

**Between the Exception and Biopolitical Security: A  
Critical Discourse Analysis of US and EU  
Securitization Strategies post-9/11**

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## **DECLARATION OF AUTHORSHIP**

I, Elisa Fiaccadori, confirm that the work presented here is, to the best of my knowledge and belief, original and the result of my own investigations and has not been submitted, either in part or whole, for a degree at this or any other University.

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## ABSTRACT

In line with Carl Schmitt's characterization of the sovereign as 'he who decides on the state of exception', Giorgio Agamben argues that the exception is not only central to contemporary security developments but is increasingly becoming the rule. Starting from a critical exploration of biopolitics and sovereignty in the works of both Agamben and Foucault, through a theoretically informed discursive analysis, this thesis explores three important instances of securitization discourse, whose conceptualizations of sovereignty and security it uses to explain *how* exactly 'the (state of) exception' is generalized in the context of the war on terror. These are two US National Security Strategies (2002; 2006) and the European Security Strategy (2004).

What the analysis of these documents, and in particular of the NSSs, demonstrates is that, as Agamben suggests, the exception is indeed essential to an articulation of sovereign power at the national level. It is through the decision on the exception exemplified by the decision on the enemy (i.e., terrorism) and the best means to combat it that the US tries to secure its status as a powerful state, legitimize a global leading role for itself in the war on terror. However, what it also shows is that whilst the theme of emergency is constitutive in different ways of both the US and EU (bio)political foreign policy and sovereignty, the attempt to 'generalize the (state of) exception' also relies on other mechanisms of (bio)power or (bio)security. These mechanisms of (bio)security, I argue, are operationalized differently from the logic of exception, but are not unconnected to it. They permit the globalization of (the state of) exception in the form of what I have called a 'global (bio)emergency-State', whose primary enabler is the US state and of which the EU is an active, if 'indirect', participant.

This thesis argues that the logic of exception and security are in fact coextensive. However, contrary to Agamben, it claims that they are not coextensive in the absolute sense of being one and the same as his understanding of biosovereignty implies. They are coextensive in the very specific senses of the logic of exception finding its continuation in the transformation of security into strategic objective at both US national and European level.

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## LIST OF ABBREVIATIONS

AIDS	Acquired Immune Deficiency Syndrome
CDA	Critical Discourse Analysis
CEDAW	Convention on the Elimination Of All Forms of Discrimination Against Women
CFSP	Common Foreign and Security Policy
CINC	Commander in Chief
DPG	Defence Planning Guidance
EC	European Community
ENP	European Neighbourhood Policy
EPC	European Political Cooperation
EU	European Police Office
EUROPUL	European Union
ESS	European Security Strategy
FROTEX	Frontieres Exterieures: European Agency for the Management of Operational Cooperation at the External Borders of the MS and EU
GNP	Gross National Product
HIV	Human Immunodeficiency Virus
IMF	International Monetary Fund
ISAF	International Security Assistance Force
JHA	Justice and Home Affairs
NATO	North Atlantic Treaty Organization
NSSs	National Security Strategies
NGOs	Non-Governmental Organizations
PNAC	Project for the New American Century
PCF	Communist French Party
PNR	Passenger Name Record
SIS	Schengen Information System
TEU	Treaty on European Union
UK	United Kingdom
UN	United Nations
US(A)	United States (of America)
USCENTCOM	United States Unified Command (Central Command)
USSTRATCOM	United States Strategic Command
WEU	Western European Union
US-VISIT	United States Visitor and Immigrant Status Indicator Technology
WMD	Weapons of Mass destruction
WTO	World Trade Organization

## INTRODUCTION

### *When the Exception Becomes the Rule in International Politics*

The September 11<sup>th</sup> terrorist attacks and the subsequent war on terror were said to mark a turning point in world history (see, for instance, Denzin and Lincoln, 2003: xiii; Ignatieff, 2002; Held, 2003; see also the National Strategies analysed here, and the 2010 NSS<sup>1</sup>). After the attack, many newspapers referred to 9/11 as ‘the day that changed everything’ (quoted in Solomon, 2007: 137) and many articles, reports, and books were written to prove or disprove the way in which the attacks signal reconfigurations and novelties in the current world and to assess the impact of 9/11 on politics and various disciplines.<sup>2</sup> My own enquiry takes a different path. Rather than probing whether the attacks of 9/11 represented an unprecedented phenomenon, I start from the presupposition that 9/11 is an important moment in history, not because of its novelty<sup>3</sup> but because of its instrumentalization by the United States government and, subsequently, by the ‘coalition of the willing’ as a watershed moment for geopolitical, social-economic and national reasons. By naming the attacks as unprecedented and by elevating them to the status of military threats, the Bush administration was able to make the waging of the ‘war against terrorism’ – a war whose name<sup>4</sup> and some of whose presuppositions have been questioned but that de facto continues in many ways to this day – appear legitimate to much of its population and some of its allies. Framing the attacks as acts of war has helped to create a certain environment of fear, which in turn has provided a fertile

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<sup>1</sup> The 2010 NSS, which is not an object of analysis but would form an interesting point of comparison for future research, does not refer to the September 11 attacks as unprecedented. However, it does refer to them as ‘transformative’, as ‘demonstrating just how much trends far beyond our shores could directly endanger the personal safety of the American people’ (US NSS, 2010: 8).

<sup>2</sup> See, the Macmillan series edited by Matthew J. Morgan, *The Day That Changed Everything? The impact of 9/11* (6 Volume set).

<sup>3</sup> On this topic, I refer readers to the findings of the Challenge report, which show that the 11 September 2001 attacks as well as the 11 March 2004 and 07 July 2005 attacks do not represent unprecedented events that radically changed the course of history. To argue that they do, the authors of the report in my view rightly suggest, downplays continuities between present and past forms of terrorism as well as ignore the fact that it was not the first time that America had experienced a terrorist attack; although, of course, not as radically or brutally ‘spectacular’ (Baudrillard, 2001).

<sup>4</sup> The Obama administration has renamed ‘the war on terror’ ‘Overseas Contingency Operation’ (Leonard, 2009) and has promised to rebalance America’s general approach to foreign policy (see Williams and Covarrubias, 2009: 261; Stokes and Raphael, 2010: 9), while other authoritative politicians, who previously endorsed it, have also started to question it (see, for instance, Miliband, 2009). Despite this, it does not seem that the new locution has caught on – newspapers and analysts continue to refer to it as the war on terror – nor are there clear signs that an end to all its various ramifications is in sight (again see Stock and Raphael, 2010; Elden, 2007). Neal sees ‘the language of the war on terror’ as ‘a grid of intelligibility’ upon which multiple positions are possible’, therefore, ‘beyond the control of those governmental elites who promulgated’ (Neal, 2009: 62).

ground for the implementation of a number of emergency legislations and securitization practices. Drawing on Giorgio Agamben's theory of the state of exception and Michel Foucault's conceptualization of biopolitics, through a critical discourse analysis of three major securitization documents that I regard as emblematic of the type of security discourses being given voice today, this thesis aims to expose some of the mechanisms of (bio)security and exception subtending these practices. The starting point of this investigation into practices of exception and of security could be expressed in the following terms: in what specific sense are we to understand Agamben's claim – a claim that, as we will see, is not unique to Agamben – that what we are witnessing today is a situation in which the exception has become the rule? Is it to be grasped in terms of the extension of the state of exception in various countries where it has become easier for governments and their agencies to derogate from law? Or something more? How should we understand the relation between the state of exception and biopower? What role do mechanisms of biopower play in the operationalization and generalization of the state of exception? What is the role of discourse and ideology? Are the ideas of 'global civil war' and of 'the camp' the best ways of conceptualizing ongoing transformations of world order?

From international and critical security theorists to geographers and sociologists, Agamben's works, especially his books *Homo Sacer* and *State of Exception*, have gained much popularity. While approaches and interpretations of Agamben's political and philosophical theory have varied, his ideas, together with those of Foucault, are amongst the most cited in current sociological analyses of the causes and, especially, the consequences and effects of the war on terror. To cite their works in relation to the war on terror and contemporary securitization developments that have been enabled by the US has become something of a commonplace. In particular, interest in Agamben's work has arisen from concerns about law in the aftermath of September 11, and especially over the impact of the war on terror on rights and civil liberties in contemporary democracies. With a few exceptions,<sup>5</sup> the tendency has been to apply his understanding of the state of exception, sometimes critically, others times less so, to an analysis of particular US emergency legislations, such as the Patriot Act and/or to spatio-political phenomena, such as Guantánamo Bay.<sup>6</sup> However, little attention has been given to the more problematic aspects of his theory, such as his tendency to engage in

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<sup>5</sup> See, for instance, Bigo and Guild, 2005; Zagato, 2006; Bigo, 2007a, 2009; Gregory, 2007; Amore and de Goode, 2008; Neocleous, 2008.

<sup>6</sup> See, for instance, Butler, 2004; Campbell, 2005; Paye, 2005 (in the book, Paye also applies Agamben's theory of the state of exception to others states); Diken and Lausten, 2005. On Guantánamo see, for instance, van Munster, 2004; Aradau, 2007; Santiago, 2006; Reid-Henry, 2007; Motha, 2006; again Gregory, 2007.

epochal rhetoric whereby, by way of analogy, the paradigm of the exception enlisted to account a disparity array of socio-historical and political phenomena. More precisely, while the existing literature has tended to deal with these issues in the abstract<sup>7</sup> or to limit an application of Agamben's ideas to the US, there has been little attempt to address what I regard as an unspecified account of the connection between the state of exception and global mechanisms and dynamics. This has prevented a more critical reflection on the (state of) exception as operationalized and generalized through biopolitical, securitization, 'legal', imperial, and warfare discourses and practices that go beyond the national level.

Rather than focusing exclusively on the national scale of the US, or on the US in its imperial role, as most contemporary literature on the exception and securitization tend to do, I will investigate and compare the US with the emerging 'state-like' security projects of the European Union. In this way my analysis goes beyond approaches that are effectively centred on the national state and its geopolitical projection. It is undeniable that what initiated the war on terror was a decision on the exception, and more specifically the decision by President George W. Bush that the 9/11 terrorist attacks constituted an act of war. To this extent, Agamben's theory of the state of exception provides invaluable resources to understand and analyse post-9/11 developments. But the war on terror cannot be reduced to a question of sovereignty nor can sovereignty be reduced to a question of a decision on the exception. While not downplaying the role of law and of the sovereign (state) power, especially that of the US, in current geopolitical configurations, I want to consider the possibility that there is more to state of exception than the suspension of constitutional laws. My aim is to go beyond such an understanding of permanent state of exception by empirically analyzing examples of both 'traditional' and 'new' state-like formations. The questions 'who decides?' and 'on what?' are fundamental. However, my claim is that in order to understand how practices of security and war relate to the state of exception it is not enough to theorize the paradoxical relation of the state to the law, as Agamben does, but it is necessary to look beyond sovereign power and constitutional law. Following a Foucauldian emphasis on how mechanisms other than sovereign power work, I also want to analyse: 1) how mechanisms of (bio)power, which are difficult to place within an Agambenian understanding of sovereignty contribute to the continuation of the war on terror; 2) some of the discursive and ideological conditions that have allowed the US to present itself as the 'decider' of the exception and how these conditions set the terms of the EU's participation in the war on terror. In order to do so, I analyse two US National Security Strategies (US NSSs henceforth) and the European

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<sup>7</sup> See, for instance, Norris, 2005; Kisner, 2007; Deranty, 2008; LaCapra, 2004; Neal, 2009.

Security Strategy (ESS henceforth), which is the first of its kind. In this way, I elucidate the variety of ways in which, as Biersteker and Weber suggest, ‘practices construct, reproduce, reconstruct, and deconstruct both state and sovereignty’ (1996: 11).

Of course, an objection may be raised that analyzing and comparing the US and the European security strategies is impracticable on the basis that the EU is not a state and that, therefore, the terms for comparison are simply not present. Clearly, the EU is not a state in any traditional sense. Nevertheless, as Balibar has argued, it is ‘in principle open to indefinite expansion without pre-established limit, and its formation is very much in process’ (Balibar, 2004: 5). We might also add, following Balibar’s latest reflections, that it is very much in question (Balibar, 2010).<sup>8</sup> As an ‘in process construction’ (Balibar, 2004), no one can know with certainty what form Europe will take, and, although not a state, the EU possesses, or aspires to possess, some ‘state-like’ features.<sup>9</sup> At the symbolic level, as Nugent and Peterson note, for instance, ‘[the EU] has a flag, an anthem, and virtually a common passport’ (Nugent and Paterson, 2003: 102). At the more concrete level, the EU has a single currency for most countries and can take economic and social decisions that can overrule the preferences of governments and citizens of one or a group of states. Most importantly for my thesis, although moves to create a European defence capability has not yet fully actualized, the drafting of a common European Security Strategy, together with other securitization practices – including policies of policing and border control<sup>10</sup> – are indicative of efforts to construct the EU as ‘state-like’, and more specifically as a unitary geopolitical agent. In addition, although authors such as Weiss argue that the EU is a weak entity and that consequently it has to ‘conform to the new strategic view of the US’ (2006: 23); the EU is an agent or actor with a certain influence or weight in the international arena. This weight, other theorists suggest, renders the EU a potential, if not an already credible alternative to the US (Biscop, 2003; Kaldor, 2005). If we understand the state as constructed through processes of securitization and technologies of power, rather than as ahistorical and metaphysical, as Agamben is prone to do, it is essential to explore exactly how it is constituted. In this respect to analyse the role of the US as well as of the EU in the war on terror is a significant contribution to sociological analysis of Agamben’s theory of the generalization of the state of exception. By being based

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<sup>8</sup> In light of the current economic crisis and what he regards as an insufficient EU’s answers to it driven almost entirely by the interests of dominant forces, Balibar makes a stark claim: ‘Europe is a dead project’ (2010: [n.p.]).

<sup>9</sup> The metaphor state-like is preferred to that of ‘Fortress Europe’ because while the latter tends to place too much emphasis on borders as external boundary and on the ability of the EU to control them (Bigo, 1998), the former is in line with the discourse of the state and new forms of the state as constructed through technologies of power, discourses etc.

<sup>10</sup> On policing and border control or what these authors as the Europeanization of internal security see, for instance, Bigo, 2001; Bigo and Guild, 2005; Huysmans, 2006.

on an in-depth analysis of mechanisms of power and logics of the state, my contribution goes beyond Agamben, at the same time as it foregrounds the ways in which the state maintains and reproduces itself through the war on terror, albeit in a transformed way – that is to say, in terms of the ‘global (bio)security emergency-state’.

## THESIS STRUCTURE

Chapter 1, the longest chapter in this thesis, will outline the theoretical framework for the subsequent analysis of US and EU security documents. First, I examine how Agamben understands sovereignty and biopolitics in relation to Foucault’s prior analyses. I then move on to explore Foucault’s notion of state racism and Agamben’s conceptualizations of *homo sacer* and of the *Muselmann*. Issues of racism are central to the war on terror, and in particular to the production and reproduction of particular ‘racialized’ subjects, but are often neglected in the literature. On the other hand, it is the figure of the *Muselmann*, together with that of the refugee, which for Agamben brings into question the ethical character of law, including human rights law, and provides the starting point for a new politics beyond law and violence. Although I argue against drawing a too easy comparison between these types of figures and contemporary forms of ‘inclusive exclusion’, my own subsequent analysis will look into how the US and the EU deal with the problem of terrorism as exception and approach the question of law. It is for this reason that clarifying what Agamben means by the term *Muselmann* and how he conceptualizes its relation to law is unavoidable. In the final part of my discussion of Agamben, his conceptions of the camp as new *nomos* and ‘global civil war’ will be introduced, relying on insights from Carl Schmitt, especially the latter’s conceptualization of the enemy and of the United States as imperial power, before critically reinterpreting Agamben’s idea of the state of exception in light of current geopolitical, securitization and international developments. Although not without its problems, the idea of *nomos* is important because it forces us to think beyond the state toward the generalization of the exception, whilst that of ‘global civil war’, although often mentioned in the literature is inadequate to explain current developments because of its reliance on a reductive Hobbesian framework. The last two sections of the chapter will be dedicated to introducing my two case studies – the US and the EU as securitization actors. Particular attention will be given to exploring how specific ideas of security, human or biopolitical security, are central to both of them.

The methodological approach taken in this study will be outlined in Chapter 2. The methodological concepts of ‘paradigm’ and ‘*dispositif*’, which are most important to Agamben and Foucault’s interpretative frameworks in this area, and which I adopt for my own sociological exegesis, will be critically reviewed and discussed. A section will be

devoted to explaining how the selected documents are to be understood as both discursive in the Foucauldian sense and at the same time as ideological. I will explain the rationale for selecting particular documents, discussing how they were produced, for what audiences, and how they are intended to function politically. In this same section, I will also show how the NSSs and the ESS will be analysed. I will be attentive to themes that emerge from the documents themselves as well as use concepts previously developed in my literature review, such as the notions of biopolitics and exception. The aim would be to uncover and challenge the ideological premises on which these texts are based, their idealized views, and some of their hegemonic effects.

Chapter 3 and 4 will be dedicated to analyzing how the US and the EU as different forms of 'state' respond to terrorism (as exception) and how a particular notion of security is central to those responses. Chapter 3 will trace how an attempt was made by the US administration to construct what I describe as a 'global (bio)security emergency-state'. I argue that this construction is essential to the generalization of the state of exception because it acts as a precondition for it and that it is fundamentally 'imperial'. I suggest that through the war on terror the Bush administration was trying to globalize the US state to make it appear as that which guarantees the security of people around the world. I demonstrate the discursive and ideological mechanisms by which these endeavours were framed, and how the paradigms of exception and security are central to them. I further suggest that it was through an instrumental appeal to international law that the US attempted to place itself beyond the purview of law. My analysis is supported by two concrete examples of how what I have called the 'unilateral internationalism' of the United States functioned at times when the law was 'in force without significance'.

Chapter 4 will use the case of Europe as a way to go beyond what I refer to as 'methodological statism'. I begin by arguing that a particular notion of (bio)security is also central to how the EU constitutes itself and further demonstrate how the EU is also being constructed as global (security) actor. In the ESS, differences between member states are implicitly played down and state-like features are ascertained. Far from being constructed as a 'new type of power' (Balibar, 2003a; 2003b, 2004) that provides a security alternative to the US, in the ESS Europe is being framed in very similar terms to how the US is framed in the NSSs. I conclude by suggesting that, even though the idea of terrorism presented in the ESS is different from that given in the NSSs, the ESS' political rationality is close to the strategy of pre-emptive warfare constructed in the NSSs.

In the conclusion, I demonstrate how a sociological analysis of the discourses and ideologies of security strategies provides a better understanding of the relationship between ‘new’ forms of ‘exceptionalism’ and changing forms of sovereign authority at national and European level than studies that simply focus on the national scale or on the international role of the US. In keeping with Agamben’s understanding of sovereign power, I argue that the war on terror cannot be understood outside of the ability of the US to decide on the exception. However, I add to this by specifying the exact mechanisms that enable the generalization of the (state of) exception. The notion of ‘global (bio)security emergency-state’ introduced in Chapter 3 will be explored further and it will be shown that this concept is invaluable as it brings attention to the global, securitization dimensions of the US state. The affirmation of a ‘global (bio)security emergency-state’ on the part of the US involved the qualification of terrorism as global exception, an appeal to international law as well as the transformation of security as traditionally defined – from the security of borders to human or biopolitical security. At the same time, I suggest that far from representing a security alternative to US NSSs, the EU security strategy is itself conducive to the generalization of the state of exception and is, therefore, not immune from similar critiques.

## CHAPTER 1

### Sovereignty, Biopolitics, Geopolitics: The Global War on Terror

Since the terrorist attacks on the World Trade Center and on the Pentagon in 2001, a large amount of literature has been published on post-9/11 securitization practices, discourses, and their relationship to sovereign power and ‘biopolitics’.<sup>11</sup> In this chapter, I will explore how the notions of biopolitics and sovereignty are developed (or not developed) in the works of Michel Foucault, especially his *Society Must Be Defended* (2003), and of Giorgio Agamben,<sup>12</sup> whose conceptualizations have become an important point of reference, albeit to different degrees and forms, for all this emerging literature. The influence of Carl Schmitt’s decisionist theory and especially his conception of a ‘new *nomos*’ on Agamben’s framing of the problem of security, sovereignty and exception will also be considered. Despite their differences (which will become apparent) and limitations (which, I believe, are best dealt with rather than ignored), both Foucault and Agamben have engaged with the problem of the relation between sovereignty and biopolitics. Their original and erudite contributions, especially Agamben’s conception of the state of exception and Foucault’s notion of biopolitics and state racism, provide important theoretical resources for understanding American ‘exceptionalism’ and today’s politics of security in the context of the war on terror. These contributions will become the main subjects of this chapter.

The chapter will be divided in ten sections. The main objective of the following sections will be to reconstruct what both Foucault and Agamben say and mean by the terms ‘biopower’ and ‘sovereignty’ and how they conceptualize the relation between the two by exploring their accounts systematically. Rather than remaining on a mainly expository level, in this chapter, I will assess both the usefulness and some of the limitations and aporias with both Foucault’s and Agamben’s concepts of biopolitics, sovereignty and the exception. In particular, I will raise some questions in relation to Foucault’s understanding of biopolitics and Agamben’s periodizations of sovereign power. Thus, on the one hand, Foucault’s conceptualization of biopower will be challenged in view of what many see as the resurgence, but what I will argue is best understood as the persistence, of sovereign power in the name of combatting terrorism, and in particular of US sovereign power. On the other hand, Agamben’s notion of sovereignty as always and already biopolitical will be questioned for paradoxically missing

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<sup>11</sup> See, for instance, Bigo, 2005, 2007a; Huysmans, 2004, 2006; Paye, 2005; Reid, 2004; Dillon, 2002; 2007; Dillon and Reid, 2001; 2007; Butler, 2004 to name just a few.

<sup>12</sup> Agamben explicitly draws on Foucault’s work and, as we will see, the similarities between the two abound.

what is specific about our present conjuncture. In particular, it will be reviewed through the lens of Foucauldian concepts, such as those of biopower, governmentality, and state racism or 'bio-racism'. I will also be making use of other critical insights from the literature on imperialism, Europe, and critical security studies, which, I believe, can enhance Agamben's understanding of the state of exception and especially of how to understand its generalization. The generalization of (the state of) the exception is often taken to indicate a broadening of the definition of what constitutes an exception and a drastic increase in the scope of emergency power in various countries. By it I mean both this and the way in which the logic of exception appears to have become dominant to the point where it is not even necessary any longer to declare an emergency for emergency measures to be implemented. My main concern is with the way in which this logic has become globalized through security, international law, 'imperial' and warfare practices.

To begin with, the term 'biopower/biopolitics' as used by Michel Foucault<sup>13</sup> (2003; 1978) will be expounded (section 1.1). Theoretical tools developed through the concepts of biopower and biopolitics can, and have indeed been used, to analyse a number of apparently unrelated facts, such as antiterrorist legal and penal developments, securitization policies and practices, including those related to 'the problem of migration' and technologically-advanced surveillance methods based on biometrics, to cite only a few examples (see, for instance, Huysmans, 2004; Amoore, 2006; Bigo *et al.*, 2007, Dillon and Neal, 2009). In relation to my own interest into the development of specific US and European securitization strategies post-9/11, the idea of biopower can contribute to their understanding by showing how the development of security, and in particular of 'human security', in the words of de Larrinaga and Doucet, 'informs the current biopolitical networks of global governmentalities' (2008: 519). The concept of human security, a very important notion for this thesis, will be analysed in section 1.9 when the US case will also be discussed. The reason for postponing the introduction of this fundamental concept is that the concept of human security cannot be understood simply through the Foucauldian notion of biopower but needs to be supplemented by an understanding of sovereignty as exception. It is only appropriate, therefore, to analyse the concepts of biopower and sovereignty first before introducing that of human or biopolitical security. The centrality of this concept to the 'state', in particular to the US but also to the EU and the war on terror will become apparent in the course of this and later discussions. While section 1.1 will be mainly expository, section 1.2 will explore Foucault's

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<sup>13</sup> Foucault did not coin the term 'biopolitics'. The Swiss political scientist Rudolph Kjellen first introduced it in 1911 (Esposito, 2004: 3-16).

argument that ‘biopower’ cannot be understood within a normative or sovereign understanding of power. It will ask: how is the persistence of sovereign power to be understood? One of the main aims of this thesis is exactly to explore what makes the persistence of sovereign power possible within the field of governmentality understood here in terms of securitization and anti-terrorism and how biopower and sovereign power are articulated in the context of the war on terror. The answer offered by Foucault, and the problem that his answer raises, will be dealt with in section 1.3. Foucault’s notion of ‘state racism’ as that which explains how the exercise of killing (‘sovereignty’s old right’) is possible within a ‘normalizing society’ whose basic biopolitical function is to improve and prolong life (Foucault, 2003) will be analysed and criticized for contradicting his understanding of biopower. While creating a useful line of enquiry – it is upon this line of argument, albeit with less attention to the problem of racism, that Agamben seems mainly to draw for its own understanding of the coincidence of sovereign power and biopower – Foucault’s notion of ‘state racism’ seems to contradict his understanding of biopower as moving away from sovereignty’s old right.

After having explored Foucault’s notion of biopower, readers will be introduced to the work of Giorgio Agamben, whose understanding of the state of exception also plays a very important role in this thesis. To adopt Agamben’s theory in relation to the war on terror is commonplace. He himself has applied his conceptual framework to post-9/11 developments, and many authors have adopted his theory to explain various aspects of the war on terror, from emergency legislations and securitization practices<sup>14</sup> to what some would see as exemplary sites of contemporary exceptionalism, such as Guantánamo Bay.<sup>15</sup> In line with these authors, I too suggest that, although not unproblematic, his notion of the state of exception can provide useful resources to understand the logic behind US state securitization practices in the war on terror. In particular, it can help to conceptualize the securitization discourses and practices analysed in this thesis as securitization practices that bear a specific relation to the US state as the initiator of the war on terror, at the same time as these practises themselves help make intelligible how the generalization of (the state of) exception is constructed. Contrary to how Agamben’s theory has often been employed to explain certain national features of the war on terror, I will investigate it with the aim of going beyond ‘methodological nationalism’ or ‘statism’. That is to say, after having presented his theory and argued that inadvertently it ends up reintroducing the state as the subject of history, I will

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<sup>14</sup> See, for example, Edkins *et al.*, 2004; Butler, 2004; Paye, 2005; Noll, 2003; Minca, 2007; Bigo, 2007a; 2007b; 2008.

<sup>15</sup> See, for example, Diken, 2003; Neal, 2006; Edkins *et al.*, 2004; Butler, 2004.

explain why, despite its nationalist overtones, the (state of) exception is to be understood as part of globalization; as ‘oriented toward global agendas’ (Sassen, 2006: 3).<sup>16</sup>

Starting from an analysis of how Agamben’s notion of biopolitics differs from that of Foucault in section 1.4, I will move on to explore in some details Agamben’s notion of sovereignty as based on the paradox of exception. In section 1.6, I explain how Agamben makes use of Schmitt’s theory of the sovereign as ‘he who decides on the exception’ (Schmitt, 1985: 5) to critically expose the paradoxes on which the sovereign’s decision, including the decision to go to war, is ultimately based. Drawing on Schmitt’s conceptualization of sovereignty, in section 1.5 I further focus on what Agamben sees as the (non-)relation of the state of exception to the law and show how, similarly to Arendt (1973 [1951]), for Agamben the rule of law (both national and international) is put into question by what he considers to be the paradigmatic figure of modernity *par excellence*: the refugee. However, since the analysis of securitization practices that I offer in Chapter 3 and 4 is concerned neither with the securitization of migration<sup>17</sup> nor with the figure of the refugee *per se*,<sup>18</sup> I will not delve into the complexity of this paradigm other than in passing. Instead, I will raise some questions about Agamben’s interpretation of the relation between sovereign power and law. In particular, I will question Agamben’s understanding of human rights for failing to recognize that, although human rights are in fact part of the articulation of sovereignty in a very specific sense, they can and have provided lawyers and human rights activists with means to challenge unfair and dehumanizing treatments related to the war on terror.

Through the work of authors such as Zolo (2006) and Gregory (2007), I will moreover challenge Agamben’s powerful critique of law for ignoring how in reality the generalization

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<sup>16</sup> On the distinction between dynamics of globalization, involving the explicit formation of global institution such as the World Trade Organization and those oriented towards global agendas and system, see Sassen, 2006. According to her, the latter includes both ‘specific localized struggles with an explicit or implicit global agenda’, such as human rights and environmental organizations and ‘particular aspects of the work of states’ (2003: 3). In this respect, Sassen mentions certain monetary and fiscal policies critical for the constitution of global markets. However, her discussion could easily be extended to securitization policies critical for the constitution of global apparatuses of control.

<sup>17</sup> By the securitization of migration is meant a set of practical and interpretative or discursive measures, which cast migration as a problem of security (see, for instance, Huysmans, 2000; 2006; see also Bigo 2002). In particular, Bigo criticizes security discourses over migration for promoting a ‘security continuum’ between immigration, unemployment, crime and terrorism (Bigo, 1994: 164). I will return to this in my analysis.

<sup>18</sup> For a very good collection of essays on the politics of (in)security and protection, see Huysmans, 2006. See especially the essay by Puggioni, ‘Protection: security, territory and population’, that specifically deals with the figure of the refugee by drawing on Agamben at the same time as it challenges the ‘prevailing narratives that overwhelmingly picture “insiders” as silent objects’ (Puggioni, 2006: 76).

of (the state) of exception is mediated by the connections between war, military occupation and *international law*. It is true that Agamben's conceptualization already seems to point in this direction and that his notion of the camp as the new '*nomos* of modernity', even as it fails to differentiate between different degrees of exception, forces us to think beyond the state toward the generalization of the exception. Nevertheless, Agamben's analysis ultimately remains far too centred on the state as an abstract entity and only offers a critique of Western politics in abstraction of its concrete manifestations. Thus, it provides only limited resources for an analysis like the one presented in Chapter 3, and especially in Chapter 4, that is not concerned with a general critique of power as such, but with both how the US, as a hegemonic state, and the EU participate in the state of exception. In section 1.8, I will bring to bear theories of 'globalization', and in particular Hardt and Negri's theory of Empire (2000; 2004), to problematize Agamben's analytical framework. Clearly, many other theories could have been chosen to discuss what many see as the decline of the nation state in relation to Agamben's theory of the state of exception. However, Hardt and Negri's indebtedness to Foucault and his notion of biopolitics, their shared political and theoretical interests, as well as explicit and implicit disagreements with Agamben, make their theory a primary site for consideration. As McLoughlin (2005) points out, the relation between these authors is not straightforward but poses considerable conceptual difficulties – for this very reason, I believe to put Hardt and Negri's and Agamben's theories in a contrastive comparison is quite productive. It will provide resources to understand 'the generalization of the (state of) exception' – a term which Hardt and Negri also use to describe the state of Empire – in terms of the United States actions and of how the EU contributes to it. My own analysis of US security strategies and of the European security strategy will further elaborate on this by looking at the discursive strategies employed by both to better evaluate the idea of generalized state of exception. However, I will not simply accept Hardt and Negri's (or, indeed, Agamben's) claim that nation states' functions have been supplanted by supra- or transnational networks of power. Instead, in the same section, I will ask whether the war on terror can be understood in terms of *regression*, as Hardt and Negri seem to suggest when they depict it as a *backlash* inside and against Empire.<sup>19</sup> Or, alternatively, whether it is more appropriate to understand it through the prism of imperialism, understood here not simply in economic terms but also as political and cultural imperialism,<sup>20</sup> whose relationship to security is key.

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<sup>19</sup> Negri quoted in Boron, 2005; Negri, 2002; Hardt, 2004

<sup>20</sup> Harvey, 2003; Wood, 2004; Boron, 2005.

Finally, in section 1.10, I will consider positions, in particular Étienne Balibar's conceptualization of Europe, that see Europe as a valuable alternative to US unilateralism. I will also explore how an idea of collective or human security with strong affinities with the one analysed in section 1.9 in relation to the US state, is central to these claims. I will suggest that these understanding of the EU rely on a model of human or biopolitical security that ignores the extent to which in making 'life' the object of security this model prepares the way for an increasing number of pre-emptive and preventive interventions. I will further argue that even though Balibar is fully aware that the EU emerged due to geopolitical and economic reasons and that at present European mediating capacities are limited, thus, that his own idea challenges simplistic conceptualizations of Europe to an extent, it still risks creating a disjunction between Europe as an idea and Europe as reality.<sup>21</sup> His emphasis on Europe's virtual mediating and protecting capacities risks downplaying the extent to which mediating and protecting capacities are part of a securitization agenda that plays a key part in constituting the European Union as a 'state-like' entity. That is to say, as an agent endowed with the capacity to choose, to influence and direct that can play a fundamental role in the geopolitical arena.

### 1.1 Biopower

The term 'biopower' was first used by Foucault in the last of his *College de France* lectures of 1975-6, *Society Must Be Defended* (Foucault, 2003).<sup>22</sup> Since then the term has provoked the interest of contemporary theorists. It has been employed by many of them with great attention 'to the moments of rupture and divergence that Foucault's historiography sought to foreground' and with the intent to develop the idea of biopower further (see Agamben, 1998; but also Lazzarato, 2006a; Hardt and Negri, 2000). According to Golder, there has been 'a marked resurgence of interest in Foucault's work'<sup>23</sup> and in particular in his notion of biopower, which, he argues, 'is partly attributable' to the translation into English of *Society Must Be Defended* but also, and perhaps more importantly, 'to a confluence of certain

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<sup>21</sup> As noted in the introduction, however, Balibar is increasingly despondent as to the prospects of Europe being capable of providing alternative means to today's economic crisis and, consequently, he suggests that the only way for Europe to survive is to find the capacity to start again on radically new bases (Balibar, 2010).

<sup>22</sup> In Britain, however, the major source for Foucault's notion of biopower before the publication of *Society Must Be Defended* in 2003 has been *The Will To Knowledge* (1978) [1976] originally published as Michel Foucault, *The History of Sexuality: Volume 1, An Introduction* – see also Lemke's summary of biopolitics (Lemke, 2001). This thesis focuses mainly on 'Society Must Be Defended' because, as 'a work in transition', it allows us to better understand the opposing interpretations of Foucault's notion of biopolitics (Montag, 2002: 112) as well as to see his own perplexities and moments of hesitation, especially in relation to his notion of biopower as substituting *versus* complementing sovereign power.

<sup>23</sup> Following Eduardo Mendieta and Jeffrey Paris (2004), Golder talks of '[a] Michel Foucault renaissance' (2005: 121).

political and historical events [...] – to which a Foucauldian biopolitical analysis is particularly germane’ (Golder, 2005: 121, 122 emphasis original).<sup>24</sup> Foucault defines ‘biopower’ as the right to “make” live and to “let” die’ (Foucault, 2003: 241). By this he means governments’ ability to regulate and control subjects – or to be more precise ‘bodies’ and ‘populations’ – by optimizing the productivity of their lives in terms of optimizing their health, welfare and labour productivity<sup>25</sup> through a number of technologies or mechanisms of power. Biopower, says Foucault, is ‘an explosion of numerous and diverse techniques for achieving the subjugations of bodies and the control of populations’ (Foucault, 1978: 140). In particular, Foucault discusses the use of statistics and probabilities. However, in line with Lemke we can add ‘indirect techniques for leading and controlling individuals without at the same time being responsible for them’ (Lemke, 2001: 12). Biopower relates to governments’ concern with raising productivity and fostering the life of the population by controlling all those factors that could put it at risk. The aim of biopower increasingly becomes that of mastering risk.

In *The History of Sexuality, Vol. 1*, Foucault offers a bipolar diagram of power whereby biopolitics comes to be conceived as one of the poles of biopower, the other being ‘discipline’ (Foucault, 1978; see also Rabinow and Rose, 2003: 2).<sup>26</sup> More specifically, he distinguishes between two mechanisms of power. On the one hand, there is ‘disciplinary power’ (‘an *anatomo-politics of the human body*’), whose emergence he traces back to the seventeenth century and the beginning of the eighteenth, and whose primary application concerns the individual ‘human’ body. On the other, there is ‘biopower’ (‘a *biopolitics of the population*’), which, in his words, ‘is not applied to man-as-body but to the living being; ultimately, if you like, to man-as-species’ (Foucault, 2003: 242). Biopower, Foucault argues, emerged during the second half of the eighteenth century in Europe and it is at that time that

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<sup>24</sup> Among other things, Golder mentions the re-election of George W. Bush, the global war on terror, ‘the prevalence of racism (particularly Islamophobia and the vilification of asylum-seekers) and its articulation in the form of state practices’ as factors that contributed to an increase interest in Foucault’s work. Golder also points to the influence of contemporary philosophy, particularly that of Giorgio Agamben, in the English-speaking world. He says, ‘[a] renewed interest is also no doubt attributable to the influence of contemporary philosophers who have continued, extended or adapted Foucault’s biopolitical analysis (of whom perhaps the most important is Giorgio Agamben)’ (Golder, 2005:122 footnote number 7).

<sup>25</sup> As Hardt and Negri note, in fact, Foucault explicitly links biopower and capitalism ‘in several works’, although he does not develop this (Hardt and Negri, 2000: 27; see also Lazzarato, 2006a; 2006b). The reasons why Foucault does not are complex. Perhaps, one of the most important is his belief that, although biopower is concerned with raising productivity, thus, ‘an indispensable element in the development of capitalism’ (Foucault (1978): 141), it is not reducible to economic factors.

<sup>26</sup> Here Foucault seems to make a distinction between biopower and biopolitics, wherein the former is a broader term that encompasses both biopolitics and discipline, the latter term refers to ‘the constitution and incorporation of the population as a new subject of governance’ (Mills, 2007: 272, note 4). However, this is a distinction, which Foucault does not rigorously follow through.

it started to ‘dovetail into, integrate, modify to some extent, and above all, use by sort of infiltrating, embedding itself in existing disciplinary techniques’ (2003: 242). Put differently, according to Foucault, this new technology of power, centred on regulatory control, is superimposed onto disciplinary mechanisms to deal with populations as such and not just with individual bodies. Biopolitics acts in a preventive fashion to deal with a multiplicity of aleatory and often ‘unpredictable’ phenomena. Among these Foucault cites: all phenomena related to ‘birth-control’, ‘problems of morbidity’, not so much epidemics but ‘endemics’ or illnesses that are routinely prevalent in a particular population, ‘public hygiene’, ‘problems of reproduction’, the problems ‘of old age’, ‘accidents’ and ‘the effects of the environment’ (Foucault, 2003: 243, 244, 245). Biopower is thus not just about disciplining bodies through regulative mechanisms but also about using ‘overall [security] mechanisms and acting in such a way as to achieve an overall equilibrium or regularity’ (Foucault, 2003: 246). It works at the level of generality (or at the level of the population) with the aim of identifying abnormalities, risk groups, and potential risk factors in order to prevent, contain, and manage them (Rose, 1999: 235).

Unlike sovereignty’s old right (‘to take life or to let live’), biopower’s aim is to preserve a healthy society by administering it through micro-mechanisms and ‘tactics’ of power. It works both as ‘governing of the self’ and as ‘conduct of conduct’; as forms of governance or ‘governmentality’ (Foucault quoted in Gordon, 1991; also in Lemke, 2002) – a crucial concept developed by Foucault in his later works, which refers to a historically specific economy of power and government, that is, neo-liberalism<sup>27</sup> (Dean, 1999). Foucault defines governmentality as

‘[t]he ensemble formed by the institutions, procedures, analyses, and reflections, the calculations and tactics that allow the exercise of this very specific albeit complex form of power, which has as its target population, as its principal form of knowledge political economy, and as its essential technical means apparatuses of security’ (Foucault, 2001a: 220).

It is a ‘tendency’ or ‘line of thought’ that ‘for a very long time, throughout the West, has constantly led toward pre-eminence over all types of power’ (Foucault, 2001a). How and to what extent, biopower as a form of governmentality differs from sovereign power will be the subject of the following two sections.

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<sup>27</sup> According to Foucault, neoliberalism is a form of governmentality, we might even say ‘the’ form of governmentality *par excellence* (see also Foucault, 2007). Here, however, I do not discuss the question of neoliberalism in details for the reason that, though certainly linked to it, the form of governmentality I focus on this thesis is not superimposable to it.

## 1.2 Sovereign Power in Question

The importance of the question of sovereignty to social theory in general, and an understanding of today's situation cannot be underestimated. Sovereign power has never ceased to make itself felt (past wars, political restructuring and violence imposed through military intervention are a constant reminder of it). However, it seems to have 'returned' with a vengeance. The war on terror makes it all the more urgent to investigate how sovereign power works in today's context and what its relation to biopower is. In this section, I will explore why Foucault thinks a theory of sovereignty is no longer sufficient to explain how contemporary mechanisms of power work. I will also raise some questions in relation to what is seen by some as a resurgence of sovereign power (see, for instance, Butler, 2004) but what I think is best conceptualized as the *persistence* of sovereignty within the field of governmentality.

Foucault's genealogical critique does not attempt to deny the importance of sovereignty as 'a problem'. However, instead of treating the problem of sovereignty as 'the central problem of right in Western societies', Foucault attempts to move away from a classical understanding of power as top-down domination in order to study how technologies of power, which are no longer presented exclusively in terms of legality and sovereignty, function in modern societies (Foucault, 2003: 26, 27). According to Foucault, in fact, both disciplinary power and biopower are different types of power that cannot be explained in terms of sovereignty. The theory of sovereignty, he argues, dates back from the Middle Ages – from the reactivation of Roman law (Foucault, 2003: 34). Whatever the reason for utilizing the theory of sovereignty in the past, in modern times, sovereignty, as a general category of the nation or of the people, is no longer sufficient to explain the operations of power. This is because power works in different ways than it did before. It is also because the theory of sovereignty fails to address how power is embodied in a number of 'local, regional, and material institutions' rather than in a central figure (2003: 27). Specifically, it fails to account for how modern mechanisms of power associated with systems of governance work at the local, micro and lowest level 'to exclude the mad', 'control infantile sexuality' and 'control, punish and reform the delinquent', among other groups of people (Foucault, 2003: 33). Foucault's questioning of sovereign power is both historical (based on the problematization of its past uses) and methodological (based on a choice on how to investigate it).

According to Foucault, power is never simply a matter of intentions or decisions (as it was for Schmitt, for instance (Schmitt, 1996)), or 'a phenomenon of mass and homogeneous

domination',<sup>28</sup> but it circulates in networks and individuals 'are in a position to both submit and exercise this power'. (Foucault, 2003: 28, 29). For him, power 'is never localized here and there; it is never in the hands of some [...]' (2003: 29). It 'is not something that is acquired, seized, or shared, something that one holds on to or allows to slip away; power is exercised from innumerable points, in the interplay of nonegalitarian and mobile relations' (Foucault, 1978: 94). It is not negative and repressive but diffused through society. Power functions, says Foucault. Thus, according to him, it should not be analysed as a question of sovereignty or as a legal matter but from its infinitesimal mechanisms upwards. Rather than trying to trace power back to a single source, such as the state or the state's sovereign representative, a class, a group of people etc., Foucault wants to analyse how phenomena, techniques, and procedures of power work at the level of subjectivity and how 'they are invested or annexed by global phenomena' (Foucault, 2003: 31). In the last instance, for Foucault, power is positive and productive because it has unintended effects – a point that is crucial to his understanding of biopolitics and that, as we will see later, also problematizes Agamben's conceptualization of it – and because subjects are both subjected and constituted by power (2003: 29-30).<sup>29</sup>

Nevertheless, although Foucault's theory of power has proved very fertile – as de Larrinaga and Doucet (2008: 3) observe, 'the mid-1990s saw the emergence of a growing body of literature that attempted to theorize global governance through Foucauldian understandings of governmentality and biopower'<sup>30</sup> and, clearly, continues to raise interest – it elicits problems of no easy resolution. In particular, I think Foucault's theory can be contested on two main fronts. First, although Foucault's conceptualization of power as productive clearly helps to grasp how certain mechanisms of power/knowledge, such as for instance those centring on sex and sexuality, are not merely repressive and/or reducible to a representation of sovereignty and law (2003: 32), it is more difficult to see how it helps to account for the type

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<sup>28</sup> Although, as the editors of *Society Must Be Defended* say, it is difficult to know which works exactly Foucault is referring to because no references are given in the book, Foucault's reference and opposition here is probably some tenets of Marxism, especially Marxist-Leninist theories of the state as instrument of class violence. Foucault in fact was certainly influenced by Marxist authors, especially 'unorthodox' ones, such as Althusser (Montag, 2002; Olssen, 2004; Balibar, 1992) but, as Montag suggests, Foucault's relation to Marxism is far from straightforward (Montag, 2002; see also Satre, 1971).

<sup>29</sup> In Foucault's own words '[t]he individual is an effect of power, and at the same time, or precisely to the extent to which it is that effect, it is the element of its articulation' (1978: 98). Subjects are both effects (they are constructed by it) and vehicles of power (it is because of these same constructions that they start to speak and to make demands in their own behalf). For an example, see Foucault's discussion of 'perversity' from the same book (1978). See also his discussion of delinquency in *Discipline and Punish* (1980).

<sup>30</sup> See, for instance, Gordon, (1991); Dean, (1999); Rose, (1999); Miller & Rose, (1990); Burchell, Gordon and Miller (1991); Dillon (1995); Hardt & Negri (2000).

of ‘discourses’ of security, terrorism and war being given voice today. One of the questions that will guide my analysis will be: how well does Foucault’s conceptualization of bio-power as ‘strategic’ account for the types of subjectivity produced in the two NSSs and the ESS? Second, and more importantly, Foucault’s periodization – a periodization that, as we shall see in the next section, Foucault himself implicitly problematizes through his conception of state racism – of biopower as modern and of sovereign power as an old type of power raises the problem of how to explain the persistence of sovereign forms of power in contemporary societies.<sup>31</sup> While, as we shall see, to treat sovereignty as always and already biopolitical as Agamben does is contestable, on the other hand, to configure sovereign power as old fails to address how sovereign power sustains itself in its present form. Given what Judith Butler calls the ‘forceful resurgence of sovereignty in the midst of governmentality’ (Butler, 2004: 59) – which I think is best thought of in terms of a continuation and which also concerns the issue of imperialism – I believe that a theoretical as well as empirical examination and possible solution of this problem is particularly urgent. This is why in this thesis I will assess, both theoretically and through a critical discursive analysis of the NSSs and ESS, how sovereign power persists within the field of governmentality, and how the relation between biopower and sovereign power is articulated in the context of today’s war on terror.

### **1.3 State Racism and the Paradox of Biopower**

As mentioned above, through his concept of biopower, Foucault attempts to move away from the problem of sovereign power. Yet, he cannot simply leave that problem behind. In particular, reflection on Nazism forces him to return to the problem of sovereign power to explain how state killing continues to be possible, and actually takes on new and extreme forms, in modern times. His answer is that *racism* is that which makes sovereignty’s old right ‘to take life or let live’ possible within the field of governmentality in contemporary societies. This is important, not only because racism provides an answer, however partial, to the problem of sovereign power, and more specifically of its persistence, but also because it alerts us to a fundamental dimension of power, which is left un-theorized in Agamben.<sup>32</sup>

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<sup>31</sup> Although, it is also important to point out that there are times when Foucault is less blunt in his periodization. Thus, for instance, in *Governmentality*, Foucault says, ‘[w]e need to see things not in terms of the replacement of a society of sovereignty by a disciplinary society and the subsequent replacement of a disciplinary society by a society of government; in reality one has a triangle, sovereignty-discipline-government’ (1978: 219).

<sup>32</sup> Agamben discusses briefly the question of racism in an interesting paper given in 2005 titled ‘Movement’ where he directly tackles this question in relation to Schmitt’s articulation of the Nazi Reich as exposed in his 1933 essay ‘State, Movement, People’ (2005c). However, it is fair to say that he does so quite dismissively, in a way that does not seem to do justice to the complexities that the question of race poses, especially with regard to how the ‘race’ and/or ‘cultural difference card’ might

Foucault's conceptualization of 'state racism' or 'bio-racism' provides insights on how to comprehend the way in which states continue to use 'race', albeit, perhaps, in a new form,<sup>33</sup> as a means of deciding over the life and death of people and of legitimizing and making killing with impunity a customary practice of imperial population control (see Kelly, 2004; Mbembe, 2003). To this extent, Foucault's understanding can help us to explore some of the racialized dimensions of the war on terror. In particular, it can enable us to explain state practices enabled by the war on terror as practices that dehumanize alleged 'terrorists' (now 'enemy combatants') – 'them' – on the basis of their assumed innate 'evilness' as opposed to 'our' innate virtues.

In the last essay of *Society Must Be Defended*, Foucault considers the question of racism in order to explain how killing was possible despite the apparent gradual replacement of sovereign power with biopower. He starts from an analysis of 'race war', or war between what were regarded as irreducible distinct races in the seventeenth-century, as furnishing the model for the notion of 'class war', and moves toward an idea of modern racism as that which 'makes killing acceptable' (Foucault, 2003: 256, 60). He says that racism is 'a way of introducing a break into the domain of life that is under power's control: the break within what must live and what must die' (2003: 254). By this, Foucault means two things. First, that it is through racism that 'the hierarchy of races, the fact that certain races are described as good and that others, in contrast, are described as inferior' is established; that the absolute worth of certain groups within a population and the complete insignificance of others is decided. Second, that it is racism that renders killing not only possible but also acceptable because it works in a way that makes it compatible with the exercise of biopower (2003: 255).

By declaring '[i]f you want to live, the other must die', racism transforms the relationship of war (i.e., a relationship based on the destruction of enemies) into a 'biological-type relationship', which renders the death of certain groups acceptable to the extent that, in Foucault's words, it 'will make life in general healthier: healthier and purer' (2003: 255). In other words, racism is that which permits killing, at the same time as, it makes the relationship of war – "if you want to live, you must take lives" – function 'in a way that is completely new and that is quite compatible with the exercise of biopower' (2003: 255). In

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be used today by political parties, states and 'state-like' entities to legitimize pre-emptive and preventive securitization practices. For a critique of Agamben on this question, see Mbembe, 2003.  
<sup>33</sup> 'Neo-racism' works by maintaining that cultural or religious as opposed to biological differences are somehow 'natural' (Balibar, 1991).

particular, what makes racism function in a way that is different from how the relationship of war does is its treatment of political adversaries. ‘In the biopower system’, where racism becomes inscribed as one of the basic mechanisms of power in the modern State, argues Foucault, enemies are no longer treated as political adversaries (and here Schmitt is clearly a very important point of reference for Foucault) but as *threats* (2003: 256, 254, 255). This, says Foucault, is what justifies the murderous function of the State (2003: 256) in modern times. The construction of security threats is essential to the modern state (see also Agamben, 2001). But what does it mean to say that racism works in a way that is totally new and compatible with the exercise of biopower? What are the consequences of this conceptualization of racism for Foucault’s understanding of the relation between biopower and sovereignty? Before we can discuss this issue, however, it will be necessary to look in some details at the case of State racism offered by Foucault in his discussion of racism as making ‘killing or the imperative to kill’ acceptable (2003: 256).

The case that Foucault cites in his *Society Must be Defended* as an example of State racism – where the word ‘example’ is, I believe, to be read in the Agambenian sense of something that because of its exemplarity can teach us about the modern state in general (Agamben, 2002)<sup>34</sup> – is that of the Nazi regime. It is during the Nazi regime, Foucault argues, that State racism became first and foremost ‘biological racism’,<sup>35</sup> establishing an exact coincidence between the power to kill or sovereign power and biopower. In his words:

‘The Nazi State makes the field of the life it manages, protects, guarantees, and cultivates in biological terms *absolutely coextensive* with sovereign right to kill anyone, but also its own people’ (Foucault, 2003: 260, emphasis added).

In other words, during the Nazi regime, race became the pivot around which the state came to exert its (bio)-power both in a sovereign and biopolitical (administrative, preventive) fashion. The Nazi State took up the theme of ‘State racism’ and developed it ‘in the legend of warring races’ for the biological protection of the German race (Foucault, 2003: 82). As a matter of fact, even though as noted above and as stated by Foucault himself at the beginning of his Collège de France lectures, one of his main concerns was to move away from the question of sovereignty, Foucault did acknowledge the persistence of the old sovereign power ‘to take life or to let live’. Foucault’s analysis of State racism can be considered as a response to the

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<sup>34</sup> More will be said about Agamben’s example in my methodology chapter.

<sup>35</sup> Foucault also refers to ‘Soviet State racism’ in which, according to him, ‘what revolutionary discourse designated as the class enemy becomes a sort of biological threat’ (2003: 83). For a counter-view, see Losurdo, 2004.

problem of how sovereign power is able to persist within contemporary societies. Through racism, Foucault investigates how the exercise of killing ('sovereignty's old right') is possible within a 'normalizing society' whose basic biopolitical function is to improve and prolong life (Foucault, 2003: 254, 60).

However, how Foucault sustains this coextensivity between biopower and sovereign power within his system of thought is another matter, which, perhaps, cannot be fully resolved within a Foucauldian biopolitical framework. It could be argued that this coextensivity is a historical singularity related to the Nazi regime rather than a generalisable position. In other words, that it does not create any problems for Foucault's claim about his analytics of power as given above. This is a plausible and, to the extent that it allows one to look at Nazism as historically specific, a quite reasonable reading. However, if my claim about Foucault using the Nazi case as an example from which to draw lessons about the modern state in general is correct – a claim that seems to find confirmation in Foucault's suggestion that it is at the time when biopower emerges and inscribes racism in the mechanisms of the State that racism becomes 'the basic mechanism of power, as it is exercised in modern States' (2003: 256) – then we are forced to recognize that Foucault cannot completely circumvent the problem of sovereign power. In order to explain killing in modern states, he is compelled to return to it. In this respect, is Genel's assertion that there is no contradiction in Foucault's idea about biopower and sovereign power being coextensive and at the same time heterogeneous (Genel, 2005) satisfying? Or should we acknowledge, as Esposito suggests, that in reality in Foucault's text, we do not find an absolute answer to the problem of sovereignty but a continuous oscillation between an interpretation of biopolitics as irreducible to sovereign power, and another for which biopolitics is part of the articulation of sovereignty (Esposito, 2004: 49)?

Indeed, in Foucault there seems to be a tension between, on the one hand, an idea of biopolitics as representing a radical break with old forms of sovereign power and, on the other, an idea of biopolitics as coextensive to it, as constituting part of the articulation of sovereignty. This is clearly made evident by his discussion of Nazism but also, as Esposito rightly notes, by the fact that Foucault uses both the term 'replace' and 'complement' to explain the workings of biopower in relation to sovereignty, sometimes in the same sentence. Thus, for instance, Foucault says, '[...] one of the greatest transformations political right underwent in the nineteenth century was precisely that, I wouldn't [sic] say exactly that sovereignty's old right – to take life or let live – was *replaced*, but it came to be *complemented* by a new right [...]. This is the right, or rather precisely the opposite right. It is

the power to “make” live and “let” die’ [or biopower] (see Foucault, 2003: 241 emphasis added; Esposito, 2004: 34). What this shows is that Foucault’s text maintains a level of ambiguity with respect to the question of the relation between biopower and sovereign power.

By bringing the question of sovereignty to the fore, the example of Nazism seems to contradict one of Foucault’s methodological starting points: ‘the idea that the sovereign does not exist’ (Foucault quoted in Toscano, 2007a); thus, to put into question Foucault’s own understanding of biopolitics and its non-relation to sovereign power. This is a point that Agamben makes explicit when he says that even though Foucault’s analysis has shown how these two faces of power work, it has failed to elucidate the points at which sovereign power (political techniques) and modern techniques of power (technologies of self) converge (Agamben, 1998: 5; see also Esposito, 2004). Agamben’s notion of sovereignty as biopolitical can be seen as an attempt to readdress the problem of sovereignty in terms of what is for him ‘a logically implicit line of thinking’ in Foucault (Agamben, 1998: 7) in order to account for mechanisms of state power that, although arguably more prevalent in the sixteenth and seventeenth centuries, continue, in different forms, to permeate contemporary societies.<sup>36</sup> In particular, in the context of an alleged resurgence of sovereign power of the United States as part of the war on terror, it seems even more fundamental to analyse the problem of sovereignty; a problem that Foucault wants to move away from but cannot completely abandon.

#### **1.4 Agamben’s Biopolitical Return to Sovereign Power**

Taking up Foucault’s suggestion about the coincidence between sovereign power and biopower, Agamben suggests that biopolitics is not only absolutely coextensive with sovereign power but that biopolitics is also, both historically and conceptually, the original activity of sovereignty. In other words, according to him, sovereignty is founded on biopolitics (Agamben, 1998: 6). This is why, for Agamben, there is no shying away from the question of sovereignty to the extent that, as it will become apparent, according to him, the production of a specifically biopolitical body is ultimately dependent on the sovereign’s

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<sup>36</sup> For a differing view see Lazzarato who, in his essay ‘From Biopower to Biopolitics’ (2006a), suggests that it is Agamben’s notion of biopolitics that oscillates continuously between two alternatives. He argues that for both Agamben and Foucault, the introduction of the *zoe* (or politically unqualified ‘life’) into the sphere of the polis is the decisive event of modernity; it marks a radical transformation of the political and philosophical categories of classical thought. Yet, he suggests, Agamben is very ambiguous on whether the ‘impossibility of distinguishing between *zoe* and *bios*, between man as a living being and man as a political subject’ is ‘the product of the action of sovereign power or the result of the action of new forces over which power has ‘no control’ (2006a: 10). Although not wrong to the extent that a level of ambiguity does pertain to Agamben’s texts also, Lazzarato’s suggestion underplays Foucault’s own ambiguities as analysed here.

capacity to exclude through inclusion what he calls ‘bare life’ or politically unqualified ‘life’ from the juridico-political order.

In the opening pages of his book, *Homo Sacer: Sovereign Power and Bare Life*, Agamben argues that in the classical world ‘to speak of *zoē politikē* would have made no sense’ (Agamben, 1998: 1, emphasis original).<sup>37</sup> As Agamben notes, Aristotle, for instance, was aware of the idea of *zoē* and suggested that ‘there is probably some kind of good in the mere fact of living itself’ (Aristotle quoted in Agamben, 1988: 9).<sup>38</sup> However, says Agamben, in Aristotle, ‘simple natural life is excluded from the *polis* in the strict sense, and remains confined – as merely reproductive life – to the sphere of the *oikos*, “home”’ (Agamben, 1988: 2; see also Arendt, 1954<sup>39</sup>). What this suggests, he argues, is that the opposition between *zoē* (i.e., bare, unqualified ‘life’) and *bios* (i.e., politically qualified ‘life’ or ‘form of life’) is what constitutes ‘the Aristotelian definition of the polis’. He says, ‘[i]n Western politics, bare life has the peculiar privilege of being that whose exclusion founds the city of men’ (Agamben, 1998: 7).<sup>40</sup> Agamben’s intention is, on the one hand, to show that it is through the exclusion of simple natural life or bare life that the polis (or city of men) is defined and, on the other, that by producing immediately politicized life this process renders unattainable any attempt to understand politics in its classical form (i.e., politics as *good ‘life’*).<sup>41</sup> Politics as *eu zēn* or good ‘life’, Agamben argues, is unattainable because it presupposes the exclusion of bare ‘life’ or *zoē* from the political life, where, nevertheless, what is excluded is not excluded in the sense of simply being outside. But what is excluded is precisely still included by its exclusion. What is excluded is included as an exception. In other words, for Agamben the constitution of the political is made possible by the ‘inclusive exclusion’ of *zoē* or bare life from political life and by its simultaneous politicization. He writes,

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<sup>37</sup> The reference here is Aristotle’s *Politics* (1981).

<sup>38</sup> See also Aristotle’s notion of man as *politikon zōon* (Aristotle, 1981 [1253a]; also quoted in Agamben, 1988: 9). However, says Agamben, the “political” is not an attribute of the living being as such, but rather a specific difference that determines the genus *zōon*’ (Agamben, 1988: 9).

<sup>39</sup> In Arendt’s words, ‘Aristotle’s definition of man as a *zōon politikon* was not only unrelated and even opposed to the natural association experienced in household life; it can be fully understood only if one adds his second famous definition of man as a *zōon logon ekhon* [political and speaking living being]’ (1958: 27); something which, however, contrary to Agamben, Arendt sees positively.

<sup>40</sup> Unfortunately, as Mills points out, there is no direct discussion in Agamben’s theory of biopolitics of the gendered dimension of the exclusion of natural life from the realm of the political in his theory of biopolitics (Mills, 2004). This is a very important point which would clearly be interesting to develop further both in relation to Agamben and the war on terror but which I have nevertheless decided not to cover here as this, given restrictions of time and space, would necessarily have meant discussing it in such a partial way as to render it meaningless.

<sup>41</sup> The reference here is again Aristotle and in particular his idea that while the *polis* ‘comes into existence for the sake of life (*zēn*), it exists for the good life (*eu zēn*)’ (Aristotle quoted in Agamben, 1998: 3, 7).

‘the entry of *zoē* into the sphere of the *polis* – the politicization of bare life as such – constitutes the decisive event of modernity and signals a radical transformation of the political-philosophical categories of classical thought’ (Agamben, 1998: 4).

According to Agamben, it is ‘[i]n the “politicization” of bare life – the metaphysical task *par excellence* – [that] the humanity of living man is decided [*si decide*]’ (Agamben, 1998: 5).<sup>42</sup> Thus, from his perspective Foucault is right in arguing that ‘when life begins to be included in the mechanisms and calculations of State power, politics turns into biopolitics and that this signals the decisive event of modernity’ (Foucault quoted in Agamben, 1995: 3; Foucault, 2003). However, Agamben expresses the view that Foucault is wrong to suggest that life only becomes a political object in early modern Europe and, consequently, to conceptualize biopolitics as an exclusively modern phenomenon. Instead, what Agamben intends to show is that from the earliest treaties of political theory, particularly in Aristotle’s notion of man as ‘a political animal’ (Aristotle, 1981), a notion of sovereignty as power over life or biopower is implicit. To this extent, bare life is the condition of modern politics (i.e., essential to its constitution). In Agamben’s words, ‘bare life is the original activity of sovereign power’ (1998: 6). Nevertheless, it is a negated or negative condition; one that only appears as such when the topology (or the hidden logic/location) on which it is based (i.e., the topology of exception or inclusive exclusion) is fully displaced.<sup>43</sup> Consequently, according to Agamben, no notions of biopolitics<sup>44</sup> can do away with the question of sovereignty. Specifically, it cannot ignore what he calls ‘the paradox of sovereignty’, whose topology (or hidden logic), in line with Schmitt (1996), he identifies in ‘the state of exception’ (Agamben, 1998: 15).<sup>45</sup>

Here, however, a parenthesis ought to be briefly open in relation to Agamben’s periodizations of biopolitics. In an interview regarding his research on *oikonomia* with Gianluca Sacco

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<sup>42</sup> Here the Heideggerian legacy is in full display. On this and on how it relates to Agamben’s nihilism, see Chiesa, ‘Giorgio Agamben’s Franciscan Ontology’, 2009: 156.

<sup>43</sup> The word topology derives from the Greek τόπος, *topos* + λόγος, *logos*. The *Oxford English Dictionary* gives two definitions: 1) the study of geometrical properties and spatial relations unaffected by continuous change of shape or size of the figures involved 2) the branch of mathematics concerned with an abstract theory of continuity. In *Stanzas: Words and Phantasms in Western Culture*, Agamben defines philosophical topology as the search for *topos* or ‘place’ but not as something simply spatial ‘but as something more original than place’; as analogous to ‘what in mathematics is defined as an *analysis situs* (analysis of site) as opposed to an *analysis magnitudinis* (analysis of magnitude)’ (Agamben, 1993: xviii-xix).

<sup>44</sup> Note that in Agamben, there is no distinction between biopower and biopolitics (see Agamben, 1998; 1999a; 2005a).

<sup>45</sup> Here two objections are worth mentioning. Agamben’s conception of sovereignty as equivalent to state’s sovereignty, fails to address, on the one hand, the fact that the superimposition of sovereignty and the state is not given but constructed (see, Biersteker and Weber, 1996; Weber, 1995) and, on the other, the more problematic but nevertheless useful distinction between ‘state sovereignty’ and ‘individual sovereignty’ intended as autonomy (see Brown, 2008).

(2004b, all translations are mine), which preceded the publication of *Il Regno e la Gloria. Per una geneologia teologica dell'economia e del governo* (2007, again translations are mine),<sup>46</sup> presumably 'to respond to the obvious critique of the *Homo Sacer* series as one which entirely ignored *capitalism* as a singular form of (bio)-power' (Toscano, 2009a),<sup>47</sup> Agamben talks about two paradigms. Namely, he speaks about 'theology, which locates in the one God the transcendence of sovereign power, and economic theology, which substitutes the idea of *oikonomia*, conceived as an immanent order – domestic and not political in the strict sense, as much a part of human as of divine life' (Agamben, 2004b). He then goes on to say that whereas, [f]rom political theology derives the political philosophy and modern theory of sovereignty; from economic theology derives modern biopolitics, up until the current triumph of the economy over every aspect of social life' (Agamben, 2004b). Thus, in a somewhat surprising move that might leave some of its interlocutors and scholars slightly puzzled, Agamben no longer talks about sovereignty as the original activity of biopolitics.<sup>48</sup> Instead, in *Il Regno e la Gloria*, he refers to it as secondary to governmentality – a governmentality that he understands as 'the political-theological dispositif of angels' (i.e., ministers, administrators, policemen). He says, the foundation [l'origine] of politics is not sovereignty, but government, it is not the king, but the minister, it is not the law, but the police (2007: 303), while 'the modern state' is that which for Agamben takes upon itself this 'double structure of the governmental machine' (2007: 159).

But what is the relation between political philosophy (sovereignty) and economic theology (biopolitics)? And, moreover, does not the affirmation of two distinct paradigms and specifically the idea of 'modern biopolitics' contradict his previous claim that biopolitics is not only absolutely coextensive with sovereignty's power but also, both historically and conceptually, its original activity? It is as if Agamben cannot completely go beyond Foucault's own understanding of biopolitics. The same temporal tension, which is also and at the same time theoretical, we have found in Foucault in relation to his notion of biopolitics,

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<sup>46</sup> The English translation of this text, by Lorenzo Chiesa and Matteo Mandarini, is forthcoming from Stanford University Press.

<sup>47</sup> Whether Agamben successfully responds to this critique is, however, uncertain. Toscano responds in the negative. He says, '[w]hile *Il Regno e la Gloria* does provide a rich archive for a study of the Christian prehistory of 'management' as an increasingly endemic principle of social organization, it is entirely mute – arguably because of Agamben's banal Heideggerian prejudices about the place of labour and productivity in the Marxian critique of political economy – about the 'anarchic' order of capital accumulation, and thus has nothing to say about the constitutively unmanageable economies (*chrematistic*) that management (*oikonomia*) seeks to govern' (Toscano, 2009a: [n.p.]).

<sup>48</sup> See also Agamben's 'Metropolis' (2006: [n.p.]) in which he says, 'I suggest to use this term, metropolis, to designate the new urban fabric that emerges in parallel with the processes of transformation that Michel Foucault defined as the shift from the territorial power of the ancient regime, of sovereignty, to modern biopower, that is in its essence governmental'.

can be discerned in Agamben. That is to say, in Agamben, we find a temporal tension between an understanding of biopolitics as new and one as continuative of a type of pre-modern sovereign power, which is also a theoretical tension between an idea of biopolitics as pertaining to the sphere of the economic/social and as constitutive of the legislative, judicial, and/or executive sphere. A complete resolution of this question is given neither in Agamben nor in Foucault.

However, whereas Foucault is more attentive in identifying how precisely various strategies of power are combined at specific historical junctures, and in indicating moments of discontinuity between different historical periods, the configuration of knowledge that they produce or episteme and events, Agamben's periodization(s), or what is, perhaps, best called his ontologization<sup>49</sup> or his 'quest' for historical-ontological *continuity*, is more problematic. Agamben's diagnosis of Western<sup>50</sup> politics, before his *Il Regno e la Gloria* (2007), as resting on a single bio-political paradigm that stretches from Aristotle to the present risks trumping Foucault's own historico-epistemological account of it (Lemke 2005, Dillon, 2005; Toscano, 2007a; Bigo 2009<sup>51</sup>). His explicit move against Foucault's own genealogical analysis allows him to argue that far from being an exclusively 'old' phenomenon, sovereign power in its biopolitical capacity continues to permeate contemporary societies. This insight is, I believe, of great value and cannot be dismissed too hastily. It brings attention to the biopolitical power of sovereignty today – a power that Foucault himself emphasizes in his discussion of state racism. Nevertheless, by bypassing Foucault's important genealogical excavation of 'governmental practice' and the way in which these neoliberal practices have weakened the power of the state<sup>52</sup> – it risks undermining the historical specificity of our present time (and indeed of previous ones).<sup>53</sup>

Furthermore, Agamben's conceptualization of biopolitics plays on a distinction – the distinction between bios and zoē – which some have disputed. Not only, as Arendt has shown, do we find in Aristotle more than one definition of man (Finlayson, 2010: 113),<sup>54</sup>

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<sup>49</sup> On the distinction between historicization and ontologization, see Dillon, 2005.

<sup>50</sup> The term 'Western' is a term that, as Toscano (2009) notes, Agamben uses without much reflection.

<sup>51</sup> See Bigo's preliminary version of a chapter in *Policing Insecurity Today Defense and Internal Security*, which is forthcoming from Palgrave.

<sup>52</sup> On this see, for instance, Fraser, 2003; Lemke, 2003; Bigo, 2006b; Hardt and Negri, 2001. Foucault and Agamben are less useful in this respect.

<sup>53</sup> As we will see in more details later, this seems both to be a problem of periodization and of framing in Agamben, at least in the Agamben of *Remnants* and *Homo Sacer*. Agamben's understanding of sovereignty within these books risks being anachronistic and limiting.

<sup>54</sup> Even though, it is fair to say, Arendt herself relies on this same definition of man as *politikon zōon* in her work (see note 20 supra). Also, see Foucault who, in *The History of Sexuality*, says [f]or millennia, man remained what he was for Aristotle: a living animal with the additional capacity for a political

which seems to downplay Agamben's argument that in Aristotle man is defined *simply* as *politikon zōon*. More importantly, it could be argued that 'life' is rarely, if ever, bare or naked<sup>55</sup> (Bigo, 2007a; Negri, 2003). In particular, Bigo argues that 'bare life is never obtained, not even in the concentration camp' (Bigo, 2007a: 12). Bigo is here referring to Agamben's discussion of the *Muselmann* in Nazi camps, whom, following Primo Levi, Agamben describes as 'the weak, the infirm, those who were doomed to be singled out' by the other prisoners of the camp and in whom he identifies the final biopolitical caesura identified by Foucault in the separation of a population from a people (Agamben, 1999a: 69; 2002: 85).

For Agamben, the *Muselmann* is a figure between bare life and political life, between life and death. It is the 'political limit and an anthropological concept' that brings into serious question the ethical character of law. It is the point at which 'the biopolitics of racism so to speak transcends race, penetrating into the threshold in which it is no longer possible to establish caesurae' (1999a: 69). The *Muselmann* is 'the object of an experiment that revokes our understanding of morality and of humanity itself' (1999a: 69). For Agamben, the very notion of an 'ethical limit' loses its meaning when confronted with the *Muselmann* as, according to him, it is precisely that which exceeds the law and ethics that concerns this particular figure. By calling into question the moral categories that attend the distinction between law and fact, life and death, 'the human and the non-human' (Agamben, 1999a: 55-63), the *Muselmann* is what renders redundant any attempt to understand law and ethics as a question of 'the good'. He says,

'In Auschwitz ethics begins precisely at *the point* where the *Muselmann*, the "complete witness", makes it forever impossible to distinguish between man and non-man' (Agamben, 1999a: 47, emphasis added).

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existence (1978: 143). Clearly, Agamben is heavily influenced by both Arendt's and Foucault's readings on this point. For a counter-view on Aristotle on the basis that '*politikon* cannot be the specific difference that determines the genus *zōon*, for the simple reason that the attribute political, as Aristotle understands it, is not specific to human beings' but attributable 'to several different kinds of "political animal"', see Finlayson, 2010: 13.

<sup>55</sup> Note that I am here conflating *zoe* with bare life, a move that may seem unjustified considering that Agamben distinguishes them at various points in *Homo Sacer*. See, for instance at page 90 where he explains that *homo sacer* is not simply *zōē* but 'the threshold at which the two spheres [ ] are joined in becoming indeterminate'. This is because Agamben wishes to maintain a distinction between his philosophical claim that all Western politics is based on this *bios/zōē* distinction and his more historical claim that the bare life/politics distinction appears with the designation of 'sacred life' in Roman law and as the result of sovereign power. However, I believe my decision is justified on the basis that in Agamben this distinction is not so clear-cut and that he himself often uses these terms interchangeably.

Consequently, and contra Arendt for whom the *Muselmann* is anti-political because deprived of what renders him/(her) something more than mere animal,<sup>56</sup> according to Agamben, only by beginning from that point or limit it will be possible to pose the question of another politics and ‘another use of law’ (Agamben, 1999: 47, 48). That is, a politics that no longer has sovereign power at its centre and is characterized by a use of ‘law in its deactivation and inactivity [inoperosità]’ (Agamben, 2005a: 64). A use of law, we could say, that is no longer linked to a concept of ‘force’ (or law as force-of-law) but of ‘play’;<sup>57</sup> ‘an endlessness of play that allows for the noninstrumental appropriation of law and ultimately its deactivation in play’ (Mills, 2008: 128).

However, what does it mean to deactivate law in play? How can law be deactivated simply through play in the present – and in fact Agamben needs a kind of ‘supplement’ in the form of ‘the messianic’<sup>58</sup> – and how can a figure that is completely subsumed to (absolute) power and force-of-law be also and at the same time *already* a new subject or ‘form-of-life’?<sup>59</sup> These questions are left unanswered and have led some authors to argue that in Agamben the negative act of destruction is equivalent to the production of a new alternative (Franchi, 2004; Chiesa, 2009), which, in turn, seems to give credit to Badiou’s claim that Agamben ultimately understands ‘being as weakness’ (Badiou quoted in Chiesa, 2009). It is not a case that as Clemens, Heron and Murray point out, ‘many of Agamben’s “heroes”, whether “actual” people or literal figure metamorphose, disappear, go mad, commit suicide, flee into anonymity and utter weakness, fail miserably, are silenced, incarcerated, or otherwise destroyed’ (Clemens *et al.*, 2009: 11). They are unable to sustain the power and force-of-law

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<sup>56</sup> For Arendt, man’s capacity of political action, and the pursuit of higher ends is what makes him something other than mere animal (see Arendt, 1971; see also Norris, 2003).

<sup>57</sup> Agamben mentions the notion of play in most of his books. More extensive conceptualization of this notions can be found in ‘Playland: Reflections on History and Play’, a chapter of his book *Infancy and History* (1993: 89-106) where he develops it by drawing on Levi-Strauss, and in *Profanation*, 2007. For a critique of play in Agamben developed through Derrida, on which Agamben himself draws, see Mills, 2008.

<sup>58</sup> Agamben is aware of this problem. In *The Times that Remains* (2005b), he distinguishes his understanding of messianic time, which he develops by drawing on Benjamin but goes beyond Benjamin’s non-Christian messianism, from Derrida (1994), accusing the latter of developing the concepts of presence and absence into an ‘actual ontology of the trace and the originary supplement’. For Agamben, Christian messianic time should be considered as the “paradigm” of historical time, “the only real time” and today’s generalized state of exception should directly be understood in messianic terms (Agamben, 2005b: 102). For some of the problems that this conceptualization raises see Chiesa, 2009; Mills, 2008.

<sup>59</sup> In Agamben’s words, ‘[t]he *Muselmann* [...] is the guard on the threshold of a new ethics, an ethics of a form of life that begins where dignity ends’ (Agamben, 1999a: 69). ‘To be potential’, he writes, ‘means: to be one’s own lack, *to be in relation to one’s own incapacity*’ (Agamben, 1999b: 172). The reference here is again Aristotle – in particular Aristotle’s notion of ‘potency’ (2001: 820) – and Heidegger (1977). For an analysis of how Agamben’s conceptualizes a form-of-life or being in its relation to its own incapacity and the difficulties that this raises, see again Chiesa, 2009.

of the state. It also the case that for Agamben the failure of these figures is not dependent on their own weakness but attributable to the thanatopolitical expressions of sovereignty, epitomized by the Nazis' extermination of the Jews (Agamben, 1998: 114). Nevertheless, by creating a kind of equivalence between figures whose 'mystical dissolution' has already happen or is imminent and 'form-of lives', Agamben's response, which as Clemens *et al.* note binds him to such antecedents as Simon Weil and Walter Benajmin (Clemens *et al.*, 2009: 11), appears truncated in its failure to acknowledge subjects' capacity to resist.

Although rare, for example, instances of resistance were not totally uncommon among detainees in Nazi camps (see Levi, 2000; Bigo in Rajaram and Grudy-Warr, 2007).<sup>60</sup> In contemporary 'camps', such as Guantánamo (Agamben, 2004a; 2005a), moreover, detainees have also engaged in practices of resistance, such as hunger strikes (Scanlan *et al.*, 2008: 276; McEvoy *et al.*, 2007). It is true that when protests did take place they were met with a violence, which was clearly intended to reduce the political influence of the strikers (in the case of force-feeding: by reaffirming the biopolitical power of the state to keep them alive at all cost). It is also the case that these type of struggles did obtain only minimal results, often in the form of promises which were then not kept (Denbeaux and Hafetz, 2009), which, in fact, seems to corroborate Agamben's point about the convergence of sovereignty and modern technique of power. It seems to give credit to what, following Agamben, Minca calls 'the (now-meaningless)' – meaningless because ethically inadmissible<sup>61</sup> (Agamben, 1998: 101) – scope of the 20th century's biopolitical machine': no longer the power to make live or let die but 'to allow to survive' (Minca, 2007: 93). However, the very fact that these types of act took place is significant. These acts point to people's capacity to resist even in the most difficult circumstances, confirming Negri's suggestion that that which 'lies at the basis of exploitation and of Power is not naked: it is powerful', and although not always, perhaps, 'capable of productivity of the common' (Negri, 2003: 197), capable at least of making itself heard. It also seems to support Bigo's assertion that Agamben confounds the political dream of sovereign power for total domination and its actual power (Bigo in Rajaram and Grudy-Warr, 2007).

One of the main problems with Agamben's theory of sovereignty seems to be that, as Rancière has argued, it conflates the exception with instances of suffering. Or, in Rancière's

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<sup>60</sup> Badiou's discussion of man as 'something other than a victim' (Badiou, 2001: 12) is also relevant here.

<sup>61</sup> See Agamben's discussion in *Homo Sacer* (1998) of the absurdity of certain dehumanization practices whereby subjects are even asked to sign explicit and voluntary consent forms to be submitted to experiments.

words, Agamben is unable to appreciate that there is not ‘an immediate identity between the exception and instances of suffering’ (Rancière quoted in Hallward, 2006: 122). Instances of suffering are not always and only those determined by the sovereign exception – i.e., those related directly to the state. For instance, to remain closer to my own problematic, biopolitical processes that regulate people through border control, which many argue are being exacerbated by the war on terror and are linked to the transnationalization of security and the police beyond the state (of which more will be said below) (Bigo, 2006b), also causes instances of suffering. Nor are we all from the outset ‘entrapped in the complementarity of bare life and exception’ (Rancière quoted in Hallward, 2006: 122 footnote 122). Rather, as Rancière says, ‘[t]here is a place where the power of the people exists and places where this power is reputedly ineffective’ (Rancière, 1999: 88). For Rancière, the shortcoming of Agamben’s conception of the state of exception is that it turns ‘the idea of the purity of politics’ on its head, ‘so as to empty the stage of political invention by sweeping aside its ambiguous actors’ (Rancière quoted in Hallward, 2006: 122, footnote 45). As a result, politics ends up being equated with ‘a power that is increasingly taken as an overwhelmingly historico-ontological destiny from which only a God is likely to save us’ (Rancière, 2004: 302). In other words, according to Rancière, in Agamben’s theory there is no space for politics in the present because his conception of politics relies on a messianic event to come. As Žižek explicates with reference to the above criticism by Rancière, ‘[w]hen, in a shift from Foucault, Agamben identifies sovereign power and biopolitics (in today’s generalized state of exception, the two overlap), he thus precludes the very possibility of the emergence of political subjectivity’ (Žižek, 2006: 341-42). Even if it is the case that in its most extreme forms sovereign power leaves little space for resistance, there are numerous past and present examples that prove that ‘people’ are in reality more resourceful than Agamben seems to allow.

Nevertheless, despite these problems, I want to argue that Agamben’s understanding of sovereignty is useful. His idea that biopolitics cannot be understood outside of the problem of sovereignty forces us to rethink Foucault’s own characterization of the relation between sovereign power and biopower or the hidden point or place of intersection between the two and to acknowledge the tensions that his analysis of state racism raises with respect to this relation. It also obliges us to consider what is about sovereign power that makes it so persistent. This is not the same as accepting Agamben’s periodization or method of analysis in its totality; quite the contrary. Whereas Agamben explores the relation between sovereignty and biopolitics, or more precisely how sovereignty is biopolitical, mainly in the

abstract, or more specifically, from the perspective of political philosophy,<sup>62</sup> what I want to provide is precisely a sociological and contextualized exegesis of practices of security and exception at a US and European level. What I am mostly concerned with here is to find out what is specific in terms of our present times that may account for today's 'generalization of the state of exception' and how different political entities, the US and EU in this case, make use of 'apparatuses of security'. This is because I believe that even if we were to accept that the 'foundational' logic of the state in its traditional form is that of exception – and there are good reasons for arguing that the state has no foundations or essences but is an historical, and we might add, discursive product<sup>63</sup> – it is still necessary to analyse *empirically* what are the discursive and ideological mechanisms that allow 'the state' to claim ultimate authority. Only this type of analysis will help to elucidate how the generalization of (the state of) the exception is achieved. It is plausible to believe, in fact, that 'states' – including what some considered as 'new state-like formations', such as the EU – configure so-called 'exceptions' and enforce security differently, depending on their specific history, interests, aims and position within the global economy. To do this, I will argue with and beyond Agamben, whose conceptualizations of the state and sovereignty risks being 'essentialist'<sup>64</sup> and his conception of the 'generalization of the state of the exception' is suggestive but not clearly developed, by critically appropriating conceptual tools from a number of theorists, including those given by Foucault as previously expounded.

Following Biersteker and Weber's emphasis on the importance of analyzing the constitutive link between the state and sovereignty as historically and discursively constructed (Biersteker and Weber, 1996), in my first analysis chapter I will explore some of the historical and discursive conditions that enabled the US state to declare itself as 'a global state' and how the war on terror was functional to this. Further, through an exegesis of US NSSs, I will discuss in what sense and how it is possible to talk about a generalization of the (state of) exception.

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<sup>62</sup> In his words, his analysis 'should not be confused with a sociological investigation' (2004: [n.p.]).

<sup>63</sup> In Engels' words '[t]he state is, therefore, by no means a power forced on society from without; just as little as it is "the reality of the ethical idea," "the image and reality of reason". Rather, it is a *product of society* at a certain stage of development [...]' (Engels quoted in Lenin, 1932: 8, emphasis original). For different understandings of the state as produced, see, for instance, Biersteker and Weber, 1996; Tilly, 1985; Mann 1997; Shaw, 2000.

<sup>64</sup> Note that the question of whether Agamben's theory is essentialist is, however, complicated. His discussion of how the nation-states makes 'nativity or birth' the 'foundation of its own *sovereignty*' (1995: [n.d.]) points to what we might call a view of sovereignty and of the link between sovereignty and the state as discursively constructed. His philosophical enterprise, moreover, is explicitly directed toward overcoming Being as essence – see his notion of 'whatever being' in the *Coming Community* (1993). The question, I suppose, is whether in trying to keep the ontological level separate from the sociological, economic and historical ones, Agamben ends up smoothing out elements which are essential to an understanding of the state and sovereign power.

An understanding of the state as produced does not necessarily preclude the modern state from following specific logics, such as the logic of exception. However, it does challenge the assumption that this logic is unique, immutable, or unaffected by discourses or systems of knowledge, by how states ‘interact’ with each other (Biersteker and Weber, 1996: 11) and by the historical, political, geopolitical and geoeconomic circumstances in which a particular state finds itself in at a particular point in time. We will see in section 1.8 exactly why Agamben thinks that we are now in the presence of a generalized state of exception and how he understands it. However, before discussing this, it is essential that we look more closely at how Agamben, and before him Schmitt, conceptualizes sovereignty as founded on the state of exception and at how, for Agamben, the state of exception is in turn to be understood as intrinsically linked to a paradoxical relation to law. The sovereign operates on behalf of the rule of law and the exception is codified in law. But the exception, on which sovereign power depends, is none other than the suspension of the law itself. From Agamben’s perspective, thus the Schmittian attempt to inscribe the state of exception within a legal context is indefensible because in reality it hides the true relation of the sovereign to the law and of the law to anomy or to a space devoid of law.

### **1.5 The Metaphysics of Sovereignty**

Theorizing the state of exception is not new. In particular, Agamben refers to Schmitt as the one who established the essential proximity between the state of exception and sovereignty. Before moving on to analyse how Agamben, while accepting Schmitt’s understanding of sovereignty, also challenges his conception of the political, it is therefore necessary to look at Schmitt’s decisionist theory of the relation between sovereignty, the exception and the political.<sup>65</sup> Although highly contestable, Schmitt’s thought is not only a very important point of reference for Agamben, but also a force to be reckoned with for any thorough consideration of the contemporary standing of the problem of politics generally, and of the contemporary intensification of US imperial power, specifically. As Toscano aptly puts it,

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<sup>65</sup> I concentrate on Schmitt’s conceptualization of sovereignty and later on his idea of *nomos*. For lack of space, his relation to the Nazi regime throughout the 1930s and ‘40s, whose importance on his own framing of these questions and in turn on Nazis theories and practices has been questioned and/or deemphasized by some (see, for instance, Piccone and Ulmen, 2002; Bendersky, 1979) including Schmitt himself (Scheuerman, 1999; Ulmen, 2003 [1943]: note 59) but is difficult to dismiss (Dyzenhaus, 1998, 2-3; Scheuerman, 1999; Wolin, 1990; Huysmans, 1999), cannot be dealt with here. On his Nazi years, on which, it is fair to say, there is no clear consensus, with explanations ranging from claims that Schmitt subscribed to Nazism in order to defend his notion of ‘total state’ from becoming exclusively founded on *Volksgemeinschaft* or ‘people’s community’ from within, to mere opportunism, bad judgment, enthusiasm, and/or a more profound affinity between his thought and Nazis ideology, see, for instance, de Benoist, 2003; Bendersky, 1979; Piccone and Ulmen, 2002; Gottfried, 2001; Carrino in Mouffe, 1999; Mouffe, 2005b; Zolo, 2008; Balakrishnan, 2000; Neocleous, 1996.

‘the uses of Schmitt’s typology and diagnosis for a revitalization of radical politics in a geopolitical moment is of course very much an open question’ (Toscano, 2009b: 240).<sup>66</sup> Yet, to the extent that Schmitt’s theory brings to light the link between state sovereignty and the designation of the exception or enemy and the limits of law when it comes to limiting and controlling sovereign power, it is worth considering, if only briefly, before turning to Agamben’s own conceptualization of the relation between sovereignty and the exception and critique of Schmitt. It is worth also reminding ourselves that Schmitt’s ‘new *nomos*’ already pointed to ‘the imperial vocation of the United States’ (Zolo, 2008).<sup>67</sup>

For Schmitt, sovereignty, the exception and the political are inseparable – the political being both the result of a sovereign decision on the exception and its presupposition. In particular, in Schmitt, the political takes the form of a distinction between the friend and the enemy, where it is a relation of war, or a deadly ‘non-relation’ in the sense of being based on ‘the real possibility of physical killing’,<sup>68</sup> that which paradoxically ‘unites’ friends and enemies. Schmitt says, ‘[t]he distinction of friend and enemy denotes the utmost degree of intensity of a union or separation, of an association or disassociations’ (Schmitt, 1996: 26). In other words, only when human beings are united or separated so intensively to form friendship or enmity, we can speak of the political. It is this same relation or distinction, analysed by Foucault in his *Society Must be Defended* through the concept of state racism, which, according to Schmitt, founds the political entity, at the same time as it ‘substantializes’ the enemy. The friend is not in need of being substantialized – it is that which decides. To this extent, Marramao is certainly correct when he says that, in Schmitt, ‘[t]he political cannot be circumscribed, confined or topologically delimited [...]. It can only be temporarily localized in those set dimensions or circumstances in which, from time to time, it manifest itself historically’ (Marramao, 2000: 1577-78). As Hirst points out, ‘[a]ny entity involved in friend-enemy relations is by definition political’ (Hirst, 1999: 9). Thus, for instance, Schmitt says ‘a religious community which wages wars against members of other religious communities’ is a

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<sup>66</sup> For a principled negative response to this question, see Peter Hallward, ‘Beyond Salvage’ (2005). For a still critical but less negative response see Danilo Zolo (2008; 2009a). In an interview with Claudia Terranova, asked directly whether his thought is Schmittian, Zolo replies by criticizing certain aspects of Schmitt, such as his ambivalent stance toward pacifism, his anti-democraticism, his silence about colonial war, and his opportunistic adhesion to Nazism, but he defends Schmitt’s realism and, contrary to Hallward, argues that Schmitt’s diagnostic analyses are of great value. See also Hirst, 1990; Mouffe, 1999; Scheuerman, 1999; and, of course, Agamben, 1998; 1999a; 2005a, among others.

<sup>67</sup> The ‘imperial vocation of the United States’ will be discussed in more details in section 1.8 through more up to date theses.

<sup>68</sup> In Schmitt words, ‘[t]he friend, enemy, and combat concepts receive their real meaning precisely because they refer to the real possibility of killing. War follows from enmity. War is the existential negation of the enemy. It is the most extreme consequence of enmity. It does not have to be common, normal something ideal or desirable. But it must nevertheless remain a real possibility for so long as the concept of the enemy remains valid’ (Schmitt, 1996: 33).

political entity (Schmitt, 1996: 37). Nevertheless, even though Schmitt claims that his ‘concept of the political must be defined apart from definitions of the state, he often surreptitiously reintroduce the state as the natural subject of political life’ (Balakrishnan, 2000: 110). This is because, for Schmitt, ultimately, only secondary political oppositions can emerge ‘*within* states’ (Balakrishnan, 2000: 110).<sup>69</sup> In Schmitt’s words, ‘[t]he ever present possibility of a friend-and-enemy grouping suffices to forge a decisive entity which transcends the mere societal-associational grouping’ (1996; 45). The state is the decisive political entity and the distinction between the friend and the enemy is the ‘substance’ of (or that which founds) the political entity (i.e., the state). The state is that which in declaring itself as ‘the friend’ declares also and at the same time ‘the other’ as its ‘enemy’. It decides itself and its others. In other words, the state is sovereign because only ‘[t]o the state as an essentially political entity belongs the *jus belli*, i.e., the real possibility of deciding in a concrete situation upon the enemy [or the exception] and the ability to fight him’ (Schmitt, 1996: 46). Schmitt adds, ‘[a]s long as a politically united people [Volk] is prepared to fight for its existence, independence, and freedom, on the basis of a decision [on the exception] emanating from the political entity, this specifically political question [the question of who decides] has primacy over the technical means by which the battle will be waged [...]’ (1996: 46).

As a legal-constitutional thinker,<sup>70</sup> Schmitt was particularly keen in developing a theory which was at the same time a legitimation of sovereignty. In particular, Schmitt establishes the proximity between the sovereign and the exception over a number of works. In the first sentence of *Political Theology*, he defines the sovereign as ‘he who decides on the state of exception’ and further suggests that ‘it is precisely the exception [or borderline case] which makes relevant the question of the subject of sovereignty, that is, the question of sovereignty in general’ (Schmitt, 1985: 5, 6). By this, he means that the question of sovereignty and that of exception are inexorably linked and that the former problem cannot be understood independently from or outside the latter. ‘The most guidance the constitution can provide’, says Schmitt, ‘is to indicate who is permitted to act in such a case’ – something which

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<sup>69</sup> Contrary to Kelsen, Schmitt saw political parties as disintegrative elements of the political system (Marramao, 2000) and continued to have doubts on whether a domestic opposition represented ‘a merely “agonal” competition that affirms the common unity’ or whether it negated ‘the political unity’, meaning that a latent civil war was already present (Schmitt quoted in Balakrishnan, 2000: 110).

<sup>70</sup> Although I believe the two cannot easily be separated – and on this Wendy Brown’s discussion of sovereignty’s theological dimension is illustrative (see section 1.8 below) – it is Schmitt’s legal-political not his religious or theological thought that I am most concerned with here. Depending on the author, these two aspects are given more or less importance. See Kervégan, 1999: 54, 71 notes 1 and 2).

Schmitt does not seem to welcome.<sup>71</sup> Only the sovereign can decide ‘whether there is an extreme case of emergency and what should be done to end it’, and, if necessary, to suspend the constitution *in toto* (Schmitt, 1985: 7). Modern legal theories tend to reduce sovereignty to ‘textbook compilations of abstract formulas from which definitions of sovereignty can be extracted’ (1985: 16). However, he contends that because sovereignty is the one concept ‘most governed by actual interests’, it cannot be examined merely formalistically (1985: 17). In particular, with references to Kelsen and to his precursor, Hugo Krabbe,<sup>72</sup> he comments that attempts to eliminate the exception or to treat it as pertaining to the sphere of sociology as if it was of little merits from a juridical perspective, *de facto* create a disjunction between sociology and jurisprudence where none exists.<sup>73</sup> This is done in order to eliminate the problem of sovereignty and its relation to the exception or the decisionist component, and to treat the state as identical with its constitution. However, according to Schmitt, this ignores that the state of emergency ‘is always something other than anarchy and chaos: it always exists in a juridical order even if it is not the legal order’ (Schmitt, 1985: 12). This (that is to say, ‘the superiority of the state to the validity and value of the legal norm’) is what confirms the existence of the state (Schmitt, 1985: 12). Contrary to liberal constitutional theory, which concentrates on the normal and sees the exception as a disturbance or interruption, for Schmitt, there is no sovereignty (nor real law) without the exception. It is by deciding on the exception that the State, which is thus ‘granted autonomous – and hence decisive – status’ (Delacroix, 2005: 37), substantiates sovereignty and real as opposed to ideal law.

According to Schmitt, therefore, the essence of sovereignty, which, as we have seen, he understands as state’s sovereignty at this point, does not reside with the monopoly to coerce or to rule (see Weber, 1991),<sup>74</sup> but with ‘the monopoly to decide’ (Schmitt, 1985: 13).

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<sup>71</sup> Schmitt regards provisions that limit the power of the sovereign by delegating control to the parliament, for instance, as attempts that aims at repressing the question of sovereignty.

<sup>72</sup> According to Schmitt, Krabbe’s theory ‘rests on the thesis that it is not the state but law that is sovereign’ (Schmitt, 1985: 2). For an analysis of Schmitt’s relation to Krabbe, see Kennedy, 2004: 83-84.

<sup>73</sup> Schmitt makes use of the term sociology to indicate a particular method of investigation that he calls ‘a sociology of juridical concepts’. Contrary to Kelsen’s theory of *pure* law, Schmitt believes that law is not and cannot be entirely free from history, politics, and the social. He denies the autonomy of secular, modern politics and law, and suggests that ‘[a]ll significant concept of the modern state are secularized theological concepts’ (Schmitt, 1985: 36). According to Ulmen, ‘this “sociology” is *radical* because it presupposes that a metaphysical image of a determinate epoch has the same structure of the form [...] of its political organization’ (Ulmen, 1999: 470). This is also interesting in relation to Agamben’s own understanding of the paradigm or image (see Chapter 2). On Schmitt’s relation to sociology as a discipline that was at the time ‘only beginning to emerge’, see Balakrishnan, 2000: 4-5.

<sup>74</sup> Max Weber defines a state as ‘a human community that (successfully) *claims* the *monopoly* of the *legitimate use of physical force within a given territory*’ (Weber, 1991[1919]: 78 emphasis original). Note that Schmitt was an important student of Weber. The relation between the two has been

Sovereignty, for Schmitt, is given by its monopoly to decide on the exception. It is given by the monopoly to establish when and what constitutes a situation of emergency at any given time – a situation that crucially the sovereign creates through a suspension of law to guarantee and validate its own existence and, paradoxically, the existence of what Schmitt calls real law. ‘Sovereignty’, says Schmitt, ‘resides in deciding this controversy, that is, in determining definitively what constitutes public order and security, in determining when they are disturbed, and so on’ (Schmitt, 1985: 9). For Schmitt, in deciding on the exception, the sovereign decides on ‘the situation in its totality’. Put differently, he decides both what constitutes the exception, and therefore, what constitutes the normal case. In a ‘state of emergency’, says Schmitt, ‘the state continues to exist while law is effaced. This is why for Schmitt ‘all law is “situational law”’ (Schmitt, 1985: 13).

In accordance with Schmitt, Agamben accepts that sovereignty is given by the monopoly to decide on the exception (Agamben, 1998: 15-16) and that the theory of the separation of powers, whereby power is shared between the legislative, executive and judiciary branches each with its separate and independent areas of responsibility is unsatisfactory.<sup>75</sup> However, he takes issue with Schmitt for ignoring, or more precisely passing over, that the decision on the exception is based on a paradoxical impossibility. Schmitt is not concerned in challenging sovereign power but, on the contrary, he wants to affirm it. Thus, he takes for granted sovereign power’s ultimate capacity to decide without questioning the hidden logic that allows the sovereign to do so. On the other hand, wanting to displace sovereign power as a form of power that is the culprit of having produced ‘the most absolute *conditio inhumana* that has ever existed on earth’ (Agamben 1998: 166), Agamben is adamant to prove the paradoxicality on which the sovereign capacity to decide is based. Agamben states, ‘what is at issue in the sovereign exception is not so much the control or neutralization of an excess as the creation and definition of the very space in which the juridico-political order can have validity’ (Agamben, 1998: 19). Thus, it is not only the case that the sovereign and the exception are inexorably linked (Schmitt, 1985) but that by determining what constitutes the exception, in actual fact, the sovereign suspends the law ‘while it simultaneously constitutes the efficacy of the law in that determination’ (Mills, 2004: 44; Agamben, 2004). ‘The “sovereign” structure of the law, its peculiar and original “force”’, as Agamben puts it,

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acknowledged by many authors, including Lukács, Arendt (quoted in de Benoist, 2003) and more recently Mouffe (1999) among others. Whether the two authors have to be read simply in terms of continuity (for instance, Bendersky, 1983: 35; but also and especially, McCormick, 1997: 8) or discontinuity (Turner, 1992), or, more probably, in terms of both is, nevertheless, still a matter of debate.

<sup>75</sup> The idea that a fair political system is one based on a separation of power has a long history, from Montesquieu, (1989 [1748]) to contemporary political theorists, such as Ackerman (2004).

'has the form of a state of exception in which fact and law [or the exception and the rule] are indistinguishable', yet must, nevertheless, be decided on (Agamben, 1998: 27). In other words, the role of law is given validity through a sovereign decision on the exception where, paradoxically, the exception is no other than the suspension of the law itself.

As Agamben suggests in reality, Schmitt is fully aware that the relation between sovereignty and the law is paradoxical: by deciding on the exception, the sovereign creates the law at the same time as 'he' situates himself both inside and outside of it. Agamben notes that Schmitt uses the expression 'to formulate it paradoxically' to describe sovereignty's capacity to create the law (see Schmitt quoted in Agamben, 1998: 16), implicitly acknowledging sovereignty's ambiguity and paradoxicality. However, because his ultimate aim is to insert the state of exception into a legal context not matter what (Agamben, 2003), or, put differently, to maintain the juridical order against the possibility of 'pure violence' – the reference here is Walter Benjamin<sup>76</sup> – he is careful not to substantiate on this inconsistency. Starting from this presupposition, Agamben further suggests that what is lacking in 'public law' is a genuine critique of the functioning and hidden foundation of sovereignty (Agamben, 2004), which would include a critique of law. His aim is to provide such a critique of law because he believes that only then the actualization of a new form of politics – that is to say, a form of politics that will no longer have sovereign power and its constitutive categories of thought at its centre – will be possible.

### **1.6 Law: part of the Paradox of Sovereignty?**

Against the idea that the law can be a distinct sphere of deliberation in which decisions can impartially be drawn as the theory of the separation of powers implies, or the guarantor of universal justice (in the Kantian sense), Agamben suggests that the law is part of the paradox of sovereignty. It is part of the paradox of sovereignty in the sense that it is through its suspension that the sovereign acquires unlimited power (or the power to decide over the 'life' of others). This is why for Agamben the law cannot become the means through which to contain the effect of sovereign power. Trying to contain the effects of sovereign power through legal means, which would include the use of human rights law, is bound to fail, insofar as, even though any such attempts may succeed in containing specific legislations, they risk reproducing rather than challenging the inherent logic of the state of exception on

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<sup>76</sup> According to Agamben, Schmitt's decisionism is to be read as a 'strategic inversion', a way of neutralizing Benjamin's anomic and revolutionary violence (Agamben, 2005a: 55). For a critique of Agamben's reading of Benjamin for in reality eliding what Sinnerbrink calls the 'anarcho-Marxist dimension of Benjamin's response to Schmitt', see Sinnerbrink, 2009: 89-91.

which sovereign power is based. Although there is much to appreciate in Agamben's critique of law and of human rights law, Agamben's characterization of law is limited and limiting, especially as it does not delve on the relationship between national law and international law, tending simply to conflate two, thus, ending up offering a monistic view of law.

As observed in the section above, for Agamben, the law cannot guarantee universal justice because it is part of the paradox of sovereignty. Agamben further suggests that the very concepts of guilt, responsibility, innocence and dignity are irredeemably compromised (Agamben, 1999a: 66) as concepts whose source is juridical (see his attention to Roman law) and were only secondarily exported to an ethical discourse. In his words, '[t]o assume guilt and responsibility<sup>77</sup> – which can at times be necessary – is to leave the territory of ethics and enter that of law' (Agamben 1999a: 22). However, Agamben argues that once we enter the realm of law we enter a very ambiguous terrain whose inadequacy and non-ethicality becomes evident when confronted with figures, such as the *Muselmann*, whose acts are in a sense beyond law.<sup>78</sup> Not even international law, and in particular human rights law, can guarantee justice for Agamben. According to him, the non-universality and non-comprehensibility of human rights is given by the fact that the Rights of Man are always predicated on others men<sup>79</sup> or non-citizens not having these same rights (see also Marx quoted in McLellan, 2000<sup>80</sup>). Drawing on Arendt, Agamben offers the case of the refugee as the example that shows the limits of law, both in its national and international configuration, and of invocations of human rights specifically. According to Agamben, what the figure of the refugee brings to light is that the declaration of rights in actual fact presupposes an originary unity between birth or nativity and nation and citizen that does not do justice to the myriad of '(in)human beings' that do not conform to this fiction (Agamben, 1998: 28). Rather than defending human rights, 'the Rights of Man represent above all the original figure of the

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<sup>77</sup> The word responsibility has its origin in the Latin legal term of '*spondeo*' or sponsor, meaning someone who 'become[s] the guarantor for someone (or oneself) with respect to someone' (Agamben, 1999a: 21).

<sup>78</sup> Agamben also offers the example of the perpetrators of Nazi crimes, whose crimes could not be properly addressed by the law as demonstrated by the Eichmann process, which Agamben describes as a 'liturgy of law' (see Agamben, 1999a; 2009; also see Arendt, 1971).

<sup>79</sup> For early feminist critiques the Rights of Man as male centred, see De Gouges' pamphlet titled 'Declaration of the Rights of Woman', 1791 and Wollstonecraft's *Vindication of the Rights of Woman*, 1792. For more recent critiques of human rights as gendered, see, for instance, Holmes, 1983; Peterson and Parisi, 1998. For a critical attempt to connect feminist commitment to equality, and in particular poststructuralist 'deconstructive equality', to 'actually existing' human rights, see Nash, 2002. See also the 'Convention on the Elimination of all Forms of Discrimination Against Women' (CEDAW) adopted in 1979 by the UN General Assembly on which Nash draws to develop her argument.

<sup>80</sup> Marx actually goes one step further when he says that 'it is not man as a citizen but man as bourgeois who is called the real and true man' in the French Declaration, recognizing that citizens themselves can be deprived of rights. For a critique of Marx's critique, see Balibar, 1994; Lefort, 1986.

inscription of bare natural life in the legal-political order of the nation-state' (Agamben, 1997). This is because,

'[r]ights are attributed to the human being only to the degree to which he or she [in his bare life] is the immediately vanishing presupposition (and, in fact, the presupposition that must never come to light as such) of the citizen' (Agamben, 2000b: 21).

In other words, for Agamben, belonging to a given national identity or being a citizen is the precondition for having rights wherein the condition of belonging is guaranteed by the vanishing of bare life into the notion of *bios* (political 'life'). Similarly to the constitutive split that underscores the term 'people' whereby, on the one hand, we have 'the *People* as a whole and as integral body politic and, on the other hand, the *people* as a subset and as fragmentary multiplicity of needy and excluded bodies' (Agamben, 1998: 31), by being predicated on some people not having the same rights of citizens, human rights perform a similar split. While they stipulate man as the bearer of rights, rights also presuppose this same man to be a citizen. Thus, in presupposing that only citizens have rights, they preclude in advance the access of non-citizens to the 'right to have rights' (Arendt, 1973), while maintaining a 'secret solidarity' with sovereign power (Agamben, 1998: 133). This is why, for him, the point is not to make human rights more inclusive. Nor is it, however, to return to an Arendtian idea of pure politics as based on a distinction between the social and the political.<sup>81</sup> For Agamben, the point is to politicize the generalized state of exception. It is to leave behind the *modern* categories of 'people', nation, and sovereignty, inasmuch as they are deemed to contain the seeds of their transformation into biopolitical apparatuses of destruction, which separate the subject of rights (citizen) from the innocent, and therefore sacrificeable, bare life of the refugee or the stateless. According to Agamben (1995), 'only in a land where the spaces of states will have been perforated and topologically deformed, and the citizen will have learned to acknowledge the refugee that he himself is',<sup>82</sup> 'man's political survival today is imaginable'.

However, it is important to note that this line of reasoning is dubious for not totally dissimilar reasons than those offered above in relation to the distinction between *zoe* and *bios* on which Agamben draws for his critique of Western politics. For a start, Arendt's critique, on which Agamben heavily relies for its argument, is arguably circumscribed to a specific period –

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<sup>81</sup> For a critique, see Rancière, 2001. See also Wolin in Hinchman, 1994; Connolly, 1997.

<sup>82</sup> Here, clearly, the use of third masculine pronoun cannot be justified on the basis of 'institutionalized sexism' (see note 27) but it must be attributed to a failure on Agamben's part to account for, to use an Irigarayan expression 'this sex which is not one' (Irigaray, 1985).

Arendt was talking about refugees between the World Wars. It is Agamben who generalizes or universalizes the refugee to ‘the’ refugee, where the problem seems to be both methodological, or Agamben’s use of historical analogies, and philosophical. On the one hand, his methodological understanding of the refugee as ‘limit-concept’ risks abstracting actual refugees from present practices of resistance and struggle, which sometimes depend on an appeal to human rights but, even when they do, do not constitute just ‘an affair of law’ (Nash, 2009). On the other hand, Agamben’s understanding of the refugee seems to rely on a philosophical idea of recognition of ‘sameness’ that, even as it goes beyond an idea of ethics as predicated simply upon the recognition of the ‘other’ (Levinas, 2003)<sup>83</sup> – for Agamben one also has to recognize oneself as refugee – it does not do justice to the fact that in reality we are not all refugees. In other words, even if we could ‘all’ potentially be stripped of our rights (we are all virtually *homo sacer*), we are not all in the present refugees. Although symbolically powerful and, perhaps, useful as a solidarity tactic,<sup>84</sup> to argue that we are all refugees, paradoxically, risks undermining the real suffering that refugees and other displaced people often endure by juxtaposing what are in fact very different conditions; even as we acknowledge the risk of denaturalization for some: those of citizens and non-citizens.<sup>85</sup>

In relation to the war on terror, human rights appear to be a double-edge sword or Janus-like. As many authors have rightly suggested, ‘human rights’ law have been used successfully to counter emergency legislations in some instances (Campbell, 2007; Bigo, 2009; Nash, 2009). For instance, Campbell argues that the Federal and Supreme Court decisions in the US concerning limitations of war-time presidential powers and the detention and treatment of Guantánamo detainees demined ‘unlawful combatants’ by the then President Bush,<sup>86</sup> ‘overwhelmingly support the argument that human rights or humanitarian law do apply to the “war on terror”’ (Campbell, 2007; Nash, 2009).<sup>87</sup> This clearly is not a sufficient evidence of

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<sup>83</sup> For a critical attempt to develop a ‘dialogic’ (the reference here is Bakhtin) as opposed to dialectic mode of thinking based both on recognition of the Other (Levinas) and impartiality (Ricoeur) in ‘international’ relations from a realist perspective, see Roberto Toscano, 1998; 2005. For a post-structuralist perspective on the same theme, see Campbell, 1994.

<sup>84</sup> For examples of organizations that use this tactic, see for instance, Liberty, a UK non-party organization, whose aim is to protect basic rights and freedoms through the courts, including of those seeking asylum. In 2009, Chakrabarti gave an interview in which she stated that ‘we are all foreigners somewhere’ (2009: [n.p.]). Also, see the ‘We are all Boat People’ campaign in support of asylum seekers. Their website can be found at <http://www.boat-people.org>.

<sup>85</sup> Arendt’s discussion of ‘denaturalization’ in terms of ‘potential statelessness’ is instructive here (in Bar On, 2002: 69-71; Arendt, 1945).

<sup>86</sup> Prisoners who did not qualify as prisoners of war under the Geneva Conventions (see Greenberg and Dratel (eds.), 2005).

<sup>87</sup> Campbell uses the examples of *Hamdi v. Rumsfeld*, 124 S. Ct. 2633 (2004), and *Rasul et al. v. Bush*, 124 S. Ct. 2686 (2007). Also, see *Hamndan v. Rumsfeld* 126 S. Ct. 2749 and *Boumediene v. Bush* 128

the universality or inviolability of human rights. In spite of the Supreme Court many rulings, human rights abuses, and gross injustices continued, and to this day, there are still many Guantánamo detainees that have not had court hearings to determine the lawfulness of their detention (Ratner and Ray, 2004; Denbeaux and Hafetz, 2009). As Nash has observed, moreover, it was ‘citizenship status, combined with diplomatic relations between allies, and not claims for human rights’, which had made possible relief for some British citizens in Guantánamo Bay in 2005 (more on the ‘illegality’ of Guantánamo Bay below). It was only much later that non-citizens resident in the UK were also sent back, in part, at least confirming Arendt’s but also Agamben’s suspicion about human rights as precluding in advance non-citizens or ‘statelessness’ people – where ‘statelessness’ should be understood in its broader sense to include various categories of people<sup>88</sup> – the ‘right to have rights’. Nevertheless, although ‘[t]he increasing legalization of human rights has led [then] neither to guarantees of human rights commitments, nor an end to human rights violations’ (Nash, 2007: 10),<sup>89</sup> successes, even if limited, obtained through the use of these rights should be taken into account in discussions of their limits. Despite Agamben’s claims to the contrary, moreover, the idea of rights as that which can, if not put a stop, at least slow down ‘the working of the [biopolitical] machine that is leading the West toward a global civil war’ (Agamben, 2005a: 87) is not completely extraneous to his own work. His text against ‘biopolitical tattooing’ (2004), for instance, is framed in terms that are not very dissimilar to ‘liberal’ critiques on this theme, where the solution to infringements of one’s rights is given by an ‘individual’ act and articulated in terms of individual rights: in this specific case, by Agamben’s refusal to submit to the practice of fingerprints.<sup>90</sup> This, I would suggest, although commendable, does seem to contradict Agamben’s own explicit and implicit critiques of liberal legalism and liberal individualism. Agamben’s piece does include a mild call for

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S. Ct. 2229 (2008), which held that the right to *habeas corpus* was granted in the Constitution, not merely in the federal statute, which could be amended by the Congress (Denbeaux and Hafetz, 2009).

<sup>88</sup> This would include undocumented migrants, asylum-seekers, or even naturalized and birthright citizens whose status, as Gündoğdu says, ‘is precarious because of the ethnic or racial identifiers that the dominant majorities attach to them’ (Gündoğdu, 2006: 7).

<sup>89</sup> Interestingly, Nash offers the Belmarsh case as an example that shows the way in which ‘when cosmopolitan law is relatively successful in abolishing the distinction between citizens and non-citizens in controversial cases, human rights come under increased political pressure’ (Nash, 2007: 10). Nash argues (2007: 16) that, although it was on the basis of a decision of incompatibility with the Human Rights Act 1998 that indefinite detention of foreigners suspected of terrorism without trial was declared unconstitutional, it was this same decision that ‘paved the way for the government to remove fundamental civil rights from citizens’ by authorizing indefinite house arrest for both citizens and non-citizens.

<sup>90</sup> Agamben was specifically protesting the US Visiting and Immigrant Status Indicator Technology (US-VISIT) program, a biometric policy requiring automatic fingerprinting and photographing of all foreign visitors, except, at the time when Agamben took this decision, nationals of twenty-seven US allies. The program went into effect in January 2004. Soon later, the program was extended to these countries.

collective action. However, his refusal in the end seems implicitly to rely on a conception of individual agency, which is very much in line with liberal capitalism's investment in certain notion of the individual as autonomous or sovereign. Indeed, it is symptomatic that Agamben's call is addressed to 'European intellectuals and teachers'.<sup>91</sup> Apart from a privileged few, who else could refuse to go to the US when their reasons for wanting to go there might in fact be linked to survival in its broadest sense? In the last instance, what the aforementioned examples highlight are the usefulness of the concept of human rights in certain circumstances and the difficulties of thinking human rights struggles, or for that matter, any type of struggles, in the abstract or independently of how the agents of these struggles frame them and what they perceive to be their roles within them.<sup>92</sup>

On the other hand, however, to dismiss how states use human rights and how the latter are entangled with oppressive contemporary practices of securitization would be mistaken. To the extent that Agamben provides a strong critique of human rights, his criticism should not be ignored. However, it is also important to point that Agamben says little on actual abuses of human rights and on the use of humanitarian language to justify interventions. In one of his latest book, titled *Victors' Justice* (2009b), in line with Agamben's critique, Zolo strongly questions the use of human rights on the part of states. But Zolo offers an account based, not as in Agamben on an abstract juridico-philosophical dissection of human rights' inherent ambiguities, but on a critical assessment of their use. Thus, Zolo specifically criticizes the manipulation of international law and of human right, offering examples of how powerful states use them to suit their interests. Starting from the presupposition that, far from being that which limits the power of states, international law is manipulated by powerful states to their advantage, Zolo observes, for instance, how the United States habitually manipulates international law while it justifies 'humanitarian wars'<sup>93</sup> in the name of protecting human rights. To this extent, according to Zolo, human rights are very much part of the rhetoric of the war on terror, especially what appears to be its 'humanitarian' dimension (Zolo, 2006; see also Douzinas, 2007). In an article written in 2009, he says, 'the normative universalism of human rights law lend itself very well to funding the "just" character of war and to ensure the aggressors with the necessary internal and international consensus to carry out the type of imperialist wars' we are witnessing in the last years (Zolo, 2009a, my translation). In this

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<sup>91</sup> In this respect, Agamben's discussion of revolution *vs* revolt in *Times to Remains* is also interesting. See Agamben, 2005b: 31-33.

<sup>92</sup> Note, moreover, that as Balibar says the 'Declaration of the Rights of Man and Citizen' is itself the result of a history of struggles; a history which, according to him, has demonstrated the impossibility of thinking liberty without equality and *vice versa* (Balibar, 2004).

<sup>93</sup> As both Zolo (2006) and Perry Anderson note (2005), we find similar justifications for 'military humanitarian interventionism' in authors such as Rawls, Habermans and Bobbio.

specific respect, far from challenging sovereign power, human rights rhetoric, like other ‘justifications for intervention’, participates in the construction of sovereignty (Weber, 1995).

As Toscano observes, Zolo’s starting point is Schmitt’s argument as put forward in *The Nomos of the Earth in the International Law of Jus Publicum Europaeum* (2003) [1943] that ‘the outlawing of armed state aggression, starting with the “Wilsonian cosmopolitanism” of the League of Nations, in reality served as prelude to unlimited and dehumanizing forms of warfare’ (Toscano, 2008: 131). Following Schmitt’s periodization, Zolo presents a genealogical account of 20th-century international law or *Jus Publicum Europaeum* as moving from a system where the concept of *justus hostis* was central to one of the aggressor as *criminal*, with the expansion of law beyond domestic jurisdictions (Toscano, 2008: 130). His work on humanitarian warfare can be seen to pick up on Schmitt’s insights, especially on his idea that ‘whoever invokes humanity wants to cheat’ (Schmitt, 1996: 54),<sup>94</sup> and his critique of law,<sup>95</sup> and to call into question the concealment of political power and interests in appeals to abstract universals, such as ‘humanity’. Contrary to Agamben, however, whose powerful critique of Western (i.e. global) politics is also, as we have seen, very much influenced by Schmitt – though he rarely discusses particular cases and when he does only focuses on suspensions of national law<sup>96</sup> – Zolo goes into detail to explain how states use *international* law to suit their interests. I will return to the conception of *justus hostis* in the next section and in Chapter 3, where I discuss US foreign security policy through a critical discourse analysis of US National Security Strategies. Let me just add here that, as Toscano rightly points out, Zolo’s tendency to treat universalism *per se* as *the* problem in an attempt to stay clear from ‘cultural imperialism’ for instance when he denounces all universalisms for their ‘intolerance, aggressiveness, [and a] negation of the world’s cultural diversity and complexity’ (Zolo, 2007: [n.p.]) is dubious (Toscano, 2008). It risks coming too close to Huntington’s thesis about the existence of some essential cultural differences between civilizations, albeit in a way that rejects conflict as a matter of principle, without recognizing that these differences are also, and some would argue principally, the result of politically and economically produced asymmetries in resources and power.<sup>97</sup> Nevertheless, Zolo’s point about how international law is hypocritically used by states and about how human rights are

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<sup>94</sup> The actual quote is Proudhon’s (Proudhon quoted in Schmitt, 1996: 45).

<sup>95</sup> See also Zolo’s previous work *Invoking Humanity* (2002).

<sup>96</sup> In particular, in his *State of Exception*, Agamben discussed the cases of France, Italy, Germany and the United States.

<sup>97</sup> In this respect, Zolo’s discussion with Ulrich Beck in ‘What Is Globalization? Some Radical Questions’ (1999) is instructive. In it, Zolo challenges Beck’s notion of ‘new modernity’ as risking being Eurocentric through references to Huntington.

increasingly becoming a banner for ‘new humanitarian wars’ (Zolo, 2006; 2002;<sup>98</sup> see also Beck, 2000<sup>99</sup>) adds a dimension missing in Agamben’s critique of law and rights as expounded above. What Zolo’s analyses help to understand is how the discourse of humanitarian intervention, which might be said to be waning somewhat but has clearly not disappeared, although not perhaps the primary justification for the Iraq and Afghanistan wars was, and still is,<sup>100</sup> part of the rhetoric of the war on terror. Whereas, as we shall see in the next section, Agamben’s understanding of a new *nomos* is quite suggestive but at the same time quite elusive, Zolo’s genealogical account helps to elucidate how Western powers, *in primis* the US, attempt to personalize or individualize international law.<sup>101</sup> We might say, in a Foucauldian way, that they use international law, which should be understood as both intertwined with and distinct from national law, ‘as tactic’ (Gregory, 2007: 207; Butler, 2004: 52) or technique of government – where more specific examples of how the United States administration uses international law as tactic will be given in Chapter 3.<sup>102</sup>

### 1.7 A new *nomos* of the earth?

Agamben borrows the concept of *nomos* from Schmitt and uses it to describe the singularity of the camp in modernity. Whereas in Schmitt the ‘new *nomos* of the earth’ appears as a spatial, political and juridical global ordering based on ‘great spaces’ (*Großraum*) that ‘will eventually put an end to the anarchy which ensued upon the disintegration of the *Jus Publicum Europaeum*’ (Toscano, 2007b: [n.p.]), Agamben suggests that the ‘new *nomos* of the earth’ is the camp. For Agamben, it is in and through the camp that the juridico-political space or anti-space of modernity is created. Agamben’s conceptualization of the camp challenges Schmitt’s vision of *nomos* as that which conjoins spatialization (*Ortung*) and order (*Ordnung*), enabling an understanding of camps, including contemporary ‘camps’, such as

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<sup>98</sup> In dialogue with Antonio Negri.

<sup>99</sup> In his book, *What is globalization?* (2000), Beck, whom cosmopolitan framework Zolo clearly is very critical of, also raises some doubts about ‘militaristic pacifism’. Beck’s fear is that ‘human rights’ could be reduced to the slogan or banner behind which a ‘new crusade’ marches and that the ‘cosmopolitan mission’, as he calls it, could be misused to imperialistic ends (Beck, 2000: 15). For critiques of military humanism see also Chomsky, 1999; Chandler, 2001.

<sup>100</sup> In this regard, it is interesting to note in passing that although not with explicit reference to the Afghanistan war, in his peace prize ‘acceptance’ speech, Obama justifies war on humanitarian grounds. He, like his predecessor (Douzinas, 2007: 6), further refers to the Afghanistan war as a ‘just war’. Also of interest is the fact that Obama appointed Samantha Power to the National Security Council as Senior Director for Multilateral Affairs. Power is well known for her ‘humanitarian interventions’ stance to prevent human-rights catastrophes. In particular, see her book *A Problem From Hell: America and the Age of Genocide*, 2003. For an analysis, see Madar, 2009.

<sup>101</sup> Following Schmitt, Zolo argues that this trend started in the wake of World War I and continued with the despatialized pacifism of the League of Nations and America’s Wilsonian ideology (Zolo, 2002).

<sup>102</sup> In particular, the focus will be article 51 of the UN Charter.

Guantánamo Bay or Abu Ghraib, not as aberrations but as paradigmatic of the political space of modernity in the West. Although clearly suggestive, I argue that his understanding of modernity as exemplified by the camp risks to create a too easy equivalence between states of emergency and democracy, consequently reducing the latter to an empty general category devoid of its ambiguous ‘subjects’,<sup>103</sup> on the one hand, and failing to differentiate between different degrees of exception, on the other. Moreover, as we will see in this and the next sections, his engagement with geopolitical and strategic aspects of state politics both in relation to the establishment of camps specifically, and to the generalization of (the state of) exception more generally, as well as to their effects on international law, is lacking.

Very briefly, according to Schmitt, the ‘*nomos* of the Earth’ is the originary gesture, the founding spatial ontology that binds every juridical-political order to a concrete territory, to the ‘sense of the Earth’ (2003: 29). *Nomos*, says Schmitt, is not law as usually translated by jurists and historians in the sense of tradition or custom but the necessary junction of order (*Ordnung*) and localization (*Ortung*) (2003: 325). *Nomos* is about ‘land appropriation’ – Schmitt uses the term *Landnahme* (2003: 328) – because for Schmitt every legal order is based on appropriation. If Foucault wanted to move away from ‘the who’ to ‘the how’ of power, Schmitt insists on both ‘the who’ (as its decisionist theory implies) and ‘the where’ (see also Dean, 2007: 245). Schmitt says,

In every stage of social life, in every economic order, in every period of legal history until now, things have been appropriated, distributed, and produced. Prior to every legal, economic and social order, prior to every legal, economic or social theory, there is this simple question: *Where and how was it appropriated? Where and how was it divided? Where and how was it produced?*’ (Schmitt, 2003: 327–8, emphasis original).

To this extent, for Schmitt, ‘there always has been some kind of *nomos* of the Earth’ (2003: 351). A world without appropriation and, as a consequence, without *nomos*, would simply be equivalent to anarchy. However, according to Schmitt, it was only after the age of ‘great discoveries’ that men started to develop ‘a global concept of the planet in which they lived’ (2003: 351) and to ground ‘their’ conception of *nomos* in the earth, the land as ‘the most basic, most primordial object of appropriation as such’ (Hallward, 2005: 238). In particular, Schmitt suggests that European civilization exists because of its history of land

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<sup>103</sup> That is to say, subjects in terms of those who govern, but also and especially, of those who are governed. Agamben’s tendency to treat the latter as passive, as completely subsumed to state power or, in any case, as only minimally equipped with the capacity to resist has been discussed in sections 1.4 and 1.6.

appropriations and territorial expansions in the ‘new world’ of the Americas first, and of Asia, Africa, and Australasia later, and of its ability to confine ‘absolute enmity’ in the non-State space. *Nomos* is the nexus that united equilibrium (between earth and sea, individual and state, politics and technology) and disequilibrium (between Europe and the rest of the world) in the epoch of the *Jus Publicum Europaeum* (Galli, [n. d.]). This is why, for Schmitt, the disintegration of the *Jus Publicum Europaeum* – as the European international legal system that regulated relations between states based on the Westphalian doctrines of sovereignty and non-intervention<sup>104</sup> in the period between the end of the religious wars of the seventeenth century and the onset of World War I – was a matter of great significance. By replacing the medieval notion of the *justa causa belli* (or doctrine of just war) by the formal concept of the *justus hostis* or legally recognized enemy (Schmitt, 2003: 124), the *Jus Publicum Europaeum* limited inter-European warfare. Its end, although not necessarily, could lead to a situation of chaos in which barbarism could prevail. It is as a response – a response that is both theoretical and based on a partial and, some rightly argue, quite contestable analysis of ‘international relations’<sup>105</sup> – to this disintegration that Schmitt envisages the possibility, first through his concept of ‘total state’, and then through his conceptualization of ‘great spaces’ as an international order beyond the state (Galli, [n.d.]), of a new *nomos* that could replace the old one and guarantee order in its absence.<sup>106</sup> Schmitt sees the disintegration of the *Jus Publicum Europaeum* as possibly establishing a new balance among a multiplicity of new *Großräume* complex ‘macro-organization of political space inspired by the “Monroe Doctrine”, in which continental or sub-continental areas of influence compete to maintain a balance of power between them’ (Schmitt in Zolo, 2008: [n.p.]; 2002).

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<sup>104</sup> The 1648 Peace of Westphalia assumes the authority of states over a territorial domestic order, and the autonomy of states in foreign affairs.

<sup>105</sup> Hallward, for instance, argues that ‘Schmitt’s book is essentially a rearguard action against’ the possibility of ‘a dis-oriented or egalitarian space’ as opposed to a territorialized one. As such, says Hallward, ‘it can no more explain the past than it can illuminate the present’ (Hallward, 2005: 239). The question of whether his *Großraum* aligned to some extent ‘Schmitt with Hitlerian foreign policy’ (Miéville, 2006: 131) is also a very important one. But one that, for lack of space, cannot be analysed here (for a positive answer see Scheuerman, 1999; Kervegan, 1999: 58-59; 62-64; for a less definite response see Koskeniemi, 2002: 241; for a counter-view see Slater, 1999: 69).

<sup>106</sup> An important text in which the definition of *nomos* as the passage from a Euro-centric to America-centric international law is already implicitly present in Schmitt is ‘Die Einheit der Welt’, 1952. In it, Schmitt questions whether ‘human power’ is ready for a not yet realized unified world structure, which he links to, and, therefore, sees as a possible, although not inevitable, result of, techno-industrial development, with a sole central power (Schmitt, 1986). In that text, Schmitt refers to Henry L. Stimson as the one who made of ‘the new world unity’ ideal a ‘true credo’ (Schmitt quoted in Galli, 2001). This notion of world unity – as a possible negative outcome of the disintegration of the *Jus Publicum Europaeum* in Schmitt’s view – is also used by Zolo to explain what he also sees as a negative trend toward the unification of the world under the hegemony of the United States (Zolo, 2002; 2006; 2009b).

In an extension and radical re-conceptualization of Schmitt's notion of *nomos*, Agamben argues that the new *nomos* of the earth is the camp. Agamben is specifically referring to the concentration camp, although, as we will see later, he also generalizes his own conception of *nomos* to other contemporary 'camps'. According to Agamben, the modern camp is created exactly at the moment when 'the political system of the modern nation-state – founded on the functional nexus between a determinate localization (territory) and a determinate order (the state) which was mediated by automatic regulations of the inscription of life (birth or nation) – enters a period of permanent crisis' (Agamben, 2000: 42). For Agamben, Schmitt is wrong in his discussion of *nomos* for failing to acknowledge, on the one hand, the element of 'nativity', with its etymological affinity with 'nation' or the fact that nation-states cannot exist without making 'nativity' the foundation of their sovereignty, and, on the other hand, that the result of the exception becoming the rule is the camp. In Agamben's view, the new *nomos* is produced in the conjunction of localization and order and by 'the inscription of bare life (the *birth* which thus becomes nation) within the two of them' (Agamben, 1998: 175).

Both inside and outside the nation at the same time, according to Agamben, the camp represents the space or anti-space of modernity in which 'every form of life and every rule can virtually be taken' (Agamben in Vries and Weber, 1997: 115). It corresponds to the suspension of law where a zone of anomie is created, which Agamben claims not to be unrelated to the juridical order but where normal laws do not apply. In Agamben's words, '[t]he suspension of the norm does not mean its abolition, and the zone of anomie that it establishes [i.e. the camp] is not (or at least claims not to be) unrelated to the juridical order' (Agamben, 2004: 23). 'Whether the first camps to appear were the *campos de concentration* created by the Spanish in Cuba in 1896 [...], or the "concentration camps" into which the English herded the Boers towards the start of the century', for Agamben it is not that important (Agamben, 1988: 166). By tracing the origin of state of exception back to the Ancient Greece, it is reasonable to suppose that such 'spaces' existed since classical antiquity, at least in their latent state. What matters the most, for him, is the fact that camps take on specific characteristics, which make them primary site of dehumanization. In other words, Agamben is not interested in the chronology of camps, but in explaining how the camp, and in particular the Nazi camp, took the form that it took during the Nazi regime, and how this form (or anti-form) of exception continues to permeate contemporary societies. For him, what counts is not the specificity of different camps<sup>107</sup> but the fact that it was with the

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<sup>107</sup> This could be one of the reasons why Agamben fails to mention what others see as primary sites of 'exception', such as the slavery plantations (see, for instance, Gilroy, 2000; Mbembe, 2003: 21). Or, Agamben's focus on the Nazi camp could instead more simply be attributed to his reluctance to see

Nazi regime that for the first time a state of emergency was legalized and extended to an entire civil population. The Nazi camps relied upon the prior legalization on *Schutzhaft* (protective custody) (1998: 167) and the inhabitants were denaturalized according to legal procedures (Agamben 1998: 132). This is what Agamben regards as fundamental. During the Nazi regime, the state of exception assumed a juridical configuration insofar as it was legalized according to legal procedures, where the imprisonment of an entire civil population found its justification in a concern for ‘national security’ ‘independently of any criminal behaviour’ on the part of Jews and other persecuted groups. He says,

‘Auschwitz is precisely the place in which the state of exception coincided perfectly with the rule and the extreme situation becomes the very paradigm of daily life’ (1999a: 49).

Not only did the inclusive (in the camp) exclusion (from society) of the people (the Jews, the Romani, the disabled, the homosexuals and other alleged enemies of the state) take place within the realm of the law, it was founded upon it. This is what renders the Nazi camp a paradigmatic example for Agamben. It is that which exposes the violent underside of sovereignty where life becomes indistinguishable from crime and is reduced to the ‘bare life’ of the ‘homo sacer’.<sup>108</sup> In the camp, all traditional distinctions between the human and the inhuman, man and non-man become indistinguishable, as the extreme figure of the *Muselmann* makes evident (on the *Muselmann* see above) (Agamben, 1998: 38).

More importantly, the camp is also that which for Agamben makes the ‘inner solidarity’ between modern democracy and ‘totalitarianism’ evident<sup>109</sup> (Agamben, 1998: 10). Far from considering the Nazi camps as aberrations of political modernity or simply as ‘true central institution[s] of totalitarian organizational power’ (Arendt, 1973: 438), Agamben sees the

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and acknowledge other modalities of oppression as well as other ‘parallel histories’ (Mignolo, 2007: 32), which could possibly offset his paradigm of exception. Even though the legalization of slavery and subsequent biopolitical practices, such as, for instance, the prohibition of mixed marriage (Losurdo, 2004), can still be seen as the result to an emergency situation, not all biopolitical racializing practices can in fact be linked to ‘bare life’, the law and/or explained through situation of emergency or exception.

<sup>108</sup> As Vogt says in his commentary on Agamben (Vogt, 2005: 79), ‘by means of his etymological exercise, Agamben excavates the constitutive ambivalence in the Latin word “sacer” as signifying somebody who is both sacred and cursed, and as such subjected to a double exclusion. The same double exclusion that is associated with the word people in modern times (see the discussion of the people above).

<sup>109</sup> In identifying an inner solidarity between modern democracy and totalitarianism, Agamben clearly follows the Frankfurt school. Interesting to note, however, that whereas the concept of totalitarianism is central to Arendt’s work, Agamben only uses the category briefly in his discussion of the camp and further takes issue with what he sees as a common theme in both Arendt and Schmitt: their attempt to keep ‘the liberal identification of totalitarianism and authoritarianism’ separate (Agamben, 2004: 74).

camp as in some way ‘the hidden matrix and *nomos* of the political space in which we are still living’ (Agamben, 1997: 108). More precisely, for Agamben, what we are faced with today is a topological relation within which ‘to an [juridical-political] order without localization (the state of exception, in which the law is suspended) there now corresponds a localization without order (the camp as permanent space of exception). The political system no longer orders forms of life and juridical rules in a determinate place, but instead contains at its very centre a *dislocating localization* that exceeds it and into which every form of life and every norm can be virtually taken’ (Agamben, 1998: 175, emphasis in the original). It is this ‘dislocating localization’ – which is ‘an inevitably spatial/geographical matrix’ (Minca, 2007; Gregory, 2007: 209) – that, for Agamben, constitutes ‘the new matrix of politics today’. Agamben fully endorses Foucault’s claim that the Nazi state made the management of life in biological terms and the sovereign right to kill *absolutely coextensive* (Foucault, 2003). At the same time, he extends Foucault’s analysis of the concentration camp to include other modern spaces of exception, among which Agamben mentions refugee camps and Guantánamo but also places like the ‘Arcade Parade near the Paris Airport’, the ‘gated communities of the United States’ (Agamben, 2000; 2004). This is because he sees these places as based on similar biopolitical mechanisms of ‘inclusive exclusion’ as those employed by the Nazis. According to Agamben, what all of these examples have in common is that they are based on a logic exclusive inclusion that makes naked life and political life ‘enter a zone of absolute indeterminacy’ (Agamben, 2000: 42). To this extent, for Agamben, the camp is ‘the fundamental biopolitical paradigm of the West’ (Agamben 1998: 181). To ignore or dismiss the workings of the camp is to miss fundamental aspects of the Nazi’s regime as well as of modernity and democracy themselves, especially in relation to today’s security developments, which see an increment of measures of exception and of spaces in which ‘normal’ laws do not apply.

Even as Agamben criticizes Schmitt, the centrality of a Schmittian conception of sovereignty for his own philosophical and political theory is made evident by his own re-conceptualization of *nomos*. The idea of sovereignty as founded on the state of exception and as directly linked to the production of bare life is that which allows him to see the camp as paradigmatic of modernity and to understand phenomena, such as Guantánamo and Abu Ghraib, not as aberrations, but as examples of ‘forms of government’ that give rise to ‘new *nomoi* of the earth’. In turn, this perspective helps to challenge the idea that torture abuses that happened in Abu Ghraib are a problem of abnormal individuals – a few bad apples – as

the Bush administration suggested<sup>110</sup> and to see abuses as systemic; as the underside of the US ‘civilizing’, ‘liberating’ and ‘securitization’ mission. However, as Santiago says, Agamben’s argument is ‘to some degree misleading’ (Santiago, 2006; Bigo, 2009) in its failure to differentiate between the various ‘camps’ he mentions and in creating a, perhaps, too easy equivalence between states of emergency and democracy. Thus, Santiago makes an important distinction that, although, arguably, difficult to square within a strictly Agambenian point of view because it implies exactly a displacement of the ‘inner solidarity’ between ‘totalitarian’ regimes and democratic ones which, as we have seen is central to Agamben’s understanding of the camp, is useful in attenuating what Negri defines Agamben’s more Heideggerian dimension (Negri, 2003). Santiago points out that while the concentration camp is premised on ‘a totalitarian political and legal conception of the state of exception’, contemporary exceptions often rely on ‘juridical-political degrees of exception’ (Santiago, 2006: 17). It follows that not all of ‘camps’ are the same. This, as Santiago suggests, does not mean that ‘the use of a narrative of the state of exception in contemporary situations’ cannot lead to a totalitarian – but I would prefer to call it a ‘total’ for reasons which will become clear later – ‘suspension of law in certain political spaces’ (2006: 18). It does mean, however, that one should also be attentive to ‘degrees of exception’ as to avoid too swift generalizations.

Guantánamo, for instance, although apparently ‘beyond the sovereignty of national territory and outside the rule of law has also emerged through a long process of legal argument, and it subsists through legal formularies’, involving the United States and Cuba (Kaplan quoted in Gregory, 2007: 213; see also Hernández-López, 2009<sup>111</sup>). While still formally under Cuban sovereignty, Guantánamo was leased from Cuba in February 1903, two years after the Platt Amendment.<sup>112</sup> In a paradoxical manner, the lease provided Cuba with ‘ultimate sovereignty’

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<sup>110</sup> See, for instance, Senator John Warner quoted in Schultz, 2004. Rumsfeld himself also tried to play torture down (in the same article).

<sup>111</sup> According to Hernández-López ‘current overseas detention by the United States on Guantánamo’ are facilitated by the legal structures developed through early twentieth century foreign relations between ‘Cuba, globally powerful states [the US in particular] and the international system’ (Hernández-López, 2009: 130). Gregory similarly argues that Guantánamo bears the marks of the ligatures ‘between colonialism, violence and the law’ (Gregory, 2007: 211).

<sup>112</sup> An Act Making Appropriations for the Support of the Army for the Fiscal Year Ending June 13, 1902, [hereinafter ‘Platt Amendment – US appropriations’]. The Platt Amendment, drawn during the occupation, stipulated the conditions for the withdrawal of United States troops remaining in Cuba since the Spanish-American War. It legally implemented protectorate status by limiting Cuba’s sovereignty, prohibiting it from entering into a treaty with another state, controlling Cuba’s foreign relations, and most importantly providing a right to put US bases on its soil (see Hernández-López, 2009). With the exception of US rights to Guantánamo Bay, the amendment was repealed in 1934 when the Treaty Between the United States of America and Cuba, 1934 [hereinafter ‘Treaty of Relations’] was negotiated as a part of US President Franklin D. Roosevelt’s “Good Neighbor policy”

and the United States with ‘jurisdiction and complete control’ over Guantánamo (Hernández-López, 2009: 126), de facto expropriating Cuba of its authority over the area, while allowing the United States to avoid checks on overseas authority in international and constitutional law. According to Gregory, what this has produced is ‘a legal impasse: a stand-off between the United States (which insists it has a legal right to occupy Guantánamo) and Cuba (declaring the continued occupation illegal)’. For this reason, he suggests, ‘it seems necessary to add that the space of Guantánamo also derives from law at a standstill. It is a zone of indistinction where the legalized and the extra-legal cross over into one another’ (Gregory, 2007: 213). It is an anomic zone where the ‘exceptionalism’ as well as the imperial power of the United States is in full display.

As Agamben seems sometimes to imply as when he talks about the creation of a permanent state of exception ‘non declared in the technical sense’ (see section 1.8 below) but never explicitly develops, in some cases, moreover, there seems not even be a need to declare a state of exception for emergency measures to be implemented. Thus, whereas the United States declared a national emergency after 9/11,<sup>113</sup> which was followed by a military order in November 13, 2001,<sup>114</sup> many European countries did not. Nevertheless, despite the fact that in many cases they did not, a legal framework for dealing with terrorism existing in all European constitutions,<sup>115</sup> international human rights law placing limitations on the use of these measures,<sup>116</sup> after September 11<sup>th</sup>, most European countries did pass a number of

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toward Latin America. The Treaty of Relations is available at <[http://avalon.law.yale.edu/20th\\_century/dip\\_cuba001.asp](http://avalon.law.yale.edu/20th_century/dip_cuba001.asp)>, while the Platt Amendment can be found at <<http://www.fordham.edu/halsall/mod/1901platt.html>>.

<sup>113</sup> A national emergency was proclaimed on September 14, 2001 by Proclamation 7463, Declaration of National Emergency by Reasons of Certain Terrorist Attacks. It is available at <<http://www.fas.org/irp/news/2001/09/091801.html>>

<sup>114</sup> Using the authorization granted to him by Congress (see note above), on November 13, 2001, President Bush issued a Presidential Military Order, Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism, which, ‘authorizes “indefinite detention” and trial by “military commission” [...] of non citizens suspected involvement in terrorists activities’ (Agamben, 2005a: 3). The order *de facto* erases any legal status of the individual or more precisely creates a new legal status of unlawful enemy combat that which was applied to the Guantánamo prisoners. The order is available <<http://georgewbush-whitehouse.archives.gov/news/releases/2001/11/20011113-27.html>>. In 2006, moreover, the US government formally codified the suspension of the habeas corpus in the Military Commissions Act of 2006 (MCA or 2006 MCA). Section 7 of the Act of the MCA was found to be unconstitutional by the Supreme Court on June 12. The Comissions Act can be found at <[http://www.loc.gov/rr/frd/Military\\_Law/pdf/PL-109-366.pdf](http://www.loc.gov/rr/frd/Military_Law/pdf/PL-109-366.pdf)>

<sup>115</sup> Many major European countries have dealt and used emergency measures to deal with terrorism (and other matters, including economic ones) before (see Bigo, 2006a; see also Neocleous, 2006; Agamben, 2004). Germany (against Baader Meinhof), Italy (against the Red Brigades), Spain (against ETA) and the UK (against the Provisional IRA in Ulster), for instance, all made use of emergency procedures prior to 9/11 (Bigo, 2006a; Neocleous; 2008). The US too has been using emergency measures prior to 9/11 (Agamben, 2005a; Neocleous, 2008).

<sup>116</sup> All the major conventions on human rights establish conditions of applicability to situations of war or other threats that endanger the life of the nation and limitations on emergency measures. Article 4 of the ICCPR, article 15 of ECHR and article 27 of the ACHR, part. 1, establishes that emergency measures have to be taken to the extent ‘strictly required by the exigencies of the situation’, which

emergency measures, sometimes openly unconstitutional because of the 'exceptional' framework that the war on terror has created. Practices of 'extraordinary rendition' (also called of torture by proxy), for instance, saw the involvement of the US or US agents, intelligence and police operations. Nevertheless, without European countries' involvement it would have been very difficult, if not impossible, for the US to carry out them.<sup>117</sup> This has led authors, such as Paye, to suggest that these and similar practices<sup>118</sup> 'insert European citizens into the American system of exceptions to the law' and 'reveal a true imperial structure in which the U.S. executive has the right to determine the exception and make it the basis of a new legal order' (Paye, 2007: [n.d.]). Although some might view the above claim as a bit of an overstatement, it is certainly the case that these practices have inserted certain European citizens and 'non-citizens' into the American system of exception and law. They, moreover, point to 'a generalization of (the state) of exception' that, apart from being based on degrees of exception, does not necessarily require to be proclaimed or codified in law to be existent or effective. We could say that what we appear to be presented with is not so much the emergence of a dictatorship but a generalization, intensification, and proliferation of exceptions, decree-laws, and security measures to the point where it becomes increasingly difficult to distinguish neatly between democratic and autocratic forms of power.

Following Benjamin's critique of violence, in particular his understanding of the relation between law-making and law-preserving violence, Agamben seems to make a similar points when he says that, 'the democratic principle of the separation of power is today diminished, and the executive has in fact absorbed, at least in part, the legislative power' (Agamben, 2003: 28). Where Agamben seems mistaken, however, is in trying to subsume all laws and regulations, as well as laws about deregulations, under the same trend. Is there not a difference between the passing of emergency laws or even the proclamation of a national emergency and a state of exception or generalized suspension of law? As Schmitt says, '[n]ot every extraordinary measures, not every police emergency measure or emergency decree is

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implies that measures need to be proportional and limited, while par. 2 of the same articles list those rights that are inalienable even in times of emergency. On the procedures and limitations of various international Human Rights Treaties with respect to emergency situations, see Zagato, 2006.

<sup>117</sup> See the European Parliament (EP) Report, Rapporteur: Claudio Fava, (A6-0020/2007) final 30 January 2007. For an analysis of EU member states' involvement in extraordinary rendition and an assessment of member states' reactions to these two reports and the Parliamentary Assembly of Council of Europe report adopted on 8 June 2007, see Toth in Guild and Geyer, 2008. See also Murray, 2004.

<sup>118</sup> In January 2009, President Obama issued an Executive Order 13491, *Ensuring Lawful Interrogations*, banning any interrogation methods not expressly covered in the Army Field Manual 2-22.3. The Order can be found at <[http://www.whitehouse.gov/the\\_press\\_office/EnsuringLawfulInterrogations/](http://www.whitehouse.gov/the_press_office/EnsuringLawfulInterrogations/)>, while the Manual is available at <<http://www.army.mil/institution/armypublicaffairs/pdf/fm2-22-3.pdf>>. The order does not explicitly prohibit the use of rendition. For an analysis of what is arguably a very thin distinction between extraordinary rendition and rendition, see the House of Commons, Human Rights Annual Report 2008.

necessarily an exception'. 'What characterizes an exception', Schmitt explains, 'is principally unlimited authority, which means the suspension of *the entire* existing juridical order' (Schmit, 1985: 8, emphasis added). However tenuous – in practice, as Agamben implicitly suggests, the distinction between the suspension of the entire existing juridical order or dictatorship and a more limited use of emergency legislations can be problematized on the basis that both lead to the establishment of camps<sup>119</sup> – this distinction is important. It makes the distinction between a total suspension of law and degrees of exception as discussed above all the more pertinent and further helps to highlight what is specific about today's situation. Emergency legislations are not exceptional. They do not need to be based on the suspension of the entire legal system to function nor do they necessarily lead to dictatorship. They simply increasingly are 'part and parcel of the political administration of contemporary capitalist states' (Neocleous, 2008: 72; Bigo, 2009). It does not necessarily follow that the word exception has to be abandoned. Whether one uses the word 'exception' (Agamben, 2003) or 'emergency' (Neocleous, 2008) seems less relevant than to distinguish between *total* suspensions of the juridical order, which seem extremely rare, and more partial but no less dangerous, and perhaps, more endemic ones.<sup>120</sup>

The increase in the scope of emergency powers and the fact that emergency legislations are becoming increasingly endemic is something that Agamben acknowledges – less so the broadening of the definition of emergency, especially in relation to industrial disputes, labour revolts and social agitations.<sup>121</sup> However, Agamben's reference to 'a generalization of the state of the exception' in contemporary societies is too broad and abstract, never clearly giving a sense of how this generalization is to be understood in practice; what specific

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<sup>119</sup> Agamben is aware of this distinction (Agamben, 2003: 32). However, he intentionally contests the idea that the state of exception originates in dictatorship. What most concerns him Agamben is not analyzing the specific forms that it takes (e.g., the Roman *intitutium*, the state of siege, dictatorial forms etc.) in different historical times – although he also does that – but pointing out the irreducible paradigmatic character of the state of exception: its ability to include by excluding bare life from the politico-juridical order.

<sup>120</sup> This is an argument that Nucleolus makes on the basis that 'where "emergency" has this sense of "emergent"', of emerging from within the rule of law, exception implies a sense of *ex capere* (being taken outside). However, although in a sense correct, this argument seems to ignore that even though in *Homo Sacer*, Agamben does affirm that the 'exception refers to what is taken out (*ex capere*)', he adds that it is 'not simply excluded' and that in Schmitt too the exception is clearly 'included'.

<sup>121</sup> See again Neocleous, 2008. In his book, *Critique of Security*, Neocleous shows how in the US 'both the history of martial and the state of siege is the history of a shift from regulation of the military within the state to regulation by the military of the whole social system' (Neocleous, 2008: 47). Martial law started to become used during times of 'peace', 'so that broader moments of crisis, rebellion or insurrection could be easily brought under its remit' (2008: 48-49). Note, however, that international human rights laws explicitly ban the use of emergency legislations for economic reasons (Zagato, 2006).

mechanisms, apart from those enabled by sovereign power, allow its generalization. Nor is there in Agamben a clear examination of how this generalization is to be understood in the context of what many see as the decline of the nation-state because of globalization processes, including but not simply those related to the increased mobility of people, and how it relates to contemporary geopolitical and strategic questions. It will be the aim of the next sections (but also of the analysis chapters) to examine in what sense it can be said that ‘the state of exception’ has been generalized and how the state of exception is mediated by the connections between war, military occupation, security and international law (Gregory, 2007).

### **1.8 The generalization of the (state of) exception**

Having looked at how Agamben conceptualizes the state of exception and why he considers the camp the new *nomos* of the earth, I will explain why Agamben’s characterization of a generalized state of exception needs to be integrated with a more extensive analysis of the relation between states, security, and the geopolitical. As previously noted, according to Agamben, we are today in a situation in which the state of exception is increasingly becoming the rule and camps proliferate everywhere. In particular, he links his theory of the state of exception to the actions, and in particular, to the ‘legal’ actions, that the then President of the United States, George W. Bush, took after 9/11. This is because Agamben saw in President Bush’s actions an attempt to produce a situation in which ‘provisional and exceptional measures’ were transformed into ‘a technique of government’ (Agamben, 2005a: 22; 2). In particular, it is the proximity of the state of exception to the global war on terror – which some, including Agamben, have described in terms of ‘global civil war’ (Hardt and Negri, 2004) – that, according to him, renders today’s situation significant in terms of creating the conditions for the generalization of the state of exception (2005a: 2; 87). Also, central to this generalization in Agamben’s view is security, and, in particular, the way in which security has become the main form of legitimation of governments. Although highly suggestive, this understanding of today’s conjuncture is unsatisfactory. By privileging the state and, more specifically, the Western ‘state’ (from the Greek *polis* or city-state to the National-Socialist state to the contemporary state-form) as ‘[t]he real subject of history’<sup>122</sup>

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<sup>122</sup> Note that Agamben actually uses this expression as a critical description of Hegel’s notion of history as the unfolding of ‘the universal Spirit’ (Agamben, 1993b: 99) and it is not even clear that he means a sovereign political entity like the state in this case. Agamben, moreover, would consider a notion of the state as motor of history as unacceptably metaphysical or onto-theological (see also his discussion of history as discontinuous in *History and Infancy*, (2007a) [1993]). Nevertheless, my argument is that by downplaying the different forms that states take in different historical times as well

and by treating it as the determinant element of today's specific geopolitical configuration, Agamben's political theory risks to succumb to what I have called 'methodological statism'.<sup>123</sup> That is to say, it risks ignoring how 'heterogeneous and plural "forms of governance"' (Foucault in Lemke, 2007: 2; see also Hardt and Negri, 2000; 2006) – where Europe itself could be considered as a new form of government – work and might in fact influence the generalization of the (state of) exception. What an exclusive focus on the state as an abstract entity overlooks is how the territory/sovereignty relation is being reconfigured because of the war on terror. It fails to pay attention to the way in which, although the war on terror was very much initiated by a decision on the exception, and more specifically by President Bush's decision that the 9/11 terrorist attacks constituted an act of war, the war on terror exceeds the paradigm of the state of exception and is linked to global biopolitical securitization mechanisms. Even the idea of 'global civil war' (Agamben, 2005a: 3) does not get us very far. While, perhaps, valuable as a conceptual framework in other circumstances, it is not very useful for analyzing the war on terror.

For a start, it is worth noting that Agamben's conceptualization is at odds with certain prominent contemporary theories of the state and sovereignty. Whereas other authors suggest that state sovereignty is no longer central (see, for instance, Hardt and Negri, 2000; Held, 1999; Beck, 1992; Castells, 2000; Lash and Urry, 1994), Agamben's concern remains on the state, and more specifically, on the state as metahistorical-metaphysical-ontological entity. Except from the legal dimension of the state, Agamben is not interested in the sociology or theory of the state as an apparatus (with its bureaucratic differentiation, group strategies, class fractions, political parties, etc.). What interests Agamben is to expose the hidden logic governing the state of exception in its production of camps. With regard to today's situation, however, Agamben does make some very interesting historical observations. In *State of Exception*, for instance, he notices that since Hitler's proclamation of the Decree for the Protection of the People and the State, which 'suspended the article of the Weimar Constitution concerning personal liberties', 'the voluntary creation of a permanent state of emergency (though perhaps not declared in the technical sense) has become one of the essential practices of contemporary states, including so-called democratic ones' (Agamben, 2005a: 2). The claim here is not that these practices of exception actually started with the

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as how the territory/sovereignty relation is being reconfigured under globalization, Agamben ends up reintroducing an element of transcendence in his thought.

<sup>123</sup> Although one mode of analysis does not exclude the other, I prefer the expression 'methodological statism' to 'methodological nationalism' as that which 'allowed sociologists to treat societies as if they were coherent and bounded entities, distinct from one another, and within the territory of the nation-state' (Beck quoted in Nash, 2010: 63; Beck, 2006) because of the emphasis on the state as opposed to society.

Hitlerian proclamation, which would contradict Agamben's own claim that the exception is the hidden topology of power.<sup>124</sup> Rather, Agamben seems to be suggesting that these practices find in constitutional mechanisms, and constitutional law in particular, their 'natural' substratum.<sup>125</sup> It is constitutional law that allows the sovereign to declare a state of exception (see also discussion in section 1.6 above).

Agamben then goes on to link his theory to the 'legal' actions of the then President of the United States, further introducing what I regard as a fundamental element to an understanding of the generalization of the state of exception: security. Agamben says, by deciding to call himself 'the Commander in Chief of the Army', G.W. Bush was 'attempting to create a situation in which the emergency [became] the rule, and the very distinction between war and peace (and between civil and foreign war) [became] impossible (2005: 22). We should note that calling himself the Commander in Chief of the Army is a legitimate and constitutional right of the President of the United States. The United States Constitution (1787) affirms that the President '[...] shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States'.<sup>126</sup> As Agamben says, Bush's decision to refer to himself constantly as Commander in Chief must be considered in the context of presidential claims to sovereign power in emergency situations. This decision, for instance, was also taken in 1933 by President Roosevelt, who 'was able to assume extraordinary measures to cope with the Great Depression by presenting his actions as those of a commander during a military campaign' (Agamben, 2005a: 21). There is nothing new or exceptional about this, although, interestingly, during the Bush presidency the question about whom the title of 'Commander in Chief' applied became a matter of great significance with Secretary of Defense Donald H. Rumsfeld announcing that the title would be reserved for the President alone.<sup>127</sup> Nor was Bush's declaration of emergencies new. The declaration of national emergencies in the United States did not begin with G.W. Bush. Bush continued seven previous National

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<sup>124</sup> In particular, see his discussion of Aristotle and of *homo sacer* above.

<sup>125</sup> The link between exception and constitution is of course a key Schmittian legacy (not just of Schmitt's theory but of his practice as a jurist); see the introduction to *Constitutional Theory* (2007) [1928].

<sup>126</sup> Article II, Section 2, Clause I.

<sup>127</sup> On October 24, 2002, Secretary of Defense Donald Rumsfeld ordered that the functional and regional commanders be referred to not as 'CINCs' as given in the Goldwater-Nichols Defense Reorganization Act of 1986 but as 'combatant commanders' when applied to 'unified' regional organizations (e.g., US Central Command or USCENTCOM), or 'commander' when talking about 'specified' units such as the US Strategic Command (USSTRATCOM). See, for instance, Morrissey, 2009: 119: note 36.

Emergencies, at the same time as he declared eight more (Relyea, 2006: 4).<sup>128</sup> What adds a new dimension to these declarations is the proximity of these emergencies to a supposedly new type of war – a global war fought in the name of combating terrorism through security and warfare measures – and ‘the legal formularies that have been mobilized around’ them (Gregory, 2007: 207).<sup>129</sup> In ‘Security and Terror’, Agamben declares that

‘[t]oday we face extreme and most dangerous developments in the thought of security. In the course of a gradual neutralization of politics and the progressive surrender of traditional tasks of the state, security becomes the basic principle of state activity. What used to be one among several definitive measures of public administration until the first half of the twentieth century, now becomes the sole criterium of political legitimation’ (Agamben, 2001: [n.p.]).

However, Agamben argues that ‘[b]ecause they require constant reference to a state of exception, measures of security work towards a growing depoliticization of society’ and lead toward a global civil war ‘which makes all civil coexistence impossible’ (2001: [n.p.]). Although he does not refer to the war on terror in this piece, if read in conjunction with the claims made by Agamben above, this understanding of the relation of the state of exception and the war on terror does offer a critical framework or ‘grid of intelligibility’ for analyzing the events and aftermath of September 11<sup>th</sup>, while highlighting the importance of security to contemporary practices of exception. However, is this framework totally persuasive or sufficient? I argue that it is not for a number of reasons.

Firstly, the idea that security is the only source of political legitimation seems overstated. As Wendy Brown suggests, the state also draws on other principles for legitimacy (see also Weber, 1995; 2006). In *Regulating Aversion: Tolerance in the Age of Identity and Empire*, Brown explores how in the context of the erosion of state sovereignty, state legitimacy also depends on ‘a sustained identification of the state with the principles of equality and liberty’, as well as ‘on the capacity of the state to maintain an unrestive citizenry’ (Brown, 2006: 102). In particular, Brown’s focus is on tolerance. She focuses on how tolerance discourse becomes that which regulates subjectivities within the US, at the same time as it provides a cover for

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<sup>128</sup> See Harold Relyea, ‘National Emergency Powers’, 2006. To contrast terrorism, G. W. Bush passed two major national emergencies, namely, the Presidential Proclamation 7463, September 18, 2001: Declaration of National Emergency by Reason of Certain Terrorist Attacks; E.O. 13224, September 25, 2001: Blocking Property and Prohibiting Transactions with Persons who Commit, Threaten to Commit, or Support Terrorism. Agamben also mentions the USA Patriot Act signed by Bush in October 26, 2001 (PL- 107-56) as being part of what he calls a radically new order (Agamben, 2005a).

<sup>129</sup> By ‘legal formularies’, Gregory means ‘the bundles of memoranda and minutes’, ‘acts and amendments’, etc. that are produced and mobilized around these emergencies.

Western supremacy and imperialism. With respect to 9/11 and the war in Iraq, it is interesting to observe as Harvey does that it was interpreted by many as an attack on freedom and that the war in Iraq was mainly justified in terms of bringing freedom and democracy to those countries (Harvey, 2005: 5, 6). Additionally, it could be argued that security has always been a very important criterion of political legitimacy. My next section will show exactly this in relation to the US – i.e., that the question of security has always been central to the US state – while also demonstrating how the paradigm of security has changed to accommodate new ‘threats’ and problems.

Secondly, and more to the point, it is undoubtedly the case that protecting the state from the threat of terrorism and other threats – terrorism is the number one threat today but, as we shall see, the securitization of problems goes well beyond terrorism – is becoming one of the main current political justification for the localization of state sovereignty. But what is ‘new’, if anything, about this? Moreover, how is protecting the state from threats to be understood in the context of a ‘surrendering of the traditional tasks of the state’? Agamben seems to suggest that this surrendering makes the state more apt to appropriate security for its own ends or survival. But because it is legitimate to think that the surrendering processes of which Agamben speaks does not simply have an effect on the state but on security itself, a question arises as to what type of security does the state draw in its quest for political legitimation. According to Duffield, the centrality of a certain conception of security or ‘biopolitical security’ to reinstating the state (Duffield, 2007: 123) as the protector of ‘the people’ cannot be underestimated. But Duffield is indeed talking about a particular type of security, whereas, as reflected in the quote above, Agamben seems to proceed as if security was unaffected by the surrendering or devolving processes of which he speaks, and as if the logic of the exception and security were one and the same. For Agamben, it seems that even if the sovereign ban can be said to have some de-territorializing effects, these do not ultimately affect the power with which the state affirms its sovereignty. On the contrary, it is by deciding on the exception that the sovereign reinforces its authority over a bounded geographic area. But how then is the declining of the nation-state to be understood in this context? Agamben fails to provide an answer to this and above questions. He also fails to provide details on how security, which is certainly crucial to today’s configuration of (sovereign) power, is configured in terms of enabling certain geopolitical localizations and possible reconfigurations of sovereignty especially in light of the war on terror. While Agamben seems to simply take the waning of the nation state for granted<sup>130</sup> and does not

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<sup>130</sup> See also Agamben’s discussion of the problem of the refugee in ‘We Refugee’ (1995) where, following Arendt, he directly connects it to the waning of the nation-state. He states that the problem

dwell much on the concept of security, other theorists have provided sophisticated, although not always convincing, analyses of the relationship between globalizing processes and the nation state, on the one hand (Held, 1999; Hardt and Negri, 2000 among others), and globalization and security, on the other (again Held, 1999; Held and McGrew, 2007; Hardt and Negri, 2004; but also Kaldor, 2007; Bigo, 2008).

Even the idea of ‘global civil war’ (Agamben, 2005a: 3), which, following Schmitt (2003 [1943]), Agamben uses somewhat uncritically, does not provide an adequate framework for understanding today’s situation, precisely for the reasons indicated by Étienne Balibar in his 2006 ‘Enemies as Strangers’. According to Balibar, the notion of global civil war is inadequate because even as it brings attention to the declining legitimacy of the nation-state and ‘accounts for the increasing confusion between police operations and war’, it risks detaching conflicts from their local specificities and presenting them as part of a unified phenomenon (Balibar, 2006). As Balibar remarks, ‘the tendency to merge a complex web of religious, social, ethnic, political, colonial, and post-colonial bloody conflicts into one single “hobbesian” state of “war of all against all,” a sort of post-historical state of nature, as it were, or an “Empire of Disorder” or *Empire du chaos* (2002) as Alain Joxe aptly calls it, is *itself* a representation and perhaps a strategy used by a would-be sovereign power which seeks global leadership beyond its actual military and economic capacities’ (Balibar, 2006: 8-9). In other words, the concept of ‘global civil war’ risks reinforcing the idea that war and violence are not simply an integral part of our present capitalist conjuncture but, in a Hobbesian sense, natural and unchangeable,<sup>131</sup> constitutive of modern politics as such. Thus, as Balakrishnan writes, it ‘risks amounting to little more than a slack metaphoric, detracting attention from a sober assessment of the capacities and limits of military power in the present conjuncture’ (Balakrishnan, 2005: [n.p.]). What is more, precisely because it uses a very similar language as that employed by the US administration, it paradoxically risks reinforcing its presuppositions rather than contesting them. To this extent, the idea of ‘global civil war’, while perhaps valuable as a conceptual tool in other contexts, is not very useful for analyzing what appears as a ‘reaffirmation’ of sovereign power, and in particular of military power, through the war on terror.

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of the refugee occurs ‘in the context of the inexorable decline of the nation-state and the general corrosion of traditional legal-political categories’ (Agamben, 1995: [n.p.]) And he adds that ‘at least until the process of the dissolution of the nation-state and its sovereignty has come to an end’, ‘the refugee is the sole category in which it is possible today to perceive the forms and limits of a political community to come’ (Agamben, 1994). Whether this affirmed decline is to be comprehended also as the result of globalizing processes, which include but are not reducible to the problem of the refugee, or solely in terms of pressure put on the structure of national sovereignty by the fact of growing numbers of refugees, is left unexplained in Agamben.

<sup>131</sup> Žižek’s discussion of politics as violence also seems to go in this direction. See Žižek, 2007.

Agamben's idea of global civil war lacks specificity, while his theory of the state of exception is too focused on the state or on the paradoxical relation between the state as sovereign power and constitutional law, to provide an understanding of what role other 'state-like' actors, such as the EU, and international law, security regimes and geopolitical factors, play in the war on terror. This is because even if Agamben's Benjaminian theoretical answer to the state of exception of a *real* state of exception in which fact and law coincides does go beyond Schmitt's vision of the political, his analysis remains too state-centred and, to some extent, even more state-centred than Schmitt's vision of a 'new nomos' was. Schmitt's conception of *Grossraumen* or 'great spaces' can be seen as a profoundly reactionary answer to the end of the *Jus Publicum Europaeum* in the form of a doctrine and legal theory that nevertheless attempted to understand and recognize the power of some nation-states to reframe the 'Westphalian' system. As Koskenniemi says, 'the merit of the *Grossraum* principle lay in the realistic recognition it implied that some powers radiated their culture, economy and influence *beyond* their formal boundaries' (Koskenniemi, 20002: 421, emphasis original). On the other hand, a focus on internal mechanisms or logics of state power has several limitations, such as failing to note what Schmitt argued was an intimate connection between the state of exception within a state's territory and belligerent occupation where, in practice, 'the population of the occupied territory is not considered to be a legal subject', thus, outside of the purview of international law (Schmitt, 2003: 207).<sup>132</sup> This is not to suggest that we can simply apply Schmitt's approach, which sidesteps all fundamental questions 'of justice, fairness, legitimacy and so on' (Hallward 2005: 238), to our contemporary situation. However, it does mean that we have to ask, even if it means going beyond Agamben, *how* is the (state of) exception operationalized and generalized? What geopolitical factors contribute to it? What logics and mechanisms of (bio)power or (bio)security enable its generalization? How is this generalization to be conceived in terms of the apparent decline of the nation state and the emergence of 'new' global networks of power, which makes it, among other things, increasingly difficult to maintain a strict line of demarcation between the internal order and the external or international order; between the police and the military?<sup>133</sup>

As noted above, contrary to Agamben's 'methodological statism', the idea that *the* state and *its* mode of government should be the main unit of analysis, authors such as David Held

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<sup>132</sup> See also Gregory, 2007: 209; Stirk, 2004.

<sup>133</sup> The blurring of the distinction between the police and the military has been noted by Gaines, *et al.*, 1999; Bigo, 2008: 14; Balibar, 2003a, among others.

argue (2002: 1-44),<sup>134</sup> that an analysis of the state cannot afford not to take into account processes of globalization, which affect the nation state in its core functions.<sup>135</sup> Such approaches suggest that processes of globalization, such as processes of privatization and transnationalization of techniques of governing, which, crucially, include the transnationalization of security,<sup>136</sup> the rise of global social movements and of international organizations, such as the WTO, World Bank, and IMF have greatly weakened the power of the nation state. In particular, authors such as Held and McGrew suggest that what we are observing is a process of relocation of the traditional tasks of the state from the state to ‘the international community’, and the involvement a number of private agencies, which increasingly perform functions that were hitherto nation-state specific (Held and McGrew, 2007; Fraser, 2003; Duffield, 2007; Bigo, 2008). For Nancy Fraser, the military and security functions ‘are being disaggregated, relocated and rescaled as a result of “humanitarian interventions,” peacekeeping operations,” the “war on terrorism,” and a host of multilateral security arrangements’ (Fraser, 2003: 167). Bigo further points to ‘a transversal field of processes of (in)securitization, whereby a certain number of professionals from public institutions with domains internal to the nation – the police –or external to the nation – such as the military and private enterprise selling protection and technologies of control and surveillance – occupy the dominant position’ (Bigo, 2008: 14).

The waning of nation states’ sovereignty because of globalization processes has even led some authors to talk about ‘global sovereignty’ to indicate today’s ‘decentered and deterritorializing apparatus of rule’<sup>137</sup> (see, for instance, Hardt and Negri, 2000: xii;

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<sup>134</sup> See, for instance, Held, 2002; Held and McGrew, 2007; Beck, 1992; Sassen, 2001; Hardt and Negri, 2000; Elden, 2007; Bigo, 2008.

<sup>135</sup> However, it is important to notice that debate about globalization and its effects on the nation state is a very rich one, involving many different authors and opinions. Not only those (so called the ‘hyper-globalizers’) who see processes of globalization as totally novel phenomena (see, for instance, Ohmaey, 1996), those (the sceptical) who do not (see, for instance, Hirst and Thompson, 1999) and those who contest it. Those who see it as a mainly Western process (see, for instance, Latouche 1996; Ritzer, 2000; Amin 1996; Bourdieu and Wacquant, 1999) and others, who talk about a less monolithic process of contamination between different cultures, people, etc. and of reconfigurations of time and space (see, for instance, Giddens, 1991; Robertson, 1992; Held, 2002; Appadurai, 1996; Lash and Urry, 1994; Mezzadra and Rahola, 2006; Sassen, 2006). But those who argue that they greatly affect the nation state, diminishing its power (again Held, 2002; Lash and Urry, 1994; also Castells, 2000; Hardt and Negri, 2000; Fraser, 2009; Harvey, 1990), with some even declaring the end of the nation state (see, for instance, Guéhenno, 1995), and those who play this down (see again Hirst and Thompson, 1999). For a comprehensive introduction to the debates about globalization, see Held and McGrew (eds.) 2000.

<sup>136</sup> By the transnationalization of security is meant the process by which (in)security professionals participate in the production of transnational ‘truths’ or threats through the ‘authority of statistics’ (Bigo, 2008: 11-12).

<sup>137</sup> It is important to point out that this is somewhat of an oversimplification, in part made to get the point across. Negri also says that the concept ‘global sovereignty’ should not be understood as a

Robinson, 2009). Hardt and Negri use the term 'Empire' to describe a new form of supranational imperial sovereignty that is irreducible to a particular state or group of states, region or place (such as the United States, the 'West' or the 'North'). As 'a new logic and structure of rule', Empire does not 'rely on fixed boundaries or barriers' but is 'connected to globalization' (Weber, 2005: 127), in the sense that it rests upon an expansive logic of networks that 'incorporates the entire global realm within its open, expanding frontiers'<sup>138</sup> (2000: xi, xii). Empire is a transnational political structure, which serves the interests of 'global capital'. According to Hardt and Negri, from a phase of history based on colonial and imperial wars and conquests of regions, we pass 'to a new phase of capital beyond imperialism'; to a place (or non-place) of imperial sovereignty, no longer based on 'fixed boundaries and distinctions between inside and outside' but on 'capitalism's internalization of its outside' (2000: 187). Classical 19<sup>th</sup> and early 20<sup>th</sup> century imperialism, as the 'extension of sovereignty of the European nation-states beyond the borders of its own countries', is no longer the driving force or principle form of capitalism's inherent tendency to expand.<sup>139</sup> Empire represents a qualitative break with the past and all previous forms of imperialist expansions. In Hardt and Negri's words, '[i]mperialism is over' (2000: xvi). 'What used to be conflict or competition among several imperialist powers has in important respects been replaced by the idea of a single power that overdetermines them all, structures them in a unitary way, and treats them under one common notion of right that is decidedly postcolonial and postimperialist' (2000: 9). Military interventions do continue to take place but they are no longer taking place along the lines of national imperialist (i.e., economic and political) interests. Rather they take place as global police actions legitimated by universal values

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coherent fully actualized capacity but as a 'tendency'. In one of his latest books, moreover, although he maintains the transition from imperialism to Empire, he further argues that 'Empire is not fully realized today', but 'an emergent form the power we shall have to confront tomorrow' (Negri, 2009: 127). This again relates to his notion of tendency. For an understanding of what Negri means by 'tendency', see his 1971 work 'Crisis of the Planner-State'. For a critique of Negri's recent works for having *de facto* flattened the notion of tendency as a non-deterministic 'adventure of reason' that needs verification, making it appear as if the tendency has already been realized, see Noys, 2010.

<sup>138</sup> The tendency of capitalism to incorporate everything within its 'frontiers' was one already noted by Marx, and later developed by Luxemburg and Lenin, as Hardt and Negri do not fail to point out (Hardt and Negri, 2000: 224). However, while in Lenin an understanding of the disparities and rivalry between different states counterbalanced this tendency, Hardt and Negri's notion of 'the end of imperialism' seems to be closer to Kautsky's notion of 'ultra-imperialism' than to Lenin's understanding of the problem. Accordingly, their notion of Empire can be subjected to similar criticisms as Kautsky's view, namely that it ignores 'the unevenness and contradictions' inherent in the world economy. On this, see Callinicos, 2009.

<sup>139</sup> The literature on imperialism is enormous. See, for instance, Hobson, 1902; Lenin, 1974 [1917]; Luxemburg, 2003 [1913]; Kautsky, 1970; Arendt, 1973; Said, 1993 [1979], among many others. Due to its vastness and richness, it would not be possible to do it justice here. Instead, I rely on the definition of imperialism offered by Hardt and Negri in Empire. Later on, I will expand a little on this theme through 'new' theories of imperialism, and in particular that of Harvey, 2003.

(2000: 18),<sup>140</sup> which have now become ‘imperial’. According to Hardt and Negri, US imperialism ended with the Vietnam War, ‘*and indeed no [other] nation state can today form the center of an imperial project*’ (2000: 384 and xiii-xiv, emphasis original).

The aforementioned approaches bring attention to other sites or determinations of power than the state. In particular, Hardt and Negri’s multi-leveled approach to the question of capital has the advantage of re-introducing the question of governmentality or of a diffuse, anonymous network of power of global scope, while delinking it from that of the state; a question that, as Bigo suggests, Agamben ‘ends up neglecting’ (Bigo, 2009).<sup>141</sup> Yet strong objections can be raised about the extent to which US practices, allegedly enacted to combat and prevent terrorism, can be fully accommodated within the theory of Empire. Authors, such as Brown (2006, 2008), but also Harvey (2003), accept that the nation-state as a form of power is in crisis. Brown, for instance, suggests that the state becomes openly aggressive as a consequence of its weakening (Brown, 2008). What in my view they rightly question, however, is Hardt and Negri’s (and other theorists of globalization) inability to appreciate the extremely potent functions of state sovereignty (Brown, 2008; Wood, 2004; Agnew, 2005; but also and again Agamben, 1998), and its imperialistic tendencies (Harvey, 2003; many of the papers in Balakrishnan, 2003). The actual decline of the nation state, which, as Bigo suggests, is particularly apparent in the privatized segments of police and military bureaucracies (Bigo, 2008), does not correspond to its end. Nor does it correspond to the end of state sovereignty. The state in effect never was all-powerful and all-encompassing. As Thorup says, claims that take the decline of the nation state as a proof of its end often rely ‘on an exaggeration of the power of the modern state historically, where the theoretical definition as the legitimate and the effective monopoly of violence is taken to be an accurate description of its practices’ (Thorup, 2006: 235; Foucault, 2003). Accordingly, to overestimate the power of the state and in particular of the United States when the limits of its actions, specifically of its military actions, are all the more evident (Mann, 2005; Kaldor, 2007), is certainly problematic. This view risks giving the state a too big role, while ignoring the important role

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<sup>140</sup> Thus, for instance, the 1991 Gulf War, in which the United States used military power against Iraq, was, according to them, carried out ‘*not as a function of [the United States’] own national motives but in the name of global rights*’ (2000: 180 emphasis original).

<sup>141</sup> Whether Hardt and Negri’s notion of ‘governmentality’ is congruent with that of Foucault is, of course, another matter altogether. For a thoroughly negative answer, which rejects Hardt and Negri’s notion of Empire *tout court*, see Rabinow and Rose, 2003. For a more sympathetic, but no less effective critique, see Toscano, 2007a. In both works, it is argued that Hardt and Negri’s biopolitics is unsatisfactory to the extent that it ignores the capillary and subjectifying mechanisms of biopolitical ‘sub-power’. Nevertheless, I suggest that despite this evident problem, it is precisely their emphasis on the global that makes Hardt and Negri’s theory of ‘governmentality’ attractive, especially for an exploration of security practices like mine that is concerned with both ‘micro’ (subjectifying/biopolitical) and ‘macro’ mechanisms of power.

of other global non-state or nongovernmental organizations, self-determination movements, etc., and the fact that the state acts within a capitalist system that is itself violent<sup>142</sup> and governed by its own the exploitative,<sup>143</sup> deterritorializing and all-englobing logic (Hardt and Negri, 2000; Reid, 2004). It is, for instance, interesting to note in passing that the US is in no better position today's to control the 'global economy' than it was when the war on terror started almost 10 years ago;<sup>144</sup> not to mention its non-effectiveness in policing 'the excluded' and providing even the most basic security needs to the populations that it has invaded. The current economic recession and the proliferation of private military and security contracts in both Iraq and Afghanistan<sup>145</sup> are testaments to American failures and further give credit to the idea that America's power is not independent from global dynamics nor its military from a capitalist order whose mechanisms of survival are in question (Balakrishnan, 2005).

On the other hand, however, to downplay or deny, as Kaldor for instance does, the role that the state, especially certain states, have had and continue to have seems just wrong.<sup>146</sup> It is the

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<sup>142</sup> On the global violence of capitalism see, for instance, Luxemburg, 2003 [1913]. For a more contemporary take see, for instance, and again Harvey, 2003; see also Davis, 2006; Klein, 2007; Marazzi, 2010b.

<sup>143</sup> Whether the exploitative logic of capitalism can be reduced to the process of 'baring' of which Agamben speaks is also in doubt. It is surely the case that many workers (including children), especially those who do not benefit from workers' rights either because of their 'illegal' or 'low' status, are forced to live in inhuman conditions, which expose them to the threat of death (Cheah, 2006; Davis, 2006). However, it is not 'necessary' for workers to live in inhuman conditions or be exposed to the risk of death to be exploited. Even when workers appear not to be exploited, in reality, they almost always are. To give just an example: participants in the 'informal economy', who appear to be 'micro-entrepreneurs', in reality also 'work directly or indirectly for someone else (via the consignment of goods or the rental of a pushcart or rickshaw, for example)' and are, if to varying degrees, exploited in the process (Davis, 2006: 180-181).

<sup>144</sup> To say that the US is in no better position with regard to the 'global economy' implies that one of the aims of the Bush administration was to control the global economy (Harvey, 2003; Klein, 2007). However, it is important to point out that this is a contested view, 'as testified by the spectrum of positions on the role of oil in the invasion of Iraq' (Toscano, 2007c: [n.p.]). Thus, for instance, you have those such as Kaldor (2007) who question whether oil was at all a reason to go to war against Iraq. Whilst others, like Klein, argue that the invasion of Iraq created the conditions 'for its subsequent pillage' and notes that, several of the architects of the Iraq war no longer even bother to deny that oil was a major motivator for the invasion' (2008: [n.p.]). Although not as central to my thesis as the question of sovereign power, biopower and security are, the question of oil, and of general resources more broadly, is important and will be expanded upon in my analysis of the US NSSs.

<sup>145</sup> The proliferation of private military and security contracts in Iraq and Afghanistan is well documented (see, for instance, Elsea and Serafino, 2007: 4; Howison, 2006: 7; Stöber, 2007: 126-131; Singer, 2003). The utilization of private military and security contracts did not begin with the war on terror – private contractors were utilized in Bosnia and Kosovo, for instance, (Singer, 2003). But it does seem to be taking on a new dimension. Whereas before mercenaries were undisciplined individuals hired on an irregular basis, according to Singer (2003: 9), after the 1990s, Private Military Corporations (PMCs) started to become employed on a more regular basis. The present massive utilization of private contracts can also be seen as a novel phenomenon (Stöber, 2007: 128).

<sup>146</sup> In treating the United States as an exception, or in her words as 'the last nation-state' whose response to 9/11 is a 'spectacle response' trying 'to redraw the boundary between "inside" and "outside", to identify a new "other"' but is destined to fail (Kaldor, 2003: 151), Kaldor underestimates the US actual power as well as other states' potential power.

geopolitical dimension, with its relations of force, that gets lost in approaches that do not take into consideration the unequal distribution of power in the international system – a distribution that while favouring certain states today could favour others tomorrow. As Elden suggests, territorial relations continue to be significant, even if the sovereignty-territory relation is being reconfigured (Elden, 2009).<sup>147</sup> Apart from its hegemonic power, clearly visible when it comes to how the US was able to get the war on terrorism framework adopted by its allies,<sup>148</sup> it is important to point out that, despite the present recession, the US remains a dominant, if not the dominant, economic player.<sup>149</sup> It is true that a great deal of its economic power no longer comes from the manufacturing industry<sup>150</sup> but from the world of finance – a world that given its precariousness is, and some would argue not surprisingly, in crisis (Harvey, 2003). As Harvey argues, the same financial power that enabled the US economic elite or upper class, with the help of the ‘neoliberal state’ – which in this perspective is not seen as a passive spectator or victim of globalization<sup>151</sup> – to assemble a great deal of wealth during the 1980s and 1990s seems to have contributed, together with the immense amount of spending to finance the wars in Iraq and Afghanistan, to US economic recession (Harvey, 2004: [n.p.]; 2007). However, even though the US is no longer the dominant player in the world of production and ‘its’ financial power is in crisis, it continues to remain very much dominant in military and nuclear terms. The United States has the largest defence budget in the world and it has continued to increase its military spending (even if mainly through borrowing) to finance the ‘global war on terror’ (Perlo-Freeman *et al.*, 2009: 179-190; Harvey, 2003; 2006b). These are facts that necessarily have had an impact when it came to decisions about whether to engage in the war on terror and how, and cannot completely be discounted when it comes to analyzing US security strategies that explicitly deal with how to contrast and combat terrorism. They also, surely, have influenced US allies, and in particular European states as well as the EU, when it came to take decisions in this respect.

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<sup>147</sup> Elden says ‘[r]ather than a process of simple deterritorialization, there is a concomitant process of reterritorialization’ (Elden, 2009: 177).

<sup>148</sup> The fact that this framing was not always accepted, at least not in its entirety (see, for instance, the pronouncement of France against the Iraq war) does not disprove US influence. On the contrary, it highlights its hegemonic power. Willingly or unwillingly, other states, including EU member states, had to confront US decisions.

<sup>149</sup> At present, the American economy is the largest national economy in the world, followed by China, which, however, many argues will ‘become (if it isn’t already) the world’s next superpower’ (Johnson, 2010: [n.p.]).

<sup>150</sup> As Harvey says, ‘much of it has moved to East and Southeast Asia, and, of course, quite a bit is in Europe as well’ (Harvey, 2004: [n.p.]).

<sup>151</sup> This perspective would also be in line with Foucault’s discussion of neo-liberal governmentality as prolongation of government (Lemke, 2002).

On a theoretical level, moreover, it seems simplistic to argue that because the imperialist aims of the Bush administration produced unintended effects it follows that the theory of Empire, which contends that we are in the presence of a new fully actualized world sovereignty, has been proved by facts. This argument tends to obscure ‘the kind of dialectical tension inherent in imperialism’ between the state and the economy (Harvey, 2003; Callinicos, 2009; Cox, 2004), which, as discussed below, Hardt and Negri do not fail to mention but fail to validate.<sup>152</sup> Harvey defines imperialism as a *contradictory* fusion of ‘the politics of state and empire’ [...] and the molecular processes of capital accumulation in space and time’ (Harvey, 2003: 26 emphasis added; see also Arrighi, 2005). For Harvey, it is ‘uneven geographical conditions under which capital accumulation occurs and asymmetries that inevitably arise out of spatial exchange relations’ that give rise to ‘imperialism’ (Harvey, 2003: 31). Thus, when Negri says that ‘the markets might become the true obstacle for Bush’ (Negri, 2003: [n.p.]), he is in part correct – in part because as Klein and others have observed markets do profit from wars – and *de facto* accepts that there is a tension between the territorial logic of the state and the logic of capitalist accumulation. However, in an attempt to defend his theory, he (along with Hardt)<sup>153</sup> ends up smoothing out this contradiction, while ignoring continuities between previous and current imperial practices. I will return to the tension between the logic of the state and that of capitalism in a moment. But first, let me provide what I believe is a better way of conceptualizing the decline of the nation-state in the context of what appears to be a reaffirmation of sovereignty.

In opposition to both ‘Hardt and Negri’s claim that nation-state sovereignty has transformed into global Empire, and Agamben’s thesis that sovereignty has metamorphosed into a world-wide production and sacrifice of bare life (global civil war)’, Wendy Brown suggests that sovereignty is best understood as migrating in two different directions at the same time (Brown, 2008: 251-252). According to her, ‘political sovereignty – as idea, fiction, or practice – is neither equivalent to the state nor merely in the service to capital’ (Brown, 2008: 257). Brown defines sovereignty as a ‘*theological* political practice’ that is migrating ‘from the nation state to the unrelieved domination of capital on the one hand and god-sanctioned political violence on the other’ (2008: 257, 252, emphasis original). For her, sovereignty is theological because it draws on God for political legitimacy.<sup>154</sup> She says ‘[p]olitical

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<sup>152</sup> This is a tension that Klein’s ‘shock doctrine theory’ also fails to validate.

<sup>153</sup> See Hardt, 2003.

<sup>154</sup> Note, however, that in this Brown seems closer to Agamben than she perhaps would like to admit. Although the claim that political sovereignty is theological in and throughout is counterbalanced by her noticing the failure of contemporary discussions of sovereignty to take into account ‘the power of the

sovereignty is never absent from [sic] theological structure and overtones, whether it is impersonating, dispelling, killing, rivaling or serving God' (2008: 260). This, she suggests, is evident in all major modern theories of sovereignty 'from Hobbes to Connolly, passing through Abbe Sieyes, Jean Bodin, and Jean-Jacques Rousseau', and in how modern rulers, such as G.W. Bush – Brown also mentions the President of Iran, Mahmoud Ahmadinejad – draw on God to legitimate their power. Brown's 'tentative suggestion', as she herself puts it, is that 'political sovereignty's theological supplement becomes more manifest as sovereignty itself weakens' (2008: 261). According to her, many theories preoccupied with sovereignty, therefore, paradoxically and unconsciously, risk colliding with the effort of 'a motley range of bellicose states [...] to revive and reassert a theologically contoured fiction about the autonomy of the political as it is overwhelmed by the economic, by the materiality of global capital and by the political rationality of neoliberalism' (2008: 251).

The question therefore is: is it possible to be preoccupied with sovereignty without reasserting the idea of the autonomy of the political? Although not easy – the difficulty of going beyond what Brown calls the fiction of the sovereignty of the political is made evident not only by Agamben but by Brown's own cautious answer (Brown, 2008; see also note 144 above) – if coupled with other understandings, Brown's own solution offers means for doing as such. By treating sovereignty as more than state-centred, one can attempt to analyse the movements of sovereignty – from the state to capital for instance, or from the state to other non-state or 'state-like' actors such as the EU – while still being attentive to how state sovereignty is organized<sup>155</sup> and organizes the space inside and outside the state (Brown, 2008: 253). This means acknowledging how the US state required others to accept that normal laws no longer applied by the simple act of declaring a state of emergency, while still being able to analyse the specific ideological and discursive strategies beyond this declaration. It also means looking at how something like 'the territorial logic of the state', as that which aims to control territory and populations (Arrighi, 1994: 36; see also Harvey, 2005: 132<sup>156</sup>) and which, as we shall see in a moment, is strictly connected to the generalization of the (state of) exception but is not the same thing, is at work in these strategies. Exploring how the

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demos to make laws for itself' (Brown, 2008: 252) and she does discuss democracy in other works (2006a), no such account is provided in the aforementioned essay.

<sup>155</sup> On this, see Biersteker and Weber (1996). They too describe sovereignty as an ambiguous concept and further distinguish between 'internal' and 'external' sovereignty, where "internal" refers to the existence of some ultimately authority over a particular domain and 'external' refers to the recognition of authority by others' (Biersteker and Weber, 1996: 2).

<sup>156</sup> Harvey expands on Arrighi's territorial of the state. By territorial logic, Harvey means 'the political, diplomatic and military strategies invoked and used by a territorially defined entity such as a *state* as it struggles to assert its interests and accumulate power in its own right' (2005: 132). For how Harvey's use of this distinction differs from Arrighi's, see Arrighi, 2005: note 15.

territorial logic of the state and what role it plays in the generalization of (the state) of exception is extremely important as it brings attention exactly to the geopolitical dimension I was emphasizing before through Schmitt. Although, as I have previously argued, the logic of exception is biopolitical and inexorably spatial, I suggest it would be mistaken to simply superimpose the sovereign logic of exception and the territorial logic of the state.

Like the logic of exception, the territorial logic of the state does seem to involve the identification of a broadly defined ‘enemy’. However, in both cases the dependency on the friend/enemy distinction is not always explicit. Thus, the logic of exception can be founded on security considerations that do not involve straightforwardly classified enemies (see, for example, logics of exception aimed at immigrants or other supposed threats that are not straightforwardly classified as enemies). At the same time, when it comes to the territorial logic of the state, the identification of an enemy becomes essential when a state or a number of states decide to go to war with another country but again is not strictly essential to the imposition of sanctions. Now, the wars waged in the name of defending democracy and freedom against the threat of terrorism, that is, the wars in Afghanistan and that against Iraq, did not appear to have as their aims explicit territorial conquest. As some rightly suggest, these wars, especially the Afghanistan one, were not just about oils and resources but about control of populations as well as strategic positioning and area of influence (see Harvey, 2003; see also Zolo, 2006). But this does not mean that something like territorial logics were not involved. As Harvey suggests the *territorial logic* is also about the accumulation of power in its own right (Harvey, 2005).

To this extent, although functional to the war on terror as premised on a state of exception, the territorial logic of the state follows its own imperial modality of operation as described above. Specifically, it follows an imperial mode of operation that is neither reducible to the state of exception nor to the logic of capital. Although *de facto* inextricable,<sup>157</sup> the state and capital are also better conceptualized as distinguishable by ‘a (logical) difference in kind’ (Toscano, 2004: 200). Though it is worth pointing out, following the likes of Tilly,<sup>158</sup> that state’s powers of coercion always has capital as its means (in the banal materialist sense that wars, especially imperialist ones, cannot be waged without financial power), the state is better conceptualized as an assemblage of relations, whose logics of power, whether ‘exceptional’

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<sup>157</sup> As Arrighi points out, [h]istorically the capitalist and territorial logics of power have not operated in isolation from one another, but in relation to one another within a spatial-historical context’ (Arrighi, 1994: 34; Harvey, 2003; Callinicos, 2009).

<sup>158</sup> See Tilly, 1990.

or territorial, are not completely subsumable to the logic of capitalism.<sup>159</sup> The idea that the logics of state power are not completely subsumable to the logic of capitalism or exploitation enables an interpretation of the war on terror as reflecting state's sovereign, territorial and security/exceptional practices, which, although not disconnected from those enabled by neoliberal capitalism, are not isomorphic with the latter. It further enables an understanding of the generalization of the (state of) exception, as involving more than first envisaged by Agamben. The decision on the exception as well as the emphasis on a specific conception of security of which more will be said in the section below are essential to the generalization of the (state of) exception. However, it is clearly not enough for a state to declare a state of exception for the state of exception to become dominant. It is because of the specific position of the United States in the global economy and of its hegemonic power that it was able to wage a global war against terrorism. This dimension also needs to be taken into account in discussions that have as their aim an exploration of the US attempt to globalize the state of exception.

### **1.9 The US and Biopolitical Security**

As Agamben says, the importance of security to the state is not new. 'Security as the basic principle of state politics dates back to the birth of the modern state' (Agamben, 2001: [n.p.]). But: in what sense is security essential to the continuation of the war on terror broadly constructed? What type of security are we talking about here? Agamben's answers to these questions seem to rely on an under-appreciation of the transformation of security. His idea that security is the guiding principle of the state does not help to understand when and why a certain conception of security, that is, 'human security' – which differs from but is not unconnected to 'territorial security' – became a key plank US state.<sup>160</sup> The analysis below provides a brief historical account of the development of the 'new' regime or paradigm of security. This account will allow us to contextualize the emergence of biopolitical security in its relation to the US state – the initiator of the war on terror – and in turn to place US national security strategies as given in the 2002 and 2006 NSSs and as analysed in Chapter 3 in the context of a broader shift of security developments.

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<sup>159</sup> This would explain why, even though the US state was arguably attempting to control the global economy (Harvey, 2003: 19; for a counter-view see Kaldor, 2007), it could not.

<sup>160</sup> Clearly, this line of questioning can also be fruitfully extended to other states, whose approach to 'biopolitical security' might in fact have developed somewhat differently, with different results. For an interesting article that move beyond the US case and examines contemporary strategies for managing biorisks in three European states: France, Germany and the United Kingdom, see Lentzos and Rose, 2009. With respect to the European approach to 'biopolitical security', see my analysis chapter on Europe.

In line with Foucault, Agamben argues that it was during the second half of the eighteenth century, with the emergence of biopolitics that the paradigm of security reached its fullest development (Agamben, 2001). Moving on from this, Agamben suggests that to a situation where ‘what used to be one among several decisive measures of public administration until the first half of the twentieth century, now becomes the sole criterion of political legitimation’ (2001: 1). And he warns us that security reasoning entails ‘an essential risk, a state which has security as its only task and source of legitimacy is a fragile organism; it can always be provoked by terrorism to turn itself terroristic’ (Agamben, 2001: 1). However, although perhaps valid in general, these claims tell us little about the development of security in relation to the US state. A brief historical excavation of this shows two things. First, that the development of the US as a national security state emerged over a number of years after the Second World War and is the result of very specific political and ideological circumstances. Second, that the expansion of security from the domain of the state to other domains pre-dates the war on terror.

As Hogan explains, the configuration of the US as a national security state materialized over a number of years after the Second World War, with Pearl Harbor (1941) signalling the end of the age of (political and military) ‘isolationism’ (Hogan, 2000: 2).<sup>161</sup> This finds confirmation in Neocleous’s account of the origins of the term (national) security. Neocleous observes that it was at about that time that ‘security’ began to replace ‘defence’ on a consistent and continuous basis in US government discourse (Neocleous, 2008: 8). Neocleous goes on to recount how ‘the idea appeared so new that one Senator commented, “I like your words ‘national security’”’ (Neocleous, 2000: 8). More specifically, according to Hogan, the development of the US national security state emerged in the context of an ideological dispute between different views on how the United States could safeguard its security in the new post-war environment (Hogan, 2000: x, 1).<sup>162</sup> On the one hand, there were those, mostly liberal democrats, who argued that because of the Soviet threat and of technological developments of the atomic bomb and long-range bombs, geographic isolation had become

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<sup>161</sup> Although, as Hogan points out, isolationism did not prevent the US ‘from opening the door to Asia in the nineteenth century, from the internationalism that followed, and from the interventions of 1917 [when the US enters War World One] and 1941 [it enters War World II]’ (Hogan, 2000: 3). It also did not prevent individual US states, often with the complicity of US officials, to engage in trans-Atlantic slave trade until well after the slave trade was abolished. The bill signed by Jefferson was to take effect on 1 January 1808 but, as Du Bois shows in his 1896 doctoral thesis slave importations continued until around 1954 (there is some debates about Du Bois’s figures) (Du Bois, 1999; Smith 1997: 227).

<sup>162</sup> It is important to note that the ideological dispute itself started much earlier. In Hogan’s words, ‘the battle between isolationism and internationalism, between unilateralism and multilateralism, is old as the country itself’ (Hogan, 2000: 357).

obsolete; thus, it was necessary for America to take a new, more proactive approach to defence. On the other hand, conservative isolationists, mostly from the Republican Party, stressed the threat posed to the American 'way of life' by militarism, standing armies, and centralized government. Hogan argues that this complex interplay of forces, which included economic factors and changes in the 'international order', as well as, internal pressures and pressure from national security agencies, civilian officials, military leaders, and the executive and legislative branches, culminated in the Truman Doctrine. The Truman Doctrine was fully encapsulated in the National Security Act of 1947 and National Security Council document NSC-68 of 1950 (Hogan, 2000: 12). Paramount to the doctrine was the containment of communism and of the Soviet Union.<sup>163</sup> During the Truman years, national security was defined primarily in the military terms of 'preparedness'<sup>164</sup> and 'deterrence'; although deterrence was sidetracked by the Korean War and 'the new military buildup, together with the cuts in the Marshall Plan' (Hogan, 2000: 313). As de Larrinaga and Doucet aptly summarize, '[t]he initial use of the term "national security" can thus be understood in the context of a new global order that saw US engagement in World War II in two theatres of operation, the invention of nuclear weapons and the deployment of a war machine of global reach' (de Larrinaga and Doucet, 2008: 523).

However, with 'the end' of the Cold War and the demise of the Soviet Union, intellectuals both inside and outside the US started to envisage the possibility of 'new' models of security. Scholars began to contest the notion that the state should be the only referent of security. They started to envisage the possibility of a type of security for which the referent was to be not only, or not simply, the state but 'the individual' or 'humanity' itself (see, for instance, Mathews, 1989; Buzan, *et al.*, 1998). These authors argued that the proliferation of 'unconventional threats' (e.g., terrorism, technology, environmental degradation and migration), posed as much of a challenge as 'conventional ones' (i.e., external and military threats), thus, security had to be conceptualized differently. Common to all these authors was the acceptance that the nation-state was, if not obsolete, in decline<sup>165</sup> and that the security of people or what is commonly referred to as 'human security' is, if not more, important than

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<sup>163</sup> The NSC-68 states that '[t]he gravest threat to the security of the United States [...] stems from the hostile designs and formidable power of the USSR, and from the nature of the Soviet system' and emphasises the need to drastically expand the standing conventional military forces of the United States. According to Gowan, it represents not just a quantitative intensification of pre-existing trends expressed by containment but a qualitative one (Gowan, 2004).

<sup>164</sup> Lentzos and Rose (2009: 248) trace back the idea of preparedness 'at least to the eighteenth century'. See Roosevelt, 1900.

<sup>165</sup> This is something that Agamben also seems to accept and welcome to a degree. See 'We Refugee' (1994). See also *Means without End: Notes on Politics* (2000b).

the security of territories (see also UNDP's reports, 1993; 1994<sup>166</sup>). Whereas during the Cold War period the concept of national security dominated the field of security analysis, with the end of the Cold War, 'security' started to be conceived in terms of 'the needs and well-being of people' globally (Duffield and Waddell, 2004: 2). In particular, it was in the mid-1990s that the term 'human security' took hold (Thomas, 2007: 109).

Drawing on Foucault's notion of governmentality, Duffield and Waddell (2004) see 'human security' as a form of biopolitics that seeks to act on populations globally, thus passing the responsibility to protect people from the state to the international community. Though, according to other scholars working in the relatively new field of 'critical security studies', the term remains controversial and subject to varying definitions,<sup>167</sup> Duffield and Waddell perceive 'human security' as something 'positive', as representing a move from geopolitics to biopolitics *beyond* the state (Duffield and Waddell, 2004: 3<sup>168</sup> emphasis added; see also Axworthy, 2001; Kaldor, *et al*, 2007). They define 'human', 'biopolitical security' as a type of emerging 'global assemblage',<sup>169</sup> whose function is the securing of populations through bringing together the existing practices, institutions and networks of sustainable development (Duffield and Waddell, 2004: 34; Duffield, 2005), and as 'emblematic of the changed relations and governmental technologies that shape the post-Cold War security terrain' (Duffield, 2005: 1). What, according to Duffield and Waddell, has problematized 'human security' – but also 'made possible new forms of coordination and centralization' – is the war on terror (Duffield and Waddell, 2004: 2-3; see also Duffield, 2005; Jolly and Ray, 2006). More specifically, they argue that the war on terror has reversed the prioritization of 'the

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<sup>166</sup> The United Nations Development Program was the first international body to use and promulgate the formula 'human security'. It defines human security as 'freedom from want' and 'freedom from fear'. That is, 'safety from such chronic threats as hunger, disease and repression and; protection from sudden and hurtful disruptions in the patterns of daily lives, whether in homes, jobs or communities' (1994: 23). For an analysis of the 'enduring importance' of the UNDP's formulation to 'human security' see, Duffield, 2004.

<sup>167</sup> As testified by the following reports: The Independent International Commission on Intervention and State Sovereignty report entitled 'A Responsibility to Protect' (2001); The Commission on Human Security's report entitled, 'Human Security Now' (2003); The High-level Panel on Threats, Challenges and Change report, entitled 'A more secure world: our shared responsibility' (2004); the UN Secretary General's report entitled 'In Larger Freedom' (2005). For a brief summary of all of these reports, see Jolly and Ray (2006).

<sup>168</sup> Although it is important to point out that Duffield is also very critical of attempts to co-opt the human security discourse for 'humanitarian' purposes (Duffield, 2010). He, moreover, acknowledges that 'while the common definition of human security is prioritizing people rather than states, it can be more accurately defined as effective states prioritizing the well-being of populations living in ineffective states' and further suggests that human security, therefore, in reality 'demands that states play a central rule' (Duffield, 2010: 122, 111).

<sup>169</sup> The term global assemblage has also been used by the anthropologists Aihwa Ong and Stephen Collier (2005) and sociologist Saskia Sassen (2006).

security of people living within ineffective states (a key manoeuvre in human security)' to the prioritization of 'the security of homeland' (Duffield and Waddell, 2004: 21).

This vision of 'human security' complicates a notion of security as simply state-centred linking directly to a Foucauldian conception of biopower. However, although insightful, the idea that it is the war on terror that has reversed prioritizations in terms of the security of the homeland *versus* the security of populations is questionable. Indeed, as Duffield and Waddell themselves and others<sup>170</sup> have argued, processes of 'securitization' have unquestionably increased and accelerated since the beginning of the war. Nevertheless, the extent to which these processes signal a radical break with, or a continuation and extension of previous conceptions of 'security', including 'human security', is something that needs to be assessed carefully. To argue that today's securitization processes, *because* of their emphasis on the security of homeland, signal a break with previous conceptions of human security is to be oblivious to the ways in which previous conception of national security were not completely indifferent to 'biopolitical' concerns. It could be argued that the (bio)political ideal of development and the securitization of populations was an integral part of both Cold War and Post-Cold War ideology and practice. Clearly, the way in which these (bio)political ideals were framed by US officials, organizations, and intellectuals was different from how they were conceptualized by the UNDP reports and the like. Nevertheless, similarities can be detected. Thus, for instance, the first National Security Strategy<sup>171</sup> formulated by the Clinton administration after the Cold War, although very much concerned with the security of the territory, placed a strong emphasis on 'sustainable development' abroad.<sup>172</sup> This seems to confirm that the security of the territory, although paramount, was not the US state's only concern during the Post-Cold War period. Both W.W. Rostow's 'modernization theory' and US interdisciplinary area studies, a staple of State Department thinking and practice in the Cold War long before 1989, although from very different perspectives, were very much concerned with the (bio)political ideal of development and enabling the welfare of populations. Human security certainly participated in the broader redefinition of security that began in the 1970s and 1980s. However, analyses that simply focus on US initial objection to human security (Jolly *et al.*, 2009) disguise the direct and indirect role that the US has played in the process of redefinition of security and obscure the extent to which Washington has been able to mobilize the concept of human security for its own use.

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<sup>170</sup> See, for instance, Jayasuriya, 2001; Huysmans, 2004.

<sup>171</sup> See, the NSS, 1995. See also the NSS, 1998.

<sup>172</sup> The document links sustainable development to four key elements: broad-based economic growth; the environment; population and health; and democracy (in the form of democracy promotion).

By shifting its referent to the individual or human, the ideal of human security introduces as threats a host of contingencies that were not previously understood as such, at the same times as, it defines, and enacts the human in biopolitical terms. According to de Larrinaga and Doucet, the target of human security ‘is to make live the life of the individual through a complex of strategies initiated at the level of populations’.<sup>173</sup> To this extent, the human security discourse can be seen as preparing ‘conceptually a form of life that is at hand for the mounting of proactive interventions of pre-emption and prevention’ (de Larrinaga and Doucet, 2008: 528, 531). Therefore, although agreeing with Duffield and Waddell that the war on terror has further problematized the notion of ‘human security’ as given in the UNDP report of 1994, it could be argued that in reality ‘human security’ was, and still is, integral to the construction of the US state in globalist terms.

The brief historical account of security offered here shows that human security is not easily separable from the more general redefinition of security that started prior to the end of the Cold War in the US and that seems now to have reached a new dimension with the war on terror. Because ‘human security’ is amenable to the strategic dimension of states, it seems to provide the perfect ideological supplement or rationale for targeting populations to prevent so-called emergencies – emergencies that the human security’s discourse itself helps to define. In Larrinaga and Doucet’s words, ‘[w]hat the discourse of human security does, whether broad or narrow, is to help define the exceptional circumstances that require the international community’s intervention, whether on behalf of humanitarian imperatives as initially conceived or in the service of maintaining global order as made evident more recently’. In turn, it ‘contributes to the labour of defining and authorizing when the suspension of conventional international law of nations can occur’ (de Larrinaga and Doucet, 2008: 532). To this extent, ‘human security can be understood as participating in the institution of a form of sovereign power insofar as it simultaneously operates within and outside the law’ (2008: 532). De Larrinaga and Doucet, rightly suggest that human security helps ‘to constitute key elements of the state of exception’ while preparing ‘the conceptual ground upon which such complexes [state and non-state actors, public and private organizations, military and civilian organizations] are bound up with instituting a form of global sovereign power’ (533). They are, however, wrong to suggest that this form of ‘global

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<sup>173</sup> In fact, de Larrinaga and Doucet show through textual examples, how the ‘initial deployment of the concept in the mid-1990s was subsequently accompanied by other efforts to theorize human security in ways that would be more amenable to the multilateral and middle-power approaches found in the foreign policy concerns of certain states’. Thus, for instance, from ‘an understanding of threats that stem from a broad set of quotidian political, social, economic and environmental contingencies’ in the 2004 *A More Secure World: Our Shared Responsibility* report shifted to what are deemed to be ‘avoidable catastrophe[s]’ (de Larrinaga and Doucet, 2008: 526).

sovereignty' is unmoored from 'the formal juridico-political sovereignty of any one state or coalition of states' (de Larrinaga and Doucet, 2008: 533) because, in my view, this ignores the role of the US, its hegemonic and imperial power as described above.

### **1.10 Europe: the Answer to American Power?**

In light of the perceived reassertion of American military and strategic power globally (see, for instance, Cox, 2003; Eland, 2002), a number of commentators, including Balibar (2004) and Timothy Garton Ash (2002; 2004), have looked to Europe for alternatives to US unilateralism. For Balibar in particular, although not a finished project and one that is in fact best left unfinished, 'Europe' 'can', or perhaps, we should say could have provided<sup>174</sup> an alternative political and social imaginary in the present situation. Garton Ash and others, such as Kaldor, conceptualize Europe as a global political actor that has the ability to check and balance US power on the global stage. This section will assess these claims critically by considering practices of securitization in the war on terror, which allow us to see these conceptualizations in a different light. It is on the basis of this analysis that, in Chapter 4, I will further delve into how Europe is being reconstituted in practice through a discursive analysis of the European Security Strategy.

Balibar has advanced the idea that Europe can represent 'a new type of power' within the post-9/11 context in his book, *We, the People of Europe? Reflections on Transnational Citizenship* (2004) and in particular in an essay called 'Vanishing Mediator'.<sup>175</sup> Starting from the presupposition that 'Europe is not something that is "constructed" at a slower or faster pace, with greater or lesser ease' but a historical, unresolved problem without any pre-established solution, whose '*modes of inclusion and exclusion*'<sup>176</sup> are far from assured (Balibar, 1991: 7; 2004 emphasis original), Balibar argues against seeing Europe as given or fixed. Instead, he presents Europe as 'vanishing mediator'. In answer to calls from America for Europe to act in the context of today's changing relations – calls that, according to Balibar, go from asking Europeans to support or 'check and balance' America in its projects

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<sup>174</sup> See Balibar's latest reflections, 2010.

<sup>175</sup> Other theoretical contributions could have been explored. However, I have decided to focus my discussion mainly to Balibar since his intervention is evocative and well-suited to a contrast with a document, the ESS, which shows how the European project is being (re)imagined in practice.

<sup>176</sup> These are modes which for Balibar are directly linked to questions of migration and racism (Balibar, 1991; 2004). In his, 1991 article, titled 'Es Gibt Keinen Staat in Europa: Racism and Politics in Europe Today', Balibar writes that discrimination is written into the very constitution of Europe (1991: 7).

to ‘helping’ or mediating situations of crisis<sup>177</sup> – Balibar suggests that Europe can assume a mediating or translating role because of its transformative potentials.

The idea of vanishing mediation is Hegelian in origin. It is linked to Hegel’s conception of dialectics and more specifically to his idea that it is through a process of mediation that two opposite or antithetical concepts (e.g. being and nothingness) are sublated into one (e.g. becoming) (Houlgate, 1998: 194). The idea has recently been revived by both Fredric Jameson and Slavoj Žižek.<sup>178</sup> In a highly original interpretation of Weber, Jameson uses the idea to: 1) counter claims that understand Weber’s anti-Marxism as a repudiation of Marxism as a whole;<sup>179</sup> 2) explain the passage from feudalism to capitalism (or the process of modernization or rationalization) in terms of a dialectic movement where a third element, called the vanishing-mediator (i.e., the ‘protestant ethic’) ‘mediates’ the transition between the two while creating the conditions for its own disappearing. Drawing on Jameson, Balibar employs the term to ‘critically assess the limits of Europe’s capability to influence and mediate conflicts and historical processes’ and explore the possibilities for Europe ‘to offer itself as an instrument that other forces in the world, aiming at a transformation of politics, could use and shape to cope with the [current] crisis’ (Balibar, 2004). He sees the vanishing mediator as ‘the figure (admittedly presented in speculative terms) of a *transitory* institution, force, community, or spiritual formation that creates the conditions for a new society and a new civilizational pattern – albeit in the horizon and vocabulary of the past – by rearranging the elements inherited from the very institution that has to be overcome [...]. It therefore creates the conditions for its own suppression and withering away. But without this “vanishing” mediation, no transition from the old to the new fabric of society would have been possible’ (Balibar, 2004: 233). Balibar is aware that, in reality, Europe’s current capacity to influence and mediate conflicts and historical processes is not that great. Nevertheless, he envisages ‘possibilities for Europe to use its own fragilities and indeterminacies, its own “transitory” character’ to effectively mediate in a process that might

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<sup>177</sup> In particular, Balibar distinguishes between official or semi-official declarations and those from a number of ‘American *liberal* intellectuals’. He himself only focuses briefly on ‘the *official* (or quasi-official) ones’ – those coming from the Bush administration and his former advisors, most of which were members of the now suspended PNAC (the role of PNAC in the formulation of the US NSSs will be discussed in Chapter 3) – and more extensively on those by Ackerman, Wallerstein, Garton Ash and Said (Balibar, 2003: 14).

<sup>178</sup> The idea of ‘vanishing mediator’ is Jameson’s but is used by Žižek too for its ability to trigger change and its highly symbolic function. Here I will focus only on Jameson’s interpretation of it as it is on this that Balibar draws for its interpretation of Europe. For an analysis of how Žižek uses the term, see Žižek, 2002; see also Dean, 2005.

<sup>179</sup> For Jameson, Weber’s Protestant Ethic is ‘explicitly directed against vulgar Marxism and against the economism of the Second International to which Engels had himself objected’, and not Marxism as such (Jameson, 1988: 4).

bring about ‘a new political culture, a new pattern of politics as such, in our context of acute national and international crisis’ (Balibar, 2004: 234).

In particular, according to Balibar, Europe’s colonial history and geography put it at the centre of insoluble conflicts, which threaten its own civil peace. At the same time, it is these same conflicts that give Europe the possibility to become something else than a nation (2004: 39, 40). In other words, Europe’s history puts it in a privileged position with regard to its own becoming. As opposed to seeing Europe as ‘lacking’ because of its particularity as an entity with no absolute *borderlines*, Balibar sees in Europe the possibility for a ‘*new type of power*’ (2004: 225). He says that rather than a ‘right of intervention’, what we are confronted with today is ‘the “fact of intervention” that is, interdependence’.<sup>180</sup> Thus, he suggests that rather than to try to ignore interventions as they take place, ‘we’ – he is referring here to ‘European intellectuals’ – should ‘organize and try to modify its consequences’ (Balibar, 2004: 215). Balibar does not suggest that this process is an easy one, or that there are guarantees that Europe will succeed. However, Balibar is hopeful about Europe’s future. He says that Europe is endowed with translating capacities<sup>181</sup> capable of interpreting the world in ways which would be if not able ‘to transforming the world, then at least to influencing and orienting the processes of transformation that are taking place’ (Balibar in Bialasiewicz and Galli, 2004: 370). According to Balibar, what Europe needs is a *model of collective security* which opens the possibility of escaping the confrontation between “terrorist” and “counterterrorist” forces’ (Balibar, 2004: 225-226, emphasis original); a model of security that does not reject the use of force but makes protection as opposed to fortification its priority. Balibar is here explicitly drawing upon the notion of collective, human security from the UN Charter,<sup>182</sup> arguing that it must become a political and substantial, as opposed to a merely formal, goal (Balibar, 2004: 226). He further suggests that this model must maintain ‘the possibility of at the same time actively fighting against injustice *and* combining the actions of intelligence and police

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<sup>180</sup> Note, however, that the link between ‘the fact of intervention’ and ‘interdependence’ understood here as linked to new globalizing processes could be contested. As stated, this link seems to imply that interdependence produces or enables ‘the fact of intervention’, whilst it could be argued ‘the fact of intervention’ can be thought as independent from interdependence, as proved by the fact that interventions in other countries are not a new phenomena.

<sup>181</sup> As a proof of this, Balibar says that ‘not even in India or in China—was it necessary to organize to the same degree the political and pedagogical conditions of linguistic exchanges’ as in Europe (Balibar, 2004: 234).

<sup>182</sup> In particular, Chapter I, Article 1: ‘The Purposes of the United Nations are: 1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removals of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace’.

services under legal control against terrorist networks, if their existence is proved' (Balibar, 2004: 226). He adds that 'there is no doubt in my mind that, in this respect, if we agree that, for various reasons, there is currently a special threat of "Islamic terrorism" (or terrorism fuelled by fundamentalist Islamist ideology), the ultimate condition for an effective "counterterrorist" policy is an active commitment to democratic regimes emerging from within the Islamic world' (Balibar, 2004: 226). This is because, for Balibar, only those societies and places where Islam is an essential cultural reference will be able to "'uproot" Islamic fundamentalism and terrorism', although not without the assistance of the international community (Balibar, 2003b: 328).

The idea that Europe should contribute to human or collective security is one that finds support among various scholars, from Biscop (2004) and Kaldor *et al* (2007), whose strategic internationalist EU-led model of Europe is certainly different from that of Balibar's, to the likes of Beck and Grande (2007), Habermas and Derrida (in Borradori, 2003), who also have very specific ideas of how to understand Europe. Thus, whereas Balibar relies on an *anti-strategic* political model for which 'power does not precede action but is rather its end result' (Balibar, 2004: 31; 2003b: 324), Kaldor relies on a 'global model' (Glasius and Kaldor, 2005; see also Biscop, 2003), Habermas and Derrida on 'supranational model' (Habermas and Derrida, 2003), Beck and Grande on 'a cosmopolitan model' (Beck and Grande, 2007; Beck and Giddens, 2005; Held, 1995; Archibugi, 2004; Delanty and Rumford, 2005). However, despite their different conceptualizations of Europe/power, all these authors agree on one thing: living in an interdependent world makes it extremely difficult for any single state alone to safeguard its own citizens, let alone populations globally, not matter how powerful that state whence the need for global or collective security. According to Biscop, for instance, "'9/11'" has demonstrated that possession of the greatest military might on earth, including the most advanced technology, cannot by itself guarantee security' (Biscop, 2003: 10; also Kaldor, 2005; Habermas and Derrida, 2003). Europe, therefore Biscop says, needs to develop its *own* security strategy as opposed to *simply* rely on NATO (2003; see also Bailes, 2005). Interesting to note, however, that on the question of European military capacity versus NATO, an issue that member states have been discussing since the end of the Cold War, when dependence of Western Europe on US military capacity started to become less of a problem,<sup>183</sup> divisions remain. The most recent tensions arose in 2003 when the idea of an independent planning and command EU headquarters was raised (see Reichard, 2006). Initially received with enthusiasm by most member states, including Britain – whose role in

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<sup>183</sup> In the words of Gowan, military dependence actually 'ended with the disappearance of the Soviet Union' (Gowan, 2004: 69). This, however, is debatable.

the war on terror has been principally directed toward defending and backing American foreign policy and decisions – the Franco-German plans suffered a set-back when US ambassador to NATO Nicholas Burns described the EU policy as the ‘most significant threat to NATO’s future’ (Evans-Pritchard and Helm 2003: [n.p.] ). This provoked strong reactions with the then Foreign Secretary Jack Straw telling Britain’s parliament ‘it was “unacceptable” for the EU to try to assume a “territorial defence” role’ (Straw quoted in Marsden, 2003). The call here was for Europe to act as mediator within the ‘new wars’; a call which, as Balibar has shown, finds its counterpart in America and which incidentally raises the question as to ‘[w]hy address Europe in this case rather than, say, Russia, Japan, or China?’<sup>184</sup> (Balibar, 2004). But it is also for Europe to have an independent role in international relations (Kaldor *et al.*, 2005), which does not mean inevitably acting alone but taking ‘a stand for itself, even in the face of its oldest friends when necessary’ (Bailes, 2005: 24; for an opposite view see Weiss, 2006<sup>185</sup>). Although these authors would not necessarily share Balibar’s anti-strategic politics,<sup>186</sup> nor would Balibar second their emphasis on strategy, they too see protection (as opposed to fortification, which however, they do not refuse *in toto*) as essential for combating violence, ‘terrorism’ and its causes.

In my view, this conceptualization of protection is limiting, since it ignores the way in which protection is not outside fortification but highly intertwined with it. Although as Bigo suggests, sealing borders is nearly impossible,<sup>187</sup> the European Commission did initiate a number of securitization policies, such as those directed toward immigrants, whose aim is the protection of what the EU perceives as its borders. These policies are not outside of certain forms of power politics and, as de Goode and others have shown, understandings of (in)security and terrorism play a key part in constituting the ‘governmental identity of the European Union’ (de Goode, 2008; Bigo, 2007a; 2007b; Bigo and Guild, 2005; Bigo, *et al.*, 2007; Huysmans quoted in de Goode, 2008) – we might say, in constituting it as ‘state-like’. Furthermore, whether Europe is a power that counterbalances US power, or whether it can be

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<sup>184</sup> Balibar asks this in relation to what he describes the call to Europe for ‘*check and balance* in order to countervail the American (super)power’ as opposed to a demand for ‘*mediation* within the “war of civilizations” that America is now apparently waging’ (Balibar, 2004: 214) because, as observed above, he wants to keep open the possibility for Europe to act as mediator.

<sup>185</sup> Following very much what could be defined as a Kaganian and/or antidemocratic position, which justifies and perpetuates the hierarchization of the current international system and of the US as its leading actor, Weiss says that the EU is a weaker entity.

<sup>186</sup> For Biscop too, for instance, Europe needs to develop a strong collaborative security relation with its Mediterranean partners, with whom it shares important political and economic interests (Biscop, 2005). But he clearly does not share Balibar’s anti-strategic politics. Biscop’s emphasis is on strategy.

<sup>187</sup> As Bigo says, ‘effective control of cross-border activities is nearly impossible in market-economy regimes which, in order to remain viable, have to keep their borders open to goods, capital and services’ (Bigo, 2002; 2009b).

regarded as a 'new type of power' in the present conjuncture is contestable since it fails to recognize that the EU is a partner of the US in the war on terror and it too has interests in Middle East (see Abraham, 2004). According to Abraham, the European-Mediterranean ensemble that Balibar proposes as 'a laboratory for new relationships between "developed" and "developing" countries, and between cultures that have their religious roots in antithetical versions of the same monotheistic theology' loses its potential when confronted with 'its Eurocentric, political underbelly' (Abraham, 2004: 10). Following Abraham's critique of Balibar's conceptualization of Europe for ignoring that at the present global conjuncture, we can argue that it is in the economic and political interest of Europe to take advantage of its geographical location to reach out to other cultures (Abraham, 2004: 11). Important aspects of the questions of security, US/EU relations and geopolitics are missing in all of the above analyses. As Abraham points out, for instance, in Iraq, US-based firms are not just in conflict with the government of Iraq over access to oil but they are also competing with European firms (Abraham, 2004: 12). This is an important point that challenges some of the (implicit) assumptions underlying the above understandings of Europe by bringing attention to the fact that the development of a European (as well as an American) security strategy is not independent from material and geopolitical factors and interests.

Ultimately, the idea of Europe as vanishing mediator raises some paradoxes that are difficult to resolve. As Iveković asks, '[w]hat happens when the vanishing mediator has vanished? Is a self-suppressing subject still a subject' (Iveković, 2008)? In addition, is it plausible to think that Europe will renounce all forms of 'power politics' to assume such a role? These questions cannot be ignored when approaching the question of how to understand the EU in its relation to the US. What kind of Europe is brought into being through the war on terror? What conception(s) of Europe are at stake in the war on terror, and through what discursive strategies and technologies is Europe being produced? My analysis of the European Security Strategy will attempt to answer these questions. The main aim of my analysis in Chapter 4 will be to evaluate through a close analysis of the European Security Strategy whether the European Union conforms to expectations about its role as anti-strategic, counter-hegemonic mediating and/or multilateral power that underlines current political and philosophical analyses of the European Union. The focus on the EU will help move the discussion from an analysis of US sovereign power and its foreign and security strategy (which after all remains a state-centred discussion) to an examination of the EU, an entity whose foreign and security strategy is still very much in the making, but whose foreign and security strategy points to the constitution of Europe as 'state-like'.

## CHAPTER 2

### Critical Discourse Analysis

Chapter 2 will explain the methodological approach to data. It will make use of both Foucault's and Agamben's methodological insights critically to analyse specific political and ideological functions of selected documents. Employing Foucault's and Agamben's methodological prescriptions will benefit the analysis of the chosen documents in a number of ways. It will allow me to explore the methodological counterpart to the theoretical positions surveyed in the literature review. Focusing on their methodological insights will help me to raise questions about what appears to be Agamben's more totalizing approach and Foucault's attempt to move away from totalizing and universalizing accounts of power from a methodological perspective, in keeping with my own questioning about the relation of sovereign power and biopower. Although Agamben is only minimally interested in epistemological and methodological questions,<sup>188</sup> and both Agamben's and Foucault's contributions to these types of question could be regarded as idiosyncratic and eclectic, I will show how their ideas can be used productively to analyse my chosen documents.<sup>189</sup> This is not to suggest that there are no limitations to their methodological prescriptions. Where relevant to my discussions, I intend to say what these problems are as well as to challenge Agamben and Foucault's interpretative frameworks. In spite of these limitations, however, their ideas, in particular their notions of 'paradigm' and '*dispositif*', remain highly valuable ways of thinking through current (in)security developments.

In particular, the Agambenian concept of 'paradigm', and the notion of '*dispositif*' as developed by both Foucault and Agamben, and how I intend to use them, will be fully explained in section 2.1. In this section, I will show that despite the problems that the Agambenian conception of paradigm and/or example raises, the notion of paradigm,

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<sup>188</sup> Agamben sees these types of question as a ways of 'sharpening knives when there is nothing left to cut' (2002: [n. p.]). However, he does deal with them in this same essay and elsewhere (see his short book on method, *Che cos'è un dispositivo?* (2006), translated by David Kishik and Stefan Pedatella as *What is an Apparatus? and Other Essays* (2009), and *The Signature of All Things: On Method* (2009), an again short but rich reflection on method, which includes a longer version of his essay 'What is a paradigm?').

<sup>189</sup> Note that there are very few interpretations of Agamben's work from a methodological perspective to date. What one finds are scattered thoughts here and there (see, for instance, Ek *et al.*, 2007: 11-12; Sinnerbrink, 2005: 258; Kalyvas, 2005: 115), with the more systematic work to date to be found in Mills (2008) and de la Durantaye (2009). On Michel Foucault's reluctance to clearly delineate a methodology, particularly with respect to genealogy (the *Archaeology of Knowledge* [1969] (2002) is dedicated almost entirely to methodology) see, for instance, Meadmore *et al.*, 2000; Tamboukou, 1999.

including the paradigm of exception, can be used sociologically and empirically to question current security discourses. On the other hand, I will show how the idea of *dispositif* can help in the analysis of the US National Security Strategies and the European Security Strategy. In particular, the concept of *dispositif* helps to understand these documents – which I will specifically analyse through a close, critical discursive reading – as strategic and as part of a *dispositif* of security that is increasingly becoming dominant or hegemonic.

In section 2.2, I draw from theories of critical discourse analysis to explain how and why these documents should be understood both as discursive in the Foucauldian sense of practices that create, as opposed to simply reflecting, certain security problems, and as ideological. As a matter of fact, even though in line with Foucault, I accept that epistemic practices and technologies of power are historically situated and contingent, I take issue with his rejection of the notion of ideology *tout court* (see also Hall, 1986; Newman, 2005; Zizek, 2002). Foucault's understanding of the relation between power and knowledge permits to investigate how forms of knowledge are linked to and implicated with power, constituting what Foucault calls 'regimes of truth'. What I oppose, however, is the idea that some draw from this understanding: that all forms of knowledge are equal.<sup>190</sup> As Foucault says, power understood here in the broadest way possible as 'a complex strategic situation in a particular society' (Foucault, 1990: 93) is difficult to locate – since it is never simply in the hands of some and its effects are often unpredictable. On the other hand, however, to neglect the extent to which dominant states and 'state-like' players, the US in particular, but also the EU to a less degree, set the frame of what is and what is not permissible in the war on terror would be mistaken. It would also be wrong to ignore the extent to which particular notions of security and exception might in fact reflect and reinforce certain geopolitico-strategic, economic, and political interests as well as the extent to which the US NSSs and the ESS are to be understood as 'strategies pursued to change societies in particular directions' (Fairclough, 2007: 54). Although, ultimately, the notion of ideology opens up more complex theoretical areas, of 'truth', of the link between political and the exploitation of labour power, and of the

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<sup>190</sup> Whether this understanding of the possibility of distinguishing between differential forms of knowledge is in contraposition to Foucault's understanding of power-knowledge is unclear, although my claim is that we need not necessarily see them as opposed. After all, even though Foucault was not interested in assessing whether discourses were actually true or false or in 'trying to dissolve relations of power 'in the utopia of a perfectly transparent communication' (Foucault, 1998: 18), he was interested in how certain discourses came to be taken as such. He moreover, explicitly says that he is 'not engaged in "sceptical or relativist refusal of all verified truth", noting further: "all those who say that for me truth doesn't [sic] exist are simple-minded"' (Foucault quoted in O'Farrell, 2005: 83). However, given that Foucault's understanding of power-knowledge does lead to misinterpretations (see, for instance, Putnam, 1981: 161; Merquior, 1985: 147; Habermas, 1987: chapters 9 and 10; see also Taylor, 1984: 152-83; Resch, 1992: 246; for a counter-view see Gutting, 1989), I felt it was necessary to make my own take on this clear.

ways in which beliefs do or do not function to regulate certain social relations,<sup>191</sup> than I will be able to go into in this chapter, I want to suggest that it remains important. A notion of ideology understood in terms of material and strategic interests as well as of cultural hegemony and its role in (re)producing certain power relations while constructing new ones will help to understand the relation between US and EU practices of security and why these practices take on certain specific forms.

The last three sections will be dedicated to explaining the rationale for collecting these particular documents. In sections 2.3, I explain how and why these particular documents were chosen. Finally, in sections 2.4 and 2.5, I look more closely at the NSSs and ESS respectively. I explain how and why the documents were produced, who their audience is and what their political functions are. I, moreover, go into the details of how these documents will be analysed.

Ultimately, the analysis that will be offered in Chapter 3 and 4 is to be considered as comparative and ‘non-statist’ in both the political sense of being critical of the way in which the state-form is used to frame certain theories, and in the methodological sense of not focusing simply on the nation-state and of treating it and its sovereignty as universal and ubiquitous. It is to be considered as an analysis that sees (in)security developments as reflecting micro and macro mechanisms of biopolitical sub-power and sovereign power and as essentially constituting the context in which the global war on terror is being thought.

## **2.1 Paradigms and *Dispositifs***

In brief, for Agamben a paradigm is an archetype or a working hypothesis that serves to elucidate how ‘a wider set of problems’ work, while a *dispositif* in both Agamben and Foucault’s view is an apparatus of power that functions to control. Although questions can legitimately be asked about the assumed ability of paradigms to be both specific and general, and about the distinction that Agamben draws between the paradigm of exception and other paradigms or examples, I believe paradigms can be used sociologically to investigate how discourses of (in)security are articulated and inform the war on terror mechanisms of exception and biopower. On the other hand, the notion of *dispositif* as developed by both Foucault and Agamben offers means to understand these discourses as part of a security apparatus whose functions are both strategic and ideological.

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<sup>191</sup> That is, the question of whether ideology and belief *always* precede forms of association among humans or whether certain social relations are unrelated to beliefs, ideas and interests and can only be *retroactively* rationalized.

Taking his cue mainly from Kuhn's conception of the paradigm as 'a single element of a whole',<sup>192</sup> Agamben defines a paradigm as 'a concrete phenomenon', which 'decides a whole problematic context' and 'makes intelligible a wider set of phenomena' (Agamben, 2002: [n.p.]). The paradigm is a 'model of functioning which can be generalized'. It is a model or an archetype – but one that has its foundation in reality – that enables the philosopher to explain how a particular arrangement of power-relations works (Agamben, 2002: [n.p.]). Thus, for instance, as we have seen in the previous chapter, the Nazi camps are specific historical phenomena but, for Agamben, they are also 'exemplary places' (Agamben, 1998) not necessarily because of the actual number of people who died in them<sup>193</sup> but because they can tell us something about our present times. They reveal that the condition of total abjection suffered by their inmates was the ultimate result of a state of exception or emergency extended to an entire civil population, and that because of their being founded in law, which is to say, on law's constitutive suspension, there is the very real possibility that they will recur. Despite the need for specifying differences between different camps and defining the key features of contemporary camps, such as the specific 'legal' and political processes through which they come to take a certain, specific form, places like Guantánamo seem to confirm Agamben's insights about the persistence of camps. We could say that paradigms are emblems used by Agamben for their power to 'make intelligible' the problems that most concern him. They are both real, concrete phenomena and representative. They are not simply idealized forms of existing entities or phenomena. They themselves have existed and exist in a form that, according to Agamben, allows the philosopher to study the larger structure of power of which they are part, while drawing analogies between their past and present configurations; in a form that allows the theorist to see how precisely belonging to a particular structure of power takes place. They are models, not simply epistemological or methodological constructs, but exemplars that work by displaying the homogeneity of the particular set to which they belong. Paradigms are products of the state of exception, inasmuch as for Agamben, the state of exception is itself a paradigm, but a paradigm that

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<sup>192</sup> Agamben notes that Kuhn has two definitions of the paradigm: the one given above, for which the paradigm is a common model or an example and on which Agamben mainly draws, and another, according to which the paradigm is the set of common practices that define a scientific discipline during a particular period of time (Kuhn, 1962).

<sup>193</sup> In point of fact although, following Primo Levi, Agamben accepts that 'the camp still remains an *unicum* both in its extent and in its quality' (Levi quoted in Agamben, 1999: 32), he wants to argue that the camp is a *unicum* or singularity that has a paradigmatic character. And in this Agamben is very much aware (see Agamben, 1999: 31-32) that he clearly distinguishes himself from many other theorists who treat such camps not as paradigmatic singularities, but as singularities whose uniqueness makes it impossible to compare it with other cases (see, for instance, Friedländer quoted in LaCapra, 1998: 26; De Felice quoted in Traverso, 1998).

takes on a very precise, transcendental form. They are ‘extreme cases’ that help to explain the regular or general by bringing to light the original character of the phenomena to which they belong.<sup>194</sup> To go back to the example of the Nazi camps, we should note that, for Agamben, people interned in the Nazi camps were interned because they belonged to a particular ‘class’ or group; although on the how and why these particular groups of people were selected, however prejudicially and arbitrarily, Agamben has little to say.<sup>195</sup> What Agamben does tell us is that these people were interned following a logic of ‘exclusive inclusion’ (something is excluded by means of its inclusion). Jews, Romani, disabled, etc., were all excluded from the juridico-political order by means of their inclusion in camps (thus, they maintained a relation to the rule in the form of the rule’s suspension. In camps, the law applies without applying. That is to say, normal laws do not apply). According to Agamben, the same logic applies to contemporary examples. The exemplarity or paradigmatic character of the Nazi camps consists in making the logic that governs all camps evident.

In his oeuvre, Agamben uses a number of paradigms or examples – most notably, the figure, drawn from Roman law,<sup>196</sup> of *homo sacer*, the *Muselmann*, the camp, etc. – all of which are connected to the sovereign exception, which he singles out as a different type of paradigm. Agamben contends that whereas ‘the example is excluded from the rule not because it does not belong to the normal case but, on the contrary, because it exhibits its belonging to it’ (it is excluded through the exhibition of its inclusion), the exception is included in the juridical

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<sup>194</sup> The link between the extreme and the exception in the paradigm can be traced back to Schmitt and his reference to Kierkegaard in *Political Theology* (1985 [1922]: 15). Schmitt quotes the Protestant theologian Kierkegaard’s understanding of the exception as that which explains ‘the general and itself’. Kierkegaard says ‘[e]ndless talks about the general become boring; there are exceptions. If they cannot be explained, then the general cannot be explained’ (quoted in Schmitt, 1985: 15).

<sup>195</sup> This is another difficulty in Agamben’s thought. The specific historical context (LaCapra, 2007: 164-65, note 21; Norris, 2002) as well as the discursive or ideological mechanisms that allowed certain groups of people to be the recipients of practices of de-humanization as opposed to others are only dealt with by him in the abstract. In particular, see his discussion of ‘categories of modality’ in *Remnants of Auschwitz*, 1999a: 146-148.

<sup>196</sup> As noted in the previous chapter, Agamben makes use of various ‘figures’ or images in his works. He never delves much on this, however, offering only scattered thoughts, at times, subsuming his use of historical figures under his conceptualization of the example, at others under that of *dispositif*, as in *Profanations* (2007: 59). Nevertheless, what is most evident is the importance of figures for Agamben’s work. Despite being historically specific, a figure such as the *Muselmann*, for instance, is used as a basis for ‘transhistorical’ reflections on (in)human conditions such as abjection. Note that we find a similar use of figures in authors such as Hardt and Negri (e.g. the figure of ‘the immaterial labourer’ and of ‘the militant’), with some Negrian and Agambenian figures overlapping (e.g. ‘the figure of the poor’ and of ‘the refugee’). Far from arguing that we should simply reject the use of figures or examples, I want to suggest that such a stance is more useful when accompanied by a socio-historical investigation into the actual composition and ambivalences of these figures and examples. This is because there is more to ‘subjects’ and ‘events’ than real figures and examples, however representative, can tell us. For an interesting, ‘profanatory’ take on the image as the site in which Agamben’s ‘own fundamental gesture – the gesture of reversibility’ or ‘of the moment when the danger coincides with the saving power’ – is most clearly legible, see Noys, 2009.

order through its exclusion (Agamben, 2009: 24; see also Agamben, 1998; 2002). This seems to imply that for Agamben both the exception and the example are ‘original’ in their own way (we will see in a moment how Agamben conceives the notion of origin); but that the exception has a unique status. Agamben explains that the exception and the example are situated in a symmetrical position with respect to each other; they form ‘a system’ (Agamben, 1988: 2). They ‘constitute the two modes by which a set tries to found and maintain its own coherence’ or by which sovereign power structures itself (Agamben, 1988: 23). But, in Agamben’s understanding, it is the sovereign exception, or more specifically, a decision on the exception, that acts as a presupposition. Like language whose presupposition is ‘the non-linguistic’ and with which language ‘must maintain itself in a virtual relation’, so ‘that it may later denote it in actual speech’ (1998: 20),<sup>197</sup> ‘the nonjuridical’ in the form of a sovereign exception is the presupposition of the law.<sup>198</sup> In his words, ‘[t]he sovereign exception (as zone of indistinction between nature and right) is the presupposition of the juridical reference in the form of its suspension’ (Agamben, 1998: 20–1, italics in original; see also 2005: 36, 39). This is because, as argued above, it is ultimately a decision on the exception that produces examples by determining both what counts as exceptional (and becomes exemplary in Agamben’s understanding) and as normal. In this sense, Schmitt is right to suggest that ‘the exception is more interesting than the regular case’ (Schmitt, 1985 [1922]: 15; quoted in Agamben, 1998: 16). It is through the sovereign’s decision on the exception that the regular or rule is determined. But why does Agamben feel the need to distinguish between the exception and the example and not just between the exception and ‘the regular case’? If, as Agamben suggests, ‘exception and example are correlative concepts that are ultimately *indistinguishable*’ (Agamben, 1998: 22, emphasis added), there must be a more profound reason for distinguishing them at various points.<sup>199</sup>

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<sup>197</sup> Benjamin’s ‘paradoxical thought, [sic] that the very essence of language is fulfilled at the point where it no longer exists – in silence’ is ‘key to Benjamin’s theory of language’ (Moses, 1989: 240) and seems to be again an important point of reference for Agamben.

<sup>198</sup> Agamben is here drawing an analogy between language and law. He writes that ‘[t]he particular structure of law has its foundation in this presuppositional structure of human language. It expresses the bond of inclusive exclusion to which a thing is subject because of the fact of being in language, of being named. To speak [dire] is, in this sense, always to “speak the law,” ius dicere’ (Agamben, 1988: 21).

<sup>199</sup> An answer to this question can to be found in Agamben’s reliance on philological concepts and ideas to explain historical-philosophical contexts. This is because Agamben sees philology and philosophy as ‘two inseparable faces of the same metaphysical project’ (Agamben, 1998: 161). It is through a philological analysis of particular legal and political concepts – with his discussion of language being part of this enquiry – that Agamben is able to show a continuity between past and present forms of ‘inclusive exclusion’ and arrive at philosophical and political conclusions about our present conjecture. Yet, not only is his establishing of a historical continuity between past and present contexts highly problematic, especially in light of Foucault’s counter-history of ruptures and reversals, but the distinction between the exception and the example seems dubious for seemingly challenging

Following Benjamin,<sup>200</sup> Agamben defines the notion of ‘origin’ as ‘the un presupposed principle’ that remains hidden in the common usage of hypothesis. That is, although an historical category, the origin [*ursprung*] is not a point of empirical beginning or genesis. Instead, ‘origin refers to a history of a different type: not empirical history [...] but a type of *essential history*’, in which ‘every original phenomenon possesses a uniqueness that differentiate it from the majority of phenomena’ encountered in history (Wolin, 1994b: 96, 97).<sup>201</sup> According to Agamben, the aim of the paradigm is not to go back to the origin of the phenomenon but ‘to show a phenomenon in its original paradigmatic character’ (Agamben, 2004: [n.p.]). He, therefore, suggests a study that uses paradigms or examples is a study *without presupposed principles*. It is a study that treats ‘the phenomenon itself as original’ (Agamben, 2002: [n.p.]). This is an important point, which is worth pursuing. It relates to the question of a sociological *versus* a transcendental use of paradigms. But first, I would like to dwell further on how, while building upon previous conceptualizations of the paradigm, Agamben attempts to go beyond them.

In line with Plato who, together with Aristotle and Kant,<sup>202</sup> are important points of reference for him, Agamben sees paradigms not as already given but as singularities that become paradigms ‘by being shown beside the others’ (Agamben, 2002: [n.p.]). That is to say, the paradigm is a singularity that acquires its paradigmatic status by being able to show that the logic governing such a paradigm can be applied to other similar cases (although whether the chosen case is itself paradigmatic as Agamben says, or its exemplary character is ultimately also related to the theorist’s - in this case Agamben’s - choices and preferences is an open question). The paradigm links a historical element in the distant past with a similar element in

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Agamben’s own intuition about the un presupposed or non-essential nature of paradigms, including the paradigm of the exception.

<sup>200</sup> Benjamin says that ‘[t]he term origin is not intended to describe the process of which the existence come into being, but rather to describe that which emerges from the process of becoming and disappearance. [...]. Origin is not, therefore, discovered by an examination of actual findings, but it is revealed to their history and subsequential development. [...]. The concept of the origin is not, as Cohen holds, a purely logical one, but an historical one’ (Benjamin quoted in Agamben, 1999: 156).

<sup>201</sup> Benjamin refers to ‘the work of art’ as original and authentic – where the category of authenticity is a central feature of the idea of origin for Benjamin – as that which ‘stands revealed as it will one day in the light of Messianic fulfilment’ (Wolin, 1994b: 96). In a later time, however, Benjamin introduces another important idea: that of ‘dialectical image’, in which ‘the course of history is frozen into an image in order thereby to demystify it’ (Wolin, 1994b: 99). Agamben draws on both Benjaminian ideas to develop his notion of paradigm.

<sup>202</sup> According to Agamben, Aristotle is the one who first theorizes the ‘paradigm as going from the particular to the particular’ but his understanding is inadequate because he does not develop this point further. Kant rightly suggests that the paradigm or example is more knowable than the other singularity to which it is compared and which it is supposed to explain but does not explain why this is (Agamben, 2002: [n.p.]).

the present to show how both – past and present elements – are governed.<sup>203</sup> However, in contrast to Plato,<sup>204</sup> Agamben suggests that rather than Ideas forming the basis or foundation of their copies (sensible, material things), a given phenomenon in its paradigmatic or analogical capacity – that is, in its capacity to show the logic governing both singularities – enables an understanding of the phenomenon itself as non-exceptional. In other words, a paradigm shows the phenomenon to which it is compared as a product of a decision on the exception that determines both the ‘exceptional’ and ‘the normal case’, making the distinction between the two indistinct. Thus, for instance, in the aftermath of 9/11, the use of emergency practices seem no longer merely ‘exceptional’ but to have become a *dispositif* or ‘technique of government’ to use Agamben’s words.

The question, however, is: can a paradigm do all this work by itself? Or is it in need of a supplement, that which in Agamben takes the form of a decision on the exception or an *a priori*? Through his paradigmatic method, which, according to de la Durantaye should be understood in light of Benjamin’s ‘dialectical images’ ‘where a moment of the past is not a simple element in a historical archive but a potentially dynamic means of understanding [...] the present situation’ (2009: 245), Agamben tries to move away from a traditional notion of causality. However, his attempt is only partially successful. It succeeds in linking the past to the present without succumbing to an idea of history as a mere series of causal connections. Nevertheless, it seems that in his philosophical search for ‘the hidden matrix’ or ‘*arcanum imperii*’ of sovereignty (Agamben, 1998) – that which Agamben finds in the paradigm of exception and which explains, among other things, the taking place of being itself in the form of the homo sacer or *Muselmann* – Agamben cannot totally abandon the idea of historical continuity and thereby ends up reaffirming a Kantian understanding of causality as external<sup>205</sup> and of the *a priori* as essential. Could we not, in fact, consider Agamben’s decision to treat the exception as presuppositional (see quotation above) and in this sense distinguishable from other examples as part of a transcendental gesture, i.e. as an assumption on how all things operate and ought to operate? In other words, my argument is that, even though Agamben

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<sup>203</sup> In this Agamben follows Benjamin and, specifically, draws on his notion of ‘dialectic image’ (see note 119 supra).

<sup>204</sup> Note, however, that in his piece Agamben cites Goldschmidt’s interpretation of Plato’s Dialogues and Plato’s use of the example/paradigm, which challenges conventional interpretations of his understating of the relation between ideas and things. Quoting Goldschmidt, Agamben notes how for Plato ‘sometimes the Idea acts as a paradigm for sensible things, but sometimes it is the sensible thing that acts as a paradigm for the Idea’ (Agamben, 2002: [n.p.]).

<sup>205</sup> The idea of causality as external is employed by Roqué to describe ‘Kant’s belief that causality operates by means of *external* forces’ and that this belief led ‘him towards theism’ (Roqué, 1985: 126). Very simply and necessary reductively put, in the case of Kant the ultimate cause is God, in Agamben’s case it is the state of exception.

lists the state of exception among his other paradigms, and further argues that his use of paradigms is non-presuppositional, thus, non-transcendental, in privileging the sovereign exception, he introduces an element of transcendence in his thought. When Agamben says, for instance, that it is ‘as if in order to ground itself the juridical order *necessarily* had to maintain itself in relation with an anomie’ (2005 51; emphasis added), the anomie or exceptions here function as constitutive outside. When, furthermore, he says that ‘the state of exception is the hidden paradigm of the political space of modernity’ and that ‘[t]he sovereign decision on the exception is the originary juridico-political structure on the basis of which what is included in the juridical order and what is excluded from it acquire their meaning’ (2008: 33), he implies that the exception is foundational. I will come back to this problem of foundation later but let us first look at some other criticisms moved against Agamben’s notion of paradigms or examples and at how he answers them.

Apart from accusations of transcendentalism (Norris, 2005; Kisner, 2007; Deranty, 2008; LaCapra, 2004), the other most common objection against Agamben’s use of ‘historically singular phenomena’ to construct, in his own words, ‘a large group of phenomena and in order to understand an historical structure’ (Agamben, 2004: [n.p.]) is that it leads to oversimplification (Bigo, 2006a; Santiago, 2006; Neal, 2006).<sup>206</sup> Agamben’s approach, it is therefore argued, risks ignoring differences between irreducible and distinct phenomena, for example between the Nazi camps and Guantanamo, or even more starkly, between Nazi camps and airports wards (Gregory, 2007; Santiago, 2006; see also Consonni, 2010); differences that his critics content cannot be explained through single paradigms. Here it is also worth noting the similarity between Weber’s definition of the ideal-type as ‘historical individual’ (Weber, 1949) – which, incidentally, also had to confront the accusation that it was riding roughshod over differences (for instance, Fischhoff, 1944: 61-77) – and Agamben’s conception of paradigms.<sup>207</sup> The main difference seems to be that whilst Weber explicitly argued that ideal types were just *instruments*, which the social scientist *created* to investigate the social world (Weber, 1949: 90), Agamben, in keeping with his notion of paradigms as

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<sup>206</sup> Although none of these authors tackled Agamben’s notion of paradigm, the criticisms they move against his theory for representing the victims of violence as detached from socio-historical frameworks of analysis and for failing to make distinctions between different sites of exceptions – in other words, for oversimplifying the phenomena he analyses – are both political and methodological.

<sup>207</sup> The notion of ‘historical individual’ derives from Rickert’s (Rickert, 1986). Although there is considerable debate on the extent to which Weber’s ideal types are influenced by Rickert’s historical individuals (see, for instance, Burger, 1976; for a counter-view, Gerhardt quoted in Bruun, 2007: 45), it is interesting to note how both Agamben’s paradigms and Weber’s ideal types are susceptible to criticisms of oversimplification. We should also note that, although Rickert does not seem to be an important reference for Agamben, he certainly has read him and is appreciative of his understanding of value as negation (1998: 137).

‘unpresupposed’ or as given and not as created, wants to sustain that paradigms are both abstract and concrete phenomena.<sup>208</sup> In other words, he wants to maintain that they are not simply idealized forms of entities that exist, but they themselves exist, albeit in a particular representative or exemplary form. In a sense then, he wants to cross over the boundary between a methodological, epistemological, and heuristic use of paradigms, giving paradigms ontological status.

In *Signatura Rerum*, a book on method written by Agamben in 2008, which includes a longer version of his lecture ‘What is a Paradigm?’ (2002), Agamben responds to accusations of simplification and transcendentalism, by reaffirming that his notion of paradigm is not to be considered as transcendental or transhistorical. He states that the paradigm ‘is a form of knowing, neither inductive, nor deductive, but analogical’ (2008: 28). Whereas deduction goes from the *general* to the *particular*<sup>209</sup> and induction goes from the particular to the general,<sup>210</sup> analogical thinking is described by Juthe (2005) – a view shared by Agamben – as a form of argumentation that goes from the particular to the particular without going via any universal premise (Aristotle quoted in Agamben, 2002: [n.p.]; Agamben, 2008: 29).<sup>211</sup> He further suggests that ‘[t]he historicity of the paradigm is not in its being diachronic or synchronic, but in a combination of the two’ (2008: 33), while repeating his previous claim that ‘the arche’ or original character of examples is not presupposed but acquired (2008: 33). Contrary to how ‘sociologists’ investigate the world, also sometimes relying on ‘paradigms’ or ‘abstract categories’ (see, for instance, Weber, 1949; but also Foucault quoted in Agamben, 2002,<sup>212</sup> Marx quoted in Kain, 1991: 144; 1993: 144<sup>213</sup>), Agamben declares that

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<sup>208</sup> In the sense of being both abstract and concrete, Agamben’s paradigms are more similar to Marx’s *real abstractions*; albeit in a form that is almost completely divested from any reference to the notions of commodity form and of ideology, which are of primary importance to Marx. For different takes on the topic of real abstractions in Marx, see, for instance, Althusser, 1971; Sohn-Rethel, 1978; Finelli, 1987; Echeverría, 1989; Žižek, 1989; Toscano, 2008a; 2008b.

<sup>209</sup> Note that, according to Russell, however, deduction also goes from the general to the general, and induction goes from the particular to the particular, or from the particular to the general (Russell, 1912: 58). In Russell’s understanding, therefore, analogical reasoning would be a form of induction.

<sup>210</sup> See Aristotle quoted in Chakrabarti (1995: 66). Other definitions of induction can be found. See, for instance, Mill, who, like Russell, argues that ‘inductive inference goes from particulars to particulars’ but not ‘to a generalization’ (Mill quoted in Lacey, 1976: 94). See also Peirce (1998).

<sup>211</sup> For lack of time and space, I cannot address the literature on analogical reasoning here. For a brief but insightful understanding of how Kant, an important reference for Agamben, uses analogical reasoning in ‘the ubiquitous, but often overlooked form, of the “as if” in his philosophy’, see Caygill, 1995: 86-87. There is also a vast literature discussing analogical reasoning in law. For avenues into these writings, see Scott Brewer, 1998.

<sup>212</sup> Although he never provided an explicit discussion or definition of the paradigm, Foucault used many paradigms in his work (Agamben, 2002; Merquior, 1985). Agamben mentions the panopticon as an example of ‘a concrete, singular, historical phenomenon’ that can be generalized as a model of functioning (Agamben, 2002: [n.p.]).

his use of paradigms or examples is not intended as ‘sociology’ or ‘history’ (Agamben, 2002: [n.p.]). Although how Agamben understands the term sociology is never clarified, it is plausible to think that what he means when he says that his use of examples is not to be regarded as a sociology or history is that he is not so much interested in empirical ‘details’; in offering an empirical analysis of how certain phenomena have developed. Instead, what he wants to provide is a critique of Western politics *as such* using examples that show its intrinsic biopolitical dimension. This is possibly because Agamben thinks – following Heidegger – that metaphysical investigations of this type are in a sense more concrete and immediate than empirical research.

However, even if we leave aside for the moment the problems of distinguishing between examples and the paradigm of the exception as analysed above and accept Agamben’s stated opposition,<sup>214</sup> given the strong causal connection between examples and paradigms<sup>215</sup> there remain significant conceptual difficulties in explaining how paradigms or examples, as products of the state of exception, have the ability to explain different historical contexts. Put differently, how can paradigms as products of the state of exception be specific and general at the same time? This is especially problematic if the state of exception is conceptualized in a way that does not allow for different degrees of exception (again see Chapter 1). Of course, the use of analogy means that this difference is in a sense unimportant – for Agamben, what is important is that the logic that governs all modern examples can be demonstrated and thus scrutinized and criticized. However, if we accept that this difference is in fact significant, it means that paradigms have to be used carefully. Otherwise, analogical thinking, which makes use of paradigms (particulars) to understand very different historical phenomena, risks becoming reductive and falling into the circular reasoning whereby that which needs explaining is, despite the claim to the contrary, presupposed. Instead of serving as the *explanations* of the logic of specific phenomena, if used without attention to historical and sociological ‘details’, the paradigm risks justifying the idea that all Western political

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<sup>213</sup> Based on a reading of the Grundrisse, according to Kain, Marx also made use of ‘abstract categories’, working them into paradigms, ‘to understand the actual world or its historical development’ (Kain, 1991: 144). Although Kain’s interpretation relies on an empiricist usage of the terms ‘abstract’ as theoretical concept, which the Marxist conception of ‘real abstractions’ challenges (see Althusser quoted in Toscano, 2008: 5; Finelli, 1987; for a counter-view see, Echeverría, 1989), the fact that Marx too used ‘abstractions’, albeit as ‘active principle(s)’, ‘set[s] of *practices*’ (Kouvelakis, 2003: 324), in his work seems rather uncontroversial. For a collection of essays that deals with the highly contested topic of Marx’s method, see Rattansi, 1989. For an excellent introductory text, see, Bottomore, 1991, and in particular the section on dialectics.

<sup>214</sup> An opposition that, as we have seen, Agamben himself implicitly puts into question when he goes on to mention ‘the state of exception’ among his paradigms (2008: 33).

<sup>215</sup> Although *oikonomia* (the latest of Agamben’s paradigm) is not (see Agamben, 2007), all other paradigms (the camp, the *Muselman*, the refugee, etc) are generated by the ‘state of exception’.

philosophy and thought is governed by a single foundational logic of exception (Agamben 1998: 35).<sup>216</sup> In other words, it ends up implying that there is a historical-ontological continuity between past and present. The question of *who* decides on the exception is a political question that cannot be evaded. And, from a political perspective, one should indeed be able to distinguish between ‘the state of exception’, or more aptly, between the sovereign decision on the exception and the products of this decision (where the state of exception is also a product of a sovereign decision). Yet, to invest the sovereign with absolute power, which it derives from the power to decide on the exception but which, in Agamben’s understanding, goes beyond it in its ability to reduce ‘life’ to bare life and to, in a sense, therefore, monopolize the question of power is disputable.<sup>217</sup> It would also be erroneous to argue that the differences or discontinuities between today’s state of exception and its manifestations and those of the past are insignificant. In this respect, it might be more useful to follow Foucault’s own take on this who says that the duty of genealogy is *not* ‘to demonstrate that the past actively exists in the present, that it continues secretly to animate the present, having imposed a predetermined form to all its vicissitudes’ (Foucault, 1977: 146; more on genealogy below).

Despite aforementioned problems, I suggest that paradigms remains useful for an enquiry into the contemporary politics of security but that, contrary to Agamben, they are most useful if employed sociologically. As Agamben himself suggests, a paradigm can be used both to understand specific historical phenomena and large-scale historical structures of power (Agamben, 2004a: [n.p.]). Therefore, paradigms are important for this thesis, whose aim is not simply an analysis of the mechanisms of power that inform the war on terror, but also of the structure of power that sustains them. The principal aim is to find out how discourses of ‘security’ are articulated and inform practices of exception and biopower undertaken in the name of war on terror, and how the US and EU – as structures of power that have a degree of autonomy but are not to be thought as completely independent from socio-economic relations

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<sup>216</sup> Analogical reasoning is not, however, necessarily opposed to attention to details and differences between cases. Guarini argues that, in law, analogical reasoning includes ‘different types of analogical arguments’, ‘often (but not always) [taking] the form of a disputed case being compared to an agreed-upon case, and one interlocutor tries to persuade another that the disputed case should be treated the same as the agreed upon case on grounds of similarity’ (Guarini, 2004: 153, 166).

<sup>217</sup> Following a non-canonical reading of Aristotle, Agamben argues that ‘the greatness of human potentiality is measured by the abyss of human impotentiality’ and that ‘potentiality constitutively be the *potentiality not to* [do or be]’ (Agamben, 1999: 182; 1998: 45). In other words, for Agamben, refusing to act – Agamben uses the term inoperativeness [*inoperosità*] – is the greatest ‘act’ of resistance because it differentiates itself from, and thus is inimical to, sovereign power whose is instead dependent on a decision (to act). To imagine a constitution of potentiality that is freed from the principle of sovereignty, not simply in terms of being able to separate itself from it but of being truly autonomous and of taking up the challenge of mediation seems impossible for Agamben.

and interests – are themselves framed by these practices. To this extent, it is not unwarranted to use paradigms, and in particular the paradigm of exception, sociologically to investigate the specificity of today's state of exception by critically taking into account the actual actors, forces, and discursive strategies involved in its production.<sup>218</sup> Agamben's use of paradigms is criticisable for failing to confront empirical specificities that could upset his understating of the state of exception, and for ultimately reinforcing a vision of history as continuous which Agamben explicitly rejects.<sup>219</sup> Contrary to this, I believe paradigms can and should be used with attention to sociological, historical and discursive details, so as to avoid hasty and counter-productive generalizations. As a matter of fact, what I am concerned with here is not solely, not even primarily, a philosophical interrogation of mechanisms of power in the abstract. Instead, what I intend to provide is a sociological analysis of contemporary securitization discourses in a political key. That is to say, a theoretically-informed investigation of securitization strategies interpreted in a socio-political key; an interrogation of discourses of security and exception that uses and understands Agamben's 'paradigms', including that of exception, not as given or inevitable but as historically specific; therefore, not only as unpredictable in their consequences but also, potentially at least, as changeable.

Although whether Agamben intends his interpretation of Foucault's notion of *dispositif* as distinct from that of paradigm is never made explicit, I think there is enough evidence to think them as distinguishable. Again, as it was in the case of the example, but which is even more evident in the case of *dispositifs*, what distinguishes them for Agamben is their relation to the exception. And even though this distinction is far from clear-cut, I believe that the reading offered below is a persuasive interpretation of Agamben's notion of *dipositif*. Agamben derives his notion of *dispositif* from Foucault (Agamben, 2006). In a passage worth quoting at length, Foucault defines a *dispositif* as follows:

What I try to pick out with this term is, firstly, 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

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<sup>218</sup> Agamben himself, although explicitly saying that his 'analysis should not be confused with a sociological investigation' (2004a: [n.p.]), repeatedly uses paradigms to explain current political events and 'discourses' (in particular see his discussion of Guantánamo Bay and of anti-terrorist legislations in his interview with Raulff, 2004a and in his *State of Exception*, 2003).

<sup>219</sup> It is interesting to note, in fact, that the configuration of what appears to be as transcendental, 'trans-historical' paradigm (i.e., the paradigm of exception) seems to be in tension with both Foucault's understanding of history and with Agamben's own, at least as described in *Infancy and History: On the Destruction of Experience* (2007) (originally published in 1978) where he also puts forward a vision of history as discontinuous.

unsaid. Such are the elements of the apparatus. The apparatus itself is the system of relations that can be established between these elements. Secondly, what I am trying to identify in this apparatus is precisely the nature of the connection that can exist between these heterogeneous elements. [...] between these elements, whether discursive or non-discursive, there is a sort of interplay of shifts of position and modifications of function which can also vary widely. Thirdly, I understand by the term ‘apparatus’ a sort of – shall we say – formation which has as its major function at a given historical moment that of responding to an *urgent need*. The apparatus thus has a dominant strategic function (Foucault 1980, 194-195, emphasis added).<sup>220</sup>

Put differently, for Foucault, *dispositifs* are both discursive and non-discursive and emerge in response to some pressing needs. They are heterogeneous ensembles made of ‘discourses, institutions, architectural forms, regulatory decisions, laws, administrative measures, scientific statements, philosophical, moral and philanthropic propositions’ (Foucault, 1980: 194). In a similar way to how Agamben intends paradigms, according to Oksala, through the notion of *dispositif*, Foucault tries ‘to overcome the distinction between transcendental constitution and empirical, causal formation’ (2008). In other words, a *dispositif* is an apparatus or regime of power, as well as a conceptual tool that Foucault uses to understand the connection and interplay between heterogeneous discursive and non-discursive elements of a certain set. As Ross puts it, the notion of *dispositif* ‘allows Foucault to join his analysis of the micro-disciplines that operate in specific institutional settings to ends that are tied to the management of life as such or more specifically of populations, and thus to a biopolitical map that structures the entire social field’ (Ross, 2008: 64). According to Agamben, *dipositifs* act as universals of sorts in Foucault’s thought (and this despite the fact that, as Agamben himself notes, Foucault ‘always refused to deal with general categories or mental constructs

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<sup>220</sup> The term *dispositif* is derived from the French verb *disposer*: to arrange, to set, to lay out. Interestingly, it has been employed in different settings, with the military setting being a primary example. However, the word itself has no single direct English equivalent. When translated in relation to Foucault, it is rendered in very different ways ranging from ‘apparatus’ as above (Colin, 1980; Armstrong in *Michel Foucault: essays*, 1992; Han, 1998; Oksala, 2005; 2008), ‘discourse’ (Robert Hurley in *The History of Sexuality*, 1998 [1976]), ‘deployment’ (Rabinow in *The Foucault Reader*, 1991), ‘grid of intelligibility’ (Dreyfus and Rabinow, 1983), to ‘multilinear ensemble’ or ‘social apparatus’ (Deleuze, 1992). Other renditions can be found (see, for instance, Berardi who refers to *dipositifs* as semiotic engines ‘able to act as paradigm[s] of a series of events, behaviours, narrations, and projection modelling social reality’ (2005)). Given that I am here concerned with how both Foucault and Agamben use the term and that the Italian equivalent of *dispositif* (i.e., *dispositivo*) is both phonetically and morphologically similar to the French one, I opted for the French term, except when already translated in other ways.

that he calls “the universals”, such as the State, Sovereignty, Law and Power’) (Agamben, 2006a; 2009: 7).

Starting from the premises that *dispositifs* are not comprehensible outside the system of heterogeneous ensemble of relations of which they are part, in his *Che cos’è un dispositivo*,<sup>221</sup> Agamben redefines Foucault’s *dispositif* as everything that ‘has the capacity to capture, to direct, to determine, to intercept, to model, to control, to assure gestures, conducts, opinions, and discourses of living beings’ (2006a: 22). In an original reinterpretation, *dispositifs*, says Agamben, are not simply prisons, madhouses, the Panopticon, schools, confessions, factories, etc., ‘whose connection to power is in a certain sense evident’. They are also singular mechanisms, such as ‘the pen’, ‘computers’, ‘mobile phones’ and complex systems such as ‘language’, which Agamben suggests, ‘is, perhaps, the most ancient of all *dispositifs*’ (2006a: 22). Agamben furthermore suggests that, in capitalist societies, there is a proliferation of *dispositifs*, to the point where they invest every aspects of social life. We could say that *dispositifs*, for Agamben, are devices whose connection to capitalism is not self-evident but remains very important. What capitalism does, just like religion did by declaring something sacred, is to remove something from ‘the free use of man’ and in a sense transform it in *dipositif*. *Dispositifs* are, moreover, distinguishable from paradigms. A paradigm can be also a *dispositif* – Agamben offers the example of *oikonomia*<sup>222</sup> and, as for paradigms, *dispositifs* always imply a process of subjectification, which is necessarily and at the same time a process of desubjectification. For Agamben, on the one hand ‘there are living beings (or substances), and on the other, *dispositifs* in which living being are increasingly captured (Agamben, 2006a: 21). However, while paradigms *always* introduce emergency and/or exception, *dipositifs*, such as the pen, do not necessarily do so, although others, such as language, do.

To the extent that both Foucault and Agamben understand *dipositifs* as both discursive and non-discursive, the idea of *dipositif* is pertinent to the context of my analysis. Following Agamben’s own understanding of the term, and Foucault’s characterization of it in terms of

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<sup>221</sup> Translated in English in 2009 by David Kishik and Stefan Pedatella as *What is an Apparatus? and other essays*.

<sup>222</sup> For Agamben the term *dispositif* can be traced back to the Greek concept of *oikonomia* as the administration of the *oikos* (the home) and, more generally, management – a term which, according to Agamben, assumed a primary importance for the Fathers of the Church (Agamben, 2006a). According to him, Foucault’s concept of *dipositif* (as well as Heidegger’s *Ge-stell*) can be linked to this theological legacy; to *oikonomia* (Agamben, 2006a). In his book, *Il Regno e la Gloria* (2007), Agamben takes up a ‘painstaking and erudite investigation’ into the different figures taken by the ‘economy’ in early Christian theology to develop his thesis that Trinitarian theology, Christology and angelology lay the groundwork for an economic theology of government that remains operative in the current dispensation of Western modernity. For a review and critique, see again Toscano, 2009.

both urgency and strategy, the documents chosen here can be understood as part of a governmental *dispositif* of security and as having themselves the capacity to capture, control etc and to produce new relations of power. The NSSs and the ESS can thus be themselves regarded as conceptual or ideological *dispositifs*<sup>223</sup> and as part of a bigger, multi-faceted *dispositif* of security. The NSSs and the ESS have a strategic function in terms of setting the parameters of what is and what is not permissible in the post 9/11-context; they also respond to what they themselves qualify as an urgent need, encapsulated by the signifier ‘9/11’ – this is especially true, for the former documents. Of course, there are differences between the first set of documents and the European Security strategy – their hegemonic power in this respect is clearly dissimilar. Nevertheless, all of these documents exemplify the type of security discourses being given voice today and are to be seen as discourses or practices that help to construct or reconstruct new state forms as ‘the point[s] of strategic codification of multitude of power relations’ (Jessop, 2007a: [n.p.]; 2007b: 68). The idea of government or ‘new forms of state(s)’ as strategic codification of power relations – an idea which according to Jessop’s highly suggestive reading is to be found in Foucault himself – provides a bridge between biopower and a theory of sovereignty; between the problematic of micropowers and of international politics/geopolitics. In this understanding, new forms of state(s) could themselves be understood as *dispositifs*, in the specific sense that they are ensembles of ‘institutional forces acting in and thought the state’ (Jessop, 1990: 270), and the discourses that they produce are to be understood as part of a *dispositif* of security that, as shown in Chapter 1, is increasingly becoming dominant.

## 2.2 Critical Discourse Analysis and Ideology

Drawing from critical discourse analysis (hereafter CDA), a methodological tradition which is directly interested in the study of discourses but whose emphasis is on the critical or on showing ‘connections and causes which are hidden’ (Fairclough, 1992: 9), I explain why and in what sense the US NSSs and ESS should be understood as ideological. Following Foucault’s insistence on historical specificity, I will argue that these documents, as exemplifications of the type of security discourses being given voice in the context of the war on terror, should be analysed as historically specific. But, contrary to Foucault’s explicit rejection of ideology, I believe they should also be investigated as discursive securitization practices that reinforce certain hegemonic ideologies as well as being themselves

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<sup>223</sup> Note that the term ‘conceptual *dispositif*’ is used by Althusser in his essay ‘Ideology and Ideological Status Apparatuses’ (1971) to explain how ideology influences subjects’ behaviours, ultimately producing material effects. I will return to the question of ideology in the next section.

‘ideologically shaped by relations of power and struggle over power’ (Fairclough, 1995: 132).

As a methodological tradition, CDA is not easily definable. It comprehends a plurality of theories and methodologies drawn from a number of traditions (see, for instance, critical linguistics, text linguistics, pragmatics), which researchers have developed and use in a variety of ways (see, for instance, Fairclough, 1989; Van Dijk in Wetherell *et al.*, 2001; Wetherell, Taylor and Yates, 2001 among others). According to Van Dijk, ‘ready-made methods’ are incompatible with CDA because CDA is a ‘perspective’ on doing research which ‘focuses on social problems’ and – in line with Foucault’s understanding of discourse – on the role of discourse in the production and reproduction of power relations and of power abuse or domination (Van Dijk in Wetherell *et al.*, 2001: 95, 96). The emphasis here is on the necessity ‘for a broad, diverse, multidisciplinary and problem-oriented CDA’ (Van Dijk in Wetherell *et al.*, 2001: 97), which will select its methods on the basis of a theoretical analysis of social issues (Van Dijk in Wetherell *et al.*, 2001: 98). CDA stresses the importance of using diverse theoretical and methodological concepts. CDA’s assumption is that ‘texts’ should be studied following methods, which should be firmly grounded in ‘systematic and detailed textual analysis’ (see, Fairclough 1995: 187) but with a strong attention to the ways strategies and processes of power and dominance are enacted and reproduced through these texts (also Van Dijk, 2003). According to CDA researchers, it is not enough to study texts on ‘their own terms’ but texts should be studied *critically* on the basis of theoretical insights with a view in exploring how the dominant forces in a society construct and reinforce discourses that favour their interests.

As Kress points out, what sets CDA off from other kinds of discourse analysis and text linguistics, ‘as well as pragmatics and sociolinguistics’ is its ‘overtly political agenda’ (Kress, 1990) and its emphasis on the relation between discursive practices and wider social and cultural structures, relations and processes (Fairclough, 1993: 135). The presupposition behind the emphasis on the political is that discourses do not simply reflect how the world is – in my specific case, how the US NNSs and the ESS respond to the problem of terrorism and security post-9/11 – rather that they help to construct certain ‘truths’ about it. In other words, discourses are not neutral but have effects on social processes, social institutions, and the social world that are not just real (Fairclough, 1989) but construct particular understandings of the world and thus of how it should be governed by those in power. These discourses are part of what Foucault calls ‘regimes of truth’ (Foucault, 1980), by which he means ‘the ensemble of rules according to which the true and the false are separated and special effects of power attached to the true’ (Foucault, 1980: 132). For Foucault, truth cannot be separated

from knowledge and/or power nor can it become the basis for ‘true subjectivity’. Truth ‘is thoroughly imbued with relations of power’ (1980: 59-60), which means that there is no truth that is innocent of power relations, which transcends them. More specifically, Foucault’s working hypothesis concerns ‘the reciprocal constitution of power techniques and forms of knowledge and of regimes of representation and modes of intervention’ (Lemke, 2007: 2) where regimes of representation are also regimes of truth. This is why, against an arguably partial, but common, understanding of Marxist notion of ideology, Foucault argues, ‘[t]he problem is not changing people’s consciousness – or what is in their heads’ but the ‘regime of the production of truth’ (1980: 133).

In line with his understanding of power as intrinsically relational and his idea of reality as constructed and permeated by discourse, Foucault rejects the notion of ideology and offers three main reasons as to why he thinks ideology is an inadequate concept. Firstly, ideology ‘always stands in virtual opposition to something else which is supposed to count as truth’.<sup>224</sup> Secondly, it refers ‘to something of the order of a subject’; a ‘humanist’ order that Foucault vehemently rejects. Thirdly, it ‘stands in a secondary position relative to something which functions as its infrastructure, as its material, economic determinant, etc.’ (Foucault, 1984: 60). Rejecting both the existence of a universal rationality and of a given subject, Foucault cannot but argue against ideology in the canonical Marxist sense of the term. In his various essays and works, Foucault speaks of forms of knowledge as giving rise to new forms of subjects – for Foucault, ‘the subject’ is an effect of power-knowledge – which further implies that ‘the subject’ is not given but constructed and that the ‘superstructure’ is not dependent on the infrastructure but has a degree of autonomy.

This view, it is fair to say, is not unique to Foucault. The base/superstructure model has been contested by a number of people, including many Marxists themselves,<sup>225</sup> from very different political perspectives (see, for instance, Bell, 1976; Fukuyama, 1992; Laclau and Mouffe, 1985; Hardt and Negri, 2001; Jameson, 1991; Agamben, 2007; Balibar, 1994; Badiou, 2005a), and on a number of counts, not just those offered by Foucault above. The critique

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<sup>224</sup> Foucault is here referring to the opposition between ideology and science – an opposition explicated and defended with force by Althusser (Althusser, 1971) but contested by other Marxists, including Rancière (1985); see also early works by Stuart Hall, such as, ‘The Problem of Ideology: Marxism Without Guarantees’ (1983). For Rancière, Althusser’s defence of the science/ideology distinction fails to recognize that ‘the relation of science to ideology is one not of rupture but of articulation’. It also constitutes a ‘complete distortion of the ideological struggle’, and implies a will to scientifically know how and why the ‘masses’ are caught in the grip of ideological misrecognition and to speak on their behalf (Rancière 1985: 116). For a defence, see Resch, 1992.

<sup>225</sup> Indeed, according to Anderson (1976), much of Western Marxism is based precisely on getting rid of this rather wooden extrapolation from Marx; though there are critical contemporary Marxists, like Cohen (1978), who would still in some sense defend it.

moved by some feminists against orthodox Marxist theories for ignoring that women's oppression is linked to questions of 'culture' to the extent that women are oppressed both as agents of production (as workers or workers' wives) and as 'women' is a case in point (see, for instance, de Beauvoir, 1972 [1949]; Irigaray, 1985; Butler, 1993, 1998). At issue here is not only the question of ideology as only explicable in relation to the economic base, but of the plausibility of a deterministic model for which the base or the economic structure determines the superstructure; although whether Marx and Engels themselves attained to this simplistic model is questionable.<sup>226</sup>

In particular, Foucault rejects what he perceives as 'regulating' principles. Against notions of universality and historical continuity,<sup>227</sup> he suggests that 'nothing in man – not even his body – is sufficiently stable to serve as the basis for self-recognition or for understanding other men' (Foucault, 1977: 153: 351-69, 360). He says, '[t]he forces operating in history are not controlled by destiny or regulating mechanisms, but respond to haphazard conflict' (Foucault, 1977: 154). In other words, for Foucault, history is not and cannot be governed by any single factor, such as the dialectic development of ideas (Hegel), 'class struggle' (Marx) and/or sovereignty or the exception (Agamben) because 'randomness' and discontinuity are ever-present.<sup>228</sup> As he explains, his genealogical analyses do not attempt to uncover how species have evolved or what their destiny will be. Rather, genealogy 'identif[ies] the accidents, the minute deviations—or conversely, the complete reversals—the errors, the false appraisals, and the faulty calculations that gave birth to those things which continue to exist and have value for us [. . .]' (1977: 146). Genealogy's preoccupation is to uncover moments of discontinuity without pretending that there are any underlying or regulating principles that could explain how history works because, for Foucault, 'effective history' (a term he uses in

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<sup>226</sup> This is a problem that has occupied, and continues to occupy, both Marxists and non-Marxists philosophers and political theorists. For a 'rethinking [of] the problem' in terms of the 'relative autonomy' of the state see Jessop, 1990: 101-104.

<sup>227</sup> Although much Marxism has been based on criticizing false universalities and continuities – something which, however, Foucault does not seem to acknowledge – from a Foucauldian perspective, the presupposition of false versus true universalities – notably in Marx's view, the proletariat was a true universal class because it acted in the interests of the majority – is problematic.

<sup>228</sup> Although it is fair to say that in all the aforementioned cases, this is clearly something of an oversimplification. Hegel's 'objective contradiction' influenced the formulation of Marx's theory of history (Rockmore, 2002: 189) and it is well known that there exist many different interpretations of both Engels's and Marx's philosophies of history. In his later writings, moreover, Marx himself seemed to adopt two formulations to explain his historical materialistic thesis: one more overtly 'mechanistic' and 'economistic' that sees revolution as inevitable and one more attentive to the working of ideology (Althusser, 1970). On the other hand, Agamben explicitly rejects a notion of economic as '*causa prima*' (2007: 132) and of history as continuous (see his discussion in *Infancy and History*, 2007a [1993]). In his more recent work and interviews, moreover, he has shifted his attention from sovereign power to governmentality, arguing that 'the arcane of modernity' is not sovereignty or the king but *oikonomia* as governmentality (Agamben, 2008a, 2007b). For some of the problems raised by this shift, see my literature review.

his discussion of Nietzsche) is history ‘without constants’. In other words, an historical or genealogical account is effective for Foucault when it rejects ideas of system, continuity and origin. The task of genealogy is ‘to record the singularity of events outside of any monotonous finality’ (1977: 139).<sup>229</sup>

From the above, we can clearly see why from a Foucauldian perspective an understanding of sovereignty as always and already biopolitical is not acceptable. In Foucault’s view, biopower and biopolitics are not universals aimed at replacing notions like State or civil society. They are historical categories aimed at describing a specific rationality, with all of its proper technologies and *sui generis* material effects (Toscano, 2008). This does not necessarily imply that biopower and biopolitics are unrelated to sovereign power or that the state has no biopolitical, securitizational dimension (Agamben, 1998). The main aim of my analysis is exactly to explore how the relation between sovereign power and forms of biopolitical power, together with what appeared to be as a strong reaffirmation of US state power, is constructed and sustained within these documents. However, it means that one should look at sovereign and biopolitical developments in their specific, contingent configurations. One should look at biopolitical, securitization developments, including those related to the war on terror, as historical phenomena whose connection to the state is to be discerned rather than presupposed.

Foucault’s ‘nominalist critique’ (Foucault, 1991b: 186), which stresses the fact that power is ‘immanent in all social relations, articulated with discourses as well as institutions, and necessarily polyvalent’ (Jessop, 2007a: 35; 1990) allows one to treat discourses as social practices with real, often unpredictable, effects. However, whereas, in my view, Foucault’s attempt to move away from mono-causal explanations of power and of history in which one factor is elevated to meta-historical status is to be welcomed, the same cannot be said for the abandonment of the problematic of ideology (see, for instance, Žižek, 1989; Balibar, 1991; 1994). Without entering the more complex problem on whether Foucault’s theory of power leads to epistemological relativism,<sup>230</sup> I suggest that the following question cannot be evaded. Even if one accepts that forms of knowledge, to remain closer to Foucault’s own terminology, are not completely dependent on material, economic factors, is not one justified

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<sup>229</sup> Note that this is a view accepted by Agamben (see note above) but that his search for ‘the *arkhē*’ (origin) or ‘*hidden matrix*’ (or hidden force that operates in history) renders somewhat less convincing.

<sup>230</sup> For a positive answer see, for instance, Taylor, 1984; Habermas, 1990. For a counter but critical view of Foucault’s work for re-affirming that which he wanted to contest (i.e., ‘an objective gaze’), see Newman, 2005: 177. For a more sympathetic view, see, for instance, Kumar, 2005a. See also footnote 135 above and the discussion below, which, although not directly with the question of relativism, offers a view of why it is in my view necessary to discern between forms of knowledge.

in asking what enables some discourses to dominate over others and whether dominant discourses of security and exception reflect certain economic, material and geopolitical interests? Put differently, what I am suggesting is that the fact that all forms of knowledge are linked to power in the sense of constituting particular subjectivities (the terrorist, the subject of security, etc.) does not preclude some forms of knowledge to dominate over others. Nor does it eliminate the likelihood that elites and dominant players, such as the US, and, to a less degree the EU, will always try to maintain their economic interests and position of power. The fact that those interests might not be simply economic, or straightforwardly understandable in economic terms, but political, or exactly the same for all those involved,<sup>231</sup> that the attempt to preserve them might in fact result in instability and/or produce opposite, often indeed haphazard effects, is not the same as to say that they do not exist.

It is my contention that discourses on and of security, such as those that will be analysed in Chapter 3 and 4, cannot be analysed as discourses that bear no relation to particular political hegemonic ideologies or ‘systems of ideas’ (neoliberal, neoconservative, interventionist, imperialist, nationalist/globalist, racial, humanitarian etc.). Nor can we simply accept the idea that we live in a post-ideological world in which ideology is, justly perhaps, but solely used to demarcate the beliefs of ‘the Other of parliamentary democracy’, as Toscano aptly called it (2006b), or, to use a much contested expression, ‘Islamofascism’ as it is was labelled by George W. Bush, some journalists, and pundits (see, for instance, Bush, 2005; Hitchens, 2007; Savage, 2005; Podhoretz, 2008). To do so means to accept the terms of these discourses and to fail to recognize that, as Althusser has pointed out, ‘one of the effects of ideology is the practical *denegation* [or *disavowal*] of the ideological character of ideology by ideology: ideology never says, “I am ideological”’ (Althusser, 1971: 164, emphasis original).<sup>232</sup> It also means avoiding the thinking of the ideational aspect of ideology or the aspect which refers, not to illusory ideas as such, but to ‘idealist’ views. [T]hat is, “idealist” not in the ontological sense, but in the sociological, thereby indicating beliefs or theories about society that ignore or downplay the role of “material”, economic factors’ (Mills, 2003: 73; see also Lock, 1976; Balibar, 1973<sup>233</sup>).

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<sup>231</sup> The EU, for instance, might have somewhat different interests than those of the US. EU member states themselves, moreover, have shown and continue to show differences in their approaches against ‘the threat of terrorism’.

<sup>232</sup> Althusser uses this idea to explain: 1) that ideology has a material existence and ‘always exists in an apparatus, and its practice, or practices’ (1971: 166) 2) the interpellation of ‘individuals as concrete subjects’ (1971: 173).

<sup>233</sup> Whereas Mills attempts to revalue the term, both Lock and Balibar use idealist in the negative to refer to a conception of ideology that ignores contradictory (material) relations – ideology as false consciousness. However, in spite of this difference, the thrust of the argument is the same.

Although agreeing with Foucault that power relations do not *simply* reflect or realize the intentions of the powerful few (Kumar, 2005a: 8), nor are they simply conceivable in economic terms, diverging from him (and from Agamben, who does not explicitly deal with this question),<sup>234</sup> my claim is that these strategic discourses do reflect and reinforce certain geopolitico-strategic, economic, political interests. The version of reality put forward in these documents, moreover, is certainly an idealized one – to adopt Marx’s words, it gives ‘its ideas the form of universality, and represent them as the only rational, universally valid ones’ (Marx and Engels, 1970 [1845]: 177). For instance, in this version of reality American greatness and its role in defeating fascism and communism is emphasized, while crucial historical facts, such as the history of slavery and of colonialism, which are fundamental to an understanding of the present, are denied. This is not to say that the ideas in these documents are to be considered as simply false. Indeed, as Agamben says, ideas used to justify the war on terrorism, such as the idea that ‘we’ all share certain values – values that are not to be questioned and that presumably unite us all as in the now commonly used expression ‘our way of life’ – are ‘so radically imbued in society that they are to be taken literally’ (Agamben, 2006). They are abstract but real – ‘real abstractions’ in Marxist terms – in the sense that they function concretely, or to adopt Foucault’s formulation, they have real effects. Nevertheless, the ideas expressed in these documents are clearly not to be accepted on their own terms. They are to be analysed as ideological and as discursive practices that reflect the attempts of powerful players to set the standards of what is and what is not permissible; of what is to be secured and what does not even deserve to live. Contrary to Foucault who, as we have just seen, rejects the notion of ideology<sup>235</sup> but also Agamben to an extent<sup>236</sup> (also see

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<sup>234</sup> As LaCapra says, ‘Agamben offers no sustained inquiry into the ideology and practice of perpetrators’ (La Capra, 2007: 137).

<sup>235</sup> Although it is interesting to note that despite his later explicit rejection of the notion of ideology, Foucault was less reluctant to use the term in the mid-1970s, when for instance he argued that ‘[t]he control of society over individuals is not conducted only through consciousness or ideology, but also in the body and with the body. For capitalist society biopolitics is what is most important, the biological, the somatic, the corporeal’ (Foucault quoted in Hardt and Negri, 2000: 27). What this implies is that, for Foucault, the notion ideology retained some use; although he clearly was already critical of it and thought that biopolitics and ideology were to be kept separate. However, my contention would be that biopolitical practices themselves cannot be understood without references to the question of ideology because 1) the subject of biopolitics, i.e., the body or life, is also an idealized version and instrumentalized projection; 2) even though biopolitics cannot be reduced to the ‘who and where questions’, these are questions that still need to be asked.

<sup>236</sup> Although there is no sustained engagement with the question of ideology in Agamben, neither do we find a rejection of the term, which, on the contrary, is employed by him on more than one occasion. In *The Open* (2004c: 77), for instance, Agamben uses the term ‘humanitarian ideology’ to describe the process by which ‘posthistorical humanity takes on its own physiology as the last impolitical mandate’, at the same time as the traditional historical potentialities (poetry, religion and philosophy) that have kept the historico-political destiny of people awake are eclipsed (2004c: 77). In *Homo Sacer* (1998: 133), he further suggests that the ideology of contemporary NGOs seems able to defend life only in the

LaCapra in Calarco and DeCaroli, 2007: 137), I believe that that the question of the ideological underpinnings of these discourses and their placements within broader ‘systems of ideas’ is a crucial one. By analyzing these discursive practices as practices of security and exception that are related to particular ideologies and are themselves ideological, in the sense of both reflecting and reinforcing certain power relations while being shaped by them, and of putting forward an idealized version of reality, this thesis hopes to provide a more convincing interpretation of how they are to be connected with Foucault’s theory of biopower and Agamben’s understanding of sovereignty.<sup>237</sup> That is to say, it hopes to provide an interpretation that as opposed to simply accepting these discourses on their own terms challenges the ideological premises on which they are based, their idealized views, and some of their hegemonic effects.

### **2.3 Selection of Documents and Analysis Related Procedures**

In this section, I discuss how documents were selected and the rationale for collecting these particular texts. Moreover, I provide further details of how documents were analysed, why looking at these documents is important and offers a way to go beyond ‘methodological nationalism’. I will suggest that, although there is a sense in which Agamben himself challenges the idea that sovereign power corresponds to the territorial borders of the state, because, as noted in the previous chapter, when it comes to discussing how the state of exception functions, he only focuses on specific national cases, he ends up accepting ‘methodological nationalism’. My choice of documents and related analysis attempts to go beyond this by emphasizing how ‘the (state of) exception’ is indeed becoming dominant at a national, as well as at European and international levels, and at how this mode of governing is generalized on a planetary scale through war, securitization practices and an instrumentalization of international law.

Agamben’s insight that the borders of sovereign power do not *necessarily* correspond with the territorial borders of states because, as Vaughan-Williams points out, in Agamben, ‘the concept of the border of the state is substituted by the sovereign decision to produce some life as bare life’ (Vaughan-Williams, 2009: 116), is an important one. It represents a challenge to the inside/outside model of sovereignty for which the borders of sovereign power coincides with the territorial borders of states (Vaughan-Williams, 2009). However, it is fair to add that

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figure of ‘sacred’ or ‘bare’ life and, therefore, is complicit with the exclusionary logic against which NGOs purportedly struggle.

<sup>237</sup> According to Kumar (2005a: 7), Foucault was also interested in uncovering ‘broader strategies for social control or domination’ but not in tackling these types of questions directly.

it remains unclear whether this objective is fully and satisfactorily accomplished and not merely for the reason Vaughan-Williams offers, that is, the fact that Agamben's notion of sovereignty ultimately reintroduces a sense of interiority and exteriority, albeit throughout society (Vaughan-Williams, 2009). But also because in Agamben's oeuvre there is no discussion of other forms of the state or changing forms of sovereignty in relation to what he regards as the 'basic principle of state politics': security. This is despite the fact that, as he himself suggests, security is never simply confined within the borders of states but finds its 'end in globalization' (Agamben, 2002: [n.p]). By looking at how security discourses are formulated by the US and the EU, I hope to provide evidences of how new forms of sovereignty are also being articulated through the discourses on the exception and security and how the question of biopolitics figures within them.

After having tracked down a number of key policy documents that specifically deal with 'the new threat of terrorism' and other security issues, a selection of three white papers, including the EU's white paper on security,<sup>238</sup> were chosen for this research. They are: the 'National Security Strategy of the United States of America' (2002; 2006), and 'A Secure Europe in a Better World: European Security Strategy' (2003).<sup>239</sup> The two US documents will be analysed together as part of my first case study, while the latter will form the basis of my second case study. These are all formal documents written from a governmental perspective after September 11, 2001. As argued in the introduction, 9/11 is taken as the date of reference for this thesis not because I accept the idea expressed in these documents that the 9/11 events mark the beginning of 'a new era' but because of its acquired status as a phenomenon of international significance – a significance that is itself performed by documents of this sort, along with a virtually infinite array of different ones. I start from the presupposition that 9/11 has been, and continues to be, instrumentalized to enforce certain types of warfare and securitization policies both at US national and at a European, international level.

Other important documents, such as the 'Declaration of National Emergency by Reason of Certain Terrorist Attacks' or the 'Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act', commonly referred to as the USA Patriot Act both issued in 2001 (in September and October respectively) were also considered for analysis but discarded for two main reasons. Firstly, these texts were strictly legal and would have made comparison with the other chosen EU non-legal document

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<sup>238</sup> Note that this is the first time that Europe has formulated a joint security strategy. It was drafted under the responsibilities of the EU High Representative Javier Solana.

<sup>239</sup> Full references to the documents are provided in the bibliography. All three documents are public and easily accessible (e.g. through the Internet).

difficult. Secondly, although national legislation does sometimes apply to external affairs – the Patriot Act being a case in point, as it includes provisions to facilitate electronic surveillance by law enforcement and the FBI, which according to some authors, have potentially broader implications on phenomena such as e-commerce and Internet activity (Smith *et al.*, 2002) – their scope of action is primarily national. This would have limited what could have been said in relation to how configurations or forms of sovereign power relate or are entangled with mechanisms of global biopower. Since the aim of this thesis is to go beyond ‘methodological statism’ (i.e., the idea that the state and its sovereignty should be the main unit of analysis), without, nevertheless, discounting the force of law and the power of sovereign states, I have decided to opt for a twin focus on US and a European texts. Evidently, the selected texts are not a true representation of the full range of governmental narratives on security and terrorism. Nevertheless, in view of their breadth (these security strategies tackle both ‘conventional’ or ‘traditional’<sup>240</sup> and ‘non-traditional’ security questions) and of their character (one national and one international); looking at these documents will facilitate an analysis of securitization strategies that is not exclusively state-centric.

In selecting and analyzing these documents, I hope to clarify how the discourse on terrorism as exception, together with mechanisms of (bio)security and the discourses they mobilize, work at the national level and how they shape and ‘are invested or annexed by global phenomena’ (Foucault, 2003: 31). More specifically, an analysis of these texts will help explain how exactly the leading state in the war on terror, namely the US, and the EU, an entity that is *potentially* comparable in power to the US<sup>241</sup> (see, for instance, Rifkin, 2004; for a counter-view see Kagan, 2002) and whose relation to the former is arguably important, although clearly not straightforward<sup>242</sup>, respond to ‘the threat of terrorism’ and deal with questions of security post-9/11. Even if, *de facto*, a ‘European’ security strategy is not yet fully developed and the EU is, at present, hardly comparable in power to the US, especially on militarily grounds, its *actual* ideological and strategic role in the war on terror is arguably not irrelevant and might also provide some clues on its future role in ‘post-9/11 world’. As

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<sup>240</sup> I.e., questions that relates to defence; to the national security of the territorial state defined mainly in military terms (see Gärtner *et al.*, 2001: 1).

<sup>241</sup> Where the emphasis here is clearly on potentiality, considering also the difficulty in defining Europe and that ‘European institutions that represent the genesis of potentially unified European foreign and security policies are in an embryonic state whose further development is uncertain’ (Coonen, 2006: [n.p.]).

<sup>242</sup> On US-EU relations and how they have developed since 9/11, the literature abounds. See Balibar, 2004; Garton Ash, 2004; Kagan, 2002. See also Lindstrom, *et al.*, 2003; Gordon and Geramy, 2004; Serfaty, 2006; Smith and Steffenson in Hill and Smith, 2005; the House of Lords report ‘A fractured Partnership? Relations Between the European Union and the United States of America’, 2003.

noted in Chapter 1, Agamben argues that, faced with the unstoppable progression of ‘global civil war’, the state of exception increasingly becomes the parading of government in contemporary politics. Having already criticized the notion of ‘global civil war’, the analysis of the aforementioned post-9/11 documents will help assess the validity of Agamben’s claim against the background of Foucault’s analysis of biopolitics and the latter’s emphasis on forms of governmental power that seek to secure and preserve the life of populations. It will help elucidate if and how securitization mechanisms are becoming the norm in international foreign politics and the extent to which these mechanisms are subsumable to sovereign power, or instead are to be understood as related but not necessarily as one and same with sovereignty, as Agamben seems to be suggesting.

As formal security foreign policy discourses, these documents offer insights into how the United States and the European Union respond to what they themselves define as the terrorist threat and other so-called security problems post-9/11. In particular, they provide clues on the ideal-construction of the problem of terrorism as emergency threat, in the US case, and as growing strategic threat in the European case, and the mechanisms of (bio)security established to combat it. They can be considered as examples – not in the Agambenian sense but in the more general sense as instances of ideological discourses – which, together with a number of security mechanisms, such as anti-terrorist laws, surveillance equipments, etc., are part of today’s global neo-liberal ‘regime of (in)security and terror’; a regime that they arguably also help to construct and establish.<sup>243</sup> As such, an analysis of these texts will help to shed light on how mechanisms of (bio)power relate to the paradigm of exception and regime of security as constructed by the US and the EU and how these mechanisms are sustained by certain ideological, strategic motifs, such as the idea that only people who share certain values ought to be protected. Whether there are specific differences in motifs between the US and EU and how these variations are to be understood is one of the questions this thesis aims to articulate and address.

As mentioned above, the NSSs and the ESS are broad in their outlook, tackling issues of ‘global security’ not only in relation to the war on terror (also constructed as a global phenomenon)<sup>244</sup> but also in connection to humanitarianism, democracy and freedom. As such,

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<sup>243</sup> Note that in light of the fact that Foucault understands a *dispositif* as an ensemble consisting of discourses, institutions, regulatory decisions, laws, etc., we could, and, in fact, I have indeed spoken, of ‘a security *dipositif*’ as opposed to ‘a security regime’. Here, however, I have opted for ‘security regime’ for the word regime seems to better capture the hegemonic dimension of this particular *dispositif*. In Foucault, the distinction between the term *dispositif* and regime is not clear-cut.

<sup>244</sup> The terms ‘global war on terrorism’ and ‘global struggle against violent extremism’ – an expression soon dropped – are instructive in this regard.

they enable a number of questions to be asked that are important to an understanding of the construction of '(bio)sovereignty' and 'biopolitical security' at both national and global level in relation to these issues and ideals. Accepting Agamben's idea that security is increasingly becoming a new paradigm of government, albeit with some qualifications (see chapter 1), I will ask how specifically does '(bio)securitization' emerge as a dominant global form of bio-sovereignty and/or biopower in the post-9/11 context? What is the relationship between 'the (state of) exception' and changing forms of sovereignty and sovereign authority? How do certain ways of speaking the truth about sovereignty, security and its objects come to be permissible and even compulsory in the present? In addition, how do these ways of speaking conform to and/or challenge Agamben's model of (bio)sovereignty and Foucault's understanding of biopolitics? Lastly, I want to ask how the conception of foreign policy presented in these documents fits in or challenges what some authors see as an imperialist project.

My theoretically informed critical discursive analysis of the NSSs and the ESS intends to explore these questions. To do so, the analysis and interpretation of these documents will be based on the assumptions developed in the previous chapter, namely, that the relation between sovereign power and biopower is neither one of incommensurability nor one of homogeneity. Insofar as life is included in the mechanisms and calculations of the state through a decision on the exception, sovereign power is biopolitical (Agamben, 1998). Nevertheless, biopower is not reducible to sovereign power. As Foucault explains, practices of biopower carried out in the name of protecting life and health are 'exercized from innumerable points' (Foucault, 1978: 94), in the sense that they involve an array of agencies, professionals and authorities considered competent to speak the truth of life, and thus, to act, on human beings (see also Bigo, 2008). As preliminarily suggested in Chapter 1, what unites biopower and sovereign power in the present are practises of global (bio)securitizations, which, apart from being integral to the construction of the US state in globalist terms, are connected to and annexed by geopolitical dynamics. The analysis will draw on this conceptualization and on the idea that a particular type of racism plays an important role in making the life of some (those classified as actual or potential terrorists) appear less worthy, and consequently, the exercise of killing ('sovereignty's old right') possible in the war on terror. In analyzing the ESS, I accept and accommodate Foucault's idea that the state is but one location of political power. By comparing the US NSSs and the ESS, I will show exactly how sovereign power and forms of biopower are connected in practices of security. The

methodological rationale for comparing the US NSSs and the ESS documents can be summarized as followed: both the NSSs and ESS are foreign policy documents written after 9/11 as answers to what they consider a changed environment; both deal with questions of security, in particular with what they regard as new threats (terrorism principally but also other types of ‘threats’); both are written from a governmental perspective and as such offer means to understand the type of dominant discourses being produced today with respect to these issues (see also Chapter 1).<sup>245</sup>

Against the accusation of ‘interpretative positivism’, whereby linguistic data are used as a way of confirming decisions and interpretations already arrived at concerning the meanings of a text (Fish quoted in Hyatt, 2005), however, I will not simply rely on these and on the other concepts developed in Chapter 1 to interpret texts. I will also be attentive to themes and ideas that emerge from the documents themselves. This will allow a focus on contextual and processual elements (Walsh in Seale, 2001: 231) as well as a comparison between themes explored in Chapter 1, such as the idea that security is what links biopower and sovereign power, and emergent themes. The aim, however, is not to merely follow an *inductive* or data-based method (naturalism), which would inevitably create the illusion that observations are free from theoretical presuppositions or that observations simply precede theoretical conceptualizations (Walsh in Seale, 2001: 231). A merely inductive approach would also contradict Foucault’s methodological insights about the relation between power-knowledge. A data-based method presupposes that there are natural laws governing phenomena and that these laws can be apprehended by simply observing them. Accepting that knowledge is imbued with power implies rejecting the idea that there are essential, transhistorical and/or natural laws governing social phenomena. How social phenomena come to be known cannot be separated from what the phenomena is, therefore, conditions of knowledge, such as how certain ideas of security emerged over a period of time (see Chapter 1), are part of what one has to explore. Rather, the rejection of a merely deductive method and the defence of a sociological use of paradigms follows a concern for socially objective, ‘situated knowledges’ (Haraway, 1991) as opposed to ‘epistemological relativism’, on the one hand, and ‘analogical’ or transcendental thinking, on the other. It follows a concern for producing knowledge that is ‘objective’ but not neutral. This is because, as Foucault argues, theoretical or analytical discourses cannot be neutral to the extent that they are ‘all permeated or underpinned by an imperative discourse’ (Foucault, 2007: 17-18). However, what this means is not that one should accept that there are no possibilities for producing valid theoretical or

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<sup>245</sup> On the appropriateness of comparing the US and the EU from a political and historical perspective, see Chapter 1 and 2.

analytical accounts of a phenomenon, or that, in order for a theoretical or analytical discourse to maintain a degree of effectiveness, the theorist, as Foucault says, has to ‘[n]ever engage in polemics’ (Foucault, 2007: 4; 1997). Rather, as suggested by Foucault himself, a theorist should be attentive to the process of knowledge production (again see my discussion of security in the previous chapter), as well as, to the real forces involved in the production of a given phenomenon, without necessarily renouncing the possibility of taking sides and of producing valid knowledge from a committed, critical perspective.

In this specific case, what I will provide is a socio-political analysis and critique of chosen texts based on a plausible account of the relation between sovereignty and biopolitics. It is my belief that sociologists should question dominant understandings of the world and what are seen as self-evident truths (Bell, 1993: 48) – such as the idea that the idea of the state as of protector of rights and of a ‘balance’ between security and liberty – while, at the same time, trying to uncover hidden relations and structures of domination. Concurrently, they should strive to produce valid accounts of what it is that they are studying based on both theoretical and empirical ‘evidences’ that do not downplay the complexity of the phenomena at hand, but do not reduce the object of analysis under question to it. In other words, sociologists should not use the idea of complexity as leverage against the very possibility of distinguishing between partiality and partisanship. Research is never neutral, never simply descriptive, or unrelated to systems of ideas. Nevertheless, this does not necessarily mean that all research is partial in the sense of being biased. One can be openly partisan – that is, one can openly take sides – while at the same time being very much concerned with producing valid accounts of the phenomenon under investigation (for a counter-view, see Hammersley, 2000).<sup>246</sup>

## **2.4 Why the National Security Strategies?**

The formulation of a national security strategy on the part of the US is required by law. Specifically, the demand for these documents originates in section 603 of the Goldwater-Nichols Department of Defense Reorganization Act of 1986<sup>247</sup> (Public Law 99–433; 50 USC. 404a), which requests that the US President transmit to Congress annually ‘a report on the

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<sup>246</sup> In his book, Hammersley explores various accounts of partisanship in social research. Although he would agree that not all are unconcerned with validity, he argues that ultimately all these accounts fail to address their internal inconsistencies, biases, and that only a Weberian or value-neutral perspective can obtain objectivity. Although I disagree with many of Hammersley’s claims, his account of partisanship is very helpful in clarifying what is at stake in some of these debates.

<sup>247</sup> The Goldwater- Nichols Department of Defense Reorganization Act of 1986 (Public Law 99–433–Oct. 1, 1996; 50 USC. 404a).

national security strategy of the United States'.<sup>248</sup> Although National Security Strategies (hereafter NSSs) have no legal force of their own, according to Baker they do serve as a guidepost for agencies and officials drawing up policies in a range of military, diplomatic and other arenas (Baker, 2006). What this thesis is concerned with, however, is not to find out whether and how the documents influence policies or whether they are the result of policies (i.e., whether there is a reverse flow or feedback within the process of writing them); but to delineate their strategic, ideological and political underpinnings and effects.

To begin with, we can affirm that the NSS documents' function is to outline what the major national security concerns of the United States are and how the US administration plans to deal with them at both a national and global level. Their aim is not to provide well-defined national guidelines for combating terrorism<sup>249</sup> – and in fact, they did not specify the legal conditions for their implementation other than in a very vague and general sense<sup>250</sup> – but to affirm the general framework for the management and administration of security post-9/11. Although the documents are complex in their articulation, with the geopolitical and socioeconomic levels of analysis intersecting and being superimposed on one another, the language used is quite straightforward, making them easy to read. These papers are strategic in the sense that they help to construct the problems of security as well as the framework and means through which they ought to be confronted. Thus, for instance, it is by codifying certain people as 'extremists', that it becomes possible to exclude them from the political debate and to 'include' them in camps like Guantánamo if caught. They are also strategic as they combine to produce the effects that they name, bringing to life a geopolitical imaginary mirroring and supporting the particular logics of the US-led war on terror. Specifically, what they intentionally generate (more on intentionality versus Foucault's emphasis on the strategic below) is a particular knowledge of populations and of how to manage and defend them, of the state (including so-called 'rogue states'), and of sovereignty, which in turn presupposes and constitutes relations of power, or, as is perhaps best described in this case, relations of 'inclusive exclusion' and domination.

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<sup>248</sup> Since 1986, 12 reports have been published; two during the 2<sup>nd</sup> Reagan administration (1987, 1988), three by the George Bush Sr. administration (1990, 1991, 1993), six by the Clinton administration (between 1994-1999) (in Haine and Lindström, 2002), and two by the George W. Bush administration (2002, 2006). The current Obama administration has published its strategy in May 2010.

<sup>249</sup> Some of these guidelines are defined in the 2003 National Strategy for Combating Terrorism, and specified in legislations, such as, the Homeland Security Act of 2002 (Public Law 107-296). See also the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458), and the Protect America Act of 2007 (Public Law 110-055), among others.

<sup>250</sup> There are only few references to specific legislations in the documents.

Drawing on Agamben's latest book *Il Regno e la Gloria: Per una genealogia teologica dell'economia e del governo* (2007), we can further suggest that the NSS documents are part of a ceremonial apparatus of political power. That is to say, their efficacy consists in being able to affirm themselves both 'metapolitically'<sup>251</sup> and mediatically. In this book, whose aim, among others, is to explore the ways that power in the West has tended to take the form of an *oikonomia* (or of a governmental machine), the key question for Agamben is why power needs 'glory' [gloria]. Power, says Agamben, needs glory because it is through the latter that it can build consent and, thus, survive. Using Agamben's ideas of consent as bounded up to power as glory, albeit in a different context, it can be argued that one of the implicit objective of these documents was to build consent by setting the parameters upon which 'decisions' regarding security ought to be framed.<sup>252</sup> Their aim was not simply to make the US administration's objectives known to the Congress but to make them known to and accepted by their allies. The way the US administration attempted to gain the consensus of their allies, however, was not simply, or even mainly, by persuading other states of the coherence of their foreign policy but by stating the limits of what was and was not negotiable in the fight against terrorism. In other words, NSSs are hegemonic in a peculiar kind of way. Their force, even though not exactly a force-of-law, consists in extracting compliance based on their ability to create a framework upon which decisions about foreign policy generally, terrorism and security specifically, are to be taken. It arises from their capacity to get their aims accepted by the Senate, to whom the documents are primarily addressed, and US allies, through persuasion ('we are in this together') and rhetorical coercion ('either you are with us or you are with the enemy').<sup>253</sup> By declaring its right to engage in pre-emptive wars in the NSSs, the US forces its allies to choose, in the knowledge that this choice could have very much split them.

Moreover, it is worth noting that these documents, although not perhaps widely read were amply discussed in many newspapers (and not simply US based)<sup>254</sup> and have become the

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<sup>251</sup> Note that the use of the adjective metapolitically bears no connections to Badiou's notion of politics as 'truth procedure' as outlined in *Metapolitics* (Badiou, 2005b). It is used here in negative, more in Rancièrian terms (1995: 99), to designate a specific *hegemonic* mode of policing or 'policy' that attempts to bring the people under the aegis of sovereignty.

<sup>252</sup> It is not a case that the EU security strategy is conceived by some exactly as 'the European answer' to the strategy of the United States (see, for instance, Reiter and Frank, 2004).

<sup>253</sup> These are sentences used in speeches by George W Bush (quoted in Hirsh, 2002: 21), but similar rhetorical devices can be found in the NSSs. Thus, for instance, the NSSs presents the US as part of a bigger Western alliance, namely 'the coalition of the willing', at the same time as it advocates preemptive war and unilateral warfare.

<sup>254</sup> In the US see, for instance, Baker (2006) in the Washington Post, where he discusses the 2006 National Security Strategy, in particular the role of preemption. Articles also appeared in the New York Times and the Washington Times. In the UK, the Guardian and the Times published many

focus of many theorists working in the areas of security, geography and international relations and law (see, for instance, Gray, 2002; Kristensen, 2006, Doyle, 2007).<sup>255</sup> In the Washington Times (2006), Baker claimed that '[t]he White House gave advance copies [of the 49-pages National Security Strategy 2002] to The Washington Post and three other newspapers'. This places these documents within the broader field of governmental propaganda. It shows how there was what could be called a strategic attempt, of which the NSSs were only but very important part, on the part of the US administration to influence public opinion, which, although not exclusively formed in the mainstream media, is undoubtedly influenced by it. A strategic attempt, which, it is plausible to assume had the effects it had also because of American hegemonic power. It was because of its hegemonic position that the United States was, arguably, able to get certain securitization discourses accepted. Whether a majority of people worldwide accepted the NSSs is clearly highly debatable.<sup>256</sup> But they certainly found a broad consensus within the US, as confirmed by the Bush re-election in 2004, and among some of its allies, namely those of 'the coalition of the willing'. Were these documents written on behalf of a different state, for instance, it is not unjustified to assume they would not have had quite the same mediatic and political impact. Their massive impact justifies why we should look at them.

This is not to say that the acceptance of certain ways of understanding and speaking about security is fully attributable to US hegemonic power. As I have argued in Chapter 1, it is also the result of a broader shift in understandings of security, which started at the end of the Cold War. Nevertheless, even though the ideas about security put forward in these documents are not exclusively American and, especially in their more radical exemplifications, may seem less plausible today, it is still important to analyse them closely. As argued above, the effects of these type of discourses are far from over, as the continuation of securitization policies in the forms, for instance, of criminalization of people – in particular migrants – and dissent, amply demonstrates (Toscano, 2009; Chang, 2002). Their pervasiveness, moreover, as discourses that rely on the proposition that 'our lives' (i.e., the lives of citizens in Western

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articles mentioning and/or discussing the strategies. In Italy, the 2002 document was discussed in the *Rivista del Manifesto* (Portelli, 2002) and in *la Repubblica* (2002). *Il Corriere della Sera* (2005) published a speech by Collin Powell the then Secretary of State in which he explains the national security strategy of the United State, referencing frequently to the 2002 NSS. These are just a few examples.

<sup>255</sup> See also the many reports of the Strategic Studies Institute of the US Army War College at <http://www.strategicstudiesinstitute.army.mil/pubs/topic.cfm?cat=5&year=2004>. Those of *Pagine di Difesa* (an Italian site of international politics and defence) at <http://www.paginedidifesa.it/index.html>. Also see Yost, 2003.

<sup>256</sup> Judging from the protests against the Bush administration's foreign policy held throughout the world in the months after the invasion of Iraq, the answer is unambiguously negative.

democracies) need to be under the control of state power and techniques of government and that all which constitutes a threat to them need to be eliminated, is something that needs to be taken very seriously.

When analyzing the NSSs what needs to be considered is also *who* produced them and *why*. This is because, even though to put too much emphasis on intentions might risk losing sight on unintentional mechanisms or effects, following what Kumar refers to as an extreme ‘anti-intentionalist’ stance (i.e., a stance that does not take into account the intentions of those producing specific discourses) is never justified (see Kumar, 2005a: 7).<sup>257</sup> Foucault’s insistence that biopower is not simply identifiable with a person or group and about the necessity of analyzing power at the ‘micro’ level in terms of governmental technologies is correct and to this extent Agamben’s ‘grand’ critical theory and his focus on sovereignty as always and already biopolitical risks undermining or contradicting this understanding. Nevertheless, my claim is that an understanding of the war on terror and of the securitization and exceptional practices that accompany it cannot leave out of consideration the ‘macro’, geopolitical level and the reasons why the US decided to wage war and others important political actors to take part in it. From a geopolitical perspective, it is evident that the why question is linked to the question of imperialism broadly defined, and of how the US and the EU position themselves within the global economy. In this respect, the NSSs served a very specific dissimulating and mobilizing function. They are instruments of power used by one of the most, if not the most, powerful nation in the world to try to impose a certain vision of sovereignty, security, terrorism, and, ultimately, of the world itself.<sup>258</sup> Evaluating how sovereignty is operationalized by the US administration and, by default, the US state (Weber, 1995: 3), how the administration constructs security within them, and in what sense does this construction form part of the articulation of bio-sovereignty or biopolitics or both is one of the main aims of the analysis of the NSSs.

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<sup>257</sup> Kumar attributes an ‘anti-intentionalist stance’ to Foucault and argues that ‘[t]aken to the extreme such “anti-intentionalist” strictures seem [to me] far from justified’ (ibid).

<sup>258</sup> Note that a non- ‘anti-intentionalist’ stance such as mine is not the same as an individualist stance whereby *individuals’ explanations* are accepted as providing the true reasons for their actions. It would indeed be wrong to reduce phenomena to explanations in terms of the beliefs and psychological dispositions of the agents because, as Marx and Engels stressed, the particular environmental and socio-historical contexts in which people act is of fundamental importance, and so is their socio-economic and political position in ‘global’ hierarchies of power. Neither Foucault nor Agamben, moreover, are methodological individualists.

## 2.5 Why the European Security Strategy?

In contrast to the US case, the formulation of a security strategy for 'Europe' is not required by law. 'A Secure Europe in a Better World' (2003) represents the first European Security Strategy (ESS) to date. It was adopted by the European Council on 12 December 2003 as an attempt to develop a common strategic vision for the whole of the EU. Its force, moreover, is arguably different from that of the NSSs. Despite being a body whose authority already circumscribes those of the other member states in certain important respects, as argued in Chapter 1, the European Union as a cohesive entity still has limited power when it comes to certain matters. In particular, although the EU has considerably power on matters of trade, finance, currencies, employment and welfare, member states retain ultimate power over matters concerning security, defence and military action. This is not, however, to suggest that the EU power in matters of security and defence is unappreciable, as proved by the extension across Europe of 'an enhanced policing capacity – one comprising a complex, ever-shifting mix of informal professional networks, inter-governmental co-operation, and nascent supranational institutions (notably Europol)' (Loader, 2002: abstract; Bigo, 2000; Bigo and Guild, 2005). Its scope of action, moreover, is continuously being extended. According to Biscop, an academic directly involved in drafting of the ESS (Bossong, 2006), the importance of a European Security Strategy, the first of its kind, should not be underestimated (Biscop, 2004; 2007). He notes, for instance, that the ESS document is omnipresent in EU discourse, in statements by European as well as other policy-makers, in the debate in think tanks and academia (Biscop, 2007: 3). And he adds, '[w]hatever the motivation [of member states], the important thing is that this [i.e., the development of a strategic concept] enabled the decisive step to launch a strategic debate in the EU, to translate policy practice into strategy'; a debate which, according to him, 'far exceeds the specific issue of Iraq' (Biscop, 2004b: 7-8).

Pertinently, many authors working in the areas of international relations and security studies support the idea that the ESS is of significance. Despite accepting that the Iraq war was indeed a major factor for its development (Heusgen, 2004: 29), in line with Biscop above, they suggest that the reasons leading to the drafting of the strategy also had to do with specific internal and geopolitical considerations (although they do not frame it exactly in these terms).<sup>259</sup> Specifically, what these authors argue is that the ESS cannot be understood outside of European unification process and 'recent' US foreign policy. For them, the ESS is to be seen as an answer to the US doctrine in the context of a European security development

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<sup>259</sup> See, for instance, Reiter and Frank, 2004: 2, 3; Biscop, 2004; Pullinger, 2007.

already in process.<sup>260</sup> Although not exclusively a reaction to the NSS – to the extent that the development of a European Security and Defence Policy (ESDP) can be said to have started earlier<sup>261</sup> – the impression that the ESS is to be understood as an answer to the NSS of 2002 finds further confirmation in the fact that the ESS uses a similar language to that of the NSS both in terms of rhetoric and of concepts employed. Its function, moreover, is also arguably very similar to that of NSS documents. As for the NSSs, the ESS does not aim to provide detailed guidelines for action but to set out the very general ‘principles, priorities and modus operandi of how the EU intends to protect and promote its security’ (Pullinger, 2007: 2). In the words of the former Director of the Policy Planning Unit of the Secretariat General of the Council of the European Union, Christoph Heusgen, who was also involved in the drafting of the document, the ESS ‘makes a common analysis of security threats and challenges and it delineates ways of dealing with them’ (Heusgen, 2004: 30). To this extent, the ESS should also be considered as part of today’s hegemonic *dispositif* of security.

One of the main aims of the analysis with respect to the EU will be to evaluate how its constructions of security and ‘exception’ compare to those of the US, as analysed in my first ‘case study’. How does the EU respond to the Bush administration’s attempt to create what is in effect a ‘new’ international order based on ‘exceptional’ measures and pre-emption? Is there a role for pre-emption in the ESS? And if so, what is it? By drawing on my literature review and on analyses of European security discourses and policies, I will compare the EU and US strategies and evaluate if and how the former reinforces or challenges the latter’s constructions of sovereignty and security. More specifically, I will analyse the EU strategy paying particular attention to how key concepts – such as that of sovereignty and security analysed in the previous ‘case study’ – are constructed in the ESS. Is the idea of security proposed in the ESS the same than the one outlined in the NSSs? How does it differ? Does the ESS offer the same or a different idea of terrorism than the one we find in the NSSs? What understanding of sovereignty and exception does the ESS rely on? True, the EU is not a state. Nevertheless, considered in the context of Agamben’s ‘generalized state of exception’ on which I have offered my own original interpretation and expansion in Chapter 1, and

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<sup>260</sup> In particular, Reiter and Frank name the drafting of a European constitution, whose process started in 2001 Europe but was later rejected by France and the Netherlands in referendums in May and June 2005, whereas Biscop mentions the creation of the European-Mediterranean Partnership (EMP) in 1995 and of the European Security and Defence Policy (ESDP) in the late 1990s. See also Algieri (2006: 133), even though, for him, the ESS document has to be considered less of an answer to the NSS than ‘a reference for the broad orientation of the EU as a global actor’ (Algieri, 2006: 114).

<sup>261</sup> A European Security Defence Policy can be said to have started with the Maastricht Treaty (1992) and a common foreign and security policy (CFSP) with the Treaty on European Union (1992). For more information on this, again see the European commission website at <http://europa.eu/scadplus/leg/en/s05002.htm> where both treaties can also be found.

which has the potential of trespassing fixed national boundaries, the EU document provides an interesting case study. Not only, as previously argued, does the drafting of the ESS point to drives within the EU to construct Europe as 'state-like', but the EU strategy cannot be dissociated from the US strategy for countering terrorism in the post-911 period. It has emerged as an answer to the US strategy, placing itself within the framework provided by the US administration at the same time as the ESS arguably has helped to expand this same framework in a specific way. The ESS will therefore be mined for insights into how Europe as a 'cohesive' or 'state-like' entity places itself in relation to the US, a sovereign state, and on how its own understanding of 'sovereignty', security and war problematizes and/or reinforces US sovereignty, generally, and 'the generalization of the (state of) exception', specifically. A comparative analysis of US and European security strategies will enable an evaluation of mechanisms exception, biopower and security, without reducing them to what Bigo calls, 'a specific state of exception with one sovereign actor, one unique moment, one unique justification' (Bigo, 2006b: 50; see also Connolly, 2007). Importantly, against Agamben's notion of the exception as the product of the sovereign decision, Bigo argues that the exception should be analysed as 'a specific form of governmentality' (2006c: 51) – a form of governmentality based on routine technology and surveillance. Whilst Bigo's understanding of the exception could be viewed as eliding the question of the (re)assertion of sovereign power in the contemporary context of the war on terror, it has the virtue of troubling an easy distinction between, on the one hand, the sovereign's right to kill and, on the other, governmental strategies to manage and protect life, without simply conflating the two. My own analysis of US and EU security strategies can also be seen as attempting to problematize this distinction; to offer evidence of how the persistence of sovereign power is enabled by practices of bio(security), and how sovereign power and biopower as a form of governmentality are entangled in practice.

### **CHAPTER 3**

#### **US Quest for Global Power**

This chapter will be dedicated to the analysis of US National Security Strategies, 2002 and 2006. By drawing on my theoretical framework, the chapter will analyse these securitization discourses not simply as strategies of (bio)power (Foucault, 2003) but as strategies of (bio)power that bear a specific relation to the US state and that attempt to create the conditions for the implementation of a generalized state of exception (Agamben, 1998, 2005a). More specifically, it will trace how in the US NSSs a concerted effort is made to construct what I will describe as a ‘global (bio)security emergency-state’, which I suggest acts as precondition for the generalization of the state of exception as well as being fundamentally imperial. The chapter will argue that there are many ways in which the Bush administration tried to globalize the US state to make it appear as that which guarantees people’s security. In particular, it identifies five. Each of them will be analysed in subsequent sections.

In section 3.1, I explore how references to the end of the Cold War and the discourse of anti-totalitarianism, which help to create an image of America as morally superior, are essential to the construction of ‘a new historical phase’. In turn, it is by claiming that what is happening is new; that we are in the presence of a new totalitarian threat that the US can justify its ‘moral grammar of war’ (Weber, 2006: 154) securitization and hegemonic role in the war on terror and claim a global role for itself. In this section, I will also look at how these discursive repertoires have started to develop during the late 1990s and are common to a whole set of people in US elites (and not only). The section will be the basis for the following discussion.

The second, and, perhaps, most important way because it underpins all the remaining five, in which the US government attempted to globalize the US state is described in section 3.2. In this section, I will show how the construction of a ‘global people’ or more specifically of ‘freedom-loving people everywhere’ (NSS, 2002; 2006) is functional to the configuration of the USA as a ‘global state’. I argue that this construction involves processes of politicization and de-politicization, and that it is that which ultimately enables the US administration to claim normative control over populations and facilitates the distinction between ‘freedom loving people’ and ‘enemies of freedom’, which is discussed in section 3.3. In section 3.2, I will also show some of the contradictions implicit in the construction of a ‘global people’ by drawing on both Agamben’s understanding of ‘a people’ and Schmitt’s conceptualization of the state.

In section 3.3, I will discuss how the distinction between friend ('freedom-loving people everywhere') and enemy ('enemies of freedom') seemingly conforms to Schmitt's notion of the political and of the state as nationally bounded, at the same time, however, as it creates the conditions for the normalization and generalization of the exception (Agamben, 1998; 2001; 2003; 2005a), thus, facilitating the establishment of 'a new world order'. By configuring the enemy as global and as the outside of law, the US government can claim the right to kill 'terrorists' whenever and wherever they are in the name of protecting 'freedom-loving people everywhere'. In the section, moreover, I will draw on Foucault's conceptualization of 'state racism' to show that it is indeed 'something akin to racism' that works to distinguish between 'us' and 'them', or to use Foucault's words, 'to introduce a break into the domain of life within what must live and what must die' (Foucault, 2003). More specifically, I show that the structure of disavowal by which the US administration denies that 'Muslims' are the object of policy discourse and practices when in actual fact they are is based on a form of racialization, which works by disassociating 'good' from 'bad' Muslims at the same time as Islam and Muslims generally are implicitly associated with terrorism. Moreover, I will point out that the association of Islam with terrorism started after the end of the Cold war (Philipose, 2007) and more specifically with the Clinton administration.

In section 3.4, I will argue that even though within these strategies terrorism is given the greatest emphasis, the two documents make no fundamental distinction between types of problems. This, I suggest, is important. While it is by naming terrorism as the number one threat facing America that the US can engage in a war which appears to have no limits (permanent global warfare), it is by making no distinction between internal and external security, security and war, friends and strangers that the US can affirm its power over 'life' itself in a biopolitical sense.

In section 3.5, I will discuss how, although perhaps, not very successfully, the Bush administration tried to globalize the state and establish what I call a form of imperial extraterritoriality in practice. I will suggest that the US attempted to enforce its power globally through 'unilateral war', which it justified through an appeal to international law and which is also, and at the same time, paradoxically, the negation of the rule of non-intervention. I will offer two concrete examples of how exactly what I have called the 'unilateral internationalism' of the United States functioned at times when the law was 'in force without significance'. These are the decisions to go to war against the Taliban in Afghanistan, and against Iraq. Furthermore, drawing on my discussion on imperialism, I will

question the extent to which these wars can be explained simply in terms of regression or of a *coup d'Etat* inside and against Empire (Hardt, 2004; Hardt and Negri, 2006).

Finally, in section 3.6, I will expand on the theme of war and its relation to imperialism. I argue that, in the aftermath of September 11, the idea of *permanent global warfare* to be thought in order to defend security seems to have become the new driving force of US 'Empire' and that this has implications for international law in the form of an undermining of its main principle.

### **3.1 Historical Periodization: A 'New' Phase**

The first way in which the Bush administration attempted to make the US state appear as that which could guarantee people's security and freedom (where security takes precedence over the former) was by presenting the war on terror in terms of signalling a major break with preceding historical eras (this remains the case). Although highly contestable, this view gave legitimacy to claims 'about an emergency situation, about the need to suspend the conventions of a politics as usual, about the necessity to wage a war, about the need to engage in a new confrontation between [new reconfigured] friends and enemies' (Bigo, 2006:a [n.p.]). This section explores how references to the end of the Cold War and the discourse of anti-totalitarianism all help to achieve this goal by creating an image of the US as 'the greatest force for good on this Earth' (Bush, 2004); as the best equipped state to confront what the documents term a 'new totalitarian ideology' (NSS, 2002).<sup>262</sup> What it shows is that these references help to construct an image of a benevolent, moral America that in turn legitimizes its self-assured securitization and hegemonic role in the war on terror. The section also looks at how these discursive repertoires are common to a whole set of people in US elites and traces their lineage back to the late 1990s. It was during the late 1990 that a particular neoconservative discourse, as developed by the members of the 'think tank' PNAC and as that which informs securitization policies analysed here, emerged.

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<sup>262</sup> The idea that the United States occupies a privileged position in the world has a long history. It can be traced back at least to de Tocqueville who, in *Democracy in America* (2000), argued that the United States was exceptional (where the word exceptional, however, assumes a different meaning than that given by Agamben – exceptional here means exemplary, unique) because of its democratic character. President Bush, it is fair to say, was not the only President who thought that the United States held a special place among nations. For instance, Regan (1974), Bush H. W. (quoted in McMahon, 2000: 233) and the then not yet President Barck H. Obama (2007) among others, have all used an expression coined by Lincoln (1862) in the context of 'giving freedom to the slave', to dub the US 'the last, best hope of man on earth'. On American exceptionalism, see, for instance, Lipset, 1996; Madsen, 1998; Ignatieff, 2005b.

There are many ways in which the war on terror is presented in both National Security Strategies (2002; 2006) as delineating ‘a new historical phase in the history of mankind’ (2002). The most prominent one is by constant references to the end of the Cold War, which according to the papers also signifies the end of ‘totalitarianism’, the triumph of ‘freedom, democracy, and free enterprise’, and the beginning of ‘a new historical phase’ (i.e., the phase of the war on terror). This historical phase, it is argued, is characterized by ‘new asymmetrical enemies’ whose capabilities differ if compared to those of the previous one (the Soviet Union in this case) but whose goals, aspirations and determination make them particularly dangerous; ‘an imminent threat’ (NSS, 2002: 15). Here are two examples from the documents themselves:

The great struggles of the twentieth century between liberty and totalitarianism ended with a decisive victory for the forces of freedom—and a single sustainable model for national success: freedom, democracy, and free enterprise. In the twenty-first century, only nations that share a commitment to protecting basic human rights and guaranteeing political and economic freedom will be able to unleash the potential of their people and assure their future prosperity. People everywhere want to be able to speak freely; choose who will govern them; worship as they please; educate their children—male and female;<sup>263</sup> own property; and enjoy the benefits of their labor. These values of freedom are right and true for every person, in every society—and the duty of protecting these values against their enemies is the common calling of freedom-loving people across the globe and across the ages (George W. Bush, 2002: preamble).

The United States is in the early years of a long struggle, similar to what our country faced in the early years of the Cold War. The 20th century witnessed the triumph of freedom over the threats of fascism and communism. Yet a new totalitarian ideology now threatens, an ideology grounded not in secular philosophy but in the perversion of a proud religion. Its content may be different from the ideologies of the last century, but its means are similar: intolerance, murder, terror, enslavement, and repression (NSS, 2006: 1).

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<sup>263</sup> It is interesting to note how the adjectives male and female are here used. Firstly, they are used to reinforce the idea that education is a universal right. Secondly, and perhaps more importantly, to implicitly re-affirm the idea held by the Bush’s administration that all those embracing this ‘new totalitarian ideology’ – later on named as terrorists – do not value their children’s education, especially that of women.

From these paragraphs, we can see that the construction of the war on terror relies upon a very particular understanding of history and moral discourse. That is to say, a mythologized, romanticized and distorted historical and moral discourse for which the references to fascism and communism bear no contextualization whatsoever and are only mentioned to the extent that they enhance US symbolic power as a force of good. In these documents, fascism and communism are one and the same – they are both part of what these documents identify as totalitarianism.<sup>264</sup>

Although not uncontested (Losurdo, 2002, 2004; Traverso, 2002; Guilhot, 2005; Žižek, 2005b), the naming of fascism and communism as the totalitarian ideologies of the twenty century among both politicians and intellectuals is certainly not exceptional (see, for instance, Popper, 1963; Arendt, 1973; Furet and Nolte, 2001; Talmon, 1952<sup>265</sup>). It is well-known, for instance, that Arendt herself describes both fascism and communism as totalitarian ideologies and, to this extent, it can be argued, and certainly not without reason, that she sides exactly with the vision of history described here. Similarly Foucault, who never explicitly mentions ‘totalitarianism’ in his discussions, speaks about the Nazi state and Soviet-state as representing, albeit in different ways,<sup>266</sup> two manifestations of the transformation of racism into State racism or biological racism, in a sense also conflating the two. However, in authors such as Foucault and Arendt the conflation of the two is arguably mainly (although perhaps not exclusively)<sup>267</sup> aimed at a denunciation of ‘technologies of (total) domination’<sup>268</sup> *per se* (Arendt, 1973; Foucault, 2003),<sup>269</sup> whilst Agamben, although also very much concerned

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<sup>264</sup> For a brief but insightful genealogy of ‘totalitarianism’, which shows both how the term developed during the Cold War as an asset of propaganda for a specific *idea* of democracy against the threat of communism both internationally and domestically; and how in the words of the author it ‘facilitated complex political realignments’, see Guilhot, 2005: 33-45. See also Traverso, 2002.

<sup>265</sup> In his *The Origins of Totalitarian Democracy*, Talmon links the French Revolution and the Russian revolution in an anti-liberal continuum. For an excellent critique, see Losurdo, 2002.

<sup>266</sup> Both in terms of the mechanisms employed by them to achieve such transformation (2003: 82-83) and of the situation to which they responded, which Foucault argues were indeed quite specific (2003: 276).

<sup>267</sup> On Arendt’s shifting positions *vis-à-vis* the USSR, see Saunders, 1999; see also Losurdo, 2002. For a critical take on Foucault’s anti-totalitarianism, see Christofferson, 1999; 2004.

<sup>268</sup> The idea of ‘total’ power or domination, however, is Arendt’s not Foucault’s. As previously outlined, Foucault’s theory of power attempts to move away from a normative or sovereign understanding power (see Chapter 1). This explains the use of parentheses on my part.

<sup>269</sup> Arendt in particular argues that totalitarian ideologies become so in their pursuit of total domination; thereby, implying that totalitarian solutions are not exclusive of these two ideologies – (her condemnation of ‘the development of totalitarian methods’ in Israel is well-documented (see, for instance, Losurdo, 2004: 29)), with Foucault seemingly following Arendt on this. He says, “[...] in many respects, fascism and Stalinism simply extended a whole series of mechanisms that already existed in the social and political systems of the West’ (Foucault quoted in Bertani *et al.*, 2003: 276), implying, similarly to Arendt (1973: 459), that the deployment of equally violent mechanisms of power within ‘liberal societies’ is also a real possibility. On this later point see also Agamben (1999, 1988); although interestingly Agamben never mentions totalitarianism in relation to this.

about how and when power becomes totalizing, mentions totalitarianism only in relation to the Third Reich and Nazism. In these texts, instead, the naming of ‘totalitarianism’ serves a very specific political and strategic purpose. It enabled the Bush administration to claim a global role for itself, which it would have otherwise found more difficult to affirm. Specifically, the naming of fascism and communism as the totalitarian ideologies of the 20<sup>th</sup> century and the reference to their end enables the positioning of the United States as the uncompromised saviour of what the documents refer to as ‘freedom-loving people everywhere’, whose freedom, according to them, is threatened by a ‘new’ but a no less dangerous ‘totalitarian ideology’. It helps to create an image of the US as ‘a force of good in the world’, whose objectives (‘rid the world of evil’) and strategies (of which more will be said in the sections below) are to be accepted without or little question. By implying that the US is morally superior, this discourse also provides a solution to what Weber has identified in her discussion of post-9/11 films as ‘the aged-old problem of how to balance morality with security’ (Weber, 2006: 117).<sup>270</sup> It says, because of its history, or to put it in Perry Anderson’s words, because the United State ‘had fought the good cause’ (Anderson, 2005: 162), it is a more credible international actor. For this reason, it is more capable to deal with the questions of security in post-9/11 era – an era that the strategies see as threaten by a new ‘totalitarian ideology’.

Both from an historical and analytical perspective, it is interesting to note that this discourse did not emerge in a vacuum.<sup>271</sup> Not only, as we have just seen, does it make use of familiar but contested ideas to project US power but we can note several resonances between this official narrative and the discourse presented by the members of PNAC (Project for the New American Century)<sup>272</sup> – a neo-conservative ‘non-profit, educational organization’, ‘whose goal’, as stated on their website, ‘is to promote American global leadership’. PNAC was an organization composed mostly by members of the Republican Party and the Bush Administration but also by some renowned scholars. Among others, it counted Dick Cheney, Richard Perle, former US Secretary of Defence Donald Rumsfeld, Robert Kagan and Francis

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<sup>270</sup> Weber is specifically referring to the ‘mythologized American WWII story’ told in many of the films she analyses but I think her argument can be extended to the historical ‘narratives’ analysed here.

<sup>271</sup> The role played by ‘think tanks’ generally, and the PNAC specifically, in the process of formulation of the NSS documents should not be underestimated. ‘Think tanks’ of various types did play a role in their formulation as confirmed by the fact that issues addressed in these documents were discussed and published by major ‘think tanks’ such as the above, but see also, for instance, the Center for Security Policy (CSP) at: <<http://www.centerforsecuritypolicy.org/>>. For a chronological exploration of the evolution and impact of ‘think tanks’ on US foreign and domestic policy, see Smith, 1991. See also Guilhot, 2005.

<sup>272</sup> The PNAC’s official website can be found at: <http://www.newamericancentury.org/>. The account had been suspended in 2008. It is now up again, although its last input dates back to 2006.

Fukuyama<sup>273</sup> and Paul Wolfowitz, who, already in the late 1991, during the Bush Snr. Administration, wrote a controversial document, the ‘Defense Planning Guidance’,<sup>274</sup> in which it was claimed that the US’s role was ‘to show the leadership necessary to establish and protect a new order’. The similarities between these two discourses – that of the National Security Strategies and the PNAC’s discourse – are striking and they need closer attention. They seem to confirm that the war on terror has indeed ‘been implemented in a manner that articulates a pre-planned neo-conservative agenda [...]’ (Bormann, *et al*, 2005; see also, Wood, 2004: 160; Bialasiewicz *et al.*, 2007: 412; the BRussells Tribunal Commission’s Conclusions, 2004<sup>275</sup>).

Their shared statement of principles reads, ‘[h]aving led the West to victory in the Cold War, America faces an opportunity and a challenge [...]. The history of this century [the 20<sup>th</sup> century] should have taught us to embrace the cause of American leadership’ (1997). This is in line with the National Security documents, whose emphasis on American leadership is analysed above, and so are many other reports written since the establishment of the PNAC in 1997. As noted by Bialasiewicz *et al.* (2007: 410), ‘[p]utatively lying outside “formal” policy networks, the Project from its inception has aimed to provide the intellectual basis for continued US military dominance – and especially the willingness to use its military might’. The ‘Rebuilding America’s Defense’ (2000), for instance, maintains not only that ‘America should seek to preserve and extend its position of global leadership’ but that it should seek to do so ‘by maintaining the pre-eminence of US military forces’ – an idea again central to the National Security Strategy of the USA.<sup>276</sup> Moreover, ‘The Right War for the Right Reasons’ (2004: [n.p.]) report specifically treats the 20<sup>th</sup> Century as that which ‘spawned the twin evils of totalitarianism’. Again, as in the examples from the NSSs, it is through the reference to the end of the Cold War and the discourse of ‘anti-totalitarianism’ that the idea of American global leadership and the consequent imperative to rid the world of its new alleged

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<sup>273</sup> Fukuyama was among the signatories of a letter sent to Bush on September 20, 2001, which argued that ‘even if evidence does not link Iraq directly to the attack, any strategy aiming at the eradication of terrorism and its sponsors must include a determined effort to remove Saddam Hussein from power in Iraq’. However, soon later, he started to distance himself from this type of interventionist policy (see, for instance, Fukuyama, 2004; 2006).

<sup>274</sup> The DPG also called for the US ‘to oppose European efforts to achieve a foreign policy independence’ (Gibbs, 2009: 113).

<sup>275</sup> The BRussells Commission is a network of intellectuals, artists, and activists who ‘denounce the logic of permanent war promoted by the American government and its allies’ in the tradition of the Russell Tribunal – note the play in the name – set up in 1967 to investigate war crimes committed during the Vietnam War. ‘The BRussells Tribunal: Conclusions of the commission’ are available at: <<http://www.brussellstribunal.org/Conclusions.htm>>. Of particular relevance here are conclusions number 2 and 6.

<sup>276</sup> How the idea of pre-emption or pre-emptive war relates to the formation of a ‘global security state’ is analysed below. See section 3.6.

totalitarian manifestation (terrorism) emerges. The reference to the end of the Cold War and the discourse of anti-totalitarianism is formative of the idea of American global leadership (Guilhot, 2005) and in turn legitimizes its self-assured, securitization, hegemonic role in the war against terrorism. America has no need of legal justification for its war, ‘for its record in defending democracy [and freedom] in the three decisive battles of the twenty century – the First World War, the Second World War and the Cold War – [gives] its *de fact* pre-eminence an ethical legitimacy’ (Anderson, 2005: 162).

Having established the main aims of the aforementioned historical ‘narratives’, their connotative meanings and briefly looked at how these discursive repertoires are common to a whole set of people, I proceed to make a number of observations that I regard as fundamental for understanding the implicit assumptions that is behind the construction of the USA as ‘global state’.<sup>277</sup>

### **3.2 The Construction of a ‘Global People’**

The construction of a global people or more specifically of ‘freedom-loving people everywhere’ (NSS, 2002; 2006) is functional to the configuration of the USA as a ‘global state’. It is through this construction that the imperative to secure ‘the people’ is globalized (that is, it becomes global in its extensibility) and that the normative control over populations or a ‘global people’ is established. It is also that which facilitates the distinction between ‘freedom loving people’ and ‘enemies of freedom’<sup>278</sup> (of which more will be said in section 3.3). By drawing on both Agamben’s understanding of ‘a people’ and Schmitt’s conceptualization of the state, this section analyses how this construction is achieved in these documents, while showing some of the contradictions implicit in it.

As observed in Chapter 1, Agamben suggests that the term people is always split between ‘The People’ of the body politics and ‘the people’ that do not have rights and are excluded (by inclusion) from politics (Agamben, 1998). Consequently, for him, the term people is intrinsically ambiguous because it refers to both the excluded and the politically included citizens. In this respect, it is interesting to observe that the ambiguity of which Agamben speaks is clearly detectable here. Within these documents, the naming of the American people functions exactly to exclude another set of people which, as we shall see, cannot be part of

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<sup>277</sup> The concept ‘global state’ was first used by Martin Shaw in his book *Theory of the Global State: Globality as an Unfinished Revolution, 2000* to describe a new structure of global power, essentially Western, that emerged after the 1989. I use the term in a similar, although not identical, way – where the main difference between Shaw’s notion of global state and mine is the relation (or non-relation in Shaw’s case) of the latter to imperialism.

<sup>278</sup> Bush used the expression ‘enemies of freedom’ in his first Address to the Union after 9/11, 2001.

the same body politic on the basis that ‘they’ do not share the same values of those that constitute it. Summarizing the objectives of the 2002 US NSS, the 2006 strategy states, [t]he security environment confronting the United States today is radically different from what we have faced before. Yet the first duty of the United States Government remains what it always has been: ‘to protect the American people and American interests’ (NSS, 2006: 18; NSS, 2002), clearly implying that the American people’s interests are a priority and not the same as those of other people. On the other hand, however, what we can also observe is that those who constitute the body politic are not themselves, not even rhetorically,<sup>279</sup> ‘sovereign’ (i.e., the People) as in ‘we the people’ of the American constitution’ but simply ‘objects’ among others ‘objects’ (i.e., other people) of sovereign power as the following sentences makes plainly clear:

‘These values of freedom are right and true for every person, in every society—and the duty of protecting these values against their enemies is the common calling of *freedom-loving people* across the globe and across the ages’ (Bush, 2002: preface, emphasis added).

‘The United States must defend liberty and justice because these principles are right and true for all *people everywhere*’ (NSS, 2006: 2, emphasis added).

Contrary to an understanding of people as ‘American people’ (see quotation above), here there is a shift in the meaning of ‘the people’ where the ‘the’ of ‘the people’ of the American constitution is replaced by ‘a freedom-loving people’, which remains ambiguously linked to the nation, but is no longer sovereign. Within these documents, people are no longer that which founds sovereignty as in modern notions of popular sovereignty or of ‘the people’ as the constituent power of ‘the state’ (see, for instance, Rousseau, 1968 [1762]; see also Negri, 1999). Instead, they are politicized – and concurrently *de fact* depoliticized – as part of a ‘global people’. In other words, they are constructed as the powerless subject of human rights, or freedom-loving interventionism, though they constitutively cannot act. They are part of a ‘global people’, and as such, they always require the US military apparatus as their universal representative. From a notion of the people as that which constitutes the body of the citizens of the American constitution and its jurisdiction, these documents pass to a *freedom-loving people* that remain vaguely linked to the nation (insofar as ‘they’ – the American

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<sup>279</sup> I say rhetorically because, as we have seen, for Agamben the concept of ‘popular sovereignty’ is from its very inception (i.e., the French Revolution) always intrinsically ambivalent.

people and freedom loving people – all share the same values) but are *everywhere* to be secured.

In truth, a notion of people as American people (or national people) was not completely rejected by the Bush administration; on the contrary. In line with Schmitt's understanding of 'the endeavor of a normal state' as outlined in my discussion of Schmitt in Chapter 1, the protection or security of 'the state and its territory' (Schmitt, 1996: 46, 52)<sup>280</sup> has always been one of the main priorities of the US government. 'Ultimately', the 2002 document states at the end, 'foundation of American strength is at home. It is in the skills of our people, the dynamism of our economy, and the resilience of our institutions' (2002: 31). However, in order to facilitate the construction of the United States as a 'global state', the Bush administration also had to invent a 'freedom-loving people' and to make *them* the object of biopolitical securitization discourses and practices. Fundamental to this construction of 'people' is an idea of freedom as potentially universal and of war as that which will eventually satisfy the conditions for it. More specifically, it is through the rhetoric of freedom that unpolitical or non-political people (both as national and global people) becomes politicized as 'freedom-loving people everywhere' as opposed to people who 'love only terror and violence'. In Bush's words, 'they hate us because we are free' (Bush quoted in Cornell, 2004: viii) and any attack on the United States was, for him, an attack on freedom *in itself*. Freedom, or what is in fact best regarded as a particular vision of it, that is, 'economic freedom' in the particular sense of Western capitalist liberal democracy,<sup>281</sup> becomes the means through which one set of people – freedom-loving people everywhere – is distinguished from another – enemies of freedom – and made the object of biopolitical security and violence.

As it will be analysed in more details in the section below, the idea that there exists an 'American people' to be safeguarded against external threats<sup>282</sup> seems to confirm Schmitt's understanding of the state as that which decides on the exception 'and determines the decisive friend-and-enemy grouping' (Schmitt, 1996: 43). In actual fact, this conception is both

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<sup>280</sup> 'The *protecto ergo obliquo*' ['I protect therefore I am obeyed'], says Schmitt, 'is the *Cogito Ergo Sum* of the state' (1996: 52).

<sup>281</sup> In the words of the 2006 strategy, 'the liberty to create and build or to buy, sell and own property is fundamental to human nature and foundational to a free society'. The document sees economic freedom as 'a moral imperative' (NSS, 2006: 27). This reinforces the opinions of authors, such as Harvey, who have pointed out that it is 'freedom, interpreted as freedom of the market and of trade, that subtends the US administration thinking and that the Bush administration in particular wanted 'to be imposed upon Iraq and the world' (2006b: 9).

<sup>282</sup> For an analysis of how this idealized self-portrait of contemporary US American-ness contrasts with 'the always fractured US and the plurality of citizens', see Weber's series of film "I Am an American": portraits of post-9/11 US citizens', 2007.

confirmed and refuted. The decisionist element is clearly confirmed. However, these documents do not wholly conform to such a conception of the political in their naming of ‘freedom-loving people everywhere’ or a ‘global people’ and effort to extend US sovereign power on a global scale. The attempt to create a global state is antithetical to Schmitt’s notion of the political as developed in his *The Concept of the Political* (1996); although, as observed in Chapter 1, in his *Nomos of the Earth* (2003) Schmitt also pointed out what he saw as a tendency toward an America-centric world order. Thus, although seemingly reinforcing Schmitt’s vision of the political as based on the distinction between the friend and the enemy to an extent, in their framing of the US state as global, the NSSs go beyond it. By framing the war on terror as a war which takes the globe as its field, it is waged in the name of a globalized humanity against a global enemy, the US attempts to extend sovereign power beyond the control of its own territorial boundaries in order to create the conditions for a new form of imperial extraterritoriality or *nomos*.

In this section, what I have demonstrated is that the US relied on a vision of people as global to construct itself as a global state. I will now show how it configured the war on terror as premised on the friend/enemy distinction in a very specific sense, before proceeding to analyse other important ways through which the US administration attempted to globalize the US state as a precondition for the generalization of the state of exception.

### **3.3 The Friend/Enemy Distinction**

This section further discusses how the distinction between friend (‘freedom-loving people everywhere’) and enemy (‘enemies of freedom’) seemingly conforms to Schmitt’s notion of the political and of the state as nationally bounded whilst it creates the conditions for the normalization and generalization of ‘the (state of) exception’ (Agamben, 1998; 2001; 2003; 2005a). By configuring the enemy as global and as the outside of law, the US government can claim the right to kill ‘terrorists’ wherever they are in the name of protecting ‘freedom-loving people everywhere’. The section, moreover, draws on Foucault’s conceptualization of ‘state racism’ to show that it is indeed ‘something akin to racism’ that works to distinguish between ‘us’ and ‘them’, or to use Foucault’s words, ‘to introduce a break into the domain of life within what must live and what must die’ (Foucault, 2003). More specifically, it shows that the structure of disavowal by which the US administration denies that ‘Muslims’ are the object of policy discourse and practices, hides a form of racialization, which works by disassociating ‘good’ from ‘bad’ Muslims at the same time as Islam and Muslims generally are implicitly associated with terrorism. Moreover, it notes that the association of Islam with

terrorism started after the end of the Cold War (Philipose, 2007), and more specifically with the Clinton administration.

As previously discussed in Chapter 1, according to Schmitt, the existence of a state must be understood through ‘the specific political distinction [...] between friend and enemy’ (Schmitt, 1996: 26). To the extent that in these documents the war on terror is conceptualized as a war between friends and enemies, it implicitly seemingly conforms to Schmitt’s notion of the political. However, as mentioned above in relation to the construction of a global people, the war on terror also operates at the level of populations and geopolitics, while adding what Žižek has called ‘a reflexive twist’ to the concept of the political (Žižek, 2003). That is to say, by constructing the friend as ‘freedom-loving people’ and ‘the enemy’ as ‘new’ type of asymmetrical global enemy ‘with no positive legal status’, it bypasses the international law which regulated relations between states since its inception (Žižek, 2003). At the same time, the war on terror is creating the conditions for the normalization and generalization of ‘the state of exception’ as described in Chapter 1. Although the framing of the enemy in existential terms – they (i.e., the terrorists) do not share the way of life and values of the United States and of the ‘free world’ – does implicitly correspond to Schmitt’s understanding of it (see Schmitt, 1996: 51); its globalization also goes beyond this specific understanding of the enemy in some important respects. In this case, the figure of the enemy is not so much constitutive of the state as ‘the specific entity of a people’ (Schmitt, 1996) or national people but of the state as ‘global state’, consequently, of the state as the entity of a ‘global people’ as analysed in the previous section. It was on the basis that the US claimed it was acting in the name of a globalized people against a global enemy that it attempted to globalize its state and to make it appear as that which could guarantee the global people’s security.

More specifically, in the ESSs, the enemy is not identifiable with a nation – although nations that support terrorism are also and most definitely enemies: ‘[t]he United States and its allies in the War on Terror make no distinction between those who commit acts of terror and those who support and harbor them, because they are equally guilty of murder’ (NSS, 2002: 5; NSS, 2006: 12). The enemy is a ‘new’ type of enemy ‘with a global reach’ (NSS, 2006: 8). ‘The enemy is not a single political regime or person or religion or ideology. The enemy is terrorism – premeditated, politically motivated violence, perpetrated against innocents’ (NSS, 2002: 5). Among other characteristics, it is distinguished from the friend (i.e., the American state, its people and ‘freedom-loving people everywhere’) by religious intolerance, its hate for freedom and democracy, its disregard for life and capacity to strike everywhere (NSS,

2002; NSS, 2006). Moreover, the 2006 document stresses the non-centralized nature of terrorists' networks and their reliance 'on smaller cells to achieve their results' (NSS, 2006:9).

Contrary to traditional definitions of *justus hostis* or the legally recognized enemy (see Schmitt, 2003; also Douzinas, 2003); according to these documents, the enemy is someone with whom, by definition, one cannot deal. The 2002 document states, '[t]raditional concepts of deterrence will not work against a terrorist enemy whose avowed tactics are wanton destruction and the targeting of innocents; whose so-called soldiers seek martyrdom in death and whose most potent protection is statelessness' (NSS, 2002: 17). In other words, the enemy is configured as total enemy; as an enemy whose life is unworthy (Schmitt, 1996; see also Derrida in Borradori, 2003).<sup>283</sup> It is constituted as an exception. It is the outside of law – terrorists, terrorist organizations and 'states that harbor them' show 'no regard for international law' (NSS, 2002: 14), thus, do not fall under the purview of protections afforded by it – with which the law must nonetheless maintain a paradoxical relation (see Agamben, 1998; 2005a). By positioning the terrorist outside of law (national laws did not apply to it but neither did, according to the Bush's administration, international laws), the US, as that which decides on the 'global exception', attempted to create the legal or extra-legal conditions for the internment and/or annihilation of those with whom it says it cannot negotiate. By configuring it as global enemy or exception, the US government could claim the right to kill the enemy in the name of protecting 'freedom-loving people everywhere' wherever he/she was. Among others, the terrorist is a figure of 'inclusive exclusion' in both the Agamben's sense of being inside and outside of (national) law (Agamben, 1998) but also in the sense of being included in the 'international community' by being placed outside of it (international laws do not apply to him/her). In the words of the 2002 document, '[t]he purpose of our actions will *always* be to *eliminate* a specific threat to the United States or our allies and friends' (NSS, 2002: 16, emphasis added). To this extent, it could be argued that there is nothing new about American foreign policy. However, by attempting to extend sovereign power in the name of protecting a 'global people' (that which, as previously analysed and is confirmed here, is both national and global) from a specific global threat or a 'globalized *homo sacer*', the US assumed for itself the right 'to take life or to let live' (Foucault, 1999) whoever, whenever and wherever they were. In name of protecting 'the global People' from 'global enemies', the sovereign has, or at least feels justified in assuming it has, the right to kill with impunity whoever and wherever it identifies as threat.

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<sup>283</sup> In Schmitt's classic formulation: "a total war calls for a total enemy" (as opposed to what Schmitt would consider as 'real enmity') (Schmitt, 2003; 1996).

Drawing on my analysis of Foucault in Chapter 1, something else that is important to highlight is that although, within these documents, the enemy is not presented in strictly racial terms, the US administration did, however, rely on ‘something akin to racism’ (Bell, 2004) to distinguish between ‘us’ and ‘them’, or to use Foucault’s own words, ‘to introduce a break into the domain of life within what must live and what must die’. In particular, in these texts, this distinction is re-articulated in terms of a cultural clash between the US, its values, religious beliefs and way of life and ‘shadowy networks of individuals’ and a small number of rogue states linked by hate, whose only aim is to bring violence and terror to the Western world because their ‘directives’ – presumably religious ones – command them to do so (Bush, 2001a). Far from being explicit, however, the language chosen for this re-articulation of ‘racism’ is carefully selected. These documents are for public consumption and written with a specific audience in mind. They are not a hasty response to 9/11. They are a calculated governmental strategic effort to convince the Congress in the first instance and America’s allies that the war on terror is justified both in the specific sense that it is the only way to get rid of terrorism and in the more general moral sense of being just. This is why an effort is made to present the war on terror in a less straightforward manner. Thus, for instance, it appears that a civilizational view of the war on terror that opposes the West and ‘the Muslim world’ is openly rejected by the documents. The administration was aware that such a view was problematic and would have been contested. Thus, the 2002 document says, ‘[t]he war on terrorism is not a clash of civilizations’ (2002: 31) and it is interesting to note that the word ‘civilization’ is not even mentioned in the 2006 document. However, even though the war on terror is not explicitly conceived in terms of ‘clash of civilizations’ (Huntington, 1996),<sup>284</sup> what the statement that follows immediately after the aforementioned sentence suggests is that Huntington’s theory of a ‘clash of civilizations’ is ‘[p]art of the theoretical underpinning’ of US policy-makers (Kepel, 2004: 62), at least to an extent. The sentence reads, ‘it [the war on terrorism] does reveal the clash inside a civilization, a battle for the future of the Muslim world. This is a struggle of ideas and this is an area where America must excel’ (NSS, 2002: 31). What the idea of a ‘clash inside a civilization’ implies is that one can draw an ideological and strategic line within the so-called Muslim world between ‘good Muslims’ and ‘bad Muslims’ (Mamdani, [n.d.]). It functions by dissociating both ‘civilized’, ‘peaceful’ Muslims and ‘freedom loving people everywhere’ from the terrorists, the extremists who appear at this point beyond salvage, thus, killable. The 2006 NSS affirms that ‘[a] proud religion – the religion of Islam – has been twisted and made to serve an evil

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<sup>284</sup> Incidentally, the sentence cited above could be a direct reference to Huntington’s theory of the clash of civilizations.

end, as in other times and places other religions have been similarly abused' (2006: 10). It continues by saying that '[t]he strategy to counter the lies behind the terrorists' ideology is to empower the very people, the terrorists most want to exploit: the faithful followers of Islam' (2006: 11). These rhetorical moves tend to perpetuate modes of racialization that historically constituted Arabs and Muslims as inferior, albeit in a very specific way. On the one hand, there are those who have exploited Islam to serve destructive ends; on the other, there are those who need to be empowered by 'us' – the US and 'us', Westerners – for them to become able to contrast and expunge these elements. In other words, even as we are presented with a view of Islam that is not openly negative or explicitly racist, we are told that terrorists are Islamists, and that 'the Muslim world' is incapable of controlling them sans the help of the West. Similarly to older modes of racialization that historically constituted Arabs and Muslims as strange, aberrant and inferior (Said, 1979), this 'new culturalist' grammar endeavors to create a firm line between 'good' and 'evil' people where 'evil' people are inextricably associated with Islam.

Interestingly, it was during the Clinton's administration that 'terrorism' and Islam started to become associated in policy discourses. As Philipose observes, since the end of the Cold War, 'images of the Arab terrorist have been ubiquitous in US terrorism studies and in media representations, occupying a place in the US discursive imagination once reserved for those of the Soviet Union' (Philipose, 2007: 1054; see also Lipschutz, 1999). The National Security Strategy of 1998, for instance, states 'US policies in the Middle East and Southwest Asia are not anti-Islamic [...] US policy in the region is directed at the actions of governments and terrorist groups, not peoples or faiths. The standards we would like all the nations in the region to observe are not merely Western, but universal' (NSS, 1998). This implies that Western values are universal whilst Islamic ones are of a different kind, and that terrorism is indeed inside/part of Islam. In particular, what this quotation shows is that whilst the Clinton administration denies that 'Muslims' are the object of policy discourse and practices, in actual fact 'they' are and that this ideological move hides a form of racialization, which works by disassociating 'good' from 'bad' Muslims at the same time as Muslims are implicitly associated with terrorism.

From what we could observe, this continues to be the case. As 'the national security ideology framed the Cold War discourse in a system of symbolic representation that defined America's national identity by reference to the un-American 'other,' usually the Soviet Union, Nazi Germany, or some other totalitarian power (Hogan, 2000: 17), today's global war on terror is also framed by reference to the un-American, un-Western 'other'. That is, a 'racialized' homogenous, 'non-centralized entity' that can be inside, as in the idea of 'homegrown

terrorism' (NSS, 2006: 11), but exists outside of the nation in a very essential way: it does not share 'American way of life' even when part of American society. This is because, as Bush made clear in his speech (see above), terrorists follow other directives. Terrorists follow the precepts dictated by Islam, albeit in a distorted way. What we can deduce from this is that, even as a racist view of 'the enemy' is refused on the surface, what the framing of the war on terror as a struggle between the righteous citizens in 'civilized nations' (NSS, 2002: 5) against 'militant murderers' 'deliberately targeting innocent civilians' (NSS, 2006: 12) is far from having abandoned a racializing ideology. More specifically, what this discourse seems to hide is a very specific form of racialization. A form of rationalization that while attempting to disavow its most 'racist' aspects, such as the explicit categorization of Muslims as aberrant, inferiors etc., it continues to perpetrate racializing symbolic violence through its 'us'/'them' vision and 'clash inside a civilization' thesis. This same discourse also facilitates internment and killing with impunity by making it appear justified.

Having now analysed how the 'war against terrorism' is premised on the friend/enemy distinction, which takes on a specific racialized form, before confronting the theme of whether wars fought in its name can simply be understood in terms of unilateralism, I will explore another important way through which the US administration tried to make the US appear as the guarantor of people's security. Particularly, I observe that even though within these two strategies terrorism is given the greatest emphasis, the documents make no fundamental distinction between types of problems relying very much on a notion of 'human or biopolitical security' as analysed in Chapter 1.

### **3.4 'Human' or Biopolitical Security**

The construction of the war on terror as 'global permanent warfare' against a global enemy, waged to defend people globally is not the only way in which the US administration tried to construct itself as a 'bio-sovereign' global power. The extension of security to other domains is also an integral part of the construction of the US as a 'global (bio)security emergency-state'. It is that which makes biopolitical securitization processes appear to be natural and just. Rather than a shift from a type of power centred on the sovereign and the security of a territory (national) to a biopolitical power that is distinguished from sovereign power and is centred on man-as-species (global) (Foucault, 2003: 279), in these documents, security is constituted both as a mechanism of state power and of biopower. It is both national - i.e., aimed at securing America's territory from external threats – and global – i.e., aimed at securi(tisi)ng the life of populations generally.

Although within these documents terrorism is clearly given the greatest emphasis,<sup>285</sup> these papers make no fundamental distinction between types of problems. Problems or ‘threats’ are presented together as part of what the documents call today’s ‘new era’ of ‘terrorist violence and chaos’ (NSS, 2002: intro). They include but are not limited to ‘terrorist organizations’ and ‘failing nations’ or ‘rogue states’, ‘proliferation of weapons of mass destruction, along with other advanced military technology’ (NSS, 2002; 2006). They also comprise ‘shared health and environmental threats, such as the spread of HIV/AIDS’,<sup>286</sup> ‘piracy’, ‘human and drug trafficking’ and ‘natural disasters’ (NSS 2002; 2006)<sup>287</sup> – where, in the last instance, the emphasis is clearly on ‘natural’ as opposed to ‘man-made’ disasters.<sup>288</sup> Moreover, both the 2002 and 2006 documents make a case for ‘biological weapons’ to be considered a global threat because ‘of the risks of contagion that would spread disease across large populations and around the globe’ (NSS, 2006: 21). Thus, not only will ‘emergency management systems’ ‘be better able to cope not just with terrorism’ but with all hazards. ‘Our medical system will be strengthened to manage not just bioterror, but all infectious diseases and mass-casualty dangers. Our border controls will not just stop terrorists, but improve the efficient movement of legitimate traffic’ (NSS, 2002: 6-7). Also, the 2006 document informs us that in order ‘to protect the United States against bioterrorism’, ‘a new comprehensive framework’ called ‘Biodefense for the 21<sup>st</sup> Century’ has been established (NSS, 2006: 19). A framework that, as the Biodefense strategy itself<sup>289</sup> explains, is needed because ‘[d]isease outbreaks, whether natural or deliberate, respect no geographic or political borders’ and ‘fully integrates the sustained efforts of the national and homeland security, medical, public health,

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<sup>285</sup> Note that it is mainly through it (and the threat of WMD) that these documents are able to affirm ‘global/national securitization mechanisms’ not simply as desirable but as an absolute necessity for the survival of what they refer to as ‘our civilization’ as opposed to that of the ‘Muslim world’.

<sup>286</sup> Here we can see coupled the problem of HIV/AIDS with national security. For the problematics of this link, which is increasingly being drawn by not only politicians but also other important bodies, see, for instance, Garret, 2005. For an analysis and critique see Elbe, 2005a; 2006 and Ingram, 2006. See also Esposito (2004), which although not directly concerned with this, exposes how the link between politics and biology becomes transmuted into practices of biopower through the language of immunization.

<sup>287</sup> Although it is important to note that there is a slight shift in emphasis between the two documents by which these problems – some of which are not even mentioned in the 2002 report, at least not in these terms – become even more fundamental in 2006. It is as if the effort to shift away from a notion of security as national to a notion of security as global is enabled and secured by simply naming a number of problems as ‘global threats’; as threats that know no boundaries.

<sup>288</sup> As matter of a fact, the documents do not mention ‘global warming’ once. Given the Bush administration’s stance on ‘climate change’ and the Kyoto Protocol (for an overview of Bush’s position see his letter to Senators Hagel, Helms, Craig, and Roberts, 2001b) this comes as no surprise. It reflects the unwillingness of the administration to take ‘climate change’ seriously and to think solutions that do not necessarily reinforce biopolitical global securitization by including it into ‘the new cross-border threats of the 21<sup>st</sup> Century’ as the editor of *New Perspectives Quarterly* envisages it (Gardels, 2002; also quoted in Cooper, 2006: 125).

<sup>289</sup> President Bush signed the actual ‘Biodefense for the 21st Century’ strategy in 2004.

intelligence, diplomatic, and law enforcement communities' (Biodefense for the 21<sup>st</sup> Century, 2004).

This merger of problems, of internal and external security, which, as I have demonstrated Chapter 1, started with the end of the Cold War is arguably that which helped to create the conditions for the affirmation of the US as a global protector. It asserts the US as that which can safeguard, maintain and bring order, which in a situation of chaos becomes a social, cultural, political and economic imperative, and protect its citizens as well as others by ending tyranny and promoting effective democracy. It creates a situation whereby there is no distinction – a distinction that the framing of global terrorism as the outside of law already blurred to an extent – between what would be considered by most security scholars as more traditional security threats (i.e. military external threats) and other types of problems, which pertain to the political, economic, and health domains. This framing of security produces a de-differentiation between internal and external security, that has as an effect the inscription 'of widely disparate phenomena' in 'continuum of risks, threats and in-security' (Bigo, 2006a: 15, 7, 11; 2001).<sup>290</sup> In this way, the ideal distinction between *security* and *war* for which the police deals with strangers, and the military with enemies around which the nation-state was based (Balibar, 2006) is here completely displaced as exemplified by this sentence: '[o]ur border controls will not just stop terrorists, but improve the efficient movement of legitimate traffic' (NSS, 2006). 'Enemies' and 'strangers' become one and the same (Balibar, 2006;<sup>291</sup> also and again Bigo, 2006a; Agamben, 2005a). At the same time, security is extended to cover the political, economic and health dimensions. A more traditional concern with territory becomes here *explicitly* coupled with a governmental concern with the well-being of the population as a whole (Foucault, 2003) as if to prove that the two are not distinct but *always* somewhat coupled even if not explicitly so.

Thus, although these documents never mention 'human security' explicitly, to the extent that as we have just seen it is not simply the security of the territory but the life of populations to be their concern, we can say that they do incorporate a conception of biopolitical security within themselves. The object of these documents' securitization strategy is not simply the territory. What these documents appear to be concerned with is also the economic, health and

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<sup>290</sup> Although Bigo's paper is about Europe, this particular aspect of his argument, I believe, can be extended to the US in light of the fact that the *dipositif* of (in)security or Ban-Opticon *dispositif* (2008) of which Bigo speaks is not simply European but global.

<sup>291</sup> Although, contrary to what Balibar seems to be implying in that text, it is unclear whether the conflation of security and war or, what in line with the above could also be seen as the extension of security to the domain of warfare and *vice versa*, underpins the decline of the nation state, and in particular of the US (see also Hardt and Negri, 2000). Or whether it is that which ultimately guarantees its survival, albeit in a transformed way (i.e., as a global (bio)security state).

environmental security of US citizens and of ‘freedom loving people everywhere’. In other words, even though not explicitly called as such, an idea of ‘human security’, albeit a very specific one, is part of these documents’ strategy of biopower. The idea of ‘security’ proposed within these documents is very much linked to a notion of people as vulnerable and in need of protection. The 2002 NSS states, ‘[t]he characteristics we most cherish—our freedom, our cities, our systems of movement, and modern life—are vulnerable to terrorism. This vulnerability will persist long after we bring to justice those responsible for the September 11 attacks’ (NSS, 2002: 31). It is also connected to an idea of the United States as the national/global security state that would guarantee their security. It is clearly not conceptualized as a project of ‘protection and empowerment’ *distinct* from state security as quoted in various (but not all) reports on ‘human security’. Specifically, ‘human security’ appears in these documents as the vector and rationality that enables the US to act on populations. This strategic ideological move on the part of the US makes it difficult to see how ‘human’ or biopolitical security can be rescued and/or disjoined from state’s functions as proponents of human security argue. It is by strategically arguing that it works toward securing human beings overall that the US state can seek the control of territories and populations (as both economic resources and strategic possessions). This does not mean that in its biopolitical securitization capacity the state works on its own. As argued in Chapter 1, the apparatus of security has in many cases been privatized and/or relocated (see, for instance, Bigo, 2006a; Fraser, 2003). However, what the framing of political legitimation in terms of human security points to is how state power and security are interlinked in practice and how the state needs to maintain its monopoly over the final decision to be able to exert control over populations. Thus, for instance, although the mere existence of ‘private security contractors’ makes it impossible to argue that the state exert full control over the means of security, it can be argued that these contractors, on which the US relies heavily, would not have gone to Iraq if the United States had not declared war in the first place. Processes of securitization related to the war on terror are premised on a sovereign decision about which humans (and states) are to be protected and which are not, and how best to protect those in need of protection. To this extent, they implicitly conform to a Schmittian vision of the political, albeit one considerably altered by the determination of the US to extend its sovereign power globally.

Crucially, the construction of the USA as a national security state directly depends on presenting problems (military, environmental, health, WMD etc.) as security threats and terrorism as the new security threat *par excellence*. The presentation of terrorism as *new*, its securitization and militarization together with the securitization and militarization of these

problems enabled the US to present itself as the protector of its citizens and to give it legitimacy and strength. However, it also has another advantage. This configuration of terrorism as new global threat helped to construct the US not just as a national security state, whose role was the protection of its territory and people but as a *global* one, whose role exceeded that of the state. According to these documents, what constitutes the body politic is not simply ‘the people’ (‘we the people of the United States’) but a ‘global people’. Consequently, the role of the state is not simply that of protecting its own people or citizens but peoples across the globe. The state has to protect ‘life’ itself. ‘Freedom-loving people everywhere’ and their biological life or ‘bare life’ become the object of (state) security where biopolitical securitization is the means through which the coupling of biopower and sovereign power, security and ‘life’ is achieved.

### **3.5 A Unilateral Internationalism?**

The question about whether the war on terror is to be understood in terms of unilateralism and the extent to which these documents rely on this idealization is complicated but very important. It is important for two main reasons. On the one hand, it draws attention to the specific way in which the US administration tried to legitimate its ‘unilateral’ decisions (Agamben, 2004). It was through an appeal to international law, which was paradoxically also and at the same time its instrumentalization, that the US attempted to legitimize its declared *de facto* ‘unilateral internationalism’. This will be analysed through two concrete examples of how exactly what I call the ‘unilateral internationalism’ of the United States functioned when the law was ‘in force without significance’ (Agamben, 2004). These are the decisions to go to war against the Taliban in Afghanistan, and against Iraq. On the other, it highlights the importance of tackling the question of state power but also and fundamentally the related question of imperialism, something which, as I have suggested in Chapter 1, Agamben does in a way that is not satisfactory.

It is certainly the case that the US administration saw itself not just as under attack but also as the leading nation of the war on terror and that as such it believed it was justified in taking any steps, including unilateral ones, it regarded as necessary to prevent further attacks. This is reflected in the NSSs (2002; 2006). However, the NSSs also promote respect for the rule of law, close cooperation with other nations around the world that are committed to the goals of freedom, democracy, and free enterprise. In this respect, the 2006 document sees a slight change in language from the 2002 National Security Strategy, placing more emphasis on co-operation and on inter-connectedness between states. Thus, for instance, whereas the 2002 report mentions the UN only in passing in the preamble and in section IV, the 2006 document

dedicates an entire section to how to promote ‘meaningful reforms of the U.N.’, especially its capacity ‘to advance the freedom agenda through tools like the U.N. Democracy Fund’ (NSS, 2006: ix). In the preamble to the 2006 document, moreover, Bush states,

We must maintain a military without peer – yet our strength is not founded on force of arms alone. It also rests on economic prosperity and a vibrant democracy. And it rests on strong alliances, friendships, and international institutions, which enable us to promote freedom, prosperity, and peace in common purpose with others (Bush, 2006, preamble)

This could be read in two ways. On a more positive note, this mild shift in emphasis between the 2002 and 2006 documents could be seen as entailing the possibility that a confrontation with the failures (never explicitly mentioned) of unilateralism was after all inevitable. In other words, according to this reading, the Bush administration recognising the limits of its foreign policy agenda, seeks a multilateral approach to ‘the problem of terrorism’. However, another, perhaps darker, but more plausible reading, as confirmed by the arguments for pre-emptive war within the 2006 document (again see section below), is also possible. Both internationalism and unilateralism are part of the same logic of security and exception and what in reality is being given voice to in these documents is not, or not simply, the ‘international unilateralism’ or, the ‘unipolarism’ of the first Bush and Clinton administrations<sup>292</sup> (see, for instance, Gowan, 2002; 2003<sup>293</sup>), but a sort of ‘unilateral internationalism’. Namely, a ‘unilateral internationalism’, or what the 2002 document instructively calls ‘a distinctly American internationalism’ that reflects the union of ‘our values’ and ‘our national interests’ (2002: I), based, as it were, on the invention of ‘a coalition of the willing’ and ‘a will of the world’ as an afterthought to its declared unilateralism. A ‘unilateral multilateralism’ for which terrorism, as an irreducible evil, becomes the means through which the USA’s specific national security agenda is internationalized or generalized ; an agenda based on the (extra)legal use of pre-emptive wars against terrorists and states that support or harbour them.<sup>294</sup> In this reading, the appeal to the

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<sup>292</sup> This is not to say that there were not disagreements between the two administrations over foreign affairs issues – prime among them a disagreement over how American dominance in the world should be maintained (i.e., over the use of ‘hard’ and/or ‘soft power’). But that, despite these differences, the Clinton administration accepted the core concepts of the Bush Snr. administration’s Defence Planning Guidance, which indicated that the great threat to US national security lay in regionalist unification moves among advanced industrial countries – in other words Europe and East Asia (Gowan, 2002). And in fact the Clinton administration was also ‘prepared to act alone’ if the national interests of the United States were at stake, as stated in the NSS of 1995 (1995: 13).

<sup>293</sup> For a different, more optimistic, perspective, see Appadurai (1999: 227); Hardt and Negri, 2000; 2004. For an opposing view, see Rahman, 2002 and Huntington, 1996.

<sup>294</sup> The 2006 document specifically names Syria and Iran as harbouring and supporting terrorism (NSS, 2006: 9).

rule of law and international cooperation only facilitates the construction of the US as a global (bio)security state by attempting to make a *de facto* unilateralism accepted by its allies. That is to say, unilateralism and internationalism are both part of a specific *national* security agenda (the security agenda of the US government) that aims to expand its sovereign, imperial power *globally*. The 2002 document explicitly states, '[t]o contend with uncertainty and to meet the many security challenges we face, the United States will require bases and station within and beyond Western Europe and Northeast Asia, as well as temporary access arrangement for the long-distance of US forces' (NSS, 2002: 29). 'In today's globalized world' 'the distinction between domestic and foreign affairs is diminishing [...] events beyond America's borders have a greater impact inside them' (NSS, 2002: 31). The 2006 National Security Strategy moreover affirms, '[g]lobalization creates challenges and opportunities' (NSS, 2006: 23, 47). As a consequence, it is decided, America must protect itself as well as 'maintain and expand its national strength', expand 'free trade', 'economic liberty' and the 'free flows of ideas' (NSS, 2006: preamble, 28, 27, 25, 12, 7). A more explicit form of aggressive unilateralism is replaced by a somewhat less explicit, although by no means obviously less aggressive form.

This interpretation also finds justification in the 2006 document's presence/absence of information regarding 'multilateral institutions' and international treaties. Thus, for instance, as previously noted, the 2006 document does talk about the UN, whereas the 2002 report does it only in passing in relation to working with the UN and other nations in order 'to provide humanitarian political, economic, and security assistance necessary to rebuild Afghanistan' (NNS, 2002: 7). However, it cannot but be noted that in the 2006 document the UN is taken into account only in relation to its need for change. No consideration is given to this institution on its own merits.<sup>295</sup> Moreover, whilst the report spends much time outlining NATO's security role in the war on terror, it does not even mention that within the context of The Common Foreign and Security Policy or CFSP,<sup>296</sup> the European Union is also developing a common security strategy (see the European Security Strategy (2004) analysed in the following chapter). Finally yet importantly, even when various individual treaties or

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<sup>295</sup> For a relatively brief but in-depth critical analysis on how the US has used the UN since its American inception in 1945 until now see, Gowan, 2003.

<sup>296</sup> As stated in their website, the CFSP 'was established as the second pillar of the European Union in the 1993 Treaty on European Union signed at Maastricht'. Its objectives, how they are to be pursued and the role of the European Commission in the CFSP can be found at [http://ec.europa.eu/external\\_relations/cfsp/intro/index.htm](http://ec.europa.eu/external_relations/cfsp/intro/index.htm).

agreements, such as the Non-Proliferation Treaty,<sup>297</sup> are addressed directly, there is no sense in which the administration recognizes that these treaties are legally binding for all signatory members, including the US<sup>298</sup> (which has been notably 'lax on its commitment on nuclear disarmament, particularly with regards to the Comprehensive Test Ban Treaty'<sup>299</sup>). On the contrary, the administration's legal outlook is determined by an instrumentalization of international law and legal institutions, which makes its declared internationalism or multilateral approach even more paradoxical.

Concrete examples of this 'unilateral internationalism', which show exactly how it functioned at times when the law was in force without significance (Agamben, 2004), would be both the war against the Taliban and Al Qaeda in Afghanistan started in October 2001 and the war against Iraq, which commenced in 2003 (or rather was intensified<sup>300</sup>). Both military campaigns were decided by the USA and legitimized or pseudo-legitimized *a posteriori* by the UN. Despite early condemnations by some members of the Security Council, namely France, Russia and Germany, the war against Iraq was officially legitimized in 2003, exactly two months and two days after the war had started.<sup>301</sup> In relation to Afghanistan, the situation is slightly more complicated but bears some similarities to that of Iraq. The initial attacks in Afghanistan carried out by American and British forces have never been officially legitimized by a UN Security Council resolution. However, the Security Council has since authorized the establishment, initially for six months but later extended, of an International Security Assistance Force (ISAF) in Afghanistan supported by NATO 'to assist the Afghan Interim Authority in the maintenance of security in Kabul and its surrounding areas'<sup>302</sup> in actual fact sanctioning the mission mandate.

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<sup>297</sup> The Treaty on the Non-Proliferation of Nuclear Weapons (NPT) was signed in 1968 and came into force on 5 March 1970 – United Nations OPI. The Treaty is available at <http://www.fas.org/nuke/control/npt/text/index.html>.

<sup>298</sup> The 2006 document refers to the Non-Proliferation Treaty only in relation to Iran's violation of it (2006: 19).

<sup>299</sup> See Ambassador Graham, 2006: 6.

<sup>300</sup> According to Harvey, the conflict with Iraq 'is of long-standing' (Harvey, 2003: 22; Balibar, 2008: 377); Iraq was subjected to bombardments even during the Clinton administration. 'On June 26, 1993, following a determination that Iraq had plotted an assassination attempt against former President Bush, President Clinton ordered a cruise missile attack against the headquarters of Iraq's intelligence service in order to send a firm response and deter further threats' as outlined in the 1995 National Security Strategy (NSS, 1995: 11).

<sup>301</sup> See resolution 1483 of the Security Council, which recognizes Britain and the United States as 'occupying powers under unified command ("The Authority")'. For an important precedent of this see the Kosovo war discussed by Zolo (2006) and Anderson (in particular, see Anderson's chapter 'Arms and Rights: the Adjustable Centre (2005: 144-177)), among others.

<sup>302</sup> See resolution 1386 adopted unanimously in 2001, which does not in itself approve the use of force on the part of the USA (see, for instance, Ulfstein, 2003: 153; Greenwood 2002: 309), but can nevertheless be seen as pointing in that direction (again see Ulfstein, 2003). See also resolutions 1413 (2002); 1444 (2002); 1510 (2003); 1563 (2004); 1623 (2005); 1659 (2006) and most recently

Moreover, that there is no sense of the limits of unilateralism within the 2006 paper is made clear by how the 2006 document describes what it calls the Afghanistan and Iraq campaigns. These are described in terms of successes rather than failures. Among the reasons why they are considered as such, the report cited the overthrow of Saddam Hussein and the Iraqi election. It added that ‘the ongoing fight in Iraq has been twisted by terrorist propaganda as a rallying cry’ (NSS, 2006: 9). While with regard to Afghanistan, the strategy mentions the facts that Al-Qaida has lost its safe heaven and that women have been liberated.<sup>303</sup> Now, that this is a very partial interpretation of facts, to say the least, is beyond doubt. No mention is made, for instance, about the number of people that have died during these wars<sup>304</sup> or about the fact that in most cases women are no better off in terms of rights, and in some respects even worse, than before (see, for instance, Rawi, 2004a; 2004b; RAWA, 2004; Mahmoud, 2004; 2006). Nor is it mentioned in the strategies that the US *de facto* broke international law as it did not have a Security Council mandate to attack Iraq (something to which I will return in the next section).

What is important, however, is not so much the falsification or obfuscation of ‘reality’, which, after all, is part of all ‘justificatory war rhetoric’, but the idea behind it. That is, the idea that the USA as a ‘global security state’ had the right to decide not only what constituted an acceptable and legitimate form of government for itself but to take the same decision for others and to impose it with force if necessary. This was based on the presupposition that ‘America must continue to lead’ by any means that it deemed were necessary. ‘The goal must be to provide the President with a wider range of military options to discourage aggression or any form of coercion against the United States, our allies, and our friends’ (2002: ix). National and international laws became secondary to the implementation of this goal. In line

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1707 (2006), which sanctions the mission until October 2007. All United Nations resolutions can be found at [http://en.wikisource.org/wiki/United\\_Nations\\_Security\\_Council\\_Resolutions](http://en.wikisource.org/wiki/United_Nations_Security_Council_Resolutions). The ISAF’s website is available at <http://www.nato.int/isaf/>

<sup>303</sup> As a tangential note, it is interesting to note here how women become the object of security; they are those in need of protection for whom the war against the Taliban was waged. In other words, women become a justification for what the US has doubt a ‘humanitarian’ war (Eisenstein, 2007: 23; Young, 2007: 133-136; Butler, 2004: 41). In a way similar to how it works in the post 9-11 films analysed by Weber, ‘the feminine’ here functions as ‘the final necessary supplement to a meaningful answer to the question: “What does it take to make a (moral) difference in the war on terror?”’ (Weber, 2006: 88).

<sup>304</sup> Without entering the politics of ‘the body count’, which could be seen as perpetuating the structure of the ban in its reduction of peoples to numbers, it suffices to say here that a very great number of people have been killed. Balibar points out that ‘[t]he practice of “zero death” war inaugurated in the Gulf and perfected in Kosovo implies an incommensurable difference between the human cost on the Westerners’ side and that on the others (where casualties are above all civilians)’ (Balibar, 2003: 38).

with Schmitt's interpretation of sovereignty, the president is here depicted precisely as he who decides on the state of exception (Schmitt, 1996; Agamben, 1998). What Agamben calls 'the paradox of sovereignty' finds in the Bush strategy its paradigmatic configuration and one of its most extreme extensions. In the sense that if it is true that the sovereign is always the one who decides on the state of exception, previously cases of exception, at least as described by Agamben, where limited to a particular state (as in the Nazi case, for instance). The sovereign had the power to create the law and the limits of the law but of a law that was nevertheless valid only within that particular state. What we seem to be witnessing in these documents is *an attempt* to extend US power spatially (at a global level) and temporally (possibly *ad infinitum*). 'The war against terrorists of global reach is a global enterprise of *uncertain* duration' (Bush, 2002: preamble, emphasis added). Thus, it will 'end in a way, and at an hour, of our choosing' (Bush quoted in the NSS, 2006: iii).

In actual fact, the sustainability of this type of imperial discourse/practices in the long run is put into question (and not only theoretically). According to Hardt and Negri, for instance, '[t]he necessity of the network form of power (thus) makes moot the debates over unilateralism and multilateralism, since the network cannot be controlled from any single, unitary point of command' (2004: 61). In particular, as argued in Chapter 1, Hardt and Negri suggest that a US-centered global order is not sustainable because it goes against the interests of other powerful nation-states and elites, which will eventually unite 'to leverage their support to prevent further unilateralism and constant war' (Hardt and Negri quoted in Woodard, 2004: 124). This is a plausible reasoning – albeit one that seems to overlook their insights about the normality of war; of war as a 'form of rule' (see section 3.6 below). Considering that neoconservative biopolitical securitization processes did not help the development/maintenance of capitalists' interests in a straightforward sense,<sup>305</sup> an investigation of how the 'new aristocracy' positions itself in relation to US 'multilateral unilateralism' is worthy of consideration. One of the main aims of this research is exactly to see how what some consider a supranational institution and which according to Hardt and Negri is part of this 'new aristocracy', i.e., the EU challenges and/or reinforces the US strategy. Incidentally, it is also interesting to note in passing (this being a problem that cannot be answered in full here but a question which would be worth developing), that the newly elected President Barack Obama explicitly rejects unilateralism as a mode of governing. In

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<sup>305</sup> Despite its long-term intentions and the fact that certain groups, especially those who manufacture military products (including multinational corporation and private military subcontractors), those who smuggle them, privatized militias, security agencies etc, have indeed benefited from current military operations, the short-term economic effects of military actions are far from coherent (Mann, 2005); contradictory, we might say (Wood, 2004: 163).

his book *The Audacity of Hope*, Obama suggests that the failures of the war on terror ‘aren’t [sic] an argument for reducing our involvement in international organizations, nor are they an excuse for unilateralism’ (2006: 320). And although the extent to which this change in rhetoric will be accompanied by radical changes in foreign policy is doubtful,<sup>306</sup> it points to the difficulties of sustaining a unilateralist stance of the kind proposed by the Bush administration.

Also unclear is the extent to which the US strategy based on war, security and violence can be explained simply in terms of a ‘thirst for resources’ on the part of the US (Harvey, 2003: 30; Wood, 2004). Although I tend to agree with those, like Harvey, who argue that oil was a major factor (again Harvey, 2003: 19; Wood, 2004: 165), a ‘thirst of resources’ is clearly not enough to explain the war on terror, not even the war against Iraq. If ‘oil’, in fact, was the main reason for war, it could, and indeed has been argued, that the US foreign policy was anachronistic and counterproductive. Anachronistic: because based on the idea that the oil industry could be controlled by one nation or by a confederation of states (the ‘coalition of the willing’, perhaps?) through military means despite its being already internationalized (Bina, 2004; Kaldor, 2007: 94). Counterproductive: because it relied on the belief that USA’s military capabilities were enough to establishing and sustaining a new American Empire, whereas, according to authors such as Mann and Kaldor, for instance, they are not (Mann, 2005; Kaldor, 2007; see also Hardt and Negri, 2004; Wood, 2004: 165). In particular, Kaldor argues that ‘states engaged in neo-modern militarism are still under the illusion that they can win militarily’. Yet, the presence of ‘new wars’<sup>307</sup> put into question the ‘utility of modern military force’ (Kaldor, 2001: [n.p.]). In her book on human security, she further suggests that ‘by stressing the importance of oil, the anti-imperialists endorse the realist justification for unilateral action’ (Kaldor, 2007: 94). For Kaldor, oil was not a major motive for war because, if it was, the US would have pursued other, more suitable strategies to obtain it (2007: 94). While Kaldor’s points as described here have the unintentional merit of making evident the distinction highlighted in Chapter 1 between capital and the state, pointing to the fact that the state can in fact act in ways which are counterproductive, her thesis is ultimately

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<sup>306</sup> So far, the Obama administration has maintained a similar stance toward terrorism to that of the Bush administration. Thus, for instance, whilst Obama has drawdown the number of troops from Iraq (although his statements so far have not touched on the question of a permanent military presence), the war in Afghanistan continues and has actually intensified under his watch (Prasad, 2009). When asked about Iran, moreover, Obama said ‘all options are on the table’ to deal with it (Colvin, 2009). This seems to confirm that as explained below, ‘multilateralism’ is not inherently *beyond* unilateralism but can easily become part of a certain hegemonic agenda.

<sup>307</sup> That are, wars as a manifestation of the erosion of the nation-state under the impact of globalization based on a mixture of violence and massive violations of human rights usually promoting nationalist or religious causes (Kaldor, 2001).

unpersuasive. It wrongly implies that we can simply simply draw a line or distinguish between ideas and practices whilst, as she herself points out in the same paragraph, ‘illusions’ do play a part when it comes to foreign policy agendas. In undermining economic motives, moreover, Kaldor’s account ends up taking the US administration’s ‘good intentions’ at face value.

Furthermore, that today’s wars can be simply controlled by a restructuring of a ‘new’ and ‘extended’ form of ‘protectionforce’ based on humanitarian laws whose major task is the protection or security of individuals worldwide rather than national security (Kaldor, 2001; 2007) seems improbable. Thus, for instance, forms of ‘protectionforce’, including so-called ‘safe havens’ and ‘humanitarian corridors’ (Kaldor, 2001) are explicitly refuted by the US administration that makes denying terrorists ‘safe havens’ one of its priority<sup>308</sup> (NSS, 2006). In turn, those ‘safe heavens’ are in themselves rather questionable for they can be considered as ‘spaces of exception’, in the same way as ‘refugees camps’ are (Agamben, 1997), whose progression from zones of safety to zones of (in)security and violence is a very real possibility. After all, as Rahola suggests, ‘it is on the basis of an international *in loco* presence that it is possible to refuse or not permit refugees from other countries, avoiding the principle of *non refoulement* stipulated by the International Statute for refugees 1951’ (Rahola, 2006: 42, note 3).<sup>309</sup> According to Toscano, ‘despite the salutary reminder of the failure of the geopolitical imaginary when it is faced by non-state actors and criminal political economies’ (2007c), Kaldor’s and similar approaches fails to consider that American ‘grand strategy’ is *already* framed in terms of *global* ‘biopolitical security’ (see above). They also ignore the fact that ‘multilateralism – understood in terms of the coordination of dominant governments, corporations, international organizations and so-called civil society – is a very determinate product of Cold War and post-Cold War unipolarity, specifically in terms of “democracy promotion” as part of a certain hegemonic agenda’ (Toscano, 2007c). In other words, as the analysis above reveals, ‘multilateralism’ is not inherently *beyond* unilateralism but can be made to ideologically work in the name of a certain image of the world in which certain governments, organization etc. dominate while others do no (which, however, is not to the same as to say that debates over unilateralism and multilateralism are unimportant).

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<sup>308</sup> As Elden notes, ‘the use of the term “safe haven” is revealing here, as it parallels ideas of humanitarian safe spaces’ (Elden, 2007: 826).

<sup>309</sup> Simply put this means that if there is already an existing humanitarian aid programme located in their country of origin, such as so-called ‘safe havens’ and/or ‘humanitarian corridors’, refugees can be – and as a matter of fact have been – denied entry in other countries. As examples of this Rohola cites Kosovo, south Afghanistan, Sebrenica and North Iraq (Rahola, 2006: 48). There are other examples (see Fitzpatrick, 1996; Hathaway & Neve, 1997).

Incidentally, this brings us back to my former point about the war on terror being continuative as well as discontinuative of policies that preceded it.

In ultimate analysis, to overstate the (military) power of the American ‘global (bio)security state’ is misleading. First, it risks ignoring that, as contended in Chapter 1, the state and capital, although very difficult to dissociate, are not completely isomorphic. States also act following their own territorial and securitizing biopolitical logics. Second, it risks eliding the fact that, as Kaldor correctly emphasizes, American power might not be as effective as generally believed, not least because, according to her, military force is unsuitable to achieve political goals. Third, it ignores the ‘resolve’ of people to resist (Gowan, 2002) – because, contrary to what President Bush, who constantly used the word in his speeches, seemed to think, ‘resolve’ is not an exclusive quality of the American people. On the other hand, however, to underplay the US strategy and to simply read the war on terror as ‘*regressive crystallization* of the emergent global state’ (Shaw, 2001: [n.p.]) and the war in Iraq as a *coup d’état* inside and against Empire (Hardt, 2004) is also problematic. Against critics who argued that Hardt and Negri’s theory of the end of imperialism had been disproven by facts, Hardt attempted to explain the war on terror generally, and the war with Iraq specifically, in terms of regression; of ‘usurpation of power’ *within* the existing ruling order (Hardt, 2004; see also Shaw, 2001). Although with some reservations, my analysis seems to confirm their critics’ insights. The ‘global state’ is also and most definitely an imperial one. In particular, what the analysis of these documents shows is that, although arguably with limited success, the US was trying to establish a ‘new international order’. Establishing a ‘new type of imperial extra-territorial (bio)power’ through a mix of aggressive (e.g., unilateral, pre-emptive war) and ‘consensual’ or hegemonic practices is clearly an implicit aim we find expressed in these documents. To this extent, the war on terror is best understood in terms of both regression in its more overt militarism and state-centrism and of *continuation* of neoliberal policies (Harvey, 2003; Brown, 2008).

### **3.6 From Deterrence to Global Pre-Emptive War**

As noted briefly above, pre-emptive war is an important means through which the US attempted to affirm its ‘unilateral internationalism’. To the extent that both the 2002 and 2006 national security strategies explicitly include a pre-emptive war doctrine,<sup>310</sup> it is worth

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<sup>310</sup> It is worth noting, however, that the ‘Wolfowitz Doctrine’ as formulated in the *Defense Planning Guidance* of 1992 already advocated preemptive attacks against foreign nations. As Bellamy Foster points out in relation to the 2002 National Security Strategy (but the same argument could easily be

looking more closely at this and how these documents frame pre-emption. What I will show here is that, in the aftermath of September 11, *permanent global warfare* in the name of security was becoming a new driving force of US ‘imperialism’ – whether it still is, I believe, is something that merits careful discussion; unfortunately, for obvious reasons, it cannot be discussed here. I furthermore discuss the implications of this for an understanding of international law, and in particular of article 51 of the UN Charter, which clearly sets that states cannot use pre-emptive force except in cases of an *imminent* attack.

As previously noted, if compared to the 2002 document, the 2006 NSS seems to place a somewhat greater emphasis on working with allies and declares diplomacy to be its ‘strong preference’ in tackling the threat of weapons of mass destruction (2006: 23). Yet, this penchant is not followed through. In section V, ‘Prevent Our Enemies from threatening Us, Our Allies, and Our Friends with Weapons of Mass Destruction’, the 2006 NSS states that a government has a duty to defend its citizens. And it adds that ‘even if uncertainty remains as to the time and place of the enemy’s attack’, ‘under long-standing principles of self defense’,<sup>311</sup> the United States will take unilateral action to defend itself because ‘anticipatory action’ or ‘the logic of pre-emption’ is better than ‘the risk of inaction’ (2002: 15; 2006: 23). The idea of ‘pre-emptive war’ is here justified by an appeal to an ‘inherent right of self-defense’, which is directly borrowed from Article 51 of the UN Charter. Article 51 stipulates that nothing ‘shall impair the inherent right of individual or collective self defence if an armed attack occurs against a member of the United Nations’.<sup>312</sup> The NSS embraces such a concept but with two additional considerations. The first is that anticipatory self-defence be made against a hypothetical threat or a danger as opposed to an actual attack. The second, a consequence of the first, is that the logic of pre-emption is not limited but unlimited in application and duration because if ‘they’ can strike anywhere and at anytime, then ‘the US’

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extended to the 2006 NSS), the formulation of it (them) is (are) arguably modelled after that defence paper (Foster, 2006).

<sup>311</sup> It was the then United States Secretary George Shultz during the Regan administration who first argued for the use of force against terrorists in other nations and ‘states that support, train and harbor terrorists or guerrillas’ (Shultz, 1986: 206). This question, about which there was, and still is, disagreement in international law, regarding whether states may respond with force if they are subjected to a terrorist attack originating within the borders of another state, was brought back to the fore after September 11. For a legalist analysis of this issue, see Ulfstein (2003); Garwood-Gowers (2004); Cassese (2001) among others.

<sup>312</sup> In full, UN Charter Article 51 states: ‘Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security’. The UN Charter can be found at <<http://www.un.org/en/documents/charter/index.shtml>>

must be able to project its military power anywhere and at anytime. As stated in the 2002 document, '[w]e must adopt the concept of imminent threat to the capabilities of today's adversaries. Rogue states and terrorists do not seek to attack us using conventional means'. Thus, it is argued that '[t]o prevent or forestall such hostile acts by our adversaries, the United States will, if necessary, act preemptively' (NSS, 2002: 15).<sup>313</sup> According to both documents, in fact, terrorists are *always* potentially ready to strike – an imminent threat. Consequently, the only way that the US administration thinks it can maintain peace and security is to prevent 'them' from attacking 'us'. 'In the new world we have entered', Bush tells us, 'the only path to peace and security is the path of action' (Bush, NSS 2002: preamble).

But what are the consequences of conceptualizing the 'new world' as constantly in a state of threat? According to Cooper, this understanding sets 'a radically new formulation of law that found the legitimate use of violence on "our" collective apprehension of the future, however uncertain, rather than the predictive calculus of risk' (Cooper, 2006: 14).<sup>314</sup> A use of law that undermines the main principle of the UN Charter that sets that states are not legitimated to use pre-emptive force except in cases where there are clear warnings or visible evidence of an *imminent* attack, allowing the United States to exempt itself from the (international) framework of law, while demanding compliance by others. Paraphrasing Zolo, the principle of self-defence was intended as an exception to the more general rule sets out in the Charter that qualifies as aggression the 'threat or use of force against the territorial integrity or political independence of any state' independently of any possible *justa causa* (Zolo, 2006: 97; Article II(4); also O'Connell, 2002: 4).<sup>315</sup> In Agamben's words, which, nevertheless, it is fair to note, are here applied to international law in a way that would seem to contradict Agamben's conception of the state of exception as founded on a 'non-relation' to national

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<sup>313</sup> Again it is interesting to note that the idea that perceived dangers have to be eliminated at their roots, before they materialized was first proposed by Kagan and Kristol in 2000 (2003: 12). This approach is based on the belief that the conditions of danger 'may be significantly ameliorated through the vigorous application of American power and ideals' (Kagan and Kristol, 2003: 65).

<sup>314</sup> Cooper's focus is on the official US defence doctrine as delineated in a number of discourses and practices, in which, Cooper shows, the logic of securitization goes even a step further. She argues that what is being articulated there 'is a profoundly new strategic agenda where war is no longer waged in the defence of the state (the Schmittian philosophy of sovereign war) or even human life (humanitarian warfare; the human as bare life, according to Agamben) but in the name of life in its biospheric dimension, incorporating meteorology, epidemiology and the evolution of all forms of life, from the microbe upwards' (Cooper 2006: 17-8). I think Cooper is essentially right. My only reservation is with her choice of adverbs. I think that the idea that this new US strategic agenda is *no longer* waged in the defence of the state and human life *but* of life in its biospheric dimension is too strong. In other words, I do not believe it is necessarily a problems of choosing between these two options because actually from the point of view of the US all these options were on the table.

<sup>315</sup> For a critical but opposing views on this issue see, for instance, Benhabib, 2002; Falk and Krieger, 2002.

law, the exception becomes the rule. As Agamben says, '[t]he normative aspect of law can thus be obliterated and contradicted with impunity by a governmental violence that—while ignoring international law externally and producing a permanent state of exception internally—nevertheless still claims to be applying the law (2005a: 87). Most legal scholars in fact would agree that even when a state has suffered an 'armed attack' triggering its right of self-defence, it is not given *carte blanche* to respond with whatever degree of force it wishes. Governing the right of self-defence are the requirements of necessity and proportionality (Garwood-Gowers, 2004: 6; see also O'Connell, 2002: 4; again Cooper, 2006: 13). Instead, the doctrine of pre-emptive warfare 'assumes that the only way to survive the future is to become immersed into its conditions of emergence, to the point of actualizing it ourselves' (Cooper, 2006: 14). Because, as the 2006 document confirms, 'we cannot afford to stand idly by as grave dangers materialize' (NSS, 2006: 23). According to the US administration, peace and security can only be achieved through acting preemptly if necessary. In other words, without war there can be no peace and no security (the two are coupled as if they were one and the same). War, in Hardt and Negri's words, 'becomes the general matrix for all relations of power and techniques of domination, whether or not bloodshed is involved. War has become a *regime of biopower*, that is, a form of rule aimed not only at controlling the population but producing and reproducing all aspects of social life' (Hardt and Negri, 2004: 13). To paraphrase Schmitt, 'permanent global warfare' is, or, at least, seems to have become, the 'new' matrix of the *nomos* (also Agamben, 2005a: 2, 87; Hardt and Negri, 2004). This is not to suggest that all of today's conflicts are the result of, or related to, the war on terror or to be understood in terms of 'global civil war' (for a critique of this see Chapter 1). It means that the war on terror risks making 'the condition of war' permanent and to expand the logic of exception beyond the state.

## CHAPTER 4

### EU (Bio)Securitization Answer to the war on terror

The extent to which security has become a paradigm of governing and how this affects the European Union is not often taken into consideration in debates about the ESS, the first European security strategy to date. As we have seen, expectations concerning the role of Europe as counter-hegemonic or multilateral power seem to underline current (policy) analysis of the European Union generally and, as we shall see, of the ESS specifically which, when considering the US NSS in relation to the former, tends to focus on differences between the two while downplaying their similarities.<sup>316</sup> I, on the contrary, will make evident differences and similarities between the two documents analysed above and the ESS, posing particular attention to the way in which the EU frames the question of security at the same time as it is *itself* framed by it. Here we have the first European security strategy to date whose ‘architectural’ configuration seems far from being a new type of power as outlined, for instance, by Balibar.<sup>317</sup> One of the aims of the chapter is to show how exactly the EU as a structure of power is being constructed through the discourse of security – this discourse is, of course, only one of the many discourses through which the EU is being constituted but one that is increasingly dominant. It is also to demonstrate how this construction challenges and/or reinforces relations of domination at the macro-geopolitical level and at the level of subjectivities.

In this chapter, I will trace how the idea of Europe as ‘vanishing mediator’ as analysed in chapter 1 places itself when confronted with that given in the ESS – a strategy, which, as we have seen, according to most authors already represents an alternative security framework to the US NSS. The chapter will ask: does the ESS represent the EU as a ‘new type of power’? Does it really represent a security alternative to US NSSs? To what extent and how specifically does EU’s security framework differ from that offered in the US NSSs? Through a close exegesis of the ESS, the chapter will demonstrate that in the post-9/11 context far from being constructed as a ‘new type of power’ (Balibar, 2003a; 2003b, 2004a) or from providing a security alternative to the US NSSs, in the ESS, Europe is being framed not very dissimilarly from how the US is framed in the NSSs. That is to say, it is being framed through a model of (bio)power that has as its stated goal the protection of peoples – peoples that in

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<sup>316</sup> See, for instance, Biscop, 2005, Bailes, 2005, Glasius and Kaldor, 2005.

<sup>317</sup> Note that Balibar himself would in all probability argue that the ESS is not representative of the type of model of Europe he had in mind. Nevertheless, the ESS offers a good case study to be compared to Balibar’s model. As the first security strategy to date, it explicitly tells us how the EU intends to address global and regional security challenges.

becoming the object of (bio)power are concurrently politicized and depoliticized<sup>318</sup> – and whose specific securitization action extends to all those instances that could put their ‘life’ at risk, first and foremost terrorism. The chapter is divided in three main sections.

In section 4.1, I will argue that the framing of Europe in terms of global security actor with military and civilians capabilities must both be seen as an answer to the US and in terms of the EU’s own objectives. It points to the persistence of a certain conception of the political as a sphere of sovereignty – something which Balibar would probably agree with but which is difficult to square with his understanding of Europe as ‘new type of power’. Far from being constructed as ‘vanishing mediator’, in the ESS, ‘Europe’, or at least the EU, is presented as a unified global actor with specific objectives and a coherent, credible and effective foreign and security policy.

In section 4.2, I will show that, as for the previous two but especially the 2006 NSS strategy, what one finds in the European document is an understanding of security as the vehicle through which social problems, including economic ones, are to be read, comprehended and ultimately tackled. Security is extended to cover every domains of ‘life’ and becomes that through which Europe is to be governed. To this extent, I suggest there are no main differences between the NSSs of the United States and the Security Strategy of the European Union. Furthermore, I provide evidences of how, in accepting the logic of security, the EU also accepts and reaffirms the discursive premises of the war on terror and the state of exception on which the war on terror is ultimately based.

Finally, in section 4.3, I will discuss what I believe can be counted as the main difference between these strategies, that is, their conceptualizations of terrorism. I argue, however, that in spite of the different conceptualization of it, or perhaps because of it, far from representing a radical break with US foreign policy as suggested by some commentators, the ESS political rationality or Polizeiwissenschaft cannot be set apart from that of pre-emptive warfare of the NSSs as analysed in my previous chapter. As for the previous sections, I will draw on themes developed in Chapter 1 to argue my case.

#### **4.1 The Persistence of a Certain Conception of the Political**

Far from constituting a ‘vanishing mediator’, the construction of Europe as structure of power in the ESS takes a very specific path. In the ESS, Europe is presented a global (security) actor

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<sup>318</sup> As opposed to post-politics (see Žižek’s discussion of biopolitics in *Welcome to the Desert of the Real*, 2003), which seems to imply that biopolitics is non-political, I think this type of politics is best characterized as concurrently politicizing and depoliticizing politics; a politics that relies on specific forms of politicization to depoliticize its ‘objects’ (or ‘objectified subjects’).

and differences between members states are implicitly played down. Europe is presented as a bounded entity – we might say as ‘state-like’ – and as an entity whose boundaries are very much already decided. This points to a certain conception of the political as a sphere of the Sovereign’s sovereignty (as opposed to the ‘sovereignty of the people’).

Like the NSSs, the ESS, ‘A Secure Europe in a Better World’, refers to the ‘post Cold War environment’ as an increasingly complex one; a time of both opportunities and dangers for which ‘the internal and external aspects of security are indissolubly linked’ (2003: 2; 1 – more on the dissolution between internal and external security in section 4.3). To this extent, there are no main differences in how these strategies configure today’s situation, the depiction of which relies in both cases on the presupposition of American (military) dominance and on the idea that we are in the presence of new global security threats. In the language of the 2002 NSS, ‘[t]he United States possesses unprecedented—and unequalled—strength and influence in the world’ and enjoys ‘a position of unparalleled military strength and great economic and political influence’ (2001: 1). In the words of the ESS, the end of the Cold War has ‘left the United States in a dominant position as a military actor’ (2003: 1)<sup>319</sup> (with the word ‘military’ qualifying in what sense the United States is to be seen as a dominant actor). References to so-called new threats, especially and foremost terrorism abound in both documents. However, it is interesting to note that after acknowledging the military importance of the US, the strategy goes on to say that ‘no single country is able to tackle today’s complex problems on its own’ (2003: 1; 13). Only by ‘acting together the European Union and the United States can be a formidable force for good in the world’ (2003: 13) – other countries are mentioned only in passing in the strategy.<sup>320</sup> In the European strategy, the US is portrayed as a very important global player but so is the EU. The EU is depicted as a global (securitization) actor whose contribution to both ‘dealing with the threats’ and ‘in helping realise today’s opportunities is indispensable’ (2003: 14).

In the first line of ESS, we find stated, ‘[a]s a union of 25 states with over 450 million people producing a quarter of the world’s Gross National Product (GNP), and with a wide range of instruments at its disposal, the European Union is inevitably a global player’ (2003: 1) – with

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<sup>319</sup> In the first draft of the document, this sentence appeared to complement the above: ‘no other country or group of countries comes close to its capability’. This has been removed from the official final draft. The provisional draft can be found at Statewatch.

<sup>320</sup> In particular, the strategy mentions in passing Japan, China, Canada, India and ‘all those who share our goals and values’ as potential strategic partners and Russia as ‘an existing international partner’ (2003: 14, 8). The ESS also talks about the need for engaging more intensively with Mediterranean states and for providing cooperative contributions for solving the Israeli-Arab conflict. However, it does not specify what this ‘engaging’ would entail.

the word *inevitably* reinforcing the idea that its global role is natural and necessary.<sup>321</sup> The document continues by saying given the ‘increasing convergence of interests’, ‘Europe should be ready to share in the responsibility for global security and in building a better world’ (2003: 1). In particular, the strategy claims that although ‘the European Union has made progress towards a coherent foreign policy and effective crisis Management’, if it is ‘to make a contribution that matches our potential’, it needs ‘to be more active, more coherent and more capable’ (2003: 11). The strategy refers to globalization as having increased ‘the scope for non-state groups to play a part in international affairs’ and ‘European dependence – and so vulnerability – on an interconnected infrastructure in transport, energy, information and other fields’ (2003: 2). However, it adds, ‘[e]ven in an era of globalization, geography is still important. It is in the European interest that countries on our borders are well-governed’ (2003: 7). Europe’s task is ‘to promote a ring of well governed countries to the East of the European Union and on the borders of the Mediterranean’ and to develop a credible foreign and security policy that builds on previous successes – the document mentions the Balkans as the best illustration of European achievements (2003: 8). ‘Through our concerted efforts with the US, Russia, NATO and other international partners’, it continues, ‘the stability of the region is no longer threatened by the outbreak of major conflict’ (2003: 8).<sup>322</sup>

The affirmation of Europe as a cohesive global (securitization) actor with a foreign and security policy based on both military and civilian capabilities is to be read both in terms of the US attempt to construct and enforce a global bio(security) state as analysed in Chapter 3 and of Europe’s own global hegemonic objectives. As argued in my methodology, it would be wrong and quite naive to see the ESS simply as an answer to the NSS of 2002. Not only has Europe economic and political interests in the Middle East – something which Balibar seems to underplay in his description of Europe as vanishing mediator but that others like Abraham emphasises (in Chapter 1) – which might not necessarily go hand in hand with those of the US. In addition, debates among member states around issues of security and defence precede the war on terror and the drafting of the 2002 US NSS. Already in 1992, the Treaty of

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<sup>321</sup> Interestingly Berenskoetter draws on this quotation to argue that the ESS assumes that the EU’s “‘global player” status is defined through numbers not ideas’ (Berenskoetter, 2005: 77). Berenskoetter says, ‘[d]espite an unspecified promise to “promote its values”’ and ‘despite aims such as global poverty reduction, the ESS clearly lacks the missionary spirit found in the NSS’ (76). He argues this to oppose Kagan’s idea of the US as realist because ‘mired in history’ and of the EU as based on idealism, thus, ‘beyond power’ (Kagan, 2002: 11). However, what Berenskoetter fails to take into account is that in reality both documents are based on a mixture of ‘realism’ and ‘idealism’, which incidentally raises the more philosophical question of whether realism and idealism can be neatly distinguished and opposed (see also my discussion of Kaldor in the previous chapter in relation to reasons for the Iraq war).

<sup>322</sup> For a contrasting view, see Zolo, 2002, especially Chapter 5 ‘The consequences of the War’. See also Balibar, 2004a.

Maastricht<sup>323</sup> affirmed that the European Council ‘shall define the principles of and general guidelines for the common foreign and security policy’ and in 1995, a first limited<sup>324</sup> attempt to draft a distinctive European security strategy was undertaken within the framework of the Western European Union (WEU)<sup>325</sup>, which resulted in the Common Concept.<sup>326</sup> Prior to that, it was the European Political Cooperation (EPC), introduced informally in 1970 in response to the Davignon report and formalized by the Single European Act with effect from 1987 that provided the basis for consultations between the Member States in foreign policy matters.<sup>327</sup> And although there was no distinctive security strategy for ‘Europe’ (thus, the quasi-total consensual view on the European Community (EC), which was established in 1958, as ‘civilian power’<sup>328</sup>) at the time, what this shows is that the question of how the European Union as a cohesive entity should respond to ‘security threats’ is one that European member states have been grappling with since the establishment of the WEU.<sup>329</sup> As Bailes suggests, ‘insofar as the political dictate of the day in the spring of 2003 was for the EU to orient itself vis-à-vis this US vision, and to achieve a united statement on points of agreement or

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<sup>323</sup> The Maastricht Treaty (formally, the Treaty on European Union (TEU)), which was signed in February 1, 1992 but came into force in November 1, 1993, established the European Union (EU), with EU citizenship granted to every person who was a citizen of a member state. It led to the creation of what is commonly referred to as EU’s three ‘pillar’ structure, the European Community (EC), the Justice and Home Affairs (JHA) and the Common Foreign and Security Policy (CFSP), and provided the blueprint for Europe’s economic and monetary unification. The Treaty can be found at the European NAvigator <http://www.ena.lu/>. For a critique of the Treaty see, for instance, Bigo and Guild, 2005; Balibar, 2004a.

<sup>324</sup> The document limited itself to an assessment of EU’s military capabilities and the identification of partners for cooperation and ultimately proved to be politically unfeasible ‘because of divisions between the Member States’ (Biscop, 2004: 11).

<sup>325</sup> The WEU was established in 1948 on the basis of the Treaty of Brussels of the same year, with the accession of West Germany and Italy in 1954 (see the The Paris Accords and the related Modified Brussels Treaty) and later of Spain, Portugal and Greece. It was based on mutual defence commitments among its full members. In reality, as suggested by Bailes, it only ever managed to carry out some small-scale police and de-mining missions, although it also provided a coordination framework for European naval operations in the Persian Gulf in 1988–90 and in the Adriatic Sea in 1993 (Bailes, 2005: 3, note 5). A brief historical account of the WEU can be found at the European NAvigator (ENA) <http://www.ena.lu/>. See also the WEU Internet site at URL <http://www.weu.int>.

<sup>326</sup> For an analysis of the Common Concept, see Biscop, 2004: 12.

<sup>327</sup> For analyses into the development of a European foreign policy from what can be broadly defined as a social constructivist approach see, for instance, Tonra and Christiansen (ed.) 2004; Bretherton and Vogler, 2005.

<sup>328</sup> See, for instance, Duchêne, 1972. See also Manners and Whitman, 1998; Sjørnsen, 1998. For opposing views see Galtung, 1973; Bull, 1982. The former saw the emergence of the EC as a ‘superpower in the making’. The latter regarded the notion of civilian power as ‘a contradiction in terms’. In particular, for Bull, the power of all so-called civilian actors, such as Europe, is always conditional upon a strategic environment provided by the military power of states (1982: 151). For a similar argument with an ‘American twist’ see Kagan, 2002. Kagan sees Europe as an actor whose (Kantian) power is conditional upon American military power. His position can be summarized in one sentence: ‘[...] Europe’s rejection of power politics ultimately depends on America’s willingness to use force around the world against those who still believe in power politics’ (2002: [n. p.]).

<sup>329</sup> For a more extensive account on the procedural antecedents of a common European security strategy, see Bailes, 2005: 6-8. See also Biscop, 2005.

difference with the USA, the NSS could certainly be seen as a major “source” document for the ESS—and it was clearly uppermost in the minds of the original drafters’. However, she adds, ‘some of the meaning of the ESS may be lost if it is not also analysed as an outgrowth of the EU’s own doctrinal development and experience, and as a commentary on purely intra-European debates over priorities and governance’ (2005: 13). This, surely, is an important point. The ESS should be read in terms of reinforcing and consolidating EU’s global role in the current international system against accusations of irrelevance and weakness (see, for instance, Kagan, 2002; Ignatieff, 2008<sup>330</sup> – see also the NSSs themselves which, as I suggested in Chapter 3, mention Europe only in passing). It also should be understood in terms of an effort on the part of European states to represent Europe as a cohesive entity, whose role in the war on terror is far from unimportant.

This is not to say that the cohesiveness of Europe in matters concerning security and foreign affairs is assured. Just the opposite is true. There continues to be substantial national divisions within the EU on how to deal with problems of security and international crises. The Georgia-Russia conflict of August 2008, as an example that goes beyond the war on terror and which incidentally, according to some, raises questions about the feasibility of framing today’s environment as ‘post-Cold War environment’<sup>331</sup>, seems a case in point.<sup>332</sup> Depending on the government of the day, moreover, individual member states have tended to take somewhat different approaches to the war on terror and so-called security problems, with countries at times going far beyond the directives provided by the EU (see Neve *et al*, 2006). Neve *et al* give as an example UK policies on preemptive detention – although, interestingly, according to Statewatch (2005), ‘what is happening in the UK is indicative of other, wider, developments’.<sup>333</sup> But the argument could easily be extended, for instance, to Italian policies on immigration, such as the fingerprinting of Roma – or Gypsy – people (initially applied

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<sup>330</sup>In the ‘The Transatlantic Culture of Freedom’, Ignatieff argues that European economic and cultural power is offset by strategic weakness (2008: 4).

<sup>331</sup> See, for instance, Kaldor, 2005. Kaldor, quite rightly in my view, extends this line of thinking to include ‘the war on terror’. And even though her account of the Cold War as ‘imaginary’ and the war on terror as ‘real’ is misleading – during the Cold War there were plenty of ‘proxy’ wars – her characterization of the logic driving US’s foreign policy as, in part at least, informed by Cold War thinking seems correct (see also Stokes, 2003; Chomsky, 2003).

<sup>332</sup> See, for instance, Poland’s, but also Britain’s, calls for a tougher stance against Moscow as opposed to the more ‘muted’ response, initially at least, on the part of other European countries such as Germany, France, but also Italy. One explanation for this is EU’s dependency on Russian energy (Stobart and Rotella, 2008; see also the NSS itself: 3). But this clearly is not all there is to it. Other reasons for EU’s divisions have to be found in the different historical trajectories of these countries and their different outlook on NATO-Europe partnership.

<sup>333</sup> See the Statewatch report, 2005. See also Paye, 2004. According to Paye, an important feature of recent anti-terrorist laws is ‘that, contrary to previous legislations, they do not longer stem from relatively autonomous national initiatives, but are being put forward by international bodies such as the G8, the European Council, or the European Union’ (2004: [n.p.]).

also to children)<sup>334</sup> and the implementation of the policy of ‘respingimenti’ (or deportation of asylum seekers back to Libya before they reach the Italian coast).<sup>335</sup> What this shows is that, as de Goede suggests, Europe as a union of countries is not easily reducible to practices of the European Union (de Goede, 2008) and that there continues to be divisions within the Union on how to deal with defence and security problems (see also Callinicos, 2010). Nevertheless, despite disagreements among member states about how to deal with defence and certain ‘security’ issues, all of them seem in agreement about the necessity of a common European security strategy as the drafting of the ESS demonstrates. The ESS is the first common European security strategy to date, which is of significance in itself, and one of first EU texts to be threat-driven (more on this in section 4.2). The ESS even talks of ‘unity of command’ (2003: 12) – an expression which seems to resonate with the proposal by some member states in 2003, in particular France and Germany, to create an independent EU military planning cell and headquarters (see Chapter 1). In the ESS, moreover, the EU/NATO relationship is not prominent. The ESS speaks fondly of NATO – it is mentioned four times in total, very briefly three times and somewhat less sketchily toward the end when the question of building a ‘more capable Europe’ arises. In particular, in the strategy NATO is depicted as an important expression of the transatlantic relationship (2003: 9) – which, as Biscop suggests, implies that it is not the sole one (Biscop, 2004 : 22). As such, it can help ‘enhance the operational capability of the EU and provide the framework for the strategic partnership between the two organizations in crisis management’ (12). This seems to corroborate my thesis that the ESS is to be read both in terms of the US NSSs and of Europe’s own hegemonic objectives and desire to delineate its own modes of operation in relation to security and defence. Moreover, in presenting Europe as a bounded political entity for which ‘geography is important’, the ESS performs an essential (i.e., essential from the point of view of its drafters) task. It constructs the EU as an entity endowed with power seeking to advance its own interests<sup>336</sup> and to make itself secure from external threats. In the words of the ESS, ‘[t]he increasing convergence of European interests and the strengthening of mutual solidarity of the EU makes us a more credible and effective actor’ (2003: 1).

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<sup>334</sup> Note that these practices were exacerbated by the Berlusconi government but they did not actually start with it. An emergency decree to facilitate expulsions was passed by the previous Romano Prodi’s government in November 1, 2007. (Decreto Legge, no 181). It is also interesting to note that although initially condemned by the European Union (la Repubblica, 2008; see also the Directive 2004/58/EC of the European Parliament and the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States), the practice of fingerprinting were later approved by the EU (see again la Repubblica, 2008). For an analysis, see Dal Lago, 2008.

<sup>335</sup> Again see Dal Lago (2009) for an analysis. He calls the practices of ‘respingimenti’, practices of ‘preventive deportation’ for which the role of the police is central.

<sup>336</sup> The strategy uses the words interest(s) 8 times in total.

The idea of a coherent, effective and credible ‘European’ foreign and security policy based on both military and civilians capabilities unquestionably, reminds to a state-like structure of power.<sup>337</sup> As Allen and Smith suggest, it would be difficult to conceive of Europe as an entity properly endowed with military capabilities with no central political authority (Allen and Smith in Rhodes, 1998: 46). On the other hand, there is a sense in which civilians capabilities themselves cannot be understood outside of the state-form, especially when framed in terms of ‘police’ and ‘border police officers’ (see the ESS, 2003; see also the Ministerial Declaration on Civilian Capabilities, 2005). Now, what this means is not that the EU is simply the same as a state. As argued in Chapter 1, Europe is clearly not a state in the traditional or Weberian understanding, nor is it a state in the Schmittian sense of it. At present, not only it lacks the monopoly over the means of violence, which remains in the hands of the EU member states and it clearly has no say over the final decision. But, again as we have seen in Chapter 1, according to Balibar, the EU also undercuts traditional territorial sovereignty and, for him, ‘the *very possibility of representing* the border’ (also Mezzadra and Neilson, 2008; Bigo, 1998). Nevertheless, the framing of Europe as a bounded entity,<sup>338</sup> whose primary role is the securitization of the European people (of which more will be said in the sections that follow), is telling. It points to the persistence of a certain conception of the political as a sphere of sovereignty, which is understood here in the negative sense of term, as a sphere in which peoples only count to the extent that they can be included in it, where the decision to be included or excluded is dependent on a ‘sovereign-type’ decision. To this extent and in this specific respect, as opposed to contribute to a radical reshaping of world politics – something which Balibar would very much welcome – Europe appears to be shaped, at the same time as it helps maintain, the existing structure of power.

## 4.2 Biopolitical Security ‘Reloaded’

As mentioned in section 4.1, according to most authors, the ESS offers an alternative approach to security than that given in the 2002 US NSS<sup>339</sup>. Even though in its infancy, authors such as Biscop, Bailes but also Kaldor *et al*, see the ESS as providing exactly the model of security that is needed today. This is questionable. As we shall see in section 4.3,

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<sup>337</sup> On this, see also Boedeltje and van Houtum’s discussion of the European Neighborhood Policy (ENP), 2008. For a contrasting view, see Manners, 2002.

<sup>338</sup> The ESS mentions enlargement. It says ‘[e]nlargement should not create new dividing lines in Europe’ (2003: 7). However, not only it mentions it only in passing but enlargement itself suggests a fixed, if not permanent boundary.

<sup>339</sup> I analyse this also in light of the 2006 US NSS, which, it is fair to say, was not available to many of these authors at the time when their comparative analyses were carried out.

the ESS and NSSs depart from each other in some respects. However, in these authors there is a tendency to overestimate differences between these strategies while downplaying their similarities and the extent to which a certain vision of security as biopolitical security *de facto* provides the rationale for the war on terror.

Biscop suggests that the ESS offers ‘a reference framework for day-to-day policy-making [...] and it guides the definition of the *means* – i.e. the civilian and military capabilities – that need to be developed’ in order to tackle the security challenges of our times (Biscop, 2007: 1: 152; 2006: 1; see also Kaldor *et al*, 2007). In particular, authors such as Biscop, see the ESS as providing a different model of security than that given in the US NSS of 2002. Although they recognize that in their enunciation of threats the EU and the 2002 US NSS are similar, they emphasize differences in severity and framing of threats (Berenskoetter, 2005) and in the way in which these documents respond to them as a sign of Europe’s increase distinctiveness and awareness of the importance of its own-shared values and objectives. More specifically, it is the general reference to ‘the rule of law’ (and in particular to the UN Charter), ‘human rights’, ‘fundamental freedoms’ and ‘effective multilateralism’ that is perceived by them as providing a different and it is fair to add better, solution to the security problems of our times. These authors see the ESS as providing an alternative strategic framework to the US NSS; although not one necessarily and wholly incompatible with (again see, Bailes, 2005; Biscop, 2004, 2007; see also Faust and Messner, 2004; Berenskoetter, 2005). The ESS, they argue, reflects a move away from securitization understood in militaristic terms toward a more holistic or comprehensive approach to security (Biscop, 2005; Bailes, 2005; Berenskoetter, 2005).

This emphasis on differences is in part probably due to the vagueness of the European document itself, which is the result of a compromise between the various member states, whose consensus on certain issues, as the examples given above demonstrate, is not given (see also Geoffrey, 2006; see also Leonard and Gowan, 2004<sup>340</sup>). However, it could also be attributed to an unwillingness on the part of these authors to acknowledge the extent to which a certain vision of security – i.e., ‘human’ or biopolitical security – is common to both the 2002 US NSS and the ESS and in fact comes to sustain the war on terror. Like in the NSSs, in the ESS, security is extended to cover almost every aspects of ‘life’, from more traditional security problems, such as regional conflicts, to poverty and terrorism. The ESS states, ‘[t]he post Cold War environment is one of increasingly open borders in which the internal and

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<sup>340</sup> Although, according to Leonard and Gowan, in the end it may be exactly Europe’s common strategic and diplomatic positions that may become grounds for consensus (2004: 7).

external aspects of security are indissolubly linked'. In particular, the strategy argues, '[f]lows of trade and investment, the development of technology and the spread of democracy have brought freedom and prosperity to many people' but have also increased 'European dependence – and so vulnerability – on an interconnected infrastructure in transport, energy, information and other fields' (2003: 2). It further suggests that today's threats are 'greater than we have known' (2003: 6). This is why, it is disputed, it is important not to ignore them and for Europe to take an active role in defending 'its security' and promoting 'its values' (2003: 6). In the ESS, moreover, security is understood as 'the precondition of development' – where 'development' is intended mainly in economic terms (as both the preceding paragraph and the one that follows make clear) – and as that which creates the conditions for a better world (as given in the title to the document). 'Conflict', the ESS continues, 'not only destroys infrastructure, including social infrastructure; it also encourages criminality, deters investment and makes normal economic activity impossible. A number of countries and regions are caught in a cycle of conflict, insecurity and poverty' (2003: 2). The imperative, therefore, becomes that of defending society (Europe in particular) from external (above all from terrorism and WMD<sup>341</sup> but also from state failure and organized crime<sup>342</sup>) and internal threats, terrorism in particular (more on terrorism as internal threat in section 4.3), through a number of instruments as outlined in section 4.1. The ESS also includes in its list of 'challenges'<sup>343</sup> systemic problems, such as 'poverty', 'AIDS'<sup>344</sup> and other 'new' unspecified 'diseases' (2003: 2).

As hinted above, it is precisely this understanding of security that is perceived by some as moving away from the idea of it given in the 2002 NSS. The expansion of security to other domains is seen by authors such as Biscop and Kaldor as challenging a state-centric model of security and as conforming to a model that takes as its object not the state but individuals, is based on human rights, and is ultimately more inclusive. What, however, these authors fail to recognize is that firstly, as argued in Chapter 1, the blurring of internal and external security is not unproblematic as, in turn, it leads to a *blurring of the distinction between police*

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<sup>341</sup> To note that in the first draft of the document, WMD was defined as 'the single most important' threat for which deterrence would fail if in the hands of 'small groups' (quoted in Quille, 2004: 424). The ESS now describes WMD as 'potentially the greatest threat to our security' (2003: 3).

<sup>342</sup> These elements – WMD, state failure and organized crime – are all unsurprisingly directly linked to terrorism in the strategy.

<sup>343</sup> It is interesting to note the use of the word 'challenges' to distinguish between 'challenges' and what the ESS perceives as 'threats'. The title to that paragraph is: 'the Security Environment: Global Challenges and Key Threats'. Also noteworthy is the fact that despite this apparent distinction there is in reality a substantial conflation of the two in their being understood in terms of prevention and linked to questions of security.

<sup>344</sup> For an analysis of the issue, see Elbe, 2005b.

actions and war (see Balibar, 2003, 2006; also Bigo, 2005). As Bigo says, 'it makes obsolete the conventional distinction between one constellation of war, defense, international order and strategy, and another constellation of crime, internal security, public order and police investigations'. It leads to what he calls a 'field of in-security', which is ultimately 'neither reducible to the national political field, nor to a level between two nations, or even to the European level' (Bigo, 2008: 28) – a point which is central to my own understanding of the EU as part of a 'global (bio)security state'. Secondly, they ignore the fact that is on the basis of similar justifications than those given in the NSS(s) that the EU defends its need for a European Security Strategy – where the object of security shifts from the American people to Europeans but does not exclude what I have called in my previous chapter a 'global people'. Even though the ESS does not refer to a 'global people' specifically, it clearly is not solely directed to Europeans. In the ESS, references to the strategy's global dimension abound. The ESS explicit said scope is that of protecting citizens living in European countries first and foremost. But it also sees and identifies Europe as most definitely capable of making 'an impact on a global scale', as the ESS itself argues in its conclusive paragraph (2003: 14). Thirdly, these scholars underplay the extent to which 'human' or 'biopolitical security' is in reality common to all three documents and especially to the ESS and the 2006 NSS, which incidentally raises the question about the effects of European ideas on conceptions of security and the configuration of the US NSS of 2006. Could not some of the changes in emphasis between conceptualizations of security offered in the American national security strategies of 2002 and 2006 (see Chapter 3) be seen in terms of an attempt on the part of the US to offer a more 'Europeanized' version of it? This slight but nevertheless noticeable shift in emphasis between the 2002 and 2006 NSSs could arguably be understood as an attempt on the part of the Bush administration to offer a vision of security that was even more in line with conceptions of 'human security' as outlined in Chapter 1. Although, ultimately, there is no way of knowing for sure (at least on the basis of evidences gathered here alone), what is clear is that there is *a shift to a certain vision of security* at both US national and European levels<sup>345</sup> and that 'European' ideals as understood here are to an extent functional to US and EU's configurations of themselves as securitization entities.

More precisely, what the analysis of these documents has made evident is that a certain understanding of security is essential to the construction of US self-image as a 'global (bio)security state' as well as to Europe's self-representation as a 'global bio-securitization

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<sup>345</sup> A shift that in line with authors such as Agamben (2004), Huysmans (2006), Bigo and Guild (2005), Reid (2007), Aradau, (2004) and Buzan, (2006), I argue has not started with 'the war on terror' but has patently accelerated because of it.

actor'. Biopolitical security is that which makes both the US and Europe in its self-representation in the ESS appear as the guarantors of people's security in the war on terror. As analysed in Chapter 3, the construction of a global people and of global threats provided the US administration with the rationale to act on populations globally. It was in the name of securing people globally that the US waged a war against terrorism whose scope of action seems unlimited. But security and terrorism are also central to Europe's self-representation. It is on the basis of similar conceptions of security than those employed in the 2002 NSS that the ESS is able to present itself as a powerful, global actor. Apart from 'global warming', which is however mentioned only in passing in the strategy,<sup>346</sup> and the addition of organized crime,<sup>347</sup> there is not much difference in how these documents conceptualize security. In the same way as the extension of security to other domains was an integral part of the construction of the US as a 'global (bio)security state', so is the presentation of problems (military, environmental, health, terrorism and WMD etc.) as security threats for the EU. It is by presenting problems as global threats that the EU establishes itself as an active global player, whose role is indispensable. By reproducing the idea of security as mechanism of biopower, the ESS does less to challenge the US attempt to enforce a 'global (bio)security state' than to reproduce its logic(s). As opposed to moving away from it, the idea of comprehensive security or 'human security' seems to reinforce the ideological premises and the mechanisms of biopower and exceptions on which the war on terror is based. Human or biopolitical security is that which ultimately creates the conditions for the implementation of securitization preventive policies in the context of the generalization of (the state of) exceptions. By adopting this idea of security, the EU, although with some hesitations<sup>348</sup>, includes itself, i.e., it becomes an *active participant* of new imperial political (dis)order (Joxe, 2002), in its representation of itself as global actor whose main function is the protection and securitization of people.

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<sup>346</sup> Global warming is mentioned parenthetically twice in the strategy (2003: 3; 10); once in relation to 'effective multilateralism' and to 'competition for natural resources – notably water'; competition which, according to the document, 'is likely to create further turbulence and migratory movements in various regions' (2003: 3). The document recognizes the link between global warming, competition and migration but completely fails to engage with it. Also unclear from the framing of the question is the extent to which the ESS considers 'migratory movements' to be a challenge or a threat as there is no further clarifications of this in the document; although the explicit association of migration with turbulence (a word with clear negative connotations) and security does seem to substantiate the latter option.

<sup>347</sup> Interestingly, however, 'organized crime' is mentioned in the NSS of 2006, which seems to confirm a certain 'European' influence.

<sup>348</sup> Here differences between how states have dealt/deal with the question of terrorism and security in general are arguably important.

In line with Zagato, it can be argued that within the European juridical framework, those results that cannot be achieved through the direct use of the state of exception ‘can in part be obtained through the transformation of security into strategic objective’ (Zagato, 2007: 296<sup>349</sup>). In the ESS, sovereignty is not simply redefined from the state to ‘international community’ (see the ESS) but, as it was in the NSSs, ‘sovereign’ power is supplemented by specific biopolitical forms of power or securitizing forms of power whose dissemination is dependent on both juridical and non-juridical instruments. Both the example offered by Zagato, i.e., immigration policy (Zagato, 2007; Bigo, 2005), and counter-terrorism policy, such as practices of extraditions, financial surveillance, data retention, borders policing and asset freezing enabled by ‘mutual legal assistance with the USA’ (ESS, 2003: 6; see also the EU Counter-Terrorism Strategy, 2005) are cases in point – with the two polices [immigration and counter-terrorism polices] actually overlapping in some important respects.<sup>350</sup> What this suggests is that, although by no means the same, European and American modes of governing rely on similar mechanisms of power to control and regulate spaces, states, and persons judged as dangers and threats to security.

Indeed, as de Goede suggests, it is plausible to suggest, that ‘a collapse between Europe and the US as distinct entities of governing is effected through anti-terror measures’ (de Goede, 2008: 163; see also Paye, 2007). This is particularly evident when it comes to policies such as, asset freezing, transfer of passengers data (PNR) and extradition – an extradition agreement between the EU and the US was signed on 6 June 2003<sup>351</sup> – of which de Goede speaks, which effectively subject all European citizens to the laws and exceptional measures of the US(A). In particular, according to Paye, extradition accords ‘insert European citizens into the American system of exceptions to the law. They reveal a true imperial structure in which the US executive has the right to determine the exception and make it the basis of a

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<sup>349</sup> Zagato also speaks of both of ‘indirect’ and ‘direct’ use of the state of exception and seems to further distinguishing from a securitization move on the part of Europe. However, in my view, this distinction in relation to Europe and in the aforementioned context is confusing. There is no clear distinction between the ‘transformation of security into strategic objective’ and ‘the indirect use of state of exception’. The transformation of security into strategic objective is precisely that which enables an *indirect* use of the (state of) exception on the part of the EU.

<sup>350</sup> See also the *Declaration on Combating Terrorism* (2004). The Declaration states ‘[i]mproved border controls and document security play an important role in combating terrorism’ (2004: 7). But borders policing and the use of intensive technologies of biometrics and shared databases are also used to manage, control and deter ‘illegal’ immigrants. When it comes to agencies, such as, the European Borders Agency (Frontex) and databases, such as, the Schengen Information System (SISI/SISII), and the Visa Information System (VIS) the same pattern applies. For a critical analysis of these databases, see Bigo and Guild 2005; Broeders 2007.

<sup>351</sup> As Paye says, within the context of extradition accords, any resident of a member state of the European Union suspected of terrorism could be handed over to American authorities and subjected to their arbitrary decisions.

new legal order' (Paye, 2007: [n.p.]). But it also is noticeable when it comes to how issues of security are framed within the ESS. As mentioned above, like the NSSs, security problems are framed in terms of human or biopolitical security where biopolitical security becomes that which prepares the way, conceptually at least, for an idea of 'life' that is at hand for the mounting of proactive interventions of pre-emption and prevention. Differences between American and European counter-terrorism policy do exist. But what the analysis of the ESS makes evident is the pervasiveness of biopolitical security and the difficulties of separating a politics of security from one based on a logic of exception within the context of the war on terror. It further suggests that security is becoming a dominant paradigm of governing and legitimation (on this see also Dillon, 2007). Although clearly not simply through it – as Friis and Murphy argue, the EU has 'to carve out a legitimacy strategy which is not unidimensional but compromises several sources of legitimacy' (2000: 299<sup>352</sup>; see also Brown in Chapter 1) – in the ESS, security is the main source of authority. It is that which frames how Europe is being (re)constituted.

To this extent, the fact that the ESS refrains from using the term war on terror<sup>353</sup> (the strategy also avoids the term enemy - more below) although welcomed by some (see, for instance, Bailes, 2005) is, unfortunately, of relatively little significance (see also Neal, 2009 in my introduction). Especially when considered in the context of the generalization of (the state of) exception as described in Chapter 1 and 2, it is difficult to see how simply abandoning the language of war, while accepting a framework of preventive action, can have a real impact. Considered in light of Schmitt's presupposition that sovereignty must not be identified with the presence of a monopoly of violence – a monopoly that is increasingly shared with other nonsovereign and/or 'petty sovereigns' organizations, such as private organizations<sup>354</sup> – but with the monopoly to decide on the exception, a question can be asked about the effects of biopolitical security on 'state' power. Do the 'transnationalization'<sup>355</sup> and expansion of security to other domains as represented both in the ESS and the NSSs *really* challenge

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<sup>352</sup> According to Friis and Murphy, this is because 'that which increases the legitimacy of the EU in one Member State' might 'do exactly the opposite in another' (2000: 299).

<sup>353</sup> The Council of Europe prefers to talk about 'fight' as opposed to 'war' against terrorism (see the official website of the Council of Europe for examples); an expression which has been taken up by many commentators and politicians. Note, however, that attempts to recast 'the war on terror' as a 'struggle against violent extremism' started with the Bush administration (see Schmitt and Shanker, 2005)

<sup>354</sup> The privatization of security is recognized by the ESS strategy itself. At page 5, we find stated, [t]aking these different elements together – terrorism committed to maximum violence, the availability of weapons of mass destruction, organized crime, the weakening of the state system and *the privatisation of force* – we could be confronted with a very radical threat indeed' (emphasis added).

<sup>355</sup> See the growing role of multinational actors, such as Europe, as well as of the police and private firms.

states' capacity to decide on the state of exception or in fact reinforce it? To note, however, that this is not so much a claim regarding the essential nature of the state (Schmitt, 1988; Agamben, 2004), which, as argued in Chapter 1, in line with Foucault and others, I prefer to think of as not having 'an essence'. If it was, moreover, it would not have been possible to extend this discourse on sovereignty to the Europe Union, which in the ESS is constructed as a 'state-like' but is clearly not a state. Nor is this a claim about power itself, whereby power ends up being conflated with sovereign power. But it is a more 'pragmatic' point about the way in which 'human or biopolitical security' is being used to legitimize practices of exception at national and European levels and has been used by the United States to exempt itself from international law and courts of law and to monopolize and use violence against all those that were, or were presumed to be, against 'them'<sup>356</sup>. It is a claim about the way in which human or biopolitical security is not merely complementing but redesigning or giving new meanings to states (see also MacFarlane and Khong, 2006: 265<sup>357</sup>), state sovereignty, and 'new' state forms such as the EU.

Europe's self-representation as a global bio-securitization actor depends on depicting problems in similar terms than those used in the NSSs. That is to say, in terms of 'global threats' – although, as we shall see, the ESS's emphasis on terrorism as internal threat also plays a major role in constructing a certain image of Europe. The construction of security problems as new global threats enables the transformation of Europe into a global security actor whose main task as securitization actor becomes the prevention of threats and regulation of populations. This self-representation depends on presenting America as unable to deal with today's threats on its own. However, this is less about undermining America power (whose role as a dominant actor is emphasized in the strategy) than about emphasizing Europe's *own* capability for enforcing security globally. By treating security as that which 'must be defended' (ESS, 2003: 6), the ESS asserts a global (bio)securitization role for Europe, which includes but is not limited to preventing/combating terrorism at the same time as it redefines sovereignty from the state to the state-like EU.

This redefinition of sovereignty, which is enabled by the affirmation of security as one of Europe's main tasks, does not necessarily correspond to the demise of national interests – the EU can be quite accommodating in these regards. It does not automatically challenge the generalization of the logic of exception whereby 'dangerous' individuals are under the

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<sup>356</sup> In the words of Bush, 'either you are with me or you are with the terrorist' (Bush, 2001).

<sup>357</sup> MacFarlane and Khong argue that the focus on 'human security' is not about transcending or marginalizing the state but 'ensuring that there are international mechanisms that can fill the gap ad interim and redesign states' that do not fulfil their duty to protect (2006: 265).

constant surveillance of ‘the state’. In taking up a securitization global role, the EU accepts and reaffirms the discursive premises of the war on terror and of the state of exception on which it is ultimately based. Despite Schmitt’s attempt to preserve the State as the only legitimate founder and operator of the exception, what this means is that if the conditions are created for its implementation, the exception can exceed its original ‘legitimate’ founder, investing a number of states and actors, among which we can count the EU, which willingly subject themselves to it in order to preserve their power.

#### **4.3 Continuing American War by Other Means?**

In the ESS, terrorism is constructed as a dangerous phenomenon, both as a global and a European phenomenon. It is constructed both as an internal and external security threat. Authors such as Berenskoetter see the naming of terrorism as an internal threat as a welcoming move on the part of Europe for rejecting ‘the externalization approach of the Bush administration’ (Berenskoetter, 2005: 81; Rhodes, 2003). However, leaving aside the fact that the framing of terrorism as an internal phenomenon is not exclusively European<sup>358</sup> and that ‘internalization’ and ‘externalization’ are not two mutually exclusive approaches, what these authors fail to consider are the limits of the European approach to terrorism. On the one hand, they fail to understand the ways in which the construction of ‘enemies’ as internal threats naturalizes them at the same time as it depoliticizes them. On the other, they fell short to acknowledge the extent to which rather than representing a radical break with US policies, Europe’s understanding of terrorism relies on a political rationality or *Polizeiwissenschaft*,<sup>359</sup> which while disavowing the terminology of war, could be seen as continuing American war by other means.

As we have seen in the previous section, in its naming of threats, the European strategy follows the framework provided by the 2002 NSS almost exactly. The only notable difference is in relation to terrorism. Even though the ESS places terrorism at the centre of his security strategy, there are some important differences on how it frames it if compared to how it is constructed in the NSSs. In the ESS, terrorism is treated as a ‘growing strategic threat’ that ‘seeks to undermine the openness and tolerance of our societies’ (2003: 3). The document

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<sup>358</sup> Since the beginning of ‘the war on terror’, many countries have adopted its language to crack down on so-called ‘internal terrorists’. See for instance Pakistan, China, Russia. In accordance to Balke, we could say that ‘[t]he exclusion that results from the mere functioning of the globally operating social systems is thus “passed on” to the local level’ (Balke, 2007: 17).

<sup>359</sup> Foucault defines *Polizeiwissenschaft* as ‘a system of regulation of the general conduct of individuals whereby everything would be controlled to the point of self-sustenance, without the need for intervention’ (1994: 30).

links terrorism to religious extremism and speaks of Europe as ‘both a target and a base for such terrorism’ (2003: 3). As in the NSSs, terrorism, or more specifically what the ESS calls the ‘most recent wave of terrorism’ as to implicitly point out that terrorism is not a new phenomenon in itself<sup>360</sup> – its newness allegedly being given by its religious extremism, dynamism and globality – is presented as a new dynamic threat, whose scope and capacity for action is global and whose power is negative and destructive. In the words of the ESS, terrorism ‘puts lives at risk’; terrorists ‘are willing to use unlimited violence to cause massive casualties’ (2003: 3). The ESS adds that ‘terrorist movements’ are ‘well-resourced, connected by electronic networks’<sup>361</sup> (2003: 3). In this respect, there are no main distinctions in how terrorism is conceptualized in the ESS as compared to the NSSs. However, despite the capacity of terrorists to kill on a massive scale, the fact that ‘European countries are targets and have been attacked’<sup>362</sup> (3) and the possibility for terrorist groups to ‘acquire weapons of mass destruction’ (4), this time, contrary to the NSSs, the ESS never uses the term ‘enemy’. In the ESS, terrorism is not treated as something that cannot be dealt with. Nor is the terrorist treated as the enemy or as a military threat. Instead, in the European strategy terrorism is presented as a dangerous phenomenon that has both global and local dimensions – it is both external and internal – and that requires a mixture of means to combat it (2003: 7). In the words of the strategy, ‘[i]n contrast to the massive visible threat in the Cold War, none of the new threats is purely military; nor can any be tackled by purely military means. Each requires a mixture of instruments’. In particular, ‘[d]ealing with terrorism may require a mixture of intelligence, police, judicial, military and other means’ (2003: 7).

This has led some commentators to argue that the perspective underlying the discussion of terrorism in the ESS is more ‘inclusive’ and multidimensional; therefore, evidently distinguishes itself from the one-dimensional offered in the NSS(s) (see Berenskoetter, 2005: 80; see also Monar, 2008: 211- 214). In particular, according to Berenskoetter, ‘[b]y suggesting that causes for terrorism may also reside within European societies, the ESS clearly contrasts the externalization approach of the Bush administration’ (2005: 81). In his words, it acknowledges that terrorism ‘is not exclusively linked to the intention of “bad” actors’ outside of the Western world, as in the NSS, but ‘emerges from multiple factors’ (2005: 80, 81), which includes ‘pressures of modernization, cultural, social and political

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<sup>360</sup> Most European countries had experienced ‘terrorism’ prior to 2001 (Monar, 2008: 214; Bigo, 2006a).

<sup>361</sup> Not surprisingly, in the ‘Report on the Implementation of the European Security Strategy – Providing Security in a Changing World’ (2008), cyber security appears as central to the prevention of terrorism.

<sup>362</sup> Note that the strategy was written before the Madrid and London bombings.

crisis, and the alienation of young people living in foreign societies' (ESS, 2003: 3). However, if, on the one hand, the development of an account of the causes of terrorism seemingly helps to challenge the idea that terrorists are *inherently* dangerous, hateful and murderous, I suggest that its 'internalization' also has some negative effects. The internalization of terrorism implies that terrorism is not to be understood *just* as confrontational or, in Foucault's words, in terms of a 'military relationship of confrontation', but also as *intrinsic* to society and thus as 'natural' (if not exactly in terms of a 'biological relationship' to the life of the social body) (Foucault, 2003: 255). In the ESS, there appears not to be a re-articulation of racism as cultural clash between two opposite 'ways of life' as given in the NSSs. Or perhaps, the re-articulation is only much less explicit than in the NSSs.<sup>363</sup> However, following my discussion of how, in Foucault's terms, 'racism' functions in terms of establishing a distinction between those who must live and those who can be killed in Chapter 1, it can be argued that, as 'part of our own society', here it is terrorism that takes the place of racism. As 'part of our own society', terrorism functions in terms of establishing a relationship of war between 'our life' or the 'life' of those living in European countries and that of the terrorist or religious extremist (Foucault, 2003). In other words, as opposed to challenge the 'externalization' approach of the USA, by naturalizing terrorism 'internalization' reproduces mechanisms of power based on 'inclusive exclusion'.

Drawing again on Foucault but this time on his timely essay 'About the Concept of Dangerous Individual', we could say that terrorism signals the existence of an inherently dangerous element – that is, more or less dangerous – in the social body (1994: 178). Terrorism is the dangerous element in the sense of having negative or damaging effects as well as of threatening the very existence of the community. In the words of Solana, the person responsible for the drafting of the ESS, '[t]errorism is an existential threat'<sup>364</sup> (Solana, 2004: [n.p.]). Terrorism is a criminal threat, vaguely linked to 'organized crime' (2003: 4, 5, 13; see also the Council of the European Union, 2005: 6), whose actions are both radical and unjustifiable but whose status is not clearly legally defined. Interestingly, the ESS is not the only European official document that lacks a definition of terrorism. The *Framework Decision on Combating Terrorism* is also unclear when it comes to specifically defining the status of terrorism. Although, contrary to the ESS, the Framework Decision does provide a

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<sup>363</sup> For instance, the ESS states that terrorism 'seeks to undermine the openness and tolerance of our societies', which indeed implies that 'our societies and values' are different from 'theirs'.

<sup>364</sup> One cannot but note the Schmittian overtones here. According to Schmitt, '[n]o programme, no ideal, no norm and no expediency confer a right to dispose over the physical right of other men' (Schmitt, 1996: 48). The only thing that does is a threat to one's own existence. In Schmitt's own words, the enemy is 'motivated by an existential threat to one's own way of life' (1996: 49).

very broad definition of its socio-political nature and a legal framework for fighting it, according to most authors, its scope of application is rather ambiguous (see, for instance, Dumitriu, 2004: 598; see also Symeonidou-Kastanidou, 2004; Sorel, 2003; de Goede, 2008).

Put differently, terrorism is depicted as both existential and criminal threat and its actions criminalized but a clear legal definition of it is lacking. What this creates is a situation of ambiguity. It produces a situation in which the status of the terrorist is suspended between legality (the terrorist is a criminal) and illegality (not only is the terrorist not ‘an enemy’ but his/her status is never clearly defined); between a domain of law and one outside the law (legal means are not enough to contrast it, the strategy explicitly tells us); between a Schmittian conception of terrorism as existential threat and a criminological conception for which terrorism is made equivalent to crime. Interestingly, however, as we have observed in Chapter 1, according to Schmitt when ‘the adversary is no longer an enemy but an outlaw, a disturber of the peace’, what we are confronted with is not a form of (state) politics firmly rooted in the friend/enemy distinction or the paradigm of war. In Schmitt’s framework, the state is and in fact ought to be the basic political entity of ‘the political’. Instead, we are confronted with a different type of politics. That is to say, a politics of imperialism that while disavowing the language of war accepts that military means are necessary. To paraphrase Foucault, within this model, the terrorist ‘appears as a juridically paradoxical being. He has broken the pact, he is therefore the enemy of society as a whole’ (Foucault, 1999 [1977]: 89–90). Because the terrorist is a threat to Western society and values, the EU accepts that terrorism is a priority that needs to be dealt with a number of instruments and measures.<sup>365</sup>

Now, the difficulty in placing the kinds of concerns that define the ‘strategy’ within a realist or Clausewitzian understanding of interests has also to be considered. The ESS disavowal of the language of war is also probably related to what Balibar calls the ‘post-bellie’ character of Europe (see Balibar, 2004: 222)<sup>366</sup> and the ideals that subtend to it. Certainly, major economic and political interests in the Middle East played an important role when it came to decisions about foreign and security policy (see Abraham, 2004: note 14). But Europe’s actions cannot simply to be explained in terms of ‘economic imperialism’ (see discussion of Schmitt in Chapter 1) – divisions between member states, political, strategic and ideological

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<sup>365</sup> See not only the ESS (2003) but also the Declaration on Combating Terrorism (2004) and European Union Counter-Terrorism Strategy (2005) and the EU Action Plan on Combating Terrorism.

<sup>366</sup> In particular, Balibar notes that one of the historical experiences that contributed to shaping contemporary Europe was that of ‘tragedy’ – the tragedy of ‘civil wars’ that ‘devastated the European community of peoples. In turn, he argues, this ‘lesson’ gave its deep roots to what he calls, following Monique Chemillier-Gendreau, a “transnational public order (not reducible to a form of moral “pacifism”) that contradicts the “Clausewitzian” equivalence of the “means” of war and the “means” of politics’ (22).

issues also play a part. What is clear, however, is that even though the ESS does not promote anticipatory or pre-emptive war, it does not reject it. On the contrary, the embracement of securitization polices such as the ones mention above<sup>367</sup> and the promotion of ‘preventive engagement’<sup>368</sup> in the ESS challenge ‘the widespread assumption that preemptive security practice is specifically American and is either widely resisted, or very reluctantly followed, by Europe’ (de Goede, 2008: 175). Although relying mainly on a criminological model whose practical horizon tends to be one of policing and appears to be unrelated to war and enmity, EU’s understandings of security and terrorism in reality are connected and enmeshed with logics of war (and with open wars too) – Afghanistan being a case in point. This enmeshment renders difficult to see how in the present Europe challenges a ‘Clausewitzian’ model of politics and raises the question of the extent to which, reversing Clausewitz’s famous dictum, the politics of the European Union is in fact the continuation of American war on terror by other means. This does not mean that we can simply understand the politics of the European Union in the war on terror in terms of continuation of American war both for the reasons given above and because this would ignore moments of hesitation and back and forth movements of the European Union. Nevertheless, what this ‘Clausewitzian’ idea questions are interpretations of US foreign policy as determined by political and economic interests and of Europe as simply driven by principled ideals. Not only there is a sense in which ‘principled ideals’ are somehow functional to the war on terror, which has been initiated by the Bush administration but which, as I have suggested here, continues in European Union practices of security. But economic and political interests themselves are not separable from ideas nor, as argued above, is ‘Europe’ beyond or above them.

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<sup>367</sup> See also what calls, ‘the financial war on terror’, which enables security action, such as economic terror sanctions, ‘on the basis of evidence that is not designed to hold up in court’ – evidence from intelligence sources, often from US intelligence (2008: 173).

<sup>368</sup> The ESS sees ‘preventive engagement’ as indispensable to ‘avoid more serious problems in the future’ (ESS, 2003: 11).

## CHAPTER 5

### Toward a Global (Bio)Security Emergency-State

We cannot deny that the idea of generalization of the (state of) exception presented here diverges in many respects from the ones given by Agamben and some of his interpreters. For a start, this thesis has considered the state, and in particular the United States of America, not simply as a locus of the enacting (or suspension) of law, but as a securitizing, imperial power whose practices of exception go beyond a legal register. It was because of the US's ability to decide on the exception and the consequent passing of laws, such as the Patriot Act, which *de facto* created the conditions for the suspension of law, that Agamben has substantiated his claims about a new legal order characterized by a permanent state of exception or what he sometimes refers to as a 'global civil war'. However, what this thesis has demonstrated is that the paradigm of exception cannot be reduced to the enactment of laws. By analyzing different securitizations strategies, two produced by the US, a state and imperial power, and one by the EU, which is not a traditionally defined state, this thesis has shown how these strategies themselves, and the ideas or constructs that subtend them, contribute to the operationalization and generalization of the (state of) exception. Moreover, whilst the existing literature has tended to deal with the most problematic issues of Agamben's theory, such as his tendency to engage in epochal rhetoric, in the abstract or to apply it to US 'legal' or extra-legal developments, no sociological study to date has focused primarily on comparing US and EU security strategies on the legal, geopolitical and social terrain. By comparing securitization strategies produced by the leading nation-state in the war on terror, whose sovereignty can be broadly conceived in Agambenian terms, especially when it comes to decisions about 'the enemy', and the EU, which while challenging 'statist' ideas of sovereignty in theory, in practice reaffirms the political as a sphere of sovereignty through its self-image as outlined in the ESS, this thesis has contributed to an understanding of the state of the exception, even as it has called some aspects of Agamben's theory into question. In particular, it has challenged the idea that the generalization of the (state of) exception is simply equivalent to the increasing use of emergency legislation in various countries or explainable through the notion of 'global civil war'. Without shying away from problematic aspects of his theory, this thesis has explored the kind of empirical complexity, which is often missing in works that do not take into account the interplay between imperial practices and practices of exception, as well as to confront the importance of international law, war, and discourses of security in the operationalization of the (state of) exception. By critically employing Agamben's and Foucault's insights on sovereignty and biopolitics, and other concepts such as those of empire and imperialism drawn from other critical theorists through an exegesis of these security

strategies, this thesis has provided a better conceptualization of the (state of) exception in terms of how the US and EU conceptualize it and what are the mechanisms that allow its generalization.

Starting from a critical exploration of biopolitics and sovereignty in the works of both Agamben and Foucault, through a theoretically informed discursive analysis, this thesis has examined three securitization strategies related to the war on terror with a view to exploring the extent and the specific manner in which the exception and security have become entangled post-9/11. In particular, it has analysed three security strategies, which were purposively chosen because they did not neatly fit into Agamben's theory. Not only are these documents not strictly 'legal' (i.e., they are not legislative but foreign security policy documents that serve as guideposts and whose function is primarily strategic or ideological) but the European one is not conceived as being representative of any one State but of the European Union itself. This has allowed an understanding of these discourses which while accepting some of Agamben's most critical insights goes beyond 'methodological statism' or his tendency, following Schmitt, to treat the state in its national form as the main object of his juridico-political, philosophical inquiry.<sup>369</sup> Concurrently, this thesis has questioned the neat distinction between the US and EU that most current approaches to security tend to assume, both in terms of applying Agamben's theory of the exception to the former and Foucault's theory of governmentality to the latter and of seeing the ESS in opposition to the 2002 NSS. By comparing US and EU security strategies, which it has treated as very important examples of the type of securitization discourses being given voice today, this thesis has provided a theoretically-informed understanding of *how* exactly the exception is operationalized/generalized in the context of the war on terror.

More precisely, what the analysis of the two NSSs has demonstrated is that, as Agamben suggests, the exception is indeed essential to an articulation of sovereignty at the national level. It is through this articulation that the US tried to secure its status as a powerful state as well as to legitimize a global leading role for itself in the war on terror. However, as suggested by the Foucauldian framework of biopolitics and state racism, what my analysis also has shown is that far from being reducible to sovereign (state) power, the continuation of the war on terror as framed in the US documents (i.e., as permanent global warfare) also relies on other mechanisms of power. It appears that the continuation of the war on terror

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<sup>369</sup> As mentioned in Chapter 1, in his latest book *Il Regno e la Gloria*, Agamben gives signs that he is starting to think beyond the question of sovereignty and more particularly about the question of the 'economy', although how successfully is an open question. Also unclear is whether the book goes beyond 'methodological statism'.

relies on mechanisms of (bio)security (note the importance of ‘human security’ to both the US NSSs and the European document) which, working ‘at the local, micro and lowest level’ (i.e., at the level of subjectivities), are ‘annexed by global phenomena’ (i.e., by the US and the EU as globalizing ‘states’) to become those that legitimize the transformation of the state of exception into a kind of endemic activity. My conceptualization of the state of exception has not simply challenged an idea of ‘sovereignty’ as entirely founded on the exception, pointing to the centrality of security to its operationalization. It has also made evident how the generalization of the (state of) exception and its entanglement with ‘human’ or biopolitical security work in practice. It has demonstrated how in a sense we pass from a ‘technical’ state of exception, intended as that which states use to contrast alleged emergencies or threats to national security, to a global, emergency-state, whose politics, combining the logic of exception with that of security, are both racializing and imperialist.

As indicated in my literature review, Agamben sees the decision on the exception as central to contemporary biopolitical developments enabled and/or related to the war on terror. According to him, the state of exception is that which enables governments to act upon the lives of peoples or, more precisely, to reduce ‘life’ to *bare life*, and is also that which allows governments to expand their (bio)power over the globe presently. He talks about a ‘generalization of the state of exception’ to indicate the pervasiveness of these mechanisms of (bio)power or ‘inclusive exclusion’ at the global level and their constant expansion; an expansion which crucially, as Agamben himself suggests but leaves somewhat undeveloped, is characterized by the centrality of security.<sup>370</sup> However, although not central to my own analysis, as I have explained in Chapter 1, this raises, among other conundrums, the question of whether constitutional law is the same as international law. Whilst Agamben seems simply to conflate the two, other legal theorists draw attention to the fact that there are certain basic human rights obligations that cannot be suspended even in times of war or other public emergencies. The examples of how human rights legislations have been used to try to counter-balance the power of the state to curtail civil liberties and people’s freedom that I have offered in Chapter 1 are cases in point. The fact that the suspension of rights can be and has been challenged through an appeal to rights, clearly, does not answer the Agambenian question of why in practice they are everywhere regularly suspended. But it does challenge his thoroughly negative view of rights. More relevantly still, what my analysis has shown is

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<sup>370</sup> See Chapter 1, section 1.9, where Agamben’s claim that security has become the state’s basic task is discussed in some details in relation to the development of ‘human security’ as that which ‘seeks to act on populations globally, thus, passes the responsibility to protect people from the state to the international community’.

that the theme of emergency is essential to a conceptualization of US and EU (bio)politics and of war as given in the US NSSs (i.e., as permanent global warfare). However, it has also revealed that ‘the generalization of (the state of) exception’ is somewhat different from the version promulgated by Schmitt and further developed by Agamben where the concepts of state and its existence, sovereignty and (juridical) order are keys. The conception of the state we are presented with in the US NSS documents is not a traditional but clearly a ‘new’ one. No longer a nationally bounded state, the US presents itself as a global (bio)securitization actor whose powers when it comes to decisions about what constitutes and how to deal with the exception go behind what is permitted in international law, giving rise (nominally at least) to what I have called a ‘global (bio)security emergency-state’.

It is important to remind ourselves, however, that although for both Schmitt and Agamben the concepts of the state, sovereignty and (juridical) order are important, it would be wrong simply to superimpose Schmitt and Agamben in this regard. As again shown in Chapter 1, for Schmitt, it is on the basis of a presupposition of the concept of the political as political decision on the friend (and the enemy) that he arrives at the concept of the state as ‘he who decides on the state of exception’. For Agamben, by contrast, it is the decision on the exception itself that is fundamental and although decisive, the political entity (i.e., the state) only makes possible a certain type of negative politics, or better biopolitics. That is to say, a form of politics based on the right to decide what life is worth living. Agamben’s emphasis is on the limitations and ultimate negative power of sovereignty as embodied in the state. The state is not that which opens the way to a new type of politics as envisaged by Agamben. For Agamben, the capacity of the sovereign to decide on the exception is based on a paradoxical impossibility, seemingly accepting that there is a continuous and progressive decline of the Nation-State and its sovereignty – something which he seems to welcome (on this see also Schmitt; although, as we have seen, Schmitt welcomes it for totally different reasons). Thus, he suggests that to regard the capacity of the sovereign to decide positively as Schmitt does is to ignore, or better still to accept, the intrinsic paradoxicality of sovereignty (both in the sense of being based on an impossibility and of setting boundaries between what is inside and what is outside of the political) as essential to a theory of the autonomy of the political. On the contrary, Agamben’s conceptions of politics and of ‘coming community’ are arrived at through the problematization of sovereign power and consequent, if theoretical, displacement. His politics is clearly anti-statist, with his notion of the political calling for a radical overcoming of every form of sovereignty and law.

Nevertheless, I have suggested that in reality Agamben's theory is not completely satisfactory with regard to the problematization of the state form in contemporary societies. More specifically, my claim is that although Agamben provides sufficient 'empirical' evidences to support his assertion that the state of exception is becoming the (main) paradigm of government, where the word government here stands for state government, he fails to explain how different forms of the state or sovereignty contribute to and are framed by the generalization of the exception. Does this mean that even as he attempts to displace it, Agamben still rely on a Schmittian conception of the political? Although perhaps not in the strong sense of ignoring the factual decline of the nation-state, especially its inability to deal with processes of 'globalization' (migration in particular) or of being incapable of thinking beyond the state in the abstract, his theory, I have argued in Chapter 1, does ultimately remain caught within a spatial/temporal statist framework. By analyzing how the EU, a non-state in the traditional sense, is instrumental in the generalization of the exception, this thesis has complicated Agamben's understanding of sovereignty as well as his understanding of security and law.

Crucially, what I have demonstrated through my analysis of the US NSSs and ESS is that both the US as a state and the EU are conducive to the generalization of the exception. I have, moreover, suggested that whereas the US did so directly by deciding on the exception as that which enabled it to declare war against terrorism and indirectly through human security, it is through the latter that the EU attempts to achieve what it cannot through the direct use of the state of exception. To this extent, it can be argued that far from being *replaced* by a logic of security, the paradigms of security and exception are in fact *coextensive*. But they are coextensive not in the absolute sense of being one and the same – as Agamben's understanding of sovereignty as biopolitical or of biopolitics as the originary activity of sovereignty implies – but in a more Foucauldian sense of working in concert, in a sense complementing each other, toward what does indeed looked like a 'new' world (dis)order and whose effects are far from over. In other words, while Agamben is correct in saying that in an indefinite state of emergency or war, the state of exception tends to become the state of normality, and also to suggest that there is a generalization of the paradigm of security, I contend that his arguments are not qualified enough to permit an understanding of the complex way in which practices of exception and security are entangled. Through my sociological analysis, I have provided empirical evidences of how a certain conception of security as 'human' or biopolitical security is increasingly becoming the basic principle of both US state and EU activity, but also as itself relying on and establishing 'a network of power'. That is to say, a network of power which includes private agencies, whose role has

been analysed in some details by Bigo (2008) among others, police forces such as border police patrols and surveillance *dipositifs*, and that, as Hardt and Negri say, transcends the boundaries of any one state but is not as decentred and amorphous as they suggested in their book *Empire*.<sup>371</sup> It is not that this network of power is dependent on the US but the US remains central to it. The war on terror provides the framework through which the US tries to (re)affirm its power to decide, while expanding its influence and fostering a world order under its hegemony.

It is through the decision on the exception, exemplified by the decision on ‘the enemy’ (global terrorism) – where the enemy or total enemy is representative of the outlaw whose life is unworthy – and what are the best means to combat it (‘legal’, securitization, and warfare means, the US) that the US asserted itself as a global power and affirmed itself as the leading state in the war on terror. What my analysis of the NSSs has shown further is that the characterization on which this decision relies (i.e., of the President as the one invested with the authority to decide on how to deal with the enemy) in fact depends on a paradoxical appeal to the law. More precisely, it depends on an appeal to international law, and in particular, to the inherent ‘right of self-defence’ as set out in Article 51 of the UN Charter, which in reality ultimately undermines the main principle of the Charter that poses limitations to the use pre-emptive force only to attacks that are proved to be imminent. By acting in ways which are inimical to it, the US attempted to exempt itself from the international framework of law, while simultaneously and paradoxically demanding compliance by others. Through an appeal to the right to self-defence, the US tried to give legitimation to its *de facto* unilateralism – a unilateralism whose specific logic and ‘limitations’<sup>372</sup> I have explained in my analysis of the NSSs – and justify a doctrine of pre-emptive warfare whose aim is, in the words of the NSSs, ‘to prevent attacks’. In other words, behind the appeal to international law, there seems to lie an instrumentalization of it in an attempt to fit the needs of a US-dominated world order as opposed to a world in which all states are equally bound to the Law of Nations (or *jus gentium*) (Zolo, 2006; see also Kelsen, 1945). Thus, the documents could affirm without hesitation that the US ‘speak[s] out

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<sup>371</sup> This is discussed in some details in my literature review in relation to Agamben’s notion of sovereignty and in my analysis in relation to the question of unilateralism vs. multilateralism.

<sup>372</sup> As argued in my analysis following again Hardt and Negri’s point about *the necessity* of the network form of power, whether the type of unilateralism given in these documents can be sustained in the long run is unclear – where especially problematic is its relation to global capital and as integral part of the network of power. Moreover, Obama’s (qualified and ambivalent) rejection of it seems indeed to point to its unsustainability; although whether ‘multilateralism’ (and the multilateralism of the new administration specifically) is necessarily *beyond* unilateralism is also open to questions for the reasons given in my discussion of it in Chapter 3.

against abuses of human rights', promotes democracy and supports their development in other countries (see section 3 of the 2006 NSS) whilst failing to provide any indication of how it intended to comply with international laws, and, in particular, with the *jus gentium*. On the contrary, the NSSs explicitly tell us that the US will do all that is in its power to defend Americans and not be impaired 'by the International Criminal Court (ICC), whose jurisdiction does not extend to Americans and which we do not accept' (NSS, 2002). They further suggest that the US will defend the peace 'by fighting terrorists and tyrants' whenever and wherever they are. This seems to confirm Agamben's claim that 'Bush is [was] attempting to produce a situation in which the emergency becomes the rule and the very distinction between war and peace (and between foreign war and global civil war) becomes impossible' (Agamben, 2005a: 22).

However, what the analysis of the documents has also intimated is that whereas it was through a decision on the exception that the US affirmed itself in the war on terror, this is not all there is to it. Its generalization – as that which ultimately guarantees the continuation of the war on terror – also relies on other mechanisms of (bio)power, which are difficult to place within an Agambenian understanding of sovereignty as biopolitical. It relies on mechanisms of (bio)security that are operationalized somewhat differently from the logic of exception, which does not mean, however, that they are unconnected to it. They, in a sense, permit the generalization of the (state of) exception in the form of what I have called a 'global (bio)security emergency-state', whose primary enabler is the US but of which Europe is part, without being reducible to it. This is because they do not simply work through a logic of 'inclusive exclusion' whereby the sovereign decides to reduce some life to bare life. But we may argue relying on Foucault, they are aimed at securing the 'life' of populations generally. They work more insidiously, through mechanisms of surveillance, for instance. They work by creating a 'security continuum' (Bigo, 1996) in which not only 'internal' and 'external' but also 'enemies' and 'strangers' become indistinguishable; a continuum in which security, intended here in the Foucauldian sense of a governmental concern with the well-being of the population as a whole (Foucault, 2003), becomes entirely coupled with 'external' security as that which deals with enemies.

In the specific, it is not simply by declaring who or what the enemy is, and more importantly, what are the best means to combat it that the US tries to affirm itself as global protector in the eyes of the American people who it claimed to be protecting. As I have demonstrated in Chapter 3, to do this the US also needed to construct an 'unprotected global people' whose 'freedom' allegedly also depended on its willingness to protect them. It is through the construction of what the NSSs dub as 'freedom-loving-people' around the world that the

imperative to secure ‘them’ is globalized (that is, it becomes global in its extensibility) and the normative control over populations is established.<sup>373</sup> It is by claiming that it can control *all* those instances that put the lives and welfare of these people (i.e., ‘freedom-loving people’) at risk that the US globalizes its sovereign power and legitimizes imperial, racializing securitization practices – where, however, the gap or ‘scarto’, to adopt Agamben’s words, between what the US claims to be able to do and what it does in actual fact is the more evident.<sup>374</sup> (To take only one example, the invasion of Iraq is nothing if not a biopolitical disaster, where not even the most elementary biopolitical duties of occupying forces (sewage, hospitals, electricity etc.) were adequately dealt with. Bioinsecurity seems to have been the norm in that domain). To this extent, biopolitical (in)security or the extension of (in)security to the political, economic, and health domains is constitutive of the articulation of US sovereignty. In other words, the US asserts itself as a ‘global (bio)security state’ because it both presents itself as morally superior, as that which can decide on the friend/enemy distinction and as that which can guarantee people’s security – where ‘the people’ are here understood as both national and global. Thus, my claim is that in the NSSs, security is constituted both as a mechanism of state power and of biopower. While still relying on a Schmittian understanding of the political as based on the state of exception, the NSSs also go beyond it in their naming of a ‘global enemy’ to combat, a ‘global people’ to defend and effort to extend US sovereign power on a global scale through biopolitical (in)security. In the NSSs, we are presented with a state that emerges from the interplay of practices of exception and security; that has human as opposed to territorial security as its main referent and point of legitimation, and is ready to use emergency legislation and pre-emptive warfare means in order to deal with what it perceives as emergencies or threats and extend its power over the globe.

On the other hand, the framing of Europe in terms of global (bio)security actor also points to the persistence of a certain vision of the political as a sphere of sovereignty at the same time as it goes beyond a vision of sovereignty as simply based on a state of exception. In particular, the framing of Europe as a bounded entity with both military and civilian capabilities signs a willingness on part of European states to configure Europe as a state-like structure of power. However, far from being simply intrinsic to how the US frames itself, what the analysis of the ESS proves is that human or biopolitical security informs European foreign policy also. In the ESS, what we have found are similar understandings of security

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<sup>373</sup> For the importance of the ideal of freedom to this construction, see Chapter 3.

<sup>374</sup> A gap which, as Bigo suggests (although he does not use these same exact terms), Agamben seems to foreclose by seemingly ‘accepting that what they [i.e., those of the Bush administration] say is what they are [were] doing’ (Bigo, 2009: 7).

and terrorism as those employed in the NSS of 2002 and of 2006.<sup>375</sup> That is, an understanding of security as the form through which Europe and the people living within it but also all others, with the exclusion of terrorists and/or criminals whose actions threaten their very existence, are to be governed and of terrorism as the dangerous element that needs to be contrasted. Furthermore, what the analysis of the ESS has also made evident is that the transformation of security into a strategic objective coincides with an indirect use of ‘the state of the exception’. In other words, if in the NSSs, it is both through a ‘direct’ use of the state of exception<sup>376</sup> and the employment of biopolitical mechanisms that the US affirms its own sovereignty, at the European level, where no state of exception is/can be declared,<sup>377</sup> human or biopolitical security is that through which Europe affirms its own ‘sovereignty’. To put it differently, it is on the basis of a similar conception of security as that employed by the US NSSs (i.e., a conception of security as a form of governmentality that is directly related to sovereign power as exception) that the ESS is able to present the EU as a powerful, global actor. In turn, it is by presenting itself as global (bio)securitisation actor that the EU acts as ‘indirect’ mediator in the war on terror. Human or biopolitical security is not only central to the US’s self-construction as a ‘global (bio)security emergency-state’ – a state which I have tried to demonstrate is fundamentally imperial. But it is also that which enables the participation of the EU in the war on terror in a policing function, which far from representing a security alternative to US NSSs, in reality seems to create the conditions for the continuation of American war on terror.

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<sup>375</sup> For the differences between UN NSSs and the ESS especially in relation to terrorism, see my analysis in Chapter 4.

<sup>376</sup> I.e., both in terms of declaring the state of exception in the technical sense (see the Patriot Act) and of investing the President with the authority to decide what are the best means to combat the enemy, even if that means going against international laws (see above).

<sup>377</sup> As pointed out in Chapter 4, not only are there limitations to what Europe as bounded entity can do in terms of foreign policy (member states are responsible for their own territorial defence and only they as national sovereign state can declare a state of emergency in the technical sense) but the post-bellum character of Europe clearly plays a huge role on this issue.

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