

The American Security Model and Its Influence over European Social and Juridic Values

The author describes the evolution from the USA individual-centric state towards the administrative and regulatory one. The author examines the very different models of security for the USA and Europe and its influence over European social and juridic values.

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1. Introduction

To understand the globalization of juridic values (justice, legal security, common good) which we are immersed in we must study the American model of a regulatory and administrative state (belatedly created in the twentieth century) as well as the functioning and internal harmonization between the fifty states and Washington because, to a certain extent, both the European Union and the globalization have been inspired by it.

Globalization is largely a product of Americanization which has exported its administrative and regulatory model to the entire world¹. We must recognize that there

1 Benedict Kingsbury, Richard Stewart and Nico Krisch, „The Emergence of Global Administrative Law” *Law and Contemporary Problems* (2005). Richard Stewart, „U.S. Administrative Law: a Model for Global Administrative Law” *Law and*

is also a globalization-Europeanization in the sense that many of reforms and processes for regional and global integration have a lot to do with the present experience and leadership of the current European Union since the union between independent states (that relinquish and share sovereignty) is stronger than that of the 50 states of the American federation².

Therefore, we must recognize that, whether we like it or not – at the outset, globalization was above all an Americanization... for the bad as well as for the good. Some only indeed see the negative part, as it happens with progressive movements opposed to deregulated trade without administrative interventionism. But it is also important to remember that globalization-Americanization has some very positive aspects, the work of their predecessors and themselves, which we shall here present.

Upon analyzing the American legal system we find that it has been a pioneer in the quest of new rights gained in the last decades: civil rights, woman's law, environmental, labour and social law, rights for the respect and protection of minorities, health, food safety, road and traffic safety, as well as others. It is a fact that Americanization and American Law have not been the result of a neoliberal and neoconservative approach, but rather transcendental activism of community movements, unrivalled in Europe or the rest of the world. All this has gelled in a period called "the rights revolution"³, which has implied a wide Corpus Juris juris corp that acknowledges the right of groups and citizens to have access to and to participate in administrative and judiciary procedures, in what has been called a model for administrative law to "ensure representation of interests and groups"⁴.

This new American administrative and regulatory state, with ample and new administrative agencies of all kinds, was the base model for the creation of the European Union (we must not forget that European Coal

Contemporary Problems, 68 (2005): 128. Bemnedict Kingsbury, „The Concept of Law in Global Administrative Law” *European Journal of International Law*, 20 (2009): 78.

- 2 For more in-depth on the European model and the functioning and harmonization between the 50 states of the United States see Manuel Ballbé, Carlos Padrós, *Estado competitivo y armonización europea* (Barcelona: Ariel, 1997). Also see Manuel Ballbé, Roser Martínez, *Soberanía Dual y Constitución Integradora. La reciente doctrina federal de la Corte Suprema norteamericana* (Barcelona: Ariel, 2003).
- 3 Charles Epp, *The Rights Revolution. Lawyers, Activists, and Supreme Courts in Comparative Perspective* (Chicago: The University of Chicago Press, 1989). Cass Sunstein, *After the Rights Revolution: Reconceiving the Regulatory State* (Harvard: Harvard University Press, 1990).
- 4 Richard Stewart, „The Reformation of American Administrative Law” *Harvard Law Review*, 88 (1975): 29.

and Steel Community (ECSC), the European Commission or the European Central Bank are mere independent administrative agencies shaped after the American pattern⁵. The same occurs with the European regulations (whether of competition or environment). Let us cite an illustrative example: The true American antitrust law (most of it not mercantile law, but administrative law of competition) lies deeply entrenched in the political and legal tradition of economic federalism⁶. It has already been established in the constitutional tradition that there is no political democracy without economic democracy⁷. Hence the principle of fragmentation and balance of economic power was the plasmation of the federal constitutional principle of *checks and balances* in business activities. Americanization of the law of competition was made evident in Europe because with the defeat of Nazism, as Garrigues pointed out, „the American soldiers carried their antimonopoly law in their backpacks – *Sherman Act* of 1890” because they always understood that Nazism and concentration of political power were no more than the result of a previous concentration of economic power through the German cartels.

Articles 85 and 86 of the European Treaty, later drafted, are ultimately the incarnation of the American law as far as competition is concerned⁸.

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- 5 *Regulation Through Agencies in the EU. A New Paradigm of European Governance*, ed. Damien Geradin et al. (Cheltenham: Edward Elgar, 2005).
 - 6 Manuel Ballbé, „La competencia como principio vertebrador del sistema pluralista”, [in:] *Anuario de la competencia de 1998* (Barcelona: Fundación ICO-Marcial Pons, 1998).
 - 7 One tends to forget that the movement of independence in America arose largely because of the English monopolies in trade. The majority of the 13 constitutions of the independent states had precepts within the chapter of the fundamental rights. For instance, Art. 41 of the Constitution of Maryland states „That monopolies are odious, contrary to the spirit of a free government and the principles of commerce and ought not to be suffered”. The neoliberal idea that free market took place in the US without any intervention of the State is evidently erroneous. This constitutional precept had a judicial plasmation and has a control over its vulnerabilities. This demonstrates that there was an arrangement and a control of the market more judicially than via public administration in the 19th century.
 - 8 Jean Monnet, one of the founders of the European Union was very familiar with conditions in the US where he lived and was involved during the decisive years of the Second World War, as can be seen from his trajectory and his memories. He was inspired by the American laws as to the development of the articles on competence in the European Treaties. First with that of the ECSC and later with that of Rome. Among

Therefore, if deep down globalization is an Americanization, let us go back in history and analyze the internal American system to better understand what we are to expect and the ultimate meaning of these administrative regulations.

In the first place, it is noteworthy that the important changes occurred in the US at the beginning of the twentieth century –mainly driven by the progressive movement initiated by professor and later United States President Woodrow Wilson, among others— caused the liberal state without public administrations or interventionist regulations to become a powerful “administrative state”. Important administrative agencies were created and strong interventionism in the economic and social spheres came about, later to become the institutional base and legal genesis of the US as a great power in the international arena.

Therefore, we must note that the American legal system underwent two large phases: its creation at the end of the nineteenth Century (individual-centric state or community state) and the one from the beginning of the twentieth Century up until our current time (administrative and regulatory state).

2. The Catholic or Protestant religious influence in the security configuration in Europe and the United States

We cannot but refer to the religious roots of the European administrative model which is the opposite of the American having puritan protestant roots.

The Catholic Church, from the tenth century through the construction of the absolute State, has been representing the sole perfectly organized and articulated administration in all of Europe and became a model system of hierarchical and interconnected organization. Let us not forget that nowhere in Europe was there yet any other administrative and functional framework as the existing church having all over the territory churches, convents, abbeys, sees occupied by ecclesiastic officers or clerics⁹. And, Latin, the

his collaborators for the writing of articles on the competence of the ECSC treaty there is a former Harvard Law teacher specialized in Antitrust who was in Paris in 1950. Jean Monnet, *Memorias* (Madrid: Siglo XXI, 1985). Marie-Laure Djelic, „Does Europe Mean Americanization? The Case of Competition” *Competition and Change*, Vol. 6 (2002): 244. Marie-Laure Djelic, *Exporting the American Model. The Postwar Transformation of European Business* (Oxford: Oxford University Press, 2001).

9 Josep Maria Font i Rius, *Estudios sobre los derechos e instituciones locales en la Cataluña medieval* (Barcelona: Ediciones de la Universidad de Barcelona, 1985). „The expression cleric slowly changes meaning to refer more and more to the person who has studied, who can read and write

vehicular language of the church, was also the language of the law and administrative expertise. As to security, the Catholic Church offers multiple innovating solutions on a regulated plan as well as on an organizational plan.

Catholicism will be having a protective function for believers (embryo of the future „protector state”) establishing a social, moral and material order under its administrations and multiple regulations and using their procedures which later on will constitute the origin of the centralist administration and public security system. Concretely, three are the legal and political organization of security that the Church will create and that it will impose as common law all over Europe: *The Tregua Dei*¹⁰, the military religious orders¹¹

Latin for which it is usually necessary to be in possession of the minor orders. Little by little and because of the expansion of the administrative apparatus, both the appointment of cleric and certain types of university studies are being secularized. One no longer learns Latin for the sole purpose of becoming a cleric, but for the most immediate purpose of becoming an official”. Norbert Elias, *El proceso de la civilización* (Madrid: FCE, 1987), 413.

- 10 The Church became an authority that progressively tried to regulate a stable order and security through peace agreements during certain periods of the year, through the „Peace of God” and the „Truce of God” (such as Sundays, Christmas, Lent, etc.). They also aimed to establish security enclaves, churches, as spaces that became a safe haven, and, later, it was extended to the protection of certain people against whom violence was prohibited: clergy, women, children, etc. In short, the Truce Dei was a kind of administrative regulation of public security very effective to progressively reduce violence and crime. These regulations, which gradually or occasionally were respected by the violent (criminals and warlords), meant the implantation of a civilizing and didactic culture of submission to social rules. It should be borne in mind that the security functions were co-participated between the ecclesiastical and royal authorities. Josep Maria Font i Rius, op. cit.
- 11 The Church, in order to be able to carry out the maintenance of peace effectively, and on the occasion of the Crusades, will create these permanent forces as authentic armed bodies specialized in security and in making war. The military religious orders, as administrators and guarantors of the maintenance of order in general, were deployed throughout the European territory in small, networked fortifications. Here is the origin of two core institutions of the administrative state: the professional army and the militarized police (Gendarmerie and Civil Guard). Let us remember that later the Pope transfers these military and security administrative apparatuses to the kings. Seward, *The Monks of War. The Military Religious Orders* (London: Penguin Books, 1995), 35. Also

(the first standing army and also the military police) and the Inquisition. In the words of Braithwaite, „[the Catholic Church was] the most powerful regulator of medieval Europe”.

Besides administration, the Catholic Church gives universal suprateritorial jurisdiction as well as the idea of administrative justice „retained” or „delegated” but not independent from the executive power of the Pope. Proof of the influence of these principles in the formation of absolute states is the Cardinal Richelieu Edict of 1641, evidencing (despite reiterated repetition that the origin of the administrative law can be found in the French Revolution) how the prohibition of letting judges control the administration had been legally configured in the Old Regime¹².

As noted, „some Continental nations, such as Italy and France, have relied upon well-staffed and specialized tribunals, comprised of high-ranking civil servants, and located within the administrative bureaucracy itself, to control the actions of administrators. Indeed, during the sixteenth and seventeenth centuries in England, the Tudor and Stuart monarchs had developed powerful administrative tribunals. These bodies might well have evolved into a bureaucratic version of administrative justice analogous to the present French *Conseil d'Etat* or the Italian Consiglio di Stato. But this line of development was cut short in Britain by the Glorious Revolution of 1688, the political triumph of parliamentary government, and the related celebration of the independent judiciary as an important check on executive power”

The Protestant Revolution also brought about a revolution of the legal and organizational systems. If the Catholic System is going to revolve around the administration (ecclesiastic at first and later of the state), the protestant system in the United States will be revolving around the individual and the community and the hierarchical organization model of the administrative state will be rejected.

In the first phase, the United States was a State practically without public administrations or administrative interventions. The model of the State was what we call State centred on the individual or the community unlike the model of the European States where, from the beginning, administration was the centre of all (even though it was military, like Prussia or Spain) following the organizational model of the Catholic Church and its „administrative state” system.

The American model – the fruit of the protestant and puritan religious conception of their founders – was based, as of Luther, on the free

Walter Ullman, *Il papato nel Medioevo* (Roma: Laterza, 1999). From the same author *Law and Jurisdiction in the Middle Ages* (Farnham: Ashgate, 1999).

12 Jean Monnier, „La naissance du contentieux administratif moderne” *Revue Administrative*, 286 (1996): 350.

interpretation of the Bible by the individual¹³. Consequently, the protagonists of the creation of the interpretation of the regulation will not be the public administration but the individual or the community. American puritanism faces a centralized, hierarchized, professional and hyperregulating organization (either of the Catholic Church or the Anglican Church) which was accused of being corrupt because it transacted with the sacrament and the inherent regulations¹⁴. This individual-centred reaction rejected any church or institutionalized administration having any monopole of power, such as the British administration that with its Anglicanism accentuated its caesaropapism model consisting in having the Queen be the Head of the political power and at the same time the head of the religious power. Therefore, the royal and the religious administration was mixed just as it had occurred in the Roman Christian Empire. One could say that, originally the European tradition had a “state-centred” perspective and that the American tradition had a „market-centred” one.

The culmination of this individual regulatory determination shall be the recognition of the right of the citizen to carry arms, provided in the second amendment of the American Constitution. Thus, the legitimate use of violence only by the state and its public administration (as it occurred in the European tradition) was rejected. This is how, the belief that the origin of a modern state comes to be when it acquires the monopoly of legitimate violence is erroneous precisely because of not knowing which is the opposed principle that is being implanted, including constitutionally in the United States¹⁵. This is an individual-centrism or communitarian vision¹⁶, in contrast to the administrative-centrism European tradition. In the early years of the United States, the individuals – community or local groups (denominated

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- 13 German and Northern European Protestantism (except for Switzerland) reproduced an administrato-centric and even militarized system due to the offensive of the Catholic armies in the 30 Years' War, configuring a kind of model of Caesaropapist states where the prince of each territory assumed the head of the Protestant Church and implanted a quasi-religious monopoly, as was the case in Catholic countries. Therefore, it must be admitted that there is a Protestant administrative tradition in Europe whose most representative state was Prussia.
- 14 Rachel McCleary, Robert Barro, „Religion and Economy” *Journal of Economic Perspective*, Vol. 20 (2006): 46-72.
- 15 Roser Martínez, *Armas: ¿Libertad americana o prevención europea? Dos modelos contrapuestos* (Editorial Académica española, 2019).
- 16 Alan Shain, *The Myth of American Individualism* (Princeton: Princeton University Press, 1994).

*posse comitatus*¹⁷ or community group of the county) – acted as citizen police, directed by a Sheriff elected by the community. Consequently, he was not an official but just any citizen and the distinction between public and private would fade away.

The same occurred with justice: it will be the individuals (citizen-judge), through the jury – a non-administrative but communitarian institution- who shall have the monopoly to dictate the culpability or the innocence of the trialled individual¹⁸.

We can say the same about the army of the United States. It was not a *standing army* (permanent and professional as the European army) but it was formed by volunteers (citizen soldiers) trained by state militias (later called National guards of each state, who still exist today as volunteers). The National Guards only depend on the President of the United States in case of war and emergencies. Still today 50% of the army of The United States, in all its units, including those sent to Iraq are National guards of the 50 States. It is true that, in this model of a composed state and a composed army, it was possible to visualize what are today the international military forces of intervention commanded by the United Nations: a military force composed and integrated by units of various states¹⁹. That is another trait of globalization-Americanization.

Finally, we have two conflicting state models: one dominated by individuals and community and the other one dominated by the public administration and its civil servants. That is, the American model of the citizen-police, citizen-soldier and citizen-judge compared to the model of the civil servant as police, as a military and as a judge.

3. The perversions of the individual-centric American model

The crisis of the state stands out in each one of the institutions previously mentioned. Citizens such as police in the *posse comitatus* extra limited themselves in their functions and defended the interests of the local patronage. In many cases, this legal institution practically transformed itself into a party of watchmen, gunmen who took matters in their own hands. It is important to say that the members of the jury were appointed by the sheriff and consequently the separation between police and justice did not exist,

17 Bonnie Baker, Jennifer Elsea, Charles Doyle, *The Posse Comitatus Act and Related Matters* (New York: Novinka, 2004).

18 The primacy of the juror over the judge is valid after the US. Supreme Court *Ring vs. Arizona*, 2002, that annulled all death sentences pronounced by a judge and not by the jury.

19 Ballbé, Martínez, *Soberanía Dual*. Mainly for this subject matter. See chapter 9, about National Guard, 105.

many cases of abuse took place, which has been classified by the expression lynching²⁰.

Another perversion of the system was the militarization of the *posse comitatus* because the volunteers of the militia and the army acted more and more frequently in these law enforcement functions. In some cases, a unit of the total militia was being introduced in the posse commanded by the sheriff or by the Marshall. After the civil war, the police functions in the *posse* had to be carried out by the military of the North, to protect the free black citizens of the South including in polling stations. In a very disputed presidential election, the military was accused – as to their functions as police – to manipulate votes. As a result of all this, the most important law that separated the civil police function from the military function was promulgated. The federal *posse comitatus* Act of 1878 prohibited professional military men or militias to participate in law enforcement functions as police or members of the *posse*²¹.

On the state level this law is not applied, the militias and the national guards of the states (depending on each Governor and only in the case of war depending and commanded by the President of the United States, as part of the Arm Forces) were constantly resorted to. At that time considering the increase of strikes:

„After 1920 the National Guard had strong ties also to local business leaders. Many high-ranking Guard officers were among their community's leading businessmen. In this period, as in the late nineteenth century, the Guard served the interest of business in conflict with labour. It saw frequent service in strikes. ... (In the media) and even on the floor of Congress, it was attacked as the private army of big business”²².

Once again the mixture of public and private, military or civil appears and reaches up to our days in the army and the police (as we can see in Iraq and Afghanistan).

20 Christopher Waldrep, *The Many Faces of Judge Lynch. Extralegal Violence and Punishment in America* (New York: Palgrave, 2002). The watchmen were also called „regulators” thus spreading the duties of the *posse*.

21 Stephen Skowronek, *Building a New American State. The Expansion of National Administrative Capacities 1977-1920* (Cambridge: Cambridge University Press, 1984); Stephen Skowronek et al., *Phantoms of a Be-leaguered Republic: The Deep State and the Unitary Executive* (Oxford: Oxford university Press, 2021); Gautham Rao, „The federal posse comitatus doctrine: slavery, compulsion, and statecraft in mid-nineteenth-century America” *Law and History Review*, 26 (2008).

22 Martha Derthick, *National Guard in Politics* (Harvard: Harvard University Press, 1965), 51-52.

This law of 1878 that represents the tradition of the opposition between civil and military power has been the most discussed since 9/11 and it has been recently modified to provide the military with a security command.

The third perversion of the system was the privatization of security. Upon rejecting the model of professional police corps which in the mid-nineteenth century in existed only large urban concentrations such as those in Chicago or New York, and to cover this void, private investigators and security companies arose. The most famous one was, created by Alan Pinkerton in 1840, the Pinkerton National Detective Agency²³. Paradoxically its most important clients were, besides private enterprises, public administrations agencies (post offices, money falsification, night guard services, etc.) They also carried out federal offence investigations assigned to them by the Department of Justice.

During the civil war, the inexistence of any small federal administration acting in the South made the Government assign to Pinkerton work of the intelligence service, as his company had a network of agents in the cities of the South and the Federal Public Administration did not. In 1861 the President resorted to General McClellan, a director of the Railroad sector who put Pinkerton (already working for the railroad) in charge of the mission of organizing a military secret service²⁴. Private security is the origin of the CIA and the American Secret Service. Pinkerton's company considers itself the first institutionalization of the American Intelligence Services which began as a Public Organization with the Secret Service (today a corps of the federal police that protects the President, different from the FBI)²⁵.

At that time Pinkerton was also put in charge of the Lincoln protection. Later, because of internal fights between politicians and militaries and the distrust due to the growing protagonism and influence of Pinkerton, his contract as Presidential escort was cancelled. Pinkerton detected a plot to assassinate President in Baltimore, but this was mocked and dismissed as an invention to create the pressure to renew his contract. However, the subsequent assassination of Lincoln made him more famous and prestigious.

The crisis of the private security model came about precisely because of their growing success. The Pinkertons were called as volunteer members of the *posse comitatus* once having sworn before the sheriff to assume their function of public police in cases of the labor contract. It was during the strike of 1892 when, to hold back disturbances, the Pinkertons were, as in other

23 James Horan, *The Pinkertons: The Detective Dynasty that Made History* (New York: Crown Publishing Group, 1967).

24 Rhodi Jeffreys-Jones, *Cloak and Dollar* (New Heaven: Yale University Press, 2002)

25 Michael Dorman, *The Secret Service Story* (New York: Delacorte, 1967), 129.

occasions, used as police. The deaths caused by the shooting provoked by this police intervention caused a great impact and was criticized by the population. All this caused the first federal private security law, the *Pinkerton act* of 1893 which, for the first time, prohibited that members of private security companies act as police and law enforcement. This prohibition made the Department of Justice obligated to create in 1905 its own Federal Police Corps which would later become the FBI.

It is important to point out this characteristic of the American security model. Globalization brought about the old model of confusion between public and private concerning security²⁶. During the Iraq War, this interaction between public and private security was²⁷ once more visible. The private security companies have an ample spectrum of functions: from being the escort of the American authorities in Iraq (Paul Bremer) to obtaining important contracts, first for the administration of the occupation and later for the Government of Iraq, to render all kinds of services (military and police).²⁸ Another current example is the private enterprise Blackwater, that even in the regulations which initially were established enjoyed immunity as an occupation army²⁹.

The fourth abuse of the system was, as of 1829, the selection of all positions in administration: *the spoil system*. It was mainly from the Government of President Jackson when appointments were made for brief mandates for an “official elite” not to appropriate itself of the positions as spoil. Thus the majority of public posts, including 90% of all the judges of the states were elected as was the sheriff.

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- 26 Anna Leander, „Globalization and the State Monopoly on the Legitimate Use of Force” *Political Science Publication*, No. 7 (2004): 67. Heinz Steiner, „The Indispensable Metaphor of War. On Populist Politics and the Contradictions of the State’s Monopoly of Force” *Theoretical Criminology*, 7 (2003): 265.
- 27 See the work of Professor of Administrative Law Paul Verkuil, *Outsourcing Sovereignty. Why Privatization of Government Functions Threatens Democracy* (Cambridge: Cambridge University Press, 2007). Nicholas Parrillo, „The De-privatization of American Warfare: How the U.S. Government Used, Regulated, and Ultimately Abandoned Privateering in the Nineteenth Century” *Yale Journal of Law and Human*, No. 16 (2007): 38.
- 28 Peter Singer, *Corporate Warriors. The Rise of the Privatized Military Industry* (Ithaca, Cornell University Press, 2003). See also Clifford Rosky, „Force, Inc.: The Privatization of Punishment, Policing, and Military Force in Liberal States” *Connecticut Law Review*, Vol. 36 (2004): 78.
- 29 Jeremy Scahill, *Blackwater. The Rise of the World Most Powerful Mercenary Army* (New York: Nation Book, 2007).

At the end of the nineteenth century, the crisis in the state-community became more acute due to corruption and to a party politicization of the administrative positions above any other merit or professional capacity (political cronyism or patronage). The need to construct a public administration up to then anorexic and lacking professionalism to respond to the requirements and public services demanded by progress became more and more evident. Although today we still have residues of this anomic and individual-centric condition mainly about the maintenance of the individual rights to carry arms, it is true that at the beginning of the twentieth century this was to be transformed into an administrative and regulatory state.

4. Security and police in the globalization: Europe v. America

Administrative law has traditionally forgotten its fundamental subject – security and police³⁰. There are many reasons for the importance of the police administration. The most important one is that, as the American term *law enforcement* means police. This administration is responsible for obeying the law, and reacting especially in any case of non-compliance.

Indeed, the police administration and the security regulations have not been considered, and precisely, when are talking about global administrative law. While it is here that we have the two diametrically opposite models between Europe and America.

As it was previously said, in the United States the individual-centrism puritan tradition created an anti-administrative, anti-civil service, anti-centralist and anti-regulatory system. Consequently, the constitutional rights of the citizens to carry arms as well as assuming the police functions (through *posse comitatus* by the sheriff), formed the state model which we sometimes follow without understanding it. We erroneously believe that its administrative and regulatory structures are like ours in the field of security. The United States extrapolate to the rest of the world its domestic security model but it does not reproduce the present-day model (more administrative and regulatory). It recuperates the old model of the nineteenth century based on the principles contained in, what can be called, the Law of the Wild West. Now, in this international panorama, the idea we get is more like the model of a global sheriff: a resort to arms and to war to solve problems which are mostly criminal cases (terrorism, war against drugs in Colombia and Mexico), a resort to the justice of lynching such as has been the rejection to create an International ad hoc Criminal Court in Iraq (as it was done in Rwanda and the former Yugoslavia) and the lack of professional American Police abroad to intensify the cooperation with the other police administrations in the world. The United States systematically resorts to the military and the internal services who are

30 Jennifer Wood, Clifford Shearing, *Imaging Security* (Portland-Cullompton: Willan Publishing, 2007).

neither prepared nor have interrelation facilities with the police of the world who have a true impact in the most hidden neighbouring communities of the world, as seen with the American military failure in Afghanistan³¹. American intelligence services are like a superstructure disconnected from those who have the information (the police agents)³². Therefore, the present unsatisfactory results of this model abroad could be predicted when considering the poor results in fighting crimes compared to Europe. America exports the massive resort to arms, strategies and war terminology, violence, military profession and techniques, repression and not the European model of prevention, regulation, police, justice, and social integration. The sentence of the U.S. Supreme Court in the case *District of Columbia et al. vs. Heller-2008* consolidates this model and curbs the regulation and administrative intervention on arms³³. It can impede the efforts of the states and the cities to limit the right

31 Craig Whitlock, *The Afghanistan Papers: A Secret History of the War* (New York: Simon&Schuster, 2021).

32 This model of intelligence, as we have said is due to the lack of professional police corps, already from back to the time of the civil war in the entire territory.

33 *District of Columbia v. Heller*, 554 U.S. 570 (2008). N.07-290; Argued March 18, 2008; Decided June 26, 2008. District of Columbia law bans handgun possession by making it a crime to carry an unregistered firearm and prohibiting the registration of handguns; provides separately that no person may carry an unlicensed handgun but authorizes the police chief to issue 1-year licenses; and requires residents to keep lawfully owned firearms unloaded and disassembled or bound by a trigger lock or similar device. Respondent Heller, a D.C. special policeman, applied to register a handgun he wished to keep at home, but the local government refused. He filed this suit seeking on Second Amendment grounds, to enjoin the city from enforcing the ban on handgun registration, the licensing requirement insofar as it prohibits carrying an unlicensed firearm in the home, and the trigger-lock requirement insofar as it prohibits the use of functional firearms in the home. The District Court dismissed the suit, the D.C. Circuit reversed, holding that the Second Amendment protects an individual's right to possess firearms and that the city's total ban on handguns, as well as its requirement that firearms in the home be kept nonfunctional even when necessary for self-defense, violated that right.

Certainly, according to the Judgment the handgun ban and the trigger-lock requirement (as applied to self-defense) violate the Second Amendment. The local total ban on handgun possession in the home amounts to a prohibition on an entire class of „arms” that Americans overwhelmingly choose for the lawful purpose of self-defense. Under any of the

to carry arms outside, which was supposed to reduce the criminality just by these regulatory controls. This sentence as many others (given the impact of the Supreme Court), can have a dangerous impact on pro-guns³⁴.

If the United States is a violent society, it is mainly due to its armed society. This is the cause of the multiplication and aggravation of social conflicts. We must keep in mind that a third of the US population owns a weapon (approximately 100 million people of 300 million in total) which brings tragic consequences. Indeed, the 300 million firearms in circulation bring mortality to an average of 30.000 victims per year (including homicides, suicides, and accidents)³⁵.

Although the volume of non-violent delinquency is similar in both continents, it is different in the case of criminal violence. Only 8% of the Europeans own arms (mainly for hunting) whereas 30% of Americans do have it (mainly short weapons), and consequently, armed violence mortality is much less in Europe. When comparing the mortality figures of 300 million Europeans³⁶ with 300 million Americans we find that the number of victims of homicides associated with firearms is seventeen times higher in the United

standards of scrutiny the Court has applied to enumerated constitutional rights, this prohibition—in the place where the importance of the lawful defense of self, family, and property is most acute—would fail constitutional muster. Similarly, the requirement that any lawful firearm in the home be disassembled or bound by a trigger lock makes it impossible for citizens to use arms for the core lawful purpose of self-defense and is hence unconstitutional.

Frederick Zimmerman, *District of Columbia et al. v. Heller: Supreme Court Establishes an Individual right to bear arms under the Second Amendment. So much for gun control* (Ann Arbor: Nimble Books LLC, 2008).

- 34 David Kopel, „The natural right of self-defense: Heller’s Lesson for the world” *Syracuse Law Review*, 59 (2008): 235. The contradictions of the pro-guns (that maintain as a fundamental right that exists as the right to self-protection through arms) are evidenced in this article. This author, is incapable of defending this right in all the states (but did not defend it in Iraq and Afghanistan), without doubt the global programme of the U.N to restrict the possession of arms and the remaining of arms in Uganda and Kenya is criticised by him, given that there is no American presence. David Kopel, Paul Gallant, Joanne Eisen, „Human Rights and Gun Confiscation”, *QLR*, 26 (2008): 385.
- 35 Roser Martínez, *Armas: ¿Libertad americana o prevención europea?* (Barcelona: Ariel, 2002).
- 36 For example, the population of Germany, France, Italy, Great Britain and Spain.

States (700 victims per year in Europe compared to 12.000 in the United States)³⁷. This situation is due to the interventionist and regulatory concept of this sector in Europe responding to the principle of legitimate violence monopoly by the government compared with the American right to carry arms.

This shows that the „availability” factor of guns multiplies the culture of violence, a situation that is different in Europe due to the restrictive regulations.

Common sense shows how the violence risk reduction is related to the possession of weapons: 100 million Americans having guns (of a total of 300) and 15 million Europeans³⁸ (of a total also of 300). We cannot imagine the violent criminality reduction it occurred in the United States if the restrictive European regulatory law applied there, and short guns were removed to 75 million Americans. The European Union shows undeniably the principle „Fewer guns, less crime”³⁹.

Comparative data between Spain and the United States on the total number of homicides and murders with or without firearms are very illustrative. For years, Spain had approximately 1 homicide per 100,000 inhabitants per year, while „the United States had 10 per 100.000 population”⁴⁰.

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- 37 It must be added that are that the team of Dr. Kellerman published in the *New England Journal Medicine* of 1993 for each Death caused by Firearms there are three wounded, one of which remain paralytic, that is 10.000 a year.
- 38 Germany, France, Italy, Great Britain, and Spain.
- 39 John Lott, *More Guns, less crime. Understanding Crime and Gun Control Laws* (Chicago: Chicago University Press, 2010). Lott, directly challenges common perceptions about the relationship of guns, crime, and violence. Don Kates and Gary Mauser, „Would banning firearms reduce murder and suicide? *Harvard Journal of Law and Public Policy* (2007). These authors try to demonstrate that are the countries with more guns those having less murders. But they never mention the fact that ninety per cent of European guns are just for hunting. Furthermore, the arms circulation is restricted and there’s an obligation – in France specially – to put a lock in every short sporting gun. But the other way they keep on avoiding the main and decisive comparison between UE and USA. The European Union shows in an undeniable way the principle “Less guns, less crime”. This is not a useful difference because the European principle of handguns almost absolute restriction means less crime and that means at least from 5 to 10 times less homicides.
- 40 James Gilligan, *Preventing Violence* (London: Thames and Hudson, 2001): 42. Mexico has 20 homicides per 100.000; Brazil has 30 homicides per 100.000 and Guatemala has 41 per 100.000. Ivan Perry, „Violence: a public health perspective” *Global Crime*, No. 4 (2009): 368-395.

This situation is due to the interventionist and regulatory concept of this sector in Europe responding to the principle of legitimate violence monopoly by the government compared with the American right to carry arms. An estimated 50,000 people die annually in the United States because of violence-related injuries⁴¹.

In the opposite models of government or citizen ownership of firearms, we have the existence of a protective administrative government oriented to prevent crime or an individual-centered government with little public police that is underpaid and has lost its professionalism.

The difference in the size of police administration is another key to differentiate the European and the American model. Spain has 240,000 policemen for 45 million inhabitants, compared to 900,000 policemen for 300 million inhabitants in the United States⁴². So in Spain, there is one policeman for every 200 inhabitants and in the United States, they have 1 for 325.

The same occurs if we compare the penitentiary systems: Spain has had 125 prisoners per 100,000 inhabitants (up to 140 nowadays) and on the other hand, the United States, or Russia have 740 prisoners per 100,000 inhabitants.

The conclusion is evident: all the money saved in public administrations and prevention professionals is spent to fight crime repression. For not having a preventive administration, the U.S. have five times more homicides, five times more prisons, penal judges, prison officials, forensic doctors, criminalist laboratories... up to five times more executioners, a profession extinguished in Europe.

Europe saves this enormous budget dedicated to repression because it invests much more in prevention and community services: educators and social assistants, more professional preventive policemen, who are better paid and get more social recognition; more administrative interventionism and more safety regulations among others. Europe has five times fewer violent crimes. It is important to point out that the determinant factor of security is

<https://www.tandfonline.com/doi/full/10.1080/17440570903248395>. Etienne Krug, Kenneth Powell, Dahlberg, „Firearm-related deaths in the United States and 35 other high – and upper-middle – income countries” *International Journal of Epidemiology*, 27 (1998): 216.

41 Karch, et al, „Surveillance for Violent Deaths – National Violent Death Reporting System, 16 States, 2005”, *Centers for Disease Control and Prevention (CDC) – Morbidity and mortality weekly report (MMWR) Surveillance Summaries*, December, 4, (2020), 1-37. https://www.cdc.gov/mmwr/volumes/69/ss/ss6908a1.htm?s_cid=ss6908a1_w.

42 The United States has only 100.000 Federal policemen, 100.000 policemen for the 50 states and 700.000 local policemen who obviously carry out 80% of all the criminal investigations.

the size of preventive administration or regulations for example in the sanitary and welfare public service. Let us not forget that, in the United States, 40 million people do not have access to health care because of the lack of this public service. In Europe, health care is available to anyone including illegal immigrants.

Finally, the American people themselves, are turning gradually towards the European model of integral and human security precisely through state regulations of gun control. In the structural aspect of globalization, the Europeans are not conscious of their exemplary security model despite irrefutable comparisons⁴³. However, we are still debating if we should impose Americanization or Europeanization in the globalization of security⁴⁴.

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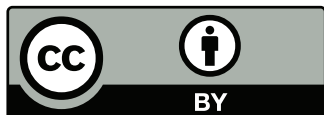
43 It is also worth saying that there are positive aspects in the Americanization of security such as the regulation of the fight against money-laundering. Wessel, „The financial action task force: a study in balancing sovereignty with equality in global administrative law” *Widener L. Review*, 13 (2006). It is necessary to remember that money-laundering crime has a reference in the arrest of Al Capone because of fiscal crimes. This example of Globalization-Americanization may also be seen together with the inside trading crime.

44 Andreas Nadelmann, *Policing the globe. Criminalization and crime control in international relations* (Oxford: Oxford University Press, 2008). Nadelmann, *Cops across borders. The internationalization of U.S. Criminal Law Enforcement*, (Pennsylvania: Pennsylvania State University Press, 1994).

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