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**FROM VICTIMIZATION TO AGENCY: CONSTITUTION OF FEMINIST
SUBJECT IN THE FACE OF LAW, POWER AND VIOLENCE**

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ASSOC. PROF. NAZAN HAYDARI

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FEMİNİST ÖZNEİN KURULUŞU

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115611027

DOÇ. DR. NAZAN HAYDARI PAKKAN:

İstanbul Bilgi Üniversitesi

DOÇ. DR. İTİR ERHAT :

İstanbul Bilgi Üniversitesi

DOÇ. DR. VİLDAN İYİGÜNGÖR :

Marmara Üniversitesi

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ANAHTAR KELİMELELER (İNGİLİZCE)

- 1)GEWALT
- 2)AGENCY
- 3) SUBJECTIVITY
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ABSTRACT

Modern juridical structure's function of protecting individuals and their rights against "violence" makes law's relation with power and violence invisible through a historical perspective. As a matter of fact nowadays we clearly witness how law is used by power mechanisms to legitimize their sanctions according to their will. The concept of *Gewalt*; presents an important frame to understand the relation between power, violence and law and it composes the theoretical approach of this thesis.

In this study the subjects of how the power constructs the gender by basing upon which norms and phenomena, the function of violence which provides to continuation of masculine hegemony based upon those norms and phenomena and to what extent the legal sanctions forms in favor of those norms, phenomena and functions to grant a legitimization to the patriarchal structure are discussed. The subject of, which states of "femininity" and "masculinity" are approved and how the public realm is constructed via this approved binary gender regime, matters in the aspect of making observations about this regime's structure and its process. The attitude of jurisdiction towards the act of "self defence" of women who have been victimized, shows how law is open to patriarchal negotiations despite the legal changes made possible by historical acquisitions.

What Çilem Doğan lives through before and along the lawsuit, puts an example about the tools of power and its juridical part have a significant role on continuing masculine dominance. The form of struggle we see in Çilem Doğan's case, against the discourse of the power and the masculine jurisdiction make us think that construction of an autonomous agency and subjectivity might be

possible. In fact, this possibility is one of the important factors that form the thesis.

Keywords: Gewalt, Agency, Subjectivity, Emphasized Femininity, Hegemonic Masculinity



ÖZET

Modern hukuk yapısının “şiddet”e karşı bireyleri ve onların haklarını koruma altına alma işlevi, tarihsel bir perspektiften ele alındığında hukukun iktidar ve şiddet ile olan ilişkisini görünmez kılar. Nitekim günümüzde hukukun, iktidar mekanizmalarının uygun gördüğü yaptırımları meşrulaştırma aracı olarak kullanıldığına açıkça tanık olmaktayız. *Gewalt* kavramı; iktidar, şiddet ve hukuk arasındaki ilişkiyi anlamak için önemli bir çerçeve sunar ve bu tezin temel kuramsal yaklaşımını oluşturur.

Bu çalışmada iktidarın toplumsal cinsiyeti hangi normlara ve olgulara dayandırarak inşa ettiği, şiddetin bu olgu ve normlara dayalı eril hegemonyanın sürdürülmesi açısından nasıl bir işlevi olduğu ve yasal yaptırımların ataerkil yapıya nasıl meşruiyet kazandırdığı konuları tartışılmaktadır. Hangi “kadınlık” ve “erkeklik” hallerinin onaylandığı ve kamusal alanın bu onaylanmış ikili cinsiyet rejimine göre nasıl kurulduğu konusu bu rejimin yapısına ve işleyişine dair tespitler yapılması açısından önem taşımaktadır. Şiddete maruz kalmış, iktidarın aracı kurumları tarafından bu şiddete terk edilmiş kadınların başvurduğu “öz savunma” eylemine karşı yargının tutumu, hukukun, tarihsel mücadele içinde elde edilmiş kazanımlarla değiştirilmiş yasaların, uygulama boyutunda ataerkil pazarlıklara açık bir alan olduğunu göstermektedir.

Çilem Doğan’ın davadan önce ve dava süresince yaşadıkları, iktidar aygıtlarının ve yargı boyutunun eril tahakkümün sürdürülmesindeki başat rollerinin ortaya konması açısından örnek teşkil etmektedir. Çilem Doğan vakasında iktidarın söylemlerine, eril yargının tutumuna karşı gösterilen mücadele etme biçimi, özerk faillik ve öznellik alanlarının inşası ihtimalini tartışmak için alan açar. Tezin temel tartışma noktası bu öznellik alanının inşasının ihtimalidir.

Anahtar Kelimeler: Gewalt, Faillik, Öznellik, Ön Plana Çıkarılmış Kadınlık,
Hegemonik Erkeklik



INTRODUCTION

Law is a mechanism that gains legitimacy to the degree it solves the disputes in the established order to purify the social structure from the elements of violence and control these elements. Law carries the power of recognition and people become subjects through this recognition. In other words, the way to become a political subject passes through the bosom of law. The power of law in interfering with personal spaces and even bodies of individuals can be explained through inseparable connection between power and violence. When it comes to marginalized people by the traditions, beliefs or power, the protection the law that is regarded as the guardian of human rights, provides changes. Although it is provided by the law that everyone is equal before the law, judicial decisions are not usually applied regardless of gender or sexual orientation. While the law seems to have lost its function to prevent the violence against women, and transgender and homosexual individuals, the punishment to a crime whose perpetrators are these individuals, is also different from the punishments imposed on men and remission given to men. Benjamin's concept of *Gewalt* in *Criticism of Violence* provides an important tool to discuss the relationship between violence, law and power.

This study is in the search for the possibility of autonomously constituted feminist subjectivities claimed beyond the relationship between law, power and violence that I analyze through concept of *Gewalt*. The literature addressing the relationship between gender and law and feminist struggles against the system of masculine jurisdiction remain limited. My goal in this research is to address the positionality of women in relation to power and law through the possibility of feminist struggles by unveiling the new field of agency. That possibility is about the ability of defining itself independent of the axis of law, power and violence. So, more than acquiring the qualities of a juridical subject, it is about being

recognized by the juridical and the social field through various subjectivities constructed by different experiences. Thus I develop my argument around the case of Çilem Doğan. The attitude of the judiciary in this cases an indication that patriarchal hegemony has been approved and is instrumental in preserving its sustainability. Çilem Doğan was arrested in Adana for killing her husband who was constantly violent towards her and forced her into prostitution. As a result of the court case In the Heavy Penal Court, Çilem Doğan received a 15 year prison sentence and was released with 50,000 Turkish lira bale. Doğan's lawyer claimed that the case was an example of self-defense and if Çilem Doğan had not used the weapon that she had coincidentally found during the violence she had to endure, the person that would have died would had been Çilem.¹ The action that Çilem Doğan, who has been pushed to a passive position by the ruling mediators, the legal process and the gendered structure, has put forward in order to protect her own life; constitutes one of the transition points from victimization to agency. However, the active state produced by this action is reflected not only on Çilem Doğan, but also on the other women who have been victimized and the feminist struggle. Çilem Doğan Case is a publicly known case with a significant media coverage that well demonstrates the relation between violence, power and law, to maintain the patriarchal structure. The case also forms a space to discuss the autonomous field of subjectivity against the system of power both in the individual and collective levels.

The subjects, in other words the individuals, are constructed through the founding structures of law, power and violence that I discuss in relation to theoretical framework of *Gewalt*. Understanding how this structure constitutes the subjectivity of woman requires understanding the religious and ideological power relations and cultural hegemony on women. I discuss how gendered structure is constituted through the discourses of power by using Connell's "hegemonic

¹ <http://ilerihaber.org/icerik/cilem-doganin-avukati-cilem-kadinin-yasam-hakki-mucadelesinin-sembolu-oldu-55449.html>

masculinity" and "emphasized femininity" concepts. Thus the patriarchal perspective presented in Civil Code provisions in Turkey, and the feminist struggles against these forms a significant part of discussion. Indeed, giving place to a historical perspective, in order to understand some of the elements that make up the cultural structure that Çilem Doğan lives in, will develop the context of the topic.

On the first chapter of the study, I use the notion of *Gewalt* to address the impact of "violence" on construction of the judicial field as both "constructive" and "destructive" practices of power. Especially evaluating the juridical position of LGBTQI+ in Turkey will have an illuminating effect on how law, politics and power work together. Again the notions of "agency" and "subjectivity" that I'll be referring to on the first chapter, are important factors in the formation of feminist struggles that I'll be speaking later in the thesis. The second chapter covers the concepts of "hegemonic masculinity" and "emphasized femininity" to examine the production of binary gender regime by cultural, religious, social norms and the power mechanisms such as the state that ensures the institutionalization of those norms. I also refer to discussions on the definition of women's "self defence" act as a form of violence by the masculine hegemony. The concepts of "family", "honor" and "confidential" are important for understanding the socially gendered structure and patriarchal hegemony in Turkey. Those concepts are also important for the comprehension of the reasons causing the problem of not exercising the law that I'll be speaking of on the third chapter.

On the third chapter; I will discuss the views on the feminist struggles in Turkey and its fight and acquisitions against the masculine laws. There lies another problem that is the executive part of the laws. Even though laws exist to the advantage of women, they do not always work as they are supposed. In this chapter I will also explain this phenomenon and the power structure that produces

male domination. I will discuss the structure and discourse of the political discourse leading to uprising "male violence" in recent years.

On the fourth chapter, I look at whether the violence that Çilem Doğan had imposed exhibited a destructive and changing potential against the law or not. The claim of the feminist standpoint theory that the subject has the potential to become autonomous from the power mechanisms is one of the points I underline. I draw my argument from the points raised by Kathi Weeks in the book of *Constituting Feminist Subjects*. Although the state of being a subject and an agent seems under the monopoly of masculine hegemony, the process Çilem Doğan went through, the action she took at the end of this process and her transformation in front of masculine hegemony make it possible for us to reconsider being subject and agency autonomously from this hegemony. The feminist debates on the subject, the theories developed on these concepts are important in order to detail the subject.

CHAPTER ONE

VIOLENCE AND LAW

1.1. VIOLENCE AND LAW

To understand the relation between violence and law, first we must look at the cases where power instrumentalizes the violence. Violence functions in two ways as “destructive” and “constitutive” that are very similar in reality although they look different. Here law fulfills the constitutive function of power. The fact that law is a constitutive factor of power mechanism might seal the relation between power and violence at first glance. Indeed, the law doesn't only prohibit violence but also legitimizes in the favor of power. The concept *Gewalt* provides a strong theoretical framework to reveal the complex relationship between power, violence and law. Thus, it will only be possible in the light of that discussion to understand the reasons why individuals who are solely have their juridical rights when they are recognized and confirmed by law, can be deprived of their rights or don't have them at all when they become persona non grata in the eye of the power. Power can legitimize violence by law towards people positioned against them and can prevent the possible sanctions about aforementioned forms of violence if not make them legal.

1.1.1. Founding Violence

The Primordial Father has the power to castrate men and own women living in the society. This situation creates a jealousy among males in the group and causes hatred towards the father. As a result, the father is removed. This primal feeling of violence towards *the Primordial Father* also creates the law. The guilt and fear that the males may be met with the same violence leads to the building of an ethical platform. Unity and cooperation are concepts that are the results of this law.²

Freud talks about the founding violence in his work titled *Totem and Taboo*. Thus, we can easily reach the consensus that violence has a potential structure to create order. As this first act of violence led to the father being eliminated, it has also enabled the law to be built upon an idealized father figure. The myth of a father constitutes the legitimate authority and this authority produces culture and societal life styles. “Accordingly the mere hostile impulse against the father, the mere existence of a wishful phantasy of killing and devouring him, would have been enough to produce the moral reaction that created totemism and taboo.”³ The principle of identity could cause the feeling of guilt to arise and the father figure to emerge. According to this, the uncertainty in the target of violence has enabled it to be more targeted and included in a stronger figure and has put it under control. The legitimacy of violence is mainly evaluated within these boundaries. It is also inevitable to face an unfulfilled feeling of hatred at this point. The concept of identity can be seen as a result of this situation.

² Alev Özkazanç, *Cinsellik, Şiddet ve Hukuk: Feminist Yazılar*, (Ankara:2013, Dipnot Yayınları), 24

³ Sigmund Freud, *Totem and Taboo*, translated by: James Strachey, (London:2001, Routledge Classics), 185

“Since their hostile impulses cannot be gratified, an identification with their erstwhile rival comes into being.”⁴

While the founding violence that is the result of the conflict between the father and the boy has constituted the law, there is one point that Freud has not taken into consideration that is the role of women. In the texts of Freud, the conflict begins with the desire for property and ownership because *the Primordial Father* initially owns all women. Women have a meta-value here. They are considered as the object of desire for the males of the tribe. Why? How did such a dominating relationship form between men and women is built? Freud does not elaborate on this topic and seems a natural situation with no need to question. Yet, the significant point is the dominating relationship forming within the shadows of violence. Freud has not even drawn attention to the possibility of such relation of dominance.

1.1.2. Gewalt

The relationship between violence, law and power and violence's constructive position through the concept of *Gewalt* in German are relevant discussion in this point. In the dictionary, *Gewalt* is defined as:

1) power, *vollziehende/gesetzgebende/richterliche Gewalt*: the executive/ legislature/judiciary; *elterliche Gewalt*: parental authority, [...]to bring sb/sth under one's control; [...] to have sb in one's power, [...] to have oneself under control, [...]to be in sb's power, [...]; *Gewalt über Leben und Tod (haben)*: (to have) power over life and death; 2)

⁴ Sigmund Freud, *Beyond the Pleasure Principle*, translated by: John Reddick , (New York:2003, Penguin Books), 159

force, violence, *höhere Gewalt*: acts/an act of God, [...] brute force; 3) force⁵

The etymological “derivative [of the word] is the verb *walten*”⁶ which means to rule, prevail.⁷ The appearance of violence is mostly aimed towards the norm being pushed outside its boundaries. Thus, the word “Violence”⁸ in English is used to describe something that goes against the norm. However, the word *Gewalt* includes violation and a constitutive attribute. *Gewalt* is an act which protects his potential of violence while positioning as a dominating power. It is both destructive and makes the order running on.

Seen in this way, ‘from the outside’, the term *Gewalt* thus contains an intrinsic ambiguity: it refers at the same time to the negation of law or justice and to their realisation or the assumption of responsibility for them by an institution (generally the state).⁹

Even though it is necessary to create a hierarchical domination above the negativity of the order, it cannot be avoided that it is also creating a positivity in creating another order. Plato mentions that violence is an act that arises over property conflicts. “Violence as the violation of the right to dispose over one’s property is thus, according to Plato, the originary, founding violence. This of course presupposes that the question of property rights-and of the proper- cen, in

⁵ Collins German - English Dictionary, <https://www.collinsdictionary.com/dictionary/german-english/gewalt>, [last accessed:15.11.2017]

⁶ Salih Akkanat, “Şiddet ve İktidar: Şiddetin “Meşruiyet”inden “Meşruiyet”in Şiddetine”, (Istanbul: 2011, Marmara University, Social Sciences Institute, Public Administration Major, Politics and Social Sciences Minor, PhD Thesis), 16

⁷ <https://www.linguee.com/english-german/search?source=auto&query=walten> , [last accessed:15.11.2017]

⁸ Violence in dictionaries: The act of resorting to physical power in order to harm individuals or property; any act characterized in this way; an action that will lead to bodily harm; using power to prevent freedom of individuals. [*The Oxford English Dictionary*, volume:XIX, prep by J.A.Simpson ve E.S.C. Weiron, (Oxford:1989, Clarendon Press), 654-655]

⁹ Massimiliano, Tomba, “Another Kind of Gewalt - Beyond Law Re-Reading Walter Benjamin”, *Historical Materialism* , volume 17, (? , 2009), 126

principle at least, be settled without violence.”¹⁰ Just like Freud’s *Primordial Father* and the negation of women over the reality created through men, Plato is also pointing out that ownership and rights based upon ownership are phenomena that exist in nature as a potential. Therefore, if we think that the base of the ancient desire to kill at the primordial violence scene exist in a mindset that women is considered as a property, it is possible to say that the two philosophers had similar conclusions. Both of these conclusions are considered essentialist¹¹; therefore, they overlook some points while defining the violence and the power.

Benjamin’s *Gewalt* presents an important cadre to understand the relationality of violence and law and the hierarchical dominance set by this relationality. In Benjamin’s discussion, violence is inherent in law and it is an act that is spread in law by the legislator. In this way, *Gewalt* represents a similar function to Freud’s evaluation of the first act of violence. Just like the father is idealized and the father law is created, law has become something more a representation of dominance for Benjamin: “Lawmaking is power making, and, to that extent, an immediate manifestation of violence”¹² Since its establishment, law has been dependent on adulterated violence. The separation of the end and the mean that dominance has created on law has established a legality field for violence.

For the function of violence in lawmaking is twofold, in the sense that lawmaking pursues as its end, with violence as the means, what is to be established as law, but at the moment of instatement does not dismiss violence; rather, at this very moment of lawmaking, it specifically

¹⁰ S.Weber, “Wartime”, *Violence, Identity and Self Determination* prepared by H.D. Vries and S.Weber, (Stanford,California:1997, Stanford University Press), 83

¹¹ The doctrine that believes the key to understanding the true nature of social phenomena and comprehending the apparent manifestation of this nature.
(http://www.felsefe.gen.tr/felsefe_sozlugu/o/ozculuk_nedir_ne_demektir.asp, son erişim:24.12.2016)

¹² Walter Benjamin, “Critique of Violence” in *Reflections*, translated by Edmund Jephcott, edited by Peter Demetz, (New York:1978, Schocken Book,), 295

establishes as law not an end unalloyed by violence, but one necessarily and intimately bound to it, under the title of power.¹³

We might think of the following question: Isn't law also the mediator of justice? Initially it seems like law has this function. This situation is closely related to the current position of the legislator. With the emergence of modernism and new criminal law, we can see that it has become a structure controlling individual violence. The controlling violence of the law continues to function under the guise of legality. For example, the legislator subject disguises the violence with symbols such as military and national service. These symbols are not as derogatory as violence but necessary for the order like *Gewalt* and thus they have been defined as a legal obligation. (Although this example has differed in many countries, it is still the case in Turkey.) In law, the definition of crime and punishment depend on which evidences and the powerful subject establishing the law. The value and legibility of the crime cannot be separated from the position of subject. The witch accusations that used to happen in England and the given punishments through court are examples of this situation.

In this sense, the charge of witchcraft performed a function similar to that performed by "high treason" (which, significantly, was introduced into the English legal code in the same years) and the charge of "terrorism" in our times. The very vagueness of the charge — the fact that it was impossible to prove it, while at the same time it evoked the maximum of horror — meant that it could be used to punish any form of protest and to generate suspicion even towards the most ordinary aspects of daily life.¹⁴

Can we suggest that the parliament has taken this law out of violence and instead started discussing in terms of language? At first it may look like violence manifested outside of language. If that is the case, it will not be possible for us to

¹³ Walter Benjamin, "Critique of Violence", 295

¹⁴ Silvia Federici, *Caliban and the Witch*, (Brooklyn:2009, Autonomedia), 170

see the traces of violence in places like the parliament (it was derived from the French verb parler which means to talk) which has been built on discussion. Hesiod's talks about a concept in law against the violence and how it creates an area of compromise in his *Works and Days*:

O Perseus, keep these things in mind and/ forget violence [Biaia] when you attend to justice [Dikē]./ To men, Zeus gave this nomos: what is proper to the fish, the wild beasts, and the winged birds is to devour each other./ since there is no Dikē between them. /But to men Zeus gave Dikē, which is much better,¹⁵

Unlike many Greek mythologies where violence and power are hand in hand, Agamben states that there is a discourse which points out that violence had not come together with potency yet. Agamben has stated that the description of the connection between violence and law has changed through Pindar's *nomos*. "The sovereign nomos is the principle that, joining law and violence, threatens them with indistinction."¹⁶ This thought is creating the foundation over which the western political values are placed. Again, according to Agamben, all the power areas as of this moment were established on Pindar's nomos basileus continent. "The sovereign is the point of indistinction between violence and law, the threshold on which violence passes over into law and law passes over into violence."¹⁷ Focusing on these definitions, if we bring forward that the representation of power is done through the structure of the parliament, we can see that it falls exactly on the point of uncertainty. Also, saying that violence has been removed from areas of converse would lead us to a dead-end in human history. We need to keep in mind the skills of humanity's strategy developing and transferring as well as determining and declaring war on individuals. Actually within the aim and means relationship; specific statements, fantasy and myths are the points that show the relationship between violence and law. Just like one's

¹⁵ Giorgio Agamben *Homo Sacer, Sovereign Power and Bare Life*, translated by: Daniel Heller-Roazen, (California:1998, Stanford University Press-Stanford), 24-25

¹⁶ *Ibid*, 25

¹⁷ *Ibid*, 44

dying for his country, saying what makes a flag a flag is blood and fighting for humanity... It can be possible to validate the connection between law, violence and power through looking at possibilities that the parliament has; namely the right to announce a mandate for military action, creating various law regulations about the police and soldiers, legislative regulations on right to protest and meeting and the possibility of these regulations can turn to laws that spread into the legitimate area of violence. Therefore, it is possible to say that to talk and communicate too can cause violence.

It is suggested that mythical and religious structures had an impact on *Gewalt*'s construction of hegemony based upon the legislative and violent field domination and its determining of political paradigm just as we mentioned through Agamben. "According to Strauss, on nothing more than fanciful myths, or projections of the popular imagination which attempt through myth to make sense of the cosmos and of human existence on this earth."¹⁸ Nietzsche is affirming what Strauss said which was that the government and religious constitutions were built based on a mythical field. Because culture itself is surrounded by codes created by mythical apprehensions. "The state itself has no unwritten laws more powerful than the mythical foundation that guarantees its connection with religion and its growth out of mythical representations."¹⁹ For him, if the myth loses its value, it has the potential to cause a collapse in the government. It is almost like Nietzsche's theory has caused Sorel to create a connection between actuality and myth. According to Sorel, myths pertaining to the defining process and the possibility of being able to create a case within the frame of ideals and beliefs can cause a strengthening in the political action process. Sorel states that the act of violence in myths has influence the political action area.

¹⁸ Jeffrey Andrew Barash, "Hannah Arendt and the Mythology of Violence", *Doğumunun 100. Yılında Hannah Arendt On Her Birth Centenary* prepared by Sanem Yazıcıoğlu,(İstanbul:June 2009, Yapı Kredi Yayınları), 92

¹⁹ Frederic Nietzsche, *The Birth of Tragedy*, Translated by Shaun Whiteside, (New York:2003, Penguin Books), 168

Benjamin takes violence as a concept that caused the modern laws and government to form and also created *Gewalt*. That is why the mythical violence is the establisher and it is the discursive manifestation of the laws we know of today.

Far from inaugurating a purer sphere, the mythical manifestation of immediate violence shows itself fundamentally identical with all legal violence, and turns suspicion concerning the latter into certainty of the perniciousness of its historical function, the destruction of which thus becomes obligatory.²⁰

Unlike Sorel, Benjamin doesn't state that mythical violence is feeding political actions. Mythical violence is law establishing. Through legends it reveals the connection between law and violence.

It is really this hero and the legal violence of the myth native to him that the public tries to picture even now in admiring the miscreant. Violence therefore bursts upon Niobe from the uncertain, ambiguous sphere of fate. It is not actually destructive. Although it brings a cruel death to Niobe's children, it stops short of the life of their mother, whom it leaves behind, more guilty than before through the death of the children, both as an eternally mute bearer of guilt and as a boundary stone on the frontier between men and gods.²¹

Is it possible to create an area without political violence? For instance the things that happened to Aeneas after the Trojan War and the things that led to the creation of Rome. Actually the real myth that contributed to the creation of Rome was Romulus and Remus' story. The establishment of Rome is based on fratricide.

No one engaged in thought about history and politics can remain unaware of the enormous role violence has always played in human

²⁰ Walter Benjamin, "Critique of Violence" in *Reflections*, 296-297

²¹ *Ibid*, 294-295

affairs, and it is at first glance rather surprising that violence has been singled out so seldom for special consideration.²²

Even if Arendt accepts that there is no beginning without violence, she makes a separation between instrumental violence and violence aimed towards a goal in creating a political area. According to her, while Aeneas' violence brought about a strong political position, Romulus' violence has a more attacking quality and that is why it does not create a permanent political area.

For the first set of legends, violence is a means among others employed by a united national group toward the foundation of a new political end, whereas in the second, violence becomes the only means employed by a mere faction, which for this reason invariably corrupts the end toward which it is directed.²³

Benjamin does not completely disclaim violence. Therefore, there is a more pure version of violence that can be placed against mythical violence: Divine violence. Divine violence is the only power that can stand against law. Differently than *Gewalt*, it has a potential that can break the structure of law.

If mythical violence is lawmaking, divine violence is law-destroying; if the former sets boundaries, the latter boundlessly destroys them; if mythical violence brings at once guilt and retribution, divine power only expiates; if the former threatens, the latter strikes; if the former is bloody, the latter is lethal without spilling blood.²⁴

In accordance with this, mythical violence demands power and instrumentalize it in favor of his demand while divine violence takes an action when there is an inequality.

²² Hannah Arendt, *On Revolution*, (San Diego, New York, London:1970, A Harvest/HBJ Book Harcourt Brace Jovanovich Publishers), 8

²³ Jeffrey Andrew Barash, "Hannah Arendt and the Mythology of Violence", *The 100th Year of Hannah Arendt's Birth*, 88

²⁴ Walter Benjamin, "Critique of Violence" in *Reflections*, 297

The legend of Niobe may be confronted, as an example of this violence, with God's judgment on the company of Korah.²⁵ It strikes privileged Levites, strikes them without warning, without threat, and does not stop short of annihilation. But in annihilating it also expiates, and a deep connection between the lack of bloodshed and the expiatory character of this violence is unmistakable. For blood is the symbol of mere life.²⁶

When the concept of divine violence is considered through the legends that Benjamin mentions, it gives rise to some questions. Actually the separation of it from mythical violence can get confusing in some points. Just like the principles of taking over power, producing domination and establishing or protecting law in mythical violence, it can be thought that violence brought about through God can be used to create positions of power and privilege.

Divine violence is ultimately nothing more than an imaginary authority that can be called on by any ruling power to legitimate itself. Every retroactive interpretation and construction of meaning implicates it in mythical violence.²⁷

No matter the amount of problems that the texts shown as examples of divine violence are, the point that Benjamin makes is: divine violence can be a type of violence that does not demand power, stays away from it and even works against it, works towards equality and righteousness and is in search of “justice”. Benjamin says that the similarities between divine violence and revolutionary violence are based on these principles. “If the object of State force was to impose

²⁵ According to the Old Testament, Izhar’s son Korah stood up to the claims that Moses and Aaron were chosen and he was thrown into fire together with his followers in order to be punished by God. [Translator’s note from Byung Chul Han, *Şiddetin Topolojisi*, translated by Dilek Zaptçioğlu, (İstanbul: 2016, Metis Yayınları), 62]

²⁶ Walter Benjamin, “Critique of Violence” in *Reflections*, 297

²⁷ Byung Chul Han, *Topology of Violence*, translated by: Amanda DeMarco (Cambridge: 2017 The MIT Press), 41-42

a social order based upon inequality and exploitation, the purpose of proletarian violence was ‘the destruction of that order.’²⁸

1.1.3. Revolutionary Violence

According to the Marxist paradigm, the function of the law and state is to legitimize the relationships that make up the class system of the society. The organizer of relationships of dominance is not the state power but actually the sovereign class that makes up the state and thus the structure of the state is the result of this connection.

These actual relations are in no way created by the state power; on the contrary they are the power creating it, The individuals who rule in these conditions — leaving aside the fact that their power must assume the form of the state — have to give their will, which is determined by these definite conditions, a universal expression as the will of the state, as law, an expression whose content is always determined by the relations of this class, as the civil and criminal law demonstrates in the clearest possible way.²⁹

“Citizens” considered “equal” or “free” within the law are actually meaningful for the state, law and sovereignty as long as they are made dependant on their economic politics. The norms and conditions that determine the market try to audit people’s lives as “excessive exploitation forms”. Thus law plays a normalizing role.

²⁸ Georges Sorel, *Reflections on Violence*, edited by:Jeremy Jennings (Cambridge:2004,Cambridge University Press), xviii

²⁹ Karl Marx&Friedrich Engels, *The German Ideology*, Chapter Three: Saint Max, II. Law “Material Life the Basis of the State”, M.I.A. Library: Marx & Engels, <https://www.marxists.org/archive/marx/works/1845/german-ideology/ch03j.htm#c.1.2.5.1.2> (last accessed:15.06.2018)

In any case, Marx wants to show that various radical forms of exploitation depend to a general state of Gewalt which is implicit to capitalism, doesn't give legally "free" labor another chance than selling themselves within the conditions provided by agents of production, named by him as the collective "slavery"(Hörigkeit) of the working class.³⁰

Through a "legal status", law separates itself from all societal and economic structures as well as the historical process and it has established itself with a completely different doctrine separate from all of the above. However, it is important to emphasize that law is not a doctrine but rather a social phenomenon and it does in fact depend on various power relationships or the society and economy that it places itself in.

The more intricate this legal system becomes, the more is its mode of expression removed from that in which the usual economic conditions of the life of society are expressed. It appears as an independent element which derives the justification for its existence and the substantiation of its further development not from the economic relations but from its own inner foundations or, if you like, from "the concept of the will".³¹

Placing the state in a position where it becomes a toll that enables the sustainability of the capitalist order and normalizes the production process and economic structure in order to protect the benefits of the classes would be insufficient in terms of understanding how it functions through the power relationships within the multidimensional societal structure. Normalizing the economic structure is just one of the functions of the state created through its focuses on power and the relationships it created through discourses. However, just like Marx had said with taking advantage of the many meanings of *Gewalt*;

³⁰ Étienne Balibar, *Violence et Civilité Wellek Library Lectures et Autres Essais de Philosophie Politique*, (Galilée, Paris:2010), 276

³¹ Frederick Engels, *The Housing Question in Marx&Engels Collected Works Volume 23 Marx and Engels 1871-74*, (Lawrence & Wishart Electric Book: 2010), 380-381

“Between equal rights [*Gewalt*] decides.”³² The violence creating and protecting structure of *Gewalt* effects the structures of the state and law organizations and through them a “naturalization” of domination types, which may or may not be institutionalized, is enabled. Bataille says that the state has a structure that produces various forms of dominance and the subjects of “I/We” and “Others” and he says that the power’s creating and destroying functions are created through this.

Bataille doesn’t just define the state as a power tool in service of some class profits. According to him, state is an institution who intends to separate the society’s “homogeneous part” - which is based on the productive benefit- from the “heterogeneous part”, in other words it is an institution who wants to extinguish which is sacred and despicable, the sovereignty with its opposite figures and more generally it is an institution who wants to annihilate the powers that are impossible to assimilate and reserve individual or collective forms of violence which forms the erotic base of domination.³³

The hegemony created through the state recognizes persons as “subject” as long as they are dependent to it. This situation makes people feel alienated and it aims to create a structure based on will. In the beginning this alienation and pressure stage was met by anxiety and fear. However, if the production of will was not created completely or if during this process there wasn’t an agreement on various points of this process of consent put people into a crisis, the emotion of “anger” is released. For this reason a necessary act of “violence” might reach the position of mediator against the established hegemony.

³² Karl Marx, Frederick Engels Werke, *Das Capital*, (Dietz Verlag Berlin,1962), 249, *Capital A Critique of Political Economy Volume I*, Translated by Samuel Moore and Edward Aveling (Progress Publishers),164 [In English translation: *Gewalt* has been translated as “force”. I chose to use to concept of *Gewalt* as it was in the original book.

³³ Étienne Balibar, *Violence et Civilité*, 302

By referencing Charles Tilly, Isabelle Sommier says that “that which makes you go back to the beginning creates a circle effect and thus pressure is one of the biggest radical effects of a mediation level.”³⁴ The methods of “legal” violence and pressurizing that the puissance use can be said to be giving rise to the desire to stand against these methods and to become more radical in many countries. For example in 1969 the assassinations that began in Italy with the explosions that happened in the Piazza Fontana and during the same year at the Bologna Station square, the state was shown as the primary responsible factor – which was later proved in the official investigation done towards the end of the 1980s – and the demonstration in 1968 named the “The Battle of Valle Giulia” where the police attacked students pushed the people in Italy to resist and create organizations.³⁵ Again in the demonstration on the 2nd June 1967 in Germany, Benno Ohnesorg; killed by the police, has become a symbol and it has caused the German Students’ Movement to grow and it gave the name “2nd June Movement” to the armed organization to commemorate the day.³⁶

After Engels (especially on Lenin and more particularly on Gramsci) it is possible to think that we came to the point that Gewalt’s theoretic and essential sides are separated despite Marxist theorists’ efforts. Europe-with an empiric racism towards people exterior to themselves, on a condition of being stamped by massive forms of absolute impoverishment supported by a civilisation who doesn’t hesitate to commit genocide and a cruel political domination (colonialist or half colonialist), different movements too, each on their own style, were trying to interpret that to resort to violence actually wasn’t an option, but an obligation.³⁷

Gewalt which Benjamin has put forward as a type of established violence seems to be legitimizing the dominance relationships that have built the structure of dominance. According to this, through drawing a clear line between what is inclusive and exclusive to the law, *Gewalt* has the right to produce legitimate

³⁴ Isabelle Sommier, *Devrimci Şiddet*, çev. Işık Ergüden, (İstanbul, 2012: İletişim Yayınları), 56 (*La Violence Révolutionnaire*, 2008, Presses Fondation Sciences Politique)

³⁵ *Ibid*, 58

³⁶ *Ibid*, 56

³⁷ Étienne Balibar, *Violence et Civilité*, 299

violence in legal extent as well as it can suspend the law - just like in the Emergency State- . The form of violence that Benjamin places against this established violence is “destructive” and “savior” and it is found outside the structure of the law and with the words of the revolutionizing Benjamin, “it is divine (holy) violence”. Benjamin sees Sorel’s idea of “proletarian strike” close to his idea of divine violence. Hence, Sorel creates a differentiation between “power” and “violence” and says that “violence” is the tool used by those rebelling against the puissance and he sees “power” as a kind of “bullying” to enforce their puissance to the society. “Sometimes the terms ‘force’ and ‘violence’ are used in speaking of acts of authority, sometimes in speaking of acts of revolt.[...] The bourgeoisie have used force since the beginning of modern times, while the proletariat now reacts against the middle class and against the State by violence.”³⁸ Therefore, there cannot be a type of “violence” that wants power, for if it includes such a demand it is faced with the risk of becoming the bully itself. Sorel says the following by stating that the aim of revolutionary battle is to copy the current power; “It cannot conceive that a revolution as vast as that [...] for the satisfaction of theorists, politicians and speculators, all worshippers and exploiters of the State.”³⁹ The idea of “proletarian strike” that Sorel has mentioned is a form of action that does not aim to become the sovereign itself ; it is a form of action that claims that deactivation of the power is just a stage of revolution’s continuity, therefore it doesn’t base itself to a certain ideal. Due to the continuation of the act of “strike” in the idea of “proletarian strike”, Benjamin states that it is placed outside the law and due to this feature it is autonomous of the impositions of the puissance and it encompasses a “destructive” potential against the power. “[...] but in determination to resume only a wholly transformed work, no longer enforced by state, an upheaval that this kind of strike not so much causes as consummates”⁴⁰

³⁸ George Sorel, *Reflections on Violence*, 166

³⁹ *Ibid*, 171

⁴⁰ Walter Benjamin, “Critique of Violence” in *Reflections*, 292

Choosing violence as a method against dominance is shaped by a two dimensional revolutionary paradigm. The first dimension is instrumentalization of violence as a necessity against pressure; the second dimension is the “savior” function of violence against the system of exploitation...⁴¹ The resistances held against the dominant regime in especially colonial or third world countries are the situations that shape the “savior” principle in demonstrations against racism and the rough interventions that they experience.

[...] there is an anarchist effect but at the same time the battles in the Third World and especially the battle of liberation in Vietnam have effects too. The rightful violence against overlooked rights enables them to gain their self-respect back and to beat all of their enemies, even the ones that were considered unbeatable. Sometimes there is an eschatological point of view. Some have a bossy psychological emotion; and choosing violence will help them be reborn. Violence is recreating through dual victims – the oppressor and the oppressed.⁴²

Frantz Fanon states that in colonial areas the violence containing demonstrations held against the power is enabling individuals to reestablish their subjectivity and get rid of being an object of the dominance. We can say that this “savior” principle is similar to the “divine violence” concept that Benjamin had put forward as a revolutionary method. However Benjamin’s form of resistance which is destructive as long as it is durable and does not desire to become the pivotal power is not apply to the colonial areas that Fanon talks about and in these areas it can be said that what matters more is the “self determination” principle.

At the level of individuals, violence is a cleansing force. It frees the native from his inferiority complex and from his despair and inaction; it makes him fearless and restores his self-respect.[...] When the people have taken violent part in the national liberation they will allow no one to

⁴¹ Isabelle Sommier, *Devrimci Şiddet*, 24

⁴² *Ibid*, 24

set themselves up as "liberators." [...] Yesterday they were completely irresponsible; today they mean to understand everything and make all decisions. Illuminated by violence, the consciousness of the people rebels against any pacification. From now on the demagogues, the opportunists, and the magicians have a difficult task. The action which has thrown them into a hand-to-hand struggle confers upon the masses a voracious taste for the concrete. The attempt at mystification becomes, in the long run, practically impossible.⁴³

There is a risk of the revolutionary battles turning into *Gewalt* at some point and creating these strategies based on the "power"; therefore, it might turn into a subject whose wishes to create the dominance. (Soviet Russia is an example of this situation.)

1.1.4. The Relationship between Gender Differences, Sexual Orientation and The Law

Law, which has been put forward by modern state as one of the obligatory practices based on getting rid of violence in society and keeping it under control, has a structure that is not only "protective" but also "intervening". Thus, the state of taking refuge in law initially contains a paradox in it. "Taking refuge in the law to get away from the violence that created the law."⁴⁴ The principle of getting rid of violence in the society seems to lose its function when groups outside of the heteronormative social sphere have demands. "The level of violence that women, and people with different sexual orientations and gender identity face and the attitude of the society/law against this violence shows, that the allegation that modern society and law is reducing violence does not seem to be corresponding with some parts of the society."⁴⁵ This situation shows that the concept law, or in

⁴³ Frantz Fanon, *The Wretched of the Earth*, translated by Constance Farrington (New York:196, Grove Press), 94-95

⁴⁴ Oya Aydın, "Eşcinsellik, Hukuk, Şiddet", in *Şiddetin Cinsiyetli Yüzleri*, prep. by Betül Yazar, (İstanbul: 2015, İstanbul Bilgi Üniversitesi Yayınları), 212

⁴⁵ *Ibid*, 212

other words; *gewalt*, which Benjamin mentions is the manifestation of violence, continues in much the same way as it had in its historical roots. While law is organizing and interfering in sexuality through the laws that it has made, it is also enabling the direct use of violence against sexual identities outside of heterosexuality. Today, as a result of struggles against the violence producing legal regulations and the political paradigms that change in same direction, in areas like Europe and America, sexual orientation has been removed from the scope of crime and punishment and it has been made possible the recognition of sexual identities by law. However, this situation is not even mentioned in many countries including Turkey. In Turkey, as Benjamin mentions, it can be seen that law still has an archaic structure that serves according to the binary gender structure by protecting the heteronormative and patriarchal order and secures the legal regulations or their interpretations in favor of the order we speak of. Law doesn't give up from intervening on individual's lives through concept of "family", by a series of legal obligations which aim to supervise their sexuality and bodies accordingly to "morality", on the contrary it keeps regulating these fields.

Law arranges sexuality in a detailed way and defines it. It determines the laws for how far, how sexual conduct is a crime, sexual assault and rape laws, consent, marriage, custody and the institution of family. However, it does not stop with just this; things that are not defined by law and not subjected in law should also take place in the sovereignty of power. It is a known fact that general categories that have their limits determined and are openly regulated with laws make it easier for the power to control them. One of the best examples for this is the category of *public moral* which has been placed in law – including the constitution and people's rights agreements.⁴⁶

The uncertainty of the definitions that create this concept of *public moral* and the fact that the limit of the forms of actions are interpreted with an open-ended perspective rather than objectively give this concept the opportunity to

⁴⁶ Oya Aydın, "Eşcinsellik, Hukuk, Şiddet", in *Şiddetin Cinsiyetli Yüzleri*, 214

completely be used to legalize the paradigm of political power and constituting discourse. Political power which bases its strength on the uncertainty that this concept creates, gives way for these laws to be abused through *public moral* and thus leads to religious references to enter the secular area of law easily. Here, normative systems such as religion and moral which are placed outside of law but become determining through law because of political power cannot be underestimated. Even if law does not have a sanction against people who enter a relationship with their own gender or enter sexual relations outside of marriage; while it tries to create some obligations for these people, it creates an illegitimate position which deprives them of some practices. “[...] topics related to the consequences that those who enter relationships have to face and which genders share relationships in which form are generally solved through public moral rules.”⁴⁷ One example of this situation can be seen in “civil servants’ law”: “Any actions are disgraceful offenses which do not align with the title of civil servant”⁴⁸ such as which is considered “relationships between same sex individuals considered against public moral [...] make up the disciplinary action and removes the sanction from civil service.”⁴⁹ Without a doubt, the reason that law has accredited itself with a power to regulate sexuality is through the regulation of the first constitution (law) on the institution of “family” which is based on the historical roots of law, aimed at setting up the gender regime, is present in various myths, is encountered in religious books and is based on the law against patricide and incest which Freud lays emphasis on. Hence, the political power set up and exist within the scope of the concept of family is resulting in a prompting of this first constitution (law) with evocative worries even today. “In the hand book

⁴⁷ O. Aydın, “Genel Ahlak, Hukuk ve Cinsellik Hukuk”, in the *Mülkiye Dergisi*, Volume 37, Issue 4, (Ankara: 2013), 141

⁴⁸ The 125th article of the 657 numbered Civil Servants Law G clause, see: <http://mevzuat.meb.gov.tr/html/dmkkısım4.html#madde125>

⁴⁹ Oya Aydın, “Eşcinsellik, Hukuk, Şiddet”, in *Şiddetin Cinsiyetli Yüzleri*, 214

given in 2012 by the ‘The Ministry of Family and Social Politics’ named, ‘Marriage and Health’⁵⁰, this warning was given to “males”:

While looking for a solution, moral and ethical values should be protected. Otherwise the lineage and the concept of family are ruined and there is no obstacle for siblings to marry each other. The foundations of the society and humanity will be ruined. This is a more serious situation for the future of humanity than wars or natural disasters. Many methods that are destroying family like sperm banks, women selling their eggs or surrogate moms are shown like solutions. Everything is going off track and losing its innocence.⁵¹

The decisiveness of the law and political power through concept of family accompanies a violent cycle that surrounds people. With the acts of identifying, recognizing, rejecting or ignoring, this violent cycle seeps into people’s lives and shows itself in a judging and at the same time managing way, especially towards people’s sexual preferences. Family keeps putting this determining power in the area of legal proceedings as a function of legitimizing recognition and ignoring. The state of being in a lawful status can only gain its rights by being dependent on the concept of family and by not declining its existence.

[...] Family (“methods that destroy family”), this ancient and privileged place of desire and power will always remain as a supreme court where it is decided who is innocent and who is not (losing their innocence) and the threshold of innocence (who doesn’t sin, who is a sinner, who is innocent, who is guilty) is determined.⁵²

The approach of rebuilding the societal area based around the benefiting political axis of modern governments gives rise to the possibility of this benefiting

⁵⁰ Özkan Ağaş, “Hakiki Cinsiyet, Yasanın Boyunduruđu ve Siyasi Öznellik”, in *Şiddetin Cinsiyetli Yüzleri*, prep by Betül Yazar, (İstanbul: 2015, İstanbul Bilgi Üniversitesi Yayınları), 146

⁵¹ “A warning to Males from the Ministry of Family and Social Politics”, T24.09.11.2012, <http://t24.com.tr/haber/aile-ve-sosyal-politikalar-bakanligim-erkekler-uyari/216993>

⁵² Özkan Ağaş, “Hakiki Cinsiyet, Yasanın Boyunduruđu ve Siyasi Öznellik”, 146

area which allows for this benefiting to ensure in all structures. This situation also brings with it the policies that allow the power to control bodies and the regulations which enable the spread of various applications together with it. At one time the different sexual identities' sexual relations were removed from the punishing dimension and brought to psychiatrists. These sexual relations were considered "illnesses" and the power's control and surrounding ability over these bodies continued.

One had to speak of sex; one had to speak publicly and in a manner that was not determined by the division between licit and illicit, even if the speaker maintained the distinction for himself (which is what these solemn and preliminary declarations were intended to show): one had to speak of it as of a thing to be not simply condemned or tolerated but managed, inserted into systems of utility, regulated for the greater good of all, made to function according to an optimum. Sex was not something one simply judged; it was a thing one administered.⁵³

When we think about this situation in Turkey, sexual orientations and identities outside of the heteronormativity are not recognized by the constitution. They are not included in the principle of "equality" and the status of "citizen". In brief they are disregarded. The current ideological position of the political power is based around creating policies to include the individuals with the status "citizen" and is gaining itself a legitimate dimension in the legal frame. By defining those left outside of this status as marginal, it is enabling that they are disregarded in both law and societal areas as well as creating a goal for making the actions of these individuals criminal offenses. Even though it was attempted to institute a juridical status for "everyone" by defining them as the people with the status of "citizen", it is considered as a fundamental crisis in the eye of the political power when there is no answer for who is "everyone" and what are they defined by.

⁵³ Michel Foucault, *The History of Sexuality Volume I: An Introduction*, Translated: Robert Hurley, (New York:1978, Pantheon Books), 24

The terms “sexual orientation and identity” which are defined by “lesbian, gay, bisexual, trans (LGBT) are not included in the “equality” clause and when they are sent to unseen status like “everyone”, or “other” or “et cetera”, denialist politics will not change. And maybe the most clear proof of the problem: “is ‘the crisis’ of who will be approved as ‘citizen’ and who will be considered as ‘human being’ while writing the article of ‘equality’ at the Parliamentary Constitution Commission!” Because if you are a gay that is standing up against compulsory heterosexuality, or a Kurd standing up against one language, or an Alevi standing up against one religion, or a woman against male dominance, a worker against exploitation, a minority against a majority, or you are poor, ill or disabled, or even old, you cannot be ‘everyone’ in the law.⁵⁴

For the power that is trying to define and affirm “everyone” against its own political paradigm, by evaluating individuals who aren’t approved by itself or seen as an opponent, taking them into its own legal area will create an undermining effect on its prohibiting, directive and administrative. The LGBTQI+ in Turkey is found in a position where the political power and laws do not recognize it, it is completely indefinite, and even though an act of violence is not “legitimate” for this group, it is far from a “criminal punishment”. For instance if a “citizen” is transgender or gay, any act of violence against them would be evaluated within the scope of an “indecent proposal” and “unjust provocation”. It results as the victimized transgender or gay becoming the perpetrator. The attitude that the police have against the people outside of the political paradigm and the way they treat them and the violence they portray against them is not met with any kind of sanction but rather encouraged by the statements of the power. The concept *gewalt* which explains the relationship between violence, law and power is showing itself clearly in these situations. The belittlement or physical harm done towards people of different sexual identities in a way becomes a legitimate act and it is accepted. This situation reminds us of the concept *homo sacer* that Agamben had used to describe people that the law did not recognize, that could be killed or harmed with no legal consequence, that have no legal safety and in short

⁵⁴ Özkan Ağaş, “Hakiki Cinsiyet, Yasanın Boyunduruğu ve Siyasi Öznellik”, 158-159

that have no connection with the law. Groups with different sexual identities or conflicting ideas with the political power are in a way degraded to homo sacer and the violence against these groups are not met with any type of punishment. Even if there was a punishment, it has become government policy to “mitigate” the punishment. The group that had shown the violence will not be met with any kind of legal difficulty and they will be able to continue their professional lives. For example, if people who have a certain powerful position such as a teacher or principle abuse their students, their place of work will be changed and they will be able to continue their professions. This is a situation that we often saw in Turkey. In a public act, if the police kill or harm an activist, the consequences they will be confronting will be similar.

The reason for this attitude that the police has for big physical violence against those with different sexual identities is this rejection. Benjamin’s prediction is at this point gaining importance: The police are intervening in this area where there is no legal regulation and because of its law making function, having a sexual identity is being punished with physical violence.⁵⁵

When the topic is people with different sexual identities, the identities of these people are not being included in laws that give them job security and thus they are being ignored yet again. This situation means that the people’s right for work is not recognized and it is just another different way of manifesting violence.

Just like in the Turkey example, the meaning of insisting on not giving room to people with different sexual orientations and identities in the constitution and/or other laws is that it is recognized but rejected. Despite all efforts, whether in constitution change practices or in recent codification practices like the Penal Code, the Labour Act, the Anti-Discrimination law, it is unfortunate to say that it hasn’t been possible to overcome the resistance that the opposing nationalist parties and political powers have created against “sexual orientation and identity”.⁵⁶

⁵⁵ Oya Aydın, “Eşcinsellik, Hukuk, Şiddet”, 217

⁵⁶ Oya Aydın, “Eşcinsellik, Hukuk, Şiddet”, 216

The paradox of taking shelter in law is also related to treating people who the lawful power does not or cannot represent as objects. What is more, these are the people who should be protected and represented by political power representatives and are included in the definition of “everyone”. Therefore, when an individual who is not considered “everyone” relies on shelter against a threat, this can be brought to a standstill by the law representatives and the law itself. This standstill makes the individual feel insecure and alone. For this reason at this point law gains a function that stops itself from being the protector and starts to produce the violence or does not prevent it as it supposed to be. The urgency against a dangerous situation once again becomes insignificant in the law process and the harm that people who are not considered “everyone” has to endure is ignored by power representatives.

[...] against many punctuated words mobilized by hatred, physical violence and death, and the urgency required by the answer that all of these require, we really have nothing to work with. But it is a matter of life and death to quickly answer and find a solution. Because the crimes that are being committed are not being punished. All of these crimes are getting lost in the legal corridor (police, prosecutor, judge, questioning, witness, court etc) through which they have to travel. We think that a legal procedure that draws the light onto these criminals in order to prevent these acts is very necessary. [...] Law is definitely holding out on this situation. Law which we know seeps into nearly everywhere and every relationship is avoiding labeling women, gays and others as legal objects.⁵⁷

The practice of struggle which changes the law against the unity of law, power and violence becomes prominent. However, as a result of the struggle that will be given in order to gain a legal status, the tendency to build this status on political subjectivity should be thought about without overlooking the interfering dimension of the law. An individual that is a subject of the law can exist with a

⁵⁷ Özkan Ağaş, “Hakiki Cinsiyet, Yasanın Boyunduruğu ve Siyasi Öznellik”, 157

dependency on the law and it must be remembered that their identity is not independent of the lawmaker and actually it will always be open for struggle with specific limitations.

When mentioning the request for a reorganization of the law in accordance with gender, we can think that every act that is accepted as a legal norm can also be redefined through the normative regulations and considering that its frame will in a way be determined and legal demands in accordance with the protection of the identity is thought about, it should be recorded that the identity is organized by the law in a paradoxical way and thus it includes normative struggle.⁵⁸

This problem is due to law not working by itself but together with the political power. If there is a power that is making decisions by taking conservative principles into account, then law and individuals which are its subject need to be shaped accordingly. The fact that legal status demands are subject to the approval of the public and power, individuals may be thirsty for this kind of approval. Thus, the process of being about to freely talk about our own sexual differences has become dependent to this approval.

[...] travelling around the limits of a trespassing practice such as law, forcing and provoking it, is an exclusive experience. [...] There have been many who wanted to surround law and got surrounded by it imperceptibly and one thing that we need to really understand is that the law is something to take seriously. The price of trying to enter the law (we should mention famous Kafka's allegory that is about destiny of this effort), be a part of it and set up the political subjectivity within it, might easily be interiorizing the limitations of the law as your own limitations.⁵⁹

⁵⁸ Oya Aydın, "Eşcinsellik, Hukuk, Şiddet", 218

⁵⁹ Özkan Ağaş, "Hakiki Cinsiyet, Yasanın Boyunduruğu ve Siyasi Öznellik", 157

1.2. BEING AN “AGENT” AND THE CONSTITUTING OF THE SUBJECT

Constituting phase of a person’s subjectivity is generally done under the identities that were given to her/him. These identities; along with specific societal roles, cultural codes and traditions getting involved to the power mechanism, they continue to ensure the consent of the person. What’s more, we might suggest that the formations such as culture, tradition and society are already in power without applying to any other mechanism and we might also argue that the areas of agency are oppressed by these mechanisms which may very well be pretty conservative. Is it possible for a person to produce a new area of subjectivity within one’s own distinctness, against subjectivities that are structured under siege? For the individual this can be done by the wish to be an agent and afterwards the will to realize itself.

The story *Bluebeard* that Clarissa P. Estés concentrates on, showing us ways of being under siege and the expressions and laws that make up the foundation of these ways which may seem natural, are limiting or even prohibiting demands and these demands are defining the subjectivity and the effect on women in the event of an agency. In the story, by giving them gifts *Bluebeard* tries to convince three sisters who are afraid of him that he is not a bad person. In the end, he marries one of these three sisters. One day, while *Bluebeard* was leaving his home for a journey, he leaves the keys of the castle they live in to her, but he wants his wife to promise him something: “[...] but this little tiny key, the one with the scrollwork on top, do not use.”⁶⁰ His wife tells Blue Beard that she will fulfill his wish but she and her sisters open the lock that the key fits in. In the room they see corpses of women. When *Bluebeard* hears about this, he says that he will kill his wife. With the excuse that she wants to pray one last time, she

⁶⁰ Clarissa Pincola. Estés, *Women Who Run With the Wolves, Mythes and Stories of the Wild Women Archetype*, (New York:1996 , Ballantine Books; Reissue edition), 33

stands watch, waiting for her brothers to come. At the end of the story, the woman's brothers kill *Bluebeard*.⁶¹

When Bluebeard bellows for his wife and she stalls for dear time, she is trying to rouse energy to overwhelm the captor, whether that specifically or in combination be a destructive religion, husband, family, culture, or a woman's negative complexes. [...]⁶²

Bluebeard is a symbol of structures like family, religion and culture or the subject of the patriarchal power, representative of masculine behavior, trying to overpower women, thus the representative of husband. The chance of women escaping the overpowering structures or being able to break out of them, exists within the opportunities that will be created by their own perpetration areas which they will evoke themselves.

But even if a woman is fatigued unto death with her miserable struggles, no matter what they might be, even though she be starved of soul, she must yet plan her escape; a woman must force herself forward anyway. [...] To go to sleep now is certain death.

[...] This is the moment in which the captured woman moves from victim status into shrewd-minded, wily-eyed, sharpeared status instead. This is the time that almost superhuman effort manages to drive the so-tired psyche to its final work. The key questions continue to help, for the key continues to bleed its wise blood even as the predator forbids consciousness. His maniacal message is, "For consciousness—you die." Her response is to trick him into thinking she is his willing victim while she plans his demise.⁶³

Estés says that pressurizing factors like family and culture drag women to certain thresholds and at one of these thresholds there is a rightful anger and the transforming power of this anger is revealed.

⁶¹ Clarissa Pincola. Estés, *Women Who Run With the Wolves*, 32-33-34-35

⁶² *Ibid*, 46

⁶³ *Ibid*, 46

It is one thing to use passive resistance as a political tool as Gandhi taught masses of people to do, but it is quite another matter when women are encouraged or forced to be silent in order to survive an impossible situation of corrupt or unjust power in the family, community, or world. Then women are amputated from the wild nature and their silence is not serenity but an enormous defense against being harmed. It is a mistake for others to think that just because a woman is silent, it always means she approves of life as is.

There are times when it becomes imperative to release a rage [...] It has to be in response to a serious offense; the offense has to be big and against the soul or spirit.⁶⁴

Estés points out that there are certain factors that clinch a woman's rightful anger. Accordingly, if a woman can accept her anger, she will be able to create a balance based on the new information and emotions. Estés, points out that anger is not a tool for revenge but rather the beginning of a transforming action. Thus, the adopting of anger is the first step for a woman in her journey of discovering her own subjectivity rather than revenge. "Now a woman who has come to terms with rage returns to mundane life with new knowing, a new sense that she can more artfully live her life."⁶⁵

When we talk about subjectivity, we can say that the only pronoun that can best represent the subject is "I". While Monique Witting mentions that women's becoming individual subjects is a political obligation, she also says that it is necessary to move away from the pronoun "I". For her, by expressing subjectivity with "I", a masculine dominance area is being entered into. She states that "I" represents the subject which makes everything appropriate for itself and overlooks differences with an understanding that includes globalization. "This privilege to speak "I" constitutes a sovereign self, a center of absolute plenitude

⁶⁴ Clarissa Pincola. Estés, *Women Who Run With the Wolves*, 264

⁶⁵ *Ibid*, 263

and power; speaking constitutes “the supreme act of subjectivity.” This coming into subjectivity is the effective overthrow of sex and, hence, the feminine.”⁶⁶ “No woman can say I without being for herself a total subject—that is, ungendered, universal, whole”⁶⁷

Butler states that the discourse of sovereignty in the process of “I” and becoming subjective cannot only be explained by the positioning of “I” ; She states that it is related to the actual power position and positioning and by avoiding Witting’s labeling “I”, subjugation of subject by the discourse cannot be avoided. According to her, power is effective in how, where and by who the feminist subject will be used because it is the progenitor.⁶⁸

It is clearly a matter of a certain authorizing power, and that clearly does not emanate from the position itself. My position is mine to the extent that "I"-and I do not shirk from the pronoun-replay and resignify the theoretical positions that have constituted me, working the possibilities of their convergence, and trying to take account of the possibilities that they systematically exclude. the "I," this "I," is constituted by these positions, and these "positions" are not merely theoretical products, but fully embedded organizing principles of material practices and institutional arrangements, those matrices of power and discourse that produce me as a viable "subject." Indeed, this "I" would not be thinking, speaking "I" if it were not for the very positions that I oppose,⁶⁹

Just as the power and statement matrix that created “I”, the constitutive of the subject is also the same matrix. Therefore according to Butler “I” and the subject cannot be thought of separately because the subject cannot exist before

⁶⁶ Judith Butler, *Gender Trouble, Feminism and the Subversion of Identity*, (Routledge, New York and London, 1999), 149

⁶⁷ Monique Wittig, “The mark of gender”, in Miller, Nancy K. , *The poetics of gender*, (New York: Columbia University Press, 1986) 63–73,

⁶⁸ Judith Butler, “Contingent Foundations: Feminism and the Question of Post-Modernism” *Feminist Contentions*, Prep. By: Seyla Benhabib, Judith Butler, Drucilla Cornell and Nancy Fraser, (New York and London: 1995, Routledge), 42

⁶⁹ *Ibid*, 42

“I”. The encountered and criticized “I” is related to the subordinate position of “I”. If this wasn’t the case then “I” or the subject would not be encountered or talked about.

No subject is its own point of departure; and the fantasy that it is one can only disavow its constitutive relations by recasting them as the domain of a countervailing externality [...] In a sense, the subject is constituted through an exclusion and differentiation, perhaps a repression, that is subsequently concealed, covered over, by the effect of autonomy.⁷⁰

At this point we can think that the subject is a concept created throughout a process that was determined in agency. The fact that agency was determined, can drag the person into believing a nihilist manner which is faced with an expression that is difficult to give meaning to. Therefore, in order to avoid losing the meaning of agency, do we need a subject that is independent of everything? Does the idea of subject being set up, led us into a determinist structure? Butler says that neither the idea of the subject being set up nor the dependency of agency on the subject show a determinist process. “We may be tempted to think that to assume the subject in advances necessary in order to safeguard the agency of the subject. But to claim that the subject is constituted is not to claim that it is determined; on the contrary, the constituted character of the subject is the very precondition of its agency.”⁷¹

According to Butler, agency is “[...] agency belongs to a way of thinking about persons as instrumental actors who confront an external political field.”⁷² Butler points out that there is opportunity for subjectivity and agency through power and politics. Thus, subjectivity and agency have a completely political center.

⁷⁰ Judith Butler, “Contingent Foundations: Feminism and the Question of Post-Modernism” *Feminist Contentions*, 42/ 45- 46

⁷¹ *Ibid*, 46

⁷² *Ibid*, 46

[...] if we agree that politics and power exist already at the level at which the subject and its agency are articulated and made possible, then agency can be presumed only at the cost of refusing to inquire into its construction [...] For if the subject is constituted by power, that power does not cease at the moment the subject is constituted, for that subject is never fully constituted, but is subjected and produced time and again.⁷³

The approaches made towards agency and subjectivity are prone to reject the subject based on concepts such as identity, politics and culture. Because these concepts are hindering the capacity of growing that a subject itself has. In this situation, agency itself is also at risk. Butler draws attention to that situation.

The question of locating “agency” is usually associated with the viability of the “subject,” where the “subject” is understood to have some stable existence prior to the cultural field that it negotiates. Or, if the subject is culturally constructed, it is nevertheless vested with an agency, usually figured as the capacity for reflexive mediation that remains intact regardless of its cultural embeddedness. On such a model, “culture” and “discourse” mire the subject, but do not constitute that subject. This move to qualify and enmire the preexisting subject has appeared necessary to establish a point of agency that is not fully determined by that culture and discourse. And yet, this kind of reasoning falsely presumes (a) agency can only be established through recourse to a prediscursive “I,” even if that “I” is found in the midst of a discursive convergence, and (b) that to be constituted by discourse is to be determined by discourse, where determination forecloses the possibility of agency.⁷⁴

Nancy Fraser rejects the metadiscourse, the fundamental “subject” of the women’s history writing over agency and subjectivity. She talks about making way for a new discourse that includes release and freedom without centralizing any part of history.

[...] local histories that recover lost traditions of female agency or resistance; narratives that restore historicity to female-centered practices

⁷³ Judith Butler, “Contingent Foundations: Feminism and the Question of Post-Modernism” *Feminist Contentions*, 46-47

⁷⁴ Judith Butler, *Gender Trouble, Feminism and the Subversion of Identity*, 182

heretofore misapprehended as natural; histories that revalue previously derogated forms of women's culture; and genealogies that denaturalize gender-coded categories like "production" and "reproduction" or that reconstruct the hidden gender subtexts of concepts like "class" and the "state"⁷⁵

While taking into account the individualization and socialization of the thesis that Butler brings forward, Seyla Benhabib says that Butler fell into determinism's trap. For her, the matrix of power/discourse is insufficient in describing the trigger for resistance and opposing acts. Benhabib focuses on what creates the difference and what gives way for change.

Indeed the question is: how can one be constituted by discourse without being determined by it? A speech-act theory of performative gender constitution cannot give us a sufficiently thick and rich account of gender formation that would also explain the capacities of human agents for self-determination. What is it that enables the self to "vary" the gender codes such as to resist hegemonic discourses? What psychic, intellectual, or other sources of creativity and resistance must we attribute to human subjects for such variation to be possible?⁷⁶

Butler states that the subject or being represented is open to criticism by approaches that can be considered feminist. According to this, the subject "woman" is not considered as permanent and a never changing existence. Because a subject is only a subject with how it is represented or in a completely opposite way, a subject can only be represented by how much of a subject it is. When the necessities for being a subject are not met, the opportunity of being represented is also removed. Butler focuses on the fact that the represented subject that Foucault talks about is an idea created by the legal power and says that the legal language and discourse that represents the feminist subject is actually what

⁷⁵ Nancy Fraser, "False Antithesis: A response to Seyla Benhabib and Judith Butler", *Feminist Contentions*, 62

⁷⁶ Seyla Benhabib, "Subjectivity, Historiography and Politics:"Thoughts on Feminism and Post-modernism", taken from *Feminist Contentions*, 110

has produced this subject. It is undesirable for women to place unconditional trust on this system. Because according to Foucault power organizes the life of the subject by negative tools such as banning and controlling. The fact that subject is shaped as long as it is included to the power platforms, might lead as to the conclusion of position of subject is already a fiction which let the law to legitimize itself. The rejection or at least opening the topic of the subject up to debate seems important in this way.

[...], the political construction of the subject proceeds with certain legitimating and exclusionary aims, and these political operations are effectively concealed and naturalized by a political analysis that takes juridical structures as their foundation. Juridical power inevitably “produces” what it claims merely to represent; hence, politics must be concerned with this dual function of power: the juridical and the productive. In effect, the law produces and then conceals the notion of “a subject before the law” in order to invoke that discursive formation as a naturalized foundational premise that subsequently legitimates that law’s own regulatory hegemony. [...]Feminist critique ought also to understand how the category of “women,” the subject of feminism, is produced and restrained by the very structures of power through which emancipation is sought.

Indeed, the question of women as the subject of feminism raises the possibility that there may not be a subject who stands “before” the law, awaiting representation in or by the law.⁷⁷

However, these approaches that Butler seems to think as important may seem to us as a single sided approach of the comprehensiveness of law and rules and a way for it to make itself known. While these approaches are only focusing on being included in the law, it doesn’t take notice of the way the law is placed and the differences in the way it is handled. According to this, if it is thought that before subjectivity, the law had used subjectivity to legalize itself, this then gives rise to a number of questions about the law maker’s position. If so the law maker is not represented by the subject position or the law maker doesn’t have a legal subjectivity area together with the function of the law. In this way it is inevitable

⁷⁷ Judith Butler *Gender Trouble, Feminism and the Subversion of Identity*, 5

to discuss the legality of the law maker. Another dimension of this discussion is that it can cause the concept of freedom to be discarded.

Alan Wolfe, “lack of appreciation for the rule-making, rule-applying, rule interpreting capacities of human beings and an emphasis instead on the rule-following character. The price postmodernism pays for its flirtation with algorithmic conceptions of justice is a very high one: the denial of liberation, play, and spontaneity that inspired radical epistemologies in the first place.”⁷⁸

Avoiding freeing, saving mythical discourse structures, Butler draws attention to how power mechanisms are producing certain perpetrating states in a performative way rather than monitoring and prohibiting. It gives the idea that freeing can be re-defined and re-constituted. “There is no gender identity behind the expressions of gender; that identity is performatively constituted by the very “expressions” that are said to be its results.”⁷⁹

Benhabib points out at this kind of acceptance will not be the transporter of change; on the contrary, it is removing the opportunity for change.

If we are no more than the sum total of the gendered expressions we perform, is there ever any chance to stop the performance for a while, to pull the curtain down, and let it rise only if one can have a say in the production of the play itself? Isn't this what the struggle over gender is all about? Surely we can criticize the supremacy of presuppositions of identity politics and challenge the supremacy of heterosexist and dualist positions in the women's movement. Yet is such a challenge only thinkable via a complete debunking of any concepts of selfhood, agency, and autonomy? What follows from this Nietzschean position is a vision of the self as a masquerading performer, except of course we are now asked to believe that there is no self behind the mask. Given how fragile and tenuous women's sense of selfhood is in many cases, how much of a hit and miss affair their struggles for autonomy are, this reduction of female

⁷⁸ Alan Wolfe, “Algorithmic Justice”, *Cordoza Law Review*, “Deconstruction and the Possibility of Justice” special edition, (c.11, no.5-6, July-August 1990), 1415

⁷⁹ Judith Butler, *Gender Trouble, Feminism and the Subversion of Identity*, 33

agency to a "doing without the doer" at best appears to me to be making a virtue out of necessity.⁸⁰

In the theory that Butler developed on agency, she talks about performativity. For her performativity is the indicator of the constituting discourse that has the capacity to create what it is naming. It also has a performative structure. The opportunity for the subject to be constituted over and over again depends on the points that overlap in the renewability tools of the language. "Agency" is one of these points where the discourse is renewed.⁸¹ Butler says these words about the renewal of the subject;

[...] the insistence on finding agency as resignification in Gender Trouble: if the subject is a reworking of the very discursive processes by which it is worked, then "agency" is to be found in the possibilities of resignification opened up by discourse. In this sense, discourse is the horizon of agency, but also, performativity is to be rethought as resignification. There is no "bidding farewell" to the doer, but only to the placement of that doer "beyond" or "behind" the deed.⁸²

Butler indicates that the concept performativity that she had used was reflected as a theatrical action by Benhabib.

I would argue that there is no possibility of standing outside of the discursive conventions by which "we" are constituted, but only the possibility of working the very conventions by which we are enabled. Gender performativity is not a question of instrumentally deploying a "masquerade," for such a construal of performativity presupposes an intentional subject behind the deed. On the contrary, gender performativity involves the difficult labor of deriving agency from the very power regimes which constitute us, and which we oppose.⁸³

⁸⁰ Seyla Benhabib, "Feminism and Post-Modernism: An Uneasy Alliance" in *Feminists Contentions*, 21-22

⁸¹ Judith Butler, "For a Careful Reading" in *Feminists Contentions*, 135

⁸² *Ibid*, 135

⁸³ *Ibid*, 136

Rosi Braidotti criticizes the ignorance of the notion of the subject in philosophical discussions. Because the absence of the subject and the absence of agent show that there is a hole where performativity can connect. While this situation is hindering individualism and autonomy, it is also causing certain gains and some covering for how these gains were maintained.

It seems to me that contemporary philosophical discussions on the death of the knowing subject, dispersion, multiplicity, etc. etc. have the immediate effect of concealing and undermining the attempts of women to find a theoretical voice of their own. Dismissing the notion of the subject at the very historical moment when women are beginning to have access to it, while at the same time advocating the "devenir femme" (as Guattari does, S.B.) of philosophical discourse itself, can at least be described as a paradox⁸⁴

Butler says that the idea of the subject being positioned outside the power is met with joy together with certain heroic ideals. In accordance with this, the agency of the subject was deterred or blocked by specific power platforms with outside applications. This kind of concept pioneers globalization. But is it really possible to define a freedom and salvation that is global? How did the tangible conditions that brought about agency again arise? The possibility of subject being able to exist outside of power means that these conditions can exist outside the area of power too. Doesn't this situation point to a certain paradox? How can the agency which situates outside the comprehensiveness of power exist but continue to "struggle" within this comprehensiveness?

Consider that according to one view of agency, a subject is endowed with a will, a freedom, an intentionality which is then subsequently "expressed" in language, in action, in the public domain. Here "freedom" and "the will" are treated as universal resources to which all humans qua

⁸⁴ Rosi Braidotti "Il Faut, au moins, un sujet." "Patterns of Dissonance: Women and/ in Philosophy", *Feministische Philosophie*, Prep by Herta Nagl-Docekal, (Viyana – Munich: 1990, R. Oldenburg), 119-120, english translation *Feminist Philosophy (Feminist Theory and Politics)*, Translated by Katharina Vester (Colorado: 2004, Westview Press)

humans have access. The self who is composed of such faculties or capacities is thus thwarted by relations of power which are considered external to the subject itself. And those who break through such external barriers of power are considered heroic or bearers of a universal capacity which has been subdued by oppressive circumstances. Whereas this emancipatory model of agency has surely been inspiring for many subordinated people, and for women in particular, it is crucial to consider the way in which this paradigm of thinking agency has come under question in recent years. Apart from the anthropological narrowness of the conception in which freedom or the will persist as universal invariants cross-culturally, there is no way to answer the question, "How does the construction of the subject as a bearer of emancipatory potential presuppose the very agency that calls to be accounted for within complex interrelations of power, discourse, and practice?"⁸⁵

Butler's idea of the subject, being constituted over and over again and agency accepting it as its prior condition, is an important assumption in terms of the changeability of the law. The thought of Benhabib on which truths put agency within resistance or if it can be defined within power seems like an important problem. Whether it is a part of the process of power or an inclusion of the subject outside of power, we are reminded of the questions of whether agency contributes to factors that enable resistance and if this resistance is global as well as the starting point of the resistance, and when agency reveals resistance. At this point referring to the concept of consent is important. What determines what to consent to and what not to consent to? Is it coming to power alone? Or does the idea of thinking about the concept of globalization over consent bring us to a conceptualization of power that allows for change? Thus, what we consent to changes depending on specific global conceptualization and if the establishment of the deployment of resistance begins here, then doesn't the disappearance of the global and the subject lead to a point where gains are disregarded just like Braidotti said?

An important discussion on this topic happened between Joan Scott and Linda Gordon. Joan Scott says that in her book *Heroes Of Own Lives, The Politics*

⁸⁵ Judith Butler, "For a Careful Reading" in *Feminists Contentions*, 136

and *History of Family Violence*, Linda Gordon: “is aimed at refuting simple theories of social control and rejecting interpretations that stress the top-down nature of welfare policies and the passivity of their recipients.”⁸⁶ According to this, Gordon brings the victim, family and government together with a certain unification tool. However, according to Scott, Gordon has not placed women as “agent” enough and in her book she has falsified the truth through demands that she sees as necessary.

A different conceptualization of agency might have avoided the contradictions Gordon runs into [...] This conceptualization would see agency not as an attribute or trait inhering in the will of autonomous individual subjects, but as a discursive effect; [...], the effect of social workers' constructions of families, gender, and family violence. It would take the idea of 'construction' seriously, as something that has positive social effects.[...] It was, after all, the existence of welfare societies that not only made family violence a problem to be dealt with but also gave family members a place to turn to, a sense of responsibility, a reason for acting, and a way of thinking about resistance.⁸⁷

Linda Gordon emphasizes that it is not possible for women subjects to reach an agreement with power through Scott’s determinist point of view; thus, this kind of unification is not possible. Just like we have previously mentioned the reason for why this kind of agreement cannot be made by women, it is possible to say that there isn’t a possibility for a resisting “subject” because the subject was already constitute by the power; therefore, their resistance will just be a part of this establishment’s discourse. Scott looks at history through the contending discourses, rather than the resisting subjects.

In fact Scott's and my differences go to the heart of contemporary controversies about the meanings of gender. Scott's determinist perspective emphasizes gender as 'difference,' marked by the otherness

⁸⁶ Joan Scott, Book Reviews: Linda Gordon’s *Heroes Of Own Lives, The Politics and History of Family Violence*, in *Signs* (c. 15, no.4, 1990), 849

⁸⁷ *Ibid*, 851

and absolute silencing of women. I use gender to describe a power system in which women are subordinated through relations that are contradictory, ambiguous, and conflictual- a subordination maintained against resistance, in which women have by no means always defined themselves as other, in which women face and take choices and action despite constriction. These are only two of many versions of gender, and they are by no means opposite, but they may illuminate the relevant issues here.⁸⁸

Butler does not accept that Scott has a determinist point of view that deprives women from agency. On the contrary, since power has a limiting effect on such an agency, she questions the meaning of negotiations which are with power.

Scott does not argue that the women who seek recourse to the state to seek compensation for family violence lack agency; on the contrary, she asks what it might mean to account for this agency that concrete relations of discourse and power condition and limit the very possibility of making any such petition. As feminist theorists of the regulatory state have made plain, the very bureaucracies through which women seek compensation may also constitute the governmental means for resubordinating them.⁸⁹

The feminist standpoint theory focuses on the positions of the subjects that constitute the system and that are constituted by it, and how the system can be changed over the agency. Dorothy Smith talks about the fact that the Marxist paradigm deprives the subject of the possibility of self-fulfillment. “[...] In the thinking of some notable contemporaries they have been wholly displaced, surviving on the ontological margins, inhabiting the fox-holes of functional position, subjected to the massive on-rolling of structures lurching toward obscure destinies.”⁹⁰ According to her; gender relations and class structure are not imposed by an external force, but are constituted through practices in everyday

⁸⁸ Linda Gordon, “Response to Scott” in *Signs*, (c. 15, no.4, 1990), 852

⁸⁹ Judith Butler, “For a Careful Reading” in *Feminists Contentions*, 137

⁹⁰ Dorothy Smith, *The Everyday World as Problematic: A Feminist Sociology*, (Boston: Northeastern University Press, 1987), 142

life. "Such relations exist only as active practices."⁹¹ She says that the subjects should not be viewed as "passive" participants of social constructs, but as actors with the ability to actively influence this construct. Hilary Rose also mentions that as well as being an active participant, subjects have the potential to defeat the system and ensure the change.⁹² Therefore, the standpoint theory would like to draw attention to the fact that instead of the perception seeing women only as "victims," they have the opportunity to become "agent".

Standpoint theory [...] thus combines a critical project, that of identifying the exploitative character of women's labor and the social relations it sustains, with a project that affirms the ontological or epistemological possibilities, the seeds of the future, that can be located there as well.⁹³

The standpoint theory acknowledges gendered structure constituted by the power, but underlines that if we treat it as the only active constituent force, a deterministic sentiment will emerge, therefore the creative potentials of the subjects who may come out in this process are ignored or sacrificed to this process.

As the tradition of feminist systems theory has pointed out, we need a conception of how subjects are constituted by social systems, but we also need to recognize how collective subjects are relatively autonomous from, and capable of acting to subvert, those same systems.⁹⁴

However, there is a possibility that this theory may open up a space that excludes different states of subjectivity by reading the position of subject only as a distinct state of agency. As a matter of fact, Kathi Weeks questions the standpoint

⁹¹ Dorothy Smith, *The Everyday World as Problematic: A Feminist Sociology*, 135

⁹² Hilary Rose, "Hand, Brain and Heart: A Feminist Epistemology for the Natural Sciences", *Signs* (c. 9, no.1,1987), 135

⁹³ Kathi Weeks, *Constituting Feminist Subjects*, (New York, London:2018, Verso), 92

⁹⁴ *Ibid*, 92

theory: “In attributing a certain fixity and stability to the subject construction, is standpoint theory threatening to reinstall a disabling and rigidly exclusive determinism?”⁹⁵ Weeks states that multiple, destructive and collective subjectivities can be created by taking advantage of feminist positions⁹⁶; the collectiveness in question here is a dynamic, variable structure rather than a fixed concept of "us", “founded in neither a unitary identity nor a spontaneous expression of unity, [...]”⁹⁷



⁹⁵ Kathi Weeks, *Constituting Feminist Subjects*(2018), 131

⁹⁶ Kathi Weeks, *Constituting Feminist Subjects*, (New York:1998, Cornell University Press), 137

⁹⁷ **Ibid**, 136

CHAPTER TWO

POWER AND GENDER

2.1. POWER AND GENDER

2.1.1. “Masculinity”

When we look at the types of corporate union, it is observed that these structures are not independent of the thought, taking action and union practices of the actors which constitute society, on the contrary, they have a similar functioning. Even though, the institutions' dependency on the maintenance of the continuity of the current structure causes danger for its entities, they created a relatively safe environment for themselves since they were handed over the authorization to maintain or modify this order: such that, while it is normal to criticize a current state for its applications, questioning the idea of state or investigating the values which constitute society, actors and negotiations which every kind of collective structure bargains with the power is considered as a problematic approach. However, while investigating the gender fact; looking at all the structures which enable creation and maintenance of the hegemony, understanding their organizational form and investigating their relation with patriarchal discourses are significant in terms of understanding the binary gender regime which constitutes the society. In a similar manner, we can interpret the institutions, social relations and the pursued policies and make inferences related to the formed power types by observing the functioning way of gender.

To understand gender, then, we must constantly go beyond gender. The same applies in reverse. We cannot understand class, race or global inequality without constantly moving towards gender. Gender

relations are a major component of social structure as a whole, and gender politics are among the main determinants of our collective fate.⁹⁸

Practices which are included in or excluded from the scope of the concepts of “masculinity” and “femininity” are the main factors which create the power that constitute the binary gender regime we mentioned. Degrading these factors to the biological assets of the “male”, “female” genders excludes the adaptation processes of the people to these items by ignoring factors such as culture, tradition, language and religion. Therefore, “essentialist” approaches which make definitions based on one “truth” like the “human nature” will fall short of explaining the processes which cause these traumas in the social sphere and even will avoid explaining them by moving through the binary opposition relation constantly to legitimate themselves. For individuals who are evaluated as the subject of concepts “masculinity” and “femininity” due to their biology, the process becomes even more traumatic by itself since they are raised according to the content of these concepts and constantly needed to be approved for their behaviors by power mediators like family. The concepts “masculinity” and “femininity” are not independent of gender, they are parts of it. “Taking a dynamic view of the organization of practice, we arrive at an understanding of masculinity and femininity as gender project. These are process of configuring practice through time, which transform their starting-points in gender structures.”⁹⁹ Therefore, the concept “masculinity” does not define a stable, constant position; it defines a phenomenon which includes the cultural, ideological structures constituted in the process of socialization. “Masculinity is not a fixed entity embedded in the body or personality traits of individuals. Masculinities are configurations of practice that are accomplished in social action and, therefore, can differ according to the gender relations in particular social

⁹⁸ R.W. Connel, *Masculinities*, (Berkley and Los Angles California:2005, University of California Press), 76

⁹⁹ *Ibid*, 72

settings.”¹⁰⁰ In fact, the traumatic organisation of the gender creates *masculine hegemony* by ignoring the complicated structure of human relations moving through only one “masculinity” and “femininity” definition.

But in a key respects the organization of gender on the very large scale must be more skeletal and simplified than the human relationships in face-to-face milieu. The forms of femininity and masculinity constituted at this level are stylized and impoverished. Their interrelation is centred on a single structural fact, the global dominance of men and women.¹⁰¹

Hegemony, which handles the sovereign as a practice of coming to power, is a structure that naturalizes the layers which constitutes the society and tends to destroy the questionability of these layers and therefore tries to ensure the position of sovereign. As Gramsci discusses, Connell uses the concept “hegemony” and mentions that “masculinity” is a way of the organisation of the power and therefore it is produced by it. This type of hegemony which we call as “masculine hegemony”, forces all the “male” subjects to adapt to this aim or to have a desire of becoming a part of this “aim” through an idealised “masculinity” definition. “[...] hegemonic masculinity describes a contemporary ideology which helps to reproduce a position in social gender relations system, the system itself and male dominance.”¹⁰² In case the possibility for the patriarchal system to be questioned and go through a legitimation crisis, the “masculinity” form, which is idealised as a naturalised passion, takes on a protective task against this crisis. While the involvement of this situation in the cultural, traditional and ideological routines creates a specific invisibility area for the functioning of this structure, it makes it possible in general for men to have the sovereignty and for women to have a position to accept and approve this sovereignty.

¹⁰⁰ R. W. Connell, & Messerschmidt, J. W., “Hegemonic Masculinity: Rethinking the Concept”, *Gender & Society*, (number 19 no.6, Dec: 200), 836

¹⁰¹ R. W. Connell, *Gender & Power*, (Oxford: 1987, Polity Press), 183

¹⁰² D. P. Levy, “Hegemonic Masculinity”, in *International Encyclopedia of Men and Masculinities*, Prep by. Flood, M.; Gardiner, J.K.; Pease, B.; Pringle, K., (New York:2007, Routledge), 253

Hegemonic masculinity can be defined as the configuration of gender practice which embodies the currently accepted answer to the problem of the legitimacy of patriarchy, which guarantees (or is taken to guarantee) the dominant position of men and the subordination of women.¹⁰³

“Masculinity” construction is normalised as a part of collective patterns; accordingly, the contribution made to the structure based on gender by the collective actions of people which are members of a union cannot be underestimated. Again in the same way, the resistance practices which are developed against male domination types reserve a collective process. However, collectivism is a process which includes many facts such as adoption of a common aim or stance, being a member of society, solidarity, the desire of being approved or accepted and living on. Therefore, as in the LGBTQI+ fight, even though it is a concept which can form strategies against dominance and creates resistance positions helping to receive positive results, also it is a concept in which the crime can be normalised and that includes organisations helping to maintain the dominance. For instance, pack rape cases are considered as a way of proving the masculinity in a group and also a reason for having the power; especially in war and occupied areas, raping is becoming a part of “constitutive violence” by putting itself in a legitimate location as an act of having the power and constituting the dominance. Again, it should not be forgotten that young girls are forced to get married as a factor of patriarchal culture and this is accepted by state, society or the members of a community while the ones who questions this factor are punished, threatened or excluded. In my opinion, none of the social structures can fully be independent of collectiveness and therefore the concepts “masculinity” and “femininity” based on binary gender regime are also related to a collective way of agreement included in the public sphere. “Hegemonic masculinity is very public.”¹⁰⁴ This situation is also related to the moments where hegemony starts to control the body with the systems based on norms such as

¹⁰³ D. P. Levy, “Hegemonic Masculinity”, 77

¹⁰⁴ R.W. Connell, *Gender&Power*, 185

morals when it enters in the public sphere and starts to become a part of it. Therefore; “The body-as-used, the body I am, is a social body that has taken meanings rather than conferred them. My male body does not confer masculinity on me; it receives masculinity (or some fragment thereof) as its social definition.”¹⁰⁵ For example; “In Turkey, it is obligatory to pass four main stages to reach the traditionally accepted masculinity level: 1. Circumcision, 2. Military service, 3. Finding job, 4. Marriage.”¹⁰⁶ These stages help to prove the masculinity in the public sphere, and in some way being accepted and approved in the community, and most importantly enabling the person to see itself as a real joint owner of the power structure.

“Fatherhood, is the position of men that proves “masculinity”. Various improvements need to be obtained for this position. First of all, man must “prove” his power in sexual area, for example a circumcised sexual organ must have the erection “ability”. That is not enough. Father means being a husband who is not infertile, a soldier protecting his house, a boss and a statesman who is skillful, earns a living for the family and makes all the economical, legal and political decisions related to the house. So, the real man should develop some skills to be the minder-protector of the house and to do this, he certainly should have different kinds of life experiences.¹⁰⁷

While it is possible for the subjects who fail to pass certain stages in this process to be excluded for “masculinity”, it is not applied to the “femininity”. While masculine hegemony structure continues to define all the individuals which it positions as woman subjects under “femininity” concept, there is no obligation to prove femininity in the public sphere. This case is related to the dominance structure based on the woman sexuality and each subject is evaluated in the scope of “feminineness” as woman in patriarchal system. In fact, when a woman subject goes out of the “feminineness” and act by rejecting that identity, she gets positive reactions in public sphere with discourses such as “Like a man, manly woman”

¹⁰⁵ R.W. Connell, *Gender&Power*, 83

¹⁰⁶ Pınar Selek, *Sürüne Sürüne Erkek Olmak*, (İstanbul:2011, İletişim), 19

¹⁰⁷ *Ibid*, 22-23

etc. Especially in the regions such as Middle East and Africa where religion, traditions and culture are based on masculine hegemony, the traditional patriarchal system is powerful, woman sexuality is totally subject to the inspection of public sphere and “masculine hegemony” is reproduced over and over again as a part of process that has collective features. “The collective inspection of woman sexuality is obviously present in many different individuals who directly consider themselves as the keeper of the appropriate sexual behaviors of women. [...], the idea of not being the sole keeper of inspecting their sexuality is very well inculcated into their daughters mind.”¹⁰⁸ Therefore, hegemonic masculinity is built over women and men who fail to prove their masculinity, constitutes binary gender regime and helps gender to stay functional in public sphere.

This structural fact provides the main basis for relationship among men that define a hegemonic form of masculinity in the society as a whole. ‘Hegemonic masculinity’ is always constructed in relation to various subordinated masculinities as well as in relation to women. The interplay between different forms of masculinity is an important part of how patriarchal social order.¹⁰⁹

The reason why we still encounter hegemonic masculinity as a structure that constitutes society is that it is reproduced by power again and again and it is related to the organisation way of the institutions which are shaped dependent upon the patriarchal power and considered as its representatives. Kandiyoti says that, “although, I still believe that the sharpest definition of patriarchy is found in the dependency of women, to make a fair explanation of the reproduction of the patriarchal relations, it is necessary to pay more attention to these institutions (such as the state, the military) which are first degree responsible for the production of male identity”¹¹⁰. Due to its role for the institutionalisation of these

¹⁰⁸ Deniz Kandiyoti, *Cariyeler, Bacular, Yurttaşlar Kimlikler ve Toplumsal Dönüşümler*, çev. Aksu Bora ve Fevziye Sayılan, Şirin Tekeli, Hüseyin Tapınç, Ferhunde Özbay, (İstanbul:1997, Metis Kadın Araştırmaları), 73

¹⁰⁹ R.W. Connell, *Gender&Power*, 183

¹¹⁰ Deniz Kandiyoti, *Cariyeler, Bacular, Yurttaşlar Kimlikler ve Toplumsal Dönüşümler*, 184

patriarchal relations, the state is one of the most important power representatives of preserving this hegemony type in societal dimensions. As a matter of fact, Connell mentions that the state is a masculine institution:

The state, for instance, is a masculine institution. To say this is not to imply that the personalities of top male Office- holders somehow seep through and stain the institution. It is to say something much stronger: that state organizational practices are structured in relation to the reproductive arena. The overwhelming majority of top Office- holders are men because there is a gender configuring of recruitment and promotion, a gender configuring of the internal division of labour and systems of control, a gender configuring of policymaking, practical routines, and ways of mobilizing and consent.¹¹¹

Thanks to its inspector feature besides being the constituent, the state also has had the authority to keep the identities which it creates or recognises under control in the direction of concept of individual. Therefore, as the recognition status of the societal categories is considered dependent on the state, this situation is effective on the pursued policies related to these categories. Most of the state structures are still trying to legitimate their own presence through “marriage” and “family” institutions and this can be interpreted that they try to recognise these individuals or keep them under inspection through policies they produced by these institutions.

Power in the state is strategic[...] The state has a constitutive role in forming and re-forming social patterns.[...] marriage is itself a legal action and a legal relationship, defined, regulated and to some extent enforced by the state. Another notable state enterprise is in the field of fertility.¹¹²

Connell mentions that, the reason why the state stays as the regulatory power for sexuality is that, as legal institutions, the structures created in the eye of

¹¹¹ R.W. Connel, *Masculinities*, 73

¹¹² R.W. Connell, *Gender&Power*, 130

state have a function to identify and categorize the individuals. Therefore, if the hegemony, which the state created, based on the position of doing these categorizations and producing or regulating the gender, is put on a legal basis, it will be legitimized. For instance, we can say this: “The most important feature of contemporary hegemonic masculinity is that it is heterosexual, being closely connected to the institution of marriage; [...]”¹¹³

In the managing institution and relations like marriage and motherhood the state is doing more than regulating them. It is playing a major part in the constitution of the social categories of the gender role. Categories like ‘husbands’, ‘wives’, ‘mothers’, ‘homosexuals’, are created as groups with certain characteristics and relationships. Through them the state plays a part in constitution of the interests at play in sexual politics.¹¹⁴

We mentioned that the state institutionalized masculinity over various structures which are considered as power representatives and also we said that it produces policies which regulate and inspect the community. It tries to keep subjects and the agents under control which provide the continuance of this hegemony in case its own legitimate area may be damaged by the hegemonic masculinity types that it produced. There are very similar points in terms of the use of violence and the will to have the dominance in military and police institutions where masculine hegemony is clearly represented and male criminals who represent this hegemony. For example, when mentioning the male violence in Turkey, the “male” policeman who commit violence in social protests against LGBTQI+ people, women and male activists, are not included in the scope of “male perpetrator”. In fact, it is obvious that there is direct connection between the applied violence and masculine hegemony.

¹¹³ R.W. Connell, *Gender&Power*, 186

¹¹⁴ *Ibid*, 130

There is a very active gender process here, a politics of masculinity. The state both institutionalizes hegemonic masculinity and expends great energy in controlling it. The objects of repression, e.g. ‘criminals’, are generally younger men themselves involved in the practice of violence, with a social profile quite like that of the immediate agents of repression, the police or the soldiers. However the state is not all of a piece. The military and coercive apparatus has to be understood in terms of relationships between masculinities: the physical aggression of front-line troops or police, the authoritative masculinity of commanders, the calculative rationality of technicians, planners and scientists.¹¹⁵

The state is at a position where it can help the masculine hegemony to keep functioning by organisation and by letting patriarchal structure to spread on a large area on a societal plane. Nevertheless, it can be considered that it is consistently in a “patriarchal negotiation”¹¹⁶ rather than a constant, stable masculinity for the strategical structures of power such as state and law. “The patriarchal state can be seen, then, not as manifestation of a patriarchal essence, but as the centre of a reverberating set of power relations and political processes in which patriarchy is both constructed and contested.”¹¹⁷

2.1.2. “Femininity”

I have already discussed that the power constitutes hegemony by defining gender structure over specific idealised figures and “masculine hegemony” has a possessive structure over this ideal “man” figure and “masculinity”. The power also defines the “ideals” of “femininity” and excludes other aspects of “femininity” by pushing them out of the society. Thus power creates a contrasting relationship between “femininity” acknowledging the “masculine hegemony” or recognises this hegemony through patriarchal negotiation and various aspects of

¹¹⁵ R.W. Connell, *Gender&Power*, 128-129

¹¹⁶ or “*bargaining with patriarchy*”, Deniz Kandiyoti, *Cariyeler, Bacılar, Yurttaşlar Kimlikler ve Toplumsal Dönüşümler*, “negotiation” is more suitable for my argument

¹¹⁷ R.W. Connell, *Gender&Power*, 130

“femininity” which are located against this hegemony. “The dominance structure which the construction of femininity cannot avoid is the global dominance of heterosexual men. The process is likely to polarize around compliance or resistance to this dominance.”¹¹⁸ Connell explains the “feminine” form that is embodied by power with the concept “emphasized femininity”. Accordingly, “central to maintenance of emphasized femininity is practice that prevents other models of femininity gaining cultural articulation.”¹¹⁹ Just like “masculine hegemony”, “emphasized femininity” is also a tool to legitimate binary gender regime by corresponding to the area of “confidential” in the axis of policies monitoring sexuality and body. However, including it into the “confidential” area is not a process independent of public sphere; actually it is related to the fact that it is a cultural and ideological construction. “Like hegemonic masculinity, emphasized femininity as a cultural construction is very public, though its content specifically linked with the private realm of the home and the bedroom.”¹²⁰ In the regions which woman sexuality is strictly inspected according to religious, moral and traditional norms, we see that “confidential” is approved and inspected through a societal process as a cultural value; as a matter of fact, it is encountered that “woman” and “confidential” are almost equated to each other in a public sphere. In these communities, woman body is at a position where they represent the moral norms of “family” and “society”, and it is also defined as how much it represents the patriarchal power values through the concepts such as “honor” and “purity”. In that case, it can be said that “woman body” is actually seen as a property of a family, society, nation and state, and in these countries “emphasized woman body” idealises an all system of values which was set up by power.

In this regard, an important reason for the collective inspection on women sexuality is the connection made between woman’s sexual purity and the honor of a family or a stirps. An amazing power is attributed to women in case they may cause shame or dishonor in a society, strips or a family because of any false steps. Therefore, they live under strict external

¹¹⁸ R.W. Connell, *Gender&Power*, 187

¹¹⁹ *Ibid*, 188

¹²⁰ *Ibid*, 187

pressures from secluding and veiling to the restriction of their entrances to public sphere and their behaviors.¹²¹

The organizational form of “emphasized femininity” is related to how much it is subjected to the power role given to “masculinity” and it represents a passive position against active male figure. “To call this pattern as “emphasized femininity” is also to make a point about how cultural package is used in interpersonal relationship. This kind of femininity is performed, and performed especially to men.”¹²² Therefore, this aspect of “femininity” which is idealised by patriarchal power, is subject to various stages such as obedience or acknowledgement of passive position and interiorization. While this aspect of obedience in social relations is affected by factors such as woman’s class position, ethnicity, color, beliefs, etc., masculine hegemony continues to function in a similar way and keeps to construct and protect the binary gender structure.

The option of compliance is central to pattern of femininity which is given most cultural and ideological support at present, called here ‘emphasized femininity’ This the translation to the large scale of patterns already discussed in particular institutions and milieu, such as display of sociability rather than technical competence, fragility in mating scenes, compliance with men’s desire for titillation and ego- stroking in office relationships, acceptance of marriage and childcare as a response to labour-market discrimination against women.¹²³

It can be interpreted that, the role of “emphasized femininity” does not occupy a position which is similar to dominance relation between idealised masculinity and other aspects of masculinity for the continuance of masculine hegemony; therefore no contrast relationship occurs with other femininity experiences based on hegemony. As a matter of fact, Connell mentions that it is not possible to constitute such hegemony because she says that, femininity is not

¹²¹ Deniz Kandiyoti, *Cariyeler, Bacular, Yurttaşlar Kimlikler ve Toplumsal Dönüşümler*, 75

¹²² R.W. Connell, *Gender&Power*, 188

¹²³ *Ibid* , 187

in a position like this; “Femininity organized as an adaptation to men’s power, and emphasizing compliance, nurturance and empathy as womanly virtues, is not much of a state to constitute hegemony over other kinds of femininity.”¹²⁴. However, a contrast relationship is demonstrably created between the position of woman in society which acknowledges the idealised woman figure and the woman which rejects or goes against this figure. Additionally, it cannot be ignored that sometimes this contrast relationship causes hegemonic settlements representing the patriarchal system. Female vice squad in Iran responsible for the woman clothes or especially in Turkey, the position of elder mothers in traditional family structures who have sons can be examples for this situation. Connell has a point, however, since the organizational form of patriarchal system may be different from society to society for the construction of relationship among women, there may be instability for the positions of the actors who apply hegemony. As a matter of fact, at a point where patriarchal norms constitute the tradition and culture and where these norms are powerfully supported in local area, a democratic state such as Lebanon and Democratic Republic of Yemen can avoid being punitive in the field of law by acknowledging these values. “[...] marriage and family constitute an area which statutory law encounters such a powerful opposition and with aforesaid law, in case there is a conflict among local patriarchal interests, it is witnessed that implementation of law is not forced that much.”¹²⁵

In Turkey, it is tried to identify and inspect the woman body in societal structure by power and in legal interpretations with the concepts such as “family” and “honor”, but in fact, the crimes committed for the protection of these concepts were evaluated with the perception of “extenuating circumstances” for a very long time in the field of law.

¹²⁴ R.W. Connell, *Gender&Power*, 188

¹²⁵ Deniz Kandiyoti, *Cariyeler, Bacular, Yurttaslar Kimlikler ve Toplumsal Dönüşümler*, 100

[...] when it is declared that murdering was due to honor reasons, a great amount of mitigation is applied. A comparison with the blood feud which is another practice named under tradition would reveal the relationship between the issue and gender. Blood feud is considered as a ‘tradition’ legalistically, but the law locates itself against this tradition. When it becomes clear that a murder was committed due to blood feud, this is considered as an aggravating circumstance. The most concrete difference of these two traditions are the genders of the actors. While women were dying because of honor, men were dying because of blood feud. Up until the last amendment, the republic regime wanted to save the male members of the political community for itself jealously, while it did not take offence to leave the female members in the area of their families. The legislation is [was] protecting the honor as a societal value.¹²⁶

“The changes in Turkey did not have almost any effect on the most crucial parts of the gender relationships and issues such as double standard based on sexuality and the definition of women’s role.”¹²⁷ Therefore; more involvement of women in the public sphere does not provide the questioning of gendered structure; on the contrary, female subjects are inspected whether they behave according to the ideal of “emphasized femininity” defined with concepts such as “honor” and “family” within various public unions. Therefore, work life, structured by masculine hegemony, puts woman body in a position where it carries the patriarchal norms excluding the own subjectivity of woman.

[...] women were appearing in the public sphere but they were not allowed to bring their sexuality at all, besides, they should have carried each role they own for family or with the symbols related to the family. In short, women appearing in public sphere behaved in a way that their duties and honors defined within the family did not conflict,[...] In this way, women were regulating their presence in public sphere by themselves without harming the supremacy of men. In an environment where sexuality and femininity are not questioned, honor continued to be a phenomenon which the women appearing in public sphere tried to attribute ‘bright’ meanings which they interiorized in their own lives and obtained from family.¹²⁸

¹²⁶ Dicle Koğacıoğlu, “Gelenek Söylemleri ve İktidarın Doğallaşması: Namus Cinayetleri Örneği”, *Kültür ve Siyasette Feminist Yaklaşımlar*, (June 3, 2007),

<http://www.feministyaklasimlar.org/index.php?act=in> , [last accessed: 5.05.2018], 11

¹²⁷ Deniz Kandiyoti, *Cariyeler, Bacılar, Yurttaşlar Kimlikler ve Toplumsal Dönüşümler*, 71

¹²⁸ Dicle Koğacıoğlu. “Gelenek Söylemleri ve İktidarın Doğallaşması: Namus Cinayetleri Örneği”,

However, the appearance of women in public sphere disrupted the economical structure of the family institution based on the patriarchal norms; in this case, masculine hegemony structure granted the priority of gaining the “right” to male subjects among certain groups and ensured the maintenance of power structure based on gender.

[...] community inspection maintained its effect on women and in some cases this effect increased even further. While the functioning of capitalist processes generally have resolver effect on patriarchal relations in family, interest groups and local dependences maintained to play vital roles for the citizens based on primary relationships to benefit from employment, education, health and the like services. [...] This process causes for the communities to conduct more inspections on women which have very significant roles for drawing the lines among present groups.¹²⁹

In a community which degrades the patriarchal structure to just a development issue and where the woman sexuality is considered as “confidential”, woman is not an autonomous subject; there is a power structure which defines her body according to the concepts such as “motherhood” and “family” carried by the religious and traditional norms and the ideal of a nation, and also it is considered as a tool which helps to regulate the population policy of the state. And this power structure was an area in which different forms of “hegemonic masculinity” produced policies which constitute and regulate public sphere. The problems which women were subjected to and their demands in this direction were excluded from the political sphere as much as possible; these problems were evaluated according to the damage they brought to the presence of family institution and the agents who created this problem were punished according to this point of view.

Before the amendment in 2004, the previous state of the criminal code showed the central importance of the women to be controlled by

¹²⁹ Deniz Kandiyoti, *Cariyeler, Bacular, Yurttaşlar Kimlikler ve Toplumsal Dönüşümler*, 101

family in that regime. Before the aforementioned amendment for example, sex crimes were listed under the “crimes towards society” title in the public decency and crimes towards family section. It was considered that, the issues related to the bodies of women were not related to their selfhood, instead it was considered as issues related to family and societal order¹³⁰

It is possible to think that, Connell says “hegemonic masculinity” was constructed as a “real masculinity” ideal in a single direction. However, it is possible to encounter with many different “hegemonic masculinity” types in Turkey. Like a hegemonic masculinity type which belongs to religious and traditional area and a hegemonic masculinity type emerged from the prevalence of elementary family which has more similar characteristics with the masculinity type which Connell mentions.

A similar equality dream, which belongs to some men has been added next to old-fashioned hierarchy fictions again which were among men and constructed based on the households. While political processes were making progress and these two dreams were either completing or breaking each other, it was naturalised for the public sphere to be an area where men were dominant and a masculine language was spoken. Of course, women’s position was the area which these two dreams fed each other the most. Women were defined and represented over family in both patriarchal models. When men from different zones married to women and started their families with the idea of defining the women in different concepts with the family, at least they started to know each other and shared the same public sphere. In this way, it seems that men from different zones made a silent agreement which constitutes and reproduces the societal order over women bodies and lives.¹³¹

One of the points which these different “hegemonic masculinity” types agreed on was the “emphasized woman” symbol which is defined over the concepts “family”, “motherhood” and “honor”. Therefore, woman subjects were given meanings by having been approached over this symbol within the

¹³⁰ Dicle Koğacıoğlu. “Gelenek Söylemleri ve İktidarın Doğallaşması: Namus Cinayetleri Örneği”,

11

¹³¹ *Ibid*, 13

dimensions where masculine hegemony was active over law; the legal processes initiated by woman were mostly for the protection of the “family institution”. “[...] In the area of the enforcement of the laws, women were frequently defined by their roles in family. Women’s individualities, the recognition process by the law institution for the harms they got and equality practices conceived by law institution are under tension with the concepts constructed over family and especially the honor.”¹³²

By mentioning the effect of concept of “honor” in custody and divorce cases, Dilek Koğacıoğlu underlines how masculine hegemony is made dominant by the subjects which are responsible for the implementation of the laws:

Also, while talking with the judges and other lawyers, they say that honor is quite normalised in their own eyes and moreover, they mention that they unavoidably evaluate the situation over honor in cases such as custody and divorce. And this causes for women to not to expect too much from the law institution in events such as domestic violence.¹³³

The patriarchal negotiation by the power with women over “emphasized women” figure causes for the binary gender regime to be reproduced again and again over “family” institution. It will be aimed to maintain a gendered structure in which the woman’s appearance in public sphere would be subject to similar norms by the power, the woman would be considered as the representative and maintainer of the patriarchal values and the sexuality of woman and LGBTQI+ would be ignored. At this point, it is necessary to mention this; since the appearance of woman in public sphere shakes the material foundations of classic patriarchal structure in a sense, it is considered as a threatening factor by the masculine power; therefore, it is aimed to remind the women their “place” through

¹³² Dicle Koğacıoğlu. “Gelenek Söylemleri ve İktidarın Doğallaşması: Namus Cinayetleri Örneği”, 12

¹³³ **Ibid**, 12

the discourses of power by ensuring the reproduction of some traditional and conservative codes in the eye of society.

[...] women appearing in public spheres and the ones who do not appear have actually become actors in a social context by defining their bodies, efforts, fields and choices over family. The woman's place, importance and existence were her family, working and/or being in the public sphere did not change anything. Different social phenomena such as institutional regulations, laws, division of labour in family and socialization of children were turning around this envision. In this way, honor based patriarchal regime was reconstructed every day and it reproduced day after day.¹³⁴

Hegemonic masculinity aims to get support for their patriarchal norms by women as well by constituting a strategical bond with women at some various points for its sustainability; when no support is found or more precisely at points where its interest falls into danger, it never hesitates to make a patriarchal bargain with women and by following a different strategy in its discourse, it manages to stay functional in various shapes. For example today, political power handles with "men violence" over definitions such as "inhuman", "crime against humanity" and "feloniousness"; it says that there is nothing to do with culture, traditional or religious structures and again, with discourses based on religious references such as "[...] what does a prophet's ummah... Command? 'Paradise lies at the feet of the mother'"¹³⁵, it tries to move by making definitions over "motherhood", it avoids to point out the relationship of this situation with gendered structure, and it tries to locate it outside of the political sphere. However, if we think that domination practices which were constructed in traditional and cultural manners are independent of patriarchal discourses, this may cause the continuance of colonist relationship types such as "hegemonic masculinity/ emphasized femininity" which

¹³⁴ Dicle Koğacıoğlu. "Gelenek Söylemleri ve İktidarın Doğallaşması: Namus Cinayetleri Örneği", 14

¹³⁵ "Erdoğan's Speech About 25 Novembre", İstanbul - BİA Haber Merkezi 26 Kasım 2017, http://bianet.org/bianet/kadin/191859-erdogan-dan-25-kasim-konusmasi?bia_source=rss, [last accessed: 2.05.2018]

help the naturalisation of masculine hegemony. Connell explained the various strategical structures which “hegemonic masculinity” can take their forms:

There is likely to be a kind of ‘fit’ between hegemonic masculinity and emphasized femininity. What it does imply is the maintenance of practices that institutionalize men’s dominance over women. In this sense hegemonic masculinity must embody a successful collective strategy in relation to women. [...] hegemonic masculinity can contain at the same time, quite consistently, openings towards domesticity and openings towards violence, towards misogyny and towards heterosexual attraction.¹³⁶

Today, the political power in Turkey uses the gender norms to create “we” and “them” discrimination and sharpen this discrimination over conservative “emphasized femininity” ideal which is suitable for its own ideological positioning. “Gender norms and specifically women’s conduct and propriety play a key role in delineating the boundaries between ‘us’ (God-fearing, Sunni, AKP supporters), and a ‘them’ consisting of all political detractors and minorities, cast as potentially treasonous and immoral.”¹³⁷ This “emphasized femininity” figure is defined over concepts such as “moral” and “honor”, is a tool which legitimates the political power’s aim of national unity with the goal of creating “religious generation”, the power itself and its patriarchal discourses. For example; the woman activist who attended to the social demonstration in June 2011 in Ankara against administrative policies, climbed to the top of panzer, then she was beaten by police and her hip bone was broken. “The PM, belittling the incident, famously asked at a public meeting: ‘was she a girl or a woman, I don’t know’ (kız mıdır kadın mıdır, bilemem).”¹³⁸ It can be seen that, the Prime Minister tries to spark a debate over “woman’s virginity” and marginalise women who are disapproved by patriarchal moral norms and are located against these norms. Moreover, he

¹³⁶ R.W. Connell, *Gender&Power*, 185-186

¹³⁷ Deniz Kandiyoti, “Locating the politics of gender:Patriarchy, neo- liberal governance and violence in Turkey”, *Research and Policy on Turkey*, <http://dx.doi.org/10.1080/23760818.2016.120124.108-109>, 105

¹³⁸ Deniz Kandiyoti, “Locating the politics of gender:Patriarchy, neo- liberal governance and violence in Turkey”, *Research and Policy on Turkey*,106

submits the “hegemonic masculinity” structure which is created with the “virginity” phenomenon to the approval of public sphere, and with this discourse, he tries to highlight that woman body carries the moral norms with a collective affirmation. “Casting aspersions on her virginity he left his listeners in no doubt that he thought her to be small virtue, as would be expected from her unseemly, unfeminine behaviour.”¹³⁹

“[...] the discourse masculinist protection was wielded by none other than the president himself who announced that “men are the custodians of women and are duty-bound to protect them.”¹⁴⁰ Through this discourse, political power states what kind of value and position is given to “femininity” and “masculinity”, he executes the active role on constituting of relation between gender and hegemony and he does the continuous production of this relation type over the thought of “woman under guardianship of men”. AKP’s “masculinity” and “femininity” definitions based on religious and traditional references move with an approach which obliges woman to the male subject. The given responsibility to the man, in some way, the power partnership deemed suitable to give the man a guardianship duty, made woman look like she is in need of protection; and it includes woman in the patriarchal negotiation as long as she proves that she deserves this protection.

2.2. THE SELF-DEFENSE EXPERIENCE

In the article “Can the Subaltern speak?” Spivak talks about a young woman age of 16-17, hanging herself. Spivak pointed out that the reason for this woman killing herself remained a mystery because the norms of the society for suicide were related to being pregnant outside of marriage. Just for this reason, the

¹³⁹Deniz Kandiyoti, “Locating the politics of gender:Patriarchy, neo- liberal governance and violence in Turkey”, 106

¹⁴⁰ **Ibid**, 109

young woman waited for her monthly period to pass before committing suicide.¹⁴¹ Later it was announced that she had joined an organization that battled for the independence of India and killed herself for political reasons.¹⁴² Identifying the death of this woman as unrelated to a male, it is claimed that women are beyond the “hegemonic masculinity” and own their bodies. However, women were able to do this not by talking but by using their bodies as an instrument. “She generalized the sanctioned motive for female suicide by taking immense trouble to displace (not merely deny) in the physiological inscription of her body, its imprisonment within legitimate passion by a single male.”¹⁴³ In this gendered structure, the female agency only exists as long as it cannot speak again, i.e. dead. Therefore, if we accept that the subject is in a process that is imminently created by the power, it will be logical to think that the dream of creating a “subjectivity” with no “agency” does not exist. How do the resistances get to a point where agency is silenced by the power, law and morals? Maybe at the point where the female identity is repeatedly redefined by the male hegemony, and the actions of this identity are not internalized. The practices of resistance may be related to questioning and balking the internalization of the codes, an increase in the acts, and changes from person to person. As Judith Butler pointed out: “The critical task is, rather, to locate strategies of subversive repetition enabled by those constructions, to affirm the local possibilities of intervention through participating in precisely those practices of repetition that constitute identity and, therefore, present the immanent possibility of contesting them.”¹⁴⁴ India can be given as an example of such resistance. In some parts of India women have been dumped in positions where patriarchy is harshly applied through law, basically in a “homo sacer” position. The “Gulabi Gang” organization of women in India punishes “males” beating, sexually abusing or exploiting women with bats. Even though this may seem like creating a vicious cycle, these acts in principle are actually

¹⁴¹ Gayatri Chakravorty Spivak Spivak, “Can the Subaltern speak?” in *Colonial Discourse and Post-colonial Theory*, Edited by. Laura Chrisman, Patrick Williams, (Columbia:1994, Columbia University Press), 103

¹⁴² *Ibid*, 103

¹⁴³ *Ibid*, 104

¹⁴⁴ Judith Butler, *Gender Trouble*, 188

“necessary”. Sampat Pal Devi said: “To face down men in this part of the world, you have to use force.”¹⁴⁵

Understanding the concept of justice within the law and defining its value in relation to lawful legislation seem problematic. If we consider the rules and laws as a structure with “everlasting justice”, we cannot comprehend the changing nature of the justice and its applications in laws in different societies and time periods.

The justice of the Greeks and Romans held slavery to be just; the justice of the bourgeois of 1789 demanded the abolition of feudalism on the ground that it was unjust. [...] The conception of eternal justice, therefore, varies not only with time and place, but also with the persons concerned, and belongs among those things of which Miilberger correctly says, "everyone understands something different".¹⁴⁶

When we think about the changeability in the concept of justice, we can also talk about the agencies that have created differences in it too. According to Derrida, the acceptance of “justice” is not completely subjected to the law and political discourses but also includes the possibility of changing these.¹⁴⁷ “To be just, the decision of a judge, for example, must not only follow a rule of law or a general law but must also assume it, approve it, confirm its value, by a reinstating act of interpretation, as if ultimately nothing previously existed of the law, as if the judge himself invented the law in every case.”¹⁴⁸ Thus, Derrida states that justice is trying to be legalized by an ethical act and because of this it is

¹⁴⁵ Aaronette White and Shagun Rastogi, “Justice by Any Means Necessary”, *Gender, Globalization, and Violence: Postcolonial Conflict Zones*, Edited by. Sandra Ponzanesi, (London:2014,Routledge), 214

¹⁴⁶ Friedrich Engels, *The Housing Question*, 381

¹⁴⁷ Saul Newman, *From Bakunin to Lacan Anti-Authoritarianism and the Dislocation of Power*, (Lanham: 2001, Lexington Book), 128

¹⁴⁸ Derrida, “Force of Law”, in *Deconstruction and the possibility of justice*, prep by David Gray Carlson, Drucilla Cornell, Michel Rosenfeld, (New York:1992, Routledge), 23

related to the responsibilities of the people.¹⁴⁹ At this point we can talk about the ethical positioning of the “necessary” acts of violence. Hutchings emphasized the differences between ethical and unethical violent acts.

Theoretically, the ideal of ethical violence relies on the plausibility of a model of ethical subjectivity and action in which the ethical subject is able to identify certain ends as ethical, undertake an accurate cost/benefit analysis of means in relation to ethical ends, control the means she is using (violence) in the service of those end only, and keep herself and her ends uncontaminated by the means of violence. Unethical violence, therefore, is violence in which the ends are unethical or the assessment of ends in relation to means is inaccurate, or where violence is not controlled by its ethical purpose, or where the user of or the ends of violence become corrupted by the means.¹⁵⁰

Within this context it will be possible to say that violence of the victim might be evaluated as a political demand and considered “ethical” because of the relations that are open to a certain exploitation caused by power’s practices based on patriarchal negotiations. “Our feminist definition stresses the ethical legitimacy of violence in the pursuit of collective political ends, when imbalances of power exist between men and women in the context of ineffective and otherwise unresponsive local judiciaries.”¹⁵¹

When the factors that enabled violence to be done by women who have experienced violence are studied, it was found that the actions are generally based on the “male violence”; the frequency of the “male violence”, the pressure it created on the woman, the ineffectiveness of searching for help and the points where she is left in a functionless way. At this point it has been pointed out that

¹⁴⁹ Derrida, “Force of Law”, 22-23

¹⁵⁰ Kimberly Hutchings, “Feminist Ethics and Political Violence”, in *International Politics*, (vol. 44, no.1, 2007), 100

¹⁵¹ Aaronette White and Shagun Rastogi, “Justice by Any Means Necessary”, 216

this is when the women go for violence or also known as “self-defense”. “Factors associated with homicide by battered women have begun to be investigated and they appear to support self-defence explanation for battered women's violence.”¹⁵² According to the report titled “the continuing self-defence cases and the legal decisions” of the Istanbul Feminist Collective, we can see that generally the act against a systematic male violence is not evaluated as self-defence and what’s more the male perpetrator receives a reduction in the punishment in a way that women do not receive.¹⁵³

According to the news that we collected for 12 months, there are around 24 decisions that have been made for these cases [...] In 9 of these 17 decisions the decision was unjust provocation, in 3 there was a reduction for good conduct[...] In 5, there was no reduction. Only 3 of these cases were absolved because of self-defence. In 2015, the number of cases still continuing was 21. 14 of these seem to be related to killings. In only 2 of these there was a request from the accused for unjust provocation and one of them was requested to be absolved due to self-defence.¹⁵⁴

The fact that the political power tries to solve “male violence” within the context of the concept of the sacredness of family and by trying to strengthen the family structure with hegemonic masculinity by repeatedly creating discourses and applying policies based on these discourses, and law moving in this way with these discourses, has caused various resistance practices and battles to be created against it.

¹⁵² Daniel George Saunders, “When Battered Women Use Violence: Husband Abuse or Self Defence?” in *Violence and Victims* (Researchgate ,1986), <https://www.researchgate.net/publication/20002430>, 50

¹⁵³ İstanbul Feminist Kolektif, *Kirpiğiniz Yere Düşmesin*, (Güldünya Yayınları:İstanbul,2015), 17

¹⁵⁴ *Ibid*, 16-17

CHAPTER THREE

FEMINISM AND THE LAW BATTLE

3.1. FEMINISM AND THE LAW BATTLE

The struggles of feminist movement in area of law in Turkey gained momentum in the 1980s with the “second wave feminist movement”. Second wave feminists adopted different principle, priority and discourse to constitute and realize their actions than the first generation of women movements who actively participated in nation-building process. During the process of nations building based on the principles of the modernization, “many educated females and males as well as (male) bureaucrats approached women an instrument”¹⁵⁵ which is “society oriented”¹⁵⁶ and “instrumental”¹⁵⁷ “used for societal development.”¹⁵⁸

There were enactments in the 1926 Turkish Civil Code which were built on a discourse that prioritize “male” subject, makes women passive, and gives no room for the gender equality principle. Improvements in women’s rights during the initial years of the Republic remained under the shadow of the Civil Code that was not defined but rather affected by the traditional, and conservative cultural values which were based on patriarchy. “The law has given different roles and responsibilities to men and women by identifying women with the house and private life and males with the public area. In this way the law contradicts the

¹⁵⁵ Betül Yazar, “Bir Moral Düzenleme Biçimi Olarak Medeni Kanunun Aile Hukukunun Arkeolojisi”, *Marmara Üniversitesi Sosyal Bilimler Enstitüsü Dergisi*, 7(28), (2007), 213

¹⁵⁶ S.Üşür, “Siyasal Süreçlerde Kadın Erkek Eşitliği”, (2002), prep. M.Göğüş, Y.Ecevit, & Üşür, S., *Kadın-Erkek Eşitliğine Doğru Yürüyüş: Eğitim, Çalışma Yaşamı ve Siyaset*. [İstanbul: TÜSIAD-T/2000-12/290], 197-258

¹⁵⁷ D. Kandiyoti, “Kadın, İslam ve Devlet: Karşılaştırmalı Bir Yaklaşım”, *Toplum ve Bilim* (53), (1991, Spring), 21-29

¹⁵⁸ Betül Yazar, “Bir Moral Düzenleme Biçimi Olarak Medeni Kanunun Aile Hukukunun Arkeolojisi”, 213

equality principles at many points.”¹⁵⁹ Most steps taken to eliminate the lack of equality between women and men such as giving the women the right to vote and to be chosen and some reforms in the education sector are limited with the masculine paradigm. “It has been defended that reforms reflect the attitude of the patriarchal state and that it prevents the independent women’s movement.”¹⁶⁰ Tekeli evaluates “in between the period when the Republic was established and 1980 as barren years”¹⁶¹. It wouldn’t be wrong to say that women’s movement is managed by the state in a shaped way. It is also being used as a society-oriented instrument. Arat sees this as a “state feminism” in a way and says that “the socioeconomic conditions at the beginning of the Republic period didn’t help the strengthening of the civil society; thus, state feminism should not be condemned.”¹⁶² According to those who share Şirin Tekeli’s opinion: “The 1923 Women’s People Party being prohibited from establishment and the Turkish Women’s Union’s abolition of itself in 1935 par the governments requests are important examples that need to be emphasized.”¹⁶³

Kılıç says that the priorities of the “well-educated” women who worked in foundations that first came to be in the 1940s and 1950 which were gathered under the title of the Turkish Women’s Foundations Federation in 1976¹⁶⁴ is to “get rid of the deficiencies that women have rather than improving women’s rights”.¹⁶⁵ According to this, their main goal was to “bring other women up to

¹⁵⁹ Betül Yarar, “Bir Moral Düzenleme Biçimi Olarak Medeni Kanunun Aile Hukukunun Arkeolojisi”, 213

¹⁶⁰ Feyda Sayan Cengiz, “Türkiye’de 1980 Sonrası Feminist Hareket” içinde *Türkiye’de Toplumsal Cinsiyet Çalışmaları*, der. Hülya Durudoğan, Fatoş Gökşen, Bertil Emrah Oder, DenizYükseker, (İstanbul:2014, Koç Üniversitesi Yayınları), 112

¹⁶¹ Şirin Tekeli, “Birinci ve İkinci Dalga Feminist Hareketlerin Karşılaştırılmalı Bir İncelemesi Üzerine Bir Deneme”, in 75 Yılda Kadınlar ve Erkekler, edited by. A.B. Hacımiraçoğlu (İstanbul:1998,Tarih Vakfı Yayınları), 337

¹⁶² Yeşim Arat, “Feminist Institutions and Democratic Aspirations: The Case of Purple Roof Women’s Shelter Foundation”, in *Deconstructing Image of the Turkish Women*, prep: by: Zehra Arat, (New York: 1998, St Martin’s Press), 330

¹⁶³ Feyda Sayan Cengiz, “Türkiye’de 1980 Sonrası Feminist Hareket ”, 112

¹⁶⁴ **Ibid**

¹⁶⁵ Z. Kılıç, “Cumhuriyet Türkiye’sinde Kadın Hareketine Bir Bakış”, in 75 Yılda Kadınlar ve Erkekler, edited by. A.B. Hacımiraçoğlu (İstanbul:1998,Tarih Vakfı Yayınları), 350

their level”.¹⁶⁶ In the 1970s, the organization of women started to be included in the left Marxist paradigm. With the spread of the leftist ways and the labour and student movements gaining momentum in the 60s and 70s, women became a part of these movements and they created their foundation structures under the roof of these leftist organizations. “The Progressive Women’s Foundation, the Laborer Women’s Union and the Revolutionist Women’s Foundation are among the women’s foundations set up within the framework of the leftist organizations of the term.”¹⁶⁷ These organizations which believed that the “Salvation of Women” will happen with a battle of the classes have been criticized for ignoring the cultural codes, the traditional attitudes and the gender roles that create and maintain the patriarchal structure that pressure the subjectivity process of women. Kılıç has said that she believes these organizations are looking at women as “downtrodden” through socialist parameters¹⁶⁸, while Tekeli has pointed out that they have not fought against the traditional gender roles in this context.¹⁶⁹

With the 1980 coup, there was a paradigm shift for the women’s struggle with the leftist organizations being demobilized, the members were deprived being put in prison or forced to flee the country. “Thus, the big “hit” that the leftist organizations received in 1980 also demobilized the socialist women’s organization and led to a change in the structure of the women’s movement.”¹⁷⁰ Kılıç says that with 1980, this was the first time that there were organizations in Turkey within the women’s movement, who defined themselves as feminists.¹⁷¹ In accordance with this, the political positioning and the struggle practices that they went through with this position cause them to come together at the second wave that rose at this time and create a big change in the organization. It can be said that

¹⁶⁶ Z. Kılıç, “Cumhuriyet Türkiye’inde Kadın Hareketine Bir Bakış”, 350

¹⁶⁷ Feyda Sayan Cengiz, “Türkiye’de 1980 Sonrası Feminist Hareket”, 113

¹⁶⁸ Z. Kılıç, “Cumhuriyet Türkiye’inde Kadın Hareketine Bir Bakış”, 352

¹⁶⁹ Şirin Tekeli, “Women in Changing Political Associations of the 1980’s” in *Turkish State, Turkish Society*, prep. by: A Finkel and N. Sirman.(Londra:1990, Routledge)

¹⁷⁰ Feyda Sayan Cengiz, “Türkiye’de 1980 Sonrası Feminist Hareket”, 113

¹⁷¹ Z. Kılıç, “Cumhuriyet Türkiye’inde Kadın Hareketine Bir Bakış”

the biggest share in this situation is the diminishing effect of the male dominance we mentioned before on the constituent and protective “society-oriented” discourse that set up the women’s movement.

Before all, the second wave of feminist movement changes the perspective and problem of “society oriented” women’s rights to a “women oriented” point of view. The new wave women’s movement moves away from the “guarding – protecting” relationship set up with other societal movements and projects that see the women’s problems and female-male equality issue as “society oriented” and starts to rely on an autonomous principle.¹⁷²

Even if the women’s movement of this term, create organization types with different ideologies like socialism or liberalism, they have started to question the definition of the politically legal “equality” principle. Thus, we have already said that the 1926 Civil Law was set up far from the principle of equality. This situation is a reflection of the “dual system in law”.¹⁷³ According to this, the contrasting relationship between me and other is recognized but is concealed by the law and legalized within society. At the same time, it can be seen that the law positions equality in a negative perspective.

This is one “negative definition of ‘equality’; so, it mentions the necessity to not discriminate and create opportunity equality.”¹⁷⁴ In accordance with this the main definition of “equality” or rather “equality when facing the law” is the principle of people having the same rights in front of the authority.¹⁷⁵

¹⁷² Betül Yarar, “Bir Moral Düzenleme Biçimi Olarak Medeni Kanunun Aile Hukukunun Arkeolojisi”, 214

¹⁷³ W.W. Williams, *Equality's Riddle: Pregnancy and the Equal Treatment/Special Treatment Debate. Feminist Legal Theory*, (Philadelphia: 1993, Temple University Press)

¹⁷⁴ S.Üşür, “Siyasal Süreçlerde Kadın Erkek Eşitliği”, 197-258

¹⁷⁵ Betül Yarar, “Bir Moral Düzenleme Biçimi Olarak Medeni Kanunun Aile Hukukunun Arkeolojisi”, 213

This contradictory form of law has enabled the questioning of it by women's organizations. It has also been seen that negative equality has not lost its function in cultural and traditional pressure mechanisms but rather it has become the law determiner and it has prepared a legal groundwork in terms of its function. For this reason the struggle for women's organizations has been constituted by the demand for a "positive equality principle" rather than a "negative equality principle."

The most important concept that has pushed women's groups to criticize the "negative equality" principle is the questioning of the very obvious separation between the public and private sector. This situation that sat in the political struggle's axis of the 1980s women's movement points at a shift in the definition of the public sector. Thus, from the ideas of the public area that squeezed all the differences into a private area, it was entered to a new public area with more open points of view. The advances that were done to a "society-oriented" point of view to a "women oriented" point of view is one that has moved into the public area idea and it has also shown that it is moving from a "negative" equality definition to a "positive" equality definition.¹⁷⁶

"The emphasis made for independence, personal space and the difference of the female identity and the women-oriented approach for female-male equality"¹⁷⁷ was not very visible until that time and the area where the male dominance was set up and run comfortably led to the creation of an area where violence is used; thus, within the scope of certain discourses it became obvious that the law that enabled the legality of violence in this system needed to be battled against. "The problems that arise in this aspect, are topics such as a male dominated society, any kind of violence especially domestic violence and sexual abuse aimed towards women, the position of women in a family, the sexuality of a

¹⁷⁶ Betül Yazar, "Bir Moral Düzenleme Biçimi Olarak Medeni Kanunun Aile Hukukunun Arkeolojisi", 214

¹⁷⁷ A.Bora & A.Gündal, *90'larda Türkiye'de Feminizm*, edited by. A. Bora & A. Gündal, (İstanbul: 2002, İletişim)

woman and the media and women.”¹⁷⁸ The battle against law was also created within the context of these problems.

The second wave feminist groups have fought against laws based upon the patriarchal structure within the old Civil Code and they battled against it and became victorious. The gains and battles that the women’s movement had in law have been staggering for the patriarchal structure and they have carried the laws based on the male subject to a point where the legality of these laws can be discussed. This situation is also important in terms of the feminist subject constituting its own agency. For this reason it will be beneficial to consider the actions and results maintained in this term.

The rule that enabled women to have a career or work in arts only with approval of the husband in the old law was a result of the pioneering acts that the women’s movement did cancelled in the Constitutional Court on the 29th November 1990. This overlooked article in the past was for the first time protested against by the feminist groups in the 1990s and they demanded that women be allowed into the public sector with their own wishes. The new law covers this change. (The new Court Decision article. 367; article. 185-196; article. 335; article. 322; article. 323-329).¹⁷⁹

The feminist groups held actions against the points in the law that concerned the marital status of women and they organized many campaigns. As a result of this there were new regulations in the law in the 1990s.

The first of this was that the 438th article found in the Turkish Penal Code which enabled commutability (for instance a shorter prison sentence) in the punishment received by rapists depending on the woman’s marital status and lifestyle (whether she is a prostitute or not).¹⁸⁰

In the campaign held against the Turkish Penal Code’s 438th article that enabled commutability for rape of prostitutes in the 1990s, the

¹⁷⁸ Betül Yarar, “Bir Moral Düzenleme Biçimi Olarak Medeni Kanunun Aile Hukukunun Arkeolojisi”, 214

¹⁷⁹ *Ibid*, 219

¹⁸⁰ *Ibid*, 220

slogan “We Will not be Modest Women” was used. The TCK, 438th article was removed because of the social pressure created by the feminists and it became one of the most important legal gains of the movement.¹⁸¹

According to the old law, if the woman was not a virgin, it was a valid reason to annul a marriage. Outside of this, if the woman had been raped, it was considered as an excuse for her to not do housework or not do enough housework and they were taken into consideration as problems that led to irreconcilable differences which could result in divorce. It is clear to see that in the old law the patriarchal power that was trying to keep the female gender under suppression has in fact secured its dominance through law. “[...] the women’s movement’s campaigns against virginity control ended with the Ministry of Justice publishing a notice aimed towards virginity tests. Along with this the use of terms like “virgin”, “widowed” and divorced” were terminated in the identity cards at that time.”¹⁸²

The old Civil Code was written not to protect women but to maintain the safety of the concept of “family” which had become a patriarchal structure. For this reason the recognition of the subjects for women and children were evaluated within this frame. “[...] it can be understood that the law is fundamentally protecting the family due to the fact that there are no legal regulations against men using violence or sexual abuse against women or children.”¹⁸³ “According to the old law, as a reason to divorce, women could show the long term negative physical and psychological treatment that their husbands were doing to them; however, they could not use this to sue criminal law against them. Because the

¹⁸¹ Özgür Sevgi Goral, “Türkiye’de Feminist Hareket”, *Devrimci Marksizm* (no.4, July 2007), 49

¹⁸² Betül Yazar, “Bir Moral Düzenleme Biçimi Olarak Medeni Kanunun Aile Hukukunun Arkeolojisi”, 220

¹⁸³ *Ibid*, 220

law had not defined such an action and it did not accept it as a crime.”¹⁸⁴ In order to increase the visibility of domestic violence and to create legal enforcements against this topic, the women’s movement held many campaigns and demonstrations to broaden the battle field in the 1980s and 1990s. “Within the frame of legal battle, the first mass campaign called the “Women’s Petition” was effectively held in the 1980s. Within this campaign, 7000 signatures were collected in order to start the Convention of the Elimination of all forms of Discrimination against Women (CEDAW) in 1986.”¹⁸⁵ As a result the agreement was signed and “in order for the ‘Convention of the Elimination of all forms of Discrimination against Women’ to be actualized, the ‘Foundation against Discrimination towards Women (AKKD)’ was set up in 1987.”¹⁸⁶

One of the most important steps taken in the battle against law that made male violence invisible was the campaign called “Unity against Beatings”. These demonstrations are also important in terms of showing that the law legitimizes masculine violence. “The campaign “Unity against Beatings” started in May 1987 and it took place with over 2000 women in Kadıköy, with a much higher number than expected by the people who had organized the Women’s March against Beatings.”¹⁸⁷

Following the rejection of a wish to get a divorce from her husband because of constantly getting beaten in Çankırı, a protest begun by eight lawyers in this area spread to Istanbul and then to other provinces and became a campaign. Due to these campaigns and demonstrations, it was shown that the logic of domestic violence against women was legitimized by courts responsible for equality. Other than this, with the release of the 4320 numbered Family Protection Law and its actualization

¹⁸⁴ Z. Arat, “Kemalizm ve Türk Kadını”, ed. A.B. Hacımiraçoğlu, **75 Yılda Kadınlar ve Erkekler**, (İstanbul:1998,Tarih Vakfı Yayınları), 51-57

¹⁸⁵ Betül Yazar, “Bir Moral Düzenleme Biçimi Olarak Medeni Kanunun Aile Hukukunun Arkeolojisi”, 220

¹⁸⁶ Özgür Sevgi Goral, “Türkiye’de Feminist Hareket”, 48

¹⁸⁷ **Ibid**, 48

in 1998, the effect of the organizations mentioned above cannot be underestimated.¹⁸⁸

Another ignored field of struggle by the law (and it is still continuing today) built by feminists against sexual abuse. For this, campaigns and demonstration were prepared to raise awareness in order to develop defense mechanisms for women to quickly protect themselves.

In 1989 the Women's Soldarity Foundation was established in Ankara, in February 1989, the 1st Feminist Weekend happened which brought together feminists from Ankara and Istanbul and following the recommendations made there they started the "No to Sexual Abuse" campaign. Within the campaign with agitation talks made on ferries, buses and other public transport vehicles, women were given purple needles to defend themselves.¹⁸⁹

Within the other important developments that took place with the effect of the feminist struggle, the demand for women's shelter and for them to be socially recognized as service organizations was accepted by the law.¹⁹⁰ "In 1990 with their applications, feminists managed to convince the Bakırköy and Şişli municipalities to open women's shelter and within the same year they opened their own Mor Çatı Women's Shelter Foundation. With the efforts of one group of feminist women the Women's Library and Information Center Foundation was established in 1990."¹⁹¹ Other changes that the women's movement wanted against the male violence were; the regulations about "Social Services and the Society for the Protection of Children (SHÇEK) and Women's hostels' , regulations about the attitude that police had against victimized women at the

¹⁸⁸ Betül Yazar, "Bir Moral Düzenleme Biçimi Olarak Medeni Kanunun Aile Hukukunun Arkeolojisi", 220

¹⁸⁹ Özgür Sevgi Goral, "Türkiye'de Feminist Hareket", 48 - 49

¹⁹⁰ Betül Yazar, "Bir Moral Düzenleme Biçimi Olarak Medeni Kanunun Aile Hukukunun Arkeolojisi", 220

¹⁹¹ Özgür Sevgi Goral, "Türkiye'de Feminist Hareket", 49

Security General Directorate and improvement of the education that police have according to these regulations.”¹⁹² Other than these, in 1990 “in order to underline the feminist criticism aimed towards the family and the Civil Code’s male dominant quality, a group of feminist women ended their marriages within the frame of a divorce campaign.”¹⁹³

While the changes we mentioned above were happening and the new law framework was being discussed, it is doubtful that the requests of feminist organizations were taken seriously or new decrees were being developed. It can also be said that the law decided on in 2002 had a goal of strengthening the power by creating a harmony in the European Union. Thus, with the application of the written laws and the problems that were encountered, there are some factors that can question whether they were created in fields open to discussion. For example; Arat said that; today, some lawyers argue that “while considering our moral and societal values, if a woman thought to be a virgin later turned out to not be one, then the male whether subjectively or objectively can annul the agreement[...].”¹⁹⁴. What’s more, “It is doubtful whether the topics that the feminists were focusing on were being discussed during the new law drafts. There is no evidence of a discussion on the dark side of family which includes domestic violence and rape in any of the news that took place in media.”¹⁹⁵

It can be seen clearly the agenda of current political power about gender equality by looking political power’s attitude about women’s abortion right. In 2012 the power wanted to inhibit to abortion by judicial regulation; but women

¹⁹² Betül Yazar, “Bir Moral Düzenleme Biçimi Olarak Medeni Kanunun Aile Hukukunun Arkeolojisi”, 220

¹⁹³ Özgür Sevgi Goral, “Türkiye’de Feminist Hareket”, 49

¹⁹⁴ Z. Arat, “Kemalizm ve Türk Kadını”, 51-57

¹⁹⁵ Betül Yazar, “Bir Moral Düzenleme Biçimi Olarak Medeni Kanunun Aile Hukukunun Arkeolojisi”, 220

reacted to power's intention and they organized demonstrations, campaigns against this patriarchal demand. As a result of women's reacts and protests, abortion was not inhibited by legally; however the most of state hospitals have initiated to not operate or avoid to abortion because of effect of political power's patriarchal paradigm.¹⁹⁶ In addition to these the Law No 6284 which is also based on prevent male violence against woman has gone into operation in 8 March 2012, but partners of the power who want a religious and conservative order and to strengthen patriarchy demand to legislate away this law on the ground that it disrupt the family. It can be said that they feel their power are threatened, and institution of family restrain this because it avails patriarchy.

3.2. THE RECENT RISE OF “MALE VIOLENCE”

The male paradigm which has been one of the creative factors of the hegemony continues to be functioning through various discourses and giving the collective subjects the feature to enure. This functionality continues to keep a mechanism on track which includes the “normalization” process and it includes various norms and tries to naturalize the current societal structure. Kandiyoti says that this normalization process includes a parallel functioning of the law and power in terms of their understanding for gender based violence.

Exploring how these processes play out in the case of gender-based violence may suggest useful points of entry for a broader exploration of the rule of law and operations of the suspension of the rule of law and the operations of impunity more generally. An obvious starting point is to interrogate the operations of the huge chasm between the laws

¹⁹⁶ <https://www.morcati.org.tr/tr/290-kurtaj-yapiyor-musunuz-hayir-yapmiyoruz>

that are intended to safeguard women's right and their actual implementation.¹⁹⁷

In violent acts where the victim is a woman and the sexual abuser is a man, depending on their respectful stance, appropriate attire, regret or giving their male hood as an excuse – by using concepts like “honor” – they try to give reasons for their actions and thus receive “good conduct reductions”. A reason for this can be that the law empathizes with the male perpetrator. However, we can also evaluate this as the privilege that the male judge gives to the male perpetrator based on the “hegemonic masculinity”. The decisions that the law makes are based on the gendered society structure and the legal processes are based on the rights that this structure gives to males.

The scandalous scale of such judgements and of arbitrary sentence reductions prompted a male journalist to invoke the ‘love affair and deep empathy’ between male perpetrators of violence and the prosecutors and judges who are supposed to deliver justice to their female victims.¹⁹⁸

At the point where women try to build their subjectivity as autonomous individuals by moving away from environments such as home where the “masculine hegemony” is created, they are met with “male violence”. The research of the We Will Stop to Femicide Platform shows that there is a connection between femicide and women's decisions making process for their lives.¹⁹⁹ In the study created by Yeşim Arat and Ayşe Gül Altınay, it can be seen

¹⁹⁷ Deniz Kandiyoti, “Locating the politics of gender:Patriarchy, neo- liberal governance and violence in Turkey”, *Research and Policy on Turkey*, <http://dx.doi.org/10.1080/23760818.2016.120124>, 108-109

¹⁹⁸ Deniz Kandiyoti, “Locating the politics of gender:Patriarchy, neo- liberal governance and violence in Turkey”, 109; For the related news: <http://www.radikal.com.tr/yazarlar/umit-kivanc/yuce-yarginin-kadinlarla-savasi-1469358/>

¹⁹⁹ <http://kadincinayetlerinidurduracagiz.net/>

that women who earn more than their husbands experience more violence from their partners.²⁰⁰

Even the most cursory, Perusal of reporting of murder cases and other crimes of violence against women indicates that perceived female disobedience and insubordination act as primary triggers: women murdered by husbands they wish to divorce, or ex-husbands they have dared to divorce, rejected suitors and obstinate girls refusing to fall in line with their fathers' or other male kin's wishes jostle on the page of dailies.²⁰¹

Kandiyoti states that the masculine violence cases of today are not because of the unbreakable male dominant tradition but because the “masculinity” feels threatened and the crisis that this creates when they try to keep the privileges of “being male”.²⁰² In order to explain this situation she talks about a new phenomenon called “male restoration”.

I propose that a new phenomenon I call ‘masculinist restoration’ comes into play at a point in time when patriarchy is no longer fully secure, and requires higher levels of coercion and the deployment of more varied ideological state apparatuses to ensure its reproduction.²⁰³

According to this, the increase in violence is not just related to continuing the male-dominated structure or strengthening the conservative traditional norms but rather that women are going against the “hegemonic masculinity”.²⁰⁴ The

²⁰⁰ Ayşe Gül Altınay, Yeşim Arat, *Violence Against Women in Turkey: A Nationwide Survey* (İstanbul:2009, Punto)

²⁰¹ Deniz Kandiyoti, “Locating the politics of gender:Patriarchy, neo- liberal governance and violence in Turkey, 109

²⁰² **Ibid**, 109

²⁰³ **Ibid**, 109-110

²⁰⁴ Deniz Kandiyoti, ” Fear and Fury: Women and Post-Revolutionary Violence”
<https://www.opendemocrarcy.net/5050/deniz-kandiyoti/fear-and-fury-women-and-post-revolutionary-violence>

spread of fighting against constitutionalized “hegemonic masculinity” among women has led to the female voice being heard more, the demands increasing and a break in the gendered society’s structure. This break has been attempted to be ruled out and patriarchal structure is tried to be protected by the patriarchal structure with various discourses, different tolerances in punishments by the male law and physical, verbal or written attacks and sexual violence by males positioned as the subject of hegemony. There are various women’s foundations such as KADEM that have a consensus with the political power which takes in the account the equality principle by using Islamic references and tries to create this need for equality away from battle and create this demand in a way that is appropriate for the gendered society – this means that there is a danger of emptying out this demand. Feminist organizations that are organizing resistances against the “male hegemony” and making the battle bigger, have been marginalized and left out with the reasoning that they do not carry “societal” values. At this point society itself becomes a problem. While the political power defines the society as solely the people who have specific ideologies and beliefs and are supported and elected them, it is also defining the rest of the people as “outcasts” or “others” because they don’t share the conservative lifestyle. The political power says that women are consignations made by God for men and thus accepts the fact that it is against the equality principle and that there is a binary gender regime based on religion and they have said that the feminists have nothing to do with “our” civilization.²⁰⁵

[...], the skewed nature of judgements in favour of male perpetrators of crimes against women may be seen as a response by representatives of the state (the judiciary, in this instance) implicitly honouring the terms of a ‘familial citizenship’ that recognizes men’s

²⁰⁵ Cumhuriyet Newspaper, Erdoğan: You know these feminists... , 17.02.2015, http://www.cumhuriyet.com.tr/haber/siyaset/216282/Erdoğan_Bu_feministler_falan_var_ya...html [last accessed: 05.05.2018]

sovereignty over women, especially if they can detect any indications of women failing to ‘know their place’ (haddini bilmek).²⁰⁶

The meaning of provocation and how it is perceived by the power within the law and how this perception surrounds women seems like an important problem because for women, provocation seems like one of the most important excuses of masculine discourse within the borders of the law against the LGBTQI+. We mentioned before that in a patriarchal system, men could be excluded from “masculinity” but women could not be excluded from “femininity”. Thus, we can say that women have always been seen as private and dangerous and at the same time dubbed as a provocative subject by the hegemony because of their femininity. We had said that there is no legal doctrine independent of the power. Therefore, it is possible to consider legal comments in terms of the power, culture and traditions within the scope of legal ethnographic. In this context we can say that the patriarchal system has been shaped by the pre-conditions of the relationship between legal comments and female provocation. “Talking back, irony or being stubborn, appear to qualify as provocation in a context where expectations of female obedience are axiomatic, but clearly very imperfectly met.”²⁰⁷

We had said that the structure of the family is an important “sanction” for power in terms of the state keeping the sexual policies’ regulations under control with the promise of a legal status. Hence, we can see the importance of the structure of family in the 41st Article of the Constitution. According to this, the article of protecting the family and children is based on that principle: “The family is the base of the Turkish Society.”²⁰⁸ The government takes the necessary

²⁰⁶ Deniz Kandiyoti, “Locating the politics of gender:Patriarchy, neo- liberal governance and violence in Turkey, 110

²⁰⁷ Deniz Kandiyoti, “Locating the politics of gender:Patriarchy, neo- liberal governance and violence in Turkey, 115

²⁰⁸ Turkish Republic Constitution, <https://www.tbmm.gov.tr/anayasa/anayasa82.htm>

precautions to enable the peace and well-fare of a family by protecting the mother and children and teaching family planning and making sure that it is implied.²⁰⁹ It can clearly be seen that the position of women is brought down to family and they are being taken under protection within this context. We had mentioned that the political power is making women a consignment of God to men and it is creating a need for a “hegemonic masculinity” by placing them in a needy position. Therefore, when analyzing the laws, this article and the discourses of the power are effective and just like Kandiyoti had mentioned, “women” are defined through “familial citizenship” and women receiving the right for protection depends on how accustomed or appropriate the female is to male guardianship. “This underlying premise regularly trumps the letter of the law to the point of courting charges of arbitrariness and impunity.”²¹⁰ Outside of this, one of the problematic articles that had changed in 2002 was the occupations and jobs of partners, article 192: “When choosing a career and job, the peace and benefit of the marriage should be considered.”²¹¹ The fact that this article has an ambiguous meaning and because of the reasons that we have mentioned above, we can say that this article is not for but rather against women. “[...] generally working outside the home is regarded as something that needs to be given up by women because of the worry that it will “ruin the peace” and it will create negativity.”²¹²

The fact that the structure of family is found as the most important part of the founding function of power, the legalization of this position leads to the judiciary becoming one of the protective tools of the “family values”. In femicide, this perception is generally aimed towards realizing this function. According to this the fundamental factors that create the “family values” based on the gendered society is that the female body is brought down to a fictitious “honor”. For

²⁰⁹ Turkish Republic Constitution, <https://www.tbmm.gov.tr/anayasa/anayasa82.htm>

²¹⁰ Deniz Kandiyoti, “Locating the politics of gender: Patriarchy, neo- liberal governance and violence in Turkey, 110

²¹¹ Filiz Kerestecioğlu, “Medeni Hukukta Kadının Cinsel Ve Ekonomik Kimliği”, in *Türkiye’de Toplumsal Cinsiyet Çalışmaları*, 242

²¹² *Ibid*, 243

instance, a perpetrator who had stabbed repeatedly his partner who had filed a divorce lawsuit was given remission for “unjust provocation” and “good conduct”. In the case that was held at the 12th Heavy Penal Court in Istanbul Anadolu where an aggravated life imprisonment sentence was requested a reduction in the penalty was described as such:

Even though the victim shortly prior opened a divorce case, she had recently gone to a hotel with a known drug dealer and acted against her responsibilities for fidelity. This unjust move led to the accused to act in this way by thinking that he was being cheated on. It has been accepted that the accused acted under the influence of the wrongdoing and with unjust provocation has committed the crime.²¹³

Due to the fidelity principle that was brought about through the familial law in femicide the perpetrator requests a reduction in the penalty on the grounds of unjust provocation and just as it can be seen in this case, it is approved by the judiciary. Again in 2012 an accused penalty was reduced from life sentence to 5 years for killing his wife. Then this decision was forgone by the judiciary and based on the “fidelity” principle, the case was re-opened and re-analyzed within the scope of “unjust provocation”.²¹⁴ Due to the “honor” principle again in rape cases the decision is made based on how “emphasized femininity” was and if the victim was doing anything against the law which can change the case from in favor of the victim to in favor of the perpetrator. The special operations officer that was arrested with the accusation of rape in 2018 was released because of “insufficient evidence”. The victimized woman was targeted with expressions such as “there were many phone numbers of men on her mobile” and “she was comfortable enough to wear shorts at home” during the case in Mardin’s 1st Heavy Penal Court and during this court and example of “hegemonic masculinity”

²¹³ Bianet, Women are fighting, Male violence is being tried, Male Violence April 2018 [last accessed: 09.05-2018], <https://bianet.org/bianet/toplumsal-cinsiyet/196813-kadinlar-mucadele-ediyor-erkek-siddeti-yargilaniyor>

²¹⁴ Ekmek ve Gül, Fidelity reduction in honor cases, 17th November 2017, [last accessed: 09.05.2018], <https://ekmekvegul.net/gundem/namus-cinayetlerinde-sadakat-indirimi-karari>

was seen.²¹⁵ With reference to Connel, we had mentioned that corporations such as the police or army get organized according to “hegemonic masculinity”. Therefore, the perpetrator in this case was one of the important subjects of these organizations and so this had affected the decision. In the rape case that was seen in Eskişehir’s 1st Heavy Penal Court, even though there were video recordings of the incident and DNA of the perpetrator were found on the victim’s trousers, the court decided that “there was no concrete evidence” and so the perpetrator was freed of charges such as “sexual assault” and “depriving a person of their liberty by using force”.²¹⁶

In cases where women are the perpetrators, “unjust provocation reductions” are not used or used a lot less in comparison with male perpetrators and the statements of a female perpetrator are not taken into consideration by the court and applications or investigations on these never begin or are delayed for a long time. Just like we talked about some judges empathizing with male perpetrators and this is effective in their decision making, we can say that when the perpetrator is a woman, there is a complete opposite attitude. In this case, woman’s adaptation level to the patriarchal system and the points that she is identified with “emphasized femininity” may be determining for judiciary’s attitude towards her. For example the request of the lawyer of Nevin Yıldırım who murdered her husband for systematically raping her in 2012, was to send her to forensic medicine and psychiatrists and that was denied by the court. Nevin Yıldırım received a life imprisonment sentence. The case was lost based on procedure not principle and it was analyzed again at the beginning of this year;

²¹⁵ Diken, the decision for the released rapist police: “The victim has too many male phone numbers” 07/03/2018, [last accessed: 09.05.2018], <http://www.diken.com.tr/tecavuzden-beraat-eden-polisin-gerekceli-karari-magdurda-cok-sayida-erkek-kayitli/>, Just like we mentioned, female actors can also have an active role in the discourses of the “hegemonic masculinity”. As a matter of fact two of the judges in this case were women.

²¹⁶ Bianet, Women are fighting, Male violence is being tried, Male Violence April 2018 [last accessed: 09.05-2018], <https://bianet.org/bianet/toplumsal-cinsiyet/196813-kadinlar-mucadele-ediyor-erkek-siddeti-yargilaniyor>

however, these requests that the lawyer has renewed were disregarded by the court and she was given a life sentence again.²¹⁷

With the increase of “male violence”, it is important to think about the effect of this act of violence being normalized by the political power and “alienating” discourse. Not only does the discourse of the power determine who deserves to be protected and who doesn’t, it also carries the ones that do not deserve it outside of the law and along with it corporate violence of civilians are approved by power as a disciplinary practice.

One such memorable instance occurred during the Gezi Protests in 2013 when machete wielding ‘tradesmen’ attacked protestors in Istanbul and Ankara with the police forces looking on (LGC News 2013). In a speech delivered to the 4th Council of Tradesmen and Artisans in Ankara, Erdoğan encouraged tradesmen (esnaf) to enforce law and order as guardians of national traditions and morality. This explicitly gave the green light to pro-government social vigilantism.²¹⁸

As a matter of fact the article numbered 696 of the Public Utility Commission in December 2017 tried to legalize “social vigilantism”. According to this they have legalized it in order to put out any acts like “the 15th July coup attempt and the other terror acts following this” these individuals will not be legally, authoritatively, financially responsible and they won’t receive any penalty.²¹⁹ Following the reactions even though they explained that the article was only acceptable during the coup attempt, the ambiguity of the article and the

²¹⁷ Bianet, Court didn’t recognise sexual assault, Nevin Yıldırım got a life sentence, 22nd March 2018, [last accessed: 09.05.2018], <http://bianet.org/kadin/toplumsal-cinsiyet/195400-mahkeme-cinsel-saldiriyi-gormedi-nevin-yildirim-a-muebbet-verdi>

²¹⁸ Deniz Kandiyoti, “Locating the politics of gender: Patriarchy, neo- liberal governance and violence in Turkey, 110

²¹⁹ Gazete Karınca, With the last Decree - Law there is no punishment for killing and injuring, 24th December 2017, [last accessed :09.05.2017], <http://gazetekarinca.com/2017/12/son-khk-ile-devlet-icin-oldurme-ve-yaralamaya-ceza-yok/>

fact that it has legalized civil violence remains to be a problem. It can be seen that “people” can easily be left outside the legal area and just like Agamben had said they are reduced to “homo sacer” and they can easily be slain through law. Thus, we are clearly witnessing the functionality of *Gewalt*.

“Behind a regime and its ideology there is always a way of thinking and feeling, a group of cultural habits, of obscure instincts and unfathomable drives.”²²⁰ With the constituting of the hegemonic masculinity it is important to understand the cultural factors and thought structures that were used in the creation of the gendered society policies. Other than the discourses and the policies that the power uses for the positions of men and women, “hegemonic masculinity” is repeatedly created. Dicle Koğacıoğlu talks about how the relationship between power and dominance needs to be regarded in a multi-dimensional way rather than one dimensionally: “This is why as feminists I recommend researching the relationship between the patriarchy and exploiting power which is based on traditional discourses in terms of nations, national and local traditions and cultures to see what kind of dominance relationships have been naturalised.”²²¹ It is possible to look at the connection and decisions among law, power and violence within the same context. However, it must not be forgotten that “changes in paradigms become necessary, says Thomas Kuhn, only when existing rules fail to operate, when anomalies can no longer be evaded, when the real world of everyday experience challenges accepted causality.”²²²

²²⁰ Umberto Eco, “Ur-Fascism” (The New York Review of Books, June 22), <http://www.nybooks.com/articles/1856>, [last accessed:9.05.2018]

²²¹ Dicle Koğacıoğlu. “Gelenek Söylemleri ve İktidarın Doğallaşması: Namus Cinayetleri Örneği”, 29

²²² E. Janeway, “Who is Sylvia? On the Loss of Sexual Paradigms”, in *Signs* (5: 1980), 582

CHAPTER FOUR

THE ÇİLEM DOĞAN CASE

4.1. The Çilem Doğan Case

Çilem Doğan was arrested in Adana for killing her husband who was constantly violent and forced her into prostitution. Çilem talks about what happened on the day of the incident as follows:

He hadn't been home for two days before the incident. I was so scared that he would know that I had spoken to the police. When he came home he hastily threw a suitcase at me and said; "Get ready, we're leaving". When I asked where he said; "Antalya and two more women are coming. You will be prostitutes, you will work for me." "What are you saying, I would rather die than do this," I said. He locked the bedroom door, he started to beat me and drag me by my hair. We started to struggle and fell down to the side of the bed. When I was trying to hold onto the bed, my hand made contact with something metal. I don't remember how I got the gun and how I shot him. I didn't hear a gunshot or anything else. The only thing I heard was my daughter crying. If that gun hadn't gone off then, I definitely wouldn't have made it out of there alive. I didn't understand that he had gotten injured or even if he had died. I still thought he was coming after me. In fear I locked the door, grabbed my daughter and ran.²²³

As a result of the Çilem Doğan court case In the Heavy Penal Court, Çilem received a 15 year prison sentence and later was released for 50,000 lira bale. Çilem's lawyers defended her that she had killed her husband in self-defense. Even though Çilem Doğan had gone to the police nine times to request protection, the Adana Republic Prosecutor claimed that in the research done for the case they could see that she "didn't seek shelter with her family, didn't change her identity,

²²³ "He finally made me kill him!", interview: Fatoş Hacıvelikızı, Songül Yıldız http://www.sosyalistfeministkolektif.org/wp-content/uploads/Feminist_Politika/fp_sayi_28.pdf, 23 [last accessed: 17.12.2017]

didn't take aesthetic or similar precautions, continued to live in the same house as her husband and retracted some of her complaints.”; therefore, they rejected the self-defense argument and requested a prison sentence between 18-24 years.²²⁴ The court came to a decision not in accordance with self-defense but with unjust provocation. Çilem Doğan explained the violence that she had to endure for years and the personal defense act as follows: “I walked down these courtroom corridors with a black eye, looking for protection many times. I had no other choice.”²²⁵ After it was proven by the lawyers with evidence that Çilem Doğan had requested protection nine times, they requested her release; however, the court rejected this. “Çilem took out nine protection decisions but the man violated every single one. She also went to the Organised Crime Control Bureau and denounced the man to them. The man was like a crime machine. After reminding all of this, we requested a release through the TCK 25/1 and 27/2 but in the summary judgment motion, release did not look like a possibility.”²²⁶ Çilem Doğan explained the psychological process that she herself went through due to how the power mechanisms were evaluating the situation and the attitude that they had against the violence she endured.

Women are strong and should be strong. When I went to the police to complain and I said I wanted to go to a shelter home, the police said “he’ll find you”. The government cannot prevent this, the system is not protecting us. The reason I am going through this is the government. I complained many times; a protection decision was made but they couldn't protect me. I continued to get beaten and fear for my life. This male regulation and this male dominated system are not protecting us. The system is not protecting us but we are going to beat this. Look at how many women are dying! 76 women died in the last three months. I would have been one of them, I would have died. Our stories are the same, just the dead person is different. The more stories I read of women defending

²²⁴ <http://www.diken.com.tr/kadina-mesru-mudafaa-hakki-yok-cilem-dogan-icin-24-yila-kadar-hapis-istendi/>, [last accessed: 15.12.2017]

²²⁵ <http://ilerihaber.org/icerik/cilem-doganin-avukati-cilem-kadinin-yasam-hakki-mucadelesinin-sembolu-oldu-55449.html>, [last accessed:16.12.2017]

²²⁶ <http://siyahaber3.org/cilem-dogana-yine-tahliye-yok-bir-sonraki-durusma-6-mayista>, [last accessed: 14.12.2017]

themselves to not die, the stronger I feel. Create a law and make this stop.²²⁷

It can clearly be seen that male violence was ignored by the power representatives or rather disregarded and within the decision of the court and through the law the main functions that created this process were kept outside of the evaluation and this has legitimized violence.

Lawyer Cemre Topal stated that the formal criminal charge that explains the violence that Çilem Doğan endured from the beginning and the process up to the incident as well as the psychological situation and the way she had to defend herself was prepared very well. “Even though no evidence other than the evidence present in the formal criminal charge could not be obtained in the prosecution process, the consideration was completely different to the criminal charge and Çilem was evaluated in the complete opposite way. She was evaluated with unjust provocation.”²²⁸

Doğan’s lawyer had said that this case was an example of self-defense and if Çilem Doğan had not used the weapon that she had coincidentally found during the violence she had to endure, the person that would have died would have been Çilem.²²⁹ Also, even if there was no pounding at that time, as a result of the physical and psychological violence and exploitation that Çilem had to endure for years, which was not prevented by the legal authorities too, there are points of view that allows for the act of killing that to be regarded as self-defense. Thus, one of Çilem’s lawyers “Fatoş Hacıvelioğlu told the court about the “disturbed woman’s syndrome” and said that even if nothing had happened on the day of the incident she pointed out that this needs to be evaluated within the scope of self-

²²⁷“He finally made me kill him!”, interview Fatoş Hacıvelikızı, Songül Yıldız [http://www.sosyalistfeministkolektif.org/wp-content/uploads/Feminist Politika/fp_sayi_28.pdf](http://www.sosyalistfeministkolektif.org/wp-content/uploads/Feminist_Politika/fp_sayi_28.pdf), 24 [last accessed: 17.12.2017]

²²⁸ <http://ilerihaber.org/icerik/cilem-doganin-avukati-cilem-kadinin-yasam-hakki-mucadelesinin-sembolu-oldu-55449.html>, [last accessed:16.12.2017]

²²⁹ **Ibid**

defense because of all the violence she had to endure until that day.”²³⁰ The lawyer told Çilem Doğan that the prison sentence she received was due to the majority of the votes given in court; however, there the head had dissenting views on the decision.²³¹ Also the lawyer pointed out that the minimum years of punishment that Çilem Doğan would receive would be 15 years because the victim was her ex-husband even with “good conduct” and “unjust provocation”.²³² However, the reduction they use for “unjust provocation” can change depending on the subject being a “female perpetrator” or a “male perpetrator”. Within Çilem Doğan’s file, self-defense decrees were not applied and what’s more the reduction of the punishment for “unjust provocation” was only ½ rather than the ¾ application.²³³ However, in many cases where the male subject has used violence and killed a woman, this reduction is at the highest with a ¾ rate. This situation shows that the judiciary system functions with a patriarchal perspective and the female-male equality principle is not applied at all here. Law creates various excuses for male violence, but while judiciaries are giving decrees when the person in subject is female it can be seen that there is a patriarchal structure and this function is used to protect the aforementioned structure. When considered in this way, it would not be incorrect to say that the decree given in the Çilem Doğan case was completely political. Thus the lawyer Gökçesu Özgül evaluates the decision in this way:

It cannot be accepted that legal corporations have fallen victim to the idea of male dominance. By creating concepts that have no legality and then making males benefit from these is just a symbol of gender inequality in the society because it is depriving women of these rights. What’s more the government also has a responsibility to provide a life with no violence and more safety for women. From the moment Çilem Doğan was arrested, she talked about the violence she endured for years. A woman who has experienced all kinds of violence had to protect herself

²³⁰ <http://siyasihaber3.org/cilem-dogana-yine-tahliye-yok-bir-sonraki-durusma-6-mayista>, (last accessed: 14.12.2017)

²³¹ <http://ilerihaber.org/icerik/cilem-doganin-avukati-cilem-kadinin-yasam-hakki-mucadelesinin-sembolu-oldu-55449.html>, [last accessed:16.12.2017]

²³² **Ibid**

²³³ **Ibid**

because the law did nothing to help her. At this point punishing Çilem and any other woman is like saying to them “you are “only half” so you cannot benefit from the law.”²³⁴

The decision given is an indicator that the masculine discourse that has gotten so used to defining women as victims felt threatened in front of the newly defined female subject in front of male dominance. Çilem Doğan’s case is an important case that revealed this side of the law. “Çilem Doğan is a woman who has talked about the drama she experienced with her own words. She is a woman who hasn’t fallen to her knees in front of the male dominated world but rather managed to explain her experience in words so filled with emotion they were like a slap in the face of injustice.”²³⁵ At this point it is possible to say that this political decision has been a warning for all women. Of course the law that has been a representative of patriarchal discourse and even actually constituted itself in accordance with this discourse will not be happy about subjects separate from this structure recreating itself. It tries to keep those who have the right to determine their own life by keeping them under tyranny. Lawyer Yalda Koçak explained the situation in this way:

In this file where the conditions for self-defense decrees are very clear, it is not an interpretation of the law in the application of these decrees. The women hating law makers have punished a woman for staying alive despite the battle for equal rights. Çilem Doğan, who created a public group against the women hating politics of the political power that is stopping the women’s movement from time to time, has become the voice of the women who have suffered from violence and was not protected by the government despite being promised to do so. She had a showdown with the legal decisions of the political power...²³⁶

²³⁴ <http://ilerihaber.org/icerik/cilem-doganin-avukati-cilem-kadinin-yasam-hakki-mucadelesinin-sembolu-oldu-55449.html>, [last accessed:16.12.2017]

²³⁵ **Ibid**

²³⁶ **Ibid**

The t-shirt that Çilem Doğan wore to court and the hand gesture she did were excessively put forward by the media and Çilem Doğan's situation, the point she was at and the process of the court case were pushed into the background and it was trivialized. By moving forward with a point of view in the knowledge of the patriarchal power of the media found within the various mechanisms of the power such as law, by focusing on the "female perpetrator's" actions, clothes, other features and experiences unrelated with the case, it is rejecting the woman as an agent and subject and even trying to objectify women. Çilem Doğan made the following explanation for this topic:

[...] I asked for a long-sleeved shirt from my mother to wear for court. Because the house was sealed off, my mother got it from some shop. We both don't speak English. [...] When you told me the meaning at our first meeting, I was very surprised. And you'll remember, I said "Take it away so I can be free." Because at first there were news that I had consciously worn the T-shirt, I was very upset. I also want to talk about that hand gesture that's been mentioned so much because I am uncomfortable. It definitely was not planned. Even after hearing my voice on the phone, my father did not believe that I was alive. Because I was always the one getting injured and moving closer to death. Just as we were walking out of the door, my father called out. I did the gesture in a "don't worry, I'm alive and well" way.²³⁷

The "it's not always going to be women dying; some men should die too!" message that Çilem Doğan gave on her way to penitentiary, reveals the damage that the masculine violence created and it is the expression of a woman who has survived and is changing and transforming. This transforming phase, other than the change is up against the masculine violence, it has also continued its existence against power and jurisdiction and it has created a new area of agency that has created a new defining subject beyond the victim and indigent female. Just as Çilem had said "If a woman wants to, she can give birth to

²³⁷ "He finally made me kill him!" Interview: Fatoş Hacıvelikızı, Songül Yıldız http://www.sosyalistfeministkolektif.org/wp-content/uploads/Feminist_Politika/fp_sayi_28.pdf, 24, [last accessed:17.12.2017]

herself.”²³⁸ When Çilem used the “it’s not always going to be women dying; some men should die too!” She had said it with these thoughts and feelings:

I was in a very bad state, I didn’t want to speak. When I was getting into the police car, I suddenly remembered all the women that had gone through what I had. I had never seen a woman who had to kill her own husband before. I just wanted to say a sentence that was only for women. That’s why I said it’s not always going to be women dying; some men should die too!” I was mainly talking about the men who use violence against their wives and make life hell for them, [...]²³⁹

4.1.1. Collective Subjectivity, Resistance and Sovereignty

The special standpoint model that Kathi Weeks put forward by taking advantage of feminist standpoint theory presents a collective subjectivity model based on a group that points to a structural position beyond individuality. However, this model does not suggest a certain self-based naturalizer, a constant subject model; on the contrary, it tries to bring out a form of collectiveness based on diversity, far from imitating the ideal presented as "the subject of history". Hartsocks says these groups should not be regarded as groups that existed in a certain social place, therefore formed without problems which have a certain point of view into the world.²⁴⁰ Besides she suggested that in contrast to the 'women's point of view', her endeavour for the idea development of a feminist standpoint theory was an endeavour which began from here.²⁴¹

²³⁸ <http://www.diken.com.tr/hep-mi-kadinlar-olecek-diyen-cilem-dogandan-mektup-kadin-isterse-kendini-dogurabilir/> [last accessed:18.12.2017]

²³⁹ “He finally made me kill him!” Interview: Fatoş Hacıvelikızı, Songül Yıldız http://www.sosyalistfeministkolektif.org/wp-content/uploads/Feminist_Politika/fp_sayi_28.pdf, 24, [last accessed:17.12.2017]

²⁴⁰ Nancy Hartsock, “ Comment on Hekman’s ‘Truth and Method: Feminist Standpoint Theory Revisited’: Truth or Justice?” in *Signs* 22 (2) (1997), 371-372

²⁴¹ *Ibid*, 371-372

While the emphasis of distinctness is placed on the foreground, there is a risk of a reduction to an individualist attitude; however, as Nancy Fraser also mentions, it is necessary to avoid a foundationalist understanding of history because the thing that makes the change is not only the individual. Çilem Doğan's case can be shown as an example of this kind of a collective subjectivity process. The action that Çilem Doğan, who has been pushed to a passive position by the ruling mediators, the legal process and the gendered structure, has put forward in order to protect her own life, constitutes one of the transition points from victimization to agency. However, the active state produced by this action is reflected not only on Çilem Doğan, but also on the other women who have been victimized and the feminist struggle. This area of activity emerges especially in the aspect of legal struggle. We have already mentioned the report that includes the cases of the women who have tried to protect their own life, published by the Istanbul Feminist Collective. After demands to make judgments based on "legitimate defence" and "battered woman syndrome", courts can return an acquittal as in the case of Yasemin Çakal by stating that "There is no ground for punishment because it is accepted that the act was carried out as a result of exceeding the limit due to excitement, fear and anxiety, which can be excused in legitimate defence"²⁴²; however, these decisions are carried to the court of appeal through the Ministry of Family and Social Policy and the counterparty's lawyers and decisions get nullified. It is clear that there is a dissidence created in the legal dimension in this respect. The different states of subjectivity that are trying to put forward their agency in the emergence of this distinction; the women who resort to self-defence to protect their lives, those who support these women, feminist organizations, lawyers, "hegemonic masculinity" of the power, those who oppose the discourse of violence that normalizes the "other", those who struggle against masculine law and institutionalized violence, and so on are effective. The decision of Çilem Doğan to be released on bail shows that the concept of masculine jurisprudence still works in a strict way, or seeing that the judgment of the

²⁴² Cumhuriyet Newspaper, "Yasemin Çakal 15 years in prison," April 9, 2018 [last accessed: 05/15/2018]
http://www.cumhuriyet.com.tr/haber/turkiye/956167/yasemin_cakal_a_15_yil_hapis_cezasi.html

judiciary can be easily changed with the interference of a structure representing political power with the case, as in the case of Yasemin Çakal, proves the effects of the combination of law, power and violence, with which we deal through *the Gewalt* concept, on the gendered structure.

As Kathi Weeks mentioned, the forms of struggle against Gewalt, [...] can be developed by “group subjects that do not replicate some of the homogenized and unified, purely functionalist or overly romantic, naturalized or naturalizing models of the past.”²⁴³ Therefore, it is important to think about and question the naturalizing concepts which the power based on dual structures such as gender and avoid the practices that constitute these concepts. Through the cases of women who have protected their lives; it seems possible to constitute various states of subjectivity, as some women's associations today, who do not demand power or who are not partners in it, who have continuity as a "strike" in the idea of a "proletarian strike", who take their destructive potential from this continuity, who do not surrender to law but can transform it, and who do not engage in *patriarchal bargaining*.

The forms of collective subjectivity that we stand on are different from a collective form of existence, that is, the perception of "us", which has become the practitioner of the discourses of power we have already discussed in the title of "masculinity". The most fundamental difference is that it is not constituted as a form of solidarity which is articulated to the power in order to legitimize patriarchal norms. When we think of the individuals, just as they are the means to normalize the discourses of power or the hegemony produced through these discourses, they can also be located in a place where they can break down or change these discourses.

²⁴³ Kathi Weeks, *Constituting Feminist Subjects*(2018), 155

The individual is an effect of power, and thus an addendum, a practitioner and an expression of it, but on the other hand, the individual can take a critical distance to the norms, question them, invent different behaviors and we can even say with Deleuze that it can bring out an opponent bodily manner by changing the borders of the body.²⁴⁴

The body is a compound in view of the power, which is not only passive, but also the carrier of the possibility of transformation with the agency in which opportunities are produced. Gender is one of the norms that serve to legitimize the power, it is obvious that there is an asymmetrical relationship between men and women, which is revealed by means of events such as culture and history, which are constituted by this norm.²⁴⁵ The founder and the legislative position of *Gewalt* gives the sovereign the authority of regulation of the public sphere. It is possible to see that the political power decides who is to be excluded from the public sphere with the processes of "othering" and "normalization" and it gives this decision to the approval of a certain section of the society through its discourses and that those who identify themselves with the ideal of being partners with the power approve this state of exclusion by turning into a practitioner and an express of discourses of the power in various forms or circles. For political power, woman is always a body associated with sexuality, more than an individual. "The sovereign discourse excludes women from the public sphere, not as a person, but as a desire object and a sexist, erotic body."²⁴⁶ Therefore, the easiest way for the sovereign to control the female body, that is to say, the possibility of emergence of agency opportunities, is to ensure that the regulations and discourses that will ensure the control of female sexuality are legitimate first in the public and then in the legal circles. It aims at strengthening the patriarchal alliance once again by ensuring that the male violence which has increased in recent years related to the beginning of the crackling of the patriarchal structure of power, so it more tightly embraces the ideal of "hegemonic masculinity" in order to preserve this power,

²⁴⁴ Zeynep Direk, *Cinsel Farkın İnşası Felsefi Bir Problem Olarak Cinsiyet*, (İstanbul: 2017, Metis Yayınları), 194

²⁴⁵ *Ibid*,189

²⁴⁶ *Ibid*,182

and "oppressed" men also identify with this ideal. Therefore, the resistance of women against masculine hegemony and strengthening this resistance by embracing the movements that various feminine states reveal against "hegemonic masculinity" are also important in terms of the possibility of liberation that the struggle will emerge. The type of struggle against masculine jurisprudence, which was put up by Çilem Doğan case and the feminist organisations that support her, has revealed this kind of a possibility of freedom. During Doğan's trial and in her prison times, letters of support were written by women of many different backgrounds, such as those working at Sel Publishing²⁴⁷, and feminist organizations and women also participated in Doğan's trials. Çilem Doğan, expressing that she felt helpless when she entered prison²⁴⁸, "Every line written by women gave me strength"²⁴⁹ "The women who came to follow my trial were shouting, 'Acquittal for Çilem!' To hear their voice gave me strength and morale. This is what gives me the most power in this process "²⁵⁰ statement is an example of a collective subjectivity as an emancipatory practice. "Those women go on their own way, seeking for autonomy, developing various strategies for survival, and not giving up on resistance in spite of getting crushed, shows that there is a symbolic strength for women against the discourse of the power."²⁵¹ Strengthening of the forms of feminist struggle in Turkey is important. Because political power's marriage propaganda and its aim of limiting women's sexuality with this institution and also not producing a lasting solution to the "masculine violence" especially faced by women who want to leave their husbands, on the contrary, dysfunction of the legal process in these cases or this violence being considered unimportant by legal institutions are related practices. Except these;

²⁴⁷ Diken, "Will women always die" letter from Çilem Doğan: If a woman wants, can give birth to herself, 07/10/2015, <http://www.diken.com.tr/hep-mi-kadinlar-olecek-diyen-cilem-dogandan-mektup-kadin-isterse-kendini-dogurabilir/>, [last accessed: 20.05.2018]

²⁴⁸ Kazate, Çilem Dogan: Letters of women give me power, 23.06.2016, <https://kazete.com.tr/haber/cilem-dogan-kadinlarin-mektuplari-bana-guc-veriyor-48425>, [last accessed: 20.05.2018]

²⁴⁹ **Ibid**

²⁵⁰ Evrensel, Çilem Doğan: Women's cry "acquittal for Çilem" has given me power, April 10, 2016, <https://www.evrensel.net/haber/277143/cilem-dogan-kadinlarin-cileme-beraat-sesi-gucum-ol>, [last accessed: 20.05.2018]

²⁵¹ Zeynep Direk, *Cinsel Farkın İnşası Felsefi Bir Problem Olarak Cinsiyet*, 193

the judiciary acting on behalf of the male in cases of sexual abuse, the consideration of woman's clothing as a representation of power's ideology and accordingly either exclusion from the public domain or approval in the public domain or taken into account by the judiciary in cases involving sexual crimes and men seeing themselves as a puissance punishing or approving this way of dressing "reveal that the political power and the law have re-constituted the patriarchy instead of going beyond it, and that we are going backwards in women's rights."²⁵² Although law in Turkey has accepted universal human rights norms and it is a party to the contracts containing the prevention of violence against women such as Istanbul Convention, and the ones that are about preventing all forms of discrimination against women such as the CEDAW, it is under the effect of a power structure that is trying to determine the position of LGBTQI+ and women with traditional and theological interpretations. With the *Gewalt* concept, we tried to make a determination about the reasons of this effect, and stated that the law was not autonomous from the paradigms of the social and the power structures.

Although in the modern world the human rights are treated as if they include women's human rights, the laws on ethics of human rights have not gained much power over the laws of the symbolic order generated by anthropology. Even in countries where international and national law is based on modern human rights, relations still exist according to patriarchal laws of ceremonial and social unconsciousness.²⁵³

Although political power is trying to strengthen the traditional sexual regime and normalization of the exploitation of the female body and patriarchy by expressing the gendered structure through concepts like "fitrat" (natal disposition); women's movement and forms of feminist struggle are becoming more visible, seeking ways to resist against these discourses of power and trying to maintain the continuity of action. According to Zeynep Direk; the line that forms the framework of feminist resistance has also become a form of defending the secular

²⁵² Zeynep Direk, *Cinsel Farkın İnşası Felsefi Bir Problem Olarak Cinsiyet*, 192

²⁵³ *Ibid*, 186

life. "The frame of resistance against the oppression of the religious patriarchy and the struggle for domination has also changed [...] Resistance to male violence is at the same time becoming a new framework for the defence of secular life."²⁵⁴

Identified with the sovereign, the institutionalized masculine violence, which is evident in the family, on the streets, and in all the institutions that represent the government, or "structural violence" as mentioned by Direk, can change to a form of "extreme violence"²⁵⁵ and cause the formation of a fragile and intrinsic model of subjectivity.

Domestic violence solidifies bodily boundaries, lifting the conditions of one's self-expression, and producing a fragile subject, whose transcendence is taken away as an effect of this process and who is reduced to immanence. [...] It is the interruption of the ability to bring in something permanent, a work, and an institution to the world, except for losing the possibility of transcendence, losing freedom, repeating a maintenance routine in a private area, due to historical and social reasons.²⁵⁶

The fact that Çilem Doğan herself and her case have become a part of the feminist struggle enables a process that breaks this intrinsic and fragile, determined pattern of women's subjectivity, and constitutes its agency and subjectivity again, thus bringing about a creative transcendence. Kathi Weeks mentions the importance of expressing these questions: "What are some of the possible ways of regarding collectivities not only as determined subject positions but also as active subjects—how can these subject positions be transformed into relatively autonomous agents capable of social change?"²⁵⁷ In the light of these questions, we can think about forms of feminist struggle and autonomous subjects, which resist the forms of masculine domination which are produced and

²⁵⁴ Zeynep Direk, *Cinsel Farkın İnşası Felsefi Bir Problem Olarak Cinsiyet*, 193

²⁵⁵ *Ibid*, 200

²⁵⁶ *Ibid*, 200-201

²⁵⁷ Kathi Weeks, *Constituting Feminist Subjects*(2018), 151

legitimized in cultural, social, economic, legal sense, which is revolutionist - revolution means "change" in a very general sense²⁵⁸ - in the context of being able to change these structures. We talked about the fact that the cases of women who have protected their lives, including Çilem Doğan's case, are dragging the legal space into an ambiguity. At this point, we can say that the women's struggle has the possibility to intervene in the legal field in an aspect, but the act of law as a means of the power makes the legal field hard to change.

4.1.2. Violence

We have mentioned that there is an "ethical" perception structure in the way that violence is revealed by those who are condemned by the system of power to a very damaging and compulsive relation of exploitation. According to this, the fact that the act of violence does not demand power, that it has no possibility to turn into *Gewalt* that it does not drag into a situation where its purpose is unclear or there is no purpose, and that it is in a structure with a certain sense of responsibility, are the motives that make it ethical. Indeed, as understood by the views of those who draw attention to the difference between justified violence and the violence of puissance, the concepts as ethics and justice are more than enough to interpret and distort. However, it is clear that there are points where the violence committed by LGBTQIs and women who are almost reduced to "homo sacer" except for the ones within the scope of legitimate self-defence, like Çilem Doğan, and which can be protected by state, law enforcement, political power, and judiciary only as a result of certain bargains, may differ from other forms of violence. These people's open positions to abuse and violence that lasts maybe for years and the psychological process created by being victims, or more precisely, being victimized can bring out the act of violence. The "violence" in question is not only against the person who represents "hegemonic masculinity"

²⁵⁸ Zeynep Direk, *Cinsel Farkın İnşası Felsefi Bir Problem Olarak Cinsiyet*, 196

but also all the institutional "masculinity" forms which normalize this situation. The kinds of lawsuit where the family institution has brought a space to dependency relations open to exploitation and thus showing that the "dependency relations open to exploitation" can be easily seen, for a political power that moves through the holiness of the family; threaten the value of the family. However, it would be a deficient inference to think that the family structure is constituted only through naked violence. Naked violence can be founding only to the extent that it can transform into power. "Violence must become power in order to establish a space."²⁵⁹ For this reason it is possible to see the family institution as one of the areas where the manifestation of the sovereign is realized. The stage of institutionalization and normalization of violence can first be found in the family, that is to say, within the space established through this institution. Because "no matter how much the family has been transformed by self-civilized or trained individuals, at the crisis points, the institutional past that transcends those individuals, and the historical practices that are thought to be surpassed, can haunt even the most alternative families."²⁶⁰ On which side of this institutionalized and normalized act of violence can we put the legitimate defence cases arising as a result of systematic "male violence"? Against it or as its manifestation?

There is a debate among feminist legal theorists on whether the legal process should be based on the concept of equality or the concept of difference and on the fact that legal sanctions should be applied accordingly.

An underlying debate [...] is over whether to identify women as a special group that needs special legal (sometimes called preferential) treatment or whether women can be accorded remedies by applying existing standards fairly and equally. Sometimes this is referred to in shorthand as the "equality versus difference" debate.²⁶¹

²⁵⁹ Byung Chul Han, *Topology of Violence*, 42

²⁶⁰ Zeynep Direk, *Cinsel Farkın İnşası Felsefi Bir Problem Olarak Cinsiyet*, 200

²⁶¹ Josephine Donovan, *Feminist Theory: The Intellectual Traditions of American Feminism*, (New York&London:200, Third Edition/The Continuum International Publishing Group Inc), 207

One of these debates is developing within the framework of the defence of legitimate self-defence in cases where beaten women kill the person who beats them. According to this; there are opinions that women who are beaten are exposed to a "specific group" because of the effect and reaction that develops in this context, and that the judge should continue and decide on the legal process by considering this situation. "[...] in order to fairly judge their behavior those experiences must be taken into consideration, sometimes seen as exonerating"²⁶² "It violates a woman's right to equal treatment to assess her situation in male terms"²⁶³ On the other hand, some feminists emphasize that the difference will institutionalize if the law is processed based on the "difference", and even based on this, the differences will deepen and the position of the status quo will become legitimate again and again.²⁶⁴ "[...] while the self-defense plea may save an individual woman from prison, it does little to stop wife abuse"²⁶⁵ This view can be exemplified by the liberal (egalitarian) feminist law theory. According to the theory of egalitarian feminist law; in liberal democracies, the inequality between men and women must be eliminated through state intervention, equality must be expressed only in legal terms, and "equality" must be guaranteed on the basis of these legal terms.²⁶⁶ The state of equality put forward through the law alone will provide a balance in the functioning of the capitalist economy based on the "individual". Therefore, the main problem in gender equality is the law; "Gender equality will be ensured if these legal obstacles are lifted."²⁶⁷ This theory of law is divided into two, as androgenic and assimilative approaches.²⁶⁸ According to

²⁶² Josephine Donovan, *Feminist Theory: The Intellectual Traditions of American Feminism*, 207

²⁶³ MacKinnon, "Toward Feminist Jurisprudence" in *Stanford Law Review* 34, (1982), 730

²⁶⁴ Josephine Donovan, *Feminist Theory: The Intellectual Traditions of American Feminism*, 208

²⁶⁵ L. Hasse, "Legalizing Gender- Specific Values", in *Women and Moral Theory*, edited by Kittay and Meyers, (ABD:1991, Rowman & Littlefield Publishers), 289-294

²⁶⁶ Birgöl Değirmenci, "Feminist Hukukun Ataerkil(Eril) Hukuka Bakışı", içinde *Toplumsal Cinsiyet Farklı Disiplinlerden Yaklaşımlar*, Ed. Derya Altun- Huriye Toker, (Nika Yayınevi:Ankara, 2017), 23

²⁶⁷ *Ibid*, 23

²⁶⁸ *Toplumsal Cinsiyet Sosyolojisi*, AÖF Yayın NO.2307 (Eskişehir: AÖF Yayınları,2015), 159

the assimilationist approach; not only the men but also the women should be constructed according to the model of "hegemonic masculinity", which means that it should be similar to the "masculinity" which is revealed by this model and the principle of "equality" must be provided through this similarity. "In this context, socially determined masculine behaviour is expected from women."²⁶⁹ As for androgenic approach; it demands that the legal space should act in accordance with a new system of norms based on the principle of "equality" to be formed in an autonomous form, without taking into account the "differences" created on the basis of the gendered structure. It is clear that according to these two approaches; law is seen as a doctrine independent of social norms and the power structure. It is also problematic at this point that laws which ignore the structure of society and powers justify their own existence based on the principle of "justice". In what context are this "equality" principle and the right to equal tribunal considered? Which one does a fair trial include; Those who do not have "equal" conditions are considered to have "equal" treatment only in the context of the law, ignoring their experiences or a practice of an "equality" which eliminates the existing "inequality" caused by the lack of steps to prevent the emergence of these experiences? Moreover, even if this "neutral" area can be created in the context of legislation, it does not seem possible to achieve the same "neutrality" in the course of its implementation. Moreover, even if we admit that it can be constructed in a "neutral" manner, including the step of the application of the law, questions about what the "law" really serves will increase if constituting and functioning manners of the society and power structures are not influenced by this "neutrality". In 1977, a decision that could be counted as an example was reached by the Supreme Court in the United States on this issue. According to this;

The Supreme Court of Washington ruled that a woman's right to equal protection was violated because the jury was not instructed to consider "her actions in light of her own perceptions of the situation, including those which were the product of our nation's 'long and

²⁶⁹ Fatma İrem Çağlar Gürgey, "Feminist Hukuk Teorisi Nedir?" in *Hukuk Kuramı* (c.1, s.5, Septembre-October 2014), 31

unfortunate history of sex discrimination' Women's actions, the Court noted, must be understood "in light of the individual physical handicaps which are the product of sex discrimination."²⁷⁰

The pro-differential feminist legal theory underlines that the laws should be regulated by taking into account the "differences" between men and women, in order to ensure justice in this context, because diversity is not only gender-focused but also biologically relevant, as absolutely opposed to the liberal feminist legal approach. For example, according to the feminist lawyer Elizabeth Wolgast, constituting "equality" is not possible because "equality" means "sameness"; but "gender differences of women can be emphasized by claiming special rights based on biological differences, so justice can be ensured."²⁷¹ This theory does not accept the "feminine" models constituted by the power as "emphasized femininity" states in the first place and goes to an essentialist reduction such as "female nature" and "male nature". It is a justifiable criticism of the liberal (egalitarian) theory of feminist law in this respect; the gains of the legal status of the differences will turn out to be a mean to approve or even normalize the status quo. As a matter of fact, the natural one is defined and legitimized through laws. I think that the two theories are missing in terms of the relationship of masculine hegemony with power and society, the role it plays in constituting of the gendered structure, and seeing how they can encompass all the individuals, especially women. It is also related to the fact that the concept of "diversity" is accepted as a phenomenon not built by gender norms. How accurate is it to place the things we call difference against equality? The process we call "pregnancy" alone does not make the family institution natural, nor does it cause an inequality between men and women. On the contrary, what drag this process into an unequal position are patriarchal discourses, strategic institutions of the power and a network of social relations. If we make the mistake of thinking that equality is "sameness", we have to make a definition of universal female or male, and in such "a" classification of

²⁷⁰ Josephine Donovan, *Feminist Theory: The Intellectual Traditions of American Feminism*, Footnote:62, 236

²⁷¹ *Toplumsal Cinsiyet Sosyolojisi*, 163

"female" and "male", we have to arrive at the result that women are "the same" among themselves, and the men are "the same" among themselves; however, this is not possible.

MacKinnon argues that inequality and "discrimination is not caused by difference, but by masculine domination"²⁷². This structure of domination shapes especially sexuality and violence according to the masculine paradigm. Thus, in accordance with this mode of domination, the judiciary sets the criminal sanctions by assessing the "consent" or "coercion" elements of sexual abuse and acts of violence that the victim is facing in the context of masculine paradigm. Susan Estrich, in the studies she carried especially in the context of sexual crimes, stated that "responding to violence according to criminal law is perceived as a response of men to violence against men"²⁷³. With this perception, especially in rape cases; due to the absence of any evidence of physical resistance to the rape or the lack of shouting and appeal for help of the victim, it is seen in judicial decisions that there is an inference that there is "consent" or that the absence of such findings is the cause for remission. As a matter of fact, it is obvious that the sense of "protecting honour" we emphasize when we talk about the concept of "emphasized femininity" is a "masculinity" value that allows the patriarchal structure to surround the female body. Accordingly, "protecting honour" has been articulated to masculine behaviour as a part of the "hegemonic masculinity" discourse. In cases where it is thought that there is consent thus no rape, there is a perception that there is not enough or no effort to protect "honour". The rape accusations in Nevin Yıldırım's case was also tried to be abated with a similar perception and was not taken into consideration. Can the killing action in Çilem Doğan's case also be evaluated as having a function that approves a masculine paradigm? Why is the attitude of the judge not in this direction?

²⁷² Birgül Degirmenci, "Feminist Hukukun Ataerkil(Eril) Hukuka Bakışı", 27

²⁷³ **Ibid**, 28

The fact that Çilem Doğan is subjected to systematic male violence and that the institutions of power have not properly sanctioned this violence but instead have or have had discourses that normalize or naturalize this violence and had practices accordingly are an indication that it positions the act of "violence", which can be regarded as a result of "traumatic female syndrome", as not a part of the masculine paradigm but just against it. When the concept of naked violence turns into power and the concept of family, which is the manifestation of the sovereign, is threatened by "violence", the attitude of the judge is shaped accordingly. However, at this point, we can argue that the reason for jurisdiction's different attitude towards the perpetrators who killed their wife and the perpetrators who killed their husband, is the male we talked about within the psychoanalytic dimension of constitutional violence is accepted as the founder of the family. The emphasis on the fact that the attitude of the ruling institutions led women to non-tangible and threatening situations as in the case of Çilem Doğan , constitutes another dimension of the case and the criminal decision given as a result of the case can also be evaluated as dissatisfaction of the masculine judge in revealing this reality. As MacKinnon said:

Those with power in civil society, not women, design its norms and institutions, which become the status quo. Those with power, not usually women, write constitutions, which become law's highest standards. Those with power in political systems that women did not design and from which women have been excluded write legislation, which sets ruling values.²⁷⁴

In this context, the act of violence in question in the case is perceived as against the family institution and thus against the power, and against all institutions that normalize "hegemonic masculinity" that operates according to patriarchal exploitation and the masculine paradigm. What should be paid

²⁷⁴ Catherine MacKinnon, *Towards a Feminist Theory of the State*, (Harvard University Press, Cambridge, Cambridge, Massachusetts, London, England:1991), 238

attention in terms of a feminist perspective is that Çilem Doğan and the people living the same situation are not "heroized" - as "heroism" is a part of masculine paradigm - and just seen as women trying to protect their lives. These cases should be considered within the scope of self-defence but these self-defence actions cannot provide a comprehensive solution to the "male violence" as the pro-equality feminists have mentioned. Still, it can be said that this violence is a life-based resistance, not a death based resistance that requires dying for and it can be emphasized that it is not produced as a form of violence in accordance with *Gewalt*, but is positioned against *Gewalt* in every aspect.



CONCLUSION

This research addresses the legal subject position of women against masculine power and judiciary by addressing the relation of law to the power and violence. It has been tried to establish a debate about the possibility of constituting a new subjectivity and produce an agency for women. The extent to which the law is subject to the discourses and policies of the government especially in Turkey, the extent to which its functions is determined by the sovereign, or whether it has utterly become a mediator of the political power are matters of debate. In this context, by using the concept of *Gewalt* I drew attention to the fact that the law can always turn to its functional and constitutive past, and historical practice for this power, by revealing a deeply rooted relationship between power, violence and law. Therefore, in the first part, I discussed the duality in the act of "violence" with reference to *Gewalt*, and Benjamin, *that this mythical or archaic constitutive violence* is one of the main factors that constitute the structure of law. It is also possible to see the relation between the *constitutive violence* or *structural violence* inside the patriarchal system, via the concept of *Primordial Father* in the dimension of psychoanalysis. It should be noted that government's policies based on violence and its institutional structures can gain legitimacy through law, therefore the law can be intrusive as much as protective. People can be in "subject" position as long as they are recognized by law and they can gain certain rights based on this status, but power relations have the authority to suspend or never acknowledge them. Particularly in Turkey, the fact that sexual orientation is not legally defined in "citizen" status, and LGBTQIs are "non-recognition" status, show that they are not accepted as "subjects" by the government and this causes life threatening situations. As explained by the concept of *Homo Sacer* some individuals can be out of law through power relations which implies that them being killed or harmed is not legally problematic. In other words, the positions of women and LGBTQIs correspond to the concept of *homo sacer* in the practices of the government or its institutions.

The law processes as a doctrine that is disconnected from historical, cultural and social contexts to ensure "justice". In this way, law is defined as an independent apparatus from power. On the contrary it is subject to power. Violence; which is positioned against the violence, pressure or domination, legitimated by the power through law and which is caused by the pressure itself, is expressed as "demand for right". However, this violence carries the risk of going too far, demanding the power itself and turning into *Gewalt*.

The discussions about the possibilities of constituting self-subjectivity in the face of power relations and forms of domination and being able to be agent are important. The concept of the subject is a product of the power structure or serves as a means of legitimizing the concept of masculine hegemony. It is therefore important to deny or debate the subject. As Butler suggests in reference to Foucault, the "subject" is constructed by the government as a legal status. However, to say that people are already built by cultural, social, legal, traditional norms and various modes of domination will cause a deterministic approach. Both because the agency of Butler is constituted in a performative way and the states of subjectivity can be repeatedly constructed, and because the feminist standpoint theory, as emphasized by Kathi Weeks, can shape people with the possibility of agents, that is, it can shape people's relations with the power not through passivity, but with the possibility of being able to affect it, it caused me to examine the concept of agency through Çilem Doğan's case. Çilem Doğan's case opens a space to discuss the possibility in the constitution of feminist subjectivity. For this, I have included how the gendered structure based on the binary gender regime is produced as a result of dominant modes of domination, social and cultural norms and also by means of these norms. Indeed, women's movement and the feminist struggle have emerged and gained momentum against the drastic practices of oppression based on gender. By taking advantage of Connell's "hegemonic masculinity" and "emphasized femininity" concepts, I addressed the discourses and actions the power in Turkey constituting the "femininity" and

"masculinity" by giving legitimacy to a patriarchal structure. I touched on how some structures such as political power, tradition, culture and religion abandon the female body to a secluded area. I draw attention to the relationship between the sovereign and the patriarchal system to build a power for controlling woman's body especially through the notions of "honour" and "family". I have argued that there cannot be a doctrine when we think of the link between the law and the power. There is a social structure that creates hegemony and that is also in interaction with all the cultural, social and economic norms. In Turkey, when the woman's legal subjectivity is in question, the legal codes do not address woman independent from the notions of "family" and "honour". This shows the normalization of masculine hegemony through law. While there are laws against the patriarchal system, the fact that the law is open to interpretation can result in judges make decisions legitimizing the gendered structure. Political power in Turkey normalizes gender relations by subjectifying women to the family institution, and religious references. Insecure position of law shapes the practices of women's survival and self-defence. Through the concept of self-defence under the definition of "ethical violence"; it is possible to see it as a legitimate way of protecting one's life in the face of the exploitative relations and as an act of opposing to injustice. However, the judiciary rarely includes these actions in the scope of self-defence. In general the judicial process, including punishment reductions, is carried out unequally for "female perpetrators" and "male perpetrators". Thus female perpetrators defences can easily be distorted by judges, prosecutors or the lawyers of the other parties. We, therefore, often witness the cases where the female subject is legally assessed from the points of view that are considered politically, socially, culturally, religiously and ideologically appropriate for the female body.

One of the main struggle areas of women's movements in the 1980s was the change in the old Civil Code had a bearing on the masculine paradigm. The amendment of the Civil Code, CEDAW based on preventing discrimination

against women, and the signing of the Istanbul Covenants against violence against women concern this struggle. It is thus justifiable to focus on the fact that the feminist debates about whether or not it is the subject of history will be the cause of ignoring the achievements of the feminist struggle. However, the fact that the notion of the subject history is a universal essentialist feminist subject model would be problematic in terms of various forms of feminist subjectivity and resistance, and would lead to an inadequate analysis of the masculine hegemony. Currently, Turkey faces an increase in male violence, decisions of the judiciary legitimizing "hegemonic masculinity" and the family institution, and the amendment of the law, recognizing the contracts. This shows that masculine hegemony does not change, on the contrary it manifests its power to change from its acknowledged legal statue. The increase in male violence is not independent from the discourses of the political power that normalizes the act of violence and the desires to define male and female relations in relation to conservative and traditional norms. When the patriarchal structure begins to crack and lose power, it may become stricter. The growing demand of women to have an independent life from men leads to the spread of feminist struggle in the social structure by causing male hegemony to feel threatened.

The case of Çilem Doğan is important both in shaking of this masculine hegemony and in revealing that legal process acts in accordance with the patriarchal structure and violence. Çilem Doğan has built a different "subjectivity" by breaking her "fragile" subjectivity and defined her own agency by protecting her life against power, masculine jurisdiction, and male domination. We witness the extent of the change that she experienced from the interviews and her statements in the trial process. It was obvious that her precautionary steps taken against male violence primarily had been nullified every time. The authorities of the government that are responsible for ensuring the "justice" have attempted to normalize the "male violence" by means of masculinized discourses. The measures authorities had taken against the violence Çilem Doğan faced were so insufficient

that Çilem Doğan has been left to kill by being reduced to be *homo sacer*. Therefore, the self-defence that women apply for surviving, like Çilem Doğan, that is to say, their acts of violence enable the conditions and unjust attitudes they experience to be heard in the social scene. The masculine nature of the law, have been revealed in cases followed by women and feminists. In some cases, "acquittal" decisions are made, but they are challenged by the institutions reflecting political power. Often the decisions were appropriate to the patriarchal structure protecting the family institutions. Indeed, these cases are also important to show how the institution of the family that forms the basis of the Constitution of Turkey is a micro-power field that is vulnerable to violence. Even the fact that Çilem Doğan had first taken prison sentence and later was released on bail shows that the judiciary decides according to the masculine paradigm. The release of Çilem Doğan can be considered as a feminist achievement. The fact that these cases had been accepted within the scope of self-defence and acquittal shows that struggles can bring change in the patriarchal decision-making mechanism of the legal arena. Here I developed a discussion about the possibility of the collective feminist subjectivities as mentioned by Kathi Weeks. Women and the feminist organizations in support of Çilem Doğan formed a significant resistance in feminist struggles. It is also evident that female subjectivities that link feminism and secular life have been constituted.

As I try to emphasize in my work; the discourses of the political power today and the increase in practices that strengthen the patriarchal system again requires that the feminist struggle should be continued and strengthened. It is necessary to open space to various agencies and subjectivities, by producing new forms of resistances. The threatening position of feminism against the forms of domination can create opportunities of movement for autonomous subjectivities. Because "[...] feminism is essentially a thought on power, about power."²⁷⁵

²⁷⁵ Zeynep Direk, *Cinsel Farkın İnşası Felsefi Bir Problem Olarak Cinsiyet*, 189

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