

**OPERATIONS OF LAW AND CITIZENSHIP FROM BELOW:
THE POWER OF LAW AND SURVIVAL IN TRANS WOMEN'S LIVES IN
ISTANBUL, TURKEY**

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CHAPTER 1

INTRODUCTION

Sex change operations were legally recognised as early as 1988 in Turkey which allows trans women to have sex change operations and make the necessary changes in their official documents. This recognition on the legal texts, however, does not reflect on the real lives of trans women. Their lives are shaped by several forms of stigmatisation, marginalisation, abandonment, injury, and even death. They are stigmatised as sexual deviants, and it is hard to get employed outside the sex industry even if they are university-trained. Many have come to pick up a livelihood through sex work, earning money through sex service to male clients. The connection between trans women and sex work even becomes established in the Turkish language, where transvestism means simply prostituting.¹

A quantitative survey called “Dog doesn’t bite dog” (2010) conducted by Lambdaistanbul LGBTI (Lesbian, Gay, Bisexual, Trans, Intersex) Association in Istanbul laid bare the problems of trans women of the city. Almost ninety percent of the participants were detained at least once and seventy percent were brought to the court following a detention. Only three percent stated that they were not teased, humiliated or insulted by police officers, and less than eleven percent that they were not subjected to their physical violence. The problems that they experienced with the judiciary displayed similar results. Twenty percent was denied service by judiciary officials and almost

¹ “Travestilik yapmak”

sixty-eight percent expressed distrust of courts. These examples make clear the prevalent role of the law and legal institutions in the everyday lives of trans women and show that their lives necessitate an analysis which goes beyond the legal texts. This study looks at trans women's relations to the law in Turkey with a focus on its effects on their everyday experiences and practices. I analyse legal texts and trans women's life story narratives with the aim of disentangling trans women's marginalisation by the law in everyday life, and their resistance against this process.

I deploy the term 'trans' as an umbrella term to refer to people "who have undergone hormone treatment or surgery to reconstruct their bodies, and to those who cross gender in ways which are less permanent" (Hines 2007a, para. 1). As such the category denotes a wide range of diversity and difference of gendered embodiment and experience, including transgender, transsexual, cross-dresser, queer gender and other gender non-conforming identities (Whittle 2006, p. xi). 'Trans woman' addresses any male to female (MTF) person who has gone or goes through these varying degrees of sexual or gender transition. Although the term 'trans woman' is transported from western globalised discourses of gender identity in Turkey, it complies with trans women's current usage of the term to identify themselves and is increasingly replacing local forms of addressing people experiencing gender transitioning.²

Legal debates about the status of trans women began in Turkey in 1981, during the early years of the 1980s dictatorship, when Bülent Ersoy, a famous singer and post-operative trans woman, submitted a petition to the Turkish courts for a change of her birth and civil records. Her demand was rejected by the Court of Appeals in 1982, the same year

² This thesis focuses only on male-to-female trans people because they have more public visibility in Turkey and more importantly, because the dynamics of the relationship of female-to-male trans people to law and other disciplinary institutions are likely to be rather different.

all trans woman entertainers were banned from performing in the country. It was six years later on May 4, 1988, that the parliament reformed Article 29 of the Turkish Civil Code permitting trans people to change their legal gender on formal documentation after sex reassignment surgery. This legislation then attracted the attention of legal scholars (Kocayusufpaşaoğlu 1986, Öztürel 1980, Öztan and Will 1988) and similar discussions followed with the amendment made in the Civil Code in 2002 (Sağlam 2004, Atamer 2005). This line of scholarship, however, did not go further than a formalist analysis of legal texts, pointing out the deficiencies in the existing regulation and possible ways of overcoming them according to the ideals of democracy and human rights.

More recently, a limited number of empirical studies on trans people in Turkey focused on trans women's everyday practices in the urban area (Kandiyoti 1998, 2002) and their relationship with patriarchy (Berghan 2007). In one of the most comprehensive works in the field, Selek (2001) explicated the multiplicity of exclusionary measures that gays, lesbians, bisexuals and transmen and trans women face in Turkey. Using Gramscian and Althusserian perspectives, she underlined the common features of hegemonic patriarchal practices targeting these groups. She also emphasised the counter-hegemonic potential of the subcultures that have been generated by their members. My study contributes to this literature by shedding light on how law is constitutive of the unequal ground that these counter-hegemonic struggles unfold.

This research is located within the recently increasing international sociological interest in transgender citizenship (Couch et al. 2008, Currah et al. 2000, Field 2007, Hines 2007b, Monro and Warren 2004, West 2013). This scholarship importantly shows how the law partakes in the marginalisation of trans people by neglecting their experiences and failing to meet their specific needs. This line of work, however, largely limited its

understanding of citizenship to a legal status and encompassed legal-formalistic concerns related to the written codes. The constitutive power of the law to shape subjectivities remains under-researched and there is no study showing the ways in which the law is implicated in the constitution of the citizenship of trans women on the ground, through its workings in the everyday.

This study takes citizenship as an empirical question to investigate how people experience being members of the polity of the state (Koğacıoğlu 2003). I take the law as a terrain where trans women frequently encounter ‘the state’ in their everyday lives and on which their citizenship and their understandings of citizenship are constructed. Specifically, I address the following questions: How does the law construct the citizenship of trans women? How do the workings of different legal scales affect trans women’s relation to the state and their citizenship experiences in the everyday? And finally, how do trans women situate themselves in relation to law and its institutions in contemporary Turkey? To answer these questions, this study builds on the previous work on the link of transgender citizenship and the law by combining it with theoretical underpinnings of law in everyday life and Foucauldian conceptualisations of legal governmentality. Such a framework will enable to examine questions of legal regulation and governance with the angle of subjects’ own perspectives on law, their use of law, their entanglement in legal regulation and the strategies they use to address these dilemmas.

Transgender Studies

Last decades witnessed an increase in the academic and social interest in ‘transgender’ alongside legal and broader social changes regarding transgender individuals especially in the Western world. This section provides an overview of the historical and political

developments regarding the recent analyses regarding transgender people in order to explore how ‘transgender’ has been approached within different fields and to trace the emergence of a sociological interest into their experiences.

The emergence of transgender as an object of study can be traced back to the late 19th century which was marked by the medical construction of sexuality and classification of non-normative sexual practices (Foucault 1978). In early 1900s, the studies of Hirschfeld (1910) and Ellis (1928) have been important for the advance of the field by decorrelating practices of gender diversity from those of sexuality. According to Hines (2010), the work of Hirschfeld and Ellis had important consequences for understanding transgender experiences by dissociating transsexuality from homosexuality and tranvestism. The latter separation was deepened in the 1950s by German medical practitioner and sexual reform campaigner Harry Benjamin (1953), who classified transsexuality and advocated the surgical reconstruction as the appropriate treatment of transsexuality. In the 1960s, studies of sexology (Benjamin 1966) and psychiatry (Money and Green 1969) paved the way for the separation of gender from biological sex as they introduced the notion of gender into discourses of transsexuality (Ekins and King 1996, p. 94). In the 1970s, the term ‘transsexuality’ was replaced by ‘gender dysphoria’ marking a move away from privileging the body towards privileging the mind as the key to a coherent self, and as Hines suggests “[t]he site of pathology was thus transferred from the body to the mind” (2010, p. 2).

Ethnomethodology provided the first systemised critique to this pathologicalisation dominant in medical thinking and assumptions about a ‘true’ gender identity. Garfinkel (1967) drew attention to the role of gender as a social construction in shaping all gendered subjectivities and pointed to the importance of transgender experiences to the

discipline of sociology to understand embodied experiences. Although Kessler and McKenna (2000) later criticised their own ethnomethodological work for being limited to the binary framework of gender, their introduction of the idea of ‘sex’ as equally constructed as gender (1978) has been important for subsequent studies on transgender experiences and gender diversity.

Unlike the first wave of feminism which was concerned about extending concepts of equality and citizenship towards the existing rights of men, it was with the second wave that a concern with the distinction between sex and gender emerged (Eisenstein 1984). Simone de Beauvoir’s famous assertion in her *Second Sex* in 1949 (1993) “one is not born, but rather becomes a woman” denoted the social constructedness of gender, and feminist theory appropriated the term ‘gender’ in order to distinguish biological differences (sex) from social/psychological ones (gender). This distinction enabled to argue that many differences between women and men were socially produced and, therefore, changeable. Since then, ‘gender’ has been a central concept for feminist theory and its primary category of difference in analysing relations of power.

By the 1980s, feminist theory and politics began to handle the relation between sex and gender more critically. The development of the LGBTI movement and the emergence of poststructuralism throughout the 1980s into the 1990s brought challenge to feminism’s formulations of gender and sex, and paved the way to the discussions of gender diversity and plural sexualities. Hagemann-White (1988, p. 230) questioned the aporia inherent in the sex/gender distinction which assumes a binary difference in the biological sex. The question as to whether it makes sense to talk about “woman” as a single gender category or about “women’s oppression” as a unified phenomenon also emerged (Cudd and Andreasen 2004).

Foucault's *The History of Sexuality* (1978) with its radical reconceptualisation of the relation of sexuality and power marked a crucial point in these discussions. Foucault's dismantling of the traditional views of sexuality as an instinctual quality and his proposal to conceive it as a discourse caused dissatisfaction with the feminist explorations for certain kinds of gender identity and sexual conduct on stock (Rubin 1998, p. 45). Reworking on Foucault's formulations, in her seminal work *Gender Trouble* (1990) Judith Butler 'troubled' the fixed categories of sex and gender with a strong challenge to the way the distinction had been conceptualised in feminism, echoing Kessler and McKenna's understanding of sex as socially constructed (1978). Butler criticised the category of 'woman' which feminism assumed to represent and claimed that feminism reduced gender to sex through the rigidly defined boundaries of masculine vs. feminine. *Gender Trouble's* overarching claim was that sex is as socially constructed as gender and that the latter is not an expression of who one is but rather a performance. Ironically, as feminism claimed to represent 'woman', women have been subjected to "stylised repetition of acts" (1990, p. 140). In this way feminism took part in the (re)construction of the category of woman and failed to do justice to the variety and fluidity of identities by fixing subjects as belonging to one or to the other gender.

Queer theory emerged in the 1990s from the growing dissatisfaction with efforts to theorise about sexed and gendered identities and was marked by a move away from a structuralist focus on the binary aspects of language towards a discursive model of poststructuralism (Rubin 1998). It involved redefining and destabilising given categories of gender and sexuality, and stressed the historical variability, fluidity, and performed nature of identities. The challenge to the feminist or gay and lesbian community posed by queer theory created new possibilities for interpreting selves and for self-expression, and as a result, it also created new possibilities for articulating a

new language of politics. Queer was taken up by transgender individuals who feel marginalised as a result of the marked categories of feminism or gay and lesbian politics (Martin 1998). Some transgender writers such as Stone (1991) or Bornstein (1994) expressed a queer subjectivity in positioning themselves outside of gender as “gender outlaws” and put forward the figure of the transgender as an epitome of subversive act of gender transgression. The term ‘transgender’ was coined and gained popular usage as an umbrella term during this period.

Since Butler’s work, the figure of the transgender has been important for queer theory which embraced transgender practices as a deconstructive tool to destabilise the binary framework of gender. Transgender practices were seen to spoil existing gender and sexual identities, by revealing their fluidity. For instance, Garber described transgender as a “space of possibility structuring and confounding culture: the disruptive element that intervenes, not just a category crisis of male and female, but a crisis of category itself” (1992, p. 17). This approach led many transgender scholars to criticise queer theory for its lack of empirical analysis (Namaste 1996, Prosser 1998). These scholars argued that queer analyses, by turning transgender into a symbol, decontextualised the lived experiences of transgender individuals and aided to the erasure of transgender lives as they are lived in their quotidian materiality. MacDonald suggested that queer theory undermines transgendered experiences to “chimera, play, performance or strategy” and that “[i]t does so at the expense of investigating the actual lives, political demands, or feelings expressed by transgendered people” (1998, p. 4). Whittle too drew attention to this danger of theorising about transgender without an empirical basis: “It is all very well having no theoretical place within the current gendered world, but that is not the daily lived experience. Real life affords trans people constant stigma and oppression based on the apparently unreal concept of gender” (2006, p. xii).

The advent of transgender studies as a field on its own can be traced, according to Stryker (2006), to two publications from the early 1990s: Sandy Stone's (1991) "Posttranssexual Manifesto" and Leslie Feinberg's (1992) political pamphlet entitled "Transgender Liberation: A Movement Whose Time Has Come". While the first text called transsexuals to come out as transgender men and women, the latter was a call for unification for all of those who feel marginalised by gender norms. Since then, scholars of transgender devoted a lot of work to challenge societal (mis)understandings towards transgender individuals (Califia 1997, Stryker 1998). Throughout the 1990s much of the scholarly work on transgender was developed out of the field of humanities, particularly in the US (Hines 2007b). In the last two decades interest in transgender persons reached across disciplinary boundaries to history (Dekker 1989), literature (Pernal 2002) and anthropology (Kulick 1998). Recent ethnographic work on transnational sexualities especially has been extremely apt in expanding understandings of how sex, gender and sexuality relate to one another in non-Western contexts and how these local understandings of gender, sex and sexuality are influenced by transnational flows of Western practices and discourses (Kulick 1998, Boellstorff 2004, Wilson 2004, Blackwood 2007, Blackwood and Wieringa 2007, Sinnott 2007).

My research is in line with this call for transgender studies to move away from a preoccupation with identity towards an interrogation of the institutional powers which affect trans women's everyday lives in an oppressive yet also productive way (Foucault 1978). I sustain the valuable insights offered by queer and transgender studies into transgender cultures which radically challenge normative understandings of gender and sexuality. However, I share the critique that the dominant theoretical models so far have been identity-centred and underlined by a lack of attention to lived experiences. Namaste criticised the preoccupation with identity in her various works and claimed

that it “prevents us from identifying the social and institutional relations that oppress us, and therefore from acting to change them.” (Namaste 2005, p. 19). Following this line, Hines also called for an “emphasis on ‘lived experience’ as a requisite for a sociology of transgender” (2007b, p. 5). This study aims to broaden analyses of everyday workings of institutional power on trans lives by examining how trans women relate to legal regulation in Turkey and will have two main components: It will explore the ways through which the law applies its power upon the citizenship of trans women and how trans women understand and make sense of this process.

Transgender Citizenship and Law in Everyday Life

The main line of the interdisciplinary field of citizenship studies has focused on theoretical debates and on historical transformations of citizenship as a formal status (Marshall 1964, Turner 1986, Giddens 1987). This normative line of studies charted the historical and institutional developments of the concept and rethought aspects of citizenship such as rights, public-private distinction, and political community (Soysal 1994, Kymlicka 1998, Young 1998). The recent emergence of interest by socio-legal scholarship in transgender citizenship is closely linked to this body of work. As such, it has focused mainly on the relationship of transgender individuals to legal codes as related to their citizenship status. These studies show the uneven access of trans women to political, civil and social rights due to their gender identity and point to the possible way-outs by stretching the boundaries of the norms of citizenship. They demonstrate the importance of the amendment of formal documentation for enjoying citizenship rights (Couch et al. 2008), the discrimination transgender people suffer including employment, parental issues and marriage (Currah et al. 2000) and the failure of legal texts to offer them protection against violence (Field 2007).

My research is formed in dialogue with this line of scholarship. It will describe how legal codes and practices relate to trans women's citizenship. My approach, however, differs in several ways from previous studies. Most previous work approached law from an instrumentalist and sovereigntist point of view. They largely organised around doctrinal and formalistic analyses of written codes and highlighted the problems of these laws in terms of the normative criteria established by the ideals of citizenship. In doing so, they undermined the lived experiences of citizenship and the importance of power relations in understanding how law *constitutes* the citizenship of trans women on the ground in its everyday workings.

The concept of citizenship has been strategically important for gender politics, although studies of citizenship paid little attention to women, and even less to non-conforming gender and sexualities. Feminist studies of citizenship noted the gendered assumptions underlying the dominant paradigms of citizenship and the exclusion of women from the notions of citizenship. They largely focused on the public-private divide which modern citizenship relies on and pointed to the need for legislative and other structural changes to broaden the notions of citizenship for the inclusion of women as active members to the polity (Lister 1997, Bussmaker and Voet 1998).

The notion of 'sexual citizenship' was coined as a critique to the disregard of sexuality which underlined the discussions about citizenship, including feminist citizenship. Evans (1993) was the first author to suggest an understanding of sexual citizenship that pays attention to the role sexuality plays in the construction of the relationship between the state, the market and the citizen. Richardson (2000) argued that the dominant models of citizenship do not only imply a subject who is only male but also heterosexual. Plummer (1995, 2001) developed the notion of 'intimate citizenship' and

suggested it as the fourth aspect of Marshallian citizenship model of civil, political and social rights. This body of theoretical work described sexual rights of groups as well as the relation of their sexuality to the issues around access to general rights, and has been important in revealing the heteronormativity embedded in the notions of citizenship and in bringing to the fore individual's experiences of sexuality. As Monro suggests (2005), however, sexual citizenship tends to overlook trans people as feminist citizenship did, and when trans people have been included into discussions of citizenship, it has been usually in relation to sexuality rather than gender. Monro and Warren (2004) put forward a theoretical model of transgender citizenship, including insights from feminist, sexual and intimate citizenship, which would consider gender diversity and its implications on citizenship experiences.

Another line of more critical and analytical studies on citizenship focused on the social situatedness of the citizen person and the lived experiences of citizenship. These studies explored a wide array of citizenship discourses and practices as they manifest themselves in the daily interactions between the state institutions and the citizen. They showed convincingly that citizenship practices cannot be reduced to legal/formal status and that the question of citizenship is simultaneously a question of ordering which happens along historically and culturally specific lines (Brubaker 1992, 1996, Joseph 1996, Somers 1993). The asymmetrical positions of the citizens have also implications on the ways discourses of state institutions are received, made sense of and used by the different groups of citizenry (Altınay 2004, Koğacıoğlu 2003). These studies pointed out the need for contextualised understandings of the lived experiences of citizenship in order to lay out how citizens establish their relation to discourses and practices of state institutions.

Following the critical line of work on citizenship summarised above, this study goes beyond the static notion of citizenship as either a legal status or a philosophical concept and focuses on the practices that constitute individuals as ‘citizens’. Citizenship in this light becomes a nodal point of the relationship between the state and the citizen that is always a product of specific historical occurrences and a question of unequal distribution of life chances and resources to some specific groups of citizens and not to others. Such an understanding impels us to reconsider the unitary notion of citizenship and to see it as a field of discourses and practices through which individuals practice being members of the polity in their different interactions with each other and the state and produce the state and their subjectivities as citizens. Focusing on one institutional site can allow us to answer the question of citizenship at least with respect to that particular institution (Koğacıoğlu 2003). Individuals’ experiences with the law form one site for the making and unravelling of citizenship. However, as Mariana Valverde (2010) drew attention, probably because of the lack of contact between socio-legal scholars and citizenship studies circles, little work is done on analysing the citizenship/law nexus and the ways through which the actual workings of the law constitute and are (re)constituted by specific practices and experiences of citizenship *on the ground*.

The question of “the constitutive nature of law” and “how legal processes construct social and cultural life” formed the background of one of the main lines of inquiry in socio-legal studies in the last decade (Merry 1995, p. 14). This question called for an exploration of how law produces rather than merely reflects cultural meanings and identities, and how in turn, there may be new locales of resistance. A novel way of looking at the relation between law and social actors emerged from legal consciousness studies, which concentrated on the meanings that circulate in the everyday exchanges of people with the law and legal institutions (Ewick and Silbey 1998, Merry 1990, 1995,

Nielsen 2000, Sarat 1990). This interest did not make the study of formal institutions less important but advocated an investigation of law and legal institutions from the perspectives of actors and through their everyday experiences.

For this study on the trans women's citizenship around their everyday interactions with the law, law in everyday life literature provides a useful empirical tool for the exploration of the constitutive power of the law and the constructions of meanings attached to the law and citizenship. Thus my analysis will combine these two lines of studies, those of citizenship and everyday experiences of the law which have so far stood apart, through an empirical examination of the particular relationship of trans women to the institutions of law in Turkey. I will disentangle the complex ways through which trans women's citizenship experiences are shaped by the law and its operations in mundane everyday interactions.

CHAPTER 2

SETTING THE CONTEXT

This chapter aims to provide a background of the historical, social and political context whereby the interactions of trans women with the law that will be analysed throughout the thesis occur. With this aim, the first section of the chapter will lay out the key structural transformations with the foundation of the Turkish Republic on the remnants of the Ottoman Empire by focusing on the process of modernisation and the role the law has played within the modernising nation-state. The second section will provide an account of the gender and sexuality dynamics that underlie the citizenship regime of the Turkish state. The third section will then discuss the regulation of sexuality by the Turkish state and argue that despite the important contributions of feminist scholarship on the link between the state and the regulation of women's sexuality, the heterosexualising and heteronormalising effects of the state policies have not been recognised nor discussed so far by critical studies. The chapter will conclude with an overview of the emergence of LGBTI identities in Turkey.

Modern Law and the Making of the Turkish Nation-state

Beginning with the decline of the Ottoman Empire, followed by the founding of the Turkish Republic in 1923 and continuing into contemporary times, modernisation has constituted an integral part of Turkey's political, economic and social history. The distinctiveness of Turkish modernisation lies in the century-old attempts to 'catch-up'

with the West in a self-initiated and top-down fashion. Unlike many modernisation projects in the global South, the modernisation of Turkey –as a country which has never been colonised- did not start in a colonial or post-colonial setting. Rather it was the ruling elite of the Ottoman state and then of the regime of the early Turkish Republic which implemented Westernisation programme upon the people of the country.

Modernisation in the Ottoman Empire began by the weakening of the military power to compensate the losses of military defeats against its European enemies, the Habsburgs and Romanovs in the eighteenth century (Lewis 1968). The adoption of Western models in the military was followed by the transference of new models of medicine, print technology, artisanal production and schooling (Göçek 1987, Zürcher 1998). Significant legal reforms were carried out especially during the Tanzimat³ period (1839-1876). The Tanzimat Edict recognised the need for new laws to improve the administration of the state especially in the commercial law, criminal code and procedures and court organisation (Otaç 2004). In line with the Edict, a series of new laws and institutions were introduced: These included a new criminal code in 1843 recognising equality between Muslims and non-Muslims; a new commercial code adopted from France in 1850 together with mixed tribunals for commercial cases in which foreigners were involved; a new law in 1867 allowing foreigners to own land in the Empire for the first time and the establishment of new secular Nizamiye Courts in 1869 to deal with cases involving non-Muslims (Zürcher 1998). Although Sharia law was never nullified, its scope was limited to matters of family law. The Constitutional documents of 1876 and 1908 were additional significant attempts to modernise Ottoman law and legal system.

The period after the fall of the 600 year old Empire with the World War I witnessed the

³ The word Tanzimat means reorganisation, reform.

climax of the transformation of the state and legal system in Turkey. After successfully repelling the Allies and the Greek army in the Turkish Independence War, Sultanate was abolished in 1922 and a totally bureaucratically controlled Republic was established under the leadership of Mustafa Kemal Atatürk in 1923. To achieve the new regime's goal of "reaching the level of contemporary civilisations"⁴, the Republican elites engaged in a series of fundamental reforms in the political, social, and cultural realms of the new nation-state.

The law occupied a specific place within the newly established regime in terms of the role it played in the realisation of the desired transformation. Hence, the legal landscape of the country went through significant transformations during the Kemalist era of the 1920s and 1930s. As Koğacıoğlu argues, although significant socio-legal transformations had taken place in other eras, especially the ones described above during the Tanzimat period in the Ottoman Empire, "the extraordinary severity, speed and extent of the Republican socio-legal transformation remains unparalleled in history still today" (2003, p. 12). These transformations included the abolition of the Sultanate and the constitution of the Republic, the abrogation of the Caliphate⁵ and the Ministry of Islamic Law and Foundations in 1924, the outlawing of the religious orders in 1925, and the replacement of Muslim law by Swiss, French and Italian codes in 1926. The declaration of the Republic as secular in the constitution of 1937 turned Turkey into the first Islamic country to accomplish a transition to a secular state. These changes in the socio-legal terrain decisively transformed customary notions of justice and brought them in line with the requirements of a modern legal system in a rapidly-developed manner.

⁴ "Muasır medeniyetler seviyesine ulaşmak"

⁵ The spiritual leadership of the Muslim world that had resided with the Ottoman Empire since 1571

Along with the adaptation of Western legal corpuses and institutions, the very pillars of daily life were directly targeted by the newly established regime through law (Finkel and Sirman 1990, Kandiyoti 1991, Ahmad 1993, Acar and Ayata 2002). The introduction of the Hat Law,⁶ the adoption of European calendar and length measurements, the change of the day of rest from Friday to Sunday⁷ and the transition from the Arabic alphabet to Latin script were some of the many legal reforms in this regard. The Unification of Education Act in 1924 put education system under strict state control, outlawing Islamic schools, and introducing “the official history” of the Turkish Republic through a rewriting of history textbooks in line with the goals of the Kemalist reforms for the creation of a homogenous Turkish nation that would constitute the new “political community” (Turan 1993, p. 121).

Today, most historians of Turkey point out the continuity between modernisation efforts in the last period of the Ottoman Empire at the end of nineteenth century, and the Kemalist reforms of the newly found Turkish Republic. In fact, Üstel (2004) argues that the project of crafting Ottoman subjects into citizens started during this last period of the Empire and constitutes an important basis upon which Turkish modern law and Turkish citizenship were built. While this widely accepted historical continuity is important to keep in mind, the ideological break accomplished by the Kemalist reforms through the complete rejection of Islam (Kandiyoti 1991) and the epistemological break introduced by this radical discontinuity between traditional definitions of the self and the new Western constructs (Göle 1997) cannot be ignored. Reforms of the 1920s were much more drastic “acculturation” (Selçuk 2008, p. 9) efforts directed at changing the whole social and cultural landscape of the country. For the elites of the new Republic,

⁶ This law rendered the use of Western style hats obligatory for men.

⁷ The official day off of the workweek was changed from Friday, which is the day for collective prayer at the mosque, to Sunday in order to become compatible with the Western world of business and enterprise.

the law was adopted as the primary instrument for changing the outlook of the nation with the ultimate goal of creating a modern society (Otaç 2004). Modern law was imagined and used as a tool to juxtapose the modern and progressive characteristics of the new regime against the Islamic Middle East and the allegedly backward and traditional Empire (Starr 1992, Zürcher 1998). The law as such provided a framework within which a new social order was imagined to be constituted from scratch (Koğacıoğlu 2003).

Only towards the end of the twentieth century did the Republican project become a target of criticism as being elite-run and authoritarian, and for not considering the popular will, cultural understandings or social relations. Contemporary critiques of the Republican project agree on the point that it “negated the historical and cultural experience of the people in Turkey” and as such “undermined the normative order in Ottoman-Turkish society” (Kasaba and Bozdoğan 2000, p. 4). Heper also argues (2000, p. 80) that “the natural rights of man [sic]” have never been the primary motivation behind political and social change in Turkish modernisation but rights and liberties have been introduced only as instruments for consolidating the political change imagined by the reformist elites in both of the late Ottoman and Republican eras.

Even this line of critical scholarship, however, treats ‘law in the books’ in instrumental terms as the potential source of equal rights and emancipation, and rarely questions departures from it other than normative criteria (Koğacıoğlu 2003, see Abadan-Unat 1991, Parla 1991). Parallel to the dominant approach that prevails in the international socio-legal scholarship, the legal domain even to this day in Turkey is almost exclusively studied through doctrinal and formalistic analyses of written codes. With few exceptions (Starr 1992, Koğacıoğlu 2003, 2004, 2005, Kalem 2010), critical

scholarship has not recognised law's everyday life nor questioned the lived experiences in the domain of law, that is, how people experience, perceive and relate to the law. In other words, the study of the legal domain in Turkey as a constantly (re)produced experience and as a site of analysing relations of power has not received much scholarly interest so far.

The Woman Citizen of the Republic

The replacement of traditional notions of justice with a modern legal system was accompanied by a change in the definition of state-citizen relationships. Citizenship in Turkey has evolved as a result of the choices made by the ruling elites in their pursuit of the top-down modernisation of the nation and the creation of a homogenous national identity. From 1923 onwards, the founding elites set the rules for citizenship by adapting a secular legal framework, defining the rights and responsibilities between the state and its individual members, and granting formal legal equality to all citizens (Koğacıoğlu 2005). Rather than the previous forms of loyalty such as family and kinship, the national identity of the Turkish citizenship was expected to produce a new kind of political community with a commitment foremost to the nation (Sirman 2005). In turn, the law as defined in the books has been put forward as the evidence of the regime's promise that every citizen has the same distance to the state through the operation of institutions in line with formally defined and impersonally implemented legal criteria. In other words, the formal law has come to be the testimony of the newly established state-citizen relationship and the promised equality of all the citizenry vis-à-vis the state regardless of their gender, class, and ethnic and religious identity and identifications.

As with many other nation state building projects, "the woman citizen" was a key figure

in the construction of the newly established regime's and nation's identity, and in the case of Turkey, the figure of the Turkish woman as emancipated and equal to the male citizenry was cast as a key marker of the level of civilisation attained by the Republic. Göle argues, "[e]very revolution defines an ideal man, but for the Kemalist revolution, it is the image of an ideal woman that has become the symbol of the reforms" (1997, p. 86). The granting of women's suffrage rights in 1934, introduction of a secular dress code, and encouragement of women's increased access to the public sphere, including institutions of education and the labour force, were listed among important accomplishments of the new regime with regards to greater gender equality (Arat 1997). The crafting of this modern Turkish womanhood and the presentation of the figure of the "emancipated" Turkish woman would turn into the symbol of Turkey's wholesale entry into Western modernity (Göle 1997).

Turkish feminists have aptly noted the discrepancies between the state-led emancipation of women and women's real lives. The Republican argument claimed that Turkish women were liberated and equal to men, yet this was not the case at all (Kandiyoti 1987). Despite such progress on behalf of women as the recognition of suffrage rights, the regime approached women's "modernisation" and "liberation" in pragmatic terms and deployed the gender equality –both in discourse and practice– to further the state's interests and image (Arat 1997, Sirman 1989, Tekeli 1986). Shahrzad Mojab suggests that the Republic's official policy proceeding through the idea of emancipation of women was "one means of subordinating women to the nation state" (2001, p. 4).

The use of women's rights by the Kemalist regime made itself clear when it used the same positives to discourage women's independent political activism that has been growing stronger since the last decades of 18th century. One of the most explicit of such

state action against politically organised women was the closure of the Women's Party and Turkish Women Association in 1935 based on the claim that there was no further need for women's collective activism, since, as the government put it, women had already reached equality to men and were liberated by the new regime (Çakır 2007, p. 65, Tekeli 1986, p. 76). The feminist movement has been suppressed and erased from official accounts and from the public memory.

Scholars showed that the production of the figure of the already emancipated Turkish woman put a crucial barrier to the women's movement in the decades to come. Arat (1997, p. 103) argued that "[u]ntil the 1980s, there was a consensus in society that Kemalist reforms had emancipated women and that this 'fact' could not be contested". Only in the 1980s, Turkish feminists came together to organise politically and acknowledged the ways through which the gender inequality has been perpetuated by the regime. Tekeli's groundbreaking study of the Ottoman feminist movement (1986) excavated the history of the Ottoman feminist movement that had been rendered invisible and re-connected Turkish feminists to their past. As such, it provided another account on how the political subjectivities of Turkish women have been diminished and their equality demands co-opted (Altınay 2000, 2004, Tekeli 1986).

As feminist scholars suggest, the crafting of the Turkish woman citizen has a double face next to the one of the "emancipated woman". A careful line had to be walked to balance modernisation aims with a strong sense of national identity. The tensions caused by the contradictions between the adoption of a Westernisation project and the simultaneous clinging on to distinctive cultural traits were reflected in the figure of the Turkish woman and the extent to which she has been westernised and/or retained

cultural values.⁸ Kandiyoti (1988) traced the female characters in Turkish novels since the Tanzimat era and demonstrated that although there have always been anxieties around “too much Westernisation” in Turkish modernisation; it was the female figures that embodied fears of excess Westernisation in later Ottoman and early Republican novels. The “Alafranga”⁹ woman, who misinterpreted the meaning of freedom as licentiousness and thus lost her honour, was the result of such wrongful interpretations of what Westernisation means and should entail. The new Republican woman had to be modern, but at the same time too much Westernisation symbolised moral decay for her so she should remain alerted on and discipline herself in the prescribed way. In this way, the entry of an increasing number of women into public sphere was also closely tied to the construction of the new Republican woman as desexualised, virtuous and chaste.

The crafting of modern Turkish womanhood is highly underlined by the tendency to emphasise women’s roles within the family and to identify women exclusively as mothers and wives of the new nation who will be its loyal servants (Berktaş 2001).¹⁰ Motherhood is imagined as the medium through which the future generations of citizens will be educated in accordance with the ideals of the Republic (Arat 1994, p. 57). Durakbaşı (1988) shows that the encouragement of women to take public roles by the

⁸ In a different context, in the post-colonial India, Partha Chatterjee (1986) points out to similar dynamics in the making of the modern nation state. He argues that the nationalist thought in post-colonial states harbors a basic contradiction at its very center, that it is “both imitative and hostile to the model it imitates” (Chatterjee 1986, p. 2). It aspires to acquire the values of the West to be modern and enlightened, yet at the same time it has to contain its identity that is threatened by the Western hegemony. According to Chatterjee, in India, this contradiction has been resolved through distinctions made between the private and the public, the traditional and the modern, and juxtaposing these binaries onto the woman and man binary. As women came to be equalised with home and the spiritual domain of the Indian life, men were equalised with the material, the modern and the public. As such, while women became the carriers of the Indian identity that should be preserved against Western influences, the modernisation established itself in the figure of the public Indian man.

⁹ This phrase literally means “French style”.

¹⁰ Mustafa Kemal Atatürk proclaimed, “A woman’s biggest duty is motherhood. When one realizes that the first place of education is a mother’s bosom, then the importance of this duty can be fully understood.” In this sense, the motherhood was constructed as a duty for Turkish women, and not only towards the family but through the family also to the nation.

early Kemalist project included only a small number of elite women while a much larger group had to become “modern housewives” and participate to the Westernisation in the domestic sphere. For the vast majority of women, participation in the process of modernisation meant to adhere to supposedly Western values of discipline, orderliness, hygiene and rationality within the household. Eventually these reforms about women’s status in the Republic were concerned less with women’s emancipation than with building the nation and rendering one useful to the nation state. Turkish women are expected to be “modern” and “Western” as far as they manage to achieve the desired balance between modern values and cultural virtues such as modesty, honour and motherhood.

Feminist scholars of Turkey have aptly showed how the conception of women as mothers, educators of future citizens and guardians of the moral-cultural order has been a central component in the formation of state and citizen relationship and in the actual workings of legal institutional practices. The close relationship of family and the modern state power in Turkey indicates the emphasis put on the protection of familial order rather than of individual rights in the organisation of political order. Nükhet Sirman (2005) shows the cultural prevalence of producing metaphoric relations between the family and the state and explicates the central feature of familial practices in the making of the public and private domain, in the cultural pronouncements of entitlements as well as the wording of policy in Turkey. This regime, what she has called “the familial citizenship” is marked by the continuity of the family in both public and private spheres and indicates that the familial is constitutive of citizenship discourses and practices (Sirman 1990, 2004, 2005). Following Sirman, Koğacıoğlu (2003, 2005) examines women’s citizenship in the legal domain and sheds light on the ways through which the daily operation of the courthouse breaches women’s citizenship rights at the

expense of the family-related ideals and reinforces the family as an institution. Other scholars, looking to the gender-biased nature of the welfare regime of Turkey, point out that it treats women as dependants of men, reflecting the gender roles attributed to men and women within the society and prioritising family. Thus the welfare regime, both in discourse and practice, reinforces gender inequalities and result in the increased vulnerability of “women without men” who are not under the protection of any form of social security scheme (Özar and Yakut-Cakar 2013).

On Non-Normative Sexual and Gender Identities in Turkey

As discussed in the previous section, a central component of the specific imagining of Turkish womanhood has been related to the norms associated with the performance and display of women of their sexuality in the public. Within this context, certain forms of “femininity” are coded as “over-sexual” and recognised as threats introduced by the Western licentiousness against the moral codes of the society that are strictly tied to the family structure. Feminist scholarship in contemporary Turkey has been important in showing the links between the regulation of sexuality and the modernising nation and how they play out in the nation-state’s politics. Yet despite its significant contribution, this scholarship strikingly overlooks the heteronormalising and heterosexualising effects of the transformations that the modernisation efforts introduced to the sexual regimes and practices in Turkey. Compared to the voluminous studies on the racialised, classed, and gendered ways in which the citizens of the Republic were defined, there is almost a complete scholarly silence on the non-normative gender and sexual identities which do not fit into the monogamous reproductive (hetero-)sexuality.

Part of this scholarly neglect (or delay) might be related to the fact that LGBTI identities have never been criminalised in Turkey and that they have not been openly

targeted by the law or other kind of public declarations until very recently. The invisibility of non-normative sexual and gender identities forms another part of this lack of scholarly attention. It was only in the 1980s through the case of a trans woman that debates around trans identities entered to the public spheres of Turkey. Bülent Ersoy, a trans woman singer who entered the music scene with a male body in 1971, initiated a long-lasting legal struggle for the amendment of her formal documentation after she had had her sex reassignment surgery (SRS) in the UK immediately in the aftermath of the 1981 coup d'état. Bülent Ersoy's case then ignited a great deal of public, legal and medical discussion and her demand for the official recognition of her SRS consequently led to the first official reaction of the Turkish state to trans identities. The Court of Appeals rejected her demand in 1982 and the same year cross-dressers and trans performers were banned to work in the entertainment sector, one of the most common ways of employment for trans women. Bülent Ersoy, however, did not give up her desire to be recognised by the law as a woman, a desire that took her to a long series of trials until the insertion of an article to Turkish Civil Law on the regulation of SRS in 1988. This article, which introduced "transsexuality" as a medico-legal category into Turkish legal framework, was amended in 2002 and remains the only statutory reference to LGBTI individuals to this day in Turkey.

The same period of the late 1980s marked the emergence and expansion of LGBTI subject formations, activism and politics in the context of post-1980 military coup. Neo-liberal policies imposed upon the society through the military takeover were followed in the post-coup era by increasingly liberal discourses, access to foreign cultural products, and a transition from a complete state monopoly of the national cultural production and emission (Gürbilek 1992). In 1987, the first LGBTI demonstration was held in Istanbul by trans women in response to the police violence that targeted them (About us, n.d.). In

1993, Turkey's first LGBTI initiative "Lambda Istanbul" was established, and Istanbul Governorate prohibited the Pride Conference that the group planned to organise in the city. The underlying claim of the prohibition was that "the conference is contrary to Turkey's traditions and moral values and it might disturb the peace of the society" (About us, n.d.). As a result, the conference could not take place; foreign delegates of the conference were arrested, threatened with possible strip searches and HIV tests, to be finally deported. Next year, the first LGBTI monthly magazine *Kaos GL* was printed in Ankara where it is still being published.

In the following years, in 2001, *Kaos GL* and Lambda Istanbul became legally registered organisations. Since then, the movement has grown throughout the country and today there are more than 20 LGBTI organisations spread across different cities. LGBTI activism has expanded into university campuses as well, beginning with the formation of LEGATO at Ankara's Middle Eastern Technical University. In the late 2000s, trans women started to organise separately. Trans women in Ankara founded in 2006 Pembe Hayat (Pink Life) as the first LGBTI organisation that specifically focused on trans issues that was followed by the establishment of another trans-oriented association in Istanbul called Istanbul LGBTT in 2008.

Probably the most visible demonstration and insertion of LGBTI identities into the public sphere is the annual pride marches that have been organised since 2003 on Istiklal Street of Beyoğlu. The march grows in numbers every year, from about 30 people in the first Pride Istanbul in 2003 to more than 100.000 taking part in the 2015 Istanbul Pride. In cities other than Istanbul and Ankara LGBTI groups began to organise prides in the last few years. Since 2010, Istanbul LGBTT organises Istanbul Trans Week and Istanbul Trans Pride that are centred on trans visibility and demands, and are joined

by people from all over Turkey.

All in all, it is against this background that this research intends to inquire into the ways through which the Turkish law reacts to and strives to regulate trans women's gender and sexuality at the intersection of modernisation history, ideals of Turkish womanhood and heterosexual reproductivity, and the more recent neoliberal restructuring of the state and the society, while trans women, alongside other LGBTI identities, become more and more visible in the public. I will be looking into how trans women challenge and resist in multiple ways the legal attempts that attempt to contain their existence and talk back to the discourses and practices that aim to mould their subjectivities, or completely banish their existence.

CHAPTER 3

THEORISING THE POWER OF LAW

The theoretical approach that I use to analyse the power of law in this thesis relies on the work of Michel Foucault and its subsequent elaborations by socio-legal scholars. Foucault traced the emergence of an art government which he called governmentality, that is, “the ensemble formed by institutions, procedures, analyses and reflections, the calculations and tactics that allow the exercise of this very specific albeit complex form of power, which has as its target population, as its principal knowledge political economy, as its essential technical means apparatuses of security” (Foucault 1991, p. 102). Governmentality is characterised by the proliferation of new technologies of power, i.e. the techniques, practices, discourses and forms of knowledge in which the conduct of individuals and groups becomes a matter of calculated management in order to achieve certain desirable objectives for each and for all (Foucault 1981).

Unlike the sovereign notion of power which works through physical coercion on subjects over whom the ultimate dominion is death, this art of government works at the level of life through a novel technology of power which is positive and productive (Foucault 1978, 1982, 1991). Biopower is this political technology that “brought life and its mechanisms into the realm of explicit calculations and made knowledge-power an agent of transformation of human life” (Foucault 1978, p. 143). Power is no more in the sovereign right “to kill and let live” but rather in “the right to intervene in making of life, in the manner of living, in ‘how’ to live” (Foucault 1978, p. 136). Likewise, it

involves a dispersed form of power that is not centred in any single locus of coordination but is fluid, multifaceted and heterogeneous.

Biopower takes two forms. The first form is biopolitics, which targets population at “the level of its aggregate effects” (Foucault 1991, p. 102) and focuses on its biological processes. It aims to maximise the health and welfare of the population as a whole through means such as controls of birth, death, reproduction and infectious diseases. The other form is discipline which addresses not the human species but the individual body (Foucault 1978) and operates through temporal and spatial organisations, hierarchical surveillance and examinations with the aim of fostering “docile” and “useful” bodies (Foucault 1978). In sum, these two kinds of technology of power constitute “the two poles around which the organisation of power over life was deployed” (Foucault 1978, p. 139). Whereas biopolitics endeavours to optimise the life of the population, discipline tries to optimise the life of the bodies which compose that population. The account of the subjectivity that emerges from this analytics is one in which the subject has neither a fixed or knowable content but is discursively constructed and mediated. Furthermore, the productive power has the capacity to incite subjects to govern themselves, so that subjects end up partaking in their own governing. This, however, does not mean that they cannot be resisting (Butler 1990, 1993).

These theoretical notions inspired an expanding body of political, social and cultural analysis from a variety of disciplines. Governmentality scholars explore a broad range of discourses and practices including psychiatry, medicine, and psychology (Ong 1995, Rose 1998), social insurance and risk (Defert 1991), poverty and insecurity (Dean 1991), genetic knowledges and technologies (Rabinow 2005) and regulation of pregnancy and reproduction (Horn 1994). This kind of an understanding of the

operation of power introduces a particular challenge to socio-legal studies, as Foucault's conceptualisation of power as not solely negative or repressive, but mainly as productive and normalising, explicitly distinguishes his approach from studies of power that focus on the dominating role of juridical sovereignty and state institutions (Foucault 1978).

Several socio-legal scholars remained sceptical as to the extent that Foucauldian theory considers law a manifestation of the increasingly out-dated juridical model and sees it only in the negative prohibitory fashion (Smart 1989, Hunt and Wickham 1994). Hunt and Wickham (1994) criticise Foucault even of "expulsion of law from modernity"; yet still put their efforts to reconcile Foucauldian insights with socio-legal studies and to establish the importance of his concept of governmentality for a finer understanding of the operations of law in modernity.

Another line of scholars came up with a different interpretation on Foucault's position on law, harshly criticising the "expulsion of law" thesis and calling it "problematic" (Munro 2001) or even "misleading" (Murphy 1996, Rose and Valverde 1998). Pioneered by Foucault's research assistant Francois Ewald (1990) and socio-legal scholar Victor Tadros (1998), and taken up by later scholars (Rose and Valverde 1998, Valverde 1998, 2008, Munro 2001), this "emerging counter-claim" to the "dominant interpretation" (Munro 2001) offers a different reading of Foucault. It conceptualises law itself as governmentalised (Rose and Valverde 1998, p. 543) and as an accomplice of the normalising power (Ewald 1990, p. 159). Thus law in Foucault comes to be seen as bound up in the circulation of power but only as one of the mediums which establish ways of being and behaving that influence people in their everyday lives. Indeed, the following words of Foucault seem to support this view:

I do not mean to say that the law fades into the background or that the institutions of justice tend to disappear, but rather that the law operates more and more as a norm, and that the judicial institution is increasingly incorporated into a continuum of apparatuses (medical, administrative, and so on) whose functions are for the most part regulatory (1978, p. 144).

Although Foucault's stance on law in his overall framework of governmentality goes on to provoke diverse readings and discussions in socio-legal scholarship, these discussions get resolved in similar positions regarding governmentality's relevance in explaining law's constitutive role in the society (Hunt and Wickham 1994, Munro 2001, Murphy 1996, Rose and Valverde 1998, Smart 1989, Valverde 1998, 2008). Both lines, following a Foucauldian perspective on power, subject and the concept of government as the "conduct of conduct", argue that the law appears as an important technology to govern and regulate individuals and populations (Hunt and Wickham 1994, Rose and Valverde 1998). This way of understanding of the law is increasingly reflected in works of various socio-legal scholars and legal anthropologists, from studies on moral regulation and sexuality (Hunt 1996, 1999, Valverde 1998) to legal geography and criminology (Smandych 1999).

Towards a Comprehensive Understanding of Legal Governmentality

Scholarship on Foucauldian governmentality and socio-legal scholars' refinement of legal governmentality has made the ways law works visible in new ways. These studies have been important in showing the various legal or quasi-legal techniques, strategies and rationalities used in the 'art of government', in the production of subjectivities and regulation of populations for specific ends. Beginning with the premise that trans

women emerge as objects which need to be regulated by law, my main interest in this thesis is to map empirically governmental practices and techniques targeting trans women of Turkey in their interaction with law and examine the diverse ways their “possible field of action” (Foucault 1982, p. 790) is shaped by these practices.

Studying law through the lens of governmentality necessitates a focus on the *process*. It asks how “law is doing” (Hunt and Wickham 1994, p. 99) and “what a certain limited set of legal knowledges and legal powers do, how they work” (Valverde 2003, p. 11). As such, it deconstructs law’s assumed certainty, uniformity and consistency, and demonstrates the hybrid, overlapping and contradictory modes of regulation it involves. As Walby stresses, one of the most important aspects of this way of examining law is that by “concentrating on what the law is doing, as process, as verb, instead of as a fixed set of rules, as constitutionalism, as noun” it provides “the progressive backdrop for a new paradigm of sociologically-informed thought about the carrying out of the law in the everyday” (2007, p. 568).

To demonstrate this complex and multiple operation, Rose and Valverde (1998, p. 542) offer substituting ‘law’ with the term ‘legal complex’ which refer to “the assemblage of legal practices, legal institutions, statutes, legal codes, authorities, discourses, texts, norms and forms of judgment”. The examination of the legal complex focuses more than law itself on “targets” (Hunt 2002) or in another word “problematizations” (Rose and Valverde 1998, p. 545), and on how they are regulated by the legal complex. This approach reiterates that the legal complex is only one mechanism and does not necessarily occupy a central position in the ways through which governance is effected; and also that governance is not free from the correlative of power, the resistance, so that attempts at governmentalisation are destined always to be “incomplete” (Hunt and

Wickham 1994, p. 103).

Rose and Valverde (1998) suggest that the legal complex can be studied through four foci from the perspective of governmentality: normalisation, subjectification, spatialisation and authorisation. If *normalisation* refers to the hybridisation of the legal complex with norms, *authorisation* refers to the constitution of “regulatory agents” (Hunt 2002) who are authorised to govern the target population. *Subjectification* is the constitution of subjects suffused by norms and *spatialisation* the constitution of “governable spaces” (Rose and Valverde 1998, p. 549). This thesis will show that the governmentalisation of trans women by the legal complex in Turkey *normalises* particular practices and identities while rendering deviant others who do not comply with these norms; thus it partakes in constitution of particular *subjectivities* and their inclusion in or exclusion from particular *spaces* and it achieves these through *authorising* a range of regulatory agents.

My work also acknowledges limitations in legal governmentality scholarship and intends to expand its foci in several ways. First, it does so by examining the *temporal* dimensions of the governmental operation of law, an aspect which has been analytically marginalised in most of the existing governmentality research. Exploring various interactions of law with the time, I will show how legal temporalities are connected to processes of normalisation, subjectification, spatialisation and authorisation – in other words, to modes of governing. Second, departing from de Sousa Santos’ concept of ‘interlegality’ (de Sousa Santos 1987, Valverde 2009), this study pays specific attention to law’s capacity to work at different legal orders and to the multiplicity of networks of laws and legal orders that target trans women through different techniques, rather than conceiving legal governmentality as singular and monolithic.

Finally, this thesis avoids the frequent sidestepping of the influence of sovereignty in analyses of legal governmentality. While these studies attempted to retrieve law in Foucault, they mostly neglected that law *continues* to embody sovereign power in its everyday operations on several levels through its violent and coercive mechanisms. My analysis will show that while law regulates by ‘positive’ means trans women’s subjectivities, violence is yet another component of their everyday life interactions with the law. In other words, the governmentality of trans women by the law works through more than only discipline or biopolitics, because their bodies are also the ground on which the sovereign power of law is realised and constituted. Governmentality involves sovereignty in these experiences, and in that sense the framework described above should be expanded in a way to be more attentive to the work sovereignty does in the legal governmentality of trans women in Turkey. In sum, this research will be showing that the governmentalisation of trans women by the law is happening at the nexus of multiple powers: disciplinary, biopolitical, and sovereign.

CHAPTER 4

METHODOLOGICAL FRAMEWORK

This chapter provides an account of my research methodology, fieldwork experience and my own position as a researcher in the field. The crux of my research questions lies in understanding the construction of trans women's subjectivities and citizenship experiences by the law in Turkey and the practices and discourses which revolve around them. This necessitates a thoroughly empirical unpacking of the effects of law on trans women's everyday lives together with the meanings trans women give to them. Thus this research relies on a combination of different qualitative research techniques and entails a twofold examination: on the one hand, the workings of the law; on the other, a focus on life story interviews that I conducted with trans women in Istanbul and Ankara.

My analysis of legal texts and discussions around trans women aims at showing the role that the law plays in the lives of trans women and the ways through which the law affects the terms within which their conduct is channelled. The life story narratives that I collected during this project were often imbued with stories about the law and legal institutions. How the written laws presuppose and constitute its subjects discursively, what kind of impacts they have on trans women's daily lives, and how they construct the symbolic limits of trans women's citizenship are the main questions for this part of the study. I analyse legal texts which directly pertain to trans women (i.e. the regulation on sex reassignment surgeries) along the ones which come up in the narratives of trans women and have constitutive effects on the organisation of their lives with a focus on

the interaction of different types and levels of legal regulation upon their governmentalisation by the law (Foucault 1991, Rose and Valverde 1998).

Law in everyday life literature showed the importance of studying actors' perspectives and everyday experiences of law rather than focusing dominantly on legal texts or official sites of the law (Ewick and Silbey 1998, Merry 1990, 1995, Nielsen 2000, Sarat 1990). Following this take on studying meanings and experiences, I do not only restrict my analysis to legal texts and their effects but also rely on trans women's life story interviews. Such a technique enables an informed analysis of laws and its strategies to govern this specific population, and of the articulation of the 'life worlds' as experienced and negotiated by its members.

Conducting life story interviews proved to be specifically well-suited for investigating my research questions. Life story interviews, as a qualitative research method, provide a useful passage into inquiring the connections and relationalities between the social and the personal. These narratives form significant means which connect subjects to social relations and open a way to explore how the subjectivity is constructed by appropriating, negotiating, or resisting forms of power (Franzosi 1998, Plummer 1995, Riesman 1993). Analyzing experience by focusing on life stories has the potential of revealing how particular meanings are produced under specific conditions by individuals in relation to wider social relations, and of understanding how subjects deal with different forms of power and desire by forming particular representations of themselves and their own practices (Üstündağ 2005). In the context of this research life story interviews enable me to examine how the law is articulated by trans women, how it is embedded in their social world and is resisted against, and how law constitutes these narratives but also how it is in turn constructed by them. Concepts such as state,

citizenship and their relation to law and to each other are important threads to follow in this examination of the role the law plays in the lives of trans women in Turkey. Overall these narratives form a means to understand law's role and effects on trans women's subjectivities and experiences throughout their life time.

Field entry

My entry to the field dates back to 2006, when I first visited Lambdaistanbul LGBTI Association in Istanbul during my undergraduate studies. In the following time, I became an active member of the association and attended to its weekly and annual meetings; took part in several working branches, including Media Monitoring and Law Commission, and filed first-hand reports of human rights violations against LGBTI individuals. In 2009 I assisted a trans woman who ran for local elections for a district in Beyoğlu, Istanbul. She became a very good friend of mine during that time and it was thanks to her that I was able to get to know many trans women personally. After I left Turkey for my graduate studies, I sustained an ongoing relationship and retained these networks, and as a result I did not have much difficulty in entering the field.

I started conducting life story interviews in April 2012 and the main part of the interviews was completed between November 2012 and March 2013. I found informants through my networks among trans women. After I compiled a short list of likely participants, I contacted some of them to assess their willingness to take part in the study or help me to reach other research participants. After almost each interview, the research participants strongly urged me to speak to other trans women. At times not only did they suggest names and provide phone numbers but also placed calls on my behalf or introduced me to other trans women by arranging meetings or took me directly to their homes or workplaces. At the end I had to turn down some of their efforts to

arrange more interviews for me, after I reached the five interviews that I had aimed for an in-depth analysis that will ground my work in the following chapters.

When I first reached the trans woman research participants, I explained my project briefly by stating that I am writing a dissertation on the relation of law and trans women of Turkey and that I want to listen to their life stories. Some of them were not at all surprised that I would be interested in their life stories and were very much willing to share it. Some of them did not believe that their life is worthy of attention and asked me “What should I tell?” I tried to comfort them by saying that there was nothing particular I wanted to know and I just want to listen to their life stories in any way they wanted to tell it. In some of the cases where I met the research participant recently, I was asked about the benefits of my research for trans women. Being suspicious about my intentions, they wanted to make sure that I am “not that kind of person”. What they meant by “that kind of person” primarily referred to the attitudes of researchers, journalists or filmmakers who approach them and then cut off the contact as soon as their job is over. More than myself, my trans women references tried to convince them about my involvement and dedication to the field as an old friend. Only after that, they agreed to meet me and were all forthcoming and enthusiastic in sharing their stories.

All but two of the trans women I contacted participated in this study. One of these two trans women found my approach “too personal” and suggested that I should develop a “political” questionnaire which would prompt answers about important achievements of trans women of Turkey. Although I tried to explain her the ‘political’ aims of my research and that my approach would allow her space to tell her story in any way she wanted, she requested to have a structured questionnaire just before we met for the interview. As I turned this demand down, we cancelled the interview. I did not want to

push her further. The other trans woman did not want to be interviewed, she said, because upon past experiences she does not accept such requests in principle anymore and offered her apologies (both to me and my referee) although she is sure that I am “not that kind of person.”

When I initially thought of this project, I imagined it would take place only in Istanbul, the metropolitan city of Turkey. The city remains a focal centre for trans women and other non-conforming gender and sexual identities as it promises more possibilities for expression and self-determination and for making a life anew. In Istanbul trans women have a more visible community as well. However, already during the design of the project, with the move of one of my research participants from Istanbul to Ankara for a job opportunity, I realised that limiting the scope of the interviews only to trans women who at the moment of the research live in Istanbul would be misleading due to the fact that trans women are quite mobile between different localities. They arrive to Istanbul but also leave it at times for various reasons, such as job opportunities, familial issues or legal interventions. So, as my focus is on their life stories, it was important to see their routes to as well as away from Istanbul together with their motivations and reasons more than where they live at the moment. So I decided to add one more city, the capital of Turkey, Ankara, where trans women are high in numbers and highly politicised too.

Although the interviews remained limited to these two cities, the narratives of my research participants included experiences about being a trans woman also in several parts of the country. Most of my research participants had to navigate through several urban and rural areas throughout their lifetime before, or even after, their arrival to Istanbul which they left and came back on specific occasions. This gives insight on the issues of locality and temporality as regards to the constructions of legality in general,

as it will be dwelt upon through the following chapters.

Listening to the life stories of trans women

As already mentioned, my analysis in this thesis will rely on life story narratives of five trans women, as I name them here: Derya, Cansu, Melisa, Gönül Anne and Handan Anne. Their ages ranged from 27 to 59. Derya, Melisa and Handan Anne had high school degrees, while Cansu did not finish high school and Gönül Anne did not go further than primary level education. These distinctions did not seem to play a significant role, and all were of lower socioeconomic status, living under similar conditions. All had once been or were at the time of the interview employed as sex workers. Cansu, Gönül Anne and Handan Anne had quit sex work, while the others were involved in its different forms.

Four of the interviews took place in Istanbul and one in Istanbul and Ankara. Mostly, the interviews were carried out at the homes of the research participants upon their preference. With the only trans woman whom I did not interview at her home, we met in a teahouse chosen by the research participant. In all of the cases I paid a visit by myself or with another trans woman friend to my research participants to meet, prior to the meeting for the interview. This helped me to sustain an ongoing relationship with my research participants and build trust in a gradual manner, and every time we met, I was welcomed with tea or coffee and with great hospitality.

It was at times difficult to begin at the established time with the interview. This was usually the case for the trans women who are sex workers, and due to their flexible and unusual working hours. We met at their houses where most of them also work and sometimes they had clients when I arrived. At times we had to postpone the interview or

I had to wait until they were available. In some cases, the interviews took more than one session, the longest one more than 9 hours, spanning over 5 meetings.

At the beginning of each interview I told my research participants about my research and that I wanted to listen to their life stories the way they want to tell it. I asked them for permission to tape-record the interviews and explained them that I would be the only one listening to them, that I committed to use pseudonyms not to disclose their identity and that they had the right to quit the research any time they want to. On these terms, they gave their consent. Their consent, however, was almost in every case accompanied by a statement that I am free to use their names if I wanted. As I insisted and underlined the importance of and my responsibility as a researcher to protect their anonymity, some of them said they have “noone to be afraid of except God.” At first glance, I related this to one of the self-identified common traits of trans women, namely their honesty and courage. It was a demonstration of their will to make their stories public as well as a statement which, by making their experiences visible and disclosing their identities to the wider public, challenges any attempt to suppress them. Their lives were already imbued with oppression and they did not have much to lose by disclosing their stories and identities. Reflecting afterwards, I realised that it might well have been a challenge to my position as the researcher and to the very idea of informed consent. In a way, they were claiming power over themselves and their stories and intervening to the unilateral understanding of power in the interview setting which constructs the informant as powerless, vulnerable and disadvantaged against an all-powerful researcher able to control the further disempowerment of the informants (Emerson 1981).

Following Chase’s (2003) critique about posing overly abstract sociological questions in interviews, I chose to locate the interviews in participants’ actual experiences.

Accordingly, the interviews were organised around three stages. First the research participants narrated their life stories as they wanted to tell it with minimum intervention. Then, when I found necessary, I asked them for more elaborate narrations on events already mentioned; and finally raised several themes such as relations with the family, the law, the city, in broad terms if they had not been addressed. Different forms of violence and restrictions on their life alternatives were abundant in trans women's stories, at times difficult to tell and listen to. Usually such moments of sorrow were succeeded with funny anecdotes or jokes, a common way of getting by among trans women, which I will dwell upon in the Chapter 8. In cases when they did not want to go on narrating a specific event, I gave up probing. The interviews ran usually very smoothly and as some of them mentioned at the end of the interviews, they enjoyed talking to me and they needed to share their experiences, hopes and anxieties.

Trans women live a communal life and have strong ties with each other, as one of my research participants referred to as "the biggest yet loneliest family of the world". Thus our interviews were often enriched by anecdotes about the experiences of other trans women whom I did not interview or meet at all. Moreover, as almost all of my research participants live and/or work with the company of other trans women, the interviews at homes usually took place in their presence even if we were in a more private part of the house, such as the bedroom of the research participant, on her preference. As a result, the interviews were sometimes interrupted by the commentaries or anecdotes of other trans women. This had disadvantages as well as advantages. At times it cut the flow of the narration and introduced new topics. In such cases I tried to keep the conversation in its track and if necessary, took note of these topics to open them afterwards. The advantage was that these dynamics during the interviews made me more aware of the interrelationship between my research participants and other trans women and provided

insight into the terms through which the life story narratives of trans women are constructed not only as individual stories but also as a communal one.

A common gesture at the end of the interviews with young trans women was that they usually directed me to some elderly “knowledgeable” trans women to listen to their life-stories who are regarded by this younger generation as ‘mother’s and as the carriers of the experiences of trans women of Turkey. Upon interviewing them, I concluded that one of the ways that knowledge is perceived in this context consists mainly of the wisdom and survival skills gained through experience as a trans woman and a narrative competence accompanied by a strong memory to tell about all these lived experiences. This is understandable as making a life as a trans women in Turkey until late age is difficult, and only a few succeed. As members of a generation which witnessed, suffered and survived some important turns of the history of Turkey, these women were particularly confident about the worth of their life-stories, and ready to perform, orally and sometimes bodily, their narratives.

Another kind of knowledge for my informants was related to their perception of my identity as the researcher and referred to the kind of knowledge they assumed was held by me as someone with a successful education background studying at a European university. At times the knowledge I was assumed to have gained through university education and their perception of me as a student was paralleled or contrasted to the kind of knowledge they gained through their experiences, in the words of one them, in the “life university”. ‘Educated knowledge’ corresponded to Western rational thinking and although it was usually praised for its achievements, it was the ‘life university’ which helped them for their survival. In Chapter 8 I dwell on the production and contrast of these knowledges as they provide a substantial yardstick to trans women not

only as a survival skill, but also as a way to render their painful experiences meaningful and assert agency at the face of disempowering conditions.

The issue of how I was perceived by the informants is a crucial one as it shaped our interactions and in relation the construction of the narratives. That is to say that the narratives I elicited for this study did not exist somewhere out there, waiting to be collected, but are influenced by my interactions with research participants, their perceptions of me and in the inter-subjective knowledge produced by these interactions and perceptions. For them I represented a modern, urban upper class young woman. Older trans women treated me mostly like a daughter. I was there to listen to their story, to be advised on certain topics and to make use of their story not solely for my research but also for my life trajectory. They called me “my daughter” or even “my baby” occasionally, and at one specific occasion one of them even introduced me to someone else as her daughter. Although she meant it figuratively, the person had taken it literally and the rest of the conversation went on accordingly. This signified to me both the trust established between me and my informants and the relations of power embedded in that trust. To signify our relationship as well as their status within the community as ‘mother’s, I add to the pseudonyms of these two elderly trans women the word for mother in Turkish and refer them throughout the thesis as “Gönül Anne” and “Handan Anne.”

Other kind of asymmetries in our positions necessitated me to take up several roles during the interviews and the fieldwork other than the researcher. For some, I was a daughter, yet for some others I was someone expected to give advice, to affirm their decisions or preconceived ideas, or to provide them with certain answers or solutions for questions which prey their mind - especially about the conditions of trans women in

Turkey and elsewhere. In some cases, our mutual expectations took more concrete forms. For instance, I accompanied them to hospitals or used my connections for them to get a better treatment at public hospitals or other public institutions. I put some of them into contact with some of my networks to see if they can find a job or a particular training. Although they did not make any explicit demand on me, I felt responsible, and in my attempts, I sometimes succeeded, sometimes failed.

All in all, the life story narratives I collected constitute the backbone of the analysis here, and their socially constituted and contextually produced character (i.e. the context in which they take place and their target audience) has been a crucial interpretive tool to analyse their meanings. My research experience can be considered as a continuation of my involvement with the field, but it was also a way for me to become more immersed in the relationships I developed earlier. In this way this thesis will make use of this process, and my observations throughout as well.

A Brief Look into Trans Women's Life Story Narratives

In what follows, I provide a brief account of the life story narratives from trans women and present their general life trajectory, while introducing my research participants shortly before I proceed to the analysis. All the life story narratives that I elicited for this study started off with childhood memories. Trans women's early childhood experiences commonly reveal, in their own terms, a sense of "feeling a difference". In the interviews, most gave accounts of how "realising their difference to the other boys" has been a major turning point in terms of their sense of self, and subsequently in their everyday lives and relations to the family. Most narratives of this period consist of detailed descriptions of how since early years of childhood they were inclined to occupy themselves with activities culturally coded as feminine, such as playing with dolls,

doing housework or handicraft, and enjoying the company of female friends and relatives.¹¹ Derya, born in a small agricultural village in western Turkey, began her narrative with the moment when “for the first time she felt herself”. Recounting this early awareness, she presented incidents which for her affirmed her sense of femininity:

I grew up like a girl, like a girl, had a desire for girl stuff... For instance my uncle had daughters, they used to do handicraft. I liked to be with them, do that kind of stuff. [...] I began to go to the school. I liked to play with girls. I didn't play much with boys. I didn't want to join them when they played football. Because I found male games like... Like repulsive.

In Derya's account, as much as her inclination to female activities and sustained dislike for male games seemed to be crucial in the formation of her sense of self as a trans woman, her constant refusal to male friends' offers to socialise together was to her sense of agency. She went on: “Or they used to go fishing, to play football. Sometimes they would call out to me ‘Come with us.’ I would say ‘no’. I used to stay at home. To help my mother, let's say to wash the dishes if she has, to do laundry if there is.” In a similar vein, other trans women also usually narrated moments when they actively rejected masculinity and thus inserted expressions of agency within their narratives.

Yet other childhood memories of trans women are less pleasant. Childhood for most has been marked by coercion and violence when their femininity was constantly repelled by the family, the school or the community. Derya remembered a blow on the head by the school master; Handan Anne told the story of being ostracised by her school friends and

¹¹ Here I am interested in how these gendered practices provide the means for trans women to become legible themselves and identify as trans, rather than the reproduction of gender roles and stereotypes.

Melisa of her family's corrective measures to make her act as a boy, while Gönül Anne and Cansu recalled their family's increasingly violent approach towards their deeply felt sense of selves and bodies which engulfs the whole of both's childhood narratives.

Cansu was the only trans women among my research participants who 'came out' to some of her family members and the one who was subjected by her family to the most extreme levels of violence. She first shared how she felt about her gender identity with her sister who, against Cansu's will, would tell about this to their mother to "find a solution". This act of coming out did not result in the understanding and support that Cansu had hoped for. To the contrary, it was the beginning of a continuing series of verbal, psychological and increasingly destructive physical violence that targeted her at home:

Then my mother began with room confinements. Insults. I mean remarks, words, assaults. She locked me to a room. To straighten me, she read religious books. Do this. Do that. Oppressions. Eyes are always on me. They separated my plate. They separated everything that I had. Of course they separated everything that I had. Then, there is no violence in the family but there is psychological violence. There is this... there is oppression. There is always a feeling of insecurity. For instance I go somewhere. I go to the market, [and they think] what did she do, why did you do this? I mean they were looking for other reasons underneath.

Despite the humiliations, impositions, insulating measures and the atmosphere of insecurity which Cansu was forced to endure, the efforts of her mother and sister did not

give the result they were striving for. Other trans women also shared memories of how they went on performing according to their felt gender despite the violence they were exposed to inside and outside the house. This inability of violence to change their way of being, on the other hand, was put forward as a clear evidence of their quest to live up according to their deeply felt sense of self and identity albeit all odds. Gönül Anne, who grew up amongst beatings of her father and grandfather until she ran away from home, pointed to the meaninglessness of resorting to violence to impose gender roles as follows:

There is no sense in oppressing someone, in beating, to make a boy or a girl out of him by force. People are just lying to themselves. It doesn't happen like that. Samoa Island is so beautiful in the issue of sexual taboos. I mean they should leave everyone in the world to decide on their own behalf. They shouldn't let anyone go out of her own way and cause an accident. Because I liken this to cause an accident and kill people forcefully while they were going only on their own way.

Although Gönül Anne was talking metaphorically here, her metaphor was apt in capturing the real life experiences of trans women and for some, like Cansu, the reality. It was when Cansu's father and his brothers found out about her feelings through the talk in the town, that they forced her to take her own life. Cansu had to drink a bottle of DDT and opened her eyes at the hospital where her family had brought her to die. There she was threatened by her brothers not to go back home and in Cansu's words, "That was how I got disconnected from home. I got disconnected from home. This is how my childhood passed."

Not every trans woman I interviewed had been put or threatened to death by their families as it was the case for Cansu, but abandonment by or separation from the family came up as common experiences. All trans women I interviewed were abandoned or expelled by, or had forsaken their familial ties in their teenage years, although some re-established contact years later. The tension between family and community expectations on the one hand and their search for spaces to express their gender identity on the other seems to have got resolved only when they left home, their family and towns behind. Handan Anne, the only trans woman who described a happy family life in her childhood years, expressed this double meaning of the separation from the family when she was talking about the sudden death of both of her parents, the misery she went through those times and the changes brought to her life: “But you know finally one doesn’t die with the dead. Even if that is your mother, your father, your sister or your child... one doesn’t die with the dead. You go on living. And from then onwards... With their death, the gate of freedom was opened for me...”

The second period which emerges in the narratives of trans women is their lives in Istanbul away from their families which most of my analysis in the following chapters will be focusing on, without undermining the influence of the ongoing effects of trans women’s departure from their home. In these narratives, one can detect two forms of talking about Istanbul. In the first kind of talk, Istanbul is depicted as a place of independence, ability for self-expression and autonomy. Indeed, trans women’s efforts to start a new life in Istanbul enabled them to surpass the limits set on them by their earlier networks and provided them with a new means for making sense of themselves and a space to express their gender identity. The two over fifty years old trans women that I interviewed, Handan Anne and Gönül Anne, all talked about their arrival to Istanbul as the first time of seeing other trans women, learning about trans identities,

and thus becoming legible to themselves. Entering the trans community also brought a strong sense of empowerment for all these women and involved tacitly a break with their past and its replacement with a new present. “Finally I was free” was how Gönül Anne felt when she began living among her trans friends.

This emerging sense of belonging to the trans community of the city ran parallel to the second kind of talk about Istanbul. “You have to move compulsorily to big city. And then the most painful, worst times of the life begin actually. You don’t realise this at first,” Derya said. This talk depicts the city as a place of poverty, violence and suffering. Handan Anne and Gönül Anne narrated their lives as street children until their entry to sex work when they have been raped number of times by police officers or passersby. Others narrated their efforts to find jobs or abuses and discriminations they encountered in workplaces.

Although their reasons to enter sex work are varied, sooner or later after their separation from their families and arrival to Istanbul all the trans women I interviewed began working as sex workers. Most trans women emphasised that they did sex work mainly in order to make a living at a basic level. “Finding bread” was used both as a symbol as well as an embodiment of the concreteness of the needs and everyday struggles. Handan Anne, underlining the forced nature of her involvement with sex work based on her survival needs, recalled her first days in Istanbul when she had no food, money or place to go:

Of course that is because you are forced. A human-being should do something to live. [...] When you starve, of course there is immorality there. You have to live. But only the ones who were starved would understand this. The one who is full doesn’t

understand the hungry one. Many many years ago, in those days when I was alone, I starved for three days. I starved for three days. I had no money. I used to go to the Şehzadebaşı mosque and drink only water. I drank water from the yard of the mosque. No food. Of course. Third day... Fourth day, under a rainy weather, I saw there, next to the municipal theatre house there, in Saraçhane, on top of a rubbish bin, inside of it, on top of the rubbish, I saw a piece of bread bigger than a half bread. It was rotten one side. It was almost completely green on the other, the crust. I threw myself upon and grabbed it. I went, in a hidden and deserted place I cleaned that bread and ate it. Because of it... bread is for me very sacred.

For Gönül Anne, on the other hand, entering sex work was a decision which she took after being harassed by men in other workplaces:

Then I began in Abanoz¹². I have a circle now. Good. Here I cannot see anything to feel pity for. You are forced to do sex work. Trans women are forced to sex work. No, it is not like that. As I told before, I wanted to work. But the man finds a way to take advantage of you no matter how good you are. He takes advantage of you. No matter how hard you try to work, they pull you from your feet. So I said. This is more honest. At least, come on! I am in prostitution and I will get money!

At the moment of our interviews Melisa and Derya were sex workers. Melisa was

¹² A street of brothels in Istanbul. I will talk about Abanoz Street more in Chapter 6.

mainly working in an illegal brothel and Derya on the streets, while both occasionally arranged clients online. Cansu had quited sex work several years ago and had begun selling lottery tickets on a Beyoğlu street. Gönül Anne and Handan Anne were former sex workers and at the time of the interviews Gönül Anne was a part-time activist and Handan Anne had no employment after the *kolievi*¹³ she was running had been closed down by the police. The linkages between trans women's trans identity and their sex worker status is another important thread that runs through all the chapters of this thesis.

One of the most central struggles trans women described to me about their lives in Istanbul was their struggle for “an identity/ID.”¹⁴ Especially as they approximate their bodies to female physical characteristics through cosmetic practices, hormone ingestion, clothes and hairstyles, the inconsistency between their gender identity and its (legal) denial becomes even a more pressing issue that bothers them in their everyday life and interactions with public as well as private institutions. The legal recognition of trans identities, however, are intended only for trans people who undergo sex reassignment surgery through a highly regulated medico-legal process which undermines its accessibility to a great extent. The fifth chapter looks closer into this process and the sexual and gender configurations that it requires trans women to reproduce in order to be allowed for a sex change operation and then make the necessary changes in their legal documents.

A wide array of interactions and negotiations of trans women in the city are produced at the intersection of different kinds the legal actors and institutions. Trans women's narratives show that they are usual subjects of constant police surveillance, fines,

¹³ *Kolievi*, literally meaning in trans women's slang “house of intercourse” are houses where trans woman sex workers can rent rooms for short terms. These houses are usually run by trans women who themselves are sex workers or were once.

¹⁴ *Kimlik* is a word used both for identity and ID in Turkish

arbitrary arrests, and trials. Chapter 6 will look to trans women's interactions with the police and the struggles over space that they have given against them in Istanbul in detail and its changing dynamics. In the seventh chapter I will move to a discussion of trans women's narratives on their experiences in the courthouses and how these narratives construct law and state respectively and as intertwined to each other and to other sources of power.

Finally, the question of how trans women are able to resist and survive these different forms of violence will be the focus of the last chapter, where I will show that trans women manage to give a meaning to their painful experiences by forming particular representations of themselves and their own practices and by coming up with alternative knowledges about themselves, law and state, based on these very experiences.

CHAPTER 5

RECOGNITION THROUGH REGULATION: THE LEGAL REGULATION OF SEX REASSIGNMENT SURGERIES IN TURKEY

Herculine Barbin was a nineteenth-century hermaphrodite, raised as a woman and subsequently reassigned to the male sex, a reassignment that would end in misery and her suicide at the age of thirty. Foucault, in analysing her diary together with the medical records that document her ambiguous identity, raises the following question: “Do we *truly* need a *true* sex?” (1980, p. vii). He claims that in nineteenth century Europe,

Biological theories of sexuality, juridical conceptions of the individual, forms of administrative control in modern nations, were led little by little to reject the idea of a mixture of the two sexes in a single body, and consequently to limiting the free choice of indeterminate individuals. Henceforth, everybody was to have one and only one sex. Everybody was to have his or her primary, profound, determined, and determining sexual identity; as for the elements of the other sex that might appear, they could only be accidental, superficial, or even quite simply illusionary (Foucault, 1980, viii).

Foucault reads Herculine's account to understand how hermaphrodites stopped being people who can retain an anatomical mixture of the sexes and became those whose ambiguous sex and gender should be disambiguated in line with their 'true sex'. "It was no longer up to the individual to decide which sex he wished to belong to" (1980, p. ix), he writes. Instead, it became the task of the medical expert to decipher "the true sex that was hidden beneath ambiguous appearances" and to say, "which sex nature had chosen for him and to which society must consequently ask him to adhere" (1980, p. ix). This understanding holds that 'true sex' is an essential identity and that it can take only two mutually exclusive forms (male or female).

The rise of "scientia sexualis", that is the sciences of sexuality (Foucault 1978, p. 51), has been accompanied by an increasing reliance of law of the medical sciences as the legitimate source to enforce the truth of sex upon ambiguously sexed and gendered bodies. In his lecture *Abnormal*, Foucault discusses the linking of law and modern sciences, in this particular case, psychiatry. Looking at the effects of an 1838 law regulating "the compulsory hospitalisation order", he argues (2003, p. 140) that "[t]he 1838 law consecrated psychiatry as a medical discipline, but also as a specialised discipline within the field of medical practice." With this regulation, the law "sanctions the role of psychiatry as a particular scientific and specialised technique of public hygiene." In other words, not only does the medical knowledge legitimise the enforcement of its truths in the courtroom. Its operation is enabled by the law which influences how they function by creating new problems and by allowing them to operate in the domains of emerging biopolitical concerns.

Looking at this interaction of the law with the 'real' sciences, Carol Smart in her *Feminism and the Power of Law* (1989) takes Foucault's arguments one step further.

According to Smart, although the law is indeed increasingly incorporating expert knowledge of the ‘real’ sciences into its own body and claims, this does not mean that the power of the law is fading; on the contrary it is extending its power. As she succinctly puts it, “[i]t is not correct to depict this historical development in terms of law being ‘challenged’ by the new discourses; rather law attempts to extend its sovereignty over areas constructed by the discourses of the human sciences as significant to the disciplining of the social body” (Smart 1989, p. 17). While the law more and more relies on the scientific status of expert knowledges that used to be outside of its domain, it becomes part of a method of regulation and surveillance but is still able to contain the new technologies of discipline. As the development of sciences extends the terrains of regulation, they create new fields for legal intervention. Law extends its authority “into more and more ‘personal’ or ‘private’ areas of life” and “not just in terms of discovering new objects of scrutiny, but in terms of new methods of application” (Smart 1989, p. 96).

In this chapter I look to the ways through which the law, in interaction with medical sciences, understands and establishes the ‘true’ sex of trans women, focusing on the legal regulations of sex reassignment surgeries (SRS) in Turkey. In Turkey, male and female citizens are assigned blue and pink identity cards (IDs) respectively and changing the colour of their ID is a substantial concern for trans people in their everyday interactions with public institutions and ordinary citizens. In the first section of this chapter I will trace the early legal discussions about the recognition of trans identities in Turkish laws and the emergence of transsexuality as a medico-legal category in the country. Debates around trans identities entered to the public and legal spheres of Turkey in the aftermath of the 12th September 1980 coup d’etat, when Bülent Ersoy, a trans woman singer who entered the music scene with a male body in 1971,

initiated a long-lasting legal struggle for the amendment of her formal documentation after her SRS in the UK in 1981. Her demand was rejected by the Court of Appeals in 1982; the same year the military government had banned cross-dresser and trans performers to work in the entertainment sector, one of the most common ways of employment for trans women. In this section, I will analyse court decisions that were incited by and pertain to Bülent Ersoy's request for the official recognition of her transitioned sex.

Bülent Ersoy's legal struggle for the amendment of her official documents after her SRS came to an end by the recognition of SRS in the Civil Code in 1988. The second section of this chapter will provide an overview of this legal text which marks the first and only direct reference to LGBTI identities in Turkey. I will present the evolution of this legislation into the current 2002 law on SRS and point to the changing definitions of the law of what 'true' sex is. Although both regulations converge upon the requirement of sex reassignment surgery to carry out the change in official documents and obtain a new ID, the changes in the 2002 law introduced a much more complicated medico-legal procedure, which denotes an understanding of transsexuality that should be put under extensive control and regulation by the legal authorities as well as by the medical sciences.

My focus in the rest of the chapter will be the current 2002 law. To this end I will turn to one of my research participants' account and discuss the current legal procedure mainly through the ways Cansu experienced her transition and the procedure. When analysed from below, through the experiences of trans women with and around this legal regulation, we see that at both the level of legal texts and daily practice, the law and the medical expertise do more than simply certifying transsexuality. This medico-legal

process, I argue, should be conceptualised as an array of disciplinary practices aimed at constituting the ‘true’ sex of trans woman applicants. In Foucault’s analysis (1978, 1979) on the modern forms and techniques of power, discipline is the modality of power that works to produce docile bodies through a whole set of instruments, corrective techniques, procedures and levels of application. Following from there on, far from being a practice of power that merely affirms or rejects trans women’s experiences, the regulations of SRS function as a “technology and knowledge of rectification, readaptation, reinsertion and correction” (Foucault 2003, p. 21). This medico-legal process, which takes an average duration of two years, relies on normative understandings of gender and sexuality to authorise sex reassignment and works as a site where legal and medical professionals, through working on the psyche, body and will of trans women, discipline them in certain ways of embodying their transitioned gender.

Two of my research participants, Gönül Anne and Cansu had undergone SRS and through the required legal route to have their transitioned sex legally confirmed. While Gönül Anne had changed her legal sex before the introduction of the 2002 legal regulation, Cansu had her operation only one year before our interview, in January 2012, and at the time of our interview was still waiting for the authorisation of the court to have her new ID issued. Among my other research participants, Derya and Melisa were still in the process of debating whether they desired, would fulfil the requirements and/or could afford to undergo sex reassignment surgery and the strict medico-legal process that it requires. Handan Anne was clear that she never considered sex reassignment as an option. Although my discussion of SRS will be based mainly on the account of Cansu, at times I will be drawing on the narratives of these other trans women without an SRS as well. As the discussion will show, it is only keeping an eye

on the experiences of trans women who had SRS as well as on those who did not that we can understand how the regulation works in practice, which subjects it includes and excludes, and with what effects and consequences. In a similar vein, this discussion will include my research participants' observations and understandings of the experiences of other trans women in relation to SRS.

The Emergence of Transsexuality in Turkish Laws: The Case of Bülent Ersoy

Bülent Ersoy was already one of Turkey's most popular singers in the genre of classical Turkish music when, in 1979, she began to publicly and visibly transition from male to female. At the end of March 1981, Ersoy travelled to London to undergo her SRS and, when she was back to Turkey, made an application to Fatih District Court in Istanbul with her claim to change her official sex. She was not the first trans person who had an SRS and asked for a change of her official gender status; several others preceded her case and most of them had been successful.¹⁵ Thus it was not an exception when the judge of the Fatih District Court approved her application to amend her legal records and documents. The decision was done on the basis of a notarised translation of the medical report from the London hospital where Ersoy's surgery took place and the physical examination report of a local medical council stating that no bodily difference could be detected between Ersoy and those who are born female.

The approval of Bülent Ersoy's sex by law did not last long. A few weeks after a public prosecutor appealed the decision of the local court with the claim that Ersoy was a woman only "in appearance" and could not be considered a "real woman" despite the

¹⁵ In 1980 Adnan Öztürel, a renowned professor of forensic medicine, published an article on these legal cases. In this article he states that five out of six cases before Bülent Ersoy's one had been successful in the amendment of official documents following SRS upon application to Istanbul local courts. My elderly research participants also mentioned that until Ersoy's case it was known in the community that they could change their legal sex after having an SRS.

reports of the medical experts.¹⁶ Eventually the Supreme Court overruled the decision of the local court in 1982 and ordered a retrial of Ersoy's case. The Court stated that "medical opinion [had to] be sought in order to establish whether the claimant [had] become a woman in the real sense of the word,"¹⁷ ignoring the fact that the local court had based its decision upon such medical reports.

The retrial of Ersoy's case in the same local court in May 1982 required her to obtain two further medical reports: one from the Şişli Children's Hospital, and another one from the Psychiatric Chair of Çapa Medical Faculty. These reports found, in direct contradiction with the previous ones, that Ersoy was "not a transsexual but a male homosexual, and therefore had failed to become a woman, though without the possibility of returning to his manhood." The public prosecutor of the case would base his arguments on these findings, that "the principles of biology and law" did not allow for someone to "have artificial female genitalia made for himself and then go on to claim that he's a woman." Eventually, Ersoy lost the retrial and the decision of the court stated: "No one can do as they please with their body."¹⁸

Bülent Ersoy did not give up her attempt to gain official recognition of her transitioned sex and applied again to the Fatih District Court two years later, in 1984. Her application was accompanied with another medical report which she has received from the National Institute of Legal Medicine and Forensic Sciences. This report clearly stated that she was a woman in terms of her physical appearance, genitalia and

¹⁶ "Bülent Ersoy'un kadınlık kararının bozulması için Yargıtay'a başvuruldu," [Application for the appeal of the decision of Bülent Ersoy's womanhood] *Milliyet*, 4 July 1981.

¹⁷ Yargıtay 2. Hukuk Dairesi, 21 January 1982, E: 1981/8911, K: 1982/259, *Yargıtay Kararları Dergisi* (1982), p. 323.

¹⁸ Fatih 3. Asliye Hukuk Mahkemesi, 6 September 1982, E. 1982/254, K. 1982, 420

psychology.¹⁹ Yet when the lower court refused her claim,²⁰ Bülent Ersoy appealed the decision only to be rejected once again by the Supreme Court in a majority decision. According to the Court, the existing legal framework did not give individuals the freedom to choose their sex, so nobody could change his or her sex arbitrarily and then request a change in their birth registration. Below I provide a detailed account of the Supreme Court decision, particularly in regard to the Court's argument lines in order to dismiss Bülent Ersoy's womanhood and deny her claim. This closer look at the ruling provides insights into the legal constructions of trans identities and of citizen-state relationship. It is also relevant as the dissenting opinion put forth the need for the recognition of medical expertise as the sole authority on the issue, a criterion that would be taken in the forthcoming 1988 legislation on sex reassignment surgeries.

The Court's majority opinion begins by trivialising the evidence contained in the medical report and holding legal rules above the medical expertise:

The medical report just consists of the definition of a person who is a male from birth, got his²¹ male sexual organs annihilated by his free will through an operation, adjusted himself psychologically to womanhood and provided him body a womanly outlook in an artificial way. However, the legal rules currently in force do not allow sex change on the basis of

¹⁹ "Adli Tıp Ersoy'un kadınlığını kabul etti," [National Institute of Legal Medicine and Forensic Sciences accepted Ersoy's womanhood] *Milliyet*, 23 December 1984.

²⁰ "Doktorlara göre kadın, hakimlere göre erkek," [Woman according to doctors, man according to judges] *Milliyet*, 24 January 1985.

²¹ Turkish pronouns are gender neutral. Because the Court did not recognise Bülent Ersoy's gender identity here I use male pronouns for the majority's references to her. On other occasions my use of the gender pronouns follow the self-identification of the person in question.

personal will.²²

The very same Court that had previously stated the need for medical authorisation this time chose to disregard the medical report produced by the highest medical authority in the country and ruled that in fact, a medical report could not have any effect on the legal decision. The lower court, consequently, was correct in refusing Ersoy's claim. In this quote, the Court also actively defines sex reassignment as a voluntary act, as a matter of personal will to 'annihilate one's male sexual organs.' This trivialisation of sex reassignment surgery is then followed by the the only legal reference embedded in the majority opinion. This is a reference to the Article 23 of the Civil Code, which protects one's legal capacity and personal rights to act freely against the illegal or immoral restrictions of such rights.²³ The decision continued:

First of all, this kind of an act involves a restriction of personality rights, which is impermissible according the 23rd Article of the Civil Code. For no one has the right to dispose the integrity of their body (including sexual integrity and its continuity) in cases which are not openly dictated by the law. From this follows that no one can change sex on the basis of free will.

Recasting an article that was formulated to protect individual liberty as a prohibitory act against sex transition, the Court argued that Ersoy's act of undergoing SRS constituted an infringement that she had committed against her own bodily integrity and personal

²² Yargıtay 2. Hukuk Dairesi, 27 March 1986, E. 1986/651, K. 1986/3256, *Yargıtay Kararları Dergisi* (1986), p. 1112.

²³ Article 23 of the Civil Code reads "No person may, wholly or in part, renounce his or her legal capacity or his or her capacity to act. No person may surrender his or her freedom or restrict the use of it to a degree which violates the law or public morals."

rights. As Ertür and Lebow (2012) remind us, the specific historical context that this interpretation of the Article 23 of the Civil Code came out is worth noting. Capital punishment, arrest of hundreds of thousands, torture and murder under detention and expatriation were widespread practices in this period in wake of the military dictatorship. The reworking of the meaning of protection of personal rights by the Supreme Court in this context indicated that “the state not only reserves the right to withhold recognition of non-normatively gendered bodies, but even more starkly, it claims the right to dispose of the personal rights and bodily integrity of its subjects, as its exclusive, sovereign prerogative” (Ertür and Lebow 2012, p. 19).

The decision went on to detail why a sex change could not be permissible. The next rationale that it put forward displays the threat which the trans body poses to the question of identity upon which legal judgments rest. The Court appears to be anxious about being deceived by the applicant and aims to ensure that no fraud is allowed:

Such permission [...] would pave the way for fraudulence before the law. For example, persons unable to divorce their spouse would undergo sex change and thereby obtain the opportunity to divorce on the basis of the principle that people of the same sex cannot be married. Others may use this opportunity to evade their duty as men to perform their military service [...] or to gain the right as a woman to retire earlier, or to profit unfairly from other such benefits.

This unease with the possibilities of fraud against a trans woman is by no means unique to the Supreme Court of Turkey. Foucault noted similar observations in *Herculine Barbin*, pointing out the tendency by courts and doctors to denounce claims of non-

normative gender identities by constructing them as a deceiving:

But if nature, through its fantasies or accidents, might ‘deceive’ the observer and hide the true sex for a time, individuals might also very well be suspected of dissembling their inmost knowledge of their true sex and of profiting from certain anatomical oddities in order to make use of their bodies as if they belonged to the other sex. In short, the phantasmagorias of nature might be of service to licentious behaviour...the *moral* interest that inhered in the *medical* diagnosis of the true sex (Foucault 1980, p. viii).

Contemporary research on transgender people’s interactions with the law also points out to the common association of the transgender with fraud. Sharpe (2002), for instance, lays bare how marriage of transgender persons leaves the law in a fear of fraud. Currah and Mulqueen (2011) discuss the operation of contemporary high-tech security apparatuses in airports that flag a perceived mismatch between the ID and gender of transgender persons, and thus often construe transgender persons as potential security threats. The legal concerns about fraud by transgender people continue to impact the meanings their nonconforming gender identities can take in the legal sphere in their various encounters with the law and legal institutions.

In Ersoy’s case, the Court was particularly concerned about potential of fraud in three aspects of social life: marriage, military service and pension rights. To further its argument, it deployed an imaginary subject who undergoes sex reassignment surgery in

order to facilitate a divorce, avoid military service,²⁴ or get an earlier retirement.²⁵ Besides further exposing the trivialisation of sex reassignment by the Court, this deployment is significant in revealing the biopolitical underpinnings of the Court's decision: It assumes (and constitutes) a citizenry that, if allowed, would do anything to discard themselves from civic and economic duties - even undergo sex reassignment surgery. Because of that, this imaginary citizen subject should be kept under strict control by the law, and the power of the law over the citizens should be sustained for the citizens to fulfil their duties as they are prescribed by differential gender asymmetries. The last part of the majority opinion concluded:

The fact that the appellant is now incapable of reclaiming the capacities as his sex (his masculinity) due to an operation that he underwent of his own free will does not justify that he has the right to achieve his goal [of changing sex]. [...] Everyone must suffer the consequences of their mistakes. It is not right to look for solutions on the basis of sentiments.

Playing on the very line drawn between emotion and reason, the majority decision drew a strict line between deciding on the basis of sentiments and on the basis of legal mandates, condemning the former as fallacious and identifying itself with the latter. The majority thus declared that “[this situation] cannot be allowed by throwing the law aside.” Eventually, the Supreme Court maintained that sex identity was an unquestionable truth which is determined by the anatomy of the individual at the

²⁴ It is worth noting that military service is compulsory for men over 18 years old in Turkey and it is highly dignified. The compulsory military service is not only an obligation for male citizens to display their loyalty to the state but also bestows them a higher position in the gender hierarchy that constructs them as the defenders of the nation state, and women as objects that need to be protected (for a detailed study of militarisation in Turkey and its gendered implications see Altınay 2004).

²⁵ In Turkey both the minimum working years to get a state pension and the age of retirement are lower for women.

moment of birth and which would always remain the true sex of the individual throughout her life.

In this 1986 decision, we also find indications of judges no longer satisfied with the definition of sex identity upheld by the majority. The dissenting opinion, written by Judge Namık Yalçınkaya, favoured authorising Bülent Ersoy to change her sex on official documents and reflected a grasp of the pertinent literature sustaining that transsexuality is a much more complicated phenomenon than being proposed in the majority opinion. Yalçınkaya's first criticism was on the Article 23 of the Civil Code used as the basis of the majority's argumentation. He questioned the constitutionality of this legal reference and argued that this Article "protects the personality not against the persons themselves but from other people" and thus "the majority opinion declaring that Article 23 of the Civil Code protects persons directly from themselves and thus a person cannot change sex by free will lacks any legal foundation." His argument was supported with numerous references to legal doctrine and Supreme Court's precedents.

This dissenting opinion was not devoid of conceptions on transsexuality and normative definitions of how it should be understood. Yalçınkaya defined a transsexual woman "according to the international medical literature" as "a woman who is imprisoned wrongly by the nature in a male body but who is a woman with all of her soul in reality." Consequently, for him sex reassignment ought to be "nothing more than an operation that adapts the outlook of the existing male body to the soul which reflects the real sex of the person." This was in complete contrast to majority's definition of the sex, which in the opinion of Judge Yalçınkaya was "outdated and lost its value in the light of the results of 'psychosexuality' studies." Comparing this medical body of knowledge about transsexuality to the case of Bülent Ersoy, he emphasised that Ersoy was

diagnosed and treated for this precise medical condition by a team of expert doctors before and after her sex reassignment. Yalçinkaya further stated that it would not be legal to disregard the medical reports in an issue which “is impossible to solve with the general and legal knowledge that the law profession provides” and that “transsexuality is a phenomenon of our age, which can be diagnosed and treated by the developing medical science in the life of the modern society.” Therefore, he concluded “it is time to rethink the law.”

This opinion foreshadowed a new forthcoming legal interpretation of cases like Ersoy’s. It would be one in which the true sex of the individual does not necessarily have to correspond with the sex assigned at birth but should, if necessary, be determined upon consultation to a body of medical experts. Despite this initial glimpse of recognition of transsexuality as a medical condition, it took two more years for the formal recognition of SRS. The right-wing Motherland Party (ANAP) government that had won the 1983 elections following a three-year long military rule, under the leadership of Turgut Özal brought the legalisation of SRS in 1988.²⁶ The new 29th Article of the Civil Code of 1926 in 1988 read:

All the necessary changes shall be made in the civil status of the transsexual in case of any sex change which occurs after birth provided it is proved by a medical report. In all cases, for the correction of these records, action is brought against the spouse if the transsexual person is married. The same court shall indicate in its judgement to whom custody of the children shall be given. The marriage is automatically dissolved on the civil

²⁶ Some authors suggest that the new neoliberal regime took advantage of Ersoy’s case to mark its difference to the military rule, promoting individual rights, freedom and tolerance (Altınay 2008, p. 215).

status record. After the court's decree the changes brought about are to be entered in the transsexual's civil status records by adding such details to the original record so as to update the data concerning sex on the birth certificate and identity papers, and by authorising a subsequent change of forename.²⁷

As soon as the law was passed in the Parliament, Ersoy made her final application for the official change of her documents in line with her SRS and received her new ID in a few weeks' time. The recognition of sex reassignment surgeries in the law and the emergence of "transsexuality" as a legal category were very important for the lives of trans women. As such, Bülent Ersoy and her legal struggle for the sex change registration still embody a key moment in trans women's history in Turkey, despite Ersoy has distanced herself from LGBTI groups, and despite the persistent (and increasing) medicalization of the transgender people in the legislation which will be discussed below.

Critiques of the 1988 Law and the Current Law of 2002

With the introduction of the new article, anyone who had the medical committee report confirming that they had had an SRS could demand change in their legal sex and ask for the replacement of the identification card. This first legal regulation regarding transsexuality in Turkey attracted considerable attention from legal scholars (Öztan and Will 1988, Zevkliler 1988). These studies presented formalist analyses of the legal decisions in Bülent Ersoy's case or of the subsequent law, largely remaining limited to

²⁷ "Doğumdan sonra meydana gelen cinsiyet değişikliğinin asgarî sağlık kurulu raporu ile belgelendirilmesi halinde nüfus sicilinde gerekli düzeltme yapılır. Bu konuda açılacak davalarda cinsiyeti değiştirilen kişi evli ise, eşe de husumet yöneltilir ve aynı mahkeme, varsa ortak çocukların velayetinin kime verileceğini de tâyin eder, cinsiyet değişikliği kararının kesinleştiği tarihte, evlilik kendiliğinden son bulur."

pointing out the gaps and contradictions in the existing regulations and possible ways of overcoming them by applying normative criteria. One central criticism was that the 29th Article did not specify the pre-conditions for such an SRS and might lead to malpractice. Comparing the newly introduced article to Swedish and German codes on transsexuality which required a non-married status and infertility for SRS, critics focused on the lack of concern for these issues in the Turkish regulation (Zevkliler 1988). Another criticism was that this article created room for “gender chaos”²⁸ by allowing anyone to reassign their sex (Zevkliler 1988).

The legal debates that urged to overcome contradictions in the legal regulation, ensure protection of family life and put the sex transition under medical and legal control continued until the introduction of the 2002 Civil Code and the amendment done in the regulation of SRS. Changes to the 40th Article in the Civil Code put trans people under strict and complex institutional supervision, in line with the German and Swedish protocols (Sağlam 2004) reflecting the concerns mentioned above. The 2002 legal regulation, currently in force, reads:

A person who wants to change her sex has to apply to the court personally and ask for permission for a sex reassignment. For this permission to be given, the applicant must have completed the age of 18 and must be unmarried. Besides, she must prove with an official health board report issued by an education and research hospital that she is of transsexual nature, that the sex reassignment is compulsory for her or his mental health and that he or she is permanently deprived of the capacity of

²⁸ “Cinsiyet karmaşası”

reproduction. If it is confirmed by an official health board report that a sex reassignment operation was effected based on the permission given and in accordance with the purpose and medical methods, the court will decide for the necessary changes to be made in the civil status register.

As in the previous 1988 legal regulation of SRS, the law's designation of body attributes of trans people is significant in Article 40 of the Civil Code currently in force. The change in civil records – the ultimate legal effect of the proceeding – is intended only for trans people who desire and can afford a sex reassignment surgery. Thus trans women who want to have a pink identity card are legally obliged to change their bodily dispositions through permanent medical interventions. Certainly, there are trans women like Gönül Anne and Cansu who experience their sex in line with these institutional definitions and have a strong desire for undergoing sex reassignment surgery. Yet there are also others who do not share the particular configuration of transgender embodiment that the law recognizes. For these trans women, the legal requirement to have a sex reassignment surgery contradicts their self-understandings, desires and experiences. Melisa said: “I of course want a pink identity card. But I do not have any problem with my organ.”²⁹ Similar feelings were shared and expressed by Handan Anne and Derya. In this sense, a first point that can be made about the 2002 legal regulation – similar to the previous law on the change of legal sex - is that it is organised in a way to strictly impose its own criteria and definition of transsexuality upon a wide range of transgendered experience and and to withhold recognition from those who do not fit its mode of regulation.

²⁹ “Ben de pembe kimlik istiyorum elbette ama organımla da bir sorunum yok yani.”

The second substantial change brought about with this law concerned the extent and scope of the interventions into the transition period of trans people. While the 1988 law determined the true sex of the applicant based on a post-SRS medical report that demonstrates the materiality of the transition in the reconfigured sexual organ, in the 2002 one we see a completely different understanding of the sex transition: that it should be policed by legal institutions in tandem with the medical sciences from the very beginning until the very end. As it can be seen in the letter of the law, the 2002 law introduced a number of new and substantial pre-conditions for having an SRS: The regulation is designed to prevent any possibility that a married person might undergo the surgery and continue her marriage, as one of the first requirements is to be unmarried. The next measure, concerning the certification of transsexuality, is crucial in that it puts the sex reassignment process under rigorous medico-legal control and authorises trans women's sex change only through claiming to have a psychosexual illness through the medium of scientific knowledge. Furthermore, the criterion about reproduction capacity ensures that only people who have no (potential) links to reproductive families undergo the operation. Atamer (2005) draws attention to an additional requirement –echoing the critic of Zevkliler about the 1988 regulation above (1988)- that has been implemented in courts' practice. She claimed that, in order to get the permission of the court, trans people also might need to demonstrate that they do not have any children – thus converting the claim to lack of reproductive capacity into a retroactive one; the applicant shall never have had such capacity.

Today civil courts work in conjunction with various medical experts along to decide the possibility of a sex change operation. The process, with an average duration of two years, works as follows: The person applies to the court first, requesting an authorisation to begin with her SRS process. They should give evidence of being

unmarried and over 18 years old at the time of the application. The court then directs the applicant to a research hospital where they need to obtain a health board report. This includes urological, gynaecological, genetic, endocrinological and plastic surgical examinations, as well as a psychotherapy period. Overall this health report should state that the individual is of “transsexual nature” and “sex reassignment is necessary.” With this report in hand, the applicant then goes back to the court and asks for the permission to have the sex reassignment surgery. The procedure comes to an end when the applicant presents the final post-operative medical report and if the court finds the report appropriate, sex change in the official records and ID is ordered to the administrative authorities. Trans people can, of course, have sex reassignment surgeries without this legal procedure and the official permit. Those operations, however, are not regarded as legal and do not allow for changes to official records or a new ID.

Sex Reassignment Surgeries as a Disciplinary Practice

Cansu had her SRS only one year before our interview took place and was still waiting for the decision of the court for the amendment of her legal sex. While providing an overview of the procedure Cansu went through, the discussion below will show the disciplinary mechanisms that underline the current medico-legal regulations of SRS. My aim here is to draw attention to two aspects of the relationship between SRS regulations and discipline. First, I suggest that these regulations should be understood as a disciplinary practice that aims to make productive and docile bodies out of trans women in relation to the prevailing forms and performances of selfhood, desire, and femininity. Secondly, next to techniques of measuring, correction, observation, and supervision that the legal procedure prompts, I will claim that it is also through the less visible

organisation and regulation of time that trans women's bodies and femininities are shaped and disciplined in particular ways.

In Cansu's narrative, the sex reassignment surgery emerged as one of the topics on which she elaborated in great detail. Having a sex reassignment surgery was her life-long desire and she had managed to finally have it one year before our interview. When we met she was still waiting for the court's decision to order changes to her official records and the issuing of a pink ID:

Well... My biggest wish, dream was to have the operation. And I had my operation. I had it on January the 20th, last year. But I still couldn't get my pink identification card. I'll get it on the 28th, 29th of this month. I went to the courthouse. It is difficult. Very difficult...

Cansu's narrative was overwhelmed by the presence of law and the procedure it required. She spent half an hour describing all the legal and medical steps she had to take since she initiated the procedure for her sex reassignment. She was very precise in her description of the details of this period, going over the different institutions involved in the strenuous work of getting a legal SRS. Her account started with a summary of these steps:

First you make a petition to the court. It refers you to the hospital. In Çapa³⁰, there you have a period of treatment. Then it refers you to the court, saying you can get the operation. Then the court gives you a report stating that this person got the right

³⁰ Çapa University Hospital, one of the leading public education and research hospitals in Istanbul where trans women receive medical supervision and examination during their transition period.

and is allowed to have the operation. With that report in the hand, you go and get your operation. After the operation the doctor gives you a medical report that states that you had the operation. Then you take that again to the court. So I appeared in court to state that I had my operation.

This summary, which recited the legal regulations in an impersonal manner, was then followed by the details of the medical examination at the hospital. After the authorisation of the court to commence the process, Cansu went to the university hospital to get the board report that she should present back to the court as a proof of her “transsexual nature” and “the need for the sex reassignment surgery.” She had first gone through genetic, endocrinological and urological exams at Çapa University hospital, where, in her own words, her “body was checked.” Her chromosomal combination was monitored to determine whether she is intersex or not. Endocrinology ran three different tests to observe her hormone levels. Based on test results, an endocrinologist decided on her required level of hormone intake. In urology, her reproductive organs were examined, and an assessment was carried about her “reproduction capacity” – in order to fulfil the Article 40 infertility requirement. This test was done through sperm enumeration: “They collect sperm samples, they collect semen and analyse that. Yet I couldn’t produce any. Because I cannot. That was good, because if you cannot, they write there... how do they call it? Huh. Yes. They wrote ‘she doesn’t have any reproduction capacity.’” In Cansu’s case, that sperm samples could not be obtained from an ejaculate was considered to provide sufficient evidence of the malfunctioning of her penis and subsequently of her incapability of reproduction in her current state of being.

The psychiatric evaluation of trans women is another chief part of gathering medical evidence of one's transsexual identity. As described before, it is only by claiming and scientifically proving to have a psychosexual illness that trans women's sex reassignment surgery can be legally authorised. The Harry Benjamin Guidelines for the Treatment of Gender Identity disorder serves as the outline for assessment and treatment of transsexuality (Yüksel et al. 2000). The initial evaluation by these medical departments of Cansu's "transsexual nature" was thus followed by the certification of her transsexuality by the psychiatry. Cansu was required to attend group psychotherapy in the same university hospital. She entered the group after the individual assessments of the psychiatrists, and her psychotherapy group was composed of 30 to 35 trans people. They met once a month for two hours under the supervision of several psychiatrists and psychologists. These therapy sessions lasted overall almost one year.

Article 40's description of the procedure refers to a document produced by psychiatrists testifying the transsexual nature of the applicant. The task of these medical professionals, as Cansu's narrative transpired, goes well beyond the production of this document and is best described as a systematic and constant observation of bodies and minds of trans women, and their evaluation in terms of bodily capacities and gender performances which should overlap with their true sex. A specific production of gendered embodiment is thus rendered obligatory through the process, and to get a legal SRS a trans woman should prove that she is able to reproduce this embodiment, aligned with the gender roles that are socially and culturally expected.

In the interview, Cansu told of several instances where the emergence of disciplinary interventions can be traced during her psychotherapy sessions. From the very beginning of her narrative, Cansu constructed herself as a trans woman through normative

frameworks. Expressions such as that she “never felt like a man”, that she “never liked her penis” or that she “always had sexual desire for men” were often emphasised. Before she had begun with the sex reassignment procedure, she already had done several modifications on her body through hormone intake and aesthetic surgeries. On the other hand, she wore little make up if any and preferred to wear pants and loosen tops. She also was aware that her bodily experiences, emotions and desires about her gender and sex were not necessarily shared by other trans women in the group therapies and her account involved her observations of the interactions of medical professionals with other trans women in these sessions.

Cansu’s narrative indicated how the sexual orientation of trans women emerges as an essential mark of one’s transsexual identity. Mocking her conversation with the psychiatrist, Cansu recounted: “Ay in the individual therapy, I had to give a full account of my sex life! ‘Yes madam, I am attracted by men. And don’t worry, I don’t fuck them!’” This quote shows that Cansu was fully aware of the expectations of the medical authorities. A trans woman in her therapy group, on the other hand, was directed from group therapy to individual therapy when she came out as a lesbian. The confessional mode of this interaction with the psychiatrist and the exclusion of those who do not follow its schema give clues as to how psychiatric authorities evaluate trans women’s sex, gender and sexuality. Within this framework, a trans woman is expected to have sexual desire for the opposite sex before and after sex reassignment surgery. In other words, one of the markers of one’s true sex gets to be one’s sexuality according to the heterosexual norm. Trans women have to persuade the legal and medical authorities that they fit into this prototype even when their experiences tell otherwise. The experiences and desires which do not fit to this heteronormative framework need to be further evaluated and risk exclusion.

The general outlook and the clothes of the trans women were described as a determinant in the psychiatrists' evaluation of transsexuality. Cansu was instructed by the doctors several times to wear clothes that are seen as appropriate for the gender into which she was transitioning. She remembered instances where she had been asked "why I don't wear skirts or use more make-up." Furthermore, she also recounted how some of the therapists reacted to the skirts or make-ups of other trans women and questioned them as "too short" or "too much". This shows other disciplinary aspects of the therapy sessions that aim to mould trans women into the normative frameworks of femininity. Trans women need to prove not only their desire for a sex change or their transsexuality, but also that they are able to display just enough, but not excessive or "too sexual" gender performances associated to womanhood. The boundaries of this womanhood appear here to be drawn by the norms of respectable female identity, and Cansu and her therapy-mates were expected to align themselves with its normative ideals. In this sense, psychotherapy sessions do not only evaluate the transsexuality of trans woman applicants but work in ways that attempt to regulate and influence trans women's emergent femininity towards particular ways of gendered embodiment and performance.

Once all these medical actors were scientifically convinced of the need for Cansu's SRS, they then brought together their individual reports to prepare a final board report, which included the individual signatures of each above-mentioned specialist. Cansu presented this report to the court to get its authorisation for her sex reassignment surgery. With the court's authorisation, she had her surgery at a private hospital and then with the medical report stating that she completed the sex transition completely she went back to the court for the legal approval of her transitioned sex.

When presented with the medical report about Cansu's SRS, the court, however, did not seem to be satisfied and ordered her to bring witnesses to testify her transition – a further requisite, once more introduced beyond the legal text. In the next hearing, Cansu's witnesses were demanded to testify for her SRS and her adjustments to homosocial environments, groups and activities as a woman. Parallel to the understandings of medical authorities of transsexuality –yet not being satisfied by the evidences they provided- the witnesses were questioned about the way Cansu behaves in her daily life, whether she is engaged in activities such as doing housework or how she dresses. As the court was inserting its own criteria and method to determine one's sex, it also communicated its understanding of that sex: a female-bodied person could claim that she is a woman but it is still crucial to see if she is bodily and behaviourally attuned to womanhood, and whether she is capable of persuading others of her femininity. At the end of this hearing Cansu received another postponement and her hope was that the next hearing would be end of the process and finally the issuing of her pink identity card would be authorised.

Experiencing Institutional Time

The discussion above demonstrated that the current regulation of sex reassignment surgery requires a complicated and painstaking process. In order to fulfil the legal criteria, Cansu was required to move back and forth between the judiciary and hospitals. This detour was necessary to collect 'evidences' of her transsexuality and to demonstrate her fitness for the sex reassignment surgery as her case depended on the production of the appropriate documents by each institution that she visited.

While the ability to collect these medical reports and court authorisations relies on particular understandings of sex, gender and sexuality that underline them, another

significant element in constituting the ‘truth’ of one’s sex appears to be the submission to temporal frameworks of medical and legal institutions. Elizabeth Freeman, pointing to the connection of time and power argues that “[t]he body politics and power relations are made possible by manipulating time” (2007, p. 161). This section looks to the temporal dimension of the SRS process through Cansu’s case which seemed to establish its disciplinary power upon her also through imposing its own timeframe and denying temporalities of her body, sex and life.

Cansu’s narrative transmitted an emphasis on her inability to control the process of her own sex reassignment and its “difficulty”, a description she used repeatedly to explain how she has been feeling throughout her SRS experience. Almost all phases she described were followed frequently by statements such “It was really difficult” or “They made me struggle a lot there.” One aspect of the difficulty attached to the medico-legal procedure she had to follow to get her SRS was the collection of the documents required by the law to fulfil the expectations of the experts she encountered for the previous two years of her life. But, crucially, the legal and medical examinations of one’s fitness for SRS, the legal decision that would come out as the result of these examinations, and finally its reflection on one’s official records all required *time*. Looking closer into Cansu’s narrative, it becomes clear that her feelings of struggling and difficulty had a temporal dimension. References to the time and duration of each phase of her legal experience of the transition were abundant in her narration. About the body checks at the hospital, for instance, she said: “Then I got my report there. They kept me there dealing for 3-4 months. They made me struggle a lot.” Her next step was the pre-surgery psychotherapy sessions: “That took more than a year, exactly 13 months.” Since she had her surgery last year, the timeline that the courthouse follows to issue her identity card was a central issue as well:

I appeared at the court stating that I had my operation and first they gave me a date one month later. Yes of course one month later. I went again and this time they asked for witness. I found the witness. But I had two, three hearings. The last hearing was the third one. Before the surgery I had two more. They just postpone it. [...] On the 29th hopefully I will get my identification card. Look, on the 20th it will be exactly one year [since I did the last application to the court].

What I intend to point out is that Cansu's narration of her experiences both in the medical examinations and the courthouse underlined the contradictions between her temporal and bodily assumptions about sexual transition and the ones upheld by the institutions. Consider the example of the psychotherapy period required, which she deemed disproportionate to her needs:

I wonder whether they believe that we go there as if we are going for shopping! I mean, I already did my decision, as a woman I want to have this operation. What sense does it make to force me to go to those sessions for one year? Give me my report so I can have my surgery.

Cansu was well aware that the average completion time of these sessions is two years and she was done much before the average. What crucial was yet that the duration of psychotherapy solely depended on the psychiatrists' assessments of the applicant's condition, and Cansu had to follow the timeline that psychiatrists' saw as appropriate rather than her own bodily time. Cansu's understanding of her transition and the legal and judicial timelines showed similar discrepancies, which became more evident in the

last, post-op phase of the legal procedure:

The court... I am done with everything. Ay I think this is the biggest discrimination! I mean I already had my operation done now. Why do you do three more hearings for me? I already had my operation. Everything is over. What is the use? What sense does it make? [...] Why do you make me wait one more year? What kind of a procedure is this, what is this?

SRS procedure is not only a matter of sex transition but is also experienced as a significant transition in one's relation to other temporalities of one's life. The timeframe of the courthouse pressed onto Cansu even more as she had an opportunity to apply for a new job, which that she preferred over her current one as a street lottery ticket seller:

They made me struggle a lot. I struggled a lot. And finally it is almost over. It is over. It was difficult, it was very difficult but hopefully I will manage to change my identification card. After this, after the surgery and the identification card, this friend of mine, who helped me with doing this job, will find a job for me in a hotel. I will work as a maid. That would at least be better than here. Here it is very difficult to work in cold.

Cansu could apply to this new job, as a maid in a hotel, only after getting her new ID because she thought the hotel would not accept her with a blue one. Neither did she want to enter that job without her new ID, having to disclose her transgender identity. In this sense, the legal transcription of the sex transition and its conclusion in the change of the official documents signified a new phase in her life – and the postponement of the final decision obliged her to wait, to be patient, and to endure the ambiguous temporal

framework of the procedure.

The institutional timeframe, in sum, leaves not much room for one's account. The recognition of the 'truth' of one's sex is strictly tied to the institutional times and delays, meaning that Cansu had to spend a great amount of time before the gaze of medical and legal authorities to prove herself fit. These episodes of waiting Cansu was subjected to for the legal recognition of her sex reassignment worked as a further means through which the law enhanced its power and recreated her as a subject of its disciplinary power. Parallel to what Auyero and Swistun describe for the experiences of the urban poor affected by environmental pollution in Argentina, Cansu experienced the procedure as "something that escapes [her] control and as something toward which the dominant stance is that of waiting for the powerful to decide over their lives" (2009, p. 111). Part of Cansu's experience of her SRS was marked by the use of time by legal institutions and the medical science that emplaced her in different episodes of waiting, and in a productive way constituted her subjectivity as one that waits for an uncertain amount of time in the hope of fulfilling their criteria. Cansu felt that she had to comply and subject herself to these institutional temporalities, besides its other requirements about gender performance and medical fitness, to get what she believed was already rightfully hers, to be authorised to be legally in her sex. By imposing a timeframe that Cansu experienced as rigid, arbitrary, and incomprehensible, the 2002 law on SRS and the particularities of its unfolding at the hands of legal and medical experts in daily life moulded a particular subject out of Cansu whose subjection to the law's disciplinary power was produced also through an exposition to institutional frameworks of time.

Conclusion

This chapter analysed the legal regulation of sex reassignment surgeries, which is

central to this study as its provisions in the Civil Code are the only legal text that directly refers to trans (and other LGBTI) identities to this day in Turkey. The chapter began with an overview of how trans identities emerged as a topic of public debate in Turkey in the early 1980s through the legal struggle of Bülent Ersoy. Before Ersoy's case, post-op trans women had been able to get their civil registrations amended by applying to courts and providing medical reports of their sex change. However, Bülent Ersoy's transition was not allowed. My analysis of the arguments wielded by the Supreme Court to base its dismissal showed that the Court's decision reinserted its sovereign power over Bülent Ersoy's highly visible non-normative gender identity through a claim over her bodily integrity, while simultaneously policing citizenship duties as they are distributed according to the sex of citizens – ones that is, in turn, defined as their sex as assigned at the moment of their birth.

My discussion followed to argue that international and national evaluations of transsexuality by medical sciences, mainly by psychiatry, played a key role in the next substantial landmark in Turkey's legal regulation of trans bodies and identities: the recognition of transsexuality as a legitimate medical condition and the consequent acknowledgement of medical expert knowledge by the law in the determination of an individual's sex. The 1988 law recognised sex reassignment surgeries and allowed post-op trans women to modify accordingly their identity cards and civil records. This law's procedure relied solely on the evidence of one's anatomical reconfiguration after SRS in order to carry out the legal changes in one's civil records. No further consideration was needed, nor did trans women need any prior legal authorisation or examination to have their surgeries.

The criticisms of the 1988 law lead to the current legal regulation which came into force

with the introduction of the new Civil Code in 2002. It replaced the existing law with a complex process, introducing several pre- and post-SRS legal and medical examinations and requirements. While some authors had emphasised the advantages of the new model (arguing, for instance, that it would allow for control of medical malpractice cases), my analysis shed light on the new dynamics of power that have emerged between the trans applicant, the law, and the medical expert as a result of the new legislation and the particularities of its implementation by medical and judicial authorities.

Drawing not only on authorised legal texts but on the narrative of a trans woman who recently went through SRS complemented my analysis and showed dimensions of the linking of power and knowledge as it plays out in this unique medico-legal process. Cansu's accounts foregrounded that the role the law plays in the regulation of sex reassignment surgeries is not limited to a basic recognition of the evidence and knowledge produced by medical sciences through a succession of legally mandated bureaucratic steps. Rather, the linking of the trans applicant to the law through medical knowledge is multi-layered. Cansu's narrative showed that the legal regulation currently in force is underlined by an expanding power of the law vis-à-vis trans women as well as vis-à-vis medical science and expertise. This expansion first relates to, as Foucault reminded us, the extension of law's reach through the medical knowledge. The law's power as a gatekeeper is further pronounced as each step in the medical institutions requires court's approval to move forward. What is more, the law might not even be content with the post-op medical report of SRS and insist on the production of further evidence according to its methods, as it was the case for Cansu. Eventually the law's definition of sex and sex transition takes precedence over other definitions including those established by medical knowledge and retains the power to be the final determiner of one's true sex. This point reminds Carol Smart's argument in *Feminism and the*

Power of the Law (1989) that the law, despite having a lower status than ‘real’ sciences, sets itself above other knowledges in the way sciences do and disqualifies alternative accounts of reality other than the one established by its own method.

The chapter also showed that the evaluations of legal and medical experts of one’s ‘true’ sex involve a whole range of examinations of trans individuals’ bodies and minds, from chromosomal combinations to one’s appearances, routines and relationships. Not only the anatomy of trans women are examined, but also their gender performances. They are examined as per their qualifications to claim “a body for life within the domain of cultural intelligibility” (Butler 1993, p. 2) and those who want their legal documents transformed in line with their gender identity have to fulfil these conditions and “pass” the femininity test. We have seen that the terms of this test, as was in Cansu’s case, might be based on dominant social norms of gender and sexuality. To get the reports that *scientifically* produce and prove her *true* sex and that are considered as legitimate and indispensable evidences by the law to allow any SRS and further changes in official records, Cansu had to reproduce these gendered expectations of various legal authorities and medical experts.

Another argument emerged from the combined closed reading of legal texts and of Cansu’s detailed accounts. The temporality of the legal regulation appeared to be an important dimension of the SRS experience, naturally disregarded in strict legal-formalistic analyses. In Cansu’s narrative, references to the gap between the time of the medico-legal procedures and the felt time of her body, sex and life was recurrent. The medico-legal regulations of SRS subjected her to a timeline that she experienced as something that is beyond her control and that she is forced to undergo in order to obtain the recognition of her transitioned sex. I suggested understanding this expectant waiting

for an affirmative answer as a temporal process in and through which disciplinary power is accomplished and experienced. As Pierre Bourdieu succinctly puts it in *Pascalian Meditations* “waiting is one of the privileged ways of experiencing the effect of power” (2002, p. 228). Interpreted in this light, the subjective experience of waiting turns into something more than a mere repression and becomes a productive phenomenon.

Finally, this account showed how the recognition of sex transition by the law, as important as it is, undermines the self-definitions of trans women regarding their gendered and sexed identities. The recognition is allowed only to those who are able to fit their bodily configuration, desires and capacities to the institutional regulations. Those others who do not desire or cannot afford the terms of the modes of this regulation are excluded from the frameworks of legal recognition. As such, legal recognition of sex reassignment remains conditional and disallows trans women’s recognition outside of those borders set by this regulation. In other words, in order to be recognised by the law in line with their gender identity, trans women have to (re)produce the ‘truth’ of their sex in a way that affirms and conforms to the institutional templates of the intelligible trans body with its sex, sexuality, gender, and temporality.

CHAPTER 6

BANISHED FROM THE CITY: TRANS WOMEN AS *HOMO SACERS* OF POLICE PRACTICES

This chapter focuses on the exclusion of trans women from the public spaces in Istanbul since the late 1970s and aims to shed light on the role of the law through its various deployments by the police in trans women's spatial relations with the city. My research participants told me of several dislocations and exiles that they individually and communally have experienced in Istanbul and even out of the city and it is clear that the experience of displacement and exclusion has become a substantial part of their lives. This chapter examines the interaction of social and legal dynamics in the lives of trans women in order to shed light at their routinised exclusion from public spaces. Drawing on Giorgio Agamben's (1998, 2005) elaboration on the sovereign exception that distinguishes between politically qualified and politically disqualified lives, in this chapter I argue that trans women of Turkey routinely find themselves in the position of *homo sacer* whose social existence is expelled out of the realm of proper citizenship. I will show the ways through which their governmentalisation by the law (Foucault, 1991; Rose and Valverde, 1998) leaves trans women in an exceptional legality that strips them from their most fundamental rights.

Giorgio Agamben famously challenged Foucault's contention about the distinction of sovereignty (the right of death) and bio-politics (power over life). In *Homo Sacer: Sovereign Power and Bare Life* (1998), he followed Carl Schmitt's 1932 (2005)

definition of the sovereign as the one “who decides on the state of exception” and claimed that “the production of a bio-political body is the original activity of sovereign power” (Agamben 1998, p. 6). In this way Agamben linked the power of the sovereign to suspend the law to the mechanisms of bio-power that distinguish lives which are politically relevant from those which are not. The sovereign power that is able to decide on the suspension of the law and to define the threshold of who is inside and who is excluded from the political community has become the dominant paradigm of government according to Agamben, as opposed to Foucault whose focus was on the positive forms of power as distinct from its negative manifestations. Central to Agamben’s account is the excluded figure called *homo sacer*, the obscure Roman figure that has been literally cast out of the polis and out of the rule of law defined for citizens. Homo sacer, stripped of all political rights, is reduced to mere biological body that ceases to be of any political significance as distinct from politically qualified life.

This take on sovereignty was followed increasingly among Foucauldian circles, especially in philosophy and anthropology. It came to be reflected in a wide range of analysis, from the treatment of detainees, refugees and migrants to the administration in colonial and authoritarian regimes or of the neo-liberal era in a variety of settings. Judith Butler articulated about what she referred as “the resurgence of sovereignty within the field of governmentality” in her analysis of post 9/11 policies (2004, p. 53). She argued that the procedures of governmentality enable and fortify the emergence of the sovereign as a tactic in contexts such as Guantanamo for the aims of managing certain populations who, through the suspension of the law, are taken away from their legal rights and thus dehumanised. Achille Mbembe (2003), studying modernity from the perspective of the post-colonial, suggested the term “necro-politics” to denote this underside of bio-politics which is concerned with the elimination of life in order to

preserve it, i.e. in the name of protecting the life of the social body. Aihwa Ong (2006), in the example of South-East Asia, put forward the notions of “graduated sovereignty” and “variegated citizenship” to underline the differential treatment of populations and the uneven distribution of rights and resources among the citizenry according to their position in the hierarchy of neoliberalism.

Agamben’s account has been criticised in that it misses the concrete ways in which sovereignty exerts its power on certain groups and not on others and that it oversees how exclusionary practices target gendered and sexualised subjects differentially. Catherine Mills notes that Agamben is “not at all sensitive to the gendered dimension” although the rendering of some individuals as homo sacer and attaining others’ citizenship occur through gendered and heteronormative rules (2004, p. 58). Lisa Sanchez, in her reworking of Agamben’s homo sacer, argues that his figure of homo sacer is masculine and its “inclusive exclusion” is made possible through the ultimate exclusion of the figure of the prostitute, “a figure of perpetual motion, elusive and ghost- like, both illegal and impossible” (2004, p. 862). While the male Agamben’s homo sacer retains the possibility of recovery from his outlaw position, the prostitute does not and as such she marks the space of the sovereign power as the “eternal otherness who makes it possible to imagine the inner dimensions of community, politics and nation, and the terms through which subjects can be displaced to the outside” (2004, p. 861). Finally, Sanchez calls for a theory of “differential exclusion” to understand how sexed, gendered and racialised bodies are target by the laws of exclusion partially and differentially, rather than as a once and for all subordinator.

This chapter aims to contribute to these debates with an analysis of the concrete ways through which the law exerts sovereign power on certain subjects in everyday life. I

suggest understanding state of exception as part of the “legal complex” (Rose and Valverde, 1998: 542) that applies selectively to some particular subjects and social groups, while others become subjects of legal power in an ‘ordinary’ way. Although governmentalization by the law does not necessarily presume sovereignty, I argue that it casts some subjects – as in the case of trans women - to the constant and pervasive risk of being reduced to *homo sacers* upon whom a variety of “petty sovereigns” (Butler, 2004) can exert powers of punishment, coercion and death.

Unlike Agamben in whose analysis space, time and body are collapsed and individuals are turned into homo sacers in a nationally homogeneous way,³¹ my analysis directs attention to the multiplicity of legal practices that target trans women’s bodies differentially in particular times and spaces. Austin Sarat (2010, p. 6) has pointed out “the need to think beyond the drama of the sovereign suspension of legality to appreciate the more ordinary ways through which law anticipates and responds to emergency”. In this line, I suggest that instead of opposing legality to sovereignty we need to pay closer attention to the interaction of law with negative forms of power in order to understand the operations of sovereignty in the field of governmentality. My analysis here will show a web of laws, decrees and police conventions that unfold in relation to social dynamics and enable the creation of zones of ambivalence where the treatment of trans women is left to the performance of the authority in question and this happens within as well as in the margins of ordinary legal procedures. Who, when and where will become a target then depends on these performances (Butler 1993, 2004). Moreover, as I hope my account of the lives of trans women will prove, these performances are not singular. Trans women’s accounts show the multiplicity of these

31 Or in a homogenous fashion in a group, see Agamben’s discussion of the camp (1998). In fact this is parallel to his pictorial representation of state of exception in the form of a grid (1998, p.28).

performances and that the ways exclusion is excerpted and experienced are more complicated and able to shift grounds.

This chapter will begin with an overview of sex work regulations to focus to lay the ground on which trans women's interactions with the law in everyday life take place. The following section will then look at the major dislocations and expulsions faced by my trans woman research participants in and out of Istanbul in the last decades as they conveyed me in the interviews. This account will attest that police appears to be the main actor in these displacements and show in the next section that once contained in specific neighbourhoods, trans women increasingly have to move and shift their working places in order to secure survival and minimise police interference into their lives. The final section will show how trans women described what they observe as a change in the forms of police power as it operates on their bodies and spaces, one that moves away from outright physical repression towards deploying other strategies such as not enforcing the law, imposing fines or relying excessively on legal texts and other legal scales. I will suggest that these different police practices speak to different ways of exercising sovereign power and to different modalities of exclusion of citizen subjects, through the interaction of social and legal dynamics that largely surpass the rule of law vs. state of exception divide.

Exclusion of Trans Women from Regulated Sex Work Spaces

The different kinds of spatial exclusions that trans women face in Istanbul bring to the fore the unavoidable linkages between their trans identity and their sex worker status. This makes it impossible to analyse trans women's experiences without looking into the dynamics of sex work, its legal framework and its legal and quasi-legal regulation on the ground as related to trans women. It is, for this reason, theoretically and empirically

necessary to make some remarks about the regulation of sex work in Turkey. This account will show that trans women are legally excluded from regulated spaces of sex work and provide an overview of the common forms of sex work among trans sex worker women in this legal landscape.³²

In Turkey, sex work is not criminalised but regulated by the legislation called “Bylaw about Provisions on Generalised Women and Generalised Houses and Fighting against Venereal Diseases Transmitted through Prostitution”³³ in line with the framework drawn by special codes under “Public Health Law” which originally date back to 1930 and have been modified in 1961 and 1973.³⁴ The substantial part of the regulation deals with the licensing of brothels and sex workers, as well as the procedure for medical examinations of sex workers. After describing the procedure to be taken in case of non-compliance with the provisions, it ends with the social assistance that is to be granted to the women who want to give up sex work, the management of hospitals of venereal diseases and the tax that is to be taken from brothels by the state. According to the regulation, this administrative work is to be carried out by the “Commission against Prostitution” which convenes under the office of the governor.

The bylaw refers to the sex worker as “generalised woman”³⁵ who is defined as “a woman who acquires an artisanship of giving satisfaction to others’ sexual needs in return for profit and who engages in sexual relationship with different men.” These

³² Except for a few studies (Whowell 2010), literature on sex work remains highly focused on women sex workers and the different effects of sex work legal regulations on other groups than female, such as male and trans groups, are rendered invisible along on these groups’ experiences as sex workers. This lack reflects itself in the literature on trans women as well.

³³ Genel kadınlar ve genelevlerin tabi olacakları hükümler ve fuhuş yüzünden bulaşan zührevi hastalıklarla mücadele tüzüğü (30 March 1961)

³⁴ Umumi Hıfzısıhha Kanunu (24 April 1930)

³⁵The term for brothel can also be translated as “generalised house”.

women have to acquire a license, i.e. *vesika*³⁶ that is given in replacement for the sex worker's confiscated identification card. Licenses render sex workers legible to state and its officials, and through the replacement of their identity cards sex workers have their identity replaced by one only as a "generalised woman."³⁷ The definition of sex worker under this regulation sets the limits of who can work in a brothel. It only covers non-trans woman sex workers who serve male clients, thus preoperative trans women and male sex workers fall outside the established rules regulating the operation of brothels. The consequence is that a preoperative transwoman who wants to work legally in a brothel should first undergo the sex change operation and all the related procedure determined by the Civil Code to issue a pink ID card that I analysed in Chapter 5; and only then could she apply for a license.

A careful reading of trans women stories of sex work lays bare how the intricacies of the regulatory framework disadvantage them in ways that go beyond the mere legal texts. Trans women I talked to emphasise the specificities of the construction of male desire for their bodies: most of their clients intend to have (mutual) anal intercourse and having gone through the surgery and losing their penis generates a loss for trans woman sex workers' business appeal.³⁸ The regulation takes for granted and reproduces a heteronormative male desire, and trans women pay for the contradictions between the legal regulation and their clients' demands. While the clients demand to be penetrated by trans woman sex workers, the legal regulations are only intended for opposite sex encounters and in regulated brothels.³⁹ Trans women's entry into state regulated brothel

³⁶*Vesika* literally means "document".

³⁷See Zengin, A. (2007) for a closer examination of the legal regulation of brothel life.

³⁸ Quite tellingly one colloquial term for penis among trans women is "national wealth".

³⁹ In 2001 a change was proposed to this bylaw by the Ministry of Health and Ministry of Interior that would allow trans woman sex workers to work in brothels. The proposal changed the terms "generalised woman" to "sex worker" without reference to sexual identity and "generalised house" to "place of intercourse", and defined prostitution as "the act of engaging in sexual intercourse with various people in

would require them go through sex reassignment surgery, an option not always desired by trans women, yet which would drastically reduce their sexual appeal in the sex industry. What we see here is then the effective expulsion of trans women from regulated sex work spaces.

Under the conditions of the current regime about sex work there exist two domains: licensed and unlicensed sex work. Unlicensed sex work outside brothels is not considered a crime but remains informal. Space matters in the making of the regulation of sex work and informal sex work in spaces other than brothels has a highly ambivalent status. Almost all trans woman sex workers who do not fit the image of the “generalised woman” navigate through spaces that are regulated mainly by bylaws in an ambivalent manner.

Trans women strive to overcome this ambiguity by searching for and investing in forms and spaces of sex work that they conceive as more stable and less risky. Working in trans brothels was by far the most preferable option among my research participants. These brothels are designated only for trans woman sex workers and have illegal status for the reasons I counted above. All my research participants, especially elderly ones, had worked in this kind of brothels and although until the 1990’s there were a number of specific streets allocated solely for this purpose in Istanbul, nowadays there is only one street, in the district of Beyoğlu. At the moment of our interview, Melisa was

exchange for financial benefit” (Ercan 2001). This proposal went through the Council of State but was dismissed by the Prime Ministry. About the reasons of the dismissal of the proposal, media articles focused on the using of the term “sex worker,” which gives us clue about the biopolitical reasons lying behind the regulation. In *Hürriyet Newspaper* of 7 January 2001, a high level chief of police declares: “No transvestite will ever be given the right to work in brothels. Anal intercourse is against our traditions. The state cannot invite people to engage in anal intercourse... How can such a thing happen? How can men who appear as women be allowed to work in brothels? God forbid! Anal intercourse is against our customs and traditions. We will never ever grant transvestites brothel rights. The regulation that foresees homosexuals and transvestites to work in brothels will not be legalised. It was a draft in any case. Can a state allow such perversion? The state will never pass a perverted law.”

working in this brothel.

Working in ‘trans clubs’ seems to be another preferred option. Gönül Anne, Handan Anne and Melisa had worked in trans clubs at different points of their lives. Banned to run any sex work-related activity at the club, my research participants were hired as a *konsomatris*⁴⁰ and their work consisted of accompanying the client and motivating him to order the required amount of food and drinks designated by the club. Then they would be allowed to leave the club with him and provide sexual service on their own terms. Melisa considered this form of sex work to be her first preference as it is one of the safest forms of sex work:

The club setting fits me. It does good to me. On the streets there is always a conflict. You escape from the police. You escape from the people. Anything can happen to you. But there are fewer risks at the club. It is more guaranteed. [...] Finally your place is known. The place you take [the client] is known. So you are more comfortable.

The number of trans clubs however has been decreasing in the last years. Most of them closed down or switched to hiring only non-trans women, according to my participants.

In this context, the emergence of the Internet has meant the possibility of developing new spaces to find and communicate with potential clients for my research participants.

The two participants who were sex workers at the moment of our interviews, Derya and Melisa, mentioned that they used cyberspace to arrange their clients. To do so, they

⁴⁰ “Statute on Places which are to be opened by permit” and “Statute on Licenses to Open and Operate Business” are two legal texts which directly regulate these venues. These statutes forbid sex work but allow *kons* at nightclubs. *Kons* refers to the accompany of women workers to the male clients at their tables at the night clubs, where they provide service to the client in the form of conversation.

signed up in particular profile websites where their photos and contact information are displayed. Both said that while some sex workers go to the clients' place, they preferred to call them home for security reasons. Because they usually do not see the customer until they meet, they want to stay in their place, and usually one of their housemates would stay at home to keep an eye on. This situation, however, also changed sharply with the introduction in 2007 of Law No. 5651 on the Regulation of Publications on the Internet and Suppression of Crimes Committed by means of Such Publication". As a result of this legislation, many web sites that Derya and Melisa were using to meet their clients were blocked, which in turn nearly nullified their possibility advertising for their own sex work. Derya said: "It was good to find clients from the internet. But now they deny access to our websites." This has the net effect of driving trans women away from what effectively is a less risky form of employment towards street sex work or *çark*, as the final sex work modality and space is called in trans women's slang.

Çark consists of stand-alone sex work by waiting on particular streets and taking clients to a nearby *kolievi*.⁴¹ This form of sex work was clearly the least preferable option for my research participants as some of their accounts above already hinted to. They depicted how this form of sex work renders them more open to violence of clients or community groups, to theft, assaults or other kind of attacks as well as to interventions of the police – which in turn encourage and intensify the former kind of violent acts.⁴² However and despite the risks, the lower chances of being hired by trans brothels and clubs and the decreased possibility of finding clients on the Internet, had meant that all the research participants involved in my study were led to do street sex work

⁴¹ *Kolievi*, literally meaning in trans women's slang "house of intercourse" are houses where trans woman sex workers can rent rooms for short terms. These houses are usually run by trans women who themselves are sex workers or were once.

⁴² See Sanchez (1998) for similar dynamics on the illegal status of female sex work and Hubbard and Sanders (2003) for tactics which female sex workers use to resist these acts of violence.

occasionally if not regularly. This dilemma prompted by the different scales of the spatial regulation of sex work, which pulls and pushes trans women to and from street sex work, underlines the discussion that follows in the next sections.

Collective Displacements and Exclusions from Neighbourhoods

In the 1970s, while Bülent Ersoy was making a name for herself, the Beyoğlu district of Istanbul had become the centre of queer lives in Turkey (Öz, 2009; Yüzgün, 1993). Besides ‘gay’ bars, parks, and Turkish baths of the district, the life on Abanoz Street had been flourishing. Originally home to the first legal brothels of Istanbul opened in 1884 under Ottoman rule (Wyers, 2013), Abanoz was a lively centre for trans sex work in this period. The paths of Gönül Anne and Handan Anne had crossed in the trans brothels of this street in the 1970s, when both of them, who did other forms of sex work until then, begun working in Abanoz’s venues through the invitation of other Beyoğlu trans woman friends. Gönül Anne’s words captured the extent of sex work in Abanoz Street in those times: “Those who came from Italy to work here. Those who came from France. Those times there was Soviet Socialist Republic, the iron curtain countries, there were people coming from there, from Yugoslavia, from Bulgaria. There were transvestites, transsexuals who came from Greece and worked here.”

In the memories of these two trans women, who were in their mid-fifties when they told me their life stories, Abanoz Street offered trans women the physical and social space necessary for collective living and working outside conventional ties and sociabilities. The years that Gönül Anne and Handan Anne spent among other trans women in the Abanoz Street of Beyoğlu marked a turning point in their lives as they signify a moment when they became self-legible to themselves, found means to identify themselves as trans and viewed themselves as a community and a big family. Gönül Anne,

remembering those days, told: “We had a communal way of living. There was sharing at that time. There was trust.” Both emphasised not only their good relationships with each other in the trans community but with their neighbours and even with law enforcement officers: “I mean this was such a free country. There was police oppression, but not like now.” Her nostalgic description of those times underlined the diversity and the harmony in their lives at the same time:

We were so good with the people. It was so beautiful those times. It was great. All those Romanians, oh my God, those neighbourhood relations, I cannot tell. We would drink tea until the morning. There were security guards⁴³ those times: ‘Girls, let’s prepare tea.’ Armenians, Greeks, Assyrians. The relationships were so beautiful. [...] We were living our body language freely. We used to put our carpets to the streets and with those gypsies, *ooohh*, we used to have fun until the morning, go to the cinemas... It was such a culture.

The golden days of Abanoz came to an end when the street was emptied by the police forces in 1978. In the narratives of trans women who witnessed this evacuation operation, it has been personified around the figure of Saadettin Tantan, then chief of Istanbul police. Gönül Anne remembered: “The man [Tantan] initiated a big operation. He filled municipality buses with clients and took them to the police station. [Abanoz] ended. The houses were shut down. A history closed. He finished it.” The operation was marked by the high levels of police violence. Handan Anne said: “So it was closed. We were subjected to so heavy tortures. One of our friends peed blood. The man who was in

⁴³ “Bekçi”, a kind unarmed police officer assigned to specific districts to maintain security. The position was abolished in 1985.

the morals office then and nicknamed ‘scourge’ had done that. He made us suffer to the bone. Tantan closed it. He rooted Abanoz out.” With the evacuation of Abanoz Street, the sense of spatial stability and fixity that was brought into Handan Anne and Gönül Anne’s lives was broken. Trans women’s expulsion from Abanoz Street scattered them away from each other and from the city centre, and even to the rest of the country. In Gönül Anne’s words, “We all had to disperse. Some of us to İzmir, some of us to Kırşehir to be a *köçek*,⁶ some of us began working in a hit and run style even in Tokat.”

One of the most symbolic attacks against trans women of Istanbul took place following the closure of Abanoz Street at the dawn of the coup d’état of 1980 in the form of a forceful deportation out of the city. This attempt unavoidably brings to mind Agamben’s homo sacer as an epitome of expulsion of outcasts out of the polis (Agamben, 1999: 42-43). Amidst the announcement of state of emergency an increasing political violence in the city, trans women were detained one night by the police for around five days following mass arrests before being forcefully taken to the train station to be sent out of the city. In the words of Gönül Anne:

They filled all of us into a coach. Also to the one next. Whatever... We are waiting for the departure of the train. But what are we going to do, where are we going to go, what is going to happen? We don’t know anything. We are just there, asking each other, in panic, without knowing what will happen to us... [...] The train departed. The doors closed automatically. The doors have been locked. You cannot go out. We are looking out of the windows. In that moment, I remembered that movie, Cassandra Crossing [...] Just like in that movie; I think to myself

‘we are going to death.’

Gönül Anne’s remark about *Cassandra Crossing* here is a case in point, with its reference to the biopolitical concern that underlines the plot of the movie and its complicated relation to the eradication of those who are seen as threats to the health and well-being of the (bio)political community. Gönül Anne survived this deportation attempt by jumping out of the train with another friend and returning to Istanbul hitchhiking on the highway, yet she saw some of her friends for the last time on that train. She said:

We have friends whose dead bodies we couldn’t find. We have friends from whom we never heard about, although one expects that they would return, even after years, and appear in a hairdresser, in a club, somewhere. But there are many friends that we have lost. I believe they were killed.

On September 12, 1980, the Turkish Armed Forces staged a coup d’état, toppling the government and outlawing all kinds of political activities. Gönül Anne was just back from her work at a gazino early in the morning when she heard about the declaration of the military coup. In sheer contrast to her description of pre-coup Istanbul as a place of armed clashes, political demonstrations and massacres, she narrated the day of the declaration of the coup d’état as “silence”: “My relation to life was cut for three days. There were only children on the street. The voices of little children were coming. Neither a car sound, nor a horn sound; no screams or noise. The city had wrapped itself into a grand silence.”

One of effects of the military coup that Gönül Anne and Handan Anne—who was back to Istanbul by then- emphasised the most was its influence on their sex work, working

times and spaces. They had to go on working in order to live, like Gönül Anne put it:

Because the landlord doesn't understand from the coup d'état, electricity doesn't understand from the coup d'état, neither do bread, water. Your other expenses, 'military coup was declared', don't understand. These are all stuff that work through money. You cannot say to your market, to your butcher, to your rent, to your bread, 'Aha today coup was announced, let's manage me.' You have only one thing to do, just like today; you have to do sex work.

The increased level of power given to the martial law governorship and the police led them to constantly change their working spaces to assure security and survival. Handan Anne recounted: "Those were bad days. We work hit and run, from one place to another one to survive." Gönül Anne said: "*Kelle koltukta*. Some of us worked in Belgrad Forest, some of us to the other side,⁴⁴ because we had to continue living *kelle koltukta*."

The aftermath of the 1980 coup was a juncture of the liberalisation of the Turkish economy and the large-scale repression of the leftist movement and the Kurdish insurgency. Istanbul had become one of "the privileged sites of the valorisation of neoliberal policies, implementations and strategies" (Bartu Candan and Kolluoğlu 2008, p. 9), while the police force's scope of authority was widened through legal amendments by the first post-coup government. The immediate impact of these rapid neoliberal/violent transformations filtered into trans women's lives through the destruction of Beyoğlu's Tarlabası neighbourhood as part of a large-scale urban project. Trans women, who had tried to find refuge in Tarlabası after their expulsion from

⁴⁴ She makes reference to the Asian part of Istanbul

Abanoz Street and comprised a considerable proportion of its population at that time, were once again forcefully evicted. Displaced and diffused throughout the city, trans women had been urged to regularly circulate in the city to assure security and survival, while their individualised bodies became open targets of the governmental violence that strives to oust them from public spaces.

Trans women's working and living places, despite lacking that strong sense of communitarian existence, continue to be direct targets of the exclusionary violent attacks that marked their forced relocations in past decades. Derya, who mainly does street sex work, shared one of such experience in Şişli, another central neighbourhood in Istanbul just next to Beyoğlu, in 2009. There was, she told me, a kolievi in a street of Şişli where she used to take her clients. After some threats, the kolievi was suddenly attacked by a neighbourhood group and trans women were cruelly beaten. The house was raided and the properties in the house were thrown out of the windows and burned on the street. As a result, the kolievi had to be closed. In the same days, Derya was beaten in the same neighbourhood by men that she had seen in the street of the kolievi before.

An element emphasised by Derya in her narration marks a central point for my argument on the changing ways trans women's bodies, spaces and times are governmentalised and rendered bare. What was crucial for her in both of the attacks was that the police stood by and watched, or took hours to arrive at the scene upon trans women's calls, while all this violence was happening – a *modus operandi* that LGBTI sources have denounced in other parts of Istanbul and Turkey.⁴⁵ Telling about these

⁴⁵ LGBTI organization Kaos GL reported similar incidents in Avcılar, Istanbul and in Ankara in Eryaman where trans women had to leave their homes and belongings behind and reported inaction of the police (Kaos GL 2007, Öz 2009).

brutal attacks, Derya expressed her conviction about the role of the police in the way the events unfolded: “In my opinion most of them [the attackers] are friends of the police. It is the police who make them do this. For us not to work there. This is my opinion and I am sure it is like that.”⁴⁶ Looking back at Gönül Anne and Handan Anne’s stories of violence and exile, what Derya’s observation transpires is a novel function that is fulfilled by the police in trans women’s spatial exclusion, and a different way of experiencing the performance of sovereign power in their lives: instead of actively participating in the operations in a physically violent manner as Handan Anne and Gönül Anne depicted, she described a police that refuses to impede the violence against selected victims, that does not respond or intervene in the face of it and that possibly participates in their orchestration as accomplices of those informal groups that appear as direct perpetrators. Below I examine this younger generation’s narratives in detail in order show the multiple ways through which they are targeted and excluded from public spaces by legal authorities through their trans and sex worker identity.

Exclusion from Public Spaces

The previous section followed the narrations of trans women in order to trace the recent history of Istanbul’s urban space as recounted from the perspective of trans women. Their emphasis revolved around issues of dwelling and use, as well as of their exclusion from Istanbul’s neighbourhoods. Violence and the role of police forces therein were recurrent in these stories, and I identified two roles in which police feature over trans women’s daily lives and spaces: being direct perpetrators of violent attacks against trans women and acting as bystanders to such attacks. Both of these forms of police power

⁴⁶ “Birçoğu da polisin arkadaşlarıdır bence. Onlar yaptırıyor. Bunlar burayı çıkmasını diye. buna da ben öyle kanaatliyim ve eminim ki öyledir yani.”

appear to be easily classifiable outside the normatively drawn boundaries of lawful action (namely in a legal vs. illegal dyad). There is, however, a further shift that trans women detect and express in talking about the ways through which they become subjects of oppression by the authorities, which precisely is an increasing reliance of the police on ‘the law’ in order to ban their sex work practices and banish their existence from public spaces. In this section I look at two of such shifts trans women told me that are underlined by a move away from actively inflicting violence towards containing them through legal means such as the imposition of fines and turning them into defendants at the courthouse. This move, I argue, points to different ways of exerting sovereign power and governing subjects and spaces not through suspension of the law but on the contrary, through calling and activating law in a systematic, differentially targeted manner.

The prevalence of the police power in trans women’s lives as well as its changing forms of application were evident in Derya’s narrative and in its organisation. Her account of her life in Istanbul was clearly demarcated through time periods each of which she equalised with different forms of police treatments she was exposed to on the streets of Istanbul. One of such periods was her first years in Istanbul, during the late 90s:

In the 90s I was subjected to such tortures. Very heavy tortures. For instance my... There was Şişli [police station], the eighth floor. I never forget that. When they took me there, once it was even with a friend, I was tortured. They wash you with pressurised water, and make you wait until the morning, on a winter day, completely naked, until the morning, in tiny detention rooms, in an awful condition where people –excuse me– pee and poo, where they put

people who committed murder, murderers, they put us to the same place and you do not realise the arrival of the night nor of the morning. I stood there for two days.

The 2000s marked, in Derya's narration, a period of different form of police violence:

In the 2000s this happened. Torture is still going on. This time they gave up police stations and began to leave [us] to the streets. This time they dumped [us] to the streets. Being beaten on the streets began. They used to tuck you in the police car and after beating, dump you to Belgrad forest. Imagine it is midnight; let's say you are on work at three o'clock at night. He doesn't take you to the police station, but leaves you to Belgrad forest. You're all alone, in the forest. [...] No one cares whether someone passes by there, a murderer, someone kills you there. Because he already dumped you there.

Other research participants shared similar stories about how the police used to detain and torture trans women in police stations, and then shifted to carrying them in police cars to the outskirts of the city and dumping them there out of the cars. This out-of-record detention and removal of trans women's bodies from city centre to the suburbs, as opposed to temporarily confining them to police stations, left trans women more vulnerable against police as well as other kind of violent acts as they had to return to the city by hitchhiking on the freeway. Derya commented "It is better if he takes you to the police station. You prefer that. You say 'I will stay there for two or three hours or until the morning. I stay and go out.' But this time, this kind of a torture. For us not to go out to the streets."

In more recent times, trans women that I interviewed underlined a further visible change in the strategy of police to remove their bodies from streets, one that has been linked to a significant modification of the legal framework for the governance of the use of public urban space in Turkey. “Now we don’t live the same things but this time the fines make us suffer to the bone”, Melisa said. She refers to fines issued under the 2005 Law on Misdemeanours (LoM)⁴⁷, regulating civil orders and granting local authorities powers to deal with minor offences considered to be likely to cause harassment, distress and nuisance. As Yılmaz describes, with the introduction of LoM some former felonies have been redefined as “misdemeanours”, which “can be considered as unimportant social infractions” (Yılmaz 2005, p. 38). These felonies thus lost their “criminal” attribute, but remain unlawful and have been relocated to a different jurisdictional arena, to be negotiated by “law” branches other than criminal law courts.

LoM authorises the police to deal with a series of these misdemeanours –gambling, drunkenness, excessive noise, occupying the street, failing to disclose one’s identity to a public official or polluting the environment, among others. The vaguely defined offenses couple with the loosely defined aims of the legislation, stated as “to protect public order, general morality, general health, the environment, and the economic order”. The vagueness of the language law is significant here in that, through the ambiguity encoded in the law, the agencies trusted the implementation – namely police officers – are given a wide license to decide not only what “general morality”, “public order” or “general health” mean, but also how they are to be protected and who and how commits a misdemeanour by disturbing them.

As Melisa’s remark anticipated, this has not been un consequential for trans women’s

⁴⁷ Kabahatler Kanunu, no. 5326 (March 2005)

work and use of the public urban spaces. My research participants reported intensified police intervention into their lives with reference to this law, but with fining as the most pervasive tool. They emphasised that police officers routinely issue them fines, imputing them by clauses as varied as “disobeying the lawful orders issued by authorised agencies with a purpose of judicial procedures or in order to protect public security, public order or common wealth”⁴⁸; “making noise with a purpose of disturbing or breaking the peace of others”⁴⁹; “disturbing others to sell goods and services”⁵⁰ or “unlawfully occupying street”⁵¹. One single fine is around 100 TRY⁵² as of September 2015, and trans women told me of being fined excessively and on occasions, even more than once in a day. Melisa, for instance, calculated to have paid 3,000 TRY in fines by the time of our interview. Stories of other women who have accumulated fines to the point of being unable to pay them were shared as well. Gönül Anne mentioned a friend of her who had around 5,000 TRY of fines due to pay and whose debt continuously increases because she keeps being fined and due to the interests that add to the ones which she already cannot pay.

These pecuniary penalties thus operate in a twofold way as a check on trans women’s conduct and public performances. On the one hand, they target the public presence of trans women; on the other they function as an impoverishment mechanism and a form of economic violence over them. Moreover, both punitive effects feed each other back. As they hinder trans woman sex workers’ capacity to work, they simultaneously force them to surrender at least some part of their income in form of fines. As such they condemn trans women to a vicious circle of being fined and doing sex work in order to

⁴⁸ Kabahatler Kanunu, no. 5326 Article 32

⁴⁹ Kabahatler Kanunu, no. 5326 Article 36

⁵⁰ Kabahatler Kanunu, no. 5326 Article 37

⁵¹ Kabahatler Kanunu, no. 5326 Article 38

⁵² 1 TRY is equal to 0,29 EUR as of September 2015

be able to afford these fines. As a matter of fact, after being fined by the police trans women have to go back to the streets to pay the fine and compensate the lost. It would be wrong to assume, however, that these fines inflict only economic harm. The unremitting and cumulative force of police fines has also the capacity to leave its imprint on body and well-being of trans women. Cansu, another young trans woman who has lived through the LoM years, pointed further to how their bodies do not remain untouched by these fines:

I know of a winter night when I was fined four times and lost exactly 368 TRY in fines. It's deadly cold outside, my feet are freezing and among other thousand kinds of difficulties I had to go to the street again. That night I was at the street for 7-8 hours. I couldn't get out of the bed the next two days because of muscle pain. Imagine.

Trans women narratives make clear, first of all, that in the routine of Istanbul police forces sex work and waiting for customers on the streets emerge as a routinised target of the enforcement of misdemeanour legislation – despite sex work not being criminalised in Turkey. Yet what is more relevant for my argument is that fines are applied to trans women not necessarily through their status as sex workers but mainly through their trans identity. Trans women are being fined for acts such as walking on the sidewalk or standing in a street corner. Their mere existence in the public space at any time of day or night in other words, is labelled by the police as unlawfully occupying the streets, disturbing or breaking the peace of others or disobeying orders of police officers. In words of Derya:

Now they came up with this idea of fining! Whenever they see you

on the street, it doesn't matter if you are out for sex work or shopping or hanging around. They fine you accusing you of occupying the street, preventing the police from fulfilling its duty, whatever...

The police do not only refer to LoM to legally control trans women's public presence. They also make use of higher levels of law, such as the Criminal Code, and fill lawsuits against them on such charges as insulting police officers, deliberately resisting them or preventing them from fulfilling duty. Derya shared an incident she experienced some time before our interview, where she was targeted and harassed by a police officer in her car:

Look at the violence I experienced from the police some days ago. We are sitting in our car with a friend of mine. We are sitting in our car. Waiting for someone. 'Get out of the car! Out!' He has pepper gas in his hand. 'Get out of the car!' 'Aaa!' I said, 'why the pepper gas? Put the pepper gas down' and closed the window. [...] As soon as I said that, 'is it you who says that?' [...] And now he filed a criminal report against me. And the charge is this: I prevented him from doing his job. I insulted him.

Almost all the trans women I interviewed had gone through a number of criminal cases of similar kind, some still pending at the time of our interviews. Most of their appearances at the courthouse were driven by similar interactions with the police, and in most of these cases they were prosecuted based exclusively on police allegations. Some of these allegations related to their sex work practices, some were just aimed at trans women's public appearance. The amount of these cases my research participants had

reveals a judiciary that is systematically called upon by the police into the lives of trans women in order to work actively for their management in the urban space. Derya counted: “I have... I have 2-3 cases that go on at the moment. But if I count the earlier ones, they would make around 15-20. All of them are about the police.” One of these cases was prompted by the incident I recounted above. In another one, Derya had been accused of indecent behaviour on the basis on the report of a police officer who claimed that she was seen naked on the street. Derya was found guilty by the court and sentenced to six months by the local court of Şişli. Handan Anne has been tried several times on charges of running an illegal brothel and found guilty in her last trial. Her imprisonment sentence was suspended for five years and at the moment of our interview she was in the second year of this probation period. Cansu had been condemned by the same offence and also was going through a suspended jail sentence. Derya’s narrative, structured around the changing ways she experiences police practices, put forward:

Before they used to take and release you after ID check. They used to beat you and hit you with baton two-three or five-six times and release you. Now they take you to trials and they make you crawl from pillar to post. You go to a trial ten times. One single trial! What is the difference? There is no difference. It got even worse. Much worse!

This new mode of harassment, which we could well term legal harassment, has effects on how trans women use spaces and organise their lives and behaviour, while it marks clear lines of acceptable and unacceptable bodies and which of their conducts will or will not be tolerated by the police. Handan Anne closed her kolihouse as a result of her sentence: “I had to close the kolihouse. I cannot risk being tried again. One friend is in

prison now because of reoffending, for 11 months.” Derya felt herself under pressure to watch and control herself in her interactions with the police when on streets, concerned that any act, any utterance could be used against her in trials:

Because there is this police chief, Aziz Yalcinkaya. He does this to all transvestites. He provokes on purpose. For you to say something to him as to press charges. Now I don't say anything. What shall I do? Even if he hits, breaks, I don't speak out. Because I will have a trial with him now.

The consequences of these policing performances are persistent, and multiply its governmental effects because even when they are not actualised they exists as potential threats for trans women. Both Melisa and Cansu shared feelings of insecurity and fear when they are out on the streets, and Derya told that whenever she sees a police officer out, she cannot help but feel that he will harass her. Almost all of my interviewees mentioned that they refrain from going out and spend as much time as possible at home: “Most of my friends are mentally depressed. We are imprisoned to our houses. Are walking on the street, shoppings misdemeanour?” Melisa asked. The potentiality of the policing actions permeates into their daily lives and puts them under a constant sense of threat and vigilance even in the most mundane daily matters and exchanges.

Conclusion

This chapter disentagled the ways through which trans women have been excluded from formally regulated sex work and public spaces in Istanbul in the last decades, and demonstrated how their life stories can hint to the stages and contours of this exclusion and the parallel changes in the modes in which authorities (particularly the police)

excerpt their governance attempts over them. Specifically, I tried to understand how the condition of *homo sacer* becomes relevant to understanding trans women's lives in light of Giorgio Agamben's claim (1998): the sovereign rule that assumes primacy over all other laws and defines a threshold of who is inside as active citizen and who is excluded, whose life is politically relevant and whose life ceases to be relevant has become a dominant paradigm of government. We have seen the exclusionary work done by police forces in defining the boundaries of proper citizenship by holding the sovereign power to determine who can have access to what parts of the city and belong to the public space and the national body, by articulating the welfare of the citizenry (biopolitics) with practices revolving around sovereignty.

The differences in the treatment of non-trans and trans woman sex workers by the law and the police in Turkey are telling in this regard: The law frames non-trans woman sex workers only in terms of national health, morality and population concerns by an emphasis on their 'controllability' and 'recoverability' through disciplinary mechanisms. Opposedly, the accounts on the policing of trans women make it clear that they are not considered disciplinable or correctable into the social order. Trans women's bodies, instead, are seen as dangers to be contained and circulated in the form of the organisation of public space, health risk or moral threat and are consequently simply banished from public spaces. As such, it is their very bodily existence and performances what turns trans women into targets of police power. With the aim of ensuring the welfare and the security of the 'respectable' citizens, the police hold the power to decide how to approach and treat trans women's bodies or allow the violent ways they may be treated.

Benjamin (1981) argued that police merges "law-preserving" and "law-making

violence”. This means that the police enforce and preserve existing legal provisions but also tend to transgress them and execute alternative ones. We can trace, in the acts of the police, that the performative and the constitutive intersect. Expanding on Benjamin’s discussion on police, it can be argued that these performances undertaken in the name of legal and/or social authorities are also what constitute the sovereign as such. This chapter showed that that these performances of sovereignty are not singular and that trans women become targets of the definitional power granted to the police in multiple ways. Here I argue that to understand the interaction of sovereignty, citizenship and law and the condition of trans women and other subjects who are laid bare – or, as Lisa Sanchez (2004, p. 897) drawing from Agamben puts it, are “extinguished, removed, or erased” – we need to go beyond Agamben’s account where subjects are turned into bare lives homogenously and in a singular gesture of the sovereign and rather address the multiplicity of these performances of sovereignty that are borne out of the interaction of the subjects’ social contexts, their bodily performances and legal texts and practices in different times and places.

When seen from the perspective of trans women’s experiences as they recall them, it is clear that states of exception can be generated in delineated spaces such as camps, national territories or specific zones or by marking the boundaries of a specific moment in time. Their experiences of the 1980 coup d’etat can be a good example to illustrate this. While it is thought as a national state of exception delineated temporally, turning Istanbul into a complete site of exclusion for certain subjects to the point of deporting them out of the city shows the complicated ways in which space and time interact. A way that people are rendered to the status of homo sacer may come through the privileging of violence in containing bodies while simultaneously being immune to any repercussion such as the narratives of exclusion that Gönül Anne and Handan Anne

transmitted. Another way to establish sovereign power and inflict exclusion can be through outsourcing repressive efforts to informal groups and negating requests for aid than directly inflicting violence on bodies and spaces as Derya and other trans women's accounts on police inaction suggested.

Based on the experiences of my research participants and the shifts they observed and articulated to me about the ways through which the police apply its power over their everyday lives and spaces, this chapter also showed that constitution of sovereignty over trans women happens not only through not enforcing or suspending the law but, on the contrary, by calling unremittingly law and establishing an overwhelming presence in lives through legal means such as misdemeanour orders, fines and trials. I suggest that this cannot be considered as a suspension of law but is a state of law as it is experienced and embodied by trans women. By addressing the public visibility of trans women by the means of fines or by taking trans women to courts police does not "erase any legal status of the individual, thus producing a legally unnameable and unclassifiable being" as Agamben describes his homo sacer (2005, p. 3). On the contrary, trans women find themselves hailed as subjects of law by constant references to legal texts of different scales and by occasionally being turned into defendants in numerous trials.

That these modes do not enforce outright physical repression, the chapter further argued, does not mean that they are not experienced or embodied as violence, suppression or exclusion. Pecuniary punishments illustrate this point. Recent literature on fines had underlined an understanding of this form of penalty as a monetised risk management tool that does not seek to punish but to distribute the risk of offending among aggregates of population through actuarial calculations (O'Malley 2009). Trans women's accounts, however, show how a legal technology as the fine can mediate other

relations of subjection and domination than those suggested by O'Malley (2009). They function, instead, as a mechanism which is underpinned by norms of gender and sexuality and which simply remove and banish bodies from public spaces due to their non-normative gender identities and sexualities. Moreover, the effects of such legal means are not always far from corporal forms of punishment and are felt on the very key sites of sovereign power: the liberty and the body.

Finally, the narratives of trans women I interviewed conveyed the pervasive and insidious entanglement of trans women and their everyday lives by the police. They described how police maintains its governmental aims and recreates its power to limit trans women's access to public spaces in an effective manner with its presence in their everyday lives. However, it would be wrong to assume that trans women are passive objects of these interventions. The struggles that they have been giving over the space in Istanbul and the experiences that they gathered throughout these struggles continue to shape their subjectivities, their relation to each other, to the law and to the state. In the last chapter of this thesis I will return to this issue and look at how trans women resist their legal entanglement by cultivating alternative knowledges about the law and the state by means of their experiences. Yet before that, my attention turns in the next chapter to the experiences of trans women at the courthouses, one of the other most important sites in which law materialises in their daily lives and their perceptions about law are solidified in contemporary Turkey.

CHAPTER 7

‘LAW FROM ABOVE’ AND ‘LAW ON THE GROUND’: EXPERIENCES AT THE COURTHOUSE AND CONSTRUCTIONS OF LAW

In this chapter I look to the ways trans women talk about their experiences at the courthouses, how they view the judicial system and legal professionals generally and how they use specific tactical knowledge to deal with their conflicts based on these perceptions and experiences. All trans women I interviewed had some experience with the courts throughout their lives in Istanbul, although the reasons for their interactions with the judiciary varied. Most of them were related to sex work practices where they appeared as defendants based on police allegations, as discussed in the previous chapter. In few other cases, they were tried following other criminal allegations or were plaintiffs in cases involving the police or other parties.

The relatively novel literature on legal consciousness suggests a useful framework for an exploration of law from the perspective of actors’ experiences. This approach, which dates back to the 1980s, represents a move from looking at law as an institutional structure to investigating the ways in which law is received, used or avoided by social actors in order to understand how law sustains its institutional power and durability. This line of studies has demonstrated that lay people, instead of passively accepting hegemonic discourses/images of law, develop in a variety of ways multiple and complex meanings about it. Empirical studies have explored how these meanings are connected to ordinary citizens’ everyday life behaviour and how law reproduces itself as a

meaningful category of social practice (Sarat 1990, Ewick and Silbey 1998).

In their influential study of the ways New Jersey residents narrate their everyday life stories with the law, Ewick and Silbey deploy the term “legal consciousness” as “the ways in which the law is experienced and understood by ordinary citizens as they choose to invoke the law, to avoid it, or to resist it” (Ewick and Silbey 1992, p. 737). Looking into “commonplace stories of law” (Ewick and Silbey 1998), the authors delineate three types of legal consciousness, each of them associated with a particular set of perceptions and actions towards law. This tripartite classification comprises of “before the law”, “with the law” and “against the law” schemas. While the first one represents an understanding of law as a reified source of grandeur and principles, individuals who display a “with the law” consciousness tend to see law as a game and utilise it as a resource in pursue of certain aims (Ewick and Silbey 1998, p. 48). Finally, the ones who are “against the law” are those who remain critical of law’s hegemonic notions and thus are not likely to make claims or use the law but develop tactics to resist it largely through scarcely perceivable manoeuvres (Ewick and Silbey 1998, p. 48–9). Based on this framework, Ewick and Silbey predict that members of marginalised groups will generally be against the law, although they do not systematically analyse their data by social status (McCann 1999). These differing modes of consciousness, Ewick and Silbey concluded, constitute law’s hegemony despite its inability to live up to its ideals.

The relatively more recent body of work that addresses legal consciousness of LGBTI people has been crucial in understanding LGBTI people’s perceptions of and attitudes towards the law (Connolly 2002, Hull 2003, 2006, 2014, Harding 2006, 2011, Richman 2006, 2014). Studies on LGBTI legal consciousness have demonstrated the diverse

meanings that the law attains rather than one single overarching image among LGBTI people, and made important contributions to the legal consciousness literature both in theoretical and empirical terms (Hull 2014). Rosie Harding's (2006, 2011) study of legal consciousness in the lives of gay men and lesbians, for instance, relied on an innovative methodology that combined qualitative responses to an online survey, published personal narratives and in-depth interviews. Harding demonstrated that Ewick and Silbey's account scheme remains limited to understand gay men and lesbian's oppositional stance towards the law and put forward three other ways of conceptualizing resistance: stabilizing, moderating, and finally, fracturing resistance (Harding 2011, p.46-47).

Notwithstanding its important contributions, the focus of this literature has been unfortunately limited to gay and lesbian populations, and questions around trans people's legal consciousness as well as those of bisexual and gender variant groups remain largely unaddressed. Trans people face different obstacles in a variety of institutional and cultural settings which cannot be subsumed under LGBTI umbrella and require an engagement with trans people's day to day lived experiences (Namaste 2005, Stryker and Whittle 2006, Hines 2007). Another limitation of LGBTI legal consciousness studies has been the tendency to frame research questions around specific themes such as gay and lesbian families, partnership and parenthood recognition, and formal equality. This theme-based approach usually confined inquiry to questions that pertain to gay and lesbian people's specific and isolated interactions with the law, and as Hull (2014, p.569) states, has hindered the development of "broader portraits of the place of law and legality in the lives of marginalized social actors."

In this chapter, I follow Ewick and Silbey's (1992) definition of legal consciousness for

my analysis of trans women's talk about their experiences at courthouses. However, while Ewick and Silbey sought to provide an overall theory on legal consciousness by departing from the question of how the law sustains its institutional power, this chapter focuses on the experiences of a particular group at the courthouses and aims to understand how these experiences produce and reproduce particular perceptions about the law without presuming law's legitimacy in their lives. In her 2005 essay "After Legal Consciousness", Silbey criticized the way legal consciousness research has been exhausted and argued that the approach has lost its critical edge by shying away from explaining the question of the hegemony of the law. While I agree that it is important to approach that question, I also believe that taking it as a starting point involves empirical and conceptual flaws that may lead to capturing less of the complexity of legal consciousness of groups like my research participants. Rather than presumed, overestimated and/or imposed on research participants or the data, I argue that the question of legal hegemony should be left open to be investigated empirically from bottom-up. This move also helps us to capture better the dynamics in the construction of particular context-specific understandings of law and legal consciousnesses of marginalised groups, which remain limited in Ewick and Silbey's schema (Abrego 2008, Boittin 2013, Hernandez 2010).

My research participants were quite vocal and straightforward in expressing their scepticism towards the law. The overarching image of law that appears in their narratives based on their experiences with the judiciary is primarily as an instrument of those in power. Aligning with the powerful, it is a law that routinely evades and falls short of fulfilling its own promises of impartiality and autonomy and fails to deliver justice, as well as one that exists within a tension between the functions it actually serves and those it is meant to serve as a framework of rules within which certain social

needs can be met and justice achieved. Moreover, in trans women's account, law almost exclusively appeared in relation to other notions such as state, locality and informality and cannot be accounted for without taking into account its dependency to such notions. This poses a further challenge to legal consciousness literature which usually takes the law as an autonomous field despite its critique of 'law-first' formalist jurisprudence and of law's own claim for autonomy.

The chapter will begin with a focus on the accounts of Derya and Melisa who found themselves at courthouses for different reasons in order to illustrate two different yet connected components of the perception of law by my research participants: one that constructs law as an exercise of power from above at the discretion of state officials in order to achieve domination and regulation as it deems appropriate; the other one that describes it as an instrument of powerful groups or persons that is laden with informal modes of conduct and can be manipulated towards one's interests 'from below' by exploiting local connections and other forms of social, economic or symbolic capital. As trans women usually find themselves out of these networks and instead feature as a target of law, a sense of marginality remains pervasive in their interactions with the judiciary.

The chapter will conclude with a focus on trans women's search for ways to manage the workings of the judiciary and what they consider as its often unjustifiable decisions. Upon this analysis, I will claim that, despite the general modes of working of the courthouse excluding them, trans women still acknowledge limited opportunities at the courts for them to influence the implementation of laws in their favour through various tactics deployed during their everyday interactions with legal institutions. Depending on the chance offerings of the moment and on more long-term availability of resources,

they actively engage in different constructions of legality and manoeuvres in order to achieve certain objectives – these vary from calling for top-down implementations and enactments in line with formal/legal criteria to getting things done bottom-up through personal and informal means within the or outside the courthouse.

Conclusion

This chapter examined the ways trans women experience the judiciary, assess its workings and dwellers and, in turn, develop their own sets of practices on the margins. It showed that trans women considered the judicial system, on the one hand, as an instrument of domination and regulation controlled by the state. In this imaginary, legal professionals were seen as mere transmitters and enactors of state ideology. Law appeared to be organised from top to down reflecting seamlessly the conscious choices of ruling classes and dominant state ideology, ready to break its own rules for the sake of protecting this unity.

The second section of the chapter showed that this monolithic image of law as an external force practiced from above was complemented with a more complex, multi-layered, and fragmented picture of the law. In this understanding, courthouse practice was enmeshed within local and informal practices and law could be used by everyone else as an instrument for their own purposes and interests, providing that one has familiarity and extra-legal power to exert influence on legal decisions. As a result, the resources that people are able to mobilise appeared to be at least as important as the content of the legal procedures; and trans women described how people at the courthouse routinely look for ways to influence the law through informal practices. Those people or groups who occupy positions privileged enough are able to make the law “come” and “work in one’s favour” – a position trans women usually find themselves far from.

The despairing picture that the combination of these two prevailing images of the workings of judicial proceedings conveys did not mean, however, that my research participants remained passive recipients of law’s structural and situational power

dynamics. The way trans women move within and around the courts also demonstrated that they have developed a fairly complex picture of the legal system and recognise the existence of spaces that can be activated to get better treatment and a favourable decision. They addressed multiple levels of authority within the judicial system which reveals an understanding of the judiciary as a multi-layered institution with diverse possibly conflicting agendas. What is crucial here is that getting a somewhat more conducive legal environment at the courthouses did not confer legitimacy on the courthouse practices in general or relate directly to the potential for fair treatment trans women desire to receive there. A negative understanding of law and the legal system hold sway and was expressed through a strong disbelief in the institution of law.

This chapter also showed that trans women's encounters and interactions at the courthouses give the abstraction that is 'the state' a concrete materiality and form and they come to imagine and experience the state through locally experiencing the workings of the law at the courthouses. Law is perceived as a part of the state-society relationship and converted into a site of meaning over state where citizenship comes to be experienced and articulated. Trans women feel themselves condemned to a state of injustice due to their trans identity or its consequences such as being cut from their families. Yet this differentiated treatment was by no means passively accepted by trans women. As their accounts demonstrated, their and other's unequal treatment at the courthouses or other public institutions were openly challenged both on site and in different social contexts like our interview, putting into question the taken for granted departing point about the durability and hegemony of law of legal consciousness studies (Silbey 2005).

These findings put into question the "unrelenting faith in and support for legal institutions" (Silbey 2005, p.326) and its centrality for legal consciousness studies. My

work demonstrates that legal consciousness as a way to study people's perspectives and uses of the law retains its importance even when, and sometimes exactly when it does not look into the hegemony of law. I argue that analysing if and how law matters in people's lives without asserting or assuming law's hegemony, durability or legitimacy may be what is necessary to recapture the critical edge of the concept of legal consciousness. Indeed the discussion expands legal consciousness literature also by highlighting the importance of looking into the influence of extra-legal sources of power in people's understandings and uses of law. The application of life story narratives has been crucial in allowing me to go beyond the limited frameworks so far deployed in legal consciousness literature, including those with a focus on LGBTI subjectivities. Following Engel and Munger (2003), I sustain that this methodology that has been not been used very often in the field has potential to enrich and diversify our contemporary understandings and empirical examinations of legal consciousness.

Finally, while the courts impose upon trans women their own definitions of right and wrong, guilty and not guilty, trans women do not only exceed these definitions by drawing attention to flaws in the laws and in their practice and to spaces that lie outside a strict formal and impersonal juridical operation. Trans women do so also by placing their hope for truth, justice and moral satisfaction in other arenas of their social life than in a legal framework. A significant part of this seems trans women's construction of themselves as knowledgeable, struggling and ethical subjects in relation to the experiences that I have been discussing so far. The next chapter concludes this thesis by dwelling on the means through which trans women give a larger meaning to their experiences which they depict as 'painful', strive to make them habitable and become subjects of their own lives through their quotidian labour on their subjectivities and relationships.

CHAPTER 8

'I LIVED AND LEARNED': NARRATIVES OF SURVIVAL, SELF-MAKING AND ALTERNATE MODES OF CIVIC SUBJECTIVITY

Given the encapsulation of trans women's lives by different forms of legal power described in the previous chapters, the question of how they survive and live through these different modes of marginalisation and violence becomes even more pressing. Elaine Scarry, in her influential book *The Body in Pain* (1985), investigated the relation of pain and consciousness to suggest that pain is the disintegration of consciousness, language, and world. According to Scarry, physical pain brings about an "absolute split between one's sense of one's reality and the reality of other persons" (1985, p. 4) and thus is "radically subjective" (p. 50) and "unsharable" (p. 16). Veena Das, by contrast, challenged the view that pain destroys one's capacity to communicate. Arguing that pain is rather a social experience and its expression is an invitation to share and an appeal for acknowledgement, Das in her various works offered alternative ways of understanding the experience of violation, trauma and suffering (Das 1995, 1997, Das et al 2000). In her essay "Language and Body" (1997), she observed that women who were greatly traumatised by the partition of Pakistan and India did not transcend this trauma, as, for example, Antigone did in classic Greek tragedy and instead, they incorporated it into their everyday experience in a way that the very vulnerable conditions of their lives became the conditions on which they grounded their empowerment, resistance and resilience.

A reading of violence, survival and self-making in this vein requires an understanding of

power as not only repressing, demobilising or pacifying, but also as a relation of force that permeates life and is productive of new forms of subjects, desires, relations, and discourses (Foucault 1978, 1980). Reformulating Michel Foucault's notion of "subjection", Judith Butler in her *The Psychic Life of Power* (1997) discusses how power subordinates and simultaneously produces and gives shape to the very subjects that it subordinates: "Power not only *acts on* a subject but, in a transitive sense, *enacts* the subject into being" (Butler 1997, p. 13). This is the double meaning that the subjection carries of having submitted to power and becoming a subject by virtue of this submission. The subject that emerges is however not fixed nor does it precede power relations, but is produced through these relations, which form the necessary conditions of its possibility and "is the occasion for a further making" (Butler 1997, p. 99). Through reiteration of this ambiguous relationship to power of being subordinated and simultaneously being dependant on the condition of subordination to come into being, subject formation takes place in multiple and contradictory ways. Such an understanding of power and subject formation encourages us to locate agency within this productive reiterability and to conceptualise agency, in Saba Mahmood's words, "as a capacity for action that specific relations of subordination create and enable" (Mahmood 2005, p. 18). This kind of a conceptualisation of agency is clearly in contrast to understanding it as happening only external to power and as the relative autonomy of the subject from relations of power.

This account on the process of subjection and understanding of agency speaks very strongly to how we can theorise the lives of trans women that I interviewed and the formation of their selves and life projects in the midst of various forms of deprivation discussed in the earlier chapters. As these chapters pointed, my research participants did not narrate their experiences of violence as described by the literature asserting the unspeakability of experiences which represses and destroys the integrity of the body, self,

and language. In contrast, their narrations were mostly told in quite consistent and articulate manners and with a will to be shared. A sustained finding through the themes of this thesis has been that, although there are oppressive mechanisms that target them, posing trans women's lives as totally "repressed", "passive", or "bare" would be a misconception. Rather, in the midst of deprivation, trans women find various ways of survival, struggle and make their lives inhabitable.

Unlike the Indian and Pakistani women in the analysis of Das (2007), for my trans women research participants the experiences that they call "painful" did not remain in the past but exist as a potential to be realised on an everyday basis. Under these circumstances, these experiences do not suspend "normal" life but have become the normal context for the unfolding of their lives. In this chapter I will focus on the ways through which they cope with deprivation in the urban setting of Istanbul and incorporate the various forms of oppression they experience into their lives as individuals and as a collective. In particular, I examine some of the kinds of selves and expressions of autonomy and agency trans women formulated in their life story narratives in relation to their painful experiences. My argument is that as injurious as the forces that target trans women are, including legal power, they also have productive, constitutive and transformative effects by enabling production and transformation of particular kind of selves, relationships and forms of living.

My focus will be on three of such ways which provided my research participants the conditions of their resistance, resilience and empowerment as they were reflected in our life story interviews: Firstly, I will look to their production of alternative knowledges and resignification of hegemonic meanings about life, law, state and its male citizens. Through this knowledge, I argue, trans women are able to claim an authoritative voice

and construct themselves as citizen subjects who have access to the hidden face of the nation-state. Secondly, I will pay attention to the cultivation of a sense of self by trans women that is primarily struggling at multiple zones of confrontation at individual and collective levels. The self that appears in these narratives is one that aims to achieve a particular kind of ethical purity and integrity, one that they practice on themselves consciously to be ethically good as well as courageous, defiant and disobedient beings. Finally, new forms of solidarity and networks of care emerge next to these processes of self- and community-making, where especially elderly trans women take the role of filling the gaps which are opened up by social exclusion in the lives of each, and educate the young ones into the knowledge and ways of being as a trans (sex worker) woman in the urban setting. In the following sections of this chapter I will be showing how through these processes trans women manage to restore a sense of self and community, reconstruct the world as meaningful, and reclaim their life from violence, which are enabled, also in their own views, by their painful experiences even if their lives have been shattered by these very experiences.

The Poisonous Knowledge

In her work on violence and subjectivity, Das (2000) is concerned with the interaction of production of truth, the power of voice and the will to live left in the aftermath of violent events. For her, exposure to violence provides one access to “poisonous knowledge” by throwing into question the assumptions one had made about life and its qualities (Das 2000). Poisonous knowledge does not simply mean speaking about the traumatic events of the past. It refers to a certain kind of truth that is not accessible in ordinary circumstances yet one that enables to incorporate traumatic events into everyday life and redeem voice, thus rendering these painful experiences meaningful and habitable.

Parallel to the poisonous knowledge Veena Das eloquently describes, most articulate expressions of a point of truth on which to construct a life and an identity in the narratives that I elicited were formulated in relation to trans women's construction of a particular kind of knowledge and of themselves as the carriers of that knowledge. Their narratives suggested that only by undergoing suffering can one seriously comprehend the true knowledge about what life really is and that they are in possession of this knowledge as it has been revealed to them by their experiences. All trans women's narratives conveyed a message that they "did not have all that suffering in vain" in Gönül Anne's terms: "I lived and I learned. I see life from a different perspective now. I understand it. So it was good for me in a way. I understand people very well now."

One common way through which my research participants underlined the importance of their painful experiences in the acquirement of this knowledge was their construction of life as a school. Recounting me their "painful experiences" or "painful days" in their own words, my research participants emphasised strongly that they were not ashamed or afraid to tell their life experiences, as many others would be. Rather, they found these experiences to be the source of the knowledge on which the foundation of their stance on life rests, and a source of empowerment that distinguished their knowledge and identity as genuine over educated and/or conventional wisdom and forms of living:

Life is a school. Because they taught me these. It was not teachers who taught these. It was those men¹, this or that. People taught me. One lira for a bagel² and you learn it. There is no such issue, such requirement as to go to an academician and take a course. I am a

¹ Here Gönül Anne used the word *amca* which means paternal uncle in Turkish and is used to address older men as well.

² This is a reference to an incident when Gönül Anne, as a street kid in her teen years in Istanbul, was approached by a man who offered her money for a bagel and who later raped her

distinguished professor in my own field. Of course. And no professor is able to come and study this school of arts of me. Because there is no such school. You cannot study this school of arts at the life university. No one can. It is very difficult. How well can you act as a prostitute? How well can you act as a trans? You cannot. You can only act superficially. [...] You learn what it means to be fucked by someone only when you are fucked. I wrote their lives. I did this. I did that. Get over with these.

How I was perceived by the research participants shaped our interactions and the presentation of this knowledge and its acquirement by trans women in the narratives. At times – like in the quote above – academic knowledge or the knowledge I was assumed to have gained through university education was contrasted to and challenged by the kind of knowledge they gained through their experiences – in the words of Gönül Anne, in the “life university.” For them, not education but experience was the route to knowledge. At other moments, as it was usually the case in the interviews with elderly trans women who treated me mostly like a daughter, I was a young woman who was there to listen to their story, to be advised on certain topics and to make use of their story not solely for my research but also for my life trajectory.

Not only in inserting their difference to me, but the differentiations which they made between the older and present versions of themselves tracked the route of acquirement of this knowledge. In the former phases of their lives, they described themselves as ignorant, innocent, and weak, while at the present they considered themselves to be more courageous, mature and wise. Their accounts of earlier years were repeatedly used to testify for the lack of knowledge and ability to act entailed by the absence of painful

experiences in the past to draw on. Talking about her first arrest by the police, Melisa said: “I don’t know anything. I never lived this. I am 18 years old, an ignorant. Because I do not know of such pain, I am unconscious about it.” Later in our interview, she would provide a view on how she believes this growing out of ignorance happens gradually, drawing a parallel with my education trajectory:

For years I’ve been running around. Do you know how our circle is? It develops level by level, step by step. [...] For instance you studied; your education went further, you fulfilled higher responsibilities. It works the same way in our circle, my sister. First you have a period of *Kezban*³. You are ignorant. It is like you believe in everything, you do this and that.

Besides numerous references to “being ignorant”, “being naïve”, “not knowing the evil”, “lacking the ability to know whom to trust”, and “believing in everyone” were some of the other common expressions trans women used to describe this period of their lives. In telling these experiences, their emphasis was on their survival despite all physical and psychological suffering, and that they learned valuable lessons for their lives by means of these experiences: “Believe me; I regard myself as a person in her 45-50s because of the struggles of life I gave,” said Melisa who was 28 years old at the time of our interview. When 58-year-old Gönül Anne was telling about her first arrival to Istanbul and the days she was living on the streets, raped various times by men, she underlined how one leaves this ignorant state of being: “Slowly I began to understand what things are. What words are. What numbers are. What life means. I began to distinguish what is what.” Maintaining an image of her earlier self as “an apprentice”, she went on explaining how

³ *Kezban*, a Turkish female name. In slang, it indicates an inexperienced, naïve person.

she learned life: “I always say that you learn life as you are being fucked. Whatever you are, you cannot learn life without being fucked. Certainly *muck muck*⁴.”

So far it should be clear how trans women narrated an understanding of life as a school and of themselves as having been able to get to know life better by means of their painful experiences. But what did the life teach them or what did this knowledge consist of? Very much like what James C. Scott (1992) called “hidden transcripts” that articulate inverse, oppositional values to the social order described by “public transcripts”, the knowledge my research participants laid claim to was a kind of resistant discourse that offered an oppositional, inverted knowledge into “life’s hidden realities”, as many stated. These realities were very much related to questions that were raised by trans women’s life experiences and asked for a re-evaluation of the uniform and immutable conceptions of the life as defined and fixed by the norms of the society. In that sense, their narratives testified for the societal rule’s “hypocrisy” and “discrepancies” and were aimed at challenging knowledge about themselves as well as about family, men, law and the state.

This resignification of the social order involved the knowledge on what it means to be trans or sex worker. In their narratives trans women repeatedly rejected conventional wisdom about their identities and laid bare the truth about themselves from their own perspective. Remember how Gönül Anne, who grew up amongst beatings of her father and grandfather until she ran away from home, pointed to the meaninglessness of resorting to violence to impose gender roles as follows:

There is no sense in oppressing someone, in beating, to make a boy or a girl out of him by force. People are just lying to themselves. It doesn’t happen like that. Samoa Island is so

⁴Typical onomatopoeia for kissing sounds in Turkish

beautiful in the issue of sexual taboos. I mean they should leave everyone in the world to decide on their own behalf. They shouldn't let anyone go out of her own way and cause an accident. Because I liken this to cause an accident and kill people forcefully while they were going only on their own way.

Other trans women also emphasised the irrationality of imposing gender roles upon trans identities, and demanded the acknowledgement of their experiences and of the violations they have suffered. Some explicitly rejected commonplace claims that trans identities “are imports from the West to Turkey” or “increased in number” and constructed their life, knowledge, and testimony as evidences against those claims. Handan Anne, for instance, complained about the “ignorance of people” and put forward her historical knowledge vis-à-vis the official and commonsensical demarcations of Turkish society and inserted trans identities as a genuine element into the Turkish history and culture:

Actually we exist in the Turkish culture. People don't know their history, their past. For instance transsexuals were very precious during the reign of Murat IV. The ones who did not have transsexual neighbours were not respected. Families used to take their sons to male *hamams*⁵. Men had their first sexual experience with transsexuals. Or there is a folkloric song called *Benli*. Do you know it? Benli was a famous transsexual of those times. [Tells the story of Benli] Of course the stories that are told are not these. People are ignorant. They do not know about these.

The line trans women drew between themselves as “knowledgeable” and the rest of the

⁵ Turkish bath

society as “ignorant” was not solely about the knowledge of about being a trans or sex worker. Their experiences had led them to question broader taken for granted aspects of life and guarantors of truth, safety and love. For some trans women, such as Gönül Anne, the contradictions between what one is told and what one sees at an early age leads one to challenge religion, its integrity and guidance:

You go to the religious school on the other hand, you read Quran, listen to the orders of Allah but there is nothing in your life that you see in Quran. This is another contradiction. I mean when you look to the Quran, it is very beautiful; but what you see when you look back to your life is something completely different. There are so many contradictions that disbelief begins at that point. Discrimination begins there. There is no relation between what is in Quran and what is happening at your home.

The changing meaning of “home” and the inversion of the knowledge about spaces was another common point in the narratives in this regard. Spaces which commonly would be considered as sites of love, safety and warmth cease to fulfil their promises and turn into grounds where pain and rejection unfold and the self is violated. Home turns into a place where “the otherisation and discrimination begin”, and far from offering shelter is experienced as hindrance and confinement. Gönül Anne told:

So I ran away [from home]. Oh, I am free now! I breathe as I run away. As I tell you, when I went out of the house, wandering around on that yard made me happy. As if I am condemned to thousand years, as if I am in a dungeon; I was experiencing the biggest freedom and breathing when I went out. [...] Home is supposed to

be one's shelter, where one would live happily. Home is warmth.

This is not the case. Outside world gave me happiness. They used to say that outside world is bad but I knew that home was worse than that.

The resignification of home and family as limits upon oneself is coupled with the new meanings given to other places. Streets, forests and even cemeteries become sites which offer freedom, peace, and safety. Handan Anne told:

I cannot forget the peace and comfort sleeping in the cemetery gave to me. I never had a sleep like that in my life. The sleep in the cemetery is a beautiful sleep. It is not possible to tell about, it should be lived. [...] Cemetery is the most secure place, did you know?

There is no evil in cemetery.

One other frequent target in the narratives of trans women that they claimed "to know their real faces" were socially respectable men. They mostly appeared in the narratives as abusers, rapers, sex work clients or sexual deviants. Gönül Anne recounted her days as a street child:

I never forget this... Those monsters, all those well-intentioned old men, gentlemen... Whatever their profession was, without any exception, they used to take and abuse us. They used to take us to hamams, or to their houses, to nooks... Those men would never be unoccupied. All of these were pious, respectful men. Since then, I am well trained, that is, about mankind.

Anthropologist Helio Silvia considered similar statements of Brazilian travesties as "a

kind of guerilla warfare against macho men, married men, family men, ‘squares’ (‘caretoes’), all those who under the cover of good behavior can slip, under protection, into practices that are not compatible with their public images” (1993, p. 99 quoted in Kulick 1998, p. 161). During our interview other trans women shared examples of such guerrilla warfare and pointed to the gap between the real identities and appearances of Turkish male citizens who never seemed to pose a threat to morality or social order, unlike themselves who live their sexuality and gender identity openly yet suffer due to this honesty. They mentioned several examples of Turkish men’s desire to be penetrated by trans sex workers, condensed in their common referral to their penis as “national wealth.” Telling about “the double lives of men,” Derya said: “People think that we are the deviants but the real deviants are those family men.” Melisa added: “Only interest. They are only after their interests, fucking and money.” Still, men were not almighty, and their lack of self-control signed them as inferiors. Gönül Anne explained: “Because I got to know so many men in my life... Do you know? Men are actually pitiful. Men are like children. All they care about is, let me talk to you openly, so you learn it, they only care about their bowel and they do not know what to do with that.” Later on, while talking about a sex work client man, who despite his “tough” outlook ended up in demanding a masochistic role play, she would warn me against the deceptions and appearances of men as well as of the life in general:

You see, life is always a deception. Colours are very beautiful but don’t let yourself be deceived by the colours of mankind. Look to the real colours, to the colours of the nature. Don’t let yourself be deceived even by them. Because sometimes they are poisonous. Mankind’s colours are deceptive too, they might poison you.

Once “poisoned” by what they later recognised as deceptions of life, trans women’s life experiences added to their construction of the true knowledge of law and state as well. As the previous chapters of this thesis pointed out, the nature and authority of the law and the state were highly questionable in their narratives. Reflecting on the intrusions of the law into their lives, many directly challenged its promises of delivering equality and justice and framed it as one of the most persistent violators and unwelcome powers in their lives. Handan Anne shared an account of how she was raped and then beaten by a watchman during her first days alone in Istanbul: “He was a man of law, but do you know what? I suffered the biggest malice in their hands.” Cansu said: “We are always told to trust the police, the law, aren’t we? But let me tell you what I learned by living all these years: They are the last ones that one can trust in.”

Others talked openly against official and commonplace claims that torture is an issue of the past in Turkey. Melisa added: “No one should tell that torture is over, it is still going on and we, trans women, are the witnesses.” Derya, on the other hand, while she was talking about the legal treatment of trans women by law in the 2000s, was also providing a critique against modernist understandings of the law when she presented a firm disbelief in its progressive accounts and consciously worked against public narratives which in particular read the law in a progressive fashion towards civilisation, inclusion and equality: “Then the 2000s... The millennium years that were said to be beautiful years... We never saw a millennium. There is no such thing. There is no difference. It got even worse. Much worse.” The shifting practices of the police that they perceive, as discussed in the sixth Chapter, was clearly parcel of this knowledge.

In the seventh Chapter I put forward that in trans women’s understanding law appeared in direct relation to state and that trans women attribute their problems with the law

directly to the state. Following on from there, not surprisingly, the knowledge of the law that they transmitted in their narratives was connected with the claim of knowledge and critiques that they have over the state and much of the critique trans women voice targeted the state. Gönül Anne's point, in paralleling the taxing of legal brothels to fining of trans woman sex work on the streets, was a case in point in reverting the knowledge on state, statesmen and their moral standards: "Our great state, our great statesmen are so moral, aren't they? They tax brothels. Then that's not enough. They fine our girls on thousands of liras. If you ask me, the biggest pimp is the state." Talking about trans and non-trans women murderers, Derya added: "There is no such thing as a state behind you that protects you. That's another lie. Actually if we surrender to this fact, things would be much easier."

In sum, the poisonous knowledge that trans women produce in relation to the meanings they give to their experiences very much talk back to the pillars of the formal accounts on the Turkish state, pillars that are about the idealisation of family and home, the male citizens as the main political subject, and the ideas of modernity and progress that are coupled with the law and the formation of the nation-state. In this sense I claim that through their alternative knowledges trans women construct themselves as citizen subjects who, despite their suffering due to the double standards of the state, have access to its truth which is not accessible to those who did not have the same experiences. The citizenship that trans women claim to hold becomes thus a relationship that is based on state's violence as well as on the knowledge trans women produce about the real face of the state that it hides from its 'morally upright' population.

Reclaiming Life

In accepting that life is learned through painful experiences and learning to challenge the

givens of society based on these experiences, my research participants framed life as a struggle and transmitted an understanding of themselves and their community as constantly struggling. Their narratives underlined the struggle one has to give to survive and keep one's own ground, and the importance of not avoiding but learning to confront taxing entanglements in order to redeem one's life. Gönül Anne stated:

Because this is life. My life. Committing suicide is very easy. I also tried that but... It is very cheap, very cheap. Cheaper than a tinplate. Even tinplate has a meaning. If I am a human, I learned how to struggle with these. [...] This is the fact of life; you have to cope with these things.

In this section I look to trans women's construction of themselves as struggling, good and courageous subjects who, against all odds, pursue to achieve integrity, satisfaction and meaning in their lives and reclaim agency. These attempts were elucidated in their narratives on several levels. One concerned their individualised and efforts against letting themselves into the hands of violent acts and their shattering effects. Consider again Gönül Anne's account on how she consciously worked on her subjectivity against violence and derived a sense of agency from cultivating positive emotions and practices such as love and self and mutual care in the face of the negativity imprinted on her life:

You grow up in such an environment. I say fortunately I didn't turn into a monster. I mean. I could have grown up into a much different person. I could have grown up into a villain. But it means that I still keep alive that love in me. [...] I always aspired for the nature, for love. I aspired for flowers. I aspired to be good, to be a good human. Amidst all of this ugliness, I aspired for those

beautiful things that I could aspire for. Yes, there were times when I felt hatred as well as feelings of revenge. But I suppressed them in time. I learned that revenge wouldn't help and that it is bad and would only lead me towards my own end. Then I learned to love myself. Before everything else, I learned to love myself, to respect myself. I sold my body, worked at night clubs, in circuses; probably I exhausted myself in many different ways. But even in that moment of exhaustion, I learned to love myself. And I aspired to nourish love and respect for others. Not that I didn't have any lacks, I did. I aspired to fill them.

This strong impetus of Gönül Anne for cultivating love and compassion for herself and others underlines a strong sense of agency and resilience, and translates into the power she has upon her sense of self, her feelings and acts despite the physical and psychological suffering she had to endure throughout her life. Other trans women also gave accounts of their love for nature, their efforts to take care of themselves and others, and to be good humans. Although they had little control over what could and did happen to them, they did have some control over themselves and the strength to formulate commitments in their lives according to their own desires.

The cultivation of this self at times was put forward as a remedy against the interference of legal power into their lives. Handan Anne, after telling about her trials that ended up in a suspended imprisonment sentence, explained why she believed she managed to get a somehow preferable judicial decision. Her acts of benevolence in her opinion had real life consequences and protected her from a less favourable legal decision that might have taken her to prison:

Do you know what I used to do? When the morning comes, I used to have my breakfast and think which hospital to go to. Let's say Taksim. I would go to Taksim hospital, see the head doctor to ask about the patients of the hospital who cannot pay for their medicine and are in difficult situation. I used to buy their medicine or 15-20 parcels of water bottles and leave one to the bedside of each patient. These goodnesses protected me.

Another way in which trans women expressed their struggles to survive related to their attempts to insert laughter and joy into the places of violence and suffering in order to domesticate violence that engulf their lives and make it endurable. *Güllüm*, a word from the trans slang *lubunca* and a unique element in Turkey's trans subculture, refers to the insertion of fun and enjoyment even into the most unbearable conditions. The words of Gönül Anne articulated eloquently the meaning of *güllüm* for trans women of Turkey:

As I always say... *Güllüm* is our lives. What we call *güllüm* is something weird. It is like a green oasis in the middle of trans women. In other words, *güllüm* is like a spring in a desert. It is the joy of life. [...] *Güllüm* connects you to life even in your saddest moments. For instance we had a funeral. We cried and then we laughed all together at one instant. You can suffer inside, but you can go out of that suffering for a moment.

As a survival strategy, *güllüm* enables trans women to suspend and transcend unbearable moments, restore oneself and the group mentally and, even if momentarily, provides an important anchor point to establish their agency and a sense of control over the course of their lives. Gönül Anne's elaboration went on demonstrating how *güllüm* also shields

them against the intrusion of legal power into their lives and helps keep one's self at least partially apart from the harms that it inflicts on the body and the mind:

You are beaten, you are beaten by the police, you are smashed, you are insulted, but when you are by yourself, with your friends, you destroy all that torture with one gullüm, with one joke. And you forget that beating you got. This is how we always survived.

Our interviews passed through the same succession of sad stories and fun, painful experiences intertwined or succeeded by moments of joy and laughter.

This conception of self that rests on a conscious cultivation equips trans women with a yardstick to evaluate law with a moral idiom and appeal to a sense of righteousness and justice as well. Juxtaposing the ethics that they develop and their conclusions about the operative side of law, trans women construct themselves as human beings who have higher moral standards than those upheld and performed by legal professionals – and, as such, than those of the law itself.

Trans women's narratives were full of stories of facing legal officials or other harassers courageously, which constructed them as unyielding, disobedient and assertive. These were stories where trans women, in the face of a perceived injustice, opted for challenging the opponent rather than remaining in silence or 'playing the game'. Some of these were stories of moments when trans women felt in a desperate situation where they had nothing else to do to save themselves out of that position. Elderly trans women were especially prone to give lengthy accounts of their collective actions of resistance, struggle and disobedience such as riots and hunger strikes. Some of these actions were more aggressive, noisier and violent. Gönül Anne narrated an incident when police detained a big group of trans women in the late 1970s and piled them for several days in a tiny and

stuffy detention room at the police station. On the fourth day, the harassment by the police chief sparked a big rebellion:

Seyyal stood up and jumped. Holding the collar of the police chief, she said ‘God has given you two eyes, was not enough; he gave you two more eyes of glass. As soon as she shouted ‘I fuck your eyes’, she took the glasses and punched him in the face. All of us got up. Tülay broke a chair into pieces, I am still in shock, and all of us are doing something. Oh my God! We blew down, knocked over and trampled down all those cases, files, teapots, sinks, everything. We broke everything into pieces. No stone was left on another one. I never forget. One of the girls butted the iron door of the room. I saw ‘Onion Head’⁶ lying below her. She just had had appendicitis operation; she blew up her suture with her hands. It was total chaos.

This episode was followed by the submission of the police to trans women’s demands and they were released from the police station. Just before they went out, the following conversation took place between Gönül Anne and a police officer, which Gönül Anne told proudly about: “Do you know what a police officer said then? ‘You would never fall down. You are like a castle. Look, I admire you, this stance of you. No one here can do what you did. ’ He said us exactly this.”

The same pattern of encounters repeatedly emerged in trans women’s narratives: They, individually or collectively, resist an unfair practice, either related to themselves or others, and raise their voice, at times in a violent manner. Then the challenged party (doctor,

⁶ Nickname of a trans woman

police officer etc) is overpowered by trans women because they either cannot any longer deny the soundness of their arguments or are unable to deal with their courage and determination. These actions are both pragmatic and symbolic. They are pragmatic in that they are temporary reactions to a sense of injustice and desperation and are aimed at solving problems immediately in the face of the lack of alternatives. But they are symbolic in the sense that they create a strong sense of agency and counter-discourses that pose trans women against both the actors of these unjust acts and to the submissive and subservient practices and discourses of others, by stressing how they talk up and resist, if necessary in a violent manner, the inequalities and injustices they encounter.

During the interviews I was also told direct assertions of trans women identity as one that is disobedient and courageous, ready to confront and openly struggle with the authority when necessary. Handan Anne stated openly trans women's transparent and brave characteristics, while telling about how they have been historically present in LGBTTT organising, many times in leading positions:

Look. I always state this. I always state this reality without any hesitation, without any exaggeration. When there was no Lambda, no Kaos, before there was any LGBT organisation, we transvestites and transsexuals did our activism. As a matter of fact our activism is at the forefront since Ottoman times, since our existence came into being. We didn't escape under umbrellas when it rained on us. Even if it rains, we are here; even if cannonballs are fired, we are here; even if the skies fall down, we are here. We have no hole to escape. Our colour is evident.

Many experiences of this kind, parallel to experiences of violence, were rendered by trans

women meaningful or understood as collective even if they were lived through individually. “Transsexuals were always free. They never let themselves enslaved by anyone” or “Transsexuals recognise no rule. They only abide by the rule of their minds” were some of the statements trans women invoked in order to underline their common noncompliant, independent and defiant character. It is also in this way that trans women manage to enact a sense of agency and restore their sense of self in relation to the world they inhabit, by bridging the gaps brought about by violence through their active work on their subjectivities and circumstances as well as their individual and collective self-presentations.

Practices of Care

In a context where they no longer share the truths that are widely shared, and instead produce their own set of knowledge and values, trans women also told me of practices of care, support and education that they develop within the trans community. In this section I first will look at the relationship established between different generations of trans women, in particular mother-daughter relationship, which draws our attention to their practices that bind those who are socially excluded through a network of love, care, understanding, home, solidarity, compassion and recognition. Then I will examine how this support network performs an educating role alongside other functions of care, as another important means for personal empowerment, formation of collective identity and reclaiming their life from violence. Transmission of knowledge from older generations to younger ones was central within participants’ narratives, in particular the transmission of knowledge that is produced about and deployed against the law and the state.

As mentioned in earlier chapters, all of my research participants lost contact with their families when they were very young and, in some cases, they had to leave their

hometowns and move to Istanbul in order to establish a new life from scratch. Trans women that I interviewed positioned their entry to trans community within this context where the community provided them a means to make sense of themselves, form new relationships of solidarity and struggle together against their marginalisation in the society.

Mother-daughter relationship is a part of this communitarian life and all my research participants lived in the accompany of a mother during the first couple of years since their entry to trans community.⁷ Some began as domestic helpers in more established trans woman's homes in exchange for housing. Older trans women helped them figure out their transition and often introduced them to sex work after a while. Once they began making their own money, young trans women left their mother houses yet this did not signal the end of the mother-daughter relationship. Most of my interviewees identified the mother-daughter relationship as a continuing supportive and protective mechanism in their lives. Gönül Anne, who had been mothered and who mothered other trans women, provided a powerful description of the function of mothering in trans women's lives in the face of family abandonment and disowning:

All of them have a longing for a mother. Every trans woman. She is like a bird with a broken wing. She wants the mother to heal it [...] Motherhood because you left your country, your town, your village, wherever you are coming from. You enter a new life. There are older trans women and transvestites there. You become one of them. You form a family. [...] When you enter here, let me say it's like a dervish lodge. It's like a school. Here, it is like you

⁷ For detailed discussion of mother-daughter as a form of kinship relationship see Çalışkan (2014) *Queer Mothers and Daughters*, unpublished MA Thesis, Sabancı University, 2014.

have a mother. You fill that emptiness, that loneliness with her. She knows that she is not her birth mother but the mother gives love to her, understands her soul, and shares her pain. She does what her birth mother did not do.

Gönül Anne's depiction invites to look beyond care as something that is given or received within an intimate familial context towards understanding it as a relationship that does not exclusively belong to people who are related by blood or law but one that is formed by practicing love, support, protection and trust. The account of younger trans women who have only been daughters so far emphasised the role of the mother in the adaptation to the new life that they meet in Istanbul: "Life is not easy. I cannot thank her enough for supporting me, for showing me the right path", Cansu said. Melisa told that after she left her family house her trans mother "embraced me and showed how to do things", and Derya underlined how her mother provided protection for her in her new life in Istanbul: "Thanks to her, she opened her doors to me, if she did not, I could have been in worse situations."

The mother-daughter relationship functions as a support network for trans women by bringing experienced and inexperienced trans women together and allowing an intergenerational transmission of memory and knowledge (Çalışkan 2014). This network seems to be particularly crucial for younger trans women who recently entered the community to develop a sense of belonging and at the same time to survive the different modes of violence that target them in the city. Mothers that I interviewed, Gönül Anne and Handan Anne, stated that mothers share their knowledge on how to deal with the conditions of being a trans sex worker in urban Turkey. Gönül Anne defined this relationship as a "master-apprentice relationship" in which the mothers as the masters

train their daughters. The narratives of younger trans women emphasised the importance of the transmission of knowledge. Derya said: “The mother is very important because she already knows what you will go through and what you should do. She teaches you these.” Indeed the mother-daughter relationship seems to contain an extensive knowledge transfer regarding sex work. Elderly trans women share information on rules of sex work to ensure the safety of newcomer trans women against potential threats. This included, in Derya’s description, the transmission of detailed information on types of “men”, the places and times of sex work and the measures one should take. She told: “She taught me how I should choose the clients, how I should make the deal, how I should protect myself.”

This transmission is not divorced from trans women’s understandings of the threats they face from the legal system and its agents, and it has a significant role for trans women in order to cope with the different levels of legal power that shape their everyday lives. Mapping out the route of sexual transition and the technical and legal information with regard to sex reassignment surgeries, for instance, is a point on which both elderly Gönül Anne and young Cansu emphasised the importance of listening to and learning from the experiences of mothers. All my participants shared stories about how elderly trans women passed their memories and knowledge to younger trans women about the ways of dealing with the police that they gained through years of experience. Handan Anne, presenting her perspective on how to deal with the police, explained what she taught to younger generations of trans women: “I tell them how to treat the police. You should know how to behave when you are against a police officer. We have been down that road. And as you see, I am still on my feet.”

Gönül Anne told of several episodes when she took young trans women to hospitals after

being beaten by the police or clients, followed them into police stations and courthouses, or assisted them in finding lawyers. Then, remembering how she herself had been mothered and how her mother used to give her tips even at the moments of actual confrontations, she narrated the first time she was taken to a police station:

We arrived there [Beyoğlu police station]. Deniz Anne, may Allah give her a long life, said ‘Gönül, if they ask you where you are from, tell them you’re from Istanbul. From Bursa or Istanbul. Only then they will not bother you.’ [...] It is my first time in the police station. I am trembling. What shall I do? But even there, she gives advices, loads you, in a sense she equips you.

Although Gönül Anne did not understand at first, it turned out that Deniz Anne was warning her about a common police intimidation tactic of those times: officers were asking trans women about their place of origin to hit them with batons as many times as the license plate number assigned to that city. In Turkey the first two digits of license plates denote the city code number of the main residence of the car holder. City code numbers are distributed alphabetically and currently go from 01 to 81. So for instance a trans woman who was asked about her place of origin and replied “Adana” would be hit according to the number plate ‘01’ of Adana once, but if she replies “Zonguldak” sixty-seven times. The underlying claim of this performance, Gönül Anne explained me, was punishing trans women for not “fitting” their cities of origin. Istanbul and Bursa, however, seemed to be exceptional cases as police officers considered them cities that “normally” produce non-normative sexual identities. Trans women from Istanbul or Bursa, as a consequence, were not beaten. Gönül Anne went on: “Then my turn arrived: ‘Istanbul’ [I said]. ‘Huh, normal’ they said. As if all Istanbul is like us. Good, I was saved.” Yet that

was not the end of the story at the police station. The next step was the police registration of unregistered trans woman sex workers (a practice of the police used to deploy against trans sex worker women in those times in order to keep them under surveillance, that Gönül Anne called “stamping”) and again Deniz Anne had instructions for her to how to deal with this stage:

Again Deniz saved me there. She said ‘Look, there they take your fingerprints. If they ask you whether you already have fingerprints or not, say ‘Aa of course’. Don’t let them understand that you are new here. If you do, you’d stay there all alone here when we leave [the station]. Because of that, say that things like ‘Oo this is like our father’s house’ so you leave with us.’ So you leave with us.’

As such, Gönül Anne managed to by-pass the police beating and the registration. Gönül Anne concluded: “Mothers of those times... Like what Deniz did for me for instance. Deniz protected me from many things that I did not know about. She protected me from being stamped.”

Another crucial part of this educative care relationship is the transmission of elderly women of their collective life experiences to younger generations. Elderly trans women bring together their own personal experiences with collective history of the trans community and pass it to younger generations – a practice that mirrors the life story narratives that they told me for this research. Trans women, by transmitting their experiences with the names of those responsible, the conditions of those years and the ways they survived and struggled thus create a reservoir that provides younger ones a medium to make sense of their own experiences through older generations’ lives. This

practice at the same time produces and reproduces the trans identity and belonging to the community. All of my research participants, for instance, mentioned the 1980 military coup d'état period and the trans women's exile on trains that I discussed in Chapter 6, when most of them did not live through those particular experiences. The account of Melisa who did not witness the violent times of military rule showed how memories of older generations passed to her play an important role in her daily life: "Nowadays we maybe don't have soldiers, but the police officers who fine us are all around." In a similar vein, Derya, recounting inherited memories of military rule years concluded: "Nothing has changed. Before soldiers were torturing, now the police." The struggles of earlier generations thus have been another anchor point for trans women in order to develop a sense of belonging and provide a lineage of resistance against the powers that have aimed to undermine them. Derya said:

Our struggle was initiated by those who were exiled, by their riots, by their hunger strikes in the 1980s. You know what? In the first pride we are a handful of people only on Istiklal Street. Last year we were tens of thousands. I cannot tell you how proud I was seeing that crowd. This is thanks to the struggles of our elders. Actually you should go and listen this history from them.

The sharing of stories in this way establishes a connection between different generations of trans women and makes up the content of trans womanhood in the urban space, and through telling their stories, trans women form a collective repertoire upon which their subjectivities unfold. These practices of care, which also involve intergenerational knowledge transfer and construction of a collective memory among trans women about their past and present play a significant role in the formation of their oppositional

subjectivities as knowing, ethical, and struggling human beings who share a common identity and living.

Conclusion

This chapter looked to the ways through which trans women negotiate, challenge and transform the parameters of their life-worlds through an engagement with their painful experiences of marginalisation, displacement, abandonment and injury and explored how these experiences came to endow new forms of autonomy and agency to their individual and collective biographies. Following Foucauldian theorisation of subjection (Foucault 1978, 1980) and its further articulations by other scholars (Butler 1993, 1997, Das 1995, 1997, 2000, 2007 Mahmood 2005), I suggested that to understand the lives of trans women we should look not only to the repressive effects of power, but also to the productive ways in which it invests subjects with new forms agency and transform selves, relationships and forms of living. This chapter documented some of these subjectivities and understandings of selfhood as well as new kind of relationalities which emerged from trans women's precarious condition through their active and creative labour. We have seen that the very processes and conditions that subordinate trans women turn into the means through which their very subjectivities are produced and given shape (Butler 1993, 1997, Foucault 1978, 1980, Mahmood 2005).

The first focus of the chapter was on how trans women told me of the ways they articulated the disruptions in their lives and reconfigured their very identity by generating a knowledge based on their experiences. While the different forms of violence that they suffered led to irrevocable transformations in their sense of self, relationships and world, the production of "poisonous knowledge" provided them a ground on which to think about their lives reflexively, to understand and speak of their experiences, and to give

intelligibility to their selves. In contrast to views on violence and the subsequent trauma as resisting any effort to give them meaning, this knowledge did not consider one's painful experiences as a traumatic insertion of the past into the present, but rather a new horizon of meaning that is constituted by those experiences. For "there is a kind of knowing that works by suffering", and without this knowledge one cannot understand "the way human life is." (1986, p. 46 quoted in Das 2007, p. 76).

This knowledge that cannot be engaged by the intellect but only through suffering included their convictions about their gender identity and about family, men and law and the state. As these embody some of the most important norms that target and render trans women as subordinate, it is not surprising that the poisonous knowledge trans women produce target them back. In trans women's experiential corpus of knowledge, their non-normative gender identity appears as natural and a genuine part of Turkish culture and the norms that violate this identity are resignified by a radical subversion of the dominant forms of knowledge. Men, that are taken to be the ideal embodiment of the citizen of the state, emerge from their narratives as those who lead double lives and, if anything, it is their moral inferiority what sets them apart. Family and home, in a complete reversion, are reframed as the sites where violence, abandonment and disowning were met for the first time and cease to have the capacity to provide one safety and love. The law, and in relation the state, were thrown into question, as forces which, far from securing rights and wellbeing, become the main unwelcome powers in their lives. This knowledge provided anchor points for trans women to reassert their power and help them refine their identity and social position, by constituting them as citizens who have access to the real knowledge about the state– in opposition to the rest of the people who lack similar experiences.

Foucault defined ethics as a modality of power that “permits individuals to effect by their own means or with the help of others, a certain number of operations on their own bodies and souls, thoughts, conduct, and way of being” (Foucault 1997, p. 225). This definition resounds with the discussion of the second section of this chapter, which looked to the labour trans women exercise on their lives, the capacities of their selves and their sense of being. Trans women conduct and describe themselves as subjects who strive to actively cultivate practices, techniques, and discourses through which they can protect themselves from the harmful effects of the forces intruding their lives, and achieve a particular state of being, happiness, and truth, in other words, an ethical living.

A related instance of autonomy that my research participants talked about was the moments when they, individually or collectively, challenged those in positions of authority. These moments varied from individual acts of resilience to communitarian outbreaks. The importance of these acts, I argued, reside in the meanings they signify to their practitioners and in the work they do in constituting its practitioner as much as in their pragmatic ends. By these means, trans women produce and sustain a sense of being alive, of having the control of their lives, and keep alive the sense of a self that is disobedient, rebellious, and defiant.

Finally, the forces that encapsulate the lives of trans women at the intersection of their interactions with a broad range of institutional and non-institutional actors reverberate also how trans women relate to one another and pave the way for new possibilities of solidarity and togetherness. The last section of the chapter focused on these emerging relationalities. I concentrated on the relationship between elderly and young trans women and its function in trans women’s lives, with a special attention to their experiences with and around the law. Elderly trans women not only provide care, support and protection to

the younger new-comers to the community. They also share with them the knowledge accumulated through their experiences in order to educate and prepare young trans women for their new lives. This includes the circulation of knowledge on how one should deal with police and other legal actors and authorities. Furthermore, elderly trans women pass the history of their community to younger generations who then rely on this history to make sense of their own experiences. These practices of care, education, and transmission of knowledge, furthermore, aid to the construction of trans women as a resilient community that has a past, a present, and a future, and that is shaped by their struggles of various kinds against the multiplicity of powers attempting to intervene in their daily lives.

Underlining the intricate ways in which processes of oppression, exclusion and violence affect and inform gendered lives and strategies of survival, trans women's stories present us the productive tensions inherent to the positions of marginality and the possibilities and potentialities of ways of survival in dire times and places. In words of Veena Das, this account allows us to see "what it is to pick up the pieces and to live in this very place of devastation" (Das 2007, p. 6) "by embracing the signs of injury and turning them into ways of becoming subjects" in a shattered environment (Das 2007, p. 215). Gönül Anne said:

You are walking on a road full with broken glasses. You don't have any other way. You have to walk on those broken glasses. You cannot even feel whether your foot bled or fell apart. But you are walking on that road. And even if then, after that road of glasses, you enter a straight, clean one, the wounds on your feet never heal. Still, it is those steps that take you somewhere.

CONCLUSIONS

This research project was driven by the questions of how trans women's lives are influenced by law –in the books and in practice- and how they make sense of and situate themselves in relation with law in contemporary Turkey. For these aims, I analysed legal texts and life story narratives of five trans women in Istanbul which provided rich accounts about their encounters with the law as they live their lives at the intersection of various forms of legal power. While doing this, I sought to avoid the omissions that arise from doctrinal studies that limit the scope of their inquiries to the letter of the law, but also those of socio-legal approaches that rely on legal formalism or concentrate on questions of policy. This stream, which dominates the study of law and society in Turkey and abroad, takes legal thinking's normative frameworks at their face value and abstains from interrogating law in any way beyond these self-referential normative frameworks. Such an approach consequently remains limited to pointing out to deficiencies or gaps between legal texts and practice and does not leave analytical room to examine and understand the effects of legal power in the lives of social actors.

In order to account for the everyday lives of law and of those people within its structures, this thesis built on the Foucauldian framework of governmentality and conceptualised law as part of a broader network of power relations through which “the conduct of individuals or of groups might be directed” (Foucault 1982, p. 790). As an empirical examination of the law through the perspective of governmentality, it looked to the ways in which law as an arena of multifarious power relations partakes in the constitution and moulding of particular subjectivities, sexual and gender identities, and times and spaces.

I argued that understanding the dynamics of the lives of trans women in Turkey needs an unpacking of the unitary understandings of law, best conveyed by Foucault's insights about governmentality, and of Rose and Valverde's (1998) discussion of Foucault's significance for socio-legal studies. This thesis contributes to the existing body of scholarship on legal governmentality at several points: i) it explores the multiplicity of the effects of law in its different capacities (negative and positive) and its work on different scales; ii) it looks for the context-specific iterations of legal operation; and iii) it pays close attention to the interrelation of legal regulation with processes of subjects' self-making and self-transformation (Butler 1993, 1997, 2004).

In this framework, I first set out to explore the legal regulation of sex reassignment surgeries, the only legal text that openly deals with trans identities and allows trans people who undergo sex reassignment surgery in the legally prescribed way to get the necessary amendments in their legal documents. Chapter 5 traced back to the first discussions about the emergence of transsexuality as a legal category in the country around the long-lasting legal battle of trans singer Bülent Ersoy in the 1980s and discussed the law on sex change that came into effect in 1988 as well as its amended 2002 version. This discussion enabled me to observe how law and medical sciences, through at times overlapping, at times contrasting approaches, define and regulate trans identities, and their interaction with regard to these changing definitions and modes of regulation. Combining this analysis with an examination of the narratives of trans women who have gone through the process, I claimed that the interrelated dynamics of law and medical sciences expand legal power into areas formerly unregulated by law (Foucault 1978, Smart 1989), and that in this case law strives to maintain its power by keeping the SRS procedure under its constant supervision and imposing its own criteria to be the final determinant of the 'true' sex of trans women.

The third and fourth sections of Chapter 5 examined the disciplinary effects of the current law on SRS mainly through Cansu's account of her SRS experience, which indicated the intricate links between gender identity, self-understandings and medico-legal authorities during transition. Cansu had to demonstrate that she fulfilled the medico-legal criteria of transsexuality. A substantial part of this effort consisted of collecting the necessary medical evidences at a university hospital, including psychotherapy sessions that she had to join for more than a year. The task of legal and medical authorities, however, did not only entail the production of a testimony of transsexuality as something that already exists 'out there.' Rather, they relied on particular understandings of gender and sexual identity in doing their work and attempted to mould the bodies and bodily performances of trans women into a form that is not always in line with trans women's specific bodily, sexual and temporal experiences. In this sense, the medico-legal regulation of SRS's appeared as a disciplinary practice where a number of legal and medical experts in light of the corpora of medical and legal knowledge work on the psyche, body and will of trans women in a way to produce disciplined gender identities, denying recognition to those who do not fit their limited definitions of sex, gender and sexuality.

One of the most powerful demonstrations of legal power that came to the forefront in trans women's life narratives concerned the spatial exclusions that they have experienced in Istanbul and the operation of police power circumscribing their working and living places. In Chapter 6 I looked at the forced displacements my research participants told about and the forms of police power that have pushed them to specific parts or even out of the city. In this chapter I suggested that these experiences cannot be fully understood without taking into account the operation of sovereign power over their lives as granted to the police. Moving beyond Agamben's account (1998, 2005) where subjects are homogenously turned into homo sacers through the suspension of law, this chapter

pointed out to the multiplicity of ways through which states of exception are created and the treatment of trans women is left to the authority in question, embodied in the police forces. This discussion showed us that the exception as a form of governance is not necessarily located outside of the ‘normal’ forms of legal power as reflected in the legal/illegal and law/exception dyads, and that it cannot be confined to particular kinds of spaces or times. Instead, I argued, we need to understand states of exception as a complex socio-legal condition that targets and affects subjects and bodies in multifarious ways.

To reveal this complexity and the forms of sovereignty, I looked for its embodiments and articulations by social actors who experience its force on the ground. Seen from the perspective of my research participants, it was clear that states of exception can be generated by a literal suspension of constitutional order –which was the case for trans women’s experiences and vivid descriptions of the 1980 coup d’état— as well as by encircling lives through the use of legal texts and practices –like in the increasing use of the Law on Misdemeanours, fines and prosecution that my research participants described. Moreover, sovereign power can be imposed over targeted bodies through outright physical violent suppression but also through outsourcing of violence or not responding to violent attacks. What is crucial and brings together these diverse sets of performances is the boundary that they draw between the public spaces and the bodies of trans women, i.e. in the exclusion work that they do as they determine which citizen bodies have rightful access to the city and which should be banished.

Moving on from the focus of previous chapters on law’s effects on trans women’s lives, Chapter 7 examined their experiences at the courthouses and constructions of law as they relate with these experiences. Changing policing strategies and legal frameworks meant

that, especially in recent years, the ongoing conflict between the police and trans women on the streets has been increasingly taken to courthouse spaces. This entailed the introduction of new spatio-temporalities and actors such as judges, prosecutors and lawyers to the lives of trans women, as well as the contact with a new scale of the complex of legal governance. In trans women's narratives the judiciary allies with police power in shaping their marginality, but the particularities of courthouse proceedings and dynamics and their power effects proved crucial for this study as a central frame of reference in trans women's 'law talk'.

A central trait of the analysis in this chapter was that, unlike in the legal consciousness literature which usually treats law as an autonomous field, my research participants' accounts required to be more attentive to the effects of other social structures on the emerging meanings of law, as law was made sense of almost exclusively in relation to extra-legal sources and forms of power such as the state and the family. Law was, on the one hand, regarded as an instrument of the state, through which the state imposes its will on people, and on the other, as a space where actors contest with each other to get the upper hand through mobilising formal and informal means and legal or extra-legal forms of capital. While in the former trans women felt directly targeted by the state due to their gender identity, in the later they found themselves disadvantaged due to the consequences of familial disowning and disconnection from networks that might provide them advantage.

Finding themselves with the courthouses under these circumstances, my research participants gave also accounts of a complex set of manoeuvres that they deploy in order to get favourable decisions. Utilising the language of the formal law was one way of drawing from such discourses that enable them to voice their complaints and demands.

Trying to mobilise personal connections and local resources, when any is available, was another. These accounts suggested that there is no single, unified response to law just as there is no single or unified “law” targeting them. Trans women have to develop different sets of accommodations and solutions on differing terrains, which at times are transitory and at times required more long-term engagements. This finding contrasts with those of legal consciousness studies in which avoidance of engagement with the law holds sway in experiences of marginalised groups. Because law intervenes constantly in their daily lives, trans women that I interviewed could not afford to deem law irrelevant and/or distant to their everyday existence. They are aware that they are constantly in a position where their daily lives can be easily subjected to legal enactments, even when they are not breaking the law, just because of the way they look or for being in a certain neighbourhood at a certain time. In other words, the law was too powerful in my research participants’ lives not to be salient, and trans women had actively engaged with its effects – in actuality or latency – on a daily basis.

Lastly, this marginalisation and legal and quasi-legal dynamics of inclusion-exclusion should not be considered only in terms of subordination. What my research participants told me did not only encompass domination by various forces, but also their struggles against these multiple subordinating agents to ensure their survival, the lessons learned throughout and how both were transmitted. In the last chapter my focus was on how trans women, as targets of governmental practices of legal power, resist its impositions by their creative labour on their subjectivities. Trans women undertake this engagement by turning their experiences into a new horizon of meaning that grounds their life and generates new senses of selves and relationalities. The cultivation of a particular kind of knowledge and construction of themselves as the carriers of that knowledge, the intentional work that they do on themselves to constitute their moral being as ethical, struggling and defiant

beings, and their combination of practices of care, education and community building were some of the ways that we have seen which enable trans women to make sense of their own experiences, enact and sustain agency, and produce and strengthen belonging in the trans community.

The crucial argument of this chapter related to the tension between power and resistance, subordination and self-making: it is, I claimed, the operations of power and specific relations of subordination –whether in their positive or negative demonstrations— which constitute subjects and make room for specific enactments of agency through endowing its subjects with the capacities necessary to become legible to themselves and to undertake specific actions and discourses against the forces that circumscribe their lives. This allows for a reconceptualisation of the notion of ‘agency’ as nothing outside of or external to power. Rather, as Butler points out, agency can be understood as “a reiterative or rearticulatory practice, immanent to power” (1993, p. 15) and be localized in the possibilities that are “opened up in and by that constrained appropriation of the regulatory law” (1993, p. 12).

Besides being a study of legal governmentality, another aim of my thesis was to examine questions of citizenship with regard to the legal domain. Each chapter of my thesis, by studying both the effects of law and the reception of these effects through the lens of a marginalised group, spoke to different ways through which trans women’s citizenship in Turkey is constructed by law and showed how trans women challenge dominant configurations of citizenship through their engagements and performances. I argued that, rather than the top-down declarations of citizenship in law in the books as belonging to a community of right holders, it is mainly through the everyday encounters and confrontations that citizenship and the perception of a community take shape. This

indicates the need to understand citizenship as an ongoing process, rather than one depending solely on a pre-existing set of rules.

Particular attention was paid to how trans women's bodies and gender performances get transformed into markers of hierarchy and pattern the citizen-subject relation in a diversity of ways. Being attentive to the different scales and to the dispositions of each scale, my analysis showed the differing constructions of trans women's citizenship by different levels of law and how various legal texts and practices rely on certain kinds of subjects and identities and strive to regulate or exclude trans women's femininities, capacities and bodies. All in all, this account showed that rights associated with formal citizenship status and the question of who will be the bearing subject of those rights cannot be thought out of the context or the social positioning of the subject within that specific context.

Trans women are not passive recipients of those legal texts and practices —much to the contrary, they contest, shape, as well as transform them. My research participants' accounts of their interactions with law and legal officials uncovered how trans women engage with the state and understand it in particular ways. In their narratives, the idiom of the "state" appeared as the main medium through which they raised their complaints and demands in different areas of their lives. Their emphasis was on the state as an unwelcoming force in complete contradiction with its promise of providing social and material goods, on their struggles against the conditions the state offers them, and the knowledge gathered through their experiences. While they turned their life into a testimony of the hidden face of the state, their narratives indicated alternative ways of articulating the formation of a community based on their identity and common experiences as well.

The stories trans women told me contained fear, pain, disappointment, frustration, anger and misery; yet it was also through constructing and communicating narratives that they resisted against multiple erasures, made themselves the subject of their own speech and affirmed their survival (Brison 2002). Narration gave trans women the opportunity to talk back to the institutions, actors and norms who violated, exploited and dehumanised them and to establish their own facts from their own perspective and influence how their selves and experiences are understood by others. In other words, trans women used narratives as a means to challenge conventional wisdom, resist social marginalisation and exclusion and redefine their position within the society. As such, narration enabled them to “sustain a sense of agency in the face of disempowering circumstances” (Jackson 2002, p. 15). This corresponds with Plummer’s (1995) discussion of storytelling as a political process and illustrates how storytelling may be used by previously disenfranchised communities to assert their strength.

This thesis was written at a time where trans women’s experiences and the insights we can gain from their accounts are becoming even more important in understanding the forms of power that target our lives in Turkey. We are witnessing an overwhelming increase in the deployment of law and more specifically police and judicial power to contain public discontent and political opposition and define the boundaries of proper citizenship. Hundreds of politicians, journalists, academicians, students and former military officials have been prosecuted and imprisoned as a result of the Ergenekon trial against a criminal network allegedly plotting for military coup and of KCK (Kurdistan Communities Union) trial for links to the Kurdish guerrilla warfare. Especially since the 2013 Gezi uprising,⁸ anyone who joins a street demonstration takes the risk of being

⁸Gezi uprising started at the end of May 2013, as objections to a part of Beyoğlu’s urban renewal project which would replace Gezi park – the only green space in central Istanbul – with a shopping mall. The heavy police crackdown of the protest with tear gas and water cannons only increased the numbers of protesters

detained and injured or even shot death by police gas capsules. Arrest is now a potential risk for anyone speaking against the government. As the final lines of this work are written, curfew is imposed in several Kurdish south-eastern towns, while offices of the predominantly Kurdish party HDP (Peoples' Democratic Party) in the western cities are burned by nationalist and pro-government throngs under the passive observation of the police.

All of this is happening in a country that, at least until very recently, was praised by its exemplary democracy as a model for the Middle East in European and North American contexts, from the media to academia. Turkey's European Union (EU) candidacy, for long at the centre of foreign policy agenda, also triggered legal reforms to comply with EU conditionalities that reinforced that view, including measures such as the curtailing of military power, abolition of the death penalty, and clampdown on the use of torture by the police. The account that I draw on here about trans women's experiences with the law attest to the fact that efforts for 'more' law to fill what is seen as a 'lawless' legal culture do not always bring about the expected outcomes but can well unfold into novel adaptations on the ground. In this regard, my study can be read as an account on the intricate relations between law, legal reforms and legal innovations beyond the Turkish milieu.

To conclude, I would like propose this account of trans women's interactions with the law and the state not only as an account of trans women in Turkey but rather as a pursue of questioning of what trans women's experiences can tell us about the social structures we inhabit - from the law to the family, from the market to the city and to our bodies. Trans women's living conditions are not simply an evidence of difference. Rather, they

defending the park from hundreds to millions, and expanded the protests throughout the country for 20 days. 11 protestors were killed and more than 8,000 were injured during the protests.

demonstrate the terms through which our lives are governed and at the same time may give us lessons as to the possibilities of *becoming* as individuals and communities. As the legality trans women have been subjected to in many changing forms through decades is spreading and a sense of instability and unpredictability settles in our lives, the lives of trans women also reveal the importance of the labour involved in becoming subject of one's own life and building alternative forms of solidarity and resistance.

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