

On the Double Exceptionalism of Liberal States

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Introduction

The overarching focus of this anthology is on freedom of expression in higher education institutions. As Mona Wille points out in her introduction, there is a general concern that the values of freedom of expression and academic freedom are under threat in liberal-democratic societies. One of the greatest challenges, she argues, comes from a changing security context. Within this context, the values underpinning liberal-democratic societies at large, including academia, are at times challenged in the name of security measures. In this chapter, I take a wider perspective on this issue, zooming out to see how security politics and liberal identities intersect. My intention here is to give a critical contextualization to the broader theme of the book. I do so by highlighting how a certain logic of double exceptionalism permeates how liberal-democratic societies deal with issues of security. To understand the general societal and political trends

in relation to academia and freedom of speech, we must also understand how self-described liberal states struggle with the conflictual demands of values on the one hand and security-related pragmatism on the other. Most recently, these conflictual demands have come to the forefront of our attention as a result of the global Covid-19 pandemic and the wave of emergency legislations introduced in a number of European states.¹

Empirically, I focus on the Norwegian balance between values and security after the terrorist attack in July 2011. The political foundation of many of today's European states is in part based on a set of liberal values pertaining to the rule of law, democracy and human rights, where freedom of speech is central. As a moral and political value, freedom of speech is seen as foundational to the identity of liberal-democratic states, exemplified by the speech the Norwegian prime minister at the time, Jens Stoltenberg, gave in response to Anders Behring Breivik's attack: 'With the world's most powerful weapons—the free word and democracy—we will find the course for Norway after 22 July 2011' (Stoltenberg, 2011). Norway's response to the attack on its liberal values—Breivik explicitly targeted the long-ruling Labour Party, with a manifesto decrying 'cultural Marxism'—was, at least rhetorically, to emphasize and protect those very values. Many commentators applauded the value-based rhetorical response of the Norwegian prime minister as an exemplary stance and an alternative to the typical security-centric response of governments to terrorist attacks. Instead of threatening with a ruthless and swift response, a typical response across regime types after terrorist attacks, the Norwegian prime minister emphasized the value-based order at the heart of Norwegian self-perception. Freedom of speech was also at the centre of the public debate in the aftermath of the attack (Eide, Kjølstad, and Naper, 2013), suggesting that the government's framing was effective.

In apparent contrast, when faced with severe security dilemmas, the response from states has often been to enter into a form of ‘state of exception’, where certain normal governing rules simply no longer apply, or to ‘securitize’ an issue in order to place it outside of ‘normal’ politics, yet within the parameters of domestic law. The period after the terrorist attack on 9/11 2001 has been defined in part by a spread of such security practices in both liberal and illiberal states. Justified by an overarching need to protect lives first and values (implicitly) second, the world has witnessed a systematic role-back of liberal values such as freedom of speech in the name of security, with states either circumventing democratic processes or enabling such policies by working through their democratic institutions. In part, I will argue, this is made possible (that is, legitimized) through a wide-spread self-perception in the Western world of their own states being ‘inherently’ liberal. Policies restricting or contradicting liberal values thus do not alter their identification as defenders and representors of these same values.² There is thus a double form of exceptionalism at play here: the right to transgress normal liberal politics and the claim to not let that transgression alter one’s liberal identity. This chapter will discuss these dilemmas—of security vs liberal values, and the self-perception of liberal-democratic states—in the context of the liberal West after 9/11, connecting the Norwegian response to the broader trends in how states navigate between liberal identities on the one hand and politics of security on the other. My intention with this move is thus to highlight some of the broader dynamics at play in how liberal-democratic societies relate to, and often sidestep, their liberal-democratic character—specifically in times of increasing securitization. I leave it for others in this volume to shed light on how this dynamic relates to academia and the university sector.

I proceed in three steps. First, I discuss the logic of double exceptionalism at play in how liberal-democratic societies deal

with security issues. Secondly, I discuss how this logic has panned out in Norway after the terrorist attack on 22 July 2011. Thirdly, I conclude with a broader discussion on the implications of my argument for the topic of this book, including how the dynamics between security and liberal values play out in seemingly more 'normal' times, and how the dynamic unfolds in the current global pandemic crisis we are in.

The double exceptionalism: liberal identities and logics of security

At the heart of the tension between the logic of security and the logic of a state's liberal identity is what I here will term a double idea of exceptionalism. On the one hand, there is the powerful and well-established idea that security threats may warrant a temporal and spatial hold on both 'ordinary' legal frameworks and the day-to-day actions of those in charge of a state's security, such as police officers and border guards. National security apparatuses typically gain more power when a country faces a national security threat, and central citizen rights may be set aside through a legitimation that is about protecting their lives. This is what is often referred to as the 'state of exception', with reference to the work of German interwar philosopher Carl Schmitt and Italian philosopher Giorgio Agamben. The basic tenet is that those who are in power can use their sovereign authority to sidestep normal politics. For Carl Schmitt, the essence of this process was that the sovereign held the power both to declare what constitutes emergency, and what would be the appropriate response to such an emergency. Freedom of speech, for example, was within this context presented as a potential threat to the stability of the sovereign sphere. In Giorgio Agamben's work, the state of exception is presented as an illusory practice. Debates

over law versus politics serve more as ideological mechanisms to legitimize the sovereign's acts than as actual constraints on the sovereign (Huysmans 2008, Schmitt 1996, Agamben 2002). The central premise in both arguments is that the sovereign state holds the power to both transgress, create, and in other ways set aside the law. In many countries, this can be done explicitly through declaring a state of emergency, but the state of exception as an analytical concept reaches wider, pointing to the logic inherent in how states can use security to move around or altogether sidestep the law. In state of emergencies, those in control over the government are (more so than usual) in control over the state.

The focus of 'non-normal' politics is also at the heart of securitization theory. Securitization is the oft-employed theoretical concept used to describe those processes through which a state presents something as a security threat that has to be dealt with outside of 'normal' politics (Buzan, Wæver, and de Wilde 1998). Through effectively presenting an issue area—terrorism, architecture, pandemics, immigration—as a matter of security, the state moves it into the realm of the extraordinary. Practices that may follow with successful securitization processes, include extensive (re)allocation of resources, preventive arrests, expanded detainment provisions at home and abroad, restrictions on freedom of speech (including the press), enhanced interrogation techniques, mass surveillance, curtailment of citizenship rights, and so on. In addition to potentially restricting liberal rights, more power is usually given to the executive, meaning that policies of scaling down on civil liberties are often done through executive power, sidestepping 'normal' legislative power and parliamentary practices. When mobilized as a legitimizing trope to respond to an imminent security threat, secrecy and expediency are usually added to the list of permissible behaviours on the part of the state. More generally, as securitizing an issue has the

effect of placing it outside the realm of ‘normal’ politics, it also means that successful securitization is one of de-politicization. As Benjamin Herboth notes, ‘processes of securitization are processes of de-democratization’ (2016, p. 139), meaning that what constitutes ‘normal’ politics in this prism is democratic, to which issues of security are—or at least can be—an exception. This does not mean that securitization processes do not happen in more authoritarian states, but that the distance from what is defined and perceived as ‘normal’ and ‘extraordinary measures’ is usually far wider in liberal-democratic states.

Although these political processes of exception follow a similar underlying logic of security, they operate on a wide scale, ranging from ‘full-on’ state of emergencies to more limited judicial changes. The US ‘war on terror’ after 9/11 is the clearest modern example of the former in a self-defined liberal-democratic state, where both domestic and international law have been sidestepped in the name of counterterrorism and security more broadly. Both Congress and Senate have been bypassed, and the war on terror has been used to legitimize e.g. incursions into other states and so-called ‘precision targets’, seeing terrorist suspects as lawful targets that can be ‘eliminated’ rather than dealt with through ordinary legal channels. While US actions have been most extreme, the post-9/11 era has been defined by an increased logic of securitization also spreading elsewhere. More limited judicial changes include governments granting more surveillance power to their national security agencies or restricting freedom of expression online. While the common logic is one of security and ‘non-normal’ (exceptional) politics, the logic represents and can enable a wide range of different behaviour ranging from illegal (outside the law) to legal (through the law). Some states stop at granting more surveillance powers to their security agencies through judicial changes; others continue to cascade illiberal laws and practices in the name of security; others again sidestep

law altogether with the justification that expediency is key. As the preliminary responses to the very recent global Covid-19 pandemic has highlighted, both official state of emergencies and increased securitization processes can also reach deep into realms not typically seen as related to the domain of security, such as elementary schools, shops, businesses—and, important for this volume, universities.

There is a difference between on the one hand the logic channelled through imminent security risks, and the slower, more abstract threat of a potential future security risk. Changes can come overnight—as with states of emergency—in the face of perceived imminent threats to national (or regional) security. They can also come incrementally and over a longer period of time, opening up a space for gradual changes in policies in the name of security. A central aspect underpinning these processes is a turn in the last two decades from defence to ‘prevention’ when dealing with security issues. As Rens Van Munster notes with reference to the US war on terror and its global aftermaths, ‘[d]ue to its emphasis on prevention, the war on terrorism institutionalizes the state of exception as a permanent aspect of global order’ (2004, p. 152). Thus, illiberal policies are often legitimized as part of a long-term process to deal with a security issue. In contrast, when danger is presented as imminent, policies may also become more ruthless, justified through the need to act swiftly and outside ‘everyday’ routines of ordinary politics. A more gradual response is found in how states use the presence of a feeling of insecurity to push through more piecemeal changes to society, such as broadened surveillance powers for the state. The central point for this volume, as it relates to freedom of speech, is thus the extent to which security measures legitimates a pause, rupture, or circumvention of the everyday logic of liberal-democratic societies. This rupture happens both in phases of exception and seemingly ‘normal’ times, blurring the borders

between where and why security measures and ‘unnatural times’ start and end. Whilst official, full-on state of emergencies on their part usually come to an end, residues of the exceptional measures may remain in place. Indeed, state of emergencies are also strongly associated with autocratization processes, seen by democracy researchers as both a ‘cause and a consequence of democratic decay’ (Lührmann and Rooney, 2019, 19). Of course, this does not apply to all states, but the fluid borders between the exceptional and the normal is, paradoxically, an ever-present threat.

The practices of securitization described above cut across regime types, making the way in which security has been used to sidestep normal politics probably one of the most international phenomena of modern times. The ‘war on terror’ has also had the effect of normalizing these practices across regime types. In Russia, President Vladimir Putin consolidated his power in the early 2000s in part through promising to ‘wipe out’ Chechnyan terrorists. Freedom of speech was explicitly curtailed, prohibiting media from covering the events on the ground (see e.g. Wilhelmsen, 2017). That stance became more legitimate in the face of the US-led international coalition after 9/11, meaning that authoritarian states could make new alliances with liberal states in the war against terror. Because the US has both been leading the war on terror and representing themselves as the leader of the free world, they have also expanded the notion of what is perceived as acceptable liberal responses to security threats in the past two decades. This has had two overarching consequences in terms of the behaviour of other states: first, it means that alliances of self-defined liberal states can be legitimized more easily in the fight against terrorism with highly illiberal states such as Egypt, Turkey, or Uzbekistan. Secondly, it means that the repertoire of acceptable responses from self-identifying liberal states is de facto expanded through practices

of other liberal-democratic states. This latter part is essential when we seek to understand how ‘security’ is used vis-à-vis our liberal rights also in seemingly less securitized spheres, such as higher education and academia, the context of this anthology.

Crucially, the employed logic of a ‘state of exception’, or the more mundane and everyday practices of security regulations challenging aspects of liberal rights, does not mean that the self-perceived liberal identity is set aside in states that define themselves as liberal-democratic. Seen as a stable attribute of a state, the perceived liberal identity persists—at least in the eyes of the beholder—despite illiberal actions. This is the second form of security-related exceptionalism, which I analytically denote as ‘states of exception’—that states with an explicit liberal identity see their identity as historically fixed, irrespective of their illiberal actions. Though related to the idea of US exceptionalism, its consequences are broader and more ontological, speaking to a persistent historical trend of liberal democratic states routinely not living up to their own ideals, yet still maintaining their position of moral superiority. Politics—messy, full of contradictions and pragmatic decisions—don’t go well with ideas of absolute identities and moral absolutes. At no time in recent history was this dynamic more pronounced than after 9/11. Despite the profoundly illiberal actions that followed as part of the war on terror, including restrictions on freedom of speech, the government maintained its rhetoric of being both a defender and representor of those same values. In a speech commemorating the fifth anniversary of the 9/11 terrorist attacks, President Bush noted:

In the first days after the 9/11 attacks I promised to use every element of national power to fight the terrorists, wherever we find them. One of the strongest weapons in our arsenal is the power of freedom. The terrorists fear freedom as much as they do our

firepower . . . We are fighting to maintain the way of life enjoyed by free nations (Bush, 2006).

The war on terror was presented as ‘the fight of all who believe in progress and pluralism, tolerance and freedom’, and that they were ‘in a fight for our principles, and our first responsibility is to live by them’ (Bush, 2001). President Obama—a favourite of many European politicians and 2009 recipient of the Nobel Peace Prize, yet one who neither shut down Guantanamo Bay and massively increased the use of so-called targeted killings through drone strikes—similarly emphasized the US as the representor of these values. In the central speech on foreign and security policy given during his second term, Obama stated:

I believe, that a world of greater freedom and tolerance is not only a moral imperative, it also helps to keep us safe . . . America’s support for democracy and human rights goes beyond idealism—it is a matter of national security . . . Respect for human rights is an antidote to instability and the grievances that fuel violence and terror (Obama, 2014).

Seeing oneself as the embodiment of liberal values no matter what matters a great deal. The securitization processes we have seen emerge in Europe over the past 20 years have not come about in a vacuum. Although the fluid and far-reaching US ‘state of exception’ is more extensive than, for example, the logics of security employed in France or Norway, they both operate within a related and interconnected sphere of logics. The war on terror after 9/11 was portrayed as a collective effort, with the infamous postulate of ‘either you’re with us or against us’. Whereas the Iraqi war was a somewhat more solitary endeavour in terms of alliances, the decade-lasting and on-going war in Afghanistan, and the later intervention in Libya, was very

much a result of team play both within the UN and NATO. Poland, Lithuania, and Romania—all NATO members since 1999 and 2004 respectively—helped the CIA in their ‘rendition programs’, meaning that they let the CIA carry out torture and inhuman and degrading treatment at secret facilities on their soil. Many of the securitization processes have also happened precisely within the framework of the transatlantic alliance and within the EU (Balzacq, 2008; Stambøl, 2016). Despite at times highly illiberal practices in liberal-democratic states, the parallel insistence on the value communities between states such as the US and France, or the US and Israel, persists (see e.g. Holm, 2017). What this means is that a liberal identity is not breached by profoundly illiberal practices, since the field of ‘security’ is seen as being an exceptional realm. This is thus what I term the double exceptionalism: the exceptionalism to transgress the law and ‘normal politics’, and the exceptionalism to not let that transgression alter the self-perception one has built on those ‘normal’ politics.

One might of course interject that the US ‘war on terror’—with the extensive outside operations in the Middle East and elsewhere—bear little resemblance to the form of security logics increasingly routinized in European politics. The important thing to note here is the extent to which these logics feed of each other: what may be deemed permissible for certain liberal states in so-called thick, full-on ‘states of exception’—in the US war on terror, torture, extraterritorial operations, restrictions on freedom of speech—affects the space for what is defined as appropriate security measures in other liberal (and non-liberal) states. Whether we call it norms or something else is irrelevant; what matters is that the definition of appropriate security measures is also expanded also internationally through a set of practices that align in logic. As Roe writes, ‘Extraordinary politics is . . . what normal politics is not. And normal politics is how things are

ordinarily done in liberal democracies' (Roe 2012, p. 251). Since liberal democracy—what constitutes 'normal politics'—is seen as a stable attribute of many Western states, more illiberal actions—such as curtailing freedom of speech or religion in the name of security—has seemingly little bearing on that self-perception. Of course, these practices can also create a domestic and international backlash, with states such as Russia and Iran referring to 'double standards' as the systematic gap between actions and words increase in self-identified liberal states (Holm and Sending, 2018; Holm, 2019). The double exceptionalism is largely enabling in the short-term and in the domestic and value-based context (i.e. the liberal West), but it also creates a crisis of legitimacy at the international level. This is a side-note when it comes to the topic of this book, but it also points to the way in which liberal-democratic states have contributed to a crisis of legitimacy of the values that they are supposed to front. Self-defined liberal states have historically always also acted in illiberal ways, both at home and abroad. But, paired with an increased attempt to spread liberal-democratic values elsewhere after the end of the Cold War, the persistent and unavoidable gap between identity and practice is becoming both increasingly visible and contested.

Understanding how this logic of double exceptionalism plays out matters: in a context of an increasingly securitized society, we as citizens have to be conscious of how the logic of security intersects with our identities (and practices) as 'liberal' societies. In the following section, I will explore how the tension between the logics of security and values have played out in Norway after the terrorist attack on 22 July 2011. I will discuss how respective governments have handled the value/security tension and specifically in relation to freedom of speech, before concluding with a discussion on wider implications for how we think about the tensions between liberal values, freedom of speech, and security.

Norway: the attack on freedom, 22 July 2011

On 22 July 2011, the Norwegian right-wing extremist Anders Behring Breivik carried out the deadliest attack on Norwegian soil during peacetime. Attacking first the government quarters through a self-made bomb, killing 8, Breivik then drove to a small island, Utøya, 38 km northwest of Oslo, where the youth wing of the country's governing Labour Party had their annual political summer camp. At Utøya Breivik massacred another 69 people, mostly teenagers. Breivik's attack was both a physical and a symbolic attack. The physical attack—a bomb in the main government quarters and on a summer camp—brought a new-found challenge, as it was the first major terrorist attack on Norwegian soil. In terms of symbolism, Breivik's direct targeting of the Labour Party—its youth wing in particular—was a frontal attack on both the liberal and the social-democratic basis of Norwegian society. Targeting civil servants in a government building further underscored the perception that this was a deliberate attack on Norwegian political identity. Just before the rampage, Breivik distributed a 1,500-page manifesto in which his ideological visions were spelt out, targeting political correctness, 'cultural Marxists', feminist supremacy, multicultural policies, and Islam. Notably, he also denied being guilty of a crime, as he saw the actions as 'necessitated by the real possibility of a Muslim take-over of Europe, assisted by the 'cultural Marxists' of the Norwegian Labour Party, and by the party's lax immigration policies' (Walton 2012, p. 4). In Breivik's own assessment, it was thus crucial that the court did not deem him to be mentally unfit for criminal accountability, as that would have undermined the political credibility of his acts and visions.

The official response

The government's immediate political response to the attack was to emphasize the core values of Norwegian political society. Addressing the public in the days afterwards, Norwegian Prime Minister Jens Stoltenberg, himself from the Labour Party, emphasized the need to not let the terrorist win by moving away from core values such as freedom of speech: 'With the world's most powerful weapons—the free word and democracy—we will find the course for Norway after 22 July 2011.' Honouring Norway's values, defined as liberal-democratic, was presented as the penultimate response to violence: 'We must never give up on our values. We must show that our open society will also pass this test. That the answer to violence is even more democracy' (Stoltenberg, 2011). International commentators applauded the official response seen as a call to values instead of the typical securitizing processes seen after terrorist attacks. Media researchers have also concluded that freedom of speech was at the centre of the public debate in the aftermath (Eide, Kjølstad, and Naper, 2013), indicating that the government's framing was effective in setting the agenda.

In parallel with the government's emphasis on values, the Norwegian Police Security Service (PST) soon proposed changes to the existing counterterrorism laws that would give them more power. The suggested changes were legitimized through the need to 'secure democracy' (Fimreite et al. 2013, p. 851). PST was criticized after the attack for not having taken seriously the online activity of anti-immigration and anti-Islamist groups, where Breivik had himself been an active participant (Andersson 2012, p. 421). The official commission tasked with evaluating the attack similarly concluded that better routines could have made them more aware of Breivik's preparations (Kolås, 2017, p. 525). Still, judging from opinion polls, the public was at the time more supportive of the

values-first response. Contrary to what is commonly expected after terrorist attacks, Norwegians reacted with less support for counterterrorism measures after the attack. Comparing public opinion on counterterrorism measures in 2006, 2011, and 2012, public attitudes changed towards being less favourable to counterterrorism measures right after the attack than when asked in 2006 and 2012 (Fimreite et al., 2013). Only 2 out of 10 feared a new terrorist attack right after 22 July. At the same time, there was little reaction or public discussion around the legal changes introduced after the 9/11 attack, which Fimreite et al. (2013) ascribe to high levels of public trust. The weakened support of counterterrorism measures after the attack can plausibly be connected to how the government so adamantly emphasized a value-based response.

Some see the value-based response of the government as problematic. While Prime Minister Stoltenberg emphasized freedom of speech and (liberal) democratic values more broadly, he also explicitly warned against a ‘witch-hunt’ on opinions in the aftermath of the attack. Paradoxically, racist and Islamophobic speech could thus flourish more openly, whereas people were discouraged from targeting those who operated within the same or nearby ideological spectre as Breivik. Breivik had for ten years been active in the Norwegian populist far-right Progress Party (FrP)’s youth wing, as well as connected to certain central extreme-right bloggers both in Norway and abroad. By lauding free speech as a central value, critics such as Muller Myrdahl (2014) see the room for hate speech expanding widely, de facto legitimizing continued attacks on immigrants and Muslims in particular. An extensive report on public attitudes towards freedom of speech published in 2014 concluded that a majority of Norwegians favour some restrictions on freedom of speech, with 60 per cent of respondents partly or fully disagreeing with the statement that ‘speech that mocks religion should be allowed’, 68 per cent disagreeing with the statement that ‘racist

speech should be tolerated' (Staksrud et al., 2014). Yet, studies also show that hate speech and prejudices are on the rise, particularly against Muslims (Hoffmann and Moe, 2017; Wiggen, 2012). Media studies have similarly concluded that criticisms of Muslims and 'foreign cultures' have become more normalized in Norwegian mass media, particularly after 9/11. After the attack of 22 July, previously marginalized anti-immigrant and anti-Muslim voices got even more public attention, thus de facto to some extent normalizing their presence (Figenschou and Beyer, 2014; Andersson, 2012). The heavy emphasis on free speech thus had a side-effect of giving more public attention to Breivik's less extreme ideological affiliates.

The response of the government cemented the perception that freedom of speech and liberal-democratic values were both central to Norwegian identity and the only 'right' way to respond, thereby de facto overshadowing the negative implications of a near-absolutist interpretation of that free speech. One of the most cited interlocutors in Breivik's manifesto, Peder Nøstvold 'Fjordman' Jensen, who had advocated for a civil war and deportation of Europe's Muslims, was awarded a controversial book stipend by the Fritt Ord Foundation (Fritt Ord), an influential private foundation supporting freedom of expression. The Minister of Culture at the time, herself from the Labour Party, supported the stipend, stating that it was an excellent opportunity to show what 'our democracy is made of' (Tajik, 2013). Yet, as freedom of speech was elevated as a value central to Norwegian collective identity, it also meant that some discussions were explicitly played down in public—as with regards to the ideological similarities between Breivik and both extremist and non-extremist political iterations on the far right. The prime minister's statement after the attack on not wanting a 'witch-hunt' on opinions paradoxically signalled both a desire for a restriction on freedom of speech and support for it. The

subsequent leader of the Labour Party, Jonas Gahr Støre, would six years later admit that they explicitly avoided talking about the connection between the attacker and the Progress Party. Drawing a hypothetical comparison to if the attacker had been Muslim and a member of a congregation, Støre noted that that congregation would have been ‘turned upside down’—and that that wasn’t done to the Progress Party. In 2017, Støre stated:

After 22 July it was important for our society to say that the entire democracy was attacked, that it was an attack on us all. But maybe it was wrong to say that 22 July struck all of us. It obfuscates where the hate towards us [the Labour Party] stems from (Støre quoted in Skybakmoen, 2017).

Støre’s point also speaks to the extent to which Breivik was framed as a ‘lone wolf’, in line with the typical racialized discourses on terrorism. Had he been Muslim, the ideological context would, without doubt, have been central. Most probably, his identity as ‘Norwegian’ would have been played down, as has happened in terrorist attacks elsewhere in Europe where the attacker(s) has been a citizen born and raised in the country, but also a Muslim (more on this later). As Falkheimer and Olsson (2014) argue, the attention to Breivik was highly depoliticized in its individualization. This is worrying, as Norway has a history of violent right-wing and racist extremism that should—immediately—have been seen as a central context. The fact that Norwegian media also gave Breivik ample space to publicly state his ideas must thus be both seen in connection to i) the fact that he was seen as ‘one of us’—Norwegian, white, Christian, thus sensationalizing his ‘otherness’ within the context of that in-group, and as acting ‘alone’—despite his well-known ideological counterparts, and ii) in connection to the heavy emphasis on freedom of speech as the only right kind of response.

Breivik's rights vs security

During Breivik's trial, there was a public debate over whether his freedom of speech should be restricted for the sake of the public, particularly for those most closely affected by his acts. Whereas some argued that the terms of his confinement should include full restrictions on external communication, others saw this as an unjust and unnecessary addition to his physical confinement (NRK, 2012a, 2012b). There was also a debate over whether Breivik should be allowed to use the court proceedings as a way of publicizing his thoughts, with the court allowing him to do so (NRK, 2012c). Overall, there was thus a heavy emphasis in the public debate on Breivik's freedom of speech, turning the treatment of him as an individual into a test of Norwegian society's handling of the security/values nexus. As one of the prosecutors stated in an interview with regards to giving Breivik that space:

Otherwise he's won. And you know, he wanted to change Norwegian society and I'm sure he'd feel it was a victory if we gave up our principles. At this moment we're being tested—can we hold on to our principles? (McPherson, 2012).

In part, the policy of emphasizing values was also put to the test by Breivik himself. In March 2016, Breivik sued the Norwegian state for human rights violations, claiming that his terms of confinement constituted a break with the European Convention on Human Rights. The court ruled partly in Breivik's favour, arguing that the solitary terms of confinement were inhumane. The judge, Helen Andenæs Sekulic, stated that 'the prohibition of inhuman and degrading treatment represents a fundamental value in a democratic society. This applies no matter what—also in the treatment of terrorists and killers' (Fouche and Doyle, 2016). Yet, the state repealed the verdict, which in a new court

round resulted in the state's victory over Breivik. Notably, the verdict was not that he did not have the same rights as others, as is often the logic in the far-end cases of states of exception, but that his human rights had not been violated (NRK, 2017).

Similarly, when Breivik applied to the University of Oslo to study Political Science, the official response was that he had the same right as others. He was thus admitted in July 2015, with the restrictions of a) not being allowed to visit campus or b) have contact with students or staff. The rector of the university published a statement, explaining their reasoning:

By sticking to our rules and not clamouring for new ones, we send a clear message to those whose misguided mission it is to undermine and change our democratic system. It is part of the universities' mission to uphold democratic values, ideals, and practices, also when these are challenged by heinous acts (Ottersen, 2015).

The overall emphasis in the public arena has thus been to treat Breivik as an equal legal subject, within what could be defined as the 'normal', liberal-democratic state of affairs. The heavy public prioritization of his rights is a notable break from the logic typically employed after terrorist attacks. Yet, whereas there has been a distinctive emphasis on the rights of Anders Behring Breivik, including his freedom of speech, other parallel practices—in the name of counterterrorism and security more broadly—have fallen within the realm of securitization. The before-mentioned Norwegian Police Security Service has, for instance, attempted to intervene in the work of journalists, arguing that it was for the sake of national security (Wibe-Lund et al., 2015). In 2013, the terrorism laws were changed to enable prison sentences up to 6 years for those who had 'encouraged or recruited' people to terrorist acts. In 2014, the Minister of Justice (from the Progress Party) decided to temporarily arm near 6,000 Norwegian

police officers in response to an unidentified terrorist threat, bypassing the Norwegian Parliament (Omdal, 2014). This was followed up by a proposal to Parliament, and the police were temporarily armed from 25 November 2014 to 3 February 2016 due to ‘heightened security risks’. The Police Security Service recommended a permanent armament of police in 2017, arguing that the police needed to be able to respond quickly to jihadist terrorists (Haug Røset and Hopperstad, 2017). The proposal was accepted with revisions in June 2018, with a ‘partial’ armament of police in select areas such as airports and railways.

An official committee was in 2016 tasked with looking into how the military could assist the police, with the majority of the committee concluding that more tasks could be transferred to the military, including counterterrorism at sea. The Police Union reacted strongly, stating that ‘In peacetime, a democratic society does not use its defence to carry out the tasks of the police’ (Hultgreen, 2016). That same year, the conservative government coalition initiated legal changes that gave the police ‘expanded access to use secret coercive measures in investigations, aversion, and prevention of serious crimes’ (Justis- og beredskapsdepartementet, 2018). The government also initiated increased surveillance measures for the police (‘communication control’), including camera surveillance and covert audio surveillance. In 2017, a control mechanism was established to keep judicial track of their surveillance work. The committee’s task was limited to the police, meaning that they were not to look into the work done by the Norwegian secret services (Statens Sivilrettsforvaltning, 2017). The government and the Police Security Service argued for immediate implementation of the measures, while the opposition parties, including the Labour Party, argued for restrictions to the proposed changes, including source protection for journalists (Akerhaug, 2018). In 2018, the government also established an official panel tasked with

reviewing whether the existing law that applies during war or when Norway's independence is under threat, enabling the government to sidestep Parliament and existing laws, could also apply in other forms of crisis. The direct context was the refugee crisis in 2015, and the government justified the review by stating that there 'also in peacetime can occur extraordinary situations where there is a need to act quickly, and where today's laws are not adequately flexible' (Regjeringen, 2018). The official report, published in June 2019, was in favour of developing a new law for extraordinary crisis situations, though noting that the refugee crisis would not meet the requirements for an extraordinary situation.

An expose in 2018 revealed that the Norwegian Intelligence Service (NIS) had partnered with the US National Security Agency to build a surveillance base whose operations were kept out of public scrutiny. The most controversial aspect was that despite the NIS' mandate forbidding surveillance of Norwegians, the base had collected metadata also on Norwegian citizens (Bye Skille et al., 2018; Moltke, 2018; Stormark, 2018). Critics pointed out that this constituted a breach both of the laws regulating the NIS and freedom of speech (Wessel-Aas, 2018). While the head of NIS vehemently denied that they operated in breach of Norwegian law, the debate highlighted the extent to which Norwegian secret services are operating in a legal grey area, justified by an overarching security threat perception. As one commentator stated in response: 'It is vital to ensure that those who are tasked with protecting Norway's democracy themselves do not violate the values that they are entrusted to protect' (Stormark, 2018).

The Progress Party, which Breivik had been a member of, has been at the forefront of targeting the Labour Party (AP) for not doing enough in response to potential terrorist threats, though with an emphasis on jihadists. In March 2018, the then Norwegian Justice Minister Sylvi Listhaug, from the Progress

Party (FrP), caused an uproar—which would eventually lead to her withdrawal from her post—after publishing a photo on Facebook of masked men from the terrorist group Al-Shabaab, with the comment ‘AP cares more about the rights of terrorists than your security’. The rhetorical attack was by many perceived as particularly tasteless as the Labour Party had been the main target of the largest terrorist attack in Norway. The Facebook post was in response to the Labour Party having rejected, along with a majority in Parliament, a government proposal that would make it possible for the police to strip foreign fighters of their citizenship without prior court proceedings. The Labour Party was not opposed to the measure *per se* but insisted that it should happen through judicial proceedings. The Justice Minister explicitly played on the value-first based approach of the Labour Party, bluntly stating that this very logic protected the rights of terrorists. The Labour Party leader Støre responded that ‘Norway has a Minister of Justice who deliberately, calculatingly stokes the exact same hatred that took so many lives on 22 July’ (Vignæs and Konstad, 2018), causing a backlash of critique. The Justice Minister’s political advisor, who was responsible for the earlier controversial Facebook statement, criticized the Labour Party leader for turning 22 July into ‘something political’:

Jens Stoltenberg [the former prime minister from the Labour Party] did an outstanding job in uniting everyone [after 22 July], and not making something political out of it—but Støre clearly has other plans. Stoltenberg would never have done that (Espen Teigen quoted in Blaker, 2018, my translation).

On the one hand, the period after 22 July has been marked by a strong symbolic prioritization of liberal-democratic values—particularly freedom of speech—*vis-à-vis* Breivik. Yet, in other areas, we have witnessed changes that are moving incrementally

towards restricting liberal values, as in increased surveillance powers. Freedom of speech also came at the cost of increased hate speech towards Muslims and immigrants—hate speech that Breivik himself perpetuated—whereas the party at the centre of his attack, the Labour Party, paradoxically remained mostly silent about the connections Breivik had to a central Norwegian political party.

On the exceptional versus the normal: security and values

The Norwegian story after the 22 July attack illustrates the extent to which the relationship between the exceptional—the crisis—and the normal is fundamentally uncertain. Unlike in the 22 July attack, where the threat was specific, individualized and delineated, most security measures happen—as was discussed earlier—in the preventive realm, in the realm of risks and potential threats. What constitutes ‘normal times’ is never given, as liberal-democratic societies in general also have become far more securitized in the period after 9/11. The handling of the Breivik case—from his trial to the terms of his imprisonment—was closely tied up with a performative aspect of wanting to showcase Norway’s liberal-democratic identity even when faced with a crisis. Here, the Norwegian state actively sought to move in the opposite direction of what the logic of security usually implies. Yet, in other parallel processes, security was used in Norway as a rationale for sidestepping some of the values associated with that identity, highlighting the extent to which the logic of security is a pervasive, everyday aspect of liberal-democratic society. Whereas the logic of the exceptional applies in how security measures are bracketed as pauses in the ‘normal’ state of affairs, what constitutes ‘normal’, as non-securitized,

is also increasingly in flux. When threat-perceptions become a persistent and stable part of a society's view of its surroundings, the logic of exception is routinized and is no longer exceptional, but highly normal (cf. Neal, 2012). The policies of security are seen as running parallel but not in contradiction to those values that they seek to defend. In contrast, for states deemed 'authoritarian' such policies are seen as a further cementation of their illiberal politics. Despite illiberal responses in liberal-democratic states, the liberal self-identification remains strong, blurring the boundaries of how security affects our foundational values in both the short- and long-term.

The flipside to the strong emphasis on freedom of speech is to what extent hate speech is taken seriously. In one of the paramount liberal formulations of the principles including freedom of speech, John Stuart Mill emphasized that it could only be limited if people were harmed due to the liberties of others. In the more absolute iterations, the harm principle does not include speech mocking or bashing e.g. religious communities. Norway has leaned towards the more absolutist interpretation of free speech, though with implicit restrictions on what was deemed permissible to openly discuss (in Norway, Breivik's political past). Since terrorist attacks on liberal societies are also portrayed as distinctly symbolic attacks on values, those values become further isolated as part of the reaction—alongside a range of more illiberal policies in the name of security.

In some ways, the rhetoric of values often seen in self-defined liberal-democratic states create an entrapment through the totalized or absolute representations of their identity: no state can only be liberal or illiberal. Political practices will always contain hybridity in terms of values. One of the essential tasks of the modern state is to ensure the security of its citizens. At the same time, the logic of security has developed in such a way that the designation of both specified and unspecified threats—or,

more vaguely, ‘risks’—give the state an enormous amount of power. In states with no pretence of being liberal-democratic, this logic of security often flows into the general logic of governance, and is thus to be expected. Though it is also within the logic of liberal-democratic states to have an open climate for discussion, the spectre of security may easily interfere with that. Paradoxically, due to both high levels of public trust and a wide-spread assumption of the rightness of the government’s response, and in convergence with the logic of secrecy and expediency in security, illiberal practices may end up going under the radar. Security is also a realm of politics, but because security both historically and presently has been spoken about and acted upon in a depoliticized manner, many seem to forget its inherently political character. ‘Security’ is thus more often accepted at face-value as an argument for certain measures, forgetting that what constitutes the right response to a security issue is always political—and thus must also be debated and potentially contested, including when it comes to how it affects our foundational liberal-democratic values.

At the same time, if unknown practices become public—for example through journalistic scrutiny, as in the beforementioned case with the wide-scale US–Norwegian data collection—there is also an available open public space for criticism. As Pastor writes, this is the great strength of liberal systems, in that ‘by encouraging criticism, it defuses destructiveness’ (Pastor quoted in Moshirzadeh, 2011, p. 125). Hence, whereas criticism of securitizing practices is typically struck down in more authoritarian regimes, the logic of self-defined liberal societies is to explicitly open up for criticism and disagreement. Just before this book went to print, the potential democratic value of this form of criticism was illustrated in the Norwegian setting. After the Covid-19 pandemic also hit Norwegian society, the government drafted an emergency law that was to be quickly

processed through parliament, giving the government extensive new powers, and allowing it to sidestep existing law. Yet several prominent legal scholars reacted strongly against both the law and the process, with the parliament subsequently amending the law. In contrast, a Covid-19 state of emergency law issued in Hungary, giving the Prime Minister the right to rule by decree indefinitely, was widely seen as the final nail in the coffin for Hungary's remaining democratic credentials (its liberal credentials already long gone).

In the 2000s, the discourse of security threats is seemingly everywhere—be it from a potential future refugee crisis, a pandemic, an international terrorist threat, gradual (societal) radicalization, or climate crisis. As a consequence, the very constitution of 'normal times' as distinct from 'exceptional times' is increasingly blurred. This matters. It means that security measures are increasingly becoming a part of the normal state of affairs. As this normalization happens, the instincts of citizens to react when faced with new measures might also fade. The threshold for what is deemed 'exceptional' is increasingly elevated, as the 'normal' embodies an increasingly wide range of security measures. With that follows the unavoidable question—what does it mean for an extensively securitized society to be liberal? I leave that question open for reflection, but my hope is that the remaining chapters in this anthology—that deal more specifically with the area of freedom of speech and academia—will address some of those questions more directly.

If there's a lesson to be drawn from my discussion here it's that issue areas designated as realms of security must always be questioned and (re)politicized: in the constant battle between the realm of the exceptional and the realm of the normal, politics has to be front and centre. This means that the impulse on the part of both the public and politicians to accept security as an argument for restricting values should constantly be debated,

and if necessary, challenged. When it comes to academia and the higher education sector, most of the debates happen in that place of the normal rather than the immediate and the exceptional. Yet, that also leaves the sector vulnerable to securitizing measures implanted from above within the apparent logic of the normal, be it with regards to counter-radicalization, a pandemic, or in combating extremism. What constitutes the right way to deal with issues of security is never given. Nor is it given that security automatically legitimates a suspension or encroachment of existing laws and rights, including free speech. This might seem like somewhat of a banal point, but given how 'security' is being used also in states defined as liberal-democratic, a point that must be frequently repeated.

Notes

1. Academic publications usually take time. My contribution in this anthology was written in 2018, updated in 2019 follow several rounds of peer-review and editorial feedback. As such, the Covid-19 pandemic was not yet an issue. Upon the deadline for the final book manuscript, in March–April 2020, this context had been radically altered: including, in the Norwegian context, a debate around a proposed ‘emergency law’ that I now briefly deal with in this chapter. In Hungary, a state of emergency law was widely criticized by other EU countries for allowing Prime Minister Viktor Orbán to rule by decree without a set time limit. I’m only able to briefly touch upon these issues in this chapter, but how states react to the pandemic is illustrative of arguments that I make in more general terms here.
2. The term ‘liberal’ is inherently contested, used in multiple ways both by political actors and in the academic literature. In this chapter, I refer to ‘liberal’ more or less interchangeably with liberal-democratic states, as those based on the parallel pillars of the rule of law, democracy, human rights, tolerance and protection of minorities, support for civil society and existence of market economy. This is, in terms of specific institutions, how liberals define their own ideology, rather than how that ideology is described from a critical (outside) perspective, where neoliberalism as a specific (co)governing logic is usually given far more attention. For the latter, see for example Nancy Fraser’s or Wendy Brown’s excellent work.

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