

Taiwan and Civil Liberties in the State of Exception

Change in the Emergency Policy Framework as a Signifier of
a Process of Liberalization or of a Continuation of the State
of Exception?

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Abstract

The purpose of this study is to investigate whether the Taiwan government's lifting Martial Law and passing the National Security Law signified a process of liberalization or the continuation of the state of exception. Its aim is to unpick the relationship between security policy development within the legal framework and human rights.

This study's historical perspective is deployed deductively to analyze the changes to, and the effects of, the emergency policies.

The analysis employs a comparative approach to the two emergency policy periods. They will be discussed thematically according to Giorgio Agamben's concepts – juridico-political, law of revolution, sovereignty and legal status – of the State of Exception theory.

The results indicate that Martial Law and the subsequent National Security Law constitute the continuation of the state of exception in relation to the civil liberties. The difference lies in the application of the legal frameworks. In the first instance, targeting the social sphere in its totality and in the second, the individual. From the civil liberty perspective, it could be noted that this constitutes a continuation of the emergency policy era in an evolved form, its objective being the elimination of individuals who are deemed to endanger authority.

Key words: Human Rights, The State of Emergency, Emergency Policy, Social Sphere, Political Sphere, Security, Policy Development, Taiwan

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Abbreviations

CCP	Chinese Communist Party
DPP	Democratic Progressive Party
GDP	Gross Domestic Product
KMT	Kuomintang Party
PRC	People's Republic of China
ROC	Republic of China (Taiwan)

1 Chapter: Introduction

The use of emergency policies has, since the beginning of the 20th century, become a seemingly increasingly prevalent social phenomenon.

The 11th September 2001 incident, branded ‘9/11’ (Fox News, 2003), a major attack on US territory resulted in some 2792 civilian death (CNN U.S., 2003). It allowed the construction of a decisive break in international relations. The future – post-9/11 – was thereby distinguished from the pre-9/11 past. This forced a consequent and inevitable shift in the perception of core democratic values. Anti-Terror Legislation is in the US seen by some to a significant degree as subverting the American Bill of Rights (Осознание, 2010). The political agenda through the manipulation of juridical institutions was thereby able to legislate the use of pressure on individual lives.

Instead of promoting pragmatically secured social infrastructure in the face of an emergency, the imposition of emergency policies can be shown actively to erode human rights and to produce anti-democratic practices. By these means liberal democratic nations find themselves as Sylvia Hale suggests, “[becoming] police states” (Morgan and Dagistanli, 2010:591). Such a transformation of the political agenda not only questions justice but also challenges social trust (McCulloch and Pickering, 2009:636). Consequently, in democratic nations under emergency provisional legislation, the implementation of human rights becomes subject to neglect or suspension (Westendorf, 2013).

The concept of the ‘State of Exception’ was formulated by Carl Schmitt, as a framework for understanding the erosion of human rights within this context. The war on terror constitutes such a topological structure. He characterizes the ‘State of Exception’ as:

“[U]nlimited authority, which means the suspension of the entire existing order. In such a situation it is clear that the state remains, whereas law recedes. Because the exception is different from anarchy and chaos, order in the juristic sense still prevails even if it is not of the ordinary kind” (Schmitt, 1922:12).

In order for liberal democracy to prevail it has to fulfill the following criteria: 1) free, fair and competitive elections, 2) a broad set of human and political rights, 3) the rule of law,

4) the division of power (executive, legislative and judicial powers), and 5) participation (Margård, 2012). A democratic system would give weight to the second criterion. The Universal Declaration of Human Rights 1948 embodies these principles summarized by Hsieh (2006:9) below:

Articles 2-21; Civil and political rights or legal rights: These rights reflect a Western liberal tradition that includes the rights to liberty, the right to life, the right to self-preservation, the right to property, and the right to freedom from torture.

Articles 22-27; Social, economic and cultural rights: These [include] social welfare, [e.g.] employment, income, education, and participation in a cultural life.

Article 28; Collective rights: These reflect an ‘international’ view, including the duties and rights to self-determination of peoples.

Agamben (2005:8) argues that there is a trade-off between emergency policies and human rights, in other words between civil rights and security. The more human rights become controlled by the state through its legal institutions (emergency policies), the less democratic the government becomes. In order to understand this particular set of legal and social relations, which is becoming a central issue, Taiwan, or officially the Republic of China (ROC), with its long history of emergency legislation, might offer a useful microcosm of this process of exchange between security and liberty (Luce, 1984:203; Roy, 2003:158; Taipei Times, 2009).

Taiwan’s concern with human rights is linked to both its internal and external political development. Internally democratization and human rights are inextricably linked. The Chinese Civil War, an expression of deep divisions between competing ideologies of national identity, has been seen as the means by which democratization was carried out in Taiwan (Hsiao, 2006:292).

Both internal and external, geopolitical factors, and their relations to each other, are significant in the formation of nations. The national identity of Taiwan and its population remains problematic and in some respects undeveloped (Roy, 2003:242). Both the external relationship with Mainland China, and the internal situation leave the population without the civil structures, which enable civil liberties. McDonald (2013) suggests that the unifying effect of traumatic events may enable reactive social structures to be constructed. Agamben (2005:87), however, reveals the mechanism by which a contested national identity allows the

restriction placed upon human rights through use of emergency provision. Arguably Taiwan's peripheral and indeterminate status left it vulnerable to use of exceptional measures.

The island's future relationship with China is one of the major political issues in contemporary Taiwan politics (Roy, 2003:242). China contests its right to separate self-governance. It is frequently argued that a sense of national identity is fostered by 'oppression' by a power structure experienced as different or other. Taiwan's national identity is thus seen as developing during social discontent. The popular uprising in 1945 and its repression by the government proved a catalyst for the development of the independence movement emphasizing rival notions of liberty and self-determination (Hsiao, 2006:272-273).

1.1 Purpose

This thesis is based on a single longitudinal case study of Taiwan comparing two emergency policy periods, indicated above, using Giorgio Agamben's epistemological theory of the State of Exception. While ostensibly security might seem to imply liberty for the individual, the purpose of this study is to map the paradoxical relationship between civil liberty and security policy framed within the constitution. This is a situation in which, in Agamben's (2005:1) words, "the state of exception appears as the legal form of what cannot have legal form". An emergency policy system, which makes ambiguous the notion of a liberalization of human rights in Taiwanese society, will be skeptically and critically examined. The question of whether the lifting of martial law and the passing of the new National Security Law in reality made a significant positive difference to the degree of civil liberty within Taiwanese society will be critically interrogated. Does evidence support the assertion that the Kuomintang authorities' legislative amendments were in practice the means by which the state of exception was deliberately continued, bringing about the disintegration of the process of liberalization and an attendant social fragmentation?

1.2 Research Question

This thesis explores the consequences that the transition in Taiwan's legal framework between two emergency policies have had for the development of civil liberties. Particular attention will be paid to the historic and social context and to Agamben's theory of the State

of Exception as a paradigm of government. The restructuring of social and political relations will also be evaluated as an effect of the process of the legal transition. The research question(s) could be posed:

- How does the transition from Martial Law to the National Security Law change the juridical approach to human rights in Taiwan society?
- Were these amendments part of a process of establishing core democratic principles or were they a continuation of the state of emergency?

1.3 Method

The prevalence of the phenomenon of emergency policy enactment suggests use of the qualitative method as appropriate for the examination of open-ended questions of concern within the social environment. It allows construction of a discourse in the field of “unforeseen areas of discovery” within the lives of people in the social environment (Holliday, 2007:5). In order to contribute to this debate, ontological authenticity enables a better understanding of the specific social milieu, as it allows analysis of complex exchanges between society and the institutions of government and the law, and gives access to levels of social and political interaction (Bryman, 2012:393; Holliday, 2007:5). It provides a comprehensive and broad perspective on processes observed over time in relation to human social behavior within the specificities of place and time and within the context of concepts of rights, liberties and emergency policy.

The study contains a single longitudinal case study, the instance of Taiwan. This is examined in the light of State of Exception theory. Taiwan offers a “life-history approach” (Bryman, 2012:402) given its historic use of emergency policies embodied constitutionally the Martial Law in February 28th 1949 and the National Security Law in June 12th 1987 continuing up to the present.

This specific example will enable identification of the specific effects on civil liberties within the historical context of Taiwanese social reality that both these legal frameworks have nurtured. Thus, it will provide a better understanding of the particular adjustments between the notion of emergency policies on one hand, and democratic freedoms on the other, created by the existence of a state of exception. These will be clarified by comparison with the

implementation of emergency legislation within democratic states and the specificities of similarities and differences will be analyzed in relation to differing social effects.

Additionally, the case study will give an insight into how the balance between emergency policies and the presence or absence of civil liberties changes over time. The longitudinal approach enables generalization of empirical paradigmatic shifts in the relationship between the field of emergency policies and that of human rights, reflecting a strong sense of before and after (Bryman, 2012:402; Holliday, 2007:97) and affect processes such as formal liberalization and the development of civil liberties within society. Agamben's own work suggests pre-emptive steps to safeguard human rights. To narrow the research scope further, a detailed comparison will be made of the two emergency policy periods which allows precise observations to be made of differences and similarities (Bryman, 2012:74) within the social community. Any hindrance of formal liberalization caused through a continuation of the state of exception will be clearly demonstrated in relation to those particular examples. A full recognition of the historic context is essential in order to explore their differences in law, mindful of Schmitt's statement that martial law is "neither a right nor a law... but rather a proceeding guided... by the necessity of achieving a certain end" (Schmitt, 1922:172). The evidence gathered for the relationship between security policy development and human rights will reveal the complex interplay of multiple factors and the influence of cultural specifics.

A deductive and analytic methodology will be used in the application of Agamben's theory of the state of exception. Deductive reasoning allows examination of the nature of the relationship between the emergency policies and civil liberties and between theory and social research (Bryman, 2012:24). The research question problematizes the manner and extent to which emergency policies interfere with or reaffirm the notion of human rights. Consequently, the data will show how productive a theoretical approach to the issue can be held to be (Bryman, 2012:26).

1.4 Empirical Material

Secondary sources have been used throughout. The published literature includes a range of work by noted academics and theorists in the relevant fields. Primary sources will be used where possible.

The key source for this study is Giorgio Agamben's theory of the State of Exception.

This will be analyzed in the light of the context of Taiwan's specific experience of emergency legislation and of its effects on civil liberty within what is, in many ways, a developing state. Taiwan has experienced during the six decades since 1949 a process of democratization in the sphere of human and political rights at the same time as existing under emergency provision (Hsieh, 2006:5). Therefore, Agamben's theory of the State of Exception will be applicable to this case, as it will allow the presentation of evidence drawn from longitudinal social changes and political transformations under emergency provision.

The sources used for this analysis of Taiwan's historical context include academic writers such as Linda Chao and Raimon H. Myers, Taiwan Communique-journal, Denny Roy, Alan M. Wachman, Kenneth Christie, Hsin-Huang, Michael Hsiao, and Jolan Hsieh. Current news items will also be discussed taking into account the context of their institutional construction.

These texts will provide evidence for the historical background of the use of emergency policies and will be considered critically in the light of further analyses of the social, legislative and historical situation, and of Agamben's theory, in order to demonstrate whether the legislative process spurred on the process of liberalization or further entrenched the state of exception regime within the social milieu. The interpenetration of the legal framework with the political and its effects on this specific society will be examined.

1.5 Limitations and Delimitations

The methodological challenge in this research is that it proposes a single case study – having two aspects – in relation to the overarching prevalence of the use of emergency policies by governments since the beginning of the 20th century. Thus, the study will not allow “theoretical generalization” (Bryman, 2012:406) of the processes operating within one social context to be taken to apply equally elsewhere. Consequently, the degree to which the findings may or may not be applicable transnationally will remain unclear (Bryman, 2012:390). Likewise the degree of variability between different factors has to remain essentially untested in relation to the phenomenon's global scope.

Instead, this study permits a specific political context to be drawn on and an in depth observation of the effects of emergency legislation on individual liberty to be made (Bryman, 2012:26). The study will analyze those aspects of a state under authoritarian government since 1949, which are relevant to state of exception theory and to liberty. It will consider the means

by which the democratization process in the field of human and political rights has proceeded and discuss the attempts to widen the politically involved base during a sixty-year long contestation of martial law. A longitudinal perspective on a specific political context allows evidentially based assumptions about the future development of human rights legislation and practice, which are possible under emergency provisions in a modern setting. Thus, a degree of “theoretical generalization” will be possible (Bryman, 2012:406). Questions concerning the long term effect on social reality, or indeed on the tension between notions of national security and national liberalization, are suggested by this method of research.

Another limitation is authorial subjectivity. Bryman (2012:405) suggests that taking an unsystematic, impressionistic and subjective view of the relative significance or insignificance of aspects of the topic may result in bias. The adherence to the epistemological theoretical framework outlined above ensures that the analysis of the effect of the use of emergency policies on the development of civil liberties are both empirically and theoretically grounded and thereby unpartisan.

1.6 Disposition

The theoretical framework is discussed in Chapter-2. First an overview is given of the category of emergency policies, of what counts as emergency policies for the purpose of this study. A discussion of Giorgio Agamben’s epistemological concept of the state of exception follows. Central to Agamben’s work are the core philosophical areas formative of the state of exception, that of Juridico-Political, Law of Revolution, the Sovereignty and Legal Status. The purpose of this exegesis is to draw out connections between notions of emergency policies, the concept of the state of exception and its effects on liberty. The theoretical framework concludes with a critical analysis of current research in the field with reference to theoretical developments proposed by Edkins, Bigo and Hyusmans.

A summary of Taiwan’s historical use of emergency policies and their deconstructive effect on social reality follows in Chapter-3 providing the evidential base for the theory delineated above. The historical context of human rights’ development in Taiwan is discussed. A longitudinal perspective will enable the topic to be considered in relation to the two periods under consideration. This throws light on the developmental and deconstructive processes which came into effect under these changing forms of emergency legislative policies and on the extent to which they could be said to have remained intact during the

process of legislative change. The historical correlation between the legal framework and the nature of resistance should reveal the developmental change that emergency policies affect. This study considers evidence, which poses a challenge to commonsense notions of a natural and perceived link between security and liberty. The character of both sets of emergency policy legislation will be briefly described.

In Chapter-4 Agamben's theory of the state of exception will be critically applied to the above analysis using the core principles itemized above. The particular cases which have been treated as exceptional under Taiwanese emergency legislation during the stated periods will be thematically analyzed and comparative use will be made of the similarities and differences. It is within the field of social reality that the state of exception, constructed ambiguously in relation to the legislative field, plays out in relation to the epistemology of civil liberty. The manner and means by which this is carried out will be discussed in Chapter-5.

2 Chapter: Theoretical Framework

The theoretical framework suggested by an examination of states of exception is fundamental to understanding the longitudinal effects on the social setting and on future security policing, liberalization and policy development. This chapter discusses the nature of the emergency policies in relation to the social sphere and to the concept of security and civil liberties. The key concepts are then explored and a critical overview of current research in this field of political and developmental study is given.

2.1 The Nature of the Emergency Policies

The term ‘emergency policies’ is commonly used in empirical studies, and it is also used specifically within the analysis of the State of Exception. In normal circumstances the *état de paix* distinguishes a zone of action where military authority and civil authority each acts in their own sphere (Agamben, 2005:5). However, the emergency situation has two effects. The first blurs these spheres and the second neutralizes the public realm (individual or collective) (Huysmans, 2008:166). Thus, the sovereign can declare whether or not a city is actually under attack or directly threatened by enemy forces (Agamben, 2005:4-5). Westendorf (2013) interprets the term ‘sovereign’ as referring to a governing apparatus either a person, a government or a law that frames the legal norm and places legal exception boundaries within the social environment according to which civilians are judged.

This creates a paradox, Huysmans argues, as the security measures are result of a process of (in)securitization that is deeply politically rooted (Denemark, 2010:2). Instead of securing the social infrastructure, the law is used as a tool by the government/sovereign to structure social order. The law reflects power that identifies the social as a problem, especially in relation to human rights. Political power becomes concentrated in the hands of the state in order to stifle social resistance. In the US, the Patriot Act 2002 was a means of justifying the war against Afghanistan and of further militarizing internal security (Bigo, 2006:48), therefore rendering problematic the issue of human rights. The monopoly on political power

given to the government allows it to block opposing political forces whose agenda might be seen to undermine it (Christie and Roy, 2001:222).

A liberal democratic understanding presupposes a balance between government and society (Margård, 2012). Agamben refers to this as ‘the Veto and the Voice Power’ (Davenport and Inman, 2012:623). The balance will prevent the unequal distribution of human and political rights between these two spheres.

Emergency provision causes de-differentiation of internal and external security forces through the practice of violence (Denemark, 2010:4) where biological life becomes subject to sovereign power, to use Agamben’s term.

That which is ostensibly intended to protect, is enabled to cause harm. This can also be understood as a “destabilization of [the] boundaries of the social universe” (ibid:5), an act which undermines democratic values. For Denemark (2010:2) ‘preserving political powers’ would mean the imposition of a ‘political program’, which would assess who needs to be protected and who sacrificed, designated, controlled or coerced. Thus, this political program targets “imaginary future harms” (McCulloch and Pickering, 2009:629) assuming that a ‘futuristic threat’ would be eradicated leading to a reduction in the level of international terrorist crime. Thus, the current counter-terrorist measures aim to ‘align’ the future with the present, both judged as equally predictable. McCulloch and Pickering (ibid) emphasize that “ignoring social and environmental factors” may lead to the customary use of anti-democratic practices.

2.2 Giorgio Agamben – The State of Exception

One of the key concepts that Giorgio Agamben uses in theorizing the use of exceptional measures is that of the juridico-political. The concept refers to a point of imbalance between public law and political fact (Agamben, 2005:1). As there is no clear division, a paradoxical position is constructed in which it is possible to have a set of juridical measures that cannot be understood in legal terms, so that the state of exception appears as the legal form of that which cannot have legal form. It is the state of exception, which allows the juridical sense to remain, but without the juridical order. Christie and Roy (2001:222) see the shift in legal status as “enhancing socioeconomic rights” while “reserving strong political powers to the state, that is, holding back civil and political rights”. Therefore, the use of exceptional measures could be understood as the ‘illegal manipulation’ of civil liberties through the

‘noble excuse’ of protecting those very values. Agamben (2005:1) refers to De Martino to argue that exceptional measures are the result of periods of political crisis, therefore the phenomenon should be understood on political and not on juridico-constitutional grounds. Agamben (ibid) raises the question of the relation that binds, and at the same time abandons, the living being to law and how that is disabled from preventing what was supposedly conceived of as temporary, becoming a permanent institution. Permanent use of emergency policies itself on a daily basis replaces the constitution, a process which Roy (2003:158) has confirmed in Taiwan. Here it is evident that necessity, as Agamben (2005:1) argues, is a key aspect of the exceptional. Thus, the State of Exception has become a permanent form of government in a response to both internal and external threats.

The juridico-political, a ‘law of revolution’, is Agamben’s second key concept. Emergency policies are “juridically organized violence” (ibid:28) a reference to ‘pure violence’ occurring outside the law where the sovereign responds with assault to social agitation, by suspending law. This phenomenon creates a deception in which the security level is raised, but at the same time the citizens are not secured (ibid:2) creating a field of action, which is permitted through a legal exception, a contradictory legality. The state of exception becomes closely related to states of civil war, insurrection and resistance. The reason for a society’s approval of the normalization of the state of exception is due to its conflicting nature. Civil war is the antithesis of normal conditions, but through the emergency policies these circumstances become the legal norm (ibid). The ‘natural’ acceptance of sovereign violence implies the acceptance by society of sovereign dictatorship and the violation of human rights within ‘democratic conditions’. When acceptance becomes a legal norm, democracy disappears, to be replaced by “liberal-totalitarianism” (Zizek, 2002:4). This legal response/reaction can be understood as the law of revolution, a deconstruction of the legal norm. Criticism of emergency provision is therefore re-embodied as the ‘law of revolution’, an emergency policy put forward in reaction to a government devoted to the purpose of perpetuating its power in a manner directly contrary to the fundamental principles of modern democratic government (Roy, 2003:91).

Agamben refers to the notion of the life form as legal status or more commonly as ‘bare life’ an attribute of the state of exception. Agamben (2005:3) states that emergency policies erase the legal status of individuals. Beings become available for reclassification in relation to sovereign power as suspects and terrorists, potential or actual, establishing a binary opposition of political to social. The terms in this opposition may be allocated varying roles, with the social sphere defined as threat, as above, and the sovereign as protector with a space

left for individual self-allocation. This could be described as “homicidal monomania” (Foucault, 1978:197). Elsewhere Foucault uses the metaphor of ‘infectious disease’, ‘medicalising’ the process of arousing a fear of maximum consequences with minimum warning. Legal status is removed out of a “desire to control the danger hidden in human behavior” (ibid), and hence in society. Agamben (2005:26) acknowledges Dante’s affirmation of the possibility that a suspension of the law might be necessary for the common good. The category of ‘common good’ suggests security experienced by the commonality for the good of all rather than exclusively by the government apparatus. As emergency provisions become daily practice, the purpose of the ‘common good’ that of preserving the life form becomes questionable. The process used involves neutralizing society through allocating its political powers to the state (Roy, 2003:91).

Agamben (2005:1) draws on Schmitt’s definition of sovereignty, “he who decides on the state of exception”. It is balanced by the power of veto and the voice. This suggests that the law becomes a guarantor of the immunity of the sovereign, “privileging sovereign violence” (Humphreys, 2006:680). With the removal of voice power, citizens are rendered vulnerable before the law, as newly constituted. Resistance may be viewed as both the citizen’s right and the duty. It is this, which can be achieved through voice power. Schlozman et al. (2012:2) define this as a requirement for a functioning democracy. It is the means by which information about public experiences, needs and preferences is communicated and through which public officials are held accountable. The presence of sovereign power removes the political capital from the ‘duty right’ (the voice) of the citizens (Agamben, 2005:10-11). “Sovereign dictatorship” (ibid:33) is one category Agamben uses to designate suspension of democratic principles. In this case, he explains the mechanism, which allows the link between sovereign and juridical order as “the distinction between constituent power and constitutional power” (ibid). Sovereignty anchors juridical order, in Agamben’s (ibid) phrase, by colonizing the life form through its enactment of emergency policies, which allow it to claim ownership over the legal life through limiting participation in the political. The value of Agamben’s work can be summarized as recognizing that the state of exception is a paradigm of government, and that the need closely to define the relation of the living being to law is urgent. After all, the state of exception marks the ‘threshold of indeterminacy’ between democracy and its opposite (ibid:1).

Having “reached its maximum worldwide deployment” (ibid:87), with the normative aspect of law ‘obliterated’, the state of exception is applied internally while externally, under the pretext of legality, international law is breached. In his conclusion he suggests that a way

out is to be found in a ‘countermovement’, which seeks to loosen what has been artificially, and violently bound. For Agamben, a more positive future resides within what he calls ‘the bio-political machine’ (ibid), which through ‘true political action’ is able to ‘sever the nexus between violence and law’. It is this which will enable the existence of a ‘pure law’ (ibid:87-88), and hence liberty.

2.3 Current Research – The State of Exception

Current research popularizes and applies, but fails to develop, Agamben’s examination of power and its implications for liberty.

Edkins reclassifies the state of exception as a crime against humanity. The survivors of emergency provisions possess no human rights and removed from the legal norm undergo a collective trauma involving death, violence and brutality (Edkins, 2003:2-3). Agamben (2005:1) is careful to examine the causes, which allow constructing and legitimating social action in relation to extreme violence. Edkins does not take into account the formation of the person and their scope for freedom of action through legal, civil or economic institutions, or through structures of exchange. She sees the paradox of supposed protection promoting danger as a social event in which the “community of which we consider ourselves members turns against us” (Edkins, 2003:4). This raises questions centering on the use of the first person. What leads ‘us’, whoever that is, to consider ourselves ‘members’ and of what? Membership is posited as natural and self-evident rather than constructed from social/legal norms and apparatuses of power and exchange? Her reader is placed in a position of identification with the collective. What kind of an understanding and action could follow? Agamben (2005:1) is careful to distinguish between fields of action and expectation, bare life and the person.

Didier Bigo’s analysis of the state of exception is empirically grounded in observing ‘social management’ where security and surveillance constantly monitors activities that become routinized on daily basis, rather than exceptional practices (Bigo, 2006:46). The sovereign is seen as an expression of discontent produced between the political and the public spheres (ibid:57). The reason for what he calls ‘unequal management’ is the perceived need of the sovereign to generate exceptional measures to resolve social discontent, or necessity with social discontent read as a political crisis. He draws from Agamben the awareness of the importance of state of emergency theory in the analysis of social action and inaction within

perceived states of exception (ibid). The sovereign accrues power through the ‘illegal manipulation’ of civil liberties (Evans, 2005:222). Due to the juridical illusion, government defines what distinguishes liberal from illiberal practices, allowing the sovereign, to breach democratic principles (Bigo, 2006:51).

Huysmans uses state of exception theory to explore the ‘politics of insecurity’ and to note that while access to the political is denied attention is focused on ‘an illusory crisis. Exception suppresses the political right by eliminating the sphere of public action, a constituent of modern democratic politics (Huysmans, 2008:165). He reworks Agamben’s concept of legal status, noting a conflict between sovereign power and the rule of law’s protective power over citizens (ibid). Executive power dilutes the rule of law, resulting fragmentation of the political (ibid); those rights are reserved to the state. Huysmans has government escalating into authoritarianism when “violence [has] no reference to law” (ibid:173). Drawing on Agamben, Huysmans describes a political system, operating on the dictatorial principle of ‘fear of the enemy’, which guarantees the concentration of power in state/sovereign hands and public alienation. Thus society surrenders to sovereign (ibid:170). He (2008:165) takes Agamben’s concept of exception as central to the politics of insecurity.

3 Chapter: Taiwan: The Historical Context

This historical outline contextualizes the complex interplay of political and human rights' and liberties' development in Taiwan. It provides an empirical context for Chapter-4's theoretical analysis and gives an overview of the island's emergency policies discussed above, which have both provoked and prevented changes at the societal level.

3.1 Taiwan: Human Rights Development

Taiwan's geopolitical position has been central to its social development. It has not always been considered part of China and has often been governed by non-Chinese (Wachman, 1994:6). According to the Formosan Association of Human Rights' (a lobbying body based in, and funded by, the US) statistics for 1979 (published in 2003) 85% of the population are the descendants of the original inhabitants, non-ethnically Chinese immigrants from the mainland (Luce, 1984:203). The population is unified by a local dialect related to those of southern China, and by their sense of cultural cohesion (Chuang, 2014). The island has been a colony, a trading hub and a production base (Wakabayashi, 1999) since the Dutch trading empire (1624-1662). It fell to the Chinese/Japanese warlord Ch'eng-kung's forces, remaining a separate fiefdom until 1683, when it came under the rule of the dominant Manchu Ch'ing dynasty (Wachman, 1994:6).

This legacy of ethnically varied colonization was far from unique compared with China and its periphery. Issues of self-determination remain problematic.

Relations with Japan have proved central in constructing notions of unity and difference. In 1895 the Treaty of Shimonoseki ceded Taiwan to Japan until the end of the Second World War (ibid:6-7). There was both resistance, pressing for liberty, political participation and its opposite (Wakabayashi, 1999). The Japanese Prime Minister Ito Hirobumi identified Taiwan's geopolitical importance: "Taiwan... can control maritime rights in the Yellow Sea, the North China Sea and the Sea of Japan. It is the door to Japan's defense.

If we lose this good opportunity, the island of Taiwan will be taken by other powerful countries within two to three years” (Roy, 2003:32). Wakabayashi (1999) describes Taiwan’s “sorrow of having no command over oneself”. The colonizer/sovereign’s state of exception legitimated the transference of the power of self-determination to itself. Economic benefits accrued, and Japanese investment allowed the modernization of Taiwan’s economy (Hsiao, 2006:272).

The legacy of colonialism has contributed to the construction of a sense of national identity and self-determination, opening an opportunity for political engagement and the development of civil liberties. Mainland China’s resumption of power in 1945 was initially welcomed (ibid). Due to rising inflation and increasing corruption (ibid:272-273) discontent provoked a challenge to sovereign power. This was read as disloyalty, centered on the period of Japanese rule (Roy, 2003:56), a patriot problem which Chiang Kai-shek was sent to solve. For the Kuomintang, in retreat from Mainland China the belief in a popular recall remained a central belief, as did the ideology of a national Chinese identity (Christie and Roy, 2001:221).

The 28th February 1947 massacre was an important historic moment in the construction of national identity, in common with the 9/11 attack. The massacre was a response to an anti-government uprising, which marked the beginning of the White Terror period. A state of emergency was declared (Wakabayashi, 1999) and the estimates of the number of deaths varies between 10,000-30,000 or more, with reports of disappearances and imprisonment (Durdin, 1947). A sense of unity was provoked in the face of victimization and injustice. Christie and Roy (2001:222) see this incident as crucial in maintaining the KMT in power by locking the Taiwanese out of political participation through the imposition of martial law, which reserved power to the state. This enabled the cultivation of a powerful security apparatus, which neutralized dissenters. Political and human rights were thereby removed. The moment clarified the requirement for a rebalancing of the distribution of rights between government and governed.

Taiwan’s geopolitical position means that external pressures remain, especially from China and the US, with its Cold War strategy (Roy, 2003:105). America’s support for the Kuomintang brought economic benefit (Dumbaugh, 2009:1), but also the challenge of Taiwan’s government avoiding colonial-style dependence in relation to demands for economic and political liberalization.

Taiwan’s shift in the direction of civil rights was signaled by its signing the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights in 1967 (Amnesty International, 2009), thus gaining a

seat at the United Nations. Further movement in that direction was prevented by the implementation of martial law. The UN seat was relinquished and Taiwan withdrew in 1971 (Library of Congress, 2009). A popular campaign urging re-ratification began in the 1990s. These same conventions were signed again in March 31st 2009, this time ratifying them by pursuing a development agenda for human rights (Amnesty International, 2009). Unresolved conflicts both external concerning national identity and internal in the sphere of civil liberties were provoked.

The relation of law to protest and popular political activity became explicit during 1980s. The opposition gained momentum with the establishment of the informal Public Policy Research Association (The Taipei Times, 2012), which on 28th September 1986 reformed as the Democratic Progressive Party (DPP) (Taiwan Communique, 1987:3). On 12th June 1987 DPP sponsored a rally in front of the Legislative Yuan to protest against the proposed National Security Law. According to the Taiwan Communique (1987:13) there were more than 3000 DPP-supporters. It has been claimed that provocateurs broke through police lines and attacked the DPP-followers (ibid). A government controlled press characterized DPP-supporters as “violent demonstrators” (ibid). After the incident three DPP-organizers and two Anti-Communist Front leaders were arrested for “disrupting public order and interfering with the police duties” and for “inciting clashes by staging a counter-demonstration” (Taiwan Communique, 1987:14). The demonstration was seen as a violation of government authority and the National Security Law as a response to it allowing the continuation of civil rights restrictions.

On 1st July 1987 the National Security Law was promulgated coming into force on 23rd July 1987.

3.2 The Nature of the Martial Law

The Kuomintang government implemented martial law as a Wartime Temporary Provision in Taiwan in 1949. This automatically suspended the constitution (Hsiao and Hsiao, 2001:4). Martial law allowed a repressive and authoritarian system to prevail, dominated by political leaders who had found a last stronghold in Taiwan. The ideology of the Kuomintang government remained marked by its history as a defeated army. The concept of the military dominated its government, thus martial law was not an anomaly within that context. The

Kuomintang conceived of a Chinese people, rather than a Communist government, who would welcome their return.

Their system of government established without regard for the consent of the island's pre-existing population, was imposed by military force within a context of civil war (Hsieh, 2006:54). This continuing legacy suggests itself as a major cause of Taiwan's most intractable political problems, which stem from differing views of the island's national identity (Wachman, 1994:5; Roy, 2003:103,105). In common, paradoxically, with aspects of the mainland's communist ideology, issues which might be thought to enable divisions within the population are suppressed. Anyone voicing criticism of government policy was subject to summary arrest (Taiwan Communique, 1987:3). An immediate concern was to prevent communist subversion and Taiwanese nationalism from undermining the status quo of Kuomintang rule (Chao and Myers, 2000:387). Martial law was the means by which Taiwan was secured suspending activities that might have weakened their authority supporting goals both ideological and self-serving. Zhang (2003:52) summarizes some of the "limits on political participation at the national level", which included a virtual ban on the formation of new political parties, censorship of the press, and surveillance of political dissidents who advocated communism or Taiwanese independence. The provision gave the president, whose term was unlimited, unlimited power, including the right to appoint key government personnel.

Under the law, which Agamben would see as, in a sense, non-law or politically clouded law; individuals found guilty of threatening public order or safety, or the internal security of the state would be imprisoned or executed (Chao and Myers, 2000:387-388; Luce, 1984:203). The use of military courts emphasized the continuance of a state of war, and the presence of an exceptional existential threat. Such 'closed' government also allowed the unchecked spread of corruption, including the embezzlement of public funds by party officials and the unjust treatment of Taiwanese citizens (Christie and Roy, 2001:223).

A public statement by Chiang Kai-shek in 1949, quoted by Roy (2003:88-89), asserts that the Kuomintang is committed in principle to a fully democratic system but argues that this has to wait until the Communist threat has passed because liberalization could create vulnerabilities that the enemy would exploit.

"We hope that the Taiwanese people can maintain their security, peace, happiness, and prosperity. We also hope to preserve effective political functions for safeguarding our democracy and freedom. But... in world history there has not been a single free,

democratic state like the Republic of China that has for so long confronted an expanding communist totalitarianism. Because of this fact, the Republic of China relies on law and implements martial law to preserve our nation's security and to prevent the communists from exercising all sorts of subversive activities" (ibid).

For the time being civil freedoms and political rights had to be traded for security.

Chiang's statement justifying the imposition of martial law had the aim not of enabling a democratic state to be created, but rather of facilitating a return to sovereign power within Mainland China (Roy, 2003:90). It also sustained the Kuomintang in power (Christie and Roy, 2001:222). The continuation of martial law reflected in legal terms the continuation of the stasis reached at the end of the civil war between communist China and a Taiwan in effect under diplomatic quarantine (Bush, 2011:274-275). A corrosive political dynamism dominated both the internal and external relationship between Taiwan and China.

Twenty-four years after the almost four decades of martial law (1949-1987) The Taipei Times (2012) reported that thousands of people were arrested, imprisoned, tortured and murdered by the Kuomintang government to suppress dissent. In reaction to increasing demands for popular participation in government (Luce, 1984:204) a system of strict censorship was imposed which tightly restricted media access. Some minimal concessions were made (advertisements were permitted in 1991), but complete government control continued (Wachman, 1994:207).

The foundation of the DPP signaled a development of public political engagement with street protests challenging the justice of a continuance of martial law and demanding human and political rights hitherto reserved to the government itself (The Taipei Times, 2012; Taiwan Communique, 1987:5). The continuation of martial law was marked by gradual social politicization, which was severe enough to have the potential to damage the government. The repeal of martial law was agreed and scheduled for the beginning of April 1986 (ibid; Wakabayashi, 1999). In its place a National Security Law was passed.

3.3 The Nature of the National Security Law

The new National Security Law was passed on 23rd June 1987 (International Taiwan Communique, 1987:7) a few days before martial law was lifted (14th July 1987). In 1986 President Chiang Ching-kuo, gave the following reason "it is time to have constitutional

reform. The time is changing, the tide is changing, the environment is changing”, but he did not say specifically that the KMT Government would change (Hsiao, 2006:8). It could be argued that in lifting martial law, it had, in some respect, changed. The new legislation resulted in some easing of the restrictions placed on fundamental human rights, for example freedom of expression, freedom of assembly and freedom of the press (Hsieh, 2006:55). Essential was the fact that that civilians would not be tried in military courts and that a large number of decrees were removed from the statute book. These included the repeal of thirty decrees on censorship and the repeal of the requirement to issue exit and entry permits (Taiwan Communique, 1987:4).

However, the new legislation still contained a significant number of restrictions, specifically in the areas of human and political rights (Taiwan Communique, 1987:1,7). The KMT’s proposition was that the National Security Law should operate within the context of a normal and constitutional system, that is, in Taiwan’s case, under the existing Republic of China Constitution of 1946, which had been adopted at that time in Mainland China (Hsieh, 2006:55). In a sovereign dictatorship constituent power “is nevertheless connected to every existing constitution in a way that... it appears as the ‘founding power [that] cannot be negated even where the constitution might negate it” (Schmitt quoted in Agamben, 2005:34). Other pre-existing laws such as 170 individual decrees remain extant, part of the statute of emergency provision (Taiwan Communique, 1987:4-5). The most important restrictions appear within the National security Law in Article 2:

“Public assembly and association must not violate the Constitution, advocate Communism or the division of the national territory” (ibid:1).

The reference to ‘division of the national territory’ is important not only in reference to opposing internal forces that could challenge the sovereign, but also in asserting the potential for unity with China. The Taiwan Communique (1987:6) argues that the restoration of civil rights to former political prisoners was limited, amounting mainly to the restoration of their right to vote in elections. “They will still not be able to run for public office or hold a job in their profession” (ibid). In effect those silenced by imprisonment for political offences will remain to a degree politically silenced.

The partial amnesty announced for political prisoners demonstrates the level of control still exerted over Taiwan residents. It restored rights to 237 civilians but it excluded those who had been convicted on charges of sedition more than once (ibid). By these means the

limitations on individual liberty continued, and continue, especially in the areas of public participation in democratic decision-making (aside from having the vote), freedom of speech, and, in the wider sphere, having the ability to assume the responsibilities of the citizen within a free society (ibid:1). In practice, given the constraints on civil involvement, martial law itself remains in all but name with, in effect; only the emergency decrees having been lifted (ibid:4; Hsieh, 2006:55) leaving security legislation in place. The effect of those decrees, within the context of the legal requirements framed under the constitution, is that sedition remains a serious crime, carrying a heavy sentence.

The continuation of social discontent signifies the unresolved and complex nature of the particular expectations of human and political rights in the face of the legally restrictive political situation outlined above.

Taiwanese politics contain two distinct sources of political influence, potential loci of power: the Kuomintang governing party with its nominal territorial ambitions, and the residents who claim legal rights of ‘ownership’ of the polity of Taiwan. Thus, Taiwan still faces a highly politicized national identity issue (Roy, 2003:242); its internal development remains over-determined by the island’s future relationship with China. Within this context the realization of the ideal of liberty for the citizen cannot but be problematic.

The ideological difference with China, the political dynamics inherent in the economic gap between these states has been and is important. The historian Prasenjit Duara views modernization as a matter of economics and technology, not of political evolution (Fenby, 2003:228). For much of the period under consideration in comparison with China Taiwan was regarded as a developed country which attained a GDP annual growth rate of approximately 7.9% during the 1950s-1960s compared to China’s 6.47% (Nayyar, 2008:265; Lau, 2012:4). In July 2014 China’s growth rate was stated to be 7.5%, and in August 2014 Taiwan’s 3.74% (Trading Economics, 2014). Economics and technology indeed provide a terrain to catalyze the issue of civil and political rights. An example is the development of cross-strait standards in commercial exchange, a guarantor, in Taiwan’s view, of economic security, and an opportunity to develop a human rights agenda through trade (The Diplomat, 2014). That Beijing considers Taiwan part of the People’s Republic of China means that such moves are seen as symptomatic of “separatism” (Chao and Myers, 2000:387,405; Hsieh, 2006:5; Hsiao, 2006:11) a response that reinforces the island’s sense of unity.

Taiwan’s suspicion of the motives and actions of a China which remains Communist (Fenby, 2003:419) allows it to justify the passage of the National Security Law as a secure replacement for the long-standing state of martial law. As Fenby (ibid) notes, the opportunity

decisively to opt for democratization, for what could have marked a break between the past, the state of emergency, and a future marking the beginning of democratic government was lost.

4 Chapter: Analysis

4.1 Taiwan: The Field of the Juridical-Political

The imposition of martial law is an instance of juridico-political misbalance. Politics is ‘contaminated’, in Agamben’s (2005:88) words, by law seeing itself as constituent power, i.e. the ‘violence that makes power’. Taiwan’s foreign and domestic policies, nominally directed against the threat, both ideological and territorial, imposed by Mainland China, is also directed towards Taiwan’s resident community. These emergency provisions have proved self-perpetuating and exclusive in their appropriation of control over national governance (Jackson and Sorensen, 2010:61). Denmark (2010:2) sees martial law as imposing a political program based on the designation of categories of person, those who require protection, and those who can be sacrificed. This puts the social sphere into the zone of exception where citizens are neither juridically nor politically self-determining.

The position in Taiwan, placed under martial law in 1949, by its governor Chen Cheng, was that public assembly, political criticism, and acts, which could be seen to threaten public order, were considered seditious. Individuals accused of these crimes were to be tried in courts and either imprisoned or executed (Chao and Myers, 2000:387-388). This was a political process, which became the legal norm. Consequently, civil suspects, deprived of the power to resist, were forced into a neutralized social sphere (Denemark, 2010:6). The political-juridical misbalance continues to be embodied in the subsequent National Security Law with its direct address to civil society and its relation to the institutions of law, security and human rights. Decrees promulgated under martial law were largely retained. For Agamben (2005:5) the term full powers denoting the executive’s ability to pass decrees is incorrect as it implies the erasure of the legal status of the individual thereby signifying ‘an emptiness of law’.

In practice, a political inability to resolve the crisis continues the paradox of government through laws, which cannot be understood in legal terms (ibid:1). The new law acts as successor to the old, by continuing to generate a space of enclosure expressed as a

mechanism of social control (Deleuze, 1992:4). Here the juridico-political misbalance is policed as Deleuze (1992:5) puts it, by watchdogs, resulting in a fragmentation of both the social and political spheres. Although brought in ostensibly as liberalization and indeed a shift towards civil governance, in practice only limited rights are restored to former political prisoners by the new legislation, and those who have been convicted of sedition. In reality only the rights to trial in a civil court and the to vote in elections are restored (Taiwan Communique, 1987:6). Positioned between politics and law, residents are able to act neither juridically nor politically as citizens. Thus, empirical evidence points to the degree of arbitrary power retained to the state by the National Security Law (Bradley and Ewing, 2010:92).

These instances illustrate how closely the concept of the juridical-political and its oppressive and repressive consequences have been, and are, seen to be played out in Taiwan's continuing period of emergency.

4.2 The Law of Revolution

Both the 28th February 1947 and the 12th June 1987 incidents demonstrate a dichotomy between security and violence (Edkins, 2003:10) where the emergency policies privilege the use of violence by government against the public sphere (Agamben, 2005:2). Agamben (2005:29) refers to Romano's work to characterize revolution as "violence but it is juridically organized violence", and is "deeply politically rooted" (Denemark, 2010:2). It treats the social sphere as "de facto, an outsider" (ibid:5) with the law functioning as a tool of violence for government's use. Traditional security practice is not perceived as sufficient to the requirements of the particular exceptional moment.

The response to an attempt in 1954 by, Lei Zhen, the chief editor of *Ziyou Zhongguo* and others to form a political party was arrest, a court appearance and imprisonment for engagement in subversive activities (Chao and Myers, 2000:397). This is an instance of security deployed by the sovereign against a perceived threat/violence from the public sphere. The sovereign monopolizes power through a hierarchy it has 'legally' established. The state of exception allows the sovereign to install an illiberal space, an arena contrary to the constitutional requirements of democratic government (Denemark, 2010:9). Agamben (2005:2) describes this phenomenon as the violation of civil liberties. Social justice creates the possibility of a self-determining citizenry, which undermines the distinction of ruler and

ruled. The sovereign, however, in response to a perceived threat suspends the rule of law through recourse to a state of exception.

The quashed rally on the 12th June 1987 (Taiwan Communique, 1987:5) is evidence of the threat, which the government experienced; and is reflected in a political and violent response taken to the level of the individual protester. The politically declared ‘civil war’ was legitimated by the ‘exceptional’ circumstances, with power alienated from the individual. As Cash (2009:87) has observed, “modern security stems from the absence of protection”.

When observed through Agamben’s concept of the Law of Revolution, the difference between martial law as practiced on Taiwan, and its replacement National Security Law is very slim. Both permit, and indeed ease, the transfer of violence between the social and political in the absence of functioning pure law. Consequently, the legal framework of the emergency policies enacts the full ‘stateness’ mode constructing a hegemonic sovereign power, which will forestall collective action. The kind of political violation experienced by the individual citizen within a monopolistic and hegemonic power structure with no possibility of an equality of exchange between rulers and ruled can be contextualized within Agamben’s theory as the law of revolution.

4.3 Legal Status

Taiwan’s history of colonization, lent it a shifting and variable human rights status. During the Martial Law period the Taiwanese government stripped the social sphere of its human rights, and of its legal status by converting the human entity into, in Agamben’s words, ‘bare life’. The primary goal of martial law was to protect the state against an external threat, in this case the Communist mainland. This course of events could be described as a process of dehumanization. Such a description would of course place a particular value upon the term human. An issue to be considered is the status of organizations such as the United Nations which developed out of a European historical worldview and the extent to which they might be antithetical to a philosophy of rights and duties arising out of Chinese political philosophy. Humphreys (2006:678) notes that the state of exception acts as an “imperative [that] colonizes life itself” here using the metaphor of colonialism, deemed to have a negative value, to further clarify the implications of ‘removing legal status’. Davenport and Inman (2012:620) explain that dehumanization is a result of a governing power striving to eradicate the category of the

‘private individual’ for political purposes. Consequently, martial law can be seen as Agamben (2005:3-4) puts it, as removing the human entity from the law and from juridical oversight.

To exemplify: the removal of freedom of expression – censorship. In 1960 the Kuomintang Government banned the publication of several political journals including *Ziyou Zhonguo*, *Wenxing zazhi*, *Taiwan zhenglun*, which critically evaluated the current state of Taiwan’s underdeveloped democracy (Chao and Myers, 2000:398). These publications identified single-party KMT rule as the main obstacle (ibid). Their owners were found guilty of undermining authority, suffered imprisonment and in some cases execution. The ‘citizenry’ suffers “incarceration and immobilization” (Evans, 2005:216) in order for the sovereign power to maintain control.

Its successor, the National Security Law also can be seen to have produced what Agamben calls a “zone of anomie” (Agamben, 2005:23) in which political authority uses the power over individuals generated by the state of exception in order to violate the sense of self-worth produced by a framework of law (Edkins, 2003:7). The individual is classified as a potential, social enemy difficult to identify (Denemark, 2010:6). As a consequence this produces a social infrastructure where the individuals’ life form is treated, to use Foucault’s metaphor, as host for an invisible and highly ‘infectious disease’. The medicalization of the political and social suggests an extension of the use of the discourses of oppression and repression or the psychologizing of the political. These usages suggest misclassification and transference. The desire to control exemplified in the sovereign is produced by a notion of the overriding awareness of the “danger hidden in human [social] behavior” (Foucault, 1978:7). In these respects, the use of the National Security Law is in conformity with state of exception theory in working to negate pure legal status and human rights.

The arrest of a private individual which became an iconic moment of injustice for the protest movement, sparking the June 12th 1987 incident demonstrates the designation of ‘dangerous individual’, reinforcing the identity of the sovereign as protector of fundamental security. Thus, the National Security Law can be understood to depoliticize the legal status of individuals through “alienation” (Huysmans, 2008:175).

To conclude, while the martial law period blurred law and politics legitimating the use of force, its successor, allowed the sovereign power to assume the role of the actor for the popular good. An individual’s, or a group’s attempt to reclaim the political is negated through the existence of a continued and unquestionable state of exception, a zone of legal exception. No longer citizens they are consigned to the realm of the monstrous (Foucault, 1978:5). In

both periods under discussion the operation of the state of exception depoliticizes the relation between society and government (Huysmans, 2008:169).

4.4 The Sovereign

The period of martial law encouraged the development of arbitrary power by the sovereign allowing a reconstruction of the relation between the social and the political in the context of the state of exception, which became the new legal norm. The mark of such arbitrary power is unequal access to human/civic/social rights (Denemark, 2010:8). Chao and Myers (2000:400) cite the 1972 elections; the KMT Party's campaign was funded by the state while non-KMT candidates were marginalized. Freedom of speech is thereby allotted unequally removing voice power from the social sphere.

There is a positive correlation between criminalization and discrimination within public policy when the emergency provision excludes political participation (Evans, 2005:219). Democratic rights may become a permanent casualty of the 'war on crime' (ibid). Ostensibly the National Security Law was to increase liberalization and democratization by empowering citizens with civil liberties. Even though it allowed Taiwan to adopt an electoral system, its political culture prevents its democratization due the problematic relationship between law and the political. Extensions of prison sentences for political crimes remove the individual from social and political action, through the construction of an exceptional case warranting the suspension of his/her rights.

Both legal forms limit the 'voice power' of the public through the sovereign strategy of using the state of exception to its own advantage. The sovereign is itself a construct of the state of exception and inseparable from it. Veto power overpowers the voice allowing the sovereign to enjoy increased power over the citizen (Davenport and Inman, 2012:623). Thus, both laws create a chimerical security in society. As Cash (2009:87) puts it "today to be protected is almost to be threatened".

5 Chapter: Conclusion

The effects on civil liberty in Taiwanese society of the transition from martial law to the National Security Law illustrate aspects of Agamben's theory of the State of Exception as a paradigm of government. Continuing emergency provisions undermine attempts to assert human rights, a term, which has itself become colonized by competing geopolitical interests. Martial law as its name suggests, militarizes society so that necessity prevails, ruling out challenge in the cause of survival. The National Security Law allowed a shift but, still under the code of security, it singles out individuals who might in the future pose a threat to authority. Both emergency provisions produced, and continue to produce, an unjust society through coercion and denial of human and political rights where the political sphere outside of pure law, overrides the social.

Emergency policies create by their nature a sense of danger (Chait, 2009:30). In these circumstances the very existence of the individual yields a risk for the political realm. Consequently, anti-democratic policies justify 'the state violence' inflicted by the sovereign upon the social sphere. It is democratic states or "the democratic-revolutionary tradition" (Agamben, 2005:5), which create emergency policies productive of the state of exception. Thus, the mantle of authoritarianism is assumed through the breach of democratic values on a daily basis. The rights, which might be held by citizens, are lost. Consequently, the state of exception has reached "its maximum deployment" (ibid:87), while ignoring international law producing a permanent state of exception internally. The point is to open a space for politics between law and life (ibid:88) deactivating 'the law' that binds the state of exception to life. The result is "pure law" (ibid) that does "not bind, neither command nor prohibit anything, only action as pure means" (ibid). In Taiwan the social sphere opposed a government that implemented emergency policies, which neutralized the social sphere by removing their rights and responsibilities. In other words, emergency legislation makes citizens politically incompetent and unable to participate in national political matters.

The examples above of instances of resistance and engagement point to the development of what Agamben (2005:87) calls the 'countermovement', which "seeks always to loosen... what has been artificially linked". What is important is the severing of the nexus between violence and law.

The challenge lies in finding way of preventing violence without infringing rights. Future research in development studies and political science could explore the correlation between emergency policies and the shift away from the democratization process through a further exploration of the mechanism Agamben has revealed which facilitates the negation of the realm of peaceful civil human action. Potentials for policy reforms in the light of restoring rights to the individual, following Agamben's proposal for the separation of law and violence requires further research which might pursue a theory of resistance to emergency policies, and their social and global effects.

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