

# States of Exception: Legal Governance of Trans Women in Urban Turkey\*

## Abstract

Based on life story narratives of trans women, this article aims to shed light on the role of the law in their exclusion from public spaces in urban Turkey over the last four decades. In light of Giorgio Agamben's work on the sovereign exception, I argue trans women in Turkey routinely find themselves in the position of *homo sacer*: the bare life that has been rendered politically disqualified and consigned to death. Unlike in Agamben's account, in which subjects are turned into homo sacers in a singular gesture of the sovereign, my analysis directs attention to the myriad ways states of exception can be created. The experiences of trans women in urban Turkey demonstrate that exceptional legal regimes can be generated by suspending—or by simply not enforcing—the law, as well as, conversely, by establishing an overwhelming presence of the law in daily life. Rather than opposing legality to sovereignty, I argue closer attention needs to be paid to the interfaces of law with negative forms of power, and to increasingly sophisticated ways of articulating biopolitical concerns to legal practices revolving around sovereignty.

## Keywords:

State of exception, legal governmentality, sovereignty, trans women, sex work, violence, misdemeanour law, trials, Turkey

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Trans women's lives in Turkey are marked by a stark contrast between invisibility in legal texts and overwhelming presence of law in their daily lives. LGBTI identities and practices have never been formally criminalized under Turkish laws, but neither have they been offered any formal legal recognition or protection, except for a clause regulating sex reassignment surgeries inserted into the Civil Law in 1988. However, trans women are usual targets of the law in the form of police surveillance, fines, trials, and arrests as documented in reports by LGBTI and sex worker organizations (Kaos GL, 2007; Lambdaistanbul LGBTI Association, 2010; Örddek, 2014, 2016), and a number of academic studies that have focussed on their lived experiences (Selek, 2006; Berghan, 2007; Taşcıoğlu, 2011, 2015).

Based on life story interviews with trans women, this article examines the interactions of social and legal dynamics in their lives to shed light on their routinised exclusion from public spaces. Drawing on Giorgio Agamben's (1998, 2005) work on the sovereign exception, I argue that trans women of Turkey routinely find themselves in the position of *homo sacer*: the bare life that has been rendered politically disqualified and consigned to death. I will show the ways through which their governmentalization by the law (Foucault, 1991; Rose and Valverde, 1998) leaves trans women in an exceptional legality that strips them of their most fundamental rights.

To understand the constitution of this exceptional legality, my analysis starts not from abstract rules or legal norms but from the everyday experiences of people who are subjected to its force on the ground. Law in everyday life literature has been important in showing ordinary people's tactical use of the ambivalent spaces between the formal and informal in their daily engagements with law (Ewick and Silbey, 1998). Notwithstanding this resistance potential, this article will demonstrate how the ambivalent spaces embedded in the law can also be sources for repressive practices. A web of laws and socio-legal conventions unfolding in the everyday lives of trans women in Turkey enable the creation of zones of ambivalence, in which their treatment is left to the authority in question. As such, they are turned into *homo sacers* in the most mundane daily matters.

My analysis aims in particular to draw attention to the multiplicity of governmental measures that oust trans women's bodies from public spaces. While force and coercion have long been used in their management, in recent decades new governmental strategies

have been put into place that rely largely on deployments of the law, such as fines and prosecution. Despite differences in form, I argue the same heteronormative logic of exclusion transfuses throughout these different practices that constitute trans women's governance in urban Turkey (cf. Valverde, 2014). Although some of these exclusionary measures can be more easily classified outside normatively drawn boundaries of lawful action (namely, in a legal versus illegal dyad), the web of governmental strategies encircling trans women points to the plural interfaces of the law with negative forms of power. This analysis complicates the understanding of state of exception as an aberration from or abandonment of the normal (legal) order. It goes 'beyond the drama of the sovereign suspension of legality' (Sarat, 2010: 6) towards appreciating the ways through which exceptional legal regimes can be created at the intersections of exceptionalism and legal regulation.

The article is organized as follows. After discussing my methodology, I offer an analysis on the state of exception as a concept that can be mobilized for researching the operation of sovereignty in the field of legal governmentality. This is followed by a discussion on the regulation of sex work in Turkish laws, which is the foundation on which trans women's interactions with law take place. The next section focuses on the life story narratives of trans women to demonstrate the templates of exclusion they have faced in shifting configurations of an exceptional legality since the late 1970s: (1) destruction and displacement; (2) detention and torture; (3) enablement of informal violence; (4) misdemeanour fines; and (5) criminal trials.

## **Methodology**

This article is based on life story interviews I conducted with 12 trans women in 2012 and 2013, close readings of LGBTI and sex worker organizations' publications, and analyses of relevant legal texts. Life story interviewing—a qualitative, in-depth method of data collection—reveals people's articulation of their lived experiences at the intersection of the social and the personal (Riessman, 1993; Plummer, 1995; Franzosi, 1998; Engel and Munger, 2003). This method places participants' voices at the very heart of the research and gives them significant control over the direction and content of their narratives. Instead

of imposing a question-and-response structure (Chase, 2003), the interviews were loosely structured to allow participants to convey how the law affects their lives and livelihood.

I recruited research participants via my previous acquaintances among trans women formed since 2006 through my engagement with LGBTI organizations in Istanbul. Two trans women I first reached out to put me in contact with other potential participants, who then offered more names. At all initial meetings, I introduced myself and explained in detail the project's aims, methods, and implications. This approach allowed me to build trust gradually by affording potential participants sufficient time to consider their participation and opportunities to ask questions. After agreeing to participate in this study, at the start of each interview the participants were reminded of the project details and their rights to confidentiality, to refuse to participate, and to revoke consent. Their informed consent was obtained on these terms.

The participants ranged in age from 27 to 76. Their education levels varied significantly, from incomplete primary education to university degree. Different educational achievements, however, did not seem to play a key role in determining their life trajectories. Eight participants were sex workers and two were *kolihouse*<sup>1</sup> managers who previously worked as sex workers. The other two participants had quit sex work several years ago; one was a street lottery ticket seller, and the other was an NGO staff member. Working in the sex industry is common for trans women in urban Turkey (Lambdaistanbul LGBTI Association, 2010), and the interlacing of their gender identity with sex work profoundly shapes their life conditions, as the discussion below will show.

All but one interview were carried out in the homes of participants, some of whom used this location for their work. The exception took place in a teahouse. Eight of the 12 interviews lasted more than one session, oftentimes due to the sex worker participants' working patterns. Sometimes interviews did not start immediately if a participant had a client when I arrived, or interviews had to be cut short because of a phone call from or arrival of a client. The longest interview spanned five meetings and lasted more than nine hours. All interviews were conducted in Turkish, and transcribed and translated into English by me. All participants are identified here with pseudonyms.

A note on my choice of terminology and use of personal pronouns is necessary here: First, I deploy 'trans woman' to address people who were assigned male at birth and

identify as women. Second, although Turkish is a gender-neutral language, I use the English pronouns ‘she’ and ‘her’ when referring to my research participants and not the gender-neutral pronouns (they, xie, ze, etc.). Both choices reflect the participants’ self-identification and use of gender categories in making sense of and describing themselves and their embodied experiences.

## **States of Exception: Law, Governmentality, and Sovereign Power**

In terms of its theoretical framework, this article is inspired by a Foucauldian conceptualization of power, and aims to expand on its subsequent elaborations. As is well known, Foucault traced the emergence of an art of government, which he termed governmentality. This is organized around the novel technology of biopower at the level of life as opposed to the sovereign conceptualization of power which works through coercion on subjects over whom the ultimate dominion is death (Foucault, 1978, 1979, 1991). Whereas biopolitics, the first trajectory of biopower, endeavours to optimize the life of the population, discipline tries to optimize the life of individual bodies through temporal and spatial organizations, examinations, and hierarchical surveillance.

Despite diachronic readings of Foucauldian diagrams of power, the intricate interrelationship among discipline, biopolitics, and sovereignty has featured centrally in postcolonial readings of Foucault (Spivak, 1994; Stoler, 1995; Mbembe, 2003), and more recent analyses of the post-9/11 context of the ‘war on terror’ (Butler, 2004; Puar, 2007; Bigo, 2008). Most explicitly articulated by Giorgio Agamben (1998, 2005), the state of exception thesis has provided a useful tool to articulate the workings of sovereignty in governmentality. Following Carl Schmitt’s ([1922] 2005: 5) definition of the sovereign as the one ‘who decides on the state of exception’, Agamben (1998: 6) claims ‘the production of a bio-political body is the original activity of sovereign power.’ In this way, he underlined the role of the state of exception in the (bio)political ordering, which gives way to the elimination of life in the name of promoting and enhancing the life of the social body. Central to Agamben’s account is the figure of homo sacer: the bare life that has been rendered politically disqualified and consigned to death. In contrast to Agamben’s abstract and totalizing account, emerging critical studies demonstrated the profoundly racialized,

gendered, sexualized, and classed hierarchies of exclusion/inclusion, and extended the concept from a once-and-for-all subordinator to one that appreciates how exclusionary practices target subjects differentially (Mills, 2004; Sanchez, 2004; Ong, 2006; Puar, 2007; Edelman 2014; Haritaworn, Kuntsman, and Posocco, 2014).

Foucault's tripartite discussion of power has produced considerable responses in socio-legal studies. Studies of legal governmentality have been important in showing the various legal or quasi-legal techniques, strategies, and rationalities entangled in the production of subjectivities and regulation of populations for specific ends (Smart, 1989; Hunt and Wickham, 1994; Rose and Valverde, 1998; Valverde, 1998, 2008; Munro, 2001). Yet, and perhaps due to the way Foucault's work has circulated in English-speaking law and society scholarship, and perhaps due to the tendency of an epochal reading inconsistent with Foucault's own writings (O'Malley and Valverde, 2014), the limits of law have largely remained drawn around law's biopolitical and disciplinary aspects that govern through freedom (e.g. Rose, 1999). Less attention has been paid to how positive power, in moulding subjects and populations, generates abandonment, disposability, and death for others. Nikolas Rose (2000) addressed this problem in his delineation of the two contemporary forms of governance: 'circuits of security' that maintain inclusion into the normative models of subjectivity, and 'circuits of insecurity' that manage those considered irredeemable. At the intersection of transgender and law, Dean Spade (2011: 32) uncovered how administrative law, through the distribution of security and insecurity, 'make trans people's lives administratively impossible'.<sup>2</sup>

This article contributes to these debates through an analysis of the ways through which the daily enactments of law structures trans women's vulnerability in urban Turkey. It seeks to ignite the potential of the concept of state of exception that remains underdeveloped in socio-legal studies (Lippert and Williams, 2012), and—in particular—to analyse the interplay of powers of life and death in more mundane, everyday socio-legal matters. I suggest understanding the state of exception as part of the 'legal complex' (Rose and Valverde, 1998: 542) that applies selectively to 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 exposes some subjects—such as trans women in urban Turkey—to the constant and

pervasive risk of being reduced to homo sacers upon whom a variety of ‘petty sovereigns’ (Butler, 2004: 56) can exert powers of punishment, coercion, and death.

If homo sacer is created at those moments when sovereign applications of power are tied to biopolitical management of life, the question of performances undertaken in the name of legal and/or social authority is brought to the fore. Who will become targets, and when and where, depends on these performances (Butler, 1993, 2004). As this account will show, these performances are not singular. Unlike the national whole presumed in the constitutional discussion of Agamben, in which space, time, and body are collapsed, and individuals are turned into homo sacers by a singular gesture of the sovereign in a homogeneous way, a multiplicity of practices target trans women’s bodies differentially in particular times and spaces. While some of these practices enforce direct physical repression, others perform the function of sovereign power through more indirect and/or legal means. Trans women’s entanglement in legal regulations demonstrates that the exception as a form of governance is not necessarily an aberration from or suspension of law. Neither is it a ‘lawless world’ nor a ‘legal black hole’, it can be permeated by legal knowledges, discourses, and practices (Johns, 2013). This article specifically seeks to uncover the constitutiveness of legal and institutional configurations in creating conditions of abandonment and disposability for trans women for the production and maintenance of gender and sexual hierarchies in urban Turkey.

## **Exclusion from Regulated Sex Work**

Before discussing the different kinds of exclusions trans women have faced, I provide a short overview of the legal landscape of sex work in Turkey. Sex work is a common livelihood for trans women, as it was for my research participants, and it is important to understand effects of sex work regulations on their sex work practices. Moreover, most legal interventions into trans women’s lives happen with the conflation of trans womanhood and sex work. This conflation both emerges from and reflects social and legal imaginaries on trans womanhood, and makes a distinction between trans women’s everyday lives and sex work—in terms of the effects of legal power—practically impossible.<sup>3</sup>

Under the Turkish Criminal Law, facilitation and provision of space for sex work are criminalized, while sex work per se is regulated by the Act about Provisions on Prostitutes and Brothels and Fighting Against Venereal Diseases Transmitted through Prostitution No. 5/984, under Public Health Law No. 1593 (1930, modified in 1961 and 1973). The act grants the police the authority to locate unlicensed sex work places and unlicensed sex workers, and to ‘direct’ them for registration, examination, or rehabilitation. Describing in minute detail the conditions for licensing and the procedure for medical examinations of sex workers, the act frames sex work in terms of public health, morality, and population concerns by an emphasis on ‘controllability’ and ‘recoverability’ of sex workers; and it transpires a disciplinary mode of legal power.

A closer look, however, displays another facet of the act’s construction of the sex worker, and this has wide ranging effects on trans women’s sex work practices. By defining a sex worker<sup>4</sup> 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’, the regulation allows only those who are legally female to register as sex workers, and delineates in this way the limits of who can be legally recognized as a sex worker. Thus, trans women who do not wish to or cannot afford to change their sex through legally circumscribed sex reassignment operations (as well as legally male sex workers) fall outside of the act. They cannot work as licensed sex workers independently or in licensed places of sex work; the latter are only permitted to hire sex workers in line with the legal definition.

Crucial to this article is that the law, by not criminalizing yet regulating only one particular kind of sex work—cis heteronormative—expels trans women from its regulated forms. In doing so, it casts them into an ambiguous space in which neither a law nor its mode of application is set and leaves the regulation of their work solely on the authority afforded to the police via executive order. From a formalist perspective, this could be seen as simply a ‘gap’, a ‘legal black hole’, a ‘legal technicality’. However, as we know from Mariana Valverde (2014), jurisdictional shifts are of paramount importance to the question of how the object of governance will be governed and by which authority. While the governance of cis woman sex workers aims at realigning them with the biopolitical templates through disciplinary surveillance and correction, trans sex workers are pushed to



the limits of the law, where they are denied any recognition. They are instead left to the informal and ambivalent patterns of enforcement.<sup>5</sup>

Their expulsion from regulated sex work oblige trans women to navigate an array of informal sex work practices. They attempt 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. In general terms, there are four forms of sex work for trans women in Istanbul. The first is working in trans brothels (which have illegal status as they cannot be licensed as brothels); the second is working in ‘trans clubs’ (where trans women, hired as *konsomatris*<sup>6</sup> and legally banned from any sex work at the club, accompany club clients at tables—only to later provide sexual services). The third is working via the Internet (where sex workers can be contacted by clients on various profile websites); and the fourth is working on the streets (which consists of waiting on particular streets for business). Although each research participant had her own preference among the first three, street sex work was clearly the least preferred option because it renders them more open to violence from clients, passers-by, and the police. However, the legal interventions of various authorities of different scales cumulatively have the net effect of driving them into street sex work occasionally, if not regularly.<sup>7</sup> This tension that pulls and pushes trans women into and from street sex work constitutes an important thread in trans women’s lives and underlines the discussion that follows.

## **Templates of Exclusion**

Using the life story narratives of my research participants, I now explore how their lives have been deeply affected by the shifting configurations of legal texts and practices in relation to social dynamics. Participants have faced displacement from their lives, homes, and work; detention and torture; informal violence; and misdemeanour fines and criminal trials. The following analytical discussion is organized around these specific templates, as they each move exclusionary logic into practice. While they have their own their political and social contexts, they intertwine to varying degrees in the lives of trans women.

## *Destruction and Displacement*

Debates around trans identities emerged in Turkey's public spheres in the late 1970s, when Bülent Ersoy, an immensely popular singer, began to publicly transition to female soon after entering the music scene with a male-signified body. Following her sex reassignment surgery in 1981, Ersoy immediately initiated a legal battle to be able to amend her state documents. Her case was eventually heard and rejected by the Court of Appeals in 1982. In that same year, the military government (which took power in a coup in 1980) banned cross-dressers and trans performers from working in the entertainment sector. It would take until 1988, when the Turkish Civil Law was amended, that trans people who had sex reassignment surgery were allowed to legally change their gender on their official documents.

In the 1970s, as Ersoy was making a name for herself, the Beyoğlu district of Istanbul was the centre for queer people in Turkey (Yüzgün, 1993; Öz, 2009; Özbay, 2015). Besides 'gay' bars, parks, and Turkish baths in the district, Abanoz Street in particular was a lively place for trans sex work. Home to the first legal brothels in Istanbul in 1884 under Ottoman rule (Wyers, 2013), Abanoz Street now offered trans women the physical and social space necessary for collective living and working outside conventional ties.

Trans brothels on Abanoz Street did not have legal status for the reasons explained earlier, but they were tolerated to a great extent by the police until their heavy crackdown in 1978. The police operation was marked by high levels of torture and violence personified around the figure of Sadettin Tantan, the chief of Istanbul police. One participant, Candan, recalled:

So [Abanoz Street] was closed. We were subjected to heavy torture. One of our friends peed blood. [...] [Tantan] made us suffer to the bone. Tantan closed it. He rooted Abanoz out.

Trans women's expulsion from Abanoz Street scattered them, away from each other and from the city centre. Some even had to leave the city behind. In Bahar's words:

We all had to disperse. Some of us to İzmir; some of us to Kırşehir to be a *köçek*<sup>8</sup>; 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 at the dawn of the 1980 coup d'état in the form of a forceful deportation out of the city. This unavoidably brings to mind Agamben's homo sacer as an epitome of expulsion of outcasts from the polis (Agamben, 1998: 42–43). Under the state of emergency rule in Istanbul, trans women were detained by the police for about five days before being delivered to the train station. They were to be exiled to other parts of Turkey. Bahar explained:

They filed all of us into a train carriage. Also in the one next... 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. [...] In that moment, I remembered the movie *Cassandra Crossing*. [...] Just like in that movie, I thought to myself, 'We are going to our deaths'.

Bahar's remark about *Cassandra Crossing*<sup>9</sup> is important here, 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. Bahar survived her deportation by escaping from the train at a stop, and hitchhiking back to Istanbul. Yet, she saw some of her friends for the last time on that train.

The 1980 military coup unleashed a wave of state violence<sup>10</sup> that radically transformed the political and socio-economic fabric of Turkey. The military regime imposed a neoliberal shift from state-sponsored developmentalism to a free-market economy, opening the door to privatization, deregulation, and the rise of a consumer society (Keyder, 2004). Parallel with the incorporation of the Turkish economy into the global capitalism, Istanbul became one of 'the privileged sites of the valorisation of neoliberal policies, implementations and strategies' (Bartu-Candan and Kolluoğlu, 2008: 9). Istanbul's mayor, Bedrettin Dalan, equipped with new executive authority by the post-coup government, embarked on an 'entrepreneurial makeover' of Istanbul (Tuğal, 2008: 58; see also Keyder and Öncü 1994). The immediate impact of these rapid urban transformations filtered into trans women's lives through the destruction of Beyoğlu's Tarlabası neighbourhood, where they had moved after their expulsion from Abanoz Street. Their forceful eviction from Tarlabası would starkly mark the loss of their communal living spaces and transform their

relationship with the city (Zengin, 2015). Displaced and diffused throughout the city, trans women had been urged to regularly circulate in the city to ensure their security and survival, while their individualized bodies became open targets of the governmental violence meant to oust them from public spaces.

### *Detention and Torture*

The 1990s was marked by unprecedented violence and oppression in the daily lives of trans women (Selek, 2006; Siyah Pembe Üçgen, 2013). The harshest forms of violence took place at police stations, where trans women suffered from beatings, electrocution, pressure water torture, starvation, rape, and Palestinian hanging,<sup>11</sup> all of which have been historically employed on leftists and Kurds by Turkish security forces (Göregenli and Özer, 2010). It was when Süleyman Ulusoy, the Istanbul chief of police (1992–1997), earned his nickname ‘Hose’, from his use of hoses to both beat and shower ice-cold water on trans women under his custody.

Didem, in her early 40s at the time of our interview, was deeply affected by her harsh treatment since her arrival in Istanbul in the 1990s. Her account of living in the city as a trans sex worker was clearly demarcated by periods according to the different forms of legal power she was exposed to on the streets. Of her first years in Istanbul, she said:

I was subjected to [...] very heavy tortures. For instance, on the eighth floor of Şişli [police station]. I never forget that. [...] They wash you with pressure water, and keep you there until the morning. On a winter day, completely naked, until the morning, in tiny detention rooms [...] and you do not realize the arrival of the night nor of the morning. I stood there for two days.

In those two days, Didem was starved and raped by police officials. All this violence, she believed, accumulated into ‘an enormous burden and pain upon her body’, eventually leading to tuberculosis.

The police stations were not the only sites of violence. According to Didem’s (and others’) narrative, the range of extra-legal means the police relied upon extended outwards:

Torture is still going on. This time they gave up police stations and began to leave [us] to the streets. [...] They used to place you in a police car and after beating [you], dump you in the Belgrad Forest. Imagine it is midnight; let's say you are at work at three o'clock in the morning. He doesn't take you to the police station, but leaves you in the Belgrad Forest. You're all alone, in the forest.

Rather than spatially and temporally confining trans women to police stations, the police removed trans women's bodies from the city centre through off-the-record detentions in police cars. Trans women's detention and torture, followed by their disposability, were all manifestations of their reduction to mere bodies. Didem continued:

No one cares whether someone passes by there [the forest], a murderer, someone kills you there. Because he [the police officer] already dumped you there. It is better if he [the officer] takes you to the police station. You prefer that. You say, 'I will stay there [the police station] for two or three hours or until the morning. I stay and go out' [i.e., be detained and released]. But this time, this kind of a torture.

Exposure of trans women by the police to other, more informal kinds of violence is a close relation to the form of legal power that I address next.

### *Enabling Informal Violence*

Agamben's homo sacer originally referred to, in ancient Roman law, an individual who could be killed with impunity. At the heart of all the violent attacks into trans women's daily lives and on their bodies can this impunity be found, enjoyed by both the police and ordinary people. Aggravating trans women's vulnerability, few complaints they filed have led to any legal response. The high number of trans women murdered in Turkey and the low rates for convictions of such murders are well documented (Kaos GL, 2007; Lambdaistanbul LGBTI Association, 2010; Örddek, 2016). Along with limited investigations and prosecutions, judges routinely employ Article 29 of the Turkish Criminal Code on 'unjust provocation' to reduce the sentences of those who kill trans

women. The “provocation” in these cases is found in the victim’s concealment of her “true” sex, (dis)locating the violence in trans women’s ‘fraudulent’ gender presentation (Beauchamp, 2009: 358). Decisions that maintain the “truth” of gender as the reproduction of a cis- and heteronormative bodily materiality, are another instance of withholding recognition and value from trans women (and of all trans people) in their lives and deaths.<sup>12</sup>

The unaccountability of violence perpetrated by ordinary people also appears in the life story narratives of my participants. In these cases, violence is compounded by a modality of governmental power that fulfils the function of the sovereign by its very *inaction*. Trans women shared with me numerous instances in which they were beaten by people while police officers were just a few meters away, and they did nothing to stop it. Kolihouses were attacked by neighbourhood groups; and in one instance, their belongings were thrown out of a kolihouse and burnt on the street. There have been either no responses at all from the police or responses in which the police arrived but then only watched the attack from a distance. Fulya had no doubt in her conviction about the role of the police:

In my opinion most [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.

This modus operandi of not actively participating in physical violent attacks but refusing to act against such acts of violence has often been reported in reports by LGBTI organizations.<sup>13</sup> Whether or not the police take part in the orchestration of these attacks, their inaction allows the exercise of informal violence on trans women and the accomplishment of the exclusionary aims.

The trans women’s stories that I focused on so far bear witness to the two roles of the law (i.e., police): being direct perpetrators of violent attacks by collectively displacing them or inflicting violence on their bodies, and acting as bystanders to such attacks. Both of these roles appear to be overt exclusionary practices; that is, exclusionary in terms of their impeding effects and of more conventional exceptions to the law. The trans women I interviewed, however, describe further shifts in the ways they have become subjected to legal authority, and which indicate an increasing reliance on ‘the law’.

### *Misdemeanour Fines*

In the early 2000s, the Turkish legal landscape underwent significant changes. This was due particularly to the prospect of accession to the European Union (EU), which was a catalyst for a broad range of efforts to bring the state's legal, political, and economic systems in line with EU requirements. As Turkey's poor human rights record remained the most-cited criterion, the harmonization process included important amendments in the criminal justice system to eradicate torture and ill-treatment by law enforcement officials. On the discursive level, the first Justice and Development Party (AKP) government, when it came into power in 2002 with strong pro-EU and pro-reform strategies under the leadership of Recep Tayyip Erdoğan, declared 'zero tolerance for torture'. Practically, the Criminal Code was amended, including changes to pretrial detention provisions; and numerous reform programs relating to the Turkish National Police were implemented to restructure its professionalism, efficiency, and effectiveness (Gönen, 2016).

Many in the national and international communities welcomed the legal, administrative, and discursive changes brought about by the AKP government. The 2004 Regular Report by the European Commission (2004: 34) stated that the Turkish government's 'serious efforts [...] have led to a decline in instances of torture'. Academic studies also celebrated the positive role of the EU in human rights reform in Turkey (e.g., Hale, 2011). The effects of these reforms, however, have been complicated and limited on the ground because they usually have come at the expense of depoliticizing the pursuit of human rights, treating them as susceptible to technical fixes (Çalı, 2010; Bahçecik, 2015; Babül, 2017).

The legal and political changes have not been inconsequential for the trans women of Istanbul, and the participants reported a significant reduction in the level of *physical* violence and harassment in this period. Rather than torture, detention, and beatings, the use of law—particularly the 2005 Misdemeanours Law—has now become the prominent punitive strategy through which the police target them in their daily lives. The Misdemeanours Law was part of the efforts to bring Turkish laws in line with EU legislation. This law reformulated some crimes as 'misdemeanours' which 'can be considered as unimportant social infractions' (Yılmaz, 2005: 38). Some criminal sanctions were converted into administrative fines, and the police were authorized to deal with misdemeanours such as gambling, drunkenness, and excessive noise. The General

Directorate of European Union (2008: 12) claimed that the Misdemeanours Law was aimed at ‘speeding up the provision of justice; ensuring its quick, efficient and economic implementation; reducing the workload of the judiciary; and preventing waste of time and labour of officials.’ Its loosely defined goals in the law itself, on the other hand, point to its moral character: ‘to protect public order, general morality, general health, the environment, and the economic order’.

Since the introduction of the Misdemeanours Law, trans women have emerged as targets of misdemeanours fines in the routine workday of the Istanbul police. Participants’ accounts make it clear that their mere existence in public life at any time of the day or night is articulated by the police as unlawful. Sometimes trans women are issued fines more than once a day, on the basis of clauses as varied as ‘disobeying the lawful orders issued by authorized agencies with a purpose of judicial procedures or in order to protect public security, public order or common wealth’ (Art. 32); ‘making noise with a purpose of disturbing or breaking the peace of others’ (Art. 36); ‘disturbing others to sell goods and services’ (Art. 37), and ‘unlawfully occupying the street’ (Art. 38). In the words of Didem:

Now they came up with this idea of fining! Whenever they see you on the street, it doesn’t matter if you are out there for sex work or shopping or hanging around. They fine you with the accusation of occupying the street, [or] preventing the police from fulfilling its duty.

A new disciplinary mechanism in regulating the conduct of police officers, known as the ‘bonus system’, which accompanied the restructuring of the Istanbul police, sheds light on the selective targeting of trans women. It is a points-based system to evaluate the performance of police officers. It categorizes various kinds of crimes and misdemeanours, and it allocates points to police officers according to their accomplishments (ILGA, 2014; Ördek, 2014). For instance, catching a terrorism suspect brings more points than catching a murder suspect, which is more valuable than catching someone for unregistered gun possession. These points are an important part of a police officer’s performance history, and affect promotion and work locations. Yet, this scheme does not necessarily follow the grading of criminal law (Gönen, 2016), and it institutes at least two new categories of ‘unlawful’ behaviour not defined as such anywhere in Turkish laws: ‘known woman’<sup>14</sup> and



‘transvestite’. The broad, unclear aims of the Misdemeanours Law and the legally prescribed misdemeanours are in this way filtered into the specific categories of the bonus system, providing a template to the police to strategically focus on certain subjects, including trans women.

In an economy in which fines reward police officers and raise state revenue, they conversely disrupt the economic lives of trans women. Melisa calculated that she has paid thousands of Turkish liras in fines. Others have accumulated fines that they cannot pay. These pecuniary and legal penalties impoverish trans women twice over. The first is by forcing them to surrender part of their income to the police, and the second is to hinder their capacity to make a living by limiting their access to the streets. Paradoxically, these penalties also perpetuate trans women’s dependence on sex work because, after being fined by the police, they have to work more to be able to pay the fines.

Classical literature on fines regards them as an ideal sanction for liberal justice because they do not directly interfere with the offender’s body or liberty and can be undone in the event of injustice (Bentham, [1789] 1962; see also O’Malley, 2009). Recent literature underlines an understanding of this form of penalty as a monetized risk management tool that does not seek to punish but to govern distributions of unwanted behaviour among aggregates of population through actuarial calculations (O’Malley, 2009). Trans women’s experiences, however, show how a legal technology as the fine can mediate other relations of subjection and domination than suggested by these traditional and contemporary accounts. Cansu pointed to how their bodies and well-being, and not just their finances, are affected by the unremitting and cumulative force of fines:

I know of a winter night when I was fined four times, and lost exactly 368 liras 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 on the street for seven to eight hours. I couldn’t get out of the bed the next two days because of muscle pain. Imagine.

## *Criminal Trials*

The new legal enactments used in the management of trans women go beyond the deployment of the Misdemeanours Law. The rising number of court cases, and thus increasing presence of the judiciary, reveals another type of governance that seeks to control trans women's appearance in public. Every participant I interviewed had some experience with the court system for reasons that varied, but most interactions were with the criminal courts. Younger participants had a much higher number of criminal cases, and some cases were pending at the time of the interviews. Most were related to interactions with the police, in which a participant appeared as a defendant based on police allegations. Two participants had previously served prison sentences, and two others had suspended prison sentences. Derya recounted:

I have 2 [or] 3 cases that [are] go[ing] on at the moment. But if I count the earlier ones, they would make around 15 [or] 20. All of them are about the police.

Charges brought against participants under the Turkish Criminal Law included crimes such as insulting public officials (Art. 125), performing indecent acts (Art. 225), and preventing public duty (Art. 265). In one of her more recent cases, Derya was accused of committing crimes based on Art. 125 and Art. 265, after a police officer targeted and harassed her while she sat in her own car. She told me:

Look at the violence I experienced from the police some days ago. [I am] sitting in my car with a friend of mine. We are sitting in the car, waiting for someone. [A police officer yelled,] 'Get out of the car! Out!' With pepper spray in his hand. 'Get out of the car!' 'Aaa!' I said, 'Why the pepper spray? Put the pepper spray down', and I rolled up the window. [...] As soon as I said that, [he says,] 'How dare you say that me?' [...] And now he filed a criminal report against me. And the charge is this: I prevented him from doing his job. [And] I insulted him.

Trans women's narratives reveal their simultaneous 'hypervisibility, and stark invisibility' (Lamble, 2009: 116) in court. In our interviews, they complained about the issues that complicate their chances of having fair trials against police officers. That the courts abide by police complaints and reports came up repeatedly as one of such obstacles. Prosecutors were described as actors who follow the police's lead and do not run proper investigations. Participants also shared instances when they were silenced by judges from representing themselves and their experiences. For many, the reason for this differential treatment in court lied in their gender identity. Gözde said:

He [the judge] shuts you up. [...] Because you are a transvestite, he does not care about what you have to say.

As with the fines, which may signal a more liberal approach of governance, trans women still see judicial proceedings as extreme forms of violence. Didem, comparing her direct experiences with courts to earlier encounters with the police pointed to their continuing exclusionary and exhausting effects:

They used to beat you and hit you with baton two [or] three or five [or] six times, and release you. Now they take you to [court] and they make you run from pillar to post. You go to a trial 10 times. One single trial! What is the difference? There is no difference. It got even worse. Much worse!

Others shared feelings of insecurity and fear when they are on the streets, and told me that they refrain from going out. Melisa explained:

Most of my friends are depressed. We are imprisoned in our houses. Is walking on the street or shopping a crime?

In the context of prostitution-free zones in Washington, DC, Edelman (2014) has referred to this particular form of violence as 'walking while transgender', which mainly concerns the articulation of trans feminine bodies of colour as the basis for criminality. The visible trans feminine body, seen as a danger to be contained to ensure the vitality and the security of 'respectable' genders and sexualities, is subjected to an exceptional legality. Fines and trials in the case of trans women of Turkey function as a similar mechanism

underpinned by norms of gender and sexuality and are used to erase nonconforming bodies from public spaces. The fact that these legal interventions are not conventionally associated with the use of direct physical violence does not mean that they are not experienced that way. Their effects are not far from corporeal forms of punishment because they are also felt on the key sites of sovereign power: the body and the liberty of the subject.

## **Conclusion**

This article disentangles the ways through which trans women have been excluded from public spaces in Istanbul over the last four decades. I argue this exclusion cannot be fully understood without taking into account the operation of sovereign power over their lives. Moving beyond Agamben's account (1998, 2005) in which subjects are homogeneously turned into homo sacers through the suspension of law, I point to the myriad ways through which exceptional legal regimes can be generated. States of exception can be generated in delineated spaces, such as camps and specific zones, or by marking the boundaries of a specific moment in time. Trans women's forced exile from Istanbul in the late 1970s is a good example of this. While the period can be considered as a state of emergency 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. Another way that people are rendered as homo sacer can come through privileging the violence in containing their bodies, or outsourcing the violence to informal groups and ignoring requests for aid while providing immunity to those causing the violence.

A key argument of this article is that states of exception are not only established when laws are not enforced or when they are suspended. Deploying law and establishing an overwhelming legal presence can be another way in which exceptional legalities are created. Seen from trans women's perspective, the dynamics of their exclusion (such as from formal sex work) and inclusion (such as into the criminal law) cannot be considered as a lawless state. They do not 'erase any legal status of the individual, thus producing a legally unnameable and unclassifiable being' as Agamben (2005: 3) described homo sacer. To the contrary, they are constituted by regulatory efforts of a range of authorities and hail

trans women very much as subjects of law through legal tools, from fines to the supposedly due-process oriented trials. What is crucial and brings together these diverse sets of performances is the boundary that they draw between the political community and trans women, i.e. in the exclusion work that they do in the determination of who has rightful access to the political community and who does not. In this line, this article suggests that state of exception must be understood as a complex socio-legal condition that targets and affects subjects differentially and in multifarious ways, and that should be approached via its power effects. Thinking in this fashion also enables us to move away from thinking about the state of exception only in juridical terms and instead to see the various technologies of power that are deployed by a multitude of authorities at the intersections of discipline, biopolitics and sovereignty.

After a decade of fundamental legal reforms under the rule of AKP, Turkey has ended in a spiral of violence, culminating in a nation-wide emergency regime and eventually the establishment of a presidency that expanded exceptional authority to the president to issue decrees in times of nonemergency. Today, police and judicial power are increasingly used to silence historical dissidents of the Turkish state, including the Kurds, socialists, non-Muslims, and Alevis (Yonucu, 2017), and once-privileged citizens of Turkey find themselves increasingly on the wrong end of citizenship. The trans women's accounts that I draw on here attest that efforts for 'more' law to fill what is seen as a 'lawless' legal culture do not always bring expected outcomes and can well unfold in novel ways on the ground. Rather than opposing legality to the sovereign exception, a multifaceted consideration of the interface of law with negative forms of power may help us better understand the intrinsic role of law in the constitution of exceptional legal regimes, such as in Turkey, which deem trans women, and increasingly many others, *bare* in both declared and undeclared states of emergency.

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## Notes

<sup>1</sup> *Kolihouse* (house of intercourse) in trans women's slang refers to a flat (usually run by an elderly trans woman) that offers trans sex workers hourly rent rooms.

<sup>2</sup> Studies on crime control strategies (Stenson, 1999; Carlson, 2014; Flacks 2018), contemporary carceral regimes (Lamble, 2013; Haritaworn et al., 2014), immigration and refugee management (Rajaram and Grundy-Warr, 2004; Maillet, Mountz, and Williams, 2018), and control of labour (Whyte, 2009; Steinberg, 2016) can be included in this list.

<sup>3</sup> The twinning is established in colloquial Turkish: 'transvestite' denotes a sex worker who cross-dresses. For a detailed discussion on the legal regulation of sex work of trans women, see Taşcıoğlu, 2011.

<sup>4</sup> In the act, sex workers are referred to as 'generalised woman'.

<sup>5</sup> See Amar (2013) for a similar differentiation between trans and cis woman sex workers in Brazil. The former are seen as 'gangs' that threaten the nation, and the latter as victims of the global sex-slave trade who need to be rescued.

<sup>6</sup> These venues are regulated by the Statute on Places Which Are to Be Opened by Permit (2003/6449), and the Statute on Licenses to Open and Operate Business (No. 99/13681). These statutes forbid sex work but allow *kons* at nightclubs. *Kons* refers to the accompaniment of women workers for male clients at tables in night clubs, where the women provide service to the clients in the form of conversation.

<sup>7</sup> An example is the 2007 Law on the Regulation of Publications on the Internet and Suppression of Crimes Committed by Means of Such Publication (No. 5651), which was routinely enforced at the time of this research to ban the websites that trans women use to meet their clients. In addition to judicial banning orders, the law warrants administrative power to the Telecommunications Communication Presidency to block websites under exceptional circumstances. The only available statistics on the use of the

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regulation indicate that the majority of these websites are blocked through such administrative orders (Ankara Haber, 2010). What appears as an administrative precaution to be used in exceptional circumstances is transformed into a routine banning, hindering trans women from finding clients online and thus pushing them to street sex work.

<sup>8</sup> *Köçek* is a young male-bodied dancer who displays performances associated with femininity.

<sup>9</sup> It is a 1976 movie about a train's passengers who are exposed to a deadly disease. To prevent the spread of the disease, the military plans for the destruction of the train by rerouting it over the unstable Cassandra Crossing bridge.

<sup>10</sup> Approximately 650.000 people were detained on political grounds under the three-year military rule; 171 people were tortured to death, 49 people were sentenced to capital punishment and executed; 14.000 people were expatriated, and 30.000 people became political refugees (Öndül, 2007).

<sup>11</sup> This is reverse hanging, and is a form of torture in which the victim's wrists are bound behind the back, and the victim is then suspended by a rope attached to the wrists.

<sup>12</sup> See Sharpe (2018) for an analysis of the devaluation of gender nonconforming bodies and experiences in the recent gender identity fraud prosecutions in the United Kingdom.

<sup>13</sup> For example, see Selek (2006) for trans women's expulsion from Ülker Street in 1996; and Öz (2009) about the Avcılar neighbourhood in Istanbul.

<sup>14</sup> This denotes cis woman sex workers.