# SUICIDE BOMBING AND THE MODERN NATION STATE

*Dissertation submitted to Jawaharlal Nehru University*
*in partial fulfillment of the requirements for the award of the degree of*

## MASTER OF PHILOSOPHY

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## DECLARATION

I declare that the dissertation titled **"Suicide Bombing and the Modern Nation State"** submitted by me in partial fulfillment of the requirements for the award of the degree of **MASTER OF PHILOSOPHY** of Jawaharlal Nehru University is my own work. The dissertation has not been previously submitted for any other degree of this University or any other University.

Javed Iqbal Wani

## CERTIFICATE

We recommend that the dissertation may be placed before the examiners for evaluation.

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# Acknowledgements

# Introduction

This work attempts to take up 'state of exception' as a symptom of 'sovereignty' like Marx took 'value' as a symptom of capitalism. The state of exception is taken as a symptom to highlight a foundational problem in the concept of sovereignty. It also highlights some inevitable conditions of the existence of sovereignty that cannot be avoided at any cost. This mechanism of understanding a problem through a symptom is like an umbrella, where the system is concentrated at the centre through the various extension points which in turn are joined among themselves and to the centre as well. Our aim is to understand political violence as a problem of the unresolved tension between 'constituent power' and 'constituted power'. Violence is taken here as a component of both the constituent and constituted power. Also, the concepts of hegemony and domination are taken as mechanisms to understand the relations of the discourse of sovereignty with the concept of security.

What this work attempts, somewhat ambitiously, is to situate the 'necessity' of violence by the sovereign and 'suicide bombing' as a response from the subject. It highlights the fact that theoretically and practically there is something problematic in the relationship between the ruler and the ruled. It thus brings to our attention that the unquestionable authority of the sovereign is placed in a context where it cannot escape the fact of its extra-juridical existence. Throughout the exercise that will be taken in this work we will see how the concept of modern state has always struggled with the problem of absolutism, which can be said the inescapable element of the foundation of sovereignty. In Marxist terms, our effort is to locate the process responsible for the reproduction of the conditions of production of sovereignty.

This work also tries to argue that the concept of sovereignty cannot be seen as indifferent to the discourses of power and control. We are not concerned here about the specific geographical or cultural differences of activities of suicide bombings in various contexts. What we are interested in is the question of

what is the specific rupture that the act of suicide bombing brings to the dominant discourse of sovereignty. The idea is then to ask questions regarding the character of the modern nation-state by evaluating the consolidation of modern life into a territorial yet universal embodiment. It would also like to highlight how a singular body disturbs the foundational logic of the modern political system. The project is about trying to find answers to the continuous confession of inability that political theory suggests in terms of understanding such events as suicide bombing. At the foundation of this question is the proposition suggested by Immanuel Kant, where he suggests a philosophical typology of evil. Kant makes a distinction between 'radical evil' and 'diabolical evil'. For Kant, radical evil means when one is not acting for law's own sake but there is some additional reason to it. To illustrate this he states 'addiction' as an example. In contrast to this is, Kant proposes, another kind of evil- 'diabolic evil'. By 'diabolic evil' Kant means the evil which violates moral law just for the sake of violating it. It strikes us as an interesting proposition to situate the act of suicide bombing as an activity of 'diabolic evil' opposed to the state, and then see where the sovereign, which for Kant cannot be a diabolic evil (a King committing a crime is inconceivable), as the moral basis and source of all law, must stand. Through this work, we are going to try if the Kantian understanding of sovereign can be displaced or problematized or not. In opposition to Kantian maxims (pure [duty] and impure [follow the rules just for not being in the trouble]), we would like to philosophically explore as to why a suicide bomber acts to defy these maxims. Let us also keep in mind the problem of how bureaucracy as a supplement to the law giving capabilities of the sovereign usurps subjects into endless pursuit of power, which will be discussed when we deal with the biopolitical concepts of governmentality and securitization. This will help us to explore how the state uses 'rational means' for 'irrational ends'; also, if state sovereignty in the present form is neither necessary nor a sufficient condition for the pursuit of human freedom. The work will try to touch upon how bureaucratization of life 'sanitizes' subjects and makes them tools in pursuit of power. We are going to use the act of suicide bombing a tool of short-circuiting the otherwise apparently foolproof system of state sovereignty as a legitimate authority

having monopoly over the use of force. At stake in this work is the search for an epistemological shift on these issues, by using clues from biopolitics. Perhaps, some form of epistemological violence cannot be entirely avoided in the exploration of such clues. Studying the act of suicide bombing provides us with a rare opportunity to reassess the terrain of political theory by sensitizing us to the question if we are asking the right questions.

This work comprises of three chapters trying to make sense of what lies at the base of the rhetoric and discourse of sovereignty. What is the career of this concept and where does it stand today? The first chapter will highlight the complex politics of the discourse of suicide bombing. As noted before, the act of 'suicide bombing' will be used here as an analytical tool to comprehend the apparatus of the modern nation-state as well as to explore the different paradigms of understanding such an act offered by various scholars. The second chapter will begin by discussing the traditional understanding of sovereignty as proposed by the likes of Hugo Grotius and Jean Bodin and also try to understand the significance of the questions about sovereignty they were interested in. Subsequently, we will move on to the understanding of sovereignty in 'social contract', as thought by Jean Jacques Rousseau and others. This will be followed by a brief exploration of the theory of sovereign exception proposed by Carl Schmitt and the problems around it. We are then going to take up theorists like Jurgen Habermas and Nicholas Poulantzas who have raised important questions regarding the question of state sovereignty and absolutism. The effort is to establish the link between sovereignty and dictatorial sovereignty, and investigate the paradoxical relationship between sovereignty and law using insights offered by John Austin and Walter Benjamin. Finally, we will explore the complex operationalizing of sovereignty using insights offered by the field of biopolitics, driven by the formulations of Michel Foucault and Giorgio Agamben. The idea is to investigate it further through a discussion of views offered by Jean Luc-Nancy, George Bataille and Jean Baudrillard, as a possible biopolitical critique of sovereignty. As we have already decided to use the act of suicide bombing as

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an analytical tool to understand sovereignty, the discussion will try to trace a relationship between sovereignty, life and death, as a biopolitical question, in relation to suicide bombing.

The work should thus help us understand the intellectual possibilities of refashioning human freedom in the light of a renewed understanding of the political functions of sovereignty. We will argue that sovereignty should no longer be regarded as a trans-historical constant rather should be treated as the function with 'potential' to set out the scope of politics. The point is to probe if understanding sovereignty in terms of the 'political' must of necessity reify it or, if there is a space for an alternative understanding of sovereignty. We will also try to deal with the question whether sovereignty should proceed by imposition of its power only and should the 'reason of the state' be interpreted in the same manner that keeps it distant from human interaction other than the 'social contract' paradigm. With the emergence of the modern nation-state the conceptions of sovereignty as 'un-political'/neutral has become congealed and normalized, understood as a representation of the autonomy of the political. Our attempt is to reclaim the 'political' in the concept of sovereignty.

Chapter three will try to ground the concept of 'modern nation-state' in terms of its socio-political reality and how the 'social contract' secures the ground for the modern nation-state. We will try to highlight the multidimensional link between state sovereignty, law, violence and then security as a concept to control the populations inhabiting these sovereign territories. This will be done with a historical foregrounding that has supported the modern nation-state in the present form. We will briefly explore various modern theories about the nature of state and argue that the real problematic lies in the irresolvable nature of the question of legitimate authority of the state and its monopoly over the use of violence. This will be built over the explanations highlighted by critical questions related to its foundational moments. We will contend that the early modern state emerged as an entity regulated by the society but critical theories of sovereignty underline how it later became a regulated society, which eventually dilutes the constituent power. The society's role and its relation to the modern state has, the work suggests, shifted/transformed from the earlier

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regulative society to that of a regulated society as we move into the domain of the security state. This is the consequence of the failure of political theory to resolve the historical contradiction of legitimate authority and the monopoly over the use of physical violence by state sovereignty. Our contention is that the modern nation-state in the 'age of terror' follows the standard use of hegemony or domination as per the situation/necessity, but there is a new element in this strategy of the modern state. That element is to deploy the use of hegemony as well as of domination, at the same time. In the contemporary times of securitization and the emergence of the 'security state', the exercise of authority, with the twin components of hegemony and domination simultaneously, marks a new turn in the authority exercise of the state by wielding exception through necessity, especially after September 11, 2001.

Chapter one thus helps us to explore the logic of suicide attacks to physically destroy a target and its use as a weapon in the modern warfare aimed at larger public or elsewhere. We will try to explore whether suicide terrorism includes just violent actions perpetrated by people who are aware that the chances of their returning alive do not exist or if there is something else happening here. In a different vein we will study the arguments of scholars who agree on the idea that the real intention of this act is to create an atmosphere of terror amidst a population not necessarily exposed directly to the incident but rather those informed about it from a secondary source. This work will thus highlight the nexus of the compulsory arguments about suicide bombing making the population both the primary and secondary targets and therefore the support for securitising the nation-state as necessary for their survival. In contrast to this understanding, we will argue that the act and the phenomena of suicide bombing raise some important questions about the nature of state sovereignty. It once again brings to our attention the irresolvable question of 'legitimate authority' of the state and its monopoly over the use of physical violence'. Using the insights provided by the analyses in the second and third chapters we will contend that the act of suicide bombing disturbs the dominant understanding of 'the sovereign's monopoly over the use of physical violence'.

The effort will be to understand whether it succeeds to provide a radical response to state violence or whether it circularly leads to more securitization.

At the most immediate level, our effort is to formulate provisional answers rather than providing prescriptions to political theory. The larger attempt is to modify Agamben's argument about the 'state of exception' by suggesting a provocative contrast. Our hypothesis in contrast to Agamben argues that the suicide bomber upsets the sovereign's sole right to decide the exception, by actually unleashing a counter-state of exception. In the process, we will touch upon the very different logic of organizing life suggested by the figure of suicide bomber. Finally, we would like to suggest that the question of death proposes a framework, which not only ceases to be the limit of life but in fact emerges as an effective political instrument, when political violence has become the norm. It aims to highlight the practical conditions that make the state 'visible' in terms of its actualization of the state of exception.

# Chapter One

# Current Discourses on Suicide Bombing

## 1.1 Definitions and typologies

In the recent times the number of conflicts around the globe seems to have multiplied enormously. Whether it is Northern Ireland, Chechnya, Sudan, Afghanistan, Iraq, Srilanka, Pakistan or Kashmir and so on, a component that is common to all these conflicts is that of violence. Somewhere it is riots, at other places it is armed struggle and very few have democratic peaceful agitation.

Terrorism has become the buzz word in our times and much of recent state activities have been especially articulated/formulated within the paradigm of 'fighting terror'. There are as many available definitions of terrorism as there are published experts in the field. The heterogeneity of 'terrorist behaviour' and the difference in points of view of various sections clearly points towards a serious lack of consensus among the concerned scholars. There is available typology of terrorism which is both complex and controversial since actors can be characterized across multiple variables. Nonetheless, two common elements are usually found in contemporary definitions: (1) that terrorism involves aggression against non-combatants (2) that the terrorist action in itself is not expected by its perpetrator to accomplish a political goal but instead to influence a target audience and change that target audience's behaviour in a way that will serve the interests of the terrorists.[1] A cursory survey of literature will offer certain significant dimensions of terrorism. These

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[1] Jeff Victoroff , "The mind of the terrorist: A review and Critique of Psychological Approaches", *The Journal of Conflict Resolution,* Vol. 49, No 1, Feb 2005, pp 3-42.

dimensions have different variables and are classified differently. The typologies of terrorism has been formed on the basis of having a kind of **perpetrator** - on the basis of whether individual or group; in terms of sponsorship whether state or sub-state or individual; alternatively its relation to authority whether anti-state, anti-establishment, separatist, pro-state or pro-establishment; on the basis of location or scope of the activity, whether intra-state or trans-national; its military status whether civilian, paramilitary or military; on its motivation whether secular or religious in nature; its financial motivation whether idealistic or entrepreneurial; the again its political ideology whether leftist/socialist or rightist/fascist or anarchist; and, hierarchical roles within the terrorist organization whether sponsor-led or having and middle management or followers; the kind of willingness to die: whether suicidal or non-suicidal; the targets of attack whether property or individuals or mass of people; and finally, the kind of methodology adopted for operations whether bombing, assassination, kidnapping/hostage-taking, mass poisoning, deploying rape and other forms of bioterrorism as well as cyber-terrorism. Jeff Victoroff suggests that it is essential to acknowledge from the outset that any effort to uncover the "terrorist mind" will more likely result in uncovering a spectrum of terrorist minds. This study of the terrorist minds fall into two categories; top-down approaches that seek the seeds of terrorism in political, social, economic, or even evolutionary circumstances, and bottom-up approaches that explore the characteristics of individuals and groups that turn to terrorism.[2]

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[2] Jeff Victoroff , "The mind of the terrorist: A review and Critique of Psychological Approaches", *The Journal of Conflict Resolution,* Vol. 49, No 1, Feb 2005, pp 3-42.

Of late a particular kind of phenomena has gained prominence among the violent acts. This phenomena that I am going to discuss with you, is that of *suicide bombing* which can be noticed everyday in newspapers and other media. Suicide Bombing has been dubbed as the most violent act ever witnessed by the modern history. Immediately after 9/11, the American administration rhetorically emphasized that it is the worst kind of act ever witnessed by the modern civilised world (without explaining why is it seen as even more notorious than the gassing of thousands of Jews at an industrial scale by the Nazis). However, there does seem to be something about suicide bombing that completely unsettles the rational assumptions of the world powers.

We know that suicide terrorism has been broadly defined as "the targeted use of self-destructing humans against typically non-combatant populations- civilians, to effect political change. Although a suicide attack aims to physically destroy an initial target, its primary use is typically a weapon of psychological warfare intended to affect a larger public audience. The primary target is not actually killed or injured in the attack, but those made to witness it".[3] Alternatively, it is also defined as an attack or attempted attack during which the terrorist reaches his objective or its vicinity carrying or wearing an explosive device which he is supposed to detonate to blow himself/herself up. In short, suicide terrorism includes the diversity of violent actions perpetrated by people who are aware, however that the chances of their returning alive do not exist. Therefore they do not take the trouble to prepare a get-away route and often leave behind some kind of testament in which they declare

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[3] Scott Atran, "Genesis of Suicide Terrorism", *Science*, New Series, Vol. 299, No. 5612, Mar 7, 2003, pp1534-1539.

their conscious and willing intention to go to their deaths (i.e., the suicide bomber aware that he has no chance of remaining alive, assuming the explosive device detonates as planned).[4] Suicide terrorism also aims at destroying or damaging a specific target. However, its real intention is to create an atmosphere of terror amidst a population not necessarily exposed directly to the incident, but rather those who are informed about it from a secondary source.[5]

But there arises a problem in defining Suicide terrorism by dichotomising it into its primary and secondary effects. Therefore the existing definitions stand inadequate to comprehend as well as explain the phenomena. They are the result of an analysis which aims to reduce such extreme acts to structural malfunctioning and fails to take into account the agency/selfhood of the Suicide Bomber/terrorist as is called. It also completely lacks the potential to comprehend or even admit the fractures such an act creates within dominant thought about politics. Existing definitions can be also problematized as they create the dichotomy of an absolute category of victim and perpetrator.[6]

## 1.2 Theories of/on Suicide bombing

Suicide bombing/terrorism has invited much scholarship. Various researchers have tried to find answers to the reasons or causes that make a person take his/her life in such an obviously shocking way. It is

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[4] Suicide Bombing Terrorism during the current Israeli Palestinian confrontation, *Intelligence and Terrorism Information Centre at the Centre for Special Studies (C.S.S.)*, Sept 2000- Dec 2005.

[5] See, Ami Pedahzur, *Suicide Terrorism*, Polity Press, 2005.

[6] Jeff Victoroff , "The mind of the terrorist: A review and Critique of Psychological Approaches", *The Journal of Conflict Resolution*, Vol. 49, No 1, Feb 2005, pp 3-42.

pertinent to mention here that suicide bombing not only kills the bomber but also the target along with a number of perhaps innocent civilians. The categorization of suicide bombing no doubt is based on the humanist assumption of emphasising a distinction between the combatants and the civilians.

There are innumerable theories of/on suicide bombing. The majority of literature deals with what can be seen as the abnormal psychology of the 'terrorist' individual. These theories hold that terrorists basically must be insane or 'psychopathic'. Victoroff has done for our benefit an extensive survey of such psychopathological/ socio-pathological theories.[7] According to these, a 'psychotic' or 'insane' person is so mentally disordered as not to know the right from wrong. Scholars like Cooper have suggested that terrorists, like psychopaths, are ruthless, 'outlaws' and 'outcastes' who adhere to an anomalous scheme of values out of tune with the rest of society. Pearce has suggested that terrorists are sociopaths acting anti socially due to "super ego lacunae", meaning gaps in self monitoring. What is important in these theories is the use of pathology to understand the phenomena of suicide bombing. It sounds extremely medical in nature and has serious moral overtones. Such a discourse attempts to categorize 'terrorist' as an 'abnormal' individual. In addition to these pathological theories, there are certain governmental or policy approaches that try to theorize suicide terrorism in terms of cost benefit analysis and are in contrast to the spectrum of pathological theories. Such theories are derived from economics and assume the behavioural proclivity of the 'terrorist' as a given and attempts to explain, how changes in policy might predictably alter terrorists behaviour. There is no dearth of simplistic explanations like

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[7]Jeff Victoroff , "The mind of the terrorist: A review and Critique of Psychological Approaches", *The Journal of Conflict Resolution,* Vol. 49, No 1, Feb 2005, pp 3-42.

such a deviant behaviour is influenced by flawed social learning, frustration, aggression, relative deprivation, national/cultural factors, and explanations in terms of identity, narcissism, paranoia and absolutist /apocalyptic theories. Not only this, there is another range of largely banal formulations, which attempt to explain this phenomena in terms of novelty-seeking, humiliation/revenge. We can see that such formulations have not provided any significant insight but rather have triggered an industry both in policy making as well as academia. What is important here is not what these theories are saying but where they are coming from. Terrorists are treated as 'flawed men'-even challenged ones that are yet not fully human. A realist response to the study of terrorism borrows a specific strategic logic, specifically designed to coerce modern liberal democracies to make significant territorial concessions and suggest that it has worked because terrorists have learned that it pays.[8] An interview of Eyad El Sarraj, a psychiatrist and director of the Gaza Community Mental Health Program (GCMHP)published in the *Journal of Palestinian Studies* suggest that suicide bombing is an act of despair which arises from the hopelessness that comes from a situation that keeps getting worse, a despair where living becomes no different from dying. He suggests that destruction propels people to actions or solutions that previously would have been unthinkable.[9] Sometimes the failure of the political actors to satiate the aspirations of the already struggling masses

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[8]Robert A Pape, "The Strategic Logic of Suicide Terrorism", *The American Political Science Review*, Vol. 97, No 3, Aug 2003, pp 343-361.

[9] Eyad El Sarraj and Linda Butler, "Suicide Bombers: Dignity, Despair and the need for Hope; An Interview with Eyad El Sarraj", *Journal of Palestine Studies*, Vol. 31, No. 4, Summer 2002, pp 71-76.

have resulted in resort to extreme acts like suicide bombing as in the case of Palestine after the failure of the Oslo Accord.[10]

In stark contrast to the above mentioned policy oriented/statist discourses on suicide bombing, there exist a different set of non statist approaches which tries to understand suicide bombing in bodily terms and attempts to explain them in relation to the self and the other. Gayatri Spivak has thus proposed that suicide bombing should be seen as a purposive self annihilation, a confrontation between oneself and oneself- an extreme end of auto eroticism, killing oneself as the other, in the process killing others. It takes place when one sees oneself as an object, capable of destruction, in a world of objects, so that all destruction of others is indistinguishable from the destruction of the self.[11] Such an explanation hints at a discourse where the subject is transformed into an object. In a different vein Talal Asad explains that suicide bomber belongs in an important sense to a modern western tradition of armed conflict for the defence of the free political community. To save the nation (or to found its state) in confronting a dangerous enemy the combatant may feel it necessary to act without being bound by ordinary moral constraints.[12] Significantly, Patricia Owens states that historically as well as in Hannah Arendt's political theory, suicide can be a way of affirming the kind of life one wants to lead. Thus, drawing on Arendt, Roxanne L. Euben proposes that elements of Jihad as a political action are connected to the pursuit of worldly immortality and may not be merely a military tactic. According to Arendt, with the rationalization of

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[10] Lamis Andoni, "Searching for Answers: Gaza's Suicide Bombers", *Journal of Palestine Studies*, Vol. 26, No. 4, Summer 1997, pp 33-45.

[11] Gayatri Chakravorty Spivak, "Terror: A Speech after 9/11", *Boundary 2*, Vol. 31, No. 2, 2004, pp 81-111.

[12] Talal Asad, *On Suicide Bombing*, Columbia University Press, 2007, Page 91.

mass slaughter, soldiers become mere cogs in the war machine and may act as mere robots. This underpins the effect that the modern nation state has over its subjects. Arendt adds that through violent resistance to perceived injustice, men and women establish a new public space between them but also discover 'who' they are in terms of a discovery of a particular self that would not be possible in the absence of such constitutive action. It must be understood that this is in keeping with Arendt's conception of the self as a singularity whose uniqueness can only be revealed in, and as, the narrative of its own public becoming. In addition to this, Arendt understood all human history and political processes as created and constantly interrupted by human initiative.[13]

Let us now consider an even more provocative understanding advocated by Achille Mbembe who links up suicide bombing with martyrdom and suggests that the logic of martyrdom proceeds along different lines and this is epitomised in the figure of 'suicide bomber'. The suicide bomber wears no ordinary soldiers' uniform and displays no weapon. The candidate for martyrdom chases his/her targets; the enemy is a prey for whom a trap is set in the spaces of everyday life. The trapping of the body is added to the ambush location. The candidate for martyrdom transforms his/her body into a mask that hides the soon to be detonated weapon. Unlike the tank or the missile that is clearly visible, the weapon carried in the shape of body is invisible. Thus, concealed, it forms part of the body. It is so intimately part of the body that at the time of detonation it annihilates the body of its bearer, who carries with it the body of others when it has not reduced them to pieces. The body does not simply conceal a weapon. The body is itself transformed into a weapon, not in a metaphorical sense, but in a truly ballistic sense. In this instance

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[13] Patricia Owens , *Between War and Politics: International Relations and the Thought of Hannah Arendt,* Oxford University Press, 2007, Page 50.

the death of the self goes hand in hand with the death of the other. Homicide and suicide are accomplished in the same act. And to a large extent, resistance and self destruction become synonymous. To deal out death, according to this logic is therefore, to reduce the other and oneself to the status of pieces of inert flesh, scattered everywhere and assembled with difficulty before the burial. In this case, war is the war of body on body. To kill, one has to come as close possible to the body of the enemy. To detonate the bomb necessitates resolving the question of distance, through the work of proximity and concealment. In fact a counter semiosis of killing emerges with suicide bombing. It is not necessarily based on a conventional relationship between form and matter. The body becomes here the very uniform of the martyr. The body as such is not only an object to protect against danger and death. The body in itself has neither power nor value. Mbembe emphasises that the power and value of the body results from a process of abstraction based on a desire of eternity. In that sense the martyr, having established a moment of supremacy, can be seen as labouring under the sign of the future. In other words, in death the future is collapsed into the present. In Hegelian terms the 'survivor' is a being whose existence is characterized entirely as victory over the other, his enemy.[14] Stewart Motha proposes however that the suicide bomber does not confirm to this logic as he does not survive the violent attack to gloat over his dead victims. Therefore, concluding that if death is politics, it cannot be anything other than a politically unassimilable road to another form of being.[15]

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[14] Achille Mbembe, "Nechropolitics", *Public Culture*, Vol. 15, No.1, 2003, pp 11-40.

[15] Stewart Motha, "Liberal Cults, Suicide Bombers and other Theological Dillemas", *Law, Culture and the Humanities*, Vol. 5, 2009, pp 228-286.

Motha and Mbembe's mode of analysis resonates with Asad's thoughts, that in the suicide bombers act, perhaps what horrifies is not just dying and killing (or killing by dying) but the violent appearance of something that is normally disregarded in secular modernity: the limitless pursuit of freedom outside the frame of law. But the law itself is founded by and continuously depends on coercive violence.[16]Suicidal resistance is a message inscribed in the body when no other means will get through. It is both execution and mourning, for both the self and the other, where you die with me for the same cause no matter which side you are on, with the implication that there is no dishonour in such shared death. It is the extreme case where imagination is represented as revealed truth.[17]

Frances S. Hasso offers us representations by and deployments of four Palestinian suicide bombers- Wafa Idris, Dareen Abu, Aisheh, Ayat Akhras and Andaleeb Takatkeh-who during the first four months of 2002 in organized attacks against Israeli military personnel or civilians in the Occupied Palestinian Territories. Crucial to the political and discursive significance of the suicide bombers/martyrs was that these were the bodies and the blood of women, dramatically made relevant in ways that challenged the sexual and feminized forms usually associated with menstruation, childbirth, heteronormativity, maternal sacrifice, and the violated or raped women. Moreover, they concurrently called men to arms in defence of community, and participated in that defence themselves, destabilizing the construct of men as defenders of community and protectors of women. The traditional dichotomy b/w the public and the private is thus undermined by female suicide bombers because they challenge the established understanding of the assertion of

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[16] Talal Asad, *On Suicide Bombing*, Columbia University Press, 2007, pp 91-92.

[17] Gayatri Chakravorty Spivak, "Terror: A Speech after 9/11", *Boundary 2*, Vol. 31, No. 2, 2004, pp 81-111.

masculinity in the public space in the most extreme possible way. This is an inversion/break in the dominant male oriented discourse on the phenomena of suicide bombing. There is a double inversion of the private and the public. The women inserted themselves, by dying and killing, into a sphere of politics dominated by men.

These four women were prepared for their attacks by the Aqsa Martyr Brigades, although only one of them, Wafa Idris was a committed Fatah activist. The Palestinian women's attack certainly undermine what Cynthia Enloe has called a 'gendered culture of danger' where manliness is defined by the unwillingness to shy away from danger and womanliness is that which is 'vulnerable to danger' and requiring protection. Women engaging in high-risk or suicidal militancy on behalf of community can destabilize the sexual-gender logic of such frameworks, as well as challenge the gendered link between military risk-taking and national membership and status. The three women bombers who left a message represented their acts as explosive and embodied action, recognizing that it was more dramatic and dangerous because they are women. For example, one of the women suicide bomber Andaleeb Takatkeh in her statement read, "I've chosen to say with my body what Arab leaders have failed to say...My body is a barrel of gunpowder that burns the enemy". All the women who left a message claimed and demonstrated their right to sacrifice themselves, concurrently deploying and challenging gendered-sexualized norms of duty and responsibility with respect to who protects the community and who is protected within it. As Marilyn Booth argues, contemporary Islamist biographies of Al Khansa and other 'famous wombs' usually use the women to articulate a 'family- centred and Islamically defined social cohesion' that accents the importance of 'pious women...to the future of the rightly guided community' and a gendered division of public and private sphere

participation. However, the daring of the women's acts also generated feminist pride and increased public display of militancy among Arab, including Palestinian, women and girls throughout the region. The women inserted themselves-by dying and killing-into a sphere of politics dominated by men, the Palestinian women militants allowed Arab girls and women to contest their own marginality in national and regional politics. Many seemed to interpret the Palestinian women militants as challenging the masculinity of the political domain and 'repudiating patriarchal norms of womanhood', as Neloufer de Mel argued was the case in nationalist representations of Sri Lankan women suicide bombers. But while the challenges to the masculinity of men political leaders were calls to political action, when deployed by women they also undermined the idea that such action in defence of community was solely the responsibility of men. When deployed by men they usually undermined women's political agency and became competitions between men regarding who is more masculine. Such ruptures where 'women become rifles' is a phallic representation that can also be viewed as metonym for women, compelled by men's inaction, dangerously inverting the corporal/gender/political order by becoming men/gaining dominance.[18]

## 1.3 Various categories of Suicide Terrorist

Suicide terrorism is not a very modern phenomenon. Our history is full of cases where one or the other community had such groups to carry out their missions. The most important element is that such attempts not only aim at exhibiting the commitment of the terrorist for the cause but also the extent of bravery that the group possesses.

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[18] Frances S. Hasso, "Discursive and Political Deployments by/of the 2002 Palestinian Women Suicide Bombers/Martyrs", *Feminist Review*, No.81, Bodily Interventions, 2005, pp 23-51.

A cursory non-exhaustive survey of the more notorious historical examples reveals a bewildering variety of cases: the early Jewish and Christian martyrs were religious but voluntary; the anarchists of the nineteenth to twentieth centuries were also voluntary but secular; the Japanese Kamikaze and the German SS units were secular but state directed; the Iranian Pasdaran were religious but state directed; the Assassins of medieval Islam were religious and group directed; the Palestinian and Al-Qaeda suicide terrorists are often, but not necessarily, religious and group directed; and Srilanka's Tamil Black Tigers are secular and group directed.[19]

Indeed the commitment to faith in times of crisis to undergo death for the sake of religion has been an essential element of membership in Christian community where it perceived itself at war with a hostile heathen world. Christians took over from Judaism and developed a doctrine and a practice of voluntary martyrdom for the Law for the first time of the Maccabean revolt against the Seleucid kingdom in the second century B.C. and then again in the revolts against the Roman overlords of Judea in the first and second centuries A.D.[20]

The Assassins or more clearly the Ismailis –Nizari, was a splinter group from within the Shia Muslims. They devoted themselves to the missionary preaching of their radical version of Islam and supported their mission by the systematic assassination of Princes and high-placed officials and religious dignitaries of the dominant Sunni establishment. The Assassin technique of murder seems designed to make it virtually certain that the assailant was caught and executed in the aftermath. The

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[19] Mario Ferrero, "Martyrdom Contracts", *The Journal of Conflict Resolution*, Vol. 50, No. 6, Dec.2006, pp 855-877.

[20] Ibid.

weapon of an assassin was a dagger which implies face-to-face contact with the victim and seems designed to make capture certain. The total number of murders ever attempted or carried out by assassins amounted to between one and two hundred.[21]

Anarchists of various lines in the last two decades of the nineteenth century and the first decade of the twentieth century managed to stage a sequence of political assassinations and targeted terrorist attacks that shook the world from Russia to south-western Europe to the United States. Their acts ranged from high risk operations to no-escape missions to (in Russia) suicide bombings-the first such acts ever.[22]

In the last ten months of World War II, some 4,000 young Japanese pilots died and a few thousand survived being on the waiting list as Kamikaze. It was formally a voluntary contract where the pilots were asked to join in the last frenzied months of that war.[23]

In Srilanka, the Liberation Tigers of Tamil Eelam (LTTE) had been fighting for the liberation of Tamils living in the north and east of the country. It was born in 1970s as an insurgent group but emerged into a regular army and took on both guerrilla operations as well as fairly conventional warfare. The Black Tigers were elite units of the LTTE

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[21] Mario Ferrero, "Martyrdom Contracts", *The Journal of Conflict Resolution*, Vol. 50, No. 6, Dec.2006, pp 855-877.

[22] They distinguished themselves form armchair thinkers and were of the belief that capitalist society is hopelessly corrupt and exploitative and that the working class is brainwashed and intimidated into subjection to the ruling class by the joint action of the priest and the police. Social revolution is the only way out, but it cannot be accomplished through disciplined, long-term struggle by the working class political party as the socialists would have it.

[23] Mario Ferrero, "Martyrdom Contracts", *The Journal of Conflict Resolution*, Vol. 50, No. 6, Dec.2006, pp 855-877.

which devoted itself to high-risk or no-return missions. The Black Tigers were drawn from the regular ranks of the LTTE. LTTE Cadres would write applications addressed to the top leaded Vellupillai Prabhakaran, upon which they seem to be placed on a waiting list. Once selected, the recruits would undergo intense training and would be assigned to a normal LTTE unit. Here they served by concealing their membership as Black Tigers and their assignment to different types of operations was decided by recruiters on the basis of their aptitude and skill.[24]

The 'Pasdaran' or the Corps of the Guards of the Islamic Revolution was created at the beginning of the Islamic revolution in 1979 in Iran. When the Iraqi army struck and invaded Iran in the war of 1980-81, these guards supplied the 'human waves' that swept across minefields and blew up to clear the ground for the regular army's counterattack. Joining the Revolutionary Guards Corps was always a voluntary choice, although encouraged and propagandized by the government. By 1981, 11,000 people had achieved martyrdom. These guards drew on the deep seated Shia tradition of, and cult for, martyrdom, the heavenly rewards promised to the martyrs said to be irrelevant in their case.[25]

As is well in the Palestinian suicide bombing that started with the second Intifada[26], there has been an excess of volunteers, only a few of whom are picked for suicide bombing. Once selected, one goes through a

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[24] Mario Ferrero, "Martyrdom Contracts", *The Journal of Conflict Resolution*, Vol. 50, No. 6, Dec.2006, pp 855-877.

[25] Ibid

[26] *Intifada* is an Arabic word which literally means "shaking off" but it is usually translated into English as "uprising" or "rebellion" or "resistance". In Palestine it is used in reference to resistance against Occupation (Israel) forces.

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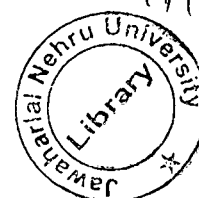
long training and preparation period.[27] To the world outside Palestine, these young men are terrorists who spread death in attempt to derail efforts to make peace. To Palestinians, they are the munadilin-Arabic word for those who struggle for justice and freedom. They are al-shuhada, martyrs who sacrifice their lives for the liberation of their people.[28]

## 1.4 Logics and counter-logics of Suicide Bombing

An entirely new semiosis of killing emerges with suicide bombing, according to Achille Mbembe. He suggests that it is not necessarily based on a conventional relationship between form and matter. The body becomes here the very uniform of the martyr. But the body as such is not only an object to protect against danger and death. The body in itself has neither power nor value. The power and value of the body result from a process of abstraction based on the desire of eternity. In that sense, the martyr, having established a moment of supremacy in the subject overcomes his own mortality, can be seen as laboring under the sign of the future. In other words, in death the future is collapsed into the present.[29]

In the suicide bombers' act, perhaps what horrifies is not just dying and killing (or killing by dying) but the violent appearance of something that is normally disregarded in secular modernity: the limitless

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[27]Mario Ferrero, "Martyrdom Contracts", *The Journal of Conflict Resolution*, Vol. 50, No. 6, Dec.2006, pp 855-877.

[28] Lamis Andoni, "Searching for Answers: Gaza's Suicide Bombers", *Journal of Palestine Studies*, Vol. 26, No. 4, Summer 1997, pp 33-45.

[29] Achille Mbembe, "Necropolitics", *Public Culture*, Vol. 15, No.1, 2003, pp 11-40.

pursuit of freedom outside the frame of law. But the law itself is founded by and continuously depends on coercive violence.[30]

The anarchists of the eighteenth and nineteenth century thought that the only strategy that is consistent with anti-authoritarian principles is to work through exemplary deeds serving the twin purposes of proving that the seemingly all powerful state is in fact vulnerable and attempted to show the working class that the 'individual will' can break the chains of subjection and can achieve freedom until the people will rise collectively in one great surge. What seems interesting is that even being a small minority, the anarchists managed to mount and sustain a long lasting challenge to Western society? They succeeded in doing so by 1) the complete lack of organization and 2) direction and the cult of martyrs. The anarchists' makes it clear that a terrorist operation run exclusively by volunteers and tuned down to minimal intensity can be very difficult to root out.[31]

Also, the Kamikaze diaries and letters reveal that they were 'normal' young men who enjoyed life but were gripped by a sense of duty towards their country. But they were skeptical and very bitterly critical of the military oligarchy and nationalist politicians who they thought had brought their country to the brink of disaster. It is important to note that a blind fanaticism was definitely not the prevailing attitude. The act was certainly out of desperation but at the level of the state of

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[30] Talal Asad, *On Suicide Bombing*, Columbia University Press, 2007, Page 91.

[31] Mario Ferrero, "Martyrdom Contracts", *The Journal of Conflict Resolution*, Vol. 50, No. 6, Dec.2006, 855-877.

naval forces of Japan and the practical logic was certainly military in nature.[32]

Interestingly, in LTTE, the organization emphasized rules of personal discipline and propriety fostering the image of the dedicated fighters, of whom not only the LTTE but all the Tamil people can be proud. The rewards of membership in LTTE, was enhanced by two cult-like features: a personality cult and a cult of martyrs. As we know, the personality cult unquestionably centres on the figure of Prabhakaran and the Black Tigers behaviour approximates war heroism in general as an instance of altruism and self-sacrifice.[33]

Significantly, scholars have suggested that the Assassins were not a criminal gang but a missionary order wedded to a millenarian and messianic reading of Islam and the members were self-selected. Membership choice was based on doctrinal issues and perhaps on social conditions, but certainly not on a predisposition of suicide, even though martyrdom was a part and parcel of the 'Shia' ideological lot. Therefore, this sect was organized as an effective secret society, based on graded initiations, so that information about their proceeding is scant.[34]

In the case of Palestinians as well Srilankan Tamils the suicide bomber as a member of the victim group, wishes to destroy the perceived evil 'other', not to defend against an anticipated attack, but only to 'make even' the relationship with the other by humiliating it. It is a heinous and

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[32] Mario Ferrero, "Martyrdom Contracts", *The Journal of Conflict Resolution*, Vol. 50, No. 6, Dec.2006, 855-877.

[33] Ibid.

[34] Ibid.

a criminal act. The sadistic exaltation in destroying the perceived victimising 'other' cannot hide the masochistic and ultimately failed attempt to conserve an image of the self and the group as a victim, and in victimhood, good and righteous.[35] Extending this to the explicit "vengeance" theory, which is understood as justice and is completely different form of political rationality or strategic planning. Any action that goes under the name of "vengeance" in such societies is precise in its protocols, protocol, strict in its targets, and limited in time. It is in fact a clearly defined process of compensation that one would call "vindicatory justice".[36]

The list of banal conclusions doesn't end here. According to another conclusion that has been drawn about suicide bombing states that it is an intergenerational investment on the art of the group and the person involved. Such a model looks at the microeconomic analysis of the phenomenon and views that the objective function of the potential bomber as affected by both his current consumption, and of the expected value of some future public good. The cause of the terrorist attack is that the probability of the next generation benefiting from this public good is positively affected by the amount of bombing performed today. It adds that all the potential bombers decide in a decentralized fashion the amount of resources they want to invest in bombing, while suicide bombing occurs when they decide their consumption level to zero. Therefore, in such a model, suicide bombing is just an extreme form of saving, such that the agent gives up any current consumption for the sake of enhancing the probability of his descendent to enjoy the benefit of the

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[35] John Rosenberger, "Discerning the Behaviour of the Suicide Bomber: The Role of Vengeance", *Journal of Religion and Health,* Vol.42, No.1, Spring, 2003, pp 13-20.

[36] Marcel Henaff, "Global Terror, Global Vengeance", *Substance#115,* Vol.37, No. 1, 2008, pp 72-97.

future public good. As an obvious economist reading it has been argued that this might provide a theoretical avenue for reconciling the stylized facts with a simple rational choice model.[37]

To examine the strategic logic of suicide terrorism, collecting information on suicide terrorist attacks worldwide from 1980-2001, Robert A. Pape explains how terrorist organizations have assessed the effectiveness of these attacks and evaluates the limits on their coercive utility by stating certain principal findings. The first principle he states is that suicide terrorism is strategic in nature and such acts are not isolated or random acts by individual fanatics but occur in clusters as a part of larger campaign by a group to attain political goals. Secondly, it is specifically designed to coerce modern democracies to make significant concessions to national self-determinations. Thirdly, this phenomena has been increasing over the last twenty years because terrorists have learnt that it pays. Fourthly, although moderate suicide terrorism led to moderate concessions, these more ambitious suicide terrorist campaigns are not likely to achieve still greater gains and may well fail completely.[38]

Suicide attacks are generally more destructive than other terrorist attacks. An attacker who is willing to die is much more likely to accomplish the mission and to cause maximum damage to the target. Suicide attackers can conceal weapons on their own bodies and make last-minute adjustments more easily than ordinary terrorists. They are also better able to infiltrate heavily guarded targets because they do not

[37]Jean Paul Azam, "Suicide-Bombing as Inter-Generational Investment", *Public Choice*, Vol.122, No. ½, Jan.2005, pp 177-198.

[38] Robert A Pape, "The Strategic Logic of Suicide Terrorism", *The American Political Science Review*, Vol. 97, No 3, Aug 2003, pp 343-361.

need escape plans or rescue teams. Suicide attacks are an especially convincing way to signal the likelihood of more pain to come, because suicide itself is a costly signal, one that suggest that attackers could not have been deterred by a threat of costly retaliation.[39]

Not only there is nothing in terrorist vengeance that would associate it with vindicatory justice understood as legitimate in traditional non state societies, but we are dealing with an act that goes beyond the modern vengeance. Terrorist vengeance is not only unrelated to traditional, ritual vengeance; it is also a perversion of modern vengeance.[40]

But the interesting discourses on body suggest that suicidal resistance is a message inscribed in the body when no other means will get through. It is both execution and mourning, for both self and the other, where 'you die with me for the same cause, no matter which side you are on', with the implication of no dishonour in such a shared death. It appears as the extreme case of cultural instruction-coercion at the full, simulating choice where imagination is represented as revealed truth.[41]

The broad purpose of this chapter has been to highlight the grave need to understand the phenomena of suicide bombing politically rather than blindly attempting at analysing it only superficially and thereby reducing it to policy formulations without ever questioning the actual

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[39] Robert A Pape, "The Strategic Logic of Suicide Terrorism", *The American Political Science Review*, Vol. 97, No 3, Aug 2003, pp 343-361.

[40] Marcel Henaff, "Global Terror, Global Vengeance", *Substance#115*, Vol. 37, No. 1, 2008, pp 72-97.

[41] Gayatri Chakravorty Spivak, "Terror: A Speech after 9/11", *Boundary 2*, Vol. 31, No. 2, 2004, pp 81-111.

discourse that goes in to the making of the 'terrorist' or the 'suicide bomber'. We are going to investigate some of these issues in the following chapters.

Chapter-2

# Sovereignty, Violence & State of Exception

## 2.1 Introduction: Sovereignty as a concept

Sovereignty as a concept is political in the sense that its primary work as a concept is intimately about the condition, content, context, and the limits of politics. Rather than a new conception of sovereignty, Political sovereignty is a property of the concept of sovereignty itself particularly dealing with the depoliticization of the meaning of sovereignty in political theory.[1] In this chapter we are going to look at the concept of sovereignty spread over a period of historical time to its consolidation in the present form. Sovereignty has operated concomitantly at three distinct levels – defining the state form of the political community, signaling liberal democratic citizenship, and indicating the inviolability of the private individual. The possible scope of sovereignty in politics and epistemology is very broad. It has been mapped from sovereign as an identifiable person i.e. King, or ruler known as 'personal sovereignty', to sovereign as office-holder known as 'impersonal sovereignty', to a sophisticated understanding of the sovereign which sets up an either/or dichotomy as a thinking strategy, to that of a sovereign performing a dominant, hegemonic, or absolute role controlling knowledge-production and knowledge-consumption which exercise a certain kind of power.[2]

To begin with, this chapter starts with the traditional understanding of sovereignty proposed by the likes of Hugo Grotius and Jean Bodin, who theorized the need to create a legitimate authority in a society or community in order to handle the conflict of interests. Subsequently, we will move onto the emergence and establishment of social contract as the tool to uphold sovereignty in the name of people as the grounding power. Following this, we

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[1] Raia Prokhovnik, *Sovereignties, Contemporary Theory and Practice*, Sage Macmillan, 2007, Page 170.

[2] Ibid, Page 119.

will briefly explore the theory of Carl Schmitt who suggested dictatorship bypassing popular sovereignty and the various responses to him by the likes of Jurgen Habermas and Nicholas Poulantzas who considered the question of how to avoid absolutism while handling the practical issues of sovereignty. Technically, since enlightenment the modern notion of citizenship is trying hard not only to occupy an intermediate position between the state and the individual, but also to come to mediate between, to accommodate, and to hold together the inherent tension between state and individual, as well as to justify the twin but opposed claims of state and individual. In this chapter, I will argue that the normative understanding of sovereignty as interactive, inter-subjective and interdependent has been replaced by the dominant understanding of sovereignty as mastery over everyone else, competition with any kind of opposition, and distrust of everyone else.[3] Establishing the link between sovereignty and dictatorial sovereignty, in the same section we will investigate the interesting relationship between sovereignty and law primarily by John Austin and Walter Benjamin, who look into the theoretical, technical and practical implications of dealing with constituent and constituted power. From here on, we will move on to exploring sovereignty from the biopolitical perspective. We will look at this problem by taking clues from Michel Foucault and Giorgio Agamben and then investigate further the writings of Jean Luc-Nancy, George Bataille and Jean Baudrillard, who advance the biopolitical critique of sovereignty. This should explain how the political relation between sovereignty and law has been understood as resulting in the production of bare life. This entire exercise to understand sovereignty will conclude with trying to establish a relationship between sovereignty, life and death, as a biopolitical question considered in the times of suicide bombing.

It has been argued that, in the Western democracies, the modern realist function of sovereignty has been that of a gate-keeping between inside and outside. The aim of this chapter is to not to make a case for abolishing the modern state as such, but to intellectually explore the possibilities of

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[3] Raia Prokhovnik, *Sovereignties, Contemporary Theory and Practice*, Palgrave Macmillan, 2007, Page 149.

refashioning human freedom in the light of a renewed understanding of the political functions of sovereignty. Partly, what I want to argue is that sovereignty should no longer be regarded as a trans-historical constant but as the function which has the potential to set out the scope of politics. Understanding sovereignty in terms of the 'political' does not reify sovereignty. We have to understand that sovereignty should not proceed by vicious imposition only, which we will engage with in the later part of the chapter. Also, how state discourse and necessity has been interpreted and leaves no space for human interaction other than the social contract paradigm. Over a period of time, especially with the emergence of the modern nation-state the conceptions of sovereignty as un-political has become congealed and normalized and are understood as a representation of the autonomy of the political. [4] I shall be attempting to reclaim the 'political' in the concept of sovereignty.

## 2.2 Sovereignty as legitimate power

The concept of sovereignty in the present times, when the rhetoric of globalization is at its peak, seems tricky because a cursory scanning of critical literature will explain that there is an inherent relationship between the concept of sovereignty and the overarching social contract. The emergence of the social contract was not an overnight event but a result of the march of mercantile capitalism from sixteenth century onwards, which shaped the understanding of the individual and the society based on a social contract that later came to be controlled by an abstract entity called the 'state'. To make this point clear, let me recall the thought of Hugo Grotius in the 16th century when the era of colonialism and territorial discoveries was gaining momentum among the nations which became colonial powers later. Grotius's 'law of sea' was taken to be a step in such direction where the concept of sovereignty was sought to be placed in the logic of control, property and right. Grotius's

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[4] Raia Prokhovnik , *Sovereignties, Contemporary Theory and Practice*, Palgrave Macmillan, 2007, pp 176-179.

formulations on rights had undeniable consequences on the understanding of the emerging concept of sovereignty. This can be explained by making a comparison between the formulations of medieval theorists who dealt primarily with Roman Catholicism and the formulations of Grotius and his successors. The Medieval theorists tended to speak of 'the right', Grotius and his successors stressed about the powers and entitlements of the person who has rights. By associating rights with the powers of a person, the moderns were able to distinguish sharply between rights on the one hand and duties on the other.[5] The context of Grotius's formulations is the clash of interests of the then colonial powers. Grotius defended the capture of a large Portuguese merchant ship by the V.O.C. (Dutch east India Company). The key legal and conceptual question was whether any private agent like that of V.O.C. could legitimately employ force against another private agent which was impeding its actions.[6] In addition to this it has a propagandist objective to defame the Portuguese and Spanish while extolling the V.O.C. and Dutch.[7] In this context Grotius wrote on the basis and nature of rights. In DIB, Book One defines the concept of war and argues for the legitimacy of war and defines who may legitimately wage war. Book Two deals with the causes of war, the origins of property , the transfer of rights and more and Book Three is dedicated primarily to the rightful conduct of belligerents in war. If Grotius is at all known to modern philosopher that is only because of his being the 'father of the natural law' as put by Hamilton Vreeland Jr.[8] Commentators like Knud Haakonssen have suggested that 'the stable core in the natural law tradition is the idea that morals is primarily a matter of norms or prescriptions and only derivatively about virtues and values'.[9] A famous expression of Grotius's non-

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[5] John Finnis, *Natural Law and Natural Rights*, Clarendon Press, 1980, Page 209.

[6] Richard Tuck, *Philosophy and Government 1572-1652*, Cambridge University Press, 1993, page 170.

[7] See Martine van Ittersum, *Profit and Principle: Hugo Grotius, Natural Rights Theories and the Rise of Dutch Power in the East Indies, 1595-1615*, Ph.D thesis, Harvard University, 2002.

[8] Hamilton Vreeland Jr., *Hugo Grotius: The father of the Modern Science of International Law*, New York, OUP, 1917.

[9] Knud Haakonssen (1992) 884, "Natural Law, " in Lawrence C. Becker and Charlotte B. Becker, eds., *The Encyclopedia of Ethics*, New York: Garland Publishers, pp 884-890.

voluntarism appears in the 'Prolegomena' to the DIB (*De iure belli ac pacis (On the law of war and peace)*. In the first few sections of the 'Prolegomena', Grotius lays the groundwork of his natural law theory. Then in the section eleven he writes that undermining or questioning the fact that God does not exist will be wicked and also to believe that God is not concerned with the affairs of men. Instead of emerging from or being otherwise dependent on God, the fundamental principles of ethics, politics and law obtain in virtue of nature. As he says in section sixteen of the 'Prolegomena' that 'the mother of right- that is, of natural law is human nature'. Grotius writes,

> The law of reason is a dictate of reason, which points out that an act, according as it is or is not in conformity with rational nature, has in it a quality of moral baseness or moral necessity; and that, in consequence, such an act is either forbidden or enjoined. (I.1.10.1)

> If an action agrees with the rational and social aspects of human nature, it is permissible; if it doesn't, it is impermissible. (I.1.12.1)

It brings to our attention the basic these propounded by Grotius that the source of the natural law is the compatibility/incompatibility of actions with our essences as rational and social beings. Deriving from what Grotius proposes: the desire for self-preservation and the need for society. (*De iure belli ac pacis (On the law of war and peace)* DIB 'Prolegomena' 6-7)

Grotius formulated a conception of rights made into powers or faculties which humans *possessed,* and in this way he played a crucial role in the commoditization of rights. For example let us take the passage below:

> At this point first of all the opinion of those must be rejected who hold that everywhere and without exception sovereignty resides in the people, so that it is permissible for the people to restrain and punish kings whenever they make a bad use of their power'... 'We refute it by means of the following arguments.

> To every man it is permitted to enslave himself to any one he pleases for private ownership, as is evident both from the Hebraic and from the Roman Law. Why, then, would it there not be as lawful for a People who are at their own disposal to deliver up themselves to some one person, or to several persons, and transfer the right of governing

them upon him or them, retaining no vestige of that right for themselves?'.[10]

According to this formulation, rights are conceived as possessions and can be traded like all other possessions. Here, the means of transfer is not identical to other exchanges of goods but the essential idea is that of giving away something in one's possession for something which is not. We can note that the commoditization of rights was one of the most important political developments of the seventeenth century.[11] Grotius exploited the latter idea in parts of his corpus. Rousseau has blamed Grotius because he opines that Grotius 'spares no pains to rob the people of all rights and invests kings with them'.[12]

Concerning the laws' 'force' or obligatory status, Grotius argues in a similar vein to that of Thomas Aquinas that the obligation is a result of an action of will by a superior on an inferior. According to Grotius, we are obliged to follow civil laws because our political superiors have forced us to do so through actions of their more powerful wills. And we are obliged to follow natural laws because God has forced us to do so through his infinitely more powerful will. Grotius stated that morally necessary acts must be 'understood as necessarily commanded or forbidden by God'. (DIB I.1.10.2) We must understand that for Grotius natural laws apply to all rational and social beings as such. It does not matter what they think or believe; if they are rational and social, they are bound by the law of nature. (DIB II.20.44)

Jean Bodin, a French philosopher, who was the other major theorist in this area, has made contribution to the standard understanding of sovereignty.

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[10] Hugo Grotius,I.3.8.1 ( i.e. DIB Book I, Chapter 3, section 8, paragraph 1) *On the Law of War and Peace/De iure belli ac pacis*, ed. Frank W. Kelsey et al. for the Classics of International Series, OUP, 1925.

[11] C.B. Macpherson, *The Political Theory of Possessive Individualism*, Oxford: Oxford University Press, 1962, Page 3.

[12] Jean Jacques Rousseau, 'Social Contract Book II, chapter Two' in *Political writings, Vols. I and II*, ed. and trans. C.E.Vaughn, Cambridge University Press, 1915.

In 1576 Bodin published his 'Six Books of the Commonwealth' (originally known as *Republique*). In this work he tries to restore the institutional bases of the French kingdom which the ongoing war threatened to undermine, the Reformer's doctrine concerning tyranny and tyrannicide. Let us consider the following from the 'Six Books of the Commonwealth', he wrote about certain authors of slander and treatises:

> ...those who have written on the duties of magistrates[13] and other similar books[14] are wrong to support the idea that Estates of the People [Estates General] are more important than the Prince. Such ideas make obedient subjects revolt when they should obey their sovereign prince [...] These notions are absurd (*absurdes*) and incompatible (*incompatibles*). [15]

Bodin described the above mentioned doctrines as 'absurd' and 'incompatible' and responds to it in his 'Six Books of the Commonwealth'. Bodin supported the right of resistance in general, but he opposed the right 'to take up arms'. It is important to mention here that armed resistance was a tactic claimed by the 'Huguenots'[16] as a right especially after the St. Bartholomew's Day Massacre.[17] In the same year i.e. on May 6, 1576, the King of France issued the Edict of Beaulieu (*Paix de Monsieur*) and convened Estates General in Blois during which the wars of religion briefly subsided. In this Royal Edict, in addition to the words 'these followers of the so-called Reformed Religion', a

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[13] Jean Bodin is referring to, an allusion to the anonymous work, *Du droit des Magistrats sur leurs sujest. Traite tres necessaire en ce temps pour advertir de leur devoir tant les magistrats que tous les sujets* [Geneva], 1574. The work will be attributed to Theodore de Beze three centuries later.

[14] Jean Bodin is referring to Francois Hotman, J. SToer (1573), Innocent Gentillet (1576) and Nicholas Machiavelli (1576).

[15] Jean Bodin, 'Book 1 Chapter 8' in *Six Books of The Commonwealth (Les Six Livres de la Republique)*, Abridged and trans. M.J.Tooley published 1955, Basil Blackwell Oxford, Alden Press, page 95

[16] French Calvinist Protestants.

[17] The St. Bartholomew's Day Massacre in 1572 was a targeted group of assassinations, followed by a wave of Roman Catholic mob violence directed against Huguenots during the French Wars of Religion. Traditionally, it is believed to have been instigated by Catherine de' Medici, the mother of King Charles IX. The massacre took place six days after the wedding of the king's sister Margaret to the Protestant Henry III of Navarre (the future Henry IV of France). This marriage was an occasion for which many of the most wealthy and prominent Huguenots had gathered in largely Catholic Paris.

distinction was made between United' Catholics or the 'Union of Catholics', and the 'associated' Catholics. We can see that through this Royal Edict, an attempt was made towards the 'reunification of the faith.[18]

In his book *On Sovereignty* Bodin discusses that a commonwealth is a just government, with sovereign power, of several households and of that which they have in common.[19] Elaborating on this he adds that this power is perpetual[20], because it can happen that one or more people have absolute power given to them for certain period of time by the sovereign, upon the expiration of which they are no more than private subjects.[21] The power of the sovereign, according to the law, is always expected no matter how much power and authority he grants to someone else because the foundation of sovereignty is such that he never gives so much authority that he does not hold back even more.[22] What is interesting in his explanation is the emphasis that it appears that the dictator was neither a prince nor a sovereign magistrate, as many have written and that he held nothing more than a simple commission to conduct a war, or to put down sedition, or to reform the state, or to bring in new magistrates but in actuality it is not.[23] Sovereignty, then for him is not limited either in power, or in function, or in length of time. He pursued the standard understanding which held that, for he is absolutely sovereign who recognizes nothing, after God that is greater than himself. While discussing the early days of Athens, Bodin explains that the people in those times made one of the citizens sovereign and called him *Archon,* the Cnidians annually chose sixty citizens whom they called *amnemones. S*overeignty thus remained in the

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[18]Jean Bodin, *Six Books of The Commonwealth (Les Six Livres de la Republique),* Abridged and trans. M.J.Tooley published 1955, Basil Blackwell Oxford, Alden Press.

[19] Jean Bodin, "Chapter 8, 'On Sovereignty', section 345" in *On Sovereignty. Four chapters from the 'Six Books of the Commonwealth,* Book I, ed. and trans. J.H.Franklin, CUP, 1992.

[20] Perpetual here means that its command is continuous and all prevailing. It never ceases to exist.

[21] Jean Bodin, "Chapter 8, 'On Sovereignty', section 345" in *On Sovereignty, Four Chapters from The Six Books of Commonwealth,* Book I, ed. and trans. Julian H. Franklin, Cambridge University Press, 1992.

[22] Ibid, section 346.

[23]Ibid, section 348.

people, and only its exercise was in the *Archon* or *amnemones*, whom one could call sovereign magistrates, but not sovereigns pure and simple. He states that sovereignty given to a prince subject to obligations and conditions is properly not sovereignty or absolute power. Interestingly he suggests however, this may be a subject who is exempted from the force of the laws always remains in subjection[24] and obedience to those who have the sovereignty. This is why the law says the prince is not subject to the law; and infact the very word *law* in Latin implies the command of him who has the sovereignty.[25] Bodin makes distinctions between the forms of state and the forms of government as essential for understanding the difference between royal monarchies, despotic monarchies, and tyrannical monarchies. Regading this Bodin writes:

Despotic monarchy must not be confused with tyranny. There is nothing unfitting in a prince who has defeated his enemies in a good and just war, assuming an absolute right to their possessions and their persons under the laws of war, and therefore governing the as his slaves; just as the head of a household is the master of his slaves and their goods, and disposes of them as he thinks fit, under the law of nations. But the prince by an unjust war, or any other means, enslaves a free people and seizes their property is not a despot but a tyrant.[26]

We must pay attention to the difference between despotism and tyranny as pointed out by Bodin. For him, despotism is legitimate and sometimes legal whereas tyranny on the other hand is always illegitimate, illegal and contrary to natural and divine laws.

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[24] This has to do with what Antonio Gramsci refers to as 'Hegemony'.

[25] Jean Bodin, "Chapter 8, 'On Sovereignty', section 349 & 359" in *On Sovereignty, Four Chapters from The Six Books of Commonwealth,* Book I, ed. and trans. Julian H. Franklin, Cambridge University Press, 1992.

[26] Jean Bodin, "'Concerning despotic monarchy', Book II, chapter 2" in *Six Books of The Commonwealth (Les Six Livres de la Republique),* , Abridged and trans. M.J.Tooley published 1955, Basil Blackwell Oxford, Alden Press, page 201.

Let us now return the context of this kind of philosophy, that we have just discussed. For a commentator on philosophy and political theory Gerard Mairet, when Jean Bodin produces the concept of modern *res publica*, he presents a demonstration which was not contested, and explained the defeat of the Christian *res publica*. The idea that god governed men and the entire world was the West which united itself under the Church of Rome was shattered with the divisions introduced by the various forms of Protestantism. Therefore the western Christian universalism was brought to a halt. Because Mairet elaborates, that the dominant faiths had a direct relationship with territorial sovereignty because, the King of a particular state belonged to the dominant sect of Christianity. This process gradually consolidated itself into the medium of nationality carved out of the tatters of faith and morals of the universal and the new particularisms i.e. faiths other than that of the dominant one were conceived of as the means of ensuring authority within a determinate territory. The non-contradictoriness of this new discursive logic of these new territorial particularities gave rise to the principles of common being for whom the systematic principles of justice instituted the modern republics. This suggests that theologies were replaced by philosophy and the modern-state overtook church. [27] But for divine and natural laws, every prince on earth is subject to them, and it is not in their power to contravene them unless they wish to be guilty of treason against God. Bodin reminds that it is essential, therefore, not to confuse a law and a contract. Law depends on him who has the sovereignty and he can obligate all his subjects {by a law} but cannot obligate himself. A contract between a prince and his subjects is mutual; it obligates the two parties reciprocally and one party cannot contravene it to the prejudice of the other and without the others consent. Furthermore, Bodin points out that the sovereign princes who are well informed never take an oath to keep the laws of their predecessors, because it ceases their status as a sovereign. For if a sovereign prince is subject to the estates, he is neither prince nor sovereign, and the state is neither a kingdom nor a monarchy. It becomes a pure aristocracy of many lords with equal power, where the greater part commands

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[27] Gerard Mairet, *The fable of the world, a philosophical inquiry into freedom in our times*, trans. Philip Derbyshire, Seagull Books, 2010 page 31-72.

the smaller part collectively, and each individual particularly. Bodin says that the sovereignty of the monarch is in no way altered by the presence of Estates. The main point of sovereign majesty and absolute power consists of giving the law to subjects in general without their consent.[28]

For example, the early Roman emperors were not sovereign, but only chiefs and first citizens, who were called *principes*. This form of state was aristocratic in nature but monarchical in practice, and was called a *principatus*. Various commentators maintained that princes should be required to take an oath to keep the laws and customs of the land. But the point is that they technically by doing this they weaken and degrade sovereign majesty, which should be sacred, and produce an aristocracy, or even a democracy. Thus when the sovereign prince perceives that these laws would steal the ultimate command of his authority and subject him to his own laws, exempts himself at last not only from the civil laws, but also the laws of God and of nature, treating them as all the same. The law of a sovereign prince deals either with the public or a private matter, or with both of these together and that in any case it looks either to advantage (*proffit*) at the price of honesty (*honneur*), or to advantage not involving honesty, or to honesty without advantage, or to advantage joined with honesty, or even to something involving neither advantage nor honesty.[29]

Thus, Jean Bodin develops the theory of sovereignty as 'the principal foundation of every republic' and bases his argument on the idea that it is the people (or the Prince) who give power for a certain time. Power is precisely what all limited power flows from, and what the people (or the prince) are originally endowed with.[30] We can say that Bodin has thematized sovereign

[28]Jean Bodin, "Chapter 8, 'On Sovereignty', section 369", in *On Sovereignty, Four Chapters from The Six Books of Commonwealth,* Book 1, ed. and trans. Julian H. Franklin, Cambridge University Press, 1992.

[29]Ibid, section 377.

[30]Gerard Mairet, *The fable of the world, a philosophical inquiry into freedom in our times,* translated by Philip Derbyshire, Seagull Books, 2010 Pp 61-62.

power as perpetual power. [31] In addition to this, for Bodin, a sovereign is 'not bound' (*absolutes*) by the civil or positive laws which he or his predecessors have promulgated. Let me suggest in passing, for Gerard Mairet, sovereignty must be understood not only as a juridical apparatus of the power of the state but as the form in which modern *res publica* is constituted historically. If a history of the sovereignty is rewritten, various conceptions of the state could be seen unfolding adjusting to the needs of the time. What one cannot see is the conceptions of power[32] or Power[33] in terms of their foundation. Differentiation and preservation of the institutions of the state can be noticed which highlight the distinction between Power and power. This form of the state as the key to sovereignty was clearly established in Bodin's thesis on sovereignty.[34]

Bodin's position is perfectly clear that all Power exercised by warrant and commission for a limited time is not sovereign power. The only power that is sovereign is the one which has the authority to grant power for a certain time. This distinction explains Bodin's definition of sovereignty as perpetual power. The perpetual power is not concerned with some individual or assembly because these are only material or physical embodiment or personification. It is Hobbes who establishes the perpetuity of power as the essence of sovereignty because sovereignty is the essence of the modern *res publica* – the state. Thus, state is thought philosophically as perpetual being by the human act of foundation that is both voluntary and rational.[35]

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[31]Gerard Mairet, *The fable of the world, a philosophical inquiry into freedom in our times*, translated by Philip Derbyshire, Seagull Books, 2010 page 55.

[32] People as constituent power.

[33] Sovereign power as constituted power or the sum total of all powers.

[34] Gerard Mairet, *The fable of the world, a philosophical inquiry into freedom in our times*, translated by Philip Derbyshire, Seagull Books, 2010 pp 52-53.

[35] Ibid, pp 64-65.

## 2.3 Sovereignty and social contract

Jean Bodin, Thomas Hobbes and their successors have a major contribution towards the consolidation of the understanding of sovereignty in its present form. For Hobbes, the rights, and consequences of Sovereignty, are the same in sovereignty by dominion as well as sovereignty by institution. A sovereign's power cannot be transferred to another without his consent because he cannot forfeit it and cannot be accused by any of his subjects, of injury. In addition to this, a sovereign cannot be punished by the subjects because he is the judge of what is necessary for peace and also the judge of all doctrines. He is the sole legislator and supreme judge of controversies, times, and occasions of war and peace.[36] The time of the historical, is the time of the political time of modernity which rests on the assumption of future only. This means that sovereignty as a concept deals with the idea of preservation of life and governs with a plan for the future. Everything is done for the sake of future and there is conception that there every bodypolitic has a 'telos'. But Gerard Mairet suggests that the constituted power is temporary, limited and finite and is received as warrant for a limited time and purpose. But, ironically Sovereignty as a concept and practice appears as a reappropriation of eternity, a pure artifice which Hobbes termed as 'mortal god' explaining its definite nature.[37] This 'Artificiall Man' as Hobbes call it, is the mortal god. In a Leviathan, a bodypolitic, according to Hobbes and many other theorists, sovereignty establishes a fixed order instituting an inflexible hierarchy within the integrity of the whole within which the holder(s) of sovereignty form an indivisible unity, whose rule is subject to no other. [38] A Mairet suggests, the people together are the body of the state, and sovereignty is its soul. The modern sovereign state is the mystique of the people, the mystical body of the people. The people (constituent power), here, are the enigma of politics, both

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[36] Thomas Hobbes, *Levaiathan*, edt. Crawford Brough Macpherson, Penguin, 1985, Page 252.

[37] Gerard Mairet, *The fable of the world, a philosophical inquiry into freedom in our times*, translated by Philip Derbyshire, Seagull Books, 2010 Page 54.

[38] Raia Prokhovnik, *Sovereignties, Contemporary Theory and Practice*, Chapter 4, the Politics of sovereignty, Sage Macmillan, 2007, Page 171.

its mask and its pretext and cannot be defined once and forever because they lies at the origin of all definitions.[39] I must state Ernesto Laclau's observations on Hobbes's *state of nature* in passing here. Laclau indicates that the state of nature is not a primitive condition which has been eradicated once the covenant has transferred sovereignty to the Leviathan, but a constant possibility within the communitarian order, which arises whenever the city is seen as *tamquam dissoluta*. He argues that the sovereign power cannot have a contractual origin because in Hobbes, the foundation of sovereign power is to be thought not in the subjects' free renunciation of his/her natural right but in the sovereign's preservation of his natural right to do anything to anyone.[40]

In contrast to this, Rousseau has suggested a different conception of sovereignty. He offers an understanding of sovereignty tied to the concept of the 'General Will'. He strongly believes that the general will alone can direct the forces of the State according to the end of its institution, which is the common good and if there were not some points on which all interests agree, no society could exist. According to Rousseau, it is solely in terms of this common interest that society ought to be governed.[41] Thus, sovereignty, for Rousseau, is nothing but the exercise of the general will, which can never be alienated, and the sovereign for him, is nothing but a collective being. Therefore, it can only be represented by itself because power can be transferred, but not will. Here, the particular will tends by its nature to be partial, and the general will to equality. Rousseau states that if the people promise simply to obey, it dissolves itself by this very act of just obedience and also loses its quality of being a people. Because if there is a master there is no other sovereign, and the body politic is destroyed forthwith. Most importantly for Rousseau, sovereignty is inalienable and indivisible. The will can be general or not which means either it is the will of the whole body or just

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[39] Gerard Mairet, *The fable of the world, a philosophical inquiry into freedom in our times*, translated by Philip Derbyshire, Seagull Books, 2010 Page 55.

[40] Ernesto Laclau, 'Bare Life or Social Indeterminacy' in *Giorgio Agamben, Sovereignty and Life*, Eds. Matthew Calarco and Steven DeCaroli, Stanford University Press, 2007, pp 11-22.

[41] Jean Jacques Rousseau, 'Book II, Chapter one' in *The Social Contract and other later political writings*, Ed. and trans. Victor Gourevitch, Cambridge University Press, Page 57.

a part. When the will is a general will, its declaration is an act of sovereignty and constituted law whereas in the case of the particular will, it is just an act of magistracy and at most it is a decree. Importantly, Rousseau reminds that the act of declaring war and that of making peace have been regarded as acts of sovereignty, which they are not. Neither of these acts is a law but only an application of the law, it is a particular act which decides the case, once the idea that attaches to the word *law* has been fixed.[42]

According to Rousseau, if the moral person of the state or the city consists in the union of its members, and the most important factor for it is the care for its self-preservation, then it needs some universal and coercive force to move and arrange each part most conformable to the whole. Rousseau invokes nature to illustrate this and says that just as nature gives each man absolute power over its members, the social pact gives the body politic absolute power over all of its members. It is the same power, the general will, which comes to bear the name of the sovereignty. He further explained that just as a particular will cannot represent the general will, the general will also changes in nature when it has a particular object. Rousseau adds that because it is 'general', it cannot pronounce judgment on a particular man or fact. By the nature of this pact what Rousseau calls the 'social contract', every act of sovereignty or in other words every genuine act of the general will, either obligates or favors all citizens equally. The sovereign only knows the body of the nation and does not single out any one of those who constitute it. The question that emerges out of Rousseau's social contract is that how individuals who have no right to dispose of their own life can transfer to the sovereign the same right which they do not have because everyone has the right to risk his life in order to save it. Rousseau argues that because whoever wills the end also wills the means, and as a consequence, these means are inseparable from certain risks and even certain losses. He states that when the guilty man is put to death, it is less as Citizen than as an enemy.[43] Mairet comments that in such a context it appears

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[42] Jean Jacques Rousseau, 'Book II, Chapter two' in *The Social Contract and other later political writings,* Ed. and trans. Victor Gourevitch, Cambridge University Press, Page58.

[43] Ibid, Chapter five, Page 65.

as if sovereignty is a politics aiming at durability, not only as a simple programme of government but as the profane spiritualization of life.[44] Explaining further, Rousseau states that a body politic can be measured in two ways; first, by the extent of its territory and secondly by the number of its people and an appropriate ratio has to be obtained between these two measures for the state to be given its genuine size.[45] William E. Connolly discussing the complexities of sovereignty in an edited book by Mathew Calarco and Steven De Carolli, argues that Rousseau knew that the paradox of founding returns as a recurring paradox of democratic sovereignty. If the 'People' is not infused by the right spirit of community, even a written constitution would be insufficient to guide it when new and unforeseen circumstances arise. According to Connolly, Self-rule, Rousseau thought is circular when it works because its preconditions of possibility require citizen habituation to common sentiments that they then express as their collective will. To be a sovereign, territorial people, it is necessary to become a highly unified nation. Rousseau is tentatively wise in trying to negotiate its terms rather than simply transcend them. For the people to rule, it must be infused with an ethos that precedes and exceeds its rule; to make that rule legitimate to the people, it must interpret what it has already become as expressive of what divine authority calls upon it to be.[46] Connolly states that Rousseau helps us to appreciate the complexity of sovereignty, but not to negotiate a response through which democracy, law, state, and sovereignty speak affirmatively to each other.[47] It is interesting that the modern nation-state through the technique of 'governmentality' takes territory and population as its tool to administer its processes. When the state

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[44] Gerard Mairet, *The fable of the world, a philosophical inquiry into freedom in our times*, translated by Philip Derbyshire, seagull books, 2010 page 57.

[45] Jean Jacques Rousseau, 'Book II Chapter Ten' in *The Social Contract and other later political writings*, Ed. and trans. Victor Gourevitch, Cambridge University Press, Page 75-76.

[46] William E. Connolly, 'The Complexities of Sovereignty' in *Giorgio Agamben, Sovereignty and Life*, Eds. Matthew Calarco and Steven DeCaroli, Stanford University Press, 2007, pp 23-42.

[47] Ibid.

thinks, it thinks the conditions of the individuals' moral action and establishes the limits within which his/her freedom is exercised.[48]

## 2.4 The challenge of dictatorship/authoritarianism

The concept of sovereignty got even more complicated with its interpretation by a German theorist Carl Schmitt, who brought to our attention some foundational aspects of the concept of state sovereignty. The foundational characteristics of sovereignty, as highlighted by Schmitt, complicate our understanding of the concept and points towards the absolutist tendencies inherent in state sovereignty. Commentators like Dyzenhaus[49], and McCormick[50] have argued that modern liberal constitutions do not acknowledge a bearer of sovereign authority, and modern legal and constitutional theory has often tried to dispense with this concept. In 'Political Theology' Schmitt argues, that such attempts to get rid of sovereignty cannot be successful. In Schmitt's view there can be no functioning legal order without sovereign authority.

According to Carl Schmitt, sovereignty functions as the principle beyond which there is no appeal to a more ultimate set of rules, and yet the boundary is only conditional and can be contested and re-formed. The power of meaning imposition in establishing the boundary between the political and the unpolitical is at the core of sovereignty. Where a conception of sovereignty is generally accepted within a political society, its definition of the political/unpolitical boundary will be unpolitical and its specification of the definition and scope of politics within the polity is unpolitical. Through the establishment of a stable link between the rulers and the ruled, it offers a

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[48] Gerard Mairet, *The fable of the world, a philosophical inquiry into freedom in our times*, translated by Philip Derbyshire, Seagull Books, 2010, page 57.

[49] D. Dyzenhaus, *Legality and Legitimacy. Carl Schmitt, Hans Kelsen and Hermann Heller in Weimar*, OUP, 1997, pp 42-51.

[50] J.P. McCormick , *Carl Schmitt's Critique of Liberalism, Against Politics as Technology*, CUP, 1997, pp 121-156.

settlement of what can and cannot be done by politics in a particular society. Sovereignty is political and unpolitical at the same time, which seems contradictory but actually is not. It is more like a religious mystery, like a deep and half-forgotten truth that seems almost beyond reason. Sovereignty is an important feature of all politics itself. It is because sovereignty performs this role that sovereignty is about establishing the relation between the ruler and the ruled and it is an effect of politics as well as acting to regulate politics.[51]

Whereas the omnipotent law giver was still associated with the personal element of rule in the seventeenth and eighteenth century, the personal factor has been dissipated by the nineteenth and twentieth century. In relation to the monarchical legitimacy, efforts were made to divide political power, to set it up, to set it against itself. The fragmentation occurred under the impact of such ideas as democratic legitimacy; the division of power; the notion that power must be checked by power, which is a central tenet of constitutional liberalism; and the idea that the sovereignty of law should replace the sovereignty of men. Although Schmitt was prepared to accept modern constitutional developments, he was determined to reinstate the personal element in sovereignty and make it indivisible once more.[52] The redefinition or falsification of the principle of sovereignty was the work of Carl Schmitt, an important figure in his time and a militant in the *ecclesia militans*. His definition of sovereignty is not only misleading but it also proceeds from a conception of politics that is pre-Bodin and pre-Hobbes. Ironically, Schmitt relies both on Bodin and Hobbes to establish his conception of sovereignty. Carl Schmitt is the best theorist of anti-sovereignty. In the historical act of the exhaustion of sovereignty or its culmination, Schmitt does not attempt to transcend the world. Rather he tries to return to the ancient world of warlords who are enlightened and guide by a revelation that has vanished from modernity and has vanished because of it. As Mairet says, Schmitt's falsification of the concept without conceptual clarification shows that his thought is the symptom of a time founded on the

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[51] Raia Prokhovnik, *Sovereignties, Contemporary Theory and Practice*, Palgrave Mcmillan, 2007, Page 155.

[52] Carl Schmitt, Introduction to *Political Theology*, Trans. and Introduction by George Schwabs, MIT Press, 1985, page xvi.

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reactionary negation of sovereignty. Schmitt's proposition highlights the tension between what sovereignty wanted to eliminate from the world i.e. challenge to its authority and monopoly over the use of violence. We can note that whenever this aspect of the sovereign is under threat sovereignty resorts to its criminal realization which is evident in the politics of death and servitude and the abasement of humanity and the tyranny of all powerful. If we examine Schmitt's thesis, we will see that he declares his agreement with Jean Bodin – the dictatorship of the commissioned officer doesn't involve sovereignty. But since he wants to justify recourse to the dictator of the state of exception, he sets out to forge the notion of 'sovereign dictatorship' through the juridical technology of public law. This rests on the substitution of the 'constituent Power' for the concept of sovereign power. Schmitt's substitution of 'constituent Power' for 'sovereign power is made possible by promotion of the theme of exception (68)[53] which we will take up in the later sections.

For Jurgen Habermas, writing in the '*Inclusion of the Other*' argues that Schmitt sets himself in stark opposition to a republicanism grounded in social contract theory. Where, the *people* and *nation* are interchangeable concepts for a citizenry that is the same as the political community. Thus, people who make up the state are viewed not as a pre-political entity but as the product of the social contract. Habermas points out that the substantive understanding of popular sovereignty assumes an essential interlinking between freedom and the external independence of a people. He further states that the procedural understanding connects sovereignty with the private and public autonomy according to such an understanding grants everybody equally within and association of free and equal legal subjects. Therefore, normatively a demand to secede is legitimate only when the central state power violates the rights of a portion of the population concentrated in a particular territory because in such a case the demand for inclusion can be realized through achieving national independence. Culturally, a nation of citizens is composed of people who, as a result of socialization processes also embody the forms of

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[53] Gerard Mairet, *The fable of the world, a philosophical inquiry into freedom in our times*, trans. Philip Derbyshire, Seagull Books, 2010 pp 66-68.

life in which they formed their identities, even if as adults they renounce the traditions in which they were brought up.[54]

In Carl Schmitt's both books *'The Concept of the Political*'[55] and *'Political Theology, Four Chapters on the Concept of Sovereignty'*, the 'telos' of the theory is the inscription of the state of exception within a juridical context. According to Giorgio Agamben, the specific contribution of Schmitt's theory is precisely to have made such an articulation between state of exception and juridical order possible. It is a paradoxical articulation, for what must be inscribed within the law is something that is essentially exterior to it, that is, nothing less than the suspension of the juridical order itself. For Schmitt, in 'commissarial dictatorship', the constitution can be suspended in application 'without thereby ceasing to remain in force, because the suspension signifies solely a concrete exception. On a theoretical level, commissarial dictatorship can thus be wholly subsumed in the distinction between the norm and the techno-practical rules that govern its realization.[56] The situation is different in 'sovereign dictatorship', which is not limited to suspending an existing constitution 'on the basis of a right that is provided for therein and is therefore itself constitutional'. Rather, it aims at creating a state of affairs in which it becomes possible to impose a new constitution. In this case, the operator that allows the state of exception to be anchored to the juridical order is the distinction between 'constituent power'[57] and 'constituted power'[58].[59] The state of exception in Schmitt's theory can be defined as the place where the opposition between the norm and its realization reaches its greatest intensity. It is a field of juridical tensions in which a minimum of

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[54] Jurgen Habermas, *The Inclusion of the Other*, Polity Press,1998, Page 145.

[55] Carl Schmitt, 'The Age of Neutralizations and Depolitcizations' in *The Concept of the Political*, trans. G. Schwab, University of Chicago Press, 2007, pp 80-96.

[56] Giorgio Agamben, *State of Exception*, trans. Kevin Attell, The University of Chicago Press, 2005 page 32-33.

[57] The people.

[58] The sovereign.

[59] Giorgio Agamben, *State of Exception*, trans. Kevin Attell, The University of Chicago Press, 2005 page 33.

formal being -in-force coincides with a maximum of real application, and vice versa. But even in this extreme zone, and, indeed, precisely by virtue of it – the two elements of the law i.e. norm and exception, show their intimate cohesion.[60]

## 2.5 Sovereignty and Authoritarianism

The idea of popular sovereignty did not discard the association of sovereignty with overpowering and tyrannical government. The notion of ruler sovereignty has remained a powerful threat, from James II to Louis XIV to Napoleon to dictators of the twentieth century. Legal sovereignty is political in being constructed one way rather than another, and the distinction between legal and political sovereignty is political in being in principle contestable. The meaning of sovereignty changes according to the values and norms of the country and over time, and the change in the meaning of sovereignty with the change in political form is political in the sense of not being derived from an uncontestable foundation. Sovereignty therefore, should be seen as an object of political knowledge because it is not natural, normal and given, but is something whose meaning needs to be recovered as politicized and constructed by making choices for this rather than that. The idea of sovereignty as a claim also spells out the political nature of sovereignty, the way a claim is tentative, can be made against the grain of the dominant order, a point of contestation, a demand to be heard, or an assertion of inclusion. As Raia Prokhnovik reminds us, sovereignty is not only about the identification and exercise of supreme authority, ruler sovereignty, the relationship between rulers and the ruled set out in legal rules. It is also about the (perhaps decentralized) symbolic unity of the polity, the 'imagined' political identity that expresses what is shared or held in common, as well as about the conditional settlement that enables the maintenance of political stability about

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[60] Giorgio Agamben, *State of Exception*, trans. Kevin Attell, The University of Chicago Press, 2005 page 36.

the realm of the political and how political performance is conducted within it.[61]

It is important in this regard to recall Nicholas Poulantzas' intervention. Poulantzas has brought to light that in effect the capitalist state is supposed to represent the 'general interest, the general will and the political unity of the people and the nation'. In the characteristic forms of the principle of representation, the general interest, public opinion, universal suffrage, public liberties, it presents the normative institutional ensemble of *political democracy*. However, in order to examine the problem of the state's unity, Poulantzas refers to the concept of popular sovereignty and to the formation of the concept of the people. For Poulantzas, in political theory, the concept of popular sovereignty covers that of the capitalist state and is linked to the problem of the *unity peculiar* to institutionalized political power. The problem of sovereignty had already been forged in connection with the absolutist state, where it indicated in a fairly confused way, and the unitary structure of political power which had gained autonomy from the economic. As popular sovereignty, it designates an ensemble of citizens, of formally and abstractly free and equal individuals set up as equal persons, as a source of the state's legitimacy. This ensemble is conceived as the body politic of society, as the people. Poulantzas says that however it is more important for us to note here that the state's sovereignty and popular sovereignty are identical. The people composed of citizens, is supposed to acquire its existence as the body politic, as the source of legitimacy, and only in so far as it takes on a unity directly embodied in the unity of state power. Popular sovereignty is identified with state sovereignty since the people are identified with the state only if they are *represented*. The role of the people's representatives is not that of expressing *the will of the nation* but, to use the expression which recurs in the theorists of liberal democracy, that of expressing *the will for nationhood*; that is to say, it

[61] Raia Prokhovnik, *Sovereignties, Contemporary Theory and Practice*, Palgrave Mcmillan, 2007, Page 162.

is the role of constituting the body politic, which is the people, by attributing unity to the members of the 'society'.[62]

The actual relation of the state's institutional powers, which is conceived as a 'separation' of these powers, is in fact fixed in the capitalist state as a mere distribution of power, out of the undivided unity of state sovereignty. This feature of the unity of the capitalist state, according to Poulantzas, governs its centralized organization. This means that the decline of local powers is directly related to the unitary organization of the state based on the central point of popular sovereignty. The juridico-political region of the capitalist state is effectively organized as an institutional unity of strictly political power (public) in so far as it constitutes the unity of an ensemble of elements (citizens) whose economic determination and therefore class membership is systematically absent from its institutions.[63]

In contrast to this, for Habermas, the *state* in the modern conception is a legally defined term which refers, at the level of substance, to a state power that possesses both internal and external sovereignty at the spatial level over a clearly delimited terrain (the state territory) and at the social level over the totality of members (the body of citizens or the people). In political usage, the concepts *nation* and *people* have the same extension. The term *nation* has the connotation of a political community shaped by common descent, or at least by a common language, culture and history. A *people* become a *nation* in this historical sense only in the concrete form of a particular form of life.[64] According to Habermas, the imposition of 'civil peace' (*Landfrieden*) was the necessary precondition for monopolizing the legitimate means of violence. A state is considered sovereign only if it can both maintain its internal law and order and externally protect its borders against threats. Internal sovereignty presupposes the ability to maintain law and order, external sovereignty the ability to assert oneself in the anarchistic competition for power among states.

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[62] Nicholas Poulantzas, 'The Capitalist State and the Field of Class Struggle' in *Political power and Social Classes*, Verso, London, 1978, Page 277

[63] Ibid, Page 279.

[64] Jurgen Habermas, *The Inclusion of the Other*, Polity Press,1998 pp 146-147.

Having said all this, although markets can be established and regulated by political means, they obey a logic of their own that escapes state control.[65]

In so far as the modern state makes use of positive law as a means of organization and implementation, it binds itself to a medium that instantiates Hobbes's principle, through the concept of law and the derivative concepts of subjective rights and of the legal person (as the bearer of rights). Within an order of modern law that is set free from immediate moral expectations (though only in certain respects), the citizens are permitted to do anything that is not prohibited and acquire a private autonomy. State and nation are fused into the nation-state only since the revolution of the late 18th century. Popular national self-consciousness provided the cultural background against which 'subjects' could become politically active 'citizens. The achievement of the nation-state consisted in solving two problems at once: it made possible a new *mode of legitimation* based on a new and a more abstract form of social integration. The nation or the *Volksgeist*, the unique spirit of the people and the first truly modern form of collective identity- provided the cultural basis of the constitutional state.[66]

According to Habermas, the private and public autonomy presuppose one another in the circuit of reproduction and improvement of the conditions of preferred ways of life. The constitution aspires to confirm itself as the institutional framework for a dialectic of legal and factual equality that simultaneously reinforces the private and the civic autonomy of the citizens. But it miserably fails to do so because the modern state works on modern law which in turn establishes itself upon a very violent relationship vis-à-vis citizens, which has already been explained by Walter Benjamin. Segmentation does not mean that fragmented societies could simply abandon part of the population to their fate without political consequences. But we will see in the coming sections that rather than abandoning, the modern state through law excludes citizen/s and populations by the concept of banishment. Habermas

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[65] Jurgen Habermas, *The Inclusion of the Other*, Polity Press, 1998, Page 107.

[66] Jurgen Habermas, *The Inclusion of the Other*, Polity Press, 1998, Page 113.

affirms that in the long term three consequences of this 'exclusion by law' are unavoidable. The first one is that an underclass produces social tensions which discharge in aimless, self-destructive revolts and can only be controlled by repressive means like the construction of prisons and the organization of internal security in general. Secondly, Social destitution and physical immiseration cannot be contained locally because the 'poison' of the ghettos will infect the infrastructure of the inner cities and even of whole regions, penetrating the pores of the society as a whole. Finally, all of this will lead to a moral erosion of the society, which will inevitably undermine the universalistic core of any republican polity. The project of the society that is capable of learning and of consciously shaping itself through its political will is still viable.[67]

The conventional meaning of political sovereignty designates a very limited notion of politics in terms of liberal democratic institutions and procedures (contested elections, a multi-party system, a free press, the rule of law, religion located in the private realm, a neutral public realm, liberal pluralism), focused on the legitimacy of the supreme law-making body. This narrow conception of politics for Habermas, leaves out of the picture of the political the still-active context out of which these institutions and processes have congealed. Sovereignty is a key means of setting out of the degree of space allotted to politics of participation, dissent, contestation, as well as the ways in which politics is habitually expressed through the formal institutions and informal forms it habitually takes. It also decides the kind of 'street' politics to be tolerated, and politics at national, regional, local, and international levels to be pursued.[68] The democratic state is replaced by a 'state of law' deprived of all philosophical reference to natural law, reduced to an ensemble of rules with no other basis than the daily administered proof of its smooth functioning. 'Norms' that are both effective and responsive to expectations of popular

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[67] Jurgen Habermas, *The Inclusion of the Other*, Polity Press,1998, Page 123.

[68] Raia Prokhovnik, *Sovereignties, Contemporary Theory and Practice*, Palgrave Mcmillan, 2007, Page 153.

sovereignty and human rights are replaced under the guise of 'logic of networks' – by the invisible hand of supposedly spontaneously regulated processes of the global economy. The nation-state, for Habermas, should be 'transformed' rather than abolished so that its normative content also be preserved. He is weary of the fact that it seems difficult to achieve a binding force between democratic opinion and that of will formation in order to move beyond the nation-state. Presently, it has been reduced to civil society and corporate media. As a modern form of consciousness, national identity is distinguished on the by its tendency to transcend particularistic, regional ties. The Janus face of the nation, which opens itself internally but shuts itself off from the outside, is already implicit in the ambivalent meaning of the concept of freedom.[69]

Thus sovereignty, for the commentator Gerard Mairet, has organized the modern world through the construction of a common being for the human beings. The 'common' in this discourse becomes the source of citizenship in the modern democracy. Citizen, therefore, becomes the subject of sovereign power. The concept of domestic and international sovereignty structures the rights and duties of the citizenship in different ways. Sovereignty in the domestic sense has a particular kind of obligation to law and therefore a specific equilibrium of rights and duties takes place. But on the other hand the citizen might find disequilibrium between these notions and a curtailment of freedom. Hence the norm of justice determines the extent of liberty of these citizens.[70] Sovereignty is necessarily outside politics but it also establishes the sphere and condition of politics itself, the boundaries and limits of politics, and so the identity of the political unit. The category of sovereignty occupies a 'neutral' position outside of politics and would be invalidated if thought to be partial to or captured by particular interests, and yet it is also deeply political

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[69] Jurgen Habermas, *The Inclusion of the Other*, Polity Press, 1998, Page 131.

[70] Gerard Mairet, *The fable of the world, a philosophical inquiry into freedom in our times*, trans. Philip Derbyshire, Seagull Books, 2010 page 31-72.

in regulating the negotiations of the norms and processes of political life in a particular society through a claim that is 'conditionally' stable. [71]

## 2.6 Sovereignty and Law

In this section we will be looking at the notion of constituted and constituent power. We will see how Austin tried to reconcile the gap between constituted power and constituent power but how he practically failed in his purpose. Moving on to Walter Benjamin it will become clear to us, that the foundational elements in modern law can be themselves seen as violent and therefore cannot sustain this relationship of a reconciled constituent power and constituted power.

John Austin, according to A. D. Lindsay, approaches the doctrine of sovereignty with the purpose of defining law. He wishes to distinguish between 'laws properly so-called' and 'laws improperly so-called', and he takes his stand on the doctrine of Hobbes that 'law is the word of him that by right hath command over others'. In order if there is a law then it presupposes that there must be distinction between the sovereign and the subjects. Austin's sovereignty rests on the fact of habitual obedience by the rest of the society. A sovereign exists if the society habitually obeys the sovereign. For the social fact remains that men obey the king, but the juristic fact is that law is what the king commands. Therefore, according to Lindsay, realizing that that the sovereign in their sense cannot be limited, Hobbes and Austin maintained that the difference between absolute monarchy and what is called a limited or constitutional government lies not in the attitude of the governed towards the government but in the number of the persons constituting the government. But the contradiction remains that if sovereignty is primarily inherent in persons, either individuals or communities supposed to be persons, then the question arises that there cannot be two sovereigns in a state, and the separation of powers in a federal state must be unreal. To have law without a sovereign is

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[71] Raia Prokhovnik, *Sovereignties, Contemporary Theory and Practice*, Palgrave Mcmillan, 2007, Page 152.

impossible according to this logic, and it is also impossible to have a sovereign without making him the authority over all law. The classical understanding holds the juristic aspect of the state as not self-contained, and that law would be impossible without the network of relations which are juridical in nature. The rigid skeleton of political machinery is closed upon with living and growing tissues and therefore makes the movement of the body politic possible. The theory of the sovereignty of the constitution holds that the 'will' between the social and juristic aspect of the state is the adherence by the majority of the members of a society to a definite principle of settling differences.[72]

Rights become positive when law introduces obligations, which means disciplining and limiting the right it undertakes to enforce. The sovereign rights of the State are limited in their formulation and exercise, not by another power extrinsic or intrinsic to it like the Papacy or Trade Unions but by itself in relation to various circumstances, which do not impose any limitation, but to which it must be relative, in order to be positive both in the legal and in the philosophical senses of the word. It draws upon a metaphysical doctrine, which holds that the source of the law is the indeterminate sovereign (king) whose historical channel is the determinate sovereign (God). The important condition to notice is that the universal character of sovereignty does not mean unlimited rights and power to exercise them but the strictly necessary character of the State, which is metaphysically established in such a way that the political organized community becomes the very act of being a hu/man. Also historically, at each given point on the axes of time and space the contingent circumstances required always a given policy or a law to settle a problem. Certainly the 'rule' or the 'norm' is a limiting condition in the proposed contract between the State and the individual self. The sovereignty of the state is characteristic of the political community. But they are correlated. Human

[72] A. D. Lindsay, "Soveriegnty", *Proceedings of the Aristotelian Society, New Series*, Vol. 24 (1923 – 1924), pp. 235-254.

liberty as per the normative discourse is only found in a State capable of providing the necessary juridical order.[73]

Theoretically, no State has ever had absolute power and universal competence for the simple reason that in order to be positive and binding rights and obligations it must be relative and therefore limited. But ironically, at the same time, as Lion observes, the State has an absolute character which follows from its being necessary both as a consequence and as a condition of human autonomy. The Sovereign State is one of the terms which appear in every historical understanding although it unveils a new 'reason' or 'necessity' every time. This is its dynamism and the primary condition which ensures that sovereignty continuously plays the part it should play. Since in order to be always absolutely necessary it must always be perfectly relative to the contingent circumstances with which it must vary endlessly.[74]

Commenting on Austin's proposition about sovereignty, C. H. McIlwain reminds us that the correlative of sovereignty for Austin is obedience, and the sovereign is the person who is obeyed. But obeying also becomes circumstantial because we may obey one armed with a pistol as well as one armed with a warrant. Supreme command will secure obedience and therefore might makes right, not that might is right. Obedience rendered to a power without right will be rendered only so long as it is compelled. Such a power to be really sovereign must have some right to receive obedience and in the long run this right will be one conceded by those who obey. For all the philosophers, 'might' will be taken as right only in the lowest forms of political life because *res publica* is *res populi*, and the higher political life of man requires not merely any association, but an association of a people in consent to law. Here it is pertinent to mention that the relation of sovereignty to law leading to disciplined subjects is not a simple one. The concept of law

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[73] A. Lion, "Sovereignty", *Proceedings of the Aristotelian Society, New Series*, Vol. 40 (1939 – 1940), pp. 135-176.

[74] Ibid.

giver internally holds the potential of violence as a necessary outcome. But we will discuss this a little later. 'Sovereign power' as distinct from any other power is the highest *legal* power in a state, itself subject to no law. Therefore, the term *sovereign* has no proper application beyond the domain of law. It is a purely juristic term and technically should convey a purely juristic idea. It holds no proper meaning if extended beyond the sphere of law and understood as a mere fact. The fictional character of the King's sovereignty has long been demystified. The challenge before us is to produce an equally clear appreciation of the fact that the sovereignty of modern parliaments can be to all intents and purposes the same, in kind, at least, if not in degree. Popularly, behind the sovereign and his protection of legal rights must always stand the might of the people, which can be bound by no law and must be, as Aristotle said, based upon the justice inherent in the people themselves, and upon their recognition and performance of their duties.[75] Aristotle was pointing to a different kind of interpersonal and community ethics that we are not going to discuss here.

The political conception of sovereignty generally remains below the level of juristic consciousness, according to commentators but it is nevertheless one that is basic to an understanding of sovereignty, even in the juristic sense, because it is the one that makes the crucial link between the rulers and ruled. The idea of 'political sovereignty' is not about the question of ultimate authority but the equally important yet largely unacknowledged way in which the shaping of the development of norms and values which condition political action, takes place. The deeply political nature of the concept of sovereignty throws new light on the distinction between *defacto* and *de jure* sovereignty. The distinction rests on the inherent tension between, and complementarity of, political and legal sovereignty in the orthodox conception. Weak states are held to have *de jure* sovereignty, the legal framework and international recognition, without popular legitimacy or capacity to use it in practice, either because another state holds *de facto* sovereignty or because the basis for creating the state was weak. Other states are held to have *de facto*

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[75] C. H. McIlwain, "Sovereignty Again", *Economica*, No. 18, Nov. 1926, pp. 253-268.

status (on the ground workability) without the *de jure* (legal and formal) standing to complement it, which is a political matter, and *de facto* refers to internal capacity or lack of it which is also political. The *de facto/de jure* distinction is not just a legal matter, and does not simply line up with politics and law respectively. The distinction is a deeply political one, and it is not a dichotomy because states (according to the state sovereignty conception) need both to be fully sovereign, and because neither one is favored over the other – either one without the other is equally unacceptable in sovereignty terms.[76] Gerard Mairet suggests that the condition of existence in the modern republic is the extension of its sphere of freedom to the limits beyond which the extension of its world becomes impossible. Hence politics assumes the force of extending the space in which the modern state constructs its world. The interesting point is that the sovereign extends itself in the name of increasing freedom. Freedom therefore gets marked by a finitude and organization of life becomes just a modulation of the restrictions that the world of morality governs. Thus paradoxically, as Mairet says, the negation of freedom becomes the essence of the freedom. The essence of the world of morality for Mairet reduces it to a world of finitude where the common being exists and realizes itself through its self-preservation as this world of finitude.[77] Sovereignty therefore, is not 'a form of power relation [to which resistance is possible] but rather a relationship of violence', on the grounds that because 'it seeks to refuse those whole lives it controls any politically valid response, it operates as a form of technologized administration'. Raia Prokhovnik emphasizes this point with the remark that that the state is invisible. Therefore, it must be personified before it can be seen, symbolized before it can be loved, imagined before it can be conceived. But the overlaying of old meanings and old ways of understanding onto new ideas, new phenomena and practices, according to Prokhovnik, is a key way of making them intelligible, relating new ideas and practices to old ones. New ideas will be more successful if they can be shown

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[76] Raia Prokhovnik, Sovereignties, Contemporary Theory and Practice, Palgrave Mcmillan, 2007, Chapter 4, Page 167.

[77] Gerard Mairet, *The fable of the world, a philosophical inquiry into freedom in our times*, trans. Philip Derbyshire, Seagull Books, 2010, Page 31-72.

to map onto and trade upon older valued ones. In this way metaphorical meaning, which at a general level is necessary aspect of living in society, is never merely neutrally rational but is always loaded with normative import. The understanding attached to the concept and practices of sovereignty indeed must trade on a dominant metaphorical meaning to be successful in 'explaining' social reality and meaning.[78]

Interestingly, Mairet explains how sovereignty is actually 'the imperium of finitude'. Because of what he discusses as the geometrization[79] of the just and the unjust, the 'just' doesn't flow from a configuration of law and salvation but from an appreciation of the experienced finitude experienced by the living and suffering beings. Therefore, various sovereign states having different national interests with all the means at their disposal set off to constitute itself as an empire in the face of the already given finitude of human conduct as set by the sovereign.[80]

Having made a brief survey of the major and classical understanding of the concept of sovereignty we shall now move on to a more critical understanding that offers to critique the complex relationship between sovereignty and law. Such an understanding of course, proceeds from the fact that the individual as well as community needs to be rescued from the fundamentally violent character of modern law. To begin with let us consider how Walter Benjamin understands the nature of law and law giver. In his famous essay, 'On the Critique of Violence', Benjamin explained that the nature of modern law is violent in character because it deals with two issues: one is 'law enactment' and the other is 'law enforcement'. For Benjamin the thesis of natural law

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[78] Raia Prokhovnik, 'Chapter3. The Metaphor of Sovereignty' in *Sovereignties, Contemporary Theory and Practice*, Palgrave Mcmillan, 2007, Page 128.

[79] According to Gerard Mairet, it means that first of all conduct is divided into just and unjust by the sovereign and then through the instrument of law the sovereign quantifies justice by depriving people of deciding what justice is.

[80] Gerard Mairet, *The fable of the world, a philosophical inquiry into freedom in our times*, trans. Philip Derbyshire, Seagull Books, 2010 page 31-72.

regarding violence as a natural datum is diametrically opposed to the idea of positive law which observes violence as a product of history. Natural law judges all the existing laws in terms of criticizing its ends as where positive law judges all evolving laws in terms of criticizing its means. Thus, it seems that justice is the criterion for ends while legality is the criterion for means. This antinomy between ends and means seemed irreconcilable for some time, and then finally the circle was broken and a mutually independent criteria both of 'just' ends and 'justified' means was floated by modern law. This dichotomy between ends and means is resolved by the sovereign through law by placing itself as the legitimate authority and monopoly over the use of physical force. But we are digressing. Let us return to the idea of law and violence. For Benjamin, all violence as a means is either law making or law-preserving, in other words, law enacting or law enforcing, if it does not claim either of these predicates it does not have any validity as a law. The question arises whether there are non-violent ways of resolving the conflict of human interests, according to Walter Benjamin, a totally nonviolent resolution of conflicts can never lead to a social contract. Later he would go on to state that law making is mythic violence, whereas divine violence is law destroying. If the former sets boundaries the latter destroys them. It seems then that, for Benjamin, the ultimate goal of human existence is to attain the absence of law-making. This expiatory power of violence is invisible to us.[81]

Thus, law is not born of nature, as the French philosopher Michel Foucault suggests, it was not born near the fountains the first shepherds frequented: the law is born out of real battles, victories, massacres, and conquests, which can be dated and which have their horrific heroes; the law was born in burning towns and ravaged fields. This does not mean that the society, the law, and the State are like armistices, which put an end to wars, or that they are the products of definitive victories. Law is not pacification for Foucault, as beneath the law, he sees war continuing to rage in all the mechanisms of power. From this perspective, war is the motor behind

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[81] Walter Benjamin, 'On the Critique of Violence' in *One-way Street and Other Writings*, Penguin, 2009, pp 1-28.

institutions and order. Therefore for Foucault, Peace itself is a coded form of war. From the seventeenth century onward, the idea that war is the uninterrupted frame of history takes a specific form. In Foucault's reading the war that is going on beneath the order and peace is race war. It is this idea of the clash between two races that articulate the social body, which was formulated in the seventeenth century as a discourse of a centered, centralized, and centralizing power.[82] Foucault saw it as the internal racism of permanent purification, which would become 'one of the basic dimensions of social normalization'.[83]

## 2.7 Sovereignty and Biopolitics

Gerard Mairet suggests that 'the manufacture of the moral world is what we call politics' and adds that 'the modern art of politics posits freedom as the only goal as if the perennial object of politics'. This freedom in turn rests on obeying the rules where the philosophy of morality is established on the unique foundation of sovereignty. Mairet explains the base of everyday politics that finds its existence substantial by having sovereignty as its point of reference. Therefore, the political constitution which aspires for freedom has to follow an organized path which is set by the sovereign in terms of the present conception of the bodypolitic. This organization of life through the obeying of rules is sanctioned as politics by the modern nation-state. Mairet observes that the discipline is brought through the basic enforcement of laws which guide the human distinction between 'just' and 'unjust'. Hence unique problems are addressed through a definite governmental solution undermining different possible solutions. Mairet problematizes these questions by raising the issue of war because war is the foundational principle which engages the freedom of a people who themselves are formed or are in the course of

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[82] Michel Foucault, 'Chapter-3, Lecture on 21 January 1976', in *Society Must be Defended, Lectures at College de France, 1975-76*, trans. David Macey, Picador, 2003, 43-64.

[83] Ibid.

formation. Mairet emphasizes that freedom, the most important issue, itself gets turned into an abstraction.[84]

Sovereignty is the theory that goes from subject to subject, that establishes the political relationship between subject and subject. Thus, Michel Foucault, the French philosopher, argues that the theory of sovereignty assumes from the outset the existence of a multiplicity of powers that are not powers in the political sense of the term but are capacities, possibilities, potentials, and it can constitute them as powers in the political sense of the term only if it has in the meantime established a moment of fundamental and foundational unity between possibilities and powers, namely the unity of power. The multiplicity of powers, in the sense of political powers, for Foucault, can be established and can function only on the basis of this unitary power, which is founded by the theory of sovereignty.[85]

Foucault draws our attention to the problem that if we look beneath peace, order, wealth, and authority, beneath the calm order of subordinations, beneath the State and State apparatuses, beneath the laws, and so on, we will discover a sort of primitive and permanent war. Going on, he raises an important question there: 'how, when and why was it noticed or imagined that what is going on beneath and in power relations is a war? When, how and why did someone come up with the idea that it is a sort of uninterrupted battle that shapes peace, and that the civil order — its basis, its essence, its essential mechanisms — is basically an order of battle? Who came up with the idea that civil order is an order of battle? Who saw war just beneath the surface of peace; who sought in the noise and confusion of war, in the mud of battles, the principle that allows us to understand order, the State, its institutions, and its history? Who basically had the idea of inverting Clausewitz's principle, and who thought of saying: it

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[84] Gerard Mairet, *The fable of the world, a philosophical inquiry into freedom in our times*, translated by Philip Derbyshire, Seagull Books, 2010 Page 31-72.

[85] See Michel Foucault, 'Chapter 3, Lecture on 21 January 1976' in *Society Must be Defended, Lectures at College de France, 1975-76*, trans. David Macey, Picador, 2003, pp 43-64.

is quite possible that war is the continuation of politics by other means, but isn't politics itself a continuation of war by other means?[86]

According to Michel Foucault, a society's 'threshold of biological modernity is situated at the point at which the species and the individual as a simple living body become what is at stake in a society's political strategies'.[87] How law entangled in the entity called sovereignty is responsible for violence has become clear from the discussions in the earlier paragraphs. Let us move on to an understanding of the 'norm' and the 'exception' of the law enactment by the sovereign. As far as the general understanding goes, the juridical order is understood to be comprised of two kinds of power unleashing. In times of peace the constitutional rights are upheld along with the technique of law enforcement i.e. the normal legal order and in times of disturbance and chaos, an emergency. This emergency is what is called in technical language- the 'state of exception'. Initially postulated by Carl Schmitt but later taken up in a more nuanced way by the Italian philosopher, Giorgio Agamben, this concept has become a kind of paradigm of late in order to understand the nature of modern sovereignty. Agamben suggests that as the sovereign is the law giver, it is the sovereign who has the sole right to unleash a state of exception. While we are evaluating as well as explaining the scope of this concept in the coming pages, let us keep in mind Benjamin's clue, that "the state of exception has become the rule".[88] Giorgio Agamben's radical formulation about the 'state of exception' suggests that 'the state of exception, which is what the sovereign each and every time decides, takes place precisely when naked life- which normally appears rejoined to the multifarious forms of social life- is explicitly put in question and revoked as the ultimate foundation of political power'. Agamben's formulation exposes us to the possibility of a permanent existence of exception, which is what he thinks lies encapsulated in the process of state action without an actual declaration of emergency.

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[86] Michel Foucault, *Society Must be Defended, Lectures at College de France, 1975-76*, Chapter-3, Lecture on 21 January 1976, trans. David Macey, Picador, 2003, pp 43-64.

[87] Giorgio Agamben, *Homo Sacer*, trans. Daniel Heller-Roazen, Stanford University Press, 1998, page 3.

[88] Ibid, page 6.

If the law employs the exception, that is the suspension of law itself- as its origin, a means of referring to and encompassing life, then a theory of state of exception is, Agamben suggests, the preliminary condition for any definition of the relation that 'binds and, at the same time, abandons the living being to law'.[89] The next chapter will try to examine how the theory of state of exception appears increasingly feasible especially when one looks at the so-called 'war on terror'. Returning to questions at hand, Agamben insists that we must understand that the state of exception as a kind of 'no-man's-land' between public law and political fact, and between the juridical order and life. As Agamben puts it, 'only if the veil covering this ambiguous zone is lifted will we be able to approach an understanding of the stakes involved in the difference- or the supposed difference- between the political and the juridical, and between law and the living being'.[90]

The advantage of Agamben's formulation is that, following him, modern totalitarianism can be defined as the establishment, by means of state of exception, of a legal civil war that allows for physical elimination not only of political adversaries but of entire categories of citizens who for some reason cannot be integrated into the political system. Agamben thus suggests that, a voluntary creation of a permanent state of emergency (though not declared in the technical sense) has become one of the essential practices of contemporary states, including the so-called democratic ones.[91] The state of exception appears today as a threshold of indeterminacy between democracy and absolutism.[92] It must be noted that the significance of the state of exception as the original structure in which law encompasses living beings by means of its own suspension clearly emerges in the 'military order' issued by the President of the United States on November 13, 2001. It authorized the 'indefinite detentions' and trial by 'military commissions' of noncitizens suspected of

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[89] Giorgio Agamben, *State of Exception* trans. Kevin Attell, The University of Chicago Press, 2005 page 1

[90] Ibid, pp 1-2

[91] Ibid, Page 2.

[92] Ibid, pp 2-3.

involvement in terrorist activities.[93] In the era of suicide terrorism the modern state has turned suspects into 'legally unnameable and unclassifiable being'.[94] We can see how the detainee at the Guantanamo bay reaches its maximum indeterminacy[95] and becomes an example of 'bare life'. We will touch upon this at more length in the next chapter. Thus, Agamben insists that the state of exception is not a special kind of law; rather insofar as it is a suspension of juridical order, it defines law's threshold or the limit concept.[96] It is pertinent to mention here that the modern state of exception is a creation of the democratic –revolutionary tradition and not the absolutist one.[97] This returns to our core question of the 'legitimate authority' of the sovereign and 'its monopoly over the use of violence'. We will try to understand the absolutist tendencies inherent in the foundations of sovereignty in the upcoming sections as well as next chapter. Let me mention in passing here, how Agamben points out that the idea of the suspension of constitution was introduced for the first time in the French Constitution of 22 Frimaire[98] of the French Republican Calendar[99], Year 8; the Article 92 of this constitution reads; "In the case of armed revolt or disturbances that would threaten the security of the state, the law can, in the places and for the time it determines, suspend the rule of the constitution. In such cases, this suspension can be provisionally declared by a decree of the government if the legislative body is in recess, provided that this body be convened as soon as possible by an article of the same decree."[100] To understand Agamben's logic, we must see that the state of exception

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[93] Giorgio Agamben, *State of Exception* trans. Kevin Attell, The University of Chicago Press, 2005 Page 3

[94] Ibid, Page 3

[95] Ibid, Page 4

[96] Ibid, Page 4

[97] Ibid, Page 5

[98] Frimaire was the third month in the French Republican Calendar.

[99] The French Republican Calendar was a calendar created and implemented during the French Revolution and used by the French government for about 12 years from late 1793 to a805, and for 18 days by the Paris Commune in 1817.

[100] Giorgio Agamben, State of *Exception,* trans. Kevin Attell, The University of Chicago Press, 2005 page 5

constitutes a 'kenomatic state' [101], an emptiness of law. As he says, the idea of an originary indistinction and fullness of power must be considered a legal mythologeme to the idea of a state of nature.[102]

In addition to this an important question is that the problem of the state of exception presents clear analogies to that of the right of resistance. It has been much debated, particularly during constituent assembly debates, whether the right of resistance should be included in the text of the constitution or not.[103] The fact is that both in the right to resistance and the state of exception, what is at issue ultimately is the question of the juridical significance of a sphere of action that is itself extrajudicial. As we can see, for Agamben, the two theses are at odds here: one asserts that law must coincide with the norm, and the other holds that the sphere of law exceeds the norm.[104] Power is, Agamben suggests, in effect, the pyramid of warrants, commissions, authorizations. There is thus an order of sovereignties in this pyramid where power is what makes possible, not what forbids. It is the law that forbids in Agamben's reading, not power. As per Agamben, a recurrent opinion posits the concept of necessity as the foundation of the state of exception, according to a tenaciously repeated Latin adage, 'necessitas lagem non habet', "necessity has no law". This can be interpreted in two opposing ways: "necessity does not recognize any law" and "necessity creates its own law". In both the cases, the theory of the state of exception is reduced to the theory of the *status necessitatis*, so that a judgement concerning the existence of the latter resolves the question concerning the legitimacy of the former.[105] It can be seen here how necessity as a reason can become the reason of the state always or anytime. Necessity is

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[101] It refers to the emptiness and stand stillness of the law.

[102] Giorgio Agamben, *State of Exception*, trans. Kevin Attell, The University of Chicago Press, 2005 Page 6

[103] Ibid, page 10.

[104] Ibid, page 11.

[105] Ibid, page 24

not a source of law, nor does it properly suspend the law; it merely releases a particular case from the literal application of the norm. As Agamben would say "[h]e who acts beyond the letter of the law in a case of necessity does not judge by the law itself, judges by the particular case, in which he sees that the letter of the law is not to be observed.[106] Therefore, necessity constitutes, so to speak, the ultimate ground and the very source of law.[107]*[108]

The essential point, in any case, is that a threshold of undecidability is produced at which *factum* and *ius* fade into each other.[109] The attempt to resolve the state of exception into the state of necessity thus runs up against as many and even more serious 'aporias' of the phenomenon it should have explained. Not only does necessity ultimately come down to a decision, as Agamben puts it, but that on which it decided is, in truth, something undecidable in fact and law.[110] In extreme situations, "force of law" floats as an indeterminate element that can be claimed both by the state authority (which acts as a commissarial dictatorship) and by a revolutionary organization (which acts as a sovereign dictatorship). The state of exception is an anomic space in which what is at stake is a force of law without law.[111] The state of exception is the opening of a space in which application and norm reveal their separation and a 'purer force-of-law' realizes a norm whose application has been suspended. In this way, the impossible task of wielding

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[106] Ibid, page 25.

[107] Ibid, Page 26.

[108] Mairet suggests that sovereignty is expressed by the system of autonomy of power which happens in response to the violence of the finite world, presuming that the solution must consist of a guarantee of freedom but rejected the idea of finding such guarantee in God because, guaranteeing freedom would imply controlling scarcity and mastering necessity. In such a situation sovereignty emerges as the system of guarantee and control or in other words as the system of the mastery of necessity. Common being becomes the element in which the sacred for the multitude resides. Life definitely becomes the sacred for the people and the nation under these circumstances. [108] Sovereignty takes the shape of a juridically organized violence.

[109] Giorgio Agamben, *State of Exception*, trans. Kevin Attell, The University of Chicago Press, 2005, page 29

[110] Ibid, page 30.

[111] Ibid, pp 38-39.

norm and reality together, and thereby constituting the normal sphere, is carried out in the form of the exception, that is to say, by presupposing their nexus. This means that in order to apply a norm it is ultimately necessary to suspend its application, to produce an exception.[112]

If it is true that the articulation between life and law, between 'anomie' and 'nomos', that is produced by the state of exception is fictional but effective one still cannot conclude from this that somewhere beyond the juridical apparatuses there is something whose fracture is represented by these apparatuses. There is no life at first as a natural biological given, and then anomie as the state of nature, and then their implications in law through the state of exception. On the contrary, as Agamben says, the very possibility of distinguishing life and law, anomie and nomos, coincides with their articulation in the 'biopolitical machine'. 'Bare life' is a product of this machine and not something that pre-exists it, just as law, Agamben points out, has no court in nature or in the divine mind.[113]

For Agamben, politics has been contaminated by law because it has been reduced to a constituent power when it is not merely a power to negotiate with law. A possible use of law after the deactivation of the device, that in the state of exception tied it to life. We will then have before us a 'pure' law, in the sense in which Benjamin speaks of a 'pure' language and a 'pure' violence.[114]

Ernesto Laclau[115] has explained that there are three theses in Agamben's argument in the *Homo Sacer*:

[112] Giorgio Agamben, *State of Exception*, trans. Kevin Attell, The University of Chicago Press, 2005, page 29, Page 40.

[113] Ibid, pp 87-88.

[114] Giorgio Agamben, *State of Exception*, trans. Kevin Attell, The University of Chicago Press, 2005, Page 88.

[115] Ernesto Laclau, 'Bare Life or Social Indeterminacy?' in *Giorgio Agamben, Sovereignty and Life*, Eds. Matthew Calarco and Steven DeCaroli, Stanford University Press, 2007, pp 11-22.

1. The original political relation is the ban (the state of exception as the zone of indistinction between outside and inside, exclusion and inclusion).

2. The fundamental activity of sovereign power is the production of bare life as originary political element and a threshold of articulation between nature and culture, between *zoe* and *bios*.

3. Today it is not the city but rather the camp that is the fundamental biopolitical paradigm of the west.

Laclau, however, criticizes Agamben of remaining uneasily undecided between genealogical and structural explanation. He is of the view that Agamben's genealogy is not sensitive enough to structural diversity and, it thus risks ending in sheer teleology. [116]

For Agamben, the essence of a ban is given by its effects – that is, to put somebody outside the system of differences constituting the legal order. Sovereign violence is in truth founded not on a pact but on the exclusive inclusion of bare life in the state.[117] When a supreme will within the community is not confronted by anything, politics necessarily disappears because the political resides in resistance. When we arrive at this point, however, the notion of *sovereignty* starts shading into that of 'hegemony'. According to Laclau, this means that Agamben has clouded the issue, as he has presented as a political moment what actually amounts to a radical elimination of the political, since Agamben understands a sovereign power which reduces the social bond to bare life. There is a molecular process of partial transformations which is absolutely vital as an accumulation of forces whose

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[116] Ernesto Laclau, 'Bare Life or Social Indeterminacy?' in *Giorgio Agamben, Sovereignty and Life*, Eds. Matthew Calarco and Steven DeCaroli, Stanford University Press, 2007, pp 11-22.

[117] Giorgio Agamben, *Homo Sacer*, trans. Daniel Heller-Roazen, Stanford University Press, 1998, pp 106-107

potential becomes visible when a more radical transformation of a whole hegemonic formation becomes possible.[118]

One could possibly make the argument that in modernity there is no primacy of natural life over political action, but rather a politicization of the terrain previously occupied by 'natural' life. For Laclau, the problem in Agamben's is that it necessarily involves an increasing control by an over-powerful state. For Laclau, all beings have become the Musselman, in Agamben's formulation – inhabitants of the concentration camps, a being from whom humiliation, horror and fear had taken away all consciousness and personality so as to make him absolutely apathetic.[119] To be beyond any ban and any sovereignty means, therefore, to be beyond politics. The myth of a fully reconciled society is, according to Laclau, what governs the (non) political discourse of Agamben. For Laclau, it is also what allows him to dismiss all political options in societies and to unify them in the concentration camp as their secret destiny. Instead of deconstructing the logic of political institutions, showing areas in which the forms of struggle and resistance are possible, he closes them beforehand through essentialist unification. Political nihilism is his ultimate message.[120][*121]

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[118] Ernesto Laclau, 'Bare Life or Social Indeterminacy?' in *Giorgio Agamben, Sovereignty and Life*, Eds. Matthew Calarco and Steven DeCaroli, Stanford University Press, 2007, pp 11-22.

[119] Giorgio Agamben, *Homo Sacer*, trans. Daniel Heller-Roazen, Stanford University Press, 1998, page 185

[120] Ernesto Laclau, 'Bare Life or Social Indeterminacy?' in *Giorgio Agamben, Sovereignty and Life*, Eds. Matthew Calarco and Steven DeCaroli, Stanford University Press, 2007, pp 11-22.

[121] But the problem with Laclau's decoding of Agamben's proposition lacks the intensity of grasping the seriousness of the situation. Agamben, as accused by Laclau sounds nihilistic but the idea is that the technologies of control deployed by the modern nation-state, as already explained by Foucault leave no space for emancipation and usurps the space of freedom and choice. Agamben's agenda is of a different kind. We can say that he aspires to present a creative nihilism which alerts us to the pitfall of the hopeful understanding and rescuing our thinking from the vicious circle of constantly doing state-theory without ever realizing it. For understanding such nihilism we must recall the explanation given by Howard Caygill about Nietzsche's nihilism. Here, we can note that Agamben's nihilism is similar to that of Nietzsche. Therefore it is also both active and passive. Agamben's nihilism can also be decoded as both creative and destructive. For the creativity, it can be seen a s a sign of strength and a violent force of destruction and for the destructive part as a decline or recession in which the synthesis of values and goals on which every strong culture rests, is dissolved.

In a slightly more sympathetic vein, William E. Connolly proposes that, not only sovereignty persists, but that in Agamben's sense it does so amid an intensification of ambiguities and uncertainties that have inhabited it all along. The rule of law in a state is enabled by the practice of sovereignty that is always above the law.[122] The 'Homo Sacer', according to Agamben, is directly connected to sovereignty, because the sovereign sphere is that sphere in which it is permitted to kill without committing homicide and without celebrating a sacrifice.[123] It is this nexus between the paradox of sovereignty, the sacred realm, and biopolitics, which makes the concentration camp Agamben's paradigm of politics, expressing the outer limit of the German Nazi regime, Agamben thus, carries us through the conjunction of sovereignty, the sacred, and biopolitics to a historical impasse according to Connolly. This combination is almost enough to make us return to the formulation suggested by Rousseau. Connolly remarks, for Rousseau tried to conceal from many the paradox he faced, while Agamben stretches a paradox so much that he does not know how to transcend it. This reading of Agamben by Connolly appears to be in haste, because Agamben's philosophy does not believe in prescriptions. The meaning and the role of the sacred is in the relation between biopolitics and sovereignty, and the 'logic' of sovereignty. Something might be sacred, as Agamben says, because it symbolizes a divine law, because it is a book that is divinely inspired, because it is a ruler divinely authorized, or because it is an asset of rituals expressive of the highest human relation to the divine. Thus, who defile these things are said to be worthy of punishment, or even death, not because they touch the sacred, but because they do so in a blasphemous manner. They translate a divine being into an idol; or ridicule a

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[122] William E. Connolly, 'The Complexities of Sovereignty' in *Giorgio Agamben, Sovereignty and Life*, Eds. Matthew Calarco and Steven DeCaroli, Stanford University Press, 2007, pp 23-42.

[123]Giorgio Agamben, *Homo Sacer*, trans. Daniel Heller-Roazen, Stanford University Press, 1998, Page 83

sacred text; or disrespect an authoritarian priesthood; or question the connection between sovereignty and the sacred.[124]

The ambiguity detected by Agamben, is, in fact, an equivocation in the idea of sovereignty, between acting with final authority and acting with irresistible power. But a modified ethos of constitutional action would nonetheless shift the effective range of court decisions and popular responses in a different direction. A change in the ethos, which forms a critical component in the complexity of sovereignty, can alter the course of sovereignty. While attending to the modern intensification of biopolitics, in which sovereignty is set. In *Empire* Michael Hardt and Antonio Negri claim in their work *Empire* that, with the acceleration and expansion of capital into something approaching a global system, the context of sovereignty has dramatically changed. They described the nineteenth century idealized by Hegel as the era of imperialism, presided over by the dominant state. But imperialism has today, according to Hardt and Negri, given way to Empire. The 'Empire' is a worldwide assemblage, in which some states have more priority than the others, but one marked above all by the migration of sovereignty toward global structures which exceed the power or control of any single state. The idea of Empire – as a loose assemblage of differentiated powers not entirely under the thumb of a dominant state or, a set of supranational corporations – is both a timely intervention in this regard which is in need of further development. Here the elements of sovereignty are distributed in a complex assemblage with multiple sites, not concentrated in the single will of a people, a king, or a dictator. As the authors say, the contemporary world assemblage is marked by two tendencies: (a) neither state authorities, corporate elites, market mechanisms, nor international agencies have sufficient foresight to govern the world intentionally as a system. (b) Every state, corporation, labor movement, and supranational movement is nonetheless enabled, contained, and restrained by the larger world assemblage, in which it is set. The ambiguities and uncertainties already discernible within

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[124]William E. Connolly, 'The Complexities of Sovereignty' in *Giorgio Agamben, Sovereignty and Life*, Eds. Matthew Calarco and Steven DeCaroli, Stanford University Press, 2007, pp 23-42.

sovereignty thus become magnified as its sites are extended to encompass the world.[125] Connolly sees Hardt and Negri refusing the drive tо reinstate the nation as the state's bulwark against the new formations of sovereignty. The new world assemblage, just because it is flexible and complex in its architecture, is not amenable to replacement. But for the same reason, it may be susceptible to significant stretching and reshaping by a variety of movements situated at multiple sites. The task is according to Connolly, to infuse it with more flexibility, inclusivity, and plurality, and to act upon localities, states, supranational capital, religious organizations and international institutions to redistribute the world assemblage.[126]

For another commentator, Steven DeCaroli, sovereignty is the embeddedness of authority within a field of application – comprised of both a space and a multitude, a territory and a citizenry – and it is this legitimized connection between authority and territory that warrants further attention. Politics is to be placed on a new footing, DeCaroli observes, it must do so by reformulating this relationship. The stabilization of a sovereign field is an ongoing, immanent process that subtends all activity within a jurisdiction, ordering all its social actors, including he who wears the crown, as well as those who envision themselves as oppositional. The bond between authority and territory must not be understood as a relation that is merely internal, or, to use Agamben's language, *inclusive*. In fact, the political distinction between the inside and outside, inclusion and exclusion, structures the basic logic of sovereignty itself, insofar as sovereignty maintains a boundary not between the legal and illegal, both of which participate in the logic of legality, but between the legal and the non-legal, that is, between the lawful and the outlaw, the citizen and the exile. Insofar as the camp's inhabitants have been stripped of every legal right and political status, their ontological condition is reduced to,

[125] For a broader discussion see, Michael Hardt and Antonio Negri, *Empire*, Harvard University Press, 2001.

[126] William E. Connolly, 'The Complexities of Sovereignty' in *Giorgio Agamben, Sovereignty and Life*, Eds. Matthew Calarco and Steven DeCaroli, Stanford University Press, 2007, pp 23-42

what Agamben refers to as 'bare life', a term he further refines by referencing the ancient Roman figure of the *homo sacer*.[127]

According to DeCaroli, Sovereign power has always placed biological life at its center only now the modern state has made the explicit, rendering the distinction between the human and the citizen, between fact and right, all but indistinguishable. What is revealed in revealed in the process is that law, together with the broad array of legal institutions that administer it, forms a secular canopy which both legitimates sovereign authority and obscures the connection between sovereignty and bare life. Bare life, is then, as the object of biopolitics, precisely that which, is made obedient prior to law in the state. DeCaroli thus finds Agamben correct in thinking that the primary function of sovereign power is not to establish the law but to determine that which exceeds the law. Hence, the state of exception is more fundamental to sovereignty than law itself, if only because it is precisely within the 'semi-political realm', where the law cannot extend, that the obedience necessary for sovereignty resides.[128]

The biopolitical question, the question which, according to Agamben, lies at the heart of politics, is therefore a question of obedience and order, not law. The banished individual threatens to bring about, from the point of view of the current order, a destabilized future. The subversiveness of these individuals is not achieved by breaking the law but threatening to establish new ones, more accurately, by threatening to become a law unto themselves. They call to attention the essential frailty of rules – their fundamental limitation when it comes to fair play and, ultimately, to justice. As the citizen dies, the man only remains, according to DeCaroli, the death of the citizen leaves standing 'the man only', a condition that draws us back to Agamben's discussion of biopolitics. When in crisis, the sovereign power responds with the laws' suspension, because what is at stake, but remains hidden in moment

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[127] Steven DeCaroli, 'Boundary Stones: Giorgio Agamben and the Field of Soveriegnty' in *Giorgio Agamben, Sovereignty and Life*, Eds. Matthew Calarco and Steven DeCaroli, Stanford University Press, 2007, pp 43-69.

[128] Ibid.

of crisis, is the connection between the sovereign's right make laws, with the territory over which it exerts its power. What makes the ban 'more ancient' than the law is its concern, not with the application of justice, but with the constituting authority of sovereignty, the ground upon which justice can appear plausible. Thus, the banishment is a response, not to an unlawful action and its agent, but to a broad-reaching conceptual threat, to the very possibility of creating a *new* law.[129]

As DeCaroli explains in Agamben's understanding, the ban is the penalty not for a deed, but for a way-of-life, whose threat the capacity to be a model (example) for a new order, showing the current order as unviable. The management of obedience has thus always been the primary task of sovereignty, and it is in the disruption of this obedience that an alternative to sovereignty may appear. The task for a politics beyond sovereignty, as DeCaroli sees it, a difficult and perhaps ultimately impossible task, is to realize a community of those who, 'by consensus or custom, are laws unto themselves – *exemplars or exiles*'. [130]

For Jenny Edkins, Agamben's terrifying spread of the 'zone of indistinction' and the 'reduction of politics to bipolitics', seems to be no space for political action, 'politics today seems to be passing through a lasting eclipse' she says. What is valuable in Agamben's discussions, according to Edkins, is the way in which politics is considered in terms of the subjectivities as well as the practices of power it entails. The state has to have a 'form of belonging' that affirms an identity, and it may be that any identity, even a temporary or a strategic one will do. What sovereign power 'cannot tolerate' is, according to Edkins, 'that humans co-belong without any representable condition of belonging, or 'that singularities form a community without affirming an identity'. We shall be discussing more of this question in the next chapter. In

[129] Steven DeCaroli, 'Boundary Stones: Giorgio Agamben and the Field of Soveriegnty' in *Giorgio Agamben, Sovereignty and Life*, Eds. Matthew Calarco and Steven DeCaroli, Stanford University Press, 2007, 43-69.

[130] Ibid.

other words, it is 'the possibility of the 'whatever' itself being taken up without an identity that is the state cannot come to terms with. According to Agamben, since its inception, sovereign power has operated through the distinction of bare life (*zoe*), the life of the home (*oikos*), and political qualified life (*bios*), the life of the public sphere (*polis*). The structure of the 'sovereign ban', or the state of exception, is such that bare life is included in the sovereign sphere, precisely through its exclusion from it. In such a state of inclusive exclusion, 'bare life' is described as *homo sacer*, a form of life that can be killed without accusations of homicide but that cannot be sacrificed. Both sovereign power and that which is opposed to it take 'bare life' as their objects or subjects. The paradox of sovereignty thus appears clearly in the attempts to distinguish constituting power that founds sovereignty and constituted power that exists when sovereignty is in place. Agamben argues that this unresolved dialectic between constituted power and constituting power opens the way for a new articulation of the relationship between 'potentiality' and 'actuality'. Potentiality is the potential to be or to do, and it is precisely the relation to an incapacity that, according to Agamben, constitutes the essence of all potentiality. Thus, rather than potentiality and actuality being distinct modes of being, they enter a 'zone of indistinction'.[131]

Sovereign power has to produce a homogenous and pure 'people' by the exclusion of all that do not count as people in its terms. In this context, a group that refuses assimilation or integration into a national body cannot be tolerated. It has to be exterminated, as in the Nazi final solution, not merely excluded but annihilated. The life that inhabits this 'zone of indifference' is neither an animal life nor a human life. According to Agamben, it is a life that is separated and excluded from itself – only a bare life. In order to try to stop the biopolitical machine that produces bare life, Jenny Edkins reminds us, what is needed is human action, 'between violence and law, between life and norm'. It is possible to interrupt or halt the machine, to loosen what has artificially and violently linked- law and life. This opens up a space for a return not to some

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[131] Jenny Edkins, 'Whatever Politics' in *Giorgio Agamben, Sovereignty and Life*, Eds. Matthew Calarco and Steven DeCaroli, Stanford University Press, 2007, pp 70-91.

'lost original state' according to Edkins, but to human praxis and political action. [132] Here, therefore is the response to Laclau's accusation that Agamben is anti-political.

The notion of community in this understanding can be equated to resistance and resistance 'to all forms and violences of subjectivity'. Any lines drawn between different forms of life have to be refused in this framework, because drawing lines would constitute a sovereign move. Sovereign power is effective because it incorporates into its logic the bare life or form-of-life that would subvert it. But this incorporation also means the sowing of a disruption at the heart of power. To oppose sovereign power directly is to enter into its line-drawing strategies – bound to fail – and ironically make disruption or destabilization less likely. The figure of the 'community' here articulates a refusal to enter these strategies that can take place within, yet remain independent of, sovereign power. [133]

More recently, Agamben (2005) has argues that states using the political and juridical impasse that allows them to suspend the law and curtail the freedom of society during an emergency or security threat, are fast becoming the rule rather than the exception. Further, he has reminded, there is no theory of the state of exception and it is explained as founded in a state of necessity, i.e., 'expediencies of a state of siege, or a political emergency'. Agamben argues that the reason for this inability to constitute a theory that would explain the juridical status of the state of exception rests precisely in the fact that the state of necessity is itself presumed to be the origin or basis of the law. [134]

When personified as individual, an institution, or general will, sovereignty appears as if it *precedes* the law, giving the law its force. Yet, the sovereign is simply the name given to a logical effect. Rather than being prior

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[132] Jenny Edkins, 'Whatever Politics' in *Giorgio Agamben, Sovereignty and Life*, Eds. Matthew Calarco and Steven DeCaroli, Stanford University Press, 2007, pp 70-91.

[133] Ibid, pp 70-91.

[134] Anuradha Veeravalli, 'Swaraj And Sovereignty', *Economic and Political Weekly (EPW)* January 29, 2011 Vol. XLVI No. 5

or opposed to the law, the sovereign can be seen as the law's 'shadow', a double. Walter Benjamin had recognized that if one wished to transcend sovereignty, one needed to transcend the law itself. That is why Benjamin analyzed the force of law in terms of a dual, but linked violence, which is but another version of the distinction between constituting and constituted power.[135]

As Benjamin's says:

> If mythic violence posits law, divine violence destroys it; if the former sets boundaries, the latter destroys them boundlessly; if mythic violence brings with it guilt and atonement, divine violence redeems; if the former threatens, the latter strikes; if the former is bloody, the latter is bloodless in a lethal way.[136]

Divine violence does not replace one political order with another. It replaces one order of the *political*, based on the sovereign self-exemption, with another, 'yet-to-be-determined' manifestation of the political beyond exceptions. It seems there is a close affinity between what Agamben calls the 'political' and Hobbes calls the 'state of nature'. The state of nature, as William Rasch has argued, is the state in which 'life may be killed but not sacrificed', it is the sphere in which the roles of sovereign and *homo sacer* are interchangeable. The work of the political is, not to replace nature but to create it. The state from which Hobbes's sovereign rescued us is that into which Agamben's sovereign pushes us. The existence of *homo sacer*, the life that may be killed but not sacrificed, is not a political problem but a problem of the political, according to Rasch. To think the political form within the political, in Agamben's view, is to "remain inside nihilism".[137] Rasch suggests that 'the political' is the realm in which the effects of fallibility are contained and

[135] William Rasch, 'From Sovereign Ban to Banning Sovereignty' in *Giorgio Agamben, Sovereignty and Life*, Eds. Matthew Calarco and Steven DeCaroli, Stanford University Press, 2007, pp 92-108.

[136] Walter Benjamin, *On the Critique of Violence*, Penguin, 2009, Page 249

[137] William Rasch, 'From Sovereign Ban to Banning Sovereignty' in *Giorgio Agamben, Sovereignty and Life*, Eds. Matthew Calarco and Steven DeCaroli, Stanford University Press, 2007, pp 92-108.

minimized, as a result the Sovereign exempts itself from the law to achieve this apparatus of containment. To Agamben, however, this toleration of the political as defined by the sovereign ban can be nothing but acquiescence in the *creation* of the social nightmare called the 'state of nature'.[138]

## 2.8 Sovereign and War

The French thinker Jean-Luc Nancy is of the opinion that war in our times no more remains a reality of military operation. It has acquired the status of a political figure in our symbolic space, as far as its moral, political and affective considerations are concerned. It is undeniably a new phenomenon, because it produces itself in a world where this symbol seems to have been all but effaced. Rather than concerning ourselves with military technology in such a world, Nancy suggests, we must pay attention to the figure of the *sovereign*. The Sovereign 'of' and 'in' war, reveals war as a *techne*, and as an *art*, according to Nancy, which puts sovereignty to work in a visible manner. According to good juridical semantics, Nancy notes, it is neither correct nor legitimate to use the word "war" for the present situation. [139] Everything is now done is in the name of 'human security'. Security has become the new reference point to exercise sovereignty in our times.

The 'state of law' is the most interesting element in sovereignty, according to Nancy, which is regarded as exempt from violence and its force. This element draws attention to the point where violence which otherwise presides in the institution of power, gets effaced, sublimated and curbed. Interestingly, in decline with regard to the global complex of techno-economics, the state seems to have entered into an age of *self-control*, by offering itself as a counterpoint in the barely sovereign role of regulative,

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[138]William Rasch, 'From Sovereign Ban to Banning Sovereignty' in *Giorgio Agamben, Sovereignty and Life*, Eds. Matthew Calarco and Steven DeCaroli, Stanford University Press, 2007, pp 92-108.

[139] Jean-Luc Nancy, 'War, Right, Sovereingty- Techne' in *Being Singular Plural*, trans. Robert D. Richardson and Anne E. O'Byrne, Stanford University Press, 2000, pp 101-144.

juridical, and social administration.[140] Nancy suggests here, how the propositions about the end of the state after globalization have failed to understand the complexity of the state behavior. For him, there is no ready-made democracy and nation, its people come before the foundation of any law. Possibly, there exists only a supposed law that borders nation-states, which is only vaguely sure of being founded on universality, and almost certain of being devoid of sovereignty. He further suggests that the 'inter' in the international law, this between, causes all the problems. For it is only comprehensible as a common space devoid of law, devoid of every sort of "setting in common" [*mise en commun*] (without which there is no law), and is structured by the techno-economic network and the supervision of sovereigns.[141] Therefore, the right to wage war also allows a sovereign to decide that another sovereign is its enemy and thus try to subjugate it or to relieve it of its sovereignty. Interestingly, it seems as if it is the sovereign's right to confront his *alter ego ad mortem*. Within the sovereign context of war, nothing is valid apart from certain supposed conventions upheld in order to keep it within a certain moral order in the modern times and sacred order in the earlier times. But this order is not superior to war; it is the very order, of which war is a sovereign extremity, the sharpest edge and the point of exception. The right to wage a war thus exempts itself from law at the very point where it belongs to it both as an origin as well as an end. This is the point of foundation, insofar as we are in capable of thinking of foundation without sovereignty, or of sovereignty itself without thinking in terms of exception and excess. For Nancy, the dominant neo-Kantian humanism discourse only renews the promise of moralizing politics. It does not situate the demand in its extreme urgency, which is needed.[142]

In a similar vein to Foucault, Jean-Luc Nancy reminds us of the fact that technologies are not responsible for war but it is war which is responsible for

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[140] Jean-Luc Nancy, 'War, Right, Sovereingty- Techne' in *Being Singular Plural*, trans. Robert D. Richardson and Anne E. O'Byrne, Stanford University Press, 2000, pp 101-144.

[141] Ibid.

[142] Ibid.

the technologies. As technologies give war its means, war generates technical progress. This is the case with satellite surveillance and unmanned drones today. The ethical, juridical, and cultural problems posed by civil technology, nuclear or biological for example, are no less acute than those posed by armaments. War is presented to us as a means to an end which can be political, economic, juridical, and religious and so on, in nature. That is what remains at stake in Clausewitz's formulation, that 'war is the continuation of politics by other means'.[143] In his lecture series titled *Society Must Be Defended*, Foucault has warned that we should not become fascinated by Clausewitz's formulation but must look into the fact that Clausewitz inverted somebody. Who is that somebody, is an important question for Foucault. Because for the sovereign, war is not the continuation of politics by other means, but according to Foucault, politics is the continuation of war by other means.

In the light of the above discussions, one can say that a suicide bomber attains the end of life by executing and carrying out something to the limits of its own logic and to the extremity of its own being. Sovereignty, as we know, is the power of execution or the power of finishing as such, absolutely so and without any further subordination to something else. Although anticipated by the legislative power, the absolutism of the suicide bomber attains an exceptional state of power in the logic of war. Despite everything, however, this occurrence touches upon the very extremity of powerful decision and decisive power when it accomplishes its 'executive' essence most properly. This is the sovereign essence of Being — where it is all 'power', whether it is the prince, State, nation, people, father-land, and so on. The execution of this desire for war is not only one of the proper ends of the executive organ but also a representation of the extreme mode of these ends. War is, according to Nancy, the *Physis* [144] *and Techne* [145] of sovereignty. In essence, war is

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[143] Jean-Luc Nancy, 'War, Right, Sovereignty- Techne' in *Being Singular Plural*, trans. Robert D. Richardson and Anne E. O'Byrne, Stanford University Press, 2000, pp 101-144.

[144] It means 'Birth'.

[145] It means 'Art'.

collective, and the collectivity that is endowed with sovereignty i.e. the Kingdom, State, or Empire, is by definition endowed with the right to war. Interestingly, the schema of the sovereign exception never stops returning and it may be seen to have returned as the perversion of waging war in the name of democracy.[146]

For the 'west', war has always had peace as its *end*, whether it is Afghanistan or Iraq, even to the extent that it is seen as necessary to battle 'peacefully', as was put forth from Augustine to Boniface. Historically, Sparta was the state which gave itself war as *the* end of its structure and formation. The general theoretical regulation and argument of Western war remains that of a 'pacificatory' war. Such war continuously denies itself as sovereign 'end', by calling almost every military operation as an operation for human freedom and democracy, and its denial practically constitutes its admission. Such 'peace', practiced in the name of humanism, is both without force or grandeur and seems nothing other than the enervation of war. For Nancy, anything that is properly to be called Sovereignty requires the 'incandescence' of the exception and the identifiable distinction of its finishing. True sovereignty takes place, he insists, not only in plenitude but in excess and as excess; the war of liberation in the name of humankind, in the name of its 'natural' rights and fraternity. This model no longer corresponds strictly to the sovereign schema. It oscillates between a general revolt against the very order of sovereigns and a policed administration of humankind, which restrains itself from abusing its governance.[147]

This 'return of war' essentially expresses a need or impulse for sovereignty. For Nancy, the concept of 'Ecotechnics' ( a reformulation of political economy) is what can capture the 'last figure without figure' of the world's slow drift into 'sovereignty without sovereignty'. The Marxist class struggle was supposed to be the other of both sovereign war and ecotechnical war. Ecotechnics is a pure *techne* of sovereignty, as Nancy says, but because

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[146] Jean-Luc Nancy, 'War, Right, Sovereingty- Techne' in *Being Singular Plural*, trans. Robert D. Richardson and Anne E. O'Byrne, Stanford University Press, 2000, pp 101-144

[147] Ibid.

the empty place of sovereignty remains preoccupied by this very void, ecotechnics cannot move towards another thinking of the end without end. By a counter administering and controlling of 'competition', ecotechnics comes to serve crushing blows for sovereignty. Nancy suggests that 'ecotechnics' should now become an alternative name of 'political economy', because according to our thinking, if there is no sovereignty, there can be no politics. If the class struggle hides itself, then nothing remains to prevent violence from being camouflaged as ecotechnical competition or, rather, nothing remains except for bare justice. But what is a justice if it is not the telos of a history, or the privilege of sovereignty? It is necessary, then, to learn how to think of this empty place.[148] The acts like suicide bombing bring to our attention the fact that this empty space can be comprehended and new tactics can be devised to capture it. Nancy suggests that the very spacing of the world, the opening of the discontinuous, polymorphous, dispersed, dislocated, spatio-temporality, presents something of itself in Sovereignty and its eagerness. Sovereignty has always from the very start exposed itself as spacing, that is, as the amplitude (of a brilliance), as the elevation (of a power), as the distancing (of an example), as the place (of an appearing). This is why these motifs can serve the ardent and nostalgic recalling of sovereign figures, war being primary among them, or access, to the 'spaciousness of the spacing, to the (dis)locality of the place', an access that we must invent.[149]

Death or identification in a figure of death, which is the entirety of what we call *sacrifice*, of which war is a supreme form, according to Nancy, provides the aim of sovereignty, which appropriates itself in order to come to an end. Is then the condition of 'being-exposed-to-death', indeed the 'human condition'? The limit of the finite existence is, Nancy argues, an infinity which everywhere overflows the death that contains it. The in-finite meaning of finite existence thus implies an exposition without brilliance: 'discreet, reserved, discontinuous, and spacious', such existence does not even reach the point of

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[148] Jean-Luc Nancy, 'War, Right, Sovereingty- Techne' in *Being Singular Plural*, trans. Robert D. Richardson and Anne E. O'Byrne, Stanford University Press, 2000, pp 101-144.

[149] Ibid.

the sovereign extremity.[150] The concept of Ecotechnics indicates the *techne* of a world, however obscurely, where sovereignty is nothing. This would be a world where spacing could not be confused with spreading out, but with "intersection". What if each people, Nancy suggests, as each singular intersection, substituted a wholly other logic for the logic of the sovereign model, not the invention or multiplication of models – from which wars would follow – but a logic where singularity was absolute and without example at the same time? If sovereignty has exhausted its meaning, and if it is acknowledged everywhere that it is in doubt or empty,.then it is necessary to reconsider the nature and function of such a sign. [151]

## 2.9 Sovereignty and the Life and Death paradox

The most critical insights into the relationship between sovereignty and life and death are provided by Michel Foucault. For him, one of the basic phenomena of the nineteenth century was what might be called power's hold over life. He was referring to the acquisition of power over man, insofar as man is a living being, and how the biological came under State control, resulting in a tendency that might be termed as state control of the biological. In the classical theory of sovereignty, the right of life and death was one of sovereignty's basic attributes. The sovereign has the right over life and death, meaning that he can, basically, either have people put to death or let them live. Extending this argument to a further point makes it paradoxical where in terms of the subject's relationship with the sovereign makes him neither dead nor alive. From the point of view of life and death, the subject has the right to be alive and possibly, the right to be dead. In this case, the lives and deaths of subjects become rights only as a result of the will of the sovereign. This right of life and death is always exercised in a way where the balance is always tipped in favor of death. As Foucault reminds us, sovereign power's effect on

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[150] Jean-Luc Nancy, 'War, Right, Sovereingty- Techne' in *Being Singular Plural*, trans. Robert D. Richardson and Anne E. O'Byrne, Stanford University Press, 2000, pp 101-144.

[151] Ibid.

life is exercised only when the sovereign can kill. It is the right to take life or let live.[152] For Foucault life must remain outside the contract because it is the first, initial, and foundational reason for the contract itself. Death was no longer something that suddenly swooped down on life like in epidemic. Death became something permanent that slipped into life, perpetually gnawing at it, diminishing and weakening it. The theory of rights has the individual and society as its base. It means the contracting individual and the social body constituted by the voluntary or implicit contract among individuals. However, disciplines dealt with individuals and their bodies in practical terms. This new technology of power does not exactly deal with society (or at least not the social body, as defined by the jurists), nor the individual-as-body. It is a new body, a multiple body, a body with so many heads that, while they may not be infinite in number, they cannot necessarily be counted. For biopolitics, therefore, the population emerges as power's problem and death seems to undergo a gradual disqualification from the public sphere.[153]

Foucault further explains that it is not because the repressive mechanisms of the state have been modified that death has become something to be hidden away. Until the end of the eighteenth century, death remained spectacular and ritualized because it was a manifestation of a transition from one mode of power to another. Death was the moment when bodies made the transition from one mode of power − that of the sovereign of this world to another − that of the sovereign of the next world, shifting from one court of law to another. Death here also meant the transmission of the power of the dying to those who survived him in terms of last words, last recommendations, last wills and testaments, and so on. All these phenomena of power were ritualized. Therefore, after the end of the subject's life, death becomes the limit or, the end of power, because death is outside the power relationship. It is beyond the reach of power, and power has a grip on it only in general, overall or, statistical terms. Power has no control over death, it can only control

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[152] Michel Foucault, , Chapter 11, Lecture on 17 March, 1976, in *Society Must be Defended, Lectures at College de France, 1975-76*, trans. David Macey, Picador, 2003, pp 239-264.

[153]Ibid.

morality. That is why it is taken as natural that death should now be privatized, and should become the most private thing of all. Since, according to Foucault, death now becomes, as a contrast, the moment when the individual escapes all power, falls back on himself and retreats into his own privacy.[154]

Agamben's review of the new medical technologies (to keep people breathing after their brains have stopped functioning) captures something of a change, showing why a sovereign authority now has to decide when death has arrived rather than letting that outcome express the play of a biocultural tradition. That is why we would like to suggest that suicide bombing, even if we call it an 'error', has opened up the possibilities to understand sovereignty in the modern times in a very different way. This way can be explored further if one agrees with what George Bataille has argued, that if individuals want to be truly sovereign, they need to pursue a 'general economy' of expenditure, giving, sacrifice and destruction, in order to escape the determination by the prevalent imperatives of utility. To understand the act of suicide bombing, then would mean, taking a clue from Bataille, to understand human beings are beings of excess, exorbitant energy, fantasies, drives, needs and heterogeneous desires.[155] However, Bataille may also be read as valorizing the absolute and unbound negativity of sovereignty as an 'unproductive expenditure' that 'has no other end but itself'.[156] For Jean Baudrillard, whose formulation resonates with Bataille, this cycle of symbolic exchange and death is one in which sacrifice provides a 'giving' that subverts bourgeois values of utility and self-preservation, an idea with serious implications in an era of suicide bombing and terrorism.[157] The play of 'simulation' must therefore be taken further than the system permits: death must be played against death – as a radical

[154] Michel Foucault, , Chapter 11, Lecture on 17 March, 1976, in *Society Must be Defended, Lectures at College de France, 1975-76*, trans. David Macey, Picador, 2003, pp 239-264.

[155] George Bataille, The Accursed Share, An Essay on general Economy Vol. III, translated by Robert Hurley, Zone Books, 1991 pp 197-237

[156] Sergie Prozorov, *Foucault, Freedom and Sovereignty*, Ashgate Publishing Limited, 2007, Page 84

[157] Jean Baudrillard, 'Symbolic Exchange and Death' *Selected Writings*, ed. Mark Poster, Polity Press; 2nd revised edition, 2001, pp 119-147

tautology. The system's own logic can be turned into the best weapon to use against it.[158] Death is always simultaneously that which awaits us on the system's terms, as Baudrillard observes, and the extermination that awaits the system itself. There is only one word to designate the finality of death that is internal to the system, the one that is everywhere inscribed in its logic: the same term of death, only it can manifest itself on either side. The ambiguity can already be seen in the Freudian death instinct. It is not an ambiguity after all. It is a thoroughgoing reversibility, according to Baudrillard. Such is the symbolic obligation that each term should be exterminated, and value should be abolished in the revolution of the term against itself. For Baudrillard, this is the only symbolic violence worthy of the structural violence of the code.[159]

Steven DeCarolli suggests that, since the middle of the sixteenth century, the problem of sovereignty has been central to political theory. From Bodin to Hobbes to Rousseau, the principle question of politics have evolved in relation to the singular challenge of providing, both in theoretical formulation and juridical practice, a legitimate foundation for increasingly secular forms of constitutional power. The question that arises then is: if not sovereignty, then what should be the basis of legitimate authority? The challenge posed by this question lingers at the edge of our era's radical confrontations with politics – both practical and theoretical. It invites us, not unlike Bodin four and a half centuries ago, to re-examine the ground of political authority once more. In this case, however, the task is not to justify sovereign power, but to conceive of a political community that does not presuppose it. By situating politics squarely within an ontology of the subject and by refusing any absolute separation between political life and life-as-such, Agamben underscores the convergence of power and subjectivity that has, since the earliest days of sovereign power, quietly materialized underneath the

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[158] The only strategy of opposition to a hyperrealist system is paraphysical, a "science of imaginary solutions;" in other words, a science fiction about the system returning to destroy itself, at the extreme limit of simulation, a reversible simulation in a hyperlogic of destruction and death.

[159] Jean Baudrillard, 'Symbolic Exchange and Death' *Selected Writings*, ed. Mark Poster, Polity Press; 2nd revised edition, 2001, Page 123

political mythologies sanctifying the 'right to rule'. It is, then, at the *intersection* of the juridical model of power (what legitimates sovereignty?) with the biopolitical model (what is the subject?) that Agamben's work resides. A complex issue it leaves unresolved is what form of political life would constitute an incompatible counterpoint to sovereignty.[160] Is it the case that what sovereignty fears most is a counter sovereignty? This is perhaps the logic deployed in suicide bombing – to enact counter-sovereignty, inverting the same manner of violence that is routinely exercised by the state. Our task today is to formulate an understanding of sovereignty precisely so that we can conceive of ways to think beyond it. A necessary condition for the possibility of banishment is, let us recall, a boundary – real or virtual, terrestrial or divine – outside of which one may be abandoned. The relationship between legitimate authority and sovereignty is fundamental, and it is precisely on the basis of this relation that banishment remains a possibility.[161]

To conclude, Sovereignty is always in the making; it is a foundational power but continuously re-founds itself. This re-founding is what gives it an exceptional character, and makes it enjoy the extra-judicial decision-making. All transgressions are termed as the reason of the state. The reason of the state reasons itself out through the deployment of the biopolitical framework, bringing the preservation of life under its purview. For Sovereign power, therefore, to encounter death outside its register poses a challenge to sovereignty. For the sovereign can never imagine death as a force or desire, as the hidden energy or excess available to human existence. The act of suicide bombing can therefore be seen to emerge from the contradictions in the logic of modern sovereignty. For Agamben, the coming politics will no longer be a struggle for the conquest or control of the State, but a struggle between the State and the non-State or the entire humanity, an insurmountable disjunction

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[160] Steven DeCaroli, 'Boundary Stones: Giorgio Agamben and the Field of Sovereignty' in *Giorgio Agamben, Sovereignty and Life*, Eds. Matthew Calarco and Steven DeCaroli, Stanford University Press, 2007, pp 43-69

[161] Ibid.

between the 'whatever' singularity and the state organization.[162] We may thus redefine the sovereign as the transgressor in relation to itself. Sovereign is s/he who is simultaneously inside the space of order as the source of its constitutive principles and outside it as something that cannot be subsumed under these principles, a surplus in relation to the other in question, which is unfathomable, monstrous and obscene.[163]

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[162] Giorgio Agamben, *The Coming Community*, translated Michael Hardt, University of Minnesota Press, 1993, page 85.

[163] Sergie Prozorov, *Foucault, Freedom and Sovereignty*, Ashgate Publishing Limited, 2007, Page 84.

Chapter 3

# Modern Nation-State and Securitization

## 3.1 Introduction

As we have seen in the preceding chapter, the concept of state sovereignty
becomes possible through the parallel existence of the law. The Law grounds,
propels and preserves state sovereignty in exceptional ways, which have been
discussed already. In this chapter, we will explore how the concept of modern
nation-state is the very extension of the concept of state sovereignty only, this
time the Westphalian treaty has fixed territories for the various sovereigns, so
as to mark their boundaries and geographical limits.

Our Objective in this chapter is to ground the concept of modern nation
state in terms of its socio-political reality and to probe social contract
discussed before paved the ground for the modern nation-state. We hope to
bring out a number of multidimensional links between state sovereignty, law,
violence and then 'security' as a concept and he practice of governance, meant
to control  to control the populations inhabiting sovereign territories. This
cannot be done without going through a historical foregrounding that has
supported the modern nation-state in the present form. There has been various
studies about the nature of this or that state, whether it is republican,
democratic, liberal or authoritarian etc. What is crucial to this chapter is
·however, is to show how the real problematic lies in the irresolvable nature of
the question of legitimate authority of the state and its monopoly over the use
of violence.

## 3.2 Classical understanding of the modern state

Before we embark, let us have a pithy recapitulation of where we stand.
Throughout the second chapter we have looked at sovereignty and its
consolidation as the harbinger of legitimate authority which authorizes the

sovereign to use violence. Also, we have discussed how the question of the use of violence by the sovereign and its legitimate authority could not be entirely resolved despite the efforts of the theorists of sovereignty i.e. the tension between constitutive and constituted power.

Apart from the social and political necessities that inspired the modern understanding of sovereignty, the discussion has tried to briefly touch upon the important figures like Grotius, Bodin, Hobbes, Rousseau, Augustine and Schmitt. This does mean that in this regard rest of the thinkers were insignificant but only that the major groundwork was done by the philosophers mentioned above, at least, in our limited understanding of the career of sovereignty. The other thinker to have contributed to the debates around sovereignty came much later, as we have seen, as responses to the advantages and dangers of particular form/s of sovereignty theorized by early philosophers. Lastly, we have tried to trace the making of a biopolitical critique of sovereignty drawing mainly on Walter Benjamin, Michel Foucault and Giorgio Agamben.

We know very well today that the nation-state has succeeded to an important extent, in presenting itself as a solid, stable and ultimately necessary form of socio-political organization in modernity. There has been made available a universalistic appeal of popular sovereignty and democracy accompanying the nation-state. But we need to understand that the nation-state is also one of the modernity's most vexing themes. There appear to be a long troubling and increasing dichotomy between the nation-state and society in modernity.[1] The nation-state can be understood in terms of looking at its own elusive history, the main features made attributed to it and the overemphasis by numerous scholars creating somewhat ambiguous normative legacy. It would seem today as if the nation-state is the central locus of modernity and not something that tried to grasp with its complicated position and ambiguous legacy. An exercise in social and political theory of the modern-state should raise the question of a concise periodization of the development of the nation-

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[1] Daniel Chernilo, 'Introduction' in *A social Theory of the Nation State, The Political Forms of Modernity Beyond Methodological Nationalism*, Routledge 2007, Page 1.

state. We need to be aware that the rise and fall of the nation-state has been declared many times. Sociologically, there is permanently an important level of vagueness with regard to the nation-state's capacity to deal with its continual crises. Both the internal and the external normative basis of the nation-state has also proved continuously changeable. Internally, it can be ethnic, political, cultural and religious, which in turn means that it has been democratic but it has equally been authoritarian and exclusionist. Externally, also, the understanding of the connections between the nation-state, internationalism and cosmopolitanism remains largely an open question even today. However, overall it seems that the self-determination is the foundational moment of the nation-state and its broad purpose is that of peaceful coexistence and realization of a democratic theory.[2]

Interestingly, however, as Michel Foucault has explained, one of the main purposes of the state is control of the subject or population.[3] Another view proposed by Walter Benjamin has explained how law, which provides the very basis of the existence of state sovereignty can itself turn into the reason for all kinds of violence in modernity.[4] Indeed there is no clear-cut solution to the question justifying the nation-state's claim to shape and steer social life, and at least some of the normative ambiguities may have to do with the separation between the nation and the state. The nation and state are in a continuous need of legitimization, but there is no automatism or necessity in the way escapes troubling questions and persuades by invoking normative legitimacy in times of crisis.

The discussion of the concept of sovereignty in the second chapter brought to light some critical questions with regard to its foundational moments. As we saw, the state legitimized its existence as well as authority in the name of the people. In its initial phases, the modern state emerged as an entity regulated by the society. However, once we engaged with the more

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[2] Daniel Chernilo, *A social Theory of the Nation State, The Political Forms of Modernity Beyond Methodological Nationalism*, Routledge 2007, Introduction, pp 2-25.

[3] See Michel Foucault, *Discipline and Punish, The Birth Of Prison*, Vintage Books, 1979.

[4] See Walter Benjamin, 'On the Critique of Violence' in *One-way Street and Other Writings*, Penguin, 2009, pp 1-28.

critical understandings of the modern state and its sovereignty, including the biopolitical critique of sovereignty, it resurfaced as a variation came as a variation to the evolution of the state. In the process, the society's role and its relation to the modern state has shifted/transformed from the earlier 'regulative society' to that of a 'regulated society'. The question that keeps puzzling us here is whether society can be understood in terms of a fixed and limited understanding, which leads to its definition as a particular type of socio-political arrangement? In the following segments we will see that the normative understanding of society as a regulative one does not hold true in the era of 'governmentality'.[5] We have already observed and will further try to understand how the abstract 'Artificiall Man'[6] of Hobbes is vexed in the empirical reality of 'population' in the present scenario. Taking a clue form Foucault's work, it can be said that in the eyes of the state, individuals become specific empirical references and society turns into a modern concept, used to control or manipulate and diffuse the sum total consequences of individual's actions by the state. Society has in any case, always been an intensely political concept which involved the normative question of having some kind of a preferred social order.

Let us begin by briefly examining some of the major classical philosophers and thinkers who have explained modern state in important ways. Given the limitation of scope, we will touch upon the representative figures Hegel, Marx, Weber and Durkheim as they help us to situate certain important questions in a more concrete manner. Let us begin with Hegel's position on the modern state. As Shlomo Avineri explains, Hegel is necessary to begin with because, it is Hegel who suggests that the universalization of the particular that is the realization of the individual and even family and the whole society leads ultimately to the realization of the state. Any discussion of Hegel's theory of the state has to battle with a preconception holding that he advocated an authoritarian, if not outright totalitarian form of government. Hegel's theory of the state proper is expounded in the 'Elements of the

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[5] See Michel Foucault and Paul Robinow, *The Foucault Reader*, ed. Paul Robinow, Pantheon Books, 1984, pp 201-222.

[6] See Thomas Hobbes, *Levaiathan*, ed. Crawford Brough Macpherson, Penguin, 1985.

Philosophy of Right.' For Hegel, as we know State is the march of God in the world. It is the way of God in the world, that there should be the state. By this small utter Hegel, meant that the very existence of the state is a part of a divine strategy, not merely a human arbitrary artefact.[7] It is suggested as a norm that can withstand the flaws and imperfections in actuality. Hegel states:

> The state consists in the march of God in the world, and its basis is the power of reason actualizing itself as will. In considering the idea of the state, we must not have particular states or particular institutions in mind; instead we should consider the Idea, this actual God, in its own right [*fur sich*]. Any state if we pronounce it bad in the light of our own principles...invariably has the essential moments of its existence [*Existenz*] within itself. But since it is easier to discover deficiencies than to comprehend the affirmative, one may easily fall into the mistake of overlooking the inner organism of the state in favour of individual [*einzelne*] aspects.... But the ugliest man, the criminal, the invalid or the cripple is still a living human being; the affirmative aspect – life – survives [*besteht*] in spite of such deficiencies, and it is with this affirmative aspect that we are here concerned.[8]

Thus, Hegel refers to the state as the 'hieroglyph of reason' which has to be decoded through a discarding of the accidental and arbitrary because underneath it lies the rational and the essential.[9] It seems as if Hegel suggests the state as the essential condition for the organization of life. Thus the modern state, it can be said, is based on subjectivity, on the idea of self determination according to Hegel. For Hegel, State is the actuality of the ethical idea and it is through the ethical mind through which the substantial will manifests and reveals itself while knowing and thinking itself and accomplishing what it knows. For, it knows its self consciousness in the state, as its essence as well as the end product of its activity in the form of substantive freedom. The state is thus conceived as freedom, which is universal and objective at the same time. Yet the idea of the state is not given but is the consequence of a historical

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[7] Shlomo Avineri, *Hegel's' Theory of the Modern State*, Cambridge University Press, 1972, pp 176-177.

[8] G.W.Hegel, 'Section3, The State, Ethical Life 3' in Elements of the Philosophy of Right, Ed. Allen W. Wood, trans. H.B. Nisbet, Cambridge University Press, 1991, Page 279.

[9] Shlomo Avineri, *Hegel's' Theory of the Modern State*, Cambridge University Press, 1972, Page 177.

development. It is only in the modern era that the element of subjectivity and of freedom appears in the state. We must remind ourselves that this element was absent from the ancient polis.[10]

> The state is actuality of the substantial will, an actuality which it posses in the particular self-consciousness when this has been raised to its universality; as such, it is the rational in and for itself.[11]

In addition to his Hegel states:

> The principle of modern states has enormous strength and depth because it allows the principle of subjectivity to attain fulfilment in the self-sufficient extreme of personal particularity, while at the same time bringing it back to substantial unity and so preserving this unity in the principle of subjectivity itself. [12]

Hegel further states that:

> The essence of modern state is that the universal should be linked with the complete freedom of the particularity [Besonderheit] and the well being of individuals, and hence that the interest of the family and the civil society must become focussed on the state ... thus, the universal must be activated, but subjectivity on the other hand must be developed as a living whole.[13]

Therefore, according to Shlomo Avineri, institutions are not conceived as external coercive organs by Hegel, but become extensions of man's own self consciousness.[14] Hence, for the individual's purely private interests, the state

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[10] Shlomo Avineri, Hegel's' Theory of the Modern State, Cambridge University Press, 1972, Page 179.

[11] G.W.Hegel, 'Section 3, The State, Ethical Life' in Elements of the Philosophy of Right, Ed. Allen W. Wood, trans. H.B. Nisbet, Cambridge University Press, 1991, Page 275.

[12] Ibid, 'Section 3, The State, Ethical Life', Page 282.

[13] Ibid, 'Section 3, The State, Ethical Life' Page 283.

[14] Shlomo Avineri, Hegel's' Theory of the Modern State, Cambridge University Press, 1972, Page 181.

sometimes appear as an external necessity.[15] This is done through the social obligation called duty. Regarding this Hegel states:

> A binding duty can appear as a limitation only in relation to indeterminate subjectivity or abstract freedom and to the drives of the natural will or of the moral will which arbitrarily determines its own indeterminate good. The individual however, finds his liberation in duty.[16] ... On the one hand, he is liberated from his dependence on mere natural drives, and from the burden he labours under as a particular subject in his moral reflections on obligation and desire; and on the other hand, he is liberated from that indeterminate subjectivity which does not attain existence [Dasien] or the objective determinacy of action, but remains within itself and has no actuality. In duty, the individual liberates himself so as to attain substantial freedom.[17]

According to Avineri, Hegel views his own ideas as transcending the political philosophies of both revolution and restoration.[18] Hegel was opposed to violent changes and had constitutional monarchy as his model of the modern state which raises the problem of separation of power. For Hegel was very much in support of a law-giver for all practical purposes for the existence of the modern state.

> Only after human beings have invented numerous needs for themselves, and the acquisition of these needs has become entwined with their satisfaction, is it possible for laws to be made.[19]

Hegel further states:

> Just as right in itself become law in civil society, so too does my individual right [einzelne] right, whose existence [Dasien] was previously immediate and abstract, acquire a new significance when its existence is recognized as part of the existent [existierenden]

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[15] Shlomo Avineri, *Hegel's' Theory of the Modern State*, Cambridge University Press, 1972, Page182.

[16] For Hegel a slave has no duties, only a free man can have them.

[17] G.W.Hegel, 'Section 3, The State, Ethical Life' in *Elements of the Philosophy of Right*, Ed. Allen W. Wood, trans. H.B. Nisbet, Cambridge University Press, 1991, Page 192.

[18] Shlomo Avineri, *Hegel's' Theory of the Modern State*, Cambridge University Press, 1972, Page184.

[19] G.W.Hegel, 'Section 2, Ethical Life' in *Elements of the Philosophy of Right*, Ed. Allen W. Wood, trans. H.B. Nisbet, Cambridge University Press, 1991, Page 240.

universal will and knowledge....Property is accordingly based on contract and on those formalities which make it capable of proof and valid before the law.[20]

Since the modern state is, according to Hegel, based on subjectivity and self determination, there has to be an expression of this subjectivity in the objective institutions of the state. This idea of a single-self as the state, critics pointed out, aspires to homogenize human difference. Hegel maintains that legislation should not interfere with the matters of subjective belief and preference; privacy and individual morals should not be subject to legislation. (But we are well aware that today the reality of a particular community/religion especially Islam is such that the mere fact of belonging to it can practically render anyone suspicious). The modern state has declared any possible non-liberal other(s) as enemies of mankind and therefore is suggestively in a state of war with them. Hegel has very specific understanding of the war situation for the modern state. He says:

> In times of war, for example, various things which are otherwise harmless must be regarded as harmful. Because of these aspects of contingency and arbitrary personality, the police takes on a certain character of maliciousness. When reflection is highly developed, the police may tend to draw everything it can into its sphere of influence, for it is possible to discover some potentially harmful aspect in everything.[21]

Hegel argues that in adjudication there are always two aspects – the question of fact and the question of law. Law requires a judge's decision, but as far as the question of fact is concerned no grounds can be adduced for supposing that the judge, i.e. the legal expert, should be the only person to establish how the facts lie, for the ability to do so depends on general, not on purely legal education. However, for Hegel, as pointed out by Avineri, a draconian penal code is a mark of society's inner uncertainty. The progressive minimalization of the necessity to use penal measures ultimately reflects the basis of Hegel's

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[20] G.W.Hegel, 'Section 2, Ethical Life' in *Elements of the Philosophy of Right*, Ed. Allen W. Wood, trans. H.B. Nisbet, Cambridge University Press, 1991, Page 249.

[21] Ibid, 'Section 2, Civil Society, Ethical Life', Page 261.

theory of the state based on self consciousness and the citizen's readiness to cooperate with each other calls for increasingly less and less coercion. Coercion, for Hegel, is the mark of undeveloped, undifferentiated structures. Where self-consciousness comes into its own, coercion becomes superfluous.[22]

Interestingly, what Hegel championed as freedom has transformed into extreme forms of subordination in the present times, which will be further explained as we move forward in this chapter. Ironically, the dissolving of the particular in the universal once again insists that Michel Foucault's concerns about the disciplining technique of the modern state are not far-fetched conclusions at all. Also, it is pertinent to mention here that there are those who think that the consciousness, over-emphasized by Hegel at all points of his theory, has been put to complete subjection. As the biopolitical perspective would contend, citizen-subjects are turned into docile bodies because of the effect of biopower on them. The problem of consciousness becomes the problem of an automatic participation in governmentality.

Karl Marx, who claimed to have inverted Hegel's method of dialectics, stands on completely opposite end on the question of the theory of state. If state is foundational necessity or aspect for human freedom in Hegel, its dissolution is the necessary and ultimate condition of freedom in Marx. The secondary accounts of Marx's understanding of the nation-state misinterpret Marx's deeper universalistic understanding of the nature of capitalism and modern social life. In the *Communist Manifesto* Marx states:

> All fixed, fast frozen relations, with their train of ancient and venerable prejudices and opinions, are swept away, all new formed ones become antiquated before they can ossify. All that is solid melts into air, all that is holy is profaned, and man is at last compelled to face with sober senses his real condition of life and his relations with his kind.[23]

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[22] Shlomo Avineri, *Hegel's Theory of the Modern State*, Cambridge University Press, 1972, pp 187-193

[23] Karl Marx and Frederick Engels, *The Communist Manifesto*, International Publishers, 2007, Page12.

Let me suggest in passing here what Gorgio Agamben calls 'bare life'[24] can be seen as the code of 'the real condition of life in present times.' Marx had the global expansion of capitalism under examination, which according to him, should have led to the premature dissolution of the nation-state. We know that this has not been the case so far. Marx points out that, under capitalism, all new forms of social relations become obsolete before they could mature: if capitalism forms the nation-state, it also erodes it before it can fully develop into modernity.[25] Marx exposes the contradiction that the creation of the nation-state appears as a forward looking project but it is at the same time outdated even before it can actually establish and settle in the present. He meant that the bourgeois of the different nations retain different national interests, whereas the bourgeois as a class has common interests globally. It makes nation and nationalism dead beyond a point if we are to accept this logic.

Thus, the historical illusiveness of the nation-state is the illusion that although it claims to have been out there forever, it is, at the same time, always about to disappear. Hence it is important to historicize the nation-state if we talk about capitalism's integrative requirements and disintegrative consequences, we must note that capitalism promises ultimate power to the people, however, it is in terms of choice of consumption. Therefore, commodification of every aspect of life takes place. Marx argues that the political programme that aims to reform the modern state within the limits of that state fails to grasp not only its historical and contradictory character but also the ultimate source of alienation and inequality of modern social life. Marx's use and understanding of the concept of society is thus closer to the generic concept of 'social relations'. Marx's most systematic understanding of society is closer to its role as a regulative ideal because he sees society as the representation of a truly social sphere of life and is an ontological reality that

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[24] For detailed discussion see Giorgio Agamben, *Homo Sacer*, trans. Daniel Heller-Roazen, Stanford University Press, 1998.

[25] Daniel Chernilo, *A Social Theory of the Nation State, The Political Forms of Modernity Beyond Methodological Nationalism*, Routledge, 2007, Page 40.

is independent of particular individuals but consolidates into various classes in every epoch/period of history. As Marx states:

> The bourgeois cannot exist without constantly revolutionizing the instruments of production, and thereby the relations of production, and with them the whole relations of society.[26]

Let us return to Hegel's proposition of reforming the foundation of modern state yet calling it a march of God on earth without resolving the contradiction it produces in terms of different strata/classes of the society. Hegel saw the state as an essential entity/organization of the society necessary to realize individual freedom. He thus suggests the concept of civil society, as the buffer zone between the individual and the state. Against any kind of revolution, he suggests the importance of civil society in realizing the self determination of the individual and collective. He says:

> Civil society is the [stage of] difference [Differenz] which intervenes between the family and the state, even if its full development [Ausbildung] occurs later than that of the state; for as difference, it presupposes the state, which it must have before it as a self-sufficient entity in order to subsist [bestehen] itself. [27]

Also, Hegel further emphasizes:

> If the state is confused with civil society and its determination is equated with the security and protection of property and personal freedom, the interest of individuals [der Einzelen] as such becomes the ultimate end for which they are united; it also follows form this that membership of the state is an optional matter. But the relationship of the state to the individual [Individuum] is of a quite different kind. Since the state is objective spirit, it is only through being a member of the state that the individual [Individuum] himself has objectivity, truth and ethical life.[28]

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[26] Karl Marx and Frederick Engels, *The Communist Manifesto*, International Publishers, 2007, Page12.

[27] G.W.Hegel, 'Section 2, Ethical Life' in *Elements of the Philosophy of Right*, Ed. Allen W. Wood, trans. H.B. Nisbet, Cambridge University Press, 1991, Page 220.

[28] Ibid, 'Section 3, The State, Ethical Life', Page 276.

But for Marx, the important character of any society is class contradictions. He states:

> In bourgeois society, therefore, the past dominates the present; in Communist society, the present dominates the past. In bourgeois society capital is independent and has individuality, while the living person is dependent and has no individuality.[29]

Unlike Hegel, Marx proposes that to realize freedom, individual as well as collective, we will have to eventually do away with the category of the state. This will take place through the instrument of revolution which will ultimately establish the 'dictatorship of the proletariat.'

When in the course of development, class distinctions have disappeared, and all production has been concentrated in the hands of a vast association of the whole nation, the public power will lose its political character. Political power, properly so called, is merely the organized power of one class for oppressing other. If the proletariat during its contest with the bourgeoisie is compelled, by the force of circumstances, to organize itself as a class; if, by means of a revolution, it makes itself the ruling class, and, as such sweeps away by force the old conditions of production, then it will, along with these conditions, have swept away the conditions for the existence of class antagonisms, and of classes generally, and will thereby have abolished its own supremacy as a class.[30]

Marx did not argue for an essential link between capitalism and the nation-state, rather he subjected the nation-state to the dialectics of formation and dissolution of social relations, which capitalism has made inescapable. The nation should be in that sense no different from all other forms of social relations that under capitalism become antiquated before they can ossify. If we are to take Marx's prognosis seriously then, the nation-state is constantly being

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[29] Karl Marx and Frederick Engels, *The Communist Manifesto*, International Publishers, 2007, Page 24

[30] Ibid, Page 31

created and dissolved, established and pulled apart in the same way as everything else is in capitalism.[31]

In contrast to Hegel and Marx, Max Weber has something different to say on the question of legitimate authority of the state. Weber's understanding of politics has to do with the determination of the specific means of politics, and not with politics' substantive values. For him, violence is a means and is the core whereas the nation is the value or the end. Weber, by placing violence at the core of the modern-state focuses on the question of the monopoly of the legitimate use of physical violence by the state. For him,

> In the last analysis the modern state can only be defined sociologically in terms of a specific means (*Mittel*) which is peculiar to the state, as it is to all other political associations, namely physical violence (*Gewaltsamkeit*). Every state is found on force (Gewalt), as Trotsky once said at Brest-Litovsk. That is indeed correct. If there existed only social formations in which violence was unknown as a means, then the concept of the 'state' would have disappeared; then that condition would have arisen which one would define, in this particular sense of the word, as 'anarchy'. Violence is of course, not the normal or sole means used by the state. There is no question of that. But it is the means *specific* to the state. [32]

Talking about the spirit of capitalism, Weber argues that the nation-state intensifies national prestige through power politics. If it becomes successful, however, the nation-state becomes a victim of its own success. Taking a clue from Marx, Weber suggests that imperialism is the representation of the disintegration of the nation-state because power-politics pushes the state beyond the limits of the nation.[33] We know that Marx also pointed this out as discussed above but the notion there was that of class struggle. Even if the idea

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[31] Daniel Chernilo, *A Social Theory of the Nation State, The Political Forms of Modernity Beyond Methodological Nationalism*, Routledge, 2007, Page 48

[32]Max Weber, "Politics as vocation" in *Political Writings*, Cambridge University Press, Page 310

[33] For detailed discussion see Max Weber, *Protestant Ethic and the Spirit of Capitalism*, Routledge, 2005.

of the Empire gave way to an idea of independent nation-states, this nation-state is needed to find a position in world politics and markets.

For Weber, the more power is emphasized, the closer appears to be the link between the nation and state. Modern states are characterized by the fact that the staff is separated by the means of administration, which according to Weber is 'bureaucracy', and also by the primary and specific means that the state uses to fulfil it tasks i.e. monopoly over the use of violence. We should also note that Weber interpreted the bourgeois capitalist world in terms of a 'rationalisation', which takes place through capitalism and this rationality is the problematic expression of the modern world and also the capacity for individual responsibility amidst universal dependency. In contrast to this, what we need to ask ourselves is that if Marx was talking about the same phenomena in terms of explaining human self-alienation in a capitalist system. He dealt with the economic expression of human self-alienation though commodity, which is the political expression of human self-alienation in bourgeois society.[34] Max Weber, in his book *Protestant Ethic and the Spirit of Capitalism* states that the modern society with capitalistic aspirations at its heart was sufficed in its purpose by the protestant ethic and its values of human conduct.[35] It brings to our attention the complexities of the relation between religion and socio-political conditions. Weber's project was concerned with the study of modern capitalism and its impact on the social order. Critics suggest that Weber was sympathetic towards Marxism but was critical of its prescriptive attitude. However, not unlike Marx, Weber was always suspicious of a state turning into an absolutist one. It may be possible to suggest that Weberian analysis oscillates between Hegelian foundations and Marxian concerns. He seems like a figure located in between and commenting on the concerns of both.

The sociologist Emile Durkheim, in the opening lines of the section on 'Definition of the State' in his book *Professional Ethics and Civic Morals*

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[34] This is part of a broader argument made by Karl Lowith in his book, *Max Weber and Karl Marx*, Routledge, 1993, pp 51-109

[35] For detailed discussion see Max Weber, *Protestant Ethic and the Spirit of Capitalism*, Routledge, 2005.

draws on the Hegelian understanding of consolidating the state as the ultimate moral of human existence. He writes:

> An essential element that enters into the notion of any political group is the opposition between governing and governed, between authority and those subject to it. [...] For this expression has any one meaning, it is, above all, organization, at any rate rudimentary; it is established authority (whether stable or intermittent, weak or strong), to whose action individuals are subject, whatever it be.[36]

> We may legitimately suppose that in the beginning there existed simple forms of society which did not comprise any society of a still simpler form; both logic and the analogies compel us to make a hypothesis which is confirmed by certain facts. On the other hand, nothing entitles us to think that such societies were subject to an authority of any kind. And that one fact that should make us reject this hypothesis as altogether unlikely is that the more the clans of a tribe are independent one of another and the more each one tends towards autonomy, the more we look in vain for anything resembling an authority or any kind of governmental power. [...] The truth is that they are interdependent, as we said just now, and that they condition each other mutually.[37]

Durkheim's core argument deals with the role of the nation-state in the actualization of universalistic moral values. According to Durkheim, the essential rules of these morals are those determining the relation of individuals to the sovereign authority. Since a word is needed to refer the particular group of officials entrusted with representing this authority, we have agreed on the word 'State'. Durkheim observes that we apply the term 'State' more to the agents of the sovereign authority, and 'political society' to the complex group of which the State is the highest organ. Thus, the principal duties under civic morals are those that the citizen has towards the State and, conversely, those that the State owes to the individual. In order to understand those duties one must determine the nature and function of the State.[38] Furthermore, Durkheim insists that when the state thinks and makes a decision it is not the society that

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[36] Emile Durkheim, *Professional Ethics and Civic Morals*, Routledge, 1957, Page 42.

[37] Ibid, Page 46.

[38] Ibid, Page 48.

thinks and decides through the State, but the State that thinks and decides for it.[39]

As we noted, Hegel understands the state as the 'mach of God on earth'. Likewise for Durkheim, as commentators have argued, the central aim was to connect moral universalism which included the principles of individual freedom, national self-determination and cosmopolitanism with workable legal frameworks and viable socio-political arrangements. Here, the normative ambiguity of the nation-state lies in the fact that the moral universalistic basis, as suggested by Durkheim, must come internally from its democratic organization and externally from its upholding of cosmopolitan principles. Durkheim defined the state as:

> [A] group of officials *sui generis*, within which representations and acts of volition involving the collectivity are worked out, although they are not the product of collectivity. It is not accurate to say that the State embodies the collective consciousness, for that goes beyond the State at every point. ... The State is the centre only of a particular kind of consciousness, of one that is limited but higher, clearer and with a more vivid sense of itself.[40]

This brings to our attention that for Durkheim the foundation of a legitimate authority rests on a moral ground which is common to all. He argues that this common ground is the nation-state. Daniel Chernilo sums up Durkehim's argument in terms of situating it in the emergence of the new secular religion in modernity, which must be attached to, and supported by, the moral authority of the state. Moreover, Chernilo remarks, that for Durkheim, the State is the power and the normative and it is not under the jurisdiction of the moral conscience of the larger society which has multiple interests. For Durkheim state should recognize no law but its own interest.[41] Durkheim seems to have unknowingly slipped into the necessity principle which is at the basis of the foundation of state sovereignty.

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[39] Emile Durkheim, *Professional Ethics and Civic Morals*, Routledge, 1957, Page 49.

[40] Ibid, pp 49-50.

[41] Daniel Chernilo, *A Social Theory of the Nation State, The Political Forms of Modernity Beyond Methodological Nationalism*, Routledge, 2007, pp 64-64.

While discussing 'professional ethics' Durkheim holds that not every secondary group can produce the regulations it requires. While the professions closely linked to the administration of the state can succeed in doing so, those professional associations closer to the economy, namely industry and trade, are hardly able to define norms in the level and form that is required. Professional ethics do not arise naturally in these fields because competition rather than cooperation is the natural form of interaction in the economy. Individual and groups devoted to productive activities, however, still have the need for a moral power capable of containing individual egos, of maintaining a spirited sentiment of common solidarity, i.e., the consciousness of all workers, for preventing the law of the strongest from being brutally applied to industrial and commercial relations. I would like to argue that the purpose of this hegemony is to de-brutalise the effect of sovereign excess which otherwise gets brutal whenever the state resorts to domination or the use of force. As far as Durkheim is concerned, we must recall that, at earlier times in history, economic functions had been subordinated to political power, military might or religious control, and therefore, can be regulated from these fields. The economy lacked autonomy and thus economic groupings had a need to create their own norms and code of conduct. The state is an agency that must offer a framework for the correct functioning of all professional groups and the expectation was that these secondary groups would close the gap between the actions of the state and those of the individual. This is what Durkheim is trying to suggest while talking about professionalism and the need for moral ethics as a value on which the state governs.

I would like to highlight in passing a telling feature in Durkheim's political sociology. On the one hand, the development of professional ethics makes clear that, with the division of labour, the gap between the individual and the state increases. On the other hand, the granting of individual rights can only be secured by the state. The stronger the state, the more the individual is respected, as Durkheim says. The idea is that there are no natural rights of the individual at the moment of birth. These rights arise and are held secure only by the state. Durkheim thus emphasized the moral character of the state. For him, the modern-state through its constitution produces a specific kind of

ethical life that takes individual moral freedom as its core value. A modern state is one which is able to enhance individual life and protect it from the despotic or tyrannical developments and a modern individual finds ethical fulfilment in collective life organized around the state. As Daniel Chernilo argues that in Durkheim's understanding, 'there can be no universalistic moral sentiments without an appreciation of humanity and its privileged position within any ethical hierarchy'.[42] It can be noted that Durkheim's project is similar to that of Hegel as both of them theorised the state as an ethical condition necessary for the organization of life. Durkheim, thus, returns to Hegel in a way.

## 3.3 Fascism and the Absolutist State

The idea of the nation-state came to be thought anew, often in rather significant ways, in the aftermath of the two world wars. Apart from the shift from colonial empires and self-determination of former colonies, the question acquired a different urgency and new critical perspectives as a result of the emergence of fascism and totalitarian states. As opposed to socialist states like the Soviet Union or Communist China, or the Latin American countries, the idea of liberal democratic states became an increasingly popular framework.

As a response to both fascism and the socialist totalitarianism, Talcott Parsons, an American sociologist, attempted to reconfigure the understanding of the modern nation-state and its need to remain democratic in nature. Parsons' understanding of the nation-state is that of a specifically modern, yet unstable, form of socio-political arrangement. He conceived the nation state as a key institutional development of the western world, as a form of social order whose existence could not be taken for granted. Also, Parsons was of the view that the permanence of the nation-state is not teleologically secured. His project was to understand and intervene in the functioning of the capitalist modernity. To Parsons, the 'American New Deal', in the form of liberal and

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[42] Daniel Chernilo, *A Social Theory of the Nation State, The Political Forms of Modernity Beyond Methodological Nationalism*, Routledge, 2007, pp 67-71.

democratic nation-state, needs to be taken as a desirable form of social order, whereas fascism and totalitarianism in general are the major threats posed to the political and social form of the modern nation-state. The challenge posed by fascism was not only against democracy, at least, democracy understood as a specific political regime, but to 'the broader type of rational-legal authority' that is at the centre of the idea of the modern nation-state. According to Parsons:

> The national state represents a social system characterized by a relatively high level of integration in one respect, namely, the capacity to control activity within a territorial area and to react concertedly as an 'interest group' vis-a-vis other territorial units. But there is no implication either that its existence is incompatible with other elements of normative control over territorial areas, transcending those of its 'sovereignty', or that elements of order that have other than primarily territorial-political references are negligible.[43]

Very interestingly, a correct understanding of fascism according to Parsons, needed to consider it as an internal development of the western civilization itself. Daniel Chernilo also echoes Parsons in saying that the reason Nazism was so seriously threatening the core values and institutions of the West is because it was deeply rooted in the structure of the western society as a whole.[44] I suggest we should look at the question not as a general question of the development of western civilization but as the problem of the foundation of sovereignty as the only legitimate authority and the use of force at its disposal to meet its ends.

Thus, 'social system', 'modern society' and the 'nation-state' are the three concepts with which Parsonian social theory made its more formal representation of society since the 1950s. The nation-state was seen as a 'concrete' representation of modern societies. According to Daniel Chernilio, Parsons regarded the rise of the nation as evolutionary achievement because it

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[43] Talcott Parsons, 'Order and Community in the International Social System' in *Politics and Social Structure*, New York: The Free press, 1969.

[44] Daniel Chernilo, *A Social Theory of the Nation State, The Political Forms of Modernity Beyond Methodological Nationalism*, Routledge, 2007, pp 77-81.

provided the basis of constructing a modern idea of community. For him, Parsons saw the nation-state as a modern yet equivocal form of socio-political arrangement and theorized its position in modernity always against the possibility of authoritarian and even totalitarian developments.

In a similar context, Michael Mann, another thinker known for his historical sociology, points out in his famous work *Sources of Social Power*, four sources of power: ideological, economic,[45] military[46] and political.[47] The major strength in Mann's explanation of the rise of the nation-state as a modern form of socio-political arrangement is that he sees it as only one element, however important, in the development of modernity. He emphasizes on the relevance of taking into account the different scales at which modernity was and continues to be shaped from local ties to global networks in the present context. Mann shows that the nation-state is 'diversifying, developing and not dying: the nation state is not hegemonic, nor is it obsolete, either as a reality or an ideal'. There is nothing automatic or necessary in its formation. In a period when theorists both social and political were concerned with the absolutist and totalitarian tendencies of the modern nation-state, Mann also evaluated fascism and its danger in the present context. He defined fascism as a 'distinctively paramilitary extreme version of nation-statism, the core fascist constituency enjoyed particularly close relations to the sacred icon of fascism, the nation-state'. For him, Fascism believes in a closed and homogenous nation as well as in strong and powerful states. It is a thick conception of the nation-state, a project which aims to remoralise politics. The fascists expected to give politics a new sense of transcendence through a project by which an ideal image of the good society can be not only conceived of but can also be put into practice. As a thorough rejection of modernism became increasingly unappealing to the masses, fascists tried to 'resacralise' the nation-state by managing to transfer some of the sense of the sacred from the figure of the God to the nation-state. In Mann's view, the modern classes and nations arose

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[45] Michael Mann, *The Sources of Social Power Vol. II The rise of classes and nation-states 1760-1914*, Cambridge University Press, 1993, pp 23-43.

[46] Ibid, pp 402-443.

[47] Ibid, pp 444-509.

together because they both call for an abstract sense of community in an analogous universalistic way, which included the diffusion of similar patterns of social practices, identities and sentiments. [48]

In another major work, *Fascists*, Michael Mann argues that fascism is merely the most extreme form of "nation-statism", the dominant political ideology of the twentieth century. An "organic nation" and a strong state that was prepared to use violence to "knock heads together", according to Mann, could transcend the conflicts, especially the class conflicts, rending modern society. Let us note that in *Fascists*, Mann discusses the core constituencies of fascism, the social locations that were at the heart of the nation or closely connected to the state, and people accustomed to use violence as a means of solving social conflicts However, Mann suggests that fascism was essentially a product of the post-World War I conditions in Europe and is unlikely to reappear in its classic garb in the future. Nonetheless, the elements of this ideology remain relevant to modern conditions and are now reappearing, though mainly in different parts of the world. [49] In the next section of the chapter we will try to understand whether fascism can arise again or in what alternate form it is manifested in the nature of the modern nation-state or also if there are certain tendencies that the modern-state borrows from fascism.

We must not overlook another important work in this regard, *Lineages of the Absolutist State* by Perry Anderson, a noted Marxist historian, who has written extensively on the nature of absolutism and the material conditions for it in the earlier centuries. In this book, Anderson has emphasized that the basic axiom of historical materialism is that the secular class is resolved at the political level not at the cultural or economic level of the society. According to Perry Anderson, absolutism was the first international state system in the modern world and therefore remains an important issue of study today. He argues that the political nature of Absolutism has long been a subject of controversy within materialism. Anderson tries to situate the Absolutist states

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[48] Daniel Chernilo, *A Social Theory of the Nation State, The Political Forms of Modernity Beyond Methodological Nationalism*, Routledge, 2007, pp 85-119.

[49] See Michael Mann, *Fascists*, Cambridge University Press, 2004.

of the early modern epoch against the prior background of European feudalism. Thus in the first chapter of this book, Anderson discusses the overall structures of absolutism as a state-system in Western Europe, from the Renaissance onwards, along with the difficult question of the relations between monarchy and nobility institutionalized by it. He suggests that it is important to look at the trajectory of each of the specific absolutist states in the dominant countries of the west i.e., Spain, France, England and Sweden. The absolutist state emerged in the west in the sixteenth century. It was a state founded on the social supremacy of aristocracy and confined by the imperatives of landed property. The nobility could deposit power with the monarchy, and permit the enrichment of the bourgeoisie, while leaving the masses at its mercy. The political derogation of the noble class never occurred in the absolutist state, according to Anderson. Its feudal character constantly ended up by frustrating and falsifying its promises for capital. Thus, the rule of absolutist state in the west was that of the feudal nobility in the epoch of transition to capitalism. In the later part of the book, Anderson begins an enquiry into the reasons why the divergent social conditions in the more backward half of the continent should have produced political forms apparently similar to the more advanced west. According to him, the absolutist state in the east, by contrast, was the repressive machine of a feudal class that has just erased the traditional communal freedoms of the poor. It was a device for the consolidation of serfdom, in a landscape devoid of autonomous urban life or resistance. Thus, 'Eastern absolutism' was centrally determined by the constraints of the international political system into which the nobilities of the whole region were objectively integrated. It was the price of their survival in a civilization of unremitting warfare. The uneven development of feudalism obliged them to match the state structures of the west before they have reached any comparable stage of economic transition towards capitalism.[50] For the purpose of our understanding, it is important to note that, unlike the theoretical model of social contract, and in contrast to the discourse of liberal democracy, there has been long historical tendency of modern states in the west towards absolutism.

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[50] For a broader discussion, see Perry Anderson, *Lineages of the Absolutist State*, Verso, 1974.

Before we move on to the second section where we discuss the emergence of the national security state, let me very briefly touch upon the analytical tools offered by Antonio Gramsci and Louis Althusser, which will help us understand the absolutist tendencies embedded in the foundations of state sovereignty from another direction. Gramsci discussed the concept of ideological 'hegemony'[51] as an important ruling technique in contrast to that of 'domination'. One might say today that the use of ideology by the state deals with the dissemination of the state propaganda and logic whereby the state rules by generating 'popular consent', (what Noam Chomsky refers to as the 'manufactured consent'). Whereas 'domination', is the use of force and coercion under conditions when 'hegemony' has failed to serve purpose of persuasion and there is rebellion against the state or particular regime. The state resorts to its full power of extreme violence when the people begin to question state, institutions and even its authority. On a similar vein Louis Althusser presented a broad typology of the state apparatuses originally pointed out by Lenin in *State and Revolution*. Althusser argues that there are primarily two kinds of apparatuses of the state: ideological state apparatus (ISA)[52] and the repressive state apparatus (RSA).[53] The ISA could be seen as to serve the purpose of what Gramsci called 'hegemony' and the RSA, that of domination. It is the work of these apparatuses, I would like to argue, that undergo change as 'techniques' and modes of 'subjectivation' in the biopolitical critique of capital. What makes the 'concentration camp paradigm' of Agamben urgent to this context is the emergence of the security state. The next section will take this up in detail. However, we are also going to see how hegemony and domination remain at work in this process.

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[51] See Antonio Gramsci, 'Hegemony, Relations of Force, Historical Bloc' in *The Gramsci Reader, Selected Writings 1916-1935,* ed. David Forgacs, New York University Press, 2000, pp 189-221.

[52] See Louis Althusser, 'Ideology and Ideological State Apparatuses (Notes towards an Investigation)' in *Lenin and Philosophy and Other Essays*, trans. Ben Brewster, Monthly Review Press, New York &London, 1971, pp 127-193.

[53] See Louis Althusser, 'The Theory of the 'New Prince'' & 'The Political Practice of the New Prince' in *Machiaelli and Us*, Verso, 1999, pp 53-103.

## 3.4 The emergence of the National 'Security State'

As we have discussed so far, it seems the modern state has failed to resolve the contradiction of legitimate authority and the use of violence as a sovereign or the guarantor of rights. The modern state has, according to Gramsci, two important tools at its disposal: hegemony and domination. At any one time either the technique of hegemony can be employed or that of domination. Usually the modern state is seen to be exercising hegemony which is the use of ideology to prevail over the governed but when this ideological submission does not work or fails to persuade the people, the modern state goes into the mode of domination as a means of control which means the use of force or physical violence in order to rule. It will be an interesting exercise to see, if the modern state, in the 'age of terror' as it is usually called, follows the standard use of either hegemony or domination as per the situation/necessity or, is there a different turn in the exercise of authority in the present time especially after September 11, 2001?

The security theorist David A. Baldwin has argued that currently the nation-states are more concerned with the concept of security rather than with redefining policy agendas.[54] Baldwin's observation appears correct in so far as the modern states tend to ignore issues like human rights, environment, human trafficking, epidemics or social injustice and human liberty, where they are in conflict with 'national security'. The values for which the 'constituent power' has always contested the 'constituted power' are pushed to a side- all in the name of state security. This has become possible for the state only by subjecting population or citizenry to a wide ranging manner of coercion, in the name of fighting terror. Thus, 'terror' has become an almost essential element in the current career of nation-state. Baldwin suggests that the concept of national security is no more a policy objective only but have become a means of larger pursuit by the modern states. Security as a concept has been used, according to Baldwin, to justify the suspension of civil liberties, making war and massively reallocating resources during the last fifty years unlike other

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[54] David A. Baldwin, "The concept of security", Review of International Studies, Vol. 23, 1997, pp 5-6.

concepts, it has not been given enough attention like justice, freedom, equality, obligation, representation and power.[55] However, the concept of 'national security' has a very close relationship with the foundations of state sovereignty and its invoking of 'state of exception'.

Earlier, in the standard international relations understanding, threats of military attack provided logic to the state for deterrence policies by lowering the probability of attack. Likewise in response to natural disasters and other problems, the state tended to develop various mechanisms to deal with the crisis or, to suggest a preparedness to meet such crisis. But what is highly interesting in the era of state securitization is that 'terror' becomes a calamity or disaster, among many other calamities. The security state argues that, like any other crisis, the state has to be eternally prepared against this crisis of terrorism, which can raise its ugly head at any moment. This 'any moment' becomes the potentiality of the threat, but as a positive, so that it assumes the shape of a conditional truth. The primary condition in this truth remains the security of the state, its sovereignty, its territory and its population and justifies its use of physical force as and when necessary. If we return to the basic and important question, security for whom?, we will see a habitual response which presupposes a single answer in this context: that is, the security of the state itself. This security of the state is secured in the name of a value, which remains no other the value remains no other than the foundation of sovereignty and its power to use physical force. However, the problem is not as simple as we have phrased it. The state puts into action various other techniques to achieve this particular aim of securing itself as the legitimate authority. We have already noted that the state could be seen to achieve this authority and legitimacy for the monopoly over violence, through hegemony or domination, in other words, through 'ideological state apparatuses' or through 'repressive state apparatuses'. Before I extend this argument further, let us discuss the insights provided by Michel Foucault to understand the concept of security and its need for governmentality, which will be crucial for the larger argument.

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[55] David A. Baldwin, "The concept of security", *Review of International Studies*, Vol. 23, 1997, pp 5-6.

From the biopolitical perspective, there is a 'mysterious' status of 'security' as a concept and its implications. Security, as a concept it can be said, deals with the issues of order and authority, therefore having political connotations. The state stands normatively as the primary political institution, around which life is organized, which needs the security paradigm as its main point of reference. It is interesting to note that the security policies of the state are concerned more with the techniques of governance than with the question of morality or ethics. As we have already noted before, there can be no perfect balancing between 'morality' and 'power'. Especially, when the sovereign power exercises 'state of exception', it knows no moral constraint but it does is dome in the name of morality: the morality of the preservation of life and its governance. There is, one might say, no morality in the condition of existence of the sovereign.[56]

Let us however return to the biopolitical understanding of security following the lines suggested by Michel Foucault. According to Foucault, there is a 'general economy of power' which has the form of, or which is dominated by the technology of security. The main issue is, Foucault argues, the correlation between the technique of security and population, both the object as well as the subject of this notion as well as the reality of a population. Foucault goes on to elaborate how sovereignty is exercised over a territory, discipline is exercised over the bodies of individuals, and security is exercised over a whole population. Discipline only exists insofar as there is a multiplicity and an objective on this basis of this multiplicity. For Foucault, discipline is a 'mode of individualization of multiplicities' rather than something that constructs an edifice of multiple elements on the basis of individuals who are worked upon

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[56] There has always been a philosophical as well as practical attempt to separate ends and means, which is deeply embedded in the western political theory, primarily the tradition of Machiavelli, Hobbes and Clausewitz. This separation of ends and means, I suggest should be seen as 'instrumental reason' as suggested by Theodor Adorno and Max Horkheimer. Their understanding of instrumental reason suggests that it is a 'reason' in which decision making systems operate free from moral constraints in accordance with the ends-means logic of strategic action.

as individuals. Thus, sovereignty, discipline, and security can only be concerned with multiplicities, according to Foucault. [57] The concept of multiplicities here includes the possibility of deviation from the norm, as the deviation from a 'docile subject' to that of a 'deviant' is the basic 'multiplicity' that the sovereign is concerned with. The recourse to 'terror' therefore must become what the sovereign fears the most, threat to its founding principle, i.e., 'the monopoly over the use of physical force'. Therefore, it is possible to say that the potential of the individual or the population to challenge the sovereign's core value is what the sovereign fears the most. Hence the sovereign acts to pre-empt, curb or control this potential by putting it under a regime of security, thereby transforming itself into a security state. Here, it promises to secure everybody from the enemy, like an anomaly that has cropped up in the system of governance. In actuality, however, it tries to protect itself by invoking the security of the bodypolitic. The question of security is thus at the very heart of sovereignty. Let us now turn towards some concrete historical instances.

According to Douglas A. Stuart, the United States of America has been 'securitized' ever since the Pearl Harbor. The most influential development in regard to security discourse had a network of institutions created by the 1947 National Security Act of the United States of America, the 'Pearl Harbor system'. National security required all Americans to adopt a completely new attitude about their safety. Changing the way that all citizens thought about security was seen as essential for America's long-term safety. According to Douglas T. Stuart, Pearl Harbor provided four specific lessons for the post-war planners. The first lesson was that the United States needed new machinery for collecting and interpreting information regarding potential enemies, before those enemies acquired the ability to 'sucker punch' United States of America. The second lesson was that Washington needed to provide military leaders with permanent and influential role in the formulation of peacetime foreign and security policy. The third lesson was that policy makers needed to ensure that both interservice cooperation and civilian-military cooperation would be

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[57] Michel Foucault, *Security, Territory, Population, Lectures at College de France 1977-78,* trans. Graham Burchell, Palgrave Macmillan, pp 17-25.

as seamless as possible. The fourth and the last lesson was that America needed new procedures for harnessing the energies of its factories and its laboratories in support of national security. The recently evolving debates about the reform of portions of the national security system bear little resemblance to the wide ranging discussions that led to the creation of the national security system in the post World War II period. The 1947 National Security Act of USA, was a single omnibus bill that created all of the leading institutions of the US national security bureaucracy, except of the Department of the State. The National Security Act, according to Douglas T. Stuart, is the second most important piece of legislation in modern American history surpassed only by the 1964 Civil Rights Act.[58]

In the light of this discussion, allow me to bring to attention the USA Patriot Act passed on 26th October 2001. My contention is that despite the fact that we cannot undermine the importance of the National Security Act of 1947 as the groundwork legislation which laid the foundation of a security state, but the Patriot act can be seen to have brought out the current state openly as the 'security state'. It has set a precedent for other states to follow similar procedures. It practically allows the state and its agencies to do almost anything in the name of security, like surveillance procedure to intercept wire, oral and electronic communications relating to terrorism as well as computer fraud and abuse offences.[59] The Act has substantially expanded the US law enforcement agencies' power of surveillance and investigation in both foreign intelligence information gathering and axis to communication.[60] Though some of the provisions dealing with search and surveillance power were expected to expire after December 31st, 2005, but the July 2005 bombings at the London tube stations expedited the process to reauthorize the Act. On July 29th, 2005, the PATRIOT Act was finally passed, extended indefinitely and was made

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[58] Douglas T. Stuart, *Creating the National Security State, A history of the Law that Transformed America*, Princeton University Press, 2008, pp 1-7.

[59] Oren Gross, "What "Emergency" Regime", *Constellation*, Vol. 13, No. 1, 2006.

[60] Oren Gross and Fiollula Ni Aolain, *Law in Times of Crisis*, Cambridge University Press, 2006, page 177.

permanent. The USA PATRIOT Act 2001 has increased the use of 'national security' letters under which banks, ISPs, telephone and credit companies, and so on can be compelled to hand over customers' records. Prior to this Act the US government had to show a 'probable cause', which is less than 'reasonable suspicion', but now they do not and companies are prohibited from telling anyone of the disclosure. In England and Wales, the Regulation of Powers Act (RIPA) 2000 has already included similar powers. After September 11[th,] 2001, part XI of the Anti-Terrorism, Crime and Security Act 2001 augmented the existing United Kingdom surveillance powers under the RIPA.[61] These acts should serve adequately as illustrations of how legislations dealing with exception has become a new 'normalcy' and a benchmark of modern public life.

We must remind ourselves that one has draconian laws in India as well.. In addition, the state has introduced Unique Identity Cards (UIDs) which are a part of extracting Biometric information of every individual through devices such as iris scan or electronic fingerprints along with the registration of complete details on a national database that will support identity cards. This is being done ostensibly for making the service delivery system more efficient, but as we know, data gathering is used by the state for primarily surveillance reasons. But we know that data has been used by the state for all kinds of profiling and restricting dissent too. Ujjwal kumar Singh, has produced a very insightful work on the anti-terror laws in India and the concept of 'state of exception' and its implications in the Indian case. While discussing anti-terror laws in India he brings to our attention that the promulgation of POTO (Prevention of Terrorism Ordinance) followed in the wake of 11 September 2001 bomb attacks of the World Trade Centre Towers in the USA. He argues that the period that followed the 'international consensus' against terror along with the Security Council resolution became the most frequently quoted justification of anti-terror law in India. The process got expedited with the

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[61] Michael Levi and David S. Wall, "Technologies, Security, and Privacy in the Post – 9/11 European Society", *Journal of Law and Society*, Vol. 31, No. 2(Jun 2004), pp. 194-220

attack on the Indian Parliament building in New Delhi on 13th December 2001. Thereafter, the chorus of global 'war on terror' became more pronounced in India. According to Singh, the dichotomy between law and violence examines the force that law deploys along with its effects unravelling the legitimization discourse of national security and democracy, which serve as an excuse for the technique in which law becomes an integral part of the organization of state violence. There is trend, Singh reminds us, towards the 'executivization' of law leading to its use as a 'political instrument' against dissent, ultimately eroding the basic principles of the rule of law. The justifications of security laws are rooted in the 'dilemma of democracy' framework, ultimately manifesting *raison d'etat* or 'reasons of the state'. Ideas of democracy, individual rights, legitimacy and the rule of law suggest that even in times of acute danger, government is limited, both formally and substantively in the range of its activities that it may pursue to 'protect the state'. The concept of the reasons of the state, according to Singh, advocates the exercise of restricted panoply of measures by the state when faced with existential challenges.[62] As have seen in the second chapter the idea of the state of exception can be used in different ways by the sovereign/state to serve its purpose. It is an element of tension inherent in the concept as well as the practice of state sovereignty. These reasons of the state are no doubt a manifestation of the organized authority, domination, and power of the possessing classes over the masses, and the most flagrant, negation of humanity. For the state, therefore, to oppress or to assassinate or annihilate citizens, which would be otherwise regarded as crime is transformed from the point of view of the sovereign and its reasons. They become an act of glory and preservation or extension of state power. Here is, once more, the question we have been dealing in this entire project. The inherent logic of legitimate authority and the monopoly over the use of violence by the state would seem contradictory and unresolvable. Coming back to the 9/11 attacks it was not only the USA which promulgated anti-terror laws like the *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act* (USA PATRIOT

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[62] Ujjawal Kumar Singh, *The State, Democracy and Anti-Terror Laws in India*, Sage Publications, 2007, pp 15-59

Act). In the same spirit there followed the UK *Anti-terrorism, Crime and Security Act 2001* (ACSA), in Canada the *C-36* (15th October 2001), in Australia *The Security Legislation Amendment (Terrorism) Act 2002*, and in New Zealand too, *The Suppression of Terrorism Act 2002*, all passed in the name of curbing terrorism. As discussed above, India also followed the suite. The development seems to strengthen the idea that the modern security state will leave no opportunity to resort to any legal measure that allows it to exercise practically absolutist tendencies. As the example illustrates we must understand that such laws are not inimical to liberal democracy. They are today rather integral to the political system's functioning and serve as a necessary corrective, restorative or curative tactic. It is important to remind ourselves that this is the context of Agamben and his Biopolitical critique of the camp paradigm, which may well serve as the model for national security-state.

In their article on 'Technology and Security', Michael Levi and David S. Wall explore the long-term impact of the post-September 11 changes in the security and privacy discourse. The event of September 11, 2011, which became the basis of 'War on Terror', acted as a catalyst to securitization tactics of the nation state that otherwise would have happened more gradually. Levi and Wall have argued that the event of 9/11 2001 has provided an international ready-made rationale for proposals which otherwise were 'under the table' and earlier would not have been acceptable politically. It is well known that the surveillance by security state has raised serious questions of individual liberty and privacy. It has raised a larger concern regarding the emerging new technologies that operate upon the principle of electronic information exchange, and which seek to bridge the physical and virtual worlds in order to form the backbone of the European as well as American information society. As the authors further suggest, the strengthening of existing anti-terrorism legislation and/or the hardening of security measures which are a part of the present war of 'readiness' does not represent a break in continuity with the past attitude of the nation-state. Thus, one is really not suggesting that the nation-state came out with such securitized practices only after 9/11 2001. There was already enough grounding for such surveillance to

intensify the momentum in the European countries which have experienced domestic terrorism in the past. To name a few, the United Kingdom had faced organizations like the IRA/UVF/UFF; France had the Algerian, *pieds noirs*, and Maghreb networks, the Corsican separatists and, to a much lesser extent, the Breton separatists; Italy had *Brigade Rossi* and ultra-right groups; Germany had Red Army Faction; Spain had the ETA, Islamic networks etc. As a consequence of such conflict experiences, these countries already had both anti-terrorist legislation as well as procedures in place. Interestingly, however, none of the EU countries have gone as far as the US in terms of introducing an Act like the USA Patriot Act 2011 which has diluted judicial oversight.

It is unclear in the current situation that if there is any criteria that will decide that the 'war on terror' is over and whether these otherwise surveillance levels will ever return to their previous status. As we know, the 9/11 differs from previous terrorist outrages in terms of the emergence of the distributed and global nature of the terrorist organization behind the attack. As indicated earlier, most previous terrorist activities have been directed at particular governments by dissent groups. [63] A far as the technologies employed for the crackdown on individual freedom and privacy are concerned, Michael Levi and David S. Wall remind us of the Echelon network that for many years remained the most ambitious of the surveillance networks. As they say, it was a joint United States-United Kingdom government-run system that was used to intercept large numbers of 'transmissions and used computers to identify and extract messages of interest from the bulk of unwanted ones', thereby capturing information about potential (which later became the terrorist) threats to the national infrastructure and any critical commercial intelligence that might affect national interests. As a matter of fact, the event of September 11, 2001 also marked a pivotal point in 'the new politics of surveillance' by legitimizing a surveillance-society model of security with a subsequent increase in the 'panoptic' power of the nation-state. These events have turned

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[63] Michael Levi and David S. Wall, "Technologies, Security, and Privacy in the Post – 9/11 European Society", *Journal of Law and Society*, Vol. 31, No. 2, June 2004, pp 194-220

the modern nation-state into a permanent 'security state', with absolutist tendencies now becoming evident in its practices. [64]

William W. Newmann has argued that the event of September 11 changed the United States' calculus of national interest. September 11, 2001, thus came to stand as a transformational event for the United States, at par with December 7, 1941 (the attack on Pearl Harbor), and July 16, 1945 (the first test detonation of an atomic bomb). It serves as reference point dividing the U.S. national security policy into "before" and "after" categories in spite of admonitions that such an event could take place. The U.S. Commission on National Security had already warned of a "new world coming" in the twenty first century in which the United States would be challenged by the global reach, ambition, and increasing technological sophistication of terrorist organizations. [65] This again brings to our attention the core problem of sovereignty and the purpose of the state in terms of the over-prediction of danger and employing strategies that embody absolutist behaviour. One might say that the 'security state' calculates its absolutism by deploying the technique of fear as well as the certainty of insecurity. It becomes a matter of 'when the enemy will attack' rather than that of 'if the enemy will attack'. This logic of the necessity of securitization, as we can see, has become a primary concern of the nation-states all over the world to resort to whatever in order to end the virtual and continuous vulnerability and to prevent any loss because of that. [66] Such logic, as we know, has already been used by the nation-states through amplifying the terror of terrorist acts and often stirring fear-psychosis in the people, especially, in the aftermath of 9/11 and the June bombings in the London tube stations. The state responses suggested every time any political violence takes place let us ensure the mandate of state to increase security.

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[64] Michael Levi and David S. Wall, "Technologies, Security, and Privacy in the Post – 9/11 European Society", *Journal of Law and Society*, Vol. 31, No. 2, June 2004, pp 194-220

[65] William W. Newmann,, "Reorganizing for National Security and Homeland Security", *Public Administration Review*, Vol. 62, Special Issue: Democratic Governance in the After math of September 11, 2001, 2002, pp 126-137

[66] Ibid.

Let me return to the dynamics of the dangerous tendency of the security state towards absolutism. To explain this, let us consider the arguments of Ronald Wintrobe who is a well known commentator of Public administration. Following a familiar line of argument, on authoritarianism, Ronald Wintrobe argues that authoritarian regimes, rather than democracies or totalitarian regimes, are the most likely sources of suicide terror. According to him, democracy is a part of the solution to the problem of suicide terrorism. He further argues that leaders whose views are outside the mainstream adopt extreme methods when there is indivisibility between the intermediate goal of the group and its ultimate goal. One of the most striking facts about the tragedy of September 11, according to him is, the perpetrators were willing to die for their cause. It is a kind of apparent readiness for sacrifice, perhaps more than any other fact that makes the act of suicide terrorism so large and so incomprehensible. For Wintrobe, more than anything else, this marks off "them" from "us", as most of us cannot imagine ourselves committing such an act. 'They', for Ronald Wintrobe, are merely an extreme example of a general class of behaviour in which everybody engages. Not surprisingly then, Wintrobe analyses the production of solidarity as a trade involving beliefs or values — the individual adopts the beliefs sanctioned by the group and receives the benefit of social cohesion in exchange.[67]

In contrast to such dominant mode of arguments, scholars have argued that the first characteristic of the current system of national security has more to do with 11/9 i.e. the collapse of the Berlin Wall, than with the 'terrorist' attacks of 9/11. In short, it is America's status as the 'sole remaining superpower.' The second important characteristic is the existence of a cluster of complex and interacting threats, including transnational terrorism, the proliferation of weapons of mass destruction, and the spill over effects from failed or failing states. It is important to remind ourselves here that the creation of Taliban was an American strategic adventure. These dangerous aspects of the current system as many have suggested, compelled the United States to continue to accord a very high priority to 'national security'. But it cannot be

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[67] Ronald Wintrobe, "Extremism, Suicide Terror, and Authoritarianism", *Public Choice*, Vol. 128, No. ½, The Political Economy of Terrorism July 2006, pp 169-195.

overlooked that the above problems are suggested to be addressed in collaboration with other nations.[68] The normalization of state violence, in such a convenient and comfortable manner, raises serious questions for the concept of freedom in the era of securitization and the absolutism of the 'security state'.

Michael Levi and David S. Walls have argued that the various security measures seek mainly to exploit the interactivity of new information communications technologies (ICTs) in order to identify the risk-posing individuals and their networks. Therefore, according to them, by gathering data about people and their movements they strengthen 'the surveillant assemblage', a term describing the relationship between heterogeneous surveillance technologies that is employed as a 'functional entity', without any other unity. As a consequence, such surveillance techniques represents a marked shift towards planned actuarial strategies that rely upon the analysis of secondary data obtained through the convergence of technologies and databases to surveil individuals and suspect groups who have previously been identified as potential risk. Also, it symbolizes a diversifying and intensifying of the use of data mining away from the otherwise surveillance practice of reacting to events by the surveillance of 'suspect individuals within suspect groups' that had been identified by traditional forms of intelligence gathering, towards the proactive surveillance of what effectively become 'suspect populations'. New technologies are used to mark 'suspect populations' and identify 'risky groups' through their different patterns of 'suspect behaviour'.[69]

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As we have discussed in the previous section, there is a distinct political dimension in the Weberian concept of state authority and legitimacy. Weber develops the arguments that are also present in the classical liberal writings of philosophers and theorists like Hobbes, Locke, and Smith, for example. For

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[68] Douglas T. Stuart, *Creating the National Security State, A history of the Law that Transformed America*, Princeton University Press, 2008, pp 283-284.

[69] Michael Levi and David S. Wall, "Technologies, Security, and Privacy in the Post – 9/11 European Society", *Journal of Law and Society*, Vol. 31, No. 2, June 2004, pp 194-220.

them, the state has not only a "realist function," a necessary place in society, but at the same time it also has a 'telos' which as per Hegel has an ethical or normative purpose. This purpose is to perform tasks that are necessary for the citizens, to solve problems, and deliver services. As Sven Bislev argues, along with the other classical philosophers like Weber that state is not only an institution for maintaining order, but it is also a creature (Leviathan) made or accepted by citizens because they need it for the purpose of building a civil society.[70] According to such an understanding, security is not only the physical protection of a regime and its associated social order. It is also a political function benefiting the civil society. It assumes that without the state to ensure basic security, there would be no civilization and therefore, no civil society. As we know welfare-state rationalities came to influence the notions of security and ideas of policing, as police forces began taking part in the general preventive approach to social problems. As Sven Bislev reminds us, therefore, there is also a popular discourse that taking care of one's own security has always been among the American Ideals. The Second Amendment in the American constitution, thus guaranteed "the right of the people to keep and bear Arms," and has often been interpreted as the promise of a right to individual violent protection, with the notion of a rough society of armed individuals as part of the US folklore. As we know, the emergence of gated communities and the contemporary idea of protecting private residences through technological devices, formerly a possibility only for the very rich, is defended as a modern, middle-class urge to self-defence. This shows the working of a hegemony of the statist conception of security as the primary concern of the population. In most of the urban setups all new buildings in densely populated downtown areas are secured with gates and new apartment blocks in suburban areas are likewise secured, with various levels and form of protection. Gated communities are ostentatiously provided with security measures and the fences and gates emphatically represent closeness, exclusivity, and security. Sven Bislev, insightfully suggests that in such a

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[70] Sven Bislev, "Globalization, State Transformation, and Public Security", *International Political science Review*, Vol. 25, No.3, 2004, pp 281-296.

conservative view of social life and economic risk, life is made predictable by the state for 'security's sake'. The state ideology of security, when extended to such gated communities, becomes linked to the idea of the reduction of social conflict (as source of risk and insecurity) inside a gated community. However we can also see that this has sharpened and potentially aggravated existing social conflicts by emphasizing differences and excluding "outsiders" whose interests differ from those of insiders. Security and terror are, it seems, two faces of the same coin, circulating in a reciprocal loop.

By the way of conclusion let me say that sovereignty today is defined by the use of security resources which we can note are military might and political power. The section on the emergence of the security state has revealed the way in which security resources are produced in the first place, and it has underscored the importance of a hegemony on the role of security in the society. Security capabilities appear as products of society; the supply of armaments and political resources depends upon the economic and social forces at work in society. However, without a working social system, or social order, security cannot not be maintained. The agenda on top of the defence of sovereignty is that the social order must also be secured.[71] As we discussed above, that there is an increased use of actuarial intelligence gathering by the state in the name of national interest and state security. As a matter of fact, complex security measures are becoming part of our everyday life, even though the 'war' footing diminishes with elapsed time from the last major terrorist attack. But the situation of war appears to prolong from the side of the modern nation-state. Allow me to make the point by quoting Benjamin Franklin. He says, 'Those who can give up essential liberty to obtain a little temporary safety, deserve neither liberty nor safety'.[72] I would like to read this in the present context as inflected with a certain radical potential - as any society that would give up a little liberty to gain a little security will deserve neither and lose both. Insofar as this it serves as a manner of intensifying the

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[71] Sven Bislev, "Globalization, State Transformation, and Public Security", *International Political science Review*, Vol. 25, No.3, 2004, 281-296.

[72] Benjamin Franklin, *Memoirs of the life and Writing of Benjamin Franklin, Vol. 1*, Printed for Henry Colburn, British and Foreign Public Library, Conduit Press, 1818, London. Page 270.

slide of the modern nation-state into absolutism, we must critique this paradigm of terror and securitization. However, this will not be possible without resolving the more fundamental problem of constituent and constituted power in the founding logic of law and sovereignty, embodied in the nation-state.

# Conclusion

Ever since Chapter one, we have noticed that the discourse of suicide bombing has a different kind of politics to it. We took up the act of 'suicide bombing' as an analytical tool to study and understand the apparatus of the modern nation-state other than the dominant paradigms offered to us by various sections of academia as well as policy maker.

In the first chapter we discussed the traditional understanding of sovereignty by invoking concepts and theories proposed by the likes of Hugo Grotius and Jean Bodin. We concluded that these theorists were grappling with the need to create a legitimate authority in a society or community in order to handle the conflict of interests. Following this we moved onto the emergence and establishment of 'social contract' as the tool to uphold sovereignty in the name of people as the grounding power. In addition to this, we briefly explored the theory of Carl Schmitt who suggested the need for a dictatorial sovereign bypassing popular sovereignty. As have noted, various theorists like Jurgen Habermas and Nicholas Poulantzas responded to such a theory of dictatorship by considering the question of how to avoid state absolutism while handling the practical problems involved in the concept of sovereignty. We observed that technically, since enlightenment the modern notion of citizenship is trying hard not only to occupy an intermediate position between the state and the individual, but also to come to mediate between, or we can say to accommodate, and to hold together the inherent tension between state and individual, as well as to justify the twin but opposed claims of state and individual. We have argued that the normative understanding of sovereignty as interactive, inter-subjective and interdependent has been replaced by the dominant understanding of sovereignty as mastery over everyone else, competition with any kind of opposition, and distrust of everyone else.[1] Establishing the link between sovereignty and dictatorial sovereignty, we

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[1] Sovereignties, Contemporary Theory and Practice, Raia Prokhovnik, Palgrave Macmillan, 2007, Page 149.

investigated the relationship between sovereignty and law primarily, as suggested by John Austin and Walter Benjamin, who look into the theoretical, technical and practical implications of dealing with 'constituent power' and 'constituted power'. Finally, we explored sovereignty from the biopolitical perspective by picking up insights from Michel Foucault and Giorgio Agamben. The question was then investigated further in the writings of Jean Luc-Nancy, George Bataille and Jean Baudrillard, who advance the biopolitical critique of sovereignty. This explained to us how the 'political' relation between 'sovereignty' and 'law' has been understood as resulting in the production of 'bare life'. Thus, we arrived at the need to establish a relationship between sovereignty, life and death, as a biopolitical question to be considered in the times of suicide bombing.

As has been argued before, in the western democracies the modern realist function of sovereignty has been that of a gate-keeping between the inside and outside. The first chapter studies as to how to intellectually explore the possibilities of refashioning human freedom in the light of a renewed understanding of the political functions of sovereignty. In addition to this, the chapter argued that sovereignty should no longer be regarded as a trans-historical constant rather should be treated as the function which has the 'potential' to set out the scope of politics. We concluded that understanding sovereignty in terms of the 'political' does not reify sovereignty. We came to a conclusion that sovereignty should not proceed by vicious imposition only and the state 'discourse' and 'necessity' has been interpreted in such a way that it allows no space for human interaction other than the 'social contract' paradigm. Thus, we concluded in the second chapter that over a period of time, especially with the emergence of the modern nation-state the conceptions of sovereignty as 'un-political'/neutral has become congealed and normalized and are understood as a representation of the autonomy of the political. [2] An attempt has been to reclaim the 'political' in the concept of sovereignty.

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[2] Sovereignties, Contemporary Theory and Practice, Raia Prokhovnik, Palgrave Macmillan, 2007, pp 176-179.

In Chapter three, we grounded the concept of 'modern nation-state' in terms of its socio-political reality and how the 'social contract' as discussed in chapter two, paves the ground for the modern nation-state. There emerged a multidimensional link between state sovereignty, law, violence and then security as a concept to control the populations inhabiting these sovereign territories. We noticed that this cannot be done without going through a historical foregrounding that has supported the modern nation-state in the present form. As we know there has been various studies about the nature of all kind of state/s, but what is important in the third chapter is the attempt to show that the real problematic lies in the irresolvable nature of the question of legitimate authority of the state and its monopoly over the use of violence. This question can be noticed throughout the three chapters.

We examined the concept of sovereignty in the second chapter and highlighted some critical questions related to its foundational moments. We explored that the state legitimized its existence as well as authority in the name of the people. Also we noted that the modern state in its initial phases emerged as an entity regulated by the society. But as we moved towards the critical understandings of the modern state and its sovereignty, the biopolitical critique included, it came as a variation to the evolution of the state. We argued that society's role and its relation to the modern state shifted/transformed from the earlier regulative society to that of a regulated society as we move into the domain of the security state. We also argued that society cannot be understood in terms of a fixed and limited understanding which leads to its arrest its progress as a particular type of socio-political arrangement. It came as an observation that the normative understanding of society as a 'regulative' one does not hold true in the present era of 'governmentality'.[3] The abstract 'Artificiall Man'[4] of Hobbes is vexed in the empirical reality of population in the present scenario. Using insights from Michel Foucault we concluded that for State, individuals become specific empirical references and society becomes a modern concept used to control/manipulate and diffuse the sum

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[3] See, Michel Foucault and Paul Robinow, *The Foucault Reader*, ed. Paul Robinow, Pantheon Books, 1984.

[4] See, Thomas Hobbes, *Levaiathan*, ed. Crawford Brough Macpherson, Penguin, 1985.

total consequences of individual's actions by the state. It brings to our attention that society has always been an intensely 'political' concept which leads to the normative question of having some kind of a preferred social order. Political Theory has failed to resolve the historical contradiction of legitimate authority and the monopoly over the use of physical violence by state sovereignty. We have also noted that the modern state has two tools at its disposal, which are hegemony and domination. As we observed that at any one time either the technique of hegemony can be employed or that of domination. Usually the modern state uses hegemony which is the 'use of ideology' to prevail over the governed but when this ideological submission does not work or fails to persuade the people, the modern state goes into the 'mode of domination' as a means of control which means 'the use of force or physical violence' in order to rule. We argued that the modern nation-state in the 'age of terror' as it is usually called, follows the standard use of either hegemony or domination as per the situation/necessity but to this process lies a specific element of the modern state. This element is to employ the use of hegemony as well as domination, both at the same time. In the contemporary times of securitization and the emergence of the 'security state', the exercise of authority with the twin components of hegemony and domination simultaneously, is a different turn in the exercise of authority by the state by wielding exception through necessity, especially after September 11, 2001.

Returning back to the questions raised in Chapter one, we know that suicide terrorism has been broadly defined as "the targeted use of self destructing humans against typically non-combatant population- civilians, to affect political change. Although a suicide attack aims to physically destroy an initial target, its primary use is typically a weapon of psychological warfare intended to affect a larger public audience. This means that the primary target is not actually killed or injured in the attack, but those made to witness it. Alternatively, it is also defined as an attack or attempted attack during which the terrorist reaches the objective or its vicinity carrying or wearing an

explosive device which he is supposed to detonate to blow himself up.[5] In short, suicide terrorism includes the diversity of violent actions perpetrated by people who are aware, however that the chances of their returning alive do not exist. Therefore, they do not take the trouble to prepare a get-away route and often leave behind some kind of testament in which they declare their conscious and willing intention to go to their deaths.[6] Most scholars agree that the real intention of this act is to create an atmosphere of terror amidst a population not necessarily exposed directly to the incident but rather those who are informed about it from a secondary source.[7] The public, the ordinary people, the ostensible primary or the secondary target of the suicide bomber, should therefore be afraid of him, no less than the state. In contrast to this understanding, we argue that the act and the phenomena of suicide bombing has raised some important questions about the nature of state sovereignty and also once again brought to our attention the irresolvable question of 'legitimate authority' of the state and its monopoly over the use of physical violence'. By using the insights provided by the analysis in the second and the third chapter we can conclude that the act of suicide bombing disturbs the dominant understanding that it is 'the sovereign who has the monopoly over the use of physical violence' to meet its ends. We can see that the suicide bombing questions this logic. Interestingly, we also note that this has not proved to be a radical response to state violence. Rather what we see is that it feeds into the security logic of the state, therefore giving rise to the 'security state'. We also observe that the idea of the security state is to maintain state's hegemony while at the same time unleashing its domination. We can argue that though the use of 'war on terror' the modern security state has once again posed the theoretical as well as practical problematic of state absolutism which we need to critique.

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[5] Suicide Bombing Terrorism during the current Israeli Palestinian confrontation, *Intelligence and Terrorism Information Centre at the Centre for Special Studies (C.S.S.)*, Sept 2000- Dec 2005.

[6] See, Ami Pedahzur, *Suicide Terrorism*, Polity Press, 2005.

[7] Ibid.

Let me return to the question of what is unsettling about the suicide bomber that I raised at the beginning of this dissertation in chapter one. In trying to formulate a provisional answer, let me bring to our attention Giorgio Agamben's radical formulation about the 'state of exception', which we have already interrogated in the second and third chapter. Agamben suggests that 'the state of exception, which is what the sovereign each and every time decides, takes place precisely when naked life- which normally appears rejoined to the multifarious forms of social life- is explicitly put in question and revoked as the ultimate foundation of political power'. Agamben's examination exposes us to the possibility of the existence of exception, which is inherently encapsulated in the process of state action without an actual declaration of emergency.[8] The crucial hypothesis, we can note from the earlier chapters, is that the state of exception has become the norm in the present times and only the sovereign has the power to decide on the state of exception. As a provocative contrast, our hypothesis is that the suicide bomber becomes an immensely important category in this regard, precisely because s/he – as we have seen throughout, effectively upsets the sovereign's sole right to decide the exception, by actually unleashing a counter-state of exception. This not only makes the sovereign's administration of life (in keeping with the needs of capitalism) difficult, but actually demonstrates other ways of organizing and giving purpose to life. The suicide bomber also attests to a very different logic of organizing life, however little we understand it, which evidently runs directly counter to the cost-benefit calculus of economic rationality that neoliberalism accords to individual rationality in modern society. Death, in such a framework, not only ceases to be the limit of life but in fact emerges as a very effective political instrument, when political violence becomes the norm. It creates the practical conditions to make the state 'visible' in terms of its actuality in the state of exception.

Let me thus conclude by reiterating that the suicide bomber affects the conventional understanding of state sovereignty and destabilize it by depriving it of its power over life. My attempt to understand the phenomena of suicide

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[8] See, Giorgio Agamben, *State of Exception*, trans. Kevin Attell, University of Chicago Press, 2005.

bombing does not intend to unduly valorise the issue, as it tries to emphasize the fact as mentioned earlier that acts like suicide bombing may not provide an alternative model of resistance to the state, rather, it may end up legitimizing the states' unleashing of severe surveillance and control measures, which destabilises the normative understanding of public equality and private liberty.[9] At any rate, however, it leaves the conventional paradigms of state as the benefactor as defunct and analytically unsustainable. Suicide bombing thus announces a new kind of politics which has serious implications for the future unfolding of neoliberal 'governmentality'. The purpose of this dissertation is to reinforce the need to return to the democratic traditions which has been usurped by the security state, rather than falling prey to the reality of the concentration camp.

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[9] Gurpreet Mahajan, "Reconsidering the private-public distinction", *Critical Review of International Social and Political Philosophy*, Vol.12, No.2, June 2009, pp 133-143..

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