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Cyberspace as a New Sphere of the State of Exception



SÜLEYMAN ALPER KARAHAN  
113680006

Assoc. Prof. Ferda Keskin

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CYBERSPACE AS A NEW SPHERE OF THE STATE OF EXCEPTION  
İSTİSNA HALİNE YENİ BİR ALAN OLARAK SİBER UZAY

SÜLEYMAN ALPER KARAHAN

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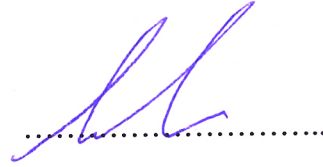
Tez Danışmanı: Doç. Dr. Ferda Keskin  
İstanbul Bilgi Üniversitesi



Jüri Üyesi: Doç Dr. Esra Arcan  
İstanbul Üniversitesi



Jüri Üyesi: Doç Dr. Erkan Saka  
İstanbul Bilgi Üniversitesi



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## **ABSTRACT**

The primary purpose of this study is to understand the relationship between cyberspace, law, and the sovereign through the concept of the exception of Agamben and Schmitt. In this respect, the central assertion of this study is that a new sphere of exception with an uncertain future is being formed over cyberspace today.

To confirm this assertion, the reasons for which this claim was made will be discussed briefly during the introduction, and some academic papers will be examined, which were written during the period that cyberspace came into existence. Afterward, via the current statistics and countries that use strict censorship towards cyberspace such as Turkey and Iran, the efforts of sovereign powers to control cyberspace will be examined, and, once again, through the concept of exception, the ambivalent relationship between the sovereign and cyberspace will be analyzed. In the following chapters, the effects of new communication technologies on social and governmental practices and the spatiality of cyberspace will be discussed using the work of McLuhan. Finally, this argument will be supported by both historical and contemporary examples and as a result, a different kind of perceptive will be offered for this exceptional sphere and its participants.

## ÖZET

Bu çalışmanın amacı siberuzayın hukuk ve egemenle olan ilişkisini Agamben ve Schmitt'in istisna kavramı üzerinden anlamaya çalışmaktır. Bu doğrultuda çalışmanın esas iddiası günümüzde siberuzay üzerinden akıbeti belli olmayan yeni bir istisna alanının şekillendiği yönündedir.

Bu iddiayı doğrulayabilmek adına, öncelikle giriş bölümünde bu iddianın hangi sebeplerle ortaya atıldığına kısaca değinilip, ardından siberuzayın ilk ortaya çıktığı yıllarda konuyla ilgili yapılan kimi çalışmalar ele alınacak. Sonrasında güncel istatistiki analizler ve siberuzaya karşı yoğun sansür uygulayan Türkiye, İran ve benzer durumda ülkeler üzerinden egemen güçlerin siberuzayı kontrol çabaları tartışılıp bu durumun istisna kavramı ile olan ilişkisi irdelencek, sonrasında yine istisna kavramı üzerinden egemen ve siberuzay arasındaki ikircikli ilişki ele alınacaktır. Ardından McLuhan'ın çalışmaları üzerinden tarih boyunca yeni iletişim teknolojilerinin toplumsal ve yönetsel pratikler üzerindeki etkileri incelenip yine McLuhan üzerinden siberuzayın özgün mekansallığı tartışılacak. Nihayetinde de bu argüman hem tarihsel hem de güncel örneklerle desteklenip bu yeni istisnai alanın kendisine ve katılımcılarına dair farklı bir perspektif sunulmaya çalışılacaktır.

## INTRODUCTION

This thesis is a result of an attempt to understand the untitled and strange relationship between cyberspace, law and sovereign power via the two premises that Schmitt attributed to law and to the sovereign which are: “Every general norm demands a normal, everyday frame of life to which it can be factually applied and which is subjected to its regulations” and “...the sovereign produces and guarantees the situation in its totality... There exists no norm that is applicable to chaos.” (Carl Schmitt, 1985, p.13) These premises are also used by Agamben in his famous work *Homo Sacer: The Sovereign Power And Bare Life* to analyze the state of exception throughout history.

It was quite interesting to incorporate these premises with the issues concerned with cyberspace — as a result, many other interesting questions appeared that need to be deal with when we think about these premises under the shadow of cyberspace such as: If sovereign powers are not capable of creating the necessary circumstances for the efficiency of the laws, then how should we perceive the current internet regulations which are already in force? Or what is the current legal status of relevant internet users who can access banned materials on the internet, and what degree laws can internalize and externalize this new space? Or how the status of cyberspace can be defined when it’s looked at from the window of the sovereign?

While we try to find genuine and plausible answers to these questions, we realize that millions of people in the entire world are suspending every kind of ban towards cyberspace without facing any legal sanction and we are also realized new kind of exceptional sphere has been formed as a result of restriction policies against cyberspace all over the world. As a result of the *de facto* suspension of the laws on a global scale, we tried to incorporate the concept of exception into the current status of cyberspace and its participants. Hence we saw the fact that today Schmitt’s premises concerned with the law and the sovereign power cannot explain the issues

related to cyberspace. Because of this very reason, we try to reformulate the current status of the state of exception (also the participants who suspended the laws via cyberspace) based on reoccurred dilemmas of the last decade.

As stated in the abstract section, the state of exception has a central role in this thesis. While searching for answers to the questions concerned with this global *de facto* suspension of the laws on a global scale, after cyberspace, we saw the state of exception found itself a new sphere that goes beyond the control and initiative of the sovereign. Furthermore, this new sphere of the exception has been used by the sovereigns as well as internet users, which in the countries that impose strict censorship towards cyberspace. That is why this sphere and the status of its participants is the primal concern of this work. To unravel the unique character of this new sphere, we will discuss the transformation of the sphere of exception and consolidate this argument via the examples from history. Furthermore, with several examples from the last decade, we will also discuss the governmental crisis that appears during the control attempts of sovereigns to cyberspace.

According to the findings of this thesis, this ambivalent relationship between laws, cyberspace, and the sovereign can only be understood through the unique spatiality of cyberspace rather than its relation with the physical space because we are living in a world of bifurcated spaces and we are still trying to adapt ourselves to this new reality; however, we are still far from plausible perspective in many aspects. The conceptualization of cyberspace that based on bifurcation, allows us to see the interaction between these spaces, and also allows us to realize the unique features of this new sphere and its effects on sovereign powers and daily routine as well. When we say bifurcation, we do not mean separate, independent, and distinct spaces, but two different, interacted, coexistent, and concurrent spaces are on the question. And this question directly related to the transition of communication technologies that affect the transformation of the governmental and daily life practices that have been discussed by McLuhan.

This new sphere of exception is the sphere of ecstasy-belonging. Different than the story of *homo sacer*, which we will discuss in the following chapters, this



sphere goes beyond the decision and the initiative of sovereign powers, and it actualizes itself through cyberspace and mostly stays limited with it. Today the issue of “To be outside and yet belong” (Giorgio Agamben, 2002) is not only a matter of legal order but also a matter of bifurcated spaces as well. Despite its unpredictable future, this sphere is still actively using by millions of people worldwide, and this *sui generis* feature of cyberspace deserves more recognition in our time.

Being outside of the borders of law and be able to see their limits is not an insignificant issue at all. Besides, that kind of relationship with legal order unravels the insignificance of cyber laws from two different standpoints.

Although the sovereign’s deficiency to establish an “everyday frame of life” and the efficiency problem of a legal system cannot be comprehended through the reactions and sanctions of a country or an organization; we still believe a few good examples and current statistics can give an excellent insight to understand the current situation. For this purpose, first, we will take a brief look at the early studies on the relationship between legal order and cyberspace. Afterward, we will examine the statistics and infographics related to Virtual Private Network (VPN) usage rates per country. In the following chapters, this data will be evaluated on the basis of the work of Agamben and McLuhan and will be conceptualized via some examples from history and from today.

## **CHAPTER ONE**

### **Short History of Cyberspace and Law Relationship and Examination of Statistics and Cases**

#### **1.1. “All the World was America”**

John Locke, in his famous *Concerning Civil Government*, Second Essay was referring to a newly discovered America to describe the state of nature where human exists without laws and sovereign power. According to Locke, the state of nature was competent freedom; within the allowance of nature, people were living their lives without getting permission from anyone, and that is why America was the second heaven (John Locke, 1690- 2017, p.18)

Even if we try to make a rough comparison, it is hard to establish any resemblance between today’s cyberspace and Locke’s America, but in the 1980s and 1990s, we can accept without hesitation that the internet was a more unsupervised and used by a more limited audience. That is why we believe calling decentralized cyberspace “20th century’s new world” would not be an exaggerated statement at all.

We can talk about a process similar to the internet for the 1920’s new radio and television when they managed to get out of the control of the US Army. Nevertheless, bilateral relations between these technologies and the decision-makers (also the legal system) followed very different protocols compared to the internet and other multimedia technologies; moreover, they did not cause any long-term governmental crisis on a global scale just like the cyberspace did.

Many distinguished social scientists and scholars of law foresaw the potential of the internet and its future consequences for the national administrations and their legal system: “Compared with previous communications media, the internet is decentralized, with registration and administration functions limited strictly to what is required to maintain operability... argue that the Internet’s unique

capacity to convert the world into global communities may ultimately demand the displacement of some national law, as technology reduces the significance of sovereignty” (Steven Salbu, 1983, pp.435-436) In 1983 when local internet providers were still very new even for America, Ithiel De Sola was emphasized these potential faculties of cyberspace: “The new realm of cyberspace thus departs from the traditional domains of communications that American law historically controlled- print, common carriers, broadcast media.” (Steven Salbu, 1983, p.453)

## **1.2 Examination on the Current Statistics of Worldwide VPN Usage Rates**

From the very beginning, cyberspace has differentiated itself from other communication technologies because of its unique structure and features- It also has the potential to overcome the limitations of the sovereign power and the legal order.

When we look back to the worldwide power struggle between cyberspace and sovereign powers in recent history, it is easy to say that prophecies of the 1980s are still on the mark in many respects. Besides, accessing banned websites and applications with any VPN application is quite easy for regular internet users, even for countries like Turkey, China, or Saudi Arabia (VPN Mentor, 2018), which impose heavy censorship against internet access. When we look at the 2018 statistics of VPN usage, we see a remarkable difference that equal to 450 percent higher. Here are the top five countries most widely accessing content via VPN: Thailand, Indonesia, China, Brazil, and Saudi Arabia.

Table 1: VPN Use Over Time

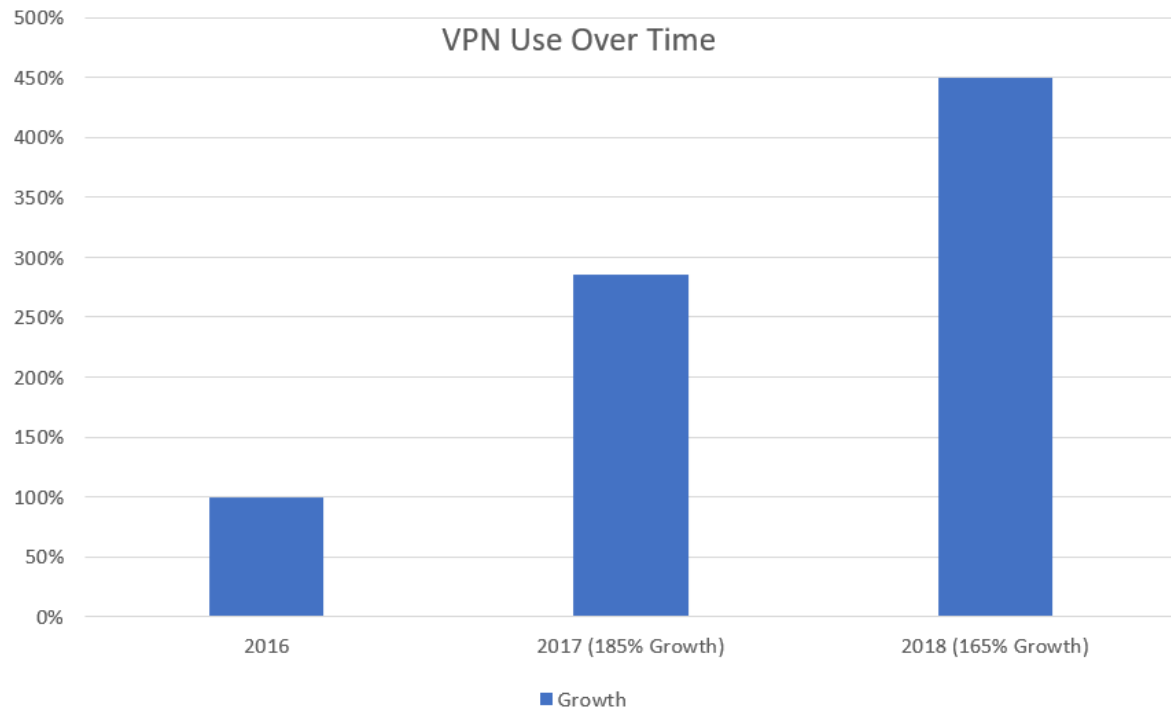
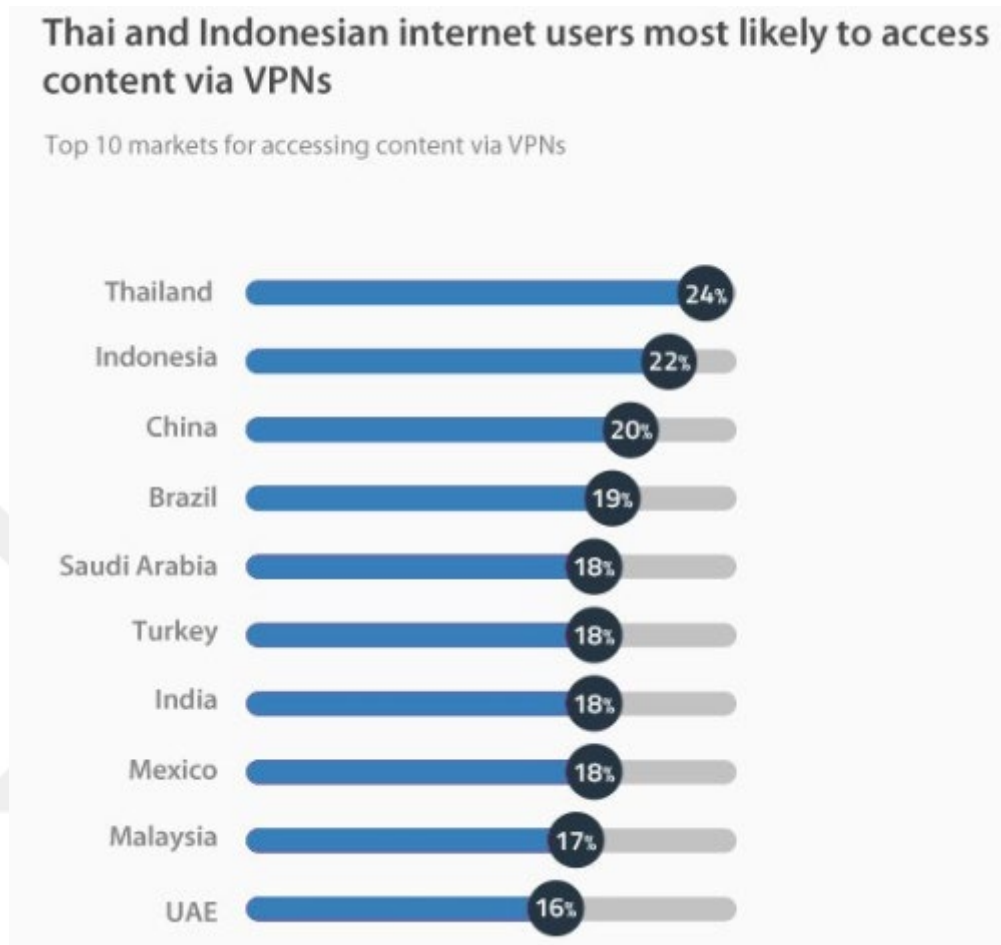


Table 2: Accessing Content Via Vpn Per Country



The situation gets more interesting when we consider the sanctions against the VPN users in some of those countries on the list. For instance, in China, the third biggest VPN market in the world, the legal penalty of using unauthorized VPN services, is not imprisonment but a 15.000 yuan fine. (VPN Unlimited, 2017)

Likewise, in Saudi Arabia, if the government detects any unauthorized VPN users, “harsh punishments” may come into force. (VPN Unlimited, 2017)

Similar sanctions are also available in the United Arab Emirates if any internet user reaches to banned materials via VPN applications they might face imprisonment or civil penalty. (VPN Unlimited, 2017)

Hence, despite legal sanctions that might lead up to imprisonment, how can those countries still be the biggest markets for VPN applications?

Although sovereign powers are not capable of controlling cyberspace, they still insist on controlling these new communication technologies with inefficient censorship, which already failed in myriad cases. So what could be the main reason for this censorship policies?

### **1.2.2 Who Has the Initiative?**

Now we have to discuss the question that we asked at the end of the previous chapter, which is about the insistence of the sovereign to take control over cyberspace. We have to admit that; cyberspace does not provide unconditional openness to the internet community. Reaching to the other side of the ambiguous edge demands reciprocal participation of the users and cyberspace. Without the consent of its users, cyberspace does not suspend the national censorship policies, which depend on the user's location- That suspension demands informant users that know how to use the internet's resources and also needs the direct involvement of the user itself. In other words, many users establish their relationship with the relevant internet regulations by suspending them. As mentioned above, this situation demands a certain level of digital literacy, which is why for the digital immigrants, people who are not familiar with the cyberspace, borders continue to be determined by the sovereign powers. By this means, sovereigns all over the world are still able to control billions of people's access to cyberspace. On the other hand, according to the infographic prepared by Global Web Index (Global Web Index, 2018), VPN usage rates are increasing for the educated people and decreasing for the oldest section of the population. This means that educated- and native users constituted the most demanding segment for the VPN, while the population that meets with cyberspace in their old age and get limited education represents the other end.

Besides that, when the attempts of the sovereign to take control over the content access in recent years are briefly looked at, it has to be admitted that- although they are not successful attempts, they force participants to use different

ways to suspend the censorship over cyberspace. For instance, a few years back in Turkey, cyberspace users were able to access banned materials via changing DNS (Domain Name System) numbers in the network settings of their devices without any additional application or interface. When the sovereign managed to take control of current DNS numbers in circulation, new numbers came up, and the situation went round in circles for a while. Finally, the sovereign power in Turkey managed to prevent accessing content via DNS numbers. However, when this happened, VPN applications that were previously used by limited participants got more popular, and other participants were able to access banned content and applications once again. (Burak Kara, 2018)

Afterward, Turkey attempted to ban the whole VPN applications in the entire country. Probably nothing could summarize this situation better than the news that took place at deep.dot.web on Turkey's banned the VPN applications: "While the government blocked the ability to use Tor with a default configuration, options are still available. We wrote an article on bypassing the ban above <sup>1</sup>Pluggable for Tor: Dodging Censorship". As it is seen, with the announcement of the censorship and the description for the suspension of it take place in the same news. (Deep Dot Web, 2016) Besides, it was a discontinued attempt, and today VPN applications can be used freely all over Turkey.

Before moving on, we have to mention local content providers located on the intersection of physical and cyberspace with examples from Turkey. After the latest legal regulations, The Ministry of Telecommunications and Communication Of Turkey (TİB) is able to ban any website or content with excuses such as national security, public security, etcetera, that without a need for a court order (NTV, 2015) Whether court orders or TİB's interventions, these bans leans on the sovereign's authority over physical space rather than cyberspace. The reason that these restrictions can fulfill the restriction function has nothing to do with a sovereign who is able to control cyberspace. These restrictions make itself valid through the sanctions that interlocutors might face in physical space. Let us take Ekşisözlük for

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<sup>1</sup> That sentence is a link to censorship suspension guideline for the readers.

instance, one of the most visited website in Turkey (Alexa, 2019) that works as an open forum which based on topics (music, cinema, politics, sexuality, academic, casual and pretty much everything that we can imagine) and comments created by its members. As a result of restriction policies towards cyberspace in recent years in Turkey, the Turkey-based website is regularly removing topics and comments because of the court orders or TİB's instructions. However, as we stated before, accessing banned contents does not constitute any penal sanction in Turkey. Moreover, when we compare VPN usage rates with the countries that use legal sanctions against VPN users, this comparison creates a serious inconsistency that causes a reasonable doubt about the efficiency of these legal procedures.

If so, when it comes to the sphere of intersection between cyber and physical space; The sovereign has the authority over the content providers via his power that established in physical space. Nevertheless, this authority depends on the content provider's consent (In this case, location, nationality, the concept of the platform and too many dynamics are very crucial, but we will not get into further technical details). Besides, when sovereigns attempt to make restrictions in cyberspace without the consent of the content provider, these restrictions are far from to be inclusive for all internet-users and only efficient for particular groups within cyberspace. Moreover, these restrictions try to fulfill their tasks with the risk of suspension under the shadow of DNS numbers, VPN applications, and <sup>2</sup>mirror sites, and so forth. (wikizeroo.org, 2019)

As we see in these examples, the sovereign is still hoping to take control of cyberspace and continuing to his endeavor to achieve this goal. It is possible to discuss similar examples via China's The Great Firewall of China or Russia's Digital Economy National Program, which has become quite popular in recent months. Although the question concerned with establishing the sovereign's authority towards cyberspace in the future still keeps its significance, this work has no any claim or intention on making future-oriented predictions; therefore, this

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<sup>2</sup> For instance, since April 29 ,2017, Wikipedia banned in Turkey but internet users can reach the Wikipedia database with adding "0" before any Wikipedia connection link. As we mentioned that process demands the consent of informant internet users



study leaves the future foresight to the communication scholars and technology experts who have an interest in the future of cyberspace. The main concern here is to understand the relation of exception between law and the sovereign without ignoring the effects of communication technologies, and as a result, to offer a different perspective to positioning cyberspace.

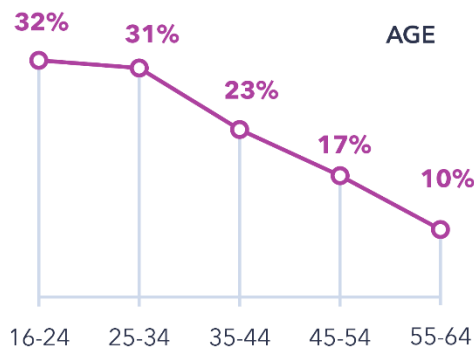
All statistics and examples have been referred to this chapter were about daily effects and results of restriction attempts over cyberspace; in further chapters, while discussing the current effects of these attempts, it will be discussed the interaction between restriction policies and governing practices. Afterward, similar examples will be discussed through historical examples to display the importance of the role of new communication technologies on the relationship between the law and the sovereign. Because if we analyze these restriction policies and consequences only on current examples, then we have to ignore the whole historical background and other dynamics that interacted with this question.

Table 3: Demographic Profile of VPN Users

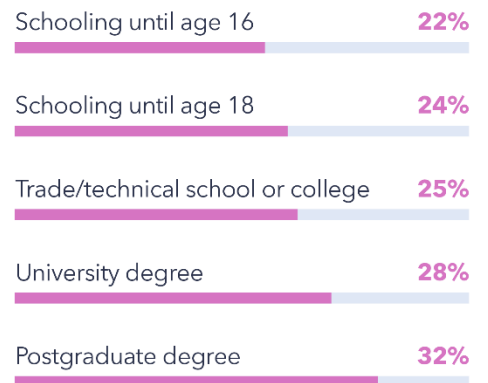
## VPN Users: A Profile

% of internet users aged 16-64 who have used a VPN (Virtual Private Network) in the past month

GENDER 20%  30% 

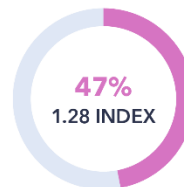


### EDUCATION

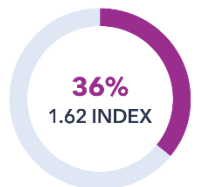


% of VPN Users who are Regulars /Semi-Regulars\* for the following activities

Vacation abroad



Travel abroad for business



\*Regulars/Semi-Regulars are defined as internet users aged 16-64 who take a vacation abroad/travel abroad for business at least once a year  
Source GlobalWebIndex Q1 2018 Base 24,461 VPN Users aged 16-64

## CHAPTER TWO

### Cyberspace as a New Exceptional Sphere

#### 2.1 Law of Exception

Now for the sake of our argument, we would like to go further into the details of the relationship between the sovereign power and the exception.

In *Homo Sacer*, Agamben defines the sovereign power based on the paradoxical relationship between the sovereign and juridical order, and without that paradox, it is impossible to talk about the sovereign itself: "...in fact the sovereign is, at the same time, outside and inside the juridical order. If the sovereign is truly the one to whom the juridical order grants the power of proclaiming a state of exception and, therefore, of suspending the orders own validity..." (Giorgio Agamben, 1998, p.17) and continues to referring to Schmitt: "Although he stands outside the normally valid legal system, he nevertheless belongs to it, for it is he who must decide whether the constitution needs to be suspended in its entirety" (Carl Schmitt, 1985, p.7) which means: "I, the sovereign, who am outside the law, declare that there is nothing outside the law." (Giorgio Agamben, 1998)

The exception is a unique force that energizes juridical order and keeps it in interaction with the outside. An undecidable position (partly inside, partly outside) of the sovereign power makes the juridical order itself possible. The actual meaning of "I, the sovereign, who am outside the law, declare that there is nothing outside the law is": As a sovereign power, I include everything into the scope of the law and as an exceptional power, who devoted this order, I position myself in an ambiguous edge of the law. Law of exception is the law of the sovereign itself. By this exceptional position, the sovereign decides what is going to be a rule and what is going to be an exception to the scope of the law.

"The exception is a kind of exclusion... But the most proper characteristic of the exception is that what is excluded in it is not, on account of being excluded, absolutely without relation to the rule. On the contrary, what is excluded in the

exception maintains itself in relation to the rule in form of the rule's suspension... Here what is outside is included not simply by means of an interdiction or an internment, but rather by means of the suspension of the juridical order's validity – by letting the juridical order, that is, withdraw from the exception and abandon it. The exception does not subtract itself from the rule; rather, the rule, suspending itself, gives rise to the exception and, maintaining itself in relation to the exception, first constitutes itself as a rule. The particular “force” of law consists in this capacity of law to maintain itself in relation to an exteriority. We shall give the name relation of exception to the extreme form of relation by which something is included solely through its exclusion.” (Giorgio Agamben, 1998, p.18)

The sovereign power determines the relation of the law to the exteriority. At that point, inclusion consists of three subcategories: interdiction or internment (inclusive exclusion), regulation, or the suspension of the law itself (exclusive inclusion). One of the main arguments of this study is that when it comes to cyberspace, the sovereign power is not alone in determining the limits of outside and inside of the law. Cyberspace is capable enough to reach beyond the initiative of the sovereign power and assign itself as an exception based on the decision of its participants. Until recent years, the sovereign powers did nothing other than acting out <sup>3</sup>the three wise monkeys. While cyber laws are losing their effectiveness, the sovereign powers continue to declare that “...there is nothing outside the law.” However, “For a legal order to make sense, a normal situation must exist.”(Carl Schmitt, 1985, p.13) Moreover, millions of people worldwide continue to suspend internet censorship, entering banned websites and using forbidden applications via the offerings of cyberspace and this situation does not constitute any criminal offense in a country like Turkey, which imposes strict censorship on the internet. This situation roughly continues as a *de facto* exception on a global scale.

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<sup>3</sup> The pictorial maxim to describe: “see no evil, hear no evil, speak no evil.”

We already mentioned that the exception is a *sine qua non*-condition for the sake and the continuity of the juridical order. We have also stated that the relationship with the outside of the law might not be a full inclusion, and in some particular cases, with the suspension of the laws, the relation of exception may come into force based on exclusive inclusion. When the cyberspace is concerned, the sovereign does not suspend the laws; on the other hand, current laws can be suspended in everyday life by internet users. With the decision of its participants, cyberspace makes itself an exception at the point where the sovereign refuses to use the exception. The sovereign loses his privileged status, based on which he decides what is going to be the law and what is going to be the exception without his own initiative. Exclusive inclusion is realized based on the opportunities that cyberspace offers and the aftermath and state of access of the virtual platforms on which national courts impose sanction is left on the ambiguous threshold between exception and legal order by cyberspace and users. Eventually, the sovereign prefers denial in the face of an exception that it does not induce. Moreover, it should be also be stated that no country, which censors the internet officially accepts this at the cost of revealing its own failure.

### **2.1.1 Every Routine is an Exception**

“Precisely a philosophy of concrete life must not withdraw from the exception and the extreme case, but must be interested in it to the highest degree... The exception is more interesting than the rule. The rule proves nothing; the exception proves everything... In the exception, the power of real-life breaks through the crust of mechanism that has become torpid by repetition.”(Carl Schmitt, 1984, p.10)

In these words, Schmitt insists that if we want to understand what we call everyday life, we should turn back to the exception, not the rule. When we think about our everyday life based on this perspective we realize that the routine makes itself possible via an exception. Every routine is a bit of an exception (when we consider the first occurrence of this routine). Agamben cites Schmitt's Political

Theology: “There exists no norm that is applicable to chaos,” because, without the sovereign power which is capable of including Zoe (bare life) to bios (social life) in some degree and creating exceptional situation for the routine, it is not possible to talk about the order itself. Order is nothing but an exception within the chaos ( “In the beginning, all the world was America,” which means chaos, out of order). Therefore, to trace the order itself, we should look for an answer to the question of how order constitutes an exceptional situation for itself.

Furthermore, in the age we live in, new communication technologies that occur as an exception in their first appearance influenced the routine with incomprehensible swiftness. In the face of a new dynamic that influences the routine at such a high pace, the confusion of the sovereign who is responsible for the inclusion of exception into the routine and determination of the limits seems understandable.

Agamben maintains that while making a critique of the exception as a historical condition that took a new shape in the modern era, the state of exception turns into a rule, and separating the rule from the exception gets impossible. At the end of Zoe's attachment to Bios (social life), western political and intellectual tradition reached a very dark point that makes it impossible to distinguish what is law and what is exception and Agamben shows the consequences of this period through the catastrophes of recent history. Today, Agamben’s inquiries on the absolute indistinction between the law and exception lose nothing from their validity. But at that time, the sovereign was the only decision-maker of the absolute indistinction. And today, the diffused accountability of the mechanisms, which constitutes this absolute indistinction stands as the new reality of our time.

As we are referring to the amphibolic condition of this new exception, we would like to emphasize the importance of considering physical and cyberspace partially different and concurrent at the same time. New exceptional space comes into existence through cyberspace, and the source of the authority, borders, rights turns into an ambiguity via cyberspace once again. However, when physical space

is in concerned, the so-called global village is far from being global in too many aspects.

## 2.2 From Coup D'etat to Exception

At this point, discussing the ambivalent attachment between the law and the sovereign through the history of the concepts of exception and *coup d'etat* can give us a good insight into the current crisis of cyberspace. Now we would like to examine two different arguments which start with very similarly and then go to opposite directions; To clarify the discussion on the concept of exception that is concerned with the exceptional status of the sovereign and cyberspace, referring to Foucault's 1977-1978 *College de France Lectures: Security, Territory, Population* might be very enlightening. In these lectures, Foucault tries to understand the formation process of the modern state through the set of relations that constitute the state itself and in the lecture on March 15, 1978, Foucault elaborates on the concepts of *coup d'etat* and <sup>4</sup>*raison d'etat* which first appear through the vast transformation process of governing practices in 17th century. In political texts at the time, the word *coup d'etat* was indicating an entirely different kind of meaning: "For at the beginning of the seventeenth century the term "*coup d'Etat*" did not in any way signify someone's seizure of the state at the cost of those who had previously held it and are then dispossessed. The *coup d'Etat* is entirely something else. What is the *coup d'Etat* in political thought at the start of the seventeenth century? In the first place it is a suspension of, a temporary departure from, laws and legality. The *coup d'Etat* goes beyond ordinary law... Or again, it is an extraordinary action against ordinary law, an action retaining no order or form of justice." (Michel Foucault, 2007, pp.342-343)

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<sup>4</sup> Reason of state

As we see, Foucault's definition of the *coup d'Etat* that based on the context of the 17th century is almost identical with the definition of the exception that we discussed from the very beginning of this study. However, the interesting part is that Foucault asks the same question right after he gives us a definition of the *coup D'etat*: "Is the *coup d'Etat* foreign to *raison d'Etat* in this? Is it an exception with regard to *raison d'Etat*?" His answer is even more interesting: "Absolutely not, because, and I think this is an essential point to note, *raison d'Etat* and a system of legality or legitimacy are not in any way homogenous." Then Foucault asks "What is *raison d'Etat*?" and discussing it via *Histoire du droit public en Allemagne* written by Bogislaw Philipp Von Chemnitz in 1640 (We will discuss a little bit later why Foucault uses the term *raison d'Etat* rather than sovereign) he says: "Well, Chemnitz says for example, it is something that allows departure from all "the public, particular and fundamental laws of whatever kind they may be. In fact, *raison d'Etat* must command, not by "sticking to the laws," but, if necessary, it must command "the laws themselves, which must adapt to the present state of the republic." So, the *coup d'Etat* does not break with *Raison d'Etat*. It is an element, an event, a way of doing things that, as something that breaches the laws, or any rate does not submit to the laws, falls entirely within the general horizon, the general form of *raison d'Etat*." (Michel Foucault, 2007, p.343)

Now, besides Foucault's opposite conclusion to the definition of the exception that we use in this thesis, why does the process, which is defined by words with negative connotations such as exception, state of emergency, unlawfulness, corresponds to a way of doing things that are accepted and affirmed as the most natural duty of the state in the 17th century?

First, we will try to clarify the situation through the notions of *raison D'etat* and the sovereign. In spite of the apparent correspondence between Agamben and Schmitt's exception and Foucault's *raison D'etat*, these terms signify entirely different things. Foucault takes *raison D'etat* as a period that new governmental techniques and technologies emerged, which feeds the dynamics that create the modern state. According to Foucault, it is impossible to make a substantial



definition of the state that can only be defined through itself. “The state is a practice.” says Foucault, and then continues: “The state is inseparable from the set of practices by which the state became a way of governing, a way of doing things, a way too relating too government.” (Michel Foucault, 2007, p.357)

Consequently, the debates on the sovereign and its meaning should leave their place to a historical set of relations for Foucault. However, according to Agamben, this set of relations is created and maintained by the sovereign power itself. For Foucault, *coup D’etat* is a way of doing what is considered as a necessary intervention by *raison d’Etat*, and it can be understood through the governmental techniques articulated that— this intervention emanates from a need, and that need appears via the set of practices and techniques implemented by *raison D’etat*. However, according to Agamben, the beginning of this ambivalent attachment between the law and the sovereign is a relation of ban and exception, which goes back to the first appearance of the political animal, and this is the basis of every kind of power practice in history: “The original political relation is the ban (the state of exception as zone of indistinction between outside and inside, exclusion and inclusion)” (Giorgio Agamben, 1998, p.102) The sovereign’s very own existential reason emanates from a relation of exception, yet, that does not mean that the exception is an immanent thing for the sovereign. This situation is the paradox of sovereignty to Agamben.

For Agamben, based on its paradoxical position, the sovereign is the origin and the existential reason of every kind of political relation. However, for Foucault, *raison D’etat* emerges as a result of the transformation of power relations and technologies throughout history. Therefore, in the 17th century, *coup d’Etat* corresponded to a way of doing that indicates *raison d’Etat*, which was immanent to power relations and technologies at that time apart from an exception.

Although this situation has been considered as a natural right of the state for a certain period in history, Schmitt defines this situation as an exception (and Agamben uses this term via Schmitt). Whether we call it sovereign power or *raison d’Etat*, the common crucial point for Foucault, Agamben, and Schmitt is that —

the authority is capable of suspending the laws when the suspension considered as a necessary intervention; as opposed to this idea, there was also a common objection that this privilege of the sovereign can or should be undermined with the rule of law or theories such as social contract or natural law and so forth. The paradoxical position of the sovereign was started to be considered as a threat rather than a necessary intervention for the sake of the law and the state. Likewise, in his lectures in the following year that he named *The Birth of Biopolitics*, Foucault continued to analyze the transformation of power practices and techniques, and mentioned the need to try to limit *raison D'etat* by the law on parallel to *coup d'Etat* that appears in the same century: "...for example, fundamental laws of the realm that jurists argue, against *raison d'Etat*, cannot be called into question by governmental practice or *raison d'Etat*... reappearance of the themes of natural law, original law, the contract, and so forth, which were formulated in the Middle Ages in a completely different context, are all in a way the other side and consequence, and the reaction against, this new way of governing on the basis of *raison d'Etat*. In fact, law and judicial institutions intrinsic to the development of the royal power now become, as it were, external and excessive in relation to government exercised according to *raison d'Etat*. It is not surprising that all these problems of law are always formulated, in the first place at least, by those opposed to the new system of *raison d'Etat*." (Michel Foucault, 2008, pp.8-9) According to Foucault new kind of governmental reason was emerged during that period, rather than a *raison d'Etat* which has been considered superior to the legal order, a new governmental practice that accepts and respects the law "on its own account in terms of its objectives and (the) best means of achieving them" (Michel Foucault, 2008, p.11) As it is seen to this definition, to control the sovereign through the law does not take place despite the sovereign but with the consent of the sovereign, and it is in force under the risk of suspension by the sovereign when it is found unfavorable. When the lines are read carefully in Foucault, ambivalent attachment of the sovereign with the law reveals itself.

For Schmitt, depriving of the sovereign from this privilege is equal to paralyzing his governmental abilities. Moreover, this ambivalent attachment that

has been tried to be destroyed, ignored, and rejected, reappeared in the 20th-century for the <sup>5</sup>sake of parliamentary democracy by Schmitt. If we summarized with Foucauldian terms: when ignored *raison d'Etat* reappeared within governmental reason *coup d'Etat* evolved to the exception

Another vital point reveals with this discussion: From many aspects, Schmitt's concept of exception just a reminder of the fact that has been known and tried to be forgotten for many years. In the following chapters, we will go back to the transformation of the sphere of exception in the 17th and 20th centuries and ascertain the link between the exception and cyberspace.



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<sup>5</sup> In his lecture titled "The State of Exception as a Paradigm of Government," Agamben summarizes, how using the exception for the sake of the state ended up during the Nazi-Era: "It can therefore be said that until the end of the Third Republic "the normal procedures of parliamentary democracy were in state of suspension"... it is important not to forget this concurrent process that transformed democratic constitutions between the two world wars."

## CHAPTER THREE

### Cyberspace as a New Paradox of the Legal System

#### 3.1 Disclosure of Being in Force Without Significance

In Political Theology, Schmitt describes the legal order in an entirely different way, in the words: “Like every other order, the legal order rests on a decision, not on a norm” which means the legal order is not constituted by the simple set of rules, on the contrary, that kind of conception prevents the comprehension of the crucial points that make the legal order itself possible. According to Schmitt — “All law is “situational...” He has the monopoly over the final decision... The decision reveals the essence of State authority most clearly. Here the decision must be distinguished from the juridical regulation, and (to formulate it paradoxically) authority proves itself not to need a law to create law” (Carl Schmitt, p.10) With the quote “creating law without the law itself, Schmitt refers to the privileged status of the sovereign and today’s sovereign losing this privilege via the user-cyberspace collaboration.

While the omnipotent sovereign “who has the monopoly over the final decision” loses its monopoly, some of the internet users suspend the censorship at cyberspace without the consent of sovereign power.

Hence, this ambivalent attachment between the cyberspace community and legal order forces us to think about Agamben’s *being in force without significance*. Agamben borrowed this term from Kant and Scholem. However, to reach a plausible conclusion within the scope of this study, the situation of *being in force without significance* should be interpreted from two different standpoints.

This new kind of relationship between the internet community and the legal order based on the suspension of the laws by internet users is not an insignificant issue at all. In other words, the global disclosure of the sovereign’s deficiency through cyberspace makes *being in force without significance* visible from two different perspectives. Some restrictions of the sovereign power might be

considered “insignificant” by some part of the population. Beyond the discussions of right or wrong, if those restrictions are not aimed at fulfilling the objective of restriction itself, this mandatory question comes right away: Is this a question of visibility between the situation of being in force without significance, which suspends every kind of meaning and definition to maximize its efficiency or the disclosure of insignificance of being in force without significance through the cyberspace?

Agamben explains this dilemma via the letters of Walter Benjamin and Gershom Scholem on Franz Kafka’s famous parable “Before The Law,” which takes place in *The Trial* (Franz Kafka, 1925-2014). This parable is about a countryman who spends his whole life to get through the open door of the law. Although the door was always open, the countryman never attempts to enter that door without permission of the watchman. According to Agamben, this is the most potent form of prohibition. <sup>6</sup>“...the pure form in which law affirms itself with the greatest force precisely at the point in which it no longer prescribes anything –which is to say, as pure ban.” When the law makes itself valid through “open door,” this is the most potent form of the law because “the already-open immobilizes” (Giorgio Agamben, 1998, p.33)

We can clarify this situation through a more current example. Peter Weir, in the 1998 movie *Truman Show*, tells a story about a fictional character named Truman Burbank. Truman’s whole life is a tv show starting from the days he spends in his mother’s uterus. The city that Truman lives in is just an enormous movie set. His whole life is designed by the director and screenwriters (Truman has no idea about what is happening until the end of the movie) and followed by millions of television viewers. After a while, a series of conflicts start between Truman’s demands for his life and the scenario of the tv show. Truman realizes his reality only when he reaches the invisible walls of the city (which means the movie set he

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<sup>6</sup> Agamben, Giorgio *Homo Sacer Sovereign Power and Bare Life*, Stanford University Press Stanford California 1998 Translated by Daniel Heller-Roazen, P:33

lives in). In Truman's city, there is freedom for everything in appearance, just like the open door in *Trial*.

On the other hand, reaching the boundaries is the only way to surpass this so-called "freedom." In *Trial*, the man from the country could not get in because the door was already open, and Truman could not manage to leave the city because nothing was forbidden. Truman never gets any rejection for his leaving attempts until the end of the movie. As he gets more suspicious about the boundaries, boundaries make themselves even more invisible. Truman does not know that boundaries exist, and that was the real challenge in the movie that made it harder to surpass the limits.

Shaping Truman's life within the scope of daily life without any certain restrictions is a great example of identifying *being in force without significance*. The legal order saves itself from the rules and restrictions of the everyday life, suspends every kind of meaning attached to it, makes possible the general frame regarding the order that creates the common and sensible ground for every kind of relationship within the legal system possible and enhances its efficiency at maximum level and this is the main goal of *being in force without significance*.

As we mentioned before, today, two types of *being in force without significance* confront each other. On the one hand, *being in force without significance*, which makes itself invisible as much as possible, determines the *everydayness* and constitutes the general frame for the rules and meanings of this *everydayness*, on the other hand, *being in force without significance* that discloses the insignificance of its own because of its self-deficiency. Just like a man who reached the borders of the movie set, today with the help of DNS numbers or VPN applications or even mirror websites, millions of internet users are facing the legal borders that should be invisible and insignificant in the first place.

### **3.1.1 Freedom and Restrictions in Liberalism as a Governmental Crisis**

In the face of *being in force without significance*, which we discussed through Trial and Truman Show, the question of “why” turns into an irrelevant question and the situation of *being in force without significance* presents itself as a simple reality of life, and most people say: “That is the way the life works” and this process is also directly related with practice of the self. Invisible borders of the order do not only manipulate the subject as an external force but also participate in the subjective experience. Not entering through the open door cannot be thought separately “from the type of individualization which is linked to the state.” (Michel Foucault, 1982, p.785)

Moreover, in both examples, there is absolute freedom rather than a restriction (The door is open, borders are invisible). If so, it is a sovereign that restricts by releasing, rather than prohibiting, and while he is doing, he also participates in subjective experience, and he accomplishes this act of restraint via the subtle establishment of freedom that presents itself as a simple reality that freed itself from significance. In this context, Foucault considers Liberalism as a new art of government that utilizes freedom: “If I employ the word “liberal,” it is first of all because this governmental practice in the process of establishing itself is not satisfied with respecting this or that freedom. More profoundly, it is a consumer of freedom” (Michel Foucault, 2008, p.63) If we go back to Truman Show again, the role of Christof (fictional director of the show), played by Ed Harris, in the analogy that we use corresponds to the sovereign in liberalism, the leading performer of this art of government. That situation inevitably reminds Bentham’s Panopticon, which is used by Foucault to formulate liberalism in the 18th century: “...the Panopticon is the very formula of liberal government” (Michel Foucault, 2008, p.67) Christof is in the position of an invisible architect that orders everyday life (city, architecture, transportation even the condition of weather and sea) and tries to get involved in every aspect of Truman’s life. From his marriage to his profession, every decision of Truman is secretly determined by Christof. Moreover, despite all those secret

interventions, every event during the show should be the result of a decision made by Truman, which is the critical condition of the show to get watched by the audience. Truman must be free; otherwise, the show is going to be over. Everything should be the reflection of Truman's free will. Weir's Truman Show is nothing but the reflection of the ordinary life of free man under the sovereign's restrictions that actualize through the production of freedom.

Consequently, "the new art of government consumes freedom. It consumes freedom, which means that it must produce it. It must produce it, it must organize it. The new art of government therefore appears as the management of freedom, not in the sense of the imperative: "be free," with the immediate contradiction that this imperative may contain. The formula of liberalism is not "be free." Liberalism formulates simply the following: "I am going to produce what you need to be free...." It is clear at the heart of the liberal practice is an always different and mobile problematic relationship between the production of freedom and that which in the production of freedom risks limiting and destroying it. Liberalism as I understand it, the liberalism we can describe as the art of government formed in the eighteenth century, entails at its heart a productive/destructive relationship with freedom... Liberalism must produce freedom, but this very act entails the establishment of limitations, controls, forms of coercion, and obligations relying on threats, etcetera." (Michel Foucault, 2008, pp.63-64)

Here, freedoms meant to utilize always ravel under the condition of restriction and bring along problems of security along with: "...protection of the collective interest against individual interests. Conversely, individual interests have to be protected against everything... The freedom of the workers must not become a danger for the enterprise and production... The game of freedom and security is at the very heart of this new governmental reason whose general characteristics I have tried to describe" (Michel Foucault, 2008, p.65)

Foucault tries to understand this problematic relationship based on the paradox of being productive and destructive for freedoms at once, which ended up with the periodic crisis of governmentality. Distinct from the periodic economic



crisis of capitalism, the governmental crisis is mostly related to the practice of power. As a result of the governmental crisis, there could be an uprising, rejection of restriction and so forth. However, cyberspace breaks this vicious circle between the game of freedom and security and forces the sovereign to face a different kind of governmental crisis. In the relationship between the sovereign and cyberspace, we are confronted with a governmental crisis, which is different from the dilemma of destructive/productive relation of freedom. This new dilemma is the sovereign who accepts the integration with cyberspace without having the efficient instruments of restriction and control. It is not easy to imagine the permanent suspension of cyberspace in any country that is integrated with the free market economy and that allows its citizens to use devices that can access cyberspace. In the next chapter, one of the most extreme examples of this governmental crisis will be discussed through the recent statements of Iran's President Hassan Rouhani and the reaction of the government against the latest protests in the country.

## CHAPTER FOUR

### EFFECTS OF NEW COMMUNICATION TECHNOLOGIES

#### 4.1 Effects of New Communication Technologies on Society

Before designating our argument on this new exceptional sphere, we have to mention the effects of the new communication technologies on the society and the sovereign via McLuhan. Afterward, we will examine a few examples to provide an insight into the historical background of this study.

Just like we said at the very beginning of this thesis, we are concerned with the transformation of communication technologies that cause a governmental and legal crisis all around the world. Therefore, since this paper postulates our time as a long term transition era from the beginning.

A few examples from history might give us a better insight to understand the consequences of this crisis from the perspective of the sovereign and legal order; it might also offer an enlightening perspective about our previous question on why the sovereign is still insisting on controlling these new communication technologies with inefficient censorship, which already failed in myriad cases.

First, we will focus on the effects of new communication technologies on our sensual ratios and how these affect our daily life practices, and afterward, we will discuss the consequences of the judiciary system and the sovereign's point of view.

In his famous work *The Gutenberg Galaxy*, Marshall McLuhan explains the effects of technological transition on our senses and the cultural consequences of this process: “When technology extends one of our senses, a new translation of our culture occurs as swiftly as the new technology is interiorized.” Moreover, reflections of this changes in society directly related with interiorization process of this new technologies: “It is simpler to say that if a new technology extends one or

more of our senses outside us into the social world, then new ratios among of all of our senses will occur in that particular culture” (Marshall McLuhan, 1962, p.40) which means as a result of expanding our senses through externalization with new communication technologies, creates new kind of relationship with outside world. Nevertheless, beyond the personal space, this relationship also indicates new kinds of social formation: “The division of faculties which results from the technological dilation or externalization of one another sense is so pervasive a feature of the past century that today we have become conscious, for the first time in history, of how these mutations of culture are initiated. Those who experience the first onset of a new technology, whether it be alphabet or radio, respond most emphatically because the sense ratios set up at once by technological dilation of eye or ear, present men with a surprising new world, which evokes a vigorous new “closure,” or novel pattern of interplay, among all of the senses together. Nevertheless, the initial shock gradually dissipates as the entire community absorbs the new habit of perception into all of its areas of work and association. Then the real revolution is in this later and prolonged phase of “adjustment” of all personal and social life to the new model of perception set up by the new technology” (Marshall McLuhan, 1962, pp.21-22) If so, after interiorization; these technologies show their real effect on people and society.

That new adjustment of senses, which emanates from new communication technologies affects the process of externalization. At this point, McLuhan mainly focuses on the learning and socializing process of illiterate societies. Every kind of aural information locates in the center of life for the societies which do not have a phonetic alphabet. The phonetic alphabet is the technology that visualizes the sound, isolated from all other senses, and turns it into static data on paper.

In opposition to individuals who become indifferent to aural information under the visual hegemony of the phonetic alphabet, aural societies use the dynamism of the sound till the end. Visualizing the aural character of language means sacrificing the gestures, intonation, and interaction between the listener and speaker. McLuhan refers to the quotes of St. Thomas Aquinas concerned with the

question of why Jesus and Socrates never write down their teachings to show the effects of the transition process between senses: “Socrates stood on the border between that oral world and the visual and literate culture. But he wrote nothing... And Aquinas considered that neither Socrates nor Our Lord committed their teaching to writing because the kind of interplay of minds that is in teaching is not possible by means of writing.” (Marshall McLuhan, 1962, p.23)

In the whole book, McLuhan examines the transition process to literacy, and after the invention of the printing press, analyzes how visual-literacy culture rises until it dominates the whole other senses. In doing so, he tries to show the reader the effects of this tremendous historical transformation in many fields from cultural-political manifestations to the time perception of the individual, perspective perception in art and Euclidean geometry.

Without a doubt, tracing the effects of changing communication technologies throughout history on the individual and society will give us a great insight as a generation who have been exposed to this technological transitions in the world to the extent that no period of history has ever witnessed. In 1962, before the internet and interactive multimedia technologies, McLuhan anticipated that the new transition would take place in human senses with the invention of electronic communication and that transition would be more painful for long-literate societies dominated by a mechanical culture such Western societies: “The new physics is an auditory domain, and long-literate society is not at home in the new physics, nor will it ever be.” (Marshall McLuhan, 1962, p.27)

#### **4.1.1 A Few Examples on Transformation of Communication Technologies**

However, McLuhan’s analysis of the effects of new communication technologies on sovereign power, which is directly related to our main argument, takes place at the very beginning of *The Gutenberg Galaxy*. Based on the storyline of King Lear, McLuhan offers an extraordinary point of view to understand the transition to literacy from orality. As a result, the concept of individuality, which was considered an inappropriate idea before the 17th century raised against the

concept of collectivity as a new value and the consequences of this transition was highly shocking for the sovereign power, and the results of this process are strictly relevant to today's crisis that occurs between sovereign powers, cyberspace, and legal order.

When Shakespeare wrote *King Lear* at the beginning of the 17th century, roughly 170 years had passed since the invention of the printing press. McLuhan states that, at the time, the controversies on the governance models and social structure of the previous century increased in continental Europe, and the tremendous social transformation began to take shape. From this point forth, he begins to detect and examine the manifestations of the turmoil of the period via *King Lear*.

McLuhan explains his first argument via these sentences from the first act of *King Lear*: “The sway, Revenue, execution of the rest, Beloved sons, be yours; which to confirm, This coronet part betwixt you” and “Know we have divided In three our kingdom”: “The new patterns of power and organization which had been discussed during the preceding century were now, in the early seventeenth century, being felt at all levels of social and private life. *King Lear* is a presentation of the new strategy of culture and power as it affects the state, the family, and the individual psyche”. With this decision, *King Lear* opens the door of competition between the sons-in-law and puts aside the inclusive role of the kingdom. After the words of the king, his children Regan and Goneril “leap into the act of filial devotion with specialist and competitive intensity.” McLuhan states how inappropriate this adulation and false lauds of his children are especially at that time: “Competitive individualism had become the scandal of a society long invested with corporate and collective values.” Regan and Goneril could be easily considered as an insincere example of today's competitive society, but at that time they were quite extraordinary characters who completely stood out of the social values. The changing dynamics of that time demands a different kind of centralism rather than a general inclusive role far from specialization. “*King Lear* is a kind of elaborate case history of people translating themselves out of a world of roles into

the new world of jobs... However, the older world of roles had lingered on as a ghost just as after a century of electricity the West still feels the presence of the older values of literacy and privacy and separateness.” (Marshall McLuhan, 1962, pp.11-12)

Likewise, in the last quarter of the 19th century as a parallel to the industrial revolution, communication technologies were exposing a significant transformation. These were the years that telegraph and local newspapers became widespread in Continental Europe and people began to communicate way faster and get more information compared to the previous century. Corey Ross describes the influence of the media in those years, in which he examined the role of the new media in the emergence of modern Germany with the industrial revolution: “the rapid demographic and technological upheavals of the period after 1870 dramatically changed the environment in which cultural activities took place. Indeed, the connections between the growth of industrial cities and the rise of commercialized, media-based can hardly be overemphasized.” (Corey Ross, 2008, p.6)

In his 1901 novel *Buddenbrooks* which contains autobiographical traces, Thomass Mann tells a story about a declining bourgeois family that cannot adapt to a changing environment, and during the novel, he is highly aware of the media's influence on society. One of the main characters of the novel Antoine “Tony” Buddenbrook spends her summer holiday in family friend Captain Schwarzkopf’s house and meets with the captain’s medical student son Morten in her adolescent years. As a child from a middle-class family who goes to medical school in another city, Morten is more familiar with the political environment of his country. Influenced by the political circumstances of his time and being an educated son of a labor family, he has hostile feelings against the bourgeoisie and aristocracy. Furthermore, Tony, as a young girl in her marrying age who grew up and adopted the values of the bourgeoisie, knew nothing about the outside world. Mann successfully reflects the difference of the characters the way to see the world and the effect of the media on class consciousness through the dialog between Morten

and Tony: “Tony finished eating, wiped her mouth, and asked, pointing to the paper, “Is there any news?” Young Schwarzkopf shook his head and laughed cynically.

“Oh, no. What would there be? You know these little provincial news-sheets are wretched affairs.”

“Oh, are they? Papa and Mamma always take it in.”

He reddened again. “...But it is not very thrilling to hear that So-and-So, the merchant prince, is about to celebrate his silver wedding... But you out to read other papers- the Königsberg Gazette, for instance, or the Rhenish Gazette. You’d find a different story there, entirely.” (Thomas Mann, 1930, p.128)

Tony’s father, as a man strictly committed to conservative and bourgeois values, will read this newspaper until the day he dies. In further chapters, Mann uses newspapers again to show that the new generation started to turn their backs against their values. As Tony’s brother Thomas takes over the company and steps into old age years later, he tries to read his father’s newspaper: “Feeble—very feeble indeed, this paper” he said... “One, two, three, and you’ve finished with the whole stupid thing.” (Thomas Mann, 1930, p.221)

Under the shadow of new values and diversified local newspapers, members of the bourgeois class could not be able to maintain their lifestyle in their isolated world. In the changing world, while Thomas still devotes himself to these bourgeois values until the end, he still questions these values inside out. As a person who reached his life goals offered by the bourgeoisie at a young age, he lost his will of life without knowing why. And when old Tony heard his brother’s reproach, she consoled him with the words she heard from Morten in her teenage years: “I’ve always said, ever since I was a mere slip of a girl, that this town paper is a wretched sheet... Consul So-and-so is going to celebrate his silver wedding! We ought to read other papers: the *Königsberg Gazette*, or the *Rhenish Gazette*...” (Thomas Mann, 1930, p.221) The main reason behind the decline of this family is the confusion between the older values and the new order of the world.

That is why we believe that the only way to reach a reasonable conclusion on the crisis between legal order, cyberspace, and the sovereign power is to contemplate on these insufficient “older values,” and their problematization praxis, which can not respond today’s necessities as pointed out by McLuhan. For this very reason, thinking about the exception and understanding — its relationship with cyberspace has vital importance. Consequently, thinking over the exception and being able to analyze its relationship with cyberspace without excluding the techniques and practices of governing is the indispensable condition of this study.

Thus, imagining the cyberspace and its effects on our daily lives and relationship with the external world in our time cannot be comprehended without considering the two-sided relation of exception within the “routine” created by cyberspace (In this case we should use routine within its individual and social context). We will primarily focus on the two-sidedness of this exception. However, before that, we have to clarify one more point: Visual culture inevitably shares its linear hegemony. Electronic space is nested with other senses as much as the visuality. It is bifurcated as more than linear. Furthermore, it is interactive to the extent that it cannot be compared to any other medium. Most visited platforms such as Youtube, Wikipedia, Twitter, Instagram, Facebook are based on an interactive concept that allows members to produce content. Today, the sovereign’s ordinary linear law tries to impose itself with an insistence on a multilayered space that stands out of this linearity, and that attitude is one of the most important reasons for the clash between cyberspace and the sovereign power.

Now we would like to ask one final question before we move to the next chapter: Considering the effects of new communication technologies on the practice of the self, what example could be the best match for Regan and Goneril or Morten Schwarzkopf in our time? When we consider numerous instances, today, discussing this question via one particular example could be inappropriate. Consider Twitter, one of the most widely used social media platforms of our time, and think about all the dialogs between artists, presidents, athletes, and other users. In this case, there is no need to go back to previous centuries; all those dialogs are extremely unusual



even for fifteen years ago and often downright unacceptable. Insulting to any director or a musician or someone famous could be evaluated as insolent acts by the public, but today people are witnessing those kinds of moments all the time and sharing the screenshot of the incident with their friends for fun via cyberspace. Beyond that, American television host James Kimmel started a new series in his show called “mean tweets,” based on reading twitter insults by the guests (including former President of the United States Barrack Obama, Robert de Niro and many celebrities from all around the world) of the show. Moreover, this concept was adopted by many different platforms in cyberspace such as BuzzFeed, Ekşisözlük, Onedio, and so forth.

#### **4.2 Bifurcated Space**

Now we will focus on the spatiality of cyberspace and try to articulate the other argument that we discussed. According to McLuhan, with the birth of typographic man, Newtonian linear space, which deals with isolating the components in the whole from the whole itself, has made itself dominant in almost every stage of social life, especially after typography. In this sense, linearity is the summary of the typography period until the electronic era. Moreover, legal order could not immunize itself from the typical reflexes of the sovereign power and linear imagination of the world of Newtonian space. In many places of the world, this isolated-linear law trapped itself into an intricate paradox within the bifurcated, simultaneous, and multilayered space. Thinking upon regional censorships of the internet with the assumptions of Newtonian physics, written by Louis de Broglie (The Revolution in Physics) and cited by McLuhan, is very interesting: “... such a conception rested on several implicit hypotheses which were admitted almost without our being aware of them. One of these hypotheses was that the framework of space and time in which we seek almost instinctively to localize all of our sensations is a perfectly rigid and fixed framework where each physical event can, in principle, be rigorously localized independently of all the dynamic processes

which are going on around it." (Marshall McLuhan, 1962, p.5) It does not seem possible to divide cyberspace into the regional borders, nor attempt to regulate cyberspace based on the figurative acceptance of these borders will give us a plausible answer. In short, isolated evaluations are entirely insufficient to understand the complex structure of cyberspace.

If so, does this situation justify the question repeated continuously by popular culture and academic world: Have national borders lost their significance? Absolutely not! This assertion shows a lot of intellectual movement and ideas called "innovative," which try to embrace technological innovations that are still under the influence of the typographic culture and its "old values." Ambiguous borders of cyberspace do not give you the right to travel without a passport in physical space or can not save you from the accusations that you might be confronted with because of your actions within the cyberspace in any authoritarian state. We should go beyond this linear perception to make a proper analysis of this complicated situation. First of all, it is almost impossible to synchronize the simultaneities through a linear perspective. Besides, this multilayered simultaneity is the only solution to say "there is" and "there is not" at the same time without running into a contradiction. And that kind of simultaneity mostly makes sense over what it is not, rather than what it is. Therefore, performing multilayered synchronization without rejecting borders within the reality that our physical presence occurs, demands us to imagine a multidimensional space that does not exclude the possibility that the borders may have indicated beyond the ordinary meaning in cyberspace we interact — ignoring the borders rather than not knowing them is not a more understandable or plausible approach at all. And to generalize the ambiguousness of the borders in cyberspace to physical space is an obvious indication of how deeply the isolated linear visualization cultivates our way of thinking.

The interaction between physical and cyberspace is an absolute and two-sided relation of exception, which we have focused on from the very beginning, and which happens in that interaction zone. Moreover, the transformations created by this interaction on a local and global scale are known by billions of people who

have to shape their everyday life over and over via these technologies. But still, we could not save ourselves from stereotyped definitions of a one-sided linear way of thinking to understand this interaction and multilayered structure.

George Von Bekesy gives us a road map to reaching beyond that linearity in his famous work *Experiments in Hearing*. In this work, which is especially emphasized by McLuhan, Von Bekesy shows the importance of understanding a problematization within its uniqueness via the crucial distinction named by him as a theoretical and mosaic approach: “It is possible to distinguish two forms of approach to a problem. One, which may be called the theoretical approach, is to formulate the problem in relation to what is already known, to make additions or extensions on the basis of accepted principles, and then to proceed to test these hypotheses experimentally” which is the approach adopted by the linear law of sovereign against cyberspace. “Another, which may be called the mosaic approach, takes each problem for itself with little reference to the field in which it lies, and seeks to discover relations and principles that hold within the circumscribed area... When in the field of science, a great deal of progress has been made and most of the pertinent variables are known, a new problem may most readily be handled by trying to fit into the existing framework. When, however, the framework is uncertain and the number of variables is large the mosaic approach is much the easier.” Because of this very reason, understanding cyberspace through its spatiality and discovering the relations between physical and cyberspace based on the mosaic approach has vital importance. Also, McLuhan accepts the mosaic approach as the only exit in this situation: “The mosaic approach is not only “much the easier” in the study of the simultaneous, which is the auditory field; it is the only relevant approach. For the “two-dimensional” mosaic or painting is the mode in which there is the muting of the visual <sup>7</sup>(or linear) as such...” (Marshall McLuhan, 1962, p.40.)

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<sup>7</sup> Paranthesis belong to me

When McLuhan inquired about the relationship between communication technologies and social/individual life practices, he did not mention the exceptional status of this situation explicitly, that is the technologies that directly affect everyday life or “*everydayness*,” according to Heidegger. However, as we mentioned before, in fact, King Lear is nothing but the sovereign who is in a dilemma on how to reestablish the order that was interrupted by an exceptional situation (this exceptional case will eventually shape his routine, later called typography). Furthermore, it is no coincidence that in 1985, Akira Kurosawa named his legendary King Lear adaptation as *Ran* (In Japanese chaos, mayhem).

Today, cyberspace presents itself as an entity that should be regulated by the sovereign; on the other hand, it keeps its power to suspend this regulation via participants. Moreover, this situation leaves us to confront the two-sided relation of exception.

#### **4.3 Lack of Governance or the State of the Obvious With Current Examples**

At that point, to clarify the similarity between the governmental dilemma of King Lear through the new communication technologies and the two-sided relation of exception created by cyberspace, we would like to discuss the recent statements of President of Iran Hassan Rouhani, published on January 21, 2019, at CNA: In the news titled “Resisting new technology is “outdated” says Iran’s Rouhani” just like King Lear the man who cannot provide the necessary circumstances “for changing the dynamics of that time demands a different kind of centralism” and divides his kingdom into pieces, Rouhani renounces to pretend like they have control over cyberspace while they do not in reality and implicitly confesses how cyberspace forms desperate control mechanisms in the whole country. By the way, we would like to remind that Iran is still among the top ten countries that use intense internet censorship. (Committee To Protect Journalists, 2019) (Le VPN, 2018) Further his speech, Rouhani also states that: “...preventing Iranians from accessing social would amount to creating forbidding fruit would crave more and more” (Chanel News Asia, 2019) and without a doubt, the offering of cyberspace makes

it possible to crave that forbidden fruit. Rather than acting out three wise monkeys like other country leaders, Rouhani prefers to show the absurdity of internet censorship from many aspects with his recent statement.

However, the details that make Rouhani's statement even more extraordinary than it should be are in the last paragraph of the news text: "Despite social media restrictions, Iranians including top officials such as Rouhani himself and Foreign Minister Mohammad Javad Zarif continue to use services such as Twitter, which are widely accessible via Proxy servers."

The question is no longer just the sovereign that confesses to the insufficiency of its prohibition policies in the face of the possibilities offered by cyberspace. As of now, the conflict between the sovereign power and cyberspace on deciding what would be the exception and the rule has reached such a point that many members of the administration office, including the president and foreign minister of Iran, are suspending the legal arrangements of their country via the possibilities offered by cyberspace. The people who are in charge of the institution that is obliged to "declare that there is nothing outside the law" and entitled to suspend it when they consider necessary, do not suspend the relevant laws via the privileged status of the sovereign but instead enter through the backdoor offered by cyberspace just like any cyberspace participant. If "the particular "force" of law consists in this capacity of law to maintain itself to relate to an exteriority and define itself as an essential placement that does not limit itself to separating the inside and the outside, instead determines the threshold between the two, then when it comes to cyberspace they partially give up on their exceptional privilege and leaving it to cyberspace. In that case, the sovereign renounces its existential reason that creates and maintains the relation of prohibition (first political relation which regulates the zone of indistinction between exclusive inclusion and inclusive exclusion according to Agamben).

Although the sovereign officially does not suspend the laws, he continues to suspend them through cyberspace. Just like any other user that is able to access banned web sites and applications. Moreover, Iran is not the only extreme example

of this complicated process that occurs between cyberspace, the legal system, and the sovereign.

In the year 2008, the Prime Minister of Turkey when Recep Tayyip Erdoğan was answering the questions of journalists before his diplomatic visit to India, he replied to one of these questions through a video uploaded to video-sharing web site Youtube, and another journalist reminded him of the prohibition of access on Youtube Since 2007. Afterward, Prime Minister Erdoğan replied: “If I can access, so can you.” (Hurriyet, 2008)

Besides that, in those years, internet censorship was way limited compared to recent years in Turkey. Information and Communication Technologies Authority of Turkey’s new legislation Internet Safe Handling Procedures and Principles, which caused mass protests all over the country under the name of “Do not Touch my Internet!” had not yet come to force. Briefly, millions of people realized the existence of internet censorship with the Turkish Court’s prohibition of access to Youtube. The reason was the video that contains insults to Kemal Atatürk uploaded by a Youtube user from Greece. In that period, internet users were able to suspend the Youtube ban without VPN applications by changing the DNS numbers from the network connection settings of their computers and legal order was so desperate in the face of this new medium and finally, when the prohibition ended, the headline of the popular Turkish parody news site of Zaytung was summarizing the whole situation: “The lifting of the ban on Youtube was greeted with enthusiasm by Ekrem Gündüz. The only Turkish citizen who was not able to access.” There is no need to say that the person and the content of the news were fictional; however, it gave an excellent insight into the binding of the court order. Under these circumstances, in a press meeting, a prime minister of a country could say without hesitating that: “I can access, so you can.” Of course, the dynamics that paved the way for a prime minister to make such an extraordinary statement cannot be grasped through the offerings of cyberspace, by ignoring the socio-political environment and historical conjuncture of a country. However, the only power that makes these conditions prepared by those dynamics possible is the cyberspace itself.

Those two examples show that the attempts by the sovereign power to control cyberspace are clearly far from being effective since the early years and represent an extreme point of *being in force without significance* in two types that we mentioned before; In a sense, witnessing an era of sovereigns who do not abide by the laws of his country and do not hesitate to disclose this situation is just like witnessing a sovereign that tries to fool himself right before the mirror, and it can be defined as pathological.

On the other hand, to prevent any misunderstanding we would like to stress that we are not implying that the sovereign will give up on the attempts to take control over cyberspace in the future. The primary purpose here is to show the absurdity of the ongoing governmental and legal crisis that took shape in our time based on recent examples.

Moreover, after eleven months of the statements by the Iranian President, new mass protests started in the country after a sudden increase in the price of gasoline, and as a response to that, the Iranian government decided to shut down the internet in the whole country. (Mohammad Ali Kadivar, 2019) It is another proof of how inadequate the efforts of the sovereign power to control cyberspace is, as long as people have a chance to connect to the internet. Besides, ministers and top officials who suspend the laws of their country through the VPN applications are the ones who decide to shut down the internet when anti-government actions in cyberspace find their correspondence in the physical reality. And two days after protests were taken under control, the government suspended the internet restrictions. ( Al Jazeera And News Agencies, 2019) Because it was not easy to foresee the consequences of the permanent suspension of the internet in a society interacting in cyberspace.

Similarly, seven years after hinting the insignificance of the Youtube ban in 2007, Prime Minister of Turkey Tayyip Erdoğan declared the ban of Twitter in his party meeting as a response to Gezi Protests in Turkey. (Eliana Dockterman, 2014) The interesting part is that Mr.Erdoğan declared the validity of the ban via the court order, which he implicitly mocked with seven years ag

## CHAPTER FIVE

### Transformation of the Sphere of Exception from Camp to Cyberspace

#### “5.1 The Position of Undeicedable”

At the moment that linear space bifurcated, the two-sidedness of *being in force without significance* and relation of exception is unraveling. Additionally, this bifurcated space finds its place in <sup>8</sup>*ex-stasis*. (Jean-Luc Nancy, 1991) Being outside or being elsewhere at once, this is the situation that we have to face via bifurcated space (cyber and physical). Besides this process, which we emphasize from the beginning, is realized through cyberspace and mostly stays limited with it.

Consequently, the situation of individuals in physical space contains lots of contrast in relation to their situation in cyberspace and understanding these two spaces via detached categorization would not be a realistic point of view. When we say that this multilayered simultaneity is the only solution to say “there is” and “there is not” at the same time without running into a contradiction, this is exactly what we meant to describe this situation. Reaching *ex-stasis* through cyberspace does not have to happen in physical space either. Thinking of these simultaneous spaces in their subjective territory without denying the reciprocal interaction is inevitable. Although the situation can be defined as schizophrenic from many aspects it just serves to declare the state of the obvious in a bifurcated space of our time. When McLuhan says: “Schizophrenia may be a necessary consequence of literacy” (Marshall McLuhan, 1962, p.22) he meant that until phonetical writing separated the deed from thought, we were living in a world in which people were held responsible because of their thoughts as well as their actions and the distinction between the deeds and thoughts manifests with phonetical writing. Today, we are living in a world of separated (and intertwined) spaces through cyber and physical. This division that we are exposed to even before naming it, occurs between the

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<sup>8</sup> Ancient Greek: To be or stand outside oneself, ecstasy. Jean-Luc Nancy contemplates on the possibility of a transcendental community constituted by singular beings beyond Cartesian subject-object relation. We are borrowing this term from Nancy.



space of the physical and cyber. Besides, the borders of this spatial separation are more unclear in many ways, compared to the distinction between deed and thought.

Jean-Luc Nancy defined *ex-stasis* as reaching the limits of your own existence, reaching beyond your own identity while he was seeking the togetherness that goes beyond being “us.” Nancy offers a different perspective that goes beyond visualizing the central subject, which gravitates towards the other group of objects; It is a situation of being together on the edge of the identities of singular beings. It is a situation of togetherness that goes beyond our own identity (political, cultural, religious whatsoever), to be as “them” instead of “us”. What if we ask this question: Is cyberspace capable of creating that kind of togetherness between singular beings? To say yes or no would be an arduous task to accomplish. However, we will use Nancy’s term *ex-stasis* in a little bit different context in this work: Being outside the boundaries that one is obliged to comply with, more importantly, being able to see them and being outside or beyond the situation created by those boundaries. This state of “obliging” constitutes the general frame for “*everydayness*,” and this is the most potent form of prohibition because it does not make any sense to look for any meaning beyond this and we say: “That is the way the life works” and that is why it is “*being in force without significance*.” “...being able to see them” is to be able to see the insignificance of the state of “*being in force without significance*,” and in this very point, asking “why” is not an irrelevant question anymore. Cyberspace takes the unique privilege of the sovereign’s right to “being outside” and beyond the judgment of the sovereign, it creates its own exceptional sphere that makes two-sided relation of exception possible and in the state of “being outside or beyond the situation created by those boundaries” another word, *ex-stasis* comes into existence. When Walter Benjamin emphasized the importance of the new concept of history that can correspond to a state of exception which turns into a rule itself in our time, he was also saying, at that moment “we will have the production of the real state of exception before us as a task.” (Walter Benjamin, 1968, p.257) That “real state of exception” finds itself as an *ex-stasis* in bifurcated spaces. However, the real question we have to ask is: If in his works, which constitute the general framework of this thesis, Agamben

defines individuals who have been excluded from the scope of the law as *homine sacri*, then what is the difference between *homine sacri* and *ex-statis*? To what extent is it possible to make a distinction between being a *homo sacer* (Latin: sacred man, according to ancient Roman law a person who is banned and may be killed by anybody, but may not be sacrificed in a religious ritual) and being outside of the law?

### 5.1.1 Definition of Homo Sacer

Just like the bifurcation between deed and thought after phonetical writing, in our time, a similar transition started to take shape through space itself. The ambivalent attachment between space and law dates back to hundreds of years before cyberspace. Another primary concern of this study is to trace the possibility of being outside of the post-cyberspace <sup>9</sup>nomos as a state of being in *ex-stasis* instead of to being in *homo sacer* via the relation of exception, which is not created by the sovereign.

And this leads us to think directly on *homo sacer* itself. Agamben gives us the most obvious definition of *homo sacer* through the Pompeius Festus's *De verborum significatione* (On the meaning of words): "The sacred man is the one whom the people have judged on account of a crime. It is not permitted to sacrifice this man, yet he who kills him will not be condemned for homicide." (As is seen, *homo sacer* indicates religious (the ban of sacrifice) and juridical order (killing him does not constitute any punishment) at once. At the same time, it creates a two-sided relation of exception between these orders. And Agamben rightfully asks: "What, then, is the life of *homo sacer*, if it is situated at the intersection of a capacity to be killed and yet not sacrificed, outside both human and divine law?" (Giorgio Agamben, 1998, pp.47-48) Moreover, he answers this question by pointing out to the similarity of *homo sacer* and the sovereign's legal status: "...the form of a double exception, both from the *ius humanum* and from the *ius divinum*, both from the sphere of the profane and from that of the religious. This topological structure

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<sup>9</sup> Ancient Greek: Law or custom

drawn by this double exception is that of a double exclusion and a double capture, which presents more than a mere analogy with the structure of the sovereign exception... Just as the law, in the sovereign exception, applies to the exceptional case in no longer applying and in withdrawing from it, so *homo sacer* belongs to God in the form of unsacrificeability and is included in the community in the form of being able to be killed. Life that cannot be sacrificed and yet may be killed is sacred life... What defines the status of *homo sacer* is... both the particular character of the double exclusion into which he is taken and violence to which he finds himself exposed. This violence — the unsanctionable killing that, in his case, anyone may commit — is classifiable neither as sacrifice nor as homicide, neither as the execution of a condemnation death nor as sacrilege. Subtracting itself from the sanctioned forms of both human and divine law, this violence opens a sphere of human action that is neither the sphere of *sacrum facere* nor that of profane action. This sphere is precisely what we trying to understand here.” (Giorgio Agamben, 1998, pp.52-53)

## **5.2 Transformation of the Sphere of Exception**

Once again, a fascinating example of this ambivalent life of *homo sacer* and the sphere that Agamben is trying to understand takes place in Foucault’s College de France lectures entitled Security, Territory, Population. Foucault’s citations from Chemnitz on the revolts of Saxons and the measures of the emperor clearly show that since the early times of the modern state first started to take shape, individuals can quickly become the object of this sphere of action through the suspension of the law: “...we should cite Chemnitz, because he really is of the most interesting” says Foucault and examines Chemnitz’s arguments on Charlemagne's struggle against the Saxons in further pages: “Chemnitz says Charlemagne established judges to suppress Saxon revolt and agitation, and the first peculiarity of these judges was that they were unknown to the public, so one did not know who one’s judges were (As is seen, it is hard to distinguish the judges from the executioners). Second, these judges judged without knowledge of the facts, that is to say, without doing anything to establish the facts held against those they sentenced. Third, their

judgment did not take the form of a trial, that is to say, there was no judicial ritual. In other words, for Chemnitz this is a polite of saying that Charlemagne planted assassins among the Saxons, who killed whomsoever they wished, and without giving a reason.” (Michel Foucault, 2007, p.318) When this happened, the relationship of the Saxons with the law was rearranged based on suspension. Moreover, judges left their place to assassins in the judge's clothes.

Now, as we stated before, we would like to talk about the transformation process of the exception from the 17th to the 20th century. Chemnitz especially emphasized the temporary character of the measures of the state of emergency: “...these people sometimes committed injustices... this arrangement did not last for long and was only suffered for as long as thought necessary in relation to the fury of Saxons that could only be restrained in such an extraordinary way.” (Chemnitz, 1712, pp. 27-28)

However, Agamben summarizes the transformation of the exception in the 20th century like this: “...in our age, the state of exception comes more and more to the foreground as the fundamental political structure and ultimately begins to become the rule.” (Giorgio Agamben, 1998, p.19) He also discusses this argument in his lecture titled *The State of Exception*: “That the real state of emergency since then became the norm... that is no longer capable of fulfilling the task assigned to it by Schmitt. According to him, the functioning of the legal order rests in the last instance on an arrangement, the state of emergency, whose aim it is to make the norm applicable by a temporary suspension of its exercise. But if the exception becomes the rule, this arrangement can no longer function and Schmitt’s theory of the state of emergency breaks down.” (Giorgio Agamben, 2002) At the end of the transformation process of exception — since from the revolt of Saxons to the reign of Third Reich, the state of exception has become the rule rather than a tool to re-establish the order. Just like Agamben stated, Nazi rule was thirteen years of rule of the state of emergency on paper.

And this sphere was the concentration camps in the 20th century. When Agamben defined “the camp as the “nomos” of the modern,” he meant, the

sovereign started a constant renewal of the edge of the law, and the most extreme example of this new process was the camp as an exceptional place that suspends the law for the ones who is in it: "... a new juridicopolitical paradigm in which the norm becomes indistinguishable from the exception." It was a place that ...every question concerning the legality or illegality of what happened there simply makes no sense." (Giorgio Agamben, 1998, pp.95-96) No action can be considered as a crime at camps in a traditional way that the word crime indicates. This is why the rights that begin at birth were also suspended just like any other right. That was the field of action of unleashed violence that stayed outside of the *nomos*. As is seen, Agamben finds the common point of *homo sacer* and the sovereign through their exceptional status in *nomos*. Both of them neither in nor out of the law. While the sovereign was determining the edge of the law through its exceptional status, *homo sacer* was pushing into the center of this field of violence located outside of the law. As we see, when the exception turns into a permanent governmental technique, the state of exception finds its permanent sphere via camp.

An era in which exception ceased to be an exception and became the rule inevitably brings to mind those words of Walter Benjamin quoted by Agamben: <sup>10</sup>"The tradition of the oppressed teaches us that the 'state of emergency' in which we live is not the exception but the rule. We must attain to a conception of history that keeping with this insight. Then we shall clearly realize that is our task to bring about a real state of emergency..." (Walter Benjamin, 1968, p.257) Still, we are living in an age that the exception quickly turns into a rule, and it is receiving international legal status that goes beyond regional borders when <sup>11</sup>superpowers use it. After all, the question of the new concept of history which is capable of corresponding to the exception and considered as a task by Benjamin is still a matter of significant discussion.

That is why we have to contemplate this question: when we attempt to establish the legal status of *homo sacer* and the sovereign through the bifurcated

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<sup>10</sup> Homo Sacer p.36

<sup>11</sup> To get more information on the US policies during the state of emergency after 9/11: Agamben's lecture "The State of Exception as a Paradigm of Government".

spaces of cyber and physical, where are the individuals who reach *ex-stasis* via cyberspace situated in this equation?

We are referring to *ex-stasis* because when the sovereign is not the force that leads out to the outside of *nomos*, he cannot know who is in or who is out — from the very beginning, informed participants of cyberspace accessing *ex-stasis* beyond the initiative of the sovereign. Furthermore, the previous questions we asked; “why accessing web sites banned by the court order not constitute any criminal action in Turkey?” or “although the most advanced internet regulation system Great Firewall of China, why China still on the top ten in VPN usage list in the world?” make sense at this point. Because when the participants reached beyond the *nomos*, the question of the legality becomes irrelevant. The point where camp and cyberspace resemble one another and differentiate is precisely to be in and outside of the *nomos* at the same time. Exclusive inclusion created by the sovereign occurs despite the will of its interlocutors at camp. But in cyberspace, it occurs against the will of the sovereign.

Once again, Being outside yet belonging finds its new sphere through the bifurcated spaces. Accessing *ex-stasis* in cyberspace does not always correspond to physical space. However, if there is an unquestionable truth, it is this: *Bifurcation within the space in the age we live in makes it possible to be in and outside at the same time.* To be outside with the suspension of the sovereign through the cyberspace and no direct correspondence with the physical space is the *sui generis* strangeness of our time. It is being in and outside of the *nomos* at once. Moreover, this situation makes it possible to create an analogy between the sovereign, *homo sacer*, and cyberspace. Suspending *nomos* via cyber-exception against the sovereign (Physically, participants of cyberspace still exist within the *nomos*; however, concurrently, they are still outside of *nomos* in cyberspace that goes beyond the initiative and control of the sovereign) creates the possibility to reach *ex-stasis* without being a *homo sacer*.

Today numerous participants of cyberspace are the actors of the same kind of paradox defined by Agamben as “the paradox of the sovereign” in the first

chapter of *Homo Sacer*. If we go back to the definition of the sovereign at the beginning of this thesis: "...in fact the sovereign is, at the same time, outside and inside the juridical order." Moreover, Agamben still emphasizes the ambiguous position of the sovereign and the state of emergency before the law in his lecture given at 2002 Roland Barthes Center: "To be outside and yet belong: such is the topological structure of the state of emergency, and since the being of the sovereign, who decides over the exception, is logically defined by this very structure, he may also be characterized by the oxymoron of an "ecstasy-belonging." (Giorgio Agamben, 2002) This oxymoron, which is defined by Agamben as an "ecstasy-belonging," is the name of the relationship between billions of cyberspace users who have suspended the law. Furthermore, this ecstatic-belongingness finds its place at bifurcated spaces and through the non-linear perceptive and gets a meaning beyond being an oxymoron. Similarities between the relation of cyberspace with the law and paradoxical position of the sovereign, which makes its very existence possible do not define the position of cyberspace as a paradox. Ordinary linear power and legislative practices that try to subordinate cyberspace are responsible for this paradoxical situation. Although the dialectic that regulates the relation of law with the inside and outside is not able to correspond to the current situation, cyberspace is still deprived of its specific spatiality from many aspects.

## CHAPTER SIX

### CONCLUSION

In a consequence of the arguments that have been discussed the findings of this study are as follows: In our time, a new sphere of an exception which is not created by the sovereign comes into existence through cyberspace and its users. That sphere itself and the users familiar with the possibilities offered by cyberspace are the main actors of this long-standing governmental and legal crisis. Although all the control and restriction efforts that have been tried so far have not yielded the desired result, there is no guarantee as to how long this sphere of exception will last.

Now we would like to go back to the questions that we asked in the first chapter: “If the sovereign powers are not capable of creating the necessary circumstances for the efficiency of the laws, then how should we perceive the current internet regulations which are already in force?” For now, these regulations can only be binding for people who voluntarily obey them and people who were not aware of how to suspend them. Moreover, these regulations constitute the main reason for the disclosure of *being in force without significance* for the people who know how to suspend them.

Then “What is the current legal status of relevant internet users who can access banned materials on the internet, and in which degree can laws internalize and externalize this new space?” Under these circumstances, in many aspects, the legal status of internet users are no different from the legal status of the sovereign. Neither inside nor outside of the law. This ambivalent or privileged attachment gives the power to create the sphere for the state of exception. Cyberspace establishes the sphere of *ex-stasis* or ecstatic-belonging for its participants, which happens through the bifurcated spaces. Moreover, this bifurcation unravels the invisible border of the legal order.



In order to reach a genuine awareness of cyberspace itself, it is essential to analyze this space based on its specific spatiality rather than its interaction with the physical space. Imagining cyberspace through its specific spatiality reveals the bifurcation that occurs within the space itself, and then the contradictory togetherness that grows between the two spaces and reaches the point where the legislators fail to comply with their laws turns into a problem that needs to be analyzed through bifurcated spaces rather than to be a paradox in itself. Thus, when the partial autonomous character of the bifurcated spaces detected, these spaces start to interact with each other and turn into a representation of an unusual coexistence with their own autonomous fields. People who are experiencing this bifurcation, concurrently witness two types of sovereign in different spaces. The sovereign who is incapable of establishing the necessary circumstances for binding of the law at cyberspace and the sovereign who has unquestionable authority that can be observed in every aspect of physical space.

This togetherness rejects a homogeneous point of view of dialectical logic and offers a heterogeneous perspective that does not reject the idea of coexistence. Foucault defines this perspective as a strategic logic: “ I suggest replacing this dialectical logic with what I would call a strategic logic... The Function of strategic logic is to establish the possible connections between disparate terms which remain disparate.” (Michel Foucault, 2008, p.42).

Although for many social scientists, the statement “the medium is the message” (Marshall McLuhan, 1964) is considered as a cliché statement of a technological determinist approach, in fact, it still seems to have lost nothing of its actuality and managed to survive the relentless test of history. The global village gets its true meaning based on bifurcated spaces and it can be thought of as partial and mostly limited with cyberspace. In opposition to being a technological determinist, that statement can be thought together with many different disciplines of social science and political philosophy. Moreover, it can find a new field of expression through these fields.

On the other hand, the question of suspension of laws via cyberspace is closely related to the current problems of many other fields such as political economy, sociology of media and communication, cybersecurity. That is why this new sphere of exception should be analyzed through the other disciplines of social science as well.

“How the status of cyberspace can be defined when it is looked at from the window of the sovereign?” Depending on the circumstances, it could be defined as a tumor, necessity, danger or rival. We saw from the examples that have been discussed via Turkey and Iran that in many places, sovereign powers are still confused about establishing a consistent relationship with cyberspace. In the final analysis, it will not be possible to make clear arguments on this issue without revealing the relationship between the governmental crisis created by cyberspace and power techniques and restriction practices of the sovereign powers.

On the other hand, the question of the suspension of laws via cyberspace is closely related to current problems of many other fields such as political economy, sociology of media and communication, political philosophy. That is why this new sphere of exception should be analyzed through the other disciplines of social science as well.

Although we mostly discussed the sphere of exception through its effects on individuals, this sphere, which provides the suspension of the laws, can be exploited by criminal organizations. As seen from the deep web case and myriad other cases, the new sphere of exception has already been abused many times in the recent past. However, other consequences of this sphere are way beyond the scope of this paper, and it should be the subject of another examination.

As a result, if this paper can make a microscopic contribution to the literature in order to position the relationship between cyberspace and the sovereign power within the set of relations that includes the sovereign itself, it will have achieved its purpose.

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