

**Precarious Stateness and the Fleeting Boundaries of Sovereignty: Reflections on Giorgio Agamben, Transition Theory, and the Indonesian Case**

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**ABSTRACT**

Transition research in general explores why a state is necessary for democratic transition and tries to find out how stable and lasting stateness can be achieved. But transition research usually does not question the classic theoretical perception of the state and, therefore, is based on the idea of the sovereign state as a conceptional precondition without discussing its fundamental theoretical framework. Because of that, it is important to take a systematic step back and to discuss the theoretical concept of the modern state by reconsidering and rethinking its fundamental and constitutive characteristics, above all the idea of sovereignty. In order to do so, I will first briefly sketch the classic theoretical concept of stateness and its characteristic features. In the second systematic step, I will confront the classic understanding of stateness with a poststructuralist reinterpretation of state theory which suggests a fundamental reconsideration of prevailing theoretical concepts. In the third section, I will finally discuss what the reinterpretation of classic state theory can amount to and which conclusions can be drawn for transition theory. This last question will be illustrated by different problems that the Indonesian state has to face.

Keywords: Stateness, Sovereignty, Transition, Transformation, Democratization, Political Theory, Political Philosophy, Contractarianism, Giorgio Agamben, Indonesia

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## Introduction

To regard the contractualist nation-state with its firm territorial demarcation as an old-fashioned model seems to be quite trendy. Especially the broad discourse on economic, political and cultural globalization focuses on the substantial loss of meaning if not even on the dissolution of the sovereign state as a relevant political entity. And in fact, there are obvious signs of the changing role of the nation-state and his creative power in domestic and international affairs.<sup>1</sup> Numerous globalization theorists rightly stress the increasing trans- or postnationalization of global politics and emphasize the questionable nature of the classic idea of national sovereignty<sup>2</sup> in a globalized world. But while some authors even claim the end of the state<sup>3</sup> – either optimistically or with a look of concern, but certainly in an overhasty manner –, the classic (nation-) state still represents one of the main conceptional points of reference in the theories of transition and democratization. Actually, this is neither surprising nor problematic, but a conceptional and systematic necessity, because a democratic system demands and presupposes a clearly defined *demos* which holds the sovereign power. Furthermore, democracy presupposes the possibility to guarantee the rule of law within a particular territory, i.e. a sovereign monopoly on the use of force. As Linz and Stepan point out, democracy »requires statehood. Without a sovereign state, there can be no secure democracy.«<sup>4</sup> According to them, the »state as a prerequisite to democracy«<sup>5</sup> is not only characterized by its sovereignty, but also by its spatial limitations as a »territorial entity«.<sup>6</sup>

The theoretical necessity of referring to the classic concept of a bounded sovereign territorial (nation-) state seems to be accepted to such an extent, that even the lack of interest towards the stateness problem in transition theory can still be seen as a prove of this necessity. Thus, the indifferent attitude towards the stateness issue that has to be noticed in the transition theory in the nineties<sup>7</sup> can hardly be considered as a theoretical underestimation of the state, but rather

<sup>1</sup> See – of course only exemplarily – Robert O. Keohane. 2002. *Power and Government in a Partially Globalized World*. London and New York: Routledge, pp.71-77, 204-215, Klaus Müller. 2002. *Globalisierung*. Frankfurt am Main and New York: Campus, pp.38-61, Jürgen Neyer. 2004. *Postnationale politische Herrschaft. Vergesellschaftung und Verrechtlichung jenseits des Staates*. Baden-Baden: Nomos, pp.70-99 and for an overall view Michael Zürn. 1998. *Regieren jenseits des Nationalstaates. Globalisierung und Denationalisierung als Chance*. Frankfurt am Main: Suhrkamp, James N. Rosenau (ed.). 1992. *Governance without Government. Order and Change in World Politics*. Cambridge: Cambridge University Press, Claus Leggewie. 2003. *Die Globalisierung und ihre Gegner*. München: C.H. Beck and David Held. 1995. *Democracy and the Global Order. From the Modern State to Cosmopolitan Governance*. Cambridge: Polity Press.

<sup>2</sup> See above all still Josph A. Camilleri/Jim Falk. 1994. *The End of Sovereignty? The Politics of a Shrinking and Fragmenting World*. Aldershot: Elgar.

<sup>3</sup> This thesis – which in my opinion can hardly be maintained – is supported by Michael Hardt/Antonio Negri. 2001. *Empire*. Cambridge and London: Harvard University Press, pp.137-143, 183-188 and also by Ulrich Beck. 2002. *Macht und Gegenmacht im globalen Zeitalter. Neue weltpolitische Ökonomie*. Frankfurt am Main: Suhrkamp, pp.20-26, 84-94, 433.

<sup>4</sup> Juan J.Linz/Alfred Stepan. 1996. *Problems of Democratic Transition and Consolidation. Southern Europe, South America, and Post-Communist Europe*. Baltimore and London: The Johns Hopkins University Press, p.19.

<sup>5</sup> Ibid., p.17.

<sup>6</sup> Ibid., p.18.

<sup>7</sup> In numerous influential studies on transition and democratization there is almost no theoretical discussion of the stateness issue. See for example Mark Arenhövel. 1998. *Transition und Konsolidierung in Spanien und Chile. Strategien der Demokratisierung*. Giessen:

demonstrates that statehood is unanimously regarded as an essential precondition of democratization and hence, from a theoretical point of view, is taken for granted and consequently does not require special attention. Another reason why stateness was not picked out as a central theme in transition theory consists in the regional concentration of transition research on South America, Southern and Eastern Europe<sup>8</sup> where stateness problems were either virtually inexistent (as for instance in Poland, Hungary, Portugal, Chile, etc.) or could be considered as resolved – if not completely, then at least in principle (like for example in Greece, Cyprus, Czech Republic, Slovakia, etc.). In sum, the lack of examinations of the stateness problem in transition research in the last decade is not a theoretical deficiency, but can be explained by both, a (more or less tacit) consent<sup>9</sup> to the theoretical necessity and even logical inevitability of consolidated stateness for transition processes, and the empirical insignificance of stateness problems in many transition states.

However, in the meantime the question of stateness has become a central topic in transition theory and is discussed in detail<sup>10</sup> as the absence of stable and consolidated stateness – as for instance in Indonesia – or even the failing of states<sup>11</sup> poses major problems in the democratization processes of numerous transition countries. Because from the theoretical point of view of transition theory, stateness still is regarded as a simple precondition of democratization the theoretical examinations of the stateness problem of course concentrate on the possibility to achieve stable statehood in transition countries and on measures to avoid the failing of states as this in almost every case leads to the end of any democratization efforts and enforces illiberal structures and policies. Therefore, the discourse on stateness in transition research on the one hand mainly focuses on the basic functions and services that a state has necessarily to provide in order to make democracy possible<sup>12</sup>

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Focus, Eberhard Sandschneider. 1995. *Stabilität und Transformation politischer Systeme. Stand und Perspektiven politikwissenschaftlicher Transformationsforschung*. Opladen: Leske+Budrich, Wolfgang Merkel (ed.). 1996. *Systemwechsel 1. Theorien, Ansätze und Konzepte der Transitionsforschung*. Opladen: Leske+Budrich, Wolfgang Merkel. 1999. *Systemtransformation. Eine Einführung in die Theorie und Empirie der Transformationsforschung*. Opladen: Leske+Budrich and also Guillermo O'Donnell/Phillipe C. Schmitter/Laurence Whitehead (eds.). 1986. *Transitions from Authoritarian Rule*. 4 Vol. Baltimore: The Johns Hopkins University Press.

<sup>8</sup> This is also pointed out by Linz/Stepan. 1996, p.16f, Mark Arenhövel. 2003. „Konkurrierende Narrative zu Nation, Staat und Demokratie in Indonesien“. In Petra Bendel/Aurel Croissant/Friedbert W. Rüb (eds.) in collaboration with Timo Freudenberger. *Demokratie und Staatlichkeit. Systemwechsel zwischen Staatsreform und Staatskollaps*. Opladen: Leske+Budrich, p.183 and by Wolfgang Merkel/Hans-Jürgen Puhle/Aurel Croissant/Claudia Eicher/Peter Thiery. 2003. *Defekte Demokratie. Band 1: Theorie*. Opladen: Leske+Budrich, p.59.

<sup>9</sup> See again the analyses mentioned in footnote No.7.

<sup>10</sup> Cf. Linz/Stepan. 1996, Bendel/Croissant/Rüb (eds.). 2003, Merkel/Puhle/Croissant/Eicher/Thiery. 2003.

<sup>11</sup> That precarious stateness is also a global risk is shown by Ulrich Schneekener. 2005. „Fragile Staatlichkeit als globales Sicherheitsrisiko“. *Aus Politik und Zeitgeschichte*. No.28-29/2005, pp.26-31. For a short overview on the relationship between the failing of states and globalization see for example Jochen Hippler. 2005. „Failed States und Globalisierung“. *Aus Politik und Zeitgeschichte*. No.28-29/2005, pp.3-5.

<sup>12</sup> Cf. for example Andreas Anter. 2003. „Im Schatten des Leviathan – Staatlichkeit als Ordnungsidee und Ordnungsinstrument“. In Bendel/Croissant/Rüb (eds.), pp.36-45, Merkel/Puhle/Croissant/Eicher/Thiery. 2003, pp.229-231, Petra Bendel/Michael Krennerich. 2003. „Einleitung: Staat und Rechtsstaat in jungen Demokratien – eine Problemskizze“. In Bendel/Croissant/Rüb (eds.), pp.11-16, Friedbert W. Rüb. 2003. „Staatlichkeit, Staatsbildung und Staatszerfall. Dimensionen und Perspektiven der politikwissenschaftlichen Debatte“. In Bendel/Croissant/Rüb (eds.), pp.58f, 62f, 67f, as well as Linz/Stepan. 1996, pp.17-21.

and thereby stresses the absolute necessity of states for democratization. On the other hand, more concrete questions are being discussed, like – to name just a few – the means of achieving and consolidating stateness in multi-ethnic and/or multi-religious societies,<sup>13</sup> the relation between state-building and nation-building,<sup>14</sup> the cultural context of state-building processes,<sup>15</sup> the international context of state-building,<sup>16</sup> the institutional basis which is necessary to attain consolidated stateness<sup>17</sup> or questions of inclusive or exclusive citizenship.<sup>18</sup> Thus, transition research on the one hand explores in detail *why* a state is necessary for democratic transition, and on the other hand tries to find out *how* stable and lasting stateness can be achieved and ensured in order to lay the foundations for a promising democratization process.

Even though these studies and examinations undoubtedly are of particular relevance with regard to transition and democratization processes it seems nevertheless fruitful to raise the question of stateness in a more elementary and fundamental manner. Transition research mainly refers to a classic idea of the state in which a state is characterized by its sovereignty (inwards and outwards), its territoriality, the rule of law and the monopoly on the use of force. While numerous considerations – which is justified because they are focusing on transition and democratization – are especially interested in showing how to realize and achieve stateness in its classic sense, and do not concentrate on the very notion and meaning of stateness, I will take a systematic step back and discuss the theoretical concept of the modern state by reconsidering and rethinking its fundamental and constitutive characteristics, above all the idea of sovereignty. Because stateness is a necessary precondition of democratization and, at the same time, a chief problem and a very important topic with regard to Indonesia,<sup>19</sup> it seems not only justified, but rather necessary to discuss the theoretical essence, the notion and the very meaning of stateness. Thus, it is essential to get down to the theoretical basics of the concepts of sovereignty and stateness as transition research usually does not question the classic theoretical perception of the state, and therefore is based on the idea of the state as a conceptual precondition without discussing its fundamental theoretical framework.

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<sup>13</sup> Cf. for example Rüb. 2003, p.72, Bendel/Krennerich. 2003, pp.21ff, Arenhövel. 2003, pp.185ff, Merkel/Puhle/Croissant/Eicher/Thiery. 2003, pp.231ff, Peter A. Kraus. 2000. „Nationalismus und Zivilgesellschaft in Transformationsprozessen“. In Wolfgang Merkel (ed.) in collaboration with Christian Henkes. *Systemwechsel 5. Zivilgesellschaft und Transformation*. Opladen: Leske+Budrich, pp.73, 76ff, 83ff.

<sup>14</sup> Cf. Linz/Stepan. 1996, pp.20ff, Bendel/Krennerich. 2003, pp.20ff, Rüb. 2003, p.72f.

<sup>15</sup> Cf. with special regard to the Indonesian case Arenhövel. 2003, pp.186ff, 192ff, 199f.

<sup>16</sup> Cf. for example Merkel/Puhle/Croissant/Eicher/Thiery. 2003, p.59, Anter. 2003, pp.45ff, Rüb. 2003, p.74.

<sup>17</sup> Cf. with a focus on Indonesia Johannes Herrmann. 2005a. “Regional Conflict. Decentralisation as a solution to ethnic conflict in Indonesia?”. In Ingrid Wessel (ed.). *Democratisation in Indonesia after the fall of Suharto*. Berlin: Logos, pp.146ff.

<sup>18</sup> Cf. for example Jürgen Habermas. 1998. *Die postnationale Konstellation. Politische Essays*. Frankfurt am Main: Suhrkamp, pp.160ff.

<sup>19</sup> See for example Johannes Herrmann. 2005b. *Unter dem Schatten von Garuda Schwingen. Chancen und Probleme nationaler Integration in Indonesien. Geschichte, Ideologie, Religion, Recht*. Wetzlar: J&J-Verlag, pp.226-238.

So, to put it in general terms, in the following notes I will neither discuss *why* a traditional (nation-) state is necessary for transition (or not) nor *how* stateness can be achieved, but I will centre on *what* the state as a theoretical entity actually is. In order to do so, I will first briefly sketch the classic theoretical concept of the state and its inherent characteristic features (like sovereignty, etc.) as it originated in social contract theory. In the second systematic step, I will confront the previously discussed prevailing interpretation of social contract theory and the traditional understanding of stateness with a poststructuralist reinterpretation of state theory which suggests a fundamental categorical reconsideration and a quite radical shift of meaning of classic theoretical concepts in the theory of the state. In the third section, I will finally discuss what the reinterpretation of classic state theory can amount to and which conclusions can be drawn for transition theory. This last question will be exemplified and illustrated by several problems that the Indonesian state has to face.

### **Stateness and Sovereignty – Some Notes on the Classic Perception**

The theoretical framework of the modern (nation-) state derives from social contract theory and since then it has only slightly changed. As the main purpose of the state – which in fact is its *raison d'être* – consists in overcoming the anarchic and therefore belligerent state of nature,<sup>20</sup> some few characteristics are sufficient for giving a minimal definition of the state, i.e. for outlining a reduced ideal type of stateness. Thereby, this minimal definition intends to grasp any kind of modern state, regardless of its political system because we are concerned with stateness in general (as a precondition of democratization) and not only with consolidated and stable democracies.

According to the prevailing interpretation of social contract theory, the main conceptual features of the state are 1) its territoriality,<sup>21</sup> 2) its legal and factual monopoly on the use of force within its territory,<sup>22</sup> 3) its defined membership<sup>23</sup> and 4) the rule of law.<sup>24</sup> These four central features of the state are interconnected and mediated by 5) the idea of sovereignty which can be considered as a very special attribute of the state as it has a triple notion. Thus, sovereignty on the one hand

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<sup>20</sup> Cf. John Locke. 1966. *Two Treatises of Government*. A critical edition with an introduction and apparatus criticus by Peter Laslett. Cambridge: Cambridge University Press, pp.298ff, 344f, Thomas Hobbes. 1985. *Leviathan*. Edited with an introduction by C.B. Macpherson. London: Penguin Classics, pp.184ff, 227f, 353ff and Jean-Jacques Rousseau. 1964. *Œuvres complètes*. Ed. by Bernard Gagnebin and Marcel Raymond. (Bibliothèque de la Pléiade.) Vol. III. *Du contrat social. Écrits politiques*. Paris: Gallimard, pp.176, 191, 361, 422f who stresses that the original state of nature was peaceful but also emphasizes that this original state of nature has to be understood as a theoretical and unhistorical construct and underlines that the missing of social order produces an anarchic situation. This anarchy in which the individuals have unrestrained personal liberty and pursue exclusively their own interests is not only according to Hobbes and to Locke, but also according to Rousseau a horrible state of war.

<sup>21</sup> See for example Locke. 1966, pp.308ff, 313f, 317f, 366f. For an examination of the reasons why social contract theory has hardly discussed the political and ethical implications of the change of borders and of territorial demarcations see Allen Buchanan. 2003. "The Making and Unmaking of Boundaries: What Liberalism Has to Say". In Allen Buchanan/Margaret Moore (eds.). *States, Nations, and Borders. The Ethics of Making Boundaries*. Cambridge: Cambridge University Press, pp.231ff.

<sup>22</sup> See for example Hobbes. 1985, pp.227f.

<sup>23</sup> See for example Locke. 1966, pp.365ff and on this issue also Habermas. 1998, p.161.

<sup>24</sup> See for example Rousseau. 1964, pp.378ff.

emerges from the conceptional fusion of territoriality, membership, rule of law and – first and foremost of course – the monopoly on the use of force. On the other hand, sovereignty furthermore works – according to Arenhövel – as the coordinating intermediary<sup>25</sup> for precisely these features of the state, and thus as a principle of order. And if we refer once again to the territorial limitations of the modern state, we finally discern that sovereignty is also a political and legal metaphor for the validity of a state as it is the purpose of a national border to separate a contract territory (state) from another, to ensure the security and safety of the territory and to guarantee that specific form of validity of a contract which is called sovereignty. So, sovereignty has to be considered as the most characteristic trait or the core of the state because it is conceptualized as a combination and therefore as a theoretical result of the main features of the state, as a universal medium of systemic political communication and as a metaphor for the validity of the state.

In the contractarian foundation myth of the modern state, sovereignty follows from the free will of individuals in the state of nature to relinquish their boundless liberty and their anarchic freedom and to alienate their power and their natural right to everything (life and health of others included) to a superior authority.<sup>26</sup> This new political body is sovereign from the very beginning of its existence and has a unique legal position because it is based on the will and consists of the unified power of every single individual. So, the common alienation of power and of the natural freedom is giving birth to sovereignty. The individuals agree that from the moment of the alienation of their absolute freedom and of their individual right to the arbitrary use of violence, only the sovereign will have the right to declare generally binding laws and will have the exclusive legitimacy to the use of force in order to enforce the rule of law and to preserve societal peace. As sovereignty is a conception of general quality (because it represents the common will and unites the power of every individual) sovereignty has both a legal foundation as well as a legal structure.

Sovereignty and the other just mentioned features of a state are a minimum requirement for every state, not only for democratically organized societies. Citizenship, for example, is of course of particular importance in democratic systems because it defines the *demos* and therefore is directly linked to political participation and, thus, to political power. Nevertheless, with regard to the simple fact of stateness, defined membership is just as crucial for non-democratic states as it is for democracies because according to social contract theory the establishment of every state – even of

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<sup>25</sup> On the significance of sovereignty as a mediator as well as on the theoretical notion and political impact of modern sovereignty in general, see Mark Arenhövel. 2006. *Metamorphosen der Souveränität*. Frankfurt am Main and New York: Campus. (Forthcoming)

<sup>26</sup> See Hobbes. 1985, pp.225ff, Locke. 1966, pp.341ff and Rousseau. 1964, pp.360ff. Cf. on the alienation of rights and the establishment of sovereignty Wolfgang Kersting. 2002. *Jean-Jacques Rousseaus „Gesellschaftsvertrag“*. Darmstadt: Wissenschaftliche Buchgesellschaft, pp.58ff.

the obviously undemocratic *Leviathan* – is in the end based on consent.<sup>27</sup> So, the particular significance of citizenship in democracies consists in its function within an existing society. Although it is crucial for a democracy to clearly distinguish those who form part of the *demos* from those who do not, this function of citizenship within the democratic society is an additional, a secondary function which analytically has to be separated from the question of stateness. Thus, the decision on membership is a characteristic trait of every modern state, no matter whether it is a democracy or not.

The same is true for the rule of law which according to contractarian state theory is a minimum requirement for every state, not only for democracies. For the question of stateness it is only of secondary importance whether the sovereign is represented by the totality of citizens and laws are enacted in a democratic procedure (like in Rousseau's state<sup>28</sup>), or whether the declaration of laws is at the exclusive discretion of an all-powerful autocratic sovereign (as in the Hobbesian state). With regard to the question of stateness, the general validity, the compulsory nature and the organizing and ordering function of the law are much more important than its democratic legitimacy. As the main *telos* of the state according to social contract theory consists in overcoming the anarchic state of nature and in establishing a legal state, the most important task of the rule of law is to bring anarchy to an end, to ensure societal peace through the legal monopoly on the use of force and thus, to provide a stable »Ordnungspolitik«. <sup>29</sup> In order to serve its purpose, the law has to be reliable and its enforcement has to be guaranteed.

This classic conception of sovereignty and stateness is accompanied by several systematic and strict binary distinctions and dichotomies which have always been of great relevance in political thought. From the idea of membership, for example, follows a severe distinction between citizens and aliens while the rule of law sets limits to the legal scope of human and political action and separates the spheres of legality and of illegality. Furthermore, the notion of territoriality detaches the state from its global environment and distinguishes the own territory from foreign territory so that the state is constituted as a political and at the same time also as a geographic entity. As the use of force is

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<sup>27</sup> Cf. on political consent as the basis of stateness in social contract theory Patrick Riley. 1982. *Will and Political Legitimacy. A Critical Exposition of Social Contract Theory in Hobbes, Locke, Rousseau, Kant, and Hegel*. Cambridge: Harvard University Press, pp.2, 8-20, for a discussion of consent in Locke's political thinking see Joshua Cohen. 1999. "Structure, Choice, and Legitimacy: Locke's Theory of the State". In Christopher W. Morris (ed.). *The Social Contract Theorists. Critical Essays on Hobbes, Locke, and Rousseau*. Lanham: Rowman & Littlefield, pp.121-130, 132ff, on the virtuality of consent see Jeremy Waldron. 1994. "John Locke. Social contract versus political anthropology". In David Boucher/Paul Kelly (eds.). *The Social Contract from Hobbes to Rawls*. London and New York: Routledge, p.51f. See on the other hand Murray Forsyth. 1994. "Hobbes's contractarianism. A comparative analysis". In Boucher/Kelly (eds.), pp.38f who argues that consent is not the heart of the social contract but only »an alternative or supplement to it«.

<sup>28</sup> Rousseau. 1964, pp.351-362 of course denies that it is legitimate to totally renounce to political freedom. But even though a non-democratic and absolutist state might not be legitimate, it nevertheless does not lose its classification as a state.

<sup>29</sup> Anter. 2003, p.38. Cf. also *ibid.*, pp.36-42.

monopolized in the sovereign's hands, not only legitimate and illegitimate violence is strictly separated, but there is also a clear division between the sovereign power and the subject, and therefore also between the public and the private sphere. This also implies that the sovereign power is easy to localize and to detect, it has a clear center. Moreover, the nexus between territoriality and the monopoly on the use of force, respectively the very idea of sovereignty establishes a strict dichotomy between internal and external affairs and thus, between domestic and foreign policy. Consequently, the notion of sovereignty itself is divided in two different aspects, namely the internal and the external sovereignty. While internal sovereignty consists in the unrestricted freedom of political action within the own territory and without any interference from outside, external sovereignty means the freedom of the sovereign to pursue an independent foreign policy and to be recognized as a separate and closed entity vis-à-vis other states. With regard to democratic states, the separation of powers has to be mentioned as an additional systematic differentiation within the conception of sovereignty.

It turns out that the characteristic features of the state as well as the idea of sovereignty as a whole are conceptualized as differentiation and separation lines and, besides their practical and political impact, function as systematic boundaries. These clearly defined boundaries of territory, legality, legitimacy, responsibility and membership provide the basis for consolidated and well-ordered stateness and separate the societal state of man from the disordered and anarchic state of nature. So state theory can be considered as a theory of boundaries which enables systematic separations and the drawing of clear borders while at the same time, from the perspective of classic state theory, globalization has to be regarded as a process of opening and illimitation and, thus, as an opposite trend. And because transition research emphasizes that stateness is a necessary precondition of democratization, globalization is, of course, causing concern for transition theory<sup>30</sup> as it weakens the state's sovereign room for maneuver in making political decisions and thereby the very fundamental principle of stateness. Although every state is affected by this decrease in sovereign power, in practice non-consolidated states like Indonesia are, obviously, far more affected. As Hippler points out, globalization – although it is not the only reason – might provoke or at least accelerate the disintegration and even the failing of precarious states with their fragmented and highly disintegrated societies because of the economic, political and cultural pressure that globalization processes can cause.<sup>31</sup>

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<sup>30</sup> Cf. For example Anter. 2003, pp.43-47, 50, Bendel/Krennerich. 2003, p.10 and also Rüb. 2003, p.74 who does not explicitly speak of globalization but – in accordance with the classic distinction between internal and foreign affairs – prefers to stress the impact of »intervening variables« and of »external actors« on state-building processes. (Translation by A.V.)

<sup>31</sup> Cf. Hippler. 2005, p.5. It has to be emphasized that globalization processes *might* contribute, but certainly *do not necessarily* contribute to the political disintegration of precarious states. Globalization processes can even have an integrating effect. This might for example be the case when such processes produce economic wealth.

These conclusions are theoretically and systematically reasonable and convincing. Taking into account the current poststructuralist discourse, it nevertheless seems fruitful not only to analyze how the weakening of sovereignty contributes to the failing of states and consequently to the undermining of the idea of stateness but also to ask if and to what extent certain political phenomena – that are usually considered as signs of precarious or even failed stateness – in fact are inherent to the classic theoretical conception of sovereignty and stateness itself. Thus, in the following section I will first briefly introduce and then critically discuss a quite different interpretation of the conception of sovereignty which has far-reaching consequences for the notion and the idea of sovereignty and stateness in general.

### **Sovereignty and the State of Exception: From Guantanamo to Aceh**

Giorgio Agamben, whose philosophical approach to the notion of sovereignty is being intensely discussed at the moment, suggests a fundamental reinterpretation of the contractarian foundation myths of modern states and of the concept of sovereignty which shakes the very basis of the classic perception of sovereignty and consequently of stateness. According to Agamben the primary scope of sovereignty has theoretically never been and still is not a well-ordered society under the rule of law but the very essence of sovereignty consists in the possibility and competence to declare the state of exception and thus to decide whether the system of laws is in force or in its entirety suspended.<sup>32</sup> Sovereignty can not be seen as the systematic opposite of the state of nature but as the incorporation and thereby the integration of the state of nature into society<sup>33</sup> because the sovereign is composed of the unified natural power of the state of nature and is the only actor who – after the establishment of society – still keeps the »*ius contra omnes*«. <sup>34</sup> The state of exception constitutes a zone in which political action has no legal form but is realized in practical and factual measures. The state of exception establishes a zone of unconditional administration in which sovereignty – as Butler puts it – realizes itself as a totally prerogative force.<sup>35</sup> For Agamben, sovereignty is the decisive force that can declare the general inapplicability of the law or the exclusion of individuals

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<sup>32</sup> Cf. Giorgio Agamben. 1998. *Homo Sacer. Sovereign Power and Bare Life*. Stanford: Stanford University Press, pp.15f, 37f and Giorgio Agamben. 2005. *State of Exception*. Chicago and London: The University of Chicago Press, pp.1f. For a good and compact résumé of the main thesis of Agamben see also Vanna Gessa Kurotschka. 2004. „Lebensform, nacktes Leben, Untätigkeit ohne Werk“. *Deutsche Zeitschrift für Philosophie*. Vol.52, No.6, pp.929-931, for a detailed explanation of Agamben's theory see Eva Geulen. 2005. *Giorgio Agamben zur Einführung*. Hamburg: Junius, pp.55-102. The idea that sovereignty consists in the possibility to declare the state of exception does of course not originate from Agamben, but obviously is based on the Schmittian perception of sovereignty. However, Agamben's achievement does not only consist in the theoretical reformulation and development of the Schmittian statement, but also in the fact that he a) conceptualizes the relation between the sovereign power and the subject in a systematic and coherent manner and that he b) in detail reveals and discusses the practical and functional logic of sovereignty. Even though a comparative discussion of the Schmittian and the Agambian approach in general seems to be an interesting challenge it is not essential with regard to my purposes and will not be done in this context.

<sup>33</sup> Cf. Agamben. 1998, pp.35ff.

<sup>34</sup> *Ibid.*, p.35. (Italics by G.A.)

<sup>35</sup> Cf. Judith Butler. 2004. *Precarious Life. The Powers of Mourning and Violence*. London: Verso, p.56.

or groups from any legal protection and that can replace lawful order by the rule of the factual. This exclusion has to be understood in an absolute and total sense as through the expulsion from the state laws, the individual is not simply expatriated but is excluded from the status to be a right holder any longer. Because of its absoluteness, this form of expulsion is not only an exclusion from certain rights or special laws but marks the impossibility to be a right holder and therefore has to be understood as an exclusion from the legal sphere in general. The excluded person is thus no longer regarded as a political subject but is reduced to its organic substance and to its creatural and biological being under the free and unlimited sovereign right of disposal.<sup>36</sup> This »bare life«<sup>37</sup> of the *homo sacer*, as he entitles this type of totally excluded humans,<sup>38</sup> for Agamben »is the originary political element.«<sup>39</sup> Since the idea of the pure and bare biological life derives – among other traditions – from the contractarian concept of the pre-societal state of nature, and provides the basis for the establishment of sovereignty, the *homo sacer* has always remained the main point of reference for the sovereign power. Sovereignty focuses its attention on the *bare life* of man and from the sovereign point of view only this bare and naked life – which lacks any juridical status – is of authentic political relevance.<sup>40</sup> *Bare life* is the sovereign's »primary target«.<sup>41</sup> The original structure of the relation between the *bare life* and the sovereign is the ban. The abandoned human is externalized from the political sphere of legality and at the same time becomes a subject to the total and factual power of sovereignty.<sup>42</sup>

As a consequence of the sovereign's power to decide on the state of exception and on the exclusion of humans from the political and law-based sphere, Agamben stresses that the systematic and logical structure of sovereignty is paradoxical. »The paradox of sovereignty consists in the fact [that] the sovereign is, at the same time, outside and inside the juridical order«<sup>43</sup> as on the one hand sovereignty is law-based, but on the other hand it has the right to suspend the law<sup>44</sup> and thereby – as we can conclude – to suspend the very foundations of its own validity. It can even be concluded that sovereignty is particularly powerful when it abolishes its own legal basis. Because the essence of sovereignty is realized through the authority to decide on exceptions from the law, sovereignty does not take shape as a well-ordered state under the rule of law, but rather reaches its highest degree of authenticity in the perpetuated exception of the concentration camp<sup>45</sup> in which the exception

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<sup>36</sup> Cf. Agamben. 1998, pp.82ff.

<sup>37</sup> Agamben. 2005, p.4.

<sup>38</sup> Cf. for example Agamben. 1998, pp.71ff, 81ff.

<sup>39</sup> *Ibid.*, p.88. (Italics by G.A.)

<sup>40</sup> Cf. *ibid.*, pp.87ff, 105ff, 109ff.

<sup>41</sup> Mika Ojakangas. 2005a. "Impossible Dialogue on Bio-power. Agamben and Foucault". *Foucault Studies*. May 2005, No.2, pp.7.

<sup>42</sup> Cf. Agamben. 1998, pp.109ff.

<sup>43</sup> *Ibid.*, p.15.

<sup>44</sup> Cf. *ibid.*

<sup>45</sup> Cf. *ibid.*, pp.169ff, Agamben. 2005, pp.1f, 6-10, 22ff.

becomes the norm and in which law and fact become indistinctive. Thus, for Agamben, the concentration camp is the clearest and most authentic form of the expression of sovereignty and therefore represents the »'Nomos' of the Modern«.<sup>46</sup>

So, according to Agamben, the theoretical essence of sovereignty consists in its potential to suspend the law, i.e. to decide whether, where and when the rule of law is in force or in its entirety suspended. Therefore, the state of exception is not a systematic counterpart to consolidated stateness and sovereignty and is not necessarily a sign of weakened sovereignty but rather an inherent possibility of the concept of sovereignty itself. To put it mildly, this is a quite pessimistic interpretation of the modern notion of sovereignty and stateness. And because Agamben's explanation is focused on sovereignty as the core concept of stateness, his conclusions do not only affect dictatorial or authoritarian but equally democratic states.<sup>47</sup> From this perspective, the US-prison in Guantanamo can be regarded as a paradigmatic example for the inherent tendency of sovereignty to constitute unlegislated areas as Guantanamo is defined as a political space which is neither subject to the American nor to the international law. Thus, Guantanamo constitutes an area in which internal and external competences of the state are intermingled and prerogative and administrative sovereign power is at its peak.<sup>48</sup> But according to Agamben's approach, every location, zone or situation which is declared as an unlegislated and exceptional area could be mentioned, like, for example, the camps for US-citizens with Japanese background during the Second World War, the immediate declaration of the state of exception after the hurricane in New Orleans (end of August 2005), the suggestion of the former German minister of the interior to establish European camps in northern Africa for African immigrants who intend to enter the EU, or the Indonesian decision of 1991 to declare Aceh to a simple »'military operation field' (DOM, *Daerah Operasi Militer*)«.<sup>49</sup>

With regard to Agamben's conclusions on sovereignty, the systematic distinctions and differentiations – which were mentioned in the previous section of this article and which are of crucial relevance for the ordering and pacifying effect of sovereignty and stateness – can not be maintained any longer. If sovereignty is not the strict counterpart of the state of nature but the incarnation and introduction of the state of nature into society then sovereignty can not be characterized as the guarantor of the rule of law but as an oscillating and indeterminable »state of

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<sup>46</sup> Agamben. 1998, pp.166.

<sup>47</sup> Cf. *ibid.*, pp.10f, 119ff, 165, Agamben. 2005, pp.2ff, 11-22.

<sup>48</sup> Cf. Butler. 2004, pp.62ff.

<sup>49</sup> Johannes Herrmann. 2004. *Regionale Konflikte in Indonesien*. Hamburg: Abera, p.28. (Italics by J.H., translation by AV) For an overview of the independence movement in Aceh see *ibid.*, pp.22-44 and for an analysis of the main guerrilla group in Aceh see Antje Mißbach. 2005. "Aceh's Guerrillas. The internal transformation of *Gerakan Aceh Merdeka* (GAM)". In Wessel (ed.), pp.163-171.

indistinction between nature and culture, between violence and law«. <sup>50</sup> So the power to declare the state of exception at the end has nothing to do with the constitution of a clear demarcation between law and exception, <sup>51</sup> it is not »the drawing up of a border but its deletion«. <sup>52</sup> Consequently, not only becomes the distinction between the rule of law and the state of exception blurred but also between internal and external affairs because sovereignty itself works as an oscillating force that on the one hand introduces the state of nature into society and on the other hand externalizes internal issues by declaring the rule of exception.

So the idea of territorial limitations is not at all inherent to the concept of sovereignty, which, on the contrary, has an expansive and potentially boundless claim to power. Furthermore, the difference between legality and illegality becomes indistinct as this difference is at the sovereign's arbitrary disposal. And if every individual is – at least virtually and potentially – a *homo sacer* and if humans in the sovereign's perception appear mainly as *bare life* then the difference between citizens and aliens can hardly be considered to be a severe and systematic one but has rather to be seen as a provisional, temporary, uncertain and finally precarious and arbitrary distinction that can always be revised. And also the separation between the private and the public sphere can no longer be maintained in a strict sense but depends on the sovereign's discretion as *bare life* cannot have privacy. Furthermore, it follows from the sovereign's potential universality and from its unrestricted tendency to expansion that the sovereign power can not be seen as a clearly localizable and detectable institutional entity. Sovereignty rather appears as a potential for total access through total exception, exclusion and externalization. And finally, there can of course be no reliable separation of powers, on the contrary, it has even to be emphasized that the separation of powers is a concept which – from its logical structure – is opposite to the notion of sovereignty. Thus, it follows from Agamben's considerations that sovereignty on the one hand still constitutes and makes possible these distinctions that are so important for the classic perception of stateness. On the other hand these differentiations are not meant to be strict, severe and stable, but from the moment of their establishment have to be considered as dubious and precarious, as tactical differentiations that can be revised by the executive sovereign power at any time.

It also has to be mentioned that on the basis of Agamben's reconsidered notion of sovereignty the relation between state sovereignty and globalization appears in a different light. With regard to the impact of globalization on state consolidation, a biased perception that exclusively stresses the weakening of sovereignty seems inappropriate. Globalization – as could be shown – from a classic

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<sup>50</sup> Agamben. 1998, p.35, cf. *ibid.*, pp.109ff.

<sup>51</sup> Cf. Agamben. 2005, pp.14, 22.

<sup>52</sup> Geulen. 2005, p.77. (Translation by A.V.) Cf. *ibid.*, pp.73f, 77f.

state theoretical perspective has to be regarded as a tendency to call boundaries into question. But if sovereignty is no longer seen only as a restricting and limiting force, then globalization and sovereignty do not appear to be strictly opposite movements. So taking into account the ambivalent character of sovereignty, the crucial point is not that globalization undermines national sovereignty but that under globalized conditions, i.e. under conditions in which borders and boundaries become unclear, blurred and precarious,<sup>53</sup> sovereignty is able to reveal its original and quite undemocratic character.

Sovereignty and sovereign power exertion in Agamben's understanding is inescapable, universal and omnipresent but therefore at the same time diffuse and quite difficult to localize. One could argue that in Agamben's description, the center of power exertion is highly visible as it appears in the sovereign's declaration, establishment and the control of the state of exception. However, this view would only be convincing if one regarded the state of exception as a temporary and spatially limited, i.e. as a *real* exception to the legal order. But taking into account Agamben's emphasis that the conceptional core of sovereignty consists in establishing the state of exception as a permanent order and thus in completely deleting the difference between law and exception, it is not contradictory to conclude that the sovereign power on the one hand establishes states of exception, and on the other hand is difficult to localize because of its omnipresent universality in the perpetuated state of exception.

This diffuse omnipresence of power in Agamben's approach is an important congruence to Foucault's perception of power in general and also to the functioning of power in Foucault's concept of governmentality.<sup>54</sup> At the same time, Agamben's juridical and institutional focus on sovereignty does not at all correspond to Foucault's considerations on power and governmentality. Foucault argued that the juridical and institutional conception of power might have been characteristic of pre-modern monarchies and feudal systems but can not be considered to be the main model in modern societies. According to Foucault, the classic sovereign concept of power establishes a hierarchical relation that allows a clear and discernible distinction between the power holder on the one hand and the powerless subject on the other hand, and works mainly through interdiction and punishment.<sup>55</sup> However, for Foucault, in modern states, power is not mainly a strict

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<sup>53</sup> From this does not necessarily follow that under globalized conditions borders and boundaries are weakening as the drawing and deletion of borders on an uncertain and unreliable basis can have quite the opposite effect. Borders and boundaries can be strong and difficult to overcome precisely because of their blurred, uncertain and unreliable character.

<sup>54</sup> For a very good and brief insight in the notion of governmentality cf. Michel Foucault. 1992. *Was ist Kritik?* Berlin: Merve, pp.10ff, 14ff and also Regina Brunnett/Stefanie Gräfe. 2003. „Gouvernementalität und Anti-Terror-Gesetze. Kritische Fragen an ein analytisches Konzept“. In Marianne Pieper/Encarnación Gutiérrez Rodríguez (eds.). *Gouvernementalität. Ein sozialwissenschaftliches Konzept im Anschluss an Foucault*. Frankfurt am Main and New York: Campus, p.54.

<sup>55</sup> See especially Michel Foucault. 1975. *Surveiller et punir. Naissance de la prison*. Paris: Gallimard, pp.9-40, 214ff.

negating and punishing authority but rather a productive discursive force that works on the basis of procedures of normalization, standardization and supervision.<sup>56</sup> It has rather to be understood as an omnipresent and decentralized network that imbues the entire society and works through the entirety of social practices. Thus, Foucault emphasizes: »Quoi d'étonnant si la prison ressemble aux usines, aux écoles, aux casernes, aux hôpitaux, qui tous ressemblent aux prisons?«<sup>57</sup> While the juridical and oppressive model of sovereign power was characteristic for pre-modern states, in modern societies Foucault makes out a productive and scientific-discursive functioning of power that has a biopolitical focus and takes care (for example) of the health, the education, the growth and the wealth of the population. According to Foucault, this form of societal regulation which he calls governmentality is characteristic of modern societies and has already replaced the traditional model of sovereign power. Because Foucault rejects the juridical and sovereignty-based concept of power and emphasizes the significance of governmentality, the state-centrism of political thinking can no longer be maintained. Consequently, he stresses that it is not appropriate to imagine the sovereign state as a political entity because »the state is nothing more than the mobile effect of a regime of varied governmentality«.<sup>58</sup>

However, one of the main claims in Agamben's revision and reformulation of the concept of sovereignty consist in unifying the biopolitical and governmental idea of power subsequent to Foucault with the traditional sovereignty-based conception<sup>59</sup> which for Foucault in modern societies was only of little relevance. Of course, the relation between governmental bio-power and sovereign power would be worth to be discussed in detail. But as we intend to focus our attention on the notion of sovereignty, it is not crucial for our purpose whether Agamben's theoretical attempt to bring together the separated Foucaultian conceptions of power is convincing, as Margaroni emphasizes,<sup>60</sup> or not, as Geulen, Lemke and Ojakangas point out.<sup>61</sup> Actually, the reason why Agamben's considerations are of particular relevance here, is that he underlines the great

<sup>56</sup> Cf. *ibid.*, p.227.

<sup>57</sup> *Ibid.*, p.264. For his concept of power see furthermore Michel Foucault. 1976. *Histoire de la sexualité I. La volonté de savoir*. Paris: Gallimard, chapter 5. I have discussed Foucault's relation between discourse and power in more detail in Andreas Vasilache. 2003. *Interkulturelles Verstehen nach Gadamer und Foucault*. Frankfurt am Main and New York: Campus, pp.47ff, 68ff. Cf. also Isabell Lorey. 1999. „Macht und Diskurs bei Foucault“. In Hannelore Bublitz/Andreas D. Bührmann/Christine Hanke/Andrea Seier (eds.). *Das Wuchern der Diskurse. Perspektiven der Diskursanalyse Foucaults*. Frankfurt am Main and New York: Campus, p.91 who argues that Foucault ignores the persistence of sovereign and oppressive forms of power exertion. On this also see Vasilache. 2003, pp.115f. On Foucault's theory of power in general see of course still Axel Honneth. 1986. *Kritik der Macht. Reflexionsstufen einer kritischen Gesellschaftstheorie*. Frankfurt am Main: Suhrkamp.

<sup>58</sup> Foucault, Michel. 2000b. „Staatsphobie“. In Ulrich Bröckling/Susanne Krasmann/Thomas Lemke (eds.). *Gouvernementalität der Gegenwart. Studien zur Ökonomisierung des Sozialen*. Frankfurt am Main: Suhrkamp, p.70. (Translation by A.V.) Cf. also Michel Foucault. 2000a. „Die »Gouvernementalität«“. In Bröckling/Krasmann/Lemke (eds.), pp.62ff.

<sup>59</sup> Cf. Agamben. 1998, pp.3-9, 119f.

<sup>60</sup> Cf. Maria Margaroni. 2005. „Care and Abandonment. A Response to Mika Ojakangas' »Impossible Dialogue on Bio-power: Agamben and Foucault«“. *Foucault Studies*. May 2005, No.2, pp.34ff.

<sup>61</sup> Cf. Geulen. 2005, p.86, Thomas Lemke. 2004. „Die Regel der Ausnahme. Giorgio Agamben über Biopolitik und Souveränität“. *Deutsche Zeitschrift für Philosophie*. Vol.52, No.6, p.959, Ojakangas. 2005a, pp.11ff, 15f and Mika Ojakangas. 2005b. „The End of Bio-power? A Reply to My Critics“. *Foucault Studies*. May 2005, No.2, pp.47-53. It has to be mentioned that Ojakangas seems to ethically idealize Foucault's conception of biopolitics.

significance of sovereign power and – in contrast to Foucault – does not try to show that the sovereign model of power exertion is an anachronism which is only of little importance for modern societies. While Foucault had to negate and to overcome the classic idea of sovereignty in order to demonstrate the illiberal tendencies in modern societies,<sup>62</sup> Agamben shows the illiberal essence of the juridical form of power exertion and of the law-based model of sovereignty itself. While Foucault had to overcome the idea of stateness, Agamben demonstrates that the theoretical concept of the state itself is based on a totalitarian foundation.

Apart from Geulen's, Lemke's and Ojakangas criticism on Agamben's aim to theoretically unify the two separated Foucaultian models of power in his reformulation of sovereignty, four different objections can be raised against Agamben's approach. *Firstly*, Agamben's theoretical claim is by far too broad in scope. Thomä stresses that the theoretical universality that Agamben's broad analysis suggests is in general not appropriate for social thinking.<sup>63</sup> And in fact, it seems quite daring to claim that modern state theory can be reduced to the persistence of just a few relevant theoretical figures (like the *homo sacer* or the state of exception) and to state that political phenomena that in many regards are so different one from another, in the end all are just outcomes of the same sovereign logic. In Agamben's »Grand Theory«,<sup>64</sup> no systematic differentiation is possible between the so-called new wars, the prison in Guantanamo or the fingerprinting of airline passengers because each of these phenomena is just an example for the production of *homines sacri* and for the state of exception as the *nomos* of modernity.

*Secondly*, it can be objected that Agamben does not consider the empirical validity of his explanations and statements, as Heins' criticism of Agamben's considerations on the human rights discourse exemplifies.<sup>65</sup> And also Agamben's questionable comparisons and the doubtful analogies he draws – like, for instance, his analogy between the registration of biometric information when entering the USA and the tattooing of detainees of concentration camps<sup>66</sup> or other absurd and ethically relativistic analogies<sup>67</sup> – give the strong impression that there is a lack of empirical validity in his considerations.

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<sup>62</sup> Cf. for example Foucault. 1976, chapter IV.1 and Michel Foucault. 1978. „Recht der Souveränität/Mechanismus der Disziplin“. In Michel Foucault. *Dispositive der Macht. Michel Foucault über Sexualität, Wissen und Wahrheit*. Berlin: Merve, pp.75-84.

<sup>63</sup> Cf. Dieter Thomä. 2004. „Der Herrenlose. Gegenfigur zu Agambens "homo sacer" – Leitfigur einer anderen Theorie der Moderne“. *Deutsche Zeitschrift für Philosophie*. Vol.52, No.6, p.983.

<sup>64</sup> Quentin Skinner (ed.). 1990. *The Return of Grand Theory in the Human Science*. Cambridge: Cambridge University Press.

<sup>65</sup> Cf. Volker Heins. 2005. „Der Ernstfall der Menschenrechte. Eine Kritik an Agamben“. *Westend. Neue Zeitschrift für Sozialforschung*. Vol.2, No.1, pp.143ff.

<sup>66</sup> Cf. Giorgio Agamben. 2004. „Non au tatouage biopolitique“. *Le Monde*. January 11-12, 2004, p.10. See also Geulen. 2005, p.101 and Heins. 2005, p.142.

<sup>67</sup> Cf. Giorgio Agamben. 1999. *Remnants of Auschwitz. The Witness and the Archive. (Homo Sacer III)*. New York: Zone Books, pp.24ff where he – without any explanation – equates a soccer match between the SS and deportees in Auschwitz with any other soccer match that takes place nowadays.

A *third* objection *could* stress that Agamben is not able to propose any real solution for the paradox of sovereignty, for the sovereign's focus on bare life or for the state of exception as the characteristic trait of modern sovereignty.<sup>68</sup> One may reproach that the deconstruction of the notion of sovereignty does not only demonstrate the problematic nature of sovereignty but also reveals the hopelessness of the situation. However, this, of course, can not be regarded as a legitimate objection against Agamben because the legitimacy and conclusiveness of a critical social theory can not per se be dependent on the possibility to provide a theoretical or practical solution.

Without maintaining that the first and the second possible objections are of little relevance, I nevertheless think there is a more fundamental objection that can be put forward against Agamben's thesis. Thus, the *fourth*, and in my opinion most convincing objection that can be raised, is that the far-reaching conclusions that Agamben draws are insufficiently proved and thus not justified by his analysis. And the main problem does not consist in his working method, which unfortunately in some passages is merely associative and is based only on statements, declarations and assertions.<sup>69</sup> The principal problem is that the inevitability, the theoretical exclusiveness and the systematic pre-eminence of the state of exception is simply not expounded or proved. Agamben does neither succeed in showing that the power to decide on the state of exception really constitutes the very essence of sovereignty nor that the possibility to declare the state of exception is the most characteristic trait of the concept of sovereignty. Agamben does not give any explanation at all why the state of exception – although he demonstrates that it is an inherent possibility of the concept of sovereignty – should take theoretical precedence over the ordering and pacifying functions of sovereignty. It is simply not persuasive to claim that – in view of the notion of sovereignty – there can be no theoretical and systematic difference between consolidated stateness on the one hand and a perpetual concentration camp on the other hand. So there is no theoretical or systematic reason to hold to Agamben's conclusion that the essence and core of sovereignty consists in the political, i.e. factual realization of the state of nature within the state. Thus, contrary to Agamben's claim, it has to be emphasized that sovereignty can not *exclusively* be regarded as the incarnation of the state of exception.

But from this objection does, of course, not follow that Agamben's considerations are in toto inconclusive or irrelevant. Although Agamben's conclusion of the quasi-equivalence between sovereignty and the state of exception is not consistent, it seems nevertheless unconvincing to

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<sup>68</sup> For a discussion of possible ways out see Geulen. 2005, pp.101-118 who concludes that Agamben is not able to provide a workable theoretical alternative to the concept of sovereignty.

<sup>69</sup> Geulen. 2005, pp.113 stresses that in Agamben. 1999 simple associations take precedence over systematic proves. Cf. Agamben. 1999, pp.24ff, but also for example Agamben. 1998, p.38.

simply reject his theoretically challenging considerations. Agamben may not be able to prove that the creation of the state of exception is the only characteristic trait and perhaps not even that it is the principle or main feature of sovereignty, but he nevertheless reveals one important level of meaning of the concept of sovereignty. Even if the state of exception is not an inevitable consequence of sovereignty, Agamben successfully demonstrates that there is an inner relation between sovereignty and the state of exception, namely, that the state of exception is a constitutive inherent principle of sovereignty.<sup>70</sup> Moreover, he develops further this idea and is able to show that, from the sovereign's perspective, the bare life of the *homo sacer* remains the main point of reference for the sovereign power, regardless of the democratic or undemocratic manner of the establishment of sovereignty. Therefore, even contractarian, i.e. consent-based sovereignty can not exclusively be regarded as a guarantor for stable, secure, well-ordered and lawful societal conditions, but also as a permanent threat for stability, security, order and the rule of law. Although Agamben might ignore that sovereignty and consequently also stateness in fact have an ordering and pacifying potential he is able to demonstrate that sovereignty and stateness are, nonetheless, symbols for arbitrariness and the total state of exception, too. It can be concluded from Agamben's considerations that – despite the *political* measures that have been developed in order to restrain sovereign power – the *conceptional* and *theoretical* framework of sovereignty has not yet lost its absoluteness and its unlimited scope.

This is an important as well as disturbing and worrying outcome. Even if one only admits that Agamben exposes a particular level of meaning of the concept of sovereignty, the consequences for certain ideas and theories (for example on precarious states, state-building, transition and democratization) would be both great and worrying as our underlying idea of cause and effect could be inappropriate. Because from this point of view, certain problems and phenomena (as for instance privatized wars, inner-state armed conflicts, uncertain territoriality, corruption, unstable institutions, etc.) which are usually considered to be characteristic of unconsolidated and precarious stateness, could turn out to be a specific form of expression of the sovereign power. Measures – like the strengthening of sovereignty and the protection of the state's monopoly on the use of force – that are being employed to fight these problems could turn out to be their very cause. To put it shortly, that what is usually regarded as precarious stateness could be just a specific way in which

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<sup>70</sup> And therefore, from an Agambian point of view, it is hardly surprising that the state of exception is indeed mentioned, discussed and finally institutionalized in the social contract theories of Hobbes, Locke and Rousseau. Cf. Hobbes. 1985, pp.228-239, 260f, 313, 365f, 368, 375 whose *Leviathan* from the very beginning is constituted as a perpetuated state of exception, but also Locke. 1966, pp.392ff, 396ff who emphasizes the necessity for a sovereign's right to prerogative and Rousseau. 1964, pp.455ff who stresses that dictatorship – in certain situations and for a limited time – might be necessary and should be allowed. Apart from this, the very existence of secret services in every state is an indication of the sovereign's tendency to constitute areas of exception because intelligence agencies *per definitionem* act within an undefined zone between law and fact, between domestic and foreign affairs and between internal and external competences.

sovereignty functions and acts. It follows from Agamben's results that precarious stateness is neither a systematic counterpart to consolidated stateness nor a sign of weakened sovereignty but rather one inherent possibility of the concept of sovereignty.

Thus, from this perspective, precarious stateness would not be – at least not exclusively – a consequence of weakened sovereignty but rather a product of the notion of sovereignty itself. Sovereignty has to be regarded as both a guarantor of well-ordered societal conditions and a permanent threat of the state of exception. In this respect, *on the theoretical level*, there cannot be any significant difference between democracies and non-democratic states<sup>71</sup> because the perpetual threat of the state of exception is not the result of a certain mode of governance, but a consequence of sovereignty and thus of the conceptional basis of stateness in general.

After having exposed the inherent ambivalence of the notion of sovereignty, it now seems fruitful to exemplify and illustrate this theoretical perception with several problems that are characteristic of precarious and unconsolidated states like Indonesia. In doing so, I will not claim to provide a detailed and extensive empirical analysis of the Indonesian situation but I will discuss whether our reviewed and modified understanding of sovereignty can help to explain these problems from a different point of view and thereby can contribute to comprehend the phenomenon of precarious stateness in a more extensive and precise manner.

### **The Fleeting Boundaries of Sovereignty: Some Remarks on Transition Theory and the Indonesian Example**

Indonesia's stateness is challenged by several serious problems. I will name just four big problem areas in order to sketch their impact on the question of stateness in Indonesia. *First of all*, the complex phenomenon of societal violence and especially of violence in political conflict has to be mentioned. Violent mechanisms of conflict regulation in Indonesia are very usual and manifest in different forms, on different levels and because of very different reasons. Both state institutions (especially the military) and private actors (for example ethnic, religious, social and separatist groups, guerrillas, regional militias and private security enterprises) frequently appear as

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<sup>71</sup> *Nota bene*: This is a theoretical conclusion. Of course, it is more than obvious, that there are huge differences between the usual mode of operation of the sovereign power in consolidated democracies and in autocratic states. But this theoretical approach to sovereignty seems important as it could help to explain why (in certain situations) it seems to be very easy for democracies to establish exceptional, unlegislated zones, to introduce systematic exclusions from any legal protection for certain groups or to suspend the rule of law etc. and, thus, to implement policies that are not only highly illiberal, but – at least at first glance – stand in systematic contradiction to the very foundations of democratic stateness.

protagonists of violence.<sup>72</sup> Because of the continuity and stability of violent modes of conflict resolution Kreuzer stresses the historical and cultural roots of violence on the Indonesian archipelago,<sup>73</sup> and Colombijn even asks if there is something particular »Indonesian about Violence«. <sup>74</sup> Although he of course denies that violence is a specific Indonesian phenomenon, he nevertheless states that in Indonesia a specific and unfortunate combination of different causes, traditions and forms of violence can be found.<sup>75</sup>

*Secondly*, interethnic tension is a great challenge for the multiethnic, multireligious and multicultural Indonesian state.<sup>76</sup> Not only the Chinese and the Christian minority, but also many other ethnic, religious or cultural groups have several times been the object of aggressions and violent excesses.<sup>77</sup> The interethnic conflicts reveal that the national integration and especially the nation-building process<sup>78</sup> still have to be considered as defective. The theoretical and ideological basis of the Indonesian state, the Pancasila philosophy,<sup>79</sup> has not yet been able to provide a national and identitarian integration, and – as Arenhövel points out – Indonesia still is an example for an »unhappy marriage of state and (national) culture«. <sup>80</sup> Thus, the Indonesian state still seems to be in search of a nation.

*Thirdly*, regional conflicts and separatist movements are questioning the territorial integrity of the Indonesian state. The history, the underlying reasons and the political infrastructure of the regional conflicts and separatist tendencies in Indonesia are different,<sup>81</sup> although economic reasons –

<sup>72</sup> Cf. for example Freek Colombijn. 2001. "What is so Indonesian about Violence?". In Wessel, Ingrid/Wimhöfer, Georgia (eds.). *Violence in Indonesia*. Hamburg: Abera, pp.29-37 and Munir. 2001. "Indonesia, Violence and the Integration Problem". In Wessel/Wimhöfer (eds.), pp.20ff.

<sup>73</sup> Cf. Peter Kreuzer. 2000. *Politik der Gewalt – Gewalt in der Politik: Indonesien. HSFK-Report 4/2000*. Frankfurt am Main: HSFK, pp.33-47, Peter Kreuzer. 2002. *Applying theories of ethno-cultural conflict and conflict resolution to collective violence in Indonesia. PRIF Reports No.63*. Frankfurt am Main: PRIF, pp.34-44, Peter Kreuzer. 2004. "Gewalt in der Politik: Die Bedeutung kultureller Rahmung von State- und Nation-building in Malay(sia) und Indonesien". *Asien*. January 2004, No.90, pp.14-21.

<sup>74</sup> Colombijn. 2001, p.25.

<sup>75</sup> Cf. *ibid.*, pp. 39f.

<sup>76</sup> Cf. for a very good and detailed insight in the Indonesian case for example Jacques Bertrand. 2004. *Nationalism and Ethnic Conflict in Indonesia*. Cambridge: Cambridge University Press, for a theoretical discussion of ethnic conflict and possible solutions see Donald L. Horowitz. 2001. "Structure and Strategy in Ethnic Conflict: A Few Steps toward Synthesis". In R. William Liddle (ed.). *Crafting Indonesian Democracy*. Bandung: Penerbit Mizan.

<sup>77</sup> Cf. Bertrand. 2004, pp.57-71, 72f, 90ff, 102ff, Christian Chua-Franz. 2002. *Indonesiens Chinesen. Konstruktion und Instrumentalisierung einer ethnischen Minderheit*. Hamburg: IFA, pp.152ff, Adam Schwarz. 1999. *A Nation in Waiting. Indonesia's search for stability*. St. Leonards NSW: Allen&Unwin, pp.380f and Herrmann. 2005b, pp.168f, 174.

<sup>78</sup> On the nation-building paradigm in Indonesian policy in general see Manuel Schmitz. *Ethnische Konflikte in Indonesien und die Integrationspolitik Suhartos*. Hamburg: IFA, pp.39-45.

<sup>79</sup> For the conceptional framework of Pancasila see Sukarno. 1970. "The Pantja Sila (Speech delivered on June 1, 1945, before the Investigating Committee for the Preparation of Independence)". In Herbert Feith/Lance Castles (eds.). *Indonesian Political Thinking. 1945-1965*. Ithaca and London: Cornell University Press, 40ff, 45ff. On the Pancasila cf. Resy Canonica-Walangitang. 2003. *The End of Suharto's New Order in Indonesia*. Frankfurt am Main: Peter Lang, pp.20ff and Arenhövel. 2003, pp.192ff, on Pancasila as an »ideology of tolerance« see Douglas E. Ramage. 1995. *Politics in Indonesia. Democracy, Islam and the Ideology of Tolerance*. London and New York: Routledge, p.1 and p.1ff.

<sup>80</sup> Arenhövel. 2003, p.187. (Translation by A.V.)

<sup>81</sup> On regional conflicts with or without strong separatist movements see Herrmann. 2005a, pp.142ff, Schwarz. 1999, pp.424ff, Schmitz. 2003, pp.49-56 and Klaus H.Schreiner. 2000. "Regionale Konflikte in Indonesien: Eine Krise des *nation building*?" *Asien*. April 2000, No.75, pp.5-19.

according to Herrmann – seem to be important in every regional conflict.<sup>82</sup> Jakarta's *transmigrasi* policy has in no way contributed to appease existing regional conflicts<sup>83</sup> through ethnical homogenization but can be seen as a measure which in some cases has even aggravated both regional disputes and conflicts between the center and the periphery, i.e. between Java and the regions affected by *transmigrasi*.

*In the fourth place*, the weakness and the decline of state authority has to be mentioned. This decline is shown by different phenomena and developments. Not only corruption or conflicts between different state institutions<sup>84</sup> but especially the increasing privatization of armed conflicts and of the security sector in general demonstrates the precarious situation of the state authority.<sup>85</sup> There is a wide range of private actors who dispose of arms and/or military equipment. Apart from guerilla organizations,<sup>86</sup> also other armed groups, profit-oriented enterprises or individuals<sup>87</sup> as well as the military and the police<sup>88</sup> – depending on the situation – have to be regarded as private actors who weaken the authority of the state. The situation is even more complex, sometimes blurred and unclear because the interrelation between private forces and state representatives can reach from severe hostility to reciprocal exploitation or even to direct cooperation.

Of course, the phenomenon of violence, the interethnic tensions, the regional and separatist movements and the privatization of public order and of armed conflicts are not the only difficulties that Indonesia has to face. And certainly, these four main problem areas can not be regarded as isolated factors. They are rather overlapping and characterized by a relation of reciprocal reinforcement. What these phenomena have in common is that they undermine the sovereign's monopoly on the use of force and therefore directly question Indonesia's stateness – at least in a traditional sense of this notion. From the perspective of the classic, i.e. traditional perception of stateness and sovereignty (as outlined in part two), these phenomena and problems would have to be interpreted exclusively as great challenges for the stateness of Indonesia and as clear and

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<sup>82</sup> Cf. Herrmann. 2004, p.104.

<sup>83</sup> Cf. *ibid.*, pp.59f and Kreuzer. 2000, pp.39ff.

<sup>84</sup> Cf. Ingrid Wessel. 2005. "The Impact of the State on the Democratisation Process in Indonesia". In Wessel (ed.), pp.20ff.

<sup>85</sup> For an overview of the privatization of the public order in Indonesian see Kees Van Dijk. 2001. "The Privatization of the Public Order. Relying on the Satgas". In Wessel/Wimhöfer (eds.), pp.152-164 and Herrmann. 2004, pp.74-79.

<sup>86</sup> Cf. on the GAM in Aceh Mißbach. 2005, pp.159ff, 167ff, 174ff.

<sup>87</sup> Lindsey describes the phenomenon of *premanisme* and points out that »government representatives, usually members of the military or police« support the illegal »control of territory« of the *preman*. Tim Lindsey. 2001. "The Criminal State: *Premanisme* and the New Indonesia". In Grayson Lloyd/Shannon Smith (eds.), pp.136-145 and Schmitz. 2003, pp.88-94, for a detailed analysis see Christoph Schuck. 2003. *Der indonesische Demokratisierungsprozess. Politischer Neubeginn und historische Kontinuität*. Baden-Baden: Nomos, pp.163-192. On the privatized political and economic role of the military and the police cf. also Lindsey. 2001, p.290, Herrmann. 2004, pp.79, 83ff and Schuck. 2003, pp.173ff.

<sup>88</sup> For a short insight in the political role of the Indonesian military see for example Atmadji Sumarkidjo. 2001. "The Rise and Fall of the Generals: The Indonesian Military at a Crossroads". In Lloyd/Smith (eds.), pp.136-145 and Schmitz. 2003, pp.88-94, for a detailed analysis see Christoph Schuck. 2003. *Der indonesische Demokratisierungsprozess. Politischer Neubeginn und historische Kontinuität*. Baden-Baden: Nomos, pp.163-192. On the privatized political and economic role of the military and the police cf. also Lindsey. 2001, p.290, Herrmann. 2004, pp.79, 83ff and Schuck. 2003, pp.173ff.

unambiguous signs of the weakness of sovereignty and consequently of precarious, unconsolidated and defective stateness.

But if we now take into consideration Agamben's reinterpretation of the concept of sovereignty, Indonesia's stateness does not necessarily appear to be defective. In contrast to the traditional understanding of stateness and sovereignty, and thus in contrast to the perception of transition theory, the just mentioned phenomena and problems do not have to be seen only as an indication of precarious sovereignty but rather as consequences of a certain mode of operation of sovereign power. In the following, I will briefly indicate a different possible perception of these problems in order to draw an important conclusion concerning the question of stateness in transition research.

If we recall that one theoretical essence of sovereignty consists in its potential to suspend the law, i.e. to decide whether, where and when the rule of law is in force or canceled, then neither generalized violence and interethnic conflicts nor separatist movements or the privatization of the public order can be exclusively regarded as signs of weakening or declining sovereignty. Destabilized societal order is not necessarily an indication of unconsolidated stateness or defective sovereignty, but can also be considered as a sovereign, governmental strategy to remain undecided and to produce a precarious state of suspense. This can be exemplified by the fight against terrorism which »after the Bali bombings (October 2002) [...] became top priority«<sup>89</sup> and of course is a necessity in order to secure the sovereign's monopoly on the use of force. But the way the anti-terrorist fight is fought shows that the governmental sovereign power obviously prefers security to peace. Thus, the sovereign anti-terrorist policy and strategy provides an example for the interest of the sovereign power to have societal conditions with a certain degree of fear, of uncertainty, of insecurity and instability. Under insecure and uncertain circumstances, sovereignty is able to offer security, and thus, is not called into question but is even able to enlarge its competences and its scope of action.<sup>90</sup>

This enlargement of the sovereign's scope of action can be realized also in other contexts. Of course, the privatization of armed conflicts, of violence and of state order in general on the one hand has to be understood as a sign of weak sovereignty. But on the other hand, the indistinctiveness of private and sovereign violence – which is so characteristic of the so-called *New*

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<sup>89</sup> Wessel. 2005, p.14.

<sup>90</sup> Cf. Andreas Vasilache. 2005. "Le terrorisme transnational et la politisation de la peur. Réflexions théoriques sur la stratégie terroriste et sur la politique anti-terroriste de l'Union Européenne, de la Russie et des Etats-Unis". In: Kirsten Westphal (ed.). *A Focus on EU-Russian Relations. Towards a close partnership on defined road maps?*. Frankfurt am Main: Peter Lang, pp.109f and Brunnett/Gräfe. 2003, pp.50ff.

*Wars*<sup>91</sup> – also allows sovereignty to permanently disregard juridical restrictions and to be always in the game (as an actor or as a mediator<sup>92</sup>) without being accountable. With a similar intention the indistinctiveness between internal and external affairs – as for instance in East Timor (before it became independent), in Irian Jaya/Papua or in Aceh – is systematically produced and exploited by the sovereign power that thereby establishes »the state of exception as the permanent structure of juridico-political de-localization and dis-location.«<sup>93</sup> Due to the externalization of certain conflicts sovereignty is able to constitute an extra-legal zone of unconditional and unrestricted scope of action. Thus, the institutionalization of *Daerah Operasi Militer (DOM)*<sup>94</sup> can hardly be seen *exclusively* as an indication of weakened sovereignty but demonstrates the tendency of sovereign power to establish zones of exception in which neither domestic nor international law is applicable and in which solely factual executive measures reign. In these zones of exception, individuals are at the sovereign's disposal as simple objects and reduced to their *bare life*.

Finally, also *transmigrasi* can be interpreted as a sovereign strategy to produce *bare life* in Agamben's above-mentioned sense. This corresponds with Kreuzer's remark that the inhabitants of conflict areas have always been conceptualized as simple objects of political decisions and have never been attributed a »Subjekt-Status«.<sup>95</sup> The category of transmigrants and their object-status as movable social material also reveals the sovereign's understanding of politics as biopolitics. By analogy it could be stated that also ethnic conflicts to a certain degree provide *bare life* for the sovereign power. The societal predominance of ethnic affiliations allows the sovereign power to sharply dissociate from the citizens who are primarily seen not as individuals and right holders, but as members of ethnic groups. Thus, *vis-à-vis* conflicting ethnic groups, sovereignty can externalize itself, can take a quasi-external perspective and can treat every ethnic conflict party as if it was an alien force.

We now discern that on the theoretical foundation of Agamben's conclusions on sovereignty, problems that usually are considered as characteristic of weakened sovereignty and precarious stateness appear in a different light. Because Agamben does not reach to disprove the ordering impact of sovereignty, the just expounded reinterpretation of several political problems of the Indonesian state of course does not claim to be a complete empirical explanation, and thus, this

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<sup>91</sup> On the definition and categorization of the *New Wars* cf. Mary Kaldor. 1999. *New and Old Wars. Organized Violence in a Global Era*. Stanford: Stanford University Press, pp.1-12 and Herfried Münkler. 2002. *Die neuen Kriege*. Reinbek bei Hamburg: Rowohlt, pp.13-57.

<sup>92</sup> For an example in which the Indonesian government appeared in the role of a mediator in a regional conflict see Herrmann. 2004, p.85.

<sup>93</sup> Agamben. 1998, p.38.

<sup>94</sup> On the opaque political and juridical status of the *DOM* see Schmitz. 2003, pp.95f.

<sup>95</sup> Kreuzer. 2004, p.21.

reinterpretation does *per se* not yet lead to a direct applicability as a policy concept. But nevertheless, Agamben successfully demonstrates the inner ambivalence of sovereignty which is an important insight and which allows understanding certain phenomena from a different viewpoint. Thus, a certain degree of supposed weakness of the sovereign power can in fact be a sovereign strategy to enlarge its scope. Unclear, uncertain and undecided political conditions or institutional and societal cacophony are not always a sign of state instability but can also be the very product of the sovereign governmental power itself. So, we can conclude that precarious and unconsolidated stateness is a quite ambivalent and complex phenomenon. As one of the characteristic traits of sovereignty is to remain undecided between its lawful and ordering function on the one hand and its tendency to total and factual freedom of action on the other hand, even the instability of the state in some cases *could* still be a political strategy of the sovereign power. Because unconsolidated stateness is not necessarily an indication of weakened sovereignty or declining power of the state, it seems necessary and appropriate to suggest a changed or additional perspective on unconsolidated stateness in transition research. Besides the – of course still necessary – discussion about the destabilizing effects of precarious stateness, transition research should also focus on the stabilizing impact of unconsolidated stateness with regard to the sovereign power. This changed perspective could possibly help explaining why for instance in some situations and areas, (sometimes even armed) conflicts on the question of stateness are remarkably durable and stable (for example in Aceh or in Sri Lanka), while in other cases they are not (for example in Ex-Yugoslavia).

Even the real disintegration and finally the failing of states can not be considered as logically opposite to the concept of sovereignty but rather as an inherent possibility and as a (from the sovereign's point of view of course non-intentional) consequence of the paradox of sovereignty. That even the failing of states and consequently the dissolution of sovereignty could be one possible effect of the concept and working of sovereignty itself is a conclusion that Agamben himself does not mention. He rather seems to suggest that the paradoxical and ambivalent structure of sovereignty always and necessarily leads to an uncontrollable strength of sovereign power. But Agamben's biased emphasis that the structure and nature of sovereignty always and in every case leads to an overwhelming power of sovereignty is not conclusive, but demonstrates that Agamben – in comparison to Foucault – is still too closely attached to a classic concept of power and that he is not willing to apply the ambivalence he has demonstrated for the structure of sovereignty also to the notion of power. Nevertheless, it follows from Agamben's own conclusions on sovereignty that not only the overwhelming strength of sovereignty, but also the failing of sovereign power is – at least

as a non-intentional possibility – inherent to the paradoxical and ambivalent concept of sovereignty.<sup>96</sup>

As I have mentioned above, Agamben is not able to indicate a solution of the paradoxical character of sovereignty and unfortunately there seems to be no simple escape from the inherent ambivalence of sovereignty. From a theoretical point of view, a mainly critical outcome of an analysis is unproblematic. From a policy-oriented perspective as it is (and should be) predominant in transition research, the theoretical conclusions that could be drawn on sovereignty have to be regarded as initial reflections. However, the critical reconsideration of the concept of sovereignty reveals the necessity for a broader perspective regarding the stateness issue in transition theory. Because if sovereignty is not only a law-based and ordering principle, but also has an inherent tendency to suspend the state laws in order to replace the regular societal relations by a state of exception, then it is of course impossible to regard stable sovereignty and consolidated stateness as unproblematic and self-evident theoretical preconditions of democratization. Thus, the reason why transition research should – besides the (necessary and important) discussion about how to achieve stable stateness in a classic sense – intensely discuss and question the theoretical concepts and the very notions of sovereignty and stateness does not consist in the empirical fact alone that these theoretical-political conceptions have frequently been – as Geertz emphasizes not only with regard to Indonesia – inappropriate and politically unsuccessful.<sup>97</sup> Sovereignty and stateness are concepts which have to be steadily and insistently discussed, analyzed and reconsidered because they on the one hand are preconditions of democratization but at the same time they carry the seeds of totalitarian rule. Thus, the relation between democracy and stateness is complex and can not be reduced to a simple relation in which the first requires the latter. Due to the inherent ambivalence of sovereignty, stateness and democracy in some respects are opposite conceptions. Therefore – and this is an essential conclusion for transition theory – it is theoretically inconclusive and politically dangerous to consider stateness and sovereignty solely as preconditions of democracy. It is crucial to realize that stateness and sovereignty are concepts that need to be unceasingly reflected – actually with regard to both precarious states and consolidated democracies.

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<sup>96</sup> It would be interesting and theoretically challenging to discuss this point in more detail, but this would have to be done in a separate analysis.

<sup>97</sup> Cf. Clifford Geertz. 2005. „Die dritte Welt. Vom Fanal der Revolution zur postkolonialen Realitätsbewältigung“. *Lettre International*. Summer 2005, No.69, pp.48f, 52.

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