OMBUDSMAN AS AN AGENT BETWEEN STATE AND SOCIETY

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ABSTRACT

OMBUDSMAN AS AN AGENT BETWEEN STATE AND SOCIETY

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Ombudsman is a worldwide institution in charge of public or private sectors for mediation. Some countries use this office to solve micro problems and some in macro. Despite the fact that Ombudsman is as an exceptional institution in terms of traditional separation of powers principle, it is generally taken as an ordinary part of executive or auditing. This tendency is refused due to Ombudsman's institutional character which is claimed to be named as *powerless chief*. Moreover, the dichotomy of public administration and politics is rejecting by examining the abstract status of Ombudsman. In doing so, it is tried to contribute on the possible origins of Ombudsman institution in an interdisciplinary way. This aim has three fronts. First of them considers the position of Ombudsman within the branch of the executive by discussing the development of public administration and bureaucracy. In the second place, it is tried to make connection between important and related points of Swedish history, the homeland of Ombudsman. This is not for showing the material conditions of Sweden, rather it is for opening a way to use some approaches and concepts of political anthropology. Finally, Relations of executive power and representation is theoretically revisited with reference to defense of human rights issue that it is the most significant role of Ombudsman institution following WW2.

ÖZ

DEVLET VE TOPLUM ARASINDA BİR TEMSİLCİ OLARAK OMBUDSMAN

Değirmencioğlu, Kadir Özhan

Yüksek Lisans, Siyaset Bilimi ve Kamu Yönetimi Bölümü

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Ombudsman Dünya çapında gerek kamu gerekse de özel sektörde görev alan yaygın bir arabulucu/dolayım kurumdur. Kimi ülkelerde daha mikro ölçekli kimilerinde ise daha makro ölçekli sorunların çözümünde tercih edilmektedir. Ancak Ombudsman geleneksel güçler ayrılığı açısından istisnai bir kurum olmasına rağmen genellikle yürütme ya da denetleme görevi özelinde ele alınmaktadır. Bu eğilim tezde geri çevrilerek, Ombudsman'ın kurumsal özellikleri hasebiyle 'iktidarsız şef' olduğu iddia edilmektedir. Diğer yandan, Ombudsmanın soyut statüsü baz alınarak siyaset ve kamu yönetimi ayrımı da reddedilmektedir. Böylece Ombudsman kurumunun disiplinlerarası bir yolla kökenlerinin tekrar gözden geçirilmesi amaçlanmaktadır. Bu hedefin 3 aşaması bulunmaktadır. İlk olarak kamu yönetimi ve bürokrasi tartışması yapılarak, Ombudsmanlık kurumunun yürütme içindeki yerine değinilmektedir. İkinci olarak, Ombudsman'ın ilk ortaya çıktığı ülke olan İsveç tarihinde önemli ve ilişkili noktalarla bir bağlantı kurulmaktadır. Bu sadece somut tarihi verilerin sunulmasından ziyade siyasal antropolojinin kavram ve yaklaşımlarını kullanmak adına bir yol açmak maksadıyladır. Son olarak Ombudsmanlık kurumunun 2. D.S. sonrası kazandığı başat rollerden biri olan insan haklarının korunması meselesinden hareketle, temsil ve yürütme ilişkisi arasında teorik bir tartışma yürütülecektir.

Anahtar Kelimeler: Ombudsman, Temsil, Kamu Yönetimi, Siyasal Antropoloji, İnsan Hakları.

To the memory of my grandfather, Abdülkadir Değirmencioğlu

whom I never met.

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CHAPTER 1

INTRODUCTION

"je me risque à ne rien vouloir dire[1]"

In the preface written by Spivak, for the book of *grammatology* that of Derrida makes a discussion about prefaces[2]. Fortunately, or not; there won't be a deconstructionism debate in this work, rather, it will be chosen whether introduction or *pro-factio* is preferred. Actually, the problem is to designate the line between *pro* and *factio*. This is also a theoretical borderline between MSc and PhD processes.

This thesis was written to dare, grasp or transcend the limits of the individual academic learning process for individual purposes. But the point is that there has been a margin between academy and superstition. In that way, *sapere aude*, one of the most famous enlightenment era mottos reminded by Kant is chosen to find a way to synthesize different contributions of social sciences as much as possible within a limited topic.

Actually, even it is understood as a countless challenge or churlish salutation; backstage of the theme of this thesis is that academia bog down through over-technicism and alienation, which is reproduced by strict bureaucratization and

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[1] "I am taking the risk of not wishing to say anything" (Derrida, 1981, p. 14).

[2] "The preface, by daring to repeat the book and reconstitute it in another register, merely enacts what is already the case: the book's repetitions are always other than the book. There is, in fact, no "book" other than these ever-different repetitions: the "book" in other words, is always already a "text," constituted by the play of identity and difference. A written preface provisionally localizes the place where, between reading and reading, book and book, the inter-inscribing of "reader(s)," "writer(s)," and language is forever at work. Hegel had closed the circle between father and son, text and preface..." (Derrida, 1976, p. xii)

stratification in general terms. Thereby, writer of this words hardly believes that all those literatures' code and autism tendency in all fields and subfields of natural and un-natural sciences seem to be reproducing by repeating themselves, acknowledging the famous 'bone collecting' issue.

Then, if it is to make an introduction, it should be noted that this thesis is born to reject the famous politics/administration separation or so-called dichotomy as if legendary brothers who are fallen apart due to tragic/dramatic reasons. Most famous tale of such brothers, Cain and Abel may be remembered here, from the narrations of divine religions Cain who is a farmer murdered his brother Abel who is a shepherd. This tale is taken to show the dramatic dichotomy between political science and public administration.

Politics has dozens of more definitions in the depths of philosophy if it is compared with public administration, but to place this text to a side, over-fragmentation is denied thanks to the less fragmented department of METU political science and public administration. Thus, the first thesis of the thesis is to call for a peace between Cain and Abel, which is part of a theological-anthropological story at the same time. By saying this it is being underlined both metaphorical and actual connotations in its epistemological and methodological meanings.

Title of the thesis may be misleading which demonstrates itself as if a legal-procedural analyzing of the institution. Rather, it is a quest for mediated reality through an institution by allusions and adumbrations. Ombudsman is chosen to anchor for avoiding unending theoretical sailings, more than to this, for its status as an unfinished and uneven institution between pre-capitalist and capitalist associations. Its foundation and proliferation timeline are both viable examples for questing public administration and bureaucracy in a scheme.

Main faults and uneven categorizations of the thesis are related with these interdisciplinary efforts. During reading, such a type of institution let re-thinking

about a founding principle of government: separation of powers and position of the authority within public administration. In sum, it can be said that Ombudsman a 'neither nor; either or' category.

Ombudsman is a peculiar kind of structure place in between executive and jurisdictive powers. Actually, this positioning is related with legislation, which gives its legal authority and realm within the bureaucracy. Notably, in Sweden and other countries, Ombudsman is seen as an agent which has an abstract and concrete representative factor in the democratic governance system. But being as an agent it is deprived of power and function of sanction. If we think about bureaucracy in general terms, it is not possible to detect a unit operates without any concrete action. This is why this thesis is trying to investigate this void observable with operating of Ombudsman within the conventional separation of powers.

Sapere Aude, as mentioned above, has shared similar fate like a bunch of other famous sayings; that its first part is ignored or actually never considered: "*Dimidium facti qui coepit habet; sapere aude; incipe!*[3]" that originally belongs to Horatius. Thus, it lasted many years and painful hours on the table when the beginning of the thesis was forgotten. But as it can be seen by annotation, there are 3 parts in it. This historical background of the ombudsman is tried to be connected within three dimensions: First, its position in administrative and bureaucratic theory; second its symbolic meaning within 'chief without power' finally, its main duty in modern nation state as a mediator in defense of abstract human rights

In "Dimidium facti qui coepit habet", It is being tried to make an introduction to public administration and bureaucracy related with the history of ombudsmanship. As a well-known progress, Ombudsman, appeared in 18th century Sweden, gained its modern form by 1809 constitutional amendment. If we don't assume the Finnish case, structured in 1919, the proliferation of such institutions dates back to mid 20th

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[3] "He who has begun has half done. Dare to be wise; begin!" (Horatius, 1989, p. 40-41).

century; at the threshold of 70's, hence just a few years before the crisis that social, political and economic factors involved.

In *sapere aude*, which consists the 3rd part, it is tried to interrelate ombudsman institution with political power and its mediation process by symbolic prescriptions mostly borrowed from anthropology. Cassirer's inception about symbolic forms and its relationship with human thought can shed light on this connection by his understanding human as *animal symbolicum*. In this manner, during the chapter abstract and concrete categories are taken together to understand Ombudsman in its historical origins. However, it should be annotated about interpretation and over-interpretation that the rightful warning of Eco for considering meta historical elements (Eco, 2004).

These symbolic underpinnings have roots mentally in the still-shining *magnum opus* of Koselleck's *Critic and Crisis*. He asserts that enlightenment is grounded on the dawn of Bourgeoisie State following the collapse of Absolutist State during the 18th century that it can be seen as the crisis of the shattering wall between morality and politics (Koselleck, 2012, pp. 14-20). Moreover, it may be also asserted that a proto version of *one-dimensional man* is served to reproduce this wall. Morality ascribed to the State relies on essentially the dualism of god and evil. In the second term, between enlightenment era and the French revolution, it became a tension between the morality of society and immorality of the State. This awakening in its zenith is borrowed from the American revolution in 1774 meaning victory against tyranny for the intelligentsia of Europe. In further, following WW2, morality equalized with the human rights concept as an external balance to the State for the sake of society.

The development of advanced capitalist State which give the *janus* face as welfare and warfare has the only legitimacy within human rights and administering of it. In the final part, *incipe*, by mentioning to Arendt, Balibar, and Schmidt this legitimacy is focused to understand the role of post-WW2 proliferation of Ombudsman

institution in the context of separation of power in an advanced divided social structuration.

CHAPTER 2

INTRODUCTION TO FIELD OF ADMINISTRATION

At the beginning of the 19th cc., following the development in the field of State Sciences, Staatwissenschaft[4], public administration has not been taken as a field of science, yet. Although, from the late middle ages up to 16th cc. secular administrative apparatus and agents were thought to be in enhancing. This process, especially, must be associated with the radical turn of European monarchies from non-economic coercion to economical one. One of the turning points of this process is named as mercantilism and/or cameralism.

The object of the mercantilism is economy although it is much more than steering: guidance of the economy by the sovereign. It can be deduced from the work which is written by Voltaire and dedicated to Friedrich the Great in 1770 seems to be confirming it: "How deplorable is the people's condition when they have everything to fear from the abuse of sovereign power and their needs are prey to the avarice of the prince, their freedom to his caprice, their peace to his ambition, their security to his perfidy, and their life to his cruelties" (Treuherz, 2014, p. 62).

This process is a new kind of legitimization through ratio(nality) or governmentality as called by Foucault[5]. Between 17th and 18th cc. these two forms of government

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[4]   Staatswissenschaften includes Public Law, Public/State Economics, Public Administration (including Public Policy, which can be listed separately, or vice versa), and from Political Science, the subfields of Government, Comparative Government, and Political Philosophy/State Theory. (Drechsler, 2001, p. 106)

[5] "To govern a state will therefore mean to apply economy, to set up an economy at the level of the entire state, which means exercising towards its inhabitants, and the wealth and behavior of each and all, a form of surveillance and control as attentive as that of the head of a family over his household and his goods" (Foucault, 1991, p. 92).

nearly turned out to a coherent ideology. This way of governmental technology can be summarized as 'strong economy'. While in colonialist powers are called as mercantilist for their focusing on external trade income and trade security, on the other hand, Prussia, German principalities and Scandinavian monarchies are called cameralist (Tribe, 1984). In addition to this, again within German and Nordic realm, cameralism was not only about to *oikos* but also *polis*: *polizei*[6] and its discipline which reflects the grasping of society as a partner and taking into hand as a consent factor by the government, followed as Cameral sciences or Kameralwissenschaften.

This Era is marked by Friedrich the Great and his administration who is an enlightened monarch. In this way, Cameralism owes its existence to him and the schools which are founded by. This branch handles *oikos* not as just the substitution of household, rather it seizes all exchange and production organizations. *Polis* is focused for both security and satisfaction motives to sustain the State. In broader terms, fiscal success is interconnected to *space* as property and *security* as war affairs.

Sketchily, protectionist view which is grandfather of cameralism and mercantilism is generated through English trade policies and Colbertism of France. It can be especially thought that German modernization's *great other*, French counterpart, has deeply affected cameral trend. Besides, German particularity is said to be added English 'Eastern Indian Company' tradition, into her multipartite structure to replace external resourcelessness. This fragmental line can be taken as Staatwissenschaft and later List's national economy thesis up to end of 19th cc.

This new science and form of the State become widespread by its officers and *bureaucratized the World*, simultaneously with the industrial revolution of 19th cc. and the crisis of 1870's. It is notably seen as a crossroad between direct and indirect

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[6] "While Polizei constituted a program of total regulation it was at the same time nonjuridical, seeking not to adjudicate the legality of completed actions but rather attempting to define the conditions of good order and public safety in advance" (Tribe, 1984, p. 274).

intervention of the state; the transition from polis to oikos. This frame is as visible as from the point of social class contradictions and a fierce clash between labor and power which flourished across Europe. Just after the crisis, the emergence of public administration comes into being by the famous article of Wilson in 1887 and it marks the *unhappy accident* by sharply separating administration and politics.

At first glance, separation of administration and politics corresponds to the negation of cameralist doctrine. Nevertheless, it is the surface of upcoming State formation. In the second layer, the vital point is a reaction to *Laissez faire et laissez passer* motto especially expanded during 19th cc., a tradition coming from the French physiocrats who are promoters of land reforms in favor of traders. Related with the deficiencies of liberal State which are seen within the currency crisis started in Germany and unsettled the world trade deeply which caused to an end in the *gilded era* of the USA, conditions let Wilsonian administration to arise. As a result, Wilson offered the neutralization of bureaucracy and therefore eliminating the *spoil system*. Moreover, as the 3rd layer, he defends the German methodology[7] to underline dichotomy and strong State ruled by laws of legislation/politics; acted by bureaucracy/administration.

This methodology can be called an ideal type of 'administration' as Wilson says: "Politics is thus the special province of the statesman, administration of the technical official" (Overeem, 2012, p. 58). Conversely, Wilson also takes bureaucracy at the side of the State that it means a politization through a-politization. It is also needed to indicate that Wilson in his later work *leaders of man* unifies separation with a powerful leader in 1890 and asks the obvious question in that way: "The divinity that once did hedge a king, grows not now very high about the latest Hohenzollern; but who that prefers growth to revolution would propose that legislation in Germany proceed independently of this accident of hereditary succession?" (Wilson, 2018, p. 222). It can be deduced that he defends strong presidential administration as a fusion

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[7] "If Wilson or Frank Goodnow are to be called the 'fathers' of American public administration, Stein (1815–1890) deserves recognition as at least a grandfather" (Overeem, 2012, p. 45)

between popular democracy and government[8]. Overeem, in his article also points out an interesting concept that Caesarism is the thing that Wilson preferred after WW1 by indicating plebiscitary parliamentarism (2012, p. 68).

Before experiencing 20th cc. in which scientification turns into a religion, fate of public administration is waited till the born of Taylor and Fayol's managerialism. In this point, positivism and empiricism meshed together under the shadow of German inspired Wilson. Moreover, it means legal entity both private and public tends to be ruled in similar manners: Plebiscitary president and manager come together at the dawn of 20th cc. As can be seen, the exclusion of labor from both representation in politics and administration in organization reflects the essential meaning of dichotomy. Splitting of the labor makes administration an empty signifier in the name of efficiency which in turn nothing more than instrumentalization of rationalization.

In the second layer, the subject of the administration becomes profitable by the following developments within WW1 which is named as Fordism or Taylorism. In this era, military and civil organizations coincide whereby civil and military violence. Alike with the perspective of Weber, what can be said on the State except its being as the monopoly of legal violence. It is that legality and jurisprudence not only the modern state is a law ruled organization but also implementation and execution of the law soar only on the ground of violence and its apparatuses. Structure of the social being is a total of holographic (Morgan, 2010). Leviathans which illustrate Fordist empiricist, Taylorist positivist, and Weberian interpretive layers.

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[8] "Wilson's ideal leader is contemplative, not charismatic; he is less an agent of the people responding to their will than an agent of the nation absorbed in its history and at one with its identity. *The true statesman*, he wrote, *leaves self out of every question*; he has no distinctive personality or individuality. Because *the nation is an organic thing*, the leader needs a *sensitive, conceiving, and interpreting mind*, one capable of perceiving *the next forward step* and organizing *the State for the movement*. (Cited in Bimes & Skowronek, 1996, p. 50)

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Even if Weber has not been famous up to the 1920's, his ideas can be said to be in power, or at least that of his interpretive culturalist method[9]. His prediction on Europeanisation of America (Offe, 2013, p. 50-51) is about to being realized in the time of his voyage which is similar with Tocqueville's pathway. Moreover, both Weber and Tocqueville infer Aristocracy problem which is parallel to inequality in labor and capital relations where businessman title acts as lordship (2013, p. 31). In the perspective that US's founding principle is an issue of nation seeking instead of State seeking, individualism becomes the vital input instead of the sovereign's power and decisions. In each portion of the state apparatuses, even jurisdiction is included, all issues are handled as a business (2013, p. 64). In this process, the most important factor is the 'boss' issue turns into one-man-phenomenon and from presidency to daily economic relations it is said to be determinative in social action. Here is preferred to take this phenomenon in terms of the ideal type of governmentality whether it is a far-modern chief or street level bureaucrat.

In addition to this, appearing one-man phenomenon can be taken into hand within the paradigm of crisis that of 30's started with 1929 economic turmoil. Thus, democratic and administrative crisis of these years let re-legitimation of the leadership as a ghost from pre-modern and pre-industrial era: The ghost of chieftainship heroic-social construction of total representation that of natural law, improved by modern state capabilities, especially capability of usage of legal-administrative / law-ruled state which is only responsible for natural rights, not bound with human rights, yet.

In another view, it can be taken as the mixture of Weber's types of authorities: traditional as much as representative body politics; charismatic as much as sensational form heroic sagas; and legal in which even self-evident violations is written into official archives. Hence, both European fascism and American new-deal

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[9] "Weber did not envision the prospect of universal norms of the culturally valuable or value related. He simply conceded the subjectivity of the personal or collective interests that shape the investigators' perspectives. This was consistent with his cultural pluralism […] At the same time Weber found it fruitful to investigate potential objects of the cultural and social sciences for their possible relationships to […] cultural values" (Ringer, 2000, p. 124).

where exchange relations are upside down because of speculative crisis, again, the critic takes the economy -whether it is liberal in ideological or capitalist in practice- to merge with politics in the name of corporatism.

We may also conclude differences and similarities by comparing the movies: modern times[10] and metropolis[11]. These examples symbolize both American and European examples of government technologies or as Foucault says technologies of domination[12] - and technologies of the self[13]. The remarks cited above on Weber and Tocqueville on America and its European burdens can also be grasped within these stories. There can be acknowledged four segments of time and four of space: Lang's metropolis has a timetable belongs to both before and after crisis within a futuristic concept on Europe-mostly Weimer Germany. The main reason which crumbles social context and organization seems to be *technologies of the self.* In the modern times, when labor becomes unemployed, thus, economic mediation turns into its dark twin: violence. In addition to this, both scripts have an underpinning on *formen* issue also of the most important scene of the Lang designates: "The mediator between the head and the hands must be the heart". It is captured that *formen* is a mediator, the borderline between both pre-capitalist and capitalist mode of production or blur transition between pre-capitalist authority and capitalist one.

Another contradiction or antinomy between development and enriching welfare of Fordist era is a kind of isolation both occur in individual and public domain. This

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[10] Movie on criticism of Fordist life by comparing before and after 1929 crisis. Released in 1936, written, directed and played by Charlie Chaplin.

[11] Movie on futuristic over-industrialized society harshly divided between workers and city planners-managers. Released in 1927directed by Fritz Lang.

[12] "Technologies of power, which determine the conduct of individuals and submit them to certain ends or domination, an objectivizing of the subject" (1988, p.18).

[13] "Technologies of the self, which I permit individuals to effect by their own means or with the help of others a certain number of operations on their own bodies and souls, thoughts, conduct, and way of being, so as to transform themselves in order to attain a certain state of happiness, purity, wisdom, perfection, or immortality" (1988, p.18).

also can be taken as a turning point for Fordist robotized society depicted in both movies as well as problems of Taylorism's visible pyramidal structure. It is nothing more than POSDCORB of Gullick's principles of administration unify both French managerialist thought and American practice of military-civil alliance on government. This portraying is followed by famous Waldo-Simon debate in two realms: fact-value distinction and possibility of democratic administration. Unsurprisingly, it is related with the variations of divisions as administration vs. politics which shouldn't be taken without the mainstream economy-politics distinction.

Waldo's position is on about to ignoring *fact-value dichotomy* which arises from efficiency and decision-making tension by saying it is not possible to differentiate both administration and politics in terms of un-independency of public executers because of their choices are thought to be value free. In essence, while the *a pirori* acceptance of profit maximization rule is taken similar with a natural law shaping the grand-political decisions, why the question of the administration is fixed to the understanding of a cocktail of mystical bureaucratic actions. If efficiency is the main goal only for efficiency's sake, there is needed one to make a final decision on what the most efficient is.

Until this point, these interpretations on the classical era of administration is also an era of strictly isolation of the State from public administration's focus both in theory and practice. Although, in reality, the so-called abstraction of the State flourished from market and State relations, by the indispensable marriage between nation state and capitalism, hinders the real mechanism of sovereignty and power. In this way, while State abstraction is positioned the Power to an upper stage, at the same time it curtains itself by political field teamed with mediated actors such as parties, NGO's, lobbies, religious and ethnic groups etc. Hence, the specific being of human existence loses its locus between the tension of the economic and the political as the same as that of public administration.

Especially it can be deduced that by the behaviorist approach both on organizational studies and public administration[14] seems to focus on abstaining from authoritative leadership after WW2 but at the same time the public administration is charged with developments in phycology which renders it to open a gap between positivism. Another post-WW2 event is the development of comparative public administration throughout the world, started by rehabilitation of Europe and followed by Domino Theory which is, in essence, aims to the encirclement of communism from Balkans to Asia-pacific regions (Slater, 1993). Merging of comparative administration and development let another problem which is flatting the differences between regions and States, especially their historical, long-term problem-solving capacity on governing the society.

At the dawn of the global capitalism, Riggs conception of prismatic society (Riggs, 1964) can be taken as an example of the change of the hand which handles the mirror, in Riggs words, turning American public administration's status from looking to itself for attuning administrative structure within European tradition; for exporting American public administration values to underdeveloped/developing States (Riggs, 1962, p. 11-12). In this meaning, it is expected that old administrative apparatuses must be modernized or reformed by a determinative external factor which can be named as Western/Atlantic Bloc.

Thereby decision makers and implementors would render their decisions accustomed to American norms and benefits. This can be taken as another variation of modernity flourished from German tradition and modified by American one in which socio-political factors are ignored and constitutive ratio of capitalism doesn't have to harmonize itself with internal spatio-temporal process. Practicing of this formula can be seen from Latin America to Middle East and Asia valid from mid 50's, each of

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[14] It is also another problematic marriage within 50's and 60's to construct another focus and locus for administration issue.

these countries is thought to be need a kind of PAITME[15]. In this point, it can be said that functionalism and pragmatism are hand to hand.

This era until general crisis of Welfare state following 68 riots and 70's petrol shocks hit Western societies with legitimacy crisis and American public administration with the Watergate scandal. After this period, critic comes from liberal agenda again to diminish executive functions over *oikos* or it can be said that politics is reduced into economy in the name of neo-liberalism. Ombudsman proliferation, which will be mentioned must be considered as the early child of this crisis and a critic to heal the dissolution of social contract and substitute the State as a metaphor. Moreover, while this replacement means objectification of the State, public administration becomes an object of fiscal relations.

2.1. Brief History of Bureaucracy

When hearing the word of bureaucracy, the first thing to be sounded is its archaisms, seriousness, and brown suits. It sounds like a fact comes from thousands of years ago to make our daily life harder and unbearable. Secondly, Weber comes into minds routinely associated with sociology so that does not make a powerful impression. Two of them might be true that maybe the Weber part more than, but there are so much to say about, especially when re-thinking with 2000's developments in all fields of life. Here is to say another before start is the technological (related with our article communication technologies) development which changes our 'daily' life slowly or suddenly; willingly or unwillingly.

Although there are dozens of definitions and descriptions, bureaucracy is not a one-sided concept to explain in one sentence. Common belief is conceptual bureaucracy's belongingness to Weber but there are several attempts to point out the developing organizational process with a comprehensive term. One can say, "The authority of

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[15] Public Administration Institute for Turkey and Middle East.

power which various government departments and their branches arrogate to themselves over fellow citizens" (Albrow, 1970, p. 17). This 19th century explanation, basically, edits a form about bureaucracy. To Albrow it is possible to tell about pre-20th century thinkers trying to explain 'modern' organization of the sovereign in the way of 'paradoxical position' of the new servant type but as they are unable to manage exploring the importance of bureaucrat-to-be (1970, pp. 30-32).

If someone is looking for Amerigo Vespucci and Christopher Columbus of bureaucracy, Mosca, Michels and naturally Weber are the patented explorers not just curious voyagers. Mosca's main focus is on power -and its classification, in his major book about the ruling class. He diversifies feudal government in which concentrated power functions are managed by a person or family, on the other hand, bureaucratic one where these functions are divided among ruling class and daily functions of the government is operated by appointees in principle of merit (Albrow, 1970: 33-34). He also writes the importance of salaried officials in terms of bureaucratic organization. In Mosca, the relationship between bureaucracy and democracy is vital because of modern state mechanisms in which there are two main cores of power; one of which is politics composed of elected representatives and the other is bureaucratic mechanism for balancing. In case of predomination – of a party, class or organization, balance breaks down which may cause bureaucratic despotism (Etzioni-Halevy, 1985, pp. 14-17).

Michels, famous for his *iron law of oligarchy*, says each organization has oligarchic tendencies. In all large-scale organizations especially in political parties; as masses joined organization, possibility of taking democratic decisions became impossible, then, a core team flourish. In that core, members keep their position with their skills, networks, and background, according to given salary (Albrow, 1970, pp. 36-37). We can sum his ideas up from Etzioni-Halevy's work: "The officials of State bureaucracies and the leaders of parties have in common: they are both intent on preserving their own positions and the rewards accruing from them, and, by so doing,

they strengthen the bureaucratic and/or oligarchic, non-democratic character of the organizations of which they form a part" (1985, p. 23).

Last maybe the most important destination before Weber is Marx. Even though none of his works focused on bureaucracy, particularly; we can understand his view from critiques to the modern state. His remarks rely on critique of Hegel's civil society and state, which simply takes bureaucracy as an instrument of state that of dominant class. In another segment, it is nothing but the so-called common interest to hide real situation of inequality among society. It is a coercive mechanism sustaining reproduction of multi-faced exploitation. Marx also sees bureaucrats as a constructed layer in society. Finally, State, naturally, bureaucracy is a temporal issue that will disappear by proletariat revolution as a result of withering out of the State. Later Lenin and Trotsky make contributions to bureaucracy but not to the concept itself. Because, especially Trotsky's findings are about the inevitability of bureaucracy as Weber indicated which occurred in Soviet administration conversely with Marx's prediction (Mouzelis, 1972, p. 14). Lenin's attribute is parallel to his new-deal plot, not cynical to bureaucratic formation.

Most probably the father of the bureaucracy approach is Weber. His understanding of bureaucracy derives from authority types one of which is legal-rational one which is ‘‘typical administrative apparatus corresponding to the legal type of domination, called bureaucracy" (Mouzelis, 1972, p. 17). He asserts several distinguishing points which separates bureaucracy from charismatic and traditional organization styles, some of them, mainly, are detailed duty definitions; ordered hierarchy-supervision; restricted authority within duties; objective selection of personnel due to their educational background; life-long employment and rank-based salary (Mills and Gerth, 2005, pp. 290-300; Etzioni-Havely, 1985, pp. 26-28; Mouzelis, 1972, pp. 18-22; Albrow, 1970, pp. 42-45).

Bureaucratization is an inevitable process to Weber (Albrow, 1970, p. 45) and a technical issue which focuses on setting an effective administration mechanism

throughout rational-mind. If it is to say another way that the establishing of bureaucracy is demolishing of irrational structures, which also result of the economic transition and progress interpreted in his famous work of The Protestant Ethic and the spirit of Capitalism, with the help of other writings it is apt to say that roots of the bureaucrats can be found in tax-collectors of Lords during middle ages as a matter of fact that patrimonial layers can be found, too. (Mouzelis, 1972, p. 20; Blau and Meyer: 1987, p. 30). He adds that it is not possible to abolish bureaucracy after assembling it once (Mills and Gerth, 2005, p. 312).

Weber, of course, is aware of negative points of bureaucracies especially when thinking the relationship with growing democracy and conversely still-living patrimonial remnants. It was an ideal type strictly adherent to the norms but there is always a possibility for them to be loosen in terms of individual interest instead of common one.

Especially Merton handles indicates the role of personality within the efficiency of bureaucratic structures and also underlines the possibility of shifting focus of mechanisms from execution of the policies and having effort for the institutional goals to normative and formal concerns which may led bureaucracy to become a sacred fact as in the traditional or charismatic authority types (Merton, 1992, pp. 101-105). Veblen makes a similar reference and says that this cause *trained incapacity* which is a term stresses both rigidity and inefficiency (Etzioni-Havely, 1985, p. 40).

Another thing is the informal face of bureaucratic organization which is underestimated in Weberian approach and particularly emphasized by human relations school that it opens a way us to consider politics-bureaucracy connection, more carefully: patronage-client relationship; modern spoil system and modern farming mechanisms.

2.1.1. Bureaucracy vs. Scientific Management

Taylor's fame, certainly, comes from his work of the *Principles of Scientific Management* written in 1912. Avoiding from predecessor-successor relation, making a connection might be beneficial. Namely, the father of the classical organization approach, Taylor, by making such a simple but vital deed rendered organization enormously efficient by time-action algorithm which was what Weber aimed with his ideal type of bureaucracy.

After the scientific revolution and growth of the economy, knowledge took the place of old legitimacy sources and became the only reference point in all fields so that the demand for a scientific organization mind was demanded. Weber's centralist pyramidal state organization seems parallel with Taylor's industrial type in the field of manager-worker division of power and jurisdiction. Moreover, synchronized with the growing of professional-managerial class, it can be seen that, in civil or military with 'elite formation' rendered critical to attend as a civil-servant/bureaucrat, there is a social layer, with having their codes and minimal interest bases, acting as another actor in all fields. Maybe in this manner, even Marx does not see them as another interest group, official workers are in a more advantaged place. Burnham interpret the case in way to see managerial class as a unified form constituted by bourgeoisie- as a ruling class (Etzioni-Havely, 1970, p. 55).

Gouldner in his work of Patterns of Industrial Bureaucracy underpins the importance of norms for bureaucracies. He asserts that rules are beneficial for order in a job; relationship between people -workers or officials- but has a dysfunctional face (Mouzelis, 1972, p. 60). Selznick and Blau bring the approach further and interrogate the strict centralist legitimation of organization. But this led another dilemma to become visible which might cause subsystems relatively to be independent from central command-decision making structures to differentiate their sub-goals instead of focusing for the common-goal of organization and/or common-interest of public, particularly in public organization. The concretion of the relation between Weberian and Taylorist styles can be seen by the POSDCORB principles systematized by

Gulick to make a broader angle to understand the functions and duties of chief executive or in our perspective bureaucrat as well (Gulick, 1992, p. 88).

2.2. Bureaucracy and Shifting Paradigms

Linear progressive nature of history can also be seen from the growth of the governments or more truly growth tendency. From ancient times to the 21 century, State mechanisms tried to be wealthier, powerful, efficient, longevously. Trend changed from post-WWII to 70's was growth parallel with capitalism in the world and reversed. Growing means bureaucracy and related with the reorganization and reform processes in economy and politics. Each shifting in production field means shifting in recruitment or each technological development means a new attempt to find out a better way to govern. Thereby changing of Weberian-rational bureaucracy throughout the world is inevitable, too.

As mentioned in the beginning, there were not any classification between private and public asserted by Weber in bureaucracy. Between two world wars epoch; stick moved back and forth between a general organizational perception or separation. In the golden years of American capitalism just after the Fordist boom, it led alienation as Marx underlined beneath of the title of meta fetishism. The second one was the adaptation problem of organizations to changing demands of clients-citizen because as Blau and Meyer indicated strict pyramidal structures made communication harder (1987, p. 167), moreover it is apt to say that 1929 crises rendered these negative features visible.

The transition from Welfare to Warfare is one of the main instruments of capitalist system in order to balance supply and demand that it is easy to see during WWII. By 50's with several approaches from different channels, public administration effected bureaucratic structures. Influence over bureaucracy can be understood from mainly

two indicators. One of which is the government expenditures and the second one is the government employees. Because more spending means more commodity or service and commodity-service production needs to be done by officials. But it is another dilemma for democratic norms especially when thinking attempt for gaining support of masses has possibility of resource allocation and recruitment unequally.

Until 70's, administrative regulations of resources, which heighten year by year, made the bureaucracies clumsy and swollen; command-control mechanisms lost its influence while technological developments were rendering problem solving easy in all fields, there were not any mechanisms capable of adjusting itself. The most crucial thing which became basis for neo-liberal critiques and attacks was enormous state expenditures to health and other social security issues. (Peters, 2001a, pp. 28-29)

2.3. Political Control of Bureaucracy

This approach is rooted in the famous politics-administration dichotomy by Wilson. As a start it focuses on the reciprocal relationship between policy makers and exercisers accordingly there is a reciprocal limited influence capability, too (Frederickson and Smith, 2003, p. 20-22). Lipsky's street level bureaucracy approach one of the main arguments of this line. He considers the role of street-level bureaucrats such as police, fireman, teacher and etc. within the problem-solving ability and motivation in spite of lack of power and authority (1992, pp. 480-482). Agency theory seems to be borrowed from private organization fulfill the street-level by making the advantage of bureaucrats' fair which is knowledge sustain hidden supremacy over politicians (Frederickson and Smith, 2003, pp. 36-39).

Bureaucratic politics approach takes bureaucracy as equal of politics inspired by Waldo at first. They try to combine the remarks belongs to administration and management into an ideal democratic state concept and doesn't avoid using efficiency; democracy; normativity; centrality; hierarchy etc (Frederickson and Smith, 2003, pp. 41-47). Here it is to add that informal-formal and value problems of bureaucrats are displayed, especially Wilson with his famous work of

Bureaucracy: what governments do and how they do? Interpret the components of bureaucratic behaviors in terms of motive forces; cultural values; self and common interest. But at the end of the book after long case explanations recommends us to create diminished, expert organizations works as open systems able to manage in itself (1996, pp. 115-120, 393-400).

Finally, Krislov in his essay of Representative Bureaucracy tries to legitimize shaken image of Western-states by putting an equality emphasis, concretely not different from Weberian sense, to all socio-economic groups in terms of service procurement and right to manage and right to join decision-making mechanisms in all measures (1992, p. 424). These concepts even if seem to different in some field, indeed, approaches consciously or not giving way to render market-based social and political arena trying to establish legitimized and acceptable.

Extinction of Keynesian State by 70's milieu of crisis made small businessman-entrepreneur complaint more loudly. After a period of corporatist warfare state, then, interventionist state - namely both steering and rowing, the stick was now in favor of 19th-century liberalism fans. Their demand was returning to free-market economy laissez-faire mind. But paradoxically as Polanyi indicated, indeed "laissez-faire itself was enforced by the state...the road to the free market was opened and kept open by an enormous increase in continuous, centrally organized and controlled interventionism" (Etzioni-Halevy, 1985, p. 111).

From 70's to 2000's main arguments of the right has not changed with their demands, actually. Diminishing of state mechanism calmed down and come to the motto of steering rather than rowing. The arguments were named as public management; new public management etc. and sometimes democratic concerns became visible with participatory models; then, governance approaches.

Osborne's arguments from Reinventing Government can give us a schema: As indicated just above "steering rather than rowing; empowering rather than serving; competitive; results oriented; enterprising; decentralized and market

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oriented"(Denhart, 2004, p. 137). Denhart again makes good description saying that these movements not only demand public administration to emulate the market-based tools but also the free-market mind (2004, p. 140).

Seeing market-based approaches as fruits of Chicago school, Dreyfus, State is trying to be handle as an ordinary actor with reform process that it is nothing but discourse in order to sustain global policy-making process by international institutions (2007, pp. 255-260) at the same time, the spiral of public-private guarantee a scapegoat to capitalism's structural failures that crisis are given the name of bad-management. Dreyfus' detection on politics is important which assert that in spite of accusations, actually, bureaucracy, apart from damaging, led democracy and market to live (2007, p. 281).

2.4. Some Remarks

Developments occurred in the last 10 years in the field of management as general is to be considered, too. These are network; governance and post-modern approaches influenced the field directly or not. Doubtless as happened in the 1900's as technological innovations have been main determiners. Bureaucracy has been named as red-tape, unnecessary etc. by free-market mind and still in the same line just before the Global economic crisis which punished finance sector in a heavy hand made a paradoxical situation. Will A drowning man clutch at a straw?

In accordance with examples of re-nationalization of big companies nowadays instead of privatization cliché can be a breaking point for the future of bureaucracy. Doubtless, the meaning of governing has changed form and substance from 20th to 21st centuries as Kooiman depicts it as process of bargaining and mediating instead of laws, rules, and execution of them in industrial democracies (Peters, 2001b, p. 8). Everything is more complex than it was in the past ever but coordinately we are more capable for overcoming the problems. Even they are still crawling, participatory mechanisms sustained by networks among people might open a radical

way to be governed. But we mustn't be deluded easily when dreaming on these developments, secondly, we are to scrutiny the new developments before emulating and implementing them.

In the near future with the help of the fast-blooming information technologies can bring us an equal global citizenship status, so that it might be possible to make completely new governing tools. Today we are very far away where we stand a century ago in all fields, to some better, some worse; environment, plants, animals, poorest, richest have a chance to meet at the same point at the same time that it means the overwhelming of conventional social structures and perceptions.

If we make a dualist separation one is behalf of bureaucracy and one is not, in a very simple and reductionist way, it is apt to say that a core authority is unavoidable. Its features; servants; features; dimensions changes depend on its (our) goal. From Adler's perspective, coercive or enabling, we don't have to choose only one (1999, pp. 45-46) but can harmony both for us.

"One cannot consider a tree as fictitious and only its roots as real" (Pappenheim, 1959, p. 79) says Tönnies. So, reality is both belong to each other. These epistemological saying which considering Marx's capital can borrow us the question how can be differentiate or unify administration, agent, institution or the State. If we follow Foucault, *etatisation of the society* and *governmentalization of the state* are in consonance. This consonance is result not only capitalism but also the fragmentation, differentiation, and division. As Marx's saying in Grundrisse production is about object for subject and vice-versa.

Just before a hundred years ago, there were a couple of sovereign State in the World. In the following trend, while sovereignty was proliferated, capital became concentrated. Ancient means of coercion was changed in three trends during 17th and 18th centuries: capital densely and trade monopolistic Netherlands; Spanish and Scandinavian tribute and labor slavery model and Anglo-British model as a synthesis which combines economic and non-economic coercion (Tilly, 2001, pp. 165-166).

These new governmental technologies were just adapted the east Indian company model in the name of incorporation. In another hundred years later, World experienced the 1873 crisis in which the governing trends changed completely.

During the 19th cc. European powers includes Sweden and US. Faced with migration problem, cities were growing rapidly, and available administrative background is not enough to govern. In the same era, racial fragmentation is dividing the world as western and non-westerns; blacks and whites. Capital is in trend of monopolysation Trost. The first civil war caused by capital accumulation outbreaks in the US is not a surprise in such a dense mobilization term. On the other hand, The State structures are exhausted by frauds and polarizations. This is why capital accumulation and condensation continue and sovereignty of the semi-modern states are fragmented.

Major first civil war that of Peleponessian can be remembered here. The war of minority against majority; richness against discipline. It is the essential inspirational point of Hobbes' state of nature concept (Sahlins, 2012). Democracy is taken as the main cause of war where demos trapped in their desires. Therefore, it can be deduced that both political science and public administration are systematized in a narration of civil war and *cratos* of the *demos*. It is also a caution towards land and sea civilizations and their different genetic (Schmitt, 2009).

Again, as Marx says in the capital self-valorization of capital which is also starting point of Italian autonomy school (Bonnefeld, 2014) can shed a light alike with the angel of Benjamin stands between past and future. If political science, older than its counterpart as a science is still debating the Hobbes phenomenon, why public administration is leaving this aside? Taking public administration as a mathematical function can be useful to deliberate. A priori segmentations and paradigm shifts compose various answers for daily problems. Besides, words don't change the vital and historical relations between man and administration. Especially the first question which is rarely comes to the fore: should public administration be studied in exact periodization and ideological agendas?

This can be given as 1930's where, between world wars and perpetual crisis. In a frame poverty belongs to wither capitalist and pre-capitalist values and facts on the other hand industrialization, urban planning and pro-aristocratic enrichment are easily visible. This era is the timeline when European values are bankrupted due to fascist and national socialist ideologies, Soviets builds a progressed industrial society from an agricultural Asiatic model and US gained the infinite productive capacity to maintain its democracy. It can be said that irrelevant regimes are born from nearly the same cluster of values. There is nothing as a closed subset after Galileo, rather it is an infinite cluster of experiments. Physics can't be verbalized by one formula. In similar with the revolution of 1792, neither revolution, nor politics can have one variation." (Badiou, 2013, p. 32).

The *event* which is trying to be evaded, in another aspect, opening ceremony of public administration or Wilsonian revolution - as a Galileo one- would be a man's burden to alternate social dimensions. Moreover, it can be questioned the event's fostering to whole composed of a priori ontic beings. Is it really the founder of public administration as a science?

Dualism or binary oppositions of philosophy which Derrida is settled in the context of post-structuralism relies on text and voice. The latter characterizes Western thought in which politics and administration can be considered. Other than progression the critical transition must be about looking at the margins instead of mainstream spatial contradictions. This is why there will be an evaluation on a marginal narrative on a detail belong to Swedish history.
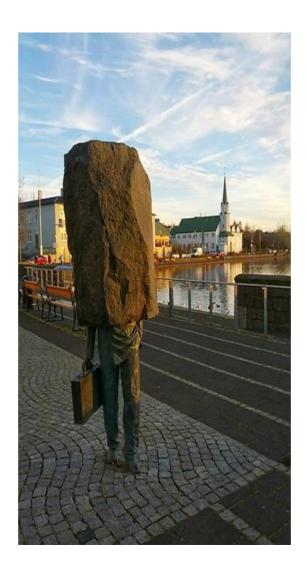
Figure 1. Magnús Tómasson's "Óþekkti Embættismaðurinn" (The Unknown Bureaucrat) from 1973. Reykjavik, Iceland. Retrieved from internet.

CHAPTER 3

ORIGINS OF OMBUDSMAN IN A BRIEF

In the late 60's the dawn of capitalism and re-construction of Europe lost its velocity. Actually, situation named as Keynesian state or welfare state were coming to a new era called legitimacy crisis. There was a multi-faceted breakdown through Western Europe despite Scandinavian model was alive at least in its socio-political concern. As Habermas says, the problem is "Recoupling the economic and the political […] creates an increased need for legitimation. The state apparatus no longer, merely secures the general conditions of production […] but is now actively engaged in it. It must therefore – like pre-capitalist state – be legitimated". (Habermas, 1976, p. 36)

Legitimacy is belief in the rightfulness of a given authority / *Herrschaft* in Weberian definition. (Beetham, 1991, p. 35). He underlines the controversies of well-known authority types of Weber. It is critically important, not only because of Weber's fame, common tendency in grasping bureaucratic phenomenon in terms of legal-rational authority creates legitimacy. If we follow the path of Beetham, summarily we may see a deficit in legitimacy (1991, p. 43) issue. Although Weberian methodology and its shortcomings are explained by several scholars, in public administration it is hard to avoid falling the gap between legitimation sources of modern state and/or bureaucracy as a distinctive feature of the legal authority.

To make it clearer, it should be questioned where the legality does start. If whole legal system which includes constitution is only measured with codification, it should be noted that it is only matter of time and luck to transform an illegitimate authority to a valid one. Therefore, it is vital to think bureaucratization issue in a way of political anthropology for example when a conqueror or a victorious warrior captures a socio-political entity, he claims his sovereignty either before acclaimed as

a ruler or later. Later he becomes king and founds a hereditary system that rules are heralded and written. The problem in legal authority of modern state has two sides: One is its major source called popular sovereignty comes by Rousseau and French revolution, second is hidden force behind the law, underestimated in given time and place that it is nothing, but a myth lies in depth of history.

Inferring from Bureaucratization of the World, Ombudsman-ization came into being during 60's and 70's in the Western world. As a transition era, for nearly all fields in social sciences from 1945 to 1973 had major changes. During these years, welfare state and its social reproduction costs and benefits, social movements, cold war and its moral and daily effect on individual realm must be acknowledged. Moreover, developments in public administration thought are important to observe this proliferation in terms of system approach and comparative public administration movement.

First visible context of public administration after WW2 seems to be derived from re-structuring of Europe, re-organization of the society, as a kind of peace time mobilization, and implementation of pro-allied state mentality in terms of law and administration. As a well-known article "paradigms of public administration" that of Henry designates 5 paradigms in public administration. The third paradigm *public administration as political science* comprehends 1950 to 1970 where writer identifies as "renewed definition of locus –the governmental bureaucracy –but a corresponding loss of focus" (Henry, 1975, p. 381). Most probably, public administration was still suffering of administration/politics dilemma. The following paradigm sustained a focal point as administrative sciences, yet it was lack of locus (1975, p. 382). It is seen that dichotomy evolved from *administration vs politics* to *public and private spheres*. This is one of the most critical point of the era.

In another direction to say, Non-Weberian, German public administration seems stand against Weberian bureaucratic phenomenon. Starting from the scholars like

Von Stein Otto Hintze and Rudolf Smend[16] a vigilant thought was alive to estimate German state tradition and peculiar modernization points in Hegelian point as general.

This is valid to say because apolitical and uncharismatic bureaucrat type was not suited to German modernism in general terms. The essence of the German model was integrative, solidarist, organic and symbolic foundation of State over society in a crossroads of representation. Moreover, this representation occurs by public administration's mediation role in Hintze's words (Seibel, 2010, p. 722).

Not surprisingly it would be making a connection between enlightenment question of Kant asked in his famous enlightenment article which assigns public figures to be carrier of idea of enlightenment that they should operate it in their life both public and private. Also, it can be comparable with Hegelian *Geist* issue and role of the state as the real actualization of the reason that servants are the far most visible carrier of the *reason* a couple of steps before citizens.

Main performative capability of German tradition is "the use of public administration as a political integrator […] until present day […] with a proven record of adaptability throughout several phases of emerging challenging groups and state response" (Seibel, 2010, p. 721). This reflection[17] can also be seen in the emergence

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[16] "Lorenz von Stein (1815–90) portrayed public administration as the "working state," a living organism instead of just a tool of government, thus laying the groundwork for conceiving the state apparatus as a socially embedded entity.

Otto Hintze (1861–1940) gave the most exhaustive empirical analysis of the integrative role of public administration when characterizing the co-optation of the landed aristocracy into the Crown's army and administration as a prerequisite of stable government in early modern Germany.

Rudolf Smend (1882–1975), finally, addressed the entire machinery of government as an integrative mechanism emphasizing, among other things, the mutual adjustment of administrative decision making and what he termed the "spirit of the public" -Geist des Publikums-." (Seibel, 2010, p. 720).

[17] Ombudsman as appointee of the elected. So it is to be underlined that balancing to things.

of Wilsonian progression era[18] that it is to get rid of pejorative individualistic behavior hidden beneath dualistic partisanship. It was valid also for Weber that society should separate political leaders and public servants because the former must perform its duties in a way of self-fulfillment and the latter is bounded with obligation of self-denial (Sager and Rosser, 2009, p. 1137). But the crucial point is that the aim of Wilson was not to take administration out of politics (Rosenbloom, 2008) keeping politics away of administration whether in terms of business or not. So, it should be noted that Weber can't be taken as a grand example of German tradition in American or wide range public administration context rather there are strong German elements in Weber's approach to bureaucracy and administration and a similar situation is received in Wilsonian and following approaches[19] or practices in public administration context.

For Waldo, who is a prominent dissident against politics/administration dichotomy, it is not possible to completely unify or disintegrate decision making and administrative system rather it is better to grasp the issue by counterbalancing appointees and elected ones (Güler, 2005, pp. 248-50). "a bureaucratic organization is an organization that cannot correct its behavior by learning from its errors" (Crozier, 1964, p. 187) but some solutions such as Sweden is historically possible. First reflection of decision making is the statue of Speaker of the Parliament in Sweden since 1974 whose rank is just after the King and higher than prime minister. Position is over to daily political debates in the parliament, so it presides on the legislation but never in the process. In sum, it is the total representation of the monarch and the society honored as the far most upper position to gained in Sweden[20]. Second answer is Ombudsman as disintegrating administrative system

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[18] "Progressivism was a rebellion against limited government and the individualism of nineteenth-century liberalism. It accepted collectivism, the welfare of the community as a whole, as a positive value" (Walker, 1989, p. 512; Sager and Rosser, 2009, p. 1137).

[19] Before 1950's it is also important to note that Nazi public administration gainings and its scholars moved to U.S. had considerable effects on American public administration. (Petzschmann, 2014)

[20] Retrieved from http://www.riksdagen.se/en/how-the-riksdag-works/the-speaker/the-tasks-of-the-speaker.

from politics. They are both for accountability tension between legislation and administration.

In this manner, during the thesis, Swedish public administration is taken as a part of Germanic one. Both for the understanding of modern times Sweden in a frame and its past. it will be considered that Swedish administration tradition is a synthesis of Roman civilized codes and German tribal ancestry which will be mentioned. "Scandinavian variant […] combines étatist, organicist inheritance similar to the Germanic tradition with a strong state-welfare orientation […] social compact arising from deep-seated democratic, communitarian tradition" (Painter and Peters, 2010, p. 23). Organicist structure of state-society relations which is still visible in public sector[21] and secondly, decentralized organization of government coincides with legalism to avoid corruption as a general governmental problem[22].

"Modern government, especially in times of crisis, already made use of delegation, effectively sharing political responsibility between the political executive and administrators." (Petschmann, 2014, p. 269). Especially it is the effective-decisionism which is observable in modern times turmoil of the governments that it is sacrificing of accountability to restitute it in long term.

In addition to this, Swedish -rather than Scandinavian administration has a distinctive feature that is called dualism: *small ministries and large agencies* (Levin, 2009, p. 41). It gives a constitutional guarantee for agencies in their field of specialization

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[21] In the Swedish welfare state, the public sector has been considered one and indivisible. If, for practical reasons, the services were better produced and delivered by the local governments, then the responsibility for these tasks was decentralized to these governments. Such was the case with the strongest area, the care for the sick and disabled, and for children and the elderly. As a result, the expansion of the welfare state mostly took place on the local and regional levels during the 1960s and 1970s (Ehn at al, 2010, p. 431).

[22] This logic builds on the idea that systemic corruption should be understood as a problem of collective action (Persson et al. 2013; Rothstein 2011) in which the agents perceive that they would stand to gain if they could transform their un-cooperative behavior into a 'game' based on cooperation.

also as cited above, fulfills the *decentralized and unitary* uniqueness of Swedish public administration. Hence autonomy is sustained in both national and local levels.

Table 1. Four Types Of Public Administration. By M. Painter, M. & B.G., Peters, 2002. Tradition And Public Administration. Houndmills, Basingstoke, Hampshire: Palgrave Macmillan, p.20.

	Anglo-American	Napoleonic	Germanic	Scandinavian
Legal basis for state?	No	Yes	Yes	Yes
State and society	Pluralist	Interventionist	Organicist	Organicist / Welfarist / 'Open Government'
Organization of government	'Limited government'; UK: unitary, with weak 'local self-government'; US: 'compound republic'	The indivisible 'Jacobin' Republic; hierarchical and centralized (Spain: semi-federalized)	Integrated; cooperative federalism and interlocking coordination	Decentralized through administrative and/or political decentralization
Civil service	UK: quite high status, unified, neutral, generalist, permanent; US: upper ranks temporary, politicized	France: Very high status, permanent, specialized elite training; segmented 'corps'. (S. Europe: lower status, politicized)	Very high status, permanent; legal training; upper ranks permanent, but can be openly partisan	High status; professional, nonpoliticized (Sweden: segmented and decentralized)

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3.1. Ombudsman as a Solution

All of descriptions underlines intermediary role of ombudsman taking place between State and society; government and citizens; company and consumer. This so-called mediation process will be observed in practical meaning. Then, it will be referred to philosophical meaning in the following parts. In different countries ombudsman are called such as "nationale ombudsman in the Netherlands; le médiateur in France;

protecteur du citoyen in Canada; defensor del pueblo in Spain; provedor de justiça in Portugal…" (Özden, 2010, p. 26).

The peculiar point about Ombudsman is in "its description as one-person institution" (Erdengi, 2009, p. 7) rather than a structure. Actually, this perception consists main representative role of ombudsman and its core as well. The second point comes after one-person's singularity if it is to say in a Marcusian manner as a kind of *one-dimensional man* in contrast to neutral sphere of bureaucracy and bureaucrat that of Weber. This view can also take us to personalism issue of philosophy and literature which was relevant in 19th and early 20th century Germany, Russia, Sweden and Britain as well.

Nearly in all countries, ombudsman has an independent institutionalized person or vice-versa. But most importantly, decisions are not binding or directly executive (Erhürman, 1998). Another common feature of ombudsman is in its assignment way that it is mostly occurred by parliaments in spite of some exceptions such as France in which it is appointed by cabinet and in the U.K. by the Queen.

Actually, just after it is exported to Norway by 1952 as military ombudsman and in Denmark by 1955, it became a trend and proliferated all over the World. But if we look closer to chronology on the chart (Doğan, 2014, p. 90), it will be easier to conduct a debate about it.

Table 2. Proliferation of Ombudsman until 1980's

1810 Sweden (national)	1966 Guyana Tanzania	1973 France Zambia UK (health) Rajasthan (India) Canada (Prison)
1915 Sweden (military)	1967 U.K. Alberta (US) Jerusalem (city)	1974 UK (regional) Detroit (US) New Jersey (US) Haifa (Israel)
1920 Finland	1969 Hawaii Northern Ireland	1975 Alaska (US) Kansas (Prison) Michigan (Prison) Oregon (Prison) Papua New Guinea
1952 Norway	1970 Canada Jamestown-NY (US)	1976 Portugal Australia Austria
1955 Denmark	1971 İsrael Nebraska (US) Seattle (US) Zurich (SWE)	1978 Jamaica Puerto Rico Tasmania
1959 (West) Germany	1972 Israel (mil.) Fiji Minnesota (prison)	1979 New York (US) Philippines
1962 New Zealand		1980 Ghana Florida (US)
1963 Norway		1981 Ireland Netherlands Spain

Main move of proliferation dates back to 1970's. The turning point for world capitalism and nation states, in addition to this, it is immediately afterwards of 1968 movements, era of *crisis of legitimacy* as Habermas underlined. If god doesn't play dice, neither socio-political re-organizations do. Thus, one of the main reasons lay behind ombudsman movement should be understood as a quest for re-habitation and re-modelling of relations between administration and citizen; State and society.

But the question is why a Nordic/Swedish institution or tradition was chosen and implemented. The reason might be inquired by observing characteristics of these countries; their social, political and economic trends. Before going further, to put it a comma, it would apt to say that, Nordic social democracy and a kind of peculiar solidarism might have been attracted the public administration-to-be.

Swedish case is not only important because of its first example but also the emphasis on human rights context. In sum, the citizen is primarily protected by law with its essential connection with human rights. During its duty, ombudsman is the only institution to investigate high administrative courts members.

Enhancing duties and responsibilities of the welfare state gives a rise in abuse of power throughout the world. But, it is needed to be democratic at the same time if these abuses will be questioned. Another aspect of the proliferation is on the rise of individual rights prior to collective rights. It is also visible in empowering of human rights as a mirror for altering rights of the citizen. Hence, designating malfunctions or abuses to the disadvantage of the status of human or citizen are re-presented in an abstract way. Moreover, these abuses are designated as grievances forwarded to the grievance man (Colon, 1973).

The mainstream typology in ombudsman issue is between classical and non-classical It asserts that Scandinavian examples are the core traditional one that they don't have executive power and only responsible to related national legislation. In addition to them, the non-classical versions which are observable in France, UK and the USA

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are part of executive branch which makes them less-independent (Ayeni, 1985, pp. 6-10).

Reif makes a blur categorization on ombudsman which are classical and hybrid types in which the latter is mostly belongs to a variety of tradition in Iberian and Latin American countries as well as African counterparts to help investigations on human rights abuses and violations during civil or military dictatorial regimes (Reif, 2009, pp. 7-10). This hybridity can be understood mostly by their date of foundation when the transition to neo-liberal regime type is becoming visible. Actually, their fundamental role in between State and society or establishment and individual stay the same. More than to binary classification there are ten types of Ombudsman:

1-Public Sector Legislative Ombudsman, 2- Public Sector Executive Ombudsman

3- Public Sector Hybrid Ombudsman: Human Rights, Anti-Corruption, Leadership Code Enforcement etc. 4- Public Sector Legislative or Executive Ombudsman with Limited Subject-Matter Jurisdiction 5- Executive Organizational Ombudsman Created by Government Departments, Agencies or State Corporations to Handle Internal and/or External Complaints 6- Hybrid Public/Private Sector Ombudsman for an Entire Industry or Service Sector Created by Legislation to Resolve Complaints Made by Customers/Clients 8- Organizational Ombudsman Created by Private Sector Institutions and Corporations 9- The International Organization Workplace Ombudsman 10- Creation of the Classical Ombudsman at the International or Supranational Level of Governance (2009, pp. 26-28).

Another aspect of the origin of ombudsman in Scandinavia is the *rule of law* principle. Due to the fact that in its foundation the name of the institution is Justice-Ombudsman, it takes both administration and jurisdiction beneath of rule of law to sustain obedience to law of all public officers. Although, this *redress* issue when welfare State is over-grown by 1960's becomes obsolete. The parliamentary

ombudsman of Denmark which is founded in 1955[23] unified the apparatuses and means of rights protection within three power branches in the name of human rights protection. This is also another turning point in history of ombudsman proliferation.

3.2. Way through Ombudsman in Sweden

As a law liked rule, there should be some explanations about etymology of the title. Ombudsman is a Swedish term comes from hundreds of years ago. Before making statements, it would be better to look into Swedish government mechanism lays behind the Ombudsmanship.

As a harsh geography, settlements of Sweden were drifted apart, or transportation/logistics were a little bit harder compared to lower German realm during early and Middle Ages. Thus, interaction and communication related with administrative duties developed in a peculiar way. Possibly a Roman type military organization called *hundred* as in the name of *haörads* formed within provinces which each of them contains an assembly called Ting that met under the chairmanship of a *Lagman/lawman*[24] (Wennergren, 1968, p. 2)

There are offsets in ombudsman institution. First, comes chronologically later. It dates back to a time of crisis and turmoil for Swedish monarch and kingdom, which is also known in Ottoman Empire's history. Charles XII's[25] involuntary stay in Ottoman realm took place between 1709-1714 just after his defat to Russians. During his long accommodation it is said that Charles observed Ottoman institutions closely

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[23] "With the adoption of the new Constitution in 1953 the Danish Parliament was attempting to bring the public administration under stronger parliamentary control and to reinforce means of individual legal protection" (Kuscko-Staldtmayer, 2008, p. 154)

[24] Lawman, or 'law speaker'—head administrator of justice in each landskap, who also acquired other administrative responsibilities. Landskap is main regions of Sweden. (Line, 2006, p. 558).

[25] His nickname, given by Ottomans, *demirbaş* (fixture) is an allegory underlining the expenses made for Charles and his servitors by Ottoman exchequer during exile days.

(Einhorn and Logue, 2003, p. 83). For some scholars, the philosophy lay behind ombudsmanship is an interpretation of combination rooted in several versions of Islamic and especially Ottoman bureaucratic apparatuses called as *kadı'l kudat*[26] which is originated in rise of Islamic Empires up to 12th cc.

Ombudsman historically appeared in Sweden in the 18th century as a public agent and as an institution between the sovereign and subjects. Ombudsman means deputy or representative whose object is to advocate in case of any abuse of right by bureaucratic mechanisms. The crucial point is that Ombudsman must be neutral towards abuses -of rights of subjects but this neutrality has issues with "prérogatives de la puissance publique[27]"

At First, in 1713 King Charles XII instituted *Hogsta*[28] *Obudsmannen* (Orfield, 1966: 7) to control jurisdictive and executive power –and their agents' function in good and fair conditions while he was in exile in Ottoman Empire after losing battle against Russia. Jagerskiöld underlines that, in the beginning of the 18thcc, Attorney General –Justitiekansler were appointed to oversee judges and servants of the King by 1719 (1961, p. 1079).

The point is title of Attorney General's belonging to the Royal government which bypasses necessities of Parliamentary control over executive branch. Swedish parliamentary tradition has some important features within 18th cc. Most important part is its *quadrumvirate* formation composed by nobles, clergy, merchants and

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[26] Kadı'l Kudat is an Office/duty given by khalif to khadi (Islamic judge) of the capital at the rising era of Islamic empire. They were taken as representative of khalif in case of his absence. During time it became a clerical-jurisdictive position with secondary administrative and supervisory duties adherent to religious authorities. In relation with their accepted title of Jurisprudent, it should be said that decisions were detached from their sect belonging, so to underline. (İslam Ansiklopedisi 66-69; 69-73; 77-82). Moreover Kazasker (Kadı-asker) that it can be translate as military judge position also has to be considered (ibid 140-143).

[27] Official Powers of Public Authority

[28] Highest.

peasantry. Moreover, Riksdag seems to be sustaining its executive functions coming from medieval era (Ihalainen, 2015, p. 71). The role of the estates that it will be mentioned in the early histography of Sweden are both examples of representation of the social body, in partial, as well as divided society's separation of authority rather than power, directly.

The power held by estates relies on the local assemblies, evolved from *thig-*assembly. Especially after the domination of Christendom, parish assembly-like meetings are added to the local government tradition have authority over land-ownership, fiscal and taxation issues where commoners play crucial roles and named as juryman. Also, their position which is guaranteed by 1739 royal order (Ericsson, 1980, p. 77). The process of avoiding from absolute monarchy repeated severally in 18th cc., only halted at the dawn of mercantilist era and not supported by the understanding of sovereignty alike with other European powers, rather, it is sustained as law and liberty (Wolff, 2007, p. 361-2).

The transition from Enlightenment era 1720-1789 caused a marriage between bureaucracy and nobility despite its quite-well functioning. Hence, it can be deduced that, even if it is not the same with French model of tax-office counterpart, executive functions seem to go beyond balancing the absolute power toward independency. As a result, centralist motto of the era is damaged. The period between 1789 to end of 1800's must be considered with the elimination of the bureaucrat-nobles called as accord-system (Rothstein, 1998, p. 292-295).

The Montesquieuan constitution in the beginning of 19th cc., therefore, draws line between authority and power, more than functioning of the government. The balance is maintained by autonomous bodies/diversification both in general and in each departmentization, which is apt to call it *administrative state* (Pierre, 1993, p. 390) where bureaucracy renders itself another effective representation of the State both for consent and legitimacy. In addition to this, this tradition of autonomous departments and agents possibly opens a way to re-animation of pre-Enlightenment era control mechanism which they are accustomed to mostly modernized public administration

of Sweden. Additionally, "It might become apparent that a politico-ideological awareness of the need for bureaucratically inclined administrative changes had formed before the economic situation would allow them to come to fruition" (Rothstein, 1998, p. 304).

There can be detected three dimensions of tensions within the born of Ombudsman in Sweden. First, the unavoidable historical existence of local privileges, second, fluctuating effect of aristocracy and the third as monarchs who are generally close to non-economic coercion, even if Sweden is not an earliest example of democracy and capitalism, it is one of the most important in following rule-of-law which is nearly transcended to natural-law.

As a well-known historic moment, modern Ombudsman institution officially dates to 1809 in the name of *Justitie-Ombudsman* (JO) by the new constitution of Sweden. This new institution was about to enhance control of legislative power over executive one. In the constitution, the JO was described as representative of parliament for supervising and observing the actions of jurisdictive and executive powers in case of accidental and contingent situations:

> The basic idea behind the creation of the JO's office was that the courts and other authorities would be less inclined to disregard the law to serve the wishes of the Cabinet if the activities of the authorities were watched by a people's tribune who was independent of the government. (Bexelius, 1968, p. 11)

It is important to emphasize that main Ombudsman regulation met by 1809 constitution was simultaneous with the war between Sweden and Russia. More than a hundred years after foundation of ombudsman, military ombudsman act accepted during another war that of WW1, 1915.

Ombudsman as regulated by Swedish laws, is elected by electors from the parliament for four years, has an Office chosen by him and he is responsible to the parliament.

Moreover, investigations are made by complaints of citizens and/or by initiation of Ombudsman itself. (Bexelius, 1968, p. 13). It seems that in the beginning, Ombudsman was acted like administrative jurisdiction. But for the early 20th century, it was not easy to distill this branch of jurisdiction. For the importance of ombudsman, Bexelius who were an JO says:

> It may be added that the mere existence of such an institution serves as a security valve in society, with a general soothing effect as a result. The existence of such a security valve facilitates co-operation between authorities and citizens. The fact that there is an independent institution which devotes special attention to ensuring the rule of law strengthens citizens' confidence in the will and readiness of society to protect them against encroachments from society's own organs. Tensions between society and the citizenry may thus be smoothed away in a truly democratic way. (1968, p. 18)

Moreover, about the authority of Ombudsman to observe jurisdiction has been considered more of a secondary role compared with administrative[29]. The foundation process of Ombudsman can't be analyzed without glancing at historical turning points of Sweden, also in terms of amendments.

Especially 1766 Freedom and the Press act should be given that the pioneer of its kind in modern world for guaranteeing freedom of speech in an early era. In the same year, name of the Hogsta-Ombudsman is changed as *Justitiekansler* -Chancellor of Justice- (Orfield, 1966, p. 8). In 1782, King Gustav permitted the Jewish minority to settle and right to have their temple (Pulma, 2016, p. 648). In 1810 after the new constitution the freedom act is renewed with several changes until 1949 (Petersson, 2009, p. 4). Especially after 1920's Swedish system evolved into a parliamentary government system in which royal power moved a ceremonial role. Besides, Ombudsman institution saved its position from 20th cc. to modern day.

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[29] "Since this point is so often missed by foreign observers, it is important to note that the JO does not have authority to change the decisions of courts or administrative official" (Bexelius, 1961 cited in Orfield, 1966, p. 12).

3.2.1. Short Remarks from Swedish History

It is possible see some evidences about public assemblies on Swedish territories related to delimiting authorities of the Kings starting from 9th century. In addition to that there was title called earl who have considerable authority under the King and where Kings not presented[30] (Lindkvist, 2003a, pp. 223-225). As it is understood, although there is a strong tendency through centralization, Swedish territories were multipartite until institutionalization of Christianity around end of 13th century.

By spread of Christianity, acceptance and validity of royal authority enhanced. It was not only ideological but also intercultural and intellectual. This is because of new clergy became literate so that "they consequently played an important role as counsellors and administrators" (Lindkvist: 2003b, pp. 166). In fact, this process of transformation didn't take place only in Kingship's favor, but also traditional bodies of the people partly resisted and partly accustomed and acceded themselves such as regional things or assemblies[31] mentioned in the beginning[32].

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[30] "Early medieval Sweden has been described as a federation of provinces. Kings, earls and the Church represented the centripetal tendencies whereas the magnates, chiefs or aristocrats, frequently stood for centrifugal tendencies" (Lindkvist, 2003a, p. 227).

[31] "The things were political as well as legal assemblies and constituted important meeting places between the king and his representatives on the one hand and the local or regional ´elites and broader population on the other. But the relative influence of the two parties varied from kingdom to kingdom. In this and other respects the local ´elites of Sweden appear to have kept their influence on a higher degree and for longer than was the case in Norway and Denmark. In Norway the regional law-things were obviously instrumental in paving the way for royal and ecclesiastical reforms whereas the Swedish monarchy was probably in general confronted by a stronger opposition within the framework of provincial things. In so far as Iceland was a political unit in the Free State period it was because the Icelanders accepted a common body of law and had a hierarchy of things with the Althing at its summit. It was within this framework that the *godar* exercised their judicial and administrative functions. Power was, however, increasingly concentrated in the hands of a diminishing number of chieftains and families and was converted into territorial lordships over extensive regions. But no single chieftain had the resources to extend his rule over the whole of Iceland, and the increasingly bitter and destructive power struggle among a handful of leading chieftains and their families paved the way for the inclusion of Iceland in the Norwegian realm" (Lindkvist: 2003b, p. 167).

[32] Also, in Norway, "law-thing was different from earlier local public assemblies of all freemen in that it was a representative body for a larger area, consisting of specially appointed men who only met once a year; for a long time, it was also the highest judicial assembly in the country and the only one that could ratify laws" (Krag, 2003, p. 186).

As we observe throughout Scandinavia by 10th century impact of Christianity, Kings of North gained divine statuses. Although, foundation of the Kingship in Sweden in terms of legal and political control apparatuses dates to 13th century. Before that it has been said that sphere of legal authority was limited that of monarchs (2003b, p. 230). In that point, we may put a mark to emphasize role of the religion especially Christianity and its effect on administrative capacity whilst transition from pagan era. Moreover, from the beginning of Christian missions, it is said that Germans and English missionaries have an important role in conversion (Line, 2007, p. 66). This mixture in maturing of Swedish State tradition should be remembered as a grand concept or theory also during modernization period and other developments in Swedish history. Especially it will be rectified Clastres' approach to the State and society.

To avoid a long debate between historians and anthropologist on 'early-state' (Claessen and Skalnik, 1978) it should be noted that, during iron age of Europe, there were remarkable differences among northern and central regions. For our purpose, it was about emerging of a pre-bureaucracy which identifies the noticeable transition from chiefdom (*godar*) to kingdom or State in a way.

As it is understood from the Line's study, chiefdom or kingdom doesn't display political situation during Iron age. Free regions kept its positions (and of their sovereignty) with their free-man gathered in assemblies (Thigs or Altings) which are led by lawman despite of a central government or its representative (2007, pp. 54-55). Moreover, even in 13th cc[33]., after possible unification under one king, there were periods that main regions of Scandinavia and Sweden may had been ruled without a King rather by a mutual "cultic-judicial-administrative" system (2007, p. 57) which takes us to consider that it relies on *lagman* and *thig* tradition.

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[33] It is important to underline from now on that in Scandinavian tradition if there is something symbolizing the given geography started to come into being by 12th century by Swedish and Danish Kings' meant the same due to law and tradition (Line, 2007, p. 64).

Vogt & Esmark points out the form of the early Swedish state as *aristocratic republic*. This character is said to be determined by regional-local nobility whose realm named as *lagsagor* in which lawmen (within noble kinship) has judicial authority. As a consequence of that, medieval Sweden had lack of central/royal authority (2013, p. 148). This is actually the strength point of Swedish decentralized[34] government tradition.

In the end of 15th cc up to 16th, while, local tradition saves its power adherence with the catholic church, a new trend in the peasantry arises as the discontent towards monarch. Shortage in agrarian society makes farms and villages empty hence both revenues of the nobles and the monarchy falls down (Larsson, 2016, p. 32). In the era of the Gustav Vasa, the elements which will later compose the Riksdag-assembly-start to be formed by calling of the estates to retake taxation and property privileges of church (2016, p. 35). Therefore, in the beginning of the peasantry revolt, domination of the catholic church is also an issue which render the influence of Protestantism easier.   As Kouri indicates, by the loss of financial influence of the church transferring to the crown, "the jurisdiction of clergy over laymen was drastically curtailed and subjected to royal supervision" (2016, p. 63). Long process of Protestantism is matured by a mixture of humanist Catholicism and equalitarian Lutheranism.

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[34] "this discursive dominance of the concept of decentralization in Swedish politics from the 1970s onwards cannot by itself, however, explain why a real and radical decentralization has been the dominant feature of public sector developments since then. We need to understand why this element of reform has been 'historically efficient' and to this end we must inevitably turn to some prominent and lasting features of constitutional and administrative history in Sweden. My argument here is that Sweden, contrary to what many believe, has not in any simple sense been a centralist society. To be sure, it has had since the seventeenth century a fairly strong central government, run by Kings (and the odd Queen) and eventually by democratically elected leaders, but also by a powerful class of civil servants; to a large extent Sweden has been a Beamtenstaat (bureaucrat), or ambetsmannastat. This civil servant class has since at least the 1720s could uphold a considerable autonomy through the structural feature which is commonly called the 'dualism' of Sweden's politico-administrative system – or in modern reform talk, an 'executive agencies' model. In addition, Sweden has since long combined an elaborate and strong central apparatus with an equally developed local government level. The relative absence of a strong feudalism helped to sustain this tradition of local self-rule even through the periods of absolutism that belatedly but eventually also became part of Sweden's history. From the 1860s a strong local self-government level has been a constituent feature of the Swedish system; in that respect, the country has few or no rivals." (Premfors, 1998, p. 156)

3.3. From Anthropology to Politics

It is not possible to re-establish the scene of politics and administration in a limited thesis, but it would be apt to borrow some remarks from anthropology to make a better connection between representative and mediatory role of Ombudsmanship.

In this field, several well-known scholars can be arrayed such as Evans-Prichard who studied on Nuers' *ordered anarchy*, Henry Morgan and his approach to ancient societies as *societas* and *civitas*; Radcliffe Brown's *internal cooperation*; Maine's *ancient law* depicts primitive societies organized within kinship etc. (Balandier, 2010, pp. 23-30). One of the main questions of Anthropology is origin and genesis of political power which constitutes political anthropology.

In this study Clastres's approaches will mostly be borrowed to attach Ombudsman phenomenon to its claimed origins cited above. Clastres is one of the re-founders of anthropology who mostly focused on South American natives during 60's and 70's. From the view of politics, Clestres changed the dichotomy of anthropology that it was societies have a state and stateless societies. He made sharp turn from the question on the status of stateless societies to the *societies against the State*.

Actually, this statement *a priori* accepts the proposal of political anthropology which says, "all societies are political" (Abeles, 2012, p. 68). In this view, if being Stateless doesn't mean to be free from the politics, the State issue can be thought as a variation of politics but not an imperative of it[35]. Clastres interrogates the status of societies as divided and undivided beings. It means that the power, as we perceive routinely, related with organized and separated parts of society is kept within society in undivided examples (1994, p. 88). So that it doesn't mean that the primitive societies which don't have a state organization which is lack of power as well. This opens up

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[35] In the former parts this aspect opens us a view of repetition of history to understand meta-historical elements of social formations.

the second postulate of political anthropology as all human communities have inherently power which Clastres accepts but reconsiders it[36].

3.3.1. Chief without Power

Chiefdom is taken as name of the leadership of primitive societies. It is assumed that they hold minimum power to order for sharing, martial affairs, taxation or general coordination (Lewellen, 2011, p. 54). In Clastres view, war is the constitutive element in primitive societies and their chieftainship. But the focal point of Clastres who takes the chieftaincies among American natives ascertains that "chief consists of his almost complete lack of authority; among these people the political function appears barely differentiated" (1989, p. 28). In this claim we may catch the scent of primitive communism of Marx and Engel's ethnology writings. Moreover, this should be taken as an attempt to separate authority and power in terms of social division of labor. It is social not only because of its links with community but also it is one of the unique examples which marks distinction between authority and power or *auctoritas* and *potestas*. Within Roman tradition after Christianization this segregation is referred to religion-auctoritas and empire-potestas.

Interestingly, another aspect of primitive societies related with Powerlessness is shed light by the words as "chief, he is a professional pacifier; in addition, he has to be generous and a good orator (Clastres, 1989, p. 36). Through this oration, one of the vital predictions, the totality of society in which the representative role of the chief is appeared[37]. Oration is the repetition of un-*difference* or the only perpetual call for being one instead of more than one rather than many. It is, as cited above, the far most rule of undivided society.

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[36] "1-What is political power? That is: What is society? 2- What explains the transition from non-coercive political power to coercive political power, and how does the transition come about? That is: What is history?" (1989, p. 24). In this two question Clastres seems to articulate Marx's definition of political power which necessitates social stratification.

[37] "He is responsible essentially, for assuming society's will to appear as a single totality" (Clastres, 1994, p. 88)

"He has only one right or rather, one duty as *spokesperson*: to tell Others of the society's will and desire" (Clastres, 1994, p. 89). This is a priori valid during peacetime until society's will to power over 'the other'. Thus, we can designate two main duties that of chiefs which is immanent to his perpetual position "can be seen as a sort of unpaid civil servant of society (1994, p. 89)". This unpaid civil servant and/or spokesperson is responsible to communicate with friends and enemies[38].

Firstly, while communicating with so-called friends and enemies, it is necessary to designate them at first. In doing so, it is important to note that enemy category is belong to 'outside' or 'others'. Internal conflicts are not solved via commands or law rather by repeating and declaring *parole* comes from ancestral sources. In this sense, the chief is unable to derive a kind of amendment. In essence, the words always refer to the unity of the community; to convince members to end the conflict in behalf of the community without any sanction.

The second duty which can be deduced is related with the chief's wartime status. At first, it should be note and repeat the angle of Clastres about war which is cited above underlines the constituent role of it for primitive communities. In wartime, again chief is unable to declare in its own sake but for the will of the society. Although preparations and reforming the exchange relations is given the responsibility of the chief in addition to arranging fighters in full obedience. This is the only situation during which the chief's commands are needed to be obeyed (1989, pp. 64-65).

This second duty is directly based on features of chiefs. One of which is his properties' richness, among other members, not for accumulating but for sharing and granting them for society. Second one is about his warrior talents which is proved

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[38] "In other words, the primitive leader is primarily the man who speaks in the name of society when circumstances and events put it in contact with others. These others, for primitive societies, are always divided into two classes: friends and enemies" (1994, p. 89)

prior struggles and during hunting. These features are also seeming to be consistent with the authority which are limited by the essence of the society itself and the power which is given to the chief in time of war or turmoil or in case of emergency.

If it is apt to say, this symbolic structuration in primitive societies is directly related with representative role of the chief and its mediatory position. In addition to that, chiefs' capabilities are mostly related to mobilization level of that societies. In taking this view it is vital to underline the geographical and technical skills. In other words, avoiding from having a chief with power can thought to be about the put limitations on the possibly enhancing sphere of influence vis-à-vis *others*. Thus, limitation of the power takes us to the limitation of time and space for inhabitation.

In sum, existence is the chief is the reflection of the perpetual interaction between society and the Law. Because the first article is the preservation of being united and undivided. Montesquieu's famous work spirit of laws starts with these words: "laws, in their most general signification, are the necessary relations arising from the nature of things" (2001, p. 18). In this 'order' we can catch the geographical, cultural and climatic factors which effect the law and political formation of nations. In this meaning, particular characteristics are viewed as a part of totality - having a form of government-.

3.3.2. Holy (Sacred) and Religion

For Durkheim[39], the main role of holy objects is to maintain normal life by positive action (1995, p. 26). Already it is a known fact. But he takes *sacred* - a priori -as constitutive element of religion, it means a negation -negation of profane in favor of former. For sum, it establishes belief within two parallel worlds: as sacred and profane. As Durkheim said, it is "distinctive trait of religious thought" (1995, p. 34) the characteristic lays behind that belief is myths and rites. Not surprisingly, these

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[39] God/religion is society worshipping to itself.

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are constituents of social being. Moreover, as a common notion on society that of Durkheim reduces it to an organism composes of different parts have functions.

It is important to acknowledge distinction between mechanic and organic solidarity (Durkheim, 1960) and division of labor types. Here if it wouldn't be so brutal, it will be asserting to draw an intermittent line between mechanic solidarity and the sacred. If in Durkheim's view mechanic solidarity relies on low dynamic density[40] in pre-modern era, it would be saying that there was high level of *static density[41]* different from Durkheim although high level of morality as Durkheim said. For a while it is apt to quote 'morality' or take it as a sum total of the 'law' which is divine or not but concomitantly belong to origin of mentioned society. In a parallel view, Malinowski underlines a similar process by giving examples from Melanesian society (2016, pp. 56-60) although he doesn't equate solidarity with norms/laws rather an inevitable usual layer of the community.

Anomie is another well-survived concept inherited from Durkheim and for some highly related with alienation of Marx (Durkheim, 1952). Anomie is briefly state or process of breaking of social norms in times of crisis and turmoil in transition era of societies (Durkheim, 1960). The emphasis on norm is clearly vital to interrelate it to concept of our work. Normlessness if is to say is a state of powerlessness not only related with subjective condition of person/subject but also result of social behavior[42] or society as a whole (Midgley, 1971).

For Gauchet, "religion lies in this process of establishing a dispossessive relationship between the world of visible living beings and its foundation" (1997, p. 22). But this

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[40] Population and social interaction.

[41] Dunamis vs energy; actual vs potential.

[42] "refers to a breakdown of social standards governing behavior. When a high degree of anomie has set in the rules governing conduct have lost their savor and their force. Above all, they are deprived of legitimacy. There is no longer a widely shared sense of what is justly allowed by way of behavior and what is justly prohibited" (Midgley, 1971, p. 41).

dispossession embodies itself with another anomie as reification and hierofani of Eliade can be reflected through personification of anything, includes person itself.

3.3.3. Function of the Holy Man

Brown articulates on the meaning and importance of holy man. For our purpose to question the possible line between holy-man and law-man, it would be important to look back his work. "The rise of the holy man as the bearer of objectivity in society is, of course, a final playing out of the long history of oracles and divination in the ancient World" (1989, p. 134). So, it can be said that it is an intersection of paganism and monotheistic religions for big portion of the world in historical manner. The phenomenon of holy man for Brown can be the answer for grey time between old and new belief systems. This period in Brown's articles dates back to 4 to 5th cc for Near East and Roman Empire. But as noted in the former chapter, it should be underlined that Christianization for Scandinavia is mostly predicted between 11 to 13th cc. However, it seems to plausible to take it as a model, mode of transition in common.

Brown indicates the important role of holy man as a mediator in daily local life as "arbitrator and mediator" (1989, p. 97). Moreover, he stands as totally outsider to society deeply related with his ascetic character, non-participant in production and consumption in other words he negates both the oikos and polis. As noticed "he was thought as a man who owed nothing to society" (Brown, 1971, p. 91).

 "Only a holy man could thus mention the unmentionable" (1971, p. 93) with his role as healer and confessor (1971, p. 96). It is not surprise that the role of Shaman as transmitter between holy and supernatural forces coincides with that of holy man. In case of emergency, catastrophes and illness he functions as (1971, pp. 95-97)

- a directly approachable blessing distributer
- a professional in world of amateurs (layman)

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- an allayer of anxiety / *decisionnaire universal* of the locality

Actually, these features give society lessening *mana* of the society back moreover fortify the solidarity by personification of the holy. In the backpack the holy man carries the natural law as divinity while transforming testimonial of the power in 'street level'.

In this new type re-presentation of divinity, holy man as ombudsman harmonizes a-priori and a-posteriori without exception. It has no exception because it ignores and negates the internal structure of community -with inspiration from (Agamben, 2009, pp. 28-30), it occurs in the exception of unexceptional. If the exceptional configures itself by exclusion and this exclusion consists a compulsory inclusion that of time and space; chronos and topos. Agamben makes his choice with ortung (localization) and ordnung (ordering) words (2009, p. 30). It can also be said that summoning community to normalcy[43]. The root of normal from norm in Greek gnomen means carpenter's square. Thus, the right angle between order and space is the point where sovereign emerges. Recovery and correction of abnormal by ritual of lawspeaker, his parole suspends the nomos until language is changed. The holy persons' role during the process gains importance related with his relocating of the words. When abreaction ends, validity of the nomos refresh itself in *ex nunc* (future) and in *ex tunc* (past).

Shaman is another person, personal abstraction and personification of spiritual forces related with nature who has healing and prophecy duties in nomadic and semi-nomadic communities. During healing Shaman present a show by repeating the natural phenomena in acting (Strauss, 1983, p. 52). Shaman goes through to the primer cause of the patient's illness. The major event takes place during this process by Shaman's *abreaction* in ecstasy condition (Strauss, 1983, p. 53). In a way he

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[43] "c.1500, "typical, common;" 1640s, "standing at a right angle," from Late Latin normalis "in conformity with rule, normal," from Latin normalis "made according to a carpenter's square," from norma "rule, pattern," literally "carpenter's square," which is of unknown origin (see norm). Meaning "conforming to common standards, usual" is from 1828, but probably older than the record" in https://www.etymonline.com/word/normal

absorbs affection of the patient to his body; from his body to holy spirits. Essence is the dismissal of malicious forces from the patient as well as community.

This is also a part of illness-wellness dualism from the beginning of Greek thought. It means wellness is only acknowledged in absence of illness. Moreover, another related concept is justice (dike in Greek) is only established when injustice (adikia) occurred. If we take two examples related with logic constitutes sacred; the negation continues with wellness in case of non-illness and justice in case of injustice. Differentiation of holy from profane and rendering itself existed must be taken the parity relation between dike and nomos. In Durkheimian terms, relying on the conceptualization of the reality to its negative, by an acknowledgement, means duality's nature is both transitive and comprehensive.

3.3.4. Transitive Role of *Lagman*

> The idea of the holy man as Christ made accessible adds a rather different shade of color. […] the holy man was presented as rural patron and as a charismatic Ombudsman in the villages of the eastern Mediterranean. (Brown, 1983, p. 10).

It is not only visible in Mediterranean, but also Nordic realm. It is not detected any concrete etymological connection between layman and lagman/lawman. Although the main aspects of the connection are the meaning of layman as 'inexperienced' and the second meaning as 'non-clerical'. Their position within the thigs and kings sustains the legitimacy of ancient power. More than to this, As Larsson indicates, they have a role in codification of the laws which means the merging of roman and tribal laws also a teacher renders society literate (Larsson, 2016, pp. 426-427).
 Complementary and missing parts of the linkage between pagan and Christian traditions can be found of at the same time here. Due the fact that adaptation of a new religion means adaptation of new social organization and organizers as well. It necessitates either continuity or break off in the space. As it is observable in the Swedish history shortly depicted above, transformation of pagan chiefs/kings to

religious rulers had a mirror effect in periphery, or it would be seen as synchronic actions.

This issue can be taken also as religion within *separation of the sacred*[44] that if we consider of Durkheim's indication saying, "neither man, nor nature have of themselves a sacred character, they must get it from another source" (1995, pp. 87-88) that the sacred alone or legitimation of the sacred by common acceptance of the perception emerges as an alien over/above society. Moreover, it is important to say that Durkheim takes religion[45] as a combination or phenomenon of the sacred[46], a variation of it.

Gauchet's similar position can be summarized as that he fosters this approach to a threshold which makes us to think religion and the state simultaneously. Main root lays behind this idea that it is self-externalization, all human communities have been followed or rather inherited. The *dept* Gauchet underlines is related with this externality which means primitive communities feels that they owe their existence to a God -nature or cosmos, etc. (2011, pp. 33-34).

In this extent, the prominent generalization about the State come to be questioned whether it is a modern nation-state form or a relatively archaic one. In a modern state duties and obedience are determined within the 'law' -generally written- which was constituted by the nation but in practice by representatives elected in a way. In

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[44] "The division of the world into two domains, one containing all that is sacred and the other all this is profane is the distinctive trait of religious thought." (1995, p. 37)

[45] "A religion is a unified system of beliefs & practices relative to sacred things, that is to say, things set apart & forbidden - beliefs & practices which unite into one single moral community called a Church" (Durkheim, 1995, p. 47).

[46] "Durkheim noted, certain collective representations were infused with sacredness as a means of eliciting allegiance from the individual self" (Garrett, 1974)

addition to that, type of the representation would be occurred as being noble, appointed or selected[47].

Certain division between ruler and ruled is derived from *debtor-creditor relationship*[48] in Gauchet's approach so that he transcends the question towards concerning origin of the State by looking back to societies before having a State or never have. From this point on it have to be dealt with two different realms: *physis* and *nomos*. It orientated in the principles or empirical events of the nature which should be administered in a different space. Although it shares an important interface with *concept of time*.

The question arises as the belongingness of a particular structure to a peculiar geography which copies itself. Principle of separation of power is not only an ancient motto, rather a re-declaration of divided society and its political phenomenon, instead of the political itself. From countries to districts, regions to continents, classes to sects, different appearances of political body leave its heritage. Whether its name is *general will* or not, abyss of representation and that of impossibility should be considered to understand adventure of human's political being, moreover its derivative postulate. The socio-political being, its information, myth, potential of mimesis, exclusions turns into a different kind of ratio. Rousseau in that point can be taken of a pioneer of critical thinkers who can detect either negative and positive phases of the photograph.

Society gives up social custody to a power or Holy. Following to this, the signifier of Holy as being of the leader takes custody as a social accessory (Akal, 2012, p. 197). Court joker (Akal, 2012, p. 195) emerges as a kind of mirror for the king. He says the truth to the king what he forgets through time about origin of his realm. In

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[47] In that meaning a civil servant, Prussian Junkers, judges etc. would be taken as representatives.

[48] Well-known dialectical approach of Master vs. Slave (Lordship and Bondage) that of Hegel takes a position which deduces this certain distinction by self-consciousness of the 'I' referencing to other. (Hegel, 1998)

modern bureaucracies' auction mechanisms takes such a role that at first glance they don't have sanctioning Powers. Sanctions comes later by other cogs of the *deux ex machine*. The separation of the sacred is also beneath the transition from lagman to layman than the speak-person. This scheme is also cached parallel to the transition from natural law to natural rights and human rights.

In another segment, Origin of ombudsmanship as a variation of *lagman* mediates the 'the first rule' as a supplementary rule. Actually, this function has tied to famous POSDCORB of Fayol and Gulick. Reporting seems to have a limited social audit. An auditing in the social. Because, the social which is separated as economic and political precedes economic over political that society is divided as ruler and ruled. Then, modificatory of political's 'the' disappears. As Clastres remarkably says, power comes into being before labor and exploitation; economy becomes visible as derivation of the political (2006, p. 169).

CHAPTER 4

TENSIONS OF DISENCHANTMENT

System approach in organization theory dates back to 1950's following developments in the military. Moreover, it went further by technological advances such as telecommunication, guide and missile systems. Most famous part of this development is 'feedback' issue which makes a connection between inputs and outputs. Actually, from the time of Adam Smith it can be said that there is a connection between production and consumption; money and commodity. Re-habitation of this connection maybe means another interpretation of triumviri of the dialectic. But without any doubt, this dialectic cannot be occurred by itself. It needs another process as a third way.

If we make a phrase, if it is apt to say, after dualism of organization collapses which relies on manager and worker distinction, managerialism gained its actual importance. When a third person comes into scene, this position brings it to a delusive mediator not only between ruler and ruled but also as a distributive agent in production process.

In *Formen*, there are two main questions one of which examines private property independent from capitalism and other is how social relations are imagined independent from impersonal nature of capitalism (Bloch, 2001, p. 57) which is understood as "the relationship of worker to the objective conditions of his labor with its material prerequisites" (Marx, 1964, p. 67). Direct relationship from *zoon-politikon* to social division of labor between cumulative surplus value as social output[49] is drawn here. "contains all the conditions for reproduction and surplus

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[49] In this context social output is used as it is immanent to economic output. This is simply because of method of political economy used by Marx denies separation of mainstream fields of science.

production within itself" (Marx, 1964, pp. 70, 83, 91), and which therefore resisted disintegration and economic evolution more stubbornly than any other system (1964, p. 83). The theoretical absence of property in "oriental despotism thus masks the "tribal or communal property" which is in its base" (Hobsbawn, 2011, p. 148)

Due to Marx's partition of tribal-despotism separation into three parts, We are to insist on Germanic type to make a valid connection between Ombudsmanship. It is not only because of geographical meaning but also related with its larger influence on cultural and political base. As it is said above, *as a form of tribal or cummunal property* is masked by despotic character. The last pinning is on character or to say person(a). Term of character[50] has an important meaning fort his explanation. It deeply marks for a symbol scratched on the body that it means law is written to the body (Clastres, 2006, p. 121).

In addition to this, *persona* means 'mask' comes from old Latin that could be borrowed from ancient Greek word *perso*. Also, we can catch a meaning that touch with legal status (Mauss, 2005, pp. 489-490), such as a legal entity which composes both its abstract and material being. Thus, if we are to talk about the parts or unity about the State, it would be essential to estimate characterization and personification of the State or its components that it is very likely to think the same argument about organizations as well. It wouldn't be surprising to utter transition from pagan gods to Christianization that of Nordic and Germanic people. It would also seem to be very blur to assert that personification of God prevails over the characterization of nature. Before this, it would be beneficial to add a complementary to grasp how human behave in front of reality. There are two ways of realism counterparts to others: factual reality and practical reality (Wilson, 2010, p. 228). Factual realism expresses

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[50] "mid-14c., carecter, "symbol marked or branded on the body;" mid-15c., "symbol or drawing used in sorcery," from Old French caratere "feature, character" (13c., Modern French caractère), from Latin character, from Greek kharakter "engraved mark," also "symbol or imprint on the soul," also "instrument for marking," from kharassein "to engrave," from kharax "pointed stake," from PIE root *gher- (4) "to scrape, scratch." Meaning extended in ancient times by metaphor to "a defining quality." Retrieved from http://www.etymonline.com/index.php?term=character.

the truth or to say that in a way what lays behind and event in physical-concrete manner. Conversely, practical realism gives comfort to owner of the question by adapting him to actual world (2010, pp. 228-9).

If we combine two paragraphs, it can be said that personification of god is a way of practical realism. Would it be interesting to assume that personification of the State beneath Leviathan was an effort to make a unifying system[51][52]? It is apt to say that Prince of Machiavelli is an example for characterization of the State. It also means to draw *law* on the body of the prince in behalf of man. But the condition of abstraction of the State as Marx pointed out in his early writings if it is to say didn't occur in a critical moment rather it was a process un-simultaneously and unconsciously.

Hence, there should be aware about that before abstraction of the State there would be a transition between characterization of the society and personification of the State. If modern State is occurred/created in an uncertain momentum, *Etatization* could have corresponded to a practical reality in terms of coercion and consent algorithm. In Foucault's Lectures it is derived as 'reality of transaction' (Lemke, 2015, p. 47).

In Montesquieu we see that power or jurisdiction is relatively minor if compared to legislation and executive. Distinctively, Spirit of the laws is unification of these two powers immanent to King's body or so to say that in his personification. Following to this, law is brought out by a kind of abstraction or symbolization especially in its early forms. For now, if we leave Montesquieu's approach to geographical manner,

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[51] "A religion is a unified system of beliefs and practices relative to sacred things which unite into one single moral community called a Church, all those who adhere to them." (Durkheim, 1995, p. 44).

[52] "Cultures are defensive constructions against chaos, designed to reduce the impact of randomness on experience. They are adaptive responses, just as feathers are for birds and fur is for mammals. Cultures prescribe norms, evolve goals, build beliefs that help us tackle the challenges of existence. In so doing they must rule out many alternative goals and beliefs, and thereby limit possibilities; but this channeling of attention to a limited set of goals and means is what allows effortless actions within self-erected boundaries. (Wilson, 2010, p. 219)

there should be underline some criticisms to his position about separation of powers. We acknowledge the incidental being of jurisdiction in Althusser's Montesquieu (Althusser, 2005, p. 123). If it would be persuasive:

> Of the three powers above mentioned, the judiciary is in some measure next to nothing: there remain, therefore, only two; and as these have need of a regulating power to moderate them, the part of the legislative body composed of the nobility is extremely proper for this purpose (Montesquieu, 2001, p. 177).

It doesn't mean that jurisdiction has any importance, but it is in the influence zone of direct implementation of power, so to say in the heart of it. In Montesquieu's context, nobles are highlighted as part of the legislative body.

Actually, one of the main paradoxes of enlightenment project is taking universal/transcendental identity into account while fostering seeds of the sovereignty to divide and re-unite within them. From this angle, modernity is a decomposing phenomenon as post-structuralist manner underline. Besides as said above, it is a solid paradox or dilemma that we can both capitulate and seek for escape routes. If we are to continue, it is called 'national citizenship' as Benhabib writes (2006, p. 11) in addition to controlling diachronic and synchronic identity of the nation via membership practices of the State (2006, p. 27). Charles Taylor and Foucault agrees up on the fact that of 'essence of the self' idea is a modern delusion (Weir, 2009, p. 540). Because, human is dialogical.

In history of sexuality, Focault sheds light onto power even if it is to make a connection with sexuality that the issue of administration is in common with. While illustrating draft of representation of power he gives five features as *negative relation, insistence of the rule, cycle of prohibition, logic of censorship* and *uniformity of apparatus* (1978, pp. 83-84). Following this, especially the last dimension as uniformity of apparatus shows holist rather than monist way of repression of obedience beneath the umbrella of law as well as practice and notion or abstraction. Moreover, we, as the people or citizens or children etc., are seemed to be

part of it as a cog in a wheel as classical public administration approach says or machines that of Deleuzean manner.

If we are to continue with Foucault again, "all the modes of domination, submission and subjugation are ultimately reduced to and an effect of obedience" (1978, p. 85). Although, this relational postulate occurs in a way of negation besides that "no-saying power" of Foucault, the simplistic preclusion method keeps human away from examining its subalternity.

Probably one of the main assumptions of the thesis on ombudsmanship comes up with the critique of the critics towards political institutions during enlightenment or modern state era, which are "carried out on the assumption that, ideally and by nature, power must be exercised in accordance with a fundamental lawfulness" (1978, p. 88). Actually, these are juridico-political positions within the power or the State even if the State is not taken as the main location of power rather "institutional integration of power relationships" (1978, p. 96).

Lemke points out this issue by linking Foucault's genealogies of modern state and subject in terms of synchrony; hence totalization and individualization (2015, p. 20) are to be taken together for interpreting the position of self in the face of the state machines. Actually, the interpretation is just given maintained in Governmentality (Foucault, 1991, pp. 99-101) as transformation and transition of art of government to political science based on political economy during 17th and 18th centuries in which the role of sovereign surpasses its conventional role as father of the family. Naturally, it does mean an exit from oikos of family for the sovereign to domain of the social as well as a new era for representation or figuration of the government by new organization technics and methodologies.

But here is to say that, this transition means also reversal of *nomos* and *physis* distinction so that nomos becomes physis; individual becomes truth and property become essence. Now what lay behind are private and public domains. The first one

means nothing more than a huge restrictive mechanism consists of subsets as families. Though, individual is governed in family and invited to public domain to be liberated by representation of the sovereign and mediation of nomos. It can be said that the focus on population as the subject of the government; self-interest melted in the pot of the social as long as social does make sense for individual and Kantian juridical reason contains.

We will try to come back or recall problem of justice and judgement in terms of ombudsmanship and its position on behalf of separation of powers. Before this, *etatisation* problem should be considered to make a concrete connection to anthropology. Foucault considers state as *reality of transaction* in his Lectures. Gender politics is not one of the focal points of this study. Anyway, it is not possible to deny completely the role of body politics or biopolitics in government/administration issues whether it is related with Foucauldian manner or not. Thus, in this part it will be tried to consider the role of Ombudsman, actually independent from this role, solely as a body within socio-spatial context.

As a routine or one of the well-known dualisms, bio-politics finds its grass roots in *zoe/bios* distinction. This seems to be ancient loot like other dualisms of Greek philosophy stones. In that way, bio-politics came to the fore by 70's as a matter of ecology, biology and population issues (Lemke, 2015, pp. 42-44). It is not a surprise that political science has enhanced its borders through anti-politics – or they were taken as apolitical for a long time by several effects of 68 events (Mulgan, 1994). Without any doubt, there are strong economic factors beneath these events. First of all, increase in labor costs that of developed countries triggered the decrease in profits. Even If this short phrase can't give a wide angle on the issue, it can be said for the event horizon of post 70's.

If we have a look at Negri, we find an important connection with regard to labor and State mechanism. He says that the destruction of welfare state is fragmentation of socialization of labor (2006, p. 163). It gives us a clue on re-reproduction of

capitalist state by segmentation and fragmentation of all social layers otherwise *the social* would strength its internal ties in the context of "Society against the State" as Clastres indicates for ancient societies.

Terray, puts some illuminating arguments about the essence of genesis of the State[53] by underlining that the State comes into being synchronically with deteroriation of homogeneity of society (2011, p. 100). In addition to that this de-homogenized society form a basis for ruler/ruled dichotomy. These newly formed rulers/administrators settle onto higher stages of hierarchy while ruled fell into depths of inequality field. This is called *embodiment of the State* (2011, p. 101), which makes the publicness, by the hand of administrative tools. To shed some light on to this study Terray finds the difference between modern and non-modern State by acknowledging face to face contact of capability of State and society in Abron State case.

Thoroughly, the State can be equated to the people as being of rulers: "everyone recognizes face and voice of the State" (2011, p. 101). In here the recognizing process can said to be taken shape in public sphere. Not only it is the remnant from transition before and after social contract, but also its fictitious existence as rock bottom of social interaction forfeit to absolute recognition of State power. Moreover, this domain can said to be an infrastructure for infrastructural origin of the market where *politicon* of the *zoon* carries away both potentialities and actualities at the same time.

For Habermas, public sphere is an open field to open for every citizen (Habermas, 1989). It also has a role for designating borders of general will and common good. In Habermas's view, public sphere seems to independent from State power, its pressure and control dispositives and both subjection operations of the capital. In Negt and Kluge, we can detect an opposite direction within the function of public sphere

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[53] Terray as an anthropologist gave short remarks from his PhD thesis on Gyanab Abron Kingdom in the article. But his theme is about to think non-western State types in Westernizised times.

which open potentiality for resistance capabilities for labor; proletarian sphere against bourgeoisie sphere (Negt and Kluge, 1993). In Foucault, public sphere is a place for mobility between both power and society where two positions transfer their values and cultures (Foucault, 1980).

Public sphere should be taken with the bodies by which it can be differentiated from only spatial process. Because, struggle in public sphere, since 18th cc. is not only a dimension of constructed, solid space, also in bodies of people. Therefore, from the interaction of property and labor in Lockean meaning which is taking private sphere just a mean for relations of *oikos*, individual and social bodies are left aside to quest for relations in *polis.* From the Foucault's archeology on panopticon, he underlines, the power doesn't only discipline and control the daily space, in addition to prisons, schools, bureaus, factories but also their bare life -as Agamben says, their essential body. It names as body politics since the developments in governmental technology simultaneously with modernity.

Especially Agamben, who borrows Foucault's bio-politics and pulls it through born of polis as a political unit (Agamben, 2005). Agamben sees it as a perpetual paradigm from democracies to dictatorships which can be come into existence whenever conditions are ready that they let a kind of *nomos; camp* (Thakur, 2011). Absolute body of the political, king, leader, pope, empire is captured for a ransom demanded from each of the members of the society. Conjugation is body to body, to render, to validate humane façade of the State whether in the semblance of one man, or a kind of assemblage. This is the stage where normativity as nomos is ready to be constituted.

For Hardt and Negri, opposing to Agamben, doesn't mean to overlapping exception and rule, rather a new line between State and market related with capitalism. Although, the point they met is the new status of subject vis-à-vis power. For replacement of ombudsman to the issue, this meeting is taken as a mediation under the shadow of law, rule of law in general. If the final mediation derives from

variations of alienation of labor, at the same time, legal entity of the person, as solid body or contextual abstraction lives under the condition of rule of law. It is not a coincidence that, motto of *rule of law* is not a variable both in ancient regimes nor modern ones.

As said above in the scene where power vis-à-vis person is not just a phenomenon but the interchangeable condition related with the divided society, itself. Thus, it is better to take this encounter for the construction and constitution of nomos that of administration. When social body is reflected by itself with One, the power has also capability to encounter it with Oneness of itself, too. State of exception means the suspension of law for the sake of order. So, the division leaps on the realm of constitutive constitution. Exclusion excludes the excluder itself. This is why he considers the state of exception as a civil war (Agamben, 2005, pp. 18-22).

"The state of emergency is an anomic space in which what is at stake is a force of law without law" (2005, p. 39). This anomic space also shows itself in implementation and execution of the policy in general, by given bureaucracy; the context coincides reality and law. It is already the sphere of reason of the State in which *imperium/dominium* tradition from the Roman history chooses former.

In that position, we are seemed to come closer to representation issue, which will be discussed in the following chapter. So that, before going into this problem, it is better trying to understand grounds of re-representation as a relational flow of human being.

> In the west, there is a substitution corresponding to each withdrawal. The work reduction is made easier by the corrosive effect of criticism. There is a complete negative evaluation of the history of thought whose metamorphoses are found in different forms: passive and active nihilism (Nietzsche), occultation of being (Heidegger), instrumentalization of reason (Adorno) or loss of aura (Benjamin). One might say that the common denominator of all these deprecatory views of the mind converges on a central point: the fading away of something that used to be there but is there no longer. With the age of enlightenment *reason* is substituted for revelation; then suffers in its

> turn the subversion of its authoritarian rule by fundamental drives and
> impulses (Shayegan, 1997, p. 63).

Human rights are the only total representation of human race when it becomes obsolete to find a new suspension between social interactions collapsed. The story is the evolution of natural law to natural rights and by the Westphalian consensus as a break to post-WW2 world. On the other hand, this concept of rights is bearer of ancient coherences. Again, in its evolution, rule of law composes the traces and consistency in terms of governmental process.

4.1. Human Rights and Ombudsman

After 1948 the acceptance of Declaration of Human Rights by UN, the World is seemed to have a common frame for legal positivism. Moreover, the process since 1774 and 1789 the transition from Roman-Catholic legal tradition to abstract universal one starts to have ground. In other words, it is a standardization developed and promoted by dozens of acts and amendments in national and international levels.

The bankrupt of natural rights is WW2 by several aspects which is visible in the Arendt's question on *les sans-papiers*[54]. The crisis is that of legitimacy during the war because of collapsed political regimes thereby emerging of citizens without belonging to any State. This crisis is also about the bankrupt of republican and liberal traditions on State-society relationship. Hence, the declaration of Human Rights alike with 1789 is the re-definition and re-habilitation of rights and duties; *autocritas* and *potestas*.

In the era between 1945 to 1960's, new nation state from relies on human rights principles starts to emerge. It is also visible by following the foundation of Danish Ombudsman in 1954 the transition from classical Ombudsman to hybrid Ombudsman institution. Redefinition of public good is taken with a new element that

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[54] Immigrants who don't have identity and/or permit to stay in a country especially emerged during and after WW2.

of human rights which means the fulfillment of basic rights. Although it is important to remind equa-liberty principles which can be summed up as not giving both right to live and living standards together. The era cited above shouldn't mislead about the handling of socio-economic rights are juxtaposed as human rights.

From the European Convention on Human Rights at 1950 the principle of good govern(ance)ment starts to become visible inherited today. Especially first 12[55] articles compose the pathway of 21st cc' administration. In other words, democratic representation is tied to human rights as both national and international norms; to sustain democratic politics, it is essential to build up a democratic public administration as well. Before new public management and governance issues which are focused after 1970's the definition of them are equated to less corruption and less abuse of power. Use of ombudsman in this new legitimacy cycle can be underlined as:

> The ombudsman does not only have the power to contest before constitutional courts, but is also vested with preventive powers, which give him the ability to influence the political process and public awareness by advising state organs on the implementation of human rights, reporting on the general situation in the field of human rights, tasks of education, information and research in the field of human rights, cooperation with NGOs and international organizations. The activities of these ombudsmen are focused on the protection of human rights; sometimes exclusively (Kucsko-Stadlmayer, 2009, p. 12).

The critical dimension of taking human rights as new face of rule of law principle is enclosure of universal-abstract human rights by concrete actions of public officials in terms of their rightful use or misuse. In here, human rights as a pro-active protection mechanism and ombudsman who observes and intervenes in violations of them become the factor which localize/nationalize fundamental rights.

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[55] Article 11: 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

4.2. Holy Passage of Human Rights in Dept of Violations

It is obvious that there are several controversies in Human Rights literature between realists and idealists; republicans and liberals; Marxists and non-Marxists; optimists and pessimists; radicals and conservative democrats. Due to the fact that it is not possible to discuss all approaches, we are to take Hannah Arendt and Étienne Balibar into account to discuss the main points of their position within Human Rights. Arendt is a pessimistic figure due to her Nazi experiences that Heidegger is another. In this work it will be tried to question her ideas about human rights in terms of liberal or republican positions comparing with Balibar. Because of limited time and space, there will be no deeper investigation for both of the scholars.

For chronological reasons, we are to grasp these crisscross concepts from the point of Balibar. He is as the old and one of the most famous followers of Althusser also famous for deconstructing human rights in favor of equaliberty which had caused him to be labeled as 'reformist' from the side of so called orthodox-Marxists. If it comes to Arendt, her very focus is totalitarianism and according to this, a critique of modernism which is not ignoring all acquisitions but of historicist and determinative interpretations. So that Arendt underlines the fallacies both of Marxist and Liberal traditions. In that point they criticize Marxism. Especially in *The Human Condition,* Arendt comments on Marx's concept of productive labor as unification of work and labor as a re-interpretation of *animal laborans* (1998, pp. 87-90). At the same time Balibar draws attention on double meaning Marx's 'man makes his own history' claim, which may preclude idealist conceiving borrowed from classical modernity willingly or not (2010, pp. 88-92). The way by which Marx takes us away is the glorifying of labor that in the current condition curtaned by reification and alienation by capital processes. Moreover, proletariat is inferred as the people of the people (Balibar, 2010, p. 40), at the end of a negation. So, the mediation appears in front of this 'essentialist' aphorism.

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As a brainstorming, we may acknowledge the Arendt's 'right to have right' as an essential argument. For Balibar, Arendt's 'right to have rights' concept is not a minimum ground for the political constitutive protection but a maximum-common for the public sphere (2001, p. 18), which is invulnerable and inalienable for human rights.

In Arendt, there is distinction of actor and spectator which the former sustains exclusivity of the event in terms of juridical reason (Deveci, 2007, p. 121). But this 'passive' or 'negative' situation stands on the opposite of Marx's *praxis*. Anyway if are to take into account of Arendt's *vita activa*, the distinction may reflect the Kantian categories of reasons that labor with pure reason; work with practical reason and action with judgment. If Kant's perpetual peace is end of the judgment so that the concept can be summarized as *ius commune.*

But if we ask what Arendt looked for in Kant is a reconciliation of his reflective judgment with Aristotelian human action category. If reflective judgment of Kant gives us the imagination that makes us to think in the mind of the other, we can get the largest context for communication (Ingram, 2008, pp. 81-82), then action so that the political capability. Balibar, following Althusser takes ideology in the sphere of society. In that point the Marxist concept of 'essence of human' that it is only the togetherness of social relations that coincides with Balibar's point that it is rather than taking Kant's view of the subject as transcendental universal consciousness, holds Marx's designation of the subject as the effect or result of the social processes (2010, pp. 30-31).

Actually, the concept of the social processes, especially relies on the ground of politeia that even if it includes exclusion, in a way that intrinsically giving opportunity for one to embed into society (Arendt, 2011, p. 305). But it that point probably Balibar is right on his critique of Arendt's ancient Greek political concept that she converges to Rousseau via giving reference to Herodotus's *isonomia* advocating against tyranny (2007, p. 735). Actually, the difference between

Aristotelian democracy which includes ruling/ruled dichotomy at the same time exclusion of a contingent other, so that it may give rise to power as a metaphor of '1' in a totalitarian sense that the representation of each person may be reflected by an authority whenever it tends to be tyranny or oligarchy which it will be turned in the following of this work.

In that point we may consider another thinker, Hegel, as the cult of modern totalitarian State concept, in terms of realization of spirit. Hegel is taken as ontologically idealist but conversely, he is referred to grasp the practice of State power in different levels. Between human rights and the state power the concept of banality of evil, Hegel is inferring evil by negation, as simply nothing but not the good, at the same time circumstantial, while Good is eternal and endless in a transformative endless circle, which sets up the *being*. In that point evil is the negation of good thus the good is appeared by *negation of negation* (2004, pp. 173-174).

But the point is, related especially with Arendtian omnipotence of man's evil that the threat through human dignity or *vita activa* is nothing but the circulation of real being on the earth that the earth immanently has evil because of its nature. Thus if *a priori* State mechanisms in all segments take the omnipotence as nature of their *deus ex machina* being, it is the only and far most dangerous way to operate in itself. This is why Arendt is trying to tell us that race and bureaucracy goes hand in hand by imperialist politics and policy implementations after the *law-breakers* in India by reference to Burke (2011, p. 115). The 'law breakers' takes us to one of the main problematics of political anthropology that the essence of human being/living necessitate 'law' a kind of 'first law' which is external to that society (Clastres, 2006, pp. 151-153). In here it is apt to remember the words of Arendt: "Not man but men inhabit this planet. Plurality is the law of the earth".

Anyway, this doesn't mean that Arendt is looking for a mythical context of anthropology, rather as Balibar says, she is tremendously criticizing anthropological

anchors of human rights which are also described as foundation of the political[56] (2007, p. 728). Moreover, the relations between *vita activa* and human rights have remarks (both approvals and drawbacks) from Burkean institutionalism and Marxian concept of alienation (2007, p. 729).

To Arendt, which is interesting and what Balibar underlines is the 'groundlessness' of theory of human rights which occur by 'actual practice' or it is to say a kind of praxis, relies on the 'first law' of Arendt as cited above, which interconnects man to man perpetually. If we are to make crosscheck, the relationship between each member of society embrace both consensus and disconsensus that this is why the core of the human rights as well as politics are said to be groundlessness taken as undetermined and unfinished process.

Although in the other side of the mirror, there are violence and power relations related with the optimistic *isonomia* reading of Arendt[57]. In her book of 'on violence', we see that, both institutionalism and civility are being merged in the context of Roman pacta *sund servanda* (2009, pp. 52-53). Thus, she is trying to open a way to a possible social context that social body might survive and sustain itself by consensus on social norms whether they are normative laws or semi-formal instructions. The critical point which she insists is that it is vitally wrong to make a direct connection between power and violence on the ground of laws (2009, p. 54) and in the same manner her quotation from Cicero takes its meaning: *Potestas in populo, auctoritas in senatu*. Finally, her separations between power/strenght; authority/violence transitivity which gives a basis for human rights in the frame of

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[56] "The basic error of all materialism in politics - and this materialism is not Marxian and not even modern in origin, but as old as our history of political theory - is to overlook the inevitability with which men disclose themselves as subjects, as distinct and unique persons, even when they wholly concentrate upon reaching an altogether worldly, material object." (Arendt, 1998, p. 183)

[57] It is to underline that Arendt wrote 'On Violence' in the shadow of 68 event. She was not fan of these riots and blame european left for being blind about new transformations and developments and especially criticized violence adopted into new social movements in the USA (black movements, etc.) (2009, pp. 26-30)

perpetual politics which set up power as togetherness and she points it out as the opposite of violence (2009, pp. 64-70) that it excludes all against '1'.

In sum not the citizen but the member of the society, man, should have right to have right to involve in power via politics in term of communication. Because of this Arendt can be taken as a quasi-liberal on account of exclusion of being monad-isolated-individual. The rest is not an ideal but a theorem of republican tendency, as Balibar says. Doubtless she catches this position in her Hobbes critique.[58]

Bureaucracy as a form of government deprives man from political freedom and vita active in the last stance, takes power which everybody intrinsically has and directs it to a quasi-organic organized body which can be either pure republican or tyrannical. In each of the contexts, it will inevitably narrow public realm (Balibar, 2009, pp. 96-99). According to this, and as cited above in Arendt's Kantian public realm becomes –if we are to take from Laclau- an *empty signifier* for possibility of politics.

For Balibar, human rights must be rooted in practices of right-bearers themselves (Ingram, 2008, p. 402). Thus, the only way to make a historical -not historicist-extent is to grasp the meaning of French declaration of rights of man and citizen. But this relationship is not taken as a negative aspect of the politics in terms of anti-political (2008, p. 411) rather a positive function of the status given by the right that also sustains right above of a legal status (Balibar, 2001, p. 20).

Balibar takes another point or it is to say, goes further by saying that interpreting human rights not in terms of politics but cosmopolitics of civility (2001, p. 2; 2001, p. 19) taken from Kant and Marx as well as Spinoza. The point in general, which Balibar tries in the 'Philosophy of Marx', is deducing politics from contradictions of capitalism by grasping by Marxist dialectic underlining Marx's idealist abstractions or it is to say Marx's assumption of rendering proletariat a subject without subjection

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[58] For Hobbes, the instinct which motives man to attend politics is not the equality in the face of death but fear results from equality of being killed by anybody (2009, p. 84)

to another subject but to another social body (2010, pp. 97-99). So that there can be any legal-universal category as if the category of rights of man which is abstracting and curtaining the essence of human that is in the form of praxis.

In this point Arendt and Balibar shares similar concerns idealization of anthropological categories of human (Balibar, 2004). The way, which takes us to the socialist totalitarian regimes, is idealization of a determined status of a particular-historical or constructed human in the thought of Arendt. In Balibar we see it from criticism of Marx's idea on total ignoring of autonomous social subject category and Rousseau-inspired social coercion[59] that, indirectly, destroy the bridge that it may give us the possibility of social freedom.

The fallacies may be read in Arendt can be taken as private/public distinction by underlining public, stay in a negative position in terms of private property *vita activ*a relations. But there is no doubt that her vision of human rights opened a hopeful way for civil politics. Her cautions on violence and totalitarian power are end of a contingent and exceptional status but as Balibar says, this contingency becomes normal in the historical context.

This is why Balibar is rightfully making propaganda for a possibility of civility means either human rights or resistance against violence (2004, p. 320) from the point of Arendt. But Arendt is getting closer to Gandhi's passive resistance avoid from violence while Balibar is not giving up the tradition of class struggle which is turned to civic struggle within *civitas*[60].

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[59] "Balibar insists, it can only be "a right of everyone on his or her own behalf which signifies, among other things, that no one can be liberated or emancipated by others, from 'above,' even were this 'above' to be right in the Kantian sense itself, or the democratic state" (Ingram, 2008, p. 411).

[60] "Personally, I would advance different hypotheses concerning this relation to tragedy. First, negatively, I would posit the idea that a politics of civility (which doubtless determines that tragedy cannot ever be completely oriented either to the epic or messianic mode) can no more identify itself with nonviolence than with the counter violence that "prevents" violence or resists it. This also means that a politics of civility cannot coincide (in any case uniquely, or completely) with the imperative of peace. Further, it must give way not only to justice but also to the political confrontation or conflict without which it does not have the value of emancipation." (Balibar, 2009, p. 28)

If we look from the reality of ruling/ruled –in the process of subjection- both of the scholars are opposing against limitations imposed by constituted political regimes but Balibar enhancing his arguments by not only exposing the weakness of natural right myths but also by making human rights more radical. But this time the paradox of Arendt which is seen as human rights/national identity tension transform to a possibility of violence in Balibar, even if his reflections about dictatorship of proletariat. Finally, his caution about that there is no chance of *equaliberty* without solving the individualist and republican dilemma (2004, pp. 320-1) is still valid.

4.3. Schmittian Remindings

Doubtlessly, Schmitt is one of the most debating figures of Political Sciences and so on. As a jurist, advisor and thinker from the days of Weimar to Nazi epoch and after WW2, he conducted and developed his approaches and interpretations. He wrote his best marks between the two wars (some of the scholars name this period as "Second 30 Years War") during which World politics were in a general crisis situation, so was Weimar Germany within her own conditions.

As he indicates in the foreword of the Political Concept, "the essence of the problem is reciprocal positioning of state and political and war and enemy" (Schmitt, 2006, p. 29). The famous striking proposition, "The concept of the state presupposes the concept of the political" (Schmitt, 1996, p. 19), In that way, political transforms into sprit that of Hegel.

Friend/Enemy(foe) distinction is supplied for the demand for the definition in deficiency of political actions. It is independent from theological or moral or normative of fictional ones; it can be alive with or without them. It is an existential emphasis and partly related to human existence. His existential perceptions are related to his critique of liberalism that can be summarized by a mass enemy not an individual. When it is time we will mention again but it is to be said that his enemy is common; it is a community (the other) and *hostis* not *inimicus* (2006, p. 49). We can

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say that the thing known as a necessity for sovereign may even be a tool within Schmitt's look.

His enemy and friend distinction concerned with international arena in *The Political Concept* but as he pointed out, in brief, if political is currently thought equal to party politics, there is a state of internal conflict and political unity comes closer to a dangerous threshold, arbitrary or not, to possibility of dissolution – and civil war. Here we should say that his approaches about human notion converge with Hobbes' and Machiavelli's in terms of wild nature of human and a possibility of chaos or war. But this doesn't mean a state of nature (or a possibility of it) because the sovereign is capable of setting in emergency by its *per se* legitimacy independent from norms and individuals.

To Schmitt every conflict goes with politics is independent from its character such as economic, religious, and ideological because when sides are determined, or one side eliminates the other, new ruler (group or person) faces with necessity of making enemy-friend distinction derived from sovereignty -essence of it – and *state of exception* as well.

Sovereign holds a very large place in Schmitt's assumptions and it is also parallel with another critical concept of state *of exception* as we have just mentioned above. But before going forward it will be beneficial to speak about the connection between these two notions. As he indicates, sovereign is the political entity, therefore it is the one capable of making decision in the state of exception. We, again, face with another negation, but it is ordinary because of Schmitt's anti-normative view. Another notion that is necessary to make this debate understandable is *state*.

Schmitt's *state* is "essence of political entity belong to the *jus belli..."* (1996, p. 45) and possibly close to Weber's famous definition: "monopoly of legitimate physical violence" (Weber, 1994, p. 310). Jus belli ability plays an important role in state-citizen relationship with its legitimacy state demanding its people to fight and die for

prospect and security of political union, for a stable *status quo.* He shortly makes a statement about internal enemy concept that we can call as civil war, against which concrete sovereign can fight outside the law and constitution. It was possible to think about Guantanamo base of the USA till last year, moreover *reign of terror* during French revolution can be an example for that situation. But we can also say in a Machiavellian manner that ending conflicts may gravitate through state's entity and it can never be accepted by Schmitt.

Again, he emphasizes on sovereignty with *protection and obedience axiology* in Hobbesian manner and urges states to become conscious about the importance of making decisions in state of exception and war, otherwise, this will make them to be subject to another sovereign able to make friend-enemy distinction and protect those people on its own. Schmitt's anti-pluralism is to be approached in terms of his criticism of liberalism. For Schmitt, as we have mentioned above, internal pluralism means depoliticization, but a plural World is natural because of *other*s, we maybe think within Levinas' *other concept*, that owes its existence to the enemy.

Here, we come closer to our title, *humanity concept* through Schmitt's perception. In such a world, world of conflicts between nation states, there is no possibility of living in a World state united beneath the flag of humanity. Because there is no other for humanity, with such definition, ordinary rules of war are abandoned, and enemy has become inhuman. Thus, his emphasis on humanity is not a political concept; one never asserts himself to war against enemy of humanity. Furthermore, with these arguments, Schmitt prevents us from going into a universalism and explaining it by League of Nations criticism. Here we are to think about United Nations and related organizations and the E.U as an example of *Völkerbund* within the frame of Schmitt's distinctions. Again, with his words: "The *jus belli* would not thereby be abolished but, more or less, totally or partially, transferred to the alliance" (1996, p. 57). From there it is possible to interrogate globalism – possibility- that will be discussed later.

Another approach of his through liberalism critique is the state notion towards liberalism. State is nothing but a regulator, an ordinary instrument or actor like companies for liberals. Human concept, to their axiology, is "good" moreover move in accordance with rational economic choices. Hence liberal state, with its economic-moral reductionism, tends to melt each of the political ones in its status quo conformism. It is to say that conformism, as he indicates and emphasizes, depends on liberal-bourgeois life style constructed on culture of fear; fear of "bellum omnes contra omnes" status. There, it is easy to find reasonable basis of liberal normative law principle. Here we are to switch our debate through his law and sovereignty concepts connected with potential human rights perceptions.

Schmitt's law and state relationship can become understandable with his sacred state approach. Liberalism's poverty is hidden inside its individualistic obsessions, theological remnants from scholastic philosophy. As he illustrates in *Political Ideology* and in other works, liberal parliamentary democracies couldn't manage to legitimize themselves just with economic or moral values, therefore they still keep crown. His accusation against liberalism can be connected to alienation at the 8th part of the political concept and as Leo Strauss pointed out, there could be a culture-mystification emphasis in Schmitt's work (1996, pp. 81-109).

His main *human* references become concrete in terms of ''last war of humanity'' and conclude this assumption by labeling common humanity ideal as impossible because of inevitability of inhuman category. It is not a surprise to face with a negation again, but it can be apt from which a humanity perception is engendered. We can't totally say that he is an anti-humanist thinker, but it is obvious that he is not a human rights thinker as well. His inhuman category is to be considered with risk of abusing some concepts such as peace, law and human.

He depicts it within a war concept as *last war of humanity;* by giving this example he never affirms death of -sacrifice of- a person except existential threatens. It is possible to see it as a minimum basis in extent of "right to live'', but the same

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Schmitt probably chooses *reason d'état* in the state of exception(s). His chart borrowed from Constant gives us a frame of history he agrees by its linear fiction but disagrees of the idea about war being outmoded. It is to emphasis on *technology* that he also interpreted under the article of *age of neutralization and depoliticization* (2006, pp. 100-114). His criticism against technological-ethic-parliamentary structure of liberalism may be concomitant with human rights in liberal sense.

The sovereign (constitutive) is above law and even people and sustains its capability (that is the ideal one) within circumstances and crisis. However, within that process, sovereign and, its concrete status, state lose that capability; cause enemy-friend relationship to become blur, that is the natural crisis of liberal state, consequently there are two options: one is shifting power; emerging of new a power. The other is self-remembering of concrete sovereign by taking *decision,* by leaving unnecessary negotiations aside.

But it is to say that his sovereign stands between Hobbes and Rousseau. He believes in a Hobbesian conflict domain as mentioned above, but this domain is integrated on to a collectivity. Schmitt implicitly explains it by popular sovereignty, but this popularity is a homogeneous one and united beneath under the roof of the state that is determined by common sense against a common enemy. It is his legitimacy that is not grounded with dignity of human alone. There is dignity of enemy; dignity of people (nation?) but individualistic assumptions are denied. If there are some sacred dedications to humanity, it just might be derived from the *political.* Implicitly, problem of *state motivated humanity* (as Arendt explained in *Perplexities of Human Rights*) becomes visible.

It is not reasonable to examine Schmitt and human rights concept from today's framework (modern world's perspective). As it is depicted in Barkin's work; human rights become nothing but a technical tool of 21st century, tool to legitimize *states* in international relationship domain, to sustain the *status quo(s)* (Barkin, 1998). His natural right references from Hobbes and the way he goes through is not an effort to

find an ideal way of life and ideal *servant state* in liberal manner to serve the best options to individuals.

It can't be taken through human rights in the concept of the political; indeed, at the end, his pessimist picture on a possible last war shows us how he drawbacks from a liberal grounded human rights approach. If human rights doctrine is structured on historical gaining and needed a normative basis at international level; the political concept is not apt for it. State shouldn't be e neutral actor to Schmitt and humane neutralization can be considered within that idea. If it is just a legitimization tool, there is no problem about it. But if it divides humanity into two main camps as human and inhuman; it might drug us into calamity; as mentioned above, waiting for *reign of terror;* heterogeneous masses are the State of him.

4.4. Chieftaincy of Ombudsman

Born of Ombudsman is related with transgressive situations. Moreover, it can be associated with malfunction and maladministration of government. It holds the line between power and constituent power. It has lack of any ability of sanction that could be so. This is not because of the design of ombudsman's rights and duties rather it is a sum of reflections loaded to Ombudsman to carry out premises of symbolic side of the legitimate sovereignty.

In the realm of Ombudsman, the power –as signified by the State has an option to generate a renewable source of negative rights by negating the realm of positive rights. In doing so, violation is seemed to be compensated behalf of the subject. Rather the violation is suspended, and it is sanctified61 as a compensation. Actually,

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[61] "early 15c., "confirmation or enactment of a law," from Latin sanctionem (nominative sanctio) "act of decreeing or ordaining," also "decree, ordinance," noun of action from past participle stem of sancire "to decree, confirm, ratify, make sacred" (see saint (n.)). Originally especially of ecclesiastical decrees. early 12c., from Old French saint, seinte "a saint; a holy relic," displacing or altering Old English sanct, both from Latin sanctus "holy, consecrated" (used as a noun in Late Latin; also source of Spanish santo, santa, Italian san, etc.), properly past participle of sancire "consecrate" (see sacred). Adopted into most Germanic languages (Old Frisian sankt, Dutch sint, German Sanct).

case is kept out of the jurisdiction. The well-known principle of accountability of the administration swings to ambiguous process of legislation.

Citizen is detained by uncertainty of workflow that is, in fact, predicted by subject to be restituted and the border recommended by law. After the satisfactory executive action, new rule isn't made rather it is re-produced. Thus, illegality of the complained situation is negated. Ombudsman steps in as an agent who is responsible for negation of the negation as a reflection of Hegelian dialectic but vitally it operates as a parasite organ as Marx underlined (Marx, 1993). Moreover, this negation capability is repealed by itself. Each reproduction of the law –wherever and whenever it is violated, enhances the mediation process. In that point machine-being is restricted free from its desire by the normative system. Pascalien pretending of both sides make rights obsolete; their usage and the general scope of jurisprudence. Alike with the impossibility of representation, atonement of violations stays void. If any possible atonement seems to be realized, the social apparatus of game is also

Saint (n)Originally an adjective prefixed to the name of a canonized person; by c. 1300 it came to be regarded as a noun. Meaning "person of extraordinary holiness" is recorded from 1560s.Saint, n. A dead sinner revised and edited. The Duchess of Orleans relates that the irreverent old calumniator, Marshal Villeroi, who in his youth had known St. Francis de Sales, said, on hearing him called saint: 'I am delighted to hear that Monsieur de Sales is a saint. He was fond of saying indelicate things and used to cheat at cards. In other respects, he was a perfect gentleman, though a fool.' [Ambrose Bierce, "Devil's Dictionary," 1911] Perhaps you have imagined that this humility in the saints is a pious illusion at which God smiles. That is a most dangerous error. It is theoretically dangerous, because it makes you identify a virtue (i.e., a perfection) with an illusion (i.e., an imperfection), which must be nonsense. It is practically dangerous because it encourages a man to mistake his first insights into his own corruption for the first beginnings of a halo round his own silly head. No, depend upon it; when the saints say that they--even they--are vile, they are recording truth with scientific accuracy. [C.S. Lewis, "The Problem of Pain," 1940] Saint Bernard, the breed of mastiff dogs (1839), so called because the monks of the hospice of the pass of St. Bernard (between Italy and Switzerland) sent them to rescue snowbound travelers; St. Elmo's Fire "corposant" (1560s) is from Italianfuoco di Sant'Elmo, named for the patron saint of Mediterranean sailors, a corruption of the name of St. Erasmus, an Italian bishop martyred in 303.Sacred (adj.)Late 14c., past participle adjective from obsolete verb sacren "to make holy" (c. 1200), from Old French sacrer "consecrate, anoint, dedicate" (12c.) or directly from Latin sacrare "to make sacred, consecrate; hold sacred; immortalize; set apart, dedicate," from sacer (genitive sacri) "sacred, dedicated, holy, accursed," from Old Latin saceres, from PIE root *sak- "to sanctify." Buck groups it with Oscan sakrim, Umbrian sacra and calls it "a distinctive Italic group, without any clear outside connections." Related: Sacredness. Nasalized form is sancire "make sacred, confirm, ratify, ordain." An Old English word for "sacred" was godcund. Sacred cow "object of Hindu veneration," is from 1891; figurative sense of "one who must not be criticized" is first recorded 1910, reflecting Western views of Hinduism. Sacred Heart "the heart of Jesus as an object of religious veneration" is from 1765". Retrieved from http://www.etymonline.com/index.php?term=sacred

repeated. State is a macro consist total of the micros. Thus, particular status of the individuals guarantees the flows of sovereignty machine. Whether the processor is working (the legitimacy) or not is related with the flows of *homo-ludens*.

Apollonian[62] side of the law doesn't let Dionysian seeds to be flourished. This motto hidden in apollonian identity which shows the *principium individuationis* (Nietzsche, 2013) and don't let citizen to feel to be part of the Dionysian whole but apollonian society. The possibility of uncertainty is used against the one who is complaining about law and order.

As said before in societies without states, power is detached from the society, but there is power diffused into it. Moreover, there is not secrecy in political affairs or in power relations. In modern society and state, there are two main realms of secrecy: one is individual (would be economic or private in general meaning) and official that of State affairs. This secrecy would be taken as sum total of all administrative actions and can be named as major black box of the system.

On the condition that, secrecy would be considered as a factor of entropy. However, the position taken by the State vis-a-vis multitudes necessitates it to be in perpetually in precepting and keeping all flows. On the other hand, secrecy of the black box is only kept in secure by mediating that the State has to be mediation itself. If it is so, the State cannot sustain its subjectivity nor objectivity. By such organizational arrangements, it can be deduced that the State organs mentions only fronts of desperate and relative phenomenon of uniqueness claim.

In Monadology, Leibniz says if a thing is not united as one, it is not an entity which sheds a light from late middle ages. If this claim is borrowed, the State is structed in

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[62] "Terms generally applied to Apollo are reason, order, intellect, form, moderation, and consciousness. " Dionysus was associated with the earth and the world rather than the sky and the heavens. He was, like Apollo, a son of Zeus but only a marginal Olympian. He was the "Mad God," associated with ecstasy and chaotic emotions. Dionysus is the god of the grape, of drunkenness. Leeming, David A. "Apollo." *Encyclopedia of Psychology and Religion*. Springer US, 2014. 102-103.

an un-rational and hyper-real -rather than unreal. Thus, is an informal way, theological and metaphysical thoughts of the past re-unite:

Figure 2. The stamp itself bears the inscription 'TAJ WAJ' spelt back-to-front, short for 'tajny' and 'jawny' (secret and open), and the pad has the word 'NIE' (No). Szczecin's 'monument to the unknown bureaucrat' was created by the architect Wojciech Gołębiowski and the artist Jerzy T Lipczński, 2013. Retrieved from internet.

If the comparison between powerless-chief and Ombudsman is apt, it would be expected that State and society; politics and economy and politics/administration issues will be exaggerated and extended. This is related with the main field of powerless chief who is responsible of transmitting demands and wills to others. In this picture the State seemed to be the great other, fully alienated from society.

Second inference is that the State has started to pretend to behave as a separate community despite all participatory efforts. Symbolic foundation of primitive societies then its transition to divided society kept its root which claims that it is the only source transmitting between external and internal realms. Moreover, if

auctoritas and *potestas* controversy precluded which is a problem of Roman's imperium context, the State unifies in its abstract and concrete body and reflects -but not shares it via agents and/or institutions such as Ombudsmanship.

Montesquieu's arguments on geographical determination would be considered avoiding going too further. Although a singular structuration which belongs to a peculiar space and time proliferated throughout the World would mean two things. First, circumstances attached to Nordic geography penetrated to other spaces and second, organizational transformations in divided societies at noumenal level can't be taken as obstacles that it lets any structures and apparatuses to become common outputs of all modern states.

If we borrow a Word on law from Montesquieu "laws, in their most general signification, are the necessary relations arising from the nature of things" (1777, p. 1), it would be complemental with Spinoza's "It seems to be only by a metaphor that the word law (Lex) is applied to natural things" (2007, p. 58). In this point, we are over-reaching the phenomenon of governing and separation of powers. the Power which is said to be separated[63] rather than divided[64]. If so, the State as invented nature of human becomes metaphor of a metaphor unbundled to hinder perpetually the people's claim on their existence and governing their own existential necessary relations. Therefore, Rousseau's underlining which indicates unfortunate accident -as valid reason of the social contract which is replaced by common will was taken as anthropological turn in this manner.

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[63] c. 1400, from Old French separacion (Modern French séparation), from Latin separationem (nominative separatio) noun of action from past participle stem of separare "to pull apart," from se- "apart" (see secret (n.)) + parare "make ready, prepare" (from PIE root *pere- (1) "to produce, procure").

[64] early 14c., from Latin dividere "to force apart, cleave, distribute," from dis- "apart" (see dis-) + -videre "to separate," from PIE root *weidh- "to separate" (see widow; also see with). Mathematical sense is from early 15c. Divide and rule (c. 1600) translates Latin divide et impera, a maxim of Machiavelli. Related: Divided; dividing.

In Marx's early writings, before analyzing political economy he interprets on abstraction of the State by underlining its belonging to modern era. This issue which also stands back at the critique of Hegel's Philosophy of law, relies on the material base of pre-modern states, more specifically of middle ages. About that era, Marx says "The Middle Ages was the democracy of non-freedom" (Marx, 1970). It would seem to be a far aim but if we follow the words to the opposite direction, importance of the law of the middle ages would strengthen the connection.

"Political constitution as such is perfected for the first time when the private spheres have attained independent existence. Where commerce and property in land are not free, not yet autonomous, there is also not yet the political constitution" (Marx, 1970). Social life and political life are identical which also means state equals to market conditions. Therefore, the State is concrete although concreteness is supported by mystification of the State sovereignty. Mediation[65] struggle occurs between political body and mystical body (Neocleous, 2014, p. 26). on which symbolic dualistic power structure appears and fractures the phenomenon of sovereignty into two parts as of pendulum. Thus, we are with again with a dichotomy.

While thinking of democracy, it is inevitable to make visible or hidden connections with ancient forms. Thus, there are some remarks to take in Marx's conception of "democracy of non-freedom". Current moment of democracy radically re-founded after WW2 carries so many features related with advanced financial capitalism and

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[65] 1540s, "divide in two equal parts," probably a back-formation from mediation or mediator, or else from Latin mediatus, past participle of mediare "to halve," later, "be in the middle," from Latin medius "middle" (from PIE root *medhyo- "middle"). Meaning "act as a mediator" is from 1610s; that of "settle by mediation" is from 1560s. Related: Mediated, mediates, mediating. Mediator: mid-14c., from Late Latin mediatorem (nominative mediator) "one who mediates," agent noun from past participle stem of mediare "to intervene, mediate," also "to be or divide in the middle" (see mediate). Originally applied to Christ, who in Christian theology "mediates" between God and man. Meaning "one who intervenes between two disputing parties" is first attested late 14c. Feminine form mediatrix (originally of the Virgin Mary) from c. 1400. Related: Mediatorial; mediatory. Retrieved from http://www.etymonline.com/index.php?term=mediation.

information technologies. Especially at the dawn of Ombudsman proliferation just before and after 70's capitalist crisis shows a vital crisis of representation.

If Sweden and Finland are excluded, between 60's and 70's main motion of transformation can be summed with regression of welfare state and protesting of the society. In public administration field, quest for a new paradigm that it will be determined as new public management; more depolitization of the field both in practice and theory in addition to this, intensive marketisation of public services.

Naturally, it means a fundamental change in political realm. New-individualization of the self contrasts the consumer front of human, while erosion of protective mechanisms of law system triggers an identity crisis of the citizen in political meaning. When importance of the *activa* (*vita activa* of Arendt) lost its importance on making decisions, its *potentia* must be suppressed with indirect ways. In the wake of communication era, communication has been taken as measure to persuade society with hologram of a person. It has more than a common denominator with re-feudalization concept[66].

Ombudsman appears at this moment to close the irrational gap between over-alienated system and over-fragmented society. Over fragmented because it is lack of productive means for subsistence which is the far most difference compared with pre-modern era which tells us the over-alienation at the same time. The over alienated one is left to a bare political field which is apolitical, deprives of public services due to their privatization. Ombudsman-like institutions arose when public

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[66] "Associations become concerned with the representative showing of their members in the public sphere–'the aura of personally represented authority' (Habermas, 1989:200) as a part of public relations and the refeudalized public sphere: 'the public sphere becomes the court before which public prestige can be displayed–rather than in which public critical debate is carried on' (Habermas, 1989:201). If the public sphere is not genuine, accountability cannot be authentic, but is rather a matter of public relations" (Livingstone, S., and Lunt, P. (1994) The mass media, democracy and the public sphere. In Talkon Television: Audience participation and public debate (9-35). London: Routledge.)

and private; state and society, political and economic meshed and merged. This issue also explains reciprocal usage of Ombudsman in public and private spheres.

In this frame, representation becomes impossible and meaningless due to fading of individual interests. Rather violations and threats come into being to necessitate a common defense on behalf of the subject. Although daily practices foster subject to reverse direction; makes its choice to compensate individual deprivations. Repercussions of malfunctions and maladministration are not taken as common routines. Thus ombudsman-like institutions re-produce the gap between society and individual at the same time. This issue is stated as isolation effect by Poulantzas[67]. Moreover, this effect which is rooted in economic deprivation re-shapes person and creates juridic subject (Milovanovic, 1981). Juridic subject is the citizen covered with abstract set of duties and rights given by juridico-political structure of capitalist society. In fact, human as an ontic status has to be covered with a kind of juridico-political structure the main change is in its structuring related with transitions to kinds of mode of production.

It is better to borrow autonomy of political and the State from Poulantzas to understand the line between transitive organization of the central-political legitimation domain. In our case Sweden, archaic structures haven't been dissolved completely rather they are inherited by the (central) Statehood. Moreover, the peculiar position of Swedish State as both embodies political and economic means of coercion sustained its role as big mediator which would be comparable with the great other. In Swedish case, otherness of the great other is not dedicated through the State

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[67] Poulantzas, a structuralist Marxist, for example, points out that the juridico-political superstructure conditions individuals for their subjection to the ruling "class" (Poulantzas, 1973: 239). For him, ". . . the function of the capitalist state is to prevent their (the dominated classes) political organization which would overcome their economic isolation . . ." (pp. 118-19). The mechanism here involved is the "effect of isolation" by which the juridico-political structures of the capitalist state, including juridical ideology, condition the individuals as "individual-subjects" deprived of their class membership as well as their economic determination (Poulantzas, 1973: 128). Because of this "effect of isolation" by which the subject is constituted as a "juridic subject" with rights as well as a citizen with political interests, ". .. the capitalist state maintains the political disorganization of the dominated classes, by presenting itself as the unity of the people-nation, composed of political-persons/private individual." (cited in Dragan,1981)

rather, pre-modern and undiveded member of the society is taken as the great other as origin of the law and origin of the State legitimacy- in national level and local level. This dilemma also reflects the scene that two kinds of lagman exists in modern Sweden as justitie-chancellor and justitie-ombudsman.

Différance (Derrida, 1978) within founder moment and the founded is allocated by the political being. Although this scheme becomes visible during time of crisis -not in a moment but within a process. This prop the overlapping of foundation and proliferation sequences of Ombudsman. Primacy of the politics is only valid whence taking the the beginning as word[68]. There is no doubt, Word is neither the same in the so-called beginning, nor in a modern constitution. However, it should be repeated to be sustained. Repetition is the core politics.

Derrida's fuzzy interpretation from mythology would figure in the topic. In Platon's pharmacy (Derrida, 1981) he takes Thoth[69] the god of moon and writing to exemplify transfiguration of dualisms: logos-nomos; sun-moon; logos and nomos. One of the most valid part of this narration is the role of Thoth as mediation[70] goes through the

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[68] "In the beginning was the Word, and the Word was with God, and the Word was God." John 1:1

[69] "He bears the signs of the great sun-god. He interprets him as a spokesman, a standard bearer. And like his Greek counterpart, Hermes, whom Plato moreover never mentions, he occupies the role of messenger-god (RA), of clever intermediary, ingenious and subtle enough to steal, and always to steal away. The signifier-god. Whatever he has to enounce or inform in words has already been thought by Horus. Language, of which he is depositary and secretary, can thus only represent, so as to transmit the message, an already formed divine thought, a fixed design. The message itself is not, but only represents, the absolutely creative moment. It is a second and secondary word. And when Thoth is concerned with the spoken rather than with the written word , which is rather seldom , he is never the absolute author or initiator of language. On the contrary, he introduces difference into language and it is to him that the origin of the plurality of languages is attributed." (Derrida, 1981: 88)

[70] "The system of these traits brings into play an original kind of logic: the figure of Thoth is opposed to its other (father, sun, life, speech, origin or orient, etc.), but as that which at once supplements and supplants it. Thoth extends or opposes by repeating or replacing. By the same token, the figure of Thoth takes shape and takes its shape from the very thing it resists and substitutes for. But it thereby opposes itself, passes into its other, and this messenger-god is truly a god of the absolute passage between opposites. If he had any identity -but he is precisely the god of non identity- he would be that *coincitientia oppositium* […]. In distinguishing himself from his opposite, Thoth also imitates it, becomes its sign and representative, obeys it and conforms to it, replaces it, by violence if need be. He is thus the father's other, the father, and the subversive movement of replacement. The god of writing is thus at once his father, his son, and himself. He cannot be assigned a fixed spot in the play of

practice of life. Because he is also god of medicine (pharmakos) that the Derrida follows unpromisingly a poison. In Platon's Phaedrus dialogue, "Pharmakos (ceremony) is depicted as origin of difference and division, […] good and evil, sacred and accursed" (1981, p. 133). The Thoth quotation of Platon which is used to connect dialogues hidden meaning takes us to unification of logos and nomos in the end. Because only law can say the right thing if it is done rightly. Thus, they mean the same in the realm of poli(s)tics; *double-entendre* of political realm and being.

Even If we pass over the human rights literature in political science, issue of (human) rights violations compose majority of Ombudsman cases must be underlined. If executive functions operate in behalf of publicity, the actor who breached the agreement/contract is the public (totality) itself by the violation against subject (singularity). Thus, in another level, micro crisis of the social contract reflects the macro level and feedbacks itself by repetition of critique.

> These exclusions took place at critical moments (drought, plague, famine). Decision was then repeated. But the mastery of the critical instance requires 'that surprise be prepared for: by rules, by law, by the regularity of repetition, by fixing the date (Derrida, 1981, p. 133).

Ombudsman emerging as Thoth just on the margin of the separation of power. "is neither king nor jack, but rather a sort of joker". It replaces the executive and juridical representations and figurations. Moreover, separation of power is seemed to become as division of power. Condensed power which were negated in a time from undivided society, negates itself as a negative derivation. It is thus the reminiscence[71] of forgotten reality of the State power.

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differences. Sly, slippery, and masked, an intriguer and a card, like Hermes, he is neither king nor jack, but rather a sort of joker, a Boating signifier, a wild card, one who puts play into play." (Derrida, 1981, pp. 92-93)

[71] Plato's *anamnesis* concept of remember: Meno (81b–d; 85 d–86 b), Phaedo (72c–76 d), and Phaedrus (249 c).

Erosion in between the functions of government takes us to discussion of politics/administration dichotomy. Ombudsman seems another reflection of unification of politics and administration, as said above logos and nomos. Moreover, as a part of dialectical underpinning, it comes as synthesis which evokes physis. More specifically, it is a derivation of physis. If it is to make a resemblance from Marx's famous M-C-M' cycle of capital, physis(P) makes a chain with a priori nomos (N) which the first law then it turns out P' (P-N-P'). If it is maintained, P'-N'-P''… would be asserted. Parallel to this extent, derivation of juridico-politic as face of the State which absorbs natural law (physis) (Koselleck, 2012, p. 57). and operates itself as (N)'. Although the problem with Ombudsman we face is its process which turns the (red)tape back where power is alien (Thomas, 1994, p.10) (ated). In this borderline between the power and Power, by which each decision of the ombudsman renders civilian element to capitulate its existential political armament and surrender.

CHAPTER 5

CONCLUSION

Ombudsman event is a rejection derives from crisis of internal audition where public can't be rendered consent. In this rejection, moving pendulum of public administration between market and the law hauls the object to both directions at the same time. Agent as decisionmaker or policy implementor has to consider and direct the action in a limited time. Although his position as a servant of the society is blurred by the different characteristics of market and the public.

While making decision on what is for public interest which is isolated in the name of public-policy; legislation is seemed to only an assembly amongst *assemblages*[72] and additionally it is nothing more than a *dispositive*[73]. Administering of the multitudes is operated by the *machine* character of the State. Its functioning in three domains as executive, jurisdictive and legislative forms transforms into organs without bodies.

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[72] In practice, the assemblage is the productive intersection of a form of content (actions, bodies and things) and a form of expression (affects, words and ideas). The form of content and the form of expression are independent of each other – their relationship is one of reciprocal presupposition (one implies and demands the other but does not cause or refer to it, for example a sunset is an array of colors produced by the diffraction of light, but this does not cause us to see it as beautiful or melancholic; by the same token, our concepts of beauty and melancholy do not compel us to apprehend sunsets in this way). (Buchanan, 2015, pp.390)

[73] What I'm trying to single out with this term is, first and foremost, a thoroughly heterogeneous set consisting of discourses, institutions, architectural forms, regulatory decisions, laws, administrative measures, scientific statements, philosophical, moral, and philanthropic propositions-in short, the said as much as the unsaid. Such are the elements of the apparatus. The apparatus itself is the network that can be established between these elements […] by the term "apparatus" I mean a kind of a formation, so to speak, that at a given historical moment has as its major function the response to an urgency. The apparatus therefore has a dominant strategic function […] I said that the nature of an apparatus is essentially strategic, which means that we are speaking about a certain manipulation of relations of forces, of a rational and concrete intervention in the relations of forces, either so as to develop them in a particular direction, or to block them, to stabilize them, and to utilize them. The: apparatus is thus always inscribed into a play of power, but it is also always linked to certain limits of knowledge that arise from it and, to an equal degree. condition it. The apparatus is precisely this: a set of strategies of the relations of forces supporting, and supported by, certain types of knowledge. (Agamben, 2009, p. 2)

The administrative law part of the ombudsman issue is acknowledged through of the exceptional structure of ombudsman. Anyhow, administrative justice pretends to put barricade, to overrule against executive body. Rather it operates as a filter in case of the corrosive relations occur between public and private spheres. The rights assigned to Leviathan or its any appearance, daily process is paralyzed. The main difference between administrative jurisdiction and ombudsman is not the usage of everlasting procedures of the law, rather ombudsman's plebiscitary character which doesn't foster all structures of power or all internal bureaucratic mechanisms. It uses its given margin (margin of appreciation[74]) to consider the violation, revaluates and re-evaluates it. As it is observable in the international law, by which regulations of international human rights bonded nation-state, ombudsman institution seems to be regulated more than its integral leviathan.

The dissolution of the contract brings state and society against each other that the politics with its over-mediated and fragmented form isn't enough to persuade both sides for rights and duties nor for control and resistance. Over-determinative role of the financialized and speculative market crushes the so-called welfare state guarantees for re-production of capital in all means. Public authorities and public sphere which are squeezed by the private market relations tries to solve the problem by privatization of themselves as well as particularizing. In another segment, street-level bureaucracy and privatized and de-regularized side of the local government-ilty accompanies it. In that way, security umbrella of advanced capitalist or post-Fordist socio-political context puts police-force as the only achievable street-level agent against citizen. This is why administrative abuses and police force abuses juxtapose.

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[74] "it refers to the room for manoeuvre the Strasbourg institutions are prepared to accord national authorities in fulfilling their obligations under the European Convention on Human Rights" (Greer, 2000)

In Kantian terms, antagonism comes into being by sociality which is un-social together with perpetual resistance that challenges society (Bonnefeld, 2014, p. 131). Following this case, the State can be understood as external force which fosters individuals' interests –interdependency- to get closer by institutionalization. This can be considered of unification by law and by an absolute fair civic constitution especially codifies property rights and regulates use of force/power (2014, p. 131).

For Foucault, governmentality ensures the legitimation capability of the State and it doesn't work rely on a personal way, rather it is the control over demography, production and circulation of ends (Butler, 2013, p. 65-66). Visible side Reason d'etat loses its influence then governmentality begins to secure all flow. The sovereignty revives in this paradigm propounds itself by using power in privileges which is assigned to executive organs or executers as personal bodies who are neither have to be legal-normative nor legitimate (2013, p. 67).

More than just the privatization, legal status of citizen is being re-feudalized (Supiot, 2013, p. 144). The democratic unfreedom of Marcuse and unfree democracy of the Marx seem to be come together with their burden as symbols, myths and spatial relations. They are not exactly the same form, rather pathways. Extension of the repetition is about to the recurrence of the flow of capital. Differentiations occurs in the reproduction around the capital as essence and flourishes itself in forms. As seen in the. Brumaire, this repetition of the forms is most visible in the State form to repeat the formalization of the State (Karatani, 2013, p. 42).

In this sense it can be said that specialization in general meaning is bypassing the common in all sense. Supiot says that, right as a normative architecture precedes the State which is the sovereignty of a prince or nation throughout, tradition of ius/lex distinction of the continent became blur (2008, p. 22-23). Besides that, Common law tradition can afford the meaning of Right derived by the State rather by judges (2008, p. 24). So, it becomes individualistic in general perception and nothing important remains between law and individual.

Suspending the rule of law or drowning individual sphere with rights and laws do the same for processing of administration. Thus, enhancing the sphere of executive power does mean a perpetual state of exception. Ombudsman is therefore a common event throughout the World. As Hobbes says, the measure of good and evil is the law but as Schmitt adds, "The sovereign state power alone, on the basis of its sovereignty, determines what subjects of the state have to believe to be a miracle" (2008, p. 54). This is taken as a factor vital to designate political issues during the thesis, thankfully Bourdieu is another reminder by modernizing Cassirer's symbolic thinking to the capital as saying that force of the State is merely special in symbolic reproduction (2005, p. 97). This is why the common share between Hegelian universal group, reasoning organ of Durkheim and rational-legal authority (2006, p. 97) is bureaucracy.

Bureaucracy is between implementation and execution; reason and legality. Each point where it abused or malfunctioned suspends the agent's law-bounded identity. The crisis which is whether political or economic make constructs a bridge between administration and politics. Legal personality differentiates The State or legal administrative system as abstract unity from other socio-political beings. Naturally, it relies on the existence of a constitution whether it is specific and extraordinary text or a composition of ordinary laws (Braud, 2017, p. 365).

 "We couldn't have chance to assert that there are unjust laws, if there were no dualism of law and justice" (Direk, 2012, p. 109) but we know there are… Also we can say that "1789 Declaration of Human Rights didn't aim legitimization of promulgating laws but legitimization of margins and norms that legislation has to respect" (2012, p. 109). In that very point on, idea of human is taken as essence of justice and law by enlightenment period instead of nature-physis. This hierarchal positioning of human over nature is probably negation of natura in the famous phrase of Spinoza *natura naturns*. This aphorism, as it is known, juxtaposed with its twin *natura naturata.*

This adding was made to investigate dualism of God and nature by Spinoza but during time, at least in that time, *human humanata/human humanizes*. It is not just the result of concentrating 'history' benath of human but also legitimization of all human activity in different levels: politics, economy, management, etc. Thus, human centered era mean not only administration by determination also administering human by whom put idea of human over nature in which once upon a time homo sapiens live horizontally. In essence, it is tried to say that, who governs nature, governs human.

The second paradox can be seen when imagining on dual meaning of justice. It becomes a question when law making, or legislation doesn't meet demands of individual or society in general. Moreover, when people are not content with the 'final sentence' besides authorities insist on justice of practice, there should be a justice over justice/law. "Derrida says that narration is precondition for law" (2013, p. 121). His question or quest of justice/law is derived from Kafka's *Before the Law* text in which Kafka scrutinizes relationship between man and law (also right). More than this, Moral law of Kant is the main question for Derrida about Kafka (2013, p. 118). Without any doubt we are to see totality/singularity-particularity relations and reflections within this quest. If our relations/reflections are founded in an authentic and singular way, the problem comes into being by definition of total/general/universal principle of justice and its reflection on the singular being or by the tag that where is the junction point between particular and total?

Inaccessibility, immunity and unrepresentativeness are law of the law. Thus, a law has categorical authority as much as it is able to prohibit accessing to the content (Direk, 2012, p. 122). Construction and acknowledgment of human rights are realized between the symbolic and inescapable connection of freedom and morality as "Kant claims that whilst freedom is the essential ratio of the moral law […] Therefore, the moral law is the rational knowledge of freedom. However, the only authentication of the moral law as binding upon us is the fact of reason. The latter is the subjective guarantee of the determination of the will by the moral law"

(Critchley, 2008, p. 29). In addition to this, it refers to why the post-WW2 consensus the first-total bankruptcy of morality of enlightenment gave a birth to human rights as a necessary input for all constitutional developments.

"The problem of our time is unification of neo-schmittianism in the name of neo-liberalism and neo-leninism in the name of radical Islam" (2008, p. 160) adds Critchley. In a theme, it is beneficial to think the leader-myth factor of our time. As seen from the quotation, repetition is about two things: epistemology and methodology. In another terms, eternal-dept concept of Gauchet's is being deepened. Even it is visible in new public management of neo-liberal turn. *Line of flight* is ignoring of the classical public administration's mottos by negating and reversing it. Economic being controls over the society with individual beings, relies on possession. On the contrary, this possessive individualism which substitute monetary/fiscal apparatuses instead of indulgence also substitutes itself with multiplicity or Levinasian infinite demand.

From the beginning of capitalist distribution, materialization and mystification have the same meaning. Effectiveness or Efficiency of a function is nothing but *petitio principi* (begging the question). While singularity is depicted as a fallacy must be avoided, inadequacies are directed to departments. Agitating of the political participation is in essence the hindering the gap of participation in market relations. Keeping political sphere unfunctional and downgrading it to voting is parallel with the right to remedy for the citizen on a pathway of customer satisfaction.

Advantage of the capital in comparison with the politics is its less vulnerability about public opinion. In that meaning, political power can be manipulated through different segments of power as Mann's categorization; ideological, military, economic, political. If it is to observe that, each of the category is sounded to have an ombudsman. From the past 40 years, one of the reasons why public personnel rights are diminishing is to standardize mid-level manager with bureaucracy. Including ombudsman other higher staff are politically appointed and/or temporal.

Fundamental and permanent functions of the State which were thought to be bureaucratically/neutrally administrated are left aside. Dead-end between relative autonomy of the State and relative superiority of the market is tried to overcome by Ombudsman-like systems.

Charles XII., were legitimated besides his lack of authority due to his exile. In essence he was a king, chief without power. This is the beginning of the Ombudsman story links middle ages and modern times. If it is acknowledged that his exile because of war, an external violence is the main factor which excludes and marginalize him. Another war was the Finnish war resulted in independence of her from Sweden which is in a way a civil war, during aristocratic republic where accord system caused corruptions and empire was divided. In the following years centaur-State was born all over the world and the cold war was nothing but maintenance of Warfare.

Arendt made a question on the Eichmann case which underlines the reason d'etat which insists on the sustaining both crime and legality together (Arendt, 2012, p. 296). It also means that if violence and crime/abuse are representing the borderlines of the State, they can be the routine process in a state. Moreover, when the grasping or presenting the abuse is more individual, negative effect of the loss of legitimacy will be more diminished. Similar principle with the easiness of managing by splitting.

Another aspect of Sweden/Scandinavia is its geography which makes her fragmented more than central. In addition to this, it shares both land and sea social features from the Viking era. They come into being as society of war and constructed an identity which transferred conflict out of the land. Persistency of the power that of chiefdoms and sustaining of war are coordinated. During the same period, paganism and Christianity, Germanic ancestral laws and Roman codes, were also together. In pre-modern and semi-modern period this trend shows itself as aristocratic, monarchial

and partly enlightened values of the State. In the same manner, de-centralist and centralist tendencies are still articulated to each other.

"*Neccessitas legem non hab*et[75]" the famous motto of from the late medieval State is an effort for the State-being not to become *Deus otiosus*[76]. Instead of this, It uses *Deus acephalous*[77] to survive its body against negative entrophy. Resistence arose in the late 60's was a threat to integrity of divided society. In this way, antidote is searched on the birthmark of the Statehood: possibly chief without power or *sovereign without coercion*.

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[75] "Neccesity has no law"

[76] "a high god who has withdrawn from the immediate details of the governing of the world."

[77] (god) having no head and/or hierarchy

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APPENDICES

A. TURKISH SUMMARY / TÜRKÇE ÖZET

Giriş

Bu çalışmada Ombudsmanlık kurumunun Foucault'nun deyimiyle arkeolojisine değinilmeye çalışılacaktır. Bu minvalde ilk olarak İsveç'te ortaya çıkmış olan ve daha sonra hemen tüm Dünya'da yaygınlaşmış olan kurumun bürokrasi ve kamu yönetimi içerisindeki yeri, hem de tezde iddia edildiği haliyle Clastres'in kavramsallaştırmasıyla 'iktidarsız şef' olarak konumlandığı tartışılmaya çalışılacaktır.

Genel itibariyle ombudsman üzerine yapılan çalışmalar, onun kurumsal ve hukuksal yapısıyla ilgilidir. Diğer yandan yine yapısal özelliklerinin incelendiği çalışmalar, karşılıklı ülke incelemeleriyle desteklenmiştir. Ancak bu tezde söz konusu ülke veya kurumsal yapılara konuyla ilişkisi itibariyle değinilmiştir. Daha ziyade yapılmaya çalışılan Ombudsman'ın tüm ülkelerde bir şekilde yerine getirdiği devlet ve toplum arasındaki arabuluculuk (mediation) rolü üzerinde durmaktır.

Ombudsmanın yetkileri incelendiğinde gerek doğduğu yer olan İsveç'te gerekse de İngiltere, Amerika ve Fransa gibi ülkelerde, idari yargı sisteminin ve yasamanın arasında ve yürütmeyle ilişkilendirildiği göze çarpacaktır. Ortaya çıktığı ülke olan İsveç'te ombudsmanın ilk formu kral naipliğidir ve 18. yy. başı olarak tarihlenir. Kral ombudsmanı genel olarak Kral'ın idari ve yargısal temsilini yapar ve kimi durumlarda onun adına karar verir. Resmi olarak 1809 Anayasası ile kabul edilmiş hali ise 'adalet ombudsmanıdır.' Bu tarihten itibaren Ombudsman İsveç idari yapısının değişmez bir unsur olarak ortaya çıkmıştır.

İsveç örneğinden sonra Finlandiya: 1919 / Norveç: 1952 / Danimarka: 1955 / Almanya: 1959 / Yeni Zelanda: 1962 / Norveç: 1962 / İngiltere: 1967 / Kanada: 1970 / Fransa: 1973 / Portekiz: 1976 / İspanya: 1981 / Hollanda: 1981 /Amerika: 1969 (eyaletler bazında) yıllarında Ombudsmanlık kurumunun benimsendiği ülkeler olarak öne çıkmaktadır.

İsveç ve Finlandiya hariç tutulursa, 1960 ve 1970 yılları aralığının kritik olduğu ortaya çıkmaktadır. Tam bu aralığın dünya tarihi açısından taşıdığı önem, eğer kamu yönetimine çekilirse, yeni kamu yönetimi paradigmasının ortaya çıkmaya başladığı dönem olduğu görülmektedir. Diğer yandan krizi önceleyen ve krizi sonralayan bu dönemin Habermas'ın tespit ettiği şekliyle 'meşruiyet krizine' denk gelmesidir. Krize verilen yanıt ise, iletişimsel eylem içerisinde müzakereci demokrasiye giden katılımcı mekanizmalardır.

Ombudsmanın bu *kriz* sarmalında *kritiğe* dair, ya da devlet ve toplum arasındaki iletişim sıkıntısına bir yanıt olarak kapladığı zemin ki buna ister bir iktidar teknolojisi istersek de yeni bir kurumsallaşma dalgası diyelim, tekabül ettiği yönetsel formun hem geleneksel güçler ayrılığı prensibinin yasama, yürütme ve yargı fonksiyonlarına tam bir ara/dolayım kurum olarak; hem de bunları aşan, tekil bir merkezi iktidar formunun gölge fenomeni olarak eşlik ediyor olması, çalışmanın varsayımları olarak düşünülmelidir. Bu sayede merkezi devlet gücünün çeşitli düzeylerdeki pratiklerinin geniş bir dolayım alanına aktarılması söz konusu olmaktadır.

Bu dönemin kriz koşullarını hazırlayan ve hazırladığı iddia edilen sürecin başat aktörü, refah devleti sürecinde büyüyen devlet ve onun çeşitli organ ve aparatlarıdır. Dolayısıyla kamu gücünün etki alanının artması, kamu gücünün kötü yönetim, insan hakları ihlalleri, ayrımcılık başlıklarında ortaya çıkan 'hatalarının' da niceliksel ve niteliksel olarak artmasına sebep olmuştur.

Kamu Yönetimi ve Ombudsman

Kamu yönetimine karşılık gelen şeyin bir yandan da bürokrasi olduğu aşikârdır. Bürokrasinin soy kütüğüne ilişkin olarak bir tarihleme tarihsici ya da nominalist bir düzenek etrafında yapılabilir. Daha ötede kendi içinde türselleştirmeye de tabi tutulabilir. Bu noktada pre-bürokrasi ya da pro-bürokrasi odaklarını görmek de mümkündür ve 17. ve 19.yy. arasındaki merkantilizm, kameralizm, fizyokrasi ya da aydınlanmış monarşi deneyimleri ile tekno-politik paradigmanın gelecek tasavvurları bu şekilde okunabilir. Bu işleyiş İsveç'in devlet biçiminin gerçirdiği evreler için de benzer özellikler arz eder.

Ancak bürokrasinin tarihi ile ki tekrar etmek gerekirse kamu yönetimi ile bürokrasinin tanımlanması eş anlamlıdır; bürokrasinin inşası ya da Foucault'nun söylediği gibi, toplumun devletleştirilmesi ve devletin yönetimselleştirilmesi senkron içindedir. Bu senkron, bir yabancılaşma olgusunun, kaçınılmaz ve kapitalizmden de bağımsız olduğu öne sürülebilecek bir şekilde ortaya çıkan ayrımların bir sonucudur ve ayrımlar, iki kümeyi yani belirli işlerin toplum için gördürülmesi ve belirli işlerin toplum için icad edilmesini getirmiştir. Başka bir ifadeyle "O hâlde üretim, sadece özne için bir nesne değil, aynı zamanda nesne için de bir özne yaratmaktır" (Marx, 1973). Yönetim de aynı şekilde farklı özne ve nesne arayışındadır, denilebilir.

Kamu yönetiminin en büyük ezberlerinden birisi olan Wilson meselesi de tam bu noktada değerlendirilmelidir. 19.yy sonu itibariyle kaleme alınan yönetim/siyaset ayrımı çağrısına bir tarihsel olayla bağ kurmayı deneyelim: Henüz daha 100 sene öncesinde Dünya ölçeğindeki egemen devlet sayısı, aşağı yukarı Avrupa devletleriyle sınırlıydı. Ancak takip eden süreçte birçok değişkenin hesaba katılması, sermaye ve fiziksel zor biçimlerinin farklı sentezlerini de beraberinde getirdi. Örneğin Tilly (2001), sermaye ve zor arasındaki ilişkiyi kabaca üçlü bir skalada açıklar. Bunlardan ilki, Hollanda gibi sermaye yoğun ve ticaret tekeli odaklı model; ikincisi İspanyol ve İskandinavlar gibi haraç ve emek köleleştirmesi odaklı zor-yoğun model ve son olarak bu ikisinin sentezi olarak Fransa ve Britanya (2001).

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Dahası, bu tipolojilere sonradan eklenen şirketleşme ile de –ki 'east indian company' kastedilmektedir. Bu küçük skalaya sermaye akışkanlıkları ve yoğunlaşmaları da eklendiğinde; ilk emaresini 1873 krizinde gördüğümüz, sermayenin dünya ölçeğinde etkileme gücünün bir üst belirlenim haline gelmesi yönetimin kodlarını bir değişime zorlamaktadır.

Şirketleşme ve iç savaşın sentezi olarak karşımıza, henüz hem siyasal hem de ekonomik alanlarını inşa etmeye çalışan bir devlet örgütü çıkmaktadır. Dahası, siyasal kamplaşmanın ve anakronik bakarsak, etkin olmayan bir devletin sancıları söz konusudur. Egemen bir devlet olma sürecinin ya da aynı çağın başka bir sorunu, kalıplaşmış ve alışılagelmiş güç odaklarının çözülmesine binaen yeni büyüklü küçüklü devlet oluşumlarının gözlemlenmesiydi. Dolayısıyla bu noktadan Amerikan iç savaşı ile kamu yönetiminin kurucu metni üzerine tekrar gidilebilir. Fakat bundan önce Tukidides'in Peleponez iç savaşına dair belirli vurgularına değinmek ufuk açıcı olacaktır. Atina ve Sparta savaşı, azınlığın çoğunluğa karşı bir savaşı ve daha önemlisi, Sparta'nın Atina'nın büyüyen gücünden endişe duyması dolayısıyla çıkmıştı, en azından anlatılanlar böyledir. Fakat bundan daha önemlisi, savaşın bir iç savaş olarak değerlendirilmesidir. Aradaki büyük tarih farkını şimdilik derin bir teferruat olarak bir tarafa bırakırsak, Bu iç savaşın, aslında kara ve deniz devletleri arasındaki temel yönetim eğilimi (hatta ideolojisi) ayırımının savaşı (Schmitt, 2009) ya da histografik bir savaş olduğu söylenebilir.

Kamu yönetimi, esas olarak bir fonksiyon meselesidir. Bu fonksiyon, konumunu kimi belirlenimlerden almaktadır. Bu belirlenimler ve konumlar da kuşkusuz ki tarihsel toplumsal bir şemanın ürünleri ve farklı gerçeklik katmanlarının bileşenlerinden oluşmaktadır. Kuramsal dönemselleştirmeler yahut interdisipliner kümelenmeler etrafında olguların değerlerle yoğrulduğu ve kavram kalıplarına döküldüğü izlenimi ilk olmasa bile eleştirel bakışlarla elde edilebilir. 30'lu yıllarda yahut iki savaş arası dönemde bir yanda kriz devam ederken, diğer yanda dönem devletlerinin kalkınma hamleleri süregelmekteydi. Kalkınma yerine sanayileşme, imar hareketi, zenginleşme gibi kavramlar da kullanılabilir hatta bu genel bir

'kapitalistleşme' başlığına da oturtulabilir. İtalyan Faşizmi, Alman Nazizmi, Sovyet Sosyalizmi ve Amerikan New Deal'ı dönem içinde kendine yer bulmuş sosyo-ekonomik kümeleri oluşturmaktadır. Fakat disiplin içinde kuruculuk rolü verilen yalnızca Amerikan kamu yönetimidir. Kaldı ki özellikle Faşist devlet reformlarından ve eğer bahsedilebilirse nasyonel sosyalist devrimle kurulan Alman idari yapısıyla olan açık ve kapalı birçok benzerliğine ve Carl Frederich gibi Almanya'dan Amerika'ya göç eden bilim adamlarına rağmen.

Zira bu basit olarak, nedensellik ve etki; izlenimler ve ideler arasında doğan bilgi biçimidir Hume'un insanın farklı zaman ve mekânlarda da olsa az çok aynılığına dair söylemi, devamında ise tam da ihtiyaç duyulabilecek bir örnek Bhaskar'ın (2016) rasyonelliğin bir totoloji olduğuna dair eleştirisiyle geliştirilebilir. Rasyonellik, kamu yönetiminin temelinde bir kurucu öge olarak yer alır. Bu kuruculuk hem aydınlanmanın mirası olarak hem de kapitalizmin eklemlendiği genel yönetsel ilkenin bir uzantısıdır. Kameralizmin doğuşundan, yani seküler yönetselliğin inşasından kapitalist ilkelerin eklendiği modern kuramlara kadar temel saiktir.

Toplum sözleşmesi geleneği, Hobbes'dan Rousseau'ya kadar egemenlik teorisini yeryüzüne indirme çabasını anlatır. Aralarındaki farklılıklar bir tarafa, buluştukları ortak nokta, sözleşme öncesi yahut bölünmemiş toplumdaki durumunun 'kötülüğü' yahut artık geri dönülmezliği üzerinedir. Fakat bu durum, her ne şekilde olursa olsun verili bir insan kavrayışının totolojisinin de resmini çizmektedir. Bölünmüş toplumun sözleşme anında bir kurucu moment sonrası aldığı hal inceleme konusudur. Aynı şekilde kamu yönetimin disiplini adına belirli kurucu momentler var sayılmaktadır. Bunlar, Wilson, Fayol, Taylor, Weber'dir ve malum olduğu üzere 19.yy sonu ve 20.yy başını işaret etmektedir.

Bir kıyasa gidersek, siyaset bilimi açısından kurucu metin ya da anlatıların, antik Yunan dünyasından gelmesine benzetilebilir. Anlatılan Sokrates, Platon ve Aristoteles ile bir çizgi çizilmesi en olağan davranıştır. Benzer bir çizginin çekilmesine dair bir alt küme kavrayışı, Kameralizm üzerine olan çalışmalarla

denenmiş görünmektedir. Ancak söz konusu çalışmalar daha ziyade tali-tarihi çalışmalar olarak benimsenmiş hatta alana katılması da sorunlu görünmektedir. Aslında yukarıdaki izlekle, kamu yönetimi adına söylenmek istenen şey, tüm sosyal bilimlerin yükünden müteşekkil bir noktadır ancak bunun 'white man's burden' olarak yorumlanması da mümkündür. Wilson'ın kurucu ayrımının anlattığı şey, siyaset ve yönetim dolayımlarına ayrı ayrı, tıpkı siyaset ve ekonomi ayrımları gibi ihtiyaç duyulması ve/veya bunun türetilmesidir.

Derrida'nın post-yapısalcılık vurgusu içerisinde hesaplaştığı en önemli mevzulardan olan Batı düşüncesindeki düalizm (1981), siyasetin ve yönetimin ayrı alanlar, mevziler, dışa vurumlar ve süreçler ihtiva etmesi gerektiğine dönük varsayım da geçerlidir. Diğer anlamıyla mevcudun olumsuzlanmasıyla aşılmaya çalışılan bir siyasal problem hatta diğer taraftan Amerikan devletinin söz konusu momentteki biçimine dair bir özgüllüğün 'olumlanmasından' başka bir şey değildir.

Ombdusman bahsinin konu içerisinde yeri, onun 2. Dünya Savaşı sonrasında neden yaygınlaşabildiği, bir tikel ülke örneğinin neden Dünya açısından kamu yönetiminin bir mütemmim cüzüne dönüştüğüdür. Bunun arka planında ise Ombudsmanın tarihsel olarak sürdürülebilmiş bir yönetsel geleneğin hatta daha evvelinde meta-tarihsel bir sürecin parçası olduğu çalışmada iddia edilmektedir. Bu gelenek, İsveç'in tarihsel ve coğrafi konumundan ileri gelen parçalı yapısı hem deniz hem kara özellikleri taşıyan sosyo-politik varlığı ve bunları kapsayan yerelin hem ekonomik hem de politik özellikler taşıyan göreli özerkliğine rağmen merkezi bir devlet yapısına sahip olmasıdır.

Aralarında zaman farkı bulunan iki tarihsel betimleyici meselenin üzerinde durmak gerekirse, bir tanesi, İsveç kralı Şarl'ın 1713'de Ruslara yenilgisi sonucu Osmanlı topraklarında yaşadığı sürgün hayatının, kral naipliğini, bir temsil olarak, '1' in temsili olarak somutlaştırmasıdır. Bunu hazırladığı iddia edilebilecek diğer gelenek ise, İskandinav Dünya'sının Roma egemenliğinden de önce taşıdığı 'lagman' (hak sözcüsü) ve thig (yerel meclis) gelenekleridir. Bu iki olayın ortak paydası, bir

temsilcinin, aynı anda hem yerel birimi hem de kralı yani soyut olarak devletin beden formunu temsil etmesidir. Hem naipliğin hem de hak sözcüsünün temel görevi ise 'kurucu yasanın' tekrarıdır. Bu anlamda yasama, yürütme ve yargının hem pre-kapitalist hem de pro-kapitalist ayrımından ve özelliklerinden münezzehtirler. Aynı şekilde kuvvetler ayrılığı içerisinde de bir istisnayı temsil etmektedirler.

Söz konusu istisna, kuvvetler ayrılığı içerisinde kalan ve aynı zamanda siyaset ve yönetimin alanın ortak kümesinde kalan ilk yasanın tekrarlanmasıyla birlikte, kurulu olanın hatırlatılmasıdır. Bu hatırlatma ilkel toplumlardan günümüze uzanan ve devletsiz toplumlarda da görülen topluluğu 'birlik' yapan sözün tekrarı ve bu sözün tüm taraflara, toplum sözleşmesinin taraflarına hatırlatılmasıdır. Modern ya da modern olmayan meşruiyetin sürdürülebilmesinin tiyatral bir gösterisidir.

Antropolojik Çıkarımlar

Taylor, ilkel kültür kitabında (2016) ilkel insanın da uygar insanın da aynı anlığa (vernunft) sahip olduğunu söyler. Bu anlığın ortaklığını sağlayan da Cassirer'in anlattığı üzere 'fundamentum divisionis' yani bölümleme ilkesidir. Bu ilke mitos, din ve hikayelerin akış şemasını sağlayan şeydir. Başka bir ifade ile form değilse de öze dönük bir düşünme metodu ortaklığının altı çizilir.

Bu ortaklıktan hareketle, öncelikle Ombudsmanın tarih ötesi bir form olasığının anlaşılması bakımından devlet mefhumuyla olan gölge-fenomen ilişkisini sorgulamanın, devletin tarih ötesi varlığını ve yokluğunu sorgulamaktan geçtiği düşünülmelidir. Bu konuda devletin sönümlenmesi meselesinin, aslında hiç var olmamış bir devlete ya da 'devletsiz topluma' değen bir yanı olduğunun sorgusu açıktır. Bu konuda Clastres'in devletsiz toplumlara dönük tasavvuru, iktidarın henüz toplumdan ayrılmadığı üzerinedir.

Dahası bu iktidar henüz ayrılmadığı için şefin de icrai bir özelliği bulunmaz. Toplumun kendisi, söz konusu iktidara sahiptir ve aynı zamanda iktidar topluma

dağılmış durumdadır. Şef ancak bu birliğin temsili konumundadır. Yine Clastres'in ifadesiyle şef, ücretsiz bir memur gibi, ancak toplumun diğer toplumlar karşısındaki 'özerkliğinin' sergilenmesinin bir aracıdır, ancak bir sözcüdür. Sözcülüğü[78] ise 'yasanın' tekrarıyla sınırlıdır (1980, s. 105-108).

İlkel toplumlarda mevcut olan bu sembolik oluşum, ombudsmanlık kurumu açısından çubuğun tersine büküldüğü ve eğer bölünmüşlük ile bölünmemişlik arasında bir zaman alanı var sayarsak, toplum bölündükten sonra, söz konusu toplumun coğrafi yapısının dağınıklığının bir coğrafi faktör olarak kurumun yapılanmasında sentezleyici olduğu söylenebilir.

Coğrafyanın belirleyiciliği ekseninde güçler ayrılığı ile birlikte anımsanması gereken Montesquieu "yasalar nesnelerin doğasından kaynaklanın zorunlu ilişkilerdir" der. Bunu Spinoza'nın teolojik-politik incelemesindeki sözleriyle yani "yasa sözcüğünün doğal şeylere uygulanması ancak bir dolayım olarak kabul edilmelidir. Çünkü yasa dendiğinde yalnızca buyruk anlaşılır" (2007, s. 39) birlikte düşünmekte yarar var. Aslında bu noktada güçler ayrılığına ya da genel yönetim olugusunun farklı tezahürlerine geri dönüyoruz. Lakin bu düzlemin farklı boyutlarda, idari birimlerde yahut yaşam alanlarında, köylerde ve kasabalarda, kentlerde; sınıfsal konumlarda, coğrafyalarda farklı tezahür biçimleri öne çıkacaktır. Yani çok katmanlı bir yapının izleri görünmüş olacaktır.

Rousseau'nun genel iradenin temsil edilemezliğine paralel ortaya koyduğu cumhuriyet tabiri tebaanın rejimi olarak kurgulanmıştır. Zira, talihsiz rastlantı olarak ortaya çıkan varlık, bizleri tüm insanlığı zaman ve mekândan bağımsız olarak yeni bir varlığa zorlamıştır. Rousseau'nun yaptığı ise o varlığı tam olarak bulunduğu

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[78] "Şef, kimsenin itaat etmeyeceğini önceden bildiği emirler formüle etmediği gibi, örneğin iki birey ya da iki aile arasında bir anlaşmazlık çıktığında hakemlik etme hakkına da sahip değildir. Uyuşmazlığı, kendisinin temsilcisi olacağı, var olmayan bir yasa adına çözmeye değil, karşıt tarafların iyi duygularına seslenerek, sürekli olarak, atalardan devralınan iyi anlaşma geleneğine göndermede bulunarak yatıştırmaya çalışacaktır. Şef, komuta-itaat ilişkisini öne süren bir üslupla değil, toplumun kendi üstüne olan kendine ait söylemi, kendisini bölünmemiş bir toplum olarak ilan ettiği söylemi ve bu bölünmemiş varlığım koruma isteğiyle konuşur." (Clastres, 1980, s. 106-7)

konumda eleştiriye tabi tutmaktı. Marx'ın erken dönem eserlerinde özellikle gazete yazılarında ve görece hukuk felsefesinin eleştirisinde arka planda duran devletin soyutlanması meselesi konuya ışık tutabilir. Marx, bunu modern devlete özgü ve sivil toplumun ortaya çıkması, yaratılması yahut devletin onun üstünde ve hatta onu aşarak soyutlanması şeklinde okur. Özellikle odun hırsızlığı üzerine olan kısa yazısında "bütün ülkelerdeki yoksullar için geçerli olabilecek bir görenek hukuku" na dönük bir çağrı yapar. Çağrı yaptığı şeyin bir diğer karşılığı, orta çağın özgürlüksüz demokrasisidir. 1843 yazılarında Marx'ın demokrasiyi yerleştirdiği skalanın diğer ucunda ise devletsiz toplum bulunmaktaydı. Henüz komünist manifesto ve 1848 hareketleri yoktu, sadece bir analiz ama önemli bir analiz yapmaktaydı hatta düşünümsellik bile denilebilir.

Clastres, Devlete karşı toplum savunusu etrafında düşünerek, özellikle Engels'in aile eve özel mülkiyet kavrayışını eleştirir ve siyasalın belirleyiciliğini vurgular. Zira siyasal olan, topluma dair olandır, toplumun ta kendisidir. Yönetsel olan da toplumdadır, zira ayrışmış değildir. 20.yy'da ise ayrışmanın iflasının bir mimesisi, 1950'ler Dünya'sında, büyük savaşın 1648'den beri gelen rasyonalite ve reason d'etat, özellikle doğal haklar meselesinden Fransız ve Amerikan devrimleriyle yurttaş haklarına taşınan meşruiyet rasyonalitesinin çökmesiyle betimlenebilir.

Çünkü bu, iş bölümünün türeyişinden bu yana gelen anlatının da sorgulanmasını gerektirir ve bizi siyasalın önceliği anlamında iki noktaya iter: Birincisi, yönetsel iş bölümünün siyasal bir arka plana sahip olmasıdır ki çok kabaca Waldocu paradigmaya yeniden bir çağrıdır. İkincisi ise, siyasalın yönetsel karşısındaki konumundan ziyade ekonomik karşısındaki konumu ve yine en kaba tabiriyle ekonomik özgürlüğün yolunun bir siyasal mücadeleden geçtiği ve bunun bizatihi siyasalın kendisi olduğudur. 1947 sonrasında bu görünümün yönetselleştirilmesi ise İnsan Hakları söylemiyle kapsanacaktır.

İnsan Hakları ve Ombudsman

Ombudsmanlık kurumu için 1950'li yıllar hem yayılım tarihini hem de Ombudsmanın ülkesel ve biçimsel farklılaşmasını ifade eder. O tarihe kadar Klasik ya da İskandinav ombudsmanı olarak adlandırılan kurum artık hukukun üstünlüğü ilkesiyle sağladığı, genel olarak devletin vatandaşa karşı eylem ve işlemlerinin suistimale yol açıp açmadığını gözetleme ve düzeltilmesi yönünde tavsiye görevini, insan haklarının ihlali meselesine yöneltmeye başlar. Söz konusu değişimin arka planında yukarıda belirtildiği üzere 2. Dünya Savaşı yatmakla birlikte, aslolarak vatandaşlık ve devlet arasındaki sözleşmenin geçerliliğini yitirmesi yer alır. Bu sürecin en büyük görünümlerinden bir tanesi, savaş sırasında ortaya çıkan ve savaş bitiminde de uzun yıllar çözülemeyen sans-papiers yani savaş sürecinde kağıtsız, pasaportsuz veya vatansız kalan kitlelerdir. Söz konusu kitleler, baskıcı rejimler altında vatandaşlıktan çıkartılmış, kötü muamelelere maruz kalmış ve Agamben'in tabiriyle çıplak yaşama (bare life) mahkum edilmiştir.

Avrupa'daki yurttaş devlet ilişkisinin çökmesinin bir başka anlamı liberal ve cumhuriyetçi rejimler arasındaki koruyucu-kollayıcı mekanizma farklarının da ortadan kalkmasıdır. Bu anlamda ne mülkiyet rejimine dayanan haklar ne de kollektif anlamda yurttaş hakları insanların can ve mal güvenliğini temin edebilmiştir. Avrupa'nın yeniden inşasının sonucu olarak ortaya çıkan refah devletinin serencamı *welfare state* (refah devleti) ve *warfare state* (savaş devleti) arasındaki dönüşümü de insan hakları soyutlaması üzerinden ve altyapısal olarak emeğin sermaye karşısında yeniden üretiminin sübvanse edilmesi şeklindedir. Bunu yaparken Habermas'ın iletişimsel kuramına dönük bir inşa devam eder. Yıkılan meşruiyet sistematiği içerisinde, insanlar arasındaki eşitliğin ontik temelinin ifadesi ve çeşitli mekanizmalar üzerinden yeniden kurulmaları, Ombudsmanlık kurumu açısından, refah rejimlerinin yapısındaki temsil çatlağının bürokratik aparatlarla kapatılmasına örnek teşkil eder.

Ancak bu yapılırken ortaya çıkan melez kurum olan Ombudsman, Weberyen ideal tip benzetmesiyle ve Schmityen anlamda 'dost' kavramını ve alt anlamıyla kamusal-ortak iyiyi evrenselleştirirken düşmanı da evrenselleştirebilecek kuvvetler ayrılığını bypass eden bir siyasal kararcılığın da temelini hazırlar. Hem yasama ve yürütme hem de yürütme ve yargı arasındaki dengenin kuruluyor görünmesi ve bunun yasanın sözünün tekrarıyla sağlanması, yönetim eliyle siyaset kaynaklı hoşnutsuzlukları teknik bir arızaya indirgemektedir. Balibar ve Arendt'in vurgulamalarından devşirilebilcek *equaliberty* arayışında, egemenliğin refleksinin, egemenliğin meşruiyetini sağlayan rızayı ve onun olmadığı durumu yani hoşnutsuzluğu ve doğuracağı muhalefet imkanlarını tekrar kendi kurucu yasasına yönlendirerek boşa düşürmesinin yolunu açıyor görünmektedir.

Siyasal ve yönetsel alanların birliğinin radikal bir şekilde perkitilmesi, devleti topluma karşı bir momente sokmuştur. Bu anlamda süreç, Clastres'in *devlete karşı toplum* yaklaşımının negatifi olarak anlaşılabilir. Zira kapitalizmin kişiler üzerindeki kontrolü olarak siyaset ve kaynak dağılımı üzerindeki kontrolü olarak ekonomi, ancak siyasal olanın daralması ve belirli pratiklere hapsedilmesi neticesinde siyasal olana dair yegane ortaklığın siyasetin gündelik biçimlerine hapsedilmesiyle süredürülebilir. Aynı şekilde yönetsel olan da bu gündelikliğe kapatılır. Nasıl ki temsili kurumlar sembolik olarak yüceltilmekteyse, yönetsel kurumlar da yüceltilir.

Bu anlatı doğrultusunda egemenin ekonomi dışı zor araçlarını kullanmamasına dönük beklentinin, kural olabilecek istisnaları ile tarihinin yazıldığını görmekteyiz ve sadece adı konmuş faşist ve/veya totaliter yönetimler bunun az bir kısmını oluşturmaktadır. Egemenin meşruiyeti açısından elini güçlü kılan şey işlev ve fonksiyonlarını evrensel bir statüde konumlandırmasıdır. Bu özellik, ombudsmanı özel sektörün ve yerel yönetimlerin de bir çok kademesinde görmemize sebep olan arabuluculuk rolünün gücünün arkasında bulunmaktadır.

Gerçekliğe dair bir saptama ve bağıntı kurulacaksa 'yabancı politiğin' tüm bu ilişkiler ağı üzerinde sürekli dolaşıyor oluşu, ona dair özerklik tartışmalarına da

yeniden bir bakışı sağlayabilir ve Poulantzas'ın devlet ve bürokrasiye dair çözümlemeleri ile Gramsci'nin sivil ve siyasal toplum şemasına da bir bakışı faydalı kılar.

Sonuç

1960'ların eşiğinde olmadığımız aşikar ancak cevaplanması gereken soru, yukarıda zikredilen egemenlik lojistiğinin belli ellerde toplanmasının yani ticaretin ayrı bir uzmanlaşma alanı olmasından bu yana, bir değişim aracı olarak paranın meta yerine geçmesinin sınırları aşması ve belli ellerde biriken ticari karın, 'kamusal' gelirler karşısında yakaladığı avantajın da artarak artmasının bölünmüş/devletleşmiş topluma ikinci belki de kaçınılmaz, zorunlu bir bölünme yaratarak Badiou'cu anlamıyla bizi başka bir varlık olmaya zorlayıp zorlamadığıdır.

Kapitalist üretim ve bölüşüm ilişkilerinin başından beri, maddileştirme ve mistifiye etme aynı anlamlara sahiptir. Bu anlamda paranın veya verimliliğin kavram ve olgu olarak konumları ve kaderleri benzerdir. Dolayısıyla metodolojik ve epistemolojik olarak neo-liberalizmin ortaya çıkmaya başladığı dönemin "bastırılanların geri dönüşüne" sahne olması da tesadüf değildir. Bu çalışmada anlatılmak istenilenlerden bir tanesi budur. Diğeri ise, Marx'ı Kant üzerinden okuyan Karatani'nin tarih ve tekerrür yaklaşımıdır. Burada Tekerrürün olay-içerik değil; biçim-yapı olarak mümkün olduğunu söyler (Karatani, 2013). Tekerrür, bir takım genellikler türetebildiği gibi, tekillikler de üretebilir. Ancak yapılar süreklilik arz eden bir görüntü verebilirler.

XII. Şarl'ın iktidarsız şefi tarihten geri çağırdığından beri, çok şey değişmiştir. Ancak iç ve dış savaşların süreğenliği içerisinde iktidarın bilinen temsilinin girdiği kriz ölçüsünde, devamlılığını dolayım temsillerle idame ettirmesi bakımından değişenlerin niteliği tartışmalıdır. İktidar formunun yaptırım gücü olmayan tekrarları, onu iktidar olarak korumakla birlikte, iktidarsız şef modellerini çoğaltmıştır. Bu husus, iktidarın görünün siyaset ve yönetim mekanizmalarından azade bir yerde

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olduğunun sorgulanmasına ve temsili Demokratik rejimlerin krizlerine dönük bir açının kavranmasına işaret etmektedir. Arendt'in kötülüğün sıradanlığı örneğindeki bürokrat tipi, suç ve yasallığın eşgüdümlüğünü anlatmaktadır. Bu istisnai tespitin, hata ve yasallık eksenindeki karşılığının Ombudsman tipi temsili-bürokratik yapılar olduğunun altını çizmek gerekiyor.

Ombudsman bu noktada temsil edilemeyen ve edilemeyecek olanın karşısında başka bir düzey yahut küme vazifesi görür. Kral ile danışmanları ilişkisinde olduğu gibi ana iktidar grubunun bir dolayım mekanizmasına ihtiyacı vardır. Çünkü Bakhtin'den ödünç alacak olursak karnavalesk bir kurum, burada artık gündelik plebisitleri işletmektedir, denebilir. Önemli nokta ise bunun idari mekanizmalar eliyle yapılıyor oluşudur.

Dolayısıyla karşımızda duran devlet aygıtının işleyişi geçmişle gelecek arasında bir köprü kurma durumundadır. Bu hem geçmişin sorunlarıyla baş etmiş kimi idari ve yargısal çözümlerin işe yarayan taraflarıyla hem de gelecekte devam etmesi olası sorunlara dönük *status quo*'yu devam ettiren, devletin siyasal olan içindeki ya da ona mündemiç durumsal karakterini de anlamamıza yardımcı olabilir.

Devletli topluma geçişin nasılından ziyade, geçiş anına dönük olarak varsayabileceğimiz şey, bir "yabancı politiğin" toplumun anlam borcunu değiştirmesidir. Peki bu sahne, tekrarını, bizzat devlet iktidarı için yapabilir mi? Tezin yola çıktığı sorulardan bir tanesi de bu idi. Aşağıdaki alıntıyla, söz konusu yabancı politiğin ve dolayısıyla Ombudsman temasında aranan şeyi anlatmak aydınlatıcı olabilir:

> Thot figürü, ötekisinin (baba, güneş, yaşam, söz, köken veya doğu, vs.) karşıtıdır, ama aynı zamanda ona ilave olur ve onun yerini doldurur. Thot figürü, tekrar ederek ya da yer alarak eklenir ve karşıt olur. Bu arada biçim kazanır, biçimini hem direndiği hem de yerine geçtiği şeyden alır. Dolayısıyla kendi kendisine karşıt hale gelir, zıttına geçer ve bu mesaj taşıyan tanrı, tam da karşıtlar arasındaki mutlak geçişin tanrısıdır. [...] Kendisini ötekisinden ayırt ederken, Thot aynı zamanda onu taklit eder, onun göstergesi ve temsilcisi haline gelir, ona başeğer ve kendisini ona uydurur, gerekirse şiddet

yoluyla onun yerine geçer. O halde babanın ötekisidir, yerine geçmenin babası ve altüst edici hareketidir. Böylece, yazının tanrısı aynı zamanda hem babası hem oğlu hem de kendisidir. Farkların oyununda kendisine belirli bir yer tahsis edilmesine izin vermez. Hermes gibi kurnaz, ele geçmez, maskeli, komplocu, soytarıdır, bu ne bir kraldır ne de bir vale; daha çok oyuna oyun katan bir tür joker, işe yarar bir gösteren, nötr bir karttır (Derrida, 2014, s. 44-45).

Ombudsman da Thot gibi karşımıza çıkar. Ne kraldır ; ne ne de vale. Jokerdir. İdari ve yargısal temsillerin yerine geçer dahası temsil mekanizmasında, devletle toplum arasındaki dolayım denizinde, can kurtarıcı bir filika olarak belirir. Tıpkı filika gibi, hiç batmayacağı düşünülerek yapılan gemilere konur. Ancak yapılma amacı, geminin batma durumudur. İstisnanın, ön-varsayımsal olarak olağana mündemiçliğinin sembolüdür.

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