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Geopolitics of Border Hardening: Protecting Statehood through Re-territorialisation

Dissertation

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Declaration

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Abstrakt

Predkladaná dizertačná práca sa snaží odpovedať na otázku, prečo štáty stavajú bariéry na svojich hraniciach. S cieľom poskytnúť odpoveď navrhuje nový teoretický prístup založený na prehodnotení diel Carla Schmitta. Táto teória stavia na existujúcich vedeckých poznatkoch a predstavuje koncept *nomos* (pl. nomoi), ktorý definuje ako základný politický poriadok pozostávajúci z performatívneho spôsobu života a rozdelenia pôdy. Základným argumentom, ktorý práca ponúka, je, že hraničné bariéry sú postavené proti ťažko identifikovateľným cudzincom stojacim mimo tohto poriadku. Práca ponúka sedem prípadových štúdií, v ktorých je proces výstavby bariéry sledovaný bezprostredne s vývojom rôznych faktorov týkajúcich sa jednotlivých *nomoi*. Výsledky potvrdzujú existenciu ťažko identifikovateľných cudzincov, ktorí rôznymi spôsobmi spochybňujú príslné *nomoi*, a ich úlohu v procese vedúcom k výstavbe bariéry. Pre štúdium hraničných bariér to znamená dôležitosť problému cudzosti a identifikácie pri predpovedaní konštrukcie bariér. Okrem toho práca tiež demonštruje potenciálnu užitočnosť nomosu ako analytického nástroja pre geopolitický výskum.

Abstract

The presented dissertation seeks to answer why states construct barriers on their borders. In order to provide an answer, a new theoretical approach is proposed based on re-reading the works of Carl Schmitt. The offered theory builds upon existing scholarship and is centred around the concept of *nomos,* defined as a political order consisting of a performative way of life and land division that is underlying the political existence of states. The basic argument advanced here is that border barriers are constructed against hard-to-identify strangers to this order. Seven case studies are offered where the process of barrier construction is tracked back-to-back with various developments pertaining to the identified *nomos*. The results confirm the existence of hard-to-identify strangers challenging the respective *nomos* in different ways and their role in the process leading to the barrier construction. For the study of border barriers, this implies the importance of the issue of strangeness and identification in predicting barrier construction. The work also demonstrates nomos' potential usefulness as an analytic prism for geopolitical research.

Kľúčové slová

hranice, hraničné bariéry, geopolitika, Carl Schmitt, teichopolitika, teritorialita, process tracing

Keywords

borders, border barriers, geopolitics, Carl Schmitt, teichopolitics, territoriality, process tracing

Názov práce

Geopolitika spevňovania hraníc: Ochrana štátnosti cez reteritorializáciu

Acknowledgement

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1. The Era of Teichopolitics

Ten years ago, Rosière and Jones (2012) argued that the world is entering a new era of geopolitics, marked by increased control of cross-border flows, barricaded privilege and jealously protected wealth. They named this era *teichopolitics* – the politics of walls.

Why does mankind build walls? That is the fundamental research question, in its political sense, that the presented text addresses. The most readily available answer suggests that walls were historically built for protection – from animals, weather, or other men. Yet, the very facticity of this non-natural object provides far more than a simple shelter. Whether motivated or not, it also creates separation – it defines those behind the wall. And not only that, but it also establishes orientation, an ordering of observed reality that allows one to direct his or her life based on the possibility of identification. Without walls, one is not only powerless in the face of adverse weather or hostile animals; he or she is also relegated to identification with regard to close blood ties. The existence of a wall allows for more – it enables the abstraction of "us" behind the wall and "them". It also allows the distinction between that which is "mine" and that which is "theirs" from the perspective of space. That is not to say that such separations are only tied to walls and artificial structures, as grouping instincts and territoriality must have been present before any elaborate separation constructions could have been made.

Several researchers in diverse areas show the necessity for territoriality, whether from the perspective of resources or identity. Peterson (1975), for example, shows the biological importance of spacing for the survival of Aboriginal societies. McGuire and Hildebrandt (2019) similarly discuss the territory marking techniques of Sacramento River Canyon natives and how these techniques played a role in ritual behaviours and identity creation. From the psycho-social perspective, Brown and Altman's article (1983) stressed the deterrence role the distinct markings of territoriality and occupancy play in preventing burglary. In more day-to-day life, Ruback and Juieng's research (1997) describes how the need for control re-assertion leads to territorial behaviour in the parking lot even beyond the simple cost-benefit analysis. All of these most likely cut down to more basic instincts of ownership motivated by intraindividual interactions related to both self-identity and the need for a dwelling place (Pierce et al., 2003).

This recognised need for security and identity resounds in the historical research on border barriers. Curta and colleagues' (2005) examination of ethnogenesis in early medieval Europe and its relation to various barriers demonstrates very well how intimately the

conception of group belonging is tied to the construction of separation walls. More recently, David Frye's work (2018) provided a very comprehensive analysis ranging from the walls of the ancient Middle East in 2500 B.C. to the Berlin Wall. Similar to Curta et al., Frye's work reveals the close relationship not only between border walls and civilisation but also between the border walls and the way of life established behind them.

In one way or the other, various authors confirm the historical importance of barriers over centuries. Aristotle stressed that while a *polis* is not made simply by a wall, the best *polis* will erect one for protective purposes (Aristotle, 1999, pp. 54, 168). Machiavelli recommends a high wall with a ditch to withstand sieges (Machiavelli, 2005:99). Clausewitz (1976:453) further suggests that a cordon, or a wall, can even lower the intensity of permanent raiding as it discourages the attacker from venturing forth. And while the different barriers morphed throughout centuries, they never truly disappeared.

From this perspective, one can understand Jean-Jacques Rousseau's (1984, p. 95) lament on how many wars and crimes could have been avoided had our ancestors, in defiance of those creating the first enclosure of the land, torn out the fencing stakes and filled-in the separation ditch. The political dimension of this famous Rousseau's sentiment echoes throughout history – in the works of thinkers of disparate traditions, be it Saint Basil the Great (2015, p. 69) or Karl Marx (1988, p. 59). Most recently, and possibly also with the greatest hope, the sentiment resounded in the writings of well-known authors after the fall of the Iron Curtain in the last decade of the 20th century. Kenichi Ohmae (1996) heralded the dissolution of the bordered nation-state in the unlimited and genuinely global marketplace. Similarly, if less explicitly, the promise of a shared world economy without fencing stakes was, albeit with nostalgia for the times of significant ideological conflicts, announced by Francis Fukuyama (1989) in his notorious article "The End of History". Likewise, due to various processes (such as globalisation) of disintegration of the territory as the basis of the modern political order, Bertrand Badie argued that it is to be replaced by a multi-spatial order that would allow for containment of the forces of modernity and tradition (Badie, 1995).

Yet, neither has the post-historical world without limits nor a multi-spatial order materialised. Since the end of the Cold War, the number of border barriers increased by over 400% - from 15 at the time of the Berlin Wall's collapse to 77 in 2018. Furthermore, the topic has gained regional and global political traction in recent years. Be it President Trump's (2019) insistent call for building a border wall, the erection of fences in Hungary in 2015 (Saeed, 2017) or the hardening of almost all eastern borders of Turkey (Mansfield, 2017).

As the number suggests, these new barriers appear alongside those erected decades earlier. In the 1990s, only a few years after the wall collapse in Berlin, Spain started raising fences around its exclaves in Africa (Ayed & Jenzer, 2018). Since the 1980s, the Moroccan wall, or rather, berm, in Western Sahara (McNeish, 2015) delineates the territory administered by Morocco from that administered by the Sahrawi Arab Democratic Republic, and the India-Pakistan fences divide the subcontinent even outside of Kashmir (*India-Pakistan Border Fence*, 2013). The fences and defensive measures have dotted the Demilitarised zone of the Korean peninsula since the 1950s (Bondarenko, 2017). This brief list of border barriers from the half-century illustrates that this phenomenon is neither isolated to a particular region nor a group of countries.

However, the era of border barriers is closely tied to an underlying issue of national borders. Since 1989, 26 000 kilometres of new borders have come into existence (Roche, 2016, p. 105). At the same time, many established borders are so porous, with African borders often being the prime example (Walther & Miles, 2017), that they, in essence, exist only in the collective imaginations of the map-readers. Yet, it appears that the creation of new borders, or enforcement of those in existence, is a condition *sine qua non* for the maintenance or creation of statehood. Thus, if the question of the existence of border barriers is to be answered, then why are borders as such constructed needs to be considered as well.

The broad regional spread of the border barrier construction in a short period of time coming after the era of imagined unlimited global interconnectedness appears to provide almost ideal conditions for examining the question, as stated at the beginning of this chapter. More precisely, it allows the presented study to investigate why states build border barriers. It is important to note here that the presented work seeks to investigate the issues of borders and border barriers, and the produced theoretical explanation is focused on this area – it does not intend to produce alternative explanations to other discussed phenomena, be it terrorism or nationalism.

In order to produce the explanation, firstly, the current state of the academic literature on the topic is examined, and existing gaps are identified. In this regard, the presented work discusses four streams that contributed to the research on the reasoning behind the border barrier construction trend. These are the discursive, the security and defence, the biopolitical and economical, and the sovereignty streams. As all four streams explain some variability in the data, the work proposes an integrative approach to all four streams. In this regard, it suggests exploring the underlying political order that all four streams arguably use as a

referent.

This exploration starts with a discussion of the broader theory of borders from the perspective of world systems and geopolitical approaches. Based on this debate, borders are defined as categories of difference created through the bordering processes in society's day-to-day existence (Kolossov & Scott, 2013, p. 3). Following the definition, globalisation's impact on the production of borders is considered, with its implications on the production of new borders. Basing the argument on Newman's (2010, p. 773) perspective, the focus is put on analysing the political borders as relevant for producing border barriers. Political borders are then conceptualised through their daily production by agents, state institutions, and longer-lasting historical notions of borders and associated values. These historical notions and associated daily productions are understood as the sought-after political order on a given territory. In order to properly define the countours of the political order, the exploration of Carl Schmitt's writings on the subject is proposed.

The subsequent chapter integrates these established theoretical views with the original contribution in the form of the Schmittian concept of *nomos*. After the review of Schmitt's writings, *nomos* is conceptualised as a territorial order defined through a way of life understood as a set of various distinctions around which a potential political grouping is possible. Both of these components are treated as the key political grouping points used for bordering. Members of the *nomos,* termed *socii*, are those that participate in this way of life and, therefore, in the daily (re-)production of its borders. Contrarily, the term *hostis* is applied to individuals and groups that are strangers to this political order, allowing for an organised armed struggle in case they are understood as enemies. The basic argued causal chain is established upon integrating these terms with the previously discussed literature on borders and border barriers. It is argued that constructing a border barrier is a bordering practice intending to separate politically relevant categories of people for the purposes of rights and duties accordance (including the rights of an enemy) and to ensure the control of a particular territory. The central claim of the work is that different territorially bounded political entities (*nomoi*) construct border barriers when hard-to-identify strangers challenge either their way of life or its application to a particular territory. The proposed aims of the work and the advanced theoretical framework arguably categorise the presented text as nomothetic. By understanding *nomos* as a mind-independent phenomenon that is unobservable but existing and focusing on the establishment of accurate causal relations the submitted work is positioned within the scientific realist foundational background (Chernoff,

2007, p. 129; Monteiro & Ruby, 2009, p. 33).

The fourth chapter first operationalises the composite parts of a *nomos* – the territorial order and the way of life. It follows with the operationalisation of the challenges to nomos, understood as the independent variables. These challenges are defined as violent and using organised violence to change the way of life or the territorial order, or non-violent and presenting the nomos with alternative ways of life without challenging it in an organised way – for example, by creating separate societies on the given territory. Construction of the border barrier is then understood as the variable dependent on the existence of challenges to the studied nomos. In order to explore the relationship between the challenges and the construction, a process-tracing methodology is used. In this regard, the main argument is advanced through a narrative text that first identifies the basis for a nomos, tracks developments in individual cases, and proposes a description of the process that led to constructing a barrier. For each case, an alternative explanation is offered based on a time series of quantitative data from other theories discussed in the second chapter. Following the operationalisation, case studies are identified and justified. These are the Moroccan berm in Western Sahara, the Israeli wall, the barrier built by Tunisia on the border with Libya, Turkey's barrier with Syria, the US-built wall with Mexico, the Hungarian fence on borders with Serbia and Indian fences on Bangladeshi borders.

This is followed by the analytical part, divided into seven case studies and a discussion integrating the different insights gained from the individual cases. In the case of Morocco, the data imply that the wall was constructed to prevent unrestrained movement by the Sahrawi guerrillas, which allowed for the conventionalisation of enmity. In Israel, the wall was built to add another layer of differentiation between the suicide attackers that were the real enemies of the Israeli state and those Palestinians that were part of the land division of Israel through participation in its economic activities. In Tunisia, it created a straightforward bordering practice that identified the Islamic State (IS) fighters infiltrating the country from Libya and those that tried to travel to Libya to join the absolute enemy of the Tunisian state. On the Turkish-Syrian border, the wall was employed to prevent the creation of separate Kurdish nomos by infiltrating re-established real enemies fighting the IS across the border. In the case of the United States (US), the border barrier was constructed as a tool to differentiate between those that were understood as illegal immigrant workers, treated as guests and participating in the US nomos and those that were considered criminal illegal immigrants, especially gang members, that were not to be granted guest status.

Similarly, in Hungary, the fence was constructed at the height of the pressure from irregular migration, which later transformed into an instrument of hostis-socius differentiation. In the case of the Indian-Bangladesh border, the fence was used to identify the United Liberation Front of Assam (ULFA) fighters tied to the real enmity with Pakistan and as a tool for general Hindu-Muslim identification. Consequently, applying *nomos* as an analytical lens through which the presented cases were analysed, arguably, revealed similar developments and processes in otherwise unrelated cases. Considering the data for alternative explanations revealed a correlation with terrorist activity in six out of seven studied cases. Upon closer contextualisation of this data, it was revealed the activity was not connected to the border in any meaningful way in most cases.

Finally, the work concludes with short analyses of the various cases from the perspective of four other streams outside of the previously analysed quantitative data in order to pinpoint the new insights produced by the proposed theory. In this regard, it is concluded that the applied approach was not only able to bring new insights into provided causal explanations for barrier building but also enabled the integration of different existing explanations into an overarching framework. In this regard, it is concluded that border barriers are constructed when the underlying political order of a group of people is challenged by a hard to identify non-members of this group.

2. Border barriers: The Lay of the Land

The rising number of border barriers around the world since the end of the Cold War resulted in multiple theoretical and empirical academic reflections on the topic. In general, these have focused on several case studies that analyse individual border barriers from different perspectives. At the same time, several authors attempted to produce theoretical explanations for the rapid growth of this phenomenon, generally within the broader context of border studies. And while most of the produced works, both case analyses and theoretic studies, include elements of sovereignty, political discourse, defence, control, human rights, and the economy as explanatory factors in their accounts, there, arguably, are several discernible streams that highlight one element above the others as the key explanans of the empirical facts. From this perspective, it is possible to identify four loosely connected streams – the discursive stream, the security and defence stream, the economy, the biopolitics and teichopolitics stream, and the sovereignty stream.

Starting with the discursive stream, possibly the most comprehensive linkage

between the discursive practice of the political actors and the construction of border barriers was made by Reece Jones (2011, p. 216). Jones, in his article, links the emergence of the discourse associated with the global war on terror to justifications for the construction of a large number of border barriers. However, he also notes that the use of this discourse is only instrumental in achieving the expansion of sovereignty in the West under the guise of the protection of civilisation and privilege. Others building on the discursive perspective are more focused on concrete cases. Following Jones's linkage of the global war on terror and border barriers, Garret and Storbeck (2011, p. 542) argue through the use of concepts of Baudrillard's simulacrum, Foucault's heterotopias, and Agamben's *homo sacer*, that the existence of the post-9/11 discourse allowed the construction of the border barrier on the borders between the United States (US) and Mexico, which in turn produced new space, where a state of exception needed to protect the US exists.

Additionally, with regard to the US-Mexico Border, Martinez (2008, p. 276) shows how the political discourse on the issue of migration was always at the heart of all barrier-building efforts in those borderlands. However, he adds that the counter-narrative stressing human rights that existed in the 1970s is slowly giving way to a harsher tone of the war on terror. One of the latest contributions to this stream's view on the US-Mexico border is Angela C. Garcia's (2019, p. 592) analysis of American political speeches on the border wall. Her conclusions demonstrate the underlying agreement on the need for a barrier on the given border.

Simon Falke (2012, p. 233) offers a somewhat different perspective on how a political discourse impacts border barrier construction. He argues that the construction of Israeli border walls and fences is tied to fundamental ideas of demarcation of territory, which has been ingrained within the Israeli national discourse on identity, security and the fight against terrorism. It is, therefore, the underlying concepts of separation and identification, created as early as the 1920s and 1960s, that lie behind the barrier building in Israel. Turning to Europe, most of the work on border barriers was produced in the time following the European migration crisis of 2015.

Pillant and Tassin (2015, p. 51-52) discuss how the discourse on borders enforced by the European institutions, Frontex and member states' governments through insistence on ensuring closed and non-porous borders affected the Island of Lesbos on the Turkish and Greek border. Following the Greek case, Skleparis (2018, pp. 997–998) claims that the Greek government was trying to de-securitise this discourse precisely by allowing more

porous borders and liberating the associated practices. The attempt ultimately failed due to the impossibility of reconciling the narrative of the non-threatening identity of the migrant as the other and the acts of terrorism in Europe. Similarly, Rheindorf and Wodak (2018, p. 34) claim that the dominant Austrian political discourse produced a new "Other" in the form of a "male migrant" unable to integrate and linked to the terror attacks in Cologne, from which the society needs to be protected through the use of fences. Pap and Reményi (2017, p. 235) argue that the construction of border barriers in Hungary is a result of an attempt by the Hungarian government to strengthen its position at home by exploiting existing historical and cultural narratives and narratives about the interlinkage between migration and terrorism.

As is clear from this outline and the overarching theoretical work done by Jones, the discursive stream mostly focuses on how the need for protection through fencing is associated with the exploitation of underlying cultural images and narratives, predominantly those related to terrorism. However, a clear link between the particular decision to construct a barrier and the political discourse is hard to find. While it might be true that the narratives formed around the connection of migration to terrorism, both in the US and in Europe, incline to create a securitised environment, the stream tends to disregard the questions of how and why the securitisation and the subsequent need for protection lead to the creation of border barriers. The barrier is here, therefore, mostly a tool in the governments' hands intended to, knowingly or not, increase their power or to exploit the crisis to achieve their own goals. But this might not necessarily be true. Often these discourses are linked, firstly, to material facts on the ground (e.g. the actual terrorist acts), and, secondly, to long-standing identities that had existed before any political discourse on migration and terrorism was put in place. From this perspective, the barrier might result not so much from the direct and ad-hoc manipulation of relevant discourse by the political institutions but from existing identarian issues linked both to national histories and territory. Falke's work stands out here, as he clearly links the identity of a people to a territorial demarcation and further shows how the process of building barriers is related to a wider range of bordering practices used to create a national identity.

Moving to the security and defence stream, as was addressed earlier, the defensive utility of the border barriers, especially in low-intensity conflicts, has been discussed by giants of military studies such as Clausewitz. However, most likely due to the complete turn to mobile warfare in large-scale conflicts, the defensive nature of barriers has not received

as much treatment in modern literature, especially those produced during the Cold War. Tusa's (1988) study of the defensive use of barriers in the Middle East is one of the very few exceptions. In his article, Tusa analyses barriers in Yemen, Algeria, and Morocco and studies the military effects they bring in a low-intensity warfare setting. He argues that the barriers intend to disrupt enemy supply and infiltration lines (Tusa, 1988, p. 36) and provide a trip-wire-like advantage to the defender, allowing for a quick reaction to the attack of the enemy troops (Tusa, 1988, p. 42). However, after the end of the Cold War, the academic attention paid to the issues of defence and security from the perspective of the border barriers increased, often in relation to the question of terrorism. For example, Said Saddiki (2012) continues the research on Morocco's berm in Western Sahara. In this regard, he studies how the original wall's intent to limit the conflict with Polisario and protect the civilian population (Saddiki, 2012, p. 204) transformed over time to be a vital part of the cease-fire monitoring system (Saddiki, 2012, p. 205) and, arguably unintentionally, to a barrier preventing terrorist groups movements and illegal migration (Saddiki, 2012, p. 207).

On the other hand, Ray Dolphin (2008) analyses the military use of walls and fences in Israel. He argues that these walls and associated policies (such as urban planning) were used for the annexation of territory by "architectural means", as they allowed for support of Jewish demographic growth while suppressing that of the Palestinians and, at the same time, forcing the Arabs to relocate (Dolphin, 2008, pp. 116–117; 120). On a global scale, the impact of border barriers on national security was examined by Susan Jellissen and Fred Gottheil (2013). The authors investigated the relationship between the level of border openness understood as function of the state of national security and the intensity and frequency of terrorist border intrusions in 49 cases of security fences on international borders. Based on a cost-benefit analysis of losing open borders due to intrusions (Jellissen & Gottheil, 2013, pp. 268–269), the results of their proposed model suggest that once the level of intensity of terrorist border intrusions, defined in terms of civilian casualties over a specific time period, changes, so does the level of border openness. Once this shifts to a point where no border openness is consistent with the maintenance of national security, the border closes completely with a fence or a wall (Jellissen & Gottheil, 2013, p. 276). In a similar study focused on the relationship between the presence of a border barrier and terrorism, Avdan & Gelpi (2017, p. 25), while advising caution about the results due to the very complex nature of the terrorist threat, show that a border barrier construction reduces an average annual risk of a terrorist attack by 67%. Brendon Cannon (2016) specifically

analyses the case of Kenya and the impacts the proposed border wall would have on terrorist activities. And while in his conclusions (Cannon, 2016, p. 32), he argues border barriers reduce the level of terrorist activity, he adds that they can have other negative effects, especially on countries with remaining border disputes. In a more reflective piece of literature, Serghei Golunov (2014) deliberates on the border barriers in the light of the theoretical reflections and empirical uses. As barrier building states are often faced with overwhelming issues in regards to illegal immigration, drug trafficking, and terrorism, Golunov argues that that the building of border barriers is not a choice between a good and a bad option, but only between a bad and a worse one (Golunov, 2014, pp. 126–127).

There are very similar themes present in all articles within this stream. Firstly, the analysis always focuses on the issues of terrorism or low-intensity warfare. Secondly, they always explicitly or implicitly point out the issue of identification of the adversary and the associated benefits (and detriments) such a barrier provides. Arguably, these two themes are progressively more present both in the academic literature and in world politics generally after the end of the Cold War, but more specifically after the 9/11 attacks and the subsequent global War on Terror. The "facts on the ground" regarding the actual intrusions and threats to the national defence or security play a key role in the thinking about borders within this stream, especially when compared to the discursive stream outlined above. Here the state is understood as a protector. More importantly, this understanding of the state makes an implicit statement about the identities of the barrier builders – the "us" is established, while the dangerous "other" needs to be identified through the barrier-building processes. This might be the logical consequence of the ties of this stream with the original military thinking, as in war, it is easier to identify those belonging to one's side than those not belonging to it. However, while the discursive stream arguably overestimated governments' intention to manipulate the threat and border barrier discourses in order to achieve their own aims, this approach might gloss over the underlying discussions that reflect the internal national ideas about their own identity. As an illustration, states build border barriers in order to protect against terrorist threats, but this inevitably blocks migration and cross-border interactions, which can, especially at borders with a high level of historical interactions, lead to counter-narratives about the identity of the given state.

The biopolitical and economic perspective offers unique insights by adding several new themes and rearranging those identified by the previous two streams. It is possible to argue that the first work in the stream was the article by Florine Ballif and Stéphane Rosière

(2009), in which they coined the term *teichopolitics*. Under this term, they understand all politics of spatial enclosure, directed by both states and private actors and generally put in place in order to protect a territory and thus reinforce control over it (Ballif & Rosière, 2009, p. 194). Analysing these politics, they conclude that new border walls (including internal walled districts) are made by social groups in interactions with economic actors intending to contain the deviance and threats. Thus they follow the paradigm of the prison (Ballif & Rosière, 2009, p. 204). Jones and Rosière (2012) develop the concept of *teichopolitics* further. In their work, they link it directly to the Foucauldian notions of biopower and biopolitics as a way that modern states regulate individual lives and populations (Rosière & Jones, 2012, p. 219), with each new border barrier being built to specifically maintain economic privilege and wealth of the bordering society (Rosière & Jones, 2012, pp. 220; 231).

Thus, the goal of the new border barriers is to filter the undesirable flows of products and people, and its efficiency is measured by how well it manages to filter those that are supposed to be left out (Rosière & Jones, 2012, p. 232). While not dealing directly with issues of the economy and rather focusing on governability, Merav Amir (2011) also analyses the issue of the border barrier through the prism of biopolitics. In his case study of the Separation Wall in Israel, he concludes that the use of the wall is a combination of biopolitical and sovereign types of power, which is in turn used by the Israeli government to fragment the Palestinian population and keep them in a state of uncertainty (Amir, 2011, pp. 787–788). A similar assessment of another oft-analysed border barrier, the US-Mexico border wall, is offered by Thomas Nail (2013). In his article, Nail argues that the multiple and, at times, clashing policies employed at the US-Mexico border are, in effect, results of a combination of sovereign, disciplinary, and biopolitical powers used to exclude, institutionalise and manage the migratory flows in the borderlands (Nail, 2013, p. 127). From a more economic perspective, Sabine Lavorel (2016) analyses the issues of walls in their relation to exclusory practices related to natural resources. In her argument from the international legal standpoint (Lavorel, 2016, pp. 160–161; 164-165), she shows how the construction of such barriers can lead to the violation of both individual human and collective rights by the wall-building states. Elisabeth Vallet and Charles-Philippe David (2016), argue similarly that the discursive shift after 9/11 was exploited by the state elites and the military-industrial complex to find new ways of selling products, specifically the border barriers. At the same time, these new barriers are used to separate the rich from the

poor and thus provide imaginary benefits rather than actual defensive effects to the taxpayer (Vallet & David, 2016, p. 150). Another pair of authors arguing for economic explanations to existence of borders walls, as specific types of barriers, is David Carter and Paul Poast (2017). In their article, which represents one of very few quantitative analyses in this area of research, authors track the construction of all border walls since the beginning of the 19th century and test their appearance, existence, and disappearance against several independent variables – such as military capabilities, territorial disputes, alliances, civil wars, and income inequality (Carter & Poast, 2017, p. 255). Following their fixed effects regression analysis, they conclude that wealthy states construct border walls in order to prevent illegal movements of produce and people from poorer states (Carter & Poast, 2017, p. 256) due to cross-border economic inequality, as border with severe economic disparities tend to be less stable and therefore more porous (Carter & Poast, 2017, p. 263).

While works listed within this stream might appear more disparate than those in the two previous streams, they are all held together by the ideas of filtration of globalised flows and protection of economic privileges through the construction of barriers. The perspective of the biopolitical control of the population, in combination with the economic considerations and interests, in practice, provides a comprehensive picture of why a border barrier might be constructed. In outline, the desire to support the domestic defence industry while controlling the unwanted immigration movements as a biopolitical mass, along with the intent to maintain economic privilege, is a rather flexible conceptual construct that offers strong explanatory power. However, there are two associated problems. Firstly, the appearance of border barriers does not always empirically follow the proposed model. In many historical cases, applying the index used by Carter and Poast (Carter & Poast, 2017, p. 251), the much wealthier country did not build a barrier on the border with a poorer country (e.g. Germany and the Eastern Bloc countries after the end of the Cold War), or the economic differences were large for decades before such a barrier was built (e.g. Saudi Arabia and Yemen or Iraq in the early 2000s), or the actually poorer country built the barrier with its wealthier neighbour (e.g. India and Pakistan in 1988) (The World Bank, 2020)[1]. Secondly, the control of immigration of even low-skilled workers is not necessarily based on the rational grounds of protecting the economy and filtering desired/undesired flows. As economic research shows, immigrant low-skilled workers can provide economic benefits to the upper strata of the receiving society (Busch et al., 2020). At the same time, the literature

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[1] The GDP data used for comparison were accessed from the World Bank portal in the reference.

review of the articles on illegal immigration's economic impact (Ramos, 2013) suggests that the most negatively impacted are the low-skilled native workers, whose wages tend to go down when there is a major influx of illegal low-skilled immigrants. This contrast points to an issue within the filtration-of-flows argument because even the influx of low-skilled workers can be understood as a flow beneficial for the economy if looked at from the perspective of the wealthy elite, who are implicit in the financial motivation behind privilege protection and defence industry support. Based on the cited research, it could lead to an increase in the society's economic privilege, even further supported by the argument that it can be potentially harmful to the wages of the low-skilled natives.[2] The construction of the border barrier by a wealthy society in order to protect its wealth is therefore not necessarily correct. These two problems, obviously, do not disqualify the economic and biopolitical perspective, rather they show the need for a comprehensive approach with other streams. They both highlight the underlying need to understand that even wealth, economic privilege and the desire for their protection must be conceptually framed in the context of identity and security.

Finally, the sovereignty stream engages the phenomenon of the border barrier construction through the perspective of deterioration of sovereignty vis-á-vis globalisation. The authors representing this stream tend to highlight the issues associated with the deconstruction of traditional national territorial sovereignty through the enablement of new flows and identities and its attempted reconstruction through border barriers. The seminal work on the phenomenon of border barriers through the prism of sovereignty is the book authored by Wendy Brown (2010). Brown bases her argument on the political theory of Carl Schmitt and incorporates his concepts of *nomos*, sovereignty and the political (Brown, 2010, pp. 45–47) into her own notion of political sovereignty. She argues that under this notion, all other powers (i.e. religious and economic) were historically subsumed when the modern nation-state was established (Brown, 2010, pp. 56–57). Consequently, in her view, countries build border barriers as tools in their struggle to prevent or slow down globalisation's unshackling of religion and capital from their sovereign political power (Brown, 2010, pp. 27; 71). Randall McGuire (2013), in his analysis of the United States-Mexico border at Ambos Nogales, looks at the border from the perspective of the two states and the

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[2] As it would most likely increase the wealth of the upper classes of the society, since the low-skilled immigrant workers would, in effect, lower the costs of labour, which would in turn increase the surplus that is acquired by a given employer.

perspective of the border-crosses. He argues (Mcguire, 2013, p. 477), in the vein of Brown, that both Mexico and the US use the border as a place of (re-)assertion and (re-)materialisation of their borders, which, however, contributes to the exacerbation of exactly those factors – namely violence and lawlessness – they are trying to control. While not building directly on Brown or Schmitt, Pusterla and Piccin (2012, p. 130) similarly argue, in the case of member states of the European Union (EU), that their sovereignty is transferred to the EU level. The loss of sovereign control over territory and the sole right to coercion, in turn, makes these countries construct border walls that are nothing more than states' doomed-to-fail attempts to reverse this process (Pusterla & Piccin, 2012, p. 132). Also arguing from the perspective of the EU, Denis Duez (2014) looks at the figure of "migrant other" and its relation to the construction of the communal identity of the Union. His main argument, while not explicitly using the word sovereignty, lies in the idea that the EU achieves unity and further integration by creating a picture of a hostile "other" that newly construed "Europeans" need to be protected from (Duez, 2014, p. 63). And EU protects "Europeans" though a set of border hardening procedures – including walls and fences – that are designed to achieve its credibility, and thus support the integration process. Looking from a more macroscopic perspective, Landovský and Riegl (2016), on the other hand, see the emergence of border hardening and border barriers as the result of a conflict of what they term "worlds of sovereignty". In their view, different countries in the world exist in different state of sovereignty. Europe (and the West) operates under a post-modern sovereignty allowing for free travel and disappearance of internal borders. Countries like China, Russia, India or Pakistan exist in the modern world of sovereignty, where Westphalian style of realistic politics is the norm. Finally, failed states around the world exist in a deteriorated state of pre-modern sovereignty, where warlordism, lack of territorial control, and spill-over of violence is the norm. In their argument, border barriers emerge on the fault-lines of these three worlds, and also between the countries in the second world.

The key topic of this stream of thought on border barriers' construction is state sovereignty, its disappearance, and re-assertation under pressures ranging from regional integration, through migration, to security threats. Here, obviously, all previous streams are somewhat connected. Nevertheless, the key issue of this sovereignty approach is the treatment of sovereignty – as was observed before (Micko & Riegl, 2022, p. 2), only Brown builds her understanding of the concept from the ground up, while other authors rely on a generally accepted, and mostly legalistic, perspective of what sovereignty is. Generally

speaking, this understanding takes a state-centric approach and relies on the conventional application of sovereignty as the absolute and omnipresent power over activity on a clearly demarcated territory. Once this criterium appears to be somewhat relaxed – either by massive immigration through its borders, or through the inability of a given state to manage the influx of foreign capital completely, or through supra-national integration of some powers, all proxies for globalisation – the sovereignty is understood as disappearing, and states are expected to try to reverse the course by building border barriers. But this perspective would make integration with other proposed explanations unlikely – as states would at the same time be building border walls by exploiting their very strong sovereignty (i.e., economic, defensive, and discursive streams) and in order to hold on to the last remaining vestiges of sovereignty they have. One could argue to dismiss the sovereignty stream if it was not for the empirical evidence it brings. As presented by Brown, the alternative is integrating different concepts proposed by Carl Schmitt, which show that legal sovereignty is much closer to the political order of an enclosed land. This would mean that the direction of the sovereignty stream in its search for the explanation of border barriers is to go beyond sovereignty and instead focus on the underlying political community that allows for sovereignty to exist in the first place.

What does it mean for this text? If the goal is to produce an explanation for the construction of border barriers, then it implies that an integrative approach of all four streams needs to be produced in order to cover the wide spread of the empirical reality they describe. Looking at the presented literature, there appears to be a key uniting factor – discursive, defensive, biopolitical, and sovereignty streams seem to hold an unspoken underlying political order as the key referent to which they attach their arguments. In this regard, both Brown and Falke stand out as they explicitly understand the relationship between the territory and national identity and the political order that is created from their interaction. Neither discursive appeals to security nor actual defensive applications of border walls can be justified outside of the framework of understanding that is based on this order. The same applies to the protection of privilege and sovereignty. All four of them exist, and are existentially tied to, a particular underlying order that elucidates their meaning to the given national audience. Discursive practices leading to the strengthening of American government *vis-á-vis* constructed threats, actual and concretely needed defence of American territory, protection of American wealth, and re-assertion of American sovereignty all make sense only with regards to a particular territorially demarcated political order, through

which they are imbued with meaning. And this meaning is evocative only for the American public. It is through this perspective that the explanation of why a border barrier is constructed after years of cross-border economic disparity, concurrent waning and strengthening of American sovereign power, and decades of under-siege discourse can be formulated.

At this point, one could argue that the term political order is a simple substitute for the state. However, just as in the case of sovereignty, the state is only a legal and social construction that emanates from daily exclusory interactions occurring between individuals – thus, it is the normalisation of everyday life, not everyday life itself. It is a result of this particular set of behavioural patterns, which it also shapes but is not synonymous with them. Therefore, to properly meet the challenge of formulating an integrative theory capable of solving the issues with the aforementioned streams, this political order needs to be analysed. Following Brown and Falke and situating the discussion on these issues within a broader context of border studies, the analysis starts from the vantage point of exclusory practices and interactions that take place on a specified territory – in other words, from the theoretical perspectives on borders at large, on what they are, how they are created, and how do they frame these practices and interactions.

3. Theorising Borders

Over more than a century of academic interest in borders, there were several various approaches in the political geography that analysed the phenomenon from different perspectives. Some of them focused on the typology of borders, others on their origins, yet others on what roles the borders play in international conflicts. However, those most relevant to the topic at hand are those that focus on particular processes that are associated with borders. Specifically, the question of how borders are produced, what their "bordering" functions mean, and how they work in empirical terrain. In this regard, it is reasonable to follow Kolossov's (2005, pp. 609–610) categorisation of approaches to the study of borders and focus on what he termed world systems and geopolitical approaches dated to the late 1980s and 1990s. While even these categories can be further divided into distinct groups, the main focus should remain on the authors dealing with the relations between the borders and the production of identities and security, as these works deal precisely with the issues of exclusory practices at the border and beyond. This is because, as Kolossov argues (2005, p. 614), borders and boundaries cannot be seen properly without an understanding of the role

they play in social consciousness and the production of people's identities with regard to a particular territory.

3.1 Borders, bordering, and borderwork

Starting with the turn away from the understanding of borders as lines in the sand, Newman (2003, p. 14) conceptualises them instead as institutions that manage the extent of inclusion and exclusion, with their essence being the separation of the "self" from the "other". This process of separation is key for the ordering of society and is termed bordering (Newman, 2003, p. 15). Accordingly, this is then reflected in the myriad of borders that are produced and re-produced around the world. Nationalism is inherently contingent on the existence of borders, and so are culture and religion.

However, borders do not exist only at the edges of large societal groups – they exist within and across them. This can be seen not only on the borders between ghettos in large cities or between regions within a single nation but also in the ability of the police officer to check documents of migrants far beyond the country's borderline (Kolossov & Scott, 2013, p. 6). Borders are therefore understood as categories of difference created through the process of bordering that are constantly being made in society's day-to-day life (Kolossov & Scott, 2013, p. 3), with them being inherently tied to the symbols, signs, and narratives established for bordering purposes by a given society (Kolossov & Scott, 2013, p. 9). It is clear then that identities and feelings of belonging are intertwined with the creation and production of borders. Many of the existing borders are in place only because there is an explicit association between a specific group and a given territory, which they consider their own. On the other hand, there are other borders that are imposed top-down by groups of elites with aims of new societal compartmentalisation. As was said before, these borders do not necessarily include only national borders, but also borders between religious and cultural groups (Newman, 2006b). Or as Stein Rokkan (Rokkan, 1987) argued, borders could be divided into economic, cultural and military-administrative categories.

With the rapid onset of globalisation after the end of the Cold War, and as discussed previously in the introduction, the newly established "world of flows" (Newman & Paasi, 1998; Paasi, 1999, pp. 70–71) caused by the processes of cross-border cooperation and international trade liberalisation was theorised by several researchers. With the traditional western understanding of borders and national territoriality's ties to sovereignty, there were those that argued these processes were deteriorating national sovereignty and creating new

political authorities and different types of sovereignties around the world (Agnew, 2005, p. 456).

However, this type of deterioration must have inherently brought about new boundaries and identities exercised across the existing national boundaries, with the creation of cyberspace even allowing for truly globalised communities essentially disconnected from their particular physical location (Newman & Paasi, 1998, p. 199). As such, these new boundaries, and consequentially identities and orders, were and are created on top of the existing national frameworks, which they weaken (Sassen, 2006, p. 403) but at times also reinvigorate (Laine, 2016). Global markets, cyber communities, international companies, global migration, and other globalised phenomena thus jointly contribute to the changing and de-anchoring of the sense of national belonging from the established borders and create new bordering practices and communities that co-exist with the old national ones (Sassen, 2006, p. 407) or, arguably, they lead to the strengthening of this sense as it is challenged by the newly produced identities and borders. With the situation surrounding the COVID-19 pandemic, these processes became even more highlighted within the everyday issues related to cultural consumption. For example, the lockdown-boosted stellar rise of services such as Netflix or HBO during the 2020 pandemic was accompanied by stronger consumer complaints about the geo-restrictions and roll-out times for territories outside of the US, increasing the already made statements about the "digital Iron Curtain" that these practices create (Kennedy, 2015). This implies that while some borders, identities, and practices associated with them are being weakened, others are being overlain on top while they re-arrange and repurpose the old in a new fashion.

There are two important implications from this discussion that are necessary to analyse. Firstly, the creation of new borders and associated identities. One of the most jarring issues connected to this topic is the problem of cyberspace and the proposed newly created global communities and their borders almost without any link with their actual physical position on Earth. Such communities truly present an extreme case for border studies as they lay bare the issue connected to territoriality and its relationship with the border. If there is no given piece of land a group claims, does it have borders? Newman (2006b, p. 183) notes that a border does not need to be territorial for it to be a border. However, he recognises that a major component of societal organisation is missing without spatial borders. In this regard, summarising arguments made by Taylor (1996) about the territorial trap in border studies, he notes that territory and territoriality are important for understanding the *political*

compartmentalisation of the territory and that it is necessary to analyse it as a part of symbolic identity and socio-political power relations (Newman, 2010, p. 773). It implies one important thing for the future theoretical consideration of border walls – not all borders are political. Therefore, while new borders are being created through the processes of globalisation, with associated new identities that may weaken the sense of national belonging, they are not decisive unless they are territorial to a political degree.

Secondly, the issue of borders, group identity and security should be addressed. Borders do create a sense of belonging to a community, and therefore, they are associated with the way people identify themselves. Taken from the perspective of societal ontological security, which is based on the conception of the self as an orderly inside (Mälksoo, 2010, p. 17) and the other as the container of potential threat, the identification of the self with a group is tied to the certainty of a boundary that allows the group "self" to remain unquestioned (Chernobrov, 2016, p. 582) and therefore allows for the sense of security. Such a boundary is created through performances that demonstrate the fact of belonging and sameness (Barth, 1998).

Going back to the aforementioned border theory and tying it with the issue of the political territoriality of borders, national borders are created through performative actions that enable identification with the particular national group on a given territory, and it is the potential inability to identify who belongs and who does that produces insecurity. At the same time, this creates another conundrum that is reflected in the state of the literature on border studies but has wider methodological and epistemological ramifications. Are these performances related purely to the day-to-day activities of the individuals who border, de-border, and re-border (Rumford, 2006, p. 164) or are they related to a wider set of historical and present performances by state and societal institutions (O'Dowd, 2010, pp. 1147–1148)? In other words, who is responsible for identifying the group membership? As Azmeary Ferdoush (2018, p. 184) proposed in his structurationist theory of borders inspired by Anthony Giddens, the answer seems to be *both*. In order to properly understand bordering and associated identification, it is necessary to understand how the national institutions and agents operate at the border and how the members of the society perform their belonging. Therefore, the entire nexus of behaviours of state and non-state institutions, citizens, and border-crossers, legal and illegal, on a given territory must be considered when the existence and production of a national border are to be analysed.

In empirical terms, several case studies have shown how identity production occurs

during state creation and how borders are key in the production of a set of identity behaviours. For example, Claire Beaugrand (2018) demonstrates how several state institutions, elites, everyday lives, and physical border barriers, along with space delimitation, worked together during the bordering process in the production and maintenance of Kuwaiti national identity in the 20th century. Cathrine Brun (2019), on the other hand, analyses borders in Sri Lanka during the civil war and Georgia and how changing power relations and minor border adjustments affect the day-to-day lives and identities of borderlanders, who, in turn, often end up outside of the administrative frames of either of the border-producing entities. A very similar perspective is provided by Galen Murton (2017, 2019), who shows the interaction of ethnic identity with fenced borders and hardened border regimes in the case of the Mustang-Tibet portion of the China-Nepal border. The author analyses how the issue of the particular Mustang population's ethnic affinity with the population of Tibet, which has a certain politico-spatial dimension, and that borderland's guerrilla history leads the Chinese government to enforce a one-of-a-kind border regime directed even against Mustangese coming close to the fortified fencing. From a different perspective, Kraudzun (2017) discusses how the lack of the creation of a new political order from the centre of governed territory creates spheres of personal power that enforce individual border regimes. Finally, in a very interesting analysis of border production in ancient Greece, Gary Reger (2017) shows all of these factors – religious practices, national identities, trade, borderlanders, issues with ownership of property and land, international relations, and domestic politics – at play in the ancient Greek *polis*.

Returning to the considerations at the concluding parts of the previous chapter, several important insights were gathered from this discussion. It seems clear that the underlying political order that is referred to within all the four mentioned streams of the border walls literature can be identified with the set of bordering practices performed by both the state institutions, its agents, and its citizens as an expression of a particular set of values that are understood as crucial to the given spatial organisation. This set cannot be identified either with sovereignty or with legality. It is an extra-legal agreement on the particular way the society is set-up as it strikes at the core of what a society is and how its members are identified as its members. In addition, a set of values and associated behaviours conducted by institutions and individuals is a necessary condition, but it's not sufficient to become a political order. So is the possession of a territory. For a particular set of values on a given territory to become a political order it must be a decisive point of orientation and grouping

for the group's members – decisive in its ability to define the member and the non-member of the group existentially. In this regard, it is necessary to return to Wendy's Brown's conception of political sovereignty based upon re-reading of Carl Schmitt's work.

Understanding the integration of both religious and economic power within the order imposed by the nation state seems crucial – as such an integration must have been based upon creation of a unique grouping point through which the border of members and non-members could have been done outside of the economic and religious frameworks. In simplified terms, this should mean the nation state with its focus on the use of same language and shared real or imagined past. Production and elucidation of the conceptual frame behind this integration and creation of what Brown termed political sovereignty appears to be the logical next step as it could provide an analytical lens that would explain the politically decisive grouping points integrated with a particular spatial organisation.

3.2 Carl Schmitt and Nomos

In order to prepare such a conceptual frame, it is necessary to re-read the most important texts of Carl Schmitt's work, identify key concepts he proposes, and integrate them into a unified whole. There are several ways such an enterprise can be undertaken, but it seems to be the most logical to start with Schmitt's work on extra-legal order and then continue by tying other concepts to this grounding.

For Schmitt, the only way for a law to become manifest is through delineating the earth by fences, enclosures, boundaries, and other constructions. In this manner, the basic ordering and orientation of human social life become apparent as a clear structure of society is on full display in terms of a visible material reflection of the societal units. Families, clans, estates, governmental and sacred buildings – these all are revealed through a particular delimitation of the earth that showcases one or the other type of ownership (Schmitt, 2006, p. 42). This condition, according to Schmitt (Schmitt, 2006, pp. 44–45), is achieved by what he understands as the primaeval acts of law, the so-called land appropriations. It is through the appropriation of land that law becomes rooted in empirical reality. Once any sort of land-appropriation takes place, ownership of that particular part of the land is established internally between the land–appropriating group members and externally *vis-á-vis* other groups with appropriated land. In this regard, such a historical occurrence – for every land-appropriation must be understood as a particular historical event – grounds law in the original division of the land (Schmitt, 2006, p. 47).

This sort of land-appropriation is understood by Schmitt as the "first measure of all subsequent measures", for which he uses the Greek word *nomos* (Schmitt, 2006, p. 67). Through this concept, Schmitt describes both the process and the fact of land-appropriation through which a particular political and social order of a settled people becomes visible. It then turns a part of Earth's surface into a "force-field", which, from then onwards, and until another land-appropriation takes place, becomes ruled by the order of these settled people (Schmitt, 2006, p. 70). Fittingly, Schmitt calls this *nomos* a wall, as it creates the original reference point in time, which makes all other public and private life meaningful for that particular settled people on that particular territory, excluding any other meanings. It also suggests that it is from this original foundation that all other subsequent legal provisions stem (Schmitt, 2006, p. 73). In conclusion, Schmitt summarises that *nomos* is both the process of spatial ordering and space apportioning and then the produced order itself, through which the co-existence of people is managed (Schmitt, 2006, pp. 78–79).

However, Schmitt speaks of *nomos* in two different ways. Necessarily, this stems from the duality of legal orders established by a land-appropriation. If land-appropriation grounds not only internal but also external law (i.e. law towards the others) in a particular spatial order, it opens the possibility of annihilating the original international, for the lack of a better world, territorial order that managed the behaviour of different settled people within that part of the world. Therefore, firstly, such a land appropriation can annihilate the established spatial order in its completeness, or, secondly, it can function within it and only establish a new "force field" that others respect (Schmitt, 2006, p. 82).

Based on this discussion, it should be clear that Schmitt understands *nomos* as the original division of the land that creates a specific political and societal order of a settled people and grounds law in two directions, externally and internally, and that can but does not have to, eliminate the macro-*nomos* of the region where it is performed. But what is the content of such an order? Around what, outside of the territorial division, is this order based?

Looking at Schmitt's treatment of the *nomos* of medieval European *res publica Christiana* (Schmitt, 2006, p. 58), it is possible to start formulating an answer to this question. According to Schmitt, the land division of the medieval order involved the difference between the non-Christian soil (such as the of the Islamic empires) that was open for land-appropriation and missionary work and internal soil distributed among the Christian princes, the Church and others. While the wars between the Christian princess were, in essence, understood as legal disputes that were centred on the fulfilment of a right, crusades

and holy wars for missionary purposes were against the actual enemies of Christendom and were waged as wars of annihilation. At the same time, not all internal violent conflicts were only legal disputes. According to Schmitt (2006, pp. 62–65), the title of *imperator* was closely tied to the concept of *katechon* – i.e. that which withholds (the coming of the Antichrist) discussed in one of the Pauline epistles. It means that a Christian monarch holding the *imperator* title was responsible for guaranteeing the law and freedom of any Christian *civitas* – especially against a tyrant, who was understood as the enemy of humanity. In this regard, the order appears to be grounded within the difference between those belonging to the order and its division of land and those left outside – either by their external or internal enmity.[3] Whether these descriptions are historically correct or not, it still becomes clear that Schmitt's structural understanding of an order is tied to the concept of the enemy and, therefore, of the political.

This then leads to another of his fundamental and famous concepts. According to the oft-quoted and used view, the key to understanding the political lies in the distinction between friend and enemy, which denotes the highest possible intensity of association and dissociation of human beings under a specific grouping point (Schmitt et al., 2013, p. 26). To be clear, someone considered to be an enemy is not necessarily morally evil; it is simply the other, the stranger, against whom a conflict of utmost intensity is possible (Schmitt et al., 2013, p. 27). Furthermore, and more importantly, it is the question of public enmity. As Schmitt (2013, p. 28) highlights, it is not *inimicus*, an enemy in the private sense of the word; it is a public enemy, *hostis* (pl. *hostēs*), against whom a struggle of the entire public is conducted. It is consequential then that such a decision on having a *hostis* rests solely within the political group, if it exists, which can decide at any time that an enemy must be fought.

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[3] For example, the Christian medieval order can be found to be represented by the depiction of hell, paradise, heaven, and biblical and/or mythological concepts such as the Alexander Gates and the structure of the map within the "history of salvation." It may be of interest that most, if not all, of these maps almost completely omit any political depiction of the "Saracen-ruled" territories, somewhat different from some Muslim depictions at the time. This can suggest two points. Firstly, the depiction of the already mentioned Alexander Gates as a way of detaining the biblical figures of Gog and Magog, who play the role of the armies of the Antichrist in Christian (and partly also Muslim) eschatology. This concept appears to resonate with Schmitt's grasp of the title of emperor in the medieval *res public Christiana* as it included the dimension of *katechon* as the preventor of the coming of the Antichrist, but in this case through the territorial defence and protection of Christian communities from tyranny. The second point, discussed below in the main body of the text, is Schmitt's assertion that the absolute hostility was caused by the significantly different perception of the world that it is reasonable to believe was being structurally shown on the maps. By combining elements such as the different orientation of Christian maps *ad orientem* with Jerusalem / Rome in the centre compared to the orientation *ad meridian* and the central position of Mecca or depicting the whole known world as part of one order between hell and heaven, it might be possible to understand the formulation of these maps as a representation of another conceptual framework describing the particular world order.

Here, Schmitt (2013, p. 27) alludes to a key concept – such a decision is based upon the perception of potential "negation of one's way of life" by the enemy. It is precisely this way of life, however, defined, that is the grouping point of a politically organised group of people. As Schmitt (2013, p. 32) notes, an internal conflict erupts even if domestic differences or internal antagonisms reach the friend-enemy distinction intensity. But this conflict – the killing and dying – can only be justified by a perceived existential threat to one's way of life (Schmitt et al., 2013, p. 49).

Looking back at the discussion of the question of the content of *nomos*, it seems that this application fits Schmitt's description of medieval *res publica Christiana*'s *nomos*. This means that this underlying spatial order and orientation is created through a political grouping around a way of life, which denotes who is a member of this group and who is a stranger, or a *hostis*, against whom war is possible. Despite having this basic understanding of *nomos* as a way of life on a territory, two new lines should be developed to understand this conceptual framework in its entirety. Firstly, the issue of what is this "way of life", which areas it comprises, and who establishes it, as well as the question of legality and sovereignty and how they stem from the extra-legality of the *nomos*. Secondly, the question of the distinction between a *hostis* and a friend needs to be discussed. In particular, this involves the question of who is a *hostis* and who is a friend, and when a *hostis* becomes an enemy to be fought and repulsed.

Starting with the way of life, it is apparent from Schmitt's treatment of the *nomos* that it entails the creation of a division of the appropriated land among the members of the appropriating group. However, this cannot be only understood as a purely economic system that is intended to ensure the productivity of the land, as it is specifically related to the political nature of the group. There can be no division among group members unless there is a grouping point which constitutes such a group. Schmitt (2013, p. 22), when discussing the nature of a "total" state, which penetrates society, notes that there is nothing in the modern state that cannot be at least potentially political. Consequently, the state and society acquire their identity from their positions on various potential political domains. Logically then, he contends that any anti-thesis, be it moral, economic, or religious, can result in or intensify an existing friend-enemy grouping (Schmitt et al., 2013, p. 36) because every religious, moral, economic, ethical, or any other difference can be transformed into a political one if it provides a sufficiently strong grouping point to create a friend-enemy antithesis (Schmitt et al., 2013, p. 37). Based on this, it would seem that every *nomos* has a

specific set of potentially political grouping points that are understood as establishing the membership of the given land-appropriating group. Grouping points that in and of themselves allow for differentiation and the existence of strangers (Schmitt et al., 2013, p. 54). Schmitt (2008, p. 65) specifically addresses this issue in *Political Theology II*, albeit on the side of the discussion on political theology, firstly, with regards to the ancient Greek *polis* but then with more generalising statements. According to him, a *polis* was a community based on a cult. With this in mind, he states that political theology is part of the *nomos,* and it establishes the public sphere by creating a pantheon of the gods to be worshipped, rites of sacrifice, and associated ceremonies. In this way, it is an element of the political identity and provides a link between the deceased and the living that essentially contributes to the ability to identify "one's inheritance, one's succession, and oneself."

Therefore, a territorial order or *nomos*, understood as a way of life on a territory, is centred on a set of underlying grouping points that can be used to identify who belongs to the order and who does not, or, in other words, who is a friend and who is a *hostis*. With regards to what has been said about *nomos*, understood as a way of life on a territory, it is the fount from which the rest of legality springs within a given political entity. Schmitt confirms this when he notes that there can be no norm applicable to a homogenous medium and that there must be an underlying order for the law to exist at all (Schmitt, 2005, p. 13). Here, another key Schmittian concept comes into play – that of a sovereign. Famously, Schmitt (2005, p. 1) defined a sovereign as "he who decides on the exception". He continues to characterise the exception as the suspension of the existing legal order while the *state remains*. The exception is thus neither anarchy nor chaos; it is a return to the extraordinary order through authority liberated from the legal norm (Schmitt, 2005, p. 12). That is key for the matter at hand, confirming the conceptual structure presented here.

Furthermore, and more importantly, it also points to another important part. When internal friend-enemy grouping appears within a political unity, it inherently must suppress any legal order as the situation does not allow the application of norm due to the heterogeneity of the subject. One cannot imagine how any law could be applied in a situation where multiple competing political authorities decide on such a law. Therefore, sovereignty is the decision (Schmitt, 2005, p. 9) on what constitutes public order and security and the guarantee of its existence (Schmitt, 2005, p. 13). It is the homogenisation of the medium for the application of the law and, therefore, the guarantee that all members of the political unity agree on the underlying way of life in the given spatial setting.

Consequently, a sovereign is the one who guarantees that the situation is normal and that such antagonism does not exist in order for the law to be applicable. At the same time, it is the one who suspends the law in a situation when the population no longer agrees upon the underlying order. In simplified terms, one who accepts the declaration of and declares a civil war from the state's perspective. And once the norm is suspended, it can be reinstated only when a new sovereign is able to guarantee the agreement on the underlying way of life in a given spatial setting. In line with Schmitt's argument that all modern legal concepts are secularised from theology, it is possible to say, based on this discussion, that sovereign sanctifies the way of life that is used for the homogenisation of the population and the establishment of the norm. Consequently, *nomos* is a defined territory with associated internal land division imbued with a sanctified way of life that allows for the applicability of the law.

Now it is possible to move to the issue of the relationship between the concepts of friend and enemy. While Schmitt never defines what a friend is, it is possible to understand one from its opposite – the enemy. In this regard, this seems like a relevant starting point that will allow both for the understanding of enmity in its completeness and also for elucidation of the concept of a friend. From the discussion on the nature of *nomos* and the associated way of life, it seems fruitful to discuss the term Schmitt uses for an enemy – *hostis*. *Hostis* in the original Latin denoted a stranger or a foreigner, with later transformation to a public enemy or an enemy in arms against one's country (C. T. Lewis & Short, 1879). In this regard, the double understanding of the term is important, as it clearly was to Schmitt, who, as was previously noted, highlights the potentiality, not necessity, for fighting an enemy. Following the logic of the Latin term, the relationship between *hostis* and *nomos* then seems to be that of exclusion. Someone who is a *hostis* is a stranger to a given way of life, someone who does not share in common the established territorial order that is *nomos*. It is only until such a *hostis* is understood as threatening to this order that he or she becomes an enemy to be fought. As Schmitt observes, Roman political thinking understood that there was a difference between "enemies against whom a war could be declared and who declare war on us" and others who were mere "robbers and brigands." He finds this to more generally mean that the ability to recognise a *iustus hostis* – a just enemy – is the beginning of all international law, albeit in a rudimentary form (Schmitt, 2006, pp. 52–54). Despite this recognition as an existing stranger with an independent order, the co-existence of ancient empires was problematic as it lacked the idea of a common spatial order – *hostēs* can have

their own order, but it is a fundamentally unjust order that cannot be imposed on another order. Accordingly, wars between them were always waged as wars of annihilation (Schmitt, 2006, p. 55) and their security rested on absolute exclusionary practices such as great walls and concepts such as "the house of peace" in Islam, whose purpose was to separate an established and peaceful order from the chaos outside of it (Schmitt, 2006, p. 52). However, the collapse of *res publica Christiana* in the 16th and 17th century and its replacement with the developing state structure as the internal political grouping points for these newly created entities brought about not only the conclusion of creedal wars on the European continent but also the establishment of a new political order with fixed borders that allowed for a specific type of foreign relations with other organised politically unified territorial orders (Schmitt, 2006, pp. 128–129). This was achieved through the de-theologisation and neutralisations of the previously politically critical religious opinions and the transfer of loyalties of warring parties towards the newly created state (Schmitt, 2006, p. 140). Schmitt argues that thusly-established states transformed the nature of war into a "war in form", which meant that recognising one another as *iustus hostis* was possible even formally under the auspices of the *ius publicum Europeaum* (Schmitt, 2006, pp. 140–148).

Therefore, war became bracketed due to the recognition of one state by another as a distinct territorial and organised order with associated accordance of *ius ad bellum* only to thusly-organised entities. No private war was allowed, and only a war of "public against public" was possible (Schmitt, 2006, p. 158) – anyone else declaring war on a state would be treated as a criminal and not accorded the rights normally given to the opposing enemy soldiers. This led to a situation in which the political decision on enmity was taken away from the battlefield – the enemy in the European wars was identifiable by a uniform, which granted him associated rights (Schmitt et al., 2013, p. 34). When applied to the time period between the Congress of Vienna and World War I, war was typically conducted by regular and regularised armies[4] of states that did not treat one another as criminals allowing for a peace treaty as a recognised end of the war (Schmitt, 2004, p. 6). Schmitt understands this as conventional enmity that was created within the *ius publicum Europeaum* and perfected in the conflicts of the 18th and 19th centuries, with the exception of wars against Napoleon.

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[4] Possibly the most apt description of this situation can be found in Joseph de Maistre's (1962) considerations on War, Peace, and Social Order in his *Soirées de St Pétersbourg*: "Bombs were never directed at the palaces of kings; balls and displays on more than one occasion interrupted the course of battle. The enemy officer, who was invited to these celebrations, would come in order to joke about the battle to be fought on the morrow; amidst all the horror of the most sanguinary engagement, the dying man could still hear the voice of compassion and words of courtesy."

The uniform represented the regularity of the conventional enemy (Schmitt, 2004, pp. 9–10). And nature of the conflict between European countries developed into a stage, in which war could be understood as a game and the enemy an opponent of a war game.

However, it was precisely during the Napoleonic wars, when a new kind of enemy broke the cast of regularity within European warfare. The Spanish partisan against Napoleonic occupation retreated into irregularity and defended national soil against the foreign conqueror. This, for that historical moment, broke down the conventionality of warfare and re-established a real, and territorially based, enmity (Schmitt, 2004, p. 63). Partisan is in this regard defined especially through the lack of regularity – that is the lack of identification and the possibility to disperse among the population – as well as by his tellurian – territorially based – character. It is the tellurian character that roots a partisan, and consequently the real enmity, in a territory and thus limits the real enmity to the question of the defence of the group territory and protection of "hearth and home" (Schmitt, 2004, pp. 13, 20). The lack of identification means that the partisan does not have the rights and privileges accorded to conventional enemy combatants and is understood as a criminal (Schmitt, 2004, p. 16). However, another type of enmity appeared as the character of the partisan transformed from the defence of the national soil to the spreading of the international revolution. Schmitt, in this regard, argues that the re-emergence of absolute enmity in Europe and on the global scale was heralded by the creation of an international communist partisan war that was global in nature as its goal was the upsetting and change of the established order of bourgeoise control in a world-wide class struggle for communism. This enmity called the entire social and political framework into question (Schmitt, 2004, pp. 35–37). While both enmities – real and absolute – suppress the concept of *iustus hostis* for that of *iusta causa*, re-establish the criminalisation of their enemies and allow for their own criminalisation, their key difference lies in their spatial goals (Schmitt, 2004, pp. 20–21). A real enemy in the form of a partisan is defensively trying to expel a foreign conqueror that is trying to impose a way of life on a specific territory – the Spanish partisan's struggle against Napoleon's secular republicanism presents a perfect example – an absolute enemy aggressively seeks the utter end of any potential enmity on the planet by imposing their way of life on the global scale (Schmitt, 2004, p. 66).

This reveals a triple type of enmity, arguably based around the opposition to the established *nomos* from the perspective of a friend. If a *hostis* is a person, who has no part in the common way of life on a territory, then an enemy is the one who actively opposes it

or is perceived to be doing so by the political group. But even such an enemy can be accorded a right to be a just enemy without touching upon the right of the political group to decide on war against such an enemy. Arguably, this must be related to the way of life, as a just and, therefore, a conventional enemy – established only under the *ius publicum Europeaum* and only in Western Europe[5] after the collapse of *res publica Christiana* – is allowed to take the territory and has a right to impose particular and limited changes (*cuius regio euius religio*) on it. He or she does not intend to upset the entirety of the established political and social order. This was possible due to the establishment of European macro-*nomos* among Christian princes (Schmitt, 2006, pp. 86, 94) that recognised both Catholic, Protestant, and Reformed creeds as legitimate expressions of a recognised sovereign will, whose potential imposition on a conquered territory was accepted but only after an armed struggle of identified state armies.

On the other hand, the conventionality crumbles upon the imposition of a way of life outside of those areas understood as legitimate, as was the case in the aforementioned Spanish partisan struggle against Napoleon. No warfare regulation could occur, as the struggle for a group's way of life on its soil against an illegitimate foreign conquest and imposition becomes understood as the ultimately just conflict and the enemy, even if identified, has no rights. Finally, while the conclusion of a conventional enmity requires honourable defeat and real enmity expulsion from a territory, absolute enmity calls for a complete annihilation and conversion towards the order that is to be imposed without any territorial limits. Thus, the intensity of the opposition to another's way of life and its territorial limitation is what creates the typology of enmity.

It is also important for the opposite concept of a friend. As was said before, friendship and enmity are based on the highest degree of association and dissociation with a group that allows for killing and dying for such a group. If the concept of *hostis* implies non-belonging to the way of life, and if dissociation of *hostis* as enemy always includes the opposition to a *nomos* as a way of life on territory, then the concept of friend and association must include following such a way of life on a given territory in the existential sense. This means partaking

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[5] Arguably, there are other times in history when enmities similar to the conventionalism of the Western European warfare existed. Indeed, the exchange of Hector's body between Priam and Achilles followed by a truce between the Greeks and the Trojans can come to mind. Albeit, it speaks more to the rudimentary form of *iustus hostis* discussed previously than to the actual conventionality of warfare, especially since this one particular war ended in the absolute destruction of one of the warring side. Similarly, the Ancient Indian *Manusmirti* also include some regulations on conduct in war – it seems that whether these were observed only in wars between Indian princes or also during the Alexandrian and Hellenic invasions of India has not yet been studied.

in the established *nomos* as a member, considering this partaking to be just no matter the position within the division of the land and the lack of violent opposition to it. In this way, and in order to propose an unburdened label for this concept, the Latin word *socius* (pl. *socii*)[6] – follower, partaker, adherent, or ally – seems appropriate to counterbalance *hostis*.

Furthermore, if the bracketing of war, achieved under the *ius publicum Europeaum*, is necessarily contingent upon the identification of *iustus hostis*, it seems to be so because there are certain rights and privileges that such identification accords. Then, it is clear that the un-bracketing of warfare and the "spilling of the Acheron", to use Schmittian language, is achieved precisely by the lack of identification, the draw to the dark, the lack of uniform, and the disappearance between the non-fighting populace. Through this, the partisan acquires his specific character but also gives up on any rights that would guard him through regularity. Even nowadays, the lack of any real rights of the partisan can be seen in the very reality of unlimited drone warfare and secret torture bases around the world reserved for those truly fighting in the dark. It seems apparent, then, that it is the identification of the *iustus hostis*, and *ipso facto* the identification of the *socius*, that is needed for the accordance of any rights – be it rights of membership or rights in war.

In summary, *nomos* is a territorial order defined through a way of life understood as a set of various distinctions on any number of scales ranging from theological to economical, around which the potential political grouping is possible. In this way, it includes and integrates both the internal division of the land (and associated production) and the external differentiation vis-á-vis other groups. Thus, it allows for the grouping of those belonging to this order – *socii* – and those belonging not – *hostēs*. Furthermore, those that are perceived to challenge this order can be defined as enemies[7] against whom an organised public struggle is possible. Enemies can take various forms and, if understood as just, can even be accorded rights based on specific identification and regularity. Based on this definition, a challenge to a *nomos* is understood as any sort of perceived attempt at the imposition of another way of life perceived as a new point on a relevant distinction scale to be applied on a part or the

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[6] Interestingly, the original hypothesized proto-Indo-european word root for *socius* is sekʷ, meaning "to follow", in Indo-Iranian, Indo-Germanic, and Greek languages developed into words denoting friends, comrades, or allies, but with the implication of camaraderie in war.

[7] In this regard, it is worth noting that some works in the psychology of killing in war include the concept of the moral, cultural, and emotional distance that is related to the soldier's ability to kill the opposing living force (e.g. Grossman, 1995, p. 157). The potential that these factors create for the strongest level of dissociation appear clearly here – the enemy is distant from the soldier because s/he is the other on the relevant grouping points that were decided by the soldier's political unity. Any other conceptualisation of the problem – e.g. the soldier imagining the enemy within the Christian conceptual structure as a brother or within the Communist structure as a worker would make the firing of the shot impossible.

entirety of the territory that this *nomos* considers its own or an attempt at changing the principle, through which the titles of ownership are divided or maintained in this particular *nomos*.

3.3 Nomos, theory of bordering, and border walls

There seems to be an important fit between the issues discussed in the literature on borders and the presented concept of *nomos* with its associated framework. *Nomos* is a territory imbued with a sanctified way of life.[8] This territorial order presents a set of values – economic, religious, and other – and a particular division of the land (both internal and external), normally agreed upon by the members of the group and sanctified by its leadership that can be transformed into various political grouping points allowing for public struggle if challenged internally or externally. In this regard, several related discussions should be addressed to integrate the concept of *nomos* into the established literature and then use it for the particular analysis of border walls. Firstly, the question of belonging and bordering in the political sense needs to be addressed from the perspective of scholarly research on borders. Secondly, how is this issue related to the problem of identification and membership. Thirdly, what types of challenges exist when the identification is non-sufficient, and where do they originate. And finally, how these relate to the phenomenon of border walls.

As was outlined above, borders are categories of difference produced through bordering practices in a society's day-to-day life. These borders exist across societies and are produced by a myriad of social phenomena, including language, buildings, religion, culture, political opinions, and even personal gesticulation. A number of new borders have been brought about by the advent of globalisation that cross-cut with the existing borders and create new sets of differentiations (Agnew, 2005; Kolossov, 2005; Kolossov & Scott, 2013; Newman, 2006a; Sassen, 2013). However, while the key question with regards to the political nature of the old and the new borders have been answered, often with resounding

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[8] Such a conceptualisation of space and human behaviour seems almost absolutely communitarian and therefore political. Yet, read through the prism of Heideggerian thought, or more specifically Haugeland's (2005, p. 423) exegesis of this philosophy, it can provide also an important insight into the issues related to individuality. Taking the concept of *dasein,* seen as the embodiment of an entity understanding being, it is possible to agree with Haugeland that *dasein* itself is a way of life of community only later individualised through Heidegger's key concepts of anxiety, being-toward-death, and conscience. Whether this implies that the existence of a political community is a pre-requisite for the existence of a reflexive individual is left for the reader to decide. However, through the prism of Schmitt's personal treatment of *Katechon* and the existential necessity of the political for the ability to decide freely (Schmitt, 2015, p. 63), there is indeed a prospect for seeing the potential de-politisation of the world Schmitt describes as connected to the disappearance of human individuality as such.

claims of the end of nation state's political authority, it has seldom been accompanied by a specific conceptualisation of the political and often simply conflated with the issue of sovereignty. And this is precisely where *nomos*, as a concept, fits. It is not the simple existence of new differentiations that in and of itself can challenge or change the political makeup of the world – borders exist in everyday lives and have existed for centuries in human society. It is the question of whether they can be politically relevant in the Schmittian sense. It is a question of whether there are groups of people that are existentially organised along these lines of bordering and, therefore, willing to kill and die for their preservation if their existence is challenged.[9] At the same time, as Newman noted (2010, p. 773), the political ordering of society requires possession of a territory. *Nomos,* in this regard, denotes all the potential political grouping points of a society on a particular territory. However, this territory, and its maintenance, is also an inherent part of this order – it is a political grouping point of its own because, with a territorial change, there is inherently an associated change with regard to *nomos* as a way of life on the territory. Recalling Ferdoush's (2018) structurationist theory of borders, along with the debate of O'Dowd (2010) and Rumford (2012), the concept in this way provides a grounding in which everyday lives, elite behaviours, but also historical experiences play a role. *Nomos* thus allows seeing how sanctified practices in the broadest sense of the word, both those caused by historical memory and elite decision-making, are used to differentiate political members and non-members on a given territory in everyday lives. As Conversi (1999, p. 583) argued, it allows grounding the boundaries in practices by relating them to content.

This leads directly to the second key issue and the question of the identification of members and non-members. In an extreme case when the decision to fight an enemy *in concreto* has been taken by a political group, there are two absolutely crucial suppositions. The first one is the implicit knowledge of group membership. This means that the group must know at the moment of this decision who are its friends or *socii* that are making the decision, the concrete people that will kill and die in the struggle against the identified enemy. The second one is addressed by Schmitt in his *Theory of the Partisan*, and concerns the issue of identifying the enemy. The conventional warfare of *Ius publicum Europeaum*

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[9] This is in a way similar to Stein Rokkan's aforementioned categorisation of borders into economic, cultural, and military-political, in which the third type was concerned with the prevention of movement of people, while the other two dealt with products and ideas respectively (Hlousek, 2004). Albeit, *nomos* integrates these three types of borders into an ordering principle based around the overarching issue of membership. Every Rokkan's border type can within this concept become a decisive bordering point.

normally expected the opposing forces to be properly identifiable in order to accord rights to them. As the re-emergence of the partisan and its growth towards the global revolutionary war(s) concluded the era of the visibility of the enemy, the issue became much more potent. In the 21ˢᵗ century, this could have been seen in the struggle against various clandestine terrorist organisations around the world and even more explicitly in 2014 with the Russian invasion of Ukraine and what has been termed by some as the advent of the so-called hybrid warfare.[10] The lack of identifying features served here precisely the purposes described by Schmitt – it allowed the participants the escape from the normativity that exists in the modern international legal system bringing them both benefits of uncertainty but also repercussions beyond those normally associated with their actions. However, while the decision on a struggle against an enemy is indeed an extreme situation, these two suppositions reveal a much larger picture. The accordance of rights and duties associated with the membership in a *nomos*, of being a *socius*, as well as the lack thereof associated with being a *hostis,* is inherently based on the group's ability to identify. With regard to the border literature, this must be understood as the fundamental reason for the existence of bordering practices in general. There can be no borders and, therefore, no human grouping of any kind if there is no function of differentiation that allows for identifying those on the inside and those on the outside.

In terms of political groups, this goes even further – while it also means that there cannot be any war if there is no certainty on membership and enmity, and therefore without identification, there can be no political grouping in Schmittian terms, there are also more prosaic reasons. Using present-day examples, elections, state positions, ownership, law, and more, would make little sense if identification of state members would not be possible. It is not that they would be practically impossible; it is that they would be non-sensical as they are all based around the need to ensure the identity of a member or non-member. One may argue that the lack of state membership identification would not bring any severe changes, as evidenced by a large number of expatriate communities worldwide. However, this is a rather straightforward case of identification of a *hostis* as a guest. Instead, it is necessary to

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[10] While this term has been given a wide recognition in both the public and the political discourse, it is necessary to mention that it still lacks a proper conceptual treatment (see Bahensky & Kofron, 2016 for more on this topic). Apparently, the issue of conceptual clarity of "hybrid warfare" is not among the topics of this text, nevertheless, with the line of argument made here, it seems clear that the issue of hybridisation is nothing more than shedding of the remainder of the conventional enmity that defined interstate warfare in the previous centuries in favour of politization of all domains of engagement and as such is neither particularly new nor necessarily innovative (see Raitasalo, 2017 for more on the history of the concept).

imagine a situation where no one can be identified as belonging or not belonging to a given state. Obviously, the state would be an absurd proposition in such a situation. In consequence, the differentiation of *hostis* and *socius* based on a sanctified way of life as the content of the bordering process conducted on a particular territory is necessary for the existence of any political entity whatsoever. At the same time, any processes and practices that lead to difficulties in the identification of members and non-members can be problematic as they can result in the withering-away of the given political entity's *nomos*, since, even if not violent, they can at least pose challenge to the established titles of ownership but also to the application of the law, creating groups to whom the law applies and others to whom it does not. This can eventually lead to the heterogenization of the medium and, therefore, the potential collapse of the established *nomos*. Worse, if violent, they can result in an armed struggle and a complete change to the territorial component of the *nomos* or its utter replacement with another one.

These challenges, however, are various. As was seen with the issue of enmity and the way it opposes the established or attempted *nomos*, there are various forms that it can take. This is important because it also relates to what methods are used to challenge it. With conventional enmity, the playing field is clear – the enemies are equal, and their combat is just. The ability to identify them as such is what gives them the required rights and obligations. Here, the identification serves as a way of protection, and while an identified conventional enemy provides opposition to the established *nomos*, he or she is being counted within the *nomos* itself.

On the other hand, beginning with the real enmity, the method of warfare changes, and so does the role identification plays in it. Taking Schmitt's treatment of the Spanish partisan into account, it is clear that the conventionality's collapse is related to a major degree in the identifiability of the enemy. And this is even more true with the appearance of the absolute enmity – when anyone and everyone can be a potential enemy to a given *nomos*. Therefore, as the challenge to the *nomos* increases, the ability to identify the enemy seems to disappear. This logic is based on a simple directed relationship between a desired declared enmity of a certain political group against another group that seeks to challenge the established way of life on the entirety or just a part of a given territory. In their essence, these three types of enmity thus present different grades of violent challenge to *nomos* from organised opposing groups and can therefore be found by looking at the way their violent struggle questions the *nomos* – be it on the part of its territory, the territory as a whole, or

even globally. However, the enemy is only a *hostis* in its most extreme form of negation.

But not all *hostēs* need to be understood as enemies – on the contrary, a stranger can always be accommodated as a guest and even transformed into a *socius* if appropriate conditions are met – the adoption of the way of life on the given territory by a *hostis* and his/her incorporation into the land-division. This assumes that the sanctified way of life is something that can be adopted. Apparently, if the membership in a *nomos* is defined in terms of racial profiling or other non-changeable characteristics, there is no way for a hostis with these features to be accommodated as a guest, much less assimilated as a socius. This approach by a *nomos* would be identical to pathological homogenisation as described by Rae (2002, p. 298).[11] With this in mind, can a *hostis* that intends to become a guest and potentially a *socius*, become a latent challenger of the *nomos*?

Arguably, this should be only possible in two specific situations. Firstly, such a *hostis* as a guest is not properly transformed into a *socius* and always remains in the form of a stranger on the territory. This is not necessarily only caused by the differences in the performative way of life but also through the failure to assimilate the *hostis* into the division of the land – as such, the stranger, even if linguistically and culturally behaving as a *socius*, remains fundamentally opposed to the division of land by the sheer lack of his or her ability to participate in it properly. Apparently, the failure to transform a *hostis* as a guest to a *socius* can be attributed to both the incoming *hostis* as well as to the receiving *nomos*. The issues related to the integration and assimilation of immigrants into receiving modern societies have been treated by several researchers (e.g. Heckmann & Schnapper (2003) or Alba & Foner (2015)), who generally highlight the same problems. As such, the idea of economic and cultural integration and associated difficulties is nothing new and has been discussed in policy and academia for decades, if not centuries.

However, the novelty in this approach is the second situation of a *hostis* non-violently challenging the *nomos*, which is the lack of identification. Through the prism of the discussion above, the lack of identification of *hostis* as a guest intending to become a *socius*, immediately establishes the conditions of the situation just described. Without the incoming society's knowledge, the *hostis* remains a stranger, never becoming a guest and therefore

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[11] In this regard, it is possible to argue that the *nomos* approach would also partly help to analyse the way Rae's state-builders formulate and resort to pathological homogenisations. It is possible that these particular types of homogenisations are caused by a sanctification of a specific set of unchangable features selected from the exisiting societal way of life and then applied to the entire pre-existing *nomos* – redefining the original dichotomy of hostis-socius in a new way and resulting in violence.

never being accorded rights and obligations normally given to guests. Thus, unidentified *hostis* remain outside the territorial order, if not through the inability to adopt the way of life, then through the issues related to the fact that such a *hostis* exists outside of both the political and legal order and, consequently, the division of the land. Inevitably, the presence of a large number of unidentified *hostēs* creates a situation in which the law is not properly applicable because the medium to which it should apply is no longer homogenous – there are groups to whom the public law of the *nomos* applies and those to whom it does not – which creates the conditions for the state of exception. In the worst case, *hostēs* can establish their own smaller degree territorial orders within the larger *nomos*, which can, in the most extreme situation, lead to the ultimate declaration of enmity either from the receiving society or from the *hostēs* thus organised. For illustration, several empirical cases can come to mind, some of which are analysed later. In Europe, the issue of the so-called parallel societies has been in the public discourse for years – and only in the last three years three major European democracies – France (DW, 2020), Austria (Reuters, 2018), Denmark (Timsit, 2018) – created several laws that specifically focus on the issues of the creation of separate territorial orders on their territories.

Interestingly, these cases are often a combination of the two situations – they often include large un-assimilated groups of *hostēs* that are identified as guests and reside legally within the *nomos* that also shelter unidentified groups of the same background. In many cases, this miniature *nomoi* gave rise to violent opposition in the form of terrorist attacks on the existing overarching *nomos* of the receiving society – the Brussels borough of Molenbeek can serve as an illustration (Traynor, 2015). On the other hand, in the US, the issues with undocumented immigrants are partly tied to the issues with the job market and the consequent problems for under-educated or low-skilled American citizens (The United States Commission on Civil Rights, 2010, p. 3), which are in turn reflected in the rising tensions within the already existing *status quo* of the American *nomos*.

All in all, there are several ways a *hostis* can pose a challenge to a *nomos*. Those that are violently opposing a *nomos* are considered public enemies and are normally fought and repulsed as such. In this regard, the problem of identification is crucial as it serves as the key grouping principle – the *nomos* needs to know who opposes it so it can mount an armed struggle against this opposition. However, those that are not violently opposed to a *nomos* can also challenge it. In this case, the lack of identification of who is a stranger to a particular *nomos* allows for the creation of separate *nomoi* and the lack of the applicability of the public

law.

Finally, all these three debated points are directly and significantly tied to the questions of border barriers. Apparently, the very nature of barriers as physical objects positioned in space designed to prevent unlimited access has a direct relation to the issue of membership, identification, and order. Going back to the original discussion of the four various streams of thought about their construction on borders, it is *nomos* that provides the key point of reference for all four of them. Any protection of territory, any defence of the people, any maintenance of wealth, any securitising speech act of the border is predicated upon the sharing of the same underlying understanding of these issues, which is, in turn, a part of the political existence of the given entity in terms of *hostis – socius* dichotomy. Undocumented illegal immigrants in the US can only be framed as a problem if there is an overarching understanding of American legality as essential for establishing a fair playing ground for economic activity. Construction of a sand berm in the middle of the Saharan desert to prevent the Sahrawi guerrillas from carrying out attacks on the settlements only makes sense if the cut-off territory is taken as a part of the Moroccan *nomos* and is consequential in identifying the violent enemy trying to take it as its own. Hungarian securitising discourse about the dangers of Muslim immigration and the need to protect Europe has meaning only if there is a particular and resonant conception of strangers and members within the Hungarian society. In all these cases where a border barrier has been constructed, the barrier presents an attempt to reinforce the *hostis-socius* dichotomy in order to maintain the established or establishing *nomos*. In a way, it is the hardening of the theoretical force field that *nomos* establishes upon its creation for various reasons. Identification of who is coming is what lies behind all of them, albeit for purposes animated by different aspects of the political order. At the same time, all these identifications are intended to ensure that a given political order is maintained in terms of territory, internal land division and a *hostis-socius* dichotomy.

Consequently, the construction of a border barrier is a bordering practice intending to separate politically relevant categories of people for the purposes of rights and duties accordance (including the rights of an enemy) and to ensure the control of a particular territory. The reasons for its construction are based on the challenges presented to the various aspects of *nomos* – either violent or non-violent. The violent challenges to the *nomos* are associated with the attempts to identify the hostis as an enemy who needs to be fought and repulsed to maintain or establish the *nomos*. On the other hand, the non-violent challenges

are generally associated with the ability of the *nomos* as a political unity to remain one and are therefore related to the identification of *hostis* as a guest needed for the applicability of law (assignment of rights and duties of guests) and maintenance of the internal land-division. In other words, the ultimate conclusion of this theoretical part is that different *nomoi* (mostly states in modern times) construct border barriers when their way of life on territory, or its aspects, is challenged, violently or non-violently, by a hard-to-identify or a hard to keep at bay *hostis*. The necessary next step is to describe in closer detail the relationship and the interaction between the various challenges to *nomos* as the independent variable and the construction of a border barrier as the dependent variable and select case studies on which this relationship is tested.

4. Method and case selection

Now that the conceptual framework of *nomos, hostis* and *socius* is defined, it is necessary to specify how to find it in the empirical terrain. The starting point should be the definition used in the previous chapter that outlines *nomos* as:

a territorial order defined through a way of life understood as a set of various distinctions around which a potential political grouping is possible.

Dissecting this definition into its constitutive parts shows which concepts need to be tracked empirically – territorial order and way of life.

The territorial order is understood as the concrete and entire part of the land that an administrative authority (in our case, the state) seeks to control by military or civilian means. The control is legitimised and enforced through the application of a set of culturally and historically rooted formal and informal performative procedures expected from both the inhabitants and the administrators of the said territory to carry out in order to display their adherence to the given administrative authority and allow participation in the division of the land. In tangible terms, it is the combination of values, historical memory and symbolism, daily performative actions, religious practices, and administrative measures whose carrying out attests to the membership of an individual in the territorial order. As a sort of Husserlian eidetic reduction approach, the combination condenses the essential features of the ideal member of such an order. Practically and as used in this work, *nomos*, as the territorial order imbued with a way of life, is found by looking at a particular territory that the state (as the

administrative authority) manages *de facto* and seeks to manage *de iure* and by establishing the set of values and behaviours that are understood as crucial for membership and taking part on the internal division of the land (i.e., be included in the economic life). This includes the investigation of the importance of language, religion, and important historical events that are woven into the current public discourse through both legal (constitutional), administrative and social facts and actions. A *socius* takes part in these essential features, while a *hostis*, in consequence, is an individual that does not share in this way of life on the given territory, and an enemy is an individual that, as a part of a different *nomos,* violently challenges its territorial or performative part.

Moving on to the issue of challenges to *nomos* thus defined, as was mentioned before, they can be either violent or non-violent. The violent challenge is much more explicit in that, in practice, it entails the actual use of force or a threat thereof against the administrative authority of the opposing *nomos* in the implementation of a new administrative authority on a part or entirety of the territory already belonging to or being claimed by this opposing *nomos.* In terms of enmity, the challenge at hand, with regard to the issue of border barriers, must be conducted by a group of real or absolute enemies (i.e., *hostēs* in the most extreme form) that do not respect conventional standards of war (e.g., do not wear uniforms) and carry out covert activities that make their members hard to identify by the opposing group. For illustration, the definition would include a politically active group living in a trans-border region without having its own state and running a violent rebellion against one of the states where it exists to achieve statehood. At the same time, it would include an extremist organisation with global goals (e.g., communist or Islamist) that conducts an armed struggle against several states, intending to replace them all with one universal *nomos*.

On the other hand, the non-violent challenge is murkier. There might be no actual declaration of enmity nor any particular intent by a group to develop a separate administrative authority. As was said before, one of the key characteristics of the non-violent challenge is the presence of a large number of *hostēs* as guests on the territory of the *nomos* that either cannot or are not willing to take full part in the *nomos* through assimilating into its way of life and participating in the internal division of the land. The easiest way of tracking such a situation empirically seems to go through assuming that it creates tensions with the population of the *nomos* that are not politically violent but can be seen by their consequences in the legal and/or public spheres. Consequently, such a challenge exists if a particular group of *hostēs* as guests or as unidentified guests resides within a *nomos* and is

committing illegal activities (both violent and economic crimes), is a relevant part of the public discourse (e.g., their presence is discussed as a political problem during elections), or is portrayed or understood as undesirable by the population of the *nomos* (e.g., protests, public calls, widespread targeted violence against members of this group). In practice, this means that such a challenge would be tracked by criminal statistics (e.g., illegal work), political statements, public opinion polls etc.

With the definition of the *nomos* used as the underlying referent (the thing to be protected), and violent and non-violent challenges (things to be protected against) as the independent variables, it is necessary now to operationalise the border barrier construction as the dependent variable (the thing to be protected by). In this regard, a border barrier is a man-made object stretching continuously along the border (or its part) that makes the movement across more difficult or even impossible (Rosière & Jones, 2012, p. 222). Therefore, the executive decision of the administrative authority (i.e., the state) to build such a barrier and/or the construction itself is expected here as the consequence of the existence of violent or non-violent challenges to the *nomos*. Building on the illustrations above, one can imagine a state that is threatened by a violent rebellion by a cross-border ethnic group that seeks to secede or a violent transnational terrorist organisation seeking to create a new global territorial order. The state in this scenario finds it difficult to identify and wage war against members of these groups as they do not conduct open and conventional warfare. It, therefore, constructs a border barrier to reinforce its existing territorial order and subject the two groups to identity checks if they want to cross peacefully (i.e., allowing for their identification as enemies) or publicly declare their enmity by attacking the barrier. At the same time, it allows for better control of the territory behind the barrier and, therefore, maintenance or establishment of order. In another example, it is possible to imagine a state with an immigrant minority group whose members arrive in the state's territory both regularly (i.e., through proper border checks) and irregularly in large numbers and follow a different religion, speak a different language, work in an illegal manner, commit a high number of criminal acts. This state would build a barrier to ensure that the group's incoming numbers are regulated and that only those with specific performative history (i.e., people with the potential to integrate) are allowed to pass.

As a final note, in practice, there might be several border barriers constructed by a single administrative authority on a given border over a sufficiently long period. Hence, if the barriers are not built in a continual fashion as a part of the same process of *nomos*

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protection, only the last construction is tracked. This is done in order to avoid the analysis of the construction of, for example, the "Iron Curtain" barriers[12] built by central European countries, followed by the analysis of the anti-immigration barriers built by the same countries much later.

As for the method, the way these three elements interact is studied by the application of the causal process tracing method described by (Collier, 2011) and by Blatter and Haverland (2012). The method was selected in order to analyse the temporal interplay between the violent and non-violent challenges, as operationalised above, and the protection or establishment of *nomos* in the process resulting in the construction of a border barrier. It starts with describing the situation before the bulk of the process started and outlines how the *nomos* was framed *status quo ante*. As stated above, this includes delineating a particular territory that the state manages or seeks to manage (if put into question) and setting out the set of values and behaviours understood as crucial for membership in the given society and economy. Then, the two types of challenges are tracked by looking at the actions and reactions that changed the situation of the *nomos* – by putting it into question territorially or with regard to the way of life, either violently or non-violently. If the argumentation advanced here is correct, the analysis should present two specific "smoking guns".

For the violent challenges, this smoking gun should be framed by a concrete act or statement by the violent group designed to establish a new administrative authority on the part or entirety of the territory with an associated way of life curtailed by the construction of a border barrier.

For the non-violent challenges, the smoking gun should come in the form of either a rapid increase in the number of irregular crossings through the border of people that are in one way or another not associated with the *nomos's* core group or in the form of an already existing minority group with continued irregular cross-border inflow with an increase in the number of illegal behaviours, conflicts with the domestic population, or establishment of separate societies on the territory. Both these issues are expected to result in the construction of a border barrier.

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[12] Although this is not the main topic of the analysis in this work, the Iron Curtain border barriers arguably also contain the logic advanced here – albeit in the opposite fashion. It would seem that they were a part of the conventional defence against the potential advance of enemy armies from the West, but at the same time a tool for the identification of those "not wanting to share on the common" of Socialism/Communism. Consequently, they served as a way of identification of anyone trying to leave a given socialist country without proper permits. Such an attempt was in a performative way a declaration of being a *hostis* to the socialist *nomos*. Arguably, it was even understood as the declaration of enmity as an individual wanted to join the hostile forces across the border.

Once these are evaluated through a narrative text tracking the development of border barriers through the process-tracing method, alternative explanations are considered based on the temporal development of associated indicators.

Starting with economic stream, the GDP per capita difference is tracked over the years, starting five years before the narrative text in order to track for any abrupt changes. Here, the expected relationship is that there should be a considerable increase in the disparity in the years surrounding the barrier building. Additionally, in order to evaluate the protection of wealth argument, the general social spending in the barrier-building country is tracked as well, when the data allows. Data for GDP is acquired from the World Bank (The World Bank, 2023), while the social spending data is tracked as a percentage of GDP and comes from the International Food Policy Research Institute dataset (2019), particularly social protection. As with GDP difference, the expected relation to border hardening is a significant increase in spending in the years prior to the construction. Finally, for the biopolitical component of the economic stream, the international immigrant population in the country is tracked. Unfortunately, only available data from the UN track the developments in five-year windows. Nevertheless, the five-year horizon allows for checking for any significant changes in the period, assuming that such a change would occur when a border barrier was constructed (The United Nations, 2020).

Secondly, the defensive stream is similarly tracked through two variables. First, the general defence budget of the barrier-building country is evaluated. However, assuming the defence budget does not normally cover barrier building, the expected relationship supposes a drop in the defence spending preceding the construction. This argument stems from the research claiming lower income for the defence industry as a reason for barrier building – consequently, a significant drop in the national defence budget should imply lower revenue for the defence industry. The defence expenditure data is sourced from SIPRI (2023). Second, country terror attacks in the barrier-building country are tracked using data from the Global Terrorism Database (National Consortium for the Study of Terrorism and Responses to Terrorism, 2022). The expected relationship is that the barrier is constructed after a severe increase in the number of terrorist attacks in the country in the previous year or a long-term growth in the last five years.

As for the sovereignty stream, it is arguably difficult to track the temporal waning of national sovereignty outside of monitoring the loss of decision-making powers of the central government or its lack of monopoly on the legitimate use of violence. Nevertheless, suppose

the waning happens within the process of multiple globalisations that have been taking place since the second half of the 20th century. In that case, it is possible to negatively correlate this waning with the increase in total globalisation of a country. Consequently, the rapid jumps in globalisation would lead to the governmental need to reinforce the perception of sovereignty and construct a barrier. In order to track this relationship, the KOF Globalisation Index is used for each given country (Gygli et al., 2019).

Finally, the discoursive stream appears to be the most difficult to operationalise for an alternative explanation. While a full alternative analysis of the threat discourse development in given countries is beyond the scope of this dissertation, it is possible to argue that any overarching discursive themes, if relevant for barrier building, would be discovered in the texts used for the narrative text. It is assumed that the preceding arguments would use an overarching discourse that justifies the construction of the barrier.

Based on these considerations, several different types of cases are needed for a thorough investigation of the concept. Apparently, these should all be cases where a border barrier was constructed and thus allow for the tracking process.

The first category of cases should entail those where the *nomos* is being established or maintained *vis-á-vis* a violent and hard-to-identify opposition. Micko & Riegl (2022) analysed this type of cases, and their selection here is an altered version of those published there. The case category is then subdivided into two kinds of cases. One of these kinds includes cases in which the opposition comes from a real cross-border enemy – i.e., one tied to a part of the *nomos's* territory and seeks to administer it. The second kind is one when the *nomos* is facing an absolute enemy – i.e., one that seeks the complete annihilation of the given *nomos* (and possibly other *nomoi* on the global scale) – infiltrating its territory from across the border. It is important to stress that both types of enemies must in this case be carrying out non-conventional operations, i.e., participate in guerrilla style warfare or terrorist attacks. From the perspective of the particular cases, it is reasonable first to identify the region, where there is a larger number of border barriers, as well as conditions allowing for the non-conventional warfare and existence of multiple claimed *nomoi*. It would also be useful to identify cases with newly establishing *nomos*. Regionally speaking, states in the Middle-East and North Africa (MENA) region appear to have built the largest quantity of border barriers since the beginning of the millennium (Carter & Poast, 2017; Hassner & Wittenberg, 2015). At the same time, the region has the history of post-colonial state formation in the 20th century, as well as existing civil wars, active terrorist groups, and a

particular religious and cultural context, specifically the Muslim *ummah*. Such a combination offers sufficient empirical background for tracking various overlying challenges states' territorial orders can face. In order to analyse the way a border barrier is employed in creating a claimed territorial order, two cases in the region seem very interesting. The first one is the case of the Western Sahara War, in which Morocco faced the Sahrawi Polisario Front in a struggle over the control of the Western Sahara territory after Spanish decolonisation. During the war, Morocco constructed a series of border barriers that were used in countering Polisario units. This case can offer an illustration of the impact that a border barrier has on establishing a new territorial order on a new and previously uncontrolled territory while struggling against an enemy claiming this territory. The second case – and one that is very often analysed ever since its construction (e.g., Amir, 2011; Busbridge, 2017; Falke, 2012; Usher, 2005) – is the case of the Israeli border wall constructed between 2003-2006. The barrier was constructed after the beginning of the Second Intifada and a string of terrorist attacks in the country. The Israeli case offers a more extreme situation of a contested *nomos* establishment over the entirety of the territory as it is part of a longer conflict over Israeli and Palestinian statehood. From the perspective of the order maintenance, the region hosts possibly the most infamous case of the globalised absolute enemy in the form of the so-called IS, with its goal of establishing a new Caliphate and recruiting fighters from all around the world. For the purpose of this study, an ideal case would therefore include the attempt of IS to infiltrate an established state's territory from the neighbouring state in order to establish its own administrative authority. The criteria are filled by several countries in the region – such as Tunisia, Saudi Arabia, Jordan and Turkey. Still, only in Tunisia was there a direct attack by the IS seeking to seize territory and set up an administration. Tunisia, therefore, seems to be the best case for analysis. Another relevant case in this regard is also Turkey, where there was an interesting interaction between the local and the global. The interaction was present in the way the IS operated and carried out attacks in Turkey, while also being engaged in a fight against the Kurdish Workers' Party that, at the time, was maintaining a fragile peace with Ankara. Finally, all these cases involve interactions between state and non-state actors that are acting either as real or absolute enemies.

The second category includes cases where a border barrier was erected, and no violent opposition to *nomos* was present. As was said before, these cases should include situations with a major rise in irregular crossings foreign to the *nomos's* way of life or those

with continued irregular cross-border inflow and an increasing number of illegal behaviours. There are several cases in the last two decades in which these types of flows played an important role – for example, the Indian border barrier with Bangladesh, Spanish exclaves Ceuta and Melilla in North Africa, the American border wall with Mexico, and multiple longer or shorter barriers erected all around Europe during the 2014 migration crisis. While most of them have been widely covered in the media and in academic literature, there is possibly none discussed more extensively than the American border wall with Mexico (studies other than those already cited include: Díaz-Barriga & Dorsey, 2020; Dorsey & Díaz-Barriga, 2010; Garcia, 2019; Guerette & Clarke, 2005; Roche, 2016). Outside of the fact that the wall has been used as a go-to-case for a wide range of academic works, it also provides a typical case of a minority with regular and irregular inflow and with securitised behaviour within the US. If the theory advanced here is correct, it should therefore provide a clear process of how a non-violent challenge to the territorial order leads to the construction of a border barrier. Similarly, the case of Hungary offers an instance of a large influx of people of different origins compared to the Hungarian population without any violent actions conducted against the country. In this regard, the Hungarian case allows for the analysis of an irregular flow without any major presence in the destination country. If the logic advanced here is correct, the analysis should provide a description of the process in which the people crossing the Hungarian borders were hard to identify and were in their performative way of life different to the Hungarian *nomos*. Finally, the case of Indian-Bangladeshi borders limits the number of categories of differentiation. It thus allows for tracking if the inability to identify had anything to do with the categories present. In essence, the only differentiation category in borderlands between the Indian Northeastern states and Bangladesh is the Hindu-Muslim divide (outside of administrative differentiation). At the same time, the case sits between violent and non-violent cases, as there were deadly clashes between the two countries' border guards. In this regard, the proposed theoretical explanation is considered confirmed if the Hindu-Muslim dynamic combined with the inability to identify comes into play in the process leading to border barrier construction. However, if in any of these three cases, there is no apparent difference between the way of life of the incoming migrants or there are no major state-level issues of their integration into the internal land division, the theory is considered unable to explain the case.

In terms of data used for the analysis, a dataset of articles for each case was established by using the Factiva database. The database was searched for articles based on a

predefined set of terms that contextualise the issue discussed here. It can be argued that such a contextualisation would already impose a given structure on the examined data. However, it was assumed (and later confirmed during the analysis of years with minimal data) that if tracked phenomena were minimal, there would not be any relevant articles found. Therefore, no process could be tracked. At the same time, the alternative hypothesis evaluation, stemming from other identified streams as described above, allows for independent evaluation of the data produced by competing explanations.

For the case of Morocco, the following terms were searched: "morocco and sahara and (barrier or wall or fence or berm)." The search period was from 01/01/1975 to 31/12/1992. This research returned 227 articles. For the Israeli case, the following terms were searched: "(border and (fence or wall)) and (((palestinian or arab or muslim) and (terrorism or terrorist attack or criminality or violence)) or (arabic and identity))." The search period was from 01/01/1999 to 31/07/2003. This research returned 2456 articles. The terms had to be more specified compared to Tunisia, Morocco and Turkey as the produced number of articles was in the tens of thousands for a simpler search. For the case of the Tunisian barrier with Libya, the terms searched were: "tunisia and border and (barrier or wall or fence)" with the date limited to the time between 01/01/2013 and 31/12/2018. The search produced 327 articles. In the Turkish case, the searched terms were "turkey and border and (wall or fence or barrier)." The searched dates were between 01/01/2013 and 31/12/2018, with the resulting number of articles being 999. The case of the US was arguably one with the most publicity, with a simple search structure returning hundreds of thousands of articles. Finally, the structure used was: "(border fence) or ((latino or latin or mexican) and (criminality or illegal work or violence)) or ((spanish language) and (misunderstanding or inability to speak or official language or identity)). The results were filtered for the dates from 01/01/1989 to 31/12/2006. The final count of the articles analysed was 7,797. For Hungary, the entered structure was "(constitution or (identity or identification) or (christianity or christian) or (islam or muslim)) and ((territory or crown or Saint Stephen or borders or community or fence or wall) or (criminality or criminal))." The temporal filter was set to dates between 01/01/2010 and 31/12/2015. The search produced 1709 articles. Finally, in the case of India, the searched terms were "(india and bangladesh) and (border and (fence or barrier or wall)) or ((immigration and (criminality or hostility or violence) or (border and (tensions or clashes or conflict))))" set between 01/01/2000 and 31/12/2007. The results of this search were 2913 articles.

The produced search results were then manually combed for duplicities, and a smaller subset of articles for analysis was selected – the subsets can be found in the attached data file. Once a subset was produced, the analysis was conducted by establishing the nomos and then iteratively describing the various developments in the relevant articles. In this regard, there is a potential for a personal bias in selecting the articles. However, the sample was based on the operationalisation defined above. Furthermore, the author would argue that while the individual described events could vary from analyst to analyst, the identified trends and their temporal coincidence would be similar, if not identical.

In addition, the proper application of the process-tracing methodology also calls for the alternative explanation analysis as defined above. Therefore, once a case is analysed from the perspective of the advanced theory, the four alternative streams are used to see their explanatory value and how it changed during the tracked period.

5. Case studies

5.1 Morocco and Western Sahara

5.1.1 Nomos-focused Process-tracing

(This chapter is re-published from Micko & Riegl (2022) *with minor changes)*

The Western Sahara dispute dates back to 1957 when Morocco officially raised its historical claims against Spain at the UN. With the ongoing decolonisation and some successes of armed struggles for independence in the next two decades, some representatives of the native people of Western Sahara, the Sahrawis, established the Polisario Front, an organisation intending to end the Spanish occupation and declare an independent state. In June 1975, King Hassan of Morocco took the dispute to the World Court in Hague, which found some of the Moroccan claims valid but ruled that the people of Western Sahara should settle the issue of sovereignty through a referendum organised by Spain. In November, Morocco organised a march of some 350 000 unarmed people to Western Sahara, and Spain conceded the territory's administration to Morocco (in the north) and Mauritania (in the south). Finally, in December, Morocco sent its military to take control of the territory (Cutler, 2008). Following these steps, the Polisario Front declared the Sahrawi Arab Democratic Republic in February 1976. Here, both Morocco and Polisario Front made clear their desire to set up their respective *nomoi* on the territory of Western Sahara, claiming the

bordering rights of the territory. Especially the unarmed march from Morocco shows the settlement intention of the Moroccan government, which is, in its essence, associated with the question of "what way of life" should prevail on that territory.

The scene was set for war as the three sides clashed over the territory. The Polisario front started to wage a guerrilla war against both Mauritania and Morocco. In 1979, Polisario and Mauritania signed an agreement ending Mauritanian claims to the territory. Morocco responded by claiming the relinquished Mauritanian territory. Between 1975 and 1980, more than 5000 Moroccan soldiers were killed (Mullenbach, 2019). Polisario's guerrilla tactics were successful in tipping the scale in their favour through the use of irregular means, such as speedy and unrestrained transportation across the unpopulated countryside in Western Sahara while harassing and inflicting heavy casualties (reaching 100 soldiers per month) on the Moroccan forces (*The Western Sahara Conflict: Morocco's Milestone(S)*, 1979, pp. iii–iv). These developments showcase Morocco's initial inability to enforce internal bordering on the territory they claimed. In particular, it shows that it was impossible for them to establish any order as the military occupation of the territory proved inefficient in the identification of the Polisario fighters as enemies. The lack of identification allowed Polisario to expand the challenge outside the territory of Western Sahara, and the guerrillas managed to wage war on the "core" Moroccan territory, such as during the battle of Draa valley, where they claimed they had killed as many as 1000 Moroccan soldiers (Roberts, 1980).

In early 1981, the Moroccan leadership decided to build a 640 km long sand wall sporting gun turrets and surveillance around what was termed "useful Sahara", enclosing the triangle of Smara, Boujdour and Laayoune. This decision came after years of heavy casualties stemming from the impossibility of identifying the enemies due to the underlying failure to establish a *nomos*. As soon as the border barrier was in place, Polisario guerrillas limited their attacks on Moroccan outposts outside the wall – such as Guelta Zemmur in October (Markham, 1981). The lack of conflict allowed for the free traffic flow between these cities and economic development. Furthermore, in 1982, the border barrier was further improved with new sensors to detect intruders. With no attacks occurring throughout the next fifteen months and with major governmental economic projects including the settlement of administrative and medical personnel, the barrier achieved the bordering intention and established *nomos* on the controlled territory by disallowing Polisario fighters to operate without clear identification of their enmity (Cowell, 1983; Ghiles, 1983; Gupte, 1982).

The established *nomos* around the "useful" Sahara was expanded in 1984 with military push east and southward and accompanying wall extensions protecting the territory paralleling the Algerian border and the trade route between Smara and Hawza (Kamm, 1984). These extensions in the heart of the desert changed the way the locals carried out their lives as it essentially made the traditional camel caravans impossible. Furthermore, the economic development funds from Morocco allowed for the construction of schools, industry and housing for those of the locals that wanted to settle. Above the economic development itself, the military side of the Polisario guerrilla tactics relied more and more on conventional means such as heavy artillery and tanks (Schumacher, 1984). All these factors show the impact of the barrier on the establishment of *nomos* not only as a territorial title but also as a way of life. While the construction of the wall forced Polisario to become much more conventional in their tactics, it also forced the locals to adopt a more settled life, supported by funds from the Moroccan government.

In 1985, Morocco was continuing the *nomos* establishment on the territory of Western Sahara – in January, it declared Goulimime, a city within the internationally recognised borders of Morocco, to be the capital of the controlled part of Western Sahara ("Capital of Moroccan Sahara Named," 1985), while in June, it pushed the wall further south ("Moroccan Army to Extend Wall Protecting Them from Polisario Guerrillas," 1985). Reportedly, the section finished in August 1985 enabled the Moroccan military to track and destroy the enemy on the other side of the wall more easily (J. Miller, 1985). These developments led to the expected change in the nature of warfare. Since the construction of the first wall in 1981, no attacks behind the wall have been reported. Morocco's ability to identify the enemy through border barriers was vital in establishing both the combat line, where the enemy was fought, and the order behind it. This is exemplified by the fact that in 1985 the Moroccan officers behind the wall were no longer even carrying handguns, while Polisario forces, now unable to blend in with the population, continued to rely even more on tanks and surface-to-air missiles than on jeeps and fast movement (Dickey, 1985). In addition, this change was also acknowledged by the Polisario leadership in August 1985 (Stolz, 1985), even after conducting a successful attack on the wall claiming to kill 270 soldiers and seizing up to 100 military vehicles ("Guerrillas Claim Major Victory in Western Sahara," 1985).

In 1987, Morocco started to build the last stretch of the wall to deny Polisario fighters access to the Atlantic coastline and, thus, prevent them from mounting attacks against

international fishing fleets (Randal, 1987). Here, the construction of Moroccan *nomos* on the Western Saharan territory was completed, as they not only successfully managed to identify the enemies in order to wage war against them but also ensured the security of *hostis* as guests, in the form of the first international traders and later on international tourists. During this entire time, Morocco continued to allocate resources to the territories under its control and foster foreign investment in tourism ("Completion of the Latest Desert Wall System," 1987). Reportedly Morocco invested more than 1 billion USD into the Al Ayoun area alone and built more than 24 schools, 2100 km of new roads and a new port (Cody, 1988). In order to avoid being walled out even further, Polisario mounted several attacks on the construction sites (MacDonald, 1987a) in an attempt to gain ground within the area that was soon to be controlled by Morocco. After its completion, the sources inside Polisario claimed that the harassment tactics from the phase before 1981 would return in the form of attacks on the wall itself, draining the morale of the Moroccan forces (MacDonald, 1987b). However, the demonstration of such an attack in July, which reportedly claimed the lives of 275 Moroccan soldiers, had no lasting impact – the return to unidentified enmity was no longer possible for Polisario forces as Morocco has successfully enforced its *nomos* on the territory in question.

In 1988, Morocco and Polisario agreed to a cease-fire and a referendum on the territory's future that should have been until that time administered by the UN and guarded by a peacekeeping force (P. Lewis, 1988). Nevertheless, the fighting continued on the wall even after the agreement as Morocco was unwilling to withdraw its military forces and administrators from the territory (Ghiles, 1988). The plan was back on track in January 1989 as King Hassan himself met leading members of the Polisario Front in Marrakesh, fulfilling a long-lasting demand of the rebel group (Dowden, 1989). This saw a major fall in the already sparse attacks on the wall – in 1987, a major offensive was launched every six to eight weeks; in 1988, only three attacks happened, and none was launched until October 1989 (Moffett, 1989). From October onwards, Polisario restarted the attacks on the wall, even briefly occupying parts of it (MacDonald, 1989; "Morocco Says 45 of Its Soldiers Killed in Sahara Battle," 1989).

At the beginning of 1990, the UN Secretary-General proposed a UN force (future MINURSO) to monitor the ceasefire and prepare the referendum, which was later authorised by the U.N. Security Council (Houk, 1990). Further developments happened in 1991 when both sides accepted the idea of the referendum keeping the existing Moroccan administration intact but cutting the troops by two-thirds (Ghiles, 1991). MINURSO was established in

April 1991. In August, however, both sides clashed once again, with Morocco arguing that Polisario forces intended to commit terrorist attacks inside the Moroccan Sahara ("Government Forces and Polisario Guerrillas Renew Fight," 1991). Following this, Morocco presented a request for changes to the voting roll, effectively barring the U.N. mission from conducting the planned referendum ("Morocco Bars UN Mission to Observe Western Sahara Vote," 1991). However, in 1992 King Hassan held his own referendum on amendments to the constitution, with the inclusion of the voters in Moroccan Sahara. Following the events of 1991, no major clashes happened.

In summary, there are two important lines of development pertaining to the issue of *nomos* and border walls. Firstly, the issue of identification of the enemy. The military success of the Polisario Front before 1981 was mostly due to guerrilla tactics, fast movement and blending in with the population. Once the wall was set up, designed to protect the military force inside and furnished with radars and sensors able to track the movements outside, Polisario was no longer able to hide nor benefit from the open space and uncertainty. It, therefore, had to change its tactics to more conventional in nature, using tanks and heavy artillery to attack only the clearly defined enemy construction that was the wall. It was through the use of the border barrier that Morocco was able to identify the enemy and wage war against it. Interestingly, the wall also led to developments on the international front, where the first meetings between the two parties took place. To a degree, it can also be argued that the constructed wall led to the acknowledgement of Polisario from the Moroccan side.

Secondly, the question of the way of life in Western Sahara should be addressed. Both the establishment of trade and economic development sponsored by the government in Rabat were able to take off only after the border barrier was built. This was made even clearer with the question of fishing when the barrier was built precisely with the issue of the protection of international fleets in mind. Outside of the economy, the belonging of the walled-off territory to the Moroccan *nomos* was confirmed firstly by the inclusion of the north-eastern part under a region governed by a city in the internationally recognised borders of Morocco, and secondly by the referendum in 1992, which demonstrated the ability of Moroccan state to include the Saharan inhabitants in and carry out this process on the territory of Western Sahara. Especially the second occasion shows that the populace of Moroccan Sahara was understood as having the "part in the common" and thus being a part of the *nomos* of Morocco.

Furthermore, this "acceptance" of the new order, forceful or not, can also be seen in how the wall transformed the way inhabitants of Western Sahara lived – their significant change from nomadic to sedentary lifestyle, evidenced by the fact they could be counted for voting, adds to the argument of a new *nomos* being established using the barrier.

Both these lines show how the border barrier allowed for the creation of *nomos,* and thus both supported the establishment of a particular way of life on the given territory and enabled friend/enemy identification of those crossing the claimed border.

5.1.2 Alternative explanations analysis

While it is arguably hard to argue about the narrative of barrier building for war purposes in the Moroccan case, the comparison is nonetheless undertaken for the purposes of the analytical method.

Starting with the indicator of economic difference, it must first be stated that there is only minimal data on the gross domestic product of Western Saharan territory. As such, it was impossible to make a proper yearly comparison of economic data for the country. Nevertheless, based on Moody's Analytics' estimates (Moody's Analytics, c2023), the GDP per capita (PPP) was 2500 in 2007. As this is the only available estimate, the Moroccan GDP per capita (PPP) data is also used. However, data for this indicator are only available after 1990. Consequently, the constant USD GDP per capita is used to evaluate the yearly GDP growth, which is then applied retrospectively to the PPP data backward until 1975. Similar growth rates are also assumed for Western Sahara.

This method estimates the economic difference as far back as 1975. This estimate shows some degree of economic difference at the time of barrier building. Nevertheless, no significant increase is detected in the years preceding the last barrier construction. Interestingly, the estimated difference decreased in the final construction year. Considering the first barrier construction (1980), the difference still moved around 1200 LCU per capita for the past five years. Overall, the evidence does not seem to suggest that the protection of wealth could have played any role in the barrier building.

From the perspective of globalisation, the KOF Index shows that the final border barrier was constructed when the index values went down instead of rapidly up, as expected by the hypothesised relation. Considering the preceding years, the index value stayed at around 46, without a major increase or decrease. Even if the first barrier building is considered (1980), the index value saw only minimal annual change – from 43.67 to 43.68.

Nevertheless, there was a steady increase between 1975 (40.28) and 1978 (43.15). Based on this data, it is not likely that the protection of sovereignty in the face of globalisation played a role in the barrier-building decision.

Regarding migrant stock in the country, the data is only available after 1990, where the reported percentage equalled 0.2 of the population. As such, it does not allow any conclusion on migration as a relevant factor in the barrier-building decision. Still, based on the migrant stock development after 1990 (0.18 in 1995 and 2000, 0.17 in 2005), it does not seem likely that the percentage reached higher than the given numbers. It also aligns with the previously analysed articles, as the reports never mentioned international migration.

In terms of military expenditure in the country, the variability does not seem to explain the barrier-building either. First, in 1980, military spending increased from the previous year, but the growth continued over the next two years. Then, in 1983 there was a rather significant reduction while more barriers were being built in Western Sahara. Spending increased again in 1985, only to decrease the following year. The budget remained constant in 1987, when the last wall was built (until 2022). It also remained steady for the next three years. In other words, the barrier-building processes did not seem to drive the extent of the defence budget in the country. In fact, the data seem to suggest the opposite, as the expenditure decreased when the barrier was built (possibly to the reduction in engagement in Western Sahara).

The Moroccan budget for social security was considerably small in the tracked period, reaching values between 1.25 and 1.75% of GDP. In this regard, it seems unlikely that the protection of the social security system or the national wealth, in general, was a significant motivation behind the construction of the barrier. The analysed data in the previous part shows the opposite; the Moroccan government sought to invest funds into the area's development and was building the wall to ensure it could do so.

Finally, the terrorist threat in the country seems to align with the border construction. Both years 1979 and 1986 saw an increase in the number of terrorist attacks conducted in Morocco proper. On the other hand, the number was relatively small – two attacks in both cases. At the same time, there were no terrorist attacks between the first and last barriers. Inspecting these cases closer, the attacks carried out in 1986 were on maritime traffic and by Polisario Front. These cases were discussed in the nomos-centred analysis. The cases in 1979 were bombing attacks in Ceuta and Maghnia, a city on the Morocco-Algeria border.
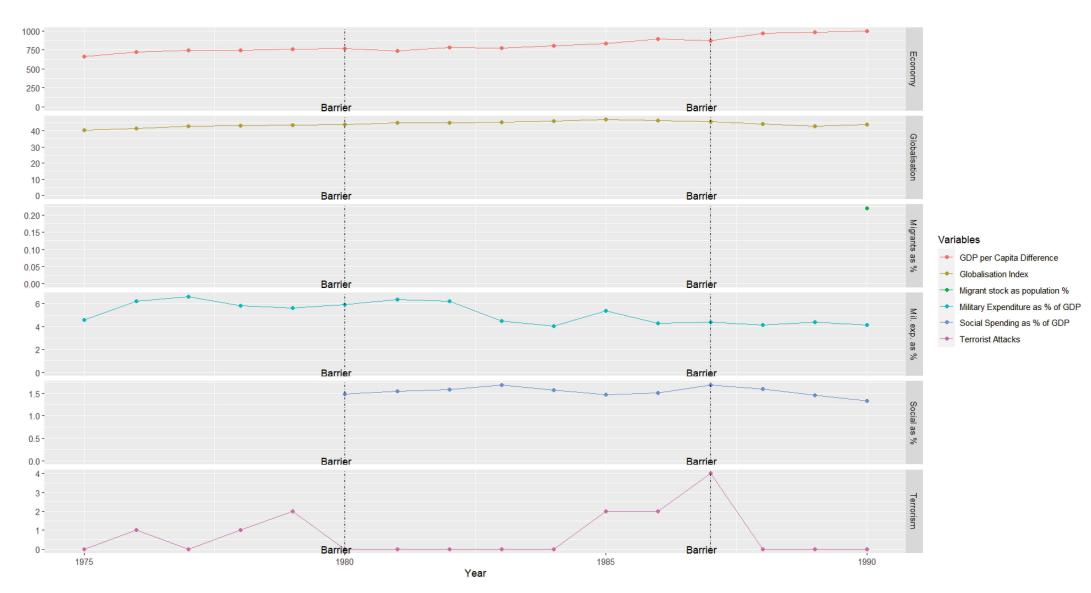
Figure 1: Alternative variables for Morocco

These cases seem disconnected from any Saharan dispute, and the construction of a barrier would most likely not have been directly related to them. In this regard, the 1979 correlation appears to be more coincidental.

5.2 Israel and Palestine

5.2.1 Nomos-focused Process-tracing

The formulation of the Israeli *nomos* arguably started in the early 19th century with the establishment of Jewish nationalism in Europe. This formulation was closely entwined with the religious performances of the Jewish faith and the emergence of modern European nationalism after the Napoleonic wars. These were situated within the broader context of the European nations' emergence and the so-called "Jewish question in Europe." Historically, Jewish people in Europe were sometimes understood as "*hostis* as a guest" and other times as "*hostis* as the enemy," which was primarily based on their different religious affiliation. During the 19th century, there were attempts at including the Jewish people as socius in various European and Eastern countries by basing the new political grouping points solely on language and loyalty to the central state administration.

Nevertheless, the numerous ongoing formal and informal persecutions in Europe led to several waves of Jewish emigration to Palestine, along with the establishment of multiple legal entities intended to facilitate the (re-)acquisition of Jewish national soil. The performative aspects were firstly represented by the emergence of the Hebrew language as a new "national" language that grouped together the various Jewish groups in Palestine and the references to messianic aspects of the faith that called for the Jewish to return to their homeland in Palestine (Sachar, 2013). The religious aspects, or belonging to the Jewish faith, seems to have been the prime identifier of a *socius* as evidenced by the decision of the Israeli supreme court in 1962 stating that willing converts to Christianity of Jewish origins cannot make an "Aliyah" (lit. ascent) - the immigration of a Jewish person to Israel and acquisition of Israeli citizenship (Pex, 2022).

The early settlements did not lead to any major issues with the existing Arab population of Palestine and produced a working and mutually beneficial cohabitation. However, the question of the Arab population of the newly acquired land was arguably underappreciated by the Jewish leadership at the time. The different performative aspects of daily lives – the limitation of employment to Jewish workers or equality between sexes – allowed for the initial establishment of the political grouping points. In 1928, the placement

of a screen for separating men and women on their way to the Western Wall sparked outrage among Arab Muslims, who saw this as an attempt to control the Al-Aqsa Mosque. The conflict resulted in the first major violent clash between the two people in Palestine (Sachar, 2013, pp. 256–272). Since then, the violence between the Arab and the Jewish people never truly subsided. It led to the question of how Arabs in Israel and Palestine should be regarded - whether *hostis* as a guest or *hostis* as an enemy.

The combination of the Jewish faith and Hebrew language as the political grouping points, along with the problematic relationship with the Arab population, shows the grounding into which the analysis of the *nomos* with relation to the border barrier must be situated. After four major wars between Israel and an alliance of Arab states between 1948 and 1973, the Israeli state controlled most of the original Mandatory Palestine as settled by the League of Nations. This included complete control over Jerusalem, declared the capital of the country in 1980. Additionally, Israel controlled the territories of the State of Palestine (declared in 1988) in the West Bank and the Gaza Strip. In parts of the West Bank, new Israeli settlements were established by various groups of settlers. Coupled with demographic and economic pressures, this led to an armed popular uprising in 1987, the First Intifada, by the Palestinian Arabs. The Intifada was concluded with the Oslo Accord in 1993 and 1995 that established the Palestinian Authority that was to be responsible for a limited self-governance and to be a standing partner for the Israeli state in the negotiations on the remaining issues – the right of Palestinian refugees to return to their land now in Israel, agreement on borders, existence of Israeli settlements in the West Bank and the status of Jerusalem. The Palestinian Authority was supposed to oversee the two disconnected Palestinian territories – the West Bank and the Gaza Strip. The Gaza Strip was fenced off by Israel in 1996, according to one of the interim agreements, while Israeli authorities screened and tariffed any import of goods from the sea.

Similarly, the influx of Arab Palestinian day workers, estimated at 30 000 from Gaza and another 92 000 from the West Bank, to and from Israel was monitored through an elaborate set of security installations and checkpoints (McCartney, 2000). The Israeli citizens were also distinguished from the Palestinian citizens by the colour of the identity cards (blue versus orange), which could be demanded by any police officer for inspection. Palestinians presenting their orange cards without further permits can be arrested for illegal entry (Stern, 2001). The presented data show that while the performative, or the sanctified way of life, aspect of the *nomos* has been clearly defined in the Israeli case, the issue is the

external division of the land/territory.

Tracking the process of the fence construction started at least in January 2000, when there was a minor clash between Hamas and Islamic Jihad on one side and the Israeli Defence Forces (IDF) following targeted air strikes. Hamas used infiltrators through the Gaza fence that attacked both the Israeli military convoy and a nearby settlement. ("3 Israeli Soldiers, 2 Palestinians Killed in Gaza Strip Flare-Up," 2000). In May, on the 52nd anniversary of the Palestinian defeat in the first Israel-Arab, the clashes flared up again, reportedly due to the lack of progress on the negotiations of the peace settlement. More than 500 Palestinians charged an Israeli army base by the Netzarim settlement near Gaza, while thousands demonstrated in the West Bank (Bashi, 2000). Some Arab-Israelis reportedly burned the Israeli flags and waved the Palestinian ones within the territory of Israel proper. According to the poll conducted at the time, 70% of the Arab population of Israel identified as Palestinian, compared to 27% just five years ago (Sontag, 2000). In July, another clash occurred in Gaza as one of the Israeli settlements in Northern Gaza tried to expand their settlement by pushing the separation fence further into the Gazan territory (Al-Mughrabi, 2000).

In August, the IDF expressed concerns about the potential outbreak of violence if the peace negotiations broke down. It reported thousands of Palestinian teenagers being trained to use automatic rifles in camps sponsored by the Palestinian Authority (Katzenell, 2000). In September, Ariel Sharon, the opposition leader in Knesset, visited the Haram al-Sharif complex containing both the Al-Aqsa Mosque and the Dome of the Rock – some of the holiest sites of Islam. This resulted in a major clash between the security forces protecting his visit and the Palestinians living in the city (Greenberg, 2000). The clashes spread out into the Gaza Strip and the West Bank (Hockstader, 2000), with violence continuing for several days. The Palestinians reportedly understood the visit as the expression of sovereignty over Jerusalem (Laub, 2000a). At this time, the Israeli government decided to close any crossing points between Gaza and West Bank and Israel proper. The IDF stated that it did not "need 1,000 people coming to (the Israeli town of) Netanya to work and two people coming in with a bomb" (Tarabay, 2000). As the situation continued to escalate, the Israeli settlers in the West Bank blocked the roads for Arab motorists and threw stones at their cars. In other places, the Israeli settlers and the Palestinians exchanged fire (Laub, 2000b). With the kidnappings and mutilations of Israeli soldiers by Palestinian mobs, the IDF fired rockets directly at the Palestinian Authority's President Yasser Arafat's house in the Gaza strip

(King, 2000). This was followed by thousands marching in the West Bank, decrying their opposition to a cease-fire and calling for another Intifada (Tarabay, 2000). In Jerusalem, local residents started to build a concrete wall to separate themselves from the nearby Arab villages in order to avoid being fired at (Snegaroff, 2000). Following the same logic, the Israeli government started to consider fencing off the entire Palestinian population in self-rule pockets (Heritage, 2000) in case the Palestinians unilaterally declared an independent state (Demick, 2000).

Nevertheless, the government recognised that cutting off the Palestinian dayworkers would be a massive blow to the Israeli economy (Beaumont et al., 2000). In November, there was the first suicide bombing of the conflict in Jerusalem, later claimed by the Islamic Jihad, whose demonstration was banned by the Palestinian Authority just a day later (Philips, 2000). This was followed by a decrease in violence, unblocking of tax refunds from Israel to the Palestinian Authority (Laub, 2000c) and an agreement between President Arafat and Prime Minister Barak to stop the violence. However, the agreement was rejected by Hamas and Islamic Jihad, and in December, the clashes restarted. At the same time, the Israeli-Palestinian negotiations in Washington began ("Chronology since Israeli-Palestinian Clashes Began," 2000). On 30th December, Yasser Arafat's Fatah movement called for further intensification of the uprising and defined it as the "only method of achieving independence" (Kraft, 2000).

Changes in the self-perception of the Israeli Arabs show the deep *hostis-socius* grouping even within Israeli society. As the symbolic performances during the Independence Day anniversary show, this was tied closely to the issues of the peace agreement progress that would lead to a clear territorial demarcation and a final establishment of the two *nomoi*. The memory of the creation of Israel reverberated even more in the Palestinian territories. In this regard, the charging of the Israeli fence around Gaza shows the fence was used as a container of Palestinian anger through clear territorial demarcation that allows for the prevention of crossing. The major deterioration of the situation laid bare the entire state of the issue of *nomos* in general and the identification of *hostis* and *socius* in Israel in particular. The visit to the Muslim Holy Place in Jerusalem by an Israeli politician escorted by a major security detail was understood as a declaration of territorial demarcation and recalled the first historical clash between Arabs and Israelis in the 1920s. In this regard, the historical memory was clearly integrated into the Palestinian proto-*nomos,* with the Haram al-Sharif complex as a clear space of importance. The way a visit to the complex could be performed

had become an issue of the way of life that was to be imposed on that particular territory. The massive popular response to the uprising shows that the political grouping from the Palestinian perspective was fully established. Ensuing clashes in the Palestinian territories between Israeli settlers and the Arab population contrasted with the closure of crossings between Israel and the West Bank along with the economic impacts again stressed the issues with the territorial aspect of the Israeli *nomos*. The lack of a clear division of the land (both in territorial and economic terms) created a situation in which those that were necessary for the running of the Israeli economy had to be kept out because it was not possible to identify them as enemies, while there were those understood as *socii* (i.e., Israeli settlers) spread behind these checkpoints. Finally, the issue of the friend-enemy distinction and the need for protection and identification was essentially taken up by the Israeli population that started the construction of their local fences.

In January 2001, Prime Minister Barak reiterated that Palestinian refugees' right to return to Israeli territory would not be accepted "under any circumstances" (Dunn, 2001). In February, the IDF killed an Islamic Jihad fighter while scaling the Gaza fence. In response, the organisation stated that "no barriers or wire fences" would keep them from escalating the situation. Fatah reported a similar sentiment in the West Bank (Goldenberg, 2001). As the elections in Israel drew close, the Prime Minister noted that only a clear border could bring peace between the two nations and that he is willing to evacuate Jewish settlements in the West Bank ("Israeli Premier Baraq on Peace Process, Religious-Secular Ties, Settlements.," 2001).

At the same time, the Jewish settlers in Palestine continued construction and included fencing in order to prevent Palestinians from entering. The communities stated that this land was part of the land God gave to the Jewish people, and they would not leave it. Some even went as far as organising settler patrols that cruised the roads and harassed surrounding Arab communities (Reeves, 2001). As the elections led to the victory of Ariel Sharon, who refused the abandonment of any settlements, the Palestinian factions were threatened with an upsurge of violence in the Palestinian territories (Engel, 2001). While the violence continued, a border wall was constructed at the Gaza Strip crossing at Karni. The wall was outfitted with holes intended to facilitate trade without face-to-face contact (Myre, 2001b). In March, the government started work on a plan to construct a series of barriers on the "seam line" between the Israeli and Palestinian territories intended to limit the freedom of movement from the West Bank to Israel ("Israel to Start Work on Separation Plan along

'Seam Line'.," 2001). Another Palestinian was reportedly killed as he tried to climb a fence between Gaza and Israel while Yasser Arafat called for continued uprising and the Israeli representatives hinted the possibility of a full scale invasion of Palestinian territories ("Israeli Minister Hints at Invasion," 2001). In April, the regime governing crossing from the West Bank to Israel was eased, and 3 200 new permits were given to Palestinians to enter the country for work reasons, arguing that the country was trying to detach the work permits as far as possible from the security situation (Hauser, 2001) since there was a brief dissipation of violence in the preceding days. Nevertheless, just few days later, two pipe bombs exploded in Tel Aviv (Copans, 2001a). This led to an increase in Israeli raids into Gaza and stepped up the security regime on the Gaza fence resulting in further deaths of illegal crossers, while the Arab world vowed to step up terrorist attacks against Israel (Goldiner, 2001). In May, the Israeli military started the policy of forays into Palestinian territory targeting the areas held by Palestinian militants, which also resulted in a major loss of civilian property (Tarabay, 2001).

After a bombing attack on the fence in Gaza, the Israeli military launched a missile attack on the headquarters of Fatah in West Bank ("Missiles Blast Arafat HQ," 2001). At the same time, some of the settlements in the West Bank were reportedly being expanded (Barr, 2001), while a poll reported 61% of Israelis supported a freeze on settlement expansion if it would end the violence (Kaplow, 2001). In June, the Israeli Defence Ministry submitted to Prime Minister Ariel Sharon a plan to set up a buffer zone between Israel on the one hand and Gaza and the West Bank on the other. The buffer zone was intended to forbid approach by any Palestinian without proper permissions ("Israeli DM Submits Plan on Buffer Zone with Palestinians," 2001). In July 2001, the Israeli settlers in the West Bank started to construct fences on their own to prevent shooting attacks from the Palestinian towns. The central government did not approve these projects, and locals had to call them "security agricultural separation projects" (Adams, 2001). In August, a suicide bomber from West Bank committed an attack in the Israeli city of Haifa (Lynfield, 2001), right after an attack in Jerusalem the day prior. The attacks led to the suspension of any ceasefire negotiations from the Israeli side (Williams, 2001). Further suicide attacks in September were committed by an attacker dressed as an ultra-Orthodox Jew (Myre, 2001a) and even by an Israeli Arab, which was reportedly the first case of such an attack in the current conflict (Myre, 2001c). Even a year after the beginning of the uprising, 85% of Palestinians supported the continuation of attacks on Israeli targets (Plushnick-Masti, 2001). The

implementation of the buffer zone was to start on 24 September. After this date any Palestinian attempting to enter the area would be "arrested and sentenced" by the IDF (Weizman, 2001). The violence continued until the end of the year with the suicide bombings and shootings both in Israel proper and in Gaza and West Bank, followed by the Israeli forays into the Palestinian territories. Nevertheless, on 16th December, Yasser Arafat called for the cessation of violence, which led to Hamas announcing it would stop suicide bombings in Israel proper, but did not rule out continued attacks against Israeli settlers and soldiers in Gaza and West Bank (Copans, 2001b).

The issue of the return of Palestinian refugees to the Israeli territory confirms the Israeli understanding of the Palestinians as *hostis*, while the increased popular demands for stopping the expansion of settlements in Palestine show the step-by-step conflation of the territory of Israel proper with the desired *nomos*. Interestingly, even despite their understanding of Palestinian land as granted by God to the Jewish people, the Israeli settlers themselves resorted to the construction of border walls and anti-Arab patrols that would allow for the identification of imposition of a way of life on their selected territory. Possibly the most important part of the development is, firstly, the decision to detach the issuance of work permits from security situation, followed by suicide attacks based intentionally on the impossibility of identification – one committed by an attacker dressed in traditional clothes and the other by an Israeli-Arab. The overwhelming popular Palestinian support for the continued uprising, along with the previously mentioned major self-identification of Israeli-Arabs as Palestinians, seems to have led to the Israeli decision to create the buffer zones that would prevent crossing from the West Bank to Israel for most of the Palestinians. While the Israeli government shied away from using the term border, the creation of the zones served as an imposition of political order on a particular territory with the exclusion of the West Bank. This was, in a way, similar to the policy in Gaza, where the fence was regularly attacked by the militants but also allowed for continued economic activity – a prime example of the identification that allows for the establishment of order and recognition. Interestingly, the linking of ceasefire negotiations to suicide attacks committed by hard-to-identify enemies shows how the lack of identification precludes the assignment of rights and duties even to an enemy and therefore prevents conventional negotiations.

In January 2002, there were the first suicide bombing attacks carried out by Palestinian women. This forced the Israeli security agencies to rework the existing profiling data for the terrorist attackers, which were until then expected to be young Palestinian men

without wife or children that infiltrated the territory. While the government denied plans for building a "separation wall", it admitted that more physical barriers would be necessary to manage infiltration (Grushkin, 2002a). In this regard, it presented a plan to surround Jerusalem with fences and roadblocks with increased patrols to prevent suicide bombings (M. Miller, 2002). In February, a wave of suicide shootings occurred in Israeli cities by Palestinian gunmen. This phenomenon was previously present only in Palestinian cities. Its spread to Israel implied a change in tactics and required lower logistical support compared to the use of suicide bombers (Blanche, 2002).

Two weeks later, Prime Minister Ariel Sharon announced official plans to create additional buffer zones to protect against Palestinian attacks and to provide a "security separation for all Israelis", including Jewish settlers (Grushkin, 2002b), while continuing with the military operation against the Palestinian terror organisations (Myre, 2002a). The IDF operation was widened, and around 20 000 troops were deployed in the West Bank and Gaza strip (Barzak & Assadi, 2002). Over March, the operation sought to dismantle the "terrorist infrastructure" in the Palestinian territories while suicide bombings continued in Israeli cities (Hemmer & Lin, 2002). By April 2002, not a single suicide attacker in Israel arrived from the Gaza Strip – they were all of the West Bank or Israeli Arab origin.

The ongoing military operation did not manage to bring an end to suicide attacks, which was reportedly the primary goal of the Israeli government ("A Daily Selection of Views from the Arab Press, Compiled and Translated by The Daily Star," 2002). In this regard, reportedly, all Israeli security agencies, as well as the president, Moshe Katsav, argued for fencing off of the West Bank (Myre, 2002b; "Tanks Roll into Hebron; Guerrillas Fire into Israel," 2002). In late April, the Israeli forces withdrew from the West Bank cities after reportedly capturing 15 Palestinians on their most wanted list (Myre, 2002c). This was followed by creating a tight military closure around these cities to prevent terrorists from entering Israel (Merzer & Ackerman, 2002). By May, many government-funded electric fences and checkpoints modelled after border crossings were constructed on the line between Israel proper and the West Bank as part of the buffer zone policy implementation (Radin, 2002). At the same time, the IDF completely withdrew from the Palestinian territories (Linzer, 2002). Yet, another suicide attack with a large number of victims occurred after the attacker infiltrated Israel disguised as an Israeli soldier. Between April and May, Israeli security forces reportedly thwarted at least 22 attempted suicide attacks (Kalman, 2002). The Israeli intelligence agencies warned of another impending suicide attack wave. They

recommended building a fence or a wall on Israel - West Bank line (Chardy, 2002), supported by 70% of Israel's population (Goodspeed, 2002). At the end of May, the Israeli authorities decided to erect a 20-kilometre-long fence around Jerusalem to prevent continued Palestinian suicide bombings (Copans, 2002). In June, the construction of a 110-kilometre-long fence along some of the lines between Israel and the West Bank was approved by Prime Minister Ariel Sharon (Weizman, 2002), with the extension to 360-kilometre just a few days later ("Work Begins on Sharon's West Bank Wall: 360-Km Fence Planned," 2002).

In 2002 the increase in the demand for identification increased as the attacks started to be committed both by more straightforward means (shootings), people outside of the usual profiles (women) and by more and more complex ways of masking (using Israeli uniforms). All attempts to solve the issue of these attacks include, in one way or another, a heightened sense of filtration. Firstly, more separation barriers were constructed between Israel and West Bank, most likely following these barriers' success in the Gaza Strip. Nevertheless, the existence of the Israeli settlements beyond these barriers – and the potential desire to extend the Israeli *nomos* across the entirety of Palestine – did not yet allow for the full separation. As the terrorist attacks continued, the IDF committed major forces that essentially controlled the entire Palestinian territory. When even this did not lead subsiding of the hostilities, the majority of the Israeli population demanded the fence construction to ensure that all those passing the line would be properly identified. The construction of these fences began as the IDF withdrew step by step from the West Bank, while their deployment did not stop the high casualty attacks in Israel proper. The decision to build fences was made while avoiding the word "border fence".

The process of the construction of the Israeli (border) barrier on the line between Israel proper and the West Bank followed the outline expected by the proposed theory. The original issue of the land appropriation for the Israeli/Jewish *nomos* lay at the heart of the conflict. In essence, it was the differing views within the Israeli society on the question of what should be considered the territory and where the way of life should be applied. The construction of a barrier on a specific land would inherently lead to the hardening of one proposed land appropriation for the Israeli *nomos*. This would, in turn, lead to leaving out some of those that were understood as Israeli *socii* – namely, the settlers in the West Bank territories. However, the lack of such appropriation created a situation in which it became impossible for Israel to properly identify *hostis*, especially those understood as the enemy in the form of Palestinian suicide attackers. Comparing the situation in Gaza, where most of

the conflict remained on the border fence, with the situation in the West Bank throughout the described parts of the conflict reveals how the fence allowed for a conventionalization of enmity in a manner similar to the previously described Moroccan wall in Western Sahara. Finally, the issue of the division of the land (i.e., participation in the economy) seemed poignant throughout the conflict. Both from the perspective of the Israelis and the Palestinians, both took part in each other's economic well-being. As was seen in Gaza, it was arguably with the construction of a clear delineation wall, but also with various bordering practices used to identify and thus ensure the travel of Palestinian workers to Israel, that a return to an economic exchange was possible at least for a time.

5.2.2 Alternative explanations analysis

Looking at the data of the alternative explanations, there only seems to be a relevant change in the military expenditure, social security and terrorism indicators. The economic differences between Israel and Palestine were significant for a long period of time. Furthermore, they even lowered during the year of the barrier construction. Similarly, the globalisation index shows an increase from around 60 to around 70 between 1995 and 2002, yet the most major growth occurred already in 1999. By 2002, the year of barrier construction, globalisation had been stalled for at least three years.

In terms of migration, the percentage of migrants in the Israeli population is naturally high due to the immigration of people with Jewish origins. Even though there are no data for 2002, the proportion lowered between 1995 and 2000 by around three percentage points. The same can be observed between 2000 and 2005 when the ratio went down by another 2%.

Regarding military expenditure, it shows a falling trend between 1995 and 2002, with the lowest point in 2000 – a reduction of almost 2% of GDP – likely caused by the withdrawal of Israeli forces from Lebanon in 2000. This trend changed between 2000 and 2002, but the spending did not reach the former extent. Looking at the data on contractors building the barrier – Magal, a perimeter security provider, was reportedly involved in these constructions (Reed, 2016). Assuming there is a relation between the company's shares prices and overall market success, historical data on Magal Security Systems LTD. shares are investigated.
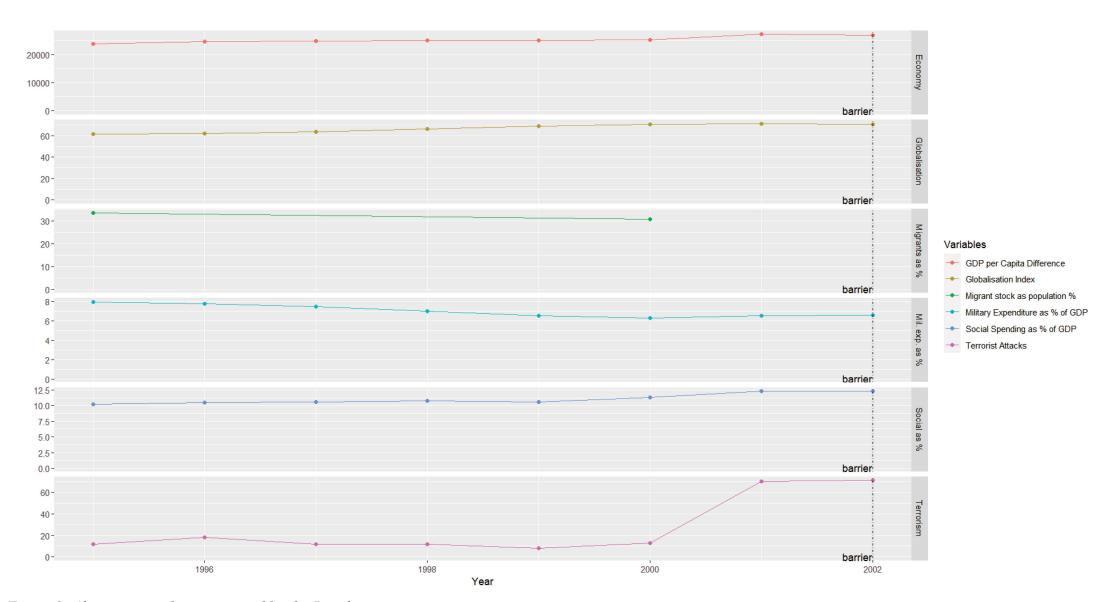
Figure 2: Alternative explanation variables for Israel

Based on the Business Insider data (SNT Stock, 2023), there seems to be a correlation between the share price and the military expenditure in Israel, especially between 1996 and 2002. At the beginning of 1999, a share was sold at around 1.3 USD per share. It reached 8.8 USD per share at the end of 2001 and stayed high throughout 2002. In this regard, the role of the defence industry lobby in the decision to build a barrier cannot be excluded. There was also a growth in the percentage of GPD spent on social security – from around 10.2% in 1995 to around 12.2% in 2002. Nevertheless, since there were no new integration programs that would lead to a change in the access to social security for Palestinian Arabs, it is unlikely that a barrier would be required to prevent inflation of the social security users. It is assumed that there was no major demographic change in the number of Palestinian Arabs with Israeli citizenship over these years.

Finally, in terms of terrorism, it seems apparent that the barrier was constructed as a response to the increase in terrorist activity in Israel – as described in the nomos-centred analysis. However, it is unclear if the barrier-building decision would still have been made had it not been for the territorial issues described above. In any case, terrorism appears to be a relevant alternative indicator for explaining the barrier construction in Israel.

5.3 Tunisia and Libya

5.3.1 Nomos-focused Process-tracing

(This chapter is re-published from Micko & Riegl (2022) *with minor changes)*

Tunisia was the ground zero of uprisings that shook the Middle East and North Africa, known as the Arab Spring. In 2011 Tunisia had its first free parliamentary elections after the revolution, with Islamist Ennahda Movement receiving 37% of the vote and leading the government. For the next two years, Ennahda's attempts at some conservative reforms (such as reducing women's rights) faced significant societal opposition. In 2013, the country was rocked by political assassinations of anti-Islamist politicians resulting in mass demonstrations calling for the government's resignation. Following the Prime Minister's resignation in February 2013, a new secular government was sworn in in December 2013, and in January 2014, the parliament passed the country's new constitution setting the country on a democratic course (*Tunisia Profile - Timeline*, 2017). Tunisian Ministry of Interior accused Ansar al-Sharia, an extreme Islamist organisation calling for the Islamization of Tunisia and with ties to Al-Qaeda, of conducting the murders. The organisation, along with

other Al-Qaeda affiliates, started an armed insurgency in the mountainous regions of Tunisia, on the border with Algeria and Libya. The organisation was reportedly severely weakened after the military operations against its foothold in the Chaambi mountains (Amara & Markey, 2014) and the 2013 series of arrests (Zelin, 2015). The process starting with the revolution and ending with the acceptance of a new constitution and operation against Ansar al-Sharia, enshrined a new way of life on the Tunisian territory. Here the *nomos* was reformulated, and attempts at ensuring full compliance with this *nomos* over all the claimed territory were more or less successful.

Unlike the relatively peaceful transition to democracy in Tunisia, neighbouring Libya was since May 2014 mired in a civil war between several factions – one of which was the IS militias, who seized control of Derna, a city in eastern Libya, in October 2014 (*Libya Profile - Timeline*, 2018).

The first signs of strain on the Tunisian border could be seen in August 2014, when hundreds of people fleeing Libya tried to violently press through the border passage resulting in Tunisia closing its borders (Bouzza, 2014), followed in November by the arrest of 20 armed militants linked to the Katibat Uqba Ibn Nafaa, an IS-pledged organisation, from Libya trying to cross the border to Tunisia (Carlino, 2014). Furthermore, the southern border with Libya and Algeria became a hotspot for smuggling, costing the Tunisian economy an estimated 1 billion USD. Around this time, the government started to consider erecting a kilometre-long border fence with Libya ("Tunisia's Border Dilemma," 2014). The interaction of the threat to the established *nomos* from the inability to identify potential enemies crossing the border can be seen here. The large number of refugees flowing in from Libya, the economically damaging black market, and the potential infiltration of IS fighters combine several bordering issues that challenged not only the rule of law in Tunisia but also its underlying understanding of friends, guests and enemies.

Meanwhile, in Libya, the IS declared its presence in several areas, including the governorate of Tarabulus, just a few kilometres away from Tunisian borders (Ernst 2014). Several successes followed this in early 2015 when the organisation acquired more territory around Sirte (Zway & Kirkpatrick, 2015). Around the same time, in March 2015, two gunmen, who reportedly illegally crossed from Libya to Tunisia, attacked Bardo national museum in Tunis, killing 21 people (El-Ghobashy & Addala, 2015). IS claimed two more attacks targeting military personnel in May and June. Another brutal attack on civilians happened in July on the Sousse beach, killing 38 people. Reportedly, both attackers in Bardo

and Sousse were trained in the Libyan town of Sabratha and then controlled by the IS (Lister & Razek, 2015). The attacks reduced the number of tourists by 25% and the total revenue by 35% in an economy where one-sixth of the GDP came from tourism (Monks, 2017). This significant increase in the attacks constituted a challenge to the Tunisia order and was caused precisely by previously identified problems with bordering. Following the attack, the Tunisian government authorised plans to construct a 167km long wall consisting of berms and trenches from Ras Jedir to Dahiba on the borders with Libya (Tharoor, 2015a; "Tunisia Fears New 'Terrorist Attacks': Pm," 2015).

Furthermore, the military imposed a no-go zone stretching several kilometres from the Libyan border (Lister, 2015). Later in July, Tunisian President Essebsi stressed that any attack on the barrier would have a military response ("Caid Essebsi: Any Possible Attack on Border Wall with Libya Could Have Military Response," 2015). However, the plans to construct the barrier met with opposition from the populace living in the border areas – with some lamenting the breakdown of trade, recalling that there had been no fence even under the colonial rule ("Tunisia Starts Construction of Security Barrier on Libya Border," 2015) and some actively protesting and blocking the planned construction ("Tunisia-Libya Ras Ajdir Border Crossing Reopened Following Tunisian Protests.," 2015). Others noted that the constructed barrier would end the old traditions of border communities that had long ignored the state line, dividing entire tribes ("Tunisia Digs a 100-Mile Moat to Keep Refugees at Bay," 2015). While it was the territory-challenging absolute enmity of the IS that led the Tunisian government to construct a border barrier that could identify the crossing enemies, the strengthening of the external bordering practice by the barrier also helped to enforce the *nomos* as the way of life vis-á-vis the local traditions and identities possibly stretching back centuries. Thus, the true interlinked nature of a *nomos* as a territory and as a way of life was shown clearly.

Similar development continued in August 2015, when Tunisian forces arrested 12 people trying to cross to Libya and join the IS, while the Parliament approved laws allowing the death penalty for those convicted of terrorism and giving security forces more power to detain suspects ("Tunisia Says Arrests 12 Trying to Enter Libya.," 2015). The border was, therefore, no longer only used for external identification but also for internal one – the crossing into Libya for training with IS was directly linked to the declaration of enmity towards Tunisian *nomos*, as this was based on the aversion towards Islamist fundamentalism.

In October, the military seized two trucks crewed by IS militants illegally crossing

the border and carrying explosives and weapons (Amara, 2015). Another IS-related terror attack happened in November when a suicide bomber killed 12 presidential guards. At the same time, the organisation strengthened its positions in Libya and boasted 5000 soldiers (El-Ghobashy & Morajea, 2015). Following these events, the Tunisian Interior Ministry noted that:

> "Real danger is coming from Libya because there is no state in Libya. There's chaos instead. Many terrorist groups and members of those groups go to Libya, get trained there, and then they come to Tunisia to perpetrate attacks. (…) We are building a fence. It is almost finished" (Sidner, 2015).

The first 196 km-long part of the barrier was finished in February 2016 ("Tunisia Unveils Anti-Jihadi Fence on Libyan Border," 2016) with financial assistance from Germany and the U.S., but so far without the electronic monitoring systems ("Tunisia Finishes Libya Border Fence Intended to Keep out Militants," 2016). The Ministry's response, in essence, confirms almost precisely the previous analysis – the fence was necessary to identify enemies, who both were going from Tunisia to Libya and those that were coming from Libya to Tunisia.

Further development shows how important the factor of undeclared enmity was in IS's thinking. In March, Tunisian security forces killed five IS militants after they crossed the border ("Tunisia Kills Five Militants near Libyan Border," 2016) in the North and faced an organised attack with heavy weaponry reportedly aimed at seizing the city of Ben Guerdan on the borders with Libya. The government responded by closing the two nearby border crossings ("Militants Attack Tunisian Forces near Libyan Border, 53 Killed," 2016) and later termed the attack, which happened in three different spots simultaneously, "an unprecedented attempt" of IS to acquire territory in Tunisia (Lall, 2016). Almost at the same time, Minister of Defence Horchani noted that the barrier was useless without electronic monitoring and drones and expected these solutions to be installed soon in cooperation with Germany and the U.S. He also added that the barrier was not supposed to divide Tunisians and Libyans, but in the absence of a political solution, it was necessary for Tunisia to protect the joint borders ("Border Electronic Monitoring: German and American Technicians Expected (Horchani)," 2016). In May, the U.S. provided the country with jeeps and planes to guard the border ("Tunisia Gets U.S Planes, Jeeps to Guard Libyan Border," 2016). As the minister's words suggest, the intention to strengthen the bordering process was clearly

intended against those *hostēs* that were supposed to be identified as enemies and that were directly opposed to the established Tunisian *nomos*, and not against Libyans, whom were identified as guests. On the other hand, IS's attempt to seize territory in Tunisia right after the information on the construction of the border fence was published shows how the lack of identification and declaration of enmity fit into their globalised enmity.

Following these attacks, in August, IS lost its stronghold in Sirte, and its fighters were reportedly trying to cross to the neighbouring countries (Abi-Habib & Morajea, 2016). No other reports of clashes between Tunisian forces and militants were reported in the border regions. However, in February 2017, the government extended the state of emergency due to threats from neighbouring Libya ("Tunisia Extends State of Emergency, Citing Extremist Threat," 2016). Nevertheless, the only other border incidents reported happened in July 2017 ("Tunisia Arrests Smugglers on Libyan Border," 2017) and then in April 2018, when the military fired at smugglers who they tracked using the electronic monitors ("Tunisian Patrol Attacked by Smugglers near Libya Border," 2018).

Beyond the self-evident statement that the border barrier was built because of the threat that was Islamist extremism in the form of IS presence in Libya, there are also several lines that contribute to the argument advanced in this paper.

Firstly, the civil war *per se* was not the reason why Tunisia opted for building a barrier; it was the fact that that civil war was producing an absolute enemy, one that Tunisia struggled with right after its own revolution, and one that was trying to acquire control over Tunisian territory as demonstrated by the attack on Ben Guerdan. And it was precisely the absence of any *nomos* in Libya that allowed this. In this case, the barrier construction harkens back to ancient times and a border between (a particular) *nomos* and chaos. Therefore, the fence, the state of emergency and capital punishments served as bordering tools for enemy identification. More specifically, they were designed to identify enemies crossing into the country intending to break the Tunisian *nomos* and those crossing out of the country to join the enemy.

Secondly, similar to the case of Western Saharan nomads, the border barrier affected how the people in the border areas behaved and enforced the Tunisia-centric perspective in their everyday lives. While in Western Sahara, this produced positive feedback, most probably due to heavy investments, here, the already troubled economic situation, exacerbated by the terrorism's impact on tourism, did not produce a strengthened affinity of the border population for the Tunisian *nomos*. Nevertheless, the change in the behaviours of
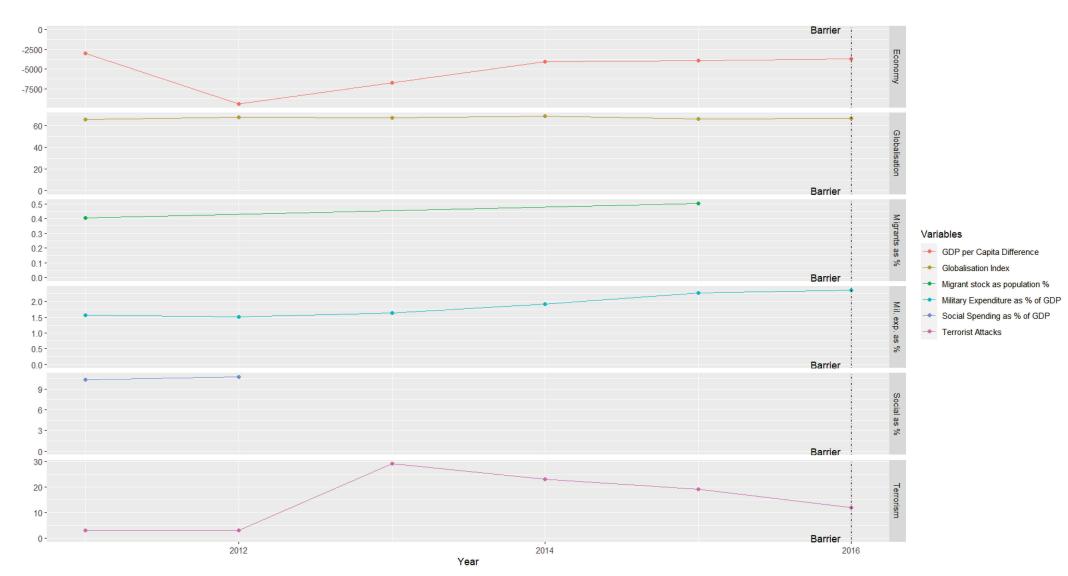
Figure 3: Alternative explanation variables for Tunisia

border communities due to the barrier was caused by the enforcement of state-based *nomos* and the interlinking of territory and way of life.

5.3.2 Alternative explanations analysis

Looking at the data for alternative explanations for the Tunisian border barrier, it seems that most of the indicators are irrelevant to the case or work in the opposite direction than expected.

This is the case with the economy and the military spending. The economic difference between Tunisia and Libya is in the opposite direction than the hypothesis expected. Due to continued oil exports, even during the civil war, Libya still reached a GDP per capita higher than that of Tunisia. It is evident that this does not account for the distribution of wealth in the country, but, as it stands, it still does not provide an alternative explanation for the barrier building.

In terms of military expenditures, the actual defence budget increased in all years before the barrier building, which also puts in doubt any involvement of a defence contract lobby in the country. From the perspective of migration, the number of individuals of international background was negligent both in 2010 and in 2015, just a year prior to the construction. Finally, there is insufficient data on social spending as a percentage of GDP. Still, considering the adverse economic difference with Libya and the minimal number of migrants, it is possible to assume its protection did not play a significant role.

Regarding the data on terrorism, similarly to Israel, the variation in the number of terrorist attacks in Tunisia corresponds to the decision to construct a border barrier. Arguably, in the Tunisian case, the terrorist variable could explain the barrier-building decision independently, as no other component was identified through nomos analysis.

5.4 Turkey and Syria

5.4.1 Nomos-focused Process-tracing

(This chapter is re-published from Micko & Riegl (2022) *with minor changes)*

The issue of the Turkish *nomos* and the sanctification of a particular way of life on the country's territory has, in the last three decades, been raised by the question of Kurdish rights. Since 1984 the Kurdistan Workers' Party (PKK) has been waging guerrilla warfare in the Turkish southeast against the government. Kurdish people number around 40 million (Institut Kurde De Paris, 2017) and are dispersed in the borderlands of Turkey, Iraq, Iran

and Syria. This dispersion and the specific geography of the area led Turkey to intervene in Iraq in 1992 and 1995 against the PKK. The struggle between the government in Ankara and the PKK rose and fell again until a major breakthrough in March 2013, when the jailed PKK leader Abdullah Öcalan along with the government, announced the end of the armed struggle and a ceasefire ("Turkey Profile - Timeline," 2018). The cease-fire plan included the withdrawal of PKK fighters from Turkey to northern Iraq starting in May 2013 (Parkinson & Albayrak, 2013). At this time, it seemed that this new agreement produced a shared understanding of the common and, therefore, also solidified a slightly amended order on the Turkish territory. However, at approximately the same time, the civil war in Syria saw the rise of IS, as the organisation seized the city of Raqqa and started extending towards Turkish borders with a predominantly Kurdish population ("Syria Iraq: The Islamic State Militant Group.," 2014).

At the same time as the agreement was coming into effect, the first terror attack in Turkey related to the Syrian war and later claimed by the IS took place in Reyhanli, killing 52 ("ISIL Threatens Erdoğan with Suicide Bombings in Ankara, İstanbul," 2013). Two months later in July 2013, the Kurdish representatives from Turkey, Iran, Iraq and Syria met in a pan-Kurdish congress in Arbil, where they announced their aim as "the establishment of a Kurdish state by the Kurds in the four countries ("Commentary Views Turkish Premier's Meeting on Syrian Kurds," 2013; "Pan-Kurdish Congress Planned to Unify," 2013). At approximately the same time, there were reports of the Kurdish Democratic Union Party's (PYD) military wing People's Defence Force (YPG), based in Syria, fighting the IS, which resulted in the Kurds routing the Islamists from the border city of Yaroubiya and the formation of an autonomous government in the Syrian regions controlled by PYD. The Party was reportedly drawing fighters from PKK (Christie-Miller, 2013). Also in October, the PKK in Turkey complained about the stalled process of the cease-fire implementation ("Iraq's Kurdistan BACKS Turkey Peace Efforts," 2013). Through these events, the slow unravelling of the solidified *nomos* began. The expansion of IS in Syria and Iraq started, which threatened the Kurdish population in these countries and subsequently created a political grouping point for the Turkish Kurds that once again produced a challenge to the order agreed upon with Turkey.

In January 2014, the IS was reported to be battling for control of the border town of Jarabulus on the Turkish border (J. Krauss, 2014). The fighting forced out large numbers of refugees, increasing the pressure on Turkey and resulting in some closure of the border in

February ("Troops Fire Warning Shots to Disperse War-Weary Syrians at Border," 2014). However, during this time, Turkey reportedly did not control border crossings well enough, enabling those intending to join IS to cross. This changed in August 2014, when Turkey deployed soldiers to the border to prevent passage (Helm & Chulov, 2014). In September, the deployment was reportedly helping to stem the flow of Islamists heading to Syria, but Turkish officials bemoaned the issue of separating IS-affiliated foreign fighters from those joining more moderate opposition (Dombey, 2014). At the same time, the Kurdish city of Kobane and the surrounding villages were under siege by IS, forcing thousands of Kurds from their homes and seeking refuge in Turkey. PKK called on all Kurds from Turkey to cross the border and help defend the city (Zalewski & Solomon, 2014). This was not met with support from Ankara, as the Turkish military was blocking those trying to cross into Syria to aid the YPG (Butler, 2014). Due to a major increase in strain on the Turkish border, President Erdogan announced that a special meeting of parliament should allow for military action in Syria if the situation further deteriorates (Barnard & Landler, 2014). Here it can be seen that the challenge stemming from the identification of the potential IS fighters as absolute enemy through hardening of the border by army deployment also increased the tension with Kurds, who were also trying to cross the border to assist their ethnic kin besieged by the IS. The unwillingness of Ankara to allow the Kurdish fighters to cross, be it due to actual inability to separate them from potential IS recruits or due to fear from their potential future enmity, was putting more strain on the commitment of the Kurds to the agreed *nomos*.

In October, IS flags were already flying over districts of Kobane, and the government in Ankara announced that any attack by the terrorist organisation on its borders would trigger NATO's joint defence mechanism (J. Hall & Crone, 2014). Interestingly, here the bordering tool for dealing with IS as the absolute enemy was not a border barrier but the existence of an international framework. IS now had to understand that any potential incursion to Turkey would potentially result in the entire Alliance entering into conflict. However, due to the American unwillingness to support the creation of a safe zone in northern Syria, President Erdogan decided not to intervene in Kobane. This sparked major protests by the Kurdish population all over Turkey, leaving 14 dead (H. L. Smith et al., 2014). Following the riots, the president said about IS and the YPG that "it is wrong to view them differently, we need to deal with them jointly." Both the rioting and the president's statement suggest the continued unravelling of the agreed *nomos* between the Turkish government and the Kurds.

Nevertheless, as the fighting in and around Kobane moved closer to the Turkish border, Ankara increased its military presence at the borders and allowed the US to use its bases for airstrikes (Akinci & Daou, 2014). Following this, an unexpected decision was made to allow Kurdish fighters from Iraq to pass to Syria to help defenders. At the same time, the US decided to drop weapons, ammunition and medical supplies to YPG near Kobane (Parkinson, 2014) – a step majorly criticised by President Erdogan (Jones & Peker, 2014). In November, the first round of improvements on the Turkish borders took place – installing new fences and thermal cameras (Becatoros, 2014). This first round of border barrier construction seems directly related to the potential future challenge coming from the energised (and armed) Kurdish fighters in Syria. While it did not come after a major IS attack, it followed directly after the increase of Kurdish military presence in Syria and increase of their support from US.

Meanwhile, in Turkey, the Kurds clashed with the police in February 2015, remembering the anniversary of Öcalan's capture (Cakan, 2014). Apart from this, the IS conducted the bombing of a police station in Istanbul in January (Lepeska, 2015). In Syria, the war progressed, and the Kurds successfully pushed the IS out of Kobane. In June 2015, the Kurdish forces were battling the IS in the Syrian town of Tal Abyad, just south of the Turkish border. President Erdogan commented on this development, saying that "this is not a good sign (…) it could lead to the creation of a structure that threatens our borders" (Kilic, 2015). The city was captured later that month, allowing the Kurds to connect two of their self-administered cantons along the border with Turkey.

Furthermore, the loss of Tal Abyad was a significant blow for IS as it had previously served as a key spot for the organisation to ferry in foreign fighters and sell oil on the black market (Karam, 2015). Nevertheless, Turkey immediately closed the border crossing once it was acquired by the YPG (Cockburn, 2015). This form of border hardening appears to be related to the potential danger of challenge to the administration of territory stemming from the growing Kurdish influence and administration in the borderlands. In June 2015, President Erdogan noted that by bombing Arabs and Turkmens on the Turkish borders in Syria, the West is putting "terrorists from PYD and PKK" in their place ("Turkish President Said to Prefer Islamic State Control of Northern Syria," 2015). As another round of border wall construction and security enhancements was underway at the same time (Coskun, 2015), the collapse of the agreed *nomos* and the rise of the Kurds, successful in their fight against IS in Syria, as the renewed real enemy of the Turkish *nomos* was becoming clearer and clearer.

This line of thinking is confirmed by the reports from late June that suggested Ankara might be planning a military intervention in the Kurdish-controlled areas, which the PKK leadership would have understood as an "attack on all Kurdish people" and an action that would have "taken Turkey to civil war" (Fraser & Satter, 2015). In particular, Ankara was weary of the possible conquest of Jarabulus, which would link the entirety of the Kurdish-controlled areas in Syria ("Kurdish Offensive in Syria Has Ankara on Its Toes," 2015). The logic of real enmity and the perceived Kurdish challenge to Turkey's *nomos* shows clearly here – the PKK's statement demonstrates that the political grouping point for them is the identification with their ethnic kin in the neighbouring countries, whose organisations Ankara understood as hostile.

Outside of this, IS conducted another bombing in Diyarbakir (Lepeska, 2015). In July, the IS conducted its deadliest terror attack that year in Suruc, claiming 33 lives. As the attack took place in a predominantly Kurdish region, the PKK retaliated against the Turkish police and armed forces as they saw the government in Ankara as complicit with IS. Following this, the Turkish government decided to build a border wall on a 150km stretch, employ UAVs and surveillance balloons, extend floodlighting and enhance the patrol roads on the Syrian borders (Coskun, 2015). The overlying of global and local came full circle as it was the fight of the Kurds in Syria and Iraq against IS, which led to the re-politicisation of PKK in Turkey; it was the IS attack on the Kurds in Turkey that led to the re-emergence of civil conflict in Turkey between the Kurds and Ankara. And, as was confirmed by deputy prime minister Bulent Arinc, who said that "the critical issue is preventing the entry of terrorists and taking physical measures along the border against the Daesh threat" (Bulos, 2015), Turkey was ensuring that any enemy crossing its borders would be identified as such. Above this, Turkey bombed positions of IS in Syria and PKK in Iraq later the same week, arguing it bombed all terrorists without distinction (Spencer et al., 2015) – the strikes against PKK continued next week as well (Gunes, 2015). This resulted in more clashes in the Kurdish-populated regions of Turkey (Otten, 2015), the renewal of hostilities between PKK and the Turkish government and the complete collapse of the 2013 ceasefire (Pamuk, 2015) and the *nomos* it was trying to establish. In August, the first part of the new wall was being built near Bukulmez in the province of Hatay, allegedly due to weapons smuggling by the IS ("3-Meter-High Wall Being Erected on Syrian Border in Hatay," 2015). Interestingly, however, the Hatay province bordered only areas controlled by the Free Syrian Army rebels and the PYD (Matar, 2015). In October, the PYD declared Tal Abyad a part of their

administration (El Deeb, 2015). In November, the only still existing and unclosed border point between IS and Turkey was Jarabulus, across the border from the Turkish region of Kilis and Gaziantep, which Ankara started walling-off in December with construction heading towards the YPG controlled areas in the East. The military said that it will implement a shoot-to-kill policy against those trying to cross (N. Smith, 2015).

In January 2016, another terrorist attack in Istanbul shook Turkey, with the government attributing it to IS but not ruling out PKK as the perpetrator (Peker et al., 2016). At a meeting with US representatives in February, Turkish Prime Minister Davutoglu showed several smuggling spots through which the Syrian Kurds smuggled weapons supplied by the US to fight IS to Turkey to aid PKK. This meeting came after Turkey barred the YPG from taking part in the peace talks in Geneva and after months of bloody struggle against the PKK in the southeast (Nissenbaum & Lee, 2016). In February, the Turkish military shelled the YPG militia and demanded its retreat from the territory it seized ("Syria Conflict: Turkey Shells Kurdish Militia," 2016). In March, the PYD announced their plan to unite Kurdish-controlled areas into a semi-autonomous entity ("The Kurds' Push for Self-Rule in Syria," 2016). In August, Turkey launched a full-scale military operation in Jarabulus to "clear the Turkish borders of terrorist groups", with President Erdogan stating that the operation is directed as much against the IS as it is aimed at containing the Kurds ("Turkey Is Fighting ISIS in Syria, and Blocking US-Backed Kurds," 2016). The IS was cleared from the border in September (Coker, 2016), and Turkey pushed on to al-Bab, the last IS stronghold in northern Syria, in November (El Deeb, 2016).

The border wall was finished in January 2017, protecting 330 km ("Turkey Completes Building Wall on Borders with Syria, Iraq," 2017) – in March, the reports stated that the Turkish military was firing upon anyone who got close (Davison & Graff, 2017). In June, President Erdogan said that his administration plans to build border walls with Iraq and Iran, similar to those with Syria – one official was reported to have said that it was precisely to protect against the PKK fighters entering from Iraq and Iran and carrying out attacks in Turkey (Mansfield, 2017). The chain of events starting between January 2016 and 2017 shows the final stage of the border hardening process accompanied by the full-scale enmity between Ankara and the Kurds. The critical logic behind all the described border barrier constructions was to ensure that no unidentified enemy, meaning for the most part a Kurdish fighter, could pass between the Kurd-controlled territories in Syria and Kurdish areas of Turkey. Furthermore, Kurdish declarations of autonomy and successes on the

battlefield placed a premium on the properly controlled border. The previously clearly shown political grouping point for Kurds was the ethnic kin in the neighbouring countries. Thus, such autonomy had an implication of potential desire for its extension to Turkey. The enmity between the Turkish government and various Kurdish organisations was fully shown by the end of October 2017, when the IS had no territorial control in the vicinity of the Turkish borders (El Hilali & Petkova, 2017). Still, it did not stop the Turkish military from expanding its presence in northern Syria (Al-Khalidi et al., 2017).

From the perspective of *nomos* and the enmity used here, Turkey was trapped between two enemies – IS and PKK – both with claims challenging the established *nomos*. While the ceasefire of 2013 could have given Ankara peace of mind regarding its domestic population, the developments in Syria (and Iraq) were obviously working against this as the new situation moved PYD to the driver's seat in the struggle against IS. In the meantime, IS was not only extending its influence in Syria and Iraq but also threatening and perpetrating attacks in Turkey. Nevertheless, as PYD gained concrete military support from the US and Ankara was accused of being on the side of the terrorist quasi-state, Turkey had to allow the Iraqi Kurds to pass and help relieve Kobane. But it was aware of the newly equipped PKK fighters returning back through the border from Syria, and this was precisely when the first round of border wall enhancement happened. This was also demonstrated whenever a potential Turkish attack in PYD-controlled Syrian territory was threatened with a response in Turkey proper. As the PYD gained more and more territory in Syria and as the internal situation with PKK worsened, Turkey realised the threat PYD-controlled borderlands posed. While the decision on the border wall construction from June 2015 might have come after the terror attack perpetrated by IS, its construction, placement, and timing, along with the policy of shooting at anybody approaching the wall, dealt more with the threat posed by PYD to Turkish territory than by IS with its diminishing influence in Syria. The fact that the military operations Ankara undertook between 2015 and 2017 were directed in no small part against PKK and PYD only adds to this argument.

Furthermore, the promised border walls with Iraq and Iran – both with the Kurdish minority in the borderlands – support this claim even further. Above this, unlike in Tunisia, IS never attempted to actually acquire a piece of Turkish land for its own administration – therefore, while it was an absolute enemy, its challenge to Turkish *nomos* was secondary to its challenges in Syria and Iraq. Furthermore, IS perpetrated a deadlier attack in Reyhanli in 2013, and Turkey has repeatedly reacted to threats or attacks by IS with a threat of military

might – such as deploying troops to the border or threatening to get NATO in if IS tries anything against its territory – and there was no reason to change this in 2015. This also illustrates that if IS tried to acquire administration in Turkey, it would have to deal with the entire military might of the Alliance.

All in all, the border wall on the border with Syria was constructed at the time when the Turkish *nomos* was being challenged predominantly by the PKK, and the influx of hard-to-identify, veteran and equipped fighters from Syrian PYD, now ruling an almost autonomous territory, to support this challenge would make the conflict worse. The wall was thus used to identify the enemy coming from Syria and to reinforce the territorial order of the country face-to-face with those trying to change it.

5.4.2 Alternative Explanations Analysis

There seem to be three relevant indicators from the alternative explanation data – economic difference, migrant population and terrorist attacks. The globalisation index shows no major change occurred in the tracked period. Similarly, the social spending increase from 5% to 12.5% took place already in 2009 and actually decreased by 2017. Regarding military expenditure, the variation between 2006 and 2017 was consistently between 2.35% and 1.81%, with 2006 and 2015 as maximum and minimum points, respectively. In 2016 and 2017, the expenditure returned to levels observed in 2011 and 2012. Despite arguably a small change, it is still possible to assume this was a drop sufficient to accommodate lobbying for contracts. However, the border barrier's main section was built not by a major defence industry company but by a state-owned real estate development company called TOKI (Coskun & Devranoglu, 2016). In this regard, it seems unlikely that the falling output of the defence industry influenced the decision to build the barrier.
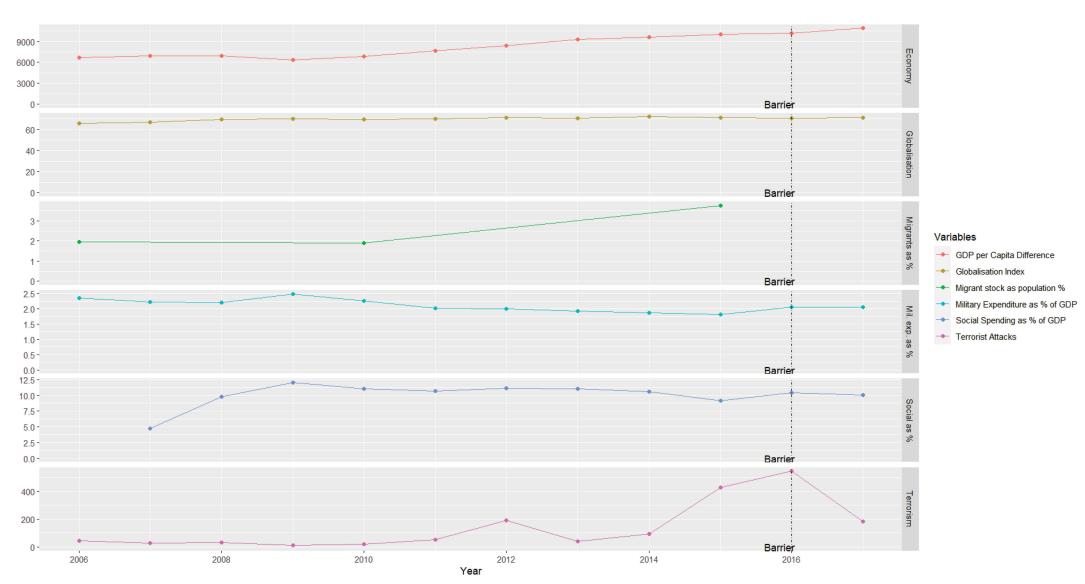
Figure 4: Alternative explanation variables for Turkey

Moving to the three more variant indicators, the increase in the economic difference and the increased number of immigrants in Turkey after 2010 might work hand-in-hand in providing an alternative explanation for the barrier. In this regard, the increase in the wealth difference by 64% – from 6638 USD to 10 888 USD - could have provided the baseline for the desire of the Turkish government to regulate the border crossing. The doubling (from 1.9 to almost 3.8%) of the migrant population – most likely caused by the influx of refugees coming from the warzones in Syria (and Iraq) - would then provide the sufficient condition for the barrier-building decision to occur in 2016.

Figure 5: Terrorist attacks in Turkey by perpetrator

Finally, the terrorism indicator variability also offers an alternative explanation for the decision. There was a marked increase in terrorist activities from 2014 until 2016. Upon closer investigation of the data, it seems that the PKK conducted a vast majority of attacks (figure 4). Similarly to the case of Israel, the increase in the number of terror attacks exists within the broader context of the territorial issues connected to the struggle for independence or autonomy by the Kurdish minority (as it was analysed above). Therefore, the variation in the data on terrorism would arguably not produce as robust an explanation as the nomos approach above.

5.5 The United States and Mexico

5.5.1 Nomos-focused Process-tracing

Considering the historical development of the US as a country of immigrants and, therefore, a composite nation, the isolation of the way of life aspect of the American *nomos* seems to be an almost impossible task. Nevertheless, the key historical moments of engagement with an enemy that existed in the history of the country can serve as a basic blueprint for this purpose. Starting with the American Revolutionary War against the United Kingdom and the subsequent declaration of Independence, the fundamental understanding of the way of life on the newly acquired territory of the Thirteen Colonies was that "all men are created equal" and are endowed with rights to "Life, Liberty and the pursuit of Happiness." This was, in a way, a response to the grievances the then-colonists had against the British crown, especially with regard to the lack of representation despite taxation ("no taxation without representation"), suspension of individual rights, suspension of the local laws and the exploitation of private ownership (permanent quartering of troops) (*Declaration of Independence*, 1776). All these were then reflected not only in the Constitution of the United States but also in the Bill of Rights – a list of ten amendments to the Constitution that addresses the issues of the rule of law and provides for the trial by jury for any person accused for a capital crime and bans unwarranted searches and seizures against any person living in the country (*The Bill of Rights*, 1789). Arguably, the aspect of the rights of the individual and free society was reinforced by the American victories in the First World War against Wilhelmine Germany, in the Second World War against Nazi Third Reich and in the Cold War against the Soviet Union – all, but especially the second two, political orders found upon preference for collective and disregard for individual rights.

Nevertheless, the respect for individual and property rights as the basis of the nascent American *nomos* was not its only aspect. Another part of the way of life that was maintained in the American territories was the existence of a slavery-based economic system and division of the land. This, in effect, restricted the understanding of a *socius* only to the white part of the population. Enslaved black people were consequently not guaranteed the same rights to the protection of the law as the white population (Finkelman, 2020). Whether the issue of race-based slavery and its integration into the American way of life in the first half of the 19th century was the main reason for the American Civil War or not, the war's outcome decidedly banned slavery on the entire territory of the US (A. Johnson, 1866). While the

institution of slavery was banned legally, racial segregation remained ingrained within the performative aspects – both institutional and individual – of the American *nomos* and existed even outside of the white-black categories. Over the course of the 19th century, the American way of life expanded through war or colonisation over new territories – Texas, California, and others in the 19th century. This brought (among others) a large Mexican population into the American political order, with varying degrees of willingness to integrate. The discrimination and violence against the Mexican Spanish-speaking population occurred alongside continued discrimination and violence against freed black population long years after the Civil War (Arana, 2019). Following the Civil Rights Movement of the 1950s and 1960s, it is possible to argue that, at least from the legal standpoint, the situation with regard to day-to-day officially sanctioned discrimination lowered (U.S. House of Representatives - Office of the Historian, 2008). Nevertheless, polls as recent as 2019 show that the perception of race and racial discrimination is widely different in the American public – especially between white people and people of different racial backgrounds (Menasce Horowitz et al., 2019).

Outside of the racial aspect that has been a longstanding problem with the American way of life, another aspect seems to be present in the tension between individual rights and the application of legality (as in the just-described case of slavery). The focus on "Life, Liberty and the Pursuit of Happiness", along with the rebel inheritance of the American Revolution, arguably produced a contrast with the enforcement of laws. In the folk imagination, the concept of an American heroic outlaw harkens back to at least the mid-19th century individuals such as Jesse James or Billy the Kid. While heroic outlaws existed in cultures around the world, the American outlaw was distinct in that his heroism against the oppressive system was supported by the local population and treated as basically pious yet ultimately rejected as misguided (Meyer, 1980). This phenomenon could have also been observed on the creation of the bootlegger-racketeer-gangster folk hero model in the 20th century during American prohibition (Skipper, 1989), which was in itself an attempted change to the American way of life through regulation of the individual rights.

The three described aspects arguably reveal the underlying structure of the American *nomos* as it existed in the early 1990s when the issue of a barrier on the southern border started to gain in importance. In its very basic sense, the American way of life was based upon the respect of individual rights against perceived oppression, even to the point of illegality. Interestingly, it is this tension between legality and resistance to power that

narrates the collapse of American slavery, the American struggle against Nazism and Communism, the civil rights movement, as well as countless real or made-up outlaw heroes of the American pop culture. After all, even an occasional observer of the current American political debate can notice both Democrats and Republicans framing their discourse in the words of resistance against the established order. The American *nomos* is, therefore, one of constant flux, where the performative aspects of the way of life keep expanding as far as possible with regard to what can be subsumed under the accepted behaviour. This inherently meets the issue of legality, as argued in the theoretical section, for it questions the ability to exercise law on a homogenous medium. Furthermore, the differing legal orders of the fifty federal states contribute to this expansion with plentiful examples of things lawful in one state but illegal in others (e.g., the legality of casino construction in Nevada versus other states).

All in all, this seems to suggest that the American way of life should be understood as expanding individual rights negotiated with the opposing respect for legality. In effect, this means that anyone living in the US and supporting the basic ideas of freedom as described above is technically an American *socius* – after all, even convicted mafia bosses helped the US Navy fight the Nazis in Sicily (Campbell, 1974). Additionally, the question of race and discrimination or prevention thereof seems to play a role of its own in the way of life. While it was arguably a part of this expansion of individual rights, due to its importance in the civil war, the issue of race arguably historically offered a potential for another *nomos* developing on American soil. In this sense, it has to be included in the analysis as a potential underlying and hard-to-capture element of the current *nomos*, normally understood under the term structural racism (Rucker & Richeson, 2021).With the *nomos* defined, the analysis following analysis starts at the end of 1980s and continues until 2006, tracking demographic changes, various criminal issues, communal violence and how these interacted with the hardening of the border regime with Mexico.

In 1989, there were various issues with Hispanic immigrants throughout the US. In Miami, civic leaders specifically addressed Hispanic immigrants from Nicaragua to stay out of the state as they blamed the influx of Nicaraguans for major riots in the state. The riots were reportedly caused by the discontent of the local African-American population with the influx of new immigrants. Across the US, the illegal Hispanic immigrants through the southern border were often refused their due wages (Hepburn, 1989). Additionally, there were reports of frequent violence against Mexican citizens in California ("Mexico Protests

Border Incidents," 1989). In July and August, several major U.S. cities reportedly saw a major increase in violence to illegal drug imports from Latin America, negatively affecting mostly the low-income strata (Buckley, 1989; "Drugs Create 'Little Beiruts' in U.S. Cities - Terrorism Study," 1989). The African-American, Hispanic, Native American and Asian civil society groups criticised the anti-drug policy approach that focused mostly on enforcement instead of prevention ("People of Color Say Administration Drug Control Strategy Gives Inadequate Attention to Prevention," 1989). Around the same time, the US Government announced a plan to build a four-mile-long ditch, while a private group called for the construction of a 50-mile metal fence along the border (Berke, 1989).

The local responses to the influx of Hispanic immigrants from various countries show that there were tensions between the local population and the different American communities. Two key aspects in this regard are the conflicts with the African-American community and the issues of due wages for illegal immigrants. In a way, both of these issues are related to the distribution of land aspect of *nomos*. Firstly, the conflicts with the African-American population imply the upsetting of a specific equilibrium tied to access to low-paying jobs. The influx of illegal immigrants that could have been paid lower wages due to the lack of legal oversight of their work increased the competition on the African-American groups and consequently probably led to conflicts. Secondly, the lack of legal protection also enabled local American employers to deny agreed wages to undocumented workers. Nevertheless, another important development was the rapid increase in violence tied to drugs. While the change to the border regime was essentially minuscule, it shows that at least some of these developments played a role in the decision.

As 1990 unfolded, there were reports of escalating violence in California against Hispanic immigrants, who were nonetheless deemed crucial for the state's economy (Mydans, 1990a). By June, locals from the San Diego area in California organised their own border patrol – The Light Up The Border protest – to demonstrate against the continued influx of Hispanic immigrants (Kiley, 1990). In December, a law was passed that offered the legalisation of illegal immigrants from El Salvador for a period of 18 months. After 18 months, however, they would return to being on the US territory illegally, and their previous compliance would help the official authorities identify them for deportation. At the time, the estimated number of illegal Salvadoreans in the US was around 1 000 000, with the majority in California (Mydans, 1990b). In May 1991, Hispanic neighbourhoods in Washington saw rioting against alleged police brutality and discrimination the Salvadorean and Guatemalan

immigrants faced from the local police. Conflicts with the local black population also occurred in the area (C. Krauss, 1991). Outside of the ethnically motivated tensions, the early 1990s also saw the rise in the ethnically based crime organisations that effectively replaced the Italian-American Mafia organisations such as the Cosa Nostra (Appleby, 1992). Local police officers reported an increase in the participation of young Hispanic males in gang activities of organisations such as Latin Kings that were linked to the narcotics and firearms trade (Rierden, 1992). These groups portrayed themselves as organisations for the advancement of the Hispanic people with goals for the wider Latin community. Additionally, the organisations had clear codes of conduct, rituals, and an enforcement arm dedicated to upholding these principles. Their stated goal was to have 100 000 members by the year 2000, and seen a major rise since its establishment in 1989 (Hernandez, 1992).

At the same time, a new push was being made by the non-governmental sector to secure local voting rights for immigrants. Nevertheless, in some cities where such legislation was drafted, it gave rise to violence between African-American and Hispanic communities. In some cases, the legislation was openly protested by the elected African-American community representatives (Sontag, 1992a, 1992b). With the Rodney King case ruling in 1992, Los Angeles saw major riots by the African-American community that disproportionally affected the Hispanic and Korean communities in the city (Purdum, 1997). Similarly, labour issues stemmed from the construction industry's exploitation of illegal immigrant workers and the busting of long-established unions. Attempted strikes by the Hispanic workers led to an investigation by the Federal Immigration and Naturalization Service (INS) (Gardner, 1992). By 1990, the flow of illegal drugs through the U.S.-Mexican border continued almost unabated. Over the period between 1980 and 1990, the number of drug-related criminal cases nearly tripled from approximately 12% in 1980 to above 32% (Meddis, 1994). The US put up a barrier of radar balloons along the Mexican border to detect a drug smuggler's plane as far away as 150 miles (Treaster et al., 1990). The authorities discovered tunnels dug beneath the border fence used for drug smuggling ("Tunnel of Drugs on Mexican Border.," 1990). As these developments progressed, the INS reported installing 14 miles of steel fencing, replacing chain link and steel cables and installing high-intensity lighting along the Tijuana River Channel crossing area. It reportedly led to increased control of the southern border concerning an 11-fold increase in drug smuggler seizures and lowered influx of illegal immigrants ("INS Regaining Control of the Southern Border," 1992).

The situation in the early 1990s shows that there were indeed responses to

immigration through the US-Mexico border that were, in their nature, local. The mobilisation against Hispanic immigration was essentially still tied to the previously identified issues of the integration into the land division aspect of the *nomos* and the question of legal protection. The increase in conflicts between the African-American and Hispanic populations, especially in California, attests to the issue of upsetting the land division and even the access to public decision-making when it came to voting. However, a more country-wide phenomenon was the continued and unabated influx of illegal narcotics and the associated increase in Hispanic gang activity. Arguably, the Border Patrol at the time was more concerned about the issues of drug smuggling than necessarily the influx of illegal immigrants. The fact that the Hispanic gangs expanded their influence over the country and were tied to the drug trade hints at the more important problem with regard to border control.

The gangs were, in their essence, ethnically organised rule-based organisations with specific performative ways of identifying their members. Additionally, they also had state goals for the Hispanic community. The changes to the border regime that occurred in this time period – the balloons and the improved fencing – were always reported with allusion to the changes to the drug trade and illegal immigration. Here the question of criminality and illegality comes to play – the legalisation of Salvadorean migrants suggests that the public policy was unlikely to be motivated by specific ethnic bias against the Hispanic population. Instead, the border regime seems to have been based on the identification and filtration of criminal activities tied to performatively exclusive groups such as the described Hispanic gangs.

By 1993, the expansion of the Latin Kings gang's activities spread to different cities in Massachusetts and Connecticut as the organisation was fuelled by money made from drug trafficking (Rierden, 1993). Throughout the year, the gang violence between this one and various other gangs over drugs continued, with the vast majority of homicides being attributed to it (Cavanaugh, 1993). In the same year, only around one-third of legal immigrants of Hispanic origin eligible for citizenship were asked to acquire one (Sontag, 1993). As the influx of Hispanic immigrants, legal or illegal, continued, some states started to change their originally welcoming rhetoric. Specifically, in California, which absorbed more than a third of the country's migrants in the last decade, public opinion turned against more immigration as it was understood as economically demanding on the health, school and police budgets. Hispanic migrants filled predominantly jobs unwanted by the local population. The number of such jobs in the slowing economy in the early 1990s fell,

increasing the competition. At the same time, the legal system of the US made even illegal immigrants eligible for some health and schooling programs, while the states complained that the taxes paid by these migrants are generally directed to the Federal budget. In contrast, the states must have paid the bill for these programs (Reinhold, 1993). Just a year later, California organised a referendum asking about restricting access to schools and healthcare and law enforcement for illegal immigrants. This was met with a public outcry from the large Hispanic population and warnings of violent escalation by the police (Handelman, 1994). In September 1993, following an increase in communal violence in the area, a local chief of the Border Patrol in El Paso implemented a new tactic that consisted of deploying 400 officers on every 90 meters of the busiest illegal border crossing line in the country. At the time of the implementation, this led to a complete halt of illegal immigration through this particular part of the border.

Nevertheless, the higher echelon of the Border Patrol in Washington did not directly support the implementation of the approach. It also led to a major downfall of the revenues of the local stores in the cross-border area but also reduced crime rates (Brinkley, 1994). The centralised federal policy changed in 1994 with the implementation of Operation Gatekeeper, which was designed to assume control of the border in the San Diego area in California. The operation re-deployed agents from across the border and contributed to the construction of a fence barrier using the surplus landing mat material. The fence, however, had severe design oversights that allowed for easy bypass of the barrier altogether (Graham, 1996; Martin, 2019). A similar operation – Operation Safeguard – was started in Arizona, where a border fence was constructed with the addition of low-light cameras and night-vision scopes. Similarly to the operation in El Paso, this led to a major decrease in crime in the area and a diversion of immigration around the city (Graham, 1996). In February 1995, a major increase in the number of attempted illegal immigration crossings through the southern border was reported. The crossers reported among themselves on the changes in border patrol patterns and deployment of new equipment – such as in El Paso – which led to changes in their patterns (Ayres, 1995). At the same time, violent attacks by immigrants or their guides (*coyotes*) were on the rise – from 14% in 1994 to 24% in 1995. Most of these attacks (40%) occurred in the El Paso region (Sanchez, 1995).

The continued expansion of gang activities in the mid-1990s that was associated with the cross-border drug trade coupled with the implementation of the Operations Gatekeeper and Safeguard and their impact on lowered criminal activity in the borderland seems to

suggest that there might be a link between the two. Interestingly, the original operation was based on an initiative of a local officer and, as reported, did not garner much support in the centre. It would appear that its later wider adoption was caused exactly by its effectiveness in lowering immigration and criminality, at least in the short term. The connection between criminality and border apprehension is also attested by the increased violence against Border Patrol agents. While it is arguably not political violence associated with friend-enemy distinction, the connection between the narcotics trade as a criminal behaviour with ties to specific performatively exclusive groups (gangs) has at least the potential to suggest the existence of proto-political distinctions. Additionally, the changes in the welcoming attitude in California caused by the increased budget pressures due to the state's inability to tax undocumented workers also shows that the impacts of lacking immigrant identification and connected ability to impose legality on them really only existed at the state, instead of the federal, level.

In January 1996, the US Attorney General proposed a plan to build a fence along the entire American-Mexican border and station military personnel in the area to control immigration (Diebel, 1996). In April, the FBI started an investigation of a beating of two Mexican immigrants by two local law enforcement officers, which resulted in demonstrations across the US opposing the violence against Hispanic immigrants in the country (Handelman, 1996; James, 1996). The Border Patrol reported an increase in the number of immigrants with convictions in the US that they were caught repeatedly and had to deport. Since the illegal immigrants caught generally refused to cooperate, the Border Patrol officers relied on specific dressing patterns - athletic jackets with white logos on the back, white sneakers and socks that made the smugglers easier to follow at night (Graham, 1996). In September 1996, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) came into effect. In its essence, IIRIRA aimed "to increase penalties on immigrants who had violated US law in some way - whether they were unauthorized immigrants who had violated immigration law or legal immigrants who had committed other crimes" (Lind, 2016). Throughout 1996, a continued influence of Hispanic youth gangs was reported in the High Schools in North Virginia that required screening for weapons in high schools (Nakashima & Bates, 1996). On the other hand, the number of drug-related violence between Latin Kings and Los Solidos and other unspecified African-American gangs saw a decrease in Connecticut (Rierden, 1997; Stout, 1996).

The fact that the proposed border fence came from the Attorney General seems to

support the previously proposed narrative that the issue had more to do with particular types of criminality rather than undocumented migration itself. The continued presence and activity of various Hispanic gangs with their *nomothetic* tendencies seem to coincide with the declaration and the IIRIRA act. The act itself seems to further confirm the US Administration's intention to ensure the filtration of the criminal migrants and the smugglers instead of the undocumented workers coming to participate in the US land division. Here the *nomos* and challenges to it lay bare. The legality against the pursuit of happiness is only applied when this pursuit is in itself critically against the established underlying order. Furthermore, the investigation and the subsequent public outcry against the law enforcement agents that attacked the Hispanic immigrants suggest that the public did not accept brutal enforcement tactics to stem the immigration flow.

In 1997, as Latin Kings before, the Los Solidos gang active in Massachusetts published a charter of behaviour expected from its members that included details of the gang's drug and prostitution operations, interspersed with excerpts on family picnics and brotherly love. Interestingly, during the trial of one of its members, the defence attorney argued that it was through the committing of criminal activities that the members sought to partake in the legitimate society (Rierden, 1997). With regards to ethnic relations, following the 1992 riots in Los Angeles, the local demographic balance changed in favour of the Hispanic voters, with continued strained racial relations in the city (Purdum, 1997). Meanwhile, the 18th Street Gang, tied to Colombian and Mexican drug cartels, continued expansion in the southwest of the city with an increase in violent crime (Lunden, 1997). In May, the Clinton administration pushed for the reform of the IIRIRA Act in order to lower the perceived harsh penalties for illegal immigrants working in the country (Luhnow, 1997). President Clinton also signed a joint declaration with Mexican President Zedillo stating that "the border should not be a barrier" and that the cooperation with Mexico would improve border management and allow for "safe and orderly" immigration while stopping illegal immigration ("Clinton, Zedillo Sign Declarations on Drugs, Migration," 1997). In August, the INS reported a sustained increasing trend in the number of immigrants with criminal records that were to be immediately deported from the US.

Additionally, these immigrants were caught repeatedly trying to cross into the US or during illegal activities. One of the main gangs tied to this trend was the Mara Salvatrucha (MS-13) gang with origins in El Salvador ("U.S. Deports Felons but Can't Keep Them Out -2-," 1997). In October in New York, the Mayor's office reported an outbreak of gang-

related violence perpetrated by more organised and structured gangs with specific initiation rituals compared to just four years ago (Onishi, 1997). In December, the US government started setting up border task forces that were to deal with the spillover of drug-related gang violence from across the Mexican border. This spillover involved attacks on border patrol officers, including using automatic weapons (Boadle, 1997). At the end of 1997, the government started design work on the border between Arizona and Mexico that was supposed to "look as friendly as possible" and allow the "feeling of openness to be present." The barrier was to be used in the urban areas and was intended to deter illegal immigrants and drug smuggling. The then-current state of the fencing on the border was at around 100 out of the entirety of 1933 kilometres of the US-Mexico border.

As before, there was the continued trend of the spread of criminal groups with performative identification and designated commanding structures that, in one way or another, established an expected way of life for its members. More importantly, these groups were violently at odds with the drug-related legal framework of the US. The fact that the Clinton administration attempted to lower the IIRIRA impact on the illegal workers along with the border declaration with Mexico and the intended design of the barrier implies that it was indeed the identification of those individuals that were members of these particular groups.

In February 1998, President Clinton openly admitted that no progress was made in preventing the influx of cocaine and heroin into the country (McCoy & Kenney, 1998). In March of the same year, the head of the INS called for additional border patrol officers to keep out the drug smugglers and illegal immigrants ("Mexico's Migration Chief Criticizes U.S. Policy," 1998). In Texas in 1998, 10% of the prison population comprised those belonging to organised gangs, accounting for 75% of the violent crime in the state. The gangs offered protection, shared commissary treats and spoil from smuggling and extortion to its incarcerated members (Burnett et al., 1998). In July, vigilante groups reportedly operated on the US-Mexico borders, allegedly killing 14 immigrants. For the past three years, the border patrol has caught more than 1.2 million illegal immigrants annually at the border. Yet, minimal attention was paid to the illegal immigrants already working in the US (A. Hall, 1998). In May 1999, people with property in Arizona near the Mexican border reported a major increase in the number of illegal migrants crossing through their property – from one to two people per day ten years ago to 30-40 or even 100 people in 1999 (K. G. Hall, 1999; "Profile: Douglas, Arizona, Cracking down on Illegal Immigrants," 1999).

As the growth of the Hispanic population in the US continued, some cities implemented programs for the inclusion of Hispanic officers into their police forces and integration of the Hispanic communities into the policing work to prevent the penetration of gangs (Powell, 1999). On the other hand, Human Rights Watch reported continued police brutality against the Hispanic and African-American communities (Wright, 1999). Similarly, Hispanics were overrepresented in the American prison system (Gladstone, 1999). In the meantime, the continued pressure on the border led to an increase in the deaths of would-be illegal immigrants. With Operation Guardian putting more border patrols in place, the migrants were pushed into more inhospitable terrain. The US government pledged to take steps to avoid the deaths ("UN Rights Chief Visits U.S-Mexico Border.," 1999). In 2000, drug offenses accounted for almost 55% of all Hispanic state prison incarcerations compared to 28.2% for African-Americans and 10.4% for White Americans. Anecdotal evidence from the local police officers in Massachusetts suggested that a non-negligible number of drug offenders migrated to a country from the Caribbean or Latin America to earn money in the drug trade and then return home (Brownsberger, 2000). At the same time, the crime statistics in the US went down (Zahn, 2000). In May 2000, American and Mexican officials met to discuss the vigilante activities of Arizona ranchers against the illegal migrants. The ranchers argued that they were forced to act because their properties were being destroyed, and there was no government action (Villegas, 2000). The government was concerned that these activities could lead to violence against the incoming migrants (Garza, 2000).

Nevertheless, some argued that "a way should be found that the immigrants for which there are jobs in the US with no citizen takers can enter by a safe and legal route" (The Associated Press, 2000). In July, Mexican officials complained about the shooting of four Mexican immigrants in Houston, Texas, in 1997. About a third of the city's 2.5 million population was Hispanic at the time, and all the shooting cases were related either to the victim's use of guns or suspicion of drug dealing (Franks, 2000). The landowners in South Texas shot another three illegal immigrants due to their frustration with damaged property. In August, some of the border patrol officers reported demoralisation due to the failing strategy of preventing illegal migration and because there was no enforcement of immigration laws beyond the border. Once an illegal immigrant passed the border, they reportedly would only have had issues caused by their illegal status if they were caught for unrelated law enforcement purposes (Burnett, 2000). Furthermore, Hispanic immigrants were also the least likely of all immigrant groups to the US to naturalise and, therefore, to

participate in political life, except for the times when the outcome of the political debate would have an impact on the well-being of the Hispanic community (Sierra et al., 2000). Outside of political life, the lack of documentation was reported to prevent some of the Hispanic immigrants from seeking healthcare out of fear of being deported (Davis, 2000). During the year 2000, 369 illegal immigrants, up from 231 in 1999, died while trying to cross the border, with the majority of other injuries being caused by falling from the fence. The various operations taking place between 1994 and 2000 led to changing migration patterns and to surges of immigrant crossing in places neighbouring the crossings with border patrols deployed (Fullerton, 2000).

As the developments between 1998 and 2000 show, the most important issue with the integration of Hispanic immigrants into American society was, by far and wide, gang activity. After all, gang and drug activity was linked to the four deaths of illegal immigrants in Texas. The overrepresentation in the justice system and the connection of these gangs to drug-related criminal activity, and law enforcement's attempts to recruit Hispanic officers to aid in combating these phenomena highlight this further. At the same time, the response to the border situation was primarily due to property damage, even with participants in the Arizona or Texas rancher citizen border guards stating that work should be given to those that want to work. Additionally, the lack of any major immigration enforcement for non-criminal aliens beyond the border confirms the focus on criminal behaviour as the feature key for identification of those allowed to participate on the American *nomos* as hostis-as-guest and those deemed unwelcomed. The fact that the Hispanic community had little interest in political participation outside of migration debates – something that can likely be attributed to communal support for illegal immigrants – and had little interest in naturalisation suggests that the Hispanic community had little interest in anything beyond improving their economic situation while carrying out their lives. On its own, this very clearly resonates with the basis of the American *nomos,* understood as freedom to pursue happiness.

By 2001, it was reported that Hispanic immigrants developed minimal parallel ethnic infrastructure and were more likely to join a non-ethnic civic group than a Hispanic organization (Rodriguez, 2001). In February, a binational panel of experts from the Mexican and American Chambers of Commerce proposed legalising the illegal workers already in the US to address the nationwide demand for both skilled and unskilled labour ("Panel Urges Bush to Legalize Mexican Migrant Workers.," 2001). The immigrants comprised 12% of the

American workforce and dominated the low-skilled job sector but were threatened by the lack of legal protection stemming from their illegal stay in the country (INC, 2001). In March, it was reported that the Hispanic population is becoming the country's largest minority. At the same time, as a group, they were divided by national origin, historical memory, skin colour and religion – unlike any other immigrant or racial minority group in the US at the time (Sachs, 2001). This was reflected even in the inter-Hispanic crime, when, for example, a Mexican group of illegal immigrants was attacked by Puerto Ricans. Instead of reporting the crime to the police for fear of deportation, they planned to burn down a house belonging to the Porto-Rican group (Yee, 2001). The integration of Hispanic people into the mainstream white society in the US was proceeding faster than in the case of the African-American community. However, their integration was reportedly strongly dependent on their socioeconomic background (Scott, 2001). Over the year, California reported the spread of youth Hispanic gangs from urban centres to rural areas. The gang membership at the time was estimated at around 800 000 active members, with gang activity understood as an "alarming new problem" (Elsner, 2001). After the attacks of 9/11, the south border with Mexico reportedly stalled, with the interactions resuming only by mid-October (Brooks, 2001). Also in October, the US unions started a debate on whether they should also start representing the undocumented workers that reside in the US illegally, with two sides disagreeing on whether funds should be expended to help illegal residents (Strugatch, 2001).

Throughout the year, President Bush displayed a cautiously positive message about Hispanic migrants highlighting their contributions and suggesting a program that would allow the legalization of workers that paid taxes and worked in the US. In the second half of the year, two program suggestions appeared authored by Democrats and Republicans, respectively, essentially reflecting the idea of legalisation (Waslin, 2001). In December, the Austin (TX) police started to accept Mexican consular identification cards as ID proofs while arguing it was their job to "protect and serve the residents of Austin" and not to "deport anyone, or report them to INS." In addition, the Austin police started to persuade the local banks to accept these cards for account establishment purposes. A similar program of consular ID acceptance was implemented in San Francisco for city and county services (Tedford, 2001).

Apparently, the trend of the integration of the Hispanic community into the American *nomos* continued in 2001. The fact that the illegal workers, predominantly of Hispanic origin, contributed significantly to the low-skilled labour market and was even reflected in

the legislative proposals and the President's speeches and proposed programme. Additionally, there was a lack of any major ethnic structures for the Hispanic population that would be separate from the mainstream American civic structures. This was reflected even in the union debate on whether they should represent the undocumented workers. Furthermore, the new acceptance of consular ID cards by the local police – even in Texas, a border state with a major illegal immigrant influx – shows that the illegal Hispanic immigrants were not understood as opposed to the American way of life.

On the other hand, the continued gang activity in major cities continued to be closely tied to Hispanic migrants and their own internal divisions. Finally, the changes to the border regime after 9/11 and the virtual halt of any cross-border activity despite the long-lasting ability of illegal immigrants to cross the border under any circumstances provide an interesting event. Arguably, the reformulation of the friend-enemy relations after the attacks on the Twin Towers that had to take place in the US could have influenced the decision to infiltrate the border – as it was possible to imagine that any infiltration of hard to identify an individual would be understood as a declaration of enmity.

In 2002 the violence against Hispanics fell by 56% compared to 1993, which the Hispanic community attributed to raised police awareness and respect towards the community ("Violence against Hispanics Dropped 56 Percent in Seven Years.," 2002). At the same time, the US-raised children of Spanish speakers reportedly preferred television networks in English rather than Spanish (Ayuso, 2002). Additionally, the number of defendants in the legal system requesting Spanish language interpreters rose between 1994 and 2001 in areas with a growing Hispanic population, which led to courts demanding more funding for interpreters (Elliot, 2002). In March 2002, the situation at the Mexican border deteriorated further as the US authorities seized millions of dollars worth of drugs, which was followed by execution-style killings in the border cities such as Ciudad Juarez (Tedford, 2002). In April, the U.S. Department of Justice considered a proposal to allow local police departments to enforce federal immigration laws (Coggins, 2002). This came at a time when in LA, the most populous Hispanic city in the US, 66% of the Hispanic population reportedly distrusted the local police department ("Ten Years after Riots, Minorities Still Distrust LAPD.," 2002). In June, the New York authorities announced the arrest of 25 people connected to drug smuggling from Colombia. The drugs from Colombia reportedly pushed out other international sources of drugs in the New York area at the time (Torode, 2002). As the INS strengthened the border regime after the events of 9/11, human smuggling rings

funnelling cheap labour in essentially slave-like conditions from across the border started to be uncovered, such as the one in Arizona. The perpetrators were tried under the new Victims of Trafficking and Violence Prevent Act passed in 2000 (State Department, 2002).

Similarly, in July, five Mexican nationals were indicted and tried under the same act for trafficking teenage girls to New York for prostitution purposes ("Five Indicted in N.J. in Mexican Sex Slave Case.," 2002). In June 2002, Jose Padilla, a.k.a Abdullah al-Muhajir, a Gang member from Chicago, was detained by the US government for alleged ties to Al Qaeda (Miles, 2003). Padilla was designated as an enemy combatant by the US Administration and held in a military prison until his later trial in 2007 when he was found guilty of conspiring with Al Qaeda (Vicini, 2012).

Additionally, the cross-border traffic shows changes in demographics as undocumented migrants from China, Iraq, Yemen, Pakistan and other countries were caught trying to cross the border (Flynn, 2002). The gang violence in Minnesota increased during the year, and gang and drug-related crimes were the reason for about half of the city's killings. The authorities attributed the violence to especially Hispanic gang members' jail releases, new gangs establishing turf and a lucrative and growing street-level drug business (Chanen, 2002). In LA, the number of active gang members reached 100 000, with the murder rate reaching 18 murders per 100 000 inhabitants. Most of the victims were of Hispanic or African-American origin (Davidson, 2003). By September 2002, Los Angeles, Chicago and Houston agreed to accept the Mexican consular ID card as means of identification when dealing with local law enforcement agents. Nevertheless, the reported easing of the immigration regime by the US administration for Mexicans was allegedly stopped after the 9/11 attacks (Brewington, 2002). In October, the violence in the Ciudad Juarez and El-Paso border region related to drug trafficking worsened with an increase in attacks on the Border Patrol officers ("Violence Increases along Mexico-U.S. Border.," 2002). In December, a Florida court convicted another three individuals for enslaving around 700 illegal immigrant workers ("Mexico Praises U.S. Court Sentences for Slavers.," 2002).

It appears that as the Hispanic demographics increased in the US, there were no major tensions nationwide – the violence against the community fell rapidly, with most occurrences being essentially verbal, the Hispanic youth was more accustomed to English than Spanish programming, and even within the Justice system, the demand for Spanish interpreters suggests that there were attempts to assuage any disadvantages for non-bilingual speakers.

Furthermore, the tightened border regime after 9/11 and the uncovering of the human

smuggling rings under the Victims of Trafficking and Violence Prevent Act seem to suggest the intention to soften the negative impacts stemming from illegality (i.e., the inability to reach the police for help). On the other hand, the continued ascendence of gang violence across the US, especially with regard to illegal substance trafficking and selling, was equally tied to the Hispanic demographics. The potential links of gangs with Al Qaeda after 9/11 arguably went even further in establishing the gang activities as part of the *hostis*-as-enemy dynamic with regard to Hispanic gangs. Surprisingly enough, even after these developments in cities most hit with these activities, the local authorities started to accept the consular ID card for identification purposes. Additionally, the proposal that the local police was to enforce immigration legislation was not picked up, arguably even flat-out refused by the police departments. This seems to suggest the clear differentiation between the illegal immigrant as a worker, generally understood under the *hostis*-as-guest, essentially in line with the American *nomos,* and the illegal immigrant as a gang member understood under the *hostis*-as-enemy category opposed to the American way of life as such.

In 2003, the Hispanic community in Chicago reported minimal feelings of discrimination by the public institution or society. It, however, reported growing concern about the crime rate and gang violence ("Poll - Chicago Hispanics Don't Feel Discriminated Against.," 2003). In March 2003, Pennsylvania County was ordered by a court ruling to print ballots in Spanish and hire bilingual poll workers (Caruso, 2003). The situation at the Mexican border in April remained constant, with armed clashes between various gangs ("Mexico Police Seek Victims after Border Slayings.," 2003). The drug-related violence also expanded into federally managed parks close to the borderline with violence directed against the park rangers ("Rising Violence ; U.S. Park Rangers under Attack," 2003). By July, the Mexican government working with the US, managed to dismantle a major drug syndicate that focused on smuggling operations into the US (Vicini, 2003). In August, the drug smugglers encroached on the native Indian land, which became a major line for drug influx into the US. The previous year, four trucks even tried to pass straight through the border fence in the area before being stopped by the authorities (K. Johnson, 2003). Also, in August, Washington again became the city with the most homicides in the country, mainly due to the Hispanic gang violence in some of its areas (Dao, 2003; Fahrentold, 2003). Reportedly, the violent clash was caused by the graffiti spray-painted on various parts of town in what was supposed to be territory marked by different gangs (Fahrentold, 2003).

At the time, the Mara Salvatrucha (MS-13) gang was described as the most organized

and brutal of the country-wide operating gangs (Gloda, 2003). The change in Hispanic gang activity occurred with the increase in immigration to the areas near the Washington, D.C. border. The authorities reported a major increase in violent gang activities by September 2003 (Stockwell & Castaneda, 2003). In October, a special interagency federal unit was established in North Carolina specifically intended to dismantle the gangs operating there. The unit included members of the Immigration and Customs Enforcement personnel. Among its operations was Operation Fed Up, targeted at Hispanic gangs – mainly Mara Salvatrucha and its competitors ("Multi-Agency Unit Aims to Dismantle Charlotte-Area Gangs," 2003). The regime was hardened at the San Diego border area with steel walls, helicopter patrol, infrared cameras and motion detectors. The hardening pushed the migrants to pass through the desert between Arizona and the Mexican Sonora state (Thompson, 2003). In Arizona, the local ranchers started patrolling the border to prevent damage to their property from the illegal migrants (Overington, 2003).

While the progressive integration of the Hispanic performative way of life into the American *nomos* continued with the bilingual ballots and low levels of discrimination in various parts of the country, the violence related to gang activity continued to flourish. Apparently, there was a correlation between the increase in immigration to an area and the increase in gang activity. At the same time, the expansion of violence even to specific parts of the American land division – the parks and the Native Indian land – further attests to the framing of the illegal immigrant gang member as *hostis*-as-enemy. The criminal alien in this regard became anathema to the American *nomos* from the hyperlocal to the (parks, native land, neighbourhoods) to country-wide scale. Consequently, establishing the anti-gang task force in North Carolina with Immigration and Customs Enfourcement (ICE) Agents as the leading part, along with the hardening of the border regime in Arizona, seem to stem from this enmity. There was no drive to pursue undocumented workers. Instead, the operation and the hardening seem to have been designed to identify the criminal immigrant and ensure he or she would not enter the country.

In January 2004, President Bush presented an immigration reform that would allow employers to bring in foreign workers on three-year work visas and even offer this visa type to the illegal workers currently in the US. He argued that:

"Workers who seek only to earn a living end up in the shadows of
American life, fearful, often abused and exploited. When they're victimized

by crime, they're afraid to call the police or seek recourse in the legal system. They're cut off from their families far away, fearing if they leave our country to visit relatives back home, they might never be able to return to their jobs. The situation I described is wrong. It is not the American way" ("Interview: Representatives Jim Kolbe of Arizona and Cliff Stearns of Florida Discuss the Bush Immigration Plan," 2004) .

Nevertheless, the visas given to undocumented immigrants would not automatically allow for their citizenship. At the same time, the US airports and ports started to fingerprint foreigners arriving in the US in order to track down criminals and suspected terrorists (Allen, 2004). In February, the Californian panel of regulators refused the Department of Homeland Security's request to construct border fencing due to its potential damage to the environment (Hettena, 2004). Atlanta's Police Department started the employment of "Latin American emissaries" intended to reach out to the Hispanic community and ensure them that the police is there to help them and would only pursue illegal immigrants that are criminals (Simpson, 2004). In March, the federal government announced the tightening of the border in Arizona due to worsening border violence and in order to prevent infiltration by drug smugglers and potential terrorists. Over the last year, there was an increase of 34% in crossers and 17% in illegal drug seizures in this area (Lichtblau, 2004). The increase in border violence and illegal migration in Arizona continued as the US and Mexican authorities debated new illegal migrants' repatriation plans ("US, Mexico Discuss Revised Mexican Repatriation Plan - NYT," 2004). In April, the Los Angeles Police Department (LAPD) reported Hispanic gangs as a continued source of trouble, while the Department of Homeland Security (DHS) reported more than 20 000 criminal immigrants being deported to Central American countries since 2000 (Bell, 2004).

In May, the 911 emergency number operators started being given language courses in Spanish to better respond to changing demographics of people in an emergency (Fleming, 2004). Additionally, local police departments resisted efforts to make them enforce immigration legislation as it would be at odds with their mission – to protect people living in their communities (McCarthy, 2004). In June, the Border Patrol reported an increase of almost 160 000 individuals caught in illegal attempts to pass the border from Mexico. One DHS official stated that the service was "completely overwhelmed by the numbers" (Thompson & Ochoa, 2004). Furthermore, the changes in the numbers were accompanied

by changed patterns of circular migration, with illegal migrants staying in the US longer and not only staying for seasonal jobs (Axtman, 2004). In local elections in Utah, one of the contenders reportedly encouraged illegal immigrants to participate in the vote. It led the Department of Justice to send monitors to observe the regularity of elections (Warburton, 2004). In July, Tennessee implemented a law requiring proof of U.S. citizenship or permanent residency to acquire a state driver's licence – a change from March 2001. The justification was the intention to prevent potential terrorists from having valid documents (Galindo, 2004). In Virginia, the new law enabled the state and local police forces to arrest illegal immigrants without a warrant but only if they had been convicted of a felony, ordered out of the country or suspected of committing another crime. The change was based on the testimonies of police officers working on gang-related crimes, arguing that the lack of such an option prevented them from effectively policing the gangs ("New State Law Has Immigrants Fearing Police," 2004). In August, the Mexican government filed a complaint against the Border Patrol agents using pepper guns against illegal immigrants on the border. The Border Patrol responded that it's been using the weapons for two years under very strict regulations ("Mexico Demands US Explain Pepper-Gun Use at Border.," 2004). In Chicago, the Hispanic residents felt among the least safe and the most affected by gang-related crime (Greenberger, 2004). Studies from September 2004 showed that Southern California continued to have major problems with gang-related criminality, whose imitation spread across the US (Barrett, 2004a). The gangs reportedly had their own ways of identification processes "including tattoos, dress, signs, gang T-shirts that may include pictures of its dead, slurs against other gangs and even traditions, such as annual gang days."

Additionally, some even had "historians" that kept records of important events and numbers of rival gang members killed (Barrett, 2004b). In October in Idaho, the city of Cadwell reported increased gang-related violence that accompanied the Hispanic migration into the area (Fick, 2004). At the end of October, the House of Representatives approved legislation that allowed the DHS to waive any federal laws interfering with the fence construction on the US-Mexico border (Eilperin, 2004). In Virginia, 24 Hispanic labourers were caught in an anti-loitering police operation. The labourers were identified as illegal immigrants and, due to the legal changes, were now liable to deportation from the country (Cho, 2004). In November, Arizona voted in favour of the initiative to bar illegal immigrants from receiving government services (Jacoby, 2004). In Suffolk County, New York, the rapid increase of Hispanic immigrants over the last three – the growth of 20% – reportedly led to

anti-migration demonstrations and proposals for designating some local police units to enforce the federal immigration legislation (Healy, 2004). In 2004, three businesses countrywide were fined for hiring illegal immigrants, compared to 1063 in 1992 (The Monitor's View, 2006). Similarly, only around 500 undocumented workers were arrested at worksites in 2004 (Maurer, 2020).

The understanding of the undocumented worker category of illegal Hispanic immigrants was fully explained in the President's speech, directly tying the attempts at pursuing happiness through work to the American way of life. Furthermore, he clearly understood it as the failure of the American legal system to accommodate the willingness of would-be immigrants to work in the US. In this regard, the lack of legal protection and all consequent negative impacts this state produces should be ameliorated by providing a legal way to participate in the American way of life. While this was arguably the most obvious expression of the undocumented worker category of the illegal immigrant, the fact that there was, in reality, no enforcement of immigration legislation in the workplace and that the state police departments refused to implement the immigration legislation, some even going as far as to ensure that the Hispanic community understood it does not want to deport them, shows in practice how the "willingness to work" was not understood as against the American *nomos,* rather the opposite. This "willingness to work as part of the pursuit of happiness" type of illegal immigrant was in contrast to the gang and drug-related criminal immigrants that were understood as a distinct category. This is attested only by the fact that there was no direct issue of the Hispanic demographic on the policy level despite the further deterioration in both borders and gang-related countrywide violence that was correlated with an increase in the Hispanic population. Only in some localised cases – as in Suffolk – was the major increase considered an issue.

Additionally, even changes to ensure better identification, as those in Tennessee or Virginia were directed against terrorism (following the events of 9/11) or against gang activity. The subsequent expulsion of the loitering undocumented migrants was understood as unintended. In a way, this works side by side with the changes to the border regime. The identification at the airports and ports was caused by the engagement with the absolute enemy that the US had in Al Qaeda. Similarly, the intention to construct the border fence should be understood as part of the filtration efforts to separate the criminal illegal immigrant from those that are simply coming to work.

At the beginning of 2005, Arizona, for the first time ever, reported the highest

number of border apprehensions in the country (Winograd, 2005). In January, several reports described the Mara Salvatrucha gang (MS-13) as becoming more involved in smuggling illegal immigrants and drugs and weapons into the US. Additionally, it was described as the "only U.S. gang with a broad international reach", and some elected representatives expressed worries about their potential connection to terrorism (namely al-Qaeda) (Elsner, 2005). In the same month, President Bush repeated his calls to loosen immigration policy on workers as some Republican representatives prepared bills on tightening asylum policy and constructing border fences in their states ("Some In GOP Oppose Immigration Measures Backed By Bush," 2005). One of the proposed acts – the REAL ID bill, was formulated as an answer to the 9/11 attackers having access to proper ID cards. Its co-sponsor, Rep. Sam Johnson of Texas, directly linked the threat of terrorism to the mismanaged immigration system and insufficient border protection. The act, eventually passed in May, set specific standards for Driving License ID cards that were an answer to the 9/11 attacks. Additionally, it created strict laws to govern cases of immigrant involvement in terrorist activities and allowed for the completion of the border fence construction in the San Diego area ("Rep. Johnson Backs Tough New Border Security And Immigration Reform Bill," 2005). Meanwhile, the violence at the border continued with the US Government cautioning travellers about the escalation in fighting among cartels ("U.S. Warns of Violent Crime along Mexico Border.," 2005). In February, the Juarez cartel reportedly controlled the majority of smuggling routes through the US border ("Mexico Gang Controls Most US Border Routes - Officials," 2005). In March, new border checkpoints designed to prevent the influx of migrants carrying drugs into the US were causing troubles for the undocumented labour force going to work at the local fields – the fields' owners argued that the entire US agriculture could not exist without a foreign workforce (Jordan, 2005). Also in March, a civic group calling itself The Minuteman Project (MP) started organising a larger number of volunteers to assist the authorities in stopping illegal immigration at the border. Its main argument was that the current laws left the country vulnerable to another attack akin to 9/11 (Shorey, 2005). At the same time, the federal, state and local authorities launched a countrywide operation against the MS-13 with the US Immigration and Customs Enforcement officials directing the operation (Barrett, 2005).

By the end of March, the publicity of the MP led to MS-13 ordering its members to "teach a lesson" to the volunteers deploying at the border ("Activists Fear Violence as Vigilantes Deploy on Border," 2005). After the beginning of the MP activities in April, the

Border Patrol in Arizona stated that their presence was not welcome and it could lead to escalation with drug smugglers on the border (Peňa, 2005). The MP members reportedly tripped the Border Patrol's sensors to detect illegal crossings (Rotstein, 2005a). Nevertheless, just a week after their deployment, the illegal crossings in the area plummeted, but the migration pattern adjusted to different crossing points (Rotstein, 2005b). In April, the head of the ICE addressed the House Subcommittee on Immigration, Border Security and Claims, where he stated that Central American gangs operating in the US had between 750 000 – 850 000 members with the majority being illegal immigrants. He admitted that there could be links between these gangs and terrorist organisations and noted that ICE is at the forefront of the struggle against illegal gangs in the US (Gonzalez, 2005). At the time, 30% of 18 000 inmates in Los Angeles were foreign-born, and there were only two federal officers designated to determine who should be deported. The overcrowding of the facilities resulted in the release of 200 000 convicts in the past three years (Fox, 2005).

In May, some anti-immigration activists called for the enforcement of laws against hiring illegal immigrants that were allegedly neglected across the country ("U.S. Citizens Debate Impact of Illegal Immigration," 2005). Nevertheless, a large number of illegal immigrants in the country continued to pay taxes through the W-7 form that enabled individuals without a Social Security number to pay their federal taxes (Roddy, 2005). According to a government report from April 2005, criminal illegal immigrants in jail in the US have increased by 15% since 2001. They made up 27% of all federal prisoners, costing the US budget about 1.2 billion USD in 2004 alone (Vitter, 2006). At the same time, a coalition of Texas sheriffs addressed the federal government with a plea for help due to the spill-over of violence and voiced fears against potential contact with terrorists ("Texas Border County Sheriffs Warn of Criminals Crossing from Mexico," 2005). In May, anti-gang legislation introduced in March that would further persecute gang members passed the vote in House but, in turn, did not pass the Senate (Crary, 2005).

In the meantime, the expansion of the MS-13 and other gang-related violence contributed to high homicide rates in Washington (Klein, 2005). In California, Governor Schwarzenegger endorsed the MP, commending the group for doing a "terrific job" in Arizona and inviting them to California ("UC-Davis: EDITORIAL: Minuteman Project," 2005). In June, the U.S. Department of State issued warnings about the situation on the Mexican border regarding drug-related violence (State Department, 2005). Also in June, Texan border landowners met with the MP leadership to discuss their deployment in the

area. Reportedly the owners were concerned about the periodic damage to their property stemming from illegal immigration (Levy, 2005a). Over the last year, the local police inquired about immigration status in 670 000 cases over the country, while the anecdotal evidence suggested that some of the mayors and local police chiefs ignored immigration violations as they understood them as not criminal (Llorente, 2005).

The push for the immigration reform programme and the continued reliance of the US agriculture and the federal tax revenue on illegal immigrant workers were essentially trends observed before. These trends showed how even the illegal immigrant worker understood as *hostis*-as-guest became integrated into the American nomos, sometimes even within legal frame*s*. On the other hand, a major development occurred with regard to the criminal illegal immigrant understood as *hostis*-as-enemy. The significant increase in the number of gang members in the US was, in essence, just the continuation of the trend observed already in the early 1990s.

However, now for the first time were, these gangs tied to the absolute enemy that the US found in Al-Qaeda after the attacks of 9/11. Both the terrorist and the gang member were shadowy figures – impossible to identify and threatening the American way of life. This worry was furthermore not expressed only at the federal level with the passing of the REAL ID Act but also by civic society in the form of the MP and even local police forces such as in Texas. The nexus between the need for identification of the enemy, the immigrant and the border fence was clearly established in the REAL ID act that not only responded to the need for clear identification principles in drivers' licences but also changed provisions for immigrant terrorism activities and allowed for border fence construction. Additionally, the fact that the operation against MS-13 activities was headed by the ICE instead of any other "domestic" agency, such as the FBI, shows how large a role the cross-border element played in its activities. After all, even their threats to the MP members observing at the border show that MS-13 was annoyed, if not worried, by attempts at their identification. In this regard, the MS-13 and other similar gangs, with their specific exclusionary performances, violence and desire to remain unidentified – all elements that in one way or another already led to their conceptualisation as *hostis*-as-enemy – were fused with the understanding of hard-to-identify absolute enemy – the Al Qaeda – and subsequent need for identification grow proportionally.

In July, the CIA and DEA claimed that there were at least 100 different Mexican gangs involved in the U.S. cocaine trade (O'Grady, 2005). Also, in July, the Border Patrol

recorded a major increase in armed attacks against its agents in the border zone of Arizona (Marizco, 2005). In Texas, the Texas Border Sheriff's Coalition noted its concerns about the growing number of non-Hispanics crossing the border, especially from nations with Al Qaeda links. They again lobbied the Federal Government for aid in border protection (Levy, 2005b). The Department of State renewed travel warnings amidst escalating violence on the Mexican border ("US Renews Mexico Travel Warning as Killings Mount," 2005). In August, the DHS reported an alarming level of gang activity accompanied by violence. The gangs, such as the MS-13, Latin Kings, or the 18th Street Gang, posed "a severe threat to public safety" ("US Homeland Security Arrests More Than 500 Gang Members," 2005). In New Mexico, the governor, of Hispanic origin, declared a state of emergency in four border countries due to escalating crime and violence caused by uncontrolled migration ("Mexican Government Criticizes New Mexico Border Emergency Declaration," 2005). In Arizona, a state of emergency was declared as well. At the same time, two illegal immigrants were awarded a borderland ranch in a lawsuit settlement. The ranch had been previously owned by one of the vigilante groups – Ranch Rescue – and its previous owner was found guilty of harming the two immigrants, which resulted in the law suit (Pollack, 2005).

By late August, New Mexico and Arizona were granted 1.75 and 1.5 million USD from the federal level to help contain escalating gang violence and drug smuggling across the border ("Editorial: Sane Immigration Policy," 2005). The Homeland Security Secretary admitted that the country did not have proper control of its borders and that he intended to map every mile of the Mexican border to allow for estimating the number of illegal crossings through various corridors. This mapping was to ensure that the new Border Patrol agents that were to be provided by Congress were deployed as rationally as possible (Lipton, 2005). In California, the Governor stated that he was not considering the state of emergency declaration as the situation in the state had ameliorated significantly in the last few years ("California Refuses to Declare Mexico Border Emergency," 2005). At the time, 90% of California's agricultural workforce was made up of illegal immigrants, compared to the 53% national average (The Food Institute, 2005). In September, the DHS secretary approved the construction of the 23-kilometre-long border fence in the San Diego area that was halted since 1996 due to environmental litigations. These litigations were circumvented thanks to the REAL ID Act of 2005 (Olson, 2005). In Texas, a bipartisan group of federal representatives wrote an open letter to President Bush decrying the state of the border and the increasing number of other-than-Mexican immigrants that had not been processed and

released without proper process by the DHS, the gang-related violence and the influx of drugs (Bonilla et al., 2005). According to a researcher from Duke University, there was very little anger at immigrants trying to solve personal economic problems (Dobbs et al., 2005). For example, this tension showed in the campaign in Suffolk County, New York. One of the contenders highlighted that the undocumented day labourers had a negative impact on the community while also arguing that he wanted to include the people "that come here and want to work" (Munoz, 2005).

Similarly, Customs and Border Protection confirmed that the majority of the people crossing the border were trying to find work. Nevertheless, it also confirmed several ongoing investigations of potential links to Al Qaeda. By October, the number of citizen border-watch groups reached 40 along the border, with Minuteman Project being the most famous. The various border-watch groups called for military deployment to the border (Strohm, 2005). In October, a federal team was dispatched to the Texas border to help combat the violent crime along the borderline (Sherman, 2005). While the debate on the border continued, the federal legislature in place prevented the schools and healthcare facilities from inquiring about their customers' citizenship status. Representatives of some of these facilities supported the continuation of this practice arguing they were "not the INS" (Romboy & Dillon, 2005). In 2005, reportedly 70% of murders took place in just 3.5% of counties, generally with high gang concentration (Lott, 2005). In November, the DHS secretary stated that:

> "Illegal migration is a severe and growing security threat. Illegal migration undercuts the rule of law. Illegal migration undermines our national security. And illegal migration imposes particular public safety and economic strains on our border communities. (…) Though a large part of our interior enforcement strategy involves worksite enforcement, it is not limited to that. It includes more focused efforts that locate and remove criminal aliens, dismantle human trafficking and smuggling operations, all in addition to reducing document fraud at the worksite. Criminal activity by illegal immigrants can also represent a severe security threat to our communities. Through initiatives like Operation Community Shield, which targets gang activity, we are identifying and incapacitating illegal immigrants who bring crime and violence to our communities."

In the same speech, he announced the changing of the "catch and release" approach that dominated the DHS enforcement to "catch and return" – meaning that those illegal aliens that were caught would be detained and returned to their home country. He also stated that the country would build physical infrastructure to deter illegal border crossings. Along with the increase of almost 3000 border patrol officers, it was a part of the Secure Border Initiative that was supposed to take control of the border areas (Department of Homeland Security, 2005). Interestingly, 57% of enrolment into the Border Patrol was of people with Hispanic origins (Tobin, 2005).

In the meantime, the efforts of the ICE to deport the illegal immigrant gang members continued across the country, with the operation arresting more than 1500 gang members across the country ("Immigration and Customs Enforcement Apprehends 44 Minnesota Gang Members, Associates as Part of Operation Community Shield," 2005). By November, the illegal immigrants from El Salvador became the second largest immigrant group in the US, after Mexicans. However, unlike Mexicans, the caught illegal immigrants were entitled to an immigration court hearing that would typically take time. The ICE stated that the numbers could be related to the MS-13 movements (The Associated Press, 2015). The violence at the Nuevo Laredo area of the border far exceeded its historical levels. It was at the time attributed to the competition between various Mexican and US-based gangs. Outside of the border violence itself, the ICE also focused on the human smugglers ("State Dept.: U.S. Works To Confront Criminality At Southwest Border," 2005). Later in November, the DHS Secretary addressed the issue of the temporary worker program, stating that the goal is to identify those that are in the US illegally for work and allow them to stay for another six years and work legally. The policy would enable to government to acknowledge that across the country, there is a demand for low-paid workers even if they are working illegally (Hannity & Colmes, 2005). In the meantime, public opinion polls suggested that escalating violence, drug smuggling, and fears of potential Al Qaeda infiltration were behind the public support of increasing border control (Wilson, 2005). President Bush stated that both employment of modern technology and fencing is key to lowering the influx of illegal immigrants.

At the same time, he admitted that the legalisation of migrant workers – through a Guest Worker Program – would allow to better target activities against the real security threats at the border ("Mexico's Fox Says U.S. Needs Immigration Reform," 2005). In December, the House approved additional 1100 km of fencing for the US-Mexico border.

Some representatives noted that the fencing in California cut the crime rate in the area and that the fence was supposed to lower the amount of criminal illegal immigrants that the US Administration has to house in federal facilities before deportation (Moscoso, 2005). According to a report by the United States Government Accountability Office (2005) the number of criminal aliens incarcerated increased from about 42,000 at the end of the calendar year 2001 to about 49,000 at the end of the calendar year 2004. The percentage of all federal criminal aliens prisoners has remained the same over the last three years – about 27 per cent. The majority of criminal aliens incarcerated at the end of the calendar year 2004 were identified as citizens of Mexico.

Similarly, the number of estimated gang members in the US reached its peak in 2005 after a major decrease between 1996 and 2001 (National Gang Center, 2022). Accordingly, the number of violent gang activity peaked in 2005, after a reduction between 1995 and 2000 (*Gang Activity and Violence*, 2022). By the end of 2005, the number of worksite arrests increased to above 1000 compared to 500 a year ago (Maurer, 2020).

During the second half of 2005, the direction of the US border management policy became even clearer and confirmed the previous analysis. The continued federal investigations with regard to gang links with Al Qaeda, coupled with an increase in other-than-Mexican immigrants passing through the southern border, an unprecedented number of gang memberships, violent gang activities and continued deterioration of the border situation in Mexico and the US, led to redoubled efforts at changes to the management of border and immigration. However, there are some important elements to note in the speeches announcing the changes. Both the President and the DHS secretary noted that the border management's focus must be on the "real threats." This apparently meant the violent and criminal illegal immigrants that are tied to gang membership in the US.

On the other hand, those illegal immigrants coming to work should be identified and filtered through the Guest Worker Program. Interestingly enough, exactly the same rhetoric was used even on local levels, where those wanting to work were welcomed, while the anti-immigration demands were focused on those threatening the community. The fact that the legal system went as far as awarding property to illegal immigrants as part of the settlement of abuse at the border shows confirms this analysis almost *in extremis*. The developments highlight the intention to identify those that were in line with the American way of life and allow them to participate and filter those that oppose it. The border fence, along with the Guest Worker Program and changes to DHS policy (catch and release), were designed in a

way that would allow for the filtration of criminal illegal immigrants from the population of illegal immigrants coming to work in the US market. The focus on the criminal illegal immigrants understood as *hostis*-as-enemy would be achieved by the implementation of these three policies. Those would have wanted to work would have willingly identified themselves through the worker program, while those that had crossed the fence would have intentionally declared opposition to the American way of life. Additionally, those with criminal records would be caught, deported and threatened with jail if they tried to return. This is true even despite the increase in workplace enforcement – with 1000 deportations being absolutely negligible compared to millions of undocumented workers in the US at the time and the apparent focus on a different group of immigrants.

In January 2006, tension with a Hispanic undocumented minority in Suffolk, New York, continued with some local citizens protesting against their presence and calling for the full application of the immigration law ("Opposing Sides in Immigration Fight Rally on Long Island," 2006). At the time, the agricultural sector reportedly complained to the US Administration that not enough labour was reaching the relevant firms for the field harvesting process due to the hardened border regime ("Mexico Condemns Another Slaying of Emigrant in U.S.," 2006). Also in January, a task force established between the Departments of Social Security and Homeland Security met for the first time since being instructed to do so in 2004. The intent was to identify illegally working immigrants through taxpayer-identification numbers (McCombs & Stauffer, 2006). In February, a false terrorist threat report was passed to federal agencies describing a nuclear warhead smuggled through an underground cross-border tunnel along with Chinese and Iraqi attackers ("Mexican Suspect In Terror Hoax Extradited To San Diego," 2006).

Nevertheless, the Director of National Intelligence stated to the Senate that the US officials were more concerned about the Canadian, rather than Mexican, border with regard to terrorist threats (Gorham, 2006). The Texas governor deployed an increased number of state police officers to the Texas-Mexico border counties due to increased violence allegedly by drug smugglers (Pierson, 2006). The rise of violence included an armed clash between Texas police and drug smugglers disguised as Mexican armed forces members. Similarly, weapon stashes were discovered along the Rio Grande that included improvised explosive devices. Additionally, the drug traffickers allegedly started to include people smuggling in their operations (Axtman, 2006). The number of attacks on Border Patrol agents increased by more than 100% over the last fiscal year (G. Miller, 2006).

Meanwhile, an event called March for Migrants reached Washington, D.C., in order to put pressure on the Senate to reject the additional border fencing approved by the House in December ("'March for Migrants' Reaches Washington," 2006). By the beginning of March, another bill dealing with immigration was introduced into the House. The bill proposed the creation of another version of the guest worker programme that would legalise undocumented migrants currently working in the US (Werner, 2006). According to the various law enforcement officials' statements to Congress in March 2006, there was a major change in the type of illegal immigrants entering through the Mexican border. Compared to the situation at the beginning of the 1990s, the current immigrant population was more violent and often armed. Additionally, 10% of the coming illegal immigrants were allegedly known criminals (Mitchell, 2006). A study published in March noted that the majority of Hispanics aged 18-34 understood themselves as American and Hispanic at the same time (Winslow, 2006). The DHS Secretary, in his address on Operation Community Shield, noted that the new integrated approach allowed the ICE and other law enforcement agencies to target the criminal illegal migrants better. More importantly, he noted that the members of violent gangs were primarily foreign-born, in the US illegally and were involved in crimes with ties to the border (Department of Homeland Security, 2006b). The operation was designed to identify and remove illegal immigrant gang members from the country (Department of Homeland Security, 2006a). President Bush suggested a 3 billion USD increase for border security while the Border Patrol was acquiring high-tech sensors and surveillance cameras (Allen-Mills, 2006). The public opinion in March suggested that 69% of Americans opposed the construction of a border fence, with 85% having a favourable view of the Mexicans ("Americans, Mexicans Oppose Border Fence - Poll," 2006) with 60% illegal immigrants coming from Mexico.

Many of the trends identified previously continued in the first three months of 2006, with one major change being the false terror attack claim and the Intelligence community admitting the focus on the Canadian border with regard to terrorism. In this regard, it seems the criminal illegal immigrant's conceptualisation could have been disconnected from the wider-ranging connection to Al Qaeda as American absolute global enemy. Nevertheless, this disconnect did not alter the US focus on criminal immigrants from Mexico. In fact, the increase in the border protection budget and continued acquisition of high-tech equipment for an identification came in spite of rather low support for hardening the border regime in the population. Nevertheless, it would seem that the differentiation between the *hostis*-as-

guest of illegal immigrant workers and *hostis*-as-enemy of criminal illegal immigrants was also noticed by the drug smugglers. The fact that they included human smuggling in their drug smuggling operations seems to suggest that the human "cargo" was more likely to pass the border, potentially due to a more welcoming approach by the authorities. At the same time, the categories associated with the criminal illegal immigrant were, in essence, tied to that of a gang member – according to the DHS Secretary, gang members were predominantly foreign-born, arrived illegally and were committing crimes related to the border. While not stated explicitly, the difference with illegal immigrant workers can be deduced – the worker simply did not commit crimes related to the border. This is precisely the category based on which the Guest Worker Program was supposed to filter, while the border fence was supposed to increase the price of crossing and instead direct the would-be-workers to the program instead.

The end of March saw several widescale protests against the proposed immigration legislation. The protests were mostly against the border fence and the provision that anyone harbouring or helping an illegal immigrant would be subject to criminal penalties (Economist Intelligence Unit, 2006). The Spanish-Language media urged the participants to carry American flags, wear white to demonstrate peaceful intentions and ensure that they do not leave trash behind (Flaccus, 2006). Some of the border fence critics noted that the potential construction would go against the "American spirit of openness" (Gaynor, 2006). By the end of March, President Bush stated:

> "I believe that we ought to say to somebody doing a job an American won't do, 'Here is a tamper-proof identity card that will enable you to be here for a period of time.' And if that person wants to become a citizen of the United States, because we're a nation of law, they get at the end of the line, not the beginning of the line" ("Guest-Worker Gains," 2006).

At the time, there was estimated 85 000 criminal illegal immigrants at large in the US (Vitter, 2006). The protests in April showed massive support against the planned immigration legislation, with 500 000 protesters in downtown LA alone (Abraham, 2006). Similarly, hundreds of thousands appeared in Dallas, many waving American flags (Garay, 2006). According to the existing policy, the migrants caught less than 14 days after entering the country or within 100 miles of the border could be deported without appearing before a

federal immigration judge (Talhelm, 2006). This also translated to the strategy applied in the Nogales area. The Border Patrol used the fences in the city area to push the smugglers into the desert, where the time for apprehension was increased to at least three days due to the terrain (Bowers, 2006). According to the reported polling, public opinion in April was more favourable to a guest worker programme allowing the legalisation of undocumented migrant workers if a border fence was constructed (Templeton, 2006). By the end of April, almost 500 immigrant support groups called for "A Day Without an Immigrant" protest – a nationwide general strike demanding full workers' rights for undocumented immigrants (Rizvi, 2006).

At the end of April, a Spanish-language version of the US National Anthem was released by one of the groups, which prompted a response by the President stating that "people who want to be citizens of the United States should learn English" and should be able to sing the national anthem in English (VandeHei, 2006). The "A Day Without an Immigrant" protests saw tens of thousands participating across the country, with slogans including "We are not criminals. Allow us to work" or "God bless America" while waving Mexican and American flags (Lozano, 2006). Nevertheless, there was reportedly no major economic damage caused by the protests ("U.S. Immigration Protests Draw Praise, Skepticism," 2006).

The rather massive public outcry against the proposal that would, in essence, criminalise the illegal immigrant workers and anyone aiding them in any way (even in terms of driving them to work, unknowing of their status) further confirmed the public understanding of illegal immigrant workers as *hostis*-as-guest. The specific performative actions asked by the Hispanic radio stations during the protests, along with the slogans during the A Day Without an Immigrant protest ("We are not criminals"), give credence to this understanding. Even the illegal immigrant workers themselves, or their supporters in the US public, understood the critical difference between the criminal illegal immigrant and those that simply wanted to work (in accordance with the American way of life). Nevertheless, the protests were also directed against the border fencing itself, which was arguably similarly conceptualised as being against the American way of life ("spirit of openness"). President Bush's speech on the debated Guest Worker Program illustrated the conundrum very well. Those that wanted to work must have been identified. Implicitly, those coming without identification could not be welcomed as guests. Finally, the issue with the American anthem in Spanish might have also revealed another aspect of the *nomos* that was

only partially debated – the issue of specific cultural performance as part of the way of life. Arguably, outside of this particular episode, the issue of the English language was not crucial for the integration of the Hispanic immigrants. Quite the opposite, from the local to the federal level, the Spanish language issues were addressed by increased numbers of interpreters or double language products.

By mid-May, President Bush ordered 6000 National Guard troops to be deployed at the border to assist the Border Patrol (J. Miller, 2006). The fruit industry representatives were concerned that such a deployment would lead to a major labour shortage in its grouped enterprises ("Fruit Industry Worries about Impact on Packers," 2006). Several days later, President Bush highlighted that workforce increase and fencing are only a part of border security and that a guest-worker programme is necessary to properly manage the border ("Immigration Wars Bush's Push for Border Fence," 2006). By the end of May, the Minuteman Project members started to construct a self-help border barrier on a privately owned cattle ranch along the Arizona border with Mexico (Rotstein, 2006). At the same time, thousands of bricks were delivered by mail to the offices of House and Senate representatives. Citizens sent bricks in support of the barrier construction (Hulse, 2006). The DHS also received the first offers for the planned Secure Border Initiative – a three-year program to "gain operational control of the border" by including high-tech equipment (Debusman, 2006). In June, Texas started to put more surveillance cameras with night vision at the criminal activity hotspots and most frequent illegal crossings to the country ("Texas Governor Announces High-Tech Border Measures," 2006). The camera streams were supposed to be publicly available on the internet and intended to allow citizens to report a border crossing (Caldwell, 2006).

At the same time, the first of the planned 6000 National Guard troops arrived in Arizona, intending to provide support to the Border Patrol. These included the construction of additional border fencing (Billeaud & Myers, 2006). The fence was intended mainly to block vehicle traffic ("Utah Guardsmen Repair Arizona's Border Fences," 2006). The ICE-conducted Operation Return to Sender captured 2179 illegal immigrants, of which 829 were sent to their home countries. Most of the captured were either criminal aliens or illegal immigrant gang members and were mostly of Latin American origin ("US Detains 2,179 in Anti-Illegal Immigration Raid," 2006). By June 2006, the number of Mexican immigrants who transitioned to legal residency had doubled compared to 1990, which led to additional educational gains on the part of the migrant population (American Political Science

Association, 2006). In LA, there was an uptick in Hispanic-African-American violence both within jails and in schools.

Furthermore, the Hispanic demonstrations in May and June led to many African-American representatives expressing concerns about the increase of Hispanic influence in the country (Cose & Murr, 2006). By early July, President Bush was reportedly more open to the "enforcement-first" approach that focused on increased border-security programs before legalising undocumented workers. This reflected a shift towards the bill sponsored in the House of Representatives focusing on border security instead of the Senate bill focusing on the guest-worker program (Bahadur, 2006). Some of the law enforcement officers' testimonies at the House panel on the issue stressed the increase in the number of nationalities caught at the border, with some even coming from countries where terrorist groups were active. Additionally, the officers also stressed the increasingly violent gang members and drug and human smugglers that they had had to deal with (Hastings, 2006). In August, the Senate passed an amendment to a defence spending bill that provided additional 1.86 billion USD for 600 km of new triple-layered border fencing and 740 new vehicle barriers on the US-Mexican border (Gamboa, 2006). In LA, the number of anti-illegal-immigrant groups increased after the demonstrations in May and June (Uranga, 2006). By the end of August, the English classes for immigrants across the country were full, with waiting lists of up to 18 000 people (Moscoso, 2006). In September, the number of illegal crossings in some sectors of the Arizona border plummeted, reportedly after the deployment of the National Guard troops (Wolff, 2006).

By mid-September, the House approved a new bill that would add 1130 km of double-layered border fencing. The bill was reformed from the bill passed last December. The original bill would make it a felony, compared to a misdemeanour under then-active legislation, to enter the country illegally. This part was not included in the new bill. The justification for the fence construction was that it would allow the Border Patrol to focus on the unfenced areas when apprehending illegal immigrants ("US House OKs Bill To Build 700-Mile Mexico Border Fence," 2006). Following the approval of the bill, the Embassy of the US in Mexico issued a statement saying:

> "Violence in the U.S.-Mexico border region continues to threaten our very
> way of life, and as friends and neighbors, Mexicans and Americans must be
> honest about the near-lawlessness of some parts of our border region." (State

Department, 2006)

By the end of September, the Senate passed the bill on the extension of the border fencing (Weisman, 2006). It was signed by the President on 26 October 2006 (The White House, 2006).

The time span between April and September 2006 represents the final stages of the development of *hostis*-as-guest versus *hostis*-as-enemy specification as it pertained to Hispanic illegal immigrants and the hardening of the border regime on the US-Mexico border. The major public outcry expressed in the various demonstrations was most likely caused by the collapsing of the two categories of a criminal illegal immigrant (*hostis*-as-enemy) and illegal immigrant worker (*hostis*-as-guest) into one through the House bill from December 2005. In its essence, this collapse inherently dealt with the simplification of identification of the enemy, as anyone entering the country illegally would automatically be understood as a criminal. Interestingly, the demonstrations themselves showed the level of influence of the Hispanic population in the country that could negatively affect the existing balance with regard to the African-American position.

Nevertheless, the fact that demonstrations prevent the changed understanding of illegal migration seems to confirm the idea of the pursuit of happiness as the basic foundation of the American *nomos*. Additionally, the continued integration of the Hispanic population was shown on the high demand for learning English across the country. At the same time, the continued unmanageable situation at the border, with returned hints of potential terrorist infiltration and increased violence by illegal immigrants, warranted a response that would enable a clear filtration of the flows. The highest gang violence (tied to illegal Hispanic migration) statistics in years, coupled with the discovery of essentially military-grade arms caches and the continued rise of violence at the border, seems to have been behind the decision to deploy the military in the area as well as behind the rather fast passing of the Secure Fence Act of 2006. In this regard, the fence along with the military deployment were intended as tools for the filtration of illegal immigrant workers and criminal illegal immigrants. While it is true that its construction would lead to changes in migration patterns, the continued treatment of illegal entry as a misdemeanour would allow the illegal immigrant workers to attempt multiple illegal entries even just days apart.

On the other hand, the treatment of criminal illegal immigrants would result in deportation and, if caught again, in actual criminal proceedings. In this way, the fence would

allow the Border Patrol to increase the reaction time needed to intercept the illegal immigrant and consequently filter the criminal ones present while, in essence allowing the workers to try again soon.

In summary, the most important part of the process that eventually led to the construction of the border barrier on the US-Mexican border was the challenge that criminal illegal immigrants understood as *hostis*-as-enemy created for the American *nomos*. The fundamental issue within this process was the separation of the illegal immigrant workers that were crucial for the continued functioning of the American land division and were welcomed not only by the population but also by the political representation on state and country levels. Based on the presented data, it appears that the criminal illegal immigrant as a subset of the incoming immigrant population is understood as transformed throughout the 1990s and early 2000s through the emergence of organised gangs with hierarchical structures and performative ways of identification (Stewart, 1998) into *hostis*-as-enemy. This enmity was declared through various violent actions that went beyond the tolerable illegality inherent in the American way of life. As in the early 2000s, gang violence grew to disproportionate levels both within the country and at the borders, the tools needed for identification became more and more pronounced – the new law enforcement operations directed by the ICE, the REAL ID Act, and finally the construction of the border barrier.

Arguably, it was the potential connection between the absolute enemy the US had in Al Qaeda after the event of 9/11 and the gangs that contributed to the creation of a deeper enmity with the groups. Finally, the discovery of arms caches and essentially a military stand-off with border patrol seems to have been the last straws in the process of border hardening. At the same time, the illegal immigrant workers were arguably understood within the *hostis*-as-guest frame throughout the process. The virtually non-existent enforcement of immigration laws at the workplace or at the employer level stands as the most important testimony to this, alongside both representative and public declarations to that extent. While the illegality of their presence was not seen as a problem for their inclusion in the American way of life, it did allow for problems with the identification of those that were to be allowed and those that were to be expelled.

In this regard, it seems the border fence was precisely the tool by which one would become separated from another – whereas the criminals would be deported, and if caught again tried and imprisoned, the workers would simply be returned to the Mexican border to try again later or potentially given a chance to appear at the immigration court, which would

allow them to stay in the US even further.

5.5.2 Alternative explanations analysis

Starting with the economic difference, it is true that there was a continuous increase in the economic difference between the US and Mexico. Unlike in the Turkish case, the difference changed less rapidly (over 17 years) and generally by a smaller amount (only by 30%). And unlike in the case of Turkey, the migrant population increased only by about four percentage points from 9% in 1990 to 13 in 2005. Equally, the increase was not as rapid as in the Turkish case.

Furthermore, the US is historically a country with larger immigrant populations. Therefore, the increase in immigrant numbers might not have been caused only by those crossing the southern border. It is still possible to argue that the confluence of migration and economic differences led to the decision to construct a border barrier. However, it begs the question of why it did not occur in 2000 when there was the most major jump in the migrant population (by 1.7% compared to 0.9% in 2005) along with the most rapid increase in economic difference (34000 USD to 39 000 USD compared to 40 000 to 43 000 USD in 2005).

Additionally, as there was no major increase in social security spending, it seems unlikely that the protection of the population's social benefits would be a major motivation. Similarly, the increase in globalisation was overall slow – from around 75 to 80 over the course of 17 years. It is unlikely that a perception of losing sovereignty to globalisation pressure was a motivation behind the construction.

Turning to military expenditures, over the course of the tracked period, the lowest point was reached in 2000 with a continual increase until 2005. During that time, the US was involved in two wars – in Afghanistan (2001) and in Iraq (2003). Assuming increased demands for defence industry products (including perimeter security) caused by these two conflicts (supported by the gradual increase in defence spending), it does not seem likely that the government would decide on barrier building as a tool to support the industry.

Finally, looking at the data on terrorist attacks, it seems unlikely that terrorism was a significant motivation for barrier building. As such, it would have been more likely the country would have constructed the barrier sometime between 1995 and 2000, as these years had the highest overall numbers of terror attacks.
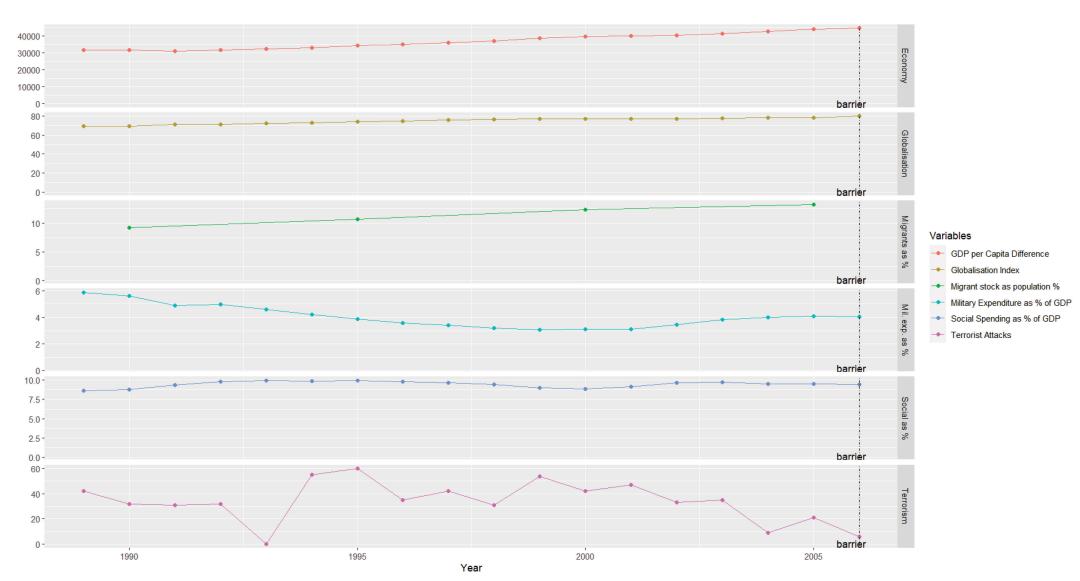
Figure 6: Alternative explanation variables for the US

5.6 Hungary and Serbia during the European Immigration Crisis

5.6.1 Nomos-focused Process-tracing

Before tracking the process that led to the construction of the barrier in Hungary in 2015, it is necessary first to establish a basic outline of the Hungarian *nomos*. Historically speaking, there were at least two important themes that framed Hungarian understanding of the territory – the concept of the Lands of the Hungarian Holy Crown and the memory of the Treaty of Trianon. The idea of the Holy Crown was based on the almost mythical Crown of Saint Stephen, who transformed Hungary into a Christian Kingdom. The Crown as a physical object was used for his coronation ceremony on Christmas, 1000 AD. However, the territorial aspect of the concept tied to the physical Crown denotes the lands that the Hungarian monarchy acquired over centuries and which became its patrimony, united under the reigning monarch, at least since the 16th century. In the 19th century, the unification under the monarch transformed under the liberal influences of the era into the unification by the Hungarian language (Péter, 2012, pp. 51–56). The formulation of the importance of the Hungarian language came in opposition to the Austrian element and found its expression in the uprising of 1848 and finally in the Austro-Hungarian Compromise of 1867. Then as a part of the defeated Austria-Hungary after World War I and the Treaty of Trianon, the concept of the Lands of the Hungarian Holy Crown shattered with newly established nation-states. If language was the unifying factor behind the Hungarian *nomos* in the 19th century, then after the Treaty of Trianon, more than 3 million Hungarian speakers, and therefore *socii*, lived outside of the newly established Hungarian state. Reincorporating the lost lands and brethren into one territorial unit became a recurrent topic in the foreign policy of Hungary ever since. The Holy Crown tradition and its physical representation in the concrete diadem remained active and still plays an important role in the country's political scene (Péter, 2012, p. 17). The memory of the Trianon Treaty is annually recalled on the 4th of June, the National Day of Remembrance ("Hungary's Foreign Minister Downplays Dispute with Slovakia," 2010).

As for the current situation, in 2010, reportedly 76% of ethnic Hungarians living in neighbouring countries desired Hungarian citizenship. At the same time, the importance of language as the key component of the modern Hungarian identity was shown in the integration issues of the extra-EU minorities living in the country ("Hungarian Research Institute Publishes Study on Situation of Immigrants," 2010). The importance of the foreign-

born Hungarians in the government's policy went as far as ministers visiting Serbian Vojvodina without even notifying their counterparts ("Serbian Progressives' Leader Discusses Visit to Hungary, Position on Minorities," 2010). Furthermore, in May 2010, the government decided to offer Hungarian citizenship to ethnic Hungarians living in neighbouring countries (McLaughlin, 2010). Later, Hungarians with dual citizenship living abroad were also accorded the right to vote in the national elections (Szakacs, 2013), requiring the applicants to have an average command of the Hungarian language and ancestors of Hungarian origins (Simic & Lemajic, 2012).

Outside of the language and the issues of Hungarians in neighbouring states, the Hungarians saw themselves as deeply European. There was very strong backing for the country's ascension to the European Union in 2004. Upon taking over the presidency of the European Union for the first time in 2010, the government defined its vision for its term as trying to "find the real soul of Europe" (Hugh Williamson, 2010). The Hungarian Prime Minister Viktor Orban, while commenting on the friendship with Poland, noted that the two countries' back-to-back presidencies have "a special chance to inspire Europe to pay more attention to its 'soul' or identity" ("Hungarian Premier Hails Ties with Poland," 2010). Hungarian presidency wanted "a strong Europe" built around strong demography, family support, social inclusion, the fight against poverty, Roma integration, and cultural diversity.

Around this time, Hungary also saw an increase in support of the far-right Jobbik party, which was tied to issues with the country's Roma population. As Jobbik's then-leader Gabor Vona said:

"Now only drastic interventions are capable of helping . . . we must produce an environment in which gipsy people can return to a world of work, laws and education. And for those unwilling to do so, two alternatives remain: they can either choose to take advantage of the right of free movement granted by the European Union, and leave the country because we will simply no longer put up with lifestyles dedicated to freeloading or criminality; or, there is always prison."

According to opinion polls of the time, 55% of Hungarians were against having Roma and 50% against having LGBTI neighbours (Traynor, 2010). While the questions of the particular study did not include the attitude towards Muslims, the public opposition to

building a mosque in Budapest can provide at least anecdotal evidence to the public perception ("Newspaper Depicts Life of Muslims in Hungary," 2010). Also in 2010, the government pushed a media law that would endow the national media authority with new powers to regulate the press. The Prime Minister argued that the new regulations were required to ensure the moral upbringing of the children (Csermely, 2010).

In 2011, a new constitution was approved by the country's parliament dominated by Prime Minister Orban's party FIDESZ and their supermajority. The new constitution replaced its communist-approved predecessor from 1949 ("Slovak Foreign Ministry Reacts to Hungary's New Constitution," 2011). According to the Prime Minister, the constitution was based on public opinion on the key issues. This opinion was acquired by questionnaires sent to every Hungarian citizen above 18 years of age (Dometeit, 2012). The preamble of the constitution highlights in its very first paragraph the Hungarian nation's pride in being made a part of Christian Europe by Saint Stephen and in its ancestors' contribution to the defence of Europe over the past centuries. It explicitly honours the Holy Crown, which it understands as embodying the "constitutional continuity of Hungary's statehood and the unity of the nation." Additionally, it recognises "the role of Christianity in preserving nationhood", and commits itself to "promoting and safeguarding [Hungarian] heritage, [Hungarian] unique language, Hungarian culture" but also "the languages and cultures of nationalities living in Hungary." Regarding other than Hungarian nationalities, the preamble recognises them as a "part of the Hungarian political community" and "constituent parts of the State." Overall, the constitution was to be:

> Our Fundamental Law shall be the basis of our legal order: it shall be a covenant among Hungarians past, present and future; a living framework which expresses the nation's will and the form in which we want to live (*Fundamental Law of Hungary*, 2011).

In essence, the presented data outline the Hungarian *nomos* just before the beginning of the European immigration crisis. As Pál Schmitt, the then-President of Hungary, summarised in defence of the government's reforms, the ideological foundations were "the Christian Faith, conservatism, and patriotism" (Laczynski, 2011). The Hungarian *nomos* was closely tied to the historical legacy of the Holy Crown, Christianity, the defence of Europe and the unique characteristics of the Hungarian nation – the language and the culture. The

combination of the understanding of the Holy Crown, standing for the unity of the nation, and connection to Hungarians' "past, present and future", along with the laws allowing dual citizenship and voting to ethnic Hungarians living abroad with language requirements shows that the basic way of life grouping point for Hungary at the time was the ability to speak the Hungarian language.

However, the references to the importance of Christianity and the references to the defence of Europe in the constitution also reveal another aspect of the Hungarian *nomos*. The fact that most of the population would not want an LGBTI neighbour, the Prime Minister's essentially moral argument for newspaper censorship and the strong references to Christianity in the Constitution reveal a potential to understand the nature of the Hungarian way of life as "speaking Hungarian" and "respecting the Christian traditions." Furthermore, considering the issues with the Roma population in the country, it is also possible to argue that there was either a racist element in the more radical understanding of the *nomos* (considering no non-white ethnicity was ranked as badly in the cited research, including Slovak, Romanian or Jewish people) or an element strongly focusing on the full participation on the common under a strict and equal application of the law. Nevertheless, the incorporation of the other "nationalities" into the understanding of the political order shows the acceptance of the historical ethnic groups as *socii* within the *nomos* but with a clear understanding of the order as fundamentally Hungarian and Christian.

At the same time, while not explicitly stated in the Constitution, the defence of Europe cannot refer to any other historical event than either the Mongol raids in the 13th century or various Turkish invasions and conquests between the 16th and 18th centuries. The Turkish-Muslim control of the Hungarian territory for more than a century seems as the most likely reference for the Constitution. This, in essence, reveals firstly a strong sense of historical identity tied to the protection of Europe or Christianity. Additionally, coupled with the statements made by the government before its assumption of the Presidency of the European Union about the re-discovery and protection of the European "soul", it situates the above-defined way of life firmly within the community of European nations, understood as culturally, linguistically different but united through the same – most likely Christian – soul.

As the increase in the number of refugees reaching the EU started in the summer of 2013, Hungary was among the EU member states that faced the brunt of the influx. In July 2013, Hungary had to open temporary facilities dealing with immigrants. At the same time, it introduced new legislation that allowed detaining of asylum seekers, arguing this was

required to combat the abuse of the asylum system (Jovanovski, 2013).

In December, the Hungarian foreign secretary, in an interview on Hungary's foreign policy, explicitly stated that the country is committed to creating "a Christian Europe" grounded in traditional Christian values, nation and community ("Interview - State Secy Sums up Hungary's," 2013). In April 2014, Prime Minister Orban's FIDESZ party again won the national parliamentary elections with 44.54% of the vote and 133 seats in Parliament, a super majority. While it is true that the report written by OSCE's Office for Democratic Institutions and Human Rights claimed that FIDESZ benefitted from its position as the current government and from opinionated media coverage, it still concluded that the elections were administered properly with a diverse and inclusive selection of candidates (OSCE, 2014).

In August 2014, the new-old Prime Minister Orban demanded the inclusion of a statement denouncing immigration to Europe and calling for working towards its cessation. He based this argument on the claim that the maintenance of a nation-state with identical language and Christianity as a religious cornerstone was of utmost importance for Hungary. In September, Brigadier General Zsolt Bodnar, the deputy director of the Hungarian Counter-Terrorism Center, noted that there are no borders for terrorists and that they act against the whole European value system. He noted that the Center is tracking Muslim radicals that try to hide within the illegal migration wave coming to Europe while mostly heading to the Western party of the continent. In this regard, they work closely with the existing Muslim community in Hungary, which, as he argued, has no interest in having "radical groups set up [t]here" (Haraszti & Swendt, 2014). In October, Hungarian foreign minister Szijjarto highlighted the Hungarian role in establishing international cooperation against the IS, then active in Iraq, and stated that this policy stems from its belonging to Christian Europe and special duty towards Iraqi Christian communities ("Update - Szijjarto Discusses Economic-Defence Cooperation," 2014).

As the increase of immigration through Hungarian borders to Europe increased between 2014 and 2015, the Hungarian position regarding its understanding of the way of life became even more explicit. With its rhetoric focused on Christian values, the government secured strong domestic support, revealing a wide public backing for the constitutional changes the FIDESZ-dominated government made over the previous years. At the same time, the response to the unfolding migration crisis also started to crystalise. The issue of IS and Muslim terrorism in Europe and elsewhere started to be high on the

agenda of both the security and foreign policy actors in Hungary. The mixing of terrorists within the migration wave shows the first appearance of a new enemy that needs to be identified – an enemy whose existence is contrary to the "European values" understood as Christian and applied even beyond Europe. Furthermore, it was also an enemy that sought to challenge the established way of life while mingling with other *hostēs* arriving in Europe.

In December 2014, the country already became a migration flashpoint. The asylum requests in 2013 amounted to 18 900; in November 2014, they reached 35 000, with another 12 000 projected in December. The arriving migrants reportedly carried no identification and were normally taken to the police station for fingerprinting and medical check-ups – in-line with Dublin agreements (Gorondi, 2014). Already in January 2015, Prime Minister Orban spoke out against the migration, arguing that most of the migrants are economical and claiming that Hungary cannot provide a refuge to those who are coming for purely economic reasons. In particular, he argued that: "[Hungarians] do not want to see among [them]selves minorities with different cultural characteristics and backgrounds; [they] would like to keep Hungary as Hungary" (Horvath, 2015). The same week, just after the attacks on Charlie Hebdo in Paris, the government started to draft a law on protecting community symbols and values from terrorism, while the leader of one of FIDESZ's election coalition partners, Peter Harrach, argued that immigration should be seen as one of the reasons behind the attack.

In February 2015, the FIDESZ party already suggested closing Hungary's borders to non-EU economic migrants, arguing that the country cannot provide jobs for them and has to focus on Hungarians instead (Feher, 2015a). The border police installed heat-seeking cameras and deployed trialling drones, while a mayor from a town bordering Serbia asked the government to build a fence to prevent crossing from the south – at times directed mostly against the wave of Kosovans (Byrne & Vasagar, 2015). In the same month, the foreign minister asked the International Criminal Court to start an investigation of the execution of Christians by IS in Egypt while offering financial support to the families ("Foreign Minister Offers Support to Murdered Coptic Christians' Families," 2015). Hungary also intended to increase its military contribution to the coalition against the IS due to its self-described dedication to Western values ("Szijjarto: Hungary Determined to Fulfill Its Intl Duties to Combat IS," 2015).

In the first phase of the migration wave at the end of 2014 and the first half of 2015, the contrast between the Hungarian understanding of *hostis* that would be allowed as a guest and of *hostis* that would not was on display for the first time. This understanding had two

dimensions. Firstly, the mostly Kosovan wave of early 2015 was nonetheless predominantly Muslim. The terrorist attacks organised by Muslim radicals in Paris and the IS's acts in the Middle East reverberated with the Hungarian self-understanding as the protector of Europe and Christianity. The Muslim terrorist was understood as the enemy threatening the Hungarian and the European way of life - an enemy that needed to be fought abroad and from who the country had to be protected. And due to the lack of available identification of the incoming migrants, the government's ability to select the enemy and protect the country was at stake. Secondly, the participation in the common showed for the first time – only those understood as *socii* were to be allowed to share in the division of the land (i.e., the economy). This resonated with the previous understanding of the Roma people in Hungary –strict and equal adherence to the laws of the land was a pre-requisite for full participation in the common. Implicitly, anyone arriving illegally was not to be allowed to threaten the existing internal division of the land.

In April and May 2015, the Prime Minister started a "national consultation" on the topic of migration – a questionnaire of 12 questions sent to every Hungarian citizen over 18 years of age. In June, the leader of the opposition, Ferenc Gyurcsany, argued for a more inclusive immigration policy, referencing Christian charity. The FIDESZ party responded by firstly asking why does he want to spend billions on economic migrants instead of Hungarians living outside of the country and secondly by stating that the government intends to keep Europe and Hungary as they were ("Taking in Refugees Matter of Humanity, Says Gyurcsany," 2015). Nevertheless, the results of the "national consultation", announced in July, were based on 1 million responses (out of 8 million eligible) and reportedly showed that Hungarians voted against illegal migration to the country, against the "intellectual rampage of the European left-wing politics" and for defending the country (Kiss, 2016, p. 48). Between January and May 2015, the number of illegal border crossings through Hungary's southern borders reached 50 000, compared to 43 000 over the entire year 2014. Most of those crossing the border were coming from Kosovo, Afghanistan and Syria ("Hungary Is Full: Budapest Hopes to Close Border to Illegal Migrants," 2015). In June, the government prepared a plan to build a four-meter high fence along its border with Serbia ("Hungarian Fence Is 'barrier to Asylum Seekers' Says UNHCR," 2015). At the same time, it proposed to tighten the law on migrants and asylum seekers. The law change, approved in July, would allow it to improve the identification of legitimate asylum-seekers and fasten the deportation of economic migrants ("Hungary Seeking to Tighten Law on Asylum

Seekers, Migrants," 2015).

The "national consultation" on migration was certainly a unique case of engagement with the public. Nevertheless, it allowed for an insight into the belief system of the population. As was noted before, the importance of legality was shown in their response. The Hungarians understood the performance of legal entry as a prerequisite for being accepted as a guest. This was later reinforced in the law seeking to achieve better identification of those who were in Hungary legitimately and those that were not welcome.

Additionally, the defence of the country and the "rampage of the European left-wing politics" also showcase another two aspects of previously described *nomos*. Both of them are tied to the respect of the traditional, Christian and European values that, to a degree, animate the basic Hungarian political grouping point. Interesting in this regard was the opposition's leader's attempt to reframe the understanding of the Christian aspect of the Hungarian identity from the perspective of Christian charity (in essence, in line with what Pope Francis was saying at the time). The lack of any actual response to this and similar calls reveals that the Hungarian understanding of Christianity was not necessarily religious. Instead, it reinforced the previous observation that Christianity was understood as a *nomos* component linking the Hungarians to the Europeans through the duty of protection. This duty was even revealed in opposition to the "European left-wing politics" that were supporting the Muslim migration and were, therefore, foreign both to the Hungarian and European way of life (from the perspective of the Hungarian *nomos*).

Furthermore, the ruling party's retort focusing on Hungarians abroad highlighted the ordering of the *nomos's* grouping point – those that belong first and foremost are Hungarian speakers. The decision to construct the border barrier is tied to both of these issues – the reinforcement of legality for the determination of unwelcomed/guest/enemy status and a tool in the protection of the country and Europe of Christian values.

As the preparation for the fence construction was underway, the government started a poster campaign with a message highlighting what it apparently understood as dangers of the migration – illegal migrants taking jobs from Hungarians and potential terrorist threats.[13] On the border with Serbia, a mayor of a small town even used the town's budget to employ a group of migrant-seekers to catch those that the border police missed. In his views, the

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[13] Some of the posters included slogans in Hungarian such as: "If you come to Hungary, you cannot take the job of Hungarians"; "If you come to Hungary, you must respect our culture." or "If you come to Hungary, you must abide by our laws."

incoming Muslim immigrants had values that would clash violently with the "Christian civilisation" (Hull, 2015). Orban stated that Hungary saw a larger number of migrants than Italy and Greece at the time and that each country must protect their own borders ("UPDATE - Hungary Cannot Host Any More Migrants, Says Orban in Brussels (Adds Details)," 2015). In July, information from the border described the incoming migrants throwing away their Greek, Macedonian and Serbian asylum application certificates that would allow their identification because they feared they would be returned to the country where they first asked for asylum. The number of immigrants passing through Hungary reached 72 000 at the beginning of July, while FIDESZ parliament faction leader Antal Rogan noted that "economic migrants must be stopped at the borders of Hungary and, therefore, Europe" ("Facing Record Migrant Flows, Hungary Tightens Asylum System," 2015).

Another government representative noted that Europe is undergoing Islamification, and while Islam as a religion must be respected, Europe is based on Judeo-Christian values. That is why the border fence was a necessary move in his view ("Migration Crisis Europe's 'Invasion', Says Soltesz - Paper," 2015). The opposition launched a poster counter-campaign, which also included a quote by Saint Stephen, stating that: "a country that has only one language and only one tradition is weak and failing." Nevertheless, a poll from July showed that 63% of Hungarians considered immigration to be a security threat to Hungary, while 73% rejected illegal immigrants as such (Feher, 2015b).

The understanding of the *hostis* to be allowed as a guest and one that had to be expelled crystallised even further as the number of passing migrants continued to rise. The concept of the economic migrant coming to reap the benefits of Europe and not respecting the laws was created. This influx was understood as a wider threat to the way of life in Hungary and Europe as it was tied to Islamification. This was clearly tied to the issues of legal arrival and ease of identification – those truly running away from war should have no trouble arriving through appropriate checkpoints and presenting their documents. However, as many of the incoming migrants intentionally threw away their identifying documents, the impossibility of according rights and duties properly seems to have led to the continued need for the construction of the fence. In this view, if all those coming had been let in, it would have resulted in an increased threat to Europe. On the other hand, Hungary, and Hungarians, were responsible for the protection of Europe and Judeo-Christian values. That is why only those that had the legitimate right to arrive could be let in, and this was to be ascertained by building a border barrier. And despite the opposition's efforts to reframe the historical

understanding of the identity, a vast majority of the population seemed to have agreed with this framing.

By the 10th of August, the number of migrants in Hungary passed 100 000. Reportedly, migrants, once smuggled into Hungary, could pass on to Germany or France without any passport checks. The government explicitly stated that the protection of the Hungarian borders with a fence is equal to the protection of Europe, and the Hungarian Army started the construction of the 175-kilometre long and 4-meter tall fence on the border with Serbia (J. Hall, 2015; Peleschuk, 2015). Special "border hunter" police units were also deployed to keep illegal immigrants out of the country (Feher, 2015c). As the fence was going up, the immigrants still remaining in the Balkans tried to rush past the border before the passage would have been blocked. While in Greece, no fingerprints or identity checks reportedly took place, and the government simply directed them to Macedonia. The migrants' biggest fear was to be identified before they reached their ultimate destination – Germany. As one of them noted: "there are police officers behind the Hungarian border that want to take our fingerprints, and if they do that, we will not be able to seek asylum in Germany" (Pancevski, 2015). Another immigrant went even further:

> "My brother is in Sweden. He told me to chop my hands off rather than give my fingerprints to the Hungarians. So we're trying to find a way to Austria without meeting the Hungarian police (Chalk, 2015).

This sentiment was also reported by the NGO volunteers working with the migrants. According to their reports, migrants were afraid to give their fingerprints because they knew it would make it legal for any Western European country to deport them back to Hungary ("EU to Hold Extraordinary Talks on Response to Migrant Crisis," 2015). Additionally, migrants "with the economic migrant profile" were reportedly buying fake Syrian passports in Turkey, assuming as Syrians, they would automatically be granted asylum in Europe (Murphy & Lamparski, 2015). In Serbia, just a few kilometres away from the Hungarian border, various identity documents from all around the world were found, most likely thrown away by migrants outside of Syria assuming new identities and trying to apply for asylum as war refugees in Europe (Stojanovic, 2015).

The rush for the Hungarian border from the Balkans and the motivation of the immigrants to not be identified in any way, in essence, reinforced the Hungarian perception

and resonated with the "duty to protect the borders" that was a part of the identity explicitly stated in the constitution. This was because of the previous description of the lack of identification as creating the conditions for the Islamification of Europe by economic migrants that were not to be accorded rights of the guest upon their arrival.

In the first week of September, 71 people were discovered dead in a truck in Austria, presumably driven by people smugglers. At the same time, Germany announced it would no longer deport Syrian refugees who were already registered in other EU countries before reaching Germany (Feher & Bender, 2015). Around the same time, the Hungarian parliament passed a bill that ruled that entering the country through any other than legal entry points or damaging the fence was punishable with up to three years in prison (Feher, 2015d). Amid rising international criticism for preventing migrant entry to Europe, Hungary lifted its ban on allowing migrants without EU Visas to board international trains, which resulted in an overload of Austrian borders and the stopping of the trains for several hours (McLaughlin, 2015). The migrant crowds gathered at Budapest's Keleti train station chanted: "Germany! Germany! We want to leave," as the Hungarian police had to evacuate the station due to disorderly attempts at bordering trains for Western Europe. In reaction to the criticism and the chaotic development, the FIDESZ parliament faction leader Rogan said that "the very existence of Christian Europe" was under threat and refused to allow his grandchildren to grow up in a "United European Caliphate" (Than, 2015a).

Similarly, Prime Minister Orban stated that his country has the right to refuse to have a large number of Muslims, adding that his people do not like the consequences as they have historical experience with such a situation (Tharoor, 2015b). He also stated that a new, more strict legal situation must be created at the border and admitted that the military might be deployed to protect the Hungarian territory (Dearden, 2015). Finally, as the fence was nearing completion and after several riots in migration registration centres and the chaotic march of migrants through Hungary to Austria, Orban stated that the "entire way of life for Hungary and Europe lay in balance" and that fences have to be maintained "until this madness goes away" (Than, 2015b). At the same time, he noted that he found the fact that only Spaniards and Hungarians were willing to protect the borders of Europe rather depressing. He described the current situation as an invasion and argued that "those who are invaded cannot take anyone in" ("Orban: Who Are Invaded Cannot Take in Anyone - Paper," 2015). The first full fencing of the Hungarian-Serbian border was finished on 14 September 2015 (Samuels, 2015).

The German decision to, in essence, suspend the rules established under Dublin Regulation,[14] possibly motivated by the humanitarian crisis accompanying the migrant movements, seemed to have partially changed the Hungarian perspective. Whatever the motivation behind allowing the unruly boarding of trains for Western Europe was, the Hungarian strategy essentially remained the same – the protection of the country. At the same time, their Prime Minister's statements hinted at the feeling of betrayal from the rest of Europe, as Hungary understood its actions as protecting everyone. And as the migration through Hungary became chaotic and, to a degree, violent, the separate categories of economic migrants and refugees collapsed into one – an invader. Even more, a Muslim invader akin to the Turkish-Muslim occupants of Hungary, as the Prime Minister referenced. Therefore, anyone trying to pass the border illegally was to be understood as unwelcome and threatening to the way of life. The border fence then became the prime tool in preventing the collapse of the established *nomos* – both the Hungarian and the wider European one.

All in all, the story of the border fence in Hungary during the European migration crisis seems to have resonated with the fundamental understanding of Hungarians as a nation. The sanctified way of life on the Hungarian territory was historically tied to the Hungarian language and the Christian traditions, albeit secularized. Furthermore, these two identities acquired their meaning during years of struggle against Ottoman invasions and later Austrian-German dominance. Therefore, the influx of a large number of Muslim immigrants, presumably without any sort of understanding or appreciation for the Hungarian language or culture within the context of the rising Islamist terrorism, was perceived as a threat to this way of life by a *hostis* that is hard, and indeed unwilling, to be identified. Because of this, the government decided to construct a border barrier intending to ensure that anyone who passes it illegally is understood as unwelcomed and, therefore, also to allow for identification and the associated protection of the way of life.

5.6.2 Alternative Explanations Analysis

Looking at the alternative explanation variables, there seems to be a relevant variation only in two indicators – military expenditure and terrorism.

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[14] The Dublin Regulation is a EU regulation that establishes the criteria and procedures for determining which member state is responsible for examining an asylum application within the European Union. Typically, it is the first country of entry.
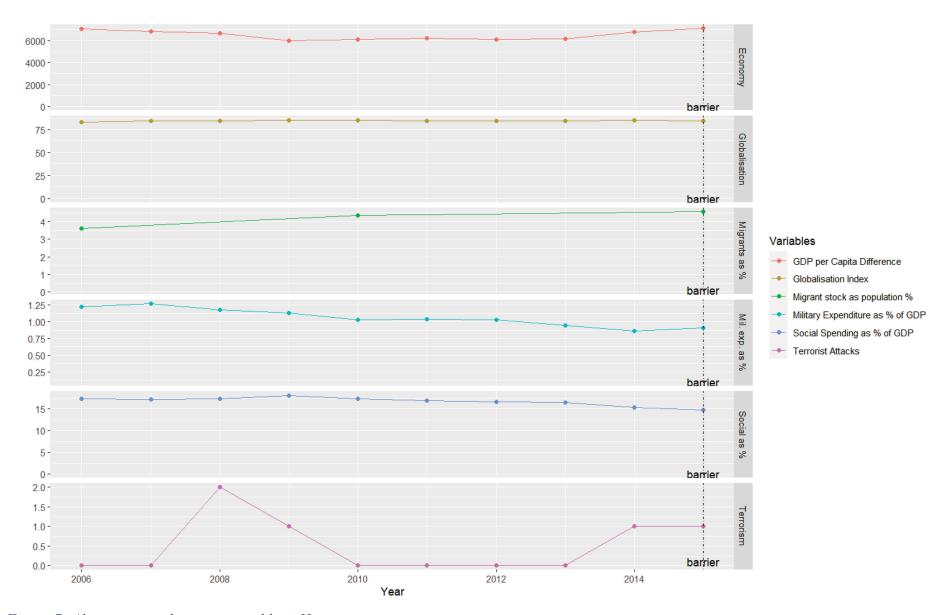
Figure 7: Alternative explanation variables - Hungary

In terms of economic differences between Hungary and Serbia, there was not much change in the observed years. The difference actually dropped between 2006 and 2010, with an increase back to the original levels between 2012 and 2015. In this regard, it is unlikely the economic difference played a role in the barrier-building decision as no barrier was constructed in 2006 when the difference was at the same level as in 2015. Similarly, there was no change in the globalisation index. The percentage of migrants in the Hungarian population increased between 2006 and 2015, but the most major increase was recorded already in 2010 (from 3.6 to 4.3). Between 2010 and 2015, the recorded change was only 0.2 percentage points. In terms of social spending, the expenditure is the highest in all the compared countries, yet as the barrier-building decision was nearing, the actual percentage of GDP spent on social security was reducing. This moved in the opposite direction than the justification for the border barrier imagined.

Moving to the two relevant indicators, military spending had been falling in Hungary since 2007 and was reduced by almost one-third by 2014. The year of the barrier construction saw the first increase in military spending in eight years. No data on a particular contractor building the fence was found, but it seems governmental agencies constructed the fence. As it stands, this would rule out the defence industry lobby as a reason for barrier building. Nevertheless, it did come after a period of severely reduced defence spending.

In terms of terrorism, the phenomenon has been virtually non-existent. In this regard, the change in 2014 and 2015 could have a sufficient impact on the public to warrant the construction of the barrier. Upon closer inspection, the attacks consisted of a bomb attack on a bank (in 2014) and a discovery of a homemade explosive on a bus from Romania (in 2015). Both incidents were without casualties, and no group claimed responsibility. They also did not figure in the barrier debate as observed previously. Nevertheless, it is not possible to discount the potential connection between the incidents and the barrier as one was directly linked to international travel.

5.7 India and Bangladesh

5.7.1 Nomos-focused Process-tracing

The Indian sub-continent has for centuries hosted a myriad of various language groups, ethnicities and religions. It is possible to assume that it was thanks to these differences that it had not been politically unified until its various princely states were attached to the British Crown in the 19th century. With a large number of religious minorities,

the modern state of India was born in the middle of the 20ᵗʰ century, after an unarmed struggle for independence inspired and led by Mahatma Mohandas Karamchand Gandhi. While the anti-British struggle since the rebellion of 1857 and until independence certainly defined a part of the basic understanding of Indian identity, it was the conflict between the Muslim and Hindu elements in the independence movement that arguably produced the most important exclusion related to the modern Indian *nomos* (Metcalf & Metcalf, 2006). The development between Congress and the Muslim League, and the subsequent establishment of India and Pakistan, in its original borders, along with the dispute over Kashmir, seem to imply an underlying religious grouping point for the *nomos* of India. The numerous wars and armed clashes between 1947 and 1999 without any settlement on Kashmir between two countries that have a shared history, culture and, to a degree, even language indeed highlight the issue of religion and associated territorial control. India was founded as a non-denominational secular federal republic, and there are no special provisions for the place of Hinduism, nor other Dharmic or Abrahamic religions, in the original text of its constitution (*The Constitution Of India*, 1949).

However, its constitution also features Article 7, with the specific exclusion of people who migrated to the territory of Pakistan after March 1947 from acquiring Indian citizenship. This article, in itself, provides a specific connection between the Indian territory, its political grouping point and the exclusion of Pakistan. Furthermore, in practical terms, the soldiers of Muslim origin make up only 3% of the Indian Armed Forces, while they represent 14% of the population (Saksena, 2014). The inter-communal contact between Hindu and Muslim citizens was reported to be minimal. At the same time, the Hindu-nationalist party Indian People's Party (BJP) gained wide-ranging support among the country's Hindu majority (Chopra, 2000). While Pakistan and India share tumultuous and bloody history, the Hindu aspect of the Indian *nomos* might be better seen in the situation with Bangladesh, essentially a friendly country since its India-supported independence. While the enmity with regard to Pakistan was virtually clear cut and the challenge to Indian *nomos* comprising Jammu and Kashmir evident, no such issues existed with Bangladesh. At the same time, the Bengali language and culture are a part of India through its state of West Bengal (Datta, 2004). Here the issue of identification and belonging to the Indian *nomos* became even more pronounced.

This points to another key aspect of the Indian *nomos* - federalism. India, in its essence, is a union of various state entities grouping together people speaking at least 121 different languages ("More than 19,500 Mother Tongues Spoken in India: Census," 2018),

at least 44 ethnic groups (Basu et al., 2003) and reportedly 705 officially recognised tribal groups (IWGIA, 2021). Some of the major groups share important linguistic and cultural similarities with the neighbouring countries and have their own political histories. Additionally, for decades there have been separatist and insurgent movements, with the most serious being the Naxalite-Maoist insurgency aiming for the establishment of a Communist regime in India and the various Assam separatist movements seeking the independence of the north-eastern Indian state of Assam. The various separatist groups in Assam have reportedly had ties both with the Bangladeshi and Pakistani government agencies (Kotwal, 2001) and even with Al-Qaeda (Rajamohan, 2003). Some reports also suggested the Assam insurgency was supposed to have been incited by Christian missionaries. Around 30% of the population of the Northeastern part of India was reportedly Christian (Z. Hussain, 2000). Outside of the Assamese separatists in Northeast India, there were also disputes between various northeastern groups, such as the Nagas, Kukis, Bodos, and Santhals, with varying levels of hostility towards the central government (Choudhury, 2002). These rebellions are often deeply rooted in the particular local histories of, at times, forceful integration of the former princely states to the federation of India and their interaction with the newly established borders. Interestingly, one of the more active groups, the United Liberation Front of Assam (ULFA), originally started as an Assamese identarian militant group seeking independence and demanding a stop to foreign immigration (Gohain, 2007; "Northeast Carnage Blamed on Terror Bases across Borders," 2004).

The Indian *nomos* is, therefore, a bit difficult to pinpoint. Apparently, at least according to the constitutional order, to be understood as an Indian *socius* from the performative perspective, one should speak some of the languages accepted in the Indian territory, practice some of the religions historical to the Indian continent and be a member of one of the dozens of ethnic groups living in India. However, while these are necessary conditions, they are not sufficient as there is no clear bordering factor, such as language or adherence to a particular cultural or religious tradition. A Bengali from Bangladesh can come to the Indian state of West Bengal without arguably being recognised as not Indian. This turns to the question of administrative identification but also raises the question of who is an Indian. The overlying of the unclear belonging to the Indian state on top of the former long-held identities connected to the feudal or pseudo-feudal relations contributes to the issue. At the same time, the issue of territorial integrity is also heightened within the understanding of the political grouping point not only because of the Kashmir experience but also because of

the armed struggle of various separatist and rebel groups. Nevertheless, for research purposes, it is possible to assume the modern Indian *nomos* to be understood as outlined above and infused with a strong sense of territoriality and the potential inclusion of Hindu/Muslim differentiation as another aspect. In order to specify how the various aspects interacted in the process of barrier building on the Indian-Bangladeshi border, it is reasonable to start right after the end of the Kargil conflict with Pakistan in 1999.

As the foreign affairs minister, Jaswant Singh summarised in 2000 after the end of the so-called Kargil Conflict with Pakistan:

> "For two decades, India has been a victim of state-sponsored terrorist violence, aided and abetted from across the border. The challenge before India is to maintain an open, democratic, transparent and pluralistic society, safeguard individual rights and, at the same time, combat the scourge of terrorism through all possible means."

In the same speech to the Indian parliament, he called out Pakistan against using the term "Jehad" to denote "international terrorism with a focus on cross-border terrorism in Jammu and Kashmir" ("India Does Not Accept 'Jehad' as Instrument of Foreign Policy.," 2000). Nevertheless, Indian authorities also reported tracking infiltration attempts by the elements supported by the Pakistani Inter-Services Intelligence (ISI) agency across the border from Bangladesh. At the same time, it reported the Naga and Assam separatists (ULFA) as operating out of the territory of Bangladesh, while it did not accuse its government of supporting them ("False Passport Threatens Naga's 50-Year Dream.," 2000; "Insurgents Groups Still Using Bangladesh Territory," 2000). The reports indicated the ISI was enlisting illegal immigrants from Bangladesh for terrorism purposes. Illegal immigration from Bangladesh at the time was assumed to be around 10 million people and to have been concentrated in West Bengal and Assam states (Jain, 2000).

Regarding immigration, the Assam governor sent a report to the federal government stating that "soon Muslims would outnumber Hindus in Assam, which could result in the state's secession from India" (Abdi, 2001). During the year, Bangladesh launched an offensive against the Assam secessionist (ULFA) camps on its territory (Z. Hussain, 2000). There were two border incidents between the Border Security Forces of India and the Bangladesh Rifles, both resulting in the deaths of civilians ("Bangladeshi Villagers Killed

by Indian Border Guards.," 2000; "Border-Killed.," 2000). The two incidents involved the construction of a tea garden and the use of arable land in the disputed territory. With regard to the inter-communal violence reported in West Bengal, there was one major incident that implied a culture clash. However the participating groups were not specified (Prakash, 2000).

As India finished its conflict with an enemy that for decades used tactics intended to obscure the identity of its fighters, it very strongly condemned the conceptual framework from which these tactics originated – the "jehad". In this regard, the ongoing use of identifiable fighters even from within the Indian society and arguably even from some of its neighbouring states highlighted the issue of the *hostis* identification in India. The appeal of the Assam state governor highlighting the Muslim feature of the Bangladeshi migration also points to the attempts at linking the exclusivity of Indian *nomos* to the suggested Hindu political grouping point. Furthermore, the threat of the secession of the Assam state due to overwhelming demography changes in the context of the exploitation of the Bangladeshi migration by Pakistan for hostile actions suggests that there was at least some underlying feeling of danger associated with the Muslim presence. This could have been supported by the ongoing separatist activity in the region and the inter-communal clashes. Nevertheless, the activity of Bangladesh against the militants on its territory seems to have prevented the reframing of the Bangladeshi migration as challenging to the Indian *nomos*.

In February of 2001, the Indian federal Tripura state authorities announced the construction of a border fence over 40 kilometres stretch of the border between the Indian state of Tripura and Bangladesh. The announced reason for construction was the prevention of separatist movements (the National Liberation Front of Tripura and All Tripura Tiger Force) from their camps in Bangladesh. At the same time, the intent was also to reduce the number of illegal immigrants. Some reportedly influential members of civil society were also lobbying the federal government to fence off the entire border ("India to Fence Part of Border with Bangladesh to Check Militants," 2001). In the same month, the Supreme Court of India ruled that illegal immigration from Bangladesh is both an economic and security threat to the country. The federal government responded it already had plans in place for the fencing of the entire length by March 2007. The standing policy towards the illegal immigrants from Bangladesh in the state of Assam was governed by the Illegal Migrants Determination by Tribunals Act (IMDT) which was different from the policy applied in the rest of India. In the case of IMDT, the burden of proof that a person is not a legal citizen of

India was on the police, meaning the defendant did not have to produce the required documentation. Initially, it was approved in 1983 to deal with the complaints by the local population against the rapid increase in the number of Bangladeshi inhabitants that migrated to the country illegally. During the proceeding, the government representative blamed the ineffectiveness of the migration enforcement on this act (Fernandes, 2005; "Illegal Bangladeshi Migrants Strain on Country," 2001). The court ordered the expulsion of all illegal Bangladeshi migrants in India, numbering between 15 to 20 million and living mostly in Assam and West Bengal, but also in the capital of New Delhi. Some of them managed to acquire ration cards, voter identity cards and even passports through bribery. Illegal Bangladeshi immigrants were even caught in Jammu and Kashmir as they attempted to pass to Pakistan (Rana, 2001).

With regard to the situation on the border, in April, there was a major border clash reportedly caused by the Indian occupation of a disputed village that was a part of the numerous Indian enclaves in the territory of Bangladesh (Miglani, 2001). There were 16 Indian and two Bangladeshi casualties, and the Indian authorities reported signs of torture found on the dead bodies. The clash led to an increase in the border patrols ("Seven Killed in Pre-Election Violence - Other World News.," 2001) and a considerable reduction in smuggling and even formal trade ("Smuggling-Fall.," 2001). During the year, the conditions in north-eastern and some eastern states were described as disturbed by militant activities of various underground groups and ethnic tensions facilitated by networking of the militant groups operating across the border ("Terrorist Activities by Militant Outfits and Action Plan to Deal with Them," 2001). For example, there were communal clashes in Orissa state between locals and Bangladeshi settlers (Chandran, 2001). In September, Tripura called on Bangladesh to demolish camps of separatist groups (National Liberation Front of Tripura, NLFT) operating out of its territory ("Indian State Accuses Bangladesh of Aiding Rebel Groups," 2001). In terms of national security, outside of a major bombing campaign by the Muslim militants in Kashmir in October (Wani, 2001), there was also a serious attack on the Indian parliament in December ("India Considers 'all Options'…," 2001). At the same time, a major smuggling of cattle was reported from India to Bangladesh, with the number estimated at 300 000 cows smuggled each year. In response, a local administration decided to give out cow ID cards ("And Now, ID Cards for Cows?," 2001).

Similar to the Assamese call on the central government in the previous year, the Tripura state decision to construct a border fence on its own as well as its later call on the

Bangladeshi government to push the rebels from its territory, and the attempts of local administration to establish ID cards for bovines, show the assumed troubles of unclear identification that challenges the *nomos* at the local level. In the case of Assam, the influx of unidentifiable migrants was exacerbated by the standing Indian policy, which led to a judicial decision on the dangers of migration to the country. As expected, the Supreme Court's justification was based on the connection between the presence of Bangladeshi migrants and potential security, most likely terrorist, threats to the *nomos*. As the year unfolded, the continued activities of the separatist movements in Bangladeshi borderlands increased along with clashes between the two nations' border guard agencies. While the incidents are different in nature, they both present a challenge to the territorial aspect of the Indian *nomos* – one through the low-intensity conflict caused by the lack of proper delineation and the other by direct challenge by hard-to-identify enemies to the territorial aspect of the *nomos*. From the perspective of the conflict with Pakistan, the connection between the Bangladeshi illegal immigrants and Pakistan was reinforced during the year.

The year 2002 started with another clash on the border, reportedly caused by constructions on the zero line by the Bangladeshi side. Additionally, the Indian BSF increased security measures following the terrorist attack on the Parliament in the previous year and arrested suspected spies in the Shiliguri district ("BSF-Killing.," 2002). There was also a terrorist attack in West Bengal by Bangladeshi immigrants with possible links to Pakistan (C. Banerjee, 2002), which led to increased vigilance on the border with Bangladesh ("Gunmen Open Fire at US Site in India," 2002). In February, the BSF shot four Bangladeshis dead as they were trying to cut the barbed wire fence ("Indian Border Security Force Today Refused to Hand over the Bodies of Four Bangladeshis Shot Dead on the Border.," 2002). This was followed by a high-level bi-lateral BSF-BDR meeting to address infiltration, harvesting of crops and trans-border crime ("India, Bangladesh to Discuss Border Crime," 2002) that concluded with a pledge to maintain peace at the border areas and takes steps to avoid encroachment on the disputed territory ("Bangladesh, India Pledge to Maintain Border Peace," 2002).

Nevertheless, just two weeks later, the BSF imposed a curfew on the border areas and banned any kind of movement after sunset. This resulted in clashes with the locals. Reportedly, this was caused by the assumed ISI connection to illegal migration. Since the beginning of the year, 22 Indian nationals were killed by BSF firing on the border trespassing (Roy, 2002). The increased vigilance included the transfer of control of the key to the border

fence gates. The key was transferred from the gate sentry to the company commander, which led to the local farmers being unable to reach their fields on the other side of the fence (N. Banerjee, 2002a). In June, there was an increase in ISI agents crossing the Bangladesh-India borders, and the BSF noted that with the number of illegal crossings, it is impossible to properly investigate ISI affiliation (N. Banerjee, 2002b). Later, in July, the construction of the fence on the borders in Assam, Tripura and West Bengal threatened to leave inhabitants of a set of villages in the Bangladeshi territory. The inhabitants of these villages feared that they would leave them for exploitation by Bangladeshi robbers and bandits (Sil, 2002). Even on the Indian side of the border, there were reports of Bangladeshi intruders raiding villages and kidnapping villagers ("Four Killed in Clashes on India-Bangladesh Border," 2002). In December, the BSF officials declared that controlling the infiltration across the Indo-Bangladesh border is impossible. The declaration came after the discovery of the ISI spy network regularly crossing through the border. A decision to increase the number of border guards present at the border followed suit ("It's Impossible to Check Infiltration - BSF.," 2002). The issue of the support for terrorists and separatists was then addressed at the meeting of the Bangladeshi-India foreign ministers ("Trade, Terrorism Top Bangladeshi FM's Talks with Indian Leaders [Corrected 06/17/02]," 2002) in June and later also in August, when the two countries agreed not to harbour each other's fugitives (Ahmed, 2002). From the perspective of the inter-communal violence elsewhere in India, in Gujarat in April, major Hindu-Muslim riots occurred along with a discovery of explosives caches and weapons ("More Riots in Gujarat as Police Find Cache of Explosives, Weapons.," 2002). Later, in September, Muslim radicals committed a massacre in the Hindu temple in Gujarat (MacKinnon, 2002).

The increase in border security measures right after the attack on Parliament in late 2001 shows that the connection between the threat to Indian *nomos* coming from Pakistan and illegal Bangladeshi immigration was established. Bangladeshi migration as a threat was further reinforced when the links between the insufficient border screening and Pakistani ISI activities were uncovered as the Hindu-Muslim violence in the western part of the country rose again. While there were always meetings between the border guard agencies and even higher governmental representatives of the two countries, they were clearly insufficient to ease the worries of the potentially hidden enemy within the influx of the Bangladeshi *hostis*. The hardening of the border had major impacts on the local inhabitants. The change in the fence gate management, along with the fears of bandit raids on Indian villages behind the

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fence, showcases the nexus between order and protection within the *nomos* but also further reveals the simmering hostility existing at the border. The villagers, by virtue of their land being outside of the border fence and in order to allow for the identification of those who belonged and those who did not, were forced almost out of the political order and their *socius* status simply by their land being left out of the re-establishing political order.

In January 2003, there were reports of the BSF pushing between 150-280 Indian Bengali-speaking nationals of Muslim origin towards the Bangladeshi border. This was part of a wider security policy of crackdown on illegal Bangladeshi nationals living in India. Its justification was its connection with the Pakistani ISI and the reported presence of Al Qaeda in Bangladesh. Additionally, some reports argued that the demography of border regions such as Islampur in West Bengal and Karimgunj in Assam saw a major increase in their Muslim population compared to the reported 60% in 1981 (Mitra, 2003). The decision was followed by a consultation by the two countries' foreign ministers in February, where the Indian foreign minister Yashwat Sinha stated that: [India] want[s] the friendliest relationship with Bangladesh and (…) the present situation to end as soon as possible ("Bangladesh Foreign Minister to Visit India Later This Week," 2003; Pan, 2003). In the same month, there were local elections in the Tripura state, which were marred by militant attacks (W. Hussain, 2003). In March, an inquiry team from New Delhi visited the borders in order to evaluate the problem of infiltration and BSF-BDR conflicts ("Smuggled Camels Returned to India.," 2003).

By June, hundreds of illegal immigrants were deported from India to Bangladesh following the crackdown initiated in January ("'Hundreds' of Illegal Immigrants Deported to Bangladesh from India.," 2003), while the head of India's Defence Intelligence Agency expressed concerns about Pakistan's support to militant activity in Bangladesh directed against India. India also submitted a list of 99 training camps operated by Indian separatists out of Bangladesh. The government of West Bengal stated that its economy was under siege by illegal migration and demanded the federal government speed up the fencing. By this time, more than 1000 km of border fencing, out of the scheduled 3406 km, was already constructed (Bedi, 2003). In August, 30 people in Tripura state were killed by the Tribal separatists operating out of Bangladesh ("Strike in Northeastern Indian State after Militant Killings.," 2003). Later in November, a similar scene played out in Assam, where several Hindi speakers were killed and at least 600 houses burned by a local separatist group (ULFA) (Z. Hussain, 2003).

The trend from the previous years was further reinforced in 2003. With the Bangladeshi migration lacking proper identification and being a direct threat to the Indian *nomos* associated with its primary enemy from Pakistan, the understanding of *hostis* as guest changed. This is why the pushing out of the Muslim Bangladeshi began, and by June, the deportations had reached hundreds. With West Bengal's worries about its own economy, the longstanding local threat to the Indian *nomos* empirically experienced by north-eastern states and state-level threats became connected. Meanwhile, the Bangladeshi government was confronted with a choice to side with the separatists or with the government of India by evicting the separatist camps. As attempts were being made to lower the freedom of action of the militant groups across the border, their real enmity came to the front in the Indian border states. This resulted in increased speed of the border fence construction and demands by the northeastern states for the fence construction and heightened interest in the border issues from the centre.

In January 2004, Indian intelligence reported the movement of rebel groups previously residing in Bhutan to Myanmar and Bangladesh ("Indian Separatists Say Camps Safe in Myanmar despite Reported Crackdown.," 2004). In February, as the Indian BSF continued with the construction of the fence close to the boundary pillar, the BDR formally lodged a protest to suspend the construction ("Border-Tension," 2004). In May, the Meghalaya state governor noted some positive signals from Bangladesh, yet Indian separatists still had active camps in its territory ("India Getting Positive Reaction from Bangladesh," 2004). Only three days later, after a meeting between the BSF and BDR officials, the Bangladeshi side refused that there were any militant camps in its territory and opposed the erection of the fence by India closer than 137 meters to the borderline. India also suggested a joint operation against the militant camps, to which no response was allegedly given ("BSF-BDR Meet Ends in Disagreement over Terror Camps.," 2004; "India Proposes Joint Anti-Terrorism Ops With Bangladesh," 2004). Reportedly, there was Indian intelligence information on Pakistan's ISI attempts to establish a Muslim breakaway region in Indian Northeast with support from Islamic fundamentalist elements in the Bangladeshi army, bureaucracy and intelligence (Kumar, 2004). Nevertheless, the border barrier construction continued despite changes to the government in New Delhi after the elections. On the ground in West Bengal, people described the illegal crossing of Bangladeshi immigrants as causing the loss of jobs and terrorism. Some even argued that the migration is pushed by Bangladesh for geopolitical reasons and that once the demography of the states

in question changes to mostly Muslim, Bangladesh can demand the territory. At the same time, Amnesty International and Human Rights Watch reported anti-Muslim riots in India and Muslim militant attacks against Hindus in Bangladesh (Pocha, 2004). In June, the new Minister of Defence, Pranab Mukherjee, described plans for fencing the entire border system of the country as he addressed the filling of gaps in the Jammu and Kashmir fences used for infiltration (IANS, 2004a).

In July, the Minister of State for Home Affairs, Reghupathy, announced that the cache of sophisticated weapons seized in Bangladesh was intended for use by insurgent groups in India's northeastern states (IANS, 2004b). On the same day, the decision was made to fence the border also between Mizoram state and Bangladesh, as this border was supposedly used for gun smuggling in support of the separatist groups in the region (IANS, 2004c). Since the beginning of 2004, India has pushed back 21 000 illegal Bangladeshi migrants, and according to the available reports, the migration went down 25%. According to the BSF commander Ajai Raj Sharma, the fencing was 50% complete ("India Has Deported 21,000 Bangladeshis since 2003: Border Guard Chief," 2004). Nevertheless, there were still 500-700 daily illegal crossings (N. Banerjee, 2004). In August, the BSF once again submitted an updated list of the militant camps in Bangladesh, while the BDR side denied their existence. BDR also refused the possibility of constructing a border fence closer than 137 meters to the borderline as per standing agreements against the construction of defensive structures on the border ("India Provides New List of Insurgent Camps to Bangladesh," 2004). The continued attempts at constructing the fence led to increased tension and high alert declaration on both sides of the border ("Bangladesh, Indian Border Guards Issue Red Flag Alert at Dinajpur Frontier.," 2004). Later that month, there were major bombing attacks in Assam by the separatists (ULFA), while available reports identified several major leaders of the group as residing in Bangladesh (Mills, 2004).

Furthermore, a large number of the separatist camps in Bangladesh allegedly re-opened in 2001. It has been suggested that there was opposition against closing down these camps within higher echelons of the Bangladeshi armed forces (Jha, 2004). In September, India reiterated its position on constructing the fence on the zero line. It called again for a joint operation with the Bangladeshi armed forces against the Indian separatist camps in Bangladesh while expressing concern about the arms smuggling from the country. Bangladesh responded that the intelligence on the camps provided by India had not been sufficient to act upon ("New Delhi to Seek Dhaka's Help in Cracking Insurgent Camps,"

2004). In September, India announced the speeding up of the fence construction with the intended end date in March 2006. The Indian Interior Ministry Secretary Dhirendra Singh justified the decision by stating that India has: "grave concerns about Indian insurgents which are using Bangladesh's territory for training and obtaining arms" ("India to Fence off B'desh Border by March '06.," 2004).

Additionally, the Indian government was adamant on the need to construct the fence on the borderline, as there was a large number of Indian villages situated closer than 137 meters to the line, and the fence construction would leave tens of thousands of Indian citizens on the wrong side of the border (Dam, 2004). In October, there were multiple attacks in Nagaland and Assam that killed more than 50 people and were committed by ULFA and other separatist groups in the region (Morrison, 2004). In 2004 ULFA was almost fully dependent on Bangladesh to remain operational. The Assamese Chief Minister demanded the government in New Delhi increase pressure on Bangladesh to expel the militants from its territory ("Northeast Carnage Blamed on Terror Bases across Borders," 2004). In November, the Indian Prime Minister announced that Bangladesh refuses to support India in the fight against the militants or illegal migration, and in response, India was strengthening the border management and redoubling efforts to finish the fence ("No Pledge To End Militant Attacks From Bangladesh -India PM," 2004). In the same month, it was announced that Phase I of border fence construction was completed, but major work remained on Phase II – the remaining 2429 kilometres (Kala, 2004). Just one day after the announcement, a new military doctrine for fighting terrorism was published, stating that infiltration must be checked at the border and that any border fence must be backed by surveillance equipment and a sufficient number of guards ("India Releases New Army Doctrine for Fighting Terrorism," 2004).

The understanding of the lack of identification of the border crossers from Bangladesh as a threat to the Indian *nomos* became the most obvious in 2004. Bangladesh opposed the construction of the fence, while it continued to offer at least indirect support to the separatist groups operating on its territory and carrying out attacks in India. The connection between the Pakistani challenge to the Indian *nomos* in Jammu and Kashmir and the illegal migration changing the demographic balance in the northeastern states was now explicitly expressed. Demographic changes were imbued with the potential to cause breakaway attempts from the now-Muslim states. This was confirmed with the inclusion of Bangladeshi borders in the plans to fence the entire border system of the country. In addition,

the discovery of the weapons caches and continued attacks against civilians in Assam and across the Northeast showed that the lack of identification of the flows through the border is a clear danger that is necessary to be controlled. This all resulted not only in another increase in the speed of the fence construction but also in the decision to construct fences outside of the original plan. With the first phase of border fencing almost finished, it directly impacted immigration as the Indian security apparatus continued to deport the illegal Bangladeshi migrants. Finally, the production of the new military doctrine and the requirement for surveillance equipment further supports the claim that the construction of the border fences was intended for the identification of the incoming enemies of the Indian *nomos*. The border fence that was being built in Bangladesh, just as the one already constructed in Kashmir, was to be equipped with surveillance technology to ensure all those trying to cross illegally were tracked.

In summary, the case of the Indian-Bangladeshi border fence shows some underlying problems with the definition of the Indian *nomos* stemming both from the Hindu-Muslim struggle from its history and the overlying of the new Indian state identity over the historical loyalties of the local population in the Northeast. While the fears of the Islamification of the north-eastern states were present even in the 1980s, as shown by their incorporation into ULFA's original justification of their armed struggle, they became understood as a threat to the Indian *nomos* only when they became linked to *hostis* as real enemy seen in Pakistan, and potentially even in absolute enmity within the global terrorist organizations such as Al-Qaeda. At the same time, the ongoing cross-border infiltration by the militant separatist groups poses another threat to the *nomos*, which arguably became linked to ISI activities over time. According to the data, the reported Pakistani attempts at exploiting the Bangladeshi clandestine migration through the Indian north-eastern borders were the main reason behind the construction of the border fence and all the connected policies. In this regard, the Hindu-Muslim differentiation became important and seemed to have become a more crucial aspect of *socius-hostis* identification as time passed. This is best attested by the attempts to push out hundreds of Muslim Bengalis identified as Bangladeshi by the BSF. The local issues with land demarcation and clashes between the border guard agencies appear to be auxiliary to the issue and found credence only as they prevented the construction of the barrier.
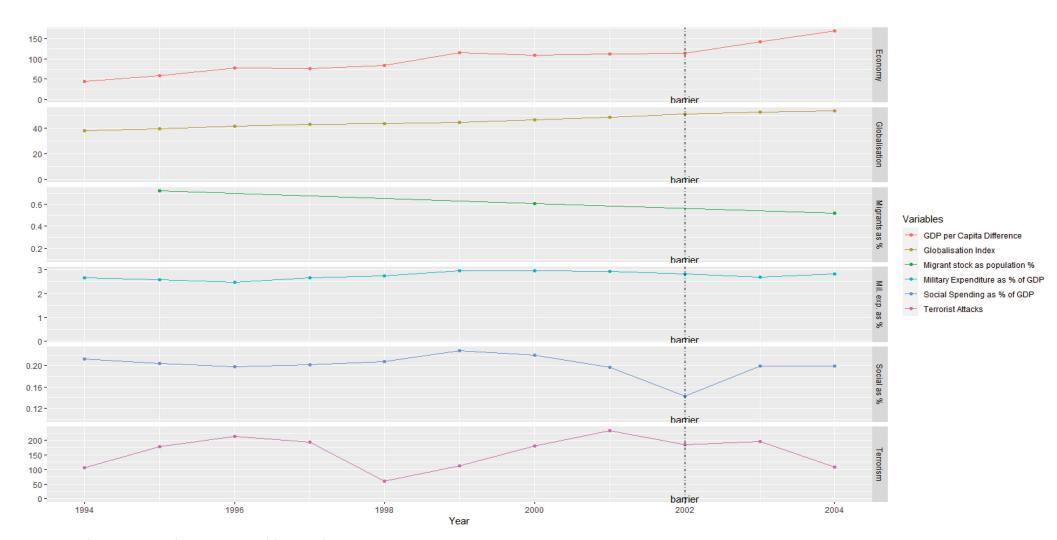
Figure 8: Alternative explanation variables - India

5.7.2 Alternative Explanations Analysis

While there was a constant increase in the economic difference between India and Bangladesh, in the observed period, the actual difference in GDP per capita terms was minimal (between 50 and 150 USD per capita). In this regard, it seems unlikely that the protection of wealth played and key role. This argument is also sustained by the very low social security spending in India (just 0.2% of GDP) and also the low and lowered overall migrant population in the country.

Similarly, the military expenditure over the previous years was either growing or was maintained, with the year of the barrier construction decision being the first year when the expenditure dropped slightly. Therefore, it is possible to assume that maintaining the military expenditure was not a major reason behind the construction.

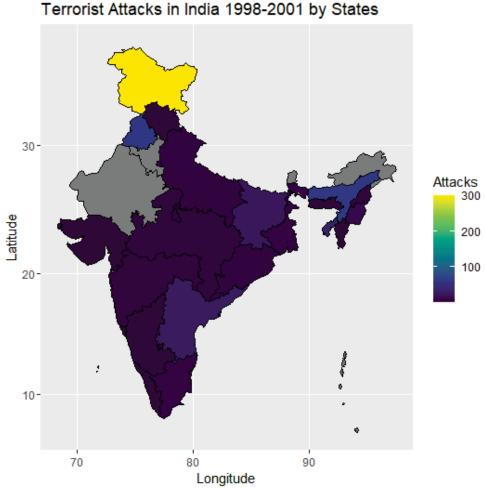On the other hand, India saw a continuous rise in the globalisation index throughout

Figure 9: Terrorist attacks in India by State
Note: Polygon data for India acquired from
http://www.indiaremotesensing.com/2017/01/download-india-shapefile-with-official.html

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the entire observed period. The increase was also considerable, as the index's value raised from just below 40 to above 50. In this regard, the condition for protecting waning sovereignty seems to be fulfilled. However, the issue here is that globalisation is not directed.[15] Therefore, it begs the question of why the barrier was built on this border and not some other border. If sovereignty loss is the main motivation, it is still possible to argue that the nomothetic approach provides the reasoning behind the particular case.

Finally, the most likely alternative explanation seems to be terrorist activity. The number of terrorist attacks between 1998 and 2001 almost quintupled – it went from around 50 to around 250. This increase coincides with the barrier-building decision in 2002, as the number of recorded attacks was the highest in the entire tracked period. Upon closer evaluation of the GTD data, it does not seem easy to link the terror attacks, particularly to the Bangladeshi border (Figure 8 above). Most of the attacks were carried out in Jammu-Kashmir – 301 out of 701 in the period between 1999 and 2001. The state of the other 122 was not determined. The remaining 278 were mostly spread equally between the other affected states, with Assam and Punjab having 62 and 60 attacks, respectively. In this regard, it could be assumed that the barrier was built due to terrorism spreading through the border to other parts of the states. Nevertheless, as was argued in the nomos-based approach, the barrier-building decision's connection to terrorism came from a larger perspective of friend-enemy distinction and was not the only motivation – the purely terrorist-activity-based perspective would lose track of other important issues related to the building of Indian territorial order in the borderlands with Bangladesh.

5.8 Discussion

Using the *nomos* as an analytical lens through which the presented cases were analysed arguably reveals similar developments and processes in otherwise unrelated cases. Starting with the basic premise of the theoretical conclusion stated above, the border barrier was, in all cases, used as a border practice to identify politically relevant categories of people for rights and duties conferment. In the case of Morocco, the wall was constructed as a tool to prevent unrestrained movement by the Sahrawi guerrillas. In its effect, it allowed for a conventionalisation of enmity because it forced the Sahrawi fighters to attack the wall and

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[15] While it is possible to make a similar argument about the other used variables, the other indicators can be always understood in the framework of "the biggest issue." The funds for the barrier would in these cases be used to address the biggest issue coming from abroad – i.e. the most terrorist attacks, the largest migration, the largest social security using individuals etc. With globalisation, this direction does not exist.

therefore declare enmity. Similarly, in Israel, the wall was constructed to add another layer of differentiation between the suicide attackers that were the real enemies of the Israeli state and those Palestinians that were part of the land division of Israel through participation in its economic activities. In Tunisia, it created a clear bordering practice that not only served to identify the IS fighters infiltrating from Libya but also those that tried to travel to Libya to join the absolute enemy of the Tunisian state. On the Turkish-Syrian border, the wall was employed to prevent the creation of separate Kurdish *nomos* through the infiltration of re-established real enemies fighting the IS across the border. While all these challenges were arguably violent, they share similarities with cases of the US-Mexican wall and the Hungarian wall on the borders with Serbia that were essentially non-violent. In the case of the US, the border barrier was constructed as a tool to differentiate between those that were understood as illegal immigrant workers, treated as guests and participating in the US *nomos*, and those that were considered criminal illegal immigrants, especially gang members, that were not to be granted guest status.

Similarly, in Hungary, the fence was constructed at the height of the pressure from irregular migration. At first, it was supposed to serve as a tool to filter between legitimate asylum seekers and economic migrants. Arguably as the pressure increased, it transformed into an instrument of *hostis-socius* differentiation, allowing for the accordance of the unwelcomed *hostis* status to incoming Muslim migrants. In the case of the Indian-Bangladesh border, the fence was used not only to identify the ULFA fighters tied to the real enmity with Pakistan but also as a tool for general Hindu-Muslim identification; however still tied to the enmity with Pakistan.

Furthermore, analysing the presented cases using this particular framework also seems to have brought new insights into the field. While it is true that a potentially deeper analysis would be required for a more precise definition of the performative/way of life aspects of each discussed *nomos*, all the instrumental definitions appear to have served their purpose. The use of the land division and the way of life, as two *nomos's* sub-concepts, allowed for tracking several levels of analysis throughout the presented cases. It, for example, allowed to show the empirical difference between the aforementioned illegal immigrant workers and the criminal illegal immigrants in the case of the US, the Palestinian terrorists and Palestinian workers in the case of Israel, or asylum seekers and economic immigrants in the case early stages of the process in Hungary. In all three cases, the more traditional approach to tracking ethnicity without questioning the issue of the challenge to

the underlying political order would not allow for the differentiation of the categories. Similarly, in the case of Turkey's fence with Syria, the analysis of the violent threat to the Turkish territory coming from the IS and the Kurdish organisations enabled the pin-pointing of the explanation as tied to the particular real enmity with the Kurds. In addition, as in the Tunisian and Moroccan cases, the way of life aspect showed how the barrier construction changed the patterns of behaviour that existed in those particular places for centuries and therefore reinforced belonging to the given *nomos*.

In some cases, where the territory was in question – the Moroccan wall in Western Sahara or the Israeli wall in the West Bank – the concept also helped to reveal the nexus between the way of life and territorial control. In this regard, it showed how the construction of the wall in Morocco led to the region's development. In contrast, in the case of Israel (and partially even in India), it showed how the presence of *socii* outside the *nomos's* established territory could lead to issues for the *nomos* maintenance.

At the same time, the analysis of the various challenges to any particular *nomos* revealed many interactions between local, state and global levels when it comes to the border (re-)production. In both violent (Turkey and partly India) and non-violent cases (Hungary, US), the existence of a particular global narrative of an absolute enemy – such as Al-Qaeda or IS – transformed the perceptions of the specific challenges to the given *nomos*. In the case of Turkey, the newly agreed *nomos* collapsed partly due to the emergence of the IS as the new absolute enemy. On the other hand, both the immigrants from Bangladesh for India and from Mexico for the US were at times considered potentially connected to Al Qaeda as the absolute global enemy at the time. In Hungary, terrorist attacks in Western Europe and activities against Christians in the Sinai Peninsula contributed to the need to identify potential enemies hidden in the migration wave. In this way, the globalised enmity of Al Qaeda and IS partly translated into particular border practices implemented on the state level. While the global and state interaction was taking place, the local and hyper-local actors influenced and were influenced by the new border practices designed for *nomos* protection. In Israel, the US and Hungary, the hyper-local agents created their own barriers when needed to protect either their property or their way of life. In the US, a local Border Patrol officer devised one of the hardening border regimes in the 1990s and implemented as part of the state policy. In addition, the advent of the border fence and the process leading to it influenced the local actors, whose specificity was already a part of the given *nomos*. For example, the native land in the US became a part of the trafficking route and then became

walled off by the fence while essentially being left out of the decision-making process. Similarly, in Tunisia and Morocco, the construction of the barriers limited cross-border interactions that existed for centuries. In this way, it is possible to argue that the element of the central administration was strengthened whenever the border barrier was constructed, as it damaged any local specificity that existed at the border by imposing a direct orientation towards the centre.

Finally, the cases also represented a variation in the ratio of the importance of external division of the land/territory, performative way of life and land division. Still, in all cases, all three played a role in one way or the other. Arguably, the case of the Moroccan wall in Western Sahara relied most heavily on the clear external division of the land/territory taking place through the construction of the wall, as it was the most critical issue for both Morocco and Sahrawis. Nevertheless, this was tied to the problem of way of life and land division/economic life that was to be developed on this territory later. The Israeli case was the second one with the highest importance of territory. However, here the interaction with the way of life of the Israeli settlers in the West Bank and the land division which the Palestinian workers took place played a more critical role. While the territory itself was never in question as much as in the other two cases, the primary reason for the barrier construction in Turkey was the challenge to the established external division of the land/territory that the creation of the Kurdish administration in Syria potentially posed. It implicitly had to do with the imposition of the Turkish or Kurdish way of life on that given appropriated territory, but this was never directly the issue in the process. It was arguably also the case with land division/economic life participation. All three cases had two overlapping *nomoi* claimed by two real enemies on each side. In the case of the Indian fence with Bangladesh, the territory issues – especially the question of abandoning Indian villages behind the fence – arguably played a balanced role with the way of life aspect, defined by the Hindu-Muslim differentiation in North-eastern states. Land division/economic life did not arguably play a significant role in the process, despite the issues of employment playing a role in the High Court decision on border protection. Then, the case of Tunisia, while violent, focused mainly on the way of life aspect, as the IS as an absolute enemy of the Tunisian *nomos,* intended, in its ultimate goal, to annihilate the Tunisian *nomos* in its entirety. In this regard, there were no territorial claims. The identification that the border barrier provided played a part in the struggle for the imposition of the fundamentalist way of life on the territory. Then, in Hungary and the US, the importance was mainly on the way of life and integration into the

land division/economy. In the US, the issue was with the criminal illegal immigrants challenging the *nomos* by establishing performative-based exclusive groups that violently disregarded American imposition of legality beyond that tolerated by the underlying way of life (the pursuit of happiness). Similarly, in Hungary, the Hungarian and Christian-centric way of life was at odds with the predominantly Muslim immigrants, some of which were, furthermore, seeking integration into the land division that was unacceptable by the Hungarian *nomos*.

Considering the alternative explanations, it seems none of the applied variables provided consistent answers to the individual cases. One of the most consistent indicators was terrorist activity, as some increase in the number of terrorist attacks had temporal coincidence with the construction of border barriers in arguably six out of seven presented cases. Nevertheless, a closer examination of most of these cases showed that the terror attacks were, in many cases, either disconnected from the particular border (India, Morocco) or not tangentially relevant (Hungary). Additionally, the threat of terrorism was in the remaining cases already included in the analysis (Turkey and Israel).

The economic explanation seemed to possess some explanatory power. Nevertheless, it was still mainly related to the context – the economic differences existed for a more extended period, and there never were any sudden jumps in the difference. In combination with the migrant population and arguably social spending, the explanation worked mainly in the Turkey and Syria case. In the cases of India and Libya, the differences were either low or non-existent, respectively.

The military expenditure arguably worked in the case of Israel, where it was directly connected to a firm benefitting from the construction. In other cases (Hungary, Turkey), where the coincidence occurred, the companies constructing the barrier were governmental and not necessarily in need of the contract. The American and Indian cases showed the opposite dynamic – military expenditures were either constant or growing for the observed period.

Finally, globalisation only had temporal coincidence in the India case. The social expenditure and migrant population functioned only in conjunction with the economy, as mentioned before. In this regard, it is possible to argue that the process tracing method proves the proposed nomos solution to the problem of border barrier construction.

All in all, the nomos-centred process tracing of border walls and fences in the presented seven cases offered new insights into the issue of bordering and border barrier

construction in line with what the proposed theoretical framework expected. At the same time, it allowed for more consistent explanations than the existing theories, as proved by the alternative approaches. In this regard, it is now vital to summarise these outcomes within the larger body of the academic work and make conclusions about the viability of the *nomos* analytical framework for further analysis of the geopolitical phenomena.

6. Conclusions

This work set out to answer the research question of why mankind builds walls in its political sense. In order to do so, it first considered the existing academic studies on the topic. Following the evaluation, it was found that the current theories could not explain the phenomenon of border walls in their entirety. A new theoretical approach was proposed to address this insufficiency. It was based on re-reading the works of Carl Schmitt, creating an analytical framework from them and situating this framework within a larger body of theoretical reflection on the nature of borders. The final framework gravitated around the word *nomos* as a political order, a sanctified way of life on a given territory. *Nomos* was understood as a set of economic, religious, and other values and a particular land division (internal/economic and external/political), generally agreed upon by the group members and sanctified by its leadership. All of these values, if sufficiently different, could be transformed into various political grouping points allowing for public struggle if challenged internally or externally. With its way of life and division of the land aspects as the basis*, nomos* was used as the primary referent, whose maintenance was crucial for the existence of the political grouping of a given people.

In this regard, *nomos* was situated within the literature as a set of bordering practices that were crucial for creating borders in their political sense. The proposed approach toward the border barrier analysis then argued that constructing a border barrier is a bordering practice used to separate politically relevant categories of people for rights and duties in accordance (including the rights of an enemy) and ensure the control of a particular territory. The inability to separate these politically relevant categories was conceptualised as either a violent or non-violent challenge to the *nomos*, which was treated as an independent variable to explain the construction of the border barrier. Seven cases where this approach would be tested were selected and analysed using the process-tracing method. In all seven cases, the development of a challenge to the *nomos* was observed in the temporary link with the border-hardening process. However, as one of the reasons for this thesis was the integration of the

various theoretical approaches to the issue, it would be judicious to consider their explanations for the analysed cases even outside of the analysis of the alternative variables done above and more on their own terms. It would also allow pinpointing the new insight given by the Schmittian theory, if any.

For the purposes of this short analysis, the cases are checked through the analytical framework of the four streams presented earlier. For the discursive stream, the existence of manipulative national discourse is searched for. For the military, the presence of a violent enemy trying to attack the country is examined. For biopolitical, explicit attempts at protecting wealth or controlling a specific population are searched. Finally, a challenge to the state's monopoly on violence is tracked for the sovereignty stream.

Starting with the case of Morocco, no real in-depth analysis is necessary to conclude that the case could be explained either by the military stream or the sovereignty stream, as both tracked variables were present in Western Sahara. However, there was hardly any economic or biopolitical aim or very explicit public discourse defending the construction behind the barrier building. While the existing theories from different perspectives could have explained the case, the application of the *nomos* framework, nevertheless, contributed to focus on the extension of the political order behind the wall and the conventionalisation of warfare. In this way, the security stream's emphasis on defence and security and the importance of a traditional understanding of territorial sovereignty could be integrated under one theoretical roof.

The case of the Israeli wall is one of the most often analysed in the academic literature, with arguably all four streams providing relevant explanations. The demographic changes and the need to control the Palestinian population have existed in Israeli public discourse for a long time. It shows a reasonable justification for the explanation offered by the discursive and biopolitical streams. Similarly, an enemy attacking the existence of the state was present. Additionally, there was arguably an apparent lack of sovereign ability to impose the monopoly of violence in Israel, especially in the West Bank. However, as the *nomos* approach showed, these issues were tied to the problem of the land division and the ability to identify those that were to participate in the common. Israeli and Palestinian Arabs have participated in the Israeli economy in significant numbers ever since the creation of the state, and control of their numbers never appeared as relevant in the analysed process. Therefore, it was shown that the presence of the enemy, the lack of sovereign control in several areas and attempts to manage the Arab population were all caused by the challenge

of land division and *socius-hostis* identification.

The military approach could explain the Tunisian border barrier, but there were arguably no other relevant indicators. Any perceived threat from IS was real, and therefore, discourse about it could not be manipulative. No economic gain or biopolitical control of the population was sought, and neither were there any significant troubles for the Tunisian sovereignty with the exception of one described attack. The Schmittian theory, in this case, in essence, agreed with the military approach. However, it added multiple layers to the analysis dealing with the particular challenge to a way of life and its local and hyper-local transformations.

At heart, this was also the case in the analysis of Turkey. However, the *nomos* analytical framework allowed for specifying the enmity critical to the border barrier construction. Arguably, the conventional wisdom explanations focused on the IS infiltration or immigration – i.e., military or biopolitical answers. As the presented analysis showed, the construction had more to do with unravelling the Turkish *nomos* and its conflict with its Kurdish population.

The case of the US works oppositely. There was no direct military threat to US security when the border barrier was constructed. However, arguments have been made that the lack of ability to control the borderlands amounted to issues with sovereignty. Similarly, academics argued that the border was constructed to prevent the coming of poor immigrants that would take away from the US economy, to manage the Hispanic population, or only through securitisation discourse by the US government to appear tough on migration. However, as the presented data showed, the actual decision to build a border barrier had little to do with poor illegal immigrant workers or with a specific securitisation discourse. After all, workplace enforcement was essentially nonexistent, and various US Presidents from different parties highlighted the importance of immigration for the US job market. At the same time, the explanation of bordering against Hispanics also does not work, as even the US Border Patrol was recruiting large numbers of Hispanic officers. Furthermore, multiple policies around the US were designed to integrate the minority into the US political and economic system. While the economic argument can make sense on the surface – poor immigrants were indeed coming into a wealthy country – the *nomos* analysis shows that most of the population never had any major issue with precisely these immigrants.

Similar to the US, several different approaches were used to explain the Hungarian case. It is true that the government was pushing a specific discourse on migration while it

was losing its sovereign control of the borderlands, and the incoming migrants were of an economically disadvantaged background. Nonetheless, situating all these within a broader context of the Hungarian *nomos* showed that they all played a specific role and why they resonated with the local public. Furthermore, Hungary serves as an interesting case considering the influx of refugees from Ukraine after the start of the Russian invasion in February 2022. The situation in absolute numbers of people on the border might have been close to the situation in 2014 and 2015. At the same time, Hungary arguably had a more reserved tone about the Russian invasion than other European countries. Nevertheless, no mention of additional border fencing was given either by the government or the public, which supports the argument advanced here that a specific challenge needs to take place.

In the Indian-Bangladeshi case, explanations from essentially all streams except for the discursive one are readily available. The Bangladeshi migrants were coming from a less well-off country, and there were concerns stating that their presence could upset the ethnic balance in the Northeastern states. At the same time, the Indian government was not having full sovereign control of the borderland, and there was enemy fighter infiltration from across the border. However, the border barrier construction really started when the infiltration and immigration were linked to a particular friend-enemy distinction that India had with Pakistan.

As this short comparison illustrates, the applied *nomos* approach was not only able to bring new insights into the reasons for barrier building but also enabled the integration of different existing explanations into an overarching framework. In this regard, it can be concluded that border barriers are constructed when the underlying political order of a group of people is challenged by a hard to identify non-members of this group.

Furthermore, the results of this thesis also suggest that the Schmittian approach to geopolitical analysis can generate novel perspectives on various issues. For example, Mandelbaum (2019, p. 221) calls for re-evaluating the relationship between state, nation, society and security to understand how some are made a part of the nation and others are excluded. It is arguably possible to achieve this through the proposed framework while disconnecting the issue from the existence of a particular nation-state. Similarly, the nature of the *hostis-socius* allows for the application of the formation of territorial-political units in the post-colonial setting without prejudice to the use of violence (Mandelbaum, 2019, p. 226). This approach has already been applied to study the state development and the existence of enmity in the West African context (Doboš & Mičko, 2022).

In this regard, the following research agenda should focus on the close specification of this theoretical framework - namely, closer analytical specification of how to identify the way of life aspect in the empirical terrain. In this regard, the potential re-examination of the interaction between the concepts of Carl Schmitt advanced here and the body of work produced by Michel Foucault outside of that produced by Giorgio Agamben should be undertaken. If successful, such a conceptual framework could serve to advance geopolitical analysis into new areas.

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