

## What Do Transgender Women's Experiences Tell Us about Law? Towards an Understanding of Law as Legal Complex

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### Abstract

Based on ethnographic study conducted in Istanbul, this thesis investigates the *effects* of law and legal operations on transgender women's sex work and daily lives, and seeks to disentangle the multidimensional ways through which they and their conduct are governmentalized by law. The first part of the thesis discusses the legal dynamics surrounding transgender sex work and delineates how transgender women are expelled from regulated sex work by the interaction of the socially produced desire around their bodies and law. Led to work outside the regulated sex trade, transgender women navigate spaces which are regulated in an ambivalent manner yet which have the net effect of drawing transgender women into street sex work. The second part shows that these legal practices on sex work do not apply to all sex workers but to nearly all transgender women, depriving them from their most basic rights. Overall my analysis demonstrates that transgender women find themselves in a multitude of legal and institutional practices that are borne out of the interaction of their social contexts, their bodily performances and legal texts and their application, and that this is done through various regulatory agents. I argue that such an examination demonstrates law's multiplicity and heterogeneity against the unitary and sovereigntist understandings of law which prevail in popular discourse as well as scholarly and activist thinking in Turkey and abroad.

### Key words

Socio-legal studies; Foucault; Governmentality; Sex work; Transgender women; Turkey.

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## 1. Introduction

### 1.1. Background

In Turkey, the understanding of law radically changed as a result of the Kemalist revolution in the 1920's and 30's. The establishment of the Republican regime in 1923 replaced the authority of religion and of the Sultan in the Ottoman Empire, and the following decades witnessed the appropriations of European law. These transformations in the socio-legal terrain decisively transformed customary notions of justice and brought them in line with the requirements of a modern legal system. Under the Republican system, this new legal framework has come to be presumed to be the seamless embodiment of universal values in modern Turkey in opposition to the kind of ambiguity and multiplicity that marked existing forms of jurisprudence. As with other modern legal systems, it is now marked by a quest for certainty, uniformity and a promise for equality for all of those who belong to the nation.

This new language of legality also worked on modes of scholarly thinking. To this day in Turkey, the legal domain is almost exclusively studied through formalistic analysis. Many academic studies see 'law in the books' in instrumental terms as the potential source of equal rights and emancipation, and rarely question departures from it other than normative criteria established by democracy, human rights or rule of law (Abadan-Unat 1991, Parla 1991). With few exceptions (Starr 1992, Koğacıoğlu 2002, 2005), critical scholarship does not question the lived experiences in the domain of law in terms of consistency and social equality. In other words, the study of the legal domain as a site for analyzing power relations did not get much scholarly interest so far in Turkey.

Within this context, it is not surprising that the relation of transgender women to the legal domain has not been studied through a sociologically informed perspective.<sup>1</sup> Early public debates about the status of transgender women began in 1981 during the early years of the 1980s dictatorship in Turkey, when a famous singer, Bülent Ersoy, a post-operative male to female transgender person, 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 all transgender entertainers in Turkey were banned from performing. It was six years later on May 4, 1988, that the parliament passed Law 3444 and reformed Article 29 of the Turkish Civil Code to allow the amendment of formal documentation for those who had undergone sex reassignment surgery.

This legislation then attracted the attention of legal scholars (Kocayusufoğlu 1986, Öztürel 1980, Öztan & Will 1988) and similar discussions followed with the amendment made in the Civil Code in 2002 (Atamer 2005). Yet this line of scholarship does 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 transgender people of Turkey focus on transgender women (Kandiyoti 1998, 2002) and their relationship with patriarchy (Berghan 2007). In one of the most comprehensive works of the field, Selek (2001) explicates the multiplicity of exclusionary measures that gays, lesbians, bisexuals and transgender men and women face in Turkey. Using Gramscian and Althusserian perspectives, she underlines the common features of hegemonic patriarchal practices targeting these groups. She also emphasizes the

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<sup>1</sup> In this thesis my focus is on male-to-female transgenders. Thus whenever I use the term throughout the thesis, I mean those who are transgending from male to female. By transgending I refer to "individuals who have undergone hormone treatment or surgery to reconstruct their bodies, and to those who cross gender in ways which are less permanent" (Hines 2007).

counter-hegemonic potential of the subcultures that have been generated by their members.

Without undermining this resistance potential, in this thesis I study the interaction of social and legal dynamics in the lives of transgender women of Turkey in order to shed light on the unequal ground on which these counter-hegemonic struggles unfold. I see law as constitutive of the unfair ground in these struggles in its two ways; (1) through its work in setting up divisions (such as legal/illegal or legitimate/illegitimate etc.) and (2) through its work through various techniques at different legal orders, which display at times overlapping, at times contradictory logics (Santos 1987, Valverde 2009).

When thought from below and through the material experiences of transgender women, it becomes clear that a web of laws and juridical and police conventions unfold in relation to social dynamics whose application are left to a variety of legal and quasi-legal authorities. Thus instead of focusing at one particular instance of this relation, my analysis directs attention to the simultaneity of various socio-legal practices and applications that target transgender women.

### *1.2. Governmentality and the Legal Complex*

What I will delineate in this thesis is instances of an experience of legality that applies only to some bodies in a given space and time while others who do not have the same embodied performances do not become subjects of law in the same fashion. This selective targeting of bodies brings to mind the question of *governmentality*.

Foucault (1991: 102) depicts governmentality as "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." The concept of governmentality highlights the techniques, practices, discourses and forms of knowledge in and through which subjects come into being, and through which their lives are regulated and directed. Likewise, it involves a dispersed form of power that is not centred in any single locus of coordination but is fluid, multifaceted and heterogeneous.

This kind of an understanding of the operation of modern forms of power introduces challenge and debate to socio-legal studies. In particular, Foucault's conceptualization of power as not solely negative or repressive, but mainly as productive and normalizing, explicitly distinguishes his approach from studies of power that focus on the dominating role of judicial sovereignty and state institutions (Foucault 1978a). Several socio-legal scholars remain sceptical to Foucault's approach to law and express their concerns regarding the extent to which Foucaultian theory considers law a manifestation of the increasingly out-dated juridical model and sees it only in the negative prohibitory fashion (Smart 1989, Hunt & Wickham 1994). Hunt and Wickham (*ibid.*) criticize Foucault even of "expulsion of law from modernity"; yet still put their efforts to reconcile Foucaultian 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.

On the other hand, another line of scholars end up with a different interpretation on Foucault's position on law, harshly criticizing the "expulsion of law" thesis and calling it "problematic" (Munro 2001) or even "misleading" (Murphy 1996, Rose & Valverde 1998). Pioneered by Foucault's research assistant Francois Ewald (1990) and socio-legal scholar Victor Tadros (1998), and taken up by later scholars (Munro 2001, Rose & Valverde 1998, Valverde 1998, 2008), this "emerging counter-claim" to the "dominant interpretation" (Munro 2001) offers a different reading of Foucault. This interpretation conceptualizes law itself as governmentalized (Rose &

Valverde 1998: 543) and as an accomplice of the normalizing power (Ewald 1990: 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 (1978a: 144) 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.

Although the two lines of scholars have different interpretations of Foucault's position on law, what is important for me in this thesis is that they end up in similar positions regarding law's embeddedness within governmental strategies (Walby 2007). Indeed, Foucault's influence is increasingly reflected in works of various socio-legal scholars and legal anthropologists whatever their interpretation of his theories. A diverse range of legal processes and interactions are analyzed through the lens of governmentality, from studies on moral regulation and sexuality (Hunt 1996, 1999, Valverde 1998) to legal geography and criminology (Smandych 1999). This emerging interest in governmentality also represents a shift from the social control analyses of 1970s and early 1980s which are criticized of being functionalistic and simplistic by critical theorists (Hunt 1999).

My general theoretical concerns in this thesis are inspired and guided by this above-mentioned line of scholarship which demonstrate governmentality's relevance to render the ways law works visible in new ways and overall has been important in showing the various legal or quasi-legal techniques, strategies and rationalities used in the 'art of government' to manage 'problematic' populations. Beginning with the premise that transgender women emerge as objects which need to be regulated by law, my main interest in thesis is to map empirically governmental practices and techniques targeting transgender women of Turkey in their everyday interaction with law and examine the diverse ways their "possible field of action" (Foucault 1982: 790) is structured by these practices. Now let me clarify my approach to governmentality and the theoretical tools I employ in this thesis more in detail:

Studying law through the lens of governmentality necessitates a focus on the *process*. It asks how "law is doing" (Hunt & Wickham 1994: 99) and "what a certain limited set of legal knowledges and legal powers do, how they work" (Valverde 2003: 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 (2007: 568) 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".

To point this complex and multiple operation, Rose and Valverde (1998: 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 & Valverde 1998: 545), and on how they are regulated by the legal complex. Yet it reiterates that the legal complex is only one mechanism and does not 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 governmentalization are destined always to be "incomplete" (Hunt & Wickham 1994: 103).

The legal complex can be studied through four foci from the perspective of governmentality (Rose & Valverde 1998): If *normalization* refers to the hybridization of the legal complex with norms, *authorization* refers to the constitution of "regulatory agents" (Hunt 2002) who are authorized to govern the target population. *Subjectification* is the constitution of subjects suffused by norms and *spatialization* the constitution of "governable spaces" (Rose & Valverde 1998: 549). As I hope my account will show that the governmentalization of transgender women by the legal complex in Turkey *normalizes* certain forms of practices and identities while rendering others deviant or marginal; thus that it partakes in constitution of particular *subjectivities* and their inclusion in or exclusion from particular *spaces*; and that it achieves these through *authorizing* a range of regulatory agents. To show the dynamic and fluid nature of power, I will weave my analysis of these governmental practices together with the several tactics transgender women deploy to resist them (de Certeau 1988). This comprehensive outlook will provide the basis of my empirical study of the ways through which the legal complex operates upon and governmentalizes the transgender women of Turkey.

## 2. Methodological Framework

### 2.1. Introduction

This chapter opens with a brief discussion of the methodological approach I deployed for my research and sets out my field experience, as well as information on my research sites and participants. My choices of research methods, sites and participants were mainly driven by this project's small scale in terms of time constraint and feasibility which necessitated making difficult choices about what I should examine and what I should not. Thus this chapter contains not only information on the field sites, participants and methods I deployed, but also reflections on the limits and limitations of my research.

Mariana Valverde (2003) demarcates two types of inquiry within critical studies, specifically in sociology of law. The first line inquires into the *interests* of law and has been successful in its projects of exposing "the myth of legal neutrality", the relations of power concealed by law (*ibid.*: 11). Yet these studies usually lean against certain realist epistemological assumptions (Rose 1987, cited in Valverde 2003) and understand law just as a tool of social structure and domination. Thus they tend to replace the myths they denounce with other grand abstractions such as the patriarchy, racism or globalization and a consequence has been the negligence of the more mundane questions of the *how* things get done within and around legal mechanisms on the ground (*ibid.*: 11).

This question of 'how' is what the second type of inquiries works upon. Valverde, clearly maintaining Nietzsche's and Foucault's criticisms of any kind of foundationalism and transcendentalism, calls this approach "dermatological" (*ibid.*: 13). Dermatology is a term she borrows from Valery and Deleuze, the latter of whom used the metaphor to explain Foucault's methodological strategies.<sup>2</sup> This approach, without opposing the surface to the depths, the "appearances" to "the reality" (*ibid.*: 12), tries to document how the legal complex operates, and is concerned with the *effects* of these legal operations, without making claims about structural causes.

Taken together with my understanding of law as governance, this dermatological method Valverde describes parallels my theoretical and analytical concerns. As I explicated in the earlier chapter, my study is first and foremost a study of

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<sup>2</sup>Valverde notes (*ibid.*: 13): "When asked to explain Foucault's method, Gilles Deleuze observed that a metaphor Foucault might well have used to describe his method is one drawn from Paul Valery's remark 'le plus profond, c'est la peau' (Deleuze 1990, 119)."

governmental practices targeting transgender women of Turkey. Thus as an analysis of governance, my study pays attention to the process itself and asks how "law is doing" (Hunt & Wickham 1994: 99) and "what a certain limited set of legal knowledges and legal powers do, how they work" (Valverde 2003: 11), rather than aiming to reach to a generalization of the reasons underlying these practices.<sup>3</sup>

## *2.2. Methods, Sites and Participants*

The crux of my research questions lies in understanding the manners through which law targets transgender women of Turkey and renders them subjects of its constitutive power. This necessitates a thoroughly empirical unpacking of the ways the legal complex operates upon transgender women and also its effects on their sex work and daily lives. Either way, my initial conclusion is that the governmentalization of transgender women by the legal domain often happens through a multitude of legal and institutional practices and it is necessary to understand the complexity of the institutional matrix. With the aim of demonstrating this complexity, I devised a method of field research mainly tailoring two basic research methods: in-depth semi-structured interviewing with transgender women, and close readings of legal texts.

Following my objectives, I began my fieldwork with a general overview of the legal texts regarding transgender women of Turkey. In the Turkish legal system, there is only one law which concerns directly transgender women: Article 40 of Civil Code about the regulation of sex change operations, which dates back to 1988 but was changed in 2002. First of all I examined this particular law which has implications in particular on the construction of the symbolic limits of transgender identity and in general on discourses and practices of citizenship in Turkey. However, I decided to note its effects on transgender women as far as it relates to the specific governmentalization I describe which is concerned with the more mundane, everyday workings of the legal complex on transgender women rather than doing a detailed examination of this law and its effects, which would exceed the limits and the scale of this thesis.

Later on, I focused on the laws on sex work. This had two main reasons: The first one considers that transgender women of Turkey, including my participants, mainly have to make a livelihood through sex work. The only big scale survey on transgender women of Turkey driven by Lambda Istanbul LBTT Association (2008) indicates that 89.7% of transgender women do sex work and believe that they have to do it due to their gender identity, and 57.8% were rejected for a job because of their gender identity. The notion becomes established even in the daily Turkish language, where "doing transvestism"<sup>4</sup> means simply working as a prostitute.

The other reason, not less important than the first one, is related to the interventions of legal institutions and police officers into transgender women's sex work and daily lives. As far as these interventions are mainly based on/legitimized through "suspicions of prostitution" although sex work is not criminalized but regulated according to Turkey's legal framework, I wanted to see what the law in the books says, then to see how they are put into action by the authorities who are charged to operationalize them.

With these considerations in mind, I examined legal texts on sex work in general and then looked to the ways they apply to and in turn affect transgender women of Turkey. After my review of Turkish laws, the text I had to examine for this part turned out to be "Act on Provisions about Generalized Women and Brothels and

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<sup>3</sup>As Valverde (ibid.) cautions, my preference not to look for causes does not mean that there are no sociologically discernable way of understanding what underlines these practices and their complexity. However in this study I refrain from making generalizations which would need a different kind of inquiry with different research questions and a different methodological approach.

<sup>4</sup>"Travestilik yapmak"

Fighting against Venereal Diseases Transmitted through Prostitution". For this part of analyzing legal texts, I was more concerned with how this act constitutes its subjects, and has an impact on the specific sex worker population I study. In the second section of Chapter 3, I show the effective expulsion of transgender women from regulated sex work by the interaction of the socially produced desire around their bodies and law.

After examining the legal texts, transgender women's narratives about their engagements with law were the only feasible way to be informed about their sex work and its relation to the legal complex (Mason 2002: 66). Thus interviews with transgender women constituted an appealing and the only site to investigate what happens once they are excluded from regulated sex work, yet how the legal complex goes on subjectifying and directing them to different legalities of action and in turn constructs them and their daily lives. On the other hand, doing the socio-legal analysis of legal texts before conducting my interviews helped me to get a better sense of the field and to conduct my interviews in a more reflexive manner based on the insights I got.

Overall, I conducted in-depth, semi-structured interviews with 10 transgender women from Istanbul, the metropolitan city of Turkey. It is estimated that about 5000 transgender women live in the city and it is very much skewed towards advantage of overcoming the symbolic violence of heterosexual regulatory matrix (Butler 1999) where transgender women have a more visible community and the means to transform their bodies and physical appearance. Yet although being renowned for being the most liberal city of Turkey, transgender women can hardly be said to enjoy the city's reputation. Personal accounts of transgender women point out that all other kind of social relations rather than gender identity become irrelevant for them, they are stigmatized as sexual deviants, and it is hard for them to get employed outside the sex industry.

Though it might be hard to reach transgender women because they are extremely stigmatized and excluded, knowing through activism transgender women personally helped me to find my research participants. In my interviews I was interested in a short personal history of my participants, their everyday life and their encounters with law enforcement officials, especially with police officers. These interviews lasted between two hours and six hours and fifteen minutes. In some cases they were completed in more than one session. All interviews were conducted in Turkish, taped and transcribed afterwards.<sup>5</sup>

Because the variety of my participants and their experiences were important for me to see different moments of legal regulation in their everyday lives, and their lives as sex workers, for my sampling, I followed a strategic path to get the relevant range of data I need to address my research questions (Mason 2002: 123). As of my participants, all of them were born in rural Turkey and raised in conservative families,<sup>6</sup> and all of them had left their families for Istanbul in their mid or late teenage years. They describe their journey to Istanbul as the first time of seeing other people resembling themselves, thus beginning to make sense of their sense of selves and to provide themselves with the appropriate signs to their gender identity. Yet soon after their arrival to Istanbul, all participants whose ages differ between 21 and 57 had began working as sex worker unable to find any other employment. Seven of them have been working as a sex worker for more than a decade, at times relying on transgender acquaintances for livelihood. The remaining three participants are former sex workers who gain their living through other

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<sup>5</sup>Quotations in the thesis are my own translations where I tried to remain loyal to the expressions of my participants as much as possible.

<sup>6</sup>In the research I found out that most transgender women who openly acknowledge their transgender status come from lesser backgrounds. It is likely that upper class transgender women are able to devise mechanisms that enable them to live with less risk. It is also possible that they can find more sophisticated ways to selectively experience their transgender identity or to disclose it contextually.



means. The sex worker participants work in Beyoğlu district of Istanbul, and with the exception of one, all participants also live there.

That transgender women live a communal life which they call "the biggest yet loneliest family of the world" enriched my interviews by pointing to experiences of many other transgender women who I did not interview and displayed the generalizability of the phenomenon I study. My sampling also succeeded in meeting my aim to trace the multiple and fluid effects of the legal complex on transgender women's daily lives in general and sex work in particular. In terms of sex work, these interviews provided me with a much different and richer picture than implied by legal texts. As it is not easy to define sex work as well as its boundaries, it turned out that in the context of transgender sex work, locales vary widely as well, both in their characteristics and the ways they are regulated by different legal and institutional interventions. Considering the limitations of the thesis that it cannot cover this variety, I had to make another choice and I decided to focus on street sex work and working via cyberspace as they appear to be the most popular forms of sex work among transgender women and their regulation to have effects on non-sex worker transgender women as well.

Having made this decision, I turned once again to the specific legal texts which regulate these forms of sex work and cross referred my analysis of these legal texts with my participants' accounts. For street work, I examined "Law on Misdemeanours Orders" (LMO) and the "Law on the Powers and Duties of the Police" (LPDP), for sex work via cyberspace Law No. 5651 on the "Regulation of Publications on the Internet and Suppression of Crimes Committed by means of Such Publication". Later I added to this framework an examination of media archives, mainly to trace other effects which might not come out in interviews and to point to the ways how the governmental practices targeting transgender women are put into circulation by the authorities. This triangulation of legal texts, narratives of transgender women with statistics from newspapers or declarations of authorities on their operations helped me to grasp the ways the legal complex constructs transgender women's sex work in particular places at specific times. The focus in the third section of Chapter 3 is this process which, as I show, leaves transgender sex workers not much option than to work on streets.

Another important aspect of my research is exploring how the measures regulating sex work do not apply to all sex workers but do apply to nearly all transgender women. In my interviews, I searched for the ways through which the laws and policies on street sex work come to surround everyday life of many transgender women, whether they are sex workers or not. Here the laws applied to street sex workers, LMO and LPDP, came to the front. In Chapter 4 I explore their enactments on transgender women and show how these low level regulations work in a conflicting way with higher levels of law to deprive transgender women from their most basic constitutional rights.

During my fieldwork, I happened to attend many informal conversations with many transgender women, their lawyers or other actors of the LGBTT field of Turkey. Thus at times throughout the thesis I also use the insights I got from these occasions as they helped to understand the LGBTT movements' legal strategies and the social milieu better.

### *2.3. Ethical Considerations*

All in all, during the process of my research, I tried to be self-reflexive as much as possible and be aware of the power-laden process of doing research, particularly when with socially disadvantaged groups. As in other more informal occasions I met transgender women, their lawyers or other LGBTT activists, at the beginning of each interview I told my participants about my research and its aims. Before each interview I explained to my participants in detail that I would not disclose their

identity and that they also had the right to quit the interview any time they want to. As I assumed that the interviews might lead transgender women to disclose some information which they would not make public in other contexts, I also let them know that they had the right to withdraw specific information they gave me during the interview, so as not to expose them to inadvertent danger. On these conditions, I gained their informed consent. After transcription, I used pseudonyms<sup>7</sup> and removed specific information about my participants for aims of anonymization. Through different steps of my research, I also stayed in contact with them to share my research findings for their input and their ideas about the way their experiences are made sense of and represented on the written page.

### 3. The Regulation of Transgender Sex Work

#### 3.1. Introduction

Literature on sex work regulation has been important in showing the complex effects of legal regulations on sex workers, especially in terms of marking the spaces of sex work and creating spaces of violence (Sanchez 1998, Sanders & Campell 2007). However there is still a persistent tendency which Jane Scoular (2010: 12) detects: Studies on sex work remain mostly formalistic in their understanding of the legal regulation of sex work because they take the institutional definitions of legal regimes on sex work at face value in terms of the distinctions set between prohibitionist, abolitionist or regulatory systems. Indeed, a quick look at the literature on the regulation of sex work (Gangoli & Westmarland 2006) proves that Scoular's critique has much validity and shows that this top-down and state-centred 'sovereignist' approach fails to interrogate the provisional and complex dynamics involved in legal processes. To overcome these limitations, Scoular suggests taking the insights provided by governmentality seriously where she shows "how law, in neo-liberal settings, matters in constructing the space, subjects and systems of governance" (*ibid.*: 24).

Furthermore, literature on sex work is highly focused on women sex workers, probably as a consequence of the influence of feminism and the feminist concern about the exploitation of the female body. Except for a few studies (Whowell 2010), the different effects of sex work legal regulations on other groups than female, such as male and transgender groups, are rendered invisible along on these groups' experiences as sex workers. This lack reflects itself in the literature on transgender women as well. Although in many countries transgender women constitute an important portion of the sex workers, studies on transgender women's sex work mostly focus on medical consequences and risks associated (Operario et al. 2008, Wilson et al. 2009). Questions of how sex work regulations affect them and their sex work on ground have not been studied.

In this chapter, I look to the legal texts and practices concerning sex work in general and transgender sex work in particular in Turkey and bring them together with the results of my interviews through the lens of governmentality. In light of my theoretical and analytical concerns, I ask about the effects of these texts and practices on transgender sex workers and show against sovereignist understandings of law which might lead one to call Turkish legal framework as 'regulatory', the complex, provisional and contradictory ways through which law regulates transgender women's sex work practices.

This conceptualization is parallel to Scoular's (2010) observation of the need to deploy Foucaultian insights to study sex work. However, my study expands on Scoular's work by showing that not only is there a constellation of different modes of governing of sex work distinguished spatially but moreover, within what appears

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<sup>7</sup>The pseudonyms I choose are actually a bit out of the ordinary. This is done in the spirit of not indicating other transgender women while trying to encode my participants.

to be one mode of governmentality there are differentiated groups of sex workers who experience that governmentality differentially. Furthermore, while Scouler explains her findings through neo-liberalism, following my methodological considerations in terms of my study's approach and scale, I also refrain from making a statement about the factors underlying the way sex work laws are operationalized in Turkey.<sup>8</sup>

The rest of the chapter is organized around the forms of sex work. One dilemma encircling the sex work practices of transgender women is the construction of male desire for their bodies. "If you don't have something in front of you, they put you out of the car," Emine tells. The reason is that most men who want sex with a transgender sex worker actually want to have a mutual anal intercourse in an acknowledged or unacknowledged desire for a homosexual encounter. So, having gone through the surgery and losing their penis generate a loss of business appeal for transgender sex workers. Quite tellingly one colloquial term among transgender women for penis is "national wealth". This dilemma marks all the forms of sex work described below.

### 3.2. Working in a Brothel

In Turkey, sex work is not criminalized but regulated by the legislation called "Act on Provisions about Common Women and Common Houses and Fighting against Venereal Diseases Transmitted through Prostitution"<sup>9</sup> according to the framework drawn by "Public Health Law".<sup>10</sup> The substantial part of the regulation deals with the licensing of brothels and sex workers, as well as the procedure for the medical examinations of sex workers. After reiterating 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 sex workers who want to give up sex work, the management of venereal hospitals and the fee 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 governorate.

The act refers to the sex worker as "generalized woman"<sup>11</sup> 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 women have to acquire a license, i.e. *vesika*<sup>12</sup> that is given in replacement for the sex worker's confiscated identification card. As licenses render sex workers legible to state and its officials, through their replacement of the identity cards sex workers lose all their identity but gain one only as a "generalized women."<sup>13</sup>

The definition of sex worker under this regulation sets the limits of who can work in a brothel. It only covers woman sex workers who serve male clients, thus preoperative transgender women and male sex workers fall outside the established rules regulating the operation of brothels. The consequence is that a preoperative transgender woman who wants to work legally in a brothel should first undergo the sex change operation and all related procedure determined by the Civil Code<sup>14</sup> to

<sup>8</sup>At this point I have to add that I share the concerns of some governmentality scholars (Rose, O'Malley & Valverde 2006: 97) that neo-liberalism turned into a cookie-cutter and is being used intensely to explain diverse phenomena in many different contexts. Instead I think it has to be kept in mind that neo-liberalism might unfold differently depending on the context and thus we need to develop more contextualized understandings of neo-liberal processes.

<sup>9</sup>Genel kadınlar ve genelevlerin tabi olacakları hükümler ve fuhuş yüzünden bulaşan zührevi hastalıklarla mücadele tüzüğü (19 April 1961).

<sup>10</sup>Umumi Hıfzısıhha Kanunu (1930).

<sup>11</sup>The term for brothel can also be translated as "generalized house".

<sup>12</sup>Vesika literally means "document".

<sup>13</sup>See Zengin, A. (2007) for a closer examination of the legal regulation of brothel life.

<sup>14</sup>One interesting site in which one can observe transgender women being governmentalized by the legal complex is sex change operations. Article 40 of the Civil Code on sex change operation clarifies this.

issue a pink ID card<sup>15</sup> and only then she can apply for a license. While getting a license is a bit more common among transgender women, working in brothels is extremely exceptional. They are not allowed to work in brothels with a blue ID card. As such these regulations also reproduce the contradictions of socially produced male desire and transgender women pay for the contradictions of legal regulation with socially produced desire for their bodies. While the clients ask for transgender sex workers, the legal regulations are only intended for opposite sex encounters and in regulated brothels.

Actually, in 2001 a change was proposed to this act by the Ministry of Health and the Ministry of Interior that would allow transgender sex workers to work in brothels. The proposal changed the terms "generalized woman" to "sex worker" without reference to sexual identity and "generalized house" to "place of intercourse", and defined prostitution as "the act of engaging in sexual intercourse with various people in exchange for financial benefit" (Ercan 2001). This proposal passed through the Council of State but was dismissed by the Prime Ministry.

About the reasons of the dismissal of the proposal, articles appearing in newspapers focus on the using of the term "sex worker". In *Hürriyet* Newspaper of 07 Jan 2001 (*ibid.*), 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 legalized. It was a draft in any case. Can a state allow such perversion? The state will never pass a perverted law."

This demonstrates that the regulatory dynamics of the legal complex work through divisions. This distinguishing between sex workers and sexual practices is parallel to what Foucault calls "dividing practices" (1982:210). Hunt (1999:8) observes that dividing practices have two consequences: they delineate 'good' from 'bad' and they legitimize the different treatment of the divided categories. In this case, the regulation of brothels cuts the sphere of sex work into two domains. Firstly it divides it by rendering one as regulated and the other one as unregulated sex work domains which are also spatially distinct and unconnected from one another. At the other one it distinguishes female sex work from transgender or male sex work, attaining the former legitimacy and pushing the latter further to the margins of social life and at the hands of another way of legal management.

The quote above also demonstrates that not allowing transgender women to work in brothels cannot be considered as a gap in legal texts but is more about deciding to regulate transgender sex work on another scale. Banning transgender women from brothels would not put an end to transgender sex work yet it means not

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Currently the person who wants to have sex change operation has to be i) older than 18, ii) unmarried, iii) not sexually reproductive iv) the person needs to have a transsexual 'nature' and sex change should be obligatory psychologically and physically. To meet the criteria (iii) proposed by the law, transgender women who desire to undergo sex change operation first have to sterilize themselves before applying for a sex change operation and also to demonstrate that they do not have any children so to be able to claim that they have never retained reproduction capacity. According to my participants, there have been cases that transgender women were denied the operation because they have reproduction capacity which caused big concern and fear on part of my pre-operative transgender participants. Although they want to go undergo the operation, the procedure of the sex change operation also keeps them reserved. Currently civil courts work in conjunction with various experts along the duration of a two year period regarding the possibility of a sex change operation. This long duration of experts, courts and doctors working on the psyche, body and will of the transgender women can be seen as a process where the person's fitness for heteronormativity of femininity is tested and produced. This two year era and various scientific and legal procedures deployed on the transgender women can be seen as a process of governmentalization of the transgender body. The emergent femininity is to be a governmentalized one that carries its difference from other femininities in both its body and the way in which its sexuality and reproductivity are regulated. This process clearly carries some disciplinary elements (Foucault 1978b).

<sup>15</sup>Pink ID cards are taken as an indicator of womanhood in Turkey.

attaining it the legitimacy which legislation would bring. Thus transgender sex work goes on being regulated through the legal complex by other legal or quasi-legal practices at different scales and this shift in scale enables "complex governing manoeuvres" (Valverde 2009: 139) to be acted upon transgender sex workers.

All in all what we see here is the effective expulsion of transgender women from regulated sex work. Female sex workers are governmentally managed through being framed only in terms of health and population concerns. However, the governmentalization of transgender sex workers unfolds itself by the interaction of socially produced desire around their bodies and law. They can only work outside of the brothel.

### *3.3. Working outside a Brothel – Other Locales*

Under the conditions of the current regime about sex work there exist two domains: licensed and unlicensed sex work. The unlicensed sex work outside the brothels is not criminal but remains informal. However the "Act on Provisions about Common Women and Common Houses and Fighting against Venereal Diseases Transmitted through Prostitution" does not end by describing the regulation of licensed sex work and has another turn for the sex work which takes place outside of the licensed regulation: According to its 23<sup>rd</sup> clause, sex workers who do not comply with the conditions of being a "generalized woman" are treated in accordance with "clauses concerning health measures." These sex workers cannot be "licensed" but remain "surveilled". The "Commission against Prostitution" is authorized to issue for these sex workers a confidential health paper called as a "blood card". The act sets clear that these sex workers who cannot work in brothels are required to pass medical examination every ten days and their blood cards should show the last time the sex worker was under medical examination, and whether she has any contagious disease or not.

As it is, sex work regulation enables a four tiered legality: i) having the license, and being formally employed in a brothel, ii) having the license but not working in a brothel, iii) not having the license but having the blood card, iv) having none of the papers. Mentioning some statistics might be revealing in this regard. A 2004 report of the Ankara Trade Organization suggests that as of 2004 in Turkey there were 56 brothels, about 3,000 licensed sex workers, 15,000 sex workers working with a blood card and more than 100,000 sex workers working without license or blood card. Interestingly, the report also notes that more than 30,000 women applied for but did not get a license.

As my older participants inform, especially during the 1970s many transgender sex workers have been given blood cards. Yet my younger sex worker participants also mention that they know few transgender women who have been issued a blood card after that period. This demonstrates that the authorities who are authorized to issue the documents operationalize the same bylaw in different ways in different times which in turn has different effects on sex workers. By the time of the interviews, none of my sex worker participants had been issued with a license or blood card.

Clearly the attainment of each document is a struggle. For sex workers, these documents are precious as they enable protection from interventions by the police. For example Latife, while we talk about the documents, recounts that one of her friends was able to pass a stop by a police officer without the fine that is imposed upon transgender sex workers and transgender women –and that I will discuss below. He let her go after she showed him her blood card. Latife, on the other hand, was fined because she did not have the card. In this case, the blood card offered a protection for her friend as a sex worker yet for Latife its lack meant the opposite, vulnerability.

Other than the documents and the temporal dimension, spatialization seems to matter a lot in the making of the regulation of transgender sex work as well. Sex work in spaces other than brothels has a highly ambivalent status. Yet as brothels are legally excluding transgender women who do not fit the image of the "generalized woman", transgender women have to navigate spaces that are regulated in an ambivalent manner. For the rest of this section, I will focus on the regulation of street sex work and working via cyberspace as they appear as the most popular forms of sex work among transgender women.

### 3.3.1. Street Sex Work

One of the most common ways of finding customers for transgender sex workers is street sex work or *çark*, as it is put in transgender slang. *Çark* consists of stand-alone sex work by waiting on particular streets for clients or touring with a car and meeting potential clients through signalling with headlights in particular districts; then taking clients to car parks or private houses that are located nearby. Sex workers rent these private houses for short durations and after the transaction leave them to find new clients.

Street sex workers usually mention that they can generally choose their working hours and the clients, and refuse to provide services. Street sex work is also considered as a more profitable way of sex work. However it renders transgender sex workers more open to violence of clients or community groups, to robberies or other kind of attacks as well as to interventions of police officers which in turn aid the intensity and continuation of the former kind of violent acts.<sup>16</sup> Indeed, although sex work itself is not criminalized in Turkey, some articles of various laws are enacted to detain, fine and harass transgender sex workers. These laws are, namely, Law on Misdemeanours Orders (LMO)<sup>17</sup> and the amendment to the Law on the Powers and Duties of the Police (LPDP)<sup>18</sup>. Now I turn to explore the enactments of these laws at street level in order to understand how they target transgender women.

LMO are civil orders that grant local authorities authority to deal with behaviours which are considered to be likely to cause harassment, distress and nuisance. As Yılmaz (2005: 38) puts it, with the introduction of LMO, some former felonies have been entitled as "misdemeanour" which "can be considered as unimportant social infractions". These felonies lost their "criminal" attribute, but remain against the law (*ibid.*), to be negotiated by other "law" branches than law courts. Now the administrative authorities are authorized to deal with these acts deemed as unlawful.

In general terms LMO gives the police the means to punish a number of misdemeanours –among them gambling, drunkenness, making noise, occupying the street, failing to disclose one's identity to a public official, polluting the environment or hanging posters in public places etc. The aim of the legislation is stated as "to protect public order, general morality, general health, the environment, and the economic order", and the vagueness of the language of the law is significant here.

Soon after the introduction of the LMO, police officers are reported to routinely refer to three such acts to detain and fine transgender sex workers: Article 32: "(1) Any person who disobeys the lawful orders which are given by the authorized agencies with a purpose of judicial procedures or in order to protect public security, public order or common wealth is fined 100 TRY. The authorized agency imposes

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<sup>16</sup>See Sanchez, L. (1998) for similar dynamics on the illegal status of female sex work and Hubbard, P & Sanders, T. (2003) for tactics which female sex workers use to resist these acts of violence. Although I discuss tactics of transgender sex workers to escape police fines below, in this thesis I do not focus on the ones they deploy against other kinds of violence.

<sup>17</sup>Kabahatler Kanunu, no. 5326 (March 2005)

<sup>18</sup> Polis Vazife ve Selahiyet Yasası, no. 2559 (June 2007)

the fine", Article 36: "(1) Any person who makes noise with a purpose of disturbing or breaking the peace of others will be fined 50 TRY. ... (3) The police and municipal force are authorized to fine" and Article 37: "(1) Any person who disturbs others to sell goods and services will be fined 50 TRY. (2) The police and municipal force are authorized to fine."

The amendment done in the latter, in LPDP, gives police additional authority to arrest and detain people based on "suspicion" "in order to prevent a crime or a misdemeanour" and "to prevent any present or potential dangers to the life, bodily integrity or property of individuals, or to society"<sup>19</sup>. On the other hand, Article 10 now allows police to search persons, their vehicles, personal belongings without their consent or an authorization of judicial decision which was formerly necessitated.

In the practical combination of LPDP and LMO in the routine of Istanbul police forces, sex work and waiting for customers on the streets emerge as a routinized possibility that sex work and waiting for customers on the streets would be considered a misdemeanour. Through this new set of laws which complement each other, police now have a wide license for policing without any juridical scrutiny, while it is fully left to its subjective decision what "general morality" or "public order" mean. In the interviews, as well as in more informal occasions I happened to attend, many transgender women report intensified police intervention with the introduction of these laws.

Both laws are important because they indicate a change on how the street sex work of transgender women is governed. These developments point to the rise of a governmental logic where the public officials claim to control circulation in the name of security order and morality. Foucault (2007: 93) notes the emergence of this new formulation of power: "no longer that of fixing and demarcating the territory, but of allowing circulations to take place, of controlling them, sifting the good and the bad, ensuring that things are always in movement, constantly moving around, continually going from one point to another, but in such a way that the inherent dangers of this circulation are cancelled out."

Interestingly the examples of ambivalent spaces amongst laws, acts and statutes described above do not remain only in daily life but are transformed into public declarations and put into circulation as well. One example is the declaration of "Commission against Prostitution" in 2007 that "it is clear that some transvestites and women disturb common citizens" and that the Commission decided to enact Article no. 32 of Law on Misdemeanours Orders "to protect public order and public health of society" and to fine "these persons who wait for their customers on streets" (Arpa 2007). In this case the Commission was turning into a public event what should be basically its bureaucratic duty.

Another more recent example concerns a police officer's statement to a Turkish newspaper. He says: "In the first five months of 2010, we brought prostitutes and transvestites to the police station and fined them exactly for 497 times. And each time after fining, we let them out according to the framework drawn by laws. They, on the other hand, continue prostitution as soon as they put their step on the street. We got tired of fining; they did not get tired of being caught. There are even times when we catch and fine the same prostitute five times a night!" (Boğazlıyan 2010).

Actually this last statement is quite parallel in some senses to what my participants call "the standard way police treat transvestites". Ayşe states: "Each time we have to sign a report, and they fine us with 117 TRY. For example I got fined like eight times last week. And you know, if you don't pay, the fine keeps going up." She continues: "When you are detained, you swear you'll never do it again, you say

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<sup>19</sup> LPDP, Article 4/A.

'wherever I may go, let me not come across these men again'. But where else can you go? You go on touring once again." Seemingly quite surprising for the police officer, for Ayşe it is a matter of fact that after being fined by the police she has to go on working to be able to pay the fine.

To break this vicious cycle of being fined while working and working more to be able to pay the fines, transgender sex workers develop what might be called 'tactics' of 'making do' following the instructive distinction de Certeau put between strategies and tactics in his *The Practice of Everyday Life* (1988). De Certeau (1988: xix) defines tactic as "a calculus which cannot count on a 'proper' (a spatial or institutional localization)". Tactics are attempts to reappropriate the space. But because they do not have places of their own yet always remain within the boundaries of the strategies, they cannot accumulate their 'win's. Strategies, on the other hand, have their own places, and are thus able to produce and fix power relations and discipline spaces and subjects.

Against the strategies of the legal complex I described above, transgender sex workers adopt tactics to reduce risks associated by the police which usually take the form of appropriating the space to their own needs. For instance they tell that on the streets they work they look for particular points, especially corners where they have a good view for potential clients but also for approaching police cars and officers. Another important factor in choosing these points is that they give them enough time and opportunity to run away and hide if they detect a potential risk by police. Thus they always stay alert and keep their attention on the motion on the street, even while they talk with clients. This leads them to minimize the time they spend by bargaining and assessing clients, and in turn undermines their profit and heightens the risk of being exposed to violence. When they see police approaching, they try to run away and hide, and also to call other sex workers they know who work on the same street to warn them against the police.

Once fined, another tactic of transgender women which seems to be more effective is to make objections to the fines imposed under LMO and LPDP. LMO ensures that objections to administrative fines can be done to Criminal Courts of Peace within 15 days with a letter of application which should be prepared by the legal representative or the lawyer of the complainant, and should include information about the administrative decision and evidences against it. In cases of objections, these fines are usually overruled by the courts, yet few of my participants mention that they made use of this potentiality and even the ones who did, did it occasionally because of their lack of the necessary capitals in terms of resources, knowledge, networks and skills. This reminds of a point Chatterjee (2004: 66) highlights about that "governmental activity takes place within the stratified social structures of class, status and privilege. Benefits that are meant to be available in general, are cornered by those who have greater knowledge of and influence over the system". This unavailability marks again the boundaries and limits of tactics. Yet what is more and directs attention the contradictory workings of the legal complex is that as transgender women emphasize, the overruling decisions do not get reflected onto the streets in the operations of the police and transgender women have to object each single fine which makes recourse to this tactic even more difficult.

In this context the most widely-used tactic among transgender street sex workers becomes changing the space of the sex work and moving to home, and working via cyberspace. The discussion below addresses this form of sex work and the legal dynamics surrounding it.

### 3.3.2. Sex Work via Cyberspace

The emergence of the Internet has led to the further development of the sex industry by providing sex workers new means to communicate with clients. As Sanders (2005) points to the rise in the use of Internet by female sex workers in



UK, for transgender sex workers in Turkey Internet provides another tactic to cope with the violent acts and legal interventions they encounter on the streets; and the ones who can afford and have the means, mostly prefer arranging their clients via cyberspace.

To do this, transgender women usually sign in to various profile websites which costs between 50-100 TRY per month. The monthly fee, they say, varies according to the sites' popularity, number of visitors and Google rankings. Transgender sex workers' photos and personal and contact information are present in these profile sites. While some workers go to the client's place, most of them prefer to call the client to their home. Because they do not see the client until they meet, they want to stay in their place. Usually and preferably, one of their housemates stays at home as well to keep an eye on and prevent any violent attack.

My sex worker participants emphasize frequently that they prefer this kind of sex work because in practice it means "a safe haven" for them away from the police and in their own space. However, this situation changed sharply with the introduction of Law No. 5651 on the Regulation of Publications on the Internet and Suppression of Crimes Committed by means of Such Publication<sup>20</sup> in 2007. Law No. 5651 defines the legal responsibilities of various internet actors including content providers, hosting companies, access providers (ISPs), and Internet cafes and regulates procedures regarding crimes committed on the Internet. It declares that access to websites will be blocked if there is sufficient suspicion that obscenity and prostitution are being committed on that website. Other crimes include encouragement and incitement of suicide, sexual exploitation and abuse of children, facilitation of the use of drugs, provision of dangerous substances for health, gambling, and crimes committed against Atatürk<sup>21</sup>. As a result of this legislation, many web sites that include the words "gay", "lesbian", "transsexual" and "transvestite" are blocked related to charges of "obscenity" or "prostitution". Among these sites are also the profile websites which transgender women were using to meet their clients.

According to the law, blocking orders can be issued by a judge during preliminary investigation and by the courts during trial, but also by a government body, the Telecommunications Communication Presidency (TCP) through "administrative blocking orders". These orders can be issued by the Presidency with regards to the crimes listed above when the content and hosting providers are situated outside the Turkish jurisdiction. If the content in question involves sexual exploitation and abuse of children, and obscenity, the Presidency can also issue administrative blocking orders with regards to content and hosting companies based in Turkey. In the latter case, a judge is required to rule on the administrative decision within 24 hours.

The first three year statistics of TCP for between 2007 and 2010 (Ankara Haber 2010) reveal an interesting dynamic: 5800 websites were blocked in Turkey under the provisions of Law No. 5651 since November 2007. Only 8% of these websites were blocked by court orders, while the remaining ones were blocked via administrative blocking orders issued by TCP. Although there are no specific data on the numbers, out of these 5800 bans, obscenity is the leading reason for blocking access to websites. Obscenity is followed by blocking orders against prostitution and child abuse.

As the statistics demonstrate, most of the websites and content are blocked without a decision established by a court of law. Here what crucial is that through these routinized measures what appears as an administrative precaution to be used in

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<sup>20</sup>İnternet Ortamında Yapılan Yayınların Düzenlenmesi ve Bu Yayınlar Yoluyla İşlenen Suçlarla Mücadele Edilmesi Hakkında Kanun, No. 5651 (23 Nov. 2007).

<sup>21</sup>For instance Youtube is banned in Turkey for more than two years due to some videos that allegedly insulted Atatürk.

exceptional circumstances in clearly demarcated ways gets to be transformed into a routine banning. My participants tell that they and the profile site administrators try to struggle with these measures through changing the content of website by using material which would reduce the risk of being charged with obscenity or prostitution, such as using photographs which display transgender women less sexual by covering specific bodily parts or using less overt language. However this does not help to keep the profile sites unbanned as my participants add. They believe because their transgender identity remains (actually should remain for purposes of advertising) visible, the websites end up being charged with obscenity if not prostitution. This nullifies the possibility of transgender women advertising for their own sex work which has the net effect of transgender women quitting what effectively is a less risky form of employment in favor of *çark*, street sex work.

#### 4. Governing Transgender Women

##### 4.1. Introduction

In 1967 Garfinkel (cited in King & Ekins 2007) pointed to the importance of transgender experiences to the discipline of sociology but it was almost two decades later a sociological interest emerged on what can be considered as "transgender studies". In 1998 Susan Stryker (1998:155) wrote that "as a field, transgender studies promises to offer important new insights into such fundamental questions as how bodies mean or what constitutes human personhood" and underlined the importance of the field in terms of the new insights it can offer to understand embodied experiences. In these last two decades interest in transgender persons reached across disciplinary boundaries to history (Dekker 1989), literature (Pernal 2002), anthropology (Kulick 1998) and to women's and queer studies (Butler 1990, Chapman & Du Plessis 1997, Halberstam 2005).

In international scholarship, transgender people's relationship to law is studied mostly in terms of their relation to legal codes related to their citizenship status. These studies show the uneven access of transgender women to political, civil and social rights due to their gender identity and point to the possible way-outs by stretching the boundaries of citizenship and constructing an understanding of "transgender citizenship" (Monro & Warren 2004). They show the importance of the amendment of formal documentation for enjoying citizenship rights (Couch et al. 2008); the discriminations transgender people suffer including employment, parental issues and marriage (Currah et al. 2000) and how laws fail to protect them against violence (Field 2007).

This chapter can be read in line with these studies, where I describe how some legal regulations, once enacted on the ground, might bring transgender women the constant and pervasive risk of being deprived of their most basic constitutional rights. However the difference of this section lies that it does not highlight the flaws in 'law in the books' nor focuses on law as a means to protect the rights or to meet the needs of transgender women. It moves from this theoretical standpoint to an empirical examination of the complex ways through which transgender women of Turkey are rendered as lesser citizens of the Republic, and shows that this happens also through low level legal regulations at the intersection of different legal orders rather than in a hierarchical manner assumed by law's sovereigntist understandings.

##### 4.2. Transgender Women as Targets of Governmental Practices

In the previous chapter I analyzed laws and their enactments surrounding transgender sex workers in Turkey, and showed the emergence of a variety of legal or quasi-legal regulatory agents and a multiplicity of institutional and legal practices that construct, locate, enable and exclude transgender sex work in particular places

at specific times. More specifically, these governmental practices do not apply to all sex workers but they do apply to nearly all transgender women. They target transgender women qua transgender women. Nearly all transgender women, whether they are sex workers or not, are put in a position where their daily lives might be subject to this legal assemblage.

Şükrüye tells: "If a trans woman goes out after dark, even for a social reason, they will arrest you for sex work." Indeed, her story reveals that her identification with transgenderism turns to be more important than all other identifications on the streets, so that she is automatically associated with sex work and fined for it. As she observes "just because we look the way we look, they fine us", the transgender body, at the instance it proclaims its gender identity, is equalized with sex work and subjected to a legality which do not apply to individuals with different embodied experiences. Most of my transgender participants report that they refrain from going out and they always feel afraid once they are. This leads them to maximize their efforts to pass as a woman, and erase or hide their bodily signs which they consider might cause them to be considered as not-woman.

This legality goes beyond streets and reaches into the private homes of transgender women. Fikriye states:

They charged us with prostitution. But I work at a job with social security. I earn my living with that. I've got Beyoğlu District Governorship Certificate of Employment and Health. And I told about these to the officer. But they accused me of lying. They didn't believe me. I couldn't go to my job because of them and lost a day's wage, I felt seriously down. While taking my statement the police officer said: "You were caught with two condoms in your home and you're being charged with prostitution."

Ironically, the condoms Fikriye had which lead to her being charged with sex work were given to her by the Ministry of Health. However police once again acted and recreated condoms as evidences of sex work there they signify the possibility of a sexual relationship which a transgender woman could 'commit'.

Similar practices follow transgender women even when they organize politically. In April 2008, Lambda Istanbul Cultural Centre was searched by police officers and officials from the Associations Section of Governorship of Istanbul Provincial Directorate. The warrant for the raid was issued under article 227 of the Criminal Code, criminalizing actions that "encourage, facilitate or procure a place for prostitution" (Human Rights Watch 2008). That transgender women enter Lambda Istanbul office and spend their time there was found suspicious. Volunteer office workers and visitors of the association were detained for two hours during the search of police who insistently asked them to show the secret rooms they use for the purposes of sex work. Before leaving, the police officers harassed them that they were not involved in sex work but in "kinky" and "funny" activities.

While these sorts of practices unfold in the daily lives of transgender women as individuals and in the daily lives of their associations, they also become targets of other more publicized legal efforts. On May 29, 2008 a local court in Istanbul issued a verdict denying Lambda Istanbul the right to become an official association and ordering the organization to be closed down, because the organization violates "the morals, the peace and welfare of the family." The association appealed to the decision and the court of Cassation overturned the decision which the lower court abided by. Yet the terms of these two latter decisions are significant in that they left LGBTT people in the limbo of legality. The court of Cassation stated: "If in the future the association engages in acts that are in the direction of promoting, encouraging and disseminating the following sexual orientations: lesbian, gay, bisexual, transvestite, transsexuality out of line with its bylaw, then the possibility of the application of [...] articles 30 and 31<sup>22</sup> of the law of associations and its

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<sup>22</sup>The articles relating to general morality of the Turkish Civil Code are referred.

disbanding are indubitable.”<sup>23</sup> As with this sentence the Court put out a warning to LGBTTT individuals, it also imagines an association that is formed by a group of people who share a set of sexual performances but do not disseminate or encourage it.

Even in more daily encounters transgender women receive inadequate service from police; few complaints by transgender women lead to police responses, charges or convictions. All my participants indicate that they abstain from calling the police even when they are in desperate need of help. Lütfiye says: “[A]nd if I fall into a situation where I definitely have to call the police, I would pretend to be a man; I mean I would change my voice accordingly...” Otherwise police would not come to help her, she believes. Although this might be called as a tactic or even a “masquerade” (Ewick & Silbey 2003: 1350), it also points to dynamics in access to justice: As Felstiner, Abel and Sarat put it (1980/81: 637) “access to justice is supposed to reduce the unequal distribution of advantages in the society; paradoxically it may amplify these inequalities”. Transgender women’s relation to police and the inaccessibility of the latter amplify their vulnerability to violence.

In sheer contrast to the low levels of recourse to the police, transgender women report experiences of disproportionate levels of violence. Behice tells “4 of my housemates are killed, I put 15 of my friends into ground” and adds “few trans women die a natural death.” Thus the governmentalization of transgender women, which I described in this thesis, appear to have effects on transgender women’s existence on other domains and literally as well. They are denied to have a permanent and rightful place in the political community they are members of also through these practices.

## 5. Conclusion

In this thesis, I tried to understand the effects of the operation of the legal complex on transgender sex work in particular and transgender women in general. I argued that understanding the dynamics of transgender sex work and the lives of transgender women in Turkey needs an unpacking of the unitary and sovereigntist understandings of law in the light of Foucault’s insights about governmentality, and of Rose and Valverde’s discussion (1998) on Foucault’s significance for socio-legal studies.

My analysis shows that transgender women find themselves in a multitude of legal and institutional practices that are borne out of the interaction of their social contexts, their bodily performances and legal texts and their application, and that this is done through various regulatory agents. Rose and Valverde (1998: 546) would term these agents “all the little judges of conduct [who] exercise their petty powers of adjudication and enforcement”. They seem to leave transgender women without any institutional or cultural entitlement to the ways in which their social existences is channelled. What is permitted and what is not, what is legal and what is not, what can be used as evidence and what not gets to interact in manifold ways with the distinction of which of transgender women’s practices are to be recognized by the law and what not. Space also emerges as a significant factor in the constitution of these practices and their effects.

As Scoular suggests (2010: 30) that “examining the extended forms of governance” might “enlighten us more about what law is doing more than the statue book”, an important contribution of my thesis is that it demonstrates the always conditional, provisional and selective operations of the legal complex which includes contradictions, plurality and heterogeneity in its way of managing its subjects and in itself. In particular, my examination shows that the law cannot be presumed to treat its subjects in a nationally homogenous manner but rather is flexible enough

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<sup>23</sup>Court of Cassation Seventh Chamber, 2008/4109, no. 2008/5196, 25 Nov. 2008.

to adapt to 'problems'. Its subjects, depending on their identities, practices or experiences, might become its objects in strikingly different ways.

An important component of this flexibility seems to be law's capacity to work at different legal orders and through different techniques which support or contradict each other yet overall form and sustain the patchwork of legality transgender women are subjected to. This kind of a legality calls to mind de Sousa Santos' argument (1987: 298) that "[o]ur legal life is constituted by an intersection of different legal orders, that is, by interlegality". I deploy de Sousa Santos' concept of 'interlegality' to point to the intersection of multiple networks of laws and legal orders which form part of the socio-legal experiences of transgender women. This legality shapes their sex work practices and their daily lives in diverse ways, amounting to rendering their constitutional rights and protections invisible in more mundane socio-legal interactions of specific contexts, times and spaces.

Although my thesis does not look at some important aspects of this particular operation of the legal complex, it still points to some interesting themes for further research: such as the questions of legal consciousness, shifting experiences and understandings of citizenship which unfold in relation to this governmentalization process; the ways through which these governmental practices are normalized, legitimized and resisted against in and through different scales. Especially in this last period in which the LGBTTT organizations of Turkey put their efforts to achieve a legislative change in the constitution which would, according to the expectations, secure rights abuses against LGBTTT individuals, my study hints to the need of a different way of thinking about law and legal struggles if one wants expectations to be reflected in the material everyday experiences. Moving away from thinking about law in juridical sovereigntist terms towards seeing the various technologies of power that are deployed by various authorities and by different legal orders seems to be key to such an understanding. I believe my research constitutes an initial attempt of it with its call for investigating law's *complex* modes of working.

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