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Chapter 8
**A STATE IN ANOMIE: AN ANALYSIS OF MODERN TURKEY'S STATES OF
 EXCEPTION**

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*...the norm functions precisely by way of managing the prospect of
 its undoing, an undoing that inheres in its doings.¹*

It is late January 2016; a group of people are trapped in the basement of an apartment building in Cizre, a town in Şırnak, Turkey.² This event, which would go on to occupy Turkey's politics until February 1st, was not the result of unfortunate circumstances or a natural disaster, rather it was caused by ongoing round-the-clock curfews and military operations which had begun to dominate the life of Kurdish-populated cities in Turkey's southeastern regions, where Cizre/Şırnak is located.³ The declaration of curfews, followed by intensive military operations, had caused those injured to seek shelter in a basement, where they waited, trapped, for an ambulance that would never arrive. On February 1st, communication with those trapped in the basement was lost for good.⁴ According to reports from local and international human rights organisations, a similar

¹ Butler, Judith. *Frames of War: When is life grievable?* (London: Verso, 2010), 12.

² 'Urgent Action: Injured, Stranded, In need of Emergency Care', *Amnesty International* (26 January 2016) <https://www.amnesty.org/download/Documents/EUR4433222016ENGLISH.pdf> accessed 13 February 2019.

³ For the latest figures on the curfews see the report; Human Rights Foundation of Turkey. *Curfews in Turkey between the Dates 16 August 2015 – 1 January 2019*. (2019b). <http://en.tihv.org.tr/curfews-in-turkey-between-the-dates-16-august-2015-1-january-2019/> accessed 13 February 2019.

⁴ According to MPs from the People's Democratic Party (Halkların Demokratik Partisi – HDP), through whom communication was carried out, people trapped in the basement were left under the debris after the building they were in was hit by bombs. 'Latest Reports from Wounded in Cizre: We're Under Debris', *Bianet*, (1 February 2016). <http://bianet.org/english/human-rights/171692-latest-reports-from-wounded-in-cizre-we-re-under-debris> accessed 13 February 2019.

accident happened in at least two more basements in Cizre around the same time,⁵ with at least 130 people losing their lives.⁶

The story of those who were trapped and died in that basement is just a drop in the ocean of Turkey's juridico-political history of deadly exceptional measures. After the demise of the one-party regime in 1945, Turkey experienced a series of military coups that had taken place respectively in 1960, 1971 and 1980. After the 1980 coup, Turkey's military regimes drafted a new constitution in 1982, under the authority of the ruling military group. The 1980 coup was followed by a dual regime of state of emergency rule and counter-terror law that dominated the political, as well the social and economic life in the 1990s. Since the summer of 2015, the infamous tight control seen in the 1990s has been extended further still, to include round-the-clock curfews and a nationwide state of emergency. During this final state of emergency, which took place between the years 2016-2018,⁷ Turkey went through a parliamentary regime change after a constitutional referendum. The state-form change – from a parliamentary system to a strong presidential one – took place *de facto* through executive decrees (KHK –*Kanun Hükmünde Kararname*) issued during the state of emergency, which were later formalised with the constitutional referendum of April 2017.⁸ The new strong presidential system was presented by the ruling Justice and Development Party (AKP) as a Turkish-style presidency.⁹ While some scholars referred to it as hyper-presidentialism, emphasising the 'strong single executive power with very little or no constitutional constraints',¹⁰ others presented such reform as a part of the ongoing process of weakening political institutions.¹¹

⁵ The Human Rights Foundation of Turkey's Cizre field report located three shelter basements, which had been destroyed by military forces. Although some of the bodies were identified and buried hastily, either by the families or by local government authorities, the whereabouts of the other bodies is still unknown. The field report mentions human remains scattered all over the city and witness testimonies mention some human remains thrown in the Tigris River. Human Rights Foundation of Turkey. *76-Day Curfew: Cizre Field Report*. (2016). <http://en.tihv.org.tr/79-day-curfew-cizre-field-report/> accessed 26 February 2019.

⁶ Amnesty International reports that the number of people who sought shelter in various other basements in Cizre amounts to 130. Amnesty International. *Amnesty International Report 2016/17: the state of the world's human rights* (2017). <https://www.amnesty.org/download/Documents/POL1048002017ENGLISH.PDF> accessed 26 February 2019.

⁷ A nationwide state of emergency was declared on July 21st 2016 after the failed coup attempt by the followers of Fetullah Gülen. The AKP government used this opportunity to eliminate all opposition with mass purges in governmental posts including civil service and the military. For an overview of events, see (Amnesty International 2017: 367- 371). For figures of two years of emergency measures see; 'OHAL sona erdi: İki yıllık sürecin bilançosu', *BBC Türkçe* (19 July 2018). <https://www.bbc.com/turkce/haberler-turkiye-44799489> accessed 26 February 2019.

⁸ Erensü, Sinan and Ayça Alemdaroğlu. 'Dialectics of Reform and Repression: Unpacking Turkey's Authoritarian "Turn"'. *Review of Middle East Studies*, (2018) 52(1), 16-28.

⁹ For political context on this Turkish style of presidency, see Kalaycıoğlu, Ersin. The Challenge of à la Turca Presidentialism in Turkey. *Global Turkey in Europe*. (2014). https://www.iai.it/sites/default/files/gte_c_18.pdf accessed 23 July 2019.

¹⁰ Boyunsuz, Şule Özsoy. 'The AKP's Proposal for a "Turkish type of presidentialism" in comparative context'. *Turkish Studies*, (2016) 17(1): 68-90.

¹¹ Akman, Canan Aslan and Pınar Akçalı. 'Changing the system through instrumentalising weak political institutions: the quest for a presidential system in Turkey in historical and comparative perspective' *Turkish Studies*, (2017) 18(4): 577-600.

Despite these various readings, it is common to analyse the current state of Turkey through a sudden ‘authoritarian turn’ which became apparent after the 2013 Gezi protests, accelerated after the 2016 failed coup attempt and, finally, legalised by the presidential regime change.¹² While authoritarian turn is often related to a ‘democracy in crisis’,¹³ or even considered a betrayal of democracy,¹⁴ some suggest the recent political and legal changes in Turkey ‘signals a transition to a more ‘exceptional’ paradigm of security’.¹⁵ However, neither authoritarian tendencies nor exceptional measures are new trends in Turkey’s political and legal climate.

In this chapter, I would like to consider the transformation of the exceptional measures from a historical perspective with the aim of exposing the evolutionary pattern of the states of exceptions in Modern Turkey. In order to do so, I will consider the round-the-clock curfews as a signpost. Even though Turkey is living proof of exception being the norm, I suggest that the round-the-clock curfews expose a pattern of anomie within the paradigm of exception; that is to say that some exceptional measures are even more exceptional than others are. Although Giorgio Agamben demonstrates in the book *State of Exception* that exceptional measures are necessarily neither internal nor external to law¹⁶ – in other words, situated in a zone of indistinction – Turkey’s states of exception show nuances due to its subject target. Hence, this chapter follows Agamben’s lead in investigating Turkey as an anomic state, while introducing a subject-oriented perspective to bring to light the particular pattern of states of exception on which the Turkish nation state was built (and continues to live in).

Turkey: a state in anomie

Exceptional measures suspend the juridical order for its restoration or defence. As Agamben stresses, those measures are:

‘[...] neither external or internal to juridical order, and the problem of defining it concerns precisely a threshold, or a zone of indifference, where inside and outside do not exclude

¹² In addition to those cited within the text, there are special issue journals focusing on the matter of authoritarian turn in Turkey see; Öktem, Kerem and Karabekir Akkoyunlu, eds. ‘Exit from Democracy: Illiberal Governance in Turkey and Beyond’. *Southeast European and Black Sea Studies* (2016) 16(4): 469- 690. Tansel, Cemal Burak, eds. ‘Decoding the Repertoires of Authoritarian Neoliberalism in Turkey’. *South European Society and Politics* (2018) 23(2): 197-302. Toktamiş, Kumru F. And Isabel David, eds. ‘Critical Crossroads: Erdogan and the Transformation of Turkey’. *Mediterranean Quarterly* (2018a) 29 (3).

¹³ Öniş, Ziya. ‘Monopolising the Centre: The AKP and the Uncertain Path of Turkish Democracy’. *The International Spectator* (2015) 50(2): 22-41.

¹⁴ Toktamiş, Kumru F. and Isabel David. ‘Introduction: Democratization Betrayed – Erdogan’s New Turkey’ *Mediterranean Quarterly* (2018b) 29(3): 3-10.

¹⁵ Kaygusuz, Özlem. ‘Authoritarian Neoliberalism and Regime Security in Turkey: Moving to an ‘Exceptional State’ under AKP’ *South European Society and Politics* (2018) 23(2): 281-302.

¹⁶ Agamben, Giorgio. *State of Exception*. trans. by Kevin Attell (Chicago: University of Chicago Press, 2005).

each other but rather blur with each other. The suspension of the norm does not mean its abolition, and the zone of anomie that it establishes is not (or at least it claims to be) unrelated to the juridical order'.¹⁷

In other words, exceptional measures indicate a state of anomie, where legal boundaries and definitions of inside and outside blur. With this definition in mind, I propose to analyse Turkey as a state in anomie where the inside and outside of the juridical order blurs.

'A state in anomie' bears a double meaning. In their discussion on the nation state, Judith Butler and Gayatri C. Spivak remind the readers of the double meaning of the word 'state'.¹⁸ The first meaning is the juridico-political construct, that 'signifies the legal and institutional structures that delimit a certain territory', while the other refers to the 'conditions in which we find ourselves'.¹⁹ These two meanings collide, especially in exceptional times. As the boundaries between the juridical and political order blur, so does the distinction between those two meanings of state as the state manifests its force on subject-bodies. During states of exception, the state claims to restore or defend its juridical order by leaving subjects in a certain "state", such being trapped in a basement sheltering from military operations conducted by the state of which you are a citizen. At this point, it is crucial to unearth the relationship between the state in juridico-political terms and the subjects left in a determinate state. In order to understand the relationship between the Turkish state and the state of those subjects trapped in the basement to die, it is necessary to recall the foundational state of the Republic of Turkey, or in other words its foundational state of war.

After the establishment of the Turkish Republic in 1923, the first exceptional measure issued was against a Kurdish rebellion known as the *Sheikh Said rebellion* of 1925. The government ordered mobilisation only in certain areas where the revolt took place and established martial courts (*Istiklal Mahkemeleri*) in Turkey's new capital, Ankara, and in the *de facto* capital of the Kurdish region, Diyarbakır, where Kurdish community leaders including Sheikh Said were hanged.²⁰ Additionally, the government adopted the Law for Maintenance of Order (*Takrîr-i Sükûn Kânunu*, no. 578)²¹ which ended the multi-party regime and replaced it with single-party rule, embellished with extraordinary powers, which lasted until the end of World War II.²² During this period yet

¹⁷ Ibid., 23.

¹⁸ Butler, Judith and Gayatri Chakravorty Spivak. *Who Sings the Nation-State?* (London, New York and Calcutta: Seagull Books, 2010).

¹⁹ Ibid., 3.

²⁰ 'Bir Halki Yargılamak: Türkiye'de Ulus-Devlet ve Kürt Meselesi'. *Toplum ve Kuram* (2012) 6-7:13-27.

²¹ Law for Maintenance of Order (Takrîr-i Sükûn Kânunu). 4 March 1925, no. 578.

²² Zürcher, Erik J. *Turkey a Modern History*. (London: I.B. Tauris, 2017).

another Kurdish *Dersim* uprising of 1937 was suppressed by heavy military operations, which again has been concluded with hanging the leader, Seyit Rıza, his sons and five other followers.²³

Although during the interwar period exceptional measures were quite common among the nations across the continents,²⁴ it is worth noting that in Turkey's case what triggered the single party regime was not an outside threat but rather an inside one.²⁵ However, prior to the establishment of the martial courts and the Law for Maintenance of Order, two other legal measures were adopted, just a couple of months after the official foundation of the Republic of Turkey in 1923. The first one is a law called *İzale-i Şekavet* (no.356), translated as 'elimination of bandits',²⁶ which declared that the killing of those labelled bandits was not a crime.²⁷ This was followed by another decree (no. 372),²⁸ which gave amnesty to all possible criminal actions carried out while defending the country, between the years 1918 to 1923.²⁹ It appears that this decree was in response to the Ottoman war criminals tribunal which aimed to prosecute the military elites of the independence war, such as Enver, Cemal and Talat Pashas who later became political leaders of the Turkish Republic, for offenses against Greeks and Armenians.³⁰ As Taner Akçam's detailed account of crimes committed within those years discloses, 'Christians were to be eliminated by expulsion or massacre. Non-Turkish Muslims, such as the Kurds, Arabs, and Balkan migrants (refugees from Christian persecution), were relocated and dispersed among the Turkish majority to be assimilated into the dominant culture'.³¹ In other words, the *İzale-i Şekavet* (no.356) and the decree no.372 pardoned any criminal acts carried out to suppress the Greek, Armenian and Kurdish

²³ Watts, Nicole. 'Recocating Dersim: Turkish State-Building and Kurdish Resistance, 1931-1938'. *New Perspectives on Turkey* (2000) 23: 5-30.

²⁴ After emphasising the role of World War I in generalising the exceptional measures, Agamben provides a brief history of the exceptional measures taken during the world wars. Agamben, *State of Exception*, 11-22.

²⁵ For a detailed analysis of exceptional measures of the interwar period see; Parslow, Joakim. 'Theories of exceptional executive powers in Turkey, 1933-1945'. *New Perspectives on Turkey* (2016) 55: 29-54.

²⁶ *İzale-i Şekavet* was adopted when the Rumi calendar was still in use, hence in the official documents the year of the law is 1339. Elimination of Bandits (*İzale-i Şekavet*). 18 October 1923, no. 356. The *İzale-i Şekavet* law was terminated in 1962. In a report prepared by the Ministry of Justice it was noted that the law was in breach of the Constitution and also that it was no longer needed since there were provisions to punish bandits under criminal law, police conduct law and gendarme conduct law. Draft Law to Abolish Law on Elimination of Bandits and Reports from Ministry of Interior and Justice (*İzale-i Şekavet Kanununun yürürlükten kaldırılmasına dair kanun tasarısı ve İçişleri ve Adalet komisyonları raporları* (1/191)). *TBMM*. 27 April 1962. No.255.

²⁷ Esen, Selin. *Karşılaştırmalı Hukukta ve Türkiye'de Olağanüstü Hal Rejimi*. Ankara: Adalet Yayınları, 2008.

²⁸ Degree no. 372. 19 November 1923. No. 372.

²⁹ Esen: 146.

³⁰ The offences subject to the war crimes tribunals were the expulsion of Greeks and Armenian Genocide. The articles 2216 -230 of the Treaty of Sévres, which is a peace treaty signed between the Ottoman state and the Allied forces (the European opponents in WWI) in 1920 but later on replaced by the Lausanne Peace Treaty with the foundation of the Turkish Republic in 1923, were concerned with prosecution of Ottoman war criminals. Akçam, Taner. *From Empire to Republic: Turkish Nationalism and The Armenian Genocide*. (London: Zeb Books, 2004) 180-207.

³¹ Akçam, Taner. *The Young Turks' Crime Against Humanity: The Armenian Genocide and Ethnic Cleansing in the Ottoman Empire*. (Princeton: Princeton University Press, 2012) xv-xvi.

minorities against their possible alliance with the occupying forces.³² These two legal measures cannot be dismissed as exceptional measures taken during the exceptional times of crisis, but rather they indicate the pattern of exceptional norms in which modern Turkey's juridico-political system operates. Even in this brief history of exceptional measures taken during the foundation of the Republic of Turkey, it is possible to spot the difference in terms of "who was left in what state", which serves as a pattern for upcoming states of emergency.³³ The answer lies in what type of states of exception were granted to different subjects; in other words, who was killed and who was granted amnesty for their killings.

In his inquest on the state of exception, Agamben unearths an interesting relationship between mourning, feast and anomie.³⁴ He considers mourning in terms of public mourning, and specifically in the case of a sovereign's funeral and its potential to create public chaos. He writes '[t]he correspondence between anomie and mourning becomes comprehensible only in the light of the correspondence between the death of the sovereign and the state of exception'.³⁵ Agamben considers that public mourning is a ritualised form of the state of exception that is declared to prevent chaos. The other point he makes is related to the periodic feasts 'that are characterised by unbridled license and the suspension and overturning of normal legal and social hierarchies [when] criminal behaviour is considered licit or, in any case, not punishable'.³⁶ Although Agamben's reading of mourning and feast are quite specific, I believe his exposure of the relationship between mourning, feast and anomie enables us to comprehend the workings of two parallel regimes of states of exception embedded within the foundation of the Republic of Turkey.

At this point, I would like to bring a contemporary account of mourning in relation to a state of exception to the discussion. Just after the 2015 bombings in Paris, which were followed by a two-year state of emergency,³⁷ Judith Butler wrote a short commentary unpacking this intrinsic

³² The Treaty of Sévres aimed to partition Anatolia to establish Armenian and Kurdish nation states and included partitioning Thrace to Greeks (ibid).

³³ It is hard to spot such an obvious pattern in the late Ottoman period, which suggests that the pattern has to do with the foundation of Turkey as a nation state. For an analysis of exceptional measures taken during the Ottoman period see; Lévy-Aksu, Noémi. 'An Ottoman variation on the state of siege: the invention of the idare-i örfiyye during the first constitutional period'. *New Perspectives on Turkey* (2016). 54: 1-24.

³⁴ Agamben, *State of Exception*, 65-73.

³⁵ Ibid.,68.

³⁶ Ibid.,71.

³⁷ A state of emergency was declared in France following the November 2015 attacks, which expired in November 2017. The state of emergency served as grounds for legitimising the AKP government's grip on power through the emergency measures. Similar to the executive power grab of AKP through a referendum, France ended its state of emergency by introducing a counter terrorism bill, which was criticised for normalising the state of emergency. 'France declares end to state of emergency almost two years after Paris terror attacks', *Independent* (31 October. 2017) <https://www.independent.co.uk/news/world/europe/france-state-of-emergency-end-terror-attacks-paris-isis-terrorism-alerts-warning-risk-reduced-a8029311.html> accessed 26 February 2019.

relationship between public mourning and exception.³⁸ Referencing Gillian Rose, Butler titles her commentary ‘Mourning Becomes the Law’. Although Butler does not openly refer to Agamben’s work, she elaborates in a similar vein:

‘Hollande announced three days of mourning as he tightened security controls [...] Are we grieving or are we submitting to increasingly militarized state power and suspended democracy? How does the latter work more easily when it is sold as the former?’³⁹

What Butler suggests is that the state of public mourning had become an excuse for the state of exception. This contemporary example can help us relate Agamben’s analysis on mourning and exception to today, and to see that their relationship is not only a casual one, but rather, they overlap and blur into one another. In other words, the state of mourning is not only a part of the apparatus of exception but at times it appears as a form of a state of exception that paralyses and captures subjects in a constant state of mourning.

These two parallel states of exception operated within the foundational years of modern Turkey – one issuing a state of mourning (*Takrîr-i Sükûn Kânunu*) and the other a state of feast (*İzâle-i Şekavet* and *decree no. 372*). They constitute a frame for what is inside and what is outside of the Turkish nation state. Here I am referring to the Butlerian concept of ‘frame’ which is defined as follows: ‘...to call the frame into question is to show that the frame never quite contained the scene it was meant to limn, that something was already outside, which made the very sense of the inside possible, recognisable’.⁴⁰ Considering the framing of the Turkish nation state enables us to approach its inside/outside, free from the limitations of territorial nation state borders. The last point is crucial to help us unpack Turkey’s anomic state of those left in the state of mourning and those granted a the state of feast (or amnesty) within the territorial nation state borders of Turkey (known as *misak-i milli*). The exceptional measure of issuing an amnesty for criminal acts only makes sense if there is an exceptional criminal activity that would not be accepted in normal times on recognised subjects. Hence, the double form of states of exception, mourning and feast, sets the frame of the Turkish nation state, which indicates the group of subjects who are placed out of

³⁸Butler, Judith. ‘Mourning becomes the law. Judith Butler from Paris’. *Verso*. (2015). <http://www.versobooks.com/blogs/2337-mourning-becomes-the-law-judith-butler-from-paris>. The text appears to be taken down from the website however can be reached from; Butler, Judith. ‘Mourning becomes the law. Judith Butler from Paris’. *Instituto 25 de Mayo para la Democracia* (2015). <https://instituto25m.info/mourning-becomes-the-law-judith-butler-from-paris/> accessed 28 February 2019.

³⁹ *Ibid.*, 2.

⁴⁰ Butler, *Frames of War*, 9.

the frame regardless of their citizenship status. However, there is a catch; it is this outside that makes the inside possible and recognisable.

Regardless of its ethnic diversity, the Republic of Turkey is commonly referred to as the Turkish state (*Türk milleti*) rather than the state of Turkey. This choice of words is not random; it refers back to the nation state building process in Turkey.⁴¹ Since its foundation, all the other ethnicities, other than those recognised non-Muslim minorities, have been forced into uniting under one national identity.⁴² In other words, the Turkish state is the “frame” of the Republic of Turkey, not only as a separation from a territorial outside (enemy) but more so, from the inside, through which other identities have been placed out of the frame. As Butler reminds us in the quote above, the inside of the frame is only recognisable with its outside. Thus, what is left out of the frame becomes the condition for the existence of the Turkish state.

Furthermore, as Butler remarks, there is yet another meaning to the word ‘frame’; that is ‘to frame’ in the sense of falsely accusing someone of a crime or wrongdoing. This blurring of the division of the outside and inside of the Turkish state relates to the perpetual framing of Kurdish subjects as bandits, or to put it in modern terms, as terrorists. In this regard, Butler’s deliberation on the frame of recognition, that is recognising the inside through its outside, is to ask the question when is a life “grievable”, or to be more precise, whose life is “grievable”. She mentions ‘specific exploitation of targeted populations’ and that ‘[...] when such lives are lost they are not grievable, since, in the twisted logic that rationalizes their death, the loss of such populations is deemed necessary to protect the lives of “the living”’.⁴³ Butler suggests that the lives ended to secure other lives are the ones who are considered ‘ungrievable’. However, the case of Turkey demonstrates that the issue of grievability is more complex than that general statement. Not only is there always someone to grieve, in other words to mourn after the lost ones, but in relation to the frame of recognition, there is the question of who is grieving and whether the shared (public) grief or mourning of a targeted population is recognised by the rest. Different from the state of exception resulting from public mourning, the frame of the Turkish state constitutes a line of separation: one’s mourning is the other’s feast. Thus, Turkey is an anomic state and at the same time, in a state of anomie.

⁴¹ Barış Ünlü in his work on the social contract of the Turkish nation state suggests that the contract of being a Turk is built on being Muslim. In this way, only non-Muslims are recognised as minorities while other Muslim ethnic groups were assimilated under the identity of Turkishness. Ünlü, Barış. *Türklük Sözleşmesi: Oluşumu, İşleyişi ve Krizi*. (Ankara: Dipnot Yayınları, 2018).

⁴² The Lausanne Peace Treaty was signed after the conclusion of World War I in July 1923 between Turkey and the allied forces. According to Section III ‘Protection of Minorities’, the Republic of Turkey recognised only non-Muslims as minorities and granted only non-Muslims with minority rights. The rest of the population is recognised as Turkish by the allied forces. ‘Lausanne Peace Treaty’. 24 July 1923. *Republic of Turkey Ministry of Foreign Affairs*. <http://www.mfa.gov.tr/lausanne-peace-treaty.en.mfa> accessed 28 February 2019.

⁴³ Butler, *Frames of War*, 31.

The threshold of lawfulness/lawlessness

Turkey's pattern of states of exception is reflected on the legal form of such measures. Theoretically speaking the characteristic of the state of exception is the blend of executive, juridical and legislative powers producing a zone of anomie, which are claimed to be clearly separate from one another in a democratic state. In *Homo Sacer*, Agamben highlights that life becoming a target of a political decision, allows an uninterrupted shift from democracy to totalitarian (absolute state) and totalitarian regimes to democracies.⁴⁴ This is one of the main collateral factors for exceptional measures transformed in paradigm of governance. By declaring exceptional measures, the nation states do not lose the legitimacy that comes with them being 'democratic', since the suspension of the juridical order for its restoration or defence does not mean the abolition of the entire juridical system. Rather adopting exceptional measures results in a dual system in which both the juridical order and its exception co-exist. Agreeing with this broad description of the state of exception, I would like to highlight a pattern evident in Turkey's states of exception; that is a dual regime of exception. While one covers completely the juridico-political territory of Turkey, the other is specific to the Kurdish-majority provinces of eastern and south-eastern Turkey, which is even more legally arbitrary and militarily fortified than the former. This pattern is related to the discussion of "who is left in what state", and at the same time unearths the threshold of lawfulness and lawlessness within Turkey's anomic state.

In the aftermath of Turkey's founding years, in 1951 some amendments were made to articles 141 and 142 of the Turkish Penal Code (no.5844)⁴⁵ in response to the Cold War, which added communism as a threat. Article 141 criminalised any acts to abolish a social class, to establish rule of one social class above others, and to change economic and state structures, while article 142 criminalised the making of 'propaganda' in favour of those crimes listed in the previous article, including writing about them. After the military coups of 1960, 1971 and 1980, a separate emergency law was added to the new constitution, commonly known as OHAL, (*Olağanüstü Hal Kanunu*, no.2935),⁴⁶ in spite of already having an article on state of siege in the previous 1961 constitution.⁴⁷ OHAL was immediately implemented, with a similar scope to the round-the-clock

⁴⁴ Agamben, Giorgio. *Homo Sacer: Sovereign Power and Bare Life*. transl. by Daniel Heller-Roazen. (Stanford: Stanford University Press, 1998) 72.

⁴⁵ Amendments to Article 141 and 142 of Turkish Penal Code. 3 December 1951. No.5844.

⁴⁶OHAL (*Olağanüstü Hal Kanunu*). 25 October 1983. No. 2935.

⁴⁷ The state of exception (OHAL) was split from the state of siege by the 1982 Constitution. The Constitution, amended after the Constitutional Referendum of April 2017, combined the two back again under the responsibilities of the National Security Council, although the president alone can declare a state of emergency. As article 119 says: 'In the event of war, the emergence of a situation necessitating war, mobilization, an uprising, strong rebellious actions against the motherland and the Republic, widespread acts of violence of internal or external origin

curfews of 2015, mainly covering the Kurdish majority southern and south-eastern provinces of Turkey. While the juridico-political territory of Turkey was governed by exceptional measures, the Kurdish-majority provinces were governed under a double regime of exception that was established by the combination of the anti-communist articles of the Turkish Penal Code and OHAL emergency measures. In 1991, while OHAL in the Kurdish provinces continued, Turkey adopted its first version of the counter-terror law (no.3713). This was presented as a more comprehensive version of the anti-communist articles of the Turkish Penal Code, which were due to be abolished after the passing of the counter-terror law. The 1990s, which saw the intensified regime of exceptional governance through the combination of OHAL and the counter-terror law, are renowned as among the deadliest times in the Kurdish regions. Unlike the state of emergency declared according to the Constitution, the curfews and military operations were based on the Provincial Administration Law (*İl İdaresi Kanunu*, no: 5442),⁴⁸ which originated a debate about its legality.⁴⁹ The declaration of the round-the-clock curfews accompanied by military operations were based on provisions relating to governors' and sub-governors' responsibility to take the 'necessary measures to prevent crimes from being committed and to protect public order and security' and 'to secure peace and security, personal immunity, safety of private property, public well-being and the authority of preventive law enforcement'.⁵⁰ The European Commission for Democracy through Law, known as the Venice Commission, issued a detailed report on the legal framework of the curfews.⁵¹ The Commission concluded that 'the curfews imposed since August 2015 have not been based on the constitutional and legislative framework which specifically governs the use of exceptional measures in Turkey, including curfew'.⁵²

The case of Turkey shows, therefore, that there are different standards in the exceptionality of exceptional measures. Grounding the curfews and military operations within the Provincial Administration Law without declaring a state of emergency exposes a double standard according to which the Turkish state's understanding of the rule of law differs depending on the targeted subject. Furthermore, the arbitrariness of the curfews exposes, once more, the pattern of Turkey's states of exception as being nothing other than a never-ending civil war with its Kurdish citizens.

threatening the indivisibility of the country and the nation, emergence of widespread acts of violence aimed at the destruction of the Constitutional order or of fundamental rights and freedoms, serious deterioration of public order because of acts of violence, occurrence of natural disasters, outbreak of dangerous epidemic diseases or emergence of a serious economic crisis; the President of the Republic may declare state of emergency in one region or nationwide for a period not exceeding six months'. Amendments to the Constitution of the Republic of Turkey. 16 April 2017. No. 6771.

⁴⁸ Provincial Administration Law (*İl İdaresi Kanunu*). 10 June 1949, no. 5442.

⁴⁹ Şenses, Erkan. 'OHAL'sız OHAL Sokağa Çıkma Yasakları?'. *Güncel Hukuk Dergisi* (2016) 145: 20-25.

⁵⁰ Article 11(a) and (c) of Provincial Administration Law.

⁵¹ European Commission for Democracy through Law. *Opinion on the Legal Framework Governing Curfews*. (2016). [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2016\)010-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2016)010-e) accessed 25 November 2019.

⁵² *Ibid.*, 20.

Uncovering *Stasis*: round-the-clock-curfews

Agamben adds a note at the very end of his elaboration on the concept of civil war (*stasis*): '[t]he form that civil war has acquired today in world history is terrorism'.⁵³ And immediately after, he repeats an argument already advanced in book *Homo Sacer* in relation to *stasis*. He writes: '[i]t is no coincidence that the 'terror' should coincide with the moment in which life as such – the nation (which is to say, birth) – became the principle of sovereignty. The sole form in which life as such can be politicised is its unconditioned exposure to death – that is, bare life'.⁵⁴ By taking this note as a point of departure, I suggest that Turkey has been in a never-ending state of civil war since its foundational war of independence in 1923, which served as a condition for the continuity of the Turkish nation state and hence, for its sovereignty.

As argued above, throughout its history the Turkish state has governed the Kurdish region through exceptional measures while legitimising those measures through the rhetoric of the 'war on terror', nearly a decade prior to its global use. Those exceptional measures against the Kurdish population were legitimised with the historic accusation of terrorism, and they enabled the threshold to be pushed further still, and for the anomie to be extended even further. Today's post-referendum question of 'what went wrong'⁵⁵ concerning Turkey's *de jure* dictatorship has its answers in this gradual expansion of anomie through the ultra-exceptional measures issued on the Kurdish population. During the most violent times of the curfews, this point was raised by a large group of Turkey-affiliated academics, known by the name *Academics for Peace*, who wrote in a statement that Turkey has been systematically killing its own Kurdish citizens.⁵⁶ This is civil war and the current situation of *de jure* dictatorship is a simple outcome of a state of a civil war extended nationwide.

To investigate further the state of Turkish civil war it is worth looking at the first part of Agamben's volume *Stasis*, which is a response to Nicole Loraux's series of articles on this theme. By studying the concept and the practice of *stasis* in ancient Greece she concludes that civil war is

⁵³ Agamben, Giorgio. *Stasis: Civil War as a Political Paradigm*. Trans. by Nicholas Heron. (Edinburgh: Edinburgh University Press, 2015) 18.

⁵⁴ Agamben, *Homo Sacer*, 18.

⁵⁵ At the "Law and Politics in Turkey: Reform, Authority and Emergency" conference that took place on October 26-28th 2017 at Northwestern University, the question of 'what went wrong?' dominated the debate. To follow up the conference debate see; Gölarıksel, Saygun and Z. Umut Türem. 2019. 'The Banality of Exception? Law and Politics in "Post-Coup" Turkey'. *The South Atlantic Quarterly* (2019) 118(1):175-187.

⁵⁶ Academics who signed this petition statement have been facing mass purges and state prosecution. For the full statement by the Academics for Peace see 'We will not be a party to this crime' *Academics for Peace* (10 January 2016). <https://barisicinakademisyenler.net/node/63> accessed 18 February 2019.

For a detailed report focusing on the aftermath of the peace petition see; Human Rights Foundation of Turkey. *Academics for Peace: a brief history*. (2019a). <http://www.tihvakademi.org/wp-content/uploads/2019/03/AcademicsforPeace-ABriefHistory.pdf> accessed 17 July 2019.

‘war within the family’.⁵⁷ Agamben, although relying heavily on Loraux’s detailed study, objects to this idea and suggests placing *stasis* exactly in between family and the city; indeed ‘*stasis* does not have its place within the household but constitutes a threshold of indifference between the *oikos* and the *polis*, between blood kinship and citizenship’.⁵⁸ Similar to other Agamben’s propositions on anomie, *stasis* is a blurred space in which the apolitical life of kinship becomes politically charged, and the politically charged citizenship is depoliticised.⁵⁹ Despite the problematic assumption of bare life that is presupposed by the Agamben in general, Turkey’s anomic state, confirms in a way his theory of *stasis* as a threshold between kinship and citizenship.

If the Turkish nation state was a family, in the eyes of the state Kurdish citizens are considered the unreliable sibling who is likely to betray, if they have not already done so. The troubled relationship between kinship and citizenship was at its peak during the peace negotiations, which were carried out between the Turkish state and the Kurdish Worker’s Party (PKK- *Partiya Karkerên Kurdistanê*) between 2009 and 2015.⁶⁰ During this time ‘my Kurdish sibling’ became a common phrase, which was often used by the then prime minister and now president R.T. Erdoğan, and by rest of the Turkish state officials, to emphasise the period of reconciliation after a decade-long blood feud.⁶¹ However, peaceful times did not last long and the Turkish state officials who were carrying out the negotiations once again accused their Kurdish siblings of backstabbing, to which the Turkish state responded with the round-the-clock curfews and military operations.⁶² As argued above, this has its roots in the foundational war of the Republic of Turkey and its nation state framing process.⁶³ The exceptional measures that followed, and which had been implemented within the Kurdish regions since the foundation of the republic, demonstrate the evolution of the founding war of the Turkish state into a continuous state of civil war that has always been kept as a possibility within the anomic state of Turkey. Thus, the Kurdish population have always been perceived by the Turkish state as potential terrorists, and the Kurdish majority provinces have always been considered the headquarters of terrorism to keep *stasis* a waiting

⁵⁷ Agamben, *Stasis*, 3-8.

⁵⁸ Ibid.,11.

⁵⁹ Ibid.,14.

⁶⁰ Yeğen, Mesut ‘The Kurdish Peace Process in Turkey: Genesis, Evolution, and Prospects’. *Global Turkey in Europe*. (2015). https://www.iai.it/sites/default/files/gte_wp_11.pdf accessed 19 February 2019.

⁶¹ ‘Benim Kürt kardeşlerim’ in Turkish. On 5th March 2019 at a rally Erdoğan repeated his gesture of calling Kurds his siblings while asking for the Kurdish votes for the upcoming March 2019 local elections. ‘Erdoğan Kürtlere seslendi: Bak size ‘kardeşlerim’ diyorum!’, *Cumhuriyet* (5 March 2019) http://www.cumhuriyet.com.tr/haber/siyaset/1278526/Erdoğan_Kurtlere_seslendi_Bak_size_kardeslerim_diyorum_.html accessed 5 March 2019.

⁶² This chapter does not intend to debate the events, which are arguably the cause of the failed peace process, nor the events prior to the curfew, but rather aims to demonstrate the specific exceptional measures issued to the Kurdish region, within the framing of the Turkish state.

⁶³ While Turkey’s founding war, commonly referred to as the independence war, is glorified by Turkish nationalists as a victory against occupying colonial powers, it is also remembered as a time of public mourning by its minorities.

possibility. Indeed, as Agamben claims, *stasis* ‘must remain always possible in the city, yet...nonetheless must not be remembered through trials and resentments’.⁶⁴

For *stasis* to remain always a possibility in a state, the times of feast and mourning should be left unpunished. This has been the case in Turkey since the first amnesty of 1923. The Turkish state fully accepted neither responsibility for the systematic violence imposed on the Kurdish region, nor punished those responsible for the extra judicial killings, which took place during the double regime of OHAL and the counter-terror law of the 1990s.⁶⁵ Still to this day, relatives of those who were forcibly disappeared during those times, known as the Saturday Mothers (*Cumartesi Anneleri*), have been gathering in Istanbul at Galatasaray Square every Saturday since March 27th 1995. The Saturday Mothers demonstrate not only the transitivity of kinship and citizenship, but also contribute to the argument raised above regarding Turkey’s anomic state, leaving the Kurdish subjects in a constant state of public mourning.

Finally, the last aspect that is exposed by the round-the clock curfews is the economy of Turkey’s anomic state, which is yet to be explored in the literature. Agamben briefly mentions the economic aspect of *stasis* as he writes; ‘...civil war marks the threshold through which the unpolitical is politicised and the political is ‘economised’.⁶⁶ The Turkish government issued ‘emergency expropriation’ orders in the areas under the curfew. According to Amnesty International’s report on displacements during the curfews ‘in the city of Cizre, a total of 22 plots of land were expropriated across three neighbourhoods’,⁶⁷ and this number goes up to 60% of land in the historical Sur district of Diyarbakır. The report concludes that this was a systematic plan to displace its Kurdish residents.⁶⁸

At this point, I would like to recall Agamben’s critique of Michel Foucault’s genealogy of biopolitics in which Foucault suggests that the sovereign power’s interest in the economy of life began with liberalism.⁶⁹ In *Kingdom and the Glory*, Agamben argues that every primary target of the sovereign power requires calculation, as he writes, ‘[e]very act of government aims at a primary

⁶⁴ Agamben, *Stasis*, 16.

⁶⁵ During the peace negotiations, as a sign of reconciliation the state accepted the existence of hundreds of mass graves located across Turkey’s Kurdish region. According to the Human Rights Association’s special report of 2014 on mass graves, 49 mass graves were estimated in Diyarbakır alone, of which only 8 have been opened. These contained remains belonging to 77 individuals. Human Rights Association. *Türkiye’de Toplu Mezarlar Raporu*. (2014). <http://www.ihddiyarbakir.org/Content/uploads/28148ca9-d128-4b4c-afde-87cec90eef89.pdf> accessed 11 July 2017.

⁶⁶ Agamben, *Stasis*, 17.

⁶⁷ Amnesty International. *Displaced and Dispossessed: Sur Resident’s Right to Return Home*. (2016). <https://www.amnesty.org/download/Documents/EUR4452132016ENGLISH.PDF> accessed 28 February 2019.

⁶⁸ On the relationship between curfews and the government’s gentrification plans as a form of cleansing at the Kurdish cities see; Yıldız, Ceylan Begüm. 2016. ‘Diyarbakır’s Objects of Memory: “Restoration” of the Kurdish City into a Bibloket’. *London Journal of Critical Thought* (2016) 2: 50-61.

⁶⁹ Foucault, Michel. *The Birth of Biopolitics: Lectures at the Collège de France, 1978-79*. Trans. by Graham Burchell. (New York: Palgrave Macmillan, 2008).

target, yet, precisely for this reason, it can lead to ‘collateral damage’ which can be expected or unexpected in their specifics, but are in any case taken for granted’.⁷⁰ Surely, Agamben has a point here, that the ones trapped and killed in the basement are considered collateral damage by the Turkish forces, and their deaths require no further investigation or punishment. However, I believe the economy of emergency can be considered in broader terms, either in the Foucauldian sense of *homo economicus* (biopolitics in the sense of economy of life), or in terms of neo-liberal war economies.⁷¹ Over the last decade, Turkey’s economic growth has been heavily based on the construction sector.⁷² In this sense, curfews reveal the economic aspect of the state of exception; that the destruction of cities and the deaths of their inhabitants were coordinated in order that they could be rebuilt, not only to generate growth through rebuilding infrastructure but also through the rebuilding, or rather re-branding, of Kurdish cities that are to be consumed by ‘the other’; such as for tourism.⁷³ In other words, in neoliberal times of crises, economic projections become the driving force behind the implementation of states of exception.

Conclusion

Although Agamben exposes the crucial placement of *stasis* within the modern juridico-political systems, he provides little explanation as to how the active state of *stasis* is calmed or concluded only to be evoked again in the future. Surely, this is partly due to Agamben’s general argument of exception being an everyday paradigm of government; hence, *stasis* never calms down. However, as the case of Turkey demonstrates, it changes form; and at this point, it is possible to direct a criticism towards Agamben’s lack of differentiation between different forms of states of exception.⁷⁴ As the case of Turkey exhibits, although exception is the norm, there are different forms of exceptions, which leave targeted subjects in different, and at times opposing, states. Furthermore, target-oriented exceptional measures, such as granting one group an amnesty while another is left in mourning, is the motor that keeps *stasis* as a constant possibility within the state. Hence, in order to keep an active state of *stasis* as a possibility, there must be passive form(s) of

⁷⁰ Agamben, Giorgio. *The Kingdom and the Glory: For a Theological Genealogy of Economy and Government*. Translated by Lorenzo Chiesa and Matteo Mandarini. Stanford: Stanford University Press, 2011 (2007), 119.

⁷¹ It is not possible to further discuss this within this chapter due to space limitations. However, to clarify, my emphasis is on the necessity to merge subject oriented questions - such as who constitutes collateral damage; or in other words, who is consumed, and who are the consumers - with neoliberal analysis while considering the economy of exceptional measures.

⁷² On Turkey’s economic transformation from being a neoliberal success story to civil war economy see; Madra, Yahya M. and S Yilmaz. ‘Turkey’s Decline into (Civil) War Economy: From Neoliberal Populism to Corporate Nationalism’. *The South Atlantic Quarterly* (2019) 118(1): 41-59.

⁷³ Regarding the government’s plans to make Kurdish cities desirable for tourists after the curfews see; Yıldız 2016.

⁷⁴ Agamben’s theory of state of exception provides a very helpful lens, however as a result of its broadness fails to guide any detailed analysis. As in the case of Turkey, his lack of differentiation between state of emergency and counter terror laws proved to be problematic.

stasis at which the active state of civil war seems to be concluded. As a way of conclusion, I would like to recall the state of those trapped in the basement.

On January 26th 2015, one of the trapped people in Cizre lost his life while waiting for an ambulance to arrive, and while waiting for the European Court of Human Rights' (ECtHR) decision on the request for an interlocutory injunction due to interim measures.⁷⁵ He was the sixth person to die in that basement. The next day three MPs began a hunger strike to raise awareness of those trapped, calling for ambulances not to be stopped at military checkpoints.⁷⁶ This should have created a commotion in parliament, however the hunger strikers were MPs from the People's Democratic Party (Halkların Demokratik Partisi – HDP), the Kurdish Party-led leftist coalition party which was accused of conspiring against the Turkish government. They were quickly labelled as terrorists by the government⁷⁷, and on the third day of their hunger strike, the Turkish Constitutional Court denied their application requesting an injunction.⁷⁸ While a group of 132 public figures issued a statement that they were ready to save those trapped in the basement it was already too late. On February 1st, the hunger striking MPs declared that they had lost communication with the people in the basement. They added that in their last contact, they had heard explosions and those in the basement said that they were trapped under debris.⁷⁹ Both national and international human rights organisations reported that the basements were destroyed by heavy weaponry, if not specifically targeted by the Turkish forces. The Human Rights Foundation of Turkey's Cizre field report says that basements were burnt and that human remains were spotted in the neighbourhoods where basements were located, while some were said to have been thrown in the Tigris River. An active *stasis* transformed into a passive one when one side wins; when one side feasts on the other's mourning; when the memory of *stasis* is erased through destruction. Whether it is a gravestone or a land; when everything belonging to the losing side becomes the property of the other.

⁷⁵ 'Selami Yılmaz Dies While Waiting for Ambulance in Cizre', *Bianet* (26 January 2016). <http://bianet.org/english/human-rights/171502-selami-yilmaz-dead-while-waiting-for-ambulance-in-cizre> accessed 28 February 2019.

⁷⁶ '3 HDP MPs on Hunger Strike for Ambulance to Reach Injured', *Bianet* (27 January 2016) <http://bianet.org/english/human-rights/171554-3-hdp-mps-on-hunger-strike-for-ambulance-to-reach-injured> accessed 28 February 2019.

⁷⁷ 'MPs on Hunger Strike Call Government to Pull Their Weight', *Bianet*, (28 January 2016). <http://bianet.org/english/human-rights/171585-mps-on-hunger-strike-call-government-to-pull-their-weight> accessed 28 February 2019. 'MPs on Hunger Strike: Don't Hinder Ambulances', *Bianet*, (29 January 2016). <http://bianet.org/english/human-rights/171626-mps-on-hunger-strike-don-t-hinder-ambulances> accessed 28 February 2019.

⁷⁸ 'AYM Cizre'de Ambulans Talebini Reddetti', *Bianet* (29 January 2016) <http://bianet.org/bianet/insan-haklari/171640-aym-cizre-de-ambulans-talebini-reddetti> accessed 28 February 2019.

⁷⁹ 'Latest Reports from Wounded in Cizre: We're Under Debris'. 2016. *Bianet*, 1 February. <http://bianet.org/english/human-rights/171692-latest-reports-from-wounded-in-cizre-we-re-under-debris> [accessed on 28 February 2019].