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CONTEXTUALIZATION OF EL SALVADOR'S NEED FOR A POWERFUL EXECUTIVE:  
A LOCKEAN ANALYSIS OF NAYIB BUKELE'S APPROACH TO PUBLIC SECURITY  
IN A HISTORICAL, POLITICAL, AND SOCIAL SYNTHESIS

by

Manuel Agressio Girón Alemán

A thesis submitted in partial fulfillment  
of the requirements for the degree

of

MASTER OF ARTS

in

Political Science

Approved:

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Logan, Utah

2023

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## ABSTRACT

Contextualization of El Salvador's Need for a Powerful Executive: A Lockean Analysis of Nayib Bukele's Approach to Public Security in a Historical, Political, and Social Synthesis

by

Manuel Agresio Girón Alemán, Master of Arts

Utah State University, 2023

Major Professor: Robert Ross

Department: Political Science

Post-Civil War El Salvador has been plagued by multiple factors that are detrimental to public safety. The history of human rights in El Salvador has been set aside by scholars who, when analyzing Nayib Bukele's presidency (2019-present), come to legitimate but incomplete conclusions. The purpose of this thesis is based on the why of the current events in El Salvador in relation to democracy and the violation of the human rights of suspected criminals ordered by the executive branch. This expansion on the study of El Salvador's contemporary politics is important because it addresses the current state of the presidency and public safety from a historical and theoretical perspective that offers a cause-and-effect explanation rather than just an assessment and criticism of ongoing events. For this purpose, the theory of John Locke will be used, specifically his theory on the right to life, which establishes this right as fundamental for society and which protection is in the hands of the government and should be a priority for any liberal democratic state. Simultaneously, John Locke's theory of executive prerogative will also be analyzed in relation to the power that Bukele has exercised in El Salvador to reduce the

homicide rate in the country from a state of emergency where the human rights of suspected members of criminal organizations have been violated and where irregularities have emerged, alarming international human rights organizations and foreign governments.

Much can be learned from Locke's theory on the right to life and executive prerogative. The implementation of these theories to understand the political and social reality of Salvadorans and the actions taken by the current government to combat insecurity in the country are important and can be more fully understood by Locke's philosophy. The right to life, as stipulated by John Locke, places this right, along with the right to liberty and property, as fundamental. This idea is used, as well as the executive prerogative that stipulates that the executive can act without or against the law in cases of emergency, to understand the conditions that have led the Salvadoran population to substantially accept and approve of a powerful executive whose orders have infringed on human rights of suspected criminals. Such conditions include the inability of the state to protect civilians, a long history of human rights violations against civilians, and a long list of corruption in the executive.

(76 pages)

## PUBLIC ABSTRACT

Contextualization of El Salvador's Need for a Powerful Executive: A Lockean Analysis of Nayib Bukele's Approach to Public Security in a Historical, Political, and Social Synthesis

Manuel Agresio Girón Alemán

For most of the three decades that have presided over the Salvadoran Civil War, El Salvador has been a state tormented by high levels of crime, especially the country's homicide rate, a product of the strong presence of criminal organizations such as MS-13 and 18th Street Gang. The current president of El Salvador, Nayib Bukele, who took office in 2019, has declared war on gangs under a state of emergency where the human rights of suspected criminals are violated, particularly their due process guarantees. This has caused Bukele's government to draw strong condemnation and criticism from foreign governments and human rights organizations. This thesis argues that the actions of the current Salvadoran government, and the high levels of acceptance by the population, can be understood under a historical, political, and social synthesis in the Salvadoran post-Civil War era.

Similarly, John Locke's theory of executive prerogative and the right to life are used in this thesis to understand the current attributions that the executive branch has taken in El Salvador to decrease homicide rates and to understand the role of the president in protecting the rights of civilians when other government institutions are incapable of protecting such right.

## ACKNOWLEDGMENTS

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Love and support transcend everything.

Manuel Agresio Girón Alemán

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## INTRODUCTION

On June 1st, 2019, Nayib Bukele took office as president of El Salvador. Since then, his ways of ruling and policies have been questioned by international entities (such as human rights organizations) and foreign governments. This questioning is based primarily on the state of emergency imposed by the president and approved by the current legislature for the purpose of mass incarceration of suspected gang members (the terms “suspected criminal(s)” or “suspected gang member(s)” will be used throughout this thesis when necessary due to the absence of formal accusations brought against alleged members of criminal organizations before a court), whose actions, over the decades, have caused El Salvador to rank among the countries with the highest homicide rates in the world (Daugherty 2017). During the state of emergency, which has been renewed monthly since March 2022, the rights of association and legal counsel have been suspended, the latter a clear violation of Article 9 of International Covenant on Civil and Political Rights. International entities and foreign governments argue that, besides these violations, there have been others such as disappearances and arbitrary arrests of civilians. Despite these accusations and criticism, approximately 90% of Salvadorans—as per the latest polling data—approve of Bukele’s four-year-long presidency and 91% approve of the current state of emergency (“El Salvador's Authoritarian President” 2023; Kinosian and Renteria 2023).

As it will be learned in the literature review, scholars evaluating Bukele's presidency express concern about the president's authoritarian and dictatorial tendencies for acts that undermine democracy and the separation of powers in El Salvador. Such criticism points out Bukele’s seemingly centralization of power in the executive and the ongoing human rights violations against suspected gang members — all of which, by definition, are eroding factors of democracy (Avelar and Lopez 2022). Bukele’s centralization of power and his ability to enact a

state of emergency, however, have yielded important and substantial results in the protection of the lives of Salvadoran citizens (Kinosian and Renteria 2023). Nevertheless, current scholarly claims do omit the historical, political, and social reality of El Salvador post-Civil war (1992-present) that can explain Bukele's popularity and support.

The goal of this thesis will be to understand the conditions under which the majoritarian will of the populace justifies the erosion of democracy and the violation of human rights ordered by the executive to improve public security in El Salvador when viewed within the framework of executive prerogative and natural rights theory as set forward by John Locke. To arrive at these conditions it is necessary to understand the role of the government in protecting people's lives, the role of the executive, and his powers in achieving and meeting those protections; thus, Lockean theory will aid in providing a well-established framework in the natural rights of people and the prerogative given to the executive when the protection of such rights has not been met by the different branches of government and other their institutions. Alongside Lockean theory, post-Civil War Salvadoran history on human rights and government institutions will be analyzed to understand their effects on people's experience regarding the government's role in protecting their rights, and the perception that people have on the implementation and protection of human rights for past and present victims of human rights violations.

For Locke, the right to life (the right that has been violated by criminal groups in El Salvador for decades) is fundamental and its protection is a duty of the government to fulfill as understood by his prioritization of such right, including that of freedom and property, in his *Second Treatise of Government*. In El Salvador, as it will be seen through exploring its post-Civil War history, such duty has not been performed in an effective or substantial manner. For three decades, the Salvadoran government has been ineffective in protecting the lives of Salvadorans

and in combating criminal groups due to incapable institutions and corruption. Since the implementation of the state of emergency in El Salvador by the executive in March 2022, however, the homicide rate has dropped substantially, and the country is on track to becoming the safest country in Latin America, according to Bukele (“El Salvador Is Already” 2022). Even though El Salvador is experiencing fewer homicide rates than previous years, Bukele’s statements on El Salvador becoming “safer” can underplay other factors that undermine the security and liberty of civilians. The country may be becoming safer in terms of homicide rates as it will be shown through data in this thesis, but the safety of the population under a state of emergency is threatened since some civil liberties have been suspended and the armed forces and national police are conducting arbitrary arrests that have incurred on the rights of innocent civilians. Indications that such violations may happen in the future are strong due to the nature of how gang crackdown is being carried out. Despite irregularities, the use of executive prerogative, that is the power of the executive to do good without or even against the law during times of necessity, has been employed by the president to protect the lives of its citizens under a state of emergency and to fulfill the duty of a government that has not been able to stop criminality in El Salvador.

The Salvadoran constitution states that “El Salvador recognizes the human person as the origin and the end of the activity of the State” (“El Salvador: Constitution” 2014, 5), and that the President of the Republic has the obligation “to strive for social harmony, and conserve peace and interior tranquility and the security of the human being as a member of the society” (“El Salvador: Constitution” 2014, 37). The constitutions of Central America, including that of El Salvador, were largely inspired by the Constitution of the United States of America. The U.S. Constitution served as a model for these Central American countries as they sought to establish

their own republican governments after gaining independence from Spain in the early 19th century. Just as Lockean theory influenced the constitution of the United States, said constitution influenced the constitutions of Latin American countries. These constitutional contributions included the idea of a “written Constitution as the supreme limit to the action of the ruler, the checks and balances between the powers of the State including checks and balances, federalism, presidentialism, guarantee of human rights, control of constitutionality and subjection of powers to the Constitution, and promotion of democracy as a form of government” (Piza 1989, 8). The very idea of the existence of a constitution in the Americas is the product of Lockean theory. Thus, a connection between the executive role and the protection of the right to life does exist in the language of the Salvadoran constitution arguably consistent with Locke’s theory on prerogative and the right to life.

Lockean theory on executive prerogative, as used in this thesis, is not to be understood as advocacy of the actions performed by the executive in El Salvador, but to explain the powers of the executive and his response to the homicide crisis in the country and how its use may be viewed as consistent with protecting the right to life. As it will be argued, John Locke’s right to life as expressed in the *Two Treatises of Government* is stricter and firmer in protecting the lives of the majority group in a state with no history of human rights protections by neither international organizations nor its government than those human rights that are championed by the democratic and institutionally developed West. In an emergency scenario where neither the legislative nor the judicial can enact laws effectively or rapidly enough to secure the lives of their citizens, the executive figure can order mandates that violate the right to liberty of a criminal minority group whose purpose is to infringe on the right to life of the majority group. I will provide a clear reading of the intent and limitations of Locke’s advocacy of the right to life

above other rights such as the arbitrary arrests and imprisonment without a trial. Chapters VIII, “Of the Beginning of Political Societies”; IX, “Of the Ends of Political Society and Government”; XI, “Of the Extent of the Legislative Power”; XIV, “Of Prerogative”; XVIII, “Of Tyranny”; and XIX, “Of the Dissolution of Government” from John Locke’s *Second Treatise of Government*, will infer the argument of this thesis.

This thesis will be divided into three parts. First, a background overview of human rights violations and impunity in El Salvador’s post-Civil War history and the ongoing human rights violations against suspected gang members in El Salvador. This historical recapitulation provides context to the perception of Salvadorans regarding human rights, highlights the impact of criminal organizations in society, and explains in detail the accusations made by foreign governments and international organizations against the current Salvadoran government. The second consists of an extensive literature review on Bukele’s presidency, Lockean theory on the right to life, Lockean theory on executive prerogative, and checks on prerogative. The third and final part is an analysis of the connection between life and prerogative, the possible checks on prerogative given the state of the current Salvadoran government, the government’s role in protecting human rights, and the limitations of Locke’s theory in explaining El Salvador’s case.

## PART I: BACKGROUND

### **Human Rights Violations and Impunity in El Salvador’s Post-Civil War History (1992-present)**

From 1979 to 1992, El Salvador was engulfed in a deadly Civil War that caused between 70,000 to 80,000 deaths and more than 10,000 missing persons (“Truth Commission” 1993). The

characteristics of the Salvadoran Civil War such as its background, purpose, and outcome are out of the scope of this study; nevertheless, its aftermath and consequences have shaped Salvadoran society, and serve as a precursor to understand the people's views and sentiments towards human rights and impunity today.

After the Civil War in 1992, a Truth Commission was created to implement measures that would restore “peace, national reconciliation, and the reunification of Salvadoran society” (Lira, Cornejo, and Germán 2022, 151). Despite the Commission's recommendation that a policy of integral reparation be implemented for a lasting peace and to rebuild Salvadoran society, most victims have not been recognized or repaired. An example of the atrocities perpetrated during the Civil War is the massacre of El Mozote, the largest massacre in Latin American history, where for three days soldiers burned, murdered, raped, destroyed, and razed the area, which resulted in the murder of 1044 people, 49% of whom were children under 12, only 373 people survived (Lira, Cornejo, and Germán 2022, 152).

Human rights organizations that remained after the war, restricted their focus on administrative activities rather than criminal law initiatives. Their practices were limited to exhumations for victim identification purposes only and official records of identity for reunification of families. It seemed logical to follow this relatively narrow legal agenda in light of the poor response to isolated attempts to challenge impunity (Collins 2008, 30). For more than two decades that followed the civil war, there existed a perceived security emergency in El Salvador due to high levels of crime committed by gangs. During the years that preceded Bukele's presidency, “the government [had] lost its de facto ability to reduce violence. It seemed that the gangs determined the level of violence, and they were the only ones with real tools to reduce the number of murders, which is quite worrying because it showed the deepening

dysfunctionality of the Salvadoran state” (Stelmach 2022, 82). Hard-line policing and partial reversal of the demilitarization that was one of the hard-won achievements of the peace process was demanded by the public. According to estimates, the death rate by the mid-2010s was at least as high as it was during the civil war, and high crime rates along with low conviction rates indicate an overburdened judicial system, which struggles to deal adequately with past and present human rights violations (Skaar, García-Godos, and Collins 2017, 281), including “mutilation and decapitation of victims as a way of initiating newcomers and terrorizing society” (Wolf 2011, 43), as well as “forcibly recruiting children and subjecting some women, girls, and lesbian, gay, bisexual, and transgender (LGBT) individuals to sexual slavery, and the killing, disappearance, rape, or displacement of those who resist them, including government officials, security forces, and journalists” (World Report 2019). Thus, human rights organizations have been criticized in El Salvador for being soft on their reporting of crime in comparison to their reporting on human rights violations against suspected gang members. In 2019, Bukele’s first year in office, the average daily toll of murders dropped to four homicides per day in comparison to an average of 12.7 homicides per day during the previous administration according to the Salvadoran National Police data (“Logros y Memorias” 2023), and 2020 became the most peaceful year of the postwar era (Wolf 2021, 67). This fact provides context to the acceptance and recognition of palpable change that has been nonexistent, until recently, regarding the way governments deal with crime in El Salvador.

### **Ongoing Human Rights Violations Against Suspected Gang Members in El Salvador**



The United States Department of State, in its 2021 Human Rights Report for El Salvador, lists the following violations under Section 1. Respect for the Integrity of the Person:

Unlawful killings of suspected gang members and others by security forces; forced disappearances by military personnel; torture and cruel, inhuman, or degrading treatment or punishment by security forces; harsh and life-threatening prison conditions; arbitrary arrest and detention; serious problems with the independence of the judiciary; serious restrictions on free expression and media, including violence or threats of violence against journalists and censorship; substantial interference with the freedom of peaceful assembly and freedom of association; serious acts of government corruption; lack of consistent investigation and accountability for gender-based violence; significant barriers to accessing reproductive health; and crimes involving violence by security forces against lesbian, gay, bisexual, transgender, queer, and intersex individuals. (“Country Reports” 2021)

According to The United States Department of State, their annual Country Reports on Human Rights Practices “cover internationally recognized individual, civil, political, and worker rights, as set forth in the Universal Declaration of Human Rights and other international agreements” (“Country Reports on Human Rights” n.d.) Similarly, organizations such as Amnesty International and Human Rights Watch, two of the most vocal organizations regarding human rights abuses in El Salvador, have reported similar violations (“El Salvador: State of Emergency” 2022; “World Report 2022” 2022) and their reports uphold human rights as stated in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (“Amnesty International's Statute” 2021; “What Are Human Rights?” 2020).

According to Amnesty International, “President Bukele’s government has trampled all over the rights of the Salvadoran people. From legal reforms that flout international standards, to mass arbitrary arrests and the ill treatment of detainees, Salvadoran authorities have created a perfect storm of human rights violations, which is now expected to continue with the extension of the emergency decree” (“State of Emergency” 2022). One month after Bukele enacted the state of emergency, at least 17,000 people had been arrested in the context of the measures, and

civil society and the families of those detained have reported arbitrary detentions by security forces. “Videos have also circulated purportedly showing ill treatment of the detained by security forces, such as a video in which a uniformed individual appears to be standing on the head of a subdued prisoner” (“State of Emergency” 2022).

According to Human Rights Watch, “President Bukele’s crackdown on gangs includes raids in mostly low-income communities and mass incarceration of suspected members. The identity of active gang members can be given away through a combination of physical characteristics such as shaved hair and tattoos that allude to their membership in criminal organizations, “tattoos in the gangs are about identity, and symbolic affiliation that represents part of its subculture,” which represents and tells “their life story about important people and also about death, given their many violent crimes” (“Salvadoran Ex-Gang Members” 2019). At least 65,000 people have been detained as of March 2023 — thousands without arrest warrants. To justify the raids, the authorities have described all those netted in mass roundups as gang members who deserve the abuse they receive. “If you are law-abiding, no worries, you have nothing to fear,” his powerful propaganda machine promises. Yet Human Rights Watch has documented many arrests apparently based solely or largely on people’s age, their appearance, or their residence in a gang-dominated rural or urban neighborhood, factors that have nothing to do with whether they have committed a crime” (Taraciuk 2022). Most of those reports rely on the Salvadoran press’ ability to investigate and report on such violations. The United States Department of State, for example, includes reporting from *El Faro* and *La Prensa Gráfica* in their assessment of human rights. Both newspapers have a history of bias against the current government. For example, a 2022 report from *El Faro* stated that “gangs fulfill a necessary social

role in El Salvador” (“Periodista De «El Faro” 2022), causing indignation among readers and a strong response from the president.

Since the state of emergency was declared in El Salvador in March 2022, arbitrary arrests and imprisonment without a trial, violations recognized by the Universal Declaration of Human Rights under articles 9, 10, and 11 (“Universal Declaration of Human Rights” 1948), have emerged as the main transgressions against human rights executed by Bukele’s government in El Salvador. As a result, the United States Department of State expresses that “the United States uses a wide range of tools to advance a freedom agenda, including bilateral diplomacy, multilateral engagement, foreign assistance, reporting and public outreach, and economic sanctions. We work with democratic partners, international and regional organizations, nongovernmental organizations, and engaged citizens to support those seeking freedom (“Country Reports on Human Rights” n.d.), which indicates a multilateral and joint effort made by the United States and international organizations in advancing an agenda that they consider appropriate for Salvadorans. Such agenda, however, as shown by the response of Salvadorans throughout Bukele’s four-year-long presidency, distances itself from the wishes of the population, the current state of affairs in the country, the conditions of government institutions, and the country’s post-Civil War history.

Table 1 *Timeline of Relevant Events and Data in Nayib Bukele's Presidency*

Year	Homicide Rate per 100,000 inhabitants as per Insight Crime (Appleby et al. 2022) and Salvadoran National Police data ("Logros y Memorias" 2023)	State of the Separation of Powers and Checks and Balances in El Salvador	Nayib Bukele's approval rating according to CID Gallup polling data ("Cid Gallup: Latinoamérica" n.d.)	Number of innocent civilians wrongfully imprisoned
2019	36 per 100,000 inhabitants	Nayib Bukele becomes president of El Salvador on June 1st, 2019, as an independent candidate with no representation in Congress.	No data	
2020	19.7 per 100,000 inhabitants	Nayib Bukele sends the military to Congress to "pressure lawmakers to pass a \$109 million loan he is seeking to fight criminal gangs" (Aponte, Vorobyeva, and Breda 2020).	86% (Oct. 2020)	
2021	17.6 per 100,000 inhabitants	<p>Nayib Bukele's party, Nuevas Ideas, wins a supermajority in Congress ("Bukele secures legislative" 2021), and Congress removes Supreme Court judges from the Salvadoran Supreme Court including the attorney general (Gabriel 2021).</p> <p>The Supreme Court permits the executive to run for reelection despite the constitution</p>	85% (Aug. 2021)	

		prohibiting it (“El Salvador’s Constitutional Court” 2021).		
2022	7.8 per 100,000 inhabitants	<p>State of emergency is introduced in the country (“El Salvador State of Emergency” 2023).</p> <p>Bukele announced his presidential candidacy for the 2024 elections on September 15th (“El Salvador’s Bukele Says He Will Seek Re-Election” 2022).</p>	86% (May 2022)	
2023	(As of April 15, 2023) Estimated 2.5 per 100,000 inhabitants	“The state of emergency has now been in force in El Salvador for a year, and at least 65,000 people have been detained” (“El Salvador State of Emergency” 2023).	92% (Jan. 2023)	Approximately 3,745 innocent civilians have been wrongfully imprisoned since the implementation of the state of emergency according to government statistics (Brigida 2023).

## PART II: LITERATURE REVIEW

### **Nayib Bukele's Presidency**

The existing literature on Bukele's presidency in relation to public security policy is limited and often biased. Recent research emphasizes continuous democratic backsliding and anti-democratic practices ordered by the executive of El Salvador without addressing its short-term results. There exists an apparent consensus among researchers to group Bukele into the populist category of world leaders and have used the newly-created term "millennial dictator" (Quezada 2022) to describe him — a term that he has sarcastically embraced. Researching the means while omitting its results may not yield a broader understanding of Bukele's success in terms of approval and popularity among Salvadorans, but it provides a path for understanding his short- and long-term goals as head of state as well as predicting his seemingly authoritarian future.

The rise of Bukele could be seen as a reflection of an incidental authoritarian drift that arises in Latin America as a product of the representativeness crisis created by the traditional political parties in the region, and the end of two-party system continuity that El Salvador experienced in its post-Civil War history until 2019 is attributed to populist practices performed by Bukele during his first and only political campaign as leader of an independent opposition (Landeros 2021). Democratically held elections legitimized Bukele's populist phenomenon and rise to power. From early in his presidency to today, however, this phenomenon has now transitioned to what is described as a "dictatorial regime" (Landeros 2021, 94) still legitimized by the population but a symptom of a crisis of liberal democracy created by decades of rule from discredited political parties. A prototype of not only contemporary authoritarianism but also

millennial dictatorship. Bukele, through practices such as strong social media presence used to propagandize his achievements and attack opponents, surges as a new type of leader with an apparently novel style of leadership but whose governing is rooted in anti-democratic processes.

Congenial perspectives by scholars on Bukele's authoritarian-like approach add blame to the democratic system in El Salvador as one of the bases for his success. On February 9, 2020, President Bukele, alongside the Salvadoran Armed Forces and the National Civil Police, entered the Legislative Assembly to pressure congress to approve a loan request destined to Bukele's security plan, which the opposition had blocked. Bukele's early presidency also coincided with the beginning of the COVID-19 pandemic, which prompted authoritarian attitudes from the executive including the application of public force to impose confinement measures. This created conflict between the executive and the opposition-controlled legislative and the judicial, "the high expectations of citizens regarding the new government, added to the high levels of approval of the president, increase the pressure to respond to the needs of the population" (Tobar 2020, 73). The disagreements between the branches of governments stressed the political system and hindered the legitimacy of the legislative by the population due to its inefficiency and opposition to act promptly to the perceived public security emergency. In a state highly susceptible to the effects of a pandemic, alongside controlling crime rates, stressed relationships between powers of government and put to question the level of development of the democratic system, which ultimately benefited and consolidated Bukele's power in El Salvador as his political party, Nuevas Ideas, with pro-Bukele parties, won a supermajority of seats in the Legislative Assembly.

In El Salvador, democratic practices such as free and fair elections are fulfilled. However, these practices co-exist alongside autocratic ones where the system of checks of balances is threatened: "The first few signs [of autocratization] include the norms of the electoral democracy

and the rule of law component and surfaced after Bukele's Nueva Ideas won a supermajority in the Parliament election in 2021, enabling the administration to sack disloyal judges, assign new judges to the Supreme Court and install a new attorney general, all loyal to the president and the Nuevas Ideas party... Nevertheless, these actions are still aligned with the constitutional order of El Salvador" (Nilsson 2022, 20). Shortly after the legislature removed the five judges from the Supreme Court, U.S. Vice president Kamala Harris and U.S. Secretary of State Anthony Blinken, expressed their concerns over the state of democracy in El Salvador:

We have deep concerns about El Salvador's democracy, in light of the National Assembly's vote to remove constitutional court judges. An independent judiciary is critical to a healthy democracy – and to a strong economy. (Harris 2021)

Spoke today with Salvadoran President @NayibBukele to express serious concerns about yesterday's move to undermine El Salvador's highest court and Attorney General Melara. Democratic governance requires respecting the separation of powers, for the good of all Salvadorans. (Blinken 2021)

Bukele dismissed the criticism from the United States, tweeting that "with all due respect: We're cleaning our house ...and that is none of your business." His ways of handling the COVID-19 pandemic were popular among Salvadorans ("US Concerned" 2021). Taking the military to the legislative and removing the Supreme Court judges was well-received by the public. The military, according to the literature, "[has] been used in the past to assist in natural disaster relief without imposing detrimental effects on civilian control, democracy, the rule of law or human rights. However, militarization becomes a problem if it interferes with public policy, leadership selection, or internal security" (Acacio, Passos, and Pion-Berlin 2022, 2).

Parting ways from the idea that Bukele is an example of a new generation of millennial leaders, researchers also emphasize a similitude to existing autocrats around the world, that, regardless of left- or right-wing leanings, essentially behave the same such as Hugo Chávez in Venezuela, Daniel Ortega in Nicaragua, Recep Erdogan in Turkey, and Victor Orbán in Hungary



(Nilsson 2022, 24), as well as figures like Donald Trump in the U.S. and Jair Bolsonaro in Brazil who turned into reality the “looming fears of demise of democracies” (Quezada 2022, 64). Those leaders rose to the presidency through democratic means but stayed, or wanted to stay, in power in undemocratic ways, a path that Bukele is expected to take. In the 2021 legislative elections, both formerly dominant parties' party offices were raided, and several party figures were arrested on corruption charges. “The next step of autocratization will be harder restrictions on political parties, perhaps prohibition of some parties and more extensive harassment of political parties and candidates” (Nilsson 2022, 21), something commonly seen in other authoritarian regimes in the region such as Nicaragua and Venezuela.

A ruling issued by El Salvador's Constitutional Court on September 3, 2022, allowed presidents to run for consecutive reelections. Despite the plain language of the constitution, which prohibits consecutive presidential reelections, the ruling allows President Nayib Bukele to run for reelection in 2024. Bukele announced on September 15, 2022, that he would run again in 2024. Despite the constitution prohibiting it, the latest poll put Bukele's reelection at 70% favorability among the Salvadoran population (“Salvadorans in Poll Favor Bukele” 2023). With Bukele's latest decision to run for reelection, it can be argued that Bukele is using democratic institutions and the control that he has over them, as a result of the overwhelming support he has from the people, to gain more power through legal means. It seems that the safety that the president has created in El Salvador, thanks to the state of emergency and the massive arrests of suspected criminals, has made the protection that Salvadorans now enjoy become an excuse for El Salvador's government to move towards more autocracy and less democracy. This notion poses the following question: how can the people's response in relation to Bukele's actions in the protection of life in the country be understood under the realities of a liberal democracy?

## Lockean Theory on the Right To Life

In the *Second Treatise of Government* John Locke states the following on the rights to life, liberty, and property of ourselves and others:

The state of nature has a law of nature to govern it, which obliges every one: and reason, which is that law, teaches all mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions... (and) when his own preservation comes not in competition, ought he, as much as he can, to preserve the rest of mankind, and may not, unless it be to do justice on an offender, take away, or impair the life, or what tends to the preservation of the life, the liberty, health, limb, or goods of another. (Locke 1980, 9)

A natural right is a right that people have prior to the state. Once a state is in place, these natural rights are transferred to the state, including the right to punish which Locke grants to individuals in the state of nature. Locke needed to explain how using punishment within the state, which entails deprivation of life, liberty, and possessions, would be compatible with the natural rights of people in the state of nature. The right of the state to punish is rooted in the right of individuals to punish, Locke believes individuals have a natural right to punish before the state does. The state then becomes the exclusive punisher when people abandon this right and give it up to the state, according to Locke. A Lockean state of nature punishes an offender based on four things: one, having negatively impacted another's life, health, liberty, or property; two, being dangerous to the rest of humanity because of this; three, he has opened himself to punishment because he is dangerous; and four, the punishment exacted should effectively deter similar acts in the future (Suess 2015, 381).

In Locke's doctrine of rights, he defends the right to punishment through the "forfeiture" of rights of criminals. In fact, Locke argues that criminals forfeit their rights by the sole act of committing crimes:

This freedom from absolute, arbitrary power, is so necessary to, and closely joined with a man's preservation, that he cannot part with it, but by what forfeits his preservation and life together: for a man, not having the power of his own life, cannot, by compact, or his own consent, enslave himself to any one, nor put himself under the absolute, arbitrary power of another, to take away his life, when he pleases. Nobody can give more power than he has himself; and he that cannot take away his own life, cannot give another power over it. Indeed, having by his fault forfeited his own life, by some act that deserves death; he, to whom he has forfeited it, may (when he has him in his power) delay to take it, and make use of him to his own service, and he does him no injury by it: for, whenever he finds the hardship of his slavery outweigh the value of his life, it is in his power, by resisting the will of his master, to draw on himself the death he desires. (Locke 1980, 17)

Thus, when a criminal abandons the law of reason, he forfeits his rights and may thus be legitimately executed. In civil society, rights are transferred from individuals to society by consent that is then entrusted to the government through executive power. As a result, Locke's 'alienation' (free transfer) of right gives the magistrate the right to punish the offender, while the offender's forfeiture of right grants the magistrate the right to punish the offender. (Simmons 1994, 475).

The literature on Locke's right to life is most commonly studied in conjunction with the right to liberty and property. The latter encompasses much of Locke's extant literature, while the right to life usually takes a secondary role in Locke's theory of natural rights perhaps due to its seemingly self-explanatory nature and widely accepted right that most, if not all societies uphold. However, the scope of the right to life can extend beyond the matter-of-fact consensus that may exist in upholding and protecting the lives of the people, such scope expands to issues like the death penalty and other punishments. The focal point of this literature review is on the importance of life as the most basic right of an individual and to what extent its protection and

preservation can be stressed in a liberal democracy, including the violation of other rights to safeguard that of life. The punishments that are or are not apt for those who take somebody else's life are not in the scope of this paper. Rather, what will be reviewed here is the importance that Locke puts to the right to life in his writings and how its preservation exceeds that of any other right, particularly the rights of those individuals or groups whose aim is to do harm.

In the *Second Treatise of Government's* "Of the State of War" chapter, Locke argues that "it is one's right, to take the life of another, even if one merely suspects that the other might conceivably use his power in violation of one's rights" (Locke 1980, 15). Such violation, for Locke, includes the lawfulness of killing a thief even he "has not in the least hurt him, nor declared any design upon his life...and therefore it is lawful for me to treat him as one who has put himself into a state of war with me, i.e., kill him if I can" (Locke 1980, 15). This emphasis in the violation of one's rights, in general terms, that Locke identifies, elevates the importance of the respect of a man's rights and the necessity for either self-protection, in the case of an individual in the the state of nature, or protection by the government when the individual enters civil society.

Due to the nature of the ongoing gang crackdown in El Salvador, there arises a question of whether Bukele's actions have been aimed at ending a state of war fostered by criminal gangs in El Salvador or if his actions have created a state of war between the government and the population. John Locke defines a "state of war" as the following:

The state of war is a state of enmity and destruction: and therefore declaring by word or action, not a passionate and hasty, but a sedate settled design upon another man's life, puts him in a state of war with him against whom he has declared such an intention, and so has exposed his life to the other's power to be taken away by him, or any one that joins with him in his defence, and espouses his quarrel; it being reasonable and just, I should have a right to destroy that which threatens me with destruction: for, by the fundamental law of nature, man being to be preserved as much as possible, when all cannot be preserved, the safety of the innocent is to be preferred. (Locke 1980, 14)

The population is aware that their rights are threatened under a state of emergency, and despite such awareness, the state of emergency has, as previously detailed, a 92% approval rating among the population. John Locke argues that “he who attempts to get another man into his absolute power, does thereby put himself into a state of war with him; it being to be understood as a declaration of a design upon his life” (Locke 1980, 14). The threat that gang members have posed for El Salvador for decades, including murder, rape, sexual slavery, etc., and whose sole existence threatens the lives of civilians, can be argued to hold more weight than the threat that the government poses for the population under the current state of emergency imposed to end such a state of war fostered by criminal gangs. This conclusion can be reached not only by an outside interpretation of the situation, but by the own experience of Salvadorans as shown by approval rating and electoral results. Bukele’s government has created an environment where civilians can and have become victims of human rights violations under the state of emergency, but such violations have not been sufficient for the people to consider the current government as a “threat” to their lives and freedoms in comparison to the threat posed by criminal organizations. In theory, both government and criminal organizations can be argued to be in a state of war with the population; but, in practice, the situation is more complex and can be a matter of interpretation and perspective, particularly considering that the Salvadoran government, for decades, was complicit in perpetuating a state of war in its policies towards criminals prior and even at the beginning of Bukele’s presidency through negotiations and pacts with criminal organizations to reduce crime (Flores 2020).

A person is bound by the law of nature to protect his life, liberty, and property, and he also owes it to others to protect their lives unless their own is at risk. Throughout his writings, Locke often refers to the principle that mankind is to be preserved to the greatest extent possible

as the fundamental law of nature. (Tuckness 2008, 470). The preservation of life, therefore, serves as the basis of any law that aims to protect people. The argument of killing another individual who might endanger one's life (the duty to preserve all mankind is invariably linked to killing a man who could endanger one's life in every passage in which Locke discusses it (Goldwin 1976, 131)), is not to be used in this thesis as its theme or case, but rather as a logic that shows the intent of Locke's theory regarding the right to life and the role of the government in protecting it by violating the rights of those who are acting against this fundamental right using lesser penalties, such as right to liberty as in the case of suspected criminals in El Salvador, in order to avoid and deter individuals with criminal intentions. In Locke's view, the primary objective of government is to protect the inherent rights of individuals since every human being is born with certain inherent and inalienable rights: life, health, liberty, and property (Suess 2015, 374). The theory is similar when looking at international intervention: "A state could invade to prevent impending violations of the rights to life, liberty, and property if it sees clear evidence of such violations. Despite Locke's vagueness about intervention thresholds, the lack of specification itself points to fairly permissive ground rules" (Tuckness 2008, 471). In an international stage, a response is commonly seen when the right to life is being widely violated, for example, in a genocidal event.

In the case of the thief, as expressed in Locke's chapter "Of the State of War," we discover that a transgressor—a simple thief, in this case—is defined as someone who has committed a specific act, for which they are eligible for retribution and punishment (Dilts 2012, 76):

Thus a thief, whom I cannot harm, but by appeal to the law, for having stolen all that I am worth, I may kill, when he sets on me to rob me but of my horse or coat; because the law, which was made for my preservation, where it cannot interpose to secure my life from present force, which, if lost, is capable of no reparation, permits me my own defence, and

the right of war, a liberty to kill the aggressor, because the aggressor allows not time to appeal to our common judge, nor the decision of the law, for remedy in a case where the mischief may be irreparable. (Locke 1980, 15)

This specific excerpt is revealing in two ways: one, it acknowledges the role of the state in protecting an individual's preservation, "because the law, which was made for my preservation, where it cannot interpose to secure my life from present force, which, if lost, is capable of no reparation, permits me my own defence"; and two, it gives the state the role of the "intervener" between the thief and the victim, i.e., the one who must protect the victim and punish the aggressor.

As explained through the extant literature, Locke's intentions on the importance of life seem to be consistent: its protection is fundamental and the punishment for its violation is severe. Therefore, there arises a justified question that forms in protecting the lives of the people, not by massively killing the aggressors that may work as a criminal organization, but by stopping them in ways within the reach of a state's institutional abilities. Although the literature on the importance and protection of the right to life as specified by Locke is consistent, its application in liberal democracies is taken for granted as a protection that governments grant to their population. However, the protection of the right to life in countries with an astronomical homicide rate as it has been in El Salvador for decades and with a very low level of apprehension and justice, cast doubt on whether all this literature has a purpose beyond a simply theoretical one rather than practical. The literature lacks emphasis on what this thesis focuses on: cases where the right to life is massively violated over an extended period of time and where a state is not capable of resolving it through the institutional means that are commonly found in the world's largest liberal and democratic referents whose conception was directly influenced by Locke.

The protection of life and the need for immediate action from an executive are two strongly linked ideas since, by constitutional definition<sup>1</sup>, the executive organ is obliged to protect its citizens from acts that infringe on sovereignty and their rights. In the case of El Salvador, the executive's reaction to the number of violent deaths in the country led him to make a decisive decision in what he considered to be a national emergency.

### **Lockean Theory on Executive Prerogative**

Individual rights such as the right to life, free association, freedom of expression, and due process of law define liberal societies as these limit the authority of government. A division of government functions ensures an environment where individual rights and liberties are respected. Each branch is empowered by the constitution to keep the other branches from abusing those rights. As a matter of fact, liberal constitutionalism is characterized by sustained efforts to limit discretionary actions, particularly those associated with the executive branch (Dragu and Polborn 2014, 511). In El Salvador's case, however, the issue arises when those branches of government that are supposed to ensure individual rights are unable to effectively do so, specifically the preservation of life against criminals in an emergency scenario. In those cases, the executive discretionary actions would be needed in order to bring stability and protect the rights of the population through adequate means.

In the *Second Treatise of Government*, John Locke defines prerogative in four different ways. Locke's first introduction to executive prerogative states the following: "Many things

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<sup>1</sup> The Salvadoran constitution states the following as an obligation of the executive: "to strive for social harmony, and conserve peace and interior tranquility and the security of the human being as a member of the society" ("El Salvador: Constitution" 2014, 168).



there are, which the law can by no means provide for; and those must necessarily be left to the discretion of him that has the executive power in his hands, to be ordered by him as the public good and advantage shall require” (Locke 1980, 84). Secondly, Locke writes that “this power to act according to discretion, for the public good, without the prescription of the law, and sometimes even against it, is that which is called prerogative” (Locke 1980, 84). In its third definition, Locke further explains what prerogative entails: “prerogative can be nothing but the people's permitting their rulers to do several things, of their own free choice, where the law was silent, and sometimes too against the direct letter of the law, for the public good” (Locke 1980, 86). In its last and perhaps most concise definition, Locke argues that “prerogative is nothing but the power of doing public good without a rule” (Locke 1980, 87). The extant literature on executive prerogative tends to focus on the American presidency, and researchers have not yet applied this philosophy to the executive of other states. The executive of El Salvador, combined with its historical, economic, and social context, cannot be compared to that of the United States, particularly in a scenario of domestic emergency in which El Salvador finds itself and on which this study focuses. However, despite their differences in government and circumstances, much can be learned from the application of the executive prerogative in one of the largest liberal democracies in the world.

Abraham Lincoln stands as the main political figure highlighted in the study of executive prerogative. Categorized as a “prominent doer” (Mansfield 1989, 279) in the area, “Lincoln comes to realize that the maintenance of constitutionalism requires more than simply an adherence to legalistic forms. The press of necessity in extraordinary situations requires that legalism sometimes bow to the “action” and “energy” of a discretionary executive power” (Kleinerman 2009, 186). Lincoln confronts exactly the kind of situation that destroys

constitutional orders during the Civil War. However, he realizes that adhering to legalism to prevent that destruction will only exacerbate the destruction of constitutionalism. Lincoln takes the necessary steps for the preservation of the Constitution, even if they appear often at odds with its language. Claiming he “may in an emergency do things on military grounds which cannot be done constitutionally by Congress,” Lincoln suspended the writ of habeas corpus, declared martial law, authorized the trial of civilians by military courts, and proclaimed the emancipation of slaves, all done in the context of a civil war. Another example of an executive prerogative acknowledger includes Richard Nixon, who stated that “in war time a President does have certain extraordinary powers which would make acts that would otherwise be unlawful, lawful if undertaken for the purpose of preserving the nation and the Constitution.” John Locke’s executive prerogative influence in American politics can be seen as established and accepted when used in times of emergency and when the public interest requires “ordinary laws to be set aside” (Arnhart 1979, 121), and the executive to act according to its own discretion for the public good.

Literature acknowledges the concern of the executive prerogative being misused by the individual in power. Locke defines tyranny in his *Second Treatise of Government* as “the exercise of power beyond right, which no body can have a right to. And this is making use of the power any one has in his hands, not for the good of those who are under it, but for his own private separate advantage” (Locke 1980, 101). In the succeeding chapter, “Of the Dissolution of Government,” Government is dissolved when either the legislative branch or the executive “act contrary to their trust,” and the people are thereby “absolved from any further obedience” for “men can never be secure from tyranny, if there be no means to escape it till they are perfectly under it: and therefore it is, that they have not only a right to get out of it, but to prevent it”

(Locke 1980, 111). As a result, the people are slow to react, they do not rise up every time something is mismanaged. They rise up when they begin to feel the oppressive nature of government and its potential direction after a “long train of abuses” (Passavant 2009, 191). To avoid this, researchers emphasize strong restrictions and control by the people: “The people will acquiesce in an action of executive prerogative when they see it has done good; if it has not done good, they will limit prerogative or exercise their right of resistance” (Mansfield 1989, 203). When the executive chooses tyranny, however, it does so on its own responsibility, and the interest of the people no longer serves as an incentive or limitation to its power. Civil government is legitimate insofar as it furthers the ends for which it was created and it continues to receive the consent of the community (i.e., it is a human rather than a divine creation). The government has brought about a state of war against the people and their liberties if it rules arbitrarily or tyrannically and if it fails to serve the purpose for which it was created. Power then returns to the community to construct a new government that protects the people's rights better (Passavant 2009, 175).

“When the very existence of a nation may be threatened, and when the normal rules of conduct do not apply, there is no substitute for the unfettered, discretionary judgment of a ruler acting for the public good” (Arnhart 1979, 122). Locke is the first to assert that even derogations from natural or fundamental rights can be justified by a state of exception, even though he does not question its legality. Additionally, he defines emergency government as being concerned with security and life preservation. Locke tends to prioritize the right to life over other natural rights and accepts restrictions on these rights as a means of protecting the whole population (De Wilde 2010, 266). The key term for most, if not all authors is “public good,” but who defines “public good”? As it will be argued in this thesis in the context of public security in El Salvador,

“public good” is defined and sustained by the public through continuous public support and transparent election of the executive as to “fulfill the legally unspecified interplay between the government and the people” (Seliger 1968, 371).

### **Checks on Prerogative**

In *The Leviathan*, published in 1651, Thomas Hobbes creates the Leviathan, a metaphorical creature which represents the state. As a result of surrendering their individual rights to the Leviathan through the social contract, their subjects surrender their rights in exchange for security and protection. A strong central government presided by the Leviathan, according to Hobbes, is the only force that can prevent chaos and violence from surging. As a result, the Leviathan possesses unlimited authority over its subjects and no individual can oppose it. Although Locke's prerogative and Hobbes's leviathan may appear at first sight to share similarities, Locke, unlike Hobbes, limits the powers of the prerogative and the purpose for its use.

A result of the English civil wars (1642-1652) of the seventeenth century and developments leading up to the Glorious Revolution (1688-1689) in England, Locke's focus on legislative power paved the way for Parliament to establish the formal doctrine of parliamentary sovereignty, by which the Crown's authority in England could be checked, misconduct prevented, and its ancient prerogatives even stripped. Thus, it is the legislature's responsibility to regulate executive power prospectively, correct any abuses, while also ascertaining what is necessary for the public good. To solve the dialectical problem of enabling and restraining executive power simultaneously, Locke proposed legislative checks and balances (Jenkins 2011,

564). Therefore, insofar as the executive power retains prudence in administering its responsibilities, it is independent of the legislature. However, this prudential discretion does not prove either superiority or complete independence from the legislature. Since the executive power still must answer to the legislature for how that prudence is used, it is ultimately accountable to the legislature (Kleinerman 2009, 70).

If the legislature reigns supreme and can limit prerogative any time, there arises the assumption that the legislature always works in the best interest of the people in mind. This idea is particularly interesting in El Salvador's case since before the 2021 legislative election, Bukele, who ran as a third-party candidate in 2019, had no representation in Congress. From 2019 to 2021, Bukele's party had no sitting members in the Legislative Assembly. The reasons, therefore, of the legislature for not passing Bukele's plans to fight the pandemic and criminal gangs can only be assumed. Taking into consideration, however, the landslide results of the 2021 legislative elections in favor of Bukele's party, perhaps it can be understood that the then-members of Congress were not acting in accordance with the people's wishes. Nathan Pinkoski, author of *Taming the Parliament: John Locke on Legislative Limits, Prerogative and Popular Sovereignty*, acknowledges and addresses a predicament with the limitation that the legislature imposes on the executive:

According to this misconception of executive prerogative, any executive exercise of prudential power that affects proceedings in the legislature, such as using the power to prorogue to bring the proceedings of the legislature to an end, is a scandal. However, when the legislature or another body acting on behalf of the legislature denies executive prerogative, or attempts to exercise prerogative or federative powers itself. It transforms the executive into an ineffective body dependent on the legislature. By failing to grasp the inherent limitations of legislative power, this account frustrates the executive's distinct and independent responsibility to secure natural rights. It thereby frustrates the ends of government and is incompatible with the Lockean commonwealth. (Pinkoski 2022, 74)

Pinkoski argues that the limitations imposed by the legislative on the executive can hinder its role of securing the rights of those who elected him since the legislative exerts too much power on the executive. This theory greatly resembles the 2020 Salvadoran political crisis that occurred when the president sent the military to Congress. The executive used this method of coercion because the legislative, which was then controlled by the opposition, opposed the president's proposed loan for law enforcement funding which sought to increase funding for the National Civil Police and to reduce crime perpetrated by criminal gangs (Aponte, Vorobyeva, and Breda 2020).

Pinkoski's theory does not excuse any actions, nor does it create a leeway for the executive to act however it pleases, but rather explains how controlled and limited the executive is by the legislative in scenarios where it seeks to protect the "natural rights" of its people. As previously discussed, Bukele's party won the 2021 legislative election by a landslide which could be interpreted as an indication of the people's discontent with how the opposition was not supporting policies that would benefit the population in terms of public security. Even though Locke argues that the legislative stands supreme, the purpose of executive prerogative is to allow the executive to respond quickly to emergencies and threats to the common good when the legislative is not able to meet those needs or to protect those rights. The legislature should be able to check and balance the executive's use of executive prerogative as per Locke. The extent of this limitation, however, should theoretically be based on the effect of such prerogative in protecting the people—whether it would do more harm than good—and not limiting it on the basis of partisan ideology. Any reason for limiting the executive is valid since the legislative is supreme, but one reason seeks the protection of people either for or against the use of prerogative, while the other does not, on the contrary, it stops the executive from protecting the

people on the basis of ideology and partisanship over the protection of people's natural rights, which the status quo that then composed the legislature during the 2020 political crisis in El Salvador had been unable to accomplish in three decades and that ultimately resulted in a landslide win for Bukele's party.

There are both theoretical and practical dilemmas associated with the possibility of abuse of prerogative. A first question is how to determine exactly when, in exercising discretion and force, an executive has intended to "enslave or destroy" its people rather than to preserve them. The answer to this question is closely linked to the question of who or what may judge. The legislative power is supreme in the community, but Locke also contends that it is dependent on executive power to carry out its laws and on executive discretion to convene it when normally not in session. Locke implies that the constitution of government neither defines the extent of prerogatives nor does it create a judge who oversees both legislative and executive powers. (Mattie 2005, 88).

It is possible that John Locke did not anticipate situations that we see in contemporary politics—hence his emphasis on the legislature as the main limiter of executive prerogative—where the party of the incumbent president controls several, if not all of the powers of the state which would cause the legislature to be unable to limit the executive's prerogative unless they do so by acting against their leader. However, Locke acknowledges that, ultimately the power to limit the president is held by the people:

A weak and ill prince, who would claim that power which his predecessors exercised without the direction of the law, as a prerogative belonging to him by right of his office, which he may exercise at his pleasure, to make or promote an interest distinct from that of the public, gives the people an occasion to claim their right, and limit that power, which, whilst it was exercised for their good, they were content should be tacitly allowed. (Locke 1980, 86)

In many states that exist today where people are under the oppression of a tyrannical leader elected under a facade of transparent and democratic elections where he and his party exert absolute control, the people are the ones who collectively have the power to overthrow such a reign. The extent to which the people have the ability and ease to collectively fight tyranny is possibly something that Locke grossly overestimated. However, history does prove him right in that eventually the people revolt against their oppressive system.

Other literature in the study of executive prerogative interpret prerogative, in an American politics context, as very limited and that the executive is always a subordinate of the legislative power of Congress by arguing that it is likely that the President will feel obligated on extraordinary occasions in a similar manner as the man who feels compelled to tear down an innocent man's house to put out a fire while the house next to it is burning. He may act contrary to law, but he gets himself within reach of impeachment, and may only continue in office if the people permit it, which, in short, means that the President has no prerogative to act against the laws or in silence of the laws without the consent of Congress (Langston 1991, 59).

El Salvador has imprisoned more than 65,000 suspected gang members without trial (“El Salvador State of Emergency” 2023), a violation of the Article 9 of International Covenant on Civil and Political Rights, and has allegedly conducted arbitrary arrests, short-term disappearances, deaths in custody, etc., which has been done under a state of emergency (regime of exception) that has been in place since March 2022. Bukele is not arbitrarily exercising prerogative, but it is doing so under the regime of exception clause of the constitution, which must be renewed by Congress every month. El Salvador’s constitution states the following under section two pertaining to regime of exception:

In cases of war, invasion of territory, rebellion, sedition, catastrophe, epidemic, or other general disaster, or serious disturbances of the public order, the guarantees established in Articles 5; 6, first paragraph; 7, first paragraph; and 24 of this Constitution shall be



suspended, except for meetings or associations with religious, cultural, economic or sport purposes. This suspension may affect all or part of the territory of the Republic and may be accomplished by a decree of the Legislative Organ or the Executive Organ, as the case may be. (“El Salvador: Constitution” 2014, 10)

Likewise, the guarantees contained in Articles 12, second paragraph<sup>2</sup>, and 13, second paragraph<sup>3</sup>, of this Constitution, shall be suspended whenever the Legislative Organ so accords, with the favorable vote of three quarters of the elected Deputies; the administrative detention not exceeding fifteen days. (“El Salvador: Constitution” 2014, 10)

Right now, the president’s party has control of the executive, the legislative, and the judicial branch, so no branch can control or limit his actions unless his own party acts against him. Any possible prerogative that the president may take in the future will most likely be approved by the legislative since there is an absence of strong pluralism in Congress. Therefore, the only limitation that the executive has is that of the people through fair and transparent elections in El Salvador’s case. John Locke was a great proposer of the separation of powers and checks and balances. He makes such a stance clear throughout his *Second Treatise of Government* arguing that, “because the laws, that are at once, and in a short time made, have a constant and lasting force, and need a perpetual execution, or an attendance thereunto; therefore it is necessary there should be a power always in being, which should see to the execution of the laws that are made, and remain in force. And thus the legislative and executive power come often to be separated” (Locke 1980, 76). In El Salvador, the legislative and the judicial are akin to the president’s interests. In the case of the legislative, all congressmen are in such positions through electoral

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<sup>2</sup> “The detained person shall be immediately and clearly informed of his rights and of the reasons for his detention and cannot be compelled to make a declaration. The detained is guaranteed the assistance of a defense lawyer (defensor) during the proceedings of the auxiliary organs of the administration of justice and in judicial proceedings, in the terms established by the law.”

<sup>3</sup> “The detained person shall be immediately and clearly informed of his rights and of the reasons for his detention and cannot be compelled to make a declaration. The detained is guaranteed the assistance of a defense lawyer (defensor) during the proceedings of the auxiliary organs of the administration of justice and in judicial proceedings, in the terms established by the law.”

processes, while supreme court judges akin to the president hold such positions through constitutionally legal means. The current conformation of two of the three bodies of government by members of Bukele's party is due to the people's vote through elections. The case of El Salvador is unique in the region since its elections, contrary to those of established authoritarian regimes such as Nicaragua and Venezuela (alongside an absence of a left or right agenda), have been transparent and their results have been validated, per election results and international and national polling data, by most of the population.

### PART III: ANALYSIS

The following points in El Salvador and Bukele's presidency correspond and are consistent with Locke's theory of rights and prerogative. Such points will be augmented and detailed in following sections.

1. Right to life is a natural right (a fundamental right recognized by the Universal Declaration of Human Rights). In El Salvador, such a right has been massively violated by criminal entities. Currently, the Salvadoran government has received international condemnation for violating due process guarantees of suspected criminals. As explained in the literature, such protection of rights to criminals is unrealistic for El Salvador's government since its institutions are incapable of readily meeting the number of criminals and the demands of justice from the population that has been accumulated over years of injustices and human rights violations against civilians.

2. Closely linked to the previous point is the duty of the government to protect such rights and the usage of prerogative. The enactment of the current state of emergency in El Salvador is established and protected in their constitution. However, Bukele's attributions and actions hindered the established theory of separation of powers in the country and casted doubt in his ways of governing. Such attributions, however, can be argued to be consistent Locke's executive prerogative employed in times of emergency and crisis.

3. El Salvador has not yet arrived at a point where the population is showing discontent to the current government. On the contrary, the current government's approval rating is very high as per international and national polling data. All three branches of government are currently occupied by Bukele's party members and sympathizers. Thus, the limitations that he and his government have right now rest on multiple factors that can only exist with electoral transparency. All factors, as consistent with Locke's theory, ultimately rest entirely on the population.

### **Connection Between Life and Prerogative**

It is key to consider that the importance given to the points that John Locke raises in his *Second Treatise of Government* are largely interpretative since he, on many occasions, does not make direct connections between the ideas he presented. In this case, the right to life and the prerogative, though not explicitly or textually correlated, is certainly linked to the duty of governments to protect the highest entity in a society: the individual. As we observed in the review of the literature on prerogative, this right of the executive aims to do good for society by trespassing the laws of the state on occasions when this is necessary. In the case of El Salvador,

where institutions have continually failed to protect the lives of citizens at the hands of criminal entities, the current executive has chosen to exercise his office for the good of the majority by massively imprisoning suspected criminals, violating their due process guarantees.

To understand the relationship between the right to life and executive prerogative, it is important to emphasize the characteristics of the transition between the state of nature and civil society. In the state of nature, the right to punish is possessed by the individual; in this scenario, John Locke argues that, if someone break the law of nature, they are subject to potentially losing their life.

In the state of nature, one man comes by a power over another; but yet no absolute or arbitrary power, to use a criminal, when he has got him in his hands, according to the passionate heats, or boundless extravagancy of his own will; but only to retribute to him, so far as calm reason and conscience dictate, what is proportionate to his transgression; which is so much as may serve for reparation and restraint. (Locke 1980, 10)

That, he who has suffered the damage has a right to demand in his own name, and he alone can remit: the damnified person has this power of appropriating to himself the goods or service of the offender, by right of self-preservation, as every man has a power to punish the crime, to prevent its being committed again, by the right he has of preserving all mankind, and doing all reasonable things he can in order to that end: and thus it is, that every man, in the state of nature, has a power to kill a murderer, both to deter others from doing the like injury, which no reparation can compensate, by the example of the punishment that attends it from every body, and also to secure men from the attempts of a criminal, who having renounced reason, the common rule and measure God hath given to mankind, hath, by the unjust violence and slaughter he hath committed upon one, declared war against all mankind, and therefore may be destroyed as a lion or a tyger, one of those wild savage beasts, with whom men can have no society nor security: and upon this is grounded that great law of nature, Whoso sheddeth man's blood, by man shall his blood be shed. (Locke 1980, 10)

Locke knew that this right given to the individual was undesirable due to the individual's own personal biases, including their emotions and revenge, which would lead to unjust punishments. Therefore, the right to the preservation of one's life, along other rights, is transferred to a higher civil authority, the government.

Whosoever therefore out of a state of nature unite into a community, must be understood to give up all the power, necessary to the ends for which they unite into society, to the majority of the community, unless they expressly agreed in any number greater than the majority. And this is done by barely agreeing to unite into one political society, which is all the compact that is, or needs be, between the individuals, that enter into, or make up a commonwealth. And thus that, which begins and actually constitutes any political society, is nothing but the consent of any number of freemen capable of a majority to unite and incorporate into such a society. And this is that, and that only, which did, or could give beginning to any lawful government in the world. (Locke 1980, 53)

This transfer of rights from the individual to a higher civil authority means that now the individual right and duty that each person possesses in preserving his own life devolves to this new higher civil authority. In other words, if the state has a monopoly on the use of force to defend the right to life granted to it because the people ceded their rights to the government, then the state has a responsibility to protect its people by deterring criminals in the same way that an individual in the state of nature would.

If the violation of the right to life of civilians perpetrated continuously by a criminal entity or organization could be punished by the loss of life, Locke's argument would naturally include punishments of lesser severity to deter criminals. To prevent other criminals from committing the same offense, the punishment of the criminal should serve society as a whole:

Which being a trespass against the whole species, and the peace and safety of it, provided for by the law of nature, every man upon this score, by the right he hath to preserve mankind in general, may restrain, or where it is necessary, destroy things noxious to them, and so may bring such evil on any one, who hath transgressed that law, as may make him repent the doing of it, and thereby deter him, and by his example others, from doing the like mischief. (Locke 1980, 10)

This does not mean that it is desirable for the state to infringe on the right to life of criminals.

Locke, in fact, suggests that the state is also obliged to preserve the right to life of persons who have committed crimes as long as it is done without harming the innocent:

It is fit the ruler should have a power, in many cases, to mitigate the severity of the law, and pardon some offenders. For the end of government being the preservation of all, as

much as may be, even the guilty are to be spared, where it can prove no prejudice to the innocent. (Locke 1980, 83)

This latter point is a clear human right feature that Lockean theory lays out since it reveals and exhibits Locke's views on the preservation of life by extending it to those that have wronged others. The preservation of life does not mean or imply the death of those violating it unless the "aggressor allows no time to appeal to [our] common judge" (Locke 1980, 15). Practices such as torture do not serve any purpose in the deterrence of criminals nor does it serve society, and it would thus go against the end of government.

As previously stated, in El Salvador, the implementation of the right and duty to protect life by the state has been extremely poor. Thus, the compatibility between the right to life and executive prerogative lies in the fact that violations of the right to life in El Salvador is a national emergency in which institutions such as the Congress or the Supreme Court are and have been incapable of resolving. In this sense, El Salvador's case is an example of a prolonged state of war between a criminal group and the population. Such reality resembles more life in the state of nature than one under higher civil society where the government is supposed to impose and carry out protections granted to it in the social contract. Locke's emphasis on the preservation of mankind as the most basic human right seems to have gotten lost in El Salvador's recent history.

The right to life that Locke refers to in his famous sequence of rights "life, liberty, and property" found throughout the *Second Treatise of Government*, is intrinsically linked to life and survival and the means that an individual may use in achieving its preservation in the state of nature. According to C. B. Macpherson, author of the introductory notes of the *Second Treatise of Government*:

God had given the earth to men for their subsistence: there was a natural right to life; and therefore, each had a natural right to take to himself what was needed for sustaining his life. Moreover, every individual had a property in his own person and his own labor, and

so could rightfully appropriate to himself from the common whatever he mixed his labor with. By this reasoning there must be certain limits to the amount of rightful individual appropriation. First, anyone may appropriate only as much as leaves enough and as good for others, since everyone has a right to his own preservation. (Locke 1980, XVI)

Once an individual finds himself as a member of society under the rule of a sovereign entity, such preservation now rests on that entity as his rights have been transferred to the state.

Locke's theory on the violations against right to life and its preservation—perhaps not to the extent and severity that he could have foreseen happening in any state—is relevant and applicable to El Salvador's case as the country's national emergency meets the criteria that Locke lays out for executive prerogative to be used. The connection between life and prerogative is, therefore, found in the government's role to execute the law invested in it by the people through the social contract, specifically the legislative since, according to Locke:

The first and fundamental positive law of all common-wealths is the establishing of the legislative power; as the first and fundamental natural law, which is to govern even the legislative itself, is the preservation of the society, and (as far as will consist with the public good) of every person in it. (Locke 1980, 69)

Locke's supremacy of the legislative power within government is a "a fiduciary power to act for certain ends, there remains still in the people a supreme power to remove or alter the legislative, when they find the legislative act contrary to the trust reposed in them" (Locke 1980, 77 cf. 111). According to C. B. Macpherson, "the authority of any government is conditional on its performing the functions for which it was entrusted with power" (Locke 1980, XX). This latter point is at the core of the use of prerogative and its compatibility with the executive's performance in executing the power entrusted to it when the legislative is not able to perform its duty.

The right to the preservation of life is just one of many rights such as the protection of private property or the conservation of freedom that, when they are being grossly violated by

other members of the community, Lockean theory supports by the argument that it is the government's responsibility to meet and fulfill its purpose. This logic is employed by Locke to argue in favor of prerogative. Thus, mass violations of the right to life against civilians merit intervention from any branch or body of government capable of protecting the integrity of people.

### **Checks on Prerogative**

Perhaps the biggest worry of those that analyze and study Locke's executive prerogative is the limitations that Locke imposes on prerogative versus the realistic limitations that can restrict an executive in each state. In El Salvador's case, the president's party controls the executive and the legislative, and even the judicial system has been compromised by Bukele's government. Three limitations of executive prerogative can be identified in Locke's *Second Treatise of Government*: First, the rule of law should apply equally to the executive and the rest of society, according to Locke. Consequently, executive actions should not be above the law, they should be held accountable because "where-ever law ends, tyranny begins, if the law be transgressed to another's harm; and whosoever in authority exceeds the power given him by the law, and makes use of the force he has under his command, to compass that upon the subject, which the law allows not, ceases in that to be a magistrate" (Locke 1980, 103). In this sense, magistrates refer to public elected or appointed representatives who maintain order in society, these may include legislators and the executive. The end of the rule of law, according to Locke, does not signify "abolishment or restraint, but the preservation and enlargement freedom" (Locke 1980, 32). The law, therefore, is supreme over the magistrate, who is also under the law.



The executive is not exempted from following what is established under the constitution. Thus, the executive is bound to only act in benefit of the people as set by the rule of law of a state. Even when the executive employs prerogative during an emergency scenario, it must be done to “preserve the members of that society in their lives, liberties, and possessions” (Locke 1980, 189). Apart from defining executive prerogative in various ways, Locke also sets parameters as to the toleration of the people in the use prerogative:

This power, whilst employed for the benefit of the community, and suitably to the trust and ends of the government, is undoubted prerogative, and never is questioned: for the people are very seldom or never scrupulous or nice in the point; they are far from examining prerogative, whilst it is in any tolerable degree employed for the use it was meant, that is, for the good of the people, and not manifestly against it: but if there comes to be a question between the executive power and the people, about a thing claimed as a prerogative; the tendency of the exercise of such prerogative to the good or hurt of the people, will easily decide that question. (Locke 1980, 84)

The Salvadoran population, as suggested by Locke’s theory, may be far from examining prerogative in the country since its employment is “tolerable” and they see the effects that it has had in El Salvador and possibly on a personal level where a sense of personal safety has increased. Therefore, the collateral damage that the current state of emergency has created, including the wrongfully imprisonment of more than three thousand innocent civilians who have already been released according to the government, may not be enough to create intolerance or dissatisfaction with Bukele’s government and his employment of prerogative. The executive, therefore, possesses a lot of room to maneuver in pursuit of what the population itself considers to be beneficial to the public good. This popular basis for the judgment of the executive that Locke consistently moves towards in his various definitions of prerogative simultaneously moves away from the rule of law that an executive must abide by, including the separation of powers and the theory that the executive can be limited by the legislative.

Within the arguments of the use of prerogative, there arises the uncertainty of whether such power and its limitations can be explicitly found in the language of a constitution. In “The Extra Constitutionality of Lockean Prerogative,” the author explores the relationship between prerogative and constitutionality:

Yet prerogative stands beyond the constitution because the constitutional and the legal are the obligatory. Where political power is exercised, "all private judgement of every particular Member [is] excluded." The people are not obligated to accept assertions of prerogative; nor must the prince admit that he exercises something other than prerogative until the opposition of the majority is made manifest. That there is no constitutional check does not mean that institutional responses to prerogative are contemptible; it means simply that the logic of prerogative does not tell us when the prince must stop pressing the issue. It means we are in a realm where the limits on the acceptable use of power are ill-defined, which means they may be the subject of dispute. (Corbett 2006, 447)

No constitutional check, however, does not mean that the constitution does not stipulate what parameters of governing are acceptable. Defending individual rights and freedoms is a fundamental principle of the Salvadoran Constitution. In it, it is stipulated that the state is obligated to ensure everyone has access to justice and the judiciary is independent of the government. Additionally, the Constitution specifies how the different branches of government are responsible for maintaining the rule of law and ensuring the separation of powers. For example, Article 86 of the Constitution states that”

All public power emanates from the people. The organs of the Government shall exercise it independently within the respective powers and competences established by this Constitution and the laws. The powers of the organs of the Government cannot be delegated, but these shall collaborate amongst themselves in the exercise of the public functions. The fundamental organs of the Government are the Legislative, the Executive, and the Judicial. (“El Salvador: Constitution” 2014, 21)

In addition to ensuring justice and protecting citizens' rights, this reinforces the rule of law by emphasizing the importance of independent and impartial judiciaries, independent and publicly elected legislatures, and an independent and transparent executive. Locke believed that the

executive should be limited by the separation of powers. This means that the executive should not have too much power, and that other branches of government, such as the legislative, should have the power to check and balance the executive's power. Thus, the parameters of what is acceptable for the people also exists within the rules of government and what is stipulated in the constitution to protect the well-being of the people.

Second, Locke believed that the executive should be limited by the consent of the governed. This means that the executive's power should be derived from the consent of the people, and that the people have the right to remove the executive if they believe that he or she is not fulfilling their duties. Locke states the following:

Here, it is like, the common question will be made, Who shall be judge, whether the prince or legislative act contrary to their trust? This, perhaps, ill-affected and factious men may spread amongst the people, when the prince only makes use of his due prerogative. To this I reply, The people shall be judge; for who shall be judge whether his trustee or deputy acts well, and according to the trust reposed in him, but he who deposes him, and must, by having deposed him, have still a power to discard him, when he fails in his trust? If this be reasonable in particular cases of private men, why should it be otherwise in that of the greatest moment, where the welfare of millions is concerned, and also where the evil, if not prevented, is greater, and the redress very difficult, dear, and dangerous? (Locke 1980, 123)

The executive is thus accountable to the people through regular elections and can be removed if it acts against the people's interests. In a liberal democracy, as it is the case in El Salvador, presidential elections are held every certain number of years, every five years in El Salvador.

If the executive fails to perform its duties or acts against the trust reposed in it, the people have the right to remove it. Through regular elections, Locke believed the executive's power is derived from the people's consent. Additionally, he believed that the legislative and executive branches should be separate and checked by one another to prevent the abuse of power, and that an independent judiciary could interpret the law and enforce limits on the executive's power. As a result of these principles, individual liberties are protected, and tyranny is prevented. As Locke

believed the people had the right to remove or alter the government if it failed in its duties or acted against the trust entrusted to it, regular elections are essential in contemporary democracies. They serve to protect individual liberties and prevent tyranny, as well as hold the government accountable to the people. Regular elections, however, are in most cases not enough in stopping tyranny; the transparency factor of those elections is also essential in ensuring that the true will of the people is applied.

Since the end of the Salvadoran Civil War, presidential elections in El Salvador have been consistently transparent and have been categorized as “largely credible and free” (“El Salvador: Freedom” 2021). This has solidified the expectation in El Salvador of fair and transparent presidential elections for 30 years. The ongoing withering of democracy in the country, including the constitutionally dubious reelection of Bukele, and the mass support from Salvadorans, could indicate a shift of toleration of what is democratically acceptable versus what is detrimental to democracy. Once this acceptance of democratic violations from the populace becomes a norm in El Salvador, the only available limitations that the executive could have are regular and transparent elections, the limitations that the legislative should impose the executive as per Lockean theory and El Salvador’s constitution, and ultimately the act of revolting and overthrowing the government:

Not only are the powers of any government thus limited: the whole power of any constituted legislature, and therefore of any other part of a government, is revocable: the legislative power (which must be supreme within any frame of government) "being only a fiduciary power to act for certain ends, there remains still in the people a supreme power to remove or alter the legislative, when they find the legislative act contrary to the trust reposed in them. (Locke 1980, 77 and 111)

The idea that people are entitled to dissolve their governments if they become tyrannical including interfering or inhibiting electoral processes, and no longer act in their interests was also revolutionary to Locke’s theory. As a result, the government's sovereignty depends on how

well and how determined it is to serve the people. Such theory can not only explain the need for executive prerogative, but it can also act as a check to limit prerogative.

The end of government is the good of mankind; and which is best for mankind, that the people should be always exposed to the boundless will of tyranny, or that the rulers should be sometimes liable to be opposed, when they grow exorbitant in the use of their power, and employ it for the destruction, and not the preservation of the properties of their people? (Locke 1980, 115)

The end of government, as Locke refers to in this passage, pertains to the government's inability to "protect the God-given inalienable natural rights of the people. For their part, the people must obey the laws of their rulers. Thus, a sort of contract exists between the rulers and the ruled. But, Locke concluded, if a government persecutes its people with "a long train of abuses" over an extended period, the people have the right to resist that government, alter or abolish it, and create a new political system" ("Natural Rights" 2001). This same philosophy inspired Thomas Jefferson to provide a reason for revolution and used it as proof that revolution was necessary in 1776 to end the tyranny that Britain had over the colonies.

Third, and perhaps the most direct assertion that Locke makes about the ultimate limitation that the people can impose on the government comes in the following passage:

For when the people are made miserable, and find themselves exposed to the ill usage of arbitrary power, cry up their governors, as much as you will, for sons of Jupiter; let them be sacred and divine, descended, or authorized from heaven; give them out for whom or what you please, the same will happen. The people generally ill treated, and contrary to right, will be ready upon any occasion to ease themselves of a burden that sits heavy upon them. They will wish, and seek for the opportunity, which in the change, weakness and accidents of human affairs, seldom delays long to offer itself. He must have lived but a little while in the world, who has not seen examples of this in his time; and he must have read very little, who cannot produce examples of it in all sorts of governments in the world. (Locke 1980, 113)

Legitimate governments operate with the consent of the governed and act in their best interests.

When is a revolution justified? In Locke's view, a revolution is justified only as a last resort when the government is incapable of protecting individuals' natural rights. It is the legislative

branch's responsibility to set the limits of the executive's actions, according to Locke. Extending these bounds and acting outside the law is a violation of the social contract, for which the people or the legislature may hold the executive responsible. Through the rule of law and by guaranteeing that the power of the executive can be limited by the people's will, Locke limits the executive prerogative: "If a long train of abuses, prevarications, and artifices, all tending the same way, make the design visible to the people ... 'tis not to be wondered they should then rouse themselves, and endeavor to put the rule into such hands, which may secure to them the ends for which government was at first erected" (Locke 1980, 113).

The Salvadoran Legislative Assembly has the power to limit the executive. However, Nuevas Ideas, Bukele's party, holds a supermajority in Congress which would make it difficult for the legislative body to act against the president when or if necessary. In 2021, the Salvadoran Supreme Court, composed of judges appointed by Bukele's party, ruled that a president can serve a second consecutive term despite the constitution banning re-election after one term. In September 2022, Bukele announced his reelection. ("Despite Prohibition" 2022). There are indications that the rule of law in El Salvador is being manipulated, through legal means, for the benefit of the current president and his party.

As previously stated, international organizations and the US Department of Justice have accused El Salvador of restricting freedom of press, harassment and intimidation of political opposition and civil society actors, and the erosion of checks and balances. There have also been reports of excessive use of force by security forces and arbitrary detentions of protesters, as well as allegations of corruption and political manipulation of the justice system. There is truth to these accusations since multiple allies of Bukele have been accused of corruption, there have been reported cases of the use of excessive force by the Salvadoran police and military under the

current state of emergency, and there has clearly been erosion of democratic institutions in the country, particularly the judicial system that is composed of sympathizers of Bukele. This creates a big problem for the accountability of the executive since the concentration of power in the hands of the ruling party and its allies erodes democratic institutions and the rule of law. This continues to contribute to a lack of accountability and a culture of impunity that has plagued El Salvador for decades where those in positions of power are not held accountable for their actions. Overall, the democratic backsliding trend in El Salvador poses a threat to the country's democratic future and its ability to uphold human rights, the rule of law, and electoral processes. Such antidemocratic and authoritarian tendencies are not compatible with Locke's theory. In Locke's view, the rule of law is essential for a just society, and Bukele's efforts to control the judiciary and other institutions may threaten it. Bukele's presidency, however, is still ongoing and his policies and actions are still a matter of debate and scrutiny.

### **Human Rights and the Government's Role**

John Locke's conceptualization of rights as "natural" and "inalienable" include that to life and to property. In contemporary human rights theory, the right to life is considered a "fundamental" right. Both contemporary human right theory and Locke's theory on natural rights consider the right to life as irrevocable unless it is forfeited by the violation of someone else's right. Such forfeiture can be applicable to gang members in El Salvador.

Besides the Crime which consists in violating the Law, and varying from the right Rule of Reason, whereby a Man so far becomes degenerate, and declares himself to quit the Principles of Human Nature, and to be a noxious Creature, there is commonly injury done to some Person or other, and some other Man receives damage by his Transgression, in which Case he who hath received any damage, has besides the right of punishment common to him with other Men, a particular Right to seek Reparation from him that has

done it. And any other Person who finds it just, may also join with him that is injured, and assist him in recovering from the Offender, so much as may make satisfaction for the harm he has suffered. (Locke 1980, 11)

God-given inalienable natural rights are secured and protected by the government, Locke argued. On the other hand, the people are obliged to follow the laws of their rulers, which creates a sort of contract between the rulers and the ruled. It is the right of the people to resist a government which has been persecuting them for an extended period, alter or abolish that government, and create a new political system if that government has committed a series of abuses. Since humans are relational beings, living and thriving in social relationships is fundamental to who we are as humans. Thus, it is the role of society and its political structures to protect the basic human rights (natural rights, as described by Locke) to life, property, and liberty.

For Locke, “the government comes into place as a ‘necessary evil,’ so to speak, to ensure the safety and survival of the people who decide to give up the free exercise of some of their rights to increase their chance of survival and general well-being. This is how life, liberty, health, and property can be secured as part of fulfilling the God-given purpose to survive” (Simon 2018). In other words, a government should never become the people in itself, but rather a tool for the protection and advancement of their rights. It should always be viewed only as an agent of society, and not as the society itself. Perhaps the most revolutionary concept established in the *Second Treatise of Government* is that, “to ensure that the power of the civil state stays limited and monitored, power must be divided into three branches that balance each other out – the legislative, judicial, and executive. This arrangement is lifted up as the best solution (under the given circumstances) for protecting people’s natural rights – namely (above all) the right to life, liberty, and property. The task of the national government then is to protect the people from an



outside threat, maintain stability, and social harmony through the rule of law” (Do and Valco 2021, 10).

In El Salvador, however, the separation of powers since the 2021 legislative election has eroded. Bukele’s party holds a supermajority, which means that no votes outside of his party are necessary to pass any laws in El Salvador. The judicial branch is also formed by judges that support Bukele’s way of governing. This control of the three branches of government by one party certainly resembles that of other authoritarian countries not only in the region, but also from around the globe. As seen in the literature review, much of Bukele’s criticism comes from this erosion of democracy and populism that has characterized him and his government. In much of the literature, comparisons between Bukele and authoritarian leaders such as Nicolas Maduro in Venezuela, Daniel Ortega in Nicaragua, and Viktor Orbán in Hungary are present. What differentiates Bukele, and one of the characteristics that puzzles analysts and writers on Bukele’s presidency is the absence of an ideological agenda. For example, in Venezuela and Nicaragua, both leaders had the implementation of socialism as the basis of their rise to power and their subsequent authoritarianism (María 2016; Cruz 2019), while in Hungary the story is similar but with a right-wing national-conservative ideology (Halmai 2018). Such extremist ideologies are absent from Bukele’s government. This does not imply that the lack of an ideology in El Salvador’s government is an excuse for any of its actions nor does it put it as a positive trait, but rather serves as an example of one more distinction that characterizes and separates Bukele from other consolidated authoritarian leaders around the world, which makes him worth analyzing separately.

Nayib Bukele’s political career started as a member of the FMLN, a left-wing political party and one of the two major parties in El Salvador until 2019. From tweets published during

his time as mayor of Nueva Cuscatlán and San Salvador, it can be seen that he was against “neoliberalism” and criticized right-wing governments such as Honduras’ for implementing such policies. Him and his party, today, on the other hand, support “traditional” and “Christian” values like anti-abortion and anti-same sex marriage laws. Since the creation of his party, Bukele has been critical of right- and left-wing politics and his true ideology has been categorized as a “mystery” (Rincón 2021). This ideological mystery becomes even deeper when looking at the strong economic relationship that he has created with China and his distancing from maintaining amicable relationships with the United States.

Rather than pushing for a certain type of economic or social model, Bukele’s sole focus seems to be in improving the country’s safety and the implementation of Bitcoin as a currency and as a driving factor in increasing tourism and business. Bukele’s reputation for his authoritarian tendencies, nevertheless, is not baseless. Constant attacks on the press; taking the military to congress; populist ways of governing such as attacking and demonizing, whether justifiably or not, the opposition; and alleged corruption are examples of clear violations against the independence of the three branches of government and the upholding of pluralism as an important characteristic of democracy. Locke’s three branches of government, as he laid out, must be independent of each other in its functions, even though the current Legislative Assembly in El Salvador was chosen by the people in a transparent and fair electoral process, the intrusion of a populist and messianic executive in influencing and meddling with the role of the legislative is incompatible with a liberal democracy and erodes its institutionality:

The power of the legislative, being derived from the people by a positive voluntary grant and institution, can be no other than what that positive grant conveyed, which being only to make laws, and not to make legislators, the legislative can have no power to transfer their authority of making laws, and place it in other hands. (Locke 1980, 74)

Nonetheless, the people in El Salvador have had, in the first four years of Bukele's presidency, the last say in electing their representatives. Even though Bukele's practices are, in theory, authoritarian and dictatorial, in practice, it has so far favored the well-being of Salvadorans seen by the people's support through transparent electoral processes and unbiased international polls. To pursue their well-being in a way that is favorable to them through government is consistent with Locke's ideas of the pursuit of happiness through free will: "the highest perfection of intellectual nature lies in a careful and constant pursuit of true and solid happiness" (Locke 2004, 338). Decreasing the homicide rate in any given state, can be argued, would contribute to a society's happiness. This theory of pursuit of happiness and the right to life, as Locke argues, does not only include a right to be alive, but also to live a comfortable and safe life:

The only way whereby any one divests himself of his natural liberty, and puts on the bonds of civil society, is by agreeing with other men to join and unite into a community for their comfortable, safe, and peaceable living one amongst another, in a secure enjoyment of their properties, and a greater security against any, that are not of it. (Locke 1980, 52)

The history of human rights in El Salvador, as previously reviewed, is plagued by violations and an absence of institutional intervention that have contributed to a lack of significant change in the well-being of citizens in terms of security for decades. As demonstrated in the literature review, for many years there was a collective culture where citizens did not expect government institutions, such as the courts or the police, to ensure justice and security. El Salvador, during the 2010s, had an impunity rate of 97%, in other words, out of 100 homicides, 97 of them went unpunished. Since the last figures published in 2021, a year before the implementation of the state of emergency, these figures had decreased to 67% ("Impunidad En El Delito" 2021). By 2023, with the implementation of the state of emergency, the militarization of the country, and the rapid imprisonment of approximately 65,000 suspected gang members, these numbers can be

expected to have plummeted significantly, which could indicate that this culture of impunity is changing in El Salvador and with it the expectations of citizens regarding the role that the government plays in protecting their lives and well-being.

One of the arguments in relation to human rights that this thesis tries to expose is the different needs that each state has and the different levels of consolidation and productivity of its institutions in relation to protecting the natural rights of their people established by Locke: life, liberty, and property of its people. The history of impunity in El Salvador, its political history, public security, the level of crime, its institutions, etc., are vastly different from the countries that now strongly criticize the government. The social magnitudes that criminal groups carry in El Salvador, their effects on the economy such as entrepreneurs and small business owners not being able to sustain a businesses because these groups charge what is called "war tax" where if a person who opens a business or company does not pay these criminal groups a tax, they run the risk of being assassinated and/or are forced to close their businesses, which affects the country's economy (Arévalo 2022). Crime in El Salvador has affected every aspect of production, security, migration, etc., of its citizens.

Despite the great social changes in El Salvador, international human rights organizations and foreign countries have strongly criticized the Salvadoran government for not respecting the rights of suspected gang members, but how justified are these interferences when the vast majority of the population supports government measures against criminal entities? As David A. Reidy puts it, "staying clear about the different forms of toleration properly shown to different states is essential if we are to realize a world not only within which basic human rights are universally secured as a matter of both domestic and international law, but within which the liberalization and democratization of all polities is realized through the moral agency, the

reasoned exercise of the sense of justice, of their members” (Reidy 2008, 402). In other words, governments do not have the responsibility to respond or obey to foreign interference when it goes against democracy, the will of the people and actions that benefit the human rights of civilians over the rights of criminals who violate society, life and the well-being of citizens. The sense of justice to meet social needs is different for each state and its citizens, “Human rights, basic and otherwise, constitute practical and pragmatic answers to particular problems properly identified and resolved only from the internal normative point of view of moral actors” (Reidy 2008, 401).

The protection of contemporary human rights, whose principles have been influenced by thinkers such as John Locke throughout history, is today the basis for the respect and protection of individuals and their rights, including the right to life which is studied in this thesis. The purpose of the state of emergency occurring in El Salvador must be seen as the result of institutional ineptitude combined with an astronomical homicide rate that, if quick results are desired, can only be realized with prompt action to prevent further acts of murder from being committed. The criminal acts of arbitrary killings or disappearances of which the current Salvadoran government is accused by foreign countries such as the U.S. State Department and international human rights organizations, if true, are unacceptable and incompatible with John Locke's theory. It must be considered that these accusations are not necessarily ordered by the government, but independent actions of the armed forces or the Salvadoran national police that commit these criminal acts on the spot and not by state orders (Alemán 2022). It is doubtful that anything on this scale can perfectly be executed. As long as a state of emergency is in place, personal actions from individual police officers may divert from the necessary measures to capture suspected gang members. Civilians can and have become victims of arbitrary arrests.

The numbers of alleged civilians that have been wrongfully imprisoned, as shared by the current government data, is 3,745 (Brigida 2023). The government has the duty to respect the physical integrity and life of criminals and suspected criminals as established by the fundamental human right of protecting life and as compatible with Lockean theory. Eradicating criminality, as seen in El Salvador, does not mean eradicating criminals but preventing crimes by means of mass incarceration of suspected criminals given that it is the only effective option that the current Salvadoran government has adopted, and which has yielded important results. If El Salvador were to remain in a perpetual state of emergency, however, given the limitations that emerge under a state of emergency, civil liberties—including freedom of assembly, freedom of speech and freedom of press—could be limited, which would lead to a loss of democratic freedoms.

Similarly, the bypassing of normal institutional checks and balances that occur under a state of emergency could lead to the weakening of those institutions and concentrate power in the executive for an indefinite period. As of March 2022, the state of emergency is still in place and every month, since March 2021, the Legislative Assembly has approved an extension of the state of emergency (“El Salvador Extends Emergency” 2023). Such limitations to the freedoms of citizens would be incompatible with Lockean theory as “the end of law is not to abolish or restrain, but to preserve and enlarge freedom” (Locke 1980, 32).

The mistakes of governments are paid for by the citizens. The lack of interest and the prevalence of corruption in the executive throughout the years following the Salvadoran civil war can be summarized in the fact that out of the six presidents that have occupied the executive in post-Civil War El Salvador, four of them have either been imprisoned or are currently in exile. Former President Francisco Flores Pérez (in office from 1999 to 2004) faced charges of embezzlement of \$5.3 million and illegal enrichment of \$10 million that was donated by

Taiwan's government during his presidency (“El Salvador judge orders” 2014). He died under house arrest in 2016; former President Antonio Saca (in office from 2004 to 2009) is currently in prison serving a ten-year sentence “after he pleaded guilty to embezzlement and money laundering charges involving more than \$300 million of public funds” (“Former El Salvador President” 2018); former President Mauricio Funes (in office from 2009 to 2014) was granted asylum in Nicaragua in 2016 after he was accused of “crimes of embezzlement, illicit negotiations, misuse of funds, illicit enrichment and influence-trafficking” in El Salvador (“Former El Salvador President Granted Asylum” 2016); and former President Sanchez Cerén (in office from 2014 to 2019) was granted citizenship in Nicaragua in 2021 “after facing an international arrest order related to corruption charges in El Salvador” (“Nicaragua Grants Citizenship” 2021). These arrests and accusations against former presidents have consecutively, since 1999 through 2019, stained El Salvador’s presidency, showing the level of corruption found in the executive for two decades.

For many years El Salvador had a completely different policy than it does today regarding gangs. The government of El Salvador came to consider the gangs as "political institutions" (Martínez and Reyes 2023) and negotiated with them since the 2000s to reduce the crime rate. These negotiations included moving MS-13 and Barrio 18 leaders from maximum security prisons to lower security prisons so that they could operate from them with greater ease (Martínez, Martínez, and Arauz 2012). These negotiations continued even during the first two years of Bukele's presidency until relations between the gangs, as institutions, were completely broken and a state of emergency and zero tolerance towards these criminal groups was implemented. This information demonstrates the level of penetration of these criminal groups even in the same Salvadoran political institutionality. This "rewarding" of criminal groups over

the years serves as a great contrast between the role of the government before and the role of the government now and the futility of the Salvadoran governments, over the years, in combating these criminal groups.

Have Bukele's actions, however, preserved or dissolved El Salvador's government? This question can be answered in two ways: First, if the governments that preceded that of Bukele were to be considered as "dissolved states" due to the government acting contrary to the trust granted to it and by the introduction of illegal measures to control crime, "not being thereunto authorized by the fundamental appointment of the society" (Locke 1980, 109), including its complicity with criminal organizations in their state of war against the population by granting them illegal privileges, conducting illegal pacts, and making illegal negotiations (Robbins 2021), whilst not meeting the need of the people in terms of public security, then it is "plain that the legislative is changed" (Locke 1980, 109). Thus, it can be argued that Bukele's actions, with the approval of the population through electoral processes, preserved the purpose for which government exists: the protection of the life, liberty and property of each member. This would have to reconcile, however, with the fact that Bukele has also been accused of illegally negotiating with gang members to reduce crime during the beginning of his presidency (Robbins 2021). This act goes contrary to the trust granted to Bukele, which would lead to the dissolution of Bukele's government according to Locke. What differentiates Bukele's government from previous governments, however, is the reconciliation of the population with such violation of trust that Bukele has seemingly atoned in the eyes of the population by the implementation of the state of emergency and the declaration of war against gangs, which have only led to Bukele's approval rating to increase.



Second, due to the fracturing of checks and balances and separation of powers between the executive and the legislative, an argument in favor of the idea that Bukele has dissolved the government may be validated under Locke's own theory of the dissolution government as "he, who takes away the freedom, or hinders the acting of the legislative in its due seasons, in effect takes away the legislative, and puts an end to the government" (Locke 1980, 109). However, this argument poses a strong theoretical and practical challenge that would need to be overcome: the supermajority from Bukele's party that currently controls congress has been democratically elected. John Locke seems to create a parameter in his *Second Treatise of Government* in respect to this matter: "When, by the arbitrary power of the prince, the electors, or ways of election, are altered, without the consent, and contrary to the common interest of the people, there also the legislative is altered" (Locke 1980, 109). One of the limitations that this thesis strongly acknowledges for checking executive prerogative is the importance of fair and transparent elections. John Locke states just that by arguing that if the "ways of election are altered," then the legislative is also altered, and government is thus dissolved. But John Locke also acknowledges, in that passage, the "consent" and the "common interest" of the people in the way that the "prince" acts. Thus, is the dissolution of government legitimate if it goes against the consent and common interest of the people? If "consent" and "common interest" of the people are to be measured through elections, as liberal democracies do, then the response to the previous question yields a negative answer as "the people shall be judge" of whether a "Prince or Legislative act contrary to their trust" (Locke 1980, 213). Therefore, the question of whether Bukele's actions preserved or dissolved El Salvador's government is answered by the people's ability to judge the executive and legislative actions freely and transparently.

Absence of respect for human rights throughout a prolonged history and El Salvador's institutions inability to protect its people and bring justice to past and present crimes thus are two conditions that have prompted the population to support a government with what foreign governments and international organizations deem as an "authoritarian-like" leadership that is "massively" committing human rights violations (Delcid, Suarez, and Fox 2022). The current situation in El Salvador is more complex than just categorizing its president as an authoritarian leader. The focus of this paper is not to counter argue that Bukele is not leading the country towards authoritarianism as its symptoms indicate that the path the current government is taking may take the country towards continuous democratic backsliding but to state the conditions in El Salvador's history that may explain why the current president and its government are so well favored by the people given the circumstance of human rights violations and the erosion of democracy. The reasons why the people have placed their trust in the president and his government have already been specified above. However, what are the limitations of John Locke's theory in understanding the current situation in El Salvador as well as its incompatibilities?

### **Limitations**

The purpose of the analysis of Locke's theory on this thesis has not been to impose Lockean theory on El Salvador's case but to try to understand such a case under a liberal democratic analysis. There are limitations in John Locke's theory in understanding Bukele's presidency in El Salvador. For instance, the cultural and historical context that exists between Locke's theory, which emerged in 17th century England, and its applicability to El Salvador's

unique history and culture, all of which may not align with Locke's theory. Even though El Salvador's constitution originated and was inspired by a Lockean-type constitution such as the United States', it can be argued that the El Salvador constitution does not possess an interpretative element in comparison to that of the United States, which would make the connection between John Locke's theory harder to apply to the current language found in El Salvador's constitution. The argument of originalism and textualism against the living constitution viewpoint that exists in the United States does not exist in El Salvador. Therefore, the executive may be more limited in arguing in favor of prerogative under an emergency scenario.

This thesis' demonstration on the connection between right to life and prerogative in relation to the public security crisis is purely theoretical but its argument is based on the application of theory on the factuality of El Salvador's ongoing political events. It is important to acknowledge that, even though Locke's theory may prove to be consistent with the use of executive prerogative in El Salvador, it cannot be applied to other characteristics that have appeared due to a prolonged use of prerogative under a state of emergency. The concentration of power that exists in El Salvador today is not consistent with Locke's theory and it goes against his preposition of separation of powers and checks and balances as well as an overall departure from Locke's vision of limited government and individual rights that have surged due to Bukele's authoritarian tendencies. Ultimately, Locke's theory can be used to both understand and criticize Bukele.

## CONCLUSION

The conditions that have led the Salvadoran population to vehemently support Nayib Bukele and his policies are the following:

1. A history full of human rights violations against the lives of civilians post-Civil War El Salvador.
2. Weak institutions that do not deliver or meet their responsibilities in protecting civilians.
3. A history of corruption in El Salvador's executive which has diminished its perception.

As analyzed throughout this thesis, all have led the population to support a messianic leader who, by using the prerogative of the executive to lower the country's homicide rate in ways that violate the human rights of suspected criminals, has created a cult around him that is similar to authoritarian leaders seen around the world.

The right to life, liberty and property is Locke's philosophy proverb. Half of this thesis derives from the idea that the right to life is a fundamental part of individual freedom. The other half is from Locke's argument that executive prerogative could be a valuable tool for the public good as long as it had limits that would protect the same fundamental rights that he promoted. These two propositions, although not directly or explicitly linked together in Locke's *Second Treatise of Government*, do connect when they are translated into real life occurrences such as the ones seen in El Salvador where mass violations of rights against civilians merit, according to the executive's own discretion, the use of prerogative to stop those violations from continuing to happen.

The claim that this thesis makes is that the current human rights violations and the democratic backsliding that El Salvador is currently experiencing can be understood as a result

of a series of historical, political and social realities in El Salvador's post-Civil War history. The literature regarding Nayib Bukele's presidency falls short in explaining the whys of his actions and his mass popularity. Repeatedly categorizing Bukele as a populist is neither enough nor helpful in even beginning to comprehend the problems that have carried El Salvador to where it is today politically. Through John Locke's theory, El Salvador's current president and the power he holds can be understood as an executive figure, in times of emergency, performing a role that requires the use of prerogative. Like any country, there are several focus points that can be analyzed such as the economy, social issues, and public health. The sole focus, however, of this thesis has been public security and how it has been fought in El Salvador and the effects it has had on democracy and human rights. The conclusions reached by this thesis are thus specifically in relation to public security and the executive, and no other aspects such as the ones previously listed. This clarification serves to draw a line between the fact that the president of El Salvador is on his way to becoming a dictator (or perhaps already is) and the reality the country faces—and has been facing for decades—in terms of crime and public safety, and the support that the people have given to the current government through democratic means.

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