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The Violent Law of Human Rights: An attempt to analyze the problematic nexus between law, rebellion, and human rights discourse

JAMM07 Master Thesis

International Human Rights Law
30 higher education credits

Supervisor: Markus Gunneflo
Term: Spring 2021

dedicated to
my mother, Halime Kibar
and to my late father, Abdülkadir Kibar

thank you for the lessons you taught

Preface

Although this preface is long overdue, being able to write this still gives me great pride and pleasure. I believe, it would be appropriate to start with thanking my supervisor, Markus Gunneflo. I appreciate your patience with me. It was a pleasure for me to work with you, you were the one I was impressed by the most during my time in the Lund University. Your critical engagement and unique academic perspective have enlightened me and will be a priceless support for me in the future. Although I haven't had the chance of meeting them in person, I would also like to thank some academics, whose works provided a horizon for me which made this work possible; thank you all; Frédéric Mégret, late Charles Tilly, Norman Finkelstein and Amin Parsa.

Three more specific thanks will go to Julia Schlüter, Can Turgut and Hatice K. When it comes to those lovely days in Lund, of course, Julia! I was lucky enough that you forgot to send your language-proficiency document the previous year causing you to be a classmate of mine. Thank you for your precious accompany during this Nordic journey. Can, you also made this work possible, you were by me to help whenever I writhe. Thank you for all your help. It would be my honor if we cross paths one day as collaborators.

And Hatice, it is not even possible to describe how important your precious presence in my life. Everything would have been lacking without the marvelous support I have gotten from you.

And lastly, I still remember the thrill I felt when I got the email from the university notifying that I have been admitted to the program among almost a thousand applicants. I will carry this pride through my academic career. But your admittance would have not been enough, thank you Swedish Institute for providing me the scholarship which made this Scandinavian adventure possible.

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Abstract

Rebellion is a seldom accomplished attempt aiming to bend the law to counterweight the sovereign power or to overthrow the sovereign in a given legal order. Either way, it contests the boundaries of the law. The thesis at hand aims to investigate the problematic relationship between the human rights discourse, law and the concept of rebellion. For this purpose, while discussing whether a rebellion can claim legality in accordance with international human rights law discourse, this thesis also aims to investigate the shift which notion of human rights has undergone in its relationship with the concept of rebellion.

In order to scrutinize and apprehend the notion of rebellion within international human rights law discourse in the thesis, this study is divided into three main parts. In the first part, a working definition for the concept of rebellion has been set, and the integral *sine qua non*-components of rebellion is defined. Therefore, the term rebellion is defined precisely and coherently while being differentiated from other social and political movements. In the second part, four different positive legal documents from the 18th century were compared to the modern international human right law sources in the context of rebellion, and the legal and contextual differences amongst these legal documents are ascertained. With this comparison, it is claimed that the concept of rebellion was deliberately obliterated and discredited in the modern international human rights law discourse. In the fourth and last main chapter, in light of the findings from the first chapters, modern international human rights law's approach towards the concept of rebellion were evaluated in the context of the law, violence and justice as they are discussed in the article by Walter Benjamin named *Critique of Violence.*

It has been concluded that rebellion, as a concept, can never claim legality under the current understanding of the contemporary international human rights law discourse. However, it is argued that a legitimate rebellion could be defined if and only if the correlation amongst justice, violence and law is purely displayed. Consequently, it has been asserted that rebellion as a concept should be considered as a norm which is deeply rooted within the human rights idea and that the idea of human rights can only preserve its aim through this assent. The thesis is concluded by claiming that the shift in the positioning of the human rights notion, which is a highly comprehensive notion, regarding the concept of rebellion has resulted in an ontological change within the human rights concept itself.

Öz

Ayaklanma, kurulu bir hukuk düzeninde egemen güce karşı bir denge unsuru olmayı veya direkt egemeni alaşağı etmeyi hedefleyerek hareketlenen ve doğrudan bir başarıya nadiren ulaşan bir teşebbüs halidir. Bu açıdan, hukukun sınırlarıyla mücadele hali ayaklanma kavramının muhtelif görünümlerinde mevcuttur. Elimizdeki bu tez; insan hakları söylemi, hukuk ve ayaklanma kavramları arasındaki muğlak ilişkisiyi irdelemeyi amaçlamıştır. Bu amaçla, bir ayaklanmanın, uluslarası insan hakları hukuku ve bu hukukun ürettiği söylem üzerinden meşruiyet iddia edip edemeyeceğini tartışırken bir yandan da insan hakları kavramının bu ilişki içerisinde ve sürecinde maruz kaldığı değişimi irdelemeyi hedefler.

Bu tez, uluslarası insan hakları hukuku bağlamında ayaklanma kavramını düzgün bir zeminde tartışmak için üç ana bölüme ayrılmıştır. Birinci bölümde, ayaklanma kavramının sınırlarını belirlemek, bu kavramı belirli bir düzlemde tartışmak için bir tanım oluşturulmuş ve hukuki bağlamda olması gerektiği düşünülen kurucu unsurlar belirlenmiştir. Böylelikle, diğer benzeri politik ve/veya toplumsal hareketlerden tanım olarak ayrıştırılması sağlanmıştır. İkinci ana bölümde 18. yüzyıldan dört farklı hukuk metni modern insan hakları hukuku metinleri ile ayaklanma kavramı bağlamında kıyaslanarak tartışılmış, böylelikle metinler arasındaki temel farklılıkların ortaya konulması hedeflenmiştir. Bu kıyaslama neticesinde, ayaklanma kavramının modern insan hakları hukuku metinlerinde bilerek ve isteyerek daraltıldığı ve hatta ilga edildiği ve tedricen hukuk perdesinden çıkarıldığı öne sürülmüştür. Dördüncü ve son ana bölümde de ilk bölümlerden elde edilen bulgular ışığında modern insan hakları hukukunun ayaklanma kavramına yaklaşımı; Walter Benjamin'in Şiddetin Eleştirisi Üzerine isimli makalesinde tartıştığı hukuk, şiddet ve adalet bağlamında değerlendirilmiştir.

Neticede, herhangi bir ayaklanmanın, modern insan hakları hukuku bağlamında herhangi bir hukukilik iddia etmesinin mümkün olamayacağı sonucuna varılmıştır. Buna karşılık; hukuk, şiddet ve adalet kavramları arasındaki ilişikinin sarih bir biçimde açığa çıkarılması halinde, herhangi bir ayaklanmanın meşruiyet iddiası doğabileceği ileri sürülmüştür. Daha da önemlisi, ayaklanma kavramının insan hakları fikrinin temelinde var olan bir kaide olduğu ve insan hakları fikrinin taşıdığı iddiayı ancak bu ön kabulle koruyabileceği iddia edilmiştir. Bu tez, kapsamlı bir fikir olan insan hakları kavramının, ayaklanma kavramı karşısında aldığı pozisyonun süreç içerisinde değişimi neticesinde ontolojik bir değişime uğradığı iddiasıyla sona ermektedir.

List of abbreviations

ACHPR	African Commission on Human and Peoples' Rights
ACHR	American Convention on Human Rights
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IHL	International Humanitarian Law
IHRL	International Human Rights Law
NATO	North Atlantic Treaty Organization
UDHR	United Nation Universal Declaration of Human Rights
UN	United Nations
UNGA	United Nations General Assembly
UNSC	United Nations Security Council

1. Introduction

-Tvätta dina tårar och spegla dig i din likgiltighet (...)
-Tyst... tyst.
-Jag ska vara tyst. Men under protest!
Ingmar Bergman / Seventh Seal, 1957

1.1 Background

Radical changes regarding the existing legal order can only emerge when the consensus for the preexisting order has been challenged. Consensus in and of itself is a concept that is difficult to achieve and easy to reject. That is the reason why an idea such as consensus has to contain very strong deontological bases rooting from the concept of sovereignty. As a complement to the notion of consensus, similarly, sovereignty has a strong claim in itself, according to Carl Schmitt, *the sovereign is he who decides on the exception*.[1] Juxtaposing these leads one to think of a sovereign entity that is capable of deciding what falls out of the normative consensual order in a given society. Therefore, thinking about rebellion, in relation to law (which is one of the fundamental apparatuses of the sovereign) and with the sovereign who is capable of suspending the law in order to protect the law and itself would not be enough. Rebellion, in itself, has to bear something more to create an extra-legal base to establish an *de facto* legitimation.

This study focuses on the notion of rebellion as one of fundamental form of contentious public politics and a constant part of human existence. In this research, the benchmark of the observation will be the ambiguousness of the notion of rebellion, thereof the critique and evaluation of the thesis will take place around this notion. This notion will be comparatively assessed by defining it, situating it in its historical context, as well as by explaining how the international law[2] apprehends it today. The thesis at hand will show that it is impossible today to acknowledge the right of rebellion as a fundamental *human right*. Further, it is going to be demonstrated that international human rights law (IHRL) is not designed to recognize any act of rebellion as legal under the contemporary IHRL discourse. However, it will be asserted that rebellion, when it is necessary, ought to be accepted as, if not a *legal*, a *legitimate* idea that has

[1] Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* (George Schwab tr, London and Cambridge, Massachusetts: MIT Press 1985) p. 5. For a further reading exception&sovereignty correlation, please see, Agamben, Giorgio, *State of Exception* (Attel K tr, University of Chicago Press 2005).
[2] I consider international law here in a broader sense that includes international criminal law, international human rights law, international humanitarian law, etc.

inherently been embedded in human dignity, which is the foundational notion of the doctrine of human rights idea.

To support this claim, it will be argued that this legitimation claim might have emanated directly from the general principles and norms that are laid out to constitute the authority of modern IHRL in its current use. Therefore, *a priori*, it is a justifiable concept, even if it carries some contradictory baggage in the face of hegemonic preservation goals of contemporary domestic legal orders. Subsequently, it will be claimed that the contemporary IHRL-with regard to the notion of rebellion has arrived to, if not intentional, a hegemonic and state-centric approach, which protects the *status quo*, and provides a comfort zone for sovereigns to enjoy their everlasting power by utilizing the claims of sovereignty while generating different varieties of *law-preserving* violence upon their subjects. In other words, the claim of lack of the recognition of rebellion, as a concept, in any level would cause the contemporary IHRL regime to be at variance with its own founding roots, and it thus creates different varieties of contradictions with its very own founding claims.

1.2 Review of Relevant Literature

To prepare for this research, initially a literature review that would shed light on the prospects of the inquiry was conducted. Even though there is a wide range of research that is targeted to the analysis of the rebellion from different perspectives, there are not any specific body of legal scholarship focusing on this enquiry within its bare argument. Therefore, this subject is chosen since it is arguably one of the under-researched areas of the IHRL corpus. Hereby, it was deemed necessary to look for various researches of scholars from different disciplines, whose topics are similar to the mainline arguments presented within this research, to fully comprehend the relation between theories and their respective products. It was concluded that these studies have several common inclinations to the notion of rebellion.

Firstly, what is often done regarding this topic is either evaluating it from the political theory perspective by applying the *just war theory* as a legitimate cause or trying to conceptualize it as a human right[3] by means of *natural law* & *natural rights theory.* Even though conceptualizing this idea by natural law is a reasonable way to assert such a claim in legal studies, without disclosing the deficits of the contemporary IHRL regime on the notion of rebellion, it is doomed to be a slender claim within IHRL discourse. Furthermore, they are

[3] Often as a Right to Resist instead of Right of Rebellion. I consider these two notions of being different and should be respected accordingly, *see infra*.

disregardful to the shifting dynamics of the notion of rebellion and its transforming legal and political objectives.

Secondly, relevant literature being produced by legal scholars analyzing the relationship between law and rebellion is focused and limited to the narrow analysis of catastrophic cases which had occurred in the past, thus generally produces justification arguments retrospectively.[4] From the same point of view, Frédéric Mégret stresses that "*it is hard to imagine that a right to resistance could emerge as little more than a retrospective historical footnote*."[5] There is a general pattern within the works of these scholars that considers and conceptualizes rebellion only as a justifiable mean to avoid certain catastrophic ends. Therefore, it leads to set up necessary conditions for the sake of case-by-case justifications. However, the reasonings of these scholars are disregarding the core legal problem and are understating the general framework that conditions the use of rebellion to a certain justifiable end. Therefore, it is my observation that those who barely might consider rebellion as a justifiable act under very certain circumstances, have common approaches for such justification which require a long list of criteria that has been set by an *extra-legal* legitimation base.

In short, there is a remarkable amount of work about rebellion and resistance movements, particularly about the contemporary possibilities of them, but it appears that there are two major gaps within this scholarly tradition. The first is, their claims have neither the sufficient basis to be used as a fulfilling legal argument, nor are built upon a historical legal controversy. Secondly, they were inattentive to the contemporary challenges that this notion might face today within the broader framework of contemporary international law. Therefore, by maintaining a critical attitude towards the above-mentioned scholarship, this research is geared to show the broader scheme within the legal sphere that involves and appreciates different perspectives had been previously brought.

In the argumentation part of this research, it is aimed to bring a multi-angular assessment to the notion of rebellion which is considered to be one of the most important patterns of the notion of law in general. It is believed that understating the legal importance of the notion of rebellion would cause several undesirable consequences in the contemporary international legal theory and practice. It can be argued that regarding the discussion of the

[4] Such as possible rebellions could have been justifiable in the course of the Srebrenica Massacre or Nazi Germany.

[5] Frédéric Mégret. *Beyond "Freedom Fighters" and "Terrorists": When, if Ever, is Non-State Violence Legitimate in International Law?* at.26

notion of rebellion, the connection between the factual situations in the world and the legal consequences of these factual situations had been poorly demonstrated and misinterpreted. In order to prevent the possible ambiguity in *the law*, law itself-including international and domestic-has to maintain its correlation between its own legal framework and factual situations in the world. Therefore, I believe-and hope-that my proposed thesis in this regard will compensate for a respectable gap in the given literature and will be a valuable resource to comprehend and explain the importance of the notion of rebellion.

1.3 Structure & Methodology

By situating law as a distinct phenomenon that is derived from a set of social processes that are embedded in historical and political contexts, I benefit from the new legal realism movement to see how legal culture, legal consciousness, legal norms, and ideas are transferred from the factual situations to the legal-sphere.[6] It can be claimed that the formation of modern law is a result of the multilayered social processes that are embedded in historical and political contexts. Numerous variables are closely related to these processes, and they all depend on and compete with each other to constitute our current understanding of the established law. It could be argued that social movements and the notion of rebellion have the most observable effect on improving the concept of law and humanizing the law and legal institutions.

Furthermore, in line with the inclination of critical legal theory, it is intended to interrogate how the notion of rebellion relates to the broader structure of international law in a multi-disciplinary perspective. In this regard, political theory plays a respectable role here since one of its main research areas pay close attention to the formation of states, elaborating components of a legitimate-state, designating thresholds of just war and, if ever, legitimate non-state-actors-violence. Therefore, this multi-disciplinary approach along with critical legal theory would enable this research to posit the notion of rebellion properly within the related IHRL theory.

The subject of this research is interrelated to three main chapters, which all depend on and complement each other to define the direction of the research outcome. With an introduction and a conclusion chapter, this research will consist of five chapters, and it has been cumulatively constructed in order to get elicited findings progressively and gradually.

[6] Sally Engle Merry, *New Legal Realism and the Ethnography of Transnational Law*, 31 Law & Soc. Inquiry 975 (2006). pp:975

After the first introductory chapter, the theoretical framework of the research will be elaborated in the second chapter by building a working definition to the notion of rebellion which subsequently allows this study to discuss the notion of rebellion in reference to the norms and concepts that are detailed in the second chapter. For this reason, the second chapter will prioritize to locate and apprehend essential components of rebellion in order to put forward a suitable working definition for the notion of rebellion itself in the first place. Accordingly, three main *sine qua non* components have been set to define any action as an act of rebellion. The main elements of the working definition, which has been detailed in the second chapter as possessing specific demands, resorting to violence and heading toward sovereign authority are three designated integral components of any act of rebellion.

Thus, these three main components of rebellion also allow it to be differentiated from other contentious public politics, such as the notion of resistance, protests, civil disobedience as well as terrorist actions. Therefore, it will be clarified that under which criteria the notion of rebellion can be separated from other similar notions. The theoretical framework of the research will be constructed upon these components as reference points, thereof it will allow this study to apprehend and elaborate on other subjects in the ensuing chapters. Subsequently, this thesis will situate its own approach to the notion of rebellion within this wider literature parallel to its own findings. Situating the notion of rebellion into the realm of the IHRL corpus at the end of this research requires a clear categorization of related notions. Thus, the descriptive method will generally be applied in the second chapter.

In the third chapter, the main focus will be on the selected legal documents which had ratified the term of rebellion explicitly or implicitly. Along with the working definition of rebellion which had been defined in the second chapter, these legal documents will be analyzed. These selected documents are; United Nation Universal Declaration of Human Rights, 1948; the French Declaration of the Rights of Man and of the Citizen, 1789; the American Declaration of Independence, 1776; the Constitution of Maryland, 1776; and the Virginia Constitutional Convention, 1776. The UDHR has been selected among others from the contemporary era of the IHRL due to it being the only contemporary IHRL document which mentions “rebellion” in its own context as well as it has long been considered as one of the most fundamental moral source of the IHRL. The other documents which have been selected in this inquiry regarded as fundamental legal documents not only because they were both preceding and groundbreaking legal documents with respect to their times, but also because they still shed light on contemporary IHRL discourse from many aspects. On account of this

correlation, the UDHR and other historical legal documents become important components of this research.

Subsequently, these legal documents will be compared in order to reveal how a rebellion has been established within their legal context. The fundamental aim of this comparison is to sharpen the conceptual differences between the UDHR and other legal documents in order to unveil distinct and noticeable differences when it comes to ratifying and phrasing rebellion. Through analyzing documents; the conditions, means and ends for a legal rebellion will be examined in order to set forth these differences among these legal documents. Moreover, in line with the findings from the second chapter, these selected documents will be critically analyzed in terms of how they relate themselves with the components of the working definition of rebellion and other forms of contentious public politics. Hence, comparative and textual analysis (hermeneutic) method will be applied in the third chapter.

Lastly, the fourth chapter will seek to articulate possible answers of four major questions. The first question is, could a rebellion claim legality and consider itself legal when taking into account the IHRL regime and particularly preambular paragraph three to the UDHR? When taking into account the very strong consensus in selected historical legal documents which indubitably shows that they consider the right of rebellion is an inalienable human right, what are the possible legal and political factors causing the contemporary IHRL project to obliterate the human right of rebellion? The third question will thus be whether it is possible to consider a rebellion as, if not *legal*, *legitimate*? The final and the main question which this research initially is dedicated to comprehend is how the notion of rebellion could be situated in the realm of the IHRL?

On account of the case that if the law does not emphasize or enact a circumstance within positive legal instruments, it is inevitable that the case would not reach a proper conclusion if the discussion merely resides within a positive assessment of legal documents. The claims with respect to differences between being *legal* and *legitimate* or assertions which differentiate the points between *legality* and *legitimacy* have to involve different approaches to motivate reasons for such claims. The research refers to Walter Benjamin's *Critique of Violence* at this particular point since it would be impossible to understand the inquiry of the thesis unless the correlation amongst justice, violence and law is unfolded and displayed.

Walter Benjamin considers the unveiling of this correlation as the task of a critique of violence.[7]

Since the objective of this work is to clarify the position of the notion of rebellion in the context of the contemporary IHRL regime, the dichotomy phrased by Walter Benjamin is deemed useful and relevant to explain the inherent violence embedded in law by dismissing and undervaluing the concept of rebellion. While the emergence of modern human rights regime will be situated within a framework akin to Benjamin's understanding of the law, it will be useful to analyze the rupture points in the international law and international humanitarian law through the concepts of *law-making* and *law-preserving* violence.

At the end of this thesis, it will be argued that the IHRL's current understanding and conceptualizing of the notion of rebellion is inaccurate and causes a contradiction with its own founding root which may cause a shift in the understanding of human rights discourse. However, an argument regarding possible legitimate rebellion is not an easy claim to uphold as it has to struggle against the principle of sovereignty itself. Since the sovereignty belongs to sovereigns which are capable to *suspend the law* and *decide on the state exception,*[8] it is no surprise that rebellion is seen as a threat to this foundational principle of the state-centric international law regime. Taking this defense seriously, this thesis intends to re-conceptualize the notion of rebellion within the scope of human rights discourse to show that the contradiction is merely constituted and presupposed. A proper legal argumentation with respect to the claim of legitimate rebellion can only emerge at the expense of understanding the very core idea of law, its foundational elements and its *raison d'etre.*

[7] Benjamin, Walter. 1978. *Critique of Violence*. In Reflections: Essays, aphorisms, autobiographical writings, ed. Peter Demetz, 277–300. New York: Schocken Books. at 277

[8] SCHMITT, *supra* note 1, at 5.

2. Rebellion as a form of Contentious Public Politics

2.1 Forms of Contentious Public Politics

In order to situate the notion of rebellion coherently into its proper ground, it is an initial necessity to scrutinize the wider umbrella which the notion of rebellion belongs to. The notion of *contentious public politics*, which had been phrased by Charles Tilly in his book titled *the Politics of Collective Violence*,[9] has been chosen to define that larger ground in which the will of the dissident people at large forming a public action can be found. To him, contentious politics consist of discontinuous, public, collective claim making in which one of the parties is a government.[10] It has been defined by him as *contentious* because participants are making claims that affect each other's interests and as *politics* since relations of participants to governments are always at stake.[11] And it is *politics*, because people do struggle for power along with efforts of collective claim-making. The term contentious public politics vary in forms, and different variety of public politics such as protests, demonstrations, assemblies, rebellions, and social movements may reside within this notion. In other words, contentious public politics are the attempts that may be formed in different shapes and ways to counterweight to oppressive power which is considered by dissenters as a source of a wide range of scourges. Further, in Tilly's reading, contentious politics consist of a larger subset of public politics in which collective contention involves; among others, rebellions, revolutions, social movements, protests, demonstrations, general strikes, and contested electoral campaigns.[12] These terms have long been used interchangeably among people without a deliberate intention. Since it is one of the prominent aim in this study to terminate such ambivalences among these terms, a set of conceptual tools will be adopted to determine precisely these notions in this study. This determinacy, therefore, would provide a proper discussion space which will be held in the remainder of the thesis.

2.1.1 Defining the Concept of Rebellion

Considering the fact that scrutinizing the notion of rebellion in detail and locating it into the proper ground within the international human rights law realm is the fundamental object in

[9] Charles Tilly. *The Politics of Collective Violence*. Cambridge University Press, 2003.
[10] *Id*. at 9.
[11] *Id*. at 26.
[12] *Id*. at 30.

this thesis, it necessitates this study to bring an in-depth evaluation over the term here in this section. In order to create a space for discussion of this concept, a working definition to the concept of rebellion must be brought to materialize the way the term is being interpreted in this study. Hereby, it would become possible to compare said term along with other forms of contentious public politics. This section is, therefore, dedicated to provide the working definition for the concept of rebellion and to scrutinize its core components.

To begin with, it would be reasonable to start by summarizing the working-definition brought in this study by aligning the *sine qua non*-components as it is the argument that the sole combination of said components in a particular time would constitute a rebellion. *Resorting to any form of violence, heading toward sovereign entity as the target* and *possessing specific demands* are the three main components which the combination of them would constitute the notion of rebellion, making this notion separable from other forms of contentious public politics. In other words, by means of these components, the notion of rebellion will be easily differentiable from social movements, resistances, mass protests, demonstrations, etc. Introductory answer to these fundamental problems will lay out the basic foundation to understand the purpose of this thesis as well as will clarify the debate around key concepts.

On the other hand, it is worth mentioning that debates located amid the notion of rebellion, which is a highly controversial topic, often involve numerous disciplines to take the stage. Hence the debates and research regarding the term rebellion need to entail an interdisciplinary approach to scrutinize this selected topic. It is therefore believed that it would be beneficial for this research to have situated its approach mostly within the intersections between political theory and Int'l law. Despite its weaknesses in respect to legal argumentation, the notion of rebellion has been discussed relatively more in political theory than it has been discussed in the realm of international law. In addition, it should initially be distinguished that there are two approaches often held by political theorist and legal scholars with regard to defining the concept of rebellion; on the one hand, scholars consider the concept of rebellion as an extreme form of resistance movement, therefore connect the term with the notion of resistance,[13] while others believe that these two concepts are separate from one another and should be evaluated as such.[14] A position with regards to this binary approach should be taken before any deep scrutinization is conducted. In this regard, the concept of rebellion will be

[13] Yulia Razmetaeva. The Right to Resist and the Right of Rebellion. in: Jurisprudence. 2014, 21(3): 758–784. at 778.
[14] Christopher Finlay, (2015). *Terrorism and the Right to Resist A Theory of Just Revolutionary War*. Cambridge University Press, ISBN 978-1-107-04093-9. at 42.

considered in this thesis as a separate concept, thereof has to be scrutinized accordingly. The reason behind why rebellion should be separated from resistance will be detailed, *infra*.

2.1.1.1 Detailing the Working Definition of Rebellion

> *"The law's interest in a monopoly of violence vis-a-vis individuals is explained (...) by the intention of preserving the law itself; that violence, when not in the hands of the law, threatens it not by the ends that it may pursue but by its mere existence outside the law."*[15]

As Benjamin has clarified strictly, sovereigns are inclined to monopolize violence by the intention of preserving the *law* itself. The law, in this sense, could be institutionalized as a public order, government, sovereign entity and so on. In evaluating the term violence, some scholars made a distinction between *force* and *violence* by arguing that force consists of legitimate short-run damage and seizure–which typically means that the persons who administer the damage enjoy legal protection for their actions, conversely violence refers to damage that does not enjoy legal protection in this regard.[16] Evaluating these two together would lead one to apprehend the difference as based on (legitimate) force and (illegitimate) violence. In this regard, violence monopolized by the *law* becomes to be called *force*, while others will continue to be *violence* due to its mere existence outside the law.

It is therefore clear in this research that when an action is described as violent, it is not considered in a narrow sense but brings a broader framework to decide in which respected action is located. Therefore, when a contentious public politics is considered as violent or resorts to violence in the course of the realization of respected politics, it is not directly meant to be as harmful to what there is around, damaging to the property, or that it kills people, but it is considered violent merely because the politics in question exists outside the *law*.

What is, therefore, the scope of the law, what is the edge of it and how the line in question has been drew? Considering the violence itself can clearly be seen in sovereignty's very foundation since "the modern state makes war and is made by wars"[17] States are inclined to do what they have always thought they must *legally* do; monopolizing the violence apparatus.[18] It is widely presupposed and accepted that the political authority, which often

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[15] BENJAMIN, *supra* note 7, at 281.

[16] CHARLES, *supra* note 9, at 73.

[17] Kardeş, M. Ertan (2019). *DISORIENTED WARS AS A LIMIT PROBLEM OF POLITICAL PHILOSOPHY PHILOSOPHY* in: Armagan Öztürk, Murat Satici. Living Together, Discourses on Citizenship in Turkey. At, 92.

[18] Charles Tilly. *Coercion, Capital, and European States, Ad 990-1992*. Cambridge, Mass: Blackwell, 2015. Print. at 69

carries sovereignty claims, barely holds power to determine whether certain violence is legitimate. Moreover, that political authority itself, which is often stated in the form of government, is considered the only legitimate actor which monopolizes the legitimate violence.[19] All sovereign entities in this respect monopolize extensively over concentrated means of violence in the form of arms, troops, guards, and jails to maintain what their rulers define as public order.[20] One of the areas which the sovereign has powerfully presented itself is the domination it has established over legal violence. Due to this domination, concerning the exercise of violence, legitimate authority is *de facto* sovereignty, and is therefore the sovereign entity. As Schmitt describes the notion of sovereignty as something able to *suspend the law* and *decide on the state exception,*[21] apprehending sovereignty in this respect would thus allow us to apprehend the scope of the law, therefore its edges. In the framework of this research, Schmitt's definition may be updated by claiming that sovereign is also an entity that has the power to turn *violence* into *force* when taking into account the *law* regarding which particular forms of violence it chooses to sponsor, tolerate, reckon, and therefore legitimate.

Evaluating the case from this point of view would allow us to reach the conclusion that contentious public politics often generates violence, although do not shed blood. The particular point when they take a violent turn, therefore, would be the time when they contest the limits of law in a given context. To sum up, the concept of rebellion is definitely a violent act, and hereby has to resort violence in its formation.

As it has been said, another component of a working definition of the concept of rebellion is that the violent action in a rebellion has to head toward a sovereign entity. However, contentious public politics might form its agenda toward various entities, differing from one form of politics to another. It differs mostly on the grounds of their intended and selected ends. But when it comes to rebellion, the only entity that the rebels have to reckon with is the sovereign entity. So, how sovereignty that usually embodied in the form of the political regime can be defined? According to Tilly, the whole set of all interactions that took place among organized political actors and established government would constitute a political regime.[22] A regime in this respect has a broader framework that contains; agents of governments, polity members who have routine access to constituted political actors,

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[19] Hanke, Edith, Lawrence Scaff, Sam Whimster, and Andreas Anter. "*The Modern State and Its Monopoly on Violence.*" The Oxford Handbook of Max Weber, Oxford University Press, February 11, 2019.
[20] CHARLES, *supra* note 9, at 27.
[21] SCHMITT, *supra* note 1, at 5.
[22] CHARLES, *supra* note 9. at 28.

challengers who are lacking that routine access to constituted political actors, subjects which are persons and groups who live under the regime, and outside political actors such as other governments.[23]

In this regard, a sovereign entity often takes the form of an established political regime. Hereby, a sovereign entity might appear in a wide range that may contain law enforcement agencies, ministries, governments, or a person holding the power to govern, parallel to the connection of how they legitimize their power when they resort to it. Therefore, the concept of rebellion has to be formed and organized against one of, or several of, or all forms of power emanating directly from the sovereign entity.

Last but not least, having demands in a very specific form are the most distinctive components of the concept of rebellion, and such demands in question can only be formed in two different ways that differ by their level of intensity. Accordingly, the weaker demand anticipates a very radical changes in the current legal order in a given context, and the other one intends directly to abolish the legal order itself to establish a new one. Therefore, the concept of rebellion should aspire either to altering the existing legal order in a most certain way *or* abolish and thereby establish a new legal order, respectively.

To illustrate, "Ash-shab yurid isqat an-nizam"[24] was the first and by far the most famous political slogan which has been used frequently amongst dissenters in the course of the Arab Spring uprisings that have spanned over two continents, toppled three regimes and involved millions of people.[25] As it is clearly specified in this slogan, dissenters of Arap Spring had had certain and a very specific demand—to topple the regime. Rebellion movements have to set their own intended ends through their demands. Those specific demands as a component of the concept of rebellion would allow one to differ rebellion from other forms of contentious public politics, wherefore rebellious action has to bear certain and particular demands in itself. In this respect, any contentious public politic which does not possess this particular kind of demands would thus not be considered as rebellion even if that demand is headed towards a sovereign entity along with violent means, which are the other components of a rebellion.

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[23] *Id*. at 29.

[24] People demand to topple the regime / الشعب يريد إسقاط النظام

[25] The Arab Awakening, in:https://www.aljazeera.com/indepth/spotlight/aljazeeratop102011/2011/12/20111 22619534967270.html (Accessed 20th of May 2020).

2.1.2 Social Movements

Social movements is the foremost vague term as well as being the term that have been used most interchangeably among other forms of contentious public politics considering the fact that any action held by a group of people is labeled with this term by the people lacking a comprehensive approach to it. Such a reading paves the way for the term social movements to be in ambivalence in legal and political debates and thus causing the term to often intersect and frequently overlap with other similar notions. The forms of contentious public politics that might be protected by the IHRL regime are generally recognized as social movements by some scholars. The term will be elaborated in this section in the way in which how scholars define and conceptualize it, thus illustrating the relation among the terms social movement, rebellion and contentious public politics. This also will help to clarify the theoretical differences between rebellion and social movement thus will set the reasons why rebellion has not been regarded in this study as a form of social movement, even though the terms in question share a common basis, which is important for the inquiry of this thesis. The fundamental reason why the term social movement would not be adequate to encompass the concept of rebellion is because the term social movement has been invented in 1850[26] to describe certain situations which are not inclusive of the notion of rebellion.

To begin with, Charles Tilly defines social movements as an invented political form; which is inclusive of organizations that are composed of various strata of society such as workers, women's groups, students, youth and the intellectual component that will be bound together by one common grievance which in most cases will be the commonly perceived as lack of democracy in a specific political setting.[27] To him, social movements are a distinctive form of contentious politics in the sense that it involves the collective making of claims that possibly be in *a conflict with someone else's interests*.[28] In his reading, social movements link at least three parties: a group of self-designated claimants, some object/s of claims, and the public of some kind and only further interactions among these three would constitute a social movement.[29] From this point of view, it is not a precondition for the claim to target governmental officials, but the claim may direct to a wide range of targets such as owners of

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[26] Stein, Lorenz von (1959): *Geschichte der sozialen Bewegung in Frankreich von 1789 bis auf unsere Tage.* Hiledesheim: Georg Olms. *See Also*, Tilly, Charles. Social Movements 1768-2004. Paradigm Publishers, Boulder London. at 5.
[27] Tilly, Charles. Social Movements 1768-2004. Paradigm Publishers, Boulder London. at 1.
[28] CHARLES, *Id.* at 3. *See Also*, McAdarn, Doug, Sidney Tarrow, and Charles Tilly (2001): *Dynamics of Contention.* Cambridge: Cambridge University Press.
[29] CHARLES, *supra* note 27, at 4.

the property, religious functionaries, and others whose actions or failures to act significantly affect the welfare of many people.[30] Evaluating the case from this perspective, the first distinction would be that the social movements have a more array of options to choose their target to lodge their claims, whereas the concept of rebellion has to head toward holders that enjoy sovereign power.

Jasper defines social movements as sustained and intentional efforts to foster or retard broad legal and social changes through informal institutional channels that are often not endorsed by authorities.[31] Mario Diani, on the other hand, proposes another angle to this debate in which he defines a social movement as a distinct social process engaging collectives to act through different mechanisms.[32] Further, he singles out three-elements which the combination of would constitute a social movement, involvement of collectives in a conflictual relation with an identified opponent, dense informal networks and sharing a distinct collective identity.[33] Conversely, Goldstone suggests one should turn away from "laws" of social movements toward causal analogies and connections between distinctive aspects of social movements and other varieties of politics in order to apprehend social movements as political structures that produce change, variation, and salient features of said political structures and processes.[34] Holders of this approach suggest that identifying the opponent with a dense claim is a distinctive element in defining social movement. In his reading, Amir Parsa states that a movement without a clear target cannot be considered as a social movement in this sense because it fails to create the conflict to demand a change from a specific interest group that may resist the change because of its own interests.[35] On the other hand, although social movements bring one's mind the labour movement, and the Marxist theory of class struggle and class consciousness, the "new social movement" approach offers a new understanding of the content of social movements and argues that a homogenous cause of action is losing its relevancy in the contemporary context.[36]

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[30] *Id*.

[31] James M. Jasper. *Protest: A Cultural Introduction to Social Movements*. at 15

[32] Amin Parsa. *Evils of Law, Ethics of Violence: A Look on the Derogatory Nature of the Right to Freedom of Assembly*. 2011. at 14. *See also*, D. Della Porta & M. Diani, *Social Movements: An Introduction* (Blackwell, Malden, MA, 2006), at 20.

[33] PARSA, *supra* note 32, at 9. *See also*, D. Della Porta & M. Diani, *Social Movements: An Introduction* (Blackwell, Malden, MA, 2006) at. 20.

[34] CHARLES, *supra* note 27. *See Also*, Goldstone, Jack A. (2003): "Introduction: Bridging Institutionalized and Noninstitutionalized Politics." In Jack *A*. Goldstone, ed., *States, Parties, and Social Movements*.

[35] PARSA, *supra* note 32, at 9.

[36] *Id*. at 10.

Therefore options may vary on the grounds of its ends, means and condition in realizing a social movement.

To sum up, the term social movements is an invented term in the 19th century to define a wider umbrella in which some forms of collective actions in the form of contentious public politics can be found. With respect to setting the boundaries of the term, there are much shared approaches coming from different scholars who have long been working on this subject. Therefore, it can be drawn that targeting the identified opponent along with an intensified claim by people would allow one to distinguish a social movement. However, this does not necessarily mean to contain all forms of contentious public politics since the fact that the level of intensity of the means lodged and the claim brought to the target in the course of social movement may vary. To illustrate, some peaceful protests and destructive revolutions may together be recognized as a social movement in this regard as long as they do contain a target headed toward with a clear claim.

2.1.3 Resistance

As the concept of resistance has been generally used together with or instead of the concept of rebellion, it would be useful to describe resistance as well to differentiate it from the concept of rebellion. The concept of resistance is a form of retroactive action attempting to undo something which has already been done by a third party before in time or to attempt to regain a regular situation that has been interrupted by an ongoing action taking place. The action can be taken by a single person or a group of people. Therefore, it is a matter of retrieving something retrospectively, and it frequently invokes softer demands.[37] For example, resistance can be formed against unnecessary intervention of a public assembly by law enforcement officers or against certain factual situation such as arbitrary detention.

Resistance against foreign occupation could be given as another example which also creates an exceptional situation in terms of resistance movements. In this particular circumstance, people who engage in resistance would have been in a position in which they refuse the *de facto* legal order of occupation power, thus refuse to obey it accordingly in a given context. The reason why resisting against an occupation power should not be considered as a rebellion is that the predominant intention and the end invoked people want to get is not to alter the legal order in a given situation but *undo* the occupation and *regain* their former legal

[37] *Please See,* Edward Rubin (2008). *Judicial Review and the Right to Resist,* 97 GEO. LJ. 61, at 67.

order back respectively. Hence it would be suitable to define such a movement as a resistance movement instead of rebellion.

On the other hand, non-violent resistance movements would be another exceptional situation that may also exemplify the diverse possibilities of actions found within the resistance movements. In this regard, civil disobedience as a form of resistance can be evaluated. Civil disobedience is an option that necessitates neither violence nor specified demand but still is considered as an act of resistance. From this point of criteria, the concept of rebellion can be dissociated from the concept of resistance as resistance often has a more diverse array of motivations. The fundamental point here is despite some exceptions, a resistance often involves people staying within, comply with and act accordingly to the legal order in a particular place. However, when it comes to rebellion, the legal order is generally being refused, and attendees often demand to alter something belonging to a sovereign entity in order to achieve their particular ends.

2.1.4 Protests

A protest is the most visible form of contentious public politics in everyday life. In protests, people take actions aiming to make publicly known their disapproval regarding a particular case. Therefore, the intention in protests surpasses the actions that are held or the structure formed by the protest. However, there is an array of different activities and means that possibly can be taken in the course of a protest. A protest might collect a group of people around it to form a movement, as well as a single person can pursue their action in the form of a protest. In accordance with a wide range of actions, there are different varieties of means that can be resorted in the course of protests. In this respect, protests can structure themselves as a social movement in parallel to complying with the criteria has been elaborated in the respected section detailing the social movements. Notwithstanding the fact that protests often invoke peaceful actions to be taken, there are ways for people to protest all by themselves, in dramatic acts that others cannot ignore, such as hunger strikes or self-immolation.[38] Therefore protests can be categorized as the actions of intentions rather than ends. They provide different varieties of entities with the intention of targeting without a clear expectation of change. What matters in this regard is that showing the disapproval against a given situation.

On the other hand, it should also be noted that ECtHR has established in its case-law the term mass-protests when examining the right of assembly in particular cases. In the Guide on

[38] JASPER, *supra* note 31, at 15.

Mass Protest which has been published by the Court, it has been stressed that the Court did not lay down in a strict definition of what constitutes "mass protests" in its case-law, however the Court has examined different forms of assemblies amounting to "mass protests".[39] Although basically, the Court prefers to define "mass protest" in the case-law as a form of large scale assembly or demonstration while being aware that not every assembly constitutes a protest.[40] In addition, the Court stresses that protesting is the most commonly restricted type of assembly, thus constituting the subject of applications to the Court most frequently under Article 11 and/or 10 of the Convention.[41] Such an interpretation is an unfortunate approach considering the fact it misses the problematic part from various aspects as well as might lead protesters to be killed by authorities on the legal ground of limitation clause of Article 2 enacting right to life. This problematic correlation will be discussed in the remainder of this chapter.

To sum up, protest is a form of contentious public politics that is the most visible among others, and the distinctive aspect of protest is to aim to show disagreement to others with means which one prefers. From self-immolation to gathering with people in a public square, everyone can protest in their own way to show their disagreement in a given context. Evaluating the case from this perspective clarifies that the approach taken concerning the protest and upholding of the term mass-protest by the Court constitutes as a restrictive interpretation, and it may lead to unintended consequences.

2.1.5 Terrorism

On the other hand, what is often done by sovereign entities is to label people who are involved in different forms of contentious public politics as terrorists or rioters in order to outlaw them without any further evaluation. In order to discredit their purpose in the first place such inclination is useful as well. What could be the applicable criteria in order to determine whether someone is terrorist and what is the threshold to consider an organization as a terrorist organization? Above all, it is worth to note that terrorism, terrorist and terror organization are among the most slippery terms in international legal studies. Deucedly, states have a tendency to label people or organizations-either domestic or at an international level-as terrorists. States often resort to such labeling of the related people/groups as terrorists not on the account of

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[39] Council of Europe/European Court of Human Rights. *Guide on the case-law of the European Convention on Human Rights: Mass protests*, (Updated on 31 December 2020), at 6. *See also* (for instance, *Navalnyy v. Russia* [GC], 2018; *Alekseyev v. Russia*, 2010; *Shapovalov v. Ukraine*, 2012; *Virabyan v. Armenia*, 2012; *Frumkin v. Russia*, 2016, § 148; *Işıkırık v. Turkey*, 2017).

[40] *Id*.

[41] *Id*.

them being actual terrorists but because doing so makes them less complicated to manage. Moreover, the international community pay much less attention to the states which engage in the so-called war on terrorism. This lack of engagement paves the way for different varieties of civilian casualty, for example, according to the report of the UN Afghanistan Mission, in the first half of 2019, the coalition of NATO and Afghan troops caused 186 more civilians to die than the Taliban.[42] To set a limit to these definitions is therefore crucial and directly related to IHRL and IHL. Uncertainty of the threshold of the definition of terrorism threatens the assertion of the international human rights regime severely. Moreover, such an ambiguity also jeopardizes the enshrined principles of liberal international criminal law such as the 'presumption of innocence'.

Engaging in a global war on terror, which is especially initiated following the 9/11 attacks, has been criticized from many aspects. Effective and convenient fight against terrorism can only emerge at the expense of being pertinent to the rule of law and its enshrined principles. Otherwise, neither international political community nor legal institutions would serve justice, but rather, they would only corrode the rule of law. Relevant to this subject, labeling people/groups as terrorists without detailed examination, allows only a tangential scrutinization of the situations. Therefore states, or other entities that hold effective control over lands, ought not use terrorism card easily in order not to pave the way for fighting harshly against "inappropriate,, people from their point of view. Yet, as mentioned above, such entities use this card commonly, in order to discredit such people as well as attract less attention from the international community. To illustrate, there are various organizations around the globe which are considered as allies by some, conversely the same organizations are being considered as terrorists by other entities. There are different reasons lying under this situation, but mainly such a circumstance exists because entities seek to gain rhetoric supremacy and try to legitimize their actions in the international community. Such an ambivalence would endanger the belief in law and in the sense of justice.

Who is a terrorist, what is terrorism and when is an organization gets tainted with terror? In order to dissociate terrorism from the concept of rebellion in this section, these terms will be assessed by two criteria; their targets and intended ends. According to renowned academic Norman Finkelstein, the basic distinction of international law makes between the reason why states enter into to war and how do the states are conducting the war is the

[42] *For details, please see,* UNAMA Protection of Civilians in Armed Conflict – Annual Report 2018, available at https://unama.unmissions.org/protection-of-civilians-reports.

determining criteria for the scope of the vague term of terrorism.[43] To him, terrorism refers to the targeting of civilian population and/or civilian infrastructure in order to achieve a political end.[44] Therefore, terrorism creates the main difference in terms of its target; deliberately targeting civilian targets would result in engaging in terrorism. Furthermore, even if a party is engaged in a war of self-defense, this criteria would still be applicable. So that any circumstance invoking deliberate targeting of civilian people and/or civilian infrastructure in order to achieve a political end would commit a terrorist offence, regardless of the offender being a civilian or a state officer. Besides people and non-state actors, states may also invoke terrorism acts if their actions are in line with the aforementioned criteria. On the other hand, according to Aleksandar Marsavelski, *genus proximum* of terrorism invokes two sides, which are extremism and violent crime, respectively.[45] To him, the variations of terrorism are also possible, one might originate from non-state actors which generates non-state terrorism, and if states engage in such acts then this would constitute the case of state terrorism.[46]

In conclusion, it can be argued that on the one hand, rebellion in itself does not create direct engagement with the act of terrorism, however this could be the case on the other if rebels chose their targets among civilians in order to get their intended ends. This equation applies to other forms of contentious public politics as well, thus entails evaluating the situation case-by-case.

2.2 The Relation Between Contentious Public Politics and Int'l Human Rights Law

There is no particular cluster of rights in international level which ratifies any form of contentious public politics explicitly as a human right. However, among others, freedom of assembly along with freedom of expression, which have been ratified in different positive human rights mechanisms, is the closest one to this inquiry. Despite the fact that it is a prevailing opinion which have been articulated among people that peaceful protests and peaceful demonstrations are considered as human rights, there are no particular positive law enactments in which these notions are established as a human right explicitly. As Parsa stresses that since there is no right to "protest" *per se*, the conjunction of freedom of

[43] Norman Finkelstein, (November 13, 2009) Interview on Danish DR2 TV, at https://www.youtube.com/watch?v=z6x0S7lCIWA, (Accessed 10 January 2020).
[44] *Id*.
[45] Aleksandar Marsavelski. *THE CRIME OF TERRORISM AND THE RIGHT OF REVOLUTION IN INTERNATIONAL LAW*. in: Connecticut Journal of International Law(245-293) at 266.
[46] *Id*.

expression and assembly provides such a right under IHRL.[47] Such approach is also taken by the ECtHR itself as the Court stated that the protection of expression of personal opinions, secured by the Article 10 to the ECHR, is one of the objectives of the freedom of peaceful assembly which is enshrined in the Article 11 in the ECHR.[48]

When it comes to rebellion, what is first and foremost should be stressed is that it is precisely impossible for a sovereign to allow its own overthrowing by the means of rebellion, so is for IHRL. Therefore, it is reasonable that some forms of contentious public politics which are destructive to the sovereign entity would not be protected by IHRL discourse. Since the sovereign entities are the fundamental constitutive component of its working mechanisms, IHRL would never allow any form of power to overthrow a sovereign entity. Hence it became a necessity to clarify what are the possible forms of contentious politics that might be enacted under and protected by IHRL discourse, and if there are some, what are the limits for people to enjoy them. The indications of contentious politics should be traced through an examination of both freedom of assembly and freedom of expression. These rights, freedom of assembly and freedom of expression, will be helpful in analyzing the IHRL's approach to any form of contentious public politics. Freedom of assembly and freedom of expression have been ratified with different phrases by the most dominant positive international human rights instruments such as ICCPR, ECHR, ACHR, and ACHPR. However, in order to avoid over-examination, thus prevent this examination from leading to another direction, solely ECHR and the caselaw of ECtHR will be analyzed at this point. Considering influence over the human rights case law that ECtHR has and influence of ECHR on expanding the human rights discourse over other jurisdictions, ECHR's perceptive about the inquiry would be sufficient to clarify the main cause here.

2.2.1 Regarding Paradoxes of Article 10 & 11 to the ECHR

The rights in question have been ratified by ECHR as Freedom of Expression under Article 10 and as Freedom of Assembly and Association under Article 11. The Court stresses that Article 11 must also be considered in the light of Article 10 considering the fact the aim of the exercise of freedom of assembly is the expression of personal opinions,[49] as well as the need to secure a forum for public debate and the open expression of protest.[50] Moreover, the

[47] PARSA, *supra* note 32, at 21.
[48] GUIDE ON MASS PROTEST, *supra* note 39, at 6-7.
[49] Ezelin *v* France, ECtHR Judgement of 1991, at § 37. *See Also, Id*.
[50] Éva Molnár v. Hungary, Judgement of 2008, at § 42. *See Also*, GUIDE ON MASS PROTEST, *supra* note 39

link between Article 10 and Article 11 has been regarded particularly relevant where the authorities have interfered with the right to freedom of peaceful assembly in reaction to the views held or statements made by participants in assemblies.[51] These rights are considered as inseparable rights among scholars as well as it is stated by David Mead that "*there is no case in which the court has considered both Article 10 and 11 separately"* and also *"no application has been rejected, or a violation not been found under one where it would have been under the other*."[52] Freedom of Assembly has been ratified by ECHR as it follows;

ECHR Article 11, Freedom of assembly and association

> *1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, (...).*
>
> *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.*

The right in question has been limited by the ECHR along with another paragraph that provides numerous legal interference options for governments within their own jurisdictions. Necessity in a democratic society, prescription by law and seeking a legitimate aim are the preconditions that any legal restriction upon the realization of the right must meet beforehand. Those specific aims aligned as following; 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. Moreover, members of the armed forces, the police officers and the administration members of the State are in power to impose such restrictions. Those restriction clauses are also enacted in very similar form in other human rights documents such as ICCPR, ACHR, and ACHPR.[53]

With respect to freedom of assembly, on the other hand, ECtHR has published two different guides on December 2020 which are titled as; "Guide on case-law of the Convention –

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[51] Primo and Others v. Russia, Judgement of 2014, at § 92. & Stankov and the United Macedonian Organisation Ilinden v. Bulgaria, Judgement of 1998, at § 85.
[52] D. Mead, *The New Law of Peaceful Protest: Rights and Regulation in the Human Rights Act Era* (Hart, Oxford, 2010) p. 64. See Also, PARSA, *supra* note 32, at 14.
[53] PARSA, *supra* note 32, at 17.

Mass protests"[54] and "Guide on Article 11 of the Convention – Freedom of assembly and association"[55] respectively. In those guides the Court clarifies its way to interpreting the practice of rights and elaborates its approach toward inquiries in question.

In the Navalnyy v. Russia case, for example, the Court clarifies that right of assembly only protects the right to "peaceful assembly,,[56] thus it does neither cover a demonstration where the organizers and participants have violent intentions nor otherwise reject the foundations of a democratic society.[57] Notwithstanding, the Court asserts that freedom of peaceful assembly and right to freedom of expression should not be interpreted restrictively as they are fundamental rights in a democratic society,[58] when it comes to limitations, the Court clarifies that restrictions must be interpreted as not only including both measures taken before or during the public assembly, but also those taken after it in the form of punitive measures.[59] Also, evaluation of interferences must be subjected to the proportionality test in which such the interferences taken by governments are most commonly present in the context of mass protests.[60]

On the other hand, the court has produced its case law regarding this inquiry on both; through *ratione materiae* and *ratione personae* examination. To illustrate, in the *Razvozzhayev v. Russia and Ukraine* case; the applicant was found guilty of leading a number of individuals to break through the police cordon given the fact the breaking of the cordon led to the escalation of violence at a crucial moment and triggered clashes, thus the Court considered such deliberate acts to fall outside the notion of "peaceful assembly,, and applicant's complaint as incompatible *ratione materiae* with the provisions of the Convention.[61] As it can be distinguished by the case-law that the Court examines certain matters under Article 10 or 11 together, one of the distinctive criteria noted by the Court is that in the exercise of the right to freedom of assembly the participants would not only be

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[54] GUIDE ON MASS PROTEST, *supra* note 39.

[55] Council of Europe/European Court of Human Rights. *Guide on Article 11 of the European Convention on Human Rights: Freedom of assembly and association*, (Updated on 31 December 2020).

[56] Navalny v. Russia, Judgement 2018, § 98. See also GUIDE ON MASS PROTEST, *supra* note 39, at 6.

[57] Ter-Petrosyan v. Armenia, Judgement of 2019, at § 53. & Gün and Others v. Turkey, Judgement of 2013, at § 49. See also GUIDE ON MASS PROTEST, *supra* note 39, at 7.

[58] Djavit An v. Turkey, Judgement of 2003, at § 56; Kudrevičius and Others v. Lithuania [GC], Judgement of 2015. at § 91.

[59] EZELIN v FRANCE, *supra* note 49, at § 39.

[60] GUIDE ON MASS PROTEST, *supra* note 39, at 9.

[61] Razvozzhayev v Russia and Ukraine and Udaltsov v. Russia, ECtHR Judgement of 2019, at § 284. *See Also*, GUIDE ON MASS PROTEST, *supra* note 39.

seeking to express their opinion, but to do so together with others which falls under freedom of assembly.[62] Moreover, as it can be seen in *Éva Molnár v. Hungary* case, the Court emphasized that one of the aims of freedom of assembly is to secure a forum for public debate and the open expression of protest.[63]

Realization of the right in question and particular applicability of limitation clauses has been discussed among legal scholars as well. Amir Parsa conducts an extensive research regarding IHRL's actual shortcomings in realization of related rights-particularly freedom of assembly.[64] Parsa initially clarifies assemblies at stake over two distinctive characters; having a political character—political not in a narrow sense of party struggle but rather the general contestation on having control over the decision making process, as well as having a critical attitude toward the power holder.[65] Subsequently, he concludes that it is impossible to hold an assembly without giving a possible legal cause for interference; he argues that if such an interference does not happen, it does not necessarily mean that a reason for interfering was not available for the sovereign.[66] As Parsa states, the law takes away with one hand what it gives with another[67] since the recognition of a human right renders the said right impossible to practice without giving a legal cause for inference, interruption and confrontation by the sovereign.[68] Therefore it can be claimed that the margin of appreciation given through numerous legitimate causes of intervenes provided by ECHR to governments make it theoretically impossible for people to hold any form of contentious public politics in public space. Parsa describes this as a paradox so normalized that is ignored by most legal commentators, a paradox that creates an open-ended space for state interferences as well as paves the way for practically undermining realization of this right and theoretically creates an impossibility of action.[69]

To sum up, several conclusions can be reached. Firstly, freedom of assembly, which is enacted and enshrined in different international human rights instruments with similar phrases, is the most suitable right under which some forms of contentious politics can be formed.

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[62] GUIDE ON MASS PROTEST, *supra* note 39. See Also, Primov and Others v. Russia, ECtHR Judgement of 2014, at § 91.
[63] Éva Molnár v. Hungary, ECtHR case of 2008, at § 42.
[64] *Please See*, PARSA, *supra* note 32.
[65] *Id*. at 8.
[66] *Id*. at 36.
[67] *Id*. at 33.
[68] *Id*. at 49.
[69] *Id*. at 31-32.

However, freedom of assembly is extensively limited by lawmakers resulting in the exercise of the said law to be largely dependent on the margin of appreciation of the government against which the assembly would usually be formed. Subsequently its precisely impossible to think other forms of contentious politics which bear a destructive manner, such as rebellion and revolution, to be defined and protected by IHRL at any level. It is not an unexpected result to conclude that IHRL is not keen to acknowledge these destructive forms of contentious public politics-like rebellion-as any form of human rights, however what is intended to be revealed here is that IHRL is also not keen to provide a practical proper legal space for people to hold an assembly in a form which they demand. In other words, what IHRL generally does with respect to peaceful forms of contentious public politics is to establish and ratify them in a such an implicit and indirect way that it becomes practically impossible for people to enjoy them without the immediate risk of being intervened by the sovereign entity. This situation enables governments to legally justify the use of violence against those who practice their basic human rights, on the basis that they are violent or radical and not peaceful.[70] Therefore it can be claimed that contentious public politics have almost no space at all in positive IHRL instruments except very few forms of it that come along with numerous options for government to subjugate. It, therefore, should not be regarded as a "limitation", but as an absolute "suppression".[71]

2.2.2 Legal Ground to Neutralize *Rioters*, Limiting Clause to Right to Life

Another important point which I would like to draw attention to here is the limiting clause to the probably most enshrined right in IHRL discourse over the globe, the so-called right to life. Right to life has been ratified by ECHR as it follows;

ECHR Article 2, Right to life

> *(...)*
> *2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:*
> *(a) in defence of any person from unlawful violence;*
> *(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;*
> *(c) inaction lawfully taken for the purpose of quelling a riot or insurrection.*

[70] *Id*. at 4.
[71] *Id*. at 36.

As it is evident in section C, killing a person for the purpose of quelling a riot or insurrection would not constitute a breach of a person's right to life, but would considered as a lawful killing by a lawfully taken action. It is pretty clear that the riot/insurrection are not the ones which protected by ECHR as peaceful assembly under Article 11, therefore can be ceased forcefully by governments. However, such an approach and the way ratifying one of the most enshrined human right would lead, *inter alia*, two different problematic conclusions.

Firstly, this may lead to a confusion about drawing a line between violent assembly and riot/insurrection by governments without giving a detailed definition of the terms riot or insurrection. So, this may create an unfortunate ambivalence for governments to decide when they are authorized to kill a person by means of the legal power given by arguably the most prestigious human rights convention in the world. Charles Tilly observes, in this regard, that the term riot embodies a political judgment rather than an analytical distinction.[72] He claims that authorities often label gatherings and attendees as riots and rioters to damage them only when they disapprove the cause at stake, conversely they are inclined to consider essentially similar events with other labels when they approve.[73] In addition to that, he stresses one cannot find an instance in which the participants called the event a riot or identified themselves as rioters despite the fact many of them called riots, or the local-language equivalent, by authorities and observers from multiple countries over several centuries.[74] Thereof it is an unfortunate use of the term riot by ECHR considering the term riot embodies a political judgment rather than an analytical distinction which may result in arbitrary use of lethal force by authorities in a given context.

The second issue which should be laid down at this point to clarify the case is that IHRL in general and ECHR in particular, does not ever justify any attempt to form a contentious public politics which the formation of would create a danger to sovereign entity. Because any form of contentious public politics which harbor a risk towards the legitimacy of the sovereign would be at a risk of being identified as riot/insurrection by the related entity resulting its demise legally under the protection of ECHR.

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[72] CHARLES, *supra* note 9, at 18.
[73] *Id*. at 17-19.
[74] *Id*. at 117.

In conclusion, in the light of the evaluation made above, it can be claimed that the formation of IHRL, regarding contentious public politics, operated in the way in which the Governments have the ultimate margin of appreciation ranging from protecting them to killing them. The extent to which people can hold the sovereign accountable they live under its jurisdiction is based on the tolerance given by the same sovereign.

2.3 Concluding Remarks

The remarkable legal wording and political use of the notion of rebellion makes it one of the most ambiguous and contested terms to be discussed within the context of IHRL. It is shown within the scope of this chapter that while rebellion has unique 'uses', 'abuses' and 'restrictions' for it to be actualized, it is one of the fundamental forms of contentious public politics. As it can be seen in its preamble, though the ECHR system is claimed to be found upon the principles of protecting freedoms 'which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the Human Rights upon which they depend', the actual realization of rights and freedoms fails to uphold this premise. The general and specific restrictive clauses within the Convention privileges the state/sovereign authority over the core goals and presuppositions of a just rebellion and thus pushes the exercise of the right to the margins of its legal framework. However, it is my assertion that just rebellion as an act is ontologically directed towards the betterment or protection of a political democracy and thus with enough support for more marginalized contentious public politics, there could be an expansion on the scope of articles 10 and 11 of the Convention.

3. Analysis of the Selected Legal Documents

3.1 Introduction

Ideas, ideals and ideologies of law manifest themselves most tangibly, frequently, and powerfully in declarations and constitutions.[75] These legal documents can be seen as a meta reflection and may offer tangible ideas about the peoples' identity and norms. Even though constitutions are situated hierarchically higher than declarations and declarations do not carry the same legal authority as constitutions, their languages can be used in this context. Therefore, concepts and rights are enshrined more concretely and acutely in declarations than constitutions, where they are enshrined more mellifluously. Regardless of their differences, constitutions and declarations are important sources to understand how society perceives and regulates legal contestations, how they understand the law and what actions they take to preserve the legal order.

This chapter analyses specific historical legal texts and the United Nations Universal Declaration of Human Rights (UDHR), one of the best known and authoritative modern international human rights documents. Even though it is not a legally binding source,[76] its enormous effects on the IHRL and other positive international legal sources are visible. For example, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) refers directly to the UDHR in various aspects. Moreover, in its preamble, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) references the UDHR and praises this declaration.[77] In this regard, it is clear that the UDHR is an important cornerstone of the contemporary IHRL.

UDHR, as will be discussed in detail later this chapter, is comprised of eight preambular paragraphs and thirty articles. The third preambular paragraph to the UDHR is:

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[75] Frankenberg, Günter. Comparing Constitution: Ideas, Ideas, and Ideology - Toward a Layered Narrative." *International Journal of Constitutional Law* 439 (2006).

[76] Another controversy takes place here, some legal scholars inclined to regard UDHR as a part of customary rules of international law, therefore argues it is binding; some scholars reject this claim concerning states' practices.

[77] ECHR, https://www.echr.coe.int/Documents/Convention_ENG.pdf (accessed, 22nd May 2020)

> *"Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law."*

This chapter will mainly revolve around this paragraph. Many legal scholars interpret the third preambular paragraph to the UDHR as the most significant and the only positive international legal source in which the notion of rebellion has been ratified. In parallel with this, this chapter is structured to put this paragraph in its place within the broader scope of the concept of rebellion. Besides the third preambular paragraph to the UDHR, this chapter is also allocated to investigate four more selected historical legal documents to compare them with UDHR along with a particular focus on both; how these documents recognize the concept of rebellion within their context and how the term human rights had been understood. These selected legal documents are; the French Declaration of the Rights of Man and of the Citizen, 1789; the American Declaration of Independence, 1776; the Constitution of Maryland, 1776; and the Virginia Constitutional Convention, 1776.

The aim of this comparison is to examine how the concept of rebellion is described in the relevant articles of these historic legal documents and how the rights, if any, in these texts are defined. Close inspection of this comparison might yield fruitful results to capture how the status of rebellion in various historical moments had been adopted and its relation to the law. Further, this comparison aims to understand in what kind of cause-and-effect relation the rights were mentioned, and consequently, to analyze similarities and differences between the third preambular paragraph the UDHR and these historical legal documents.

For this analysis to be in accordance with the fundamental discussions of this thesis, examples were selected from amongst these positive legal texts which are considered to be one of the first codifying human rights and civil rights documents. It is argued that these texts still shape and affect today's legal culture. Several reasons can be aligned with why these particular legal documents have been chosen to be examined in this study. The first reason behind such selection would be that these 18th century documents are the ones whose effects over the formation of positive law are perceptible the most amongst their counterparts. Moreover, these legal documents are the initial examples in positive legal history that the term human right/s have been used in a particularly important position. Therefore, these documents have paved the way for to term human right/s to be used within established legal mechanisms. They are mostly related to domestic legal cases, thus domestic legal documents considering that the international law-in today's sense-had not been established yet among nations of the 18th

century. However, it cannot be disregarded that these initial efforts to put the term human right/s into the legal sphere were a triggering cornerstone in legal history which subsequently allowed the international community to have an IHRL mechanism today. As UDHR is the first step to *the internationalisation* of human rights idea, much the same these documents are the first step to *enacting* the term human right/s within the legal framework. Therefore, it is pretty clear that these documents are not only pioneers respecting human rights ideas, but also fundamental motivational sources of what we have today.

In order to achieve conclusions about the relevance and importance of this comparison, the second objective intended to be obtained here, and the main goal of this chapter is to scrutinize the reasons behind the differences among five selected legal documents. In light of these purposes, the initial part of this chapter will comprise of the analysis of the UDHR and its related preambular paragraph. In this part, the UDHR will be defined and discussed in terms of its importance and influence on how the notion of rebellion is apprehended. Subsequently, an analysis of the aforementioned historical legal documents will follow. These documents will be briefly defined, and sequentially, expressions concerning human right/s and rebellion will be elaborated in line with this study. Lastly, the conditions and reasons for a potential rebellion will be analyzed together with how the concepts "sovereignty" and "sovereign" were defined in these texts. To conclude this part, findings from the chapter will be stated to critically analyze the reasons that caused such differences among the documents.

3.2 United Nations Universal Declaration of Human Rights, 1948

3.2.1 Understanding the Universal Declaration of Human Rights

The United Nation's Universal Declaration of Human Rights[78] was proclaimed in the General Assembly of United Nations in Paris on the 10th of December 1948.[79] It consists of 30 articles and a preamble that defines the motivations and guide marks of the declaration. The UDHR is the single most important reference point for cross-cultural discussion of human freedom and dignity in the world today.[80] As it is stated in the United Nations (UN) official website, UDHR is now translated into more than 500 different languages, and it was the source of inspiration to the treaties that are legally obligatory for the UN party states. For example,

[78] Universal Declaration of Human Rights, G.A. Res. 217(III) A, UN Doc. A/RES/217(III), at art. 8 (Dec. 10, 1948).

[79] http://www.un.org/en/universal-declaration-human-rights/

[80] Mary A. Glendon, Knowing the Universal Declaration of Human Rights, 73 Notre Dame L. Rev. 1153 (1998). at 1153.

ICESCR[81] and ICCPR.[82] In this regard, it is clear that UDHR resides as a cornerstone of modern legal history from various aspects and particularly in the reconstruction process of human rights as a legal term after World War II (WWII). As described in a leading text, "it is the parent document, the initial burst of enthusiasm and idealism, terser, more general and grander than the treaties, in some sense the constitution of the entire movement — the single most invoked human rights instrument."[83] Moreover, some scholars like Aggelen believe that the importance of the UDHR has grown tremendously since it was first signed, far beyond its role as guidance and inspiration for the UN, and it continues to guide the development of international human rights law, in practice as well as in aspiration.[84]

On the other hand, all sorts of legal developments have cause-and-effect relations, as particular incidents had caused consequences in the short or the long term; hence those incidents also pave the way for legal developments in human history. With respect to UN in general, a connection between the formation of the UN and WWII can be seen easily. In order to prevent possible catastrophes in the future, UN considers itself in its Charter as a protector of international peace and security,[85] and refers to the notion of human rights multiple times throughout its Charter.[86] Conversely, some scholars criticize the formation of the UN by heavily taking into account that the victorious countries of WWII formed a privileged group within United Nations Security Council (UNSC) and rewarded themselves with their power of the right to veto after their victory.[87] Moreover, some scholars claim that the UDHR basically could be considered as an insufficient response to the cruelest persecutions and victimizations of terrible atrocities have had occurred during Hitlerite Germany.[88] On the contrary, Morsink

[81] ICESCR, http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx

[82] ICCPR, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en

[83] HENRY STEINER *&* PHILIP ALSTON, INTERNATIONAL HUMAN RIGHTS IN CONTEX 120 (1996). *Id.*

[84] Johannes van Angeles, The Preamble of the United Nations Declaration of Human Rights, 28 Denv. J. Int'l L. & Poly 129 (2000). pp. 131

[85] UN Charter art. 1, para.1

[86] *E.g. please see;* UN Charter art. 1, para.3

[87] Aral, Berdal, The United Nations and International Inequality, SETA, p.9. accessible in https:// www. academia.edu /4913909/Birleşmiş_Milletler_ve_Uluslararası_Eşitsizlik.

[88] Jacob Dolinger, The Failure of the Universal Declaration of Human Rights, 47 U. Miami Inter-Am. L. Rev. 164 (2016).

claims that the UDHR was adopted to avoid another Holocaust or a similar abomination.[89] In addition, Aggalen states that the Declaration became nothing less than the definitive statement of the prevailing hopefulness and the high ambitions in the realm of human rights at the end of WWII.[90] Beyond these remarkable debates, there are two important consequences, the first is that it is pretty clear that WWII has a tremendous effect on the formations of the UN in general and UDHR in particular. Therefore, it could be claimed that the cause-and-effect relationship connecting the atrocities committed in the course of WWII is one of the main triggering reasons for the foundation of the UDHR. And secondly, it is certain that the term human rights, in the modern sense of the term, instantly turned out to be one of the most important terms for not only UN but also for other newly born supranational organizations and treaties. In this regard, a distinct proliferation in referring to the term of human rights after WWII in different legal documents can easily be seen. Despite the fact that UDHR does not put international legal obligations to the countries that are members of the *civilized* world,[91] the proclamation of UDHR was undoubtedly one of the most substantial achievements with respect to the realization of the human rights project.

Situating the UDHR, on the other hand, bears an important role initially. What are the main factors which distinguish the declaration from regular writs and legal texts? Why does the Declaration matter, or does it really matter? Answers to these questions indeed differ from one perspective to another. To begin with, the Declaration, at least, differs from others because of the fact that the drafting process of it had lasted almost three years. The UDHR has seven formative drafting stages, which consist of (1) the First Session of the Commission, (2) the First Session of the Drafting Committee that it created, (3) the Second Session of the Commission, (4) the Second Session of the Drafting Committee, (5) the Third Session of the Commission, (6) the Third Committee of the General Assembly, and (7) the Plenary Session of the same 1948 Assembly.[92] As it is stated in the beginning, some legal texts have a long back-story as almost three-years-long discussion compresses itself to a four-pages-long declaration containing thirty articles and eight preambular paragraphs. Every single word within this

[89] JOHANNES MORSINK, THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: ORIGINS, DRAFTING & INTENT (1999), pp 36.

[90] Johannes van Angeles, The Preamble of the United Nations Declaration of Human Rights, 28 Denv. J. Int'l L. & Poly 129 (2000) pp. 131.

[91] Although there are certain attempts to make UDHR articles/values a part of the international customary law

[92] JOHANNES, *supra* note 89, at 4.

meticulously written declaration is important and has a reason why it is not phrased in a different way than it is. "The language of the declaration is a part of the reality to which it refers", therefore, it should be analyzed both within its own socio-political and historical context to be able to truly understand its authoritative value.[93]

To summarize, the UDHR was a declaration that was ratified by the United Nations General Assembly (UNGA) after three years of preparation. The UDHR was an important initial aspiration for modern human rights project as it had led to numerous ensuing human rights treaties to come into being despite the fact that the UDHR, *per se*, is not a binding source. Those were the initial years for the modern understanding of human rights project in which the concepts of human rights and human rights law were developing globally, and this declaration can be considered as a milestone in this process. In this respect, the UDHR had preserved its importance since its affirmation and showed its effects on different occasions.

3.2.2 Apprehending Preambular Paragraph 3 to the UDHR

Preambular Paragraph 3 to the UDHR, 1948

> *"Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law."*[94]

Many things stand out in the textual analysis of Preambular Paragraph 3 to the UDHR. In the first instance, it should be stated that the paragraph includes many notions and concepts such as; the rule of law, human rights, tyranny and oppression, rebellion and the condition of it being *a last resort*. The term *compelled to recourse*, though seeming less intriguing compared to other concepts, is arguably the most important. In this section, this paragraph will be analyzed semantically to comprehend what does it actually claim. Prior to the analysis, it should be stated that the paragraph is negatory by its construction as a sentence which is an example that have, perhaps, never been seen in other legal documents. There is a strict ambivalence in this paragraph. It is unclear whether the paragraph is referring to the importance of protection of human rights or is it emphasizing the probability of a rebellion when analyzed closely. Initially, this ambivalence itself makes the paragraph distinguishable from the other examples.

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[93] Saussure, Ferdinand de. Course in General Linguistics. Columbia University Press, 2011, p. 18

[94] UDHR, *supra* note 78.

In this preambular paragraph, UDHR considers the protection of human rights by the rule of law as the way to avoid rebellion. In this respect, UDHR not only does not consider rebellion as a human right but also regards human rights and rebellion as being opposite and contrary concepts. As it is stated above, every single word within this meticulously written declaration is important and has a reason why it is not phrased in a different way than it, in fact, is. From this perspective, it is noteworthy to state that this paragraph is a product of three years of deliberation and preparation and is written in a certain way by design. If and only if endeavored hard enough and thought deviously and in detail against this ambivalence, one can argue that this paragraph presents rebellion as a possibility under very certain circumstances. This potential rebellion is strictly tied to certain conditions.

On the other hand, the paragraph deems necessity as a prerequisite by stating, "whereas it is essential…" and states that this necessity may be exerted only as a last resort. Additionally, it states that this can only be exercised against tyranny and oppression. However, when the sentence is interpreted holistically, the statement becomes, human rights should be protected by the rule of law in order to prevent man to rebel, as a last resort, against tyranny and oppression. Beyond the discussion of whether the UDHR being legally binding or not, when evaluated from this perspective, it is difficult to even argue that this paragraph recognizes rebellion as an option, let alone to argue that it constitutes a legal basis for rebellion. And lastly, when stating that human rights should be protected, the means of protection is not detailed, and the paragraph remains non-informative about the means, simply stating that human rights are ought to be protected.

3.3 Selected Historical Legal Documents

3.3.1 French Declaration of the Rights of Man and of the Citizen, 1789

French Declaration of the Rights of Man and of the Citizen has significance in the history of human rights for various reasons. Since it was influential in later constitutional documents, this declaration has a substantial value, especially for Continental Europe. Close inspection of this Declaration reveals that it was significantly influenced by the doctrine of natural rights. Tenets of Enlightenment are visible in almost all of the rights enshrined in this declaration, which puts individualism at the center of attention. It also harbors traces of the Social Contract theory, as theorized by Jean-Jacques Rousseau, and the Separation of Powers espoused by Montesquieu.

In parallel with the objective of this discussion, the focus of the analysis will be on article 2 and article 3 of the French Declaration of the Rights of Man and of the Citizen. In the context of the discussion, initially, Article 3 will be analyzed, and Article 2 will be analyzed subsequently in parallel with the findings from the analysis of Article 3.

French Declaration of the Rights of Man and of the Citizen, Article 3

> *"The principle of any sovereignty resides essentially in the Nation. Nobody, no individual may exercise any authority which does not proceed directly from the nation."*[95]

As it can be observed, Article 3 defines the concept of sovereignty and includes two separate sentences, hence two separate verdicts. The first of these verdicts is that sovereignty stems from and resides within the nation. Correspondingly, a sovereign that does not take its legitimacy from a Nation loses its assertion, and it is condemned.

In the second sentence of Article 3, the term "any authority" was used instead of the term "sovereign authority". This preference points out that not only a supreme claim such as sovereign authority, but any authority shall stem from and belong to the nation itself. Therefore, as per article 3, it can be claimed that any type of authority-including sovereign authority-must emanate from the will of the nation.

French Declaration of the Rights of Man and of the Citizen, Article 2

> *"The goal of any political association is the conservation of the natural and imprescriptible rights of man. These rights are liberty, property, safety and resistance against oppression."*[96]

Similar to Article 3, Article 2 shows certain wording preferences as well. Article 2 utilizes the expression "any political association" without the mention of the term state/government or equivalent to discuss the aim of this political association. It is stated in Article 2 that the aim of the political association is the protection of four particular subjects described in the text as *rights*: liberty, property, safety, and resistance against oppression. These rights are defined as being natural and imprescriptible. When evaluated from this perspective, the declaration is stated clearly and cognizably.

Although the term rebellion or the notion of a rebel is not mentioned directly, a conclusion can be drawn easily through a semantic evaluation. Sovereignty claims must, in any

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[95] French Declaration of the Rights of Man and of the Citizen, 1789. https://avalon.law.yale.edu/18th_century/rightsof.asp

[96] *Id*.

case, arise from the nation, and the most sacred duty of the authority born from this claim should be the protection of the man's right of "resistance against oppression". Hence, the political regimes are assigned the tasks of protecting rights that include resistance against oppression. Therefore it can lexicologically be claimed that if the sovereign authority somehow creates oppression, in parallel with the recognized right, the people may resist and form a rebellion through exercising their imprescriptible right stated in this Article.

3.3.2 American Declaration of Independence, 1776

The American Declaration of Independence is the document declaring the independence of the 13 states located in the America-continent from the United Kingdom. From this perspective, the American Declaration of Independence cannot be regarded as an orthodox declaration of rights. However, it is significant since, by the context of a paragraph in its Preamble, it protects the natural rights, and when government harms the recognized rights, it paves the way for a justified revolution.

American Declaration of Independence, Preambular Paragraph :

> *"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness; That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent, of the governed; That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organising its powers in such form, as to them shall seem most likely to effect their Safety and Happiness…"*[97]

Semantic analysis of this paragraph shows that there are inalienable rights and securing these rights through governments being instituted among men is the leading purpose of the governments. Governments represent sovereignty, and from this aspect, they carry the sovereignty claim, deriving their just powers from the consent of those whom are governed. In the following sentence, in the case of sovereign authority being destructive toward the rights that are mentioned, altering, or abolishing the government and instituting a new government laying its foundation on such principles is accepted as a right of the people. In conclusion, the

[97] American Declaration of Independence, 1776. https://www.archives.gov/founding-docs/declaration

sovereignty claim being constituted on the consent of the people and circumstances under which a rebellion may take place are evident in this paragraph as well.

3.3.3 Maryland Constitution, 1776 & Virginia Declaration of Rights, 1776

Maryland Constitution, IV.

> *"Whenever the ends of government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual, the people may, and of right ought, to reform the old or establish a new government. The doctrine of non-resistance against arbitrary power, and oppression, is absurd, slavish, and destructive of the good and happiness of mankind."*[98]

Two things draw attention when Maryland Constitution IV is considered. One is the consuetudinary definition and sanctification of rebellion, and the other is the despising of the disregard toward rebellion. As it is stated in the first sentence, in certain specific circumstances, rebellion is justified in one prerequisite, which is the ineffectualness of all other means of redress. The more intriguing part is that non-resistance against arbitrary power under certain circumstances is reprobated, denigrated, and also defined as absurd and slavish. This raises the question of whether, according to the paragraph in question, it is absurd and slavish to enunciate the absence of the right to rebellion? If, as it is stated in the paragraph, arbitrary power and oppression results in the perversion of the ends of Government and manifestly endangerment of public liberty, the realization of rebellion to institute a new government would be legitimate. When regarded in this manner, disregarding the right of rebellion by the Maryland Constitution is absurd and slavish, resulting in the destruction of the good and happiness of mankind. Therefore, it can be argued with confidence that there is a powerful declaration of the right to rebellion.

On the other hand, the first three Articles of Virginia Declaration of Rights as follow,

Virginia Declaration of Rights, Article 1

> *"That all men are by nature equally free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means*

[98] Constitution of Maryland - November 11, 1776. https://avalon.law.yale.edu/17th_century/ma02.asp

of acquiring and possessing property, and pursuing and obtaining happiness and safety."[99]

Article 2

"That all power is vested in, and consequently derived from, the people; that magistrates are their trustees and servants and at all times amenable to them."[100]

Article 3

"That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community; of all the various modes and forms of government, that is best which is capable of producing the greatest degree of happiness and safety and is most effectually secured against the danger of maladministration. And that, when any government shall be found inadequate or contrary to these purposes, a majority of the community has an indubitable, inalienable, and indefeasible right to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal."[101]

Virginia Declaration of Rights grants the right of rebellion to the majority of the community. It states that all power of a government is vested from the people and consequently derived from the people, defining sovereignty through this statement and recognizing the people as the source of the sovereign authority. As was the case in other legal documents, by whom and how a state is constructed, the purposes of the state and legitimacy of a rebellion in the case of it being inadequate or contrary to the purposes of the state are stated in this document as well. In the Maryland Constitution, there are two options given in the case of inadequacy; reforming the existing state or establishing a new state. Whereas, in the Virginia Declaration, there are three options; reform, alter or abolish. As stated before, wording differences among the legal documents may be observed, and despite these differences, approach to the values that are protected, the definition of sovereignty, and the cases in which sovereignty is legitimate are stated clearly and cognizably.[102]

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[99] Virginia Constitutional Convention on June 12, 1776. https://www.archives.gov/founding-docs/virginia-declaration-of-rights

[100] The Virginia Declaration of Rights; June 12, 1776. https://www.archives.gov/founding-docs/virginia-declaration-of-rights

[101] VIRGINIA, *supra* note 99.

[102] For the detailed analysis of the legal decelerations, constitutions and other texts referred to in this thesis, please see Georg Jellinek, The Declaration of the Rights of Man and of Citizens: A Contribution

These constitutions and declarations are the ones that enacted the very first positive laws related to human rights, or as they stated, rights of men. Many arguments may be articulated based on the analysis of the legal documents above. First of all, it can be argued that the claim of natural rights is very prominent in all of the texts, and the heavy influence of the doctrine of natural rights is pronounced. Human rights are defined, and these rights are emphasized through the endowment of various epithets. It is noteworthy that whereas in the texts originating from America, human rights are more within the triangle of life, liberty, and happiness; in the French Declaration of the Rights of Man and of the Citizen, the human rights reside more within the concepts of liberty, safety, and resistance against oppression. A detailed study on this particular difference may yield interesting results. In addition to this, each document defines sovereignty, legitimate government and their origins and boundaries. Each of the documents derived sovereign authority from the individuals and the respective collective entities they form and enact the right of people to alter and reform the sovereign authority. Further, they explicitly support the strong action taken by the people whose rights are impaired against the sovereign authority in the case of the human rights that are defined and sanctified being debilitated by the said alleged sovereign authority.

Based on the conclusions drawn from the textual analysis of respected parts, Preambular Paragraph 3 to the UDHR will now be compared to other articles. Initially, all documents, although using different expressions, defined sovereignty, specified the source of sovereignty, stated the purposes of sovereignty, and clearly enacted exercising the right of rebellion in the case of sovereigns being incongruous with its purposes. In the case of paragraph 3 of the UDHR, in addition to the lack of clear and cognizable statements, even a claim for the existence of such a right in the paragraph is onerous, and even if it can be argued that there is such a right, there is no mention of means of exercising such a right. As an example, these means are specified in the other legal documents clearly as reform, alter, abolish, institute a new one, establish a new one, etc.

The second fundamental conclusion is, in the historical documents, the right to rebellion is stated clearly and fortified through epithets such as indubitable, inalienable, indefeasible, inherent, and imprescriptible. When considering UDHR, claiming the existence of such a right requires a lexicological analysis, and it is not self-evident within the text itself. It is left to the

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to Modern Constitutional History, by Georg Jellinek. Authorised translation from German by Max Farrand, revised by the Author (New York: Henry Holt and Co., 1901).

understanding of the interpreter, and therefore claims about such a right cannot be made easily when compared with its U.S. and French counterparts.

The third conclusion is that whereas this right is enacted in the articles of all the historical legal texts except for one, in UDHR, this topic mentioned in one of the 8 paragraphs of the Preamble. The exception in the historical legal texts is The American Declaration of Independence because it is discussed within its preambular paragraphs. However, this exception may be clarified by considering the fact that The American Declaration of Independence is not a bill of rights. Therefore, when scrutinized by its structure, it does not lead to a negatory opinion. When UDHR, on the other hand, is analyzed by both its structure and content, the fact that this concept is referred to in the preamble clearly depicts that it does not signify the concept as an enactment, while this is not the case in other historical legal texts.

It is noteworthy that preambles, indeed, matter. Important knowledge about the intellectual deontological background process of a legal text may be acquired by reading the preamble of the respected legal documents. From this perspective, preambles of legal documents may be regarded as an interesting summary. However, it is also true that preamble is not the appropriate place to enact a right as a human right. It should be explicitly stated in the articles of the depending document. If not, the preamble itself would only be a contributory interpretive tool within the context of a broader *bloc de constitutionellé*, rather than it being a normative framework on its own.[103]

The fourth and last conclusion of this comparison, which also can be regarded as a conclusion to the first three conclusions stated in this section, is that UDHR intentionally did not recognise the concept of rebellion as a legal option for people to uphold. The concept of rebellion is derogated, and, unlike in the historical legal documents, this concept was withered away and deprived of the legal ground. One may imagine retrospectively that if a law-maker in the late 18th century were to witness an influential universal declaration without a recognition of right to rebellion, he (it is probably going to be a male) would deem it insufficient and disappointing.

In conclusion, it can be argued explicitly that the rebellion-and some other forms of contentious public politics-as a concept, including all its definitions and cases of necessity, is

[103] Though, there are some debates about the legal authority of preambles in given constitutions or treaties. See; Neuborne, Burt. *Hommage a Louis Favoreu*, International Journal of Constitutional Law, Vol. 5, 2007, p. 24

enacted as a right and enshrined as a principle in the historical legal documents. This means that the concept of rebellion is a precondition for the survival of any legitimate legal order. All of the other fundamental rights and freedoms are thought to be secured by deeming the right to rebellion as crucial and constitutive for a good and legitimate government. Given the approaches taken by the dominant legal documents in the late 18th century could be considered as a triggering factor for Haitian Revolution, which had taken place just a few decades later on. The population of the place where the French colonisers called Saint-Domingue was 556,000 and included roughly 500,000 African slaves in the late 18th century.[104] Taking into account the brutal conditions-including starvation, malnutrition, backbreaking labor conditions and, for sure, discrimination-had been growing progressively, thousands of slaves rose in rebellion in May 1791.[105] The Haitian people ultimately won their independence from France through their struggle since the Europeans' attempt to appease the outrage in order to quell the slave revolt fell short.[106] This subsequently resulted in being the first revolution in the history accomplished by slaves ensuing series of conflicts between 1791 and 1804, resulting in the ultimate frustration of a number of colonist armies, including British and French colonisers.[107]

3.4 Concluding Observations

In light of the evaluation made above, it can be clearly argued that the historical documents explicitly enact destructive forms of contentious public politics, such as resistances, rebellions and revolutions. They either define these politics themselves as a human right or as a right to exercise in the case of sovereigns jeopardizing human rights. However, it cannot be said that there is even a slight similarity between the other articles and preambular paragraph 3 to the UDHR in this sense. When UDHR is compared to other examples, the conditions allowing any form of contentious public politics are not ratified clearly in terms of means, reasons, and ends. However, there is one more remarkable difference that is considerably more important than obliterating the justified ground of rebellion, which is the way legal documents conceptualize the term human right/s have changed as well. To put it simply, the term human right/s indeed does not cover the same idea in these documents as what it does in the UDHR.

Particularly, the previous documents have adopted the term human right/s or defined concepts as rights for the purpose to arsenal people to protect their dignity against the direct

[104] https://www.britannica.com/topic/Haitian-Revolution

[105] *Id*.

[106] *Id*.

[107] *Id*.

sovereign, therefore the term human right/s is comprehended as a weapon to hold sovereign power accountable whenever it is necessary. However, when the UDHR and the modern IHRL is taken into account, in the era of modernization and internationalization for the human rights idea, the human rights idea became a claim protecting the human dignity not actually against sovereigns, but through sovereign entities in forms and by means of the established institutions. This portends that the concept known as a human right/s is discernibly different. Therefore, it can be claimed that the human rights idea had molted drastically regarding the way it operates. It had molted from being apprehended as a claim to protect people's own dignity and counterweight against governments' cruelty to an institutionalized term that has to be protected by means of the established entities. Hence, everything was changed; comprehension of the term human right, the way the term operates, and the bare purpose the term seeks. In a nutshell, the right to rebellion is not only left behind as the time passed but also the scope encompassing the term human right/s as an idea had changed, which seeks attention to pay.

At this point, a question that relates to the reasons behind these two crucial differences arise. One may argue that the concept of rebellion and other destructive forms of contentious public politics being in the forefront of these historic documents as not surprising since all were a product of a revolutionary context and have occurred in the given contexts after such legitimation. The lack of such revolutionary context is reflected in the UDHR. The first tangible difference between these documents has been depending on this point all along; they are a by-product of different societies and different experiences. Moreover, they are not only different in their respected times, but they are also different in kind, resulting in their serving different purposes. All of the historical documents enact constitutional rights to secure domestic legal order, and they are an offspring of the revolutionary settings, whereas the UDHR is not. And also, as the UDHR is in international settings, it has no and aimed not to have domestic legal authority in a domestic legal context.

In order to understand this separation, it would be useful to understand the priorities of these documents. When the UDHR was being drafted, the workings of the new international order were still unknown. Also, considering the fact the UDHR came into being before the decolonization process, enactment of the possibility of the right to rebellion in international law would bring the question of colonies. During which, the powerful nations-they were the victorious of the WWII as well- explicitly did not want to encounter the right to rebel against their alleged legitimate authority in their colonies. Furthermore, with regard to the timing of the UDHR, international law setting that did not include rebellions after the fact what WWII was

violent enough. Conversely, the main concern was to operate a sustainable international order. Therefore, the idea of human rights had been attempted to be realized through governments instead of against governments with the intention of sustaining the international legal order.

Newly founded international legal order prioritizing the stability ensuing WWII caused the disregarding of the concept of rebellion to be acknowledged and being enacted not only within the UDHR but also ensuing human rights discourse. It is visible that, that time was a critical juncture of possibility for human rights idea to take human being in its core, but instead it started to provide a state-centric approach to achieve its enshrined objectives. Therefore, human rights discourse had been changed. More importantly, the way it operates has shifted. This is the reason I believe how and why the concept of rebellion had been obliterated from the human rights idea, which at the time was about to change its direction toward another way of operation. The international community prioritized preserving the international legal order settings. Therefore, the UDHR stands as a cornerstone, an initial example of motivation of the modern IHRL, pioneer of the idea of protecting human rights through established institutions as it had been stated in its preambular paragraph 3; *that human rights should be protected by the rule of law for a man not to be compelled to have recourse to rebellion.* Although it can be argued that the UDHR wrongfully assumes the idea of human rights in relation to protection of the existing legal orders and the right of rebellion as antithetic to one another, it can also be debated that the UDHR still acknowledges the right to rebellion, albeit in a much narrower sense than compared to the other historical legal texts. This ambiguity, of course, is established by design. Such assumption results in the preservation of the existing legal orders that are considered more important or higher at rank when compared to the right of people to actively protect their dignity, which results in failing to notice that enactment rebellion as a concept is indeed the purest way to make sure that human rights remain in protection.

4. *Critique* of the Idea of Human Rights

4.1 Introduction

As it is shown in detail in the previous chapters, concept of rebellion has undergone many alterations in terms of both the prestige of the notion and its presence as a *human right* in given different legal documents resulting in nullification of the concept as a whole. Further such derogation is not only caused to nullify the concept of rebellion by allowing it to disappear from the human rights discourse, but it also caused any form of contentious public politics to be derogated. I consider this decretive of the situation to be very intriguing and one of a kind due to its one specific feature: Considering the historical development of the idea of the human rights, there has never been a human right that was once recognized and was sternly derogated in the years to come. When the historical development of any given human right is analyzed, it can be seen that human rights have always been a part of a continuous improvement and has been elaborated so that its scope of application has widened and increased in a linear manner. This is the case from right to property to right to life, and from the freedom of speech to right to a fair trial. However, peculiarly enough, the concept of rebellion in the forms of right to rebellion was entirely disregarded as a human right, let alone being restricted, it is out of the peripheries of the human rights law sphere for good. From this perspective, the concept of rebellion is a first and has a very interesting characteristic in this respect. It can be claimed that due to this situation, the assertion of human rights has created a discrepancy with its own future.

The concept of rebellion does not find a place in the framework of neither the modern Int'l law that has redeveloped after the WWII nor the IHRL jurisprudence and its discourse that is continuously developing within and beside the Int'l law. Furthermore, not only it is not considered as a human right, but it is also not defined as an any option within Int'l law in general to exercise in the case of states betraying the pure essence of their purpose of existence. Given the presumption the UDHR Paragraph 3 being the most powerful and only source enacting this notion, then several reasons can be aligned causing this notion to be derogated in terms of content, target, and scope in the contemporary human rights discourse. The main question which should be asked at this point is, what is the reality behind this situation? Why has the assertion of human rights as an idea altered its attitude against the concept of rebellion during its historical development? Would this alteration may create violence in itself or can this nullification itself be defined as violence? And lastly, in light of these findings, what relation

can form between modern IHRL and the concept of rebellion? This chapter aims to address these questions as well as to ascertain some of the reasons behind this alteration causing such nullification of a concept. In order to answer the abovementioned questions, the nexus of law, violence and power, as well as power of law to legitimize violence must be determined. To comprehend the complicated relation in the said discussion and to be able to draw appropriate conclusions, Walter Benjamin's "*Critique of Violence*" provides an important foundation. Therefore, this chapter aspires to explain Walter Benjamin's *Critique of Violence* text and the relations constructed in this text. This chapter, therefore, aims to understand the reasons causing these problematics by the illations obtained from Benjaminian approach, and intended to *critique* the resulting consequences as a form of conclusion.

4.2 'Critique of Violence'

Before the investigation of the rhetorics of Benjamin's *Critique of Violence* with respect to violence, law and power; apprehending the text itself initially would make forthcoming discussion easier to apprehend. This will clarify both the scope and the purpose of the text in the first place. I consider, in this respect, starting with translation problematic of the German-language-term *Gewalt* has been a sort of custom among scholars whose researches engage with the *Critique of Violence*. The original title of the German text is *"Zur Kritik der Gewalt"* in the original text. However, the word *Gewalt*, does not only mean *violence* in German-language but it also means *force*.[108] This particular double-meaning associates this word with not only bare violence but also force of law. According to Derrida, the way *Gewalt* had been translated from *Gewalt* to *Violence* is a 'very active interpretation' considering the fact that such derogation in this particular term would cause disengagement with other meaning of term such as legitimate power, authority and public force.[109] Therefore it would have been almost impossible to find a one-size-fits-all word in the English language-possibly in other languages as well-for *Gewalt*.[110] Yet this fact paves the way for ambivalence in several

[108] https://dictionary.cambridge.org/dictionary/german-english/gewalt (accessed on: 22 May 2020)
[109] Derrida, Jacques. 1992. *Force of law: The mystical foundation of authority*. In Deconstruction and the possibility of justice, ed. Drucilla Cornell, Michel Rosenfeld, David Gray Carlson, 3–67. New York: Routledge. At 6. *See also* Gunneflo, M. (2011). *The Targeted Killing Judgment of the Israeli Supreme Court and the Critique of Legal Violence. Law and Critique*, 23(1), 67–82. doi:10.1007/s10978-011-9097-y. at 72
[110] It is quite obvious for me to see the problem of translation within the scholarly traditions of comparative law since following the new legal realist tradition, I accept that meanings are (including legal semantics) culture, context and history dependent. Therefore, 'loss in translation' is an inevitable

instances within the text, this double-meaning doubtlessly shows its significance throughout the text. Even though the main subject of Benjamin is the decayed parliamentarian system in his epoch,[111] this particular reasoning would be useful here in our topic to evaluate IHRL discourse with respect to its own claims. This unique examination of violence puts this particular text in an independent position where different kind of analysis can be conducted by means of its variable and efficacious approach to the case. This is the reason why this text will remain within different varieties of legal debates regardless of time.

To begin with, Walter Benjamin considers the task of critiquing violence as something that displays and unfolds the violence in relation with law and justice.[112] In the text, *Critique of Violence* imposes itself the question to determine whether violence, in a given case, is a means to a *just* or an *unjust* end.[113] In this sense, violence is considered as a pure means to an end.[114] The central objective in the text is, thus, the question of the justification of certain means that constitute violence.[115] Benjamin examines the term *violence* without referencing or conditioning it with another particular concept or case resulting in that to regard concept of violence autonomously.[116] To put it simply, the main matter which Benjamin goes through throughout this text is the question of how to decide if violence is justifiable and how does it become possible for violence to have different appearances.[117] In order to solve this problematic, as Benjamin stated, a more exact criterion is needed, which would discriminate within the sphere of means themselves, without regard for the ends they serve.[118]

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curse and blessing for the researcher who is interested in juxtaposing elements from different spheres of the world.

[111] Koskenniemi, Martti. "International Law and Empire -- Aspects and Approaches." In *International Law and Empire: Historical Explanations*, Oxford University Press, 2017. at 4. Here, Koskenniemi argues "that led by infamous Schmitt, many interwar German jurists thought League of Nations as a hegemonic institution.". *See Also* Can Turgut. *Violence, Resistance and International Law: A Sociolegal Approach to Global Legal Order*. in: Working Paper, Socio-Legal Studies Graduate Conference. 2019. University of York. at 3.

[112] BENJAMIN, *supra* note 7, at 275.

[113] *Id*.

[114] Saul Newman. *Terror, Sovereignty and Law: On the Politics of Violence*. in: German Law Journal Vol.05 No.05 (569-584) at.571

[115] BENJAMIN, *supra* note 7, at 279

[116] Swiffen, Amy. Walter Benjamin s Concept of Law." in *The SAGE Handbook of Frankfurt School Critical Theory*. SAGE, 2018. at 870. *See Also*, CANTURGUT, *supra* note 111, at 15.

[117] CANTURGUT, *supra* note 111, at

[118] BENJAMIN, *supra* note 7, at 275

According to Benjamin; there are two different appearances of *legal* violence; with this regard, all violence as a means, is either law-making (*rechtsetzend Gewalt*) or law-preserving (*rechtserhaltende Gewalt*).[119] Benjamin limits legal violence in two variates as such.[120] He argues that violence forfeits all its validity if the violence lays claim to neither of these predicates.[121] He further stresses that all violence, as a means, even in the most favorable case, is implicated in the problematic nature of law itself.[122] Given that violence can only be found in means to achieve certain ends, he therefore argues, depending on the *justness* of the intended ends, violence gains legitimacy.[123] In this respect, legal violence means the power of the State that can be exercised on its subjects through its use of constituting or preserving its binding nature.[124]

Law-making violence in this respect can be understood as a violence whose consequence establishes a new law. In other words law-making violence is associated with the moments of the inauguration of law.[125] This is to say that, law-making violence is not only in conflict with existing laws and its conditions, but it also aims to constitute new ones in their place.[126] As Newman concluded, lawmaking violence, indeed, only reaffirms the very *place of power*; considering the fact law-making violence is irreducibly related with power; it, therefore, reaffirms the link between violence, law and power.[127]

On the other hand, law-preserving violence, the second appearance of the legal violence duality, aspires to preserve the law which had been established before any preservation attempt.

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[119] *Id*. at 287.

[120] However, other possibilities have been put forward. Gunneflo, in his reading of Benjamin, claims "the targeted killing judgment of the Israeli Supreme Court collapses this distinction in a different way from that foreseen by Benjamin." And Gunneflo considers the targeted killing judgment of the Israeli Supreme Court as 'Administrative Foundational Violence'. Please see, Gunneflo, Markus. 2011. *The Targeted Killing Judgment of the Israeli Supreme Court and the Critique of Legal Violence. Law and Critique*, 23(1), 67–82. At , 67-68.

[121] Benjamin, Walter. 1978. Critique of Violence. In Reflections: Essays, aphorisms, autobiographical writings, ed. Peter Demetz, 277–300. New York: Schocken Books. at 287.

[122] BENJAMIN, *supra* note 7, at 287

[123] *Id*. *See Also*, CANTURGUT, *supra* note 111.

[124] Butler, Judith. Critique, Coercion, and Sacred Life in Benjamin s Critique of Violence.'" In *Political Theologies*, edited by Hent de Vries and Lawrance Sullivan. Fordham University Press, 2006. at 201. *See Also*, CANTURGUT, *supra* note 111. "Butler uses the terms *law-instating* (for *rechtsetzend*) and *law-preserving* (for *rechtserhaltend*)."

[125] GUNNEFLO, *supra* note 109, at 72.

[126] NEWMAN, *supra* note 114, at 572.

[127] *Id*. at 574.

By doing so, this law-preserving violence makes sure that the posited law continually binds the population it governs.[128] This form of violence, therefore, has the function of maintaining and perpetuating the authority of the existing legal system through the violence it produced.[129] In Benjamin's reading, every valid law-making and law-preserving action *is*, therefore, inevitably violent.[130] Benjamin also brings up some exceptions in which the distinction of violence is suspended. To him, police violence is emancipated from both conditions given that it produces violence to preserve law-for legal ends-but simultaneously it is an authority to decide these ends by itself within very wide limits—therefore produces law-making violence at any time.[131]

Furthermore, Benjamin makes a distinction between *ends* based on their purposes which the violence is directed. According to him, *natural ends* refers to the goal aiming to make a law which does not have a general historical acknowledgment for it.[132] On the other hand, *legal ends* conceptualized as an objective to preserve the established or in similar words, acknowledged law.[133] As he stated, the differing function of violence, depending on whether it serves natural or legal ends, can be found in the background of specific legal conditions providing such ends.[134] In this respect, legal ends often associated with law-preserving violence while natural ends often refers to law-making violence.

Benjamin scrutinizes the different forms of ends through the lens of positive and natural law as well. In this respect, Benjamin stresses that natural law prioritizes to judge all existing law only by criticizing its *ends* while positive law prioritizes to judge all evolving law only by criticizing its *means*.[135] In Benjamin's reading, this is to say that natural law attempts to "justify" the means by the justness of the ends; conversely, positive law to "guarantee" the justness of the ends through the justification of the means.[136] Newman summarizes this in a nutshell, "*just as natural law leaves unresolved the question of means, so positive law leaves unresolved the question of ends*".[137] Benjamin concludes this paradigm by two different

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[128] Gunneflo with reference to Derrida, Plase see, GUNNEFLO, *supra* note 109, at 73.

[129] NEWMAN, *supra* note 114, at 572.

[130] BENJAMIN, *supra* note 7, at 287.

[131] *Id*. at 286.

[132] *Id*. at 280.

[133] *Id*.

[134] *Id*.

[135] *Id*. at 276.

[136] *Id*.

[137] NEWMAN, *supra* note 114, at 571.

affirming approaches in their common basic dogma: just ends can be attained by justified means, justified means used for just ends.[138]

From this perspective, if a posited law exists in any positive legal documents, according to the positivist approach, it becomes *legal* and *lawful* as the said rule has a direct connection with a related positive legal document. Positive law, therefore, is able to provide at least general grounds to examine the case. Natural law, in this regard, does not provide adequate criteria for examining violence whether it is just and moral.[139] Conversely, positive law, which concerns itself with the *means* of a certain action, regardless of the justness of its ends, come under legal scrutiny.[140] According to the positivist understanding, therefore, *legality* is the main pattern when it comes to consider any posited law as valid or enforceable. Therefore, the term being *lawful* makes such situation coherent in parallel to the etymologic outcome of the said term. On the other hand, the term *legitimate* must be understood differently considering the fact that all lawful and legal actions could be *legitimate* rules but not vice versa. As Benjamin stated, if justice is the criterion of ends, legality is that of means.[141]

From this point of view, every violence—either law-making or law-preserving—has to be in correlation with just and moral cause to be considered as legitimate. Without these correlations, Benjamin argues, violence loses its legitimacy and thus it loses its connection with law.[142] To him; at this particular point, the law therefore no longer carries the characteristics of true law, it then becomes mere atrocity.[143] From this point of view, law simply cannot determine if this violence becomes an atrocity, because law itself is not capable of judging the justness of its own ends considering the fact the precondition of the creation and its continued existence of any law is bound to violence.[144] Therefore, law cannot reach the conclusion by making self-references to determine justness or unjustness in any given case. Considering violence in the Benjaminian perspective, provides a foundation to perceive the concept of law alone, thus allows to concept of law to be liberated by not making constant references to specific historical events, ideas or figures for the purpose of legitimization of the law.[145] Thus,

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[138] BENJAMIN, *supra* note 7, at 293.

[139] NEWMAN, *supra* note 114, at 571.

[140] *Id*.

[141] BENJAMIN, *supra* note 7, at 276.

[142] *Id*. at 286.

[143] *Id*.

[144] CANTURGUT, *supra* note 111.

[145] *Id*.

this approach allows us to distinguish whether certain posited laws and enforcement of them are just. In this respect it offers a critical tool to deal with problematic nature of legal debates without falling into error which is presumption of positive legal documents as legitimate and serving justice. This presumption further causes to support the belief that law itself is just and should be understood as an end.

There could be several conclusions which Benjaminian perspective would bring to the way in which we apprehend IHRL. The question concerning finding the proper source of any human right or principles that human rights discourse is enshrining, directly enables us to connect to the scrutinizing ground of the right/principle at stake. That is the reason why any legality claim which bases itself upon some particular positive legal documents-either convention or declaration-cannot be assumed as legitimate and just. There must be an external reference point to decide this conclusion. In example, right of life, is not a *legal end* and *just* simply because it is ratified in countless legal documents, but because it originates from the norm human dignity; humans are therefore dignified, accordingly, right of life is a *legal end*. Yet, protecting the right to life through law-preserving violence is, because of this reasoning, just and legitimate, therefore a legal end in Benjamin's reading.

Such a dichotomy matters enormously. Given the fact that some of the *de facto* situations either in conflict zones or around the globe clarify the importance of *legal* / *legitimate* difference. That is the reason why natural law is important considering the fact that it has a powerful and distinguished effect over any legal regime. Therefore, one can claim that particular Gewalt-as both, force of law&violence-could be legal with particular reference to positive law documents, however same claims cannot be made upon with respect to legitimacy claim. Every action, in this respect, which takes its force from posited law is legal, but not just, hence not directly legitimate. In other words, this means that every legal action is legal but could be both legitimate or illegitimate. To illustrate, a judiciary decision regarding building new settlements could be both legitimate and legal, on the contrary a judiciary decision which allows Israeli Occupation Powers to build new settlements in the Occupied Palestinian Territory might make these settlements arguably *legal*-making reference to being in conjunction with a legal judiciary decision-but not *legitimate*, therefore unjust. Therefore, in this example, it can be argued that this particular legal action loses its connection with *just ends*; then law thus becomes nothing, but mere atrocity.

To summarize, my reading of Benjamin allows me to apprehend the connection between law and violence in relation with legitimacy and justice. Hence depending on the

justness of the intended end of law & violence, one could evaluate whether posited law & violence gain legitimacy. Given the conclusion of justness or unjustness-therefore determining legal and natural ends-is not possible to achieve by law making self-reference, positive legal documents are not able to put forward a justness claim which merely deepens on itself. Such legitimacy claim would be drawn from a closed-cycle-system. The claim which assumes that positive legal documents are legitimate and serve justice turns out a lame-duck presumption if this claim does not invoke another justness claim—in the most cases such justification comes from a higher principle. In this respect, on both international and domestic level, *legal* violence will remain in States and binding international organizations-such as UNSC-and will continue to be legally exercised on its subjects, continue to exist being lacking with respect to legitimacy claim. As Can Turgut stresses, this power will remain through its use of constituting or preserving its binding nature; different varieties of violence will continue to be enforced in the ceaseless validity cycle between the constituting power and the constituted power; role of violence as a means is either law-making or law-preserving.[146]

In conclusion, it can be claimed that the establishment of *a law* could be considered legitimate if and only intended *end* of this particular law *is* just. If the intended end is just, therefore all ensuing law-preserving legal enforcement towards this just end, would serve justice, therefore legitimate. This is how indeed the concept of law should operate. Conversely, if the intended end is not just, therefore all ensuing law-preserving legal enforcement towards this unjust end, would become mere atrocity therefore neither just nor legitimate in itself.

When it comes to the inquiry of this study, given the genealogy of violence and its relation to law and power obtained, necessitates to reevaluate the selected documents to understand the reason creating the difference among them. After that, I will bring my opinion regarding the nexus of the relation among law, rebellion, and human rights discourse.

4.2.1 Situating Human Rights' Discourse into Framework

In this genealogy of violence and its relation to law, one important actor is remaining to be situated into the equation; power. Power refers, in this equation, to this irreducible connection between violence and law.[147] Power in this respect appears as sovereign standing both inside and outside the law. Law and violence has the connection, in which violence

[146] BENJAMIN, *supra* note 7. *See Also*, CANTURGUT, *supra* note 111.

[147] NEWMAN, *supra* note 114, at 575.

reaffirms the law and the law reaffirms violence; power lies here as a signifier of this very connection.[148] As Newman clarifies; law which seeks to dismiss violence always involves a violence of its own, re-instates violence in its very foundations.[149] All instances of violence as well as the law, therefore, must ultimately invoke the principle of power.[150] As Schmitt defines sovereignty as an entity which is capable of suspending the law and decide on the state of exception,[151] following, Agamben considers sovereignty as defined by this very "state of exception" which is capable of suspending the normal juridical framework, the legal limits and protections that are enshrined within it, resulting in the suspension of the law itself.[152] Conversely, what Benjamin brings here is that the "state of emergency" is not the exception in power, but the rule.[153] Power, from this point of view, is the signifier of the principle of state sovereignty, which often goes beyond the parameters of the law in the very name of enforcing it, suspends the distinction between law-making and law-preserving violence.[154] That is the reason why, power decides on what is law, and its respective decisions, therefore, creates exceptions.

The genealogy of the nexus among violence, law and power allows forms of contentious public politics to be differentiated from one another. There are ones like rebellions and revolutions, whose actions engage with law-making violence, therefore located outside the posited law, hereby, an immediate risk to power. And there are others which do not necessarily evoke law-making violence, often comply with the posited law, such as protest and some other forms of resistance. The relation which modern IHRL and human rights discourse has established towards contentious public politics can be detectable here in this separation. Modern human rights discourse had basically closed all the gates that may potentially be a threat to power considering they might use any sort of law-making violence. When it comes to concept of rebellion, considering it with the working definition I have put forward, law-making and law-preserving violence's approach to the concept of rebellion can easily be captured. To put it simply; rebellion, by all means, completely and undisputedly refers to the law-making

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[148] *Id*.

[149] *Id*.

[150] *Id*.

[151] SCHMITT, *supra* note 1, at 5.

[152] Giorgio Agamben. 1998. *Homo Sacer: Sovereign Power and Bare Life*. Daniel Heller-Roazen trans., Stanford University Press. at 15. *See Also*, NEWMAN, *supra* note 114, at.575

[153] Walter Benjamin. 1982. *Theses on the Philosophy of History*, *in* ILLUMINATIONS, 255, 259 (Hannah Arendt ed. & Harry Zohn trans., Fontana. *See Also*, NEWMAN, *supra* note 114, at.575.

[154] NEWMAN, *supra* note 114, at.574

violence; so do other forms of contentious public politics which are potentially destructive to the sovereign and power. Therefore, although they had once been, they cease to be located within the frame in neither IHRL nor the human rights discourse.

The approach obtained from Benjamin also allows us to detect differences within selected legal documents, their approaches to the forms of contentious public politics and to the term human right/s. As it detailed in the previous chapter; some of the historical documents consider contentious public politics-including resistance and rebellion-as a human right, while others consider them as a means to avoid breaching what were considered as human rights. In both cases, historical documents are, in a way or another, enacting such possibilities and encouraging people, in their perspective, to uphold those ways to keep people dignified. They set the criteria of a sovereign entity crystal-clear and aimed to protect that sovereign entity through law-preserving violence; however, when certain criteria met, they all allow to harbor law-making violence to counterweight the possibly corrupted sovereign power. Given approaches clarify that historical documents acknowledge to allow, when necessary, both types of violence—law-making and law-preserving violence. Historical documents, in this respect, bear a very strong sense of law-making violence. Further, there is not only strong sense of law-making violence but also acknowledgement of law-making violence within their context. This is reasonable considering the fact that they are constitutional revolutionary documents, their approach to the law-making violence is a way to legitimate their own legitimacy in the form of ensuing legality of newly established political regimes.

Conversely, what is the IHRL and its established institutions-including case laws of different human right courts' jurisprudence and conventions-merely has that the protection of law-preserving violence. There is neither recognition of law-making violence in modern human rights idea nor acknowledgment, let alone encouragement for any purpose such violence may direct. Such a sharp approach affects human rights discourse's relation with other even softer forms of contentious public politics as well. In example, as it has been discussed in the second chapter, ECHR's restrictive approach to the right of assembly and its very detailed restriction clauses, I believe, originated from such an understanding. This clarifies the problematic approach of ECtHR to the so-called right of assembly and the alleged right of protest—or as it has been mostly described by the ECtHR, mass-protest. Modern IHRL and human rights discourse, deliberately, do not provide any space to those which might engage with law-making violence, and provides a very limited and restricted opportunity to the others such as protests and assemblies. This is the reason why the right of assembly, as it is ratified in the Article 11 in

the ECHR, turns out to be a human rights that is impossible to practice without giving a legal cause for inference, interruption and confrontation by the sovereign due to its very detailed restrictive clauses.[155] Such an approach creates an open ended space for state interferences as well as paves the way for practically undermining realization of this right and theoretically creates an impossibility of action.[156] Therefore, two conclusions can be drawn; we do not have some forms of contentious public politics and what we have from remainder of them is extremely limited and restricted.

There are historical facts that chronologically relate in detecting the restrictive approach taken by UDHR and ECHR on the name of human rights. With respect to UDHR, it was drafted by surviving countries aiming to establish institutionalized and internationalized human rights project ensuing WWII considering the fact they absolutely aware that the human rights idea is the future. They also, however, keenly and desperately interested on to preserve their dominance— the dominance not only regarding their own population they rule but also dominance upon their colonies. Yet, the deliberate intention to preserve legal dominance by ECHR is also comprehensible since the colonial nations were just about to face extreme violence by the respected countries, in the name of self-determination. Given that the historical reasons caused the positive instruments of IHRL to exclude any right for anyone to legitimately contest their authority, resulting in either having very restrictive clauses or basically not recognizing contentious public politics. This allows not only throwing any form of law-making violence out of legal framework, but also clarifies the reason that is behind the very shift which the term human right/s is subjected to. This situation draws the conclusion of obtaining an approach in which the sovereigns/governments/political regimes and their continuity is the main concern, and the intended result is aimed to be achieved through the modern Int'l law.

Nullifications and obliterations of some of destructive forms of contentious public politics are hidden here, state-centrist form of human rights idea and its resulting demand that states must preserve itself under every situation. This is the very law-preserving violence showing itself in the form of protection of sovereign entity and their political regimes. All we have, within and beside of the modern human rights discourse is the law-preserving violence. This is the very approach what Benjamin explains as law being considered as violence when in the hands of individuals as a danger undermining the legal system.[157] What is most threatening

[155] PARSA, *supra* note 32, at 49.
[156] *Id*, at 5.
[157] BENJAMIN, *supra* note 7, at 280.

to the state is not the legality or illegality of people's ends, but the mere existence of violence outside the law constitutes a threat by itself, even if it is in order to attain natural ends.[158] This is to say that law does not attach importance to whether or not ends are just but whether these ends are sought with violence.

In order to make things more complicated, this is also what Benjamin discusses, when law-preserving violence becomes extreme, it looks very much like law-making violence in itself. Benjamin examples this situation in the example of violence exercised over life and death, he argues, the purpose in this situation is not to punish the infringement of law but to establish new law, resulting in law to reaffirm itself.[159] Sovereigns today by the means of the way in which the modern human rights discourse structured, transgress their own authority, thus they are no longer interested in preserving the law, they simply make new law. We no longer get that Benjaminian coherent system of dichotomy to evaluate violence, what we just have is the preservation of law. Merely preserving law lead IHRL to undertake state-centric view prioritizing *status quo* all along.

4.3 Concluding Remarks

In light of the evaluations made above, there could be three main conclusions that I would like to dwell on. The first conclusion would be that the shift in the human rights discourse made in reference to its relation vis-a-vis violence led to the change in the very meaning of the term of human rights. It is, therefore, changed the meaning of the term, the way it operates and the scope it encompasses. It used to be a claim, that had originated directly from human beings, from their dignity, which belongs to people in order to arsenal them to counterweight the sovereign whenever it might be necessary. However, from particularly 1948 and on, the term human rights, the idea residing in it, have changed to be another fiction that necessarily has to be realized through established/institutionalized mechanisms either domestically or internationally. It means that human rights as an idea had started to deploy a state-centric approach within itself, resulting in protection of the status quo, no matter what situation might bring. Ever since its manifestation, the modern version of international human rights law constructed itself as a regulatory concept within sovereignty-human beings dilemma. It aims to protect human beings against the strong authority of the sovereign entity and to set

[158] NEWMAN, *supra* note 114, at 571.

[159] BENJAMIN, *supra* note 7, at 286.

certain boundaries. However, it aims to realize it through the same authority in a given case, which is the fact creating the irreducible contradiction. This is to say that, the term becomes a set of norms which have to be upheld through sovereign powers instead of strengthening the people against sovereigns. It was once a claim against power, now it turns out to be a very useful apparatus of power.

The shift which the term human rights had also paved the way for welding to deploy human rights as a tool to sustain domination in and of itself.[160] In example, Amnesty International, once came up with an campaign called "keep-the-progress-going" in which they advocated against the withdrawal decision of NATO troops from Afghanistan in order to protect Afghani women' rights where they referred to a broad array of claims that takes its roots from the modern human rights discourse.[161] In an article named "Smart Power,, written by Suzanne Nossel, who was the Amnesty International USA's executive director at the time when Amnesty's keep-the-progress-going campaign took place, called upon progressives to "learn from the example of the U.S. military's" use of power in a "smart" way.[162] Different varieties of usage of human rights discourse has a great deal of potential to be deployed to the extent that resorting to the military power and prolonging a foreign military occupation in another country in order to protect their human rights.[163] Violence, in this respect, has to be deployed to protect human rights from the violence that violates human rights.[164] "Keep-the-progress-going" campaign in which the term human rights deployed to justify military occupation, was merely a paradigmatic example of the potential the term human rights has within much wider trend whereby human rights are being deployed in the service of domination.[165] The situation also clarifies that the term human rights, and the scope of it, refers to wider area than the IHRL, indeed, legally refers.

The second conclusion that can be drawn is that the absence of the acknowledgement of any kind of law-making violence within IHRL and human rights discourse is the reason

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[160] For an in depth evaluation, *Please See*, Nicola Perugini and Neve Gordon, (2015). *The Human Right to Dominate*. Oxford University Press. The book examines both; "violent practices deployed against individuals and groups in order to dominate them & enacting different relationships of domination these practices are rationalized, legitimized, and made sense of by appealing to human rights."

[161] Nicola Perugini and Neve Gordon, (2015). *The Human Right to Dominate*. Oxford University Press. at, 1-5.

[162] *Id*, at 4. *See Also*, Nossel, Suzanne. "Smart Power." *Foreign Affairs* 83, no. 2 (2004), 131–142.

[163] *Id*, at 5.

[164] *Id*. at 3.

[165] *Id*.

effecting IHRL's approach to all forms of contentious public politics. As detailed, this resulting in the forms of contentious public politics that might potentially became a threat to sovereign has no longer a base in IHRL and its discourse. Furthermore, it makes IHRL to regard remaining forms of contentious public politics very restrictively despite the fact that they have relatively softer means and ends. The main inquiry of this thesis ending here, the reason why we no longer have the concept of rebellion within the legal sphere is hereby clarified. *Raison d'etat* of *power* outweighs the *raison d'etre* of the term human rights. This situation, I believe, creates different varieties of contradiction of the human rights idea with its own foundation, roots, and *raison d'etre.*

The last conclusion, and the consequence of the first conclusions is that the IHRL, therefore, has an immediate risk to be the very source of violence in itself. IHRL and the human rights discourse, are no longer interested in ends, but rather interested in the legal means it itself had already provided. Resulting to the situation in which human beings, the very subject of human rights idea, are not capable of to set natural ends by themselves, but they have to pursue legal ends what IHRL had already and limitedly provided to them. However, I believe, the norm human rights/human dignity-the fundamental reason of human rights discourse-have the scope encompassing a wider area than it had already provided by the established conventions and institutions. That would be a proper approach, in which *reason* comes directly from *human dignity,* to discuss what human beings and dignity of them, indeed, is capable of. Given a situation in which if a natural end found in the very core of human rights idea is not found within IHRL, this will cause IHRL to be disregard it to be pursued, resulting in it to be not protected by established law, would therefore, become violence. This is to say that, according to Benjaminian reading, the law would no longer be law, but a mere atrocity. Not acknowledging at all the law-making violence within IHRL and its discourse allows this risk to be within IHRL. IHRL, therefore, has an immediate risk to be the very source of violence in itself. The explanation of law's interest in monopolizing the violence via-a-vis individual, as Benjamin claimed, caused IHRL to take a stand with the same approach. If law, would continue to prefer not to justify its means by legitimate ends beyond its own institutionalized legal verges, it will be doomed to produce bare-violence. Everywhere and all the time; as an omnipresent and comprehensive *Gewalt*.

5. Conclusion

This study intends to dwell on the concept of rebellion. In order to provide a proper discussion ground, it is initially aimed to clarify similar words that often deployed interchangeably to describe similar concepts. Due to this reasoning, this study initiated its discussion with the chapter in which these notions are defined through the components provided them to differentiate the terms. The term contentious public politics, which initially phrased by Charles Tilly, is chosen to define the ground in which dissenting actions forming contentious politics in itself can be found. I have tried to detect three integral components to establish a working-definition for the concept of rebellion to distinguish it from other similar concepts, subsequently allowing me to purify the way I interpret the concept. Moreover, the notions of social movements, protests, resistances have been chosen among other forms of contentious public politics to analyze in depth to distinguish their differing aspects from the concept of rebellion. Later in that chapter, the relation IHRL created via-a-vis contentious public politics was analyzed by means of investigating ECHR's, I infer, related Articles 10 and 11 which the right of assembly and freedom of speech had ratified. Furthermore, one of the exceptional clauses of right to life enacted in Article 2 to the ECHR had been analyzed to show the Convention's approach to the collective actions in general.

In the following chapter, five different legal documents from different époques and societies have been evaluated to show their different approach regarding the way they interpret power, violence, and some forms of contentious public politics. One of the legal documents evaluated in this chapter was the UDHR with a particular focus on its third preambular paragraph in which the term rebellion is found, making UDHR seemingly the only source of modern IHRL that has a reference to the concept of rebellion. Other legal documents chosen to be evaluated in this chapter have been selected from 18th century to compare them with UDHR with respected terms. Taking into account the fact they were from different contexts, and they indeed were different in kind, two main differences among them have been found; the first was that the 18th-century-documents were carrying in them a very strong sense towards rebellion and some other forms of contentious public politics while UDHR is desperately trying to do the opposite. And the second conclusion was that the very term human rights has been conceptualized differently in 18th-century-documents than it was conceptualized within UDHR. It is concluded that it merely was not the term that changed but also the scope it encompasses and the meaning of the term claims to have is changed. Hereby two major

questions arose at that point, what could be the legal and political reasons that might cause such differences; and how could one apprehend these differences?

In order to answer these questions, I delve into the role of law-making and law-preserving violence by using Walter Benjamin's seminal piece of *Critique of Violence* in which he discusses the genealogy of violence to understand its relation with law and power. With the perspective obtained from Benjaminian perspective over the inquiry, the nullification of concept of rebellion in modern IHRL regime has been analyzed to comprehend the nexus of the relation between IHRL and violence. Three major conclusions have been subsequently reached from this interrogation. The first was that the change in the term human rights itself has resulted the term to have a state-centric approach that was created with the idea of human rights and this idea has to be realized through established/institutionalized mechanisms. This was also what preambular paragraph three to the UDHR enacted as protecting human rights by a rule of law is the way to avoid unintended consequences. This change can also be seen in the claim modern understanding of the term human rights bear in itself. It also has been detailed that shift might yield unfortunate consequences considering the fact the term human rights even deployed to justify prolonging military occupation in another country in order to protect *human rights*. The second conclusion was that the withdrawing law-making violence explicitly from IHRL caused the concept of rebellion to be removed from the framework and caused softer contentious public politics to be derogated. Then finally, it had been concluded that the withdrawing of law-making violence explicitly might carry a risk for IHRL to become a source of violence in itself.

It was one of the fundamental driving points of this research to situate the notion of *rebellion* within its proper place in the IHRL and the discourses surrounding this legal system. However, to the researcher's surprise, it was concluded that the current international legal order does not offer legitimate maneuver points for rebellious activities to take place – even against corrupt sovereign entities, that may be seen as just ends. However, the research at hand does not conclude with pessimistic futurities that would picture the international human rights scene with mere a static, hegemonic, and unchangeable scenery. On the other hand, with respect to the rising scholarships, activists and *social movements* from the global south that includes anti-imperialist and de-colonial tendencies, indigenous resurgences, transitional justice and reparation claims, food sovereignty movements and global solidarity networks this research concludes with an optimistic note with the hope that one day the international human rights

framework can be reformed to truly honor the ideas of human wellbeing, dignity and international solidarity.

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