

## The Logic of Reconciliation: Between the Right to Compensation and the Right to Justice in Turkey

We did not know what to expect of the law. We informed all of our members to come and give their testimonies. Villagers found it difficult to believe that the state would accept its responsibility and compensate for the damages incurred by the armed forces. They were suspicious of the purpose and the consequences of the law and . . . uncertain about how to complain about the state to the state. (Lawyer from a human rights organization)

In 2004, the Turkish parliament passed the “Law on Compensation for Losses Resulting from Terrorism and the Fight against Terrorism.” The law was designed to compensate citizens who had incurred material damages as a result of the military conflict between the Kurdistan Workers’ Party (Partiya Karkeren Kurdistan, or PKK) militants and the Turkish armed forces. The preamble explained that the aim of the law was to provide compensation for damages in the context of “bolstering trust and rapprochement between the state and its citizens.”<sup>1</sup> Compensation was to be granted for losses resulting from physical damage to movable and immovable assets as well as losses that resulted because a person was denied access to his property during that period. Loss of life and injuries were also included in the compensation categories, but nonpecuniary damages were not. Compensation would be awarded by mutual agreement between the applicants and the provincial committees (known as damage assessment commissions), which were staffed by local public officials and the governor of the province. To receive the awarded compensation, the applicant needed to sign a friendly settlement (*sulhname*) that involved the following declaration:

I agree to receive compensation (as determined by the damage assessment commissions) for the damages and losses incurred as a result of terrorism and the fight against terrorism. I hereby confirm and declare that my losses as assessed by the commission have been compensated either in kind or cash.

Applicants also had the right to reject the award and appeal the decisions of damage assessment commissions at the administrative court.<sup>2</sup> The law was extended three times through several amendments. In 2006, the government submitted a report to the European Court of Human Rights on the applicants who had filed applications with that entity and later received damages under the Compensation Law.<sup>3</sup> After evaluating the mechanisms and results of these assessments, the European Court of Human Rights ruled that the Compensation Law provided an effective domestic

remedy and that applicants must exhaust these procedures before applying to the European Court of Human Rights; it then returned all pending applications. This decision led to the beginning of a new phase in which the definition of the loss, recognition of the injured citizens, and reparations became an internal matter between state officials and Kurdish citizens.<sup>4</sup>

The deadline for applying for the Compensation Law ended in 2008. Complaints about the form and content of the law have been covered in the media, which focused on individual protests and testimonies and official statistics that revealed the high percentage of rejections issued by the commissions. People often complained about the low level of compensation and the rejection of files and threatened to take their cases to the European Court of Human Rights. However, as I will discuss in this essay, very few applicants resorted to litigation to appeal the decisions of the commissions. The majority of the applicants agreed to sign the friendly settlements, which meant that they renounced their right to litigation and consented to the legal closures of their files with respect to the injuries they had suffered between 1987 and 2004. What does this agreement between the applicants and state officials reveal about people's experience of justice and reconciliation? How does the Compensation Law affect their perception of the state and their expectation of recognition of their injuries and acknowledgment of the violation of their rights as Kurdish citizens? How does the Compensation Law transform the relationship between the state and injured citizens in the context of contemporary Turkey?

In this essay, I explore the processes and outcomes associated with legal reforms designed to provide restorative justice in the context of contemporary Turkey. Focusing on the practices and discourses associated with the Compensation Law, I analyze the mode of the relationship between the state and Kurdish citizens. I explore both state practices and the survival mechanisms of those citizens living in the conflict zone. In doing so, I discuss whether these official attempts at reparation and compensation succeed in opening up new imaginaries and experiences of the state for Kurdish citizens who signed the statement indicating rapprochement with the state, in exchange for accepting compensation payments.

In her discussion of reparations within reconciliation processes, Martha Minow argues that “acts of reparation can meet burning needs for acknowledgement, closure, vindication, and connection. They provide a specific narrow invitation for victims and survivors to walk between vengeance and forgiveness.”<sup>5</sup> Yet she also suggests that “the ultimate quality of that invitation depends on its ability to transform the relationships among victims, bystanders and perpetrator.”<sup>6</sup> This sentiment is echoed by Elazar Barkan, who also argues for the significance of acts of restitution for opening up a discussion between perpetrators and victims, leading to the alteration of the identities of both groups. Their interaction affords a “new form of political negotiation that enables the writing of memory and historical identity in ways that both can share.”<sup>7</sup> And yet despite his optimism about the political and cultural benefits of restitution, Barkan still asks: “Could restitution turn a traumatic experience into a constructive national narrative and identity?”<sup>8</sup>

Building on that question, I argue that in the context of contemporary Turkey the Compensation Law as a mode of reparation did not engender any practices or

discourses that transformed relationships between the state and Kurdish citizens. This does not mean that it did not open up discussions of past injustices. It opened up the possibility of documenting losses and searching for traces of the abandoned property and loved ones who had disappeared or were dead.<sup>9</sup> Despite such spaces of disclosure, the law did not provide opportunities for negotiation between victims and perpetrators. The state did not use the law to offer an apology or explicitly acknowledge its full responsibility for those losses and damages incurred during the conflict. Rather, the Compensation Law *reproduced* historically and politically embedded symbolic and material relationships between the state and the Kurdish citizens. The state reproduced its power as the sovereign with the double sword of protection and violence.<sup>10</sup>

Those who applied and received “damages” did not perceive the payments as compensation for past injuries and injustices. Instead, they viewed them as another form of state charity, which was historically and politically a familiar mode of interaction with the state. As a result, they did not necessarily go through the dilemma of reconciling with the state or betraying the struggle by renouncing their right to litigation. For them, the state was the entity with resources to execute and to protect. The perennial dilemma was how to have access to resources without being subject to violence. In what follows, I explore and reveal the mechanisms that the Turkish state employs to reconsolidate its rule at the margins of its sovereignty.

### **Life at the Margins of the State**

Veena Das and Deborah Poole have suggested a new analytical strategy for studying the ethnography of the state at the margins of the nation-state.<sup>11</sup> First, they question the classical anthropological and sociological postulates that identify the state as the political organization that holds the monopoly over legitimacy and order. Second, they hold up to scrutiny the studies that envision the state as a rationalized administrative form of political organization that loses its power along its territorial margins or becomes dysfunctional in so-called segmented societies with strong family traditions. Instead, Das and Poole call for reflection on “how the politics and practices of life in marginal territories shaped the political, regulatory and disciplinary practices of that thing we call the state.”<sup>12</sup>

In doing so, they attempt to reverse the assumptions that the state is absent at the margins/peripheries and instead suggest that margins refer to sites where the state constantly reestablishes its law in the presence of other conflating orders that “emanate from the need to secure political and economic survival.”<sup>13</sup> Drawing on Das’s and Poole’s insightful suggestions, I argue that eastern and southeastern Turkey, the conflict zone, constitutes the margins that accommodate both the practices of the state and its lawmaking through violence and other forms of power, such as the PKK, that colonize and challenge the sovereignty of the Turkish state. This interdependence and the battle to gain power over the territory and people structures the relationship between the state and Kurdish citizens.

In setting up the political and social imagination of these relationships, I employ Giorgio Agamben’s formulation of sovereignty to describe the forms and effects of state power.<sup>14</sup> Drawing on the work of Carl Schmitt, Agamben argues that the “sovereign is the one who decides on the exception” and that the production of bare

life is the instantiation of a state of exception.<sup>15</sup> In Agamben's formulation, "bare life" refers to the individual stripped of his or her legal and political rights, whom Agamben calls the *homo sacer*. In this particular order, the sovereign is both inside and outside the law. Sovereign power depends on the ability to create a threshold of indistinction between legal and illegal, exclusion and inclusion, so that "what violates a rule and what conforms to it coincide."<sup>16</sup>

I contend that the Turkish state acts as the sovereign power, in Agamben's sense, reestablishing its order in eastern and southeastern Turkey through violence. It relies for its power on its capacity to decide on the state of exception and to create the distinction between citizen and noncitizen, terrorist and nonterrorist, loyalist and traitor, good Kurd and bad Kurd. However, here it is important to highlight that the repetitive performance of sovereignty does not only occur through the production of *homines sacri* as killable bodies. As Das and Poole aptly show, the performance of sovereignty also occurs through practices of various figures that embody the state and that also enjoy immunity to the law.<sup>17</sup> Das and Poole argue that these figures do not appear as "ghostly spectral presences" from the past but appear through practices embedded in everyday life.<sup>18</sup>

On the one hand, they perform as the objective, neutral, authoritarian representatives of the state; on the other, they act as local sovereigns, deciding on the exceptions and transgressing state law by the appropriation of private justice. In the context of the margins of the Turkish state, these figures appear in the guise of tribal leaders, village guards, paramilitaries, military officers, and civil servants. Their decisions would function both to exclude and include the subjects in the political order. In other words, their practices as local sovereigns would not only strip citizens of their legal rights but also provide protected access to resources. It is this uncertain, unpredictable, illegible nature of their practices that draws the contours of the relationship between state and citizens.

The rest of this essay will be concerned with such daily practices that constitute the sovereign power of the state at the margins. Focusing on the decision-making mechanisms of local civil servants in the damage assessment commissions, I will particularly explore the ways in which the state's practices lie simultaneously inside and outside the law, enacted through the exceptions embodied by the local authorities of power as representatives of the state and providers of private justice. Before analyzing the practices and discourses of civil servants in the damage assessment commissions, I offer a brief ethnographic background to the military conflict between the PKK and the Turkish armed forces is required, along with some exploration of the ways in which the state operated to tackle political violence and its aftermath in order to reconstitute its power at the margins.

### **Governing under a Permanent State of Exception**

Between 1984 and 1999, the guerrilla war between the PKK and the Turkish armed forces in eastern and southeastern Turkey claimed the lives of more than 30,000 people and resulted in the evacuation of 3,000 settlements and the forced displacement and migration of thousands of people. The lack of state control of rural areas, spatially and administratively, and the inability of the Turkish military to deal with counterin-

surgent war, contributed to the PKK's initial success.<sup>19</sup> Controlling the moral and military foundations of Kurdish resistance, the PKK emerged as an object of protection and fear for the Kurdish people in the region. In the mid-1990s, the state changed its strategy and tried to control its enemy by creating, as Begoña Arextaga terms it, "powerful identifications" with the "terrorists" and the Kurdish tribal families while appropriating power attributed to them.<sup>20</sup> The state enacted terrorist-like activities, which were carried out by paramilitaries, village guards, and informants and which resulted in assassinations, anonymous killings, disappearances, and village evacuations in an attempt to undermine the collective and moral bases of resistance.

The intense conflict ended in 1998 following the unilateral ceasefire declared by the PKK upon the arrest of its leader, Abdullah Öcalan. In the post-1999 context, with the unilateral ceasefire, the state aimed to reestablish its power in the region and refurbish its credibility in the international arena. The post-1999 period engendered contradictory policies that ranged from the enactment of government reforms in pursuit of democratization, rehabilitation, reparation, and reconciliation to military operations and serial acts of legal repression aimed at imprisoning human rights activists and political militants aligned with the pro-Kurdish party. Under the surveillance of international organizations, the Turkish state's approach to the Kurdish question involved ambiguous strategies which Mesut Yegen aptly describes as "the amalgam of the old and new, blending the assimilation and oppression of the past with a new discrimination and recognition."<sup>21</sup>

Aiming to regain the support of Kurdish citizens, the state set up rights-based development projects to address the poverty and underdevelopment which, according to official state discourse, were the main causes of the emergence of terror and terrorism in the region. These projects involved the construction of water resources, opening of literacy and other skill-related courses for women, distribution of material for the reconstruction of villages, and support for the restoration of historical sites in various towns and cities. They were implemented with the support of various local and international NGOs and at the same time publicized through performances led by local governors as the official face of the state. Local governors and high-ranking representatives of the military forces took part in public events such as diploma ceremonies for women who had recently earned certificates of literacy, circumcision and civil marriage ceremonies organized and funded by the state, and the opening of water resources in evacuated villages recently opened for resettlement. Alternatively, the local governor set aside a few hours on certain days of the week known as the public day (*balk gunu*), during which he, as the official representative of the state in the province, received locals in his office and heard their complaints, registered their needs, and mobilized channels to provide aid as requested. Citizen participation in official ceremonies, state-funded activities, or education programs were realized through encouragement fees or the creation of charities that provided monthly payments based on applicants' economic status.

The state was not the only agent to mark practices and discourses in the transition process. In the post-1999 period, local and international NGOs, municipalities, and pro-Kurdish parties transformed the relationship between the state and Kurds into a more complicated exchange of cooperation, bargaining, and challenge.<sup>22</sup> The way in

which the Kurdish struggle was organized depended on various strategies ranging from “armed combat to syndicalism, from political resistance to emboldened cultural assertion.”<sup>23</sup> All of these strategies were deployed to harness and mirror the state.

In 2003, the PKK ended the truce, citing the militarized policies of the state toward the Kurdish problem. Subsequently, military conflict accelerated, resulting in deaths, injuries, and the increase of human rights violations in the region. In this political context, what is referred to as “the Kurdish problem” has taken the form of a protracted war marked by cycles of violence that coincide with the mundane activities of daily life in the conflict zone.<sup>24</sup> These activities range from the struggle to survive in a difficult economy, to social commitments to family and close circles of contacts, to engagement with the political movement. Daily life is structured around conflict and competition between the state and the PKK in the struggle for control and hegemony over people and territory. In this political context, the state attempted to be sole provider for all material and immaterial benefits. Using both legal and material resources, it banned the work of civil society organizations linked to the *Bariş ve Demokrasi Partisi* (BDP, a pro-Kurdish party) and the PKK, reclaiming control as sovereign power.<sup>25</sup>

In her subtle analysis of the expansion of the Maoist Communist Center (MCC) in Jharkhand, Alpa Shah discusses how support for the MCC is based on having not only a shared ideology or support from the locals but also control over what she calls “markets of protection” in which “violence is used to sell protection for bargaining for power and material benefits.”<sup>26</sup> Drawing parallels with Charles Tilly’s analysis of violence as a “double-edged commodity,” Shah argues that MCC refounds its power by selling protection for access to the informal economy of the state and from its possibilities of violence.<sup>27</sup> Here I argue that at the margins of Turkey the PKK uses violence to protect its legitimacy and power as the sovereign of the Kurdish nationalist movement. The state establishes its power not only through military conflict with the PKK.<sup>28</sup> In order to reclaim its sovereign power in the region, the state uses violence to sell protection to its dissident citizens by giving them access to its material resources and by restraining them from its possibility of violence. In the next section, I examine the Compensation Law and the damage assessment commissions as key sites for looking at this “market of protection,” places where citizens are given access to state resources in exchange for their recognition of and consent to the legitimacy of rule.

### **Damage Assessment Commissions**

Damage assessment commissions were established as the main implementers of the Compensation Law. They were responsible for processing applications, assessing damages, establishing payments, and preparing settlement statements or protocols of nonagreement in those cases in which applicants refused to sign statements and decided to take the commission’s decision to the administrative court. Commissions were chaired by the provincial governor (*vali*) and composed of six members, five of whom were public officials from the provincial public departments of health, finance, agriculture and rural affairs, industry and commerce, and public works and housing. They also included a lawyer appointed by the bar association, as well as a police officer as commission secretary, responsible for receiving applications and documents. The

governor's role was to represent the state. The police officer and the governor were the only nonlocal public officials on the commission. The rest of the members were local bureaucrats, some of whom had family members who were going through the same process and awaiting a decision.

In principle, the commission's decision was based on the documents submitted by the applicants to support their claims, including probate decisions, autopsy reports, incident reports and deeds, reports provided by gendarme forces in the village (whether evacuated or not during the conflict), as well as on the findings of subcommissions composed of local experts who visited the villages to assess the damages and losses claimed in the applications.<sup>29</sup> After approving the eligibility of the applicant and verifying the presence of the required documents, the commission awarded compensation based on the reports provided by local experts from the subcommissions. Until 2006, damages were calculated according to the estimated amount indicated in the subcommission reports. This often resulted in inconsistent and incoherent decisions on the amount to be compensated, which not only engendered tensions among villagers but also jeopardized the credibility of the damage assessment commissions. In 2006, the government set up a calculation model based on a standard values table that indicated an upper and lower limit of the value for certain types of property, including houses, farmland, gardens, trees, and wheat stock. A computer program was developed to calculate compensation by multiplying each item of damaged property by a value falling between the upper and lower limits of the standard values table. The commission members relied on the subcommission's report that assessed the damaged property, but they themselves were expected to designate the upper or lower limit of the value of the chosen property and use the data processor to calculate compensation.

A short conversation between a commission secretary (a policeman) and one of the other commission members provides insight into how personal judgments were used to set these limits in both a literal sense and a figurative one. While the experience of violence was reduced to the calculation of property, the computer program mingled the subjective decisions of commission members with the mundane stresses of daily life in a government institution in the conflict zone:

Police officer: Sir, how many kilos of grapes does a vine produce?

Commission member: No more than ten kilos.

Police officer: I calculated the cost of the damage based on fifteen kilos.

Commission member: That is too much, but don't waste time changing it. We have to be at the meeting in fifteen minutes. Make a cut from the total production of other trees. Are there apricot trees on the list of the claimed items?

Police officer: Yes.

Commission member: Drop it from there. Calculate fifty kilos for each apricot tree.

Police officer: OK, I will do that.

Applications involving death, disappearance, and bodily harm were also subject to the personal judgments of the commission members. In principle, the law set the compensation amount for death and bodily harm based on civil-servant coefficients: 17,000 Turkish lira (currently around \$9,500) for death. Here the amount is fixed,

with no upper or lower limits, regardless of differences of class, age, or gender. The law stated that all of the applicants who were affected by “terrorism” and “the fight against terrorism” were eligible to apply. Members of the military and police forces, public officials, village guards, and displaced villagers would be granted the same amount for death, injury, or disability. The homogenizing principle of the law created symbolic equality among the dead and erased the distinction between victim and perpetrator.

Yet there was still a rule to draw the boundaries of exclusion. According to the law, people who were convicted under the Anti-Terror Law or who had received compensation from another source (here stipulations refer to the European Union of Human Rights) were not eligible for compensation. In the case of the former, this was because they were held responsible for the event that had led to damages and injuries. This was the most sensitive issue for the commission members I interviewed in 2009. In their view, other criteria (here they refer to the availability of required documents) were always open to negotiation, but the exclusion of those convicted under the Anti-Terror Law should by no means be transgressed.

All the same, this did not mean that the law ruled out the possibility of creating new “exceptions.” The commission members further interpreted the noneligibility criteria and extended them to the relatives of convicted individuals and PKK guerrillas. It was not uncommon for the applications of the families of guerrilla fighters to be rejected without cause. The criminal records of male relatives of female applicants were checked before a decision was issued in order to avoid “abuse of the law.” A similar attitude pertained in cases of anonymous killings and disappearances. Some attorneys reported that initially compensation was granted only for cases in which the act had been reported as murder by the PKK and Hezbollah and had been taken to the National Security Court. Most of the applicants who could not provide incident reports or autopsy reports were declined. As one of the lawyers explained,

During the early years, we could not receive any compensation for anonymous killings. The commission members were prejudiced. They considered the victim and [his or her] relatives to be potential terrorists. In later years, they changed their attitudes and agreed to award compensation in a few cases of disappearance and killings. We still do not know the reasons behind these decisions. Maybe they received a secret message from the state, maybe there was a warning from European Court of Human Rights observers. But it is still difficult to get compensation for these cases.

Even administrative court verdicts that contradicted the commissions’ decisions did not change interpretations of the cases of disappeared and anonymous killings. One experienced lawyer gave the example of an application involving a man who was shot dead in protests in 1992.<sup>30</sup> The commission refused to provide compensation to the family, arguing that by attending the protest the man bore some responsibility for the events that had caused his death. The family took the case to the administrative court, where the decision of the commission members was found wrong and the file was sent back for revision to the damage assessment commission. The lawyer described the uncertainty of the decision-making process: “We expected that the commission

members would object to this verdict and take the file to the Supreme Court. Yet they did not move. Either they forgot or they decided to act as if nothing happened.”

But this was not exceptional. As Das discusses, the uncertainty of the law and the arbitrariness of authority were not exceptional at the margins of the state.<sup>31</sup> There were numerous examples of arbitrary, inconsistent, and exceptional decisions by commission members as civil servants. According to the lawyers, these inconsistencies existed not only between commissions in different provinces but also within the same province, even within the same commission. There were many cases in which a commission applied totally different criteria in its evaluations of files from a single village. In some cases, it accepted the remnants of houses and burnt trees as evidence of the evacuation of the village, while other commissions considered only the incident reports drafted by the gendarme forces to be reliable sources of evidence. In other cases, while commissions agreed to pay for the material losses, they also rejected compensation applications filed on behalf of people who had died in the same village, claiming that the incident had happened before the date indicated in the law.

Lawyers often interpreted these differences as following from the political views of the local governor of the province, who chaired the commission and allegedly influenced the decisions of other members. As mentioned above, with the exception of the local governor and the police officer, commission members were local public officials in the midst of everyday political struggles. Their class, ethnic background, and experience of violence as witness, victim, or perpetrator, as well as their desire to conform with and show their loyalty to the local governor as the top representative of the state in the province, came into play in decisions.<sup>32</sup>

From the perspective of commission members, the inconsistencies were due to the initiative they needed to take given the absence of a well-codified legal structure, the lack of infrastructure, and political and economic polarization in the region. Exceptions were by no means indicators of unjust, noncredible, or abusive practices. These interventions were necessary in order to define and redefine the boundaries between legality and illegality or between justice and injustice, as well as to provide protection both for the state and injured yet “abusive” citizens.

One commission member explained the logic of his decision making as follows:

The decisions relied on our knowledge of the region, sense of justice and, most importantly, our conscience. The law was enacted without any infrastructure or well-defined rules. We did not evaluate these applications on the basis of one set of rules. Our main principle was to act in order to arrange settlements. We tried to protect people as much as we could and give them compensation even if they had left their villages earlier than the start of the conflict. The war affected everyone. Everyone lost something here. But people started to ask for more than what they had lost. We are not prejudiced against anyone, but we also have a responsibility to protect the state.

The commission members reiterated that conscience and justice guided the logic of their decisions. In that context, morality did not lie in making coherent and consistent decisions regarding the judgment of applications.

Their responsibility to the state and their awareness of the political reality of the region were pushing them to develop private senses of justice while transgressing the law and at the same time reestablishing the boundaries of the state by reiterating notions of loyalty and care. Their morality as decision makers lay in keeping equal distance from the hegemonic actors of the conflict. As an experienced local bureaucrat who had been working as a commission member for the past five years said,

We try to keep equal distance from all parties. Every single day for the last two months, I have received two phone calls, one from an internationally known PKK activist, and one from the son of a village guard who is also a big landowner. They both call about their relatives' applications. I give them both the same answer: your applications are pending. I then delay both applications. After each call, I put them at the bottom of the pile. I focus on the applications submitted directly by the villagers without lawyers' mediation. I know that those are the ones that need to benefit from the law and get some money in their pockets.

Commission members used their local knowledge as the main source of authority to allegedly differentiate true claims from false ones and create various exceptions that resulted in refusal of applications. Despite this explicit transgression of the law, local civil servants legitimized and rationalized arbitrary and exceptional decisions. As Veena Das aptly analyzes, "The whole realm of acceptable excuses [in this context exceptional decisions] creates the realm of the civil, in which the very illegibility of the state to its citizens becomes the mode of establishing its legitimacy."<sup>33</sup>

### **Seeking Resources without Justice**

Despite the strong sense of dissatisfaction regarding the decisions of the commissions, the majority of applicants were inclined to accept the compensation and renounce their right to litigation. People resorted to litigation only when their cases had been rejected or the compensation offered by the commission was exceptionally low. According to the lawyers, this was related to the applicants' financial situations and the high costs and long waiting periods associated with litigation. It was not unusual for six to eight years to pass before applicants had exhausted domestic legal options and reached the point at which they could appeal to the European Court of Human Rights.

Nonetheless, while these financial considerations were important, they do not fully explain the rationale behind the acts of submission and more significantly the renunciation of the right to litigation. In an expansive war zone where there is full and open support for the Kurdish national movement and where the PKK is the leading party for the Kurdish struggle, why would people submit to a law and sign agreements renouncing their right to litigation? What does this submission reveal about the relationship between the state and Kurdish citizens? My goal in answering these questions is not to establish another moral ground or to make a judgment regarding the economic and political pragmatism of the Kurds in their relationship with the state or to provide another authoritative discourse on how to reconcile with the state. Rather, I am intrigued by the daily pragmatism of life that constitutes and also regulates the relationship with the state. Narratives of displacement and violence and attempts to

return home constitute different parts of a complicated relationship that fit together but do not provide a full picture of the hopes or expectations regarding the end of the conflict.

Those I interviewed for this project in 2009 who had applied for compensation under the new law and later agreed to accept it were fully aware of the rules of the “market of protection.” They were open to articulating their experience of violence, support for the Kurdish struggle, and disapproval and fear of the militarized solutions of the government. In effect, they had a wider imagination of the state than thinking of it through the police forces, military, government, and civil servants. In their view, the state has the potential to penetrate into any polity—including tribal families and the branches of the pro-Kurdish political party—and turn opponents into traitors.

They fetishized the state through the imaginary and their experience of violence, threat, and care.<sup>34</sup> They were fully aware of the power relations, networks, and dynamics that existed behind the fetish as the mask. They engaged with it either directly or through mediators, such as lawyers or civil servants with whom they might be kin through tribal connections. They were neither indifferent nor resistant toward the resources or benefits provided by the state. Many people were politically involved with the struggle or had family members that joined the PKK and at the same time had jobs as civil servants. They did not view their double act of subversion and submission as a conflict.<sup>35</sup> Their eagerness for benefits was based on their hopes of economic and political survival and feelings of resentment and anger about the violation of their rights and the nonrecognition of their identities as Kurdish citizens. In their political imaginary, the state was an entity with the capacity to execute and nurture. The Turkish state was obliged to provide them with resources in exchange for the violence they had been subjected to for decades. This was epitomized by one statement from an elderly Kurdish man: “Should the state not subsidize this region, these mountains explode [*bu dağlar patlar*]. And the state knows that.”

Most of the villagers filed their applications for the Compensation Law through power of attorney. Their lawyers drafted standardized petitions that often consisted of a short explanation of the loss claimed, accompanied by a list of the damaged or lost properties. Where applicable, they included the names of the dead or injured and the requested amount of compensation for material and immaterial losses. In most of the applications, the perpetrators were not identified. While some lawyers attributed responsibility to the Turkish armed forces, others decided not to do so for pragmatic reasons. This concealment was based on rumors that applications which stated that the evacuation of the villages had been handled by the Turkish armed forces were declined or delayed indefinitely. The effects of these rumors were magnified by the parallel implementation of another procedure that took place over the course of residents’ return to the villages.<sup>36</sup> In order to obtain the official permit of entry to the villages, displaced villagers were obliged to indicate that the village had been evacuated by PKK militants. In the view of the applicants and their lawyers, people who had signed these statements before applying for compensation received larger awards.<sup>37</sup> This was one of the main rules of the “market of protection,” in which the state promised protection in the form of “non-threat” in exchange for signatures that would

provide legal protection for the Turkish state against the accusations that it had violated international agreements.

Applicants had to prove by way of documents that the alleged losses and damages had been incurred between 1987 and 2004; that they had been evicted from their villages or that their property had been burned or demolished; and that the injuries or deaths of relatives had been incurred as a result of terrorism or the fight against terrorism. The majority of the applications were rejected by the damage assessment commissions because they lacked the required documents.

Villagers were not concerned about whether as the applicants they reconciled with the state or renounced their right to litigation. They were all aware of the implicit rules of negotiation that the state imposed on returnees, which involved signing the statements that identified the PKK as the perpetrator, volunteering to collaborate with the military, and voting for the government party. However, they were not sure about the legal implications of the Compensation Law and how it differed from previous projects of the government concerning return to the villages. The intervention of lawyers as mediators in the procedure, the absence of a legal setting where they could provide testimony, and the lack of an official apology or acknowledgment of the incidents of evacuation and displacement obscured the terms and conditions of submitting to the law, as well as the meaning and the long-term implications of receiving compensation. In this political context, applicants perceived compensation as another form of charity supported by the EU. The imaginary of connection between the state as charity-giver and the EU as funder blurred their understanding of the implications of the law. They were not sure who was paying for their losses and damages or whom they would have to take to court if they decided to reject payment. Despite their suspicion of the purpose of the law, the main concern of the villagers was to focus on available resources and ascertain how to get the greatest amount of compensation in the shortest time period. This placed them again in the same dilemma: how should one get one's share of state resources without fully submitting to the state, without fully being visible or legible?

Makbule, a fifty-year-old Kurdish woman, was living with her children in a town on the Syrian border. She had been brought to the village by her mother-in-law and married to her husband when she was thirteen. Her husband's family became involved in the struggle early on. She told me, "I came to the village without knowing anything about [the struggle]. I grew up witnessing death and disappearance, first that of my husband and then those of my brothers-in-law and nephews." She left her village with her extended family in 1993 after her husband was found dead. Soon after, the entire village was evacuated and their home and fields were burnt. She was the sole breadwinner, caring for her children with the help of her in-laws. Makbule was politically active and took part in all of the demonstrations and meetings organized by the pro-Kurdish party. She felt that after everything that had happened to her family, she had nothing to lose: "I walk in the front row at every demonstration. The police know me, and I know them."

When asked about the possibility of returning to the village, she recalled the rumors that she had heard about recent returnees: "We cannot return. The soldiers would not allow anyone from my family to settle in the village again. They not only

burnt our house, they bombed it—they destroyed it. From time to time, we go there to pick fruit from the remaining trees and visit relatives who recently returned.” Makbule was aware of the Compensation Law. She had heard about it from her brother-in-law. She gave him the documents required for the application that he said he would submit on behalf of his father for the whole family. She expected to receive her share:

Before my brother-in-law was killed, he told me that he would apply to Europe to ask for money for our damaged property. He asked me to give him the deed to the property that I had inherited from my husband. I did as he asked. However, after he applied on behalf of the whole family, he was killed. When I spoke with the lawyers, I learned that his application had been accepted by the commission and that his wife would receive all of the money for the property, including that which belonged to me and my children.

Information about the Compensation Law was conflated with other “rights” discourses that involve filing an application with the European Court of Human Rights and seeking recognition of the violation in Europe. Like many displaced Kurdish villagers, Makbule thought that “Europe” was the agent that recognized the violation of rights. Makbule was not aware of the terms of the law that required that she renounce the right to engage in future litigation. Based on her experience of surviving the war, she knew that one should be aware of the terms for receiving anything from the state: “We know how our neighbors have returned to the village. They do not want to admit it, but they signed the papers that say that the PKK did it. They signed them and resettled. They signed them and they got the money.” However, what was immoral for Makbule was not to receive the money from the state. As the sole breadwinner of the house, she was desperate to get her share from her sister-in-law. What was not acceptable was to get the money by declaring in writing that the PKK had been responsible for the evacuations. She was pleased to know that given his political commitment, her brother-in-law would not do that. She did not want to think otherwise.

Riza Bey was in a similar limbo. He also lost his house during the evacuation of his village and was committed to the struggle. He grew up in western Turkey and moved back to his village after the conflict began. His was the first house to be burned in the village with all his belongings inside. The family moved to the closest city. During that period, his daughter joined the PKK. In 2000, he helped a migrant association make a documentary about his village. This was the first documentation of the burning of his house and the evacuation. When some of the villagers wanted to return to their homes after the year 2000, they were asked to sign statements indicating that the PKK had been responsible for their losses. “I did everything I could to convince the villagers not to sign those statements. I went back and forth every day. But I could not convince them. They signed the agreements, and when they applied for damages under the Compensation Law, the ones who had signed those documents got more money.” According to Riza Bey, after the villagers returned, everyone and everything was different. Even the most Kurdish-nationalist villagers were now trying to get along with the village guards. Despite his resentment

toward the returnees, he also filed an application to claim damages for what he had lost during and after the evacuation of his village:

Most of the field that belonged to us was already confiscated by the state and registered as state property. I did not have proof of all of the belongings I had in the house. I thought about rejecting the money and taking the file to the European Court of Human Rights, but if the state paid compensation it means that the state accepted its responsibility for burning all of the villages. If the state accepted its responsibility, then I thought I could not take my case to the European Court of Human Rights any longer, so I accepted 1,000 TL [\$560 currently]. But this is not about money. No matter how much they pay, it will not bring back what we lost in this war. At this point, I trust neither the state nor the people here.

Ahmet Bey had similar anxieties about his new life in the village. He believes that people returned for different reasons. Some wanted to take back their land, while others had political motivations. Regardless of their reasons, they were asked to identify which side they had supported during the conflict and to prove their loyalty to the state. Soon after returning he began to struggle with the implicit rules of negotiation imposed by the state. He was forced to collaborate with the military and asked to act as the local informant. He refused to take on that role. After a few months, the soldiers entered his house by force, claiming that he was hiding weapons and bombs. “They found bombs in my house, but I wasn’t the one who hid them there. That was the cost of refusing to collaborate. However, they could not prove anything.” He was imprisoned and released five months later without a conviction. He was not willing to give up his struggle to survive in the village. He made basic repairs to the house and received free building materials as part of the government aid distributed to those who wanted to return. Before he was imprisoned, he submitted his application and supporting documents to the lawyers in the human rights organization. He never received a response. However, he discovered that a family that had lived in the same neighborhood after the evacuation had received a huge amount of money for land that did not belong to them. How did they do it? After his imprisonment, Riza Bey’s new challenge was to find out how to make use of state resources. The life of a returnee was inscribed along a thin line between the struggle to resettle and to continue life without being subjected to violence. The foe was not only the state. In this context of political uncertainty, neighbors, fellow villagers, and family members could all become enemies, establishing alliances with different faces of the state in order to receive immunity and protection in exchange for their loyalty. This was the “banal” reality of life in the region.

The implementation of the Compensation Law led to structural inequalities, ongoing tensions among families, communities, and villages, and the creation of mechanisms of exclusion and inclusion. It did open up the possibilities of documenting loss and the dead and disappeared.<sup>38</sup> However, the law did not transform relationships between the state and Kurdish citizens. Rather, it reproduced symbolic and material relationships based on bribery, disavowal, abuse, and subversion. The state used the law to reestablish its rule in the region and to refashion its credibility and legitimacy under the scrutiny of transnational organizations, such as the EU and

the European Court of Human Rights, and finally to reduce the issue of reparation to material transactions in a way that was familiar to Kurdish citizens.

In his important analysis of national reconciliation processes, Richard Wilson draws the historical and political boundaries of reconciliation as a political, legal, and cultural concept. Wilson situates his critique in the analysis of state power and argues that in the process of establishing reconciliation through truth commissions, “the focus is not as much on individuals, but on the nation-state, and this brings us much closer to the actual meaning of ‘national reconciliation’ as defined by political and religious elites.”<sup>39</sup> Wilson states that in various countries with truth commissions, the “sub-national social groups such as classes, races and genders are not to be reconciled with one another either.”<sup>40</sup> Instead, “reconciliation works at a much more abstract level and the nation-state is to be reconciled itself.”<sup>41</sup>

Here one can argue that the Turkish state used the Compensation Law to reconcile with itself and “Europe.” The caretaking and justice-delivering images of the state as sovereign power were developed under the scrutiny of the European Court of Human Rights and other supranational organizations. With reference to various post-conflict contexts, Susan Sylmovics argues that money, claims, narratives of suffering, subjectivity of victimhood, and the notion of humanity are all conflated through reparation projects.<sup>42</sup> In this context, reparation emerges as a “new foundational ritual” that gains its legitimacy through its connection with transnational legal mechanisms and its originating link with the speaking victim. Here, at the margins of the Turkish state, reparation achieved legitimacy not through its link with the victim but through its collaboration with transnational legal mechanisms. The state used the law to homogenize and depoliticize the experience of violence and reduce the issue of restitution of rights to pecuniary reparation for violations committed in pursuit of the “war against terrorism.”

Finally, from the applicants’ perspective, the Compensation Law by no means evoked a sense of reconciliation with the state. Despite the silent voicing of empathy for the pain of the “other” (read as Turks), reconciliation was still seen as a project of the Kurdish national struggle. This project encompassed the desire for the victory of the armed resistance against the Turkish military, the release of the PKK leader and other militants, the establishment of truth commissions of retributive justice by punishing the perpetrators, and the procurement of an official apology from the government. In this political context, there was no imagination of the reconciliation project as a “departure from violence,” to use John Borneman’s famous phrase.<sup>43</sup> Quite to the contrary, the subjects of this ethnography couldn’t imagine the past, present, or future without the PKK as protector of their rights. They hold on to the PKK and the Turkish state as two sides of the conflict, as well as two parties of reconciliation, while steering the focus away from their current survival struggles, everyday inequalities, and feelings of suffering and pain.

#### NOTES

This essay is based on my doctoral and postdoctoral research conducted primarily in the towns and villages of Mardin, southeastern Turkey, in 2000–2001, July–August 2003, February–March 2007, July–September 2008, and July–September 2009. The material is drawn from informal

meetings and interviews that were conducted in Turkish or Kurdish and translated by my research assistant and members of host families. The names of informants have been changed for reasons of confidentiality. I am particularly indebted to my research assistant, Firat Ulas Tur, and my lawyer friends, especially Ismail Elik and Ozlem Durmaz Mungan, for their amazing encouragement, support, and help in this process. The essay benefited from the comments of the organizers and participants of the workshop “Possibilities of Reconciliation and Legalization of Justice” (Halle, Germany, April 2009), especially Sharika Thiranagama. I thank all of them. Some of these ideas could not have been formulated without the encouragement and critical comments of Julia Eckert and Brian Donahoe, the editorial help of Kate Godman, and the insightful reflections and support of Manuel Arroyo-Kalin. Needless to say, all mistakes that remain are mine. Some of this material appears in an earlier piece published in *Law against the State: Ethnographic Forays into Law’s Transformations*, ed. Julia Eckert, Brian Donahoe, Christian Strumpell, and Zerrin Özlem Biner (Cambridge: Cambridge University Press, 2012).

1. Official gazette, 2004, cited in Turgay Unalan, Ayse Betül Celik, and Dilek Kurban, “Internal Displacement in Turkey: The Issue, Policies and Implementation,” in *Coming to Terms with Forced Migration: Post-Displacement Restitutions of Citizenship Rights in Turkey*, ed. Dilek Kurban et al. (Istanbul: TESEV, 2007), 92.
2. *Ibid.*, 91.
3. For a detailed analysis of this process, see Dilek Kurban, “Human Rights Watch, Kurdish Human Rights Project, and the European Court of Human Rights on Internal Displacement in Turkey,” in Kurban et al., eds., *Coming to Terms*, 291–313. For the most recent comprehensive analysis of the Compensation Law, see Dilek Kurban and Mesut Yegen, *Adaletin Kiyisinda Zorunlu Goc, Sonrasinda Devlet ve Kurtler* (Istanbul: TESEV, 2012).
4. For a critical analysis of the displacement and the Compensation Law, see Bilgin Ayata and Deniz Yüksek, “A Belated Awakening: National and International Responses to the Internal Displacement of Kurds in Turkey,” *New Perspectives on Turkey*, no. 32 (2005): 5–42.
5. Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston: Beacon Press, 1998), 106.
6. *Ibid.*
7. Elazar Barkan, *The Guilt of Nations: Restitution and Negotiating Historical Injustice* (Baltimore: Johns Hopkins University Press, 2000), xviii.
8. *Ibid.*, xli.
9. Zerrin Özlem Biner, “Documenting Truth in the Margins of the Turkish State,” in *Law against the State: Ethnographic Forays into Law’s Transformations*, ed. Julia Eckert et al. (Cambridge: Cambridge University Press, 2012), 228–44.
10. For a more elaborate discussion of the double role of the state as producer of protection and violence, see Tobias Kelly and Alpa Shah, “Introduction—a Double-Edged Sword: Protection and State Violence,” *Critique of Anthropology* 26, no. 251 (2006): 251–57.
11. Veena Das and Deborah Poole, “State and Its Margins: Comparative Ethnographies,” in *Anthropology in the Margins of the State*, ed. Das and Poole (Santa Fe, N.M.: School of American Research Press, 2004). It is important to note that their approach is informed by recent anthropological literature that deconstructs the analytical and political distinctions between the categories of state and society, studying the former by recognizing its instances and effects on the local. For significant examples of this genre of work, see Begoña Aretxaga, “Maddening States,” *Annual Review of Anthropology* 32 (2003): 393–410; Thomas B. Hansen and Finn Stepputat, eds., *States of*

*Imagination: Ethnographic Explorations of the Post-Colonial State* (Durham, N.C.: Duke University Press, 2001); Chris J. Fuller and Veronique Benei, eds., *The Everyday State and Society in Modern India* (London: Hurst and Company, 2001); Timothy Mitchell, "The Limits of the State: Beyond Statist Approaches and Their Critics," *American Political Science Review* 85, no. 1 (1991): 77–96; Michael Taussig, *The Magic of the State* (London: Routledge, 1997); Diane M. Nelson, *A Finger in the Wound: Body Politics in Quincentennial Guatemala* (Berkeley: University of California Press, 1999); Yael Navaro-Yashin, *Faces of the State: Secularism and Public Life in Turkey* (Princeton, N.J.: Princeton University Press, 2002).

12. Das and Poole, "State and Its Margins," 8.
13. *Ibid.*, 10.
14. Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen (Stanford, Calif.: Stanford University Press, 1998).
15. *Ibid.*, 6–8.
16. *Ibid.*, 57.
17. Das and Poole, "State and Its Margins," 13.
18. *Ibid.*, 13–14.
19. Joost Jongerden, "Village Evacuation and Reconstruction in Kurdistan," *Études rurales* 186 (July–December 2010): 83.
20. Aretxaga, "Maddening States."
21. Mesut Yegen, "The Kurdish Question in Turkey: Denial to Recognition," in *Nationalisms and Politics in Turkey*, ed. Marlies Casier and Joost Jongerden (London: Routledge, 2011), 67–85.
22. For examples of studies on state-citizen relations in the post-1999 period, see Zerrin Özlem Biner, "Retrieving the Dignity of a Cosmopolitan City: Contested Perspectives on Culture, Rights and Ethnicity in Mardin," *New Perspectives on Turkey*, no. 37 (2007): 31–59; Zeynep Gambetti, "The Conflictual Transformation of the Public Sphere in Urban Space: The Case of Diyarbakir," *New Perspectives on Turkey*, no. 32 (2005): 43–71; Joost Jongerden, *The Settlement Issue in Turkey* (Leiden: Brill, 2007); Jongerden, "Crafting Space, Making People: The Spatial Design of Nation in Modern Turkey," *European Journal of Turkish Studies* 10 (2009), <http://ejts.revues.org/index4014.html> (last accessed September 17, 2012); Kurban et al., eds., *Coming to Terms*; Clemence Schalbert-Yücel, "Power, Ideology, Knowledge-Deconstructing Kurdish Studies," *European Journal of Turkish Studies* 5 (2006), <http://ejts.revues.org/index777.html> (last accessed September 17, 2012); Murat Somer, "Resurgence and Remaking of Identity: Civil Beliefs, Domestic and External Dynamics, and the Turkish Mainstream Discourse on Kurds," *Comparative Political Studies* 38, no. 6 (2005): 591–622; Nicole F. Watts, "Re-Considering State-Society Dynamics in Turkey's Kurdish Southeast," *European Journal of Turkish Studies* 10 (2009), <http://ejts.revues.org/index4196.html> (last accessed September 17, 2012); Zeynep Gambetti and Joost Jongerden, "The Spatial (Re)Production of the Kurdish Issue: Multiple and Contradicting Trajectories—Introduction," *Journal of Balkan and Near Eastern Studies* 14, no. 4 (2011): 375–88.
23. Gambetti and Jongerden, "The Spatial (Re)Production of the Kurdish Issue," 378.
24. For recent insightful examples of ethnographic analysis of protracted wars, see Tobias Kelly, "The Attractions of Accountancy: Living an Ordinary Life during the Second Palestinian Intifada," *Ethnography* 9, no. 3 (2008): 351–76; Sharika Thiranagama, *In My Mother's House: Civil War in Sri Lanka* (Philadelphia: University of Pennsylvania Press, 2011).
25. Marlies Casier, Joost Jongerden, and Nic Walker, "Fruitless Attempts? The Kurdish

Initiative and Containment of the Kurdish Movement in Turkey,” *New Perspectives on Turkey*, no. 44 (2011): 122.

26. Alpa Shah, *In the Shadows of the State: Indigenous Politics, Environmentalism, and Insurgency in Jharkhand, India* (Durham, N.C.: Duke University Press, 2010), 166.

27. Charles Tilly, “War Making and State Making as Organised Crime,” in *Bringing the State Back In*, ed. Peter B. Evans, Dietrich Rueschemeyer, and Theda Skocpol (Cambridge: Cambridge University Press), 1985. Shah cites Tilly’s suggestion to examine “statemakers as entrepreneurs” who sell protection either to provide shelter from the enemy or to restrain the subject from violence. See Shah, *In the Shadows of the State*, 166.

28. For a sociological analysis of the interdependent relations between the state, tribal families, and the PKK, see Nese Özgen, “State, Border, Asiret: Re-Construction of Asiret as an Ethnic Identity,” *Toplum ve Bilim*, no. 108 (2007): 239–61.

29. If the deeds were not available, the commission referred to statements provided by older villagers as witnesses. Histories of internal conflict within the village sometimes affected these statements.

30. In August 1992, fifty-three people protesting the killings and injuries that had occurred during the Newroz celebration were shot to death by members of the Turkish armed forces in downtown Sirnak, a city on the Iraqi border.

31. Veena Das, “The Signature of the State: The Paradox of Illegibility,” in Das and Poole, eds., *Margins of the State*, 225–52.

32. This attitude of loyalty was more strongly expressed by commission members in the cities with mixed Arab and Kurdish populations, where the former have historically been associated with the state and the latter with the struggle against the state.

33. Das, “Signature of the State,” 248.

34. Michael Taussig, *The Nervous System* (London: Routledge, 1992), 111–40. For an excellent and critical analysis of the state as the fetish in the Turkish context, see Yael Navaro-Yashin, *Faces of the State: Secularism and Public Life in Turkey* (Princeton, N.J.: Princeton University Press, 2002).

35. For a comparative analysis of people’s perception of their (dis)attachment to the state in marginal territories or confined zones, see David Nugent, “Before History and Prior to Politics: Time, Space and Territory in the Modern Peruvian State,” in *States of Imagination: Ethnographic Explorations of the Post-Colonial State*, ed. Thomas Blom Hansen and Finn Stepputat (Durham, N.C.: Duke University Press, 2001), 257–83; Shah, *In the Shadows of the State*, esp. chap. 2; Yael Navaro-Yashin, *The Make-Believe Space: Affective Geography in a Post-War Polity* (Durham, N.C.: Duke University Press, 2012), esp. chap. 4.

36. For an excellent analysis of rumors in the daily struggle for rights, see Julia Eckert, “Rumours of Rights,” in Eckert et al., eds., *Law against the State*, 147–70.

37. The two procedures are not dependent on each other. People were not required to return to the villages in order to apply for compensation.

38. Biner, “Documenting Truth.”

39. Richard A. Wilson, “Anthropological Studies of National Reconciliation Processes,” *Anthropological Theory* 3, no. 3 (2003): 371.

40. *Ibid.*

41. *Ibid.*

42. Susan Slymovics, “Financial Reparations, Blood Money, and Human Rights Witness

Testimony: Morocco and Algeria,” in *Humanitarianism and Suffering: The Mobilisation of Empathy*, ed. Richard A. Wilson and Richard D. Brown (Cambridge: Cambridge University Press, 2009), 281–82.

43. John Borneman, “Reconciliation after Ethnic Cleansing: Listening, Retribution and Affiliation,” *Public Culture* 14, no. 2 (2002): 282.