



CHAPTER 4

**STATE-CONDUCTED POLITICAL VIOLENCE:
A PERSISTENT JURIDICO-POLITICAL
PHENOMENON
(EVEN IN TIMES OF TRANSFORMATION)**

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Abstract

According to liberal constitutionalism, the legitimacy of the actions of the sovereign state finds its grounds in democratically formed political power that is subjected to national law inside. The reflection of this thought in IR is the thesis of liberal international order. As such, the state is also deemed to be bound by international law in its relations with other sovereign states, comprising an international order valuing liberal principles of state rule and actions. The defenders of liberal constitutionalism and liberal constitutional order consider democracy and violence incompatible. However, political violence conducted by states is integral to many democracies. Let alone democracy excluding violence and sovereign state practices, the state practices' legitimacy has been ultimately based on violence. In navigating the complex interplay between state practices and (national and international) norms, this paper looks at the power-law nexus in the national and international orders. It centers this nexus by looking into the emergency and war powers in the legal order, political power and democratic legitimacy, and notions of sovereignty to discuss the spatially selective political violence conducted by states. It argues that domestic and international security politics co-constitute each other. The mutual relationship between democratic notions and violence accompanies this co-constitution. Through the justification on the grounds of political 'necessities', referring to democracy and liberal order, violence can become something processed and laid the basis for through the state institutions formed as a part of democratic requirements. In effect, violence becomes justified as the logical extension of emergency or war prerequisites to save the nation/state. When the subject that is framed as a threat is the same for the state's internal and external actions, national and international aspects of sovereignty merge into the notion of violence, legitimized on the same grounds at both national and international levels.

Keywords

*Democratic Legitimacy, Liberal Constitutionalism, Liberal International Order,
Legal Order, Violence, Sovereignty*

Introduction

From the liberal constitutionalist perspective, the legitimacy of the sovereign state's actions finds its grounds in democratically formed political power that is subjected to national law constituting a liberal constitutional order. The reflection of this thought in the discipline of international relations (IR) is the thesis of liberal international order. According to this framework, states are obligated to abide by international law in their interactions with other sovereign states, thus endorsing an international order that upholds liberal principles of governance and conduct. States incorporate international treaties into their legal systems, thereby integrating the rights and liberties regime into their constitutional framework upon ratification. The liberal argument of the universality of human rights theoretically equalizes all people regarding their rights. While all states are deemed equal before international law, no person is exempted from human rights, regardless of their origin.

Conventionally, the democratic theory posits that democratic institutions offer peaceful avenues for conflict resolution, employing methods such as voting, negotiations, and compromises to foster harmonious coexistence of otherwise non-complementary social and political elements. In this conventional view, the fragility of democratic institutions is inclined to lead to violent conflicts (Mansfield & Snyder, 2005; see also Rummel, 1995). For instance, Ikenberry (2011, p. 63) argues that "democracies are ... particularly able and willing to operate within an open, rule-based international system and to cooperate for mutual gain." As such, democracy and violence are generally considered incompatible. However, political violence conducted by the state is integral to many democracies, including the 'liberal' ones (see Go, 2023; Maharwal, 2017; Meyer, 2021; Prakash, 2022). As Kundnani (2017) points out, states have broken the security order rules regardless of where they are located. Many state practices within and outside the national territory have defied the conventional attributions of sovereignty and the conventional democratic theory. Let alone democracy excluding violence and sovereign state practices, the "current constitutional legitimacy is ultimately based on violence", as Ninet (2013, p. 8) argues.

In navigating the complex interplay between state practices and (national and international) norms, this paper looks at the power/law nexus in the national and international orders and how the tension between the law and political power unfolds in territories exposed to states' security measures that interfere with the rights and liberties regime of the inhabitants of these specific territories. The paper centers on the nexus of law/power by looking into the notions of the legal order, sovereignty, political power, and democratic legitimacy, as well as what they notions refer to in times framed as extraordinary due to emergency or war conditions. How to conceptualize these interconnected notions is essential to understanding domestic and international politics and juridico-political conditions of political violence conducted by states. Liberal constitutionalists (intra-state) and the theorists of liberal international order (inter-state) defend legal systems that prevent arbitrary actions of state authorities. However, the practice indicates that political violence conducted by states may be inherent to the democratic order as a potentiality inside and outside. As such, the law allowing discretionary actions and inactions of state authorities dissolves arbitrariness in the notion of discretion, based on which the threat definitions are made and what is framed as a threat is targeted. This paper contends that the state has the capability to exercise its sovereignty through violent actions or inactions (remaining silent when violence in geography leads to violations of the rights and liberties of the inhabitants of that geography) if nothing prevents it from doing so.

In what follows, I will discuss the emergency and war in the law and how the use of the exceptional powers deriving from these exceptional situations is based on discretion and, ultimately, on the political will of political power. Subsequently, I will look into state sovereignty - how it has been defined in scholarly work and how state authorities exercise it. Then, I will examine the tension between political power and the law and how this tension may unfold in several ways, in some of which democracy and violence become co-constitutive. Finally, I will look into how some forms of violence conducted by states present spatial patterns in specific geographies.

Protecting the Nation/State in Times of Emergency and War

At the national level, emergency powers legally embodied in state institutions, be it martial law or the ruler's prerogative, have an old and continuous history in both theory and practice and date centuries back in the modern state. As such, state authorities' interference with the constitutional norms concerning citizens' rights through emergency powers is a historical phenomenon. Today, in every constitutional order, state authorities are equipped with means to protect the state (see Neocleous, 2006). Decisions defining a specific situation, event, people, or geography as a threat to the existence of a given political order may result in defining the times as 'extraordinary', requiring exceptional security measures, hence interfering with the norms concerning the rights and liberties regime until the threat is eliminated. According to the defenders of liberal constitutionalism, the state guarantees rights and liberties unless there is a threat to the nation/state requiring the restriction or suspension of some constitutional rights and liberties to facilitate the use of exceptional security measures targeting the threat. While these measures constitute exceptions to norms on the rights and liberties regime, they comply with some other norms concerning the security of the nation/state. As such, every constitutional order functions on this inherent contradiction between contradicting provisions. As Hussain (2007, p. 742) argues, "rule of law is and has always been capable of accommodating a range of repressive but legal measures." Then, theoretically, in the liberal order of the state, norms and exceptions to norms are not dichotomous, but they can exist simultaneously in every legal order. Both the legal and political orders are preserved during times framed as 'extraordinary'.

States, whether classified as liberal democracies or not, are creative in producing ways of preventing their citizens from exercising their constitutionally recognized rights and liberties by justifying state authorities' practices on the grounds of security needs. Neocleous (2006) has shown how emergency declarations have been a significant part of the rule of law in many countries. Indeed, the continuous mundanity of states' interference with rights and liberties may be carried out through the law, sometimes even through "excessive law-making" (Finden & Dutta, 2024). As long as there is legal control of unconstitutional practices, the issue of unconstitutionality may be resolved within the law. Moreover, empirical research has demonstrated that citizens' rights and liberties are limited by state authorities in different ways, with examples defying the norm-exception dichotomy, with or without an emergency declaration (Bigo, 2001; Feldman, 2010; Finden & Dutta, 2024; Neal, 2012; Yonucu, 2018).

The coexistence of the norms and exceptions to these norms is also an integral part of international law. Of the extraordinary categories of state rule, war involves direct violence and "injurious acts aimed at the very corporeality of the other targeted" (Jabri, 2007, p. 10). Having sought the avoidance of its violent and destructive consequences, ever since the end of WW1, liberal internationalism has been concerned with "the prevention of future war, capacities centered on ideas relating to collective security underpinned by international law and international institutions" (Jabri, 2007, p. 3). The UN Charter, as a part of international law concerning violence, has also resulted from the same endeavor to set principles in international relations to prevent states' violent actions against one another. The UN simultaneously acknowledges the primacy of human rights protection "by the rule of law" (UN, n.d.) and the "principle of the sovereign equality of all its Members" (The UN Charter, Art. 2). The UN Charter regulates the exceptions to the rule that independent states shall not interfere with each other's sovereignty and territorial integrity (Art. 2). These exceptions are military actions based on the "inherent right of individual or collective self-defense if an armed attack occurs against a Member" state (Art. 51). Member states are responsible for reporting their military measures in self-defense to the Security Council (Art. 51). Nevertheless, the Security Council is not authorized to review the expediency of military action in self-defense as every sovereign state is entitled to take every measure it deems necessary to protect itself.

Like the constitutional order at the national level, international law has flexible boundaries when the nation/state security is concerned, functioning on the grounds of discretion. These principles set by the UN Charter are ambiguous due to contradictory provisions that grant discretionary power to states, which lead to juridico-political challenges. As such, the defenders of state sovereignty and its independence in making decisions concerning its security argue that international law "fails to respect the sovereignty of states, intruding upon domains in which they should be free to make their own decisions" (Besson, 2011, p. 376). This argument and its practical reflections create legitimacy

issues. The absence of sanctions, frequently observed in the international military actions of states that defy global norms concerning ‘universal’ human rights, challenges the argument that international law confers legitimacy in international relations. Moreover, although international law texts define sovereign states as equal to each other, these sovereign entities are not equal but are practically often located hierarchically. The hierarchy in international relations does not imply a hierarchical ranking of all states, one below the other. As Lake (2011, p. 61) highlights, “a single state may possess relationships of varying degrees of hierarchy across many dyads, as does the United States today. A single state could exercise authority over only one other state, and that relationship would still ... constitute a hierarchy.”

Not everyone living in a country is affected by the security measures interfering with the rights and liberties regime to the same extent, and oftentimes, there is a spatial pattern of this (hierarchy between spatial territories within the national borders) (see Höniç, 2014; Türkoçlu & Elitsoy, 2024). Similarly, although international law recognizes the right of self-defense to every state equally, states have varying degrees of power in exercising their discretionary powers. As Zarakol (2017, p. 3) has argued, “the structures of differentiation at the core of hierarchical systems are deeply implicated with power. Hierarchical systems are thus intrinsically political.” The politicalness of the hierarchy connotes both the hierarchical position of political power in the international system and the political decision of political power about the spatiotemporal aspects of state violence in the national order. As Gregory (2006, p. 420) argues, “law is not outside violence” and “among other things, that law becomes the site of political struggle not only in its suspension but also in its formulation, interpretation and application”. The discretion in interpreting the law has historically been proven by states to lead to the defiance of the rights and liberties regime in the name of security at both national and international levels.

Hussain (2007, p. 739) has highlighted that in the Anglo-American common-law tradition, “well before the current war on terror and its potentially endless operations, the question of what would legitimately constitute wartime, beyond the fact that the executive simply claimed it to be so, was a constant and recurring concern.” As such, the decision on what constitutes wartime depended on the discretion and security understanding of the political power at a given time. While discretion is central to decision-making authority, the legislator’s goal within the framework of liberal legal theory is to establish specific criteria for exercising this discretionary power. In contemporary politics, in terms of the principles of self-defense, “it is generally agreed that, to be lawful, the use of force must not exceed what is necessary and proportionate” (Greenwood, 2003, p. 312). Nevertheless, the decisions on what is necessary and how much is proportionate are discretionary. For example, even though the condition for military action is stated as the occurrence of an armed attack, this condition has been interpreted broadly by the US and the UK to encompass the armed attacks that have not yet emerged. Thus, the military invasions of Afghanistan and Iraq were portrayed as legitimate and necessary (see Gregory, 2010, p. 156) on the grounds of the arguments that these countries posed an imminent threat (Greenwood, 2003, pp. 12–14). This claim of urgency was used to justify immediate military action, even though the threat that was portrayed as imminent was more a potential risk than an actual danger. One of the juridico-political results of these occupations was the restriction, suspension, or violation of the ‘universal’ rights of civilians living in the occupied geographies and the exercise of power by some other sovereign states over the territories of sovereign states that were assumed to have equal status with the occupiers. Below, I will discuss the legitimacy conditions of this.

Political Power and Democratic Legitimacy

National and international legal frameworks both protect rights and liberties yet also include security regulations that may justify the restriction of these rights and liberties. As legal regulations are abstractions and often comprise open-ended provisions, their interpretation co-constitutes the legal system with the word of the law. The capacity to act on a particular interpretation comes only with power. Political power and its ability to produce violence are embedded in the legal system nationally and internationally. As such, on matters where the nation/state security is deemed to be at stake, political power embeds the potentiality to decide on which of the contradictory constitutional or international norms is expedient. The security measures contradicting the rights and liberties regime come at a cost for those occupying the area designated as a threat.

Within the interplay between power and law, political power consistently endeavors to protect itself (defending the self) by employing instruments of political violence legitimized on the grounds of necessity. The principle of the liberal legal framework that political authority must continuously operate within the bounds of legal norms embodies the aspiration that state authorities are legally accountable before the law for their interventions in the law (e.g., restriction or suspension of rights and liberties at the state level and military actions at the international level).

As such, every constitutional framework has regulations on when and how state violence may target its citizens and the various manifestations of such violence (e.g., martial law, state of siege, the declaration of war or mobilization, states of emergency, criminal code, and anti-terror legislation). On an international scale, the ability of one state to target another state and its citizens, along with the stipulated conditions for such actions, falls under the purview of international law. Theoretically, democratic institutions and decision-making legitimize state actions based on the rights and liberties regime (legally recognized inside and through international agreements) and the principle of equality. The constitutional order addresses all citizens equally in matters of nation/state security and recognizes the democratic rights of all citizens equally. According to international law, all individuals possess the same human rights, and every sovereign state is equal under international law. Per this view, the legitimacy of state-conducted violence is based on the democratic coordination of the political order. For example, according to Besson (2011, p. 380), international law, if it is compatible with state sovereignty, is meant to favor some “values that make a good state, ... such as self-determination, democracy, and human rights, but also the values that make a good international community of equal sovereign entities.” As such, “democratic coordination constitutes the justification for the legitimacy of international law” (Besson, 2011, p. 379).

That being said, democracy is often portrayed as the rightful foundation of the legal system in the modern state and inter-state relations of the modern era. One consequence of the notion of popular sovereignty is that the people, whose members have equal voting rights and are equal before the law, elect lawmakers so that the laws made (indirectly) represent the legal form of the people’s decision. The equivalent of this system on the international level is that independent and legally equal sovereign states become bound by international norms by consent. As such, the law addresses those who are bound by it. Every democratic constitutional order defines the legal attributions of its citizens and their relationship with state authorities under the principles of governance. International law, governing the relationships between states, also defines who is bound by the law. For example, who constitutes a UN member is specified in Article 3 of the UN Charter, and 193 sovereign states that comply with the criteria have accepted that the regulations of the Charter bind them.

This understanding of legitimacy, finding its basis in democracy, has had something to do with the ‘liberal peace thesis’, which has happened to be a set of arguments glorifying democracy while simultaneously legitimizing armed violence in non-democratic territories. “The liberal peace thesis states that democracies do not go to war with one another” (Turner, 2006, p. 740). Rummel (1995, p. 5) finds an “equation between the scales of power and violence”. He argues that “democracies do not (or rarely) make war on each other, ... and that democracies have the least domestic violence” (Rummel, 1995, p. 5). Based on the restrictions around political power acting inside and outside, the liberal peace thesis assumes an exclusionary relationship between democracy and power. As such, “the liberal peace has a double impact: it promotes pacific relations between states and domestic peace” (Turner, 2006, p. 741).

However, the discretion of political power has undemocratic potential in it. Even though, in international law, regardless of the legitimacy source of the sovereign state, the principle of nonintervention is “highly legalized” and obligatory for all members of the UN (Zarakol, 2017, p. 35), the legitimacy of political power in a sovereign state may be open to discussion by the intervening state. The military intervention can be justified on the basis that the country exposed to the intervention is undemocratic. For example, US President George W. Bush, in his speech on the Iraqi invasion, stated that “the terrorists who attacked us” are defenders of a “totalitarian ideology” (The Guardian, 2005). He declared the aim of the invasion to be delivering democracy: “helping Iraqis build a free nation that is an ally in the war on terror [and] ... advancing freedom in the broader Middle East” (The Guardian, 2005). Such discourses and the state’s interruptive actions show that political

power's decisions potentially lead to practices that deviate from democratic principles in the name of democracy. Furthermore, the violent action is sourced from power rather than democratic legitimacy or law, considering that "international law ... regards forcible democratic regime change as unlawful" (Wheatley, 2006, p. 532). Through political power, what is unlawful becomes legitimized, while the concept of democracy is applied selectively, disregarding the principle of equality among sovereign states and individuals.

As the premise of liberal democracy that it would guarantee human rights and equality among states became so apparently falsified by post-9/11 security politics, contemporary scholars have questioned the foundational tenets of liberal democracy. The critics of post-9/11 security politics have rightfully criticized the liberal state formation, considering liberal states' security measures against terrorism and creativity in coming up with new ways of violating their citizens' rights. Scholars pointed at the legitimization processes of "an array of violent and illiberal practices" in liberal democracies (Neal, 2010, pp. 1–3) and the existence of detention "camps and therapeutic policies exist within democratic forms of governance" (Huysmans, 2008, p. 179), as the rule of law rendered "optional for liberal democratic societies" (Dyzenhaus, 2006, p. 1). While emergency and war refer to different situations and address juridico-politically different forms of power and violence, in contemporary politics, the discourses of emergency and war have mingled together in taking exceptional security measures domestically and internationally (see Doty, 2007; Hönig, 2014; Pope, 2017; Salter, 2008). The intertwining of the emergency and war discourses has targeted specific territories, defined by some as spaces of exception (Biswas & Nair, 2010; Gregory, 2011). Violence conducted by states through political motives inside and outside has been justified on seemingly democratic foundations.

Democracy, being a contested and an ambiguous concept, can be used as an instrument to legitimize state-conducted political violence, driven by force and security logic. Firstly, the understandings of democracy and their presentations greatly vary (Tanguy, 2003, p. 145). Secondly, the composition of the international decision-making authority of an organization whose decisions are binding on every state may itself be undemocratic, as is the case with the formation of the UN Security Council (see Du Bois, 1945; see also Grovogui, 1996, p. 118), which has endorsed "a particular system of government" in some of its resolutions (Wheatley, 2006, p. 532). Some approaches in the literature have attempted to resolve the tension between democracy and state-conducted political violence within and by liberal legal systems by highlighting the antidemocratic nature of the regions subjected to such violence. For example, Besson (2011, p. 382) has argued that "[s]overeign states cannot react in the same way to the international rule of law depending on whether they are democratically organized or not, on the one hand, and whether international law is democratically adopted or not, on the other." However, as any state has the privilege of the sovereign in international law, regardless of their level of democracy or whether they adopt democratic institutions at all, the democratic principle does not necessarily work when determining whether the state's action is legitimate. Thus, while the 'antidemocratic states' argument sought to resolve one tension, it gave rise to another: the violent actions of liberal democracies conducted in the name of democracy.

Despite the goal of transforming political power into "legal relationships" and ensuring these relationships are "purposive-rational, that is, predictable and calculable" (Neumann, 1950, p. 165), such attempts by liberal constitutionalists and internationalists do not necessarily provide democracy and legal legitimacy. The practice confirms Neumann's argument that "[p]ower cannot be dissolved in law" (1950, p. 166). As Neumann (1953, p. 912) argues, "[i]f our social, economic and political life were merely a system of rational, calculable relationships, the rule of law would ... cover everything. ... [However,] [t]he non-rational element, power, and the rational element, law, are often in conflict." The tension between political power and law often results in political power deviating from the norms that make a legal framework liberal in the first place (among others, see Apap & Carrera, 2004; Diken & Laustsen, 2004; Dillon, 2018; Doty, 2007; Humphreys, 2006; Neal, 2012, 2019). Besides the rule of law being an ideal, the lawmaking itself results from political struggles, the consequence of which the political impositions over those bound by the law. As Lake has argued, "the law is always consciously written and enacted by someone ... to conceive of law as the product of instrumental self-interest and intentional political strategies, contingent on the distribution of political power in society and existing political institutions" (Zarakol, 2017, p. 21).

The law, a product of political struggles, serves as a tool for the maintenance of the existing hierarchies through interpretation and application at the national and international levels. Political will is the underlying component of the state's violent actions and decisions concerning rights and liberties inside and outside. Inside, the struggle for political power ceases the exceptionality of the security measures interfering with civil rights and brings about instead "the prosaic politics of emergency" that is continuous (Feldman, 2010, p. 138). The power to declare exceptions to international norms exhibits similar characteristics. As Tanguy (2003, p. 146) highlights, "[w]hile sovereignty concerns—or rather the fear of the law of the mightiest—may be the major challenge to building consensus among most nations, political will is the Achilles' heel of the powerful states on the Security Council and therefore of the entire system." On a similar note, as Jabri (2010, p. 48) argues, the powerful "assumes the right to declare the exception to the rule, to define necessity, and to determine the capacities requisite of such agency." As such, the political will emerges as the dynamo of the action and inaction of the sovereign state. The law falls short in determining the legitimacy. This is how, for example, the US can "accuse other states of being rogue states" while violating "international right" and not respecting international law "whenever it suits it not to", as Derrida (2009, p. 41) argues. The powerful get to produce rhetoric about those who do not follow international norms: "rogue states', ... delinquent states, criminal states, states that behave like brigands, ... who just do as they feel, do not respect international right, stay in the margins of international civility" (Derrida, 2009, p. 40).

Making an exception to the norm to interfere with the rights and liberties regime comes across both in actions and inactions of state authorities. For instance, several states' military interventions, such as "India's intervention in East Bengal in 1971, Tanzania's overthrow of the Amin government in Uganda in 1979 and Vietnam's use of force against the Pol Pot regime in Cambodia in the same year", were presented by those favored the intervention as the use of the right of self-defense (Greenwood, 1993, p. 35). On the other hand, the inaction of states in certain instances that involved severe human rights violations and even genocide has shown the political and discretionary character of military actions. How the international society neglected the Rwandan genocide, for example, has indicated the hierarchically positioned sovereignties, considering "policy-makers in the West" described "the unfolding genocide as ... an ancient and irresolvable tribal conflict between primitive peoples" (Bellamy, 2002, p. 25), somewhat not worth the effort.

State Sovereignty

The conventional distinction between the features of the sovereign power within and outside the national territory -the internal (national) and external (international) aspects of sovereignty- derive from and within the power-law nexus. At the national level, sovereignty refers to the monopoly of lawmaking and violence. As a legal organization, the state regulates the principles of governance within its territory, where people inhabiting the national territory are meant to live according to the norms set by the constitutional order. In liberal internationalism, it is the right to be equal with all the sovereign states to whom international law applies equally. In this framework, equality is derived from the indivisibility of sovereignty.

As clear as these definitions of sovereignty at the national and international levels may sound, the concept of sovereignty, like democracy, is contested and full of ambiguities. As Lake has highlighted, "[s]overeignty itself is and will always remain a contested and contingent construct that evolves through political struggle" (Zarakol, 2017, p. 30). Different notions have been attributed to sovereignty as to what makes a sovereign. For instance, in Derrida's understanding, "[s]overeignty is an exceptional force that has the power to make the law, and so is not subject to it" (Thomson, 2014, p. 100). For Schmitt (1985, p. 5), the sovereign is "he who decides on the exception". For Ninet (2013, p. 21), "[t]he right to be defined as a sovereign will be provided by force". For Besson (2011, p. 380), what determines an entity as sovereign in the international dimension is "the rules of the international legal order". According to Waltz (1979, p. 96), the sovereign state is an entity that routinely "decides for itself how it will cope with its internal and external problems".

The common feature of all the different definitions of sovereignty is that they all explain it in the context of the relationship between the constitutional and political order. While liberal constitutionalism attempts to limit political power at the national level and place it within a legal framework (restraints

on emergency powers), liberal international law aims to be a tool to limit arbitrary actions in the relations between states. Nevertheless, national and international legal orders are fictitious and artificial, just like sovereignty is. Sovereignty is an “abstraction, a legal fiction that continues to evolve” (Ninet, 2013, p. 20; see also Besson, 2011, p. 380). While liberal constitutionalists and internationalists have characterized sovereignty through its indivisibility as a unified source of power, the hierarchies within and abroad have proven the opposite. As Lake (2011, p. 46) has argued, “the assumption of indivisibility is a political aspiration and normative program of would-be state builders who wish it were so.” As Storey (2017, p. 119) highlights, “[t]he creation and maintenance of military bases in other countries and the economic and political pressures exerted (both directly and indirectly) by major powers graphically illustrates that some states possess the capacity to be considerably more sovereign than others.” Just as in the discussion of democratic legitimacy above, the concept of sovereignty can be used selectively in the hands of political power and to reproduce inequality.

Sovereign practices vary greatly based on contextual circumstances and blur definitions and distinctions. First of all, as Ninet (2013, p. 17) argues, how states “are ‘sovereign’, who attributed ‘sovereignty’ to them (e.g., the people, the nation, the monarchy) and what this attribution implies (e.g., full powers, legitimate representation, legal authority) are characteristics that can vary significantly from case to case.” Besides, one of the most critical indicators of sovereignty being a legal fiction is the acceptance that it can be completed with international recognition. Therefore, political entities over which there is a dispute as to whether they are sovereign do not have the same sovereign rights in the eyes of sovereign states that do not recognize them. For example, while Kosovo, which declared its independence in 2008, is recognized as a sovereign state by some countries, it is still a part of Serbian territory for some. Seemingly sovereign jurisdictions like South Ossetia and Transnistria lack widespread international recognition and sovereign rights (Storey, 2017, p. 118).

Besides, as Jabri (2007, p. 2) argues, there are state practices that cease the “distinctions between the inside and outside, the domestic and the international, the zone of civic peace and the zone of war, the sovereign state and the anarchic outside” (see also Hussain, 2007, p. 744). The security policies introduced nearly worldwide (see Bellamy & Bleiker, 2007; Eckert, 2008) within the global war on terror, utilizing both emergency and war discourses (Chandler, 2009; Jackson, 2018), confirm this argument. Following 9/11, Afghanistan and Iraq were invaded, the US occupied the Pakistani airspace (Osuri, 2017, p. 2434), ‘enemy combatants’ were locked up in camps outside the US territory, and as part of the same security logic, the rights of certain groups were violated by selective security measures at airports and by relying on the discretionary powers of bureaucrats and security professionals (Apap & Carrera, 2004; Salter, 2008), and simultaneously, emergency powers were exercised against immigrants framed as threats within the national territory (Pope, 2017). Having violated “the Convention against Torture and the relevant US statute that implements its international legal obligation in this regard”, the US has argued that in its war on terror, torture in interrogation was legitimate (Suganami, 2007, p. 518).

The security policies implemented by the US (with the cooperation of several other states) at both national and international levels within the scope of the global war on terror indicate that states, while being positioned hierarchically in the international order, can also position people hierarchically through political violence. Another result of these policies is the hierarchical positioning of geographical spaces at the national and international levels. Depending on social and interstate hierarchical positions, some security measures interfering with the rights and liberties regime are spatially selective and present spatial patterns. The subsequent section will delve into this.

Spaces of State-Conducted Political Violence: Permanent Preemptive Measures

The political power, which is assumed to operate in the liberal order in line with democratic principles, decides who will benefit from which fundamental rights and liberties in which territorial spaces. Simultaneously, multiple and multi-layered state authorities implement these decisions alongside making decisions based on their discretionary powers, sometimes even assuming the decision-making authority themselves despite on a relatively smaller scale (e.g., daily decisions of bureaucrats and security professionals). Both political power, which is dispersed in the regular functioning of the state

order, and the exercisers of state power per their profession either enact (lawmaking) or exercise sovereign power (Biswas & Nair, 2010, p. 2; Türkoğlu, 2024). As discussed in the previous sections, various geographies become places where exceptions are made to norms regarding rights and liberties based on discretion, domestically and internationally.

Contemporary literature has mainly analyzed the state's interventions in the rights and liberties regime in the name of security through the distinction between the past and present divided by a historical rupture, the 9/11 attacks. Indeed, 9/11 constituted one of the shifts in how states respond to what they frame as terrorism, as the events of 9/11 were utilized to define the concept of terrorism, which is an empty signifier, broadly. Even though most preemptive security measures target spaces framed as a threat at the national and international levels, several scholars in contemporary literature developed after 9/11 have relatively isolated the security measures contradicting the rights and liberties regime from their spatial patterns and spatiotemporal aspects.

While criticizing contemporary security politics, Walker (2006, p. 76) has observed a Schmittian construction of the enemy: "Construct the other as enemy, as absolutely alien or absolutely threatening, and the way is open to the declaration of exceptions that affirm the suspension of liberties and the authorization of absolute authority." In his formulation, Schmitt (2007, p. 26) defines the political as the "specific political distinction ... between friend and enemy". According to Schmitt, enmity emerges when two similar collectivities confront each other at the national and international levels. "The enemy is solely the public enemy because everything that has a relationship to such a collectivity of men, particularly to a whole nation, becomes public by virtue of such a relationship" (Schmitt, 2007, p. 28). Therefore, the distinction between the nation and its enemies corresponds to the essence of "the political" in Schmitt's thought. For Schmitt, the definition of the enemy is necessary to ensure the survival of national identity (Lewis, 2020, p. 17). However, according to Walker (2006, p. 81), the Schmittian exception's spatial and temporal limitations cannot "lay out the options" to explain the exceptionalisms in contemporary politics. Walker (2006, p. 81) argues that well-defined distinctions between friend and enemy do not exist anymore because the core principle of exceptional security policies of the 'West' has become "securing the modern subject" from the other, who is defined as "primitive" or "barbarian" (2006, p. 77). He states that "[t]he exceptionalisms that we associated with the spatial limits of the modern state (friends and enemies) and the temporal limits of the states system as the political expression of the modern world (civilized and barbarian) have been conflated" (Walker, 2006, p. 80).

Walker is not alone in the argument that the territorial aspects of the Schmittian distinction between friend and enemy have faded since 9/11. The critics of Schmitt in contemporary literature have centered the continuity in the use of exceptional powers. This line of thought has argued that the 'enemy' has been defined as an intangible, abstract threat that can appear anywhere at any time, yet not necessarily in a specific space (Diken & Laustsen, 2004, 2005; Dillon, 2018; Jabri, 2006). For example, Dillon (2018, p. 18) has argued that the twenty-first century's sovereign subjectivity does not function through "existential friend/enemy distinction." Dillon's argument is linked to the notion of risk, which is, by a strand of thought, considered to be underpinning the politics of exceptional security. For example, Diken and Laustsen (2004, p. 97) have argued that contemporary security politics operates on "the logic of risk-management that aims to control not only events but, more importantly, eventualities." In this logic, exceptional security measures appear to be a part of "preemptive strategies" rather than a response to an unforeseen emergent crisis. On a similar note, Aradau and Van Munster (2008) argue that post-9/11 counterterrorism policies are the methods of insurance activity shaped around the risk paradigm. The logic of insurance that is active in current security policies begets different boundaries and exclusion practices than national security policies: concepts such as "danger" and "enemy construction" associated with national security are replaced by "risk management" (Aradau & Van Munster, 2008, p. 92; see also de Goede et al., 2014). Fierke (2015, p. 273), too, has highlighted that "[t]he security landscape following 9/11 was dominated by a logic of premeditation", according to which "emergency services" are kept operational due to the possibility of a future attack.

On the notion of risk and preemptive strategies employed by states, Kessler and Werner (2008, p. 292) have argued that placing the notion of risk at the heart of politics blurs the distinctions through which we understand politics, such as those between internal and external sovereignty and crime and

war. The shift “from security to risk symbolizes a break from the idea that the legal system would be a system of norms” (Kessler & Werner, 2008, p. 294). Jabri (2006) has considered the disappearance of the distinctions in question as the basis of political violence conducted by states: when “distinctions between war and criminality, war and peace, war and security ... disappear, impunity is the result, accountability shifts beyond sight, and violence comes to form the linchpin of control” (Jabri, 2006, p. 48). As the notion of risk has become the logic behind military actions, people get “killed on the basis of informal determinations of responsibility, unchecked characterizations of imminent threats and disputed status under the laws of war” (Kessler & Werner, 2008, p. 291).

All these views critical of security policies introduced with a preemptive logic hold validity in explaining that states can consider any person as a threat depending on the context and what is framed as a threat at a given time. The political power’s decision on who/what the threat is is always political (see Dillon, 1996). These threats are delineated from the broader society and global context, often along distinctions such as West/non-West, civilization/barbarism, or ethnic and religious lines, depending on contextual circumstances. However, the views discussing security politics based on the consideration of 9/11 as a breaking point (which it might be, in some regards) overlook two things: (i) interventions of states in the rights and liberties regime against what/whom they frame as a threat to the nation/state had been integral to state rule before 9/11, too (Bigo, 2011; Feldman, 2010; Neal, 2012; Neocleous, 2006; Scheuerman, 1997); and (ii) in some contexts, instead of the intangibility of the ‘enemy’, there may be a highly tangible spatial pattern to the preemptive state practices in defiance of the rights and liberties regime, which is persistent. In some places, security measures have a spatially selective aspect and a historical background at the national and international levels.

Prakash’s (2022) book on the policing of North Africans in Paris between 1925 and 1975 has shown that within the fifty years under research, the territorial spaces inhabited heavily by North Africans were subjected to significantly more security-oriented governance in Paris compared to the rest of the population, and North Africans suffered heightened levels of police harassment and violence. Prakash (2022, p. 4) highlights that “historical consciousness can sculpt contemporary politics” and searches for the history of imperialism in Paris. In France, according to Prakash (2022, p. 8), the colonial logic of governing over the spaces inhabited by those from the former colonies of France led to “the particularist policing of North Africans.” Having historicized the police violence in specific territorial spaces, Prakash (2022, p. 58) has underlined that, as early as 1948, the Parisian urban space was mapped and “certain areas of the city [Paris] and surrounding suburbs [were coded] as zones of social and political danger” due to these spaces being inhabited by North Africans.

Prakash’s research sheds light on the ongoing spatialized police violence in today’s France as well as the international aspects of the violence conducted by the state (see Body-Gendrot, 2011). Another study does the same for Britain and the US. Having historicized the militarized police violence over specific geographies in these two countries, Go (2023, p. 2) writes that “police patrol, harass, and violently coerce racialized minorities at disproportionate rates”. As such, the militarization of the police has a racially unequal impact on society. Having aimed to present “a history of our imperial present” (Go, 2023, p. 4), Go shows that nonwhite neighborhoods in the US and the UK have been subject to racially motivated, militarized and spatialized police violence. Taking the history of the militarization of the police acting through an imperial logic back to 1829, Go (2023, p. 251) argues that the authorities, who subjected the colonies to pure violence in the colonial period, still control the metropolises with “military-imperial policing”. As such, the police, using military tactics, serve in “metropolitan colonies” “to maintain a racialized socioeconomic order” (Go, 2023, p. 251).

The research has shown that imperial pasts have shaped the present, and states have selectively restricted or suspended people’s rights and liberties in specific geographies. According to Osuri (2017, p. 2434), in “the settler-colonial contexts of the US, Australia and Canada ..., in various ways, both direct and indirect colonialisms ... remain effective.” The continuity of spatially selective preventive security measures is ensured and upheld by the continuous use of the powers activated by the state in times of emergency and war. In the process, the state socio-politically constructs its national territory and international space simultaneously in terms of the geography in which the threat lies. In places where this exceptional situation is permanent, the preemptive feature of the exceptional powers of state authorities is permanent.

As Meyer (2021, p. 279) argues, “[s]ecurity aspires ... not to eradicate or rehabilitate such threat objects but rather to administer them, to perpetually restage and reposition the specter of insecurity just beyond reach, but close enough to excite.” In contexts where emergency and war powers coalesce, both emergency and war narratives are utilized internally and externally. As discussed earlier, the arguments that portray democracy and violence as exclusionary of each other fail to account for the violence purportedly employed in defense of democracy. Democracy often serves as a guise for violent interventions and civilian ‘casualties’ in the territories of those framed as a threat. This is how, for instance, the US, “radicaliz[ing] average citizens or Muslims or unimaginably evil others” (Aradau & Van Munster, 2008, p. 204), invades where these “radicalized” elements are located. As Jabri (2010, p. 49) argues, “the primary focus of intervention is a recognition of target societies not so much as distinct political entities, but as spaces open to policing operations” (Jabri, 2010, p. 49). Concurrently, it utilizes an emergency discourse inside, targeting the spaces where Muslim immigrants are settled (Pope, 2017).

Both former colonizers and former colonies may shape their security understanding based on the threat they frame in specific spaces. For example, Kashmir, heavily inhabited by a Muslim population, has been a territorial space that has shaped both the Pakistani and Indian security policies inside and abroad. The Indian authorities have legitimized their exceptional security measures over the Kashmiri territory by framing the demands for independence as a threat to the national integrity, while Pakistan considers Kashmir integral to the Pakistani nation (Ganguly & Bajpai, 1994, p. 410). As such, “popular Kashmiri sovereignty has never been facilitated or enabled” by India, which repeatedly refused to agree to the UN resolution plans (Osuri, 2017, p. 2438). Even though “a substantial portion of Kashmiri opinion favors ... independence from both India and Pakistan”, the area has remained a zone of conflict between postcolonial Pakistan and India (Ganguly & Bajpai, 1994, p. 402). From the 1990s onwards, “Hindu nationalists highlighted the purported threats to national integration and national security due to an armed insurgency in Kashmir and Muslim immigration from Bangladesh” (Finden & Dutta, 2024, p. 11). Within the wave of counterterror legislation in the post-9/11 era, the Indian security policies were shaped “by the state’s need to gain legitimacy in the international system as an ally in the War on Terror, and a discourse of ‘Islamic terrorism’” (Finden & Dutta, 2024, p. 11).

The examples discussed in this section illustrate the interdependence of the national and international, as well as the inside and outside. In matters concerning security policies and interventions in rights and liberties, the state’s designation of what constitutes a threat is decisive. The geographical location of the element framed as a threat, whether within or beyond national borders, can be subject to political violence conducted by the state when the political power is strong enough to take violent actions. The regime of rights and liberties of those exposed to state violence differs from the rights and liberties that those outside the threat definition can exercise. State actions demonstrate that while legal norms may be manipulated to justify emergency measures and wartime authorities, the concept of discretion inherent in law plays a pivotal role in decision-making.

Conclusion

Liberal constitutionalists and the advocates of the liberal international order suggest a juridico-political framework to delineate state actions through legal standards. They seek to establish parameters to avoid the utilization of emergency and wartime powers by state authorities. These views theoretically equalize all citizens under a given constitutional framework and states under international law. However, contrary to the ideals of liberal constitutionalists and internationalists, state practices indicate that the basis of legitimacy for politically motivated violence by states at both national and international levels is power, not law or democratic legitimacy. Political power is also the underlying determinant of international hierarchical positioning. In domestic politics, political power determines who will benefit from rights and liberties and to what extent. As such, neither citizens within a country have uniform access to rights and liberties, nor do states possess equal sovereign rights.

On the one hand, legal orders at the national and international levels secure rights and liberties. On the other hand, they contain provisions stating that these can be limited for the security of the nation/state. As such, the law allows means of self-defence through emergency and war powers. In some contexts, these powers granted to state authorities in the two different situations intertwine

when the state frames the national and international security threats by using the same concepts to define these threats or defining the threat to the self as the same at the national and international levels. Under the circumstances, political violence conducted by states presents spatial patterns, where state authorities impose restrictions, suspensions, or violations of the rights and liberties of those inhabiting those specific territories.

As such, domestic and international security politics co-constitute each other. The mutual relationship between democratic notions and violence accompanies this co-constitution. The juridico-political conditions of state violence derive from the political power's decision-making, resulting in the enactment of state power or the exercise of sovereign power. Through the justification on the grounds of political 'necessities', referring to democracy and liberal order, violence can become something processed and laid the basis for through the state institutions that are supposedly formed as a part of democratic requirements. In effect, violence becomes justified as the logical extension of emergency or war prerequisites to save the nation/state. In instances where spatial patterns of state violence persist, preemptive security measures exhibit a historical continuity. This continuity is attributed to the continuity of the assumed notion of threat, be it 'barbarism' threatening 'our civilization' or threats to territorial integrity. The state's spatially selective interferences with rights and liberties serve to uphold the hierarchical and power-based structure prevalent both domestically and internationally. When the subject that is framed as a threat is the same for the state's internal and external actions, national and international aspects of sovereignty merge into the notion of violence, legitimized on the same grounds at both national and international levels. The primary underlying source of the spatially selective state violence is the political nature of the territorial space.

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