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## US HOMELAND SECURITY AND DEMOCRACY IN THE FACE OF VIOLENCE

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### ABSTRACT

This paper looks into the US homeland security policy and the application of democratic principles when the nation is internally facing a situation of violence. Instead of a simple laws analysis, it is a research carried out in relation with a historical perspective. Dealing with the threats of the homeland security in the United States of America by referring to the Civil War and the September 11th Terrorist Attack, the paper shows the weaknesses and loopholes of the Constitution when it is about ensuring the national security. According to what we notice, violence makes the Executive disregard the Constitution and the international agreements when it has to protect the homeland and its people. The paper has concluded that referring to forces becomes unavoidable in some situations. Thus, the US Constitution should be amended with articles authorizing the use of military forces to overcome some threats due to rebellion or terrorism in order to preserve democracy so that to secure life within the territory of the country and, incidentally, that of the world.

**Keywords:** United States, Homeland Security, Democracy, Violence, Civil War, Terrorist Attacks, Constitution.

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### 1. INTRODUCTION

When taking the oath, the American president elect swears to fulfil so many constitutional obligations as among the most solemn one is protecting the nation, the homeland and its people. This may explain how from a part of Justice Department in charge with homeland security we shift to a totally independent department within the periods following the attacks led by Osama Bin Laden in the USA on September 11, 2001. The new Homeland Security Department was designed to prevent such attacks as well as some natural disasters in the US lands in the coming years. Though, Vile (2007), Bysyuk (2010), Mohammad and Noori (2017) have expressed their points of view about the American national security, the present paper still questions it in reference to cases of violence as limited to both the Civil War and Osama Bin Laden's terrorist attacks. We go through the historical perspective in the American context to highlight the constitutional weaknesses while confronting these violent events. In fact, the American context is that of democracy, « a system of government in which power is either held by elected representatives or directly by the people themselves. » (*Cambridge Advanced Learner's Dictionary*, 2010). The essential question is: what are the democratic foundations of the US executive power decisions to stop violence for the sake of the homeland security? It is supposed that any power in America originates from its constitution which unfortunately shows its limits in case of internal violence. In search of expected means to stop violence in time of peace, a particular attention is given to democratic principles, Civil War, terrorism and US homeland security policy.

## 2. US CONSTITUTION: A GUARANTEE OF DEMOCRACY?

The idea of democracy is motivated by the necessity to secure any individual rights within a nation as they are needed in the USA where those rights are basically expressed in The Declaration of Independence (Tindal and Shi, 1989: A1):

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights that among these are Life, Liberty, and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.

What finally justifies the existence of government is the necessity to help people enjoy their three fundamental rights namely Life, Liberty, and Happiness. This body of the Nation must come to the materialization of the principles announced by the Constitution which Preamble (Tindal and Shi, 1989: A12) clearly said:

WE THE PEOPLE OF THE UNITED STATES, in order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish the constitution for the United States of America

Beyond the will of the people, the constitution contains the fundamental laws of the Nation, the rights of citizens, and the form of the national government, its objectives and the way to reach them.

It is better to emphasize that in the US, there are the state government and the national or federal government. Here, the debate is mostly interested in the federal government since it is the government of the whole country. As defined in the Constitution, its political system or regime is based on the separation of powers into three branches. The first one is the legislative power. The Constitution mentions it in Article I, section I : “All legislative Powers herein granted are vested in a Congress of the United States, which shall consist of a Senate and House of Representatives” (Tindal and Shi, 1989: A12). The second one is the executive power that is defined by the Constitution in the first section of its Article II as follows: “The Executive power shall be vested in a President of the United States. He shall hold his office during the term of four Years, and, together with the Vice President, chosen for the same Term [...]” (Tindal and Shi, 1989: A16-17). The third one is the judicial Power making the Article III of the Constitution, section I which reads: “the judicial Power of the United States is vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish [...]” (Tindal and Shi, 1989: A18)

The system provides some checks and, even, balances so as each branch can know the limits of power among them. Otherwise, it is neither the President, nor the Congress, nor the Supreme Court which possesses the ultimate power but the ordinary people. The Declaration of Independence substantially expressed it:

[...] whenever any Form of Government becomes destructive of these ends, it is the right of the People to alter or to abolish it, and to institute a new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to affect their Safety and Happiness. (Tindal and Shi, 1989: A1)

This makes people consider the US as having a strong democracy in the world that so many other countries can follow.

It does not matter reminding that we are essentially concerned with the executive branch of government. "The United States government has no greater responsibility than protecting the American people" (*National Security Strategy*, 2015: 7). The question is: how does the US President take into account some of his constitutional obligations in matters of security? It is, for instance, the application of an inaugural disposition. This one requires him to take an oath as follows: "I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States" (US Constitution, Article II, Section I). The power to lead the US army is among important powers that the US Constitution gives to the President:

The President is the commander-in-chief of the army and navy of the United States, and of the militia of the several states when called into the service of the United States. The President could require the opinion, in writing, of the principal officer of each of the executive departments, and was also given the power to grant reprieves and pardons for offences against the United States except in cases of impeachment. (US Constitution, Article II, Section II)

We try to see if this executive branch serves its people democratically that is by respecting the Constitution and all of the universal democratic principles or if it hinders them when carrying out its homeland security policies precisely under the light of what happens during the Civil War and the September 11 terrorist attacks.

### **3. ANTI-SLAVERY REBELLIONS AND THE CIVIL WAR: THE INEFFICACY OF THE U.S CONSTITUTION.**

The issue of slavery was a source of disagreements from the first days of American independence to days when the southerner authorities advocated the maintaining of slavery particularly. The South had its reasons since it depended on large plantations of cotton, tobacco, sugar cane and others needing an important manpower. This was not true for authorities in the North with more industries and advocating the end of slavery. Moreover, in the 1780s, a debate in Congress resulted in the passing of an ordinance which prohibited slavery in the Northwest territory as it permitted it in the Southwest one. So, each new state should express its statehood if it allowed slavery or not. Louisiana, for example, entered the Union as a slave state whereas Illinois entered it as a free state. This shows to what extent the U.S Constitution was inefficient. There was not a unanimous law in the whole country about slavery. Because of that policy of a half-slave nation, the federal Constitution was weaker than the state Constitution. That policy resulted in anarchy and mob rule characterized by the anti-slavery rebellions and the Civil War in the 1800s.

Rebellions against slave masters were common in the 1800s. Even before that century, Blacks and their white allies were convinced of gaining their freedom by violence. Nat Turner; a black slave in Southampton, and John Brown, a White Native New Englander were among the famous figures of those rebellions. Both were killed. John Brown was, first, tried, then, convicted of treason, conspiracy, and murder. (Friedman, 2008: 13).

The Civil War or the internal armed conflict opposing Americans from 1861-1865 was mainly explained by the position on the practice of slavery. The Nation was divided into two parts: the North against slavery and the South in favor of it. Despite the freedom of the people to decide about their choice, Southerners should not secede and keep on using Blacks as slaves. The expected best reaction from the executive power or the President of the United States was to stop the South on its way to secession. Unfortunately, as we previously developed it, “When the South seceded to form the new Nation, the US president at that time, James Buchanan, simply declared that the southern states had no constitutional right to secede and the federal government had no power to control a state by force” (Loumbouzi, 2020 : 23). Beyond the absence of constitutional laws against secession, James Buchanan “refused to assert federal power provocatively (Tindall, America, 1989: 404).

Anyway, Abraham Lincoln’s election to the presidency of the U.S. was seen as a menace to the Southerners’ interest in keeping slavery in 1860. That decision of cutting all intercourses with the North was unconstitutional for it is not allowed in the US Constitution precisely on its article 1, Section 10. Lincoln resorted to the army to save the union while the southern authorities rebelled and finally seceded to maintain slavery. He referred to “stewardship,” an activist conception of the presidency advanced by Theodore Roosevelt, which holds that the President can do anything that is not expressly prohibited by the Constitution (Robinson, 1997). He did something which was neither prohibited nor allowed formally by the Constitution. Hence, it seems indispensable to amend the Constitution to fill these loopholes and make those weaknesses disappear.

#### **4.INTERNATIONAL TERRORISM: A REAL THREAT TO THE US HOMELAND SECURITY**

During the last decade of the twentieth century, some tragical events marked the history of the USA. Bysyuk (2007: 10) helps us remember them:

Prior to the terrorist attacks on the World Trade Center in New York, the US had experienced three big terrorist attacks – the World Trade Center bombing in 1993, the Oklahoma City bombing in 1995 and a bombing explosion in Atlanta during the Olympic Games in 1996.

One can remember the implication of the Executive power under the presidency of Bill Clinton as Beall (1998: 694-695) reports:

President Clinton first introduced antiterrorism legislation in February of 1995, approximately two months before the tragic incident in Oklahoma City. That legislation, the Omnibus Counterterrorism Act of 1995, was a response to the 1993 World Trade Center bombing in New York City. One week after the Oklahoma City bombing, on April 26,

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1995, the President presented an expanded version of the bill to the Senate and urged quick action.

After all this, there was the passing of the anti-terrorism act of 1996:

The resonance of these attacks was so overwhelming that the US government began to realize the severity of such a national-level threat, and this resulted in the Anti-Terrorism and Effective Death Penalty Act [AEDPA], and which was adopted by the US government as a measure to combat terrorism (Bysyuk, 2007: 10)

In spite of the AEDPA for the protection of the US territory against terrorism, on September 11, 2001, other unprecedented terrorist attacks led by Osama Bin Laden occurred there touching severely the Twin Towers and the Pentagon. The Twin Towers in New York City totally destroyed after two airplanes were crashed on them while another airplane was crashed into the Pentagon. Those attacks resulted into more than 2,970 dead (Goodrich qtd Bysyuk, 2007: 11). We come to talk about international terrorism which motivations are not clearly understood.

Indeed, many reasons can be argued to justify those international terrorist groups' violent actions under the cover of Al Qaida, a political and religious Islamic movement advocating the Jihad, with Osama Bin Laden as leader. But, an opinion thinks that the majority of those reasons are related to "cultural differences, economic and ideological influences of the 'Western World' with the United States to the forefront, disbelief in democratic values based on strong and sometimes radical religious influences" (Goodrich qtd Bysyuk, 2007: 11). That may be true in consideration of what the perpetrators of those attacks claim from their conviction as they dislike Western education and values. They are finally acting against the "sinful" western system represented by the USA threatening their religious, cultural and economic interests. Thus the United States, defending and promoting democratic values abroad, finds itself at war with terrorism. Its homeland security is now more constantly in danger because of terrorist groups than other Nations in the world.

In fact, the terrorists mostly targeted USA because of its particular devotion to high democratic values.

the higher democracy level of a particular state, the higher the potential risk of a terrorist attack. Such a relation is tightly linked with the freedom of the media in these countries. The higher the level of mass media freedom, the more the terrorist attack will be publicly discussed and analyzed – the greater the political, social and economic impact such an act will have. As discussed earlier, this is one of the major goals of modern terrorism. Such situations create a dilemma for democratic society which becomes a 'victim' of its own liberties to a certain extent (Bysyuk, 2007: 9)

We identify terrorism as the main threat to the US national security in the twenty-first century. Such a threat has also shown, to some extent, the shortcomings of the US

democracy especially during the Bush administration as the latter felt obliged to restrict some civil rights and discount some democratic principles in order to achieve homeland security (Romano, qtd Mohamad, 2017 ). Otherwise, although President Bush advocates the promotion of democracy abroad and sees this as a means to reinforce the US internal stability and counteract terrorism, he has proposed and applied some laws precisely The USA Patriot Act which made certain people have some doubt on U.S democracy.

### 5. G.W. BUSH'S HOMELAND SECURITY POLICY

Following the September 11, 2001 terrorist attacks in the USA,. the newly created Homeland Security Department had to deal with the enforcement of immigration laws, responses to natural disasters, preparations for and responses to terrorist attacks. Thus, seven years after those terrorist attacks, on April 6, 2008, President George W. Bush, declared: "War came to our shores on September the 11th, 2001. It was a war we did not ask for, it's a war we did not want, but it is a war that I intend to deal with so long as I'm your President" (The Administration of President George W Bush, 2008 : 3). In fact, those attacks made the US government and its citizens aware that terrorism is the worst threat of the new era.

The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (The USA Patriot Act) was one of the immediate aftermath of the 11 September terrorist attacks. Other major pieces of legislation (Intelligence Reform and Terrorism Prevention Act, the Protect America Act, Modernization of the Foreign Intelligence, Surveillance Act) accompanied this law that increases the powers of the US government in fighting terrorism. It also allows the government to put non-US citizens in prison for an unlimited period without a trial if the Attorney General considers them to be a threat to national security. There was a wide variety of surveillance programs such as roving wiretap by government officials, listening to conversations between lawyers and clients in detention ; obtaining the library and medical records of suspects ; intercepting telephone and internet communications ; searching premises without a warrant ; and using other measures not normally acceptable by the courts (Vile, 2007 : 250). When we carefully look at this act, we notice that it violates certain of the democratic principles quoted above namely civil liberties. The U.S Constitution clearly promoted these civil rights such as privacy, freedom of speech or press, the habeas corpus. Its first, fourth, and fifth amendments help check it:

#### Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances (*Amendments to the Constitution of the United States of America*, 25-26).

#### Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or Affirmation, and particularly describing the place to be searched, and the persons or things to be seized. (*Amendments to the Constitution of the United States of America*, 26).

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#### Amendment V

No person shall be held to answer for a capital, or other infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or espublic danger, nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation (*Amendements to the Constitution of the United States of America*, 26)

Nevertheless, with this act, so many foreign people and some American citizens were arrested because of their suspected links with Al-Qaeda. They were automatically tried and no possible appeals from their verdicts. Though considered as a public danger, they could not be deprived of the writ of habeas corpus. Also American ordinary citizens' privacy was violated when we look at the variety of surveillance programs. The CIA (Central Intelligence Agency) and FBI (Federal Bureau of Investigation) controlled most phone calls.

Other consequences of the September 11 terrorist attacks were the wars in Afghanistan and in Iraq. As the U.S government was seeking for Bin Laden and trying to prevent further potential terrorist attacks, they started taking and incarcerating many prisoners and insurgents suspected of links with al-Qaeda. The problem was that those arrests did not comply with the rules of the Geneva Convention which prescribes certain conditions that prisoners may be kept and how they must be treated. According to the Geneva Convention, all the people who do not participate actively in the war must be treated humanely. Those people may be wounded soldiers, sick soldiers or prisoners of war.

Persons taking no active part in the hostilities, including members of armed forces who laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other case, shall in all circumstances be treated humanely without any distinction of founded race, color, religion or faith, sex, birth or wealth, or any other similar criteria. (Article 3, *Geneva Convention*, 1949).

Afterwards, no mutilation, cruel treatment and torture are allowed. In the same way, the taking of hostages, outrages on personal dignity or the passing of sentences and the executions without any trial are prohibited. (Article 3, *Geneva Convention*, 1949). Nevertheless, the U.S. Patriot Act mostly includes conditions that go against those of the Geneva Convention. For President G. W. Bush and his administration, the 'War on Terror' declared by him, was not similar to a normal war. And because of that, the prisoners should not be considered as prisoners of war. They maintain such an argument because for them, the Taliban and Al Qaeda are terrorist organizations nor state parties to the Geneva Convention and their members do not meet some conditions such as being part of a military hierarchy, carrying arms openly and conducting their military operations in accordance with the customs and laws of war (Vile, 2007: 251). Nonetheless, when reading the second article of the Geneva Convention, we can realize that what the Bush administration maintained did not suit with the content of this article.

According to it, the Geneva Convention must be applied to all state party even at war with a country or an organization that is or not a party to the convention:

[...] the present Convention shall apply to all cases of declared war or any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them. [...] Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereof shall remain bound by it in their mutual relation to the said power, if the latter accepts and applies the provisions thereof. (Article 2, *Geneva Convention*, 1949).

The fact that prisoners were held incommunicado that is without communicating with other people was greatly condemned by Federal Judge Robert G. Doumar who advocated that a prisoner should have a lawyer and wait for their trial in freedom before being forced to stay in prison as required by the U.S Constitution (G. Doumar quoted by Vile, 2007 : 252). “The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Case of Rebellion or Invasion the public Safety may require it.” (Article A1, Section 9, US Constitution). Focusing on this writ of habeas corpus, there is sufficient evidence that Bush did not comply with the U.S Constitution as most of these detainees were incarcerated for a long period without being judged. Besides, they were tortured and underwent several humiliations as illustrated by those words : “In this war on terror, America has taken the fight to the enemy. Hundreds of terrorists have been captured or killed in two dozen countries, including the mastermind of the 9/11 attacks—Khalid Sheikh Mohammed.” (The Administration of President George W. Bush, 2008: 2).

The executive body of government under G.W. Bush behaved as both prosecutor and judge instead of only using the powers given to it by the Constitution. In doing so, his regime resembled that of a dictatorial regime. He went beyond the powers the Constitution has granted him. In reality, President Bush refused to apply the Geneva Convention to the prisoners and set up some military commissions to judge those detainees. He did it as a commander-in-chief and without even consulting Congress. Then, he laid down the procedures that the commissions had to adopt. This happened without taking into account the normal rules of the U.S Constitution and Geneva Convention. (Vile, 2007: 252). As Guatánamo Bay is located in Cuba but under U.S. control, the Bush administration tried to seem a democratic government by incarcerating those prisoners at Guatánamo Bay since the U.S. law does not apply to a foreign country. In the same way, the torture was a violation of the Detainee Treatment Act 2005 which outlaws torture in American prison camps and the right of the government to hold enemy combatants. In fact, the Bush administration used this act to justify his policy as some aliens detained at Guatánamo Bay were not protected by this law. So, here again, as Lincoln and other former American presidents (Andrew Jackson, Theodore Roosevelt, F.D. Roosevelt), G. W. Bush resorted to stewardship by disregarding the Constitution. This means that time has come to draw lessons to save democracy by reading again the constitution proposing amendments.

## 6.CONCLUSION



To conclude with this paper, we have gone through the democratic reality of the USA while this Nation was confronted to situation of violence. Thanks to historical perspective, it is known that the violent events of the Civil War and September 11 Terrorist Attacks have urged both Abraham Lincoln and George W. Bush administrations to take political decisions without taking into account the Constitution so as to solve these issues. The September 11 Attacks also showed the capacity of the executive branch to ignore the international agreements they signed when they have to ensure their homeland security. All these demonstrate the weaknesses and loopholes of the U.S. Constitution and lead to the conclusion that violence seems unavoidable in certain situations when the U.S.A has to secure its homeland and people. Then, U.S. officials need to amend their Constitution so as to insert some articles allowing them to resort to military forces in certain situations in order to preserve democracy as well peaceful life in the country and in the world.

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