

# Legitimacy and Security from a Historical Perspective: A Case Study in the History of Terrorism\*

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## *1 Introduction*

Faced with political violence such as terrorism, Western societies have, since the turn of the millennium, put security issues high up on the agenda again. In response to the numerous attacks that have taken place since 2001 in New York City, Alexandria, VA, Bali, Moscow, Beslan, Madrid, London, Mumbai, Sydney, Paris, Brussels, Ankara, Istanbul, Jerusalem, Nairobi, Berlin, Teheran, St. Petersburg, Barcelona and Turku, among others, new security laws have been passed in the United States, as well as in many European countries, Russia, Australia, and Turkey, especially. With these laws, parliaments and governments intend to strengthen national and international security authorities by creating new security agencies or reorganizing and enlarging existing ones, by improving the agencies' equipment, and by extending their regular and exceptional powers to act against citizens and non-citizens alike. At the same time, on an international level, wars and military interventions have been led with the declared aim of fighting terrorism and (re-)building nation states in the name of global se-

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\* This article was written while I was receiving a Heisenberg-Fellowship of the German Science Foundation (DFG), and in my capacity as manager of the sub-project "Security of the State and Security from the State in Europe, Russia and the United States in the 19<sup>th</sup> Century" of the Collective Research Center / Transregio 138 "Dynamics of Security: Types of Securitization from a Historical Perspective" at the Justus-Liebig-University Gießen and the Philipps-University Marburg. The text has profited in many ways from the fact that – as an alumna of the Institute for Advanced Study Konstanz – Fred Girod and Svenia Schneider-Wulf kindly gave me permission to work in the Seeburg for a few weeks, again. For conversations on the topic of this text, my thanks goes to Kurt Lüscher and Wolfgang Seibel. Moreover, I am indebted to Ulrich Bröckling, Malte Griesse, Iwan Iwanov, Martial Staub, and the editors of this volume, who read the text in an earlier stage and gave valuable comments. Lukas Keller was a great help, again, in providing me with the few titles I could not find at the Library of the University of Konstanz. If not indicated otherwise, accentuations are in the texts as cited, and translations are mine.

curity. As a result, security measures and/or interventions in the name of security have directly or indirectly affected many people in most countries of the world in one way or another.

In correspondence with the rising importance of security measures in political, public and private life, research and discussions regarding security issues have gained momentum in academia. Before the turn of the millennium, debates on security and securitization were mostly confined to comparatively small and self-contained circles of researchers working in institutions and think-tanks specifically devoted to security studies and political consulting. Since 2001, university teachers and scholars in other disciplines have increasingly taken up the topic of security as well.<sup>1</sup> In addition to this widening of the field, research in specialized security and securitization studies has intensified and gained increasing recognition beyond their immediate circles. Hence, the study of security and securitization currently is a vibrant and important field of study in many ways.

The cross-fertilization between, on the one hand, security studies and securitization studies and, on the other hand, the social sciences and the humanities more generally has enriched discussions in a wide range of disciplines by opening up new questions, perspectives, and interpretations. This may be especially true for the discipline of history.<sup>2</sup> Conversely, the engagement of scholars from disciplines other than International Relations with issues and debates in the field of security and securitization studies has the potential to open up new perspectives and questions and to mark certain neglected areas in this field.

One such neglected area in current security and securitization studies is the significance of legitimacy in a broader sense – that is, the legitimacy of political, economic or societal orders, as such – for issues of security.

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1 On this development, see, for example, C.A.S.E. Collective 2006, pp. 445 and 460-472. The Collective Research Center “Dynamics of Security” is an example of this development. Initiated in 2014, the Center brings together scholars from the disciplines of history, art history, law, sociology and the political sciences.

2 As far as the sub-project “Security of the State and Security from the State in Europe, Russia and the United States in the 19<sup>th</sup> Century“ is concerned, the fruitfulness of security theory for the interpretation of history has become clear, for example, in the discussions of the International Conference *Dynamics of Security in Russia in the Era of Revolution and Restoration (1790-1840) / Dynamiken der Sicherheit in Russland im Zeitalter von Revolution und Restauration (1790-1840)*, which took place in Gießen on March 2-3, 2017. It will also be apparent in the anthology resulting from this conference.

From a historical perspective, it is remarkable that legitimacy in this sense does not figure prominently in the explanation of stability, safety and threats to both in much of recent security and securitization studies. Certainly, in the history of political thought, in current political and sociological theory as well as in the general fields of International Relations and conflict studies, many works deal with questions of legitimacy and the stability of political order. It might suffice, here, to remind of the classical works by Machiavelli, Hobbes, Locke, Kant, and some of the historical authors mentioned in the main part of this text, the books by Henry Kissinger, Raymond Aron, Paul Schroeder, and Alexander Wendt,<sup>3</sup> or the contributions of researchers connected to the *Hessische Stiftung Friedens- und Konfliktforschung* (Peace Research Institute Frankfurt) and the *Wissenschaftszentrum Berlin für Sozialforschung* (WZB, Berlin Social Science Center).<sup>4</sup> Moreover, there are a number of expositions especially on legitimacy of the state and the law.<sup>5</sup> Seen from this perspective, issues of legitimacy and the stability and security of order belong to the core questions of political thought and political theory.

Despite this long and impressive tradition, preliminary examinations of the field of legitimacy, security, and their relationship show that the correlation between legitimacy and security is not easy to grasp. For example, no agreed upon definitions of the terms ‘legitimacy’ and ‘security’ exist, and the ways in which the concepts are used in the literature, as well as the manner in which their correlation is described, vary widely.<sup>6</sup> Accordingly, Christopher K. Ansell states that legitimacy “is a critical but often vexing concept in politics and political science.”<sup>7</sup> Browsing the indices of prominent standard introductions, theories, and compilations in the field of security studies, one will find that in many of these works, the terms ‘legitima-

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3 See, for example, Kissinger 1974; Aron 1966; Schroeder 1994; and Wendt 1999.

4 See, for example, Geis/Nullmeier/Daase 2012; Daase 2013; Rauh 2015; the project “Rethinking Legitimacy and International Institutions“ by Michael Zürn and Matthew Stephen, as well as their article (2010); Kreide 2015 (reprinted in a revised version Kreide 2015a). On Hobbes cf., for example Marciniak 2015, e.g. pp. 158f.

5 For recent works, cf. esp. Barker 1990; Beetham 1991; Stryker 1994; and Gilley 2009.

6 For a good overview of definitions and concepts of legitimacy, cf. Stryber [= Stryker] 2001; Ansell 2001; and esp. Mandt 1995; as well as Kaase 1995; and Sarcinelli 1998.

7 Ansell 2001, p. 8704.

cy' or 'legitimation' are not indicated. In case one of these terms is mentioned, it typically leads to expositions about historical developments or about 'weak' states in the so-called Third World.<sup>8</sup> The treatment of legitimacy in a broad sense as a factor relevant mainly for history and the so-called Third World potentially implies, though, that the question of legitimacy can be neglected when dealing with current challenges to security in the so-called First World or on a global level.

In European securitization studies, such as the Copenhagen and Paris Schools, legitimacy is an important category, yet in a narrower sense. In works of these two schools, the category is mostly used with respect to the political or professional legitimacy and authority of specific security moves and experts.<sup>9</sup> This is somewhat surprising, because in their hallmark book, *Security. A New Framework for Analysis*, published in 1998, Barry Buzan, Ole Wæver and Jaap de Wilde have given the category of legitimacy in the broad sense a systematic treatment under the heading "The Political Security Agenda."<sup>10</sup> Here, the three authors maintain that "[p]olitical security is about the organizational stability of social order(s)." They state: "Typically, political threats are about giving or denying recognition, support or legitimacy." As such, they are "purely political threats" (as opposed to military ones, for instance), in which "words matter in relation to recognition and related political demands."<sup>11</sup> Buzan, Wæver and de Wilde differentiate between threats to the "internal legitimacy" of the political unit, primarily relating to "ideologies and other constitutive ideas" and "the external recognition of the state, its external legitimacy."<sup>12</sup> They observe that "a state consists of three components: idea, physical base, and

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8 See, for example, Booth 2007, p. 260; Booth/Wheeler 2008, p. 109; Acharya 2011 and Homer-Dixon 2011; Booth/Erskine 2016, esp. pp. 166-171. In some books, the term 'legitimacy' appears in the text but not in the index. Such absence is significant because it indicates that the author(s) or editor(s) do not consider the term to be a key-concept of the field. On the absence of the term and the concept in many standard texts in the field of International Relations, cf. also Clark 2005, pp. 2 and 11. On p. 9, Clark poses the question, "why, thus far, has it [legitimacy; C.D.] never been regarded as one of the discipline's key concepts?"

9 Cf. further on this and with extensive references to the literature the chapter by Andreas Langenohl in this volume.

10 Buzan/Wæver/de Wilde 1998, Chapter 7.

11 Id., p. 141 and p. 142. Cf. also p. 144.

12 Id., p. 144.

institutions,”<sup>13</sup> and they note that any subversion of legitimacy affects the ideas and ideologies on which political institutions are built, and thereby the stability of a political order. In their typology of cases, Buzan, Wæver and de Wilde consider questions of legitimacy in the broad sense under the heading “Unintentional threats to states on political-ideological grounds.” As examples, they name the conflict between India and Pakistan and the one between Israel and the Palestine Liberation Organization.<sup>14</sup> Thus, legitimacy in the broader sense is well positioned in the theory of the Copenhagen School through the termini of “political security” and “political threats.”

Yet, even though Buzan, Wæver and de Wilde systematically include the category of legitimacy into their approach of securitization theory, their usage of this category still fits the general picture outlined earlier. Similar to Ansell quoted above, the three authors, at the beginning of their chapter entitled “The Political Security Agenda,” remark: “the political sector will turn out to be the one that is the most perplexing.”<sup>15</sup> Buzan, Wæver and de Wilde also regard legitimacy issues in the broad sense as a security threat predominantly for ‘weak’ states, where “basic institutions as well as ideologies are often challenged, and political violence is extensive,” whereas in ‘strong’ states, “the framework and thus some basic legitimacy of the government are usually accepted.”<sup>16</sup> Concerning ‘strong,’ liberal-democratic states, processes of legitimation mainly come into focus with regard to security measures – that is, only in the narrow sense. Thus, Buzan, Wæver and de Wilde define a “security criterion,” according to which an issue “has to be a threat of a dramatic nature, portrayable as threatening the breakdown or ruin of some principle or some other irreparable effect whereby one can then legitimate extreme steps.”<sup>17</sup> According to the Copenhagen School, therefore, legitimacy issues in ‘strong’ states concern less the question whether audiences are prepared to generally accept that “government acts only as the legitimate agent of the nation-state,”<sup>18</sup> in contrast to ‘weak’ states. Rather, the crucial question is if audiences are prepared to accept as legitimate a specific securitizing move and

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13 Id., p. 150.

14 Id., p. 157.

15 Id., p. 141.

16 Id., p. 148.

17 Id., p. 148.

18 Id., p. 146.

the security measures it enables. Finally Buzan, Wæver and de Wilde themselves marginalize the cases assembled in their typology of cases under the heading “Unintentional threats to states on political-ideological grounds,” by noting that conflicts of this type are “not common” and that they are “not the typical form of political security conflict.”<sup>19</sup> It is possibly for reasons such as these that the inclusion of the category of legitimacy in the broader sense into securitization theory, which the Copenhagen School offers in principle, has not brought about an effective inclusion of legitimacy into the research of this school or into the general field of security and securitization studies. In the writings of the Paris School, questions of legitimacy mostly concern the securitizing actors and their audience.<sup>20</sup> Hence, there is also a tendency in both schools of European securitization studies to neglect legitimacy in the broader sense, if it does not pertain to ‘weak states’ in the so-called Third World.

With regard to history, security studies tend to focus on the emergence of legitimacy in international society. The *locus classicus*, in this respect, is Henry Kissinger’s 1957 definition of a legitimate international order in his remark that the order established at Vienna in 1815 was legitimate because it established “international agreement about the nature of workable arrangements and about the permissible aims and methods of foreign policy.” This definition comes in combination with Kissinger’s statement that a legitimate international order does “not make conflicts impossible, but it limits their scope,”<sup>21</sup> thus stressing the link between legitimacy and security: “Stability, then, has commonly resulted not from a quest for peace but from a generally accepted legitimacy.”<sup>22</sup> These quotations have been cited so often in the relevant literature that they have acquired a certain status of fame in the field of security studies; still, they stand somewhat apart from the actual research questions and study programs.

In the field of International Relations, Ian Clark is one of the rare scholars to fully focus on questions of international legitimacy. He works with historical material, striving to establish legitimacy as a key concept

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19 Id., p. 157.

20 See, for example, Balzacq 2011, Chapter 1, p. 3, and the remarks by Langenohl in his introduction to this volume.

21 Kissinger 1974, p. 1, cited for instance in Booth/Wheeler 2008, p. 109.

22 Kissinger 1974, p. 1.

of his discipline.<sup>23</sup> Under the heading “Why Legitimacy Matters,” Clark underlines that there is “a possible connection between international legitimacy and the greater international stability that results from it,” thus also stressing a link between legitimacy and security.<sup>24</sup> The more direct aim of his study, however, is to explore the “international practice of legitimacy” in its “substantive” and “procedural dimension,”<sup>25</sup> in order to decide, for example, if we can “make judgements about the varying degrees to which international society has succeeded in legitimating its actions,” and if “– in that sense alone – [...] some international orders [have] been more legitimate than others.”<sup>26</sup> In order to answer such questions, Clark develops a distinctive approach to international legitimacy, arguing that the “core principles of legitimacy express rudimentary social agreement about who is entitled to participate in international relations, and also about the appropriate forms in their conduct.” In this sense, “*legitimacy thus denotes the existence of international society.*”<sup>27</sup> Hence, security remains present as the overall goal of legitimations, but it is not the direct focus of Clark’s study.

In history, one can indeed find many important indications that legitimacy in the broad sense is crucial for security and securitization. In order to fully appreciate this, it is helpful to take a long historical view. Social scientists sometimes assert that legitimacy of political rule is mainly a modern phenomenon. A prominent scholar presenting forceful normative arguments for such an assertion is Wilhelm Hennis. In a similar sense, Stephan Leibfried and Michael Zürn write: “Legitimacy or the acceptance of political rule came into full bloom with the rise of the *democratic nation-state* in the nineteenth century.”<sup>28</sup> Others assert that pre-modern concepts of legitimacy existed, but are not relevant for legitimacy issues today. Ian Clark, for example, states: “No attempt need be made to provide

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23 See Clark 2005, p. 9. Cf. also Clark 2007 his *International Legitimacy and World Society*. Oxford; New York: Oxford University Press, 2007, as well as Wight 1977, p. 153. The chapter is a revised version of an article first published under the same title in *International Relations* 4(1), 1972: 1-28.

24 Clark 2005, p. 15.

25 Id., pp. 1 and 3.

26 Id., p. 9.

27 Id., p. 2.

28 Cf. Hennis 1976 and Leibfried/Zürn 2005a, p. 2 (orig.: Leibfried/Zürn 2006a, pp. 20f. For the emergence of this position in the course of the revolutionary era, see also further down.

a comprehensive intellectual history of the term [legitimacy; C.D.],” because “the concept came into common usage only after the French revolution,” and: “This post-1789 usage, as we shall see, was to be distinctive.”<sup>29</sup> Certainly, with the democratic nation-state, “popular legitimacy” as a specific understanding of legitimacy was established, and this principle of legitimacy is still relevant today.<sup>30</sup> From a historical perspective, however, it is important to note that legitimacy – at least in the empirical sense – also existed in other societies and at other times, even if it was understood differently.<sup>31</sup> This is important not least because observations on the relationship between legitimacy and security in pre-modern times hold important lessons on their relationship in general.

Therefore, in the following I will use different historical methods to approach the relationship of legitimacy and security as well as securitization from a diachronic perspective. First, I will introduce the term ‘legitimacy,’ as it is commonly used in everyday English, French, and German today. Then, I will describe the history of the term and of the concept of ‘legitimacy’ for Central Europe in its *longue durée*, with the help of *Begriffsgeschichte*, the history of concepts, and the history of ideas. This history is correlated with events and constellations, taken from European history, which illustrate the importance of legitimacy for security and indicate the significance of changes of the term and of the concept of ‘legitimacy’ for the history of security and securitization and the stability of political orders. Then, in a case study focusing on the 8 years between 1858 and 1866 in Europe, Russia, and the United States, I will show that questions of legitimation and de-legitimation were important preconditions for the emer-

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29 Clark 2005, p. 17.

30 For the term ‘popular legitimacy,’ see Wight 1977, p. 153. For the relevance of this understanding of legitimacy under the conditions of the present transformations of the democratic nation-state, cf. Leibfried/Zürn 2005a. (Orig.: Leibfried/Zürn 2006a); Nullmeier et al. 2010; as well as the titles in the series “Transformations of the State”, edited by Achim Hurrelmann, Stephan Leibfried, Kerstin Martens and Peter Mayer (Basingstoke: Palgrave Macmillan). The differentiation between legitimacy in a normative as compared with an empirical sense is common in the literature. See on this differentiation esp. Beetham 1991. Leibfried and Zürn (2006, p. 28) introduce the differentiation in “Von der nationalen zur post-nationalen Konstellation”.

31 Cf., for example, the introduction in Württenberger 1982, pp. 677-679, who takes an anthropological approach; or (partly on the basis of this same text) Schneider et al. 2010, p. 5; as well as Gilley 2009, p. xi, who provides examples.

gence of terrorism as a specific tactic of political violence – a tactic currently considered as a major security threat. Overall, the combinations of conceptual history with a praxeological approach show that legitimacy is decisive for security and securitization in a variety of ways.

This text does not make any claim to deal with the topic at hand in a comprehensive manner. Instead, this article is supposed to present a first outline of the argument – an outline, which is to be followed by further studies dealing with the arising questions in more depth.

## 2 *Historical Perspectives on Legitimacy and Security*

In current usage, the term ‘legitimacy’ has at least a double meaning. On the one hand, it overlaps with the term ‘legality.’ The *Oxford English Dictionary*, for example, defines ‘legitimacy’ as “[c]onformity to the law, to rules, or to some recognized principle; lawfulness,” and in a more directly political sense as “[t]he legal right to govern or to sovereignty; *specifically* the fact or principle of strict hereditary succession to a throne.”<sup>32</sup> Similarly, the *Grand Larousse de la langue française* defines the French ‘*légitime*’ as “fixé ou établi par la loi, conforme aux règles,” “[c]onforme à la loi écrite, au droit positif,” “[f]ondé, appuyé sur la loi” and as “conforme à la raison, au bon droit.”<sup>33</sup> On the other hand, the term ‘legitimacy’ can be directly juxtaposed with the term ‘legality.’ In this sense, the *Grand Larousse* renders the meaning of ‘*légitime*’ as “[c]onforme à la justice, à l’équité, au droit naturel, à la loi morale ou divine (par opposition à *légal*)” and as “[f]ondé sur le droit divin, par opposition à tout autre pouvoir réputé usurpé.” Carl Schmitt, in his political essay *Legality and Legitima-*

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32 Entry “legitimacy”, in: *OED. Oxford English Dictionary*, Oxford University Press 2017, [www.oed.com/view/Entry/107111?redirectedFrom=legitimacy#eid](http://www.oed.com/view/Entry/107111?redirectedFrom=legitimacy#eid) [last accessed: July 19, 2017]. On the same line, the American *Merriam-Webster Dictionary* defines the meaning of “the quality or state of being legitimate” as “accordant with law or with established legal forms and requirements,” as “ruling by or based on the strict principle of hereditary right,” and as “conforming to recognized principles or accepted rules and standards” (Entries “legitimacy” and “legitimate,” in: *Merriam-Webster Dictionary*, <https://www.merriam-webster.com/dictionary/legitimacy> [last accessed: July 19, 2017]).

33 Entry “*légitime*”, in: *Grand Larousse de la langue française*, in 7 vol., vol. 4: IND-NY, Paris: Larousse 1975, p. 2992.

cy on the Weimar Republic, used the terms as opposites in this sense.<sup>34</sup> The juxtaposition of the terms ‘legitimacy’ and ‘legality’ is thus more pronounced on the European Continent than in Britain or in the United States, perhaps for reasons connected with differences between historical experiences and different legal traditions.

Notwithstanding this difference, for the longest time in European history the juxtaposition of ‘legitimacy’ and ‘legality’ would have been hard to comprehend on the Continent as well. Both terms are ultimately derived from classical Latin ‘*legitimus*.’<sup>35</sup> This word also combined the meaning of the current term ‘legal’ (“of or concerned with the law,” “legally prescribed or recognized,” “permitted by law,” “lawful”), with the additional meaning of ‘legitimate’ (“prescribed by custom or usage,” “genuine,” “just,” “proper”).<sup>36</sup> Accordingly, it was the term ‘*legitimus*’ which was used to refer to the Law of the Twelve Tables, which is considered as the foundational law of the Roman community.<sup>37</sup>

In the terminology of the Middle Ages, a principal differentiation between law, justice and morality cannot be found, either. The term ‘*legitimus*’ continued to be used in learned Latin discourse,<sup>38</sup> and it began to enter the vernaculars.<sup>39</sup> Moreover, the neologism ‘*legalitas*’ (meaning “legal status,” “law-worthiness”) was coined. This new term was not juxtaposed

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34 Schmitt 2004 (orig.: Schmitt 2012). For contemporary German usage, the most useful points of reference are the entries ‘legitim’ and ‘Legitimität’ in: *Wahrig. Deutsches Wörterbuch*, edited by Renate Wahrig-Burfeind, 8., vollständig neu bearbeitete und aktualisierte Aufl. Gütersloh/München 2006, p. 932.

35 The term ‘legalis’ can be found, since the first century AD, but it did not play a significant role. Cf. Würtenberger 1982, p. 680, note 8.

36 Cf. entry “legitime, adj. and n.,” in: *OED. Oxford English Dictionary*, Oxford University Press 2017, <http://www.oed.com/view/Entry/107120?redirectedFrom=legitime#eid> [last accessed: July 20, 2017]; and the entry “legitimus” in *Pocket Oxford Latin Dictionary: Latin-English*, Oxford: Oxford University Press 2005, <http://www.oxfordreference.com/view/10.1093/acref/9780191739583.001.0001/b-la-en-00001-0005755?rskey=5ejm9i&result=1> [last accessed: September 15, 2017].

37 Cf. Würtenberger 1982, p. 680, and for more detail Würtenberger 1973, chapter 1.

38 Cf. Würtenberger 1982, pp. 681-684, and Würtenberger 1973, p. 37-45.

39 Words from the family ‘legitim-’ began to enter the French language in the thirteenth century and the English language from 1400 onwards. Cf. entry “legitimacy,” in: *OED. Oxford English Dictionary*, Oxford University Press 2017, [www.oed.com/view/Entry/107111?redirectedFrom=legitimacy#eid](http://www.oed.com/view/Entry/107111?redirectedFrom=legitimacy#eid) [last accessed: July 19, 2017] and the entry “légitime,” in: *Grand Larousse de la langue française*, in 7 vol., vol. 4: IND-NY, Paris: Larousse 1975, p. 2992.

with ‘*legitimus*,’ however. The law was seen to comprise proven and tested rules for society; thus, lawful behavior was regarded as just and moral – and vice versa.<sup>40</sup> In content, the medieval principle of legitimacy was dynastic. According to Martin Wight’s succinct characterization, the dynastic principle was “concerned with the status and claims of rulers” and “might be cautiously described as a doctrine that legitimacy rests upon prescription, tempered by consent.”<sup>41</sup> It connected international and domestic politics, because it prevailed (or was proclaimed to prevail) “*within* a majority of the states as well as in the relations *between* them.”<sup>42</sup> The understanding of legitimacy in dynastic terms entailed that conflicts about legitimacy were typically conflicts about the question, whether an individual person or body (such as a chapter or a monastic order) had or did not have the legitimate right to rule specific towns, territories, and subjects.<sup>43</sup> Therefore, in the Middle Ages, conflicts about legitimacy were frequent, but limited in kind, and it may be considered significant that, in the Empire, no assassination of a king took place for political reasons between 754 and the Holy Roman Empire’s demise, in 1806.<sup>44</sup>

When competing orders of legitimacy emerged, serious controversies about legitimacy began, and these controversies soon became relevant for the security of those in power as well as for large parts of society. After the Reformation, the term ‘*legitimus*’ took center stage in deliberations about the right to resist a ‘tyrant.’ In this discourse, the dynastic principle of legitimacy continued to be recognized, but faith and the way, in which rule was exercised, gained in importance as additional criteria for legitimacy.<sup>45</sup> For example, Martin Luther initially declared that no obedience is

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40 Cf. Würtenberger 1982, p. 681.

41 Wight 1977, pp. 153 and 157.

42 *Id.*, p. 153.

43 On different types of violence in Medieval Europe, cf. for instance Brown 2014.

44 The two kings, we know to have been assassinated, Philipp von Schwaben, in 1208, and Albrecht I. von Habsburg, in 1308, were murdered for a violation of honor and because of inheritance matters, respectively. Cf. Bihrer 2005, esp. pp. 118f. and 123. Moreover, there were several attempts to assassinate Friedrich II. (1212-1250), and one each to assassinate Konrad IV (1250-1254) and Sigismund (1411-1437), as well as rumors about poisoning, mainly in situations with double-elections (*Doppelwahlen*) or counter-kings (*Gegenkönige*). See Bihrer 2005, p. 123.

45 For the term ‘legitimacy’ in the context of Early-Modern politico-theological language, cf. Schorn-Schütte/Tode 2006. On England see esp. Zaller 2007.

due to ‘ungodly’ rulers, but that one was not allowed to resist them actively, either; after the outbreak of the Peasants’ revolts in 1524, however, he adopted a strict position of non-resistance.<sup>46</sup> By contrast, Roman Catholics and Calvinists alike revived and elaborated on ancient and medieval ideas about resistance and tyrannicide.<sup>47</sup> Under the impression of the Catholic monarchy’s fight against the Huguenots in France, especially the attempt to murder the entire Calvinist leadership in the massacre of St. Bartholomew’s Eve in 1572, Calvinist monarchomachi (notably François Hotman, Théodore de Bèze, Calvin’s right-hand man, Philippe du Plessis-Mornay, George Buchanan, and Johannes Althusius) discussed: (1) if resistance was legitimate against a ruler who overstepped his powers and acted as a tyrant; (2) which subjects would have the right to resist such a tyrant; (3) at what stage of misrule resistance was legitimate; and (4) in what form.<sup>48</sup> Fearing social unrest and retribution, most of the Calvinist monarchomachi gave restrained answers to these questions.

Around the same time, some Catholics began to raise analogous issues with regard to ‘heretic’ Protestant rulers. Upholding an “extreme or exclusive Catholic principle of legitimacy” (and thus “turning revolutionary”),<sup>49</sup> preachers of the Catholic League (such as Rossaeus of Paris, Jean Boucher, Francisco Suarez, and Juan de Mariana) claimed that heretic rulers were by definition tyrants, and that tyrants could be assassinated. A number of popes and Catholic monarchs put these ideas into practice and deposed Protestant sovereigns. Thus, Pope Pius V in 1570 declared Queen Elizabeth I of England to be a heretic, and Pope Sixtus V in 1585 issued the same kind of statement about King Henry IV of France. In the face of the abovementioned interpretations en vogue in the Catholic League, such delegitimizing declarations were calls for political murder.<sup>50</sup> For instance, Spanish King Philip II declared William of Orange an outlaw. When Philip had tried to violently suppress Protestants and Protestantism in the Low Countries in 1581, the Dutch States-General renounced their alle-

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46 For an introduction to the political implications of Luther’s teachings, see Skinner 1978, part 1, esp. pp. 16-19.

47 Ford 1985 underlines the fact that monarchomachi can be found on both sides of the religious divide. Cf. e.g. p. 150.

48 Cf. Würtenberger 1982, p. 685f.; Würtenberger 1973, pp. 37-45; as well as Ford 1985, pp. 150-155, and Skinner 1978, chapter 8, esp. pp. 242 and 252, and chapter 9.

49 Wight 1977, p. 157.

50 Cf. Ford 1985, p. 156f., and Wight 1977, p. 157.

giance to the Spanish king, declared him a tyrant, and chose William of Orange as their leader instead. In this way, William also became an ally of French Huguenots. Following Philip's delegitimizing declaration, however, a French Catholic, Balthasar Gérard, murdered William of Orange in 1584. Gérard was executed, but for his deed the Spanish king generously paid the assassin's family.<sup>51</sup>

Here as in other cases in the era of the Wars of Religion, violence against the population for religious reasons, the contestation of the sovereign's legitimacy, which followed such acts of violence, and the delegitimation of rulers chosen in their place by the persecuted, overall generated a sharp increase in assassinations as well as (civil) war, and in this way significantly affected the security of governments and the public. Franklin Ford, for instance, counted 35 "major political murders and executions in the Age of the Wars of Religion," from July 1535 to January 1649.<sup>52</sup> But in Early Modern Europe, the focus of attention was still on the legitimacy of individual rulers – their person, religious beliefs, and actions – who were judged against principles of godly rule or true Catholicism, while the principle of dynastic legitimacy itself was not questioned.

This changed in the course of the revolutionary era, when competing orders of legitimacy emerged for a second time, as adherents to the principles of popular legitimacy and the nation-state began to challenge the principles of dynastic legitimacy and the *raison d'être* of empires.<sup>53</sup> This was the moment when the term 'legitimacy' became a discursive weapon to attack or defend entire systems of rule. Now, 'legitimacy' has begun to be juxtaposed with 'legality', and the dualism between 'legitimacy' and 'legality' began to make sense to a broader public.

Preconditions for the principle of popular legitimacy were the emergence of the sovereign state and the democratization and de-personalization of the concept of legitimacy, which took place in French political thought. Searching for ways out of the religious strife, which had come in the wake of the reformation in the second half of the sixteenth century, the

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51 Cf. Ford 1985, pp. 160-162, and specifically Jardine 2005. For the legitimation of the Dutch revolt against Spanish rule, see Saage 1981, part I und III.

52 For the table in question, see Ford 1985, pp. 147-150.

53 For global perspectives on this "crisis of the old regimes in Europe", cf. esp. Bayly 2014, Part I, esp. pp. 86-88 (quote p. 86); and Osterhammel 2009, esp. Chapter 10. For a relativization of the contrast between the legitimation strategies of empires and nation-states cf. Leonhard 2012.

'*Politiques*,' a circle of politicians, jurists and political theorists, contradicted all theories of resistance and tyrannicide, from Calvinist and Catholic monarchomachi alike. The most important political thinker belonging to this circle was Jean Bodin. He conceived a non-denominational monarchy, whose main-purpose consisted in the maintenance of public peace and order. To enable the monarchy to take on this role, it was supposed to be the sole institution exercising legitimate power in the state; in return, it was supposed to be legislative in character and bound by natural and higher law. Bodin's political thought proved influential. Politicians, such as the Cardinal Richelieu, put the idea to consolidate the French monarchy into practice and in this way strengthened the French state.<sup>54</sup>

The depersonalization and democratization of the concept of legitimacy took place towards the end of the eighteenth century. Enlightenment philosophers (such as Claude Adrien Helvétius, Paul-Henry Thiry Baron d'Holbach and Jean Jaques Rousseau) first used the adjective '*legitime*' to characterize sovereignty and political or state rule, in general. In this way, they severed the term from the person of the sovereign and his or her rule, and instead identified the people of the nation as the sole and true source of legitimacy, for example in the concept of '*volonté générale*.' According to Rousseau, this source of legitimacy, was not even bound by natural and higher law.<sup>55</sup> In this way, the scene was set for the battle between those fighting for the principle of popular legitimacy and those defending the principle of dynastic legitimacy in the revolutionary era.

From the end of the eighteenth century onwards, the principles of popular and dynastic legitimacy were used to threaten and overthrow the security and integrity of governments, states, and empires, in both directions – from dynastic to popular rule and back again. First, in 1776, Continental Congress, referring to the principal of popular legitimacy, seceded from the British Crown and its Empire. The former colonies defended their secession in the War of Independence. In 1789, the assembly of the French Third Estate, in its Coup d'État against King Louis XVI, declared to be the sole legitimate representation of the French nation, as *Assemblée Nationale*. Civil war and terror followed in France, and more than 20 years of Revolutionary and Napoleonic Wars across the whole of Europe. After 1814, in the peace negotiations and at the Congress of Vienna, the French

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54 Cf. Würtenberger 1982, pp. 689-691; Würtenberger 1973, Chapter 2.1, esp. pp. 76-80; and Skinner 1978, pp. 284-301.

55 Cf. Würtenberger 1982, pp. 691-694; Würtenberger 1973, Chapter 2.2.

diplomat Charles-Maurice de Talleyrand introduced the concept of legitimacy as an organizing principle for the interior order of each state as well as for the European international order, and in this way helped to prepare the preservation of France and the restoration of the Bourbon monarchy. This did not stop conflicts, however. In most parts of Europe, insurrections, revolutions and restorations were frequent, until the revolutions of 1848/49 had been put down. For these reasons, according to Thomas Würtenberger, it was during the Era of European Restoration that ‘legitimacy’ definitely and irrevocably became a concept used for *machtpolitik* as well as a crucial category of state-policy.<sup>56</sup>

The juxtaposition of ‘legitimacy’ and ‘legality’ emerged after the Congress of Vienna in the political conflicts about the implementation of the principles of dynastic or popular rule, in France as well as in Germany. It can first be found in the writings of conservative political theorists during the French restoration period. In the eyes of ultramontane politicians and publicists, such as Louis de Bonald, Hugues-Félicité Robert de Lamennais, and Fabre d’Olivet, a metaphysical basis was the pivotal requirement for legitimacy. They regarded only those political institutions which were ordained by God and founded in God’s order, and only those laws which history had bequeathed upon society, as legitimate. Political institutions newly constituted by man, only, and the laws they issued, could, in contrast, merely claim ‘legality.’ In the following years, this dualism of legitimacy and legality was adopted in other political and philosophical writings and transferred onto other topics. Most importantly, liberal political theorists began to devise competing definitions of legitimate authority. According to the *Staatslexikon* of Karl von Rotteck and Carl-Theodor Welcker, for instance, legitimacy could only be claimed by democratic nation-states, whose political and legal systems was endorsed by its citizens.<sup>57</sup> The position taken by Hennis, Leibfried and Zürn, cited above, can be read in this tradition.

Consequently, in the violent political conflicts of the first half of the nineteenth century between those who defended the dynastic principle of legitimacy and those who fought for the popular principle, ‘legitimacy’ was the focal point of an intense academic and widespread popular debate, a discursive weapon, and an important object of conflict, all at the same

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56 Würtenberger 1982, pp. 694-710, esp. p. 697; and Wight 1977, p. 160.

57 Würtenberger 1982, pp. 715-732.

time. And just like in the decades after the reformation, the contestation of legitimacy in the Revolutionary Era and in the period of European Restoration generated an increase in political murder as well as in (civil) war, weakening the security of political institutions as well as public security. Different from the former period, however, in the decades around 1800, it was the legitimacy of the state and of the entire political system which was at stake, including the monarchy. The process of the emergence of terrorism shows how the contestation of legitimacy could turn into a security issue.

### *3 Legitimacy and the emergence of terrorism in nineteenth century Europe, Russia and the United States. A Case Study*

The contestation of legitimacy witnessed in the revolutionary and restoration eras, was an important factor for the emergence of terrorism. In this emergence process, all three aspects of the contestation of legitimacy prominent in the first decades of the nineteenth century were indispensable preconditions: the fundamental critique of political systems and their representatives from adherents of a different principle of legitimacy; the widespread popular, political, and academic debate on the topic; and the juxtaposition of ‘legitimacy’ with ‘legality.’ Hence, the link between these preconditions and the emergence of terrorism is another argument for the thesis that terrorism is a modern phenomenon, which first emerged in the nineteenth century in Western Europe and in the United States.<sup>58</sup>

For the first terrorists, questions of legitimacy played a decisive role in their decision to resort to acts of violence, in a twofold manner: They had

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58 I first explored this topic with the help of a conference, “Terrorism and Modernity: Global Perspectives on Nineteenth Century Political Violence,” organized together with Claudia Verhoeven, and supported by Mareike König and Benedikt Stuchtey as well as Samuel C. Ramer and Margaret M. Keenan, on October 23-26, 2008, in Tulane University, New Orleans, LA. Many contributions given on this conference, were taken up into the *Oxford Handbook of the History of Terrorism*. See <http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199858569.001.0001/oxfordhb-9780199858569>. On the invention of terrorism as a distinctly modern phenomenon, cf. Dietze 2016. For a discussion of the literature on this topic, see the introduction there. The book is currently being translated into American. The translation will be published by Verso in London and New York.

to *de-legitimize* the state, its representatives, and their policies, in order to *legitimize* the violence they perpetrated against the political order and its representatives. This is true for all five persons, who can be described as inventors of terrorism. The first two of them were Felice Orsini, who attempted to assassinate Napoleon III in 1858, and John Brown, who attacked an arsenal of the US Army in Harpers Ferry, Virginia, in 1859.<sup>59</sup> They are inventors of terrorism, because they perpetrated acts of political violence, which: (1) conform to the criteria for terrorism used today; (2) resulted from independent and idiosyncratic processes of thought and action (and not primarily the imitation of some prior action by others); and (3) can be proven to have served as models for the actions of terrorists to come. As for the criteria of terrorism used today, the German sociologist Peter Waldmann defines this specific tactic as “violence against a political order from below which is well planned and meant to be shocking. Such acts of violence are supposed to spread feelings of insecurity and intense fear, but they are also meant to generate sympathy and support.” Waldmann stresses that – for a terrorist act to be successful – the symbolic effect of the violence (its message) is more important than its instrumental effect (the carnage and destruction it wreaks). “Terrorism [...] is primarily a communication strategy.”<sup>60</sup> The first individuals, who verifiably adopted, copied, and thereby further developed the terrorist acts of Brown and Orsini were Oskar Wilhelm Becker, who failed in his attempt to assassinate Prussian King Wilhelm I in 1861, John Wilkes Booth, who shot U.S. President Abraham Lincoln in 1865, and Dmitriï Vladimirovich Karakozov, who tried to kill Tsar Alexander II in 1866. All five experimented with older and newer forms of insurgent violence and used the ensuing media coverage for their purposes with varying degrees of success. By way of this media coverage, they also learned about and from one another. In the context of this learning process, they developed patterns of violent action that must be called terrorism, even though the perpetrators them-

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59 Here, and in the following, the current spelling “Harpers Ferry” is used in the text; in citations, however, the spelling “Harper’s Ferry” is rendered, which was common in the middle of the nineteenth century.

60 Waldmann 1998, pp. 10 and 12f. Other well-composed social scientific definitions consist of similar elements. See, for instance, the definition by the American political scientist Hoffman 2006, pp. 40f.

selves and the societies in which they lived (with one exception) did not use this term.<sup>61</sup>

Living in diverse political systems and circumstances, the five inventors of terrorism were proponents of different principles of legitimacy, and acted out of different considerations. Felice Orsini, who, with his assassination attempt, triggered the transnational, collective process of the invention of terrorism, was part of the revolutionary movement against the restoration in the Italian states and a veteran of the Italian revolution of 1848/49.<sup>62</sup> He had been an elected member of the national Constituent Assembly in Rome and appointed as *commissario straordinario dal Comitato esecutivo* (“extraordinary representative of the executive committee”) of the Roman Republic.<sup>63</sup> In Orsini’s eyes, an independent and unified Italian republic, which had become some contours during Napoleonic rule and in the course of the revolution in 1848/49, was the legitimate political structure and government for the people living on the Apennine peninsula. The Roman republic was short-lived, however, because – of all rulers! – it was the president of the Second French Republic and nephew of Napoleon I (whom Orsini’s father had served as officer), who supported the counter-revolutionary side. Louis Napoleon Bonaparte (later Napoleon III), by military force, terminated the internationally acclaimed experiment in democracy which the Roman Republic represented, and reinstated the Pope in his worldly possessions and sovereignty.<sup>64</sup>

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61 For a discussion of the case-selection, the literature on these cases as well as possible precursors cf. the introduction and the conclusion of Dietze 2016, esp. pp. 17-19. On the cases themselves and the connections between them, see the individual chapters of the book, respectively.

62 For Felice Orsini, cf. esp. the biographies by Luzio 1914; and Packe 1958; on his assassination attempt, see Dansette 1964; Cappelli 2008; and Dietze 2016, chapter 2.

63 On the Italian revolution and the Roman Republic, see Riall 2009, pp. 23-25; and Header 1975. For Orsini’s role in them, see, for example, Orsini 1857, pp. 72f., chapter VIII; Luzio 1914, pp. 65-77; and Packe 1958, pp. 89-111. For the term *commissario straordinario dal Comitato esecutivo*, cf. Orsini 1857, documents 35-39.

64 On Louis Napoleon’s decision and his command to the French expeditionary corps to put down the Roman Republic, see Girard 1986, pp. 105f. and Milza 2004, pp. 169-171. On the legendary defence of the Roman Republic by Giuseppe Garibaldi and a corps of voluntaries from the whole of Europe, cf. Riall 2009, pp. 23-26; Macaulay Trevelyan 1907; and Riall 2007, pp. 75-97.

After the fall of the Roman Republic, Orsini fled Italy and found asylum first in Nice, and later in London. During his exile, he met many other refugees from the German and Italian states, as well as from France.<sup>65</sup> The French refugees were mostly republicans who had fled their country after the coup d'état in Paris on December 2, 1851, with which Louis Napoleon ended the Second French Republic and began to establish, what was to become the Second Empire. This coup d'état was accompanied by "legal terror." For example, the French army put down protests by republicans, who opposed the dissolution of parliament, and tough repressions hit all those, who gave any signs of discontent with the new political order.<sup>66</sup>

For most of the refugees from France and the Italian states in London, there was little doubt that the restoration order imposed on the Apennine peninsula as well as Napoleon III's authoritarian Empire in France were illegitimate political entities, erected with the help of military might and police suppression. At least this is what Felice Orsini and his Italian, French, British (but also American) friends and supporters thought. George Jacob Holyoake, for example, a radical British publisher who helped Orsini test prototypes of his bombs, spoke of Napoleon as the "false President of the Republic" and "French usurper,"<sup>67</sup> while Orsini's co-conspirator and "inseparable brother"<sup>68</sup> in London, the "French Jacobin" Dr. Simon François Bernard,<sup>69</sup> wrote:

Voici un seul homme, l'empereur, l'obstacle unique et l'ennemi commun qui éteint toute idée et rallume toute haine, qui arrête ou entrave tout progrès, qui dit à la révolution: *Tu n'iras pas plus loin*, tu reculeras; qui, par ruse et par force, s'embusque dans un serment, derrière une constitution, avec une bande de complices à gages, leur criant: vainqueurs, à nous le monde! vaincus, un

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65 On Orsini's exile in Nice, see Orsini 1857, pp. 98-101; Luzio 1914, pp. 77-84; and Packe 1958, pp. 115-118. On the subversive activities he undertook, until he was arrested, and on his flight to Great Britain, cf. Orsini 1857, chapters IX-XIV; Luzio 1914, pp. 85-257; and Packe 1958, chapters 3 and 4. On the refugees from the Italian states in London, see Verdecchia 2010.

66 The term "legal terror" is used by Willms 2008, p. 104. On Louis Napoleon's election as president of the Second Republic, and his coup d'état cf. Aprile, 2000, chapters III-IV; and Price 2001, chapter 1. On the repressions, see Aprile 2000, pp. 199-218; and Price 2001, pp. 27-37.

67 Holyoake 1892, p. 27. For a vivid description of the bomb tests, cf. chapter 60.

68 Pyat 1862, p. 7.

69 For the expression "French Jacobin", see Holyoake 1892, vol 2, p. 31. On Bernard and his relationship with Orsini, see *ibid*, chapter 62; Lancet 1858; Pyat 1862 as well as Packe 1958, 228-230 and Dansette 1964, pp. 59-62.

exil d'or! en conséquence, exterminant les plus braves citoyens, effrayant les plus lâches, trompant les plus sots, ami à revolver, allié à cuirasse, menaçant ou il n'est pas maître, enchaînant France, Italie, Mexique, en attendant plus, ayant commencé comme l'oncle et devant finir comme lui!<sup>70</sup>

In this depiction of Napoleon III and his rule, Bernard assembled typical insignia and signs of a 'tyrant' and his or her illegitimate rule, such as the enmity of the people, the suppression of free speech and the fanning of hate in society at large, as well as rule by stratagem, deceit, fear, force, threat, perjury, and with the help of a circle of greedy and vindictive favorites. Accordingly, after Orsini's assassination attempt, Bernard declared in a London court: "We want only to crush despotism and tyranny everywhere," convinced his English jury, and was acquitted.<sup>71</sup> Today, Napoleon III may be mostly remembered for his role as a patron of the arts and for the rebuilding of the center of Paris, but those who opposed his coup d'état on *Deux-décembre* and experienced the political repression of the Second Empire had a different perspective.

Importantly, moreover, Felice Orsini and his collaborators thought that the Second Empire, its Emperor, and some political decisions he had taken, were illegitimate to such an extent that tyrannicide was justified. There are indications that the decision to attempt an assassination was not taken lightly. Félix Pyat, a French refugee who, in 1848, had been a member of the Constituent Assembly and, in 1849, had taken part in an insurrection in Paris to prevent the crushing of the Roman Republic, explained that Orsini's supporter Dr. Bernard saw regicide as a "droit de légitime défense, balance d'extrêmes, réaction adéquate à l'action, remède homéopathique, contre-poison."<sup>72</sup> Certainly, with these words, Pyat expressed his own views on this question. After Orsini's assassination attempt, he was brought before an English court for the glorification of regicide.<sup>73</sup> Felice Orsini himself was convinced there were "rightful assassinations", as Holyoake points out in his autobiography. He renders a story which Orsini once told him, referring to his life experience in the Italian states under Austrian restorative rule. The story is about an Italian youth who inadvertently killed the dog of an Austrian officer. The officer had the youth arrested and sentenced him to such a severe whipping that the boy

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70 Pyat 1862, pp. 6f.

71 Holyoake 1892, vol. 2, p. 33.

72 Pyat 1862, p. 6.

73 On Félix Pyat, see Colombet-Schieferer 2011.

died during punishment. The next day, the youth's father stabbed the officer. Holyoake, in accordance with Orsini, concludes that the father had done right, just as it was right to assassinate Napoleon III.<sup>74</sup> This story, indeed, seems to be significant for Orsini's perspective on tyrannicide, because in front of the court in Paris he explained: "J'ai fait comme Brutus. Il [Louis Napoleon; CD] a tué mon pays, j'ai voulu le tuer,"<sup>75</sup> and thus – just like in the story – argued with the reciprocity of death, in real life. Holyoake also relates, however, that Orsini had long discussions with Joseph Cowen, a radical English journalist and politician, about the right to resist Napoleon III and assassinate him.<sup>76</sup>

With respect to their interpretation of violence, Orsini and his supporters stand in the European tradition of debates on legitimacy and the right to resist tyrants. When justifying the assassination attempt on Napoleon III, their views take up and renew the ancient ideas revived and discussed by the monarchomachi of the sixteenth century, and they explicitly refer to ancient and early modern figures like Cato, Brutus, William Shakespeare and John Milton. Holyoake, for example, writes: "When Cato visited the palace of a tyrant and saw the persons he put to death, and the terror of the citizens who approached him, he asked, 'Why does not some one [sic] kill this man?' Orsini came forward in like case to do it."<sup>77</sup> As cited above, Orsini referred to Brutus, in court, and Félix Pyat recounts that, just like "les deux plus grands génies de l'Angleterre", Shakespeare and Milton, Bernard thought that Brutus was the best of the Romans and that tyrannicide was a right and a duty.<sup>78</sup> To the elements originating in the long tradition of deliberations concerning the right to resist illegitimate rule, Orsini added a number of strategic considerations, however, which are indicative of terrorist tactics.<sup>79</sup> Thus, notions of tyrannicide and said novel strategic considerations, together with Napoleon's political instrumentalization of the assassination attempt, circumstances of nineteenth century popular and media-policy as well as popular and media reactions, caused the turn from tyrannicide into terrorism, in Orsini's case.<sup>80</sup>

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74 Holyoake 1892, vol. 2, chapter 61, pp. 27 and 223.

75 Dandraut 1858, p. 28.

76 Holyoake 1892, vol. 2, p. 223.

77 Id., p. 27.

78 Pyat 1862, p. 5.

79 For a presentation and discussion of these elements, see Dietze 2016, pp. 135-145.

80 See on this Dietze 2016, pp. 157-185.

For the other inventors of terrorism, considerations about legitimacy were similarly crucial, even if their considerations show different degrees of elaboration. John Brown – the second of the inventors of terrorism – fought against slavery, which was protected as an institution in the southern states of the United States until 1865.<sup>81</sup> As compared with Orsini and his collaborators, for Brown and his supporters it was more challenging to justify their act of violence, because it was directed against the political and social order of a republic based on popular legitimacy, a principle Brown and his group strongly supported. This is why he and his backers went to great lengths to legitimize the raid on Harpers Ferry, in content as well as in form.

Regarding content, the comparatively new juxtaposition of ‘legitimacy’ with ‘legality’ stood at the center of John Brown’s justification. In the interview he gave right after his defeat at Harpers Ferry to politicians like Henry A. Wise, the Governor of Virginia, James M. Mason, one of Virginia’s Senators, and a number of military people and journalists, Brown replied to Senator Mason’s first question, how he justified his acts:

I think, my friend, you are guilty of a great wrong against God and humanity. I say that without wishing to be offensive. It would be perfectly right for any one to interfere with you, so far as to free those you willfully and wickedly hold in bondage. [...] I think I did right, and that others will do right who interfere with you at any time, and all times. I hold that the golden rule, do unto others as you would that others should do unto you applies to all who would help others to gain their liberty.<sup>82</sup>

In this explanation given to Senator Mason, Brown referred to the Golden Rule, a fundamental ethical law expressed for instance in the Gospel according to Matthew 7, 12: “Therefore all things whatsoever ye would that men should do to you, do ye even so to them: for this is the law and the prophets.”<sup>83</sup> John Brown, an orthodox Calvinist, was convinced that the

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81 Out of the large literature on John Brown and the raid on Harpers Ferry, see esp. Oates 1970; and McGlone 2009. For Brown’s interpretation of his violence more generally, see Dietze 2016, chapter 4; and Dietze 2015.

82 “A Conversation with ‘Old Brown’”, in: *Baltimore American, and Commercial Advertiser* (Baltimore, MD), October 21, 1859, p. 1.

83 *Holy Bible. King James Version* [Online: Bibelwissenschaft.de, Das wissenschaftliche Bibelportal der Deutschen Bibelgesellschaft, King James Version, <https://www.bibelwissenschaft.de/online-bibeln/king-james-version/lesen-im-bibeltext/bibel/text/lesen/stelle/50/70001/79999/ch/a5a2e1ea07656939fc979acaa9012ffa/>, last accessed 11.8.2017].

positive laws allowing the institution of slavery in the southern states, contradicted God's Higher Law as expressed, for example, in the Golden Rule. Therefore, in his eyes, the positive law was illegitimate – a perspective, reiterating the juxtaposition of legality with legitimacy.

His abolitionist friends and supporters concurred, and they made the contradiction between legitimacy and legality in the slavery question even more explicit. For example, the famous orator Wendell Phillips, in a speech in Brooklyn on November 1, 1859, provocatively pointed out that it was not John Brown who was an insurgent but the state of Virginia:

I said that the lesson of the hour was insurrection. I ought not to apply that word to John Brown of Ossawatimie, for there was no insurrection in his case. It is a great mistake to call him an insurgent. This principle that I have endeavored so briefly to open to you, of absolute right and wrong, states what? Just this: 'Commonwealth of Virginia!' There is no such thing. [...] Virginia, the Commonwealth of Virginia! She is only a chronic insurrection.<sup>84</sup>

By identifying John Brown and the insurrectionary violence he had perpetrated with absolute right – that is, with legitimacy – and a southern state, the Commonwealth of Virginia, with permanent insurrection, and absolute wrong – and thus with illegitimacy – Wendell Phillips reversed the usual concept of legitimacy concerning insurrectionary violence and the state.

The reason for this reverse of legitimacy, Wendell Phillips declared, was the fact that the state of Virginia did not fulfill the qualifications of legitimate statehood. As qualifications, Phillips firstly named the criteria developed by liberals (and used by some political scientists, until today),<sup>85</sup> according to which legitimacy could only be claimed by democratic nation-states, whose political and legal system was endorsed by its citizens:

Lawless, brutal force is not basis of a government, in the true sense of that word. [...] No civil society, no government, can exist except on the basis of the willing submission of all its citizens, and by the performance of the duty of rendering equal justice between man and man. Whatever calls itself a government, and refuses that duty, or has not that assent, is no government.<sup>86</sup>

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84 Phillips 1863, pp. 271f. Cf. also the slightly different version of the speech given in "The Virginia Rebellion... Wendell Phillips on the Outbreak", in: *The New York Times* (New York, NY), November 2, 1859, p. 1.

85 See e.g. the criteria by Karl von Rotteck and Carl-Theodor Welcker in their *Staatslexikon* and the reference to Wilhelm Hennis, Stephan Leibfried and Michael Zürn referred to above.

86 Phillips 1863, pp. 271f.

Secondly, Phillips – an orthodox Calvinist, just like John Brown – referred to the demands of the Christian faith, the Bible and God’s Higher Law in order to demonstrate the illegitimacy of the state of Virginia: “The barbarous horde [the slave-holding class in the State of Virginia, which was for a large part identical with the political class of the state; CD] who gag each other, imprison women for teaching children to read, prohibit the Bible, sell men on the auction-block, abolish marriage, condemn half their women to prostitution, and devote themselves to the breeding of human beings for sale,”<sup>87</sup> in Phillips’ eyes, did not qualify for legitimate and civilized statehood: “You see I am talking of that absolute essence of things, which lives in the sight of the Eternal and the Infinite; not as men judge it in the rotten morals of the nineteenth century, among a herd of States that calls itself an empire, because it raises cotton and sells slaves.”<sup>88</sup> Therefore, the Boston abolitionist, with regard to legitimacy, came to the conclusion: “What I say is this; Harper’s Ferry was the only government in that vicinity,” and “John Brown has twice as much right to hang Gov[ernor] Wise, as Governor Wise has to hang him.”<sup>89</sup> It comes as no surprise, then, that Wendell Phillips, in his widely perceived speech, placed John Brown’s raid on Harpers Ferry in the tradition of the American Revolution, and in this way credited Brown’s violence with the highest legitimation possible. Soon, Wendell Phillips was not alone anymore with this interpretation.<sup>90</sup>

John Brown also saw himself in the tradition of the American Revolution. This becomes evident, for example, from Brown’s endeavors to legitimate his violence, in form. In analogy to the founding documents of the United States, Brown wrote “A Declaration of Liberty by the Representatives of the Slave Population of the United States of America”<sup>91</sup> and a “Provisional Constitution and Ordinances for the People of the United

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87 *Id.*, p. 272.

88 *Id.*, pp. 272f.

89 *Id.*, pp. 273 and 272.

90 Transcendentalists like Henry David Thoreau and Ralph Waldo Emerson soon presented similar interpretations in their speeches. Cf. for example Thoreau 2001; and Emerson 1995. For recent books on this topic, see Reynolds 2005; Stoneham 2009; and Kemper Beck 2009.

91 The document is reprinted in Hinton 1894, pp. 637-643. On this document, cf. McGlone 2009, pp. 213-216.

States.”<sup>92</sup> In these documents, he presented his idea of an ideal United States in which the promises of liberty and the pursuit of happiness would come true for the entire population. Moreover, with the help of his African-American friend Martin R. Delany, Brown summoned a “Provisional Constitutional Convention.” About fifty people, mostly African-Americans, took part in this gathering. Together, they discussed and adopted Brown’s “Provisional Constitution” and elected a government (the election of a President was postponed). The Convention also conferred the command of the armed forces upon Brown, and endorsed his insurrection-plan (as far as Brown was prepared to give it away).<sup>93</sup> In this way, John Brown consciously tried to gain popular, even state-like, legitimacy for his enterprise, justifying his violence in accordance with the revolutionary American tradition and self-perception, and asking for legitimation specifically from African-Americans – the group, for whose liberty and rights he fought.

For the three individuals who imitated John Brown’s and Felice Orsini’s terrorist acts, the illegitimacy of current rulers and existing social and political conditions, as they perceived it, also played an important role. For Oskar Wilhelm Becker, King Wilhelm of Prussia was “nicht im Stande [...] die Umstände zu bemeistern, die sich der Lösung der Aufgabe entgegensetzen, die er als König von Preußen in Bezug auf die Einigung

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92 Pamphlet, John Brown’s “Provisional Constitution and Ordinances for the People of the United States” from records relating to John Brown’s raid at Harper’s Ferry, Virginia (now West Virginia) in October 1859, 1859–1859, 15 p.; Letters Received by the Office of the Adjutant General (Main Series), 1822-1860; Returns of Military Organizations, compiled ca. 1800 – 12/1916; (National Archives Microfilm Publication M567, roll 618, frame 411-420); Records of the Adjutant General’s Office, 1762–1984, Record Group 94; national Archives, Washington D.C. [Online: [www.archives.gov/research](http://www.archives.gov/research), National Archives and Record Administration, Online Public Access, John Brown’s “Provisional Constitution”, last accessed 5.7.2012]. The preamble and the first seven articles are re-printed in: Ruchames 1969, pp. 119-121. For the formation of this constitution in Frederick Douglass’s house, see Douglass 1994, p. 755; and Oates 1970, pp. 224-227.

93 On the Convention, see the minutes “Journal of the Provisional Constitutional Convention, held on Saturday, May 8, 1858”, in: United States Congress. *Report [of] the Select Committee of the Senate Appointed to Inquire in to the Late Invasion and Seizure of the Public Property at Harper’s Ferry*. Washington, 1860, pp. 45-47; the reports by Anderson (1980) and Martin R. Delany in Rollin 1868, pp. 85-93; as well as Oates 1970, pp. 242-247; and McGlone 2009, pp. 213-216.

Deutschlands zu erfüllen hätte.”<sup>94</sup> Becker thus thought it was legitimate to attempt to assassinate the Prussian King, because he deemed him unable to realize his historic mission and the desire of the German people: the unification of the nation.<sup>95</sup>

For John Wilkes Booth the formal justification of his act of violence was especially important, just as it had been for his example, John Brown, a few years earlier. Booth, like Brown, was an ardent supporter of the political and social order of the United States, as he knew them, and of the principle of popular legitimacy implemented in its constitutions, and just like many Southerners of his time, he was convinced that Abraham Lincoln’s presidency was illegitimate.<sup>96</sup> For example, according to the memories of his sister, Asia Booth Clarke, one night in the last winter of the Civil War in 1864/65 (presumably in the weeks around Lincoln’s re-election) he sang a parody to her, ending with the rhyme “In 1865 when Lincoln shall be king,” and told her:

That Sectional Candidate [i.e. of the northern states, only; C.D.] should never have been President, the votes were doubled to seat him. [...] This man’s appearance, his pedigree, his coarse low jokes and anecdotes, his vulgar similes, and his policy are a disgrace to the seat he holds. Other brains rule the country. He is made the tool of the North to crush out, or try to crush out slavery, by robbery, rapine, slaughter and bought armies. He is walking in the footprints of old John Brown [...] He is Bonaparte in one great move, that is, by overturning this blind Republic and making himself a king. This man’s re-election which will follow his success, I tell you, will be a reign! [...] a false president, yearning for kingly succession as hotly as ever did Ariston [a tyrant in ancient Athens; C.D.].<sup>97</sup>

John Wilkes Booth believed that Abraham Lincoln was an illegitimate president for many reasons: Lincoln (1) was the candidate exclusively of the northern states and had come into office by vote rigging; (2) he was not worthy of the presidency because of his lowly descent and his coarse

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94 Oskar Wilhelm Becker, “Notiz über die Motive meiner That”, in: Landesarchiv Baden-Württemberg, Generallandesarchiv Karlsruhe, 250: Amtsgericht Baden-Baden: Verfahren 10, Bl. 4.

95 On Oskar Wilhelm Becker and his assassination attempt, see Haehling von Lanzenauer 1995; on his political thought, and his interpretation of his assassination attempt, see the respective parts in Dietze 2016, chapter 6.

96 On John Wilkes Booth generally, see the biography by Alford 2015. For an analysis of his political thinking and of his justification of his assassination of president Abraham Lincoln, see esp. the relevant parts in Dietze 2016, chapter 6.

97 Booth Clarke 1999, pp. 88f.

manners (most southern presidents before had been from wealthy planter families); (3) he did not rule independently, but was a marionette controlled by rich abolitionists of the northern states who had violated the constitution and declared war on slavery, just like the insurrectionist John Brown; (4) he intended to overthrow the American republic in a coup d'état, just like Napoleon III had done in France; and (5) he was a tyrant. None of these rumors are true.<sup>98</sup> For instance, there had been no irregularities in the election of 1860; Lincoln was simply the first president to be elected with the votes of the northern states, alone, because the United States had undergone demographic changes.<sup>99</sup> Still, Booth believed these stories circulating among adherents of the Confederacy, and when he heard that Lincoln intended to give some former slaves the right to vote, he acted on the basis of these rumors and shot the American president.

In contrast, Dmitrii Vladimirovich Karakozov entirely concentrated on justifying his attempt to assassinate the tsar in content. He gave political as well as economic reasons. In his written claim of responsibility, he delineated what he saw as the historical guilt of the Russian tsars: the suppression and expropriation of the Russian people. In his eyes, Alexander II had renewed this guilt with the emancipation declaration, which the tsar had issued in 1861, and which acted to the detriment of the former serfs: “Sad and distressed I became, that my beloved people is so oppressed, and there I decided to destroy the liar-tsar and to die myself for my beloved people.”<sup>100</sup> Moreover, Karakozov described what he thought a Russia without tsars would be like, a Russia with a political system based on popular legitimacy and an economic system providing for a fair allocation of ground and capital. This would be “true freedom” (*nastoiashchaia volia*).<sup>101</sup>

The five cases presented here, prove that – for the emergence of terrorism – concepts of legitimacy were of crucial importance. These concepts of legitimacy differed, however, in connection with the respective social and political situations in which the inventors of terrorism lived. In the case of Felice Orsini and his supporters, the conflict of legitimacy follows the revolutionary pattern common since the late eighteenth century. They

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98 See for example the accounts of McPherson 1988 and Donald 1995.

99 See McPherson 1988, p. 232; and Donald 1995, p. 256.

100 “Grustno, tiazhko mne stalo, chto tak pogibaet moĭ liubimyĭ narod, i vot ia reshil unichtozhit’ tsaria-zlodeia i samomu umeret’ za svoĭ liubeznyĭ narod”. (Shilov 1918, p. 161).

101 Shilov 1918, p. 161.

were ardent and active proponents of the principle of popular legitimacy, and shared a fundamental critique of the political system of the restorative order in the Italian states, of the Second Empire in France and of Emperor Napoleon III, whom they saw as responsible for putting down republican forms of government and for re-/establishing dynastic rule, in France and in the Apennine peninsula. After the failure of all attempts to implement the principle of popular legitimacy through collective violence, they took up ideas of tyrannicide.

John Brown and his group, in contrast, perpetrated violence against a political order in which the principle of popular legitimacy had been successfully implemented through collective violence. The orthodox Calvinist Brown, therefore, referred to the legitimacy of God's Higher Law in order to criticize the positive law supporting the institution of slavery as illegitimate. In structure, his argument thus resembles the reasoning of the ultramontane politicians and publicists in the French restoration period, whereas, in content, Brown's recourse to God's Higher Law differed from the ultramontanes' views, because it was revolutionary instead of restorative. John Brown and Wendell Phillips combined the recourse to God's Higher Law with the demand for a full implementation of popular legitimacy, a legitimacy which included all those of the population who had no political rights on the basis of the color of their skin and/or their legal status as a slave.

The three imitators represent variations on these basic themes. John Wilkes Booth regarded John Brown's demand for the inclusion of the slave population into the principle of popular legitimacy as illegitimate, because it threatened the republican principles as he understood them, and because it contradicted the constitution of the United States at that time. Dmitriï Vladimirovich Karakozov called for the implementation of the principle of popular legitimacy in Russia. As an additional requirement for a legitimate political order, he demanded economic participation, however. Finally, for Oskar Wilhelm Becker's decision to try to assassinate the king, the popular demand for unification and the Prussian king's alleged inability to fulfill this demand were the key factors. Taken together, the three cases stand for a universalization and further differentiation of notions of popular legitimacy.

In a similar vein, all five cases studied here can be seen as indicators as well as effects. First, they are indicators for and effects of the debates on legality, legitimacy, and legitimate rule, in the first half of the nineteenth century, in Europe, Russia and the United States. Second, all five protagon-

nists are indicators for and effects of the active participation of wider parts of the population in conflicts about forms of government. Moreover, the differences and contradictions between their ideas concerning legitimacy and the political demands resulting from these ideas point to a phenomenon which might well be typical for periods of major political and social change, in general, as soon as a population is involved with politics at all. Once the political and social order has begun to change, one person's legitimacy is another's illegitimate order – as one could formulate with Gerald Seymour.<sup>102</sup> The sole exception might be a political order which has wholly and irrevocably discredited itself, in the eyes of an overwhelming part of the population.

In European history since the middle of the nineteenth century, legitimacy continued to be contested. Conspicuously, in Germany in the second half of the nineteenth century, there are hardly any traces of public and academic discourses on legitimacy. Thomas Würtenberger explains this fact with the effects of Bismarckian power-policies, which tended to disregard claims of legitimacy in order to forge the German states into a German Empire and nation. Correspondingly, legal positivism and theories on *realpolitik* identifying legitimacy with state-power were prominent, in the public as well as in academia.<sup>103</sup> Despite such legitimizing discourse, the level of political violence remained high, in the 'Golden Age of Terrorism' or '*l'ère des attentats*', in Europe, Russia and in the United States.<sup>104</sup> After the end of the First World War and the founding of the Weimar Republic, in Germany, an intense discussion of legitimacy set in again between adherents of the Hohenzollern-monarchy and the German Empire, on the one hand, and the adherents of the Republic, on the other.<sup>105</sup> At the same time, there was a peak in political violence, which entailed different forms of political violence, from street terror to assassinations of promi-

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102 The original quotation by Gerald Seymour is: "One person's terrorist is another's freedom fighter". (Seymour 1975, p. 61).

103 Würtenberger 1982, pp. 732-34; and Würtenberger 1973, pp. 237-240.

104 For an overview cf. esp. Rapoport 2006; and Jensen 2010. On Germany, see Gabriel 2014; and Mühlwinkel 2014; on France Bouhey 2008; and on Russia Naimark 1983, as well as Budnickii 2000.

105 The essay by Schmitt *Legality and Legitimacy* (2004, orig. *Legalität und Legitimität*, published in 1932), is part of this discussion, Schmitt taking a critical stance towards the Weimar Republic, arguing for a "total state" based on ethnicity (see esp. the conclusion, e.g. pp. 88 and 90f.). Cf. on this debate Würtenberger 1982, pp. 735f.; Würtenberger 1973, Chapter 6; and esp. Dyzenhaus 1997.

ment republican statesmen.<sup>106</sup> After the end of the ‘Third Reich’ and the Second World War, legitimacy increasingly became the object of the newly developing social and political sciences.

On the whole, the historical perspective confirms that there is a correlation between legitimacy and security. The consideration of different constellations over the course of European history indicates that the fundamental contestation of legitimacy has caused rises in the level of political violence, for example, in the Era of Religious Wars, the Revolutionary Era, or the period after the First World War. In case of the emergence of terrorism, the correlation is not only indicated, but can be shown, firstly, to be true and, secondly, to be of crucial relevance. Thus, loss of legitimacy can severely undermine political order and rule as well as rulers themselves, while legitimacy helps to secure power as well as social and political orders. And indeed, rulers in societies all across the globe in much of human history have known this and acted accordingly.

#### 4 Conclusion

The aim of this chapter was to make a case for a better inclusion of the category of legitimacy in the broad sense – as referring to political, economic or societal orders as such – into European security and securitization studies. The starting point for the argumentation was the observation that in studies of the Copenhagen and Paris Schools, as well as in other works in the field of security and securitization studies, the category of legitimacy in the broad sense is considered as a relevant category, but rarely for current security issues in the nations of the West or globally. Instead, legitimacy is either used in a narrower sense – that is, with respect to the political or professional legitimacy of securitizing moves and security experts, while legitimacy in the broader sense is mainly regarded as a factor relevant for ‘weak’ states in the so-called Third World and in history. With respect to history, special attention is given to the emergence of legitimacy in international society. Such a focus implies, however, that legitimacy in the broad sense can be neglected when dealing with current challenges to security and constructions of threat in the so-called First World or on a global level.

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106 See for example, Sabrow 1994 as well as Reichardt 2002.

However, a historical perspective – thus, the rationale – can be helpful to appreciate that legitimacy in the broader sense is a crucial factor for security, in general. The long historical view combining the history of the term ‘legitimacy’ with events and constellations taken from European history helps to identify patterns and constellations concerning the relationship between legitimacy and security, and in this way holds important lessons on their correlation. When, in the Reformation and in the Revolutionary Era, competing concepts of legitimacy emerged and serious controversies began, large-scale conflict involving “political threats” against “ideologies,” “other constitutive ideas,” and “political institutions” (Buzan, Wæver and de Wilde) followed, which meant that the respective controversies became relevant for the security of those in power as well as for large parts of society and the political and social order as a whole. In this respect, both eras are comparable. Large-scale violence against the population, especially, was a reason to contest a sovereign’s legitimacy and in the short- or in the long-run brought about an increase in violence, while the concept of legitimacy itself became a discursive weapon to attack or defend rulers or entire systems of rule.

The emergence of terrorism shows how exactly the contestation of legitimacy turned into a security issue. The contestation of legitimacy witnessed in the revolutionary and restoration eras was an important factor for the emergence of terrorism, because for the first terrorists, questions of legitimacy played a decisive role in their decision to resort to acts of violence. This is another argument for the thesis that terrorism is a modern phenomenon which first emerged in the nineteenth century in Western Europe and in the United States. In the process of the emergence of terrorism, all three aspects of the contestation of legitimacy prominent in the first decades of the nineteenth century were indispensable preconditions: the fundamental critique of political systems and their representatives from adherents of a different principle of legitimacy; the widespread popular, political, and academic debate on the topic; and the juxtaposition of ‘legitimacy’ with ‘legality’. Seen in this way, the inventors of terrorism are indicators for and effects of the debates and conflicts around legality, legitimacy, and legitimate rule, which intensified during the Revolutionary Era, as well as indicators for and effects of the active participation of wider parts of the population in conflicts about forms of government. In principle, questions of legitimation were important for the inventors of terrorism in a two-fold manner: they had to de-legitimize the political order, against which the violence was aimed, and they had to legitimize the vio-

lence they perpetrated with regard to this de-legitimation. Their precise concepts of legitimacy differed in relation to the social and political situations in which the inventors of terrorism lived, and the differences between their concepts point to the fact that consensus about the way and the direction of change is unlikely, once a violent overthrow of a political order has taken place with some extent of public participation. After such violent transformations, one person's legitimacy is another's illegitimate order – as one could formulate with Gerald Seymour – at least, until the new order has taken sufficient hold. Until then, political violence is more likely.

For these reasons, a historical perspective on security and securitization studies suggests that the relationship between legitimacy and security merits more attention and further examination, as does, specifically, the transformation of concepts of legitimacy over space and time as well as specific constellations of contestation – not only with respect to the role legitimacy plays in history and 'weak' states of the Third World, but also with respect to the emergence of current security issues, globally and in the democracies of the so-called First World. In such a focus, the historical perspectives open up different insights. For example, *Begriffsgeschichte*, conceptual history and the history of ideas underline the importance of the link between security and legitimacy in European political philosophies since antiquity. Further investigation in this direction seems worthwhile, especially if such an investigation would not restrict itself to Europe, but consider political thought from other regions, such as the Near and Far East or south-western Asia, and in this way enable globalized perspectives on concepts of legitimacy and security as well as their role in different conflicts.<sup>107</sup> With regard to the history of violence and security, the link between the emergence of competing concepts of legitimacy and large-scale conflict involving "political threats" – such as the reformation era, the revolutionary era, as well as current times – could encourage comparisons between the respective eras concerning forms of violence and security issues, as well as concerning the developments and solutions which enabled past societies to find ways out of the respective conflicts. Such studies might inform today's attempts to deal with competing secular and religious concepts of legitimacy and with religious as well as political de-le-

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107 For global perspectives on legitimacy and the stability of empires cf. Münkler/Hausteiner 2012.

gitimations of political orders, inside and outside the West as well as on a global scale. Moreover, the historical perspective can be read as a warning to give too much weight to the differentiation between so-called 'weak' and 'strong' states, because history shows that the legitimacy and security of political orders have to be constantly fostered, maintained, and renewed to prevent their demise. This observation, however, opens up questions about the relationship and interdependency of legitimacy and security in negative spirals of contestation and decline. In this context, terrorist attacks are not only attempting to de-legitimize a political order by aiming at constitutive ideas and ideologies, which form the basis of that order, but have a de-legitimizing effect because they aim at the basic legitimacy and security of order. And, possibly, some security measures, usually following such attacks, involuntarily augment this effect by challenging the legitimacy of political order even further.

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