

Necropolitics in OHAL:
The State of Emergency Experience of Turkey
(1987-2002)

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Abstract

“Necropolitics in OHAL:
The State of Emergency Experience of Turkey (1987-2002)”

Özlem Has, Master’s Candidate at the Atatürk Institute
for Modern Turkish History at Boğaziçi University, 2017

Asst. Prof. Ziya Umut Türem, Thesis Advisor

Achille Mbembe has opened a new path for studies of violence with the concept “necropolitics” which refers to the “subjugation of life to the power of death.” The Mbembe’s main goal is to reveal the relationships among power, politics, and death, particularly in places where a state of exception is in operation. He claims that disciplinary and biopolitical powers are insufficient to explain the mechanisms of control and subjugation in exceptional spaces; necropolitics is needed if one wants to understand the true workings of power.

This thesis discusses the necropolitical violence at the intersection of necropolitics and the state of exception that was in operation during the years of the State of Emergency (Olağanüstü Hal or OHAL), which was put in practice in Southeastern Turkey between 1987 and 2002. This thesis argues how the politics of death was implemented in the OHAL region in light of specific cases from the OHAL period.

51,000 words

Özet

“OHAL’de Nekropolitika:
Türkiye’nin Olağanüstü Hal Deneyimi (1987-2002)”

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Achille Mbembe, "yaşamın ölümün gücüne boyun eğdirilmesi" anlamına gelen "nekropolitika" kavramıyla şiddet çalışmalarında yeni bir yol açtı. Mbembe'nin asıl amacı, özellikle bir istisna durumunun yürürlükte olduğu yerlerde iktidar, politika ve ölüm arasındaki ilişkiyi ortaya koymaktır. Mbembe, disipline edici ve biyopolitik iktidar biçimlerinin, istisnai alanlarda kontrol ve boyunduruk altına alma mekanizmalarının işleyişinde yetersiz olduklarını iddia ederek; bu yerlerde iktidarın gerçek işleyişine bakılmak isteniyorsa nekropolitik iktidar biçimine de bakılması gerektiği üzerinde durmuştur.

Bu tez çalışması nekropolitika ile istisna durumunun kesiştiği noktada, Türkiye'nin güneydoğusunda 1987 ve 2002 yılları arasında deneyimlenen Olağanüstü Hal (OHAL) döneminde işlev gören nekropolitik şiddeti tartışmayı amaçlıyor. Bu tezde ölüm politikalarının OHAL bölgesinde nasıl uygulandığı bir takım örnek olaylar ışığında incelenecektir.

51.000 kelime



To all who say “Peace” first.

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Abbreviations and Acronyms

CHP	Cumhuriyet Halk Partisi (Republican People's Party)
CUP	İttihat ve Terakki Cemiyeti (Community of Union and Progress)
DYP	Doğru Yol Partisi (True Path Party)
HEP	Halkın Emek Partisi (People's Labor Party)
ISIS	Islamic State of Iraq and Syria
İHD	İnsan Hakları Derneği (Human Rights Association)
KHK	Kanun Hükmünde Kararname (Decrees Having the Force of Law)
OHAL	Olağanüstü Hal (State of Emergency)
PKK	Partiya Karkerên Kurdistanê (Kurdistan Workers' Party)
RP	Refah Partisi (Welfare Party)
SHP	Sosyal Demokrat Halkçı Parti (Social Democratic Populist Party)
TBMM	Türkiye Büyük Millet Meclisi (Grand National Assembly of Turkey)
TSK	Türk Silahlı Kuvvetleri (Turkish Armed Forces)

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Introduction

Over the summer of 2015 and since, the public space of Turkey has been flooded with stories and images of death as the “peace process” between the Turkish state and the PKK¹ came to an end.² While the scale of destruction in Kurdish towns since the (re)escalation of the conflict has been staggering, three moments stand out in this massive campaign of violence and death: The naked image of the body of a female PKK combatant Kevser Eltürk in August

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- 1 PKK (Partiya Karkerên Kurdistanê, Kurdistan Workers’ Party) was established on 27 November 1978 and initiated an armed uprising against the Turkish state aimed at obtaining cultural and political rights and self-determination for Kurds in Turkey. For more detail, see Hussein Tahiri, *The Structure of Kurdish Society and the Struggle for a Kurdish State* (California: Mazda Publications, 2007); Aliza Marcus, *Blood and Belief: The PKK and the Kurdish Fight for Independence* (New York: NYU Press, 2007); and Gülistan Gürbey, “The Kurdish Nationalist Movement in Turkey since the 1980s,” in *The Kurdish Nationalist Movement in the 1990’s: Its Impact on Turkey and the Middle East*, ed. by Robert Olson. (Kentucky: University of Kentucky Press 1996), 9-38.
 - 2 For a chronology and the deterioration of the Turkey-PKK peace process, see “Chronology of Peace Process in Turkey,” *Hakikat Adalet Hafıza Merkezi*, accessed April 10, 2016, <http://hakikatadalethafiza.org/en/chronology-of-peace-process/>; and Mustafa Akyol, “Who killed Turkey-PKK peace process?” *Al-Monitor*, August 4, 2015, accessed April 10, 2016, <http://www.al-monitor.com/pulse/originals/2015/08/turkey-syria-iraq-pkk-peace-process-who-killed-kurds.html#>.

2015; the demolition and bombing of cemeteries where PKK fighters are buried in September 2015; and a leaked video displaying the body of the PKK sympathizer Hacı Lokman Birlik as it was dragged through the streets of Şırnak Province behind a military vehicle in October 2015.³ All these moments share one thing in common: They either present direct, graphic depictions of dead bodies and/or violent actions targeting the dead.

The wide circulation of such video recordings, images, and news items, as well as the fact that they were not condemned outright by state authorities, produce certain effects, regardless of whether or not they have been put into circulation intentionally.⁴ While there is certainly no anomaly in two armed groups considering each other as enemies and engaging in deadly battles with one another, the use of dead bodies as political tools is an exceptional undertaking, which it appears is being mobilized in Turkey in the fight against the armed Kurdish resistance.⁵

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- 3 Johnlee Varghese, "Turkey to Probe 'Naked Images' Leaked Online of Female Kurdish Guerilla, Slain by Special Forces," *International Business Time*, August 17, 2015, accessed April 10, 2016, <http://www.ibtimes.co.in/turkey-probe-naked-images-female-kurdish-terrorist-slain-by-special-forces-643230>; Derya Aydın, "Yası Tutulmaya Değer Görülmeyen Bedenlerin Süreklileşmiş Yası: Devlet Mezarlıkları Neden Bombalıyor?" *Zan Enstitü*, accessed April 10, 2016, <http://zanenstitu.org/yasi-tutulmaya-deger-gorulmeyen-bedenlerin-sureklilesmis-yasi-devlet-mezarliklari-neden-bombaliyor-derya-aydin/>; and "İnsanlık hâlâ sürükleniyor," *Evrensel*, October 4, 2015, accessed April 10, 2016, <http://www.evrensel.net/haber/262001/i>.
 - 4 For example, the governor of Muş - where Kevser Eltürk was killed - announced an "administrative and criminal investigation," but not against the perpetrators of the inhumane act themselves, but rather against those who shared the images. On the other hand, in the case of Hacı Birlik, the legal investigation was based on "insult against the memory of a person" rather than "willful murder," "torture," and "misconduct." For detail, see Johnlee Varghese, "Turkey to Probe 'Naked Images' Leaked Online of Female Kurdish Guerilla, Slain by Special Forces," *Business Time*, August 17, 2015, accessed April 10, 2016, <http://www.ibtimes.co.in/turkey-probe-naked-images-female-kurdish-terrorist-slain-by-special-forces-643230>; and "Hacı Lokman Birlik soruşturmasında 6 polisin ifadesi alınacak," *IMC*, November 7, 2015, accessed April 10, 2016, <http://www.imctv.com.tr/haci-lokman-birlik-sorusturmasinda-6-polisin-ifadesi-alinacak/>.
 - 5 Maintaining the protection of human dignity in any circumstance, the Geneva Convention (to which Turkey has been a party since 10 February 1954) establishes the international prin-

As such exceptional measures were deployed, first questions that come to mind are if Turkey is a state of law, how can cities and cemeteries be so easily destroyed and how can the abuse of dead bodies be legitimized with judicial impunity in the manner of a spectacle? The answer in part is that such fighting occurs under exceptional circumstances. Announcements of Temporary or Military Security Zones (Geçici/Askeri Güvenlik Bölgesi) in over a hundred places in mostly Kurdish-populated cities have facilitated the functioning of this process.⁶ However, the issue of abuse of dead bodies remains important even under exceptional rule. Desecration of human dignity remains prohibited under both domestic and international law whether in exceptional or normal rule.⁷ So then, what is the motivation for turning inhumane practices against human dignity into a routine affair?

ciples of humanitarian treatment during war for members of armed forces, civilians, and prisoners of war. Common Article 3 of the Geneva Convention (I) relating to non-international armed conflict and Geneva Convention (III) related to treatment of prisoners of war in non-international armed conflict clearly state the prohibition of practices including “violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture” and “outrages upon personal dignity, in particular humiliating and degrading treatment.” For detail, see Geneva Convention, “Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, August 12, 1949,” accessed June 18, 2015, <https://www.icrc.org/applic/ihl/ihl.nsf/9861b8c2foe83ed3c1256403003fb8c5/baa341028ebffie8c12563cd00519e66>; and Geneva Convention, “Convention (III) relative to the Treatment of Prisoners of War. Geneva, August 12, 1949,” accessed June 18, 2015, <https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=E160550475C4B133C12563CD0051AA66>.

- 6 “Turkish Security Zones Prompt Human Rights Concerns for Kurds,” *Voa News*, September 28, 2015, accessed May 12, 2016, <http://www.voanews.com/a/turkey-kurds-security-zones-curfews-human-rights/2982509.html>.
- 7 Article 17 of Constitution of the Republic of Turkey: “No one shall be subjected to torture or mal-treatment; no one shall be subjected to penalties or treatment incompatible with human dignity.” For detail, see Republic of Turkey, “The Constitution of 1982,” retrieved 10 July 2016, from [https:// global.tbmm.gov.tr/docs/constitution_en.pdf](https://global.tbmm.gov.tr/docs/constitution_en.pdf).

Article 3 of European Convention on Human Rights: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.” For detail, see European Convention, “European Convention on Human Rights,” retrieved 20 June 2016, from http://www.echr.coe.int/Documents/Convention_ENG.pdf.

Images and videos (of the bombings and display of bodies mentioned above) began to circulate by 2015 were mainly discussed on the basis of whether they represent a return to the 1990s. This decade is of critical importance in Turkey's regime of violence, especially for Kurdish people who lived in Southeastern Turkey in those years. The war between the PKK and the state escalated in these years, and the response of the state was to implement a State of Emergency (Olağanüstü Hal or OHAL), which was in force during the long 1990s - from 1987 to 2002. This exceptional rule provided the Turkish state with the opportunity to govern the southeast Turkey outside of the normal social and judicial order of general state rule. The Governorate of the State of Emergency Region (Olağanüstü Hal Bölge Valiliği) was formed in 1987. This rule was possible through extralegal practices and judicial impunity in the region provided by Decrees Having the Force of Law (Kanun Hükmünde Kararname or KHK). From this date forward, forced displacements, village evacuations and burnings, disappearances, bans on free movement, bans on pasturing, and rations on food and on the acquisition of animals became routine, though the legality of these practices continues to be discussed even today. Treatment of dead bodies was of capital importance for this OHAL period, and this thesis focuses on this dimension of the OHAL.

In this exceptional space and period, a politics of death was in operation against PKK combatants and, to some degree, civilians. A regime of violence directed towards the dead, particularly the corpses of PKK fighters, was in operation through practices of the torture of dead bodies, refusal to deliver the dead for proper burial, attacks on funerals, burials in unmarked and mass

Common Article 3 of Geneva Convention: "violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture shall remain protected at any time and in any place." For detail, see Geneva Convention, "Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, August 12, 1949," accessed June 18, 2015, <https://www.icrc.org/aplic/ihl/ihl.nsf/9861b8c2foe83ed3c1256403003fb8c5/baa341028ebff1e8c12563cd00519e66>.

graves, and attacks on cemeteries. This thesis explores what such practices targeting the corpses of the enemy achieve politically. I analyze all these processes of violence under the broader concept of necropolitics.

Achille Mbembe, the initial theorist of this concept, uses the term necropolitics to point out a form of power the essential axis of which concerns the “subjugation of life to the power of death.”⁸ By employing this concept, Mbembe reveals the relationship between power, politics, and death, particularly in places where a state of exception is in operation.⁹ Citing the South African and Palestinian examples, Mbembe shows that an examination of disciplinary and biopolitical powers are insufficient to explain the mechanisms of control and subjugation in such exceptional spaces. According to Mbembe, such exceptional zones need to be analyzed as the concentration of multiple powers: “disciplinary, biopolitical, and necropolitical”¹⁰ if one wants to understand the true workings of power.

In practice, necropolitics can be approached in various ways. On the one hand, this analytical tool could be applied to the analysis of the consecration of the bodies of those declared martyrs by the state. On the other hand, one can use it to analyze those dead bodies that the state defines as enemies. While the post-2015 practices of denigrating bodies are significant, in this thesis, I analyze the necropolitical violence at work in Turkey’s predominantly Kurdish southeast between 1987 and 2002 when it was legally declared a zone of exception.¹¹ I study this exceptional period in part because it is a crucial moment

8 Achille Mbembe, “Necropolitics,” *Public Culture* 15 (2003): 39.

9 Mbembe, “Necropolitics,” 12.

10 Ibid, 29.

11 The exceptional regime embodied in the OHAL governorate was created to prevent the spread of the armed activities of the PKK. In this sense, majority Kurdish provinces such as Batman, Bingöl, Diyarbakır, Elazığ, Hakkari, Mardin, Siirt, Şırnak, Tunceli, and Van, as well as Adıyaman, Bitlis, and Muş with a status of neighboring province (mücavir il) became parts of state of emergency region.

that provides an understanding of the “necropolitical violence” of the Turkish state in general.¹²

In analyzing the OHAL rule and the broader necropolitics in Turkey, I am particularly interested in the mechanisms of inclusion in or exclusion from the social and legal order of state by a political decision that laid the foundation for (the legitimation of) necropolitical violence. I claim that the state of emergency rule has prepared a convenient base for the implementation of mechanisms where law and violence are instrumentalized in a manner supportive of one another. I use “contractual violence” as an explanatory concept to refer to the threshold to which this instrumentalization led. This is a kind of contract between the state and society in terms of approving of, supporting, and even participating in state violence. The legal foundation of the OHAL regime contributes to this contract as it provides judicial impunity for violent practices against those who are in the relation of enmity.

In light of these, what was the facilitative role of the relation of enmity and judicial impunity as two components feeding contractual violence and determining the necropolitics of the Turkish state in the 1990s? To answer this question, I present four cases representing the four stages of necropolitical violence in order: From practices immediately after a killing to post-burial practices. Since *having a grave* has important symbolic value in human sociality in terms of signifying a place for survivors to visit and grieve, I analyze the cases establishing between pre- and post-burial processes. In this sense, I examine the Ardahan-Göle case (1992) as representative of inhumane after-killing practices and the Kulp-Lice case (1991) as representative of an attack on funeral process before burial. On the other hand, I examine the case of Kasaplar

12 Banu Bargu uses the term necropolitics in the context of inhumane acts that “target the dead bodies of those killed in armed conflict, by way of their mutilation, dismemberment, denuding, desecration, dragging, and public display, the destruction of local cemeteries and other sacred spaces that are designated for communication with and commemoration of the dead, the delay, interruption, or suspension of the conduct of funerary rituals, the imposition of mass or anonymous internment, the pressure for clandestine internment, and the repression and dispersion of funeral processions for the newly dead.” For detail, see Banu Bargu, “Another Necropolitics,” *Theory & Event* 19 (2016), accessed April 10, 2016, <https://muse.jhu.edu/article/610222>.

Deresi (1989) as representative of burial in a mass grave and the Antalya-Manavgat case (1998) as representative of attacks on graves after burial. I analyze these cases applying the concept of necropolitics with the help of auxiliary notions: The construction of enmity, the culture of impunity, contractual violence, derealization and dehumanization, the symbolic capital of the dead, and the manifestation of state power.

§ 1.1 Conceptualization of the Issue

This thesis makes use of a theoretical and conceptual toolkit to make sense of an empirical phenomenon. All the concepts and theoretical interventions that I utilize here are drawn from a set of related readings in history and political theory. While there are several studies depicting the relationship between the Turkish state (power) and political violence, works explicitly focusing on necropolitical violence are scarce. Two edited volumes that focus on the Turkish state and political violence are important in terms of consolidating the concepts of the culture of impunity and contractual violence.

The first is the book coedited by Güney Çeğin and İbrahim Şirin: *Türkiye’de Siyasal Şiddetin Boyutları* (Dimensions of Political Violence in Turkey).¹³ In this work, Çeğin and Şirin show the dynamics and continuity of the operation of political violence from the late Ottoman Empire to the present day. While the object of violence shifts - from Armenians to rival Turks, Alevis, Kurds, and women - the state is the main actor propagandizing, organizing, and systemizing violence against these groups with the facility of judicial impunity for perpetrators. These groups are considered in a relation of enmity since they are outside of the idealized (white/Turkish/male) identity of the society. Thus, I use the concept of the culture of impunity in the context of the historical practice of canceling judicial accountability for perpetrators with re-

13 Güney Çeğin, and İbrahim Şirin, *Türkiye’de Siyasal Şiddetin Boyutları* (Istanbul: İletişim, 2014).

spect to inhumane acts against outcast groups in society. Contractual violence¹⁴ occurs at this point. By this concept, I mean a relation of approval and consent between state and society with respect to acts and a discourse of violence. Since such support was acquired in mainstream society, any violence of the state attained a kind of legitimacy. I argue that the construction of enmity and judicial impunity are the two motors behind such a contract. While the construction of enmity is a facilitative factor in legitimizing violence, judicial impunity is the result of such a contract.

The article of Bahar Şahin Fırat entitled “*Türkiye’de ‘Doksanlar’: Devlet Şiddetinin Özgünlüğü ve Sürekliliği Üzerine Bir Deneme*” (“The Nineties” in Turkey: An Essay on the Uniqueness and Continuity of State Violence)¹⁵ motivated me to prepare this thesis around the regime of violence in the 1990s. While Şahin Fırat provides a broad frame of violence in these years from the theoretical vantage points of state racism and internal colonialism against the Kurdish-populated southeast, I discuss the relation between the state and violence on the basis of the legal construction of the OHAL regime and the specific appearance of necropolitical violence. This article describes the categorizations of derealization and dehumanization, as well as punishment relation between them that is specific to the OHAL region. She constructs a relation between these categories on the basis of the reproduction of punishable human categories from human communities already rendered as illegitimate.¹⁶ In light of this, I claim that the OHAL legislation drew a line between the OHAL region and the rest of Turkey not only in a geographical sense, but also

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- 14 This concept refers to a tacit contract between state and society. Şerif Mardin uses this term - tacit contract - to explain relations between the “ruler” and its “subjects,” between the “center” and its “periphery” in Ottoman times. Since Mardin’s term refers to reconciliation mechanism regulating relations between center and peripheries during any rebellion, I consciously use the contractual violence to underline the reconciliation on violence that is mutually produced by state and society. For tacit contract, see Şerif Mardin, *Türk Modernleşmesi: Makaleler 4* (Istanbul: İletişim Yayınları, 1991), 108.
- 15 Bahar Şahin Fırat, “Türkiye’de ‘Doksanlar’: Devlet Şiddetinin Özgünlüğü ve Sürekliliği Üzerine Bir Deneme,” in *Türkiye’de Siyasal Şiddetin Boyutları*, edited by Güney Çeğin, and İbrahim Şirin (Istanbul: İletişim, 2014), 369-403.
- 16 Şahin Fırat, “Türkiye’de ‘Doksanlar,’” 376.

in terms of civil rights. What the state of emergency rule constructs is a relation of suspension - suspension of the general state rule applied to all citizens of Turkey for people who live under the OHAL regime. Their citizenship was derealized by the OHAL legislation in contrast to the citizenship of others who live out of the emergency region where general state rule still operates. Emergency practices such as village evacuations and burnings, bans on free movement, food rations, and animal quotas are evidence of this derealization. As a further step of derealization, dehumanization represents a punishment relation operating outside of the general judicial and social order of the state. While derealized lives still have the advantage of participating in the human sociality of the state to the extent that they collaborate with the state, there is no such opportunity for the dehumanized lives.¹⁷ “Pure violence”¹⁸ against them outside the bounds of judicial accountability is made legitimate through the contract between the state and society. Treatment of PKK fighters and civilians who share similar ideologies are part of process of dehumanization, as analyzed throughout this thesis. According to this depiction, they are considered killable entities with a guarantee of judicial impunity for perpetrators. As Lucien Van Liere notes:

One aspect of killing is the “derealization” of the relationship between perpetrators and victim. Derealization works as dehumanization. As a

17 The village guard system is the best example of such collaboration. Since 1985, thousands of people have been forced to make a choice to fight against the PKK with the state or be exposed to the violence of the state. Those who chose to be village guards were armed and financed by the state. The state, in fact, used this system to distinguish “loyal” from “disloyal” citizens. For detail, see Evren Balta, “Causes and Consequences of Village Guard System in Turkey” (paper presented at the Mellon Fellowship for Humanitarian and Security Affairs Conference, CUNY-Graduate Center, New York, December 2, 2004).

18 That is to say, pure from guilt under the law. For detail, see Walter Benjamin, “Critique of Violence,” in *Reflections: Essays, Aphorisms, Autobiographical Writings*, ed. Peter Demetz (New York: Schocken Books, 1986), 300.

result, a perpetrator does not need to see himself as a perpetrator because his act of violence was not committed to “real” human beings.¹⁹

The second edited book is by Güney Çeğin and Ümit Kurt: *Kıyam ve Kitâ: Osmanlı’dan Cumhuriyet’e Devletin İnşası ve Kolektif Şiddet* (Revolt and Massacre: The Construction of the State and Collective Violence from the Ottoman Empire to the Republic).²⁰ This book also provides a broad perspective on political violence but focuses on the transition from the Ottoman Empire to the early years of the Republic of Turkey. This book offers an informative foundation on Foucault’s approach to the circular nature of sovereignty which is detailed in the theoretical chapter and used throughout the thesis with respect to the absolute continuity of sovereignty even in modern democracies. As the book claims, the nature of sovereignty regarding the use of violence did not disappear in the transition period from a monarchy to a modern nation state; conversely, it was reserved and instrumentalized on the way to creating a homogenous nation state with an emphasis on Turkish nationalism.

Beyond the varied perspectives of these works which discuss the historical relations between violence and the state, the main contribution to thinking about this relation from the vantage point of the politics of death is the doctoral dissertation of Hişyar Özsoy: *Between Gift and Taboo: Death and the Negotiation of National Identity and Sovereignty in the Kurdish Conflict in Turkey*.²¹ Özsoy focuses on the politico-symbolic representation of the PKK dead within the Kurdish community. According to his claim, these deaths are included in the symbolic economy of the community as “gift” in which the dead are symbolically resurrected as the “martyrs of Kurdistan.” This is presented as a way to struggle against the assimilation policies of the Turkish state and to construct a common, national identity for the Kurdish community around those who sacrificed themselves for the freedom of Kurdistan. That is, it is the

19 Lucien van Lier, “Between Enmity and Compassion, On the Grievability of Life,” in *Images on Enmity and Hope: The Transformative Power of Religions in Conflicts*, ed. Lucien van Lier and Klaas Spronk (Berlin: LIT, 2014), 43.

20 Ümit Kurt, and Güney Çeğin, *Kıyam ve Kitâ: Osmanlı’dan Cumhuriyet’e Devletin İnşası ve Kolektif Şiddet* (Istanbul: Tarih Vakfı Yurt Yayınları, 2015).

21 Hişyar Özsoy, “Between Gift and Taboo: Death and the Negotiation of National Identity and Sovereignty in the Kurdish Conflict in Turkey” (PhD diss., The University of Texas, 2010).

construction of a separate necropolitics from within the Kurdish community. Unlike Özsoy's thesis, my thesis is limited to state necropolitics vis-à-vis dead of the PKK. However, I do not intend to undervalue the agency of the PKK dead within the Kurdish community. Conversely, I reveal the strategies of the Turkish state to destroy the symbolic value attributed to PKK dead and use them as tools to manifest state power through necropolitical violence.

With respect to symbolic capital of dead bodies, I was particularly inspired by the study of Katherine Verdery entitled *The Political Lives of Dead Bodies: Reburial and Postsocialist Past*.²² In this book, Verdery undertakes research throughout Central and Eastern Europe to explain the role of dead bodies in national transformations after the collapse of communism in 1989. According to her, dead bodies are convenient vehicles for transmitting political messages in society. From this point of view, she provides an alternate reading of political transformations through corpses. While some become part of national honor, others are manipulated in a relation of enmity. In this thesis, I focus on the latter argument. I claim that PKK corpses have been used in a manipulative way as effective vehicles for transmitting a message regarding the manifestation of state power to the masses who are similarly aligned with the PKK dead.

It is worth noting that newly published works discuss the relationship between political violence and death: *İsyân Şiddet Yas: 90'lar Türkiye'sine Bakmak* (Revolt Violence Mourning: Looking at the 90s in Turkey)²³ and *Öteki Olarak Ölmek* (Dying as the Other).²⁴ Given the rise of state violence especially in the Kurdish-populated provinces of the southeast in the summer of 2015, the display of the torture of dead bodies (Kevser Eltürk and Hacı Birlik) in social media, the attacks on cemeteries where the corpses of the PKK had been buried, and the increasing discussion of return to the 1990s, these edited volumes fill an important gap in the literature regarding the politics of death. Since they approach the issue from a wide perspective, they consider the targets of necropolitics more broadly - from Alevis, to women, to Kurds, to

22 Katherine Verdery, *The Political Lives of Dead Bodies: Reburial and Postsocialist Change* (New York: Colombia University Press, 1999).

23 Ayşen Uysal, *İsyân Şiddet Yas* (Ankara: Dipnot Yayınları, 2016).

24 Evrim C. İflazoğlu, and A. Aslı Demir, *Öteki Olarak Ölmek* (Ankara: Dipnot Yayınları, 2016).

transgender individuals. As both were published while this thesis was being written, they contributed to its revision in a supportive way.

§ 1.2 The Structure of the Chapters and the Methodology

This thesis is partitioned into four main chapters: Theoretical, historical, and legal chapters, as well as one that involves the case studies.

In the theoretical chapter, I give a theoretical overview of necropolitics to show that the ancient right of the sovereign to kill persists in modern times. Three theoretical influences besides Mbembe's theorization inform my reading of the necropolitics of the OHAL period: Michel Foucault's notion of a power triangle composed of sovereign power, disciplinary power, and biopolitical power; Judith Butler's theorization of sovereignty in exceptional states; and the distinction that Giorgio Agamben proposes among *zoë*, *bios*, and bare life.

The historical chapter draws the historical line of necropolitics from the late Ottoman to Turkish one in light of the theoretical discussions of the previous chapter. Since the focus of this thesis is on Kurdish conflict, necropolitical moments with respect to Kurdish rebellions are presented in this chapter. Given that the 1913 coup d'état was a break paving the way for the formation of the modern Turkish state and nation, cases of necropolitical violence are examined in terms of their transformation before and after 1913. The cases are the rebellions of Bedirxan Beg of Botan (1838-1847) and Sheikh Ubeydullah (1879-1881) from before 1913 and the rebellions of Molla Selim in Bitlis in 1913 and Sheikh Abdulsalam of Barzan in 1914 from Ottoman history after the coup. In addition, the rebellions of Sheikh Said (1925), Ağrı (1926-1930), and Dersim (1937-1938) are examined from the history of the Republic of Turkey. I also offer a brief history of Inspectorates-General as the prototype of the Governorate of the State of Emergency Region.

The third chapter focuses on Turkey's experience of the OHAL from a legal perspective, describing the legal framework in which the case studies took place. In doing so, I do not only lay out the legal arrangements that made this extraordinary regime and its executive arm - namely the Governorate of the State of Emergency - possible in the first place, but I also reveal the extralegal

means through which the regime was created and sustained. In this regard, examination of decrees having the force of law provides the means to embody conflict and transitions between rule of law and rule by law.

Finally, in the last chapter, I offer a detailed analysis of the political, social, and legal aspects of the four cases from the 1990s mentioned above and show how they exemplify the regime of necropolitics in Turkey during the OHAL rule.

With respect to methodology, I use primary and secondary sources in this thesis. Primary sources include parliamentary questions and reports, legal texts, newspapers and magazines related to the period from 1987 to 2002, and published memoirs and interviews. Secondary sources include theoretical works, articles, and books about the topic. For primary sources, parliamentary questions and reports are generally available from the online archive of the TBMM (Türkiye Büyük Millet Meclisi, Grand National Assembly of Turkey), the legal texts of Constitution of the Republic of Turkey, the Act on States of Emergency (No. 2935), and Decrees Having the Force of Law are drawn from both the online archive of TBMM and that of the Resmi Gazete (Official Gazette). Apart from these, I used contemporaneous mainstream newspapers - *Cumhuriyet*, *Hürriyet*, *Milliyet*, and *Sabah* - and publications of the Kurdish political movement and the PKK such as *2000'e Doğru*, *Özgür Gündem*, and *Serxwebûn*. The comparison of mainstream and partisan media reveals how the manifestation of state power over the dead of the PKK was perceived in Kurdish society and by the PKK itself. Except for the monthly magazine *Serxwebûn*, which has its own online archive, I obtained all these media sources from the archive of Atatürk Library in Taksim.

§ 1.3 Summary

This thesis reveals the dynamics of the necropolitics of the Turkish state in the context of the Kurdish conflict. While the focus is the state of emergency region and the period from 1987 to 2002, this OHAL period is not unique in history in terms of the formation of necropolitical violence; rather, it was a peak in the appearance of such violence characterized by practices of torture of dead bodies, attacks on funerals, burials in mass graves, and attacks on the

cemeteries of PKK fighters. Since the most important feature of the 1990s was the fact that the law was instrumentalized with the OHAL legislation, this thesis analyzes the historical and legal origins of necropolitical violence.

As the following chapters show, the construction of enmity is the factor that facilitated the appearance of such violence on dead bodies as a way of consolidating contractual violence and judicial impunity. The relation of enmity emerged in the discourses of traitor and rebel in the late Ottoman and early Republican periods, and the discourse turned into one of terrorism with respect to the PKK in the 1990s. While the PKK portrays itself as a guerilla movement in the quest for political status for the Kurdish nation, the Turkish state constructs its relation of enmity on the basis of security and emergency on the pretext of fighting against terrorism. PKK fighters have been introduced as demonic entities outside of human sociality, who need to be destroyed even by employing practices outside human sociality. I do not engage in these debates about terrorism and guerilla warfare in this thesis unless strictly necessary. My argument concerns the treatment of bodies after their killing. For this reason, I use the relatively neutral terms fighter and combatant instead of terrorist or guerilla to identify the PKK's participants in the conflict.

Necropolitics: A Theoretical Overview

...the production of a biopolitical body is the original activity of sovereign power.

– Giorgio Agamben, *Homo Sacer*

Achille Mbembe, the initial theorist of the concept, defines necropolitics as the “subjugation of life to the power of death”¹ and asks: “What is the relationship between politics and death in those systems that can function only in a state of emergency?”² Mbembe reveals the relationship between politics and death in the places where some form of a state of exception is in operation. He chooses South Africa and Palestine as examples of modern colonial occupation to elaborate on this relation. For him, disciplinary and biopolitical power are insufficient to explain the real situation in such places. Mbembe claims that the situation that has evolved in these places can only be understood from the point of “concatenation of multiple powers: Disciplinary, biopolitical, and necropolitical.”³ In such an atmosphere, establishing and fostering the discourses of “relation of enmity,” “national security,” “common

1 Achille Mbembe, “Necropolitics,” *Public Culture* 15 (2003): 39.

2 Ibid., 16.

3 Ibid., 29.

good of the state,” and “national emergency” are useful for the transition to the necropolitical level.

The question to be asked is: What is the relationship between sovereignty and the politics of death? The answer to this question is important for this thesis, as it itself is founded on the research question; what was the facilitative role of the construction of enmity and judicial impunity as two components feeding contractual violence and determining the necropolitics of Turkey during the OHAL period?

In light of these questions, this chapter provides a general portrayal of the nature of states of emergency and necropolitics in a theoretical sense. Michel Foucault’s power triangle asserting that sovereignty itself is never lost in history, Giorgio Agamben’s thoughts regarding the expendability of certain lives, and Judith Butler’s claim about the resurgence of sovereignty in exceptional times are used as auxiliary theoretical lines.

All these theoretical approaches allow us to comprehend what happens to those whose lives are declared to have no value in contrast to others. What kinds of political and practical tools are at work over them? Before answering these specific questions, we depict the preliminary historical and practical conditions for deciding whose lives are more valuable. The emergence of the modern nation state, the construction of enmity according to nationalistic ideals, and the need for a new social contract between the state and citizens exactly stand at this level of decision.

§ 2.1 Consecrated Deaths and Expendable Lives

This section explains two dynamics of the politics of death in the hands of sovereign power. The first concerns those who sacrifice their lives for the sake of their state or nation; the second is related to the expendability of the lives of others who are perceived as a threat to state sovereignty.

Peter Medawar states that life and death are not completely scientific concepts. They are also political concepts and can be politicized by words uttered

during a speech.⁴ Thus, the issue of whose life and therefore whose death is more valuable matters. Equally important is the question of who has the decisive power to determine and politicize lives and deaths.

In answering this question, state power emerges as the key factor. Undoubtedly, from the late eighteenth century onwards when nationalistic ideals began to affect the world, state-citizen relations have undergone a transformation on the basis of nation state formation. It could be said that this originated from an imagination based on unity of culture, language, and land, and also the defense and willingness to die, if necessary, for their sake.⁵

Ulrich Bröckling evaluates the glorification of political deaths as a consecration ritual of the nation state.⁶ According to this logic, death and homeland mutually reinforce one another. Death in war means highest level of responsibility of people for their homeland. Nevertheless, such deaths carry a message for those who remain alive in terms of giving practical meanings to the ideas of homeland and death for its sake.⁷ From this point of view, the symbolic representation of martyrdom is a useful political tool to bless death and foster nationalism for citizens who remain alive. It is also to distinguish between us - people over whom state sovereignty is indisputable - and others - those in a relation of enmity over whom state sovereignty is in question or crisis.

Undoubtedly, state sovereignty over the lives and deaths of citizens is legitimized for the sake of the state and nation. If these values are in danger, the state will not hesitate to take measures to kill, since the lives of others are perceived as a threat in the relation of enmity and are therefore not valued and expendable.

In a broader sense, it is useful to understand the transformation of life itself into an object of the state and more broadly, “power.” In doing so, I base

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- 4 Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (California: Stanford University Press, 1998), 164.
 - 5 Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (New York: Verso, 1991), 7.
 - 6 Ulrich Bröckling, *Disiplin: Askeri İtaat Üretiminin Sosyolojisi ve Tarihi* (Istanbul: Ayrıntı Yayınları, 2001), 135.
 - 7 Bröckling, *Disiplin*, 135. Bekir Düzcan, “Çanakkale İçinde Kurdular Beni: Şehit(lik) İmgesi Üzerinden Toplumsal Bedenin İnşası” in “Öl Dediler Öldüm,” ed. Serdar M. Değirmencioglu (Istanbul: İletişim Yayınları, 2014), 111-112.

my narrative on the perspectives of three theorists; Michel Foucault, Giorgio Agamben, and Judith Butler. Foucault's historical depiction of the transformation of sovereignty on the basis of a "right to kill" provides an understanding of the construction of enmity in terms of security and the common good of the nation. His perspective concerns the creation of valuable and insignificant lives while the sovereign power preserves its intrinsic nature to decide expendability of certain lives in different forms - from ancient models to those of modern states. Agamben theorizes states of exception with the concepts of bare life in between *zoē* (the state of animality) and *bios* (political-social life). Interestingly, Agamben explains those deemed unworthy of life on the basis of abandonment from the social and judicial order and the provision of judicial impunity for perpetrators who violate the limits of life and death against those who are considered expendable. On the other hand, Butler clarifies the relation of the state of exception and impunity on the basis of the resurgence of sovereignty in the absolute sense in modern states.

2.1.1 *Power Triangle of Michel Foucault*

How does Michel Foucault approach the question of life and death in relation to the state and sovereignty? This considers the circular nature of sovereignty and the extreme dynamics of decision with respect to worthy and unworthy lives. The claim is that the ancient right of the sovereign regarding "taking life or letting live" has not been lost, but has evolved into a new one which is fostering life or disallowing it – that is, "making live or letting die."⁸

Foucault describes sovereignty in a circular way. According to him, "the end of sovereignty is the exercise of sovereignty."⁹ Detailing his historical analysis from premodern to modern times is necessary to understand what exactly he means.

8 Michel Foucault, "Society Must Be Defended: Lectures at the College de France 1975-1976" (New York: Picador, 2003), 241.

9 Michel Foucault, "Governmentality" in *The Foucault Effect: Studies in Governmentality with Two Lectures by and An Interview with Michel Foucault*, ed. Graham Burchell, Colin Gordon, and Peter Miller (Chicago: University of Chicago Press), 1991, 95.

Foucault explains sovereignty before the eighteenth-century as the “exercise of power to reinforce, strengthen and protect the principality.”¹⁰ To put it another way, sovereignty concerned what the sovereign, namely the prince, owns: His territory and subjects. In this atmosphere, the only thing determining the relations between the prince and the subjects and providing a “common good” for both the prince and the subjects was obedience to the law of the sovereign. So long as people obey the law of the sovereign, the prince maintained his principality at will. Otherwise - that is to say, in cases where subjects did not obey the law - the sovereign had an ancient, absolute right over his subjects to take their lives or let them live.¹¹

After this presentation of the original sovereign state, Foucault describes a transition process in the late seventeenth and early eighteenth centuries. He introduces the “state that governs” rather than the “sovereign state.” While the exercise of the power of the sovereign state includes the obedience to law, Foucault offers “governmentality” as the main modality of exercising power by the state. By governmentality, he mentions “disposing things:”

that is to say, of employing tactics rather than laws, and even of using laws themselves as tactics - to arrange things in such a way that, through a certain number of means, such and such ends may be achieved.¹²

Foucault describes two intrinsic mechanisms of power: Discipline and biopolitics. By discipline, Foucault means a power technology centering on individual bodies aimed at their separation, serialization, training, and surveillance in order to provide social control. This technology functions with the help of institutions such as schools, hospitals, barracks, and workshops. No doubt, discipline deals with individual bodies as a project of adjustment to make individuals more useful and docile in line with new emerging capitalist and nation state concepts in the eighteenth century. From the end of this century onwards, a new power mechanism emerged - biopolitics - which centers on

10 Ibid., 90.

11 Foucault, “*Society Defended*,” 240-241.

12 Foucault, “Governmentality,” 95.

the population rather than on individual bodies. It “aims to establish as sort of homeostasis, not by training individuals, but by achieving an overall equilibrium that protects the security of the whole from internal dangers.”¹³

In other words, the target is life itself. The aim of regulating the population is brought about by increasing the importance of parameters such as propagation, births, mortality, health, life expectancy, and longevity. The issue is to make life itself more useful rather than to operate on individual bodies one at a time. Since there is always a possibility not all individuals may not be physically touched upon through the control mechanisms of discipline, there is a risk that social control is not provided in an exact manner. Nevertheless, the idea in biopolitics is that the optimization of individuals can be increased by optimizing the value of life.¹⁴

Foucault claims that this historical process does not imply that the former rights of the sovereign have been fully erased. As emphasized in the beginning of this section, the continuity of the exercise of sovereignty - whether with old rights or with new ones - is the significant point for the sovereign. In the words of Foucault:

We need to see things not in terms of the replacement of a society of sovereignty by a disciplinary society and the subsequent replacement of a disciplinary society by a society of government; in reality one has a triangle, sovereignty – discipline – government, which has as its primary target the population and as its essential mechanism the apparatuses of security.¹⁵

The emphasis on security is worth considering. Since the perceptions of threat and security have changed in parallel with the process of the transformation of the population as an objective of the state, it is also possible to encounter authoritarian governmentality in the mold of the aforementioned triangular formulation. Therefore, considerations of the birth of biopolitics that exclude the possibility of the killing of one’s own population ignore the dark side of

13 Foucault, “*Society Defended*,” 249-250.

14 Michel Foucault, *The History of Sexuality 1: An Introduction* (New York: Pantheon Books, 1978), 139.

15 Foucault, “*Governmentality*,” 102.

biopolitics. The extreme point of biopolitics occurs at the point of people are divided into “who must live” and “who must die” in a manner that categorizes their lives as worthy or unworthy according their integration into society as docile, useful bodies. If not integrated, they pose a threat to the biological common good of the population. It is worth noting that this categorization between life and death does not always presage the murder of those to be eliminated. There are other forms of indirect murder such as “the fact of exposing someone to death, increasing the risk of death for some people, or, quite simply, political death, expulsion, rejection, and so on.”¹⁶ Therefore, the real issue is to declare a portion of the population as expendable because they pose a threat to the population as a whole.

In this regard, Foucault argues that notion as of racism (state or biopolitical racism) are the determinant power for the elimination of threats to the population. Indubitably, at the level of biopolitics, threats are perceived as biopolitical threats. In this sense, Foucault defines racism as the extreme level of biopolitical governance:

What in fact is racism? It is primarily a way of introducing a break into the domain of life that is under power’s control: The break between what must live and what must die.¹⁷

Foucault accepts the existence of racism, but claims that it evolves differently in the hands of the modern state that governs in light of biopolitical principles.¹⁸ This process can be understood as an extreme point of association between sovereign’s ancient “right to kill” and the modern state that governs at the level of biopolitics. Continuing at this extreme level, what this association leads to is not unlike genocide since the principles of biopolitics are in operation. However, the irony is that all racist practices and even genocide at the biopolitical level can be exercised and politicized in the names of national good and life itself. Foucault summarizes this point in *The History of Sexuality*:

16 Foucault, “*Society Defended*,” 256.

17 Ibid., 254.

18 Ibid., 254.

If genocide is indeed the dream of modern powers, this is not because of a recent return to the ancient right to kill; it is because power is situated and exercised at the level of life, the species, the race, and the large-scale phenomena of population.¹⁹

2.1.2 *Homo Sacer or Living Dead of Giorgio Agamben*

Agamben carries forward the issue of worthy and unworthy lives by proposing a distinction between “zoē,” “bios,” and “bare life.” In doing so, he contributes to the categorization issue of biopolitics on “who must live” and “who must die” in terms of the expendability of life.

By zoē, Agamben means simple life functions specific to the state of animality. Bios covers the spheres in which political and social life are established.²⁰ On the other hand, bare life represents the “nucleus of sovereign power” remaining between zoē and bios.²¹ The main goal of political power according to Agamben is to incorporate zoē into the bios in line with the desires of the political power for sovereignty. It is, thus, possible to think of bare life as the realm where sovereign, disciplinary, and biopolitical forms of power play mutual roles.

Bare life represents the human life on which the state of exception is established. So far as disciplinary and biopolitical powers are effective over people in the realm of bare life, they are included into the legal and social order of the bios. Otherwise, subjects are exposed to the sovereign, in extreme durations, to necropolitical power on the grounds that they have rejected the bios and thereby the sovereignty project of the political power. This last stage approaches zoē, in other words, animality. Although Agamben never used the word necropolitics, he explains the transition process to the level of necropolitics with the help of an analogical figure from the ancient Roman system of law - *homo sacer* - who is the person who “may be killed and yet not sacrificed.”²²

19 Foucault, *History of Sexuality* 1, 137.

20 For details of distinction among zoē, bare life, and bios, see Agamben, *Homo Sacer*, 1.

21 Ibid., 6.

22 Ibid., 8.

The fact [is] that bare life, wounded, expendable, and endangered, is not the same as biological Zoē, but rather the remainder of the destroyed political bios.²³

Ewa Plonowska Ziarek's contribution is worth mentioning at this point. She describes bare life within a relation of the state of exception and abandonment. That is to say, the situation of the *homo sacer* corresponds to the situation of one not worthy of being used for the sake of the state but who is allowed to be killed with a guarantee of judicial impunity for perpetrators. Therefore, the life of the *homo sacer* is a relation of exclusion from the social and judicial order, to put it plainly, exclusion from the rights of citizenship in a modern sense. As discussed in the section on Foucault, although power mechanisms evolved from sovereignty into discipline and then into biopolitics, the tool of dividing populations into segments and determining whose lives are valuable or not remains in the hands of the sovereign power. That means the decision of bare life is only made by the sovereign power as a result of political inclusion, because, the political decision made by sovereign power itself leads to an exception within both social and judicial order.

The "sovereign" structure of the law, its peculiar and original "force," has the form of a state of exception in which fact and law are indistinguishable (yet must, nevertheless, be decided on). Life, which is thus obliged, can in the last instance be implicated in the sphere of law only through the presupposition of its inclusive exclusion, only in an exception.²⁴

Considering the issue from the point of the production of bare life - in other words unvalued life - Agamben's concept of "inclusive exclusion" is significant for understanding the exceptional nature of the situation. Accordingly, the life declared bare is neither completely outside nor inside the social and judicial order; it stands precisely on a threshold between them since it is excluded from the normal workings of bios which are directed at re-inclusion in line with the

23 Ewa Plonowska Ziarek, "Bare Life," in *Impasses of the Post-Global: Theory in the Era of Climate Change II*, ed. Henry Sussman (Michigan: Open Humanities Press, 2012), 195.

24 Agamben, *Homo Sacer*, 27.

desires of the sovereign through the extreme power mechanisms of discipline, biopolitics, and necropolitics.

2.1.3 *Judith Butler's Claim: "Resurgence of Sovereignty"*

The argument of Judith Butler about the resurgence of the ancient, unlimited power of the state over life and death in the state of exception is important. What conditions lead to the resurgence of sovereignty within the field of governmentality?

From Butler's point of view, the emergence of bare life in the embodiment of *homo sacer* is only possible by means of the suspension of legal rule corresponding to "a lawless and unaccountable operation of power."²⁵

Nonetheless, Butler does not exclude the possibility of sovereignty and governmentality coexisting as in the original claim of Foucault. Accordingly, the only thing that matters for the sovereign is the exercise of sovereignty in which even the law can be used as a tactic of governmentality. What Butler reveals is

that precisely because our historical situation is marked by governmentality, and this implies, to a certain degree, a loss of sovereignty, that loss is compensated through the resurgence of sovereignty within the field of governmentality.²⁶

As Butler clearly demonstrates, the most decisive condition of this resurgence is the "sovereignty of the nation," in other words, security and national emergency.²⁷ It is for this reason that the law is easily suspended: To preserve and protect national security. However, the point that makes Butler's approach important is the process of administration by which sovereignty is revitalized with the help of the suspension of law. State sovereignty is not revitalized in the hands of a monarch, prince, or king in the process of governmentality; rather it is revitalized in the hands of "petty sovereigns [that] abound, reigning

25 Judith Butler, *Precarious Life: The Powers of Mourning and Violence* (London: Verso, 2004), xv.

26 Butler, *Precarious Life*, 56.

27 Ibid., 55.

in the midst of bureaucratic army institutions.”²⁸ To illustrate the argument, Butler offers the example of the Guantanamo Bay detention camp in terms of the indefinite detention of prisoners. It is, in fact, a current, simple example of the ancient power of sovereign over life and death being revitalized and exercised in the hands of bureaucratic, administrative officials acting as petty monarchs. This camp was set up in 2002 to hold and interrogate prisoners considered extraordinarily dangerous as a part of the United States’ War on Terror after the 9/11 attacks. Butler notes the extraordinary status of those in this camp who are outside both domestic and international principles of law. General law was suspended for them since they are physically excluded but politically included by the discourses of terror and national security. The responsibility for their lives after this inclusive exclusion belongs to officials who “now not only decide who will be tried and who will be detained, but also have ultimate say over whether someone may be detained indefinitely or not.”²⁹

What disappeared when sovereignty is revived under exceptional rule is the system of checks and balances (i.e., the separation of legislative, executive, judicial powers) which are a precondition for democracy. In this sense, authority increases in the hands of the executive body and its agents. The thoughts of Agamben and Butler should be brought together. Agamben evaluates sovereign power as the power that declares the state of exception, and Butler emphasizes that

as law is suspended, sovereignty is exercised; moreover, sovereignty comes to exist to the extent that a domain - understood as “the exception” - immune from law is established.³⁰

From this point of view, Butler reduces the issue of bare life - that is, whose life is valuable or not - to the questions of “who counts as human and whose lives count as lives:”³¹

28 Ibid., 56.

29 Ibid., 52.

30 Ibid., 61.

31 Ibid., 20.

Violence against those who are already not quite living, that is, living in a state of suspension between life and death, leaves a mark that is no mark.³²

§ 2.2 Necropolitical Working of the State

The contribution of the post-colonial theorist Achille Mbembe for studies focusing on the transformation of sovereignty is the insufficiency of discipline and biopolitics to clarify the current dynamics of sovereignty in the modern world. For this reason, he opened a new path focusing on the new notion of necropolitics. Mbembe claims that the new, modern sovereignty is based on the “concatenation of multiple powers: Disciplinary, biopolitical, and necropolitical.”³³ At this point, it is useful to focus on the question of what exactly Mbembe means by necropolitics.

Mbembe, in the simplest sense, defines necropolitics as “subjugation of life to the power of death.”³⁴ In this respect, necropolitics could be understood as the extreme of biopolitics. Biopolitics aims to regulate life by categorizing a population according to its mortality, health, and the capability of its members to integrate into society as useful, docile bodies. The extreme of this categorization of the population is to divide people into those who are valuable or those who are expendable because they are deemed useless in terms of the common good of society. Of course, this sort of categorization always includes the possibility of divide people into those “who must live” and “who must die.” The point on which Mbembe focuses, which is derived from this possibility, is the governance of the subjugation of life to the power of death.

My concern is those figures of sovereignty whose central project is not the struggle for autonomy but the generalized instrumentalization of

32 Ibid., 35.

33 Mbembe, “Necropolitics,” 29.

34 Ibid., 39.

human existence and the material destruction of human bodies and populations.³⁵

It should be noted that the theoretical perspective of Foucault in terms of the circular nature of sovereignty still applies. Even in the theoretical model of Mbembe, to exercise control over death is merely a reflection of the exercise of sovereignty as a result of the manifestation of power over life.³⁶ Mbembe offers two relational concepts in terms of regulating life by governing death: The state of exception and the relation of enmity.

2.2.1 *Two Level of the State of Exception: Derealization and Dehumanization*

Discourses like national security and emergency facilitate the resurgence of sovereignty at a necropolitical level. Max Weber defines the state as “a political community which, within a particular territory, successfully claims a monopoly over the legitimate use of physical coercion.”³⁷ This definition is also embedded in Mbembe’s perspective inspired by Foucault: “Sovereignty consists of the will and the capacity to kill in order to live.”³⁸

What should be discussed is the reality of the legitimate use of physical coercion by states. This monopoly of the state has always accommodated a risk for the evaluation of a relation of enmity on the normative basis of the right to kill with reference to the state of exception.³⁹ Beyond disciplinary and biopolitical powers, there is an additional power of the state used in areas where state sovereignty is disputable - that is, necropolitical power. In places where disciplinary and biopolitical powers have no influence, necropolitics comes into play, which is killing the other who is in a relation of enmity and using their deaths to manifest state power to those who remain alive who share similar alignments with those who were killed.

35 Ibid., 14.

36 Ibid., 12.

37 Matthew Deflem, *Sociology of Law: Visions of a Scholarly Tradition* (Cambridge University Press, 2008), 42.

38 Mbembe, “Necropolitics,” 18.

39 Ibid., 16.

The *homo sacer* of Agamben emerges as the slain body in the text of Mbembe. He introduces the slain body as one who lives in the space of the living dead. By referring to kind of space, Mbembe uses the notion of “death worlds” as “a new and unique forms of social existence in which vast populations are subjected to conditions of life conferring upon them the status of living dead.”⁴⁰ Mbembe is referring to areas where the rules of the state of exception are in operation in the guise of a state of siege, state of occupation, or state of emergency.

These forms of state of exception are also within the frame of inclusive exclusion. Since state of exception refers to a ban or abandonment of the social and judicial order, such exceptional spaces represent regions where necropolitics - as the ultimate level of biopolitics - is in operation. In this kind of environment, state sovereignty extends into the civil sphere with the suspension of constitutional norms that protect citizenship rights. Without doubt, the only thing remaining is bare life, since the perpetual state of exception enables the state to render the lives of those under exceptional rule as *homo sacer* - killable beings with a guarantee of judicial impunity.

These kinds of death spaces also lead to the subcategorization of the population on the basis of discourses of resistance, rebellion, and terror. As mentioned in the section on Foucault, the right of the sovereign to kill does not always include direct murder, but can include exposing someone to death, increasing the risk of death for some people, political death, expulsion, and rejection. Undoubtedly, all of these direct or indirect practices of murder are in operation over people in death spaces, since “socio-political abandonment and denationalization constitute specific articulations of the necropolitical order operating in everyday social spaces and upon the bodies of the ‘potentially dead.’”⁴¹ In this regard, the motto “make life or let die” is not operative as much as with biopolitics. The only dynamic available for those in the state of exception is “to kill or allow to live.”⁴²

40 Ibid., 40.

41 Edward A. Avila, “Conditions of (Im)possibility: Necropolitics, Neoliberalism, and the Cultural Politics of Death in Contemporary Chicana/o Film and Literature” (PhD diss., University of California, 2012), 25.

42 Mbembe, “Necropolitics,” 12.

However, there can be a subcategorization even among the living dead. This consists of derealization and dehumanization based on relations of enmity. The lives in the space of political abandonment represent derealized bare lives, which means being treated outside of the general social and judicial order that applies to every citizen outside of the exceptional regions. At this level, derealized lives of the exceptional regions are exposed to the disciplinary and biopolitical power of the state oscillating between the *zoë* (the state of animality) and *bios* (political and social project of the sovereign). If these tools are effective over derealized lives, they have a chance to be included in the *bios* as equal citizens. Otherwise, they are exposed to the indirect or direct murders of the sovereign and the necropolitical power of the state outside of general state order. The level of these powers is determined according to the degree of oscillation in terms of what point is being approached: *Zoë* or *bios*? Approaching *zoë* leads to an increase in the level of sovereign and necropolitical power. At this point, dehumanization begins. Since there are some who reject the *bios* of the sovereign in a relation of enmity, they are treated as outside of the *bios* at the extreme of sovereign and necropolitical power. They belong to the state of animality at this stage; that is to say, they are allowed to be killed and treated outside of the normal judicial order.

Subdivision enables the creation of punishable human categories from human communities that are already rendered illegitimate.⁴³ All bodies in the state of exception are allowed to be treated outside of general state rule, but the situation for those in the relation of enmity in the form of resistance, terror, or rebellion is different to a degree. Those people have become valued not for their lives, but for their deaths as a propaganda tool of the state's necropolitics. In this regard, Mbembe likens killing these people to an extension of game where "more intimate, lurid, and leisurely forms of cruelty appear"⁴⁴ outside of judicial responsibility, because, they are already declared as killable.

43 Bahar Şahin Fırat, "Türkiye'de 'Doksanlar': Devlet Şiddetinin Özgünlüğü ve Sürekliliği Üzerine Bir Deneme," in *Türkiye'de Siyasal Şiddetin Boyutları*, ed. Güney Çeğin, and İbrahim Şirin (İstanbul: İletişim, 2014), 376.

44 Mbembe, "Necropolitics," 19.

2.2.2 *The Legitimate Face of the Relation of Enmity: Contractual Violence*

So far, we have mainly discussed the transformation of state and citizen relations from premodern to modern times in light of the evolution of the domination of the sovereign over its subjects' lives and deaths. We concluded that the ancient, unlimited right of the sovereign to kill has been updated according to modern conditions. Although modern democracies have restricted themselves with dedication to law, the creation of exceptional legalities in many circumstances shows that being bound by law is no obstacle to a resurgence of sovereignty over citizens' lives and deaths. The question is: If the state exists for the citizens according to the modern social contract, how can this principle be so easily violated in favor of the state? The answer helps us to build a relation between the state of exception and necropolitical violence.

It is obvious that the motivation to die and kill for the sake of the sovereign as in due course been replaced by the idea of dying and killing for the sake of the state or nation. What is favored here is no longer the good for the prince, but the alleged common good of the people, since the state emerges as the only power that can provide this. We could translate this situation as national security and emergency in today's terminology. For the sake of the state and nation's protection, a fictional contract has emerged between the state and citizens over whom state sovereignty is not disputable. According to this contract, a certain part of the community that poses a threat to state sovereignty can be made expendable. It can be treated outside of general state law and order under the assurance of impunity. Unlawful violence targeting them in life and even in death can be supported by society or used for propagandistic purposes by the state.

I name these processes with regard to the legitimated use of physical coercion over expendable lives contractual violence. This refers to a relation of practice and approval between the state and society. The discourse concerning the relation of enmity is the most facilitative factor of this relation. In this sense, both parts of the contract feed each other on the basis of practice and discourse regardless of being inside or outside of the legal structure.

It could be said that level of the derealization of "others" provides legitimacy regarding physical violence. Undoubtedly, the relation of enmity readily

increases the volume of this legitimacy. If the banning and abandonment of general law and social order represent the first step of derealization, the relation of enmity provides the necessary conditions to raise the level of derealization to the level of dehumanization.

Certain lives are not considered lives at all, they cannot be humanized, that they fit no dominant frame for the human, and that their dehumanization occurs first, at this level, and that this level then gives rise to a physical violence that in some sense delivers the message of dehumanization that is already at work in the culture.⁴⁵

After that point, dead bodies can be used as politically valuable symbolic capital.⁴⁶ It is obvious that there are significant moments to increase the symbolic value of dead bodies such as resistance, rebellion, civil war, and terror. While the violence of the state against those in the relation of enmity and deaths for the sake of state are consolidated in light of the discourses of counterinsurgency and martyrdom, the death of “others” generally labeled as “traitors” or “terrorists” becomes part of the state’s propaganda regarding necropolitics.⁴⁷ For this reason, after being killed with impunity, corpses of them who are deemed as “traitors” or “terrorists” can only be carriers of a political message to the circles to which they belong. In this sense, the leading mechanism for regulating society is not biopolitics, but necropolitics: “impunity constitutes a mechanism of governing that reproduces a disciplinary effect that stretches over a large segment of society.”⁴⁸

§ 2.3 The OHAL Experience of Turkey between Theory and Practice

It is possible to discuss the OHAL experience in Turkey between 1987 and 2002 in light of this theoretical framework. Accordingly, the emergency region

45 Butler, *Precarious Life*, 34.

46 Katherine Verdery, *The Political Lives of Dead Bodies: Reburial and Postsocialist Change* (New York: Colombia University Press, 1999), 33.

47 Bröckling, *Disiplin*, 351.

48 Avila, “Conditions of (Im)possibility,” 24.

emerged on the legal basis where the law is instrumentalized as a tactic. As will be detailed in the fourth chapter, this instrumentalization was possible with the help of Decrees Having the Force of Law (Kanun Hükmünde Kararname or KHK) in which the principle of rule of law was replaced with rule by law. General state rule was no longer valid for the OHAL region in contrast to areas outside of the region. With its own legal establishment, a new, exceptional regime was created in the 1990s. This regime stood at the “point of imbalance between public law and political fact.”⁴⁹ That was, in fact, the extension of a kind of political incorporation. I explain this process by modeling a necessity-decision-response chain.

Many studies focus on the state of exception revealing its threshold relation at the border of the legal and political. Carl Schmitt, a significant theorist of the issue, explains this relation with a decision paradigm. This paradigm especially appears in his understanding of sovereignty. According to Schmitt, “sovereign is he who decides on the exception.”⁵⁰ Indubitably, this kind of paradigm, by nature, requires a concept of necessity. In what conditions does the sovereign deem it necessary to decide on the exception? Extraordinary conditions are the common point of all theorists who focus on the state of exception as the core of necessity. Schmitt describes those conditions as “a case of extreme peril, a danger to the existence of the state, or the like.”⁵¹ Walter Benjamin explains these conditions as “the threat of declaring a new law” to the existing law.⁵² On the other hand, Agamben further clarifies the situation, describing it as “civil war, insurrection, and resistance.”⁵³ In brief, Butler notes that a state of exception comes into force “in the name of a security alert and national emergency.”⁵⁴ All these extraordinary conditions, in fact, find a

49 Giorgio Agamben, *State of Exception* (Chicago: The University of Chicago Press, 2005), 1.

50 Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* (Chicago: The University of Chicago Press, 2005), 5.

51 Schmitt, *Political Theology*, 6.

52 Walter Benjamin, “Critique of Violence” in *Reflections: Essays, Aphorisms, Autobiographical Writings*, ed. E. F. N. Jephcott, and Peter Demetz (New York: Harcourt Brace Jovanovich, 1978), 283.

53 Agamben, *State of Exception*, 2.

54 Butler, *Precarious Life*, 51.

meaning in political incorporation. Anomalies that are accepted as political fact are included politically with an immediacy for elimination. Therefore, we can add the immediate response of state power to extreme internal abnormalities to the necessity-decision chain as an outcome. Since the abnormalities are experienced outside of or against the ongoing judicial and social order of the state, the response can also be carried outside of the existing legal and social order, which implies the suspension of general state law for a specific region. In this regard, the state of exception is a response of state power in a “zone of anomie”⁵⁵ to immediately eliminate the conditions of anomie.

The ongoing war between the PKK and Turkey since 1984 has been accepted as a political fact and given the name terrorism. After the fact was determined in this way, fighting against terrorism was included in a practical way as a necessary action. The main response to this politics was a decision to create the Governorate of the State of Emergency Region (*Olağanüstü Hâl Bölge Valiliği*) in Southeastern Turkey on 19 July 1987. From this date until 2002, it is possible to think of this region as a place where general state rule was suspended for those living there. Their lives were reduced to easily expendable entities through establishment of an extralegal rule in southeast under the title “state of emergency” (*Olağanüstü Hal* or OHAL). Therefore, it is useful to think of the OHAL region as a place of bare life stuck between the state of animality (*zoē*) and political and social life (*bios*). This situation also refers to a relation of derealization in comparison with others’ citizenship within the *bios*. To put it bluntly, basic rights such as freedom of movement, possession, and food acquisition are available to real citizens of the state outside of the OHAL region, but these basic rights were suspended within the OHAL region in the name of fighting terrorism. There were free movement and pasture bans, curfews, village evacuations and burnings, and quotas for food and animal acquisitions. While their lives were pushed outside of general state rule, the citizenship of the people living in the region was derealized. Ordinary people had two choices: Either they could compromise with state politics in the region and thus attain the opportunity for inclusion into the *bios*, or to the extent that they opposed state politics and practices, they would be exposed to

55 Agamben, *State of Exception*, 59.

the rules of the state of animality outside of the normal social and judicial order

As a further step, a process of dehumanization is carried out against those who are in relation of enmity. In this case, the situation is different for those who reject the bios project of the state. This is the highest level of the relation of enmity established with the tools of sovereign and necropolitical power. The situation of PKK fighters can be evaluated in this manner. They represent the character of *homo sacer* - killable under the assurance of impunity for perpetrators- since they symbolize animality (zoë) in the eyes of the state. They are captured dead, but their punishment continues even in death outside of general state rule.⁵⁶

On the threshold of derealization and dehumanization, increased violence against civilians in the practices of village evacuations and burnings, disappearances in custody, and unresolved murders are examples of the indirect murders. On the other hand, an extreme level of dehumanization in the necropolitics of the state is observed vis-à-vis the dead of PKK fighters, such as dismemberment of *cenazas* (corpses), refusal to deliver dead bodies for burial, burial in unmarked, massgraves, and banning funerals. These are extensions of direct murder.

In this sense, there is a punishment relation on the threshold of derealization and dehumanization. The necropolitical practices of the state are the best way to clearly read this punishment relation. First, the punishment physically targets the dead bodies of those in the relation of enmity who cannot be captured alive. As a further step, it can also aim at a regulatory and disciplinary force over dead bodies on the basis of intimidation and manifestation of state power.

56 “Capturing dead” (Ölü olarak ele geçirme) was a popular discourse in the media and state language of the nineties. Behind this discourse lies an image that PKK fighters were captured like animals and thus their bodies belong to their hunters. For detail, see Tanıl Bora, “Ölü Ele Geçirme,” *Birikim*, October 14, 2015, accessed March 25, 2016, <http://www.birikimdergisi.com/haftalik/7250/oluelegecirme>.

§ 2.4 Summary

In this chapter, I examined the evolution of notions such as sovereignty, the right to kill, and the politics of death (necropolitics) in light of the studies of Michel Foucault, Giorgio Agamben, Judith Butler, and Achille Mbembe.

The contribution of Foucault reveals the evolution of three levels of power - sovereign, disciplinary, and biopolitical - and explains sovereignty in a circular way. Accordingly, “the end of sovereignty is the exercise of sovereignty.”⁵⁷ For this reason, we cannot claim that sovereignty is replaced by disciplinary power which is replaced by a biopolitical one. It is more meaningful to evaluate them as signs of a triangle in which sovereignty still preserves its ancient right to decide over the death and life of the population. Moreover, producing a categorization of “who must live” and “who must die” is the dark face of the biopolitics in which the “right to kill” of the sovereign power is revitalized in the name of the common good of the population - ironically as genocide in its most cruel form.

Agamben provides a standpoint in terms of the conceptualization of inclusive exclusion in the embodiment of the *homo sacer* based on the division among *zoē*, *bios* and bare life. In this sense, *homo sacer* represents the bearer of bare life who is excluded from the social and judicial order but at the same time is included in the state of exception that can only be declared by the sovereign power as the source of its sovereignty. In this atmosphere, some people and populations can readily be declared as expendable, unworthy of life, and allowed to be killed outside of judicial responsibility.

Butler explains that there are blind spots in which we can observe a “re-surgence of sovereignty” in an absolute sense at the level of governmentality in the name of national security or national emergency. With the help of these discourses, the sovereign right to decide over the deaths and lives of people could be revitalized in the form of suspension of general law, namely state of exception. The attractive part of Butler’s argument was that because of the resurgence of sovereignty at the level of governmentality, there are little monarchs in the bureaucratic system who have the right to govern the lives and

57 Foucault, “Governmentality,” 95.

deaths of those the expendable, as seen in the example of the Guantanamo Bay detention camp.

Mbembe, the main theorist of necropolitics, warned about the insufficiency of disciplinary and biopolitical explanations to clarify the current dynamics of sovereignty in the modern world. According to him, modern sovereignty is based on the “concatenation of multiple powers: Disciplinary, biopolitical, and necropolitical.”⁵⁸ And the geographies in the state of death-worlds are governed at the level of necropower rather than biopower. The subjugation of life to politics of death is intensified with the help of a state of occupation, state of emergency, or state of siege as forms of the state of exception.

Beyond these, we observed the usefulness of some discourses fostering nationalism and facilitating the production of expendable bodies with their bare lives. In this manner, discourses of “relation of enmity,” “national security,” “common good of the state,” and “national emergency” contribute to the categorization of people as valuable or not valuable - which is to say, the production of expendable lives outside of general law and social order.

In this regard, dead bodies of those in a relation of enmity emerge as useful tools in order to administer the politics of death of the state on the threshold of derealization and dehumanization. We will examine this using the example of the state of emergency rule of Turkish State.

58 Mbembe, “Necropolitics,” 29.

A Historical Background: The Transformation of the Politics of Death

The history of some is not the history of others.

– Michel Foucault, *Society Must Be Defended*

Since “sovereignty means the capacity to define who matters and who does not, who is disposable and who is not,”¹ the politics of death deserves an in-depth historical investigation. This chapter conducts such an investigation from the standpoint of the history of Turkey. The transition from the Ottoman Empire to republican Turkey is the main marker in this chapter giving meaning to the theoretical frame of the previous chapter. Indeed, this transition process not only symbolizes the collapse of a premodern empire and the establishment of a modern nation state but also symbolizes a reconfiguration of sovereignty and society relations. Saba Mahmood suggests reading such transition processes through a promise relation in favor of citizens:

1 Achille Mbembe, “Necropolitics,” *Public Culture* 15 (2003): 15.

The inescapable quality of secularism in part emanates from the structure of the modern liberal state, which promises to demolish premodern forms of hierarchy in order to create a polity where all citizens are supposed to be formally equal in the eyes of the law.²

In this new environment, the state - in an abstract sense unlike a monarch - has been made more responsible to its citizens (instead of the figure of subjects [*tebaa*]). The rule of law is the foundation of this relation based on accountability and provision of consent between state and citizens. However, this relation does not always work in such a mechanical way. As Mahmood follows this transformation in Egyptian history, we consider it in the transition period from the Ottoman Empire to the Turkish republic. Our questions are: Who are more valued and included as citizens of the modern nation state and who are not? What happens to those who oppose the new bios project of the modern nation state? Are they treated according to the rule of law or according to the political and social superiority of the bios where even the law is instrumentalized?

It is worth remembering that the only constant over time is the circular nature of sovereignty: “The end of sovereignty is the exercise of sovereignty.”³ While exercised in an absolute sense in premodern times, extraordinary regulations and practices still provide the opportunity for the revival of sovereignty in modern times. This chapter is a prelude to the interpretation of the necropolitical violence of the modern Turkish state into the dead bodies of PKK combatants and the legal ground that made this violence possible. It will provide an essential perspective regarding the consolidation of the politics of death around the construction of enmity and contractual violence on the basis of employing dead bodies of enemy as politically useful objects.

Although Kurdish revolts occurred in the Ottoman period, a new control policy began to be practiced in the early twentieth century. In this regard, I

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- 2 Saba Mahmood, *Religious Difference in A Secular Age: A Minority Report* (Princeton: Princeton University Press, 2016), 11.
 - 3 Michel Foucault, “Governmentality” in *The Foucault Effect: Studies in Governmentality with Two Lectures by and An Interview with Michel Foucault*, ed. Graham Burchell, Colin Gordon, and Peter Miller (Chicago: University of Chicago Press, 1991), 95.

assert that the year 1913 constitutes a defining moment in terms of the transformation of the state's necropolitics. This is when members of the Community of Union and Progress (İttihat ve Terakki Cemiyeti or CUP)⁴ declared their dictatorship with a coup d'état against Ottoman rule and initiated an exceptional period in light of nationalistic ideals. Thus, in this chapter I focus on historical cases before and after 1913 to demonstrate that the date was a break. After then, the dead bodies of Kurdish rebels started to be used as politically beneficial tools to display the manifestation of state power. Undoubtedly, the legacy of the Ottoman Empire is much wider and more varied beyond this chapter and 1913, in terms of its necropolitical practices of especially non-Muslim and non-Sunni Muslim groups.⁵ However, since my topic focuses on necropolitics concerning Kurdish rebels, 1913 has critical significance: It is the first time necropolitical violence vis-à-vis another mostly Sunni Muslim group - Kurdish people - started to be used systematically.

As will be seen from the cases, while reconciliation was preferred to the death penalty vis-à-vis Kurdish rebels before 1913, the policy changed thereafter. Public display of the executions of Kurdish rebels, refusal to deliver bodies to families, and burial in unmarked or mass graves became routine and were applied systematically from this date forward. This chapter is partitioned into two to reveal this transformation before and after 1913. In the first section, after briefly describing the status of the Kurdish population in the Ottoman Empire, some specific cases will be summarized indicating the distinction before and after 1913 up until the establishment of the Turkish republic. The rebellions of Bedirxan Beg of Botan (1838-1847) and Sheikh Ubeydullah (1879-1881) show

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- 4 The CUP was a political organization established in 1889 and supported mostly by student circles in medical and military schools. They pursued ideals of Pan-Ottomanism, Pan-Islamism, and Pan-Turkism to save the Ottoman Empire from disintegration. Although they took control of the empire in the election of 1908, they declared their strict opposition to the rule of sultan in 1913. For a detailed study, see Erik-Jan Zürcher, *The Unionist Factor. The Role of the Committee of Union and Progress in the Turkish National Movement (1905-1926)* (Leiden: Brill, 1984).
 - 5 The ruling system in Ottoman Empire was constituted on a religious-based *millet* system. The term *millet* corresponds to nation in English, but its use in the Ottoman Empire was to distinguish among religious groups. Accordingly, the ruling power defined itself as Sunni Muslim - a superior *millet* - instead of emphasizing Turkish identity.

the atmosphere before 1913, and the rebellions of Molla Selim (1913) and Sheikh Abdulsalam of Barzan (1907-1914) characterize the later period. The second and more detailed section is devoted to the republican period, again summarizing the status of Kurdish people and moving to specific cases from the early years of the republic. In this regard, the rebellions of Sheikh Said (1925), Ağrı (1926-1930), and Dersim (1937-1938) will be described in detail to reveal both the necropolitical violence of the modern Turkish state and judicial exceptions within it.

§ 3.1 Necropolitical Violence of the Ottoman Empire

The Ottoman Empire (1299-1923) had a multiethnic, multi-religious structure. Throughout the 624 years of its rule, its most expansive borders reached from Southeastern Europe to Mesopotamia, the Arab Peninsula, and Northern Africa. In this vast geography, it maintained a mostly Sunni Muslim population consisting of Arabs in the south; Kurds in Eastern Anatolia, Northern Syria, and Mesopotamia; and Turks or Turkish-speaking populations in the Balkans and Central and Western Anatolia. In addition, there was also an Alevi population strewn among the Sunni Muslim population of Anatolia and Northern Syria (the latter called Nusayris, or Arab Alevis); Shiites in Southern Mesopotamia; Greek Orthodox and Catholics in various parts of Anatolia but mostly along the Anatolian coasts; Slavic and Bulgarian Christians in the Balkans; Maronite Christians in Syria and Palestine; Armenians in various parts of Anatolia but mostly in Eastern and Southeastern Anatolia; Yazidis throughout Mesopotamia; and Jews in Western Anatolia, Mesopotamia, and Palestine.⁶

To hold these diverse ethnoreligious populations together, an ethnically and religiously pluralist polity was formulated, namely the *millet* system. *Millet* refers to “the official macro-organization of religious communities that

6 Aviel Roshwald, “Etnisite ve İmparatorluk: Tarihsel Bir Giriş” in *Kıyam ve Kıtâl: Osmanlı’dan Cumhuriyet’e Devletin İnşası ve Kolektif Şiddet*, ed. Ümit Kurt, and Güney Çeğin (Istanbul: Tarih Vakfı Yurt Yayınları, 2015), 40.

were partly autonomous in their decision making.”⁷ Accordingly, the minimal condition was that loyalty to the Ottoman dynasty was demanded within the shared territories of the state rather than nationalistic ideals. In this regard, Ottoman Empire had four main millets; Muslims, Greek Christians, Armenian Christians, and Jews.⁸ According to the system, those non-Muslim minorities living in the domain of the Islamic Ottoman Empire were allowed to rule themselves with little interference from the government. Accordingly, they were free to organize their judicial, financial, and educational issues according to their own religious laws.

Within this system, the sultan held absolute executive power to decide over life and death. We observe the sultan exercising this absolute right within the Ottoman judicial order in two ways. The first concerns death penalties that required the verdict and approval of the sultan. The second concerns death penalties that required only an exceptional order from the sultan without any judicial verdict. This latter is called *siyaseten katl* (which may be translated as political death decree).⁹

The emphasis on *siyaseten* (political) is immensely important in the context of our topic since it corresponds to political situations such as threats to the sovereign authority of the sultan. Crimes committed against the indisputable authority of the sovereign through the activities of rebellion, banditry, and the arbitrary attitudes and cruelty of local officials vis-à-vis the *reaya* (ordinary subjects of the empire) that conflicted with sultan’s sovereign rule on the issues of taxation and corruption were situations that could trigger *siyaseten katl*.¹⁰ Once these crimes constituted political threats to the authority of the sultan, the treatment of those who had committed them operated outside the normal judicial proceedings that generally applied to every subject under the sultan’s rule. Here, it is possible to observe the production of bare

7 Uğur Ümit Üngör, *The Making of Modern Turkey: Nation and State in Eastern Anatolia (1913-1950)* (New York: Oxford University Press, 2011), 12.

8 Üngör, *Making of Modern Turkey*, 12.

9 Taner Akçam, *Siyasi Kültürümüzde Zulüm ve İşkence* (İstanbul: İletişim Yayınları, 1995), 47.

10 İsmail Katgı, “Osmanlı Devleti’nde Siyaseten Katl (Hukuki Maiyeti, Sebepleri, Usulü, İnfazı ve Sonuçları),” *Uluslararası Sosyal Araştırmalar Dergisi* 24 (2013): 190.

lives outside of the reach of normal judicial proceedings through a political decision of the sovereign according to the principle of *siyaseten katl*.¹¹

Since the Ottoman system of rule was constituted on religious-based *millet* system, different applications of *siyaseten katl* can be observed vis-à-vis different groups such as non-Muslims, non-Sunni Muslims, and Sunni Muslims.¹² While the use of the right to *siyaseten katl* was more certain and severe against non-Muslim and non-Sunni Muslim groups, conciliatory measures were taken with Sunni Muslim groups usually, particularly in cases where they declared their regret and requested amnesty.

3.1.1 *Status of Kurdish People in the Ottoman Empire*

At the beginning of this section, we emphasized the Sunni Muslim structure of the empire. Kurds were the second largest group after the Turks in this picture. For this reason, treatment of this second, massive, Sunni Muslim group under Ottoman rule has a separate importance.

Hamit Bozarslan highlighted a kind of “tacit contract”¹³ in Ottoman-Kurdish relations which was in place since the sixteenth century.¹⁴ The reason is that the Kurdish-inhabited region was perceived as a buffer between the Ottoman and Safavid states, the two powerful states of the time. That gave Kurds a political advantage in terms of maintaining control over their lands in the form of principalities or emirates. On the other hand, all the region could be regarded as a buffer zone it could also be considered as a field of contention between the two states. Unquestionably, the religious privilege of the Ottoman

11 Akçam, *Siyasi Kültürümüzde Zulüm ve İşkence*, 48.

12 For a detailed analysis of how the Ottoman Empire treated different segments (non-Muslim, non-Sunni Muslim, and Muslim) of its population, see Taner Akçam, *Siyasi Kültürümüzde Zulüm ve İşkence*, (Istanbul: İletişim Yayınları, 1995); and Ümit Kurt and Güney Çeğin, *Kıyam ve Kitâ: Osmanlı’dan Cumhuriyet’e Devletin İnşası ve Kolektif Şiddet* (Istanbul: Tarih Vakfı Yurt Yayınları, 2015).

13 For this concept, see Şerif Mardin, *Türk Modernleşmesi: Makaleler 4* (Istanbul: İletişim Yayınları, 1991), 108.

14 Hamit Bozarslan, *Violence in the Middle East: From Political Struggle to Self-Sacrifice* (Princeton: Markus Wiener Publishers, 2004), 24.

state insured its victory since most Kurdish tribes - apart from Kızılbaş Alevis - followed Sunni Islam, while the Shiite branch was dominant in the Safavid state.¹⁵ The position of being in the middle of two influential states also increased the tactical bargaining power of the Kurdish emirates since the two states actually lacked strict, despotic, and infrastructural power due to the extent of their lands.¹⁶ Therefore, the Kurdish emirates had pursued a quasi-independent structure since the sixteenth century because of this tacit contract.

The nineteenth century initiated a different phase in terms of the preservation of the quasi-independence of Kurdish principalities. The century is marked by western-type modernization and centralization efforts on the part of Ottoman Empire. In this process, the central authority of the Ottoman Empire claimed more power over these quasi-independent Kurdish emirates. The question concerns whether or not this process was smooth. The answer to this question, of course, requires an in-depth and multidimensional analysis of the historical process. I make this analysis from the standpoint of necropolitics and consider the year 1913 as an important shift in treatment of Kurdish rebels by the Ottoman Empire.

3.1.2 *The Treatment of Kurdish Rebels by the Ottoman Empire before 1913*

World history is full of stories of the bloody suppressions of rebellions. This is not unusual when there are two forces with the intention to kill each other. However, our focus is the use of the dead bodies of enemies as a political tool in the hands of the sovereign to manifest its power. Admittedly, every deadly victory over the enemy is also a declaration of this sovereign power; however, there is a point where sovereignty operates beyond death which we call necropolitics. The dead of the enemy become a political tool to subjugate the masses on the enemy's side. As we put 1913 forward as a flashpoint in the implementation of necropolitics vis-à-vis Kurdish rebels, we briefly discuss the

15 Paul White, *Primitive Rebels or Revolutionary Modernizers? The Kurdish National Movement in Turkey* (New York: Zed Books, 2000), 55.

16 Martin Van Bruinessen, *Agha, Shaikh and State: The Social and Political Structures of Kurdistan* (New Jersey: Zed Books, 1992), 145-185.

period before 1913 in this section. The claim is that the use of mechanism of reconciliation to suppress Kurdish rebellions was more prevalent before 1913.

We see many rebellions in this period that generally erupted in opposition to the centralization efforts of the state over Kurdish emirates. Two main motivations for these revolts stand out: To reclaim previously enjoyed rights around a tacit contract or to achieve national independence.¹⁷ There were two main rebellions in this process: The rebellion of Bedirxan Beg of Botan (1838-1847) and the rebellion of Sheikh Ubeydullah (1879-1881).¹⁸ Since a multidimensional historical research of these rebellions exceeds the scope of this thesis, I limit myself to approaching the issue in terms of whether or not necropolitical violence was used as a method in the suppression of these rebellions.

It is historical fact that necropolitical violence was not used in either both rebellion. Instead, honorable treatment was provided in both cases. For example, Bedirxan Beg was called to the center of state authority, Istanbul, after his defeat. He was then sent to Crete to suppress the rebellion of the Cretan Greeks. After achieving this mission over ten years, he was again invited to Istanbul and awarded with the honor of pasha.¹⁹ In the same way, Sheikh Ubeydullah was sent to Istanbul in return for his surrender on the condition that he be treated honorably. He was exiled to Hijaz from there.²⁰

3.1.3 *The Treatment of Kurdish Rebels by the Ottoman Empire after 1913*

While the establishment of the Republic of Turkey represents a de jure break from Ottoman rule and a transition to a modern nation state, a de facto break and transition was in fact provided by the 1913 coup d'état. As its main actors, members of the CUP appeared on the stage of history with a new imagination of the nation and the state. Indubitably, this imagination was based on the idea of the self in the face of the other. In this regard, I find the periodization of

17 David McDowall, "The Kurdish Question: A Historical View" in *The Kurds: A Contemporary Overview*, ed. Philip G. Kreyenbroek and Stefan Sperl (New York: Routledge, 2000), 11.

18 For details of the revolts, see Hakan Özoğlu, *Osmanlı Devleti ve Kürt Milliyetçiliği* (Istanbul: Kitap Yayınevi, 2009); and Wadie Jwaideh, *The Kurdish National Movement: Its Origins and Development* (New York: Syracuse University Press, 2006).

19 Özoğlu, *Osmanlı Devleti ve Kürt Milliyetçiliği*, 95.

20 Ibid., 98.

Uğur Ümit Üngör important. There are three main phases that explain the transition from the Ottoman Empire to the Republic of Turkey through the political movement of the Young Turks.

The first phase may be termed the “Ottoman patriotic citizenship,” roughly running from the 1860s to 1889. The second was the phase of “Muslim nationalism activism,” lasting from approximately 1889 to 1913. The third and final phase was the apex of the Young Turk movement, that of “Turkish nationalist hegemony,” from 1913 to 1950.²¹

This periodization reflects ideological and political transformations. Above all, it symbolizes a transition from a more inclusive imperial system to an exclusive state formation based on Turkish nationalism. This new modern nation state first excluded non-Muslims and later non-Turkish groups that did not compromise with the new sovereignty project (bios) of the state formed around Turkish nationalist hegemony.

The imagination in the minds of the members of the CUP was fed by the turbulent atmosphere of the the Ottoman Empire in the nineteenth century in which the comparatively pluralistic millet system began to collapse in the face of the victory of nationalistic claims of minority groups as exemplified by the Balkan revolts. Traumatic loss of land in this move toward nationalism led to the consolidation of the national imagination of the *vatan* (homeland). It was also the start of the construction of a new social and political order (bios) on the reimagined vatan which is based on the inclusion of those within the self and exclusion of those within the others. Ruth A. Miller, in a study that investigates the legislative process of this transition period, argues that the reconstruction of self and other in the positivist mindset of the CUP was based on biological determinism and an imagination of the nation as a social organism:

The decrees instituting new legislation called repeated attention to the importance of uniformity and group identity, they mobilized a vocabulary of biological determinism to play up the ways in which deviant

21 Üngör, *Making of Modern Turkey*, 26.

individuals threatened the purity of this group, and they redefined religious and social morality as quasi-medical barriers against these threatening deviations.²²

This process is not only relevant to the formation of a new, ethnically homogenous sovereignty project in the age of modern nation states, but also includes the formative components of necropolitical violence vis-à-vis those who are accepted as a threat to the uniformity of the nation. Hişyar Özsoy explains this process with the concept of sovereignty. Accordingly, Özsoy redefines sovereignty on the basis of which not only redesigns on top of the newly constructed vatan land (homeland) but also underneath it according to the desires of the dominant nation for sovereignty.²³ He claims that those who oppose the new bios of the state were excluded from underneath the land in death as well as from on top of it in life. After this, sovereignty becomes a power that not only affects life, but also the hereafter. Maltreatments of the dead bodies of rebels can be understood in this manner. Since they are accepted as traitors to the bios, they are treated inhumanly, outside of the bios, and even proper passage to the hereafter is in the hands of the sovereign. In this regard, practices of torturing dead bodies, their public display, and their burial in unmarked places or mass graves could be discussed as separate components of necropolitical violence that control and discipline the masses at the borders of the hereafter.

It is no coincidence that the first examples of the necropolitical violence of Turkish state against Kurdish rebels overlapped the victory of the Turkish nationalist hegemony of CUP members in the coup of 1913. The rebellions of Molla Selim in Bitlis in 1913 and Sheikh Abdulsalam of Barzan in Mosul between 1907 and 1914 are the first examples of the flashpoint.²⁴ In both cases,

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- 22 Ruth A. Miller, *Legislating Authority: Sin and Crime in the Ottoman Empire and Turkey* (New York: Routledge, 2013), 83.
- 23 Hişyar Özsoy, “Araf’ta Kalmak: Tarih Mezarda Başlar,” *Yeni Özgür Politika*, May 6, 2012, accessed January 22, 2016, <http://www.yeniozgurpolitika.org/index.php?rupel=nuce&id=9088>.
- 24 For detail, see Jwaideh, *Kurdish National Movement*; “Şeyh Şahabettin ve arkadaşlarının mezarlıkları yapıldı,” *İlkha*, November 2, 2015, accessed May 3, 2016, <http://www.ilkha.com/haber/24642/seyh-sahabettin-ve-arkadaslarinin-mezarliklari-yapildi>; and Ramazan Balcı, *Osmanlı’nın Doğu Siyaseti* (İstanbul: Yitik Hazine, 2010).

the reconciliatory mechanism that was in operation before 1913 was left aside and the dead bodies of rebels were made into a spectacle to intimidate locals regardless of whether or not they supported the rebels. For example, the bodies of Molla Selim and his friends were displayed on gallows for three days to manifest state power.

The revolts of Abdulsalam of Barzan in 1907 and 1914 are a more striking demonstration of the change regarding state necropolitics before and after 1913. Accordingly, Abdulsalam first revolted in 1907 motivated by nationalism. After two months of violent clashes, The Empire surprisingly decided for the return of the sheikh to his region and offered state aid for the people of Barzan. Given these conditions, the sheikh surrendered and was even awarded a state medal. Nevertheless, the sheikh revolted again in 1914, this time against the oppressive rule of the CUP in the region. However, the sheikh was not as lucky as in the previous revolt. He was caught and publicly hanged in Mosul with his three followers. Moreover, the decision to execute him was made by Süleyman Nazif, the local CUP governor alone without consulting with the government in Istanbul.²⁵

§ 3.2 Necropolitical Violence of the Republican Turkey

The proclamation of the Republic of Turkey in 1923 constituted the final stage in the victory of the CUP ideals of a modern nation state and citizenship. These ideals emphasizing a nationalized vatan became strong throughout traumatic processes such as the loss of the Balkans in nineteenth and twentieth centuries, local disturbances in Kurdish and Arabic regions vis-à-vis the CUP government leading up to First World War, and the defeat of the CUP government during the First World War between 1914 and 1918, and the turbulent years of War of Independence between 1919 and 1922. These processes sharpened the difference between the imaginations of self and other. The self was

25 Jwaideh, *Kurdish National Movement*, 113. This attitude of Süleyman Nazif matches up with Butler's argument regarding the resurgence of the ancient power of sovereign over life and death in the hands of bureaucratic, administrative officials acting as petty monarchs in the process of governmentality. For detail, see Judith Butler, *Precarious Life: The Powers of Mourning and Violence* (London: Verso, 2004), 56.

based on Turkish ethnic nationalism and secularism; conservatively religious Turks, non-Turkish speaking Muslims, and non-Muslims became internal others. These others either had to be assimilated into the newly created bios through the exercise of disciplinary and biopolitical power, or they had to be eliminated by the tool of exclusion from the uniform purity of the bios (vatan) - dead or alive - lest they pollute that purity. Therefore, the emergence of the vatan is the “geography of nationalism,” which

is the spatial expression of strategies of exclusion, displacement and dispossession of the externalized “other,” as well as of strategies of reconstruction and re-production for the sovereign and hegemonic “self” of the nation.²⁶

As in Özsoy’s claim, inclusion in or exclusion from the vatan is not only related to the redesign of the top of the land but aims underneath the land according to the desire for sovereignty of the dominant nation.²⁷ That means not only are living people the target of this reconstruction process, but also the dead with respect to whether or not they threaten the purity of the vatan. Therefore, the transition period from the Ottoman Empire to the republic be considered as “the process of identification and disidentification” from top to bottom of the land.²⁸

Without doubt, it was yet another state-building process as well as a process of forming an ethno-religiously (Turkish-Muslim) homogenized nation

26 Kerem Öktem, “Creating the Turk’s Homeland: Modernization, Nationalism and Geography in Southeast Turkey in the late 19th and 20th Centuries,” in *The City: Urban Culture, Architecture and Society*, paper for the Socrates Kokkalis Graduate Workshop, Harvard University (2003), 1.

27 Özsoy, “Araf’ta Kalmak.”

28 Üngör, *Making of Modern Turkey*, 8; and Ayşe Parla, and Ceren Özgül. “Property, Dispossession, and Citizenship in Turkey; or, the History of the Gezi Uprising Starts in the Surp Hagop Armenian Cemetery,” *Public Culture* 28 (2016), 617-653.

and vatan. The newly formed government while undertaking the state-building had to prove its physical power and violence vis-à-vis potential threats of counterpowers and internal resistance.²⁹

In this context, the emergence of the Turkish republic can be evaluated as a rupture in terms of the multiethnic and multi-religious structure of the Ottoman Empire; on the other hand, it could be evaluated as the continuity of the ideals and politics of the CUP, especially after 1913. With respect to our subject, the necropolitics of the Turkish republic vis-à-vis Kurdish rebels are the most convenient example for exhibiting this rupture-continuity relation. I choose to indicate this relation in light of three Kurdish rebellions in the early years of the republic: The rebellion of Sheikh Said in 1925, the Ağrı Rebellion between 1926 and 1930, and the Dersim Rebellion between 1937 and 1938. Before examining these cases in terms of death politics, we need to discuss the change of the status of Kurds in the newly established republic.

3.2.1 *Status of Kurdish People in the Republic of Turkey*

A comparison of the constitutions of 1921 and 1924 is enlightening and shows the changing status of the Kurdish people in the Turkish republic. This comparison also shows the sharp transition from the pluralistic nature of the Constitution of 1921 to the more ethnonationalist, statecentric Constitution of 1924 which emphasized Turkish identity.

The Constitution of 1921 (*Teşkilatı Esasiye Kanunu*) constitutes a deviation from the historical process in place since 1913. As an interim constitution emerging from years of national struggle and predating the establishment of the republic, it reflects pluralistic environment without a Turkish nationalist emphasis. From the standpoint of Kurds, this twenty-three-clause constitution recovered the *tacit contract* since it included clauses with regard to decentralization (*ademi-merkeziyetçilik*). Article 11, for instance, states that provinces shall have the autonomy and legal personality in local issues. In this regard,

29 Charles Tilly, "War Making and State Making as Organized Crime," in *Bringing the State Back In*, ed. Peter Evans, Dietrich Rueschmeyer, Theda Skocpol (Cambridge University Press, 1985), 173-174.

the regulation and governance of foundations, madrasahs, education, health, economy, agriculture, public works, and social assistance works were to be under the authorization of city councils - everything except for domestic and foreign policies including judicial and martial issues and international economic relations.³⁰

However, this positive environment for the Kurdish population was shattered by the Constitution of 1924 in which the pluralistic nature of the Constitution of 1921 was replaced by Turkism. This transition can be observed by comparing the first article of the Constitution of 1921 and the third of the Constitution of 1924. The former states: “Sovereignty unconditionally belongs to the nation” without any ethnic specification. Nevertheless, the latter article defines the nation through a reasoned decision:

Our state is a national state. It is not a multinational state. The state does not recognize other nations other than the Turk. There are also people from other races within the nation who should have equal rights and [access to the] law. However, granting [special] rights to them in accordance with race is not permissible.³¹

Beside renouncing the pluralistic nature of the state and decentralization, the withdrawal of the caliphate - the main legacy that had attached Kurds to Turkish rule since sixteenth century - led to the break of the last tie in Turkish-Kurdish relations. After this time, a sequence of armed uprisings against the

30 Madde 11: “Vilâyet mahalli umurda manevi şahsiyeti ve muhtariyeti haizdir. Harici ve dahili siyaset, şer’i adlî ve askeri umur, beynelmilel iktisadî münasebat ve hükûmetin umumi tekâlifi ile menafii birden ziyade vilâyata, şâmil hususat müstesna olmak üzere Büyük Millet Meclisince vaz edilecek kavanin mucibince evkaf, Medaris, Maarif, Sıhhiye, İktisat, Ziraat, Nafia ve Muaveneti içtimaiye işlerinin tanzim ve idaresi vilâyet şûralarının salâhiyeti dahilindedir.” For detail, see Republic of Turkey, “Teşkilatı Esasiye Kanunu,” accessed February 5, 2016, <https://www.tbmm.gov.tr/anayasa/anayasa21.htm>.

31 “Devletimiz milli (ulusal) bir devlettir. Çok devletli bir millet değildir. Devlet Türk’ten başka bir devlet tanımaz. Memleket dahilinde eşit hak ve hukuka sahip olması gereken ve başka ırktan gelen kimseler de vardır. Fakat bunlara da ırki durumlarına uygun olarak haklar tanımak veya bu anlama gelecek sözler etmek caiz değildir.” For detail, see Şeref Gözübüyük, *Zekar Sezgin, 1924 Anayasası Hakkındaki Meclis Görüşmeleri* (Ankara: SBF Yayınları, 1957), 7.

Turkish state began that continues even in the present as seen in the example of the PKK.

In this part, I evaluate only three of these - and mostly in terms of necropolitics - since they are the best examples of the construction of the necropolitical violence of the Turkish state strengthened by the imaginations of self and other in a relation of enmity.

3.2.2 *The Treatment of Kurdish Rebels by the Turkish State in the Early Years of the Republic*

Establishment of the Republic of Turkey also means the promulgation of a new modern state on the basis of rule of law. Recalling the evaluation of Saba Mahmood mentioned at the beginning of this chapter, the hierarchical formation, religious-based millet system of Ottoman rule was replaced by a nation based on equal and secular citizenship. With respect to the transition to a modern nation state, Mahmood evaluates the promise of equal citizenship before the law which “was linked to a foundational critique of ascriptive inequality and a recalibration of particularistic forms of belonging.”³² Nevertheless, this process was not smooth in the case of the Turkish republic: “The legal terminology was expressing the uniform as essentially ‘good’ and the idiosyncratic as essentially ‘bad.’”³³ In fact, while the Constitution of 1921 reflected the core of this promise even before the state had been founded, the Constitution of 1924 defaulted on this promise just a year after the state was established.

This process, at the same time, entailed reconstructing public space as an embodiment of vatan in conformance with the new bios imagination of the sovereign. Judith Butler discusses this process:

The public sphere is constituted in part by what cannot be said and what cannot be shown. The limits of the sayable, the limits of what can appear, circumscribe the domain in which political speech operates and certain kinds of subjects appear as viable actors.³⁴

32 Mahmood, *Religious Difference in a Secular Age*, 11-12.

33 Miller, *Legislating Authority*, 84.

34 Butler, *Prekarious Life*, XVIII.

The identification and disidentification tools mentioned by Üngör were also in operation during this reconstruction. In the transition period from the Ottoman state to the Turkish republic, identities that did not fit within the ethno-religious norm (Turkish-Muslim) of Turkish republic were excluded from this sphere if they were not assimilated. The extreme of this reconstruction emerged in the necropolitics of the state regarding those who wholly opposed the newly constructed public sphere. This was a story of people executed in public but not mourned in public. The bodies of rebels were reduced to an instrument to give form to public sphere for the rest of the population.

In this regard, rebellions against the newly formed vatan were considered a threat against the holistic imagination of the public space (bios) - or in other words, a threat against the indivisible integrity of the vatan. Kurdish rebellions against the Turkish republic can also be evaluated in this manner. Throughout these rebellions, we witness the extremes of the necropolitics of the state in which the state tries excluded rebels even from underneath the land after their killing by refusing to deliver dead bodies for proper burial or burying them in unmarked or mass graves. Undoubtedly, these practices redraw the borders of the vatan even from underground. Those who threaten the purity of the vatan are wiped out not only from on top of the land, but also from underground.

On the other hand, the display of dead bodies in public after show trials constitutes another dynamic of necropolitics in which state power was manifested and the rest of society was targeted for intimidation. While these kinds of necropolitical practices were used in the cases of the Sheikh Said and Dersim rebellions, the case of the Ağrı Rebellion was a pure instance of contractual violence against those declared killable under the assurance of impunity for perpetrators. These cases are also indicators of prosecution outside of the state's general system of justice in the show trials of the legally disputable Independence Tribunals and the exceptional formation of the Inspectorates General. Hişyar Özsoy evaluates these practices with respect to the relation of enmity. Accordingly, all practices of physical coercion are legitimated on the basis of protecting the vatan from those labeled rebel or traitor.³⁵ In fact, this

35 Hişyar Özsoy, "Between Gift and Taboo: Death and the Negotiation of National Identity and Sovereignty in the Kurdish Conflict in Turkey" (PhD diss., The University of Texas, 2010), 115.

is not just a theoretical observation, but a fact. It is embedded in the famous motto used in nationalist circles even today: “Söz konusu vatansa gerisi te-ferruattır!” (If the vatan in question, the rest is insignificant!).

3.2.2.1 Sheik Said Rebellion (1925)

In this context, the rebellion of Sheikh Said represented the first challenge to republican ideals after 1923. Discussion of the religious or nationalistic causes of the rebellion aside, the rebellion is important as it was the first after 1923 in which necropolitical mechanisms were put in operation against the rebels by the state.³⁶ The rebellion also led to a surprising for the Turkish government’s newly designed bios project since the sheikh successfully conquered large swaths of countryside in the east around Bingöl, Elazığ, and Diyarbakır with an estimated 15,000-strong infantry and cavalry.³⁷ Because of the extent of the threat to state sovereignty in the region, more than 50,000 soldiers - which corresponds to almost half of the Turkish army - were mobilized to suppress the rebellion. The rebellion also represents the first brutal suppression in republican history. The cost of restoring of state sovereignty in the region amounted to the destruction of 206 villages, the burning of the 8758 houses, and the killing of the 15,200 people including innocent men, women, and children.³⁸ It, in fact, entailed the punishment of the whole region with its locals.

The rebellion ended with the defeat and capture of the sheikh and his supporters in April 1925.³⁹ After their defeat, Sheikh Said and other rebel leaders were prosecuted before a special court known as the Independence Tribunal of Diyarbakir. Before discussing the outcome of this show trial, it is beneficial to consider the historical background and functions of these tribunals. In fact, the legality of these tribunals (in operation between 1920 and 1927) is still discussed because of their extraordinary, special powers that underline their political rather than judicial nature. Independence Tribunals were authorized by

36 For a detailed historical background, see Jwaideh, *Kurdish National Movement*, 203.

37 Üngör, *Making of Modern Turkey*, 124.

38 Abdul Rahman Ghassemlou, *Kurdistan and the Kurds* (Prague: Czechoslovak Academy of Sciences, 1965), 52.

39 Jwaideh, *Kurdish National Movement*, 204-205.

the Law on Deserters (Firariler Hakkında Kanun) on 11 September 1920 foremost to solve the problem of deserters. Accordingly, the tribunals were authorized to judge deserters and those who aid and abet them. Decisions made by the tribunals were final, and military and civilian officials were responsible for the execution of the decisions. On 26 September 1920, the powers of tribunals were expanded in the context of the Hiyanet-i Vataniye Kanunu (Law on Treason against Vatan). The main purpose of the law was to thwart the challenges to the authority and legitimacy of the National Assembly, which had been newly established on 23 April 1920, during the War of Independence.⁴⁰ These tribunals were arguably political rather than judicial because members of the court were selected from among the deputies of the assembly regardless of whether or not they had a law degree. Suspects had no right to defense by a lawyer; they also had no right to appeal the decision (*temyiz*). In this environment, suspects could be arrested, prosecuted, and executed on the same day or in the same week.⁴¹

While Independence Tribunals were mostly used to try deserters charged with treason against the vatan during the years of the War of Independence, they were reestablished after the foundation of the republic with the aim of executing rebels. The first Independence Tribunal in the republican period was established for the trials of the Sheikh Said Rebellion in which sheikh and forty-five friends were openly accused of being “motivated by the purpose of setting up an independent Kurdish state,”⁴² in the words of the chief judge. They were sentenced to death. Then Sheikh Said and his forty-six friends were hanged in public on 28 June 1925 in Diyarbakır’s Dağkapı Square.

Interestingly, the execution of these hangings was conducted in front of a platform including military and civilian officials among applause and demonstrations of joy.⁴³ After their bodies were exhibited until midday, their *cenazas*

40 Ahmet Demirel, *Tek Partinin Yükselişi* (İstanbul: İletişim, 2012), 56-60.

41 Ahmet Turan Alkan, *İstiklal Mahekemeleri* (İstanbul: Ağaç Yayıncılık, 1993), 23-30.

42 Jwaideh, *Kurdish National Movement*, 207.

43 Ahmet Kahraman, *Kürt İsyanları: Tedip ve Tenkil* (İstanbul: Evrensel Basım Yayın, 2004), 172-177.

(corpses) were not given to their families but interred in a mass grave near the same square with no marker.⁴⁴ Hişyar Özsoy evaluates this situation thusly:

Although the systematic policy of executing Kurdish rebels by hanging them in public started after the military coup of the Committee of Union and Progress (CUP) in 1913, the first refusal to deliver dead bodies of Kurdish rebels to their families for proper burial took place in 1925, two years after the declaration of the Turkish Republic in 1923.⁴⁵

The display of the dead bodies of the rebels is, in fact, the manifestation of the state's decisive victory over the first challenge to its sovereignty. However, it is not the end of the necropolitics of the state. Confiscation of dead bodies and leaving them unburied is evidence of the continuity of this politics. Accordingly, rebels continued to be punished even after death through the wiping their presence from the land itself in unmarked graves. Undoubtedly, this kind of punishment also targeted the relatives of the rebels and rest of the society on the basis of intimidation and the manifestation of state power by governing death and dead bodies.

3.2.2.2 Ağrı Rebellion (1926-1930)

The nationalistic character of the Ağrı uprising was even more certain and occupied the internal affairs of Turkey from 1926 to 1930. This nationalism was clearly asserted in the founding congress of leading organization of the uprising, Xoybûn, in 1927 in Syria: "Kurdish national consciousness, waking up from its heavy sleep, has cried out loud - so high that the assimilation project cannot stand up."⁴⁶

The collapse of the Ottoman Empire and the foundation of many small nation states within its dissolved territories led to the dispersion of the Kurdish population in Iraq, Syria, Turkey, Iran, and the Soviet Union. In this environment, the rebellion created a nationalistic motivation for these dispersed populations, starting with Kurdish intellectuals in Syria and Iran. In light of this support, rebels exceeded in resisting Turkish troops around Mount Ağrı

44 Özsoy, "Between Gift and Taboo," 103.

45 Ibid., 103.

46 White, *Primitive Rebels or Revolutionary Modernizers?*, 76.

for a significant time. Moreover, the suppression of the rebellion was only achieved with the help of foreign countries such as the Soviet Union and Iran, since the threat of the rebellion was also perceived as a danger to their own national sovereignty over their Kurdish populations.⁴⁷

The importance of this rebellion in terms of our topic concerns Law No. 1850 dated 20 July 1931, which states that the

actions of watchmen, village guard, militia, and the *local people* who participated in the suppression movement of the rebellion along with military forces and governmental officials between 20 June 1930 and 1 December 1930 shall not be considered a crime.⁴⁸

This was crucial because the law fully authorizes a large group of people - from military and civilian officials to ordinary people - to carry out all types of violent actions with a guarantee of judicial impunity. That was important in two respects:

Most importantly, it best reflects contractual violence in the name of the state. The law is, in essence, retroactive. Although accepted in July 1931, it provided a legal protection for acts from June 1930 to December 1930. That means the state retroactively approved all types of violence by officials and civilians in a contractual manner instead of judging them individually to determine if they acted beyond the purposes of the act of suppression. In fact, it is known that the movement exceeded its intentions and was directed against innocent civilians.⁴⁹ For instance, while the number of rebels was estimated at 10,000,

47 Jwaideh, *Kurdish National Movement*, 211-214.

48 Birinci Madde: “Erciş, Zilân, Ağrıdağ havalisinde vuku bulan isyanla, bunu müteakip birinci umumî müfettişlik mıntakası ve Erzincanın Pülümür kazası dahilinde yapılan takip ve tedip hareketleri münasebetlerle 20 Haziran 1930 dan 1 Kânunuevvel 1930 tarihine kadar askerî kuvvetler ve Devlet memurları ve bunlarla birlikte hareket eden bekçi, korucu, milis ve ahali tarafından isyanın ve bu isyanla alâkadar vakaların tenkili emrinde gerek müstakillen ve gerek müştereken işlenmiş efal ve harekât suç sayılmaz.” For detail, see Republic of Turkey, “İsyan mıntıkasında işlenen efalin suç sayılmayacağına dair kanun,” retrieved 10 February 2016, from https://www.tbmm.gov.tr/tutanaklar/KANUNLAR_KARARLAR/kanuntbmmco10/kanuntbmmco10/kanuntbmmco1001850.pdf.

49 Kahraman, *Kürt İsyanları*, 226-248.

some 15,000 deaths were declared in the Zilan region by the semi-official newspaper of the government, *Cumhuriyet*.⁵⁰ This strengthens suspicion about the slaughter of civilians. Wadie Jwaideh discusses the process of punishing whole communities in the region of the uprising:

The suppression of the revolt was accompanied and followed by drastic punitive measures, which are said to have included deportations, mass arrests, and summary executions. Kurdish villages in the area were bombed and set on fire, and whole communities are said to have suffered heavy losses.⁵¹

Secondly, the law also supports the claim of Butler regarding the resurgence of sovereignty in exceptional times in the hands of local authorities - and even in the hands of civilians, as seen in our example. As discussed in the previous chapter, sovereignty reproduces itself with absolute power over the lives of others, and this production is best reflected in the decisions concerning the death of others without any legal liability. In this regard, the law accepted that people killed during the suppression were killable entities regardless of whether they were rebel or civilian thereby reproducing the communities of the region in the context of dehumanization with the peculiarity of being killable under the assurance of judicial impunity for perpetrators. Even though the dead bodies of those killed were not found, the necropolitical power of the state was made overtly manifest in a political cartoon of the time published in *Milliyet* on 19 September 1930. A symbolic gravestone is drawn on the highest point of Mount Ağrı referring to those who have been killed, and an epitaph written on it read: “Hayali Kürdistan burada meftundur.” (Imaginary Kurdistan is captivated here.)

Article 1 of Law 1850 overtly states that it was only valid for the region from Erciş, Zilan, and Mount Ağrı, where the rebellion broke out, to the Pülümür district of Erzincan where some pursuits and suppression actions took place.⁵²

50 Ibid., 242.

51 Jwaideh, *Kurdish National Movement*, 213.

52 Republic of Turkey, “İsyân mıntıkasında işlenen efaîin suç sayılmayacağına dair kanun,” https://www.tbmm.gov.tr/tutanaklar/KANUNLAR_KARARLAR/kanuntbmmco10/kanuntbmmco10/kanuntbmmco1001850.pdf.

It is possible to discuss suppression of the rebellion in light of a necessity-decision-response chain. It was, in fact, the second great uprising encountered by the newly established republic. Moreover, it was much more effective than the Sheikh Said Rebellion in terms of its organization. For instance, suppression of it lasted almost four years while the Sheikh Said rebellion lasted only two months. A speech by İsmet İnönü - prime minister at the time - also shows the measure of the perceived threat to the newly established state, which was mostly based on a homogenous Turkish nation. As the suppression efforts continued, İnönü stated: "Only the Turkish nation has the right to demand ethnic rights in this country. Any other element does not have the right."⁵³ İnönü's words reflect the consistency of the state regarding the necessity of immediately suppressing the rebellion. After the situation was politically circumscribed in this way, first Inspectorate General was formed in response, which became the mechanism that prepared the convenient base for Law 1850.

The formation of Inspectorates General is critically important in terms of our topic since they are the prototype for the 1987 Governorate of the State of Emergency Region. In this sense, Inspectorates General are regional governorates with quasi-marital authorization over civilian, military, and judicial institutions within their borders. According to this general framework, five separate Inspectorates General were established between 1927 and 1952 to consolidate the authoritarian rule of the newly established republic with the tools of Turkification. Thus, it is no coincidence that three of the Inspectorates - Inspectorates General I, III, and IV - cover the region directly involved in the Kurdish issue.⁵⁴ In this sense, Article 3 of the Law on the Establishment of the Inspectorate General No. 1164 (Umumi Müfettişlik Teşkiline Dair Kanun) was ratified on 25 June 1927 to consolidate public order and security within the

53 White, *Primitive Rebels or Revolutionary Modernizers?*, 79.

54 Inspectorate General I (1927): Diyarbakır, Elazığ, Urfa, Bitlis, Van, Hakkari, Siirt, and Mardin. Inspectorate General II (1934): Edirne, Kırklareli, Tekirdağ, and Çanakkale. Inspectorate General III (1935): Erzurum, Kars, Gümüşhane, Çoruh, Erzincan, Trabzon, and Ağrı. Inspectorate General IV (1936): Tunceli, Elazığ, and Bingöl. Inspectorate General V (1947): İçel, Seyhan, Hatay, Gaziantep, and Maraş. For detail, see Cemil Koçak, *Umûmî Müfettişlikler (1927-1952)* (İstanbul: İletişim, 2003).

borders of the inspectorates.⁵⁵ According to Article 1, the authority responsible for the formation and abolition of inspectorates is the council of ministries.⁵⁶ Based on this law, Decree 5858 on the Formation of Inspectorates General (5858 sayılı Umumi Müfettişlik Teşkiline Dair Olan 1164 Numaralı Kanun Mücibince Tanzim Olunan Umumi Müfettişlik Vazife ve Salahiyetlerine Dair Olan Talimatnamenin Meriyete Vazı Hakkında Kararname) was approved on 27 November 1927.⁵⁷ According to Article 1 of this decree, Inspectorate General 1 was established in the provinces of Elazığ, Urfa, Hakkari, Bitlis, Diyarbakır, Siirt, Mardin, and Van. The decree also gave authority to Inspectors General over the governors of these provinces in Article 7.⁵⁸ Article 8 highlighted the power of Inspectors General on the basis of their right to order governors to act in all necessary matters.⁵⁹ In addition, they had absolute authority over security forces (police and gendarmerie) within the region.⁶⁰ By this decree, the first implementation of Governorate of the State of Emergency Region of the 1990s was put into practice. As we discuss in the next chapter, the Law on the Establishment of the Inspectorates General No. 1164 will be replaced by the Law on State of Emergency No. 2935 in 1983, and Decree 5858 on the Formation of Inspectorates General will be replaced by the Decree 285 regarding the Establishment of Governorate of the State of Emergency Region in 1987. Therefore, Inspectors General will be replaced by Governors of the State of Emergency Region with the full authority granted to Inspectors General.

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- 55 Üçüncü Madde: “Umumî müfettişler Dahiliye vekâletine merbut olup mntıkaları dahilinde asayiş ve inzibatın teminine nezaret ve kavanin ve nizamatin tamamii tatbik ve icrasını mütemadiyen takib ve murakabe ve vekâletleri kanunen haiz oldukları salâhiyetlerden İcra Vekilleri Heyetince kendilerine tevdidine karar verilenleri istimal ederler.” For detail, see Republic of Turkey, “Umumî müfettişlik teşkiline dair kanun,” Law No: 1164, retrieved 10 February 2016, from https://www.tbmm.gov.tr/tutanaklar/KANUNLAR_KARARLAR/kanuntbmmco05/kanuntbmmco05/kanuntbmmco0501164.pdf.
- 56 Birinci Madde: “(...) Umumî müfettişler İcra Vekilleri Heyeti kararlaile tayin olunur ve memuriyetlerine de aynı suretle nihayet verilir.” Ibid.
- 57 Koçak, *Umûmî Müfettişlikler (1927-1952)*, 72.
- 58 Ibid., 74.
- 59 Ibid., 75.
- 60 Ibid., 75.

While the continuity of these features can be followed, it is also possible to observe them from regulations such as Law No. 1850. As a matter of fact, judicial impunity was provided in the OHAL period for officials ranging from the Governorate of the State of Emergency Region to local governorates to the Ministry of the Interior by Decree 285.

3.2.2.3 Dersim Rebellion (1937-1938)

The existence of Dersim itself was a threat to the ethno-religiously homogenized nation project of the state since the region was mostly inhabited by Zaza-speaking Alevi Kurds. The other issue was the mountainous terrain of the region which had unequivocally prevented the access of the state and promulgation of its initialization policies in the region since Ottoman times.⁶¹ For these reasons, Dersim easily became the internal issue of the Turkish state to be overcome with the necessity-decision-response chain. For example, a report prepared in 1926 by the Ministry of the Interior says that “Dersim is an abscess on the Turkish Republic and it must be removed, for the sake of the country’s wellbeing.”⁶²

In this regard, assimilation efforts in Dersim gained a momentum with the acceptance of the Law on the Administration of the Province of Tunceli on 25 December 1935. This law granted a military official the powers of both commander and governor of the province. Later, the powers of this official were extended to a wider region with the establishment of Inspectorate General IV in the provinces of Tunceli, Bingöl, and Elazığ on 6 June 1936.⁶³ Undoubtedly, the main purpose of these regulations was to increase state sovereignty in the region. To this end, Inspectorate General IV sped up the construction of military installations, roads, and bridges. Thus, the region became more accessible to the state. However, discontent and opposition from local dignitaries and the local people to the increase in military installations began to be called an uprising; therefore, the foundation for intervention in Dersim was laid.⁶⁴ The speech of Mustafa Kemal Atatürk, the founding father and president of the

61 Jwaideh, *Kurdish National Movement*, 215.

62 White, *Primitive Rebels or Revolutionary Modernizers?*, 79.

63 Demirel, *Tek Partinin Yükselişi*, 215.

64 Ibid., 215-216.

republic, at the opening of the Turkish Parliament on 1 November 1936 was a signal flare:

Our most important interior problem is the Dersim problem. No matter what cost, we have to remove this abscess at its roots. To deal with this problem, we will give wider powers to the government.⁶⁵

The description of Dersim as an abscess emerged both in the report of the Ministry of the Interior and the speech of Atatürk. This, in fact, overlaps with the CUP mindset the big thing the modern nation state as a social organism. In this depiction, Dersim was imagined as a defect damaging the uniformity of the nation state, and so, it needed to be treated immediately.

While it is possible to separate Dersim from Sheikh Said and Ağrı in terms of nationalistic motivation, there is no difference in the fate of the rebels. After a show trial by a military tribunal sanctioned by General Inspectorate IV, seventy-five-year-old Sayyed Rıza (the leader of rebellion) was publicly hanged together with his supporters on 15 November 1937 in Elazığ. Their bodies were exhibited all that day on the scaffold as if a part of a theatrical scene. And their bodies were not returned to their families. They were loaded onto the back of a truck and taken away. According to some, they were interred in an unmarked mass grave. Others claim their bodies were burned with gasoline.⁶⁶

Even though those accused of responsibility for the rebellion were executed, it was not an ultimate defeat by state policy. Military actions continued even into 1938 with even more brutal land and air operations. The brutality of this second operation can be traced in the writings of Nuri Dersimi, a witness of the rebellion:

Military operations resumed on an even larger scale. The Karabal, Ferhad, and Pilvank tribes, which surrendered, were annihilated. Women and children of these tribes were locked into hay sheds and burned alive. Men and women of the Pilvank and Asağı Abbas tribes, which had always remained loyal to the government, were lined up in the In and Inciga valleys and shot. The women and girls in Irgan village were

65 White, *Primitive Rebels or Revolutionary Modernizers?*, 79.

66 Kahraman, *Kürt İsyanları*, 349-352.

rounded up, sprinkled with kerosene, and set alight. Khech, the chief village of the Sheykh Mehmedan tribe, which had already surrendered, was attacked at night and all the inhabitants were killed by machine gun and artillery fire. The inhabitants of the town of Hozat and the men, women and children of the Karaca tribe were brought nearby the military camp outside Hozat and killed by machine gun. ... Thousands of women and girls threw themselves into the Munzur river. ... The entire area was covered by a thick mist caused by the artillery fire and air bombardments with poison gas. ... Even young men from Dersim who were doing their military service in the Turkish army were taken from their regiments and shot.⁶⁷

This narrative, in fact, shows that the same mechanism operating in other rebellions was in operation in Dersim in terms of not only punishing those responsible but the region as a whole. Besides, as the brutality in the narrative reveals, processes of derealization and dehumanization manifested themselves to an extreme degree. Accordingly, the whole region was described politically as a rebellious region and derealized from the normal judicial and social order of the state, unlike other regions. And so, people - regardless of whether they

67 “Dersim mıntkasında büyük manevralar bütün şiddetiyle devam ediyordu. Teslim olan Karabal, Ferhat ve Pilovank aşiretleri tamamen imha edilmişlerdi. Bu aşiretlere mensup kadın, çocuk ve ihtiyarlar samanlıklara doldurularak yakılmış ve öteden beri hükümete muti olan Pilvank ve Aşağı Abbas aşireti efrat ve aileleri dâhi İn ve İnciga vadilerinde top yekûn kurşuna dizilmişlerdi. İrgan köyünde dahi bütün kız ve kadınlar toplattırılarak üzerlerine petrol serptirilip fecî bir surette yakılmışlardı. Hükümete muti ve ordu emrine teslim olmuş olan Şeyh Mehmedan aşireti merkezî Kheç köyüne gece bir baskın yapılmış ve bir tek kişi bile istisna edilmeksizin mitralyoz ve top bonbardımanlarıyla bütün halk imha edilmişti. Hozat merkezindeki muti kürtler ve Karaca Seitleri halkı aileleriyle birlikte Hozat kışlası civarına getirilmiş ve makinalı tüfenk ateşiyle imha edilmişlerdi. ... Binlerce genç kadın ve kızlar Türk canavarlarına namuslarını teslim etmemek için kendilerini Munzur suyuna atmak suretiyle intihar ederek Kürt şerefi uğrunda ölüyorlardı. ... Mıntıkayı top ve uçakların saçtığı zehirli gaz bombardımanları kesif bir sis tabakası altına almış, yaşayan hiç bir mahluk kalmamış, yanan evlerin ve ormanların manzarası cehennemi bir hal arz ediyordu. ... 1937de askere alınıp Türk bayrağı altında hizmet etmeğe devam eden Dersimli efrad dahi mensup oldukları kıtalar arasından seçilerek istisnasız kurşuna dizdirilmişlerdi.” For detail, see Nuri Dersimi, *Kürdistan Tarihinde Dersim* (Halep: Ani Matbaası, 1952), 318-320.

were rebels or civilians - were exposed to extreme dehumanization as seen in the quotation. It is also possible to follow this process in the state archives. Although the archives do not cover the certain statement regarding the course of operations, some resources claim that 40,000 people lost their lives and 3000 families were deported as the result of these operations.⁶⁸

§ 3.3 Spectacle of Death as Manifestation of State Power

Foucault stimulates us to think about public execution as a political rather than judicial ritual. According to him, “it belongs, even in minor cases, to the ceremonies by which power is manifested.”⁶⁹ The Kurdish rebellions we discussed in the period after 1913 carry the manifestation of power to another level. State power was manifested during public executions, but also after the executions. The display of the bodies of Molla Selim for three days, Sheikh Said for half a day, and Sayyed Rıza for a full day says something about necropolitics as an effort to discipline the public sphere with threat of death. Therefore, what is rendered as a spectacle is not actually the punished bodies, but the absolute authority of the sovereign over them - namely its absolute invincibility. Without doubt, the purpose in a necropolitical manner was to “make everyone aware, through the body of the criminal, of the unrestrained presence of the sovereign.”⁷⁰ It is not the only the manifestation of punishment over those who threaten the bios of the sovereign, but the message of what will happen to those who have similar alignments with those punished.

Since the bios refers to a realm over which political and social lives are established, the punishment of rebels who rise up against this order occurs outside of this framework. Although legal trials - for example by the Independence Tribunal for Sheikh Said and by the military court for Sayyed Rıza - and the creation of Inspectorates General occupy a place within this order, they stand on the threshold of exception. While show trials before tribunals

68 Jwaideh, *Kurdish National Movement*, 216.

69 Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Vintage Books, 1995), 47.

70 Foucault, *Discipline and Punish*, 49.

without the right to appeal or even to a defense by a lawyer make this exception possible, the formation of Inspectorates General during the rebellions of Ağrı and Dersim served the resurgence of exceptional sovereignty in these regions. Law No 1850 is the peak of this exceptionality over regions and individuals; in fact, all the cases from Sheikh Said to Dersim revealed the expansion of this exceptionality over whole region and individuals besides the execution of the leaders after show trials. Unequivocally, whole regions turned into exceptional places outside of the normal judicial and social order where the only valid rule was that of the state of animality (zoë). It is also possible to observe this from the politics of leaving people unburied. Undoubtedly, it is also related to redesign underneath the vatan land. The presence and visibility of those who rise up against the bios of the sovereign are not only wiped away from on top of the land, but also from underneath it.

In fact, these cases are perfect reflections of the manifestation of state power over both bodies and legal structures, as Foucault explains:

Its [sovereign's] aim is not so much to re-establish a balance as to bring into play, as its extreme point, the dissymmetry between the subject who has dared to violate the law and the all-powerful sovereign who displays his strength. Although redress of private injury occasioned by the offence must be proportionate, although the sentence must be equitable, the punishment is carried on in such a way as to give a spectacle not of measure, but of imbalance and excess; in this liturgy of punishment there must be an emphatic affirmation of power and of its intrinsic superiority.⁷¹

§ 3.4 Summary

This chapter reveals the roots of the necropolitical mechanism of the modern Turkish state. Following a timeline from the Ottoman Empire to the Turkish republic provided a foundation to understand working of this mechanism.

The year 1913 was an important turning point in terms of the rupture and continuity from the Ottoman period to the republican years with respect to

71 Foucault, *Discipline and Punish*, 48-49.

the transformation of necropolitical violence. In the course of this historical pursuit, we observed a flashpoint in terms of necropolitical violence vis-à-vis Kurdish rebels which differ before and after 1913. Some specific cases examined strengthened this claim. For instance, while the suppression of the rebellions of Bedirxan Beg of Botan (1838-1847) and Sheikh Ubeydullah (1879-1881) show that there was still a reconciliatory mechanism in use before 1913, the post-suppression treatment of the rebellions of Molla Selim (1913) and Sheikh Abdulsalam of Barzan (1907-1914), where public executions were used as the manifestation of power, demonstrate the opposite.

Promulgation of the republic signified a victory of the modern nation state and the idea of the rule of law. However, as cases we examined in the early years of republic show, the period was characterized by an excess of necropolitical practices in which even the law itself was instrumentalized, as seen in the practices of the Independence Tribunals and Inspectorates General. I evaluate the process as a story of seizing public space with the tools of identification and disidentification in light of an ethno-religiously homogenized nation imagination in which those who oppose the project are easily cleaned from this realm even during their death as in the examples of Sheikh Said and Sayyed Rıza. Their bodies were exhibited for hours and not delivered to their families for proper burial. Moreover, their lives were already derealized when normal judicial order was thrown out in the show trials of disputable tribunals without even a defense lawyer.⁷²

Thousands in each case were also exterminated outside of normal judicial order as a part of the state politics of punishing whole regions where rebellions broke out. While this punishment was more certain for those deemed rebels or traitors, it also targeted the whole community that lived in these regions. While their lives were already derealized because they live in conflict regions, the relation of enmity contributed to the normative basis for treating those communities as expendable. Law No. 1850, enacted during the Ağrı Rebellion, proved the banality of this expendability on the basis of the dissemination of sovereignty over lives and deaths from state to local officials and ordinary people in the form of immunity from state rule.

72 Kahraman, *Kürt İsyanları*, 146.

Foucault's circular understanding of sovereignty is also important here: What is important for the sovereign is only the continuation of sovereignty regardless of acting in a monarchy or a modern nation state. Butler claims that there are always exceptional moments where sovereignty not only resurfaces in an absolute manner out of the law, but also gets supported by it.



Legal Analysis of the OHAL, 1987-2002

Lawmaking is powermaking.

– Walter Benjamin, *Critique of Violence*

Although modern democracies are a work of the rule of law, there are blind spots where authoritarian sovereignty resurges. In this chapter, I reveal these blind spots at the border between the rule of law and rule by law in light of the state of emergency experience of Turkey. In fact, the fringe rule of the state of exception has given modern sovereign powers the opportunity to constitute their own extralegal governance.

Considering Agamben's definition of the state of exception as a "point of imbalance between public law and political fact,"¹ this chapter reveals blind spots arising from this threshold: The recession of the principle of rule of law in the face of rule by law. As discussed in the theory chapter, the state of exception is the creation of a process modeled by the necessity-decision-response chain. Accordingly, certain extraordinary conditions such as war, insurgency, and civil war are subject to a consideration as political facts that need to be eliminated immediately. In this regard, it is possible to evaluate the legal dimension of the state of exception rule as a response to this legal and

1 Giorgio Agamben, *State of Exception* (Chicago: The University of Chicago Press, 2005), 1.

political urgency. While the enforcement of measures against extraordinary situations takes time under the normal judicial order, its suspension in the name of the state of exception strengthens the hand of the executive body to develop effective ways to immediately eliminate threats. However, it does not guarantee that the executive body does not use the rule of exception as an opportunity to expand its authoritarianism outside of normal social and judicial order. In fact, it implies the withdrawal of the checks and balances system - the main precursor for democracy. The state of emergency is accepted as “the creation of the democratic revolutionary tradition and not the absolute one.”² Butler best explains this situation regarding the instrumentalization of law within the field of governmentality in this way:

My own view is that a contemporary version of sovereignty, animated by an aggressive nostalgia that seeks to do away with the separation of powers, is produced at the moment of this withdrawal, and that we have to consider the act of suspending the law as a performative one which brings a contemporary configuration of sovereignty into being or, more precisely, reanimates a spectral sovereignty within the field of governmentality. The state produces, through the act of withdrawal, a law that is no law, a court that is no court, a process that is no process.³

Therefore, rule by law emerges in a realm where the law and its suspension are themselves used as tactics. Undoubtedly, processes for declaring states of emergency are a part of the constitutional law of democratic countries. That means the state of exception is, in essence, included in the rule of law. The main question, however, is what must we understand from rule by law in an environment where it is intrinsic to the rule of law? Agamben explains this on the basis of “the gradual erosion of the legislative powers of parliament.”⁴ Since extraordinary conditions that threaten state sovereignty need effective, immediate responses outside of normal judicial and legislative workings, the rule of the state of exception in modern democracies is a loophole for solving

2 Agamben, *State of Exception*, 5.

3 Judith Butler, *Precarious Life: The Powers of Mourning and Violence* (New York: Verso, 2004), 61-62.

4 Agamben, *State of Exception*, 7.

speed and time problems. Therefore, the legislative power of parliament as the main mark of the rule of law is suspended, and the process is handed over to the governance of decrees having the force of law, the main mark of rule by law. Under these circumstances, the executive body expands its powers through these decrees, to some extent free from judicial and legislative control and limits.

This situation is also true with respect to Turkey's OHAL experience. Although the OHAL regime is expected to contain some forms of legal order, it is a regime in which the illicit is rendered licit and where law and violence themselves are instrumentalized as tactics.⁵ To demonstrate this, I examine the legal status of the main texts that constitute the OHAL regime of Turkey in the 1990s: The 1982 Constitution of the Republic of Turkey, the Act on States of Emergency, and Decrees Having the Force of Law. Although this order corresponds to the hierarchical importance of the legal texts, I examine to what extent this order was preserved in Turkey's OHAL where rule by law through state of emergency decrees was more decisive in practice than the constitution and the Act on States of Emergency. While the general principle of law is that it applies to the whole of a country and is amended only through a legislative approval process, this principle was set aside by decrees issued in the state of emergency years, we discuss below. What happens if a decree is approved? They, in fact, attain the status of law after the approval process. Since this process needs a debate and approval in parliament, decrees are under the supervision and control of the legislative body. Thus, we consider three main questions along the border of the rule of law and rule by law in this chapter: How was the extralegal regime established around state of emergency decrees? What is the legal basis for bypassing the approval by parliament? What was the judicial responsibility of the regime established by the decrees regarding actions of officials in the OHAL region?

During Turkey's OHAL regime between 1987 and 2002, seventeen decrees were issued. As seen in the Table 4.1, the first was issued in 1987 and the last in 1993. Only Decree 387 was debated and approved by the General Assembly on

5 Ibid., 24.

26 January 1990.⁶ Decrees 413, 421, and 424 were repealed by the Council of Ministers without any debate and approval in the assembly.⁷ On the other hand, the last decree of the OHAL period, Decree 481,⁸ was replaced by Law No 3920.⁹ This approval and disapproval process was carried out arbitrarily without a legal basis. Thus, the sixteen unapproved decrees established their own extralegal regime within the OHAL regime of Turkey.

Table 4.1 Distribution of the Seventeen OHAL Decrees by Year, 1987-2002¹⁰

1987	1988	1989	1990	1991	1993
Decree 285	Decree 313	Decree 387	Decree 413	Decree 432	Decree 481
Decree 286	Decree 321		Decree 421		
Decree 287			Decree 424		
Decree 299			Decree 425		
			Decree 426		
			Decree 427		
			Decree 428		
			Decree 430		
4	2	1	8	1	1

In light of these, this chapter outlines the legal groundwork on which the necropolitical violence of the Turkish state against PKK fighters operated. While the issue is detailed in the next chapter, this chapter describes the legal structure and actors of OHAL rule through which necropolitical violence became possible and routine.

6 Decree 387 was issued on 30 October 1989 and became a law on 18 January 1990.

7 Decree 413 was issued on 9 April 1990 and repealed on 9 May 1990. Decree 421 was issued on 13 April 1990 and repealed on 9 May 1990. Decree 424 was issued on 9 May 1990 and repealed on 15 December 1990.

8 Decree 481 was issued on 4 March 1993 and repealed by Law 3920 on 10 December 1993.

9 Zafer Üskül, *Olağanüstü Hal Üzerine Yazılar* (Istanbul: Bükre Siyaset Yazıları, 2003), 193.

10 Data in the table are arranged according to the online catalogue of the Official Gazette between 14 July 1987 and 30 November 2002.

§ 4.1 A General Review of the OHAL Rule in Turkey

The state of exception background, in fact, is a deep-rooted tradition in Turkey. Various parts of Turkey experienced state of exception rule under the names of martial law or state of emergency for forty-one years from 1925 to 2002, corresponding to 44 percent of the ninety-four-year history of the republic (1923 to 2017).¹¹ On top of this, the latest state of emergency was announced around the time this chapter was written, on 21 July 2016, because of a failed coup d'état on 15 July 2016.¹² This historical fact pushes us to ponder

11 Dates and places of martial law:

- 24 February 1925-23 December 1927: Muş, Bingöl, Elazığ, Siirt, Diyarbakır, Mardin, Tunceli, Urfa, Bitlis, Van, Hakkari, Malatya, and Erzurum.
- 1 January 1931-9 March 1931: Menemen, Manisa, and Balıkesir.
- 20 October 1940-23 December 1947: Istanbul, Kırklareli, Edirne, Tekirdağ, Çanakkale, and Kocaeli.
- 7 September 1955-7 June 1956: Istanbul, Ankara, and Izmir.
- 28 April 1960-1 December 1961: Istanbul, and Ankara.
- 21 May 1963-20 July 1964: Istanbul, Ankara, and Izmir.
- 16 June 1970-16 September 1970: Istanbul, and Kocaeli.
- 26 April 1971-26 September 1973: Istanbul, Kocaeli, Sakarya, Zonguldak, Izmir, Eskişehir, Ankara, Adana, Hatay, Diyarbakır, and Siirt.
- 20 July 1974-2 September 1975: Istanbul, Ankara, Tekirdağ, Kırklareli, Edirne, Çanakkale, Balıkesir, Manisa, Izmir, Aydın, Antalya, Muğla, Adana, İçel, and Hatay.
- 26 December 1978-12 September 1980: Adana, Ankara, Bingöl, Elazığ, Erzincan, Erzurum, Gaziantep, Istanbul, Kahramanmaraş, Kars, Malatya, Sivas, Urfa, Adıyaman, Hakkari, Diyarbakır, Mardin, Siirt, Tunceli, Izmir, Hatay, and Ağrı.
- 12 September 1980-19 July 1987: whole country.

Dates and places of a state of emergency:

- 19 July 1987-30 November 2002: Bingöl, Diyarbakır, Elazığ, Hakkari, Mardin, Siirt, Tunceli, Van, Adıyaman, Bitlis, Muş, Batman, and Şırnak.
- 21 July 2016-present: the whole country.

For detail, see Zafer Üskül, *Siyaset ve Asker*, (Ankara: İmge Kitabevi, 1997); and Zafer Üskül, *Olağanüstü Hal Üzerine Yazılar*, (Istanbul: Büke Siyaset Yazıları, 2003).

12 The coup was organized by a faction within the military connected to the organization of the religious leader Fethullah Gülen who is accused of being the leader of the Terrorist Organization of Fethullah Gülen (FETÖ, Fethullahçı Terör Örgütü) and the Parallel State Structure (PDY, Paralel Devlet Yapılanması). The attempt was suppressed due to the involvement of

Walter Benjamin's aphorism that the state of exception "in which we live is not the exception but the rule."¹³

The forerunner of the OHAL experience in the 1990s occurred between 1927 and 1952. As mentioned in the previous chapter, the Inspectorates General in these years were similar to the experience in the 1990s. What revived the OHAL rule between 1987 and 2002, in fact, was the quasi-martial authorization of Inspectors General who were influential within a specific region under their domain. Therefore, Inspectorates General can be considered a prototype of the Governorate of the State of Emergency Region in many ways. First, the reason for their emergence is the same: To immediately respond to extraordinary situations and consolidate public order and security within the region under their domain. In both cases, the authority of Inspectors General and governors over local officials and security forces is absolute. And lastly, both establishments have carried out their acts with a guarantee of judicial impunity, outside of normal social and judicial order. While for Inspectorates General it was certain with the support of laws like Law No. 1850 during Ağrı Rebellion, it was implemented in a complex way for the OHAL regime of the 1990s with the decrees of the state of emergency. To clear up this complexity, it would be beneficial to focus on the workings of the OHAL regime in Turkey.

In theory, the state of exception refers to a threshold relation between public law and political fact, so it is possible to approach the OHAL experience in Turkey in light of this framework. The ongoing war between the PKK and Turkey since 1984 was accepted as a political fact and labeled terrorism. After the fact was determined in this way, fighting against terrorism emerged as a necessary action.

common people upon the invitation of the president, Recep Tayyip Erdoğan: "Go to the streets and give them their answer." For detail, see "How the Turkish government regained control after a failed military coup," *Washington Post*, July 18, 2016, accessed July 18, 2016, <https://www.washingtonpost.com/graphics/world/turkey-military-coup/>.

- 13 Walter Benjamin, "On the Concept of History," in *Walter Benjamin: Selected Writings* (Volume:4 1938-1940), ed. H.Eiland & M. W. Jennings (Cambridge: Harvard University Press, 2003), 392. Benjamin is implying the rise of fascist governments in Europe between the two great wars.

Reflecting this necessity, state of emergency rule in Southeastern Turkey was put in effect between 1987 and 2002. This exceptional rule was put in place to establish and maintain public order and consolidate state sovereignty which had been in crisis in the southeast since the PKK's first armed attacks against Turkish Armed Forces (Türk Silahlı Kuvvetleri or TSK) on 15 August 1984. Returning to the necessity-decision-response chain, we can describe the Turkish state as a sovereign power that needs to reestablish its authority over Turkey's southeast against the counter-sovereign authority of the PKK. The response of Turkey on 19 July 1987 was to form an emergency administration covering eight provinces in Turkey's southeast: Bingöl, Diyarbakır, Elazığ, Hakkari, Mardin, Siirt, Tunceli, and Van. Then, the provinces of Adıyaman, Bitlis, and Muş were added with a special status of "neighboring provinces" (*mücavir il*). On 6 May 1990, the newly created provinces of Şırnak and Batman were added to the list. To implement OHAL rule in these provinces, the Governorate of the State of Emergency Region was established. The governorate was originally established as a part of the Ministry of the Interior, and governors of this body were long nicknamed "Süper Valiler" (super-governors) as a result of their extraordinary powers.¹⁴ That the police forces in the region and National Intelligence Agency (Milli İstihbarat Teşkilatı) personnel were directly accountable to the governor shows the extraordinary extent of the powers they enjoyed. Similarly, the Gendarmerie Security Command (Jandarma Asayiş Komutanlığı) was established in 1987 by the authorization of the Governorate of the State of Emergency Region, showing its clear increase in extraordinary power over the armed forces, as well. To underscore the consolidation of authority in the hands of the Governor of the State of Emergency Region, Doğan Güreş, the Chief of the General Staff (Genelkurmay Başkanı) from 1990 to 1994, explains the position of the TSK in the face of the Governorate of the OHAL region in an interview:

Security Command in the region takes its orders from the Governor of the State of Emergency Region. On the other hand, the Governor

14 Governors of the State of Emergency Region were Hayri Kozakçıoğlu (1987-1991), Mehmet Necati Çetinkaya (1991-1992), Ünal Erken (1992-1995), Necati Bilican (1995-1997), Aydın Arslan (1997-1999), and Gökhan Aydın (1999-2002).

takes instructions from the Ministry of the Interior. ... The General Staff provides support troops, new weapons system, military equipment, and training at the request of the Security Command, and provides air support when needed. Command of ongoing operations in the region is not carried out by the General Staff.¹⁵

All these powers held by the governor of the OHAL region turned it into a “super-region” where a great deal of the responsibility over all acts and practices of local officials and security and military forces was handed over to the Governor of the State of Emergency Region. Without doubt, these powers were delegated to the governor by national law as a result of a threat perception to re-consolidate public order and state sovereignty in the region vis-à-vis the PKK.¹⁶ Under these circumstances, the state of emergency was renewed forty-six times for four months at a time; this continuous state-of-emergency rule was thus extended up to 30 November 2002.

The OHAL region was a place where general state rule was suspended by national state law. That is to say, the general state rule that applied to all other citizens of the country was suspended between 1987 and 2002 for those who lived in the OHAL region. This is the best indicator of the derealization of citizenship for those who lived in the region outside of general social and judicial order - of the production of bare lives. But did it truly lead to an exclusion relation with the general state law? In practice, what happened during the 1990s in the emergency region in the southeast can be interpreted as inclusionary exclusion in the form Agamben deals with. Accordingly, the state of emergency region was separated from the general legal and social order. However, that does not imply a strict exclusion relationship. On the contrary, this

15 “Bölgedeki Asayiş Komutanlığı görevlerini Olağanüstü Bölge Valisi'nden alır. O da İçişleri Bakanlığı'ndan talimat almaktadır. ... Genelkurmay Başkanlığı Asayiş Komutanlığı'nın talep ettiği destekçi birlik, yeni silah sistemi, malzeme ve eğitim olarak karşılanmakta, ihtiyaç duyulduğunda hava desteği tahsis etmektedir. Bölgede sürdürülen operasyonların sevk ve idaresi Genelkurmay Başkanlığınca yürütülmemektedir.” For detail, see Mehmet Ali Kışlalı, *Düşük Yoğunluk Çatışma* (Ankara: Ümit Yayıncılık, 1996), 218.

16 “Bir yıldönümü hikayesi: OHAL,” *Sol*, July 19, 2002, accessed July 19, 2016, <http://haber.sol.org.tr/serbest-kursu/bir-yildonumu-hikayesi-ohal-ozkan-oztas-haberi-57178>.

happened on the basis of political inclusion in which the region was accepted as a zone of political anomie that needed to be overcome immediately. Owing to this urgency, Agamben's "inclusive exclusion" appears at the point where "fact and law are indistinguishable."¹⁷ In fact, the inclusive exclusion itself turns the status of people who live in the emergency region into bare lives. However, there is still a legal order applied to them, which is the legal order of the state of emergency in which they still have an opportunity to be included into the bios of the state with the help of disciplinary and biopolitical powers. But what happens to those who reject the bios - namely, the sovereignty project of the state? How do the legal mechanisms of OHAL operate over them? Is it a punishment relation meeting to the appearance of necropolitical violence that will emerge to decide whose life is more valuable and should be included in the bios, and whose life is expendable, even with judicial impunity? In brief, what kind of a law resurges from these blind spots? Could it be the law of the state of animality (zoë) where all tools of dehumanization beyond derealization are in operation over those declared enemies of the state with the labels of the rebel, traitor, or terrorist?

The construction of enmity and its propagandizing from the sides of the state and society in a contractual manner contributed to the emergence of violence outside of normal social and judicial order. The relation of enmity and judicial impunity are facilitative factors, especially for the resurgence of a strict sovereignty in modern democracies on the pretext of a state of exception. Alongside this theoretical framework, historical analysis of Turkey provides the groundwork to observe this framework. Suppression of Kurdish rebellions in the early years of the republic enroute to becoming a modern democracy represent the best examples of this groundwork. As analyzed in the previous chapter, show trials for the rebels (as seen in the cases of Sheikh Said and Dersim) in exceptional courts such as the Independence Tribunals and Military Tribunals, as well as the implementation of Law No. 1850 following the suppression of the Ağrı Rebellion served political ends outside of normal judicial order. Moreover, the formation of Inspectorates General meant the possibility

17 Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Stanford: Stanford University Press, 1998), 27.

of exceptional social order outside of the normal one. No doubt, these exceptions became reality in the name of the reconsolidation of sovereignty. As in the popular slogan of nationalist circles, if sovereignty is in question, whether or not the actions are within the social and judicial order is insignificant. As the history of the early years of Turkey shows, the management of this politics is best observed in the governance of death and dead bodies. What all these historical experiences evoke is the reality regarding the nature of states of exception in which “the state produces, through the act of withdrawal, a law that is no law, a court that is no court, a process that is no process.”¹⁸

4.1.1 *The Formation of Rule by Law vs. Rule of Law in Legal Texts*

In the constitutional history of Turkey, there are three main texts that regulate states of exception in a legal sense: The constitutions of 1924, 1961, and 1982. It is worth noting that the regulation of states of emergency is first introduced in the Constitution of 1982; the previous constitutions only regulated the principles of martial law and the state of war.¹⁹ Moreover, the latter two constitutions (of 1961 and 1982) are works of their own exceptional circumstances, namely the military coup d'états of 1960, 1971, and 1980. The state of exception asserted itself in each case as martial law which, in general, refers to the withdrawal of the executive, legislative, and judicial branches in favor of military rule. Namely, these branches were seized by military authorities after the coups in order to eliminate public disorder and conflicts - the reasons given for the enforcement of coup d'états and martial law. With the help of military law, military justice, and military tribunals, civil law was suspended.²⁰

18 Judith Butler, *Precarious Life: The Powers of Mourning and Violence* (New York: Verso, 2004), 61-62.

19 For related articles, see Article 86 in the Constitution of 1924 and Articles 123 and 124 in the Constitution of 1961. Republic of Turkey, “1924 Anayasası,” accessed February 5, 2016, <https://www.tbmm.gov.tr/anayasa/anayasa24.htm>; and Republic of Turkey, “1961 Anayasası,” accessed July 20, 2016, <https://www.tbmm.gov.tr/anayasa/anayasa61.htm>.

20 For detailed analysis of coup d'états and martial law in 1960 and 1980, see Zafer Üskül, *Siyaset ve Asker* (Ankara: İmge Kitabevi, 1997).

Joakim Parslow, in his study analyzing the formation of exceptional law in Turkey from the point of lawyers' compromises and contradictions, underlines two principal factors concerning the legitimacy of exceptional rules: "the extent to which it had 'democratic goals' and the extent to which it remained within the legally defined limits of states of emergency."²¹ While the first criteria is contentious especially in terms of constitutional outcomes,²² Parslow clearly claims that the second criteria was not fulfilled by the three coup d'états: "The 1971 and 1980 interventions, in contrast, installed regimes of exception whose suspension of the constitutional order was exacerbated by their 'authoritarian goals.'"²³ Without disregarding the authoritarian undertones of rule by law, Parslow nevertheless mentions that rule by law "depends on upholding at least a credible semblance of adhering to the rule of law."²⁴ From this point of view, I trace the following question: To what extent was the rule of law principle preserved in the OHAL rule of Turkey in the face of the establishment of rule by law with the decrees of the state of emergency?

4.1.1.1 OHAL in the Constitution of 1982

When we look at the Constitution of 1982, we see that the forms of states of exception outlined in Articles 119, 120, 121 and 122 included a state of emergency, martial law, mobilization, and the state of war under the broader heading of extraordinary administration procedures.²⁵

21 Joakim Parslow, "Lawyers on the Barricades: The Politics of Exceptional Law in Turkey, 1930-1980" (PhD diss., University of Washington, 2014), 2.

22 Among the three constitutions (of 1924, 1961, and 1982), the Constitution of 1961 is the most democratic and based on human rights. On the other hand, these features of the Constitution of 1961 were withdrawn in the more state-centric, authoritarian Constitution of 1982. For detail, see Zafer Üskül, "Turkey's Democratization and European Union," *Turkish Policy Quarterly* Fall (2002), accessed July 25, 2016, <http://turkishpolicy.com/article/22/turkeys-democratization-and-the-european-union-fall-2002>.

23 Parslow, "Lawyers on the Barricades," 2.

24 Ibid., 15.

25 While the first three concern the extraordinary administration procedures in states of emergency, Article 122 concerns the procedures for martial law, military mobilization, and a state of war. For detail, see Republic of Turkey, "The Constitution of 1982," retrieved 10 July 2016, from https://global.tbmm.gov.tr/docs/constitution_en.pdf.

The first two articles underline two conditions with regard to the declaration of a state of emergency. Article 119 includes conditions of “natural disaster, dangerous epidemic diseases or a serious economic crisis” as the main necessities for declaring a state of emergency.²⁶ Article 120, on the other hand, draws a framework around the conditions of “serious indications of widespread acts of violence aimed at the destruction of the free democratic order established by the Constitution or of fundamental rights and freedoms, or serious deterioration of public order because of acts of violence.”²⁷ Article 120 is directly relevant to the topic of OHAL rule in the southeast (1987-2002), and other articles from the Constitution and the Act on States of Emergency will be analyzed in light of this framework.

As stated in the continuation of Article 120, the Council of Ministers under the direction of the President of the Republic is authorized to declare a state of emergency after consulting with the National Security Council (Milli Güvenlik Konseyi). Such declaration may pertain to one or more regions (as in our example of Southeastern Turkey) or it can be declared for the country as a whole.²⁸ In terms of duration, it shall not exceed a period of six months. As highlighted in Article 121, this duration may be extended for periods of a maximum of four months at a time or completely lifted only by the decision of the TBMM (Türkiye Büyük Millet Meclisi, Grand National Assembly of

26 Article 119: “In the event of natural disaster, dangerous epidemic diseases or a serious economic crisis, the Council of Ministers meeting under the chairpersonship of the President of the Republic may declare a state of emergency in one or more regions or throughout the country for a period not exceeding six months.” Ibid.

27 Article 120: “In the event of serious indications of widespread acts of violence aimed at the destruction of the free democratic order established by the Constitution or of fundamental rights and freedoms, or serious deterioration of public order because of acts of violence, the Council of Ministers, meeting under the chairpersonship of the President of the Republic, after consultation with the National Security Council, may declare a state of emergency in one or more regions or throughout the country for a period not exceeding six months.” Ibid.

28 For example, the most recent state of emergency, declared on 21 July 2016, covers the whole country.

Turkey). Article 121 is also notable for laying out the details of the post-declaration process.²⁹ It is possible to evaluate three separate aspects of this process: The procedure of entry into force, procedures of the restriction or suspension of fundamental rights and freedoms, and the tasks of public servants and procedures regarding the enactment of decrees having the force of law on matters necessitated by the state of emergency.

According to the article, the decision to declare a state of emergency is to be published in the official gazette. Then, the decision must be submitted to the TBMM for debate and approval that same day. In this regard, the article is clear that “if the Grand National Assembly of Turkey is in recess, it shall be immediately assembled.” Moreover, authorization related to the renewal or repeal of the state of emergency also belongs to parliament.

The most controversial point about the state of emergency legislation is related to the restriction or suspension of fundamental rights and freedoms.

29 Article 121: “In the event of a declaration of a state of emergency under the provisions of Articles 119 and 120 of the Constitution, this decision shall be published in the Official Gazette and shall be immediately submitted to the Grand National Assembly of Turkey for approval. If the Grand National Assembly of Turkey is in recess, it shall be immediately assembled. The Assembly may alter the duration of the state of emergency, may extend the period for a maximum of four months each time at the request of the Council of Ministers, or may lift the state of emergency.

The financial, material and labour obligations which are to be imposed on citizens in the event of the declaration of state of emergency under Article 119 and the manner how fundamental rights and freedoms shall be restricted or suspended in line with the principles of Article 15, how and by what means the measures necessitated by the situation shall be taken, what sorts of powers shall be conferred on public servants, what kinds of changes shall be made in the status of officials as long as they are applicable to each kinds of states of emergency separately, and the extraordinary administration procedures, shall be regulated by the Act on State of Emergency.

During the state of emergency, the Council of Ministers, meeting under the chairpersonship of the President of the Republic, may issue decrees having the force of law on matters necessitated by the state of emergency. These decrees shall be published in the Official Gazette, and shall be submitted to the Grand National Assembly of Turkey on the same day for approval; the time limit and procedure for their approval by the Assembly shall be indicated in the Rules of Procedure.” Ibid.

In this regard, Article 121 points to Article 15 of the constitution. Every restriction or suspension must be in line with Article 15, which states:

In times of war, mobilization, martial law, or a state of emergency, the exercise of fundamental rights and freedoms may be partially or entirely suspended, or measures derogating the guarantees embodied in the Constitution may be taken to the extent required by the exigencies of the situation, as long as obligations under international law are not violated.³⁰

Undoubtedly, those rights guaranteed by international law are inalienable rights. Given this, the European Convention on Human Rights is the most applicable international agreement to Turkey because the European Court of Human Rights is its enforcement mechanism.³¹ Article 15 of the convention regulates derogation in times of emergency and clearly emphasizes the inviolability of Articles of 2, 3, 4, and 7, which respectively concern the right to life, prohibition of torture, prohibition of slavery and forced labor, and prohibition of punishment without law.³²

When it comes to decrees having the force of law, the Constitution of 1982 made a distinction between decrees issued in normal times and decrees issued in a state of emergency. According to Article 91, which regulates the procedures for decrees in normal times, the TBMM is responsible for empowering

30 Ibid.

31 Turkey has been a party since 1954.

32 European Convention, “European Convention on Human Rights,” retrieved 20 June 2016, from http://www.echr.coe.int/Documents/Convention_ENG.pdf. Nevertheless, a report on human rights violations in the OHAL region prepared by then president of the Diyarbakır Bar Association, Sezgin Tanrıkulu, and a lawyer colleague, Serdar Yavuz, expresses deep suspicion of the inviolability of these articles with respect to extrajudicial killings and losts under custody. According to the report, 25,344 PKK militants, 3,541 security forces, and 5,105 civilians - 33,990 people in total - lost their lives between 1987 and 2002. 471 people were killed in unsolved murders and 194 people were recorded as lost. Moreover, there were 1177 registered claims of torture. For detail, see Sezgin Tanrıkulu and Serdar Yavuz, “İnsan Hakları Açısından Olağanüstü Hal’in Bilançosu,” *Sosyal Bilimler Araştırma Dergisi* 6 (2005), 493-521.

the Council of Ministers to issue these decrees.³³ These decrees are prohibited from regulating fundamental rights, individual rights, and individual duties (included in the first and second chapters of the second part of the constitution) and political rights and duties (listed in the fourth chapter), with the exception of martial law and states of emergency. That implies that any kind of regulation or restriction is possible in decrees issued in a state of emergency with the exceptions of the right to life, prohibition of torture, prohibition of

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- 33 Article 91: “The Grand National Assembly of Turkey may empower the Council of Ministers to issue decrees having the force of law. However, with the exception of martial law and states of emergency, the fundamental rights, individual rights and duties included in the first and second chapters and the political rights and duties listed in the fourth chapter of the second part of the Constitution, shall not be regulated by decrees having the force of law.

The empowering law shall define the purpose, scope, and principles of the decree having the force of law, the operative period of the empowering law, and whether more than one decree will be issued within the same period.

Resignation or fall of the Council of Ministers, or expiration of the legislative term shall not cause the termination of the power conferred for the given period.

When approving a decree having the force of law by the Grand National Assembly of Turkey before the end of the prescribed period, it shall also be stated whether the power has terminated or will continue until the expiry of the period.

Provisions related to issuing decree having the force of law issued by the Council of Ministers meeting under the chairpersonship of the President of the Republic in time of martial law or states of emergency, are reserved.

Decrees having the force of law shall come into force on the day of their publication in the Official Gazette. However, a later date may be indicated in the decree as the date of entry into force. Decrees shall be submitted to the Grand National Assembly of Turkey on the day of their publication in the Official Gazette.

Empowering laws, and decrees having the force of law which are based on them, shall be debated in the committees and in the Plenary of the Grand National Assembly of Turkey with priority and urgency.

Decrees not submitted to the Grand National Assembly of Turkey on the day of their publication shall cease to have effect on that day and decrees rejected by the Grand National Assembly of Turkey shall cease to have effect on the day of publication of the resolution in the Official Gazette. The amended provisions of the decrees that are approved as amended shall go into force on the day of their publication in the Official Gazette.”

Republic of Turkey, “The Constitution of 1982,” https://global.tbmm.gov.tr/docs/constitution_en.pdf.

slavery and forced labor, and prohibition of punishment without law. Decrees in normal times come into force on the same day they are published in the official gazette unless a different date is specified within the decree itself. They must be submitted to the assembly on the same day as their publication in the official gazette, and they are given priority and must be urgently debated in committees and the plenary of the assembly. Otherwise,

decrees not submitted to the Grand National Assembly of Turkey on the day of their publication shall cease to have effect on that day and decrees rejected by the Grand National Assembly of Turkey shall cease to have effect on the day of publication of the resolution in the Official Gazette. The amended provisions of the decrees that are approved as amended shall go into force on the day of their publication in the Official Gazette.³⁴

On the other hand, the procedure regarding decrees issued in a state of emergency are regulated by Article 121. Accordingly, the Council of Ministers chaired by the President of the Republic has the right to issue decrees on matters necessitated by the state of emergency. They “shall be published in the Official Gazette, and shall be submitted to the Grand National Assembly of Turkey on the same day for approval.”³⁵ However, the same article gives the Procedures of Parliament (*Meclis İktüzüğü*) authorization to determine the time limit and conditions for approval. Nevertheless, the TBMM made no such regulation until 1996. According to a regulation dated 24 May 1996, the time limit was determined as thirty days. That means decrees of states of emergency, which are submitted to the assembly, shall be immediately debated in committees and the plenary of the assembly and concluded within thirty days. They take priority over other decrees in normal times, draft laws, and bills.³⁶

34 Ibid.

35 Ibid.

36 Republic of Turkey, “Millet Meclisi İktüzüğünün Başlığı ile Bazı Maddelerinin Değiştirilmesi ve Bu İktüzüğe Bazı Maddeler Eklenmesi Hakkında Karar,” Official Gazette, 24 May 1996, Decree No: 424, retrieved 25 July 2016, from <http://www.resmigazete.gov.tr/main.aspx?home=http://www.resmigazete.gov.tr/arsiv/22645.pdf&main=http://www.resmigazete.gov.tr/arsiv/22645.pdf>.

However, this situation led to a controversy in terms of the legality of decrees put in practice before May 1996. As mentioned at the beginning of this chapter, all decrees of the state of emergency were put into practice in the period from 1987 to 1993, which is to say before 1996.

A decree - regardless of one in normal times or one in a state of emergency - attains the status of law after the approval process. Since this is a process of debate and approval in parliament, approval is under the supervision and control of the legislative body. Therefore, although decrees are subjected to parliamentary approval according to the 1996 Procedures of the Turkish Assembly, decrees issued in the OHAL years remained outside of the framework of legal checks and balances. This situation led to an arbitrariness in the use of approval power through bypassing the legislative body as control and supervision mechanism. That means, at the same time, an increase in the power of the executive body facilitated by rule by law vis-à-vis the legislative body representing the rule of law.

Considering the tasks of public servants and procedures regarding the enactment of decrees of the state of emergency, an impunity protection is provided. Although Article 125 of the constitution clearly points out that “recourse to judicial review shall be available against all actions and acts of administration,”³⁷ Article 148 states that “decrees having the force of law issued during a state of emergency, martial law or in time of war shall not be brought before the Constitutional Court alleging their unconstitutionality as to form or substance.”³⁸ The routine practice is that the constitutionality of both form and substance is examined by the Constitutional Court for only laws, decrees having the force of law in normal times, and the Procedures of the Turkish Assembly.³⁹ Therefore, Article 148 is itself a constitutional protection with respect to the constitutionality discussion on decrees issued in a state of emergency.

37 Republic of Turkey, “The Constitution of 1982,” https://global.tbmm.gov.tr/docs/constitution_en.pdf.

38 Ibid.

39 Formal criteria refer to the organ that performs the procedure and implementation of the procedure regardless of type and content of the procedure. On the other hand, substantive

The constitutionality of the form and substance of decrees issued in a state of emergency can only be discussed after they attain the status of law through the approval process. That is to say, the prohibition of constitutional supervision over the decrees issued in a state of emergency only applies to the stage before approval.⁴⁰ However, that does not mean there is no authority of the Constitutional Court over these decrees. This situation was clarified by the appeal of the main opposition party of the time, the SHP (Sosyal Demokrat Halkçı Parti, Social Democratic Populist Party) to the Constitutional Court in 1990 and 1991 to cancel some articles of Decrees 424, 425, and 430 on the basis that they contradict the constitution and the Act on States of Emergency. As the decision of Constitutional Court dated 10 January 1991 shows, while Article 148 seems to authorize rule by law outside of the rule of law, in fact, there are restrictions. The minimum conditions pointed out in the decision include limits on necessity, duration, and the region of states of emergency.⁴¹

The Act on States of Emergency is a general law that applies to the whole country. This Act and measures arising from it are put into effect throughout the country when a state of emergency is declared. Decrees described by Article 121 of the Constitution are to make regulations on

criteria refer to the content of the procedure regardless of the organ and form of implementation. For detail, see Kemal Gözler, *Kanun Hükmünde Kararnamelerin Hukuki Rejimi* (Bursa: Ekin Kitabevi Yayınları, 2000), 221.

40 Ergun Özbudun, *Türk Anayasa Hukuku* (Ankara: Yetkin Yayınları, 1986), 208-209.

41 However, the main principle here is application to the Constitutional Court. Since the application only contains Decrees 424, 425, and 430, the decision of the court has been only applied to these decrees. Moreover, the Constitutional Court cannot make a decision on its own without an application, and its decisions cannot be applied to other decisions. For example, a similar process was undertaken with respect to the most recent state of emergency in Turkey in 2016. The CHP (Cumhuriyet Halk Partisi, Republican People's Party) applied to the Constitutional Court to cancel of some articles of decrees of the state of emergency based on the decision of court in 1991. However, the Constitutional Court rejected the application, criticizing its own 1991 decision. That has introduced an arbitrariness into the case law of the Constitutional Court. For detail, see "Turkish Constitutional Court rejects CHP's appeal to annul decree laws," *Hürriyet Daily News*, October 12, 2016, accessed October 14, 2016, <http://www.hurriyetdailynews.com/turkish-constitutional-court-rejects-chps-appeal-to-annul-of-decree-laws.aspx?pageID=517&nID=104889&NewsCatID=338>.

issues necessitated by the state of emergency and are valid only for the state of emergency region during the state of emergency. ... On the other hand, rules that do not meet the standard of a state of emergency decree fall under the supervision of the Constitutional Court.⁴²

Considering Articles 91, 121, and 148 together, we conclude that “rule by law” was convenient for the period from 1987 to 1996.⁴³ To put it bluntly, the executive body expanded its sovereignty over the OHAL region between these dates, with the help of the decrees issued in the state of emergency outside of the general judicial order and under the safeguard of Article 148. That means that the executive body created its own extralegal status with judicial impunity in this region between these years.

4.1.1.2 OHAL in the Act on States of Emergency

In addition to these legal texts regulating the state of emergency rule in Turkey, another important one is the Act on States of Emergency No.2935 dated 27 October 1983.⁴⁴ In fact, the first state of emergency in Turkey was declared on 19 March 1984 just after the abolition of the martial law that had been put into effect following the military coup of 12 September 1980.⁴⁵ It was part of the transition process from martial law to ordinary rule, and the state of emergency was finally removed in Istanbul on 19 November 1988.⁴⁶ While the transition to ordinary rule was brought about in this way for most parts of the country, a very different legality was in operation for Kurdish provinces in the southeast. While the state of emergency was gradually phased out throughout

42 “Anayasa Mahkemesinin 10 Ocak 1991 Tarih ve E.1990/25, K.1991/1 Sayılı Kararı,” *Anayasa Mahkemesi Kararlar Dergisi* 27, 105.

43 That is, from the start of the OHAL rule in the southeast to the regulation of Article 128 in the Procedures of the Turkish Assembly.

44 Republic of Turkey, “Olağanüstü Hal Kanunu,” Official Gazette, 27 October 1983, Law No: 2935, retrieved 27 July 2016, from <http://www.resmigazete.gov.tr/arsiv/18204.pdf>.

45 Üskül, *Olağanüstü Hal Üzerine Yazılar*, 75.

46 Ibid., 75.

most of the country, on 20 May 1987 the TBMM decided to continue it in Diyarbakır, Hakkari, Mardin, and Siirt.⁴⁷ Before detailing the legal structure of OHAL rule in these provinces, a quick look at the context of the Act on States of Emergency of 1983 is helpful.

Responsibilities and measures to be taken in cases of natural disaster or dangerous epidemic disease, a serious economic crisis, and violent acts are regulated separately in three parts of the act. In the context of our topic, we consider only the responsibilities and measures related to violent acts. These are listed in Article 9 as: Settlement restriction, ban, or evacuation; education suspension and dormitory closure; control, closure, or use, if necessary, of entertainment places, clubs, and accommodations; use or expropriation of all communication tools in the state of emergency region; control, restriction, or ban of foodstuffs, animals, animal products, and products of heating, hygiene, and medicine; registration or ban of transportation vehicles in the region; curfew; assembly ban in certain places or at certain hours; body and vehicle search; obligation to carry identity card for people in the emergency region; permission or ban on printing, duplication, publication, distribution, and confiscation of newspapers, magazines, brochures, books, pamphlets, posters, and etc. in the region and permission or ban of their import into the region if printed outside of the region; control or ban on words, texts, images, movies, records, and cassettes; ban on carrying of any kind of gun for bullet even if licensed; control of entry and exit to the region; ban on the settlement of people considered suspicious and their deportation from the region; and permission, delay, control, or ban on meetings and demonstration marches.⁴⁸

The third part of the act is devoted to organs and implementation. According to Article 12, the State of Emergency Coordination Committee of Prime Ministry is formed to coordinate amongst the ministries regarding matters that led to the declaration of the state of emergency.⁴⁹ Article 14 states that the

47 Hakan Balcanlı, “Cumhuriyet Dönemi Olağanüstü Bölge Yönetim Uygulamaları (Umumi Müfettişliklerden Olağanüstü Hal Bölge Valiliğine)” (PhD diss., Ankara University, 2012), 155.

48 Republic of Turkey, “Olağanüstü Hal Kanunu.”

49 Madde 12: “Olağanüstü hal ilanında koordinasyon Başbakanlıkça sağlanır. Başbakanlıkta bunun için, olağanüstü hal ilanına sebep olan konu ile ilgili bakanlıklar temsilcilerinden

implementation of duties and powers belongs to the governor of province if the state of emergency covers only one province, the governor of the region if the state of emergency covers multiple provinces, or the governors of the regions under the coordination and cooperation of the Prime Ministry if the state of emergency covers multiple regional governorates or the country as a whole.⁵⁰ Regional governors may delegate some or all of their duties and powers to provincial governors in the provinces in which the state of emergency is declared.

In the prevention and suppression of social events, regional and provincial governors can use police and gendarmerie forces under their command (Articles 21 and 22). If these fail, they have the right to appeal to neighboring regional governorates and to the highest military commander in the region. Military forces fulfill the tasks given to it by the regional governor under the direction of their own commander. If there is need for cooperation or coordination between security and military forces, the responsibility for it belongs to the commander of the military force.

Articles 25, 32, and 33 are important in terms of addressing the subject of criminal and disciplinary penalties against the actions of regional and provincial governors and other personnel within the state of emergency region. According to Article 25, those who work against the measures, commands, and tasks given by governors in light of this act are to be imprisoned from one to

oluşan Başbakanlık Olağanüstü Hal Koordinasyon Kurulu kurulur. Bundan ayrı olarak Kurula katılan bakanlıklarda da merkez kuruluş içinde bir ünite görevlendirilebileceği gibi özel bir ünite de kurulabilir. Başbakanlık Olağanüstü Hal Koordinasyon Kurulunun, kuruluş ve çalışma esasları çıkarılacak yönetmelikte gösterilir.” Ibid.

50 Madde 14: “Olağanüstü halin uygulanmasında görev ve yetki:

- a) Olağanüstü hal bir ili kapsıyorsa il valisine,
- b) Bir bölge valiliğine bağlı birden çok ilde ilan edilmesi halinde bölge valisine.
- c) Birden fazla bölge valisinin görev alanına giren illerde veya bütün yurttan ilan edilmesi halinde, koordine ve işbirliği Başbakanlıkça sağlanmak suretiyle bölge valilerine.

Aittir. Gerekli işlemler onlar tarafından yürütülür.

Bölge valileri; kendilerine ait görev ve yetkilerin bir kısmını veya tamamını, illerinde olağanüstü hal ilan edilen il valilerine devredebilirler.” Ibid.

six months.⁵¹ Article 32 emphasizes that public servants other than regional and provincial governors and judicial and military servants are to be handed disciplinary penalties such as a warning, condemnation, and for the cut of their salaries in cases where they do not fulfill, neglect, or fail at their tasks.⁵² In addition, Article 33 blocks the decisions regarding the stays of execution for lawsuits that are prosecuted against the administrative acts of governors arising from this act.⁵³

Given the structure of the Act on States of Emergency, the aforementioned articles are effectively implemented through decrees of the state of emergency. In this regard, Article 4 of the act emphasizes that

during the state of emergency, the Council of Ministers, meeting under the chairpersonship of the President of the Republic, may issue decrees having the force of law on matters necessitated by the state of emergency without restrictions and procedures in accordance with Article 91 of the Constitution. These decrees shall be published in the Official Gazette, and shall be submitted to the Grand National Assembly of Turkey on the same day for approval.⁵⁴

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- 51 Madde 25: “Bölge valisi veya il valisi tarafından, bu Kanun veya diğer kanunlarla verilen yetkilere dayanılarak alınan tedbirlere aykırı hareket edenler, emirleri dinlemeyenler veya istekleri yerine getirmeyenler veya kimliklerine dair kasten veya gerçeğe aykırı bilgi verenler veya bilgi vermekten çekinenler, fiilleri başka bir suç oluştursa bile ayrıca bir aydan altı aya kadar hapis cezasıyla cezalandırılırlar.” Ibid.
- 52 Madde 32: “Bölge valisi ve görevlendirilmeleri veya görevli olmaları halinde il valisi, adli ve askeri personel hariç olmak üzere bölgelerinde çalışan ve Devlet Memurları Kanunu kapsamına giren bütün personele bu Kanun uyarınca verilen görevleri yapmamaları veya savsaklamaları veya alınan tedbirlere uymamaları halinde, tabi oldukları disiplin mevzuatında bu fiillerin disiplin cezasını gerektirip gerektirmediğine bakılmaksızın, durumun ağırlığını dikkate alarak uyarma, kınama ve aylıktan kesme disiplin cezalarını doğrudan doğruya vermeye ve uygulamaya yetkilidirler.” Ibid.
- 53 Madde 33: “Valilerin bu Kanunun verdiği yetkileri kullanarak yapacakları idarî işlemlere karşı açılacak davalarda yürütmenin durdurulmasına karar verilemez.” Ibid.
- 54 Madde 4: “Olağanüstü hal süresince, Cumhurbaşkanının başkanlığında toplanan Bakanlar Kurulu, olağanüstü halin gerekli kıldığı konularda Anayasanın 91 inci maddesindeki kısıtlamalara ve usule bağlı olmaksızın, kanun hükmünde kararnameler çıkarabilir. Bu

Agamben remarks that “necessity creates its own law.”⁵⁵ At this juncture, the state of emergency is on the threshold of the rule of law and rule by law. The crucial importance of the decrees having the force of law also emerges on this threshold. The general structure regarding the OHAL in the constitution and in the Act on States of Emergency, as well as the position of decrees having the force of law in these legal texts, say something about the framework of the rule of law. The implementation of every act related to rule in the state of emergency, including the implementation of decrees, is expressed according to a legal framework. Undoubtedly, this legal framework serves the fulfillment of necessary, immediate action in the emergency region out of normal judicial order, which would take more time. However, the reality is that some extralegal actions are possible apart from this general structure. In reality, rule by law represses the rule of law with the help of decrees.

Considering Article 121 of the constitution and Article 4 of the Act on States of Emergency together, the crucial position of decrees in the ruling regime of the OHAL becomes apparent. Both articles, in fact, cast suspicion on the implementation of OHAL acts and practices with the ambiguous phrase: “matters necessitated by the state of emergency.” No doubt, ambiguousness on these matters and the lack of a legislative approval mechanism led to a limitless, uncontrolled, and thus arbitrary resurgence of sovereignty in the hands of Governors of the State of Emergency Region with judicial immunity, at least until 1996. As the law is instrumentalized as a tactic in the hands of the executive body, the balance of powers shifts in favor of the executive.

In light of this legal framework, how was such an extralegal regime with judicial impunity established in a practical way around the decrees of the state of emergency during Turkey’s OHAL.

4.1.2 *The Formation of Rule by Law vs. Rule of Law in Practice*

Considering Article 128 within the Procedures of the Turkish Assembly in 1996, the arbitrariness of the approval and repeal process regarding the decrees

kararnameler Resmî Gazetede yayımlanır ve aynı gün Türkiye Büyük Millet Meclisinin onayına sunulur.” Ibid.

55 Agamben, *State of Exception*, 24.

of state of emergency is evident. Indeed, the sixteen unapproved decrees established an extralegal regime in the OHAL region, contributed to the power expansion of the executive body safeguarded by judicial immunity. This was possible through the creation of an extralegal status within the Act on States of Emergency through the decrees of the state of emergency. The act is a general law that applies to the whole country, and therefore, any amendment to it is only possible through the law approval process after debate in the assembly. However, this principle of amendment through the assembly debate and approval was not implemented in the state of emergency decrees. In this section, only Decrees of 285, 413, 421, and 425 are analyzed on the basis that they construct a new regime beyond the state of emergency legislation through the expansion of judicial impunity.

4.1.2.1 Construction of a New Regime outside of the State of Emergency Legislation

OHAL rule in mostly Kurdish-populated provinces of Turkey was created without approval by the assembly in a decree having the force of law on 14 July 1987: Decree 285 on the Establishment of Governorate of the State of Emergency Region.⁵⁶ According to Article 1 of the decree, a Governorate of the State of Emergency Region was established for the provinces of Bingöl, Diyarbakır, Elazığ, Hakkari, Mardin, Siirt, Tunceli, and Van on 19 July 1987. Article 2 states that this governorate depends on the Ministry of the Interior, and Article 4 clearly explains the duties and powers of the governor. The most important of them was that private and public security forces in the region are under the command of the governor and that the governor has the right to give tasks to the Gendarmerie Security Command. In the same way, the National Intelligence Agency was also made accountable to the governor for activities in the region.

The articles so far comply with the principles and articles of the constitution and the Act on States of Emergency. However, the distinguishing feature

56 Republic of Turkey, “Olağanüstü Hal Bölge Valiliği İhdası Hakkında Kanun Hükmünde Kararname,” Official Gazette, 14 July 1987, Decree No: 285, retrieved 25 July 2016, from <http://www.resmigazete.gov.tr/main.aspx?home=http://www.resmigazete.gov.tr/arsiv/19517.pdf&main=http://www.resmigazete.gov.tr/arsiv/19517.pdf>.

of this decree is in the Article 4 paragraph j regarding the establishment of a new ruling regime outside of the act. In this regard, this paragraph creates a new status within the act, namely the *mücvir il* (neighbouring province). Although there is no such categorization in the act, this paragraph in Decree 285 lists the conditions related to the formation of neighboring province. Accordingly, the powers of the governor of the OHAL region could extend outside the region “on the demand of the Governor, the offer of the Minister of the Interior, and the confirmation of the Prime Minister” for the purpose of pursuit and security operations in neighboring provinces.⁵⁷

In this regard, Adıyaman, Bitlis, and Muş were declared neighboring provinces with the consent of the Prime Ministry on 24 July 1987.⁵⁸ Therefore, the governor attained the right to use security forces under his command in these provinces and could request necessary measures from the governors of these neighboring provinces. These requests were to be fulfilled immediately by the governors.⁵⁹ The problem originated from the contradiction between the Act on States of Emergency and Decree 285. Hierarchically, the act is more important than Decree 285 with respect to the formation of the state of emergency. While the act includes articles about the formation of the Governorate of the State of Emergency Region, it lacks any regulation concerning the formation of *mücvir il*. Decree 285 created this extralegal status outside of the

57 Madde 4/j: “Olağanüstü Hal Bölge Valisi, emrindeki kuvvetleri gereğinde mücvir İl’lerde hareketin takibi maksadıyla görevlendirebilir. Gerekli terbirlerin alınmasını mücvir İl Valilerinden isteyebilir, bu istekler ilgili Valiler tarafından derhal yerine getirilir.

Mücvir İl’ler Olağanüstü Hal Bölge Valisinin talebi, İçişleri Bakanının teklifi, Başbakanın onayı ile belirlenir.

Olağanüstü Hal Bölge Valisi bu yetkilerden gerekli gördüklerini görev alanındaki İl’lerin Valilerine ve Jandarma Asayiş Komutanına devredebilir.

İçişleri Bakanı bu yetkilerden gerekli gördüklerini re’sen kullanabileceği gibi bölgede görevli sorumlular hakkında usulüne göre soruşturma açmak, açtırmak ve görevden uzaklaştırmak yetkisine de sahiptir.” Republic of Turkey, “Olağanüstü Hal Bölge Valiliği İhdası Hakkında Kanun Hükmünde Kararname.”

58 Balcanlı, “Cumhuriyet Dönemi Olağanüstü Bölge Yönetim Uygulamaları,” 410.

59 Republic of Turkey, “Olağanüstü Hal Bölge Valiliği İhdası Hakkında Kanun Hükmünde Kararname.”

Act on States of Emergency, but without any debate in or approval by the assembly. Any amendments to a law that applies to the whole country shall be made only by the standard process of approving laws, namely debate in and approval by the assembly. However, a new ruling regime was brought about for certain southeastern provinces of Turkey through a decree, not through a law.

More importantly, the regime contradicted Article 121 of the constitution according to which the authority to approve in the declaration of a state of emergency within a specific region or in the country as a whole belongs to the TBMM. That means that the final decision on the duration and abolition of OHAL rule and the narrowing and expansion of an OHAL region belongs to the TBMM. This right was deprived by the implementation of *mücavir il* because the implementation, in fact, entailed the expansion of powers pertaining to the Governorate of the State of Emergency Region beyond the specific region.⁶⁰

Nevertheless, Decree 421 (1990) further expanded the powers of the governor in neighboring provinces. Article 4 states that the governor of the state of emergency region can use all his powers and duties - that apply to the OHAL region - in the neighboring provinces.⁶¹ That is to say, the governor of the state of emergency region attained full power over even neighboring provinces. And again, this power was obtained through a statutory decree without debate in the assembly. Indubitably, Decree 421 created an extralegal status in practice vis-à-vis the Act on States of Emergency. Although there is no provision regarding the administrative status of *mücavir il*, Article 4 of Decree 421

60 Üskül, *Olağanüstü Hal Üzerine Yazılar*, 20-21.

61 Madde 4: "Olağanüstü Hal Bölge Valisi, görev alanına giren illerle mücavir illerde; İl idaresi Kanunu, Ceza Muhakemeleri Usulü Kanunu ve diğer kanunlarla valilere tanınmış bulunan görev ve yetkilerle Olağanüstü Hal Kanunu ile il valilerine verilen yetkileri kullanır." Republic of Turkey, "2935 Sayılı Kanun ile 285 Sayılı Kanun Hükmünde Kararnamenin Bazı Maddelerinde Değişiklik Yapılması Hakkında Kanun Hükmünde Kararname," Official Gazette, 13 April 1990, Decree No: 421, retrieved 26 July 2016, from http://www.resmigazete.gov.tr/main.aspx?home=http://www.resmigazete.gov.tr/arsiv/20491_1.pdf&main=http://www.resmigazete.gov.tr/arsiv/20491_1.pdf.

created such an administrative status for certain provinces and expanded powers of the regional governor over them.

4.1.2.2 Expansion of Judicial Impunity

As discussed, decrees issued in a state of emergency in themselves have a constitutional protection through Article 148. Accordingly, these decrees “shall not be brought before the Constitutional Court alleging their unconstitutionality as to form or substance.”⁶² On the other hand, Article 125 of the constitution clearly points out that “recourse to judicial review shall be available against all actions and acts of administration,”⁶³ which means that many losses of rights stemming from unfair administrative actions are guaranteed by the constitution. This situation brings to mind the question: Can actions of the administration arising from these decrees be prosecuted in an environment where even constitutional control over the decrees is proscribed?

The answer to this question in the Act on States of Emergency is found in Article 33: “Stays of the execution shall not be decided in lawsuits that are prosecuted against the administrative acts of governors which are arising from powers of this Act.”⁶⁴ The article unifies Articles of 148 and 125 of the constitution. While recourse to judicial review of the actions of the administration is protected under Article 125, on one hand, impunity or acts arising from decrees is guaranteed in Article 148.

However, Article 7 of Decree 285 (1987) eliminates the possibility of opening an annulment suit (*iptal davası*): “Annulment suits shall not be initiated concerning administrative actions related to the use of the powers of the Governor of the State of Emergency Region.”⁶⁵ Moreover, Article 4 of Decree 413

62 Republic of Turkey, “The Constitution of 1982,” retrieved 10 July 2016, from https://global.tbmm.gov.tr/docs/constitution_en.pdf.

63 Ibid.

64 Madde 33: “Valilerin bu Kanunun verdiği yetkileri kullanarak yapacakları idarî işlemlere karşı açılacak davalarda yürütmenin durdurulmasına karar verilemez.” Republic of Turkey, “Olağanüstü Hal Kanunu.”

65 Madde 7: “Bu Kanun Hükmünde Kararname ile Olağanüstü Hal Bölge Valisine tanınan yetkilerin kullanılması ile ilgili idari işlemler hakkında iptal davası açılmaz.” Republic of Turkey, “Olağanüstü Hal Bölge Valiliği İhdası Hakkında Kanun Hükmünde Kararname.”

(1990) modified and expanded this authority to the administrative acts of the Ministry of the Interior in the region.⁶⁶ Thus, the acts of the Ministry of the Interior were also granted impunity. Both articles created an extralegal status within Article 33 of the act without debate in the assembly.

Article 7 of Decree 285 (1987) and Article 4 of Decree 413 (1990) clearly led to a contradiction with Article 125 of the constitution concerning recourse to judicial review of all actions of the administration as well as with Article 33 of the Act on States of Emergency regarding the obstacle to decide stays of execution in lawsuits brought against the administrative acts of governors. Since the Decrees 285 and 413 have no authorization from the TBMM to amend laws that apply to the whole country under the procedures for issuing decrees in normal times, their constitutionality becomes more suspect given that they conflict with constitutional articles.⁶⁷ In this regard, a new regulation concerning these decrees has become necessary since they cross the line of conflict with Article 125 of the constitution. For this reason, Article 33 of the act was again regulated by Article 2 of Decree 425 (1990): “Stays of execution shall not be decided in lawsuits that are prosecuted against the administrative acts of the Minister of the Interior, the Governor of the State of Emergency Region, and provincial governors.”⁶⁸ This decree again guaranteed a kind of impunity

66 Madde 4: “2935 sayılı Kanunun 33 üncü maddesi başlığı ile birlikte aşağıdaki şekilde değiştirilmiştir.

‘Dava açılabilmesi:

Madde 33 — Bu Kanunla İçişleri Bakanına ve valilere tanınan yetkilerin kullanılması ile ilgili idari işlemlere karşı yargı mercilerinde dava açılmaz.’ ” Republic of Turkey, “2935 Sayılı Kanun ile 285 Sayılı Kanun Hükmünde Kararnamenin Bazı Maddelerinde Değişiklik Yapılması Hakkında Kanun Hükmünde Kararname,” Official Gazette, 10 April 1990, Decree No: 413, retrieved 26 July 2016, from <http://www.resmigazete.gov.tr/main.aspx?home=http://www.resmigazete.gov.tr/arsiv/20488.pdf&main=http://www.resmigazete.gov.tr/arsiv/20488.pdf>.

67 Gözler, *Kanun Hükmünde Kararnamelerin Hukuki Rejimi*, 210.

68 Madde 2: “2935 sayılı Kanunun 33 üncü maddesi aşağıdaki şekilde yeniden düzenlenmiştir.

‘Yürütmenin durdurulması kararı verilemeyeceği;

Madde 33 — Bu Kanun ile İçişleri Bakanına, Olağanüstü Hal Bölge Valisine, il valilerine tanınan yetkilerin kullanılması ile ilgili idari işlemlere karşı açılacak davalarda, yürütmenin durdurulmasına karar verilemez.” Republic of Turkey, “2935 Sayılı Kanun ile 285 Sayılı Kanun

for the administrative acts of these officials without debate and approval by the assembly, while at the same time guaranteeing recourse to judicial review.

What is the logic of initiating judicial review for these acts if the decision to stay the execution cannot be taken? That is the decision to compensate for damages caused from the acts of administration can be taken in these lawsuits unless the decision to stay of execution can be taken. Zafer Üskül explains the situation with an analogy:

If the print shop of a newspaper is shut down because of an item of news in the newspaper, the owner of the print shop is faced with a loss. The owner cannot initiate the process of an annulment suit against the act that led to the shutting down of his print shop; however, he can initiate an action against the administration to compensate for damages suffered because of the shutting down of the print shop.⁶⁹

§ 4.2 Summary

I approach the issue of the construction and operation of the extralegal structure of OHAL in Turkey between 1987 and 2002 as the construction of a new regime beyond what was permitted in extant emergency legislation and as the expansion of judicial impunity. In this regard, the three main legal texts analyzed were, in respective degree of authority: The Constitution of 1982, the Act on States of Emergency, and Decrees Having the Force of Law. However, in practice showed us, the working of authority generally operated in the reverse order.

To clarify this reverse order, I emphasized decrees which have played a crucial role in the OHAL region unlike the Constitution of 1982 and the Act on States of Emergency. The contradiction in paragraph j of Article 4 of Decree

Hükmünde Kararnamenin Bazı Maddelerinde Değişiklik Yapılması Hakkında Kanun Hükmünde Kararname,” Official Gazette, 10 May 1990, Decree No: 425, retrieved 26 July 2016, from <http://www.resmigazete.gov.tr/main.aspx?home=http://www.resmigazete.gov.tr/arsiv/.20514.pdf&main=http://www.resmigazete.gov.tr/arsiv/20514.pdf>.

69 Üskül, *Olağanüstü Hal Üzerine Yazılar*, 17.

285 and Article 2 of Decree 421 with the Act on States of Emergency with respect to the implementation of neighboring province, as well as the contradiction in Article 7 of Decree 285 and Article 4 of Decree 413 with Article 125 of the constitution with respect to initiating judicial review against the acts of local authorities and the expansion of judicial impunity for these acts are examples of extralegal powers granted by decrees overruling the constitution and the act. The unsupervised continuity of such extralegalities in the region, in fact, was mostly caused by ambiguity about the approval process for these decrees. Article 121 of the constitution left this authority to the Procedures of the Turkish Assembly; however, this issue was not dealt with in the procedures until 1996. This situation led to an arbitrariness that favored the executive body which managed to form its own extralegal order in the region. Tragically, sixteen decrees issued in the state of emergency years were never discussed in nor approved by the assembly.

In light of this, this chapter makes sense of case studies that are detailed in next chapter in terms of the legal construction and operation of the OHAL regime in general sense. Thus, this chapter has been an opportunity to locate and describe actors and their powers, discourses, and practices in the violent atmosphere of OHAL regime.

Dead Bodies at the Borders of Dehumanization

Now that I've seen what war is... I know that everybody, if one day it should end, ought to ask himself: "And what shall we make of the fallen?"

– Cesare Pavese, *The House on the Hill*

Nazım Alpman, in an editorial column in which he discusses the inhumane nature of the war between the Turkish army and the PKK in the 1990s, writes:

Between the two fighters who were put naked in the morgue, the body in one piece belonged to the soldier. And the body with a gouged eye, keeping stab wounds in its belly and hips, a burned face, and fingers sliced off belonged to the guerilla!¹

1 “Çırılçıplak morga konulmuş iki savaşıdan, bedeni tek parça olan askerdir. Gözü oyulmuş, karnı kalçaları bıçak darbeleriyle yarılmış, yüzü yakılmış, parmakları kesilmiş olanı gerildir!” For detail, see Nazım Alpman, “Kuralsızlığın Kuralları Gerillayı Öldürmek,” *BirGün*, July 12, 2010, accessed October 13, 2015, <http://www.birgun.net/haberdetay/kuralsizliginkurallarigerillayioldurmek16432.html>.

As mentioned in the introduction of this thesis, the necropolitics carried out by states runs two ways. The first concerns the dead bodies of those whose lives are sacrificed for the sake of the state at the will of the state. The second concerns the dead bodies of those who must be eliminated due to a relation of enmity. Throughout this necropolitical distinction, it is possible to follow the traces of consecrated bodies in the discourse of martyrdom on one hand, and bodies humiliated with necropolitical violence on the other. A Kurdish mother - who has not been given the dead body of her son, a PKK fighter, since he was killed in 1992 - best explains the necropolitical distinction of the state between soldiers and PKK combatants:

Turks are luckier. At least they have their cenaza, when their kids [soldiers] are killed. All the army commanders, politicians and other big people go to their funerals. Their funeral ceremonies are all over the TVs. They bury their dead the way they wish. They have graves to visit...They kill our children. People say it is war. The state says they are terrorists. I think it is pre-destination. I understand that. We cannot change the will of Allah, we have to accept it. *But what do they want from our cenaza?* I don't understand that.²

Undoubtedly, the question the mother raised is pivotally important. What does the state want from the dead bodies of PKK fighters when they can no longer fight? The nineties, when the war between the Turkish state and the PKK escalated, was a peak point of the dissemination of the necropolitical violence of the state. In these years, the state consolidated its shaken sovereignty in Turkey's southeast against the PKK by governing death and dead bodies as a useful political tool to control and manage human bodies and territory.³ Practices ranging from torture of corpses, refusal to deliver bodies for proper burial, burials in unmarked or mass graves, banning funerals, punishing funeral goers, attacking cemeteries, and disinterment became routine in the nineties.

2 Hişyar Özsoy, "Between Gift and Taboo: Death and the Negotiation of National Identity and Sovereignty in the Kurdish Conflict in Turkey" (PhD diss., The University of Texas, 2010), 27.

3 Özsoy, "Between Gift and Taboo," 29.

In previous chapters, we analyze the formation of the necropolitical violence of the Turkish state vis-à-vis Kurdish rebels in a historical and legal framework. In doing so, we benefited from the theories of Foucault on the circular nature of sovereignty; Agamben on the distinction among *zōē*, bare life, and *bios*; Butler on the resurgence of sovereignty in states of exception; and Mbembe on the relationship between politics and death in systems where a state of emergency is in use. In this chapter, we expose the actual violence that characterized four case studies that occurred in the emergency years (1987-2002) concerning the political use of PKK corpses. Each of these corresponds to one stage of necropolitical violence in order of post-mortem practices, funeral ceremonies, grave, and post-burial practices. In this order, the Ardahan-Göle case (1992) is used as representative of inhumane after-killing practices, the Kulp-Lice case (1991) as representative of an attack on funeral process before burial, the case of Kasaplar Deresi (1989) as representative of burial in a mass grave and the Antalya-Manavgat case (1998) as representative of attacks on graves after burial. While these cases were selected from the emergency period (1987-2002), the cases of Ardahan-Göle (1992) and Antalya-Manavgat (1998) were consciously chosen from outside the emergency region. The purpose is to compare the relation between the construction of enmity and contractual violence in terms of whether or not the appearance of the necropolitical violence is dependent on state of emergency rule.

The cases are organized around the metaphor of *having a grave*. No doubt, the grave represents an important stage for proper passage to the hereafter since it symbolizes a specific place with a name to visit. In light of this symbolic value, Hişyar Özsoy addresses the Marquis de Sade's metaphor of "killing a life twice" which refers to a distinction between biological and symbolic death.⁴ What is intended by symbolic death is the destruction of the symbolic value of the dead as belonging to any specific ideological, social, and political circle. For the deceased and the social circle to which they belong, there is a process providing the deceased proper passage to the hereafter. Postmortem rituals like washing the corpse and preparing it for burial, organizing a funeral ceremony, and burying it in a specific place and marking and visiting that

4 Ibid., 31.

place are phases of this process have a crucial symbolic value in human sociality. While they signify the proper declaration of a death, they also represent a way for those left behind to grieve the one who is dead. Thus, any aggression in these phases targets this symbolic value in human sociality on behalf of both the deceased and society. It implies the closure of the gates of proper passage to the hereafter to those who are killed in an act aiming for enhancing sovereignty.⁵ On the other hand, the real message is, in fact, for society, since they are deprived of the right to properly bury their dead. With respect to the deprivation of burial rights, Özsoy metaphorically reminds us of the meaning of the Latin term *humanitas* (humanity), which originates from *humando* which means the act of burying - a feature specific to *humans*.⁶ This meaning defines human as only living being among others who is able to bury its own kind, so it is possible to evaluate necropolitical violence that violates this symbolic value as an act of dehumanization.

A grave represents the purest declaration of death and is important for the circulation of the symbolic value of the dead one in human sociality. I examine the cases of Ardahan-Göle and Kulp-Lice to reveal the necropolitical violence of the state that targets the pre-burial processes, and the cases of Kasaplar Deresi and Antalya-Manavgat for the post-burial processes.

§ 5.1 The Appearance of Necropolitical Violence in Pre-Burial Processes

The two cases we examine in this section exemplify the necropolitical violence of the state in the pre-burial phase. Postmortem rituals and funeral ceremonies are critical moments of the pre-burial period in which necropolitical violence is applied for the construction of enmity and manifestation of state power. In this regard, the Ardahan-Göle case is important in terms of revealing how the construction of enmity works on after-killing processes on the basis of dehumanization vis-à-vis PKK dead. On the other hand, the Kulp-

5 Ibid., 41.

6 Hişyar Özsoy, "Araf'ta Kalmak," <http://www.yeniozgurpolitika.org/index.php?rupel=nuce&id=9088>.

Lice events are discussed as an example of the manifestation of state power to those who are similarly aligned with the dead.

It is worth noting that necropolitical practices such as abuse of dead bodies of enemies and attacks on funeral processions are not specific to the conflict between Turkish military forces and the PKK. As a matter of fact, conflicts in other parts of the world are replete with such examples. Conflicts between Israel and Palestinian Liberation Organization, Russia and Chechen nationalist and Islamist forces, Sri Lanka and the Liberation Tigers of Tamil Eelam, and Britain and the Irish Republican Army are among the most known examples where the necropolitical violence of the state reaches excessive degrees.⁷ In this regard, similarities between the confession of a Russian soldier and that of a Turkish soldier regarding the dehumanization of the enemy is no coincidence. The Russian soldier addresses a culture of impunity when he speaks of the motivation behind necropolitical violence against Chechen fighters. That means “acting outside the rules, violently and with impunity.”⁸ The soldier explains the routine practice of the dismemberment of the dead bodies of the enemy as follows:

Cutting off ears may seem savage to some, but it has its explanations. It's an old tradition among the Special Forces - you cut off the ears of the enemy in order to later lay them on the tombstone of your friend who was killed in the war. It's not a manifestation of barbarism. It's just our way of telling our deceased mate: Rest in peace. You have been avenged.⁹

7 Extreme examples are the actions of the Islamic State of Iraq and Syria (ISIS) today. The organization kills mostly noncombatants on camera and spreads videos throughout the world as a necropolitical act to consolidate and manifest its sovereignty.

8 “War Has No Rules for Russian Forces Fighting in Chechnya,” *Los Angeles Times*, September 17, 2000, accessed 5 April 2016, <http://articles.latimes.com/2000/sep/17/news/mn-22524>.

9 “War Has No Rules for Russian Forces Fighting in Chechnya,” <http://articles.latimes.com/2000/sep/17/news/mn-22524>.

On the other hand, a Turkish soldier adds another dimension to such practices in line with Mbembe's argument that "killing the enemy of the state is an extension of play:"¹⁰

I never went into a skirmish, but before I went to the Orduevi, the Bolu commandos camped close to our unit and showed us videos from the operations they participated in. In one of those videos, they ask a terrorist lad something like "Where are the others?" You can't hear it well because the helicopter is too loud. Anyway, they tell him that he will be set free if he tells the truth. I am summarizing for you what I can remember. The child tells them things. The filming stops at that point. Then they throw him out of the helicopter. They kill him there. That is what I witnessed. I saw transparent things in their hands and asked what they were. They were using them as key-chains. One of them said, "These are ears, man." I asked: "What ears?" Apparently, they cut off the ears of the terrorists they killed, and put them in Coca-Cola until the cartilage came out. Then they use them as keychains.¹¹

The narration of a ghassal,¹² Fahri Doğan, who was responsible for the preparation of cenazas for burial in the region of Mardin and Batman throughout the 1990s, also shows the commonness of atrocity:

I washed cenazas whose eyes were removed, whose ears and nose were sliced off. I have seen cenazas without sexual organs. If there is a real Islamic world, come and see what we have here. Is the lack of a human nose a normal thing? Is the lack of sexual organs a normal thing? Could those who have done such things be Muslim? I did not see sliced

10 Achille Mbembe, "Necropolitics," *Public Culture* 15 (2003): 19.

11 Nadire Mater, *Voices from the Front: Turkish Soldiers on the War with the Kurdish Guerillas* (New York: Palgrave Macmillan, 2005), 186.

12 One whose job is to wash and prepare the body of the deceased according to Islamic principles.

organs next to the corpses. Cenazas were delivered to us with missing organs.¹³

Despite the cruel treatment of corpses, a new form of resistance appeared in funeral ceremonies. Claiming a cenaza and broad participation in funeral ceremonies with Kurdish flag and other symbols of the Kurdish people and the PKK turned funerals into political demonstrations. Against this new form of resistance, attacks on funeral processions began as an extension of necropolitical atrocities against ordinary people who are in between zoë and bios as they participate in such ceremonies. As the Ardahan-Göle and Kulp-Lice cases show, PKK fighters are already killable entities outside of normal judicial and social order. Thus, any inhumane practices against them in both life and death occur in a place outside of human sociality where the only valid rule is the military culture of impunity on the basis of enmity. However, after the enemy is killed, practices against corpses mostly serve the manifestation of state power. Funeral ceremonies throughout the nineties were practical platforms to convey to people what would happen to them if they remained close to the enemy. Not only would they lose the possibility of inclusion into the bios, but they would be treated according to the rules of zoë (the state of animality) outside of normal judicial and social order.

5.1.1 *Ardahan-Göle Case as the Purest Form of the Construction of Enmity*

Ardahan is a province in northeastern Turkey and Göle is the largest district of the province. Even though the region has a significant Kurdish population and adherents of the PKK, it was never included in the OHAL zone. However, events including the torture of the dead bodies of PKK fighters, display of their

13 “Gözleri çıkarılan, kulağı olmayan, burnu kesilen cenazeler yıkadım. Hem de yakın zamanda. Cinsel organı olmayan cenazeler gördüm. Eğer gerçekten bir İslam âlemi varsa, gelip ne yaşadığımızı görsünler. Bir insanın burnunun olmaması normal bir şey midir? Bir insanın cinsel organının olmaması normal bir şey midir? Bunu yapanlar Müslüman olabilir mi? Ben vücudun yanında kesilen organlarını görmedim. Cenazeler bize organları eksik teslim ediliyor.” For detail see, Müjgan Halis, “Güneydoğu’da Gassal Olmak,” *Nokta Dergisi*, October 12, 2015, accessed October 13, 2015, <http://www.noktadergisi.org/guneydogudagassalolmak.html>.

naked corpses, and their burial in a mass grave, which took place in Göle in September 1992, are a summary of events that routinely occurred in the OHAL region throughout the 1990s.

What was it that set the stage for the appearance of such violence beyond the rule of the OHAL region? Indubitably, it was the construction of enmity that prepared the ground for the emergence of necropolitical violence. As discussed and exemplified in the theory and history chapters, a certain part of the community that posed a threat to state sovereignty in a relation of enmity was easily made expendable on the pretext of national security and emergency. This perception of threat, in fact, provides the basis for necropolitical violence outside of general state law and order under the assurance of judicial impunity for perpetrators. It is indeed a process of dehumanization in which enemies of the state are placed in a similar position as the ancient *homo sacer* who is killable with a guarantee of judicial impunity. The case of Ardahan-Göle is, thus, important for revealing how the construction of enmity was propagandized and managed vis-à-vis the dead of the enemy on the basis of dehumanization.

The course of events was introduced to the public in the frontpage articles of *Özgür Gündem* newspaper dated 13 and 14 September 1992. According to the articles, eighteen PKK militants were killed in a gunfight with the TSK (Türk Silahlı Kuvvetleri, Turkish Armed Forces) on 7 September 1992. However, the main subject was the treatment of the corpses of PKK combatants. According to the articles, the naked bodies of dead fighters were displayed throughout the town of Göle in the back of a municipal garbage truck. After this display, their burial *en masse* in a shared grave was also covered in the articles.

Another article dated September 16 covered the necropolitical violence more extensively, offering eyewitness accounts. Eyewitnesses remarked that the marks of tank treads were on the dead bodies, which means that one or more tanks ran over the corpses. According to another claim, there were burns, bruises, and bloodless bullet holes on the bodies. A witness who did not wish to be named (identified in the article only as Y.K.) said:

As was clearly understood from the corpses, their killing was carried out with bombs or chemical weapons. They were shot after that. Their heads were crushed. There were traces of tank treads on their bodies.¹⁴

Despite the fact that deaths that occur as a result of gunshot wounds are supposed to be the subject of forensic medical investigation, the fact that the prosecutor disallowed the autopsy for these corpses strengthens the claims.¹⁵ That means supposed inhumane treatment of PKK corpses was not reported scientifically as the result of an autopsy. Moreover, as stated in the continuation of the article, two doctors admitted that they had signed the death certificate without conducting the identification process. The chief surgeon of the state hospital of Göle, Dr. İbrahim Kalkan, explained that the process

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- 14 “Cesetlerden öldürme olayının bomba veya kimyasal silahla gerçekleştirildiği, daha sonra kurşuna dizildikleri anlaşıyordu. Hepsinin kafası ezilmişti. Vücutlarında tank paletlerinin izleri vardı.” For detail, see “Görgü Tanıkları Vahşeti Anlattı: Göle’deki Cesetlerde Palet İzleri,” *Özgür Gündem*, September 16, 1992.
- 15 Deaths resulting from gun wounds are the subject of forensic medicine. According to Article 79 of the Law on Criminal Procedures, forensic examination is made to determine the identity of the deceased and the time and cause of death. An autopsy is carried out at the request of the prosecutor or doctor. Burial of bodies is allowed only after the regulation of a death certificate by the prosecutor or doctor. If families do not claim the corpses within fifteen days, the burial is carried out by the municipality. However, this situation was amended by new regulations on 7 January, 16 January, and 20 April 2016. According to these regulations, if a body not claimed within five days, the corpse is delivered to the municipality or the administrative authority of the region (the governor of a province or provincial district). If there is a risk of a disruption of public order with regard to the funeral and burial of a corpse, it is directly delivered to the administrative authority. This situation can be evaluated as legal cover for the the practices of the nineties regarding the banning of funerals and refusal to make corpses available for proper burial. Moreover, it is no coincidence that these regulations have been made in the summer 2015 as discussions between Turkey and the PKK disintegrated. For the Law on Criminal Procedures and Regulations, see Republic of Turkey, “Ceza Muhakemeleri Usulü Kanunu,” accessed August 20, 2016, <http://www.ceza-bb.adalet.gov.tr/mevzuat/1412.htm>; and Republic of Turkey, “Adli Tıp Kurumu Kanunu Uygulama Yönetmeliği,” accessed August 20, 2016, <http://www.mevzuat.gov.tr/Metin.Aspx?MevzuatKod=75.7076&MevzuatIliski=o&sourceXmlSearch>.

was carried out under the supervision of the prosecutor. A classic autopsy was not performed. Incision was not done. The cause of death was obvious. Identification was also not done. We saw what the people saw.¹⁶

That the process was performed in this way with the decision of prosecutor demonstrates yet another procedure outside of normal judicial and social order that was applied where enemies of the state were concerned. The contrary position of the prosecutor with respect to the Law on Criminal Procedures and the statement by Kalkan “We see what the people saw.” strengthen witness claims regarding the abuse of the PKK corpses.

Beyond that, the narrative of another witness demonstrates the brutality of the treatment of the corpses in terms of the construction of enmity. According to this narrative, officers from Special Forces in civilian clothes tried to provoke the people during the public display of the corpses: “They [dead bodies] must be fed to dogs. They should not even be brought to the police station.”¹⁷ These sentences best reflect the dehumanization operating against the enemy. Once dehumanized, they are pushed into the realm of *zoë* - out of the normal social and judicial order of the *bios* - where the only valid rule is the rule of animality. Treatment of the PKK fighters’ bodies as carrion and the desire to throw them to the dogs indicate the production of dehumanization on the basis of the *zoë*.

How did the state react to such explicit necropolitical violence when notified of the situation? A parliamentary question about the case and the subsequent answer by the Ministry of the Interior give us an answer. The written question was prepared by a Kurdish deputy, Hatip Dicle, the deputy from Diyarbakır of the Social Democratic Populist Party. After describing the events in the way discussed above, Dicle asked:

16 “Savcının denetiminde yapıldı. Klasik otopsi yapılmadı. Yarma filan olmadı. Ölüm nedeni belli. Kimlik belirlemesi de yapılmadı. Şu şudur, şu şahıstır diye tesbit yapılmadı. Bizim gördüğümüzü halk da gördü.” “Görgü Tanıkları Vahşeti Anlattı: Göle’deki Cesetlerde Palet İzleri,” *Özgür Gündem*, September 16, 1992.

17 “Bunları köpeklerle yedirmek lazım. Karakolun önüne bile getirilmemeliler.” Ibid.

Will the truth be revealed to the press and officials by excavating the place which is claimed to be a mass grave?

Is any investigation be conducted into those responsible for an event which recalls the Nazi brutality?

If the ministry is of the view that the news is false and if the eighteen PKK militants, whose deaths were declared in an official statement, were washed and buried in accordance with Islamic beliefs, what are the determinations of the ministry about the location of their graves, the name of clergy who will testify, and the identities of the militants?

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Although the question was submitted to the assembly on 15 September 1992, the answer was only provided on 3 November 1992 signed by the Ministry of the Interior, İsmet Sezgin, and with an additional note by the Gendarmerie General Command of the Ministry of the Interior. According to the official statement, seventeen terrorists were captured dead and two were captured alive during the gun battle. The dead bodies were brought to Göle (Ağrı) at 7 o'clock in the evening on 6 September 1992. Because of the late hour, the autopsy was delayed to the next day. The clothes of the dead bodies were removed during the autopsy due to their smell, and after that, the bodies were shown to people who want to see them for the purpose of their identification (*teşhis*) but not their display (*teşhir*). Because nobody identified the corpses, the real identities of some and the code names of others were determined from

- 18 “Toplu mezar olduğu iddia edilen yer, basın ve yetkililer huzurunda açılmak suretiyle, ger çek ortaya çıkarılacak mıdır?

Bu Nazi vahşetini andıran olayın sorumluları hakkında Bakanlığınızca başlatılmış bir soruşturma var mıdır?

Bakanlığınız, sözkonusu haberin doğru olmadığı görüşünde ise ve resmî açıklamada da öldürüldükleri duyurulan 18 PKK militanının cenazeleri İslamî inançlar doğrultusunda yıkanıp gömülmüşse; tanıklık edecek din adamının ismi ile militanların mezarlarının yeri ve kimlikleri konusunda Bakanlığınızın tespitleri nedir?” For detail, see TBMM, “Diyarbakır Milletvekili M. Hatip Dicle'nin, Ardahan'ın Göle İlçesinde 7 Eylül 1992 tarihinde öldürülen bir grup militanla ilgili haberlere ilişkin sorusu ve İçişleri Bakanı İsmet Sezgin'in yazılı cevabı (7/337),” *Tutanak Dergisi* Term 19 Vol 20 no.21 (1992), 99, retrieved 18 August 2016, from <https://www.tbmm.gov.tr/tutanaklar/TUTANAK/TBMM/d19/co20/tbmm19020021.pdf>. <https://www.tbmm.gov.tr/tutanaklar/TUTANAK/TBMM/d19/co20/tbmm19020021.pdf>.

the statements of the terrorists who had been captured alive and from documents found in the clothes of the dead. Then, the corpses were carried to their place of burial by the municipal wastetruck because it was the only vehicle belonging to municipality other than a tractor.

The discourse of the state about the implementation of the process being the result of local conditions rather than bad intentions clashes with the narratives of witnesses on the ground, with the evidence of torture on the corpses, and with attitudes of Special Forces members. Furthermore, although the autopsy was emphasized in the answer, no autopsy had been performed as the chief surgeon of the hospital in Göle testified.

However, the most interesting point is related to the claims of a mass grave. Here, the state chose the statement “a single grave of sufficient length” instead of “mass grave.” Burial in a single grave of sufficient length was not extraordinary provided there were some reasons, which were listed as: “six of them being uncircumcised, no claim by relatives, and the absence of an imam to perform the religious ceremony.”¹⁹ Therefore, with these explanations, the state tried to justify and normalize burial in a mass grave without a religious ceremony.

The emphasis on circumcision has a separate importance in terms of propagandizing the construction of enmity. This was a common method used throughout the OHAL period. The purpose of this discourse is twofold. First, it breaks both the sympathy and support of religious Kurds for the PKK by promoting the PKK as a tool of foreign powers to threaten the integrity of Turkey. Furthermore, it was designed to evoke the historical collaboration between Ottoman officials and Kurdish militias for the deportations and massacres of Armenians in the nineteenth and twentieth centuries on the assumption they would revolt against the empire.²⁰ Therefore, the main aim of this

19 “İçlerinden (6)’sının sünnetsiz oluşu, yakınlarının çıkmayı ve dinî merasimi icra edecek imam bulunmayışı, ayrıca umumî hıfzısıhha kuralları uyarınca derhal toprağa verilmeleri gerektiğinden dinî merasim yapılmamış, her biri için müstakil mezar acıtmayarak; yeterli uzunlukta açılan tek bir mezarda toprağa verilmişlerdir.” Ibid.

20 Uğur Ümit Üngör, “CUP Rule in Diyarbakir Province, 1912–1923” (MA diss. University of Amsterdam, 2005), 110.

discourse on circumcision is to establish parallel between PKK fighters and Armenian people on the assumption they [Armenians] came in the PKK clothes to get revenge of the past. Construction of enmity is established and propagandized using a discourse of “How can you support these Armenians?” - provoking the religious and historical emotions of devout Kurds.²¹

Beyond witness narratives and the answer of the state, the monthly magazine of the PKK, *Serxwebûn*, covered the event from the perspective of intimidation and manifestation of state power. Abuse of dead bodies is, at the same time, the best method to speak to those who care about him/her, and identified themselves with the aims and ideologies of the dead who was once alive.²² Accordingly, the message hidden within the necropolitical violence of the state was expressed in *Serxwebûn* as such:

[The state] paraded murdered people through the streets naked to intimidate our people. It is not trying to display PKK guerillas with the description “terrorist, separatist,” but display the brutal face of the state’s own.²³

5.1.2 *Resurgence of Sovereignty in Kulp and Lice Line*

Kulp and Lice are two districts of Diyarbakır Province in Southeastern Turkey. Diyarbakır is considered the unofficial capital of Turkish Kurdistan. It was included in the OHAL region in Statutory Decree 285 on 14 July 1987. The Kulp-Lice case concerns attacks on the funeral processions of PKK dead. It symbolizes a new moment of intimidating masses and manifesting state power. OHAL rule strengthened state forces’ power by giving them extraordinary

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- 21 Adnan Çelik, “1990’lı Yılların Olağanüstü Hal Rejimi ve Savaş: Kürdistan Yerellerinde Şiddet ve Direniş,” *Toplum ve Kuram* 9 (2014): 108.
 - 22 Katherine Verdery, *The Political Lives of Dead Bodies: Reburial and Postsocialist Change* (New York: Colombia University Press, 1999), 32.
 - 23 “[Devlet] Halkımızı sindirmek için Göl’e de katlettiği insanları çıplak soyarak caddelerde dolaştırmıştır. Teşhir etmeye çalıştığı, ‘terörist, bolücü’ diye tanımladığı ARGK gerillaları degildir kendi caniyane yüzüdür.” For detail, see “Katliamlar Kürt Halkının Özgürlük Yürüyüşünü Durduramaz,” *Serxwebûn*, September 1992, accessed March 23, 2016, <http://serxwebun.org/arsiv/129/>.

powers outside general state rule, and funeral ceremonies emerged as a new field of struggle between the Turkish state and the PKK. No doubt, this situation gave a new value to PKK dead whose deaths in the struggle were recycled as the martyrs of Kurdistan. Hişyar Özsoy explains.

Such a struggle to get the dead body, designing massive funeral ceremonies as a form of resistance and appropriating death into nationalist struggle through specific rituals of martyrdom was institutionalized during the serhildans (uprisings, Kurdish intifada) in the early 1990s.²⁴

What was the distinguishing feature in the 1990s in terms of claiming the dead bodies and funerals of Kurdish rebels given that the struggle between the Turkish state and Kurdish rebels traced back to the early years of the republic? There are two possible answers. The first is the routinization of abuse of PKK dead. Corpses, the bodily integrity of which was mostly deteriorated, were routinely, publicly displayed in the media (newspapers and television) or through practices and discourses of state forces to manifest state power. Consequently, demanding the bodies of the dead and designing funeral ceremonies for them became a new method of struggle to break the inhumane daily practices of state necropolitics. Thus, these ceremonies and processions were rituals returning the reputations of the PKK dead in response to humiliation by state forces.

Despite the psychological effect, the politics of the PKK for provoking people to claim cenazas was also powerful. A decision made at the second conference of the PKK in 1990 was an official statement of this new process: “The cenaza of the martyrs have to be claimed and buried in a way worthy of them; they should not be left on the battleground under any circumstances.”²⁵ Of course, this situation reveals another face of necropolitics beyond that of the state. The emergence of funeral ceremonies as PKK demonstrations with visible symbols of the Kurdish people and the organization - such as posters and flags proves that another necropolitics was being constructed on the basis of martyrdom and the symbols of Kurdistan. Indubitably, this was more easily

24 Özsoy, “Between Gift and Taboo,” 45.

25 Ibid., 47.

said than done. The funeral ceremonies of the nineties were a new battleground between the Turkish state and ordinary people, PKK militias, and their sympathizers. While a new necropolitics was being constructed through funeral ceremonies on one side, the necropolitical violence of the state was also in play with all the means granted by OHAL regulations: The right of state officials to control or ban meetings and demonstrations with judicial impunity in the OHAL region.

The Kulp-Lice case exemplifies an overall summary of this process. In addition, in comparison with other cases it was more widely covered in mainstream newspapers of the time such as *Hürriyet*, *Cumhuriyet*, *Milliyet*, and *Sabah*. This was because of the murder of many civilians by military gunfire and the role of state officials and deputies in solving the chaos.

Events transpired around the claiming of the cenazas of sixteen PKK fighters killed in an operation by the TSK against a PKK camp in the countryside of Solhan (Bingöl) and Kulp (Diyarbakır) on 19 December 1991. On 22 December 1991, a convoy of five hundred cars from Kulp, Lice, and Silvan (Diyarbakır) was organized to recover the cenazas from the conflict region, but they only managed to get three of them before returning to Kulp. The next day, a group consisting of thousands of people went to get the remaining cenazas; however, they were stopped on their return on the bridge over Sarım Çayı (Sarım Creek) two kilometers outside Kulp. The group was told not to cross the bridge with the cenazas. Another group from various districts of Diyarbakır who wanted to participate in the funeral ceremony in Kulp was stopped at the military station of Zeyrek between Kulp and Lice. The problem was still not resolved the next day, 24 December 1991, and a military fire opened up on the masses trying to cross barricades. As a result, seven people at Sarım Çayı and three near the military station of Zeyrek were killed by gunfire of soldiers.²⁶

The course of events was discussed in mainstream newspapers around topics of “funeral tension,” “pirate demonstration,” “pro-PKK slogans,”

26 Mustafa Doğan, “21 Yıl Önceki Kulp Katliamında 37 Askere Soruşturma,” *ANF News*, June 26, 2012, accessed March 25, 2016, <http://anf-ajans.com/guncel/21-yyil-onceki-kulp-katliaminda-37-askere-soruthturma>.

“provocation on special forces by people in the convoy,” and “armed conflict between people and soldiers.” In Article 9 of the Act on States of Emergency, permission, delay, control, and ban of meetings and demonstration marches are listed among measures that may be taken in the OHAL region.²⁷ In this way, the military gunfire on the people was justified in mainstream discourse. The message was that there was no problem the soldiers had not fired on an innocent funeral procession, but rather on a PKK demonstration. For instance, *Cumhuriyet* ran a photo on 25 December 1991 depicting a group of people including children on front lines with sticks and stones in their hands. According to the similar narratives of *Milliyet*, *Cumhuriyet*, *Hürriyet*, and *Sabah*, a group of people waiting for the passage of the cenazas over Sarım Creek made an unauthorized demonstration, chanting “Long live PKK,” “Long live Kürdistan,” and “Long live Apo.” Then, they attacked the soldiers with sticks and stones who hindered the passage of the cenazas. Upon this, the soldiers made an announcement for them to disperse and opened fire on the people to realize it.²⁸

This kind of implicit justification of military gunfire has been revealed by the statements of state officials, as well. According to the statement of the Minister of the Interior, İsmet Sezgin, the events were the result of an instruction from the PKK made at the organization’s second conference to transform funerals into demonstrations.²⁹ For Sezgin, “it was normal for soldiers to open fire” as a result of agitation.³⁰ Such “normalizing” discourse was also apparent in the statement of Süleyman Demirel, then prime minister: “These are ongoing things in Turkey. It was not an event that occurred for the first time.”³¹

Details of the event were covered in *Serxwebûn* in December 1991, and *2000’e Doğru* on 29 December 1991. The interesting detail in both magazines

27 Republic of Turkey, “Olağanüstü Hal Kanunu,” Official Gazette, 27 October 1983, Law No: 2935, retrieved 27 July 2016, from <http://www.resmigazete.gov.tr/arsiv/18204.pdf>.

28 “G.Doğu’da Çatışma: 12 Ölü,” *Cumhuriyet*, December 25, 1991. “Diyarbakır’da Çatışma: 9 Ölü, 35 Yaralı,” *Milliyet*, December 25, 1991. “PKK’lıların Cenazesinde Olay: 8 Ölü,” *Hürriyet*, December 25, 1991. “Lice ve Kulp’ta 9 Ölü,” *Sabah*, December 25, 1991.

29 “Sezgin: ‘Gösteriler PKK Talimatlı,’” *Hürriyet*, December 25, 1991.

30 “Sezgin: Askerin Ateş Açması Normal,” *Milliyet*, December 25, 1991.

31 Ibid.

is related to a dialog between the Governor of Diyarbakır, Muzaffer Ercimiş, and the colonel of the commando brigade, İsmet Yediyıldız. The governor proposed various initiatives to calm the chaos and allow the group to pass with their cenazas. However, the answer from the colonel was: “It is not your job. This event is neither yours nor the minister’s (Minister of the Interior) business. Only we understand their language. I take my orders from my superiors, not from you.”³² Hüseyin Turhallı, the provincial head of the Kurdish party, the HEP (Halkın Emek Partisi, People’s Labor Party), met with Yediyıldız to resolve the events. The latter’s diatribe against Turhallı also illustrates the gravity of the situation: “Are you a Kurd? Do you want your national rights? No matter what shit you are.”³³ After this meeting, Yediyıldız went nearby to the convoy and shouted to the soldiers at a level everybody could hear: “You are not to let even a single person cross the bridge. In the case they cross, kill them.”³⁴ The most notable statement of this attitude of Colonel Yediyıldız came from the district governor (*kaymakam*) of Lice, Beyazıt Tunç: “Events are out of my control. I cannot speak to anyone. The military does not recognize civilian authority.”³⁵

In fact, the statements of Yediyıldız and Tunç recall the explanation of Butler with respect to the resurgence of sovereignty in the hands of local authorities in states of exception. As Butler notes, modern states of exception provide a basis for the revival of sovereignty in a strict sense - not in the hands of a given monarch, but rather in the hands of “petty sovereigns ... reigning in the midst of bureaucratic army institutions.”³⁶ In our example, neither the gover-

32 “Bu sizin işiniz değil. Bu olay ne size, ne de Bakan’ı ilgilendirir. Bunların dilinden ancak biz anlarız. Ben emir sizden değil, üstlerimden alırım.” “Sömürgeciliğin Katliam ve İmha Politikaları Serhildanlar Zinciri ve Gerilla Atağıyla Boşa Çıkarılıyor,” *Serxwebûn*, December 1991, accessed May 1, 2016, <http://serxwebun.org/arsiv/120/>.

33 “Kürt müsünüz, kimliğinizi mi istiyorsunuz? Ne bok olursanız olun.” For detail, see “Lice Kaymakamı Beyazıt Tunç: Askerler Sivil Otoriteyi Tanımıyor Söz Dinletemiyorum,” *2000’e Doğru*, December 29, 1991, 9.

34 “Köprüden bir tek kişiyi bile geçirtmeyeceksiniz. Geçen olursa öldürün.” *Ibid.*, 9.

35 “Olaylar benim kontrolümden çıkmış. Kimseye söz dinletemiyorum. Askerler sivil otoriteyi tanımıyor.” *Ibid.*, 10.

36 Butler, *Precarious Life*, 56.

nor of Diyarbakır nor the district governor of Lice have not been directly effective in solution of the chaos; the absolute sovereignty over death and life was revived in the hands of Yediyıldız and vaguely implied superiors. Article 4 of Decree 285 on the Establishment of Governorate of the State of Emergency Region establishes that private and public security forces in the state of emergency region are under the command of the Governor of the State of Emergency Region, and, as stated in Article 2 of the Decree 285, the governorate is dependent on the Ministry of the Interior. Therefore, the first names that come to mind these are the “superiors” are Mehmet Necati Çetinkaya, then Governor of the State of Emergency Region, and İsmet Sezgin, then Minister of the Interior. The same logic emerged in the reply by government spokesman and Minister of State, Akın Gönen, upon the questioned by a reporter of 2000’e *Doğru* about the action of Yediyıldız:

These are the staff of the Ministry of the Interior. It is a Ministry of the Interior concern. You must ask this question to our Minister of the Interior. Whatever is necessary is done.³⁷

Considering the approach of İsmet Sezgin towards the events on the basis of his discourse of normalization and considering Article 7 of Decree 285, Article 4 of Decree 413, and Article 2 of Decree 425 which created an extralegal status in articles 125 of the Constitution and 33 of the Act on States of Emergency regarding the expansion of judicial impunity for the actions of the OHAL governorate and officials under its command, it goes without saying that no judicial investigation conducted with respect to those responsible for course of the events.

There was a parliamentary report prepared on the Kulp-Lice events by deputies of the DYP (Doğru Yol Partisi, True Path Party), the RP (Refah Partisi, Welfare Party) and the SHP which emphasized the personal attitudes of military officials. The discordant situation between security units and civil authorities was clearly stated in the conclusion.

37 “Bunlar İçişleri Bakanlığı’na bağlı personeldir. İçişleri Bakanlığı’nı ilgilendirir. Bu soruyu İçişleri Bakanımıza yöneltmeniz gerekir. Gereken neyse yapılır.” “Lice Kaymakamı Beyazıt Tunç: Askerler Sivil Otoriteyi Tanımıyor Söz Dinletemiyorum,” 2000’e *Doğru*, 11.

We have detected human rights violations because of the personal and faulty practices of some officials and assert the dominance of civil authority to end the confusion over authority in the name of providing peace and preventing terrorism in the region.³⁸

Considering the dimensions of the case, it is an indicator of the extreme of state necropolitics targeting not only PKK fighters but ordinary people. In this case, necropolitical violence was directed at the derealized lives of people in the OHAL region to manifest state power. Since the funeral participants violated the possibility to be included to bios by claiming the corpses of already dehumanized bodies, they were treated under the rule of zoë. They were killed with judicial impunity. The statements of İsmet Yediyıldız, İsmet Sezgin, and Süleyman Demirel are, in fact, official reflections of the practice by which the state of exception over some lives and deaths oscillates between zoë and bios in Turkey. It is not the exception but the rule for them to be outside of the normal social order and judicial investigation.

§ 5.2 The Appearance of Necropolitical Violence in Post-Burial Processes

Burial in mass graves is practiced for outcasts in many parts of the world. Human rights organizations and the relatives of the disappeared have revealed that there are central number of mass graves in Argentina, Kashmir, Bosna-Herzegovina, Iraq, Cambodia, East Timor, and Rwanda.³⁹ The history of Turkey is not outside this picture. The list of mass graves in Turkey, from the the practice of burial in mass graves has deep roots.

38 “Kulp ve Lice olaylarında, bazı yetkililerin kişisel hatalı uygulamalarının insan hakları ihlallerine sebep olduğunu, bölgede huzurun temini ve terörün önlenmesi için yetki kargaşasına son verilip, sivil otoritenin mutlaka hakim kılınması gerektiğini ve bölge halkına şefkatle yaklaşılması lüzumunu; halkın örf, adet ve inançlarına saygılı davranılmasının sorunun çözümüne faydalı olacağını tespit ettik.” For detail, see Türkiye Büyük Millet Meclisi İnsan Haklarını İnceleme Komisyonu Başkanlığı, “Faaliyet Raporu: 1 Mart 1991- 31 Ağustos 1992,” TBMM, 79.

39 Özgür Sevgi Göral, Ayhan Işık, and Özlem Kaya. *The Unspoken Truth: Enforced Disappearances* (Istanbul: Hakikat Hafıza Merkezi, 2013).

Table 5.1 List of Mass Graves in Turkey⁴⁰

Distribution of Mass Graves in Turkey	No. of Graves	No. of People Civilians/PKK	Total
Diyarbakir (1992–1998)	30	56/242	298
Siirt (1989–1999)	36	56/320	376
Bitlis (1993–1999)	35	59/426	485
Hakkari (1992–2005)	33	32/315	347
Bingöl (1928–2000)	33	242/226	468
Van (1993–1998)	18	21/236	257
Şirnak (1990–2007)	14	85/119	204
Batman (1993–1999)	11	13/185	198
Mardin (1990–1999)	14	6/105	111
Dersim (1937–1997)	5	235/24	259
Elazığ (1993–2010)	3	1/54	55
Ağrı (1989–1994)	2	5/48	53
Iğdır (1994)	1	0/14	14
Ardahan (1992)	1	0/19	19
Kars (1994)	1	0/7	7
Adıyaman (1994)	1	0/17	17
Malatya (1995)	1	0/5	5
Gaziantep (1994)	1	0/10	10
Hatay (1998)	1	0/8	8
Şanlıurfa (1994)	2	16 (ratio unclear)	16
Hizbullah	10	54	54
Total	253	865/2380 (Şanlıurfa excluded)	3261

The large overlap of mass graves with the OHAL region and period again reveals that the state of exception through some deaths had become the rule. Nevertheless, there are non-derogable rights even in states of exception. As discussed in Chapter 4, these rights are the right to life, prohibition of torture,

40 The table was prepared according to “Türkiye’de Toplu Mezarlar Raporu” (Report on Mass Graves in Turkey) prepared by the İHD (İnsan Hakları Derneği, Human Rights Association) İHD, “Türkiye’de Toplu Mezarlar Raporu,” retrieved 23 August 2016, from <http://www.ihddi-yarbakir.org/UserFiles/261749%C4%BoHD-TOPLU%2oMEZAR%2oRAPORU.pdf>.

prohibition of slavery and forced labor, and no punishment without law according to Article 15 of the Constitution of the Republic of Turkey and the European Convention on Human Rights. Given this, what was the function of mass graves in the state of emergency in Turkey? Two possible answers are suggested in the data in Table 5.1, in which deaths of civilians and PKK fighters are listed separately.

With respect to civilian deaths, the main reason is to remove violent deaths from the public eye in a country proud of its state of law. Deaths in this category are generally Kurdish political opponents to OHAL rule, journalists and human rights activists publicizing violations in the emergency region, and PKK sympathizers. As bearers of bare life between *zoë* and *bios* in the emergency region, they were added to the list because they approached *zoë* at the intersection of derealization and dehumanization. They violated the borders of discipline and biopolitics in the emergency region by standing up against OHAL practices or standing with the PKK. Therefore, they approached *zoë*. They were treated in accordance with the rules of the state of animality and even denied a grave at the level of necropolitics.

However, there is another reality considering the distribution of people in mass graves. The ratio of PKK dead at 73 percent outnumbered that of civilians. This says something intrinsic about the nature of dehumanization. The dramatic rate of 73 percent shows that the gates of the hereafter are closed to those whose lives do not make sense in the *bios* of the sovereign. PKK fighters appear as *homo sacers* which the state can treat at will - in life and in death - outside of normal order of the *bios*. The main aim here is wiping out of the enemy's existence from also death. That also related to the realization of symbolic death in addition to the biological one. Hişyar Özsoy explains this process in light of a sovereign edict.

There is a sovereign edict that prohibits proper burial for the dead body of a "traitor" (rebel or terrorist), which taboos the dead as a dangerous or polluting entity and excludes it from legal citizenship and human sociality.⁴¹

41 Özsoy, "Between Gift and Taboo," 93.

In this depiction, PKK fighters are enemies of the state who threaten the integrity and purity of the vatan, so they are treated in a relation of exclusion after death. They are excluded from human sociality as entities whose mourning is not conducted in a manner befitting proper passage to the hereafter. As a result of this edict, they are excluded from underneath the land itself for the reason that they have been accused of polluting the purity of the vatan. Therefore, they are killed a second time, but in a symbolic way. Thus, routine practices of denying burial or burying in mass graves are the peak of dehumanization in the necropolitical hierarchy of the state.

As the cases of Kasaplar Deresi (Butchers Creek) and Antalya will show, denying burial or burial in a mass grave, in essence, serve two main purposes in the necropolitical order: To prevent the symbolic capital of the dead and to preserve the purity of the vatan. While the case of Kasaplar Deresi does this with respect to a mass grave, the case of Antalya takes it a step further through the disinterment of corpses at the will of society - the purest example of contractual violence.

5.2.1 *A Secret that Everyone Knows: Kasaplar Deresi*

Evidence in the case of Newala Qesaba (Butchers' Creek, Kasaplar Deresi) was the first to raise the question of mass graves in Turkey. Butchers' Creek is located in Siirt in Southeastern Turkey. The province was added to the OHAL region by Statutory Decree 285 on 14 July 1987. The case, in fact, exemplifies how the state of animality worked in a relation of enmity persisting from Ottoman times into the 1990s. The name of the creek originated from the practice of the butchers of Siirt who slaughtered stolen cattle there in Ottoman times because it is secluded. According to a popular narrative in the region, the creek was also used for Armenian massacres in the 1910s.⁴² Finally, it came into the public consciousness as a mass grave for PKK corpses in 1989.

While OHAL rule led to chaos between civil and military authorities in the Kulp-Lice case, the opposite occurred in the case of Kasaplar Deresi. The collusion of civil and military officials was introduced to the Turkish public,

42 Günay Aslan, "Kasaplar Deresi," *gunayaslan.com*, April 3, 2011, accessed October 14, 2015, <http://gunayaslan.com/index.php/gunayaslan yazilar/409kasaplarderesi>.

and the world in an article by Günay Aslan. The article titled “Siirt’te İnsan Çöplüğü” (Human landfill in Siirt) was published in *2000’e Doğru* on 19 January 1989. According to its claims, the dead bodies of PKK fighters were taken with a garbage truck belonging to the Municipality of Siirt and thrown into the landfill of city’s military brigade: Newala Qesaba.⁴³ Aslan provided a list of seventy-three people thought to have been thrown into the creek including mostly PKK headsmen, guerillas, and prisoners who died under torture.

Aslan explained the process in detail with impressions of witnesses in a book published in 1990 entitled *Üniformalı Kasaplar* (Butchers in uniform). As Aslan explained, he was informed about activities at the creek in a briefing by Zübeyir Aydar, the head of the Province of Siirt from the People’s Labor Party, in December 1988.⁴⁴ Aydar bases his claims on the testimony and rumors of locals. According to them, they had seen dogs roaming the city with the body parts of those who had been thrown into the landfill in their mouths.⁴⁵

In witness accounts, Newala Qesaba was an open secret, as the narrative of Ali Oktay indicates. His cousin, Mehmet Oktay, a PKK fighter, and one of the most important commanders of the PKK, Mahsum Korkmaz (Agit), were killed together in a gun battle with a commando unit in 1986:⁴⁶

The bodies of Mehmet and Mahsum were thrown into Kasaplar Deresi in front of our eyes after they had been dragged street by street roped to the back of a tractor to spite us.⁴⁷

The testimony of a municipal garbage worker, Sevdin Dağtekin, also points to the banality of violence rising from the collaboration of civil and military officials:

43 Ibid.

44 Ibid.

45 Günay Aslan, *Üniformalı Kasaplar* (Istanbul: Pencere Yayınları, 1990), 52.

46 He was the first commander of the PKK. He is also known to have led the first attacks of the PKK against the Turkish Armed Forces on 15 August 1984.

47 “Mehmet ve Mahsun’un cesetleri bizlere nispet yapılrçasına bir traktörün arkasına bağlanarak, sokak sokak dolaştırıldıktan sonra gözlerimizin önünde Kasaplar Deresi’ne atıldılar.” Aslan, *Üniformalı Kasaplar*, 53.

Most of the time we joined in the work of throwing corpses into Kasaplar Deresi with the collaboration of the regimental command and the municipality. Recently, I pushed my own nephew, Hamit Dağtekin, into the landfill with my own hands. You must follow orders. If you do not, your fate will be the same. No humanity remains in the human.⁴⁸

Moreover, a formal document of the Department of Technical Services of the Municipality of Siirt (*Siirt Belediyesi Fen İşleri Müdürlüğü*) dated 13 July 1988 shows the collusion of military and civilian officials. This document signed by the mayor, Mahmut Çalapkulu, informed the regimental command about the corpses of five terrorists thrown into the Kasaplar Deresi.⁴⁹

The cooperation of civilian and military officials points to a single individual in charge at the top: The governor of the OHAL region. However, when the opinion of the regional governor, Hayri Kozakçıoğlu, was asked on 16 January 1989, his answer was: “I can't deal with the fate of a dead captured terrorist. I'm busy with larger concerns.”⁵⁰ There were only three corpses in the creek according to the statements of Kozakçıoğlu, but the reality was different. Increased public interest in both the internal and international arenas compelled the prosecutor of Siirt to take action. The prosecutor started an excavation of the creek on 22 April 1989 with bulldozers.⁵¹ Six corpses were removed in a twenty-five-meter section of the two kilometer long creek. Panic ensued and excavation was stopped by the decision of the Ministry of Justice.⁵² The creek

48 “Kasaplar Deresi’ne ceset atılması işine çoğu zaman Alay Komutanlığı ve Belediye Başkanlığı işbirliğiyle biz de katılırız. En son kendi yeğenim Hamit Dağtekin’i kendi elletimle yuvarladım çöplüğe. Emir kulusun, yapmazsan senin de akıbetin aynı olur. İnsanda insanlık kalmıyor ki...” Ibid., 59.

49 Ibid., 60-61.

50 “Ölü olarak ele geçen teröristin akıbetiyle ben ilgilenemem, daha büyük organizasyonlarla meşgulüm.” Ibid., 61.

51 Aslan, “Kasaplar Deresi.”

52 Aslan, *Üniformalı Kasaplar*, 78-79.

has not been further excavated to date, and it was surrounded with barbed wire and rubble was poured over it.⁵³

While oral and written parliamentary questions regarding the creek by Mahmut Alınak (the deputy of Kars from the SHP) and Fuat Atalay (the deputy of Diyarbakır from the SHP) were left unanswered, a statement by Abdülkadir Aksu, then Minister of the Interior, was printed in newspapers on 5 May 1989. Aksu explained that eight corpses have been buried in the creek since 12 September 1980 and six were removed in the prosecutor's excavation. In addition, the minister accused municipality workers "burial of corpses in a place that is not a cemetery." The most interesting point in Aksu's explanation concerned why the municipality had acted in such way. According to Aksu, they used heavy equipment belonging to public institutions because corpses had not been claimed by families, some were not identified, and because of possible local reaction against PKK corpses.⁵⁴ Despite the minister's explanation, the new mayor of Siirt, Ekrem Bilek, confirmed the cooperation of civilian and military authorities.

Seven to eight corpses were buried in Kasaplar Deresi under the supervision of the security forces in the period before me. Later, the bodies removed during a recent excavation of the prosecutor were submitted to our municipality, and buried in the city cemetery by our municipality.⁵⁵

Undoubtedly, denying burial is an old practice considering treatment of the dead bodies of Sheikh Said and Sayyid Rıza in the early years of the republic. Confiscation of their bodies after their hangings and their burial in unmarked

53 Celal Başlangıç, "AKP Tipi Kamu Düzeni: Daha Çok Kasaplar Deresi!" *Haberdar*, January 22, 2016, accessed March 20, 2016, <http://www.haberdar.com/akp-tipi-kamu-duzeni-daha-cok-kasaplar-deresi-makale,705.html>.

54 "Kasaplar Deresi Olayına Açıklama: 'Cesetleri Belediye Gömdü,'" *Milliyet*, May 5, 1989.

55 "Benden önceki dönemde 7-8 ceset güvenlik kuvvetlerinin gözetiminde Kasaplar Deresi'ne gömülmüş. Daha sonra ise C. Savcılığı, geçtiğimiz günlerde yaptığı kazı sırasında çıkarılan cesetleri belediyemize teslim etmiş ve belediyemizce şehir mezarlığına gömülmüşlerdir." *Ibid.*

mass graves indicate continuance of the punishment process after the execution for both the dead and the society to which dead belong. Therefore, the case of Kasaplar Deresi does not seem to be an anomaly in history; rather, it is an outcome of longstanding practice. Indifference and normalization in the discourses of the Governor of the State of Emergency Region, the Minister of the Interior and the mayor of Siirt - those responsible in the case - are reflections of well-established practice. This is also true in terms of the creek's own history in which the process of dehumanization was strikingly moved from Ottoman times into the late 1980s. While the creek initially provided an escape for butchers to kill stolen cattle, it later functioned for the slaughter of people in a relation of enmity (Armenians, and then PKK fighters) in accordance with the rules of the state of animality (zoë). Those taken outside the bios in a relation of enmity are also treated outside normal judicial and social order.

5.2.2 *Legitimacy of Necropolitics within the Borders of Contractual Violence*

Antalya is famous along the Mediterranean coast of Turkey for tourism. Events that occurred in Antalya, were outside the OHAL region and rule. The main purpose for highlighting this case is that it exemplifies the working of contractual violence within society on the basis of the approval of state violence in regardless within the OHAL region, or not.

Three PKK fighters were killed in an armed conflict with a gendarmerie unit in Manavgat, Antalya, and were buried in the cemetery of the same province. Thereupon, a group of almost one thousand people were gathered in front of the Governmental House (*Hükümet Konağı*) with Turkish flags, and then, closing the Alanya-Antalya highway to traffic, chanting “Kahrolsun PKK!” (Down with the PKK!), “Şehitler PKK ile yan yana yatmaz!” (Martyrs cannot lie side by side with the PKK!), and “Cesetler yakılsın!” (Burn the corpses!). Despite promises of the district governor of Manavgat, Nazmi Kahraman, a group continued to demand that corpses be burned. After that, the governor gave an instruction to immediately move the corpses to another place. The corpses, which were exhumed with a bulldozer belonging to the

Manavgat municipality, were moved to another, unspecified place.⁵⁶ The angry group chanting “Martyrs cannot lie side by side with the PKK” and “Ne mutlu Türküm diyene!” (How happy is the one who says I am Türk!) was not pacified until it went to the cemetery and saw the corpses being taken away.⁵⁷

The situation is described in *Serxwebûn* as a planned part of psychological warfare in which fascist groups and cameras were organized in advance to exhibit how guerilla corpses could be damaged and moved from one grave to another.⁵⁸ However, the events did not come up on the agenda of Parliament. Minister of the Interior, Murat Başesgioğlu, upon being questioned by a journalist, evaluated the existence of the PKK in Antalya within the classical state discourse as internal and external enemies seeking to damage Turkish tourism.⁵⁹

The case of Antalya-Manavgat shows that violence vis-à-vis the dead bodies of PKK fighters, whether practiced in the OHAL region or elsewhere, has a crucial dynamic in society when it comes to the relation of enmity. That, in fact, shows how necropolitics exceeds in a contractual manner between the state and society. The main guarantee of this contract - which includes explicit or implicit approval of and consent for the discourse and practice of violence, is the removal of judicial responsibility. The judicial impunity which is provided to perpetrators against dehumanized lives of PKK fighters prepares the basis for all types of inhumane practices. Judith Butler states that

certain lives are not considered lives at all, they cannot be humanized, that they fit no dominant frame for the human, and that their dehumanization occurs first, at this level, and that this level then gives rise to a physical violence that in some sense delivers the message of dehumanization that is already at work in the culture.⁶⁰

56 “Cesetleri Verin Yakalım!” *Milliyet*, April 16, 1998.

57 “Halkın Öfkesi,” *Hürriyet*, April 16, 1998.

58 Kani Yılmaz, “TC Psikolojik Savaşla Nereye Varmak İstiyor?” *Serxwebûn*, April 1998, accessed May 4, 2016, <http://serxwebun.org/arsiv/196/>.

59 “Antalya’da PKK’lı Avı,” *Sabah*, April 12, 1998.

60 Butler, *Precarious Life*, 34.

We see the same message working its way through society in the case of Antalya-Manavgat. Recalling the sovereign edict proposed by Özsoy regarding the prohibition of “proper burial for the dead body of a ‘traitor’ (rebel or terrorist),”⁶¹ the emergence of contractual violence against PKK dead is a continuation of this edict. Accordingly, the land of the dominant nation was closed to PKK fighters even after their death. Therefore, those at the borders of enmity were also wiped out from underneath the land on the pretext that they violated the purity of the land, as they did once top of the land with enmity activities against the bios of the state. The slogan “Martyrs cannot lie side by side with the PKK” is the best example of this violation of the purity.

In the discourse of martyrdom, dead soldiers represent the real owners of the vatan because they sacrifice their lives for the sake of it. On the other hand, in this same imagination, PKK fighters represent the enemy of the vatan, so their burial in the same land pollutants the purity of the vatan land. For this reason, “martyrs cannot lie side by side with the PKK.” These constructed representations produce consent regarding the legitimization of violence and corporeal punishment for “outcast” subjects.⁶² Therefore, the slogans chanted during the Antalya event and the practices in operation in the OHAL region can be evaluated as two parts of the same contractual violence.

§ 5.3 Agency of Dead Bodies

Besides the question asked by a Kurdish mother - What does the state want from a PKK fighters’ cenaza? - the other question inherent to all the cases is what does such violence on the dead enable that violence on the living cannot? In other words, do dead bodies have something to signal to the rest? In this regard, Katherine Verdery encourages us to think about bodies as symbolic vehicles:

61 Özsoy, “Between Gift and Taboo,” 93.

62 Ramazan Aras, *The Formation of Kurdishness in Turkey: Political Violence, Fear and Pain* (London: Routledge, Taylor & Francis Group, 2014), 159.

Dead people come with a curriculum vitae or résumé - several possible résumés, depending on which aspect of their life is being considered. They lend themselves to analogy with other people's résumés. That is, they encourage identification with their life story, from several possible vantage points.⁶³

Thus, the dead do not remain dead. From the perspective of necropolitics, they act as a useful vehicle to manifest state power to the rest. In this regard, the dead bodies of those who are in a relation of enmity have a critical importance as propaganda tools to intimidate those who share similar alignments and ideologies. That indicates a fundamental point on the essence of necropolitics: The state aims to regulate and discipline society with the power of death. Thus, all the necropolitical practices on PKK corpses analyzed in the case studies - from postmortem torture to post-burial attacks - can be considered an overall summary of what will happen to those who are on the side of the PKK.

The manifestation of state power over PKK corpses not only serves a message to the circle of the dead, but also to the rest of society. In this message, PKK fighters are killable entities with a guarantee of impunity for perpetrators. There are, in fact, two dynamics facilitating this message: The construction of enmity and judicial impunity. No doubt, both promote contractual violence.

The construction of enmity through a demonizing rhetoric of separatist terrorists contributes to the dehumanization of these bodies, not only in the process of their killing but also in postmortem abuses. Once they have been dehumanized, inhumane practices on their corpses are normalized and even affirmed in the imagination of the masses. The cases of Ardahan Göle, Kulp-Lice, Kasaplar Deresi, and Antalya-Manavgat reflect this process. All these cases, in fact, show that the PKK dead have no place in human sociality even in death because they have conducted terrorist activities against the bios (political and social life) of state sovereignty. Thus, they have but one choice: To be killed and treated in accordance with the rules of *zoë* (the state of animality) with no judicial responsibility for perpetrators of activities such as torture of their corpses, blocking or attacking their funeral processions, or their burial

63 Katherine Verdery, *The Political Lives of Dead Bodies: Reburial and Postsocialist Change* (New York: Colombia University Press, 1999), 28.

in mass graves. In the words of Special Forces members, “They must be fed to the dogs. They should not even be brought to the police station.” in Ardahan-Göle case. Moreover, normalization discourses of minister of the interior and prime minister for the attacks on funeral procession in Kulp Lice, the collusion between civil and military authorities for the practice of mass grave burials in Kasaplar Deresi, and the slogan “martyrs cannot lie side by side with the PKK” in the society mindset as a normative basis for the inhumane disinterment practice against PKK corpses in Antalya case were, in fact, possible by means of the dehumanized depiction of “PKK terrorist” outside of human sociality.

Political discourse and the practices of the Turkish state has been mostly conducted with use of the term *terrorist* instead of *guerilla*. A parliamentary question dated 11 January 1994 best exemplifies this propagandization within state discourse. The written question was submitted to the TBMM (Türkiye Büyük Millet Meclisi, Grand National Assembly of Turkey) by a Kurdish politician, Hatip Dicle (the deputy of Diyarbakir Province from the SHP), about inhumane treatment with respect to the corporeal integrity of the bodies of twelve PKK fighters by soldiers after an armed conflict on 16 October 1993 in Karıncak (Bayırlı) village near Lice in Diyarbakır: “Deaths as a result of armed conflict are understandable. But how can cutting off the ears from guerilla corpses disregarding any legal and human values be explained?”⁶⁴ The answer, with a note of the Gendarmerie General Command of the Ministry of the Interior (İçişleri Bakanlığı Jandarma Genel Komutanlığı) and the signature of Nahit Menteşe, the Minister of the Interior, is interesting in terms of its emphasis on Dicle’s use of the term “guerilla.” According to it, the use of guerilla was interpreted as an effort to ascribe legitimacy to the PKK. After this determination, the definition of guerilla warfare is given at length:

64 “Silahlı çatışma ve sonucunda gelen ölümler, anlaşılır durumdadır. Ama hukukî ve insanî değer yargılarını hiçe sayarak, gerilla cesetlerinin kulaklarını kesmek, nasıl izah edilebilir?” TBMM, “Diyarbakır Milletvekili M. Hatip Dicle'nin, Diyarbakır-Lice Karıncak Köyü yakınlarında çıkan çatışmaya ilişkin sorusu ve İçişleri Bakam Nahit Menteşe 'nin yazılı cevabı (7/2787),” *Tutanak Dergisi* Term 19:62 (1994), 159, retrieved 18 August 2016, from [https:// www.tbmm.gov.tr/tutanaklar/TUTANAK/TBMM/d19/co51/tbmm19051062.pdf](https://www.tbmm.gov.tr/tutanaklar/TUTANAK/TBMM/d19/co51/tbmm19051062.pdf).

Guerilla: A general term used for any civilian or military individual who participates guerilla warfare. Guerilla warfare is a movement conducted according to military or quasi-military principles with the participation of local people with the aim of reducing the combat power of an enemy who has occupied the vatan and forcing them to leave this lands through the methods of harassment and creating casualties on the side of enemy. Therefore, there are no guerillas within the borders of Turkey! But there are terrorists and collaborators who support them with their behavior and words.⁶⁵

After this long definition, the actual subject of the question is mentioned in only two lines: "... incorrect allegations with the purpose of giving support to certain political circles."⁶⁶

Another facilitative factor feeding contractual violence is judicial impunity. In the previous chapter, we discussed the role of the state of emergency legislation as a basis for exercising judicial impunity. In this context, we analyzed how Article 148 of the constitution, Articles 32 and 33 of the Act on States of Emergency, Article 7 of Decree 285, and Article 4 of Decree 413 expand judicial impunity for acts and practices of the governor of emergency region, other officials from the Ministry of the Interior, and military officials in the region. Given the routineness of inhumane treatment of dead bodies in the OHAL period, not only was accountability for these practices eliminated, but moral restraint as well. Exceptional times through providing judicial impunity to perpetrators against already dehumanized lives prepare the basis for all types of inhumane practices with the discourses of enmity (terrorist, rebel, or traitor). As Talal Asad emphasizes:

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- 65 "Gerilla: Gerilla harbine katılan herhangi bir sivil veya askerî şahsı ifade eden genel bir terimdir. Gerilla harbi ise; Vatan toprağını işgal eden düşmanı taciz veya zayılatma amacı ile muharebe gücünü azaltmak ve işgal ettiği topraklardan terke zorlamak maksadı ile yerli halktan ve düşman gerisinde kalan kuvvetler tarafından askerî veya yarı askerî esaslara sevk ve idare edilen bir hareket türüdür. Bu nedenle, Türkiye sınırları içinde Gerilla yoktur! Ancak; terörist ve onlara söz ve davranışları ile destek veren işbirlikçileri vardır." Ibid., 159.
- 66 "Soru önergesinde belirtilen hususlar maksatlı, tamamen belli çevrelere destek vermek amacıyla yönelik, asılsız iddialardan ibarettir." Ibid., 160.

If immunity for war crimes is secured (as in the case of the US negotiations in August 2008 with the subordinate Iraqi government, in which immunity for all American soldiers and contractors was sought) the line between ‘innocent’ combatant and ‘criminal’ combatant becomes clear again. He who is not legally pronounced guilty is innocent.⁶⁷

Although judicial impunity during OHAL rule is observable in all these cases, the cases of Ardahan-Göle and Antalya-Manavgat show that the state of exception with respect to judicial impunity is no exception but rather the rule for some. Indeed, Ardahan and Antalya were never within the OHAL region nor under OHAL rule. However, the same necropolitical violence in the OHAL region is present in these two cities. While judicial impunity was provided in a *de jure* manner by the emergency rule in the OHAL region, this impunity is granted in a *de facto* manner in Ardahan and Antalya. While the torture of corpses and burial in mass graves was revealed by the lack of an autopsy and explanation by the official statement that “six of them being uncircumcised, no claim by relatives, and the absence of an imam to perform the religious ceremony” in the Ardahan-Göle case, events developed on the basis of contractual violence in the Antalya-Manavgat case. Accordingly, the social mindset of locals from Manavgat led civil authorities to expel PKK corpses from the municipal graveyard. This is the process of normalization and approval of necropolitical violence practiced in the OHAL region. What is being approved is that some bodies may be treated in an inhumane way even in death because they violated the borders of human sociality by opposing the bios.

At this point, Arendt’s assumption regarding the nature of violence is important: “Violence is by nature instrumental; like all means, it always stands in need of guidance and justification through the end it pursues.”⁶⁸ In the en-

67 Talal Asad, “Thinking About Terrorism and Just War,” *Cambridge Review of International Affairs* 23 (2010): 11.

68 Hannah Arendt, *On Violence* (New York: HBJ, 1970), 51.

suing section of her book, she reveals the function of violence: “Violence, being instrumental by nature, is rational to the extent that it is effective in reaching the end that must justify it.”⁶⁹ There may be no problem rationalizing the act of killing PKK fighters in an armed conflict, the instrumentalization of violence occurs with practices on corpses of those fighters. Arendt’s argument is harmonious with Foucault’s definition of governmentality at the point of the instrumentalization of law. Accordingly, Foucault defines governmentality as “disposing things: That is to say, of employing tactics rather than laws, and even of using laws themselves as tactics – to arrange things in such a way that, through a certain number of means, such and such ends may be achieved.”⁷⁰ When the relation Arendt constituted regarding the instrumentalization of violence is considered in tandem with Foucault’s assumption regarding the instrumentalization of law in modern states, there is an environment where the relation between violence and law is blurred.

The place that the dead of the PKK occupied in the 1990s is in the middle of this blurriness. Undoubtedly, the contribution of the OHAL regime in these years is undeniable as it prepared a legal basis for the production of derealization and dehumanization outside of normal judicial and social order. That, at the same time, refers to the production of punishable human categories from the already rendered illegitimate human communities,⁷¹ namely, production of dehumanized bodies from the already rendered derealized bodies.

Given the OHAL rule in Turkey between 1987 and 2002, PKK fighters represented dehumanized bodies - homo sacers. They were deemed killable under the assurance of judicial impunity for perpetrators since they symbolize belonging to the *zoë* (the state of animality) in the eyes of the state. They need

69 Arendt, *On Violence*, 79.

70 Michel Foucault, “Governmentality” in *The Foucault Effect: Studies in Governmentality with Two Lectures by and an Interview with Michel Foucault*, ed. Graham Burchell, Colin Gordon, and Peter Miller (Chicago: University of Chicago Press, 1991), 95.

71 Bahar Şahin Fırat, “Türkiye’de ‘Doksanlar’: Devlet Şiddetinin Özgünlüğü ve Sürekliliği Üzerine Bir Deneme,” in *Türkiye’de Siyasal Şiddetin Boyutları*, ed. Güney Çeğin, and İbrahim Şahin (İstanbul: İletişim, 2014), 376.

to be eliminated with no moral restraint, and allowed to be punished with judicial impunity outside of general state rule. As seen throughout the case studies, the dead bodies of PKK fighters emerge as not included into bios with their lives, but with their deaths as captured dead bodies – namely belong to their hunters. In this regard, we can evaluate state’s treatment of corpses - dismemberment of cenazas, refusal to deliver the dead for proper burial, burials in unmarked or mass graves, and banning funerals - as aspects of a practice of punishment of those who not punished when they were alive.⁷² However, this punishment mostly acts on those who share the similar lives and ideologies with the dead. The function of necropolitics starts at this point, since the main goal of political power is to incorporate zoē into the bios in line with the sovereign’s desire for political power. Therefore, the bare or derealized lives of those who live in the OHAL region oscillated between the zoē and the bios. Their renewed inclusion in the bios of the state, namely normal judicial and social order, depends on a compromise with the state against the PKK on the basis of fighting against terrorism. Otherwise, those who live in the OHAL region are reduced to the status of zoē in tandem with the dehumanized lives of PKK fighters. Either they compromise with the biopolitical desire of the state or they are exposed to the necropolitical violence of the state in both life and death as a living family member, friend, and comrade of the dead, or as being killed oneself with all the punishment one one’s dead body.

§ 5.4 Summary

This chapter provided an in-depth consideration of the question: What does the state want from the dead of the enemy in cases when they can no longer fight? Özsoy’s notion of killing a life twice - in terms of both a biological and symbolic death - provides a vantage point from which to think of the corpses of the PKK not only as deactivated entities but as useful vehicles to transmit a political message regarding the manifestation of state power to the masses who share similar alignments. Dead bodies which are politically included in life are

72 Tanıl Bora, “Ölü Ele Geçirme,” *Birikim*, October 14, 2015, accessed March 25, 2016, <http://www.birikimdergisi.com/haftalik/7250/oluegecirme>.

included in deaths in a punishment relation against both the dead and the human sociality to which who belong, since treatment after death, desiging funeral ceremonies, and burial in a specific place with a given name occupy a prominent place in human sociality providing the dead with proper passage to the hereafter. Therefore, any aggression that appears during these phases first aims to destroy the symbolic value that is intrinsic to these phases within human sociality. More important, undoubtedly, is the purpose to kick the enemy out not only from on top of the vatan land but also from underneath it. In this regard, we emphasized two important notions that feed contractual violence between the state and society and facilitate this aim: The construction of enmity - which has already worked through society via the propagandizing discourses of terrorist, rebel, traitor, and enemies of the vatan - and judicial impunity - which was provided on a large scale by OHAL legislation. Nancy Scheper-Hughes evaluates this process of the construction of the self vis-à-vis other with the relation of exceptional times such as chaos, anomie, and war in terms of approval of violence by the society: "The chaos of war provides an ideal cover for the inhumane treatment of the bodies of the enemy, the terrorist, who are regarded as 'better off dead.'"⁷³

From this point of view, I reveal the necropolitics of the Turkish state against those who are outside of the bios at the intersection of derealization and dehumanization through four case studies from the OHAL period. While bearers of bare lives who live in the OHAL are subject to the disciplinary, biopolitical, and necropolitical power of the state given the placement between the zoē and bios, PKK fighters are the purest expression of dehumanization - a modern homo sacer with the peculiarity of being killable with a guarantee of judicial impunity for perpetrators. In this regard, I approach the cases to reveal how violence is instrumentalized with necropolitical aims at the borders of death and where the law itself is instrumentalized through the extralegal status of OHAL legislation.

73 Nancy Scheper-Hughes, "Terrorist Necropolitics: Allegations of Organ Theft of Executed Captives by ISIS through an Anthropological Perspective," *Harvard International Review*, July 28, 2015, accessed March 25, 2016, <http://hir.harvard.edu/terrorist-necropolitics-allegations-of-organ-theft-of-executed-captives-by-isis-through-an-anthropological-perspective/>.

Since “having a grave” has the most symbolic value in terms of its being visible to the circle of the dead who share similar alignments, I took the grave as the metaphoric point of distinction among the cases. While I discussed the cases of Ardahan-Göle and Kulp-Lice as aspects of a pre-burial processes, I handled the cases of Kasaplar Deresi and Antalya-Manavgat as parts of the post-burial process. Necropolitical violence was discussed through the cases of Ardahan-Göle and Kulp-Lice as prime examples of the construction of enmity and manifestation of state power. While the Ardahan-Göle case demonstrated how the routine dehumanization of the enemy worked on dead bodies even outside of the OHAL region, the Kulp-Lice case best indicated the manifestation of state power over death since it was a message regarding what will happen in death to those who are close to the enemy. On the other hand, the cases of Kasaplar Deresi and Antalya-Manavgat demonstrated a further step in the dehumanization process in the form described by Hişyar Özsoy regarding a sovereignty that even regulates underneath the land. In this regard, the case of Kasaplar Deresi shows the banality of necropolitical violence against the dead of the enemy with respect to the issue of mass graves. The rules of animality routinely worked over the dead of the enemy in daily operations through the cooperation of civil and military authorities. On the other hand, although Antalya did not belong to OHAL region, the case proved the extent to which it is normal to damage corpses in the discourse of terrorism as part of contractual violence. It also proved that for those in the relation of enmity, there is no place for them even on the underside of the land on the pretext that they have polluted the purity of the vatan. Hamit Bozarslan emphasizes that

in Turkey, as in many other places, the symbolic violence prepared, legitimized, and allowed the continuation of the physical violence. It led to the dehumanization of the Kurds, “neutralizing” the crimes committed against them and their identity.⁷⁴

74 Hamit Bozarslan, *From Political Struggle to Self-Sacrifice* (Princeton: Markus Wiener Publishers, 2004), 45.

Conclusion

This thesis discussed the necropolitics of Turkey and the ways of propagandizing and conducting it in relation to the state of exception. To this end, I followed the necropolitical violence of Turkish state over the dead bodies of the PKK in relation of enmity within the legal formation of the state of emergency region between 1987 and 2002. As claimed by Mbembe, extraordinary situations (chaos, rebellion, resistance, and war) create their own extraordinary rules (states of siege, occupation, and emergency) that cannot be understood only through the lenses of discipline and biopolitics. Necropolitics is needed to explain them. I configured the issue around specific cases in Chapter 5, each of which corresponds to one moment of necropolitical violence from after-killing practices (in Ardaha-Göle), attacks on funeral processions (in Kulp-Lice), leaving without a grave (in the case of Kasaplar Deresi), and attacks on graves (in Antalya-Manavgat). While we traced the question of “What does state want from the dead body of an enemy who can no longer fight?” positing two significant factors that facilitate propagandization and the conducting of the process over the masses: The construction of enmity and judicial impunity. The thesis claims that both emerge at the point where violence and law are easily instrumentalized, feeding a contractual violence in which extreme violence by state against those who are in the relation of enmity is approved by society.

In light of these, I approached the OHAL region at the intersection of political fact and law through the necessity-decision-response chain. The main claim was that OHAL rule in a specific region was created as a response once the PKK was a threat to state sovereignty that needed to be eliminated. This required a legal formation to facilitate processes outside of the normal social and judicial order, namely the Governorate of the State of Emergency Region that was in operation between 1987 and 2002. What I claim throughout the thesis is that this legal formation, in fact, led to a relation of derealization and dehumanization in Southeastern Turkey. I use the theoretical tools of Agamben to explain this relation of *zoë* (the state of animality), bare life, and *bios* (the political and social project of the sovereign). According to them, the lives of those in the OHAL region are rendered bare - namely derealized - in contrast to the lives of other citizens living outside of the region. This was realized with the suspension of general state rule which applies to all citizens. The fundamental argument of the thesis is that there are two options for bearers of bare life according to whether they oscillate towards *zoë* or *bios*. Either the disciplinary and biopolitical powers of the state over these people are influential and they become included in the *bios* to the extent they comply with desire of the state for sovereignty within the region, or they are treated with the rule of state of animality (*zoë*) to the extent that they oppose this desire. It is the level of dehumanization in which state targets bare lives by governing death and dead bodies to manifest its power. This study offered PKK fighters as representatives of this level. They are, in fact, the modern version of Agamben's *homo sacer* with the peculiarity of being killable with a guarantee of judicial impunity for perpetrators. Since they wholly opposed the *bios* of the state, their punishment continued even in death with the torture on and dismemberment of their corpses, their burial in unmarked or mass graves, and attacks on graves where they are buried with the pretext that they pollute the *vatan*. As detailed through these cases, dead of PKK are not included in *bios* in life, but are included in death as useful symbolic vehicles to intimidate the masses and manifest state power. Inhumane treatment of PKK corpses was incorporated into this message as a summary of what will happen those who share similar alignments with the PKK dead.

I suggest that the legal formation of the OHAL regime enabled the appearance of such violence outside of judicial responsibility. Accepting that the state of exception is a creation of state rule, I reveal blind spots in its workings that led to the instrumentalization of law in terms of the creation of extralegal governance through which sovereignty resurges in an absolute manner at the expense of the executive body. Throughout Chapter 4, I discuss the possibilities of such a resurgence on the basis of the expansion of extralegal governance and judicial impunity in light of the OHAL experience of Turkey. In this regard, I analyze three main legal texts according to their respective degree of authority: The Constitution of 1982, the Act on States of Emergency, and Decrees Having the Force of Law. However, in practice, rule by law repressed rule of law with the help of decrees of the state of emergency that were outside of the control and supervision of the TBMM. Accordingly, Decree 285 and Decree 421 offered the new administrative status of neighboring province even though there is no such status defined in the Act on States of Emergency. They expanded the ruling rights of the Governor of the OHAL region over these provinces. Moreover, Decrees 285, 413, and 425 provided judicial impunity for the administrative acts and practices of the Minister of the Interior, the Governor of Region in State of Emergency, and provincial governors.

While this atmosphere evokes a situation where law and violence approve of one another, Chapter 3 shows that it was not unique to the OHAL experience between 1987 and 2002. This period was but one part of a longer historical process of both exceptional and necropolitical practices. In this sense, I argue 1913 was a turning point in terms of the formation of necropolitical violence against Kurdish rebels. During the creation of a modern nationstate and a new bios project - from the Ottoman Empire to republican Turkey - this year is a rupture in terms of the use of necropolitical practices against Kurdish rebels. As a new Turkish-based homogenous nation state was constructed, people who broke the mold or opposed it not only paid the price in life but also in death. While reconciliation as an option vis-à-vis Kurdish rebels that was employed before 1913 (in the rebellions of Bedirxan Beg of Botan and Sheikh Ubeydullah) was abandoned, public executions and display of the dead bodies of rebels were turned into manifestations of state power with the aim of intimidating the masses who were similarly aligned with rebels (as in the rebellions

of Molla Selim, Sheikh Abdulsalam of Barzan). Victory of this new bios based on Turkish nationalism was declared with the establishment of the Republic of Turkey in 1923, and the necropolitical violence of the state led to a more systematic formation of death governance. Cases from this period (the rebellions of Sheikh Said, Ağrı, and Dersim) show how both violence and law were instrumentalized at the intersection of necropolitics and the state of exception. The Independence Tribunals, Inspectorates General, and the enactment of Law No 1850 prove that derealization and dehumanization have been practiced since early years of the republic. In this regard, treatment of dead rebels in the cases generally and the dead bodies of Sheikh Said and Sayyed Rıza specifically - with respect to their public display and burial in unmarked graves - can be followed in the examples of the OHAL period, as well.

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