing devices come to modify the traditional norms of war? Identified as part of the Revolution of Military Affairs (RMA), the use of drones has popularized a new kind of warfare that found its launching platform in the securitization process. The RMA is ascribed to the evolution of the security agenda within a certain political and economic context[286] which condemns large scale conflict, enables investment in new high-tech weaponry and diversifies threats to security to redefine policy on the matter.[287] This redefinition within a securitized environment also implied an entire rewriting of the legally accepted (or rather legitimized) *modus operandi* of liberal democracies (in this particular case represented by the United States) on the international scene. Replacing traditional warfare with 'targeted killing' which the UN has defined as: "[…] the intentional, premeditated and deliberate use of lethal force, by States or their agents acting under colour of law, or by an organized armed group in armed conflict, against a specific individual who is not in the physical custody of the perpetrator."[288]

This implies a change not only in the means of war but also in the law of war. War 'dronification' as a result of the age of (in)security has set new standards, new norms for violence and the use of force which the liberal order should only condone exceptionally. Such exception has become the norm and the Pakistan case illustrates what this means for liberal democracy.

---

[285] Mbembe, "Necropolitics."

[286] Keith L. Shimko, The Iraq Wars and America's Military Revolution (Cambridge: Cambridge University Press, 2010).

[287] Ian Buchanan, "Treatise on Militarism," Symploke 14, no. 1 (2006): 152–68, https://doi.org/10.1353/sym.2007.0004.

[288] Philip Alston, "The Challenges of Responding to Extrajudicial Executions: Interview with Philip Alston," Journal of Human Rights Practice 2, no. 3 (2010): 355–73, https://doi.org/10.1093/jhuman/huq013.

To understand how the use of drones in Pakistan represents the intersection of the concepts we have discussed, the first section will focus on the situation in the country by drawing on empirical data. Here we shall consider how the securitization process has exploited the metaphor on war to its advantage. In the second section, instead, the legal drawbacks will be exposed showing how in Pakistan it was security, rather than law, that wrote the norms on the most controversial subjects of international law: the use of force and human rights.

A. The Case of Macrosecuritization – Drone Warfare in Pakistan

The Pakistani case is only one among the numerous battles fought for the war on terror (WoT). This war was framed as a securitizing move both directly[289] and indirectly.[290] The former refers to the performance of speech acts which we have already introduced in the first chapter. For the purpose of having this clear in mind and understanding how it evolved into the use of drones in Pakistan, we shall briefly recap its main elements by drawing on its rhetoric.

The securitization occurs both nationally and internationally. On a national scale the securitizing actor is the executive that appeals to the values of the audience, the American *demos*: "[…] the United States is again called by history to use our overwhelming power in defense of freedom. We have accepted that duty, because we know the cause is just [...] we understand that the hopes of millions depend on us [...]."[291]

At the international scale the securitizing actor is the United States as the pioneering liberal nation state that appeals to the audience of Western liberal democracies (or the international community) and more specifically its most prominent actors - the allies: "The cooperation of America's allies in the war on terror is very, very strong. We're grateful to the more than 60 nations that are supporting the Proliferation Security Initiative to intercept illegal weapons and equipment by sea, land, and air. […] We're proud to call them friends."[292]

Once again, we must emphasize how this form of first-generation scholars' securitization is comprehensively effective when complemented in a second-generation understanding of securitization focused on context and the practices deriving from it. Their normalization in the global state of exception enhances the effectiveness of speech acts performed several years afterwards. In fact, the indirect study of the war on terror as a securitization move occurred following the speeches on the substantial increase in drone strikes nearly eight years after it had begun.[293] Even though its starting date was clearly carved in history as the infamous 9/11,

---

[289] Barry Buzan, "Will the 'Global War on Terrorism' Be the New Cold War?," International Affairs 82, no. 6 (November 2006): 1101–18, https://doi.org/10.1111/j.1468-2346.2006.00590.x.

[290] Barry Buzan and Ole Waever, "Macrosecuritisation and Security Constellations: Reconsidering Scale in Securitisation Theory," Review of International Studies 35, no. 2 (April 2009): 253–76, https://doi.org/10.1017/s0260210509008511.

[291] Dick Cheney, 'Success in war is most urgent US task, Cheney says: remarks to the Commonwealth Club of California', 7 Aug. 2002 in Buzan and Waever, "Macrosecuritisation and Security Constellations: Reconsidering Scale in Securitisation Theory."

[292] George W. Bush, "President Bush Discusses Progress in the War on Terror," georgewbush-whitehouse.archives.gov (The White House, July 12, 2004), https://georgewbush-whitehouse.archives.gov/news/releases/2004/07/20040712-5.html.

[293] Mary Ellen O'Connell, "Unlawful Killing with Combat Drones a Case Study of Pakistan, 2004-2009," *Notre Dame Law School Legal Studies Research Paper* 09-43 (July 2010).

its end remains yet to be determined as the open-ended objective of the war[294] implies its indefinite continuation: "Neither I, nor any President, can promise the total defeat of terror."[295] The only aim that has been clearly satisfied is that of reinforcing the dominance of the securitizing actor, the United States[296] that keeps on appealing to the same double audience:

> Americans are deeply ambivalent about war, but having fought for our independence, we know a price must be paid for freedom. From the Civil War to our struggle against fascism, on through the long twilight struggle of the Cold War, battlefields have changed and technology has evolved. But our commitment to constitutional principles has weathered every war, and every war has come to an end.[297]

To legitimize the use of lethal weapons, the argument of securing future liberal democracy is used: "From our use of drones to the detention of terrorist suspects, the decisions that we are making now will define the type of nation — and world — that we leave to our children."[298] The transformation of drones into killing robots was an effect of the securitization process initiated in September 2001. The Department of Defense (DoD) describes them as unmanned aerial vehicles (UAVs) that "can fly autonomously or be piloted remotely, can be expendable or recoverable" and that can carry a "lethal or non-lethal payload."[299] Ready for use by the 1950s,[300] drones were employed for surveillance and reconnaissance until the new century. In the age of (in)security this technological device was popularized because,

> […] technology is generally presented as the means by which security will be better achieved. Nothing is less sure than the idea that technology will eventually help in improving security. Nonetheless, it remains that the massive resort to technological tools by the police, the military, and intelligence agencies has a profound impact on both security practices and the very structure of the modern state's security apparatuses.[301]

---

[294] Amy Zalman and Jonathan Clarke, "The Global War on Terror: A Narrative in Need of a Rewrite," Ethics & International Affairs 23, no. 2 (2009): 101–13, https://doi.org/10.1111/j.1747-7093.2009.00201.x.

[295] Barack Obama, "Obama's Speech on Drone Policy," The New York Times, May 23, 2013, https://www.nytimes.com/2013/05/24/us/politics/transcript-of-obamas-speech-on-drone-policy.html.

[296] Scott Nicholas Romaniuk and Stewart Tristan Webb, "Extraordinary Measures: Drone Warfare, Securitization, and the 'War on Terror,'" Slovak Journal of Political Sciences 15, no. 3 (July 2015): 221–45, https://doi.org/10.1515/sjps-2015-0012.

[297] Obama, "Obama's Speech on Drone Policy."

[298] Ibid.

[299] Department of Defense, "Unmanned Aerial Vehicles," in The Department of Defense Dictionary of Military and Associated Terms (Joint Publication, 2008).

[300] Geoffrey Sommer et al., "The Global Hawk Unmanned Aerial Vehicle Acquisition Process a Summary of Phase I Experience" (Rand Monograph Report, 1997).

[301] Thierry Balzacq et al., "Security Practices," in International Studies Encyclopedia Online (Hoboken, NJ: Blackwell Publishing, 2010).

In a context of war, the greatest value such technology can offer is by carrying a "lethal payload" therefore the function of the drone dramatically shifted, it was securitized in response to the threat. From a surveillance, defensive tool it became one for attack in line with the prevention strategy adopted with the WoT.

Even though drone weaponization took place in several countries, the magnitude of the campaign in Pakistan is particularly striking especially in consideration of the fact that in no circumstance did Pakistan attack or explicitly threaten the United States (a point which is particularly relevant for legal aspects considered in the next section). On the 19th of June 2004, the first launch was made.[302] Even though different sources report slightly different numbers, figure 3 enables us to understand the overall trend of the attacks.
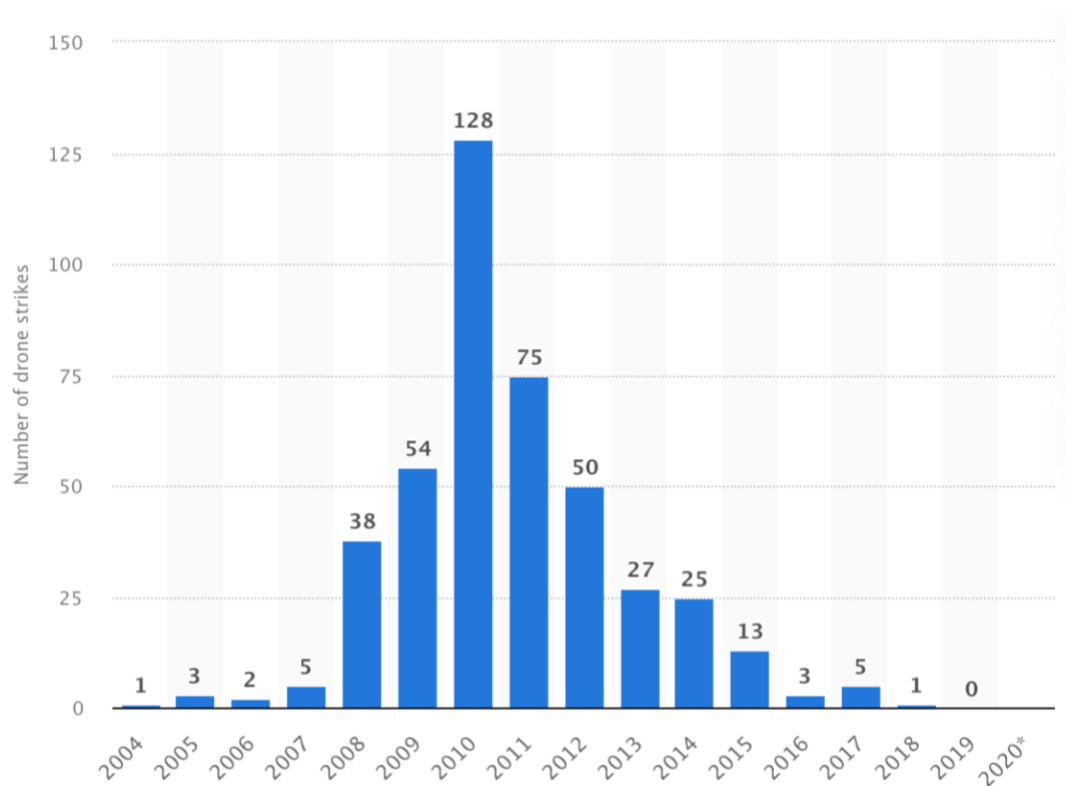

Figure 3 - Number of U.S. drone strikes carried out under CIA command in Pakistan from 2004 to April 2020. Source: Graph data was provided by The Investigative Bureau of Journalism until 2017 (the exact reference corresponds to that of figure 4). The most recent figures were then updated in "U.S. Drone Strikes in Pakistan 2004-2019," Statista (Statista Research Department, May 3, 2021), https://www.statista.com/statistics/428296/us-drone-strikes-in-pakistan/.

The exact number of strikes diverges among sources as the New America reported a maximum of 122 strikes in 2010 whilst the Long War Journal stated a total of 117 for the same year.[303] Precise accuracy however is not relevant for our analysis and the figure presented above was chosen as the most up to date at the time of writing and the only one accounting for both Pakistani and international media.

---

[302] Javier Jordan, "The Effectiveness of the Drone Campaign against al Qaeda Central: A Case Study," Journal of Strategic Studies 37, no. 1 (2014): 4–29, https://doi.org/10.1080/01402390.2013.850422.
[303] Ibid.

A variety of different drones were deployed across the years ranging from the MQ-1 predator and MQ-9 reapers with a lethal payload of Hellfire missiles and two different types of laser-guided bombs respectively.[304] These deadly weapons do not only target combatants and individuals that have been specifically selected but also suspicious behaviour leading to signature strikes in conformity with the preventive strategy. The legitimacy in this regard was secured by drawing broad analogies across time, evoking fear and threats of the past (as already presented in the first chapter):

> During World War II, for example, American aviators tracked and shot down the airplane carrying the architect of the Japanese attack on Pearl Harbor, who was also the leader of enemy forces in the Battle of Midway. This was a lawful operation then, and would be if conducted today. Indeed, targeting particular individuals serves to narrow the focus when force is employed and to avoid broader harm to civilians and civilian objects.[305]

Equating preventive strikes for suspicious behaviour with response to actual military force, implies that many of the attacks reported in the graph had substantial repercussions on civilians, a distinction which we shall consider later on. In the meantime, we can observe a noteworthy augmentation of strikes from 2007 to 2008 with a steady increase until 2010. The reason behind this is a CIA paper of the same year which had assessed that al-Qaeda had increased its militancy primarily in Pakistani tribal areas where it had set its base of operations[306] reaching its apex of menace.[307] Right at the end of his mandate, in order to avoid leaks and make the attack more impactful, President Bush allowed for an exponential decrease in the time lapse that was required between target localisation and actual launch as Pakistan stopped being notified beforehand.[308] This aggressive approach is hardly surprising given the securitization rhetoric that characterized the neoconservative presidency ever since 9/11. What is more worrisome is the continuation of the upward trend that reached its peak at 128 strikes in 2010, mid-way across the new democrat presidency.

The number of drone strikes in the first years of the Obama administration more than tripled those going from 2004 to 2008. Therefore, notwithstanding the rise to power of the political

---

[304] Christopher Drew, "Drones Are Weapons of Choice in Fighting Qaeda," The New York Times, March 16, 2009.
[305] Harold H. Koh, "The Obama Administration and International Law," Annual Meeting of the American Society of International Law, 2010, http://www.state.gov/s/l/releases/remarks/139119.htm.
[306] Such as North and South Waziristan and Bajaur. (Javier Jordan, "The Effectiveness of the Drone Campaign against al Qaeda Central: A Case Study").
[307] Keith Somerville, "US Drones Take Combat Role," BBC News, November 5, 2002.
[308] Ibid.

opposition and not only, the incarnation of all the political ideals antithetical to those brought about by neoconservative ideology, high-tech violence as a means for security was increased. Securitization discourse maintained that same logic that had been adopted throughout the Bush era: "[…] as we shape our response, we have to recognize that the scale of this threat closely resembles the types of attacks we faced before 9/11… These attacks were all brutal; they were all deadly; and we learned that left unchecked, these threats can grow. But if dealt with smartly and proportionally, these threats need not rise to the level that we saw on the eve of 9/11."[309] The constant referral to 9/11 makes the speech act ever more powerful due to its symbolic relevance. Furthermore, it extends the amplitude of the securitization technique as it alludes to the past, brings it to the present and projects it into the future as a threat that can "grow."

The security issue, therefore, is exempted from political differences. The degree to which this occurred is however outstanding as drone strikes multiplied and notwithstanding the words of the new president sustaining that "our operation in Pakistan against Osama bin Laden cannot be the norm,"[310] drone strikes in Pakistan were far from being the exception. As aforementioned, being a conflation of the topics analysed so far, the Pakistani case shows the extent of the securitization effect across space and time. We can define it, in fact, not as a case of simple securitization but the vertex point of a macrosecuritization process. Securitization alone perhaps would have not sufficed to allow such controversial means to be used but macrosecrutization, as the prefix 'macro' suggests, enlarges its impact and extent of legitimacy. Such macro process takes place when a "higher order of securitization embeds itself in such a way as to incorporate, align and rank the more parochial securitizations beneath it."[311] Describing it as parochial would be a euphemism, but the 'dronification' of warfare in Pakistan was undoubtedly one of the most critical moves of the war on terror macrosecuritization process[312] grounded in global exceptionalism. The rhetorical device of labelling the war on terror as a 'long war'[313] enabled all the actors involved in the securitization to treat it as such. The combination of discourse and practices[314] carried out with this prospect built a macro-

---

[309] Barack Obama, "Remarks by the President at the National Defense University" (National Defense University, May 23, 2013).

[310] Obama, "Obama's Speech on Drone Policy."

[311] Buzan and Waever, "Macrosecuritisation and Security Constellations: Reconsidering Scale in Securitisation Theory."

[312] Jordan, "The Effectiveness of the Drone Campaign against al Qaeda Central: A Case Study."

[313] Romaniuk and Webb, "Extraordinary Measures: Drone Warfare, Securitization, and the 'War on Terror.'"

[314] Cornerstone practices in this regard are for instance, the unprecedented and unique invocation of article 5 of the North Atlantic Treaty Organization. Following that, the Proliferation and Security Initiative to whom a total of forty states adhered after it was established by the United Nations. Furthermore, at an EU level, the threat package further testifies the impact of the WoT macrosecuritization.

framework which is temporally extended given the 'long' factor and transnationally spread given that the enemy, 'them,' is a non-state actor that can be essentially anywhere. In fact, in the case of macrosecuritization, the referent object can be at any level therefore it coordinates lower scale securitizing practices embedded in it.[315] For what concerns drone strikes in Pakistan, the referent object is at multiple levels as each one appeals to different audiences. In the first place, depicted as a safe haven of those who had directly attacked the United States, at a micro-level the referent objects are American civilians whose life is threatened by the possibility of future attacks. Secondly, at a meso-level, the referent object is the United States as a nation, due to the fact that Pakistani tribal areas supposedly hosted some of the leaders that had attacked important governmental structures undermining the credibility of the US as a global power. The function of the macrosecuritization process is in fact, also that of enhancing the influence and authoritative legitimacy of the securitizing actor. Finally, at a macro-level, the referent object is the international community, more specifically the values of liberal democracy. Drones, therefore, are a securitized weapons that contribute to ensure the securitization of all these referent objects at different levels. What is so crucial to take into account of Pakistan with respect to, for example, the use of drones in other countries such as Afghanistan, is that even though Pakistan had not been involved in the trigger for the War on Terror, the macrosecuritization process made it one of the major targets of this securitization move. A move that legitimizes the use of violence, the antithetical reality to that perpetual peace[316] sought by liberal democracies.

Academic and technocratic authorities also gave their share of speech acts to contribute to the securitizing process. Here however, contrarily to the political arena, we do witness voices of protest or reticence in resorting to drone strikes.

In favour of the advantages supplied by the high-tech unmanned aerial vehicles was Daniel Byman, Director of the Center for Peace and Security Studies at Georgetown University's School of Foreign Service.[317] Transitioning to the use of drones allowed to shift terrorists' position from an offensive to a defensive one. Additionally, in 2008, Leon Panetta, former director of the CIA, reinforced this argument by affirming that drone warfare was the only

---

[315] Buzan and Waever, "Macrosecuritisation and Security Constellations: Reconsidering Scale in Securitisation Theory."

[316] Immanuel Kant, Perpetual Peace (North Charleston, South Carolina: Createspace Independent Publishing Platform, 1795).

[317] Daniel Byman, "Why Drones Work: The Case for Washington's Weapon of Choice," Foreign Affairs 92, no. 4 (2013).

possible strategy to be adopted against al-Qaeda leaders that finally cannot rely on the tribal regions on Pakistan as being "neither safe nor a haven."[318] However, not all voices have been homogenized to this stance. Counterinsurgency expert David Kilcullen stated that same year that: "[…] Since 2006, we've killed 14 senior al-Qaeda leaders using drone strikes; in the same time period, we've killed 700 Pakistani civilians in the same area. The drone strikes are highly unpopular. They are deeply aggravating to the population. […]."[319]

Even though the CIA keeps on upholding that the killings are surgically precise and therefore has failed to acknowledge civilian casualties, the collateral effects of drone warfare are instead substantial. Not by chance, David Kilcullen made his remark the year in which most non-combatants became drone victims as visible in figure 4.
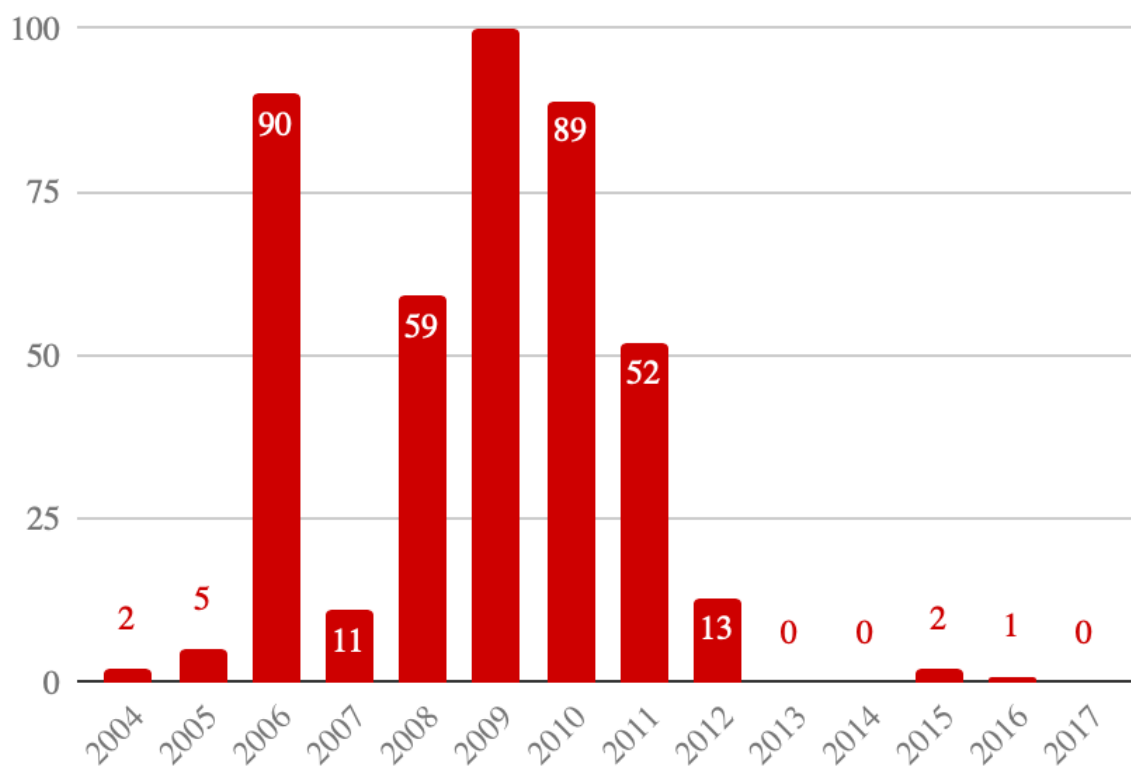

Figure 4 - Pakistan: minimum number of civilians killed in CIA drone strikes, year by year (2004-2017). Source: "Pakistan Drone Statistics Visualised," The Bureau of Investigative Journalism (The Bureau of Investigative Journalism, July 2, 2012), https://www.thebureauinvestigates.com/stories/2012-07-02/pakistan-drone-statistics-visualised. The date provided corresponds to the first time data was published. The data was subsequently updated in the following years as visible in the graph.

---

[318] Cable News Network (CNN), "U.S. Airstrikes in Pakistan Called 'Very Effective,'" CNN.com, May 18, 2009, https://edition.cnn.com/2009/POLITICS/05/18/cia.pakistan.airstrikes/.
[319] U.S. Government Publishing Office, "Effective Counterinsurgency: The Future of the U.S.-Pakistan Military Partnership," House Hearing, 111 Congress www.govinfo.gov, April 23, 2009, https://www.govinfo.gov/content/pkg/CHRG-111hhrg52666/html/CHRG-111hhrg52666.htm.

The fact that the number of civilians killed showed in the graph is the minimum is worrisome both during the Bush (where in 2006 there were 90) and during the Obama administration (where in 2009 and 2010 there were 100 and 89 respectively[320]), especially in consideration of the fact that the number should be, at least close to, zero. When making our considerations, we must account for the fact that the data reported in the graph has been retrieved from the same source (with an update reported from Statista) as the previous one due to its accountability and because graphic illustration is visually more impactful. However, in order to avoid possible biases, by relying also on the table below, we can compare the statistics of The Bureau of Investigative Journalism (TBIJ) with other sources.

	The Bureau of Investigative Journalism	New America Foundation	Government of Pakistan**
Number of Strikes	383*	370	330
Total Killed	2296-3718	2080-3428	2200
Civilians Killed	416-947	258-307	400
Militants Killed		1623-2787	
Children Killed	168-202		
Injured	1089-1639		
Others (non-combatants; unconfirmed identities)		199-334	200

*Figure 5 - Data comparison on drone strikes (2004-2014). *According to a Special Rapporteur, Office of the High Commissioner of Human Rights.*
Source: Zoha Waseem, "Drones series, Part I: Pakistan's decade of drones (2004-2014)" Strife, April 8, 2014, https://www.strifeblog.org/2014/04/08/drones-series-part-i-pakistans-decade-of-drones-2004-2014/.

Whichever the source adopted, it is clear why drone warfare has triggered a lively debate even among security and terrorism experts. It is particularly important that this debate takes place within the security realm and not only in contrast to the humanitarian one because it can instigate future de-securitization processes which we shall discuss in the final chapter. By considering figure 5 where the minimum reported number of civilians killed have been 258 (according to the New America, formerly New America Foundation) and the maximum were 947 (according to the TBIJ[321]), we can conclude that 'surgical accuracy' is not the most appropriate term when referring to drone strikes. Looking at the magnitude of the numbers overall also leads us to comprehend why we can talk about macrosecuritization. The decade of drone strikes in Pakistan is an important, but not the only securitization move that has been

[320] TBIJ, "Pakistan Drone Statistics Visualised," The Bureau of Investigative Journalism, accessed July 8, 2022, https://www.thebureauinvestigates.com/stories/2012-07-02/pakistan-drone-statistics-visualised.
[321] Zoha Waseem, "Drones Series, Part I: Pakistan's Decade of Drones (2004-2014)," Strife, April 8, 2014, https://www.strifeblog.org/2014/04/08/drones-series-part-i-pakistans-decade-of-drones-2004-2014/.

enabled by this framework. If only one among its practices can cause such damage and death, the exceptionalism in which it is embedded could corrode liberal democracy indefinitely. In light of this, the next section will analyse specifically which Western values and rights were violated in Pakistan and how this contributed to cause long lasting repercussions.

B. The Paradox of the Use of Force – Repercussions on the Rule of Law

> […] America's actions are legal. We were attacked on 9/11. Within a week, Congress overwhelmingly authorized the use of force. Under domestic law, and international law, the United States is at war with al Qaeda, the Taliban, and their associated forces. We are at war with an organization that right now would kill as many Americans as they could if we did not stop them first. So this is a just war — a war waged proportionally, in last resort, and in self-defense.[322]

The words of President Obama framing the 'dronification' of warfare in Pakistan are the ultimate manifestation of the macrosecuritization process. The former President clearly labels it as a legal action, not only legitimate. Something that remains within the bounds of the rule of law. Resorting to the lexicon used in the third chapter, this would refer to a state of emergency rather than one of exception. The rhetoric used is one that resonates with the standards set by international law. This was a necessary criterion especially following the presentation of the Special Rapporteur interim report that spurred the UN General Assembly to formulate resolution 68/178 requiring the compliance with the Charter, human rights and international humanitarian law as a whole, whilst fighting terrorism.[323] UAVs were therefore included among the measures that had to respect international law obligations according to paragraph 6 of the resolution.[324] To maintain a façade that conforms to such obligations, the legal jargon adopted in the President's performative act is that of a 'just' war. A just war is, *nomen omen*, a war that is rightfully fought. This term refers to a war that respects norms around which the Western world has built its regulations of the use of force. Such conception finds its roots in the ancient European empires which customarily respected laws of war. However, such laws were only properly formulated in the 20th Century with the League of Nations where they were distinguished as *jus ad bellum*, conditions that must be met before engaging in war, and *jus in bello,* regulation of the conduct of the warring parties.[325] At a theoretical level, conformity to such norms is the only use of violence legally acceptable by the liberal democratic order. They are in fact formalized by the Hague and the Geneva Convention.

---

[322] Barack Obama, "Obama's Speech on Drone Policy," The New York Times, May 23, 2013, https://www.nytimes.com/2013/05/24/us/politics/transcript-of-obamas-speech-on-drone-policy.html.
[323] Ben Emmerson, "Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism" (Human Rights Council, 25th session, agenda item 3, March 10, 2014), https://webcache.googleusercontent.com/search?q=cache:fkY4AtTtukUJ:https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A-HRC-25-59.doc+&cd=19&hl=it&ct=clnk&gl=it&client=safari.
[324] Ibid.
[325] Robert Kolb, "Origin of the Twin Terms Jus Ad Bellum/Jus in Bello - ICRC," International Review of the Red Cross, October 31, 1997, https://www.icrc.org/en/doc/resources/documents/article/other/57jnuu.htm.

A moral argument would also point out the fact that it can occur that one of the two 'jus' in question are respected whilst the other is not.[326] This would be equivalent either to the commencement of a just war in conformity with the *jus ad bellum* that employs illicit means, or to the resorting to a war that is not just but during which the law of war is pursued in line with the *jus in bello*.[327]

The issue with the Pakistani case is that both set of norms are undermined. In fact, notwithstanding the afore cited speech, the President also explicitly stated that: "[…] in an age when ideas and images can travel the globe in an instant, our response to terrorism can't depend on military or law enforcement alone. We need all elements of national power to win a battle of wills, a battle of ideas."[328] Using terminology that belongs to the metaphor on war, such as 'battle', the speech states that law enforcement is not sufficient to put up a fight. This is also applicable for the law of war which is not accounted for in the fight on terror.

With reference to the *jus ad bellum*, as clearly stated in Chapter II, article 2(4) of the Charter of the United Nations regulates the use of force which, above a minimal level,[329] is explicitly prohibited.[330] The two exceptions provided by Chapter VII, namely the authorization provided by the Security Council and the use of self-defence, have been widely interpreted in the context of securitization frameworks, especially the latter, which set the legitimacy bar much lower. However, as many liberal democracies embedded in common law tradition such as the United States themselves rely on the use of precedent for the interpretation of law, it is important to account to what extent the limitation of article 2(4) can be used. Especially because bypassing such article implies a suspension of both the prohibition of the use of violence and the respect of state sovereignty. The violation of the latter was often justified through mediatic means by appealing to a belligerent rhetoric that once again, relied on past fears of the audience, the American *demos*: "[…] the government [Pakistan] has been harking on about how the drones are in violation of Pakistan's sovereignty- the double standards are mindboggling; our sovereignty was compromised the moments we allowed foreign fighters to use our soil to

---

[326] Walzer Michel, Just and Unjust Wars: A Moral Argument with Historical Illustrations (New York: Basic Books, 1977).
[327] Ibid.
[328] Barack Obama, "A Just and Lasting Peace" (The Nobel Foundation, December 9, 2009).
[329] Mary Ellen O'Connell, "Unlawful Killing with Combat Drones: A Case Study of Pakistan, 2004-2009," Social Science Research Network, November 6, 2009, 13.
[330] United Nations Charter (1945) art 2(4).

launch attacks in Afghanistan and our own citizens. […] we must have the courage to call spade a spade."[331]

However, the use of rhetoric alone is not sufficient to provide the necessary legal support to justify such actions. By referring to the case law of the International Court of Justice for instance, the Nicaragua case dating back to 1986 is a fundamental lens in the interpretation of self-defence.[332] Use of force in response to an attack, only has a legal basis if the attack is an armed one. Acts which are related to the possibility of the use of force but do not explicitly put it into practice cannot be regarded as a justification for self-defence.[333] Secondly, the Court also ruled on the issue of incidents considered cumulatively, as could be those of past and future terrorist attacks, which do not allow to resort to the use of force.[334] Moreover, self-defence cannot be legalized as a reaction to a non-state group aggressor as decided in Congo v. Uganda.[335] Finally, self-defence does not even relate to the situation of Pakistan as it was neither directly nor indirectly involved in the terrorist attacks of 9/11. In this regard, it is also important to consider mediatic coverage that counters the securitization discourse by framing the issue in the opposite way highlighting these legal deficits: "These attacks which have suddenly increased since December 16, 2014, are decidedly illegal, immoral and they undermine the country's sovereignty [...] if we endorse these attacks because they kill our enemies we would only be according a legal status in international law [...] to the US or any other country the right to undermine our sovereignty."[336]

The statement highlights how the violation of Pakistan's sovereignty is particularly dangerous as it sets a new precedent, one that manipulates the criteria for the use of force and extends them across space, to the US and 'any other country'. This was undoubtedly rendered more feasible due to the use of UAVs, securitized measures under the pretence that their lack of human presence does not constitute a physical entry in Pakistan's territory exonerating them from being deemed as a sovereignty violation.

---

[331] "Daily Times, February 8, 2014" in Akber Ali, "Elite Pakistan Press Discourse on US Drone Policy," Pakistan Journal of Humanities and Social Sciences 5, no. 2 (2017): 124–39, https://doi.org/10.52131/pjhss.2017.0502.0027.

[332] Military and Paramilitary Activities (Nicaragua v. U.S.), 1986 I.C.J. 14, 195, 230 (June 27).

[333] Ibid.

[334] "Even taken cumulatively, and reserving, as already noted, the question of Iranian responsibility, these incidents do not seem to the Court to constitute an armed attack on the United States of the kind that the court, in the case concerning Military and Paramilitary Activities in and against Nicaragua, qualified as a ―most grave‖ form of the use of force," Oil Platforms (Iran v. U.S.) 2003 I.C.J. 161, 191 (Nov. 6).

[335] Armed Activities on the Territory of the Congo (Congo v. Uganda) 2005 I.C.J. para. 301 (Dec. 19).

[336] "The Express Tribune, February, 1, 2015" quoted in Ali, "Elite Pakistan Press Discourse on US Drone Policy."

Concerning the *jus in bello*, instead, we must acknowledge that especially in the light of the fact that we are dealing with normative systems ideated by liberal democracies, it is crucial to maintain the respect of human rights even in situations of armed conflict. Once again, mediatic performance did not convey this legal aspect of the war taking place where instead drone operations were justified for being result-oriented:

> It has always been the case that our government representatives have said one thing in front of the public to placate the masses but have always remained silent behind the scenes when it comes to the drone strikes. That is because they themselves know that drones will get the job done they are too scared of doing themselves, done. If applied at right time [drones] can be very effective.[337]

Such rhetoric does not meet legal requirements of the liberal order. Effectiveness is hierarchically placed above morality and ethics appealing to the rule of security that thrives on fear rather than the rule of law. Lack of transparency is in fact depicted as an asset for drones to "get the job done" notwithstanding the fact that it does not conform to a democratic regime. Here in fact, voices in the media also denounced this aspect which impeded for the liberal democratic political system to take place: "Drones have always been in the shadows, but the time may be right for a little light to be shed and for the government to bring some clarity to an otherwise opaque issue,"[338] and, "CIA continues to send in its armed drones with tacit permission from our premier intelligence agencies, our civilian administrations are morally and ethically free to continue to condemn the attacks."[339]

Opaqueness is antithetical to the democratic process and the call to civilian administrations emphasizes how moral and ethical standards are disregarded. Protecting human rights in fact, should remain a paramount objective for liberal democracy. This implies that no matter the magnitude of the emergency taking place, it is the duty of nation states to comply to certain principles set out by humanitarian law from which exception is supposedly not conceived. Such principles are undoubtedly part of customary law, but they have also been explicitly recognized in the review of customary international law which the International Committee of the Red Cross (ICRC) published in 2005.[340] Even though the review sets out both international and

---

[337] Daily Times, Sept 26, 2014 quoted in Ali, "Elite Pakistan Press Discourse on US Drone Policy."

[338] The Express Tribune, May 24, 2015, quoted in, Ibid.

[339] The Express Tribune, July 11, 2016, quoted in, Ibid.

[340] Jean-Marie Henckaerts and Louise Doswald-Beck, "Customary International Humanitarian Law, Volume I, Rules," International Committee of the Red Cross (Cambridge University Press, New York, 2005), https://doi.org/10.1163/090273509x12506922106795.

non-international rules distinctly, some common principles are to be respected in both cases. Such principles are the renowned necessity, proportionality and discrimination.[341] The speech opening this section, alludes to these rule of law principles as legitimators of the technological warfare when instead they too are victims of the strikes. The principle of military necessity "permits measures which are actually necessary to accomplish a legitimate military purpose[342] and are not otherwise prohibited by international humanitarian law."[343] Even though it is debatable whether the military purpose of the drone warfare conducted by the United States was legitimate, the last aspect is certainly not respected. The International Covenant on Civil and Political Rights (ICCPR) articulates how in situations where a non-state actor, group or individual seeks to gain power, a government does not have the right to deprive him/her/them of their life: "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."[344]

Furthermore, the ICCPR also acknowledges the possibility of derogation from certain rights in situations of emergency in article 4(1),[345] something that the United States could have claimed in the securitized context of the war on terror. However, in the second paragraph of the same article it also emphasizes that: "No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision,"[346] where article 6 concerns the right to life. How are these articles crucial in relation to the situation in Pakistan? This is because even if Pakistan had hypothetically openly or covertly requested the assistance of the United States, an intervening state is only allowed to use the same amount of force as that consented to the requesting state.[347] This implies that by no means could the US derogate from the right to life as the Pakistani government itself did not have this option.

In addition to this, the simple fact that we cannot label the drone war in Pakistan as a 'war of necessity'[348] since the survival of the US was not at stake nor, in relation to the *jus ad bellum*

---

[341] Ibid.

[342] This point is particularly debatable in relation to the fact that drone attacks are fuelling anti-Western sentiments. The military purpose is in fact unachievable if more violence is triggered by drone warfare and hatred towards liberal democracies increases.

[343] International Committee of the Red Cross Glossary, "Military Necessity," How does law protect in war? - Online casebook (casebook.icrc.org, 2015), https://casebook.icrc.org/glossary/military-necessity.

[344] International Covenant on Civil and Political Rights, UN GAOR Supp. No. 16, at 52, UN Doc. A/6316 (1966), art 6.

[345] International Covenant on Civil and Political Rights, UN GAOR Supp. No. 16, at 52, UN Doc. A/6316 (1966), art 4(1).

[346] International Covenant on Civil and Political Rights, UN GAOR Supp. No. 16, at 52, UN Doc. A/6316 (1966), art 4(2).

[347] Mary Ellen O'Connell, "Unlawful Killing with Combat Drones: A Case Study of Pakistan, 2004-2009."

[348] Richard N. Haass, War of Necessity, War of Choice: A Memoir of Two Iraq Wars (Riverside: Simon & Schuster, 2009).

criteria, was it responding in self-defence as a "last resort" as claimed by the President, makes it a 'war of choice.'[349] The term 'choice' associated to the use of force in a liberal democratic context is per se oxymoronic given that the latter is by all means avoided according to the values the liberal order stands for. Even though this is not a legal argument, it is a consideration which complements the rationale under law violations showing how the rule of law is being threatened by the fact that its own principles are not guiding the actions of its advocates.

Moving on the principle of proportionality, this serves to determine the intensity and the magnitude of military action.[350] Given the asymmetrical nature of drone warfare, respecting this criterion should be more feasible. By surpassing the limit of the *Nebel des Krieges[351]* that Clausewitz used to describe the uncertainty caused by the fog of battle, the United States supposedly managed to employ high-tech weapons within the proportionality bound set by law. This would be undoubtedly true if the surgical accuracy we previously mentioned were to be respected. In this case, the proportionality principle as laid out by humanitarian law in the Geneva Convention would be upheld: "Among others, the following types of attacks are to be considered as indiscriminate: […] an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated."[352]

This concept is reinforced in the 2005 review of the ICRC which uses the same wording as the Geneva Convention in rule 14 emphasizing that such type of attack "is prohibited."[353] As stated in the beginning, the excess referred concerns both intensity and magnitude therefore the quantity of force and its geographic scope.[354] The latter is evidently violated as the attacks were expanded in a region far outside the original target of the war on terror. The former, which should have been mitigated by technological accuracy, was also disregarded as the empirical data summarized in the graphs in the previous section demonstrate that the number of casualties resulting from the attacks was not that low. In this regard, the concept of proportionality is intertwined with that of discrimination. The constant referral to civilians in defining the respect of proportionality highlights how it cannot be applied without the respect for discrimination

---

[349] Ibid.

[350] International Committee of the Red Cross Glossary, "Proportionality," How does law protect in war? - Online casebook (casebook.icrc.org, 2011), https://casebook.icrc.org/glossary/proportionality.

[351] Carl Von Clausewitz, On War (Princeton University Press, 1832).

[352] Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, art 51 5(b). The concept is reiterated in article 57.

[353] Jean-Marie Henckaerts and Louise Doswald-Beck, "Customary International Humanitarian Law, Volume I, Rules," Rule 14.

[354] Mary Ellen O'Connell, "Unlawful Killing with Combat Drones: A Case Study of Pakistan, 2004-2009."

(or distinction). The latter is probably the most relevant principle in relation to the Pakistani case. This principle is acknowledged several times in international humanitarian law[355] and, not by chance it is the first rule presented by the International Committee of the Red Cross: "The parties to the conflict must at all times distinguish between civilians and combatants. Attacks may only be directed against combatants. Attacks must not be directed against civilians."[356]

Rule 1 summarizes articles which refer both to situations of international and non-international[357] armed conflict implying that in any circumstance, when the use of force is employed, it cannot target victims that are not directly involved in the conflict militantly. The articles outlining the principle of distinction are very clear on the status of protection granted by civilians which is further reinforced by the principle of proportionality (and to some extent also that of necessity given the fact that it requires for measures to comply to international humanitarian law). Given the weight attributed to distinction in wars fought by liberal democracies, it is easily understandable why the key securitization term in legitimating the 'dronification' of warfare was that of 'accuracy.' Exempting UAVs from being responsible of innocent victims made their use of force justifiable, a violence for the greater good, that of security. By relying on empirical data however, we have already witnessed how such accuracy is a myth. Figure 3 in section A of this chapter clearly illustrates that the minimum number of civilians killed during the attacks on Pakistan is substantially above zero. Furthermore, these results have been shared by all kind of sources, even those that could potentially have a bias and no interest in proving that civilian casualties have reached a two-digit threshold. This data testifies to violation of both liberal democratic principles and rights. In the first place there is a

---

[355] The first time it was in the St. Petersburg Declaration stating that "the only legitimate object which States should endeavor to accomplish during war is to weaken the military forces of the enemy" (St. Petersburg Declaration, preamble (cited in Vol. II, Ch. 1, § 83)). Now however, the Geneva Convention codified it in three different articles of Additional Protocol I. "In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives." (Art 48)
"The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited […]," (Art 51(2)).
"Attacks shall be limited strictly to military objectives […]", (Art 52(2)).
[356] Jean-Marie Henckaerts and Louise Doswald-Beck, "Customary International Humanitarian Law, Volume I, Rules," Rule 14.
[357] This would be the case for Art 13(2) of Additional Protocol II of the Geneva Conventions relating to the Protection of Victims of Non-international Armed Conflicts: "The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited."

violation of discrimination (and proportionality). Secondly, due to the lack of data on the precautions taken by the United States when a target is deemed not to be a civilian according to the drone operator[358] together with the frequent employment of signature strikes, targets can be killed with no identification process nor any access to a fair trial. Not only is this a violation of one of the most basic liberal constitutional rights, but it is also part of international law: "All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law […]."[359]

Article 14(1) of the ICCPR requires the establishment of a time lapse between the aim to the target, or to the critical circumstance, and the actual 'punishment', if so we may call it. This is further emphasized in the second paragraph stating that: "Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law."[360]

The problem with UAVs is that Pakistani civilians are not only somehow unjustly accused of crimes they did not commit, they are also instantly condemned with the death penalty. This was demonstrated, for example, in March 2011 in Datta Khel where drones had deemed to have identified suspicious heat signatures striking a minimum of 19 to 30 civilian victims on the spot.[361]

Of course, the macrosecuritized context of a major war presumes to suspend such rights transnationally due to the international emergency. The duration and geographical exceptional expansion of such status implies a disregard for fundamental rights which is to be expected given the violent nature of war. But the principles governing the law of war should not be violated even in emergency circumstances due to the fact that they are purposefully directed to such situations. Instead, the 'collateral effect' of civilian casualties during drone warfare violates all the principles of the *jus in bello* leading to further use of force. By looking back at the end of the speech we quoted in the previous section by David Kilcullen concerning the effect of the attacks on civilians, we can identify the major issue that is arising from the large margin of error of these high-tech weapons: "[…] The drone strikes are highly unpopular. They

---

[358] Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, art. 57(2).
[359] International Covenant on Civil and Political Rights, art 14(1).
[360] International Covenant on Civil and Political Rights, art 14 (2).
[361] Gregoire Chamanyou, Théorie Du Drone (Paris: La Fabrique éditions, 2013).

are deeply aggravating to the population. And they've given rise to a feeling of anger that coalesces the population around the extremists and leads to spikes of extremism."[362]

Kilcullen's words summarise the counter productiveness of drones, especially regarding the use of force. It appears that instead of diffusing liberal democratic values, the United States is giving life to a 'siege mentality'[363] which acts as a recruitment mechanism in favour of extremism.[364] Witnessing useless and innocent life loss provoked by those exporting liberal democratic values radicalizes Pakistani civilians towards an antithetical ideology with respect to the murderers. The result is even more use of force as a response and the protraction of conflict in the future. This brings us back to a further violation of the principle of necessity as, due to the fact that the military objective of defeating 'them' to obtain peace is reversed, we cannot really consider it legit.

At this point, our question is why? Why would the very country which advertises Western values as being emblemized in its stars and stripes voluntarily destroy everything it stands for? Why would the United States abrogate the rule of law which made it the land of freedom and rights in a country that represented no direct menace to such rights? And why would it resort to violence to obtain the opposite reaction from what it was aiming for?

Here lies the paradox of the use of force which, to some extent, we could consider the paradox of liberal democracy itself. To better explain it, we shall borrow a concept from that of democratic peace theorists, or rather to their critics: antinomies.[365] The concept of antinomy is defined by Mueller as "a law-like preposition from which a secondary proposition and its very opposite can be deduced."[366] This term was attributed to the behaviour of democracies which is ambivalent: democracies are promoters of peace until they are among themselves, until they deal with 'us.' They do however have a tendency to adopt a belligerent behaviour towards 'them' to the point that we can talk about "democratic wars."[367] The implications of such antinomic *modus operandi* implies that democracies are characterized by non-violent but also

[362] Kilcullen, "Effective Counterinsurgency: The Future of the U.S. Pakistan Military Partnership."

[363] David Kilcullen and Andrew McDonald Exum, "Death from Above, Outrage down Below," The New York Times, May 17, 2009, sec. Opinion, http://www.nytimes.com/2009/05/17/opinion/17exum.html.

[364] Ibid.

[365] Harald Müller, "The Antinomy of Democratic Peace," International Politics 41, no. 4 (2004): 494–520, https://doi.org/10.1057/palgrave.ip.8800089.

[366] Matthew Evangelista, Harald Müller, and Niklas Schörnig, Democracy and Security: Preferences, Norms and Policy-Making (London: Routledge, 2008).

[367] Anna Geis, Lothar Brock, and Harald Müller, Democratic Wars: Looking at the Dark Side of Democratic Peace (Basingstoke: Palgrave Macmillan, 2006).

violent behaviour. Both are in fact "democracy-specific."[368] The paradox is therefore the outcome of the dual nature that has characterized modern liberal democracies since 1945. When the United States began the drone warfare in Pakistan, it was manifesting such paradox. It exploited the use of force, the most exceptional measure, to *secure* the liberal democratic values it represented, that had been undermined by 'them.' It did so in the name of liberal democracy, but by using force, it did not respect liberal democratic principles, therefore it is more coherent to say that it did so in the name of security. The paradox is therefore manifested as the intersection between the antinomic essence of liberal democracy with the securitization process. By setting universal objectives, liberal democracy has built a self-destructive mechanism within its purpose. To export its values globally, it is forced to violate them, it is forced to auto-destruction. Securitization is the tool that has been used to set this destruction in motion. Its effectiveness derives from the fact that it is tailor-made to survive in liberal democracy as its ruins deteriorate beneath it. It feeds on the "dark side"[369] of liberal democracy promising the *demos* to thrive in a liberal world. It legitimates practices that counter the rule of law in favour of the rule of violence.

To summarise what we have analysed in this case study, the rule of violence has been the normative framework governing the US-led drone strikes in Pakistan. The new set of norms enabled by the macrosecuritized environment of the war on terror tipped the behaviour of the United States towards its belligerent side. This set of norms cannot be considered part of a state of emergency as they expand in time and space beyond its scope and do not align with any of the principles of the rule of law. They include:

- Suspension of fundamental rights, specifically the right to life[370]
- Undermining of the principle of sovereignty[371]
- Violation of the *jus ad bellum*[372]
- Rewriting of the *jus in bello*[373]

---

[368] Frank Sauer and Niklas Schörnig, "Killer Drones: The 'Silver Bullet' of Democratic Warfare?," Security Dialogue 43, no. 4 (2012): 363–80, https://doi.org/10.1177/0967010612450207.

[369] Anna Geis, Lothar Brock, and Harald Müller, Democratic Wars: Looking at the Dark Side of Democratic Peace.

[370] Even though we took into consideration other rights, this is undoubtedly the most severe violation.

[371] The fact that drones are 'unmanned' cannot authorize the entry of a lethal weapon in a foreign territory, especially considered the damage it caused to the population.

[372] In this case we can consider an explicit violation as there was no legal basis supporting the attack

[373] We can talk about 'rewriting' due to the fact that if drones lived up to the standards they were originally set to respect, the principles of necessity, proportionality and discrimination could potentially have been respected. The principles were therefore dimensioned according to the needs of the US.

- Violation of the use of force → New standard of the use of force[374]

In short, this set of violations are part of a major repercussion of securitization on the rule of law: 'normative' frameworks where law stopped ruling. The new 'norms', if so we can call them are in other words the exception. Derogating from the right to life, the most basic, inalienable human right, establishes a precedent to legitimize any kind of minor exception, in all spaces and at all times. The same goes for the use of force: using it as a first rather than last resort sets a new, much lower, standard to be respected. What is worse, the United States has not concretely been held accountable for its actions granting it impunity. This exempts it from the sanctions regime it should be subject to according to the rule of law. Under the rule of security such sanctions cannot exist as they would impede the impact of securitization.

By ruling through exception in Pakistan, the United States is exporting exceptionalism, not liberal democracy. It is securing non-liberal, anti-democratic values and legitimizing them globally. In doing so, it is potentially paving the way for the rule of security to install itself permanently. Securitization has been exploited as a weapon, more deadly than any drone, and its target is liberal democracy.

---

[374] Such standard, for instance, opened the debate for the legalisation of autonomous lethal weapons. A step further with respect to drones, these killing machines are characterised by humans being out of the loop rather than in the loop (See Markus Wagner, "Taking Humans out of the Loop: Implications for International Humanitarian Law," Journal of Law, Information & Science 21, no. 2 (2011), https://doi.org/10.5778/jlis.2011.21.wagner.1.). Even though this technology is yet to be fully developed, the only fact that liberal states are discussing on which norms could regulate independent machines which can decide on matters of life and death creates an ethical and legal dilemma whose advocates are supported by a securitized environment which 'welcomes' the use of force.

Concluding Remarks: Desecuritizing in the Name of Liberal Democracy

As we move away from the specificity of the previous chapter, we can extend its conclusions from the particular to the general (which leads us to consider the potential permanence of the rule of security above the rule of law). Choosing Pakistan as a case study was relevant for this thesis as it perfectly responded to our analysis. We are however aware of the fact that such type of operations are, once again, not the exception. The Pakistani case had undoubtedly weaker justifications with respect to other countries that could legitimize the international law violations of the United States. At the same time, the case constitutes only one among the multiple situations in which securitization attacked liberal democracy, each constituting a milestone for global exceptionalism. A situation which has become so frequent and normalized that it is the new reality of the liberal international order, an order which has barely any 'liberal' left in it. The paradox of the use of force of liberal democracy that is legitimized abroad makes it compatible with the rule of law in the eyes of the audience, liberal democratic citizens. Even though these explicit deadly means are outside the liberal normative framework, their acceptance makes them a routine that is translated in more subtle violations within Western borders, as we witnessed in previous chapters. Necro-politics is slowly but steadily expanding at home as it has for centuries governed abroad. The 'us' are digging their own grave right next to 'them.' It is therefore a priority for the West to put in place a counter measure to survive, and perhaps bring the 'rest' back to life: desecuritization.

In a way, the most interesting about a speech act is that it might fail. And this is an essential part of its meaning… In our context this is clearly the case: the invocation of "security" is only possible because it invokes the image of what would happen if it did not work. And not only this (…): the security speech act is only a problematic and thereby political move because it has a price. The securitizer is raising the stakes and investing some (real) risk of losing (general) sovereignty in order to fence of a specific challenge. In the present [poststructuralist] usage of speech act theory the meaning of the particular speech act is thus equally constituted by its possible success and its possible failure--one is not primary and the other derived.[375]

It only seemed right that as our first chapter began by presenting the securitization theory as proposed by the Copenhagen School, our last chapter should go back to that same school to

---

[375] Ole Wæver, "Securitization and Desecuritization," in On Security (New York: Columbia University Press, 1995), 46–86.

direct liberal democracy towards the opposite direction. Exploring this possibility is not an encouragement or a suggestion but an urgent cry for help coming from the ruins of what is left of liberal democracy. Such ruins are indeed in a critical position as they are overwhelmed by the hegemony of the securitizing actors that gain their authority through liberal democratic mechanisms themselves. These ruins are, however, supported by the antinomic reality of liberal democracy which does not only operate in the context of violence. It also, in fact, seeks to securitize on the one hand and to desecuritize on the other. If we refer back to the original securitization spectrum of figure 1 in the first chapter, we can observe how an issue goes from the non-politicized, to the politicized, and finally becomes securitized. For the purpose of our initial explanation, the arrow was only marked towards a single direction implying that once the securitization stage is reached, it is final. Even though de-securitizing can be a difficult move, especially when we are talking of macrosecuritized environments such as our case study where securitized practices are part of a larger institutionalized process, it can occur. What Wæver states in relation to the above citation is that a speech act is not necessarily successful. For most of this thesis we have in fact highlighted the power of security performances and how these resulted into impactful practices, but this is not always the case. Not only can a speech act fail, but it can also be reversed. More importantly, Wæver advocates in favour of this reversal in order to reach a state of non-security or a-security[376] lacking restrictive measures.[377] Essentially the de-securitization exists as a process (or rather a solution) that can take place after that securitization has occurred meaning the arrow of figure 1 is a two-way arrow. If we expand the diagram to the aspects of securitization we analysed in the following chapters, figure 6 is more representative of what occurs in relation to liberal democratic law (the constitution) and the state of emergency.

---

[376] This status is very different from insecurity where a threat exists but there are no measures that can guarantee safety against it.
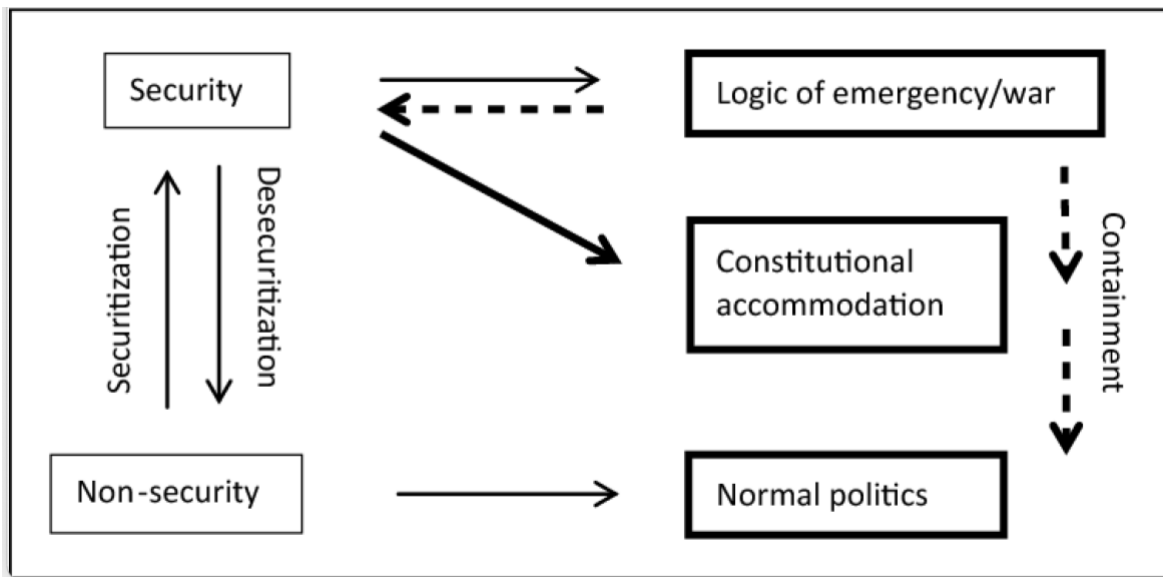[377] Wæver, "Securitization and Desecuritization."

Figure 6 - The constitutional dimension of securitization and desecuritization.
Source: Tine Hanrieder and Christian Kreuder-Sonnen, "WHO Decides on the Exception? Securitization and Emergency Governance in Global Health," Security Dialogue 45, no. 4 (June 10, 2014): 331–48, https://doi.org/10.1177/0967010614535833.

It is important to remark a couple of details of the figure. The first is the relationship between the state or 'logic' of 'emergency/war' that leads (with a nuanced dotted trajectory) to constitutional accommodation and normal politics. This shows the penetration of the exceptional in the norm, an aspect we widely discussed in chapter III, and then in everyday routine as part of a political reality. The illusion that debate around the issue still exists allows to keep the issue securitized as if it were a 'non-security' issue that also has a direct connection with 'normal politics'. Another point to take into account is that there is no direct relationship between securitization and normal politics which are separated by the normative realm and legitimating steps that create a link between the two.

As we can observe, all the elements taken into account by this conceptualization of securitization and desecuritization are always dependent on security and on its relationship with norms and politics. More precisely, its relationship with a liberal democratic understanding of norms and politics where the former are identified as the constitution and the latter as debate occurring among citizens with equal civil and political rights. Conceiving desecuritization in these terms remains therefore very Western and implicitly keeps on feeding on the 'West' against 'the rest' narrative. Reaching 'asecurity' is simply dependent on the issue itself losing its threatening image or a perceived change in relationship with the issue which makes it

trustworthy.[378] Both possibilities are thought of in relation to the securitizing actor and the audience's perception, both belonging to Western society, which shift an issue out of the 'logic of emergency' back to 'non-security' and finally to 'normal politics.' Everything remains in the hands of liberal democratic citizens and their leaders, just as for securitization.

However, as our understanding of securitization did not stop with first generation scholars' theories on the securitization process, our analysis of desecuritization will also expand beyond this. This means that for this chapter, the normative dimension of liberal democracy will leave the stage to the political (and judicial) one. For law to re-establish its ruling power, it is necessary to re-define the political debate that norms are supposed to protect but has instead been lost as the rule of law was suspended. To do so, we shall question what we highlighted in relation to the figure showing that the relationship between security, norms and politics is a lot more complex. Furthermore, we shall introduce other important elements of de-securitization in order to make it relatable to our study and understand whether it can actually propose viable solutions for liberal democracy.

Even though the focus of our study revolved around security and its legal implications, politics is a very important component at this point. Until now, we always talked about de-politicizing therefore there was no use in analysing this aspect as the aim of the rule of security was to evade politics which translated in evading the rule of law. *Ça va sans dire*, that the opposite process of desecuritization relies on the political as much as securitization relies on the exceptional. As afore stated, the political has mostly been associated with practices that only involve liberal democratic citizens. This limit would be acceptable if we were dealing uniquely with a situation of national securitization. However, as stated multiple times in the third and fourth chapters, this is definitely not the case. The macrosecuritized framework triggering the global emergency we are set in, does not give us the luxury of remaining within our 'comfort zone' in taking into account only what we are familiar with: the West. The most important political actors in this regard, especially in relation to our case study which took place outside of liberal democratic boundaries, are the 'others.' "Politics exists when the natural order of domination is interrupted by the institution of a part of those who have no part."[379] Those who have no part, are those that are governed with exceptional measures, those whom we can very

---

[378] Andrea Oelsner, "(De)Securitisation Theory and Regional Peace: Some Theoretical Reflections and a Case Study on the Way to Stable Peace," EUI WORKING PAPERS, 2005.

[379] Jacques Rancière, Dis-Agreement: Politics and Philosophy (Minneapolis: The University of Minnesota Press, 1999).

easily compare to what Agamben described as living in 'bare life.'[380]What is interesting about Rancière's affirmation above is that it completely defies Agamben's conception. According to the latter, the corpses ruled by exceptionalism are deprived of their rights and freedoms, and with that, of their voices and of their faculty of participating in political life. On the contrary Rancière states that theirs are the only voices, without them there is no politics. By being excluded from the political debate that takes place within the state, 'those who have no part' are spared from the constraints of the social contract[381] whose procedures are the end of politics.[382] The outsiders, whose voices are silenced within the systems of the state, are the only ones that are not oppressed by the sovereign order. Their status of exclusion is also a status of power. This is because it is this very status that endows them with the will and possibility of challenging and resisting. It endows them with the faculty of doing politics. Compromise is antithetical to politics that must instead give rise to contrast and disagreement.[383]

Conceiving politics as such, puts 'those who have no part' in a position of privilege. Regarding our case study, these would be the Pakistani people themselves but in the overall macrosecuritized framework of the 'us' vs 'them' narrative, it is 'them' who have such privilege. Paradoxically, those who are ruled by exception are also free from the rule of law and free to implement debate. They are the key to re-politicizing and desecuritizing. They are therefore also potentially the saviours of liberal democracy.

But how does politics start? How can the 'other' envisage the debate and be heard? To answer these questions, we shall introduce a new element to the process: emancipation.

Desecuritizing means restoring politics which also means democratizing. Anyhow, those that have to take on the burden of democratizing act from the outskirts of democracy as they have been exiled from it by security. Not by chance, they are also labelled as "security have-nots"[384] and for once, not having something is an asset rather than a disadvantage. These individuals

[380] Heather L. Johnson, "The Other Side of the Fence: Reconceptualizing the 'Camp' and Migration Zones at the Borders of Spain," International Political Sociology 7, no. 1 (March 1, 2013): 75–91, https://doi.org/10.1111/ips.12010.

[381] Jean-Jacques Rousseau, Du Contrat Social (1762; repr., Paris: Gf Flammarion, 2001).

[382] Rancière, Dis-Agreement: Politics and Philosophy.

[383] Johnson, "The Other Side of the Fence: Reconceptualizing the 'Camp' and Migration Zones at the Borders of Spain."

[384] Tim Dunne and Nicholas J. Wheeler, "'We the Peoples': Contending Discourses of Security in Human Rights Theory and Practice," International Relations 18, no. 1 (March 2004): 9–23, https://doi.org/10.1177/0047117804041738.

have the chance to democratize security[385] as they strive to emancipate towards a better world.[386] Emancipation can in fact be defined as: "[…] freeing people, as individuals and groups, from the social, physical, economic, political, and other constraints that stop them from carrying out what they would freely choose to do, of which war, poverty, oppression, and poor education are a few."[387]

Critical security studies (in particular the Frankfurt School) view emancipation as equivalent to security to the point that, "security and emancipation are in fact two sides of the same coin. It is emancipation, not power and order, in both theory and practice, that leads to stable security."[388] The concept of security in this case is radically different to the one we have explored until now. Security here is in fact interpreted as human security which, as already mentioned is, more often than not, in conflict with national security. Equating the two concepts is however not a recipe for desecuritization but rather counter securitization. This also implies that any kind of social transformation still occurs within a security logic.[389] In other words, the result is that security understood as emancipation becomes a social matter where security have-nots are attributed with other categories.[390]

Going back to our case study, the solution proposed by the Frankfurt School would not find the grounds to be put into practice as its scholars envision security as "a world security community of communities, where war is practically unthinkable and in which global issues can be pursued as collectively as possible."[391] The drone strikes that took place in Pakistan are instead the manifestation of warfare between different communities that do not aspire to pursue the same values collectively. Security is the poison that triggered the war, not the antidote, and equating emancipation to security makes it part of the poison. In the Pakistani case, we are dealing with securitized practices that cannot be fought by the (international) community. Such community is trapped in a context of macrosecuritization that keeps on existing as an overarching framework until the security logic is kept in place. Even though in his early works on emancipation Kenneth Booth does point out how emancipation logic is distinct from

---

[385] Claudia Aradau, "Security and the Democratic Scene: Desecuritization and Emancipation," Journal of International Relations and Development 7, no. 4 (December 2004): 388–413, https://doi.org/10.1057/palgrave.jird.1800030.

[386] Richard Wyn Jones, Security, Strategy, and Critical Theory (Boulder, Colo.: Lynne Rienner Publishers, 1999).

[387] Ken Booth, "Security and Self: Reflections of a Fallen Realist," in Critical Security Studies: Concepts and Cases (London: UCL Press, 1997), 83–119.

[388] Ibid.

[389] Aradau, "Security and the Democratic Scene: Desecuritization and Emancipation."

[390] Ibid.

[391] Ken Booth, Theory of World Security (Cambridge University Press, 2007).

security logic, the focus is not sufficiently shifted to the political realm that emancipation can feed on.

Emancipation must in fact find its voice outside of security and within the political[392] (and at times, as we shall see, within the judicial). This is the only way to enact the democratization that can de-construct that macro-framework and put an end to the binary narrative stigmatizing the 'other'. By linking emancipation to democratic politics, it is linked to equality and fairness,[393] it gives a voice to all, a voice that can however be kept accountable as it is under public scrutiny. Emancipation opens the doors of debate, it welcomes contestation from all. It makes no distinction between sides or individuals as it seeks a debate that invokes the universal principles that a democratic regime should uphold. This universality and equal recognition engage with a new logic, outside the bounds of security.[394] It is not exclusionary which means there is no need to sacrifice a certain group to guarantee the security of another,[395] but rather it defines new equal grounds that determine the relationship with 'the other.'

Now that we have a clearer idea on the 'how' to start the debate, we must also question the 'who'. Who is entitled to enact the 'how' (emancipation)?

If we go back to the definition of emancipation, it starts out by 'freeing people' but who provides such freedom? Security actors? The audience? According to Balibar, the answer is none of the above. It is the security have nots that must proceed to be heard because emancipation is not an external but an internal process.[396] Emancipation cannot, in fact, be conceded, it must be taken. It is a duty and, in some aspects, also a prerogative of the 'other' to impose a "rational obligation upon the others to recognize them,"[397] it is not the 'insiders' that allow them to speak up. The first step towards this, is one of dis-identification from that of the 'other' or 'security have not' and the invocation of universal principles. By default, these are not particularistic values[398] (such as those that belong to liberal democratic states) but rather rights that belong to humanity itself and that, at a theoretical level, liberal democracy believes to uphold. The main issue here, is that it is particularly problematic to claim a right from the

---

[392] Aradau, "Security and the Democratic Scene: Desecuritization and Emancipation."
[393] Ibid.
[394] Jacques Rancière, On the Shores of Politics, trans. Liz Heron (1995; repr., London: Verso, 2007).
[395] Columba Peoples and Nick Vaughan-Williams, Critical Security Studies : An Introduction (London: Routledge, 2014).
[396] Étienne Balibar, Droit de Cité (Marseille: Éditions De L'aube, 1998); Étienne Balibar, Politics and the Other Scene (2002; repr., London: Verso Books, 2012).
[397] Rancière, On the Shores of Politics.
[398] Ayoob Mohammed, "Defining Security: A Subaltern Realist Perspective," in Critical Security Studies (Minneapolis: University of Minnesota Press, 1997), 121–46.

outsiders of the community which does not allow them to dis-identify as outsiders in the first place.[399] Recognition and universality only work as emancipation strategies if they are practiced by those that are already on the inside. And, as already argued, if they are the only ones in the discussion, political debate cannot really take place. The path to emancipation, therefore, must involve the insider as well, as the 'us' can create a link with 'them'[400] that is not a binary exclusionary relationship but rather a weapon to challenge the securitized practices. This also means establishing a medium for their voices to be heard and denounce the securitized status quo. The mediators that help constructing this link between insiders and outsiders are in between the political and the judicial realm. These can, in fact, mutually reinforce one another as grass root organizations and NGOs are supported by human rights lawyers advocating on behalf of the security have-nots and creating a political bridge with a judicial response. They are both distinct from the securitizing actor but are still authoritative towards the liberal democratic audience due to their endorsement of the values belonging to the people's culture. This allows them to transcend communities as whether they are founded in liberal democratic countries or not, they can still appeal to the liberal democratic world and be heard.

By looking back in time and making a connection between our case study and the situation of Guantanamo Bay introduced in chapter III, we can witness several circumstances where the judicial response exempted Pakistani detainees from the exception enabling their emancipation from the securitized constraints. An interesting example is presented by Reprieve, a non-profit organization of international lawyers and investigators with the purpose of fighting for the victims of extreme human rights abuses such as death row or detention without charge or trial.[401] Its co-founder, Clive Stafford Smith filed the first litigation against Guantanamo in 2002 and took on more than 80 prisoners as clients giving them a legal representation, a voice.[402] One of his clients which was captured in Pakistan, Binyam Mohamed, was tortured and interrogated in Morocco and then sent to Guantanamo until the Pentagon officially dismissed charges. Even though Clive Stafford Smith stated that: "This is more of the Guantanamo farce, sadly. Instead of delivering justice, the military tries to hide all the mistakes

---

[399] Aradau, "Security and the Democratic Scene: Desecuritization and Emancipation."
[400] Jacques Rancière, Dis-Agreement: Politics and Philosophy.
[401] "Reprieve US," Reprieve US, accessed August 26, 2022, https://reprieve.org/us/.
[402]Fatima Bhutto, "Nothing but Pitch Black Darkness," foreignpolicy.com, August 14, 2021, https://foreignpolicy.com/2021/08/14/guantanamo-torture-afghanistan-pakistan-ahmed-rabbani-no-charge-trial-biden-obama-trump-reprieve/.

and crimes that have been committed, including 18 months of torture of Mr. Mohamed in Morocco,"[403] by escaping the exception, Binyam Mohamed was given the chance to be freed from the securitized environment he had been subjected to. Notwithstanding the unfairness of the lack of repercussions towards the US, this can still be considered a win towards emancipation.

Remaining in the judicial realm between Guantanamo Bay and Pakistan, another interesting case is that of Rasul v. Bush, 542 U.S. 466 (2004).[404] Here the have-nots were 14 petitioners captured in Pakistan (and Afghanistan) which challenged the fact that in the locus of detention, they had been deprived of their *habeas corpus* and due process rights. The decision on the matter was taken by the Supreme Court with a 6-3 majority that ruled that US courts had jurisdiction to hear the foreign nationals notwithstanding the fact that they were not detained within the US sovereign territory. The same occurred with Hamdi v. Rumsfeld, 542 U.S. 507 (2004) where the Court determined that application of *habeas corpus* had to be applied towards the detainee held as unlawful enemy combatant.[405] To do so, Combatant Status Review Tribunals (CSRTs) were established by the DoD. The proceedings allowed to verify whether prisoners were actually 'enemy combatants' leading to a possible release or repatriation. The result was that 38 detainees were found to have wrongfully been labelled as unlawful enemy combatants. Moreover, the two cases triggered the formation of Administrative Review Boards (ARBs) to perform annual checks on whether initially classified enemy combatants still represented a threat. In this case, 14 detainees were recommended to be released and 120 repatriated. The results in terms of numbers are not particularly high but quite outstanding with respect to the amount of have-not petitioners that triggered the process (14 petitioners for the first case and 1 for the second). This shows how desecuritization can be spurred by a domino effect that expands from the have-nots across liberal democracy. Even though the dimension in which this occurred was judicial, an important political aspect is brought about simply by challenging these practices. The security have-nots raise their voice by making a case and with the help of liberal democratic lawyers and judicial institutions they produce a debate, a debate that leads towards emancipation.

---

[403] Jane Sutton, "Guantanamo Charges Dropped for 5 Inmates," Reuters, October 21, 2008, sec. World News, https://www.reuters.com/article/uk-guantanamo-hearings-idUKTRE49K6AL20081021.
[404] "Guantanamo Litigation - History," Lawfare - Hard National Security Choices (The Lawfare Institute), https://www.lawfareblog.com/guantanamo-litigation-history.
[405] Ibid.

On the other hand, these cases can only be put in motion once the securitization impact has already produced detrimental repercussions. It is instead also important for us to recognize when the process takes place entirely in the political realm and here NGOs are critical actors that close the gap between 'us' and 'them.' For instance, Mwatana for Human Rights, a Yemen-based NGO, implemented a direct bridge by reporting the words of Mamana Bibi in Pakistan who said: "We pray peace can be restored to our country and people and end this mess and bloodshed but up 'til now there has been no end in sight."[406]

The Pakistani woman identified as the 'other' is claiming her people's right to be heard through an NGO. She is claiming the universal right of peace and non-violence by making the insiders aware of the violations she is going through. In the same way, Amnesty International, a British-based NGO has contributed to this link directly by quoting Nabeela, Mamana Bibi's granddaughter that stated: "I wasn't scared of drones before, but now when they fly overhead, I wonder, will I be next?"[407]

It also reinforces the link indirectly by using Nabeela's voice to introduce a detailed report on US drone strikes in Pakistan. Raising awareness and denouncing securitized violent practices sets the ground to listen to the voices of those seeking to emancipate. It enhances our will and need to create this new relationship with the other because it is within our interests to challenge the securitized status quo that is destroying the values we supposedly stand for.

Emancipation is the realization of the liberal pursuit, it solves the liberal antinomy by giving a voice to 'the rest.' When they are welcomed in the political debate, or rather as they forcibly raise their voices to create an environment of contrast and disagreement, they are already part of 'us' as they participate in the liberal democratic process escaping the securitized one. As exceptionality became the norm eroding the rule of law, it also triggered the voices that have the potential to globally democratize by changing the narrative. It set the grounds to dis-identify as the 'other,' to emancipate, to desecuritize.

Of course, the realization of such a process is still very far away from the reality of the current international order. The reasons behind the end of the drone strikes in Pakistan are multiple and nuanced as they involve state interests and political strategies that go beyond the scope of

---

[406] "Joint Statement of NGOs on European Assistance to the US Lethal Drone Programme," Mwatana for Human Rights, April 25, 2018, https://mwatana.org/en/joint-statement-of-ngos/. The original source of the interview was Amnesty International, but it is important to account for the fact that the message was conveyed by an NGO that is not based in a liberal democratic country.

[407] "'Will I Be Next?' US Drone Strikes in Pakistan," Amnesty International (London: Amnesty International Publications, 2013), https://www.amnestyusa.org/files/asa330132013en.pdf.

our analysis. Just because a set of practices was abandoned, the overall macrosecuritization was definitely not deconstructed. However, these (very) small steps point towards the right direction. It is important to acknowledge that re-writing the relationship with the others and making their voices heard through these mediums is fundamental to re-politicize. This is demonstrated by the letter which was delivered to President Biden's office on the 30th of June of 2021 demanding "an end to the unlawful program of lethal strikes outside any recognized battlefield, including through the use of drones"[408] by a coalition of 100 NGOs determining a "major leap forward."[409] Just as securitization expands through space and time, so do the voices of the drone strikes victims, very slowly but steadily. Liberal democratic securitized practices are being challenged both from the outside and from the inside striving to escape the exception. Such challenge questions the legitimacy of the rule of security. It claims back legality as it condemns the violations of the rule of law. Re-writing the narrative from both sides, a truly universal narrative, is an essential part of this process which is at the core of desecuritization. Even though desecuritizing a well-established framework such as that of the war on terror is a complex and lengthy endeavour, building a new relationship towards emancipation may be the last hope for liberal democracy.

---

[408] Charli Carpenter, "Anti-Drone Advocacy Just Took a Major Leap Forward," World Politics Review, July 9, 2021, https://www.worldpoliticsreview.com/a-new-framing-for-advocacy-to-end-america-s-drone-killings/.
[409] Ibid.

Conclusion

The objective of this thesis was not one of introducing new notions at an abstract level nor that of shedding light on a new non-analysed case study. The aim was instead that of weaving together a set of concepts belonging to the security and legal realm as they are manifested in liberal democracy: securitization and the rule of law respectively. In order for this to be relevant to us, as social scientists, a hybrid approach between the theoretical and the concrete was maintained as each concept was inserted in its corresponding reality. The purpose of this was to determine whether our guiding question is verified or not both conceptually and practically: *Has securitization established a permanent rule of security above the law of liberal democracy?*

Our analysis started out by understanding the multifaceted role of security as interpreted by liberal democratic states in the 21st Century. During the first chapter, in fact, we explored the transition of security from noun to verb and the *mise en place* of securitization. The fundamental step that must occur for an issue to be securitized was essentially summarized by the securitization diagram illustrating the shift from the political to the security realm. Abandoning the political is *per se* non-democratic as it silences debate and the pluralism of democracy. For a more comprehensive understanding of how this evolution took place, we considered the origins of securitization and its course of action oscillating between speech and practice during the age of security. To better determine what triggered its expansion and snowball effect across liberal democracies, we considered it on different scales, national and international with a specific focus on a potential turning point: 9/11.

Given the fact that the rule of law is the cornerstone of liberal democracy, analysing it in relation to security is crucial for the purpose of answering our research question. For this reason, in the second chapter we considered the position of security in a liberal democratic normative framework. To have a more complete picture of the relationship between security and law, we adopted a comparative approach to examine how it is balanced or restricted by other rights belonging to liberal culture. This brought us to an important conclusion on the matter: securitization has elevated the status of security to that of a quasi-constitutional principle. The age of security has therefore set the basis for a new rule, a rule that struggles with the law. This is the rule of security, a rule operating outside of the norm.

Moving on to chapter III, this aspect was better explored. Can the rule of security operate within liberal democratic bounds? In order to do so, it has to conform to the norms established in chapter II. The only time the rule of law accepts to be set aside is in situations of emergency

that are still defined according to its own norms meaning that law remains hegemon. To understand why and when this occurs, once again we resorted to a comparative analysis to observe when acting outside the ordinary limits set by liberal democratic constitutions is still within the realm of legality. On the other hand, we also distinguished the state of emergency from the state of exception. The concept borrowed from Giorgio Agamben shed light on how securitization allowed to replace the legal with the legitimate. Being in a liberal democratic context, anything which is accepted by the *demos* (or the audience in securitization terms) is legitimized, bypassing the need for a legal support. Such legitimacy finds its support in the use of the metaphor of war, an instrument which draws on the lawful aspects of the state of emergency but, when used in a securitized context, triggers exceptional practices perpetrated through space and time. The geographically expanded and temporally prolonged effect of the securitization process escapes the rule of law making the exception perpetual. This abstract affirmation is verifiable in some of the most representative liberal democracies such as France, Germany and, above all, the United States. What was also important to account for in this chapter, however, is that this *modus operandi* is not only practiced at home but also, or better, especially abroad. By building on an 'us' (liberal democracies) vs 'them' (non-liberal democracies) narrative that finds its roots in colonialism, Western states violate the rule of law in a lot more extreme and explicit ways in non-Western areas.

This brought us to chapter IV, our case study. The case was the point of unison for our previous three chapters and perhaps, due to its empirical dimension, the most explicative to draw conclusions regarding our guiding question. By analysing the behaviour of the liberal democracy *par excellence* and its disregard for the constitutionalism it originally founded, we witnessed securitization's attempt to dismantle liberalism's universal goals. The US drone strikes in Pakistan were a perfect example as they affected a geographical area which was not directly involved in the security issue at stake and therefore could not build on any legal ground to respond to it. Furthermore, it took place a lot later with respect to the emergency situation, disregarding the fundamental time limit set by the *état de siège*. All this was possible because the drone warfare was legitimized by a much broader securitized framework that came to replace the normative one. This macrosecuritization was built speech after speech, practice after practice, until the context of war became an eternal reality normalizing the use of force. In practice this resulted in: the suspension of fundamental rights, the undermining of the principle of sovereignty, the violation of the laws of war and a new standard of the use of force. The antinomic essence of liberal democracies resorted to its belligerent side in the name of security. The new norms established by the United States in Pakistan set an important precedent

of global emergency that cannot be overlooked. Securitized practices that do not conform to the rule of law undermine its credibility and hamper the universal project of liberal democracy. By securitizing the West, and liberal democracy itself, securitization fed onto the dark side of liberal democracy setting the scene for its self-destruction.

Of course, being part of a macrosecuritized framework the examples in this regard are multiple but for the time and page constraints we limited our case study to the one framed as the most relevant for the issue. The Pakistani case is a particular example, but its conclusions can be generalized and extended to other countries that underwent similar practices consolidating the rule of security globally and, perhaps, permanently. By considering other US-led drone operations further research could expand the geographical areas in which violent securitized practices are applied to like Afghanistan, Yemen and Somalia.[410] Additionally, it could also take into account other emblematic liberal democracies that became victims of their own securitization such as the United Kingdom's use of drones in Iraq and Syria[411] or France in Mali.[412]

Finally, the last chapter shifted to a different perspective: not all is lost. The situation of global exceptionalism depicted through the case study is not particularly promising, but a counter process does exist and desecuritizing is a possibility. This reversal concept was immediately theorized by the Copenhagen School together with securitization. Its development however remained very narrow-minded as the two processes only contemplated Western society's features and intervention to enact them. The international context that securitization is impacting required a broader understanding of the matter that drew on non-Western society to reverse the securitization diagram and re-enter the political. Here, the security have-nots, those who suffer in the exception the most, are the only ones that can raise their voice and emancipate to claim their rights. Emancipation is what challenges securitization, and the only thing the

---

[410] Sandra Krähenmann and George Dvaladze, "Humanitarian Concerns Raised by the Use of Armed Drones," Geneva Call, June 16, 2020, https://www.genevacall.org/fr/humanitarian-concerns-raised-by-the-use-of-armed-drones/.

[411] In the case of the UK for instance, the extensive length of drone operations in these areas is a manifestation of perpetual exceptionalism. Furthermore, the lack of transparency of reports regarding the strikes violates democratic principles.
Chris Cole, "Overview of UK Air Strikes in Iraq and Syria since the Territorial Defeat of ISIS in March 2019," Drone Wars UK, November 1, 2021, https://dronewars.net/2021/11/01/overview-of-uk-air-strikes-in-iraq-and-syria-since-the-territorial-defeat-of-isis-in-march-2019/.

[412] By deploying a drone strike in Mali and framing it as a "heavy blow to an Islamist group", President Macron exploited the 'us' vs 'them' narrative legitimizing the death of 40 alleged terrorists.
"French Army Deploys Drone Strike for First Time in Mali Operation," The Guardian, December 23, 2019, sec. World news, https://www.theguardian.com/world/2019/dec/23/french-forces-kill-40-jihadists-during-operation-in-mali.

West can do is support it and project it to build bridges between 'us' and 'them' for their voices to be heard.

In conclusion, going back to our core question, even though the rule of security is constantly challenging the rule of law, it has not out ruled it entirely. This means that its rule is not yet permanently set above the law, but rather in a constant struggle with law. Liberal democracy is under attack, but it has not reached the end. The only way to save it, is to fight securitization with it. This paradoxical solution represents the perfect answer to our paradoxical issue as presented in the introduction: the end of history as the beginning of the end of liberal democracy. Liberal democracy aims to be universal. This universality cannot be imposed on the 'other,' it must be wanted. Therefore, it is the other, through contestation, through opposition, through debate that saves 'us' from the rule of security. The 'us' vs 'them' narrative is the main pillar securitization has been built on, but it is also the trigger for 'them' to react, to emancipate, to desecuritize. As long as they raise their voices, the security have-nots challenge the rule of security in favour of the re-establishment of the rule of law. This potential desecuritizing, re-politicizing and democratizing signals that the end has yet to come. The *δῆμος* can gain back its *κράτος*[413] and demand the rights it has been stripped of.

Liberal democracy is a long way from realizing its goal and securitization has pulled it several steps back. But liberal democracy's true aim lies in constant progress. Therefore, although its cornerstone, the rule of law, is threatened, as long as it is fought for, no matter how, no matter from who, it is being realized. And the fact that the fight is brought forward by the 'other' is a demonstration that, even in small quantities, it lives on everywhere. Even when its mother country neglects it, violates it, by claiming their rights, those who do not preach its values, practice them.

Liberal democracy still has a lot to tell, and through the voices of the rest it can perhaps save itself from the West.

---

[413] Referring to the etymology of the Greek democracy at the origin of liberal democracies: from *demos* (people) and *cratos* (power).

Bibliography

Ackerman, Spencer. "41 Men Targeted but 1,147 People Killed: US Drone Strikes – the Facts on the Ground." *The Guardian*, November 24, 2014.

Agamben, Giorgio. *Homo Sacer : Il Potere Sovrano E La Nuda Vita*. Torino: Einaudi, 2005.

Agamben, Giorgio. *State of Exception*. Chicago: University of Chicago Press, 2005.

Agamben, Giorgio. *State of Exception*. Translated by Kevin Attell. University Of Chicago Press, 2005.

Agamben, Giorgio. "Giorgio Agamben: 'de l'Etat de Droit à l'Etat de Sécurité." Le Monde.fr, December 23, 2015. http://www.lemonde.fr/idees/article/2015/12/23/de-l- etat-de-droit-a- l-etat- de-securite_4836816_3232.html.

Alexander, John B., and Charles 'Sid' Heal. "Non-Lethal and Hyper-Lethal Weaponry." *Small Wars & Insurgencies* 13, no. 2 (August 2002): 121–32. https://doi.org/10.1080/09592310208559186.

Ali, Akber. "Elite Pakistan Press Discourse on US Drone Policy." *Pakistan Journal of Humanities and Social Sciences* 5, no. 2 (2017): 124–39. https://doi.org/10.52131/pjhss.2017.0502.0027.

Alston, Philip. "The Challenges of Responding to Extrajudicial Executions: Interview with Philip Alston." *Journal of Human Rights Practice* 2, no. 3 (2010): 355–73. https://doi.org/10.1093/jhuman/huq013.

Amarasinghe, Punsara, and Sanjay K. Rajhans. "Agamben's Two Missing Factors; Understanding State of Emergency through Colonialism and Racial Doctrine." *Open Political Science* 3, no. 1 (April 22, 2020): 34–46. https://doi.org/10.1515/openps-2020-0003.

American Civil Liberties Union. "Surveillance under the USA/PATRIOT Act." American Civil Liberties Union, 2022. https://www.aclu.org/other/surveillance-under-usapatriot-act.

Aradau, Claudia. "Beyond Good and Evil: Ethics and Securitization/Desecuritization Techniques." *Rubikon: International Forum of Electronic Publications*, 2001.

Aradau, Claudia. "Security and the Democratic Scene: Desecuritization and Emancipation." *Journal of International Relations and Development* 7, no. 4 (December 2004): 388–413. https://doi.org/10.1057/palgrave.jird.1800030.

Aradau, Claudia, and Rens Van Munster. "Exceptionalism and the 'War on Terror.'" *The British Journal of Criminology* 49, no. 5 (2009).

Aristotle. *Politics*. Indianapolis, Indiana: Hackett Publishing Company, Inc, 2017.

Balibar, Étienne. *Droit de Cité.* Marseille: Éditions De L'aube, 1998.

Balibar, Étienne. *Politics and the Other Scene*. 2002. Reprint, London: Verso Books, 2012.

Balzacq, Thierry. "The Three Faces of Securitization: Political Agency, Audience and Context." *European Journal of International Relations* 11, no. 2 (June 2005): 171–201. https://doi.org/10.1177/1354066105052960.

Balzacq, Thierry, Tugba Basaran, Didier Bigo, Emmanuel Pierre Guittet, and K. Ollson. "Security Practices." In *International Studies Encyclopedia Online*. Hoboken, NJ: Blackwell Publishing, 2010.

Balzacq, Thierry. *Securitization Theory: How Security Problems Emerge and Dissolve*. Milton Park, Abingdon, Oxon: Routledge, 2011.

Bannon, Alicia L. "The Responsibility to Protect: The U.N. World Summit and the Question of Unilateralism." *The Yale Law Journal* 115, no. 5 (March 1, 2006): 1157. https://doi.org/10.2307/20455648.

Bantekas, Ilias. "The International Law of Terrorist Financing." *The American Journal of International Law* 97, no. 2 (April 2003): 315. https://doi.org/10.2307/3100109.

Beauchamps, Marie. "Perverse Tactics: 'Terrorism' and National Identity in France." *Culture, Theory and Critique* 58, no. 1 (February 28, 2016): 48–61. https://doi.org/10.1080/14735784.2015.1137480.

Beck, Ulrich. "The Terrorist Threat: World Risk Society Revisited." *Theory, Culture & Society* 19, no. 4 (August 2002): 39–55. https://doi.org/10.1177/0263276402019004003.

Bellamy, Alex J. "The Responsibility to Protect-Five Years On." *Ethics & International Affairs* 24, no. 2 (2010): 143–69. https://doi.org/10.1111/j.1747-7093.2010.00254.x.

Bellamy, Richard. *Constitutionalism in Transformation : European and Theoretical Perspectives*. Edited by Dario Castiglione. Oxford: Blackwell, 1996.

Bennett, William J. *Why We Fight : Moral Clarity and the War on Terrorism.* Washington, D.C.: Regnery Pub, 2002.

Bhutto, Fatima. "Nothing but Pitch Black Darkness." foreignpolicy.com, August 14, 2021. https://foreignpolicy.com/2021/08/14/guantanamo-torture-afghanistan-pakistan-ahmed-rabbani-no-charge-trial-biden-obama-trump-reprieve/.

Blasi Casagran, Cristina. "Fundamental Rights Implications of Interconnecting Migration and Policing Databases in the EU." *Human Rights Law Review* 21, no. 2 (2021): 433–57.

Bigo, Didier. "Internal and External Aspects of Security." *European Security* 15, no. 4 (December 2006): 385–404. https://doi.org/10.1080/09662830701305831.

Bonner, Robert J. "Emergency Government in Rome and Athens." *The Classical Journal* 18, no. 3 (1922): 144–52.

Booth, Ken. "Security and Self: Reflections of a Fallen Realist." In *Critical Security Studies: Concepts and Cases*, 83–119. London: UCL Press, 1997.

Booth, Ken. *Theory of World Security*. Cambridge University Press, 2007.

Bourbeau, Philippe, and Juha A. Vuori. "Security, Resilience and Desecuritization: Multidirectional Moves and Dynamics." *Critical Studies on Security* 3, no. 3 (September 2, 2015): 253–68. https://doi.org/10.1080/21624887.2015.1111095.

Bowdle, B.F., and D. Gentner. "The Career of Metaphor." *Psychological Review* 112, no. 1 (2005).

Boyle, Darren. "France Extends State of Emergency 'until ISIS Is Defeated.'" Mail Online, January 22, 2016. http://www.dailymail.co.uk/news/article-3411547/France-.

Britannica, T. Editors of Encyclopaedia. "Charter of 1814." In *Encyclopedia Britannica*, 2009.

Brown, Hollly Cade. "Figuring Giorgio Agamben's 'Bare Life' in the Post-Katrina Works of Jesmyn Ward and Kara Walker." *Journal of American Studies* 51, no. 1 (April 6, 2016): 1–19. https://doi.org/10.1017/s0021875816000566.

Buchanan, Ian. "Treatise on Militarism." *Symploke* 14, no. 1 (2006): 152–68. https://doi.org/10.1353/sym.2007.0004.

Burke-White. "Human Rights and National Security: The Strategic Correlation." *Harvard Human Rights Journal* 17 (2004): 254–64.

Bush, George W. "Address to a Joint Session of Congress and the American People." 2001. https://georgewbush-whitehouse.archives.gov/news/releases/2001/09/20010920-8.html.

Bush, George W. "President Bush Discusses Progress in the War on Terror." georgewbush-whitehouse.archives.gov. The White House, July 12, 2004. https://georgewbush-whitehouse.archives.gov/news/releases/2004/07/20040712-5.html.

Butler, Judith. *Precarious Life : The Powers of Mourning and Violence*. S.L.: Verso, 2004.

Butterworth, Michael L. "Ritual in the 'Church of Baseball': Suppressing the Discourse of Democracy after 9/11." *Communication and Critical/Cultural Studies* 2, no. 2 (June 2005): 107–29. https://doi.org/10.1080/14791420500082635.

Buzan, Barry. "Rethinking Security after the Cold War." *Cooperation and Conflict* 32, no. 1 (1997): 5–28. https://doi.org/10.1177/0010836797032001001.

Buzan, Barry, Ole Waever, and Jaap De Wilde. *Security: A New Framework for Analysis*. Boulder, Colo. Lynne Rienner, 1998.

Buzan, Barry. "Will the 'Global War on Terrorism' Be the New Cold War?" *International Affairs* 82, no. 6 (November 2006): 1101–18. https://doi.org/10.1111/j.1468-2346.2006.00590.x.

Buzan, Barry, and Ole Waever. "Macrosecuritisation and Security Constellations: Reconsidering Scale in Securitisation Theory." *Review of International Studies* 35, no. 2 (April 2009): 253–76. https://doi.org/10.1017/s0260210509008511.

Byman, Daniel. "Why Drones Work: The Case for Washington's Weapon of Choice." *Foreign Affairs* 92, no. 4 (2013).

Cabinet Office. "Responding to Emergencies - the UK Central Government Response." gov.uk, April 19, 2013. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/192425/CONOPs_incl_revised_chapter_24_Apr-13.pdf.

Cable News Network (CNN). "U.S. Airstrikes in Pakistan Called 'Very Effective.'" CNN.com, May 18, 2009. https://edition.cnn.com/2009/POLITICS/05/18/cia.pakistan.airstrikes/.

Carl Von Clausewitz. *On War*. Princeton University Press, 1832.

Carpenter, Charli. "Anti-Drone Advocacy Just Took a Major Leap Forward." World Politics Review, July 9, 2021. https://www.worldpoliticsreview.com/a-new-framing-for-advocacy-to-end-america-s-drone-killings/.

Chamanyou, Gregoire. *Théorie Du Drone*. Paris: La Fabrique éditions, 2013.

Charney, Jonathan I. "Anticipatory Humanitarian Intervention in Kosovo." *The American Journal of International Law* 93, no. 4 (October 1999): 834. https://doi.org/10.2307/2555348.

Childress, James F. "The War Metaphor in Public Policy: Some Moral Relections." In *The Leader's Imperative: Ethics, Integrity, and Responsibility*, 181–97. Purdue University Press, 2001.

Christie, Ryerson. "Critical Voices and Human Security: To Endure, to Engage or to Critique?" *Security Dialogue* 41, no. 2 (April 2010): 169–90. https://doi.org/10.1177/0967010610361891.

Cole, Chris. "Overview of UK Air Strikes in Iraq and Syria since the Territorial Defeat of ISIS in March 2019." Drone Wars UK, November 1, 2021. https://dronewars.net/2021/11/01/overview-of-uk-air-strikes-in-iraq-and-syria-since-the-territorial-defeat-of-isis-in-march-2019/.

Conseil Constitutionnel. "Acte Additionnel Aux Constitutions de l'Empire Du 22 Avril 1815." www.conseil-constitutionnel.fr. Accessed June 19, 2022. https://www.conseil-constitutionnel.fr/les-constitutions-dans-l-histoire/acte-additionnel-aux-constitutions-de-l-empire-du-22-avril-1815.

Cortright, David, and George A Lopez. *Uniting against Terror : Cooperative Nonmilitary Responses to the Global Terrorist Threat*. Cambridge, Mass. ; London: Mit Press, Cop, 2007.

Counter-Terrorism Committee. "Survey of the Implementation of the Security Council Resolution 1373 (2001) by Member States." U.N. Doc S/2009/620, December 3, 2009.

Dearden, Lizzie. "Paris Attacks: France's State of Emergency Is Imposing 'Excessive' Restrictions on Human Rights, UN Says." The Independent, January 20, 2016. https://www.independent.co.uk/news/world/europe/paris-attacks-france-s-state-of-emergency-is-imposing-excessive-restrictions-on-human-rights-un-says-a6822286.html.

Department of Defense. "Unmanned Aerial Vehicles." In *The Department of Defense Dictionary of Military and Associated Terms*. Joint Publication, 2008.

Does, Antonia. "Securitization Theory." Essay. In *The Construction of the Maras*. Graduate Institute Publications, 2013.

Dorf, Micheal C. "What Is an 'Unlawful Combatant,' and Why It Matters." FindLaw for legal professionals, 2002. https://supreme.findlaw.com/legal-commentary/what-is-an-unlawful-combatant-and-why-it-matters.html.

Drew, Christopher. "Drones Are Weapons of Choice in Fighting Qaeda." *The New York Times*, March 16, 2009.

Dunne, Tim, and Nicholas J. Wheeler. "'We the Peoples': Contending Discourses of Security in Human Rights Theory and Practice." *International Relations* 18, no. 1 (March 2004): 9–23. https://doi.org/10.1177/0047117804041738.

Dworkin, Ronald. Terror and the Attack on Civil Liberties. New York Review of Books 50 (2003):37–41.

Emmers, Ralf. "Securitization." Essay. In *Contemporary Security Studies* . New York: Oxford University Press, 2010.

Emmerson, Ben. "Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism." Human Rights Council, 25th session, agenda item 3, March 10, 2014. https://webcache.googleusercontent.com/search?q=cache:fkY4AtTtukUJ:https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A-HRC-25-59.doc+&cd=19&hl=it&ct=clnk&gl=it&client=safari.

Entman, Robert M. (1993) 'Framing: Toward Clarification of a Fractured Paradigm', Journal of Com nication 43 (4): 51 -58.

Epstein, L., and J. Knight. "Constitutional Borrowing and Nonborrowing." *International Journal of Constitutional Law* 1, no. 2 (April 1, 2003): 196–223. https://doi.org/10.1093/icon/1.2.196.

Etymonline. "Legitimate | Etymology, Origin and Meaning of Legitimate." www.etymonline.com. Accessed June 20, 2022. https://www.etymonline.com/word/legitimate.

Evangelista, Matthew, Harald Müller, and Niklas Schörnig. *Democracy and Security: Preferences, Norms and Policy-Making*. London: Routledge, 2008.

Evans, Gareth, and Mohamed Sahnoun. "The Responsibility to Protect." *Foreign Affairs* 81, no. 6 (2002): 99–110. https://doi.org/10.2307/20033347.

Evans, Gareth. "The Responsibility to Protect: An Idea Whose Time Has Come … and Gone?" *International Relations* 22, no. 3 (2005): 283–98. https://doi.org/10.1177/0047117808094173.

Fabbrini, Sergio. *America and Its Critics : Virtues and Vices of the Democratic Hyperpower*. Cambridge: Polity, 2008.

Feinberg, Myriam. "States of Emergency in France and Israel – Terrorism, 'Permanent Emergencies', and Democracy." *Zeitschrift Für Politikwissenschaft* 28, no. 4 (October 8, 2018): 495–506. https://doi.org/10.1007/s41358-018-0147-y.

Fisch, William B. "Emergency in the Constitutional Law of the United States." *The American Journal of Comparative Law* 38 (1990): 389. https://doi.org/10.2307/840550.

Flusberg, Stephen J., Teenie Matlock, and Paul H. Thibodeau. "War Metaphors in Public Discourse." *Metaphor and Symbol* 33, no. 1 (January 2, 2018): 1–18. https://doi.org/10.1080/10926488.2018.1407992.

Foucault, Michel. *The History of Sexuality*. Vol. 1, 1976.

Foucault, Michel. "Security, Territory, Population." *Lectures at the Collège de France*, 1977.

Foucault, Michel. "Society Must Be Defended: Lectures at the Collège de France, 1975-76." Edited by Mark Hearn. *Labour History*, no. 86 (2004): 218. https://doi.org/10.2307/27515985.

Frost, Tom. "Agamben's Legalization of Foucault." *Oxford Journal of Legal Studies* 30, no. 3 (April 21, 2010): 545–77. https://doi.org/10.1093/ojls/gqq015.

Fukuyama, Francis. *The "End of History?"* Washington, D.C.: United States Institute Of Peace, 1989.

Fukuyama, Francis. *The End of History and the Last Man*. 1992. Reprint, London: Penguin, 1992.

Fukuyama, Francis. *Liberalism and Its Discontents*. London: Faber and Faber, 2022.

Gaddis, John Lewis. "The Insecurities of Victory: The United States and the Perception of Soviet Threat after World War II." In *The Long Peace*, 20–27. Oxford: Oxford University Press, 1987.

Gaddis, John Lewis. *Surprise, Security, and the American Experience*. Cambridge, Mass. ; London: Harvard University Press, 2005.

Geis, Anna, Lothar Brock, and Harald Müller. *Democratic Wars: Looking at the Dark Side of Democratic Peace*. Basingstoke: Palgrave Macmillan, 2006.

Geis, Anna, Lothar Brock, and Harald Müller. "From Democratic Peace to Democratic War?" *Peace Review* 19, no. 2 (June 2007): 157–63. https://doi.org/10.1080/10402650701353570.

Geneva Centre for the Democratic Control of Armed Forces. "States of Emergency." https://www.files.ethz.ch/isn/14131/backgrounder_02_states_emergency.pdf, October 2005. https://www.files.ethz.ch/isn/14131/backgrounder_02_states_emergency.pdf.

Giddens, Anthony. *The Consequences of Modernity*. Padstow Polity Press, 1990.

Giordanengo, Davide. "The State of Exception." E-International Relations, 2016. https://www.e-ir.info/2016/06/21/the-state-of-exception/.

Glasius, Marlies. "What Authoritarianism Is … and Is Not: A Practice Perspective." *International Affairs* 94, no. 3 (May 1, 2018): 515–33. https://doi.org/10.1093/ia/iiy060.

Goldstein, Judith, and Robert O Keohane. *Ideas and Foreign Policy : Beliefs, Institutions, and Political Change*. New York: Cornell University Press, 1993.

Graziadei, Michele. "Comparative Law as the Study of Transplants and Receptions." In *The Oxford Handbook of Comparative Law*, 2006.

Grégoire Chamayou, and Janet Lloyd. *Drone Theory*. London: Penguin Books, 2015.

Gunaratna, Rohan. "The 9/11 Effect and the Transformation of Global Security." Council of Councils, September 1, 2021. https://www.cfr.org/councilofcouncils/global-memos/911-effect-and-transformation-global-security.

Haass, Richard N. *War of Necessity, War of Choice : A Memoir of Two Iraq Wars*. Riverside: Simon & Schuster, 2009.

Hanrieder, Tine, and Christian Kreuder-Sonnen. "WHO Decides on the Exception? Securitization and Emergency Governance in Global Health." *Security Dialogue* 45, no. 4 (June 10, 2014): 331–48. https://doi.org/10.1177/0967010614535833.

Hartmann-Mahmud, Lori. "War as Metaphor." *Peace Review* 14, no. 4 (December 2002): 427–32. https://doi.org/10.1080/1040265022000039213.

Henckaerts, Jean-Marie, and Louise Doswald-Beck. "Customary International Humanitarian Law, Volume I, Rules." International Committee of the Red Cross. Cambridge University Press, New York, 2005. https://doi.org/10.1163/090273509x12506922106795.

Heupel, Monika. "Adapting to Transnational Terrorism: The UN Security Council's Evolving Approach to Terrorism." *Security Dialogue* 38, no. 4 (December 2007): 477–99. https://doi.org/10.1177/0967010607084997.

Hobbes, Thomas. *Leviathan*. 1651. Reprint, Mineola, New York: Dover Publications, Inc, 1651.

Hogan, Michael J. *A Cross of Iron : Harry S. Truman and the Origins of the National Security State, 1945-1954*. Cambridge: Cambridge Univ. Press, 2007.

Husa, Jaakko. "Legal Families." In *Elgar Encyclopedia of Comparative Law 382*, 2006.

Hussain, Nasser. *The Jurisprudence of Emergency : Colonialism and the Rule of Law*. Ann Arbor: University of Michigan Press, 2003.

Huysmans, Jef. "International Politics of Exception: Competing Visions of International Political Order between Law and Politics." *Alternatives: Global, Local, Political* 31, no. 2 (April 2006): 135–65. https://doi.org/10.1177/030437540603100202.

Huysmans, Jef. "The Jargon of Exception—on Schmitt, Agamben and the Absence of Political Society." *International Political Sociology* 2, no. 2 (June 2008): 165–83. https://doi.org/10.1111/j.1749-5687.2008.00042.x.

International Commission on Intervention and State Sovereignty. "The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty." Canada: International Development Research Centre, December 2001.

International Committee of the Red Cross Glossary. "Military Necessity." How does law protect in war? - Online casebook. casebook.icrc.org, 2015. https://casebook.icrc.org/glossary/military-necessity.

International Committee of the Red Cross Glossary. "Proportionality." How does law protect in war? - Online casebook. casebook.icrc.org, 2011. https://casebook.icrc.org/glossary/proportionality.

Jaeger, Paul T., and Gary Burnett. "Information Access and Exchange among Small Worlds in a Democratic Society: The Role of Policy in Shaping Information Behavior in the Post-9/11 United States." *The Library Quarterly* 75, no. 4 (October 2005): 464–95. https://doi.org/10.1086/502787.

Johnson, Heather L. "The Other Side of the Fence: Reconceptualizing the 'Camp' and Migration Zones at the Borders of Spain." *International Political Sociology* 7, no. 1 (March 1, 2013): 75–91. https://doi.org/10.1111/ips.12010.

Jordan, Javier. "The Effectiveness of the Drone Campaign against al Qaeda Central: A Case Study." *Journal of Strategic Studies* 37, no. 1 (2014): 4–29. https://doi.org/10.1080/01402390.2013.850422.

Kant, Immanuel. *Perpetual Peace*. North Charleston, South Carolina: Createspace Independent Publishing Platform, 1795.

Kanwar, Vik. "Giorgio Agamben, State of Exception (Stato Di Eccezione). Translated by Kevin Attell. University of Chicago Press, 2005. 104 Pages." *International Journal of Constitutional Law* 4, no. 3 (July 1, 2006): 567–75. https://doi.org/10.1093/icon/mol023.

Kaplan, Amy. "Where Is Guantanamo?" *American Quarterly* 57, no. 3 (2005): 831–58. https://doi.org/10.1353/aq.2005.0048.

Kaunert, Christian, and Sarah Léonard. "EU Counterterrorism and the European Neighbourhood Policy: An Appraisal of the Southern Dimension." Terrorism and Political Violence 23, no. 2 (2011): 286–309. https://doi.org/10.1080/09546553.2010.538276.

Kempen, Piet Hein van. "Four Concepts of Security--A Human Rights Perspective." *Human Rights Law Review* 13, no. 1 (February 4, 2013): 1–23. https://doi.org/10.1093/hrlr/ngs037.

Kilcullen, David. "Effective Counterinsurgency: The Future of the U.S. Pakistan Military Partnership." Presented at the Hearing of the House Armed Services Committee, April 2009.

Kilcullen, David, and Andrew McDonald Exum. "Death from Above, Outrage down Below." *The New York Times*, May 17, 2009, sec. Opinion. http://www.nytimes.com/2009/05/17/opinion/17exum.html.

Koh, Harold H. "The Obama Administration and International Law." Presented at Annual Meeting of the American Society of International Law, March 25, 2010. http://www.state.gov/s/l/releases/remarks/139119.htm.

Kolb, Robert. "Origin of the Twin Terms Jus Ad Bellum/Jus in Bello - ICRC." International Review of the Red Cross, October 31, 1997. https://www.icrc.org/en/doc/resources/documents/article/other/57jnuu.htm.

Krähenmann, Sandra, and George Dvaladze. "Humanitarian Concerns Raised by the Use of Armed Drones." Geneva Call, June 16, 2020. https://www.genevacall.org/fr/humanitarian-concerns-raised-by-the-use-of-armed-drones/.

Krasteva, Anna. "Editorial of Special Focus: Securitisation and Its Impact on Human Rights and Human Security." *Global Campus Human Rights Journal* 1, no. 315 (2017).

Krause, Keith, and Michael C. Williams. "Broadening the Agenda of Security Studies: Politics and Methods." *Mershon International Studies Review* 40, no. 2 (1996): 229. https://doi.org/10.2307/222776.

Lachmayer, Konrad. "A Comparative Analysis of Security as an Element of Constitutional Design: Is Global Terrorism Changing the Conditions of International Constitutional Law?," 2007. https://www.lachmayer.eu/wp-content/uploads/2014/05/2007_A-Comparative-Analysis-of-Security.pdf.

Laffranque, Julia. "Judicial Borrowing: International &(And) Comparative Law as Nonbinding Tools of Domestic Legal Adjudication with Particular Reference to Estonia." *International Lawyer* 42, no. 4 (2008).

Lakoff, George, and Mark Johnson. *Metaphors We Live By*. Chicago: University Of Chicago Press, 1980.

Laqueur, Walter. "Postmodern Terrorism." *Foreign Affairs* 75, no. 5 (1996): 24. https://doi.org/10.2307/20047741.

Lawfare - Hard National Security Choices. "Guantanamo Litigation - History." The Lawfare Institute, n.d. https://www.lawfareblog.com/guantanamo-litigation-history.

Mabee, Bryan. "Re-Imagining the Borders of US Security after 9/11: Securitisation, Risk, and the Creation of the Department of Homeland Security." *Globalizations* 4, no. 3 (September 2007): 385–97. https://doi.org/10.1080/14747730701532567.

March, James G., and Johan P. Olsen. "The New Institutionalism: Organizational Factors in Political Life." *American Political Science Review* 78, no. 03 (December 1983): 734–49. https://doi.org/10.2307/1961840.

Mbembe, Achille. "Necropolitics." *Public Culture* 15, no. 1 (January 1, 2003): 11–40. https://doi.org/10.1215/08992363-15-1-11.

McDonald, Matt. "Securitization and the Construction of Security." *European Journal of International Relations* 14, no. 4 (2008): 563–87. https://doi.org/10.1177/1354066108097553.

McLoughlin, Daniel. "Giorgio Agamben on Security, Government and the Crisis of Law." *SSRN Electronic Journal* 21, no. 3 (2012). https://doi.org/10.2139/ssrn.3965656.

McSweeney, Bill. "Durkheim and the Copenhagen School: A Response to Buzan and Wæver." *Review of International Studies* 24, no. 1 (1998): 137–40.

Michel, Walzer. *Just and Unjust Wars: A Moral Argument with Historical Illustrations*. New York: Basic Books, 1977.

Miliband, Edward. "UN Security Council Resolution (Libya) - Friday 18 March 2011 - Hansard - UK Parliament." hansard.parliament.uk, 2011. https://hansard.parliament.uk/Commons/2011-03-18/debates/11031850000007/UNSecurityCouncilResolution(Libya).

Mohammed, Ayoob. "Defining Security: A Subaltern Realist Perspective." In *Critical Security Studies*, 121–46. Minneapolis: University of Minnesota Press, 1997.

Müller, Harald. "The Antinomy of Democratic Peace." *International Politics* 41, no. 4 (2004): 494–520. https://doi.org/10.1057/palgrave.ip.8800089.

Mwatana for Human Rights. "Joint Statement of NGOs on European Assistance to the US Lethal Drone Programme," April 25, 2018. https://mwatana.org/en/joint-statement-of-ngos/.

National Commission on Terrorist Attacks upon the United States (The 9/11 Commission). "Final Report." New York: W.W. Norton, 2004.

Neal, Andrew W. "Cutting off the King's Head: Foucault's Society Must Be Defended and the Problem of Sovereignty." *Alternatives: Global, Local, Political* 29, no. 4 (October 2004): 373–98. https://doi.org/10.1177/030437540402900401.

Neocleous, Mark. "Against Security." *Radical Philosophy*, January 2000, 7–15.

Newman, Saul, and Micheal P. Levine. "War, Politics and Race: Reflections on Violence in the 'War on Terror.'" *Theoria: A Journal of Social and Political Theory* 110 (August 2006): 23–49.

Nomi Claire Lazar, and Cambridge University Press. *States of Emergency in Liberal Democracies*. Cambridge: Cambridge University, 2013.

O'Connell, Mary Ellen. "Unlawful Killing with Combat Drones a Case Study of Pakistan, 2004-2009." *Notre Dame Law School Legal Studies Research Paper* 09-43 (July 2010).

Obama, Barack. "A Just and Lasting Peace." Presented at the The Nobel Foundation, December 9, 2009.

Obama, Barack. "Obama's Speech on Drone Policy." *The New York Times*, May 23, 2013. https://www.nytimes.com/2013/05/24/us/politics/transcript-of-obamas-speech-on-drone-policy.html.

Obama, Barack. "Remarks by the President at the National Defense University." Presented at the National Defense University, May 23, 2013.

Oelsner, Andrea. "(De)Securitisation Theory and Regional Peace: Some Theoretical Reflections and a Case Study on the Way to Stable Peace." *EUI WORKING PAPERS*, 2005.

Peoples, Columba, and Nick Vaughan-Williams. Critical Security Studies : An Introduction. London: Routledge, 2014.

Pfersmann, Otto. "The New Revision of the Old Constitution." *International Journal of Constitutional Law* 3, no. 2-3 (May 1, 2005): 383–404. https://doi.org/10.1093/icon/moi025.

Połońska-Kimunguyi, Eva, and Marie Gillespie. "Terrorism Discourse on French International Broadcasting: France 24 and the Case of Charlie Hebdo Attacks in Paris." *European*

Journal of Communication 31, no. 5 (September 24, 2016): 568–83. https://doi.org/10.1177/0267323116669453.

Rancière, Jacques. *Dis-Agreement: Politics and Philosophy*. Minneapolis: The University of Minnesota Press, 1999.

Rancière, Jacques. *On the Shores of Politics*. Translated by Liz Heron. 1995. Reprint, London: Verso, 2007.

Reiner, Robert. "Policing a Postmodern Society." *The Modern Law Review* 55, no. 6 (November 1992): 761–81. https://doi.org/10.1111/j.1468-2230.1992.tb00940.x.

Reiter, Dan, and Allan C Stam. *Democracies at War*. Princeton, N.J.: Princeton University Press, 2002.

Reprieve US. "Reprieve US." Accessed August 26, 2022. https://reprieve.org/us/.

Reynolds, John. *Empire, Emergency and International Law*. Cambridge University Press, 2017.

Richard Victor Ericson, and Kevin D Haggerty. *Policing the Risk Society*. Oxford Clarendon Press, 2002.

Richard Wyn Jones. *Security, Strategy, and Critical Theory*. Boulder, Colo.: Lynne Rienner Publishers, 1999.

Roe, Paul. "Actor, Audience(s) and Emergency Measures: Securitization and the UK's Decision to Invade Iraq." *Security Dialogue* 39, no. 6 (2008): 615–35. https://doi.org/10.1177/0967010608098212.

Romaniuk, Scott Nicholas, and Stewart Tristan Webb. "Extraordinary Measures: Drone Warfare, Securitization, and the 'War on Terror.'" *Slovak Journal of Political Sciences* 15, no. 3 (July 2015): 221–45. https://doi.org/10.1515/sjps-2015-0012.

Rousseau, Jean-Jacques. *Du Contrat Social*. 1762. Reprint, Paris: Gf Flammarion, 2001.

Rychnovskà, Dagmar. "Securitization and the Power of Threat Framing." *Perspectives* 22, no. 2 (2014): 9–31.

Sauer, Frank, and Niklas Schörnig. "Killer Drones: The 'Silver Bullet' of Democratic Warfare?" *Security Dialogue* 43, no. 4 (2012): 363–80. https://doi.org/10.1177/0967010612450207.

Scheppele, Kim Lane. "The International Standardization of National Security Law." *Journal of National Security & Policy* 4 (2010).

Scheuerman, William E. "Globalization and Exceptional Powers. The Erosion of Liberal Democracy." *Radical Philosophy* 93 (1999): 14–23.

Schmitt, Carl. *Legality and Legitimacy*. Durham: Duke University Press, 2004.

Schmitt, Carl. *Political Theology: Four Chapters on the Concept of Sovereignty*. Chicago: University Of Chicago Press, 2005.

Schmitt, Carl. *Dictatorship : From the Origin of the Modern Concept of Sovereignty to Proletarian Class Struggle*. Polity Press, 2013.

Shimko, Keith L. *The Iraq Wars and America's Military Revolution*. Cambridge: Cambridge University Press, 2010.

Schuessler, Jennifer. "Francis Fukuyama Predicted the End of History. It's Back (Again)." *The New York Times*, May 10, 2022, sec. Arts. https://www.nytimes.com/2022/05/10/arts/francis-fukuyama-history-liberalism.html.

Schultz, David. "Democracy on Trial: Terrorism, Crime, and National Security Policy in a Post 9-11 World." *Golden Gate University Law Review* 38 (2008): 195–248.

Schweitzer, C.C. "Emergency Powers in the Federal Republic of Germany." *Political Research Quarterly* 22, no. 1 (March 1, 1969): 112–21. https://doi.org/10.1177/106591296902200109.

Secretariat of the Venice Commission. "Venice Commission - Observatory on Emergency Situations." Coe.int, 2020. https://www.venice.coe.int/files/EmergencyPowersObservatory/T03-E.htm.

Sifris, Ronli. "Operation Iraqi Freedom: United States v Iraq – the Legality of the War." *Melbourne Journal of International Law* 4 (2003): 31.

Šimonović, Ivan. "The Responsibility to Protect." United Nations, 2010. https://www.un.org/en/chronicle/article/responsibility-protect.

Simpkin, James. "Necro-Ethics Part 1: Drone Theory and the Categorical Imperative." Medium, May 28, 2020. https://jsimpkin.medium.com/necro-ethics-part-1-drone-theory-and-the-categorical-imperative-f2d3be7d8b95.

Snow, David A.-Robert D. Benford (1988) 'Ideology, Frame Resonance, and Participant Mobilization', International Social Movement Research 1 (1).

Somerville, Keith. "US Drones Take Combat Role." *BBC News*, November 5, 2002.

Sommer, Geoffrey, John Birkler, Giles K. Smith, and James Chiesa. "The Global Hawk Unmanned Aerial Vehicle Acquisition Process a Summary of Phase I Experience." Rand Monograph Report, 1997.

Stamnes, Eli. "'Speaking R2P' and the Prevention of Mass Atrocities." *Global Responsibility to Protect* 1, no. 1 (February 2009): 70–89. https://doi.org/10.1163/187598409X405488.

Statista. "U.S. Drone Strikes in Pakistan 2004-2019." Statista Research Department, May 3, 2021. https://www.statista.com/statistics/428296/us-drone-strikes-in-pakistan/.

Stritzel, Holger. "Towards a Theory of Securitization: Copenhagen and Beyond." *European Journal of International Relations* 13, no. 3 (September 2007): 357–83. https://doi.org/10.1177/1354066107080128.

Stritzel, Holger. "Security, the Translation." Security Dialogue 42, no. 4/5 (2011): 342–55. https://doi.org/10.1057/9781137307576.

Sujit Choudhry, and Cambridge University Press. *The Migration of Constitutional Ideas*. Cambridge: Cambridge University Press, Dr, 2014.

Sutton, Jane. "Guantanamo Charges Dropped for 5 Inmates." *Reuters*, October 21, 2008, sec. World News. https://www.reuters.com/article/uk-guantanamo-hearings-idUKTRE49K6AL20081021.

Szasz, Paul C. "The Security Council Starts Legislating." *American Journal of International Law* 96, no. 4 (October 2002): 901–5. https://doi.org/10.2307/3070686.

Templeton, Tom. "9/11 in Numbers." The Guardian. The Guardian, August 18, 2002. https://www.theguardian.com/world/2002/aug/18/usa.terrorism.

The Bureau of Investigative Journalism. "Pakistan Drone Statistics Visualised." The Bureau of Investigative Journalism, July 2, 2012. https://www.thebureauinvestigates.com/stories/2012-07-02/pakistan-drone-statistics-visualised.

The Guardian. "French Army Deploys Drone Strike for First Time in Mali Operation," December 23, 2019, sec. World news. https://www.theguardian.com/world/2019/dec/23/french-forces-kill-40-jihadists-during-operation-in-mali.

The Washington Post. "President Bush's 2002 State of the Union Address." Washingtonpost.com, January 29, 2002. https://www.washingtonpost.com/wp-srv/onpolitics/transcripts/sou012902.htm.

The White House Archives. "Presidential Message." georgewbush-whitehouse.archives.gov, 2003. https://georgewbush-whitehouse.archives.gov/news/releases/2003/12/20031225.html

The White House. "The Constitution." The White House, 2021. https://www.whitehouse.gov/about-the-white-house/our-government/the-constitution/.

Thibodeau, Paul H., Rose K. Hendricks, and Lera Boroditsky. "How Linguistic Metaphor Scaffolds Reasoning." *Trends in Cognitive Sciences* 21, no. 11 (November 2017): 852–63. https://doi.org/10.1016/j.tics.2017.07.001.

Thoms, Oskar N. T, and James Ron. "Do Human Rights Violations Cause Internal Conflict?" *Human Rights Quarterly* 29, no. 3 (2007): 674–705. https://doi.org/10.1353/hrq.2007.0034.

UNA-UK. "R2P - in Detail." United Nations Association, 2021. https://una.org.uk/r2p-detail.

United Nations. "United Nations Charter." United Nations, 1945. https://www.un.org/en/about-us/un-charter/full-text.

U.S. Government Publishing Office. "Effective Counterinsurgency: The Future of the U.S.-Pakistan Military Partnership." House Hearing, 111 Congress www.govinfo.gov, April 23, 2009. https://www.govinfo.gov/content/pkg/CHRG-111hhrg52666/html/CHRG-111hhrg52666.htm.

Van Dijk, Teun A. (2001) 'Critical Discourse Analysis', in Deborah Schiffrin-Deborah Tannen-Hei Hamilton (eds) The Handbook of Discourse Analysis, pp. 352-371. Oxford: Black.

Vaughan Lowe, and Et Al. *The United Nations Security Council and War : The Evolution of Thought and Practice since 1945*. New York: Oxford University Press, 2008.

Vaughan-Williams, Nick. "Borders, Territory, Law." *International Political Sociology* 2, no. 4 (December 2008): 322–38. https://doi.org/10.1111/j.1749-5687.2008.00054.x

Vocabolario Treccani. "Eccezióne." www.treccani.it. Accessed June 18, 2022. https://www.treccani.it/vocabolario/eccezione/.

Vultee, Fred (2011) 'Securitization as a Media Frame: What Happens When the Media "Speak Security"', in Thierry Balzacq (ed) Securitization Theory: How Security Problems Emerge and Dissolve, pp. 77-93. London-New York: Routledge.

Vuori, Juha A. "Illocutionary Logic and Strands of Securitization: Applying the Theory of Securitization to the Study of Non-Democratic Political Orders." *European Journal of International Relations* 14, no. 1 (2008): 65–99. https://doi.org/10.1177/1354066107087767.

Wæver, Ole. "Securitization and Desecuritization." In *On Security*, 46–86. New York: Columbia University Press, 1995.

Wæver, Ole. "Security, the Speech Act: Analysing the Politics of a Word - Working Paper 1989." Academia.edu, June 3, 2014. https://www.academia.edu/2237994/Security_the_Speech_Act_working_paper_1989.

Wagner, Markus. "Taking Humans out of the Loop: Implications for International Humanitarian Law." *Journal of Law, Information & Science* 21, no. 2 (2011). https://doi.org/10.5778/jlis.2011.21.wagner.1.

Walker, R. B. J. "Lines of Insecurity: International, Imperial, Exceptional." *Security Dialogue* 37, no. 1 (March 2006): 65–82. https://doi.org/10.1177/0967010606064137.

Waseem, Zoha. "Drones Series, Part I: Pakistan's Decade of Drones (2004-2014)." Strife, April 8, 2014. https://www.strifeblog.org/2014/04/08/drones-series-part-i-pakistans-decade-of-drones-2004-2014/.

Welsh, Jennifer M., and Michael Ignatieff. "The Lesser Evil: Political Ethics in an Age of Terror." *International Journal* 60, no. 1 (2004): 285. https://doi.org/10.2307/40204036.

Williams, Michael C., and Keith Krause. "From Strategy to Security: Foundations of Critical Security Studies." Essay. In *Critical Security Studies: Concepts and Sases*, 33–66. London: Routledge, 2003.

Williams, Michael C. "Words, Images, Enemies: Securitization and International Politics." *International Studies Quarterly* 47, no. 4 (December 2003): 511–31. https://doi.org/10.1046/j.0020-8833.2003.00277.x.

Wheaton, Henry. *Elements of International Law*. Boston, 1866.

"'Will I Be Next?' US Drone Strikes in Pakistan." *Amnesty International*. London: Amnesty International Publications, 2013. https://www.amnestyusa.org/files/asa330132013en.pdf.

Zalman, Amy, and Jonathan Clarke. "The Global War on Terror: A Narrative in Need of a Rewrite." *Ethics & International Affairs* 23, no. 2 (2009): 101–13. https://doi.org/10.1111/j.1747-7093.2009.00201.x.

Legal Sources

Armed Activities on the Territory of the Congo (Congo v. Uganda) 2005 I.C.J. para. 301 (Dec. 19).

Charter of Fundamental Rights of the European Union, 2000.
Constitution of Greece (1975, as revised by the parliamentary resolution of May 27th, 2008).

Constitution of India (1950).

Constitution of the Fifth Republic (1958).

Constitution of the German Empire (1871).

Constitution of the Italian Republic (1948).

Constitution of the Republic of South African (1997).

Constitution of the Republic of South Korea (1948).

Constitution of the United States (1789).

Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR).

Council Framework Decision of 13 June 2002 on combating terrorism (2002/475/JHA).

Council of the European Communities, and Commission of the European Communities. 1992. Treaty on European Union. Luxembourg: Office for Official Publications of the European Communities.

Federal Constitution of the Swiss Confederation (1999).

International Covenant on Civil and Political Rights, UN GAOR Supp. No. 16, at 52, UN Doc. A/6316 (1966).

Military and Paramilitary Activities (Nicaragua v. U.S.), 1986 I.C.J. 14, 195, 230 (June 27).

Oil Platforms (Iran v. U.S.) 2003 I.C.J. 161, 191 (Nov. 6).

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.

Regulation (EU) 2019/818 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration and amending Regulations (EU) 2018/1726, (EU) 2018/1862 and (EU) 2019/816, *Official Journal of the European Union* L135.

The French Constitution, adopted by the Referendum of September 28, 1958 and Promulgated on October 4, 1958. French Text and English Translation. New York: French Embassy, Press and Information Division, 1958.

The Germany Emergency Acts (1968), 17th constitutional amendment to German Basic Law.

The United Nations Charter (1945).

The Weimar Constitution (1919).

Summary

This thesis is developed along the lines of two macro-areas of International Relations: Security Studies and Comparative Law contextualized within liberal democracy. The latter rose to the apex of the world order at the end of the 20th Century with 'the end of history' which predicted the universalization of liberal democracy. Such order relies on two fundamental pillars: the rule of law, which distinguishes it from other political regimes as it is not the sovereign but the norms that have the last word, and the power of the *demos*. The *demos* presents an important element which is that of legitimacy. Other than being supported by the law, liberal democracy depends on what the people approve to be legitimate.

At this point, we can introduce the realm of security and how it interacts with this context. When security intersects with liberal democracy, like other issues, it must be politically debated, and its measures must conform to the rule of law. However, given the symbolic power attached to such realm, the debate is transformed in a unique process of securitization. Such process distinguishes itself as it escapes the political because of the unquestioned approval that justifies it, therefore, its legality is not put into discussion as it relies on legitimacy. The issue is that securitization gives security a huge potential, that of imposing itself on the rule of law and universalizing the rule of security rather than that of Western liberal democracy. The end of history brings about a fatal paradox: the end of liberal democracy. In fact, securitization stems from liberal democracy supported by the rule of law, but as it is implemented, it threatens it. Therefore, the aim of this thesis is that of questioning whether securitization has established a permanent rule of security above the law of liberal democracy. In doing so we can verify whether securitization has determined the fatal demise of liberal democratic principles globally.

The Age of Security

The 21st Century in which our analysis is set, is one where the omnipresence of security is such that we can label it an actual 'age of security.' This does not necessarily imply that this period is characterized by an objective status of security as the notion itself is essentially contested. Security is, instead, used as a tool, a set of practices that transforms it into a verb: securitization. The first theories on securitization were originally developed by the first-generation scholars of the Copenhagen School as a part of Critical Security Studies. This alternative approach uses security as a framework of analysis and allows us to borrow it for the purpose of our research. The securitization framework works on a spectrum that moves an issue from the political to

the security realm. To be implemented, it requires for an authoritative actor to use a speech act that frames an issue, area, topic or group of people as being security related. This act enables to mobilize and legitimize extraordinary resources towards the threat which has been socially constructed and associated to survival.

Securitization, however, does not stop at this, as later elaborated upon by second-generation scholars. The latter developed the process beyond the speech act which, notwithstanding its significance as a point of departure, relies on many other elements for its effectiveness. Among these we highlight the importance of audience, context, and power relations. Additionally, the role of security practices is particularly relevant as these can be the consequence but also the cause of a securitization speech. These elements therefore all contribute to the framing of a security threat, a frame that is negotiated by the security actor and the audience. The negotiation is characteristic of the liberal democratic regime where securitization is developed: the approval of the *demos* is a necessity for legitimacy. Once the frame is legitimized however, securitization gains such a solid ground that it does not need to endure further input from the *demos* which implicitly set the frame to legitimize future acts.

The concrete reality in which this theoretical framework operates is one that does not only correspond to the age of security, but also to that of terror. Securitization, in fact, finds its most exponential expression in the Global War on Terror following 9/11. In this case, even though national security remained crucial, global security was paramount implying a trans-nationalization of securitization. The process was pioneered by the liberal democracy *par excellence*, the United States. The rhetoric it was built on relied on an 'us' vs 'them' narrative where the former is constituted by Western liberal democracies and the latter by all those that could threaten 'our' values. Such a narrative was put at the core of the speech act and accordingly implemented through security practices. Such an exponential development of securitization suggests that to some extent, 9/11 represents a true turning point for the impact it had on justifying security practices. One must however also keep in mind that in some respects it was simply a reformulation of already existing practices. In fact, before 9/11, the taunting date that set the American security environment was the 7th of December 1941. Pearl Harbor was used as the triggering event that was evoked to frame the US-Soviet conflict therefore analogically to 9/11 its impact was protracted across several decades. Another common feature is that the United States acted as a securitizing actor that spoke to the Western audience. This precedent implied that the audience was already acquainted with securitized practices that relied on an event as a legitimiser. On the other hand, it was also pointed out that

in some regards Al Qaeda's attack may have been even worse than the Japanese one. Even though in terms of numbers 9/11 was a lot less damaging than Pearl Harbor, its power rests on its symbolism as it targeted emblematic landmarks of the United States and to some extent, of liberal democracy itself. The response was a new kind of war, a geographically and temporally unlimited war based on a sense of insecurity and xenophobia. The effect resonated across global and national scales and securitization processes were implemented on both levels. Internationally the UN Security Council acted as the securitizing actor with the United States in the lead. Terrorism was newly framed through a series of resolutions calling upon member states to counter it. The pre-eminence of the US in the international liberal order at the time of 9/11 functioned as a trampoline for securitization to extend its reach globally. However, the core securitizing actor implemented a much stronger mobilization in its homeland which served as an example for the rest of the world. As the issue is defined as an existential threat, it is shifted from the political to the security realm stalling the system of checks and balances to concentrate all the power in the hands of the executive. The result was a series of illiberal memoranda complemented by the Patriot Act that stands out for its discriminatory nature undermining liberal democratic values.

The war on terror was therefore waged both at home and abroad. Its projection as a global war gained support from multiple audiences that echoed its practices in space and time. In this, 9/11 was a major turning point as its underlying logic and framing of transnational terrorism kept securitization alive through liberal democracies across the years. For instance, the Charlie Hebdo attacks also translated into a war frame that concentrated the power in the hands of the French president. The prolonged state of emergency allowed for several US-inspired counterterrorist activities which were then formalised into legislation. This shows how since September 2001, securitization has gradually led to the institutionalization of emergency response beyond the limits set by liberal democracy. Even though 9/11 response was supported by already existing institutional realities, the measure to which it was extended allows to make exceptions to the values that have permeated the world order. The global war on terror has set the premises for a perpetual war implying that exceptional violations to liberal democracy are legitimized as lawful with an alarming frequency. For this reason, it is crucial to understand the complex relationship between law and security.

The Relationship between Law and Security in Liberal Democracy

As all elements which interact with law, the position of security underwent several changes affected by the interplay between the international and national level. Norms established

internationally since 1945, have been designed to govern a liberal democratic world order. In this normative framework, international security is set as an objective that can be achieved as a consequence of the respect of human rights and prevention of war. Looking at the interaction with the national level, the protection of individual security as a right domestically, fosters international security. The exception to this lies in the universal project of liberal democracy that may resort to international aggression to spread its values. Paradoxically, security can be temporarily set aside for the greater purpose of democratizing and guaranteeing future international security promised by the perpetual peace of liberal democracy. The position of security on a global scale is therefore somehow fluid as it changes according to Western needs. At a national level instead, dealing with law in liberal democracies requires looking at constitutions as a primary source. Security is not codified as a constitutional principle but contributes to the formulation of the protection of fundamental rights established by the constitution. It allows to balance and limit rights against each other and with society's objectives. Moreover, a special legal clause in most constitutions allows for the suspension of multiple rights for the sake of security: the state of emergency. Here the constitution itself puts law at the disposal of security purposes. The effect is that of taking extraordinary measures which is very similar to that of the securitization process. The difference is that instead of being triggered by a political speech act, it is allowed by the primary source of law itself which does not need the approval of the audience. To some extent, liberal democracy provides a formal constitutional loophole that set the ground for the transformation of the role of security.

The practical repercussions of such loophole have been anticipated in the previous paragraphs considering the cases of the United States and France. The securitization processes implemented exploited the state of emergency which leads us to examine the legal consequences in this regard. The leading securitizing actor at the pinnacle of liberal democracy, the US, operated formally through the UN Security Council which, through the resolutions, enacted a binding legal document. Then it operated practically by implementing securitized policies that caused an international domino effect. The support of the Western audience was determined by the position of the United States as a global power but also as a constitutional role model. The rule of law is 'legitimately' bent by its own modern founder allowing security to introduce international norms. An important example in this regard is the Responsibility to Protect doctrine (R2P) that represented a way to ensure human security for the populations of the affected states and prevent potential safe havens for terrorist activity threatening international security. The R2P was transformed into a powerful speech act supported by the

'us' vs 'them' narrative to appeal to the audience of the (Western) international community. Its discourse, however, has very concrete effects on the international legal framework as, especially its third pillar, counters principles of international law and the UN charter. Notwithstanding the inconsistencies with international law, the controversial doctrine was strongly advocated for by the former UN Secretary-General creating exceptions to the respect of sovereignty and non-intervention. This questions the possibility of ever upholding the rule of law globally.

The normative impact of securitization internationally caused a national standardization of national security law. What initially occurred as a counterterror effect slowly came to permeate constitutional realities even among systems belonging to different legal families. The increasing frequency with which global emergencies have been declared since 9/11 has paved the way for constant measures to be applied on both international and national scales in the name of security. These have been routinized to ensure security permanently shifting its status towards a constitutional principle. The implication is that rather than being limited by the constitution, security can be considered on the same level as other principles and fundamental rights and is equally balanced against them. This logic is particularly problematic when it intersects with the international level that sets security as an objective. If states must balance security with other national principles whilst also pursue security internationally, it is more likely for security to prevail. For instance, this is one of the risks for EU member states where the European Union's treaties holding constitutional validity formally position the principle of security on the same level of freedom and justice. In practice however only the field of security has witnessed an expansion which necessarily impacts member states' governance that must abide by EU principles.

The transformation of security into a constitutional principle is also visible beyond European borders as once again, the United States provides us with substantial examples. The most emblematic are that of the aforementioned Patriot Act and the Homeland Security Act showing how national legislation can limit civil liberties for security purposes without being debated. Security is not only being conceived as a constitutional principle, but as a dominant one that is naturally in contrast with the hegemonic nature of law in the rule of law. Securitization's challenging of the law has been so compelling that the last couple of decades have gone towards the subduing of certain legal principles and values to security. The risk is that of a new guiding framework for liberal democracies: the rule of security.

Towards Perpetual Exceptionalism

The rule of security is a rule of exception. The exception is the result and also the aim of securitization. The exception, however, is an exception to the norm, an exception to the law. There is, therefore, an incompatibility between the exception and the rule of law. As previously stated though, there is a legal scenario contemplated by law that enables the exception in a context of emergency. Schmitt's original depiction of the state of emergency is set in a very limited timeframe that has the only purpose of restoring law and order. It came to define the nation state and was integrated into liberal democratic constitutions as a part of law. A pioneer in this regard is undoubtedly France as the 'state of siege' dates back to the Revolution of 1789 and is now enshrined in article 16 of its constitution. Germany also has an important history concerning such clause in the Weimar Constitution as it was the legal support that plunged the regime into the Second World War. In the United States instead, the situation is quite different from the European counterparts as the state of emergency is never mentioned in the actual text of the constitution. Resorting to 'emergency powers,' therefore, largely depends on the outcome of the conflict between branches of government based on the competences granted by constitutional articles. On the other hand, several provisions do allow for exceptions to certain laws. All these provisions are a response to a potential situation of war or general insecurity, setting the base for the securitization process. Finally, the closest thing to the state of exception in the United Kingdom is martial law used to justify the defence of the Commonwealth in situations of war.

The issue is that that securitization has shifted the state of emergency (above but within the rule of law) towards a state of exception (outside of the law) which corresponds to a state of pure violence. The securitized context gives life to the routinization of securitized or emergency measures which become the norm. It is precisely when the emergency becomes the rule that the dialectic between law and exception ceases to exist. This also means that it is not even necessary to use a speech act to resort to extraordinary measures because those measures are now ordinary, they are the norm of perpetual exception. Such status of perpetual exceptionalism is not a phenomenon that liberal democracies have reserved only to their own regimes. It has in fact been used as a weapon of oppression by Western colonial empires. The mode of governance in these empires can be described as belonging to that of 'necro-politics' as colonized populations are treated like corpses. The narrative guiding imperialism at the time closely resonates with the securitization process of today. The 'us' vs 'them' shifted from civilized states vs non-civilized countries to liberal democracies vs non liberal democracies.

For the greater purpose of civilizing, exceptional measures were necessary, just like for the purpose of security today.

The best way to claim such purpose, is that of war. Being conflict the manifestation of a situation of insecurity, using the metaphor of war is the most effective way to trigger the state of emergency. The power of such metaphor can, however, prolong the state of exception making it indefinite. It is a long-standing metaphor that is quickly processed by the audience and can be projected on to a wide variety of topics constructing actual realities. Moreover, it highlights a distinct set of parties that are in violent conflict between one another where one is usually depicted as the 'good' (of which the audience to whom the securitizing actor appeals to is supposedly part of) and the 'bad' (the threat against which the securitizing process is built on). This narrative generates an effect that is very similar to that intended by the securitization process and therefore amplifies its impact.

The largest internationalized and prolonged support has been generated by the war on terror as a hegemonic securitizing actor felt politically and culturally undermined. The latter works in favour of homogenizing the response of those who share such culture as 'us' declaring war on 'them.' By uniting the international community, rather than a *state* of exception it generates a *global* (or Western) exception. Concretely, the effects of the war on terror are most visible in the extra-judicial space in Guantanamo Bay. Such *locus* has been placed offshore to enable exceptionalism to take its most extreme form in what resembles a necropolitical reality. Liberal and democracy are two concepts that are unknown to the caged detainees of Camp Delta whose scope is to deprive the 'other' of all that 'we' stand for. Detainees are subject to the same lawless status of the colonies where sovereignty was exercised above the rule of law. The rule is more one of imperialism or absolutism rather than one of law. At the base of its legitimization, lays always the same concept: security.

The war on terror continued to manifest itself, changing the 'face' of the 'other' according to the security agenda. The attacks in France in 2015 constituted a dramatic event that called for the declaration of a state of emergency but, being in a securitized environment set in a war context, a state of exception was the result. The emergency was set to continue until the war on ISIS comes to an end showing how the fight against the 'other' also takes place at 'home,' depriving 'us' of our own values.

The Pakistani Case Study

Even though the war at 'home' threatens liberal democratic principles, the severeness of violations perpetrated abroad is a lot more striking. The previously mentioned state of pure violence comes to life in the *modus operandi* adopted by liberal democracies in the high-tech weaponry used for 21st Century warfare: drones. The situation resulting from the US-led drone strikes that have occurred in Pakistan since 2004 is the explicit culmination of all the topics discussed until now. It is, in fact, the manifestation of the outcome of securitization practices implemented by liberal democracies establishing global exceptionalism. Being strengthened by the metaphor on war based on the 'us' vs 'them' narrative, the US action in Pakistan blatantly disregards the rule of law and the values it protects which are supposedly upheld by those who initiated the securitization process in the first place. The controversy is caused especially by the fact that the precise targeted killing guaranteed by drones has many fallacies that make civilian casualties a substantial collateral damage. Furthermore, disregard of the principle of sovereignty cannot be justified with the argument that UAVs' intervention is 'unmanned' meaning that the territory is not physically entered by Americans.

Anyhow, to legitimize the use of lethal weapons, the argument of securing future liberal democracy is exploited. The Bush administration made the first launch in 2004 but the peak of the strikes was reached in 2010, mid-way across the new democrat presidency. The security issue, therefore, is exempted from political differences. The degree to which this occurred is however outstanding as drone strikes multiplied becoming the norm. The Pakistani case shows the extent of the securitization effect across space and time. We can, in fact, define it not as a case of simple securitization but the vertex point of a macrosecuritization process. Securitization alone perhaps would have not sufficed to allow such controversial means to be used but macrosecrutization, as the prefix 'macro' suggests, enlarges its impact and extent of legitimacy. This enables to create referent objects at any level and coordinating securitizing practices embedded in it. If we look at Pakistan, the referent object is at multiple levels as each one appeals to different audiences. At a micro-level the referent objects are American civilians whose life is threatened by the possibility of future attacks. At a meso-level, the referent object is the United States as a nation, due to the fact that Pakistani tribal areas supposedly hosted some of the leaders that had attacked important governmental structures undermining the credibility of the US as a global power. Finally, at a macro-level, the referent object is the international community, more specifically the values of liberal democracy. Drones, therefore,

are securitized weapons that contribute to ensure the securitization of all these referent objects at different levels.

The rhetoric surrounding this 'dronification' of warfare is one that insists on its legality, not only on its legitimacy. The legal jargon adopted in this regard is that of a 'just war' that conforms to international norms and regulations around the use of force. The latter can be summarized in the *jus ad bellum*, conditions that must be met before engaging in war, and *jus in bello,* regulation of the conduct of the warring parties. The issue with the Pakistani case is that both set of norms are undermined. The former finds its codification in the UN charter whose main objective is that of prohibiting the use of force with very few exceptions in Chapter VII (authorization from the UNSC and self-defence). Neither are applicable for Pakistan that was not directly involved in an armed attack. For the *jus ad bellum* instead, we must acknowledge that in the light of the fact that we are dealing with normative systems ideated by liberal democracies, it is crucial to maintain the respect of human rights even in situations of armed conflict. Additionally, principles of necessity, proportionality and discrimination should remain paramount. The characteristic of these principles is that as they govern the law of war, they should not be violated even in emergency circumstances due to the fact that they are purposefully directed to such situations. Instead, the 'collateral effect' of civilian casualties during drone warfare violates all the principles of the *jus in bello* leading to further use of force. The effect is, in fact, counterproductive as it appears that instead of diffusing liberal democratic values, the United States gave life to a 'siege mentality' which acts as a recruitment mechanism in favour of extremism. Witnessing useless and innocent life loss provoked by those exporting liberal democratic values radicalizes Pakistani civilians towards an antithetical ideology with respect to the murderers. The result is even more use of force as a response and the protraction of conflict in the future.

But why would the mother country of freedom and rights use violence to obtain the opposite reaction it was aiming for? Here lies the paradox of the use of force which, to some extent, we could consider the paradox of liberal democracy itself. The *modus operandi* of democracies is ambivalent: democracies are promoters of peace until they are among themselves, until they deal with 'us.' They do however have a tendency to adopt a belligerent behaviour towards 'them' to the point that we can talk about 'democratic wars' for the universalization of democracy. When the United States began the drone warfare in Pakistan, it was manifesting such paradox. It exploited the use of force, the most exceptional measure, to *secure* the liberal democratic values it represented, that had been undermined by 'them.' It did so in the name of

liberal democracy, but by using force, it did not respect liberal democratic principles, therefore it is more coherent to say that it did so in the name of security. The paradox is therefore manifested as the intersection between the ambivalent or antinomic essence of liberal democracy with the securitization process. By setting universal objectives, liberal democracy has built a self-destructive mechanism within its purpose. To export its values globally, it is forced to violate them, it is forced to auto-destruction. Securitization is the tool that has been used to set this destruction in motion. It legitimates practices that counter the rule of law in favour of the rule of violence. The rule of violence has been the normative framework governing the US-led drone strikes in Pakistan. The new set of norms enabled by the macrosecuritized environment of the war on terror tipped the behaviour of the United States towards its belligerent side. This set of norms cannot be considered part of a state of emergency as they expand in time and space beyond its scope and do not align with any of the principles of the rule of law. They include: suspension of fundamental rights (specifically the right to life); undermining of the principle of sovereignty; violation of the *jus ad bellum* and of the *jus in bello*; a new standard of the use of force. In short, this set of violations are part of a major repercussion of securitization on the rule of law: 'normative' frameworks where law stopped ruling. The new 'norms,' if so we can call them are in other words the exception. By ruling through exception in Pakistan, the United States is exporting exceptionalism, not liberal democracy. It is securing non-liberal, anti-democratic values and legitimizing them globally. In doing so, it is potentially paving the way for the rule of security to install itself permanently. Securitization has been exploited as a weapon, more deadly than any drone, and its target is liberal democracy.

Desecuritizing in the Name of Liberal Democracy

As we move away from the specificity of this case, we can extend its conclusions from the particular to the general (which leads us to consider the possible permanence of the rule of security above the rule of law). Pakistan constitutes only one among the multiple situations in which securitization attacked liberal democracy, each one a milestone for global exceptionalism. It is therefore a priority for the West to put in place a counter measure to survive, and perhaps bring the 'rest' back to life: desecuritization.

Even though the focus of our study revolved around security and its legal implications, politics is a very important component at this point. The political has mostly been associated with practices that only involve liberal democratic citizens. This limit would be acceptable if we were dealing uniquely with a situation of national securitization. However, this is definitely not

the case. The macrosecuritized framework triggering the global emergency we are set in, does not give us the luxury of remaining within our 'comfort zone' in taking into account only what we are familiar with: the West. The most important political actors in this regard, especially in relation to our case study which took place outside of liberal democratic boundaries, are the 'others.' The reason is that by being excluded from the political debate that takes place within the state, the 'others' or 'those who have no part' are spared from the constraints of the social contract whose procedures are the end of politics. The outsiders, whose voices are silenced within the systems of the state, are the only ones that are not oppressed by the sovereign order. Their status of exclusion is also a status of power. This is because it is this very status that endows them with the will and possibility of challenging and resisting. It endows them with the faculty of doing politics. Desecuritizing means restoring politics which also means democratizing. Anyhow, those that have to take on the burden of democratizing act from the outskirts of democracy as they have been exiled from it by security. So how do they raise their voice to trigger debate and start politics? The answer lies in emancipation. Emancipation must find its voice outside of security and within the political. This is the only way to enact the democratization that can de-construct that macro-framework and put an end to the binary narrative stigmatizing the 'other.' By linking emancipation to democratic politics, it is linked to equality and fairness. It gives a voice to all, a voice that can however be kept accountable as it is under public scrutiny. It makes no distinction between sides or individuals as it seeks a debate that invokes the universal principles that a democratic regime should uphold. This universality and equal recognition engage with a new logic, outside the bounds of security. It is not exclusionary which means there is no need to sacrifice a certain group to guarantee the security of another, but rather it defines new equal grounds that determine the relationship with the 'other.'

Emancipation cannot be conceded, it must be taken. It is a duty and, in some aspects, also a prerogative of the 'other'. The first step towards this, is one of dis-identification from that of the 'other' or 'security have not' and the invocation of universal principles. The main issue here, is that it is particularly problematic to claim a right from the outsiders of the community which does not allow them to dis-identify as outsiders in the first place. The path to emancipation, therefore, must involve the insider as well, as the 'us' can create a link with 'them.' This also means establishing a medium for their voices to be heard and denounce the securitized status quo. The mediators that help constructing this link between insiders and outsiders are in between the political and the judicial realm. These can mutually reinforce one another as grass root organizations and NGOs are supported by human rights lawyers

advocating on behalf of the security have-nots and creating a political bridge with a judicial response. They are both distinct from the securitizing actor but are still authoritative towards the liberal democratic audience due to their endorsement of the values belonging to the people's culture. This allows them to transcend communities as whether they are founded in liberal democratic countries or not, they can still appeal to the liberal democratic world and be heard. Emancipation is the realization of the liberal pursuit, it solves the liberal antinomy by giving a voice to 'the rest.' When they are welcomed in the political debate, or rather as they forcibly raise their voices to create an environment of contrast and disagreement, they are already part of 'us' as they participate in the liberal democratic process escaping the securitized one. As exceptionality became the norm eroding the rule of law, it also triggered the voices that have the potential to globally democratize by changing the narrative. It set the grounds to dis-identify as the 'other,' to emancipate, to desecuritize. Just as securitization expands through space and time, so do the voices of the drone strikes victims, very slowly but steadily. Liberal democratic securitized practices are being challenged both from the inside and the outside striving to escape the exception. Such challenge questions the legitimacy of the rule of security. Even though desecuritizing a well-established framework such as that of the war on terror is a complex and lengthy endeavour, building a new relationship towards emancipation may be the last hope for liberal democracy.

In conclusion, going back to our core question, even though the rule of security is constantly challenging the rule of law, it has not out ruled it entirely. This means that its rule is not yet permanently set above the law, but rather in a constant struggle with law. Liberal democracy is under attack, but it has not reached the end. Liberal democracy is a long way from realizing its goal and securitization has pulled it several steps back. But liberal democracy's true aim lies in constant progress. Therefore, although its cornerstone, the rule of law, is threatened, as long as it is fought for, no matter how, no matter from who, it is being realized. And the fact that the fight is brought forward by the 'other' is a demonstration that, even in small quantities, it lives on everywhere. Liberal democracy still has a lot to tell, and through the voices of the rest it can perhaps save itself from the West.