

# Mobilizing the State of Emergency for the Economy: The Cases of Turkey, France and the European Union

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## Declaration of Originality

The intellectual content of this thesis, which has been written by me and for which I take full responsibility, is my own, original work, and it has not been previously or concurrently submitted elsewhere for any other examination or degree of higher education. The sources of all paraphrased and quoted materials, concepts, and ideas are fully cited, and the admissible contributions and assistance of others with respect to the conception of the work as well as to linguistic expression are explicitly acknowledged herein.

*B. Bulkan*

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## Abstract

Mobilizing the State of Emergency for the Economy: The Cases of Turkey, France and the European Union

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Today, our world lives through a new political process. Some political decisions and implementations are obviously results and products of a state of exception. The exception derived from internal or external causes creates a mechanism of state of emergency to handle with the causes. The state of emergency is the most important and visible legal version of the state of exception. In this study, the state of emergency will not be handled as only a legal term but also a method/mechanism of crisis management. Therefore, this thesis will show its two types: *de jure* and *de facto* and how the state of emergency (with two types) affect the economy in the hand of executive branches as well as its relationship with the legal order. The research will not only deal with the term the state of exception and the state of emergency theoretically but also reveal their projections in practice. For this purpose, the study will have the Turkish state of emergency (2016-2018) as the main case and will resort to the EU Debt Crisis (2009-2013) and the French state of emergency (2015-2017) as supporting and explanatory examples. It will show how the sovereigns (governments, presidents or administrations) employ the state of emergency to control, direct and discipline the national or regional economy. While indicating that, it will note that the current legal and institutional order will be determinant for the maneuver of the sovereigns.

42,500 words

## Özet

Ekonomi İçin Olağanüstü Hali Harekete Geçirme: Türk, Fransız ve AB Vakaları

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Doçent Ziya Umut Türem, Tez Danışmanı

Bugün dünyamız yeni bir siyasi süreçten geçiyor. Bazı politik karar ve uygulamalar açıkça istisnai durumun ürünü ve sonucudur. İç veya dış sebepler sonucu oluşan istisna bu sebepleri yok etmek için de olağanüstü hâl (OHAL) mekanizmasını oluşturur. OHAL istisnai halin hem en önemli hem de en görünür yasal versiyonudur. Bu çalışmada OHAL yalnızca bir hukuki kavram olarak değil, bir kriz yönetim biçimi olarak alınacak. Dolayısıyla bu tez OHAL'in iki türünü de ortaya koyacak: de jure (hukuki) ve de facto (fili); bununla beraber OHAL'in (bu çeşitleriyle) yürütme erkinin elinde ekonomiyi nasıl etkilediğini onun yasal yapıyla olan ilişkisiyle beraber gösterecek. Bu araştırma yalnızca istisnai hal ve OHAL kavramlarını teorik çerçevede tartışmakla kalmayacak, onların pratikteki izdüşümlerine de değinecek. Bu amaçla, çalışma Türkiye'deki OHAL'i (2016-2018) ana durum olarak gösterecek ve AB Borç Krizi'ne (2009-2013) ve Fransa'daki OHAL'e (2015-2017) destekleyici ve açıklayıcı örnekler olarak başvuracak. Bu çalışma egemen kuvvetlerin (hükümetler, başkanlar ve yönetimler) olağanüstü hali kullanarak ulusal ve bölgesel ekonomileri nasıl kontrol ettiği, yönlendirdiği ve disiplin altında tuttuğunu gösterecek. Bunu yaparken, yasal ve kurumsal düzenin egemenlerin hareket kabiliyetlerini belirleyici unsur olduğunu da gösterecek.

42.500 kelime



To all who say democracy and freedom first  
and  
To İldeniz

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## Glossary of Non-English Terms

Coup d'état	alteration of the existing government by violence
De Facto	in reality
De Jure	by right
Ipsa Jure	judicially
OHAL	state of emergency
Sıkı Yönetim	Martial Law
Über	super

## Abbreviations and Acronyms

AKP	Justice and Development Party
ANAP	Motherland Party
ECB	European Central Bank
ECHR	European Convention on Human Rights
EU	European Union
FRP	Free Republican Party
IMF	International Monetary Fund
ISIL	Islamic State of Iraq and the Levant
PKK	Kurdistan Worker's Party
RPP	Republican People's Party



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*Et par le pouvoir d'un mot  
Je recommence ma vie  
Je suis né pour te connaître  
Pour te nommer*

*Liberté.*

*And by the power of a word  
My life returns to me  
I am born again to know you  
And to name you*

*Liberty*

– Paul Eluard, *Liberté*

*All the world's a stage,  
And all the men and women merely players;  
They have their exits and their entrances;*

– William Shakespeare, *As You Like It*



## Introduction

*It is this no-man's land between public law and political fact, and between the juridical order and life....*

– Giorgio Agamben, *State of Exception*

The current political situation of the world has been continuing to undertake old political phenomena. A state of emergency, as the most potent legal version of a state of exception, is one of the most visible and referred phenomena that the authorities have preferred to apply in specific times. Undoubtedly, a state of emergency has showed noticeable changes by the time and it has gained a more legal position. In this thesis, firstly, I will consider and regard it as both inside of legality and outside of legality in various concepts. Even though it has been regarded as a legal apparatus, we could see that it has brought some implementations and results beyond the law. The importance of a state of emergency as a political or legal institution has significance in both political science and sociology because it is a very significant figure for some discussions on-going today.

It should be noted that I will use the terms “state of exception” and “state of emergency” interchangeably because indeed state of exception is an umbrella term. It includes both state of emergency and martial law/state of siege. While the thesis will focus on the effect and usage of the state of emergency to

interfere with the economy, I will touch upon some martial law cases as a type of state of exception. Thus, the term state of exception will define the exceptional cases which caused the environment and situation necessitating the proclamation of the state of emergency and application of emergency politics. So, interchangeability refers to the same phenomenon indeed. As we will see, this thesis will handle the term state of emergency as not only a legal situation but also a crisis management mechanism or method. So, the classification of the states of emergency matters at this point.

However, as a goal of this thesis, it will be showed how the state of emergency affects the economic policies of countries and to what extent it is able to do that. Some of these effects are clearly visible whereas some of them are rather subtle. Here, state of emergency will not be only handled with its legal version/meaning, its usage will cover its broader concept. In other words, the thesis will separate state of emergency into two: *De jure* (legally declared) and *de facto* (not legally proclaimed). Also, the thesis will be based on this distinction in general. So, the thesis attempts to show how the sovereigns (from governments to administrations) mobilize the state of emergency to affect, direct and discipline the economy. Even though the research includes three different cases to investigate the effects of the state of emergency, it is not a pure comparison which the thesis aimed. It is, rather, aiming at investigating three different cases mobilizing state of emergency for the economy and having different legal structures.

As this thesis is going to attempt to depict this process, emergency politics could go beyond the known and predicted form of state of emergency. Because of that fact, I will employ various cases in this thesis. As I mentioned, this thesis will raise some critical questions and try to give proper answers to those questions. It will ask, first, what emergency politics mean and to what extent they have importance in contemporary politics as well as under what circumstances they arise. Furthermore, what a state of emergency and a state of exception refer to and what is their critical effect in the economic area for countries will be asked and answered as much as possible. While answering these questions, I will show how the state of emergency and exception provide a basis for the political economic implementations of governments and administrations in my main (Turkish case) and secondary cases (French and the EU

cases). The intensity of the intervention of the sovereign in these cases will show us the level of impact of the sovereigns and how they regard the rule of law while employing emergency politics. The reason for choosing the French and the EU cases is derived from the necessity of showing two types of the state of emergency in Europe: De jure and de facto state of emergency. I believe that to put these two types of the state of emergency offers more enlightening points to grasp the importance and influence of the state of emergency on the Turkish economy. Therefore, while the EU case will show us how the state of emergency can be implemented without declaration (de facto), the French case as a contemporary of the Turkish one will reveal how a European de facto/declared state of emergency is used to discipline/control the national economy. These steps and parts will show how state of emergency can be used in these different three steps by the sovereigns in accordance with their aims and politics. While doing that, how the sovereigns use the discursive way of state of emergency to discipline the economy and mobilize the state of emergency. Even though the ways that they preferred and implemented are different, they used and employed a common term and it is state of emergency. So, the thesis will show not only the common points of states of emergencies employed in the three cases, but also point out the fundamental distinctions.

At this point, it will be useful to mention the term “sovereign” because I will use this term a lot of times. However, I have to highlight what it means in the context of this thesis. As we will see in the next chapter, I will show the different state of emergency cases and put broader meanings and implementations of state of emergency as well. At this point, I will have to mention who resorts to and employ state of emergency. Thus, I will use “sovereign” to refer to national governments and presidents as well as the ruling coalitions in the Euro Debt Crisis for the EU case which include the European Commission (EC), the European Central Bank (ECB) and the International Monetary Fund (IMF) with some national governments. So, the term sovereign will mean those who hold power to mobilize the state of emergency to discipline and control the economy. Besides, even in the nation-state cases, the sovereign is not constituted by a single person indeed. When we examine them, we can see

there some “sovereignty coalitions” including both the presidents of the republics and the executive and legislative branches forming the exposed face of the term or concept of “state”.

When we look at the general framework, Turkish case will occupy more place because when we look at the anatomies of the cases of states of emergency, we will regard that the institutional and legal structure of Turkey is very suitable for sovereigns to make use of the state of emergency to apply their political economic goals. By all means, we will see that the sovereigns in the other cases made use of state of emergency in their national or regional economies; however, the intensity and content of states of emergency, especially in the field of the economy, show some changes in accordance with their established legal and institutional structure. Thus, I will surely show how they have used states of emergency in the field of the economy; nevertheless, the usage of the state of emergency was not as extreme or intensive as in the Turkish case. Therefore, this situation will be the answer to why the Turkish case will occupy much more place than the others.

I argue, based on the above cases, that state of emergency is beyond a legal term by presenting *de facto* and *de jure* states of emergency. In accordance with an institutional and legal order, governments or administrations may adopt and mobilize the state of emergency for their economic goals or troubles that they have encountered with. In spite of some structural differences of the cases that I have chosen, all of these cases, in my view, will reveal that state of emergency (with all apparatus) may be a useful option despite its costs. Three different cases will show how and under what circumstances sovereigns resorted to employing the state of emergency. However, not it will not produce a comparison between them, the study will present three different cases, one by one, resorting to the state of emergency. Thus, it will be a combination of the state of emergency cases rather than a comparison of the state of emergency applications. It does not mean that I will not apply comparative method; nonetheless, the results will aim at showing how different types of state of emergencies were used for the economy rather than comparing them with their pluses and minuses.

## § 1.1 Limitation of the Research

When we look at the sources related to the state of emergency, we can encounter, first, its main title, a state of exception. Although we can reach a lot of essential sources about the term state of exception, these studies are mostly philosophical and theoretical. When we search the origins of a state of emergency, we could obtain some documents, articles and news related to the relationship between a state of emergency and human rights, political life and legal structure. Since the literature has been interested in those topics much more than the economic side of the cases of state emergency, I have had to collect some literature and bring them together. Notably, while the French state of emergency has been discussed regarding political and legal structure as well as human rights, the discussion about its impact on the economy has been undervalued as much as I have regarded. However, the Turkish case has a lot of sources for this subject because, as we will see, the economic effect of the state of emergency was visible and observable.

In other words, I hope that this study, with all deficiencies and limits, would be able to become a useful and referable source for the academy and for those who are interested in these subjects such as the state of emergency and the state of exception. Even though it was not easy to find ordered sources about the state of emergency cases after all some sources played a very vital role for me in order to complete this research.

## § 1.2 Methodology and Content

In this research, I applied various methods; these are mainly literature review and media scanning. These methods are very important to create a narration for a state of emergency and a state of exception and to find materials for it. In order to create that, I have resorted to the literature related to the sovereignty, state of exception and state of emergency. This literature offered me a very fundamental and essential ground to start to build the narration. After revealing its (a state of exception with an emergency) theoretical background, I will mention and contemplate its historical context and its economic version or what it has meant in the area of the economy. The creation of narration will

rest upon some official documents (e.g. laws, decrees and constitutions) in Turkish, English and French, and they will be supported by the relevant journal and magazine articles and news. That property of the narration is very critical because the practical side of laws and official documents will be able to be shown through their help. In other words, by using them, we will be able to show how the laws and rules have been reflected in political, economic and even daily life.

Indeed, the thesis does not aim at comparing three cases. Rather, it purposes to show three different applications of state of emergency in different regions. Although it does not have such strong comparison intention, three cases will show how the sovereigns resorted to the state of emergency to manipulate, control and discipline the national economies. As I have expressed, the main point of these parts will be the relationship between the states of emergency (*de facto* and *de jure*) and the course and content of the national economies. Therefore, the thesis will include the Turkish (2016-2018) and French (2015-2017) cases as *de jure* state of emergency, and the European Union case (after 2008 Crisis) as *de facto* state of emergency. Both the policy implementations and their economic effects (if it exists) will be demonstrated during the emergency/exceptional period. This method will make me establish a frame for the definition and characteristics of a state of emergency (with a state of exception as its general heading).

The theoretical part of the thesis will start with the conceptualization attempt of a state of emergency with a state of exception. The creation or formulation of the term state of exception will be held through the history of political thought and philosophy. This part will offer us the historical and philosophical voyage of state of exception in the literature before it turned to the state of emergency in legal order in the 20th century. In addition, this chapter will touch upon the relationship between a state of exception/state of emergency and the economy, as an economic state of emergency. While doing that, I will point out the economic sides and dimensions of exceptional times and to what extent the course of economy and states of exception could have affected each other. Probably, this chapter is one of the most challenging part to be grasped because this part will attempt to bring various concepts and

structures economically, politically, historically, sociologically and philosophically. However, this is very important in order to build the essence of the thesis. Thus, we will see how emergency policies could take place in exceptional times and what kind of role they have in order to build order in an economy of a country or a region. This will show us the level of relationship of the capitalist economy and emergency politics, especially afterwards of the World War II in Europe. Europe can be still regarded as a disputable area in the case of the state of emergency (or the state of exception) especially in the economic aspect.

In the third chapter, I will cover the Euro Debt Crisis and the EU organs and elites' reactions to it. As an example of the de facto state of emergency, the exceptional and emergency politics of the EU during the Euro Crisis have revealed the limits of the capacity and authority of the governments or supra-governmental organizations by applying to the exceptional powers and decision-making processes. When viewed from this aspect, it can be easily grasped that without need of a declaration of state of emergency, in spite of its impossibility across the Union as a whole, the de facto structure of state of emergency have attempted to take control of the symptoms of the crisis, and it can be said that it became successful partly. The importance of this example is indeed lying behind the fact that even though the organs and bureaucracy of the EU implemented and recommended many different policies as a response to the Crisis, there was no mobilization in terms of a de jure state of emergency, perhaps by its nature. Meanwhile, the evolution of the structure of the capitalist economy and its relationship with the state structure will be shown to point out the historical background of the state of exception/emergency as an institution and implementation in the economic field.

In the fourth chapter, I will show the state of emergency in France. This chapter will firstly show how the notion of state of emergency developed historically since 1958. While doing that, I will mention the previous state of emergency cases until 2015. The chapter will show how the sovereigns took positions in the cases of state of emergency and how they interfere with the field of economy so far. While doing that, I will talk about the position and importance of the notion of state of emergency in the Constitution of 1958 and how the sovereigns adapted the law into the real politics. Also, it will show

how and to what extent the legal and institutional structure allowed the intervention of the sovereigns in various fields, especially in the economic one. It will discuss all of them by touching upon the last state of emergency case in 2015 as well.

In the fifth chapter, I will talk about the notion of state of exception with its legal versions (state of emergency and martial law) by demonstrating the historical cases until the 2016 case. The first part of the chapter will show the historical development of state of exception as a state of siege/martial law and its transformation to the state of emergency and of its legal position from the 20th century to the 21st century. In this part, I will mention the evolution and usage of the martial law and the state of emergency as tools of the state of exception in the Republic of Turkey. This part will play a critical role in terms of revealing the evolution and transformation of the constituents of a state of exception such as a state of emergency and a martial law. We will also see the economic intervention of the state mechanisms employing emergency politics regardless of the causes of the exceptional periods and situations. In the second part of the chapter, I will talk about the contemporary case of the de jure states of emergency in the Republic of Turkey. This part will show political implementations and the reflections of the states of emergency in the economic field. While doing that, I will resort to some pieces of data published by the state departments and journals/newspapers. These data tables will present mostly the course of economy of the countries under the state of emergency, especially in Turkey, in order to grasp the possible relationship between the state of emergency and the economy in these exceptional times.

In the chapter of conclusion, I will discuss what I infer after the findings and show the characteristics of de facto and de jure state of emergency through the case studies. While that part will be like a summary of all research, the main thesis will be stated in that part as well in a strong expression. Also, I will assess the results and indicators of the study and talk about what we learned after those comparisons. These assessments and critiques will show the degree and the level of the relationship between the state and the state of emergency/exception as well as how the state of emergency affects the relationship between the state and economy. So, this part will state what the thesis would like to say.

## State of Exception and Economy: A Theoretical View

*Soverän ist, wer über den Ausnahmezustand entscheidet.*

*Sovereign is he who decides on the exception.*

– Carl Schmitt, *Political Theology*

In this chapter, I will attempt to conceptualize the state of emergency and the state of exception by referring to the literature. While doing that, the evolution of the meaning of the emergency and exception will be put forth and how it was regarded by the significant philosophers or theoreticians until it was legalized in the constitutions. Furthermore, I will investigate the relationship between the state of emergency (with exception) and the economy as well as the role of the state of emergency over the national and regional economy. After conceptualization and discussion about the definition and evolution of a state of exception with a state of emergency, I will talk about how the state of emergency is used to “save the economy” by the governments and administrations which are the sovereigns of the modern times. This will show us how a legal structure allows for exceptional powers over the economy and how the governments use these powers. The relationship and ties between the state and the state of emergency/exception in terms of intervention in the economy will be covered as well as the relationship between the state and economy by

considering the state of emergency/exception. Also, the theoretical and practical sides of implementation of emergency politics by the sovereigns (leaders or governments) to affect and direct the economy will be indicated. Thus, this chapter will aim to bring both legal situation of the state of emergency and its influence on the economy together theoretically because it will be an essential background of the case chapters.

## § 2.1 Conceptualization

“State of Emergency” has been a controversial subject both for politicians and legal experts. The discussion on the state of emergency has been pursued within the frame of democratic institutions, specifically constitutions. The constitutions of states form a frame for a state of emergency. Besides this, certain international agreements such as the European Convention on Human Rights draws a stricter frame for the term. The definition and characteristics of the state of emergency have been discussed with the term “state of exception” and “state of necessity”. Emergency law comes under the circumstances of those states. It is discussed whether or not a state of emergency means the abandonment of the rule of law.<sup>1 2</sup> However, emergency law does not refer to arbitrary rule. In contrast, state of emergency purposes “the self-preservation of the state” in emergent times or in state of war or civil war.<sup>3</sup> Ugo Mattei notes “in a state of emergency, ordinary political life is suspended”; thus, state of emergency puts a different kind of sets of rules.<sup>4</sup> These notions open to debate what is an indicator of whether or not a state is under threat and under what circumstances a state should preserve itself.

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- 1 Neocleous, Mark. “The Problem with Normality: Taking Exception to “Permanent Emergency.” *Alternatives: Global, Local, Political*, 31(2), 2006. 191–213.
  - 2 Sloane, Robert D. ‘On the Use and Abuse of Necessity in the Law of State Responsibility’. *American Journal of International Law*, 106(3), 2012. 447-508.
  - 3 Ellian, Afshin (2012), “The State of Exception in a Time of Terror”, 33
  - 4 Mattei, Ugo. “Emergency-Based Predatory Capitalism: The Rule of Law, Alternative Dispute Resolution, and Development.” In *Contemporary States of Emergency: The Politics of Military and Humanitarian Interventions*, edited by Didier Fassin and Mariella Pandolfi. New York: Zone Books, 2010. 62-73.

The term state of emergency is a legal institution which could be resorted in any case of political, social, economic or natural chaotic or disrupting situations or events by the official authorities. The term is included and subsumed by the term state of exception in addition to the theoretical background of the state of exception, the historical implementation of state of exception (both state of emergency or state of siege) is rather wide and frequent. An exceptional situation may be created by, as mentioned above, by political, social, economic or natural causes. In any state of exception, a state of necessity takes place; and this state of necessity moves beyond any law and thus it creates its own law.<sup>5</sup> The emergence of necessity, indeed, is bound to the legal structure of any land, region or union. It means even though the law does not have a capacity to deal with an exceptional situation, it may foresee such a situation and may allow for exceptional law. Exceptional situations have been generated by civil wars, world wars, economic depressions or natural disasters throughout history in the world. Especially in the early 2000s, terrorist attacks have become very important causes of leading to create a state of exception. Specifically, the 9/11 in the USA have given a way for the rise of discussions on the structure and characteristics of the state of exception. Undoubtedly, the most important debate is whether or not a state of emergency causes a suspension of democracy.<sup>6 7 8</sup> One of those who believes and supports that under a state of emergency, ordinary political life is suspended, Ugo Mattei claims that the state of emergency is a tool of predatory capitalism, and so saying this, he embeds economic affairs into the subject, alongside with political issues. According to him, a state of emergency is used to create a false consciousness, and this is a method of establishment of the domination of power over the rest. He calls it as a project and under this project, the law has a two-sided purpose: “a

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5 Agamben, Giorgio. *State of Exception*. Chicago: University of Chicago Press, 2005. 24.

6 Ignatieff, Michael. *The Lesser Evil: Political Ethics in an Age of Terror*. New Jersey: Princeton University Press, 2004.

7 Agamben, *State of Exception*.

8 Neocleous, “The Problem with Normality: Taking Exception to “Permanent Emergency.”

coercive and an ideological apparatus of domination”.<sup>9</sup> He asserts that contemporary worldwide states of emergency are obviously “invented” and “exaggerated” in order to keep “legal transformation”; and the legality of that transformation is sought to establish the domination and its projects’ expansion and recognition.<sup>10</sup>

## § 2.2 State of Emergency and Its Laws

“Soverän ist, wer über den Ausnahmezustand entscheidet”; it means that sovereign is he who decides on the exception.<sup>11</sup> Carl Schmitt, the German philosopher and theoretician, writes this sentence to show the source of a state of exception (*Ausnahmefall*). A state of exception entails a state of emergency which could not be foreknown or foreseen by any written laws of states. Thus, according to Schmitt, the laws do not include any preparation for emergency situations. He handles and exemplifies a “liberal constitution” by referring, mostly, to the Weimar Constitution which was in force between 1919 and 1933. The constitution has an interesting characteristic in the notion of the state of emergency. In Article 48, in the case of exception, the sovereign can suspend the constitution but not extinguish it.<sup>12</sup>

Indeed, Schmitt is against the liberal principals of the constitution and liberal principles of the state of law. In the sentence of Schmitt about the sovereign, the word “über” is discussed by Tracy B. Strong in the foreword part of the *Political Theology* of Schmitt. According to Strong, the term *über* entails a kind of ambiguity.<sup>13</sup> She notes that the sentence could be translated as either “he who decides what the exceptional case is” or “he who decides what to do

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9 Mattei, “Emergency-Based Predatory Capitalism: The Rule of Law, Alternative Dispute Resolution, and Development”, 89.

10 Ibid., 89.

11 Schmitt, Carl. *Political Theology: Four Chapters on the Concept of Sovereignty*. London: The University of Chicago Press. 2005. Pp. 5

12 Ibid., *Political Theology: Four Chapters on the Concept of Sovereignty*, 7.

13 Strong, Tracy B. “Foreword: Dimensions of the New Debate around Carl Schmitt.” In *The Concept of the Political* by Carl Schmitt. London: The University of Chicago. 2007. Ix.

about the exceptional case”.<sup>14</sup> However, when Schmitt’s all philosophical view, it is recognized that one without another does not make sense anything; so, the basis of sovereignty includes both deciding what an exception is and deciding appropriate to that exception. In this situation, he is outside of the regular legal system; however, he is still subject to that legal system. All purpose of his decision about a suspension of the constitution lays behind and depends on its entirety.<sup>15</sup> The emergency law aims at the self-preservation of the state.

The critical keywords in Schmitt’s understanding of a state of emergency are *decision* and *exception*. He highlights that every legal order rests upon a decision, and the legal order’s notion consumes two principles: Norm and decision. Every order, including legal one, is based on a decision, rather than on a norm.<sup>16</sup> In a case of the exception, the norm is dissolved while the autonomy of decision retreats to the lower level. This inversion can be evaluated as from the absolute normativity to the absolute *decisionism*.<sup>17</sup> All the norm is, at the same time, a decision, depending on time and condition. Concurrently, the decision becomes a norm. The interaction and interplay between these two terms belong to the domain the politics, which are implemented in different times and conditions.<sup>18</sup>

Nonetheless, Schmitt asserts that the existence of the state proves its supremacy “over the validity of the legal norm”.<sup>19</sup> The concept of the sovereign of Schmitt contradicts with the one of Hobbes. According to Hobbes’ definition, the exception is the “occasion for and of the revelation of the true nature of sovereignty”.<sup>20</sup> However, Schmitt objects this definition by showing another definition of the sovereign: It refers to both the exception and genuine decision. The sovereign suspends the law in order to create the order. Thus, this decision of the sovereign belongs to the law and this implementation does not

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14 Ibid., “Foreword: Dimensions of the New Debate around Carl Schmitt”, xi-xii.

15 Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, 7.

16 Ibid., 10.

17 Ellian, Afshin and Geliijn Molier (2012). *The State of Exception and Militant Democracy in a Time of Terror*. 33

18 Ibid., 33.

19 Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, 12.

20 Strong, “Foreword: Dimensions of the New Debate around Carl Schmitt”, xx.

carry an anomaly. In the case of exception, the sovereign, in that way, pursues to uphold the law. In the intendment of law, the law of exception means enforcing not to enforce the law.<sup>21 22</sup>

The other pillar of the state of emergency in Schmitt is the authority. Schmitt notes the characterization of an exception is designated mainly by the unlimited authority. This kind of authority brings the suspension of all existing order. Under this authority, the law withdraws; however, the state keeps existing.<sup>23</sup> It is important here that the exception is not the same thing with anarchy and chaos; rather, it is so different from these terms. Authority maintains juristically the order in the case of exception. This situation indicates the superiority of the state against the legal norm. In this situation, the superiority proves that the decision makes itself free from normative ties and becomes absolute. For self-preservation of the state, the monopoly of last decision belongs to the sovereign and the source of the sovereignty of state lies behind this authority. Starting from this point of view, the state of emergency is like a mirror which shows who has the source of authority.<sup>24</sup> The decision in a state of emergency is apart from the legal norm, and it does not need to be circumscribed by the jurisdiction for making the decision and for enactment. In a liberal state of law, the objectivity of abstract norms is placed against the orders of individuals. However, Schmitt asserts that rules are shaped by facts and matters, and there is not any decision who should decide. So, the legal order needs someone enforcing the rules. At this point, the sovereign takes over authority.

By looking at the sovereign term, Schmitt applies to the term “dictatorship”. Firstly, he remarks that the dialectical development and dictatorship do not include each other because the dictatorship is counted as “an interruption of the continual series of development, a mechanical intervention in organic

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21 Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, 13-14.

22 Behçet, Muhammed. *Olağanüstü Hal Uygulaması ve Teorik Temelleri*. Bilgi Üniversitesi, 2014. 11.

23 Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, 12.

24 Behçet, *Olağanüstü Hal Uygulaması ve Teorik Temelleri*, 12.

evolution”.<sup>25</sup> The development (within world spirit – *Weltgeist*) should continue although it undergoes some aberrations. Even these aberrations must serve the progress as a negate (*negationen*). The critical point for the progress is any exception cannot come from outside into the immanence of progression. In fact, the *diktat* of the dictator becomes, in time, a part of the development. It is interesting that Schmitt does not have a positive view about the parliamentary system because it is retarding for policy making and coming to an end. The parliamentary democracy is not the sole type of democracy, and this is the tangible difference, for Schmitt, between liberalism and democracy. Even parliamentarism and democracy do not necessarily overlap. In this type, parliaments, according to Schmitt, has created an advantageous system for the political elite and their followers.<sup>26</sup> The essence of democracy lies behind the identity of governed and governing.<sup>27</sup> At this point, even though the dictatorship seems anti-liberal, it is not necessary to be anti-democratic for dictatorship. This negative view about the parliamentary democracy creates a ground for overlapping of progress the dictatorship in Schmitt’s philosophy.

Schmitt splits dictatorship into two categories: Commissary dictatorship and sovereign dictatorship by referring to the history and literature on the sovereign term. In commissary dictatorship, in a state of crisis or necessity, a constitution could be suspended, and it creates temporary measures that not lead to abrogation of the constitution.<sup>28</sup> Under this type, the dictator can suspend the current rules and laws, but not recreate them. His power comes from a constitutional authority. The constitution could keep its existence even though the dictator does not resort to it; however, it is critical that this is a legal and tangible exception because this exception aims at protecting the current legal order and is temporary.

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25 Schmitt, Carl. *The Crisis of Parliamentary Democracy*. London: The MIT Press. 1988. 56.

26 Ibid., *The Crisis of Parliamentary Democracy*, 4.

27 Ibid., *The Crisis of Parliamentary Democracy*, 14

28 Hoelzl, Michael and Graham Ward. “Carl Schmitt. Dictatorship: From the Beginning of the Modern Concept of Sovereignty to the Proletarian Class-Struggle”. *Polity*. 2013, x-xlv. 1 ed. Cambridge: Polity, Vol. 1, p. 1 -31.

In the second category, sovereign dictatorship, the state of exception is permanent, unlike in the commissary dictatorship; and the dictator, as the sovereign, can decide what exception is. In this dictatorship, a country needs a new constitution, and it is not enough to suspend the current constitution. For this purpose, the sovereign dictator has authority to create a new constitution; this authority is called *pouvoir constituant* (constituent power).<sup>29</sup> Even though constituent power is legally obscure, it is politically and concretely determinant. The relationship between constituent power and *pouvoir constitué* (constituted power) is the key providing legal basis for the state of emergency. While creating constituted power, the power of the dictator is not absolute because he runs counter to and changes the current legal norm. Moreover, the power and authority of a dictator is based on the people (*das Volk*). The protection and obedience play very important roles in the philosophy of Schmitt; if sovereign protects the subject, the people are charged with obedience to him.<sup>30</sup> The sovereign, or dictator at this point, is the embodiment of the people and, he draws the lines deciding what crisis is and who is enemy or friend. The dictator, in general, and in classical meaning, is accepted as the one upon the people and he makes people free and enlightens individuals.<sup>31</sup> State of exception creating sovereign dictatorship does not refer to only a random period, but it is regarded as a permanent act of restoration of law.

On the other hand, Walter Benjamin's notion on the state of exception is based on the existence of violence. In his 'Critique of Violence', he separates violence into two categories: Law-making and law-preserving.<sup>32</sup> These are not coherent with each other. Law-making violence employs violence in order to make laws and establish social relationships. It, therefore, could be regarded as a political power. On the other hand, law-preserving violence adopts violence to protect any current social networks and relationships. At this point,

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29 Schmitt, Carl. *Dictatorship*. Cambridge: Polity Press. 2013.

30 Schwab, George. "Translator's Note to the 1996 Edition and Acknowledgements". In *The Concept of the Political* by Carl Schmitt. London: The University of Chicago. 2007. liii.

31 Schmitt. *Dictatorship*, 130.

32 Benjamin, Walter. "Critique of Violence." In *Reflections: Essays, Aphorisms, Autobiographical Writings*, edited by Peter Demetz. New York: Schocken Books, 1986. 277-300.

law enforcers could, in view of Benjamin, come into the state of exception to protect the order and keep it. It means that there has been strong transitivity between the law-making violence and law-preserving violence employed by law enforcers; thus, this situation creates a vicious circle and law enforcers do/could not drop to use violence by resorting to the state of exception. According to Benjamin, the thing could generate a state of emergency under the condition that exception becomes rule or order is the divine violence.<sup>33</sup> That divine violence refers to that a sovereign may use while attempting “the dissolution of the law in favour of justice”.<sup>34</sup> Since he regards law-making violence as mythic violence, divine violence is the road to freedom.

One of the most important scholars who handles with the definition of ‘state of exception’ is Giorgio Agamben. For him, the intimate relationship between the state of exception, and ‘civil war, insurrection and resistance beclouds to define the state of exception. Even though the state of exception is an answer or instrument which is used by the state against a civil war or a revolt, the state of exception could have put a ‘legal civil war’ into forth. The paradoxical situation of resorting to the state of exception is that in spite of the legal structure of implementing the state of exception, the suspension of law emerges by this method. According to Agamben, the paradox that the contemporary/modern state has faced with is that the global or permanent state of exception to hold and effectively implement governing dynamics and mechanisms; so, the state of exception seems as “the dominant paradigm of government in contemporary politics”.<sup>35</sup> Even though, as Agamben points out, the state of exception emerges as a “threshold of indeterminacy between democracy and absolutism”.<sup>36</sup> The most critical point in Agamben’s understanding is that the politics’ task is ‘sovereignty’ and ‘life’ (of not only individuals but also nations) is determined by the politics. Therefore, it is a method that the state could apply in a different period and in different ways. The state does

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33 Ibid.

34 Kopin, Joshua Abraham. “Walter Benjamin on Divine Violence”. <https://notevenpast.org/walter-benjamin-on-divine-violence/>

35 Agamben, *State of Exception*, 2.

36 Ibid., 3.

not do that within a special kind of law because the state of exception is not a sort of law; on the contrary, the state of exception means the “suspension of the juridical order”, and it defines and characterizes “law’s threshold” and “concept”.<sup>37</sup> In other words, the state of exception is neither outside of legal order nor inside of it. So, “outside” and “inside” do not exclude each other, vice versa, they include one another.<sup>38</sup> When we look at the current form of the state of exception, through the perspective of Agamben, we can notice “the structure of the law” and “the limits of legal authority”.<sup>39</sup> The state of exception, in view of Agamben, is “neither external nor internal to the juridical order”; and the zone of anomie or indifference created by the “suspension of the norm” is indeed related to the juridical order.<sup>40</sup>

### § 2.3 What Comes First or Sequence of Concepts

THREAT → SECURITY → NECESSITY → EXCEPTION → EMERGENCY

In the collocation, it obviously seems that any threat to the country, ideological or constitutional structure create a problematique of security to prevent the threat. To put security politics into effect is now a state of necessity for protecting the country’s constitution, institutions or citizens. When we look at the source of any security politics, it seems that the first step of this chain is a threat coming from an internal or external source. As a response or a reaction to that threat and its source, a security policy is naturally resorted and applied. In some cases, laws could not allow some state actors to apply certain politics, and so they seek to breach or get over those laws and rules. At this point, the state of necessity brings an international customary law, which

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37 Ibid., 4.

38 Vaiz, Mehmet Ekin. *Olağanüstü Hal Kavramı ve Yönetimi*. Doğu Akdeniz Üniversitesi. 2011. 19.

39 Atilés-Ostario, Jose and David Whyte. “State of Exception, Law and Economy: A Socio-legal Approach to the Economy of Exception in an Era of Crisis.” *Oñati Socio-legal Series*, 8 (6), 2018. 812.

40 Agamben, *State of Exception*, 23.

means a state could justify a breach of an international obligation (plus obligation given by its own laws) under an imminent peril.<sup>41</sup> This condition is a kind of sign for that there is obviously an exceptional situation. Thus, the state of necessity could be accounted for as a self-reaction of the state against the threat in the state of exception supported by the state of necessity. As seemed, state of necessity and state of exception are so intertwined because even we are accepting them as two different phases or steps, they followed each other so closely. While an exceptional situation is generated, necessity also emerges. In other words, the state of exception is created both by a threat and by necessity before the law. Indeed, as Agamben notes that the state of necessity is a space without law; however, it should be highlighted that it is an “anomie” resulting from “the suspension of law”.<sup>42</sup> Nevertheless, it does not mean that state of necessity annihilates law; more precisely, it opens a new legal phase upon the established legal structure. The exception finds itself in the legal structure as an emergency; and with the term ‘emergency’, state of exception becomes the governmental phenomenon – a government could apply comfortably and legally the provisions of the state of exception under the title of a state of emergency.

## § 2.4 Times in Exception

An exceptional time refers basically to a situation that is not accordance in with ‘normalcy’ or state of normalcy, which mean “sovereignty of the state of democracy and the rule of law. Even this reference shows the exception needs a democratic and juridical structure for its own existence. The liberal state is regarded as the most favorable one to host both democratic structure and the rule of law. Especially the rule of law is the indicator of the state of democracy; every action which can be taken by state authorities and their responsibilities in front of the people are, not completely but mostly, specified in laws. In certain times, state authorities come into a situation that seems as compelling the

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41 Tanzi, Attila. *State of Necessity*. 2013. *Oxford Public International Law*. <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1071?prd=EPIL>

42 Agamben, *State of Exception*, 23.

state to take exceptional precautions against some adverse developments. These developments do not seem as that they can be solved or prevented by measurements under the rule of law or state of democracy. These developments or events could be not only political or social but also economic or financial. When we look at the many examples and cases of the state of emergency declarations, we can notice that emergency politics go beyond the specific fields which are intended to be made or turned to “normalcy”. In my view, any political emergency subsumes economic aims and intentions as well as any economic emergency, includes political assertions and strategies. Even though the political emergency seems more juridical and bureaucratic, the economic emergency is competent to show its severity. It is open to being discussed and investigated how a state of emergency makes way for the intervention of political bodies to affect and even direct the economy. When we look at the examples and cases, it can be regarded that every emergency creates its own politics and economy. Although liberalism is accepted as the champion of the rule of law and state of democracy, liberal states could resort to some applications which go beyond the juridical structure and borders. The main motivation of the proclamation of emergency is to obtain the competency and ability to respond immediately to a situation.

In this context, there is an acquiescence that the state of normalcy is not capable of interfering with political, social or economic problems in time or completely. Even the laws could include this acquiescence by noting that the conditions in which the state authorities could resort to exceptional implementations. Such laws lead to various discussions about whether or not they draw a jurisdiction which should not be violated or exploited. For example, in our main and secondary cases, Turkey and France respectively, the constitutions mention and specified the conditions and situations which lead to the proclamation of a state of emergency; however, these countries needed to put new specifying laws how and what to do during emergency time. Almost all states of emergency have been inclined to create their own legal framework. In spite of theoretical discussions of the juridical framework of a state of emergency, the examples that we are looking at give a clue for that a state of emergency has a strong potential to go beyond the established legal order and the rule of law.

In my view, the areas which the state of emergency is used politically and economically are worthy to scrutinize carefully. Regardless of its origin, the political or economic one, it is seen that emergency politics affects democratic procedures; they obviously increase and ease the way and probability for interventions of governments into the economic sphere. These interventions create a frame of extinguishing mechanisms leading to the state of emergency. Emergency politics could take power which is able to influence profoundly the economic and political establishment and order of the region or country. At this juncture, one of the most important characteristics of this study is to carry the definition and implementations of the state of emergency one step further. In contrast to the political and natural causes of exceptional times, economic reasons do not usually need to apply to the legal state of emergency. When states face serious economic problems or even crises, they often declare that they have to resort to and implement emergency politics to recreate the economic order which has been shocked or even shattered even though they do not proclaim a political state of emergency based on constitutional authority. However, Alan Green notes that even if the state has not proclaimed a state of emergency, it does not mean that it is not resorting to and using an “emergency paradigm” that refers to exclusively emergency precautions and discourses.<sup>43</sup> Greene calls, in the same article, this situation as ‘de facto emergency’; in my view, this denotation is very apposite because even though there is not a proclaimed ‘de jure emergency’, the executive branches begin to implement emergency politics and measurements. Understandably, a de jure state of emergency refers to a situation that a state of emergency is proclaimed legally by legal authorities in a country or a region whereas a de facto state of emergency tells us in spite of non-existence of any proclaimed state of emergency, governments could apply for emergency policies in practice. Hereby, the French and Turkish cases will be examples of the de jure state of emergency while the policies taken against the European Economic Crisis by the organs of the EU and local governments will be the example of the de facto state of emergency.

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43 Greene, Alan. “Questioning Executive Supremacy in an Economic State of Emergency.” *Legal Studies*, 35, no. 4, 2015. 594–620.

The most interesting and salient side of these exceptional times is that governments or other executive bodies (including individuals) are able to take the opportunity to apply various interferences that they could not easily find an opportunity in the state of normalcy. These interferences do not need to be seen as exceptional; the main point, at this stage, is the changing dimension of the capacity of the state for intervention in several zones and spheres. Especially recent discussions on permanency (possibility) of the state of emergency in statecraft and even in globalization and international relations have shown an intensive increase.<sup>44</sup> Both cases of French and Turkish cases, and the emergency conditions created by the European Debt Crisis (in spite of an absence of a proclaimed state of emergency) have made room for critical interventions of the state (and even upper executive bodies). This room exhibits that the executive branches are willing to neglect or put democratic rights or processes on the back burner. It is based on that while proclaiming an emergency, state organs and actors regard themselves freed from the constrictions and feel free to act as needed. This situation produces a discussion about whether emergency politics result in ‘executive supremacy’. The discussion has an important side because although many constitutions, for example, put a limit for executive branches what to do in the emergency or exceptional period; however, these limits can be regarded as marginal such not change of constitution or dissolution of parliament. De jure or de facto, an emergency is in favor of the executive branch because the executive branch can be regarded as the most important sovereign in exceptional times while the other branches have some difficulties to find space against the executive one or they are bypassed to a certain extent.<sup>45</sup>

This opportunity helps the executive branches to put forth their technocratic plans and tendencies. Technocracy refers to basically ruling of the country by people who are professionally competent on what they engage in. The

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44 Specifically, Giorgio Agamben’s *State of Exception* and Kanishka Jayasuriya’s *Reconstituting the Global Order: Legitimacy and Regulation*

45 Sandbeck, Sune and Etienne Schneider. “From the Sovereign Debt Crisis to Authoritarian Statism: Contradictions of the European State Project.” *New Political Economy*, 19:6. 2014. 847-871.

technocratic administration seems in conflict with the election-based system. Although not every government resort to full-fledged technocracy in exceptional times, their precautions and measurements include serious technocratic dimensions. These dimensions lead to supporting economic technocracy over democracy.<sup>46</sup> This evaluation of Kiely may be seen a bit bitter; however, the neoliberal wave, since the 1970s, has shown the bitterness of ‘the victory of the free market’. Perhaps, the most salient common property between neoliberalism and ordoliberalism is that they pay attention to economic technocracy more than democracy itself. Even though it is said that political (and social) liberalism is necessary for economic liberalism or vice versa, the history itself presents that they are not always complementary with each other in every stage of the liberal and modern world. Specifically, in the emergency periods, it can be said that the priority market freedom and confidence can be immediately the most important matter for lawmakers and executive branches. This primacy of the market liberalism requires sometimes competent management of the economy, which is provided by ‘technocratic administration’. Especially economic technocracy, in other words administration of economy by professionals who are mainly not elected but charged via the bureaucratic process, is criticized as that it neglects the expectations and necessities of masses in order to restore and reorder the economy undertaking serious shock or crisis. The main reason for that situation may be that the technocrats do not feel responsible in front of the people or masses because they are professionals, and their only task is to maintain the sound economy. In contrast, elected rulers seem to be subjected, more or less, to expectations to masses, at least desires of their power base. Economic technocracy is also regarded as a modality which is used to limit democratic politics and processes as well as authoritarian liberalism.<sup>47</sup> While technocracy is based on meritocratic and professional principles, it includes distrust to mass democracy and even democratic pro-

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46 Kiely, Ray. “From Authoritarian Liberalism to Economic Technocracy: Neoliberalism, Politics and ‘De-Democratization.’” *Critical Sociology*, vol. 43, no. 4–5, July 2017, 725– 745.

47 Kiely, “From Authoritarian Liberalism to Economic Technocracy: Neoliberalism, Politics and ‘De-Democratization’”.

cesses by the ‘political and economic elite’. It is very worthy to define technocracy with the famous expression of Röpke “revolt of the elite”.<sup>48</sup> As Röpke says itself, elite movement should not allow disarray of liberalism by democracy (of masses), especially in the economy (in market).<sup>49</sup>

At this point, the famous term, authoritarian statism, which was coined by Nicos Poulantzas, is very beneficial to bring light into the discussion of the executive branch. In mind of Poulantzas, in authoritarian statism, national parliaments and other organs of popular forces are edged from decision-making process and this process is seized by the executive branch and the state administration.<sup>50</sup> Indeed, the state administration refers clearly to the executive branch (including bureaucracy) which is inclined to monopolize the capacity and authority of the ruling country. Although Poulantzas used this term to depict a strategy of a Keynesian-welfare nation-state form to manage the “permanent crisis in capitalist societies”.<sup>51</sup> The speed and capacity of the executive branch are the most referred point for the necessity and legitimacy of the executive supremacy. This understanding overlaps the notion which the emergency requires precautions that are not possible to be taken in normalcy. Therefore, it is regarded and asserted that the democratic process and ‘check and balance’ system is very fragile to be violated during exceptional times. Many cases show a state of emergency – explicitly or not – is prone to suspend normal procedure in state administration. The common characteristics of the authoritarian statism and the state of exception (specifically state of emergency) beg into question whether it is possible the inversion of the authoritarian statism into the state of exception or vice versa. Nonetheless, according to Poulantzas, an authoritarian state is not a form of exceptional state, but it is the “new democratic form of the bourgeois republic in the current phase of capitalism”.<sup>52</sup> It is a kind of new version of the capitalist state which has to

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48 Röpke, Wilhelm. *A Human Economy*. Wilmington, DE: ISI Books. 1998. 130.

49 Röpke, Wilhelm. *Against the Tide*. Vienna: Ludwig von Mises Institute. 1969. 97.

50 Poulantzas, Nicos. *State, Power, Socialism*. London: Verso, 2000.

51 Boukalas, Christos. “No Exceptions: Authoritarian Statism. Agamben, Poulantzas and Homeland Security”. *Critical Studies on Terrorism*, 7:1, 2014. 112-130.

52 Poulantzas (2000). *State, Power, Socialism*. 208-209

survive under changing conditions. This rejection of Poulantzas about the exceptional side of authoritarian statism shows a clue for the possibility that the state of exception converts to normalcy.

Although the suspensions of democratic processes and of the rule of law do not seem lucidly in various cases, preference of resorting to emergency politics comes virtually from the capability of these politics to suspend the normal or democratic decision making and execution procedure. Delegation of powers to the executive branches is clearly one of the most critical properties of the exceptional time; however, it is not limitless. In some cases, such as the Constitutional Court of Turkey, the judiciary power has made a decision, which has created serious discussion, that the decree laws of the President during the state of emergency are not subject to be evaluated and controlled by the Court.

## § 2.5 Economy in the Grip of Emergency and Exception

This study conceives a state of emergency beyond the legal framework and claims that executive branches do not always need to proclaim a state of emergency based on constitutions to carry out emergency politics. A state of emergency is the most famous and typical characteristics of a state of exception. In other words, the state of emergency is an application method of the state of exception. Therefore, exceptional times do not have to be defined under a legal state of emergency. This chapter is going to assert this notion, and it is going to show that governments apply for emergency politics in exceptional times without proclaiming state of emergency or they used to use emergency politics outside of the fields that the politics should have been carried out. It will be showed that these politics were used for several reasons but the most important, in my view, is the sustainment or perpetuity of governments or leaders. Another important reason is to protect or change the established political structure as well as the economic one, accordingly including property relations. To broaden the notion of emergency politics and how it affects the statecraft, martial law or *état de siège* is counted as a tool of the state of exception like the state of emergency. The differences between martial law/*état de siège* and state of emergency are handled in the Historical and Legal Background

Chapter. In this chapter, how a state of exception emerges and how emergency politics overflow will be showed.

The relationship between the economy and non-democratic elements of the economic politics of the governments has been handled by many scholars from different aspects and views. When we look at the literature, we can see some diagnoses of ‘undemocratic’ applications used to ‘save the economy’ of a country or a region. These applications used by governments have been held in accordance with the concept of sovereign because when they encounter with a crisis or a chaotic case especially in terms of economy, they try to define the exception and how to respond to it. When governments recognize if they try to handle current economic problems within the legal order, the reaction and respond could not be so immediate and effective. Thus, they tend to resort to some exceptional precautions and policies. This situation, therefore, creates a mutual state of exception in terms of legality. However, governments and administrations attempt to bring the state of exception and legal structure in practice. The limited nature of the legal structure, in any case moving beyond the legality, allows, intentionally or unintentionally, governments and administrations to take some exceptional precautions. These precautions can take the form of the state of emergency in two different types, de facto and de jure state of emergency. As I discussed in the previous chapter, cause and environment of crises or chaotic cases and the legal structure which a government or administration have are determinant for the type of the state of emergency.

The cases that we will cover or even we experience in our own lives show us the tendency of the political elites and governments to prepare a basis for economic intervention during the emergency period and implement emergency policies even though the exceptional case is not produced by any economic turmoil or crisis or the state of emergency is not declared due to an economic cause. However, when we look at the theoretical development of the state of emergency, we can see recognize some significant changes. Although we see the crucial effect of a sovereign in Schmitt’s theory, in the 21st century, sovereignty looks that it has been diffused into different parties.<sup>53</sup> The contemporary form of sovereignty is related to political and economic structure and

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53 White, Jonathan. “Emergency Europe.” *Political Studies*, vol. 63, no. 2, June 2015. 300–318.

notion. The development of ‘liberal democracy’ and ‘economic and political freedoms’ under constitutions and various laws seem preventive of arbitrariness. However, at this point, it is very worthwhile to pay attention to what William Scheuerman said; he asserts that the contemporary form of capitalism has a desire for a more rapid and quick response and reaction to the exception in terms of the executive branch.<sup>54</sup> So, this question arises: Are the political and economic instruments of modern contemporary capitalism, or literally of liberalism –even we can call neoliberalism- unable to expedite the reactions given to conditions and causes of emergency? Schmitt is pretty decisive and stable in this matter, and he claims that liberalism is not only unsuccessful to theorize a state of emergency and a state of exception, but also could not propose sufficient emergency precautions which could be taken in times of a crisis or a threat.<sup>55</sup> Even though it has been known very well that Schmitt was strongly against a parliamentary democratic structure because of his worldview and ideological assertions, it does not necessarily make his ideas worthless on the incapacity of liberalism to react emergency conditions to a certain extent. Indeed, the liberal world has always alternative plans and solutions for every problem undertaken by itself. However, the matter is that these solutions have not always been in the borders of liberal conditions. Especially after the expansion and ‘normalization’ of neoliberalism, it has been easily seen that neoliberalism has not avoided or forbidden implementing illiberal or authoritarian policies when the necessity emerges in its eyes. The illiberal or authoritarian implementations of neoliberalism is indeed very controversial subject; however, we can see an embedded authoritarian or illiberal characteristics of capitalism with neoliberalism in many cases. These cases and examination of neoliberalism show us when neoliberalism encounter with its

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54 Scheuerman, William. “Economic Globalization and the Rule of Law”. *Constellations: An International Journal of Critical and Democratic Theory*. Volume 6, Issue, 1999. 3-25.

55 Schmitt, *Political Theology*, 6.

own limits, it is not reluctant to move beyond its limits.<sup>56 57</sup> Beyond the limits, we encounter with emergency politics of governments and administrations. As Reynolds noted, resources used by states in the frame of emergency and exception has not ever been limited only to the “sphere of natural security”.<sup>58</sup> There is integrity between economic structure and political decision-making process to make away with causes of the exception or to consolidate the hegemonic law of the global economy.<sup>59</sup>

As we will see, this hegemonic neoliberal/capitalist economic structure uses the state of emergency as both a defence and offence mechanism. In any economic crisis, the state of emergency, regardless of de jure or de facto one, is a very practical way for governments and administrations prefer to enact. Thereby, this option is not limited for any economic crisis, in other words, the contemporary sovereigns can choose the state of emergency as an offence mechanism for economic structure and course even though the exception results from non-economic causes. The causes of the emergency and exception can determine the characteristics of the state of emergency. To put in another way, defence of offence mechanism of the state of emergency is contingent upon the nature of the specific exceptional case. While the defence mechanism of the state of emergency aims at protecting and defencing the current economic structure and principles in practice, its offence mechanism purposes to expand the current economic structure and make new room for applying the economic law. These mechanisms can be used in accordance with the ideological/political economic understanding of the sovereigns; so, in this situation, we can see authoritarian liberalism with idiosyncratic examples such as Turkey which is the main case of this thesis.

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56 Harvey, David. *A Brief History of Neoliberalism*. New York: Oxford University Press. 2005.

57 Kingfisher, C., & Maskovsky, J. (2008). “Introduction: The Limits of Neoliberalism.” *Critique of Anthropology*, 28(2), 115–126.

58 Reynolds, John (2012). “The Political Economy of States of Emergency.” *Oregon Review of International Law*, 14(1), 85-129.

59 Cotula, Lorenzo (2017). “The state of exception and the law of the global economy: a conceptual and empirico-legal inquiry.” *Transnational Legal Theory*, 8:4, 424-454.

### 2.5.1 *Authoritarian Liberalism*

At this point, it seems the discussion of authoritarian liberalism plays a very critical role to understand the relationship between the neoliberal/capitalist economic structure and law, and the state of emergency. Of course, the state of emergency is not a tool of only capitalist/neoliberal political economic structure; it has been used by and for other ideologies. However, the late 20th and the early 21st centuries have been witnessing the capitalist/neoliberal state of emergency. Under different economic school and trend, governments have resorted to the state of emergency to create an exceptional situation which they could generate a new political economic and socio-economic structure and environment. Authoritarian liberalism is historically one of the best examples showing the strong relationship between the state and “free market economy”. When we look at its origins and its evolution over time, authoritarian liberalism is very significant political economic understanding and system revealing how the state and the free market economy have strong ties.

The term was coined by Hermann Heller, the German philosopher and jurist, in 1933; it was characterized as a degradation of democratic structure or government “in favour of the dictatorial authority of the state”.<sup>60 61</sup> Indeed, Heller wrote his article as a reaction to the Von Papen government of 1932 of the Weimar Republic since he recognized that even though the Weimar Republic was following democratic procedures outwardly, both the political and economic crisis of the Republic was dragging it into a tyrannical structure. As Benefield mentions, Schmitt and ordoliberalists of Germany shared a notion that because of the crises of the Weimar Republic, the mass democracy was transforming into a tyranny. However, authoritarianism was intended in the Republic to defeat the “lamentable weakness” of the liberal state as well as to reorganize the “socio-economic relations to achieve free economy”.<sup>62 63</sup>

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60 Heller, Hermann. “Authoritarian Liberalism?” *European Law Journal* 21, 2015. 295-301

61 Bonefeld, Werner. “Authoritarian Liberalism: From Schmitt via Ordoliberalism to the Euro.” *Critical Sociology* 43, no. 4-5, July 2017. 747-61.

62 Friedrich, Carl J. “The Political Thought of Neo-Liberalism.” *American Political Science Review* 49, no. 2, 1955. 509-25.

63 Bonefeld, “Authoritarian Liberalism: From Schmitt via Ordoliberalism to the Euro”, 748.

Alexander Rüstow notes that in the eyes of authoritarian liberalism, the state is a market police.<sup>64</sup> Indeed, such kind of state is conflicting with the notion of “night-watchman state” of libertarians and of neoliberals. Even though the night-watchman state is responsible for providing legal background and basis to guarantee the free function of economy and property rights, market policing of the state is indispensable for the existence of the free market and so maintenance of liberal and competitive economy is depended on the existence of a strong state authority.<sup>65</sup> Indeed, this is a dependent free market-led or at least controlled by the state itself because the market needs or made a destitute of the protection of the state. This situation can be understood with the notion of steering capacity of the state of Samuel Brittan of and of Friedrich von Hayek; this capacity enables the state to plan the competition in the market.<sup>66</sup> <sup>67</sup> From this point of view, market liberalism regards a strong state not only to provide a free market but also to keep politics and economics in different spheres. However, the strength level of the state is open to being discussed. If the existence of the state is necessary for the existence of the free market, then, the state should be for the existence of the free market, and it should use its all forces to provide, to guarantee and to maintain it.<sup>68 69</sup>

At this point, some questions start to raise: Does the sovereignty belong to the state or the market? In fact, the state can use the sovereignty to construct and consolidate the sovereignty of the market; in other words, the state can use its power and tools to strengthen the market. A key factor for the level of

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- 64 Rüstow Alexander. “General Social Laws of the Economic Disintegration and Possibilities of Reconstruction”. Afterword to Röpke’s *International Economic Disintegration*. London: W. Hodge. 1942. 267–283.
- 65 Bonefeld, Werner. “Neoliberal Europe and the Transformation of Democracy: On the State of Money and Law”. *Globalisation and European Integration: Critical Approaches to Regional Order and International Relations*. Edited by Petros Nousios; Henk Overbeek; Andreas Tsolakis. London: Routledge. 2012. 51-69.
- 66 Brittan, Samuel. *The Economic Consequences of Democracy*. London: Temple Smith, 1977.
- 67 Hayek, Friedrich von. *The Road to Serfdom*. London: Routledge. 1976.
- 68 Polanyi, Karl. *The Great Transformation*. New York, NY: Beacon Press. 1957.
- 69 Gamble, Andrew. “Neo-liberalism”. *Capital and Class* 75, 2001. 127–134.

power of the state's capacity to implement its task as the market police is bounded to the relative independence of the state structure from the society. It is rather important for authoritarian liberal understanding because the most important obstacle for the state to do its business for the market is mass democracy. When we look at what Schmitt says, he also asserts that mass democracy causes, in the end, a weak state because it neglects the quality of the state while focusing on the quantity of it.<sup>70</sup> Basically, the quantity state refers to a state that tries to reach and arrive more people to include them socially and economically. The welfare state understanding is accordant with this kind of state. On the other hand, the quality state seeks maximization both economically and politically. Every action should be taken in a minimum period, and an outcome should bring the best solution.

Werner Bonefold notes Hermann Heller constructs his definition of authoritarian liberalism on what Schmitt called a state of total quality. It refers to that a state is responsible for liberating the economy, embedding depoliticization into the socio-economic ties, providing and enhancing the free economy in the social structure, and securing and maintaining the free labor and its operation.<sup>71</sup> Heller deduces about authoritarianism and reaches authoritarian liberalism by looking at the Weimer Republic, especially the period led by Franz von Papen, who was a conservative German chancellor. According to Heller, authoritarian state receding from "economic production and distribution" in favour of non-state actors, in the beginning.<sup>72</sup> Of course, as he notes himself, it is not a real retreat for the state; rather, it keeps supporting and makes for the big or would-be big industrial establishments. The main focus of economic retreat of the state lies behind roll-back in social welfare policy. Here, the quality state understanding of Schmitt steps in again to characterize the state understanding of authoritarian liberalism. Welfare policy creates only the quantity state, and the quantity state is completely weak. The weakness of the quantity state rests on 'the fact' that both political and economic overload that disenables the state to move and, naturally, to govern the society

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70 Schmitt, *Political Theology*.

71 Bonefold, "Authoritarian Liberalism: From Schmitt via Ordoliberalism to the Euro", 749.

72 Heller, "Authoritarian Liberalism", 300

in accordance with liberal principles and ideas.<sup>73</sup> Bonefold makes a point that in view of Schmitt a state of emergency is a state of particular and strong political equality since it brings both huge political intensity and perfect political quality. In specific, the suspended the rule of law is to contribute the capacity to make and apply a decision of the state during the emergency period. In this period, the ‘adverse impact’ of the mass democracy on statecraft is impeded by the emergency law. In Schmitt’s view, the strong state should adopt an authoritarian executive state structure (*Regierungsstaat*) which minimizes or destroys almost all liberal legal obstacles. This kind of state steps back the legal state (*Gesetzgebungsstaat*) which depends on liberal law principles and popular sovereignty led by the mass democracy.<sup>74</sup>

### 2.5.2 *The Answer of the 20th Century: Ordoliberalism*

On the one hand, classical liberalism and then neoliberalism have been specifying the roles of the state and the market separately. On the other hand, in practice, the role of the state is very vital for creation or flourish of the market. At this juncture, it is worth to mention ‘ordoliberals’ and deal with the definition and characteristics of ordoliberalism. Ordoliberals take themselves apart from classical liberals or neoliberals. Apparently, the main difference among them is that the ordoliberals assert that the state is responsible for generating a legal framework for a sound economy which creates and hosts a sound competition in accordance with market principles since they agree on that the market could not work in perfect on its own.<sup>75</sup> In this system, a kind of social market economy is supported and implemented. The social market economy is different from the *laissez-faire* economy and central-planned economy. Indeed, ordoliberalism has been evaluated as German style of neoliberalism even though, as mentioned, it has some different properties than neoliberalism, especially the one in Anglo-Saxon world; so, the term the “social market” is one of these characteristics. This model, on the one hand, is against possible

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73 Bonefold, “Authoritarian Liberalism: From Schmitt via Ordoliberalism to the Euro”, 749.

74 Ibid., 751.

75 Biebricher, Thomas and Frieder Vogelmann. *The Birth of Austerity: German Ordoliberalism and Contemporary Neoliberalism*. London: Rowman & Littlefield International, 2017.

monopolization of private firms and affords to prevent any kind of monopolization in the economy. On the other hand, it tries to contend with certain socio-economic problems such as unemployment, equal opportunity, protection of depended individuals and so on. This model is respectful to private property and freedom of economic initiation; however, the control and surveillance of the state are indispensable. In this type of economic model, the strong state is rather necessary to establish a sound social market economy. One of the most important Ordoliberal, Wilhelm Röpke, asks a question that which judicial order is the most appropriate for a “just, free, of the highest productivity, and based on a sophisticated division of labor” to show the importance and necessity of ordoliberal system.<sup>76</sup> However, Ordoliberals’ market understanding does not completely overlap the social market economy even though the concept of the social market economy was evolved from the Ordoliberalism’s market notion.

Even though ordoliberal policies were implemented in a state of democracy by a democratic/elected government, the theoreticians of ordoliberalism usually point out beyond the state of democracy of the mass democracy. Sean Irving points out this situation by noting that “Authoritarianism was at the heart of the ordoliberal projects”.<sup>77</sup> Many ordoliberal doctrinaires share clearly some notions of Schmitt on mass democracy and parliamentary liberalism. In their views, the parliamentary liberalism could yield to the demands of different groups that have various interests and motivations. So, this type of liberalism can be manipulated and disabled by the mass democracy. These conflicts and influences in the state structure possibly result in losing the force and authority of the state itself.<sup>78</sup> Rüstow tinkers with liberalism by saying that it does not ask for weakness from the state; rather, it requests the freedom for economic progress under the protection of the state. This protection claims a strong state. This state should be “over and above the economy, over and above

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76 Gregg, Samuel. *Wilhelm Röpke’s Political Economy*. Cheltenham: Edward Elgar, 2010. 86.

77 Irving, Sean. “Limiting Democracy and Framing the Economy: Hayek, Schmitt and Ordoliberalism.” *History of European Ideas*, 44:1, 2018. 113-127.

78 Bonefeld, “Authoritarian Liberalism: From Schmitt via Ordoliberalism to the Euro”, 752.

the interested parties” to be a strong one.<sup>79</sup> This point gives a clue for the victory of both the state and the market. A free market is a result of the strong state, and the capacity of the strong state can be evaluated by the presence of free and healthy economy. The strong state is able to create a legal framework which enables the market economy can flourish even though there is a borderline between the state and the economy. This structure contrasts with the Keynesian economic structure which the state carries more concrete loads and plays a relatively direct role in the economy, such as subsidies or government spending. The (strong) state has a motivation to create a basis for “political conception of market order” supported by institutions designed and charged to prevent any political effect in the market; it can be called “a politics of anti-politics”.<sup>80</sup> By this politics, the economy (and naturally the market) is purified of political intervention and manipulation except for the state protection, which is vital for the existence of the free market.

It can be noted that the strong state does not have to be democratic; in other words, it is not necessary to be democratic to have a strong state, at least in terms of economic respect. This view is in conflict with the Westernized democratic world view; however, it seems that it was not so problematic in the world of the early 20th century. However, we can still see an indication of the verification of the argument. The main prerequisite is that it should be capable of enforcing and maintaining the rules of the liberal market economy; this demands a strong jurisprudence and competent economic and political institutions with a capable bureaucracy. Even if democracy has a role in the statecraft, “it would have to be subordinated” to the ordoliberal dictates.<sup>81</sup> It is seen that the main cause of thoughts of radical ordoliberal about the relationship between the strong state and democracy comes from the crisis undertaken by the Weimar Republic before 1933. Michael A. Wilkinson diagnoses that ordoliberalism is the embodiment of strong “rationalization of the fears

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79 Bonefeld, “Authoritarian Liberalism: From Schmitt via Ordoliberalism to the Euro”, 753.

80 Jayasuriya, *Reconstituting the Global Liberal Order Legitimacy and Regulation*, 19

81 Wilkinson, Michael A. “The Reconstitution of Post-War Europe: Liberal Excesses, Democratic Deficiencies.” Chapter. In *Constitutionalism beyond Liberalism*, edited by Michael W. Dowdle and Michael A. Wilkinson, 38–76. Cambridge: Cambridge University Press, 2017. 45.

of the weakness of a democratic state<sup>82</sup>; and it endeavours to protect the presence of liberty by means of the accumulated excessive strategies.<sup>82</sup> They blame primarily the constitution of the Weimar Republic as too weak to deal with monopolistic capitalism as well as the socialist wave. This perception drives them to highlight the importance of institutions and the constitutional structure of the state. The authorities and capabilities of the state are critical but limited; this is necessary to be strong and non-interventionist one.

### 2.5.3 *Politicization of the Economy*

It is open to dispute whether or not the (strong) state is capable of limiting its own authorities and jurisdiction. Surely, Ordoliberal claims that the strong state neither set the market free as much as laissez-faire economy nor brings the economy under its control and governance like central-planning or socialist economy. According to Ordoliberals, the economic order and structure should not be left to self-generated action of the market; so, the order-based policy of the state (*Ordnungspolitik*) is needed for construction and maintenance of a healthier market.<sup>83</sup> This policy is an attempt to rein back the state to interfere with the market as well as to prevent it from leaving the market alone. In the view of Ordoliberals, political interference is one of the causes of the decline of the 19th state structures. Under the circumstances that certain private interest groups seize the statecraft and state structure, the state begins to weaken and to lose its strength to rule through the “politicization of the economy”.<sup>84</sup> It means that economic activities and the market submit to the state; or we can see the reverse situation if we look at the 19th and 20th century’s state and market relationships. According to Ordoliberal, the state is the provider of the necessary environment for the market. This action of the state is not evaluated as an intervention; but, in my view, it can be regarded as the ‘favourableness’. The goodwill action of the state is not understood as an act of any private interest group. It is just corrective, not destructive. It provides for

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82 Wilkinson, “The Reconstitution of Post-War Europe: Liberal Excesses, Democratic Deficiencies.”, 46.

83 Jayasuriya, Kanishka. *Reconstituting the Global Liberal Order: Legitimacy and Regulation*. London: Routledge, 2006. 18.

84 Ibid., 19.

a work of the free market in a prosperous nature by doing away with the deficits of the free market economy.

The relationship between the capitalist economy and neoliberal political structure and the state of exception can be discussed under various topics. However, even under the neoliberal/capitalist system, economy sometimes needs a sort of intervention if it encounters with troubles or barriers. Although neoliberal economic understanding seems theoretically rejecting every type of intervention coming from the state institutions, it needs in practice some interventions indeed.<sup>85</sup> If we take the predatory characteristic of the capitalist economy, this characteristic could be fed by the state/sovereign intervention.<sup>86</sup> As this chapter has covered, different methods of the sovereigns meant to control the economy for the favour of the market. While doing that, “order” becomes very critical and essential element to establish the market economy. Even though under the rule of law, the capacity of sovereigns’ action is limited to a certain extent, the exceptional periods unveil the sovereigns’ capability and intention in terms of economic policy in accordance with the agenda of the political and economic elites.

The politicization of the economy includes the intervention of the state and its apparatus within the rule of law and beyond it. When the sovereigns/governments cannot find a room to do that within the rule of law or on a legal basis, they attempt to adapt the legal system to their interventionist method. For the accomplishment of this reason, the state of emergency/exception creates a very appropriate basis for the sovereigns/governments. When we look at our cases, we can see the struggle between the current legality and new legality in front of the sovereigns. When they cannot find a room to take action in the current legal system, they are prone to create a new one by resorting to the elements and principles of the state of emergency. For the sake and perpetuity of the current economic systems within the perpetuity of the political and economic elite, the economy becomes politicized under emergency politics and in the hands of the sovereigns/governments.

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85 Mahmud, Tayyab (2015). “Precarious Existence and Capitalism: A Permanent State of Exception.” 44 *SW. L. REV.* 699 (2015)

86 Callinicos, A. (2007). ‘Does Capitalism Need the State System?’, *Cambridge Review of International Affairs*, 20 (4), 533–49.

## The De Facto State of Emergency in Europe: The Case of the Euro Crisis

*Leur prospérité et les développements sociaux indispensables sont impossibles, à moins que les États d'Europe se forment en une fédération ou une "entité européenne" qui en fasse une unité économique commune.*

*Their prosperity and the necessary social developments are impossible, unless the states of Europe form a federation or a "European entity" that makes them a common economic unit.*

– Jean Monnet

*Thus, a continent united by different languages was divided by a common currency.*

– Yanis Varoufakis

**I**n this chapter, I will handle the de facto state of emergency in the European Union during the Euro Debt/Eurozone Crisis between 2009-2013 (indeed it continues somewhere and somehow). This chapter will show how the EU

administrations, organs and elites used the state of emergency to “save the European economy” by resorting to various emergency politics to react against the exceptional situation created by the crisis. The EU case constitutes a very significant example of the de facto state of emergency; it will show us how and to what extent the EU organs shaped the exceptional case by implementing emergency politics. At this point, I will show how the de facto state of emergency was employed by the ruling coalitions mostly including the European Commission, the European Central Bank and the International Monetary Fund as well as national governments. In this case, these elements will comprise the sovereigns. The significance of the EU case lies behind the fact that sovereigns used a different type of state of emergency called the de facto one which sovereigns did not need to resort to the legal system to proclaim the state of emergency.

Therefore, especially undeclared, in other words, the de facto states of emergency or informal states of exception are very worthwhile to be mentioned. Its importance derives from the fact that actually, many governments or leaders resort to this type of state of emergency without a declaration because the formal state of emergency requires some legal provisions and procedures to be declared. So, in this chapter, I preferred the Euro Crisis and the reactions of the government and the European Union against the crisis’ symptoms and results to talk about and analyse to a certain extent. It will show us to what extent the governments or administrations could respond to the crisis and, if they could, how they could achieve in doing. These responses could be seen that they included some “undemocratic” or non-liberal responses and applications, or they were “beyond democracy”. Therefore, the economy or namely the market under the control of or ordered by the state is a very critical phenomenon which is enlightening the relationship between the economy and the state of emergency. Even though the market is regarded as free, a demand for order or control has been a historical praxis for governments. Nowadays, they are prone to use exceptional periods or emergency as a tool, especially to satisfy the demand mentioned. In other words, we will see that the state of exception has become central for contemporary political strategies and there is an “indistinguishable zone” between the law (theory) and the fact

(practice) when we consider the political practice.<sup>1</sup> We will see how the de facto state of emergency was used to consolidate the political and economic mechanisms to solve the crisis in the Eurozone. At this point, the EU case will show us more than the politicization of economy. By the technocratic interventions and precautions, the ruling coalition wanted to steer, and the de facto state of emergency would become a very useful and less costly way to do that.

### § 3.1 Crisis and Emergency

Here, the cause of proclamation of the state of emergency is important; however, even though it has been declared for political reasons, it seems that the political elites or governments are intended and prone to prepare a basis for economic intervention during the emergency period and while implementing emergency politics. As covered in the previous chapter, we can notice the crucial effect of a sovereign in Schmitt's theory, in the 21st century, sovereignty seems that it has been diffused into different parties.<sup>2</sup> It means that a mechanism of decision-making is not depended on one agent or individual. It shows surely a different emergency regime than the classical ones; however, the distinctiveness, at this point, is whether or not the state of emergency is encompassing only a country or a greater region. Nonetheless, it is clear that nation-states have still important capacities to take control when an exceptional period emerges. The paragon of regional emergency is undoubtedly Europe where the Euro Crisis started to undertake in 2009, especially by the Mediterranean European countries such as Greece and Spain. The Euro Crisis, including the Debt Crisis has been a very controversial academic topic. When we look at the Euro Crisis and the precautions taken by the European Union (EU) authorities, the EU countries such as Germany and France, and some international financial organizations, we recognize and appreciate that the term "emergency" is not only legal or land/country-specific situation. Like a political state of emergency, an economic state of emergency aims at interfering

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1 Bernat, Ignasi. "The Permanent State of Exception in the Southern Periphery of Europe." *Oñati Socio-legal Series*, 8 (6), 2018. 932.

2 White, Jonathan. "Emergency Europe." *Political Studies*, vol. 63, no. 2, June 2015. 300–318.

with problems which create conditions of emergency. I believe and assert that a political state of emergency and an economic state of emergency could and should not be separated because indeed they are obviously two sides of the same coin. In any case, political or economic emergency politics bring the other with it. For this reason, two cases of this study, Turkey (primary one) and France (secondary one), would be rather open to being important examples and lessons of this subject. Nevertheless, the case of the Euro Crisis is pretty beneficial to present the bigger picture of the intertwined political and economic state of emergency in our age. The logic behind this togetherness is that even though a state of emergency looks that it is declared to make room for the act of the state in terms of politics, it is proclaimed to make a room for the economic intention of the state as well. Thus, although the economy is not necessary to declare the state of emergency, it could be excellent motivation or result for the state.

### 3.1.1 *Emergency Politics in the Euro Crisis*

European Debts Crisis is a favorable and recent example of how emergency politics steps into action in exceptional times. Deficiencies and regularities in the economic contexts of some member countries of the European Union (EU) created an exceptional situation in the eyes of the EU. The precautions and measurements taken by the Union and the International Monetary Fund (IMF) – they were trying to take action together – showed emergency politics are ready to be “a mode of rule”.<sup>3</sup> It almost verifies ‘normal measures’ – we will be able to call ‘rule of law’ and ‘state of democracy’ – are not appropriate and applicable for the exceptional times. Portuguese President of the European Commission at that time labels this situation as “exceptional measures for exceptional times” to describes the necessities of the precautions against the Euro Crisis.<sup>4</sup> The precautions and measurements of the Union to mitigate the

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3 White, “Emergency Europe”, 303.

4 “Barroso: These Are Exceptional Measures for Exceptional Times.” *Politics*. 27 October 2011. <https://www.politics.co.uk/comment-analysis/2011/10/27/barroso-these-are-exceptional-measures-for-ex>

effects of the crisis across the Union generated some discussions about its contexts and influences on the democratic structure for both the EU and the countries which undertook serious crises. At this point, perhaps, the most important critique is that the EU has chosen economic liberalism instead of political liberalism in the trade-off that it faced in 2008. This is noted as a strong characterization of neoliberals, and it could be adopted to the preferences of the Union.<sup>5</sup>

The period reaching the huge economic crisis spread into the world from the United States markets. Although it showed its bitter face in 2008 as a result of the collapse of one of the most famous investment banks Lehman Brothers, its origins, indeed, was resting upon the crisis of the subprime mortgage market in the USA. While the US Secretary of the Treasury declared that they had the decision to allow Lehman Brothers for going bankrupt, European leaders were aware of that the crisis rising from the Wall Street was catastrophic enough to swallow European economic partly.<sup>6</sup> They were right about their concerns and fears because the American toxic securities and assets were in strong relationships with various European banks. This was just one cause of many triggering and then intensifying the volume of the crisis. In addition to the toxic assets, overdependence among the financial market and increasing financialization made European banks important actors of the global crisis.<sup>7</sup> However, the most characteristic side of the outburst of the crisis is that it was shaped by the sovereign debt crisis. The crisis which has begun to be called 'Eurozone Crisis' started to show its effects since the late period of 2009. Some member countries began to undertake difficulties to repay their government debts or to interfere with bailing out the banks which were about to declare bankruptcy. To do so, they needed serious assistance of outside, third parties such as other Eurozone countries, the International Monetary Fund (IMF)

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5 Kiely, Ray 2017. "From Authoritarian Liberalism to Economic Technocracy: Neoliberalism, Politics and De-democratization". 740.

6 Bastasin, Carlo. *Saving Europe*. Washington, DC.: Brookings Institution Press. 2015. 3.

7 Kutlay, Mustafa. "Euro Krizinin Politik Ekonomisi ve AB'nin Uluslararası Sistemdeki Geleceği." In *Ülke Deneyimleri Işığında Küresel Kriz ve Yeni Ekonomik Düzen*, edited by Fikret Şenses, Ziya Öniş ve Caner Bakır. İstanbul: İletişim Yayıncılık, 2013. 169-185.

and the European Central Bank (ECB). The trend of sovereign debt crisis emerged in Greece in 2009 through the change of the government from center-right party of Karamanlis to center-left party of Papandreou. The new government made a statement that there was falsification in formal statistics during the government of Karamanlis. In 2009, the budget deficit of Greece was 15.1 percent of GDP and its government debt was higher than 300 billion Euros whereas its GDP was 330 billion Euros.<sup>8</sup> This was the first concrete step of the debt crisis in Eurozone and it so “the modern Greek tragedy”, as a metaphor of Kutlay, began to debut.<sup>9</sup> In spite of the fact that the share of Greece’s GDP was just 2 percent of total GDP of Eurozone, global financialization and expanding loan volume had interconnected Eurozone countries to each other, and every country had begun to become dependent to one another through bank credits. Indeed, Greece was not alone in this trend; Spain, Portugal, Ireland and even Italy were experiencing such problems in different levels and volumes. Especially mortgage loans and various problems in the balance of payments, and even falsification – like in Greece – in bank accounts and budgets in Ireland induced crises in these countries.<sup>10</sup> At the first stage of the crises, national governments tried to solve the ‘chronic’ economic problems in their own scheduled. However, these crises were not separate from each other and in fact, they were making up the one, Eurozone Crisis. The governments that understood they did not have the capacity to mitigate the effects of the crisis, they resorted to the third parties to cooperate. At this point, the European Troika made up of the European Commission (EC), the ECB and the IMF came into play.<sup>11</sup> Loan plans were constituted under supervisions of these

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- 8 Eurostat, <http://ec.europa.eu/eurostat/tgm/table.do?tab=table&plugin=1&language=en&pcode=teina200>
- 9 Kutlay, “Euro Krizinin Politik Ekonomisi ve AB’nin Uluslararası Sistemdeki Geleceği.”, 171.
- 10 Bayram, İsmail Emre. “Finans Odaklı Büyüme ve Avrupa’da Sosyal Refah Devletinin Geleceği: Kriz Sürecinde İsveç ve İrlanda Deneyimleri”. In *Ülke Deneyimleri Işığında Küresel Kriz ve Yeni Ekonomik Düzen*, edited by Fikret Şenses, Ziya Öniş ve Caner Bakır. İstanbul: İletişim, 2015. 143-168.
- 11 Lekakis, Joseph N. and Maria Kousis. “Economic Crisis, Troika and the Environment in Greece”. *South European Society and Politics*, 18:3, 2013. 305-331.

three institutions and the countries that would take borrows were directed to take some serious precautions.

This point is very important to be discussed because even though the Troika includes three non-state institutions, the German government acted as a leader of the Union in the matter of crisis. A considerable amount of German policy-makers and economists asserted that the main reason for the crisis in ‘peripheral European countries’ is that they could not succeed in making necessary structural reforms in the pre-crisis period.<sup>12</sup> The German government supported to make the governments applying to the bail-out package of Troika carry out some prescriptions subsuming rigid structural reforms and adjustments. This was an important advantage for Germany to impose tight monetary policy and the economic model based on budget discipline upon the other countries in crisis. In other words, these packages recommended (and required) to execute austerity policies in the debtor countries. These bail-out packages due to their elements and principles were an example of emergency politics. The crisis had created an exceptional period in Eurozone, and the interventions and measurements should have been exceptional. The ordoliberal economic policies led by the German government became the main actor as a savior of Eurozone to get rid of the crisis. The economic understanding of German government reflected that no one needs any coordination if everyone is executing its own “correct policies”.<sup>13</sup> However, a kind of coordination mechanism was needed in the area where the crisis was intensifying. The German government and officials supported a firm application of the Stability and Growth Pact (SGP) which would be able to smoothen the effects of the crisis and the budgets of the debtor countries. The German government’s senior partner CDU was making the Maastricht Criteria the current issue while discussing the Euro Crisis and the debtor countries’ fiscal structures and policies. According to the German government, the debtor countries could not have achieved to implement a strong fiscal discipline, and social expenditures

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12 Kutlay, “Euro Krizinin Politik Ekonomisi ve AB’nin Uluslararası Sistemdeki Geleceği”, 172.

13 Dullien, Sebastian and Ulrike Guérot (2012). *The Long Shadow of Ordoliberalism: Germany’s Approach to the Euro Crisis*. Stiftung Mercator. 3.

reached excessive amounts and disaffected the budget balances. However, Ireland had decided to implement neoliberal politics while its economy started to experience critical growth; so, the government expenditures were considerably cut in accordance with the notion of small government.<sup>14</sup> Also, Spain was loyal to the criteria of the SGP and the Maastricht Criteria in the matter of its public debt.<sup>15</sup> It is worth and appropriate to mention what the Maastricht Criteria included because this was a kind of economic guide and principal reference of the Union members. The Maastricht Treaty was signed in 1992 in Maastricht city of Netherlands among the EU countries. They made a decision that they have to limit their budget deficits and debt levels. Perhaps, the most characteristic provision of the Treaty is that the budget deficit of member countries should not exceed 3 percent of their GDPs. However, as mentioned before, the budget deficit and GDP ratio of Greece turn upside-down this provision of the Treaty.

The discussions and insolubility about the crisis between debtor countries and the other EU countries and organs led by Germany retarded taking the precautions and implementing emergency politics. When these politics began to be applied, it was a bit late and was opening a kind of painful period for both the debtor countries and the EU itself. The debates about the future and existence of the EU arose, and the EU itself began to be queried in many fields. The measurement taken and dictated by the Troika to the debtor governments created systemic problems and met with huge reactions of citizens. These reactions led to government changes in Greece, Spain and Italy whereas some populist movement – leftist or rightist – began to increase their support through their Eurosceptic discourses in particular. Although this study does not aim at investigating the effects of the Eurozone Crisis and specifically the influences of emergency politics during the crisis in the debtor countries, this is a very important point for the European politics in post-2008 period to

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14 Bayram, İsmail Emre (2015). ‘Finans Odaklı Büyüme ve Avrupa’da Sosyal Refah Devletinin Geleceği: Kriz Sürecinde İsveç ve İrlanda Deneyimleri’. In *Ülke Deneyimleri Işığında Küresel Kriz ve Yeni Ekonomik Düzen*, edited by Fikret Şenses, Ziya Öniş ve Caner Bakır. İstanbul: İletişim. 160.

15 Kutlay, “Euro Krizinin Politik Ekonomisi ve AB’nin Uluslararası Sistemdeki Geleceği”, 174.

point out the interactive relation between emergency politics and the Eurozone Crisis. 2008 Crisis created a state of exception and exceptional politics began to be executed gradually.<sup>16</sup> As Vivien Schmidt notes in her study, during the Eurozone Crisis, decision-making process became rather distant from the citizens because the authority was considerably taken by the leaders of the member states in the European Council.<sup>17</sup> Distrust to the citizens' view, thereby the mass democracy generated a strong resentment in public. At the first stage, the punishment mechanism of the citizens emerged as the change the governments by the elections in many debtor countries. However, new governments were helpless and desperate, and they would have to obey the programs of Troika. Besides with the democratic change in governments, the cases of Italy and Greece show a different side of emergency politics.

## § 3.2 The Relationship between the State of Exception and Neoliberalism

### 3.2.1 *The Amity of Neoliberalism and Technocracy*

Overthrowing of the center-rightist government of Silvio Berlusconi in Italy and the center-leftist government of George Papandreou in Greece resulted in technocrat governments. These technocratic governments were charged to implement emergency politics in their countries in the strictest sense of the word. Elected or technocratic, new governments would have to negotiate and agree with the Troika and Germany. This crisis created a peerless opportunity to exhibit and impose its sovereignty in the Union and Eurozone upon not only to the debtor countries, but also, as it were, to the world. While the Chancellor (prime minister) of Germany Angela Merkel regarded euro as a success

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16 Tzouvala, Ntina. "SYRIZA Wins: Reflections While the Tide is Turning". *Critical Legal Thinking*. 2015. <http://criticallegalthinking.com/2015/01/28/syriza-wins-reflections-tide-turning/>

17 Schmidt, Vivien A. "The Eurozone Crisis Challenge to Democracy: Which Way Forward?" *Open Democracy*. 2012. <https://www.opendemocracy.net/vivien-schmidt/eurozone-crisis-challenge-to-democracy-which-way-forward>

criterion of Europe by saying “if the euro fails, Europe fails”<sup>18</sup>, a senior official of CDU Volker Kauder stated the success of Germany on imposition bail-out packages into the austerity policies upon the debtor countries by his sentence: Europe speaks now German.<sup>19</sup> It was open to be discussed and questioned whose interests were being protecting during these emergency politics. Even though there was not any proclaimed state of emergency, it was crystal clear that not only Eurozone countries but also whole EU members were undertaking the state of emergency. It could be easily legitimized as Barroso’s phrase; exceptional times requires exceptional reactions. It was required by the Troika and Germany that the debtor countries should have sacrificed their old policies and even sovereign rights to a certain extent if they intended to overcome the crisis. Technocratic structure and ordoliberal emergency politics were accepted as the most strategies to throw the crisis away out of Europe. The dependency of Eurozone to the ECB had been extremely high because they did not have the authority to finance their current account deficits by implementing monetary policy. In other words, the all authority in monetary policy was the ECB, and it was using a typical Bundesbank (German Central Bank) exchange rate policy.<sup>20</sup> It is worthy to note that new prime ministers in Italy and Greece (respectively Mario Monti and Lucas Papademos) were former employees of the EU. This situation puts forth that democracy is not regarded as a “categorical good”, but it is a system which it could work when all conditions are suitable.<sup>21</sup> In this period, democratic legitimacy and processes fell behind the economic state of emergency politics and struggle with the crisis. It reveals the alleged dilemma of neoliberalism between political liberalism and economic liberalism and its inevitable preference: Economic liberalism. The technocratic language of the EU Commission with its other partners (the ECB and

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18 Kiely, “From Authoritarian Liberalism to Economic Technocracy: Neoliberalism, Politics and ‘De-Democratization.’” 305

19 Kutlay, “Euro Krizinin Politik Ekonomisi ve AB’nin Uluslararası Sistemdeki Geleceği”, 173.

20 Baldwin, Richard and Charles Wyplosz. *The Economics of European Integration*. New York: McGraw-Hill Irwin, 2009. 390.

21 Kutlay, “Euro Krizinin Politik Ekonomisi ve AB’nin Uluslararası Sistemdeki Geleceği”, 181.

the IMF) strengthened the victory of economic liberalism over political liberalism over the Southern part of the Union.<sup>22</sup>

The technocratic institutionalization and implementation of ordoliberal economic policies were seen as the ‘necessary measurements’ to overcome the crisis not partly but collectively by decision makers of the Troika and the most influential countries of the Union. However, the aims and results of these politics were beyond the handling with the crisis. The Union, which had given a new impulse to the discussion on anarchism since its establishment, was now witnessing an increasing neoliberal wave. Even though ordoliberalism is separated from neoliberalism in some respects,<sup>23</sup> I agree with the side of those who consider ordoliberalism as a sort of classical liberalism and a different type of neoliberalism with the rule and the existence of strong state and ordoliberalism, which was experienced by the EU members in the crisis, was the political economic dimension and instrument of authoritarian liberalism.<sup>24</sup> Although the main principles and elements of ordoliberalism in another chapter this study, the exposure of the relationship and interaction between ordoliberalism and Eurozone Crisis as well as technocracy is very illuminating the importance and level of the state of exception and emergency politics in Europe. The most significant property of the state of exception during the Eurozone Crisis is that all exceptional politics was made look legal because the current legal establishment of the Union was susceptible to systemic arrangements whereas national legal structures were bypassed through hegemonic policies. This hegemony mainly refers to the foreign actors that own financial power and resource needed by the debtor countries and so have an opportunity to affect those countries by using their advantages.<sup>25</sup> This situation made

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22 Schmidt, “The Eurozone Crisis Challenge to Democracy: Which Way Forward?”

23 Röpke, *A Human Economy*, 130.

24 Wilkinson, “The Reconstitution of Post-War Europe: Liberal Excesses, Democratic Deficiencies”, 50.

25 Tayfur, Fatih M. (2013). “Tarihsel Süreç İçinde Güney Avrupa’nın Borç Krizi: Yunanistan, İspanya ve Portekiz”. *Ülke Deneyimleri Işığında: Küresel Kriz ve Yeni Ekonomik Düzen*, edited by Fikret Şenses, Ziya Öniş ve Caner Bakır, İstanbul: İletişim Yayıncılık, 187-218.

national governments both a subject and an actor during the emergency period. The hegemonic coalition of neoliberalism was composed of the “EC, European Court of Justice (ECJ), national governments, and large firms” that come together to “support the EU’s neoliberal regulatory model”.<sup>26</sup>

### 3.2.2 *State of Emergency with Ordoliberalism*

When we look at the point of view of the German government, we may assume that the debtor countries of the Eurozone, especially the Southern ones, could not make the necessary reform to create or strengthen the free market before the period of roll-back of the state in the neoliberal age; or the state had stayed on the market that prevented the maturing of the free market. In spite of their anti-interventionist state viewpoint, both neoliberalism (of the Anglo-Saxon world) and ordoliberalism should have made the state as an interventionist to regulate the market after the Global Financial Crisis and the Eurozone Crisis. Philip Cerny calls this situation as “de facto interventionism” or “post-Ordoliberalism”.<sup>27</sup> The state of exception and the state of necessity created an obligatory for not only nation-states but also the EU as a supranational (and alleged anarchic) body to interfere with and regulate the markets to put an end the problems which created the emergency and bring the order to the market. This process explicitly subsumed authoritarian characteristic while making reforms because the legislation was passed by way of votes of confidence, which so prevented debates and discussions, and amendments, and the Ministry of Economy seized and collected extreme power in the countries in which reforms should have been done.<sup>28</sup>

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26 Thatcher, Mark. “Supranational Neo-liberalization: The EU’s Regulatory Model of Economic Markets”. *Resilient Liberalism in Europe’s Political Economy*. New York: Cambridge University Press, 2013. 171.

27 Cerny, Philip G. “In the Shadow of Ordoliberalism: The Paradox of Neoliberalism in the 21st Century”. *ERIS European Review of International Studies*, 3(1), 2016. 78–92.

28 Gualmini, Elisabetta and Schmidt, Vivien A. “State Transformation in Italy and France: Technocratic Leadership on the Road from non-Liberalism to Neo-Liberalism”. *Resilient Liberalism in Europe’s Political Economy*. New York: Cambridge University Press, 2013. 371.

It was the association of technocracy and authoritarian liberalism which openly lacked parliamentary involvement to rescue the free market and recreate the ‘sound economy’ in the Eurozone. Bruff’s term ‘authoritarian neoliberalism’ seems that technocracy and authoritarian liberalism could act together to reconfigure the state into the less democratic entity by means of constitutional and legal arrangements and changes aiming at insulating the state from social and political conflict.<sup>29</sup> The rescue politics of the EU mechanisms and the Troika reveals that neoliberalism would have to resort to ordoliberal economic policies and turn to authoritarian characteristics. This seems that while the state of exception and necessity pushed neoliberalism into the authoritarian structure to execute emergency politics, it has elicited the immanence of authoritarianism in neoliberalism. Of course, it has been discussed the authoritarian characteristics of neoliberalism during its reign from the 1980s to today, and even Hayek was thinking that a dictatorship may be more liberal by imposing some limits for its policies and implementations than a democratic government that does not have certain limits.<sup>30</sup> Certainly, this view of Hayek is open to be discussed and has been criticized by the many. In that context, it is not true that a dictatorship has some limits to be called more liberal. It is not the subject of this thesis to discuss a possibility of a dictatorship to be liberal or not; however, if we consider a dictator as a sovereign and he has authority to decide what is the exception (referring to Schmitt’s viewpoint), there is not a certain limit to be mentioned. It does not mean that a sovereign (let us think it here as a supranational or national structure that directed the Union and the debtor countries’ government in the context of the Eurozone Crisis) necessarily disregards the laws and legal framework. On the contrary, it can lead a legal structure by adding it or change its composition to be able to implement its exceptional politics. Clearly, the exceptional period of the Eurozone (more broadly the EU) gave a critical opportunity to neoliberalism to predominate in the region with its bitter and perhaps cruel face. Indeed, while we think and read neoliberalism it may come into our minds as

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29 Bruff, Ian. “The Rise of Authoritarian Neoliberalism”. *Rethinking Marxism*, 26:1, 2014. 113-129.

30 Bonefold, “Authoritarian Liberalism: From Schmitt via Ordoliberalism to the Euro”, 755.

a ‘bodiless thing’; but it could not be understood without the fact that it is a class project.<sup>31</sup> Nonetheless, we should remind that neoliberalism needs the state in any case and under any circumstances. The Eurozone Crisis has become a very critical example of the reality, Schmidt and Woll point out, that “powerful states are central to assuring the survival of neoliberalism in the international realm”.<sup>32</sup>

Perhaps, the most enlightening description of the political economic characteristic of the EU is presented by Ben Rosamond (via citation of Schmidt and Woll); the economic liberalism of the EU was an example of critical balancing and struggle among ‘German ordoliberalism, Anglo-American neoliberalism and French Colbertism’.<sup>33 34</sup> It shows that the EU has resorted to different political economic methods and strategies throughout its history. Its political economic strategy and characteristics were prominently individualized after the Maastricht Treaty, the Eurozone Crisis showed that the exceptional times may lead it to take extraordinary measurements by adopting and implementing a kind of emergency politics like a nation-state. It could be asked why this exceptional time was led by neoliberalism (within ordoliberalism and technocracy). The answer is not hard but long. However, it can be said that the EU as a whole mechanism has established hegemony over not only ‘core’ members of the Union, but also ‘periphery’ countries; and while doing that it implemented in general neoliberal policies. This property of the Union could be noticed in the policies that have been imposed upon and wished from the new members (privatization, tax reforms, cutting government expenditures). Of course, the EU attaches extreme importance to the free and sound market across the Union. It has had executive, legislative and judiciary powers and structures in order to its founding and promoting principles upon the

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31 Harvey, David. *A Brief History of Neoliberalism*. 2005.

32 Schmidt, Vivien A. and Cornelia Woll. “The State: The Bete Noire of Neo-liberalism or Its Great Conquest?”. *Resilient Liberalism in Europe’s Political Economy*. New York: Cambridge University Press, 2013. 134.

33 Rosamond, Ben. “Supranational governance as economic patriotism? The European Union, Legitimacy and the Reconstruction of State Space”. *Journal of European Public Policy*, 19:3, 2012. 324-341.

34 Schmidt and Woll, “The State: The Bete Noire of Neo-liberalism or Its Great Conquest?”, 135.

members. However, we cannot say that the EU could have used its mechanisms to prevent the coming crisis into the Eurozone. It is because the Eurozone itself did lack such kind of an upper control mechanism. Imposed policies were recommended in order to make the other countries like Germany; however, the EU could or did not create such a sphere for the peripheral countries.

Why I have needed to mention that kind of economic structure is when we look at the state of exception and the state of emergency, they have had a strong role that not only to control on economy, but also to create a new economic order. The order brought by the exception could become dominant, and the economic trend could direct to that trend. Post-war Germany's economic structuring could be a prominent example in this matter. When we look at the economic policy of the European Union during the Euro Crisis, we can regard its roots in the previous structure and establishment. This view can lead us to a historical viewpoint which can enlighten the ties between the "old" and "current" economic structure and mentality. Even though exceptions could be unique and peculiar to that age or locale, we can see recognize that the exception does not lose its domination power. Thus, this chapter has told us the economic structure built upon an exceptional understanding can create the normalization and constitute the state of normalcy after removing the state of exception by the time. The creation of the new normalcy could be seen more noticeable in the *de jure* state of emergency while it is prone to be less recognizable in the *de facto* state of emergency. It is because the existence of the *de jure* state of emergency shows itself with the institutions and legal structure which can be prepared to any possible declared state of emergency whereas the *de facto* state of emergency can show itself only in the applications and it can be lack of any institutional or legal embodiment. In this case, we can see that the *de facto* state of emergency of the EU has been beyond a specified region and emerged in different territories at different times. As for the *de jure* state of emergency, the EU authorities has used obviously the *de facto* state of emergency for the maintenance of "the relations of domination and subordi-

nation” between the EU structure (backed by some locomotive countries primarily Germany) and the countries dealing with the economic and political pressure coming from the EU authorities after the Euro Crisis.<sup>35</sup>

### § 3.3 Conclusion

After the Global Financial Crisis and the Euro Debt Crisis, the ruling mechanisms of the EU stepped in to mitigate the effects of the crisis and consequently to resolve it. Even though there is no only one government or president as a sovereign, we can see more than one actor for the formation of sovereignty. For this aim, some institutions form a coalition to manage the crisis. The established ruling coalition, including the EC, the ECB and the IMF – sometimes called as the Troika - took some precautions against the spread of the crisis in a certain period. To realize this aim, they tried to go to cooperation with the national governments such as the Greek and the Italian governments even though they were not so willing to do that. The ruling coalition resorted to emergency politics which brought the instruments of de facto state of emergency to a certain extent within the borders of the EU, especially in the Eurozone. Although the EU is not a country and is not ruled by a central government, the interpenetrated economic structure and management within the borders of the Eurozone pushed the sovereigns to act as a national government and to resort to emergency politics. It is not a proclaimed one due to the lack of such legal system or background in the EU; however, the ruling coalition made a room to use emergency politics to mitigate and resolve the crisis as soon as possible. We can see in this case that the sovereigns aim not only at saving the current economic/financial system but also at seeking a room to create a new and more efficient/useful one.

As we see, the EU case demonstrates although the sovereigns change their shapes, characteristics and contents, they can make use of the state of emergency in another form. This form shows us de facto state of emergency was the ultimate way or method that the EU ruling coalition’s partners, namely the sovereigns, to take the crisis under control and protect the presence of the

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35 Bernat, “The Permanent State of Exception in the Southern Periphery of Europe”, 945.

principles of the EU's political economy understanding. Unlike, mostly, the Turkish case, the politicization of economy did not happen so much in the EU case because of the technocratic principles and methods of the ruling coalition to solve the crisis' effects. The sovereigns attempted to exclude many potential actors from the coalition as far as possible and obliged some governments to cooperate with themselves. It reveals that the level of disposability of state of emergency even in non-nation-state examples.



## French Case: Historical Background and the Contemporary Example of the State of Emergency

*Chaque ordre établi tend à produire (à des degrés très divers et avec des significations très différentes) la naturalization de son propre arbitraire.*

*Every established order tends to produce (to very different degrees with different means) the naturalization of its own arbitrariness.*

– Pierre Bourdieu, *Outline of a Theory of Practice*

This chapter will discuss the implementation of the state of emergency in France by the sovereigns. While doing that, I will handle first the legal position and property of the state of emergency in the French constitutions. To do that, I will cover the historical cases of state of emergency in France, especially after the inurement of the Constitution of 1958. Thus, in the first part of this chapter, I will focus on their historical conjunctures and investigate what their effects were on political, economic and social conditions in two countries. Even though there was not so much intensive domination of the government or the president, namely the sovereigns, over the economy in the

past cases of the state of emergency in France, we can see the ways and methods how the sovereigns mobilized the (de jure) state of emergency to resolve the crisis regardless of its origin. The examples of the state of emergency in the past will show also how the institution of the state of emergency developed and how the constituents of sovereignty had positions during these exceptional cases. At this point, the phenomenon state of emergency as a legal tool was used for a reaction to the chaos or turmoil caused by the Algerian Problem at the beginning. However, by time, the state of emergency changed its characteristics and dimension as we will see in this chapter.

Right after, I will talk about the last state of emergency declared after the terrorist attacks in 2015 and to what extent the sovereigns took part in the field of the economy by using the state of emergency. As stated before, even in the last state of emergency, the intervention of the French sovereigns did not reach extreme dimension; however, we will see the sovereigns tried to use the existence and tools of the state of emergency against some economic problems. Thus, we can say that this chapter's importance comes from the fact that state of exception with its legal branches have been almost every time used to consolidate the power of the state or government over the political or economic system. However, we will see this consolidation by the state of emergency do/could not reach the extreme dimensions, at least in the field of the economy.

#### § 4.1 The State of Emergency in and after the Constitution of 1958

In France, the term “state of emergency” is remarked at Article 16 of the Constitution of 1958 which created the Fifth Republic.<sup>1</sup> The constitution was adopted in 1958 by the referendum and it offers some extraordinary powers (*pouvoirs exceptionnels*) to the president which generates a kind of state of exception since the president, if he or she could obtain these powers, could have an opportunity to move relatively free to arrange in the subjects which are granted to the president's authority. The president should take consent from

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1 French Republic. “Constitution of the Fifth Republic.” Article 16. <http://www.assemblee-nationale.fr/connaissance/constitution.asp>

the Assemblies in which area he or she would work and think to make some changes. However, these authorities are given to the president after the consultation with the Prime Minister, the presidents of both Assemblies and the Constitutional Council (*Conseil Constitutionnel*).<sup>2</sup> When we look at that point, it can be noticed that the exceptional powers are indeed limited to a certain extent by the constitution itself. For example, the Constitutional Council should be asked for the precautions which would be measured by the President. Or the National Assembly could not be dissolved during the state of emergency. In contrast, the assemblies should meet in accordance with the law (*ipso jure*). Article 16 includes some significant points for granted authorities to not only the president but also some official groups and organizations; for instance, the Constitutional Council is one of them. It contains the President, the presidents of the National Assembly and the Senate, and sixty members of each assembly.

Article 36 of the Constitution remarks the state of siege (*état de siège*) which means the President can put enforce a decree law (*décret*) in a specified subject. This law is valid for twelve days, and it can be only extended by the consent of the Parliament. In general, this article may be carried into effect when there is a foreign threat or a war; and under this condition, military authorities could undertake the authorities of police if they regard there is a necessity. When this article is applied, some basic liberties could be suspended; for example, freedom of assembly or legal searching for private spaces could be restricted and limited. Decree laws may be issued by the President of the Republic or by the Prime Minister. In some cases, the consent of the Council of State is compulsory for the enactment of the decree whereas the most important decrees are signed by the President of the Republic in the Council of Ministers and the consent of the Council of State is not sought. These laws may be related to general or individual issues; and thus, they are regulatory or individual acts. According to Article 37-1 of the 1958 Constitution, statutes and

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2 French Republic. "Constitution of the Fifth Republic." Article 16. <http://www.assemblee-nationale.fr/connaissance/constitution.asp>

regulation carried out by the decree laws are subject to limited purposes and duration.<sup>3</sup>

Retrospectively, the origin of the state of emergency in France is based on the Act of State of Emergency (*état d'urgence*) in 1955, in the period of the Fourth Republic. The law could be put into force as a decree by the President. The law was giving extraordinary powers and authorities to the military to undertake many authorities and tasks of the civilian authorities. Article 12 of this act permits a power delegation from the judiciary to military justice for some specific criminal events, which are specified by a decree. State of emergency declared by the President lasts for only twelve days, and the extension of the period of the state of emergency depends on the allowance of the Parliament. To extend the period, the Parliament should enforce a law if it is necessary according to it. This law also offers some extraordinary powers to the Minister of the Interior; for instance, the minister can allow the officials for house arrests without asking the legislative branches. Also, the prefects, who are representative of the state in regions, are endowed similar exceptional authorities. For example, they have the authority to ban or control the meetings or declare curfew. A decree based on this act allows authorities for searches and measurements, and censorship and control on media, press and artistic activities without the permission of the judiciary.

#### 4.1.1 *States of Emergency in France, from Yesterday to Today*

Historically, this act was put into force during the period of separatist/independentist upheaval in Algeria in 1955, where it was the dominion of the French Republic. This law was constituted the basis of the framework of the state of emergency in France. The Algerian War had been started in 1954 by some armed groups led by the National Liberation Front (FLN). The first state of emergency was declared on 3 April 1955 against the rising intensity of the Algerian upheaval even though the country was not in a war.<sup>4</sup> This emergency

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3 French Republic. "Constitution of the Fifth Republic." Article 37. <http://www.assemblee-nationale.fr/connaissance/constitution.asp>

4 Hellio, Maïté. "Etat D'urgence: Quand L'exception S'inscrit dans la Durée". 2016, <https://www.nouvelobs.com/politique/20160420.OBS8922/etat-d-urgence-quand-l-exception-s-inscrit-dans-la-duree.html>

lasted for six months, and it was dissolved by the parliament on 1 December 1955. During that period, the military acquired some authorities and allowances. The period was very useful for the military because the military officials were in favour of immediate interference in Algeria and the most important way for this aim was to increase the numbers of the French soldiers in Algeria. The aim was realized during the state of emergency period, and the number of soldiers reached 200,000 in early 1956, immediately after the emergency period.

The second proclaiming of the state of emergency was caused, again, by the unrest in Algeria; but this time, that was an attempt of coup d'état. This movement has also been called Algiers Putsch or May Crisis. The upheaval had turned to a battle, and the seriousness of the independentist movement increased. Also, the new coalition government in France led by Pierre Pflimlin had an aim to make some changes in Algerian politics of the French Republic.<sup>5</sup> These intentions of the government generated some restlessness in some military officials and groups. While the officials in Algiers began to prepare the coup plans (Operation Resurrection); they were supported by the French settlers in Algiers. The army sent an ultimatum to the government in Paris as that the French state should not abandon Algiers, and the French settlers started to demonstrate in the streets in Algiers. The fear that the new government of Pflimlin would weaken the fight was a betrayal in the eyes of the army and the French settlers.<sup>6</sup> The main aim of the army was to take the control and authorities of the government because the government was not capable and did not intend to support enough the conditions and movements of the army in Algeria. The army was settled in Corsica, and it seemed they were ready to take action by landing from the island. The President and the parliament agreed on proclaiming the state of emergency on 16 May 1958. In contrast to the first one, the emergency measures directed against the French settlers and the French

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5 Wall, Irwin M. *France, the United States, and the Algerian War*. Berkeley and Los Angeles: University of California Press, 2001. 138.

6 Laponce, Jean A. *The Government of the Fifth Republic: French Political Parties and the Constitution*. Berkeley and Los Angeles: University of California Press, 1961. 6.

armed forces in Algiers.<sup>7</sup> Also, the former Governor of Algiers General Jacques Soustelle. However, his first aim to persuade General Charles de Gaulle to return to the leadership of the Republic. He worked to affect the other members of the coup preparation, and he succeeded in realizing his aim. After many discussions in the army and in the parliament, de Gaulle was asked if he could accept to be the leader of the Republic. That de Gaulle accepted the offer opened a new era for the French state. According to Laponce, the Fourth Republic was not lacked talented politicians because it realized some important achievements for the modernization of the economy after World War II, and the development of European integration.<sup>8</sup> According to de Gaulle, the constitution was not so strong in terms of especially the authorities of the presidency. The President of the Republic, René Coty stated in the parliament that the nation had been almost in the civil war; to mitigate the turmoil, he asked de Gaulle to cooperate with him to investigate what was needed to restore the country and the institutions of the Republic.<sup>9</sup> De Gaulle had some conditions to undertake this duty. He was asking that a new constitution was absolutely necessary to create a powerful presidency and if he would assume the duty to be chief of the Republic, he would be granted some extraordinary powers for the six-month period. While these conditions were accepted by President Coty, Prime Minister Pflimlin resigned and Coty, on the following day, “called upon that most illustrious of Frenchmen to form a new government”.<sup>10</sup>

The cabinet formed by de Gaulle was approved by the National Assembly in June, and he was endowed by an authority to rule the country by decrees the for six-month period. This situation gave exceptional powers to de Gaulle; but he kept blaming the Constitution of the Fourth Republic. He formed a council to work on the new constitution. It is an important point that during the exceptional ruling of the country under de Gaulle, the country would be

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- 7 Anderson, Grey. “The French Emergency”. 2015. <https://www.jacobinmag.com/2015/11/paris-attacks-hollande-state-of-emergency-de-gaulle-algeria-isis-terrorism/>
- 8 Laponce, *The Government of the Fifth Republic: French Political Parties and the Constitution*, 6.
- 9 Fenby, Jonathan. *The History of Modern France: From the Revolution to the War on Terror*. London: Simon & Schuster, 2013. 396.
- 10 Haine, Scott W. *The History of France*. London: Greenwood Press, 2000. 180.

prepared to accept or not the new constitution. Even though many politicians who feared a new turmoil were in favour of the new constitution, some politicians were insistently objecting the new constitution. The most important figure of this group was François Mitterrand, prospective President of the Fifth Republic, and he published his ideas about the constitution in 1964, titled as *Le Coup d'État Permanent* (The Permanent Coup d'Etat). The most critical objection was against Article 16, giving the President extraordinary powers if the state of emergency was declared. However, the referendum was held on 28 September 1958, and the new constitution was accepted by 79.2% of the voters.<sup>11</sup> Besides with the approval of the constitution, it meant de Gaulle would be the new President of the Republic.

#### 4.1.2 *Algeria, Again*

In 1961, the country was again under threat from Algeria again. The Algerian War had come to the boil for two sides. On 8 January 1961, French people held a referendum to decide whether or not the Algerian people had a right to make their own decision to be independent. As a result of the referendum, self-determination was approved by 75% of the voters.<sup>12</sup> President de Gaulle charged Prime Minister Michel Debré to negotiate secretly with the FLN. However, some retired generals in Algeria planned a coup to overthrow de Gaulle and to establish a military junta in France, which would maintain the war in Algeria against anti-colonist groups led by the FLN. This movement was named as the Algiers Putsch or Generals' Putsch. The General took action on 21 April 1961 in Algeria and their movement was over on 26 April 1961. The plan of the coup had two steps; firstly, the operation would have started in Algeria, and the Algerian major cities such as Algiers and Oran would have been captured. Secondly, Paris would have been seized after the completion of the first phase.<sup>13</sup> However, while the military officers and commanders in the cities of

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11 Nohlen, Dieter and Philip Stöver. *Elections in Europe: A Data Handbook*. Baden: Nomos. 674.

12 *Ibid.*, 674.

13 Connor, Ken and David Hebditch. *How To State A Military Coup: From Planning To Execution*. New York: Skyhorse, 2009. 65-70.

Algeria refused to join the plan of the retired generals, Prime Minister Debré learned that there was a preparation for coup. Also, the putsch news spread into the country, and it created great confusion and misinformation; for example, some corps in France would join the coup or some cities would support the operation.<sup>14</sup> On 22 April, after the three rebel generals of the coup –Challe, Jouhoud and Zeller- declared that the army seized the control of Algeria and Sahara, President de Gaulle in the Council of Ministers proclaimed the state of emergency. In the meantime, a lot of leftist groups, including left-wing parties and the Human Right League (*Ligue des Droits de l'Homme*) decided to demonstrate against the attempted coup and called their supporters.<sup>15</sup> This was the first proclaiming of the state of emergency based on Article 16 of the Constitution of the Fifth Republic. It is worth to note while the state of emergency was declared against the attempted coup of the retired generals, on 17 October 1961, the emergency law was implemented to impose a curfew for French Muslims who demonstrated in Paris and attacked by the police, and many of the demonstrators were killed under the police attack.<sup>16</sup> Under the exceptional powers of the President, the state of emergency lasted until 15 July 1962 without parliamentary control. However, the order of the president extended the state of emergency until 31 May 1963, when the Algerian War had been over.

The next state of emergency was a regional one. In 1984, in New Caledonia, where it is an oversee and a special (*sui generis*) part of France, an independentist movements took place.<sup>17</sup> On 12 January 1985, the High Commissariat of the Republic in New Caledonia proclaimed the state of emergency for 12 days. After the completion of this period, the emergency was lasted to 30 June 1985 by the law of 25 January 1985. This emergency act created a discussion on

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- 14 Brizzi, Riccardo. *Charles De Gaulle and the Media: Leadership, TV and the Birth of the Fifth Republic*. Cham: Springer, 2018. 179.
- 15 “Les Appelés en Algérie et le Putsch d’avril 1961.” *Histoire Coloniale*. 12 April 2011. <https://histoirecoloniale.net/les-appelles-en-Algerie-et-le.html>
- 16 Nelson, Libby. “France Has Declared a State of Emergency, but the Law Has an Ugly History”. 14 November 2015. <https://www.vox.com/world/2015/11/14/9736288/paris-attacks-state-of-emergency>
- 17 Atkin, Nicholas. *The Fifth French Republic*. London: Palgrave MacMillan, 2004. 153.

whether the 1955 Law for emergency was in conflict with the 1958 Constitution. The Gaullist political party the Rassemblement pour la République (Rally for the Republic) led by Jacques Chirac, prospective President of the Republic, appealed to the Constitutional Council so that the state of emergency in New Caledonia was based on the 1955 Law and it was not in accordance with the 1958 Constitution.<sup>18</sup> However, the Constitutional Council did not accept this appeal and rejected it by noting that the 1955 Law is not contrary to the Constitution of the Fifth Republic (Conseil Constitutionnel). This declaration of the state of emergency was followed by the proclaiming of new regional states of emergency in the islands of Wallis and Futuna, belonged to France in Pacific, on 29 October 1986 and in Windward Islands, a part of French Polynesia, on 24 October 1987 to prevent the independentist turmoil.

#### 4.1.3 *Paris is Burning*

November of 2005 Paris witnessed a huge riot from the banlieues (suburbs) in the north and the northeast. The events started through the death of two North African people – Bouna Traoré and Zyed Benna - who was chased by the police when the police were performing identity check on citizens. These two young men died because they were electrocuted when they were escaping and trying to climb to an electrical substation in Clichy-sous-Bois, the Paris suburb in the northeast, then the news of their death triggered riots in the places where mostly Muslim-origin French people lived.<sup>19</sup> Firstly, the violent demonstrations spread to the other regions of the Île-de-France and then to the other major cities of the country by 3 November. After about thousand vehicles, dozens of public and private buildings were set on fire, President Jacques Chirac declared the state of emergency on 8 November 2005. This situation allowed the government “to enforce a night-time curfew, search per-

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18 French Republic. “Décision n° 85-187 DC du 25 janvier 1985”. <https://www.conseil-constitutionnel.fr/decision/1985/85187DC.htm>

19 “Timeline: French riots.” *BBC*, 14 November 2005. <http://news.bbc.co.uk/1/hi/world/europe/4413964.stm>

sons and premises without a court warrant, outlaw public gatherings, and censor newspapers and other media.<sup>20</sup> 9 days later than the announcement of the state of emergency, the police declared the riots came to an end; during this period, approximately 9,000 vehicles were burned, more than 2,800 people were arrested and 126 police and other officials injured, and the total monetary damage was around almost 200 million Euros (250 million USD).<sup>21</sup> However, the state of emergency was extended on 21 November 2005 for three months by the approvals of the Senate and the National Assembly. In response to that, as in 1985, whether the state of emergency is legal and 74 law professors with the Green Party started to claim that the state of emergency is not legal, and it should be ended. However, the Council of State, the most prominent administrative body of the country, refused all these objections and it decided that the three-month state of emergency was a guarantee to mitigate the following unrest and it was legal.

Indeed, while the social and political sides of the riot have discussed in French history, but its economic side should be reconsidered and brought to the minds. Even though the source of the riot looks as based on three deaths and a kind of mass ethnic reaction to that affair, the reaction was including socio-economic and political economic properties. When we look at the structure and characteristics of the northern suburbs of Paris, some of them are full of low-income individuals and families. Many members of this group are from different ethnic groups than Europeans. It could be noticed that those people had regarded themselves as politically, socially and economically excluded. If we look at the history of violence in France, in the suburbs, we can see that this riot was not the first one. We can make a list from “the summer of 1981, riots in banlieues of Paris on September 1995, in May 1996, December 1997 and 1998, May 1999, September 2000, July and December 2001, and January and October 2002”.<sup>22</sup> The unrest has continued after that event in 2006, 2007-2009, July 2009, July 2013, July 2015, March 2016, March and May 2017, and ongoing Gilets Jaunes (Yellow Vests) protests since November 2018. However,

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20 Allport, Alan. *Jacques Chirac*. New York: Infobase Publishing, 2007, 16.

21 Ibid., 16.

22 Angéil, Marc and Cary Siress. “The Paris Banlieue: Peripheries of Inequity.” *Journal of International Affairs*, vol. 65, no. 2, 2012. 57–67.

the events in 2005 were the first riot causing a declaration of the state of emergency without having any military characteristics.

When the ill-fated affair happened, many individuals from that group lost their control, and they obviously attacked to some materials and properties. We could not know whether they were anti-rich, anti-property or anti-capitalist because we do not have sufficient pieces of data; however, they transferred their angriness to anti-property actions. That angriness was clearly strengthened and intensified with exclusion and so marginalization. At this point, the state was obliged to interfere with that situation by declaring the state of emergency.

## § 4.2 The Contemporary State of Emergency in France

### 4.2.1 *What Happened There*

November of 2015 created a great shock in the public opinion across the world by the terrorist attacks in different districts of Paris. The attacks began around 9 pm on Friday 13 November with suicide bombings outside of the Stade de France when the national football teams of France and Germany faced each other, and the then president of the republic François Holland was among the audience. These attacks were followed by mass shootings, suicide bombings and hostage-takings in the Bataclan theatre and Boulevard Voltaire. In total, the terrorists killed 130 people, 89 people of them were at the Bataclan theatre.<sup>23</sup> The number of injured people were also very dramatic with 413 people while around one fourth in a serious situation.<sup>24</sup> Even though the country had been undertaking high alert against any possible terrorist attack after the attacks on Charlie Hebdo, a humour magazine, and a Jewish market in Paris in

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23 “Paris Attacks: What We Know So Far.” France 24. 15 November 2015. <https://www.france24.com/en/20151115-paris-attacks-bataclan-what-we-know-attacker-victims-arrests-belgium>

24 Steafel, Eleanor et al. “Paris Terror Attack: Everything We Know on Saturday Afternoon.” *The Telegraph*. 21 November 2015. <https://www.telegraph.co.uk/news/worldnews/europe/france/11995246/Paris-shooting-What-we-know-so-far.html>

January 2015 that left behind 17 dead and 22 wounded people, these attacks shocked the world public opinion.<sup>25</sup> The responsibility of the Attacks in Paris was assumed by the Islamic State of Iraq and the Levant (ISIL) after a very concise time.<sup>26</sup> They declared the aims of the attacks as a retaliation against the French airstrikes on the places of ISIL in Iraq and Syria.<sup>27</sup> When we look at the influences of the attacks, we see that these attacks were the most destructive and deadliest one for France since the end of the World War II and for Europe since the train bombings in Madrid in 2004, assumed by Al-Qaida and left behind 193 dead.<sup>28</sup>

President Hollande stated that they evaluated these attacks of the ISIL as an ‘act of war’, which means a cause of war.<sup>29</sup> However, this statement was not so clear because it was possible to interpret that speech as French authorities had not been fighting against the ISIL targets and members. Notwithstanding, the reaction of the state to these attacks would have been serious and a bit harsh inside of the borders. At the night of the attacks, President Hollande stated that a state of emergency was declared across the country.<sup>30</sup> As mentioned before, the President has an authority to proclaim the state of emergency without any permission from another institution by referring Article 16

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- 25 Randolph, Eric and Simon Valmary. “Gunmen Kill More Than 120 in Wave of Attacks Across Paris.” *AFP*. <https://www.yahoo.com/news/least-120-dead-paris-attacks-investigation-source-pta-013205822.html>
- 26 Castillo, Marino. “Paris Suicide Bomber Identified; ISIS Claims Responsibility for 129 Dead.” *CNN*. 16 November 2015. <https://edition.cnn.com/2015/11/14/world/paris-attacks/>
- 27 “Paris Attacks: Day After Atrocity – As It Happened.” *The Guardian*. 14 November 2015. <https://www.theguardian.com/world/live/2015/nov/14/paris-terror-attacks-attackers-dead-mass-killing-live-updates>
- 28 Lynch, Suzanne. “Europe’s Open-Border Policy May Become Latest Victim of Terrorism.” *The Irish Time*. 19 November 2015. Accessed 14 November 2017. <https://www.irishtimes.com/news/world/europe/europe-s-open-border-policy-may-become-latest-victim-of-terrorism-1.2435486>
- 29 “Hollande says Paris attacks ‘an act of war’ by Islamic State.” *Reuters*, 14 November 2015 <https://www.reuters.com/article/us-france-shooting-hollande/hollande-says-paris-attacks-an-act-of-war-by-islamic-state-idUSKCN0T30JG20151114>
- 30 “What Does a State of Emergency Mean in France?” *France 24*, 15 November 2015. <https://www.france24.com/en/20151115-what-does-france-state-emergency-mean>

of the Constitution; however, the duration of this emergency is 12 days. To extend this period, the decision and ratification of the parliament (two branches: The Senate and the national assembly) should be received, and this extension can be for 3 months. Surely, the parliament granted the authorization for the 3-month state of emergency. This state of emergency, as in previous ones, was including many serious and problematic precautions such as forbiddance of public demonstrations, intervention to telecommunications and permission to the police to make a search without a warrant. Even though many of them were thought as problematic, the bureaucracy and state elites asserted that these measurements were extremely necessary to fight effectively against terrorism. Besides with the internal measurements, on 15 November, the French airstrikes launched the most intensive bombings Syria of Operation Chammal to ISIS targets in Raqqa.<sup>31</sup> The operation had begun in September 2014 and its name was referred to a wind seen around Iraq.<sup>32</sup> Five days after of the attacks, on 18 November, Belgian-Moroccan Abdelhamid Abaaoud, the suspected leader of the attacks, and his two fellows were killed in Saint-Denis in a police raid.<sup>33</sup>

In the direction of the Prime Ministry, the measurements and precautions that could be taken were reported after the January 2015 attacks in Paris targeting Charlie Hebdo and Jewish supermarket; and the state of emergency was mentioned as one of the possible measurements.<sup>34</sup> However, the Islamist attacks in France did not stop and could not be prevented; so, the November 2015 attacks opened the way going to the countrywide state of emergency. French people and the state got reacquainted the state of emergency ten years

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- 31 Rubin, Alissa J. and Anne Barnard. "France Strikes ISIS Targets in Syria in Retaliation for Attacks." *The New York Times*, 15 November 2015. <https://www.nytimes.com/2015/11/16/world/europe/paris-terror-attack.html>
- 32 "Irak: L'Opération Française S'Appelle Chammal." *Le Figaro*, 20 September 2004. <http://www.lefigaro.fr/flash-actu/2014/09/20/97001-20140920FILWWW00056-l-operation-francaise-en-irak-baptisee-chammal.php>
- 33 "Paris Attacks: 'Ringleader' Abdelhamid Abaaoud Killed in Raid." BBC, 19 November 2015. <http://www.bbc.com/news/world-europe-34867615>
- 34 Vitkine, Antoine and Bruno Dive. *Attentats au Coeur de Pouvoir*. 2015. [http://www.film-documentaire.fr/4DACTION/w\\_fiche\\_film/47266\\_1](http://www.film-documentaire.fr/4DACTION/w_fiche_film/47266_1)

later. While the last one had derived from a suburb riot around Paris, this time was a result of a massive terrorist attack. In the first three days of the state of emergency, through the special measures, the police raided 168 homes, and 104 people were placed under house arrest while 23 people were arrested, and 31 weapons were seized by the police.<sup>35</sup> This amount would have reached high numbers in a two-year period of the state of emergency with more than 4600 warrantless raids, 646 people in custody and 625 firearms.<sup>36</sup> The emergency was totally extended six times by the approval of the parliament until 1 November 2017 when the Anti-Terrorist Law took place the state of emergency. Even though the state of emergency was dissolved in the country, the new law created major critiques and discussions about the role and power of state and violation of human rights. However, as this thesis aims, I will go back to the period of the state of emergency. As mentioned in the previous chapter, the state of emergency was proclaimed by President Hollande for 12 days, and then the parliament extended the period of the state of emergency. The responsibility of forming the juridical framework and control of arrests belonged to the ‘Direction of Public Liberties and Juridical Affairs, an organ of the Ministry of Interior.

#### 4.2.2 *What It Means to Economy*

Indeed, we do not see very tangible and direct intervention of the authorities by employing the tools of the state of emergency unlike in the Turkish case; when we look at these applications and implementations in France, we can see that the authorities brought the de jure state of emergency and the economic

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35 Chrisafis, Angelique. “France Under First Nationwide State of Emergency since 1961.” *The Guardian*, 16 November 2015. <https://www.theguardian.com/world/2015/nov/16/france-nationwide-state-of-emergency>

36 Nordstrom, Louise. “In Numbers: Behind France’s Two-Year State of Emergency”. *France 24*. <https://www.france24.com/en/20171031-france-anti-terror-law-numbers-record-long-state-emergency-macron-civil-liberties>

state of emergency together and made use of the tools of the state of emergency.<sup>37</sup> Both Hollande and Macron have used the term “economic state of emergency”, and they tried to use the governance tools to handle the current economic problems of the French economy. However, the critical side of the thesis has been to show the juncture of both the implementation of the state of emergency and the regulation of the economy. So, even though the economic causes were not the motive of the declaration of the state of emergency, the authorities are prone to use emergency politics, as we see. When we look at the course of economy of France, it is seen that even though it was experiencing some economic troubles, they were not so devastating for the economy of the country. However, when we talk about France, it is very significant to touch upon the other European powers’ economic situation, as I mentioned before. Even though the declaration of the state of emergency, the economy of France was not seen so affected by it. The country performed some economic fluctuation; so, the state of emergency could be regarded as both an obstacle and a rescuer in the eyes of some political elites.

When we look at, for instance, the external debt of France, we can see some increase in that amount during the state of emergency period in spite of irregularity. On the other hand, we can notice that in the first half of the state of emergency, the foreign direct investment undertook certain significance decrease. However, it is clear that the new election campaign and the optimistic wind coming with Emmanuel Macron and his political movement. Since the main problem of the French economy was the intensive unemployment, the French authorities preferred to interfere with that problem during the state of emergency by referring to the term “economic state of emergency”.

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37 Saint-Bonnet, François. “The State of Exception and the Terrorist Threat – An Obsolete Combination”. In *The Rule of Crisis*, edited by Auriel, Pierre, Oliver Beaud and Carl Wellman. Cham: Springer, 2018. 61-70.

Table 4.1 Gross External Debt of France (billion Euro)<sup>38</sup>

	2015 Q1	2015 Q2	2015 Q3	2015 Q4	2016 Q1	2016 Q2	2016 Q3	2016 Q4	2017 Q1	2017 Q2	2017 Q3	2017 Q4
External Creditors	1,202	1,197	1,184	1,165	1,206	1,209	1,198	1,154	1,177	1,173	1,151	1,131
Long-term	1,633	1,728	1,708	1,698	1,801	1,857	1,874	1,815	1,812	1,822	1,857	1,847
Short-term	470	515	488	485	490	493	484	453	474	500	465	454

Table 4.2 Foreign Direct Investment in France (million USD)<sup>39</sup>

	2015	2016	2017
FDI Inward Flow	45,347	35,165	49,795
FDI Stock	687,374	704,890	874,521
FDI Stock in GDP	28.5	28.3	n/a

Before the attacks on 13 November, the French economy was about to get over slowly the economic stagnation which it undertook during the recent years. Especially after the Global Crisis in 2008, the country could not succeed in stopping the increase in the unemployment rate. Even though, since the crisis, the averaged unemployment rate of the European Union was a bit higher than the rate of France, by 2014, the average rate of the EU caught the French one. While the unemployment rate of the EU began to exhibit a dramatic drop by that date, the French state showed the highest point at the unemployment rate in the country for recent years. In 2015, the unemployment rate across the EU was 9.39 while it was 10.36 in France. In the same year, this rate was 4.62 in Germany. However, in spite of some fears and warnings, the unemployment rate of the country started to show slightly decrease by 2016. It is now debatable whether there is an effect of the state of emergency and emergency politics of the government on this drop; however, it seems that the state of emergency caused or at least triggered some significant changes in the French economy.

38 Banque de France. "General Government Debt", <http://webstat.banque-france.fr/en/browseTable.do?node=5384932&periodSortOrder=ASC>

39 Santander Trade. "France: Foreign Investment", <https://en.portal.santandertrade.com/establish-overseas/france/foreign-investment>

The most important example of the relationship between the government and the economy is the declaration of the state of economic emergency declared by then President François Hollande on 18 January 2016. Even though it does not seem legally related to the state of emergency itself, it might be recognized that the government resorted to the discursive way while they intended to make an action for the recovery of the economy. This was the program which aimed at boosting the stagnant and choked French economy, and it seems that the name of “state of emergency” was used to draw attention to the serious situation of the economy. This package was composed of a 2 billion-Euro job creation plan, and this plan was thought and regarded as emergency economic policies to the market dynamics. According to this package, firms that have fewer than 250 employees would receive subsidies from the state if they hire a young or unemployed person for six months or more.<sup>40</sup> Additionally, the government created approximately 500,000 vocational training schemes. The President himself stated how the government could find the sources to finance this economic package. According to him, this 2 billion Euro-program will be supported without any new tax, but it will be afforded by money coming from the savings in other areas of public spending.<sup>41</sup> This package is very important for the President because he described the economic and social situation were under threat by noting that social emergency led by unemployment is very severe as much as the emergency produced by terrorism.<sup>42</sup>

These interventions pose a simple question whether the free market even in continental Europe could not correct its own dynamics. It is not pursuant to explain this question with only one example. However, as I handled and pointed out in another chapter which focuses on the relationship between economy and emergency politics, we can see in this example how the state or

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40 BBC. “Hollande Says France in State of Economic Emergency”, 18 January 2016. <https://www.bbc.com/news/business-35343611>

41 CNBC. “French President Declares Economic Emergency”, 18 January 2016. <https://www.cnbc.com/2016/01/18/french-president-declares-economic-emergency.html>

42 Alderman, Liz. “François Hollande Aims 2 Billion Euro Plan at France’s Economic ‘Emergency.’” *The New York Times*. 18 January 2016. <https://www.nytimes.com/2016/01/19/business/international/hollande-aims-2-billion-plan-at-frances-high-unemployment.html>

the government could take over a role to mitigate any disruptive situation in the economy in any state of emergency which is either created by some external factors or by the state or the government itself. This kind of package is known or called “economic support package”, not a bailout package at all in that level; however, it raises a question to what extent it is compatible with the free market understanding. Indeed, this package and set of policies show that the immanent and embedded characterization of ‘contemporary liberal democracies’ that include a significant scope of economic emergency powers.<sup>43</sup> It is clear that there is not a need to declare a legal state of emergency to implement economic emergency powers in liberal countries. However, the existence of the political power concentrated in the hands of the executive branches, the legal ground of new policies’ enforcement and possible consent of the people who are subject to the state of emergency and emergency laws create more unimpeded way and legal means to enforce such kind of social and economic laws.

In spite of lack of legal basis of the state of economic emergency, President Hollande and his team regarded and posed that as a complementary of the de jure state of emergency. Simply, when we look at his following speech, we can notice this kind of mindset: “I believe that, confronted with facing the disorder of the world, an uncertain economic outlook and persistent unemployment, we must also declare an economic and social state of emergency”.<sup>44</sup> When we look at the historical perspective of this reform package, it was followed by the plan for change in the Labor Law (Code du Travail) of France by the initiative of the cabinet of then Prime Minister Manuel Valls from the Socialist Party. The Labor Law is known as the ‘sacred cow’ of France, and it is very famous with its over 3,300-page book. It has been considerable for the working class (with all strata) of the country. Especially, through important changes during the 2000s, the power of the code was strengthened, and the conditions of the working class were improved. However, some discussions about the effects of the code on the economy began to show significant increase, specifically after

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43 Scheuerman, *The Economic State of Emergency*.

44 Woods, Mike. “Hollande Pledges 2Bn Euros to Face Economic and Social State of Emergency.” *RFI*, 18 January 2016. <http://en.rfi.fr/france/20160118-hollande-pledges-2bn-euros-face-economic-and-social-state-emergency>

the Global and Euro Crisis at the end of the decade. While many employees regard the law as a guarantor for their long-term job security, numerous employers and some officials criticize the code as an obstacle before the economic growth of the French economy and as a primary cause of high unemployment rate in the country because they blame it for making it expensive to take on new employees and difficult to discharge them. Prime Minister Valls, the head of the reformist movement in the law, was blaming the code for creating “barriers to the labor market”. According to him, the change aimed at framing more flexible hiring and firing rules in France as applied in Germany, the UK and Scandinavian countries.<sup>45</sup>

The French government’s plan was met by serious street protests and demonstrations. From workers to students, a large mass poured into streets to protest the ‘reform’ of the government on the law. Of course, under the state of emergency, these protests were in conflict with the ‘measurements’ of the emergency governance; so, some interventions and precautions against the protestors and demonstrators were above the ‘normal’ to a certain extent. According to the Amnesty International’s briefing, the French authorities used the emergency laws by putting 639 measures to prevent individuals from taking place in public demonstrations, and many of them were related to the protests against the Valls’s reform in the Labor Law.<sup>46</sup> In spite of massive protests against the reform package for the law, Prime Minister Valls stated that the reform in the code was necessary because of its recovering effects on the French economy. In addition to the street demonstrations, some parliamentary members of the Socialist Party (Valls’s own party) tried to block any change in the law; however, the determinant attitude of Valls opened the way for the change in the law. Valls, after saying “I think it’s time to stop playing

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45 Lichfield, John. “François Hollande Attempts to Slay France’s Sacred Cow Labour Laws”. *Independent*, 6 March 2016. <https://www.independent.co.uk/news/world/europe/francois-hollande-attempts-to-slay-frances-sacred-cow-labour-laws-a6915716.html>

46 “France Using State of Emergency Against Peaceful Protests, Amnesty Says.” *BBC*, 31 May 2017. <https://www.bbc.co.uk/news/world-europe-40105183>

around”, resorted to Article 49.3 of the constitution to bypass the parliament.<sup>47</sup> This article gives permission to the prime minister of the Republic to pass a law without taking consent of the Parliament.<sup>48</sup> In the legal ground, there is not a necessity for having a state of emergency to resort to that article. As described by Marc Perelman, it seems that it is ‘nuclear weapon’ of the French politics because it could bypass the parliament in the matter of financial bills and social security financial bills in a while. However, the existence of the state of emergency gave a kind of convenience to pass the law to the government while there were some serious protests outside the parliament. As is seen, emergency politics created an appropriate zone for the government for resorting to in order to quell angry masses.

When we look at the context of the reform or the bill of the Labor Law, we can recognize that it was indeed aiming at taking back some acquisition of the working class from blue collars to white ones. As mentioned in general above, rules of hiring and firing an employee were rather strict for the employers; and this situation was creating ‘some problems’ for them while taking on new ones. Moreover, the bill in the law would permit to be made a specific and local negotiation and bargaining between employers and employees to arrange payments and working hours which was indeed 35 hours a week as a limit; and in general, the hourly pay would be lowered following the changes in the law. If there is a disagreement on a new deal between a company and its staff, the staff would have the power to take a final decision, but it would need to take the consent of unions representing about 30 percent of the workforce via a ballot. Furthermore, the change in the law would give allowance to the em-

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47 Vinocur, Nicholas. “Manuel Valls Defies Calls to Resign, Forces Labor Bill Through Parliament.” *Politico*, 7 May 2016. <https://www.politico.eu/article/france-prime-minister-manuel-valls-defies-calls-to-resign-forces-labor-reform-bill-through-parliament/>

48 French Republic. “Constitution of the Fifth Republic.” Article 16. <http://www.assemblee-nationale.fr/connaissance/constitution.asp>

employers to “use declining economic performance as a justifiable reason for dismissal”.<sup>49</sup> The companies, for sure, must show their capacity to apply this novelty while they have the plan to fire their employees. For example, a company which has 10 or fewer employees can discharge its staff after a one-month drop in its income whereas a company with about 300 staff should wait for three successive quarters of decreasing revenues for dismissal. This would grow up for larger companies while planning any layoff.

The bill, even though, was thought and planned to boost the economy by creating more flexible workfare environment, some changes in the bill before the final version after some serious critiques did not please even the pro-business groups. Firstly, the pro-business people wanted to remove some severance packages paid to workers noticed to have been wrongfully dismissed. Also, the ‘chance’ obtained by the large companies to arrange and negotiate with their employees on the working hours was not given to the small and medium-sized entrepreneurs and companies; however, many pro-business people asserted that those kinds of companies need such sort of flexible work environment to grow up and to create more new job opportunity. Nonetheless, the government and Valls himself recognized that no part could have been satisfied through the bill in the Labor Law. Although the bill could be enforced by the means outside the parliamentary vote, as was mentioned above, the pro-business groups would wish for more pro-business reforms and changes in the law.

The main change in the law was carried out by the government led by the new President, Emmanuel Macron in September 2017, two months before the repeal of the state of emergency. Emmanuel Macron has come to the office as the candidate of the centrist Republic En Marche movement and he promised to carry out numerous reforms triggering the economic growth and removing some obstacles in the statecraft. A reform in the Labor Law was one of them, and he kept his ‘word’ by drafting the law. It is obvious that both the landslide of his party and the existence of the state of emergency gave the opportunity to the new president to make some change and regulate the current system

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49 “Why Have France’s Labour Reforms Proved So Contentious? The Guardian. 26 May 2016. <https://www.theguardian.com/world/2016/may/26/why-france-labour-reforms-proved-so-contentious>

and structure. By the reform in the Labor Law, small companies obtained some particular freedom to be able to negotiate working conditions with the workers; in other words, they have become free of the industry-wide collective agreements negotiated by trade unions.<sup>50</sup> If a small company have fewer than 50 workers, they are able to negotiate with its employees with respect to working hours, payment and overtime without asking a trade union. Indeed that kind of small companies are constituting of 95 percent of all companies in France, and that action was forbidden in the previous form of the law.<sup>51</sup> In this situation, it is obvious that the value and existence of the trade unions have been attempted to decrease by the government itself, and they have been neglected as a mediator or a representative of the workers against or before the employers. Furthermore, the new form of the law is open to encourage the employers for hiring and rehiring employees because of the flexibility in contracts.

### § 4.3 Conclusion

When we look at the French case and the history of the state of emergency, even though the state mechanisms, namely sovereigns, could implement emergency politics to mitigate the effects of crises and to resolve them, it is seen that the economic intervention of the sovereigns through the state of emergency was not extreme or intensive. The interventions mostly became more intensive and severe in political and social areas in accordance with the sources of exceptional situations. Although the main aim of the thesis is not a comparison between cases, rather, to show how the different ways have been used by the sovereigns. Especially when we look at the other de jure state of emergency case in Turkey, we can notice that although the sovereigns can take the control over the ruling mechanisms, the established legal and institutional

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50 “French Labour Reforms: What’s Actually Going to Change for Workers in France.” *The Local*. 22 September 2017. <https://www.thelocal.fr/20170922/french-labour-reforms-whats-actually-going-to-change>

51 Chassany, Anne-Sylvaine. “Emmanuel Macron Pushes Through French Labour Law Reforms.” *Financial Times*. 22 September 2017. <https://www.ft.com/content/a9ad1728-9f68-11e7-9a86-4d5a475ba4c5>

order puts certain limits to prevent the sovereigns for going beyond the current legal system.

Indeed, France is one of the countries that applied the most to the state of emergency. Also, we can almost say the constitution of 1958 created the modern state of emergency and bridge the political structure and the legal structure. Most of them originated from political or social turmoil; so, mostly, the sovereigns preferred to control the actors of the chaotic environments. While doing that, indeed, we do not see a strong willingness to control and discipline the current economic system due to, in my view/findings and to the extent we see, legal and institutional structure and background that did not allow so much the sovereigns to move free relatively. This structure mostly obliged the sovereigns to stay within the borders of legality to a certain extent, especially in economic affairs. In other words, the established legal and institutional order did not allow the sovereigns to reach extreme dimension with their emergency politics at some points, at least in the field of the economy.



## Turkish Case: Historical Background and the Contemporary Example of the State of Emergency

*Die Tradition der Unterdrückten belehrt uns darüber, daß der Ausnahmezustand, in dem wir leben, die Regel ist.*

*The tradition of the oppressed teaches us that the "state of emergency" in which we live is not the exception but the rule.*

– Walter Benjamin, *Theses on the Philosophy of History*

This chapter aims at delving the recent (de jure) state of emergency in Turkey, after the attempted coup d'état in 2016. In addition to the de facto state of emergency in the EU case and the de jure state of emergency in France, the chapter will show how the sovereigns in Turkey mobilised the de jure state of emergency and implemented emergency politics to affect and discipline the economy. Before pointing out how the sovereigns mobilised the state of emergency, I will touch on the historical and legal background of the state of exception applications in Turkey with both kinds: State of emergency and martial law. These parts will show how the sovereigns in Turkey resorted to the

types of state of exception to mitigate the effects of the crises and to resolve them. While doing that, we will see that the sovereigns in Turkey have been prone to use emergency politics under the state of exception, especially, to intervene the national economy and to create a new economic order or phase. These examples are at the regional level as well as at the national level. Even though, in some cases, the sources of the proclamation of the state of emergency or martial law were not economic, the sovereigns could regard it as an opportunity to interfere with the economy. Unlike the French case, we will see the legal and institutional structure and background of Turkey could not prevent the fact that the state of emergency and martial law made rooms for the sovereigns to be a very significant and a dominant actor in the course of economy.

## § 5.1 The State of Emergency in Turkish Legal System

In the 1924 Constitution, the notion of the state of emergency did not take part. In the 1961 Constitution, even though the term the state of emergency is provided, the measures that must be taken was limited for monetary issues and work responsibilities.<sup>1</sup> During the time that the 1961 Constitution was in force, the state of emergency was not ever proclaimed. While the 1924 and 1961 Constitutions were in effect, the authorities appealed to a martial law/state of siege (*sıkı yönetim*) when they faced a case of emergency.

According to Articles 119 and 120 of the Constitution of 1982, the state of emergency could be proclaimed under two conditions. The first one is that when there is a natural disaster or serious economic depression, the President of the Republic could proclaim the state of emergency in one region or in the countrywide for a period of six months, through the Council of Ministers. The second condition is that when violence rises or the public order begins to be disrupted, the President of the Republic could declare the state of emergency in a region or the countrywide for a six-month period, through the Council

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1 Üskül, Zafer. *Olağanüstü Hal Üzerine Yazılar*. İstanbul: Büke Yayınları, 2003. 88.

of Ministers after taking the opinion of the National Security Council.<sup>2</sup> The decision of the state of emergency is delivered to the National Assembly for its approval and the Assembly meet immediately to vote the decision of the President and the Council of Ministers. The Assembly has the authority to extend the period of the state of emergency for four months at maximum in each time or to remove it. All the arrangements, which should be realized and applied by the government, are stated at the Law of State of Emergency (*Olağanüstü Hal Kanunu*). This law was put into force on 25 October 1983, about ten days ago before the transition to the democratic political process. The law indicates which measures should be taken under which circumstances. It specifies the two circumstances which cause the declaration of the state of emergency:

Natural disasters, dangerous epidemic illnesses or severe economic crisis

The emergence of violence that aims at the removal of the fundamental rights and freedoms and the democratic structure, established by the Constitution or the disruption of the public order due to violence<sup>3</sup>

The most important and critical part of the Law is Article 11 because it states that under the state of emergency, declared due to violence, the fundamental rights and freedoms could be limited or stopped. The measurements that could be taken against rights and freedoms include declaration a curfew, the banishment of the right of assembly, and increase of control on media, press and artistic activities. If the state of emergency is valid for one city, the responsibilities belong to the governor of that city. When the state of emergency includes more than one city, the authority is undertaken by an emergency rule governor.<sup>4</sup> If the state of emergency is proclaimed in country-wide, the coordination and cooperation are provided by the Prime Ministry.

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2 Republic of Turkey, “The Constitution of 1982”, <https://www.tbmm.gov.tr/anayasa/anayasa82.htm>

3 Republic of Turkey. “Olağanüstü Hal Kanunu”, 25 October 1983, <http://www.mevzuat.gov.tr/MevzuatMetin/1.5.2935.pdf>

4 The implementation of this governorship was launched in 1989 by the decree law 1987, see Republic of Turkey “Olağanüstü Hal Bölge Valiliği İddiası Hakkında Kanun Hükmünde Kararname”, 10 September 1987. <http://www.mevzuat.gov.tr/MevzuatMetin/4.5.285.pdf>

It is worth to note that the Law of State of Emergency was put into force during the military rule, following the coup d'état on 12 September 1980. This situation gives that a constitutional protection due to the Provisional Article 15 of the Constitution, which denotes that in any case of war, mobilization, the state of siege or state of emergency, the exercise of fundamental rights and freedoms may be partially or entirely suspended to the required extent as long as obligations under international law are not violated.<sup>5</sup> This protection prevents any discussion or objection that the Law of State of Emergency is conflicting with the Constitution.<sup>6</sup>

One of the highly disputed issues in today's Turkey is decree laws of President Recep Tayyip Erdoğan. When we look at the historical voyage of decree laws, its origin based on 1984. Firstly, I have to probe this term in the frame of the Constitution. According to the Law of State of Emergency, during a state of emergency, the Council of Ministers, met under the leadership of the President of the Republic, may issue a decree law about the subjects which are obligated by the state of emergency.<sup>7</sup> The authority for issuing a decree law is granted to the President and the Council of Ministers by the National Assembly in specific areas. The decree laws publishing by the President and the Council of Ministers are offered to the approval of the Parliament. Indeed, there is not a specific timeline or period for this procedure. Until the approval or rejection of the Parliament for a decree law, it remains in force.

## § 5.2 From Martial Law to the State of Emergency

Even though the Law of State of Emergency was put into effect in 1983, Turkish people met the first example of the state of emergency on 19 March 1984 under the rule of the Motherland Party (*ANAP*) and the premiership of Turgut Özal.<sup>8</sup> The state of emergency was introduced in the cities where the martial law was

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5 Republic of Turkey, "The Constitution of 1982", <https://www.tbmm.gov.tr/anayasa/anayasa82.htm>

6 Üskül, *Olağanüstü Hal Üzerine Yazılar*, 92.

7 <http://www.mevzuat.gov.tr/MevzuatMetin/1.5.2935.pdf>

8 Üskül, *Olağanüstü Hal Üzerine Yazılar*. 134.

enforced, issued after the coup on 12 September 1980, was lifted. States of emergency were extended or lifted in these cities except some of them in the southeastern part of Turkey. In 1987, the state of emergency was in effect in 8 provinces of the southeastern part of the country by establishing an emergency rule/governorship; this rule included Bingöl, Diyarbakır, Elazığ, Hakkari, Mardin, Siirt, Tunceli and Van.<sup>9</sup> The cause of the proclamation of the state of emergency was the severe attacks of the Kurdistan Worker's Party (PKK). By the time, Adıyaman, Batman, Bitlis, Muş and Şırnak were added to the list of the provinces ruled by the emergency governorship by 1990.

As I noted in the previous part, before the Constitution of 1982, even though the 1961 Constitution proposed a state of emergency and measurements which could be taken, there was not any proclamation of the state of emergency. However, in spite of the absence of a proclaimed state of emergency, the Turkish State proclaimed and undertook many martial laws before and during the republic. Since exceptional times could (and should) not be limited by the period of the state of emergency, as mentioned before, looking at the period under the martial law will give an important sight for evaluating the voyage of the state of exception as well as the state of emergency. Even though many of the martial laws were proclaimed due to the social and political turmoil as well as the wars, we can find the embedded economic aims or opportunities between the lines.

### 5.2.1 *Fixing the National Economy in World War II*

After the beginning of the World War II, as a reaction of the devastating economic effects of the war, on 20 October 1940, the Republican People's Party (RPP) government took some measurements including the National Protection Law (Milli Koruma Kanunu) into force. This law defines a possible state of exception and of emergency in 3 categories: A general or a local martial law, a possibility of entering a war of the state, and a war between foreign states

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9 Yıldız, Kerem and Mark Muller. *The European Union and Turkish Accession: Human Rights and the Kurds*. London: Pluto Press, 2008. 180.

regarding the Republic of Turkey.<sup>10</sup> The first importance of this law is that it reveals the causes of a possible state of exception and of emergency. The state creates the legal framework for the conditions that necessitate the exceptional politics which could or should be taken by the state itself.

After the death of Refik Saydam, a new prime minister was designated, Şükrü Saraçoğlu, and his ideological position (ultra-nationalism) created critical discussion in the country. The new government of Saraçoğlu passed a very topical tax law in November 1942. This law was called 'Wealth Tax' (Varlık Vergisi). Indeed, this law seemed to aim at applying tax policy like the UK, Germany and the US did during the war; so, the state was expecting to gain million liras by this tax law. However, the separate lists for Muslims and non-Muslims, as well as foreigners, show the different purposes and dimensions of the passing of the law. Many writers think this law was beyond an ordinary taxation law and it was aiming at nationalizing or 'standardizing' the economy.<sup>11</sup> This kind of political economy was rather in accordance with the ideological position of the government of Saraçoğlu. In specific, when we notice that the time, the law was enforced, was included by the most successful period of Axis Powers led by the Nazi Germany, it becomes harder not to agree with those writers and scholars. This period reveals effectively the importance of the state of exception in the management of the economy by the state or government. Even though the Turkish economy was following the statist/étatist economic policy during the shift after the effects of the Great Depression, the government was determinant to establish the indisputable control of the state over the economic actors and the market by the National Protection Law in 1940. However, due to lack of necessary and competent institutions which could have given this opportunity to the state, the government felt it would have to get involved in the process of the economy more directly by the Wealth Tax in 1942.

Faik Ahmet Barutçu, a politician and member of the parliament at that time, notes the speech of Prime Minister Saraçoğlu related to the Law in his memoir; Saraçoğlu says that this law is revolutionary because it will give us

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10 Republic of Turkey. "1940 National Protection Law", Article 1. <http://www.mevzuat.gov.tr/MevzuatMetin/1.3.3780.pdf>

11 Such as studies of Zürcher, Ahmad, Lewis.

our economic independence. He continues; therefore, the foreigners who have held our will be abolished, and we will deliver the Turkish market to Turkish entrepreneurs.<sup>12</sup> The Prime Minister remarked in his speech that they did support neither sovereignty of capital nor one of classes; in contrast, they did so the sovereignty of the people. Perhaps as the most striking statement in the speech, he asserted that they were neither students of Adam Smith, nor apprentices of Karl Marx.<sup>13</sup> Thereby, he, in the name of his government and the state, was rejecting both liberalism and communism. The sovereignty of the (Turkish) people could have been succeeded by only the existence and intervention of the state. According to the law, there would have been commissions in every district centers that would determine who pays how much. After decisions of these commissions, taxpayers would have to pay their taxes in 30 days (two parts in every 15 days) and this tax would have been once. If they were not able to pay their taxes, their assets would have been levied. If they could not pay even in this situation, they would have been subjected to physical servitude. Interestingly, according to the reports of the commissions, the taxpayers in Istanbul composed 54 percent with 62.575 people of the total number of taxpayers across the country (114,368). In Istanbul, 87 percent of the taxpayers was composed of non-Muslim people whereas only 7 percent of them was Muslim.<sup>14</sup> The rest subsumed foreign entrepreneurs. More interestingly, the accrued amount of Wealth Tax of taxpayers of Istanbul was 317,275,642 TL which composed 68 percent of all accrued Wealth Tax.<sup>15</sup> Even though the justification of the law had been declared as to tax high profitability produced by the exceptional war conditions, it was seen that the government considered mostly the non-Muslim people as those who gained high profits in that exceptional period. Many non-Muslim people's assets were levied and sold in low costs while some of them were sent to different places to serve in the expense of their tax dues. Some taxpayers who could not have paid their

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12 Barutçu, Faik Ahmet. *Siyasi Anılar 1939-1954*. İstanbul: Milliyet Yayınları. 263.

13 Neziroğlu, İrfan and Tuncer Yılmaz. "Şükrü Saraçoğlu, 5 August 1942." *Başbakanlarımız ve Genel Kurul Konuşmaları*. Ankara: TBMM Basımevi, Cilt 3, 2014. 141.

14 Aktar, Ayhan. *Varlık Vergisi ve Türkleştirme Politikaları*. İstanbul: İletişim Yayınları, 2008. 140.

15 Ibid., 141-142.

debts were sent firstly to Aşkale, Erzurum whereas the rest were sent to Sivrihisar, Eskişehir to carry out their physical service in the expense of their debts to the state.

It is seen that the state of exception triggered by the war outside the country generated a new legal framework in which the state could control, direct and lead to the domestic economy and economic relationships. While the war was creating and increasing the horror and worry in the country, the state considered that as an opportunity to realize its political economic strategy in accordance with its ideology. The difference between the declared aim of the taxation law and its implementation reveals how the government planned and went beyond the legal framework that it created itself. The state organs moved beyond even the law they put into effect because they explicitly refused to enforce the article related to physical service of the law for the Muslim taxpayers. In other words, according to notes of Faik Ökten, who was the head of the provincial treasury in Istanbul, physical servitude obligation was not imposed on the Muslim groups.<sup>16</sup> What did trigger the government to take kind of these measurements or what did lead it to implement the law in different manner? The answer is not easy unfortunately. It is not very possible to label it as xenophobia, national socialism or fascism as seen in some European political arena. It is clear that Kemalist solidarist-corporatist ideology and mindset was very delicate about the nationalization of the economy and economy's naivety in any exceptional case, war or crisis. In my view, the first cause of this sensitivity derives from the lack of capacity to regulate and direct the economy of the Ottoman Empire during the World War I and the following period. That situation was very fresh in the minds of the political elite of the single-party government. The second cause comes from the desire of Kemalist corporatist ideology to hold different classes together by preventing 'excessive lifestyles' which could disturb the harmony in the society and between different classes.<sup>17</sup> Created exceptional economic change was so dramatic, especially in Istanbul. As quoted by Ayhan Aktar, the value of sold real estates by the taxpayers to pay their Wealth tax was 11, 077,949 TL in Istanbul and 95 percent of

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16 Ökte, Faik. *Varlık Vergisi Faciası*. İstanbul: Nebioğlu Yayınları, 1951. 154.

17 Aktar, *Varlık Vergisi ve Türkleştirme Politikaları*, 158.

these estates were sold by non-Muslim individuals and companies as well as foreigners (non-citizens).<sup>18</sup> 67.7 percent of these estates were bought by Muslim Turkish individuals and companies whereas 30 percent of them was taken by the public companies and institutions. The volume of real estate transfer puts forth the effective dimension of the law on the economic transformation in this exceptional period.

### 5.2.2 *The September Plunder*

By the return to the multi-party system in the 1950 election, the period of the Democrat Party (DP) started. At the early stage of the power of the party, it had positive relationships with different strata of the society such as intellectuals, liberals or non-Muslim groups, or even it tried to find good relations with them. However, the liberal environment of the DP did not last so long because the party was already mixed of different viewpoints and ideologies unlike the RPP, even though the RPP was including different views it could consolidate the masses under Kemalism or Republicanism. Towards the mid-1950s, the country could not renew its relative political and economic recovery and some authoritarian characteristics would have emerged of the DP in different fields. One of the most important affairs that revealed the illiberal side of the DP was the 6-7 September Affairs or the Istanbul Pogrom in 1955. To delve this affair, the Cyprus Quest should be noted and handled because the conflict between Turks and Greeks in the island that created an artificial problem, and this was used to purge Greeks who especially had economic and financial influence in the city. According to the reports of the US Consulate, the number of the Greek population in Istanbul in 1955 was 103,809 while the population of Armenian was 60,260 and there was 76,965 Jews.<sup>19</sup> These groups were accepted as ethnic minorities in the country by the Lausanne Treaty in 1923; however, it is not easy to say that the implementation of the government after this period could afford the rights and requests of the minorities.

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18 Ibid., 203.

19 Güven, Dilek. *Cumhuriyet Dönemi Azınlık Politikaları Bağlamında 6-7 Eylül Olayları*. İstanbul: Tarih Vakfı Yurt Yayınları, 2005. 141.

Towards the mid-1950s, the discussions over Cyprus began to intensify by the notion of the 'Enosis', which means the unification of Cyprus and Greece or dependent on the island to the mainland. This notion accelerated the fear in the Turkish public opinion about the possibility of that the Turkish people could have been the minority in the island. This fear was watching for an opportunity to turn to a grudge against the Greek minority in Turkey. This possibility came true in 1955. While the disagreement between the Turkish and Greek governments over the Cyprus Quest was continuing, an affair emerged in Thessaloniki, where Mustafa Kemal Atatürk was born, lighted the fuse in the Turkish public opinion. According to a news published a journal (*İstanbul Ekspres*), the Greeks bombed the house of Atatürk which was used as a museum.<sup>20</sup> However, that was fabricated news, and they were obviously aiming at provoking the nationalist spirits of the people against the Greek population living in Turkey; so, they achieved their objective. After this news spread in the country, a riot broke out against the non-Muslim people and especially their properties. The attacks were realized in Istanbul and Izmir; but Beyoğlu in Istanbul was the most damaged place by the attackers. Interestingly, the attacks were manipulated by the fabricated news about the bombing of Atatürk's house and it could be expected that the main objective of the attackers was houses and workplaces of Greek people. However, when we look at the total damage of the attacks, we encounter an interesting table. While damaged 2500 workplaces and 670 houses belonged to the Greek community, Armenians' 1000 workplaces and 150 houses, Jews' 500 workplaces and 25 houses and Muslims' 400 workplaces and 40 houses were vandalised.<sup>21</sup> At this point, we can reach two different inferences. The first one is that the groups were attacking to places regardless of checking who owned those places by thinking of all of them belonged to the Greek people. The second one is that 'deviation' in their aim to attack to the Greek places was intentional because they were directed to make people frightened and to show the decisive attitude of 'Turkey'

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20 Akgül, Elif. "6-7 Eylül 1955'i Basın Nasıl Gördü?". *Bianet*. 06 September 2013. <https://m.bianet.org/bianet/medya/149698-6-7-eylul-1955-i-basin-nasil-gordu>

21 Güven, *Cumhuriyet Dönemi Azınlık Politikaları Bağlamında 6-7 Eylül Olayları*, 49. See the Report of the Consulate General of the USA in Istanbul.

about the Cyprus Quest. Besides with the material damages, we encounter death/murder cases in the reports. When the Turkish media stated the number of dead people at 11, according to the report of Helsinki Watch, this number was 15.<sup>22</sup>

On the occasion of these attacks and assaults, the government declared a “martial law” containing Istanbul, Ankara and Izmir on 7 September 1955 and the armed forces took the control in these cities by stopping almost all attackers. By the martial law, military commissions were established in 3 cities, and they began to judge suspects of the riot. The government stated these events were so saddening, and the damages of all owners would have been compensated in various ways. However, the main question has arisen from why and how these groups could unite rapidly and attacked to Greeks and other non-Muslims. The most claimed and strong one of the possible causes is that it was a part of the nationalization of the economy ongoing since the single-party government.<sup>23</sup> Even though the DP was against the étatist political economic understanding of the RPP and supported some kind of liberalization in the economy, it seemed that the political economy of the DP was also including a sort of étatist principles. They declared their own étatism before the 1950 election by noting that étatism should fill some blanks and it should allow free economic structure.<sup>24</sup> The liberal understanding of the DP was compulsorily subsuming étatist principles because the free market agencies were not competent to take all control of the market. Therefore, the state should show itself as not only a regulator but also an accelerator and corrective in the market. In the 6-7 September Affairs and Plunder, we can see the real attitude of the DP to the non-Muslim groups and their existence in the economy in specific. According to some speech and reports, it seems clear that the attacks were led and directed by the top of the government although all members of the government and the party were not aware of the plans. The importance of the

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22 Human Rights Watch. “Denying Human Rights and Ethnic Identity: The Greeks of Turkey. Helsinki Watch Report.” Washington: 1992. <https://www.hrw.org/sites/default/files/reports/TURKEY923.PDF>

23 Look at Dilek Güven, Ayşe Hür, Mete Tunçay

24 Baytal, Yaşar. “Demokrat Parti Dönemi Ekonomi Politikaları (1950-1957).” *Ankara Üniversitesi Türk İnkılâp Tarihi Enstitüsü Atatürk Yolu Dergisi*, 40, 2007. 550.

affairs on 6-7 September is to show how the sovereigns manipulated an exceptional situation manipulated by using the people.

### 5.2.3 *Clouds or Sun of May*

The other important martial law declaration came just before the coup d'état on 27 May 1960; the law was declared on 28 April 1960. This was the second martial law put into effect during the DP government. In consequence of the increasing student protests in Istanbul and Ankara, the government led by Prime Minister Menderes decided to proclaim a martial law including only two cities. Indeed, the angry and resentful group was not only students; on the contrary, a lot of people's resentment began to arise because the DP government increased the pressure on the opposition, specifically on the RPP by the Committee of Inquest that aimed at investigating and banning almost all activities of the parties. The martial law proclaimed and put into effect on 28 April was indeed a progressing part of the new state of exception created by the DP government itself by enforcing the Committee of Inquest. Establishment of this Committee has been evaluated and regarded as 'de facto discharge' of the opposition.<sup>25</sup> It is debatable why the party had begun to be inclined to implement 'illiberal' policies against the other groups after 1955. Beside it, the economic indicators were not healthy, unlike ones in the first period of the DP government. In 1956, the party took an action against its founding ideology and the 'National Protection Law', which was put into force in 1940, was revised and revived. By some revision, even though the main aim of the law was to take prices and supplies under control, it went beyond the previous one, and it included some measurement to strengthen the position and control over the media and press.<sup>26</sup> The economic structure and course of the country did not really go to a good point, and the state felt it should have taken a critical role to control the economic significance and parameters. However, the party come up with that these measurements could not have been taken only in economic fields, but also specifically and strongly in political and social fields, and the martial law was declared. However, this martial

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25 Eroğul, Cem. "Demokrat Parti ve İdeolojisi." Ankara: İmge Kitabevi, 1990. 234.

26 Zürcher, *Turkey, A Modern History*, 231.

law could not show the expected performance. After a while, on 27th of May 1960, some officials of the Turkish Armed Forces (many of them were low-ranking officials) made a military coup and seized the control of the country. By the extension of the duration of the martial law, it lasted until the 1st of December 1961.

The next important martial law was declared after another military intervention on the 12th of March 1971. Around that time, both economic and social problems started to break out. As a reaction to the outbreak, the Chief of General Staff declared a memorandum to the then Prime Minister, Süleyman Demirel, including some serious ultimatum. That memorandum text subsumed the wish for the end of the anarchy and reforms in accordance with the Kemalist Spirit.<sup>27</sup> After negative reactions of the politicians to the memorandum, Prime Minister Demirel resigned and İsmet İnönü, the leader of the RPP, also criticized that. After some negotiations, Nihat Erim, a senator from the RPP, was supported to establish a government. The government was supported by the military as well and the government was supposed to be a technocratic government and Erim did so. His cabinet was compromised of some professional individuals and its program was covering “land reform, a land tax, nationalization of the mineral industry and measures to protect Turkish industry by demanding that joint ventures be at least 51 per cent Turkish owned”.<sup>28</sup> It is seen that the general political economic strategy was the import substitution industry, and though it could not be adopted as much as expected. Indeed, the Erim government was seeking the support of the army to realize those policies; however, the military was busy with the ongoing unrest in the country. After a while, in response to the terrorist attacks, the National Security Council declared the martial law in 11 provinces on 27 April 1971. It could be said that even though Erim and his government were willing to initiate the reforms indicated in its program, both the current unrest and the military’s attention deciding to diminish that did not make an appropriate room for realizing of the reforms. The martial law lasted until 26 September 1973. In that period, we

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27 Ibid., 258.

28 Zürcher, *Turkey, A Modern History*, 259.

can see some technocratic and supra-party governments which sought to mitigate the social and political tensions and realize economic reforms.

#### 5.2.4 *The Dawn of New Era*

As I mentioned before, the 1980 coup d'état has become extremely important rupture in Turkish history in terms of political, social or economic dimensions. Indeed, there is a very long way going to the coup d'état in 1980. Either political stalemate or economic depressions had started to increase and intensify the chaotic situation across the country. While economic production could not reach a satisfied level mainly due to lack of sources and devaluation of the Turkish Lira, the political stability could not be established because of sharp ideological varieties. Plus, the anarchical environment in daily life become much more frightening for many people. The General Staff of the Turkish Armed Forces regarded the situation as mentioned above, and they benefited from that situation as an unavoidable opportunity. Besides it, the government led by Demirel, initiated liberalization reforms on 24 January 1980 including some critical policies liberalize the Turkish economy by integration and making it open to the world economy. However, there was a strong opposition coalition to that reform package, and this coalition was subsuming from the pro-state interventionist bureaucrats to mobilized leftist movement and organized labor unions.<sup>29 30</sup> Even though the government started to carry the reforms into effect, it was seen that the opposition in both sides was very powerful, at least they could have brought a halt to the reforms. Also, the results of the reforms began to create "economic earthquake" because Turkish Lira was devalued 32,7 percent against the USD while many items' prices went up by 70-80 percent.<sup>31</sup> It is obviously seen that the worsening economy course was rather affecting the socio-political conditions adversely.

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29 Pamuk, Şevket. *Türkiye'nin 200 Yıllık İktisadi Tarihi*. İstanbul: İş Bankası Kültür Yayınları, 2016.

30 Armstrong, William. "Interview: Nilgün Önder on Neoliberalism and State Intervention in Turkey Since 1980." *Hürriyet Daily News*. 12 December 2015. <http://www.hurriyetdailynews.com/interview-nilgun-onder-on-neoliberalism-and-state-intervention-in-turkey-since-1980-92415>

31 Ahmad, Feroz. *The Making of Modern Turkey*. London: Routledge, 1993.

When we look at the critiques on the coup d'état on 12 September 1980, we can see a view asserting that the coup was done by the military in order to realize and complete the 24 January reforms and integrate the economy to the liberal world economy. In this situation, there should be a coalition between the capitalist class and the military, which could even throw the political partner away due to the political economic stalemate. According to this view, all these reforms could not have been successful under a “democratic regime” and without crashing the opposition coalition. Therefore, the economic elites and the military cooperated.<sup>32 33</sup> Clearly, the “exceptional political order” was pretty useful to construct a liberal, even neoliberal economic structure in Turkey after 1980. Through the declaration of the martial law across the country after the coup d'état, political, social and economic life in Turkey started to display extremely different performance. First of all, the political and class resistance to the neoliberal economic transition was smashed and shuttered because both political structuring and existence of union or labor organizations were dissolved. The state of exception left the opposition empty. The military was well-organized against any opposition movement and voice. So, the democratic life could come in 1983 by the free elections won by Turgut Özal's Motherland Party, which was in favour of the free market understanding and the neoliberal economic transition. Even the martial law lasted until 1987 in some regions of the country by transforming to the state of emergency.

#### 5.2.5 *The State of Emergency in the Kurdish Dominated Regions*

Obviously, the region which has been the most affected by the state of emergency in the history of the Republic of Turkey is the one where the Kurdish people live. The Kurdish region (mostly the southeast and the east part of Turkey) was ruled by the regional and repeated/renewed martial law and then the state of emergency from the late 1970s to the early 2000s as I mentioned before. The state of emergency was resorted and implemented by the governments to struggle with the operations of the PKK in the region. By the decrees concerning the state of emergency, some villages were evacuated, and people

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32 Boratav, Korkut. *Türkiye İktisat Tarihi 1908-2002*. Ankara: İmge Kitabevi, 2005.

33 Savran, Sungur. *Türkiye'de Sınıf Mücadeleleri 1918-1980*. İstanbul: Yordam Kitap, 2010.

were transferred to different regions, and this was one of the main policies of the government while using the state of emergency. At this point, neoliberalization process and the Kurdish issue coincided to a certain extent. In this sense, we can say that the (neo)liberal trajectory of Turkey can be traced in the region through the economic policies and by looking at the relationship between the state and the local elites/actors.<sup>34</sup> Through the state of emergency, the transformation of the space and economic relationships, as well as the relations of production in the region, can be followed and regarded.<sup>35</sup> Especially, when we look at Diyarbakır, which is the most important Kurdish city in Turkey both economically and socially, the state of emergency, as well as martial law, have been used for both a kind of new accumulation strategy specifically through a boom in the construction sector.<sup>36</sup> In the last years, Diyarbakır witnessed a considerable transformation, especially with its “new neighbourhood and new forms of life” through new “strategic instruments of capital accumulation” mostly including housing and land markets.<sup>37</sup>

In addition to that, we can see that the state aimed at transforming the region economically through constructions in order to weaken the influence of the PKK over the people of the region. Evacuations, at some points, gave the state some opportunities to control both the population and its influence over the region as well as the influence of the Kurdish movement. Specifically, the plan of the Southeastern Anatolia Project, which is a regional development project aiming at integrating different sectors contingent upon the concept of sustainable development for millions living in the region, put a skeleton in 1989, and after this date, the state started to make the project actual. This project’s some parts coincided with the regional state of emergency and it can be discussed how this project made use of that regional state of emergency both

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34 Yüksel, Ayşe Seda. “Resclaed Localities and redefined Class Relations”, in *The Kurdish Issue in Turkey: A Spatial Perspective*.” Eds. Zeynep Gambetti and Joost Jongerden. London: Routledge, 2015. 214.

35 Gambetti, Zeynep and Joost Jongerden. “The Spatial (Re)production of the Kurdish Issue: Multiple and Contradicting Trajectories-Introduction.” *Journal of Balkan and Near Eastern Studies*, Volume 13, Number 4, December 2011. 375.

36 Yüksel, Ayşe Seda. “Resclaed Localities and redefined Class Relations”, in *The Kurdish Issue in Turkey: A Spatial Perspective*.” 2015. 215.

37 Ibid., 227.

economically and politically. In the broader sense, on the one hand, the state of emergency, as well as martial law, squelched opponent voices to a certain extent during the transformation of the space and relations of production in the region; on the other hand, they tried to by-pass some bureaucratic obligations or obstacles. The Kurdish case demonstrates that the types of state of exception (state of emergency and martial law) became a very useful political economic apparatus as well as socio-political one to control the regional economy for the sovereigns.

### § 5.3 Contemporary State of Emergency in Turkey

#### 5.3.1 *Turkey as an Exceptional Case of the State of Exception?*

On Friday 15 July 2016, Turkish public opinion faced with a piece of shocking and striking news around 9 pm. The Turkish Armed Forces (TAF), not at large, started a coup d'état against the AKP government and presidency of Recep Tayyip Erdoğan. Some armed groups barricaded some roads and occupied some strategic places such as the Bosphorus Bridge and the Sabiha Gökçen Airport in the Anatolian side. While they forced a TRT (Turkish Radio Television) employee to read the declaration of intervention, it has come out that the TAF declared in its official website that they did not involve in such interference. It was announced by some high-ranking TAF personnel and members of the government that the TAF was not included in such an activity and it was an uprising of Gülenist military officers. While these groups bombarded the National Assembly, in which many parliaments gathered to evaluate the situation at that point and the headquarters of special operation with fighter aircraft, they commenced fire to the civilian population in some places. Division in the army, strong attitude between political parties and defence of civil population prevented the possible coup d'état and the armed conflagrations were finished until the noon of 16 July. At the same day, Erdoğan convened all members of the parliament and made a speech addressing the pro-coup groups and mindset. On 20 July, after the National Security Council, Erdoğan announced a state of emergency for three months against the attempted coup d'état by the ratification of the parliament.

### 5.3.2 *The Gülenist Movement or the Cemaat*

Even though it is not subject and focus of this thesis, the Gülenist movement deserves to be handled to enlighten the attempted coup d'état and its following process. This movements effects and directions on Turkish politics and economy deserve deep interests and research indeed. Therefore, its role and influence on the coup d'état attempt will be the very important and substantial field for academic research. The history and development of the Gülenist movement, indeed it was known as 'cemaat' (community) by the Turkish people and media for a long time. The movement emerged in the 1970s in İzmir where the leader of movement Fethullah Gülen performed his duty as an 'imam'. The movement had strong relationships with 'Nurculuk', a religious movement based on the thoughts of Said Nursi since the early period of the 20th century. The Gülenist movement declared itself as part of Nurculuk, and it was called 'neo-Nurcu'.<sup>38</sup> It was coined with the old school of Nursi and new 'manifests' of Gülen. Especially after the 1980s, the movement began to spread across the country and obtained new members in different parts of Turkey. This spread and progression meant to be an important factor in the eyes of the politicians. Besides within the political structure, the movement had mighty economic power through its capital-owned members.<sup>39</sup> These members or followers were generally small entrepreneurs in Anatolia in specific. However, the new connections, which they would establish, would open new ways to develop and accumulate their capitals to have a say in both political and economic arena in the country.

Specifically, in the 1990s, the movement began to show its presence in media, politics, and economy. In spite of some critiques against it from the secular front, the Cemaat succeeded to establish itself in the eyes of different strata. While the intervention in February 1997 affected it negatively and Gülen fled

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38 Yavuz, M. Hakan. "Towards an Islamic Liberalism?: The Nurcu Movement and Fethullah Gülen." *Middle East Journal*, Vol. 53, No. 4 (Autumn, 1999), 584-605.

39 "Turkey Coup: What is Gulen Movement and What Does It Want?" BBC. 21 July 2016. <https://www.bbc.co.uk/news/world-europe-36855846>

the country, the movement kept growing not only in Turkey but also in different parts of the world. The neo-Nurcu Gülenist movement received a great deal of attention in those places, and they engaged in establishing schools. These schools were seen as representative and missioner of Turkish culture and education system.<sup>40</sup> However, it was clear they were branches of central neo-Nurcu Gülenist movement and even ideology. Well, what was the aim of this movement, and what was its ideology? It is not easy to answer the question at once because there has been a long history and ‘struggle’ for the movement. However, it is the fact that the movement used a lot of methods to apply its agendas and realize its strategies. It is clear that the movement was seen as a mediator between Islam and the other Abrahamic religions through its campaign of ‘interfaith dialogue’ (dinler arası diyalog). This was a name of a book of Gülen’s ones; and he was presented even in the academy as a ‘moderate’, ‘prolific’ and ‘intellectual’ Muslim scholar or philosopher.<sup>41</sup> It shows that Gülen was gained recognition by the world academy and intellectuals. This was a very important point and strategy of the movement because they need to be called ‘moderate’ or ‘liberal’ Islam to obtain more appropriate room to implement their strategies.<sup>42 43</sup> Although Gülen has been in Pennsylvania personally since 1999, his movement and directions were keeping being strong and effective over Turkish politics until late 2012.

### 5.3.3 *Towards the Coup d’état Attempt*

This date was determined and labelled as the beginning of the fork between the Cemaat and the AKP. The Cemaat did not welcome the Oslo Dialogues

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- 40 Aliyev, Fuad. “The Gulen Movement in Azerbaijan.” *Hudson Institute*. 27 December 2012. <https://www.hudson.org/research/9864-the-gulen-movement-in-azerbaijan>
- 41 Aviv, Efrat E. “Fethullah Gülen’s Jewish Dialogue.” *Turkish Policy Quarterly*, 9, 3, 2010. 101- 115. <http://turkishpolicy.com/dosyalar/files/101-114.pdf>
- 42 Ebaugh, Helen Rose. “The Gülen Movement: A Sociological Analysis of a Civic Movement Rooted in Moderate Islam.” AZ Dordrecht: Springer Netherlands, 2010.
- 43 Hesselmanns, Marthe. A Different Take on Tolerance? Gülen's Alternative to Islam Controversies in Germany. *Journal of the Ottoman and Turkish Studies Association*, 1(1-2), 2014. 149-166.

between Turkey and PKK (Kurdish Worker's Party) because it claimed that it was kept out in that process, and the government accepted some requests of the PKK against the Cemaat.<sup>44</sup> However, the main conflict occurred in the process of 17-25 December 2013. Some tape recordings were leaked to Youtube by claiming that they belonged to the conversations between some bureaucrats, businessmen, politicians and even Erdoğan with his family. The assertion of these recordings was to show 'corruption' in the upper stage of the state. Nonetheless, these recordings were leaked and sent by the followers of Gülen; the government and Erdoğan stated that it was a 'parallel state' (*Paralel Devlet Yapılanması - PDY*) because it plotted against the government; and this organization began to be called 'FETÖ', abbreviation of the *Fethullahçı Terör Örgütü* (Fethullahist Terrorist Organization).<sup>45</sup> Firstly, some businessmen and bureaucrats were detained; then, the government decided 'to clean the state' by making operations against some policemen and prosecutors who were claimed to be the Cemaat followers. This date was the milestone for the declining power of the Cemaat in Turkey because the government started an attack on the Cemaat and its followers in political, social and economic fields. For example, the business associations composed of Cemaat follower businessmen (TUSKON) were taken into investigation, and some of those businessmen were arrested. While the settlement in bureaucracy and economic pillar of the Cemaat were being dissolved by the government, they faced a stiff challenge in the field that they had been powerful: Media. The Cemaat was directing the agenda through its own media, at least affecting it pretty much, especially during the cases against the Kemalist structure and groups (Ergenekon and Balyoz). The most famous and influential media organ of the movement was *Zaman* journal. It had begun its effect since the early 2000s and towards 2010, it strengthens its own voice in the Turkish media. The most crucial factor in this development was the cases to eliminate the Kemalist structure in bureaucracy, army and media because the newspaper was almost

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44 Arslan, Rengin. "AKP-Cemaat Gerilimi: Barış Süreci Nasıl Etkilenecek?" *BBC*. 25 December 2013. [https://www.bbc.com/turkce/haberler/2013/12/131225\\_rengin\\_acilim](https://www.bbc.com/turkce/haberler/2013/12/131225_rengin_acilim)

45 Lowen, Mark. "Turkey's Erdoğan Battles Parallel State." *BBC*. 17 December 2014. <https://www.bbc.co.uk/news/world-europe-30492348>

the prosecutor of the cases. However, after 17-25 December process, the newspaper became an anti-AKP one by dropping its all language. In March 2016, the government appointed a trustee to the newspaper whereas some other media establishments linked to the Cemaat were closed such as *Kanaltürk* and *Bugün*.<sup>46</sup> The Cemaat was literally besotted by the government until the first half of 2016.

The siege would have resulted in a shocking attempt on 15 July 2016, astonishing not only Turkey but also the world. Since the cases of coup d'état attempts and of defendants have not been yet over while the author of the thesis is writing it, I believe it will not be right and fair to mention the specific names of military officials arrested and sued after the attempt. However, it clearly showed the volume of the disaccord in the army and the presence of any parallel settlement in it. According to the bill of indictments, the coup was attempted by the Gülenist infiltrated military officials, and it was a planned action among these officials.<sup>47</sup> Even though the pro-coup forces tried to seize the strategic points and places such as TV channels and Bridges – they could control some of them for a while – the chain of command of the TAF was determinant to eliminate these pro-coup groups as well as the all political parties and police forces. The high-ranked officials of the pro-coup group called themselves the 'Peace at Home Council' (Yurtta Sulh Konseyi) which was strategic naming policy to affect and attract Kemalist groups and officials because the name of the council based on the famous motto of Mustafa Kemal Atatürk: Peace at Home, Peace in the World. However, it could not be said that they were successful in that aim because neither the chain of command of the TAF nor other political parties and civil Kemalist groups supported the coup attempt. From the beginning of the attempt to the noon of 16 July, different armed conflicts occurred, and pro-coup forces commenced fire over the civils who were against the coup attempt in various places. The loss of this attempt was extremely heavy. In total numbers, the coup d'état attempt caused around 290 people. While 36 pro-coup officials were killed, the number reached 68

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46 "Zaman Gazetesine Kayyum Atandı." *BBC*. 4 March 2016. [https://www.bbc.com/turkce/haberler/2016/03/160229\\_zaman\\_gazetesi\\_kayyum](https://www.bbc.com/turkce/haberler/2016/03/160229_zaman_gazetesi_kayyum)

47 Uzun, Cem Duran; Mert Hüseyin Akgün and Hasan Yücel. *İddianamelerde 15 Temmuz Darbe Girişimi ve FETÖ*. Ankara: SETA Yayınları, 2017.

for anti-coup military officials and policemen. The most dramatic death number emerged in civil losses; the pro-coup forces in different cities slaughtered 168 civil people.

#### 5.3.4 *New Turkey but Old Politics*

Four days later than the suppression of the coup d'état attempt, on 20 July 2016, a state of emergency was proclaimed by the decision of the Council of Ministers by referring to Article 120 of the Turkish Constitution after receiving the opinion of the National Security Council. This decision was ratified in the Parliament, and the state of emergency became valid since 01:00 21 July 2016. This was the first countrywide state of emergency declaration and practice in Turkey even though there was a considerable amount of regional state of emergency after 1983. Prime Minister Binali Yıldırım, in his speech to thank in the parliament, stated that the state of emergency was vital to do away with and get rid of the calamity that the country undertook.<sup>48</sup> In addition, in the same day, Deputy Prime Minister Numan Kurtulmuş expressed that some part of the European Convention on Human Rights (ECHR) was temporarily suspended during the period of the state of emergency across the country by referring to the same implementation of France on the ECHR.<sup>49</sup>

At this point, it is pretty worthwhile to mention what the ECHR is and what it means as an international law apparatus. The most important description and limits for the state of emergency are put by ECHR. It imposes critical obligations for all parties of the convention. All parties should protect everyone's right to life by the law.<sup>50</sup> The Convention provides a guarantee system to check any party who is supposed to violate the contract provisions in 52nd and 53rd Articles.<sup>51</sup> Nonetheless, the ECHR gives a right to any party to derogate

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48 "OHAL Tezkeresi Genel Kurul'da Kabul Edildi." CNN Türk. 21 July 2016. <https://www.cnntrk.com/turkiye/tbmm-genel-kurulunda-ohal-oylamasi>

49 "Kurtulmuş: Avrupa İnsan Hakları Sözleşmesi Askıya Alındı." BBC. 21 July 2016. <https://www.bbc.com/turkce/haberler-turkiye-36855356>

50 Council of Europe. "European Convention on Human Rights, Article 1." [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf)

51 Behçet, *Olağanüstü Hal Uygulaması ve Teorik Temelleri*.

from its obligation “in time of war or other public emergency threatening the life of the nation” in Article 15.<sup>52</sup> While doing that, the Convention stipulates that derogations of parties do/could not cover 2nd, 3rd, 4th and 7th Articles of the ECHR. The suspension of these articles for a specific while seemed legal and appropriate according to Article 15 of the ECHR. However, the discussion was around how the government would use this suspension and until when this situation would go on. The worries increased after the first decree law signed by President Erdoğan himself and enforced by the parliament about the close of any institutions such as universities or foundations which were supposed to be related to the Cemaat or FETÖ, as called after 17/25 December 2013 affairs. According to the decree law, such type of organizations would have been closed if they had any relationship with terrorist organizations which created a threat against the national security of the country.<sup>53</sup> Following decree laws signed by President Erdoğan and ratified by the parliament played a very critical role in the matter of reshaping the bureaucratic, economic and educational structure. In addition to the close of some organizations, dismissal of some officials from ministries, universities and other state institutions created an important wave in the eyes of people. Even though someone was dismissed from their jobs due to their relationship – even though it is not possible to mention whether this is absolute information for the people – with the FETÖ/Cemaat, some people were dismissed for their (alleged) relationship with other organizations such as PKK. According to the statement of the Deputy Prime Minister Bekir Bozdağ, between July 2016 and February 2018, the total number of those who were dismissed by the decree laws was 107,174 whereas 3,604 people were reinstated to their jobs.<sup>54</sup>

On the other hand, the economic indicators in the Turkish economy right after the attempted coup d'état showed serious troubles. By the proclamation and enforcement of the state of emergency, the exchange rate US Dollar (USD) to Turkish Lira (TRY) exceeded 3 TL whereas the exchange rate Euro to TRY

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52 Council of Europe. “European Convention on Human Rights, Article 15.”

53 Resmi Gazete. “Kanun Hükmünde Kararname.” Law No: 667. 23 July 2016. <http://www.resmigazete.gov.tr/eskiler/2016/07/20160723-8.htm>

54 “İşte KHK'larla İhraç Edilen Kişi Sayısı.” Sabah. 31 January 2018. <https://www.sabah.com.tr/gundem/2018/01/31/son-dakika-iste-khklarla-ihrac-edilen-kisi-sayisi>

reached 3.38 while it was 3.21 on 15 July. The most important effect for this decline in the value of TRY derived from that the Standard and Poor's (S&P), which is one of the most important three credit rating agencies, lowered the credit rate of Turkey because of an alleged instability created by the attempted coup. While before the coup attempt the credit rating of Turkey was BB, it was reduced to BB-.<sup>55</sup> Even though BB rating was not very positive note, BB- was a negative sign for the Turkish economy since it was representing unstable economic environment and condition to attract foreign investment. However, it should be noted that although BB rate of Turkey did not reveal a stable and reliable environment for the foreign investors, the new rate faced serious critiques from the Turkish government and some financial environments and institutions. Specifically, the reaction of President Erdoğan did not lag to the decision of the S&P; he responded with his famous sentence 'Who are you?' and he stated that this decision was a political one not an economic.<sup>56</sup> Furthermore, the other important credit rating institution Moody's also lowered the rate of Turkey from Baa3 to Ba1; in other words, it changed the note of Turkey from the situation which foreign investment could be made to the level which it was risky to invest in September 2016.<sup>57</sup> When we look at the long run voyage of the exchange rate of USD and Euro, it could be noticed that the Turkish economy and TRY began to undertake serious problems. Exchange rate USD to TRY reached 3.52 whereas exchange rate Euro to TRY did so 3.7 on the last day of 2016.<sup>58</sup>

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55 "Türkiye'nin Kredi Notu Karnesi." Bloomberg HT. 26 September 2016. <https://www.bloomberght.com/haberler/haber/1922415-turkiyenin-kredi-notu-karnesi>

56 "Erdoğan: S&P Boşuna Uğraşma, Bizimle Hele Hiç Uğraşma." Bloomberg HT. 21 July 2016. <https://www.bloomberght.com/haberler/haber/1898205-erdogan-s-p-bosuna-ugrasma-bizimle-hele-hic-ugrasma>

57 "Moody's Türkiye'nin Notunu İndirdi." Bloomberg HT. 24 September 2016. <https://businessht.bloomberght.com/guncel/haber/1300895-moodys-turkiyenin-notunu-indirdi>

58 Central Bank of the Republic. "Merkez Bankası Kurları. [http://www.tcmb.gov.tr/kurlar/kurlar\\_tr.html](http://www.tcmb.gov.tr/kurlar/kurlar_tr.html)

## § 5.4 OHAL in the Economy

### 5.4.1 *The State of Emergency and Capital Control*

In this part, we are going to look at the course of the economy and financial development under the possible effects of the state of emergency in Turkey. Indeed, the declaration of the state of emergency was a hinder of the de facto state of emergency in Turkey before the coup d'état attempt because, as we will see, the government and state authorities started to confiscate and charging trustees to some companies related to the FETÖ. The declaration of the state of emergency was a transition of the de facto one to the de jure one. The de jure one opened a wider room for more serious political economic policies of the government.

The first point which I will show at this stage is the employment data in the country before and after the OHAL. While the number of unemployed was around 3 million in the 18-month-period before the OHAL, according to the data of the TurkStat, the number reached up to 3,5 million at the end of the 18th month of the OHAL (January 2018). In the same period, the inflation rate increased 3,3 points and became 10.02 while it was about 7.7 before the OHAL. Besides with this dramatic increase, the minimum wage on USD basis dropped to 405 USD from 480 USD.<sup>59</sup> <sup>60</sup> In addition, the gross outstanding external debt of the country exhibited a significant increase after the implementation of the state of emergency.

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59 TurkStat.<http://www.tuik.gov.tr/HbGetirHTML.do?id=27693>

60 Ok, Sinan. "OHAL Uzatıldııkça Ülke Ekonomisi Nasıl Etkilendi?" 16 January 2018. <https://m.bianet.org/bianet/siyaset/193366-ohal-uzatildikca-ulke-ekonomisi-nasil-etkilendi>

Table 5.1 The Gross Outstanding External Debt in Turkey<sup>61</sup>

Billion USD	2010	2011	2012	2013	2014	2015	2016	2017	2018	
									Q1	Q2
Total	291.7	303.7	339.6	389.9	401.9	396.4	405.1	412.7	466.7	457.0
Short Term	77.2	81.6	100.2	130.3	131.6	101.9	98.0	118.1	122.3	119.7
Long Term	214.5	222.2	239.7	259.4	270.6	294.9	307.8	336.7	344.4	337.2
Public Sector	89.1	95.8	106.3	118.9	121.3	116.6	123.4	136.6	141.0	139.2
Short Term	4.3	8.6	13.3	20.6	21.4	18.1	19.7	22.1	24.0	24.1
Long Term	84.8	87.3	93.0	98.3	99.8	98.6	103.7	114.4	116.9	115.1
Central Bank	11.6	9.3	7.1	5.2	2.5	1.3	0.8	0.7	0.7	0.6
Short Term	1.6	1.2	1.0	0.8	0.3	0.2	0.1	0.1	0.1	0.1
Long Term	10.0	8.1	6.1	4.4	2.1	1.2	0.7	0.6	0.6	0.5
Private Sector	191.1	200.2	228.7	268.5	281.9	282.3	285.0	317.6	325.1	317.2
Short Term	71.4	73.3	88.1	111.8	113.3	87.1	81.5	95.9	98.2	95.5
Long Term	119.7	126.9	140.7	156.6	168.6	195.2	203.5	221.7	226.9	221.7

Besides with the gross debt, net external debt of Turkey and accordingly its ratio to the GDP increased by reaching approximately 280 billion USD and near 33 percent while it was around 250 billion USD and under 30 percent. Moreover, in spite of the fluctuating amounts of foreign direct investment in Turkey, after 2016, we can see some critical decrease in the amount of the in-flow of foreign investment. Indeed, the cause of this decrease is very controversial; however, some could say it derives from the insecure economic environment under the state of emergency and because of that the foreign investors could not trust the legal structure in Turkey to save the investments which they would have.<sup>62</sup>

61 Republic of Turkey Ministry of Treasury and Finance. "Hazine Bakanlığı Borç Göstergeleri". February 2018. <https://hazine.gov.tr/File/Index?id=52ddcabe-ddcd-43e6-843b-fff3ff120c7b>

62 "TÜSİAD Genel Kurulu'nda OHAL Vurgusu." Dünya. 18 January 2018. <https://www.dunya.com/ekonomi/tusiad-genel-kurulunda-ohal-vurgusu-haberi-399101>

Table 5.2 Foreign Direct Investment Statistics in Turkey<sup>63</sup>

Million USD	International Direct Investment Inflow (Net Liability)	International Direct Investment	Capital
2010	9,099	6,221	6,256
2011	16,182	14,145	16,136
2012	13,744	10,128	10,761
2013	13,563	9,936	10,523
2014	13,119	8,371	8,632
2015	18,002	11,713	12,077
2016	13,343	6,103	7,534
2017	10,830	5,568	7,437
% Change	-18.8%	-19.5%	-1.3%
Total	194,150	139,748	148,138

#### 5.4.2 *Discipline through the State of Emergency for Capital Accumulation*

The relationship between the national economy and the state of emergency could be seen well by looking at the decree laws, enacted by the President of the Republic of Turkey, between 2016 and 2018. These decrees dominated not only political and economic life, but also the private lives of individuals or civil servants.

One of the most critical development and novelty in the Turkish economy under the state of emergency was the establishment of the Sovereign Wealth Fund (Milli Varlık Fonu) in August 2016 by the decree law of the President of the Republic. A sovereign wealth fund is a fund aiming at increasing the income of the state by investing in different assets, led or directed by the state. In general, there are two important motivations for establishing and organizing a sovereign wealth fund. The first one is to ensure stable operation of the economy of the country by protecting it from some conjunctural effects whereas the second one is that providing an economic environment to give

63 Republic of Turkey Ministry of Trade “Statistics” <https://www.trade.gov.tr/>

prosperity to future generations.<sup>64</sup> The mission of the Fund is defined as “to develop and increase the value of Turkey’s strategic assets and consequently provide a resource for our country’s primary investments”.<sup>65</sup> The ‘company’ would be subject to the Prime Ministry and to the private law provisions. The most critical point of the Fund was its portfolio. When we look at the table of the portfolio, it is seen how important its portfolio is. There is another disputable point about the establishment of the Fund; some critiques in this issue is that the state needed foreign indebtment and for this indebtment, it had to put up some assets as security or collateral. Thus, the formation of the Fund would be able to fulfill expectations to borrow. Through last change about the authority and the structure of the Fund after the lift of the state of emergency, it has been given an obligation authority. It is known the Fund had some negotiations with some external banks to borrow and it is only the authority of the Fund. It is obvious, despite the objections of the government, that one of the main aims of the establishment of the Fund is to find external funding by becoming indebted with their own assets.

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64 Eđilmez, Mahfi. “Varlık Fonu”. *Kendime Yazılar*. 25 August 2016. <http://www.mahfiegilmez.com/2016/08/varlk-fonu.html>

65 Turkey Wealth Fund. <http://turkiyevarlikfonu.com.tr/EN/icerik/51/about-us>

Table 5.3 Portfolio of the Sovereign Wealth Fund<sup>66</sup>

	Treasury Share (%)	Capital Receipt (TL)	Free Float Rate (%)
Ziraat Bankası	100	5 Billion	-
BOTAS (gas and petroleum)	100	4.15 Billion	-
Türk Telekom	6.7	3.5 Billion	13.31
TPAO (petroleum)	100	3 Billion	-
Çaykur (tea)	100	1.49	-
Turkish Airlines	49.12	1.38 Billion	50.18
Halkbank	51.11	1.25 Billion	48.77
PTT (Postal and Telgraph)	100	981.5	-
ETİ Maden (Mining)	100	600 Million	-
Borsa İstanbul	73.6	423.2 Million	-
Türksat (Satellite)	100	1.47 Million	-

No doubt, another important economic result of the attempted coup d'état and so of the state of emergency in Turkey was 'confiscation' or 'expropriation' of numerous companies owned by followers of the Cemaat. By the decree law declared on 23 July 2016, 35 healthcare organization, 934 schools (including elementary and high schools), 109 student dormitories, 104 foundations, 1125 associations, 15 universities and 19 trade unions were closed down.<sup>67</sup> Hereafter, through the decree law accepted on 10 November 2016 and declared on 24 November 2016, 3 news agencies, 15 TV channels, 39 newspapers, 15 magazines, 29 publish houses and distribution channels were liquidated. Another decree law declaring on 17 August 2016 states that all responsibilities of foundations and associations appropriated by the state were transferred to the General Directorate of Foundations while the responsibilities of companies and firms appropriated by the state taken over by the Ministry of Finance. Also, all

66 "Varlık Fonu'na Devredilen Şirketler." NTV. 06 February 2017. <https://www.ntv.com.tr/galeri/ekonomi/varlik-fonuna-devredilen-sirketler,qPeYG7endkWbk4dmq6fAXA/TET-fNjYkrkKXuBrKW76l8g#TETfNjYkrkKXuBrKW76l8g>

67 Resmi Gazete. "Kanun Hükmünde Kararname." Law No: 667. 23 July 2016. <http://www.resmigazete.gov.tr/eskiler/2016/07/20160723.pdf>

activities of the firms including closed institutions and organizations, TV channels, newspapers, and publish houses were stopped and their trade register records were cancelled. Their assets excluding ones appropriated by the state were transferred to the Treasury. At this point, the responsibility belonged to the Ministry of Finance and the Ministry could have assigned a liquidator to those companies.<sup>68</sup> The new decree law published on 1 September 2016 remarked that the responsibilities of companies which were appointed trustees by the Code of Criminal Procedure would have been transferred to the Saving Deposit Insurance Fund (TMSF) as a trustee.<sup>69</sup> According to the law, after some evaluation of the financial position, assets and balance sheet account of a company, the TMSF could have decided to liquidate or to sell the company. An income gaining by the selling of the assets of the company or itself would have been collected an account in order to wait until the conclusions of the cases against the companies or their owners. If a company including some closed institutions or organizations, TV channels and newspapers would have been sold by the TMSF, the income of the selling would have been transferred to the Ministry of Finance.

Furthermore, in companies where the real and legal persons with belonging to, associating with or contacting the terrorist organization of FETO are less than fifty percent shareholding, the management and representation of shares would have been delivered to the TMSF by courts rested upon the Code of Criminal Procedure.<sup>70</sup> The decree law promulgated on 22 November 2016 brought the authorities of all trustees of companies who were previously appointed to an end, and the management of companies was granted to the TMSF.<sup>71</sup> The next decree law, declared on the same way with the previous one, stated that direct or indirect debts of the companies transferred to the TMSF

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68 Resmi Gazete. "Kanun Hükmünde Kararname." Law No: 670. 17 August 2016. <http://www.resmigazete.gov.tr/eskiler/2016/08/20160817-17.htm>

69 Resmi Gazete. "Kanun Hükmünde Kararname." Law No: 674. 01 September 2016. <http://www.resmigazete.gov.tr/eskiler/2016/09/20160901M2-2.htm>

70 Resmi Gazete. "Kanun Hükmünde Kararname." Law No: 675. 29 October 2016. <http://www.resmigazete.gov.tr/eskiler/2016/10/20161029-4.htm>

71 Resmi Gazete. "Kanun Hükmünde Kararname." Law No: 22. December 2016. <http://www.resmigazete.gov.tr/eskiler/2016/11/20161122-1.htm>

should be paid by resorting to the guarantors of the debts of the companies. At this point, the TMSF was charged with to sell the assets of the guarantors to pay the debts of the companies managed by the TMSF.<sup>72</sup> An important change about the management of the process of selling of companies was held by a decree law on 6 January 2017. The law expressed that in a case that a financial situation of a company is confirmed as unsustainable, the decision for selling, liquidation or dissolution of the company belongs to the Minister whom the TMSF is subject to.<sup>73</sup> A decree law with number 686 enacted on 7 February 2017 remarked that any assignation or transfer made by a shareholder after the beginning of investigation about the company until 7 February 2017 would be annulated and cancelled.<sup>74</sup> Moreover, a decree law with number 687 enacted on 9 February 2017 gave some authorities to the trustees, mostly the TMSF, appointed to the confiscated companies in order to head them during the cases and investigation.<sup>75</sup> As well, in this decree law, the word “confiscation” was used by highlighting its procedure and importance. So, it means the state (and government) regarded and preferred it as a crucial way to winnow out deleterious things from economic life. It is obviously seen that the economic life is not freed by the government’s hand in Turkey because by these decree laws, the governments showed itself as not only a referee or night watchman, but also almost the owner of the economic life.

When we control the numbers of the companies where trustees appointed, for the TMSF, their total numbers reached 1124 whereas it was appointed as a trustee to 127 individual property holdings. The trustee of the TMSF was full for 982 companies whereas it was partial for 142 because of the amount of the share. The total amount of size of assets of these companies is 49,4 Billion £ and the size of equity capital of them is 19,7 billion £. Their revenue sum is

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72 Resmi Gazete. “Kanun Hükmünde Kararname.” Law No: 678. 22 December 2016. <http://www.resmigazete.gov.tr/eskiler/2016/11/20161122-2.htm>

73 Resmi Gazete. “Kanun Hükmünde Kararname.” Law No: 680. 06 January 2017. <http://www.resmigazete.gov.tr/eskiler/2017/01/20170106M1-2.htm>

74 Resmi Gazete. “Kanun Hükmünde Kararname.” Law No: 686. 07 February 2017. <http://www.resmigazete.gov.tr/eskiler/2017/02/20170207M1-1.htm>

75 Resmi Gazete. “Kanun Hükmünde Kararname.” Law No: 687. 09 February 2017. <http://www.resmigazete.gov.tr/eskiler/2017/02/20170209-8.htm>

24,6 Billion £ and their total employee number is 50.192.<sup>76</sup> Roughly, the size of assets of the companies equals 1.6% of the Gross Domestic Product (GDP) of the Turkish economy.

Still today, we cannot surely say who exactly benefits from the capital transfer, especially after the declaration after the state of emergency. However, we can see that some business/capital owner groups around mostly the president and the ruling party made use of the confiscation operations by buying the companies appropriated by the TMSF or by buying some companies whose owners obliged to sell them through some pressure from the sovereigns. These capital transfers were realized under the control of the sovereigns as one of the most important confiscations in the history of the Republic, and many of these companies have been waiting to be sold through auctions. Nonetheless, numerous changes in the Tender Law so far, and the fact that if a capital owner to do a significant business or to increase his/her operations, he/she should have a kind of intimate/close contact with the people constituting the sovereigns show us who will own the companies is apparent more or less. The intensity, content and method of the capital transfer demonstrate how the state of emergency was used by the sovereigns to control and discipline the national economy as well as how they made use of it to strengthen their economic ties and partisans. In other words, the state of emergency was one of the most significant and useful political economic apparatus for the sovereigns in Turkey. Nevertheless, we can recognize that even though there is a capital transfer to a certain extent and the direction of this transfer is determined more or less, it is not as explicit as in the 1940s and 1950s. This situation also shows how the mechanisms of the state of emergency were used by the sovereigns in the matter of capital accumulation and transfer.

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76 TMSF. "Kayyım Olunan Şirketlere İlişkin Veriler" <https://www.tmsf.org.tr/tr/Tmsf/Kayyim/kayyim.veri>

### 5.4.3 *The State of Emergency and Labor Control*

Besides with the capital control through the state of emergency, we can see there a massive control over the labor. On the one hand, the government attempted to control the capital by appropriating almost all known assets of the Cemaat, President Erdoğan stated that the state of emergency served best for the capital owners, namely capitalists, in his speech addressing the businessmen.<sup>77</sup> The President, in this speech, highlighted that the state of emergency was declared to provide for better functioning of the business. And then he said that the state of emergency did not prevent the wish and work of the businessmen; on the contrary, it made their business easier than before.

Supportively, the number of cancelled or postponed strikes show that the state of emergency attempted and achieved to a certain extent to control labor. In another speech, President Erdoğan criticized people comparing the last state of emergency with the old ones by saying that while the old states of emergency could not prevent strikes, they can immediately interfere through the state of emergency.<sup>78</sup> During the AKP period, in total 16 strikes were prohibited or postponed by the government because of different reasons. Seven strikes of them were prohibited or postponed during the state of emergency, and this reveals a very unequal ratio if we recognize that 7 strikes were not allowed in only 2 year-period. The AKP was already very strict in the subject of strikes; the state of emergency obviously became a very useful tool. According to the Law of Trade Unions and Collective Bargaining Agreements, a strike could be cancelled or postponed if a strike creates a threat for public health or national defense. A new decree enforced by the President (no. 678) added some situations which can be the reason to prohibit or postpone strikes. According to the decree, if there exists any threat for the metropolitan municipi-

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77 Duvar. “Erdoğan'dan TÜSİAD'a OHAL cevabı: Her şey huzura kavuşmadan OHAL'i kaldırmayız.” <https://www.gazeteduvar.com.tr/gundem/2017/05/18/tusiad-ohalin-uzatilmamasini-umuyoruz/>

78 Diken. “Erdoğan'dan patronlara: Eski OHAL'lerde grev olurdu, şimdi anında müdahale.” <http://www.diken.com.tr/erdogan-patronlara-ovundu-eski-ohallerde-grev-olurdu-simdi-aninda-mudahale/>

palties' urban public transportation services and economic or financial stability in banking services.<sup>79</sup> The extension of the scope of the law shows that executive and legislative branches are determinant to discipline the national economy with the hand of the state of emergency.

On the other hand, When we look at the decree law enacted between the declaration of the state of emergency in July 2016 and its annihilation in July 2018, 125.806 civil servants were dismissed from their professions by totally 34 decree laws enacted by the President of the Republic and ratified by the Council of Ministers. Majority of this number were charged for being a follower of the Gülenist Movement; some of them were discharged even though their adhesion to the Cemaat. The replacement of vacation positions is very important for the government both economically and politically. It is not about getting rid of the unwanted staff, but also using the state apparatuses for satisfying some groups and individuals. This labor circulation, on the one hand, reduced the burden of the state, regarding its own agenda; on the other hand, it gave the state to use the state of emergency for political economic targets as such.

## § 5.5 Conclusion

As I mentioned before, regardless of de jure or de facto, state of exception's effects could continue after the lift of the martial law or the state of emergency. As one of the most important exceptional periods, the martial law declared in 1980 continued its effect on political economic order in Turkey. The effects of this order opened a very new door into the society, culture and economy of Turkey. Even though the post-period of the coup d'état as liberalization in various fields, it is obvious that this period kept the heritage of emergency politics of coup d'état because it turned upside down in almost every point. As we covered, the coup d'état and its emergency politics in the exceptional period have been regarded as indispensable to destroy the current system of that time and to create a new and desired one by certain financial and political elites.

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79 Resmi Gazete. "Kanun Hükmünde Kararname." Law No: 678. 22 November 2016. <http://www.resmigazete.gov.tr/eskiler/2016/11/20161122-2.htm>

The examples of the state of exception in Turkey reveal that if the political elite can see or regard any difficulty and inconvenience to change political or economic system to a certain extent, the possibility to use emergency politics by creating exceptional time or by using the current exceptional time generated by external or internal causes is rather high. Especially the coup d'état in 1980 is one of the best examples in order to show how an exceptional time can be created by the elites and emergency politics are applied by them. The state of emergency, as we handled, has been formulated and applied in order to make away with the things causing and creating the exceptional period. However, regardless of the origins of the states of exception in Turkey, the governments or administrations made use of the advantages of the mechanisms and politics of the state of emergency for different aims, primarily the economic ones. Although we can see the role and pressure of the executive branches on the course of economy in the case of the Euro Crisis and the French state of emergency, these were not extreme as much as the pressure in Turkey. In the case of the EU and France, we can see some attempts of the political elites to comply with the rules and the rule of law as much as possible even though they have some undemocratic and "beyond the rule" applications. However, the applications and decisions of the Turkish government will show us the supremacy of the de facto state of emergency over the rule of law during the exceptional periods.

We can also see that even before the state of emergency in 2016, the state of exception played a very critical role when we consider the course of economy. Even if not all of them constitute that kind of system, we can notice that the political elites have been willing to use emergency politics in the economic area. However, the state of emergency declared in 2016 has become the very significant example of how the government and the president could interfere with the course of economy by the apparatus of executive and judiciary branches. The suspension of the rule of law and some provisions of the constitution paved this way to them, and they achieved creating a new system which reveals the politicization of economy in Turkey. This politicization opened a new era which removes the borders between the state and the free market. Thus, this process made the free market a sort of subject to the state or the sovereigns holding the state apparatus and institutions in the country.

Through the state of emergency in 2016, the politicization of economy went a step further by emergency politics of the government and the president. As seen in the previous cases, the state of exception was resorted by the sovereigns in order to control, direct and discipline the economy in accordance with the wish of the sovereigns. In retrospect, the legal and institutional structure in Turkey have not been a disincentive for sovereigns' mobility in many fields. Thus, the state of exception, especially the state of emergency, became a kind of blessing for the sovereigns. When we look at the state of emergency in 2016, we can see it accelerated the rhythm of the ruling party for being authoritarian. It was not a starting point for this fact, but it has become a milestone on this way for the party. Especially the labor control and capital accumulation/transfer methods show how the state of emergency became an opportunity for the sovereigns to discipline and control the economy.

# 6

## Conclusion

*We will be forced to live "as if we were free"*

– Slavoj Žižek

The comparative method, employed in this study to a certain extent, has aimed at showing the divergence and convergence between the different cases of the states of emergency. While doing that, it has purposed to reveal and put their convergent sides and properties forth specifically in terms of economic policies as well as legal as legal practices in the eyes of the authorities. By looking at the theoretical background of the emergence of the state of emergency beside with the state of exception in the literature, I have taken the theoretical discussion on what the state of emergency and the state of exception are and what they have meant into consideration specifically in terms of economy. The reason for this is to understand how those terms emerged and how they were interpreted; so, we can see how they occupy an important place in the subject of political economy. The practical applications and legally embodiment of the state of emergency have been presented in the historical and legal background. This chapter has a narrative characteristic talking about the transformation of the state of emergency (with the state of exception) from the theory to the practice within the process especially in the economic field.

The historical background of the state of emergency has been indeed intertwined with its legal background to a certain extent. The historical and legal background of the state of exception has started with the state of siege or martial law, in accordance with its locale, and by the time, the state of exception found another legal body as the state of emergency as well. Therefore, in that chapter, I have attempted to show these historical and legal developments and procedures in Turkey. Those developments have taken us away to the contemporary states of emergency. This historical revisiting has been very significant to reveal the evolution of the state of exception and its tools.

As a very significant side of the study, the economic state of emergency and the exceptional period has been handled to introduce and make sense of the relationship between the economy and the state of exception. By this chapter, the difference between the *de jure* state of emergency and the *de facto* state of emergency could be grasped uncomplicatedly in my view. Even though it is not necessary for a state of emergency to be related to economic policies, the employment of emergency politics to control, regulate and even direct the economic policies could be resorted by the authorities in exceptional times. The chapter has shown us how we could evaluate the relationship between the economy and emergency politics under which circumstances.

The chapter of contemporary states of emergency has touched upon how the Turkish and French emergency cases emerged and how the states reacted to the causes of the exceptional time. As I have mentioned before, even though the motives are different for the declaration of the states of emergency, the authorities of these countries preferred to declare it. We have seen, in this chapter, how these states of emergency were adopted and in which conditions they were applied. Especially the Turkish cases show us how the Turkish government made use of the tools of the state emergency for confiscation and led the course of economy even though the motive of the declaration of the state of emergency was not related to the economic problems. On the other hand, we do not see that kind of intensive intervention in the economic area in the case of the French state of emergency; however, we can find some governmental retouch in the economic sphere. That is because even though the state of emergency itself is thought as a subject to the legal structure and the constitution; the authorities are very competent to find some loopholes, and they can

interpret the legal regulations if they do not encounter any legal obstacles. Moreover, I have tried to interpret and discuss what we can find in the study in terms of the relationship between the legal and economic structure and the state of exception/state of emergency. Moreover, I have discussed what we can learn from them if we can find relevant something. That part has also been evaluating what the writer of this thesis could contribute to the discussion over the state of exception and the state of emergency in practice and in theory.

The thesis, overall, aimed at revealing the volume of the relationship between the state of exception/emergency and the national economies. The determining role for the volume of this relationship is to what extent the sovereigns (governments, presidents or administrations) prefer to use the state of emergency as a tool. Even though the sovereigns implement it for different strategies or ideologies, it is obvious that they are prone to resort to it when they encounter a different economic or political “threat” or crisis. The cases of the Euro Crisis and the French state of emergency reveal the significant roles of the governments, the leaders and the administrations on the course of economy. However, the Turkish case shows almost the extreme case of how the economy can be led by emergency politics and mechanisms because in the example of the Turkish state of emergency, we can see the intensive intervention of the state mechanisms in economy by employing emergency politics and the governments, primarily the President, could control and lead the economy to the direction which they require. In this study, we recognize that regardless of the origin of the emergence of the state of emergency/exception, it is a kind gift for the sovereigns if they regard troubles in the economy.

## § 6.1 Discussion on What the Study Says and What We Could Learn from It

So far, in this chapter, we have seen how the contemporary states of emergency in Turkey and France emerged and worked politically and economically. While the cause of the declaration of emergency, the legal, political and economic processes has been described, the relationship between the political process and the economy of the countries have been handled by referring to laws, decrees and news as well as statements. Thus, this chapter has given a

significant opportunity to diagnose the effects of the state of emergency over the economy.

In this thesis, I have attempted to show how the same institution or case, in essence, could affect the course of the economy in two countries which have obviously different characteristics in terms of political and economic institutions and historical background. However, the main aim has been to reveal, in spite of those kinds of differences, the case of the state of emergency could create its own political, social and economic framework regardless of where it is declared. Naturally, every country's legal structure puts some limits and regulates how it could run; nonetheless, the idiosyncratic characteristics of a state of emergency has the potential to emerge quickly. That idiosyncratic characteristics is surely upon to the legal structure, but mostly to the political course of that country. As mentioned in the theoretical chapter, laws could not predict the content of a case of the exception, so, the strength of political and legal structure plays a vital role in any case of the state of emergency.

When we look from that point of view, the states of emergency of France and Turkey has given us to evaluate and examine the same phenomenon/institution's convergent effects on two different countries. Of course, when we look at the volume and severeness of states of emergency do not seem at the same level because of the legal and institutional structures and orders; but they could not be explained by the existence or structure of the state of emergency, on the contrary, they could be elucidated by the room given to the state of emergency by the political and legal framework of the countries. For that reason, it could not be expected that a state of emergency must show the same effect at the same level in any country where it has been declared. At the same time, as I endeavor in this thesis, similar or convergent effects of states of emergency could be observed and we can deduce about the impacts and characteristics of states of emergency proclaimed in different geographies.

While differences of the countries, the economic structure like political or social one is open to the effects of decisions under the state of emergency regardless of the strength of the economy. In other words, the governments or presidents have been aware that they could affect or even direct the economy during the period of the state of emergency, and they attempted to do that in different levels. Even when I look at the general and obvious effects of the state

of emergency on the country economies, I could realize that the visibility of effect in France could not compete with the one in Turkey. However, it does not mean that the state of emergency did not significantly influence the economy in France. We could not see the high volume in France, unlike Turkey; but we could reach some obvious indicators as well as, perhaps more importantly, the details on that issue. It may be derived from the cause or source of the declaration of states of emergency since one of them was a terrorist attack, and the other was an attempted coup d'état. However, the state of emergency prompts the same institutions even though they do not apply the same methods to deal with the problems caused the declaration of the state of emergency.

Moreover, the discussion about a *de facto* and *de jure* state of emergency has taken an important place in this thesis. It derives from what we see how states or supra-state organs could react to exceptional cases. Even though the causes of states of emergency in Turkey and France did not come from economic reasons, the *de facto* state of emergency across the European Union, at least in its some members, derived from intensive and serious economic problems, namely an economic crisis, affecting and even devastating possibly the all structure of the Union. Although this thesis put a comparative study and analysis between Turkish and French cases in some respect as examples of the *de jure* state of emergency, the exceptional period and politics in the EU have been shown as an appropriate example of a *de facto* state of emergency. While the thesis has been focusing on much more the Turkish case, it has aimed at revealing to what extent exceptional policies of the state and supra-state organs could be effective and influential on the economies of states and unions if we think about it more broadly. While showing these cases, I have discussed whether the policies and precautions taken by the governments or individuals have aimed at removing causes creating the exceptional situations and the state of emergency, *de facto* or *de jure*. Regardless of its content, emergency politics carried by the governments and authorities have been supposed to as a precaution and measurements to reestablish the normalcy. That normalcy is the legal situation itself, and the state of exception inside or outside of the current legal situation is “naturally” against the exception and aims at removing it and its results. However, we have been able to observe and recognize that

exception creates its own normalcy. A stalemate limits the normalization of the current situation in the state of normalcy, and through the emergence of the state of exception, normalcy gains a pretty new outlook and even characteristic. That outlook and property are open to being shaped by the exceptional policies and exception itself. In other words, the tools of the state of exception including the state of emergency can be declared to turn to the normalcy even though they have strong potential to bring new normalcy to the current legal, political or economic structure. For example, we can observe that in the EU case and the Turkish case. The transformation of normalcy was accompanied by the intensity and strength of the state of exception and its tools. The new state of normalcy does not always have to carry characteristics of the state of exception; however, we can see some carrying some exceptional period characteristics as in the case of the EU.

The lack in the literature in terms of the *de jure* and *de facto* state of emergency could create some uncertainty to grasp what it means and what it brings because when we see some abnormality in the state of normalcy procedure in economy or law, we can diagnose it as “state of exception” but the main arguments can be missed: To what extent we can talk about the exception. In this study, I have attempted to handle the relationship between the law and the exception as well as the political and economic relations even though the law-exception relationship is not the main task of the thesis. Nonetheless, although some cases could be so open and clear to be diagnosed and explained, some of them could be seen so vague. Therefore, the study has attempted to enlighten the hidden or vague sides and points of the states of exception or the two types of the state of emergency even though it did not aim at putting a comparison. When we look at our cases, the Turkish government seems so as it made use of all properties of the *de jure* state of emergency during the 2-year period while the French authorities behaved timidly to use those properties of that kind of state of emergency. On the other hand, the authorities of the European Union and their companion governments made use of the *de facto* state of emergency during the crisis to weather the economic storm. These cases, in that situation, are very suitable to tell us the two types of the state of emergency and to what extent the governments or authorities could

benefit from the exception. As we have seen, even if the motives of the declaration or inurement of the state of emergency, regardless of its type, are different, I have taken notice of the economic side of the state of emergency even though I have touched upon its legal and political position. Regardless of its motive, the economy has been regarded as a tool of the state of emergency and the governments and authorities have been prone to use the exceptional powers on it to control and regulate its content and course. However, it is important to note that the employment of emergency politics to regulate the economic policies is not necessary; however, it is clear that it paves the way to the authorities to regard the course of economy to interfere during the exceptional period because there is not a strong obstacle constraining them from doing that.

In the broadest sense, even though the political transformation of the AKP's Turkey has started since the early 2010s, the economic transformation rose to the occasion especially by the declaration of the state of emergency in 2016. Before that date, there existed some discussions about any possibility for the transformation of Turkey to more authoritarian ruling even though the country was trying to engage itself to the EU. Even though Erdoğan every time highlights his loyalty to the free market economy understanding, the state of emergency created a quite different political economic framework for the country, especially with appropriations/confiscations and liquidations. This situation is obviously a conflict with the free market economy understanding. President and the government wished to weaken and to do away with the economic pillar of the FETÖ. However, the legal framework of the state of emergency allows the intervention of the state to an undefined extent. The discussion of whether the state of emergency is within the border of the law or not provides an arbitrariness for the state. In the other cases, it is obvious that the governments or executive branches make use of the "comfortable zone" of the state of emergency by implementing emergency politics in the national or regional economies in order to make changes or discipline; however, the relationship between the state of emergency and law does not show so extensive grey zone. In other words, although the legal status of the state of emergency is still disputable in Europe, the applications pay attention to be in the border

of law one way or another. As mentioned before, indeed, the state of emergency emerges when the current laws fall short to give a sufficient reaction to the events or case creating the exceptional state. The historical background of the state of exception in Turkey shows that the state has actually very unlimited authority to use emergency politics when it encounters with exceptional cases. The state obviously used this authority in different fields, but the intervention in the economy has been perhaps one of the most desired fields by the government. This desire derives from the limited authority of the government in the state of normalcy, in other words, in the constitutional order. Thus, the current ambiguity in the interpretation of the laws and articles about the structure of the state of emergency or the disagreement between the executive and legislative branches make the use and period of the state of emergency almost accountable. The Turkish government wanted to dissolve the economic and political pillars of the FETÖ by resorting to some political implementations. However, without the *de jure* state of emergency did not become so useful for the aim of the government. The failed coup d'état and the state of emergency made room for the government to behave more comfortably due to the legal structure and position of the state of emergency.

In three cases, in general, we can regard that the sovereigns used emergency politics to mitigate the effects of the current crisis or turmoil and even to solve these crises. However, it is obvious that they did not use the same methods while doing that. When we look at the *de jure* states of emergencies, even though the Turkish and French sovereigns resorted to legal procedures to proclaim the state of emergency, the intensity and dimension of the intervention of the sovereigns were not at the same level. I can say that the cause of this differentiation derived from the characteristics and strength of current legal and institutional order/establishment. Of course, we can see the intervention in the field of the economy in France through the mechanisms of the state of emergency; however, as we said, the level of intensity was not as severe as in Turkey. The EU ruling mechanisms also employed emergency politics under the *de facto* state of emergency to save the soundness of Eurozone and obliged some governments to follow these emergency politics. As the essence of the matter, these cases tell us that the sovereigns are prone to use emergency politics when they encounter with severe crisis or threat, and then they prefer

to employ emergency politics under the state of emergency. The type of the state of emergency hinges on the legal and institutional structure of the countries or unions. However, emergency politics, therefore state of emergency, is a very useful tool for the sovereigns. However, as thesis tried to show, the level and intensity of the intervention, especially in the field of the economy, is determined and shaped by again the established legal and institutional order and mechanisms.



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